Gohil Vishvaraj Hanubhai And Ors vs State Of Gujarat And Ors on 28 April, 2017

Bench: Abhay Manohar Sapre, J. Chelameswar

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS.5680-83 OF 2017
(Arising out of Special Leave Petition (Civil) Nos.19570-19573 OF 2016)

Gohil Vishvaraj Hanubhai & Others … Appellants

Versus

State of Gujarat & Others … Respondents

J U D G M E N T

CHELAMESWAR, J.

1. Leave granted.

2. These appeals are preferred against the final judgement dated 27 June 2016 of the High court of Gujarat in Letters Patent Appeal No. 73 of 2016 in Special Civil Application No. 11149 of 2015 with Letters Patent Appeal No. 74 of 2016 in Civil Application No. 11685 of 2015 with Civil Application No.1066 of 2016 in Letters Patent Appeal No. 74 of 2016 with Special Civil Application No 11149 of 2015. The facts leading to the instant litigation are as follows:

3. The Appellants herein are candidates who successfully appeared in the examination conducted by the Respondents for recruitment to the post of Revenue Talati but were not appointed.

4. The State of Gujarat decided to create a new post of Revenue Talati, under the control of the Revenue Department. Revenue talatis are to maintain revenue records, collect revenue etc. The creation of these posts is meant to ease the burden on existing talati-cum-mantris who were under the control of the Panchayat Department, performing duties relating to maintenance of land records and various duties incidental thereto.

5. A total of 1800 posts of Revenue Talati were created by a Government Resolution dated 23.10.2008. Ordinarily recruitment to such post is carried out by Gujarat Subordinate Service Selection Board (GSSSB). The board was requested to do so. The board expressed its inability to undertake the task within the time frame decided by the state.

6. Given the urgency of the situation, the Revenue board of the State of Gujarat decided to undertake the recruitment process by itself. The proposal was approved by the State by a Resolution dated 4.12.2013 (for convenience GR-I) of the General Administration Department. By another GR dated 11.12.2013, the Revenue Talati Recruitment Committee (hereafter COMMITTEE) was constituted under the chairmanship of Revenue Inspection Commissioner, who is an Ex-Officio Secretary to the State of Gujarat with Collector, Ahmedabad and Collector, Gandhinagar and Joint Secretary of Revenue department as Members of the COMMITTEE, to "carry out the procedure of direct recruitment" and matters incidental thereto and subject to the various limitations imposed under the said GR. The COMMITTEE decided to avail the assistance of Gujarat Technological University (hereinafter GTU) for conducting the examination.[1]

7. On 15.1.2014 an advertisement for filling up of 1500 posts of Revenue Talatis was published. Performance of the candidates at an objective type written examination for 100 marks was stipulated to be the basis for selection. The examination was conducted in 2691 centres spread over 33 districts. 7,53,703 candidates appeared in the examination.

8. A day prior to the examination, i.e., 15.02.2014, a crime was registered in F.I.R. No.46 of 2014 in Sector-7 police station, Gandhinagar under sections 406, 420 and 144 of the Indian Penal Code against two persons, namely Kalyanish Mulsinh and Nileshbhai Umeshbhai Shah. The allegation is that they had collected money from some of the candidates who were to appear in the said examination by assuring them appointments.

9. However the examination process went ahead. In the process of evaluating the OMR sheets, it was noticed that a large number of OMR sheets had specific markings. On 26.05.2014 the police authorities informed the Chairman of the COMMITTEE that during interrogation of the two arrested persons, it emerged that they had advised the candidates to put a 'b' mark on the right side of the OMR sheet.

10. Thereafter, the entire data was sent to a forensic science laboratory for further investigation. The investigation revealed 284 OMR sheets with the specific mark. The COMMITTEE decided to eliminate those candidates from consideration. Therefore, a provisional merit list was declared on 10.10.2014. 8465 candidates were placed in the list.

11. In the meanwhile, complaints were received by different authorities of the State alleging the commission of a large number of malpractices in connection with the examination:

- a complaint from Bhubhai Damor on 17.10.2014.

- The Collector, Sabrakantha District forwarded a complaint received by

him from Mr R.D. Patel detailing various irregularities.

- Similar complaint of irregularities was addressed to the Principal Secretary, General Administration Department by one Kameshbhai from Rupakheda, District Dahod.

- Another complaint was filed in the local crime branch of Surendranagar against one Hiren Narottambhai Kaoisha alleging that he had collected an amount of Rs.1.55 crores from 62 candidates.

- Further complaint alleging that one Dhirubhai Bhil, who was working as a peon in the office of the Secretary, Land Reforms and one woman employee from the same office had accepted money from a number of candidates promising to ensure that these candidates would clear the examination. The Secretary, Land Reforms was also the Chairman of the Recruitment Committee.

12. In view of receipt of a large number of complaints, the COMMITTEE probed into the matter. Some irregularities were noticed. For example, 127 candidates belonging to one family were placed in the provisional merit list. 178 candidates were found to have given same residential addresses. Both these sets of candidates had 47 candidates in common etc.

13. The COMMITTEE thought it fit to cancel the entire examination process. Accordingly, Government issued orders by a Resolution dated 03.07.2015 (hereafter GR-II) cancelling the recruitment process. It was further ordered inter alia thereunder:

> "3. On cancelling the entire recruitment procedure for filling-up the 1500 posts of Revenue Talati class and by adding 900 vacancies from the other years, it is, hereby, resolved to fill-up the total 2400 posts through Gujarat Subsidiary Service Selection Board.
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> 4. As stated at No.1, the candidates, whose name figured in the list, whose upper age limit is about to attain, now, as they shall not be entitled to appear in the examination that shall be conducted now, as a special case, a relaxation of five years is given in the upper age limit."

14. Aggrieved by the abovementioned GR, the appellants herein filed a Writ Petition (Special Civil Application No.11149/2015) seeking a declaration that the GR was illegal and arbitrary. Further the Petitioners filed an application (Civil Application No. 11685 of 2015) seeking to restrain the Respondents from publishing any fresh advertisements for recruitment. The Gujarat High Court vide an Interim Order dated 14.12.2015 disposed of Civil Application No.11685 of 2015 allowing the Respondents to proceed with fresh recruitment for 980 seats. The Petitioners filed LPAs No.73 and 74 of 2016 challenging the 14.12.2015 order. The Petitioners also filed an application seeking a stay on fresh recruitment being LPA No.74/2016. The Gujarat High Court dismissed all applications and appeals vide the impugned judgment holding that the decision of the COMMITTEE was not unreasonable since there was some material on the basis of which the decision was made, viz. the various allegations that have cast a shadow over the sanctity of the recruitment process. Hence this appeal.

15. The appellants argued (i) that cancellation of the examination without any investigation or proof of the allegations of a vitiated examination process is illegal; (ii) the legality of the GR-II must be tested on the touchstone of the principle of 'Wednesbury Reasonableness' and the principle of proportionality; (iii) Tested in the light of the twin principles mentioned above, the decision of the

COMMITTEE is both unreasonable and disproportionate to the alleged mischief, unreasonable since it is based on the irrelevant consideration of the embarrassment caused to the government and disproportionate since the allegations pertain to a small number of candidates whose candidature could have been segregated and rejected.

16. Two questions need to be examined:

> (1) What are the principles which govern the jurisdiction of the Courts which exercise the power of judicial review of administrative action in the context of a situation like the one presented by the facts of these appeals;
>
> (2) Whether those legal principles are strictly followed by the respondents while taking the impugned decision?

17. The basic principles governing the judicial review of administrative action are too well settled. Two judgments which are frequently quoted in this regard are - Associated Provincial Picture Houses Ltd. v. Wednesbury Corporation[2] and Council of Civil Service Unions v. Minister for Civil Service[3].

18. Lord Diplock in his celebrated opinion in Council of Civil Service Unions summarised the principles as follows:

> "... Judicial review has I think developed to a stage today when without reiterating any analysis of the steps by which the development has come about, one can conveniently classify under three heads the grounds upon which administrative action is subject to control by judicial review. The first ground I would call "illegality," the second "irrationality" and the third "procedural impropriety." That is not to say that further development on a case by case basis may not in course of time add further grounds. I have in mind particularly the possible adoption in the future of the principle of "proportionality" which is recognised in the administrative law of several of our fellow members of the European Economic Community; but to dispose of the instant case the three already well-established heads that I have mentioned will suffice. By "illegality" as a ground for judicial review I mean that the decision-maker must understand correctly the law that regulates his decision-making power and must give effect to it. Whether he has or not is par excellence a justiciable question to be decided, in the event of dispute, by those persons, the judges, by whom the judicial power of the state is exercisable. By "irrationality" I mean what can by now be succinctly referred to as "Wednesbury unreasonableness" (Associated Provincial Picture Houses Ltd. v. Wednesbury Corporation [1948] 1 KB 223). It applies to a decision which is so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it.

Whether a decision falls within this category is a question that judges by their training and experience should be well equipped to answer, or else there would be something badly wrong with our judicial system. To justify the court's exercise of this role, resort I think is today no longer needed to Viscount Radcliffe's ingenious explanation in Edwards v. Bairstow [1956] AC 14 of irrationality as a ground for a court's reversal of a decision by ascribing it to an inferred though unidentifiable mistake of law by the decision-maker. "Irrationality" by now can stand upon its own feet as an accepted ground on which a decision may be attacked by judicial review. I have described the third head as "procedural impropriety" rather than failure to observe basic rules of natural justice or failure to act with procedural fairness towards the person who will be affected by the decision. This is because susceptibility to judicial review under this head covers also failure by an administrative tribunal to observe procedural rules that are expressly laid down in the legislative instrument by which its jurisdiction is conferred, even where such failure does not involve any denial of natural justice. But the instant case is not concerned with the proceedings of an administrative tribunal at all." It can be seen from the above extract, Lord Diplock identified three heads under which judicial review is undertaken, i.e., illegality, irrationality and procedural impropriety. He also recognised the possibility of new heads such as 'proportionality' being identified in future. He explained the concepts of the three already identified heads. He declared that the head 'irrationality' is synonymous with 'Wednesbury unreasonableness'.

19. The principle laid down in Council of Civil Service Unions has been quoted with approval by this Court in Tata Cellular v. Union of India[4] and Siemens Public Communication v. Union of India[5].

20. Normally while exercising the power of judicial review, Courts would only examine the decision making process of the administrative authorities but not the decision itself. The said principle has been repeatedly stated by this Court on number of occasions.[6]

21. We shall now examine the questions raised by the appellants in the light of the abovementioned principles in which judicial review of administrative action is undertaken.

The 1st submission of the appellant is that there is no proof of tampering with the examination process on a large scale as asserted by the respondent, but there are only allegations of such tampering, the truth of which has never been tested by any established process of law. Therefore, the decision of the respondent to cancel the examination in its entirety is without any basis in law.

22. Purity of the examination process - whether such examination process pertains to assessment of the academic accomplishment or suitability of candidates for employment under the State - is an unquestionable requirement of the rationality of any examination process. Rationality is an indispensable aspect of public administration under our Constitution[7]. The authority of the State to take appropriate measures to maintain the purity of any examination process is unquestionable. It is too well settled a principle of law in light of the various earlier decisions of this Court that where there are allegations of the occurrence of large scale malpractices in the course of the conduct of any examination process, the State or its instrumentalities are entitled to cancel the examination.[8] This Court has on numerous occasions approved the action of the State or its instrumentalities to cancel examinations whenever such action is believed to be necessary on the basis of some

reasonable material to indicate that the examination process is vitiated. They are also not obliged to seek proof of each and every fact which vitiated the examination process.[9]

23. Coming to the case on hand, there were allegations of large scale tampering with the examination process. Scrutiny of the answer sheets (OMR) revealed that there were glaring aberrations which provide prima facie proof of the occurrence of a large scale tampering of the examination process. Denying power to the State from taking appropriate remedial actions in such circumstances on the ground that the State did not establish the truth of those allegations in accordance with the rules of evidence relevant for the proof of facts in a Court of law (either in a criminal or a civil proceeding), would neither be consistent with the demands of larger public interest nor would be conducive to the efficiency of administration. No binding precedent is brought to our notice which compels us to hold otherwise. Therefore, the 1st submission is rejected.

24. The next question is whether the impugned decision could be sustained judged in the light of the principles of 'Wednesbury unreasonableness'. In the language of Lord Diplock, the principle is that "a decision which is so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it". Having regard to the nature of the allegations and the prima facie proof indicating the possibility of occurrence of large scale tampering with the examination process which led to the impugned action, it cannot be said that the impugned action of the respondent is "so outrageous in its defiance of logic" or "moral standards". Therefore, the 2nd submission of the appellant is also required to be rejected.

25. We are left with the 3rd question – whether the magnitude of the impugned action is so disproportionate to the mischief sought to be addressed by the respondents that the cancellation of the entire examination process affecting lakhs of candidates cannot be justified on the basis of doctrine of proportionality.

26. The doctrine of proportionality, its origin and its application both in the context of legislative and administrative action was considered in some detail by this Court in Om Kumar & Others v. Union of India, (2001) 2 SCC 386.

This Court drew a distinction between administrative action which affects fundamental freedoms[10] under Articles 19(1) and 21 and administrative action which is violative of Article 14 of the Constitution of India. This Court held that in the context of the violation of fundamental freedoms;

"54. ..... the proportionality of administrative action affecting the freedoms under Article 19(1) or Article 21 has been tested by the courts as a primary reviewing authority and not on the basis of Wednesbury principles. It may be that the courts did not call this proportionality but it really was.

This Court, thereafter took note of the fact that the Supreme Court of Israel recognised proportionality as a separate ground in administrative law to be different from unreasonableness.

27. It is nobody's case before us that the impugned action is violative of any of the fundamental freedoms of the appellants. We are called upon to examine the proportionality of the administrative action only on the ground of violation of Article 14. It is therefore necessary to examine the principles laid down by this Court in this regard.

This Court posed the question in Omkar's Case;

61. When does the court apply, under Article 14, the proportionality test as a primary reviewing authority and when does the court apply the Wednesbury rule as a secondary reviewing authority? From the earlier review of basic principles, the answer becomes simple. In fact, we have further guidance in this behalf.

and concluded;

"66. It is clear from the above discussion that in India where administrative action is challenged under Article 14 as being discriminatory, equals are treated unequally or unequals are treated equally, the question is for the Constitutional Courts as primary reviewing courts to consider correctness of the level of discrimination applied and whether it is excessive and whether it has a nexus with the objective intended to be achieved by the administrator. Here the court deals with the merits of the balancing action of the administrator and is, in essence, applying "proportionality" and is a primary reviewing authority.

67. But where an administrative action is challenged as "arbitrary" under Article 14 on the basis of E.P. Royappa v. State of T.N., (1974) 4 SCC 3, (as in cases where punishments in disciplinary cases are challenged), the question will be whether the administrative order is "rational" or "reasonable" and the test then is the Wednesbury test. The courts would then be confined only to a secondary role and will only have to see whether the administrator has done well in his primary role, whether he has acted illegally or has omitted relevant factors from consideration or has taken irrelevant factors into consideration or whether his view is one which no reasonable person could have taken. If his action does not satisfy these rules, it is to be treated as arbitrary. In G.B. Mahajan v. Jalgaon Municipal Council, (1991) 3 SCC 91, Venkatachaliah, J. (as he then was) pointed out that "reasonableness" of the administrator under Article 14 in the context of administrative law has to be judged from the stand point of Wednesbury rules. In Tata Cellular v. Union of India, (1994) 6 SCC 651, Indian Express Newspapers Bombay (P) Ltd. v. Union of India, (1985) 1 SCC 641, Supreme Court Employees' Welfare Assn. v. Union of India, (1989) 4 SCC 187, and U.P. Financial Corpn. V. Gem Cap (India) (P) Ltd., (1993) 2 SCC 299, while judging whether the administrative action is "arbitrary" under Article 14 (i.e. otherwise then being discriminatory), this Court has confined itself to a Wednesbury review always.

68. Thus, when administrative action is attacked as discriminatory under Article 14, the principle of primary review is for the courts by applying proportionality. However, where administrative action is questioned as "arbitrary" under Article 14, the principle of secondary review based on Wednesbury principles applies."

28. The submission by the appellants is that the mere fact that some of the candidates resorted to some malpractice cannot lead to the conclusion that the entire examination process is required to be cancelled as it would cause undue hardship to huge number of innocent candidates. In other words, the appellants urge this Court to apply the primary review test.

29. We have already held that there were large scale malpractices at the examination process and the State was entitled to take appropriate remedial action. In the context of the occurrence of such malpractice obviously there can be two classes of candidates: those who had resorted to malpractice and others who did not. By the impugned action, no doubt, all of them were treated alike. Whether such herding together would amount to the denial of the equal protection guaranteed under Article 14? is the question.

Identifying all the candidates who are guilty of malpractice either by criminal prosecution or even by an administrative enquiry is certainly a time consuming process. If it were to be the requirement of law that such identification of the wrong doers is a must and only the identified wrongdoers be eliminated from the selection process, and until such identification is completed the process cannot be carried on, it would not only result in a great inconvenience to the administration, but also result in a loss of time even to the innocent candidates. On the other hand, by virtue of the impugned action, the innocent candidates (for that matter all the candidates including the wrong doers) still get an opportunity of participating in the fresh examination process to be conducted by the State. The only legal disadvantage if at all is that some of them might have crossed the upper age limit for appearing in the fresh recruitment process. That aspect of the matter is taken care of by the State. Therefore, it cannot be said that the impugned action is vitiated by lack of nexus with the object sought to be achieved by the State, by herding all the candidates at the examination together.

30. We see no reason to interfere with the judgment under appeal. The appeals are, therefore, dismissed, with no order as to costs.

.....J. (J. Chelameswar) .....J. (Abhay Manohar Sapre) New Delhi;

April 28, 2017

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[1] The Recruitment Committee has resolved to hand over the procedure of setting question paper, taking examination and declaring results, thereof, to the Gujarat Technological University, and hence, for the aforesaid purpose, you are requested to send the rates chargeable for each procedure to the Department, at the earliest. – Letter of the Member Secretary, Recruitment Committee to Registrar, GTU dated 15.1.2014 [2] (1948) 1 KB 223 [3] 1984 3 All ER 935 (HL) [4] (1994) 6 SCC 651 [5] AIR 2009 SC 1204 [6] Chairman, All India Railway Recruitment Board Vs. K Shyam Kumar, (2010) 6 SCC 614 at para 21; Sterling Computers Ltd. v. M.N. Publications Ltd., (1993) 1 SCC 445; State of A.P. v. P.V. Hanumantha Rao, (2003) 10 SCC [7] Ramana Dayaram Shetty v. International Airport Authority of India & Others, (1979) 3 SCC 489 [8] Nidhi Kaim v. State of Madhya Pradesh &

Others, (2016) 7 SCC 615 at para 23: "Even otherwise, the argument of the appellants is required to be rejected for the following reasons: Under the scheme of our Constitution, the executive power of the State is co-extensive with its legislative power. In the absence of any operative legislation, the executive power could certainly be exercised to protect the public interest. The right of each one of the appellants herein for admission to the medical colleges in the State of Madhya Pradesh is itself an emanation of the State's executive action. No doubt, even executive action of the State can create rights. Unless there is something either in the Constitution or law which prohibits the abrogation or abridgment of rights, it is permissible for the State to do so by executive action in accordance with some specified procedure of law. No doubt, that the overarching requirement of Constitution is that every action of the State must be informed with reason and must be in public interest. Nothing has been brought to our notice which prohibits the impugned executive action. If it is established that the adoption of unfair means on large scale resulted in the contamination of the entrance examination (PMT) process of successive years, the State undoubtedly would have the power to take appropriate action to protect the public interest. I, therefore, reject the submission of the appellants.";

In the case of Union of India v. Anand Kumar Pandey, 1994 5 SCC 663 large scale cheating occurred in the Railway Recruitment Board Examination, specifically in two rooms of a center. The Board took a decision to subject the successful candidates from that center to a re-examination. This was set aside by the Central Administrative Tribunal on the ground that such a decision was taken in violation of the principles of natural justice. It was held that there cannot be any straight-jacket formula for the application of the principles of natural justice. This Court did not find any fault with the decision to conduct a fresh examination.;

In the case of Chairman All India Railway Recruitment Board & Another v. K. Shyam Kumar & Others, 2010 6 SCC 614, large-scale malpractices surfaced in the written test. The recruitment board ordered a retest, which was challenged in the Central Administrative Tribunal. The tribunal held that a retest was valid. High Court reversed invoking the wednesbury's principles of reasonableness. This Court held that in the face of such large scale allegations supported by reports of the vigilance department and the CBI, the High Court was wrong in reversing the tribunal's decision. [9] Nidhi Kaim v. State of Madhya Pradesh & Others, (2016) 7 SCC 615 see para 42.1 and 42.2 at 649 [10] See paras 52 to 54