
(2011) 09 RAJ CK 0021
In the Rajasthan High Court
Case No : Civil Writ Petition No. 7842 of 2011

Mamta Asdev and Others

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 26-09-2011

Acts Referred:

Constitution of India, 1950 — Article 14, 21, 226

Citation : (2012) 1 RLW 271

Hon'ble Judges : Gopal Krishan Vyas, J

Bench : Single Bench

Advocate : Kailash Janid, for the Appellant; Pritam Solanki and Yashpal Khileri, Dy. Govt. Counsel, for the Respondent

Final Decision : Allowed

Judgement

Gopal Krishan Vyas, J.—Instant writ petition has been filed by 79 teenager students of Class X of Sandhya Shiksha Sadan Secondary School, Guljar Nagar and Varun Vidhya Niketan, Sector D Kirti Nagar, Magra Punjla, Jodhpur through natural guardian of petitioner No. 1 Shri Bhera Ram Asdev, in which, it is prayed by the petitioners that final result of the petitioners of Class X of the session 2010-2011 vide Annex.-10 dated 08.08.2011, which is declared against the petitioners may be quashed with further order to declare the result of the petitioners for the Secondary Examination, 2010-2011. The petitioners are minors and they all were students of Class X in their respective school during the academic session 2010-2011. After passing 8th and 9th standard while working hard the petitioners appeared in the Secondary Examination 2011 conducted by the Board of Secondary Examination, Rajasthan, Ajmer. They appeared in the examination at the Examination Center Sant Ravidas Government Girls Middle School, Bhadwasiya, Jodhpur (Center Code 17029) in all the papers of the Secondary examination with full preparation.

2. After completion of the examination they were waiting for their result and result of the Secondary Examination was declared on 19.06.2011 but surprisingly

the petitioners came to know that their result has been withheld but no reason was given by the respondent Board. Being aggrieved by the Arbitrary action of the respondents, they submitted detailed representation through their parents for declaring their result but, all of sudden, the respondent Board issued letters to the petitioners on 12.07.2011 by which the petitioners were asked to submit reply upon allegation levelled in the letter with regard to use of unfair means in the question paper of subject Science-1. The petitioners were called upon to file their reply and date was fixed for hearing in between 18.07.2011 to 26.07.2011. It was very difficult for the petitioners to approach the respondent Board within short time but the petitioners approached the respondents in difficult manner. In the notice, no specific allegation was levelled, therefore, no proper inquiry was made from the petitioners by the Board authorities. However, reply filed by the petitioners was taken.

3. In the so called letter inquiry was initiated only on the basis of the report given by the examiner to whom the answer-sheets of the petitioners were given for evaluation of the subject Science-I paper. As per the examiner the students used unfair means in the said paper. The respondent Board issued letter on 08.08.2011 whereby the result of the petitioners was cancelled without assigning any reason vide Annex.-10.

4. After receiving the letter dated 08.08.2011, the petitioners and their parents were shocked and filed another detailed representation for taking information about the grounds upon which action was taken by the respondents but no reply was received by the petitioners. The petitioners filed an application under the Right to Information Act for seeking information vide Annex.-12 but no reply is given to the petitioners by the respondent Board till today. Being aggrieved and dissatisfied by the order impugned for cancellation of petitioners examination of Secondary Examination 2011, the petitioners preferred this writ petition before this Court and submit that the order dated 08.08.2011 passed by the Board of Secondary Examination Ajmer may be quashed and set aside because it is totally unconstitutional and against the principles of natural justice.

5. Learned counsel for the petitioners submits that cancellation of the petitioners' examination is in violation of Articles 14 and 21 and right to education granted by the Constitution of India because no incident took place at the Center where the petitioners appeared in the examination and no complaint was sent by the Center In-charge to the Board. Further, upon inspection made by the squad no incident was reported but only upon the basis of opinion expressed by the examiner of the answer-sheets of the subject Science-I, the respondent Board initiated the proceedings for indulging in mass-copying against the petitioners which is totally unfounded and maligning action of the respondents.

6. Learned counsel for the petitioners invited my attention towards the notice dated 12.07.2011 (Annex.-9) and submits that in the notice it is nowhere stated in which questions alleged mass-copying was indulged in. A general assertion was made in the notice that as per examiner's report the petitioners have used

unfair means and, in pursuance of that notice, all the petitioners filed their reply and refuted the allegation levelled against the petitioners. But, without considering the reply of the petitioners straight away action has been taken by the respondent Board to cancel the examination of the session 2010-2011 of the petitioners of Secondary Examination.

7. Learned counsel for the petitioners submits that the action has been taken in very hasty manner and only on the basis of the opinion of the examiner of answer-sheets of subject Science-I paper but what type of opinion is expressed by him for the answers to the questions is not informed to the petitioners, therefore, the whole action undertaken by the respondents is illegal. Further, it is submitted that upon perusal of Annex.-10 dated 08.08.2011 it will reveal that there is no consideration with regard to the reply given by the petitioners. Therefore, if anything has been done without informing the petitioners and without providing proper opportunity to the petitioners, then, it can be said that action of the respondent Board is totally against the principles of natural justice.

8. As per counsel for the petitioners, for any intended action by the quasi-judicial authority specific charge was to be disclosed in the notice with regard to alleged mass-copying of the questions for which presumption was drawn by the examiner but, in the notice given to the petitioners, general assertion has been made, therefore, it was not possible for the teenager students to give reply upon the allegations made upon the report of the examiner on which final decision is taken by the respondents.

9. The impugned action of the respondents is not only heart-breaking for the teen-ager students but it has crushed their spirit with mental stress because in the society the petitioners have been labelled as charged for mass-copying whereas in relation to the Examination Center where the petitioners appeared in the examination no such incident took place nor any such incident is reported either by the Center In-charge or by the squad. Therefore, the whole action taken by the respondent Board against the petitioners is totally unwarranted. Hence, action of the respondents is arbitrary and illegal.

10. Learned counsel for the petitioners invited my attention towards certain judgments rendered by this Court in the case of Prabhu Ram Choudhary Vs. The University of Jodhpur, , Narendra Gupta Vs. University of Rajasthan, ; judgment of Orissa High Court in the case of Sanjay Kumar Ram and Others Vs. Council of Higher Secondary Education, Orissa and Others, ; and, judgment of the Supreme Court reported in Board of High School and Intermediate Education, U.P., Allahabad Vs. Ghanshyam Das Gupta and Others, . Learned counsel for the petitioners also invited attention of the Court towards judgment rendered by this Court in writ petitions No. 2369, 2370, 2542, 2675, 2676 and 3521 of 1989, decided on 09.04.1990; and, while citing the above judgments, it is submitted that action taken by the respondents is against principles of natural justice, arbitrary and illegal being violative of Articles 14 and 21 of the Constitution of India, therefore, Annex.-10 may be quashed and respondent Board may be

directed to declare the result of the petitioners of Secondary Examination 2011.

11. Per contra, learned counsel appearing on behalf of the respondent Board, Mr. Pritam Solanki vehemently argued that although no incident was reported by the Center Superintendent and no complaint was received but answer-sheets of the subject Science-I were sent for evaluation to the examiner and, during checking the answer-sheets of the petitioners of Science-I paper it was revealed that the students indulged in mass-copying and, in the opinion of the examiner, the petitioners used unfair practice of mass-copying, therefore, the examiner made a complaint to Deputy Director Secondary Education, Rajasthan, Ajmer stating that unfair means had been used by the students. The said complaint was placed before the Result Committee of the respondent Board on 14.06.2011 at item No. 16 and the Result Committee took decision to withhold the results of the petitioners. Thereafter, decision was taken to get the opinion of the Expert Committee. The Expert Committee after scrutinizing all the copies minutely submitted detailed report Secretary, Board of Secondary Education, Rajasthan, Ajmer on 02.07.2011. On the basis of the report of the Expert Committee, the petitioners were issued show cause notice to submit their explanations for the charges levelled against them and they were directed to file their explanation on 18.07.2011 to 24.07.2011.

12. In pursuance of the aforesaid notice, the petitioners appeared before the Hearing Committee and after providing full opportunity to the students to examine the complaint of the examiner and report of the Expert Committee and their answer sheets. Thereafter, statements of the petitioners were recorded, their answer sheets were put forward to them and compared with other answer sheets; and, ultimately, it was decided to cancel the examination of the petitioners. Learned counsel for the respondents submits that the Result Committee took appropriate decision after taking into consideration entire record and gave the conclusion that on Centre No. 512 (17029) Sant Ravi Das Govt. Girls Middle School, Bhadwasiya, Jodhpur the students were indulged in mass copying by adopting various unfair means, therefore, their examination is cancelled.

13. Learned counsel for the respondents submits that everything is done in accordance with rules and nothing has been hidden from the petitioners and a conscientious decision was taken by the Expert Committee, therefore, the contention of the petitioners that they belong to very normal and poor background cannot be considered to permit them to use unfair means in the examination which itself would be very fatal to the future of the petitioners themselves, therefore, it is submitted that this writ petition may be dismissed because the decision taken by the Board is in consonance with law and after following the procedure laid down in the rules for the purpose of taking action in case of using unfair means.

14. Learned counsel for the respondents submitted that very lenient view has been taken for cancellation of the present examination only, therefore, no case is

made out in favour of the petitioners to get any relief under Article 226 of the Constitution of India. In support of his contention, learned counsel for the petitioner invited attention of the Court towards judgment of the Supreme Court reported in Director (Studies) and Others Vs. Vaibhav Singh Chauhan, , in which, as per counsel for the respondents, Hon"ble Supreme Court has held that even interim order permitting disqualified candidate to appear in the examination is not proper. Therefore, this writ petition may be dismissed.

15. After hearing learned counsel for the parties, I have perused the entire record of the case.

In this case, it is admitted position of the matter that no complaint was forwarded by the Center Superintendent of the school in which the petitioners appeared in the examination. No complaint was received by the Board of Secondary Education, Ajmer through the Board's squad normally deputed for inspecting the examination centers. It appears that till sending the answer-sheets to the examiner of Science-I paper no complaint was received by the Board with regard to mass copying by the petitioner students. Thereafter a report was communicated by the examiner Sanjay Kumar Gupta which reads as under:

16. The above report sent by the examiner Sanjay Kumar Gupta was forwarded to the Result Committee which is evident from Annex.-R/2/2. Thereafter, decision was reported to the Secretary, Board of Secondary Education by the Result Committee. The Result Committee issued notice to the petitioners which reads as under:

17. Upon perusal of the notice dated 12.07.2011, Annex.-9, it reveals that there is mention of subject Science-I but it is nowhere mentioned that for which question the examiner has raised objection. It is very strange that these notices were given to teen-agers and minors expecting their reply as if they are competent to ascertain what is the meaning of in between the lines.

18. It seems that presumption was drawn by the examiner Sanjay Kumar Gupta that something wrong has been done in the examination. It is very strange that upon perusal of Annex.-9 it reveals that till issuance of the notice the respondent Board was not confirmed whether any outside assistance was taken by the students or they used any slips or any book/pass-book; meaning thereby, whimsical decision was taken and that too was not communicated to the students. In fact, no incriminating material was seized from the petitioner-students in the Examination Center nor there is any complaint either made by the Center In-charge or squad or any other authority. Whole impugned action of the respondents is based upon opinion and presumption expressed by the examiner of the answer-sheets Sanjay Kumar Gupta and general assertion was made in the notice with the expectation that teen-ager students will be able to give reply on the basis of the unreasoned notice.

19. In my opinion, the notice itself is against principles of natural justice. If

anything is to be inquired with regard to any allegation levelled on the basis of opinion or presumption of the examiner against the person, it was prerequisite that he should be apprised about the specific allegation levelled against the person. In the impugned notices, even the disciplinary authority was not confirmed what type of unfair means is used for the purpose of alleged mass-copying because the entire action is only based upon opinion and presumption of the examiner and no incriminating material against the petitioner-students is in possession of the Board authorities to base the impugned action thereupon. The entire action is totally against the principles of natural justice, therefore, presumption is totally baseless, unfounded and unconstitutional.

20. It is also worthwhile to observe here that in X Class the students are not appearing in only one subject or paper, they are appearing in number of subjects and papers of examination subjects are more than five in number. In the instant case, the allegation of using unfair means against the petitioners is in respect of only one paper and, that too, made on the basis of opinion and presumption expressed by the examiner Sanjay Kumar Gupta; and, before that, no complaint has been received by the Board or other examination authorities from either the Center Superintendent or Board's squad or in any other way. Therefore, the total action is based upon mere presumption of one examiner and what presumption is drawn by him is also not communicated to the petitioners. Therefore, the whole proceedings undertaken by the Board is not only objectionable but contrary to the basic principles of law.

21. It is true that for the purpose of substantiating their action some procedure is adopted which is receiving report from the examiner, putting the same before the Result Committee and obtaining opinion of the Expert Committee. However, the fact is that on the basis of the set of facts and circumstances, as in the instant case, at best, the respondent Board would have been justified to make inquiries against the Department's authorities and officials because if in the opinion of the Board mass-copying is suggested by the report of the examiner, then, certainly such incident cannot occur without the aid of the outsiders in connivance with the authorities of the Education department/Center Superintendent; and, if any inquiry based upon such presumption was to be made that was required to be made against erring officials of the Department/Board. But, no action whatsoever can be taken by the respondent Board against the petitioner-students which is, at its root, based upon presumption of one examiner only whereas at the same center (Code 17029) the petitioners have appeared in-examination of more than five subjects out of which some subjects comprised of two papers. There is nothing in the reply filed by the respondents to show that the Result Committee scrutinized all the answer-sheets of the petitioners of all the subject-papers to arrive at the conclusion that the petitioners have definitely indulged in mass-copying. Mere suggestions and presumptions cannot be the basis for penal consequences so as to ruin the careers of teen-agers.

22. Further, along with reply, certain documents have been annexed viz., Annex.-R/2/4 and Annex.-R/2/5. Both these documents are based upon presumption arrived at by the authorities of the Board but those conclusions are not even incorporated in the order dated 08.08.2011, Annex.-10 annexed with the writ petition. There is no whisper with regard to the reply filed by the petitioners to the notice. Therefore, order impugned suffers from material irregularity and illegality.

23. In the case of Board of High School and Intermediate Education, U.P., Allahabad Vs. Ghanshyam Das Gupta and Others, , Hon''ble Supreme Court held that if the statutory authority has power to do any act which will prejudicially affect the subject, then, although there are not two parties apart from the authority and the contest is between the authority proposing to do the act and the subject opposing it, the final determination of the authority will yet be a quasi-judicial act provided the authority is required by the Statute to act judicially. In that case, the constitutional Bench of the Supreme Court held that duty is cast upon the Committee to act judicially in that matter, particularly as it has to decide objectively certain facts which may seriously affect the rights and careers of examinees, therefore, adequate opportunity of presenting the case is to be given to the examinees. Para 8, 11 and 12 of the said judgment read as under:

(8) These principles have been acted upon by this Court in later cases: see Nagendra Nath Bora and Another Vs. The Commissioner of Hills Division and Appeals, Assam and Others, ; Radeshyam Khare and Another Vs. The State of Madhya Pradesh and Others, ; Gullapalli Nageswara Rao and Others Vs. Andhra Pradesh State Road Transport Corporation and Another, and Shivji Nathubhai Vs. Union of India (UOI) and Others, . Now it may be mentioned that the statute is not likely to provide in so many words that the authority passing the order is required to act judicially; that can only be inferred from the express provisions of the statute in the first instance in each case and no one circumstance alone will be determinative of the question whether the authority set up by the statute has the duty to act judicially or not. The inference whether the authority acting under a statute where it is silent has the duty to act judicially will depend on the express provisions of the statute read along with the nature of the rights affected, the manner of the disposal provided, the objective criterion if any to be adopted, the effect of the decision on the person affected and other indicia afforded by the statute. A duty to act judicially may arise in widely different circumstances which it will be impossible and indeed inadvisable to attempt to define exhaustively: (vide observations of Parker, J., in R. vs. Manchester Legal Aid Committee, 1952_2 Q B 413.

(11) We thus see that the Committee can only carry out its duties under R. 1(1) by judging the materials, placed before it. It is true that there is no lis in the present case, in the sense that there are not two contesting parties before the Committee and the matter rests between the Committee and the examinee; at

the same time considering that materials will have to be placed before the Committee to enable it to decide whether action should be taken under R. 1(1), it seems to us only fair that the examinee against whom the Committee is proceeding should also be heard. The effect of the decision of the Committee may in any extreme case blast the career of a young student for life and in any case will put a serious stigma on the examinee concerned which may damage him in later life. The nature of misconduct which the Committee has to find under R. 1(1) in some cases is of a serious nature, for example, impersonation, commission of fraud, and perjury; and the Committee's decision in matters of such seriousness may even lead in some cases to the prosecution of the examinee in courts. Considering therefore the serious effects following the decision of the Committee and the serious nature of the misconduct which may be found in some cases under R. 1(1), it seems to us that the Committee must be held to act judicially in circumstances as these. Though therefore there is nothing express one way or the other in the Act or the Regulations casting a duty on the Committee to act judicially, the manner of the disposal, based as it must be on materials placed before it, and the serious effects of the decision of the Committee on the examinee concerned, must lead to the conclusion that a duty is cast on the Committee to act judicially in this matter particularly as it has to decide objectively certain facts which may seriously affect the rights and careers of examinees, before it can take any action in the exercise of its power under R. 1(1). We are therefore of opinion that the Committee when it exercises its powers under R. 1(1) is acting quasi-judicially and the principles of natural justice which require that the other party, (namely, the examinee in this case) must be heard, will apply to the proceedings before the Committee. This view was taken by the Calcutta High Court in *Dipa Pal Vs. University of Calcutta*, and *B.C. Das Gupta and Another Vs. Bijoyranjan Rakshit and Others*, in similar circumstances and is in our opinion correct.

(12) It is urged on behalf of the appellant that there are a large number of cases which come up before the Committee under R. 1(1), and if the Committee is held to act judicially as a quasi-judicial tribunal in the matter it will find it impossible to carry on its task. This in our opinion is no criterion for deciding whether a duty is cast to act judicially in view of all the circumstances of the case. There is no doubt in our mind that considering the totality of circumstances the Committee has to act judicially when taking action under R. 1(1). As to the manner in which it should give an opportunity to the examinee concerned to be heard, that is a matter which can be provided by Regulations or Bye-laws if necessary. As was pointed out in *Local Government Board vs. Alridge*, 1915 A.C. 120 all that is required is that the other party should have an opportunity of adequately presenting his case. But what the procedure should be in detail will depend on the nature of the tribunal. There is no doubt that many of the powers of the Committee under Chap. VI are of administrative nature; but where quasi-judicial duties are entrusted to an administrative body like this it becomes a quasi-judicial body for performing these duties and it can prescribe its own procedure

so long as the principles of natural justice are followed and adequate opportunity of presenting his case is given to the examinee. It is not however necessary to pursue this matter further, for it is not in dispute that no opportunity whatsoever was given to the respondents in this case to give an explanation and present their case before the Committee. We (sic) therefore of opinion that though the view of the High Court that the Committee was acting merely administratively when proceeding under R. 1(1) is not correct, its final decision allowing the writ petition on the ground that no opportunity was given to the respondents to put forward their cases before the Committee is correct. We therefore dismiss the appeal. No order as to costs in the circumstances.

24. It appears from the above adjudication that for taking action against the teen-ager petitioner-students it was incumbent upon the respondents to apprise the students what type of illegality and allegation is found in the presumption of the examiner, however, it appears from the notice that no definite allegation was levelled against the petitioners in respect of alleged mass-copying. Therefore, apparently it appears that respondents have flouted all principles for taking action against the teen-agers by which unnecessarily the petitioners became culprits.

25. With regard to the judgments cited by learned counsel for the respondents, reported in Director (Studies) and Others Vs. Vaibhav Singh Chauhan, , in that judgment, there was direct allegation that slip during the course of examination was found with the respondent student. In para 7 of the said judgment, it is specifically observed that counsel for the respondent submitted that there was no evidence to show that the respondent used the said slip found in his possession. Therefore, it was held by the Supreme Court that it is wholly irrelevant whether the slip of paper found in possession of the examinee pertains to the examination paper in question. Here, in the present case, facts are altogether different. No direct complaint or incriminating material was received by the respondent Board prior to the presumption drawn by examiner of one paper Science-I. Therefore, the judgment cited by learned counsel for the respondents is based upon altogether different facts.

26. The action of the Committee of the respondent Board which is quasi-judicial authority is totally unconstitutional and against the future of the teenager students because upon presumption expressed by the examiner action is to be taken against the Center In-charge, flying squad and other authorities concerned of the Board for not maintaining control for conducting examination. It appears from the reply that no action has been taken against any of the authorities and all burden has been put upon the teenager students. In this view of the matter, while following the adjudication made by the constitution Bench of the Hon'ble Supreme Court in Board of High School and Intermediate Education, U.P., Allahabad Vs. Ghanshyam Das Gupta and Others, , this writ petition is allowed. Order/communication Annex.-10 whereby result of the petitioners was cancelled by the Board is hereby quashed and set aside. Respondents are directed to

declare result of the petitioners on the basis of evaluation within a period of 15 days from the date of receipt of certified copy of this order.