

(2006) 04 AHC CK 0121

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No"s. 67165, 69087, 69091, 69123, 69124, 69125, 69150, 69185, 69190, 69193, 69195, 69324, 69344, 69347, 69349, 69352, 69355, 69377, 69378, 69411, 69641, 69642, 69643, 69726, 69729, 69834, 69838, 69859, 69917, 69926, 6992

Vinod Kumar Yadav and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 24-04-2006

Acts Referred:

Penal Code, 1860 (IPC) — Section 109, 120B, 420, 467, 468

Prevention of Corruption Act, 1988 — Section 13(1), 13(2)

Vigilance Establishment Act, 1965 — Section 2(2), 2(3), 3, 4, 4(1)

Citation : (2006) 3 UPLBEC 2801

Hon'ble Judges : V.K. Shukla, J

Bench : Single Bench

Advocate : Ashok Khare, Sunil Kumar Srivastava, S.D. Shukla, Shailendra, P.S. Baghel, O.P. Mishra and Rajiv Mishra, for the Appellant; C.B. Yadav and S.C., for the Respondent

Final Decision : Dismissed

Judgement

V.K. Shukla, J.—Present bunch of writ petition has been filed by the candidates who had been pursuing their B.T.C. Course 2001 questioning the validity of the decision taken by the State Government by means of communication dated 20.10.2005 passed by Secretary Basic Education canceling the aforesaid examination of B.T.C course 2001.

2. Vigilance report dated 23.07.2005 has also been questioned and further prayer has been made that petitioners" final result be declared and consequential benefit attached to the same be also extended.

3. Brief background of the litigation is that on 26.11.2001 the State government issued Government Order notifying the procedure required to be followed for conducting the Basic Teachers Certificate Training Entrance Examination. The said

Government Order was issued pursuant to National Education Policy 1986 and as per said Government Order the Basic Teachers Certificate Training Course was to be for two years and further it was mentioned therein that for the purpose of entrance examination application would be invited by means of news item to be published in the month of December/January. Eligibility criteria was also prescribed therein providing therein that applicants should be resident of the same District from which they are moving application for getting training and further before filling up the form the candidates ought to have passed graduation or some equivalent examination and further age of the Incumbent on 1st July in the year when training was to commence should not be less than 19 years and not more than 30 years. Relaxation in age was accorded to Scheduled Caste/ Scheduled Tribes and Other Backward Class category candidate as well as candidates from Dependent of Freedom Fighter category and Physically Handicapped category and Ex-Army man category as well as to female category candidates for period of five years. Procedure for selection was also provided for and qua High School, Intermediate and Graduation quality point marks has been prescribed and further weightage mark was also provided for qua acquiring of N.C.C certificate. Written examination was also to take place comprising two papers of 100 marks each. First paper was to comprise subject of General Knowledge and second paper was to comprise subject relating to educational qualification. It was categorically mentioned therein that computation of marks would be done through computer. It was also mentioned therein that selection would be based on merit and therein requirement of minimum percentage of marks has been dispensed with. Thereafter on the basis of total marks obtained by computing quality point marks in lieu of essential qualification; in lieu of weightage and in lieu of written examination then District wise list was to be prepared strictly in merit and separate list was to be prepared qua Reserved category candidates through computer and thereafter same was to be transmitted to Registrar Departmental Examination. After said list has been finalized then said list as mentioned above was to be transmitted to District Institute of Education and Training (DIET) and thereafter Principal of the institution was to verify the marks as well as certificates and thereafter to accord admission after satisfying himself. Alongwith the said list wait list was also to be prepared comprising 20% of the total seats. For conducting the Entrance Examination four members Committee was constituted, Said Examination was to be conducted by the Director, State Council for Education Research and Training, U.P. Lucknow (SCERT) through Registrar Departmental Examination U.P. At Allahabad. Pursuant to this Government Order, advertisement was issued on 01.012.2001 by the State Council for Education Research and Training, U.P. Lucknow notifying B.T.C Entrance Examination, 2001 and inviting applications from eligible candidates for participating in the same. Pursuant to this advertisement each and every petitioner claims to have applied for consideration of their respective candidature strictly in consonance with the advertisement. Registrar, Departmental Examination, U.P. On 12.12.2001 corrigendum was issued to the advertisement whereby candidates were exempted from filing the

relevant documents alongwith the application and they were required to submit application, data sheet alongwith Bank Draft of Rs. 100/per candidate. Last date for submitting the examination form was extended to 22.12.2001 and date fixed for holding the Entrance Examination was changed and next date fixed for holding the Entrance Examination of B.T.C. 2001 was 28.04.2002. On 20.12.2001 issued circular specifying therein the modalities for finalizing the said examination in question was published on 20.12.2001. Petitioners have contended that each one of the petitioner was issued Admit Card for appearing in the said written examination conducted at the State Level. Petitioners have contended that each one of the petitioner undertook the examination but result of said examination was not declared immediately. The reason for withholding of result of the examination was on account of litigation which had commenced before Hon"ble the Apex Court qua the validity of the amendment effected to U.P. Public Service Commission (Reservation in favour of Scheduled Caste, Scheduled Tribe and Other Backward classes) Act 1994 whereby the scheduled caste and other backward classes were further sub categorized into several categories for purposes of reservation. In the said litigation which commenced before the Hon"ble Apex Court, the Hon"ble Apex Court granted the interim order restraining the implementation of the amendments to U.P. Act No. 4 of 1994. In view of the interim order granted by the Hon"ble Apex Court, State Government issued general directives placing in abeyance all selection proceedings in the entire State. Subsequently amendments which were effected to in U.P. Act No. 4 of 1994 were withdrawn by State Government and effect of the same was that litigation before Hon"ble Apex Court become infructuous and consequential Government Order had been issued. In spite of the fact that Government had withdrawn aforesaid amendments in U.P. Act No. 4 of 1994 and had clarified the same no action whatsoever was being taken by authorities qua offering appointment and in this background various writ petitions were filed before this Court by the candidates who had appeared in the different selection for filling up Group C posts. Said writ petitions were allowed by this Court on 04.10.2002 being Civil Misc. Writ Petition No. 31852 of 2002 (Ajit Kumar Singh and Ors. v. State Of U.P. and Ors.). Thereafter Government Order was issued on 12.04.2003 followed up in another Government Order dated 25.04.2003 and this particular Government Order was also addressed to Director State Council for Education Research and Training, Lucknow directing for declaration of result of the B.T.C Entrance Examination 2001. While taking steps for finalizing the result of the entrance examination the Registrar, Departmental Examination, U.P. felt certain difficulties which were highlighted by him by means of communication dated 17.05.2003 and 23.05.2003 addressed to the State Government as well as Director, State Council for Education Research and Training U.P. Lucknow. By means of said communication dated 17.05.2005, Registrar, Departmental Examination, U.P. Allahabad pointed out that there existed 26,946 such candidates whose bank drafts for the examinations fee was not available with the application from as also the fact that 21,219 candidates had been allotted their roll numbers provisionally but full details pertaining to them were not available,

as such enquiry is essential but even then attempt is being made to get the result declared. Thereafter by means of communication dated 23.05.2003 it was pointed out that after contacting computer firm large scale discrepancies have been found, the application forms of 1,11,136 candidates were such whose quality point marks awarded have been wrongly awarded and this is inclusive of those candidates who have been provisionally permitted whose percentage of marks are not available. The said communication further pointed out that 21,219 candidates were such whose forms and bank drafts pertaining to examination fee were not available but who had been permitted to appear provisionally. Negligence by Computer Firm while entering date was also noted insulting in incorrect punching. Discrepancy in the date compiled in computer disc made available from the computer firms qua statistics supplied by Firm "C" and in view of the aforesaid factual situation directions from the State Government with regard to the declaration of the result. After the said communication has been sent, State Government issued Government Order dated 02.06.2003 directing the removal of the discrepancy highlighted in the letters of the Registrar, Departmental Examination, U.P. Allahabad and for declaration of the result of the B.T.C Entrance Examination 2001 after comparing the physical and computer details within a period of two weeks. It was also asserted that thereafter pursuant thereto Registrar, Departmental Examination, U.P. Allahabad proceeded to finalize the result of B.T.C Entrance examination 2001 and declared the result in July 2003. Petitioners have contended that said declaration of result was widely published. Petitioners have contended that they have been validly selected and after being validly selected, petitioners submit that they appeared before the respective Institute of District and thereafter documents which was inclusive of original certificates etc. have been deposited and thereafter petitioners submit that they have been accorded admission in B.T.C Course 2001. Petitioners have contended that they have completed first year training and also pursued their second year training course and after completing successfully first year. Petitioners have contended that they appeared in the second year examination but the result of the same has not been declared. It has also been contended that petitioners while were pursuing their course it appears that various complaints were received by the State Government with regard to holding of the Entrance Examination. State Government in its turn directed vigilance inquiry to be conducted by the U.P. Vigilance Establishment. The U.P. Vigilance Establishment completed the inquiry and submitted report on 23.07.2005. Pursuant to the said reported dated 23.07.2005 First Information Report was lodged on 19.09.2005 at Police Station Aliganj, Lucknow under Sections 420/467/468/471/120B/109 IPC read with Section 13(1) and 13(2) of the Prevention of Corruption Act. State Government proceeded ahead to take disciplinary proceedings against the erring persons. State Government on 20.10.2005 proceeded to cancel the entire Entrance Test B.T.C. 2001 with further direction. At this juncture present bunch of writ petitions have been filed for according relief as has already been mentioned in the opening part of the judgment.

4. Counter affidavit has been filed by the State Government and therein averments have been made to the effect that State Government vide Government Order dated 26.11.2001 authorized the Director, State Council for Education Research and Training, U.P. Lucknow to take B.T.C Entrance Examination 2001 consisting of 5600 vacancies. Pursuant to said directives the Director, State Council for Education Research and Training, U.P. Lucknow invited the applications from the eligible candidates by issuing advertisement in various newspaper having wide circulation in U.P. By means of aforesaid advertisement the candidates were required to submit their application forms alongwith necessary documents as required and the last date for submitting the examination form was 15.12.2001. On 12.12.2001 corrigendum to the advertisement dated 01.12.2001 has been published whereby the candidates were exempted for filing their relevant documents alongwith application and they were required to submit their application form, Date sheet alongwith bank draft of Rs. 100/- per candidate. By means of aforesaid corrigendum last date for submitting the application form was extended up to 22.12.2001. Date of written examination was adjourned from time to time and finally written examination was conducted on 22.04.2002 and after judgment has been delivered on 04.10.2002 in Civil Misc. Writ Petition No. 31852 of 2002 (Ajit Kumar Singh and Ors. v. State of U.P. and Ors.) circular was issued by the Department of Personal, U.P. on 12.04.2003 and thereafter result was directed to be declared with regard to the B.T.C. entrance examination 2001. It was also contended that complaint has been received in respect of holding of the examination as was reflected from the aforesaid two communications dated 17.05.2003 and 23.05.2003 and Government Order dated 02.06.2003 but discrepancies which had been pointed out were never removed and result was declared on 03.07.2003. After result has been declared various complaint has been received and thereafter letter was sent by the Special Secretary to Director, State Council for Education Research and Training, U.P. Lucknow on 26.07.2003 directing/asking him as to who was responsible for permitting the candidates to appear in the B.T.C Entrance Examination 2001 who are 21219 in number whose application and bank draft has not been found placed in the record. The Director, State Council for Education Research and Training was required to submit the complete record by 29.07.2003. The Director, State Council for Education Research and Training vide communication dated 28.07.2003 has submitted the report containing 10 documents and clear cut mention was made that alongwith the application forms bank draft of Rs. 100/- was mandatory and necessary to be sent and further mention was made that application forms and bank draft was required to be maintained by the Registrar, Departmental Examination. It has further been stated that apart from irregularities, and illegalities detailed in the letter dated 26.07.2003 and 28.07.2003, various other irregularities and illegalities were pointed out by various complaints and Minister of Basic Education vide letter dated 06.12.2003 issued directions for holding inquiry and pursuant thereto Secretary Basic Education vide letter dated 02.01.2004 directed the Director State Council for Education Research and Training, U.P. Lucknow to appoint Sri

Ravi Pratap Verma, Joint Director of Education as Inquiry Officer to hold the inquiry in to the charges of irregularities, illegalities and malpractice and manipulation committed in the B.T.C Entrance Examination 2001 and thereafter submitting its report within 15 days. Sri R.P. Verma thereafter held detailed inquiry and submitted report to the Director, State Council for Education Research and Training on 08.04.2004 and subsequently to the Government Order on 30.04.2004. Sri R.P. Verma found various Irregularities, illegalities, malpractice, manipulation cutting/over cutting in answer sheets having been committed by the officers including the Director, SCERT and two Registrar Departmental Examination namely Mohd. Saeed and C.L. Chaurasiya in collusion with five computer firms which were employed by the Registrar for preparation of result of pre and post examination and recommended for holding high level enquiry. The report was submitted to the government on 30.4.2004. The Secretary of the department vide recommendation dated 7.7.2004 recommended for holding vigilance enquiry. The aforesaid recommendation has been finally approve by the Chief Minister of the State vide its approval dated 16.7.2004. On 3.8.2004 the entire matter was submitted to the vigilance establishment and the Vigilance establishment after holding the detailed open enquiry submitted its report to the Government on 23.7.2005. The entire report has been placed before the Chief Secretary on 3.8.2005, again on the aforesaid report final approval has been granted by the Chief Minister on 17.8.2005 and thereafter the matter was placed for approval to the cabinet. Cabinet has further approved and only thereafter decision was taken by the Government on 20.10.2005 for cancellation of the entire selection of B/T.C. entrance examination 2001. While canceling the entire selection Government has taken into account the 90% malpractice, manipulation, cutting/overwriting in the answer sheets and other kind of sorts/methods adopted by the authorities for admitting the candidates of their choice with the ulterior motive and with the collusion of firms employed by the Registrar for preparation of the result of pre and post examination. Firms employed adopted the entire process including the opening of the forms separating the applications and bank drafts, putting the same in database computer and preparation of admit cards and list of the candidate and therefore the entire result has been finally canceled on 20.10.2005. Form the report of vigilance department it is crystal clear that out of 5600 candidates 4674 candidates have been admitted on the basis of the malpractices adopted by three authorities and the five computer firms employed therein by cutting/over cutting of the marks on answer sheets on account of misconduct committed by the authorities In this background Joint Director held preliminary enquiry and thereafter the vigilance establishment conducted open enquiry to find out the person/candidates who have been rightly selected or wrongly sleeted but it was impossible and therefore the Government in exercise of its power canceled the entire B.T.C. 2001 entrance examination after seeking due approval from the Cabinet. However taking into account some other factors lenient view was taken and following benefits have been extended to the candidates: -

i. The candidates who have undergone the training of two years are entitled to sit in B.T.C. entrance examination 2005 if they applied without paying entrance fee.

ii. The candidate to have further granted relaxation in the age if in the meanwhile they are said to be over aged.

iii. If the candidates appeared in BTC entrance examination 2005 are selected they are not required to go for further two years training course and also they will be given appointment directly with the approval of N.C.T.E.

5. The two report one submitted by Joint Director of Education, Sri R.P. Verma and other submitted by the vigilance department clearly indicate that the authorities who were entrusted with sacred public office in fact has misused the office in place of using it. In this background it has been asserted that there is not infirmity in the decision which has been taken and no interference be made by this Court.

6. Rejoinder affidavit has been filed and therein statement of fact mentioned in the counter affidavit has been disputed and therein it has been asserted that at no point of time candidates who had accorded admission had even been informed that their admission was in any manner provisional or subject to any on going enquiry and to the contrary all the candidates were granted admission and they were pursuing their training course with no such likelihood of being thrown away from training. Grievance has also been raised qua the violation of natural justice. It has been asserted that corrigendum which was issued dispensing with requirement suppling of documents was a rightful decision taken by the authorities and said benefit was extended universally and no one was discriminated, in this background it has been suggested that decision for notifying the corrigendum in no manner affects the merit of the selection and adverse inferences drawn in the vigilance report and the counter affidavit are wholly unwarranted. It has also been contended that no capital can be made out on account of non-availability of bank draft of various candidates and by means of the inquiry qua the said candidates rightful conclusion could have been arrived at. Qua inquiry conducted by Sri R.P. Verma it has been contended that he is much junior officer qua the Director State Council for Education Research and Training, Lucknow, thus, decision of authorizing him to conduct the inquiry was perverse and arbitrary. It has further been contended that report of Joint Director of Education dated 30.04.2004 has never recommended for cancellation of entire selections. Report of vigilance establishment dated 23.07.2005 has not been preceded by any proper enquiry and said report takes misconceived objections in to account. It has also been contended that enquiry has been conducted with closed mind and does not refer to various facets of the selection peculiar to the selection in question. The following factors have been alleged to have been ignored in the Vigilance Report:

(1) The applications were invited district wise and the preparation of the select list is also with reference to individual district. In such view of the matter the

select list pertaining to individual district required individual examination and in the absence of such examination the select list or a selection could not be set aside.

(2) That the vigilance establishment in submitting the report has failed to appreciate the form of the answer sheets on account of which any over writing or cutting committed subsequently can be detected to be a subsequent interpolation. This is on account of the fact that the examination comprised of objecting type questions with multiple choice answers bearing numbers ranging from 1 to 4. The answer sheets comprised of cage in which in each question the number of the correct answering from amongst the multiple choice had to be specified. For example either one or two or three or four, in the last column of the caging provided for purposes of answering both horizontally as also vertically the addition of the numerical mentioned against each has to be aggregated and specified. There also existed a further requirement of the aggregate of the horizontal and vertical lines being specified at the end of the answer sheet. In view of the aforesaid precautions any subsequent interpolations cutting/over writing in the answer sheet is early detectable as the same would totally alter the aggregate specified at the end of the vertical or horizontal column or at the end of the answer sheet.

(3) That the vigilance establishment has failed to notice that each of the selected candidates was required to produce all his original certificates for comparison with the details mentioned in the computerized select list as also for verification of such testimonials. On the basis of such original certificates the requisite verification of the entries pertaining to weightage was conducted before admitting a student at the respect District Institute of Education and Training. Further custody of all original certificate was to retain by the principal of the college and continued to be retained during the currency of the entire course. During this period verification of the authenticity of the certificate was also obtained from the concerned institutions from which the same had been issued. On account of the procedure so adopted the various discrepancies highlighted in the vigilance establishment on account of non obtaining of the original certificate alongwith application form, some discrepancy existing in the weightage filled up in the date, sheet, the non-availability of the data sheet and/or application forms of loose any significance. It is further necessary to state that there existed a large number of such cases at each institute in which even though a candidate figured in the select list but he was denied admission either on account of any discrepancy in his original certificate, or the entries in the date sheet not co-relating with the original certificates as also any discrepancy detected with regard to the authenticity of the certificates. Two such examples are at Sarojbala Roll No. 609064 and Jyoti Dubur both of Agra having been denied admission at the state of verification. There also exist several such cases in which the candidature itself has been subsequently cancelled after admission on account of adverse report declining verification of the original certificate having been received.

(4) That the vigilance report fails to advert to the question of actual admissions. All enquiry and report is limited to the stage of preparation of the select list. No enquiry has been conducted with regard to actual admissions. The report takes objection against inclusion of several candidates in the select list who have in fact never been admitted. For example on page 37 of the report reference has been made to a candidate of Agra namely Sarojbala with Roll No. 609064 who has in fact never been admitted. Similarly on page 39 reference exists with regard to Devendra Kumar with roll No. 613476 and Varun Kumar with Roll No.; 620807 both candidates of Mainipuri. In fact Varun Kumar was never admitted while the admission of Devendra Kumar was cancelled by the Principal himself I. Further in the report at the end there exists a list from amongst 110 candidates pointing out discrepancies with regard to them. Out of the aforesaid the candidates with Roll Nos. 267939 and 270492 (both the district Mizapur) candidates with Roll Nos. 003654, 511224, 516331 and 516410 (all of district Gorakhpur); candidates with Roll No. 358936(district gonda), 404651 (district Meerut) 375732 (district Bahraich); 531640 (district Deoria); 219081 (district Baduan); 296609 (district Bhadohi); 236646 and 337194 (district Meerut); 455520 and 488888, 489219, 292455, 494510 (all district jaunpur and 375732 and 432516 (both district Bulandshahar) do not stand included either in the select list or the waiting list nor anyone of these candidates have been granted admission.

(5) The objections with regard to candidates considered provisionally is misconceived. The candidates issued provisional admit cards were governed by the letter of the Registrar dated 12.1.2002 (Annexure 5 to the counter affidavit). Such candidates were allotted Roll Nos. separately, and their answer sheets were packed separately and separately evaluated. In view of this the entire selection cannot be stood vitiated on any such ground.

(6) The answer sheets of 4768 selected candidates are available even according to the vigilance report (page 16 of the report).

(7) Some candidates against which objections are taken in the vigilance report have been admitted under court orders. Attention is drawn to the case of Anita Verma Roll No.; 290753 district Bhadohi who has been admitted in pursuance to order dated 16.4.2004 passed in writ petition No. 979 (M/S) of 2004.

(8) The decision fails to take into account the fact that each of the selected candidates has materially altered his position by wasting several years of his life in pursuing the B.T.C. Training course on account of which the respondents were stopped from taking a decision to cancel the selection.

(9) The decision fails to take into account the fact that during the period the petitioners have been pursuing the B.T.C. Training Course the State Government formulated a scheme known as Special B.T.C. Training Course and admission was granted thereto to a large number of candidates on the basis of academic qualifications without holding any written examination or interview. Such

candidates were imparted instructions of studies in theory for three months and in practical for three months. No endeavour has been made for examining the candidates admitted to B.T.C. Training course 2001 with reference to the cut of marks specified for admission in Special B.T.C. Training Course for different categories.

7. In this background it has been contended that no exercise whatsoever has been done and error if any was there, the same could have been rectified and situation could have been remedied in stead of annulling the entire process of examination.

8. Pleading to the similar effect has been exchanged in other writ petitions also. Apart from this remaining answer sheet has also been produced before this Court in order to enable prima facie ascertainment of the way and manner in which things have been carried out.

9. Sri Ashok Khare, Senior Advocate, assisted by Sri S.K. Srivastava, Advocate, opened the arguments for the petitioners by contending that in the present case State Government has exercise its authority to cancel entire examination in most arbitrary and unreasonable manner and action which has been taken is totally disproportionate to the allegation leveled and further no home work whatsoever has been done by the authority concerned and further illegalities which were mentioned were identifiable irregularities and same could have been identified and remedied as such entire cancellation of result is unwarranted. It has further been contended by him that power of cancellation has not at all been exercised within a reasonable period, inasmuch as, candidates were permitted to undertake admission and they passed their first year of training and also has completed second year training and undertook the examination and only when result was to be declared then impugned action has been taken as such principles of promissory estoppel is clearly attracted and cancellation was unwarranted. Submission has also been made that in the event of declaration of the final result in all eventuality same was to be followed by the appointments, as such in totality of circumstances of the case petitioners ought to have been provided with opportunity before canceling selection, as such present writ petition is liable to be allowed.

10. Sri Shailendra, Advocate appearing for one set of petitioners contended that in the present case entire proceedings being ex parte are unsustainable and same are without any justification and without there being any lawful authority, to hold the proceeding, consequently entire proceedings are void proceedings, inasmuch as vigilance inquiry which have been conducted same is beyond the scope and ambit of U.P. Vigilance Act, as under the said Act aforesaid authority has got no authority or jurisdiction to go into the merit of the selection and as entire action is based on the report of vigilance, entire proceedings are totally without jurisdiction. Validity of the vigilance report has also been questioned by contending that the same is based on contradictory statement of the officer and further no proper investigation was carried out at the venue of the examination

qua petitioners necessary signature of Invigilator and Center Superintendent. It has also been strongly contended that present case was certain irregularities which were pointed out and were deductible and identifiable as per the report, thus, decision for mass cancellation was clearly unwarranted and unjustifiable. Much stress has also been laid on the fact that no real effort has been made by investigating agency to get the matter inquired in its correct perspective as such entire thing is vitiated and writ petition is liable to be allowed especially when the documents were available in respective District Institute of Education and Training but no attempt or endeavor has been made to proceed in its correct perspective.

11. Sri P.S. Baghel, Advocate, appearing on behalf of one set of petitioners contended that in the present case fact of the matter is that no inquiry whatsoever has been conducted and entire purported exercise from its own showing is mechanical exercised and further there is no allegation of corruption, malpractice and fact of the matter is that all the documents were available but in stead of verifying the fact in its correct perspective and make attempt to find out regarding genuineness of the report, on merely surmises and conjuncture entire examination has been canceled. It has also been asserted that Compact Disc (C.D) was available and same would have solved all the problem as errors pointed out were merely human error.

12. Sri K. Shahi, Advocate, has also assailed the validity of the selection that wrong observation has been made qua Muslim Ali and further cancellation was not at all justifiable in the fact and circumstances of the case. He referred to the shortcoming which were apparent in the Vigilance report at page Nos. 15, 34, 41, 49 respectively.

13. Sri O.P. Mishra, Advocate appeared for one set of petitioners and his main submission was based on promissory estoppel by contending that once admission has been accorded and admission has been acted upon and petitioners had pursued their course up to last and only result was to be declared, then action which has been taken is totally arbitrary and unjustifiable.

14. Sri Rajiv Mishra, Advocate appeared for one set of petitioners and contended that ultimate directions which have been issued by the State Government are also of no consequence, inasmuch as said directives is dependent on the approval of the National Council for Teachers Education and further it has been asserted that theory of fraud cannot be applied generally and here in the present case generalized theory of fraud has been applied of and no specific allegation of fraud has come forward and against the incumbent and candidates against whom there had been some allegations they have to be Identified and have to be thrown out in stead of undertaking exercise of mass cancellation. Much stress has also been laid by Sri Rajiv Misra, Advocate on the principles of promissory estoppel qua reasonableness of the period in which action ought to have taken. In this background it has been suggested that decision taken is not at all fair decision and same was tainted with arbitrariness.

15. Sri C.B. Yadav, learned Chief Standing Counsel appearing for the State of U.P. on the other hand countered the said submissions by contending that under the Vigilance Establishment Act 1965 authority has been vested to make enquiry qua the malpractice by the authorities and here in the present case malpractice which has been done for extraneous consideration in B.T.C Entrance Examination 2001 was to be inquired into and same has been inquired and malpractice has been found to be established and petitioners are beneficiaries of the aforesaid malpractice committed by the authority as such rightful decision has been taken for cancellation of entire examination, He further contended that motive has been found for misusing the authority by the authority concerned entrusted with the task of holding of free and fair examination and material is their for cancellation of entire examination and charges have been found to be true and as the sanctity of the examination stands polluted as such no interference is warranted by this Court and writ petition is liable to be dismissed.

16. The first question is being adverted to i.e. Qua the authority of Vigilance Establishment for recommending cancellation of the examination. Much emphasis has been laid on the fact that vigilance department was not at all empowered to hold inquiry In the matter of recruitment/selection of assistant teacher and appointment matter. As per The U.P. Vigilance Establishment Act 1965, Section i specifically mentions that State Government may by notification in the Gazette, specify the offences or classes of offences which are to be investigated by the Uttar Pradesh Vigilance Establishment. Section 4 of U.P. Vigilance Establishment Act 1965 mentions that power of superintendence of U.P. Vigilance Establishment shall vest in the State Government. Thereafter in exercise of power conferred under Sub-section (2) and (3) of Section 2 and Sub-section (1) of Section 4 of U.P. Vigilance Establishment Act 1965 and in partial modification of previous orders regulating the working and conduct of inquiries by U.P. Vigilance Establishment, provisions have been made on 29.08.1977 wherein functions of U.P. Vigilance Establishment has been provided for as follows:- (i) Keep the Government informed of all cases of corruption, bribery, misconduct, misbehavior and other malpractices involving public servants that comes into notice. (ii) Collect intelligence on its own initiative or on the orders of Government to the Vigilance Department relating to corruption of any individual public servant or public servants belonging to department, class or category. (iii) Make inquiries secret or open, and investigation into cases of corruption, bribery, misconduct, misbehavior or malpractices that may be referred to it from time to time by the Government. As per paragraph 11 of this order, this order has to have effect, notwithstanding any thing to the contrary, contained in any other law for time being in force. Government Order dated 12.09.1995 has also been referred to, which provides for clearance from "Rajya Satarkta Samiti" for getting matter investigated by Vigilance Establishment.

17. On the touchstone of the provisions and Government Order referred to above, the issue is being looked into. Authority of Vigilance Establishment to make enquiry and investigation into cases of corruption, bribery, misconduct,

misbehavior or of malpractices is not disputed qua public servants and to keep government informed of the same. Here after declaration of result, various complaints had been received qua malpractices committed in holding of the examination. Minister of Basic Education on 06.12.2003 directed for holding of enquiry and pursuant thereto Secretary Basic Education on 02.01.2004 asked Director State Council for Education Research and Training, U.P. Lucknow to appoint Ravi Pratap Verma, Joint Director of Education as Enquiry Officer for holding enquiry into charges of illegalities, malpractices and manipulation committed in B.T.C. Entrance Examination 2001. Sri Ravi Pratap Verma conducted enquiry and submitted report to the Government on 30.04.2004, thereafter, Secretary on 07.07.2004 recommended for holding vigilance enquiry and same was approved by Chief Minister on 16.07.2004 and matter was sent to Vigilance Establishment on 03.08.2004, pursuant to which report has been submitted. Conduct of Government Servant in holding public examination was subject matter of enquiry/investigation and after enquiry report has been submitted. Allegations were regarding malpractices and corrupt practices having being practiced in the public examination by government servants, misusing their official position, faced with such situation the State Government had full authority to refer for enquiry/investigation to the Vigilance Establishment as on account of such conduct of officials, the purity and sanctity of the public examination was at stake. Validity of procedure adopted in holding of examination has to be necessarily looked into, when issues are raised qua conduct of officials in conducting and holding of the examination, and it cannot be said that Vigilance Establishment has no such authority. Vigilance Establishment is not acting as an expert in the field as merit of the question and answer is not being examined and too the contrary attempt is being made to find answer to the larger question as to whether examination has been held in free or fair manner or extraneous consideration have prevailed and results have been manipulated making examination a farce.

18. Here in the present case validity of the examination was not being investigated rather conduct of the authority who had conducted the examination was being looked into and while conducting the aforesaid inquiry/investigation the validity of examination was also necessary to be examined. Thus in the present case it is totally incorrect to suggest that Vigilance Establishment had no jurisdiction to look into the question of validity of the Examination and made consequential recommendation of action against erring officials and for cancellation of examination. Further non compliance of the provisions as contained in Government Order dated 12.09.1995 of getting clearance from "Rajya Satarkata Samiti" would not vitiate the enquiry report, for the simple reason that power of State Government to get matter investigated by Vigilance Establishment has not at all been curtailed by any means. This particular Government Order is mere procedural one, and does not override the provisions of the 1965 Act and the orders issued, and further the pre-requisite terms and conditions even of this Government Order is fulfilled as initially enquiry was got

conducted by Sri R.P. Verma, Joint Director of Education departmentally and the matter entrusted for enquiry was of public importance.

19. At this juncture the judgment of Hon"ble Apex Court in the case of Madhyamic Shiksha Mandal, M.P. Vs. Abhilash Shiksha Prasar Samiti and Others, is being looked into wherein Hon"ble Apex Court has deprecated interference by High Court on technicalities, in the matter where there has been malpractice in examinations and it is difficult to identify innocent students, and decision has been taken to cancel the examination. Relevant paragraph 2 is being being quoted below:

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 place 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.

20. The gist of the matter is that technicalities shall not override and take front seat in all these matters where purity and sanctity of public examination is at stake. Here non taking of clearance from "Rajya Satarkata Samiti" in the fact of present case is of no consequence and would not vitiate the investigation/enquiry conducted by Vigilance Establishment by any means.

21. The Second question to be answered is as to whether power of cancellation in the present case has been exercised within reasonable period of not. Hon''ble Apex Court in the case of The State of Gujarat Vs. Patil Raghav Natha and Others, Mansaram Vs. S.P. Pathak and Others, Devinderpal Singh Vs. Govt. of National Capital Territory of Delhi, State of Orissa v. Brindaban Sharma has taken the view that exercise of power is always subject to inherent limitation of power being exercised within a reasonable period, and as to what would be the reasonable period is dependent upon different facts situation peculiar to each case. Said legal preposition is not at all disputed. Now in the fact of the present case it is to be seen as to what is the peculiar situation in the present case. Here undisputed position is that before declaration of result two letters were written by Registrar, Departmental Examination, U.P. on 17.05.2003 and 23.05.2003 respectively highlighting certain discrepancies of examination which was conducted in respect of B.T.C Entrance Examination 2001. Pursuant to the said letter State Government on 02.06.2003 passed order giving therein categorical direction for declaration of result but caution was there i.e. after removing the defects pointed out. This is not at all the case of the petitioners that at any point of time defect which has been pointed had ever been rectified. Result in question was declared on 03.07.2003 just within a period of one moth without undertaking any exercise whatsoever. After declaration of result, various complaints were received thereafter letter was sent by the Special Secretary to the Director, State Council for Education Research and Training, Lucknow on 26.07.2003 asking him as to who was responsible in permitting the candidates for appearing in the B.T.C Entrance Examination 2001. By this letter report was called for alongwith with complete record on 29.07.2003 and Director, State Council for Education Research and Training, Lucknow on 28.07.2003 submitted report and thereafter Minister Basic Education as various other complaints have been received issued direction for holding of inquiry and thereafter Secretary Basic Education vide letter dated 1.2.2004 asked the Director State Council for Education Research and Training U.P. Lucknow to appoint Sri R.P. Verma Joint Director of Education as enquiry officer to hold the enquiry qua the illegality committed in the B.T.C. Entrance examination 2001 and submit his report. Thereafter report was submitted by Sri R.P. Verma on 8.4.2004. and copy of this

report also submitted to the State Government on 30.4.2004. The Government pursuant to report dated 30.4.2004, on 7.7.2004 recommended for holding vigilance inquiry and the Chief Minister of the State on 16.7.2004 accorded approval for holding inquiry and on 3.8.2004 entire matter was submitted to the Vigilance Establishment U.P. at Lucknow and report was submitted on 23.07.2005 and thereafter Cabinet decision has been taken for cancellation for entire examination. Series and sequence of dates and events clearly establish that right from the beginning examination in question was under cloud on account of material irregularities and malpractices having being committed in the B.T.C examination 2001. As such in the peculiar fact and circumstances of the present case, it can not be said that power of cancellation has not been exercised within a reasonable period.

22. Now the next question posed is as to whether power of cancellation has been rightly and validly exercised in fact of the present case or same has been exercised wrongly and arbitrarily? Before proceeding to answer the question posed above, the view point of Hon''ble Apex Court is being looked into. Hon''ble Apex Court in the case of Union of India and Others Vs. O. Chakradhar, has taken the view that where mischief in conducting the selection was so widespread and all pervasive, affecting the result and it was difficult to identify the persons unlawfully benefited or wrongfully deprived of selection then in that event whole selection should be canceled. Relevant paragraph 8 of the said judgment is being quoted below:

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.

23. Hon''ble Apex Court in the case, of Union of India and Ors. v. Rajesh P.U. reported in 2003 (97) SCC 285 has taken the view that when illegalities are identifiable then entire selection ought not to be canceled. Relevant paragraph-6 of the aforesaid judgment is being quoted below:

6. On a careful consideration of the contentions on either side in the light of the materials brought on record, including the relevant portions of the report said to have been submitted by the Special Committee constituted for the purpose of inquiring into the irregularities, if any, in the selection of candidates, filed on our directions-which report itself seems to have been also produced for the perusal of the High Court- there appears to be no scope for any legitimate grievance against the decision rendered by the High Court. There seems to be no serious grievance of any malpractices as such in the process of the written examination-

either by the candidates or by those who actually conducted them. If the Board itself decided to dictate the questions on a loudspeaker in English and Hindi and none of the participants had any grievance in understanding them or answering them, there is no justification to surmise at a later stage that the time lapse in dictating them in different languages left any room or scope for the candidates to discuss among them the possible answers. The posting of invigilators for every ten candidates would belie any such assumptions. Even that apart, the Special Committee constituted does not appear to have condemned that part of the selection process relating to conduct of the written examination itself, except noticing only certain infirmities only in the matter of evaluation of answer sheets with reference to correct answers and allotment of marks to answers of some of the questions. In addition thereto, it appears that the Special Committee has extensively scrutinized and reviewed the situation by re-evaluating the answer sheets of all the 134 successful as well as the 184 unsuccessful candidates and ultimately found that except 31 candidates found to have been declared successful though they were not really entitled to be so declared successful and selected for appointment there was no infirmity whatsoever in the selection of the other successful candidates than the 31 identified by the Special Committee. In the light of the above and in the absence of any specific or categorical finding supported by any concrete and relevant material that widespread infirmities of an all 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.

24. The common thread running in legal propositions quoted above is clear that examination on the whole can be cancelled only when there is material leading to inference that there are widespread infirmities of all pervasive nature, affecting the result and it was difficult to identify the persons unlawfully benefited or wrongfully deprived of selection. Exercise has to be undertaken for finding out as to whether complaint is localized one liable to be identified or same is large scale and widespread one, or the illegality and irregularity are so intermixed with the

whole process of selection that it becomes impossible to sort out the right from the wrong or viceversa.

25. On the touchstone of the proposition quoted above, the action of State is being looked into. State Government after receiving complaint qua various malpractices committed in the examination by officials entrusted with the task of holding of examination asked the Vigilance Establishment to hold enquiry. Vigilance Establishment in its turn has held the enquiry and found that there was large scale malpractice in the said conduct of examination. Vigilance Establishment has submitted its report concluding that whole selection smacks of mala fides and arbitrariness. All norms have been violated with impunity right from the stage of entertaining application till the stage of declaration of result. Some of the glaring irregularities which have been noted by Vigilance Establishment are as follows:

(1) Total 5,88,130 candidates had undertaken the examination. Answer sheet of merely 4674 candidates finally selected and 2345 of wait list has been produced and rest has been deliberately withheld so that there can be no comparative evaluation with the answer sheets of unsuccessful candidates.

(2) Total 21,219 candidates were permitted provisionally to undertake the examination, out of whom only 760 had filled up examination form and rest had been illegally permitted to undertake the examination even without having filled examination form and 84 out of these have been selected.

(3) Total eleven hundred candidates had undertaken the examination, even without appending the requisite fee in the shape of draft.

(4) In active collusion with computer Firms, the said officials right from beginning till the end have made large scale manipulation, on account of which entire examination stands vitiated.

(5) Deliberately instructions was issued to weed out evidence in the shape of pre and post examination data base, so that actual position may not emerge. The five CDs. made available separately by Computer Firms has not at all been made available and to the contrary one CD, purported to be compilation of aforementioned five CD has been produced. In the event of said five CDs being produced the way and manner in which punching had been taken place, could have been known.

(6) Difference of marks qua 289 candidates in between final result declared by Mohammed Sayeed and the marks finalized by Computer Firms Data Soft Computer and Finle Computer has been reflected.

(7) In the answer sheets made available there is 50% to 60% overwriting and cutting in answer sheets. Answer sheets have been changed and attempt has been made to correct the answer sheet by overwriting or filling up answer in blank spaces to extend undue benefit to such candidates.

26. Apart from the said irregularities various other illegalities have been pointed out. Report of Vigilance Establishment is exhaustive one, pointing out the way and manner, in which purity and sanctity of exam has been polluted and done away with. Here the problem is not at all localized one rather to the contrary entire examination stands vitiated as practically impossible situation has been sought to be created by getting record in question misplaced so that no comparative evaluation is possible qua unsuccessful candidates. Out of 5,88,130 answer-sheets only answer sheets available are 4674 qua selected candidates and 2345 qua wait listed candidates.

27. Much stress has also been laid on the fact that verification could have been done by the data sheet which were available at the respective DIET. As far as data sheets are concerned same cannot be made foundation and basis for taking decision. There was big issue that large scale manipulations have been made in the answer sheets. Answer sheet qua both the papers comprising 200 marks was relevant material inasmuch as these 200 marks would have made all the difference in the selection which was based on merit. As to whether data sheet contained correct entry qua the marks obtained in written examination, could have been varified only by Answer sheets and here only few answer sheets were available and majority was missing. Even before this Court remaining answer sheets have been produced and perusal of the answer sheet clearly reflects overwriting and cutting and further various columns have not been filled up and in the various answer sheets signature of applicants, signature of invigilator, and center superintendent are missing. Further even in remaining answer sheet which has been produced clearly demonstrate the causal way and manner in which examination has been conducted. One Sarvesh Kumari of District Moradabad, District Code-61 Roll No. 726783 Center Ambika Prasad Inter College, has written a letter to the Principal of the college on the back of the answer sheet. Xerox copy of answer sheet has been found qua following:- (i) District Bareilly, District Code-15 Roll No. 206482 Center Govt. Kanya Inter College, (ii) District Bareilly, District Code-15 Roll No. 202063 Center F.R. Islamiya Inter College, (iii) District Bareilly, District Code-15 Roll No. 200746 Center Manahas Bhushan Inter College, (iv) District Ghaziabad District Code 04 Roll No. 442174 Center Nagar Palika Baliha Inter College (v) District Ghaziabad District Code 04 Roll No. 440635 Center Bhagirath Senior Secondary School Sanjay Nagar, (vi) District Ghaziabad District Code 04 Roll No. 438139 Center Jawahar lal Kanya Inter College. (vii) District Ghaziabad District Code 04 Roll No. 438146 Center Jawahar lal Kanya Inter College. Details of same are follows:

District	Over	Signature	Signature	Signature	Column	Total	writing/cut	of
center	of	total	answer-	ting	nvigilator	superinten	applicant	missing
missing	missing	d/Seal	missing	the	missing	district.	Deoria	56
00	00	47	04	26	80			
Azamgarh	20	00	24	00	4	50	Kaushambi	57
02	44	12	11	84	Ballia	74	02	26
02	40							
93	Basti	18	01	16	00	6	36	Gonda
15	00	14	02	8	37	Allahabad	71	00
18	01	27	80					
Rampur	64	00	33	00	13	75	Moradabad	27
00	04	01	18	33	Baghpat	56	00	15
02								
03	61	Lakhimpur	89	00	38	00	03	93
Khiri	Meerut	36	00	30	01	02	46	Agra
59	00							

17 02 42 93 Mau 47 00 54 01 18 67 Chandauli 34 01 7 04 20 43 Ghazipur 43 00
18 00 47 69 Bulandshahar 72 00 39 02 40 89 Mainpuri 64 00 06 01 18 95
Aligarh 35 00 08 01 16 41 Mathura 75 00 58 04 23 96 Etah 58 02 15 01 28 84
J.P. Nagar 37 00 29 01 26 39 Kanpur 78 00 16 01 30 95 Nagar Mahamaya 37 01
08 01 13 40 Nagar Firojabad 52 00 62 03 38 92 Baghpat 24 00 4 10 25 41
Varanasi 21 00 10 00 30 42 Faizabad 29 00 06 01 19 38 Sonebhadra 70 01 11 01
33 90 Bhadohi 43 00 56 19 50 85 Barrenly 27 00 17 02 28 88 Badaun 81 00 28
01 34 95 Pilibhit 85 01 03 01 14 94 Sahajahanpur 49 01 23 01 39 95 Barabnaki
69 00 21 01 34 78 Raibareli 15 00 30 01 12 87 Gorakhpur 36 00 13 02 06 44
Firojabad 52 00 62 03 38 92 Kannauj 39 01 10 01 11 46 Etawha 38 00 19 01 16
46 Kanpur 75 00 04 03 10 97 Dehat Auriya 36 00 17 00 19 47 Mahoba 33 00 14
00 15 49 Mirzapur 36 00 39 01 28 88 Jaunpur 18 01 35 03 42 69 Pratapgarh 73
00 32 03 62 89 Sitapur 31 00 18 03 43 89 Banda 41 01 10 01 26 46 Jalaun 63
01 21 04 30 87 Sant Kabir 24 01 34 01 26 42 Nagar Kushinagar 58 00 57 01 39
77 Bharaich. 26 00 39 02 11 41 Jhansi 64 00 18 02 40 90 Hamirpur 39 00 08 01
14 45 Farrukhabad 34 00 23 02 10 45 Siddhartnagar 62 00 21 05 32 86
Maharajganj 34 00 27 01 16 46 Balrampur 33 00 00 02 18 44 Sarawasti 34 00
26 00 22 42 Sahujimah 30 00 14 00 20 40 araj/Chitra kut Ambedkar 18 00 16
01 26 30 nagar Lalitpur 78 00 00 00 09 91 Bijnor 66 00 24 01 32 89 Fatehpur 19
00 39 00 32 88 Gautam 05 00 34 03 16 46 Budh Nagar Saharanpur 43 01 38 02
41 96 Ghazibad 26 00 18 01 19 40 Unnacf 73 00 39 03 30 88 Hardoi 10 00 35
01 45 93 Muzaffarna 77 00 29 02 49 85 gar Sant Ravi 75 00 56 02 45 88 Das
Nagar Lucknow 63 00 20 02 46 84

28. In the present case illegalities and irregularities found are so intermixed with the process of selection, that it is practically impossible to sort out the right from the wrong. This Court in such matters cannot interfere as a matter of right, until and unless the decision is illogical, suffers from procedural impropriety or there is no material in support of the same or the action impugned shocks the conscience of Court. Here sufficient material has been there before the Vigilance Establishment to make such recommendation and the State Government has not committed any error in accepting the aforementioned recommendation.

29. Judgment of the Hon"ble Apex Court in the case of Union of India v. Rajesh P.O. reported in 2003 (97) SCC 285 is clearly distinguishable, inasmuch as there were total 318 candidates and only qua 31 candidates it was found that they have been illegally declared successful though they were not entitled. From the own showing in the judgment of Hon"ble Apex Court there was no grievance of any malpractice and candidates who had been illegally benefited had been identified. Here in the present case there is allegation of malpractice and impossible situation has been created by getting remaining answer sheets misplaced, thus the ratio of the aforesaid case is not at all applicable to the fact of the present case, inasmuch as here authorities concerned have taken conscious decision based on factual position seeing the nature of gravity of the allegations.

30. Much stress has also been laid on the applicability of principles of promissory estoppel and legitimate expectation in the fact of the present case. In this connection reliance has been placed on the judgment of Hon''ble Apex Court in the case of Shri Krishnan Vs. The Kurukshetra University, Kurukshetra, ; Ved Pal Singh v. Madhyamik Shiksha Parishad reported in 1987 UPLBEC 298; Pravesh Kumar Dubey v. University of Kanpur reported in 1990 (2) UPLBEC 1053; Kumari Pratima Srivastava v. Purvanchal University reported in 1994 (1) ESC 74; Abhishek Srivastava v. State of U.P. and Ors. reported in 1998 (3) ESC 2158 and J.P. Bansal Vs. State of Rajasthan and Another,

31. The principles of promissory estoppel and legitimate expectation are based on equitable consideration and while applying said principles the fact and circumstances of the case and peculiar characteristic of the case is to be seen. It is true that in the present case result has been declared and petitioners have been accorded admission and they had pursued their course till the end and before declaration of result entire examination has been canceled on the ground that examination itself -on the basis of which admission had been taken suffered from malpractice. Once an action is outcome of manipulation and maneuvering and the same is established by fact and material on record then principles of promissory estoppel and legitimate expectation cannot be pressed, as fraud and justice cannot dwell together. Much stress has also been laid on the fact that fraud cannot be generalized. Once fraud/manipulation has been practiced and it is impossible to find out who have been illegally deprived of selection and report is there that it is not free, fair and transparent examination rather same is motivated one then authorities concerned have full authority to cancel the same. Here before final result could be declared manipulation and maneuvering has been exposed thus creating situation wherein State Government in order to maintain transparency and fairness has taken decision.

32. In matters like one in hand, wherein entire examination is vitiated on-account of malpractices being adopted then individual case of innocence loses its relevance. Compliance of natural justice in such a situation would not be possible as mischief played is so widespread and all pervasive affecting the result making it not only difficult but impossible to find out persons who have been wrongfully deprived of their selection. Here no individual has been charged for using or adopting unfair means so that he can defend himself, rather to the contrary entire examination has been held to be vitiated on account of adoption of malpractice by authorities on large scale, as such entire examination has been undone. Hon''ble Apex Court in the case of The Bihar School Examination Board Vs. Subhas Chandra Sinha and Others, has taken the view that individual notice to candidates for providing opportunity was not necessary for representing their case, when entire examination was being cancelled. Guilt of selected candidates is not the question, the larger question is can such an examination tainted with malpractices be acted upon, specially when the candidates are to function as teachers in primary institution or Junior High School in future. The answer in public interest would be No. State Government has chosen not to give clearance

to the said examination tainted with malpractices and this Court can not otherwise direct.

33. Arguments have also been advanced that petitioners have been forced to compete with un-equalls and the benefit which has been extended to the candidates who are selected is that they shall not be required to undergo further training subject to approval by National Council for Teachers Educations. Here examination has been cancelled on the ground of malpractice, it would have been much more appropriate in case re-examination was conducted and opportunity was afforded to each and every candidate who had undertaken the examination in the past in stead of asking the petitioners to compete with candidates who have subsequently acquired qualification.

34. In these circumstances and in this background present bunch of the writ petition are dismissed with observations that examination for Basic Teachers Certificate -2001 be conducted by the State Government only amongst the candidates who had undertaken examination on the last occasion and in case petitioners are successful then petitioners be not forced to undergo training. Passing of this order will not prevent the State Government from undertaking subsequent B.T.C examination 2005 or any other examination in this respect.