

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH
ORIGINAL APPLICATION NO 904 OF 2022**

DISTRICT : THANE

Sangeeta Suresh Rathod,)
Age:- 43, Occu: Service,)
R/o: Pranjee Garden City, Badlapur,)
(East) Thane.)

Santosh Sangamnath Sangewar,)
Age: 43, Occu: Service,)
R/o:- HS.N-30/1 N-9 Shrikrishna Nagar,)
Hudco, Aurangabad-431001.)

Pravinkumar Harichand Mendhe,)
Age: 43, Occu: Agriculture,)
R/o:- Sanjaynagar, Govindpur Road, Gondia)
441601.)

Sambhaji Shamarao Khot,)
Age: 42, Occu: retired,)
R/o:- Near Marathi Shala, At post -Devawadi)
Tq Shirala Sangli 415412)

Anil Ramkrishna Shinde,)
Age: 41, Occu: Service,)
R/o:- At/Post Rahimpur, Talk. Sangamner, Di)
st. Ahmednagar)

Syed Obaid Athar,)
Age: 39, Occu: Service,)
R/o:- Plot no 18 B kohinoor Colony near)

masjid e khizra Paradise Colony amravati 444604)

Durgaprasad Dasrath Bankar,)

Age: 39, Occu: Service,)

R/o:- flat no 201, Building no.12,)

MHADA Colony, Datala, Chandrapur- 442401.)

Milind Dattatraya Karanjkar,)

Age: 38, Occu: Service,)

R/o:- Opposite Pratibha Bunglow,)

Dhore Nagar, Lane-1, Old Sangvi, Pune 411027.)

Swapnil Sadguru Mhikle,)

Age: 37, Occu: Service,)

R/o:- building room no 202, 2nd floor)

Siddharth Nagar, Kopri Colony, Thane East)

400603.)

Sachin Parshuram Ingale,)

Age: 37, Occu: Service,)

R/o:- Rui Chhattishi, Ahmednagar 414001.)

Priyanka Ramesh Vinchurkar,)

Age: 37, Occu: student,)

R/o:- Shantinagar Benoda Rd Dist.)

Amravati.)

Sujata Annaso Sonwane,)

Age: 36, Occu: Student,)

R/o:- 52, Dhor Galli Vasagade, Karveer)

Kolhapur, 416202)

Pankaj Shahaji Patil)

Age: 35, Occu: Agri,)

R/o:- Madhli Galli, Yelawade Ta)

Radhanagari, Kolhapur 416211)

Sachin Mohan Chindarkar,)

Age: 36, Occu: Service,)

R/o:- Achra, Kankavali Road, Khairewadi,)

Chindhar, Sindhudurg.

Sheela Arun Mahadik,)

Age: 35, Occu: Service,)

R/o:- A/p Kolewadi, Tal. Jaoli, Dist -Satara.)

Sushilkumar Suraj Bhusari,)

Age: 35, Occu: Service,)

R/o:- Ward No. 17 Gajanan Nagar, Chikhli)

Buldhana.

Mahesh Govindrao Deshmukh,)

Age: 35, Occu: Student,)

R/o:- 46 Shrinivas building Sonai Nagar)

behind Manik nagar Taroda bk Nanded 431605)

Umakant Bhaskar Kamdi,)

Age: 34, Occu: Service,)

R/o:- Sindewahi, Waneri, Chandrapur 441222)

Sunil Kachru Jonwal,)

Age: 34, Occu: Service,)

R/o:- At Shardulwadi Khultabad, Aurngabad)

431102

Suresh Baburao Lande,)

Age: 32, Occu: Nil,)

R/o:- Plot No-13, RAJGAD,)

Honajinagar, Jatwada Rd, Harsul, Aurangabad.)

Parmeshwar Laxman Bhakte,)
Age: 31, Occu: Nil,)
R/o:- Salunkhe Nagar, Bembali road,)
Osmanabad-413501)

Nikhil Shudhodhan Manwatkar)
Age:, Occu: Student,)
R/o:- Plot No 943, Unit No 2, Near Buddha)
Nagar, Nagpur- 440017.)

Ajinath Bhausahab Jagdhane,)
Age: 30, Occu: Student,)
R/o:- At Post Pimpla, Ambhora, Beed, 414202)

Mayur Ganeshrao Kalyankar,)
Age: 30, Occu: Student,)
R/o:- At Post Shemboli Tq. Mudkhed Dist)
Nanded.)

Pankaj Bulakhi Gadge,)
Age: 30, Occu: Service,)
R/o:- Kusumkot Khurd Tq Dharni)
Dist. Amravati.)

Sangita Kamaji Shirgire,)
Age: 29, Occu: Service,)
R/o:- At post Karla (bk) Tq Biloli dist. Nanded.)

Pankaj Sahebrao Wankhede,)
Age: 29, Occu: Service,)
R/o:- 61B Ramrao Dada Housing Society)
Nakane Road, Dhepur, Dhule.)

Sonali Narayanrao Gutte,)
Age: 29, Occu: Nil,)

R/o:- Jay Nagar Shivaji chowk Parli)
Vaijnath, Dist.Beed, 431515.)

Nikhil Ladoji Sawant,)
Age: 29, Occu: Nil,)
R/o:- 5, Rane Chawel,)
Premnagar, Jogeshwari (East) Mumbai.)

Rupesh Kailash Rathod,)
Age: 29, Occu: Service,)
R/o:- At Karegaon Kolambi Yavatmal 445109.)

Piyush Mahadeorao Herode,)
Age: 28, Occu: student,)
R/o:- Abhyankar Ward, Teacher Colony, Warora,)
Dist:- Chandrapur, Pin- 442907)

Ruchika Haribhau Choudhari)
Age: 27, Occu: Service,)
R/o:- Vilas Nagar, Chosala road, Yavatmal)

Vanita Vitthal Surve,)
Age: 27, Occu: Student,)
R/o:- Plot No -23, Sarnaik)
Layout, Sonkhas Road, District- Washim)

Akash Prakash Jadhav,)
Age: 27, Occu: Agriculture,)
R/o:- Bagicha Hotel Samor Datt Colony)
Jaysingpur, Kolhapur- 416101.)

Krunal Premraj Sahare)
Age: 26, Occu: Student,)
R/o:- Chapke Lay Out, Police Station Road)
Mohpa, Nagpur- 441502.)

- Rushikesh Ramchandra Magar,**)
Age: 27, Occu: Service,)
R/o:- At Post Wagholi, Tal and Dist. Osmanabad.)
- Swapnil Namdeo Dhawale,**)
Age: 25, Occu: Student,)
R/o:- Ganpati Ward Gaurala Vtc)
Bhadravati, Dist. Chandrapur- 442902)
- Priyanka Suresh Chalak,**)
Age: 26, Occu: Housewife,)
R/o:- Datt Peth Karmala Karmala)
Solapur 413203)
- Akshay Ashok Markad,**)
Age: 26, Occu: Student,)
R/o:- Banke Mage, Junction Sainanagr Vtc,)
Lasurne Tq Indapur , Pune.)
- Riyajbhai Shahanwajkha Pathan**)
Age: 26, Occu: Student,)
R/o:- Ad-C/O Nurjahan Patthan Hanuman Galli)
Manohar Patel Ward Newlaxminagar Gondia)
441614)
- Rohit Sadashiv Nikam,**)
Age: 25, Occu: Student,)
R/o:- At Post Limb TQ/Dist Satara 415015)
- Ramanand Suresh Chalak,**)
Age: 25, Occu: Service,)
R/o:- Phisare, Tq. Karmala,)
Dist. Solapur.)
- Nikita Nathaji Deshmukh,**)

Age: 24, Occu: Service,)
R/o:- Chochi, Beed Budruk, Tal. Karjat,)
Dist. Raigad- 414601.)

Santosh Rohidas Aware,)
Age: 23, Occu: Student,)
R/o:- Imampur, Tq. and Dist. Ahmednagar.)

Vitthalraj Laxman Khandare,)
Age: 23, Occu: Student,)
R/o:- Astha (Harinarayan), Tq. Ashti,)
Dist. Beed.)

Rakesh Jagannath Bagul,)
Age: 39, Occu: Service,)
R/o:- Jain Galli, Netaji rd, Dharangaon,)
Tq. Dharangaon, Dist. Jalgaon.)

Anil Prakash Suradkar,)
Age: 34, Occu: Student,)
R/o:- Relgaon, Warud (BK), Bhokardan,)
Jalna.)

Dhanaji Subhash Jagdale,)
Age: 34, Occu: Service,)
R/o:- Ugadewadi, Laxminagar,)
Velapur, Solapur.)

Suraj Sanjay Rai)
Age: 22, Occu: Student,)
R/o:- At Post Gadmodshingi, Tq. Karveer,)
Dist. Kolhapur.)

Prafull Purushottam Hedau,)
Age: 28, Occu: Service,)

R/o:- Building No. 03, Guru Market yard,)
Kolhapur- 416005.)

Siddheshwar Sonaji Satpute)

Age: 24, Occu: Student,)

R/o:- Siddheshwar Pimpalgaon, Tq. Ghansangvi,)

Dist. Jalna.) **... APPELLANTS**

Versus

The State of Maharashtra,)

Through its Principal Secretary,)

Public Health Department,)

Mantralaya, Mumbai-32.)

The Commissioner,)

Public Health Services,)

MS, Mumbai.)

The Director,)

Health Services-1,)

Health Services Commissionerate,)

Pune.) **...RESPONDENTS**

Ms Pradnya Talekar, learned advocate for the Applicants.

Ms Swati Manchekar, learned Chief Presenting Officer for the Respondents.

CORAM : **Justice Mridula Bhatkar (Chairperson)**

Mrs Medha Gadgil (Member) (A)

DATE : **21.03.2023**

PER : **Justice Mridula Bhatkar (Chairperson)**

J U D G M E N T

1. Learned counsel for the applicants prays that the impugned communication dated 29.6.2022 cancelling the Examination of Group-C posts in various establishments under the Public Health Department held on 24.10.2021, be quashed and set aside.

2. Pursuant to the advertisement dated 4.8.2021, the applicants have appeared for examination for the various posts in Group-C conducted by the Public Health Department. The examination for the 39 cadres for Group-C posts was held on 24.10.2021. The examination for Group-D posts was conducted on 31.10.2021. The FIR was registered for the complaint of paper leakage in Group-D posts. The result of the said examination was declared on 12.11.2021 for the 27 cadres out of the 39 cadres. In respect of the 12 cadres result was not declared and the present applicants were not in these cadres. The applicants have secured higher marks. On 29.11.2021 unsuccessful candidates filed Writ Petition before the Hon'ble High Court, Aurangabad Bench seeking cancellation of the Group-C posts examination. However, the High Court did not grant relief on the ground that there is no allegation of paper leakage in Group-C posts. On 20.12.2021 the Dy. Commissioner, Economic and Cyber offences, Pune City submitted report regarding paper leakage in Group-D posts without any mention of similar acts in Group-C posts. However, on 23.12.2021, the Deputy Commissioner, Economic and Cyber Offences, Pune City for the first time stated that there was some evidence regarding paper leakage in the examination conducted for Group-C posts, without giving details of cadres for which examination papers were leaked. Out of 8 lakhs candidates 486000 candidates appeared for the examination. The learned counsel has submitted that in all these 39 cadres, Group-C, the number is around 11000.

Learned counsel submitted that the paper which was leaked as stated in the report is of a different subject in Group-C. These subjects and those papers were not concerned to which the applicants belong. However, on the basis of the FIR filed at Shivajinagar Police Station in CR No. 60/2021, the report of Dy Commissioner of Police, Economics and Cyber Crime, Pune the entire process of examination was cancelled by the Public Health Department on 29.6.2022.

3. Learned counsel has submitted that out of 8 lakhs candidates 4.86 lakhs candidates appeared for the examination. Learned counsel for the applicants has submitted that the paper which was leaked as stated in the report is of a different subject in Group-C. These subjects and papers were not concerned to which the applicants belong. Learned counsel has submitted that the applicants have submitted representations and sought segregation of tainted and untainted candidates.

4. Learned counsel has submitted that the decision to cancel the entire examination of all the cadre is challenged on two grounds:-

- (i) No attempt is made to segregate the tainted from untainted candidates.
- (ii) Examinations held for Group-C posts which was conducted on 28.2.2021 by Public Health Dept. Mass level malpractices as alleged have taken place.

5. Learned counsel for the applicants has submitted that the persons whose names are appearing in the FIR of Cyber Crime at Pune in the present case are neither made accused nor action of debarring them from examination is taken by the authorities. On

the other hand, 16 applicants out of 51 applicants who have earlier appeared for the similar examination in the year 2021 they could not be appointed on account of the policy of the State to appoint only 50% candidates and the present applicants were below 50%. Learned counsel has specifically submitted only in three categories, namely, Nursing, Pharmacist and Junior Clerks malpractices were alleged and found, so the question papers were seized in the Panchanama in those cadre. Learned counsel has submitted that in the short affidavit in reply dated 27.2.2023 filed by the Respondents through Shri M.S Kadam, Chief Administrative Officer, in the office of Joint Director, Health Services, it is stated that the segregation is not possible however, earlier it was not stated. Therefore, learned counsel has submitted that the Respondent-State has not considered at the initial stage whether segregation of tainted from untainted candidates is possible. This shows non-application of mind and unfair practice.

6. Learned counsel for the applicants relied on the following judgments:-

- 1) Judgment of this Tribunal dated 10th August, 2017 in O.A 134/2017 & Ors, Sonali Shivaji Gavali & Ors Vs. State of Maharashtra & Ors.
- 2) Sachin Kumar & Ors Vs. Delhi Subordinate Service Selection Board (DSSSB) & Ors, (2021) 4 SCC 631.
- 3) Uttar Pradesh Jal Nigam & Ors Vs. Ajit Singh Patel & Ors, (2019) 12 SCC 285.
- 4) East Coast Railway and Another Vs. Mahadev Appa Rao & Ors, (2010) 7 SCC 678.
- 5) Mohinder Singh Gill & Anr Vs. The Chief Election Commissioner, New Delhi & Ors, (1978) 1 SCC 405.

6) Judgment of the Hon'ble Bombay High Court, Aurangabad Bench in Prakash B. Wani Vs. The State of Maharashtra & Ors, W.P 12117/2016.

7. Learned counsel for the applicants has submitted that on 15.3.2023, G.R is issued by the Government for appointing the agency to conduct the fresh recruitment process and the process of the new examination is likely to commence.

8. Learned counsel has submitted that there are three cadres Nurses, Pharmacist and Junior Clerk, wherein the said paper leakage has occurred. Learned counsel has submitted that there are only 100 questions of 200 marks as each question carries 2 marks. Learned counsel has submitted that Mr Gore, who allegedly paid Rs. 12 lakhs for buying the papers is not made accused in the FIR. One Mr Botale has received the copy of the papers illegally. Learned counsel has submitted that the Police have not stated that it is a case of mass leakage. The condition of having 60 common questions is incorrect because the cadres are completely varied from Dentist to Tailor, Plumber, Foreman and they have not put to notice that the 60 questions were common. Learned counsel for the applicant while dealing with the affidavit in reply dated 27.2.2023, filed on behalf of Respondents no 1 to 3 through Mahadev Kadam, Chief Administrative Officer, in the office of Joint Director, Health Services, relied on Annexure R-2, that is Police Report dated 6.1.2023 by Mr Srinivas Ghadge, D.C.P, Economic and Cyber Crime, Pune City, wherein in para 4, Note -3 it is stated that there are 60 common questions. Learned counsel has submitted that they would have segregated the papers from the afternoon shift on the basis of the report as the 60 question wherein common. But they were divided into two groups, i.e., morning examination and afternoon examination.

9. Learned counsel has submitted that the code numbers of Nursing, Pharmacist and Junior Clerk are 15, 16 & 23 respectively. For one month after declaration of the result, no complaint was filed. The examination of Group-D was conducted on 31.10.2021 and the first complaint was filed immediately in first week of November, 2021 and FIR was registered on 26.11.2021. In the impugned order of cancellation of examination, was referred to the Commissioner of Police, Pune, informing the Addl. Chief Secretary, Public Health Department about the offence registered under Sec 406, 420, 409, 120-B read with 34 of I.P.C.

10. Learned counsel for the applicant has submitted that the applicants have submitted representations in detail to the authorities and that is not considered otherwise the examination could have been saved. The applicants have submitted various representations dated 30.12.2021, 4.1.2022, 10.1.2022, 19.1.2022, 21.2.2022, 23.2.2022, 7.3.2022, 28.3.2022, 29.3.2022, 19.4.2022, 21.4.2022, 29.4.2022, 2.5.2022, 4.5.2022, 11.5.2022 and 25.5.2022 and the representations were not considered by the Government. Learned counsel has referred to the noting dated 4.1.2022 by the Under Secretary of Public Health Department. The Minister, Public Health Department on 18.2.2022 has perused the said note and made endorsement accordingly. Learned counsel for the applicants referred to letter dated 17.2.2022, written by Dr Ramaswamy, Commissioner, Public Health Department, dated 17.2.2022 addressed to the Addl. Chief Secretary, P.H.D. Learned counsel for the applicants has referred to the final note prepared by the Under Secretary, P.H.D on 3.5.2022. In this note, Under Secretary, relies on two points, i.e., Police progress reports and the report of the Commissioner, P.H. Dept dated 17.2.2022. The Under Secretary has arrived at the conclusion that due to leakage of the aforesaid papers the said examination is required to be

cancelled. The Respondents have stated that it is appropriate to cancel the said examination and also hold that NYASA Agency is responsible for the serious lapses in conducting the examination.

11. Learned counsel for the applicants has submitted that in the similar examination conducted on 28.2.2021 by Public Health Department for Grade-C, Arogya Sevak and 53 other cadres, in a similar scam of paper leakage, FIR was filed. In that scam, the examination was not scrapped, but the candidates were appointed, subject to the outcome of the investigation, i.e., the involvement of the candidate at that time. Learned counsel has submitted that the exams for the subject code 24 to 39 should not have been cancelled, but for the subject code 1 to 23 should have been cancelled. Thus, the examinations could have been saved.

12. Learned C.P.O has submitted that out of 100 question, 60 questions are common for all the cadres. Learned C.P.O has submitted that in the present case there are total 6045 posts for Group-C and Group-D. Out of that for Group C, 2739 posts and Group-D 3466 posts. Learned C.P.O has submitted that when there is less number of posts it is possible to segregate the tainted and untainted candidates. Learned C.P.O relied on the affidavit in reply dated 27.2.2023 filed by Shri M.S Kadam, Chief Administrative Officer in the office of Commissioner, Public Health Services, and referred to para 47 on the point of parity and segregation of 2021 examination conducted on 28.2.2021. Learned C.P.O has submitted that like there was paper leakage in Group-D examination and in Group-C examination also there is a paper leakage. Such report is submitted by the Joint C.P.

13. In **UTTAR PRADESH JAL NIGAM & ORS, supra**, on the point that new matter cannot be relied upon to justify the cancellation of the recruitment process or segregation from tainted to untainted candidates. In the said case appointment was made to 113 posts of Assistant Engineer (Civil), 5 posts of Assistant Engineer (Electrical/Mechanical) and 4 posts of Assistant Engineer (Computer Science/Electronics and Communication/Electrical and Electronics). All were declared as void ab initio. The challenge was given to the process and held that the order passed by the Chief Engineer on dated 11.8.2017 was in breach of the principles of natural justice as the authority failed to record the foundational fact that it was not possible to distinguish tainted and untainted cases and hence it was a wrong decision to cancel the appointment of 122 candidates. The Hon'ble Supreme Court observed as under:-

“13. The appellants have now relied upon the opinions given by the experts (Indian Institute of Information Technology, Allahabad and Indian Institute of Technology, Kanpur) as noted in the report submitted to this Court dated 20th August, 2018. The same were certainly not available to the appropriate authority before the order was passed on 11th August, 2016. Indeed, the appropriate authority took into account two inquiry reports but the same did not evince that an exercise had already been undertaken to distinguish the tainted and untainted candidates or that it was not possible to do so, so as to uphold the decision of declaring the entire selection process as void. Had the appropriate authority done that exercise and recorded its satisfaction in that behalf, to be reflected in the order passed by the Chief Engineer on 11th August, 2017, the High Court could have then followed the settled legal position expounded in *Union of India and Others Vs. O. Chakradhar* that the nature and extent of illegalities and irregularities committed in conducting a selection will have to be scrutinized in each case so as to come to a conclusion about the future course of action to be adopted in the matter. Further, if the mischief played is so widespread and all pervasive, affecting the result so as to make it difficult to pick out the persons who have been unlawfully benefited or wrongfully deprived of their selection, in such cases, it will neither be possible nor necessary to issue individual show cause notices to each

selectee. In that case, the only option would be to cancel the whole selection process and not limiting to one section of appointees. This view has been restated in the recent decision in *Veerendra Kumar Gautam and Others Vs. Karuna Nidhan Upadhyay and Others*⁶, (also see *Joginder Pal and Others Vs. State of Punjab*).”

14. In **Mohinder Singh Gill’s case (supra)**, which pertains to the cancellation of the Assembly Election in the year 1976, wherein the Hon’ble Supreme Court observed:-

“8. The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to Court on account of a challenge, get validated by additional grounds later brought out. We may here draw attention to the observations of Bose, J. in *Gordhandas Bhanji*:-

Public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the actings and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself.”

In the present case the situation is altogether different. At large level the examination was conducted so naturally it takes sometime to file FIR. It is a matter of investigation and it takes some time get the clues especially in the cases of paper leakage and copying. The Respondent-State has cancelled the examination earlier as prima facie it was found the leakage has taken place only in three cadres Nursing, Pharmacist and Junior Clerk. However, it is subsequently found that it has occurred also in general

common question. Though the leakage is detected the seepage takes time to be detected.

15. In **Sonali S. Chavan's case (supra)**, the Tribunal held that there is no prima facie material to suggest that there was any manipulation / tampering of answer books, though probably it would have been possible to do so. However, we cannot take a decision merely only on the basis of a possibility of wrong doing. Such a decision based on conjectures and surmises will not be just and proper.

16. The query was made about crystalizing the rights of the applicants when their names are not even recommended and only appeared in the merit list, what is the locus of the applicants. Learned counsel for the applicants has relied on the decision of the Hon'ble Supreme Court in the case of **EAST COAST RAILWAYS Vs. Mahadev Appa Rao**, on the point of locus. It is held that there is a need for proper application of mind and reasons to be given for cancellation. Fresh test is notified and that time they approached the Court. The second test was allowed and the same order was upheld. In **East Coast Railway's case (supra)**, the Hon'ble Supreme Court observed:-

“14. It is evident from the above that while no candidate acquires an indefeasible right to a post merely because he has appeared in the examination or even found a place in the select list, yet the State does not enjoy an unqualified prerogative to refuse an appointment in an arbitrary fashion or to disregard the merit of the candidates as reflected by the merit list prepared at the end of the selection process. The validity of the State's decision not to make an appointment is thus a matter which is not beyond judicial review before a competent writ court. If any such decision is indeed found to be arbitrary, appropriate directions can be issued in the matter.”

We accept that the applicants who have participated in the examination and they have cleared the disputed examinations are

the sufferers and therefore, being aggrieved they have locus to approach the Court.

17. In **Sachin Kumar's case (supra)**, the Delhi Subordinate Service Selection Board (DSSSB), issued the advertisement for the 231 posts of Clerks in Services Department. 61,179 candidates were found eligible to appear for the examination. The examination was conducted in June, 2014. The complaints were received by the DSSSB of various irregularities in conducting Tier-I and Tier-II Examination like leakage of question papers, mass cheating and impersonation of candidates. The result of the Tier-I examination was declared in Oct, 2014 and 2415 candidates were short listed. The Tier-II examination was conducted in March, 2015 and the results were declared in July, 2015. As many complaints were received in respect of the Tier-I and Tier-II Examination, a Committee was formed in August, 2015. The Committee concluded that there were serious irregularities of cheating, impersonation in both the Tier-I and Tier II examination and the Committee opined that the examination should have been cancelled at the stage of declaring Tier-I result and the case should be referred to the Economic Offences Wing/Crime Branch of Delhi Police. The DSSSB cancelled the entire selection process. The Hon'ble Supreme Court upheld the cancellation and observed as under:-

“66. Recruitment to public services must command public confidence. Persons who are recruited are intended to fulfil public functions associated with the functioning of the Government. Where the entire process is found to be flawed, its cancellation may undoubtedly cause hardship to a few who may not specifically be found to be involved in wrongdoing. But that is not sufficient to nullify the ultimate decision to cancel an examination where the nature of the wrongdoing cuts through the entire process so as to seriously impinge upon the legitimacy of the examinations which have been held for recruitment. Both the High Court and the Tribunal have, in our view, erred in laying exclusive focus on the report of the second Committee which was confined to the issue of impersonation. The report of the

second Committee is only one facet of the matter. The Deputy Chief Minister was justified in going beyond it and ultimately recommending that the entire process should be cancelled on the basis of the findings which were arrived at in the report of the first Committee. Those findings do not stand obliterated nor has the Tribunal found any fault with those findings. In this view of the matter, both the judgments of the Tribunal and the High Court are unsustainable.”

18. Undoubtedly, in adherence to Articles 14 & 16 of the Constitution of India, the selection process conducted in the public domain is a must. The entire process should be transparent and fair as the Government is ultimately accountable to the people for whom the administration is run by the Government. Hence, the decision in respect of the such selection process is a subject of judicial review before the judicial authority. The Government is a policy maker so the decision whether to fill up the posts and how many posts are to be filled in is entirely within the power of the State. It all depends on so many factors, like requirement, exigency, availability of posts, financial burden etc. However, once the process is initiated the Respondent-State has to be vigilant, cautious to maintain the sanctity of the rules and procedure and also equally the interest of the individuals who are the participants in the selection process.

19. Thus, the main grievance of the applicants as stated above that the examinations of certain cadre, especially Nursing, Pharmacist and Junior Clerks should have been cancelled instead of cancelling the entire selection process. Learned counsel for the applicants tried to convince on the basis of the documents referred and discussed above that in the order passed by the Under Secretary, Public Health Department, nothing is said much about the further reports that the 60 general questions were common in the two parts of the examination. This was the fact which was subsequently found. In view of the ratio laid down in the cases

referred above we have conceded to the present set of facts. In the present case the investigation was going on. The charge sheet was filed and supplementary charge sheet was also filed. However, it was necessary for the Respondent-State to take decision at the earliest in view of the illegalities/irregularities taken place at the time of the examination. Considering 4,86,000 candidates appeared for the examination was conducted at mass level and the candidates found eligible to appear for the examination are also huge in number. Indeed, it is a complicated exercise. It is a fact that a criminal case is registered against some persons. It may be true that as submitted by the learned counsel for the applicants that some of the persons who are really involved in this fraud or paper leakage are not made accused and the investigation is not properly conducted. We are not having all the powers under Article 226 of the High Court as the Tribunal is having powers of judicial review to the extent of service jurisprudence. We do not have powers to deal with the matter relating to Public Interest Litigation. Similarly, we are not the investigating agency and power of Criminal Court to deal with the issues raised by the learned counsel for the applicants at the time of argument. However, we cannot turn nelsons eye to the facts which are unfolded before us. We have gone through the noting dated 29.2.2021 of the Under Secretary, and which is subsequently approved by the Department whereby questioning the credibility of NYSA. One Agency by name NYSA Communications Pvt Ltd was involved and the entire process of conducting the examination of all these cadres was entirely given to that Agency. It is a settled position that in the administration such work is always allotted by adopting the process of tenders. So, we have nothing to say about it. However, it shocks our conscience that none of the persons from that Agency is prosecuted and all the office bearers of the Agency are missing and the Investigating Officer could not lay hands over any of the

employees of NYSA. Ex facie, this creates a big question mark as the fate of so many young candidates is at stake and the things cannot be taken lightly by the Government and the Investigating Agency. We do experience the agony and frustration of the young people who are going to appear for the examination again and again and the productive years of the young generation are wasted.

20. We are in agreement with the submissions made by the learned C.P.O considering the leakage and as it is stated that it was not possible to identify the places where the leakage has taken place on account of large scale. Moreover, due to social media the paper leakage can spread within a short period of time and nobody will come forward and disclose the Police that he has received the leaked question paper. Hence, we have to depend on the policy decision taken by the Government and presume that it is taken in all wisdom and fairness with a view to maintain the purity and sanctity in the examination process.

21. Thus, we accept that it was not possible to segregate tainted from untainted candidates when the examination is conducted at such mass level.

22. In view of the above, we find no merit in the Original Application and the same stands dismissed.

Sd/-
(Medha Gadgil)
Member (A)

Sd/-
(Mridula Bhatkar, J.)
Chairperson

Place : Mumbai
Date : 21.03.2023
Dictation taken by : A.K. Nair.