
(1996) 12 OHC CK 0007
In the Orissa High Court
Case No : O.J.C. No. 8919 of 1996

Srima Pattanayak

APPELLANT

Vs

Council of Higher Secondary Education, Orissa and Another

RESPONDENT

Date of Decision : 05-12-1996

Acts Referred:

Constitution of India, 1950 — Article 14, 226

Citation : AIR 1997 Ori 125

Hon'ble Judges : S.N. Phukan, C.J;A. Pasayat, J

Bench : Division Bench

Advocate : Srikanta Kumar Sahoo, R.K. Sahoo, M. Mohapatra and S.K. Mishra, for the Appellant; S.D. Das, A. Mohanty, L. Samantaray, M.S. Satpathy, S. Pattanaik, B.K. Singh and D. Dhar, for the Respondent

Final Decision : Dismissed

Judgement

Pasayat, J.—Petitioner, who was a candidate in the Annual+2 Arts Examination, 1996 conducted by the Council of Higher Secondary Education, Orissa (hereinafter referred to as "Council") has prayed for revaluation/re-checking of answer paper of English Paper-I as she has been awarded "0" (zero) mark. Prayer has also been made for re-checking of answer papers of certain other subjects, i.e., History Papers-I and II. Petitioner had appeared as a candidate from Barapali College, Barapali where she was prosecuting her studies as a regular candidate.

2. From the counter affidavit filed by the Council, we find that because of resort to mass scale of mal-practice, result so far as examination of English Paper-I is concerned was cancelled and zero mark was awarded to each candidate in the said paper. Flying Squad of the Council visited the examination centre and found large number of candidates resorting to mal-practice, and suggested cancellation of the examination in respect of English Paper-I. Therefore, there is no scope for entertaining the writ application. Rejoinder affidavit has been filed by the petitioner stating that only 71 students were found resorting to mal-practice,

when the Flying Squad visited, and considering large number of students, who appeared in the examination, question of cancellation of results of all the candidates is not proper, that too without observing principles of natural justice.

3. Records were produced before us by the learned counsel appearing for the Council. Following observations were made by the Flying Squad which reached the examination centre at 3.45 p.m. and remained there till 4.40 p.m. :

"(i) The general conditions around the examination centre was disturbing.

(ii) General condition inside the Examination Hall was disturbing.

(iii) Outsiders were present.

(iv) No police protection was sought.

(v) Examination was not conducted as per C.H.S.E. Rules.

(vi) Rampant mal-practice was adopted inside the examination hall.

(vii) Mal practice could not be detected and reported because it was not possible to search as the situation was beyond control.

(viii) Majority were involved in malpractice.

(ix) Some invigilators were abettors to malpractice."

4. According to Section 21 of the Orissa Higher Secondary Act, 1982 (in short, "the Act"), the Council shall constitute different committees, and one such committee constituted is the Examination Committee. Regulations are framed u/s 30 of the Act which inter alia deals with powers and duties of the Committees specified in Section 21. Regulation 77 of the Orissa Higher Secondary Education Regulations, 1982 (in short, "the Regulations") deals with the powers of the Examination Committee. Clause (vii) thereof provides that the Examination Committee will consider the cases of malpractice and award of punishment to the candidates concerned.

5. Mass copying has not been defined in the Act or the Regulations. It has, therefore, to be understood in its common parlance. What could be considered mass copying cannot be laid down with mathematical precision. It has to vary and has to be decided on facts and circumstances of each case. Generally, it would be a case of copying by a vast majority or on a massive scale or in such large proportion that it was not possible to check it. It is the unwritten rule of any examination that it must be conducted fairly which would include the concept that the examinees must take the examination fairly. Adoption of unfair practice either individually or as mass is antithesis of fairness of the examination, and even in the absence of any specific rule for the purpose, the examining body has the power not to accept the result of the examination, and take action either against an 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 Council or the Committee is within its right to cancel the examination if such

a rule is violated. In a case of mass malpractice, where large number of candidates resort to malpractice, it is not a case of 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. It is not a question of charging any one individual with unfair means, but to condemn the examination as ineffective for the purpose it was held. The Council is not required to grant any opportunity to all the candidates to present their case. The Council does not charge any one with unfair means so that he could claim to defend himself. The examination itself was vitiated by adoption of unfair means at a mass scale. The Examination Committee is responsible for fair conduct of examination. The essence of examination is that the worth of every candidate appearing therein without any assistance from outside source is appraised. If at a particular centre the whole body of students receive assistance and manage to secure success, it is obvious that the Council cannot remain as a silent spectator. 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 Council was right in its conclusion that the examinations sought to be cancelled, then academic standards require that the Council's appreciation of the problem must be respected. It would not be for the Court to inquire in such matters. The Court cannot ask the Council to grant opportunity to all the candidates or their representatives with a view to ascertain whether they had received assistance from any outside source. That would encourage indiscipline. The position was succinctly stated by the Apex Court in the *The Bihar School Examination Board Vs. Subhas Chandra Sinha and Others*, .

The falling standards of education are resultant of unfair means being adopted at the examinations. The real worth of a student is never tested in the process. He who deserves five marks gets eighty-five marks because of assistance received from outside source and unfair means adopted. The degree or diploma or certificate is not received in its true sense and is tainted with the vice of adopting unfair means.

6. The Examination Committee consisting of reputed Professors and Educationists considering the report placed by the Flying Squad and being satisfied that there was resort to malpractice approved the same and directed the results of the examination of that particular sitting to be cancelled. There is no scope for interference with the decision.

The inevitable conclusion is dismissal of the writ application, which we direct. No cost.

S.N. Phukan, C.J.

7. I agree.