

S.C.PARIJA, J.

W.P.(C) NO.18042 OF 2011 (Decided on 25.11.2011)

**CHOUDHURY JIBITESH
PRADHAN & ORS.**

.....Petitioners.

.Vrs.

**COUNCIL OF HIGHER SECONDARY
EDUCATIONORISSA & ANR.**

.....Opp.Parties.

For Petitioners - M/s. Sameer Ku.Das, S.K.Mishra.
For Opp.Parties - M/s. A.K.Bose, P.K.Das.

S.C. PARIJA, J. The writ petition has been filed by the students of the Panchayat Samiti College, Saharapada, in the district of Keonjhar, challenging the Notification dated 18.5.2011 (Annexure-1), issued by the Council of Higher Secondary Education, Orissa, (the 'CHSE' for short) cancelling the 1st sitting examination in the subject English, held on 15.03.2011 at their College Centre of Annual Higher Secondary Examination, 2011, in Arts stream and awarding "0" mark.

2. The case of the petitioners is that they had appeared in the subject English of Annual Higher Secondary Examination, 2011, from their College Centre as regular candidates on 15.03.2011. As they had prepared very well for the examination, they expected to get good marks in the said subject. The examination was conducted at their College Centre in a smooth manner and there was no untoward incident during the examination. The grievance of the petitioners is that when their result was published, they were shown to have failed in the subject English and they have all been awarded "0" mark. On enquiry from the Centre Superintendent it was ascertained that the examination in the subject English has been cancelled by the CHSE on the ground of mass malpractice and all students appearing from the College Centre have been awarded "0" mark in the said subject, though only four students were found to have resorted to unfair means and were booked under malpractice by the members of the Flying Squad, who had visited the College Centre on the date of the examination on 15.03.2011.

3. Learned counsel for the petitioners submits that as 171 candidates appeared in the examination, which was conducted in five different halls/rooms in the College Centre and only in one hall four candidates have been booked under malpractice, as has been reported by the members of the Flying Squad, the present petitioners, who were not the candidates sitting in the particular hall/room cannot be made to suffer, for the fault of those four candidates. In this regard, it is submitted that as the cancellation of the examination in the subject English and awarding "0" mark to the petitioner adversely affects their educational career, they should have been given an opportunity to explain, especially when there was no allegation against any of them of having resorted to the malpractice, as per the report of the Flying Squad. It is further submitted that the Examination Committee of CHSE has accepted the report

of the Flying Squad mechanically and passed the impugned Notification dated 18.5.2011, cancelling the examination in the subject English and awarding “0” mark to the petitioners, without verifying the veracity of the allegations made therein. In this regard, it is submitted that the report of the Flying Squad cannot be accepted as gospel truth and therefore, it was the duty of the CHSE to make further enquiry and ascertain the correctness of the allegations detailed in the said report, before taking such drastic action thereon, involving the academic career of the petitioners.

4. Learned counsel for the petitioners has relied upon the decision of this Court in ***Governing Body, Jambeswar Mahavidyalaya, Balasore –vrs- Council of Higher Secondary Education, Orissa & another***, 2005(II) OLR-518, in support of his contention that when there is no specific allegation of malpractice against any of the petitioners, the cancellation of their result on the ground of mass malpractice is not proper and justified. In this regard, learned counsel has also relied upon two other decisions of this Court in ***Principal, Ghanteswar Mahavidyalaya –Vrs– Council of Higher Secondary Education, Orissa Pragyapitha and seven others***, 2008(II) OLR-302 and the case of ***M. Vinita and others –Vrs– Council of Higher Secondary Education, Orissa***, 2008(II) OLR-622.

5. The opposite parties have filed a counter affidavit stating therein that the petitioners who are students of Panchayat Samiti College, Saharapada, had appeared in the 1st sitting in the subject English on 15.3.2011 from their College, which was declared as a Examination Centre of Annual Higher Secondary Examination, 2011. While the examination was in progress, the members of the Flying Squad appointed by the CHSE arrived at the College at 10.30 A.M. and found that there was rampant malpractice in the said Examination Centre in the 1st sitting, relating to the subject English. The Flying Squad members, on arrival at the gate of the Examination Centre found that outsiders were carrying books and note books with them and there was disturbing situation inside the campus. The Squad members further found that the staffs of the College were collecting the chits and everybody was busy in destroying them. The Squad members further found that the Centre Superintendent was taking a lead in such activity and some of the Invigilators, who were appointed from outside College, could not satisfactorily establish their identity and that the examination was not conducted as per the norms prescribed by the CHSE. Accordingly, the Flying Squad members submitted their report in the prescribed form along with their special report on supervision of the College Centre, conducted by them on 15.03.2011, in respect of 1st sitting in the subject English.

6. The special report submitted by the Flying Squad with regard to the conduct of examination on 15.3.2011 at the College Centre reads as under :

“Situation at the gate.

On arrival at the gate at 10.03 A.M. when the sitting was already in progress more than 50 outsiders were present at and around the gate. This made the entry of the squad difficult to enter into the campus. The outsiders were seen to carry books and note books with them.

Situation in the Campus.

It was all chaos inside the campus. The members of the staff of the College were seen running here and there collecting chits strewn near the windows and the verandahs. Everybody was busy in destroying them. The Superintendent was found to take lead of such activities.

Situation inside the halls.

The inside situation was found to be far from calm and quiet. The invigilators were found busy collecting incriminating materials even after all out effort on the part of the invigilators made to ensure them clean.

ATTITUDE OF THE EXAMINATION CONDUCT MACHINERY

The Superintendent was totally non co-operative rather abetting malpractice, even he refused to put his signature at Column 24 of the report form certifying our visit to the centre. Nor did he accept the M.P. forms along with incriminating materials. He with all arrogances declared not to care about the report of the squad. Other invigilators, on being exposed were also desperate and indifferent.

It was worth mention here that quite a few invigilators were appointed (?) from outside the college who did not satisfactorily establish their identity. It is not understood what was the exigency of using outsiders as the invigilators.

OVERALL OBSERVATION

Examination in the sitting was not conducted as per provision of CHSE. It is not possible to exclude any examinee not indulging in malpractice. The staff and the students were not only non co-operating but also misbehaving with us making the whole situation very disturbing and chaotic deliberately. Examinees were instigated by the invigilators not to permit search which resulted in inability to search more students and we had to leave the centre apprehending a mob attack inside the college campus itself.

In view of the above we strongly recommend for the cancellation of the seating and to initiate exemplary disciplinary action against the Superintendent and staff for creating such a situation and none co-operative with the system at all."

7. Considering the aforesaid report of the Flying Squad and keeping in view the nature and gravity of the allegations and recommendations made therein, the Examination Committee of CHSE decided to cancel the said examination in the subject English in that Centre as a whole and to award '0' mark to all the candidates.

8. In the case of ***Bihar School Examination Board -vrs- Subhas Chandra Sinha and others***, AIR 1970 SC 1269, the Supreme Court while considering the action of the Bihar School of Examinations Board cancelling all the examinations conducted at a particular examination centre of Annual Secondary School Examination, 1969, on

the ground that unfair means were practiced on a large scale at that examination centre, proceeded to hold as under :

“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, 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.”

The Hon'ble Court further observed as follows :

“xx xx xx 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 manage to secure success in the neighbourhood of 100% when others at other centers 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.”

9. In the case of *Rajiv Ratna Shukla and another –Vrs– University of Allahabad and others*, AIR 1987 All. 208, a Division Bench of the Allahabad High Court while considering the question regarding cancellation of examination on the ground of mass copying, came to hold as under :

“Even otherwise the Statute and Ordinances provide for an authority known as Examination Committee to look into and decide such matter. As the examination committee after looking into the report was satisfied that the examinations were not conducted fairly it would be unfair for this Court to interfere in writ jurisdiction. It need not be mentioned that a finding recorded by a Tribunal administrative or quasi judicial body is a finding of that if it is based on consideration of evidence howsoever meager and insufficient it may be. The report of the flying squad coupled with the statement of Centre Superintendent was available with the examination committees. Even if another committee or this Court on the same

material could have come to a different conclusion it could not furnish ground for interference. This court cannot substitute its opinion for the opinion of committee. It could quash the order only if it finds that it was based on no materials or the committee ignored some material which if considered could have resulted in a different conclusion. Since the decision of the examination committee does not suffer from any such error it is difficult to grant relief to petitioners.”

10. In *Chairman, J & K State Board of Education –Vrs– Feyaz Ahmed Malik and others*, AIR 2000 SC 1039, the Hon’ble Court observed that while judging the authority or otherwise all steps taken by the authorities of the Board to take action against the candidates taking resort to mass malpractice, it should be borne in mind that the Board is entrusted with the duty of maintaining high standards of education and proper conduct of examination. It is an expert body consisting of persons having wide experience in the field of education and therefore the decision of such an expert body should be given due weight by Courts. The Hon’ble Court proceeded to observe :

“xx xx xx In matters concerning campus discipline of educational institutions and conduct of examinations their duty is primarily vested in the authorities in-charge of the institutions. In such matters Court should not try to substitute its own views in place of the concerned authorities nor thrust its views on them.”

11. The aforementioned decisions of this Court relied upon by the learned counsel for the petitioner has no application to the facts of the present case, where the report of the Flying Squad, as detailed above, clearly goes to show that all the staffs, including the Centre Superintendent were involved in aiding and assisting the students in resorting to malpractice and the situation in the College campus was chaotic. In such a situation, as the examination in the subject English at the College Centre was vitiated by adoption of unfair means on a mass scale, it would be wrong to insist that the CHSE should have held a detailed enquiry into the matter and examined each individual case to satisfy itself as to which of the candidates had not adopted unfair means. In such a situation, the examination as a whole has to go.

12. This Court is not unconscious or oblivious of grave injustice which might be done to some of the students, may be even majority, because of refusal by this Court to interfere but we cannot ignore the deterioration in the standard of discipline of academic institutions. How this should be regulated or controlled should best be left to the discretion of those who are entrusted with this responsibility. If this Court starts substituting its own opinion in place of opinion expressed by authorities it shall result in chaos. It is well known that due to conduct of others even innocent persons suffer but the sufferings of few has to be tolerated in the larger interest of the society. As is usual in such matter it is only the few who are responsible but to protect the bona fide or the genuine if a decision is given which erodes the discipline and vitiates the atmosphere of the academic institutions then it is better to restrain and refuse.

13. For the reasons as aforesaid no impropriety or illegality can be said to have been committed by the CHSE in issuing the impugned Notification dated 18.5.2011 so as to warrant any interference by this Court, in exercise of its extraordinary writ jurisdiction under Article 226 of the constitution .

Writ Petition being devoid of merits, the same is accordingly dismissed. No cost.

Writ petition dismissed.