

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR
O R D E R

Indrajeet Singh Meena vs. State of Raj.& Ors.

S.B.CIVIL WRIT PETITION NO.5166/2007

Akhilesh Birla vs. State of Raj.& Ors.

S.B.CIVIL WRIT PETITION NO.5162/2007

Mahesh Kumar Maheshwari vs. State of Raj.& Ors.

S.B.CIVIL WRIT PETITION NO.5163/2007

Rajendra Singh Meena vs. State of Raj.& Ors.

S.B.CIVIL WRIT PETITION NO.5164/2007

Manoj Kumar Meena vs. State of Raj.& Ors.

S.B.CIVIL WRIT PETITION NO.5165/2007

DATE OF ORDER : 29th February, 2008

P R E S E N T

HON'BLE JUSTICE SHRI GOPAL KRISHAN VYAS

Mr.Ravi Bhansali along with

Mr.Vivek Shrimali, for the petitioners.

Mr.B.L.Bhati, Additional Government Counsel.

BY THE COURT:

In this bunch of writ petitions, the petitioners are challenging the order dated 27/7/2007 (Annex.3) and further prayed for a direction to the respondents to declare their

results in accordance with the papers performed by them in Secondary School Examination.

In all these writ petitions similar point is involved, therefore, for convenience, they are being disposed of by this common order and facts of S.B.Civil Writ Petition No. 5166/2007 (Inderjeet Singh Meena vs. State of Raj. & Ors.) are taken into consideration.

The brief facts of the case are that the petitioner appeared in the examination of Secondary School conducted by the Board of Secondary Education, Rajasthan, Ajmer for academic session 2006-2007 at Govt. Secondary School, Itunda District Bhilwara during the period 15/3/2007 to 30/3/2007. According to the petitioner, he is having excellent academic record as he secured 79% marks in the Board Examination of Class VIII held in the year 2005. In the Secondary School Examination also, he appeared with due preparation and dedication and he was hopeful of getting good percentage of marks. But, all of a sudden, he received a communication dated 15/6/2007 from the Board of

Secondary Education alleging therein that as per the report of examiner he was found to be using unfair means for five questions during examination of II paper of the Social Science. In the said communication, three possible unfair means were alleged to have been used while solving the said questions, which are as follows:

- (i) Taken external assistance/somebody has dictated the answers to them or
- (ii) Use some cheating paper containing answers to the problems or
- (iii) Copied answers from some Pass Book/Text Books.

while narrating the above three points of unfair means, it is further alleged that according to rules of the Board, the said action is punishable and the case of the petitioner along with relevant record was placed before the Result Committee and the Committee found the said charge of using unfair means proved. Upon which, the Committee decided to inform the petitioner to appear before the Committee to clarify his stand and he was was

directed to send his explanation by 23/6/2007 through registered letter or if the petitioner is desirous to avail opportunity of hearing then he may appear on 25/6/2007 at 11.00 am in the office of Inquiry Officer with all relevant record.

In pursuance of said communication, the petitioner appeared before the Inquiry Officer & submitted his explanation. The original document/answer sheets and reports were shown to him.

On 25/6/2007, when petitioner appeared before the Inquiry officer, he realized that opportunity of personal hearing is nothing but an eyewash or an empty formality because batch of three students were called at a time and during interaction some of students were directed to solve the questions as appeared in original examination and some of the students were given fresh question papers. The petitioner also prayed for giving fresh questions because he was fully prepared and having a good academic background but his

request was not acceded to. According to the petitioner after appearing before the Inquiry officer, he was firm that he will be awarded good marks and his result will be declared but to his utter surprise he was served with an order, whereby, he was found guilty of using unfair means in the Board Examination 2007 and he was penalized with cancellation of his examination for the year 2007. According to the petitioner, by this cancellation order of examination, the Board has spoiled his career and by this action he has suffered one year loss of his studies purely on presumption and imagination of the Board, which cannot be permitted to stand. In cancelling the examination of 2007, the Board has not even thought proper to disclose the reasons for arriving at such a perverse conclusion.

It is also pointed out by the petitioner that in all 56 students were taken to the task by way of issuing similar notice, but after completion of inquiry, result of 29 students was declared and they were exonerated by the Committee, but petitioner along with 26 other

students were penalized by cancelling their examination of Secondary School for the year 2006-2007. Learned counsel for the petitioner while attacking upon the order impugned contended that similar kind of notices were issued to the students, whose results had been declared but case of the petitioner was not considered at par with those students, who were similarly situated namely; Shri Vishnu Kumar Vaishnav, Sangeeta Meena and Piyush Kumar Maheshwari. Upon these students also same allegations were levelled but no punishment was inflicted and their results were declared. It is submitted by the learned counsel for the petitioner that respondents have not shown any reason or ground to justify their action. It is vehemently argued by the learned counsel for the petitioner that the Board has passed the order of cancellation in a mechanical manner which is evident from the fact that the order is in printed/typed form and similar type of orders have been issued in case of other students also. The Board has not even mentioned that what evidence is on record for levelling such allegation of using unfair means.

while inviting the attention of the Court towards the notice dated 15/6/2007, it is argued that at the time of issuing notice, the Board itself was not sure about type of unfair means used by the petitioner so also notice was issued on three grounds which are altogether different and not connected with each other and that too in the form of printed letter. Upon persual of notice it does not disclose any reason or evidence upon which the Board has arrived at with *prima facie* finding that it is a case of use of which unfair means. When Board itself was not firm at the time of issuing notice then it is obvious that petitioner was indulged in a false case.

It is vehemently argued by the learned counsel for the petitioner that all the three allegations cannot be levelled at a time because if a students is found to have used unfair means then he may be guilty of one of the allegations mentioned in the notice, but in the present case by simply ticking on three points, the Board has issued notice of using unfair means in the examination. It is also

argued that the Board itself has printed all the possible modes of unfair means in the examination by making five points and word 'or' has been used between all these points/allegations, which clearly shows that all these points/allegations are different from each other. But, in a mechanical manner, the Board has issued the notice dated 15/6/2007 by levelling three allegations at a time out of five printed points.

According to the petitioner, without considering the reply submitted by the petitioner and without considering any of the points raised by him at the time of hearing, straightway impugned order dated 27/7/2007 has been passed. It is contended by the learned counsel for the petitioner that in all the cases identical and verbatim language has been used for cancelling the examinations and that too without evidence and disclosing any reason or consideration by the respondent Board.

It is further submitted that as per the cancellation order dated 27/7/2007, it is only

informed that the petitioner has been found guilty of using some cheating papers containing answers. How the inquiry officer and the Board has come to this conclusion without any evidence, oral or documentary, is beyond imagination. Simply, if the examiner finds that the answer to a particular question is same in the answer books of some of the students, it cannot be a ground to allege that such students have indulged themselves in using unfair means. Therefore, the order of cancellation of examination has been passed in mechanical manner, so also the punishment order is also a printed order bearing same language and has been passed without considering the reply and the points raised at the time of personal hearing, therefore, it is totally against the principle of natural justice and deserves to be quashed.

Learned counsel for the petitioner has invited the attention of the Court towards the judgment rendered in 1974 RLW 230 [Indira Methi vs. Board of Secondary Education, Rajasthan, Ajmer] so also the judgment reported

in AIR 1981 (Raj.) 69 [Sanjay Lobo vs. University of Rajasthan] and AIR 1981 (Raj.) 188 [Suresh Kumar Bagaria vs. University of Rajasthan]. While citing these judgments, it is submitted that in all these judgments, the Coordinate Bench of this Court after considering the entire facts, quashed the order of cancellation of examination and passed an order to declare the result and since the case of petitioner is also on the same footing, the cancellation order deserves to be quashed.

Learned counsel for the respondents while refuting the allegations and grounds raised by the petitioner submitted that the relief prayed for in these writ petitions should not be granted because the petitioner and other similar candidates were was found indulged in using unfair means and upon the report of examiner, who was assessing the answer books of second paper found that answers of five questions were same in language and ditto and that could not happen without some outer help, therefore, the examiner has made complaint and his report was placed before the

Board and after providing opportunity of personal hearing to such students including the petitioner, the Board has arrived at a conclusion that it is a case of mass copying and appropriate case for taking serious action for maintaining good education standards and, therefore, the decision of cancellation of result was taken, which cannot be questioned under Article 226 of the Constitution of India.

According to the counsel for the respondent, opportunity of hearing was given to the petitioner and considering the stand taken in personal hearing and the relevant provisions of law, the decision to cancel the examination of 2007 was taken, which is just and proper. It is also submitted that not only the action has been taken against the petitioner but action has also been taken against the center, where the petitioner appeared in said examination by de-notifying it as center for future examinations. It is argued that the action has been taken to maintain prestige of education system in Rajasthan and discouraging the practice of use of unfair means. According to

the respondent, decision was taken purely in accordance with the prevailing rules relating to use of unfair means.

with regard to the stand of petitioner for not passing reasoned order and application of mind, it is submitted that Board is not required to pass order as if it is passing any judgment. The order impugned has been passed on the basis of inquiry report in which recommendations were made to cancel the examination on the allegation of using unfair means and all has been done after giving adequate opportunity to hearing.

with regard to the allegation that order has been passed in mechanical manner and without application of mind, it is submitted that notices were issued to 56 students of same center and out of them only 27 were found guilty of using unfair means and in their cases decision to cancel the examination was taken while giving benefit of doubt to others. Unfortunately, petitioners were found guilty of using unfair means in the examination,

therefore, their examinations were cancelled.

Learned counsel for the respondent has invited my attention towards provisions of Sections 2(c) and 3 of the Rajasthan Public Examination (Prevention of Unfair Means) Act, 1992 in which definition of unfair means and provision of punishment for using unfair means are provided. It is submitted by the learned counsel for the respondent that petitioner cannot claim sympathy because examiner while evaluating the copies of examination found that identical answers were given by all the students.

Learned counsel further invited my attention towards judgment of this Court passed in S.B.Civil writ Petition No.4901/2006 by Coordinate Bench in which learned Single Judge of this Court while following the decision rendered at Jaipur Bench in S.B.Civil writ Petition No.6368/2006, wherein, the court has refused to interfere in the matter of using unfair means. Learned counsel for the respondent has invited my attention towards two

more judgments of Jaipur Bench one in S.B.Civil writ Petition 6368/2006, which is followed by learned Single Judge of Principal seat and second in S.B.Civil writ Petition No.6583/2005, wherein, learned single Judge of this Court has refused to interfere in the similar matter while observing that this court under writ jurisdiction cannot sit in appeal over the discretion used by the concerned authority on expert report.

After hearing both the parties perusing the pleadings of the case so also the judgments cited by both the learned counsel, first of all it is required to observe that in all these cases identical and verbatim notices were issued to the students, so also, in all the notices the allegations were also same, which reads as under:-

“2- केन्द्र पर बाहरी सहायता/बोलकर उत्तर लिखवायें हैं अथवा

3- समान सूत्र /पर्ची इत्यादि व सहायता प्राप्त कर उत्तर लिखें हैं अथवा

4- पास बुक/पाठ्यपुस्तक से नकल कर उत्तर लिखें हैं।”

All these notices were issued in printed form without disclosing as to how the examiner has come to the conclusion for making such allegations against the petitioners, who are teenagers. Upon perusal of the notices, it is clear that till issuance of notice the Board was not firm that which type of unfair means has been used by the petitioner and, therefore, three types of allegations were leveled against the petitioners. Petitioners were directed to appear on 25/6/2007 for personal hearing and before that they were asked to file their written reply till 23/6/2007. The petitioners appeared before the Board and refuted the charges levelled against them. On their personal appearance, some of the students were directed to solve the questions, as appeared in the examination and some students were given fresh question. However, without disclosing any reason, the impugned order dated 27/7/2007 was passed. Abstract of the order is very important for adjudicating the present controversy, which reads as under:

“1-वह बोर्ड परीक्षा-2007 के दौरान अनुचित सामग्री

लाने का दोषी पाया गया तदर्थ परीक्षा परिणाम समिति के निर्णयानुसार उसकी वर्तमान परीक्षा निरस्त कर दी गई है। वह आगामी परीक्षा में प्रवेश हेतु सम्बन्धित विद्यालय प्रधान से यथासमय सम्पर्क स्थापित करें।"

Upon perusal of the aforesaid reasoning, it cannot be presumed that petitioners' version was rightly considered by the Committee. If respondent Board is of the opinion that the petitioners carried with them some material at the time of examination then obviously, for proving such allegation/guilt, the Board is required to conduct inquiry at the centre and to collect oral as well as documentary evidence. It is not known to the petitioner that upon which evidence allegations are levelled and upon which evidence finding has been given for such allegations, therefore, it can be said that Board has passed the impugned orders in mechanical manner that too in a printed form and the statutory authority while passing adverse order against the students in this manner was required to pinpoint specific act based on some evidence,

oral or documentary but all basic components and requirements of law are lacking in this case.

It is true that the Committee was constituted while finding that the matter is very serious and opportunity of hearing was given but for the purpose of reasonable opportunity of hearing, the adjudicating authority is required to follow certain procedure namely (i) the adjudicating authority should give all the information as to the nature of the case which the party has to meet, (ii) should disclose all information, evidence or material which the authority wishes to use against the individual (iii) to receive all the relevant materials which the individual wishes to produce and (iv) it should give to the individual concerned an opportunity to rebut such information or material. But in this case, upon perusal of the notice and impugned order, it is clear that none of these points are in existence. In the absence of above points, how it can be said that inquiry has been conducted in fair manner. This proposition of law was

considered by this Court in Indira Methi's case (supra) in which in similar circumstances the learned single Judge of this Court has held in para 10 as under:-

"10. In the light of above principles I have now to see whether reasonable opportunity was afforded to the petitioners to meet the case against them. From the reply it appears that a complaint was received by the non-petitioners against the petitioners and it was on that complaint that show cause notices were issued to the petitioners. It is further apparent from the reply that the matter was referred to the expert in the subject who had given opinion against the petitioners even before the enquiry officer examined the delinquent examinee. The inquiry officer did not disclose the gist of the complaint nor the report of the expert which were in existence prior to the date when he embarked upon enquiry. The show cause notice also did not specify the particulars of unfair means alleged to have been resorted to by the petitioners in the subject of arithmetic. The enquiry officer merely inquired as to whether the petitioner copied from the another candidate or whether she allowed the another candidate to copy from her answer book but did not ask whether they copied from a common source. All that can be gathered from the statement of the petitioner before the enquiry officer is that information was elicited from her as to the fact whether her answer tallied with another candidate's answer and whether she allowed copy or had copied from the answer book of

the another candidate. This in my opinion is not at all sufficient specification of the charge and it is difficult to hold that the petitioner could make out from the queries of the enquiry officer the real case which she had to meet. The results committee had relied upon the report of the enquiry officer but that report was also not confronted to the petitioner. Mr.M.D.Purohit seriously contended that it was not necessary to disclose or confront all the material used by the results committee to the petitioner under the principles of natural justice. I am unable to agree. It is a basic requirement of the principle of natural justice that the materials which are sought to be used against a particular individual are to be disclosed to him before any adverse order is passed against him. It was then contended by Mr.Purohit that the petitioner could have asked for furnishing the further materials which she had failed to do and in the statement before the enquiry officer she had categorically stated that she had nothing to say further. According to the learned counsel for the non-petitioners, there was therefore sufficient compliance of the principles of natural justice. In this connection he has placed strong reliance upon Prem Prakash vs. Punjab University(12). It is true that in Prem Prakash's case their Lordships of the Supreme Court have observed that the examinee can ask for more information and details with regard to the material evidence which may be sought to be used against her/him. From these observations Mr.Purohit urges that the petitioner having not asked for the further information she cannot make a grievance in regard to failure to supply particulars as to charge and evidence to be used

against her. The observations of their Lordships are to be taken in the context of the facts of that case. The necessary documents were supplied in that case to the delinquent and all the necessary certified copies of the documents including the order of the standing committee were supplied to the candidate. In that case delinquent was also given an opportunity to answer a questionnaire and the standing committee also gave him a bearing and put certain questions to him. As stated earlier what will be the extent to which the principle of natural justice will be imported in a case depends upon the facts and circumstances of each case. In that case the student had asked for the copies also and was made aware of the case which he had to meet. In that context their Lordships in para 9 of the judgment observed that the copies of the reports of the examiners were supplied to the appellant as also the questions which were put to him in the questionnaire by the standing committee when he personally appeared before it and all these facts fully established that he was informed of the charge against him. It was in these circumstances that their Lordships did not allow the objection of the delinquent in that case. But as regards apprising the nature of the charge and the disclosure of materials sought to be used against the delinquent in my opinion is the responsibility of the Board. The reason is how could the delinquent examinee ask for the incriminating materials to be used against her unless apprised of it. The results committee availed of the examiner's and expert's report without confronting it to the concerned petitioner nor did it give any opportunity to the petitioner for

giving explanation. In these circumstances, it is difficult to hold that the reasonable opportunity was given in the instant case and consequently there was a violation of principles of natural justice."

The said principle was further followed in two judgments cited by learned counsel for the petitioner referred to above. Therefore, in my opinion the decision rendered in Indira Methi's case covers the controversy of the present case and is complete answer to the present case in which learned Single Judge of this Court while following as many as 14 judgments interfered in the matter against the action taken by the Board in a very casual manner.

In these circumstances, I am of the opinion that in this case also it was expected from the respondent authorities, who are entrusted with the task of maintaining education standard, to pass order in accordance with law. Upon perusal of the notice and impugned order, it is clear that these orders are cyclo-styled/printed orders. It does not disclose what type of recommendation was made

by the committee. In my view, recommendation of the committee cannot be treated as a secret document nor it is a privilege document. The respondents are under obligation to act in fair manner when such a harsh decision is taken which has spoiled the career of teenagers.

Upon aforesaid discussion, in my opinion, the respondents have acted in very mechanical manner, without application of mind and in printed and verbatim notices and punishment orders were issued, which is not expected from the Educational Authority like the Board of Secondary Education, Ajmer when they are punishing the teenagers and casting stigma upon them. Therefore, notices as well as punishment orders dated 27/7/2007 in each case deserve to be set aside for the reason that 29 students against whom similar allegations were levelled but they were given benefit of doubt and upon same allegations the present petitioners have been punished.

Accordingly, all the writ petitions are allowed. The notices as well as punishment

order dated 27/7/2007 passed by the respondent Board in each case is hereby quashed. The respondent Board is directed to declare the result of the petitioners forthwith.

(GOPAL KRISHAN VYAS), J.

Pankaj Baweja