

(2017) 04 AHC CK 0115
In the Allahabad High Court
Case No : 41 of 2017

Shri Ram Janki Inter College

APPELLANT

Vs

State Of U.P. Thru. Prin.Secy., Secondary Education & Others

RESPONDENT

Date of Decision : 10-04-2017

Acts Referred:

Citation : (2017) 04 AHC CK 0115

Hon'ble Judges : Amreshwar Pratap Sahi, Sanjay Harkauli

Bench : Division Bench

Advocate : Ripu Daman Shahi

Judgement

1. Heard learned counsel for the appellant.
2. The appellant institution is aggrieved by the order dated 25.10.2016 passed by the Secretary, Board of High School and Intermediate Education, U.P. whereby the centre superintendent and the invigilators have been debarred from being notified for further invigilation or holding of examination for three years and simultaneously the appellant institution has also been debarred from functioning as a centre of Board examinations for a period of three years. The learned Single Judge has upheld the said order by the impugned judgment dated 19.12.2016, hence this appeal.
3. Learned counsel for the appellant contends that no reasons are recorded as to what was the material on the basis whereof this order of debarring the appellant has been passed nor any material was furnished to the appellant to meet any such allegation on the basis whereof the debarment could have been passed. Even otherwise, it is urged that if any incident has taken place on the road at a considerable distance and not inside the premises of the institution, then the involvement of any student or outsiders in the said incident cannot be construed to be an incident generated at the instance of the appellant so as to debar it from being a examination centre. Consequently, in the absence of any such reasons, the impugned order blacking listing the appellant institution and the

judgment of the learned Single Judge in depriving the appellant institution of acting as a centre of examination by upholding the order of the Board is vitiated. Consequently, the impugned judgment as well as the order dated 25.10.2016 deserves to be set aside.

4. It was also urged that in the absence of any such material being brought to the notice of the appellant so as to contest the aforesaid position, the impugned order of the Board is in violation of the principles of natural justice, which aspect has not been appreciated by the learned Single Judge in correct perspective.

5. Apart from this, the alleged First Information Report, which was lodged, there is no police report charging the appellant institution and in the absence of any such material, the appellant institution could not have been blacklisted on the basis of the First Information Report.

6. Learned Single Judge, on the other hand, submits that the power to either establish and notify a examination centre or depriving it from acting as such is available to the Exam Committee in terms of Chapter VI of the Regulations framed under the U.P. Intermediate Education Act, 1921. The examinations committee made a recommendation and took a decision to debar the appellant institution on account of the reports that were received and which is in consonance with the policy of 2016-17 examinations notified on 13.10.2016 where clause 6 Ka empowers the taking of such action. The said clause is extracted herein under: "VERNACULAR MATTER OMITTED"

7. It is further submitted that as per the documents on record and the short counter affidavit, which has been filed on behalf of the State, it is evident that on 01.06.2016, hearing took place and the Principal of the appellant institution representing the cause of the appellant had been heard. This is annexure 1 to the short counter affidavit, which document indicates the presence and the opportunity having been given by the concerned committee. It is also the contention of the learned Standing Counsel that the examinations that had been cancelled and related to 24.02.2016 was re-scheduled for 29.03.2016 after the aforesaid incident of mass copying had been reported. It is urged that this decision of holding of a re-examination on the ground of mass copying, which was taken on 15.03.2016 and the examination, which were held pursuant thereto were not challenged. Hence, the appellant institution cannot now take a stand of questioning the consequential actions that have taken by the Board.

8. It has also been submitted that the reasons for holding of the reexamination was mass copying and the same is also evident from the recommendations, which have been made by the Secretary, and filed as Annexure 2 to the Short Counter Affidavit.

9. It has further been contended that in view of the aforesaid situation that had arisen and the factors that have been noticed in the reports that a decision was taken to black list the institution for three years as well as debar the Centre Superintendent and the invigilators from participating in any examination activity

for a period of three years.

10. Controverting the aforesaid submissions, learned counsel for the appellant submits that the report, which has been relied on itself indicates that the material of mass copying was not available and had not been sent by the District Inspector of Schools and not only this, the said report does not make any recommendation for black listing the institution except for holding of a fresh examination.

11. In this view of the matter, the same cannot amount to a material for the purpose of black listing of the institution. Hence, the decision taken on 25.10.2016 is vitiated as it is founded on a material, which does not take notice of the aforesaid factors.

12. It is further submitted that in view of the aforesaid position, no appropriate opportunity has been given for controverting the aforesaid allegations. It has also been urged that the District Inspector of Schools has himself countersigned the daily diary and in such circumstances, while countersigning the daily diary, he does not appear to have made any such mention of any mass copying having been found at the centre of the appellant institution. It is, therefore, submitted that in the absence of any material or any sufficient cause, the blacklisting of the appellant institution is unjustified.

13. He further submits that vide letter dated 27.02.2016, the Director of Education had been informed by the Joint Director of Education of certain facts making allegations against the District Inspector of Schools and indicating therein that the District Inspector of Schools had acted in a biased manner for reasons that have been disclosed in the said letter. Even this aspect of the matter does not appear to have been considered by the Examination Committee while passing the resolution against the appellant institution.

14. Having heard learned counsel for the appellant, it is evident that the power to notify a particular institution as a Centre for holding examinations is available under Chapter VI of the Regulations framed under the U.P. Intermediate Education Act, 1921. This is clearly evident from clause 2-h of the aforesaid Chapter and further on account of use of unfair means, the power to take action against the Centre Superintendent, Head of the Institution and Invigilators, Teachers or other employees is provided for in Clause II of Chapter VI -B of the Regulations framed under 1921 Act.

15. Since the Board is empowered to take such action through its Committees and the State Government is also enjoined with the duty and obliged to issue necessary instructions, the State Government also appears to have issued the Government Order dated 13.10.2016 where the Policy to be adhered to at the time of holding examinations has been clearly spelt out, which is in addition to the Regulations framed under the U.P. Intermediate Education Act, 1921. Clause 6 Ka as extracted hereinabove, therefore, acts in aid of the authorities, which action is permitted to be taken under the provisions referred to hereinabove.

16. However, such action where it amounts to depriving any institution or individual of any such duties to be performed, the same has to be after providing an opportunity of hearing.

17. In the instant case it is evident that the appellant institution had been put to notice and there is a clear indication of the presence of the Principal as also the contentions raised on behalf of the institution on record which were taken notice of while proceeding to take action. The presence of the Principal on 01.06.2016 therefore, clearly establishes the same.

18. So far as the issue relating to the submission of a police report is concerned, the same is with regard to the incident that was reported that took place, which according to the petitioner is outside the institution. The submission of the police report would, therefore, will have no impact on the decision, which has been taken in the present case as the action taken is based on the reports of the educational authorities.

19. The second issue is about the conflicting reports of the District Inspector of Schools and the Joint Director of Education, Faizabad. Suffice to it mention that the reports are conflicting in relation to the happening of the incident inside the institution but the fact remains that the incident did happen whereafter a decision was taken to cancel the examinations on the ground of mass copying and the disturbance that was created. Such an act is clearly covered and is within the powers of the respondents as per Clause 6 (Ka) of the Government Order dated 13.10.2016. Thus, no advantage can be claimed by the appellant institution on the aforesaid ground so as to vitiate the impugned order.

20. The third is with regard to the issue of non-availability of material namely that the report itself did not indicate the presence of the material on the basis whereof it could be said that mass copying had been carried out. As indicated above, on the strength of such a report, a decision was taken on 15.03.2016 for holding of fresh examinations. The fresh examinations were accordingly, held on 29.03.2016. No challenge having been raised to the same, the aforesaid question cannot be raised by the appellant institution as a defence in relation to the consequential action.

21. Fourthly, so far as the issue of the maintaining of the daily diary is concerned, we find that on 24.03.2016, the same was duly signed by the concerned invigilator in-charge. The District Inspector of Schools has put his signatures beneath the same, which does not in any way amount to affirming or otherwise approving of any incident, which might have taken place in between.

22. Consequently, for all the reasons aforesaid, we do not find any error of the Board's order dated 25.10.2016 or the conclusion drawn by the learned Single Judge. The appeal lacks merit and is accordingly rejected.