
(2009) 03 OHC CK 0013
In the Orissa High Court

The Controller of Examinations, Council of Higher Secondary
Education

APPELLANT

Vs

Narmadaprava Sahoo and Another

RESPONDENT

Date of Decision : 06-03-2009

Acts Referred:

Citation : (2009) 107 CLT 887 : (2009) 1 OLR 799

Hon'ble Judges : B.S. Chauhan, C.J;B.N. Mahapatra, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. This writ appeal has been filed against the judgment and order of the learned Single Judge dated 3.11.2008 by which the writ Petition filed by the respondent No. 1 against cancellation of the result of her examination making the allegation of mass copy has been allowed.

2. The facts and circumstances giving rise to this case are that challenging the cancellation of examination in Chemistry Paper of +2 Science Annual Examination of 2008 in respect of the students of P.S.H.S. School, Danra, the writ petition was filed. The allegation of the petitioner/respondent No. 1 was that her result along with other students had not been declared in Chemistry Paper though there had been no complaint by the Flying Squad and without issuing any notice to her. In the result published on 25.7.2008, the petitioner/respondent No. 1 and other students were shown to have failed. From the mark sheets supplied to them it was reflected that they were awarded "O" mark in the Chemistry Theory Paper, though they secured good marks in the aggregate. The petitioner/respondent No. 1 as well as other students who appeared in the Science stream were declared failed except three candidates. According to the petitioner there was no report of untoward incident in or around the examination center on the relevant date when the examination was conducted in Chemistry Theory Paper. The invigilators/Centre Superintendent and the Flying Squad which visited the center had not reported about any mal-practice being adopted by any of the

candidates. No incriminating materials whatsoever were found to be in their possession in the said examination. Therefore, in the absence of any independent evidence of mal-practice their examination in Chemistry Theory paper had been cancelled and they had been awarded "0" mark.

3. The present appellant, i.e., the Controller of Examinations, Council of Higher Secondary Education filed counter affidavit contending that though there had been no adverse report against any of the students from the examination hall either by the invigilation team or by the Centre Superintendent or by the Flying Squad. However, at time of evaluation of the answer scripts in Chemistry Theory Paper of the petitioner/respondent No. 1 and other students of the school two Assistant Examiners observed that in almost all the answer scripts the answer to the objective questions carrying out 40 marks have been jotted down in one of the pages of the answer scripts and some of the candidates have mentioned the same to be rough work and all the answers are almost identical including the mistakes. In view of such report, suspicion arose that the answer to the objective questions might have been copied. In view thereof, the Examination Committee authorized the Chairman of the Council of Higher secondary Education to take a decision regarding cancellation/withholding the cases of different reported examination centers. Accordingly, the result of 47 candidates including the petitioner/respondent No. 1 appearing from the said center was withheld pending further inquiry. The matter was reported to the Committee of Experts and the answer scripts of the total number of 50 candidates from the said school were again scrutinized by the said Committee, who after verifying each answer script observed that in all the answer scripts, except the answer scripts in respect of three candidates, are written at different pages and marked as "rough work" or "cancelled" by putting a cross over the writing and some have damaged the writing by scribing over the same. In view thereof, the examination of the said paper was cancelled and the candidates have been awarded "O" mark. The Committee opined that answers to the objective questions might have been dictated or written on the Black Board just before arrival of the flying squad.

4. Arguments were advanced before the learned Single Judge and after taking into account the earlier judgment in an identical case in W.P.(C) No. 10106 of 2008 M. Vinita and Others Vs. Council of Higher Secondary Education, decided on 19.8.2008, the learned Single Judge came to the following conclusion:

This Court also finds that in the absence of any report made by the Flying Squad/ invigilators/Superintendent of the Examination Centre that the candidates adopted unfair means or there was mass mal-practice while appearing in the Chemistry paper where "O" mark has been awarded to them, just because, the answers to the objective questions were found to have been noted in some part of the answer scripts clumsily, the same cannot, by any stretch of imagination, be a basis for the Examination Committee to raise a suspicion on the candidate and to rely upon such suspicion and conclude that the candidates have adopted unfair means during the course of examination. The further conclusion in the

report of the committee that the answers to the objective questions must have been dictated prior to the commencement of the examination is also far fetch. This Court is, therefore, of the view that basing on such suspicion pointing, in the absence of any concrete materials, towards unfair means being adopted by the candidates, the Examination Committee could not have awarded "O" mark in the Chemistry paper of the petitioners as well as the other candidates of the said institution, more so, when no plausible reason has been assigned by the Examination Committee for doing so.

5. In the Writ Appeal same arguments have been advanced. Learned Counsel for the appellant has submitted that the learned Single Judge has not examined the case in correct perspective. It was a clear-cut case of mal-practice. In such an eventuality there was no occasion even to observe the principles of natural justice and to give any opportunity of hearing to any of the students. The opinion expressed by the Expert Committee was enough and the Council has proceeded accepting the said report. Therefore, the appeal deserves to be allowed.

6. On the contrary, Mr. S.S. Das, learned Counsel for respondent No. 1 submitted that the examination paper was in two parts. In the first part the paper, four questions were objective in nature and they were to be answered by writing a particular word or figure, while three questions had to be answered descriptively. There was no allegation so far as mal-practice in respect of three descriptive questions were concerned. So far as objective type of questions were concerned, they were carrying 40 marks and the mal-practice is seriously alleged to have been only in respect of one question which carried only one mark out of total marks of 40. In other respects opinion of the Expert Committee has not been to the extent that there was any possibility of mal-practice etc. More so, the report of the Export Committee may be merely an opinion and thus, the Council ought to have examined the Invigilators/Centre Superintendents/Members of the Flying Squad etc. The copies were distributed only about 5 minutes prior to the commencement of the examinations, therefore, the suggestion that somebody might have written the questions and answers on the blackboard and the candidates might have copied the same prior to coming of the Flying Squad etc. is a cock and bull story. Therefore, no order could have been passed in the facts and circumstances of the case without examining the invigilators/Center Superintendent etc. The earlier judgment and order of the learned Single Judge in M. Vinita (supra) was challenged before the Division Bench of this Court in W.A. No. 175 of 2008 which has been dismissed by a speaking and reasoned order dated 22.10.2008. Therefore, no view contrary to the same should be taken in this case, particularly in view of the fact that the judgment and order of the Division Bench dated 22.10.2008 has not been challenged further. The appeal lacks merit and is liable to be dismissed.

7. There can be no dispute over the settled proposition of law that in case of mal-practice the principles of natural justice do not apply. More so, the opinion of the Expert Committee should not be lightly interfered with by the Court even if there

is no direct evidence in respect of adoption of unfair means by the students in the examination. It may also not be possible even in some cases to recover any incriminating material used for adopting the unfair means in the examination.

8. Thus, it is not necessary for us to burden the judgment by citing the judicial pronouncements made by the Hon"ble Supreme Court in these regards.

9. We have also examined the answer scripts produced by the learned Counsel for the appellant-Council in presence of the learned Counsel for the respondents and it is not disputed that the alleged mass-copying has been found mainly in respect of one question, i.e., question No. 1-A(c). That question carried only 1 mark and it is stated that all the students have answered in a similar manner. So far as other three questions are concerned, it is not a case of mass copying as the answers given by the students are not inverbatim. There have been spelling mistakes in the answer books, which are not the same in all the answer books.

10. Serious objections have been regarding mass copying only in one question carrying only one mark out of 70 (out of 40 marks in objective questions). Two examiners, while evaluating the answer sheets raised suspicion of mass copying. The expert committee opined that somebody might have given dictation or might have written on the Black Board from where students might have copied. The Council had taken a decision adversely affecting so many students and cancelling their examinations taking into consideration the said suspicion and opinion without realising that the suspicion and expert opinion could not be a substitute of evidence. In such fact situation, the Council ought to have examined the staff on invigilation duty, i.e. teachers and peons etc. working there, the center Superintendent and the members of the flying squad. There should have been some evidence against the students. Examinations was conducted as per the instructions given by the Council, answers sheets were distributed just before the commencement of the examinations. Therefore, the Council ought to have examined as to whether there was a possibility on the part of Some one to dictate the answer or write it on the Black Board. Particularly, in view of the fact that persons who were responsible for conducting or supervising the examinations did not file any opinion whatsoever. Therefore, having no clinching evidence to show that there had been a mass copying, such a decision should not have been taken by the Council merely on conjectures particularly in view of the fact that mass copying is seriously alleged only in respect of one question carrying only one mark out of seventy marks in the Chemistry Theory Paper.

11. The learned Single Judge while deciding the writ petition has relied upon his earlier decision in M. Vinita (supra) which has been upheld by the Division Bench of this Court in dismissing the appeal filed by the present appellant vide judgment and order dated 22.10.2008.

12. In view of the above, we do not see any reason to take a view contrary to the same.

The writ appeal is devoid of any merit and is accordingly dismissed.

B.N. Mahapatra, J.

13. I agree.