
(2007) 08 AHC CK 0054
In the Allahabad High Court

Santosh Kumar Shukla and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 31-08-2007

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2008) 1 UPLBEC 15

Hon'ble Judges : Sudhir Agarwal, J;S. Rafat Alam, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Sudhir Agarwal, J.—All these intra Court appeals arise out of a common judgment dated 24.4.2006 of the Hon'ble Single Judge dismissing writ petitions of all these appellants. Since the questions of fact and law involved in all these appeals are similar, as requested and agreed by the learned Counsels for the parties, the same have been heard together and are being decided by this common judgment.

2. Admission to Basic Teaching Certificate (hereinafter referred to as "BTC") Course 2001 has given rise to this mass litigation. Experience of the Court in the last few years has shown that any selection or examination leading to employment has not been allowed to be finalized without being involved in a chain of litigation for one or the other reason. No doubt, often the authorities conducting examination, have been found responsible for such a situation, but it is really unfortunate that a large number of cases are coming to this Court everyday involving such matters consuming a good amount of time of this Court in dealing with such matters though the situation could have been avoided by the authorities, if they act with more caution, uprightness, honesty and straightforwardness in conducting such examinations. We are constrained to make these observations since the present one is a glaring example case showing how lack of fairness and honesty by those, responsible for conduct of a fair selection has resulted in spoiling an entrance examination wherein lacs of

candidates have participated, and, particularly when about five thousands candidates, after being declared successful have already undergone training for almost two years and now facing dilemma about the validity and correctness of their training and also likely to lose a golden period of their life by undergoing such unfruitful training.

3. The facts in brief are that the State Government notified BTC Training Entrance Examination, 2001 (hereinafter referred to as "entrance examination") vide Government Order dated 26th November 2001 authorizing State Council for Education, Research & Training, U.P., Lucknow (hereinafter referred to as "SCERT") to conduct the said entrance examination. The candidates who succeed in the said entrance examination were to admit for two years' BTC training course to be imparted at District Institute of Education & Training (hereinafter referred to as "DIET"). The said qualification is recognized for appointment of Assistant Teachers in primary schools, hence the candidates after completion of training would have been entitled to be appointed as Assistant Teachers in primary Schools maintained by Board of Basic Education. SCERT, accordingly, published advertisement on 1.12.2001. The last Date for submission of examination form was 15.12.2001. Written examination was held on 28.4.2002. Since there was some delay in declaring result of the said examination, it appears that some candidates, namely, Ajeet Kumar Singh and Ors. approached the Court and this Court directed the State Government to take a final decision in the matter. Consequently, a letter was issued by the State Government on 12.4.2003 directing the authorities to finalize selection at the earliest. On 3.7.2003, the result of entrance examination was declared wherein all the appellants were declared successful. The Principals of various DIETs were directed to admit successful candidates subject to verification of their testimonials from original record. The candidates including the appellants got admission in DIETs and were imparted BTC training. Written examination at the end of first year of training course was held in May 2004 and the result was declared on 17.8.2004. All the appellants were successful therein and thereafter, were imparted training for the second year course of BTC training. After completion of second year training, written examination as well as practical examination have been held in January 2005, but, thereafter, the result of second year examination was not declared. In the meantime, it appears that some complaints were made regarding large number of irregularities and illegalities in the entrance examination. It appears that the State Government got the matter investigated by Vigilance Department, which submitted its report on 23.7.2005. Pursuant to the vigilance report, wherein large scale of manipulation and irregularities by the officers responsible for conducting the said entrance examination was observed, the State Government suspended the then Director, SCERT vide order dated 29.9.2005 and lodged a first information report on the same date. Further, acting on the said report of Vigilance Department, the State Government issued an order dated 20.10.2005 cancelling entrance examination but directing that the candidates who have already undergone BTC

training course, would not be required to undergo a fresh training course if they succeed in the fresh entrance examination to be conducted in 2005. Aggrieved by the order dated 20.10.2005, whereby the entrance examination itself was cancelled resulting in automatic revocation of entire training course undergone by the appellants unless they appear and succeed in the fresh entrance test to be conducted by the State Government, the appellants preferred a number of writ petitions before this Court, which have been dismissed by Hon"ble Single Judge after hearing the parties vide judgment impugned in these appeals.

4. Sri V.K.S. Chaudhary, Senior Advocate, assisted by Sri P.N. Tripathi appearing in Special Appeals No. 1367 of 2006 and 947 of 2006 assailed the impugned judgment and the State Government's order dated 20.10.2005 contending that since the pre examination irregularities stood condoned by the State Government's policy decision dated 2.6.2003 accepting where to the SCERT declared result of the entrance examination on 3.7.2003 therefore, the respondents are estopped from taking a contrary decision subsequently and that too after almost two years when the appellants have already undergone and virtually completed the entire training of BTC course. The impugned order is vitiated being against the principle of estoppel. The report of vigilance could not have been acted upon since it was not an enquiry in respect to the alleged irregularities of entrance examination and even otherwise the matter was beyond the purview of the Vigilance Establishment Act, 1961 (hereinafter referred to as "1961 Act"). Since the impugned order has been passed by the State Government solely relying upon the Vigilance Department report though it is outside the purview of the 1961 Act, the order is wholly without jurisdiction.

5. Sri S.K. Kalia, Senior Advocate, assisted by V.B. Kalia, Advocate, appearing in Special Appeals No. 947 of 2006 besides adopting the arguments of Sri Chaudhary, further contended that the State Government's order is in violation of principle of natural justice, since the selection has been cancelled without giving any opportunity to the appellants though the said order seriously and adversely affects all the appellants. He further contended that even from a perusal of the vigilance report and other material available with the Government, it cannot be said that the irregularities, if any, were so large scale and wide spread so as to warrant cancellation of the entire examination. The alleged irregularities were identifiable and, therefore, selection of only such candidates should have been cancelled which is found to be irregular or illegal but that would not have vitiated the entire selection. In support thereof, he placed reliance on the Apex Court's Judgment in Union of India and Others Vs. O. Chakradhar, and Union of India (UOI) and Others Vs. Rajesh P.U., Puthuvalnikathu and Another, He further contended that even the vigilance did not conduct any thorough investigation of the entire entrance examination and its report is perfunctory, incomplete. It has considered only a few cases like sample cases and, therefore, cannot be the basis for cancelling the entire entrance examination. Had the appellants been afforded opportunity, they could have shown to the authorities that there was no wide spread illegality or

irregularity in the selection and none in their individual cases and, therefore, the appellants have been seriously prejudiced by denial of opportunity. The order is thus vitiated being in violation of principle of natural justice. He also placed reliance on Apex Court's Judgment in *S.L. Kapoor Vs. Jagmohan and Others*, , *Olga Tellis and Others Vs. Bombay Municipal Corporation and Others*, and *Maharishi Dayananad University v. M.L.R. Saraswati College of Education* : (2000)7SCC746 . He also contended that after declaration of result, the appellants were admitted for training course and have spent valuable time of two years and at this stage, an order cancelling the entrance examination is wholly unjust, arbitrary and discriminatory as it wipes out two years' period during which the appellants have undergone training without their being any fault on their part and, therefore, the impugned order is patently illegal. In order to show several inconsistencies in the enquiry report of vigilance department, he also placed before the Court the report and we propose to deal with this aspect of the matter later on at appropriate stage. At this stage, this much is suffice to say that his contention, by referring to the vigilance report, is that the report on the face of it is such which could not have furnished a relevant material to form an opinion that the entrance examination is vitiated on account of alleged large scale illegalities/irregularities, which warrants cancellation of the entire entrance examination and, therefore, the impugned order is patently illegal having been passed without application of mind and the Hon'ble Single Judge has erred in law in taking a view otherwise.

6. Sri Shailendra, Advocate, has argued on behalf of the appellants in Special Appeal No. 627 of 2006, and while adopting the arguments of learned Senior counsels Sri Chaudhary and Kalia, he further contended that in the facts and circumstances of the case, the balance of equity lies in favour of the appellants for the reason that many of the appellants were such who were already serving elsewhere, but in the hope to get a better employment, left their service and sought admission in BTC Course since it would have ensured appointment as Assistant Teacher in Primary Schools maintained by the Board of Basic Education. During the two years period of undergone training, they could not apply for any other selection since their testimonials were kept by DIETs and the appellants were confined to the training course of BTC itself. Now after completion of that course, they cannot be told that their very entry in the training course was illegal and. therefore, is cancelled. Thus, the entire action is wholly unjust, illegal and arbitrary. In any case, the entire selection could not have been cancelled. He also questioned the status of vigilance report and application of the said report in the light of the provisions of 1961 Act. He also placed reliance on the Apex Court's judgment as referred to above and further cited *Nagaraj Shivarao Karjagi Vs. Syndicate Bank Head Office, Manipal* and another, and *Syed Rahimuddin Vs. Director General, C.S.I.R. and Others*,

7. Sri Ashok Khare, Senior Advocate, assisted by Sri P.N. Ojha, Advocate, argued in Special Appeal No. 568 of 2006, 596 of 2006 and 595 of 2006. Adopting the arguments of other learned Counsels, he further submitted that doctrine of

estoppel and waiver apply for the reason that the State Government was aware of the alleged irregularities as early as in May 2003 when the Registrar, SCERT sent letter dated 17.5.2003 and 23.5.2003, yet it allowed result to be declared finally and the candidates were allowed to take admission in BTC Course. They have also completed training of BTC Course. After such a long time, it was not open to the State Government to cancel the very entrance examination. He contended that the power, even if is discretionary, could have been exercised in a reasonable time and the very exercise of power unreasonably makes it arbitrary exercise of power violating Article 14 of the Constitution and, therefore, the order is liable to be set aside on this ground alone. He also placed before us the vigilance report in order to show that certain aspects termed as irregularities and illegalities, by no stretch of imagination can be said to be so and, therefore, he submits that reliance placed by the State Government on such report in passing the impugned order vitiates the order impugned in the writ petition.

Sri R.K. Ojha, appearing for the appellants in Special Appeal No. 947 of 2006 contended that considering the facts and circumstances and the future of the candidates, who are before the Court and who are sought to be penalized for no fault on their part, in equitable jurisdiction, this Court should interfere and set aside the order passed by the State Government cancelling the said examination particularly when the equity lies in favour of the appellants.

8. Sri Abhishek Srivastava, advocate, appearing in Special Appeal No. 778 of 2006 submitted that Sri R.P. Verma, Joint Director, submitted enquiry report in respect to the examination wherein he found only 164 candidates" selection to be irregular or vitiated. The vigilance report has also basically followed the said report of Sri R.P. Verma and there is nothing to show that the number of erring candidates is more than what has been pointed by Sri R.P. Verma. He, therefore, contended that the act of the State in passing impugned order fails to satisfy the test of fairness since it lacks the existence of material. The impugned order has been passed on non est, flimsy and imaginary grounds. He also contended that a right accrued in favour of the appellants on completion of the training and since the alleged malpractices cannot be attributed to the appellants, their selection could not have been cancelled and that too without giving any opportunity.

9. No other counsel individually made any submission but all the other learned Counsels for the appellant have adopted the arguments of the learned Counsels, who have appeared and argued as noted above.

Sri C.B. Yadav, Chief Standing Counsel, assisted by Sri Sanjay Goswami, Standing Counsel while defending the order of the State Government impugned in the writ petitions as well as the judgment impugned in these appeals, contended that there were large scale illegalities and irregularities found in the entire entrance examination, which were committed by the authorities, who were responsible to hold the said examination. The State Government did not take any action in haste but got the matter enquired in detail, firstly through Sri R.P. Verma, Joint Director of Education and, thereafter through Vigilance Department.

After collecting material and finding sufficient material to show that the entire selection is vitiated and smacks of illegalities, irregularities and favoritism, having lost its sanctity, the same has been cancelled since such a selection could not have been allowed to sustain. It would cause more injustice to the larger number of candidates who could not be selected due to the alleged irregularities or illegality on account of wrong selection of various candidates. He submitted that once fraud and illegality is detected which vitiates the entire proceeding, even the beneficiaries have to suffer. In such case, the principle of natural justice inviting opportunity to individuals is neither necessary nor required. He placed reliance in support of the aforesaid submission on *The Bihar School Examination Board Vs. Subhas Chandra Sinha and Others*, *Maharashtra State Board of Secondary and Higher Secondary Education Vs. K.S. Gandhi and Others*, He contended that law of equity and estoppel does not lie against statute and particularly when the State has taken action against illegal and unlawful act and in support thereof placed reliance on *Union of India and Ors. v. M. Bhaskaran* 1995 (Suppl.) (4) SCC 100 and *United India Insurance Co. Ltd. Vs. Rajendra Singh and Others*, . Besides placing reliance on entire record pertaining to various enquiry reports he also made available to the Court the original record of selection particularly the answer sheets, attendance sheets etc for the perusal of the Court and argued that on the face of it the arbitrariness and illegalities are apparent, therefore, in such case where the State Government has taken a decision to cancel the entire selection and the same is based on relevant material, in exercise of power under Article 226 of the Constitution of India, this Court should not interfere with such decision of the State. The scope of judicial review only permits a scrutiny as to whether there is any error in decision making process, but the Court shall not consider the matter sitting as an appellate authority and once it is found that the decision has been taken on valid grounds, the Court shall not exercise its authority of judicial review and, therefore, he contended that the writ petitions have rightly been dismissed by the Hon"ble Single Judge.

10. We have heard learned Counsel for the parties at great length and have also perused the record of the appeals, the original record pertaining to the selection and enquiry etc and also various authorities cited at the bar.

11. Here is a case where on the one hand, the State Government's decision to cancel an entrance examination, which is said to have lost its sanctity on account of alleged wide spread irregularities, illegalities etc. is up for consideration. Simultaneously the career of about 5000 candidates is also at stake who, after final declaration of the result, have undergone training and after completion of second year's training have appeared in the examination, but their result has not been declared. The distance between the candidates in entitlement to get certificate of training course is only the act of declaration of second year's examination's result, which is already held and, thereafter, the successful candidates would have been entitled for consideration for appointment to the post of Assistant Teacher in Primary School maintained by the board of basic

education had the impugned order of State Government would not have come in between. The validity of the order of the State Government needs to be judged on the well settled principles of judicial review while the other aspects of the matter is more based on equity, justice and conscious rather than legality.

12. It would be useful at this stage to remind ourselves the scope of judicial review in such matters. It is not disputed that the order dated 28.10.2003 is an administrative decision of the Government cancelling the entrance examination, though as a consequence it has caused serious prejudice to the appellants and has entailed in visit civil consequences. Judicial review of an administrative decision or order is not an appeal from a decision, but is a review of the manner in which the decision was taken, i.e., decision making process. Judicial review is entirely different from an ordinary appeal. Lord Scarman in *Nottinghamshire County Council v. Secretary of State for the Environment* 1986 A.C. 240 put a note of caution for exercise of power of judicial review in the following words:

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

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

1. Illegality.
2. Irrationality, namely, *Wednesbury* unreasonableness.
3. Procedural impropriety.

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

13. In the light of the legal exposition as noticed above, we have to consider whether there is any error in the order impugned in the writ petition warranting

interference by this Court or whether the Hon'ble Single Judge has rightly declined to interfere with the said impugned order.

From the pleadings of the parties, as also various other documents placed for perusal of the Court, namely, vigilance report etc. the facts, as emerge, it would be appropriate to recapitulate the same in brief as under.

For admission to two years training course in BTC to be imparted by the training institutes of the State Government, namely "DIET", a new policy resolved by the State Government vide Government Order dated 26.11.2001 (hereinafter referred to as "G.O.") which was issued in supersession of all existing Government Orders on the subject. It provided that admission to two years BTC Course shall be regulated by an entrance examination. Item 3 of the G.O. dated 26.11.2001 provided that the candidates shall be entitled to appear in the entrance test of BTC provided they belong to the same District wherefrom they are seeking admission for training. The educational qualification required was graduation and prescribed age was 19 to 30 years as on 1st July on the date of commencement of training course. Relaxation of five years in age was applicable to Scheduled Caste, Scheduled Tribes and other Backward Classes and other reserved categories" candidates including women candidates. The selection process as prescribed in para-4 of the G.O. was as under:

(A) Education Ability Percentage of Examination

High School marks obtained divided by 1/10 Intermediate marks obtained divided by 2/10

Graduation marked obtained divided by 4/10

(B) Extra qualification of N.C.C.

NCC Senior/Junior division

certificate 5 marks NCC "B" or "C certificate 3 marks

(C) Written test

Maximum prescribed marks in written test shall be as follows:

(a) first paper of general knowledge 100 marks (b) second paper (based on education qualification) 100 marks

(the marks obtained in the question papers shall be computed by computer)

(D) The minimum pass marks in written test

The requirement of 33% has been done away and selection shall be based on suitability cum merit.

Selection in entrance test is based on the marks obtained under items (A) (B) (C). A districtwise merit list of respective reserved category candidates is required to be separately prepared through computer by the Registrar,

Departmental Examination. The merit list is to be prepared in such manner that the candidates securing highest marks shall be placed at serial No. 1, that who secured less than first one shall be at serial No. 2 and so on. For each training institute recognized by the National Council of Education Teachers (hereinafter referred to as "NCET"), the merit list shall be made available. The institute's principal shall verify marks and other certificates with original and after being satisfied shall allow admission to the selected candidates. Along with the merit list, a list of 20% candidates shall also be supplied and for computation purpose less than one shall be rounded as one. In case of absence of suitable candidates of Scheduled Tribes category, the vacancies shall be made available to the candidates of Scheduled Casts. The Government order constituted an admission committee at District level consisting of- (1) Principal DIET-Chairman, (2) District Inspector of Schools-Member, (3) District Basic Education Officer-Member, (4) Principal, Government Girls Inter College (in case of non availability, it shall be Principal of Government Inter College)-Member.

14. The said Government Order also provides that the Director, SCERT and Registrar, Departmental Examination shall conduct entrance examination and Registrar, Departmental Examination shall work under control of Director, SCERT. Consequently, SCERT published advertisement in various news papers on 1.12.2001 notifying the aforesaid entrance test. A letter was issued by Registrar, Departmental Examination addressed to all Principals, DIETs and Government Training Institute, Agra and besides other, in para-3 thereof, it was provided that the admission card of the candidates shall be photo scanned and will contain the name, father's name, role no and the allotted examination Centre. The admission card shall be in two files and both the files shall be obtained by the Centre Incharge after counter signature by the candidates concerned, the candidates will have to provide one copy of the admission card to the Invigilator and second copy shall be kept by the candidate. It also provided that both the copies of entrance card must contain signatures of Room Invigilator and candidate as well as Center Superintendent and also the seal of Centre Superintendent. The examination fee was Rs. 100 payable through a bank-draft.

15. It is said that 5,88,128 candidates in all submitted application forms. On 12.12.2001, a corrigendum was published by SCERT informing the candidates that requirement of annexing certified copies of marks sheets and certificates along with application form as provided in the advertisement dated 1.12.2001 has been relaxed. The last date for submission of application form was extended to 22.12.2001. The date of examination was notified as 6.1.2002 changed to 30.1.2002 by corrigendum dated 28.12.2001 and again changed to 28.1.2002 vide corrigendum dated 12.1.2002 and was ultimately held on 28.4.2002. For the purpose of processing the computer data of the candidates, namely, preparation of photo scanned admission cards, feeding of entire details of various candidates, preparation of desk slip and examination result, tenders were invited from certain computer firms and vide order dated 12.12.20001 issued by Sri C.L. Chaurasiya, the then Registrar, Departmental Examination, the work was allotted

to the following computer firms:

Sl. No	Name of the Firm	Allotted divisions (Commissionaires)
1	Creative Infosystem Ltd.,	Faizabad, Kanpur, Basti, New Delhi Saharanpur
2	Finteck Computer System	Varanasi, Gorakhpur Ltd., New Delhi
3	Unitron Computer Pvt. Ltd.,	Moradabad, Agra, Azamgarh New Delhi
4	Data Soft Computer	Jhansi, Devipatan, Bareilly, Services Pvt. Ltd. Computer Mirzapur Center, Delhi
5	Wips Pvt. Ltd.	Allahabad, Lucknow, Chitrakoot

Out of total application forms which were received, the category wise break was as under:

Male candidates 383459 Female candidates 204669 General category candidates 277005 OBC candidates 208600 Scheduled Casts candidates 78905 Scheduled Tribe candidate 10325

While issuing admit cards, 21,200 candidates were allowed provisional admission in the written test since their application forms or examination fee etc. were not available. Written test was held on 28.4.2002, but the result thereafter could not be declared. It appears that some candidates approached this Court at Allahabad and Lucknow seeking mandamus commanding respondents to declare result wherein directions were issued to the respondents to take appropriate decision. On 23.5.2003, the Registrar, Departmental Examination U.P. Allahabad sent a letter to the Director SCERT stating that when computer data was physically and mechanically verified it resulted in several irregularities on account whereof declaration of result has become problematic. Elaborating, it pointed out that for 1,11,136 candidates, percentage of marks in high school, intermediate and graduation was wrongly mentioned or marked as zero which included some of the candidates who were allowed to appear on provisional basis. It also pointed out that the data made available though CD. was showing much difference. The said letter was referred to State Government by Director, SCERT whereupon Special Secretary, U.P. Government vide letter dated 2.6.2003 required Director, SCERT to remove all irregularities and deficiencies as pointed out in Registrar, Departmental Examination's letter dated 23.5.2003 after physical and mechanical verification and, thereafter declare result of BTC Entrance Examination, 2001. The Director, Departmental Examination vide letter dated 7.6.2003 required two computer firms, namely, Creative Infosystem and Unitron Computer Pvt. Ltd to remove various deficiencies and irregularities by making physical and mechanical verification of data and thereafter to prepare result. The

divisions allotted to the said computer firms were as under

_____ Creative Infosystem	Unitron Computer (Pvt.) Ltd.	_____
		Agra, Lucknow,
Banda, Meerut, Varanasi, Gorakhpur, Mirzapur, Jhansi, Gonda, Bareilly,		
Allahabad, Faizabad, Saharanpur, Moradabad, Azamgarh Kanpur, Basti	_____	

Thereafter, the result of the written examination was declared on 3.7.2003 by the Registrar, Departmental Examination. The candidates, who were declared successful sought admission at different training centres and commenced their training course. In the meantime, certain complaints were received by the State Government alleging large scale irregularities in the aforesaid examination, whereupon Sri Ravi Pratap Verma, Joint Director of Education (Training) SCERT (hereinafter referred to as "JDE") was authorized to conduct enquiry in the alleged irregularities in the said Examination. JDE after holding enquiry submitted a report on 20.4.2004, based on the informations received from two computer firms, namely, Datasoft Computer Ltd. and Finteck Computer System pertaining to Jhansi, Devipatan, Bareilly, Mirzapur, Varanasi, Gorakhpur and Meerut division. Verifying several irregularities, he pointed out that in the said divisions at least 299 candidates have wrongly been selected, and, besides, copies of a large number of selected candidates were missing on account whereof facts in respect to those candidates could not be verified. A districtwise list of all the seventy districts giving missing number of answer sheets of selected candidates was given by him along with his enquiry report. It shows number of available answer sheets of selected candidates in written test as 4624, number of missing answer sheets of selected candidates as 778, number of available answer sheets of candidates placed in waiting list as 2421 and the number of missing answer sheet of candidates placed in waiting list was 604. He also pointed out that in respect to Allahabad, Lucknow, Chitrakoot, Faizabad, Kanpur, Basti, Saharanpur Moradabad, Agra and Azamgarh, pre and post examination CD could not be made aailable, therefore, he could not make any comments in respect thereto, but apprehended a large scale irregularities in the entire examination. He recommended action against the then Registrar, Departmental Examination and also said that the selected candidates who were undergoing BTC training be permitted only provisional permission in BTC first year training examination so that there may not arise any complication subsequently in taking appropriate decision with respect to the entrance examination. Out of seven Divisions in all, tentatively, the JDE found in selections of 299 candidates to be totally illegal and irregular. The pre and post examination CD of rest of the 10 divisions were not made available to him in respect to which initially the contract for preparation of result was awarded to M/s Wips Pvt. Ltd. Jaipur, Creative Infosystem Limited, New Delhi and Unitron Computers Ltd., New Delhi. It is interesting to note that the Unitron Computers Pvt. Ltd. and Creative Infosystem Ltd. are the two companies, which were subsequently authorized to

prepare the final result after reallocation by the Registrar of the Examination. In respect to seven divisions, for which JDE submitted his report, he found copies of selected/waitlisted admitted candidates missing being 778/604 in number respectively.

The letter No. BTC/Pravesh/7044/2003-04 dated 20.3.2004 sent by Sri Satich Chandra, Registrar, departmental examination, U.P., Allahabad to M/s Wips Private Limited, Jaipur shows that the said computer company on 20.3.2004 informed the Registrar that no data is available in their computer and the same was already handed over to the erstwhile Registrar by the said firm. Therefore, the computer firm, which prepared the data with respect to Allahabad, Lucknow and Chitrakoot Dham sought to wriggle out of its liability of providing data for investigation stating that it has already removed the same after handing over data CD. to the erstwhile Registrar of the Examination. Similarly, letter dated 25.3.2004 sent by the Registrar. Departmental Examination to M/s Unitron Computers Ltd. and Creative Infosystem Ltd. shows that the said two companies also did not cooperate in enquiry by providing relevant data and information to the department. Similar letters were also sent by J.D.E. on 1.4.2004 to M/s Creative Infosystem Ltd. and 2.4.2004 to M/s Wips Private Ltd. but it appears that the same did not yield any result. Out of 28 districts, it found 164 candidates were shown wrong marks in written or educational quality point marks showing their illegal selection and admission in the aforesaid Course and 13 were the candidates in the said districts who were below or above the prescribed age but were selected and admitted. The aforesaid figures were taken out of the available 3022 answer-sheets noticing that 694 answer-sheets of the selected and admitted candidates were missing. District Sultanpur's answer-sheets, which were 96 in number were also not made available to him. The report therefore, though pointed out substantial irregularities but apparently desired more investigation in the matter and, therefore, on its own could not have been acted upon. Pursuant to the said report dated 13.4.2004, the Secretary of the Department recommended for a vigilance enquiry on 7.7.2004 and the same was approved by the Chief Minister on 16.7.2004. The matter was referred to vigilance enquiry on 3.8.2004 which submitted its report vide Joint Director, Vigilance, U.P., Allahabad's letter dated 23.7.2005. The aforesaid report highlighted the following:

- (i) Number of candidates, who had secured less than 33% marks in High School but have submitted their application form and allowed to appear - 3025
- (ii) Number of candidates securing less than 33% marks in Intermediate but have submitted their application form and allowed to appear - 4244
- (iii) Number of candidates who secured less than 33% marks in Graduation but have submitted their application form and allowed to appear - 5780
- (iv) Number of candidates who secured less than 36% marks in High School, Intermediate and Graduation but have submitted their application form and

allowed to appear 298

(v) Number of candidates whose answer sheets are available but applications forms are missing - 618

(vi) Number of candidates whose answer sheets are available but their names and father's names are not available -1194

(vii) Cases where District Code is not mentioned - 87

(viii) Cases where the information with respect to High School, Intermediate and Graduation level is not available -24992

(ix) Cases where bank draft were not found enclosed - 24945

(x) Provisionally allotted roll number to the candidates - 21219

(xi) The application forms liable to be rejected for non furnishing details of the marks obtained in the educational qualifications but allowed provisionally -111136

Grand Total-197538

16. It found that the date C.d. made available allegedly by all the computer firms to Sri C.L. Chaurasiya, the then Registrar, Departmental Examination were not handed over to Dr. Mohd. Sayeed, his successor in office, who joined on 18.1.2003 but one combined C.D. was handed over while giving charge which is said to have been prepared from the aforesaid five CDs. On demand made from the aforesaid computer firms, only Finteck Computer System and Datasoft Computer Ltd. sought to provide data. Rest informed that the data have already been deleted after handing over CDs. to the competent person. From the information made available by the Computer firms, it was found that ignoring the instructions contained in the answer-sheets that cutting and overwriting shall be treated to be a wrong answer, all the answers were scored. Had such CDs. made available by all the five computer firms, the result of the written examination on the basis of the correct instructions and by ignoring cutting/overwriting answers could have been re-prepared but in the absence of the relevant information from the concerned computer firms, it was difficult to prepare the result afresh. The letter dated 23.5.2003 sent by Mohd. Sayeed to the Government also found that the combined C.D. made available and the two individual CDs. made available by the computer firms also show difference in data meaning thereby the data collected in the combined C.D. was not reliable but tampered. It is in these circumstances though he sought instructions from the Government and the Government directed to declare result after removing irregularities and discrepancies but without doing the same, result was declared. The vigilance report in substance mention irregularities/illegalities which it noted during its investigation which may be summarized as under:

(i) 26946 candidates who did not furnish bank draft of Rs. 100/-were allowed to appear out of which 94 were selected

(ii) Candidates who secured less than 33% marks in qualifying examinations or have not furnished any informations with respect thereto were allowed to be appeared and selected.

(iii) Marks of one candidate are awarded or shown in respect to other candidate making him selected.

(iv) Ineligible candidates, i.e., under age or over age which were allowed to appear and selected.

(v) Candidates whose application forms were not available where allowed to appear and selected.

(vi) The answer sheets, which did not contain either the Invigilator's signature or Examination Centre Superintendent's Signature or seal have been evaluated and selection made.

(vii) Cutting and overwriting in the answer-sheets ignoring despite clear instructions in the answer sheet and marks awarded.

(viii) Relevant CDs. were removed by the concerned officials which were not made available thereafter by the concerned Computer Firms showing an attitude of non cooperation or collusion or conspiracy.

(ix) Positive selection of the candidates who have secured less marks either in written examination or educational qualification quality point rating yet selected.

On the basis of its recommendations, the Vigilance recommended disciplinary as well as criminal action against the officials concerned including the concerned computer firms and also for cancellation of the entire entrance examination.

17. The learned Counsel for the appellants in the circumstances sought to argue that all these and various irregularities pointed out were identifiable. Therefore, the candidates who have secured selection and admission by wrongful means ought to have been identified and only their selection should have been cancelled, but the respondents in taking a decision for cancelling the entire selection have acted arbitrarily and this shows non application of mind and/or wholly arbitrary and irrational decision on their part. At first flush, the argument of the learned Counsel for the appellant appears to be quite attractive but on deeper scrutiny of the matter, we find no substance therein. One of the foremost hurdle in identifying and pinpointing the irregular and illegal selectees is the non availability of the entire information and/or even the answer sheets of all the candidates. As pointed out, in 28 districts, only about 3000 answer sheets were found available and more than 600 were found missing. These are the facts and figures with respect to the selected candidates whose result was declared. There is nothing on record to show that the answer sheets were actually available but have been shown to be missing and for this factual averment contained in the enquiry report, we do not find any reason to disbelieve. If that is so, in the absence of availability of all the answer sheets it cannot be accepted that the

respondents could have prepared the result afresh after removing the alleged irregularities and thereby excluding the wrongful beneficiaries from the list of the selected candidates namely separation of grain from chaff, the selection could not have been regularized. In the absence of the relevant documents, this exercise could not have been completed. Though it is vehemently contended that the number of missing answer sheets is only to the tune of 15 to 20 per cent and is not so substantial as to vitiate the selection of other candidates but in our view, it is only one aspect of the matter. In 28 Districts, where the enquiry was conducted by the J.D.E. more than 600 answer sheets were missing. Further, about 200 candidates were identified whose answer sheets were available and who have obtained selection illegally by showing higher marks than actually secured. In these circumstances for some of the selected candidates whether their selection is valid or not may not be verified unless the answer sheets of all the unselected candidates are also available and correctly evaluated in accordance with rules. Therefore, it is difficult to sustain that even the rest of the candidates can be said to have been validly selected. We can understand that after undergoing training for two years, during which period enquiry was also undergoing, it was a difficult decision taken by the Government but in the facts and circumstances of the present case, it would be difficult for us also to hold the said decision to be arbitrary so as to warrant judicial intervention in exercise of jurisdiction 226 of the Constitution of India. Unless, the decision can be said to be so irrational and/or arbitrary that no person of ordinary prudence would have come to such decision in the facts and circumstances of the case, this Court will not sit in appeal and set aside the said decision in exercise of its power of judicial review. We find that on this aspect of the matter, the Hon'ble Single Judge has rightly relied upon the Apex Court decision in O. Chakradhar (supra) referring to following observations contained in para-8 of the judgment:

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

Again similar observations have been reiterated in Rajesh P.U. (supra) wherein the Apex Court in para-6 of the judgment has observed as under:

In the light of the above and in the absence of any specific or categorical finding supported by any concrete and relevant material that widespread infirmities of an all pervasively nature, which could be really said to have undermined the very process itself in its entirety or as a whole and it was impossible to weed out the beneficiaries of one or the other irregularities, or illegalities, if any, there was

hardly any justification in law to deny appointment to the other selected candidates whose selections were not found to be, in any manner, vitiated for any one or the other reasons. Applying a unilaterally rigid and arbitrary standard to cancel the entirety of the selections despite the firm and positive information that except 31 of such selected candidates, no infirmity could be found with reference to other, is nothing but total disregard of relevancies and allowing to be carried away by irrelevancies, giving a complete go by to contextual considerations throwing to the winds the principle of proportionality in going farther than what was strictly and reasonably to meet the situation. In short the competent authority completely misdirected itself in taking such an extreme and unreasonable decision of canceling the entire selections, wholly unwarranted and unnecessary even on the factual situation found too, and totally in excess of the nature and gravity of what was at stake, thereby virtually rendering such decision to be irrational.

Here we are exercising a jurisdiction for issuance of writ of the certiorari against a decision taken by the State Government for cancelling the entire examination. As already discussed above, if the action or decision is perverse or is such that no reasonable body of persons, properly informed, could come to, or has been arrived at by the authority misdirecting itself by adopting a wrong approach, or has been influenced by some extraneous matters, the Court would be justified in interfering with the same, but merely for the reason that another view would have been a better view, the decision taken by the authority otherwise which is also a probable and reasonable view shall not be interfered. "(Refer to Barium Chemicals AIR 1967 SC 296)". In *Smt. Shalini Soni and Others Vs. Union of India (UOI) and Others*, the Court observed:

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

Prof. de Smith's treatise "Judicial Review of Administrative Action" (4th Edn.) at page 285-86 succinctly summarizing several principles formulated by the Courts in various decisions provides:

The authority in which a discretion is vested can be compelled to exercise that discretion, but not to exercise it in any particular manner. In general, a discretion must be exercised only by the authority to which it is committed. That authority must genuinely address itself to the matter before it : it must not act under the dictation of another body or disable itself from exercising a discretion in each individual case. In the purported exercise of its discretion it must not do what it has been forbidden to do, nor must it do what it has not been authorized to do. It must act in good faith, must have regard to all relevant considerations, must not be swayed by irrelevant considerations, must not seek to promote purposes alien to the letter or to the spirit of the legislation that gives it power to act and must not act arbitrarily or capriciously. Nor where a judgment must be made that

certain facts exist can a discretion be validly exercised on the basis of an erroneous assumption about those facts. These several principles can conveniently be grouped in two main categories; failure to exercise a discretion, and excess or abuse of discretionary power. The two classes are not, however, mutually exclusive. Thus, discretion may be improperly fettered because irrelevant considerations have been taken into account and where an authority hands over its discretion to another body, it acts ultra vires. Nor, is it possible to differentiate with precision the grounds of invalidity contained within each category.

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

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

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

...Judicial review has I think, developed to a stage today when, without reiterating any analysis of the steps by which the development has come about, one can conveniently classify under three heads the grounds on which administrative action is subject to control by judicial review. The first ground I would call "illegality", the second "irrationality" and the third "procedural impropriety". That is not to say that further development on a case-by-case basis may not in course of time add further grounds. I have in mind particularly the possible adoption in the future of the principle of "proportionality" which is recognized in the administrative law of several of our fellow members of the European Economic Community.

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

The State Government has neither taken a hasty decision nor can be said to have acted on irrelevant material or considerations nor it can be said that there is apparently a case of non-application of mind. Considering the nature of irregularities and also other relevant facts like non availability of answer sheets, removal of relevant data, non availability of even application forms etc., in our view it cannot be said that the impugned decision taken by the State Government for cancelling the entire selection can be held to be irrational or arbitrary or result of total non application of mind warranting any interference.

At this stage, the learned Counsel for the appellants sought to argue that report of J.D.E. was incomplete as has recommended for further enquiry. So far as vigilance report is concerned the same could not have been taken into account for the reason that under the Vigilance Act, no enquiry in respect to a matter pertaining to the examination in question could have been permissible and moreover the said vigilance enquiry was conducted to find out the involvement of concerned officials in certain malpractice and illegal activities and not to find out any illegality in the examination itself, therefore, the decision taken by the State Government based on vigilance report is vitiated in law having taking into account an extraneous material or an impermissible material. In support of the aforesaid argument, various provisions of the Vigilance Act as well as various Government Orders issued thereunder have been placed before us showing the scope of enquiry to be conducted by the Vigilance Department under the said Act and to show that the examination in question could not have been included within the purview of the said Act. We proceed to consider the correctness of the argument advanced on behalf of the appellant by assuming that the Vigilance Enquiry report cannot be said to be a relevant statutory report under 1961 Act for the purpose of considering the correctness or validity of the examination in question, yet whether the State Government could have acted upon the said report for cancelling examination in question. Admittedly. examination in question is not governed by any statutory provisions. The State Government own several teachers training institutes, i.e., DIETs and in order to provide admission in the said institutions, different schemes had been laid down from time to time and in the case in hand, the procedure was prescribed by G.Q. It is not disputed that it was entirely an administrative decision of the State Government for which it was competent and the said exercise of power in any case is referable to the State's executive action under Article 162 of the Constitution of India. In respect to such an administrative decision or action, when certain complaints are received by the State Government regarding non implementation of the said decision in correct manner or implementation of that decision in an irregular and

illegal manner, in order to find out substance in such complaints, in our view, it is open to the State Government to get an enquiry conducted by any executive fiat. One of such enquiry was conducted by the JDE, who submitted its report on 30.4.2004. It positively noticed involvement of the authorities responsible for conducting entrance examination in making several irregularities and illegality tainting the examination to a large scale. In order to find out the responsibility of such officials and their involvement, the State Government directed for an inquiry by the vigilance establishment. The enquiry report would have helped the Government in more than one way. The report of the Vigilance could have been utilized for proceeding departmentally as well as if necessary for initiating criminal proceedings against the erring officials and simultaneously since sufficient information was available in the said report showing irregularities/illegalities in the examination concerned, the said report in our view could validly be utilized for taking a decision as to whether the examination should be cancelled in its entirety or not. We are not informed of any provision which prohibits the State Government from taking into account the Vigilance Enquiry report as a relevant material to form such an opinion. We find that to some extent a similar controversy came up for consideration before the Apex Court in *Madhyamic Shiksha Mandal, M.P. Vs. Abhilash Shiksha Prasara Samiti and Others*, and almost similar contention advanced therein was rejected by the Apex Court as is evident from para-2 of the judgment which is reproduced as under:

We feel a little distressed that in matter like this the High Court should have interfered with the decision taken by the Board. The contention was that the examination was cancelled on the report of a Naib Tehsildar dated 18.03.1996 who was not authorized by the Board to visit the examination center. It is irrelevant whether the Naib Tehsildar was authorized by the Board to visit the centre or not but what is of importance is the fact that he did visit the centre and found the students copying even before the question papers were distributed. This clearly implies that the students were aware of the questions indicative of the leakage of the question paper. The Naib Tehsildar even complained that the teachers did not object to the students entering the examination hall with books and copying material. That would mean that either they were hand in glove with the students or they were for some reason not able to stop the students from copying. This is also evident from the report of the Superintendent of the Centre. The Naib Tehsildar States that neither the Superintendent of the centre nor the invigilators were prepared to interfere and were not able to explain how the students could enter the hall with books, etc. and copy therefrom with impunity. The Superintendent of the Centre states that he had requested the Naib Tehsildar to stay for three hours but the Naib Tehsildar did not stay. The report of the valuers at p. 81 also goes to show that there was mass copying. The High Court brushed it aside as subsequent material. But it supports the Board's decision and it was improper in a sensitive matter like this to ignore it on such a technical ground. In the face of this material, we do not see any justification in the High Court having interfered with the decision taken by the Board to treat the

examination as cancelled. It is unfortunate that the student community resorts to such methods to succeed in examinations and then some of them come forward to contend that innocent students become victims of such misbehaviour of their companions. That cannot be helped. In such a situation the Board is left with no alternative but to cancel the examination it is extremely difficult for the Board to identify the innocent students from those indulging in malpractices. One may feel sorry for the innocent students but one has to appreciate the situation in which the Board was placed and the alternatives that were available to it so far as this examination was concerned. It had no alternative but to cancel the result and we think, in the circumstances they were justified in doing so. This should serve as a lesson to the students that such malpractices will not help them succeed in the examination and they may have to go through the drill once again. We also think that those in charge of the examinations should also take action against their Supervisors/ Invigilators etc who either permit such activity or become silent spectators thereto. If they feel insecure because of the strong-arm tactics of those who indulge in malpractices, the remedy is to secure the services of the Uniformed Personnel, if need be, and ensure that students do not indulge in such malpractices.

In absence of any provision debarring the State Government from taking into account the vigilance report for the purpose of forming opinion with respect to illegality and correctness of the examination in question, in our view, the submission advanced by the appellants proceeds on a wrong assumption as if only such vigilance inquiry report could have been taken into account which otherwise falls under 1961 Act. The decision in question being an administrative decision the only requirement is whether the material is relevant or not and also whether it is reliable. It is nobody's argument that the vigilance inquiry report was not a relevant and reliable material and, therefore, we can not accept the submission that the report under 1961 Act could not have been taken into consideration for forming basis for cancelling the examination in question. Though, learned Chief Standing Counsel has also placed various provisions showing that the report in question was well within the provisions of 1961 Act and could have been relied for the purpose of the decision impugned in the writ petition, but we need not to consider this aspect of the matter, since we have come to the conclusion that the very basis of the argument of the learned Counsels for the appellants is not acceptable and, therefore, it is not necessary to dilate on this issue further.

18. Coming to the next question of the matter, learned Counsel for the appellants pointed out that the chart prepared by the Hon'ble Single Judge in the judgment in this appeals showing various discrepancies is not correct. In all there are only 70 Districts in the State of U.P. but the said chart mentions 72 Districts. Therefore, it is contended that the Hon'ble Single Judge as actually erred in law in recording a finding that various answer sheets were tainted in one or the other manner and the irregularities were widespread in all the Districts. We find that though in the chart, 72 Districts are there, but that appears to be only a clerical

error inasmuch District Firozabad has been repeated and is mentioned twice. There is no distinction between the facts and figures at both the places. Similarly, with respect to Sant Ravidas Nagar, which was earlier known as Bhadohi, it has been mentioned by both the names, namely, Bhadohi and Sant Ravidas Nagar. Some of the figures namely in column No. 4 the figures are common but in other figures there is a difference which appears to have occurred due to mistake in counting where the District was mentioned as Sant Ravidas Nagar or Bhadohi as the case may be. In respect to other Districts, no discrepancy could have been pointed out by any of the learned Counsel for the appellants. Even assuming that out of 70 Districts, there appears to be some difference in the figures of one or two Districts, that by itself cannot be said to be sufficient to warrant interference in these appeals particularly when broadly it is evident that wide spread irregularities are there and in the given circumstances, it is difficult to identify all irregularities to leave intact regular and valid selection and taking away invalid and illegal selections. The Hon'ble Single Judge has taken great pains by perusing the original record himself and recording its own finding with respect to the various irregularities with which we record our respectful agreement particularly for the reasons that the original record was also produced for our perusal and we also noticed similar discrepancies some of which are as under:

? The attendance sheets at various admission centres were not prepared and kept in manner as provided in the Government Order, i.e., scanned/photo identify attendance sheet but in a very large number of cases the attendance sheet have been prepared on plain papers.

? A large number of candidates have absented in the examination inasmuch in District Sonebhadra itself, in 16 examination centres, 570 candidates were allotted out of which only 500 actually appeared and 70 absented. Out of 5,80,000 and odd candidates who submitted application form, it is quite understandable that a few thousand candidates must have absented. The original record produced before us shows a strange thing inasmuch payment of evaluation of 5,94,016 answer sheets were made to five computer firms though the number of actual application forms received was only 5,88,128. If absentees are excluded, we fail to understand as to how more than 5 lacs 94 thousand answer sheets could be checked by the said computer firms. A photocopy of payment sheet calculation prepared by the Registrar, Examination Center was placed before this Court which has been kept on record showing following payment to respective five firms.

_____	Name of Computer Firm	Number of answer sheets for which payment made _____	
_____	Creative Infosystem Ltd.	1,27,109	_____
_____	Soft Computer Services Pvt.	91,990	_____
_____	Finteck Computer System		_____

1,19,997 Ltd.	
	Unitron Computer Pvt. Ltd. 1,29,218
	Wips
Pvt. Ltd. 1,25,702	
	Total 5,94,016

Though, it is true that this aspect of the matter is not mentioned in the vigilance report or J.D.E.'s report, but since on the application of the appellants, the original record was summoned by this Court and has been perused and this has revealed therefrom, we cannot shut our eyes, but to place the same on record. Many of the answer sheets contains several cuttings and overwriting and even otherwise not complete and conform to the instructions contained therein, but marks have been awarded and even the candidates have been selected In the circumstances, we cannot hold that the decision of the State Government is based on no evidence or lack application of mind or otherwise perverse warranting any interference. It is true that in case like this many a times a direct evidence may not be possible and the matter is to be decided on probabilities and circumstantial evidence where the technical rules of evidence and procedural law as applicable to the Court are not available but in such matters the High Court cannot sit in appeal over the decision of administrative bodies since they are best judge for taking an expert decision in the matter based on the facts and circumstances and material available before them and the judicial review is limited to the extent whether the decision is supported by any evidence.

19. The learned Counsel for the appellants also contended that such a decision can also be challenged if it is in violation of the principles of natural justice where no opportunity has been afforded. It would be suffice to remind that here is not a case of a decision taken against a individual or a small category of candidates out of the entire examinees but here is a decision taken in respect to the entire examination without blaming any individual. It would be useful to refer the Apex Court's decision in The Bihar School Examination Board Vs. Subhas Chandra Sinha and Others, as under:

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

Now coming to the last aspect of the matter whether equity and justice require that the candidates having completed two years of training ought not to have visited penal consequences and, therefore, the State Government's decision should have been set aside. We find that it is true that due to ongoing enquiry

and time taken therein, in the meantime the candidates who were selected and admitted had devoted their two years valuable time for the purpose of undergoing the B.T.C. training and we also feel that it would be hard on the part of such candidates who are ultimately excluded having spent their two years valuable time undergoing such training but in the facts and circumstances of the particular case, we find that the State Government has taken a correct decision and also has taken care of training undergone by the genuine persons by providing in the order impugned in the writ petition that after having fresh entrance test, the candidates who are ultimately found successful, if had already undergone training, would not be required to undergo such training afresh but the earlier training shall be treated to be a valid training and shall entitle those candidates for appointment in accordance with the rules on the basis of the said training. This takes care of the genuine candidates who have already undergone B.T.C. training but those who failed to get selection cannot claim any benefit since the beneficiaries of wrongful means or wrongful selection are liable to lose the benefit acquired on the basis of such tainted selection and no equity would lie in their favour. In the entirety of the circumstances and in view of the above discussion, in our serious consideration, though we find that it was a hard case but still we are bound to decide the matter in accordance with law since rule of law is to prevail and equity and good conscious needs to be observed within four corners of rule of law.

20. The learned Counsel for the appellants also pointed out that though as a result of the impugned order cancelling the entire selection, the appellants have been made to suffer by putting their two years' training in peril, but nothing has been done against the officials who alleged to be responsible for such irregularities/illegalities. On the contrary, the learned Chief Standing Counsel submitted that not only a first information report was lodged against the erring officials, but disciplinary proceedings were also initiated against them but some of them have approached this Court wherein certain interim orders have been passed staying their arrest and/or suspension as the case may be.

Be that as it may. We have no hesitation in observing that of late this Court is flooded by the cases involving wide spread malpractice and challenging the decision taken by the authorities to cancel such selection. The candidates, who have either got selected or managed to get selected and sometimes even a few bona fide honest candidates who have suffered on account of large scale malpractice of other raise such dispute. The situation has arrived at on account of general deterioration in the society. We are at pain to observe that it is so wide spread that now the people do not feel shame or repentance in taking recourse of such activities and, thereafter, in making all out efforts to retain the fruits. Corruption, favoritism and nepotism, unfortunately, has become order of day and is affecting the whole society like cancer and AIDS. Corrupt people have taken place of pride in the society. They are supported by the hypocrites committed in broad day light and as a result, the society is affected. The graph of crime and corruption has reached such a height that unless a consolidated effort by right

minded people would not come forward to counter, it may lead to disorder, social and political. We are not unmindful that the Court has a vital role to play in such matters as and when it come to its notice. In the present case, we hope and trust that the State Government shall take expeditious steps to give finality in respect to disciplinary proceedings against the erring officials and shall pass appropriate orders which may prove to be a lesson not only to them but to others also.

21. In the result, we are in respectful agreement with the Hon''ble Single Judge. The appellants are not entitled for any relief. The appeals, therefore, lack merit and are, accordingly, dismissed. No order as to case.