



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

% *Date of Decision: August 22, 2023*
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+ W.P.(C) 11099/2023 & CM APPLs. 43091/2023, 43092/2023 and 43093/2023

SIDDHARTH MISHRA & ORS. Petitioners

Through: Mr. Saaket Jain and Ms. Shivangi Anand, Advocates.

versus

UNION PUBLIC SERVICE COMMISSION Respondent

Through: Mr. Naresh Kaushik, Mr. Shauryanker Kaushik and Ms. Shikha John, Advocates for UOI.

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

HON'BLE MR. JUSTICE ANOOP KUMAR MENDIRATTA

V. KAMESWAR RAO (Oral)

CM APPLs. 43092/2023 and 43093/2023

Exemption allowed, subject to all just exceptions.

Applications stand disposed of.

W.P.(C) 11099/2023 & CM APPL. 43091/2023

1. The challenge in this Writ Petition is to an order dated August 03, 2023, passed by the Central Administrative Tribunal, Principal Bench, New Delhi ('*Tribunal*' for short) in O.A. No. 1782/2023, whereby the Tribunal has dismissed the O.A. filed by the petitioners.

2. The facts as noted from the record are that the petitioners were Civil Service aspirants and had participated in the Civil Services Examination-2023 (CSE-2023) conducted by the Union Public Service Commission (UPSC). The examination, conducted in three stages is yet to be concluded. The petitioners have participated only in the first stage, which is the



preliminary examination.

3. Their grievance before the Tribunal was that General Studies Paper-II or the Civil Services Aptitude Test (CSAT), which forms one of the two papers in the preliminary examination contains a large number of questions, which were not in accordance with the syllabus notified for the said examination. It was also their case that the CSAT/Paper-II is only qualifying in nature, however, the implications are that only those candidates who qualify in this paper, are considered for position in the merit on the basis of the marks obtained in Paper-I. According to them, this essentially means that no matter how well they will perform in Paper-I, if they did not meet the qualifying marks prescribed for Paper-II, they would be virtually out of the competition. It was also represented that the qualifying marks in CSAT Paper-II are 33%. It was also elaborated by them before the Tribunal that the syllabus for the CSAT/Paper-II is supposed to be of Class X Level Arithmetic/ Mathematics, whereas a large number of questions asked in the said paper related to Commutation, Permutation and Combination, which is not a subject taught in Class X, and infact the questions generally were those put forth to evaluate the candidates for admission in higher engineering institutions like IITs, etc. The paper being in contravention to the syllabus that has been notified, has severely impaired the prospects of the candidates to compete on their own merits in the Civil Services Examination without having to be subjected to discrimination, as students with humanities background would face unreasonable disadvantage.

4. The case of the respondent before the Tribunal was that the question paper for CSAT was set up by a committee of experts and their wisdom and knowledge cannot be questioned in a legal forum through judicial review. It



was also their case that more than six lakh candidates have participated in the CSE-2023, whereas only 15 persons, who are applicants before the Tribunal, have aired their grievance qua the said examination. It was the case of the UPSC that the examination has been conducted strictly in accordance with the rules and instructions governing its conduct and also in a transparent, fair and objective manner. It was also stated, no malafide has been alleged or speculated as far as the conduct of the respondents in conducting the said examination is concerned.

5. UPSC had also justified the qualifying marks of 33%, having been prescribed in accordance with rules governing the examination and hence, the petitioners cannot seek the change of the cut off percentage to 23% for their convenience.

6. The Tribunal while dismissing the O.A. has in paragraphs 18 to 26 stated as under:

“18. We have heard the learned counsels for the parties at great length. Besides meticulously going through the pleadings on record, we have also given due consideration to the plethora of judgments quoted by the respected learned counsels.

19. At the outset, we would like to recognize and expressly state that the UPSC carries an unblemished reputation and record of conducting examination for selection to civil posts in a fair, objective and transparent manner. We also note that apart from a limited insinuation that the Civil Services Examination, which is the subject of this OA, could have given undue advantage to science background students, no other aspersion has been cast upon the organization nor any other extraneous motive attached.

20. We are also conscious of the confines of our powers



and jurisdiction and have no doubt that we are neither authorized nor qualified to sit on the judgment over the wisdom of the academic experts who have prepared the question paper which is the subject of this OA, i.e., CSAT Paper-II of the Civil Services Examination-2023. We find this argument to be a bit curious that the paper was supposed to be of Class X Level Arithmetic but it had questions of Class X+2 level, i.e. of the level which the candidates answer while appearing in admission test for higher engineering institutions. Now the applicants before us are aspirants to the highest Civil Services of the country; why should they be intimidated by a Class X+2 level paper does not stand to reason. Moreover, as mentioned earlier, we do not have either the authority or the expertise to determine whether it is so.

21. *We do appreciate that Shri Salman Khurshid, learned Sr. Counsel appearing on behalf of the applicants has fairly suggested that in view of the limits of our jurisdiction, we should consider referring this matter to a committee of experts to determine whether the contentions of the applicants with respect to out of syllabus question is correct or not. However, acquiescing to this would mean prima facie accepting that the CSAT Paper-II, which is only a qualifying in nature, does suffer from lacunae and calls for a review.*

22. *It is not disputed that nearly 6 lakhs candidates participated in CSE-2023. We have only fourteen candidates before us. Should an examination process of this magnitude, once set in motion, be interfered with? Our decisive answer to this question would be in the negative; unless there are overwhelming circumstances and evidence of violation of statutory provisions of rules or some blatant miscarriage of justice. Such a situation does not even remotely exist. Learned counsel for the respondents has emphatically stated that the examination has been conducted strictly in accordance with the rules and*



instructions and the applicants have willingly and voluntarily participated in the same. Moreover, we notice that the qualifying marks of 33% by themselves constitute a low benchmark, it would prick our conscience if we were to contemplate lowering this abysmally low benchmark any further. The scheme of the CSE is elaborately defined and notified. The relevant extracts have already been reproduced in one of the preceding paragraphs. It is not the case of the applicants that the scheme has been compromised in any manner in CSE which is the subject of this OA.

23. We would like to emphatically reiterate that we do not enjoy any right or authority to question the wisdom and knowledge of experts who have set this question paper, and further we are clear in our views that their decision is not amenable to judicial review.

24. Moreover, perhaps it is the anxiety of the applicants that they may not have performed well as they probably found the question paper to be of a difficult level that finds expression in this OA. They may have tried to support to justify their claim by pointing out that questions were out of syllabus; we have no doubt that it is not for us to question the same since the question paper is the creation of academic experts. If we were to entertain such applications and showing indulgence, it may open a floodgate of several such petitions, thus disrupting the entire selection process, that too of an examination which is well established and whose integrity and transparency has not been questioned. We reiterate that UPSC is a respectable constitutional body and even a hint on our part could have an adverse impact on the functioning of such a body.

25. As brought out during the course of arguments, in further developments, the result of preliminary examination has already been declared with 14624



candidates having been declared successful; none of them is a party before us. Moreover, the CSE is now entering its second stage of the main examination in which these successful candidates will participate. At this stage, no interference is warranted or called for in this process.

26. Against the background of what has been detailed discussed above, we are of the well considered opinion that the present Original Application is misplaced and devoid of any merit. Therefore, it stands dismissed. Pending MA, if any, also stand disposed of. There shall be no order as to costs.”

7. Even today, the learned counsel for the petitioners reiterated the stand taken by the petitioners before the Tribunal, inasmuch, as the respondent despite notifying the syllabus as Class X level Mathematics, has asked questions, which were of Class XI & XII level. In that sense, they have contravened the very notification by which they have prescribed Class X syllabus for CSAT/Paper-II. His submission is primarily that persons with Humanities as a background did not had a level playing field, qua those candidates with Science background, having pursued mathematics and even engineering. According to him, it is in this background that the petitioners had suggested to the Tribunal to constitute a committee, to look into CSAT/Paper-II, to ensure that the questions which were asked, were as per the syllabus. He also states, this would ensure that every candidate has a level playing field.

8. On a specific query to the learned counsel for the petitioners, as to whether all the candidates are from Humanities background, he would state on instructions, out of 15 petitioners, petitioner no. 1 has an Engineering qualification, petitioner no. 4 has qualification in History, petitioner no. 6 has



qualification in Commerce, petitioner no. 8 has qualification in Mathematics, petitioner no. 13 has qualification in Sociology, petitioner no. 14 has qualification in Political Science and petitioner no. 15 has qualification in Commerce.

9. As per the information given with regard to seven petitioners, it is clear that all of them do not belong to Humanities background. Infact, we find that two of the petitioners are from Engineering and Mathematics background.

10. If that be so, the case set up by the petitioners that they did not had a level playing field in the CSAT Exam, cannot be accepted.

11. We agree with the conclusion arrived by the Tribunal in paragraphs 22, 23, 24 & 25, which we have already reproduced above.

12. Before the Tribunal, the learned counsel for the UPSC had referred to the judgments of the Supreme Court in *Ranjan Kumar & Ors. v. State of Bihar & Ors.*, (2014) 16 SCC 187; *Bedanga Talukdar v. Saifudaullah Khan & Ors.*, (2011) 12 SCC 85; *Ashok Kumar & Anr. v. State of Bihar & Ors.*, (2017) 4 SCC 357; and *Union of India & Ors. v. Mahendra Singh*, 2022 SCC OnLine SC 909. The Tribunal had rightly observed that the said judgments restrain judicial bodies/fora from interfering with competitive selection processes merely on the ground that some of the candidates may have questioned the selection process or the syllabus of the examination, even though they had voluntarily participated in the examination. It is not for this Court to examine or question the wisdom of the panel of experts that has prepared the question paper, and re-assess the relative merits of the questions. This Court cannot sit in appeal against the considered decision of such a panel of academic experts, unless such decision is demonstrated to be



manifestly arbitrary, *malafide* or illegal. Such is not the case here.

The only ground set up by the petitioners to attack the question paper is that some questions were of Class XI & XII level. Suffice it to state, the decision as to what questions need to be included in the paper, and what should be the nature and complexion of such questions, necessarily remains in the exclusive domain of the panel of academic experts. Such a decision cannot be assailed before us in judicial review, only on the ground that some questions were out of syllabus.

13. For the reasons stated above, we do not see any merit in the petition. The petition and the connected application are dismissed. No costs.

V. KAMESWAR RAO, J.

ANOOP KUMAR MENDIRATTA, J.

August 22, 2023/akc

