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

Date of Decision: 14.01.2021

+ **LPA 21/2021**

ANUJ YADAV

... Appellant

Through: Mr. Tanmaya Mehta and
Mr. Gaurav Goel, Advocates.

versus

UNION OF INDIA & ANR.

... Respondents

Through: Ms. Monika Arora, Advocate for
R-1/UOI.

Mr. Naresh Kaushik, Advocate for
R-2/UPSC.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

HON'BLE MR. JUSTICE SANJEEV NARULA

JUDGMENT

SANJEEV NARULA, J. (Oral)

[VIA VIDEO CONFERENCING]

CM APPL. 1385/2021 (for exemption)

1. Exemption allowed, subject to just exceptions.
2. The application is disposed of.

**LPA 21/2021 & CM APPL. Nos. 1383/2021 (for ad-interim reliefs),
1384/2021 (for directions to Respondent No. 2 - UPSC)**

3. The present Letters Patent Appeal under Clause 10 of Letters Patent is directed against the final order and judgment dated 20th November, 2020 passed by the learned Single Judge in W.P.(C.) 8510 of 2020. By way of the impugned order, the learned Single Judge has dismissed the writ petition filed by the Petitioner (being the Appellant herein) praying for a writ of

Certiorari seeking *inter alia* the quashing of the examination of the National Defence Academy & Naval Academy Examination (II), 2020 held on 6th September, 2020 by the Respondent No. 2.

4. On 16th June, 2020, Respondent No. 2 issued notice No. 08/2020-NDA-II for the abovesaid examination. Pursuant thereto, the Appellant applied, and was allocated a roll number for appearing in the examination, to be held at the test centre at Bhopal Institute of Technology, Bhojpur Road, Bhopal. The grievance of the Appellant is that on the date of examination there were irregularities by the invigilators at the examination centre, inasmuch as, the question paper and the OMR sheets distributed prior to the exam, were subsequently changed by them. This resulted in a loss of approximately 30 minutes of precious time, putting 96 candidates having Roll Nos. from 0413369 to 0413464 under mental stress and causing them inconvenience and disadvantage in a highly competitive examination. This was reported to Respondent No. 2 by way of an e-mail dated 08th September, 2020 followed by a reminder on 18th September, 2020.

5. The stand of Respondent No. 2 in respect of the aforesaid complaints was intimated to the petitioner *vide* e-mail dated 25th September, 2020 wherein it was *inter alia* stated that:

“The matter was taken up with the coordinating supervisor, Bhopal and it has been informed that in ‘E’ section at Bhopal Institute of Technology, Bhopal in the second session, question papers were distributed at 1:55 pm. However, some question paper was distributed wrongly and OMR sheets of some candidates were changed which took 4-5 minutes and hence there was no loss of time for the candidates. It may please also be noted that no such complaint has been received from any other candidate.”

6. In the afore-noted factual background, the Appellant preferred the writ petition praying for a writ of Certiorari seeking quashing of the examination

conducted in pursuance to the Examination Notice No. 08/2020-NDA-II. Additionally, a writ of mandamus was also prayed for directing the Respondents to re-conduct the examination afresh and, in the alternative, a direction to the Respondent to allow the Petitioner to appear in the next examination to be held in the year 2021.

7. The learned Single Judge took note of the rival contentions of the parties, and observed that the factual dispute relating to the time lost on account of re-distribution of papers is a fact which cannot be determined on the basis of the material on record, to take a view one way or the other. Further the learned Single Judge observed that the factual issue can only be substantiated by leading evidence on the disputed questions of fact, which cannot be examined in a writ petition under Article 226 of the Constitution of India. In view of the settled legal position relating to the exercise of the writ jurisdiction by the Courts, the learned Single Judge opined that the Court cannot enter into the arena of a factual dispute and the Petitioner is best left to raise his grievances by initiating civil proceedings and/or claiming damages.

8. Mr. Tanmaya Mehta, learned counsel for the Appellant argues that the learned Single Judge has failed to appreciate that on the date of the examination, the OMR sheets were distributed to the candidates at 1:50 PM and the question papers at 2:00 PM. The extra 10 minutes were given to the candidates to fill the OMR sheets without mistake. He claims that the filling of OMR sheets genuinely takes about approximately 10 minutes and it is an admitted position that in the case of the Appellant, after start of the examination, the invigilators realised that the question papers were wrongly distributed and recalled the same along with the OMR sheets. Later, fresh OMR sheets along with the correct question papers were re-distributed. This

resulted in a loss of valuable time on account of filling in the fresh OMR sheets and attempting the question paper. He submits that the examination in question is very competitive and even the loss of minuscule time is of great consequence and can significantly influence the ultimate result. Therefore, the Appellant, having been deprived of the full time available to answer the exam, is gravely and seriously prejudiced.

9. Mr. Mehta further argued that the learned Single Judge has also recorded a finding with respect to the wrong distribution of the OMR sheets and question papers. He urged that in view of observations made in the impugned order and the admissions by Respondent No. 2, it is evident that irregularities had indeed taken place during the conduct of invigilation on 6th September, 2020 and, the Appellant ought to have been given extra time to complete the examination. Therefore, the loss of time has seriously impaired the Appellant's chances of success in this competitive examination as the marks obtained by the candidates are extremely vital, reason being that the final selection is based on the cumulative marks obtained by a student in the written examination as well as in the SSB interview. He emphasized that this examination was the last attempt available with the Appellant for having a career in the defence services.

10. We have duly considered and reflected upon the submissions advanced by Mr. Mehta and perused the record. Clearly, we cannot find any admission on the part of the Respondents as Mr. Mehta is portraying before us. In the counter affidavit to the writ petition, notice whereof was taken by the learned Single Judge, the Respondents did not make any admissions to the allegations made by the Appellant. On the contrary, we find that Respondent No. 2, while specifically controverting the allegations of the Appellant, has also stated that Appellant has mis-represented the facts. We

also, on perusal of the counter affidavit, notice that Respondent No. 2 has categorically and emphatically denied any irregularity on their part. They, however, do state that some question papers were wrongly distributed and on that account, the OMR sheets of some candidates were changed which took 4-5 minutes, but despite that, it is stressed that there was no loss of time. This stand is borne out from the e-mail sent by Respondent No. 2 to the Appellant, re-iterated in the counter affidavit filed before the learned Single Judge.

11. The principle of law followed by the learned Single Judge for refusing to enter into the factual disputes while exercising writ jurisdiction is well settled and needs no emphasis. The Apex Court and several High Courts in a catena of judgments have repeatedly held that “*High Court does not generally enter upon a determination of questions which demand an elaborate examination of evidence to establish the right to enforce which the writ is claimed.* [See: **Thansingh Nathmal v. A. Mazid**, (AIR 1964 SC 1419)]. Recently, in **Bihar Staff Selection Commission v. Arun Kumar**, (2020) 6 SCC 362, the Supreme Court has held that under Article 226, the scope of judicial review is narrow in matters pertaining to evaluation of candidates for the purpose of recruitment for public service.

12. There can be no dispute that the nature of assertions made by the Appellant and the stand of the Respondent No. 2 brings out questions of fact which necessarily require adducing of evidence. Therefore, this factual disagreement cannot be appropriately tried in a writ petition. In the circumstances noted above, the Appellant has been rightly relegated to avail remedy by way of civil proceedings. Thus, in view of the factual controversy and the case laws noticed above, we do not find any fault in the view taken by the learned Single Judge, on this count.

13. Next, we are of the opinion that even the reliefs sought in the writ petition could not have been granted. The petitioner sought the cancellation of the entire examination. The Supreme Court in several decisions has pointedly observed that the courts should not easily interfere in the examination process [See: ***U.P. Public Service Commission v. Rahul Singh***, (2018) 7 SCC 254].

14. Mr. Mehta, submits that the Appellant is more concerned with the other relief sought in the writ petition whereby the Appellant is seeking a direction to re-conduct the examination afresh by allowing the Appellant to re-appear in the same. In our view, this relief also cannot be granted merely on the basis of allegations made by the Appellant, which are highly contested and controverted by Respondent No. 2. In the decision rendered in ***Mahipal v. Union of India***, (MANU/DE/1752/2020), to which one of us (Rajiv Sahai Endlaw, J) was a party, the relief of re-examination as prayed for, was declined. The said decision concisely summed up the precedents in respect of law on cancellation of competitive exams. The same is reproduced as follows:

“14. *On a conspectus of past precedents, the law on annulment/cancellation of competitive examinations or result thereof, in Amit Kumar Sharma v. UOI* [MANU/DE/1306/2020], was held to be, (i) that competitive examinations, holding whereof takes mammoth organization, cannot be annulled on mere conjectures and surmises; (ii) that it cannot be lost sight of that annulment of examination and consequent holding of fresh examination (which takes re-organization and hence time) ultimately causes delay and has cascading effect; (iii) that the same also results in the examinees being inconvenienced; (iv) that holding of fresh examination also, besides costing money, takes considerable effort; (v) that annulment of examination without proper cause will thus be detrimental not only to the body/entity holding the examination but also to the large number of candidates taking the examination and would be against the public interest and would amount to, a cure

*worse than disease; (vi) that merely because a controversy has been raised, would not invite the drastic order which has a devastating effect on a large number of people; (vii) that en masse cancellation can be resorted to only on finding a large number of such selections to be tainted and segregation of good and bad being difficult and a time consuming affair; (viii) that the **examinations are thus not to be annulled lightly, on the mere asking of any one, with the allegations of possibility of the same having been corrupted;** (ix) **that only when it is sufficiently established that the examination though purportedly conducted, was no examination and cannot be treated as a test of proficiency of students taking the examination or had ceased to be competitive or that the defects/malpractices therein had seeped to such an extent as to make it impossible for the examining authority or the Court to determine a fair result of the examination, would the Court be justified in annulling an examination;** and, (x) **that en masse cancellation would otherwise be violative of Article 14 of the Constitution of India.**”*

(Emphasis supplied)

15. On the queries raised by the Court, Mr. Mehta admits that the examination in question was to be conducted in two parts and the alleged incident of delay in distribution of the correct question papers and OMR sheets occurred in respect of the afternoon session of the examination. Mr. Mehta, responding to the query of the court, is not able to show any complaint made on the spot. The first protest by the Petitioner is two days later. Mr. Mehta, further responding to the query of the Court, states that the Appellant has not been able to clear the examination in any of the previous attempts. While it cannot be disputed that a candidate who may not have cleared the examination previously could have done so in this attempt, however the Court can always take into consideration the past performance to assess the merit/standing of the candidate. We also cannot disregard the stand of Respondent No. 2 that out of the 96 candidates who were to appear at the Bhopal Centre, the Appellant is the only one who has raised the grievance of suffering from a loss of time. These facts are being recorded only to stress that in the absence of evidence, if we were to proceed on the basis of the facts presented before us, and even if we were to apply the

doctrine of preponderance of probabilities, we cannot infer misconduct and negligence on the part of the Respondents and come to the rescue of the Appellant. Thus, we are of the opinion that in the absence of any support to the assertions made by the Appellant, the veracity of the stand of the Appellant is indeed questionable and there is no infirmity in the impugned order.

16. In view of the foregoing, we find no merit in the present appeal. Accordingly, the same is dismissed.

17. The pending applications also stand disposed of.

SANJEEV NARULA, J

RAJIV SAHAI ENDLAW, J

JANUARY 14, 2021

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