
(2016) 02 AHC CK 0185

In the Allahabad High Court

Case No : Writ - C Nos. 3880, 3882, 5353, 5382, 6362 and 6364 of 2016

S.B.S. Inter College and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 16-02-2016

Acts Referred:

Citation : (2016) 3 ADJ 624 : (2016) 3 AILLJ 67 : (2016) 2 AllWC 2154 : (2016) 2 UPLBEC 1408

Hon'ble Judges : Manoj Kumar Gupta, J.

Bench : Single Bench

Advocate : Satyendra Narayan Singh and Bindeshwari Prasad Mishra, for the Appellant;

Final Decision : Disposed off

Judgement

Manoj Kumar Gupta, J.—1. This batch of writ petitions has been filed by various educational institutions of district Mathura complaining that the Madhyamik Shiksha Parishad, U.P. Allahabad¹ has allocated examination centres for conducting the ensuing Board Examinations of the students of their institutions that are situated at a considerable distance. It is urged that the allocation of the examination centres at a distance beyond 5-8 kms. is contrary to the guidelines laid down in the Government Order dated 14.10.2015. In case of S.B.S. Inter College, Kheriya Neem Gaon, Mathura², it is urged that D.C. Vaidik Inter College, Gajju, Mathura (Code No. 1012), which has been allocated as an examination centre, is situated at a distance of 21 kms. In support of the said contention, a report of Lekhpal, Neem Gaon has been brought on record certifying that the distance between the institution and the examination centre is 21 kms. Another report of Assistant Engineer, Construction Division I, P.W.D., Mathura dated 19.1.2016 certifies the distance between the two places as 21 kms on a motorable road. In case of Sri Bankey Bihari Uchcharat Madhyamik Vidyalaya, Nagariya Sherani, Mathura³, it is urged that the distance between the institution and D.C. Vaidik Inter College, which has been allocated as examination centre, is

20 kms. The report of the Lekhpal and Assistant Engineer, P.W.D., Mathura certifying the said fact have been brought on record. In case of Sri Premchandrawati Inter College, Ranhera, Chhata, Mathura⁴ the contention of the petitioner is that the distance between the institution and the examination centre is more than 24 kms. Another institution Sri Mansingh Atardevi Inter College, Owa Shergarh, Mathura⁵ contends that the examination centre allocated for students of Intermediate is more than 20 kms. away. Jawahar Inter College, Oal Mathura⁶ claims that the examination centre allotted for the students of the institution namely, Rajkiya Kanya Inter College, Parkham, Mathura for High School examination is at a distance of 15 kms. and Pt. Deen Dayal Upadhyaya Inter College, Farah, Mathura for Intermediate examination is at a distance of 20 kms. In respect of the institution Maharshi Dayanand Senior Secondary School, Radha Kund Road, Rall, Mathura⁷, the specific case of the petitioner is that Kishori Raman Inter College, Mathura, the examination centre allotted for students of the institution is at a distance of 20 kms.

2. All the petitioners in their respective writ petitions have pointed out various institutions located in the close vicinity but which had not been assigned as examination centre for their students. The prayer made in all the writ petitions is for commanding the respondents to allocate an examination centre in close vicinity as per the provisions of Government Order dated 14.10.2015.

3. The State Government had issued a Government Order dated 14.10.2015 laying down the norms for designating institutions as examination centres for conducting the Board Examinations. The Government Order places considerable emphasis on allotting an examination centre which is in close vicinity of the institution. Under Clause 1(Pa) of the Government Order, it is provided that the examination centre should as far as possible be located within a distance of 5-8 kms. In case the geographical situation of the institution or nonavailability of an institution in the vicinity, does not make it feasible to allocate an examination centre within a distance of 5-8 kms., then in such cases, in respect of High School students the distance can go upto 8 kms., whereas in case of Intermediate students it could be 12 kms. Clause 1(Pha) provides that in rural areas where girl students are appearing, effort should be made to designate the institution as self centre and in case it is not possible, the examination centre should be located within a distance of 5 kms. Special provisions have been made for handicapped and disabled students by providing that effort should be made to allocate a self centre for such students and where it is not possible, they should be adjusted in the nearest educational institution. A District Level Committee with the District Magistrate as its Chairperson, District Inspector of Schools as Member secretary and three other members namely Basic Shiksha Adhikari, two senior most Principals, out of which one should be from rural area and Sub Divisional Magistrate of the concerned division are the members. The aforesaid Committee prepares a tentative list, publishes the same, invites objections and thereafter, sends its recommendation to the Regional Level Committee. The Regional Level Committee is presided over by the Regional Commissioner as its

Chairperson, Regional Joint Director of Education as Member secretary and two other members. It reviews the recommendations of the District Level Committee and thereafter, forwards its recommendations to the Board, which, in turn, forwards the same to the State Government for its approval. The Regional Level Committee is invested with the power to make recommendations for modification/ amendment in the proposals made by the District Level Committee and the State Government has been empowered to make necessary amendments on such recommendation.

4. Clause 18 of the Government Order specifically provides that the distance between the institution and the examination centre has to be specified in the proposal. The concerned Principal and District Inspector of Schools shall be responsible for any error in such disclosures and serious action would be taken against them. Clause 18 of the Government Order is reproduced below for convenience of reference:--

5. It is noticeable that during the previous year examinations conducted by the Board, a large number of writ petitions came to be filed before this Court alleging infraction of the Government Policy relating to allocation of institutions as examination centres. In one such writ petition by the Committee of Management B.D. Singh Inter College and another⁸, this Court noticed serious flaw in the decision of the authorities in allocating examination centres. However, since the Board exams were to commence shortly and, therefore, the Court, while disposing of the writ petition by order dated 27.2.2013, refrained itself from interfering in the matter, but issued various directions so that in future, such mistakes are not repeated. The Court noted the discrepancies found by it in designating institutions as examination centre in following terms:--

"This Court from the records finds that practically no reason has been assigned by the Regional level committee/District level committee for accepting a particular institution as examination centre over the petitioners. It is only in respect of blacklisted institutions that some reasons have been disclosed. The individual complaint of the petitioners has gone unheard which cannot be in the large interest of justice."

6. In order to ensure that such mistakes are not repeated in future, the following direction was given:--

"In order to avoid repeat of such situation in future, this Court provides that the State Government shall in future years come out with its policy decision well in advance. All the Regional level committee/District level committee or any other authority authorized to determine the examination centre shall be asked to publish the list of institutions to be made entries at least two months before the date on which the examinations are scheduled to commence so that every institution has an opportunity to seek its remedy under law in case of wrongful denial of consideration."

7. It seems that again in the examinations conducted by the Board in the year

2014 same mistakes were repeated and large number of writ petitions came to be filed before this Court. Consequently, in writ petition filed by Sri Sukuru Lal Higher Secondary School⁹ this Court by order dated 21.2.2014 issued further directions to ensure that the system is made full proof and malpractices adopted in allotment of examination centres are minimized. Again, the Court, having found that the exams are to commence shortly, did not consider it proper to interfere. The Court, after noticing its displeasure in the manner in which the authorities failed to discharge their duties, ultimately disposed of the writ petition by holding as under:--

"Although the Court has refrained itself from interfering at this stage, yet the Court cannot shirk its responsibility when it finds that there is arbitrariness and violation of the policy of the Government as well as principle of natural justice in the matter of allotment of examination centres. The Court is constrained to observe that the Committees, which have been entrusted with the task of allotment of examination centres, despite being headed by high and responsible officers, have failed to discharge their duties and responsibilities properly in terms of the Government Order, which lead to such arbitrary decisions, as discussed above, thereby resulting in filing of large number of writ petitions. Therefore, having considered the facts and circumstances in totality, in my view, following directions are necessary to be issued to the State Government for future:

(i) The State Government shall adhere to the directions issued by this Court in C/ M B.D. Singh Inter College (supra). Accordingly, for the High School and Intermediate Examinations-2015 and onwards the exercise for allotment of examination centres must be completed by 30th of November of each year.

(ii) The State Government shall constitute an Expert Committee to make suggestions to check the malpractices in the examinations of High School and Intermediate conducted by the Board.

Principal Secretary, Secondary Education, Government of U.P., is directed to make a request to His Excellency the Chancellor of the State Universities to nominate the Members of the Expert Committee. The Principal Secretary shall make such request to His Excellency within two weeks from the date of receipt of this order.

(iii) The Committees in the following years shall observe the principle of natural justice and they will record a brief reason if the institutions, against whom there are allegations of malpractices, are made examination centres. They will also record brief reasons if a request of the institution to make self centre is rejected.

(iv) The State authorities shall take action against the institutions which are found indulged in malpractices, following the procedure prescribed under Chapter III of the Act, 1998.

(v) For the current year (2014) examinations, the District Magistrate of all the

Districts of the State are directed to ensure the fairness and purity of examinations in the light of the judgements of the Supreme Court, as referred to above."

(emphasis supplied)

8. The Government Order dated 14.10.2015, which the respondents had issued for current year examinations, specifically takes notice of the previous judgements in the case of Committee of Management B.D. Singh Inter College (supra) and Sri Sukuru Lal Higher Secondary School (supra).

9. In S.B.S. Inter College, the instructions which have been received by learned standing counsel and which are placed on record, mentions that a fresh report was obtained from Khand Shiksha Adhikari, Math which states that the distance between the institution and the examination centre is about 14 kms. through a Kachcha road. On 1.2.2016, the Court, after taking into notice the instructions received by the standing counsel, passed by the following order:--

"From the instructions received by the standing counsel, it transpires that the institution, D.C. Vaidik Inter College, Gajju, Mathura, which has been designated as Examination Centre for conducting the Board examination of the students, is at a distance of 14 kms. through a Kuchha Road. On being asked by the Court as to what is the distance between the institution and the examination centre, if calculated on the basis of pucca road, it is not disputed before this Court that the distance is 21 kms.

It is astonishing that in the 21st Century, the Board is designating examination centres by calculating the distance based on kachha road.

On prayer of learned standing counsel, the matter is adjourned and will be taken up tomorrow at 12:00 noon, on which day, the secretary of the Board shall remain personally present to assist the Court."

10. On 2.2.2016 the Secretary of the Board was personally present in the Court and she admitted that an incorrect report had been submitted by the District Inspector of Schools, as a result whereof the error had occurred in allotment of the examination centre. She made a statement that the District Inspector of Schools, who had submitted the incorrect report, has since been attached to the Directorate. The order passed on 2.2.2016 is to the following effect:--

"It is not disputed before this Court that the distance between the petitioner institution and D.C. Vaidik Inter College, which has been allocated as examination centre for conducting the Board Examination of the students of the petitioner institution is 14 kms. The aforesaid distance is through a Kachha road that is allegedly in existence. According to the original records produced by the Smt. Shail Yadav, the Secretary of the Board, who is personally present, the distance between the institution and the examination centre was reported to be 12 kms. She states that the decision was taken at the higher level on the basis of report made available by the District Level Committee. She admits that the report of

the District Level Committee was incorrect.

The Secretary of the Board states that since the examinations are to commence from 18 February, 2016 and therefore, she would make all efforts to adjust at least the girls students of the petitioner institution as well as all students of High School in some nearby institution. For the said purpose, she seeks time to take remedial measures by 8 February, 2016.

She further states that the District Inspector of Schools, who had submitted the incorrect report, has since been attached to the Directorate. She is however unable to state whether any action was taken against him or not. She is granted time to clarify on this aspect by filing a short affidavit.

Put up this matter as a fresh case on 9 February, 2016.

On that day, the Secretary of the Board shall remain personally present in order to assist the court."

11. In compliance of the aforesaid order, an affidavit has been filed by the Secretary of the Board reiterating that on account of irregularity committed by the District Inspector of Schools, Mathura, he has been attached to the Directorate of Education by order dated 22.12.2016 issued by the State Government. The affidavit does not indicate any action having been taken against the officials responsible in submitting incorrect report. It is suggested in the affidavit that the students of High School could be adjusted in nearby institutions and similar exercise could be undertaken in respect of girl students of the Intermediate level. The orders passed by the Secretary of the Board making such adjustments have also been placed before the Court. The Court is informed that the change in the examination centre has been notified in newspaper "Amar Ujala" dated 16.2.2016. In respect of High School students of Sri Bankey Bihari Uchchatar Madhyamik Vidyalaya, similar adjustment has been made. In the case of Jawahar Inter College, adjustment of girl students has been made. In case of other institutions, no adjustment could be made on account of paucity of time.

12. It is noticeable that in Maharshi Daya Nand Senior Secondary School where the plea of the institution is that the examination centre assigned is 20 kms. away, the petitioners have brought on record an application by Bachchu Singh, Head Clerk and Dharam Pal, Assistant Clerk submitted before the District Inspector of Schools acknowledging mistake in mentioning that the distance between the institution and the examination centre is 8 kms., whereas in fact, it is 20 kms. They have also prayed for 10 days time being granted to them to submit another proposal so that mistake could be rectified. Taking notice of these facts, the Court on 5.2.2016 passed the following order in the said writ petition:--

"The first petitioner is a recognised Educational Institution and the second petitioner its Manager. For conducting the Board's Examination commencing from 18 February 2016, the Board had allocated Kishori Raman Inter College, Mathura (Code No. 1070), as an examination centre for the ensuing Board

Examination of the students of the petitioner Institution. It transpires from the documents brought on record of the instant petition that the aforesaid Institution was designated as an examination centre on the basis of the report of the authorities that the distance between the petitioner Institution and the examination centre is 8 kilometres. However, according to the petitioners, the distance is 20 kilometres. This is borne out from the documents annexed at page 40 of the writ petition, in which Bachcha Singh, Head Clerk and Dharam Pal, Assistant Clerk had in their letter to the District Inspector of Schools, Mathura admitted that by mistake, incorrect report was submitted mentioning that the distance is 8 kilometres whereas, in fact, the distance is 20 kilometres.

It is not disputed that in accordance with the Government Order, effort should be made to allocate an examination centre within a radius of 5 to 8 kilometres, especially where girl students are also to appear in the examination, as in case of the petitioner Institution.

A number of cases from district Mathura are coming before this Court where similar complaints are being made. In one of the matter that had come before the Court (Writ "C" No. 3883 of 2016), the State respondents had admitted that the District Inspector of Schools, Mathura submitted incorrect report and as a result whereof, some Institutions have been allocated examination centre at far flung places.

In such view of the matter, this Court is of the opinion that it is desirable that the second respondent shall examine various cases in which incorrect reports have been submitted, so that the students of such Institutions are not put to hardship.

Learned standing counsel pointed out before this Court that a meeting at the State level is scheduled to be held on 8 February 2016 and for such reason, the aforesaid writ petition has been fixed for 9 February 2016, on the request of the Secretary of Madhyamik Shiksha Parishad, U.P. Allahabad.

Connect with Writ "C" No. 3882 of 2016 and put up along with it on the date fixed.

In the meantime, the second respondent shall examine the grievance of the petitioners, as also in relation to such other Institutions of district Mathura, as may come to the notice of the said respondent.

A certified copy of this order shall be made available to the learned standing counsel, free of cost, for ensuring its communication and compliance by the Secretary, Madhyamik Shiksha Parishad, U.P. Allahabad."

13. However, as noted above, no change was made in the examination centre in respect of students of Maharshi Daya Nand Senior Secondary School. The excuse taken is that shortage of time did not permit remedial measures being undertaken.

14. The Board Examinations are to commence from 18.2.2016 i.e. day after

tomorrow. There is no gainsaying that no institution has a right to be designated as an examination centre. The Board, which conducts the examination, has to ensure that the examinations are held in a free and fair manner without any malpractice being adopted and at the same time, the convenience of the students is to be kept in mind. It is for the said reason that Government Order places great emphasis on allocating an examination centre close to the institution. It is apposite to refer to Clause 1(Da) which requires that only such institutions should be allocated as examination centres which are conveniently accessible. This is necessary to facilitate the students reaching the examination centre as well as to enable the Flying Squad to make surprise inspections. Clause 1(Da) is to the following effect:--

15. From the undisputed facts on record, it is firmly established that in several cases the examination centres that had been allocated are situated at a great distance and are not accessible through a motorable road. It is not disputed that the same is on account of incorrect data furnished by the officials entrusted with the responsibility to ensure implementation of the Scheme.

16. This Court is not oblivious of the fact that the Board has to conduct the examination of large number of students and in the process, some error here or there is bound to occur. However, at the same time, errors which strike at the very foundation on which the Scheme is conceived, cannot be permitted to go unnoticed. Whereas the Government Order, as noticed above, lays emphasis on convenient accessibility of the examination centre which means that the examination centre should be accessible through a pukka motorable roads, the respondents have made examination centres which are accessible only through kachcha road or otherwise, the distance is alarming.

17. As noticed above, the examinations are to commence from 18th and this Court is conscious of the fact that any interference at this stage would be detrimental to the holding of the examinations and would also be prejudicial to the interest of the students, as they would not come to know of the change in the examination centre, therefore, declines to interfere in the matter, but at the same time, it cannot brush aside the basic flaw in the allotment of the examination centres and the dereliction of duties on part of the State functionaries assigned with the responsibility to effectuate the State Policy. As noticed above, the District Level Committee is headed by the District Magistrate, who is the head of the district and the Regional Level Committee by the Commissioner of the Division. The proposals submitted by the District Level Committee are scrutinized by the Regional Level Committee and then again by the Secretary of the Board before it is finalised by the State Government. In such circumstances, the State Government cannot shirk from its responsibilities by passing the buck on the officials at the lowest level i.e. the District Inspector of Schools. It has to be examined as to which other officials in the hierarchy were guilty of dereliction of duties and accordingly, it has to be examined what disciplinary proceedings or other measures are required to be taken against

them. Accordingly, the following directions are issued:--

(a) A certified copy of this order shall be placed before the Chief Secretary, U.P. Government, Lucknow. The Chief Secretary shall within two weeks constitute a team of three officials comprising of the Principal Secretary, Madhyamik Shiksha as its Chairperson, another official of the rank of Joint Secretary and the Director of Education, Madhyamik Shiksha as its members.

(b) Soon after the Committee is constituted, the same shall be notified in leading newspapers in the State and objections shall be invited from the institutions as well as from public at large relating to the flaws in the allocation of examination centre during the current year. It shall be open to the petitioners as well as other institutions to file their objections/complaints before the said Committee within next two weeks.

(c) The Committee shall examine the complaints and all other cases coming to its notice and shall suggest remedial measures, so that such instances are not repeated in future.

(d) The Committee will also identify the persons responsible for various shortcomings in implementation of the Policy of the State Government contained in Government Order dated 14.10.2015 and based on the recommendation of the Committee, the State Government shall decide what disciplinary proceedings are required to be taken against the officials responsible. The outcome of the inquiry as well as the name of the officials responsible and the action proposed against them, shall be communicated to this Court through the Registrar General within next one month of the submission of the report.

18. With the aforesaid observations and directions, the writ petitions stand disposed of.

19. In the aforesaid facts and circumstances, there shall be no order as to costs.

20. The Registrar General of this Court is directed to forthwith send a copy of this order to the Chief Secretary, U.P. Government, Lucknow to ensure its compliance.

1The Board

2Writ-C No. 3882 of 2016

3Writ-C No. 3880 of 2016

4Writ-C No. 6364 of 2016

5Writ-C No. 6362 of 2016

6Writ-C No. 5382 of 2016

7Writ-C No. 5353 of 2016

8Writ-C No. 853 of 2013

9Writ-C No. 6749 of 2014