

PETITIONER:
CHAIRMAN, J&K STATE BOARD OF EDUCATION

Vs.

RESPONDENT:
FEYAZ AHMED MALIK & ORS.

DATE OF JUDGMENT: 28/01/2000

BENCH:
D.P.Mohapatra, M.Jagannadha Rao

JUDGMENT:

MOHAPATRA, J.

Feeling concerned about the menace of mass copying in examinations the Jammu and Kashmir State Board of School

Education (for short the Board) made certain amendments to the existing regulations governing cancellation of examinations on account of mass copying, outside interference or any other reason which vitiates the sanctity of examination. By the said amendment regulations 66 (a) and 66(b) were introduced which read as follows:

66(a) Notwithstanding anything contained in these regulations the Chairman may, on receipt of written report from Superintendent/s of any authorised State Government Officer or Officer/s of the Education Department, cancel any examination/s either partly or wholly for reasons to be recorded in writing whenever he is of the opinion that any examination conducted by the Board at any centre has been vitiated on account of mass copying by examinees or outside interference or any other reason which deprives examination/s of its sanctity.

66(b) The Chairman may also for reasons to be recorded in writing, cancel any examination/s either partly or wholly on the basis of any report or information from any source other than those mentioned above including any anonymous information in case he is satisfied that the sanctity of the examination/s has been adversely affected on account of mass copying by the examinees or outside interference at any examination/s centre/s for any

other reason vitiating the process of conduct of examination/s.

Provided that the Chairman shall before acting upon any such information received from any source under clause 66-b above have the same verified by the subject experts/officers of the Board or any authorised Government Officer or Officer of the Education Department. The result of the examination/s of any such centre/s shall remain withheld pending verification of the above information (Clause 66-b) received by the Chairman and his final order thereon.

Provided further that the cancellation of any examination/s under 66(a) and 66(b) shall not prevent the Board from initiating appropriate proceedings against any student/s who may be reported to have used unfair means by the concerned examination staff appointed at the centres.

Provided also but subject to the foregoing proviso, the examinees of any such centre/s shall be allowed to appear in the subsequent Examination/s conducted by the Board, if otherwise eligible under rules.

The amending notification was issued by the Secretary of the Board in terms of the decision taken by the Board at its

meeting held on 20-1-1993. Subsequently, the Chairman of the Board issued the notification dated 29-6-1993, cancelling the entire examination of Higher Secondary Part-II for regular candidates held in May-June session 1993 in the centres stated therein on account of mass copying and violation of sanctity of the examination. Being aggrieved by the said order of the Chairman some candidates who had appeared in the examination at the centres in question filed writ petition in the High Court of Jammu & Kashmir. The High Court by the common judgment rendered on 29-9-1994 allowed all the cases. The High Court struck down certain provisions of the Notification dated 27-1-1993; quashed the Notification dated 29-6-1993 and directed the Board to form a committee of experts who shall, after examining the answer scripts, verify as to whether or not the examinees of those centres resorted to copying on large scale, with the further direction that the committee shall record their reasons for coming to the conclusions. This exercise, as directed by

the High Court was to be undertaken within a period of forty five days from the date of the judgment. The High Court observed that for the purpose, the Board authorities can also utilise the services of experts outside the valley if they so choose. The High Court further ordered that the Board will after receiving the report from the expert committee take decision in the case. The Board was given liberty to formulate fresh rules on the subject; but while doing so the parameters laid down in the judgment be taken into consideration. In the judgment, the High Court issued certain precautions to be taken in particular to the following effect: Delegation of power of verification should be made to Body of Experts which can well opinion on the correctness or otherwise of the report of mass copying received by the Board;

B. The Board must make endeavour to limit their prospective sources of information with regard to mass copying to high ranking officers of high calibre;

C. The machinery of flying squads should be evolved in such a manner so that they can control the

supervision of the centres falling within their definite area;

D. The power of cancellation of results should be vested in the Board.

In the peculiar circumstances of the case, parties are left to bear their own costs.

The said judgment is under challenge in these appeals.

From the impugned judgment it appears that the High Court considering the case of both the parties, formulated eight questions: 1. Does the Notification dated January 27, 1993 suffer from being violative of Art. 14 of the Indian Constitution?

2. Does the Notification arm the Board with powers which are arbitrary in nature?

3. Does the Notification provide for a different agency as repository of power so far as cancellation of the examination is concerned and in doing so does it violate the scheme of the Act?

4. Does the Notification dated 27-1-1993 suffer from vagueness?

5. What can be the contours of rules of natural justice in a matter like mass-copying?

6. Does the Notification dated 27-1-1993 suffer from an infirmity in so far as it lays down the source from which the information with regard to mass copying can be received?

7. Is Notification dated 27-1-1993 vitiated if so to what extent? Consequently is the notification dated June 29, 1993 bad in law?

8. What are the findings of the Court?

The findings of the High Court on the question of validity of the Notification dated 27-1-1993 which was discussed under question No. 7 afore stated was to the following effect:

Having discussed the Notification dated 27-1-1993 in all its pros and cons we found the same to be ultra vires of the Art. 14 of Constitution of India and the Act, to the extent indicated below:-

a. That the notification delegates the power of cancellation of examination to the Chairman whereas the Act makes this power exercisable by the Board. That upsets the schemes of the act and makes a delegation of power against the spirit of the Act;

b. That the Notification does not make any provision for verification of a report by subject experts when the same is received in terms of its clause 66(a). That way while taking action in terms of this sub clause, the notification laid down the power which is arbitrary in nature;

c. That first proviso to the notification is faulty to the extent that it authorises the Authorised Government Officer to verify a report received by the Chairman. After all how can a Tehsildar, a Sub Divisional Magistrate, a police officer, Additional Deputy Commissioner or Deputy Commissioner verify the fact whether in a certain paper or at a certain centre copying was resorted to:

d. Clause (V) of the Definition Chapter of the notification from sub clause (c) to (e) is struck down as the same makes the notification inconsistent and vague.

The High Court held that the notification was ultra vires of Article 14 of Constitution of India and the Jammu & Kashmir Board of School Education, Act, 1975 (Act No. XXVIII of 1975) (for short the Act), since under the notification power of cancellation of examination is delegated to the Chairman whereas the Act makes this power exercisable by the Board and secondly, that the notification does not make any provision for verification of a report by subject experts when the same is received in terms of clause 66(a) and therefore, it is arbitrary in nature. Another infirmity pointed out by the High Court in its judgment is that the first proviso to the notification is invalid to the extent that it authorised a Government Officer to verify the report received by the Chairman. It appears that the High Court found it difficult to reconcile that a Tehsildar, a sub Divisional Magistrate, a Police Officer, Additional Deputy Commissioner or Deputy Commissioner should verify the fact whether at a certain centre mass copying was resorted to.

The learned counsel for the appellants contended that the High Court has committed an error in quashing the notification of the Board and also the notification issued by the Chairman adding certain clauses in the regulations vesting the power in the Chairman to cancel the examination at a centre on being satisfied on the reports received from the flying squad or other agencies that there was large scale copying in the examinations at the centre. The learned counsel further submitted that these regulations were framed by the Board which is constituted by the Government with men with considerable experience and who are well aware of the situation prevailing in the State and particularly in the educational institutions. The abnormal situation prevailing in the State on account of which serious law and order problem is being faced by the authorities of the Board necessitate vesting of power to take immediate measures to control the situation in the examinations.

Before considering the merits of the case it will be convenient to notice some provisions of the Act. As the preamble shows the Act was enacted to reform and reorganise school education in the State and consolidate and amend the law relating thereto. In Section 3 of the Act it is mandated that the Government shall, by notification in the Government Gazette, establish a Board of School Education for the State to advise the Government on matters of policy relating to Elementary Education, Secondary Education and Higher Secondary Education and in respect of matters specified by or under this Act.

Under Section 4 the Board shall consist of the Chairman; the Commissioner Education; the Secretary

Education; the Director School Education (Boys); the Director School Education (Girls); a representative each of the two Universities of Kashmir and Jammu respectively, to be nominated by the concerned University Council; four school teachers to be nominated by Government, of which two shall be lady teachers concerned with Girls Education and two male teachers concerned with Boys Education; An eminent educationist unconnected with the administration, to be nominated by the Government; a representative of one of the Teachers Training Institutions in the State, to be nominated by the Government; and two persons to be nominated by Government one lady and one male officer, from among Principals, Headmasters and Headmistresses of teaching institutions of the State.

From the provision it is clear that the Board consists of men from different walks of life, rich in experiences in the field of education in the State.

Under Section 10 of the Act are enumerated the powers and functions of the Board. Some of the provisions of the Section are noted below : (ii) to conduct public examinations for persons who have pursued the secondary school and higher secondary (school graduation) school education courses;

(iii) to publish the results of examinations conducted by the Board;

(ix) to admit candidates to the examinations of the Board under the conditions laid down by the Regulations;

(xvii) to take such measures as the Board may think necessary to raise the standard of the education in the State and advise the Government on matters of policy relating to elementary, secondary and higher secondary education;

(xviii) to frame regulations for carrying out its purposes;

(xxi) to appoint committees consisting of such members of the Board and such other persons, if any, as the Board in each case may deem fit for carrying out specified purposes and to delegate to these committees, such powers as it may consider necessary;

(xxv) to delegate such of its powers to any officer or committee of the Board as it may deem fit, provided that such delegation is made by a majority of not less than two-thirds of the members of the Board;

(xxix) to constitute various divisions, units and committees for the furtherance of its objectives;

In Section 13 it is provided that the Chairman shall be the Head of the Board and shall ensure that this Act and the regulations are faithfully observed and shall have all powers necessary for the purpose. Sub-Section (4) of the Section lays down that if, in the opinion of the Chairman, any emergency has arisen which requires that immediate action should be taken, he shall take such action as he deems necessary and shall thereafter, report the action taken to the Board at its next meeting.

Section 24 which makes provision for appointment and constitution of committees of the Board provides that the Board shall appoint a Committee for Examinations.

In Section 25 some of the powers and functions of the Committees which are enumerated in Clause Â© are (iv) to consider and decide the cases relating to misconduct and use of unfair means in the examination conducted by the Board;

(xiii) to constitute such other sub-committee and delegate such powers to it as it may consider necessary.

In Section 33 the Board is vested with powers to make regulations for the purposes of carrying into effect the provisions of the Act. In sub-Section (2) of the said section it is provided that in particular and without prejudice to the generality of the foregoing powers, the Board may make regulations providing for the following matters, namely;

(a) the procedure of conduct of business of the Board and its committees;

(f) the conditions under which the candidates shall be admitted to the examinations of the Board and shall be eligible for diplomas and certificates;

(j) the conduct of examinations;

(s) all matters which by this Act are to be or may be prescribed or provided by regulations.

On a fair reading of the relevant provisions of the Act as noted above, the position is manifest that the Board is constituted to advise the State Government in policy matters relating to education and also to regulate establishment of educational institutions and to ensure proper functioning of such institutions. The Board is also vested with the power to conduct examinations for awarding certificates and diplomas to successful candidates. Power is vested in the Board under the Act to ensure proper conduct of examinations. Under the provisions of the Act, Board is vested with power to constitute committees for different purposes, to delegate any of its (Board) functions in favour of the committee and also to delegate any of its functions in favour of any officer of the Board. If the Board in its wisdom considered it advisable to delegate the power to take action in the matter of mass copying at any examination centre in favour of its Chairman no exception can be taken to it on the ground of want of power. In that case the Chairman acts as a delegate of the Board. Any action taken or order passed by the Chairman on the strength of the delegation made by the Board cannot be faulted on the ground of lack of competence or authority. On careful consideration of the provisions of the Act and the regulation of the Board under challenge, we are of the view that both the Board and its Chairman were within their powers and authority in issuing the notifications dated 27-1-1993 and 29-6-1993 respectively. The High Court was clearly in error in quashing the said notifications as beyond the power of the Board and its authorities.

While judging the authority or otherwise all steps taken by authorities of the Board to take action against

candidates taking resort to mass malpractice it should be borne in mind that the Board is entrusted with the duty of maintaining higher standards of education and proper conduct of examinations. It is an expert body consisting of persons coming from different walks of life who are engaged in or interested in the field of education and have wide experience. The decision of such an expert body should be given due weightage by courts. This Court in the case of Bihar School Examination Board Vs. Subhash Chandra reported in AIR 1970 SC 1269 observed: 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 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.

The Allahabad High Court in Rajiv Ratna Shukla and another vs. University of Allahabad, AIR 1987 Allahabad 208, made the following observations :

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 fact if it is based on consideration of evidence howsoever meagre 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 material or the committee ignored some material which is 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.

We are not 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 matters 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.

As regards demands for enquiry and violation of principle of natural justice, suffice it to say, that on academic disciplinary proceedings exception is made where proceedings are substantially fair or it is impossible to hold inquiry. Cases of mass copying resulting in cancellation of the examination fall in this exception. By its very nature no inquiry could have been made. Decision in *Km. Madhulika Mathurs* case (1984 All LJ 618) (FB) has absolutely no relevance. Concept of reasonable opportunity assumes primacy where penal action is proposed to individual. Direction to hold re-examination cannot be put in that category. It was not like of what happened in Gorakhpur University where examination was not treated as ineffective or vitiated. Ratio of that decision is that what was invalid could not be treated as valid for punishment without affording opportunity.

Coming to the case on hand, as noted earlier, the High Court has quashed the notification issued by the Board as ultra vires of Article 14 of the Constitution and ultra vires the Act. Further the High Court has discussed at length how the Board should proceed in the matter and has issued directions regarding the principles to be followed and matters to be borne in mind by the Board while framing Rules and has even issued directions what some of the provisions of the Rules should be. From the discussions in the impugned judgment it is clear that the High Court has taken up on itself the task of finding out a scheme to tackle the problem of mass malpractice in examination. In our considered view the approach of the High Court in the matter is erroneous and this has vitiated the judgment. In matters concerning campus discipline of educational institutions and conduct of examinations the 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. That is not to say that the Court cannot at all interfere with the decisions of the authorities in such matters. The Court has undoubtedly the power to intervene to correct any error in complying with the provisions of the Rules, Regulations or Notifications and to remedy any manifest injustice being perpetrated on the candidates. In judging the validity a notification containing provisions regarding steps to be taken when a report of mass-malpractice is received it is to be kept in mind whether the provisions contained in the notification are relevant for achieving the purpose for which the notification is issued and if it is found that the notification is relevant for and has a nexus with the purpose to be achieved then the notification cannot be said to be arbitrary and discriminatory. The High Court has failed to keep this principle in view while considering the validity of the notification in question. A notification cannot be struck down as discriminatory merely because in implementing the same injustice is likely to be suffered by

some candidates. The impugned judgment does not show that the decision to strike down the two notifications is based on grounds sound in law and justified on facts. It is our considered view that the judgment of the High Court is unsustainable and has to be quashed.

Before parting with the case we would like to place it on record that by the notification No.13 B of 1995 dated 23.11.1995 of the Jammu and Kashmir State Board of School Education, Jammu, a new set of regulations for prevention of unfair means/misconduct in examination of the Board were framed. It is stated in the notification, inter alia, that these regulations have superseded the earlier regulation Nos. 50 to 66 of J&K Board of Secondary Education Regulations, 1967 and any other regulations made thereto and have come into force from the date notified by the Board. The impugned judgment in this case was not based on consideration of the notified regulations in 1995. Further, the incidents giving rise to the controversy raised in the case took place much before the said regulations were framed. Therefore, it is not necessary for decision of the case to consider the provisions of the said regulations.

Accordingly, the appeals are allowed. The impugned judgment is set aside. It is however, made clear that any action already taken by the authorities in pursuance of the impugned judgment concerning any candidate or group of candidates shall not be disturbed on the basis of this judgment. There will, however, be no order as to costs.