

(2006) 04 AHC CK 0175

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 5581 of 2006

Kiran Sonkar and Bibha Singh

APPELLANT

Vs

The State of U.P. and Others

RESPONDENT

Date of Decision : 12-04-2006

Acts Referred:

Constitution of India, 1950 — Article 14, 32

Citation : (2006) 3 AWC 2857 : (2006) 3 UPLBEC 2592

Hon'ble Judges : A.P. Sahi, J

Bench : Single Bench

Advocate : Radha Kant Ojha and Satyanshu Ojha, for the Appellant; C.B. Yadav and S.C., for the Respondent

Final Decision : Allowed

Judgement

A.P. Sahi, J.—This petition and the other related similar matters have principally raised a challenge to the Government order dated 12th of Jan. 2006 whereby the Secretary, Women and Child Development Department, Govt. of U.P. Lucknow has issued directions cancelling all selections of Aanganbadi Workers and Assistants seeking appointments under the Integrated Child Development Services. The ground of challenge is that en-masse cancellation of selections is without any basis and therefore, the State action is unreasonable and smacks of arbitrariness, thereby violating Article 14 of the Constitution of India.

2. The learned Chief Standing Counsel Sri C.B. Yadav has resisted the arguments raised on behalf of the petitioners and has urged that it was on account of complaints having been received from several districts that such a step became necessary in order to ensure transparency and fairness in the selection of Aanganbadi workers and assistants. He submits that the government order dated 12.1.2006 does not in any way prejudice the claim of the petitioners as they shall be again entitled to apply and be considered in accordance with rules. Relying on the decision of Shankarsan Dash Vs. Union of India, , Shri Yadav contends that even in the matters of public employment mere selection does not

give any right of appointment and therefore, the petitioners who have been merely selected do not have vested right to claim appointment. He has further submitted that there is no violation of any legal or statutory rights of the petitioners and as such the relief claimed for cannot be granted.

3. Shri Yadav has further relied on two decisions of the Apex Court to support the stand taken on behalf of the State, to the effect, that whenever such large scale irregularities are reported, then in that event the employer has the right to cancel the selections enmasse. The decisions relied upon by him are Krishan Yadav and another Vs. State of Haryana and others, and Union of India and Others Vs. O. Chakradhar,

4. Shri R.K. Ojha learned Counsel for the petitioners has urged that the State Govt. did not under take any exercise to identify the correctness or otherwise of the complaints, and as such the issuance of the government order on mere general notions of impropriety is unsustainable in law. He has relied on the decision of Union of India (UOI) and Others Vs. Rajesh P.U., Puthuvalnikathu and Another,

5. Similar arguments have been advanced in all the writ petitions which have been heard today and would also be covered by the aforesaid principal issue decided in this petition.

6. The scheme of Integrated Child Development Services was introduced decades ago in the year 1975 on the recommendations of the Planning Commission and is essentially a food supplementation programme. In the State of U.P., government orders were issued from time to time to implement the scheme and the latest govt. order concerning the present case is dated 16.12.2003 (Annexure 1 to the petition). The scheme was not being implemented in its true letter and spirit, as a result whereof a public interest litigation was filed before the apex court being Writ Petition No. 196 of 2001 under Article 32 of the Constitution of India by an Organization, namely People's Union for Civil Liberties. The apex court taking cognizance of the same issued notices to all the States through out India and also the Union of India where after the said petition is continuously monitoring the implementation of the scheme. The latest order which is relevant to the present issue was passed by the Apex Court on 7.10.2004 which has been appended as Annexure 5 to the counter affidavit. A perusal of the said order demonstrates that the Apex Court expressed its shock and surprise at the attitude of the Central Government and further taking notice of the progress of the scheme in various States through out the country issued directions. The Apex Court stated thus "the report presents a glooming picture both in regard to the operation of the sanctioned AWCS in some of States like U.P....

It was further noticed..."the problems seem to be more acute in States like Bihar, U.P. and Jharkhand. It deserves to be noticed that the directions in respect of ICDS were issued as far back on 28.11.01..."

7. The Apex Court again in the same order noted as follows:

The position in Bihar and U.P. is also not better.

8. While taking notice of the progress in the State of U.P., the Apex court further recorded "In the State of U.P. though percentage of non-functional/non-operational AWCS is more as per the report but according to the State admittedly 24% are non operational. In the affidavit, it has been claimed that the remaining will be operational by 30.11.2004. We direct the State govt. to make operational all sanctioned AWCS by 30.11.04. After that, we would not entertain any application for extension of time.

9. While issuing directions the apex Court in Direction No. 9 has clearly indicated "the vacancies for the operational ICDS shall be filled forthwith. Instance of U.P. where vacancies have not been filled up is quite alarming though in the affidavit it has been stated that a drive has been initiated to fill up the vacancies"

10. After taking notice of the aforesaid position, the apex court recorded a happy note in respect of shifting of AWCS to primary schools in the State of U.P.

11. It appears that in view of the aforesaid directions given by the Apex court, the State Govt. took initiatives to implement the scheme for providing the services and for compliance of the government order issued by it on 16.12.2003 which makes provisions for selections of Aanganbadi workers and assistants.

12. The selections appear to have proceeded thereafter and during the. aforesaid process, the incident which has been given rise to the issuance of the impugned government order, occurred in the district of Jaunpur.

13. The counter affidavit filed by the respondents and sworn by Smt. Indu Bala Srivastava District Programme Officer Jaunpur indicates a report pertaining to the operation carried out by a team under the directions of the District Magistrate Jaunpur on First of Jan. 2006. The incident pertains to the nefarious activities of Smt. Usha Sharma, Child Development Project Officer, Block Maharajganj district Jaunpur who was caught red handed along with her husband in the possession of unexplained cash and certain packets of document which according to the said report dated 2.1.2006, Annexure 1 to the counter affidavit, was directly related to the selection of Aanganbadi workers in the said block of Maharajganj. The concerned officer namely Usha Sharma was suspended by the Director. It is stated in the counter affidavit that certain other complaints were also received from other districts as well.

14. Shri Yadav has invited the attention of the court to a complaint made by one Vinai Maharaj State Level Secretary of Samajwadi Party Labour Union, U.P. which states about a single complaint pertaining to the engagement of Aanganbadi in Gram Panchayat Amrai Block Vishesawar district Baharaich which was also directed to be inquired and acted upon by the Secretary to the Minister of the department concerned on 9.1.2006.

15. Another complaint is from one Shivendra Kumar, Editor of some newspaper who has made a complaint with regard to certain selections at eight places in the

district of Ghazipur. The nature of the complaint indicates noncompliance of the government order under which the selections have to be made. This complaint indicates some stay order being passed by this Court in Writ Petition No. 76922 of 2005 but the complaint appears to have been sent in Feb., 2006 much after the issuance of the impugned government order.

16. The next complaint appended along with the counter affidavit is dated 20.12.2005 in respect of selections conducted by one Arvind Vijay Officer Incharge of District Programme Office Kushinagar against whom the complaint is that the selections in the block of Vishunpura and Nebua Naurangia have been held unfairly. The complaint, therefore, is in respect of two blocks in district of Kushi Nagar. The third complaint is by a MLA of Mahmudabad district Sitapur in respect of an illegal appointment of one Smt. Rekha Bharti at Aanganbadi Center Saraia Mahipat Singh. The other complaints are by the same Shivendra Kuma Editor of some newspaper in respect of eight places at Ghazipur. There are also individual complaints in respect of the appointment of one Seema Devi Village Mathurapur Khalilabad district Sant Kabir Nagar which is supported by a request by one Kiran Pal Kashyap. Similarly there is a complaint pertaining to four villages of block Chahania district Chandauli which is dated 12.1.2006. Another individual complaint is in respect of Gram Panchayat Tilka Katra Bazar district Gonda. The Minister or Child Welfare Department also wrote a letter in respect of the general complaints received from the district of Ghazipur. The individual complaint of one Km. Manju Pal of Village Digur Salon district Rai-Bareilly has Iso been brought on record followed by a similar complaint by one Indraj Singh of Village Shahpur Gujar block Jaitpur Kalan district Agra.

17. A perusal of the facts would demonstrate that most of the complaints are in individual complaints, specifically with regard to selections having been held not in conformity with the provisions of the government order. The complaints also indicate allegations against the officers at the local level. The complaints are located in a few villages of some districts as indicated herein above. The learned Chief Standing counsel states that the aforesaid material, including the incident of block Mahrajganj, Jaunpur was taken into consideration whereafter the government decided to cancel the selections through out the State.

18. Learned Counsel for the petitioner Shri R.K. Ojha ;has urged that all the aforesaid incidents are more individual complaints which can be inquired into and in case the said selections are found to be invalid, for one reason or the other, the same can be set aside without resorting to cancellation of selections through out the State. He contends that the material which has been brought on record was not at all sufficient so as to conclude that there was large scale bungling justifying cancellation throughout the State.

19. Having heard the learned Counsel for the parties, what emerges is that the incident in respect of block Maharajganj district Jaunpur led to a suspicion in the mind of the State Govt. on the basis whereof the government order appears to have been issued. The only material disclosed in the counter affidavit are the

complaints referred to herein above which are clearly in respect of individual instances of irregularities and do not reflect any large scale irregularities or illegalities. It should not be forgotten that the State of U.P. is one of the biggest States geographically as well as population wise and in proportion thereto the incidents indicated in the counter affidavit cannot be presumed to be sufficient so as to arrive at a conclusion that such bungling has been attempted through out the State. What is more important is that there is absolutely no material on record produced by the State govt. to demonstrate that any inquiry was conducted on the basis whereof it could be concluded that all the selections throughout the State deserve to be set aside.

20. The State Govt. appears to have acted too early on the complaints and that too on the basis of a single incident of district Jaunpur without under taking any exercise of making inquiries or setting up any Committee in order to arrive at such a conclusion. The recital in the government order dated 12.1.2006 to the effect that the issue was deliberated upon does not appear to be founded on any firm and positive reasoning, which could only have been arrived at by holding an inquiry and calling for a report from some High Level Committee, which in the opinion of the Court was at least required when the entire selections of the State were sought to be set aside. The mere receipt of some complaints, which were negligibly of small in proportion to the vast selections made, without any inquiry thereon could not form the basis for ordering cancellation through out the State.

21. The scheme in question is a child welfare scheme and the nature of the employment may not be, in the strict sense a public employment, yet the principle that governs selections and about which the principles have been fairly and elaborately enunciated in the decisions of the Apex Court relied upon by the petitioners would in the opinion of the Court apply to such engagements as well. While dealing with the question of maintainability of the writ petition on behalf of Aanganbadi workers seeking promotion this Court in a couple of decisions, has already arrived at a conclusion that a writ petition would be maintainable in such matters. The Court has arrived at this conclusion by recognizing and acknowledging the importance of the service rendered, namely the Integrated Child Development Services. The principle enunciated by the Apex court in the matters of public employment therefore can be pressed into service to gauge the correctness or otherwise of the process of selections of Aanganbadi workers and assistants.

22. The government order dated 16.12.2003 is sufficiently comprehensive prescribing the manner of selection. A perusal of Clause (iii) of the government order, which indicates the procedure of selection, reflects an objective mode of selection without there being any provision for holding an interview. The selections have to be held from the category of women indicated therein and according to the educational qualifications prescribed. The manner of awarding marks in respect of educational qualifications is clearly stipulated and therefore, the selections have to be held objectively. The certificates which are required

pertaining to the income of a candidate has to be issued by the Tehsildar concerned. The constitution of the selection committee reflects a fair representation of the women from every section of the society. In view of the aforesaid procedure which is almost objective in nature it would not be difficult to identify any individual irregularity or illegality. It will be a matter of simple scrutiny of the documents and the manner of award of marks for judging the merit of a candidate. There being no element of subjectivity involved in the selection process, there would be no difficulty in identifying any irregularity and disqualifying an undeserving candidate. There being a complete procedure provided for assessing the validity of selection, it would not be necessary to cancel any and every selection as has been attempted by the State Govt.

23. The incident which occurred at Maharajganj block district Jaunpur was an incident in respect of a particular Child Development Officer who was found to have indulged in unwarranted and nefarious activities and as such the action taken by the respondents was justified. However just one stray incident which was detected cannot be made the basis for cancelling the selections throughout the State and thereby putting in jeopardy the process of selections which in the opinion of the court would amount to violation of the order of the Apex court dated 7.10.2004 referred to herein above.

24. The appropriate measure which could have been taken by the State Govt. was to have first got an inquiry conducted by some high level committee in order to ascertain the correctness or otherwise of the complaints so as to undertake a measure of general nature. There are as many as 70 districts in the State of U.P. and almost 57 thousand villages comprising of several thousand blocks. The records of the petition including facts stated in the counter affidavit, do not indicate any such large scale bungling which could justify the cancellation of the entire selection of the State. Even otherwise the government order does not indicate any such material nor any such report which could have been made the basis for cancelling the selections throughout the State. The measures undertaken by the State Govt. for cancelling the selections throughout the State appears to have been taken too hurriedly.

25. Taking the instant case at hand, it is not the case of the respondents that such bungling has taken place in all the Blocks of district Jaunpur. The present case is in respect of two villages of Block Sirkoni district Jaunpur. There is no material or any complaint indicated in respect of the selections in the Block of Sirkoni, Jaunpur. In these circumstances, the cancellation of the selection of the petitioner cannot be justified on the basis of the incident which took place in some other block namely Maharajganj. At least there is no material at all so as to connect the incident at Maharajganj with the selections of the petitioner. In the absence of any such material, resorting to cancellation of selection at other places would be an unreasonable action and would otherwise unnecessarily involve the entire administration in a fresh exercise of selection. Such a procedure would delay and frustrate the purpose of the child development

service and would be a direct interference with the order of the Apex Court dated 7.10.2004.

26. Whenever a complaint is received the same has to be inquired into on the basis of grievances raised therein. If the complaint is of an individual nature then the same can be examined at the block level and a report submitted to the appropriate authority for taking action in the matter. In such circumstances there cannot be a general direction for cancellation of the selections through out the State of U.P. The measure adopted under the impugned government order therefore, in the opinion of the court was an absolutely uncalled for step and the same could have been minimized by issuing directions in respect of such incidents which deserved to be inquired in to and proceeded with in accordance with law. This would have also not burdened the administration with the exercise of holding fresh selections even where there were no complaints. It is not the case of the State Govt. that it is not possible to make any such inquiry or it was impossible to control such individual aberrations which were reported to it. The State Govt. could have issued directions to the respective authorities for taking appropriate action. In the matter of Block Maharajganj district Jaunpur action has been taken and which will be proceeded with in accordance with law. The selections in the block of Maharajganj can be examined and fresh selections can be ordered in view of the incident which was reported. This would however, not justify the cancellation of selections through out the State of U.P.

27. Coming to the decisions relied upon by the learned Counsel for the parties, notice may taken of the decision in the case of Krishan Yadav (supra). The said dispute was in respect of selection of Tax Inspectors by a selection Board in the State of Haryana. The matter was inquired into by the C.B.I. and a report was submitted indicating a fraud having been played by the authorities by tampering the entire process of selection including award of marks. The interference was so pervasive that the Supreme Court held that it was justified to go only by the report of the C.B.I. which had clearly recorded that a large scale bungling was done in the selection process. Having regard to the nature of fraud perpetuated, the Supreme Court held that in such a circumstance, the only proper course open was to set aside the entire selections as it was stinking with fraud and deceit. The decision therefore clearly indicates a conclusion having been drawn after a thorough inquiry was conducted by the C.B.I. and thereafter it was held that the entire selections were vitiated.

28. The next decision relied upon by the respondents in the case of Union of India v. O. Chakradhar (supra) indicates a similar conclusion. The said dispute was with regard to non compliance of the procedure by the Railway recruitment Board and selecting candidates without under taking the typing test besides other irregularities conducted in the examination. The contention advanced therein was that general allegations cannot be enough to take decision to cancel the whole selection, and that proper notice and opportunity was required to be given. In the said case also an inquiry was conducted by the C.B.I., and the

report submitted indicated all sorts of malafides and arbitrariness. The Court came to the conclusion that it was not a case where it might have been possible to issue notice in respect of every individual case and it was difficult to separate the cases of some of the candidates from the rest. The Court, therefore, concluded that the Tribunal and the High Court which had set aside the selections were not right in doing so and the appeal was allowed. However, in the said case the following observation has to be noted as contained in para 8 of the said decision.

In our view the nature and the extent of irregularity and illegalities 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.

29. The aforesaid observation in Chakradhar's case (*supra*) stands fortified with the view expressed in the case of *Union of India v. Rajesh* (*supra*). This case was also a matter of selection of constables in the C.B.I. The allegations were of favoritism and nepotism in conducting the physical eligibility test while holding selections by the authorities concerned. The Kerala High Court went on to hold that there was no justification to cancel the entire selections when the impact of illegalities and lapses which had crept into the evaluation of merit can be identified separately. The appeal filed by Union of India before the Apex Court was, dismissed upholding the judgment of the High Court recording that the Committee which had been constituted to inquire into the allegations had meticulously and thoroughly identified all cases individually and which found the illegality in the selection process in respect of each individual candidate. The same view seems to have been taken by the Apex Court in the case reported in *K. Channegowda and Others Vs. Karnataka Public Service Commission and Others*,

30. Applying the aforesaid principle in the present case it is evident that there was no overwhelming material evidence nor any inquiry was conducted by the State Govt. which could have led to the passing of the impugned government order for cancelling the selections throughout the State. The apex court in the case of *Rajesh* (*supra*) was clearly held that such a decision cannot be arrived at by giving a complete go-by to enquiry.

31. In view of the findings arrived at here in above, I am of the considered opinion that the State Govt. should not have taken such a decision without holding and conducting a comprehensive inquiry in this respect. The decision to cancel the selections throughout the State on the basis of material disclosed in the counter affidavit does not appear to be justified and is unsustainable.

32. The other ground urged on behalf of the petitioners is that the government order, carves out a class from amongst the same selections in favour of such candidates who have been issued letters of appointment prior to 12.1.2006 which is violative of Article 14. The argument deserves to be accepted. The said exception made by the respondent State govt. is absolutely irrational and is not founded on any cogent reason. The said decision is in complete defiance of the

Wednesbury rules of reasonableness. In the event the State Govt. was of the opinion that all the selections deserve to be cancelled then there was no reason to save such appointments where a letter of appointment had been issued. The ministerial act of the issuance of an appointment order would not validate an otherwise invalid selection. The carving out of such an exception is clearly discriminatory and arbitrary. The govt. order is liable to be struck down on this ground as well.

33. Before issuing the final directions it would be necessary to note that the procedure provided in the government order dated 12.1.2006 for holding fresh selections appears to be quite transparent and desirable, which can be implemented for holding future selections and therefore, there does not appear to be any reason to strike down the said directions contained in the government order which ensures fairness of selection. However in the event the State Govt. finds it necessary to bring out a change in the chair-person of the selection committee then the same can be done in accordance with the principles laid down in the scheme of Integrated Child Development Service and with which there can be no quarrel in principle. However, such directions should be implemented in respect of selections which maybe conducted hence forth and the same should not be made a ground to invalidate the selections which may otherwise valid and have been held in the past. The State Govt. shall also keep in mind that it has give an under taking before the apex Court for speedily implementing the process of engagement of workers and assistants to carry out the service. Any act of delay in the said process would therefore be, not only a defiance of the order of the Apex court, but also violative of the under taking given by the State Govt. before the apex Court.

34. Accordingly, in view of the conclusions drawn herein above, the Govt. order dated 12.1.2006 in so far it cancels the selections is quashed with liberty to the State Govt. to get an inquiry conducted in respect of the complaints which are received pertaining to the irregularities and illegalities as pointed out from time to time through the implementing agency or such other authorities which may be desirable for an effective implementation of the scheme. The State Govt. shall take immediate steps for the same keeping in view the principles laid down by the Apex Court in the decisions referred to herein above.

35. In view of the fact that there is no complaint in respect of the selection of the petitioners nor any such infirmity has been pointed out in the counter affidavit filed by the respondents, the writ petition is allowed and the respondents shall be at liberty to consider the issuance of the letter of the appointment to the petitioners in accordance with law. The respondents shall also be at liberty to cancel the selection of any such worker or assistant if it is found to be invalid or not in accordance with the procedure prescribed for the same.

36. The government order dated 12.1.2006 therefore is quashed to the said extent with liberty to the respondent State Govt. to implement the procedure referred to in the said government order henceforth in respect of future

selections.

37. The writ petition accordingly stands allowed subject to the directions contained herein above. This decision would also apply in respect of similar writ petitions which are being disposed of by this Court today.