

(2015) 07 AHC CK 0092

In the Allahabad High Court

Case No : Special Appeal Nos. 437, 429, 428, 442 and 441 of 2015 and Special Appeal Defective Nos. 483 and 467 of 2015

Vikas Kumar Verma and Others

APPELLANT

Vs

State of Uttar Pradesh and Others

RESPONDENT

Date of Decision : 09-07-2015

Acts Referred:

Citation : (2015) 6 ADJ 466 : (2015) 5 ALJ 457 : (2015) 112 ALR 242 : (2015) 4 ESC 2142 : (2015) LabIC 3843

Hon'ble Judges : D.Y. Chandrachud, C.J.;Yashwant Varma, J

Bench : Division Bench

Advocate : J.K. Srivastava, Anoop Trivedi and Gajendra Pratap, for the Appellant; Seemant Singh, Advocates for the Respondent

Final Decision : Dismissed

Judgement

1. This batch of special appeals arises from a judgment of the learned Single Judge dated 29 May 2015. The learned Single Judge, while allowing a batch of petitions, has set aside the final result declared on 16 March 2015 of the main examination held for selection to the post of Sub- Inspector in the Civil Police and Platoon Commander in the Provincial Armed Constabulary, by directing the exclusion of candidates who had used whiteners or blades on their OMR sheets. Finding that the instructions to candidates contained a specific prohibition on the use of whiteners or blades on OMR sheets, the learned Single Judge has held that candidates who violated the instructions would have to be excluded from the final result.

2. Following the judgment of the learned Single Judge, it is common ground that the result has been declared in accordance with the judgment of the learned Single Judge by the State on 25 June 2015. The candidates whose candidature has been excluded in consequence of the judgment of the learned Single Judge are in the batch of special appeals which have by consent been heard finally since common questions are involved. Insofar as the State is concerned, the

learned Advocate General has stated that no appeal has been filed against the judgment of the learned Single Judge having due regard to the existence of a large number of vacancies in the police force which are in urgent need to be filled up.

3. On 19 May 2011, the Uttar Pradesh Police Recruitment and Promotion Board¹ invited applications for selection to the post of Sub-Inspector in the Civil Police and Platoon Commander in the PAC. 3698 posts were of Sub-Inspector, while 312 were of Platoon Commander. The procedure for recruitment is specified in the Uttar Pradesh Sub-Inspector and Inspector (Civil Police) Service Rules, 2008². Rule 15 provides for the procedure for direct recruitment to the post of Sub-Inspector. The procedure for recruitment consists of a physical efficiency test followed by a preliminary written test. Thereafter a physical efficiency test is conducted following which a main written examination is held. The dispute in the present case relates to the main written examination which was held on 14 September 2014. The examination consisted of 400 marks out of which an objective type examination on OMR sheets was conducted on the basis of 150 questions, each carrying two marks. The results of the main examination were declared on 20 October 2014. 3801 candidates were declared to be successful.

4. The petitioners, who challenged the declaration of the result, submitted that the State had taken into account the candidature of those applicants who had used whiteners and/or blades in the course of the main written examination though this was specifically prohibited in the instructions to candidates. Their case was that such candidates have been placed higher in merit. According to the petitioners, initially at the time of the examination, the above candidates had filled up wrong answers in the OMR sheets, but subsequently, they had illegally used whiteners or blades for correcting their answers in breach of the clear instructions in the booklet and answer script. According to the petitioners, the Board could not be allowed to act contrary to its own instructions provided to candidates along with the question booklet of the main written examination and the instructions as provided in the OMR sheet prohibiting the use of whiteners and blades. Consequently, the Board ought not to have evaluated such answer sheets and ought to have rejected the candidature of those candidates who had used whiteners or blades in breach of the instructions. The relief which was sought was a direction to exclude candidates who had used whiteners or blades in the OMR sheets at the main written examination and disallow such candidates from appearing in the group discussion.

5. During the course of the proceedings before the learned Single Judge, candidates who had used whiteners or, as the case may be, blades were permitted to appear in the proceedings in order to resist the petitions. Their submission, broadly speaking, was that:

"(i) Though there was a prohibition on the use of whiteners or, as the case may be, blades while filling up OMR sheets, no consequence envisaging the cancellation of their candidature was provided in the instructions to candidates;

(ii) The instructions formulated by the Board on 2 September 2014 which envisage that any breach of the prohibition on the use of whiteners or blades would result in the non-evaluation of the OMR sheets were not notified to candidates and remained only with the Board without circulation;

(iii) In the absence of a consequence being stipulated, the candidature of candidates who had used whiteners or blades could not be excluded; and

(iv) There was no material to indicate any unfairness in the ultimate result."

6. The learned Single Judge has held in the impugned judgment and order that all candidates at the main written examination were informed through instructions printed on (i) the question booklet of the main written examination and; (ii) the OMR sheet handed over to candidates that the use of whiteners and blades was prohibited. The learned Single Judge noted that all candidates were informed that they were required to shade the correct options by using blue or black ball point pens and that candidates were not permitted to change their answers or to use whiteners or blades. The learned Single Judge held that candidates who had used whiteners or blades despite the prohibition contained in the instructions could not be placed in the same class as those candidates who had duly observed the instructions. Insofar as the State was concerned, the learned Single Judge took note of the fact that on 2 September 2014, it had formulated instructions which categorically specified that OMR sheets of candidates who had used whiteners or blades would not be evaluated.

7. Initially, during the course of the hearing before the learned Single Judge, instructions to Counsel were placed on the record which indicated that the State would exclude the candidature of those who had acted in breach of the prohibition. Subsequently, during the course of the proceedings, the State filed a counter affidavit at variance with the instructions and stated that the prohibition contained in the instructions was only by way of abundant caution in order to notify candidates of the likelihood that the automated scanning process may not accept an OMR sheet in which whiteners, blades or erasures had been used. The State in its counter affidavit submitted that there was no reason to cancel the candidature of the candidates. The learned Single Judge observed that the State could not have taken a decision at variance to its own policy decision dated 2 September 2014. Finally, the learned Single Judge has relied upon decisions of the Supreme Court in support of the principle that fairness in a public competitive examination requires that instructions to candidates should be strictly observed and that a breach would result in the exclusion of the candidature of an applicant. Following this reasoning, the learned Single Judge directed the State to recompute the result by excluding the candidature of those candidates who had used whiteners or blades. Following the decision, a fresh result has been prepared and declared by the State on 25 June 2015.

8. We may now proceed to summarise the submissions which have been urged on behalf of the petitioners:

"(i) though the instructions which were furnished to candidates contained a stipulation to the effect that the use of whiteners and blades on the OMR sheet would be prohibited, these instructions did not envisage the consequence that the candidature of a candidate would be cancelled upon the use of prohibited material. The Rules governing the recruitment have a statutory character and in the absence of a consequence envisaged therein, there would be no violation of the rules;

(ii) the instructions to candidates provided for the cancellation of candidature in certain specified eventualities but no such consequence was provided in the instant case;

(iii) there was no material before the learned Single Judge to indicate any unfairness in the course of the examination process or in the process of scanning on the basis of which, the result could be invalidated and;

(iv) though the Board had formulated instructions on 2 September 2014 to the effect that the OMR sheet of a candidate who had used a whitener or blade would not be evaluated, these instructions were not disseminated to candidates and hence, remained a confidential document of the Board."

9. The judgment of the learned Single Judge has been assailed on the ground that the Court had fallen into error in presuming that candidates who had not followed the instructions fell into a class distinct from those who had followed the instructions and in the absence of a statutory consequence of invalidation, the mere breach of the instructions would not result in the candidature of a candidate being invalid.

10. On the other hand, it has been urged by learned Senior Counsel appearing on behalf of the original petitioners, the respondents to the special appeals, that:

"(i) candidates were placed on clear notice both in the main question booklet as well as in the instructions which were appended to the OMR sheet that the use of whiteners and blades was prohibited;

(ii) a candidate who has acted in breach of the express instructions furnished by the Board, would not be entitled to assert that despite this breach the candidature would still continue to be valid;

(iii) insofar as the State is concerned, the decision of the Board on 2 September 2014 would bind it and it is not open to the State to resile from the decision which clearly stipulated that the OMR sheet of a candidate who had used prohibited material would not be evaluated;

(iv) in similar terms, the State had furnished information under the Right to Information Act on 13 November 2014. Even when the writ petitions came up for hearing, the instructions which were placed on the record by the learned Standing Counsel indicated a similar position and it was only subsequently that a counter affidavit was filed in which a variant position was adopted;

(v) the materials disclosed by the State indicate that out of 14256 candidates who appeared in the main written examination, 3038 had used whiteners and 810 of those candidates have actually been selected. The result has, therefore, been materially altered;

(vi) once the State has adopted a uniform policy not to assess the OMR sheets of candidates who use whiteners or prohibited material, any relaxation of the norms would have to be notified by the State;

(vii) the object and purpose of the prohibition was to preserve the sanctity of the examinations' process; and

(viii) in order to protect the sanctity of the examinations' process, it has been provided that after the answer sheet has been filled up, no alteration would be made and the prohibition must be understood in that context."

11. The learned Advocate General has fairly stated that the State has not filed any appeal in view of the fact that it is confronted with a large number of vacancies which are urgently required to be filled up. The State has taken a decision to declare the result in terms of the judgment of the learned Single Judge. Nonetheless, the learned Advocate General submitted that the instructions which were furnished to candidates were by way of abundant caution so as to indicate to a candidate that the use of whiteners or blades may interfere with the evaluation. Hence, a candidate would have no grievance, if the OMR sheet was not evaluated in the course of the automated scanning process. However, according to the State, out of 3038 candidates who are identified to have possibly used whiteners, blades or erasures, 810 candidates have been selected out of whom 679 have obtained higher marks. Even if the marks of questions in which such candidates had used prohibited material were to be excluded, these candidates would still be successful. Similarly, it was indicated that if a candidate by using whiteners had altered correct answers to wrong answers no benefit would enure to the candidate concerned. These submissions fall for consideration.

12. The procedure for recruitment is specified in Rule 15 of the Rules of 2008, which have been framed under the enabling provisions of the Police Act, 1861. Rule 15(a)(ii) provides that a separate booklet shall be attached with the application form containing information regarding educational qualifications, age, minimum qualifying standards for each category of physical test, medical fitness, minimum qualifying marks for the written examination, a copy of the OMR sheet for practice and other important guidelines. The main written examination is provided for in Rule 15 (f) and the procedure for conducting the written examination is to be such as is prescribed in Appendix-3. Appendix-3 provides that for the purpose of the written examination, the OMR sheet is to be in three copies. The original copy is used to scan the answers. The first carbon copy is preserved for the record of the Board, while the second carbon copy is allowed to be taken away by each candidate. The Rules have provided for the conduct of the

physical efficiency test, a preliminary written examination and the main written examination, which is to be followed by a group discussion. Detailed instructions to candidates in regard to the conduct of the main written examination are provided in the form of administrative instructions provided by the Board.

13. The first important aspect of the case to be noted is that candidates were placed on clear notice on the question booklet of the main written examination held in September 2014 of the manner in which the answers on the OMR sheet were to be entered. Candidates were informed that for every question, they would have to choose only one correct answer by shading the circle indicating the option to which the candidate has subscribed either in black or blue ballpoint pens. The use of pencils was prohibited. Candidates were informed that if more than one option is filled up in response to a question, that would be regarded as incorrect. The instructions on the question booklet contained a specific prohibition on the use of whiteners, blades and similar material. Similar instructions were contained in the OMR sheet which was given to every candidate at the main examination. Candidates were placed on notice that the OMR sheet would be evaluated by following an automated scanning process and hence, it was not permissible to fold or staple the OMR sheet. The instructions to candidates specifically stated that a candidate was not entitled to change an answer and that the use of whiteners, blades and similar other material was prohibited. Therefore, there can be no manner of doubt that every candidate at the examination was on clear notice of the fact that an answer which was entered in the OMR sheet by shading the option circle must not be altered and that the use of whiteners, blades and other such material was prohibited.

14. The prohibition on the use of whiteners, blades and other such material has a definite rationale. The prohibition is intended to sub-serve two important purposes. The first purpose is to ensure that the process of automated scanning of the OMR sheet is carried out without error by following a mechanical process. The second important purpose is to preserve the sanctity of the examinations" process. Such examinations are held by public bodies at which a large number of applicants appear. Assessment is on the basis of objective questions, which is quite unlike the traditional mode of examination where a candidate, in his own handwriting, would be required to write answers in a lengthy format to theoretical or practical questions. An objective type examination involving an OMR sheet requires each candidate only to shade the circle corresponding to one of the available options in answer to each question. There is nothing in the handwriting to distinguish an OMR sheet of one candidate from another. OMR sheets are susceptible to interpolation. The reason why the State has mandated that whiteners and blades would be prohibited is both to facilitate the process of automated scanning as well as to ensure that the OMR sheets of candidates are not subsequently interpolated behind closed doors, thereby affecting the sanctity of the examinations" process. The requirement that no alteration of a question which is answered would be permissible does not cause any prejudice to any candidate. The candidate has to think before shading. Once shaded, the answer

is final. All candidates are similarly circumstanced and are placed on clear notice of the fact that once an answer is shaded in response to one of the questions, that cannot be altered. The use of whiteners or other erasing material including blades is prohibited. That is the only way in which the purity of an examination which is conducted on a mass scale by the State can be preserved by ensuring that any subsequent attempt to alter the options is prevented. Each of the candidates is educated enough to understand the consequence of non-compliance of instructions. To our mind, to postulate that a consequence of a breach of the prohibition was not drawn to the attention of the candidates would if the submission were to be accepted, lead to an absurdity. For instance, the same instructions attached to the OMR sheet also indicate that a candidate is prohibited from bringing to the examination hall log-tables, calculators, pagers, mobile phones and other electronics gadgets. It would be far fetched to hold that though there is a prohibition on the introduction of prohibited material in the examination hall, nonetheless no consequence has been provided for a breach of the prohibition. Candidates were clearly aware of the fact that these prohibitions are intended to facilitate the proper conduct of the examination and to ensure that the sanctity of the examination is not disturbed by the use of unfair means. Hence, a candidate who has acted in breach of the prohibition cannot be entitled to urge that notwithstanding the breach, the candidature ought not to be invalidated.

15. Insofar as the role of the State in the present case is concerned, it has been rather peculiar. On 2 September 2014, the Board adopted administrative guidelines. Those guidelines specifically contained a complete prohibition on the bringing of whiteners, blades and other similar material into the examination hall and on the use thereof. The guidelines further provide that in the event that there is any breach, the OMR sheets of the candidate would not be evaluated.

16. The grievance of the appellants is that these guidelines were not notified to the candidates. The prohibition admittedly was to the knowledge of all candidates in the form of instructions in the question booklet and on the OMR sheet. What is urged is that the consequence of a breach was not notified. We will deal with that aspect of the matter a little later, but at this stage, what is important is that the State whose agency was conducting the examination would in any event be bound by its own administrative instructions. These administrative instructions were in fact sought to be implemented in terms of the instructions which were furnished to candidates which drew their attention to the fact that the use of whiteners and blades was prohibited.

17. When the batch of petitions came up before the learned Single Judge for hearing, the instructions received by the learned Standing Counsel were placed on the record, a copy of which has been made available for the perusal of this Court in the special appeal. Those instructions contained a clear statement of position to the effect that the State had constituted a Committee for identifying those OMR sheets in which whiteners or blades had been used. A statement was

also made therein that where it was found that prohibited material such as whiteners, blades or erasures have been used, the candidature of such candidates would be invalidated. As a matter of fact, these instructions which were furnished to the learned Standing Counsel were in line with a disclosure which was made under the Right to Information Act on 13 November 2014 by the Public Information Officer of the Board. Despite this, when a counter affidavit was filed on behalf of the State in the proceedings before the learned Single Judge, it was sought to be urged that the restriction on the use of whiteners, blades and other such material was introduced by way of abundant caution to place candidates on notice that OMR sheets may not be evaluated. In the counter affidavit, it was sought to be urged that the candidature of the candidate was not liable to disqualification or rejection. This statement in the counter affidavit which was filed by the State was plainly at variance with the administrative guidelines dated 2 September 2014. The interpretation which was sought to be placed by the State on the administrative instructions which were given to candidates is clearly incorrect and cannot be sustained. There would be no meaning in imposing a prohibition on the use of whiteners, blades and other similar prohibited material if this prohibition were to be read only as a measure of abundant caution. The prohibition was introduced with an important public purpose of preserving the sanctity of the examination and must be construed as such.

18. The Supreme Court has in several judgments dealt with the importance of the observance of instructions governing the conduct of public competitive examinations. In *Secretary Vs. A.B. Natarajan*, AIR 2015 SC 176 : (2014) AIRSCW 5746 : (2014) 8 SCALE 73 , a Division Bench of the Madras High Court had found in an appeal against the judgment of a learned Single Judge that the instructions which had been furnished to candidates during the course of an examination conducted by the Public Service Commission had been violated. For instance, though the use of colour pens was prohibited, several candidates had used colours other than blue or black which were the only permissible colours. Other candidates had made pencil markings. The Supreme Court held as follows:

"It is an admitted fact that serious irregularities had been committed by the candidates in their answer books. If one looks at the instructions, which had been given to the candidates for writing the answer books, it is clear that they had been informed in unequivocal terms that they had to use only blue, blue-black or black ink and they were supposed to use only fountain pen, steel pen or ballpoint pen. In spite of the said instructions, several candidates had used sketch pens, pencils and pens or pencils with different colours. Use of different colours or pencil could have given some indication to the examiner about the identity of the candidate. These facts clearly show that either the candidates were absolutely careless or they wanted to give some indication with regard to themselves to the examiner."

19. Learned counsel appearing on behalf of the appellants sought to distinguish

the judgment of the Supreme Court on the ground that this was a case where candidates had made an attempt to disclose their identity by the use of colours other than those which were permitted or through other means.

20. We are unable to subscribe to the submission and cannot hold that the judgment of the Supreme Court is distinguishable. The Supreme Court noted the irregularities which had been committed by candidates in their answer books. Having adverted to the irregularities committed by the candidates, the Supreme Court observed that either the candidates were absolutely careless or that they wanted to give some indication with regard to their identity to the examiner. On either hypothesis, it was held that such a candidate could not have been considered. This is also evident from the following extract of the judgment in Natarajan's case (supra):

"The candidates who had applied for Class - I post, if selected, were to be Class - I Officers of the State of Tamil Nadu. Not following the instructions given to them while appearing in the examination, which had been conducted for their selection, would either mean that they were so careless that they did not read or bother about the instructions to be followed or they wanted to give some indication to the examiner about their identity. In either case, such a candidate can not be selected. A candidate, who is so careless that he does not bother about his own interest, cannot be expected to become a good officer. Interest of the candidate is to get through the examination and for that purpose he has to follow the instructions. By not following the instructions, he does not take care of his own interest. So, if he has written the answer books carelessly without bothering about the instructions given to him, he is a careless person who must not be appointed as an officer and if he has done it deliberately, then also he should not be appointed as an officer because one who plans such illegalities even before joining his service, cannot be expected to become a fair and straightforward officer. So, in either case, such a candidate cannot be selected for appointment as an officer and that too a Class-I Officer of any State."

(emphasis supplied)

21. Besides the judgment in Natarajan's case (supra), the learned Single Judge has also placed reliance on a decision of the Supreme Court in Karnataka Public Service Commission v. B.M. Vijaya Shankar, where it was held as follows:

"3. Such instructions are issued to ensure fairness in the examination. In the fast deteriorating standards of honesty and morality in the society the insistence by the Commission that no attempt should be made of identification of the candidate by writing his roll number anywhere is in the larger public interest. It is well known that the first page of the answer book on which roll number is written is removed and a fictitious code number is provided to rule out any effort of any approach to the examiner. Not that a candidate who has written his roll number would have approached the examiner. He may have committed a bona fide mistake. But that is not material. What was attempted to be achieved by the

instruction was to minimise any possibility or chance of any abuse. Larger public interest demands insistence of observance of instruction rather than its breach."

(emphasis supplied)

22. Significantly, the Supreme Court held that even if the consequence of a prohibition had not been provided in the instructions of the examination, that would not make any difference in law. The Supreme Court observed that the very nature of a competitive examination requires that it should be fair, above board and must infuse confidence. If this was ignored, it would erode the sense of social equality.

23. The learned Single Judge, in the present case, has also taken note of the fact that out of 14256 OMR sheets which were evaluated, prohibited material consisting of whiteners or blades was used on 3038 OMR sheets (21.31% candidates were found to have used such prohibited material). Out of 3038 candidates, 810 would have been selected (26.66% of 3038 candidates).

24. On evaluating the submissions and after perusing the judgment of the learned Single Judge, we find no reason to interfere with the exercise of jurisdiction in a special appeal. The learned Single Judge has duly taken note of the position of law as laid down by the judgments of the Supreme Court and has carefully assessed the facts and circumstances of the case. The sheet anchor of the submission of the appellants is that the administrative guidelines of 2 September 2014 were not notified to candidates. We have assessed the submission on the basis that the administrative guidelines of 2 September 2014 were, in fact, not notified to candidates. Even if that be so, we have come to the conclusion that all candidates were independently on notice of the prohibition of the use of whiteners, blades and other similar material during the course of the examination. In recent times, there has been a great deal of concern about the manner in which public competitive examinations are being carried out. These examinations provide an important source of social mobility and livelihood to lacs of aspirants across the country. The sanctity of a public competitive examination must be maintained. The issue in a case such as the present is not where a particular candidate would have nothing to gain from the interpolation which was made. The basic issue in the present case is that despite clear notice, the appellants have failed to abide by the clear instructions in regard to the use of prohibited material. Such candidates cannot have an entitlement to be in the select list.

25. For these reasons, we see no reason to interfere with the judgment of the learned Single Judge in special appeal. The special appeals are, accordingly, dismissed. There shall be no order as to costs.

1Board

2Rules 2008