

(2007) 07 AHC CK 0105

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 34147 of 2007 With Civil Miscellaneous Writ Petition Nos. 34663 of 2007, 34664 of 2007, 34772 of 2007, 34773 of 2007, 34675 of 2007 and 33928 of 2007

Dhananjay Kumar Singh and others

APPELLANT

Vs

State of U.P. and others

RESPONDENT

Date of Decision : 13-07-2007

Acts Referred:

Constitution of India, 1950 — Article 226

Uttar Pradesh Intermediate Education Act, 1921 — Chapter 12, 10(1), 3(B), 3(C), 37B(2)

Citation : (2007) 07 AHC CK 0105

Hon'ble Judges : Sunil Ambwani, J

Judgement

Sunil Ambwani, J.

1. Heard learned Counsel for the petitioners and learned Standing Counsel.

2. Every year this Court is flooded with larger number of writ petitions filed on behalf of the Committee of Managements/Principals and students of the recognised aided and unaided High School and Intermediate Colleges, for allowing those students, who could not be registered in advance in Class IX and XI, with the Board of Secondary Education, U.P. as valid students for the High School (ClassX) and Intermediate (ClassXII) examination, in next academic session. Every year, this Court, on a plea of equity in law in favour of the students allows them to appear as regular candidates. In Inter College Kusmaul, Gorakhpur and another v. State of U.P. and others, (2006) 1 ESC 472 (All) (DB), decided on 6.1.2006 the Division Bench of this Court considered this question for the year 2006, at great length and having considered the Regulations and administrative difficulties issued following directions to avoid the malpractices in para 64 of the judgment as follows:

"In the entirety of the aforesaid submissions, this Court found it proper to issue the following directions to the respondents:

(1) The appellants students whose registration forms were deposited in the office of the District Inspector of Schools on 20.7.2005 shall be allowed to appear in the Intermediate Examination, 2006 conducted by the U.P. Board of High School and Intermediate as regular candidates.

(2) All such students, whose registration forms could not be submitted in the office of the District Inspector of Schools within the prescribed time as per Regulation 3 (C) of Chapter 12 of the Regulations due to nonavailability of the forms, and if they had deposited such forms within one month from the date the forms were made available by the respective District Inspector of Schools, they shall also be allowed to appear as regular candidates in the examination 2006.

(3) Although the relaxation which has been allowed by the Director of Education by determining different dates other than those prescribed under Regulation 3 (B) of Chapter 12 of the Regulations, is not correct, but since the students who have got the advantage thereof are not before us, they will remain unaffected from any observations made in this judgment since we do not propose to pass any order causing prejudice to such students in their absence.

(4) However, for the examination 2007 and onwards the respondents shall strictly adhere to the time schedule prescribed in Chapter 12 of the Regulations framed under the Intermediate Education Act, 1921 and the respondents and the Board of High School and Intermediate Education, U.P. shall ensure the availability of the forms well in advance to all the recognized institutions. The respondents Board may also consider the probability of allowing the recognized institutions to get registration forms printed on their own or it may put a proforma of the prescribed form on the Internet and other electronic or Printed Media so that there may not be any avoidable delay in submission of the forms due to nonavailability thereof.

(5) Any deviation or variance from the Regulation by any authorities, including the Director of Education should be dealt with strictly and if necessary requisite Departmental action may also be taken so that the statutory scheme may not be observed in violation with impunity by those who are under an obligation to obey and get it implemented.

(6) The Secretary, Secondary Education is also directed to look into the matter as to how and in what circumstances the Director of Education issued various letters and directions inconsistent with the statutory provisions and if it is found that the same was a result of collateral or extraneous reason, suitable action will taken against the erring official as per law."

3. This year again a large renumber of writ petitions have been filed by the Principals and the students of the colleges, who deposited the advance registration fees after the extended date i.e. October 3, 2006 for Class X and XII examinations to be held in 2008. Some of the writ petitions were dismissed on the ground that the Principals of these colleges cannot seek enquiry in law for students, when they themselves committed defaults in depositing the fees

beyond the last date announced by the Board.

4. Now the students have come up in the writ petitions alleging that they were not at any fault. They had filled up the forms and deposited their fees with the Principals of the colleges. For reasons best known to these Principals the forms and fees were not deposited in time. The last date for deposit of fees and forms was 30th September, 2006 for appearing in High School and Intermediate Examination in next academic session. There were some directions about the enhanced fees and as such the date was extended by the Director of Education to 1st October, 2006, which happened to be Sunday. The 2nd October was the National Holiday and there was some confusion with regard to holidays of "Deshahera" and "Id" and, therefore, the last date was extended to 3rd October, 2006. In all these cases at the hand the registration fees was not deposited even upto 3rd October, 2006. In some of the cases the fees was deposited on 4th October, 2006 and others upto 18th October, 2006.

5. Shri Neeraj Upadhyay, learned Standing Counsel appearing for the State was required and has sought instructions from the Secretary, Secondary Education Board, U.P., Allahabad, which have been given to the Court in writing. These instructions are made part of the record.

6. The Secretary of the Board in his instructions given to the learned Standing Counsel on 31st July, 2007 has furnished the information, mat for academic year 200607 (examination year 2008) the forms for advance registration of the students enrolled in Class 9th and 11th were sent to all the District Inspector of Schools by 15th July, 2006 and the instructions in this regard were given to all the Regional Secretaries of the Board on 5th July, 2006. These forms were to be distributed from 17th July to 25th July, 2006 and were required to be collected and made available with the regional offices by 10th October, 2006. According to Regulation 3 (B) of Chapter 12 of the Regulations framed under the U.P. Intermediate Education Act all the students taking admission in Class 9th and 11th were required to submit their advance registration forms giving details of their eligibility, date of birth and were required to submit the same, through the heads of their institutions. It is only when the head of the institution was satisfied with the information furnished by the students that he was required to accept the registration forms in his school. Every candidate was required to pay Rs. 20/ to the head of the institution. Since the admission procedure continues in the month of July, sufficient number of forms were made available in the month of July and last date for deposit of the registration fees was fixed on 1st October. All the registration forms were, thereafter, required to be collected and deposited in the regional office by 10th October, 2006. Wherever the demand was made from the District Inspector of Schools for supply of the advance registration forms even beyond the determined strength of students, the excess forms were not made available. Regulation 3 (D) of Chapter 12 clearly provides that only those students will be allowed to appear in Class 10th and 12th examination as regular students, who have got their registration made while they were studying

in Classes 9th and 11th. The head of the institution were not to forward examination forms of those students, who were not registered.

7. The Secretary of the Board has further informed that those candidates, who were not registered in advance in Class IX for Class X examinations can appear under Regulation 10 (I) of Chapter 12 as private candidate in the High School examination and the students, who were not registered in advance in Class XI for Class XII examination, can register themselves as students, who have passed Class XI examination under Regulation 37B(2) of Chapter 12 after their registration for "Patrachar Shiksha" and thereafter appear as private candidate.

8. The Court had issued clear and positive directions in Inter College Kusmaul, Gorakhpur (supra) on 6.1.2006 that no deviation from the advance registration and the date fixed therein shall be permitted in future. The mandamus issued by the Division Bench is binding on all the authorities in the State. All the Principals of the institutions and the educational authorities are bound by these directions. After this judgment there is no question of invoking equity in law again and again every year in favour of the students except in exceptional and deserving cases.

9. Shri Neeraj Upadhyay, learned Counsel informs that there are 45,000 schools in the State of U.P. and that there are only about 2000 aided or unaided institutions, who commit irregularities every year purportedly for the reason that they enroll large number of students much beyond their sanctioned strength, for extraneous reasons. Every year large scale irregularities are reported in the Board examination, which is the largest public school examination in the world. In order to ensure transparency, accountability, administrative convenience and to avoid any foul play the Board issues various directives. The Court had interpreted these directives and had given detailed and positive directions to the Board and educational institutions. Now it is not possible to invoke misplaced equity in favour of the students and allow them to appear in the Board examination as regular students in the year 2008.

10. Shri Neeraj Upadhyay, learned Standing Counsel further states that in the circumstances the Court may allow the Director of Education to make enquiries in respect of each case and allow only such number of students, who are within the sanctioned strength of the students of the College. Thereafter, the Director may allow these students, who have passed Class IX to appear as private candidate in the High School Examination, 2008, and those, who have passed Class XI as private candidates registered under "Patrachar Shiksha" in the Class XII examination 2008.

11. Learned Counsel for the petitioners submits that the students were not at fault. They filled up their forms and deposited fees with the Principals in time. They may not be allowed to suffer on account of the negligence of the Principal of the colleges. They also submitted various reasons on account of which the advance registration could not be obtained in the year 2006 within time. It is not possible for the Court to examine thousands of cases individually and to give

different directions in the cases. The facts of each case may differ. It is neither prudent nor appropriate to cause detailed enquiry searching for the reasons for not depositing the advance registration forms within time.

12. In the circumstances, all the writ petitions are disposed of with the directions that all the students, who were not registered in advance in Class IX and XI for reasons that their advance registration fees and admission forms could not be deposited by the last date i.e. October 3, 2006, will approach the Director of Education, U.P. with representations through their schools giving entire details including of the schools and colleges in which they are studying for appearing in the examination of Class X and XII in the year 2008. The Director of Education will constitute a special cell and will complete the enquiries with reference to sanctioned strength of the schools and colleges of Class IX and XI. He will permit only those students, who are within the sanctioned strength of the school to appear in Class IX and XII examinations. All these students, who have passed Class IX will appear as private candidates in Class X examination 2008 and those, who were not registered in advance in Class XI, will submit proof through their heads of the institutions that they passed Class XI examination and have been registered for "Patrachar Shiksha".

13. The Court is informed that last date for filling up examination forms for Class X and XII Examinations, 2008 for private students is upto 20th August, 2007 and with late fees upto 5th September. All such students must file their representations through their school, without any further delay.

14. It would not be appropriate to part with the matter without fixing responsibility on the defaulting heads of the institutions. In the circumstances, it is directed that the excess fees, which may be paid by students as private candidate will be recovered from the Principals of the schools and colleges and mat the District Inspector of Schools may take necessary steps for initiating disciplinary action against such heads of the institutions, including making an entry in their service records.

15. The Board may consider to give publicity to this order so that all concerned are informed and may avoid expenses in approaching the Court.

16. A copy of the order will be given to the Chief Standing Counsel for compliance. Decided accordingly.