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

Decided on : 08.12.2014

+ **W.P.(C) 8393/2014, C.M. NO.19433-19434/2014**

AMIT PAL

..... Petitioner

Through: Sh. Shankar Raju, Sh. Ashish Kumar,
Sh. Nilansh Gaur and Sh. Sunil Kumar,
Advocates.

versus

UNION PUBLIC SERVICE COMMISSION Respondent

Through: Sh. Naresh Kaushik, Advocate.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE VIPIN SANGHI

MR. JUSTICE S. RAVINDRA BHAT (OPEN COURT)

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1. The writ petitioner claims a direction for the quashing of the impugned order of the Central Administrative Tribunal (CAT) dated 21.11.2014 in O.A. No.2740/2014. In his application, he claimed relief by way of a direction to the respondent to permit him to proceed further in the Civil Services Examination (hereafter referred to as "CSE-2014").

2. The facts of this case throw into light exceptional and peculiar circumstances which are by and large uncontroverted. The advertisement inviting applications for CSE-2014 concededly mentioned that candidates could fill in e-forms and submit them online between 31.05.2014 and

30.06.2014 till 11.59 PM. The uniqueness of this exercise was that over a million candidates applied and were permitted to write the examination. The petitioner apparently, and unusually, filed the form a few hours before the date notified, i.e. 31.05.2014. He, in fact, submitted his online application on 30.05.2014, just six hours before the beginning of the time granted by the Union Public Service Commission (UPSC). In conformity with the terms and conditions governing such applications, the petitioner apparently filled both parts of the form; uploaded the relevant annexures, including his photograph, and; also submitted an online payment of ₹100/- which was immediately debited from his bank account. The form was also apparently accepted online and acknowledged on 30.05.2014 itself, almost instantaneously, in the following terms:

“Online Form Submission

May 30

UPSC noreplyupsc@nic.in

to me

Dear Amit Pal

*You have successfully submitted PART-I of your form for
Civil Services (Preliminary) Examination-2014*

Yours Registration ID: 11421471189

You are further requested to complete PART-II of your application for which you need to enter your RID no. and Date of Birth along with scanned images of your photograph & signature. You have to pay the fees as well if you are not a fee Exempted Candidate. The valid modes for the payment of fee are CASH in any of the SBI branch or VISA/MASTER debit/Credit card or internet Banking of SBI/SBBJ/SBIM/ST/STP.

We wish you all the best.

UNION PUBLIC SERVICE COMMISSION

May 30

UPSC noreplyupsc@nic.in

to me

Dear Amit Pal

You have successfully submitted your form for Civil Services (Preliminary) Examination – 2014

Your Registration ID: 11421471189

Your candidature is further subject to the acceptability of your photo to signature as well as verification of payment in case you are not a fee exempted candidate.”

3. While so, on 05.06.2014, unbeknown to the petitioner, the credit entry made - of ₹100/- (for the online fee submission), was reversed and credited back into his account. It was his claim before the CAT that he was completely unaware of this later development, and that when he sought to proceed further for generation of admission ticket, he was denied the same. He consequently represented to the UPSC which, on 25.07.2014, stated that the transaction in question, i.e. submission of his online application of

30.05.2014 had failed and that he could not be treated as a candidate. The said online rejection intimation reads as follows:

“ajay Sharma drajay.ips@gmail.com 2.53PM (22 hours ago)

to upscoap

25.07.2014

Respected Sir I am not able to download the admit card for CSE prelim 2014. I am sending my form copy in attachment in all three formats, i.e. pdf ms word as well as scanned copy. Kindly help.

Regards

Amit Pal

UPSC

to me

It was a failed transaction and refunded to you on 02.06.2014 with Registration ID: 11421471189

No payment has been received by UPSC against your Registration ID as intimated by SBI.

Hence, you are not a candidate for SCP-2014

Try for next year.”

4. Aggrieved, the petitioner approached the CAT. During the pendency of the proceedings before the CAT, the petitioner was allowed to appear in the preliminary test but his result was directed to be kept in a sealed cover. The CAT ultimately rejected his application by the impugned order, reasoning as follows:

“11. We are, therefore, to conclude that the applicant had applied for the examination on a date on which no notice inviting applications existed. No right can, therefore, accrue to him on the

basis of a non-existent advertisement because of which the claim of having filed a valid application successfully cannot be accepted. Mere acceptance of fees and other documents by the Respondent-UPSC would in no way entitle the applicant to be treated as having validly applied for the examination.”

5. It is contended that the petitioner could not have been held accountable for the defect in the website or the program designed and put online by the UPSC. In this regard, it was submitted that the petitioner had filled all parts of the application form successfully. It was accepted online and a Registration ID was generated. Even the online payment was accepted. In these circumstances, without any intimation that the acceptance was defective or that it would not be taken into consideration, the UPSC, merely on the strength of its notification in the public domain that applications were to be accepted from 31.05.2014 onwards, or the fact that the debit entry in his account had been reversed by the bank (which was in fact not notified to him, considering the insignificance of the amount), he could not be deprived of the chance to proceed further in the CSE-2014. Learned counsel argued that the dictates of Article 14 of the Constitution are such that even though an applicant is made aware of the conditions in which a public examination or recruitment takes place, yet in given circumstances - as in the present case, if the application is intimated to be accepted, he ought not to be prejudiced from participating in the process as that would irrevocably blight his chances to better himself/herself.

6. Learned counsel for the UPSC relied upon specific terms of advertisement. It was submitted that these clearly stipulated that online applications from candidates would be accepted from 31.05.2014 till 11.59 PM on 30.06.2014. It is contended that the UPSC, in collaboration with its

technical consultant, the National Informatics Centre (NIC) was undertaking certain trial runs in real time on the internet and the petitioner's application was submitted online during one such process. The UPSC relies upon its averments in the following terms:

"5. That prior to the issuance of the Examination Notice as aforesaid, it is submitted that the Commission issued a small Notice on 23rd May, 2014 on the website of the Commission in the form of a scroll, informing the public at large that the Commission was going to publish a detailed Examination Notice for the Civil Services Examination – 2014 on 31st May 2014.

*6. That again on 27th May 2014 the answering respondent in continuation of the earlier Press Note dated 23rd May 2014 issued another Press Note, informing the public at large that there shall be no change in the syllabi of the subjects. The said Press Note further reiterated that the Commission was going to publish a detailed Examination Notice for the Civil Services Examination-2014 on 31st May 2014. The said Press Note was also published on the web site of the answering respondent. A copy of the Press Note dated 27th May 2014 is annexed herewith as **Annexure R-2**.*

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10. That it is submitted that the NIC, which is made responsible for providing all the hardware and software supports to the Commission for its online application performed online testing one day in advance i.e. on 30th of May 2014 for testing of Payment Gateway, which could not be performed on a test server. The Payment Gateway was opened for a brief spell on 30th May 2014 during which the test run was conducted. After the test run was successfully completed, all entries made during the said test run were deleted."

7. It is also submitted that on 27.05.2014, the UPSC had reiterated the terms of Press Note dated 23.05.2014, clearly stating that the terms of the

CSE-2014 in all respects, i.e. the dates when online applications could be submitted (the opening date as well as the closing date and the time) would be strictly adhered to. It was also contended that when the trial run was in fact undertaken, an online scroll ran which clearly stated as follows – **“Aspirants for Civil Services Examination, 2014 may please note that the Examination Notice for Civil Services Examination, 2014 will be issued on 31.5.2014”**

8. It was submitted that the petitioner could not claim any right, much less invoke Articles 14 and 16 of the Constitution, given that he could not strictly conform to the terms of the advertisement and submit his online application form on or after 31.05.2014. The mere circumstance that a Registration ID was generated at the time when he furnished the application form (when the trial run was being conducted), could not confer any right upon him, much less create any equity, because on 05.06.2014, the online payment made by him was, in fact, reimbursed through reversal of debit entry by the bank. The rejection of his application by the UPSC on 25.07.2014 was, therefore, justified. Learned counsel submitted that in these circumstances, this Court should desist from interfering with the order of the CAT.

9. It is evident that there is in fact no dispute about the facts at all. The material circumstances are that:

- (a) The advertisement issued by UPSC stipulated that applications would be accepted and the opening date would be 31.05.2014; the ending date and time were 30.06.2014 at 11.59 PM.
- (b) The UPSC's stand is that from 23.05.2014, an online trial run was

conducted in collaboration with NIC.

- (c) The UPSC contends that on 30.05.2014, a gateway was opened in the trial run process. It was further contended that a scroll was run online stating that the applications would be accepted on or after 31.05.2014.
- (d) The petitioner filled both the parts of the application and furnished it online, and simultaneously made payment on 30.05.2014. All these were accepted and even acknowledged by the system. He was informed about the Registration ID and the online payment was debited from his account;
- (e) The bank - which had been instructed by the UPSC not to accept any amounts prematurely, reversed the debit entry at the time of accepting online payment on 05.06.2014. However, the petitioner was not intimated about this.

10. The UPSC neither intimated to the petitioner that the application accepted from him during the trial run process did not constitute a real time application and that he was not a candidate, nor during the period, i.e. 31.05.2014 to 30.06.2014, that his application submitted online and the Registration ID issued to him, were invalid. The petitioner was intimated that he was not a candidate only in response to his representation for issuance of Admit Card on 25.07.2014. From the above admitted facts, what is significant is that even though the terms of advertisement were clear, in that candidates had to apply on or after 31.05.2014, the UPSC accepted the petitioner's application, the fee and issued the acknowledgement during the conduct of a trial run. There appears to have been a manifest and apparent design defect in this trial run, because it permitted the petitioner to, in fact,

apply online and successfully secure a Registration ID. The online payment too was made and accepted. The only ground on which the UPSC now contends that the petitioner was aware of his rejection of candidature, was refund of online payment of ₹100/-. The UPSC also has not informed the petitioner, in any form, note or intimation between 31.05.2014 and 30.06.2014 that online acceptance was in the course of trial run and that he was not a candidate. In these circumstances, we hold that in the absence of the UPSC's intimation of:

- (a) the fact that a trial run was being conducted and that applications, if accepted, by inadvertence, would be treated as invalid;
- (b) the reversal of the online payment by the bank;
- (c) the absence of any formal intimation during the period 31.05.2014 and 30.06.2014;

the petitioner was, in fact, prejudiced. Had the petitioner been made aware consciously by the UPSC, during the period it was possible for him to apply a second time – (given that the terms of the advertisement itself - permitted candidates to fill multiple applications) he would not have been so prejudiced. This instance may be a one-off, unusual case where due to technical drawbacks and, perhaps, oversight on the part of the UPSC and NIC, the application was accepted. Nevertheless, the fact remained that the magnitude of impact upon the petitioner cannot be understated. If the UPSC's argument that its rigid timelines are strictly enforceable is to be accepted, the petitioner would lose all further chance of competing in CSE-2014. In these circumstances, the Court is of the opinion that although this

might be a singular and exceptional instance, the overall circumstances do indicate arbitrariness.

11. This Court is conscious of the authorities which stipulate that the terms of an advertisement, especially with respect to the last date on which applications are to be submitted, which in turn define the cut-off for determination of eligibility conditions, cannot be departed from (refer to *Mrs. Rekha Chaturvedi (Smt) v. University of Rajasthan and Others* 1993 Supp (3) SCC 168). In the present case, rather unusually, the petitioner applied few hours *prior* to the time when the applications could be formally accepted online. This case, in the circumstances of the case, would stand on a different footing than cases of belated submission of admission/examination forms. This could not have happened but for the UPSC's choosing to conduct online and live trial runs. May be as far as UPSC was concerned, the application was accepted and the registration was generated by sheer inadvertence and without human intervention. Nevertheless, this resulted in the petitioner entertaining a genuine and bonafide belief that he had successfully applied, as no formal intimation to the contrary was ever given to him during the period when he could have applied, i.e. before 30.06.2014 – by the UPSC. The consequence of denying relief in such cases has far graver implications for the petitioner, as he virtually becomes a victim of the design defect in the program, which was run on trial basis at the time that he submitted the online application. The public interest, if any, in rejecting his application, is far outweighed by his right to candidature, which has been proved beyond any doubt given the circumstances of the case.

12. For the above reasons, the impugned order of the CAT cannot be sustained. It is accordingly set aside. It is notified that the petitioner was successful in the preliminary examination, during the proceedings, when the UPSC was directed to produce the result in a sealed cover. The results clearly indicate that as a general category candidate, he is eligible since he has secured more marks than the last candidate in that category in the preliminary examination. He is accordingly declared to be a candidate for the CSE-2014 and shall be allowed to participate in the examination to be scheduled on 14.12.2014. All consequential steps, i.e. towards accepting the fee and the filling up of the form shall be completed within next two days and the Admit Card shall be issued to the petitioner. The petitioner shall present himself before the UPSC for this purpose, tomorrow at 10.30 AM.

13. The result in respect of the petitioner in the preliminary examination is directed to be kept back in the sealed cover.

14. The impugned order of the CAT is accordingly set aside. The writ petition and the pending applications are allowed in the above terms.

Order dasti under signatures of Court Master.

S. RAVINDRA BHAT
(JUDGE)

VIPIN SANGHI
(JUDGE)

DECEMBER 08, 2014/ajk