

(2006) 07 AHC CK 0213
In the Allahabad High Court
Case No : Writ Petition No. 2077 (M/S) of 2006

Dr. Amar Bahadur Singh

APPELLANT

Vs

Secretary, Madhyamic Shiksha Parishad and Others

RESPONDENT

Date of Decision : 03-07-2006

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (2006) 7 AWC 6602

Hon'ble Judges : Devi Prasad Singh, J

Bench : Single Bench

Advocate : Mahendra Singh Rathore and Sanjay Tripathi, for the Appellant;
C.S.C., for the Respondent

Final Decision : Allowed

Judgement

Devi Prasad Singh, J.—Controversy relates to admission of girls in an institution recognized for boys. The question involved in the present writ petition, is as to whether District Inspector of Schools has got power to transfer the students admitted in an institution to other institution of the district?

2. Bhuvneshwari Pratap Inter College, Kudwar, district Sultanpur (in short hereinafter referred to as the College) is an institution duly recognized in accordance to provisions contained in U.P. Intermediate Education Act and Regulations framed thereunder. The institution is also receiving grant-in-aid from the State Government in accordance to relevant statutory provisions including U.P. High School and Intermediate Education (Payment of Salary of Teachers and Other Employees) Act 1971. A Writ Petition No. 6135 of 2002 was decided by this Court by judgment and order dated 5.2.2002 providing that the institution shall admit the students only for respective category of students like boys or girls for which the State Government accorded recognition. In consequence thereof, by an order dated 23.3.2005 as contained in Annexure 1, a circular was issued by the Director of Education providing that in a college recognized for boys, girls students shall not be admitted and similarly in case the recognition is for girl

students then boys shall not be admitted. Only exception given in the Government order is that in the rural areas where girls' colleges are not available they may be admitted in Boys College subject to prior approval of District Inspector of Schools concerned. By a subsequent Government order dated 15.7.2005 the State Government had reiterated the earlier principle. However, it is provided that in an institution situated in rural or urban areas, in case, certain subjects are not available then girls can be admitted in the boys college but no admission shall be granted in any manner to the boys in girls college. In compliance of the Government order dated 15.7.2005 the Board had issued a circular dated 21.7.2005, a copy of which has been filed as Annexure-3 to the writ petition. According to the Petitioner's counsel when aforementioned Government order came into his knowledge, he made a representation to the District Inspector of Schools, Sultanpur for admission of girl students. In consequence thereof, by an order dated 7.7.2005 the District Inspector of Schools, Sultanpur had permitted the Petitioner to admit the girl students. The copy of order dated 7.7.2005 granting permission to the Petitioner has been filed as Annexure-5 to the writ petition. In pursuance to permission granted by the District Inspector of Schools, Sultanpur the Petitioner had admitted 35 girl students in class 9th and 14 girls in class 12th. It has been further pleaded in paras 9 and 10 of the writ petition that the Petitioner's institution has been granted recognition of various subjects like Geography, Economics and Arts. The recognition to one adjoining college, namely, Dr. Maha Devi Verma Balika Inter College, Kudwar, Sultanpur has been granted to run the subjects, namely, Hindi, English, Sanskrit, History, Civics and Home Science to intermediate classes. After admission of girls in the institution in question the Petitioner informed the District Inspector of Schools, Sultanpur vide letter dated 29.11.2005.

3. The averments contained in paras 9 and 10 of the writ petition has not been denied by the District Inspector of Schools, Sultanpur while filing the counter-affidavit.

4. From the facts and circumstances discussed hereinabove, it is amply clear that there is no bar for admission of girls in boys college, in case, they are situated in rural areas and colleges imparting education to the girls students are not available. The other condition which allows admission of girls students in the boys' colleges is non-availability of subjects in the girls' institution which the girl students want to study. In the present case, it has been categorically pleaded in para 10 of the writ petition that all the subjects which the girl students want to study are not available in Dr. Maha Devi Verma Balika Inter College, Kudwar, Sultanpur. The girl students were admitted with prior permission of the then District Inspector of Schools, Sultanpur vide letter dated 7.7.2005 (Annexure-5). While passing the impugned order dated 18.4.2006 the District Inspector of Schools, Sultanpur has not considered the fact that the prior permission was granted by the then District Inspector of Schools, Sultanpur to the institution in question. It has also not been considered by the District Inspector of Schools, Sultanpur relating to availability of subjects in the Petitioner's institution vis-a-

vis in the other institution, namely, Dr. Maha Devi Verma Balika Inter College, Kudwar, Sultanpur. The impugned order has been passed on the ground that girls were admitted without seeking prior permission of District Inspector of Schools, Sultanpur. Though, at the face of record the order dated 7.7.2005 passed by the then District Inspector of Schools, Sultanpur, a copy of which has been filed as Annexure-5 to the writ petition, shows that prior permission was accorded by the then District Inspector of Schools, Sultanpur to admit the girls in the College. Thus, the impugned order, at the face of record; seems to have been passed on unfounded grounds and suffer from substantial illegality. While passing the impugned order it was incumbent upon the District Inspector of Schools, Sultanpur to consider the permission accorded by the then District Inspector of Schools, Sultanpur vide order dated 7.7.2005 and also the availability of various subjects in the institution in question as pleaded in paras 9 and 10 of the writ petition. Thus, the impugned order does not seem to have been passed on the basis of material on record and seems to suffer from arbitrary exercise of power.

5. While passing the impugned order the District Inspector of Schools, Sultanpur transferred the girl students from the Petitioner's institution to another institution, namely, Dr. Maha Devi Verma Balika Inter College, Kudwar, Sultanpur. Whether the District Inspector of Schools has got right to transfer the students from one institution to other under the U.P. Intermediate Education Act or Regulations framed thereunder? During the course of argument inspite of queries made by the Court learned Counsel for the Respondents could not show any provision in the U.P. Intermediate Education Act and Regulations framed there under which may empower the District Inspector of Schools to transfer the students of one institution to other institution. In case, admissions were done in violation of the Government order or Regulations framed under U.P. Intermediate Education Act then only remedy to the District Inspector of Schools, Sultanpur was to cancel the admission and take appropriate action against the institution in question. It has been settled by this Court in a case in *Dr. Ram Manohar Lohia Avadh University, Faizabad, through its Registrar v. Civil Judge, Junior Division, Sadar, Faizabad and Ors.* 2005 (23) LCD 1601, that, in case, admissions are done in violation of rules and regulations then the competent authority may proceed to de-recognize the institution but District Inspector of Schools, Sultanpur appears to have got no right to transfer the students from one institution to other.

6. Right to choose educational institution co-relate to right to education. It is the fundamental right of the citizens to choose educational institution subject to merit or compliance of relevant rules or other conditions provided by Act and statute. No person can be compelled by the State to join a particular institution for any reason whatsoever. However, in case on account of certain malpractices or substantial illegalities on the part of the management admissions are struck down or cancelled then the State may give option to such students to join certain educational institution on their own sweet will but cannot compel them to join a particular institution. In the present case the District Inspector of Schools,

Sultanpur has transferred the girl students to the other college alongwith their registration number inspite of fact that they were admitted in the institution in question with the prior permission of the then District Inspector of Schools, Sultanpur. No action has been taken by the District Inspector of Schools, Sultanpur against the Committee of Management. Accordingly, the impugned order passed by the District Inspector of Schools, Sultanpur transferring the students from the Petitioner's institution to another institution seems to be arbitrary exercise of power and violative of Article 14 of the Constitution of India.

7. Parties' counsel failed to point out any provision, rules or regulation which may empower District Inspector of Schools to transfer the students of one institution to another institution for any reason whatsoever. It has been settled by the Hon'ble Supreme Court in a case in *The Barium Chemicals Ltd. and Another Vs. The Company Law Board and Others*, that in case authorities want to do certain things then they have to do the same in accordance to manner provided under the Act or statute or not at all.

8. In view of the above, the writ petition deserves to be allowed. A writ in the nature of certiorari is issued, quashing the impugned order dated 10.4.2006 passed by the District Inspector of Schools, Sultanpur, contained in Annexure-1 to the writ petition with consequential benefits. However, it shall be open to the Respondents to proceed afresh keeping in view the observation made in the present judgment.