

Rajat Jain And Ors vs Union Public Service Commission And Anr on 6 January, 2022

Author: V. Kameswar Rao

Bench: V. Kameswar Rao

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* IN THE HIGH COURT OF DELHI AT NEW DELHI
+ W.P.(C) 242/2022, CM Nos. 686/2022, 687/2022, 742/2022,
900/2022 & 901/2022
RAJAT JAIN AND ORS.

.....
Through: Ms. Anushree Kapadia, Adv. with
Mr. Ashutosh Ghade & Ms. Pri
Rathi, Advs.

versus

UNION PUBLIC SERVICE COMMISSION AND ANR.

..... Res
Through: Mr. Naresh Kaushik, Adv. with
Mr. Anand Singh, Adv. for R-1
Mr. Apoorv Kurup, CGSC with
Ms. Nidhi Mittal & Mr. Ojaswa
Pathak, Advs. for R-2/UOI

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO
ORDER

% 06.01.2022 This matter is being heard through Video-Conferencing. CM Nos. 687/2022, 742/2022 & 901/2022 Exemption allowed subject to all just exceptions.

Applications are disposed of.

W.P.(C) 242/2022, CM Nos. 686/2022 & 900/2022

1. The present petition has been filed by the petitioners with the following prayers:-

"In view of the above mentioned facts and circumstances, the Petitioners most respectfully pray that this Hon ble Court may graciously be pleased to:

1. Allow the present writ petition; and

2. Issue an appropriate writ in the nature of mandamus or any other appropriate writ directing the Respondents to postpone the schedule of Civil Services (Mains) Examination 2021 till such time the Covid 19 situation is normalized;

3. Any other relief which this Hon ble Court may deem fit in the interest of justice."

2. The petition has been filed by 19 persons, who have cleared UPSC Civil Services Examination ('CSE', for short) - Preliminary Examination and now have to appear in the mains examination of the CSE 2021 with a prayer to direct the respondents herein to immediately postpone the conduct of the mains examination scheduled from January 07, 2022 to January 16, 2022 in view of the severe spread of the Covid 19 infection, particularly, the Omicron variant thereof which is now spreading faster in India than any previously found variant of the Corona virus (Covid 19).

3. The submissions of Ms. Anushree Kapadia, learned counsel for the petitioners are primarily, that the CSE Mains Examination consists of nine papers (two qualifying papers and seven papers for counting the merit) for which the candidates have to travel to their centres and stay near the area continuously for 10 days. The centres allotted for Mains Examination are mostly in metro Cities or State Capitals, which are densely populated and gaining the numbers of Covid 19 infections in an unprecedented manner. Almost all the States /Union Territories in the country have started or likely to immediately start issuing strict Covid 19 advisories restricting / prohibiting range of activities including shut downs, travel restrictions, night curfews, weekend curfews etc. For example, in Delhi, the Government has imposed night curfew, weekend curfew (Exam is on weekend), 2992 Containment zones have been declared, Libraries and classes are closed, government offices are switched to work from home and private offices are allowed to work with only 50 percent capacity. Similarly in Mumbai, night curfew has been imposed, Schools are closed, 11 containment zones have been declared and 300 buildings sealed. Section 144 has also been imposed in Bangaluru.

4. Similarly, she has drawn my attention to various restrictions put in the States of Bihar, Uttar Pradesh, West Bengal, Karnataka, Telangana, Punjab, Maharashtra, Haryana etc. The petition also highlights that Schools and Colleges in Kolkata are closed, night curfew has been imposed, public transport is running at 50% capacity and flights from Mumbai and Delhi allowed only twice a week. Further, traveling to and from centre will cause serious risks, as candidates will travel from various places. Further, staying in hotels is another risk. After that, going back to hometown will further spread the virus. She would state, off late, in Metro-cities and State capitals, there is almost a 400% to more than 2000 % rise in Covid 19 cases in last 2 to 4 days. Further, the positivity rate across the States /Union Territories is ranging between 8% to 26%. She highlights the fact that the medical experts and hospitals all over, are seriously advising the people against attending gatherings, staying in closed spaces, maintaining social distancing and are also confirming the possibility of a second wave like situation if the Covid 19 protocols are not followed strictly.

5. That apart, even the Courts including this Court and the Supreme Court have suspended physical court room functioning and have totally shifted only to virtual hearings. She also highlights the fact that many examinations have been postponed by the Indian Institute of Banking & Finance, Staff Selection Commission. That apart, the candidates have to travel to cities experiencing covid wave like Delhi, Mumbai, Kolkata, Chennai, Bengaluru, etc., can result in Covid infection. Further, there is no proper pre-examination testing. Temperature checks can be cheated by taking Paracetamol. If few candidates attempt examination with Covid then it might result in infecting all candidates as they have to spend six hours writing papers in same room. Further, once infected, candidates will be

prohibited from writing subsequent papers as per UPSC policy. They also risk spreading to others including their families. The same phenomena can be seen where classrooms are becoming hotspots of infection. Recently, entire groups of students of schools / colleges have been reported to have contracted Covid 19. Hundreds of students at once have become Covid 19 positive due to immediate transmission of the infection from one infected person to another.

6. That apart, even in the examination centre one cannot wear N95 masks and write 4000 words in the paper in three hours. The same is impracticable. Taking off masks or wearing surgical or other masks may not prevent highly transmissible variant of Omicron.

7. She highlights the fact, in the past, more specifically in the month of April, 2021, the interviews for CSE Examination, 2020 were postponed, though, the candidates were nearly 2000. Similarly, in the month of May, 2021 preliminary examinations were postponed. According to her, the reliance placed by Mr. Naresh Kaushik, learned counsel for the UPSC on the orders passed by the Supreme Court was when the virus was not at peak or serious as it was in the month of April-May, 2021 or for that matter today and have no applicability.

8. According to her, as per her information, in Tamilnadu, the public transport is completely closed because of which the candidates may not be able to reach their centres for writing the examination. In fact, a representation is made by a Member of Parliament from Tamilnadu for postponing the exam. She also states, it is also in the interest of the exam officials / UPSC officials and their families that this examination is postponed. She did concede, during the course of her submissions that the petition has been filed not for seeking an extra attempt but for the safety of the candidates. She also state that because of the urgency of the matter only 19 candidates have come forward but many candidates have approached her to join the petition but could not join because of the shortage of time.

9. On the other hand, Mr. Naresh Kaushik, learned counsel appearing for the UPSC has raised an issue of maintainability of the petition on the ground that the same should have been filed before the Central Administrative Tribunal, being a service matter. He would state that holding of CSE examination is a critical area of governance and with the retirement of many Officers, there is a requirement for inducting fresh blood for the proper working of the administration.

10. I must state here, during the course of hearing, learned counsel for the petitioners did state that the schedule of the examination between January 07, 2022 to January 16, 2022 was fixed in the month of March, 2021 i.e. almost 10 months back.

11. Mr. Naresh Kaushik would submit that 9156 candidates have qualified to write the mains CSE examination of 2021, out of which 9085 candidates have already downloaded their admit card(s) and not many candidates have represented to the UPSC for the postponement of the examination. In other words, it is his submission that the overall consideration for holding the examination as per schedule is the public interest and not the individual's difficulty or hardship.

12. That apart, he states that a candidate has always an option to seek change of centre, which are 24 in number and 58 being sub-centres and 1185 candidates have opted for such change. According to him, the preparations for holding the mains examination are made much in advance and Supervisors / Examiners have already reached their centres and they are fully prepared to hold the examination, which commences from tomorrow i.e. January 07, 2022. In other words, only few hours are left to start the examination process and the petition filed now by only 19 candidates, is totally misconceived and untenable. The UPSC has held 29 examinations during Covid. The UPSC has issued directives to all the Chief Secretaries and the District Magistrates ensuring that no inconvenience is caused to the candidates / examination functionaries in their movement, specially who are coming from containment / micro containment zone(s) and if necessary, the candidates e-admit cards and ID cards of the examination functionaries are to be used as movement passes. In this regard, he has drawn my attention to the press release of the UPSC of yesterday i.e. January 05, 2022. According to him, the State Governments have also been requested that public transport is made operational to the optimum level, at least one day prior to starting of the examination process i.e. January 06, 2022 to January 09, 2022 and January 14, 2022 to January 16, 2022 for ensuring smooth movement of the candidates and examination functionaries.

13. According to him, the instructions are also with regard to maintaining appropriate safety protocols at the examination centres. He states, that the issue raised by the petitioners in this petition is squarely covered by the judgment of the Supreme Court in the case of Vasireddy Govardhana Sai Prakash & Ors. v. Union Public Service Commission & Ors., Writ Petition(s) (Civil) Nos.1012/2020 wherein the Supreme Court had considered the prayer of the petitioners therein for postponement of the CSE examination to be held on October 04, 2020. According to Mr.Kaushik, the learned counsel for the petitioners was counsel for one of the petitioners in the said writ petition before the Supreme Court. The case of the petitioners therein was almost of similar nature as has been urged by the learned counsel for the petitioners during the hearing.

14. According to Mr. Kaushik, regrettably, the order passed by the Supreme Court has not even been placed before this Court for perusal of the Court. According to Mr. Kaushik, the Supreme Court did not agree with the prayer as made by the petitioners in that petition. Hence, the petition for an identical / similar prayer need to be dismissed.

15. Mr. Apoorv Kurup, learned counsel appearing for the respondent No.1 / Union of India would submit that as Mr. Kaushik has made elaborate submissions, he has nothing to add except stating that the Supreme Court in Vasireddy Govardhana Sai Prakash & Ors. (supra) case has clearly held that the prayer for seeking postponement of examination cannot be on the basis of assumption but has to be on real facts, which according to Mr. Kurup have not been pleaded in the present case. In fact, the petitioners have intentionally not even annexed copy of the judgment of the Supreme Court involving identical issue, for the reasons best known to them. It is only after Mr. Kaushik, has drawn the attention of the Court to the judgment passed by the Supreme Court, which is now sought to be distinguished by learned counsel for the petitioners, which according to Mr. Kurup is totally untenable.

16. Having heard the learned counsel for the parties and perused the record, at the outset, I may state that the plea of Mr. Kaushik on the maintainability of the writ petition before this Court is concerned, no doubt, the issue raised is relatable to process of recruitment to All India Service under the Union of India and as such, being a service matter, it should lie before the Central Administrative Tribunal but the issue being of importance, I deem it appropriate to hear the parties and decide the same, making it clear that it shall not be treated as a precedent.

17. The mains examination of CSE 2021 are scheduled on 7th, 8th, 9th, 15th and 16th January, 2022. The schedule has been fixed in the month of March, 2021. 9156 candidates have qualified for the mains examination, out of whom 9085 have already downloaded their admit cards. It is a common knowledge that candidates start preparing for the CSE exams, much in advance burning their midnight oil.

18. According to Mr. Kaushik, total 82 centres / sub-centres have been established / earmarked by the UPSC. The examination functionaries have already reached the centres for holding the exams. It also can be presumed many of the candidates may have also reached the place of centre where they have to take the exam.

19. The plea of Ms. Kapadia is primarily on the vulnerability of the candidates / examination functionaries contracting Covid-19 as they expose themselves while travelling to centres and staying at the place of centres throughout the examination period. She has also urged the difficulties to be faced by the candidates to travel to the centres, which are at distant places.

20. I have gone through the averments in the petition. They are general in nature without any specific details. In any case, the above concerns of the petitioners have been answered by Mr. Kaushik by referring to the press release of the UPSC issued on January 05, 2022 i.e. yesterday wherein the following has been stated:-

UNION PUBLIC SERVICE COMMISSION DHOLPUR HOUSE, SHAHJAHAN ROAD, NEW DELHI-110069 PRESS RELEASE JANUARY 05, 2022 After carefully reviewing the situation prevailing due to COVID- 19 pandemic, the Commission has decided to conduct the Civil Services (Main) Examination, 2021 as per schedule i.e. on 7 th, 8th, 9th, 15th and 16th January, 2022.

Keeping in view the restrictions/curbs being imposed by the Governments to contain the disease, the Commission has requested the State Governments for ensuring that no inconvenience is caused to the candidates / examination functionaries in their movement, especially who are coming from containment / micro-containment zone(s) and if necessary, the candidates e-Admit Cards and ID Cards of the examination functionaries are to be used as movement passes.

The State Governments have further been requested that public transport be made operational to the optimum level, at least on a day before the Examination till the date of conduct of the Examination i.e. from 06.01.2022 to 09.01.2022 and 14.01.2022 to 16.01.2022 for ensuring smooth movement of the candidates/examination functionaries.

All the competent District Authorities and the Venue Supervisors have been provided the Guidelines of the Commission for conduct of the Examinations in these times of pandemic. These Guidelines mainly contain personal hygiene of the candidates/examination functionaries, maintenance of social distancing and wearing of masks by the candidates/ examinations functionaries all the time, provision of sanitizers at convenient places in the Venue and to the examination functionaries, candidates to carry their own sanitizers in transparent bottles, sanitization of each Venue on regular basis, two surplus examination rooms for accommodating the candidates who would be coughing, sneezing, having breathlessness, feeling feverish so that they can take the Examination under appropriate safety protocols etc."

21. From the above, it is clear that UPSC has issued directives to the Authorities in the States that no inconvenience is caused to the candidates / examination functionaries specially coming from containment zone(s) and the admit card and ID card shall be treated as movement passes. The release also reveal directives have been issued to the State Governments to operate public transport at optimum level, at least one day before the date of examination ensuring smooth movement of candidates. I also take note of the submission of Mr. Kaushik on the plea of Ms. Kapadia that public transport in Tamilnadu shall be inoperative, that the said issue is being addressed to ensure 50% public transportation is in operation. He further states, directives to the Chief Secretary and the District Magistrates are scrupulously followed. The UPSC shall always be in touch with the functionaries in the State Governments to ensure no candidate is put to inconvenience and is able to reach centre.

22. I find, the press release do indicate that the UPSC is conscious of the prevailing situation and the safety and convenience of the candidates. Preparations for such an important exam are made well in advance maintaining confidentiality and secrecy in respect of answer sheets and question papers and all preparations being in place, it shall not be in public interest to interdict the process. The apprehension of 19 petitioners cannot outweigh the interest of thousands of other candidates, (apart from public interest), who have toiled themselves to prepare themselves for the examination.

23. The reference made with respect to postponement of interview / preliminary examination in the months of April-May, 2021 was in a different fact situation. Surely, nine thousand odd candidates must have got themselves vaccinated. The Supreme Court in Vasireddy Govardhana Sai Prakash & Ors. (supra) has considered the identical pleas in the following manner:-

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(ii) The second point urged before us is regarding lack of transport facilities. However, once again this is a general statement without any specific details. On the other hand, UPSC on affidavit has produced communication issued by the concerned authorities, to ensure proper transport arrangements for the candidates, who intend to appear in the examination. Besides, in the recent past, various public examinations have been successfully conducted by different authorities. That is a testimony of the fact that if proper Standard Operating Procedures (for short „SOPs) are observed by all concerned, as defined by the Ministry of Home Affairs (MHA), it is possible to conduct such examinations.

Suffice it to observe that the lack of transport facilities across all the 72 centres, including 2569 sub-centres, has not been substantiated before us. On the other hand, we find that till recently, UPSC permitted the candidates to change their centres and almost more than 60,000 candidates availed of that option.

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(v) It is next pointed out that different states have different SOPs, including not allowing persons coming from other States in the hotels.

In this regard, UPSC/MHA may issue appropriate instructions to all the States/Union Territories to ensure, that a candidate possessing valid admit/entry card in respect of examination centre/sub-centre in the neighborhood, may be allowed in hotel to facilitate him to appear in the examination scheduled on 04.10.2020, upon production of such card.

(vi) The next grievance made before us is that the candidates who are Covid-19 patients must be allowed to appear in the examination with separate arrangement, in the concerned sub-centre/centre.

It is not possible to accede to such a general request. As a matter of fact, the medical SOPs require, that any person who has contracted Covid-19 shall remain in isolation and quarantined for the relevant period. He is not expected to move out in public. For, such candidate may expose other candidates in the concerned examination centre/subcentre to the risk of being infected, which is certainly avoidable.

We need not dilate on this aspect any further, except to note the arrangements are directed to be made by the UPSC to ensure separate sitting arrangement for candidates having symptoms of ailment like cough and cold."

24. The above aspects have also been dealt by the UPSC in the aforesaid press release.

25. One of the plea of Ms. Kapadia is that, if a candidate appearing for the last time, contracts virus, he may not be able to write further papers would cause great prejudice, is only an assumption. In any case, during her submissions she has made it clear that she is not concerned with the issue of last attempt but with the safety of the candidates.

26. The above clearly demonstrate the steps, taken by the UPSC for conduct of the mains CSE 2021, safely by following Covid protocols and ensuring least inconvenience to the candidates.

27. I do not see any reason to consider the prayers made by the petitioners in this petition. The same is dismissed. No costs.

V. KAMESWAR RAO, J JANUARY 06, 2022/ak