
(2009) 02 GAU CK 0007
In the Gauhati High Court
Case No : Writ Petition (C) No. 4724 of 2008

Pawan Kumar Goswami and Others	Vs	APPELLANT
State of Assam and Others		RESPONDENT

Date of Decision : 06-02-2009

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2009) 2 GLT 753

Hon'ble Judges : P.K. Musahary, J

Bench : Single Bench

Advocate : N. Choudhury, S.C. Keyal and S.K. Ghose, for the Appellant; T.C. Chutia, A. Chamuah and H.L. Maurya, for the Respondent

Final Decision : Allowed

Judgement

P.K. Musahary, J.—By this application under Article 226 of the Constitution of India, the Petitioners pray for issuance of Writ in the nature of Certiorari and any other appropriate writ or direction for quashing and setting aside the order dated 1.10.2008 passed by the Respondent No. 4, the Secretary, Board of Secondary Education, Assam, Guwahati (hereinafter referred to as "Board" only) cancelling the examination of the wards of the Petitioners who appeared in the High School Leaving Certificate Examination 2008.

2. The brief facts for the purpose of disposal of this petition are narrated below:

The wards of the Petitioners were prosecuting their studies in the M.D.G. Vidya Mandir in Nagaon District, Respondent No. 8, which is a recognized High School under the Board, Respondent No. 2. Being regular students, the Petitioners appeared in the H.S.L.C. Examination conducted in the month of February, 2008 by the Respondent No. 2 who issued the admit cards under the signature of the Controller of Examination, Board of Secondary Education, Assam, Respondent No. 5. The following are the names of students with fathers name and Roll No.

Sl. No. Name of Student Father's name Roll No.

1. Sri Sikandar Goswami Sri Pawan Kr. Goswami B08-578 0289
2. Sri Avinash Goswami Sri Pradip Goswami B08-578 0284
3. Sri Nikhil Robidas Smti Gouri Robidas B08-578 0288
4. Sri Jagadish Baruah Sri Jagannath Baruah B08-578 0285
5. Sri Manoj Singh Sri Rajendra Singh B08-578 0286
6. Miss Anu Singh Sri Rajendra Singh B08-578 0290
7. Miss Rinki Das Sri Pradip Das B08-578 0291
8. Sri Nantu Das Sri Amar Das B08-578 0287

3. The aforesaid students/candidates appeared accordingly in the aforesaid H.S.L.C. Examination at Jakhalabandha Centre, which commenced from 15.02.2008 to 03.03.2008. The examination concluded peacefully and there was no complaint from any quarter during or after the examination. The results of the said examination were declared on 27.05.2008 but the results of all the wards of the Petitioners were kept "withheld" without disclosing any reasons thereof. However, the Petitioners could see the results in the Internet, which they downloaded and found that in the column marked "Result" is filled up with word "withheld" and in other columns, Roll Code, Roll No., Name, Total marks secured and subject in which letter marks obtained were also filled up. In the Internet, it was found that all the candidates appeared in the examination from the School of Respondent No. 8 fared well. The Petitioners met the Principal of the Respondent No. 8's School on 27.05.2008 along with their wards and requested him to take necessary steps for declaration of the result. The Principal of the aforesaid School along with the Petitioners approached the Respondents No. 3, 4 and 5 on 28.05.2008 and submitted the admit cards and registration cards of the candidates in original in the office of the Respondent-Board as per rules. Thereupon the Assistant Superintendent of the Respondent-Board informed that the results of M.D.G. Vidya Mandir, Nagaon have been withheld due to other reasons and asked the Principal of the aforesaid School to appear before the Academic Officer of the Board (Respondent No. 6) along with the students and Officer-in-charge of H.S.L.C. Examination Centre, Jakhalabandha on 2.06.2008.

4. Accordingly, the Principal of the Respondent No. 8's School along with the Petitioners and their wards met the Respondent No. 6 on 2.06.2008. Thereupon, the Respondent No. 6 took written test of 4 students and allowed them to go. Thereafter, the Principal of the said School met the Respondent No. 6 and requested him to declare the withheld result of the students but without declaring the results, he asked him to bring the officer-in-charge of the examination centre and all the invigilators on duty in the examination centre on 18.02.2008. The Respondent No. 8 thereupon requested the Respondent No. 7 and the invigilators to meet the Respondent No. 6 but the Respondent No. 7 declined to do so as there was no official communication from the Respondent

No. 6 and addressed a letter dated 3.06.2008 to the Respondent No. 3, Chairman of the Board, clarifying the position. However, on the request of the Principal of Respondent No. 8's school and keeping in view of the future of the students, 3 invigilators namely, Sri Kalpa Nath Gogoi, Sri Jiban Baruah and Sri K. Basumatary appeared before the Respondent No. 6 on 4.06.2008 and clarified the position. In spite of that the Respondent Nos. 2 to 6 did not inform the Principal of the School nor the Petitioners about the reasons of withholding the result. Thereafter, the Principal of the School submitted a representation on 10.06.2008 before the Chairman of the Board requesting him to declare the result and release the marks sheets in respect of the aforesaid students so as to enable them to get admission and pursue their further studies but to no effect.

5. Thereafter again on 17.06.2008, the Petitioners along with the Principal of the School approached the Respondent Nos. 3 to 6 whereupon, the Academic Officer of the Board orally asked the Principal of the School to bring officer-in-charge of the H.S.L.C. Examination Centre, Jakhalabandha (Respondent No. 7) and all the invigilators who were on duty on 18.02.2008 in the said examination centre. The aforesaid officer-in-charge of the examination, Sri Chakradhar Hazarika along with Assistant In-charge(Confidential) appeared before the Respondent Nos. 3 to 6 on 18.06.2008. Thereafter on 20.06.2008, all the invigilators who were on duty on 18.02.2008 in the examination centre appeared before the Respondents No. 2 to 6 as per the oral direction of the Academic Officer of the Board conveyed through the Principal of the School. In spite of all these approaches made by the Petitioners and the Principal of the School, the Respondent-Board and its authorities did not inform the reasons of withholding the result of the aforesaid students making them to suffer irreparable loss affecting their academic career.

6. Having no other alternatives, the Petitioners approached this Court by filing a writ petition, which was registered as W.P. (C) 2856/2008. The said application was fixed for motion hearing on 14.07.2008 for obtaining instructions from the Respondents. At that stage, the Respondents, according to Petitioners, gave an impression to the Petitioners that if the writ petition was withdrawn, the result would be declared immediately and accordingly the Petitioners withdrew the writ petition believing in the assurances of the Respondents. The Petitioners waited for a reasonable period expecting declaration of the result but the Respondents once again threw the matter into the cold storage. The Petitioners, therefore, again approached this Court by filing another writ petition viz W.P. (C) 4412/2008 wherein notice of motion was issued on 30.09.2008. While the aforesaid writ petition, according to Petitioners, was scheduled to be taken up for consideration in the second week of November, 2008, the Respondent/Secretary issued the impugned order No. SEBA/EX/REG/9.04.18 dated 1.10.2008 cancelling the examination of the aforesaid 08 candidates on the following grounds:

(1) Book No. of the Answer Scripts of the whole lot of Social Science are of A series, but Book No. of Answer Scripts of these eight candidates bearing Roll

B08-578 No. 084 to 0291 are of B series.

(2) Invigilator's signatures are not put at proper places in these eight copies of the answer scripts.

(3) Answers to the questions in these eight scripts are exactly same in all the pages, which seems to be a doubtful case.

(4) There is no signature of Invigilators in the extra sheets used by these candidates.

7. I have heard Mr. N. Choudhury, learned Counsel for the Petitioner and Mr. T.C. Chutia, learned Standing Counsel for the Respondent Nos. 2 to 6. Also heard Mr. A. Chamuah, learned Counsel for the Respondent No. 7.

8. Mr. N. Choudhury, learned Counsel for the Petitioners submits that the Petitioners were not served with the aforesaid cancellation order and no prior notice was sent to them and the so called inquiry was made without giving any opportunity to reply on the aforesaid allegations, which is in violation of the basic tenets of natural justice inasmuch as the impugned order has serious consequences on the wards of the Petitioners. The further submission of Mr. Choudhury is that the answer scripts were duly signed by the In-charge of the examination centre and the invigilators and the Respondent authorities without holding any inquiry straightway took decision against the Petitioners' wards on the basis of the allegation made by the Zonal Officer, Duliajan Evaluation Centre, who had no connection with the Jakhalabandha H.S.L.C. Examination Centre where the examination in question actually held, which is unfair and illegal in the eye of law.

9. Mr. T.C. Chutia, learned Standing Counsel appearing for the Respondents No. 2 to 6 at the very outset, denies the Petitioners' claim that the Respondents ever gave any impression or assurance that the results would be declared if they withdraw their Writ Petition. He then submits that the impugned order cancelling the examination of the aforesaid candidates was served on the Respondent Principal under whose centre they appeared in the HSLC Examination, who in his turn, informed them and as such, no plea can be taken by the Petitioners that the order of cancellation of examination of their wards was not intimated or the reasons for cancellation were made known to them. No fault, according to Mr. Chutia, can be attributed to the Respondents for initiating inquiry on the basis of information/allegation receipt from the Zonal Officer of Duliajan Spot Evaluation Zone, 2008 to whom the answer scripts were sent for evaluation. According to Mr. Chutia, the impugned cancellation order was not issued only on the basis of allegation made by the aforesaid Zonal Officer or presumption taken therefrom but it was a result of thorough inquiry in which the In-charge of Jakhalabandha Examination Centre and the invigilators on duty in the said centre were called for to identify their signatures on the answer scripts, who on being shown the answer scripts, denied them to be their signatures. In that respect, the invigilators concerned have also made statements in writing. On competition of

the inquiry, it was established that some malpractice has taken place in the said centre during the period of examination and the report having been placed before the Board, it was discussed and decided by the Board to cancel the examination of the aforesaid 8 candidates and accordingly the impugned order dated 1.10.2008 was issued. In the aforesaid inquiry, according to Mr. Chutia, some of the candidates were called to the Board office for conducting written test and to verify their handwriting with the handwriting on their respective answer scripts. It is submitted by Mr. Chutia that in the case of mass copying, the Education Board or its authorities can make inquiry into the matter and in such inquiry it is not binding on the Board or its authorities to observe the strict principle of natural justice. He relies on the case of *Kishan Chand Chopra and Others Vs. State (Delhi Administration) and Others*, wherein it is held that

the Board being an expert body comprising persons experienced in the field of education and being concerned with maintaining higher standard of education and proper conduct of examinations, Court should not interfere with decisions, or actions of the Board or its authorities unless there is error in compliance with the rules, regulations or notifications and manifest injustice perpetrated on the candidates.

In the present case, according to Mr. Chutia, the Board has cancelled the examination of the aforesaid 8 candidates as per the provision under Rule 38 of the Board of Secondary Education, Assam Regulations. The matter having been inquired by a duly authorized officer and the report having been submitted by him and the same having been approved by the Board after discussion as per provision under Regulations, there is no scope for interference with the decision or action of the Board and its authorities. Mr. Chutia also puts reliance on *Central Board of Secondary Education Vs. Nikhil Gulati and Another*, wherein it is held that

the Court should desist from passing orders permitting ineligible student to undertake Board and/or University examination as that amounts to abuse of the process and puts the Rule of Law to a mockery.

But here is a case, according to Mr. Chutia, that the students who have indulged themselves in the unfair/malpractices in the examination have called upon the Court to interfere with the authorized action taken by the Board on the ground of non-compliance of fair-play in action and non-observance of principle of natural justice and sought for setting aside the order dated 1.10.2008 and if this relief is granted to the Petitioners, it would amount to mockery of Rule of Law vis-a-vis the Principle of Natural Justice.

10. Considering the nature of controversy and the relief sought for in this writ petition, this Court by an order dated 5.1.2009 directed the learned Counsel for the Respondents to keep the relevant official records along with the answer scripts of the candidates concerned in social science ready for perusal at the time of hearing. The learned Standing Counsel for the Respondent-Board has

accordingly produced the relevant records along with answer scripts of the candidates in social science subject today for perusal of this Court. I have perused the records. The letter/complaint dated 17.3.2008 signed by the Zonal Officer, Duliajan Spot Evaluation Zone, is the basis of initiating action by the Board and its authorities. In this letter, the aforesaid Zonal Officer informed the Respondent Controller of Examination about the doubt created in his mind, after finding that the answer scripts he received for evaluation found to be in the lot marked Book "B" which should have been in the lot marked Book "A" and the signatures of the invigilators were not found on a proper place of the answer scripts and the extra sheets of the answer scripts do not bear the signatures of the invigilators and also the answer to the questions of the copies of the aforesaid 8 candidates are exactly same in all the pages. On being asked the invigilators on duty at Jakhalabandha centre concerned, namely Shri Kalpa Nath Gogoi, Sri Jiban Baruah, informed the Secretary of the Board in writing on 14.6.2008 that they put their signatures as invigilators on the proper place on the main answer scripts as well as on the extra/additional sheets. One of the invigilators, namely, Sri Kalpa Nath Gogoi further informed the Secretary of the Board in writing on 11.7.2008 that the signatures appearing on the answer scripts bearing Roll Nos. B08-578-0284, 0285, 0286, 0287, 0288, 0289, 0290, 0291 are not his signature and he did not put his signature on those answer scripts as invigilator. He also informed that he did not leave any answer script unsigned nor did he allow any other person to put signature on the said answer scripts.

11. On inquiry by the Respondent No. 5/Controller of Examination, the Superintendent of Store Branch of the Board's office furnished information to the effect that in the year 2005 as many as 3200 answer scripts were supplied to Jakhalabandha Centre marked as Book "B" containing serial No. 370501 to 373500 and 216901 to 317100, in 2006 as many as 2650 answer scripts were supplied marked as Book "B" containing serial No. 185086 to 187735 and in 2007, as many as 3050 answer scripts were supplied marked as Book "A" containing serial No. 91371 to 94420. The Board has brought on record photocopies of answer scripts marked Book "A" supplied to 18 candidates of Social Science who appeared from the aforesaid centre which are within the serial numbers of answer scripts marked Book "A" supplied by the Board in 2007. In the answer scripts used by the aforesaid 8 candidates, instead of being marked as Book "A", it has been found marked Book "B", the serial Nos. of which do not come within the serial Nos. of answer scripts supplied by the Board in 2007. The answer scripts used by the aforesaid 8 candidates also found that the invigilators' signatures have not been put on the proper place of the answer scripts allotted for signature of the invigilator. It is verified from the record that none of the signatures of the invigilators on duty during the examination of Social Science subject tally with the signatures found on the answer scripts marked as Book "B" used by the aforesaid 8 candidates.

12. It is found from record that after due verification, Sri Chakradhar Hazarika,

Respondent No. 7, Officer In-charge of Jakhalabandha Examination Centre apprised the Respondent-Secretary of the Board by his letter dated 18.6.2008 and requested him to withhold the results of the aforesaid 8 candidates. The Board obtained the signatures of all the invigilators on duty subject wise in the prescribed form. It is also found on record that during inquiry, 4 candidates out of the aforesaid 8 candidates namely, Sri Avinash Goswami, Roll B08-578 No. 0284; Sri Monoj Singh, Roll B08-578 No. 0286; Sri Nantu Das, Roll B08-578 No. 0287 and Sri Sikandar Goswami, Roll B08-578 No. 0289 were called to the Board office and appeared on 3.6.2008 with the Principal of the MDG Vidya Mandir. After being introduced by the Principal, the handwritings of the aforesaid 4 candidates were collected through the dictation given to them from some portion of their answer scripts of Social Science subject of H.S.L.C. Examination, 2008. The handwritings on the original answer scripts of the aforesaid 4 candidates are found to be not tallying with the handwritings collected from them by aforesaid dictation. I have verified the original answer scripts of Social Science used in the aforesaid examination by the candidates concerned and found that they have answered using same sentences and same words including punctuations almost in all the questions, except in some questions, here and there and they secured marks in the range of 67 and 73, except in the case of Jagadish Baruah bearing Roll B08-578 No. 0285, who secured only 54 marks. On the basis of such materials on record, which were made available during inquiry to the Respondent/Academic Officer who inquired the matter, came to a conclusion that all the allegations have been established. His findings are recorded in the inquiry report which he submitted on 14.7.2008 to the Respondent-Secretary of the Board. The said report contains his remark which is quoted below:

From the investigation, it is obvious that the eight candidates of MDG Vidya Mandir, Bagori, Nagaon bearing Roll 08-578 Nos. 0284, 0285, 0286, 0287, 0288, 0289, 0290 and 0291 who appeared in the HSLC/AHM Examination, 2008 from Jakhalabandha Centre, are involved in gross violation of examination rules.

It is also obvious that invigilators' signatures seen in the Answer scripts of Social Science of the eight candidates of MDG Vidya Mandir are found to be forged because no such signatures are seen either in the official document supplied by the officer-in-charge of Jakhalabandha Centre (Annexure-08-15) or in his own statement dated 09.07.08 (Annexure-21). Such signatures are also not seen in the statements received from the invigilators who were on duty in Hall No. 4 of the centre on 18.02.2008 in Social Science subject (Annexure-04, 05, 17, 51 and 52).

It may be presumed that some unlawful activities done by some miscreants are going on secretly in the HSLC/AHM Examination Centre of Jakhalabandha with some malevolent intentions. The activities of such miscreants along with those of the eight students of MDG Vidya Mandir, Bagori whose results have been kept withheld, have jeopardized the sanctity and credibility of the examinations. Therefore, the Officer-in-charge of Jakhalabandha Centre along with his

confidential staff of Examination are to be made accountable for the occurrence of such unfortunate event.

The Board Authority will take a decision, as per rule, on the matter relating to the validity and acceptability of the results of the eight candidates of MDG Vidya Mandir, Bagori bearing Roll 08-578 Nos. 0284, 0285, 0286, 0287, 0288, 0289, 0290 and 0291 who appeared in the HSLC/AHM Examination 2008 from Jakhalabandha Centre.

13. An affidavit-in-opposition has been filed by the Respondents No. 2 to 6 justifying the action taken by the Board and its authorities and also testifying the inquiry report submitted by the Respondent No. 6/Academic Officer. In para 6 of the aforesaid counter affidavit, it is stated that the Respondent No. 6/Academic Officer of the Board, Dr. B. Goswami was entrusted to enquire into the cases of withholding the results of the regular candidates of "other reasons" and the withheld cases of the aforesaid 8 candidates fall under category of "other reasons". It is also stated in Para 8 of the said counter affidavit that on completion of inquiry, it was established that some malpractice has been taken place in the examination centre during the period of examination. The report submitted by the Respondent/Academic Officer was placed in the Board's meeting and the Board decided to cancel the results of the aforesaid 8 candidates and accordingly, the Secretary of the Board issued the impugned order dated 1.10.2008 cancelling the examination of the aforesaid candidates. It has been done so, as stated in Para 9 of the counter affidavit, for the sake of sanctity of the public examination like HSLC examination conducted by the Board.

14. Another affidavit has been filed by the Respondent No. 7, Sri Chakradhar Hazarika, Officer In-charge of the Jakhalabandha Examination Centre supporting the contention made in the counter affidavit of the Respondents No. 2 to 6. In Para 8 of his affidavit, the Respondent No. 7 specifically stated that the answer scripts used by the aforesaid candidates were the answer scripts of 2005 which were "lost/missed/unfounded" way back in the year 2005 and as the Officer In-charge of the said examination centre, he informed the matter to the Board immediately over telephone and later on in the form of a written report. He also specifically stated in the aforesaid paragraph of the affidavit as follows:

In the year 2005, the examinations were held from and on 23.02.2005 and had ended on 11.03.2005. During those days on 05.03.2005 the concerned members/officers of the Centre Managing Committee informed the answering deponent that 100 numbers of blank answer scripts are not found in the bundle of answer scripts sent by the SEBA and it is worthy to mention herein that those are of B series. The answering deponent immediately on the same day called for an urgent meeting of the Examination Centre Managing Committee to discuss the issue in the said brief meeting the learned members of the committee who are having previous experience of similar matter advised the answering deponent to inform the matter to SEBA over phone immediately and also advised to reflect the matter of those 100 numbers of lost/missing/unfounded answer scripts in the

return statement (Statement of Blank Answer Scripts, Additional Sheets and etc.) as "not found", to be submitted before SEBA at the end of examination. Accordingly the answering deponent immediately informed the matter to the Controller of Examination, SEBA over phone and submitted the return statement vide its letter No. HSLC/JKD/42/2003-2005/02 dated 17.03.2005 reflecting the matter of 100 numbers of blank answer scripts and "not found" which had duly been received by the officials of SEBA on 18.03.2005.

15. Regarding loss of answer scripts of 2005, the Respondent No. 7 in his affidavit further stated in Para 10 as under:

That the Respondent No. 7/answering deponent begs to state and submit that he took immediate steps as and when he was informed about the lost/missing of the Blank Answer Scripts in the year 2005. The Respondent No. 7/answering deponent immediately hold a meeting of the centre managing committee on 05.03.2005 to discuss the issue and decisions were taken as regards the matter. In the said examination managing committee some members were former centre in-charge and they are well versed with this kind of problems/situations. Namely Mr. Pradip Hazarika, Mr. Arabinda Borgohain and Mr. Madan Chandra Muktiar advised that it should immediately be informed to the Board (SEBA) and at the end of the examination, in the return statement those answer scripts should be shown as "Not Found". And accordingly the Respondent No. 7/answering deponent had done everything.

It is also significant to note in Para 9 of the affidavit filed by the Respondent No. 7 that he did not receive those series of answer scripts used by the aforesaid candidates from the Board for the HSLC examination held in 2008 and he submitted a return statement in the prescribed format supplied by the Board in respect of 2008 after conclusion of the examination.

16. The Petitioners have not filed any re-joinder to the counter affidavits filed by the Respondents No. 2 to 6 and Respondent No. 7 controverting the averments made therein. At the time of hearing also, the Petitioners have not shown any interest in filing any re-joinder by seeking time for the same. The Petitioners have challenged the action of the Respondents-Board and its authorities mainly on the ground of non compliance with the principle of natural justice in conducting the inquiry by the Respondent No. 6/Academic Officer of the Board. They have been insisting on giving opportunity to inspect the relevant answer scripts and furnishing the copy of inquiry report and also other relevant documents particularly, the statements made by the invigilators on duty and the statement made by the In-charge of the concerned examination centre. The aforesaid documents demanded by the Petitioners are available in the record produced by the Respondents-Board. The answer scripts used by the candidates concerned have also been produced and the Petitioners have been allowed to peruse the same in the Court at the time of hearing.

17. On perusal of the aforesaid answer scripts in question, Mr. Choudhury,

learned Counsel for the Petitioners submits that it is possible to find similar answers to the questions by several students of the same school as they prepare themselves for the examination from prepared note books published by some professional tutors, which are available in the market and as such there is nothing unusual in securing marks in a particular subject within a particular range by several students. Mr. Choudhury further submits that the candidates concerned used the answer scripts supplied by the examination centre in the examination hall and they are not supposed to verify whether the answer scripts supplied to them are ghost ones or from the lots of answer scripts lost/missed in the year 2005 for which, the candidates concerned are not attributable to any malpractice and liable to punishment. Furthermore it is submitted that the candidates in the aforesaid examination centre were never cautioned or informed before commencing or during examination in 2008 that some unused answer scripts were lost/missed from the aforesaid examination centre in 2005 so as to make them alert about the supply of any of the aforesaid lost/missed answer scripts of 2005. The Board, according to Mr. Choudhury, never notified for information of general public, particularly, the students community about the loss/missing of the same in 2005 from the aforesaid centre. The wards of the Petitioners, according to Mr. Choudhury, have become scape goats of inefficiency of the Respondent Board and its authorities in conducting the HSLC examination in 2008 and made them suffer for no fault of theirs.

18. I have given due and anxious consideration on the submissions made by the learned Counsel for the parties. It is the settled position of law that the universities and/or Board are responsible for maintaining the higher standards of education and for that matter to conduct the proper examination as they are regarded as expert body consisting of persons coming from different walks of life who are engaged in or interest in the field of education and have wide experience and naturally the decision taken by such an expert body should be given due weightage by the Courts. The general consensus is that in the matter concerning campus discipline of educational institutions and conduct of examinations, the duty is primarily vested in the universities/Boards as In-charge of the institutions and the Courts are expected not to indulge in any interference with the same or in expressing or imposing or replacing the views of the educational authorities like universities or Boards. In F.H. Malik's case (supra), it is held that the Court has power to intervene to correct any error in complying with the provisions of the rules, regulations or notifications and to remedy any manifest injustice being perpetrated on the candidates. That was a case of mass copying in examination conducted by the J and K State Board of School Education where the entire examination of Higher Secondary Pt. II was cancelled. To tackle the problem, the aforesaid Board made certain amendments to its existing regulations governing cancellation of examination on account of mass copying by the examinees or out side interference at any examination centre (s) or any other reason vitiating the sanctity of the examination.

19. On careful consideration of the provisions of the Act and Regulation of the

Board under challenge, the Apex Court in the said case came to a conclusion that the Board and its Chairman were within their powers and authority in issuing the notification cancelling the entire examination. The aforesaid conclusion was arrived at on the basis of the principle mentioned above. The Apex Court while deciding the aforesaid case, referred to its decision in *The Bihar School Examination Board Vs. Subhas Chandra Sinha and Others*, wherein it made certain important observations in Para 14, which are reproduced below:

14. Reliance was placed upon Ghanshyam Das Gupta's case (supra) to which we refened 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 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 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 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 riot be 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.

20. The case in hand differs little from the Malik's Case (supra) and in that case Respondent authorities have cancelled the examination of only 8 candidates after due inquiry made by the officers of the Board. The question arises as to whether this Court should interfere with the decision and action taken by the Board and its authorities in cancelling the examination of the candidates concerned without cancelling the examination of all the candidates who appeared in the examination from Jakhalabandha Centre. The question of cancellation of examination of all the aforesaid candidates in a particular examination centre does not arise because there is no case of mass copying or mass malpractice in the said centre and it is a case of a few candidates who have been found indulging in malpractice/Copying in respect of a particular subject namely Social Science. The issue is narrowed down to whether cancellation of the examination of those 8 candidates only is justified and whether during inquiry the Board is required to conduct the inquiry strictly following the principle of natural justice. From the records and the inquiry report, it is found that the allegations made against the aforesaid candidates were made known/informed through the Principal of the school concerned. The Principal concerned along with the Petitioners (guardians of the candidates) along with the candidates concerned, on being called, appeared before the Respondent authorities, who were shown the answer scripts marked as "Book No. B" used by them bearing wrong signatures of the invigilators which found to be not in a proper place and also not tallying with the signatures of the invigilators on duty on the day of Social Science examination in the particular examination hall. The Respondent authorities for the purpose of verifying the handwriting conducted test on 3.6.2008 by way of asking some of the candidates to take down dictation in the Board office which were duly verified and found to be different from the handwriting on the answer scripts written by them. Moreover, it appears that the Petitioners and their wards were given personal hearing by the Respondent authorities by way of giving chance to inspect the answer scripts in question and to testify the handwriting in the said answer scripts by allowing them to appear in the handwriting test. The Petitioners and their wards did not register any protest on the procedure adopted by the Board and its authorities in conducting the inquiry into the matter and never demanded before them to examine the In-charge concerned of the examination centre and the concerned invigilators on duty to test the veracity of their statements tendered by them in writing before the Respondent authorities. It appears that in the writ petitions namely WP(C) 2856/2008 (which was withdrawn on 14.7.2008) and WP (C) 4412/2008 (in which notice of motion was issued on 30.9.2008 for obtaining instructions from the Respondents), the Petitioners have not challenged the procedure adopted by the Respondent authorities in conducting the inquiry but insisted only on the declaration of the withheld results.

21. The case of Subhas Chandra (supra) is also a case of unfair means practised

on large scale at a particular centre for which the Examination Board cancelled the examination of the aforesaid centre. In that case 36 students belonging to two schools challenged the cancellation order before the High Court. The High Court of Patna quashed the order of cancellation and directed the Board to publish the result mainly on the ground that the examinees were not given show-cause notice and the material on which the Chairman of the Board passed his order were not disclosed to the examinees and the Board had therefore, failed to act in accordance with the principle of natural justice. The Bihar Schpol Examination Board, appealed before the Supreme Court. In the said case, the Supreme Court held that if it is not a question of charging anyone individually with unfair means but to condemn the examination as ineffective for the purpose it was held, it is not necessary for the Board to give an opportunity to the candidates if the examinations as a whole were being cancelled. The Supreme Court upheld the decision of the Bihar School Examination Board inasmuch as the Board did not charge any one with unfair means on a mass scale so that he could claim to defend himself. It was observed that the examination was vitiated by adoption of unfair means on a mass scale and in such 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 and in that case, the examination as a whole had to go.

22. There is no more dispute that the University/Board who are responsible for maintaining their high standards of education and conducting examination have authority to inquire itself and cancel the examination of the entire examination centre where the case of mass copying and mass malpractice is found and they are not required to resort to detailed inquiry in the conduct of each and every candidates observing the principle of natural justice. This position has been settled in the cases referred earlier namely, F.H. Malik (supra) and Subhas Ch. Sinha (supra). There are other category of cases where only a few or some of the candidates in the examination hall were found committing malpractice or copying. I may gainfully refer to the case of Board of High School of Intermediate Education, U.P. v. Ghanshyam Das Gupta and Ors. (1962) Supp. 3 SCR 36. In that case the examination committee of the School Board cancelled the results of 3 candidates without giving them opportunity of being heard and it was therefore, held by the Apex Court that the candidates must be given opportunity to explain their conducts even if there is nothing express one way or other in the Act or the Regulation casting a duty on the Committee/Board to act judicially to decide objectively certain facts which may seriously affect the bright careers of the examinees before any action is taken against them. Admittedly, the present case also involves cancellation of examination of 8 candidates only and it is not a case of mass copying or mass malpractice. The allegation has been made against these candidates that they used the answer scripts not supplied by the Board in the year 2007 and the answer scripts they used Were from the lot supplied in the year 2005 from which some answer scripts were lost/missed and a report to that effect was submitted in this regard by the In-charge of the examination centre

concerned before the Board. The Board and its authorities initially inquired about the matter and on being informed/reported by the Respondent/In-charge of the examination centre. The record shows that the Respondent authorities of the Board simply intimated the Principal/Respondent No. 8 furnishing the findings against the aforesaid 8 candidates without serving any copy thereof to the candidates concerned individually; not to speak of issuing any show cause notice asking them to explain their conducts. The candidates concerned were not furnished with the copy of the statements made by the In-charge of the examination centre and the invigilators on duty who denied the supply of the answer scripts used by the said candidates and the signatures bearing thereon. There is nothing on records to show that the aforesaid candidates, after their specimen handwriting were taken by way of asking them to take down some dictations, were shown the answer scripts they used in the examination. At no stage, candidates concerned were given notice informing that the Respondent-Board authorities have found them guilty of committing malpractice or copying in the examination and that they are cancelling their examination. In my considered view, it would have been fair to issue show cause notice before they initiated the inquiry on the basis of report of malpractice or copying, at least before they decided to cancel the examination of the candidates concerned and hear them in person.

23. It is well apprehensible that the decision of the Respondent-Board may ruin the career of the young students and make them suffer from serious stigma damaging their later lives. Going through the inquiry report and the records of the case, I find that no opportunity whatsoever was given to the erring candidates to explain or put forward their cases before the authority appointed by the Board to inquire into the matter. If the stand taken by the Respondent are accepted that some lot of unused answer scripts were lost/missed in 2005 from the centre concerned and the said candidates used some of those lost/missed answer scripts, it would require more detailed and extensive inquiry to find out the racket and also to find out whether those candidates are also involved in the said racket for the sake of fair conduct of examination and maintaining better academic standard by the Board. Without giving any chance to explain their conduct, the Board has decided to cancel the examination and close the further scope for inquiry on the racket. It appears that the Respondent authorities have become complacent after cancelling the examination of the aforesaid candidates only without showing any interest to unearth the racket of greater malpractice by some unseen elements posing a greater menace to the academic interest of the State.

24. In view of the discussions made above on the basis of pleadings, records of the case and submissions made by the learned Counsel for the parties, I have to dissuade from agreeing with the views taken by the Respondent authorities that the students concerned have been given adequate opportunity to defend their case. I defer from them and hold that the Respondent authorities are cast with legal duty to issue show cause notice and afford ing reasonable opportunity

applying the principle of natural justice, which the Respondent authorities have failed to discharge. This leads me to interfere with the procedure adopted by the Respondent authorities in the matter of inquiry into the conduct of the candidates concerned as violative of the principle of natural justice and fair-play in action. Accordingly, the impugned order dated 1.10.2008 cancelling the examination of the Petitioners' wards, as taken by the Respondent authorities, is set aside and quashed. The Respondent-Board and its authorities are directed to initiate a fresh inquiry against the wards of the Petitioners affording opportunity of being heard which would invariably include issuing of show cause notice, consideration of reply to show cause, showing the relevant documents as may be demanded by the show caused students, recording oral evidence of the witnesses and chance of cross examination strictly, if so required, on the principle of natural justice. The entire exercise should be completed as expeditiously as possible preferably within 3 (three) months from the date of receipt of a certified copy of this judgment and order from the Petitioners. Such inquiry is necessary in the best interest of academic discipline and purity of examination system.

25. With the aforesaid discussions and directions, the petition stands allowed. Let the records produced by the Board, be returned forthwith through its Standing Counsel.