$~80 to 89

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ W.P.(C) 2268/2020, CM APPL. 7921/2020, CM APPL. 44237/2021 & CM APPL. 17915/2022

NEHRU YUVA KENDRA SANGATHAN .....Petitioner
Through: Mr. Vineet Dhanda, CGSC with Mr. Karthik Sood and Mr. Saksham Sethi, Advs.

versus

ANSHU .....Respondent
Through: Mr. Anuj Aggarwal, Mr. Tanya Rose, Mr. Mansas Verma, Ms. Kritika Matta, Mr. Avinash Kumar and Mr. Pradeep Kumar, Advs.

\+ W.P.(C) 6550/2020, CM APPL. 22917/2020, CM APPL. 25426/2020 & CM APPL. 44314/2021

NEHRU YUVA KENDRA SANGATHAN .....Petitioner
Through: Mr. Vineet Dhanda, CGSC with Mr. Karthik Sood and Mr. Saksham Sethi, Advs.

versus

VINAY MALIK AND OTHERS .....Respondents
Through: Mr. Anuj Aggarwal, Mr. Tanya Rose, Mr. Mansas Verma, Ms. Kritika Matta, Mr. Avinash Kumar and Mr. Pradeep Kumar, Advs.
Mr. Nitin K. Gupta, Mr. Sanchay Mehrotra and Ms. Pranjal Vyas, Advs. for R-2 to 5.

\+ W.P.(C) 6551/2020, CM APPL. 22919/2020, CM APPL. 25431/2020 & CM APPL. 44240/2021

NEHRU YUVA KENDRA SANGATHAN .....Petitioner

Through: Mr. Vineet Dhanda, CGSC with Mr. Karthik Sood and Mr. Saksham Sethi, Advs.

versus

KARAN PAHWA .....Respondent
Through:

\+ W.P.(C) 6552/2020, CM APPL. 22921/2020, CM APPL. 25425/2020 & CM APPL. 44238/2021

NEHRU YUVA KENDRA SANGATHAN .....Petitioner
Through: Mr. Vineet Dhanda, CGSC with Mr. Karthik Sood and Mr. Saksham Sethi, Advs.

versus

JYOTI DAHIYA .....Respondent
Through:

\+ W.P.(C) 6572/2020, CM APPL. 22978/2020, CM APPL. 25428/2020 & CM APPL. 44245/2021

NEHRU YUVA KENDRA SANGATHAN .....Petitioner
Through: Mr. Vineet Dhanda, CGSC with Mr. Karthik Sood and Mr. Saksham Sethi, Advs.

versus

RAGHAV .....Respondent
Through:

\+ W.P.(C) 6578/2020, CM APPL. 22987/2020, CM APPL. 25427/2020 & CM APPL. 44266/2021

NEHRU YUVA KENDRA SANGATHAN .....Petitioner
Through: Mr. Vineet Dhanda, CGSC with

Mr. Karthik Sood and Mr. Saksham Sethi, Advs.

versus

RITU & ORS. .....Respondents

Through: Mr. Anuj Aggarwal, Mr. Tanya Rose, Mr. Mansas Verma, Ms. Kritika Matta, Mr. Avinash Kumar and Mr. Pradeep Kumar, Advs.

Mr. Nitin K. Gupta, Mr. Sanchay Mehrotra, Ms. Nisha Sharma and Ms. Pranjal Vyas, Advs. for R-3 and 5.

\+ W.P.(C) 6581/2020, CM APPL. 22989/2020, CM APPL. 25429/2020 & CM APPL. 44239/2021

NEHRU YUVA KENDRA SANGATHAN .....Petitioner

Through: Mr. Vineet Dhanda, CGSC with Mr. Karthik Sood and Mr. Saksham Sethi, Advs.

versus

SACHIN .....Respondent

Through:

\+ W.P.(C) 6583/2020, CM APPL. 22991/2020, CM APPL. 25423/2020 & CM APPL. 44272/2021

NEHRU YUVA KENDRA SANGATHAN .....Petitioner

Through: Mr. Vineet Dhanda, CGSC with Mr. Karthik Sood and Mr. Saksham Sethi, Advs.

versus

DEVENDRA KUMAR .....Respondent

Through:

\+ W.P.(C) 6584/2020, CM APPL. 22993/2020, CM APPL.

25424/2020 & CM APPL. 44267/2021

NEHRU YUVA KENDRA SANGATHAN .....Petitioner
Through: Mr. Vineet Dhanda, CGSC with Mr. Karthik Sood and Mr. Saksham Sethi, Advs.

versus

MAHAK .....Respondent
Through:

\+ W.P.(C) 6591/2020, CM APPL. 23005/2020, CM APPL. 25430/2020 & CM APPL. 44271/2021

NEHRU YUVA KENDRA SANGATHAN .....Petitioner
Through: Mr. Vineet Dhanda, CGSC with Mr. Karthik Sood and Mr. Saksham Sethi, Advs.

versus

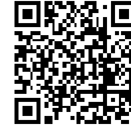
SHALU .....Respondent
Through:

CORAM:
HON'BLE MR. JUSTICE C. HARI SHANKAR
HON'BLE MR. JUSTICE ANOOP KUMAR MENDIRATTA

JUDGMENT (ORAL)
% 12.11.2024

1. The respondents in these writ petitions applied for appointment as District Youth Coordinators in the Nehru Yuva Kendra Sangathan[1]. The process of appointment involved their undertaking an online examination, to be conducted by the Institute of Banking Personnel

[1] "NYKS" hereinafter



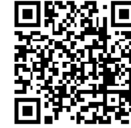
Selection[2]. The written examination was conducted on 30 April 2019. Results were declared on 5 June 2019. The respondents were found to be successful in the written examination and were shortlisted for interview. The interview was conducted between 8 and 13 July 2019. A final list of selected candidates was displayed on 7 August 2019. All the respondents in these writ petitions figured in the list of selected candidates so displayed. On 16 August 2019, offers of appointment were issued to the respondents. The respondents accepted the offers. Police verification and medical examination of the respondents was conducted on 19 August 2019. Documents were required to be submitted by the respondents for verification on 20 August 2019. This was also done.

2. Pursuant thereto, orders of posting were issued on 20 August 2019 to 79 candidates. The respondents were not issued any orders of posting. They, therefore, represented to the petitioners on 23 September 2019 and 1 October 2019. On the representation eliciting no response, the respondents approached the Central Administrative Tribunal[3] by way of OA 3004/2019.

3. The Tribunal passed an interim order on 11 October 2019, directing the petitioners to consider the feasibility of issuing orders of appointment to the respondents. The order, however, could not be implemented and no orders of appointment came to be issued to the respondents.

---

[2] "IBPS" hereinafter
[3] "the Tribunal" hereinafter

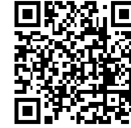


4. On 28 November 2019, the NYKS issued an order cancelling the candidature of the respondents. The reason for this was, purportedly, because they had been found to have been using unfair means in the online examination which was conducted on 30 April 2019.

5. As the Tribunal passed no interim order, 17 other candidates, who had also participated in the examination, were appointed against the petitioners' vacancies, *vide* order dated 6 January 2020. However, the respondents did not choose to implead any of the 17 appointed candidates as respondents in the OA.

6. Mr. Vineet Dhanda, learned Counsel for the petitioners, submits that the candidature of 21 candidates was cancelled, of which 10 approached the Tribunal.

7. Before the Tribunal, NYKS submitted that, on 16 September 2019, a complaint had been received from one Mohit, alleging that unfair means had been employed during the conducting of the online examination at the Shimla and Karnal Centres and that a large number of candidates from the said centres were selected. This, according to the said complaint, threw doubt regarding the fairness of the manner in which the examination was conducted at the said centres. This complaint, according to the NYKS, had been forwarded to the IBPS and the cancellation of the respondents' candidature was pursuant to a report from the IBPS.



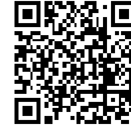
8. The OAs filed by the respondents before the Tribunal stand adjudicated by the impugned judgment dated 30 January 2020.

9. Aggrieved thereby, NYKS has filed the present petition before this Court, invoking Article 226 of the Constitution of India.

10. Re. cancellation of the respondents' candidatures

10.1 Fundamentally, the Tribunal has proceeded on the basis that the respondents' candidatures could not have been cancelled without informing them of the fact that it had been found that they had used unfair means, and affording them an opportunity to rebut the said allegation. Paras 11 to 15 of the impugned judgment of the Tribunal may be reproduced thus:

> "11. It is here, deviation or departure took place. Though the offer of appointment was issued simultaneously to all the 100 candidates and the applicants have accepted the offer, their names were not included in the order dated 20.09.2019. *In case there existed any reasons for doing that, the respondents were under obligation to convey them*. One after the other, the applicants went on approaching the Tribunal, and even though an interim order was passed, the respondents proceeded to issue the orders dated 28.11.2019. It reads:
>
> > "1. Please refer to this office reference no. NYKS/ Pers.: Apptmnt/DYV/809/2019 dated 16.08.2019.
> >
> > 2. As you are aware, it was already indicated in the Instructions attached to the Call letter for Online Exammation-2019 (Batch-II) that "Your response (answer) will be analysed with other candidates to detect patterns of similarity of right and wrong answers. If in the analytical procedure adopted in this regard, it is inferred/concluded that the responses have been shared and scores obtained /are not genuine/valid, your candidature may be cancelled and/or the result withheld."
> >
> > 3. After conducting post-exam analysis of the answer



sheets, it has since been informed by IBPS that you were found to have used unfair means in the online examination conducted on 30.04.2019.

4. Therefore, as already indicated to you in the Guidelines, your candidature in the said online examination hereby stands cancelled. Consequently, the offer of appointment letter NO.NYKS/Pers:Appttmnt/DYV/809/2019 dated 16.08.2019 also stands canceled and withdrawn.

5. Please also note that NYKS reserves its right to take appropriate legal action both Civil and/or Criminal against you.

6. This issues with the approval of the Competent Authority."

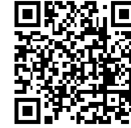
12. There is no reference to any specific acts or omission on the part of the applicants, warranting such action. Everything was pushed under the carpet of a clause contained in the call letter issued to the applicants and the so-called analysis by IBPS.

13. It is not uncommon that malpractices take place in the examinations conducted by various agencies. The law is fairly well settled that if any candidate is found to have resorted to malpractice, the agencies are entitled to take punitive actions. However, two aspects become relevant. The first is that *before any punitive action is taken against a candidate, be it in the form of cancellation of candidature or debarring him for future examinations, the law requires that a show cause notice must be issued to him, indicating the nature of allegations. It is only after the explanation offered by the candidate is considered, that a final order can be passed.*

14. *The second is that the action of this nature, if any, must be taken before the final results are declared. Once the results of candidates are declared, the agency cannot re-open the issue, that too, selectively.*

15. Viewed in this context, the steps taken by the respondents cannot be countenanced. Firstly, no notice whatever was issued to the applicants for cancellation of offer of appointment or the order of provisional appointment."

10.2 In arriving at this decision, the Tribunal has relied on the Constitution Bench of the Supreme Court in ***Board of High School***



***and Intermediate Education, UP v Ghanshyam Das Gupta*[4].**

10.3 The decision of the Tribunal is unexceptionable. The issue is fully covered by the Constitution Bench decision in ***Ghashyam Das Gupta***, not only in law but even on facts. In that case, too, the candidature three students of a college, who participated in an examination, and who had passed, were cancelled without disclosing any reason. The candidates petitioned the High Court, before whom the authorities contended that they had resorted to unfair means and that, therefore, their candidature had been rightly cancelled. The candidates contended that they were entitled to an opportunity to rebut the allegations against them before cancellation of their candidature.

10.4 The Supreme Court observed, in para 3 of the report, that it was concerned with only one of the contentions advanced by the candidates, "namely, whether the respondents were entitled to a hearing before the appellant decided to cancel the results". The Division Bench of the High Court ultimately held in favour of the candidates, that they were entitled to an opportunity of hearing before their candidature was cancelled. Aggrieved thereby, the Board of Higher Education appealed to the Supreme Court.

10.5 The Supreme Court held thus:

> "7. The first question therefore which falls for consideration is whether any duty is cast on the Committee under the Act and Regulations to act judicially and therefore it is a quasi-judicial body. What constitutes "a quasi-judicial act" was discussed in the ***Province of Bombay v Kusaldas S. Advani***[5]. The principles

---

[4] AIR 1962 SC 1110
[5] (1950) SCR 621, 725

have been summarised by Das, J. (as he was then) at p. 725 in these words:

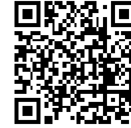
> "The principles, as I apprehend them are:
>
> (*i*) that *if a statute empowers an authority, not being a court in the ordinary sense, to decide disputes arising out of a claim made by one party under the statute which claim is opposed by another party and to determine the respective rights of the contesting parties who are opposed to each other, there is a lis and prima facie and in the absence of anything in the statute to the contrary it is the duty of the authority to act judicially and the decision of the authority is a quasi-judicial act*; and
>
> (ii) that *if a statutory authority has power to do any act which will prejudicially affect the subject, then, although there are not two parties apart from the authority and the contest is between the authority proposing to do the act and the subject opposing it, the final determination of the authority will yet be a quasi-judicial act provided the authority is required by the statute to act judicially.*

In other words, while the presence of two parties besides the deciding authority will *prima facie* and in the absence of any other factor impose upon the authority the duty to act judicially, the absence of two such parties is not decisive in taking the act of the authority out of the category of quasi-judicial act if the authority is nevertheless required by the statue to act judicially."

8**.** These principles have been acted upon by this Court in later cases : see ***Nagendra Nath Bora v Commissioner of Hills Division Appeals, Assam***[6], ***Radheshyam Khare v State of Madhya Pradesh***[7], ***Gullapalli Nageswara Rao v Andhra Pradesh State Road Transport Corporation***[8], and ***Shivji Nathubha v Union of India***[9]. Now it may be mentioned that the statute is not likely to provide in so many words that the authority passing the order is required to act judicially; that can only be inferred from the express provisions of the statute in the first instance in each case and no one circumstance alone will be determinative of the question whether the authority set up by the statute has the duty to act judicially or not. *The inference whether the authority acting under a statute where it is silent has the duty to act judicially will depend on the express provisions of the statute read along with the nature*

---

[6] **1958 SCR 1240**
[7] **(1959) SCR 1440**
[8] **1959 Supp (1) SCR 319**
[9] **(1960) 2 SCR 775**



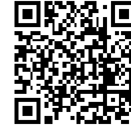
of the right affected, the manner of the disposal provided, the objective criterion if any to be adopted, the effect of the decision on the person affected and other indicia afforded by the statute. A duty to act judicially may arise in widely different circumstances which it will be impossible and indeed inadvisable to attempt to define exhaustively : (vide observations of Parker, J., in ***R. v Manchester Legal Aid Committee***[10]).

9. We must therefore proceed to examine the provisions of the Act and the regulations framed thereunder in connection with matters of this kind to determine whether the Committee can be said to have the duty to act judicially when it deals with cases of examinees using unfair means in examination halls. Under Section 7 of the Act, the Board constituted thereunder has *inter alia* powers to prescribe courses of instruction, to grant diplomas and certificates, to conduct examinations to admit candidates to its examinations, to publish the results of its examinations, and to do all such things as may be requisite in order to further the objects of the Board as a body constituted for regulating and supervising High School and Intermediate education. Under Section 13, the Board has power to appoint and constitute various committees, including the examinations' committee, and under Section 14, the Board can delegate its powers by regulations to such committees. Section 15 gives power to the Board to make regulations with respect to the constitution, powers and duties of committees, the conduct of examinations, and all matters which by the Act may be provided for by regulations. Section 20 gives power to the Board and its committees to make bye-laws consistent with the Act and the regulations.

10. It will be clear from the above that the Act makes no express provisions as to the powers of the committees and the procedure to be adopted by them in carrying out their duties, which are left to be provided by Regulations, and we have therefore to look to the Regulations framed under Section 15 to see what powers and duties have been conferred on various committees constituted under the Regulations. Section 13(1) makes it incumbent on the Board to appoint the Committee and Chapter VI of the Regulations deals with the powers and duties of the Committee. Rule 1(1) of Chapter VI with which we are particularly concerned reads as follows:

> "1.(1) It shall be the duty of the Examinations' Committee, subject to sanction and control of the Board.

[10] **(1952) 2 QB 418**



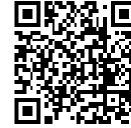
(i) to consider cases where examinees have concealed any fact or made a false statement in their application forms or a breach of rules and regulations to secure undue admission to an examination or used unfair means or committed fraud (including impersonation) at the examination or are guilty of a moral offence or indiscipline and to award penalty which may be one or more of the following—

(1) Withdrawal of certificate of having passed the examination;

(2) cancellation of the examination;

(3) exclusion from the examination;"

There is however no provision in Chapter VI as to how the Committee will carry out the duty imposed on it by Rule 1(1). Further, there is no express provision in the Act or the Regulations casting a duty on the Committee to act judicially when exercising its powers under Rule 1(1); and the question whether the Committee has to act judicially when exercising these powers will have to be decided on an examination of all the circumstances relevant in the matter. At the same time, there is nothing express in the Act from which it can be said that the Committee is not under a duty to act judicially. It is true that there is no procedure provided as to how the Committee will act in exercising its powers under Rule 1(1) and it is further true that there is no express provision in that rule requiring the Committee to call for an explanation from the examinees concerned and to hear the examinees whose cases it is required to consider. But we are of opinion that the mere fact that the Act or the Regulations do not make it obligatory on the Committee to call for an explanation and to hear the examinee is not conclusive on the question whether the Committee acts as a quasi-judicial body in exercising its powers under Rule 1(1). Even though calling for an explanation and hearing the examinee may not have been made expressly obligatory by the Act or the Regulations, it is obvious that the Committee when it proceeds to decide matters covered by Rule 1(1) will have to depend upon materials placed before it, in coming to its decision. Before the Committee decides to award any penalty it has to come to an objective determination on certain facts and only when it comes to the conclusion that those facts are established that it can proceed to punish the examinee

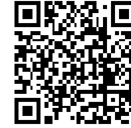


concerned. The facts which the Committee has to find before it takes action are:

> (i) Whether the examinee has concealed any fact or made a false statement in his application form; or
>
> (ii) Whether the examinee has made a breach of the Rules and Regulations to secure undue admission to an examination; or
>
> (iii) Whether the examinee has used unfair means at the examination; or
>
> (iv) Whether the examinee has committed fraud (including impersonation) at the examination; or
>
> (v) Whether the examinee is guilty of moral offence or indiscipline.

Until one or other of these five facts is established before the Committee, it cannot proceed to take action under Rule 1(1). In order to come to the conclusion that one or other of these facts is established, the Committee will have to depend upon materials placed before it, for in the very nature of things it has no personal knowledge in the matter. Therefore, though the Act or the regulations do not make it obligatory on the Committee to call for an explanation and hear the examinee, it is implicit in the provisions of Rule 1(1) that the Committee must satisfy itself on materials placed before it that one or other of the facts is established to enable it to take action in the matter. It will not be possible for the Committee to proceed at all unless materials are placed before it to determine whether the examinee concerned has committed some misconduct or the other which is the basis of the action to be taken under Rule 1(1). It is clear therefore that consideration of materials placed before it is necessary before the Committee can come to any decision in the exercise of its powers under Rule 1(1) and this can be the only manner in which the Committee can carry out the duties imposed on it.

11. We thus see that the Committee can only carry out its duties under Rule 1(1) by judging the materials, placed before it. It is true that there is no *lis* in the present case, in the sense that there are not two contesting parties before the Committee and the matter rests between the Committee and the examinee; *at the same time considering that materials will have to be placed before the Committee to enable it to decide whether action should be taken under Rule 1(1), it seems to us only fair that the examinee against*



whom the Committee is proceeding should also be heard. The effect of the decision of the Committee may in an extreme case blast the career of a young student for life and in any case will put a serious stigma on the examinee concerned which may damage him in later life. The nature of misconduct which the Committee has to find under Rule 1(1) in some cases is of a serious nature, for example, impersonation, commission of fraud, and perjury; and the Committee's decision in matters of such seriousness may even lead in some cases to the prosecution of the examinee in courts. Considering therefore the serious effects following the decision of the Committee and the serious nature of the misconduct which may be found in some cases under Rule 1(1), it seems to us that the Committee must be held to act judicially in circumstances as these. Though therefore there is nothing express one way or the other in the Act or the Regulations casting a duty on the Committee to act judicially, the manner of the disposal, based as it must be on materials placed before it, and the serious effects of the decision of the Committee on the examinee concerned, must lead to the conclusion that a duty is cast on the Committee to act judicially in this matter particularly as it has to decide objectively certain facts which may seriously affect the rights and careers of examinees, before it can take any action in the exercise of its power under Rule 1(1). We are therefore of opinion that the Committee when it exercises its powers under Rule 1(1) is acting quasi-judicially and the principles of natural justice which require that the other party, (namely, the examinee in this case) must be heard, will apply to the proceedings before the Committee. This view was taken by the Calcutta High Court in ***Dipa Pal v University of Calcutta***[11] and ***B.C. Das Gupta v Bijoyranjan Rakshit***[12] in similar circumstances and is in our opinion correct.

12. *It is urged on behalf of the appellant that there are a large number of cases which come up before the Committee under Rule 1(1), and if the Committee is held to act judicially as a quasi-judicial tribunal in the matter they will find it impossible to carry on its task. This in our opinion is no criterion for deciding whether a duty is cast to act judicially in view of all the circumstances of the case. There is no doubt in our mind that considering the totality of circumstances the Committee has to act judicially when taking action under Rule 1(1).* As to the manner in which it should give an opportunity to the examinee concerned to be heard, that is a matter which can be provided by regulations or bye-laws if necessary. As was pointed out in ***Local Government Board v Alridge***[13] *all that is required is that the other party should have an opportunity of adequately presenting his case.* But what

---

[11] **AIR 1952 Cal 594**
[12] **AIR 1953 Cal 212**
[13] **(1915) AC 120**

> the procedure should be in detail will depend on the nature of the tribunal. There is no doubt that many of the powers of the Committee under Chapter VI are of administrative nature; but where quasi-judicial duties are entrusted to an administrative body like this it becomes a quasi-judicial body for performing these duties and it can prescribe its own procedure *so long as the principles of natural justice are followed and adequate opportunity of presenting his case is given to the examinee.* It is not however necessary to pursue this matter further, for *it is not in dispute that no opportunity whatsoever was given to the respondents in this case to give an explanation and present their case before the Committee. We are therefore of opinion that though the view of the High Court that the Committee was acting merely administratively when proceeding under Rule 1(1) is not correct, its final decision allowing the writ petition on the ground that no opportunity was given to the respondents to put forward their cases before the Committee is correct.* We therefore dismiss the appeal. No order as to costs in the circumstances."
>
> (Emphasis supplied)

10.6 Thus, even where there was no statutory obligation to act judicially, or quasi-judicially, or to hear the candidates who were alleged to have employed unfair means, the Supreme Court held that, given the nature of the inquiry that was involved, and the extreme civil consequences that its outcome, if adverse, would visit on the candidates, a duty to act judicially, as also to grant the candidates an opportunity to present their case and be heard, was implicit.

10.7 The decision in ***Ghanshyam Das Gupta***, we may note, was later distinguished by the Supreme Court in cases of mass or large-scale usage of unfair means resulting in the need to cancel the examination altogether, in ***Nidhi Kaim v State of M.P.***[14], ***Bihar School Examination Board v Subhas Chandra Sinha***[15] and ***Sachin Kumar v DSSSB***[16]. Of these, ***Sachin Kumar*** and ***Nidhi Kaim*** merely followed

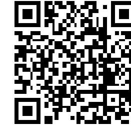
---

[14] **(2016) 7 SCC 615**
[15] **(1970) 1 SCC 648**
[16] **(2021) 4 SCC 631**

Bihar School Examination Board, in distinguishing ***Ghanshyam Das Gupta***. In ***Bihar School Examination Board, Ghyamshyam Das Gupta*** was held not to be applicable in a case of large scale or mass copying, thus:

> "14. Reliance was placed upon ***Ghanshyam Das Gupta*** to which we referred earlier. There the examination results of three candidates were cancelled, and this Court held that they should have received an opportunity of explaining their conduct. It was said that even if the inquiry involved a large number of persons, the Committee should frame proper regulations for the conduct of such inquiries but not deny the opportunity. We do not think that that case has any application. *Surely it was not intended that where the examination as a whole was vitiated, say by leakage of papers or by destruction of some of the answer books or by discovery of unfair means practised on a vast scale that an inquiry would be made giving a chance to every one appearing at that examination to have his say? What the Court intended to lay down was that if any particular person was to be proceeded against, he must have a proper chance to defend himself and this did not obviate the necessity of giving an opportunity even though the number of persons proceeded against was large. The Court was then not considering the right of an examining body to cancel its own examination when it was satisfied that the examination was not properly conducted or that in the conduct of the examination the majority of the examinees had not conducted themselves as they should have. To make such decisions depend upon a full-fledged judicial inquiry would hold up the functioning of such autonomous bodies as Universities and School Board.* While we do not wish to whittle down the requirements of natural justice and fair-play in cases where such requirement may be said to arise, we do not want that this Court should be understood as having stated that an inquiry with a right to representation must always precede in every case, however different."
>
> (Emphasis supplied)

Thus, ***Bihar School Education Board***, decided by a Bench of three Hon'ble Judges, reiterated the principle that compliance with the requirement of grant of an opportunity, and of hearing, was applicable, even if the number of candidates was large. ***Sachin Kumar*** and ***Nidhi Kaim***, as already noted, adopt and follow ***Bihar School***



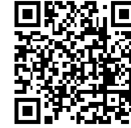
Education Board.

10.8 The prevailing principle appears to be one of *practicability*, even while *audi alteram partem* continues to loom large. Ordinarily, the requirement of grant of a fair opportunity to the allegedly delinquent examinees, or candidates, is not negotiable. If, however, it is impracticable to do so, or if doing so would seriously impact the functioning of the institution, as in a case of large or mass scale copying where, possibly, the entire examination, or the examination at a particular centre, has to be cancelled wholesale, the law cannot require each candidate to be show caused, and heard, before the decision is taken.

10.9 The facts of this case attract ***Ghanshyam Das Gupta***, not ***Sachin Kumar*** or ***Nidhi Kaim***. The number of allegedly delinquent candidates was just 21. What was required was merely an opportunity to them to defend the allegation of unfair means; not a full-fledged domestic inquiry. Failure to grant them the said opportunity, in our view, has rightly been held by the Tribunal to vitiate their cancellation, and we see no reason to interfere with the impugned decision to that extent.

11. Re. observations and findings with respect to 17 candidates appointed in place of the respondents

11.1 On the act of the petitioner in appointing 17 candidates against the vacancies against which the respondents applied, the Tribunal has critically commented, in para 21 and 22 of the impugned judgment, which read thus:



> “21. Soon after the applicants found that their names were wrongfully excluded from the order of posting, they approached this Tribunal. *The administration of any organization, which has the basic respect for principles of law, would have issued notices to the persons, whom the offer of appointment was issued, or at least deferred further steps till the entire issue is examined in detail. Once the issue landed before the Tribunal for adjudication, no responsible officer / authority would proceed to frustrate it by appointing persons in place of those, who were excluded from the order of posting.*
>
> 22. Even while the batch of O.As. was pending before this Tribunal, the respondents have taken hasty steps in filling the vacancies, which were otherwise to be occupied by the applicants herein. It is stated that on 03.01.2020, offer of appointment was issued to as many as 17 candidates to fill the vacancies, as regards which the applicants were already issued the offer of appointment, but were cancelled. In the offer of appointment, the candidates were required to submit the following documents in the prescribed formats. Clause 9 thereof reads:
>
>> “9. Your appointment to the post of District Youth Coordinator is provisional and subject to submission of duly filled in following documents in prescribed formats which is attached. (If any of you claims with respect to the documents submitted is found incorrect/not verifiable or any false information is given by you in your self-declaration, your appointment will be cancelled forthwith and criminal/legal action will be taken, as a consequence):-
>>
>> i. Format for taking Oath
>> ii. Character Certificate
>> iii. Police Verification (Attestation Form)
>> iv. Medical Fitness Certificate
>> v. Statement of Immovable Property
>> vi. Declaration regarding Marital Status””

11.2 We are not able to agree with the Tribunal in its observation that the petitioner acted irresponsibly in issuing offers of appointment to 17 candidates on 3 January 2020. Merely because the OA filed by the respondent was pending before the Tribunal, the petitioner cannot be said to have been injuncted in appointing any fresh candidates. It has to be noted that there was no interim order passed by the Tribunal,

restraining the petitioner from appointing fresh candidates on 3 January 2020, given the fact that the candidature of the respondent had been cancelled on 28 November 2019.

11.3 The mere fact that the respondents had chosen to challenge their cancellation of their candidature did not *ipso facto* result in an injunction against the petitioner appointing any fresh persons against the posts to which the respondent had aspired. Else, it would result in a peculiar situation in which, even in the absence of an order of stay, the petitioner would be bound to keep all the posts unfilled for the entire period during which the OA remained pending before the Tribunal. Needless to say, such a consequence cannot be countenanced in law.

11.4 We, therefore, do not approve the findings in paras 21 and 22 of the impugned judgment to the effect that the petitioners acted irregularly in appointing candidates against the posts to which the respondents had aspired and had been earlier appointed.

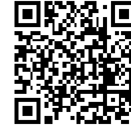
11.5 The Tribunal has, for various reasons including, *inter alia*, the fact that the candidates who have been appointed in place of the respondents had joined duties three days prior to the offers of appointment, returned the finding that their appointments were fraudulent and illegal. We cannot approve of these findings either, as none of the said respondents were made parties before the Tribunal. It needs to be noted, in this context, that the said 17 candidates have not been appointed in breach of any interim order that the Tribunal had passed. Their appointment, therefore, was not *stricto sensu* subject to

the outcome of the OA. It was the respondents' duty, therefore, to implead the said 17 candidates as soon as they had been appointed. Without them having been made parties, the Tribunal, in our view, materially erred in returning a finding that their appointment was irregular or fraudulent.

11.6 Nonetheless, to satisfy our conscience, we queried of Mr Dhanda as to how the said 17 candidates had joined three days prior to their offers of appointment. He submitted that this finding was in fact incorrect, as the offer of appointment of the 17 candidates was of 3 January 2020, though it might have reached them on 6 January 2020. There may still remain the issue of how they joined on 3 January 2020 before their offers of appointment reached them; however, as they were never made parties before the Tribunal, we refrain from making any further observations in that regard.

11.7 It may be noted that, even in the present petition, the said candidates have not been made parties. Some of them, however, moved applications for impleadment in these proceedings, which were allowed by this Court. They, therefore, were impleaded in the present proceedings. The said appointed candidates have not chosen to file any counter affidavit. They have filed two page written submissions in which they have said that they abide by the submissions of the petitioners before us.

11.8 There is wealth of judicial authority for the proposition that the selection or appointment of selected candidates cannot be disturbed without making them parties. Even where the number is



unmanageably large, they have to be impleaded at least in a representative capacity. In ***All India SC & ST Employees Asscociation v A. Arthur Jeen***[17], the principle was thus enunciated:

> "13. Although the candidates included in the panel showing their provisional selection do not get vested right to appointment, they will be surely interested in protecting and defending the select list. It is an admitted position that before the Tribunal the successful candidates whose names were included in the panel of selection were not made parties. The argument of the learned counsel that since the names and particulars of the successful candidates included in the panel were not given, they could not be made parties, has no force. The applicants before the Tribunal could have made efforts to get the particulars; at least they ought to have impleaded some of the successful candidates, maybe, in a representative capacity; if the large number of candidates were there and if there was any difficulty in service of notices on them, they could have taken appropriate steps to serve them by any one of the modes permissible in law with the leave of the Tribunal. This Court in ***Prabodh Verma v. State of U.P.***[18] has held that in writ petitions filed against the State questioning the validity of recruitment of a large number of persons in service could not be proceeded with to hear and take decision adverse to those affected persons without getting them or their representatives impleaded as parties. In para 50 of the said judgment, summarizing the conclusions this Court in regard to impleading of the respondents has stated that:
>
>> "A High Court ought not to hear and dispose of a writ petition under Article 226 of the Constitution without the persons who would be vitally affected by its judgment being before it as respondents or at least some of them being before it as respondents in a representative capacity if their number is too large to join them as respondents individually, and, if the petitioners refuse to so join them, the High Court ought to dismiss the petition for non-joinder of necessary parties."
>
> 14. This Court in para 4 of the judgment in ***A.M.S. Sushanth v M. Sujatha***[19] has stated thus:

---

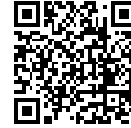
[17] **(2001) 6 SCC 380**
[18] **(1984) 4 SCC 251**
[19] **(2000) 10 SCC 197**

> "4. We find that none of the persons who were selected and whose appointments were set aside by the High Court had been impleaded as a party-respondent. It appears that a public notice was given in a representative capacity only with regard to the appointment to the post of Assistant Sericulture Officer. *The direction of the High Court, however, is not confined to that post alone and it is the appointments to the other posts also which have been set aside. This could not be done. The principles of natural justice demanded that any person who was going to be adversely affected by the order should have had an opportunity of being heard*. That apart, one would have expected the High Court to have considered the report submitted under Section 65 on its merits and then decided whether the said report should be accepted or not."
>
> (Emphasis supplied)

11.9 As such, we do not deem it appropriate to disturb the appointment of the said 17 candidates, who were never impleaded before the Tribunal.

11.10 At the same time, as the petitioner has proceeded to appoint the 17 candidates against the respondents' vacancies on the heels of the respondents approaching the Tribunal, we make it clear that it shall not be open to the petitioner plead non-availability of vacancies as a ground not to appoint the respondents. The petitioner shall ensure that they are appointed in accordance with the directions in this judgement; if necessary, by creating supernumerary posts.

12. We also find that the Tribunal has protected the interest of the petitioner by making the appointment of the respondents subject to the final outcome of the investigation by the IBPS. We, therefore, reiterate this direction.



13. While maintaining the judgment of the Tribunal, insofar as it directs appoint of the respondents, we, therefore, retain the right of the IBPS to investigate into the matter and examine whether there was, or was not, any actual substance in the allegations of unfair means having been employed by the respondents. While doing so, the IBPS would make available to the respondents the material against them and would also offer them an opportunity of personal hearing, if they so choose. The decision of the IBPS would have to be reasoned and speaking and would be communicated to the respondents as soon as it is arrived at. Needless to say, should the respondents be at all aggrieved by the said decisions, their rights in law would remain reserved.

14. We direct the petitioner to grant appointment to the respondents within four weeks, and that the investigations by the IBPS be concluded within 12 weeks from today.

15. These petitions stand disposed of accordingly, without any order as to costs.

C. HARI SHANKAR, J.

ANOOP KUMAR MENDIRATTA, J.

NOVEMBER 12, 2024

ar/p

Click here to check corrigendum, if any