

A KARNATAKA PUBLIC SERVICE COMMISSION AND ORS. ETC.

v.

B.M. VIJAYA SHANKAR AND ORS.

FEBRUARY 14, 1992

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[S. RATNAVEL PANDIAN, KULDIP SINGH AND R. M. SAHAI, JJ.]

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Service Law—Karnataka Public Service Commission—Recruitment to State Civil Service—Competitive Examinations—General Instructions (I) (XII) and (XIII)—Instructions to candidates not to write Roll Numbers anywhere in the Answer Sheet except on the space provided on the front page—Breach of instruction by some candidates—Non-evaluation of answer sheets by Commission—Action of Commission held not arbitrary—Failure to provide hearing opportunity to candidates held not violative of natural justice—Directions given to grant relaxation in age and chance to avail.

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Natural justice—Rule of hearing—Exceptions—Rule is construed strictly in academic disciplines—It should be construed more strictly in competitive examinations.

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The Karnataka Public Service Commission conducted competitive examinations for the State Civil Services. Clause (I) of the General Instructions to the candidates provided that the candidates should write their roll number only on the front page of the answer books in the space provided for it and not anywhere else inside the answer sheet. Clause (xii)

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provided that the candidates must abide by the instructions and clause (xiii) provided that failure to abide by the instructions will render them liable to expulsion from examination or such other punishment as the Commission may deem fit. Some of the candidates violated the instructions and entered their roll numbers inside the answer books. Consequently their answer books were not got evaluated by the Commission. The

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candidates challenged the action of the Commission before the Karnataka Administrative Tribunal which directed the Commission to get their answer books evaluated by holding that (i) no penalty was provided for breach of the instructions and (ii) the failure of the Commission to afford any opportunity to the candidates to explain their *bonafide* and innocence

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was arbitrary. Against the decision of the Tribunal the Commission and

the State filed appeals in this Court.

Allowing the appeals and setting aside the order of the Tribunal, this Court,

HELD: 1. The Tribunal faulted in inferring that no penalty was provided for breach of instructions requiring a candidate not to write his role number inside the answer book. The expression 'such other punishment as the Commission may deem fit to impose' in clause (xiii) of the General Instructions read with clause (xii) provides action for breach of that which is, clearly specified. Provisions attempting to infuse discipline in competitive examinations cannot be construed with same yardstick as a provisions in penal statutes. Direction not to write roll number was clear and explicit. Once it was violated the issue of *bonafide* and honest mistake did not arise. [671C, G-H, 672A, 673D]

1.1. However, the Commission did not impose any penalty on the candidates because neither their examination was cancelled nor were they debarred from taking any examination conducted by the Commission. The only action taken was that those answer books in which roll number had been written inside were not subjected to evaluation. Therefore the action of the Commission could not be characterised as arbitrary. [672B-C]

2. Natural justice is a concept which has succeeded in keeping the arbitrary action within limits and preserving the rule of law. But with all the religious rigidity with which it should be observed, since it is ultimately weighed in balance of fairness, the courts have been circumspect in extending it to situations where it would cause more injustice than justice. Absence of any expectation of hearing in matters which do not affect any interest and call for immediate action, such as the present one, where it would have delayed declaration of list of other candidates which would have been more unfair and unjust are rare but well recognised exceptions to the rule of natural justice. [672F-H; 673C-D]

2.1. Even though the procedure of affording hearing is as important as decision on merits yet urgency of the matter, or public interest at times require flexibility in application of the rule as the circumstances of the case and the nature of the matter required to be dealt may serve interest of justice better by denying opportunity of hearing and permitting the person concerned to challenge the order itself on merits not for lack of hearing to

A establish *bonafide* or innocence but for being otherwise arbitrary or against rules. [672G-H]

B 2.2. Rule of hearing has been construed strictly in academic disciplines. It should be construed more strictly in such cases where an examinee is competing for Civil Service post. Present case can safely be placed in a category where natural justice before taking any action stood excluded as it did not involve any misconduct or punishment. Therefore the Tribunal in issuing the directions approached the matter technically and completely misdirected itself in this regard. [673E-F, 673H, 673G]

C CIVIL APPEALLTE JURISDICTION : Civil Appeal Nos. 369-393 of 1991.

D From the Judgment and Order dated 13.9.1990 of the Karnataka Administrative Tribunal, Bangalore, in Application Nos. 875, 4243, 4632, 1978 to 1980, 2974, 676, 677, 4483, 1499, 2022, 1500, 2023, 3357, 1865, 1781, 1684, 3484, 3479, 2724, 2080, 3926, 4113, 4279, 3527 and 4553 of 1990.

WITH

Civil Appeal Nos. 825-826 and 394-397 of 1991.

E R.N. Narsimhamurthy, E.C. Vidyasagar, M. Veerappa, Kh. Nobin Singh, Ms. Kiran Suri, P.P. Tripathi, N.S. Das Bahl, Ms. Lalitha Kaushik, S.K. Kulkarni, Sury Kant, D.B. Vohra and L.R. Singh for the appearing parties.

The Judgment of the Court was delivered by

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H R.M. SAHAI, J. Does the rule of natural justice has no exception? Is denial of opportunity of hearing, in every circumstance, arbitrary? The State of Karnataka and the Public Service Commission, through these appeals, seek answer to these questions. They are aggrieved by directions, issued by the Karnataka Administrative Tribunal, to get the answer books of candidates evaluated who in the competitive examinations conducted by the commission for the State Civil Service for categories 'A' and 'B' post, were guilty of writing their roll numbers not only on the front page of the answer books, in the space provided for it, but even at other places in disregard of instructions issued by the Commission. Basis for the direction was failure of the Commission to afford any opportunity to the candidates

to explain their *bonafide* and innocence therefore it was arbitrary and it entailed grave consequences for those who were aspirants for entering into public service. A

Power and authority of the Commission to hold examinations, regulate its working and functioning, take action against erring candidates guilty of misconduct are all provided for by the rules and instructions issued in exercise of power conferred by the statutes. The claim of the candidates that they did not vest any right in the Commission to take such action was negated by the tribunal. But it faulted in inferring that no penalty was provided for breach of instructions requiring a candidate not to write his roll number inside the answer book. Relevant clause (1) of the Instructions to Candidates is extracted below: B C

"Before commencing your answers please write your register number and other particulars in the space provided above. Do not write your name or register number or sign anywhere in the answer book or on any loose sheets, such as precis sheets, maps, graph papers, etc." D

It is not disputed and it was found, even, by the tribunal that it was printed on the first page of every answer book. Its observance was mandatory and its disregard was punishable is clear from instruction (xii) and (xiii) of General Instructions to the candidates which are extracted below: E

"(xii) The candidates must abide by such instructions as may be specified on the cover of the answer book or any further instructions which may be given by the Supervisor/Invigilator of the Examination. F

(xiii) If the candidates fail to do so or indulge in disorderly or improper conduct, they will render themselves liable to expulsion from examination and/or such other punishment as the Commission may deem fit to impose." G

Is the expression, 'such other punishment as the commission may deem fit to impose' vague and thus arbitrary? We do not think so. Read with clause (xii) it presents no difficulty. It provides action for breach of that which is, clearly, specified. It cannot be characterised as vague. And then any capricious exercise of power can always be assailed. More impor- H

A tant than this is that provisions attempting to infuse discipline in competitive examinations to be conducted by the Commission cannot be construed with same yardstick as a provision in penal statutes. Moreover the Commission did not impose any penalty on the candidates. Their examination was not cancelled nor they were debarred from taking any examination conducted by the Commission for that year or any year, in future. Their marks in papers, other than those in which they were found to have acted in disregard of instructions were declared. The only action taken was that those answer books in which roll numbers had been written inside were not subjected to evaluation. In our opinion there was nothing, basically, wrong in it. The Commission did not treat it as misconduct. The action could not be termed as arbitrary. Nor it was abuse of power which could be corrected by judicial review.

D Such instructions are issued to ensure fairness in the examination. In the fast deteriorating standards of honesty and morality in the society the insistence by the Commission that no attempt should be made of identification of the candidate by writing his roll number anywhere is in the larger public interest. It is well known that the first page of the answer book on which roll number is written is removed and a fictitious code number is provided to rule out any effort of any approach to the examiner. Not that a candidate who has written his roll number would have approached the examiner. He may have committed a *bonafide* mistake. But that is not material. What was attempted to be achieved by the instruction was to minimise any possibility or chance of any abuse. Larger public interest demands insistence of observance of instruction rather than its breach.

F Was natural justice violated ? Natural justice is a concept which has succeeded in keeping the arbitrary action within limits and preserving the rule of law. But with all the religious rigidity with which it should be observed, since it is ultimately weighed in balance of fairness, the courts have been circumspect in extending it to situations where it would cause more injustice than justice. Even though the procedure of affording hearing is as important as decision on merits yet urgency of the matter, or public interest at times require flexibility in application of the rule as the circumstances of the case and the nature of the matter required to be dealt may serve interest of justice better by denying opportunity of hearing and permitting the person concerned to challenge the order itself on merits not for lack of hearing to establish *bonafide* or innocence but for being other-

wise arbitrary or against rules. Present is a case which, in our opinion, can safely be placed in a category where natural justice before taking any action stood excluded as it did not involve any misconduct or punishment. A

Competitive examinations are required to be conducted by the Commission for public service in strict secrecy to get the best brain. Public interest requires no compromise on it. Any violation of it should be visited strictly. Absence of any expectation of hearing in matters which do not affect any interest and call for immediate action, such as the present one, where it would have delayed declaration of list of other candidates which would have been more unfair and unjust are rare but well recognised exceptions to the rule of natural justice. It cannot be equated with where a student is found copying in the examination or an inference arises against him for copying due to similarity in answers of number of other candidates or he is charged with misconduct or misbehaviour. Direction not to write roll number was clear and explicit. It was printed on the first page of every answer book. Once it was violated the issue of bonafide and honest mistake did not arise. Its consequences, even, if not provided did not make any difference in law. The action could not be characterised as arbitrary. It was not denial of equal opportunity. The reverse may be true. The tribunal appears to have been swayed by principles applied by this Court where an examinee is found copying or using unfair means in the examination. But in doing so the tribunal ignored a vital distinction that there may be cases where the right of hearing may be excluded by the very nature of the power or absence of any expectation that the hearing shall be afforded. Rule of hearing has been construed strictly in academic disciplines. It should be construed more strictly in such cases where an examinee is competing for Civil Service post. The very nature of the competition requires that it should be fair, above board and must infuse confidence. If this is ignored then, as stated earlier, it is not only against public interest but it also erodes the social sense of equality. The tribunal in issuing directions approached the matter technically and has attempted to make out much where it would have been better part of discretion to refuse to interfere. The tribunal completely misdirected itself in this regard. In our opinion its order cannot be maintained. B
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Before concluding we express our unhappiness on the letter of First member of the Public Service Commission sent to this Court that the Special Leave Petitions were filed without authority against the decision of H

A the Commission by the Chairman and the Secretary. We do not make any comment on it but we shall be failing in our duty if we do not place it on record that but for the action of the Chairman and the Secretary incalculable harm would have been caused to the institution.

B In the result these appeals succeed and are allowed. The order passed by the tribunal is set aside. The claim petition filed by the candidates shall stand dismissed, except to the extent indicated below.

C Claim petitions were allowed on 13th September 1990. Nearly one and half years have elapsed since then. Many of the candidates might not have availed of their chance in the meantime. They might have become over age. Therefore, we consider it necessary to direct that the Commission shall grant relaxation of age and of chance to be availed, if there is any restriction in this regard, to those candidates whose answer books were not evaluated for the reason that they had violated the instructions and entered their roll numbers inside the answer books. We were informed that there were large number of such candidates. Therefore, this decision will apply to respondents as well as others who appeared in the examination. Relaxation shall be for one chance only to be availed of in the next examination.

D The appeal nos. 394-397/91 have been filed by the selected candidates. Since the appeal of the Commission has been allowed it is not necessary to pass any order in these appeals. They shall stand disposed of accordingly.

E Parties shall bear their own costs.

T.N.A.

Appeals allowed.