
(2011) 02 AHC CK 0078

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 61924 of 2009

Adarsh Shiksha Mandir Inter College

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 14-02-2011

Acts Referred:

Constitution of India, 1950 — Article 14

Uttar Pradesh Intermediate Education Regulations, 1921 — Regulation 2, 2(3)

Citation : (2011) 3 ADJ 605 : (2012) 1 AWC 337 : (2011) 2 UPLBEC 943

Hon'ble Judges : A.P. Sahi, J

Bench : Single Bench

Final Decision : Allowed

Judgement

A.P. Sahi, J.—This petition has been filed praying for quashing of the order dated 20th March, 2008 Annexure - 8 to the petition whereby the Petitioner - institution has been debarred from functioning as a centre for the Board Examinations conducted by the U.P. Board of High School & Intermediate Examinations. The debarment order is challenged on several grounds, primarily that the impugned order is arbitrary and indicates the exercise of unbridled power of the Respondents which has resulted in passing of the order for which no valid reasons are available.

2. The submission raised is that there was a solitary instance relating to the submission of two answer books by one individual candidate and the punishment meted out to the institution is absolutely disproportionate and does not conform to any apparently reasonable basis for imposing such a punishment.

3. The matter had been adjourned in order to enable the Court to be assisted by the learned State Counsel as to the nature of the guidelines that are followed by the Board for the purpose of passing such orders.

4. Affidavits have been exchanged between the parties and the stand taken by the Board is that in view of the provisions of Part-II Chapter-VI-B of the

Regulations framed under the U.P. Intermediate Education Act, 1921, the Board has the power to impose restrictions and prohibitions in the shape of punishments, and accordingly the said power has been exercised in view of the established charge against the Petitioner - institution.

5. Sri R.P. Tiwari learned Standing Counsel has invited the attention of the Court to Regulation-2 of the aforesaid chapter to contend that the power vests in the Committee for Disposal of Cases for Unfair Means with a final decision to be taken by the Board itself. He submits that the proposal tabled for debarring the institution for three years was modified by the Committee to five years. A copy of the said proposal and decision have been filed as Annexure-1 to the rejoinder affidavit. The proposal appears to have been prepared on the basis of the Enquiry Officer report in the shape of an agenda which was discussed by the Committee comprising of three persons that modified the said proposal of three years to five years. This appears to have been finally approved by the Board.

6. A perusal of the provisions as prescribed under Chapter VI-B enunciates the powers to be exercised by the Disposal Committee. Sub-rule 2 is quoted below for ready reference:

Further Sub-Rule - 3 of the said regulations provides as follows :

7. It is therefore clear from the said Regulation that the procedure has to be prescribed by the Board and the Disposal Committee will Act accordingly.

8. The instructions which have been sent by the Additional Secretary on 13th February, 2011 to the learned Standing Counsel simply indicates that the Disposal Committee is not bound by any proposal that is made and any decision taken by the Committee is approved by the Chairman of the Board. Apart from this, there is no disclosure in the instructions as to what are those guidelines or any other procedure specifically prescribed for the purpose of deciding the proportionality of punishment according to the gravity of the allegations made against the institutions.

9. The decision which has been taken by the Committee and as filed as Annexure -1 to the rejoinder-affidavit is quoted below:

10. A perusal of the said decision demonstrates that the incident was the same as described in the impugned order and the Committee decided to impose a punishment of debarment of five years as against the proposal of three years. The aforesaid decision nowhere records any reasons for imposing the said debarment for five years and further it does not even discuss any guidelines or framework that may have been prescribed by the Board for the purpose of such assessment.

11. The prescription of punishment should be clear either in the statute or under the prescribed norms.

12. From the facts and the submissions as quoted above, the position that

emerges is that there does not appear to be any guideline or procedure having been prescribed by the Board for calculating or imposing the nature of punishment. At least this Court has not been informed of any such guidelines nor any material has been either disclosed in the counter-affidavit or the instruction of the learned Standing Counsel.

13. It is a settled principle of administrative law that if an authority enjoined with the duty to impose prohibitions, restrictions or punishment has to exercise such powers, then it should not be unbridled or unguided so as to attract the penalty of Article 14 of the Constitution of India. It has time and again been pronounced by the Apex Court that reasons are the link between the decision making process and the decision itself and in such matters where punishments are imposed the order has to be passed on the basis of some framework or guideline for which there is a clear indication in Sub-rule-3 of Regulation 2 of Chapter VI-B as quoted hereinabove. The power therefore cannot be exercised arbitrarily or for any reasons. The approach cannot be whimsical. The parameters for debarring an institution for three years or five years and why not ten years have to be rationally assessed. After all an order of debarment is nothing short of black listing.

14. There are incidents of mass-copying or mass-use of unfair means or even solitary or individual cases that may have to be dealt with differently. In the opinion of the Court the same yardstick cannot be applied in all such cases and cannot be dealt with uniformly while imposing punishment. There can however be uniformity in punishment if there are similar type of cases.

15. In this particular matter there is nothing on record to indicate that any such pointer was invoked nor was the proportionality defined on any rational basis. The order in this case proceeds on the basis of a single complaint against an individual examinee. Even such a case can be taken to be a grave incident but the authority will have to disclose its mind and record reasons for the same. This will ensure rationality and also reduce misgivings and litigations.

16. It is to be noted that in this case the Respondents allege to have sent a notice to the Petitioner whereafter the decision has been taken. This by itself is not enough. If the Petitioner failed to give any reply the same does not absolve the Respondent authorities from adopting a reasonable approach. The Petitioner under the statute does not have an indefeasible right to claim that Petitioner - institution has to be selected as a Centre for holding examinations. But when the Board takes a decision for its black listing then the Petitioner has a right to know the reasons for such action being taken. The rationality of the reason has to be objectively viewed, even though this Court need not enter into the subjectivity of the decision. The Petitioner has an expectation if not a right to know the material which impelled the Board to debar it for five years and not for a lesser or a larger period.

17. Accordingly, the Court is of the opinion that the exercise of such power in the

present case in the manner as indicated above is arbitrary and the Board will have to compel its Disposal Committee to adopt appropriate guidelines for the purpose of disposal of such cases. In view of this, the order impugned based on the decision of the Disposal Committee dated 20th March, 2008 is quashed. The matter shall be remitted to the Board. The Board shall first itself indicate the procedure which has to be followed in order to ensure non-arbitrariness in such matters and also recording of reasons as to why the Board finds it necessary to impose such punishment in such cases. The guidelines will thereafter have to be assessed in the light of the facts of individual cases and then the Committee can arrive at a conclusion and take its decision.

18. The writ petition is therefore allowed with a direction to the Board to make it known to the Disposal Committee as to what procedure has to be followed for the purpose of deciding such cases as indicated in Sub-rule (3) of Regulation 2 of Chapter VI-B and then the Disposal Committee shall proceed to pass orders after giving an opportunity of hearing to the Petitioner within a period of eight weeks from the date of production of a certified copy of this order.