

(2019) 02 KAR CK 0024

In the Karnataka High Court

Case No : Writ Petition No. 34850, 34874, 44893 Of 2018 (S-Res)

Harsha N

APPELLANT

Vs

Karnataka Power Corporation Limited

RESPONDENT

Date of Decision : 01-02-2019

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 371J

Citation : (2019) 02 KAR CK 0024

Hon'ble Judges : R. Devdas, J

Bench : Single Bench

Advocate : Ravivarma Kumar, G Sharada Bai, P.S. Rajgopal, Ajay J N

Final Decision : Dismissed

Judgement

1. The respondent-Corporation is in the process of recruiting suitable candidates for the posts of Assistant Engineers, Junior Engineers, Chemists and Chemical Supervisors. In that regard, the Corporation issued recruitment notification dated 17.07.2017 inviting applications from suitable candidates. Subsequently by issuing another notification dated 03.08.2017, the earlier notification was modified by increasing the total number of posts to be filled by such recruitment viz., 394 posts identified for Hyderabad-Karnataka candidates (local cadre) under Article 371J of the Constitution of India and 228 posts for non-Hyderabad Karnataka candidates. The written test was conducted on 21.01.2018 across six centres in the State of Karnataka. About 40,000 candidates appeared for the written test, including the petitioners herein. Kannada examination was conducted for non-resident candidates on 28.01.2018 and the results for the same were announced on 09.02.2018.

2. The respondent-Corporation published the key answers to the written test, on its website on 28.02.2018 and called for objections. After analyzing the objections and feedback, revised key answers were published on the website on 08.03.2018. It is contended by the petitioners that the Corporation had held out to the candidates that the results would be announced shortly. However, the

results were not announced even after six months.

3. The respondent-Corporation issued a corrigendum dated 23.06.2018 cancelling the written test which was held on 21.01.2018. It was also stated in the corrigendum that re-examination will be conducted and the date of re-examination and further details will be announced shortly. Those candidates who had applied are eligible to appear for re-examination. The petitioners are aggrieved by the cancellation of the examination and are therefore, before this Court challenging the corrigendum. The respondent-Corporation issued a notification dated 16.07.2018 informing the candidates that the written test will now be conducted by Karnataka Examination Authority, in the month of September 2018. The details of instruction and schedule was sought to be announced shortly after the notification dated 16.07.2018 was issued.

4. The challenge to the corrigendum and notification issued by the Corporation is that the same is perverse, without authority of law, arbitrary, violative of Articles 14, 16 and breach of legitimate expectations. Allegation of malice/political considerations is also made in the petitions. The respondent-Corporation has filed statement of objections denying the allegations made by the petitioners. Although various grounds were raised in the memorandum of writ petitions and each of them were sought to be met in the statement of objections, the learned Senior Counsel Prof.Ravivarma Kumar, appearing for the petitioners, in his usual fairness, desisted from arguing on technical issues such as the impugned decision of cancellation being titled as corrigendum, while there was nothing to be corrected; the impugned order was issued by the Director, Human Resources, who has no authority of law and the impugned order is a consequence of change of guard in the Government, subsequent to the elections. As a consequence, the question for consideration is narrowed down to whether the Corporation was justified in canceling the written test in all the papers or whether it could have looked into alternatives such as appointing an expert committee to find the correct key answers, or restricted the cancelled only to those papers where the problem was so large that it was inevitable to cancel such papers?

5. It is essential to note that in another batch of writ petitions in W.P.Nos.44874-44893/2018, the petitioners who have also taken the written test approached this Court with a prayer seeking cancellation of the examination, on the ground that the same is vitiated on account of malpractice, discrepancies in the key answers and that more than 85% of the questions were lifted from a single source viz., the internet. Since the respondent-Corporation has cancelled the written test, the grievance of the petitioners in those writ petitions stand redressed. However, since both these batch of writ petitions were clubbed, learned Counsel representing the petitioners in W.P.Nos.44874-44893/2018 was also heard.

6. Learned Senior Counsel Prof.Ravivarma Kumar, initially submitted that the problem with the key answers was restricted only to one paper i.e., Assistant Engineer (Mechanical). The learned Senior Counsel seems to have been

prompted from the averments made in W.P.Nos.44874-44893/2018. It is stated in W.P.Nos.44874-44893/2018 that 85% of all the questions in Assistant Engineer (Mechanical) paper was lifted from a single unauthenticated source viz., internet. As a consequence, the discrepancies in the key answers occurred in the paper for Assistant Engineer (Mechanical). Learned Senior Counsel Shri.P.S.Rajagopal, appearing for the respondent-Corporation supported the submission that the allegation of 85% of the questions being lifted from a single unauthenticated source is also one of the reasons for cancellation of the written test. On this aspect, the person appointed by the Corporation for conducting the examination has clarified that the questions were taken from different sources which include well known text books, past examination papers of GATE, JEE etc. It was further clarified that the questions were not taken from a single source/website. However, if there were similarities, it is sheer coincidence.

7. The explanation offered by the person who set the question paper is reasonable. The allegation that most of the questions have been lifted from a single source/website may appear to be correct, but it is also to be noticed that the internet is an open source. Anyone can upload anything onto the internet. Questions from textbooks can also be uploaded. Therefore, the questions found in genuine textbooks will also find their way into the internet and websites. Bearing these things in mind, the allegation that most of the questions were lifted from a single source/website, does not hold any water. Therefore, the said contention raised by the petitioners in W.P.Nos.44874-44893/2018 and the learned counsel appearing for the respondent-Corporation is hereby rejected.

8. The learned counsel for the respondent-Corporation has pointed out from the statement of objections that in view of several representations made by the candidates and objections being raised regarding the discrepancies in the key answers, the respondent-Corporation looked into the matter and sought for the view of the person appointed by the respondent for conducting the examination. The concerned person furnished a re-revised answer key. The re-revised answer keys so furnished by the said person was sent for third party verification to Vishweshwaraiah College of Engineering and B.M.S.College of Engineering. It was found that there were huge variations in the answer keys as given by KPCL examiner and the Professors of these Colleges. As per the tabular column prepared and furnished along with the statement of objections, the question papers and the key answers were found to be defective for more than two reasons. The question papers had printing errors, while the key answers could not be reconciled either on account of wrong questions or more than one answer being correct. As a consequence, the discrepancy in the key answers in all the papers ranged from 5 to 29. There is not a single paper which was problem free.

9. The learned Senior Counsel therefore contends that the respondent-Corporation was placed in a precarious position where on account of gross errors in the question papers resulting in huge variation in marks it would not only cause furore but also bring bad name to the Institution. When the issue was

discussed at the highest level, the Corporation felt that the credibility of the examination was brought under a cloud. It was noted that the examination is a multiple choice question based examination. Each question had to have only one correct answer, since these papers are technical in nature with a scientific bent of mind. It was also felt that in view of the gross defects, candidates could not be selected in a fair and objective manner. It is under these circumstances, it was submitted that the respondent-Corporation took a decision to cancel the examination and take the assistance of Karnataka Examination Authority in conducting a fresh examination which would be fair and non-discriminatory.

10. Learned Senior Counsel Prof.Ravivarma Kumar, appearing for the petitioners sought to attack the decision of the respondent-Corporation in canceling the examination, mainly on the 'doctrine of proportionality'. It was submitted that having identified the defects in the key answers, the remedy was to secure the correct key answers from an expert or expert body. It was contended that even if the key answers to some of the questions were not reconcilable, grace marks could have been awarded to all the candidates for those questions. It was also submitted that if the problem was so huge in a particular paper, as a last measure, that particular paper should have been cancelled.

11. On the 'doctrine of proportionality', the learned Senior Counsel placed reliance on the following judgments:

- i) Rajesh Kumar and Others Vs. State of Bihar and others [(2013) 4 SCC 690];
- ii) Richal and Others Vs. Rajasthan Public Service Commission and others [(2018) 8 SCC 81];
- iii) Manish Ujwal and Others Vs. Maharishi Dayanand Saraswathi University and Others [(2005) 13 SCC 744];
- iv) Om Kumar and others Vs. Union of India [(2001) 2 SCC 386];

12. In the case of Om Kumar and others (supra), it was held that the Supreme Court of Israel has now recognized 'proportionality' as a separate ground in administrative law - different from unreasonableness. It is stated that it consists of three elements. First, the means adopted by the authority in exercising its power should rationally fit the legislative purpose. Secondly, the authority should adopt such means that do not injure the individual more than necessary. And third, the injury caused to the individual by the exercise of power should not be disproportional to the benefit which accrues to the general public.

13. The contention of the learned Senior Counsel that the respondent-Corporation should have taken the assistance of an expert body in arriving at the key answers and based on the inputs from the expert body, the answer papers should have been evaluated, springs from the fact that such exercises were undertaken at the instance of the Apex Court in the case of Richal (supra). Similar exercise was directed to be undertaken at the instance of the High Court, in the case of Rajesh Kumar and others (supra).

14. The learned Senior Counsel submitted that the decision of the respondents in annulling the examination could not be justified by supplying reasons through an affidavit or in the statement of objections. In this regard, reliance was placed on the judgment in *Mohinder Singh Gill and another Vs. The Chief Election Commissioner, New Delhi and others* reported in (1978) 1 SCC 405. It was pointed out from paragraph-8 that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to Court on account of a challenge, get validated by additional grounds later brought out.

15. Per contra, the learned Senior Counsel for the Corporation relies upon a judgment of the Apex Court in the case of *Hanuman Prasad and others Vs. Union of India and others* reported in (1996) 10 SCC 742, to counter the argument of the petitioners that when an order is passed, be it administrative or quasi-judicial in nature, it should necessarily contain grounds or reasons for invalidating the action taken. While taking into consideration the decision of the Apex Court in *Mohinder Singh Gill* (supra), it was held that if the order canceling the examination came to be passed, the record should indicate the reason, though order may not contain the reasons. It was pointed out that in the case of *Maharashtra State Board of Secondary and Higher Secondary Education Vs. K.S.Gandhi*, reported in (1991) 2 SCC 716, it was held that the order did not contain the reasons but the record indicated the same. The administrative order canceling the examination in which mass copying was alleged, was sustained.

16. The respondent-Corporation has placed on record the material which formed the basis for the Corporation to take a decision that in view of the irreconcilable discrepancies in the key answers and in view of the allegations being made that malpractice was perpetrated at the behest of the staff and officers of the respondent-Corporation, their wards gained advantage, be it in the matter of seating arrangement or leakage of question paper, the Corporation has taken the decision to cancel the examination.

17. On the question of application of the 'doctrine of proportionality' to the case on hand, learned Senior Counsel for the Corporation submitted that the material on record would clearly justify the decision of the Corporation in annulling examinations of all the papers. It is submitted that the Corporation made all efforts to secure the opinion of the experts in each of the papers and it was found that the discrepancies ranged from 5 questions to 29 questions. It was therefore felt that if grace marks were to be awarded, the very objective in conducting the examination to find meritorious candidates would be defeated. It was further submitted that no prejudice is caused to the petitioners since the answer scripts were not evaluated, another opportunity is given to all the candidates and the decision has been taken at the earliest possible time.

18. On the 'doctrine of proportionality' canvassed by the learned Senior Counsel

for the petitioners, it is seen from the material on record that the Corporation has made attempts to find the key answers from experts in the field. It is seen that the discrepancies have occurred in all the papers, ranging from 5 to 29. The tabular column prepared by the Corporation and furnished along with the statement of objections would establish the fact that in every paper there are discrepancies which cannot be reconciled. This is either because of the printing error or because of wrong questions. No doubt, it can be argued that instead of canceling the examination, the Corporation could have taken expert advice in identifying the 'problem questions' and granted grace marks to questions where it was found that the answers were irreconcilable and proceeded to evaluate the answer scripts, keeping in mind the hardship that would be caused to the candidates. On this aspect of the matter, the law is well settled that if two views are possible, the decision of the authority in taking a particular view could be subjected to judicial review, only to scrutinize the manner in which the decision is taken, lest it be tainted with malafides or based on irrelevant consideration. In this case, there is no allegation of malafides on the part of the respondent authorities. Moreover, while applying the proportionality test to the possible alternatives suggested, the Court should be concerned with the aims of the decision maker and whether the decision maker has achieved the correct balance. When such a test is applied to find out whether the Corporation has struck a correct balance vis-à-vis the available alternatives, this Court is satisfied that the decision of the Corporation is well balanced and harmonious. This view is fortified by the decision of the Apex Court in the case of *Gohil Vishvaraj Hanubhai and Others Vs. State of Gujarat and others* reported in (2017) 13 SCC 621, where it was held that "by virtue of the impugned action, the innocent candidates (for that matter all the candidates including the wrongdoers) still get an opportunity of participating in the fresh examination process to be conducted by the State. The only legal disadvantage if at all is that some of them might have crossed the upper age-limit for appearing in the fresh recruitment process. That aspect of the matter is taken care of by the State. Therefore, it cannot be said that the impugned action is vitiated by lack of nexus with the object sought to be achieved by the State, by herding all the candidates to the examination together."

19. Moreover, the decision to cancel the examination has been taken at the earliest point of time, even before the answer scripts are evaluated. The respondents have also spent little time on declaring fresh examination. The assistance of the Karnataka Examination Authority has also been sought to conduct fresh examination in a fair and transparent manner. In all the decisions relied upon by the petitioners, the situation were such that in the larger interest of the student community who had taken up examinations across the country, ordering re-examination was found to be undesirable or the process of selection had proceeded to such an extent that ordering re-examination at the advanced stages would cause undue hardship to the candidates.

20. In the light of the above, this Court is of the opinion that the decision taken

by the respondent-Corporation in canceling the examination and calling for fresh examination, granting opportunity to all the candidates who had made the application, cannot be faulted with.

21. As a consequence, W.P.Nos.34850-34874/2018 stand dismissed, while W.P.Nos.44874-44893/2018 are dismissed as having become infructuous.

No order as to costs.