

**(1971) 03 AHC CK 0019**

**In the Allahabad High Court**

**Case No :** Civil Miscellaneous Writ No. 990 of 1971

Dev Vidyalaya Inter College, Taruli

APPELLANT

Vs

Dr. C.M. Bhatia and Others

RESPONDENT

**Date of Decision :** 29-03-1971

**Acts Referred:**

Constitution of India, 1950 — Article 226

Uttar Pradesh Intermediate Education Act, 1921 — Section 11(3)

**Citation :** AIR 1971 All 567

**Hon'ble Judges :** Hari Swarup, J

**Bench :** Single Bench

**Advocate :** Sirish Prasad, for the Appellant; Standing Counsel, for the Respondent

**Final Decision :** Dismissed

## Judgement

Hari Swarup, J.—Dev Vidyalaya Inter College, Taruli, district Faizabad, is an educational institution recognised under the Intermediate Education Act, 1921 (hereinafter referred to as the Act). By a letter dated 18th January, 1971, the petitioner institution was informed that it had been selected as a centre for High School Examination, 1971, of the Board of High School and Intermediate Education. Subsequently, by a letter dated 27-1-71 the petitioner was informed that the examination will be held at another institution, the Baldeo Vidyapith Inter College, opposite party No. 4. The petitioner has challenged this order on various grounds, viz., that the order is without jurisdiction as it had not been passed by the Board, that if the order be deemed to be passed u/s 11 (3) of the Act it would be bad as it had not been actually passed by the Chairman, that before passing of the order the petitioner was not granted an opportunity of showing cause and that the order was passed mala fide and under political pressure. The respondents, on the other hand, have contended that both the earlier and the impugned orders were passed by the Chairman of the Board in exercise of the powers u/s 11 (3) of the Act bona fide and that there was no question of granting any opportunity of bearing prior to the passing of the order

withdrawing the order appointing the petitioner institution as centre for High School Examination. Objection has also been raised on behalf of the respondents that the petitioner has no legal right to maintain this petition.

2. A person can approach this Court under Article 226 of the Constitution only if by the impugned action of the respondent some legal right of his is infringed- The right which the petitioner claims to have been violated by the order of opposite party No. 1 dated 27-1-71 is the alleged right which was conferred on it by its being recognised as a centre for the holding of the High School examination. But it appears from the various provisions of the Act and the Regulations framed thereunder that merely by getting selected as a centre for the holding of an examination no legal right is conferred on the selected institution, rather an obligation is cast on it. The power to hold High School examination is vested in the Board. Sub-section (3) of Section 7 of the Act provides that subject to the provisions of the Act, the Board shall have the power to conduct examination at the end of High School and Intermediate courses. Regulation 8 (h) of Chapter VIII of the Regulations provides that every recognised institution shall, on demand, by the Board/Department, place its staff, building, furniture, etc., at the disposal of the Board for the purpose of conducting the Board's examination. These provisions in effect place an obligation on every recognised institution to make available its building etc., to the Board for the purpose of conducting examinations. There is nothing in the Act or the Regulations to show that by the placing of this obligation on an institution any legal right accrues in favour of that institution the injury of which may be actionable or which may give it the right to demand that the examination must be held at the institution. As held in " The Calcutta Gas Company (Proprietary) Ltd. Vs. The State of West Bengal and Others, , it is implicit in the exercise of the extraordinary jurisdiction under Article 226 of the Constitution that the relief asked for must be one to enforce a legal right. It has not been shown that there has been any infringement of a legal right of the petitioner in this case. The petition is, therefore, not maintainable.

3. Even if it be taken that the petition is maintainable for the relief claimed, the petitioner has failed to establish that the order was beyond the jurisdiction or authority of opposite party No. 1. Section 14 of the Act provides for delegation of Board's power to Committees. Chapter VI, Regulation 2 (h) provides that it shall be the duty of the Examination Committee, subject to the sanction and control of the Board, to propose the opening and closing of centres of Examination. The final order has to be passed by the Board itself, in exercise of its power u/s 7 (4) of the Act which provides that the Board shall have the power to recognise institutions for the purpose of its examinations. Chapter XII, Regulation 2 provides that the Board's examinations shall be held in such centres, on such dates, and at such times as the Board may from time to time decide. Section 11 (3) of the Act provides that in any emergency arising out of the administrative business of the Board which, in the opinion of the Chairman, requires that immediate action should be taken, the Chairman shall take such action as he

deems necessary and report the action taken to the Board at its next meeting.

4. The opening of an examination, centre in an institution as also the withdrawal of that order will be nothing but the exercise of the administrative business of the Board. It requires no decision on the rights of any parties. The Examinations Committee is only a recommendatory body. It acts under the control of the Board. As the order about opening or the closing of an examination centre is administrative in nature, the Chairman or the Board cannot be barred from subsequently reconsidering the matter and changing the decision. Learned counsel for the petitioner, relying on "The Board of High School and Intermediate Education, U.P., Allahabad Vs. Ghanshyam Das Gupta and Others, contended that the power of the selecting examination centres is not an administrative power and therefore, Section 11 (3) will give no authority to the Chairman to pass the order. In the case cited, a penalty was to be imposed on students using unfair means at the examinations and it was held that the power exercised by the Board in such cases was a quasi-judicial power. The principles laid down in that case if applied to the present case will show that the power exercised by the respondent No. 1 was only an administrative power. The Board has only to select a place for holding the examination and the institution so selected has by virtue of the provisions of the Regulations and the Act bound to provide accommodation and facilities for holding the examination. If the Board could order the holding of examination at a particular place, it could also rescind that order and change the centre in exercise of its powers. Respondent No. 1 had thus the jurisdiction to pass the impugned order u/s 11 (3) of the Act. As the order was only an administrative order and no right of the petitioner was being affected there was no question of affording the petitioner any opportunity of being heard or of showing cause prior to its being passed.

5. As regards the actual passing of the order by the Chairman and consultation of the Examinations Committee, it was alleged in the petition that the impugned order was passed by the Board. In the counter-affidavit it was stated that the order was passed by the Chairman in exercise of the powers u/s 11 (3) of the Act. This fact was not denied in the rejoinder-affidavit but it was alleged that the Chairman had passed the order without affording the petitioner an opportunity of being heard and without getting the opinion of the Examinations Committee about the closing of the centre. In the petition, however, it was not stated that the matter was not placed before the Examinations Committee. In the counter-affidavit it was stated that the Examinations Committee sent its proposal for opening and closing of the centres. Learned counsel for the petitioner has contended that this allegation in para 7 of the counter-affidavit does not mean that the report was actually sent Even if it be taken that this does not prove that it was sent, it does not prove the petitioner's case without any positive allegation to that effect that the Examinations Committee was not consulted or its opinion was not sent to the Chairman and considered. In paragraph 9 of the rejoinder-affidavit only it was stated that the matter of cancellation of centres was never placed before the Examinations Committee, but no record has been indicated on

the basis of which this allegation was made.

6. As regards the question of the order being passed mala fide, the only allegation is as contained in paragraphs 16 and 17 of the petition. It was alleged therein that Sri Jairam Verma, who was the Chairman of the Bharatiya Kranti Dal in January, 1971 and an ex-Minister in the State, had exercised an influence on the Director of Education, Dr. C. M. Bhatia, and he passed the order of withdrawal under that pressure, paragraphs 16 and 17 of the petition were, however, sworn by the petitioner on the basis of information received and perusal of papers. Neither the names of the persons who supplied the information have been given, nor have any papers been placed on the basis of which this information may have been gathered by the petitioner. The allegation was denied in the counter-affidavit. In the rejoinder-affidavit also the source of the information has not been disclosed. No reliance can, therefore, be placed on this allegation.

7. In the result, the petition fails and is dismissed, but in the circumstances of the case parties will bear their own costs.