
(2009) 11 RAJ CK 0082

In the Rajasthan High Court

Case No : Civil Writ Petition No. 10286 of 2009

Mamta Kumari and Others

APPELLANT

Vs

The Board of Section Education and Another

RESPONDENT

Date of Decision : 11-11-2009

Acts Referred:

Rajasthan Public Examination (Prevention of Unfair Means) Act, 1992 — Section 2, 3

Citation : (2011) 1 RLW 241

Hon'ble Judges : Raghuvendra Singh Rathore, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Raghuvendra S. Rathore, J.—This writ petition has been filed by the Petitioners with the prayer that the Respondents be directed to declare their result of Senior Secondary Examination (Hum.), 2009.

2. All the Petitioners are regular students of 12th Class (Senior Secondary) of Indira Gandhi Balika Niketan Senior Secondary School, Ardawata, Tehsil Chirawa, District Jhunjhunu. The Senior Secondary Examination (Hum.), 2009 had commenced from 12.03.2009. The Petitioners were allotted Center (No. 15156) Indira Gandhi Balika Niketan Senior Secondary School, Ardawata. The result of Senior Secondary School Examination, 2009 was declared by Respondents on 10.06.2009. But the result of the Petitioners was withheld. Thereafter, the Respondents had sent letters to Petitioners on 6th and 7th July, 2009 mentioning that they have adopted unfair means in two papers of the examination namely, English (Compulsory) and History Second. The Petitioners were asked to appear personally on 14.07.2009, at 11.00 am.

3. In pursuance of the said letters the Petitioners, alongwith their parents/guardians, appeared before the Respondents and filed their written explanations, wherein they denied the allegations levelled against them. Subsequently, on 24.07.2009, the Respondents declared the remaining result of Senior Secondary

Examination, 2009, which had been withheld on the earlier occasion. But so far as the Petitioners are concerned, their result of Senior Secondary Examination, 2009 was cancelled.

4. The case of the Petitioners is that the allegations levelled against them are all of different nature and only on the basis of presumption and doubt, it has been said that the Petitioners have adopted unfair means. In fact, the Respondents themselves are not sure and specific about the manner in which unfair means was used by the Petitioners. Further, it is submitted that it is only on the basis of the report of the examiner that the Respondents have not declared the result of the Petitioners. The allegation against the Petitioners of using unfair means is wholly vague and false. It is also submitted that the allegations about the answers of the Petitioners being same as that of the other students of the center is baseless. The counsel for the Petitioners has submitted that some of the students like Archana has a good academic record and the allegation, on the basis of the report of the examiner, levelled against her is totally false. Therefore, it is submitted that the action of the Respondents in cancelling the result of the Petitioners of Senior Secondary Examination, 2009 is illegal, arbitrary and not sustainable in law.

5. On the other hand, the Respondent Board has contested the writ petition, by way of filing reply and has submitted that all the fifteen Petitioners had appeared in Senior Secondary Examination, 2009 at Indira Gandhi Balika Niketan Senior Secondary School, Ardawata and the code of the Center was 3017. Further, it is stated that during the assessment of the answers books, the examiners of History Second and English (Compulsory) papers found that unfair means had been used by the students during the examination at the above center and as such report was given by them. The matter was then placed before the Result Committee on 29.05.2009 and the result of the Petitioners was withheld. The Respondent Board had called for the sitting arrangement of the students at the examination center. Later on the students who had appeared at the aforesaid center, including the Petitioners, were issued memos of charge and asked to submit their explanations by 12th to 15th of July, 2009. They were also informed that in case they do not admit the allegations then they should appear before the Enquiry Officer, in the Board office, on the dates mentioned in the memos i.e. from 13th to 17th July, 2009. In all, 117 students were issued charge-sheet out of the total 149 who had appeared at the center and their result was earlier withheld.

6. All the Petitioners submitted their explanations and also appeared before the Enquiry Officer in the Board office. After detail enquiry, it was found that charges against some of the students in English (Compulsory) paper were not proved beyond doubt. Therefore, they were given the benefit and as such their result was declared. The experts, after an enquiry, found that answers to the questions in History Second paper were dictated to the students at the Center. One student namely, Anju (Roll No. 1533653) was charged for using unfair means in both the

papers i.e. History Second and English (Compulsory). The answers of another student, with Roll No. 1533654, in English (Compulsory) paper were found similar to that of the student Anju (Roll No. 1533653). But during the course of hearing, this charge was not substantiated and therefore, the result of the student with Roll No. 1533654 was declared. However, the student with Roll No. 1533653 was found to have used unfair means in History Second paper and as such her examination was cancelled. Likewise, the examination of all the Petitioners were cancelled because the charges of unfair means have been found to be proved against them. In the last, it has been submitted by the counsel for the Respondent Board that it is incorrect to say that only on the basis of presumption and doubt that the examination of the Petitioners have been cancelled. In fact, the allegations have been substantiated and after giving opportunity of personal hearing that the examination of the Petitioners have been cancelled, on the report of Experts.

7. I have given my anxious and thoughtful consideration to the submissions made by the counsel for the rival parties and perused the material on record, particularly the one placed by the Respondent Board alongwith the reply. At the outset, it would be relevant to note here the provisions of law and the instructions/directions issued by the Respondent Board to the Superintendents of the Examination Centres as well as the Examiners. The enactment with regard to unfair means was promulgated in State of Rajasthan in the year 1992 and the Act is called Rajasthan Public Examination (Prevention of Unfair Means) Act, 1992.

8. The relevant provisions, for the purpose of present controversy, are u/s 2 (c), which gives the definition of "unfair means" as under:

2(c) "unfairmeans" in relation to an examination while answering question in a public examination, means the unauthorised help from any person, or from any material written, recorded or printed, in any form whatsoever or the use of any unauthorised telephonic, wireless or electronic or other instrument or gadget.

Section 3 lays down the prohibition for using unfair means as under:

Prohibition of use of unfair means: No person shall use unfair means at any public examination.

The Act of 1992 is applicable, as per the Schedule of the Act, to any examination conducted by the Board of Secondary Examination under the Rajasthan Secondary Examination Act, 1957.

9. The Respondent Board had issued Anudesh/directions to all the Superintendents of Centre of Examination for the year 2009. The relevant directions, published in the booklet, are in Article 21.3 (iii) which are as follows:

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Likewise, the directions issued to the Examiners of the Board Examination, in Clause 34, are as under:

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10. The facts of the this case reveal that there had been enormous use of unfair means by the students in the Senior Secondary Examination, 2009 and therefore result of a large number of students had to be withheld. Subsequently, the result of the students, withheld earlier, was declared on 26.07.2009 by the Respondent Board (Annexure-16), wherein the result of many of the students had been cancelled. As stated by the Respondents, initially, result of 149 students of the Center from where the Petitioners had also given the examinations, was withheld. Later on, charge-sheet was issued to 117 students including the present Petitioners. Therefore, it was a case of large scale use of unfair means by

way of similar answers given by number of students to the questions of English (Compulsory) and History Second papers.

11. In the case of B. Ramanjini and Others Vs. State of Andhra Pradesh and Others, , it Raghuvendra S. Rathore, J.had been held that mass copying constitutes sufficient reason for cancelling of examination. In para 7, the Hon"ble Apex Court had observed as under:

The facts revealed above disclose not only that there was scope for mass copying and mass copying did take place in addition to leakage of question papers which were brazenly published in a newspaper and the photocopies of the question papers were available for sale at a price of Rs 2000 each. These facts should be alarming enough for any Government to cancel the examinations whatever may be the position in regard to other centers. It is clear that so far as the centre at Anapapur district is concerned, there was enough reason for the Government to cancel the examinations.

Further, in para 8, it had been observed as under:

In such matters wide latitude should be shown to the Government and the courts should not unduly interfere with the action taken by the Government which is in possession of the necessary information and takes action upon the same. The courts ought not to take the action lightly and interfere with the same particularly when there was some material for the Government to act one way or the other.

12. As noted above, in the instant case, there had been similar answers in the answer sheets of a large number of students at the center where the Petitioners had also given their examination of Senior Secondary Examination. On having received a complaint from the examiner, the matter was placed before the Result Committee and thereafter, the chart of sitting arrangement at center was called for. The Respondent Board had doubt in respect of 149 students and therefore their result was initially withheld. The students were given due notice by issuing the charge-sheets as well as the opportunity of hearing by calling upon 117 students, including the Petitioners, to appear in person before the Enquiry Officer from 13th & 17th July, 2009.

13. Looking to the definition of unfair means as given under the Act of 1992 as well as the instructions issued by the Respondent Board to the Examiners and also to the Superintendents of the Examination Centers, it is clear that unfair means had been used by way of dictation of answers at the Examination Centers or otherwise, as a result of which similar answers were found in the answer sheets of a large number of students in respect of the same question. Therefore, it cannot be said that the conclusion arrived at by the Enquiry Officer and thereafter by the Board was only on the basis of doubt. As a matter of fact, the issue was looked into on the complaint of the Examiner, by the Result Committee as well as the Enquiry Officer and only after hearing of the explanation of the students, that the action of cancelling the examination had been taken by the

Respondent Board.

In a similar case, our High court had also declined from interfering in the action taken by the Respondents, in the case of Anand Mohan Jha and Others Vs. State of Rajasthan and Another, .

14. In the case of Bihar Public Service Commission and Anr. v. Vinoy Kumar Singh and Anr. (2003) 5 SCC 312, the Hon"ble Supreme Court was considering the point as to whether Bihar Public Service Commission was entitled to initiate action against any candidate if the candidate was found guilty of resorting to any irregular or improper means for obtaining admission to the examination hall using any other unfair means in the examination hall. It was observed, in para 14, as under:

In our opinion, the Courts can certainly examine whether the decision making process was reasonable, rationale and not arbitrary on the facts and circumstances in each case. There has been no infirmity in the decision making process by the Commission. We, therefore, hold that the impugned action initiated by the Commission in cancelling the examination of Respondent No. 1 and debarring him is wellfounded and calls for no interference.

15. For the aforesaid reasons, I am of the view that Respondent Board has neither committed an illegality nor acted in arbitrary or unreasonable manner in cancelling the result of the Petitioners. The matter was thoroughly looked into by the experts and full opportunity of giving explanation and personal hearing was given to the Petitioners, before passing the impugned order.

16. Consequently, the writ petition stands dismissed as being devoid of merits.