

(2018) 06 UK CK 0023

In the Uttarakhand High Court

Case No : Writ Petition (M/S) No. 3285 of 2017, Writ Petition (M/S) No. 3297 of 2017, Writ Petition (M/S) No. 3298 of 2017, Writ Petition (M/S) No. 3299 of 2017, Writ Petition (M/S) No. 3309 of 2017

Maresh Kothari and others

APPELLANT

Vs

Union of India & others

RESPONDENT

Date of Decision : 15-06-2018

Acts Referred:

Citation : (2018) 06 UK CK 0023

Hon'ble Judges : SUDHANSHU DHULIA, J

Bench : Single Bench

Advocate : K.S. Bora, P.S. Rawat, N.S. Pundir

Final Decision : Partly Allowed

Judgement

SUDHANSHU DHULIA, J. (ORAL)

1. In all these petitions, the petitioners before this Court are cadets of Sainik School, Ghorakhal, District Nainital, who are studying in class XI or XII,

as the case might be. The principal aim of every cadet who is enrolled in a Sainik School is to secure admission as a "Gentleman Cadet" in the

National Defence Academy (for short, N.D.A.). The studies and training in a Sainik School are also focused towards the enrichment of such cadets

so that they are trained to compete and qualify for the examination of the Armed Forces. The examination for N.D.A. is conducted by the Union

Public Service Commission (from hereinafter referred to as U.P.S.C.) and this examination is held twice a year (usually in the month of April and

September of each year) spread throughout the country.

2. The cadets of Sainik School, Ghorakhal were allotted centre at Bareilly in the year 2017. The schedule date of examination was 10th September,

2017. Each of the petitioner before this Court was caught using unfair means in the examination. The unfair means of examination in each case is

possession of some incriminating material which was found in the pocket, of each of the petitioner. In some cases it is merely a note or a small paper.

An undertaking was thereafter taken from each of the petitioners on a set proforma, wherein they have put their signatures stating that certain

incriminating material was found in their possession. The incriminating material found in each of the case is as under:

â??Mahesh Kothari - Hand written note

RudranshKutiyal- Hand written paper

Deepak Kumar - Hand written paper

SurajBhanu- Hand written paper

Mayank Rai - Handmade notes and slipsâ??

3. Thereafter a show cause notice was issued to the petitioners at their address at Sainik School Ghorakhal on 27.09.2017. The show cause notice

states that petitioners were caught using unfair means in examination on 10.09.2017. The petitioners have given an undertaking to the Commission that

under Rules 5 that in case they are found using any unfair means in the examination, then not only a criminal prosecution will be initiated against them

but they will also be debarred either permanently or for a â??specific periodâ??. In inquiry therefore it has been found that they have been using unfair

means during eamination and therefore the petitioners were asked to show cause as to why action be not taken against them, as referred above.

4. Each of the petitioners gave a separate reply admitting that they were carrying the material seized from them, but added that this was purely due to

inadvertence. In the case of petitioner Mahesh Kothari, it was said that he was carrying many hand written notes and papers carrying acronyms,

which were for his revision and by mistake one small paper was left in his pocket. Petitioner SurajBhanu in his reply to the show cause states that he

was only carrying blank paper for using it for rough work, petitioner Deepak Kumar in his reply to show cause states that he was carrying a piece of

paper to make a key of the answers for subsequent cross check, petitioner Mayank Rai states in his reply that he wrote the answer of question of

rough paper for cross checking and petitioner RudranshKutiyal submitted in his reply that when he went to the washroom, he saw a piece of paper

stuck in the cistern and as soon as he pulled out the paper to check what was written on it, he was caught by the invigilator.

5. After the incident, the Principal of Sainik School, Ghorakhal had also sent a letter to the Under Secretary (NDA), Union Public Service

Commission, New Delhi explaining that these cadets have a bright academic record and they have embarrassed the school, their parents were also

called for counselling which has been done and the school has adequately punished the cadets. It was requested by the Principal that a lenient view be

taken against these cadets as what is at stake is their entire future!

6. The UPSC, however, has passed an order dated 10.11.2017 by which each of the petitioner has been debarred for a period of 10 years from

appearing in all future examinations/selections to be held by the UPSC with effect from 24.10.2017. This order dated 10.11.2017 has been challenged

before this Court by the petitioners.

7. As far as result of the examination in which the petitioners had appeared on 10.09.2017, their candidature has automatically stands cancelled. By

interim order of this Court dated 28.12.2017, the petitioners were permitted to appear in N.D.A. and N.A. Examination, which was scheduled to be

held in the month of April, 2008, the result of which is awaited.

8. According to the learned counsel for the petitioners, usually a candidate does not get more than three chances to appear in NDA examination. They

have already lost one.

9. Learned counsel for the UPSC would argue that the petitioners were caught using unfair means during the examination. Their confession to the

guilt is on record and therefore they have been debarred as per the Rules.

10. The Rules which have been relied upon by the Commission are known as â?? the Rules for a Competitive Examination National Defence

Academy & Naval Academy Examination (II), 2017 notified on 07.06.2017. Under Rule 5, a candidate who has been declared by the Commission to

be guilty of â??using unfair means during the examinationâ?? renders himself liable to criminal prosecution and can either be â?" (a) disqualified by the

Commission for examination for which he is a candidate or (b) he can be debarred either permanently or for a specific period.

11. From the documents on record and from the perusal of the averments itself and also in view of the confession of the petitioners, which has been

taken by the petitioners before the Commission, it is clear that the petitioners were found in possession of incriminating material. Although the admission of guilt is on a set proforma paper, the fact remains that not only during examination but even after show cause notices issued to the petitioners, they have admitted the use of unfair means to that extent and have prayed for mercy. Not only this, the Principal of the College who should know the best interest of his cadets, has also pleaded for a lenient attitude at the hands of the Commission.

12. This Court has absolutely no reason to disbelieve the version of UPSC. But, in each of the case petitioners were found carrying a material, said to be incriminating, but the admitted fact is that none of the petitioners were actually found "cheating". The case of UPSC is of possession of incriminating material, which is not in doubt. If on this the Rules draw a presumption of use of unfair means then that too has to be accepted. Nevertheless the nature of the act, which is possession of the incriminating material and the quantum of punishment needs to be examined by this Court.

13. The petitioners have admitted their guilt. All the same, the nature of offence is not of a nature where extreme punishment of debarring the petitioners for a period of 10 years was required. In view of this Court, though the finding of guilt may not be interfered with, but considering the facts as well as the nature of the case, and the future consequences of the punishment, definitely the quantum of the punishment is extremely disproportionate to the offence committed. The law of proportionality is by now one of the accepted principles of judicial review. There is no doubt that an offence has been committed by the petitioners but the appropriate punishment for this would be debarring the petitioners for the said examination. Debarring the petitioners for 10 years is an overkill.

14. The three principal ingredients of judicial review were spelled out by Lord Diplock* wherein judicial review is permissible on three grounds " (a) Illegality, (b) irrationality and (c) procedural fairness. The doctrine of proportionality was also held to be relevant. The Hon'ble Apex Court has held with approval the application of the principle of proportionality in judicial review. Reference may be made here of *Ranjit Thakur v. Union of India* and others reported in (1987) 4 SCC 611, where a punishment which was

disproportionate to the offence was struck down on the principle of proportionality.

15. The principle of proportionality means that an administrative action should match the problem it seeks to tackle and should not overdo or outweigh it. In other words, it should be in proportion to it. It should be reasonable.

* Council of Civil Service Unions v. Minister for the Civil Service 1985 AC 374: (1984) 3 WLR 1174: (1984) 3 All ER 935 (HL)

16. In the present case, no doubt an offence has been committed by the petitioners, for which the appropriate punishment, under the facts and circumstances of the case, should be to debar the petitioners for the examination in which the act was committed. Debarring the petitioners for 10 years in all the future examinations conducted by the UPSC is both unreasonable and unfair for the reasons already given above.

17. Finally we cannot lose sight of the fact that we are dealing here with children. The petitioners are presumably all juveniles (considering that they are class XI and Class XII students), caught with incriminating material in an examination hall. They are not criminals. Fastening them with the punishment of a debar for 10 years, in all the future examinations conducted by the UPSC, has a potential to destroy careers which are at the very threshold.

18. The petitioners have also suffered enough. Not only do they stand debarred for the examination, but their act must have shamed them in the eyes of their teachers and peers. This Court presumes that they have by now learnt the hard lessons of life and should remember that it is far more honourable to fail, than to cheat*.

19. All these writ petitions are partly allowed. The orders dated 10.11.2017 is hereby set aside. The petitioners shall only be barred for the examination in which they have appeared and were caught using unfair means. They shall not be debarred for any other examination for the act, which they have allegedly done in NDA and NA (II) Examination, 2017 held on 10.09.2017.

* From Abraham Lincoln's letter to his son's teacher.

20. By the interim orders of this Court dated 28.12.2017, the petitioners were permitted to appear in NDA and NA Examination held in April, 2018.

Let the result of the petitioners be declared, along with the other results.