
(2011) 03 AHC CK 0094
In the Allahabad High Court
Case No : Special Appeal No. 1942 of 2009

State of U.P. and Others

APPELLANT

Vs

Ram Abhilash Maurya and Others

RESPONDENT

Date of Decision : 01-03-2011

Acts Referred:

Citation : (2011) 5 ADJ 916 : (2011) 5 AWC 5170

Hon'ble Judges : D.S.R. Varma, J; Abhinava Upadhyaya, J

Bench : Division Bench

Judgement

1. The order of the learned single Judge dated 23.1.2009 passed in CM WP No. 53313 of 2008 and a bunch of other connected matters, whereby the selection process of "safai karmis" (Group D employees) under the State of UP were held to be legal, not warranting any interference with the selection process and the eventual select list prepared by the authorities concerned, consequently settling aside the impugned order dated 23.9.2008, whereby the selection of the candidates for the aforesaid posts was set aside by the District Magistrate, Respondent Appellant No. 4. For convenience, the parties are referred to in this order as they were arrayed in the writ petition, in which the present Appellants were the Respondents.

2. At the outset, we may mention that the present bunch matters are squarely covered by two other connected civil misc. writ petitions, giving rise to Spl. Appeal Nos. 1898 of 2009 and 1063 of 2009. In all these writ petitions and the writ petition giving rise to the present special appeal, the cancellation of the selection process for the aforesaid posts of safai karmis was under challenge; of course, on different grounds. The other two aforesaid special appeals that have been filed, challenging the orders of the learned single Judge and those appeals have already been heard and eventually dismissed by this Court.

3. In the present case, the grounds for challenge are slightly different. In other words, though the epicentre of the controversy is the cancellation of the selection process, the grounds for such cancellation are different from the other bunches

of the aforesaid special appeals. So also, the grounds for selection of the candidates in the present case are also different. Adding to this, the earlier writ petitions and the consequent special appeals that were disposed of were belonging to the other districts, namely, Gorakhpur and Firozabad. It is not necessary to repeat the grounds on which the earlier writ petitions were filed and the grounds on which the writ petitions were allowed, and, consequently, the special appeals were dismissed filed by the Government.

4. However, the brief facts are that the State of UP had decided to sanction the posts of safai karmis in the revenue districts of the State, which were in total 1,08,848., by paying some remuneration for maintaining cleanliness in the villages. The other aspects about the genesis of the scheme are in no way different from the facts of the earlier writ petitions. Hence, we are not dwelling into those factual details. Of course, learned single Judge has dealt with sufficient elaboration about those facts.

5. The whole dispute is, as already noticed, the cancellation of the selection process. It is not disputed that about more than 12,000 candidates were called for the interview by the three selection committees, which were constituted by the District Magistrate, Mirzapur. Three selection committees were constituted in the present district because of the multitude of the candidates who were to be subjected to the interview process. Accordingly, each committee had taken the task of conducting interview for about 4,000 candidates and the select list has been prepared. After such preparation of the select list, several complaints were received by the District Magistrate. The substance of each complaint had been summed up and extracted by the learned single Judge. For ready reference, we may re-extract the same as under:

22. There was no allegations of corrupt practices made in any complaint nor the enquiry committee found that any member of the selection committee was interested or had demanded and taken money for selecting the candidates. No material has been produced before the Court to support the allegations that the selection committee had accepted bribes in selecting the candidates. The Court is as such left with the findings of the enquiry committee, which has relied upon the statistics indicating equal number of marks given by each committee to successful and unsuccessful candidates and the selection of large number of candidates of the castes, which are not traditionally engaged in sweeping the roads and drains, and a further complaint that a large number of persons belong to Yadav and Kurmi castes, which fall in the OBC category and a special category of Yadav castes of particular village were more in the numbers of those, who were selected. There is no such allegations that there was predominance of such castes in the selected candidates. Even according to the enquiry committee these castes had larger representation in selections.

6. At the outset, we are of the view that it is desirable for us to notice that in many of those complaints, the allegations were levelled against the selection of some individuals and further that some individual candidates appear to have

made complaints that some people belonging to some particular castes were not selected and in a solitary case the complaint has been made against an individual alleging that the said candidate was selected because of bribery. Consequently, the enquiry was ordered to be conducted by the District Magistrate. The enquiry officer filed his report, inter alia, pointing out that there was some absolute similarities in awarding marks to the candidates. In other words, it was the report that marks were awarded to the unsuccessful candidates within the range of 22 to 25 and the successful candidates were awarded marks in the range of 26 to 38. This allegedly absolute consistency was considered to be an irregularity capable of vitiating the entire selection process and as a consequence thereof, the entire selection process had been cancelled by the District Magistrate by the impugned order dated 23.9.2008. Hence the writ petitions which were allowed by the learned single Judge and the special appeals arising therefrom are before us to examine the order of the learned single Judge.

7. Learned Additional Advocate General, Mr. Jafar Nayar, assisted by the Additional Chief Standing Counsel Mr. Pankaj Rai, contended that there was absolute consistency maintained in awarding marks ranging from 22 to 25 to the unsuccessful candidates and 26 to 38 marks to the successful candidates and this absolute precision and consistency raises the eye-brows. It is his further contention that tabulation of the marks awarded to the candidates was done by all the committees at one place grouped together and, therefore, there was other possibility of the consistency being maintained in order to favour some candidates and, therefore, this should be treated as another doubtful circumstance. It is specifically pointed out by him that no separate marks were awarded to the candidates for sweeping and cycling inasmuch as those were the two eligibility criteria prescribed for the selection of the candidates. Therefore, he contends, marks against those sub-heads ought to have been awarded by the committees separately against each of the eligibility criterion for each candidates. This is another crucial aspect, according to him, that has to be noticed to have a serious doubt about the selection of the candidates. In other words, it is his contention that all the members of the three committees constituted by the District Magistrate have hobnobbed among themselves and prepared the select list for extraneous reasons. He further submits that the confidence reposed on the committees had been defeated by the methods adopted by the selection committees.

8. In the first instance, it has to be noticed that the committees have been constituted by the District Magistrate himself and, therefore, there is no doubt that the District Magistrate has overall supervisory jurisdiction on the conduct of the committees as well as the selection process. But, what is to be noticed is that what were the original reasons for the District Magistrate for ordering the enquiry after the select list was prepared. Obviously, the reasons for him for ordering the enquiry, were rested on many complaints which have been extracted already above. Otherwise, there would have been no other independent reason for the District Magistrate to order an enquiry to go into the aspects of the selection

process. As we have already noticed, just a bare perusal of those complaints would show that the complaints were made only against a few individuals and not against either the constitution of the committees or the method in which the selections were made by interviewing the candidates.

9. No doubt, a stray allegations have been made like that some of the candidates, who belong to certain castes, were not selected. But what has to be noticed conspicuously from the enquiry report is that the enquiry officer did not go into the complaints at all nor any finding, much less categorical, was recorded.

10. Therefore, the very basis or the foundation for an order of conducting the enquiry has taken a new and sharp turn from its genesis and the original one disappears

11. Further, it has to be seen that the enquiry had totally gone in a different dimension resulting a revelation which was not complained of by anybody, including the District Magistrate. In other words, the enquiry had gone into an area which was not suggested by the appointing authority or required to be enquired into.

12. Of course, if any irregularity had been revealed in the process of any enquiry, the same could not be slighted over or ignored, and appropriate action can always be initiated by the competent authority.

13. In the present case, as already pointed out by the learned single Judge, no adverse remark has been made or finding recorded as against the constitution of the selection committees or against the individual members of the said committees; nor any irregularity or instances of extraneous consideration have been pointed out, specifically attached to the said committees.

14. Therefore, the only aspect that had been dealt with elaborately and that inspired the District Magistrate to cancel the entire selection process is awarding of marks between 22 to 25 to the unsuccessful candidates and 26 to 38 to successful candidates. In this regard, we are of the considered opinion that such consistency by itself cannot be a ground to assail the selection process as a whole, rendering the entire process a nullity. It has to be seen in this regard that there were admittedly no parameters prescribed by the competent authority for awarding the marks in the interview nor there are any Rules prescribed governing the same. In the absence of such parameters or guidelines correctness of the selection process should be presumed, meaning thereby, that even if there was any consistency, such consistency need not be doubted. Obviously, in the selection process some candidates have to be eliminated; therefore, the individuals who secured the highest number of marks in seriatum would get selection and the other candidates, who secured less marks, will be eliminated.

15. For example, if all the successful candidates are being awarded the same marks, say, 30 or 36, and all the unsuccessful candidates likewise are awarded, say, 22 or 25, then it is a matter of great concern and may generate a serious

doubt of hobnobbing between the selectors. But this is not a case before us. The successful candidates have been awarded marks between 26 to 38 and unsuccessful between 22 to 25 and the natural corollary to this was that the candidates who got more marks from the top were to be selected, one after another, till the vacancies are filled; and the rest are to be eliminated. Therefore, we are of the opinion that that the finding of the learned single Judge that this consistency shall not be a matter of doubt, is correct.

16. On the other hand, no specific allegation or comments were recorded by the enquiry officer against the constitution of the selection committees as well as their functioning, and there is no other stigma except the so-called stigma as regards the consistency in awarding marks to the successful and unsuccessful candidates. If "this consistency" is eliminated from the zone of doubt, there are no other reasons for the District Magistrate to bundle out the entire selection process and all the candidates selected lock, stock and barrel.

17. In matters like this, where employment to thousands of people, who are ready to get an opportunity of employment of manual jobs of cleaning the village for a marginal sum, have to be looked at with a more realistic manner; and the circumstances, which are very marginal and minuscule in nature, if at all, have to be seen in a large spectrum, and cannot be used to defeat the whole purpose of the scheme.

18. The learned single Judge also pointed out that the enquiry report does not point out any violation of the selection procedure or irregularities by the selection committees nor there was any comment regarding the involvement of exchange of money.

19. Learned single Judge had also taken note of the fact that the persons belonging to certain castes did not have the opportunity of having selected and the in absence of any such Rules, or prescription by the competent authority or the Government in this regard, the selection committees also could not be expected to follow the principles of Rules of reservation or any such things.

20. We are in complete agreement with the learned single Judge as regards the observations about the prevalence of the caste system and other related maladies in the society. Of course, this aspect has, in fact, also had fallen for our consideration. However, though they are incidental, we are of the view that they are desired to be ventilated by the Court.

21. Further, as regards the contention of the learned Additional Advocate General that no separate marks were awarded against the two criteria of the subheads of "sweeping" and "cycling", it has to be again noted that there was no actual criteria fixed by the competent authority himself, nor any such methodology was indicated in any manner, whatsoever, to the selection committees.

22. In the absence of any adverse comments as regards the extraneous consideration on the part of the selection committees, we are of the considered

opinion that the cancellation of the selection process on that score is not permissible. This also applies to the task of tabulation that was undertaken by the selection committees. In this regard also there was no prescribed parameters fixed by the competent authority or by the Government and there was also no Rules governing this aspect. Therefore, these aspects cannot be taken into consideration.

23. In the light of the above, what ultimately remains for this Court to consider is the entire gamut of the report of the enquiry officer. The District Magistrate has solely relied upon the report of the enquiry officer and, as already pointed out, the enquiry officer's report did not go into the actual genesis of the controversy of the complaints and had taken a totally different route and recorded some findings, which, according to us, are totally untenable.

24. Learned single Judge, as appears from the perusal of the impugned judgment, had taken note of the various judgments of the Supreme Court, in particular, in *Inderpreet Singh Kahlon and Others Vs. State of Punjab and Others*, wherein it has been observed that the cancellation of selection carries a big stigma, particularly, when the cancellation of the selection is directed on the serious charges of corruption. It has further been observed that because of the misdeeds of some of the candidates, honest and good candidates should not suffer en masse cancellation. In the case in hand, as we have already noticed, no allegation was levelled against the constitution of the selection committees and no irregularity pointed out against them. In view of this, the sole aspect of awarding marks consistently in fact has to be viewed as a positive aspect in favour of the selected candidates, and not to defeat their interests. In a way, we fail to see any pragmatic approach on the part of the District Magistrate in cancelling the entire selection process in one stroke, basing simply on the enquiry report.

25. Before parting with this case, we have to point out, like we have done in the other similar matters, to the effect that it is always the prerogative of the competent authority or the Government, as the case may be, to eliminate any of the selectees from the fray of the selection on the ground of any irregularity or illegality in obtaining the selection and in order to undertake such an exercise, an appropriate enquiry has to be conducted in accordance with law and as per Rules on specific charges. In other words, the competent authority can always initiate a proper enquiry against any such candidate or candidates who were so selected through the selection process.

26. In view of the above we see no reason to interfere with the judgment rendered by the learned single Judge.

27. Accordingly, the same is confirmed and the special appeal before us fails as it is liable to be dismissed.

28. The special appeal is dismissed.

29. There shall be no order as to costs.