

(1979) 07 AHC CK 0089

In the Allahabad High Court

Case No : Civil Miscellaneous Writ No. 3060 of 1979

Krishna Mohan and Others

APPELLANT

Vs

Board of High School and Intermediate Education

RESPONDENT

Date of Decision : 25-07-1979

Acts Referred:

Uttar Pradesh Intermediate Education Act, 1921 — Regulation 13

Citation : (1979) AWC 647

Hon'ble Judges : K.M. Dayal, J;K.C. Agarwal, J

Bench : Division Bench

Advocate : R. Dwivedi, for the Appellant;

Final Decision : Allowed

Judgement

K.C. Agarwal, J.—This writ petition is directed against an order of the Secretary, Board of High School and Intermediate Education, U.P. Allahabad (hereinafter referred to as "the Board"), cancelling the results of the Petitioners. The Petitioners had appeared in 1978 as private candidates in the High School Examination of the Board. Their forms had been forwarded by the Superintendents of Examinations of different institutions from where they had applied for appearing in the examination. After submission of the forms, the Petitioners received information that their applications had been accepted. Sometime thereafter, the Petitioners applied individually to the Secretary of the Board for the change of their centres on the ground of their personal convenience, i. e., transport facilities etc. The applications of the Petitioners were allowed by the Secretary of the Board and intimation was sent to each Petitioner individually and separately that his prayer for changing the centre had been accepted. Intimation about the change of the centres was also given to the Superintendents of the concerned institutions, from when the centres had been changed and to the institutions from where the Petitioners had been permitted to appear. On the basis of the changed centres, the Petitioners appeared in the examination.

2. Thereafter, each one of the Petitioners received information from the Board that he was required to present himself before an enquiry committee of the Board on 9-9-1978. The Petitioners presented themselves before the enquiry committee on the said date. They were given charge sheets to the effect that they had collusively got the centres changed and were guilty of having obtained the orders of change of centres, and, as such, they were called upon to show cause as to why their results be not cancelled. The Petitioners gave written replies to the effect that the centres had been changed on the applications made by them, by the Board. The Petitioners denied of having any hand in the affairs of the Board.

3. According to the Petitioners' assertion, the first enquiry committee gave its report exonerating the Petitioners of the charge levelled against them. Thereafter, a second enquiry committee was appointed. This committee gave opportunity to the Petitioners and, thereafter, submitted its report to the Board. On the basis of the second report, the Petitioners were found guilty of having used unfair means at the examination and on that finding their results were cancelled. Hence, the writ.

4. The petition has been contested by the Board on the ground that the Petitioners manipulated to get their centres changed in collusion with some of the officials working in the office of the Board, and that the centres had not been changed on the order made by the authority competent to permit the change under the Regulations. The Board further asserted that it did not receive any application from the Petitioners for the change of their examination centres nor was any order for Changing the examination centres of the Petitioners from the original center to Subhash Intermediate College, Bhatni, Debris, was ever passed.

5. After hearing counsel for the parties, we find that the order of the Board cancelling the result of the Petitioners is erroneous and is liable to be set aside.

6. Chapter XII Regulation 13 of the Regulations framed under the Act provides that ordinarily no change of subject or centre shall be allowed to a private candidate after the submission of the examination form. This Regulation says that normally the centres cannot be changed, but this cannot be interpreted to mean that, in no case, the Board has power to change the examination centre. Even the Standing Counsel did not suggest the aforesaid interpretation of Regulation 13 of Chapter XII. He, however, contended that the change of examination centre is allowed to a private candidate on an order passed by the Secretary of the Board himself or by an authority, to whom the power may be delegated by the Secretary. He pointed out that in the instant case, the orders were neither passed by the Secretary nor by any of his delegatee, and the appearance of the Petitioners from the centres different than those mentioned in the forms showed that the same was got done by the Petitioners, in collusion with the employees of the Board.

7. Counsel for the State produced the record before us. From the counter-

affidavit, it is apparent that the results of the Petitioners were cancelled on the mere suspicion. There was no evidence before the examinations committee or the Board to lead it to the conclusion that the Petitioners were responsible for getting their examination centres changed in collusion with the employees of the Board. It is true that the High Court cannot assume the function of an appellate court in a matter like the present, but at the same time, if the finding arrived at is perverse or is not based on any evidence, this Court will have jurisdiction under the law to interfere. The present is a case where the results of the Petitioners had been cancelled on mere suspicion. See *Ghazanfar Rashid Vs. Secretary, Board of High School and Intermediate Education, U.P., Allahabad and Others*, . Counsel for the Board himself could not point out any evidence on which the Petitioners were found guilty.

8. Reference in this connection may be made to Chapter VI Regulation 2 Clause (1), under which the action had been attempted to be justified by the Respondents' counsel. Regulation 2 lays down that it shall be the duty of the examination committee, subject to the sanction and control of the Board, to consider the cases where examinees have concealed any fact and/or made a false statement in their application forms or a breach of rules or Regulations, to procure undue admission to an examination or used unfair means or committed fraud at the examination or are guilty of a moral offence or indiscipline, and to award penalty which may be one or more of the following:

1. ... 2. ...

9. Correctly speaking, Clause (1) cannot be applied to a case like the present. Admittedly, the Petitioners were not found guilty of having used Unfair means at the examination. The charge against them was that they got their examination centres changed in collusion with the employees of the Board. Such a charge is not covered by the aforesaid clause. Counsel for the State, however, placed reliance on the opening sentence of Clause (1) of Regulation 2 which says, "to consider cases where the examinees have concealed any fact." This clause is not attracted to the facts of the present case. The Petitioners were not guilty of concealing any fact from the Board.

10. There is another aspect of the matter which needs emphasis at this place. The same is that if fraud is committed by a party with a view to achieve certain end or object. In the instant case, counsel for the State could only suggest that the centres had been got changed by the Petitioners to enable them to use unfair means at the examination. If that was so, there were several means to catch the Petitioners. The fact of having used unfair means could be found from the answer books. No such thing could be detected. Hence, it is not possible to accept the argument of the Standing Counsel.

11. In this view of the matter, we are unable to find that the examination of the Petitioners was influenced or shaken either in the entirety or qua any examinee by any malpractice or any other improper Conduct, whether at the examination

or at any time preceding or succeeding the same, whereby the examinees had been benefitted.

12. In the result, the writ petition succeeds and is allowed. The order of the Secretary, Board of High School and Intermediate Education, U.P., Allahabad, dated 21-4-1979 is quashed. He is directed to declare the results of the Petitioners within two months from today. No order as to costs.