

(1991) 04 OHC CK 0020

In the Orissa High Court

Case No : O.J.C. No's. 5021, 5098 and 5099 of 1990

Sushmarani Das and Others

APPELLANT

Vs

Board of Secondary Education, Orissa and Another

RESPONDENT

Date of Decision : 02-04-1991

Acts Referred:

Constitution of India, 1950 — Article 226
Orissa Secondary Education Act, 1953 — Section 11, 21

Citation : AIR 1991 Ori 303

Hon'ble Judges : D.P. Mohapatra, J;D.M. Patnaik, J

Bench : Division Bench

Advocate : S.C. Dash, A.S. Naidu and P. Mohanty, for the Appellant; C.A. Rao, for the Respondent

Judgement

D.P. Mohapatra, J.—The common grievance raised by the petitioners in these writ petitions is against the action of the Board of Secondary Education, Orissa (opp. party No. 1) in cancelling the Certified Teachers' Examination (C.T. Examination) and Elementary Teachers' Examination (E. T. Examination) held in April, 1990 at the Sreekrishna Academy Centre where they were appearing. Though 63 examinees have filed these writ petitions, in all 308 candidates are stated to have suffered the consequence of the impugned action of the Board. The petitioners have prayed for issue of a writ of mandamus quashing the decision of the Examination Committee of the Board as per the notification dated 23-10-91 (Annexure 1) and directing the opp. parties to restore the results of the candidates of the C.T./S.T. Examination, 1990 of S. K. Academy Centre or in the alternative directing the Board to hold another Examination forthwith without collection of examination fees. The material portion of the impugned order as per Annexure 1 reads as follows:

"After perusal of the reports received from the Centre Superintendent/Deputy Centre Superintendents/Observers/Flying Squad/ Special Squad and careful consideration of all available documents regarding conduct of the C.T./E.T.

Examination, 1990 the Examination Committee is satisfied that examination at the following centre has not been conducted as per rules and regulations of the Board. Hence in pursuance of the Board's Regulations, C.T./E.T. Examination, 1990 is cancelled wholly as noted below against the Centre. There shall be no further examination in the cancelled papers and results of the affected candidates shall be processed taking the marks of the cancelled papers as "zero".

Sl. No. Name of the Centre Roll Nos. Papers.

1. S. K. Academy, Jagatsinghpur, Cuttack

C. T. 16P063, 23P113, 25P079, 27P111, 28P002-014, 016-019, 021-023, 025-096, 099-108, 110-123, 125-171, 173-246, 248-252, 254-300, 302-303. 29P070, 271, 276, 280, 389, 393, 396, 409, 424. E.T. RE 001, 002, 004, 005.

All Theory papers (Paper I to IX cancelled)

xx xx xx"

2. The material facts as evident from the averments in the writ petitions and the submissions of the learned counsel for the petitioners are that the petitioners appeared at the 1990 Annual Examination as private candidates since the institutions in which they were regular students were not recognised by the State Govt. The Centre Superintendent who is Headmaster of a High School conducted the examination which, according to the petitioners, was in accordance with the Rules and Regulations formulated by the Board. The flying squad and supervisors appointed by the Board had visited the S.K. Academy centre. When the result of the examination was declared it was found from the result-sheet as per Annexure 2 that the result of four candidates of the centre bearing Nos. 095, 102, 173 and 244 were withheld on the ground of mal-practice and results of the two candidates bearing Nos. 003 and 236 were withheld for other reasons, but subsequently the petitioners learnt that the result in all theory papers at the centre was cancelled by the impugned order (Annexure 1). The petitioners assailed the order mainly on the grounds that (a) it is not a speaking order; (b) the Board is not competent to direct that there shall be no further examination in the cancelled papers and results of the affected candidates shall be processed taking the marks of the cancelled papers as "O"(zero); (c) since the result sheet showed that the results of four candidates were withheld on the ground of mal-practice there was no reason or justification to cancel the results of all students; and (d) that the impugned decision is vitiated due to non-compliance with the principle of natural justice inasmuch as no notice was issued to the Centre Superintendent before taking the decision. The petitioners however conceded the power of the Board and its examination Committee to cancel the entire examination on the ground of mass mal-practice in certain circumstances. It is contended on behalf of the petitioners that there is no codified rule specifying the procedure to be followed by the Board in holding C.T./E.T. Examination, if there is any such rule/ regulation it is neither notified for knowledge of the candidates concerned nor printed on the reverse of the Admit card which is the procedure

followed in High School Certificate Examination and certain other Examinations. Therefore, according to the petitioners, it is entirely the look out of the Board to make arrangements for holding the Examination in accordance with the Rules/Regulations and if the Board fails to discharge its duty in the matter the examinee should not suffer. It is the further contention of the petitioners that the Centre Superintendent who was the principal authority in charge of conducting the examination at the Centre in question did not submit any report of alleged mal-practice amongst the examinees. In the absence of such basic material the decision of the Board to cancel the examination was vitiated and should be quashed.

3. In the counter affidavit filed on behalf of the opp. party No. 1-Board it is averred, inter alia, that during the examination at S. K. Academy centre members of the special squad had inspected the centre on different dates and had reported about mass mal-practice at the Centre. Reports to this effect were received from the Centre Superintendent, Deputy Centre Superintendent and the officers of the flying squad. On consideration of these reports the Examination Committee of the Board in exercise of jurisdiction vested in it by Regulation 17(d) of Chapter XD of the Board's Regulations held that the examination was not conducted properly as per Rules and Regulations and therefore decided to cancel all the theory papers of the S. K. Academy centre, the Committee further decided not to have any further examination in the cancelled papers in the same year. In paragraph 13 of the counter affidavit it is averred, inter alia, that the centre was visited by the special squad on 24-4-90 and 28-4-90 and by two officers of the Board who were appointed by the Examination Committee under Regulation 17(a) on 25-4-90. It is contended by the opp. party that in case of mass mal practice and improper conduct of examination the question of giving opportunity of hearing to the candidates concerned or the Centre Superintendent does not arise at all. It is asserted by the opp. party-Board that the Examination Committee is empowered to frame such Rules and Regulations as may be necessary for efficient conduct of the examination and to appoint officers besides the Superintendent of the Centre for supervision, inspection and surprise check, of examination work and the Committee is also empowered to take any such decision in respect of the conduct of C. T. Examination basing on the reports of the officers appointed for the purpose along with the report of the Centre Superintendent.

4. On our direction Shri C. A. Rao appearing for the Board submitted the reports of the Centre Superintendent and other officers on the basis of which the impugned decision was taken, for our perusal.

5. Before proceeding to consider the case on its merit it will be convenient to notice some relevant provisions of the Orissa Secondary Education Act, 1953 (hereinafter referred to as "the Act") and the Regulations of the Board of Secondary Education, Orissa (for short, the Regulation"). Section 11 deals with the powers and functions of the Board. Under Sub-section (d) of the said section

the Board has the power 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. Under Sub-section (e) the power to conduct examinations based on such courts as may be prescribed is vested in the Board and under Sub-section (f) the Board is empowered to admit candidates to its examinations in accordance with regulations. Section 21 of the Act vests power in the Board to make regulations. Sub-section (ii) of the said section enumerates some of the powers of the Board. Clause (j) empowers the Board to make regulations for the conduct of examination. In exercise of the aforementioned power the Board has formulated the Regulations which contain several chapters dealing with different topics.

Chapter XD contains Regulations for conduct of Teachers' Certificate Examination of the Secondary Training Schools. Under Regulation 1 it is laid down that the Board of Secondary Education shall conduct the Teachers' Certificate Examination of the Secondary Training Schools in the State of Orissa. Regulation 16 which contains disciplinary clauses casts certain duties and lays down the norms of behaviour of a candidate in the examination and empowers the Examination Committee to take action in cases of infraction. Regulation 17 deals with conduct of examination. Under Sub-regulation (a) it is provided that 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 Superintendent of the Centre for supervision, inspection and surprise check of examination work. Sub-regulation (b) on the basis of which the impugned order appears to have been passed provides that the Examination Committee where it is satisfied on the basis of report received from the 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 the Committee including cancellation of the examination wholly or in part. It is significant to note that this sub-regulation does not specifically empower the Examination Committee while cancelling the examination to further order that no examination will be held during the year and results of the candidates will be assessed taking the marks secured in the cancelled papers as Zero. Regulation 20 contains powers of the Examination Committee to take action. Sub-regulation (b) of the said Regulation lays down that the Examination Committee shall have the power to take action against any person connected with the examination for inefficient and improper discharge of duties. Chapter XE. contains the regulations for conduct of Elementary Training School Examination.

6. Shri C.A. Rao appearing for the Board fairly conceded that the Examination Committee has not framed any rule or regulation for conduct of the examination in question. It has only issued a set of instructions for guidance of invigilators, Centre Superintendents, examiners and others connected with the Examination. He also conceded that there is no specific power vested in the Committee to order, while cancelling the examination, that no other examination will be held

during the year and the result of the candidates will be assessed taking the marks in the cancelled papers as zero; he however submitted that this was not necessary in the case of C.T./E.T. Examinations as only one such examination is held in a year. Regarding the question of applicability of principles of natural justice, Shri S. C. Das appearing for the petitioners fairly accepted the position that it is well settled that in case of massmal-practice no examinee can claim to be noticed personally. Indeed it is averred in paragraphs of the writ application that law has been settled that if after valuation of answer papers it is found that the results of a centre are abnormally high compared to the average percentage of success of the Board, the examining authority is within its rights to cancel the results as a whole; law has also been settled by this Hon"ble Court that if the atmosphere both inside and outside the centre is abnormal and no candidate is expected to write his answers in a peaceful atmosphere, the entire examination can be cancelled.

7. In view of the accepted positions indicated above, the moot question to be considered is whether there were acceptable materials before the Examination Committee to come to the conclusion that the examination in question was not conducted as per rules and regulations of the Board and whether the Committee acted in fair and proper manner in taking the decision to cancel the examination in all theory papers held at the Centre.

8. As noted earlier, on our direction the Sri C. A. Rao submitted the various resorts which, as stated by him, formed the basis for the decision of the Committee. He conceded that the Committee did not hold any independent enquiry but only relied on the said reports. We may quote some passages from the reports.

"We observed rampant mal-practice going on inside the examination halls in presence of the invigilators who were mute spectators of the scene. The mal-practice was so pervasive that detecting specific cases was virtually impossible."

In another report it was observed :

"The candidates were informed of our arrival by the invigilators in the centre. I saw some of them throwing the incriminating materials, such as books, test-papers, printed materials and some hand-written materials and most of them kept those incriminating materials near their desks and benches without any fear and fumbling. There was a stirring and fluttering all through the halls (buildings) which would be seen even by a camel. I found almost all the candidates were adopting unfair means and violating the rules of the examination. I seized some of the incriminating materials, such as books, test papers, and some other printed and handwritten materials and came to the office room of the Centre. There I found the other member of the squad was in a cross. By watching the huge quantity of incriminating materials in my hand the Centre Superintendent asked me "what business do you have with these? Be compassionate or else you cannot be excused"."

In the said report it was recommended to cancel the second sitting Hindi paper of C.T. Examination on 25-4-90.

In the report submitted on the subsequent date it was observed:

"There was no improvement in the situation over the previous days. Mal-practice was rampant. Candidates were found in possession of incriminating materials like manuscripts, books etc. Lady candidates were allowed into the examination hall with vanity bags which contained books and manuscripts. They were using the same very comfortably in complete disregard to the indifferent invigilators. When brought to notice the C.S. remained silent. All these facts confirmed to our observation that the candidates were taking to mal practice with the consent and connivance of the invigilators."

All the reports bear the signature of the Centre Superintendent. There is also a certificate granted by him on 30-9-90 that the C.T. Examination, 1990 has been conducted in the S. K. Academy, Jagatsinghpur Centre smoothly as per rules and regulation of the Board.

On a bare perusal of the reports it is evident that there was large scale mal-practice on different days during the examination at the Centre.

9. The next question to be considered is the manner in which the Examination Committee considered the matter, On our direction to produce the materials to show how the Examination Committee of the Board considered the matter, Shri C. A. Rao produced the minute book of the Examination Committee in which the proceedings of the meeting of the Committee held on 15-9-90 were recorded. Against Item No. 2 of the said proceeding the resolution of the Committee to cancel all the theory papers of C.T./E.T. candidates appearing at the S. K. Academy, Jagatsinghpur was recorded along with the further decision that the results be processed taking the marks as zero (c) in the conceited subjects in view of the grave reports. There is neither any mention or any enquiry by the Committee nor any discussion of the materials which the Committee considered. It appears that the Committee considered the reports and took the decision to cancel the examinations in all theory papers at the Centre.

10. The Apex Court in the case of The Bihar School Examination Board v. Subash Chandra Sinha, reported in AIR 1970 SC 1260 considering a case of mal practice on mass scales observed as follows (at page 1273):

".....If there is sufficient material on which it can be demonstrated that the university was right in its conclusion that the examination ought to be cancelled then academic standards require that the university's appreciation of the problem must be respected. It would not be for the Court to say that you should have examined all candidates or even their representatives with a view to ascertaining whether they had received assistance or not. To do this would encourage indicipline if not also perjury."

In the case of Km. Nelima Misra Vs. Dr. Harinder Kaur Paintal and others, it was

ruled that in administrative actions duty is not so much to act judicially as to act fairly. Considering the power of the Chancellor under S. 31(8)(a) of the Uttar Pradesh State Universities Act, 1973 the Court held that the functions of the Chancellor is to consider and direct appointment of a candidate on the basis of the relative performance assessed by the export Election Committee and in the light of the opinion, if any, expressed by the Executive Council, his decision nonetheless is a decision on the recommendation of the Selection Committee. Such a power cannot be considered as a quasi-judicial power; there is no need to conform to the principles of natural justice. The Chancellor, however, has to act properly for the purpose for which the power is conferred; he must take a decision in accordance with the provisions of the Act and the statutes; he must not be guided by extraneous or irrelevant consideration, he must set not illegally, irrationally or arbitrarily; any such illegal, irrational or arbitrary action or decision, whether in the nature of legislative, administrative or quasi-judicial exercise of power is liable to be quashed being violative of Article 14, the principle of equality enshrined in Article 14 must guide every State action, whether it be legislative, executive or quasi-judicial.

This Court in the case of Satyajit Roy Choudhury and Others Vs. Utkal University and Others, held that though it is true that selection of the centres and conducting of the examination in the centres are the responsibilities of the University, recourse to large scale mal-practice leaves no alternative to the University except to cancel the results of the examination.

In the case of Sri G.S. Mohapatra v. Utkal University (O.J.C. No. 1491 of 1981 decided by a Bench of this Court on 22-12-81) the University had cancelled the results of Intermediate Examination in Arts and Science, 1981 of the Atal Behari College Centre, Basudebpur on the ground that some incriminating materials were found scattered on the verandah outside and outsiders including ex students were found near the Examination hall and were trying to supply incriminating materials. The Court held that from these materials it is gathered that though the atmosphere prevailing outside the examination premises was unsatisfactory and outsiders were trying to supply incriminating materials, there was no report that the examinees were assisted with or utilising incriminating materials. There was no report about adoption of large scale mal-practice. The Court while accepting the position that the University is responsible for the standards and conduct of the examination and the University's appreciation of the problem must be respected, on the facts of the case felt that there were not sufficient materials before the University for concluding that there was general or mass mal-practice. The decision of the University was held to be vitiated.

11. Let us now consider the materials available in the present case in the light of the principles laid down in the above noted decided cases. As noted earlier, the power of the Examination Committee to cancel the examination of a particular centre on the ground of mass mal-practice is not questioned, but what is questioned in the manner in which such power has been authorised by

Committee in this case. There are reports of the flying squad, counter-signed by the Centre Superintendent to show that rampant malpractice was going on inside the examination halls in presence of the invigilators who were mute spectators of the scene; the mal practice was so pervasive that detecting specific cases was virtually impossible. There was large scale outside interference. The members of the squad found some of the examinees throwing incriminating materials, such as books, test papers, printed materials and some hand-written materials etc. when they entered the examination hall. Most of the examinees had kept those incriminating materials near their desks and benches without any fear; almost all the candidates were adopting unfair means and violating the rules of the examination. Similar reports had been submitted in respect of different dates during the examination. It is relevant to note here that the submission of the learned counsel for the petitioners that the Centre Superintendent was not a party to any of these reports was factually incorrect. Indeed his signature appears on all the reports placed before us. Neither any allegation has been made nor any material has been produced before us to suggest mala fides or bias on the part of the Examination Committee. No materials was also produced to question the correctness of the reports. On the reports submitted by the officers of the flying squad it cannot be said that the decision of the Committee was based on no material or that it was illegal/irrational/arbitrary or that the Committee was guided by extraneous or irrelevant consideration. Of course it would have been better if the Committee had discussed the specific materials on which it placed reliance to come to the conclusion that the Examination at the Centre was not held in accordance with the Rules and Regulations. But that by itself, as held by the Apex Court, is not sufficient to enable this Court to interfere with the decision when materials are placed before the Court to show that recourse had been taken to large scale mal-practice.

12. On shifting the materials placed before us and on giving our anxious consideration to the matter, we do not feel persuaded to hold that the action taken by the Examination Committee on the basis that the examinees at the centre had indulged in mass mal-practice was incorrect or unfair or unjust. We therefore do not feel called upon to interfere with the decision of the Committee to cancel the examination in the theory papers held at the Centre.

13. The question that remains to be considered is regarding the further direction in the decision of the Committee that there shall be no further examination in the cancelled papers. This direction concededly was not within the power/competence of the Examination Committee. This part of the order is therefore unsustainable and has to be quashed. It is stated at the Bar that this year the C.T. / E.T. examination is scheduled to be held in the month of April.

14. In the result, the writ applications succeed in part. While declining to interfere with the decision of the Board of Secondary Education to cancel theory papers at the S. K. Acadmy, Jagatsinghpur we direct the Board to permit the candidates who appeared in the said examination from that centre to appear in

the ensuing C.T./E.T. Examination without paying any examination fees. They will appear at a centre other than the S.K. Academy centre.

D.M. Patnaik, J.

15. I agree.