2023-I-LLJ-321 (Del)
LNIND 2022 DEL 3465

IN THE HIGH COURT OF DELHI

Present:

Hon'ble Ms. Justice Rekha Palli

W.P.(C) No. 3946 of 2021, W.P.(C) No. 4196 of 2021, W.P.(C) No. 5242 of 2022, W.P.(C) No. 5886 of 2022, W.P.(C) No. 4226 of 2021, W.P.(C) No. 4316 of 2021, W.P.(C) No. 4317 of 2021, W.P.(C) 4384 of 2021, W.P.(C) No. 4452 of 2021, W.P.(C) No. 4467 of 2021, W.P.(C) No. 4475 of 2021, W.P.(C) No. 4565 of 2021, W.P.(C) No. 4678 of 2021 & W.P.(C) No. 4695 of 2021 and W.P.(C) No. 10496 of 2021

1st December, 2022

Rinku and Others

Versus ... *Petitioners*

Union of India and Another

... *Respondents*

Cancellation of Candidature – Opportunity of Hearing – Petitioners-employee sought for quashing of list issued by Respondent 2 withholding result of selection process, and directing to appoint them on specified posts with all consequential benefits, hence these petitions – Whether, use of scientific methodology used by Institute of Banking Personnel Selection (IBPS), could be basis to hold candidate guilty of having indulged in unfair means, and cancellation of Petitioners' candidature without giving them any opportunity to show cause against allegations of unfair means, sustainable – *Held*, use of statistical methods adopted by IBPS to analyze performance of candidates, could not be said to be impermissible – It was still incumbent upon Respondent no.2 to put Petitioners to notice and accord opportunity to them to reply to allegations leveled against them by providing them with copies of material based on which it could have been held that they had used unfair means in examination – Respondent 2 given complete go-by to principles of natural justice and merely proceeded to withhold Petitioners' candidature on basis of mere speculation that they had indulged in unfair means – Petitioners justified in complaining about principles of natural justice, having been violated and they were having been held to be guilty of indulging in unfair means, without any opportunity of show cause being granted to them – Impugned list quashed with direction to Respondent 2 to forthwith declare results of Petitioners – Petitions allowed.

Held : I am, therefore, inclined to agree with the respondent no. 2 that the use of the statistical methods adopted by the IBPS to analyse the performance of the candidates, cannot be said to be impermissible. This Court is therefore, unable to

hold that the analysis by the use of scientific methodology/ statistical methods by an expert body like the IBPS, cannot be taken into account to determine the question of use of unfair means in an examination. However, this does not imply that the respondent no. 2, merely on the basis of an analysis carried out by experts, can straightaway paint the candidates as having indulged in use of unfair means. In my considered view, even though it cannot be said that the use of statistical methods by the IBPS to analyse the answers was *per se* impermissible, it was still incumbent upon the respondent no. 2 to put the petitioners to notice and accord an opportunity to them to reply to the allegations levelled against them by providing them with copies of the material based on which it could have been held that they had used unfair means in the examination. It is only after following a fair procedure that action against the petitioners, if found guilty, could have been initiated. The respondent no. 2 has, however, given a complete go-by to the principles of natural justice and merely proceeded to withhold the petitioners' candidature on the basis of a mere speculation that they had indulged in unfair means. I, am therefore, of the view that the petitioners are justified in complaining about principles of natural justice, having been violated and they having been held to be guilty of indulging in unfair means, without any opportunity of show cause being granted to them. The writ petitions are, accordingly allowed by quashing the impugned list issued in December 2020 with a direction to respondent no. 2 to forthwith declare the results of the petitioners.

[Paras 21, 25, 36]

CASES CITED/REFERRED TO:

Amit Chhikara v. Union of India LNIND 2018 DEL 4476 ***(Considered)***

[Paras 6, 33, 34]

Biecco Lawrie Ltd. v. State of W.B. (2009) 8 MLJ 451 (SC) ***(Considered)***

[Para 27]

Hitender v. Union of India (2014) SCC Online Del 6452 ***(Considered)***

[Para 27]

Ravi Kumar Kulhari v. Rajasthan Raja Vidyut Prasaran Ltd. S.B. W.P.(C) No. 7345 of 2022 ***(Distinguished)***

[Para 31]

Staff Selection Committee through its Chairman v. Sudesh (2014) SCC OnLine Del 7534 ***(Considered)***

[Paras 6, 15, 32, 33, 34]

UMC Technologies v. Food Corporation of India LNIND 2020 SC 476 ***(Distinguished)***

[Para 28]

Varun Bharadwaj v. State Bank of India (2013) SCC Online Del 480 ***(Distinguished)***

[Paras 16, 19, 20, 21, 31]

ADVOCATES APPEARED:

Nitin K Gupta, K.P. Ranjan, Ritika Gautam and Bhavya Jain, for Petitioners

Om Prakash, Shivangini Sharma, Vicky Kumar, for FCI, *Vipin K Chilana*, Sr. Prof & Advisor (IBPS), *Neeraj*, SPC with *Sahaj, Vedansh Anand and Rudra*, for UOI, *Rajat Arora, Rajesh Gogna*, CGSC with *Priya Singh*, for UOI, *Arunima Dwivedi*, CGSC with

Pinky Pawar and Aakash Pathak, for UOI, *Jaswinder Singh, Ranvir Singh*, CGSC with *Abhishek Khanna and Akhilesh Suresh, Ghanshyam Mishra*, for UOI, *Farman Ali*, SPC with *Usha Jamnal and Krishan Kumar*, for Respondents

JUDGMENT

Ms. REKHA PALLI, J.

In the present batch of petitions under Article 226 of the Constitution of India, the petitioners, who are all aspirants for appointment to the post of Assistant Grade (III) Depot, Assistant Grade (III) General and Junior Engineer (CE), in the respondent no. 2/Food Corporation of India seek quashing of the list issued in December, 2020 by respondent no. 2 withholding the result of the selection process of some of the candidates including the petitioners. The petitioners also seek a consequential direction to the respondent no. 2 to appoint them on the aforementioned posts with all consequential benefits.

2. Before embarking on the rival submissions of the parties, it may be appropriate to note the brief factual matrix.

3. The respondent no. 2, on 23.02.2019, published an advertisement for recruitment to the post of Assistant Grade III in the General, Depot, Technical, and Accounts department as also for the post of Assistant Grade II (Hindi) and JE (CE) in its organization. The petitioners, being eligible, applied for appointment to the aforementioned posts and consequently appeared in the Phase-I examination held on 02.06.2019, which examination comprised of 100 Multiple Choice Objective questions required to be answered in 60 minutes.

4. Upon being declared successful in the Phase-I examinations on 08.07.2019, the petitioners then appeared in the Phase-II examinations on 27.07.2019, which comprised of 120 multiple choice questions to be solved in 90 minutes, results whereof were declared in December, 2019. The petitioners, however, did not find their names in the category of selected candidates and therefore made various representations, including filing of applications under the Right to Information Act, 2005, seeking reasons for their non-selection to the aforementioned posts as also the marks obtained by them in the Phase-II examination. It was only in December, 2020 that the petitioners were, without reasons being assigned informed that their candidature had been withheld.

5. Upon learning about their candidature having been withheld, the petitioners, in February, 2021, approached the respondents to inquire about the reasons for their candidature being withheld. It is then that the respondent no. 2 provided them with a copy of the impugned list which stated that the results of some candidates including the petitioners had been withheld in accordance with the recruitment notification. The petitioners were also verbally informed that this was due to a similarity in the pattern of their answers with the answers of some other candidates

in the Phase-II examination. The respondents, however, refused to provide details of the same to the petitioners, leading to the filing of the present petitions.

6. In support of the petition, Mr. Nitin K. Gupta, learned counsel for the petitioners, at the outset submits that the issue raised in the present petitions is squarely covered against respondent no. 2 by a decision of the Apex Court in *Staff Selection Committee through its Chairman v. Sudesh*. On 19.07.2017, the Apex Court, dismissed the Appeal being CA No. 2836-2837 of 2017 against the decision of this Court in *Staff Selection Committee through its Chairman v. Sudesh* (2014) SCC OnLine Del 7534. In *Staff Selection Committee through its Chairman v. Sudesh (supra)*, the Division Bench had rejected a challenge to an order passed by the learned Central Administrative Tribunal in similar circumstances by holding that before a candidate could be held of having resorted to cheating, it was essential to inform him not only about the analysis carried out by experts but also of the pattern discerned therefrom as also the specific reasons for coming to the conclusion that the said pattern lead to the inference of a very high probability of the candidate having indulged in malpractice. The Court held that unless this entire information was disclosed to the candidates, the mere allegation that their candidature was being cancelled on the basis of post-exam analysis done by experts was in violation of the principles of natural justice, and was therefore not sustainable. He submits that a similar issue again came up for consideration before a Co-ordinate Bench of this Court in *Amit Chhikara v. Union of India* LNIND 2018 DEL 4476 : (2018) SCC Online Del 11823, wherein the Court, following the decision in *Staff Selection Committee through its Chairman v. Sudesh (supra)*, not only quashed the withholding of the result of a candidate on similar grounds but also directed his appointment with all consequential benefits. This decision was unsuccessfully assailed by the respondents therein in LPA 90/2019. A subsequent Special Leave Petition also met the same fate. He, therefore, contends that in the light of this settled legal position, the action of the respondent no. 2 to withhold the result of the petitioners on the purported report based on some analysis carried out by the IBPS, holding the petitioners guilty of indulging in unfair means, is wholly arbitrary and unsustainable.

7. Mr. Gupta submits that despite the petitioners' repeated requests, the respondents did not inform them about the alleged method adopted by IBPS or the basis of its analysis and it is only in their counter affidavit filed before this Court that the respondents have for the first time, stated the purported reasons due to which they have presumed that the petitioners had indulged in unfair means. He submits that this *erroneous* presumption is based on the fact that some wrong answers of the petitioners were found matching with each other as also the fact that they had correctly answered some questions pertaining to the reasoning section without any rough work, answers whereof, to which the respondents perceive, could only have been arrived at by doing detailed calculations.

8. He submits that this similarity of answers to a few wrong questions was a mere co-incidence as the examination, in which the petitioners appeared, was a computer

based examination, wherein a large number of students appear across the country. Once the respondent no. 2 has itself taken a stand in its counter affidavit that all the options of a particular question were made attractive enough, a similarity of pattern in answering some of the questions with similar wrong/blank answers by the petitioners, cannot be taken to be so improbable so as to infer that they had indulged in malpractice. It is not unusual for candidates who may not know the correct answers to choose the next probable answer. He, therefore, contends that a mere similarity in the pattern of answers of the petitioners and some other candidates in a multiple choice question examination like the one in the present case, could not be the sole basis for holding the petitioners guilty of indulging in unfair means.

9. Mr. Gupta submits that in any event, the answers of candidates with whom the petitioners' answers were found to be similar were not located in the same examination centre. In support of his *plea*, he seeks to place reliance on the unfair means report submitted by the respondent no. 2, a perusal whereof shows that the candidates with whom the petitioners' answers were found to be similar, were not in the same centre had, appeared in the examination from different centers in different parts of the country. He submits that even otherwise, the respondent no. 2 had, in every examination centre, deployed invigilators to ensure that a candidate does not indulge in unfair means during the examination. These invigilators neither found the petitioners to be indulging in any means of copying *etc.* nor was any adverse report regarding their conduct submitted by them. He, therefore, contends that once the petitioners and the other candidates whose answers were allegedly similar, were not seated in the same centers as also the fact that the invigilators deployed in the examination centre did not submit any adverse report regarding their conduct, the petitioners, could not have said to be indulging in any use of unfair means during the examination.

10. Mr. Gupta then submits that the respondent no. 2's *plea* that since the petitioners did not do any rough work for attempting some of the questions, answers whereof could only have been arrived at after doing rough work, it was evident that they had indulged in unfair means, is, also without any basis. He submits that the respondent no. 2 has failed to consider that when candidates with different intellectual levels having strength in different subjects appear in a competitive exam, there is every probability that a candidate might not require rough work for answering some of the questions. Moreover, once the respondent no. 2 had only provided a short window of 90 minutes to attempt 120 questions in the examination, a candidate, in an attempt to answer all the questions, may not deem it necessary to do detailed calculations to mark the answer, which he perceives to be correct. He, therefore, submits that merely because a candidate did not do rough work for solving a particular question, the same could not imply that the candidate marked the correct answer by use of unfair means.

11. Mr. Gupta finally submits that the reliance of the respondent no. 2 on clause 38 of the advertisement to contend that a candidate did not have any vested right

in the selection process does not imply that the respondents had a right to hold the petitioners as guilty of having indulged in unfair means without giving them an opportunity to show that they had not resorted to unfair means or even following the basic principles of natural justice. As per clause 38 of the advertisement, while the respondent no. 2 was entitled to analyze the answers of candidates, the same could not imply that the result of candidates would simply be withheld on the basis of an analysis without even putting them to any notice. A mere similarity in the pattern of answers to some questions out of the large number of questions which a candidate was required to solve in limited time available, could not be the sole ground to withhold the result of every candidate, some of whose answers were matching with other candidates. He, therefore, contends that if this criteria of similarity in pattern of answers to about 25% of the questions *i.e.*, 30 out of 120 as alleged by the respondents was to be adopted for cancelling the candidature of candidates without giving them an opportunity to explain their stand, the same would lead to absurd conclusions and could seriously prejudice candidates who *bonafidely* attempted the questions. He, therefore, prays that the writ petitions be allowed and the respondents be forthwith directed to appoint the petitioners, who have been suffering for the last many years.

12. *Per contra*, Mr. Om Prakash, learned counsel for respondent no. 2, while supporting the impugned list, submits that the result of the petitioners has been rightly withheld only after following the procedure set out in the advertisement. He submits that in accordance with the conditions mentioned in the advertisement, the respondent had engaged the services of Institute of Banking Personnel Selection (IBPS), which is one of the most experienced and reputed organizations for conducting recruitments in various public sector undertakings. The said organization follows a scientific/theoretical model, in line with the international standards for detecting the use of unfair means, if any, resorted to by the candidates during examination and thereafter sends a report/analytical data of pairs of candidates suspected to have resorted to unfair means. Moreover, the analysis report of the IBPS, was thereafter examined by a panel of experts of the respondent no. 2, who also considered other factors such as evidence of any random marking, identical matches of intermittent and end skipped questions *etc.* He, therefore, contends that the conclusion arrived at by the respondent no. 2 that the petitioners had adopted unfair means, cannot be, in any manner said to be arbitrary or illegal.

13. He submits that the IBPS has clearly opined that the matching of wrong answers of candidates could not be a mere coincidence and matching of their wrong and blank answers was a clear indicator of their having indulged in unfair means. Furthermore, by placing reliance on the rough sheets of the petitioners, learned counsel for the respondent no. 2 submits that they were found to have attempted several questions in the examination without even doing any rough work for the same, answers whereof could only have been arrived at after doing some rough work. This he submits, as per the IBPS, was not possible and therefore, even this indicates that the petitioners had resorted to copying. Infact, a detailed analysis had

also been carried out of the time spent by the petitioners on different sections of the question paper whereupon it was found that even when they had correctly answered all the questions in certain sections, there was no activity on the computer screen for quite some time during the exam. All these factors taken together were clearly indicative of their having indulged in unfair means

14. Mr. Om Prakash next submits that the *factum* of the petitioners having indulged in unfair means is further substantiated by the fact that they chose examination centers other than those at their place of residence. The petitioners in the present case were all residents of Haryana but for inexplicable reasons, opted for centers in Shimla and had accordingly been allotted centers in Shimla or Solan. There was no reason as to why candidates from Haryana would opt for Shimla/Solan unless they were assured that they would be facilitated in using unfair means in these centers. Moreover, both these centers have been blacklisted after candidates therein were found to have indulged in unfair means. Even this, he contends clearly indicates that the petitioners had indulged in malpractice.

15. He then submits that the reliance of the petitioners on the decision in *Staff Selection Committee through its Chairman v. Sudesh (supra)* to contend that the cancellation of their candidature upon finding of similarity of pattern of answers by use of scientific/technical model was in violation of principles of natural justice, is wholly misplaced. In *Staff Selection Committee through its Chairman v. Sudesh (supra)*, the Court did not examine the methodology adopted by the respondents therein in detecting the use of unfair means and therefore, the said decision is not applicable to the facts of the present case, wherein the methodology used by the IBPS has been clearly explained before this Court Moreover, in *Staff Selection Committee through its Chairman v. Sudesh (supra)*, the Court was dealing with a situation where the candidates were debarred from appearing in other public examinations unlike in the present case, where the respondent has, strictly as per the stipulation in Para 38 of the advertisement, exercised their right to cancel the candidature of the petitioners, without in any manner, debarring them. He, therefore, submits that the decision in *Staff Selection Committee through its Chairman v. Sudesh (supra)*, would not be applicable to the facts of the present case, where it is a simpliciter case of the petitioners not being selected for appointment in the respondent organization.

16. On the other hand, *vide* its decision dated 06.02.2013 in *Varun Bharadwaj v. State Bank of India and Others* (2013) SCC Online Del 480, a Co-ordinate Bench of this Court approved the use of scientific methodology by IBPS to detect the use of unfair means by observing that the use of unfair means, can on many occasions, go undetected. It was held that it would not be appropriate for the Court to interfere with the rationality of the test being applied by experts to detect the use of unfair means. This decision of the learned Single Judge was carried in appeal by way of LPA 155/2013, wherein the Division Bench, while declining to interfere with the findings of the learned Single Judge, held that the use of scientific/technical

methodology to discern the similarity of patterns, which leads to the inference of use of unfair means, could not be eliminated. In the present case, the respondent no. 2 has explained in detail, the procedure and *rationale* adopted by the IBPS in detecting the use of unfair means by the petitioners. He, therefore, contends that the present case is squarely covered by the decision in *Varun Bharadwaj v. State Bank of India and Others (supra)*, wherein the IBPS, an expert body has used scientific methodology to detect the use of unfair means by the petitioners.

17. Mr. Om Prakash finally submits that in any event, the petitioners do not have any vested right to be appointed in the respondent organization. Clause 38 of the Advertisement itself made it clear that the answers/responses of the candidates would be analyzed with other candidates to determine the patterns of similarity of answers and if found that the answers had been shared and the scores obtained were not genuine/valid, their candidature could be cancelled. Infact, the advertisement also made it clear that the respondent would have the power to debar a candidate from taking any examination either for a specified period or permanently and infact, could even terminate a candidate from service, if already joined. He, therefore, submits that once the IBPS, who applied the scientific methodology uniformly to all the candidates to detect the indulgence of unfair means, had found the petitioners to have indulged in unfair means, the respondent was justified in exercising its right to cancel/withhold their candidature. He, therefore, prays that the writ petitions be dismissed.

18. Having considered the submissions of the learned counsel for the parties and perused the record, I find that two issues arise for my consideration in the present batch of petitions. The first issue which needs to be determined is as to whether the use of scientific methodology as claimed to have been used by the IBPS, can be the basis to hold a candidate guilty of having indulged in unfair means. The second issue would be primarily factual as to whether the cancellation of the petitioners' candidature without giving them any opportunity to show cause against the allegations of unfair means, is sustainable in the present case.

19. In so far as the first issue regarding permissibility of analysis of the answers by the IBPS or any other expert body is concerned, learned counsel for the petitioner has vehemently urged that an analysis of the similarity of answers of wrong and blank questions by an outside agency cannot be the basis for concluding that the candidates have indulged in use of unfair means. Learned counsel for the respondent no. 2 has however, by placing reliance on the decision in *Varun Bharadwaj v. State Bank of India and Others (supra)*, contended that the use of scientific technology to analyse answers of candidates to determine the use of unfair means has already been approved by the Division Bench. The question before this Court, thus is, as to whether the use of this methodology of analysing the answers of candidates in an examination by the IBPS, which includes a comparison of the wrong and blank answers given by a candidate, can be said to be impermissible as contended by the petitioners or that the same is a valid tool to determine the use of unfair means by a candidate, as urged by the respondent no. 2.

20. In order to appreciate this *plea*, it would be useful to refer to the observations of the Division Bench in *Varun Bharadwaj v. State Bank of India and Others (supra)*, as contained in Para 24 of the decision. The same reads as under:

"*24.* The Court is conscious that technology often empowers citizens; at the same time it has the potential to facilitate misuse. In the context of the facts of this case, this Court is not persuaded with the appellant's submission that without tangible material or evidence, the SBI could not have inferred the employment of "unfair means" by candidates generally and the petitioner In particular. Use of electronic devices to transmit information either in the form of text messages or by use of hidden listening devices which go undetected may be hard to establish. That does not mean that patterns which are discernible and are thrown up on application of scientific formulae or statistical models, which leads to further examination of the primary material should be eliminated by the Courts. In the present case, the pattern which emerged showed that the appellant's results in respect of wrong answers. matched with some other candidates who also appeared in the New Delhi centre. On further scrutiny, the reasonableness of the suspicion was strengthened by the manner of his attempting the answers. These, in the opinion of the Court, were sufficient basis for the SBI to conclude that unfair means had been employed and withhold his result. The directions sought are, therefore, unavailable in exercise of judicial review discretion under Article 226 of the Constitution. As a result, this Court finds that the impugned judgment and order of the learned Single Judge does not call for interference. The appeal is, therefore, dismissed without any order as to costs."

21. Upon a bare perusal of the aforesaid conclusions arrived at by the Division Bench, it is evident that the use of such technology to analyse the performance of the candidates in an exam has been found by the Court to be valid. The petitioners' *plea* that merely because the invigilators in the examination hall, found nothing amiss, it must be presumed that there was no use of unfair means by the candidates, cannot be accepted. As observed by the Division bench in *Varun Bharadwaj v. State Bank of India and Others (supra)*, technology not only empowers citizens but also has the potential to facilitate misuse, the use of hidden electronic devices to transmit information, cannot be simply ignored as is wished by the petitioners. Even otherwise, the Courts are not expected to sit over the judgment of an expert body regarding the methodology or the procedure adopted by them to determine the use of unfair means in an examination. I am, therefore, inclined to agree with the respondent no. 2 that the use of the statistical methods adopted by the IBPS to analyse the performance of the candidates, cannot be said to be impermissible. This Court is therefore, unable to hold that the analysis by the use of scientific methodology/ statistical methods by an expert body like the IBPS, cannot be taken into account to determine the question of use of unfair means in an examination. However, this does not imply that the respondent no. 2, merely on the basis of an analysis carried out by experts, can straightaway paint the candidates as having

indulged in use of unfair means. I may therefore, now proceed to examine whether the decision of the respondent no. 2 to withhold the candidature of the petitioners in the present case, was valid.

22. Having come to the conclusion that the analysis by use of scientific methodology can be a factor to determine the use of unfair means in an exam, the question before this Court, still would be as to whether in the present case, the respondent no. 2 could have cancelled the candidature of the petitioners as had been done, without informing them about the reasons therefor. Learned counsel for the petitioners has vehemently urged that the respondent no. 2 did not even put them to any notice but simply proceeded to withhold their candidature, which they were subsequently informed, was on the basis of a similarity of pattern in their answers to some questions, which similarity is stated to have been identified by the IBPS. Learned counsel for the respondent no. 2 has however, urged that once the advertisement itself made it clear that the candidature of a candidate may be cancelled if upon analysis of his answers, he is found to have indulged in use of unfair means and thus, there was no requirement to issue any notice to the petitioners. It has also been urged that action against the petitioner has been taken strictly in accordance with the terms of the advertisement and the respondent no. 2 was fully justified in rejecting the candidature of those candidates who were suspected to have indulged in malpractice. In any event, in the counter affidavit filed before this Court, the reasons for arriving at the conclusion that the petitioners had indulged in unfair means, have been clearly spelt out and therefore, there has been no violation of principles of natural justice.

23. Having given my thoughtful consideration to the rival contentions of the parties regarding the question as to whether the rejection of the petitioners' candidature was justified, it needs to be, at the outset noted that it is an admitted position that before issuing the impugned list, the respondent no. 2 did not provide any opportunity to the petitioners to explain their stand regarding the allegations levelled against them. The respondent no. 2 only verbally informed the petitioners that their results were being withheld on account of a purported similarity in their answers with some other candidates but did not furnish any details thereof to them. It is only at the time of filing of the counter affidavit that the respondent no. 2 for the first time, furnished some details of the analysis of the petitioners' answers as carried out by the IBPS, which according to them, conclusively showed that the petitioners had used unfair means.

24. Before this Court, once it transpired that the respondent no. 2 had not even informed the petitioners about the basis for holding them guilty of indulging in unfair means, the respondent no. 2, through the additional documents, made an effort to demonstrate before this Court by producing a comparative tabulation of answers of the petitioners along with the details of their examination centres to contend that the cancellation of the petitioners' candidature was justified. Even though, this attempt of the respondent no. 2, on the first blush, appears to *prima*

facie substantiate its stand, on a closer scrutiny of the analysis presented before this Court, I am of the view that it is not for this Court to either analyse the matching answers to some of the questions or give its opinion as to whether some of the questions, which the respondent no. 2 urge, were complex and could not have been solved without rough work, were indeed so complex that the petitioners, despite being aware that they had limited time of 90 minutes to solve 120 questions, could not have been attempted to answer without doing any rough work. The Court is not an expert on these aspects and therefore, despite the respondent no. 2's attempt to demonstrate the *rationale* of the methodology used by it, it would not be appropriate for this Court to venture into this exercise. It is only the petitioners who could have explained and attempted to clear the doubts and suspicion of the respondent no. 2 on the analysis report.

25. In my considered view, even though it cannot be said that the use of statistical methods by the IBPS to analyse the answers was *per se* impermissible, it was still incumbent upon the respondent no. 2 to put the petitioners to notice and accord an opportunity to them to reply to the allegations levelled against them by providing them with copies of the material based on which it could have been held that they had used unfair means in the examination. It is only after following a fair procedure that action against the petitioners, if found guilty, could have been initiated. The respondent no. 2 has, however, given a complete go-by to the principles of natural justice and merely proceeded to withhold the petitioners' candidature on the basis of a mere speculation that they had indulged in unfair means. This speculation is stated to be on account of a similarity in the pattern of their wrong and blank answers with those of some other candidates. However, even though the use of this analysis by the respondent no. 2 may be permissible, the fact remains that the conclusion arrived at by the respondent no. 2 is still based on a speculation and the conclusion against the petitioners has been drawn without even knowing their stand. Had the petitioners not approached this Court by way of the present petitions, they would not have to been able to decipher as to why their candidature had been withheld. I, am therefore, of the view that the petitioners are justified in complaining about principles of natural justice, having been violated and they having been held to be guilty of indulging in unfair means, without any opportunity of show cause being granted to them.

26. One of the essential components of fair procedure, which in the opinion of this Court, the respondent no. 2 ought to have followed, is that the person against whom any penal action is taken must be put to adequate notice of the matter in hand and give him an opportunity to put up his best defence. It needs no reiteration that the principles of natural justice are to be fully complied with and are not a mere empty formality unless the facts show that no useful purpose would be served by granting an opportunity to the *delinquent*. From the material placed on record by the respondent no. 2, I am unable to persuade myself to accept their *plea* that in the present case, the culpability of the petitioners was evident and therefore, there was no requirement to follow principles of natural justice before cancelling their candidature.

Postal Page No. 111

27. At this stage, reference may be made to the decision in *Hitender and Others v. Union of India and Others* (2014) SCC Online Del 6452, wherein this Court, while relying on the decision of the Apex Court in *Biecco Lawrie Ltd. v. State of W.B.* (2009) 8 MLJ 451 : LNIND 2009 SC 1538 : AIR 2010 SC 142 : (2009) 10 SCC 32, highlighted the importance of complying with the cardinal principles of natural justice. The relevant extracts of the said decision read as under:-

"*24.* It is fundamental to fair procedure that both sides should be heard-*audi alteram partem i.e.* hear the other side and it is often considered that it is broad enough to include the rule against bias since a fair hearing must be an unbiased hearing. *One of the essential ingredients of fair hearing is that a person should be served with a proper notice i.e. a person has a right to notice. Notice should be clear and precise so as to give the other party adequate information of the case he has to meet and make an effective defence. Denial of notice and opportunity to respond result in making the administrative decision as vitiated.*

(Emphasis supplied)

25. The adequacy of notice is a relative term and must be decided with reference to each case. But generally a notice to be adequate must contain the following:

(a) time, place and nature of hearing;

(b) legal authority under which the hearing is to be held;

(c) statement of specific charges which a person has to meet."

28. It may also be apposite to refer to a recent decision of the Apex Court in *UMC Technologies v. Food Corporation of India and Another* LNIND 2020 SC 476 : (2021) 2 SCC 551, wherein the Apex Court emphasized on the necessity of issuing a show-cause notice before taking any action against an individual. The relevant observations of the Apex Court therein read as under:-

"*13.* At the outset, it must be noted that it is the first principle of civilized jurisprudence that a person against whom any action is sought to be taken or whose right or interests are being affected should be given a reasonable opportunity to defend himself. The basic principle of natural justice is that before adjudication starts, the authority concerned should give to the affected party a notice of the case against him so that he can defend himself. Such notice should be adequate and the grounds necessitating action and the penalty/action proposed should be mentioned specifically and unambiguously. An order travelling beyond the bounds of notice is impermissible and without jurisdiction to that extent. This Court in *Nasir Ahmad v. Assistant Custodian General, Evacuee Property, Lucknow and Another,* has held that it is essential for the notice to specify the particular grounds on the basis of which an action is proposed to be taken so as to enable the noticee to answer the case against him. If these conditions are not satisfied, the person cannot be said to have been granted any reasonable opportunity of being heard."

29. In my opinion, the present case was not the one where the principles of natural justice could be simply given a go-by by the respondent no. 2 before holding the petitioners guilty of indulging in unfair means. In the present case, the respondent no. 2 has held the petitioners guilty of indulging in unfair means on the basis of a mere similarity in the pattern of their wrong and blank answers with some other candidates without giving them any opportunity to even show that this similarity in respect of answers to a few questions was too inconsequential. The petitioners were not given any show cause notice against the charges levelled against them before issuance of the impugned list. The petitioners have vehemently contended that many of them were seated in different examination centres and had no physical contact with each other. They have also urged and in my view, rightly so that merely because that they had attempted a large number of questions in a very short span of time or that they were sitting idle for some time during the examination, could not alone, be a ground to hold that they had indulged in unfair means. Moreover, the log sheets in support of this *plea* were neither filed before this Court by the respondent no. 2 nor were put to the petitioners. In the present case, the examination was a competitive exam where candidates with different levels of intellect appear who have their strengths in different areas/sections/subjects. It is always possible that a candidate might not require rough work for answering a particular question and may based on his/her acumen, answer the question directly. I also cannot lose sight of the fact that the candidates appearing in the examination were only allotted 90 minutes to attempt 120 questions in the objective type test. A candidate, who attempts a competitive examination sits in the same with an aim to answer most of the questions correctly so as to get selected. In an exam where a candidate has only been allotted 90 minutes to answer the entire paper, it is likely that in an attempt to answer most of the questions, a candidate might not deem it necessary to do rough work for arriving at an answer to a particular question considering the paucity of time. It also needs to be noted that though the advertisement issued by the respondents stipulated that the answers of the candidates would be analyzed and compared to detect patterns of similarity, the same did not either stipulate that rough work would be mandatory for answering questions or that the respondent no. 2 would analyze the rough sheets of the candidates.

30. Even otherwise, the analysis tabulation produced before this Court by the respondent no. 2 shows that though, most correct answers of the petitioners were matching, it is the few identical matches of wrong/blank answers, which has been made the basis for the respondent no. 2's conclusion that they had resorted to unfair means. It is the respondent no. 2's own stand that all the choices of answers were made attractive enough and therefore, even the aspect of the petitioners' few wrong answers matching had to be considered, by taking into account this factor. The speculation of similarity in answers, even if arrived at by IBPS by applying any scientific model, could not have been the sole basis of holding the petitioners guilty without giving them an opportunity even to explain their stand. In my considered view, the similarity of pattern of answers arrived at by the IBPS, the absence of

rough work by the petitioners had to be seen in the light of other surrounding circumstances after giving an opportunity to them, which the respondent no. 2, unfortunately failed to grant them.

31. I have also considered the decision in *Varun Bharadwaj v. State Bank of India and Others (supra)*, heavily relied upon by the respondent no. 2. I, however, find that in the said decision, the Division Bench had not only considered the analysis report but had also considered various other factors which were brought to its notice. The situation is different in the present case, where no other factor other than the IBPS report, has been relied upon and therefore, the decision in *Varun Bharadwaj v. State Bank of India and Others (supra)* is not applicable to the facts of the present case. For similar reasons, the decision of the Rajasthan High Court in *Ravi Kumar Kulhari v. Rajasthan Raja Vidyut Prasaran Ltd.*, S.B. W.P.(C) No. 7345 of 2022 relied upon by the respondent no. 2, would not apply to the present case.

32. On the other hand, the decision in *Staff Selection Committee through its Chairman v. Sudesh (supra)*, wherein vague show cause notices had been issued to the candidates, would be squarely applicable to the present case, wherein admittedly, no show cause notice whatsoever had been issued to the petitioners before cancelling their candidature. In *Staff Selection Committee through its Chairman v. Sudesh (supra)*, once the Court found that the show cause notices issued to the candidates did not contain the relevant particulars, it was held that the principles of natural justice had been violated. Consequently the Court upheld the order of the Central Administrative Tribunal whereby not only were the vague show cause notices quashed but the respondents therein were directed to declare the results of the petitioners therein and appoint them on the basis of their merit in the select list. The relevant extracts of the said decision read as under:-

> "*12.* We have heard learned counsel for the petitioner, perused the impugned order and the relevant record and considered the submissions. The first show-cause notice was quashed by the Tribunal, firstly on the ground that it lacked in material particulars inasmuch, as, it did not contain any details of the alleged malpractice/ copying and the *modus operandi* allegedly adopted by the applicant in coming to the conclusion that the applicant had resorted to any malpractices copying in the Tier-II examination. It is, precisely, for this reason that the Tribunal required the furnishing of details, as aforesaid in paragraphs 20 to 24 of its order dated 22.11.2013. The *rationale* behind the petitioner SSC being required to furnish the details was simply that the applicant and other candidates could not be condemned on the basis of vague and non-specific allegation of a serious nature, which impinge on their candidature and future prospects. If according to the petitioner, malpractice cheating find been resorted to by the applicant & the other candidates, it was essential that such candidates were, at least, informed of the basis on which it had been concluded, or a *prima-facie* view formed, that such malpractices/etc of cheating had been undertaken. The petitioner should have given the reasons for its said conclusions,

by disclosing as to what was the analysis undertaken by the experts/ outside agency; what was the pattern discerned by the outside experts upon analysis of the answer-sheets of all such candidates, and; that the disclosed pattern could lead to a reasonable inference with a very high probability near certainty of cheating/ malpractice. Without such disclosure, the applicant and other candidates were left in the dark, not knowing how to meet the serious allegations made against them, except by simply denying the same-which they did.

13. A comparison of the two show-cause notices issued gives the impression that the petitioner merely window-dressed the earlier show-cause notice, and served the same upon the applicant again. In fact, there was hardly any difference in the two. The show-cause notice dated 28.01.2014 issued to the respondent-applicant in its entirety reads as follows:

Show Cause Notice

"1. Whereas Shri Sudesh Son of Shri Parvinder Kumar R/o H.No. 228, Gal No. 2, Ambedkar Nagar Haiderpur, Delhi was a candidate of Combined Graduate Level Examination 2012 which was notified in the Employment News dated 20.04.2012 and appeared with Roll number 2201520498 for the said examination

2. Whereas Shri Sudesh, was provisionally called for Computer Proficiency Test (CPT) and interview *cum* personality Test of the aforesaid examination and appeared in the said CPT and Interview on 12.11.2012 and 01.01.2013 respectively.

3. Whereas the Commission, the Competent Authority in the matter, has made a conscious decision with a view to protecting the integrity of the selection process and to prevent candidates who are *prima facie* found to indulge in unfair means in such examination from entering into government service through such manipulative practices.

4. Whereas the Commission gets regular post-examination scrutiny and analysis of performance of the candidates in objective type multiple choice question papers conducted with the panel of experts who have proven expertise in such scrutiny and analysts and had undertaken such scrutiny and analysis in the case of written examination papers of the aforesaid examination.

5. Whereas incontrovertible and reliable evidence has emerged during such scrutiny and analysis that Shri Sudesh had resorted to malpractice/unfair means in the said papers in association with other 46 candidates/ candidates in Paper I of Tier II and 44 with other candidates! candidates in Paper II of Tier II.

6. Now, therefore, Hon'ble CAT, New Delhi directed *vide* its order dated 22.11.2013 in OA No. 2404/2013. Sh. Sudesh son of Sh. Parvinder Kamar is hereby informed that he had restored to malpractice with the candidates as per list enclosed

7. In view of the above he is directed to show cause within 10 days of issue of this detailed show cause notice as to why his candidature may not be canceled and he may not be debarred from the Commission's examination for the next five years."

14. Though the same makes a mention in paragraph 6 of the list of candidates in collusion with whom the applicant allegedly resorted to malpractice, once again, the petitioner failed to provide the basis for the allegation of malpractice copying.

15. In our view, therefore, the Tribunal was justified in quashing the second show-cause notice which suffered from the same lacunae of being vague and devoid of any relevant particulars, and there was no purpose in permitting the petitioner to deal with the replies and pass any further order on the basis of such a vague show-cause notice. The said show-cause notice did not fulfill the basic requirements of principles of natural justice inasmuch, as, the respondent-applicant could not effectively have met the allegations made against him-except to deny the same (which he did), in view of the show-cause notice itself being completely vague and devoid of particulars."

33. Reference may also be made to a recent decision of a Co-ordinate Bench in *Amit Chhikara v. Union of India (supra)*, wherein the Court, by relying on the decision in *Staff Selection Committee through its Chairman v. Sudesh (supra)*, quashed a vague show cause notice which was found to be not meeting the principles of natural justice. The relevant observations of the Court in *Amit Chhikara v. Union of India (supra)* read as under:

11. With all these developments, it would have been expected that the SSC would have gracefully accepted its error, withdrawn the Show Cause Notice dated 14 June, 2013, and appointed the petitioner as Assistant. However, it was not to be. Instead, the petitioner was driven to file yet another writ petition, *i.e.* WP(C) 10824/2017. *Vide* order dated 6th December, 2017, the said writ petition was disposed of, in the following terms:

"*1.* In this petition, quashing of Show-cause Notice of 14 June, 2013 (Annexure P-1) is sought and non-consideration of petitioner for appointment on the post of AG-III (General) is also under challenge

2. Learned counsel for petitioner submits that impugned Show-cause Notice of 14 June, 2013, (Annexure P-1) has been duly replied *vide* Reply (Annexure P-2). Learned counsel for petitioner submits that similar Show-cause Notices were subject matter before this Court's Division Bench decision in *Staff Selection Commissioner and Another v. Sudesh* 2014 SCC OnLine Del 7534 wherein the Division Bench has quashed the said Show-cause Notices and the said decision has been affirmed by Supreme Court *vide* its order of 19 July, 2017 in Civil Appeal No(s). 2836-2838/2017 titled *Staff Selection Commission, Thr. its Chairman and Another v. Sudesh*. According to petitioner's counsel respondent-Staff Selection Commission has been directed to appoint similarly placed

persons like petitioner, therefore, petitioner was waiting the outcome of the decision in *Sudesh (supra)* and now, in view of Supreme Court's decision in *Sudesh (supra)*, respondent-Staff Selection Commission ought to withdraw impugned Show-cause Notice (Annexure P-1)

3. Learned counsel for respondent-Staff Selection Commission submits that if the Reply to Show-cause Notice of 14 June, 2013 (Annexure P-1) has been received, then a decision thereon would be taken in light of this Court's Division Bench decision in *Sudesh (supra)*, which has been affirmed by Supreme Court *vide* its order of 19 July, 2017, within a period of six weeks and its fate would be conveyed to petitioner within two weeks thereafter.

4. Let it be so done to enable petitioner to avail of remedies as available in law, if need be. It is clarified that respondent-Staff Selection Commission would be at liberty to issue another Show-cause Notice, if the facts and circumstances of this case so warrant.

5. With aforesaid directions, this petition is disposed of.

6. Copy of this order be given dasti to counsel for both the sides to ensure its compliance."

13. To my mind, the impugned order may border on contempt, especially in view of the law laid down by the Supreme Court in *Baradakanta Mishra, of Endowments v. Bhimsen Dixit*, (1973) 1 SCC 446. It is incomprehensible, how, in the face of so many decisions of the Tribunal, this Court and the Supreme Court, the Staff Selection Commission could arrogate, to itself, the authority to decide how to implement judicial orders passed by the Tribunal, this Court, and the Supreme Court, and limit the implementation thereof to four categories of cases to which, alone, the benefit of the said judgments would be extended by it, which have been carved out by the SSC, on no discernible basis whatsoever.

16. For these reasons, it is obvious that the refusal to grant relief, to the petitioner, by the SSC, following earlier judicial authorities on the point, cannot sustain either on facts or in law.

17. As a result, the Show Cause Notice dated 14 June, 2013, issued to the petitioner, deserves to be set aside and is accordingly quashed. The impugned order, dated 13 August, 2018, insofar as it applies to the petitioner, is also quashed and set aside.

18. The respondents are directed to appoint the petitioner and Assistant Grade III in the FCI within a period of three months from today, as was directed in the case of *Sudesh (supra)*.

19. The petitioner shall be entitled to all consequential benefits, treating him as having been appointed as Assistant on the same date as other candidates, who were declared successful in the examination with him, were so appointed.

34. Though learned counsel for the respondent no. 2 has vehemently urged before this Court that the decisions in *Staff Selection Committee through its Chairman v.*

Sudesh (supra) and *Amit Chhikara v. Union of India (supra)* are not applicable to the present case as there is no debarment of the petitioners as in the aforesaid two cases and the petitioners have simply not been selected for appointment in the respondent organization, I am unable to agree. The petitioners have been held guilty by the respondent no. 2 of using unfair means in the examination which, in my considered view, will certainly cause irreparable prejudice to them whenever they apply for any other appointment. Merely because they have not been debarred, as is contended by the respondent no. 2, does not imply that the petitioners will not suffer the consequences of having been held guilty of using unfair means by the respondent no. 2. Learned counsel for the respondent no. 2 has not been able to seriously dispute that whenever in the future, they apply for any job with any other organization, the petitioners will necessarily have to disclose whether they had ever been held guilty of indulging in unfair means in any prior examination. The decisions in *Staff Selection Committee through its Chairman v. Sudesh (supra)* and *Amit Chhikara v. Union of India (supra)* are, therefore, squarely applicable to the present case.

35. The petitioners had appeared in the examination held by the respondent no. 2 pursuant to the advertisement issued in February 2019. Even though the list of selected candidates was declared in December 2019, the petitioners, who are young individuals, looking forward to start their careers are still waiting to be appointed as assistants in the respondent no. 2 organization, which appointment has eluded them for the last 3 years only on the basis of a unilateral conclusion arrived at by the respondent no. 2 without granting them any opportunity whatsoever to explain their position regarding the presumptions drawn against them. It would therefore, be in the interest of justice that in case, they fall within the merit, they are appointed without any further delay.

36. The writ petitions are, accordingly allowed by quashing the impugned list issued in December 2020 with a direction to respondent no. 2 to forthwith declare the results of the petitioners. Those petitioners who find a place in the merit list, will, within 4 weeks, be appointed against the respective posts for which they had applied with all consequential benefits except back wages.

Petitions allowed.