

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.3963 OF 2018

1. Sonali Shivram Dupare)
Age Adult, Occ:- Student)
Dhupare Pada, Post, Lone,)
Taluka Wada, District- Palghar)
2. Smita Amrut Patil)
Age Adult, Occ:- Service)
residing at Deoghar, Post-Khaniwali)
Taluka Wada, District- Palghar)
3. Tushar Madhukar Shelar)
Age Adult, Occ:- Student)
At Koshimbe, Tauka Bhiwandi)
District- Thane)

...Petitioners

Vs.

1. The Thane District Central)
Co-operative Bank)
Having address at:- Chatrapati Shivaji)
Road, Shivaji Path, Talav Palli)
Thane (W))
Though its General Manager.)
2. The District Deputy Registrar,)
Thane District Co-operative Societies)
Thane, District Thane)
3. The Commissioner of Co-operation)
Maharashtra State, Central Building)
Pune)
4. State of Maharashtra)
Co-operative Department, Mantralay)
Mumbai 400 032)
5. Galaxy Inma Systems & Services)
Private Limited)
Registered Address of the Company)
flat No.B-15/16, Bhusari Col,)
S. No.101, West End Village, BPD road)
Kothrud, Pune, Pune 411 038)

...Respondents

Mr. A. V. Anturkar, Sr. Advocate a/w Mr. Irvin D'Souza i/b Mr. Sugandh B Deshmukh for Petitioners.

Dr. D. S. Hatle a/w Mr. Deepak Jamsandekar for Respondent No.1.

Mr. N. K. Rajpurohit, AGP for Respondent Nos.2 to 4.

Mr. E. A. Sasi for Respondent No.5.

**CORAM : K.R. SHRIRAM &
RAJESH S. PATIL JJ**

DATED : 4th JANUARY 2023

(ORAL JUDGMENT PER K. R. SHRIRAM J.) :

1 Petition, though listed for admission today, with the consent of the parties is taken up for final hearing in view of the order passed by the Apex Court on 7th May 2018 which had directed this court to expedite the hearing of this Writ Petition and dispose the same expeditiously. The Apex Court has also directed the authorities concerned and the Bank, i.e., respondent no.1, in case any appointment is made, to make it explicitly clear in the offer of appointment that the appointment is made subject to the result of Writ Petition No.3963 of 2018, i.e. the petition at hand.

2 Rule. Rule, made returnable forthwith and heard.

3 Initially, petition was filed by five individuals against respondent nos.1 to 4. Subsequently, with the leave of the court the name of original petitioner nos. 2 and 5 were deleted. Respondent no.5 was also added.

4 Petitioners have approached this court aggrieved by the inaction on the part of respondent nos.2 and 4, i.e., The District Deputy Registrar, Thane District Co-operative Societies and State of Maharashtra, Co-operative

Department, to stay and cancel the recruitment process started by respondent no.1-The Thane District Central Co-operative Bank, on the basis that mass illegalities have been committed by respondent no.1 during the recruitment process for various posts including Officers, Senior Banking Assistant, Junior Banking Assistant, Peon and Watchmen etc. Mr. Anturkar submitted that the petition is restricted to recruitment by respondent no.1 in the post of Senior Banking Assistant and Junior Banking Assistant.

5 Respondent no.1 is a co-operative society and is the District Central Co-op Bank as also banking company. Respondent no.1 is governed under the Maharashtra Co-operative Societies Act 1970 (the said Act) and under the provisions of Section 79A of the said Act, the State Government has power to give directions to respondent no.1 in public interest.

Respondent no.1, on or about 16th October 2017, issued advertisement for various posts including for Senior Banking Assistant and Junior Banking Assistant. The other posts for which advertisement was issued were for Officers, Peons, Watchmen etc. A total of 211 posts were advertised. Petitioner no.1 had applied for Senior Banking Assistant and Petitioner Nos.2 and 3 had applied for Junior Banking Assistant post. Petitioners participated in the recruitment process and also attended written examination. Petitioners were not selected for the post. Petitioners have approached this court saying that gross irregularities have been committed in the recruitment process and petitioners are only three out of the many victims of irregularities in the recruitment process. From affidavit of

respondent no.1, it appears that over 15,000 candidates had participated in the recruitment process for 211 posts.

6 It is petitioners' case that respondents did not strictly follow the guide lines given by the State Level Task Force(SLTF). According to petitioners, some of the irregularities are : (a) the name of the candidate was required to be mentioned in the answer sheet which was not permissible; (b) question papers were not sealed and Optical Mark Reading (OMR) was not followed; (c) the answer sheets were not scanned immediately, etc.,. Respondent no.1, of course, has denied the allegations in the petition and a preliminary objection regarding maintainability of this petition has also been raised stating that respondent no.1 is not a State. It is also respondent no.1's case that they have strictly followed the guide lines laid down by the State Level Task Force on recruitment process. Respondent no.5, which was the agency appointed to conduct the recruitment process has also filed an affidavit stating that there was no wrong doing and that it had strictly followed the guidelines.

7 The issues in short to be decided, therefore, are:

- (i) the preliminary objection raised by Mr. Hatle on maintainability;
- (ii) whether there were any irregularities in recruitment process ? and
- (iii) if there were irregularities, what should be the outcome.

A. **MAINTAINABILITY:-**

8 On the issue on maintainability. Mr. Hatle relied upon an unreported judgment of this court in the matter of *Vikram Dhondiram Raskar & Ors. Vs.*

State of Maharashtra & Ors.¹ to submit that respondent no.1 is not a State. We reject this preliminary objection and will hold that this petition is maintainable because: (a) in the present petition directions have also been sought against respondent no.2 which is admittedly a State to conduct fresh recruitment process for the post that respondent no.1 had advertised, (b) in *Vikram Raskar (supra)* the Division Bench relied upon various judgments and in the facts and circumstances of that case held that respondent no.4 in that case, which was a Co-operative Bank registered under the said Act, was not a State within the definition of Article 12 of the Constitution of India. We have to observe that all the judgments referred to in *Vikram Raskar (Supra)* clearly hold that the tests for determining as to when a corporation can be said to be an instrumentality or agency of Government, cannot be conclusive or clinching. It must be based on facts and circumstances of the case, i.e., whether in the light of the cumulative facts whether the body could be considered as instrumentality of State.

9 In this case, (a) there are reliefs sought against the State; (b) as mentioned earlier and the State Government has power to give directions to respondent no.1 in public interest. Section 79A of the said Act provides, if the State Government is satisfied that in the public interest or for the purposes of securing proper management of the business of the society generally or for preventing the affairs of the society being conducted in a manner detrimental to the interests of the members or of the depositors or

1. In Writ Petition No.923 of 2021 pronounced on 22nd July 2022

the creditors thereof, it is necessary to issue directions to any class of societies generally or to any society or societies in particular, the State Government may issue directions to them from time to time, and all societies or the societies concerned, as the case may be, shall be bound to comply with such directions. Exhibit-C to the affidavit in reply of respondent no.1, is one such directions issued by the State Government. It specifically refers to alleged malpractices in recruitment process in various District Co-operative Banks and respondent no.1 is one such bank. Therefore, this is one such indicative fact for us to observe that respondent no.1 should be considered as an instrumentality of the State. Moreover, respondent no.1 has also accepted in the affidavit in reply that it is guided by and it has followed the guide lines issued by the State Level Task Force. If the stand of respondent no.1 is that they are not answerable under Section 226 of the Constitution of India has to be accepted, there was no need for respondent no.1 to even follow the guide lines of the State Level Task Force. Even if we do not express any opinion as to whether respondent no.1 was State within the meaning of Article 12 of the Constitution of India, it is beyond any cavil of doubt that writ petition will be maintainable when the action of respondent no.1, which is a co-operative bank registered under the said Act, to which Section 79A would apply, is violative of statutory provisions [*A Umarani Vs. Registrar of Co-operative Societies & Ors.*²] Therefore, in view of this, petition is certainly maintainable against respondent no.1 as well.

2. 2004(7) SCC 112

B. WHETHER THERE WERE IRREGULARITIES :-

10 Coming to the second issue to be answered, whether there were irregularities in the recruitment process, we find on record an affidavit filed by one Jyoti Lathkar, affirmed on 12th September 2018. Ms Lathkar is a Government Servant working as Divisional Joint Registrar, Co-operative Societies, Konkan Division, Navi Mumbai and filed the affidavit on behalf of respondent no.3. In this affidavit, it is expressly provided that on inquiry being conducted, irregularities have been found in the recruitment process. For ease of reference, paragraphs 7 to 15 of the said affidavit are scanned and reproduced herein below:

7. I say that, after getting various complaints regarding the recruitment of the Bank, Divisional Joint Registrar Co-op Society Konkan Division had appointed a committee on date 02.11.2017 consisting of District Deputy Registrar, Co-op Society, Thane and Divisional Deputy Registrar to monitor the process of recruitment. The committee appointed by Divisional Joint Registrar Konkan Division had called a meeting in this regard on 18/11/2017 in the office of the District Deputy Registrar Co-operative Society, Thane. The said Committee had enlisted various steps to be taken by the agency/company and prepared the list consisting of various steps to be taken to have a fair and transparent recruitment process. Hereto annexed and marked Ex-6 is the letter issued to the concerned agency by the said Committee dated 30/11/2017.

8. I say that, As per the agreement entered into between the bank and the agency dated 13/10/2017 the recruitment shall be undertaken by the bank as per the guidelines given by the State Level Task Force (SLTF). As per the agreement syllabus for the examination is to be provided by the bank to the agency, after that the written examination was to be conducted by the bank.



396

exam schedule to be published on website, that in the event any of the candidate is unable to receive hall ticket he shall be allowed to appear for written exam based on photo ID proof.

9. I say that, written examination has been conducted on 30/12/2017 and 07/01/2018, sealed question papers were handed over to the examination controller by the said company/agency, which were distributed to the supervisor prior to commencement of examination which has been verified by the enquiry committee appointed on 26/06/2018. Petitioner has submitted for that recruitment examination to be held online and the OMR (Optical Mark Reading) method to avoid the malpractices and committee appointed in this regards have already directed to the bank & company vide their letter dated 30/11/2017. Bank has passed resolution on date 11/03/2018 to scan the answer sheets and provide those answer sheets to the candidates who demand for the same.

10. I say that, the applicants have submitted an application dated 29/03/2018 to the office of the District Deputy Registrar Co-operative Societies, Thane, on 29/03/2018 on which explanation of Resp. No.1 Bank was sought by the



397

Line

applications were replied by letter dated 12/05/2018. Hence annexed and marked **Exh.7** is the copy of letter dated 12-05-2018.

I say that, other complaints/applications received by the Respondent No.3 were sent to the Divisional Joint Registrar Co-operative Societies Kottam Division by letter dt:01/06/2018. The Divisional Joint Registrar Co-operative Societies Kottam Division by its letter dt:05/7/2018, 16/7/2018 has asked Resp. No.2 to submit an enquiry report. Hence annexed and marked **Exh.8** is copy of letter dated 05-07-2018 and 16-07-2018.

11. I say that, during verification of the documents pertaining to the various complaints it is observed that the examination was not conducted by OMR method as advised by the committee appointed by the Divisional Joint Registrar, Co-operative Societies, Kottam Division, North Marthol dated 02/11/2017, by its letter dated 30/11/2017 to follow the necessary steps. In guideline 7.8 of SLTF (State Level Task Force) it is mentioned that arrangement for scanning of answer sheet or OMR sheets may be made by agency immediately after exam a CD or soft copy of the same, sealed in presence of 2/3 candidates and



398

kept with the bank and agency duly signed by Bank/Agency representative present at exam site during the course of enquiry conducted by the committee appointed on date 10/08/2018 it has been observed that the answer sheets are scanned from date 18/04/2018 to 25/05/2018. The scanning is not done in the presence of the candidates hence guideline No.7.8 of SLTF is partly followed by the bank. As per the schedule of the examination published by the bank on its website the written examination was to be held on 31/12/2017 and 03/01/2018 and interviews stretched from 26/03/2018 to 07/04/2018. It has been observed by the committee (Appointed to enquire) that this schedule has been observed by the bank.

12. I say that, the Divisional Joint Registrar, CS, Kolkata has sought inquiry report in to various complaints received about the recruitment from IDORCS, Thane and a committee was appointed on date 20/08/2018 to enquire in to the same. The committee has verified the answer sheets at random of the selected candidates from various categories (Jr. Manager, Sr. Banking Assistant, Jr. Banking Assistant and Peon) there was an instruction on the question paper to exercise the option of changing



399

been observed during the enquiry that few of the selected candidates have exercised the option of change of answer. It has been observed during the enquiry that few of the selected candidates have exercised the option of change of answer once in five times at maximum by cancelling previous answers.

13. I say that, as per the guideline No.7.4 of SLTF the Board of Directors of the bank may select agency for the recruitment from - IBPS, VAMNICOOM, NIBER, C-PEC, or any other similar professional agency having the required expertise and experience. Respondent No.1 bank approached to the Institute of Banking Personnel Selection vide its letter dated 19.09.2017, hereto annexed and marked Exh.-9 is letter dated 19-09-2017 for the process of the carrying out recruitment, the Institute of Banking Personnel Selection vide its email dt.22.09.2017, hereto annexed and marked Exh.10 is copy of mail, wherein it is conveyed that they are unable to take part in the process of recruitment, other agencies have not responded to the bank. Respondent No.1 bank called the quotation from six agencies for the recruitment process. The managing committee of the respondent No.1 bank selected the Galaxy Intra Systems and Services Pvt.Ltd.



400

405

No.13 passed in the meeting held on 28.09.2017. Hereto annexed and marked Exh.-11 is the copy of resolution.

14. I say that, the Divisional Joint Registrar Cooperative Societies Konkun Division Navi Mumbai vide its letter dated 2.11.2017, Hereto annexed and marked Exh.-12 is the letter dated 02/11/2017, appointed the monitoring committee headed by District Deputy Registrar Cooperative Societies Thane, along with Divisional Deputy Registrar Cooperative Societies Konkun Division Navi Mumbai as a member secretary and Co-operative Officer (Gr-I) under Deputy Registrar Co-operatives Societies Thane City, Thane as a member to monitor the recruitment procedure and make sure that recruitment process is conducted in fair and transparent manner. Monitoring committee issued instructions to the Galaxy Ima Systems and Services Pvt. Ltd. regarding conducting recruitment process in fair and transparent manner vide its letter dated 30.11.2017, Hereto annexed and marked Exh.-13 is letter dated 30-11-2017.

15. I say that, the guideline No. 7.8 of SLTP (State Level Task Force) mentions that an arrangement for scanning of answer sheets or OMR sheet may be made by the agency where



401

examination, a CD or soft copy of the same stated in presence of 2/3 candidates may be made and kept with the bank and agency duly signed by their representatives present at the examination. During verification pertaining to the various complaints it is observed by the Committee appointed on date 20/08/2018 that the examination is not conducted by OMR method as advised by the committee appointed on date 02/11/2017, vide its letter dated 30/11/2017. Similarly guideline No 7.8 of SLTF which states that scanning of answer sheets or OMR sheets may be made by the agency immediately after the examination and sealed in the presence of 2/3 candidates may be made and kept with the concerned. The bank has not scanned the answer sheets immediately after the examination. The schedule of recruitment was provided on the website www.bankofindia.co.in comprising of post wise written examination on 31/12/2017, 07/01/2018 and interview from 26/03/2018 to 07/04/2018, the final date of declaration of results was not mentioned but the final result (Appointments) is declared by the bank on 13/04/2018. The written examination and interview schedule is observed by the bank.

(Emphasis supplied)



11 Therefore, it is clear from this affidavit of Ms Lathkar on behalf of respondent no.3 that the examination for recruitment process was not conducted by OMR method and the guide lines for scanning of answer sheets or OMR sheets to be made by agency immediately after exam into a CD or soft copy of the same, sealed in presence of 2/3 candidates has not been followed.

12 Mr. Hatle submitted that the expression used in guideline 7.8 of State Level Task Force is “may” be scanned and not “shall” and, therefore, there is a discretion conferred upon respondent no.1. We are not inclined to accept this submission because respondent no.1 in its affidavit in reply has made a categorical statement that they have strictly followed the guideline 7.8 of State Level Task Force. It is also not the case of respondent no.1 that in view of the discretion conferred by the use of the word “may” in guideline 7.8, respondent no.1 chose not to follow the guideline 7.8.

Moreover, in view of provisions of Section 79A of the said Act, State Government can pass directions to respondent no.1 in public interest. Therefore, to some extent, we would say respondent no.1 is a public authority. There is no doubt that the word "may" generally does not mean "must" or "shall". But it is well settled that the word "may" is capable of meaning "must" or "shall" in the light of the context. It is also clear that where a discretion is conferred upon a public authority coupled with an obligation, the word "may" which denotes discretion should be construed to mean a command. We find support for this view in ***Mohan Singh & Ors v***

*International Airport Authority*³, *State Of Uttar Pradesh v. Jogendra Singh* ⁴ and *Dinesh Chandra Pandey v. High Court of Madhya Pradesh*⁵. If we read the guideline 7.8 as suggested by Mr. Hatle, it would defeat the very purpose of issuing those guidelines. Moreover, as noted in paragraph 8 of the affidavit of Ms Lathkar quoted above, even the agreement between respondent no.1 and respondent no.2 provides that the recruitment shall be undertaken by the bank as per the guidelines given by the State Level Task Force.

13 It will also be apposite to note that there is no affidavit in reply filed by any respondent denying the allegations, observations and findings given in this affidavit of Ms Lathkar. We have to also note that petitioners had filed further affidavits, one affirmed on 11th February 2021 and other affirmed on 4th March 2021, to bring on record the irregularities committed. To the affidavit of 11th February 2021, petitioners have annexed copies of answer sheets and from that, it appears that though multiple choice questions were there, it was not in OMR method. Moreover, essay type questions have also been given. We would agree with Mr. Anturkar's submission that answers to essay type questions could be used to increase or reduce the marks given to the candidates. No affidavit in reply denying these affidavits have also been filed by any respondent. In view of the above, it is quiet clear that the statement in the affidavit in reply of respondent nos.1 and 5 that they strictly followed and have complied with

³ (1997) 9 SCC 132

⁴ AIR 1963 SC 1618

⁵ (2010) 11 SCC 500

the regulations of State Level Task Force is incorrect statement and on that ground alone their defence should be struck down. Therefore, the only conclusion that we can arrive at is, there has been gross irregularities in the recruitment process.

14 Responding to the affidavit of Ms Lathkar on behalf of respondent no.3, Mr. Hatle submitted that respondent no.2 has filed an affidavit dated 19th July 2018 giving clean cheat to the recruitment process. We are not inclined to accept that affidavit because (a) affidavit on behalf of respondent no.3 is by an officer superior to respondent no.2; (b) affidavit on behalf of respondent no.3 is a later affidavit to which, there is no response, (c) having examined the additional affidavits on record by petitioner dated 11th February 2021 and 4th March 2021, we are satisfied that the view expressed on behalf of respondent no.3 is a correct view that there has been irregularities in conducting the recruitment process.

C. **CONSEQUENCES OF IRREGULARITIES:-**

15 Coming to the last issue, in view of our findings that the recruitment process itself was irregular, should the entire examination or selection process conducted be cancelled or only of all those candidates, in whose case malpractice could have been committed have to be cancelled. Answer to that we find in the judgment of the Apex Court in ***Gohil Vishvaraj Hanubhai & Ors. Vs. State of Gujarat & Ors.***⁶ In that case, Scrutiny of the answer sheets (OMR) revealed that there were glaring aberrations which

6. (2017) 13 Supreme Court Cases 621

provided prima facie proof of the occurrence of large scale tampering of the examination process. One of the issue that came up for consideration was whether the entire examination process should be cancelled or only of those class who had resorted to malpractice. The Apex Court came to the conclusion that the entire examination process should be cancelled and that would not be violative of Article 14 of the Constitution of India, since all candidates would get opportunity to participate in fresh examination process. Paragraphs 21 to 30 of the said judgment read as under:

“21. Purity of the examination process - whether such examination process pertains to assessment of the academic accomplishment or suitability of candidates for employment under the State - is an unquestionable requirement of the rationality of any examination process. Rationality is an indispensable aspect of public administration under our Constitution. The authority of the State to take appropriate measures to maintain the purity of any examination process is unquestionable. It is too well settled a principle of law in light of the various earlier decisions of this Court that where there are allegations of the occurrence of large scale malpractices in the course of the conduct of any examination process, the State or its instrumentalities are entitled to cancel the examination.[8] This Court has on numerous occasions approved the action of the State or its instrumentalities to cancel examinations whenever such action is believed to be necessary on the basis of some reasonable material to indicate that the examination process is vitiated. They are also not obliged to seek proof of each and every fact which vitiated the examination process.

22. Coming to the case on hand, there were allegations of large scale tampering with the examination process. Scrutiny of the answer sheets (OMR) revealed that there were glaring aberrations which provide prima facie proof of the occurrence of a large scale tampering of the examination process. Denying power to the State from taking appropriate remedial actions in such circumstances on the ground that the State did not establish the truth of those allegations in accordance with the rules of evidence relevant for the proof of facts in a Court of law (either in a criminal or a civil proceeding), would neither be consistent with the demands of larger public interest nor would be conducive to the efficiency of administration. No binding precedent is brought to our notice which compels us to hold otherwise. Therefore, the 1st submission is rejected.

23. The next question is whether the impugned decision could be

sustained judged in the light of the principles of ‘Wednesbury unreasonableness’. In the language of Lord Diplock, the principle is that “a decision which is so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it”. Having regard to the nature of the allegations and the prima facie proof indicating the possibility of occurrence of large scale tampering with the examination process which led to the impugned action, it cannot be said that the impugned action of the respondent is “so outrageous in its defiance of logic” or “moral standards”. Therefore, the 2nd submission of the appellant is also required to be rejected.

24. We are left with the 3rd question – whether the magnitude of the impugned action is so disproportionate to the mischief sought to be addressed by the respondents that the cancellation of the entire examination process affecting lakhs of candidates cannot be justified on the basis of doctrine of proportionality.

25. The doctrine of proportionality, its origin and its application both in the context of legislative and administrative action was considered in some detail by this Court in Om Kumar & Others v. Union of India, (2001) 2 SCC 386. This Court drew a distinction between administrative action which affects fundamental freedoms under Articles 19(1) and 21 and administrative action which is violative of Article 14 of the Constitution of India. This Court held that in the context of the violation of fundamental freedoms (Om Kumar Case, SCC P.408, para 54)

“54. the proportionality of administrative action affecting the freedoms under Article 19(1) or Article 21 has been tested by the courts as a primary reviewing authority and not on the basis of Wednesbury principles. It may be that the courts did not call this proportionality but it really was.

This Court, thereafter took note of the fact that the Supreme Court of Israel recognised proportionality as a separate ground in administrative law to be different from unreasonableness.

26. It is nobody’s case before us that the impugned action is violative of any of the fundamental freedoms of the appellants. We are called upon to examine the proportionality of the administrative action only on the ground of violation of Article 14. It is therefore necessary to examine the principles laid down by this Court in this regard. This Court posed the question in Omkar’s Case; (SCC p. 409, Para 61)

61. When does the court apply, under Article 14, the proportionality test as a primary reviewing authority and when does the court apply the Wednesbury rule as a secondary reviewing authority? From the earlier review of basic principles, the answer becomes simple. In fact, we have further guidance in this behalf.

and concluded;

“66. It is clear from the above discussion that in India where administrative action is challenged under Article 14 as being discriminatory, equals are treated unequally or unequals are treated equally, the question is for the

Constitutional Courts as primary reviewing courts to consider correctness of the level of discrimination applied and whether it is excessive and whether it has a nexus with the objective intended to be achieved by the administrator. Here the court deals with the merits of the balancing action of the administrator and is, in essence, applying “proportionality” and is a primary reviewing authority.

67. But where an administrative action is challenged as “arbitrary” under Article 14 on the basis of *E.P. Royappa v. State of T.N.*, (1974) 4 SCC 3, (as in cases where punishments in disciplinary cases are challenged), the question will be whether the administrative order is “rational” or “reasonable” and the test then is the *Wednesbury* test. The courts would then be confined only to a secondary role and will only have to see whether the administrator has done well in his primary role, whether he has acted illegally or has omitted relevant factors from consideration or has taken irrelevant factors into consideration or whether his view is one which no reasonable person could have taken. If his action does not satisfy these rules, it is to be treated as arbitrary. In *G.B. Mahajan v. Jalgaon Municipal Council*, (1991) 3 SCC 91, Venkatachaliah, J. (as he then was) pointed out that “reasonableness” of the administrator under Article 14 in the context of administrative law has to be judged from the stand point of *Wednesbury* rules. In *Tata Cellular v. Union of India*, (1994) 6 SCC 651, *Indian Express Newspapers Bombay (P) Ltd. v. Union of India*, (1985) 1 SCC 641, *Supreme Court Employees’ Welfare Assn. v. Union of India*, (1989) 4 SCC 187, and *U.P. Financial Corpn. V. Gem Cap (India) (P) Ltd.*, (1993) 2 SCC 299, while judging whether the administrative action is “arbitrary” under Article 14 (i.e. otherwise than being discriminatory), this Court has confined itself to a *Wednesbury* review always.

68. Thus, when administrative action is attacked as discriminatory under Article 14, the principle of primary review is for the courts by applying proportionality. However, where administrative action is questioned as “arbitrary” under Article 14, the principle of secondary review based on *Wednesbury* principles applies.”

28. The submission by the appellants is that the mere fact that some of the candidates resorted to some malpractice cannot lead to the conclusion that the entire examination process is required to be cancelled as it would cause undue hardship to huge number of innocent candidates. In other words, the appellants urge this Court to apply the primary review test.

29. We have already held that there were large scale malpractices at the examination process and the State was entitled to take appropriate remedial action. In the context of the occurrence of such malpractice obviously there can be two classes of candidates: those

who had resorted to malpractice and others who did not. By the impugned action, no doubt, all of them were treated alike. Whether such herding together would amount to the denial of the equal protection guaranteed under Article 14 is the question.

30 Identifying all the candidates who are guilty of malpractice either by criminal prosecution or even by an administrative enquiry is certainly a time consuming process. If it were to be the requirement of law that such identification of the wrong doers is a must and only the identified wrongdoers be eliminated from the selection process, and until such identification is completed the process cannot be carried on, it would not only result in a great inconvenience to the administration, but also result in a loss of time even to the innocent candidates. On the other hand, by virtue of the impugned action, the innocent candidates (for that matter all the candidates including the wrong doers) still get an opportunity of participating in the fresh examination process to be conducted by the State. The only legal disadvantage if at all is that some of them might have crossed the upper age limit for appearing in the fresh recruitment process. That aspect of the matter is taken care of by the State. Therefore, it cannot be said that the impugned action is vitiated by lack of nexus with the object sought to be achieved by the State, by herding all the candidates at the examination together.”

(Emphasis supplied)

Mr. Hatle tried to distinguish this judgment by saying that the recruitment process was conducted by a State and not a Co-operative Bank. We reject this submission in view of our finding to issue no.(i) above. If a Co-operative bank, to which State Government can give directions in public interest as provided under Section 79A of the said Act, has not followed those directions in letter and spirit, certainly the judgment in *Gohil Vishwaraj Hanubhai* (supra) will cover respondent no.1 as well.

16 In the circumstances, Rule is made absolute in terms of prayer clauses (a) and (b), which read as under:

“(a) That this Honourable Court be pleased to issue a writ mandamus or writ in the nature of mandamus or any other appropriate writ direction and order under Article 226 of the Constitution of India , 1950 quashing and setting aside the recruitment process conducted by the Respondent No.1 in pursuance of the advertisement dt. 16th

October 2017.

(b) That this Honourable Court be pleased to issue a writ mandamus or writ in the nature of mandamus or any other appropriate writ direction and order under Article 226 of the Constitution of India, 1950, thereby be pleased to direct the respondent no.2 to conduct the fresh recruitment process by appointing the reputed recruitment agency like Institute of Banking Personal Selection or any other agency which is recommended by the RBI.”

17 We clarify that we have set aside the recruitment process only with regard to Senior Bank Assistant and Junior Bank Assistant. We also clarify that all those who had applied for the recruitment process shall be permitted to reapply and any age restriction to that candidate shall be relaxed. We also clarify that any more candidates who wish to apply may apply in response to fresh advertisement that respondent no.1 shall issue but for them age restriction as per the recruitment rule, will certainly apply.

18 At the request of Mr. Hatle, this judgment is stayed for four weeks from the date this judgment is uploaded.

(RAJESH S PATIL, J.)

(K.R. SHRIRAM, J.)