

(2011) 01 AHC CK 0338

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 24140 of 2007

Smt. Manju Devi and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 18-01-2011

Acts Referred:

Citation : (2011) 2 ADJ 747

Hon'ble Judges : Sudhir Agarwal, J

Bench : Single Bench

Advocate : A.K. Malviya and Sanjeev Singh, for the Appellant;

Final Decision : Dismissed

Judgement

Sudhir Agarwal, J.—Heard learned counsel for the parties. This writ petition is directed against the order dated 23.1.2007 passed by respondent No. 1 (Annexure-10 to the writ petition), cancelling the entire selection of Aganbari Karyakarti/Sahayika in district Mau, to place all the concerned Bal Vikas Pariyojana Adhikari/District Programme Officer under suspension and also to lodge First Information Report in the matter; the order dated 2.2.2007, consequential one, issued by the Director, Bal Vikas Sewa Evam Pushtahar, U.P. Lucknow (hereinafter referred to as "Director"), annexure-11 to the writ petition, communicating the cancellation of above selection in 9 projects of District Mau, and the order dated 8.2.2007, annexure-12 to the writ petition, consequential order issued by District Programme Officer, Mau for compliance of State Government's order dated 23.1.2007 and Director's order dated 2.2.2007.

2. The facts in brief as stated are that the District Programme Officer, Mau issued an advertisement on 5.6.2006, inviting applications by 20.6.2006 for appointment of Aganbari Karyakarti/Sahayika in 9 projects in district Mau. The details of the selection, project-wise is as under:

3. The petitioner Nos. 1 to 11 applied for the post of Aganbari Karyakarti and petitioner Nos. 12 to 21 applied for Aganbari Sahayika, The selections were

made and thereafter appointment letters were issued to the petitioners on 24.7.2006, Copies whereof collectively have been filed as Annexure-3 to the writ petition. The petitioners claimed to have joined their duties except petitioner Nos. 10 and 11 i.e. Smt. Geeta Devi and Smt. Sanju Devi.

4. It appears that several complaints were received by respondents in respect of above selection, hence, vide letter dated 1.8.2006, Secretary, Women Welfare & Child Development directed for freezing of the entire selection at the stage it was and not to issue any appointment letter further. Thereafter, on 29.8.2006 decision was taken for cancellation of selection and to make a fresh and also to place the concerned officials under suspension. The consequential order was issued by Director on 31.8.2006 for compliance of the State Government's order dated 29.8.2006, It appears that District Magistrate sent a letter dated 31.8.2008 recommending that cancellation of entire selection does not appear to be justified and in respect to individual erroneous selections separate action be taken. The aforesaid order dated 29.8.2006 issued by State Government and consequential order dated 31.8.2006 of Director were challenged before this Court in a number of writ petitions. The leading writ petition No. 50346 of 2006, Smt. Meera Pandey and Others v. State of U.P. and others, was allowed vide judgment dated 26.9.2006 with the following directions:

Consequently, writ petition succeed, and are allowed. Impugned orders are quashed. However, passing of this order will not prevent the respondents from undertaking inquiry as has already been directed, and the selections made, shall abide by final outcome of the enquiry.

5. Consequently, the Director issued an order on 14.11.2006 stating that in view of the decision of this Court in writ petition No. 50346 of 2006, Smt. Meera Pandey and others (Supra), the Director's letter dated 31.8.2006 be treated as non est. The two members committee was constituted by the Government to make necessary inquiry into the matter as also noticed by Hon''ble Single Judge in his judgment dated 26.9.2006. The Committee submitted its report on 27.12.2006. It has considered individual cases of the selected candidates as well as procedure of selection and entire record and has noticed that besides the procedural irregularities in individual matters, out of 38 Aganbari Karykarti selected, 32 selections were tainted. Similarly out of 32 Aganbari Sahayika selected, 18 cases were tainted. Accordingly the committee consisting of Special Secretary, Bal Vikas Sewa Evam Pushtahar, U.P. Lucknow and Additional Director, Bal Vikas Sewa Evam Pushtahar, Directorate, U.P. Lucknow recommended that selections found tainted be only cancelled and other selectees may be allowed to join after verification of their testimonials. For the cancelled post of selection, fresh selection was recommended. The State Government considered the report and also considered that more than 50 per cent were found tainted. The Government decided to cancel the entire selection and to proceed afresh. Consequently, the impugned orders have been issued which are challenged in this writ petition.

6. Learned counsel for the petitioner could not dispute that the inquiry report findings selections tainted included names of petitioner Nos. 1, 3, 4, 5, 7, 10, 11, 13, 15, 17, 18 and 21. He also could not dispute about the findings recorded by the Inquiry Committee pointed out several irregularities and illegalities in the procedure of selection in general i.e. about non-mention of the dates of receipt of application form, non-mention of the register of application form properly, non-preparation of the broad-sheet by the Selection Committee itself etc. The selection of Aganbari Karyakarti was finalized by the Selection Committee in its meeting dated 1.7.2006 while the selection of Aganbari Sahayika was finalized on 3.7.2006. Out of total 64 selections, 40 selections have been found by the Inquiry Committee tainted and incorrect. In the circumstances, the decision of the Government to cancel the entire selection in my view cannot be said to be arbitrary or based on no materials on record. No rejoinder in the affidavit has been filed on behalf of petitioners disputing the averments made in the counter-affidavit.

In such matters, judicial review of an administrative decision cannot travel into the realm of examining things like an appellate authority. The Court has to find out whether there is an error in decision making process. The judicial review is basically comes to examine manner in which decision has been taken, i.e., the decision making process.

7. It is now well settled that judicial review is entirely a different thing than an ordinary appeal provided in a statute conferring co-extensive power upon appellate authority in the matter of looking into facts, investigation of various transactions etc. like that of initial decision taking authority. Even in matters where something depends on subjective satisfaction, the power of appellate authority is co-extensive. It may however be not said so in a case of judicial review. It would be appropriate at this stage to have a little glance on precedence as settled in the past a few decades having great persuasive and binding value.

8. I do not go into much history but suffice it to refer the observations of Lord Scarman in *Nottinghamshire County Council v. Secretary of State for the Environment*, 1986 AC 240, who 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.

9. 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.

10. 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 facet 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 correctness of the choice made by the Administrator, open to him. The Court should not substitute its decision for that of Administrator. The scope of judicial review is limited to deficiency in decision making process and not the decision itself.

11. Here we are exercising a jurisdiction for issuance of writ of certiorari against a decision taken by the Government for cancelling the entire selection. 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 authority otherwise, which is also a probable and reasonable view, shall not be interfered, (See *The Barium Chemicals Ltd. and Another Vs. The Company Law Board and Others*,).

12. 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.

13. Prof. de Smith's treatise "Judicial Review of Administrative Action" (4th Edn.) at pages 285-86, has succinctly summarised several principles formulated by the Courts in various decision, and said:

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.

14. In *Associated Provincial Picture Houses Ltd. v. Wednesbury Corp.*, 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.

15. These principles were further summarized in *Council of Civil Service Unions v. Minister for the Civil Service*, 1984 (3) All ER 935 (CCSU Case) and the aforesaid principles were categorized as illegality, procedural impropriety and irrationality, discussed in brief hereinabove. 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.

16. These two cases of 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 for Civil Liberties and Another Vs. Union of India (UOI) and Others, and State of N.C.T. of Delhi and Another Vs. Sanjeev @ Bittoo, . In view of above discussions about the facts as well as exposition of law, in my view no interference is called for with the orders impugned in the writ petition. The writ petition fails. Dismissed, Interim order, if any, stands vacated.