A

BIHAR SCHOOL EXAMINATION BOARD

v.

SUBHAS CHANDRA SINHA & ORS.

February 25, *March* 10, 1970.

B [M. HIDAYATULLAH, C. J., A. N. RAY AND I. D. DUA, JJ.]

Natural Justice—Evidence of unfair means at examination at a particular centre apparent—Cancellation of examination at the centre—Whether notice to examinees necessary.

Bihar School Examination Board Act (Bihar Act 7 of 1952) s. 9(3)—Scope of.

C Candidates at the Secondary School Examination held in March 1969, appeared at various centres. The results at all centres were published in July 1969, except those at a particular centre. The tabulators at that centre reported that the percentage of marks and of successful candidates was unusually high (80% or more). The matter was referred to the Unfair Means Committee of the Board. A comparison of the answer books at that centre showed such a remarkable agreement in the answers, D that it was obvious that unfair means were adopted and that the students had assistance from an outside source. The Chairman passed an order on August 30, 1969, cancelling the examination at the centre and allowing the examinees at the centre to re-appear at the Supplementary Examination in September The action of the Chairman was placed before the Board and was approved.

The respondents, who were the examinees at that centre, moved the E High Court under Art. 226 and the High Court quashed the order of the Board and ordered publication of the results of that centre.

In appeal to this Court,

HELD : (1) There was enough material for the Chairman and the Board for taking action without any complaint from anybody of the use of unfair means. [966 E-F]

F (2) There was no reason for withholding the publication of results of other centres which were not under suspension. [966 F]

(3) Under s. 9(3) of the Bihar School Examination Board Act, in an emergency, the powers of the Chairman are co-terminus with those of the Board and he can take action himself and later report it to the Board. Therefore, the order of the Chairman in the present case was not incompetent. [966 C-F; 967 A]

G (4) The essence of an examination 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 received assistance and managed to source success at a high percentage, when at other centres, the average was only 50%, the University or the Board ould cancel the examination *as a whole;* and if there was sufficient material on which it could be demonstrated that the Authority was right in its conclusion that the examination *as a whole* was vitiated then academic standards require that the H Authority's appreciation of the problem must be respected. To make such a decision depend upon a full-fledged judicial inquiry would hold up the functioning of such autonomous bodies as Universities and School Boards. [967 G-H; 968 E-H]

In the present case, no principle of natural justice was violated and there was no need to give the examinees an opportunity to contest the conclusion, because, the evidence was plain and transparent, and the Board had not charged anyone with unfair means so that he could claim to defend himself. Therefore, the order of the High Court must be set aside and the respondents-candidates allowed to sit for the next examination. [969 B-D]

Board of High School Intermediate Examination, U.P. Allahabad v. *Ghanshyam Das Gupta and Ors.* [1962] Supp. 3 S.C.R. 36, explained.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2620 of 1969.

Appeal by special leave from the judgment and order dated December 8, 1969 of the Patna High Court in C.W.J.C. No. 1040 of 1969.

Sarjoo Prasad, Roy Paras Nath, S. K. Bisaria and *S. S. Jahar,* for the appellant.

S. N. Prasad, for the respondents.

The Judgment of the Court was delivered by

Hidayatullah, C.J., This is an appeal against the judgment and order of the High Court of Patna, December 8, 1969 in Civil Writ Jurisdiction Case No. 1040 of 1969. It is brought to this Court by special leave. The appellant is the Bihar School Examination Board through its Chairman. The respondents are 36 students of S.S.H.E. School, Jagdishpur and H. E. School Malaur, District Shahabad. They had moved the High Court under Art. 226 of the Constitution against the order of the Board cancelling annual Secondary School Examination of 1969 in relation to Hanswadih centre in Shahbad District. They had also asked that a *mandamus* be issued to the Board to publish the results of the students who appeared at this centre. The High Court has quashed the order of cancellation and directed the Board to publish the results.

Candidates at the Secondary School Examination held in March, 1969 appeared at various centres including Hanswadih Centre. The results were published in July 1969 but the results of examinees at Hanswadih centre were not released. On July 22, 1969 it was reported in a local Hindi daily newspaper that the results of this centre and others were under consideration. On August 30, 1969 a communique from the Board appeared in the newspaper Searchlight that the examinations of all subjects held at the Secondary School Examination of 1969 at Hanswadih centre were cancelled and the reason was that unfair means were practised on a large scale at this Centre. Examinees were, however, allowed to appear at the supplementary Secondary School Examination to be held in September, 1969.

A The respondents challenged the order of the Board on many grounds. The main grounds were that there was no complaint of use of unfair means; that no opportunity had been given to the examinees to show cause before passing the order of cancellation against them; that as the Supplementary Examination was to be held within 10 days of the communique there was no time for the B students to prepare for the examination; that the cancellation ought to have been announced before publishing the results of other centres and lastly that the order passed by the Chairman and not by the Baord, was not a valid order under the Bihar School Examination Board Regulations.

C From the record of the case and the return which has been filed by the Board the following facts appear :

The Tabulators of the Hanswadih centres', reported that the percentage of successful examinees was as high as 80% whereas the average at the Arrah, Dalippur centres was only 50%. They were therefore asked to prepare percentage subjectwise. All the D Tabulators submitted these precentages. The matter was referred to the Unfair Means Committee of the Board. The Committee in its turn asked the Moderators to look into all the answer books where the percentage was 80% or more. They reported unfair means on a mass scale. The Chairman then passed an order on August 30, 1969 cancelling the examination in all sub- E jects at the Hanswadih Centre allowing the examinees to re-appear at the Supplementary Examination in September, 1969 without payment of fresh fees. The Head Masters of the three schools concerned were also informed by registered letters. The action of the Chairman was placed before the Board at its meeting on September 9, 1969 and was approved. It was stated in the return that a complaint was received from one Satnarain Singh of Jagdish- F pur, who, however, wrote a letter that he had made no such complaint.

The High Court gave a finding that the high percentages did give rise to a suspicion that unfair means were practised and that the Board was justified in investigating the case. It was, how- G ever, held that the examinees were not given a chance to show cause and the materials on which the Chairman of the Board passed his order were not disclosed to the examinees. The Board had therefore failed to act according to the principles of natural justice and the order of the Chairman and/or the Board could not, therefore, be sustained. The High Court relied upon Board of *High School & Intermediate Education, U.P., Allahabad* v. H *Ghanshyam Das Gupta and others*(1) and *Ajit Singh and others* v. *Ranchi University*(2). It commented upon the short interval bet-

(1) [1962] Supp. 3 S.C.R. 36. (2) A.I.R. 1964 Patna 291.

ween the communique and the Supplementary Examination and held that the communique should have been issued before the results had been published. The High Court also considered the competence of the Chairman to pass the order under the Regulations but did not decide it as it reached the conclusion that the principles of natural justice were violated and the orders of the Chairman and/or the Board were, therefore unsustainable. The order of the Board was quashed and the publication of the results of the Hanswadih Centre was ordered. This Court granted special leave and directed stay of the operation of the order of the High Court.

We heard this appeal on February 25, 1970. Since the next examination at which the respondents can appear is scheduled to be held in March, we did not wish to delay the decision of the appeal. We accordingly passed an order allowing the appeal and set aside the order of the High Court but stated that we would give our detailed reasons later. We now proceed to do so.

All the arguments which were presented in the High Court were repeated before us by the learned counsel for the respondent. We find it convenient to consider some of them before taking up the point on which the High Court has cancelled the order of the Board and directed the publication of the results.

The argument that no one had complained about the examination need not detain us. The Tabulators sent thier remarks on which investigation was made. The Unfair Means Committee and the Moderators gave their opinion. These were sufficient for taking action. There was no need to wait for a complaint, nor was a complaint really necessary. The results were withheld so that inquiries could be completed. In the meantime the results of the other centres which were not under suspicion could be declared because in their case there was no reason to withhold publication.

The contention that the Board alone and not the Chairman could, cancel the examinations need not detain us. Under s. 6(2) of the Bihar School Examinations Board Act, the Board considers, moderates, determines and publishes the results of examinations. It also admits candidates to examinations, disqualifies them for any reason which it considers to be adequate. Under s. 9(3) of the Act in an emergency the powers of the Chairman are co-terminus with those of the Board and he can take action himself and later report it to the Board. In this case action was taken by the Chairman and he reported it to the Board which fully endorsed it. Therefore the cancellation of the examina-

A tions at Hanswadih Centre must be treated as an order of the Board and cannot, therefore, be challenged on the ground that it was incompetently made.

This brings us to the crux of the problem. The High Court interfered on the ground that natural justice and fair play were B not observed in this case. This was repeated to us by the respondents in the appeal. A mention of fair play does not come very well from the respondents who were grossly guilty of breach of fair play themselves at the examinations. Apart from the reports of the experts, the results speak for themselves. At the other centres the average of successful candidates was 50%. At C this centre the examinations had the following percentage :

1.	Mother Indian Language	94
2.	English	70
3.	Social Studies	95
4.	Everyday Science	90
5.	Elementary Mathematics	100
6.	Economics & Civics	92
7.	Elementary Physiology and Hygiene	96
8.	Geography	99
9.	History	88
10.	Physics	70
11.	Chemistry	100
12.	Advance Mathematics	99
13.	Sanskrit	100

These figures speak for themselves. However, to satisfy ourselves we ordered that some answer books be brought for our inspection and many such were produced. A comparison of the F answer books showed such a remarkable agreement in the answers that no doubt was left in our minds that the students had assistance from an outside source. Therefore the conclusion that unfair means were adopted stands completely vindicated.

This is not a case of any particular individual who is being G 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 H 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.

Reliance was placed upon *Ghanshyam Das Gupta's* case(1), to which we referred earlier. There the examination results of three candidates were cancelled, and this Court held that they should have received an opportunity of explaining their conduct. It was also said that even if the inquiry involved a large number of persons, the Committee should frame proper regulations for the conduct of such inquiries but not deny the opportunity. We do not think that that case has any application. Surely it was not intended that where the examination as a whole was vitiated, say by leakage of papers or by destruction of some of the answer books or by discovery of unfair means practised on a vast scale that an inquiry would be made giving a chance to every one appearing at that examination to have his say? What the Court intended to lay down was that if any particular person was to be proceeded against, he must have a proper chance to defend himself and this did not obviate the necessity of giving an opportunity even though the number of persons proceeded against was large. The Court was then not considering the right of an examining body to cancel its own examination when it was satisfied that the examination was not properly conducted or that in the conduct of the examination the majority of the examinees had not conducted themselves as they should have. 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 manage 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

[1] [1962] Supp. 3 S.C.R. 36.

A 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 he should have examined all the candidates or even their representatives with a view to ascer-
B taining whether they had received assistance or not. To do this would encourage indiscipline if not also perjury.

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
C 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
D costs.

V.P.S. *Appeal allowed.*