
(1960) 03 AHC CK 0028

In the Allahabad High Court

Case No : Special Appeal No. 20 of 1960

Secretary, Board of High School and Intermediate Education,
Uttar Pradesh, Allahabad

APPELLANT

Vs

Vir Pal Singh Bhadoria, Dist. Etawah

RESPONDENT

Date of Decision : 08-03-1960

Acts Referred:

Uttar Pradesh Intermediate Education Act, 1921 — Section 15, 7, 7(12)

Uttar Pradesh Intermediate Education Regulations, 1921 — Regulation 1(1), 1(1)(4)

Citation : AIR 1960 All 535

Hon'ble Judges : S.N. Dwivedi, J;R.N. Gurtu, J

Bench : Division Bench

Advocate : S.C. Khare, for the Appellant; Shambhu Prasad, for the Respondent

Final Decision : Allowed

Judgement

Gurtu, J.—This is a special appeal from an order of a learned single Judge of this Court, dated 24-12-3.959. The respondent was the petitioner before the learned single Judge. He was a student of class X at the Government Intermediate College, Etawah, during the session 1958-59. He was found using unfair means at the High School Examination held in that year in the month of March/April. The Examinations" Committee of the Board of High School and Intermediate Education, after necessary enquiries, held him guilty of the charge of using unfair means and made an order cancelling his examination for the session 1958-59 and debarring him from appearing in the examination to be held in 1959-60.

2. Originally the respondent, petitioner, before the learned single Judge, attacked the legality of the proceedings held against him by the Examinations" Committee and impugned the entire order made by it, including the portion whereby his examination of 1959-60 was cancelled, but he later confined his relief against the portion of the order which debarred him from appearing in the examination to be held in 1960. His case before the learned single Judge was that the said Committee possessed no such power to debar him either under the Intermediate

Education Act, 1921, (Act II of 1921), or the regulations made thereunder. The learned single Judge examined the Act, accepted the respondent-petitioner's contention and directed the Board not to give effect to that portion of its order which directed the respondent-petitioner's exclusion from the future examination of 1960.

The Board has come up in appeal and it is submitted before us that the learned single Judge was wrong in the conclusion at which he has arrived and that the Board had power to order exclusion of the respondent-petitioner. Before examining the contention advanced before us, we might briefly state that the learned single Judge has approached the question, which was canvassed before him, from the point of view that the regulation under which this order was passed imposes a penalty and that the regulation was not necessarily essential for exercising the power to conduct an examination by the Board. The learned single Judge has come to the conclusion that inasmuch as the particular regulation was made with reference to the conduct of the examination there was in effect no nexus between the regulation and the expressly granted power relating to the conduct of the examination u/s 7 of the Act.

3. It is contended by the Board that the regulation is within the powers granted under the Intermediate Act of 1921. In order to determine whether it is intra vires or not, we would like to refer to certain provisions of the Intermediate Education Act.

4. This was an Act to establish a Board to take the place of the Allahabad University in regulating and supervising the system of High School and Intermediate Education in Uttar Pradesh, and to prescribe courses therefore, The Act constituted a Board known as the Board of High School and intermediate Education, and by Section 7 conferred powers on the Board. So far as it is relevant for purposes of this case, Section 7 prescribes that subject to the provisions of the Act, the Board shall have the following powers, namely, (1) to grant diplomas or certificates to persons who had passed its examinations, (2) to conduct examinations at the end of the High School and Intermediate courses, (3) to admit candidates to its examinations and (4) to publish the results of its examinations. Then there is a power granted by Sub-clause (12) in the following words :

"To do all such other acts and things as may be requisite in order to further the objects of the Board as a body constituted for regulating and supervising High School and Intermediate Education."

By Section 13 of the Act the Board has power to appoint Inter alia an Examinations" Committee. Then by Section 14 it is enacted that

"All matter relating to the exercise by the Board of powers conferred upon it by this Act which have by regulation been delegated by the Board to any one of its committees shall stand referred to that Committee, and the Board, before exercising any such powers, shall receive and consider the report of the

Committee with respect to the matter in question."

Then by Section 15 a power is granted to the Board to make regulations. Sub-section (1) of the section states that the Board may make regulations for the purpose of carrying into effect the provisions of this Act Sub-section (2) enacts that in particular and without prejudice to the generality of the foregoing power the Board may make regulations providing for all or any of the following matters, namely,

- (a) the constitution, powers and duties of committees,
- (b) the conferment of diplomas and certificates,
- (c) the conditions under which candidates shall be admitted to the examinations of the Board and shall be eligible for diplomas and certificates.
- (g) the conduct of examinations.

5. We are only specifying the particularised powers to the extent they are necessary for purposes of this discussion. It is in pursuance of Section 15 that the Board has framed its regulations. The regulations show that they deal with a variety of topics. Ch. IV deals with Committees of the Board. Ch. V deals with Committees of courses. Ch. VI deals with the Examinations" Committee. Ch. VI-A deals with the Results" Committee. Ch. VII deals with recognition of institutions by the Board. Ch. VIII deals with the Finance Committee. Ch. IX deals with the Curriculum Committee. Ch. X deals with conditions under which grants-in-aid may be given to recognised institutions. Ch. XI deals with residence of students. Ch. XII deals generally with Examinations. Ch. XIII prescribes the subjects for High School Examination, and Ch. XIV for the Intermediate Examination. Ch. XV (a) deals with High School Technical Examination and Ch. XV(b) with Intermediate Technical Examination. Ch. XVI deals with election of Members of the Board under Clauses (c) and (e) of Sub-section (1) of Section 3 of the Intermediate Education Act, and Chapter XVII deals with miscellaneous matters. We have by particularising the subject-matters of the Chapters indicated! the scope of the regulations. A perusal of the regulations will show that they cover in effect the whole gamut of High School and Intermediate Education.

6. We will now come to the material regulation which is to be found in Ch. VI headed "The Examinations" Committee". To the extent it is necessary for purposes of this case we will quote regulation 1 of that Chapter which runs as follows :

"It shall be the duty of the Examinations" Committee, subject to the sanction and control of the Board :

- (a) to order examinations in conformity with the regulations and to fix dates for holding them;
- (k) to consider all other matters arising out of the conduct of examinations, and

to make recommendations, where necessary, to the Board."

Then we have Sub-clause (1) to regulation 1 which is important and. which must be wholly quoted. It runs as follows :

"(1) To consider cases where examinees have concealed any fact or made a false statement in their application forms or a breach of rules and regulations to secure undue admission to an examination or used unfair means or committed fraud (Including impersonation) at the examination or fire guilty of a moral offence or indiscipline and to award penalty which may be one or more of the following :

- (1) Withdrawal of certificate of having passed the examination,
- (2) cancellation of the examination,
- (3) exclusion from the examination,
- (4) withdrawal of certificate of having passed: or cancellation of or exclusion from subsequent examinations including higher examinations of the, Board."

7. Sub-clause (4) was added by Notification No. B/6831/V-8 dated 17-3-1959 published in the Gazette. It is under sub-Clause (4) that the petitioner respondent has been excluded from, the examination of 1959-60, We may repeat here that his examination for 1958-59 was also cancelled. So far as the cancellation of 1958-59 examination is concerned, learned counsel for the respondent did not challenge the cancellation before us. The challenge is merely to the exclusion from the examination of 1959-60. We have now to consider whether regulation 1 (1) (4) of Ch. VI (The Examinations Committee) is intra vires the Board. We may point out at once that the power to make Clauses (1), (2) and (3) of regulation 1 was not disputed before us, and it was conceded that they were within the power granted by the Act.

It is only in regard to regulation 1 (1) (4) that the objection was raised. The contention, which was advanced before the learned single Judge, was that regulation 1 (1) (4) could not be related to the power granted u/s 15fg), namely, the "conduct of examinations", and that, therefore, that regulation could not be supported. We have already referred to Section 15(g). It allows the making of regulation in respect of the conduct of examinations. The view of the learned single Judge was that if the impugned regulation had to concern itself with the conduct of examinations, it would have found place in Ch. XII of the Regulations, which expressly deals with the conduct of examinations, and the learned single Judge has also expressed the view that this impugned regulation has no relation to the subject "conduct of examinations".

We would, however, like to point cut that the power given u/s 15 of the Act to make regulations is of a very wide character. The Board may make regulations for purposes of carrying into effect the provisions of the Act. That is the general power. The particularisations are without prejudice to the generality of the power.

The particularisations, therefore do not cut down the power or limit the general power in any way. Therefore, a regulation, which has the purpose of carrying into effect the provisions of the Act, can be made under the general power granted, and it has not to be justified with reference to the specifically enumerated powers.

8. The question, therefore, is whether the impugned regulation can be justified on the ground that it is for the purpose of carrying into effect the provisions of the Act. We may now re-refer to the powers of the Board u/s 7 (XII] which are to do all such other acts and things as may be requisite in order to further the objects of the Board as a body constituted for regulating and supervising High School and Intermediate Education. Thus a regulation, which would be requisite in order to further the objects of the Board as a body constituted for regulating and supervising High. School and Intermediate Education, could be justified u/s 15 of the Act read with Section 7 (12).

Looking at Section 7 (12) we find that it is framed in the broadest possible language. The object of the Board is described as regulating and supervising High School and Intermediate examination. This object must, in our view, necessarily include maintaining purity of examination and preserving the standard of examination and encouraging modes of conduct on the part of candidates who appear at that examination, which will ensure a proper evaluation of their academic attainments. This, in our view, is only possible if such regulations are made as will ensure that candidates will not be tempted to use unfair means and will not use unfair means at examinations. Therefore, a regulation which empowers the cancellation of a certificate of having passed the examination, or a cancellation of the examination or the exclusion from the examination, can clearly be justified on the ground that it is necessary for achieving the aforesaid objects.

9. Indeed, as we have pointed out, the aforesaid three powers granted under Ch. VI, regulation. 1 (1) (1), (2) and (3). are not challenged before us by learned counsel for the respondent at all. If the aforesaid regulations are within the competence of" the regulation-making body, then we find it very difficult to follow how sub-clause (4) of that regulation can be said to be outside its competence. We will quote Sub-clause (4) again:

"Withdrawal of certificate of having passed or cancellation of or exclusion from subsequent examinations including higher examinations of the Board."

In this case the respondent has been ordered to be excluded from the subsequent examination of 1959-60. If it was permissible to make a regulation cancelling the examination tit which the candidate sat, then surely the position is not much different in the case of a regulation which excludes him from sitting at a subsequent examination. If the former regulation could be justified on the ground that it would bring about purity of examinations and ensure the standard of examinations, then surely the regulation excluding from a subsequent

examination would help achieve the same purpose.

The cancellation of an examination at which the candidate was found to have cheated would not, in any way, work any hardship at all on the candidate because the position of a person, whose examination is cancelled for cheating, is in a sense analogous to a person who has not sat for an examination. Sitting in an examination means sitting for it in accordance with its rules and taking the elimination in conformity with, the requirements of the rules, and no rule permits cheating. So that if a candidate's examination is merely cancelled, he cannot be said to have suffered at all. Sometimes it may be necessary, having regard to the gravity of the conduct of the candidate to exclude him from a subsequent examination also.

10. The combined object of both the orders would be to reinforce in the mind of the student concerned the requirements of all examinations, namely, that it should be an examination in which the capacity of a candidate may be properly judged, which cannot be the case if those who have cheated can get away with it. We are definitely of the view that a regulation excluding from an examination subsequent to the examination in which the cheating occurred is a regulation which regulates High School and Intermediate education. Regulating also means eliminating irregularities and ensuring regularities. We are of the view that a regulation of exclusion from a subsequent examination is amply within the powers granted u/s 15 of the Act read with S, 7 thereof.

11. In construing these sections in the way we have done, we have kept in mind that we are called upon to construe an Act regulating education designed to create citizens of a guaranteed educational standard. This Act is in the category of a welfare legislation and, in our view, it should receive a hospitable scope. A construction should be put on the statutory provisions which would help achieve the purpose and object of the Act, which is to regulate the system of High School and Intermediate Education in Uttar Pradesh. We are, therefore, of the view that the regulation empowering exclusion from subsequent examinations has a nexus, which cannot be said to be fanciful, illusory or arbitrary, with the object of the Act.

The authorities charged with enforcing Ch. VI, Regulation 1(1), Sub-clauses (1) to (4) can, we think, be trusted to act with due regard to justice and discretion. The Intermediate Education Act is an Act which, in a sense, puts the authorities created thereunder in loco parentis with the candidate and we do not fear that there would be any misuse of the powers taken by the Board unto itself by the impugned regulation. We may also point out that there is an ultimate power of judicial control in case of misuse of power.

12. We have particularly considered that part of the provision of Sub-clause (4), which deals with exclusion from subsequent examinations because this is a case of exclusion from subsequent examination. We are, therefore, of the view that sub-clause (4) of Regulation 1(1), of Ch. VI is not ultra vires.

13. The respondent by way, of supporting the operative portion of the order of the learned Single Judge raised a contention that Sub-clause (4), as framed, did not cover the case of the respondent. His contention was that under Sub-clause (4) a candidate could not be excluded from the examination subsequent to the examination in which he had cheated, but that such exclusion was only possible under sub-clause (4) if there was a withdrawal of certificate or a cancellation not of the examination in which the cheating took place but of a subsequent examination and that the order of exclusion envisaged by the regulation could only be passed subsequent to such subsequent withdrawal or cancellation. We are unable to accept this contention.

We think that sub-clause (4) gives three separate powers. First, there is the power of withdrawal of certificate of a subsequent examination including higher examinations of the Board, secondly, a power likewise to cancel, and thirdly, there is the power to exclude from subsequent examinations including higher examinations of the Board. We think that, even though all these three powers have been lumped together inartistically, the true intention of Sub-clause (4), as can be gathered from its language without) unduly stretching it, is the conferment of three powers as aforesaid. Inasmuch as we are only concerned with the power to exclude from subsequent examinations, we need not further embark upon the analysis of the other two powers granted under Sub-clause (4).

14. We have given this case our very careful consideration, as we are bound to do, having regard to the fact that the petitioner respondent has been excluded from the examination of 1960, but we are of the view that the exclusion was permissible under the impugned Sub-clause (4).

15. We, therefore, allow this appeal, set aside the judgment dated 24-12-1959 of the learned Single Judge and dismiss Writ Case No. 2377 of 1959. We consider that in this case parties should, bear their own costs of both the first Court and the appellate Court. We do not think it would be desirable to saddle the petitioner respondent, who is a student. with costs.