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

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Date of decision: 20.11.2020

+ **W.P.(C) 8510/2020 and CM Nos.29764/2020 and 27541/2020**

ANUJ YADAV

..... Petitioner

Through: **Mr. Gaurav Goel, Advocate**

versus

UNION OF INDIA & ANR.

..... Respondents

Through: **Ms. Monika Arora, Advocate for R-1.**
Mr. Naresh Kaushik and
Mr. Vardhman Kaushik, Advocates for R-2/UPSC.

CORAM:

HON'BLE MS. JUSTICE JYOTI SINGH

JYOTI SINGH, J. (ORAL)

1. Present petition has been filed by the Petitioner for quashing the examination held on 06.09.2020 pursuant to an Examination Notice issued by Respondent No.2 / UPSC as also all consequential proceedings emanating therefrom, and for issuance of a writ of mandamus directing the Respondents to reconduct the examination afresh and allow the Petitioner to reappear. Alternatively, a direction is sought to the Respondents to allow the Petitioner to appear in the next examination due to be held in the year 2021.

2. The facts being in a narrow compass are that the National Defence Academy (NDA) and Naval Academy (NA) Examination which were earlier conducted twice in a year, in April and September every year, due to Pandemic Covid-19 could not be held in April, 2020. The Petitioner had applied for the examination scheduled to be held in April, 2020.

3. On 16.06.2020, Respondent No.2 issued an advertisement for the 2020 Examination, to be held on 06.09.2020. Pursuant to the advertisement, Petitioner applied on 22.06.2020 and appeared for the examination on 06.09.2020 conducted at Bhopal Institute of Technology, Bhopal.

4. As per the case set out by the Petitioner, irregularities were committed by the Invigilators during the examination process, including change of question paper and OMR sheets resulting in loss of approximately 30 minutes of examination time, adversely affecting, about 96 candidates. Petitioner vide e-mail dated 08.09.2020 reported the said irregularities to Respondent No.2, followed by a Reminder email on 18.09.2020.

5. According to the Petitioner, Respondent No. 2 sent an email on 25.09.2020 enclosing a letter dated 23.09.2020, whereby Respondent No.2 admitted the irregularities, but stated that on account of the said irregularities, only 4-5 minutes were lost. Thereafter, again emails were sent by the Petitioner wherein the Petitioner reiterated his stand of loss of crucial time of about 30 minutes which affected the number of questions which he could attempt, during the examination. Failing to get a

favourable response, the Petitioner approached the Court by filing the present petition.

6. Learned counsel for the Petitioner contends that the examination in question was to start from 2.00 pm. on the given date and the OMR sheets were distributed to the Candidates at the Centre at 1.50 p.m. to enable them to fill their details in the sheets. Petitioner was also given the OMR sheet at 1.50 p.m. and he filled the requisite details. Thereafter, Petitioner perused the question paper and solved a few questions on the question paper itself. Before the Petitioner could transfer the answers to the OMR sheets, the Invigilator realized that the question papers and the OMR sheets were wrongly distributed and collected back the documents from all candidates, and thereafter redistributed fresh OMR sheets and question papers to all candidates. The candidates including the Petitioner had to refill their details in the OMR sheets, for which ten minutes were given. This entire process consumed about 30 minutes and crucial time of the candidates was lost.

7. It is contended that there were 96 candidates at that particular Centre and it is not humanly possible to have collected and redistributed the OMR sheets and question papers to all candidates in a span of 4-5 minutes, and therefore the stand of UPSC that only a time of 4-5 minutes was lost is completely false and incorrect. Assuming without admitting that it took only 4-5 minutes to undertake the entire exercise, even in those 4-5 minutes a candidate would have solved 5-6 questions, and in a competitive examination, it could change the result of a candidate to his benefit or detriment. The final result is based on cumulative marks

obtained in written examination and SSB interview and therefore the irregularity as committed by UPSC has caused great prejudice to the Petitioner, as he was unable to attempt all questions.

8. It is further contended that assuming that the entire exercise of distributing the question papers and OMR sheets had to be undertaken again, Respondent No.2 should have given extra time to the candidates to compensate for the loss of time, due to the fault of the Invigilators/Supervisors. In any case, on account of the Pandemic Covid 19, Petitioner has already lost one chance to appear in April, 2020 and therefore, the Petitioner ought to have been given an extra chance to appear at least in the next examination, which is due to be held in the year 2021.

9. Short reply has been filed on behalf of the UPSC. It is averred in the reply that the petition is based on absolutely false premise and deserves to be dismissed on the ground that the Petitioner has misrepresented the facts. Petitioner has averred that Respondent No.2 in its email dated 25.09.2020 admitted the irregularities, whereas on a perusal of the said email, it is evident that there is no such admission by Respondent No.2. On the contrary, the correct version of the email is that in the second session, the question papers were distributed at 1.55 p.m. and some question papers were distributed wrongly. The OMR sheets of some candidates were changed, which took 4-5 minutes and hence there was no loss of time for the candidates and neither has any complaint been received from any other candidate.

10. Mr. Kaushik appearing for the UPSC, based on the short reply, argues that there were 75 candidates in 7 rows in the particular examination hall in which the Petitioner took the examination. There were 8 invigilators i.e., one invigilator for each row. 21 candidates were absent out of total 96 candidates who had to take the examination. Thus, each invigilator had to distribute question papers and OMR sheets only to 9-10 candidates. He submits that scrutiny of the records shows that a majority of the candidates have attempted questions upto serial no. 150 i.e., the last question of Paper-II including the Petitioner, who himself attempted upto question no. 150. Two candidates have even qualified in the examination from the said hall. He further submits that Petitioner is a single candidate out of 75 candidates who has raised any grievance, and that no complaint has been received from any other candidate. The report of the Coordinating Supervisor, Bhopal was obtained by the Commission by forwarding the complaint of the Petitioner, and the Report reveals that the stand of the Petitioner is incorrect.

11. In Rejoinder, learned counsel for the Petitioner reiterates that on account of the alleged irregularities, an approximate time of 30 minutes was lost in attempting the question papers. Counsel rebuts the stand of Mr. Kaushik that the Petitioner has made any misrepresentation, and according to him the email dated 25.09.2020 can only be interpreted to conclude that Respondent No.2 has clearly admitted that there were irregularities in distribution of the question papers and OMR sheets, and therefore the only question that arises is if it resulted in loss of 30 minutes or only 4-5 minutes, as alleged by Respondent No.2.

12. Learned counsel for the Petitioner vehemently argues that the answering Respondent has not stated in the reply nor placed any material on record to evidence that only 4-5 minutes were lost. It is not disclosed as to who conducted the inquiry into the issue, and no report whatsoever has been placed on record. In so far as the invigilator or the Coordinating Supervisor is concerned, it goes without saying that they will only give a report in their favour and will not support the case of their own misconduct or negligence.

13. In so far as the argument of Respondent No.2 that all candidates including the Petitioner had attempted upto the last question is concerned, learned counsel for the Petitioner contends that it is not necessary that candidates including the Petitioner attempts the question paper in a seriatim from 1 to 150, and it is possible that candidates can attempt question no.150 first and then attempt the other questions. Therefore, the fact that the Petitioner attempted question no.150 is hardly of relevance to show that the time loss did not impact the examination process.

14. I have heard the learned counsels for the parties and examined the rival contentions.

15. The focal point argued by the Petitioner is that on account of the redistribution of the OMR sheets and the question papers, crucial time in attempting the question paper, during the conduct of the examination was lost and this has adversely affected the Petitioner, who resultantly could not attempt all the questions and is finally unsuccessful in clearing the examination. The parties are *ad idem* that in fact for some candidates, the

OMR sheets / question papers were wrongly distributed and had to be collected back and fresh OMR sheets and question papers were redistributed, resulting in loss of time. The dispute, however, is with respect to the time lost in undertaking the entire exercise. While it is the case of the Petitioner that approximately 30 minutes were lost, it is the stand of Respondent No. 2 that only 4-5 minutes were lost. Respondent No. 2 has supported its stand by arguing that there have been no complaints from any other candidate, and that the candidates including the Petitioner have attempted upto the last question being question no.150, coupled with the fact that two candidates have cleared the examination from the same hall. Petitioner has contested the position by arguing that it is not necessary that a candidate must attempt the question paper in seriatim, and can start answering the questions in any pattern including starting from the last question.

16. While it cannot be debated that if during the course of conduct of any examination, the question papers or the answer sheets are collected back and redistributed, it would result in loss of time, and in a given case, loss of a few minutes could lead to a situation where candidates are unable to attempt one or more questions, due to paucity of time. This would have a direct impact on the scores of the candidate and would be detrimental to the candidate in the competitive examination, where even a single mark could effect the selection. The question, however, that arises before this Court is whether the time lost on account of the redistribution of papers was 4-5 minutes or approximately 30 minutes, and in case of the latter, the number of questions that the Petitioner was unable to

attempt. Neither side has placed any material on record for the Court to take a view on this issue one way or the other. In any case, this is an issue which can only be substantiated and proved by leading evidence and is in the realm of disputed questions of facts. Likewise, whether or not the Petitioner attempted all questions in a seriatim from 1 to 150 or attempted the question paper in a different seriatim starting from Question No. 150, cannot be gone into in a writ petition under Article 226 of the Constitution of India.

17. It is well settled by a catena of judgements that in a writ jurisdiction, Courts cannot enter into disputed questions of facts. No evidence can be led by the parties to substantiate their case one way or the other as a party would do in a civil suit. This Court cannot therefore enter into or appreciate the issue relating to the alleged loss of time caused due to redistribution of the question papers and the OMR sheets or its resultant effect on the number of questions attempted by the Petitioner. At best, the Petitioner can be left to raise the said grievances in civil proceedings and / or claim damages.

18. In my view, the grievances ventilated by the Petitioner and the arguments canvassed being in the realm of disputed questions of facts and evidence cannot be gone into in a writ petition, and on this short ground, the writ petition cannot be entertained.

19. For the aforesaid reasons, the writ petition is dismissed. Liberty is, however, granted to the Petitioner to take recourse to appropriate remedies available to him to ventilate the grievances raised in the present

petition, in accordance with law. All pending applications are accordingly dismissed.

JYOTI SINGH, J

NOVEMBER 20, 2020

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