

(2009) 04 AP CK 0054

In the Andhra Pradesh High Court

Case No : Writ Petition No's. 1295 and 6603 of 2009

P. Samba Murthy and Others

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 01-04-2009

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2009) 5 ALD 121 : (2009) 4 ALT 616

Hon'ble Judges : Ghulam Mohammed, J

Bench : Single Bench

Advocate : G. Vidya Sagar, for K.R.K.V. Prasad, for the Appellant; P. Gangi Rami Reddy, for Respondents 1 to 5 and S. Lakshma Reddy, for Respondents 6 to 42, for the Respondent

Final Decision : Dismissed

Judgement

Ghulam Mohammed, J.—Even though the matters are listed "for admission", with the consent of the learned Counsel for the parties, the writ petitions are taken up for final hearing.

2. Since the issue involved in these two writ petitions being the same, they are heard together and are being disposed of by this common order.

3. Aggrieved by the order 22.12.2008 of the Central Administrative Tribunal, Hyderabad Bench in O.A. No. 388 of 2008, the Department filed Writ Petition No. 6603 of 2009; whereas, certain persons, who are not parties to the said O.A., with the leave of the Court, filed Writ Petition No. 1295 of 2009.

4. The facts in brief are that the department issued notification on 15.2.2008 proposing to fill up 124 vacancies of Head Travelling Ticket Examiners in the scale of Rs. 5000-8000. Pursuant to which, 187 Senior Travelling Ticket Examiners have appeared for the written examinations held on 8.3.2008 and 16.3.2008 and also in the supplementary examination held on 30.3.2008. The result of the written tests were published on 8.5.2008 and in the written

examinations, about 148 candidates were declared to have been qualified. Assailing the same, certain unsuccessful candidates have lodged a complaint before the Divisional Railway manager (P), Secunderabad Division, S.C. Railway, Sanchalan Bhavan, II Floor, Secunderabad alleging mass copying during the written examinations. Thereafter, a Committee was appointed to enquire into the truth or otherwise of the allegations made in the said complaint. The Committee, after conducting necessary enquiry into the matter, submitted its report stating that certain irregularities were noticed in the written examinations. Basing on the report of the said Committee, through order dated 10.6.2008, the Divisional Railway Manager cancelled the written examinations. Feeling aggrieved by the said order, the respondents in Writ Petition No. 6603 of 2008 filed O.A. No. 388 of 2008 before the Tribunal.

5. Before the tribunal, the department has filed counter stating that the written examination was held in two batches, i.e., in respect of S. Nos. 1 to 100, the written examination was held on 8.3.2008 and in respect of S. Nos. 101 to 198, the examination was held on 16.3.2008. Further, supplementary examination was held on 30.3.2008. The Tribunal, through the impugned order dated 22.12.2008, has set aside the cancellation order dated 10.6.2008 while reserving liberty to the department to proceed against the persons who indulged in malpractices after segregating them and further to proceed with the empanelment in respect of such of those candidates who have not indulged in such malpractices. Assailing the said order, these two writ petitions are filed by the department as well as some unsuccessful applicants.

6. Sri G. Vidya Sagar, learned Counsel appearing on behalf of the petitioners in Writ Petition No. 1295 of 2009, would contend that on the basis of the complaint lodged by the petitioners, the department has appointed a committee to enquire into the matter and the Committee having gone through the answer scripts of the candidates who appeared for the written examinations and the seating arrangements, has submitted its report holding that malpractices have occurred in the written examinations and basing on the report of the said committee, the department has cancelled the entire selection process. He would further contend that the department has taken a decision to cancel the selection process basing on the findings of the departmental committee in which case it is impermissible for the Tribunal to review the decision taken by the department. In support of this contention, he relied on the decision of the Apex Court in Union of India (UOI) and Others Vs. Tarun K. Singh and Others, , wherein the Apex Court in para-4 of the said judgment observed thus:

4. The question for consideration is whether the learned single Judge of Allahabad High Court was justified in interfering with an order of cancellation passed by the competent authority and direct that the process of selection should be completed. Needless to mention that subsequent to the order of cancellation, in view of the allegation of malpractice, the departmental authorities has held an enquiry into the matter and the result of that enquiry was

revealed gross irregularities and illegalities as referred to in the judgment of the Division Bench of Allahabad High Court. Consequently the process of selection which stands vitiated by adoption of large scale malpractice to a public office, cannot be permitted to be sustained by Court of Law. That apart, an individual applicant for any particular post does not get a right to be enforced by a Mandamus unless and until he is selected in the process of selection and gets the letter of appointment. In the case in hand, much before the so-called list of selection was approved by the Railway Board, the order of cancellation had emanated on the basis of the complaint received from so many quarters. In view of the subsequent findings of the enquiry committee which has gone into the matter, we have no hesitation in coming to the conclusion that the learned single Judge of Allahabad High Court was wholly in error in issuing the direction in question and, therefore, the Division Bench of Allahabad High Court was fully justified in interfering with the said order of learned single Judge of Allahabad High Court. The Division Bench of Calcutta High Court committed error in following the judgment of learned single judge of Allahabad High Court. The judgment of Division Bench of Calcutta High Court is set aside and the judgment of Division Bench of Allahabad High Court is upheld. In the circumstances, we allow the Union's appeals and dismiss the appeals filed on behalf of the individual candidates. The appeals are disposed of accordingly. Any other question of law remains open.

He also relied on a decision of the Supreme Court in Union of India (UOI) through the Secretary Ministry of Home Affairs and Others Vs. Joseph P. Cherian, .

Secondly, he would contend that unless the decision of the department is mala fide, the Tribunal cannot interfere with the decision taken by the department and review the same. In support of this contention, he relied on the decision of the Allahabad High Court in Union of India and others Vs. Akchhay Kumar Singh and others, . In para-20 of the said judgment, the Allahabad High Court observed thus:

20. In a matter like the one on hand, the competent authority, in our opinion, does not decide a lis between the complainant on one hand and candidates seeking appointment on the other so as to be obliged to hold an enquiry in consonance with the rules of natural justice. Its decision is not to be judged from judicial or even quasi-judicial standards and since exercise of power to scrap recruitment is not regulated by objectively determinable factors, even "reasonable suspicion" as to the process of recruitment being vitiated by malpractices or corrupt means would suffice. Surrounding circumstances, e.g., the necessity to scrap the recruitment for preservation of public faith in the recruitment process will also do. The competent authority, in our opinion, is not required to hold a formal enquiry in tune with the principles of natural justice and ascertain the truth or otherwise of the complaints as to malpractice in the recruitment process as condition precedent to cancelling the recruitment process.

All that is expected of the competent authority in such a situation is that it would act in "good faith" and take a bona fide decision whether to scrap or not to scrap the recruitment. The decision should not be influenced by any extraneous consideration and whenever its decision is found to have been influenced by "bad faith" or extraneous consideration, the Court will intervene, for no power is absolute and rather all powers are conferred subject to an implied duty that they be exercised reasonably and in good faith. An authority failing to comply with this obligation. It may be observed, acts unlawfully or ultra vires. The judicial scrutiny by the High Court under Article 226 of the Constitution of India, on a matter like the one on hand, is to be made on the anvil of "good faith", bona fide and absence of mala fide. The impugned decision to scrap the recruitment in our opinion, does not appear to be tainted with mala fide, "bad faith" or "extraneous consideration". Notings on the original file produced before us would show that the matter was examined and decision to scrap the recruitment was taken after due deliberation. Such decision, in our opinion is not open to challenge under Article 226 of the Constitution of India on the ground that there was no material to substantiate the allegations of malpractice. The complaints in themselves constituted valid material on consideration of which the recruitment could lawfully be scrapped. The Director General, R.P.F. in our opinion, was right in observing that anybody who pays money to get a Job would first realise his original investment. Members of the R.P.F. who are supposed to guard the railway and public property worth crores of rupees should not be allowed to enter into the force by illegal and corrupt means. The view taken by the learned single Judge that the decision to scrap the recruitment was arbitrary cannot be sustained. The report dated 3.12.1998 submitted by the Chief Security Commissioner. R.P.F., Eastern Railway, is no doubt a post-decisional report but since it supports the complaints to a large extent, the decision to scrap the recruitment as taken by the Director General, R.P.F., cannot be said to be vitiated by arbitrariness particularly when the exercise of discretion in this regard is not regulated by objectively determinable factors/norms. Learned single Judge, in our opinion, was not right in judging the impugned decision on the touchstone of the standards meant for judging judicial or quasi-judicial decision affecting vested rights of individuals.

He, would, therefore, contend that since in the instant case, there are no malafides alleged against the decision making process of the department in cancelling the examinations, the Tribunal was not justified in setting aside the order dated 10.8.2008.

7. Sri Gangirami Reddy, learned Standing Counsel for the department would contend that pursuant to the complaint made by certain candidates in respect of the written examinations which were held on 8.3.2008, 16.3.2008 and 5.4.2008, a committee was appointed by the department to investigate into the matter as to whether any mass copying has been resorted to by the candidates and the committee after due enquiry, has submitted its report holding that malpractices have occurred in the said examinations and basing on the report of the said

Committee, the administrative authority has taken a decision to cancel the selection process and directed to re-notify the vacancies. He would further contend that since the said decision has been arrived at by the administrative authority on due consideration of the report submitted by the enquiry committee, the decision made by the administrative authority does not suffer from any infirmity and the Tribunal cannot interfere with the said decision. He, therefore, submits that the writ petition deserves to be allowed by setting aside the impugned order.

8. On the other hand, Sri S. Lakshma Reddy, learned Counsel appearing on behalf of the respondents-applicants in Writ Petition No. 6603 of 2009 would contend that there was no complaint in respect of the examinations held on 8.3.2008 and that the petitioners in Writ Petition No. 1295 of 2008 having kept quiet for more than two months, have filed the aforesaid the complaint with a view to interdict the selection process. Further they made the complaint only against two persons, namely, Sri J. Ravi and Sri V.R. Anil Kumar and when the complaint is specifically made against only two persons, the department was not justified in setting aside the entire selection process. In support of this submission, he relied on the decision of the Supreme Court in *Union of India and Ors. v. Rajesh P.U. Puthuvalnikathu and Ors.* 2003 SCC (L&S) 1048.

On a careful consideration of the contentions on either side in the light of the materials brought on record, including the relevant portions of the report said to have been submitted by the Special Committee constituted for the purpose of inquiring into the irregularities, if any, in the selection of candidates, filed on our directions - which report itself seems to have been also produced for the perusal of the High Court, there appears to be no scope for any legitimate grievance against the decision rendered by the High Court. There seems to be no serious grievance of any malpractices as such in the process of written examination - either by the candidates or by those who actually conducted them. If the Board itself decided to dictate the questions in loudspeaker in English and Hindi and none of the participants had any grievance in understanding them or answering them, there is no justification to surmise at a later stage that the time lapse in dictating them in different languages left any room or scope for the candidates to discuss among them the possible answers. The posting of invigilators for every ten candidates would belie any such assumptions. Even that apart, the Special Committee constituted does not appear to have condemned that part of the selection process relating to conduct of written examination itself, except noticing only certain infirmities only in the matter of valuation of answer sheets with reference to correct answers and allotment of marks to answers of some of the questions. In addition thereto, it appears the Special Committee has extensively scrutinized and reviewed situation by re-evaluating the answer sheets of all the 134 successful as well as the 184 unsuccessful candidates and ultimately found that except 31 candidates found to have been declared successful though they were not really entitled to be so declared successful and selected for appointment. There was no infirmity whatsoever in the selection of the other

successful candidates than the 31 identified by the Special Committee. 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 all pervasive 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 other of 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 other reasons. Applying an 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 others, 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 winds the principle of proportionality in going further than what was strictly and reasonably required to meet the situation. In short, the Competent Authority completely misdirected itself in taking such an extreme and unreasonable decision of cancelling 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.

He would also contend that the petitioners in Writ Petition No. 1295 of 2009 are not parties to the O.A. and they have no locus to file the writ petition assailing the order of the Tribunal. He, therefore, contends that the decision of the administrative authority to cancel the entire selection is illegal and the Tribunal on an earnest consideration of the matter, has allowed the O.A. and rightly set aside the cancellation order.

9. The point that arises for consideration in this writ petition is whether the order of the Tribunal is valid and legal and whether it suffers from infirmity or jurisdictional error ?

10. Before we consider the rival contentions of the parties, it is necessary to extract the relevant portion of the complaint dated 10.5.2008, which reads thus:

In the written examination held at Secunderabad, mass copying/malpractice taken place. The answer booklet of a candidate contains the handwriting of two candidates. For example, the answer booklet of Sri J. Ravi contains the handwriting of himself and another candidate Sri V.R. Anil Kumar. This is one of the examples of malpractice.

On the basis of the said complaint, the Divisional Railway Manager has appointed a Committee to look into the matter and the Committee on due verification of the answer sheets of various candidates, submitted its report. It reads thus:

1. From the quality of the answer, it appears that this answer was written before the examination. It is possible that an answer was prepared before hand and the candidates learnt it by heart and reproduced it during the examination. However

the committee is of the opinion that such a possibility can be overruled because even when an answer is learnt by heart, the candidates would be able to reproduce the main points of this answer, but not verbatim. Such verbatim reproduction of the answers seems to indicate that either they copied from each other or circulated a chit containing the answer.

2. In the third case it seems that Roll No. 195 has copied the answers for the descriptive type questions from Roll. No. 194. Perhaps because Roll No. 195 has not been able to keep pace with Roll No. 194 as he has discontinued the answer after copying about three fourths of the answer in some of the cases. It can be contested that the two candidates have prepared together hence given same answers. The committee has deliberated on this possibility and ruled it out because the answers are not similar but copied verbatim including use of capital letters and paragraphs and sub-headings. Therefore, it is apparent that the two candidates have resorted to copying.

3. From the above, committee has come to the conclusion that certain irregularities have been committed in the written examination.

11. Admittedly, on a perusal of the complaint, it is quite evident that the complaint has not been made immediately after the conclusion of the examinations, but was only made on 10.5.2008, i.e., nearly, two months after publication of the results of the written examinations. Further, the Enquiry Committee which was appointed to conduct enquiry into the matter on a perusal of the answer scripts of 181 candidates, who appeared for the written examinations on 8.3.2008, 16.3.2008 and 5.4.2008, after segregating the answer scripts room- wise as per the seating plan, conducted a random check and found that the examinations comprised of objective and descriptive questions. It also found that in respect of objective type questions, namely, question Nos. 9, 16 and 19, same mistakes have been committed by the candidates pertaining to Roll Nos. 54 and 55. So far as the descriptive questions are concerned, it found that the candidates pertaining to Roll Nos. 103, 104, 105, 106, 107, 108, 109 and 113, who appeared for the written examination on 16.3.2008 and who were placed in room No. 5 have given identical answer to question No. 6 of part-I. It found that the answer was reproduced in verbatim and there was no change in the language used in the descriptive answer.

12. The committee further found that the candidate pertaining to Roll No. 195 who was seated in room No. 9 and who appeared for the written examination on 16.3.2008, had given almost similar answers to questions 4, 5 and 7 of descriptive type as that of Roll No. 194, with minor omissions here and there. It further found that the candidate pertaining to Roll No. 194 has written complete answers; whereas the candidate pertaining to Roll No. 195 has written the answers word to word upto some extent and thereafter discontinued it. Therefore on a perusal of the answers scripts, the committee opined that the candidates have either copied from each other or circulated a chit containing the answer among themselves and accordingly, reached a conclusion that malpractices have

occurred in the written examinations.

13. When the complaint is that a mass copying/malpractice had taken place in the written examination conducted by the department, it would have been incumbent on the part of the enquiry committee to have properly analyzed the entire conduct of examinations in respect of answer sheets of all the candidates before arriving at a decision in one way or the other. It seems that the enquiry committee has done a random check. On the basis of such limited verification made by the committee, it would be difficult to come to any conclusion that mass copying/malpractice had taken place in the examination in its entirety. Some verbal reproduction of answers or use of capital letters or paragraphs or sub-paragraphs cannot be the basis for cancellation of the entire examination. It appears that the committee has observed such verbatim reproduction of the answers in respect of candidates seems to indicate that either they copied from each other or circulated a chit containing the answer. But the committee has not mentioned any basis for coming to such conclusion. On such analysis, the committee has come to the conclusion that certain irregularities have been committed in the written examination. The report of the committee does not clearly indicate what are the irregularities that have been committed and the basis for arriving at such conclusion, except that there is verbatim reproduction of answers in some cases. On the basis of the limited verification and analysis made by the enquiry committee, we are of the view that it would not be proper on the part of the administrative authority to arrive at a unilateral decision that a mass copying or malpractice had taken place in the conduct of the examinations and to cancel the examinations in its entirety. In the light of such report, which does not indicate that any large scale mass copying or malpractice or any large scale irregularities had taken place and since the matter involves the fortunes of a large number of candidate who have appeared in the written examination, the authority should have been loathe to cancel the examination in its entirety as it would be detrimental to the interests of a large number of candidates. Therefore, the decision of the authority to cancel the entire selection process appears to be not based on relevant consideration and is contrary to the principle of proportionality and does not meet the required fact situation. No convincing reasons are forthcoming from the authority concerned as to why such an extreme decision to cancel the entire selection process has been taken giving a go-bye to the principle of proportionality. In our opinion, the Tribunal, by the order impugned, has rightly annulled the order of the department to cancel the entire selection process protecting the interests of candidates who have not indulged in malpractices and rightly reserved liberty to the department to proceed against the persons who have indulged in malpractices after segregating them. Therefore, no interference is warranted with the order impugned.

14. The decision relied upon by Sri G. Vidya Sagar, learned Counsel for the petitioners in Tarun K. Singh's case (cited supra-1) to contend that when the department has taken a decision to cancel the selection process, on the basis of the finding of the departmental committee, it would be impermissible for the

Tribunal to review the decision taken by the administrative authority, is distinguishable on facts. In that case, the enquiry revealed gross- irregularities and illegalities due to the adoption of large scale malpractices. Here, in the instant case, the enquiry committee has not pointed out that any large scale mass copying/malpractices or large scale irregularities had taken place. The committee on the basis of some solitary instances in respect of two rooms has come to the conclusion that certain irregularities have been committed in the examination. The Committee also did not point out that any large scale irregularities have been committed in the conduct of examinations justifying cancellation of the entire selection process. Therefore, the Tribunal taking into consideration the entire fact situation, has come to the conclusion that the cancellation of the entire selection process is not proper and gave liberty to the department to proceed against the persons who have indulged in malpractices. In the facts and circumstances of the case, such an order cannot be said to be not proper. The Tribunal has rightly protected the interests of number of other candidates who have not indulged in malpractice, as the report of the enquiry committee is only based on certain solitary instances, but not in respect of all candidates who wrote the examination. Therefore, in the fact situation obtaining herein, it cannot be said that it would be impermissible for the Tribunal to review the decision taken by the administrative authority.

15. Since we are of the view that the department cannot unilaterally cancel the entire selection process, on the basis of some solitary instances of irregularities pointed by the enquiry committee, the decision relied upon by the learned Counsel for the petitioners in Joseph P. Cherian's case (cited supra-2), to contend that unless the decision of the administrative authority is mala fide, the Tribunal cannot interfere with decision of the administrative authority and review the same has no application to the case on hand. Be that as it may, we have already held that on the basis of some irregularities alleged to have been taken place on limited verification of the answer sheets, the entire selection process cannot be upset to the detriment of other large number of candidates who have not indulged in any malpractices or any irregularities.

16. Further, the judgment of the Apex Court in Rajesh P.U. Puthuvainikathu's case (cited supra-4), relied upon by the learned Counsel for the respondents-applicants, is a case where a special committee has been constituted for the purpose of inquiring into the irregularities, if any, in the selection of candidates for appointment to the post of Constables, Male/female. The said committee has extensively scrutinized and reviewed the situation by revaluating the answer sheets of all the 134 successful as well as the 184 unsuccessful candidates and ultimately found that except 31 candidates, who were found to have been declared successful, there was no infirmity whatsoever in the selection of the other successful candidates. But, it appears that the authority has cancelled the selection in its entirety. In such a fact situation, the Supreme Court held that "in the absence of any specific or categorical finding supported by any concrete and relevant material that widespread infirmities of all pervasive 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 other of 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 other reasons. Applying an 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 others, is nothing but total disregard of relevancies and allowing to be carried away by irrelevancies, giving a complete go bye to contextual considerations throwing to winds the principle of proportionality in going further than what was strictly and reasonably required to meet the situation. In short, the Competent Authority completely misdirected itself in taking such an extreme and unreasonable decision of cancelling 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".

17. The above decision of the Supreme Court squarely applies to the fact situation obtaining in the case on hand. As already observed, the enquiry committee has only pointed out that some irregularities alleged to have been taken place in respect of few candidates as detailed herein above, but not in respect of all the candidates who had appeared in the written examinations. Therefore, the department is not justified in cancelling the entire selection process depriving the legitimate claims or expectations of others who have not indulged in any such malpractices. In our considered opinion, the Tribunal has rightly protected the interests of those candidates who have not indulged in malpractices by giving liberty to the department to proceed against the persons who indulged in malpractices after segregating them and further to proceed with the empanelment in respect of such of those candidates who have not indulged in such malpractices. Such a well reasoned order cannot be found fault with.

18. On an analysis made hereinabove and on the basis of the fact situation obtaining in the present case, we are of the view that the department has misdirected itself in taking the extreme decision to cancel the entire selection process in respect of all the candidates, including those who have not indulged in malpractices - who are in large number, which is clearly illegal, irrational and cannot be sustained.

19. Hence, the writ petitions must fail and they are accordingly dismissed at the admission stage. No costs.