
(2014) 02 AHC CK 0182

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 6749 of 2014

Sukuru Lal Higher Secondary School and Another	APPELLANT
Vs	
State of U.P. and Others	RESPONDENT

Date of Decision : 21-02-2014

Acts Referred:

Constitution of India, 1950 — Article 21-A
Uttar Pradesh Public Services (Reservation for Backward Classes) Act, 1989 — Section 3

Citation : (2014) 2 ADJ 575 : (2014) 3 ALJ 332 : (2014) 3 AWC 2594 : (2014) 2 ESC 896 : (2014) 2 UPLBEC 1425

Hon'ble Judges : Pradeep Kumar Singh Baghel, J

Bench : Single Bench

Advocate : R.N. Yadav, Advocate for the Appellant

Judgement

Pradeep Kumar Singh Baghel, J.—This batch of writ petitions have been filed in this Court by and/or on behalf of several educational institutions praying for a direction upon the authorities to make such institutions as examination centres for the High School and Intermediate Examinations-2014 (Academic Session 2013-14) being conducted by the Board of High School and Intermediate Education, Uttar Pradesh (for short, "the Board"). As the writ petitions relate to allotment of examination centres and involve almost common grievance and issues are also similar, the same were heard in the form of batch of cases. This petition was treated as lead petition. In other petitions issues regarding girls students, violation of natural justice and absence of reasons have been taken and learned Counsel for the parties have advanced their submissions at length. Those submissions will also be considered in this matter. So far as other petitions relating to allotment of examination centres are concerned, they shall be decided separately by separate orders.

2. At the very outset, I may take notice of the fact that the State Government has issued a Government Order dated 9.10.2013, whereby it has framed a policy laying down the norms/guidelines for allotment of the examination centres for

the Board Examinations-2014. Under the said Government Order two separate Committees have been constituted; one is the District Level Committee headed by the District Magistrate of the concerned district, other members of which are concerned District Inspector of Schools, Basic Education Officer, two senior Principals of the concerned District and Sub-Divisional Magistrate of concerned Tehsil; and, the other is the Regional Level Committee chaired by the Commissioner of the Region/Division.

3. The petitioner No. 1 in the instant writ petition is a recognised institution, known as, Sri Sukuru Lal Higher Secondary School Chuha-Peeran Saurai Bujurg Kara, Kaushambi (for short, the "Institution") through its Manager and the petitioner No. 2 is its Principal. Said Institution is governed by the provisions of the U.P. Intermediate Education Act, 1921. The grievance of the petitioners is that the Institution satisfies the norms laid down by the State Government in the Government Order dated 9.10.2013 and it was an examination centre in the years 2005, 2007 and 2009. It has never been debarred from being allocated as an examination centre but without disclosing any reason and without giving any notice, it has been denied self-centre for the Board Examinations-2014 on the ground that some extra OMR forms were issued. It is further stated that allocation of examination centre in the district has been done arbitrarily and illegally as a large number of debarred institutions have been made examination centres. It is further averred in the writ petition that several institutions, even against which either first information reports have been lodged or they have been found indulged in malpractices, have been made examination centres. In some of the centres, re-examinations had been held and they come in the category of debarred institutions, even then the authorities have made them examination centres. The petitioners have mentioned the names of large number of such institutions in the writ petition.

4. On the basis of the averments made in the writ petition, the learned Standing Counsel was asked to produce the original records with regard to allocation of examination centres of District Kaushambi. In compliance with the said direction, Sri Ashok Kumar Yadav, holding charge of District Inspector of Schools, Kaushambi, appeared before the Court and had produced the records before the Court.

5. From a perusal of the original records it is evident that the minutes of the meetings of the District Level Committee have been prepared. In Column-2 of the minutes, the names of several high dignitaries such as Hon"ble Ministers, Hon"ble Members of Parliament and other influential persons are mentioned who have made recommendations in favour of several institutions. Even there is a mention of a constitutional authority also in the said column. It is also evident from the records that several institutions against whom there were allegations of malpractices have also been made examination centre without assigning any reason.

6. Against this background, learned Standing Counsel was asked to bring on

record the copy of the minutes by way of an affidavit. Accordingly, an affidavit has been filed which is on the record.

7. A query was put to Sri Ashok Kumar Yadav as to why the names of several Ministers, Members of Parliament and constitutional authority are mentioned in column-2 of the minutes. He has made statement that the District Level Committee has received the recommendations of those dignitaries.

8. Learned Standing Counsel has stated that out of 46 recommendations received from various high dignitaries, only 5 colleges have been made examination centre. He has invited the attention of the Court to paragraph Nos. 4, 5 and 6 of the affidavit, wherein it is mentioned that as per the allegations of the first information report, against those institutions a final report has been submitted.

9. It is common grievance of the petitioners not only in the present writ petition but also in most of the writ petitions relating to allotment of examination centres that in spite of the fact that they satisfy all the prescribed norms of the Government Order dated 9.10.2013, their claim for self-centre has been rejected arbitrarily, without assigning any reason, and the entire proceedings of the District Level Committee/Regional Level Committee (for short, the "Committees") are in violation of principles of natural justice. The Committees have ignored the norms laid down by the State Government without assigning any reason and have not considered the undue hardship that will be caused to young students, particularly girl students.

10. Likewise present case, in most of the similarly situated writ petitions, learned Standing Counsel was directed to seek instructions in each and every case separately from the respective districts/regions. He has also produced the original records of some of the districts including District Kaushambi, as referred above.

11. It is unfortunate that every year this Court has to deal with the large number of writ petitions before the examination of High School and Intermediate commences in the month of March/April. The State and its functionaries have stock response that any interference by this Court at this late stage shall disrupt the examinations and it would be difficult to reconsider the matters as the examination schedule has already been announced. The other practical implications are also pleaded. This year again same plea is taken by the Board and the State Government.

12. In the year 2013, this Court had decided a bunch of writ petitions by a common judgment dated 27.2.2013 rendered in leading writ petition, being Civil Misc. Writ Petition No. 853 of 2013 (C/M B.D. Singh Inter College and another v. State of U.P. and others), wherein this Court has noticed that a common complaint of all the petitioners therein was that a policy of pick and choose has been adopted by the District Level Committee/Regional Level Committee. The Court had summoned the records and found that practically no reasons were

assigned by the Regional Level Committees/District Level Committees for accepting a particular institution as examination centre over the petitioners therein. It is only in respect of blacklisted institutions that some reasons were found to have been disclosed. The Court further recorded that the individual complaint of the petitioners had gone unheard. It was further held that it is a primary duty of the Board to ensure that the examinations are held in free and fair manner. The Court had finally issued a direction to the Board to avoid the future litigation. The relevant part of the judgment is extracted herein below:

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.

13. However, from a perusal of the Government Order dated 9.10.2013 it is evident that the directions issued by this Court in the above referred case i.e. C/ M B.D. Singh Inter College (supra) have either escaped the notice of the State Government or the same have been ignored. On the other hand, the Government has taken note of a direction issued in another writ petition, being Civil Misc. Writ Petition No. 14369 of 2009 [C/M, Sankat Mochan Higher Secondary Vidhyalaya Andoli, Mahamaya Nagar (Hathras) and another v. State of U.P. and others] decided on 18.3.2009, which was decided earlier in time and in different context.

14. In the said case i.e. C/M, Sankat Mochan Higher Secondary Vidhyalaya Andoli (supra), the grievance of the petitioners therein was that the District Inspector of Schools vide order dated 10.3.2009 had changed the examination centre in the midst of examination on the ground that the area where the petitioner's institution was situated had become sensitive as there was some law and order problem. In the said background, this Court had observed that by changing the centre the students are under great mental pressure till the last moment for them as they have also to make arrangement for reaching their examination centers, which may be in villages of places lacking good transport facilities and road etc. Therefore, the educational authorities were directed that allotment of examination centres should be completed at least three weeks prior to the commencement of the examinations. The relevant part of the direction given in C/ M, Sankat Mochan Higher Secondary Vidhyalaya Andoli (supra) reads as under:

The Educational authorities are also therefore directed to ensure that no examination centre is changed from next year or 2009-2010 in midst of examination. Allotment of all examination centres should be completed at least three weeks prior to this commencement of the examinations. In case of an emergency like in the present case adequate number of police force must be deployed by the District Magistrate and the Police Authorities for smooth

conduction of the examinations. In case mass copying is reported at the examination centre the staff should be changed from that examination centre immediately. Similarly any other situation be met but in no case examination centre once allotted be changed till the last moment or during the midst of examination.

15. It appears that in the Government Order dated 9.10.2013 the time-frame prescribed in the aforesaid judgment of C/M, Sankat Mochan Higher Secondary Vidhyalaya Andoli, Mahamaya Nagar (supra) has been taken into consideration, whereas the positive direction issued in C/M B.D. Singh Inter College (supra), wherein two months' advance time was given to complete the process of allotment of examination centres, has been completely overlooked.

16. Learned Standing Counsel has stated that no Special Appeal was filed against the judgment and direction of this Court in C/M B.D. Singh Inter College (supra).

17. In my view, the direction issued by this Court in C/M B.D. Singh Inter College (supra) is binding on the State Government and the said direction has not been complied with by the State Government in the Examinations of 2014. There is no explanation on the record as to why the direction of this Court in C/M B.D. Singh Inter College (supra) has not been followed.

18. I have heard and considered the submissions of Sri Ashok Khare, learned Senior Advocate, Sri Vinod Sinha, Sri Prabhakar Awasthi, Sri R.N. Yadav, Sri Rajendra Prasad Tiwari, Sri Mohan Yadav, Sri Rajiv Trivedi, Sri C.M. Yadav, Sri O.N. Mishra, Sri A.K. Sinha, Sri Vinod Kumar Singh, Sri Sudhakar Pandey and Sri N.L. Srivastava, learned Advocates appearing for the petitioners in respective similar writ petitions, who have advanced their valuable submissions in the similar line as of the petitioners in the present case, and Sri J.K. Tiwari, learned Standing Counsel for the respondents.

19. The principal submission advanced on behalf of the petitioners is that Committees have taken decisions arbitrarily; policy of the State Government in respect of girl students have been totally ignored; decisions are in violation of principles of natural justice; and, large number of debarred institutions have been made examination centers without assigning any reason. There are several institutions against whom there were allegations of mass copying and first information reports were lodged against them. Lastly, it was urged that on the recommendation of powerful persons the examination centres have been made.

20. Learned Standing Counsel has made his submissions on the basis of instructions received by him and the records.

21. From a perusal of the instructions/record, I find that the institutions have been denied self-centre broadly on two grounds; (1) the allegation of the malpractice adopted in previous year/years examinations at the Institutions; and, (2) lack of infrastructure.

22. The first submission of learned Counsel appearing for the petitioners is that

the Committees have ignored the provisions of Paragraph-1(w) of the Government Order dated 9.10.2013, which provides that in rural area for the girl students there should be self-centre and if for some reason it is not possible then in that event their centre should be made at the nearest place and for the said purpose maximum limit of 1200 candidates as provided under Paragraph-1(h) may be relaxed. It further provides that girl students of one institution may not be allotted different examination centres. Thus, all the girl students of an institution may be adjusted at the same institution. Paragraph-1(w) of the Government Order reads as under;

23. Paragraph-2 of the Government Order dated 9.10.2013 deals with the regular girl students. It further provides that in addition to the norms of earlier mentioned paragraph, the girl students of the institution where there is co-education, shall also be entitled for self-centre. Paragraph-2 of the Government Order reads as under;

24. From the instructions and record, I find that in respect of large number of institutions the girl students have been allotted different centres. In the minutes, produced before the Court, no reason has been assigned why the aforesaid provisions of the Government Order have not been complied with. In some of the matters, College's center was more than 10 kms away. It is stated that large number of the girl students dropped their examination.

25. The Board of High School and Intermediate Education, Uttar Pradesh is a statutory body, which is the largest examining body in the world in terms of the number of students. In 2014 examination, about 72,00,000 (more than seven million) candidates would appear for High School and Intermediate standard. Determination of examination centres is an important task as it affects large number of students. Pertinently, huge number of these educational institutions are in the rural areas where basic amenities are lacking. The majority of the students including the girl students come from the underprivileged and marginalized section of society. In case their examination centers are allotted at far off places where there is no conveyance, boarding and other facilities, the parents of the girl students will be discouraged to send girl child to a school.

26. Relevant it would be to mention that by the Constitution (86th Amendment) Act, 2002 Article 21-A has been inserted in the Constitution of India. The object and reasons of said amendment reads as under:

.--The crucial role of universal elementary education for strengthening the social fabric of democracy through provision of equal opportunities to all has been accepted since inception of our Republic. The Directive Principles of State Policy enumerated in our Constitution lays down that the State shall provide free and compulsory education to all children up to the age of fourteen years. Over the years there has been significant spatial and numerical expansion of elementary schools in the country, yet the goal of universal elementary education continues to elude us. The number of children, particularly children from disadvantaged

groups and weaker sections, who drop out of school before completing elementary education, remains very large. Moreover, the quality of learning achievement is not always entirely satisfactory even in the case of children who complete elementary education.

2. Article 21-A, as inserted by the Constitution (Eighty-sixth Amendment) Act, 2002, provides for free and compulsory education of all children in the age group of six to fourteen years as a Fundamental Right in such manner as the State may, by law, determine.

(emphasis supplied)

27. Therefore, the decision of the State Government should be in consonance with the legislative intent behind the Article 21-A of the Constitution.

28. From the records it is established that the Committees have, in several cases, made centres for the girl student in breach of the Government's policy. The Committees have made only effort that in case of girl students their centres may not be more than 10 Kms. away. In some cases the learned Counsel for the petitioners have tried to demonstrate that centres of the girl students have been made at a distance of more than 20 kms.

29. The next submission of the learned Counsel for the petitioners is that the decisions of the Committees are in violation of natural justice.

30. The Government Order dated 9.10.2013 provides that the District Level Committee shall finalize the tentative list by 8.11.2013. The objections/representations were invited till 16.11.2013. And after considering objections/representations, final list was to be forwarded to the Regional Level Committee by 9.12.2013. Thus, the Government Order clearly envisaged that the Institutions shall be given opportunity to represent their case and it was obligatory on the Committees to consider their representations.

31. One of the objects of natural justice is to ensure that the law is applied impartially, objectively and fairly. The Supreme Court in the case of *Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another*, , has aptly described importance of natural justice as a highly effective rule nurtured by the Courts to ensure that quasi-judicial/administrative authorities arrive at a just decision, they also act as a deterrent on the misuse/abuse of power by the authorities. The Court further cautioned that its applicability should not be narrowed and circumscribed.

32. A recent decision of the Supreme Court in *A.S. Motors Pvt. Ltd. Vs. Union of India (UOI) and Others*, , is in point in this connection. The Supreme Court noted as under:

8. Rules of natural justice, it is by now fairly well-settled, are not rigid, immutable or embodied rules that may be capable of being put in strait-jacket nor have the same been so evolved as to apply universally to all kind of domestic tribunals and enquiries. What the Courts in essence look for in every case where

violation of the principles of natural justice is alleged is whether the affected party was given reasonable opportunity to present its case and whether the administrative authority had acted fairly, impartially and reasonably. The doctrine of audi alteram partem is thus aimed at striking at arbitrariness and want of fair play....

(emphasis supplied)

33. At this stage it would be appropriate to consider the submission of the learned counsel for the petitioners that no adverse materials relied upon by the Committee were furnished to the petitioners. The Supreme Court in *Juarsingh and Others Vs. State of Madhya Pradesh*, , considered this aspect and observed as under:

16.In our view, the requirements of natural justice are met only if opportunity to represent is given in view of proposed action. The demands of natural justice are not met even if the very person proceeded against has furnished the information on which the action is based, if it is furnished in a casual way or for some other purpose. We do not suggest that the opportunity need be a "double opportunity" that is, one opportunity on the factual allegations and another on the proposed penalty. Both may be rolled into one. But the person proceeded against must know that he is being required to meet the allegations which might lead to a certain action being taken against him. If that is made known the requirements are met. We disagree with the finding of the High Court that the Committee had the opportunity to meet the allegations contained in the order of supersession.

34. From the perusal of instructions and records, it is demonstrably established that the Committees have taken decision only on the basis of the reports submitted by the District Inspector of Schools and, in some cases, the Magistrates. On the basis of those reports, the request of the institutions to make them centre has been rejected in few words, no reasons have been assigned; the adverse materials on the basis of which the decision has been taken by the District Level Committee and the Regional Level Committee have not been furnished to the institutions concerned. Thus, the institutions were not aware of the adverse materials which have been submitted against them. Therefore, they could not place their version before the above noted Committees. In fact, the institutions were not given any opportunity to apprise the Committee about their stand and in respect of the deficiency pointed out by the District Inspectors of Schools/Magistrates.

35. Pertinently, the Committees have not recorded reasons in support of their orders. Only in few words conclusions are mentioned. It is a well-settled law that the administrative authorities also must record the reason in support of their conclusion. A Constitution Bench of the Supreme Court in its judgment in *S.N. Mukherjee Vs. Union of India*, , has underlined the importance of giving reason by an administrative authority. The Court has reiterated the principle laid down in

its earlier decision in *Union of India (UOI) Vs. Mohan Lal Capoor and Others*, .

36. In *S.N. Mukherjee* (supra) the Constitution Bench of the Supreme Court has noticed the law in United States and in England, in the following words:

11. In the United States the Courts have insisted upon recording of reasons for its decision by an administrative authority on the premise that the authority should give clear indication that it has exercised the discretion with which it has been empowered because "administrative process will best be vindicated by clarity in its exercise". (*Phelps Dodge Corporation v. National Labour Relations Board*, (1940) 85 L ed 1271, 1284.) The said requirement of recording of reasons has also been justified on the basis that such a decision is subject to judicial review and "the Courts cannot exercise their duty of review unless they are advised of the considerations underlying; the action under review" and that "the orderly functioning of the process of review requires that the grounds upon which the administrative agency acted be clearly disclosed and adequately sustained". (*Securities and Exchange Commission v. Chenery Corporation*, (1942) 87 L ed 626, 636.) In *John T. Dunlop v. Walter Bachowski*, (1975) 44 L ed 2d 377, it has been observed that a statement of reasons serves purposes other than judicial review inasmuch as the reasons promotes thought by the authority and compels it to cover the relevant points and eschew irrelevancies and assures careful administrative consideration.....

12. In England the position at common law is that there is no requirement that reasons should be given for its decision by the administrative authority. (See: *Regina v. Gaming Board for Great Britain, Ex parte Benaim and Khaida*, (1970) 2 QB 417, 413 : (1970) 2 All ER 528 and *McInnes v. Onslow-Fane*, (1978) 1 WLR 1520, 1531 : (1978) 3 All ER 211.) There are, however, observations in some judgments wherein the importance of reasons has been emphasised. In his dissenting judgment in *Breen v. Amalgamated Engineering Union*, (1971) 2 QB 175, 191 : (1971) 1 All ER 1148, Lord Denning M.R., has observed that "the giving of reasons is one of the fundamentals of good administration."

37. Therefore, I find substance in the submissions made on the behalf of the petitioners that there is violation of the principal of natural justice because neither opportunity has been afforded nor reasons have been assigned.

38. The third submission of the petitioners is that the Committees have arbitrarily made debarred institutions as examination centers in violation of the provisions of the Government Order dated 9.10.2013.

39. In *Madhyamik Vidhyalaya Prabhandhan Samiti Vs. State of U.P. and Others*, , a Division Bench of this Court has observed that if in a given case the discretion is not exercised for good and valid reason, the matter can be examined. The Court has observed as under:

In a given case, if the power is exercised arbitrarily, it would be open to an aggrieved institution to move the Court.

40. The attention of the Court was drawn to Paragraphs-1(f) and 6(b) of the Government Order dated 9.10.2013, which read as under;

41. Paragraph-1(f) of the Government Order provides that only in case of exigency of the situation the District Level Committee may consider a debarred institution to make it examination centre, provided it has requisite infrastructure, but in the event it is made centre, an outsider shall be appointed as Examination Superintendent and examinations shall be conducted under the observation of said Superintendent.

42. The Paragraph-6(b), as referred above, provides that the institutions against whom there were allegations of mass copying and re-examinations had been held in the year 2012 and 2013 and a first information report was lodged, such Institutions shall not be made examination centre.

43. The Court is constraint to observe that the menace of mass copying and malpractices in the examinations conducted by the Board is frightening. The Examinations Committee of the Board has debarred a large number of the institutions for mass copying and malpractices in the examination.

44. From this fact alone, it is evident that the malpractices in examinations in the State have assumed an alarming proportion. Whatever steps have been taken to improve the purity of examinations, the same appear to be ineffective. The Court can take a judicial notice of the news published in newspapers in respect of previous examinations regarding the widespread mass copying and malpractices in the entire State. The policy decision taken by the State Government for the Examinations-2014 also demonstrates that the State Government is anxious to check this malady.

45. The Supreme Court had the occasion to deal with the problem of malpractices in the examination in several cases.

46. In the case of Director (Studies) and Others Vs. Vaibhav Singh Chauhan, , the Supreme Court held as follows:

12.We are of the firm opinion that in academic matters there should be strict discipline and malpractices should be severely punished. If our country is to progress we must maintain high educational standards, and this is only possible if malpractices in examinations in educational institutions are curbed with an iron hand.

47. In Controller of Examinations and Others Vs. G.S. Sunder and Another, , the Supreme Court observed as under:

10. We have given our careful consideration to the above submissions. One thing must be put beyond doubt, in matters of enforcement of discipline this Court must be very slow in interference. After all, the authorities in charge of education whose duty it is to conduct examinations fairly and properly, know best how to deal with situations of this character. One cannot import fine principles of law and

weigh the same in golden scales. In the present system of education, the system of examinations is the best suited to assess the progress of the student so long as they are fairly conducted. Interference by Court in every case may lead to unhappy results making the system of examination a farce. For instance, we cannot but strongly condemn copying in the examination which has grown into canker of mass copying. Such unhealthy practices which are like poisonous weeds in the field of education must be rooted out in order that the innocent and the intelligent students are not affected. We feel that:

The hour has come when we must clear

The educational fields from poison and from fear;

We must remould our standards -- build them higher,

And clear the air as though by cleansing fire,

Weed out the damning traitors to education,

Restore her to her ancient place of awe.

(emphasis supplied)

48. In *Ram Preeti Yadav Vs. U.P. Board of High School and Intermediate Education and Others*, , the Supreme Court observed as under:

20. As regards the submission of the learned counsel to the effect that the first respondent should be directed to give an opportunity of hearing to Respondent 3 at this stage cannot be acceded to. As noticed hereinbefore, it is the positive case of the first respondent that an opportunity of hearing had been given to him by the first respondent. Secondly, in a case of mass copying the principles of natural justice need not be strictly complied with.

(emphasis supplied)

49. The Supreme Court in the case of *Madhyamic Shiksha Mandal, M.P. Vs. Abhilash Shiksha Prasara Samiti and Others*, , observed in the following words:

2.It is unfortunate that the student community resorts to such methods to succeed in examinations and then some of them come forward to contend that innocent students become victims of such misbehavior of their companions. That cannot be helped. In such a situation the Board is left with no alternative but to cancel the examination. It is extremely difficult for the Board to identify the innocent students from those indulging in malpractices. One may feel sorry for the innocent students but one has to appreciate the situation in which the Board was placed and the alternatives that were available to it so far as this examination was concerned. It had no alternative but to cancel the results and we think, in the circumstances, they were justified in doing so. This should serve as a lesson to the students that such malpractices will not help them succeed in the examination and they may have to go through the drill once again. We also think that those in charge of the examinations should also take action against

their Supervisors/Invigilators, etc., who either permit such activity or become silent spectators thereto. If they feel insecure because of the strong-arm tactics of those who indulge in malpractices, the remedy is to secure the services of the Uniformed Personnel, if need be, and ensure that students do not indulge in such malpractices.

(emphasis supplied)

50. Thus, it is clear from the principle enunciated by the Supreme Court in the above referred cases that the malpractice in the examinations should be dealt with iron hand. As observed by the Supreme Court, it should be weeded out as a poisonous weeds.

51. Regrettably, the provisions of the Uttar Pradesh Public Examinations (Prevention of Unfair Means) Act, 1998 (hereinafter referred to as the "Act, 1998") have been totally ignored in the recent years. Chapter III of the Act, 1998 deals with the penalty and procedure. Section 9 of the Act, 1998 prescribes penalty for use of unfair means which reads as under:

9. Penalty for use of unfair means.--Whoever, contravenes or attempts to contravene or abets the contravention of the provisions of Section 3 shall be punished with imprisonment for a term which may extend to three months or with fine which may extend to two thousand rupees or with both.

52. Learned Standing Counsel has furnished a year-wise result percentage of the High School and Intermediate ex-aminations conducted by the Board from 1991-2013. The list of the result percentage, as produced, is extracted herein-below:

53. From a perusal of the said chart, it is evident that in the year 1998, when the Act, 1998 was enacted, the percentage of the successful candidates in the High School and Intermediate sharply declined and it was 28.07%, 36.79%, 30.36%, 34.45%, 40.16% and 40.91% in the High School from 1998 to 2003 respectively, whereas in the Intermediate it was 55.29%, 61.34%, 68.28%, 69.89%, 70.21% and 70.51% from 1998 to 2003 respectively, but soon after the change of the Government it again sharply rose from 40% to 70% in one year in the High School and 70% to 89% in the Intermediate. The chart also depicts that after the change of Government in the State in each time, percentage of successful candidates has varied and in 2012 & 2013 it is all time high 83.75% and 86.63% in the High School and 89.4% and 92.68% in Intermediate.

54. It is astonishing that when syllabus, teachers and infrastructure of the institutions are same, how there is such a wild variation in the percentage of successful candidates. It is obvious that high percentage of successful candidates in the High School and Intermediate cannot be attributed to the improvement of standard of education but there may be some extraneous reasons.

55. Importance of the education has been highlighted by the Supreme Court in one of its recent judgment in the case of Bhartiya Seva Samaj Trust Tr. Pres. and

Another Vs. Yogeshbhai Ambalal Patel and Another, , in the following words:

21. Thus, in view of the above, it is evident that imparting elementary and basic education is a constitutional obligation on the State as well as societies running educational institutions. When we talk of education, it means not only learning how to read and write alphabets or get mere information but it means to acquire knowledge and wisdom so that one may lead a better life and become a better citizen to serve the nation in a better way.

22. The policy framework behind education in India is anchored in the belief that the values of equality, social justice and democracy and the creation of a just and humane society can be achieved only through the provision of inclusive elementary education to all. Provision of free and compulsory education of satisfactory quality to children from disadvantaged and weaker sections is, therefore, not merely the responsibility of the schools run or supported by the appropriate Governments, but also of schools which are not dependent on Government funds.

23. Every generation looks up to the next generation with the hope that they shall build up a nation better than the present. Therefore, education which empowers the future generation should always be the main concern for any nation.

56. It is apt to refer an observation of the House of Lords in respect of importance of the education for young students, as observed in the case of *Ali v. Head Teacher and Governors of Lord Grey School*, (2006) 2 All ER 457, as under:

[72] My Lords, I wish that I found this case as plain as your Lordships have done. Education plays an indispensable and fundamental role in a democratic society (see *Sachin v. Turkey*, (2004) 19 BHRC 590 at 620 (para 137)). Without it, children will not grow up to play their part in the adult world, to exercise their rights but also to meet their responsibilities.

57. Learned Standing Counsel submits that even if it is found from the materials produced by him that in some of the cases the Committees have not complied with the Government Order, then too breach of executive order does not give legally enforceable right to aggrieved person.

58. The Supreme Court in the case of *Ramana Dayaram Shetty Vs. International Airport Authority of India and Others*, , has considered the effect of violation of an executive order. The relevant paragraph is extracted herein below:

10.It is a well-settled rule of administrative law that an executive authority must be rigorously held to the standards by which it professes its actions to be judged and it must scrupulously observe those standards on pain of invalidation of an act in violation of them. This rule was enunciated by Mr. Justice Frankfurter in *Viteralli v. Saton*, 359 U.S. 535 : Law Ed. (Second series) 1012, where the learned Judge said:

An executive agency must be rigorously held to the standards by which it professes its action to be judged Accordingly, if dismissal from employment is based on a defined procedure, even though generous beyond the requirements that bind such agency, that procedure must be scrupulously observed.... This judicially evolved rule of administrative law is now firmly established and, if I may add, rightly so. He that takes the procedural sword shall perish with the sword.

59. The similar view has been taken by the Supreme Court in the case of Union of India (UOI) Vs. K.P. Joseph and Others, and in the case of Dr. Amarjit Singh Ahluwalia Vs. The State of Punjab and Others, .

60. After careful consideration of the matter, the Court finds that the District Level Committees and the Regional Level Committees have not complied with the norms laid down by the State Government in the Government Order dated 9.10.2013. There is total violation of natural justice. No reason has been assigned by the Committees in support of their decisions and they have exercised their powers arbitrarily in several cases as the institutions, which are debarred institutions on the ground of malpractices, have been made examination centres without assigning any reason. The Government Order dated 9.10.2013 has treated two type of institutions as debarred institutions; one, the institutions which have made irregularity in sending the registration forms of Standard-IX, and the others are the institutions against whom there were allegations of mass copying and other malpractices. Both type of institutions have been treated as debarred institutions. This decision of the State Government is arbitrary. An institution which has sent the extra forms and which has not complied with the directions of the Board to register the students in Standard-IX on or before 01st October of the academic session, cannot be treated at par with the institutions which are indulged in malpractices in the examinations. This categorisation of the debarred institutions lacks logic and is arbitrary.

61. However, the Court is refraining itself from interfering in the matter of allotment of examination centres in the present writ petition for the reason that the examinations are scheduled to commence from 3.3.2014, therefore, any interference at this late stage would not be in the larger public interest and the students in particular as the consequential arrangements and re-allotment of examination centres will obviously affect the smooth holding of the examinations.

62. 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 judgments of the Supreme Court, as referred to above.

63. With the aforesaid observations/directions, the writ petition is disposed of.

64. No order as to costs. Registry of this Court is directed to send a copy of this order to the Principal Secretary, Secondary Education, Government of U.P., Lucknow.