

(2003) 12 OHC CK 0027

In the Orissa High Court

Case No : Writ Petition (C) No. 8569 of 2003

Sidhartha Sankar Patnayak

APPELLANT

Vs

Council of Higher Secondary Education and Others

RESPONDENT

Date of Decision : 22-12-2003

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : AIR 2004 Ori 83 : (2004) 1 OLR 121

Hon'ble Judges : P.K. Mohanty, J;M. Papanna, J

Bench : Division Bench

Advocate : J.K. Rath, S.N. Rath, R.N. Rath, P.K. Rout and C.K. Rajguru, for the Appellant; S.S. Das, for the Respondent

Final Decision : Allowed

Judgement

P.K. Mohanty, J.—The petitioner calls in question the award of "00" marks in M.I.L. (Oriya) in the Annual Higher Secondary Examination, 2003 by the Council of Higher Secondary Education on the basis of the report of the Examination Committee dated 20-5-2003, cancelling the said examination in the centre from which the petitioner took the examination.

2. The short facts of the petitioner's case is that he had passed the H.S.C. Examination securing 583 marks out of 750 marks and was placed in higher First Division, got admitted to Patitapaban Mohavidyalaya, Sainkul in the district of Keonjhar in +2 Science course with the subjects Physics, Chemistry and Mathematics as the optional subjects and Biology as the Fourth Optional subject in addition to compulsory papers like English and M.I.L. (Oriya). He appeared at the Higher Secondary Examination conducted by the Council of Higher Secondary Education (hereinafter called "the Council") and had done quite well in the examination. The petitioner while was waiting for declaration of the result, came to know from the notification issued by the Council dated 21-5-2003 intimating therein that the Examination Committee, on consideration of records on the conduct of Annual Higher Secondary Examination, 2003, found that the

examination conducted in the petitioner's examination centre in M.I.L. (Oriya) and other eight Colleges in different subjects was not conducted as per Rules and thus, should be cancelled and the examinees of those centres in the said papers were to be awarded "00" marks. The petitioner received his mark sheet and has secured 406 marks in aggregate excluding the cancelled paper M.I.L. (Oriya) and the Fourth optional subject Biology.

3. The petitioner alleges that the examination was conducted in accordance with the Rules and in a peaceful manner and none of the examinees excepting Roll No. 329GA002 who had adopted mal-practice as would be evident from the notification of the council itself. The Centre Superintendent, Invigilators and the Flying Squad have verified the conduct of the examination, but there is absolutely no mal practice and the decision of the Examination Committee cancelling the examination in M.I.L. Paper-I of the centre is illegal, arbitrary and without any basis.

4. The opp. parties 1 to 3 have filed their returns denying the allegations made and refuting the claim of the petitioner. It is their specific case that the sitting of examination in respect of M.I.L. (Oriya) in Science stream was cancelled as a whole on the ground of mass mal practice along with eight other Central whose sitting was cancelled due to infringement of Examination Rules in different subjects by awarding "00" marks. However, subsequently some of the Centres filed representations before the council for review of their result which includes the petitioner's institution as well as K. M. Womens' College whose results were cancelled. After taking into consideration the relevant materials the Examination Committee decided to publish the result of K. M. Womens' College by modifying the earlier decision, but the petitioner's institution not being in the same footing, the representation was rejected.

5. It is the specific stand of the Council that the squad consisting of eminent academicians visited the petitioner's institution on 4-3-2003 while the examination in respect of M.I.L. (Oriya) of Science stream was going on in Patitapaban Mohavidyalaya centre where the petitioner was an examinee. The squad remained at the centre for a considerable long time during which they observed that general condition inside the Examination Hall was disturbing and one invigilator was throwing incriminating materials on spotting arrival of the squad. All the invigilators were abetors to mass mal practice and the squad found that majority of candidates were involved in mal practice and found taking down answers while the Centre Superintendent was indifferent and abetor to such mal practice. The Flying squad, therefore, suggested for cancellation of the examination in the said paper. The council has referred to the judgment of this Court in Raja Mohapatra and Others etc. Vs. Board of Secondary Education, Orissa and Another, to justify their stand of cancelling the examination held in the centre. Reference has also been made to some other judgments in support of the contention that in case the examination is not held in accordance with the Examination Rules the Examining authority has every right to cancel the said

examination. According to the Council, the Examination Committee being satisfied on the basis of the report of the Flying squad have rightly taken the decision to cancel the said paper.

6. In view of the specific stand taken by the Council of Higher Secondary Education that on the basis of the report of the Flying Squad the examination had to be cancelled in M.I.L. (Oriya) held in the centre, in order to satisfy ourselves, we called upon the Council to produce the report in original which has been produced for our perusal. The report of the Flying Squad indicates that it had visited Patitapaban Mohavidyalaya, Sainkul on 4-3-2003 during the first sitting when examination in M.I.L. (Oriya) paper of the Science stream was being conducted. The Flying Squad arrived at the centre at 11.30 a.m. and the time of departure was 12-00 p.m. which has been subsequently corrected to "11-30 a.m. to 11-50 a.m.", departure time "12-00 p.m. to 1-00 p.m.". Even taking the corrected timing of arrival and departure, the Squad remained in the centre for about an hour. The report has been submitted in the printed format of the Council. Under Col. 12 "General conditions inside the Examination hall-Peaceful/ Disturbing (If disturbing a brief description be given)". It has been mentioned in the report that the condition was disturbing, examinees were found taking down answers to question No. 10 and to question on Grammar. The report at Col. 13 indicates that no outsider was present inside the Examination Hall nor in the College campus, but outside the College campus. Col. 14 indicates that there was police protection sought. But however, in Col. 15 "Whether there was Malpractice inside the Examination Halls", the answer has been as "Yes". In Col. 16 to the query "Mal practice detected and reported" the answer is "No". With regard to misbehaviour by the candidates the answer has been given in negative. In Col. 19 as to whether the Centre Superintendent is co-operative, the answer is given as "Yes", but in Col. 20 as to whether invigilators are abetors to the Malpractice, the answer has been as "yes" and it has been mentioned that one lecturer named therein was found throwing away incriminating materials on the arrival of the squad. In Col. 21 (a) the Flying Squad reported that majority of candidates were involved in malpractice. They were found taking down answers. Sub-clause (b) of Col. 21 require the Squad to mention the reason of inability to mention the roll numbers of candidates not adopting malpractice and the answer is "Almost all regular candidates were found taking down notes on questions on Grammar & Retranslation". On such report the squad recommended cancellation of result of regular candidates and the Council was requested to decide the case of ex-regular candidates and further note has been given that it would be better if the scripts were taken to the C.H.S.E. for valuation. Under the heading "Important" it is mentioned that the situation inside the Examination Room/Hall is disturbing and not conducive for examination as per Rule and majority of the candidates were adopting malpractice/infringing Examination Rules and it is not possible to point out any candidate who is not adopting malpractice or infringing the Examination Rules.

7. If the aforesaid report is taken into consideration, the only material available

before the Examination Committee of the Council was that the examinees were found taking down answers to question No. 10 and the question on Grammar and they were found taking down answers. Almost all regular candidates were found taking down notes on question on the Grammar and Retranslation. The report does not disclose as to wherefrom the candidates or examinees were taking down the answers, whether from any independent notes before the candidates or as to whether from any other source. The report, in our considered opinion is in effect no report since the source from which the candidates were taking down notes on question on Grammar and Retranslation has not been disclosed. No incriminating material has been seized by the Squad nor any note or any book. It has also not been disclosed as to whether the examinees were taking down notes as alleged on dictation by any external source. The report otherwise clearly discloses at Col. 16 that no malpractice either detected or reported and in Col. 17 there was no misbehaviour of candidates. The report of the Squad that the general condition inside the Examination hall was disturbing, the examinees were found taking down answers to question No. 10 and to question of Grammar on the face of it cannot be accepted since according to the report itself under Col. 13 no outsider was present either inside the hall or even inside the College campus excepting the Invigilators and Centre Superintendent. No allegation whatsoever was made as to whether any Invigilator or Centre Superintendent was dictating the answers or the examinees were taking aid of any book or any notes. The report of the three learned Lecturers, one of Revenshaw College, one of Nayagarh College and the other from Gara Manitiri College, on the basis of such half-hazard and half-report could not have recommended the drastic action of cancelling the result nor could the Examination Committee consisting of experienced educationist could legitimately take such decision of cancelling the result of all the examinees of the Centre on the basis of such a vague report.

8. The law is well settled that it is the Rule of examination that it must be conducted fairly without the candidates taking resort to external aid in answering the questions. The Examining Body would be justified in cancelling the examination if on materials it comes to find that there has been a mass scale malpractice by the examinees by taking external aid in answering the questions or they have flagrantly violated the Rules of examination. If the Examination Committee on consideration of the report is satisfied that the examination was not conducted fairly in accordance with the norms prescribed by the Council, it would no doubt be justified if decides to cancel the examination to ensure a fair examination and maintaining the standard of education. In case of mass malpractice, there would not be any doubt that there may be students or examinees in the centre who have not adopted the malpractice, but since a vast majority of students adopted such unfair means, the innocent also gets punished since it cannot be distinguished at times as to who or who are not adopting such malpractice. The Examining authorities, therefore, should be more cautious and concerned while taking the drastic step of cancelling an examination on the allegation of adoption of mass malpractice by vast majority of students in any

examination. Interestingly, the seat chart available in the Squad report indicates that the examination was being conducted in Hall Nos. 4, 5 and 6. The seat chart have been attested by the Centre Superintendent signed by different Invigilators. The squad report does not disclose the condition and situation available in each halls separately. The report, therefore, is a casual and unspecific report. The Examining authorities were of the view that the examination might have not have been conducted in the proper manner basing on such a casual report the only source that was available to them was to call for the answer scripts of such candidates to verify the truth or otherwise since taking down notes may be from any unspecified external source would be similar in majority of cases. We are constrained to hold that the Examination Committee has also acted in a casual manner without proper application of mind to the report furnished by the Squad and have taken the drastic step of annulling the examination. It goes without saying that the decision of the academicians or academic bodies like the Examination Committee of the Council calls for due regard, but if the Examining body deals in such a manner and on the basis of such a report cancels the examination, the Court cannot approve such a decision because it has been taken by the Examination Committee consisting of academicians.

9. In such view of the matter, we have no hesitation to hold that the decision of the Examination Committee and consequently the decision of the Council in cancelling/annulling the examination in M.I.L. (Oriya) held on 5-3-2003 in Patitapaban Mohavidyalaya, Sainkul centre is quashed. The Council shall publish the revised result forthwith within a fortnight hence.

The writ petition is allowed with a cost of Rs. 1,000.00 (Rupees one thousand only).

M. Papanna, J.

10. I agree.