

(1982) 11 OHC CK 0001
In the Orissa High Court
Case No : O.J.C. No. 1107 of 1982

Partha Sarathi Guru and Others

APPELLANT

Vs

Utkal University and Others

RESPONDENT

Date of Decision : 09-11-1982

Acts Referred:

Constitution of India, 1950 — Article 226
Utkal University Act, 1966 — Section 10, 4

Citation : AIR 1983 Ori 66 : (1983) 55 CLT 53

Hon'ble Judges : P.K. Mohanti, J;B.N. Misra, J

Bench : Division Bench

Advocate : S.C. Dash, for the Appellant; Bijoy Kumar Patnaik and S.C. Mohapatra, for the Respondent

Final Decision : Dismissed

Judgement

B.N. Misra, J.—The petitioners who had taken the Annual Intermediate Examination in Arts of the Utkal University from the Kharasrota College Centre, Singhpur in the year 1982 have challenged the notification of the University, dated 5-6-82, Annexure 6, cancelling the result of the candidates who had taken the I. A. Examination, 1982 from the aforesaid Centre.

2. Opposite party No. 2 is the Principal of the Kharasrota College, Singhpur. The Annual I. A. Examination was held at the College Centre from 15-3-82 till 12-4-82. After the two persons who had been appointed as Centre Superintendents declined to act as such one after the other, the examination commenced on 15-3-82 with opposite party No. 2 acting as the Centre Superintendent, vide Annexure 2 (b). Dr. P. C. Mohapatra, one of the two Supervisors appointed for the Centre, inspected the Centre on 16-3-82. It is alleged by the petitioners that as Dr. Mohapatra had an unpleasant incident with an outsider, he submitted a biased report against the Centre to the University. On 18-3-82 opposite party No. 3 appeared before opposite party No. 2 at the Centre with a letter from Principal Shri G. N. Acharya who was then a member of the

Syndicate and demanded that he should be allowed to act as the Superintendent of the Centre. Opposite party No. 2 turned down the demand on the ground that without authorisation from the University it was not open to him to hand over charge of the office of the Centre Superintendent. On 19-3-82 opposite party No. 2 received a telegram from the University intimating the appointment of opposite party No. 3 as the Centre Superintendent, vide Annexure 3 (a). On 22-3-82 opposite party No. 2 handed over charge of the office of Centre Superintendent to opposite party No. 3 and the latter conducted the examination as the Centre Superintendent from 23-3-82 till its conclusion on 12-4-82. On 26-3-82 the Vice-Chancellor of Utkal University sent a telegram to opposite party No. 3 that rampant malpractice at the Centre had been reported and that the Syndicate was contemplating cancellation of the Centre. A copy of the telegram was sent by post to opposite party No. 2 in which it was further stated that if the situation did not show marked improvement immediately the Centre might be cancelled. After the examination was over the petitioners were expecting the results to be published, but to their surprise as per Annexure 6 the University cancelled the I. A. Examination results of the Centre. It is stated that during the examination 9 cases of malpractice had been reported on 16-3-82, 7 cases on 30-3-82 and one case on 31-3-82 and out of these 17 cases, only 5 were regular candidates. The notification as per Annexure 6 is impugned on the ground of mala fides of the Vice-chancellor and some members of the Syndicate. It is pointed out that Shri G.N. Acharya, as a member of the Syndicate, had no authority to appoint the Centre Superintendent and, therefore, opposite party No. 2 was justified in not handing over charge of the office of the Centre Superintendent to opposite party No. 3 until due authorisation was received by him. It is suggested that because of the misunderstanding between opposite party No. 2 on the one hand and Shri G. N.. Acharya and the members of the Syndicate on the other, the careers of the petitioners have been sacrificed for no fault of theirs. The action of the University is said to be the result of malice, prejudice and mala fides. The petitioners have also stated that the examinations were conducted in a proper manner with adequate police arrangements and there was no interference from any quarters. Annexure 6 is also challenged on the ground of being in excess of the powers of the Syndicate. The petitioners have accordingly prayed that Annexure 6 should be quashed.

3. In its counter opposite party No. 1 (the University) has sought to justify its action in cancelling the Annual I. A. Examination of the Centre. It is stated that the Supervisor Dr. P. C. Mohapatra had visited the Centre on 16-3-82 and had remained there from 9-15 A.M. till 6-00 P.M. The report submitted by Dr. Mohapatra revealed that the candidates were allowed to take copies and other incriminating materials with them into the examination hall, some candidates were allowed to carry books, candidates were not sitting according to the seat-chart, they were talking to each other and also with outsiders through the windows, about two to three hundred outsiders camp to help the candidates and the outsiders had threatened the Centre Superintendent. On 7-4-82 another

Supervisor visited the Centre from 1-30 P.M. till 5-00 P.M. and he had found a number of outsiders present at a short distance from the examination hall. Opposite party No. 3, the Centre Superintendent, submitted his report on 10-5-82. All these reports were placed before the Examination Committee of the University who after considering the said reports recommended to the Syndicate that the 1982 Annual I. A. Examination in Arts conducted at the Centre should be cancelled. The matter was placed before the Syndicate on 20-5-1982 and after careful consideration the Syndicate accepted the recommendation of the Examination Committee and as such the results of the candidates who had appeared at the 1982 Annual I. A. Examination at the Centre were cancelled vide notification dated 5-6-82. The allegations of malice, prejudice and mala fides have been firmly denied.

4. In his counter opposite party No. 2 has stated that during the period he was acting as Centre Superintendent, the examination had been smoothly conducted and he had reported the same in the University. He contends that the cancellation of the Examination of the Centre is a result of prejudice in the minds of the authorities of the University. He has also stated that only 17 cases of malpractice had been detected and, therefore, the cancellation of the results of all the candidates was not justified. Opposite party No. 2 has also filed an affidavit sworn to by Shri Rama Chandra Mallik, Ex-Member of the Parliament and President of the Governing Body, to the effect that Shri Mallik was present at the Centre on 16-3-82 during the visit of Dr. Mohapatra and that the examination on that day was peaceful.

5. In their rejoinder, the petitioners have stated that the Vice-Chancellor had informed opposite party No. 2 seventeen days before the conclusion of the examination that the Syndicate was contemplating cancellation of the Centre and as such reports have been subsequently manufactured to support the preconceived decision. It is alleged that the Syndicate had no materials for cancellation of the results of the examination.

6. At the outset it would be useful to refer to the following authoritative decisions dealing with malpractice at examinations. In *The Vice-chancellor, Utkal University and Others Vs. S.K. Ghosh and Others*, , it was observed (para 19):--

"We are not prepared to perpetrate the error into which the learned High Court Judges permitted themselves to be led and examine the facts for ourselves as a Court of Appeal but in view of the strictures the High Court has made on the Vice-Chancellor and the Syndicate we are compelled to observe that we do not feel they are justified. The question was one of urgency and the Vice-Chancellor and the members of the Syndicate were well within their rights in exercising their discretion in the way they did. It may be that the matter could have been handled in some other way, as, for example, in the manner the learned Judges indicate, but it is not the function of Courts of law to substitute their wisdom and discretion for that of the persons to whose judgment the matter in question is entrusted by the law."

In *The Bihar School Examination Board Vs. Subhas Chandra Sinha and Others*, v, the cancellation of examinations at one centre was under challenge and the Supreme Court observed:--

"13. This is not a case of any particular individual who is being charged with adoption of unfair means but of the conduct of all the examinees or at least a vast majority of them at a particular centre. If it is not a question of charging any one individually with unfair means but to condemn the examination as ineffective for the purpose it was held, must the Board give an opportunity to all the candidates to represent their cases? We think not. It was not necessary for the Board to give an opportunity to the candidates if the examinations as whole were being cancelled. The Board had not charged any one with unfair means so that he could claim to defend himself. The examination was vitiated by adoption of unfair means on a mass scale. In these circumstances it would be wrong to insist that the Board must hold a detailed inquiry into the matter and examine each individual case to satisfy itself which of the candidates had not adopted unfair means. The examination as a whole had to go.

14. Reliance was placed upon *Board of High School and Intermediate Education, U.P., Allahabad Vs. Ghanshyam Das Gupta and Others*, to which we referred earlier. There the examination results of three candidates were cancelled, and this Court held that they should have received an opportunity of explaining their conduct. It was also said that even if the inquiry involved a large number of persons the Committee should frame proper regulations for the conduct of such inquiries but not deny the opportunity. We do not think that that case has any application. Surely it was not intended that where the examination as a whole was vitiated, say by leakage of papers or by destruction of some of the answer books or by discovery of unfair means practised on a vast scale that an inquiry would be made giving a chance to every one appearing at that examination to have his say. What the Court intended to lay down was that if any particular person was to be proceeded against, he must have a proper chance to defend himself and this did not obviate the necessity of giving an opportunity even though the number of persons proceeded against was large. The Court was then not considering the right of an examining body to cancel its own examination when it was satisfied that the examination was not properly conducted or that in the conduct of the examination the majority of the examinees had not conducted themselves as they should have. To make such decisions depend upon a full-fledged judicial inquiry would hold up the functioning of such autonomous bodies as Universities and School Board. While we do not wish to whittle down the requirements of the natural justice and fair play in cases where such requirement may be said to arise, we do not want that this Court should be understood as having stated that an inquiry with a right to representation must always precede in every case, however different. The universities are responsible for their standards and the conduct of examinations. The essence of the examinations is that the worth of every person is appraised without any assistance from an outside source. If at a centre the whole body of students receive assistance and

manage to secure success in the neighbourhood of 100% when others at other centres are successful only at an average of 50%, it is obvious that the university or the Board must do something in the matter. It cannot hold a detailed quasi-judicial inquiry with a right to its alumni to plead and lead evidence etc. before the results are withheld or the examinations cancelled. If there is sufficient material on which it can be demonstrated that the university was right in its conclusion that the examinations ought to be cancelled then academic standards require that the university's appreciation of the problem must be respected. It would not do for the Court to say that you should have examined all the candidates or even their representatives with a view to ascertaining whether they had received assistance or not. To do this would encourage indiscipline if not also perjury."

In *Blaise Louis and Others Vs. The Nagpur University, Nagpur and Another*, , it was held (para 13):--

"With the assistance of the learned counsel for the petitioners and for the University, we have ourselves tried to find out whether the conclusion to which the Enquiry Committee and the Executive Council have reached was based on material on which any reasonable person would reach such a conclusion. We cannot forget that this is a petition under Article 226 of the Constitution in which this Court is not entitled to sit in appeal over the decisions of autonomous bodies like the University on matters in the academic field which under the Act is exclusively the field of the University and if we are satisfied that the decision is supported by evidence, it will not be possible for us to interfere with the decisions of the Executive Council....."

In *Madan Mohan Varma and Others Vs. University of Calcutta and Others*, , it was held (at p. 68):--

".....If on the basis of these reports the University Council had taken the decision at its meeting of 12th May, 1978, as mentioned in sub-para (e) of para 7 of the affidavit of the Registrar, in my opinion, it cannot be said that the university had acted without material or without sufficient materials. On this resolution of the University Council the Vice-Chancellor has taken the decision to cancel the examination. The Vice-Chancellor is authorised to ensure the discipline of the students under Statute 12 of the Calcutta University Statutes. Having regard to the nature of the allegations involved in this case, in my opinion, no question of giving individual notices, arises. In that view of the matter the action of the University cannot be said to be either violative of the principles of natural justice or based on no relevant materials at all. In the background of the ratio of the decision of the Supreme Court referred to hereinbefore, in my opinion, therefore, the action of the University cannot be impugned."

7. Next we may refer to some of the relevant provisions of the Utkal University Act, 1966 (hereinafter referred to as the "Act") and the statutes made thereunder. u/s 4 of the Act, the Vice-Chancellor is one of the Officers of the

University and the Syndicate is one of the authorities of the University. It is inter alia prescribed in Section 10 of the Act that subject to the provisions of the Act and the Statutes the Syndicate shall perform the functions and exercise the powers in respect of control of examinations. Part II of the Statutes deals with the powers of the Syndicate with regard to conduct of University Examinations. It is not in dispute that the University as a statutory body has the power to cancel the results of an examination in respect of a Centre. This power is implied in the power to control the examinations.

8. Learned counsel for the petitioners has, however, urged that in this case there were no materials before the Syndicate justifying cancellation of the examinations. At our request learned counsel for opposite party No. 1 produced before us the concerned file and we have ourselves looked at the reports of Supervisor Dr. P. C. Mohapatra, Supervisor Shri Chintamani Nayak and Centre Superintendent, opposite party No. 3. Dr. Mohapatra's report consists of two parts, one in the pro forma prescribed by the University and the other by way of a detailed report dated 18-3-1982. The report of the second Supervisor Shri Chintamani Nayak is contained in pro forma dated 7-4-1982. Finally opposite party No. 3 has submitted his report as Centre Superintendent on 10-5-1982. Of the three reports, the first one submitted by Dr. P. C. Mohapatra is the worst. The report of Dr. Mohapatra indicates that apart from the specific instances of malpractice, almost all the candidates were indiscriminately resorting to unfair means throughout the examination. Outside help was sought for and given. The report further shows that the examination on 16-3-1982 had not at all been properly conducted. In view of the reports of Dr. Mohapatra who had visited the Centre as the authorised representative of the University, the affidavit of Shri Mallik. Ex-Member of Parliament, must be rejected. The report of the second Supervisor Shri Nayak dated 7-4-1982 indicates that the candidates were trying to help each other to use incriminating materials, there was attempt to bring in outside help, a number of outsiders were found to be present at a short distance from the examination hall and the general condition inside and outside the examination premises was not good. The report of opposite party No. 3 who acted as Centre Superintendent from 23-3-1982 till conclusion of examination on 12-4-1982 indicates that during many sittings of the examinations candidates were seen adopting malpractice, the situation was beyond control and the Peons and Lecturers were helping the candidates. In view of these reports it cannot be said that the University had acted without material or without sufficient materials. Therefore, in coming to the conclusion that unfair means on a mass scale were adopted by the candidates at the Kharasrota College Centre on the basis of the reports of the Supervisors and the Centre Superintendent, the University cannot be said to have arrived at a wrong conclusion or exercised its discretion wrongly and in any case in this proceeding we do not propose to sit in judgment over that conclusion.

9. As regards the allegations of malice, prejudice and mala fides, it would be proper to refer to the following observations of the Supreme Court in E.P.

Royappa Vs. State of Tamil Nadu and Another, , "secondly, we must not also overlook that the burden of establishing, mala fides is very heavy on the person who alleges it. The allegations of mala fides are often more easily made than proved, and the very seriousness of such allegations demands proof of a high order of credibility....." In the present case the petitioners have no doubt made allegations of mala fides, but they have dismally failed to prove the same. There is no material before us to hold that the action of the University authorities is vitiated on account of mala fides. There can never be any assumptions in the matter.

10. In the result, this writ petition must fail and it is rejected. Parties will, however, bear their own costs.

P.K. Mohanti, J.

I concur.