

(1998) 11 AHC CK 0145

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 19052 of 1998

Nawal Kishore

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 26-11-1998

Acts Referred:

Citation : (1999) 1 UPLBEC 193

Hon'ble Judges : I.M. Quddusi, J

Bench : Single Bench

Advocate : V.K. Nagaich, for the Appellant;

Final Decision : Allowed

Judgement

I.M. Quddusi, J.—Heard learned Counsel for the petitioner and learned Standing Counsel.

2. The brief facts of the case are that the petitioner appeared in Intermediate Examination, 1997 from U.P. Board with Roll Number 1036898 as private candidate. His examination centre was Triveni Sahai Inter College, Bisauli Badaun. Some printed material was allegedly found from the possession of the petitioner by the Flying Squad when he was solving Hindi I paper and his answer book was changed, resulting which his result was withheld. Thereafter a chargesheet was issued against him vide order dated 30.8.1997 to which it was alleged that some papers were recovered from the possession of the petitioner which was kept by him inside the answer book on his desk, inside the pocket, inside the shoes and he was copying the same/trying to copy of the same. The second charge was that he could copy the same in solving question Nos. 3 and 4. The petitioner denied the same, but his result was cancelled.

3. A counter affidavit it has been filed by the learned Standing Counsel on behalf of the opposite parties, but holding has been indicated therein as to from which part of the body the piece of papers were recovered from the possession of the petitioner or was kept on the desk or inside the answer book. In the chargesheet

only this much has been indicated that the petitioner could use the same in making answer of question Nos. 3 and 4.

4. It is not clear that from which part of the body the piece of paper was recovered and there may be chances that the paper allegedly recovered from the possession of the petitioner may be lying on the earth below the desk or chair of the boy. It is also possible that he did not kept the same, but it is alleged that there were chances to keep the same. This Court has perused the record and found the report of the examiner to the effect that the examinee did not use the unfair means and did not copy from the piece of paper recovered from his possession. Moreover, since the chargesheet is not clear and specific allegation regarding the recover from specific place has not been levelled in the chargesheet when in the proforma three of four things have been indicated, as mentioned above, the petitioner is entitled to get benefit of doubt as in case he was not keeping the same and the piece of paper was lying on the earth below his desk or chair and he was not using that in solving the question paper, he might have not paid attention towards the same or there are chances that seeing the Flying Squad coming some other examinee may through the piece of paper in the room which may lying on the earth, below the desk/chair of the petitioner and the petitioner may not be aware of the same. Hence in such circumstances without specific allegation regarding the recovery from specific part of the body, it would be harsh to give punishment to the boy.

5. In view of the above, the writ petition is allowed. The order cancelling the result of the petitioner dated 31.1.1998 is quashed and a writ in the nature of Mandamus is issued commanding the respondents to declare the result of the petitioner and issue him Mark-sheet of the Intermediate Examination, 1997 (Roll No. 1036898).

6. There is no order as to costs.