

**IN THE SUPREME COURT OF INDIA**

**CIVIL APPELLATE JURISDICTION**

**Civil Appeal Nos.6190-6201 of 2019**

**(Arising out of SLP (C) Nos. 14206-14217 of 2019)**

THE STATE OF TAMIL NADU & ANR.

**.... Appellant(s)**

Versus

A. KALAIMANI & ORS.

**.... Respondent (s)**

**J U D G M E N T**

**L. NAGESWARA RAO, J.**

Leave granted.

**1.** The Teachers Recruitment Board (hereinafter referred to as the '*Board*') issued a notification on 28.07.2017 inviting applications for selection to the posts of Lecturers in Government Polytechnic Colleges in the State of Tamil Nadu for the year 2017-2018. 1058 vacancies were notified and 1,70,366 applications were received. A written examination was conducted on 16.09.2017 in which 1,33,567 candidates appeared.

**2.** The written examination was of objective type. A printed book was given to the candidates in the

examination hall. The printed book is known as Optical Mark Recognition (OMR) sheet. After completion of the written examination, the OMR sheets were scanned in the office of the Board. The original OMR answer sheets were kept in the safe custody in the office of the Board.

**3.** The scanned copies of the OMR sheets were sent to M/s Datatech Methodex Pvt. Ltd., New Delhi (hereinafter referred to as the '*Agency*') for evaluation and for preparation of the final list of the candidates who qualified for the certificate verification. The evaluation was done by the Agency and the list was sent to the Board. The merit list of the candidates called for certificate verification in the ratio of 1:2 was released on 07.11.2017. At that stage, a complaint was made to the Prime Minister's Office on 17.11.2017 as well as the Board on 21.11.2017 alleging large scale malpractices in the written examination and requesting a probe into the complaints of tampering with the OMR sheets. To verify the genuineness of the complaint made to the Prime Minister's Office, Mr. Shaik Dawood Nazzar representing the Agency was instructed to send the scanned images of the OMR sheets of the candidates whose names were mentioned in the

complaint. Certain discrepancies were found on comparison of the scanned copies of the OMR sheets with the original OMR sheets. Immediately thereafter, the System Manager of the Agency was asked to re-evaluate the scanned images of the OMR sheets of the candidates called for certificate verification from the Hard Disk which was handed over to the Board. After re-evaluation, discrepancies were found in the entries of 109 candidates who were called for certificate verification. Further scrutiny of the answer sheets revealed further discrepancies in the marks of 225 candidates. On a deeper scrutiny, the Board found that 196 candidates have been the beneficiaries of the fraudulent alteration of the marks.

**4.** After being satisfied that the marks of 196 candidates were manipulated, the Board withdrew the result which was published on 07.11.2017. A decision was taken by the Board to upload the scanned images of the OMR answer sheets of all the 1,33,567 candidates along with the final marks and answer key on the website of the Board. The candidates were allowed to download copies of their OMR

answer sheets and lodge objections in the interest of transparency.

**5.** A show cause notice was issued to the Agency which was processing the scanned OMRs to submit their explanation as to how the manipulation in the answer sheets of 196 candidates took place. Mr. Shaik Dawood Nazzar was found responsible for manipulating the OMR answer sheet images and awarding higher marks to some candidates after receiving money from one Mr. Ganesan. A decision was taken to cancel the examination that was conducted for selection to the posts of Lecturers in Government Polytechnic Colleges as the Board was of the view that there were chances of unearthing more malpractices at a later stage. In view of the serious doubt about the purity of the process of the examination conducted on 16.09.2017, the Board cancelled the written examination and withdrew the merit list dated 07.11.2017 calling candidates for certificate verification.

**6.** The Board also lodged a complaint with the Commissioner of Police, Chennai on 21.12.2017 which was registered as Crime No.468 of 2017 by the Central Crime Branch for offences under Sections 465, 468, 471, 417,

201, 120B of IPC and Section 66 read with 43 (1) of the Information Technology (Amendment) Act, 2008.

**7.** A Writ Petition was filed before the Madurai Bench of the Madras High Court challenging the Notification dated 11.12.2017 by which the written examination was cancelled and the merit list was withdrawn. A learned Single Judge of the Madurai Bench of the Madras High Court allowed the Writ Petition. The learned Single Judge was of the opinion that it was possible to segregate the tainted candidates from the non-tainted ones. As the material gathered during investigation also indicated the involvement of only 196 candidates, the learned Single Judge held that their results can be cancelled. A direction was issued to the Board to proceed with the selections excluding the 196 candidates from the selection process.

**8.** Another set of Writ Petitions were filed before the Principal Bench of the Madras High Court which came up for consideration after the judgment was delivered by the learned Single Judge of the Madurai Bench of the High Court. A learned Single Judge of the Principal Bench dismissed the Writ Petitions. The Case Diary of the investigation that was being carried on was summoned by

the learned Single Judge. After examining the material that was gathered by the police during the investigation, the learned Single Judge was convinced that the irregularities and corrupt activities pervaded through the entire process of selection. The learned Single Judge was also of the opinion that the malpractices that were committed during the conduct of the written examination were of a higher magnitude and that there was no possibility of segregating the tainted candidates from the non-tainted ones. The contention of the Board that the examination was vitiated by large scale fraud and needed to be cancelled was accepted by the learned Single Judge.

**9.** The unsuccessful candidates in the Writ Petitions decided by the learned Single Judge of the Principal Bench of the Madras High Court, the State of Tamil Nadu and the Board aggrieved by the order of the learned Single Judge of the Madurai Bench of the Madras High Court filed appeals before the Division Bench. A Division Bench of the Madras High Court decided the writ appeals and ruled in favour of Respondents. The Division Bench found fault with the learned Single Judge in not referring the matter to a larger Bench in case he was in disagreement with the

earlier judgment on the same issue by the Madurai Bench of the Madras High Court. The Division Bench also examined the merits of the matter and held that the fabrication of the records pertained only to 196 candidates and there was no material to suggest any tampering by the other candidates who took the examination. When segregation was possible, the Division Bench was of the opinion that the entire examination cannot be cancelled by the Board. Relying on judgments of this Court in ***Inderpreet Singh Kahlon v. State of Punjab***<sup>1</sup>, ***Joginder Pal v. State of Punjab***<sup>2</sup> and ***Union of India v. Rajesh PU, Puthuvalnikathu***<sup>3</sup>, the Division Bench held that the decision of the Board to cancel the entire selection process was vitiated. Aggrieved by the said decision of the Division Bench of the High Court, this appeal is filed.

**10.** Mr. Balaji Srinivasan, learned Additional Advocate General for the State of Tamil Nadu submitted that the decision taken by the Board to cancel the written examination was on the basis of abundant material that was available with the Board. He submitted that the available material suggests large scale malpractices in the

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<sup>1</sup> (2006) 11 SCC 356

<sup>2</sup> (2014) 6 SCC 644

<sup>3</sup> (2003) 7 SCC 285

conduct of the written examination. He placed before us a note submitted by the Central Crime Bureau which discloses the involvement of several persons who have conspired to commit large scale malpractices in the process of selections to the post of Lecturers in the Government Polytechnic Colleges. Huge amounts of money changed hands. The note that was submitted also suggests that certain persons have been arrested and have been remanded to judicial custody. Several persons have also been detained under the Goondas Act and they are in the Central Prison, Puzhal. There are others who are absconding and serious efforts are being made to apprehend them. The investigation is under progress according to the note that is furnished to us. The learned Additional Advocate General urged that the decision taken by the Board does not call for any interference as it was taken in the interest of high standards and integrity of the examination.

**11.** Mr. M. Ajmal Khan and Ms. Nalini Chidambaram, learned Senior Counsel appearing for the Respondent-Candidates referred to the interim orders passed by the Division Bench by which the investigation authorities were



summoned and records pertaining to the investigation were called for. They relied upon the interim orders to support the judgment of the Division Bench that there is no material to suggest the involvement of any other candidate apart from the 196 candidates who have been found indulging in malpractices. They justified the observations of the Division Bench in the impugned judgment by submitting that segregation of 196 candidates from the others is possible for which reason the cancellation of the entire selection process is contrary to the law laid down by this Court. Irreparable injury and untold misery will be caused to such meritorious candidates who were successful in the written examination if they are asked to take the written examination afresh.

**12.** In ***Inderpreet Singh Kahlon*** (supra), allegations were made against Mr. Ravinderpal Singh Sidhu, Chairman of the Public Service Commission for having accepted money and manipulating the results of some candidates in the selections to various posts by the Public Service Commission. Results were announced and the selected candidates were appointed. Pursuant to an inquiry conducted into the allegations against Mr. Ravinderpal

Singh Sidhu, appointments of persons who were selected with his help were terminated. This Court on the facts of the said case held that merely because allegations are made against the Chairman of the Public Service Commission the decision to cancel the entire selection process without examining as to whether the entire selection process was vitiated is wrong. This Court further held that there is a vast difference in the cancellation of examination prior to the selection and the termination of services of appointed persons. We are of the considered opinion that the facts of this case are entirely different and the judgment in ***Inderpreet Singh Kahlon*** (supra) is not applicable. It is not necessary to refer to the other judgments which have followed ***Inderpreet Singh Kahlon*** (supra).

**13.** In the instant case, the Board initially conducted an inquiry on its own regarding the allegations pertaining to manipulation of the OMR answer sheets. The Board found that a few people benefited due to the tampering of the OMR answer sheets. On a deeper scrutiny sufficient material was found against 196 persons who were beneficiaries of the fraud in the alteration of marks. The

Board was convinced that there were chances of more people being involved in the manipulation of marks for which reason a decision was taken to cancel the entire examination. A *bona fide* decision taken by the Board to instill confidence in the public regarding the integrity of the selection process could not have been interfered with by the High Court. Sufficiency of the material on the basis of which a decision is taken by an authority is not within the purview of the High Court in exercising its power of judicial review. More material is being unearthed in the investigation and several people have been arrested. The investigation is in progress.

**14. In *Gohil Vishvaraj Hanubhai and Ors. Vs. State of Gujarat and Ors*<sup>4</sup>, this Court held:**

“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

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<sup>4</sup> (2017) 3 SCC 621

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. 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.”

It was further held in the said judgment as follows:

“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 wrongdoers 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 the matter all the candidates including the wrongdoers) still get an opportunity of participating in the fresh examination process to be conducted by the State.”

**15.** May be, the candidates who had a chance of being selected and appointed as Lecturers in the Government Polytechnic Colleges on the basis of the results of the written examination would be inconvenienced due to another examination being conducted but a serious doubt entertained by the Board about the magnitude of the manipulation in the examination has to be given due weightage.

**16.** Having considered the merits of the case we do not approve the approach of the learned Single Judge of the Principal Bench of the Madras High Court in taking a different view with another Single Judge of the same Court. It is trite law that the matter has to be referred to a larger Bench in case of disagreement by a Coordinate Bench of equal strength.

**17.** In view of the aforementioned, we set aside the judgment of the Division Bench of the Madras High Court. The appeals are allowed.

.....J.  
[L. NAGESWARA RAO]

.....J.  
[HEMANT GUPTA]

**New Delhi,  
August 08, 2019.**