
(1992) 07 OHC CK 0020
In the Orissa High Court
Case No : O.J.C. No. 6629 of 1991

Sanjay Kumar Ram and Others	Vs	APPELLANT
Council of Higher Secondary Education, Orissa and Others		RESPONDENT

Date of Decision : 20-07-1992

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : AIR 1993 Ori 81 : (1993) 75 CLT 30

Hon'ble Judges : S.K. Mohanty, J;D.P. Mohapatra, J

Bench : Division Bench

Advocate : R.C. Rout, for the Appellant; S.D. Das, A.K. Choudhury and Bharati Dash, for the Respondent

Final Decision : Allowed

Judgement

D.P. Mohapatra, J.—Aggrieved by the decision of the Council of Higher Secondary Education, Orissa (opp. party No. 1) (for short, "the Council") in cancelling their result in English II (for Arts) of the Second Higher Secondary Examination, 1991 vide notification dated 25th November, 1991 (Annexure 6), the petitioners filed this writ application seeking to quash the decision of the Council.

2. The case pleaded by the petitioners, shorn of unnecessary details, may be stated thus:

Ninety-one candidates including the petitioners appeared in the Second Higher Secondary Examination, 1991 from the centre at B. B. College, Baiganbadia in the district of Mayurbhanj. The examination in English II was held during the first sitting on 29-8-91. The examination on that day was conducted smoothly and without any untoward incident. In course of the examination opp. party No. 4 Shri Ashutosh Sahoo, Deputy Secretary, North Zone, Council of Higher Secondary Education paid a surprise visit to the centre. The opp. party No. 5 Shri Pradip Kumar Rout, Principal of the College who was the Centre Superintendent accompanied him. He made a thorough search of the candidates. One candidate

Sarojkanta Misra was allegedly carrying a piece of printed paper. There was some dispute between the Deputy Secretary and the Centre Superintendent whether the incriminating material found from Sarojkanta Misra was a piece of "printed paper" as reported by the latter or a "chit" as reported by the former. It is the allegation of the petitioners that solely on account of this dispute the Deputy Secretary submitted an adverse report about conduct of the examination at the centre and relying on the said report the Examination Committee of the Council cancelled the result of English-11 (Arts) at the B. B. College Centre vide Annexure 6. In the result sheet of the examination against roll No. 413 K 009 of Sarojkanta Misra the letter "M" (meaning Malpractice) was indicated. All other candidates who appeared in the examination were shown to have secured "00" mark in English-II. Thereafter on enquiry the petitioners came to learn about the decision to cancel the examination in the paper in question. The action was taken without giving any notice to show cause and without giving any opportunity of hearing to the petitioners. The petitioners contend that the impugned decision was taken on the alleged mass mal practice resorted to by the candidates without any supporting material. Therefore the decision was wholly arbitrary, contrary to the principle of natural justice and hence unsustainable.

3. In the counter affidavit filed on behalf of opposite parties 1 to 4, the Council and its functionaries, it is averred, inter alia, that during the first sitting of the examination held on 29-8-91 the flying squad deputed by the council visited the college and found incriminating materials just outside the windows and recommended that valuation of English II (Arts) in the centre should be made strictly as it was suspected that the students were involved in mal practice, vide Annexure A/1. The squad also recommended for deputing a Centre Superintendent from a Govt. college in the "Annual examination. The said report was placed before the Examination Committee in the meeting held on 8-11-91 and 13-11-91. On consideration of the report the Committee decided to cancel the result in English-II (Arts) of all the candidates appearing in the centre.

4. The opposite party No. 5 in his counter affidavit has stated, inter alia, that the exam-ination. of B. B. College, Centre was held, very smoothly; seat arrangement for 91 candidates" was made in five rooms, in each room sitting arrangement for not more than 30 candidates was made, each room had two invigilators, in addition to the invigilators there were reli-evers; the Centre Superintendent himself was going round the different rooms; a thorough search was made in presence of the opposite party No. 4 the Deputy Secretary before the candidates entered into the examination halls, all the invigilators submitted reports indicating smooth conduct of the examination; no report was received about mass mal practice in any of the halls. In support of the averment that some difference had arisen between the opposite party No. 5 and the opposite party No. 4 copies of the letters dated 17-9-91, 19-9-91 and 22-11-91 vide Annexure E/1, E/2 and E/3 have been filed.

5. From the facts discussed above it is evident that the council has taken the

decision to cancel the entire examination in English, II held at the centre on the ground that there was mass mal practice in that paper. It is also clear that the report of the flying squad (Annexure A/1) was the sole basis of the decision of the Examination Committee and of the Council.

6. Against item 11 (a) of the report it is stated "incriminating material was detected from the candidate Saroj Kanta Misra (413K009)", against item 11 (d) it is stated "incriminating materials are recovered from just outside the windows" and against item 11(a) the recommendation of the squad is stated as "Valuation of English paper II of Arts of this centre must be made strict as it is supposed that students are involved in mal practice"; It appears from the report that Sri Ashutosh Sahu, Deputy Secretary, North Zone of the Council who is described as the leader of the squad was the only member who visited the centre. From the proceedings of the Examination Committee held on 8-11-91 and 13-11-91 vide Annexure B/1 it appears that a composite decision was taken in respect of 16 different centres as per the list annexed to the resolution. The resolution of the committee is, inter alia, to the effect that the sitting/sittings of examination in the centres listed in Annexure A be cancelled, that the benefit of hard case rule be not extended to the candidates involved in those sittings, and their results be published showing ciphers against the concerned papers.

7. The question therefore arises whether in the facts and circumstances of the case the Council was right in cancelling the result of all the candidates appearing in English II in the centre on the ground of mass mal practice. This question has engaged the attention of the Apex Court and High Courts from time to time. In the case of *The Bihar School Examination Board Vs. Subhas Chandra Sinha and Others*, , M. Hidayatullah, C. J. speaking for the Court observed in paragraph 14 of the judgment at page 1273:

".....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 not do for the court to say that you should have examined all the candidates or even their

representatives with a view to ascertaining whether they had received assistance or not; To do this would encourage indiscipline if not also perjury."

8. From the discussion of the facts of that case in paragraph 5 of the judgment, it appears that basing on the report of the Tabulators of the Hanswadih centre that the percentage of successful examinees was as high as 80% whereas the average at the Arrah Dalipur centres was only 50%, they were asked to prepare percentage subjectwise and they submitted these percentages. The matter was referred to the unfairmeans Committee of the Board. The Committee in its turn asked the Moderators to look into all the answer books where the percentage was 80% or more. They reported unfairmeans on a mass scale. The Chairman then passed an order cancelling the examination in all subjects at the Henswadih centre allowing the examinees to reappear at the Supplementary Examination in September, 1969 without payment of fresh fees. The action of the Chairman was approved by the Board.

9. In the case of Satyajit Roy Choudhury and Others Vs. Utkal University and Others, a Division Bench of this Court relying on the observations in the aforementioned case held that in the facts of the case hardly can any course be contemplated other than the one adopted by the University of cancelling the results of the examination. Summing up the facts of the case this Court observed that the reports indicated that (a) there was general disturbance, (b) a large number of outsiders gathered near the windows in the last hour of the sitting and they throw papers and torn pages of books into the halls and dictated answers in loud voice. They were prevented from coming near the halls in the first two hours, but subsequently the situation became uncontrollable, (c) outsiders were supplying incriminating materials to the candidates and dictating answers, (d) there was chaotic mass mal practice, (e) the examination halls were full of copy materials and candidates were using them. The halls were like "Mela, (f) incriminating materials were found every where in the rooms and also with all the candidates. Outsiders were entering into the rooms" without hesitation, Almost "all the candidates were found resorting to mal practice. They did not care for the invigilators, (g) lots of incriminating materials were found from under the long benches and desks of a large number of candidates. Outsiders (about a hundred in number) supplying hand written answers and torn pages of books to the candidates through windows. There was mass mal practice which could not be stopped even by persuasion. The candidates were talking with themselves in presence of the invigilators. General condition inside the examination halls was like a Mela and fish market.

10. In the case of Raja Mohapatra and Others etc. Vs. Board of Secondary Education, Orissa and Another, this Court construing the relevant provisions of the Orissa Secondary Education Act and the Regulations framed under the said Act held, inter alia, that the purpose of cancellation of examination at a centre is not to impose 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, that 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, that 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, that 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 the whole or in part, that it is the satisfaction of the examining body which matters and no quasi-judicial function is involved. It was further held in that case that where the Examination Committee while reaching the satisfaction of cancelling the examination held at a centre on ground of mass mal practice had not considered the report of the Centre Superintendent and the report of the observer which was considered, by the Examination Committee 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 showing thereby that the observer himself was not sure of use of mass mal practice at the centre and the report of the Expert Committee considered by the committee was based merely on examination of a very low percentage of answer papers in two subjects alone from which it could not be said 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, the conclusion reached by the Committee to cancel the examination could not be said to be properly reached as a reasonable and judicious body.

11. In the case of *Sushmarani Das and Others Vs. Board of Secondary Education, Orissa and Another*, I had occasion to examine this question. In that case the decision of the Board to cancel the examination at the centre was upheld. Therein the materials available on record showed that there was reports of the flying squad countersigned by the Centre Superintendent to show that rampant mal practice was going on inside the examination halls in presence of the invigilators who were mute spectators of the scene that the mal practice was so pervasive that detecting specific cases was virtually impossible; that there was large scale outside interference; that the members of the squad found some of the examinees throwing incriminating materials such as books, that papers, printed materials and some handwritten materials etc. when they entered the examination hall; that most of the examinees had kept those incriminating materials near their desks and benches without any fear; that almost all the candidates were adopting unfair means and violating the rules of the examination and that similar reports had, been submitted in respect of different, dates during the examination. In such circumstances, this Court did not interfere with the decision of the Committee to cancel the examination in the theory papers held at the centre.

12. The decision in the case of the Bihar School Examination Board (*supra*) was followed by this Court in other cases, including Order J. C. No. 1718 of 1981 (*Subash Chandra Behera v. Utkal University*) disposed of on 22-12-81, O.J.C. No. 3494 of 1986 (*Sri Debadutta Singh Rao v. Berhanpur University*) disposed of on 15-12-87 and O.J. C. Nos. 1212 and 1162 of 1988 (*Chandan Chakravarty v. Council of Higher Secondary Education, Orissa*) disposed of on 15-11-88.

13. From the discussions in the preceding paragraphs it is clear that the power of the Council to cancel the examination at the centre on being satisfied that there was mass mal practice during the examination in question cannot be disputed. It is also clear that such discretion or decision is to be exercised on proper consideration of the materials on record, particularly the reports of the invigilators/Centre Superintendent/ members of the flying squad who visited the centre during the examination. Such report should reveal that there was large scale mal practice by the examinees. It is also open to the examining body to come to such a conclusion on consideration of the facts and circumstances of the case even after the examination was held, for example, where it is found that the percentage of successful candidates at the centre was unusually high compared to the figures in other centres. In cases where courts have upheld the decision to cancel the examination on ground of mass mal practice it has been sufficiently demonstrated from the materials on record that a vast majority of the examinees had indulged in mal practice during the examination in question either on the basis of direct reports submitted by the authorities in charge of the examination or by the examiners during evaluation of answer papers. It is to be borne in mind that cancellation of examination at a centre is a severe step and it is likely to prejudicially affect some innocent examinees also. Vesting of such drastic and wide power has been upheld for the sake of maintaining sanctity of the examination system. Wider the power more is the necessity for caution and restraint in exercising it. Therefore the examining body while taking such decision should closely scrutinise the facts and circumstances of the case as revealed from the materials and should have good reason to be satisfied that the case warrants drastic action.

14. Coming to the present case, as noted earlier, the report submitted by the flying squad of which the opp. party 4 was a member was the only material before the Examination Committee. No other material was brought to our notice nor was it contended that the Committee considered any other material. The said report only showed that one candidate Sarojkanta Misra was found to be in possession of some printed material and that incriminating materials were recovered from just outside the windows. It was not stated in the report that any candidate other than Sarojkanta Misra was found indulging in mal practice of any type. Indeed it was not even stated that in the report that the flying squad suspected mass mal practice at the centre. The only suggestion was that the answer papers of the examinees in that centre should be strictly valued. Thus it is evident that there was no material before the Committee to hold that the candidates at the centre had indulged in mass mal practice. The circumstances in

the case, in our view, fall far short of the requirements/ tests for taking the extreme step to cancel the examination at the centre. We unhesitatingly hold that the decision of the Council was not based on any acceptable materials and it was uncalled for. As such it is unsustainable.

15. Accordingly the writ application is allowed, the decision of the Council of Higher Secondary Education, Orissa to cancel the examination in English II for Arts at B.B. College Centre vide Annexure 6 is quashed and the Council is directed to declare the result of the examinees of the centre, (within four weeks. The petitioners shall be entitled to a consolidated sum of Rs. 1000/- (one thousand) towards cost.

S.K. Mohanty, J.

16. I agree.