

(1987) 09 OHC CK 0003

In the Orissa High Court

Case No : Original Jurn. Case No's. 1996 and 2038 of 1987

Raja Mohapatra and Others etc.

APPELLANT

Vs

Board of Secondary Education, Orissa and Another

RESPONDENT

Date of Decision : 25-09-1987

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Orissa Secondary Education Act, 1953 — Section 11, 19(1), 20(1), 20(2), 21

Orissa Secondary Education Regulations, 1953 — Regulation 22, 41

Citation : AIR 1988 Ori 65

Hon'ble Judges : L.R. Rath, J;G.B. Patnaik, J

Bench : Division Bench

Advocate : R. Mohanty, P. Mohanty, S.C. Dash, B.K. Patnaik and R.C. Rout, for the Appellant; B. Roy, C.A. Rao, M. Patra, M.R. Patra, U.S. Patnaik, D.R. Mohapatra and D. Patra, for the Respondent

Judgement

L. Rath, J.—These two petitions seek the identical relief of quashing of the notification by the Board of Secondary Education, Orissa cancelling the whole of the Annual High School Certificate Examination, 1987 held at the centre of Hadibandhu Ucha Vidyapitha, Cuttack as not having been conducted as per the rules of the Board and for other reliefs differently. Since both the cases are for the identical relief mainly, they are disposed of by this common judgment. O.C.J. No. 1996/87 has been filed by the students of the Nayabazar High School, Cuttack who appeared at the Annual High School Certificate Examination, 1987 at the Hadibandhu Ucha Vidyapitha Centre for the relief as aforesaid and for the additional relief of issue of a writ of mandamus directing the opposite party Board of Secondary Education, Orissa (for brevity "the Board") to publish the results of the petitioners. In the case, the Centre Superintendent and Headmaster of Hadibandhu Ucha Vidyapitha has been impleaded as opposite party No. 2. O.J.C. No. 2038/87 has been filed by the Headmaster of Nayabazar High School, Cuttack for the relief of quashing of the notification of the Board cancelling the examination held at the Hadibandhu Ucha Vidyapitha Centre, or in

the alternative to direct the opposite party Board to hold the Annual High School Certificate Examination for the year 1987 afresh for the candidates of his school, to injunct the opposite party Board from holding the Supplementary High School Certificate Examination, 1987 before holding such a fresh examination, and to declare regulation 41 of Chap. X of the regulations framed under the Orissa Secondary Education Act, 1953 as ultra vires Section 11 of that Act. The impugned notification which has been annexed as Annexure-3 to O.J.C. No. 1996/87 and as Annexure-1 to O.J.C. No. 2038 of 1987, so far as relevant is as follows :

"NOTIFICATION

No. 56 _____ Dt. 23-6-87

Computer Cell After perusal of the reports received from the Centre Superintendents/Deputy Superintendents/Supervisors/inspectors/Observers and careful consideration of all the available documents regarding conduct of the Annual High School Certificate Examination, 1987, the Examination Committee is satisfied that examinations at the following centres have not been conducted as per rules of the Board. Accordingly in pursuance of R. 41(b) of Ch. X of the Board's Regulations, Annual H.S.C. Examination, 1987, is cancelled wholly or in part as noted below against each center.

As per R. 41(c) of Ch. X of the Board's Regulations, there shall be no further Examination in the cancelled paper(s) and results of the affected candidates shall be processed taking the marks of the cancelled paper(s) as "0" (Zero)

Sl.No.

Centre Code .

Name of the Centre

Roll Numbers

Paper(s) cancelled

REGULAR:

XX

XX

XX

37.

645

Hadihandhu Ucha Vidyapitha.Cuttack.

645001 to 191, 193 to 233. 235 to 276. 645 Y01. Y03 to Y10, Y12 to Y15, Y17.Y19 to Y25. Y27 to Y30 (299).

Examination wholly cancelled.

xx

xx

XX

XX "

It is admitted case that in the notification examination in respect of 61 centres was wholly cancelled and in respect of 2 centres, partially. Though it has been submitted that the total number of students affected by Annexure-1 is around 14,700, a fact which is not challenged by the Board, yet in this case we are concerned only with the cancellation of the results of the examination at the Hadibandhu Ucha Vidyapitha Centre in which a total 299 candidates had appeared.

2. The facts pladed by the Board justifying the cancellation, briefly stated, are that the Annual High School Certificate Examination of 1987 was held from 3-4-87 to 13-4-87. The Flying Squad appointed for the purpose of checking the examinations submitted one report on 3-4-87 and another on 10-4-87 in respect of the centre and a report from the observer of the centre was received on 16-4-87. The Observer had reported that the answer papers at the centre were being handed over by candidates to nearby candidates, additional answer papers were handed over to nearby students, outsiders climbed over the walls and handed over papers, outsiders also climbed the top of the building and dropped written copy papers, the employees of the school brought copy papers from outside and supplied the same to the candidates and test papers were brought from outside into the hall, and had concluded that the examination was conducted without sanctity and suggested that the answer papers be examined by experts. The Examination Committee in its meeting held on 26-4-87 considered the various reports received from the Centre Superintendents, Deputy Centre Superintendents, Inspectors of Schools, Flying Squads and Observers regarding the conduct of examination in various centres and resolved to open separate files centre-wise in respect of those centres against which there were adverse reports. In all, the Examination Committee considered 105 case records and decided on 9-5-87 to complete all the case records in all the cases for further consideration. It was felt by the Examination Committee that many of the centres deserved severe penalties, but decided that before imposition of penalty against any centre, further examination of records was necessary. Pursuant to the suggestions by the Observers and direction of the Examination Committee, the examination papers were examined by the Expert Committees which committees submitted their reports on 15-5-87 with regard to specific allegations relating to the examination papers, the matter was examined by the Examination Committee on 17-5-87 and 18-5-87 along with the reports and the matter was taken up for further consideration on 31-5-87 on which date after due consideration it was resolved to cancel the examination of 61 centres wholly and

partially in respect of 2 centres, to review the examination of 23 centres and to exempt 20 centres. In pursuance of such decision of the Examination Committee, the impugned notification of 23-6-87 (for convenience referred to as "annexure-3") was published. It is thus contended by the Board that the decision to cancel the examination at the centre has been bona fide taken after due deliberations and examination of the relevant material and that the conclusion of adoption of mass unfair practice at the centre had been amply established. As regards the power of the Examination committee to cancel the examination as a whole, reliance is placed on regulation 41(b) of ch. X which empowers the Examination Committee, if satisfied on the basis of the reports received from the Superintendents/Deputy Superintendents and/or Supervisors, Inspectors and Observers that the examination had not been conducted as per rules to take appropriate steps including cancellation of the examination wholly or in part.

3. Pursuing the case of the petitioners in O.J.C. No. 1996/87, Mr. R. Mohanty, learned counsel appearing for them, contests the claims of the Board by challenging the vires of regulation 41 vesting powers in the Examination Committee to cancel the examination on the ground that the Orissa Secondary Education Act, 1953 (Orissa Act X of 1953) (for short "the Act"), while vesting the power in the Board itself to conduct the examination and publish the results does not provide for delegation thereof to the Examination Committee, and hence exercise of the power by the Examination Committee in pursuance of the Regulations is ultra vires the Act, and has further urged that even conceding such power to the Examination Committee under the Regulations, yet on one hand the power has not been properly exercised inasmuch as the authority under regulation 41(a) regarding appointment of Observers and Flying Squads by the Examination Committee has been abdicated in favour of the Inspector of Schools, and that otherwise also there was no material before the Examination Committee to come to the conclusion that mass malpractice had been resorted to at the centre. Dr. S. C. Das, learned counsel for the petitioner in O.J.C. No. 2038/87 while adopting the submissions made by Mr. Mohanty has further urged that no rules having been framed by the Examination Committee as contemplated under regulation 41(a). the notification in Annexure-3 as also the resolution of the Examination Committee of 31-5-87 (Annexure-14A to O.J.C. No. 1996/87) on which Annexure-3 is based, cancelling the examination conducted as per the rules is bad.

4. A counter affidavit has also been filed by opposite party No. 2 in O.J.C. No. 1996/87, the Centre Superintendent, that the examination was conducted at the centre smoothly and strictly according to rules and that the order cancelling the examination is illegal and improper in the eye of law.

5. So far as charge of incompetence of the Board to frame regulation 41 of Ch. X is concerned, it is necessary to quote the regulation itself :

"41. Conduct of Examination --

(a) the Examination Committee will be competent to frame such rules and regulations as may be necessary for efficient conduct of the examination and shall appoint officers besides the Superintendents and Deputy Superintendent of centre for supervision, inspection and surprise check of Examination centre.

(b) The Examination Committee where it is satisfied on the basis of reports received from the Superintendent. Deputy Superintendent and/or Supervisors, Inspectors and Observers appointed for the inspection of examination centres that the examination has not been conducted as per rules may take steps as considered appropriate by (he committee including cancellation of the examination wholly or in part.

(c) In case the Examination Committee decided to cancel an examination wholly or in pan under sub-regulation (b), no further examination shall be conducted for the cancelled paper (s) and results of the candidates of such cancelled centres shall be processed taking the marks of the cancelled paper (s)as "O" (zero)."

The relevant statutory provisions are Section 1 l(d), (e), (f), (g) and (h), Sections 19(1), 20(1) and 21(1) and (2) and regulation 22 of Ch. VII. The Act has been enacted with the object to provide for the establishment of a Board to regulate, control and develop secondary education in the State of Orissa. Section 11 enumerates different powers and functions of the Boards and Clauses (d) to (h) of the section are as follows : --

"(d) to make regulations for imposing penalties, for acts of misconduct of students, teachers, examiners, examinees, printers of text books or question papers and of persons connected with an examination of the Board;

(e) to conduct examination based on such courses as may be prescribed,

(f) to admit candidates to its examinations in accordance with regulations;

(g) to publish the results of its examinations:

(h) to grant diplomas or certificates to successful candidates;

Under Section 19. the Board shall appoint the committees including the Examination Committee as named there and u/s 21(1) the Board may make regulations for the purpose of carrying into effect the provisions of the Act. Section 21(ii) enumerates the matters, without prejudice to the generality of Section 2l(i). regarding which regulations may be made and Sub-section (3) of the section directs that no regulation shall be valid without the approval of the State Government. Under Sub-clause (a) of Section 21(ii), the Board has powers regarding constitution, terms of office and powers and duties of committee constituted u/s 19. Sub-clause (j) of Section 21(ii) empowers the Board to make regulations regarding conduct of examinations. Regulations have been framed under the Act of which Ch. VII deals with the constitution and powers and functions of different committees. Regulation 20 of the chapter provides for constitution of the Examination Committee with the President and Vice-President

of the Board; Principal, Radhanath Training College, Cuttack the Secretary of the Board and six other members from among the members of the Board as members of the Committee. Regulation 22(i) of the chapter declares that the Examination Committee has the power to control the examinations conducted by the Board. The other sub-clauses of regulation 22 vest power in the Examination Committee to appoint paper setters, examiners, translators, moderators of question papers, tabulators; to fix the centres of examination; to lay down instructions to be issued to candidates, Superintendents of examination centres, examiner and others: to consider cases of malpractices and to award suitable punishment to the persons concerned; and to declare the results of the examinations besides some other powers.

6. Pressing the point of incompetence of the Regulations to vest powers in the Examination Committee regarding examinations in the manner it has been done, it is urged on behalf of the petitioners that since u/s 11 the Board has been charged with the responsibility of conducting the examinations and also to publish the results of the Annual Examination and there is no provision in the Act to delegate such functions to any other authority, the regulations as framed under Regulation 22 of Ch. VII and regulation 41 of Ch. X are without competence. It is further urged that even if the delegation of the functions to the Examination Committee would have been permissible, yet the delegation of the entire power of conducting the examinations is not permissible as it amounts to delegation of essential functions of the Board and hence amounts to self-abdication of the Board in respect of its essential functions.

7. The submission proceeds on the footing of application of the doctrine of *delegatus non potest delegare* which maxim properly belongs to the area of trust and agency and underlines that when trust has been reposed in one for the exercise of his judgment and decision, it must be so exercised by him and that it cannot be delegated to another. The very concept of delegation is one borrowed from the law of agency and conveys the idea, as observed by J. F. Garner in his book "Administrative Law", as enabling one local authority to clothe another authority with one or more of its functions, so that the delegate may act as its agent. There is much inaccuracy and inaptitude in the application of the principle and whenever the principle is pressed into service it is always worthwhile to scrutinise its applicability with a caution since, as was observed by Prof. S. A. De Smith in his leading treatise "Judicial Review of Administrative Actions", "The maxim "*delegatus non potest delegare*" does not enunciate a rule that knows no exception; it is a rule of construction to the effect that "a discretion conferred by statute is *prima facie* intended to be exercised by the authority on which the statute has conferred it and by no other authority, but this intention may be negated by any contrary indications found in the language, scope or object of the statute". Thus, in essence the theory is applicable only where there has been a purported delegation of power conferred, to another authority, and that for same no competence is found either in the express words of the statute or by necessary implications in the words used in the language of the statute, or in its

scope of object. Applying such dual test, it is however seen that Regn. 22(i) of Chap. VllandRegn. 41 of Chap. X do not in any way contravene either of them. The Committee of the Board is not an authority outside or independent of it, but is only a group of persons carved out of the body of the Board itself and invested with functions which belong to the Board. The Committee is designed to exercise the functions as the Board itself, so to say, as its alter ego and hence there is no question of the Committee being an agent of the Board or there being any delegation to it. Further, since a power of delegation can also be inferred by implication either from the words of the statute itself or from its scope and object, it is found that the provisions of Section 20(i) of the Act in terms imply such exercise of power by the Committee on behalf of the Board. Section 20(i) purports to reserve power in the Board itself to act and take decision in matters which have been delegated to the Committees. Such a power cannot be exercised by the Board if in the first instance there has been no delegation of the functions to the Committees at all. Thus the Committee is not, for the purpose, an independent body other than the Board but is merely a part of it exercising some particular functions of the Board with a further check vested in the whole Board to itself take a decision, in its own discretion, after considering the report of the Committee in the matter.

8. Almost an identical question was decided by the Supreme Court in *State of Uttar Pradesh Vs. Batuk Deo Pati Tripathi and Another*, where the question arose regarding the control vested in the High Court under Article 235 of the Constitution of India over the subordinate judiciary. Rules had been framed by the Allahabad High Court under Article 225 of the Constitution providing for formation of a Committee of Judges known as the "Administrative Committee" authorised to act for the Court. The Administrative Committee had resolved to compulsorily retire from service the respondent in that case, which decision was communicated by the Registrar of the High Court to the State Government and thereafter the decision of the Administrative Committee was circulated to all the Judges of the High Court by the Registrar for information. The recommendation of the Administrative Committee was accepted by the Governor and the respondent was compulsorily retired. The retirement was challenged in a writ petition before the High Court in a Full Bench where the majority of Judges held that the respondent, a District Judge, could not have been compulsorily retired on the recommendation of the Administrative Committee alone and that circulation of the statement to all the Judges of the decision of the Administrative Committee would not amount to consultation with the Full Court. In appeal, the Supreme Court reversed the decision and upheld the minority view being of the opinion that even if it was assumed that Article 225 of the Constitution did not authorise the High Court to frame a rule to authorise a Committee of Judges to act on behalf of the Court, yet Article 235 of the Constitution vests control over the District Judges and the subordinate judiciary in the High Court. It must be held imperative that rules must be framed to make the exercise of control feasible, convenient and effective and for that purpose rules may be framed by

the High Court regulating the manner in which the control vested in it may be exercised and thus, the rule to form a committee of Judges to act for the Court was permissible within the scope of Article 235 since a power to do a thing necessarily carries with it the power to regulate the manner in which that thing may be done. One of the reasons which impelled the Court's decision was that the power of control over the subordinate courts which is vested in the High Court comprises such numerous matters often involving consideration of details of minute nature that if the whole Court is required to consider every one of those matters, the exercise of control, instead of becoming effective, will tend to cause delay and confusion in the administration of justice and that it would be better and more effectively exercised if a smaller Committee of Judges has the authority of the Court to consider the manifold matters falling within the purview of Article 235. Since this is so, it was held that it was wrong to characterise the procedure either as a delegation or as self-abdication. The decision was again followed in a recent decision of the Supreme Court in *Tej Pal Singh Vs. State of U.P. and Another*, .

9. Section 11 (e) of the Act vests a power in the board to conduct the examinations. "Conduct" means nothing else than "control". The word "conduct" imports an idea of management, guidance and overall supervision. In the Webster's third New International Dictionary, the word "conduct" is said to be synonymous with manage, control and direct. The actual meaning has been given as "manage", control, direct : Conduct may. imply a leader's supervision, his responsible guidance in a course which he determines. xxxxx Manage may imply handling or manoeuvring, or guiding along a desired course or to a desired result; it often indicates a general over-seeing with authority to handle details, cope with problems, and make routine decisions". Thus "conduct" is wide enough to include and is synonymous with both "manage" and "control" and "manage" as it seems, means an overall supervision even to the details of solving the problems as also take the detail decisions. Thus since the conduct of examinations means control of examinations by the Board, it would undoubtedly have the power to get such control exercised through a Committee of its own constituted by it which in fact is absolutely necessary for the more convenient and efficient discharge of the control.

The ratio of *Batuk Deo Pati Tripathi* case (1978 Lab 1C 839 (SC) (supra) thus fully applies to the present case and hence there can be no basis to submit that the exercise of the power by the Examination Committee to cancel the Examination as a whole or in part is either a case of delegation of power to the Examination Committee or is a case of self-abdication by the Board since it is only the Board which is setting through its own Committee for the more efficient and convenient transaction of its own business and hence no exception can be taken either to regulation 22 or to regulation 41 in the matter.

10. Next is the question as to whether the Examination committee had not appointed the Observer and the Flying squad and if it is a fact, what is its effect.

Before however the question is taken up, it would be convenient to dispose of another objection raised by Dr. Das, namely, that since the impugned notification stated that the cancellation of the examination was being ordered as it had not been conducted in accordance with the rules of the Board, but no such rules had been framed nor published, the notification is per se invalid and is to be quashed. The argument proceeds on the footing that since regulation 41(a) of Ch. X requires the Committee to frame rules and regulations for efficient conduct of examinations and regulation 41(b) provides cancellation of an examination either in whole or in part if the Committee is satisfied that the same has not been conducted as per rules, it can only mean that the Committee may form such satisfaction if the rules framed by it under regulation 41(a) have been violated and that the examination has not been conducted in accordance with such rules. It is further submitted that the Act nowhere provides for framing of any rules except that of the regulations and the by-laws to be framed by the Board under Sections 21 and 24 and hence since no rules are contemplated to be framed by the Board, cancellation of examination for violation of the alleged rules framed by the Board is a contradiction in terms.

11. The submission is wholly without substance. It is the unwritten rule of any examination that it must be conducted fairly which would include the concept that examinees must take the examination fairly. Adoption of unfair practice either individually or as mass is the antithesis of the fairness of the examination and even in the absence of any specific rule for the purpose, the examining body would have the power not to accept the results of the examination and take action either against the individual or against all the examinees as a whole in case of mass involvement in unfair means. The rule is implicit in all examinations and hence the Board or the Committee would be within its right to scratch the examination if such rule is violated. Besides, the submission is also factually not correct. Annexure-2 to O.J.C. No. 1996/87 is the Admit Card issued to a student by the Board and on the reverse of it is printed the rules for the guidance of candidates which inter alia direct that the candidates are not permitted to talk to each other in the examination hall; no one should receive help from or assist one another; and persons unconnected with the conduct of examination shall not be allowed to enter the examination hall. Even though the rules speak of prohibition for the candidates from helping each other or the entry of outsiders into the examination hall, yet the very purpose and spirit of it is to prevent the very acts which have been complained of by the Observer and would take within its sweep all acts either committed by the examinees themselves or the invigilating officers or outsiders and even all such other acts which tend to adversely affect the conduct of a fair examination. However, even apart from the rules, it must be held that the power to cancel the examination on such account is inherent in the Board and does not wait for the framing of the rules, which if at all framed, would be merely for the purpose of elucidation and not for the purpose of assumption of power.

12. Regulation 41 no doubt vests authority in the Examination Committee to

appoint officers for supervision, inspection and surprise check of examination centres and it is the accepted case of both sides that Observers and Flying Squads are to be appointed by the Committee under this provision. It is however a fact that so far as the Hadibandhu Ucha Vidyalaya Centre is concerned, the Observer Shri Surendranath Mohapatra, as is evident from Annexure-12. was not appointed by the Committee but by the Inspector of Schools. It is the case of the Board that in the Resolution No. 18D of the Committee of 10-2-87 (annexure-B/1 to O.J.C. No. 1996/87) it was resolved that the Inspectors of Schools were to send the lists of Centre Superintendents, Deputy Superintendents and Observers within a week and that they were authorised to finalise all the teams of Flying Squad and area of operation and send the estimate to the Board within a week. Further in the Resolution No. 22 of the Committee dated 10-3-87 (Annexure-A/1 to O.J.C. No. 1996/87) - the Committee approved the lists furnished by the Inspectors of Schools and further resolved that in respect of Cuttack III Circle, since the list had not been received from the Inspector of Schools, the appointments be sent after the receipt of the list and that in case of refusal or other difficulties, the President was authorised to appoint substitutes or authorise the Inspectors of Schools to appoint substitutes. It was thus within the powers of the Inspector of Schools to appoint Observers in case of refusal of those appointed by the Committee and also finalise the teams of Flying Squad. It is the further case that so far as Hadibandhu Ucha Vidyapitha is concerned, one Smt. Snheha Patnaik had been appointed by the Board, vide Annexure-11 to O.J.C. No. 1996/87 on 13-3-87. but however she expressed her unwillingness in her letter (Annexure-C 1 to O.J.C. No. 1996/87) communicated to the Board. The refusal was received by the Board on 26-3-87 and thereafter the appointment of Shri Surendranath Mohapatra was made by the Inspector of Schools on 31-3-87. As such, it was a case of refusal by the Observer appointed by the Committee which gave occasion for the Inspector of Schools to appoint another Observer.

13. In view of such facts, it is abundantly clear that the Inspector of Schools was authorised to appoint Observers and the list submitted by him for appointment of Flying Squads was also approved by the Committee in its resolution in Annexure-E/1. The argument that authorisation by the Examination Committee to the Inspector of Schools to appoint Observers and teams of Flying Squad is a sub-delegation not authorised by law hence hit by the principle of delegatus non potest delegare is equally without force in view of the discussions made hithertobefore. Admittedly, the Inspector of Schools is a member of the Board. u/s 3(iii) of the Act, all Inspectors of Schools are members of the Board. It could not be disputed that the Board, even by an administrative rule or order, could authorise the Inspector Of Schools, as one of its members, to appoint the Observers and the teams of Flying Squad. On the authority of the very same decision of the Supreme Court in Batuk Deo's case 1978 Lab IC 839 (supra). a single member of the Body may also be authorised by the Body to act on its behalf. If that is so, there is no reason why the Examination Committee acting on behalf of the Board cannot authorise a member of the Board to perform an

executive act of a routine and formal nature. The petitioners can have no vested right in the appointment of Observers or teams of Flying Squad. It is well known that usually the persons appointed as Observers or members of the Flying Squad are under the administrative control of the Inspector of Schools and not that of the Board and without the concurrence and approval of the Inspector of Schools, they cannot be asked to discharge the functions. It is thus the pragmatic necessity that selection of the Observers, in case of refusal by the selected persons, for appointment as substitute Observers, being an emergency, should be left to the cure of the Inspector of Schools. It would often so happen that by the time the refusal by the appointed Observers/Flying Squads is received by the Board, there would be no time or occasion for the Committee to meet and appoint a new person or persons as substitutes and that the function would be more efficiently and timely discharged by the person in the administrative control of the teachers, i.e. the Inspector of Schools. This contention of Mr. Mohanty must also accordingly fail.

14. So far the last submission of Mr. Mohanty is concerned, it is worthwhile to keep in view the limitations of this Court in a proceeding under Articles 226 and 227 of the Constitution of India in a case of this type. Academical institutions like the Board of Secondary Education or the Universities are statutory autonomous bodies specifically created to deal with academic matters having the necessary expertise to assess and deal with situations related to their academic activities. It is the uniform law that the sanctity of these institutions is not to be violated under the high prerogative powers until the necessity for interference becomes a demand of justice. This Court would not rush in where even academicians fear to tread and when a decision has been taken by such body in a quasi-judicial proceeding, the High Court would neither act as a court of appeal over the findings nor would be correct to substitute its opinion for that of the authorities more properly vested with the function. But however the decision of all such bodies either rendered in a quasi-judicial proceeding or taken administratively is subject to the same limitations to which the decisions of other quasi-judicial or administrative authorities are subject to, and if circumstances exist which make the decision vulnerable in law, the Court would have a duty to intervene to safeguard the continued guarantee of the rule of law. It was observed by Justice V. R. Krishna Iyer in *Dr. J.P. Kulshreshtha and Others Vs. Chancellor, Allahabad University and Others*, :

Rulings of this court were cited before us to hammer the point that the court should not substitute its judgment for that of academicians when the dispute relates to educational affairs. While there is no absolute ban, it is rule of prudence that courts should hesitate to dislodge decisions of academic bodies. But university organs, for that matter any authority in our system, is bound by the rule of law and cannot be a law unto itself....."

Citing with approval the authority of an earlier decision *The University of Mysore and Another Vs. C.D. Govinda Rao and Another*, , as laying down the correct law,

it was further observed :

"The later decisions cited before us proudly conform to the rule of caution sounded in Govinda Rao. But to respect an authority is not to worship it unquestioningly since the bhakti cult is inapt in the critical field of law. In short, while dealing with legal affairs which have an impact on academic bodies, the views of educational experts are entitled to great consideration but not to exclusive wisdom....."

15. With the jurisdiction of the court properly defined in this backdrop of the law it is also necessary to examine a submission raised by Mr. Bijon Ray, learned counsel appearing for the opposite parties, regarding the powers of this Court to go into the question of adequacy of the materials before the Board reaching the conclusion that there has been mass resort to unfair practice in the examination. It is contended by him that it is not open for this Court to judge regarding the quantum of the materials before the Board or whether such materials were sufficient to enable the Board to reach the conclusion it has reached, and that if there is some material howsoever meagre it may be in support of the decision reached, then such decision is completely -beyond the reach of this Court and cannot be called into question.

16. The proposition advanced by Mr. Ray appears to be too widely stated to be acceptable. Reliance for the proposition has been placed upon The Vice-chancellor, Utkal University and Others Vs. S.K. Ghosh and Others, wherein it was stated :

".....The learned Judges appeared to consider that it is not enough to have facts established from which a leakage can legitimately be inferred by reasonable minds but that there must in addition be proof of its quantum and amplitude though they do not indicate what the yard-stick of measurement should be. That is a proposition to which we are not able to assent."

The decision in no way supports the submission made by Mr. Ray so as to debar the court to be satisfied that the conclusions reached can be legitimately inferred by reasonable minds on the available materials even though assessment of the quantum and amplitude of the proof is not within the province of the court.

17. The scope and limit of interference by the High Court in exercise of its extraordinary jurisdiction necessarily involves the question as to whether the decision challenged is an objective one or is based upon the subjective satisfaction of the Board. In other words, it is relevant to consider whether the decision involves a quasi-judicial process or is merely based upon the subjective satisfaction of the Board. While it is undoubtedly true that taking disciplinary measures against an erring candidate adopting unfair means during examination is a quasi-judicial process involving furnishing of chargesheet to the candidate, obtaining his explanation and holding an enquiry, yet so far as the decision to cancel an examination as whole or in part is concerned, no such procedure is involved. It must be remembered that the purpose of cancellation of the

examination at a centre is not to impose a punishment upon any student or a group of students, but is to maintain the purity of the examination and it is the pursuit of this purpose which impels the examining body to cancel its own examination. There is no lis involved in the proceedings, though as a matter of fact, because of the decision taken, it affects the persons who are not party to the decision. The proceeding however remains exclusively a matter of decision and discretion of the Board to reach the conclusion that on the existing facts, the examination has not been fairly conducted. The very regulation 41(b) stipulates that when the Examination Committee becomes satisfied on the basis of the reports received that the examination has not been conducted as per rules, it may take steps as considered appropriate including cancellation of the examination either in whole or in part. It is the satisfaction of the examining body which matters and no quasi-judicial function is involved. The Bihar School Examination Board Vs. Subhas Chandra Sinha and Others, , discussing the scope of the proceedings in such matters, held :

".....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....."

18. The true scope of interference of the High Court in respect of quasi-judicial decisions and decisions based on subjective satisfaction of the authorities was brought out in Zora Singh, in these words :

".....The principle that if some of the reasons relied on by a Tribunal for its conclusion turn out to be extraneous or otherwise unsustainable its decision would be vitiated, applies to cases in which the conclusion is arrived at not on assessment of objective facts or evidence, but on subjective satisfaction. The reason is that whereas in case where the decision is based on subjective satisfaction if some of the reasons turn out to be irrelevant or invalid, it would be impossible for a superior Court to find out which of the reasons, relevant or irrelevant, valid or invalid, had brought about such satisfaction. But in a case where the conclusion is based on objective facts and evidence, such a difficulty would not arise. If it is found that there was legal evidence before the Tribunal, even if some of it was irrelevant, a superior Court would not interfere if the finding can be sustained on the rest of the evidence. The reason is that in a writ petition for certiorari the superior court does not sit in appeal, but exercises only supervisory jurisdiction, and therefore, does not enter into the question of sufficiency of evidence.....".

19. The position that emerges is that though the reach of the High Court under . Article 226 of the Constitution in respect of either quasi-judicial or administrative orders is basically the same, i.e. it shall not interfere if there are some evidence or materials to justify the conclusion reached, yet while in the case if quasi-

judicial decisions the court would have no authority to interfere with the decision even if some of the materials on which the decision is based fail, yet no such protection is available so far as purely administrative orders are concerned.

20. Yet however it may not be proper to classify a decision of the Board to cancel the examination as a purely administrative one. It is now well settled that a distinction between quasi-judicial and administrative orders have been obliterated so far as principles of natural justice are concerned. In *Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others*, it was observed that the dichotomy between administrative and quasi-judicial functions vis-a-vis the doctrine of natural justice is presumably obsolescence after *A.K. Kraipak and Others Vs. Union of India (UOI) and Others*, in *India and Schmidt's case* (1969) 2 Ch. 149 in England and again in *S.L. Kapoor Vs. Jagmohan and Others*, it was observed :

"The old distinction between a judicial act and an administrative act has withered away and we have been liberated from the psittacine incantation of "Administrative action". Now from the time of the decision of this Court in *State of Orissa Vs. Dr. (Miss) Binapani Dei and Others*, "even an administrative order which involves civil consequences.....must be made consistently with the rules of natural justice."

Thus the expanding horizon of principles of natural justice has become equally applicable to quasi-judicial proceedings as well as administrative orders based on subjective satisfaction, and hence it can be well conceived, with the old barrier between quasi-judicial and administrative order breaking down, that there would be special type of cases which may fall in the twilight zone of falling short of purely quasi-judicial orders and yet transcending orders passed on mere subjective satisfaction. In *Rampur Distillery and Chemical Co. Ltd. and Another Vs. Company Law Board and Another*, a decision of the Company Law Board Extending the period of managing agency of the managing agents only for a part of the period than what had been asked for by the appellant company was impugned. Under the provisions of the Companies Act, the decision of the Board was dependent only upon its satisfaction that it is not against public interest to allow the company to have a managing agent; that the managing agent proposed is, in its opinion, a fit and proper person; and that the conditions of the proposed managing agency agreement are fair and reasonable. It was held that the power exercised is a quasi-judicial power and not administrative since the exercise of it necessarily implies a duty arising from the nature of the act empowered to be done and taking into consideration the object for which it is to be done, the conditions in which it is to be done, and its repercussion upon the powers of the Company and the share-holders, the creditors and the general public for whose benefit the power is to be exercised.

21. Thus the power exercised by the Board of Secondary Education though not purely quasi-judicial in nature enjoining upon it to observe all the principles of natural justice, yet the decision must be the outcome of fairplay implying that

the Board has the duty to act fairly in reaching the decision. The principle of audi alteram partem is nothing but a facet of the principle of fairplay and in modern times the courts have increasingly leaned in favour of the proposition that where full-fledged principle of natural justice is not possible to be followed either by express exclusion terms of the statute or by necessary implication, yet the authority endowed with the discretionary power must show, if called upon, to have acted fairly which in itself means that the rudiments of natural justice have been complied with. Thus, wherever necessary, concept of fairplay has been substituted for "hearing" and wherever it is shown that the power has been exercised fairly, the courts are not to interfere.

22. In (1967) 1 All ER 226 Re K. (H) (an infant), the question of the manner of exercise of discretion by the immigrant Officer for refusing admission to the United Kingdom u/s 2(1) of the Commonwealth Immigration Act was considered and it was held that the officer in exercise of his discretion was bound to act impartially and fairly and to that extent was bound to act in accordance with the rules of natural justice, but he was not bound to hold any full scale enquiry or to adopt judicial procedure.

23. The question was also considered in Radeshyam Khare and Another Vs. The State of Madhya Pradesh and Others, where interpreting Section 53A of the C. P. and Berar Municipalities Act which empowered the Government to appoint an executive officer of the Municipality if it considered that a general improvement in the administration of the Municipality is likely to be secured by such appointment, with a power of determining which powers, duties and functions of the municipal committee, president, vice-president or secretary shall be exercised or performed by such executive officer, it was held that the action taken under the section is an administrative one and is neither judicial nor quasi-judicial, but however it was observed :

"To say that the action to be taken u/s 53-A is an administrative action is not to say that the State Government has not to observe the ordinary rules of fair play."

24. In view of such emerging principles, it is to be considered as to whether the Board, in the present case, has acted fairly. In justification of the decision taken by the Board reliance has been placed on report of the Observer, two reports of the Flying Squad and the reports of the Expert Committee. At our request the reports were made available to us. Apart from the allegations of the Observer regarding the conduct of the examination, as referred to in the counter affidavit of the Board mentioned earlier, two facts which appear from it are that the space available at the centre was only to accommodate 150 candidates whereas 305 candidates had been allotted to the centre as a result of which the candidates were sitting shoulder to shoulder and copied answers from each other's answer book word for word, and that the Observer was not himself sure that the conduct of the examination had called for a cancellation of the examination as a whole and on the contrary he suggested as follows :

"1, therefore, suggest that the answer books of these candidates bearing Roll Nos. 648 001-648 276 and 648 Y01-64S Y29 in all papers should be reviewed by a team of experienced teachers for effecting suitable measures against those who adopted unfair means in the examination hall."

It was thus his view that all the answer papers were to be examined by a team of experienced teachers for proceeding suitably against those candidates who had adopted unfair means in the examination hall. The suggestion, on its own, meant that according to him all candidates had not resorted to such malpractice and that there were some who were entitled not to have their examination scratched. So far as the two reports of the Flying Squad are concerned, in one it was observed that though the mathematics students were absent, the seats arranged were congested like in a classroom and the candidates were very early peeping into the papers of others and the other report was to the effect that the examination was conducted somehow smoothly but however observed that examinees under correspondence course were, . seated in a thatched block standing in the back side of the main building and that infiltrators used to jump over the back compound-wall and assist them. The squad advised the Centre Superintendent and the Observer to change the seats of the examinees under correspondence course providing them seats in the main building in order to prevent public trespass. It has been averred in the counter affidavit of the Board that in pursuance of the suggestion of the Observer and the direction of the Examination Committee, the papers were examined by Expert Committees. The reports of the Expert Committees were submitted on 15-5-87 and on examination of the Observers report, the Expert Committee reports and the report of the Flying Squad, the decision to cancel the examination was taken after due deliberations.

Admittedly, the Expert Committee examined only two answer papers, i.e. English and General Science of respectively 67 and 81 candidates out of 299 candidates who appeared at the centre. The papers of other examinees were not gone through nor papers in the other subjects were examined. It is thus correct, as the petitioners allege, that only 22 and 27% of the answer papers in two subjects respectively were examined.

25. It is on such facts that it has been urged by Mr. Mohanty that the Board has not acted fairly in reaching its conclusion of adoption of mass malpractice by the petitioners since there was absolutely no materials before the Board to reach the conclusion of mass copying inasmuch as the Observer's recommendation that all papers should be examined to find out who had been party to the malpractice had not been carried out; it is not the fault of the petitioners that the sitting arrangements were very congested; that the report of the Flying Squad does not reveal any allegation against the petitioners generally and that merely by examining two answer papers of a very low percentage of candidates would not in any manner lead to the conclusion that the candidates at the centre were guilty of mass malpractice. In addition, it has been further urged that there was

no resolution of the Examination Committee appointing the Expert Committee and there is also no resolution of the Examination Committee accepting the reports of the Expert Committees.

26. Though the measure of proof or adequacy of the materials as the basis for the decision is not the concern of this Court, yet as was observed in AIR 1954 SC 217 (supra), the materials on the basis of which the decision has been taken must be such from which a reasonable inference could be made of the conclusion. In that case when the information about the leakage of questions was conveyed to the Vice-Chancellor, he had asked the Principal of the Medical College to look into the matter, who submitted a report after comparing the "hints" which had been leaked with the question paper. The report was considered by the syndicate who also heard the Principal on the matter at length and also examined three other persons, i.e. the one who gave the information of the leakage, the internal examiner of the examination and the President of the Board of Examiners. After such consideration, the decision of cancelling the examination was taken. Thus the University after receipt of the information regarding leakage, made a thorough investigation and being possessed of the reports and the results took the step as it did. In *The Bihar School Examination Board Vs. Subhas Chandra Sinha and Others*, the facts were that after receipt of the reports of the tabulators regarding an unusual percentage of success, they were asked to report the percentage of success subject-wise and after receiving their reports the matter was referred to Unfair Means Committee which in turn asked the modulators to look into the answer books where the percentage was 80% or more. The modulators reported adoption of unfair means on a mass scale and thereafter the Chairman passed the order cancelling the examination. The Supreme Court while negating the claim that the Board must hold a detailed enquiry in the matter and examine each individual case to satisfy itself which of the candidates had not adopted unfair means, yet held the requirement to be as follows :

".....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....."

(The underlining is ours).

In *Satyajit Roy Choudhury and Others Vs. Utkal University and Others*, , the examination was cancelled after consideration of the various reports of the Centre Superintendents and the Supervisors. Similarly in *Partha Sarathi Guru and Others Vs. Utkal University and Others*, the action was taken on the basis of two reports of the Supervisors and the report of the Centre Superintendent. In a case before the Bombay High Court in *Blaise Louis and Others Vs. The Nagpur University, Nagpur and Another*, it was observed that the University had produced so much material before the court that it was impossible to find fault with the executive council or the enquiry committee. In a recent case reported in *Rajiv*

Ratna Shukla and Another Vs. University of Allahabad and Others, the decision to cancel the examination was taken on the basis of the report of the Flying Squad corroborated by the report of the Centre Superintendent.

27. Regulation 41(b) of Chap. X under which the action of cancellation is taken envisages the action to be taken on the basis of a satisfaction arrived upon the report of the Superintendent, Deputy Superintendent and/or Supervisors, Inspectors and Observers that the examination has not been conducted as per rules. Thus the pre-conditions for the Examination Committee to reach the satisfaction are the reports of the specified persons stated in the regulation. The use of the words and/or "in Regn. 41(b) precedes the word "supervisor" which would mean an option to have been given to the committee to examine the report of the Deputy Superintendent and the reports of the Supervisors or to examine either of them. But however, the examination of the reports of the Superintendent, Inspectors and Observers is not alternative to each other and have to be examined to enable the committee to take the action desired. Such a conclusion is irresistible since because of the "," after the word "superintendent" and also of the "," after the word "supervisor" which can only mean that the reports of the Deputy Superintendent and the Supervisors have been taken as alternative to each other, but not so the report of the Centre Superintendent or the other officers mentioned therein.

28. The Centre Superintendent is basically the officer put in charge of conduct of the examination. He remains in overall charge of the examination and is responsible for the smooth conduct of it and hence is the first officer appointed by the board for the conduct of the examination. Thus the report by him has important bearing regarding the conduct of the examination and it is for such purpose that under the regulation it is one of the documents which would ordinarily be not dispensable from consideration while deciding whether the examination has been conducted smoothly or not. It is of course true that if the report is non-existent, then the question of its non-consideration would not arise and the power vested in the Examination Committee would not be frustrated only for that, but in all ordinary and normal circumstances the report of the Centre Superintendent as a rule has to be considered and it must be a rare case indeed where the necessity can be waived. Admittedly in this case the Examination Committee had not considered the report of the Centre Superintendent. It is in dispute whether the report of the Centre Superintendent had been received by the Board at all. While it is the case of the Centre Superintendent (opposite party No. 2 in O.J.C. No. 1996/87) that he had submitted the report under cover-11 on 12-5-87, yet it is the pleading of the Board that cover-11 though contained other papers, yet did not contain the report of the Centre Superintendent. In support of such submission, reliance has been placed by the Board on Annexure C/1 which is a letter addressed by the Board to the Inspector of Schools on 29-5-87 requesting him to take steps for submission of reports by the Centre Superintendents, a list of whom was attached to the letter. The Centre Superintendent of Hadibandhu Ucha Vidyalaya was a person mentioned in the

list. The Board has also annexed a further letter of the Inspector of Schools of 22nd Aug., 1987 intimating the Board that the defaulting Centre Superintendents and Observers had been requested in their reports directly to the Board. A reply affidavit was purported to have been filed by opposite party No. 2, the Centre Superintendent, seeking to annex some documents as Annexures C and D to his affidavit to show that he had sent the report on 12-5-1987, but since the affidavit was filed without the leave of the Court on 29th of August during the hearing of the case, it was made clear to Mr. M. Patra, learned counsel for opposite party No. 2, that no leave having been given by the Court to file such an additional counter-affidavit, it would not be accepted. The affidavit along with its enclosures are thus not to be taken into consideration for the purpose of this case. It thus remains disputed as to whether in actuality the report of the Centre Superintendent was received by the Board or not. Even then, a fact which indisputably emerges is that the Board felt the necessity of having the report of the Centre Superintendent and for the purpose requested the Inspector of Schools on 29-5-1987 to ask the Centre Superintendents to submit their reports but the decision to cancel the examination was taken on 31-5-1987 without even waiting for a reply from the Inspector of Schools or without waiting for any reasonable time for reports of the Superintendents to be received. The Inspector of Schools had addressed the Centre Superintendents/Observers on 2-6-87 asking them to submit their reports, but however by that time the decision had already been taken by the Examination Committee and the reports, even if would have been submitted, would have been of no avail. If the Examination Committee thought that some report had not been received and the same was necessary, then it is but natural to expect that it should have, as a prudent body, waited for the reports for a reasonable time, as the seeking of the report could not merely be a formality to observe.

29. Annexure 11 to O.J.C. No. 1966/87 shows the duties and responsibilities to be performed by the Observers. Instruction No. 6 thereof is as follows :

"6. They will submit a consolidated report on the following points immediately after the examinations are over directly to the Secretary, Board of Secondary Education, Orissa, Cuttack, by name so as to reach within 3 days of the completion of 1st phase and 2nd phase respectively.

(i) Whether the examinations are conducted smoothly as per rules. In case of any deviation, details are to be given with date of occurrence along with your views.

(ii) Whether used answer books of each day of examination are despatched to the concerned valuation centres on the same day or not. The delay in despatching the answer books, if any, should be mentioned with dates and reasons thereof."

It is apparent that the Observer of the examination is to remain present on all days and his report is to show, in the case of any deviations of the rules of the

examination, the details of those diviations with the respective dates of the occurrence along with his views. The report of the Observer which was produced before us is only of a general nature without absolutely no details datewise of the occurrences. It is not possible to know from the report as to when the instances stated therein occurred. In terms, the report is not in accordance with the instructions. On one hand the report did not furnish the required details and on the other hand it was the view of the Observer himself that a thorough checking of the answer papers was to be made to identify the candidates who had adopted unfair means at the examination. On the basis of such report alone it was not possible to have reached the conclusion of commission of mass malpractice at the centre since the Observer himself was not sure of it. This is however not to say that in no case a single report of the Observer would not suffice to base a conclusion of cancelling the examination. Each case is to be decided on its own facts.

30. So far as the reports of the Expert Committees are concerned, it also cannot be said merely by examining a very low percentage of answer papers in two subjects alone, that almost all the candidates of the centre have been guilty of mass copy in respect of all the answer papers on all days of the examination. We are aware, as has been decided by the Supreme Court in *The Bihar School Examination Board Vs. Subhas Chandra Sinha and Others*, that no duty is cast on the Board to examine each individual case to come to the conclusion that malpractice had been resorted to on a mass scale. But however to reach the conclusion which undoubtedly is a drastic one and affects the career of a large body of students, there must be something more than a mere semblance or pretext of verification. It has been submitted by Mr Ray that the purpose of examination of the answer papers by the Expert Committees was not to establish the fact of mass copy but only to corroborate the report of the Observer. But since the Observer himself made an uncertain report, the uncertainty therein could not be transformed to a certainty on the basis of such scrutiny as was done by the Expert Committee.

31. The resultant situation therefore is that while the report of the Flying Squad did not indicate that there was mass copy by all the students on all the dates, the only other material before the committee basically was the report of the Observer which could not reasonably lead to the conclusion of mass copy at the centre on all dates of the examination nor the reports of the Expert Committees also could persuade a reasonable person to reach such a conclusion and even all of them jointly considered could not form the conclusion.

32. In that view of the matter, the conclusion reached by the Committee to cancel the examination was not properly reached as a reasonable and judicious body and that in the circumstances of the case it was incumbent on the part of the Committee to have awaited the report of the Centre Superintendent and consider it. In these circumstances it is difficult to concede that the Committee and the Board acted fairly in the matter. It is also worthwhile in this connection

to note the stand taken by opposite party No. 2 that the examination had been conducted smoothly.

33. Even though on the basis of the conclusions reached the impugned decision as published in the notification of the Board vide Annexure 3 to O.J.C. NO. 1996/87 cannot be sustained and has to be quashed, yet by the very nature of the case and in view of the prima facie materials that mass malpractice might have been committed at the centre, we are not persuaded to direct a straightway publication of the results of the candidates. Since there is an apprehension of the Board, on materials before it, that the candidates were guilty of such malpractice, it would not be in public interest that merely because the decision of the Committee fails on account of hasty or inadequate consideration, the community must suffer the burden of candidates who are not entitled to succeed in the examination to parade as such. It was observed by R. C. Patnaik, J. in *Satyajit Roy Choudhury and Others Vs. Utkal University and Others*, :

"The country can ill-afford to have a posterity of ignoramuses. The malady has spread so wide and so deep that it deserves consideration from educationists, guardians and the Government. Where the future of posterity is involved, procrastination is unwise and to lie by is insensible. Let not the elders contribute to the deterioration of standard and destruction of norms by their callousness."

34. Thus while quashing the decision of the Examination Committee and the Board as contained in Annexures 3 and 8, we would call upon the Board to discharge its obligation to reconsider the matter afresh by taking into consideration the report of the Centre Superintendent (opposite party No. 2 in O J.C. No. 1996/87) who is directed to furnish a copy of it to the Board within one week from today, the other reports available with it, and the reports of the Expert Committee or examiner on the scrutiny of the answer papers of the candidates on all subjects at least to the extent of 60%. The consideration should be made and the results of the examination be published within a period of three months from the date of issue of the writ.

35. In the result, both the writ petitions are allowed subject to the observations made above and a writ be issued accordingly. There shall be no order as to costs.

G. B. Patnaik, J.

36. I agree.