

(2014) 05 AHC CK 0254

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 9800 of 2012

Devi Lal Manager

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 21-05-2014

Acts Referred:

Citation : (2014) 7 ADJ 67

Hon'ble Judges : Pradeep Kumar Singh Baghel, J

Bench : Single Bench

Advocate : P.S. Tripathi, H.S.N. Tripathi and Pankaj Tripathi, Advocate for the Appellant

Judgement

P.K.S. Baghel, J.—The petitioner claims himself to be Manager of Committee of Management of an educational institution, namely, Shyama Devi Smarak Intermediate College Shaurha, District Maharajganj (for short, the "Institution"). He has filed this writ petition for quashing of the circular dated 13th January, 2012 issued by the Secretary, Board of High School and Intermediate Education, Uttar Pradesh, Allahabad (for short, the "Board") whereby direction has been issued to all the District Inspector of Schools of the State that in view of the Government Order dated 28th February, 2011 and also in terms of the decision of the Examinations Committee of the Board dated 17th February, 2011 certain institutions may not be made examination centre. The petitioner has also challenged the order dated 24th January, 2012, whereby the Commissioner of Gorakhpur Division, Gorakhpur has asked the District Magistrates of his Division to ensure compliance of the Government Orders and circular, as referred above, and if any such institution has been made examination centre, the same be cancelled. The name of the petitioner's Institution also finds mention in the list enclosed with the order dated 24th January, 2012 and it has been blacklisted for five years from being made examination centre. The grievance of the petitioner is that the Institution has been blacklisted only on the ground that it had sent excess application forms than the number of registered students.

2. From the order dated 24th January, 2012, as is impugned in this writ petition, it transpires that certain number of Institutions have been blacklisted on the ground that they had sent excess O.M.R. Forms and such Institutions have been debarred for next five years from being allocated as an examination centre. By this order, a further direction has been issued that steps be taken to withdraw the recognition of the erring Institutions.

3. A counter-affidavit has been filed by the respondent Nos. 2, 3 and 4. The stand taken in the counter-affidavit is that in the year 2011 the Institution had sent the excess number of forms in violation of the Government Order and the Regulations framed by the Board, therefore, in view of the Government Order dated 28th February, 2011 it has been blacklisted.

4. I have heard Sri H.S.N. Tripathi, learned Counsel for the petitioner, and learned Standing Counsel.

5. Learned Counsel for the petitioner submits that the impugned order has been passed without affording any opportunity and for the first time the petitioner came to know about the said order after its issuance.

6. Learned Standing Counsel has drawn the attention of the Court to paragraph-3 of the counter-affidavit, wherein the said stand has been stated.

7. I have considered the rival submissions advanced by the learned Counsel for the parties and perused the record.

8. The State Government has issued another Government Order dated 09th October, 2013 and fresh norms have been laid down for the purpose of allotment of examination centres. In paragraph-26 of the writ petition the petitioner has stated that at no point of time he was afforded any opportunity before blacklisting the Institution. Said paragraph of the writ petition has been replied in paragraph-15 of the counter-affidavit whereunder the averments made in writ petition have not been denied but it has been stated that the Examinations Committee has taken the decision on the basis of the record. Debarring an institution on the ground that excess number of OMR forms of the students have been submitted, causes serious prejudice to the institution as the reputation of the institution is affected and the institution is not made examination centre for five years. It is a trite law that if an order is passed to the prejudice of a person, he must be afforded at least minimum opportunity of hearing by making representation in case personal hearing is not possible.

9. Regard being had to the fact that the Board has framed the Regulations for prior registration of the students of Class-IX and Class-XL This regulation requires that it is mandatory for each and every institution to send the name of the students, who are registered in Class-IX and Class-XI, in the month of October of the academic session and only those students are allowed to appear in the examination of Class-X and Class-XII in the next year whose name is registered. This regulation has been made for a laudable object that excess

number of students, who are not regular students of the Institution, may be prevented from appearing in the examination. It also helps the Board to maintain purity of the examination.

10. It is seen that large number of the institutions violate the said regulations with impunity and before the examinations of High School and Intermediate commence, the institution either itself or through its Principal or Manager or the students and guardians of the students files a writ petition for the interest of such excess students and plea is taken that if the students are not allowed to appear in the examination, their career will be ruined and they will suffer irreversible loss. The Board shall take firm steps against such erring institutions which do not comply with the Regulations of the Board in sending the OMR forms of the students of Class-IX and Class-XI within the stipulated period. If it is established that the Institution had purposely or deliberately or for some ulterior motives sent the list after the last date, the Board should consider to impose heavy fine and/or in case it finds that the institutions repeatedly make the same mistake in subsequent year also, their recognition should be withdrawn.

11. It is also seen that in such cases the Board does not take action against the Management and Principal but it refuses to allow the students to appear in the examination. Thus, only the students are made to suffer but the Management and Principal of the institutions are allowed to go scot-free. The Board is directed to consider this issue seriously and frame necessary guidelines within six months. Every year large number of writ petitions are filed by the students of High School and Intermediate that the Board is not issuing admit card to them on the ground that their name is not registered under the regulation, which requires pre-registration.

12. After careful consideration of the matter, in my view, the end of justice would be met in case the petitioner is granted liberty to make a representation to the respondent No. 2, who shall consider the cause of the petitioner and pass appropriate order in accordance with law. In the event the petitioner makes a representation within three weeks from the date of receipt of certified copy of this order, the Secretary of the Board shall pass the order expeditiously preferably within four months from the date of communication of this order.

13. Accordingly, the writ petition is disposed of.

14. No order as to costs. Registry of this Court is directed to send a copy of this order to the Principal Secretary, Secondary Education, Government of Uttar Pradesh, Lucknow and the Secretary, Board of High School and Intermediate Education, Uttar Pradesh for compliance of this order.