

(2008) 06 AHC CK 0011
In the Allahabad High Court
Case No : Writ Petition No. 828 (M/S) of 2007

Rajesh Kumar Singh and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 11-06-2008

Acts Referred:

Central Civil Services (Classification, Control and Appeal) Rules, 1965 — Rule 1(3),
15, 9

Constitution of India, 1950 — Article 14, 226

Citation : (2008) 6 AWC 6524 : (2009) 123 FLR 750

Hon'ble Judges : S.N. Shukla, J; Rajiv Sharma, J

Bench : Division Bench

Advocate : Karunanidhi Yadav and Prashant Chandra, for the Appellant; A.P. Shahi, for the Respondent

Judgement

Rajiv Sharma, J.—This bunch of writ petitions involve same questions of facts and law, therefore, all the writ petitions are being decided by a common order.

2. Heard, Mr. Prashant Chandra, senior advocate assisted by Mr. Karunanidhi Yadav, learned Counsel for the Petitioners and Mr. A. P. Shahi, learned standing counsel and also perused the records produced by him including the Enquiry Reports, which have been brought on record by means of affidavits.

3. Brief facts of the Petitioners' case are that the Petitioners on the basis of entrance examination for the academic session 2006-07, have been recommended for pursuing M.D. course in Ayurved, but on account of infighting between the Director, Ayurved and Unani Services, Lucknow, opposite party No. 2 and Convener/Principal, State Ayurvedic College, Tudiyananj, Lucknow opposite party No. 3 and on the basis of some alleged frivolous complaints, the counselling could not take place and as such, though the Petitioners being selected in the written examination, were not allowed to pursue the respective course which should have started in July, 2006.

4. It has been stated by the counsel for the Petitioners that under the garb of the

complaints, which have been manufactured at the behest of Director, Ayurved and Unani Services, Lucknow through political manoeuvring got a three-member enquiry instituted by means of an order dated 22.1.2007, in which the Director, opposite party No. 2 was a member and consequently, she became a Judge in her own cause in breach of the maxim *nemo debet esse judex in propria causa*. On the basis of the Enquiry Report dated 1.2.2007, the entire examination was cancelled.

5. Being aggrieved thereof, the instant writ petitions have been filed inter alia on the grounds that the Enquiry Report dated 1.2.2007 and the orders passed on the basis of the said enquiry are illegal and hit by the provisions as contained in Article 14 of the Constitution of India.

6. It has been urged by the counsel for the Petitioners that in the enquiry which was constituted by means of the order dated 22.1.2007, the Director, opposite party No. 2 was one of the members on account of infighting between her and opposite party No. 3. However, no opportunity has been afforded to the Petitioners before passing the impugned order dated 15.3.2007 and further, complaints alleged to have been made regarding irregularities in the examination, as a matter of fact have been fabricated and manufactured at the instance of opposite party No. 2 as in actual sense there was no complaint against the holding and selection for M. D. (Ayurveda) for the Academic Session 2006-07.

7. It has been submitted by the counsel for the Petitioners that four complaints were preferred after the declaration of results and amongst the said complaints. The first is said to be by the Minister of the State, Handicapped Department, viz., Shri Shyam Narain in which it has been alleged that the Principal Dr. Bhawan Singh had taken bribe for granting admissions to students and the said Dr. Bhawan Singh was also guilty of grave financial irregularities in the past and an enquiry was also instituted against him, which was in progress.

8. The second complaint is stated to have been made by one Mr. Ramesh Prasad on 25.1.2007 in which it has been alleged that Ayurveda M. D. Entrance Examination, 2006, in which 26 seats were to be filled up, were held in the supervision of Dr. Bhawan Singh. It has categorically been alleged in the said complaint that the selected candidates had left their answer sheets blank and that the process of filling of the blank answer sheets was accomplished in the night of 21.1.2007 whereby the Principal had called the said selected candidates to his residence to fill up the answer books.

9. The third complaint which has been made by one Surendra Verma was received from the office of the Chancellor in which it has been alleged that the entire examinations for selection were held on 21.1.2007 and the selected candidates were notified after having received a sum of Rs. 25 lacs per seat. It has also been alleged that in the last selections for examination held in 2005-06, in respect of 14 seats Dr. Bhawan Singh had committed irregularities and as

there was no supervision over the Principal of the College, he had been selling the seats and blank answer books are submitted which are subsequently filled up under the directions of the Principal and the candidates are declared selected in the merit list.

10. The fourth complaint had been made by five unsuccessful students on 29.1.2007 in which an allegation has been made that several students had given answers of only six or seven questions in the O.M.R. sheet but they have been declared selected. Further, the Invigilator had not identified the students who had left the O.M.R. sheet blank.

11. Counsel for the Petitioners submits that the entrance examination was conducted through an external agency, viz., M/s. Quatron, Indira Nagar, Lucknow and all the relevant records had been perused by the Committee in which written statement of Dr. Bhawan Singh was also taken into consideration and the Committee has recorded a clear-cut finding that in respect of the answer book against Roll No. 334, some fluid has been used which according to the Committee was unlikely to be present in the examination hall. The Committee has further found that against the seven applicants who had been named and were alleged to have paid money for their selection only three had been selected. Thus, the conclusion was drawn by the Committee to cancel the entire selection process and to get the re-examination conducted through the King George's Medical University or any other agency having prudential for holding the re-examination in a fair manner and appropriate proceedings be initiated against the Principal, Shri Bhawan Singh.

12. According to Petitioners, the falsity of the report dated 1.2.2007 and its apparent manipulation is substantiated by the fact that Sri Shyam Narain, the State Minister, by a communication dated 21.2.2007 categorically pointed out that no complaint had been sent by his office and the complaint allegedly sent on his behalf had been fabricated for which he has recommended for holding an independent enquiry. Likewise, the complaint Sri Ramesh Prasad has also given an affidavit before the Secretary, Ayurveda and Unani indicating therein that he has not made any complaint and the complaint allegedly received in his name was fictitious and fabricated. Mr. Saroj Kumar Verma has also denied of making complaint, but without looking into the aforesaid denial of complaints, only on the basis of the findings recorded by the committee which are beyond the averments made in the alleged complaints insofar as the committee was constituted to go into the truthfulness of the allegations of the complaints passed the impugned order dated 15.3.2007 cancelling the entire selection process.

13. Learned Counsel for the Petitioners also submits that the Principal of the institution was also placed under suspension and disciplinary proceedings were initiated against him, but subsequently charges levelled against him could not be proved and as such, he was reinstated in service but the result of the Petitioners, who have appeared into the examinations and declared successful for admission to pursue M.D. (Ayurved) course, has been cancelled on account of which the

career of the Petitioner is adversely affected.

14. To strengthen his arguments that the action of the Respondents is non est, unjustified and per se illegal, reliance has been placed by the Petitioners on Union of India and Ors. v. Kunisetty Satyanarayana (2006) 12 SCC 28: 2007 (5) AWC 4945 (SC); Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others, Union of India (UOI) and Others Vs. Rajesh P.U., Puthuvalnikathu and Another, Madan Lal and Others Vs. State of Jammu and Kashmir and Others, and K.R. Deb Vs. The Collector of Central Excise, Shillong,

15. In para 8 of Mohinder Singh Gill (supra), the Supreme Court held as under:

The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to Court on account of a challenge, get validated by additional grounds later brought out. We may here draw attention to the observations of Bose, J., in Gordhandas Bhanji:

Public orders, publicly made, in exercise of a statutory authority cannot be constructed in the light of explanation subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the actings and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself.

Orders are not like old wine becoming better as they grow older.

16. In para 6 of Union of India v. Rajesh P. U. Puthaval Nikathu and Ors. (supra), the Apex Court has held as under:

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 the written examination-either by the candidates or by those who actually conducted them. If the Board itself decided to dictate the questions on a 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 apart of the selection process relating to conduct of the written examination itself, except noticing only certain infirmities only in the matter of evaluation of answer-sheets with reference to correct answers and allotment of marks to answers of some of the questions. In addition thereto, it appears that the Special Committee has extensively scrutinized and reviewed the situation by re-evaluating the answer-sheets of all the 134 successful as well as 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 an all pervasive nature, which could be really said to have undermined the very progress 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 Ors. 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 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. In the case of Madan Lal (*supra*), the counsel for the Petitioners has laid emphasis upon the paragraphs of 9 and 10 which are as under:

9. Before dealing with this contention, we must keep in view the salient fact that the Petitioners as well as contesting successful candidates being Respondents concerned herein, were all found eligible in the light of marks obtained in the written test, to be eligible to be called for oral interview. Up to this stage there is no dispute between the parties. The Petitioners also appeared at the oral interview conducted by the Members concerned of the Commission who interviewed the Petitioners as well as the contesting Respondents concerned. Thus, the Petitioners took a chance to get themselves selected at the said oral interview. Only because they did not find themselves to have emerged successful as a result of their combined performance both at written test and oral interview, they have filed this petition. It is now well-settled that if a candidate takes a

calculated chance and appears at the interview, then, only because the result of the interview is not palatable to him, he cannot turn round and subsequently contend that the process of interview was unfair of the Selection Committee was not properly constituted. In case of *Om Prakash Shukla v. Akhilesh Kumar Shukla*, 1986 Supp SCC 285, it has been clearly laid down by a Bench of three learned Judges of this Court that when the Petitioner appeared at the examination without protest and when he found that he would not succeed in examination he filed a petition challenging the said examination, the High Court should not have granted any relief to such a Petitioner.

10. Therefore, the result of the interview test on merits cannot be successfully challenged by a candidate who takes a chance to get selected at the said interview and who ultimately finds himself to be unsuccessful. It is also to be kept in view that in this petition we cannot sit as a court of appeal and try to reassess the relative merits of the candidates concerned who had been assessed at the oral interview nor can the Petitioners successfully urge before us that they were given less marks though their performance was better. It is for the Interview Committee which amongst other consisted of a sitting High Court Judge to judge the relative merits of the candidates who were orally interviewed, in the light of the guidelines laid down by the relevant rules governing such interviews. Therefore, the assessment on merits as made by such an expert committee cannot be brought in challenge only on the ground that the assessment was not proper or justified as that would be the function of an appellate body and we are certainly not acting as a court of appeal over the assessment made by such an expert committee.

18. In paragraphs 10 and 12 of *K. R. Deb's* case (supra), the Supreme Court held as under:

10. A number of points have been raised before us but we need only mention one point, viz., that the Collector had no authority to appoint Shri K. P. Patnaik to inquire into the charge after the Inquiry Officers had reported in his favour. It was urged before us that such an inquiry is not contemplated by the Central Civil Services (Classification, Control and Appeal) Rules, 1957. It was contended that Rule 15 of the Classification and Control Rules did not contemplate successive inquiries, and at any rate, even if it contemplated successive inquiries there was no provision for setting aside earlier inquiries without giving any reason whatsoever. It was further contended that the order, dated February 13, 1962 was mala fide.

12. It seems to us that Rule 15, on the face of it, really provides for one inquiry but it may be possible if in a particular case there has been no proper enquiry because some serious defect has crept into the inquiry or some important witnesses were not available at the time of the inquiry or were not examined for some other reason, the Disciplinary Authority may ask the Inquiry Officer to record further evidence. But there is no provision in Rule 15 for completely setting aside previous inquiries on the ground that the report of the Inquiring

Officer or Officers does not appeal to the Disciplinary Authority. The Disciplinary Authority has enough powers to reconsider the evidence itself and come to its own conclusion under Rule 9.

19. It has been stated by the standing counsel that there is no infirmity or illegality in the impugned order of cancelling the examination as it was passed after a thorough enquiry conducted by a Committee headed by Director, Ayurvedic and Unani Services. He further submitted that in an illegal and arbitrary manner M. D. Ayurved Entrance Examination for the year 2006-07 was conducted by the Principal without following the principles of M. D. Ayurved Entrance Examination as well as no transparency was found by the three members' enquiry committee in the said examination. It has also been submitted that if any selection is cancelled on the basis of malpractices and irregularities in the process of selection then the same cannot be challenged under Article 226 of the Constitution of India. In this regard reliance has been placed by him on a Supreme Court decision in *Union of India and Ors. v. Tarun K. Singh and Ors.* 2003 (2) SCC 768, wherein it has been held that if the process of selection reveals gross irregularities then the said process cannot be sustained in the eyes of law.

20. A counter-affidavit has been filed by the Director, Smt. Raksha Goswami stating therein that on receipt of the complaints, three-member Committee was constituted by the State Government and the Committee after going through the allegations of the complaint has recommended as under:

other language

21. On the basis of the said report, the impugned order dated 15.3.2007 has been passed cancelling the entire examination.

22. It is the definite case of the Petitioners that the Chairman of the Committee Dr. Raksha Goswami had some misgiving with the Principal of the College and she in order to harm the Principal of the College, in the capacity of the Director has made a complaint regarding irregularities in the examination and thereafter she became Chairman of the Committee, which was constituted to look into the matter regarding irregularities in examinations. The said Committee recommended for cancellation of the examination and for initiating disciplinary proceedings against the Principal of the College for the irregularities committed by him in the examination.

23. The State Government accepted the said report and passed order dated 15.3.2007, cancelling the entire examination process including the result.

24. Having considered the submissions made by the counsel for the parties, I am of the considered opinion that the enquiry was not conducted in a proper and fair manner and the Chairman of the Committee was having a pre-determined mind to cancel the examinations and to harm the Principal of the College because of her inimical terms with the said Principal. This would be apparent from the fact

that the letter of Sri Shyam Narain, State Minister dated 1.2.2007 in which he has pointed out that no complaint had been issued from his office and that the complaint allegedly sent on his behalf had been fabricated, was not at all taken into consideration by the Committee. Moreover, it is not the case of the Respondents that the said letter dated 1.2.2007 is forged one. Secondly Ramesh Prasad had also given an affidavit to the Secretary, Ayurvedic, Unani and Homeopathy, Government of U. P. stating therein that he has not made any complaint ; and the complaint allegedly received in his name was fictitious and fabricated.

25. It is also relevant to mention that an affidavit has been filed by one Satyendra Singh, Joint Secretary, Medical Education Department bringing on record the report submitted by the Registrar of the U. P. Technical University. From the perusal of this affidavit, it comes out that an enquiry was also entrusted to the Registrar of the U. P. Technical University by the State Government. The Registrar in his enquiry report has mentioned that all the four sets of O.M.R. seats were examined through the Answer Key and it was found that the answer-sheets have been evaluated by the said Answer Key and there is no error in it. He has further mentioned in his report that there is no similarity of ink and procedure in filling the circles of the O.M.R. sheets by the candidates. Further, there was coding of the O.M.R. sheets in order to have transparency and fairness in the examination. He has also indicated in his report that for transparency and fairness in the examination certain other necessary precautions were also taken.

26. The other facts which vitiate the order of cancellation of examination and the enquiry headed by Dr. Raksha Goswami is that the Principal of the college was placed under suspension for committing irregularities in the examination and having failed to maintain confidentiality and secrecy of question paper. The enquiry was entrusted to Dr. Kamal Sahani, Director General, Medical Education and Training, who in her enquiry report has concluded that the charges levelled against the Principal had not been found proved and the allegation that the entrance examination stood vitiated for lack of fairness and transparency cannot be sustained. Consequently, the Principal of the college was reinstated.

27. I find force in the submissions advanced by the learned Counsel for the Petitioners that the charges were levelled against the Respondent No. 3 on account of which the entrance examination cancelled, is the result of certain vested interest of the Director, who wanted to settle personal vendetta with the Principal. However, nothing was done in respect of the students, who were declared successful in the examination and their result was cancelled in an arbitrary manner.

28. It may be mentioned that it was the onerous duty of the State Government to have examined the matter minutely before ordering cancellation of the examinations but that was not done and in a mechanical manner passed the impugned order. The State Government failed to appreciate that the findings

recorded by the Committee were not in consonance with the allegations made in the complaint. The impugned order is also not sustainable for the reason that no opportunity was ever afforded to the Petitioners either by the Three Member Enquiry Committee or by the State Government enabling them to put their version.

29. It is significant to mention that the State Government while passing the impugned order of cancelling the examination has also failed to consider the law laid down by the Hon''ble Apex Court in the case of Union of India (UOI) and Others Vs. Rajesh P.U., Puthuvalnikathu and Another, wherein it has been laid down that it is not advisable to cancel the selection en bloc when it can be ascertained as to who were the beneficiaries of the irregularity (if any) and who were not. Unfortunately, in the instant case the entire examination has been cancelled without there being any cogent evidence which resulted in wastage of precious time of the students as the examination was held way back on 21.1.2007.

30. For the reasons aforesaid the enquiry report dated 1.2.2007 and the impugned order dated 15.3.2007 are hereby quashed. The Respondents are directed to forthwith commence imparting of education in M. D. (Ayurveda course) 2006-2007 after Counselling, which shall be done without any further delay.

All the aforesaid writ petitions stand disposed of in above terms.

S. N. Shukla, J.

I pronounced the judgment under Chapter VII, Rule 1 (3) of the High Court Rules on 11.6.2008.