

(1994) 05 DEL CK 0060

In the Delhi High Court

Case No : Civil Writ Petition No. 13630 of 1994

Parents Forum for Meaningful Education and Others

APPELLANT

Vs

Central Board of Secondary Education and Others

RESPONDENT

Date of Decision : 01-05-1994

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1994) 3 AD 115 : (1994) 30 DRJ 142 : (1994) 1 ILR Delhi 200

Hon'ble Judges : Dalveer Bhandari, J;A.B. Saharya, J

Bench : Division Bench

Advocate : Hema Kohli, K.T.S. Tulsi and T.C. Sharma, for the Appellant;

Judgement

Dalveer Bhandaki, J.

(1) Parents Forum for Meaningful Education, a registered society has preferred this petition u/s 226 of the Constitution, praying that a writ of mandamus or any other appropriate order or direction be issued to the respondents to take immediate steps to frame rules, regulations requiring evaluation and certification of the difficulty level and the time liable to be spent in answering the question papers set by respondent no. 1 by an average student under examination condition, so as to ensure that in future the examinees are not confronted with question papers which have not been tested on the said touchstone by the respondents.

(2) The petitioner has also prayed that a writ, order or direction be issued to the respondent to compensate class Xii students who sat for the Mathematics examinations in the year 1994, because the question paper of mathematics examination for the year 1994 was not only very lengthy but it also included some wrong questions and also the distribution of marks for some questions was not appropriate.

(3) In the petition, it is mentioned that a large number of complaints have been received from the students who have appeared in the examination, that the

paper set was not only too long, but the difficulty level of the paper was comparable to that of the graduate level.

(4) It is further mentioned that the petitioner society had verified the said complaints and came to the conclusion that the question papers set for the students of B.Sc and B.Corn of Delhi University had similar questions with much higher marks allotted to such questions than those set for the class Xii students. Some illustrations have also been given in support of the submissions. It is also averred in the petition that in view of the fact that mathematics paper set for class Xii was very lengthy and too difficult for the examinees to answer in the given time of three hours and so the respondent is liable to compensate the examinees under Rule 10(iv) of the Manual of Rules & Regulations of respondent no.1.

(5) The petitioner also insists that there ought to be proper norms, guidelines and procedure in the examination bye-laws so that respondent no.1 should be able to examine the length and difficulty level for the average student answering the question paper as set by the Cbse before it is presented to the examinees.

(6) The petitioner has also averred that under Regulation 47 of Chapter 8 of the Examination Bye-laws, 1990, or the moderators under Regulation 48 of Chapter of the said bye-laws ought to be required to give solutions to the question papers showing that they have been tested under examination conditions and pass the test of difficulty level as well as sufficiency of time for solving the same by an average student, in other words, the moderators be permitted to certify the question paper only after carrying out the same exercise i.e. assessment of time in solving each question is given by the moderator after carrying out or solving the questions and mentioning the actual time which should be taken by an average student in the examination condition.

(7) It is further averred I hat the action of the respondent in not having the difficulty level and the length of the papers checked, results in the examinees being confronted with untested papers in examination halls. This action of the respondents is grossly arbitrary, unfair and against all norms of fair play and natural justice.

(8) It was submitted by I he counsel for the petitioner that class Xii examination is extremely vital in the career of the student. The entire educational career depends on their performance in class Xii examination, the paper of Mathematics plays an extremely important role for class Xii students.

(9) As a matter of fact, their entire career is largely stuck to one paper and that paper is of Mathematics. The students performance in one paper is likely to determine their entire future career.

(10) This court issued show cause notice to the respondents. A detailed reply has been filed on behalf of the Secretary, Central Board of Secondary Education.

(11) It is mentioned in the reply that the Central Board of Secondary Education

was introduced on 1st July, 1962 primarily to take care of the specific needs of the floating population of the student community whose parents/guardians are subject to transfers from one State to another and consequently would face serious interruption in their studies, if they had to adjust and readjust themselves to the syllabus and the examination system of every new State, to which their parents/guardian were transferred.

(12) In the reply, it is also mentioned that the Central Board of Secondary Education prescribes strict affiliation Bye laws whereby any institution seeking affiliation with it has to apply with No objection certificate from the State Government. The school is required to have full fledged infrastructure including well qualified staff, well developed laboratories, libraries and other apparatus, equipments and playgrounds. They are also required to pay the salary at par with the corresponding category of State Government/Central Government employees.

(13) It is also mentioned in the reply that the C.B.S.E. treats all its candidates uniformly. They are subject to the same syllabus, rules, regulations, examination schedules and the same system of evaluation.

(14) In the reply, it is also mentioned that the examinations system conducted by the C.B.S.E. is well organized and fool-proof. It is also incorporated in reply that at the evaluation state, the Central Board of Secondary education ensures complete fairness and is uniform applicable to all the examiners in order to eliminate the chances of subjectivity. These marking schemes are jointly prepared by the Central Board of Secondary Education Headquarters in Delhi by the Head Examiners of all the regions.

(15) In the reply, it is also mentioned that each paper setter has to be supplied with (a) Syllabus and courses, (b) Design/Blue Print, (c) Question Papers of previous years (d) Analysis based on previous year Question papers (e) Guidelines for Paper Setter, and (f) Detailed tatter with instructions requiring Special attention. Every Paper Setter is asked to set more than one set of question papers which are moderated by a team of moderators who are also appointed from the academicians of the university or from among the Senior Principles of the Senior Secondary Schools.

(16) It is further mentioned in the reply that the Central Board of Secondary Education issues detailed instructions for the guidance of the Moderators in order to ensure uniform criteria for assessment. The instructions issued to the Moderators clearly indicate that the question paper must allow sufficient lime for completing it, and that the difficulty level should be such that an average student is able to attempt it. The function of the moderation team is to ensure correctness and consistency of different sets of question papers with curriculum and to assess the difficulty level to cater In the students of different categories and to indicate the grading of the question papers as excellent or very good or good or ordinary. After assessing the paper, from every point of view, the team

of moderators gives a declaration, whether the whole Syllabus is covered by a set of question papers, whether the distribution of difficulty level of all the sets is parallel and various other aspects to ensure uniform standard.

(17) In reply, the Syllabus with unit-wise weightage of the Mathematics for class Xii has been given. The same is reproduced as under: 1. metrics Determinants 2. Vector, and Its application to Geometry 3. Three Dimensional Geometry 4. Differential Calculus 5. Integral Calculus 6. Differential Equations 08 7. Correlation and Regression 08 8. Probability 09

(18) In the reply, it is incorporated that the Mathematics paper for class Xii was set. within the above syllabus for the examination conducted in March, 1994. None of the questions set in the said paper was out of course as is quite apparent if the paper is compared with the syllabus of Mathematics for class XII.

(19) That a Group for evolving marking scheme for Mathematics paper of class Xii 1994 had been set up earlier. It met from 5th March, 1994 to 10th March, 1994. The group consisted of the following persons: Professor in Mathematics2 Reader in Mathematics Principals from Govt..1 and independent schools with Mathematics background5 PGTs in Mathematics from Govt. and Independent schools2

(20) The Group was asked to finalise the marking scheme developed by the paper setter for the guidance of the examiners. The Group was also asked to take into account the complaints that were received with regard to paper being exceptionally difficult, beyond the prescribed syllabus and involving lengthy answers which may be difficult to complete within the permissible time. The Group evolved the marking scheme and submitted the same to the respondents on March 12, 1994. It is mentioned that before the marking scheme was received from the Group, keeping in view the intensity of the complaints, an Expert Committee was constituted to examine the complaints of the said paper. The Expert Committee consisted of the following:- Professors in Mathematics2 Readers in Mathematics2 Principals from Government and Independent schools with Mathematics background6 Post Graduate Teachers in Mathematics from Government and Independent Schools3 Co-opted Education officer (Mathematics and Science background)1 The aforementioned Committee was also required to give its recommendations in respect of: 1. Difficulty level of question papers 2. Whether the questions are/are not within the prescribed syllabus 3. Accuracy of Questions, and 4. Time required to answer the question papers.

(21) The said Expert Committee opined that neither any question in Mathematics Paper of Class Xii was difficult nor any question was beyond the prescribed syllabus, but some of the questions involved lengthy calculations. During the deliberations of the Expert Committee, since the marking scheme had been received from the Group, the same was submitted to the Committee for its

considerations. The Expert Committee advised that the loss caused to the examinees by the questions involving lengthy calculations could be compensated by a marking scheme prepared for the evaluation of class Xii (Mathematics paper). The Expert Committee also carefully examined the draft marking scheme prepared for the evaluation of class Xii (Mathematics Paper) and was satisfied that it would serve the purpose of protecting the interest of the examinees.

(22) The C.B.S.E. has already accepted in to the finding of the Expert Committee for compensation to the examinees of Class Xii (Mathematics Paper) by evolving the aforementioned marking scheme.

(23) The petitioner has filed a detailed rejoinder to the counter affidavit filed by respondents 1 and 2. Averments of the writ petition have been reiterated. In the rejoinder, it is mentioned that it is clear that from the Mathematics question paper set for class Xii for the year 1994 that the so called certification by the Paper Setter or the Moderators with regard to the question papers set was a mere sham and without any application of mind. Respondent no.1 has admitted that question paper was too long to be completed within three hours. It is further mentioned in the rejoinder that similar problems were faced by the examinees of the Mathematics papers for the year 1993 and the Experts of the respondents who analysed the said paper, observed that the question paper was not only lengthy and time consuming but even the distribution of marks of some questions were not appropriate. These lapses which are frequently happening in the Cbse examinations can be taken care of, if the question papers set for the students are solved by the paper setter or Moderators at the pre-examination stage.

(24) In the rejoinder reference has been given to video magazine (News track) for the month of July, 1992 in which the Chair-person of Cbse, Mrs. Rebello was interviewed and she admitted that there were particular areas which required rectification by the respondent No.1. Till date, no constructive steps have been taken by the respondents to remedy the situation and change the system. It is submitted that a mere admission of mistake is nothing but lip service done to the students and public, when no concrete steps are taken to plug the loopholes in the system.

(25) Miss Hima Kohli, learned counsel who appeared for the petitioner society submitted that the impugned question paper was extremely lengthy and average student could not solve that question paper within the prescribed time of three hours. The question paper also incorporated some of the wrong questions and the difficulty level of an average student has not been taken into consideration. She also submitted that questions incorporated in the papers have not been solved either by the Paper Setter or by the Moderators, No assessment of time required to solve the paper was carried out by either of them, which has led to a very lengthy paper which could not be solved within the stipulated time.

(26) Miss Kohli also argued that the questions which ought to have been put in

the category of essay have been put in the category of very short and short questions. This had happened because proper instructions were not given.

(27) She says that instructions given to the Paper Setter were not clear, specific and comprehensive. She also argued that there had been no proper review or moderation by the Moderator of the said paper. The instructions given to the Moderator were also not adequate and clear. The Moderators were not even asked to solve the questions mentioned in the question paper and to make assessment of time before properly categorizing the questions into three broad categories Essay, short questions and very short questions.

(28) She has pointed out that examination bye laws of the Central Board of Secondary Education also have not been properly drafted and require complete amendment. While commenting on class 47(v) which is set out as under:

"PAPER Setter shall normally be appointed from the academicians recommended by the committee of courses of the Board"

, she mentioned that the whole clause is quite vague and each clause is so worded that there is no adherence of any norms in the strict sense and each clause can be given a go by and she gives illustration of clause (iii) where the Paper Setter shall normally be: a) teachers with at least 20 years of teaching experience, meaning thereby that this can be varied as and when required. Similarly, clause 47 (iii) reads as under:

"PAPER Seller shall normally be Persons of proven integrity."

Simple meaning of this is that in exceptional circumstances a person of not proven integrity can also be appointed as a paper setter. This obviously cannot be the intention of the framers of these bye-laws. Certain errors have crept in, in drafting of these bye-laws.

(29) Learned counsel while commenting on clause 48 pertaining to moderation submitted that instructions in bye-laws are incomplete. Clause 48 (i) reads as under:

"MOST of question papers shall be moderated by a team of Moderators consisting of eminent scholars to see their correctness and consistency with curriculum."

The Moderator has not been asked to consider: a) Difficulty level of question papers b) Accuracy of questions c) Time required to answer each question or question paper These are extremely vital functions of the Moderator. It may be pertinent to mention that even the expert committee set up by the C.B.S.E. was specifically asked to give its recommendation on aforesaid aspects.

(30) Ms. Kohli, learned counsel submitted that serious lapses have taken place in absence of any instruction to the Paper Setter or Moderator.

(31) Ms. Kohli also argued that in case the Chairman of the Board comes to the conclusion that particular Paper Setter is not competent, he can disqualify the

Paper Setter, but in a situation where there has been any serious lapse on the part of the Paper Setter, such as leakage of paper or questions out of syllabus or the paper being extremely lengthy, no provision has been envisaged on how the examinees will be adequately compensated. While pointing out the lapse in clause 48, Miss Kohli mentioned that there is no qualification that the Moderator has not been entrusted with the specific task how he or she should moderate the paper.

(32) Ms. Kohli further contended that there is no provision by which the Moderator is required to solve all the question papers and give assessment of the time taken in solving those questions, and then put them in respective categories of essay, short questions and very short questions. Unless these instructions are specifically given and there is insistence on adherence of this requirement, some kind of problem which has taken place in 1993 and 1994 is likely to recur in future also.

(33) She also mentioned that there is no requirement for the Paper Setter to be a practicing teacher of that very subject.

(34) While commenting on the marking scheme, she mentioned that most of the clauses of the marking scheme are redundant and need to be properly amended. She mentioned that qualification and disqualification must be categorical. She also mentioned that the Paper Setter and Moderator must be provided with proper training and orientation. According to her, the definition of an academician is quite vague. The bye-laws, instructions and guidance given to the Paper Setters and Moderators have to be fully amended and revised.

(35) Mr. K.T.S. Tulsi, Additional Solicitor General appeared on behalf of the C.B.S.E. and submitted that the petitioner has not challenged constitutionality or legality of the bye-laws. It would not be appropriate for us to declare the bye laws, guidelines unconstitutional or otherwise bad in law.

(36) Learned counsel for C.B.S.E. placed reliance on the following cases: 1.. Controller of Examinations and Others Vs. G.S. Sunder and Another, 2. Union of India and others vs. S.L. Dutta and another (1991) S.C.C. 505. 3. Mallikarjuna Rao and Others Vs. State of Andhra Pradesh and Others, . 4. M/s. Shri Sitaram Sugar Co. Ltd. and another Vs. Union of India and others, . G.B. Mahajan and others Vs. The Jalgaon Municipal Council and others, . Narinder Chand Hem Raj and Others Vs. Lt. Governor, Administrator, Union Territory, Himachal Pradesh and Others,

(37) The main emphasis of the learned Additional Solicitor General was that the court ought not to Interfere in the instant matter because issues involved in the case are not judicially manageable.

(38) We have heard learned counsel at length and examined pleadings and documents on record. We are quite conscious of the fact that in academic matters, court must be very slow to interfere. It is really for educationists and

experts to run the entire educational system.

(39) After careful consideration, we chose to look into the matter because the fate of several lakhs of students is at stake. The paper of Mathematics has paramount importance for students of Class XII. Their further education and career prospects largely depend on their performance in the Mathematics paper.

(40) Another reason which prompted us to examine their matter was that year after year serious problems and immense dissatisfaction was experienced by lakhs of students, their parents and teachers. For the last three years consecutively the Cbse had to give some kind of compensation after the examinations were held. This has seriously affected the credibility of the examination system..

(41) On consideration of the entire examination system, including the marking scheme and discussing the same. at length with the Chief Controller of the Examination, C.B.S.E. we are of the opinion that by and large the examination system seems to be quite scientific, systematic and has been designed to maintain high academic standards while safeguarding the interest of the students. At all levels utmost care is taken to achieve, the object of excellence and high standard of examination. All concerned authorities are conscious of their onerous responsibilities. In our opinion, if certain amendments are made in the bye-laws, and clear, comprehensive and specific instructions are given to the paper setter and moderator, the examination system can be further improved.

(42) Before dealing with this aspect, we would like to advert to the Mathematics paper of class Xii 1994 We have examined the various facets of the said paper. The recommendations of the expert Committee have been accepted and implemented by the C.B.S.E. in to. We have discussed the entire paper with the Controller of Examination, C.B.S.E. He has appraised us of the manner in which the students have been compensated. While examining the answer books, credit has been given to the students who have taken correct steps even though the conclusions arrived at by them was not entirely correct. In our opinion, while giving compensation for the Mathematics paper of Class Xii the Cbse without compromising with the academic standard have fully protected the interest of the student. We do not think it appropriate to discuss the method of compensation.

(43) We would like to assure the students, their parents and teachers that while granting compensation the interest of the students was paramount.

(44) Consecutively for the last 3 years, Cbse had to give some kind of compensation to the students. In our opinion, the credibility and sanctity of the examination system is seriously affected when year after year ,compensation in this manner has to be given to the students.

(45) We are of the opinion that the examination system must be structured in a manner where, because of initial careful scrutiny, the discontentment and dissatisfaction among the students can be avoided.

(46) In our opinion the instant litigation is not an adversary litigation of usual nature and ought not to be contested as such. Approach of all concerned, including the respondent ought to be quite sensitive and responsive to the complaints lacunas and lapses pointed out in the bye-laws and guidelines issued by; them so that the examination system can be further improved.

(47) In a case like this where a large public interest is involved because several lakhs of students appeared for the Cbse examination every year both in India and in various other parts of the world, the entire approach and prospect of all concerned must be to improve the examination system of our education. An endeavor must be to make it error free, foolproof and perfect as far as possible.

(48) When obvious lacunas, discrepancies and lapses were pointed out in the byelaws and instructions, the Additional Solicitor General appearing for the Cbse gave an undertaking to amend and revise the byelaws and instructions. In view of this assurance, we do not deem it proper to declare the bye laws, guidance and instructions either ultra virus of the Constitution or otherwise bad in law particularly, in absence of its challenge by the petitioner.

(49) The necessary amendments and changes be carried out in the existing bye laws and instructions given to all concerned at the earliest and in any event within four months from today. We are laying down the time limit so that similar problem may not arise in future. In case necessary amendments are not carried out within four months, then the petitioner would be at-liberty to move the court in appropriate proceedings for appropriate relief.

(50) In the Indian educational system, written papers are extremely important, and they have to be prepared with meticulous care and caution, Therefore, instructions given to all concerned acquire immense importance. While framing comprehensive bye laws and instructions for all concerned, following suggestions may also be considered by the C.B.S.E. 1. Bye-laws and instructions must prescribe clear qualification and disqualification of Paper Setter, Moderator, Head Examiner and Additional Head Examiner. 2. The Paper setter and the moderator must take into consideration that all the questions set in the papers are within the syllabus and curriculum 3.They must also properly evaluate difficulty level of the question paper. 4. A proper evaluation must be made whether questions can be answered by an average student within the prescribed time, leaving sometime for revision of the question paper. In the paper of Mathematics, all the questions of the question paper must be answered by the paper setter and he must forward answers or solutions of those questions. The paper setter must also indicate how much time an average student should take in answering that question. 5. The moderator must carry out a similar exercise independently. In other words, the moderator must also solve all questions and evaluate the time which an average student would take in answering those questions. If this exercise is carried out both by the paper setter and the moderator, then the usual difficulty and problem that the paper was too lengthy and could not be answered by average students within the prescribed time would be eliminated to

a large extent, if not completely. 6. The paper setters and moderators be selected amongst the eminent practicing teachers of that particular subject.

(51) In our opinion, I the aforesaid factors along with other guidance and direction followed by the Paper setter, moderator. Head Examiner and Additional Head Examiner, then the kind of problem which has been encountered this year and the last year can perhaps be eliminated to a large extent. The Head Examiner or any, other authority must ensure strict adherence and compliance of instructions, directions, and guidance given to all concerned.

(52) endeavor of all concerned be to fully establish credibility and sanctity of our examination system. No further directions are necessary. The writ petition filed by the petitioner is disposed of in terms of the aforesaid directions.

(53) Before parting with the case, we would like to record our deep sense of appreciation for very able assistance provided by Miss Hima Kohli, learned counsel appearing for the petitioner.

(54) In the facts and circumstances of this case, there would be no order as to costs.