

(2011) 01 AHC CK 0119

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 41107 of 2008

Hemant Kumar

APPELLANT

Vs

Dr. Bhim Rao Ambedkar University and Others

RESPONDENT

Date of Decision : 11-01-2011

Acts Referred:

Penal Code, 1860 (IPC) — Section 307, 308, 323, 420, 452

Citation : (2011) 2 ADJ 681

Hon'ble Judges : Sudhir Agarwal, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Sudhir Agarwal, J.—This bunch of writ petitions relates to cancellation of appointment of Class III and IV employees of Dr. Bhim Rao Ambedkar University, Agra (hereinafter referred to as "University"). The writ petitions No. 41113 of 2008, 41116 of 2008, 41118 of 2008, 41121 of 2008, 41123 of 2008, 41126 of 2008, 41128 of 2008, 41130 of 2008 and 5333 of 2008 relate to Class III employees (hereinafter referred to as "writ petitions-first set") and rest of the writ petitions relate to Class IV employees (hereinafter referred to as "writ petitions-second set").

2. Before coming to the actual dispute, the submissions and its adjudication, it would be appropriate to place certain facts in brief as borne out from record.

3. An advertisement No. 1 of 2007, was published by University on 25.10.2007 in daily news paper "Amar Ujala" and on 28.10.2007 in daily news paper "Aaj" for making recruitment to various Class III and Class IV posts. We are concerned here with the recruitment made on the post of Routine Clerks and Peons (Parichar). Details from the said advertisement, in respect to the aforesaid two category of posts, is as under:

Designation

Total number of posts

Distribution in various reserved categories

1

Routine Clerk

11

8 SC, 1 ST, 2 OBC

2

Parichar

17

15 SC, 2 ST

4. The last date for receiving Application Forms was 12.11.2007. Applications were required to be sent by speed-post/registered-post only. Some other relevant conditions, as advertised, were as under:

;ksX;rk;sa % lewg x gsrq & 1 & uSfR;d fyfir @ MkVk,sUV?h vkijsVj ek;/fed f"K{kk ifj"kn mRrj izns"K dh b.VjehfM,V ;k led{k ijh{kk mRrh.kZ gks] dEI;wVj ij fgUnh rFkk vaxzsth esa Vkbfiar dk Kku rFkk vuqHkoh vH;FkhZ dks ojh;rk nh tk;sxh A MkVk,sUV?h vkijsVj ds fy,,d o"KZ dEI;wVj fMIyksek mRrh.kZ gksuk vko";drk gS A

lewg ?k gsrq % twfu;j gkbZ Ldwy ? d{kk vKB ? mRrh.kZ,oa fgUnh Hkk"kk dk Kku] vuqHkoh dks ojh;rk A

vk;";d funsZ"k % 1- vH;FkhZ dh vk;q 1 tqykbZ] 2007 dks 18 ls 35 o"KZ gksuh pkfg, A vk;qIhek esa vH;fFkZ;ksa dks fu;ekuqlkj vf/kdre ikap dh NwV vuqeU; gksxh A

8- vkosnu i= dqylfpo Mka Hkxojko vEcsMdj fo"fof|ky;] vkxjk ds irs ij izsf"kr fd;k tk; A fyQkQs ds ?ij Li"V :i ls ^cSdykx HkrhZ gsrq vkosnu** vafdr fd;k tk; A

16- lewg ^x* ds inksa ds fy, fyf[kr ijh{kk gksxh,oa mlesa fu/kkZjr vgZrk izkIr djus okys vH;kfFkZ;ksa dks gh esfjV ds vk/kkj ij rduhdh ijh{kk & dEI;wVj Vkbfiar @ lkekU; Vkbfiar] "kkVZgSUM vkfn dh ijh{kk esa lEefyr dj;k tk;sxk A lkekU; Vkbfiar ds fy, vH;k"FkhZ dks Lo;a VkijsVj ykuk gksxk A

17- fyf[kr ijh{kk ds fy, 60 vad] rduhdh ijh{kk ds fy, 20 vad] "kS{kf.kd miyfC? k;ksa ds fy;s vf/kdre 10 vad ? izFke Js.kh 3] f}rh; Js.kh 2] r`rh; Js.kh 1] vU; & 1 vad ? fu/kkZfjr gS rFkk lk{kkRdkj 10 vadksa dk gksxk A p;u dqy 100 vadksa esa ls izkIr vadksa dh esfjV ds vk/kkj ij gksxk A

5. Later on a corrigendum was published in daily news paper "Amar Ujala" dated 22.11.2007 extending the last date of submission of applications forms to 26.11.2007. Some other conditions were also notified as under:

1- MkW- Hkhekjko vEcsndj fo"ofokj; ? rRle; vkxjk fo"ofokj; ?] vkxjk dh dk;Zifj"kn cSBd fnukad 28 Qojh] 1987 ds ladYi 146 @ 7] 1 ds vuqlkj vuqlwfp tkfr,oa vuqlwfp tutkfr vkfn vkjf{kr Js.kh ds inksa ij fu;qfDr gsrq mRrj izns"k ljdkj ds lqlaxr fu;eksa,oa "kklukns"kkksa dk ikyu fd;k tk;sxk A

2- mRrj izns"k ? mRrj izns"k yksd lsok vk;ksx ds {ks= ds ckgj ? lewg ^x* ds inksa ij lh/kh HkrhZ dh izf?;k fu;ekoyh] 2002,oa la"kks/ku fu;ekoyh] 2003 ds vuqlkj vc lewg ^x* ds inksa ij p;u gsrq dksbZ fyf[kr ijh{kk vk;ksftr ugha dh tk;sxh] cfYd IHkh vH;kfFkZ;ksa dh vfuok;Z vkgZrk ds :i esa Vad.k ;k vk"qfyfi vkSj Vad.k ijh{kk vk;ksftr dh tk;sxh A

3- p;u ds fy;s dqy izkIrkad,d lks vad ds gksaxs] ftlesa "kSf{kd] ;ksX;srk ds fy;s vf/kdre 15 vad rFkk dq"ky f[kykM+h dks vf/kdre 05 vad iznku fd;s tk;saxs A

4- lk{kkRdkj ipkl vadksa dk gksxk A ftlesa fo"k; @ lkekU; Kku & 10] vad] O;fDrRo fu.kkZj.k & 20 vad rFkk vfHkO;fDr {kerk ds fy;s 20 vad fu/kkZfjr gS A

5- lewg ^?k* ds inksa ij p;u gsrq ;Fkkla"kksf/kr prqFkZ oxZ deZpkjh lsok fu;ekoyh & 1975 vuqikyu fd;k tk;sxk A

6- vkosnu djus ds fy;s dksbZ "kqYd ugha j[kk x;k gS A vH;kfFkZ;ksa }kjk vkosnu i= ds lkFk layXu fd;k x;k ;i;s 200 @ & dk cSad M?kQ~V mUgsa okfil fd;k tk;sxk A

6. A proposal was forwarded to Vice-Chancellor of University for constitution of selection committee for the above recruitment. On 14.11.2007, the then Vice Chancellor, Sri Bhumitra Dev constituted a three-member committee as under:

(1) Registrar

(2) Prof. Ved Prakash Tripathi, Director, Deen Dayal Rural Development Institute

(3) Dr. R.K. Bharti, Department of Social Work, Social Science Institute.

7. It is said that 680 applications were received for Class III posts and 632 applications for Class IV posts. One application in respect to Class III post, entered at Sl. No. 269-A in register was cancelled.

8. The three-member committee proceeded to hold selection pursuant whereto on 26.12.2007, the Registrar called a meeting of selection committee vide his letter dated 26.12.2007 requesting Prof. Ved Prakash Tripathi and Dr. R.K. Bharti to participate therein. On 1.2.2008 one Sri Bal Jee Yadav, a Deputy Registrar was also nominated as "member" of the selection committee being representative of Other Backward Class by the then Vice Chancellor. The Registrar also stood changed. Earlier Sri Satish Chandra Sharma was Registrar. He was placed under suspension, and thereafter, on 1.2.2008, Prof. Hari Mohan was appointed as officiating Registrar, but he was relieved by Sri B.R. Kanojiya, Registrar on 7.5.2008.

9. A list of 20 candidates for the post of Routine Clerk (Class III) was prepared and signed on 25.3.2008 by Dr. R.K. Bharti based on the marks awarded in

academic qualifications.

10. The selection committee held interview for Class IV post from 6.4.2008 to 10.4.2008. It interviewed 125 candidates everyday except the last date, i.e., 10.4.2008 when it interviewed 110 candidates. After holding interview for Class IV posts, selection committee prepared a select list of 13 candidates in order of merit. Five candidates were placed in waiting list. Out of 13 candidates in the main list, 11 were against the vacancies meant for Scheduled Caste category. Against two vacancies of Scheduled Tribes, since no suitable Scheduled Tribes candidate was available, names of two Scheduled Caste candidates were recommended.

11. On 20.4.2008, typing text for Class III posts was conducted. This examination was conducted by the aforesaid selection committee.

12. On 21.5.2008, Dr. R.K. Bharti sent a letter to Vice-Chancellor that in compliance of certain legal provisions and principles of natural justice, he withdraw himself from selection process of backlog special recruitment, therefore, another person be substituted for interview of Routine Clerks scheduled to be held on 23.5.2008. The Vice-Chancellor on 22.5.2008 passed following order on the said application:

Gautam Jaiswal, Department of Chemistry, I.B.S. may replace Dr. Bharti.

13. Interview was held for Routine Clerk on 23.5.2008. 16 candidates of Scheduled Caste category and 4 Other Backward Class appeared before selection committee. A select list of 9 candidates belong to Scheduled Caste category was prepared. Two Scheduled Castes candidates were placed in waiting list.

14. Appointment letters were issued to all the selected candidates between 8th to 10th July, 2008 and many of the candidates joined.

15. The trouble started then. A complaint dated 14.7.2008 was received by University. It was on the letter head of Dr. Bhim Rao Ambedkar Vishvavidyala Anusuchit Jati Evam Janjati Sangh, Agra. It made allegations against selection committee of large scale bungling, favoritism, malpractice etc. The Vice Chancellor constituted a two-member committee consisting of Dr. Ram Shanker, OSD, (SC/ST Cell) and the then Registrar. He also restrained selected candidates from joining service till report of committee is received. On 18.7.2008, Prof. Sugam Anand of History Department was also nominated as a member of above mentioned enquiry committee. The report was submitted by the said committee on 22.7.2008, (Annexure CA-16 to the counter affidavit). Pursuant thereto, the Executive Council resolved in its meeting dated 23.7.2008, to cancel entire Class III and IV selection and appointments made above and directed for fresh recruitment. It also appointed a one-man enquiry committee of a retired High Court Judge against Dr. R.K. Bharti, who was also deprived of administrative functions. Initially Hon"ble Mr. Justice M.A. Khan (Retd.) of Delhi High Court was appointed enquiry officer by office order dated 26.7.2008, but he declined to

conduct enquiry by his letter dated 20.8.2008. Thereafter Hon"ble Mr. Justice Ghanshyam Das Agarwal (Retd.) of Allahabad High Court was appointed enquiry officer. He also could not conclude enquiry. He later on declined whereafter by letter dated 27.5.2009, Sri Chaturbhuj, Retd. Addl. District Judge, Agra was appointed enquiry officer, who conducted enquiry and submitted report on 23.3.2010, (Annexure CA-31 to the counter affidavit).

16. Sri Ranjit Saxena, learned Counsel for the Petitioners in all these matters made following submissions:

(A) So far as selection and appointment on Class III post is concerned, Dr. R.K. Bharti having withdrawn himself from selection committee and replaced by Dr. Gautam Jaiswal, it can not be said that the above selection is vitiated on account of his participation.

(B) At the best, Dr. Bharti prepared the list of the candidates on merit after awarding marks on the basis of academic qualification. Though he was also a member of committee when typing test was held, but the enquiry report of Sri Chaturbhuj shows that typing test was conducted under supervision of the then Registrar and copies were checked by one Sri P.N. Saxena, Dr. Bharti had no occasion to interfere in the matter and at the time of interview, he had already withdrawn himself. Hence, selection in question on the posts of Class III is not vitiated merely on account of his initial participation.

(C) 11 selections have been made for Class III posts and even if for one or two candidates are relatives of Dr. R.K. Bharti, or any other member of selection committee, this by itself would not vitiate the entire selection. It does not mean that there was mass bungling or irregularity/illegality in the selection.

(D) The entire selection was conducted under the supervision of Vice-Chancellor himself and after his approval, though in anticipation of approval of Executive Council, appointment letters were issued, but that itself would not vitiate selection on account of alleged illegality on the part of Dr. R.K. Bharti, which has not been substantiated in enquiry made against him.

(E) So far as selection of Class IV post is concerned, no illegality, whatsoever, has been found therein.

(F) The Petitioners were already appointed and here is not a case which suffers from the vice of mass irregularities/illegality etc. which cannot be separated from that which is legal. Cancellation of appointment in fact is nothing but termination of Petitioners and that too in violation of principles of natural justice. Hence is illegal. He placed reliance on various authorities in his written arguments, i.e., Shrawan Kumar Jha and others Vs. State of Bihar and others, ; State of Uttar Pradesh Vs. Mohd. Sharif (Dead) through Lrs., , Ishwar Chandra Vs. Satyanarain Sinha and Others, , Union of India (UOI) and Others Vs. Rajesh P.U., Puthuvalnikathu and Another, Iftkhar Ansari Vs. State of U.P. and others, Rajendra Vs. State of Maharashtra and Others, ; State of Uttar Pradesh and Ors.

v. Pawan Kumar Singh and Ors. 2009(3) ADJ 166 (DB); Uttar Pradesh Board of Basic Education and Anr. v. Smt. Gulerana and Ors. 2007(1) UPLBEC 46; Sheshdhar Awasthi Vs. State of U.P. and Others, and Mahesh Singh and Others Vs. District Magistrate Maharajganj and Others, .

17. Per contra Sri S.K. Singh, learned Counsel appearing for University, relying on the inquiry report of three member committee submitted that Dr. Bharti without disclosing that his close relatives are participating in the selection, actively participated. After considering all the pros and cons in process of selection, the Executive Council ultimately found that selection in question cannot be said to be impartial, fair and just. In these circumstances, a unanimous decision was taken by Executive Council to cancel the entire selection. Here is not a case where a decision against individuals on account of any peculiar or particular illegality or irregularity has been taken. Hence the principle of natural justice are not applicable. He submits that report of Sri Chaturbhuj is yet to be accepted by University. The same cannot be made a sheet anchor for defence in these writ petitions. He says that all the Petitioners have been allowed to participate in fresh selection without any fresh application, hence no prejudice would be caused to them and hence all these writ petitions deserve to be dismissed.

18. The short but important question, up for consideration, in all these writ petitions is, whether selection as a whole can be said to be tainted and vitiated in law justifying its cancellation in entirety; and, whether the Petitioners were entitled for show cause notice or opportunity before cancellation of entire selection which in effect resulted in termination of service of Petitioners.

19. At the outset this Court place on record its anguish and pain that a temple of learning, and that too, such an old institution like Agra University is entangled in such a kind of litigation involving the highest officers namely, the then Vice Chancellor, the Registrar and other Professors of University. It is really a matter of surprise that University had teaching staffs like Respondent No. 3, working as Lecturer in department of Social Work, against whom a number of criminal cases involving heinous crime are pending. The minutes of Executive Council (Annexure-23 of the writ petition) shows following cases against Respondent No. 3:

1. Case Crime No. 494/98, u/s 420 IPC.
- 2 Case Crime No. 438/99, under Sections 323, 504, 506, 308 IPC.
- 3 Case Crime No. 53/01, under Sections 323, 504, 307 IPC.
- 4 Case Crime No. 507/01, under Sections 323, 504, 506, 452 IPC.
- 5 Case Crime No. 244/02, under Sections 420, 506 IPC.

20. Further the report lodged by Respondent No. 3 against his own Vice Chancellor (Annexure-24 to the writ petition) shows the level to which the

dispute and allegations between the persons holding responsible high educational offices can stoop down. Respondent No. 3 himself lodged report dated 18.07.2008 against Prof. K.N. Tripathi, the then Vice Chancellor stating that he (the Vice Chancellor) as well as Registrar, Sri B.R. Kanaujiya and some others abused and beat him. The Vice Chancellor himself attacked him with a sharp knife repeatedly. This is something astounding, unimaginable and unheard. My observations are only to reflect upon the lowering of character and the level to which the persons holding such high office could go in making allegations particularly when it relates to a temple of learning like University. This is what really has pained this Court.

21. The Court takes judicial notice of the fact that Agra University is a very old institution. At one point of time the affiliated colleges of Agra University used to situate at far and distant places. A number of students of Agra University have reached very high offices across the country. The fall in standard now has reached a situation where even a teaching staff of University has made allegations of criminal assault against Vice Chancellor of University. If it is correct then seriousness thereof is beyond one's imagination. Immediate remedial measures at the level of Government as well as the Chancellor are of utmost importance otherwise one can understand to what kind of learning such people will impart to students of this institution.

22. Now I come to the main aspect of the matter. One thing is admitted. In respect of recruitment for Class-III posts there were some candidates related to one of the member of selection committee, i.e., Dr. R.K. Bharti. Secondly, Dr. R.K. Bharti though was a mere member of selection committee, but enjoyed that much of power in committee that he could have taken some decisions independently without being disturbed or dissented by any other member of selection committee. Annexure-SA-1 to the supplementary affidavit in Writ Petition No. 41107 of 2008 claims to be a letter submitted by Dr. R.K. Bharti. It mentions that his relatives, specially younger brother, Sri Hari Shankar is applicant for the post of Routine Clerk. Km. Geeta, daughter of Amar Singh, Petitioner in Writ Petition No. 41118 of 2008 is said to be the wife of Sri Hari Babu. Annexure-24 in Writ Petition No. 41107 of 2008 is a copy of first information report lodged by Dr. Bharti wherein he himself has mentioned Sri Hari Babu son of Sri Pyare Lal as his younger brother. Therefore, both these persons are close relatives of Dr. Bharti, one is younger brother and another is wife of another younger brother.

23. The inquiry committee in its report found that there is no record to show that application of Miss Geeta, Rajesh Kumar Mathuria and Hari Shankar were received in University. Who, how and when received it was not clear. It is thus evident that applications of candidates who have not submitted the same in accordance with conditions of advertisement, were placed on record surreptitiously.

24. Sri Ranjit Saxena, Advocate though heavily relied upon inquiry report

submitted by Sri Chaturbhuj, a copy whereof has been filed as Annexure-SA-1 to supplementary affidavit, but even therefrom could not contradict this aspect of the matter that application forms of all these three candidates, how and in what manner were received in University, was not clear from record. Actually the record is totally silent on this aspect.

25. Sri Chaturbhuj himself has said about application forms of these three candidates as under:

IS PRAKAR IS SAKSHYA SE YAH PRATIT HOTA HAI KI KM. GEETA, RAJESH KUMAR MATHURIA WA HARI SHANKAR KE NAAM Dr. R.K. BHARTI KE ABHILEKHON ME MANIPULATE KARKE LIKHA GAYA HAI.

26. The Respondents have filed Annexure-CA-6 to the counter affidavit which is said to be a merit list of candidates for the post of routine clerks signed by respondent No. 3 (Dr. R.K. Bharti) on 25.03.2008 containing only 20 names who were later on interviewed for appointment to Class-III post. It is said that typing test of all candidates who applied for Class-III post was held in April, 2008. If that be so, what was the occasion for Respondent No. 3 to prepare a merit list and that too of only 20 candidates on 25.03.2008 is not clear. This list is not signed by any other member of selection committee except Respondent No. 3. It is interesting to notice that typing test was held for Class-III post on 20.04.2008. Thereafter only 20 candidates were actually interviewed on 23.05.2008. Out of that nine candidates were placed in select list for Class-III post and two were placed in waiting list. The names of all these 11 candidates find mention in merit list prepared by Respondent No. 3 and signed on 25.03.2008. Names of these 20 candidates are as under:

1. Harish Chandra Kushwaha
2. Manoj Kumar
3. Mohammed Rais
4. Yogesh Chaudhary
5. Ms. Geeta - Selected
6. Bhupendra Singh - Selected
7. Brij Kishor Gautam - Selected
8. Hari Shankar - Selected
9. Jagdish Prasad
10. Neme Singh - Wait listed
11. Rahul
12. Raj Kumar - Selected

13. Rajesh Babu - Selected
14. Ram Kishor - Wait listed
15. Rajesh Kumar Mathuria - Selected
16. Shiv Kumar
17. Somnath
18. Surendra Singh
19. Ved Prakash Bodhi -Selected
20. Vinod Kumar Verma -Selected

27. How this could happen has not been explained by learned Counsel for the Petitioners. He also could not state as to how a merit list could be prepared only by Respondent No. 3 under his own signature though it is claimed by Petitioners that he (Dr. Bharti) submitted a letter for withdrawal on 11.12.2007. Sri Saxena also could not explain that having withdrawn himself from selection committee, how Respondent No. 3, Dr. Bharti could prepare, sign and participate in various proceedings of selection committee relating to Class-III posts after 11.12.2007. It appears that on account of his criminal background, Respondent No. 3 had enough influence on other members of the committee who could not muster courage to say anything against him. The alleged letter dated 11.12.2007 is not available in the records of University. No reference of any such letter has been given by Respondent No. 3 in his subsequent letter dated 21.05.2008 whereby he requested for withdrawal without disclosing any specific reason thereof and on such request Sri Gautam Jaiswal was substituted by the then Vice Chancellor Prof. K.N. Tripathi. Thus story set up about withdrawal on 11.12.2007 cannot be believed.

28. The Respondents have also filed Annexure-CA-9, a copy of select list submitted by the selection committee after its meeting on 23.05.2008. It is signed by five persons namely, Prof. Hari Mohan Sharma, Dr. R.K. Bharti, Dr. B.P. Tripathi, B.R. Kanaujiya, Dr. Gautam Jaiswal and Balji Yadav. As already observed the committee consisted of only four persons, namely, the Registrar, Prof. B.P. Tripathi, Dr. R.K. Bharti and Balji Yadav. At the time of interview for Class-III post Dr. R.K. Bharti was substituted by Dr. Gautam Jaiswal. How and in what manner the minutes dated 23.05.2008 were signed by Dr. Hari Mohan Sharma was not clear when he was not member of selection committee. This also could not be explained by Sri Rajnjit Saxena though he tried to read in this regard justification provided by Sri Chaturbhuj in his report but this Court does not find it satisfactory. No outsider can be allowed to participate in a selection proceeding when on a particular date he was not a member thereof. Similarly, if Dr. Sharma's earlier participation would have justified his signature, then Dr. Bharti also must have signed it who remained there till 21.05.2008. In any case, the authority, conduct and character of Respondent No. 3 is self speaking.

29. Sri Ranjit Saxena has cited certain authorities in support of submission that irregularities, if any, committed in selection are identifiable. Thus it would not be appropriate to cancel entire selection. The authorities should separate chaff from the grain and ought to have confined itself to cancel only the stigmatic selection and not entire one. As a matter of proposition of law, this has no exception.

30. In *Union of India v. Rajesh P.U.* (supra) the Apex Court in para 6 of the judgment said:

In the light of the above and in the absence of any specific or categorical finding supported by any concrete and relevant material that widespread infirmities of an all pervasively nature, which could be really said to have undermined the very process itself in its entirety or as a whole and it was impossible to weed out the beneficiaries of one or the other irregularities, or illegalities, if any, there was hardly any justification in law to deny appointment to the other selected candidates whose selections were not found to be, in any manner, vitiated for any one or the other reasons. Applying a unilaterally rigid and arbitrary standard to cancel the entirety of the selections despite the firm and positive information that except 31 of such selected candidates, no infirmity could be found with reference to other, is nothing but total disregard of relevancies and allowing to be carried away by irrelevancies, giving a complete go by to contextual considerations throwing to the winds the principle of proportionality in going farther than what was strictly and reasonably to meet the situation. In short the competent authority completely misdirected itself in taking such an extreme and unreasonable decision of canceling the entire selections, wholly unwarranted and unnecessary even on the factual situation found too, and totally in excess of the nature and gravity of what was at stake, thereby virtually rendering such decision to be irrational.

31. What is held above, as a matter of legal proposition can never be doubted. It is well accepted now that the irregularities, if any, committed in selection, if are of such nature as to taint the entire selection, without clearly identifying individuals, the decision of authorities would not be interfered by the Court if they decide to cancel the entire selection. But where the allegations of irregularities are of individual nature and identifiable, it would not be appropriate to cancel entire selection affecting even those individuals in respect to whom no allegations are there and the irregularities in general do not touch upon their selection. This is what has also been said in *Union of India and Others Vs. O. Chakradhar*, where the Apex Court in para 8 of the judgment said:

In our view the nature and the extent of illegalities and irregularities committed in conducting a selection will have to be scrutinized in each case so as to come to a conclusion about future course of action to be adopted in the matter. If the mischief played is so widespread and all-pervasive, affecting the result, so as to make it difficult to pick out the persons who have been unlawfully benefited or wrongfully deprived of their selection in such cases it will neither be possible nor necessary to issue individual show cause notices to each selectee. The only way

out would be to cancel the whole selection. Motive behind the irregularities committee also has its relevance.

32. In a marginal case this Court will not examine the decision of the authorities as it sits in appeal, and in particular when such a decision has been taken by a much higher body like Executive Council of University consisting of several persons of eminence and repute who have taken a collective decision, which in absence of any plea of bias or mala fide duly substantiated, ought not to be interfered lightly.

33. The scope of judicial review in such matters is now well defined with sufficient certainty. The decision of University to cancel the entire selection which has ultimately resulted in termination of Petitioners though is an administrative decision but admittedly had serious consequences causing prejudice, depriving right to earn livelihood to Petitioners in general, and, therefore, visits civil consequences to them. In such matters, judicial review of an administrative decision cannot travel into the realm of examining things like an appellate authority. The Court has to find out whether there is an error in decision making process. The judicial review is basically comes to examine manner in which decision has been taken, i.e., the decision making process.

34. It is now well settled that judicial review is entirely a different thing than an ordinary appeal provided in a statute conferring co-extensive power upon appellate authority in the matter of looking into facts, investigation of various transactions etc. like that of initial decision taking authority. Even in matters where something depends on subjective satisfaction, the power of appellate authority is co-extensive. It may however be not said so in a case of judicial review. It would be appropriate at this stage to have a little glance on precedence as settled in the past a few decades having great persuasive and binding value.

35. I do not go into much history but suffice it to refer the observations of Lord Scarman in Nottinghamshire County Council v. Secretary of State for the Environment 1986 A.C. 240, who put a note of caution for exercise of power of judicial review in the following words:

Judicial review is a great weapon in the Hands of the Judges; but the Judges must observe the constitutional limits set by our parliamentary system upon the exercise of this beneficent power.

36. The grounds on which an administrative decision can be brought within the purview of judicial review may be classified in the following three categories:

1 Illegality.

2 Irrationality, namely, Wednesbury unreasonableness.

3 Procedural impropriety.

37. Something is "illegal" when it is contrary to the statute or set principles of

law. The "irrational" means "Wednesbury unreasonableness". It applies to a decision which is so outrageous in its defiance of logic or of accepted moral standard that no sensible person who had applied his mind to the question on the given facts and circumstances would come to such conclusion. In other words, it can be said to be another facet of perversity. The Court, while applying the doctrine of "Wednesbury unreasonableness" would not go into the correctness of the decision and would not substitute the decision of the administrative authority. In *State of Rajasthan and Another Vs. Mohammed Ayub Naz*, , the Court held that the common thread running in all these decisions is that the Court should not interfere with the Administrator's decision unless it was illogical or suffers from procedural impropriety or was shocking to the consciousness of the Court in the sense that it was in defiance of logic or moral standards. In view of what has been stated in *Wednesbury* case, the Court would not go into correctness of the choice made by the Administrator, open to him. The Court should not substitute its decision for that of Administrator. The scope of judicial review is limited to deficiency in decision making process and not the decision itself.

38. Here we are exercising a jurisdiction for issuance of writ of certiorari against a decision taken by Executive Council for cancelling the entire selection. As already discussed above, if the action or decision is perverse or is such that no reasonable body of persons, properly informed, could come to, or has been arrived at by the authority misdirecting itself by adopting a wrong approach, or has been influenced by some extraneous matters, the Court would be justified in interfering with the same, but merely for the reason that another view would have been a better view, the decision taken by authority otherwise, which is also a probable and reasonable view, shall not be interfered. (See *Barium Chemicals* AIR 1967 SC 296.

39. In *Smt. Shalini Soni and Others Vs. Union of India (UOI) and Others*, , the Court observed:

It is an unwritten rule of the law, constitutional and administrative, that whenever a decision-making function is entrusted to the subjective satisfaction of a statutory functionary, there is an implicit obligation to apply his mind to pertinent and proximate matters only, eschewing the irrelevant and the remote.

40. Prof. de Smith's treatise "*Judicial Review of Administrative Action*" (4th Edn.) at page 285-86, has succinctly summarised several principles formulated by the Courts in various decision, and said:

The authority in which a discretion is vested can be compelled to exercise that discretion, but not to exercise it in any particular manner. In general, a discretion must be exercised only by the authority to which it is committed. That authority must genuinely address itself to the matter before it: it must not act under the dictation of another body or disable itself from exercising a discretion in each individual case. In the purported exercise of its discretion it must not do what it

has been forbidden to do, nor must it do what it has not been authorized to do. It must act in good faith, must have regard to all relevant considerations, must not be swayed by irrelevant considerations, must not seek to promote purposes alien to the letter or to the spirit of the legislation that gives it power to act and must not act arbitrarily or capriciously. Nor where a judgment must be made that certain facts exist can a discretion be validly exercised on the basis of an erroneous assumption about those facts. These several principles can conveniently be grouped in two main categories; failure to exercise a discretion, and excess or abuse of discretionary power. The two classes are not, however, mutually exclusive. Thus, discretion may be improperly fettered because irrelevant considerations have been taken into account and where an authority hands over its discretion to another body, it acts *ultra vires*. Nor, is it possible to differentiate with precision the grounds of invalidity contained within each category.

41. In *Associated Provincial Picture Houses Ltd. v. Wednesbury Corp.* 1947 (2) All ER 680 (CA), the question with respect to principles relating to judicial review or administrative or statutory direction was considered and is treated to be a landmark decision, commonly known as "Wednesbury case". Lord Greene in the following passage held:

It is true that discretion must be exercised reasonably. Now what does that mean? Lawyers familiar with the phraseology used in relation to exercise of statutory directions often use the word "unreasonable" in a rather comprehensive sense. It has frequently been used and is frequently used as a general description of the things that must not be done. For instance, a person entrusted with a discretion must, so to speak, direct himself properly in law. He must call his own attention to the matters, which he is bound to consider. He must exclude from his consideration matters, which are irrelevant to what he has to consider. If he does not obey those rules, he may truly be said and often is said, to be acting "unreasonably". Similarly, there may be something so absurd that no sensible person could even dream that it lay within the powers of the authority.... In another, it is taking into consideration extraneous matters. It is unreasonable that it might almost be described as being done in bad faith; and in fact, all these things run into one another.

42. These principles were further summarized in *Council of Civil Service Unions v. Minister for the Civil Service* 1984 (3) All ER 935 (CCSU Case) and the aforesaid principles were categorized as illegality, procedural impropriety and irrationality, discussed in brief hereinabove. It would be useful to remind in the words of Lord Diplock the said three rules as under:

Judicial review has I think, developed to a stage today when, without reiterating any analysis of the steps by which the development has come about, one can conveniently classify under three heads the grounds on which administrative action is subject to control by judicial review. The first ground I would call "illegality", the second "irrationality" and the third "procedural impropriety".

That is not to say that further development on a case-by-case basis may not in course of time add further grounds. I have in mind particularly the possible adoption in the future of the principle of "proportionality" which is recognized in the administrative law of several of our fellow members of the European Economic Community.

43. These two cases oft quoted with approval and followed by the Apex Court of this Country in a catena of cases, some of which are Union of India and another Vs. G. Ganayutham (Dead) by LRs., , Indian Railway Construction Co. Ltd. Vs. Ajay Kumar, , People's Union of Civil Liberties and Anr. v. Union of India (UOI) and Ors. AIR 2004 SCW 379 and State of N.C.T. of Delhi and Anr. v. Sanjeev @ Bittoo AIR 2005 SCW 1987.

44. The Executive Council as discussed above has not taken a hasty decision but initially a committee was constituted and after considering the report of committee it has taken the above decision.

45. Though it is true that lately Sri Chaturbhuj, a retired Additional District Judge, Agra who conducted inquiry against Dr. R.K Bharti, submitted his report in which he has given certain findings in favour of Dr. Bharti and has also observed that selection ought not to have been cancelled but having gone through the same this Court has serious objections on the said findings and inference drawn by him but refrain itself to make further comments on this aspect in the absence of mater of inquiry of Dr. Bharti before this Court. Any observation in this regard may prejudice him seriously in his disciplinary matter. In my view, this report, therefore, need not be discussed threadbare since the matter of inquiry of Dr. R.K. Bharti is not before this Court. It is the validity of decision of Executive Council to cancel the entire selection with which this Court is confronted with and hence would confine itself to the material available before the Executive Council for taking the aforesaid decision and to find out whether in those facts and circumstances the decision of Executive Council can be said to be irrational, illusory and arbitrary or that no person of ordinary prudence could have ever reached to such conclusion. In my view, and in view of discussion I have already made, the decision cannot be said to be irrational, illusory or arbitrary so as to warrant interference by this Court.

46. Sri Ranjit Saxena, learned Counsel for Petitioners though tried to explain preparation of merit list of about 20 candidates by Dr. Bharti under his own signatures on 25.03.2008 but could not explain as to when more than 600 applicants were there for Class-III posts, the written and typing text took place much later, then how Dr. Bharti could prepare a list of only 20 candidates on the basis of the academic record though such list ought to have been prepared for all the applicants who had submitted their application forms. Further more it is also a strange co-incidence that all the candidates who have ultimately been selected, find mention their names in that short merit list of 20 candidates prepared by Dr. Bharti as early as on 25.03.2008 by which time the process of selection had not even started, according to the own case of Petitioners. This sufficiently explain

and makes it evident how powerful and resourceful Dr. Bharti has been in the University. The influence exercised by Dr. Bharti in University and on his colleagues is writ large from the above. The further incidents and facts that Dr. Bharti is indulged in a number of criminal cases having criminal background, the fear psychosis of others is easy to understand. All these facts in a case like this may not be required to prove like a charge in a criminal case but once it can be shown that in the existence of these kinds of facts if a body like Executive Council collectively and unanimously took a decision, such decision cannot be said to be palpably irrational, arbitrary or imaginary so as to warrant interference from a Court of Law in judicial review.

47. The further submissions that since the Petitioners were already issued letters of appointment hence before taking a decision having the effect of termination, the Petitioners ought to have been afforded opportunity of hearing, suffice it to mention that in a case like this, where the very selection is tainted, and is vitiated in law, the authorities when decide to cancel the entire selection, the consequences even if results in termination of incumbents, would not attract principles of natural justice. In such cases there is no requirement of issuing notices to the incumbents concerned.

48. A similar contention was negated by this Court in Santosh Kumar Shukla and Ors. v. State of Uttar Pradesh and Ors. 2007(8) ADJ 462 : 2007(4) ESC 2934 and in para 40 this Court relying on the Apex Court's decision in The Bihar School Examination Board Vs. Subhas Chandra Sinha and Others, held

This is not a case of any particular individual who is being charged with adoption of unfair means but of the conduct of all the examinees or at least a vast majority of them at a particular centre.... The Board had not charged any one with unfair means so that he could claim to defend himself. The examination was vitiated by adoption of unfair means on a mass scale. In these circumstances it would be wrong to insist that the Board must hold a detailed inquiry into the matter and examine each individual case to satisfy itself which of the candidates had not adopted unfair means. The examination as a whole had to go.

49. The other decisions cited by Sri Saxena on this aspect, therefore, are not applicable to the facts of this case. I may particularly refer to the decision of this Court in State of U.P. v. Pawan Kumar Singh (supra) relied on heavily by Sri Saxena that on mere suspicion entire selection ought not to have been cancelled. It would be useful to refer para 36 of judgment where the Division Bench mentions that nature of irregularities found were of a nature individual to the particular candidates or to a group of candidates. It is in this context with which the Division Bench agreeing with the Hon'ble Single Judge observed that entire selection ought not to have been cancelled since it was not impossible to segregate tainted from untainted selection. Such is not the case in hand. Therefore, various decisions cited at the Bar on behalf of Petitioners, I find, lend no help to the Petitioners in this case.

50. It is true that in respect to Class-IV appointments, specifically nothing could be pointed out but considering the nature and conduct of Respondent No. 3 and the manner in which he has been able to influence the members of selection committee, I am more inclined to uphold the decision of Executive Council which consists of a large number of reputed and eminent scholars having better information of ground realities to cancel entire selection as vitiated in law involving several illegalities and irregularities and to resort for a fresh selection. The Petitioners having been permitted to participate in fresh selection without applying afresh are already protected by the University. In the circumstances, in my view, no interference is called for in these writ petitions.

51. Lastly, it was suggested that cancellation of entire selection would cause serious prejudice to Petitioners though they all belong to depressed classes like Scheduled Caste and Other Backward Classes etc. and would seriously suffer in the matter of enjoying their fundamental right of earning livelihood. This is also untenable. The advertisement issued afresh by University shows that all candidates who have already applied are not required to apply afresh and they would obviously be given opportunity in the fresh selection. This shows that University has taken care of candidates who had already applied and after giving them a fresh opportunity of selection, the appointments shall be made. I, therefore, find no reason to take a different view particularly when deciding this matter according to rule of law, this Court is satisfied that neither equity nor good conscious nor any other factor lie in favour of Petitioners to persuade this Court to take a different view.

52. Before parting, two things, however, I am constrained to observe. For recruitment of Class-III employees, the University, it appears, have decided to follow the procedure laid down in the rules applicable for Class-III employees of U.P. Government. These rules provide for direct recruitment, a written test, typing text and interview. Initially the advertisement was made in which reference was made to these rules without any reservation but later on with the approval of the then Vice Chancellor, it appears that a corrigendum was issued that selection for Class-III posts shall be made only on the basis of typing test and interview. The requirement of written test was done away. This decision imported a wider scope of favouritism and nepotism giving much scope to selection committee to make selection in a subjective manner. No reason could be given by learned Counsel for University as to why requirement of written test was done away. It, therefore, appears that there was a collective attempt to make selection in a particular way in which even the highest authority like Vice Chancellor, if not deliberately, then in a much negligent manner had his role since he allowed selection to be held in a way so that these instrumental in making selection, may have much scope of subjectivity than objective considerations. It is only when the of persons holding these offices changed, the things have been examined and thereafter a collective decision by Executive Council of University was taken otherwise, impugned in these petitions.

53. It really pains that the germs of corruption, favouritism and nepotism have intruded even the temples of learning like University. Even the lower echelon of service like Class-III and Class-IV posts are also not free from this disease. This Court can take judicial notice of the fact that wide spread unemployment and extreme disproportionate demand v. availability of employment has made even highly educated poor people to apply for Class-III and IV posts though otherwise they may be eligible even for higher teaching posts like Lecturers and Readers in University. All these unemployed persons obviously belong to poor families, having a lot of financial and other problems, to meet their two times demand of meals and earn livelihood so as to take care of themselves and their family, apply for these jobs. If in a matter of selection for such posts, element of corruption, favouritism and nepotism is allowed to enter, it would add to the misery of these poor people who in general belong to a class having no extra resources. A few lucky amongst them, who excel in having some better resources, if are allowed to grab such opportunity of employment due to this extra resource and not merit, leaving the entire general majority behind, not because of their competence but the extraneous factors like resources, it would really be a travesty of justice.

54. The nature of resources obviously are not mere relationship but many a times, financial also. I have no doubt in saying that this is nothing to a facet of corruption. One cannot read the term "corruption" only in the context of financial irregularities but it has different shades of colours. Recently this Court in Smt. Mithilesh Kumari Vs. State of U.P. and Others, had an occasion to make certain observations on corruption and said:

39. In the last 60 years of independence, if there is one field we can boast of a national allround development and that too multifold, it is the field of corruption. It has various shades. It is not confined to only one field of bribery, cash and kind, but has different colours and nuances.

40. There are some statutes in the name of checking/preventing this menace, but that is virtually toothless, a paper tiger. These statutes have not proved at all, in actual sense, a deterring measure, for the civil servants engaged in such activities. In fact these activities are beyond any limits and bounds and have crept in all the wings of State, whether executive, legislature or even judiciary.

55. The Court also held that in general the well accepted meaning of corruption is the act of corrupting or of impairing integrity, virtue, or moral principle; the state of being corrupted or debased; lost of purity or integrity; depravity; wickedness; impurity; bribery. It further says, "the act of changing or of being changed, for the worse; departure from what is pure, simple, or correct; use of a position of trust for dishonest gain.

56. Though in a civilised society, corruption has always been viewed with particular distaste to be condemned and criticised by everybody but still one loves to engage himself in it if finds opportunity, ordinarily, since it is difficult to

resist temptation. It is often, a kind, parallel to the word "bribery", meaning whereof in the context of the politicians or bureaucrats, induced to become corrupt. The Greek Philosopher Plato, in 4th Century BC said, "in the Republic that only politicians who gain no personal advantage from the policies they pursued would be fit to govern. This is recognised also in the aphorism that those who want to hold power are most likely those least fit to do so." While giving speech before the House of Lords William Pitt in the later half of 18th Century said, "Unlimited power is apt to corrupt the minds of those who possess it." Lord Acton in his letter addressed to Bishop Creighton is now one of the famous quotation, "Power tends to corrupt and absolute power corrupts absolutely.

57. Corruption is a term known to all of us. Precise meaning is illegal, immoral or unauthorized act done in due course of employment but literally it means "inducement (as of a public official) by improper means (as bribery) to violate duty (as by committing a felony)." It is an specially pernicious form of discrimination. Apparently its purpose is to seek favourable, privileged treatment from those who are in authority. No one would indulge in corruption at all if those who are in authority, discharge their service by treating all equally.

58. We can look into it from another angle. Corruption also violates human rights. It discriminates against the poor by denying them access to public services and preventing from exercising their political rights on account of their incapability of indulging in corruption, of course on account of poverty and other similar related factors. Corruption is, therefore, divisive and makes a significant contribution to social inequality and conflict. It undermines respect for authority and increases cynicism. It discourages participation of individuals in civilised society and elevates self interest as a guide to conduct. In social terms we can say that corruption develops a range bound field of behaviour, attitude and beliefs. Corruption is antithesis of good governance and democratic politics. It is said, that when corruption is pervasive, it permeates every aspect of people's lives. It can affect the air they breathe, the water they drink and the food they eat. If we go further, we can give some terminology also to different shades of corruption like, financial corruption, cultural corruption, moral corruption, ideological corruption etc. The fact remains that from whatever angle we look into it, the ultimate result borne out is that, and the real impact of corruption is, the poor suffers most, the poverty groves darker, and rich become richer.

59. This Court has no hesitation in putting on record that omission of even a small level of corruption ultimately grow cancerously. This country has now reached a stage where we find level of corruption running in several thousand of crores and going to even lacs of crores. Everyone wherever possible is indulging in such activities depending on one's capacity, capability and opportunity. This Court do not mean to say that all are corrupt. Fortunately that is not so. Still we have sufficiently large number of people who do not indulge in such activities and are bold enough to discard any attempt, if made by someone, but those who

want to take advantage of such widespread corruption, have now become so fearless that they can dare to approach and go to any extent to lure those who are in authority, to seek favour in one or the other manner. In their belief, everyone has some price, degree may defer. Fortunately, this country still have sufficiently large number of people who are beyond such vice. Probably it is for this reason we are still marching ahead and developing with galloping pace but now time has come when stern steps have to be taken with determination and cementised will to nip out corruption at every level, lest it may be too late.

60. I do not intend to indulge in further discussion on this aspect since it needs be debated, at different forum, so as to enlighten the people, and to pursue them to stand against and to arm them so as to route it out. This Court is well aware that in this process, the prime responsibility lie on the executive. But it is now of paramount importance that the judiciary must also take this task upon itself. The cases involving corruption must be dealt with extraordinary pace. It must ensure that those indulged in corruption are prosecuted and punished at the earliest and within a reasonable time. Judiciary should not show any leniency on corruption and corrupt people whether small or big. A message must go that corruption at all cost shall result in severe and deterrent punishment. The booty, loot or benefit one has earned by indulging in corruption, must be forfeited so that it may become part of public revenue, and may be utilised for public benefit, instead of allowing it to remain with corrupt beneficiaries, otherwise, effectiveness of deterrence shall stand lessened.

61. The law enforcement machinery, i.e., investigators must probe such matters independently, without any interference and should ensure completion of investigation within record time. Everyone who abate, who allow to perpetuate by inaction, encourage it and similarly all other persons connected in one or other way be dealt with in the same manner as if the corrupt person and should be punished severely but with a pace so that others may learn lesson. It be not allowed to erode with passage of time. All this require determination and will, at different level and needs be looked into with real sincerity since time has ripened now.

62. A Division Bench of this in Santosh Kumar Shukla (supra) also made certain observations in this regard in the last but penultimate paragraph and said:

Be that as it may. We have no hesitation in observing that of late this Court is flooded by the cases involving wide spread malpractice and challenging the decision taken by the authorities to cancel such selection. The candidates, who have either got selected or managed to get selected and sometimes even a few bona fide honest candidates who have suffered on account of large scale malpractice of other raise such dispute. The situation has arrived at on account of general deterioration in the society. We are at pain to observe that it is so wide spread that now the people do not feel shame or repentance in taking recourse of such activities and, thereafter, in making all out efforts to retain the fruits. Corruption, favoritism and nepotism, unfortunately, has become order of day and

is affecting the whole society like cancer and AIDS. Corrupt people have taken place of pride in the society. They are supported by the hypocrites committed in broad day light and as a result, the society is affected. The graph of crime and corruption has reached such a height that unless a consolidated effort by right minded people would not come forward to counter, it may lead to disorder, social and political. We are not unmindful that the Court has a vital role to play in such matters as and when it come to its notice. In the present case, we hope and trust that the State Government shall take expeditious steps to give finality in respect to disciplinary proceedings against the erring officials and shall pass appropriate orders which may prove to be a lesson not only to them but to others also.

63. It is true that the clouds of corruption have spread over the entire country. It has engulfed every walk of life and is not confined to only executive. The extent to which it has now grown, I am sure, cannot be eradicated in a single day or a short time but this Court has a ray of hope and belief on the consciousness of people of this country that a colossal effort on the part of citizens and people of this country is undercurrent. This would result in gradual reduction and ultimately remove an evil which has engulf the entire society. Though scenario at present is really gloomy, but a shining future, I hope is awaiting for future generation to make this country a great power in the world.

64. In the result, considering all the facts and circumstances, as discussed above, I have no hesitation in holding that Petitioners are not entitled for any relief.

65. The writ petitions are, thus, dismissed.

66. Costs, however, is made easy.