
(2002) 08 OHC CK 0038
In the Orissa High Court
Case No : O.J.C. No. 6438 of 2000

Smt. Pravamayee Nayak and Others	APPELLANT
Vs	
Council of Higher Secondary Education and Others	RESPONDENT

Date of Decision : 02-08-2002

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : AIR 2003 Ori 47 : (2002) 94 CLT 426 : (2002) OLR 791 Supp

Hon'ble Judges : M. Papanna, J;A.K. Patnaik, J

Bench : Division Bench

Advocate : Prasanna Kumar Nanda and S.S. Das and K.C. Swain For O.Ps. 1 and 2, for the Appellant; S. Mohanty, (For O.P. No. 3), for the Respondent

Final Decision : Dismissed

Judgement

A.K. Patnaik, J.—The twenty-eight petitioners are all students of Biju Pattnaik College at Asrampatna in the district of Jagatsinghpur. They took the +2 Science Stream Annual Examination, 2000 conducted by the Council of Higher Secondary Education, Orissa. On 1.7.2000 the Council of Higher Secondary Education, Orissa (hereinafter referred to as "the Council") notified the results of the petitioners in the said examination and as per the said results, the petitioners were all given "0" (zero) mark in physics Paper-I. The principal of the Biju Pattnaik College then wrote to the Controller of Examinations, Council of Higher Secondary Education, Orissa in his letter dated 4.7.2000 that it is not indicated in the notification publishing the results as to why "0" (zero) mark has been awarded to all the students in Physics Paper-I and requested him to clarify on the point. No reply, however, was given by the Controller of Examinations, Council of Higher Secondary Education, Orissa to the said letter . of the Principal of the College. Aggrieved, the petitioners have filed this writ petition under Article 226 of the Constitution for a direction on the Council to declare the results of the petitioners in Physics Paper-I.

2. A counter affidavit has been filed on behalf of the Council and the Controller of

Examinations, Council of Higher Secondary Education, Orissa (Opp. parties 1 and 2) stating therein that after the conduct of the examination in Physics Paper-I on 29.3.2000, the answer papers of the petitioners were despatched to the valuation zone for evaluation and during the process of such evaluation, it was detected by the Zone Supervisor that almost all the answers were identical in nature as per the reports of Assistant Examiners/ Chief Examiner and he immediately reported "this matter to the Controller of Examinations, Council of Higher Secondary Education, Orissa on 11.5.2000. On receipt of such report from the Zone Supervisor it was decided to withhold the results of the candidates for further investigation by the Expert Committee and the results of the candidates were withheld. Thereafter, the matter was placed before the Expert Committee on 26.6.2000 and after thorough verification and scrutiny of the matter, the Expert Committee observed that it is a clear case of mass mal-practice and submitted its report before the Examination Committee and the Examination Committee after elaborate deliberations over the matter decided to cancel the examination of the petitioners in Physics Paper-I vide resolution No. 1915 in its meeting held on 29.6.2000 and directed publication of the results of the petitioners. Accordingly, the results of the petitioners were published on 1.7.2000 showing cipher (zero) against Physics Paper-I.

A counter affidavit has also been filed by the Principal of Biju Pattnaik College, Asrampatna, district - Jagatsinghpur (Opp. party No. 3) who was also the Centre Superintendent at the centre in which the petitioners took +2 Science Annual Examination. In the said counter affidavit, the Opp. party No. 3 has stated that the examination began on 29.3.2000 and was conducted smoothly and there was no chaos and confusion in the examination. He has further stated in the said counter affidavit that the invigilators were alert, the students have appeared in all the examinations and the Council have inspected the college through its agents during the examination time. The Opp. party No. 3 has also stated in the said counter affidavit that there was no adverse report in respect of the conduct of the examination either from the Centre Superintendent or from any other source including the Council.

3. Relying on the aforesaid counter affidavit filed by the Opp. party No. 3, the Principal-cum-Centre Superintendent of Biju Pattnaik College, Mr. P. K. Nanda, learned Counsel for the petitioners submitted that there was no report submitted by the Centre Superintendent or the invigilators complaining that there was any mal-practice adopted by the petitioners in Physics Paper-I at the time of the examination and in the absence of any such report, the conclusion arrived at by the Council that there was mal-practice amongst the students* at the time of the examination in Physics Paper-I on 29.3.2000 was wholly arbitrary and vitiated by mala fide. Mr, Nanda argued that from the mere fact that the answers of the candidates to some of the questions were identical would not mean that the candidates have adopted mal-practice. He submitted that the decision to award zero mark to all the students of Biju Pattnaik College including the petitioners has been taken by the Council for extraneous considerations. Mr. Nanda cited the

decision of the Supreme Court in *Rajesh Kumar and Another Vs. Institute of Engineers (India)*, in which the Institute of Engineers came to the conclusion that 13 candidates who had taken the A.I.M.E. Group "E" examination conducted by the Institute of Engineers on 1.6.1990, had adopted the malpractice on the basis of similarity of answers in the answer books of the 13 candidates and the Supreme Court held that such similarity of answers could be a result of cramming from a common source and cannot per se be evidence of any conspiracy between the crammers to adopt unfair means in the examination. Mr. Nanda next submitted that in the case of *Board of Secondary Education, Orissa, Cuttack Vs. Gayatri Hota and others*, this Court held that only because some of the answers, that too, in respect of students who were appearing in the examinations in different halls, a conclusive conclusion cannot be reached that they were involved in mass malpractice. He also cited the decision of the Allahabad High Court in *Harish Chandra Tewari and Others Vs. The Board of High School and Intermediate Education, Uttar Pradesh, Allahabad*, on the same point. Mr. Nanda next submitted that the case of *Balia Women's College Vs. Council of Higher Secondary Education and Others*, a Division Bench of this Court has held that what could be considered mass copying cannot be laid down with mathematical precision and it has to be decided on the facts and circumstances of each case as to whether there has been mass copying at a particular examination centre. He argued that in the facts and circumstances of the present case when there was no material whatsoever indicating that the candidates resorted to mal-practice or copying at the time of the examination, the Court cannot come to a conclusion that there has been mass copying at the centre in which the petitioners took the examination in Physics Paper-I. He contended that no show cause was issued to the petitioners before the decision was taken by the Council that mass mal-practice has been adopted in the Physics Paper-I examination at the centre in which the petitioners took the examination. Mr. Nanda finally submitted that if the petitioners had resorted to mass mal-practice in Physics Paper-I, the Council would have issued a notification cancelling the Physics Paper-I examination taken by the petitioners. But no such notification has been issued by the Council and instead in the results of the petitioners published on 1.7.2000, the petitioners have been awarded "0" (zero) mark in Physics Paper-I. Mr. Nanda submitted that it is only in the counter affidavit filed on behalf of the Council and the Controller of Examinations, Council of Higher Secondary Education, Orissa (Opp. parties 1 and 2) that for the first time it has been alleged that the petitioners have resorted to mal-practice in Physics Paper-I and for this reason, they have been all awarded "0" (zero) mark in the said paper. Mr. Nanda cited the decision of the Supreme Court in *Union of India and Ors. etc. v. Mario Cabral e Sa* for the proposition that public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order, of what he meant or of what was in his mind, or what he intended to do. According to Mr. Nanda, this is a fit case in which the Court should direct the Opp. parties 1 and 2 to declare the marks that the petitioners have obtained in Physics Paper-I.

4. In reply to the aforesaid submissions, Mr. S. S. Das, learned Counsel for Opp. parties 1 and 2 submitted that the averments made in the counter affidavit filed on behalf of the Opp. parties 1 and 2 as well as the records produced before the Court would show that the answers of the petitioners were identical. He explained that the identity of the answers of the petitioners was not only in respect of the correct answers but also in respect of the incorrect answers. This was detected by the Assistant Examiners at the time of evaluating the answer scripts of the petitioners in Physics Paper-I and the Assistant Examiners reported the matter to the Controller of Examinations, Council of Higher Secondary Education, Orissa on 4.5.2000 and 5.5.2000 and the said reports of the Assistant Examiners as well as the concerned Chief Examiner of Physics Paper-I were placed before the Expert Committee who verified the answer scripts of the concerned candidates and came to the conclusion that mass mal-practice has been adopted at the concerned centre in Physics Paper-I. Mr. Das submitted that there were, therefore, sufficient materials before the Examination Committee to come to the conclusion that there has been mass malpractice in Physics Paper-I at the centre in which the petitioners took the examination and accordingly, the Examination Committee took the said decision and for this reason, the petitioners were all awarded "0" (zero) mark in Physics Paper-I. Mr. Das cited the decision of the Supreme Court in the case of *The Bihar School Examination Board Vs. Subhas Chandra Sinha and Others*, in which it was held that if there is sufficient material on which it can be demonstrated that the University was right in its conclusion that examination ought to be cancelled then academic standards require that the University's appreciation of the problem must be respected and it would not do for the Court to say that the University should have examined all the candidates or even their representatives with a view to ascertaining whether they had received assistance or not. In the said decision, Mr. Das Submitted, the Supreme Court took the view that when the examination was vitiated by adoption of unfair means on a mass scale, the Board was not required to give an opportunity to all the candidates-to represent their case. Mr. Das submitted that in the aforesaid case of *Bihar School Examination Board V, Subhas Chandra Sinha and others (supra)* there was also no report of the Centre Superintendent or the invigilators that the students had resorted to unfair means on a mass scale and it is only on the basis of the reports of the tabulators that the percentage of successful examinees at the particular centre was as high as 80 per cent compared to the average of 50 per cent, the matter was referred to the Unfair Means Committee of the Board and the Unfair Means Committee in its turn looked into the answer books where the percentage was 80 per cent or more and reported to the Unfair Means Committee on a mass scale and the Chairman of the Board passed an order cancelling the examination in all subjects at the concerned Centre. Mr. Das also relied on the decision of the Allahabad High Court in *Rajiv Ratna Shukla and Another Vs. University of Allahabad and Others*, for the proposition that what could be considered mass copying cannot be laid down in mathematical precision and it has to vary and has to be decided on the facts and circumstances of each case. He explained that the said decision of the Allahabad

High Court in *Rajiv Ratna Shukla and Anr. v. University of Allahabad and Ors.* (supra) has been followed by this Court in *Asit Kumar Panigrahi and Sitakanta Das Vs. State of Orissa and Others*, He also relied on the decisions of this Court in *Satyajit Roy Choudhury and Ors. v. Utkal University and Ors.* AIR 1982 Ori 266 *Partha Sarathi Guru and Ors. v. Utkal University and Ors.* AIR 1983 Ori 66 and *Partha Sarathi Guru and Others Vs. Utkal University and Others*, wherein the powers of the authorities conducting the examination to cancel the examination taken by the authorities for mass copying have been upheld. Mr. Das also relied on the decision of the Supreme Court in *Dental Council of India v. Subharti K. K. B. Charitable Trust and Anr.* 2001 AIR SCW 1883 for the proposition that the decision, taken by the expert bodies such as, Medical Council as the Dental Council, normally would not be interfered with by this Court under Article 226 of the Constitution. Mr. Das argued that since in the present case, an Expert Committee has reported after looking into the answer scripts of the petitioners in Physics Paper-I that there has been mass malpractice, the Court should not interfere with the said decision of the Expert Committee under Article 226 of the Constitution. Mr. Das also relied on the decision of the Supreme Court in *Union of India and Ors. v. O. Chakradhar* AIR 2002 SC 1119 in which, on the basis of the report of the C.B.I, that illegalities and irregularities have been committed in conduct of selection for recruitment to the posts of Junior Clerk-cum-Typist conducted by the Railway Recruitment Board, the Railway Board had cancelled the entire panel of selected candidates and the Supreme Court upheld the said cancellation holding that it was not one of those cases where it was possible to issue individual notice of mis-conduct to each selectee and seek his explanation with regard to the large scale, widespread and all pervasive illegalities and irregularities committed by those who conducted the selection.

5. The first question which arises for decision in this case is whether the conclusion of the Examination Committee of the Council that mass malpractice has been adopted in the examination of Physics Paper-I at the centre in which the petitioners took the examination is arbitrary and is vitiated for mala fide. This conclusion has been reached by the Examination Committee of the Council on the basis of similarity of answers to different questions in Physics Paper-I in the answer scripts of the candidates who took the examination at the centre including the petitioners. The records produced before us show that the Assistant Examiner, Physics Paper-I at K.S.U.E. College, Bhanjanagar Valuation Centre submitted a report dated 4.5.2000 to the Controller of Examinations of the Council that the answer scripts bearing code No. 39184001 to 39184020 have identical errors in question Nos. 2(f) and identical answers in question No. 3(g) except the script bearing code No. 39184002. Similarly, another Assistant Examiner, Physics Paper-I at K.S.U.B. College, Bhanjanagar Valuation Centre submitted a report dated 4.5.2000 to the Controller of Examinations of the Council that the answer scripts bearing code Nos. 69184001 to 69184020 have identical errors in question Nos. 1(b), 3(j), 2(c) and identical answers in question Nos. 2(f), 2(g) and 3(f). A third report dated 5.5.2000 was submitted by the

Assistant Examiner, Physics Paper-I to the Controller of Examinations of the Council to the effect that answer scripts bearing code numbers 69184021 to 69184031 and 691 84033 to 69184040 have identical errors in question Nos. 1(b), 1(c), 3(f) and 3(g) and that the long and short answers also appear to be same in every respect. A fourth report dated 5.5.2000 was furnished by another Assistant Examiner to the Controller of Examinations of the Council stating that answer scripts bearing code No. 69184041 to 051 have identical errors in answers in question Nos. 1(b), 1(c), 3(f) and 3(g). The Chief Examiner of Physics Paper-I after verifying the facts stated in the reports of the Assistant Examiners reported the matter to the Zone Supervisor of the Council. In view of the said reports of the Assistant Examiners and the Chief Examiner of Physics Paper-I, 69 answer papers were verified by an Expert Committee comprising of a Reader in Physics, Principal of a College and a retired Principal of a College. The report of the Expert Committee is quoted hereinbelow :

"On the basis of the reports of the assistant examiners and the concerned Chief Examiner of Physics-I answer scripts valued at KSUB College Centre, Bhanjanagar for the Annual H.S. Exam. 2000, we have verified all the 69 valued answer papers bearing Code Nos. 39184001, 003-020, 69184001-031, 033 to 051.

Our observations are :

1. Identical errors in the answers to Q. Nos. 2(c), 3(f) and 3(j).
2. Peculiar identical answers to the Q. Nos. 1(c), 2(f) and 3(j).
3. Besides, the answers to short and long questions of almost all the candidates are found to be identical.

In view of the above observations, it appears that mass malpractice has been adopted at the concerned centre in Physics-I."

"Thus, after verifying all the 69 answer papers in Physics Paper-I, the Expert Committee has come to the conclusion that mass malpractice has been adopted at the centre because there were identical answer to several questions in the answer papers.

6. The contention of Mr. Nanda, learned counsel for the petitioners, however, is that from mere identity of answers in the answer papers of the petitioners, no conclusion can be reached that mass malpractice has been adopted at the centre in which the petitioners took the Physics Paper-I examination because such identity answers cannot be ruled out when the petitioners all belonged to one institution and could have crammed the answers from a common source. It is difficult to accept the said contention of Mr. Nanda because there are also identical errors in the answers to the question Nos. 2(c), 3(f) and 3(j) as per the report of the Expert committee and such identical errors in the answers cannot be the result of cramming from the same source. Further, there are identical answers to question Nos. 1(c), 2(f) and 3(g) and the nature of the question Nos.

1(c), 2(f) and 3(g) are such that identical answers could not be given by the candidates. From the question paper of Physics Paper-I, the said question Nos. 1 (c), 2(f) and 3(g) are extracted hereunder:

"1. Answer briefly :

(a) & (b) *** *** *** What do you infer from the given time velocity graph ?

(d) to (h) *** *** *** "2. Answer briefly :

(a) to (e) *** *** *** (f) Two spheres of the same material have radii 1 m and 4 m and are at temperature 4000K and 2000K, respectively. What is the ratio of energy radiated by each of them ?

(g) *** *** *** "3. Answer briefly any ten questions :

(a) to (f) *** *** *** (g) A curve of radius 60m on the national highway is properly banked for vehicles moving at 20m/ s. Find the angle of banking.

(h) to (n) *** *** ***

The nature of the aforesaid questions are such that the answers of the candidates are likely to differ from each other and the answers to the said questions cannot be given by the candidates by cramming from common material. As to whether a conclusion can be reached from the identity of answers of the candidates that there has been adoption of mal-practice by the candidates will depend upon the nature of the questions answered by the candidates as well as the nature of the answers.

7. In *Rajesh Kumar and Anr. v. Institute of Engineers (India)* (supra) cited by Mr. Nanda, the examiner while evaluating the answers books of the examinees had reported that 13 examinees had resorted to copying inasmuch as their answers to some of the questions in the examinations were exactly same and that, on that basis, it was thought that nine examinees had adopted unfair means. The candidate took the stand that they had consulted the book *Estimating and Costing* by Professor B. N. Dutta for the purpose of preparation and the book was obtained from the Library of the Institution at the Headquarters and the members of Examination Disciplinary Committee and the Secretary and Director General scrutinised the answers written by the candidate in the answer book with reference to the said book and observed that substantial portion of the answers written by the candidate were exactly the same as the text printed in the book and on these facts, the Supreme Court held :

"..... The text of a book as the common source for cramming establishes no connection. That per se cannot be evidence of any conspiracy between the crammers to adopt unfair means in the examination unless there be material to show that there was copying of the answer-books, responding from the answer-book of one of the candidates, or directly from the book leading to the copying by others....."

But in the present case, the reports of the Assistant Examiners and the Expert Committee show that there are identical errors in the answer to question Nos. 2(c), 3(f) and 3(j). Obviously such identical errors cannot be the result of cramming from a common text book or material. Further, the report of the Expert Committee shows that the candidates had given peculiar identical answers to question Nos. 1(c), 2(f) and 3(g) and the nature of the said questions are such that ready answers will not be available to the said questions from any text book or material.

8. In *Harish Chandra Tewari and Ors. v. The Board of High School and Intermediate Education, Uttar Pradesh, Allahabad* (supra), the allegation of copying rested mainly on the circumstances that the two translation pieces, one from Hindi to English and the other from English to Hindi were attempted by the various petitioners and their answers so remarkably tallied with each other that they must be regarded as the result of copying. The High Court held that the matter contained in the pieces given for translation was of such type that there was no room for differences or variety and the answers were expected to be cast in a common mould. Therefore, the apparent similarity of pattern found in the answers of the examinees in the instant case cannot lead to the sure conclusion that they had resorted to unfair means. In the said decision, however, the Division Bench of the Allahabad High Court held :

"4. There is, however, another test which may be regarded as more dependable in ascertaining whether there was copying and that test is the nature of the common mistakes shared. More again it must be immediately added that a single common mistake found in the answers and that too of a casual nature would not justify a presumption of copying but if there are numerous mistakes which appear to be of an uncommon character, amounting to absurdity and they are found identically occurring in the various answer books, surely there would justification for saying that they flow from copying,....."

Thus, in the aforesaid decision cited by Mr, Nanda, the Allahabad High Court has held that while a single common mistake found in the answers of different candidates would not justify a conclusion there has been copying amongst the candidates, if there are numerous common mistakes of uncommon character, there would be justification for holding that they are result of copying. In the present case, there was not just one common mistake occurring in the answers of the candidates but there were identical errors in the answers of the candidates to question Nos. 2(c), 3(f) and 3(j) as reported by the Expert Committee. Besides identical errors, there were also peculiar identical answers to question Nos. 1(c), 2(f) and 3(g) and the nature of the said question Nos. 1(c), 2(f) and 3(g) were such that there was a lot of room for variety in the answers and yet the answer of the petitioners were identical.

9. In *Board of Secondary Education, Cuttack v. Gayatri Hota and Ors.* (supra) cited by Mr. Nanda, the judgment of the learned Single Judge which was challenged before the Division Bench was follows :

"I have carefully perused the answer scripts as well as the reports. It appears from the records that in respect of certain questions, answers were found to be identical in nature including some objective type answers also. After examining the reports submitted, a decision was taken to the effect that the petitioners were involved in malpractice and the results had been cancelled. From the reports, it is found that the teachers examined the papers were of the view that some of the answers are identical and not identical in mass scale. All the examiners have opined that such identical answers found in some papers is irrelevant as the same were objective type but no one has given a report that it must be a case of malpractice. Neither of the teachers examining to question No. 1 have stated that it may be a case of malpractice, but there is no positive statement that it is in fact a case of malpractice. Apart from the records, it is also not disputed that there was any allegation of malpractice either by the Centre Superintendent or from any quarters whatsoever. There is no dispute that no incriminating materials had been seized from the petitioners at the time of examination. Only because the Centre had so high percentage of pass, review was made and answer to some questions were found to be identical in respect of papers submitted by the petitioners. On presumption only they were booked for malpractice."

It will be clear from the aforesaid judgment of the learned Single Judge that although the teachers who examined the answer papers were of the view that some of the answers are identical, all the examiners had opined that such identical answers found in some papers is irrelevant, as the same were objective type and no one has given a report that it must be a case of malpractice. In the said case, there was no allegation of malpractice also by the Centre Superintendent or from any quarters whatsoever and no incriminating material had been seized from the petitioners at the time of examination and only because the Centre had a high percentage of pass, a review was made and answer to some questions were found to be identical, a presumption of malpractice was drawn. On these findings of the learned Single Judge, the Division Bench held that spot of the questions, the answers to which were alleged to be identical, were short questions and the answers are likely to tally with each other specially in view of the fact that the students are of one school and there was also the possibility that the students have crammed up the answers. The Division Bench also held :

"..... Surprisingly none of the examiners has pointed out any similarity in mistakes committed by the examinees. If malpractice is adopted, while answering, some mistakes appearing in one answer would automatically occur in the other, as answers are copied without application of mind, and that is, according to us, a reasonably reliable test to arrive at a conclusion that the examinees had adopted malpractice....."

Thus, the Division Bench of this Court in Board of Secondary Education, Orissa, Cuttack v. Gayatri Hota and Ors. (supra) was also of the view that if there are

similarity in mistakes committed by the examinees in the answers, it is reasonably reliable to come to a conclusion that the examinees had adopted mass malpractice. In the present case, there are not only identical answers to short and long questions in the answer scripts of the candidates but also there are identical errors in answers to question Nos. 2(c), 3(f) and 3(j). Thus, there are similarity of mistakes committed by the examinees in the answer scripts and a conclusion can be reasonably drawn from such similarity of mistakes that the examinees had adopted malpractice. The contention of Mr. Nanda that the conclusion of the Examination Committee of the Council that malpractice has been adopted in the examination of Physics Paper-I at the centre in which the petitioners took the examination is arbitrary and vitiated by mala fide, thus, has no merit.

10. The next question to be decided in this writ petition is whether the decision of the Examination committee of the Council is liable to be quashed on the ground that the petitioners have not been given any show cause notice before the said decision was taken. As indicated above, this was a case of malpractice having been adopted on mass scale at the centre in which the petitioners took the examination and in such a case, the Supreme Court has been taking a view that no show cause notice need be issued to the candidates as the examination in the entire centre as a whole is cancelled on account of mass malpractice. In *Bihar School Examination Board v. Subhas Chandra Sinha and Ors.* (supra) the Supreme Court held :

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

The aforesaid view has also been taken in *Union of India and Ors. v. O. Chakradhar* (supra) in which it has been held ;

"8. In our view the nature and the extent of illegalities and irregularities committed in conducting a selection will have to be scrutinized in each case so as to come to a conclusion about future course of action to be adopted in the matter. If the mischief played is so widespread and all pervasive, affecting the result, so as to make it difficult to pick out the persons who have been unlawfully benefited or wrongfully deprived of their selection in such cases it will neither be

possible nor necessary to issue individual show cause notices to each selectee. The only way out would be to cancel the whole selection, Motive behind the irregularities committed also has its relevance."

11. Coming now to the contention of Mr. Nandathat no formal notification has been issued by the Council cancelling the examination of the petitioners in Physics Paper-I, we find that under Regulation-77 of the Orissa Higher Secondary Education Regulations, 1982, the Examination Committee has been vested with the powers to consider cases of malpractice and award punishment to candidates concerned. The said Regulation does not provide that such power of the Examination Committee can only be exercised by issuing a notification. In the absence of any provision in Regulation-77 making it mandatory for the Examination Committee to issue a notification cancelling the examination of the candidates it is difficult to accept the submission of Mr. Nanda that the Examination Committee can cancel the Physics -Paper-I of the petitioners" examination only by a notification and not otherwise.

12. In *Union of India and Ors. v. Mario Cabral e Sa* (supra) cited by Mr. Nanda, the Supreme Court quoted the observations of Vivian Bose, J. in the case of *Union of India and Others Vs. O. Chakradhar*, to the effect that public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order, of what he meant, or of what was in his mind, or what he intended to do and that public orders made by public authorities are meant to have public effect and are intended to affect the actings and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself. After quoting the aforesaid observations, the Supreme Court held in the case of *Union of India and Ors. v. Mario Cabral e Sa* (supra) that it was not permissible for the Government to offer a justification for refusal to grant accreditation to the respondent on the grounds other than the one that he did not fulfil the requirements of Rule 2(1) of Section 11 of the Rules as indicated the order itself. The aforesaid decisions of the Supreme Court in *Commissioner of Police, Bombay V. Gordhandas Bhanji* (supra) and in *Union of India and Ors. v. Mario Carbal e Sa* (supra) have no relevance to the present case. The results of the petitioners notified by the Council on 1.7.2000 indicated that the petitioners were given "0" (zero) mark in Physics Paper-I. Obviously, award of such "0" (zero) mark in Physics Paper-I to all the candidates including the petitioners who had taken the examination in the particular centre indicated that Physics Paper-I had been cancelled by the Council. In the counter affidavit, filed on behalf of the Council and the Controller of Examinations of the Council, it has further been explained that the examination in Physics Paper-I of all the candidates at the centre including those of the petitioners had been cancelled on account of mass malpractice in the said examination. Thus, there is no inconsistency between the notification of the Council on 1.7.2000 notifying the results of the petitioners and the counter affidavit filed on behalf of the Council and the Controller of Examinations of the Council in this Court. The last

contention of Mr. Nanda that there was inconsistency between the notification dated 1.7.2000 of the Council and the counter affidavit filed on behalf of the Council is, thus, mis-conceived.

13. In the result, we find no merit in this writ petition and accordingly, we dismiss the same. Considering the fact and circumstances of the case, the parties shall bear their own costs,

M. Papanna, J.

I agree.