
(1983) 08 KL CK 0019
In the High Court Of Kerala
Case No : O.P. No. 1328 of 1981-G

A.K. Soumini

APPELLANT

Vs

The State Bank of Travancore and Others

RESPONDENT

Date of Decision : 01-08-1983

Acts Referred:

Constitution of India, 1950 — Article 12, 13(2), 14, 16, 226
State Bank of India (Subsidiary Banks) Act, 1959 — Section 3, 63, 63(2)
State Bank of Travancore (Officers) Service Regulations, 1979 — Regulation 14

Citation : (1983) 08 KL CK 0019

Hon'ble Judges : Chandrasekhara Menon, J

Bench : Single Bench

Advocate : O.V. Radhakrishnan and K. Radhamoni Amma, for the Appellant; M. Pathrose Mathai, Joseph Vellappally and S. Siri Jagan for Respondent Nos. 1 and 2, for the Respondent

Final Decision : Allowed

Judgement

Chandrasekhara Menon, J.—A lady Clerk-Typist of the State Bank of Travancore has filed this Original Petition. She questions in this petition the selection made by the Bank, the first Respondent here for promotion as officers junior management grade (groups A and B). Ext. P-4 is the copy of the final select list prepared and the Petitioner's name is not in the list. She seeks to quash the list in so far as it adversely affects the Petitioner. She also seeks a writ of mandamus or other appropriate order for directing Respondents 1 and 2 (the second Respondent is the State Bank of India). The State Bank of Travancore the first Respondent is constituted u/s 3 of the State Bank of India (Subsidiary Banks) Act, 1959 to frame independent rules relating to recruitment, promotion etc. governing the service conditions of the employees under the first Respondent. The gist of the Petitioner's case is as follows:

2. She had appeared for written test conducted for promotion as officers junior management grade (groups A and B). She came out successful in the written

test and she was called for interview. She was also interviewed. However according to her for no conceivable reasons she was not selected for promotion; she states that her confidential records are clean. There are no adverse entries against her. At any rate she has not been informed of any adverse entry. She would also submit that at the interview she answered all the questions correctly and fared well in the interview. She submits that there were no circumstances which would justify denial of promotion to her.

3. Petitioner is B.Sc., B.Ed. While she is not included in the list, persons who had passed only the Pre-Degree examination had been selected.

4. The Petitioner points out that Section 63 of the State Bank of India (Subsidiary Banks) Act authorises the State Bank of India to make regulations with the approval of the Reserve Bank in respect of a subsidiary bank to provide for all matters for which provision is necessary or expedient for the purpose of giving effect to the Act. Sub-section 2(m) thereof further empowers the State Bank of India to provide for the conditions and limitations subject to which the subsidiary bank may appoint officers, advisers and other employees and fix their remuneration and other terms and conditions of service. Nevertheless, the Petitioner would submit no statutory rule or valid administrative instructions for making appointments under the first Respondent have so far been made resulting in the appointments and promotions being made at the whims and fancies of the management of the first Respondent Bhnk. The Petitioners definite case is that final list evidenced by Ext. P-4 has been prepared without conforming to any standards as regards qualification, experience or other factors which would be relevant for entitlement to promotion. It is with these allegations that the Petitioner has approached this Court for reliefs under Article 226 of the Constitution, she contending that the select list and promotions are made on patently arbitrary and discriminatory basis which hence violate Articles 14 and 16 of the Constitution. She contends that the first Respondent will come within the ambit of the word "State" in Article 12 of the Constitution.

5. A counter-affidavit has been filed on behalf of the first Respondent--State Bank of Travancore and its Managing Director--The third Respondent in the O.P. by the General Manager of the Bank (Planning and Development)- What he states is that since the Petitioner did not secure the minimum marks required for qualifying for selection at the interview she had not been selected. The interview was conducted by the staff committee consisting of a non-official Director of the State Bank of Travancore, the then General Manager (Planning and Development) and one of the Regional Managers of the Bank. The said committee thus consisted of two qualified and experienced top managerial executives and one of the directors who are all alleged to be persons with considerable experience in the affairs and administration of the Bank. The minimum marks fixed for the interview for selection for promotion was 6 1/2 out of 33 marks. The Petitioner is alleged to have secured only 5 marks at the interview. The counter-affidavit proceeds to state that since the Petitioner did not

secure the stipulated minimum of 6 1/2 marks at the interview for being considered for promotion she was not selected.

6. It is further submitted in the counter-affidavit that the selection for promotion as officers in Junior Management Grade of the Respondent-Bank is done in accordance with the policy evolved in consultation with State Sector Bank Employees Association which is the representative body of the employees of subsidiary Banks like the Respondent Bank. The said policy has also been approved by the Executive Committee of the Respondent-Bank. As per the policy evolved with subsequent changes effected, allotment of marks for the written test/interview and the minimum qualifying marks for the interview in the tests are as under:

Group A Group B

Written Test 100 150 Interview 33 50 Minimum qualifying marks for the interview 6? 10

7. It is asserted in the counter-affidavit that the Petitioner performed very badly at the interview and she could not answer many of the questions put to her. Her job knowledge, general intelligence, power of expression etc. were found to be very poor. It is submitted that it is provided in the relevant policy and as agreed with the representative body of the employees that no weightage will be given to confidential reports for the purpose of promotion which is made on the basis of a selection by written test and interview.

8. In reply to the Petitioner's contentions that while she is a graduate in Arts and Education, persons who are only Pre-degree are selected, it is stated in the counter-affidavit that the selection for promotion to the Junior Management Grade Officers is only on the basis of written test and interview and not on the basis of educational qualifications. While denying that the first Respondent is "State" within the meaning of Article 12 of the Constitution of India, it is denied in the counter-affidavit the Petitioner's statement that no statutory rule or valid administrative instructions for making appointments have been so far made leaving to the whims and fancies of the management. The State Bank of India in exercise of its powers u/s 63 of the State Bank of India (Subsidiary Banks) Act, 1959, has framed regulations pertaining to the terms and conditions of service of officers and their appointments. Regulation 14 of the State Bank of Travancore (Officers') Service Regulations, 1979 provides that all appointments in and promotion to the Officers' Grade shall be made by the competent authority in accordance with the policy or guidelines, if any, laid down in this behalf by the Board of Executive Committee in the light of the State Bank of India's guidelines. These regulations provide that appointments and promotions to the Officers Grade shall be made in accordance with the policy laid down by the Executive Committee of the Respondent-Bank.

9. I will first consider the question whether the first Respondent can come within the ambit of the word "State" used in Article 12 of the Constitution of India. I do

not think now there could be any serious controversy of the State Bank of Travancore coming within the ambit of the word "State" in Article 12. That expression has now to be understood in the view of Justice Mathew in *Sukhdev Singh, Oil and Natural Gas Commission, Life Insurance Corporation, Industrial Finance Corporation Employees Associations Vs. Bhagat Ram, Association of Clause II. Officers, Shyam Lal, Industrial Finance Corporation*, . It may be noted that in that case Justice Mathew had made a new line of approach in his concurring Judgment. He had observed there that the concept of State had changed radically in recent years. The State can no longer be looked upon simply as a coercive machinery wielding the thunderbolt of authority. As the distinguished Commentator on the Constitution of India, Mr. Seervai has observed the judgment of Mathew, J., is closely reasoned. The learned Judge points out that Part IV of the Constitution (Directive Principles of State Policy) showed the extent of the services which the State was expected to undertake and render for the welfare of the people. A State is an abstract entity. It can only act through the instrumentality or agency of natural or judicial persons. Therefore the State can well make a Corporation an agency of instrumentality of the State.

10. Mr. Seervai points out:

The line of reasoning developed by Mathew, J. can also be supported on the additional ground that it prevents a large scale evasion of fundamental rights by transferring work done in Government Departments to statutory Corporations, whilst retaining Government Control. Company legislation in India has enacted provisions against the abuse of the corporate personality of the company, when combined with limited liability. Courts have torn the corporate veil in certain cases and the growing tendency is to look behind the legal personality to the reality behind it. Mathew, J. achieved the same result, but by a different route, namely, by drawing out the implications of Article 13(2). And although he mentioned liberty and equality without express reference to Article 14, he laid great stress on subjecting arbitrary action of the State to constitutional limitations. Subsequent decisions of the Supreme Court have supported his view by drawing out one of the implications of Article 14, namely, that arbitrary and capricious action by the State violates the equal protection of the laws guaranteed by Article 14.

Justice Bhagavati in *Ramana Dayaram Shetty Vs. International Airport Authority of India and Others*, following the view adopted by Mathew, J. said:

Whilst accepting the test laid down in *Rajasthan Electricity Board v. Mohan Lal* and followed by Ray, G.J. in *Sukhdev v. Bhagatram* we would, for reasons already discussed, prefer to adopt the test of Governmental instrumentality or agency as one more test and perhaps a more satisfactory one for determining whether a statutory corporation, body or other authority falls within the definition of "State". If a statutory corporation, body or other authority is an instrumentality or agency of Government, it would be an "authority" and

therefore "State" within the meaning of that expression in Article 12.

Seervai sums up:

It is submitted that the line of reasoning adopted by Mathew, J. in Sukhdev Singh's case and adopted by Bhagwati, J. for himself, Tulzapurkar and Pathak, JJ. in the Airport case marks a development, in the right direction, of administrative law and the clear emphasis put on Article 14 as negating arbitrary action on the part of the State. It is submitted that the broader test applied by Mathew, J., and accepted by Bhagwati, J., for determining whether a corporation is to be considered as "the State" is to be preferred to the narrower test laid down by the majority in Rajasthan Electricity Board case and adopted by the majority in Sukhdev's case. The above submission is now supported by the unanimous decision of 5 Judges in Hasia's case considered in paras 7.29 to 7.34 below:

Hasia's case marks the culmination of the process which Mathew, J. Started as to the meaning of "other authorities" in Article 12. In Hasia's case the question for determination arose out of writ petitions filed under Article 32 challenging the validity of admission to the Regional Engineering College, Srinagar ("the College") which was one of 15 Engineering Colleges in India sponsored by the Government of India. The College was run by a society ("the Society") registered under the Jammu and Kashmir Registration of Societies Act, 1893. The question was whether the society was "the State" under Article 12, for only if it was the state could the admissions to the college be challenged as violating Article 14. Bhagwati, J. delivering the unanimous judgment of a Constitution Bench scrutinized the Memorandum of Association and the Rules of the society and held that the society was an instrumentality or agency of the State and Central Governments and the society was an authority under Article 12 for reasons we have set out in paras 7.30 to 7.34 below:

Bhagwati, J. started the discussion with his judgment in the Airport case, and he quoted several passages from that judgment. But it is unnecessary to refer to them because, as we have seen, in the Airport case he preferred the views of Mathew, J. in Sukhdev's case to that of the majority and we have already considered the views of Mathew, J. at length. In Hasia's case, Bhagwati, J. said that if agencies and instrumentalities of Government were not held to be "other authorities" under Article 12, then.

...it would be the easiest things for the government to assign to a plurality of corporations almost every state business such as Post and Telegraph, TV and Radio, Rail, Road and Telephones--in short every economic activity--and thereby cheat the people of India out of the Fundamental Rights guaranteed to them. That would be a mockery of the constitution and nothing short of treachery and breach of faith with the people of India, because, though apparently the corporation will be carrying out these functions through the instrumentality or agency of the corporation. We cannot by a process of judicial construction allow

the Fundamental Rights to be rendered futile and meaningless and thereby wipe out Chapter III from the Constitution. That would be contrary to the constitutional faith of the post Maneka Gandhi era.

11. In the light of the above discussions, I would hold that the first Respondent Bank is a State.

12. Now we will go into the only other real question in the O.P. which in the light of the arguments of the counsel on both sides and the authorities they had cited arises for decision in the case. The question is whether the prescription of a minimum qualifying mark for the interview vitiates the mode of promotion to the post of officer-junior management grade. It is clear from Ext. R-I (c) that even if a person gets the full marks in the written test, if he fails to get the minimum qualifying marks in the interview, he will not be selected. He might have got more marks than those actually selected if the total marks of the written test and the interview are taken together. Therefore, it is apparent that oral interview plays a predominant part in the selection.

13. Before we look into the Supreme Court decisions on the point, we might refer to opinions of certain experts on the question which have been taken note of by the Supreme Court itself. The following passage from the book on Public Administration in theory and Practice by M.P. Sharma has been quoted in *Ajay Hasia and Others Vs. Khalid Mujib Sehravardi and Others*, , (the passage extracted with the earlier observation of the Supreme Court)

The second ground of challenge questioned the validity of viva voce examination as a permissible test for selection of candidates for admissions to a college. The contention of the Petitioners under this ground of challenge was that viva voce examination does not afford a proper criterion for assessment of the suitability of the candidates for admission and it is a highly subjective and impressionistic test where the result is likely to be influenced by many uncertain and imponderable factors such as predilections and prejudices of the interviewer, his attitudes and approaches, his preconceived notions and indiosyncrasies and it is also capable of abuse because it leaves scope for discrimination, manipulation and nepotism which can remain undetected under the cover of an interview and moreover it is not possible to assess the capacity and calibre of a candidate in the course of an interview lasting only for a few minutes and, therefore, selections made on the basis of oral interview must be regarded as arbitrary and hence violative of Article 14. Now this criticism cannot be said to be wholly unfounded and it reflects a point of view which has certainly some validity. We may quote the following passage from the book on "Public Administration in Theory and Practice" by M.P. Sharma which voices a fair and balanced criticism of the oral interview method.

The oral test of the interview has been much criticised on the ground of its subjectivity and uncertainty. Different interviewers have their own notions of good personality. For some, it consists more in attractive physical appearance

and dress rather than anything else and with them the breezy and shiny type of candidate scores highly while the rough uncut diamonds may go unappreciated. The atmosphere of the interview is artificial and prevents some candidates from appearing at their best. Its duration is short, the few questions of the hit or miss type which are put, may fail to reveal the real worth of the candidate. It has been said that God takes a whole life time to Judge a man's worth while interviewers have to do it in a quarter of an hour. Even at its best the common sort of interview reveals but the superficial aspects of the candidate's personality like appearance, speaking power, and general address. Deeper traits of leadership, tact, forcefulness, etc. go largely undetected. The interview is often in the nature of desultory conversation. Marking differs greatly from examiner to examiner. An analysis of the interview results show that the marks awarded to candidates who competed more than once for the same service vary surprisingly. All this shows that there is a great element of chance in the interview test. This becomes a serious matter when the marks assigned to oral test constitute a high proportion of the total marks in the competition.

The same decision states that O. Glenn Stahl had pointed out in his book "Public Personnel Administration" that there are three disadvantages from which the oral test method suffers, namely, "(1) the difficulty of developing valid and reliable oral tests (2) the difficulty of securing a reviewable record on an oral test and (3) public suspicion of the oral test as a channel for the exertion of political influence". The Supreme Court in the aforementioned case quotes from the said author the following passage which the court describes as a highly perceptive and critical passage:

The oral examination has failed in the past in direct proportion to the extent of its misuse. It is a delicate instrument and in inexperienced hands, a dangerous one. The first condition of its successful use is the full recognition of its limitations. One of the most prolific sources of error in the oral test has been failure in the part of examiners to understand the nature of evidence and to discriminate between that which was relevant, material and reliable and that which was not. It also must be remembered that the best oral interview provides opportunity for analysis of only a very small part of person's total behaviour-Generalizations from a single interview regarding an individual's total personality pattern have been proved repeatedly to be wrong.

The Supreme Court states after referring to two earlier decisions, *R. Chitralekha and Another Vs. State of Mysore and Others*, and *Minor A. Peeriakaruppan and Sobha Joseph Vs. State of Tamil Nadu and Others*, .

In most cases, the first impression need not necessarily be the best impression, but under the existing conditions, we are unable to accede to the contentions of the Petitioners that the system of interview as in vogue in this country is so defective as to make it useless.

It is therefore not possible to accept the contentions of the Petitioners that the

oral interview test is so defective that selecting candidates for admission on the basis of oral interview in addition to written test must be regarded as arbitrary. The oral interview test is undoubtedly not a very satisfactory test for assessing and evaluating the capacity and calibre of candidates, but in the absence of any better test for measuring personal characteristics and traits, the oral interview test must, at the present stage, be regarded as not irrational or irrelevant though it is subjective and based on first impression, its result is influenced by many uncertain factors and it is capable of abuse. We would however, like to point out that in the matter of admission of colleges or even in the matter of public employment the oral interview test as presently held should not be relied upon as an exclusive test, but it may be resorted to only as an additional or supplementary test and, moreover, great care must be taken to see that persons who are appointed to conduct the oral interview test are men of high integrity, calibre and qualification.

14. In *Miss. Nishi Maghu and Others Vs. State of Jammu and Kashmir and Others*, , the Supreme Court observed at pages 1980 and 1981:

Reserving 50 marks for interview out of a total of 150 (100 for written examination and 50 for interview) does seem excessive especially when the time spent was not more than 4 minutes on each candidate-It is difficult to see how it is possible within this short span of time to make a fair estimate of a candidate's suitability on a consideration of the five specified factors which are not capable of easy determination, such as physical fitness, personality, aptitude, general knowledge and general intelligence. It is also not clear how by merely looking at a candidate the selection committee could come to a conclusion about his or her physical fitness. The fact that the allotment of marks is in accordance with a policy decision may not conclude the matter in all circumstances; if that decision is found to be arbitrary and infringing Article 14 of the Constitution, it cannot claim immunity from challenge.

15. No doubt, the above Supreme Court cases are cases dealing with selection of students to professional colleges. The Supreme Court had said in a later case dealing with selection of Munsiffs (by a body consisting of a High Court Judge and the Chairman and a member of the Public Service Commission) *Lila Dhar Vs. State of Rajasthan and Others*, , that the observations in *Ajay Hasia and Others Vs. Khalid Mujib Sehravardi and Others*, , were made primarily in connection with the problem of admission to Colleges where naturally academic performance must be given prime importance and the words "or even in the matter of public employment" occurring in that decision and the reference to the marks allocated for the interview test in the Indian Administrative Service Examination were not intended to lay down any wide, general rule that the same principle that applied in the matter of admission to colleges also applied in the matter of recruitment to public services. The Supreme Court further said that the observation relating to public employment was per incuriam since the matter did not fall for the consideration of the court in that case. The court it was said, never intended any

wide construction of the observation. However, we might also take that *Lila Dhar Vs. State of Rajasthan and Others*, was only considering a case where only 25 per cent was allotted to the interview test and where it has not been given that importance as here when failure to get a minimum in the interview would be fatal for getting the job. In that case itself the Supreme Court has quoted with obvious approval the following passage of O. Glenn Stahls Public Personnel Administration:

Any form of written test possesses certain administrative advantages over the oral and performance types. The written form is much easier and cheaper to administer. It can be given to a large number of individuals at the same time, thus conserving the time of the examiners. As a general rule, it is easier to evaluate objectively, and the technical proficiency demanded in rating is usually, although not always, less. The oral test has long served as a basic selection tool in private employment but has been more slowly accepted in the public field. This conversation arises out of three considerations: (1) the difficulty of developing valid and reliable oral tests; (2) the difficulty of securing a reviewable record of an oral test and (3) public suspicion of the oral as a channel for the exertion of political influence through the destruction of anonymity. Despite these acknowledged disadvantages, however orals have been used increasingly in public personnel testing and have become important instruments wherever tests of personal attributes are considered essential. As we have noted no satisfactory written tests have yet been devised for measuring such personal characteristics as initiative, ingenuity and ability to elicit co-operation, many of which are of prime importance. When properly employed, the oral test today deserves a place in the battery used by the technical examiner.... The general principle is that resort should never be had to an oral if the relevant factors to be tested can be measured at some other point in the examining process. The reason is that the reliability of the oral, even under the best of conditions, tends to be lower than that of the well designed written test. The oral test should be confined, then to the evaluation of relevant traits which cannot be measured in any other way.

16. Therefore, I have no doubt in a case where the oral test--the interview plays an overwhelmingly important part the decisive factor as in this case as to disqualify a candidate when he does not get a minimum fixed there, the whole selection would be vitiated. Going by *Lila Dhar Vs. State of Rajasthan and Others*, , too the marks of both the interview and the written examinations should be added together and the persons who top the aggregate total marks should be selected. In a country where sixty per cent of the people are below the poverty line but the right to equality is made a fundamental right, any method of selection which is likely to favour the elitist class should not be favoured upon. To give the predominant place to the interview-oral test is likely to favour candidates belonging to the affluent class. A man of real worth and quality because of the social position in which he and his family may be placed, because of the environment in which he was brought up and in which he may still be placed may give a totally wrong impression of oneself. A person coming from the

financially well-to-do class who might have had his schooling in a Public School of the elitist class, though really not of that standard and of that depth of learning in any subject as the other candidate from the poorer class, may give the impression of a smart fellow-a good first impression. It would be deceptive impression. This is not an interview by a psychiatrist who could make a judgment of leadership and initiative even from a first impression. As the Supreme Court itself has recognised as of some weight; an interview examination is a highly subjective and impressionistic test where the result is likely to be influenced by many uncertain and imponderable factors such as the predilections and prejudices of the interviewer, his attitudes and approaches, his pre-conceived notions and idiosyncracies. It is likely to give scope for discrimination and manipulation.

17. In moulding relief in this case, I think it would be unjust at this distance of time to quash the whole selection. Persons who have not approached the court in time would not be entitled to any relief and therefore interest of justice would be served if I direct that the Petitioner also be selected if the aggregate total marks she has obtained both in the written and oral tests exceeds that of any one who is now selected. It has to be proceeded on the basis that there is no qualifying minimum marks fixed for the interview. In the matter of seniority among those selected, etc., the Petitioner on the basis of this order should be given consequential benefits if she is selected. Order accordingly. Original petition is allowed as above. There will be no order as to costs.