

(1996) 12 OHC CK 0021
In the Orissa High Court
Case No : O.J.C. No. 5951 of 1996

Tushar Ranjan Sahu and Others

APPELLANT

Vs

Council of Higher Secondary Education, Orissa and Others

RESPONDENT

Date of Decision : 19-12-1996

Acts Referred:

Orissa Higher Secondary Education Act, 1982 — Section 21, 30
Orissa Higher Secondary Education Regulations, 1982 — Regulation 77

Citation : AIR 1997 Ori 194 : (1997) 1 OLR 182

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

Bench : Division Bench

Advocate : M.S. Panda and M. Satapathy, for the Appellant; S.D. Das and G.R. Verma, for the Respondent

Final Decision : Allowed

Judgement

Pasayat, J.—Thirty-nine candidates, who appeared at the Annual +2 Science Examination of 1996 conducted by the Council of Higher Secondary Education, Orissa (in short, "the Council") have assailed action of Council in directing cancellation of result so far as physics paper II is concerned, and award of 0 mark in respect of said paper to each candidate,

2. By the impugned notification dt. 17-6-1996 the Council has notified cancellation of examination in respect of various papers in various sittings of different colleges. Petitioners appeared as candidates of Dadhipsuan College, Puromunju in the district of Kechjhar. The examination on 2-4-1996 in respect of Physics Paper II was held in the first sitting of the day. Examination Committee of Council took note of available records on the conduct of examination, and was of the view that the examination was not conducted as per the Rules of the Council. In exercise of the powers vested in the Examination Committee by the Orissa Higher Secondary Education Act, 1982 (in short, "the Act") and the Regulations framed thereunder, resolution was passed on 16-6-1996 for cancellation of the examination. It was further resolved that the benefit of Hard

Case Rules was not to be extended to the candidates, and no further examination in respect of the paper/papers was to be held.

3. Petitioners have emphatically stated that the examination was conducted in most peaceful manner. Not even a single case of malpractice was detected, and therefore, the cancellation is mala fide. Their stand is supported by the Principal of the College, who has filed a counter affidavit.

4. Council has taken a positive stand in its counter affidavit that the Members of the Flying Squad who had visited the examination centre at the time of conduct of examination found that majority of the students were involved in malpractice, the invigilators were abettors to such malpractice. When the Flying Squad arrived at the College, the incriminating materials were thrown away through the windows, and were lying scattered inside and near the examination hall. Some printed materials were also found burning at a corner of half-constructed room of the college building.

5. Mr. M.S. Panda, learned counsel appearing for the petitioners submitted that there is no material whatsoever to link the candidates with the alleged materials found inside or outside the hall or being burnt. No incriminating material was seized from the possession of any candidate. Since the Principal has himself stated that the examination was being conducted in peaceful manner, report of the Flying Squad is found on incorrect materials and the cancellation is improper. It is further submitted that the principles of natural justice have been violated as no opportunity was granted to any candidate for having his or her say in the matter.

Mr. S. D. Das, learned counsel for Council, however, submitted that in case of mass malpractice it is not a requirement to give notice to any individual candidate. Report of the Flying Squad amply reveals disorderly manner in which the examination was being conducted with active participation of invigilators. He produced before us the records containing the report of the Flying Squad and the materials annexed thereto.

6. According to Section 21 of 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 deal with the 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.

7. 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 results 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 ought 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 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 85 marks because of assistance received from outside source and the 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.

8. In the case at hand, we find from the report that the Members of the Flying Squad arrived at the examination centre at 10.15 a.m. Relevant portion of their report reads as follows :

"..... As the Flying Squad was arriving the college, incriminating materials were thrown away through the windows, which were lying scattered outside. Some printed materials were also found burning a line corner of half constructed building."

It further indicated that the invigilators were abettors to the malpractice. Flying Squad had recommended cancellation of the sitting on being satisfied that the examination was not conducted as required in law. This being the background, we have no hesitation in holding that the decision of the Council cannot in any manner be termed to be vulnerable. The clean chit given to the candidates by the Principal in his counter affidavit is really of no consequence. The report itself shows that the invigilators were abettors to the adoption of malpractice. The counter affidavit of the Principal obviously is a facade to protect interest of those who were themselves responsible for infraction. In such circumstances, we could have normally declined to interfere. But certain facts have come to light on perusal of records produced before us by learned counsel for the council.

9. We find from the records that on the same day, i.e., 2-4-1996 two flying squad visited the centre almost at the same time. First squad consisted of three members, namely. Shri J. Sahu, Reader in History, Shri A. K. Mohanty, Reader in English and Shri R. M. Patra, Lecturer in Economics, who supervised the conduct of examination between 9.00 a.m. and 11.30 a.m. They observed that the examination was being conducted in peaceful manner without any infraction. Three other members of another flying squad supervised the conduct of examination between 10.15 a.m. and 11 a.m. Their observation has already been quoted above. It is strange that the two sets of members of the flying squads arrived at diametrically opposite conclusions about the manner of conduct of examination.

10. The moot question is whether the Examination Committee considered the two reports pragmatically. It was urged by Mr. S. D. Das, learned counsel appearing for the Council that on consideration of both the reports, the report suggesting cancellation was accepted. The minutes of the proceedings of the Examination Committee were produced before us. The Examination Committee has observed that it has considered the reports and was of the view that cancellation of examination of 39 numbers of listed centres was warranted. We are not concerned with the other reports. The case at hand has some distinguishing features. Two reports as indicated above were contradictory contextually. The reports related to almost simultaneous periods of visit. It would have been appropriate, had the Examination Committee indicated the reasons as to why it discarded the report observing that the examination was being conducted in peaceful manner. That having not been done, it would be appropriate for the Examination Committee to consider the reports afresh and take a fresh decision. We make it clear that we have not expressed any opinion about acceptability of any of the reports. It is startling that the reports are so diametrically opposite. Only one of the reports can be said to be reflecting the

actual state of affairs, and not both. If there was no adoption of unfair means, the report indicating to the contrary has serious consequences. If on the other hand there was adoption of unfair means, and the report shows that everything was in order, it is equally objectionable as it gives certificate of proper conduct to an examination which is not so. The Examination Committee would do well to make an indepth study of the two reports, find out the actual position and take stringent action against the members of the flying squad who have given an incorrect report. Members of flying squad are expected to make an on the spot study of the situation in an examination hall. Such members are normally experienced teachers. Their reports are required to be fair, unbiased and reflective of accurate fact situation. Serious consequences flow if the report indicates adoption of unfair means. Care and caution should be taken to submit a factually correct report. Any departure would be dereliction of duty breach of confidence imposed and has to be seriously viewed. No laxity in such matters is warranted.

11. In conclusion, we direct the Examination Committee to take a fresh decision within a month from today, and record reasons as regards acceptability of one of the reports. Thereafter necessary action shall be taken against the erring members.

The writ application is allowed to the extent indicated above.

S. N. Phukan, C.J.

12. I agree.