
(1993) 09 DEL CK 0011

In the Delhi High Court

Case No : Civil Writ Petition No. 1667 of 1993

Parent Forum for Meaningful Education and Others

APPELLANT

Vs

Central Board of Secondary Education and Others

RESPONDENT

Date of Decision : 10-09-1993

Acts Referred:

Citation : (1993) 4 AD 73 : AIR 1994 Delhi 44 : (1993) 52 DLT 445 : (1993) 27 DRJ 475

Hon'ble Judges : Sunanda Bhandare, J;Arun Kumar, J

Bench : Division Bench

Advocate : Shyam Moorjani, Pratibha Moorjani and Anil Kumar, for the Appellant;

Judgement

Sunanda Bhandare, J.

(1) This petition filed in public interest seeks directions in respect of examinations for Class X and Class Xii conducted by the Central Board of Secondary Education, The main grievance of the petitioners is regarding the use of multiple set of question papers for Class X and Xii throughout the country. The petitioners pray that the Examinations Bye-Laws 1990 in so far as the same permits use of multiple set of question papers be quashed and the decision based on the report of Madan Mohan Committee and the Seminar held there under be also quashed. It was submitted by the learned counsel for the petitioners that another writ petition being C.W.P. 843 of 1992 was filed in this Court by a student in which similar relief was sought because multiple set of question papers were introduced by the respondent for examinations to Class X & Xii only in Delhi to be held in March 1992. Learned counsel submitted that though the writ petition was disposed of primarily because the examinations were held immediately and all arrangements were complete. Still this Court had made certain observations while disposing of an application for interim relief filed in that writ petition. In

"IN our opinion the decision to use multiple sets of question papers in the same

examination in the circumstances stated by the respondents has been taken rather in haste, in mid session and without proper consideration of the effects of the new scheme with particular reference to its impact on the students. We find there has been no proper study, no research done, no students ever queried, and no parent consulted before implementing the new scheme of examination. Respondents themselves admit it is an innovation used for the first time in the Board Examination of X and XII Classes. They say they are introducing this scheme as an experimental measure but then experiment at what cost. Are the careers of the students numbering over lakhs who are just at the threshold of their careers in their lives to be experimented with this way? Are they not being subjected to uncertainties of the examination system as is prevalent. Respondents here got a report of mass copying at 20 centres out of about 600 such centres where the examination was held in the year 1991. The mass copying at times consisted of smuggling out the question paper from the examination centre and with the help of Xerox machines etc. smuggling in answers to the question papers. The report of the expert committee on which the respondents rely is dated 30th September 1991 and the impugned circulars are of 12 September 1991 and 25 September 1991. The report of the committee was, thus, not available while the decision had already been taken. To get over this, the respondents rely on the recommendations of a seminar held on 28 August 1991 on the subject "Disinfecting Examinations (Short and Long Term Measures for preventing the Use of Unfair Means)." Foreword to this, report/brochure was written by the then Chairman, C.B.S.E, in October 1991. This was based on the discussions in the Seminar and report of the Committee abovementioned. This brochure is again of a later date than the impugned circulars. Then the contention of the respondents has been that the recommendations of the Seminar were available on 28 August 1991 itself on which date it was held. It is stated that 32 educationists including Principals participated in the Seminar where papers were also read and conclusions arrived at. Nothing further was done and no investigation made. As noted, above, students who were going to be directly affected and also their parents were not considered necessary to be consulted and their suggestions obtained. No doubt, first respondent is empowered to conduct examinations but in the exercise of that power it has to act reasonably, in good faith and on correct grounds. In other words, when the first respondent used its discretion in introducing a new system of examination papers, that discretion had to be exercised reasonably, fairly and justly. The discretion is not absolute or unfettered. When while exercising its discretion the first respondent ignores a relevant consideration or takes into account an irrelevant consideration, its decision cannot be said to be within the confines of reasonableness. That way it acts arbitrarily and a decision is liable to be set aside. This position in law is well settled. The respondents have drawn a picture that mass copying is something like an organized crime. If that be so, can the new system stop the evil. If one question paper can be smuggled out where is the guarantee that four question papers cannot be so smuggled out. The respondents have said that in each examination centre there will be four

different sets of question papers all jumbled up and no student or even the invigilator would know which of the four papers a student is getting till he actually gets it. The petitioners contend that in our system of examination all students are to be judged by a common yardstick to see their comparative merit. This is so particularly in these days of hard competition. Level of intelligence has to be decided on the basis of a set pattern which would mean a single set of paper when each one of students answers that paper according to his preparedness, ability and capability. The examiner then gives marks, may be ranging from 10% to 90%. In this way test is same for every student and he is treated equally. In the new system now introduced one student is being tested vis-a-vis three other students having different set of question papers. Petitioners have also contended that there is every possibility of discontentment and even frustration among the students when one student finds that the question paper of the other student was simple or easy. They further say for getting admission in colleges when even a fraction of marks counts, the respondents should not have embarked upon the new experiment without considering the whole matter in its proper perspective. There are other ways to curb the evil of mass copying , they contend. The petitioners have strongly criticised the discriminatory policy adopted by the respondents for the students of Delhi vis-a-vis those outside Delhi. If a certain bye law gives power to the respondents in setting paper to use multiple sets of question papers in the same examination, that cannot be confined to any particular region. Petitioners also say that they were never earlier aware till they read the affidavit of the respondents that there were different sets of papers for Delhi and outside Delhi students. They further say that choosing Delhi for conduct of examination using the new system of multiple sets of question papers is per se discriminatory. xx xx xx xx xx We are, prima-facie, inclined to agree with the petitioners that the decision to introduce multiple sets of question papers is arbitrary, unreasonable and it has no rational relationship with the object sought to be achieved. Having held so we would have certainly stopped the respondents from going ahead with the conduct of the examination adopting this new system. There are, however, weighty, and, if we may say so, even quite grave consideration which do not warrant such an order at this stage. There are about 96000 students appearing for examination for Xii Class and over 1.5 lakhs for X Class in Delhi. Their dates of examination had been announced much earlier. All preparations for the conduct of the examination have been taken. The examination is starting from 3 March 1992, only three days away from today. To hold examination for such a large number of students is a herculean task. The question papers all ready are lying in sealed packets to be sent into various centres. Examination halls/centres have been booked, all arrangements for conduct of examination made. It is impossible to have the question papers printed all over again in such quantities within these three days period. We are told one question paper consists of eight pages and there are as many as 20 or more subjects for the Xii Class. The question is also of the availability of the printer. The respondents cannot just go to any printer. The element of secrecy has to be kept in view. Only very few people can be entrusted

with the task and it is not, Therefore, that any number of people can be employed .The more the people the more chances of paper being leaked out. If we direct the respondents to go back to old system for the conduct of examination it will mean postponement of the examination for a month or so. Postponement will not only be in Delhi but also would be for rest of the country and for the students outside India as well. The schools have also made . arrangements for conducting examination of other classes keeping in view the Board Examination. Then the students have also to appear in further competitive examinations. Students must have prepared themselves by now for these examinations and any postponement of examination may perhaps not be in their own interest. The petitioners have come to us too late in the day. We know earlier also writ petition was filed questioning the new system of examination which was dismissed by us on 21 January 1992 without even issuing notice to the respondents. The points now raised were not fully agitated at that time and the petitioner there also did not file any further appeal to the Supreme Court. We have since recalled that order."

(2) Learned counsel submitted that despite these observations of the High Court the respondent has now introduced the multiple set of question papers all over India without having any debate on the advisability and legality of their use and without hearing the students and parents who would be affected by this experiment. He further submitted that the main reason for introducing the multiple set of question papers was to prevent the menace of mass copying and without considering the question whether it deprives the students of uniform evaluation. According to .the petitioner the experiment was based only on the Madan Mohan Committee Report and the Seminar held for that purpose. Such a system introduces high element of chance/luck in the examinations. Learned counsel submitted that the Board cannot apply different yardsticks for assessing the performance of students for the same examination and cannot declare their results on the basis of different yardsticks employed by it.

(3) On the other hand, learned counsel for the respondent submitted that multiple set of question papers were introduced because of mass copying at various centres and after the judgment of this Court, a questionnaire was circulated all over India eliciting views of principals and teachers of various schools and the respondent had received wide response in support of the multiple set of examination papers. Therefore, the respondent had introduced this system after taking into consideration all the aspects of the matter. The respondents have filed some of the answers to the questionnaire circulated by the respondent to the various schools in support of the said contention .Learned counsel submitted that the system is extremely impersonalized and has no room for collusion or infringement. He submitted that the syllabus for Class X & Xii for which the Central Board of Secondary Examination conducts examination are common for all its students. The examination schedule is also common, the examination commences simultaneously for all the candidates all over India as well as at foreign centres. After the introduction of multiple set of question

papers there has not been a single case of mass copying and the system has worked out well. He submitted that the decision was taken bona fide and in the interest of thousands of genuine students who study the entire syllabus and who do not take a chance and prepare the most probable questions and who do not indulge in use of unfair means for the examinations. It is submitted that the element of chance and luck is introduced by those students who do not prepare the entire curriculum and rely on the probable questions in the examinations. Infact it is submitted that the use of multiple set of question papers has improved over all standard of teaching and learning.

(4) We have gone through the questionnaire circulated by the respondent to the principals and teachers of various schools throughout the country. We find that the questionnaire only concentrates on the question of mass copying and effect of multiple set of question papers on mass copying. The respondents have not obtained the views regarding the merit of such a system for maintaining educational standard, particularly the aspect of unfairness and discrimination, if any, caused thereby to the students. Thus, the respondent has not received any response on the merits and de-merits of introducing multiple set of question papers for maintaining high level of education. They have also not sought the opinion from the schools regarding the re-action of the students and parents to this new system. The academic acceptability of such a arrangement has not been a matter of public debate as yet.

(5) The Central Board of Secondary Education conducts examination for Class X and Xii all over India. The respondent introduced the multiple set of question papers after taking into consideration the expert advice received by it from academicians, principals, representatives of Director of Education and other experts in the field of education. No doubt ,the system was introduced principally to get over the malice of mass copying. Maintaining academic standards for the purposes of this examination is the job of experts in the field. The merits and de-merits of this system for maintaining academic standards cannot be decided by this court in exercise of jurisdiction under Article 226 of the Constitution of India because of the factual material on the basis of which standards of examination of students are to be followed and the expertise is not available with the court. Since the learned counsel for the respondent very fairly agreed that the respondent is not averse to changing its decision in case it is found that the system has not worked well and reiterated that it was still at an experimental stage and there is always scope of improvements we feel that it will be appropriate if the respondent gets opinion of cross section of the people concerned with education of students and also the parents before they apply this system again in the examinations to be held in March 1994. Learned counsel appearing for the respondent very fairly agreed that the respondent will have no objection to circulating another questionnaire seeking opinion of principals and teachers of schools all over India will be circulated and answers obtained within two months. The principals can also be asked to seek the views of the Parents-Teacher Associations in their respective schools on this issue. This will ensure

that the views of the parents and students will also be placed before the respondent for its consideration before any final decision is taken in this matter for future.

(6) The petitioners have also made a grievance regarding mid term change of syllabus by the Board. Learned counsel for the respondent has explained that the syllabus was not changed mid term but only certain corrections were issued to give effect to certain changes in the world political order and normally the syllabus is circulated in the beginning of the year and no mid-term changes are made. We find no substance in this complaint of the petitioners.

(7) Next it was urged on behalf of the petitioner that the respondent should have a system of revaluation of the answer sheets. The need for permitting revaluation is sought to be emphasised on the basis of the fact that the system of evaluation of answer sheets is prone to errors which may be on account of omission, inadvertence or sometimes intentional. The Examiners have to evaluate a large number of answer sheets and in the very nature of things there is likelihood of mistakes and errors creeping in. On the basis of the result of the examination, the students have to seek further admissions. The entire education system has become so highly competitive that each mark counts for the purposes of future career of a student. Therefore, there is a pressing need that the element of error or mistake in evaluation of answer sheets be eliminated. The petitioners have cited the example of the University of Delhi in this connection. It is submitted that the said University had no re-valuation system earlier. However, this system was introduced sometime back. There-valuation will result in ensuring that the element of any error in the initial valuation is ruled out. It further gives satisfaction to the concerned student that his score in the examination is just and fair and thereby eliminate any heart burning. On this aspect the learned counsel for the respondent submitted that the system of revaluation may be good and may have its own merits, however, in view of such a large number of students who take the examination, it is practically not possible to allow re-valuation of answer sheets. Regarding the example of the University of Delhi it is submitted that the number of students at the University level is much less as compared to the number of students involved in the examination conducted by the Board. Moreover, it is pointed out that the examination of the Board is conducted throughout the country through various Centers and if revaluation has to be allowed, the Board will have to have a separate set of examiners throughout the country for this purpose. Secondly, it is pointed out that the secrecy involved in the system will be difficult to maintain and the whole exercise regarding secrecy will have to be gone. through all over again while sending the answer sheets for re-valuation. This will tremendously increase the work of the Board and will ultimately delay finalisation of the result for a considerable period which again will be detrimental to the students. The results have to be declared and finalised on a time bound basis and delay in finalisation of result may itself cause prejudice to the students.

(8) We have carefully considered the rival contentions in this behalf. The system of re-valuation has its own advantages. The examiners are human beings and perform the task of examining one answer sheet after another continuously for long hours. The task may become monotonous and there may be genuine cases where an answer to a question is left out from evaluation or there may be some element of error in evaluation of answer to another question. There have been instances in the past where examining authority including the respondent Board had to correct some glaring errors in the results. The results in the examinations are of crucial importance to the students and they may make or mar the career of a student. Therefore, there can be no doubt about the advantages which a system of re-valuation of answer sheets has. Of course there will be some practical difficulties as pointed out on behalf of the respondent in having a system of re-valuation. Therefore, it will be appropriate that the Board which is conducting the examination should take a final decision in this behalf after taking all aspects into consideration. We leave the matter to the Board with a hope that the Board will seriously consider the need to introduce the system of re-valuation of answer sheets. We trust that the Board will earnestly and sincerely consider the merit of this system from the point of view of the student and not reject it outright on account of the practical difficulties that may be experienced due to the large number of students taking the examination. Merits of the system far outweigh the practical difficulties. So far as the question of delay is concerned the result of the student concerned will alone be delayed. He cannot have any grievance on this score.

(9) The petitioners also want that the respondent should have a provision for return of answer sheets after the declaration of the results. We see no particular advantage to the students by return of their answer sheets specially in the context of the examinations under consideration. Therefore, we find no substance in this grievance of the petitioners.

(10) Another grievance of the petitioners in the present writ petition is regarding disclosure of the sample answers which the respondent Board provides to the examiners before the process of evaluation of answer sheets begins. The setting of the question papers in the examination and the evaluation of the answers is the prerogative of the examining body and we do not consider it advisable to allow any interference therein. Secondly, the disclosure of the sample answers without the return of the answer sheets to the students after the examinations are over, will mean nothing. On the other hand if the answer sheets are to be returned and sample answers to the questions prepared by the Board are to be disclosed, it will lead to an unending debate, controversy and disputes. This can neither be permitted nor encouraged. Therefore, this request of the petitioners cannot be entertained.

(11) The result is that the respondent is directed to immediately issue fresh questionnaire to all the Schools affiliated with the respondent Board and whose students take the examination conducted by it inviting the views of the Principals

and teachers of the Schools and the Parents-Teachers Associations in the respective schools on the merits of the system of use of multiple set of question papers in examinations conducted by the Board. The Board will, in this respect, elicit the views more on the question of any unfairness, arbitrariness or discrimination, involved in the use of multiple set of question papers. Besides this Public Notice be issued in prominent Newspapers inviting views on the use of multiple set of papers in the examinations conducted by the Board. The respondent Board will give a careful consideration to all the views received by it and take a decision in this behalf keeping the interests of the students foremost. After all the entire examination system is for assessing the merits of the students and no examination system which is unfair to the students can be allowed to exist. The respondent Board will also consider the question of introducing the system of re-valuation of answer sheets, as discussed above.

(12) The writ petition is disposed of with these observations. There will be no orders as to costs.