

(2010) 10 MAD CK 0215

In the Madras High Court

Case No : Writ Petition (MD) No's. 9378 to 9382 of 2010 and M.P. (MD) No's. 1, 2, 1, 2, 1, 2, 1, 2, 1, 2, 1, 2, 1, 2, 1, 2, 1 and 2 of 2010

V. Ananthi and Others

APPELLANT

Vs

The Registrar and The Controller of Examination

RESPONDENT

Date of Decision : 20-10-2010

Acts Referred:

Citation : (2010) 10 MAD CK 0215

Hon'ble Judges : K. Chandru, J

Bench : Single Bench

Advocate : M. Gnanagurunathan, for the Appellant; V. Panneerselvam, for the Respondent

Final Decision : Dismissed

Judgement

K. Chandru, J.—The Petitioners in both set of writ petitions are the same persons. In the first writ petition, they are seeking to set aside the order of the Respondent University, dated 20.5.2010, wherein the Chief Superintendent, Alagappa University, Distance Education Examinations at its Standard Matriculation School, Palani was informed that the University examinations held in May, 2010 at the Palani Centre are cancelled due to mass copying as reported by the Special Inspection Squad. The date of re-examinations was to be announced subsequently.

2. Notice of motion was ordered in these writ petitions. In the meanwhile, the same Petitioners on coming to know from the University website wherein it was indicated that reexaminations were to be held at Palani and Vizianagaram centres from 25.8.2010, filed another set of writ petitions to quash the said notification. When those writ petitions came up on 18.8.2010, this Court directed the second batch of cases to be heard along with the first batch of writ petitions. On notice from this Court, the Respondent University had filed a counter affidavit, dated 9.8.2010.

3. It is seen from the records that the Respondent University started Distance Education Programme from the year 1992-1993. They had also obtained permission from the Distance Education Council, New Delhi upto the academic year 2007-2008. Examinations by the University were conducted twice a year, i.e. in May and December. The examination centres were determined on the basis of students strength from time to time and Palani became one of the centres. The Standard Matriculation School at Palani was fixed as centre for conducting examinations in May, 2010. The theory part of the examinations for Under Graduate Courses and Post Graduate Courses were held from 5.5.2010 to 14.5.2010 and from 5.5.2010 to 18.5.2010 respectively. It was also found out by the University that right from the commencement of the examinations, there has been complaints of malpractices in that centre. Based on those reports, the University ordered the surprise squad to visit the centre. They also appointed the Registrar (In-charge), Dean-Research, Dean-College Development Council as part of the Squad. They visited the centre on 15.5.2010 at 11.00 a.m. When the squad visited the ground floor of the building where examinations were conducted, they found that there was mass copying going on in the centre. Even by the seating arrangements made, two or three candidates can sit in a same bench which will enable them copy from others. The squad also found that bribe amount of Rs. 1000/- per paper was given to the staff.

4. It was also stated that the Hall Supervisor, i.e.B. Kaleeswari also gave a written statement, dated 15.5.2010 repented that mass copying was permitted by collecting money from the examinees. Another Hall Supervisor, i.e.L. Kalaimathi also gave her written statement acknowledging the fact of copying by students with their books. The CorRespondent-cum-Principal of the School one Mrs. Vatsala Muthukrishnan also accepted that mass copying was done in at least two halls. On the basis of the report of the Squad and taking into account the reputation of the University, the University decided to cancel the examinations conducted in Palani centre. It is also stated that in order to maintain the standard of education and keeping the reputation of the University and confidence of general public, cancellation had taken place.

5. However, the Petitioner contended that only students in the ground floor were found copying and that cannot be taken as copying by all. The inspection was done only on 15.5.2010. If at all only that day's examinations can be cancelled and not the entire examinations undertaken by the Petitioners. It was also stated that cancellation has been done in contravention of principles of natural justice. The Petitioners were punished without being heard.

6. Mr. M. Gnanagurunathan, learned Counsel for the Petitioners in support of his contention, stated that mass copying is not defined anywhere. For the purpose of defining the said term, he placed reliance upon the judgment of the Allahabad High Court in Rajiv Ratna Shukla and Another Vs. University of Allahabad and Others, . Reliance was placed upon the following passage found in paragraph 5 of the said judgment which is as follows:

5. Mass copying has not been defined in the Act or the Statute framed under the University Act. 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 circumstances. It may be copying by a vast majority or on a massive scale or in such large proportion that it was not possible to check it....

Hence it was stated that there was no mass copying found in the centre.

7. For the purpose of reiterating their right to be heard before cancellation, he also relied upon a judgment of Chhattisgarh High Court in Bansal Academy etc. Vs. State of Chhattisgarh and Others, . He referred to the following passage found in paragraph 8 of the said judgment which is as follows:

8. ...It is trite that the impugned actions of the University authorities affect the interests and rights of the Petitioners. The University having invited the applications, having entered into a MO Us with the Petitioner-Institutions whereby and whereunder the Petitioner - Institutions were authorized to organize the courses and conduct examinations for the students admitted by them, having directed the Petitioner-Institutions to make admissions before a cut-off date prescribed by the University itself for the academic session 2005-2006, ought not have abruptly cancelled all the examinations organized and conducted by all the Petitioners on the alleged ground of mass-copying. In the Notification issued by the Registrar of the University dated 24-9-2005, except stating that the examinations are cancelled due to mass-copying, the details of mass-copying are not set out. It is an admitted position that before the Director, Institute of Distance Education issued letter dated 20.9.2005 and the Registrar of the University issued Notification dated 24.9.2005, none of the University authorities did issue any notice to the Petitioner-Institutions to know or have their say/ explanation with regard to the allegation of mass-copying. The action of the University, therefore, amounts to condemning a person unheard. The action apparently is vitiated not only on account of violation of principles of natural justice but also on account of violation of the mandates of Article 14, i.e. fairness, reasonableness and non-arbitrariness....

8. However, this Court is not persuaded to accept the contentions of the Petitioners in the light of the long line of decisions of the Supreme Court on similar issue. It is worthwhile to refer to some of those decisions.

9. In the earliest decision rendered in The Bihar School Examination Board Vs. Subhas Chandra Sinha and Others, , the Supreme Court held that in case of examinations held to be vitiated, it is unnecessary to give notice and the decisions of the educational authorities cannot be lightly interfered with. The following passages found in paragraphs 13 to 15 may be usefully quoted:

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.

14. ...To make such decisions depend upon a full-fledged judicial inquiry would hold up the functioning of such autonomous bodies as Universities and School Board. While we do not wish to whittle down the requirements of natural justice and fair-play in cases where such requirement may be said to arise, we do not want that this Court should be understood as having stated that an inquiry with a right to representation must always precede in every case, however different. The universities are responsible for their standards and the conduct of examinations. The essence of the examinations is that the worth of every person is appraised without any assistance from an outside source. If at a centre the whole body of students receive assistance and are managed to secure success in the neighbourhood of 100% when others at other centres are successful only at an average of 50%, it is obvious that the University or the Board must do something in the matter. 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 university was right in its conclusion that the examinations ought to be cancelled then academic standards require that the university's appreciation of the problem must be respected. It would not do for the Court to say that you should have examined all the candidates or even their representatives with a view to ascertaining whether they had received assistance or not. To do this would encourage indiscipline if not also perjury,

15. We are satisfied that no principle of natural justice was violated in this case. The Board through its Chairman and later itself reached the right conclusion that the examinations at this Centre had been vitiated by practising unfair means on a mass scale and the Board had every right to cancel the examination and order that a fresh examination be held. There was no need to give the examinees an opportunity of contesting this conclusion because the evidence in the case was perfectly plain and transparent. We therefore set aside the order of the High Court and ordered dismissal of the writ petition but made no order as to costs.

(Emphasis added)

10. The Supreme Court vide its judgment in Maharashtra State Board of Secondary and Higher Secondary Education Vs. K.S. Gandhi and Others, dealt with the scope of application of principles of natural justice. The following

passage found in paragraph 22 may be usefully extracted below:

22. From this perspective, the question is whether omission to record reasons vitiates the impugned order or is in violation of the principles of natural justice. The omnipresence and omniscience (sic) of the principle of natural justice acts as deterrence to arrive at arbitrary decision in flagrant infraction of fair play. But the applicability of the principles of natural justice is not a rule of thumb or a strait-jacket formula as an abstract proposition of law. It depends on the facts of the case, nature of the inquiry and the effect of the order/decision on the rights of the person and attendant circumstances. It is seen from the record and is not disputed, that all the students admitted the factum of fabrication and it was to his or her advantage and that the subject/subjects in which fabrication was committed belong to him or her. In view of these admissions the Enquiry Officer obviously did not find it expedient to reiterate all the admissions made. If the facts are disputed, necessarily the authority or the Enquiry Officer, on consideration of the material on record, should record reasons in support of the conclusion reached. Since the facts are admitted, the need for their reiteration was obviated and so only conclusions have been stated in the reports. The omission to record reasons in the present case is neither illegal, nor is violative of the principles of natural justice. Whether the conclusions are proved or not is yet another question and would need detailed consideration.

11. Further reiterating the same principles, the Supreme Court in *Madhyamic Shiksha Mandal, M.P. Vs. Abhilash Shiksha Prasara Samiti and Others*, observed in paragraph 2 as follows:

2. ...In the face of this material, we do not see any justification in the High Court having interfered with the decision taken by the Board to treat the examination as cancelled. It is unfortunate that the student community resorts to such methods to succeed in examinations and then some of them come forward to contend that innocent students become victims of such misbehaviour of their companions. That cannot be helped. In such a situation the Board is left with no alternative but to cancel the examination. It is extremely difficult for the Board to identify the innocent students from those indulging in malpractices. One may feel sorry for the innocent students but one has to appreciate the situation in which the Board was placed and the alternatives that were available to it so far as this examination was concerned. It had no alternative but to cancel the results and we think, in the circumstances, they were justified in doing so. This should serve as a lesson to the students that such malpractices will not help them succeed in the examination and they may have to go through the drill once again....

(Emphasis added)

12. The Supreme Court vide its judgment in *Dr. Ambedkar Institute of Hotel Management, Nutrition & Catering Technology, Chandigarh v. Vaibhav Singh Chauhan* reported in (2009) 1 SCC 59 once again in paragraphs 12 and 27 reiterated the same principles. Those passages may be usefully extracted below:

12. The learned Single Judge in the interim order has then emphasised on the fact that the Respondent had apologised and had confessed to the possession of the chit. In our opinion this again is a misplaced sympathy. We are of the firm opinion that in academic matters there should be strict discipline and malpractices should be severely punished. If our country is to progress we must maintain high educational standards, and this is only possible if malpractices in examinations in educational institutions are curbed with an iron hand....

27. Before parting with this case, we would like to refer to the decisions of this Court which has repeatedly held that the High Court should not ordinarily interfere with the orders passed in educational matters by domestic tribunals set up by educational institutions vide *The Board of High School and Intermediate Education U.P. Vs. Bagleshwar Prasad and Others*, , *Dr. J.P. Kulshreshtha and Others Vs. Chancellor, Allahabad University and Others*, , *Rajendra Prasad Mathur Ors. Vs. Karnataka University and Another*, . We wish to reiterate the view taken in the above decisions, and further state that the High Courts should not ordinarily interfere with the functioning and orders of the educational authorities unless there is clear violation of some statutory rule or legal principle. Also, there must be strict purity in the examinations of educational institutions and no sympathy or leniency should be shown to candidates who resort to unfair means in the examinations.

(Emphasis added)

13. Very recently, the Supreme Court in *All India Railway Recruitment Board v. K. Shyam Kumar* reported in (2010) 6 SCC 614 in paragraphs 18 and 43 applied the *Wednesbury* principles while reviewing the decision of the authorities and observed as follows:

18. We are, in this case, primarily concerned with the question whether the High Court was justified in interfering with the decision taken by the Board in conducting a retest for those who had obtained minimum qualifying marks in the first written test and directing the Board to go ahead with the recruitment process on the basis of the first written test against which there were serious allegations of irregularities and malpractices....

43. We, therefore hold, applying the test of *Wednesbury*1 unreasonableness as well as the proportionality test, the decision taken by the Board in the facts and circumstances of this case was fair, reasonable, well balanced and harmonious. By accepting the third alternative, the High Court was perpetuating the illegality since there were serious allegations of leakage of question papers, large scale of impersonation by candidates and mass copying in the first written test

14. In the light of the factual matrix and the legal precedents set out above, there is no case made out to entertain the writ petitions. Hence all the writ petitions will stand dismissed. No costs. Consequently, connected miscellaneous petitions stand closed.