

(1996) 09 OHC CK 0028

In the Orissa High Court

Case No : O.J.C. No's. 5272, 5274, 5286, 5292, 5294, 5297, 5306, 5337, 5322, 5336, 5371, 5383, 5456, 5501, 5503, 5533, 5550, 5571, 5670, 5688, 5691, 5771, 5772, 5833, 5841, 5893 and 5902 of 1996

Manas Ranjan Dash and Others

APPELLANT

Vs

Council of Higher Secondary Education and Another

RESPONDENT

Date of Decision : 30-09-1996

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1996) 2 OLR 592

Hon'ble Judges : A. Pasayat, J;A. Deb, J

Bench : Division Bench

Advocate : Pradip Mohanty, B.P. Ray, P.C. Rout and S. Pujhari in OJC No. 5893/96, Jatindra Mohan Mohanty and D. Samal in OJC No. 5272/96, Brahmananda Tripathy and S.K. Rath in OJC No. 5274/96, A.R. Dash, N. Lenka and N. Das in OJC No. 5286/96, Sidheswar Mallik, S.K. Dash and S.L. Kumar in OJC No. 5287/96, K.N. Jena, D.K. Mohapatra and R. Rath in OJC No. 5292/96, Manoj Mishra, U.C. Patnaik, P.K. Das, B. Mishra and P. K. Mohanty In O.C No. 5294/96, B.K. Sahoo and K.C. Sahoo in OJC No. 5306/96, B. P. Das, B.Pr. Das, B.M. Sarangi and D.K. Das in OJC No. 5322 of 1996, S.K. Pattnaik, U.C. Mohanty and A.K. Mohanty in OJC No. 5336 of 1996, R.B. Mohapatra, N.R. Routray, S. Sarkar and S. Sahoo in OJC No. 5371 of 1996, Sanjib Swain and S. Patra in OJC No. 5383 of 1996, S.C. Ghose, S. Ghose and S.L. Ghose in OJC No. 5456 of 1996, Bhimsen Sahoo, in OJC No. 5501/96, D.P. Sarangi, in OJC No. 5503/96, Y. Das, N.C. Mohanty. D.K. Dey, C.R. Satpathy. D. Bhanj and B.P. Mohapatra in OJC No. 5550/96, Sarat Ch. Sahoo, S.K. Sahoo and S.K. Nayak in OJC No. 5571/96 G.P. Mohanty and H.P. Mohanty in OJC No. 5670/96, R.P. Kar, A.N. Ray, N. Paikray, B.P. Mohanty and B.K. Badu in OJC No. 5688/96, D.K. Mohapatra and Minati Misra, in OJC No. 5691 /96, Madan Mohan Das, P.K. Singh and B.D. Pradhan In OJC No. 5771/96, M.S. Panda and M. Satpathy in OJC No. 5772/96, V. Narasingh and J.M. Mohapatra in OJC No. 5833 of 1996, M.K. Mohanty, N.R. Rout and B.P. Routray in OJC No. 5837 of 1996, B.R. Sarangi, in OJC No. 5841 of 1996 and Sameer Kumar Das, R.N. Mishra and M.R. Mishra in OJC No. 5902 of 1996, for the Appellant; S.D. Das, A. Mohanty, L. Samantaray, H.S. Satpathy, B. Patnaik, B.K. Sinha and D. Dhar, S.S. Das and K.C. Swain, B.K. Patnaik, A.K. Mohanty, N. Behuria and D.K. Mohanty, for the Respondent

Judgement

A. Pasayat, J.—An examinee goes to an examination hall with lots of expectations, aspirations, hopes and apprehensions. Assessment of knowledge of an examinee being the primary object of an examination, apprehensions exist whether preparation is adequate. Examination is essentially the process of testing the knowledge or ability of pupils. Expectations, aspirations and hopes are linked with the result, which would chart out future of the examinee. That is how, an examination has a vital role in the life of a student. Unemployment problems in the country are going up alarmingly. Every student is under constant doubt whether after completion of studentship, he would be left guessing in the cross-roads of uncertainty, which course to adopt, seek a job or pursue higher studies. With demand for seats higher than available seats, stiff competition is faced to get a seat. In the above background, any deficiency in evaluation of answer scripts of an examinee has serious consequences. Recently published results of Annual Higher Secondary (Science) Examination, 1996 conducted by the Council of Higher Secondary Education, Orissa (in short, "Council") have opened a Pandora's box of confusion, anguish and consternation, and result is about 1,20,000 candidates have knocked the doors of this Court for redressal.

2. All these writ applications contain a common grievance regarding improper evaluation in respect of answer papers of candidates who appeared at the concerned examination. Petitioners in each case was a candidate, and has made a grievance that the evaluation of answer papers is casual, improper with non-chalant, unconcern with consequences which flow from such evaluation. According to them, the Examiners appointed by the Council have awarded marks which are much below the actual marks which the candidate deserved on the basis of answers given. The number of writ applications filed shows massiveness of the problem. The Council has taken a stale plea that revaluation is not permissible, and the Court exercising power under Article 226 of the Constitution of India, 1950 (in short, "the Constitution") should not go into the forbidden area of evaluation of answer scripts. It has been submitted that though there are some instances which have come to surface in respect of evaluation of answer scripts, yet considering number of candidates who have appeared, the variations noticed are not so alarming as to warrant interference "by this Court. Strong reliance is placed by the learned counsel for Council on a decision of the apex Court in Council of Higher Secondary Education, Orissa and Ors. v. Yasodhara Padhi (Civil Appeal No. 1362 of 1990 disposed of on 28-2-1990). The facts involved in that case are entirely different, and the apex Court was not confronted with problems of the magnitude posed in the cases at hand. In fact the apex Court has observed that in the cases of apparent infirmity the Court can step in.

3. It is not in dispute that the Regulations of the Council do not permit review, and as such no review of the answer scripts can be done. It cannot be denied that an examinee has a right to fair-play and get appropriate marks according to

his performance. What constitutes fair-play depends upon the facts and circumstances relating to an examination in a given situation. If it is found that every possible precaution has been taken and all necessary safeguards provided to ensure that the answer scripts inclusive of supplements are kept in safe custody so as to eliminate the danger of their being tampered with and that the evaluation is done by the examiners applying uniform standards with checks and cross-checks at different stages, and that measure for detection of malpractice has also been effectively adopted. In such cases it would not be proper for the Court to interfere.

4. According to the Council all necessary steps in respect of aforesaid aspects have been taken. As observed by the apex Court in Maharashtra State Board of Secondary and Higher Secondary Education and Another Vs. Paritosh Bhupeshkumar Sheth and Others, , it is in the public interest that the result of Public Examinations when published should have some finality attached to them. If inspection, verification in the presence of the candidates and revaluation are to be allowed as of right, it may lead to gross and indefinite uncertainty, particularly in regard to the relative ranking etc. of the candidates, besides leading to utter confusion on account of the enormity of the labour and time involved in the process. The Court should be extremely reluctant to substitute its own views as to what is wise, prudent and proper in relation to academic matters in preference to those formulated by professional men possessing technical expertise and rich experience of actual day-to-day working of educational institutions and the departments controlling them. It would be wholly wrong for the Court to make a pedantic and purely idealistic approach to the problems of this nature, isolated from the actual realities and grass-root problems involved in the working of the system and unmindful of the consequences which would emanate if a purely idealistic view as opposed to a pragmatic one was to be propounded. In the above premises, it is to be considered how far the Council has assured a zero defect system of evaluation, or a system which is almost fool-proof.

5. Award of marks by an Examiner is to be fair, and considering the fact that revaluation is not permissible under the Statute, the Examiner has to be careful, cautious and has a duty to ensure that the answers are properly evaluated. No element of chance or luck should be introduced. An examination is a stepping-stone on the career advancement of a student. Absence of a provision for revaluation cannot be a shield for the Examiner to arbitrarily evaluate the answer scripts. That would be against the very concept for which revaluation is impermissible. Where an act is arbitrary, it is implicit in it that it is unequal both according to political logic and constitutional law, and violative of Article 14 of the Constitution. Courts have a duty to protect rights of everyone if the impugned action suffers from vice of arbitrariness, and is capricious or whimsical. Such action is violative of Article 14 of the Constitution. The basic principle which informs Article 14 is equality and inhibition against discrimination. Now, what is the content and reach of this great equalizing principle ? It is a founding faith, to use the words of pedantic or lexicographic approach. From a positivistic point of

view, equality is antithetic to arbitrariness. Article 14 strikes at arbitrariness in any action and ensures fairness and equality to treatment.

6. It has to be ensured that the Examiners who make the valuation of answer scripts are really equipped for the job. Otherwise, the very purpose of evaluation of answer scripts would be frustrated. Nothing should be left to show even an apprehension about lack of fair assessment. It is true that valuation of two persons cannot be equal on golden scales, but wide variation would affect credibility of the system of valuation. If for the same answer one candidate gets higher marks than another that would be arbitrary. As indicated above, the scope for interference in matters of valuation of answer scripts is very limited. For compelling reasons and apparent infirmity in valuation, the Court can step in. It is not disputed that valuation should be done by an Examiner who is well-equipped in the subject. That would rule out the chance of variation or improper valuation. Council authorities are required to ensure that additional steps should be taken for assessing the capacity of a teacher before he is appointed as an Examiner. For this purpose, the Council may constitute a Body of Experts to interview the persons who intend to be appointed as Examiners. This process is certainly time-consuming, but it would further the ends for which the examinations are held.

It is stated by learned counsel for the Council that after distribution of instructions for valuation, the Zone Supervisor/Officer arranges to distribute the answer scripts to the Chief Examiners. The Assistant Examiners who do the evaluation receive the scripts for evaluation from the concerned Chief Examiners. On the first day of valuation. Chief Examiners explain the scheme of valuation and method of recording marks in the computerised mark-foils (in short, CMFs") to the Assistant Examiners allotted to him. There is indepth discussion on the question paper and mode of evaluation. A rough outline is drawn-up keeping in view the scheme of valuation furnished by the Council. A sample valuation of two answer scripts is done by each Assistant Examiner. The same is then thoroughly discussed and marks awarded are suitably reviewed and altered if felt necessary. The Chief Examiner is supposed to act as a safety-valve in the matter of proper assessment. As indicated above, two specimen copies of each Examiner on the first day, and some of the answer scripts allotted to the Examiners during the period of valuation are examined by the Chief Examiner. The answer scripts are to be taken up at random. They are supposed to be representatives in character. However, putting a ceiling on the number in some cases may not be adequate. For example, the Chief Examiner may find that in majority of the cases the answer scripts picked up by him at random, the evaluation has not been properly done, he may rectify the defect in respect of those papers. But the other answer papers evaluated in the erroneous manner shall continue to have the defect unrectified. ,In such cases, the Chief Examiner should be given liberty of examining papers beyond the prescribed limit, after intimation to the Council about the necessity to do so. In case the contingency arises he may examine all the papers of the concerned subject in his charge.

7. It is accepted by the learned counsel for parties that there may not be any difficulty in following the scheme of valuation so far as tie objective questions are concerned, and in respect of essay-type questions or questions needing elaborate answers no definite scheme can be provided for. Though no strait-jacket guidelines can be provided for in such cases, yet some mode has to be evolved by which parity of evaluation can be maintained. For this purpose, the Council can indicate broad guidelines to the Chief Examiners collectively to evolve the scheme of valuation. The Chief Examiners shall then pass on the details to the individual Examiner. It is true that no foolproof system can be introduced. But by adopting remedial steps, the possibility of erroneous evaluation can be weeded out. Steps as indicated above are some of the steps in that direction.

8. Large number of writ applications filed every year making grievance of improper valuation create an alarming situation. In a welfare State education occupies a very high position. Therefore, the Council has bounden duty to take stock of the whole situation and block the loopholes. It is submitted that the Committee which was constituted pursuant to the direction given by this Court is serving a very useful purpose. The said Committee shall, till an alternative arrangement is made, continue to function as directed. But its scope of functioning is limited.

9. One thing which cannot be lost sight of is the marginal difference of marks which decide the placement of candidates in the merit list. To eliminate the possibility of injustice on account of marginal variation in marks, we feel that after the answer scripts and the mark-foils are received back by the Council, it shall find out the highest marks secured by a candidate. By way of illustration we may take it to be 650. Let a Committee of three Chief Examiners examine all papers of candidates securing marks 630 or above. Their papers shall be independently examined and the average of marks of three Chief Examiners shall be taken to be the marks secured by the concerned candidate. However, in case of difference of marks between two Chief Examiners exceeding 5 in a paper, it shall be sent to another Chief Examiner, whose opinion shall be final. In case the marks given by the fourth Examiner is less than the average of other three, the average marks shall prevail. It shall be ensured by the Council authorities that a Chief Examiner does not belong to the institution to which the candidate belongs. All possible care and caution should be taken to keep the identity of the candidate and the institution secret.

10. By interim order passed on 26-7-1996, this Court had directed the Council to appoint Chief Examiners apart from those who had occasion to deal with the answer scripts of candidates to make a fresh evaluation. That order was also assailed before the apex Court in SLP (Civil) No. 16691 of 1996, which was not entertained and was dismissed by order dated 2-9-1996. The learned counsel forth(c) Council placed before us a Chart showing that pursuant to the direction given 3, 629 answer scripts were checked, evaluated and verified by the Chief Examiners. On addition of the figures supplied, we find the number to be 3,654.

It is unfortunate that while supplying data to this Court C3re has not been taken to give correct figures. The number of answer scripts where there has been no change comes to 2, 692. The number of answer scripts where the re- addition has resulted in change is 406, and the number of answer scripts where there has been change due to other reasons is 548. Other reasons are stated to be on account of fresh valuation. In respect of Chemistry Paper II it is stated that out of the total number of answer scripts so far checked/evaluated/ verified, i, e., 530, no change was noticed in respect of 404, on re-addition change was noticed in respect of 82, and due to other reasons-change was found in respect of 31. Similarly in respect of Physics Paper II, out of total number of 333 answer scripts so far checked/evaluated/verified, in respect of 297 answer scripts no change was noticed, on re-addition change was" noticed in respect of 68 answer scripts, and the number of answer scripts where change was noticed due to other reasons is 21. In respect of Mathematics Paper II in total 582 answer scripts are stated to have been checked/evaluated/verified. In respect of 423 answer scripts no change was noticed, and the answer scripts where changes-were noticed due to re-addition and other reasons are 69 and 92 respectively. It is stated in the report that the total of figures given in different column"s do not "necessarily" tally with figures under column relating to number of scripts checked/evaluated/ verified since in a particular case, the "change might have occurred due to both" (re-additional changes and other reasons).

The casualness and carelessness with which the Council acts are amply found from the report submitted to the Court. Even with regard to the total number of answer scripts examined, the correct figure has not been reflected. We express our displeasure over the matter. Be that as it may the number of answer scripts where changes have been noticed cannot be said to be few, and constitute substantial percentage. It appears from the report that the changes vary between the range +1 and--1, and +15 and--15. It is stated that the total number of changes for other reasons (re-valuation) found is 548, Details of such changes are as follows :

+ 1	-- 88	1	-- 65	+ 2	-- 104	-- 2	-- 53	+ 3	-- 55	3	-- 30	+ 4	-- 35	4	-- 20	
+ 5	-- 23	5	-- 06	+ 6	-- 14	-- 6	-- 07	+ 7	-- 13	7	-- 01	+ 8	-- 08	+ 9	--	
06	9	-- 02	-- 10	-- 03	+ 11	-- 02	+ 12	-- 02	+ 13	-- 02	- 13	-- 02	+ 14	--		
04	-- 14	-- 01	+ 15	-- 01	-- 15	-- 01									Total	-- 548

Number of Scripts where chances were noticed on re-addition in different subjects is as follows : PAPERS NUMBERS 1. Mathematics--II ... 69 2. Physics-----I ... 42 3. Physics--II ... 68 4. Chemistry--I ... 49 5. Chemistry--II ... 82 6. Biology--1 (Botany) ... 21 7. Biology--II (Zoology) ... 18 8. Electronics--II ... 1 9. English--I ... 28 10. En&lish--il ... 28

The figures both in respect of re-addition and for re-valuation is not negligible and Is fairly large in number. The percentage of difference due to re-valuation in various papers is as- follows. : (as accepted by the Council)

PAPER; PERCENTAGE 1. Mathematics--II ... 16% 2. Physics--I ... 30% 3. Physics--II ... 5% 4. Chemistry--I ... 18% 5. Chemistry--II ... 6% 6. Biology--I ... 15% 7. Biology--II ... 14% 8. Electronics--I ... 64% 9. English--I ... 15% 10. English--II ... 10%

11. Learned counsel for the Council with reference to para-- graph-21 of the counter-affidavit in OJC No. 5893 of 1996, and the reports of the Chief Examiners has submitted that the original valuation was not erratic. We find no substance in this plea. Considering the high percentage of cases where variations have occurred, the reports of the Chief Examiners do not stand to reason. In any event, they have not given a clean chit to the original examiners. In a good number of cases, the Chief Examiners have stated in response to the query of the Council as to whether the valuation was satisfactory/erratic as satisfactory except in the reported cases. The number of cases involving variation due to revaluation is indicative of lack of care and caution. The large number of cases where changes occurred, due to re-addition is equally alarming. If examiners have not been careful enough to even correctly add up the marks it is nothing but sheer carelessness and negligence. The large number of such cases cannot be attributed to unintended mistake.

12. In paragraph-6 of the counter-affidavit filed in OJC No. 5893 of 1996, the Secretary of the Council has indicated that out of 3, 629 answer scripts verified there was no change in respect of 2, 692 answer scripts. There were re-additional changes in respect of 406 answer scripts, and changes due to other reasons were found in respect of 548 answer scripts.

In paragraph-10 it has been stated that change in mark is not only due to some mistake in valuation but is due to re-addition. It is accepted that in as many as 548 cases out of 3, 629 cases, there was variation on account of revaluation. This certainly does not speak highly of the manner of valuation by the Council.

13. Allegations were made by the learned counsel for petitioners that the interim direction given by this Court on 26-7-1996 to make a fresh evaluation of the answer scripts of the candidates who had applied for re-addition by the Chief Examiners to be appointed by the Council has not been duly complied with. To verify the statement made at the Bar, we had called for certain answer scripts of different subjects at random, and on verification found the statement to be baseless.

14. Now the primal question is the protection that can be given on the basis of report given by the Council with reference to re-valuation made by Chief Examiners. After careful consideration of the problem, we are of the considered opinion that the following procedures be adopted by the Council in all cases where there has been increase of marks:

(i) The corrected mark-sheets on the basis of re-addition/ revaluation be issued to the concerned candidates within six weeks from today.

(ii) So far as the cases where reduction has been noticed up to 5 marks, it would not be equitable to direct reduction of marks, and original marks as indicated shall be maintained.

(iii) So far as the cases where the reduction is more than 5, the answer scripts be sent to a Committee of two Chief Examiners who shall evaluate the answer scripts, and the marks awarded lay them shall be final. In case there is any variation of marks awarded by them, higher marks given by the two Chief Examiners shall be maintained. This contingency shall arise only in cases where there is difference of marks-, and the Chief Examiners shall examine the answer script separately. This exercise shall be undertaken within six weeks, and the corrected mark-sheet if any shall be sent to the concerned candidate.

(iv) The provision made by the Council for extending credit to a candidate, who falls short by prescribed number of marks to get the next higher division be applied to eligible candidates on the basis of revised marks.

15. Before we part with the cases, we are constrained to observe that the conduct of examination by the Council leaves much to be desired. In the absence of any provision, revaluation cannot normally be directed to be done. But, it would be arbitrary to leave the students without a remedy, even though there is apparent and tell-tale improper evaluation. Merely because law does not permit demand of revaluation by candidates, it does not provide invincibility to the Council. Courts are not helpless in such matters and on being satisfied that injustice is being done, a time may come when Courts would be compelled to lift the veil of protection and direct the authorities in charge of examinations for revaluation. Instances are there when Courts, on being satisfied about the apparent fallacy in award of marks, have directed revaluation. The slowness to interfere in evaluation of paper matters does not stem from lack of jurisdiction, but flows from a respect for the system, where some amount of finality has to be attached to wisdom, experience and moral of the Examiners selected by the Council. If the system begins to rot and corrode on account of apathy and indifference, time may demand striking at the root of it and wholesome alternative approach. Time alone will say when the time for such action arrives, petitions assailing the award of marks have been filed by examinees and where they demanded the revaluation of certain papers but as there were no statutory provisions mentioning revaluation so also no material was produced by the examinees to show that the Examination Committee did not consider all relevant aspects and the Examination Committee being the final authority matter could not be interfered with in some cases earlier. That has no relevance in these cases.

16. A time has come for taking a fresh look at the functioning of the Council. Three years back this Court had the occasion to observe about inefficient functioning of the Council in the case of *Ranjan Kumar Rout v. Council of Higher Secondary Education, Orissa and Anr* : (OJC No. 2420 of 1893 disposed of on 6-10 -1993). That does not appear to have brought any effect. Sooner the Council realises that things should not be allowed to deteriorate is better for it

and the society.

The writ applications are disposed of accordingly.

A. Deb, J.

I agree.