

Divya vs Union Of India on 9 October, 2023

Author: J.K. Maheshwari

Bench: J.K. Maheshwari

2023INSC900

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL ORIGINAL JURISDICTION

WRIT PETITION (C) NO. 724 OF 2023

Divya

...Petitioner (s)

Versus

Union of India & Ors.

...Respondent(s)

WITH

WRIT PETITION (C) NO. 705 OF 2023

WRIT PETITION (C) NO. 764 OF 2023

JUDGMENT

K.V. Viswanathan, J.

1. These writ petitions raise questions involving the interpretation of the Office Memoranda [OM] dated Economically Weaker Section [EWS] Category. Additionally, they also involve the interpretation of the Civil Services Examination Rules, 2022 [CSE-2022 Rules], particularly, Rules 13, 27 and 28 thereof. The petitioners, for diverse reasons, were denied the benefit of the EWS category by the Union Public Service Commission [UPSC] for the Civil Services Examination of the year 2022. Was the UPSC justified in denying them the benefit of reservation under the EWS category, is the main question involved. The three Writ Petitions involve different sets of facts. The factual parts are dealt with separately. The legal submissions broadly overlap. Whereever they need to be separately discussed, the same has been done at the appropriate place.

Writ Petition (C) No. 724 of 2023:

2. The petitioner – Ms. Divya was a candidate for the Civil Services Examination, 2022 (CSE-2022). She had already qualified for the Indian Police Service in the Civil Services Examination, 2021 and was allotted the Manipur Cadre. Wanting to fulfil her ambition of joining the Indian Administrative

Service (IAS), she applied for the CSE-2022. The category in which she wanted to be considered was in the Economically Weaker Section (EWS) category.

3. The CSE-2022 is governed by the Civil Services Examination Rules, 2022. These Rules were promulgated on 02.02.2022. These Rules are crucial for the adjudication of the case as the outcome of the case turns on the interpretation of these Rules, particularly, Rules 13, 27 & 28 thereof. Office Memoranda Dated 19.01.2019 & 31.01.2019:

4. By an Office Memorandum of 19.01.2019, the Government of India, Ministry of Personnel, Public Grievances and Pensions, Department of Personnel and Training (DoPT) prescribed the criterion to be eligible to apply under the EWS category. The prescription was that firstly, a) the persons should not be covered under the existing scheme of reservations for the SC/ST and the Socially and Economically Backward Classes and b) their family gross annual income must be below Rs.8 lakhs.

Secondly, the income was to include income from all sources i.e. salary, agriculture, business, profession etc. and it will be income for the Financial Year [FY] prior to the year of application. Thirdly, the persons whose family owns or possesses any of the following assets are to be excluded from the category of EWS, irrespective of the family income:

- i) 5 acres of Agricultural Land and above;
- ii) Residential flat of 1000 sq. ft. and above;
- iii) Residential plot of 100 sq. yards and above in the notified municipalities;
- iv) Residential plot of 200 sq. yards and above in areas other than the notified municipalities.

Fourthly, the income and assets of the families as mentioned above was to be certified by an Officer not below the rank of a Tehsildar in the States/Union Territories (UTs). The Officer was to issue the certificate after carefully verifying all relevant documents following due process as prescribed by the respective States/UTs.

5. This was followed up by another Office Memorandum [OM] dated 31.01.2019 issued by the Department of Personnel & Training, Government of India. Under this OM, issued in continuation to the OM of 19.01.2019, in Clause 5 it is provided as under:

5. INCOME AND ASSET CERTIFICATE ISSUING AUTHORITY AND VERIFICATION OF CERTIFICATE:

“5.1 The benefit of reservation under EWS can be availed upon production of an Income and Asset Certificate issued by a Competent Authority. The Income and Asset Certificate issued by any one of the following authorities in the prescribed format as

given in Annexure-I shall only be accepted as proof of candidate's claim as belonging to EWS:-

(i) District Magistrate/Additional District Magistrate/ Collector/Deputy Commissioner/Additional Deputy Commissioner/ 1st Class Stipendary Magistrate/ Sub-

Divisional Magistrate/Taluka Magistrate/Executive Magistrate/Extra Assistant Commissioner.

(ii) Chief Presidency Magistrate/Additional Chief Presidency Magistrate/ Presidency Magistrate.

(iii) Revenue Officer not below the rank of Tehsildar and

(iv) Sub-Divisional Officer or the area where the candidate and/or his family normally resides. 5.2 The Officer who issues the certificate would do the same after carefully verifying all relevant documents following due process as prescribed by the respective State/UT.

5.3 The crucial date for submitting income and asset certificate by the candidate may be treated as the closing date for receipt of application for the post, except in cases where crucial date is fixed otherwise.

5.4 The appointing authorities should, in the offer of appointment to the candidates claiming to be belonging to EWS, include the following clause:-

"The appointment is provisional and is subject to the Income and asset certificate being verified through the proper channels and if the verification reveals that the claim to belong to EWS is fake/false the services will be terminated forthwith without assigning any further reasons and without prejudice to such further action as may be taken under the provisions of the Indian Penal Code for production of fake/false certificate."

The appointing authority should verify the veracity of the Income and asset certificate submitted by the candidate through the certificate issuing authority. 5.5 Instructions referred to above should be strictly followed so that it may not be possible for an unscrupulous person to secure employment on the basis of a false claim and if any person gets an appointment on the basis of such false claim, her/his services shall be terminated invoking the conditions contained in the offer of appointment." Civil Services Examination Rules, 2022 :

6. For the sake of convenience, we set out herein below Rules 13, 27 & 28 of the CSE-2022 Rules: -

"Detailed Application Forms-I:

13. For the Main Examination, a candidate shall be required to submit an on-line Detailed Application Form-I (DAF-I) along with scanned documents/ certificates in

support of date of birth, category [viz.

SC/ST/OBC (without OBC Annexure)/EWS (without EWS Annexure)/PwBD/Ex-Servicemen] and educational qualification with required Examination Fee, within the prescribed time for the same. Any delay in submission of the DAF-1 or documents in support beyond the prescribed date will not be allowed and will lead to cancellation of the candidature for the CSE-2022.

Eligibility for Availing Reservation:

27.(1) A candidate will be eligible to get the benefit of community-based reservation only in case the particular community/caste to which the candidate belongs is included in the list of reserved communities issued by the Central Government.

(2) The OBC candidates applying for CSE-2022 must produce OBC (Non-Creamy Layer) certificate based on the income for the Financial Years (FYs) 2018- 2019, 2019-2020 and 2020-2021.

(3) A candidate at CSE-2022 will be eligible to get the benefit of the Economically Weaker Section reservation only in case the candidate meets the criteria issued by the Central Government and is in possession of requisite Income & Asset Certificate based on the income for Financial Year (FY) 2020- 2021.

28. Candidates seeking reservation/relaxation benefits available for SC/ST/OBC/EWS/ PwBD/ Ex-servicemen must ensure that they are entitled to such reservation/relaxation as per eligibility prescribed in the Rules/Notice. They should also be in possession of all the requisite certificates in the prescribed format in support of their claim as stipulated in the Rules/Notice for such benefits by the closing date of the application for Civil Services (Preliminary) Examination-2022.”

7. A careful perusal of the Rules would disclose that, under Rule 28, candidates seeking reservation under EWS for the purpose of CSE-2022 must ensure that they are entitled to such reservation as per the eligibility prescribed in the Rules. The eligibility prescribed for EWS under Rule 27(3) is that the candidate should meet the criteria issued by the Central Government and should be in possession of requisite Income & Asset Certificate (I&AC) based on the income for Financial Year 2020-2021. Secondly, the candidates should also be in possession of all the requisite certificates in the prescribed format by the closing date of the application for Civil Services (Preliminary) Examination - 2022.

It can be seen from the above-mentioned clauses that the benefit of reservation can be availed on possession of Income & Asset Certificate [I&AC] issued by a Competent Authority. Under Clause 5.3 of the OM, the crucial date for submitting I&AC may be treated as the closing date for receipt of application for the post, except in cases where crucial date is fixed otherwise.

8. As it would be clear from the Office Memoranda dated 19.01.2019 & 31.01.2019 r/w Rule 27 & 28 of the CSE-2022 Rules, for claiming reservation under EWS category, the I&AC must be as per the prescribed norms and must be in possession of the candidate on or before the cut-off date.

9. The applicable date for possession in this case is 22.02.2022. This is because after the promulgation of the Rules, the third respondent – Union Public Service Commission [UPSC] issued the examination notice on 02.02.2022 and the last date for submission of the application was 22.02.2022 and the time of deadline was 6.00 p.m. on that day.

10. As is clear from Rule 13 extracted above, the uploading of the certificates happens only after the declaration of the results of the Preliminary Examination and before the Main Examination is held. For the Main Examination, a candidate is required to submit an on-line Detailed Application Form–I (DAF-I) along with scanned documents/certificates in support of the claim for EWS category within the prescribed time.

11. Any delay in submission of the DAF-I or documents in support beyond the prescribed date was not to be allowed and would lead to cancellation of the candidature.

12. What is clear from the above is, before the closing date of application, the candidate has to be in possession of the requisite Certificate for the Financial Year 2020-2021 and before the Main Examination, the candidate is expected to upload the Certificate.

Case of the petitioner:

13. The petitioner claims that she had the EWS Certificate for the year 2019-2020 since it was issued to her on 09.10.2020 by the Haryana Government. However, according to her, even after making serious efforts to apply for the EWS Certificate for the Financial Year 2020-2021, she could not apply or get the same before 22.02.2022 due to COVID-19 Pandemic and the lockdown in Haryana till 06.09.2021; and even thereafter due to the COVID cases prevalent during the middle of 2022; that the Office of the Revenue Authorities was not functional for general administrative work and only COVID related work was being undertaken; that the Certificate is issued by the Village Tehsildar and there was no regular Tehsildar for District Mahendragarh since 2020 and the Tehsildar from a nearby place occasionally came to the Village only to perform administrative functions.

14. For these reasons, the petitioner states that she was unable to obtain the Certificate for the Financial Year 2020- 2021 before 22.02.2022. It is also admitted by her that, by 13.12.2022, she was able to obtain the EWS Certificate for the Financial Year 2021-2022 but was not able to obtain the EWS Certificate for 2020-2021 till 01.06.2023.

15. For the CSE-2022, the Preliminary Examination was held on 05.06.2022 and the results were declared on 22.06.2022 and the petitioner qualified for the Main Examination.

16. The petitioner submitted DAF-I for the CSE 2022 between 06.07.2022 and 15.07.2022 and uploaded the EWS Certificate for the Financial Year 2019-20, as she did not have the Certificate for any other year. The Main Examination was held in September 2022 and the results were declared on 06.12.2022.

17. On 05.01.2023, the Under Secretary of the UPSC issued an e-mail informing her that the EWS certificate uploaded by her was not in the prescribed format and she was requested to produce the Certificate in the prescribed format bearing date prior to 22.02.2022.

18. On 10.02.2023, she attended and participated in the interview and produced the Certificates of EWS for the Financial Year 2019-2020 and Financial Year 2021-2022. Thereafter, on 14.02.2023, she submitted a letter with the EWS Certificates for the Financial Year 2019-2020 and Financial Year 2021-2022 and, according to her, the same was received by the UPSC. This is, however, controverted by the UPSC by saying that mere delivery of the letter at the letter receiving section (Dak section) will not amount to acceptance of the same.

19. According to the petitioner, on 30.05.2023, she was informed, vide e-mail, that her candidature has been converted to General Category from EWS Category. Thereafter, the petitioner states that, on 21.06.2023, she sent a representation to the Department of Personnel and Training (DoPT) seeking acceptance of her EWS Certificate for the Financial Year 2020-2021 received by her on 01.06.2023 and that she had not received any reply. She claims that she also e-mailed to the official e-mail ID of the Chairman, UPSC but received no reply.

20. Being aggrieved, the petitioner has filed this Writ Petition since she claims that she had secured All India Rank [AIR] 105 and if she were to be considered in the EWS Category, her cut-off would qualify her, for admission to the CSE-2022 in the IAS Cadre. In the Writ Petition, she has prayed for the following reliefs:

“(i) Issue a Writ, Order or Direction in the nature of Certiorari for quashing email dated 30.05.2023 issued by Respondent no. 1;

(ii) Issue a Writ, Order or Direction in the nature of Mandamus directing the Respondents to retain the petitioner in the economically weaker section (EWS) category and accept the EWS certificate submitted by the petitioner for financial year 2020-2021, for the purpose of recruitment pursuant to Civil Services Examination 2022;

(iii) Issue a Writ, Order or Direction declaring Rule 13, Rule 27 (3) and Rule 28 of the Civil Service Examination Rules 2022, to the extent that it prescribes that candidates must be in possession of the EWS Certificate as on the closing date of the application for Preliminary Examination, to be ultra vires Article 14 of the Constitution of India as being arbitrary;”

21. The detailed facts pertaining to the petitioners in W.P.(C) Nos. 705 and 764 have been set out in the later part of this judgment. Insofar as the petitioners in W.P. (C) Nos. 705 and 764 are concerned, there is no dispute on one fact that with regard to all of them, the documents submitted with DAF-I were not the correct documents reflecting their eligibility. Admittedly, there was some lacunae or the other which they claim were rectified beyond the date of submission of DAF-I. The UPSC, in its counter affidavit, has clearly urged that with regard to the 298 EWS candidates, who

were ultimately shortlisted, the I&AC as uploaded by them in DAF-I was scrutinized and they have rejected their candidature or converted some of them to the General Category. Stand of the UPSC:

22. The UPSC has filed a detailed counter affidavit and has also filed an additional affidavit explaining their position.

23. According to the UPSC, every year they conduct smoothly a number of structured examinations, including Civil Services Examination and several recruitment tests involving nearly thirty lakh candidates/applicants. It is averred that the UPSC has elaborate methods/systems and procedures developed over nine decades. That the Civil Services Examination for recruitment to the IAS, IFS, IPS and other various Central Services in Group 'A' and 'B' is held in accordance with the CSE Rules framed and notified by the Government of India in the DoPT.

24. According to the UPSC, all candidates seeking reservation are bound by Rule 28 of the CSE-2022 Rules and that they must meet the criterion prescribed by the Central Government and be in possession of the requisite documents/certificates in the prescribed format before the cut-

off date notified by the UPSC. That the petitioner was informed on 10.02.2023 that her admission was provisional as she had not submitted I&AC based on the income of F.Y. 2020-21 and that the petitioner signed an undertaking in that regard. The UPSC contends that under Rule 27(3), candidates applying under the EWS quota were eligible only if the candidates meet the criteria issued by the Central Government and the candidate must be and is in possession of I&AC based on the income for the Financial Year 2020-2021. It is averred that since the petitioner furnished I&AC based on the income for F.Y. 2019-2020, she could not be treated under the EWS Category, and she was duly intimated on 30.05.2023 that she had to be considered under the General Category.

25. It is averred that the petitioner was not the only candidate whose category was changed to General, due to non- submission of I&AC based on the income of F.Y. 2020-2021 issued beyond the closing date i.e. 22.02.2022. It is averred that, as many as 36 candidates, who had applied under the EWS, were not treated as EWS as they failed to upload the valid I&AC with their DAF-I. According to the UPSC, out of the 36 candidates, the category of 22 candidates was changed from EWS to General as they had qualified the CSE-2022 on General Standards and with regard to 14 candidates, who failed to qualify, their candidature was cancelled.

26. According to them, a similar exercise has been carried out for CSE-2021 also. It is averred by the UPSC that the mechanism employed by them regarding the filing of DAF post pandemic has been online, removing any scope for manual intervention and, as such, the submission of the petitioner that no objection was raised during the filing of DAF-I was without merit and substance. It is further averred that even during the pandemic period, CSEs were conducted. Most importantly, it is averred that in the CSE-2022, from the State of Haryana 80 EWS candidates had submitted valid I&AC issued on the basis of F.Y 2020-2021. It is averred that the Rules being sacrosanct should not be relaxed as any relaxation would amount to relaxing in favour of a 'selected few'. Finally, it is averred

that any relaxation would pave the way for others to demand for relaxing the Rules in their favour.

27. In the additional affidavit filed on 26.08.2023, the UPSC has averred that the result of the Preliminary Examination was prepared, keeping in view the relevant category of the candidates, and declared on 22.06.2022. According to the UPSC, as per the Rules of the Examination, the number of candidates to be admitted to the Civil Services (Main) Examination was to be about twelve to thirteen times the number of vacancies to be filled through the Examination. Accordingly, 13,090 candidates (12.8 times of 1,022 vacancies) were declared qualified for the next stage i.e. the Main Examination. The cut-off marks for each Category were applied and the Category wise number of candidates who qualified for admission to the written part of the Main Examination were set out. That it was averred that the Category wise 'cut-off' at every stage was fixed by the UPSC, keeping in view the number of vacancies in each Category, the ratio required at that particular (intermediary) stage and the number of candidates available on particular point of marks. It is averred that, while determining the category wise cut-off to be applied at every intermediate stage, only the data is taken into consideration without the individual details of the candidates. It is averred that once the cut-off is determined by the UPSC on the basis of the details, all the candidates, who have secured marks equally or more than the cut-off, are shortlisted for the next stage of the Examination. It is averred that if any ineligible candidate is allowed to remain in the fray, an eligible candidate would be excluded from the zone of consideration. It is averred that if the number of candidates is changed to include extra candidates, the cut-off fixed by the UPSC will be impacted and will result in inclusion of many such candidates, who ought not to have been included affecting the whole process of the Examination.

28. It is averred that out of 13,090 candidates, 13,051 candidates finally submitted their DAF-I. As per the result of the CSE (Main) Examination, 2022 which was declared on 06.12.2022, 2,529 candidates (2.5 times of 1022 vacancies), as per the Rules of the examination, were declared qualified for the interview. That the documents of 2,529 candidates were scrutinized and the candidates were notified of their deficiency in the certificates; that 298 candidates qualified the interview belonging to the EWS Category and the I&ACs of the 298 candidates were scrutinized; that 28 candidates were failed either due to their not possessing I&AC by 22.02.2022 or for failure to upload I&ACs issued on the basis of income for the F.Y. 2020-2021; that 14 candidates who fulfilled the General Standard were adjusted against the General quota and their category was changed from EWS to General.

29. Strongly refuting the plea of the inability of the petitioner due to COVID-19 to obtain the Certificate within time, it is averred by the UPSC that the petitioner had availed the benefit under EWS Category in the CSE 2021 by producing IA&C dated 09.10.2020 during the peak of the pandemic and that the plea of the petitioner, according to the UPSC, was highly improbable and did not deserve to be sustained. Response of the petitioner:

30. This affidavit has been countered by the petitioner by contending that, in her application, she had communicated her Category as EWS; that the petitioner was counted among the 1281 EWS candidates who qualified for the Preliminary Examination and were admitted to the Main Examination; that the petitioner was never excluded at any stage due to her inability; that the UPSC

itself admitted that the scrutiny of documents uploaded with DAF-I does not happen between the Preliminary Examination and the Main Examination; that the petitioner was part of the 298 EWS candidates who had qualified the Main Examination; that the I&AC was scrutinized after the candidates were called for the interview and at the time of the interview the petitioner had shown the Certificate for the F.Y. 2019-2020 and 2021-2022 and before allocation of service, she had also submitted the Certificate for the F.Y. 2020-2021. In view of that, it is averred that the petitioner should not be excluded since the delayed submission had, in fact, not affected the Category wise selection process at any stage.

Contentions:

31. We have considered the averments and the pleadings and heard the learned counsel for the respective parties at great length.

32. Ms. Preetika Dwivedi, learned counsel for the petitioner (Ms. Divya), reiterated her case set out in the pleadings and also sought to draw support from certain judgments of this Court. Shri K. Parameshwar, learned Counsel, argued for the petitioners in the other two writ petitions. Both the learned counsel, brought to bear, considerable diligence in their preparation and presentation of the case.

33. The primary contention of the learned counsel for the petitioners is that, once their categorization as an EWS was not in dispute, mere inability to have the Certificate as of 22.02.2022 should not operate to their prejudice. According to them, the delayed submission did not affect the Category wise allocation process at any stage and that there was no rationale for insisting on the Certificate to be dated before the cut-off i.e. 22.02.2022, namely, the last day for submission of the application for Preliminary Examination. They relied on Ram Kumar Gijroya vs. Delhi Subordinate Services Selection Board & Anr. (2016) 4 SCC 754, Karn Singh Yadav vs. Govt. of NCT of Delhi & Others 2020 SCC OnLine SC 1472 (two-Judges) and 2022 SCC OnLine SC 1341(three- Judges), Charles K. Skaria & Others vs. Dr. C. Mathew & Others, (1980) 2 SCC 752, Dolly Chhanda vs. Chairman, JEE and Others, (2005) 9 SCC 779, Dheerender Singh Paliwal vs. Union Public Service Commission, (2017) 11 SCC 276, Alok Kumar Singh and Others vs. State of Uttar Pradesh and Others, (2018) 18 SCC 242 and Deepak Yadav & Others vs. Union Public Service Commission and Another, (2021) SCC OnLine SC 709. Additionally, and quite feebly, a contention was also raised that CSE-Rules 2022 have no statutory flavour and are not enforceable in law.

34. Ms. Aishwarya Bhati, learned ASG for the Union of India and Mr. Naresh Kaushik, learned counsel for the Respondent No.3-UPSC, thoroughly and painstakingly countered the submissions of the petitioners. According to the learned counsel, the present was a case where there was a clear prescription in the form of rules. Learned counsel relied on OM dated 19.01.2019, 31.01.2019 & Rule 13, 27 & 28 of the CSE-2022 Rules to contend that eligibility is acquired as an EWS candidate only after the candidate meets the criteria issued by the Central Government and is in possession of the requisite I&AC based on the income for F.Y. 2020-2021; that under Rule 28, the candidates should be in possession of all the requisite certificates in the prescribed format in support of their claim by the closing date of the application viz. 22.02.2022; that for the Main Examination, a candidate is

required to submit DAF-I along with scanned documents in support within prescribed time for the same; any delay in submission of the DAF-I or documents in support beyond the prescribed date was not allowed and would lead to cancellation of the candidature. Learned counsel distinguished the cases of Charles K. Skaria (Supra), Dolly Chhanda (supra) and Dheerender Singh Paliwal (supra) by stating that in those cases the candidates, who were given relief, possessed the eligibility before the cut-off date and the issue was only about submission of proof. Learned counsel relied on Ashok Kumar Sharma and Others vs. Chander Shekhar and Another (1997) 4 SCC 18 and Union Public Service Commission vs. Gaurav Singh & Ors. [C.A. No. 4152 of 2022 decided on 18.05.2022] to reinforce their submissions and distinguished the case of Deepak Yadav (supra) as having been confined to its special facts for the extraordinary COVID year. Learned counsel submitted that Ram Kumar Gijroya (supra) case was also clearly distinguishable and that the petitioners could not derive any benefit from it.

35. Learned counsel contend that the petitioners should be estopped from challenging the validity of the selection process since they have participated in the selection.

36. Learned counsel contend that the explanation given for not obtaining the certificate between 01.04.2021 and 21.02.2022 by the writ petitioner (Divya) in W.P. (C) No. 724 of 2023 is completely untenable. Learned counsel for the UPSC drew our attention to the fact that the petitioner had, during the heightened pandemic, obtained certificate for the year 2019-2020 on 09.10.2020. Learned counsel reiterated his submissions in the counter affidavit and in the additional affidavit and submitted that the selection process being over, the cadre being allocated and the personnel having been deputed for training, to interfere at this stage would result in administrative chaos.

37. Countering the submission of the petitioners in the other two petitions, learned Counsel states that the case was squarely covered by Gaurav Singh (supra) and if each candidate is allowed to come with clarifications/corrigenda, there will be no end to the selection process and the sanctity of the rule would completely stand negated. Learned counsel contended that any selective relaxation would cause enormous injustice to the non-applicants, who in compliance with the rule would not have applied for the reason that they did not possess the eligibility certificate on the last date for submission. To reinforce the submission, reliance was placed on Ashok Kumar Sharma (supra) and Yogesh Kumar vs. GNCTD, (2003) 3 SCC 548 wherein it was held that deviation from the Rules allows entry to ineligible persons and deprives, among others, who could have competed for the post. So, contending they prayed for dismissal of the writ petitions. Questions for Consideration:

38. In the light of the pleadings and the contentions set out above, the following main questions arise for consideration:

a) What is the eligibility criterion for a candidate to stake a valid claim under the EWS Category as per the CSE Rules, 2022 read with OM dated 19.01.2019 and 31.01.2019?

b) Was the UPSC justified in prescribing the cut-off date for possession and for uploading of the I&AC certificates in the prescribed format to stake a valid claim

under the EWS category, as done in the instant case?

c) Are the CSE-Rules 2022 enforceable in law?

d) Are Rules 13, 27(3) and 28 of the CSE-Rules 2022 constitutionally valid?

e) Was the UPSC justified in rejecting the claim of the petitioners for consideration under the EWS category?

Reasons and Conclusion:

Eligibility for EWS Category Candidates for CSE-2022:

39. As is clear from the Office Memoranda issued by the DoPT dated 19.01.2019 & 31.01.2019, the benefit of reservation under EWS category can be availed only upon possession of I&AC issued by a competent authority. The OM also makes it clear that crucial date for submission of I&AC by the candidate may be treated as the closing date of receipt of applications except where the crucial date is fixed otherwise. Insofar as the EWS candidates are concerned, Rule 27(3) of the CSE-Rules 2022 is very clear when it states that a candidate will be eligible to get the benefit of the Economically Weaker Section reservation only in case the candidate meets the criteria issued by the Central Government and is in possession of requisite I&AC based on the income for the F.Y. 2020-2021. Further, Rule 28 states that a candidate seeking reservation/relaxation benefits available for SC/ST/OBC/EWS/PwBd/Ex-Servicemen must ensure that they are entitled to such reservation/relaxation as per eligibility prescribed in the Rules/Notice. The Rule further states that they should also be in possession of all the requisite certificates in the prescribed format in support of their claim as stipulated in the Rules/Notice for such benefits by the closing date of the application for Civil Services (Preliminary) Examination- 2022. It is not disputed that the closing date of the application was 22.02.2022.

40. This takes us to Rule 13 which mentions about the submission of on-line Detailed Application Form-I (DAF-I) along with scanned documents/certificates in support of date of birth, category [viz. SC/ST/OBC/(without OBC Annexure)/ EWS(without EWS Annexure)/PwBD/Ex-Servicemen] and educational qualification with required Examination Fee, within the prescribed time for the same. Any delay, according to Rule 13, in submission of the DAF-I or documents in support beyond the prescribed date was not allowed and will lead to cancellation of the candidature for the CSE-2022.

41. It is very clear that an EWS candidate acquired eligibility to be an EWS candidate for the purpose of CSE-2022 only if the candidate met the criterion prescribed by the Central Government and is in possession of the requisite I&AC based on the income for the F.Y. 2020-2021. Read with Rule 28, the candidate should also be in possession of the certificate as on 22.02.2022. So it is beyond cavil that one cannot decide for oneself that the candidate is an EWS candidate and only on the fulfilment of the criteria and the issuance of the certificate before 22.02.2022 will the eligibility as an EWS candidate, enure to the benefit of the candidate for the CSE-2022. The argument of Shri K. Parameshwar, learned counsel, that being from the “EWS” category is a status and the I&AC to be

produced is only a proof and as such the I&AC can be produced at any stage cannot be accepted in the teeth of the clear prescription in the Office Memoranda read with the CSE- 2022 Rules. Further, as required under Rule 13, at the stage of DAF-I the document had to be submitted on-line before the prescribed date (in the present case for CSE-2022 the date was 15.07.2022) and that any delay in submission of DAF-I or document beyond the prescribed date was not allowed. These clear stipulations run counter to the submissions of learned counsel that on the rectification of a certificate it relates back to the date of the certificate.

42. The entire burden of the song of the petitioners is that they were eligible EWS candidates and that it was only a delay caused in the production of proof thereof. They repeatedly urge before us the dictum of Krishna Iyer, J., in *Charles K. Skaria* (supra), namely:-

“...To confuse between a fact and its proof is blurred perspicacity. To make mandatory the date of acquiring the additional qualification before the last date for application makes sense. But if it is unshakeably shown that the qualification has been acquired before the relevant date, as is the case here, to invalidate this merit factor because proof, though indubitable, was adduced a few days later but before the selection or in a manner not mentioned in the prospectus, but still above-board, is to make procedure not the handmaid but the mistress and form not as subservient to substance but as superior to the essence.”

43. In *Charles K. Skaria* (supra), most candidates possessed the eligibility viz. the diploma. Only the proof in the form of certificate was awaited. The authorities had also accepted them as eligible, expressly informing the selection committee that for eligible candidates even if proof came later and before the final selection, it should be considered as valid. This was also equally the situation in *Dolly Chhanda* (supra), *Alok Kumar Singh* (supra) and *Dheerender Singh Paliwal* (supra) where the factual position about the eligibility was not in dispute. Those cases and the cases of that ilk cannot support the petitioners in this case for the purpose of claiming eligibility in CSE-2022 as an EWS candidate.

44. The meaning of the word “eligible” as defined in *P. Ramanatha Aiyar’s Advanced Law Lexicon* is set out hereunder:-

“Applied to the selection of persons, the word has two meanings i.e. “legally qualified,” or “fit to be chosen.” Applied to our context, a person can be found eligible as an economically weaker section candidate and he can be considered as a fit person to be chosen under that category only if the requirement of the OM of 31.01.2019 and Rule 27(3) read with Rule 28 are fulfilled. In *Gaurav Singh’s case* (supra), it has been categorically held that assets for the particular Financial Year, prior to the year of submission, goes to the root of eligibility of the candidate in the EWS category.

It has been further held therein that the candidates whose I&ACs are not in order did not have any legal right to be considered. It has also been held that no candidate can claim any legal right for reconsideration of the candidature by submitting a fresh certificate and/or a rectified certificate.

45. That is the fundamental distinction between the Charles J. Skaria (supra) line of cases and the cases at hand. As pointed out earlier, the eligibility for being categorized as EWS candidate crystallizes only when the I&AC is issued and, in this case, as required under the rules, it was to be issued and possessed by the candidate before 22.02.2022.

46. It is also very well settled that if there are relevant rules which prescribe the date on which the eligibility should be possessed, those rules will prevail. In the absence of rules or any other date prescribed in the prospectus/advertisement for determining the eligibility, there is a judicial chorus holding that it would be the last date for submission of the application. (See Rekha Chaturvedi v. University of Rajasthan [1993 Supp (3) SCC 168]; Bhupinderpal Singh v. State of Punjab [(2000) 5 SCC 262]; Ashok Kumar Sonkar v. Union of India [(2007) 4 SCC 54].

Legal Status of CSE-2022 Rules:

47. The contention of Ms. Preetika Dwivedi, learned counsel for the petitioner, that CSE-2022 Rules has no statutory force and hence it cannot be considered as a mandatorily enforceable rule need not detain the Court very long.

48. The Union of India has explained the Source of Power for the CSE Rules. Section 3 of the All India Services Act, 1951 states that the Central Government, after consultation with the Governments of the States may make rules for the regulation of recruitment and the conditions of service of persons appointed to an All India Service. In exercise of this power, the Central Government has framed the Indian Administrative Service (Recruitment) Rules, 1954. Rule 7 of the IAS (Recruitment) Rules, 1954 provides that a competitive examination for recruitment to the Service shall be held at such intervals as the Central Government may, in consultation with the Commission, from time to time, determine and Rule 7(2) states that the examination shall be conducted by the Commission in accordance with such regulations as the Central Government may from time to time in consultation with the Commission and State Governments. In pursuance of Rule 7 of these Rules, Central Government, in consultation with the State Governments and the UPSC, has made the Indian Administrative Service (Appointment by Competitive Examination) Regulations, 1955. Rule 2(c) of the Regulations provides as under:-

“examination’ means a combined competitive examination consisting of a preliminary examination and a main examination for recruitment to the Service held under sub-rule (1) of rule 7 of the Recruitment Rules and includes a combined competitive examination for recruitment to the Service and such other Service or Services as may be specified by the Central Government from time to time;”

49. It will be seen that the “examination” includes a combined competitive examination for recruitment to the Service and such other Service or Services as may be specified by the Central Government from time to time. In Regulation 3, it is provided that the examination shall be conducted by the Commission in the manner notified by the Central Government from time to time and Regulation 4 mentions the conditions of eligibility. These Regulations, having been framed in 1955 and amended periodically do not mention anything about the EWS Category since EWS

category was notified for the first time only in January, 2019. The CSE Rules are clearly traceable to Regulation 3 of the 1955 Regulations since they deal with the manner of the conduct of the examination by the Public Service Commission read with Article 73 of the Constitution of India which deals with the executive power of the Union. It is well settled that the executive power under Article 73 is co-extensive with the legislative power and that the CSE Rules are traceable to Article 73 as held in *Mohan Kumar Singhania and Others vs. Union of India and Others* 1992 Supp (1) SCC 594. The CSE Rules do not in any manner supplant any of the provisions of the All India Service Act or the IAS Recruitment Rules or the IAS (Appointment by Competitive Examination) Regulations. They only supplement them. While the manner of conduct of examinations is clearly traceable to Regulation 3, it is untenable to say that since Regulation 4 in the conditions of eligibility does not prescribe EWS category and EWS certification and hence they do not qualify as part of eligibility. The EWS category itself came in 2019. If this contention was to be right, then there could be no EWS category at all in CSE- 2022. That is not the scenario which even the petitioners want to be in.

50. Hence, the contention that Rules 13, 27 and 28 of the CSE-Rules, 2022 cannot be given a status of rules cannot be countenanced. Additionally, these are rules traceable to the executive power of the Union which are duly traceable to Article 73. These rules are duly gazetted. These rules are set out well before the selection process begins and candidates are put to notice before the commencement of the process. Hence, it is too late in the day to contend that these rules have no sanctity or the force of an enforceable law. Impermissibility of Selective Relaxation:

51. In this case, rules clearly exist in the form of CSE-2022. It has also been settled that determination of eligibility cannot be left uncertain till the final stages of selection, since that would lead to uncertainty. [See *A.P. Public Service Commission v. B. Sarat Chandra* (1990)2 SCC 669, para 7] Further, it is well settled that if rules prescribe the last date on which eligibility should be possessed, any relaxation would prejudice non-applicants who for want of possession of eligibility would not have applied. Relaxation would then be selective, leading to discrimination [See *Yogesh Kumar* (supra)]

52. As is clear from Rule 13, in the present case, by 15.07.2022, the certificates disclosing eligibility had to be uploaded with DAF-I and it was expressly stipulated by the rule that delayed submission of the DAF-I or documents in support will not be allowed.

53. Quite apart from the above, much water has also flown under the bridge. The UPSC has made the cadre allocations and the EWS candidates against the 298 vacancies have also been allotted their respective cadres. Today, it is legally not permissible and administratively not feasible for the UPSC to unscramble the egg. Accepting the contention of the petitioners would also result in administrative chaos and will prolong the selection process indefinitely.

54. The strong reliance placed on *Ram Kumar Gijroya* case (supra) also does not impress us. Not only was there no rule, like we have in the present case, it was only while declaring the result, the requirement of submitting the OBC certificate before the cut-off date was introduced by the Selection Authority there. Moreover, unlike the present, there was no contention or issue raised in that case that eligibility enures or crystallizes only on the issuance of the certificate and on

possession of the certificate, before the prescribed cut-off date.

55. The judgment in Ram Kumar Gijroya case (supra) is also directly in conflict with the judgment of three Hon'ble Judges in Ashok Kumar Sharma and Others vs. Chander Shekhar and Another (1997) 4 SCC 18 wherein in para 6, it was held as under:-

“... So far as the first issue referred to in our Order dated 1-9-1995 is concerned, we are of the respectful opinion that majority judgment (rendered by Dr.T.K. Thommen and V. Ramaswami, JJ.) is unsustainable in law. The proposition that where applications are called for prescribing a particular date as the last date for filing the applications, the eligibility of the candidates shall have to be judged with reference to that date and that date alone is a well-established one. A person who acquires the prescribed qualification subsequent to such prescribed date, cannot be considered at all. An advertisement or notification issued/published calling for applications constitutes a representation to the public and the authority issuing it is bound by such representation. It cannot act contrary to it. One reason behind this proposition is that if it were known that persons who obtained the qualifications after the prescribed date but before the date of interview would be allowed to appear for the interview, other similarly placed persons could also have applied. Just because some of the persons had applied notwithstanding that they had not acquired the prescribed qualifications by the prescribed date, they could not have been treated on a preferential basis.....”

56. Apart from all of this, the correctness of Ram Kumar Gijroya case (supra) was referred to a three-Judge Bench in the case of Karn Singh Yadav (two-Judges). A perusal of para six of the referral order clearly shows that the Bench was echoing the ratio of the three-judge Bench in Ashok Kumar Sharma's case (supra) though there is no express reference to the said case. However, when the matter came before a three- Judge Bench, the reference was not answered and even after noticing that Ram Kumar Gijroya case (supra) covered the case of Karn Singh Yadav (two-Judges), the Court, however, denied relief to Karn Singh Yadav, the petitioner by holding that since the appellant was never appointed to the post at that length of time it was not possible to grant any relief to the appellant. Ram Kumar Gijorya (supra) is clearly distinguishable.

57. Be that as it may, we are bound by the judgment of the three-Judge Bench in Ashok Kumar Sharma (supra) and we follow the said judgment and reiterate the principle laid down thereon. It is also interesting to note that even in Deepak Yadav (supra), a judgment, strongly relied upon by the learned counsel for the petitioners, the principle in Ashok Kumar Sharma (supra) has been reiterated. However, because of what the Court called an abnormal and cataclysmal year, an exception was made due to the ongoing pandemic, lockdown and restrictions imposed thereof. In Alok Kumar Singh (supra), no rules like the ones present in this case are shown to have existed. In the present case, there are clear prescriptions as to eligibility, as has been discussed herein above.

58. In Gaurav Singh's case (supra), this Court has held as under:-

“A technical irregularity in a certificate issued by the competent authority in respect of the correct financial year cannot be equated with an Income and Asset Certificate in respect of a different financial year when the Income and Assets for the particular financial year prior to the year of submission of the application, goes to the root of eligibility of a candidate to qualify in the EWS category.

The Respondent-Writ Petitioners were well aware that they had to furnish Income and Asset Certificates issued by the Competent Authority for the financial year prior to the year of application. If the applications were made pursuant to a notification published on 24th April 2019 with 20th May 2019 notified as the last date for submission of the applications, the financial year prior to the year of submission of application could not possibly be the financial year 2019-2020, to which the Certificates related. The observation in the impugned judgment and order of the High Court of the expediency of specifying the financial year in the notification for recruitment is in the nature of an advisory, which may be kept in mind when recruitment notifications are issued by the Appellant in future. The Respondent writ petitioner Nos. 2 and 4, in whose Income and Asset certificates were not in order, did not have any legal right to be considered EWS candidates.

The Respondent-Writ Petitioners were required to submit Certificates for the relevant financial year. The negligence of the Respondent-Writ Petitioners in not checking if the Certificate related to the correct financial year, cannot be lightly brushed aside as inadvertent lapses of the certifying authority. A candidate applying for a post pursuant to an advertisement, cannot afford to be negligent. Documents required to be submitted have to be carefully checked by the candidate concerned before submission. An appointing authority proceeds on the basis of what is stated in a certificate. When a certificate pertains to a different financial year, the same is liable to be outright rejected. No candidate can, in such case, claim any legal right to reconsideration of his/her candidature by submission of a fresh certificate and/or rectified certificate.

In the case of Respondent-Writ Petitioner No.3, the Income and Asset certificate, which had initially been questioned as having been issued by an authority not competent, was later accepted as it was found that the authority issuing the certificate was in fact competent. The certificate of the Respondent-Writ Petitioner No.1 was also accepted as there was no discrepancy in either the date of issuance or the year. It was just that the seal had been stamped without the full name of the officer concerned and that was accepted as an error not attributable to the candidate concerned.” (Emphasis is ours)

59. The attempt by Ms. Preetika Dwivedi and Shri K. Parameshwar, learned counsels for the petitioners to get over Gaurav Singh’s case (supra) by relying on the case of Deepak Yadav (supra) does not also impress us. Deepak Yadav case (supra) pertained to the Civil Services Examination for 2020. It was during the middle of the peak pandemic in 2020. In that scenario, the Court observed

as follows:-

“7. Indeed, the last part of Note I of clause 7 clearly provides that proof of passing the requisite examination should be dated earlier than the due date (closing date) of Detailed Application Form-I of the Civil Services (Main) Examination. There is nothing wrong in UPSC strictly adhering to this stipulation, being in the nature of an eligibility criterion. The respondents are justified and right in urging that this stipulation is inviolable as expounded in *Ashok Kumar Sharma & Ors. vs. Chander Shekhar & Anr.*, (1997) 4 SCC 18 and subsequent decisions of this Court which need not be multiplied.

8. At the same time, it cannot, however, be denied that 2020 was an abnormal and cataclysmal year due to the ongoing pandemic, lockdowns and restrictions. UPSC had to postpone their examination like all other Universities/Boards. The results of the qualifying examination in the case of petitioners, thus, got delayed. This was entirely beyond control of the petitioners who were certainly eligible on the date they appeared in the preliminary examination and had qualified for the main examination, in which they had appeared. Admittedly, the petitioners had attained the qualifying eligibility criteria before the main examination was conducted by UPSC in January, 2021 (i.e., between 08.01.2021 and 17.01.2021).

12. Accordingly, we issue direction to UPSC to permit the 5 candidates, as a special case, to participate in the personality test/interview in the respective categories in which they have qualified. The addition of these 5 candidates would not be to the disadvantage of any already empanelled candidate in the published list for personality test/interview in the respective branches/categories. We also clarify that this order should not be treated as a precedent.”

60. This exceptional situation cannot be made a rule. In this case, the petitioner (Ms. Divya) had an opportunity to obtain I&AC from 01.04.2021 till 21.02.2022. In fact, admittedly she obtained her EWS certificate for the F.Y. 2019-2020 on 09.10.2020 and obtained her I&AC for F.Y. 2021-2022 on 13.12.2022 but obtained her I&AC 2020-2021 only on 01.06.2023. If she was in a position to obtain a certificate for F.Y. 2019-2020 on 09.10.2020 when the country was still reeling under a heightened pandemic, there is no reason why she could not have obtained her I&AC for the F.Y. 2021-2022 on any of the days between 01.04.2021 and 21.02.2022. We are not satisfied with the explanation adduced by the petitioner. Hence her claim challenging the e-mail cancelling the candidature under the EWS category is also rejected. Validity of CSE-2022 Rules – Validity of the Cut-off date:

61. The challenge made in the writ petition to declare Rules 13, 27(3) and 28 to the extent it prescribes that candidate must be in possession of a EWS certificate as on the closing date of the application for preliminary examination to be ultra vires Article 14 is only to be stated to be rejected. There is no case made out to show that the cut-off of 22.02.2022 was picked out of the hat. That was the last date for submission of the application and, according to us, it was a validly prescribed cut-off. In fact, the law laid down by this Court as discussed herein above is, where there is

absence of any rule or absence of any prescription, the last day for fulfilling the eligibility is the last date of submission of the application. This is a judicially recognized default date. In this case the last date for filing of the application has been prescribed as the cut-off in the Rules and we see absolutely no case for violation of Article

14.

62. In view of the above, we are not examining the other argument raised by Mr. Kaushik that the petitioners should be estopped from challenging since they have participated in the selection.

Writ Petition (C) Nos. 705 of 2023 and 764 of 2023:

63. In these two Writ Petitions, the legal question involved is identical, except that the factual scenario in which they arise is slightly different from that in Writ Petition (C) No. 724 of 2023.

W.P. (C) No. 705/2023:

64. The petitioners call in question the communication dated 24.05.2023 issued by the UPSC to Petitioner No.1 - Vimlok Tiwari and Petitioner No.2 Ashwani Dubey and communication dated 30.05.2023 issued to Petitioner No.3 -

Kuber Suraj Laxman. By the said communications, the UPSC converted the consideration of their candidature to the "General Category" since, according to the UPSC, the I&AC uploaded with their DAF-I mentions the Financial Year wrongly as 2021-2022 instead of 2020-2021. In the communication dated 30.05.2023 issued to Kuber Suraj Laxman, it was mentioned that he had submitted the eligibility Certificate for EWS instead of I&AC. Each of these candidates have their own explanation. Petitioner No.1 Vimlok Tiwari states that, on 30.01.2023, a communication was received from the UPSC stating that discrepancy was found in the DAF-I submitted, inasmuch as the designation, stamp, seal of the issuing authority and F.Y. 2020-2021 has not been mentioned in the EWS Certificate submitted by him. He was requested to make up the deficiencies and to submit the original EWS Certificate with designation, stamp and seal of the issuing authority with the mention of the F.Y. 2020- 2021, be produced on the date of the Personality Test. According to the petitioner, he obtained the clarification dated 31.03.2023 from the authority which issued the I&AC correcting the Financial Year to 2020-2021 and by a letter of 05.04.2023 submitted the clarification. The Personality Test had already been held on 15.02.2023. He also submits that the designation, stamp, seal of the issuing authority was already available in the Certificate originally produced.

65. Insofar as Petition No.2 – Ashwani Dubey is concerned, according to the petitioner, he was in possession of the I&AC dated 25.01.2022 which mentioned the Financial Year as 2021-2022. He received an intimation dated 10.01.2023 advising him to make up the deficiencies and was requested to produce original EWS Certificate for the F.Y. 2020-2021 in the prescribed format

issued on or before the cut-off date i.e. 22.02.2022, on the date of the Personality Test. According to the petitioner, he obtained the Certificate from Tehsildar Dindhori dated 16.01.2023 certifying that the Financial Year mentioned as 2021-2022 was a mistake and it should be read as 2020-2021 in the Certificate dated 25.01.2022. He submitted the clarification on 09.02.2023 when the Personality Test was held.

66. Insofar as Petitioner No. 3 – Kuber Suraj Laxman is concerned, he was already in possession of Certificate dated 11.10.2021 in the prescribed format found but he had uploaded the Certificate on the same day for F.Y. 2021-2022 by mistake. He submits that on the day of the Personality Test dated 17.04.2023, he had furnished the I&AC dated 11.10.2021 for the year 2020-2021.

67. The petitioner asserts that this is the Certificate for the F.Y. 2020-2021, while the UPSC in their counter affidavit assert that the F.Y. 2020-2021 is inserted. Considering what we have held on the interpretation of the Rule, these facts need not detain us any further. In any case, the Court is not to be drawn into, to investigate these factual disputes. W.P. (C) No. 764/2023:

68. Insofar as the Petitioner No.1 - Ved Prakash Singh is concerned, his candidature was cancelled on the ground that the Financial Year in the I&AC was wrongly mentioned as 2021. He did not qualify under the General Category too. In the DAF-I, the candidate had uploaded a Certificate dated 19.03.2021 valid for the year 2021. By a communication of 23.01.2023, the UPSC informed him to make up the deficiencies and the candidate was advised to produce original EWS Certificate in the prescribed format (issued by the competent authority on or before 22.02.2022) along with all certified copies of documents uploaded with DAF-I. According to the Petitioner No.1 - Ved Prakash Singh, he produced I&AC dated 19.02.2022 on the date of the Personality Test dated 22.03.2023. The UPSC has rejected the Certificate and converted his case to that of General Category. Also, on the date of the Personality Test, the Certificate was returned citing that the designation of the issuing authority was not mentioned. An undertaking was obtained that he was being interviewed provisionally at his own risk. He submits that he thereafter produced his Certificate with the designation mentioned on 05.04.2023.

69. With regard to Petitioner No.2 - Mohd. Qasim is concerned, his candidature was cancelled as he had not qualified under the General Category also. By a communication dated 24.05.2023, his candidature was cancelled as his I&AC was for the F.Y. 2021-2022. According to the petitioner, he was advised to make up the deficiencies on the date of the Personality Test. According to the petitioner, he produced a clarification dated 21.02.2023 stating that in the Certificate dated 17.12.2021, the Financial Year should be read as 2020-2021 instead of 2021-2022. He says he submitted his Certificate on 21.03.2023.

70. Insofar as Petitioner No.3 - Agnivesh Mishra is concerned, his candidature was also cancelled as in the I&AC, the Financial Year mentioned is 2019-2020. According to him, he was asked to produce the Certificate on the date of the Personality Test and he states that he produced the Certificate of 10.07.2021 for the year 2020-2021. He had in the DAF-I uploaded the Certificate dated 18.11.2020 which in the body mentioned the Financial Year as 2019-2020 though in the heading it mentioned valid for the year 2020-2021. The Certificate of 10.07.2021 produced on the date of the Personality

Test was not accepted.

71. Insofar as Petitioner No. 4 - Priyanshu Raj is concerned, his candidature was also cancelled by an e-mail of 24.05.2023 since the F.Y. mentioned was 2019-2020. In the DAF he had uploaded the Certificate dated 19.10.2020 which in the heading mentioned that it was valid for the year 2020-2021 but in the body it was mentioned F.Y. 2019-2020. According to the petitioner, he was asked to make up the deficiencies on the date of the Personality Test. He says that a Certificate of 16.10.2021 for 2020-2021 was submitted on the date of the Personality Test. However, the same was not considered by the UPSC.

72. Insofar as Petitioner No.5 - Kumari Ritika Tiwari is concerned, her candidature was rejected by an e-mail of 24.05.2023 since F.Y. mentioned was 2019-2020 in the form uploaded in the DAF-I. According to the petitioner, she was informed that her candidature was kept provisional by a mail of 01.05.2023. She claims that on 04.07.2023, she produced the I&AC dated 24.02.2021 for the F.Y. 2020-2021.

73. Insofar as Petitioner No.6 - Shivam Agrawal is concerned, by a communication of 31.05.2023, his candidature was cancelled as in the I&AC uploaded in DAF-I, the F.Y. mentioned was 2021-2022. According to the petitioner, by a communication of 07.02.2023, he was informed that his candidature is kept provisional/conditional because of non- production of original B.Ed. Certificate. He states that on his own, he obtained a clarification of 02.06.2023 from the competent authority which issued the I&AC and the mistake was corrected from 2021-2022 to 2020-2021 and he submitted the same on 07.06.2023. However, the rectification has not been considered.

Interference with the decision of the Selecting Body – When permissible?

74. Could we fault this exercise of the UPSC in rejecting their candidature under the EWS Category, is the question that arises for consideration? We are constrained to conclude that we cannot fault the method adopted by the UPSC. This is for the reason that the UPSC has strictly acted in accordance with the mandate of Rule 13 read with Rule 27 & 28. They had an obligation to scrutinize the forms as uploaded with DAF-I. Rules 13, 27 & 28 of the CSE-Rules 2022 are to be read with the Office Memoranda of 19.01.2019 & 31.01.2019 especially clause 5 of the Office Memorandum of 31.01.2019. The examining body has not considered the defects as insignificant. If this is so, then we have no option but to reject the writ petitions of all the petitioners.

75. In our view, the case of the petitioners in Writ Petition (C) Nos. 705 and 764 fails additionally, for being directly covered by the judgment in Gaurav Singh's case (supra).

76. In *T. Jayakumar vs. A. Gopu and Another*, (2008) 9 SCC 403, it has been held that the defect in the application form which renders the candidate ineligible even if overlooked in the initial screening and even if the candidate is called for the interview, does not dis-entitle the examining body to hold the candidate ineligible for selection at a later stage, once the defect in the application comes to light.

77. Shri K. Parameshwar, learned counsel, who appeared for the petitioners in W.P. (C) Nos. 705 and 764 has submitted that the communications by the UPSC asking them to make up the deficiencies and to produce the certificate on the date of the Personality Test should be treated as waiver of the rules. He submitted that the communications are a clear indicia to construe Rules 13, 27 & 28 as directory. We are not impressed with the submission. The communications do not guarantee the petitioners' that their candidature would be accepted as valid. In any event, these communications cannot be understood de hors the rules.

78. The rules clearly mandate and as has been held in the case of Gaurav Singh (supra), any mistake/omission/ negligence cannot be condoned so as to extend the deadline for production of the documents. Neither the Office Memorandum nor the rules in question can be construed as directory. They prescribe clearly the eligibility criterion and the date before which the certificate should be possessed and the date before which the certificate should be submitted. They also prescribe the consequence for the omission. As the old ditty goes for a want of a horseshoe nail, kingdoms have been lost. Here we are dealing with crucial documents determining eligibility. The petitioners who did not possess the valid documentation determining their eligibility, before the prescribed cut-off date, cannot complain, if their claim for categorization as EWS was rejected.

79. Shri K. Parmeshwar, learned counsel, argued that with regard to four other candidates there has been relaxation inasmuch as they were allowed to rectify the defects in the EWS and I&AC. We asked the UPSC to respond and the response is extracted herein below :-

Sl. No.	Roll No.	Name Rank Allocated service under EWS	Remarks
1.	5409703	Ayush Gupta 180, IAS	Minor omission in I&AC w.r.t. stamp on the photo of the candidate. The candidate was kept provisional and the DoP&T cleared his candidature after the omission was made up.
2.	866859	Anunay Anand 185, IAS	The I&AC was issued digitally. Subsequently, the candidate submitted
			the same physically signed with the stamp of the issuing authority hence the candidature was cleared.
3.	834939	Sonam 237, IAS	Her I&AC was signed by the Naib Tehsildar and issued by the Sewa Kendra of the DC office,

4.	807485	Deshmukh Rrajshree Shantaram, 719, IRMS	<p>who is the superior authority.</p> <p>Minor error in the name of the father of the candidate in the I&AC which indicated complete name including surname which was not mentioned in the DAF-I. Subsequently, the candidate submitted an affidavit clarifying the mistake and the candidature was cleared.</p>
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80. It will be noticed that UPSC has considered these omissions as trivial and as not going to the root of the eligibility, unlike in the case of the petitioners herein. In *Ajay Kumar Mishra vs. Union of India* [2016] SCC OnLine Del 6563, Indira Banerjee, J. (as Her Ladyship then was) speaking for the Division Bench of the Delhi High Court felicitously put the issue about the examining body's right to decide as to which errors are material and which are inessential and trivial. We do nothing more except to extract paras 6, 7 & 9 from the said judgment :-

“6. There can be no doubt that a candidate applying for a government job, or for that matter, any job should fill in the application form carefully. No candidate can claim any vested right to rectification of arrears in an application. Union Public Service Commission and the State Public Service Commissions deal with lacs of applications, which are received pursuant to an advertisement. Such applications are required to be processed within a short time. A candidate, who is not short-listed and/or not allowed to participate in the selection process by reason of his own laches in making careless mistakes, cannot claim any right to be allowed to participate in the selection process.

7. It is for the body conducting the selection process to decide whether mistakes should be allowed to be rectified, if so, whether they should be rectified within any specific time and what are the mistakes which can be allowed to be rectified and other similar questions. However, in view of the mandate of Articles 14 to 16 of the Constitution of India, there should be no discrimination or arbitrariness in deciding these questions. All candidates applying for the particular post/posts should be treated equally.

9. It is true that whenever any material discrepancy is noticed in the application form and/or when any suppression and/ or mis-representation is detected, the candidature might be cancelled even after the application has been processed and the candidate has been allowed to participate in the selection process.

However, after a candidate has participated in the selection process and cleared all the stages successfully, his candidature can only be cancelled, after careful scrutiny of the gravity of the lapse, and not for trivial omissions or errors.”

81. In Gaurav Singh’s case (supra) also the distinction between a defect that is material and not material and the right of the examining body to condone has been noticed. We hold that the UPSC was justified, in the case of the petitioners, in denying the benefit of categorization as EWS candidates.

82. Shri K. Parameshwar, learned Counsel, made a valiant attempt by drawing support from the letter of the UPSC dated 12.05.2023 by which the original EWS Certificate dated 19.02.2022 submitted by email dated 06.04.2023 by the petitioner Ved Prakash Singh was returned. The UPSC has, in their response, clarified that as a practice original documents submitted after the Personality Test are returned, after scrutiny and a standard format letter is used for the same. They have also stated that since the Certificate produced by the candidate was not as per Rules and conditions in the advertisement, the same was returned and not accepted. In view of this, we find no merit in that submission too.

83. In view of all of the above, the argument of Shri K. Parameshwar, learned counsel, that there was a past practice treating Rule 13 as directory has no merit.

84. Ms. Preetika Dwivedi, learned Counsel, made an alternative submission. Her plea was that in the event of the Court upholding the rule and the action of the UPSC, the Court should exercise its power under Article 142 of the Constitution of India. Her plea was that to do complete justice, her client should be treated as an EWS category Candidate.

85. We refuse to grant the petitioners refuge under Article

142. In this case, by the rightful application of the OM and the CSE-Rules 2022, complete justice has been done to all. Article 142 is, no doubt, a useful weapon in the armoury of the Court. However, its exercise should be done with great caution and circumspection. We do not find the present case as one, warranting the invocation of that power.

Conclusion:

86. Based on the above discussion, our conclusions are as under :-

i) The candidates claiming benefit of EWS Category for the purpose of CSE-2022, acquire eligibility only if they meet the criterion prescribed by the Central Government in the O.M. dated 19.01.2019 and 31.01.2019 and are in possession of the required Income and Asset Certificate (I&AC), based on the income for the year 2020-21.

Further, as required under Rule 28 of the CSE Rules, 2022 read with the O.M. of 19.01.2019 and 31.01.2019 the candidate should have been in possession of the Income and Asset Certificate (I&AC) as on 22.02.2022. Any candidate not in possession of the I&AC in the prescribed format as mentioned herein above cannot claim the benefit of EWS Category. Equally, as required under Rule 13 of the CSE Rules, 2022 at the stage of DAF-I, the document in possession as on 22.02.2022 in the prescribed format, had to be submitted online before the prescribed date. The UPSC was justified in rejecting the candidature of those candidates claiming benefit under the EWS Category if they had submitted their I&AC beyond the stipulated deadline. This conclusion has to be read with the reasoning in the judgment, particularly in paragraphs 39, 40 and 41 under the heading "Eligibility for EWS category candidates for CSE-2022".

ii) As a sequel to conclusion (i) above, we record that the UPSC was justified in prescribing the cut-off date for possession and for uploading of the I&AC in the prescribed format for claimants claiming benefits under the EWS Category. This flows from the O.M. dated 19.01.2019 & 31.01.2019 read with Rules 13, 27(3) and 28 of the CSE-Rules, 2022 and the long line of judgments in which principles for prescription of cut-off for eligibility are laid down.

iii) For the reasons set out in paragraphs 47 to 50 herein above under the sub-heading "Legal Status of CSE-2022 Rules", we hold that the CSE-2022 Rules have the force of an enforceable law. They are traceable to the All India Services Act, 1951 read with the Indian Administrative Service (Recruitment) Rules, 1954 read with the Indian Administrative Service (Appointment by Competitive Examination) Regulations, 1955 and all this read with Article 73 of the Constitution of India.

iv) Rules 13, 27(3) and 28 of the CSE-Rules, 2022 are constitutionally valid for the reasons set out in para 61 herein above under the sub-heading "Validity of CSE- Rules, 2022 - Validity of the cut-off date".

v) The UPSC was justified in rejecting the claim of the petitioners, for consideration under the EWS Category in CSE-2022.

87. For the reasons stated above, all the writ petitions are dismissed. No order as to costs.

.....J. (J.K. Maheshwari)J. (K.V. Viswanathan) New Delhi;

October 9, 2023.