

(2015) 04 KAR CK 0153

In the Karnataka High Court

Case No : Writ Petition Nos. 5338-341/2013 (S-RES)

Asha Doddamane Benakappa

APPELLANT

Vs

The State of Karnataka and Others

RESPONDENT

Date of Decision : 20-04-2015

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (2015) 04 KAR CK 0153

Hon'ble Judges : B.V. Nagarathna, J

Bench : Single Bench

Advocate : Udaya Holla, Senior Advocate for Vivek Holla, for the Appellant; H.B. Mahesh, HCGP, Advocates for the Respondent

Final Decision : Allowed

Judgement

B.V. Nagarathna, J.—Petitioner has assailed appointment of fifth respondent as the Director of the second respondent -Institute while challenging the procedure of selection adopted by the third respondent - Selection Committee. She has assailed recommendation dated 16/11/2012, made by the Committee recommending name of fifth respondent to the post of Director of the second respondent - Institute. The subsequent Govt. Orders dated 28/12/2012 and amended order dated 02/01/2013 (Annexure "J" and "K", respectively), are also questioned, by which, fifth respondent has been appointed to the post of Director.

2. The second respondent - Institute is an autonomous Institution, registered under the Karnataka Societies Registration Act, 1960, which has been established to promote, maintain and develop child health and provide comprehensive and advanced care under one roof to children and to encourage and promote research and training in child health. The administration of the second respondent is vested with the fourth respondent -Governing Council, consisting of fifteen members, the Chairman being the Minister for Medical Education. The day-to-day administration is managed by the Director of the Institute. Third respondent - Selection Committee is in charge of selecting the

Director of the Institute and the selection is made conjointly with the Governing Council of the second respondent - Institute. Indira Gandhi Institute of Child Health (Pay and Recruitment Rules, Conditions of Service Rules and Miscellaneous Provisions) Rules, 1993 [hereinafter, referred to as the "Rules", for the sake of brevity], are applicable.

3. When the post of Director of second respondent -Institute became vacant, Notification dated 28/08/2012 was issued, inviting applications from eligible candidates. The last date for submission of application was 18/09/2012. The petitioner, fifth respondent and five other candidates submitted their application online, as prescribed in the Notification (Annexure "E" to the writ petition), which is a copy published in "The Hindu", English Daily News Paper on 29/08/2012. All the seven candidates were called for interview by the Selection Committee on 16/11/2012, which was held at Vikasa Soudha, Bengaluru. The Selection Committee comprised of Minister for Medical Education, Government of Karnataka (Chairman), Secretary to Government, Health and Family Welfare Department (Medical Education), two external members being Professors and Heads of Departments and the Director, Medical Education (Member Secretary). After the interview was conducted, fifth respondent was selected to the post of Director and accordingly, the appointment order was issued to her, which is assailed by the petitioner in these writ petitions on various grounds.

4. The main contention of the petitioner is that there was allocation of 7 marks for various qualifications or achievements of the candidates and 8 marks were allotted for interview. Thus, the selection was to be made on the basis of the marks obtained by a candidate in both those segments totaling 15 marks. But the third respondent -Selection Committee has not awarded marks separately with regard to teaching experience and other achievements of the candidates, and interview, but lump sum marks have been awarded for both academic qualification and other criteria as well as interview. It is contended that the marks list mentioned as "marks secured in the interview" in print and the aforesaid words are followed by the words added by hand "& Academic Qualification, etc.". Hence, it is contended that the selection process is vitiated as the Selection Committee has not awarded marks separately, for academic qualifications and credentials and lump sum marks obtained in the interview have been awarded. It is contended that the interview was held on 16/11/2012 and the Governing Council under the Chairmanship of Hon"ble Minister for Education, Government of Karnataka, met on 04/12/2012 and decided to approve the recommendation of the third respondent - Committee dated 16/11/2012 and approved the appointment of fifth respondent as Director of the second respondent - Institute. That the order of appointment is dated 28/12/2012 and subsequently, on 02/01/2013, an amendment was made to add the words "for 3 years or until further orders, whichever is earlier". It is contended that the appointment is not in accordance with the Rules and therefore, it is vitiated. It is also contended that the third respondent - Committee did not inform the candidates that more than 50% of the marks was

to be allocated for interview and that the said allocation is not in accordance with law. Raising several other contentions, petitioner has sought quashing of appointment of fifth respondent as Director of the second respondent - Institute.

5. Statement of Objections have been filed by the respondents. First respondent - State in its objections has at the outset contended that the petitioner is not entitled to any relief as the fifth respondent has been appointed as Director of the second respondent - Institute, after following due procedure by the third respondent - Selection Committee, who prepared the panel of selected candidates and on the basis of the recommendation of Selection Committee, fourth respondent approved the name of the fifth respondent as the Director of the Institute. That the procedure followed by the Selection Committee is clear and in accordance with law, as it has considered the academic qualification and other credentials of all the applicants, including the petitioner. The petitioner having participated in the procedure adopted by the Governing Council in appointing the Director, cannot now question the procedure adopted either by the Governing Council or the Selection Committee. That it is also submitted that the Selection Committee was free to follow its own procedure and that the decision taken by the said Committee is final. Placing reliance on Rule 8, it is submitted that the Selection Committee had the freedom to decide the procedure for conducting the selection process. In fact, in the instant case, Selection Committee formulated a new procedure by allocating maximum marks as "15" instead of 100, based on the objective consideration and subjective evaluation being 7 and 8 marks respectively. The purpose of holding interview was to gauge the personality and other qualifications of the potential candidate, who was to be appointed as the Director of the Institute. Thus, there is nothing wrong in allotting 8 marks for interview or for that matter, in awarding lump sum marks to each candidate out of 15. Therefore, first respondent has sought dismissal of the writ petitions.

6. Respondent Nos. 2 to 4 in their statement of objections have contended that all the candidates including petitioner were called for interview on 16/11/2012 and the interview was conducted by the Selection Committee on that date. The candidates were informed that the Selection Committee would decide the procedure for conducting the selection and examining the credentials of all the applicants. That 7 marks were allotted for academic qualification and other credentials of the candidates and 8 marks was kept for interview to gauge the leadership skills and other qualities of the candidates. That the merit list of the candidates was prepared by the Selection Committee on 16/11/2012 and the Selection Committee recommended name of the fifth respondent as she had secured the highest merit and accordingly, recommendation was made to the Governing Council to consider her for the post of Director of the Institute. The Governing Council of the Institute met on 04/12/2012 and approved recommendation of the Selection Committee and decided to appoint fifth respondent as the Director of the Institute and accordingly, the State Government issued the appointment order. It is contended that the appointment is in accordance with Rule 8 and that the Selection Committee had the

prerogative to formulate its own procedure for selecting the best and most suitable candidate for the post. These respondents have also reiterated that instead of allotting marks out of 100, marks were allotted out of 15 and that there is no illegality in the allotment of marks or in awarding marks in lump sum out of 15 in respect of the candidates. Hence, these respondents have sought dismissal of the writ petitions.

7. Respondent No. 5 has also filed her statement of objections highlighting her achievements and the kind of candidate that is required for the post of Director. She has also contended that Clause - 11 of the Notification dated 28/02/2012 (Annexure "C"), categorically states that the Selection Committee shall decide the procedure for conducting the selection and examine the credentials of the applicants and that the procedure for selection of the Director was made known to the candidates and on the basis of her merit, the Selection Committee recommended her name to the Governing Council for being appointed as the Director of the Institute. That fifth respondent has been appointed on the basis of her academic and professional qualifications and her performance in the interview and that there is no merit in the writ petition. Specifically, it has been contended that the Recruitment Rules do not provide for allocation of marks under different heads or separately for interview, academic and other credentials of the candidates. That there was nothing wrong in awarding lump sum marks out of 15 in respect of each of the candidates in the interview. In substance, the contention is that there is no deviation in procedure made by the Selection Committee or Governing Council in appointing fifth respondent as the Director of the Institute. Therefore, she has also sought dismissal of the writ petitions.

8. I have heard learned senior counsel for petitioner, learned A.G.A. for respondent No. 1, learned counsel for respondent Nos. 2 to 4 - Institute and learned counsel for respondent No. 5 and perused the material on record as well as original records.

9. Two main contentions were raised on behalf of the petitioner. The first contention was that the award of 8 marks out of 15 for interview was on the higher side and as a result, the selection process lacked transparency, as the Selection Committee had shown favouritism to fifth respondent although, the petitioner was more qualified to be appointed as the Director of the Institute. In support of this contention, certain judgments of the Hon'ble Supreme Court were relied upon. It was also contended that when the Selection Committee had decided to compartmentalize the selection process into two segments, one, for evaluating academic and other qualifications and achievements of the candidates for which 7 marks were allotted and the second, for judging the personality of the candidate through interview for which, 8 marks were allotted, then, the Selection Committee ought to have awarded marks separately on two heads. Instead, the marks sheet shows that composite marks have been awarded on the aforesaid two aspects which clearly indicates that there has been no application of mind by the members of the Selection Committee. Elaborating on this

contention, it was submitted that the Selection Committee had to award marks for each of the individual heads decided by the Selection Committee to be the basis for evaluation of the candidate and separately for interview. Rather, the marks sheet shows that the award of marks is in lump sum in respect of the academic and other qualifications of the candidates as well as interview. Relying on certain decision of the Hon''ble Supreme Court it was contended that such a procedure could not have been adopted by the Selection Committee.

10. Per contra, fifth respondent, who is the contesting respondent, through her counsel argued that even though there may be several heads of evaluation or for that matter, selection is based on allocation of marks on various heads, it is not necessary for the members of the Selection Committee to award marks separately on each of those heads. That in the instant case, the Selection Committee adopted a composite procedure whereby, selection of the candidates was on the basis of their academic and other qualifications as well as on their performance in the interview and therefore, composite evaluation having been made, lump sum marks have been allocated by the Selection Committee, which is in accordance with law, was the submission. On this aspect, reliance has been placed on certain decisions of the Hon''ble Supreme Court.

11. It was next contended that the allocation of 8 out of 15 marks for interview is also not a legal infirmity inasmuch as the selection was being made to the post of Director of the Institute which post calls for a strong personality having leadership qualities, organizing skills, supervision of human resource. Therefore, those aspects could be judged better in an interview rather than on the basis of the academic and other credentials of a candidate. Thus, allocation of 8 marks out of 15 for interview is not vitiated, was the submission. Learned counsel therefore contended that there is no merit in these writ petitions and the same may be dismissed.

12. Learned counsel for other respondents on the basis of the original records have contended that there is no merit in the writ petitions and the same may be dismissed.

13. Having heard learned counsel for the parties and on perusal of the material on record as well as the original record, the only point that arises for my consideration is, as to whether, the selection and appointment of fifth respondent by the respondent - Institute is vitiated or not.

14. It is not in dispute that the petitioner and fifth respondent along with four other candidates were considered by the Selection Committee. Though, totally seven candidates had applied to the post pursuant to Notification dated 28/08/2012, published on 29/08/2012 (Annexure "C" to the writ petition), issued by the second respondent - Institute, one candidate did not appear for the interview, Second respondent is an autonomous Institute, established by the Government of Karnataka. Annexure "C" - Notification prescribed minimum academic qualification and teaching experience that was required; tenure of the

post; age limit and such other details. Clause (11) of the Notification states "The Selection Committee shall decide the procedure for conducting the selection and examine the credentials of the applicants". On perusal of the said notification, it becomes clear that apart from academic qualifications, teaching experience was a mandatory qualification and the same are detailed below:--

"5) a) Minimum Academic Qualification: Should possess the recognized postgraduate medical qualification i.e., M.D. in Paediatrics/M.Ch., in Paediatric Surgery or equivalent qualification as recognised by the Medical Council of India.

b) Teaching Experience: Should have minimum of ten years teaching experience as Professor/Associate Professor/Reader in a Medical College/Institution recognised by the Medical Council of India (of which not less than five years shall be as Professor) respectively in the following departments: (i) Paediatrics (ii) Paediatrics Surgery (iii) Medical Genetics (iv) Clinical Haematology (v) Endocrinology (vi) Immunology (vii) Medical Gastroenterology (viii) Medical Oncology (ix) Neonatology (x) Nephrology (xi) Neurology (xii) Cardiology.

Note: In the case of the departments mentioned at Sl. No. (iii) to (xii) above, the candidates should have acquired two years special training in the concerned subjects in an institution recognized by Medical Council of India.

The other clauses of the Notification are as under:

6) Tenure of the Post: The tenure of the appointment to the post shall be three years.

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11) The Selection Committee shall decide the procedure for conducting the selection and examine the credentials of the all applicants.

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14) The decision of the Selection Committee in the matter of selection of candidate will be final."

15. The selection was to be made by the Selection Committee, which was to make the recommendation to the Governing Council of the Institute. The Selection Committee for appointment of the Director comprised of the following persons:--

16. Rule 4 states that Pay and Recruitment Rules of the Indira Gandhi Institute of Child Health, shall be as specified in Annexure-I of these Rules. Clause-2 of Annexure-I of the Rules, states that the Governing Council shall make appointment to the post of Director. Clause 6(a) is composition of the Selection Committee to make recommendations to the Governing Council with regard to the post of Director and the same has already been extracted above. Clause 7 prescribes the mode of filling up of posts and the same reads as under:--

"7. MODE OF THE FILLING UP OF POSTS:

The posts in the Institute may be filled by invitation/promotion/open advertisement or by deputation from State Government as may be deemed for by the appointing authority in the interest of Institution service.

Clause 8 deals with functions of the Selection Committee.

"8. FUNCTIONS OF THE SELECTION COMMITTEE:

- a) The Selection Committee shall meet at Bangalore.
- b) It shall decide the procedure for conducting the selection and examine the credentials of the all applicants, who are being considered for appointment to the posts.
- c) It shall prepare a panel of names in the order of merit having due regard to the reservation of posts for SC and ST and other backward classes.
- d) Where a candidate has applied for any post, it shall be open to the Selection Committee to recommend the candidate for appointment to any other post whether it will be equivalent or higher or lower than the post applied for."

Clause 11 deals with direct recruitment, which reads as under:--

"11. DIRECT RECRUITMENT:

The Governing Council may from time to time and notwithstanding anything to the contrary in these rules at its discretion, arrange direct recruitment at any level to meet the demands of specialization and or to attract highly qualified personnel for the service of the Institute. The Governing Council at its discretion any (may) relax the prescribed qualification and experience in special circumstances, where the candidate with the qualification provided are not available."

17. The proceeding of the Selection Committee to select the Director of the Institute was held on 16/11/2012 at Vikasa Soudha at 2.30 p.m. On perusal of the same, it is noted that seven candidates had applied to the post and all seven were found eligible and were informed to attend the interview along with the requisite documents. But only six candidates attended the interview. The Committee noted the details of all the candidates and decided to adopt a procedure for conducting the interview and prepared a panel of names in the order of merit. Relevant portion of proceedings of the Selection Committee is extracted as under, as the contentions of the respective parties revolve on the same.

"1. To accord approval for eligible candidates list for the post of Director, Indira Gandhi Institute of Child Health, Bangalore.

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After detailed discussion, the Committee approved eligible candidates list.

2. To decide the procedure for conducting the selection and to prepare a panel of names in the order of merit.

The Member Secretary brought to the notice of the Committee as per the General bye law 12(4) of the Institute, the Selection Committee shall decide its own procedure for conducting the selection and to prepare a panel of names in the order of merit and he requested the committee to decide a procedure for selection of candidate for the post of Director, IGICH.

After detailed discussion, the Committee decided that the procedure for selection would be by awarding upto 7 marks for academic qualification and other criteria/parameter as detailed below:

maximum of 8 marks to be kept for interview (leadership, vision, subject, organization skills). Accordingly, the Selection Committee interviewed the following six, candidates who appeared before the Selection Committee and evaluated their merit.

The Committee prepared the merit list based on the merit as detailed below:

The Committee recommended the following candidate for the post of Director, Indira Gandhi Institute of Child Health, Bangalore in the main list.

The Committee recommended the following candidate for the post of Director, Indira Gandhi Institute of Child Health, Bangalore in the waiting list.

Meeting concluded with vote of thanks to the chair."

18. Annexure "G" is the details of the marks awarded to the candidates. Out of 7 candidates, one candidate was absent and therefore, six candidates were interviewed and evaluated, which reads as under:--

"SELECTION COMMITTEE MEETING ON 16.11.2012 AT 2.30 PM

CRITERIA FOR SELECTION OF CANDIDATE FOR THE POST OF DIRECTOR,
INDIRA GANDHI INSTITUTE OF CHILD HEALTH, BANGALORE

Notification No:IGICH/DRC/2/2012-13, Date: 28.8.2012

19. Thereafter, the Governing Council of second respondent - Institute met on 04/12/2012 and decided to accord approval of the recommendation of the Selection Committee and decided to approve that fifth respondent be selected and appointed to the post of Director of the Institute. Proceedings of the meeting held on 04/12/2012 are annexed at Annexure "H". Thereafter, Notifications were issued by the State Government on 28/12/2012 and 02/01/2013, appointing fifth respondent as the Director of the second respondent - Institute.

20. The contentions of learned counsel for parties have revolved on two aspects of the matter. One is the procedure adopted by the Selection Committee to prepare a panel of names in order of merit and the second, is the award of 8

marks out of 15 for interview, which according to the petitioner was on the higher side and therefore, it vitiated the selection process.

21. On the first contention, no doubt, the Selection Committee had the liberty to adopt its own procedure for conducting the selection and preparing panel of names in order of merit to the post of Director for the purpose of recommending the same to the Governing Council. After discussion, the Selection Committee decided to award 7 marks for academic qualification and other criteria or parameters namely, teaching experience as Associate Professor/Professor (for every 5 years, 1 mark up to a maximum of 2 marks beyond 10 years) - 2 marks; for Gold Medals if received by University - 1 mark; research papers published/presented in National/International Journals/Conferences (1/2 mark for each paper) - 2 marks; experience in administration - Head of Department/Medical Superintendent/Director in a medical institution (1/2 mark per year) - 2 marks; thus, the total marks was 7. Apart from that, 8 marks was allotted for interview to judge leadership, vision, subject, organization skills). But when the same is juxtaposed with the merit list prepared on the basis of Annexure "G", which gives the details of the marks sheet, what becomes apparent is the fact that there is no separate award of marks with regard to the academic qualification and other parameters by the Selection Committee. Annexure "G" marks sheet states marks secured in the interview and by hand, it is written "& Academic Qualification etc." On perusal of the merit list, no doubt, fifth respondent has secured the highest marks i.e., 7.5 out of 15 and the petitioner has secured 6.5 out of 15. But on what basis the marks have been awarded is not revealed inasmuch as whether any marks have been allocated to the petitioner or any of the candidates for that matter, on the aforesaid four heads is not forthcoming from the original records.

22. In that regard, petitioner's counsel has prepared a comparative statement, according to which, 4 marks had to be awarded to petitioner and 1 1/2 marks had to be awarded to fifth respondent out of seven marks. This is on the basis of the award of marks on various parameters decided by the Selection Committee. According to the petitioner, if that is so, then, she has been awarded 2 1/2 marks out of 8 marks in the interview and fifth respondent has been awarded 6 marks out of 8 marks in the interview. But in the absence of separate award of marks in the two segments of evaluation of the candidates - one being out of 7 and the other being out of 8 and a lump sum marks being awarded, there is no clarity about the application of mind of the members of the Selection Committee on the two aspects of evaluation, was the submission of petitioner's counsel.

23. In that regard, learned senior counsel appearing for the petitioner placed reliance on *Minor A. Peeriakaruppan and Sobha Joseph Vs. State of Tamil Nadu and Others*, AIR 1971 SC 2303 : (1971) 1 SCC 38 : (1971) 2 SCR 430 (Periakaruppan). That case related to selection of candidates for being admitted to medical colleges in State of Tamil Nadu. The Selection Committee was asked to award marks on the basis of following tests:--

"1) Sports of National Cadet Corps activities;

- 2) Extra Curricular Special Services;
- 3) General physical condition and endurance;
- 4) General ability; and
- 5) Aptitude"

24. The Selection Committee was directed to prepare a gradation list on the basis of total marks obtained by each applicant and submit the same to the Government. 75 marks was allotted for interview. The Hon''ble Supreme Court held that even if the Rule did not prescribe separate marks for separate heads, that did not permit the Selection Committee to allot marks as it pleased. Placing reliance on D.G. Viswanath Vs. Chief Secretary to the Government of Mysore and Others, AIR 1964 Kar 132 : (1963) 2 MysLJ 302 , the Hon''ble Supreme Court held that the Selection Committee had not divided the interview marks under various heads nor were the marks given on the itemized list. The marks produced showed that the marks were given in a lump sum, which was clearly illegal. The Hon''ble Supreme Court went on to opine that interview therein, was vitiated for the reason that the Selection Committee took into consideration irrelevant facts and further held that candidates were not interviewed in accordance with the Rules governing the interview.

25. As opposed to the said decision, learned counsel for fifth respondent has placed reliance on another decision of the Hon''ble Supreme Court in the case of Dr. Keshav Ram Pal, Reader and Head of Sanskrit Department and Offg. Principal, Lajpat Rai Post-graduate College, Sahibabad, Distt. Ghaziabad, U.P. Vs. U.P. Higher Education Services Commission, Allahabad and others, AIR 1986 SC 597 : (1986) 52 FLR 332 : (1986) 1 LLJ 311 : (1989) 1 SCALE 107 : (1986) 1 SCC 671 : (1986) 1 UJ 331 , (Dr. Keshav Ram Pal), which was a case of selection made to the post of Principal wherein, the Hon''ble Supreme Court quoting Lila Dhar Vs. State of Rajasthan and Others, AIR 1981 SC 1777 : (1981) 43 FLR 347 : (1981) LabIC 1515 : (1981) 2 LLJ 297 : (1981) 3 SCALE 1235 : (1981) 4 SCC 159 : (1982) 1 SCR 320 : (1981) 2 SLJ 266 : (1981) 13 UJ 719 held that the Interviewing Board in that case was not under any obligation to sub-divide the marks under various subheads. In that case, the basis of selection was on the candidates'' academic excellence, teaching experience, administrative experience and suitability for the post of Principal. Marks were not separately allocated for each of those heads but 50 marks was allocated for each candidate by the Interviewing Board. The argument therein was that when the selection was to be based on the aforesaid aspects, then marks had to be separately awarded under each of those heads by the Selection Committee. That argument was negated by the Hon''ble Supreme Court by holding that it was not necessary to sub-divide those marks under sub-heads. Lila Dhar was quoted as it had taken note of Periakaruppan, in the following words:--

"It is true that in Periakaruppan case the court held that the non-allocation of marks under various heads in the interview test was illegal but that was because

the instructions to the Selection Committee provided that marks were to be awarded at the interview on the basis of five distinct tests. It was thought that failure to allocate marks under each head or distinct test was an illegality. But, in the case before us, the rule merely and generally indicates the criteria to be considered in the interview test without dividing the interview test into distinct, if we may so call them, sub-tests."

26. Thus, in *Dr. Keshava Ram Pal*, the Hon^{ble} Supreme Court placed reliance on *Lila Dhar*, to distinguish it from *Periakurappan*, to hold that there was no duty cast on the interviewing Board to sub-divide the marks under various sub-heads.

27. In *Lila Dhar*, the controversy was with regard to the selection of Munsiffs by the Rajasthan Public Service Commission, in consultation with the High Court of Rajasthan under the provisions of Rajasthan Judicial Service Rules. One of the grounds of attack on the selection of Munsiffs in that case was that there was no separate award of marks under different heads at the interview. Negating that contention, Hon^{ble} Supreme Court held that the Rules themselves did not provide for the allocation of marks under different heads in the interview. It was for the interviewing Board to take a general decision whether to allocate marks under different heads or to allot marks in a single lot. It was for the interviewing Board to choose the appropriate method of marking at the selection to each service. The Hon^{ble} Court observed that there cannot be any magic formulae in these matters and Courts cannot sit in judgment over the method of marking employed by interviewing bodies unless, it is proven or obvious that the method of marking was chosen with oblique motive. It was also held that *Periakurappan*'s case dealt with admission to a college and was not a true guide with regard to recruitment to a post.

28. Learned counsel for fifth respondent further contended that the Hon^{ble} Supreme Court in *Lila Dhar* as well as in *Dr. Keshav Ram Pal*, have categorically held that allocation and award of marks under different heads at an interview is not a mandatory requirement. In the instant case, the Selection Committee also awarded marks in a single lot or lumpsum and not on various heads and therefore, petitioner cannot find fault with the procedure adopted by the Selection Committee.

29. On considering the aforesaid judgments of the Hon^{ble} Supreme Court, it becomes clear that where no separate allocation of marks is provided under different heads though various criteria or parameters are given in order to judge a candidate at the time of interview then, in such a case, it would not be necessary for the interviewing body or Selection Committee to award marks on different heads, as it may lead to distorted picture of the candidates on occasions rather than gathering the totality of the impression created by the candidate and the interviewing body may give a more accurate picture of the candidate's personality by awarding lumpsum marks.

30. But the aforesaid reasoning would not apply to a case like the instant one

where the Selection Committee had decided to allocate separate marks on the academic qualification and other criteria, which had been decided by the Selection Committee and reference has been made to the same above. A total of 7 marks were allotted for teaching experience; for receiving gold medals; for preparing research papers and for experience in administration i.e., 2+1+2+2. The Selection Committee therefore, in my view, ought to have considered each of those criteria vis-à-vis candidates interviewed and awarded marks on the aforesaid four aspects which would be a total of 7 (2+1 + 2+2). But that exercise has not been made by the Selection Committee in the instant case, in respect of any of the candidates interviewed. It is not forthcoming as to what marks were allocated to the candidates with regard to the aforesaid criteria which was a basis of evaluation of the candidates. Apart from those marks, the candidate had to be evaluated by a viva-voce examination for which, 8 marks were allocated. What are the marks obtained by each of the candidates out of 7 is not known at all. The allocation of marks out of 7 is not based on a subjective evaluation but it is wholly on objective basis. But in the absence of there being any independent allocation of marks by the Selection Committee on the objective heads, criteria or parameters, which were determined by the Selection Committee, it is not transparent as to what marks were awarded to each of those candidates on those heads. Thus, in my considered view, the first segment of evaluation of the candidates has been given a total go-bye by the Selection Committee even if the same may have been as a result of bona fide misunderstanding of the procedure formulated by it. If intentionally the procedure of award of marks on the aforesaid heads was ignored, then, it is a serious lapse on the part of the Selection Committee, it would result in there being lack of transparency in the evaluation procedure adopted by the Selection Committee.

31. Of course, a number of judgments have been cited at the Bar on this aspect of the matter, which could be referred to at this stage on transparency.

(a) In *Periakaruppan*, at Para 17, it has been held thus:--

"17. We may note that the committee had not divided the interview marks under various heads nor were the marks given on itemized basis. The marks list produced before us shows that the marks were given in a lump. This is clearly illegal."

(b) In *Lila Dhar*, it has been held as under:--

"4. The object of any process of selection for entry into a public service is to secure the best and the most suitable person for the job, avoiding patronage and favouritism. Selection based on merit, tested impartially and objectively, is the essential foundation of any useful and efficient public service. So, open competitive examination has come to be accepted almost universally as the gateway to public services."

32. Thus, it is held that in the instant case, the Selection Committee has not

applied its mind for the purpose of award of marks on the heads of academic qualification and other criteria determined by the Selection Committee, which was a maximum of seven marks in respect of any of the candidates and much less, the petitioner and fifth respondent herein. The contention of fifth respondent that the Selection Committee was not under an obligation to award marks separately out of seven, cannot be accepted for the reason that award of seven marks for academic qualification and other criteria was on an objective basis, which was determined by the selection committee on four different heads and total marks for each head was also allocated. Thus, total of seven marks on the aforesaid heads was further subdivided into four heads and therefore, in my considered view, the Selection Committee ought to have applied its mind on the aforesaid four heads in respect of each of the candidates and awarded marks out of 7 and then added those marks to the marks obtained by the candidate in the interview where maximum marks was eight. But on perusal of the marks sheet at Annexure "G", it does not reveal as to what was the marks obtained by each of the candidates in interview and as to what was the marks awarded with regard to academic qualification and other criteria. Therefore, for the aforesaid reasons, the selection of Respondent No. 5 is vitiated. The selection Committee is directed to re-do the selection process in terms of the observations made above.

33. The citations relied upon by learned counsel for respondent Nos. 2 to 4 are not applicable to this case, having regard to the facts of the present case. They have been perused and noted as under:--

"a) National Institute of Mental Health and Neuro Sciences Vs. Dr. K. Kalyana Raman and others, AIR 1992 SC 1806 : (1992) LabIC 1800 : (1992) 2 LLJ 616 : (1992) 2 SCC 481 Supp .

b) M.V. Thimmaiah and Others Vs. Union Public Service Commission and Others, (2007) 13 JT 613 : (2007) 14 SCALE 537 : (2008) 2 SCC 119 : (2008) 1 SCC(L&S) 409 : (2008) 2 SLJ 397 .

c) K.A. Nagamani Vs. Indian Airlines and Others, AIR 2009 SC 3240 : (2009) 122 FLR 198 : (2009) 4 JT 674 : (2009) 4 SCALE 670 : (2009) 5 SCC 515 : (2009) 2 SCC(L&S) 57 : (2009) 5 SCR 89 : (2010) 1 SLJ 11 : (2009) 4 SLR 648 : (2009) AIRSCW 3265 ."

34. The second limb of argument of petitioner's counsel is with regard to the allocation of marks for interview, which according to him is on the higher side and illegal. In the instant case, 8 marks out of 15 was allocated for interview. Before pronouncing on this aspect of the matter, it would be apposite to refer to the decisions cited at the Bar.

"a) Ashok Kumar Yadav and Others Vs. State of Haryana and Others, AIR 1987 SC 454 : (1986) LabIC 1417 : (1985) 1 SCALE 1290 : (1985) 4 SCC 417 : (1985) 1 SCR 657 Supp , it has been held thus:--

"There cannot be any hard and fast rule regarding the precise weight to be given

to the viva voce test as against the written examination. It must vary from service to service according to the requirement of the service, the minimum qualification prescribed, the age group from which the selection is to be made, the body to which the task of holding the viva voce test is proposed to be entrusted and a host of other factors. It is essentially a matter for determination by experts. The Court does not possess the necessary equipment and it would not be right for the Court to pronounce upon it, unless to use the words of Chinnappa Reddy, J. in Lila Dhar case "exaggerated weight has been given with proven or obvious oblique motives".

(b) Ajay Hasia and Others Vs. Khalid Mujib Sehravardi and Others, AIR 1981 SC 487 : (1981) 1 LLJ 103 : (1981) 1 SCC 722 : (1981) 2 SCR 79 : (1981) 2 SLJ 651 , it has been held as under:--

"Now there can be no doubt that, (1) having regard to the drawbacks and deficiencies in the oral interview test and the conditions prevailing in the country, particularly when there is deterioration in moral values and corruption and nepotism are very much on the increase, allocation of a high percentage of marks for the oral interview as compared to the marks allocated for the written test, cannot be accepted by the court as free from the vice of arbitrariness. It may be pointed out that even in Peeriakaruppan case, where 75 marks out of a total of 275 marks were allocated for the oral interview, this Court observed that the marks allocated for interview were on the high side. This Court also observed in Nishi Maghu case: "Reserving 50 marks for interview out of a total of 150... does seem excessive, especially when the time spent was not more than 4 minutes on each candidate". There can be no doubt that allocating 33 1/3 per cent of the total marks for oral interview is plainly arbitrary and unreasonable. It is significant to note that even for selection of candidates for the Indian Administrative Service, the Indian Foreign Service and the Indian Police Service, where the personality of the candidate and his personal characteristics and traits are extremely relevant for the purpose of selection, the marks allocated for oral interview are 250 as against 1800 marks for the written examination, constituting only 12.2 per cent of the total marks taken into consideration for the purpose of making the selection. We must, therefore, regard the allocation of as high a percentage as 33 1/3 of the total marks for the oral interview as infecting the admission procedure with the vice of arbitrariness and selection of candidates made on the basis of such admission procedure cannot be sustained."

(c) Anzar Ahmed Vs. State of Bihar and others, AIR 1994 SC 141 : (1994) 68 FLR 1 : (1993) 6 JT 168 : (1994) 1 LLJ 879 : (1993) 4 SCALE 268 : (1994) 1 SCC 150 : (1993) 3 SCR 434 Supp : (1994) 1 UJ 284 , the appeals raised the question, whether the law laid down regarding fixation of marks for interview in a selection would apply to a case where there was no written test and the selection was made on the basis of academic performance and interview. The selection in that case was for appointment to the post of Unani Medical Officer. It was submitted therein that since in that case the recommendation was to be made

only on the basis of interview and hence in accordance with the past practice which was being followed consistently and for a number of years, 50% marks were reserved for academic achievements/educational qualifications and 50% marks were reserved for interview/viva voce and selection and the recommendation was made by the Commission on that basis.

The Hon''ble Supreme Court examined the question regarding the validity of the fixation of 100 marks, i.e., 50%, for the interview. The High Court had held the same to be arbitrary. In this context, Hon''ble Supreme Court opined that fixation of marks for interview in a selection broadly fall in two categories:

- "i) Selection for admission to educational institutions; and
- ii) Selection for employment in service."

The Hon''ble Supreme Court observed as under:

"18. It cannot be held that the said procedure adopted by the Commission suffers from the vice of arbitrariness. By giving equal weight to academic performance the Commission has rather reduced the possibility of arbitrariness."

(d) In A.P. State Financial Corporation Vs. C.M. Ashok Raju and others, AIR 1995 SC 39 : (1994) 5 JT 481 : (1995) 2 LLJ 117 : (1994) 3 SCALE 149 : (1994) 5 SCC 359 : (1994) 1 SCR 474 Supp : (1995) 1 SLJ 37 , the matter related to promotion to the posts of Manager and above in the A.P. State Financial Corporation. The promotion criteria approved by the Corporation on 24-8-1987 and issued by O.M. dated 1-9-1987 postulated the following weightage to various criteria:

A Division Bench of the High Court while upholding the allocation of marks in respect of performance appraisal, reduced the marks for interview to 15% and increased the marks for length of service to 25%. Allowing the appeal in part, the Hon''ble Supreme Court held that the High Court fell into patent error in reaching the conclusion that 25% marks for interview, in the facts of that case was excessive. It was not disputed that no written test was prescribed for promotion to the post of Manager and above. The Hon''ble Court observed that the selections/promotions where only viva-voce test is provided, no limit can be imposed in prescribing the marks for the interview. The allocation of 50% marks for performance appraisal based on confidential reports is valid. The finding of the High Court that 15% marks for length of service over a period of five years were on the lesser side, is based on no reasoning and is wholly unjustified. No fault can be found with the said allocation.

35. In the instant case, total marks are 15. 7 marks were allocated for academic qualification and other criteria and 8 marks for viva-voce/interview. Of course, 8 marks out of 15 is above 50%. The Hon''ble Supreme Court in several decisions has held that in order to reduce arbitrariness and irregularities, which could occur in viva-voce proceedings, it is prudent to reduce the proportion of marks for viva-voce and to allocate greater proportion for educational qualification and other

criteria. However, it also depends on the nature of the post to be filled and the facts of each particular case.

36. Learned senior counsel appearing for the petitioner pointed out that insofar as the previous recruitment to the post of Director was concerned, only 30 marks out of 100 were allocated for viva-voce but as far as the present recruitment is concerned, 8 marks out of 15 have been allocated for viva-voce. It was also contended that this was done with an intention to ensure that the fifth respondent would be appointed as the Director of the Institute. In the absence of there being any material to establish that fact, it cannot be held that the proportion of marks allocated for interview in the instant case being on the higher side, was only with a view to accommodate fifth respondent and to ensure that she was appointed as the Director of the Institute. However, the fact remains that 8 marks out of 15 is above 50%. Though the Hon'ble Supreme Court has cautioned that greater proportion of marks being allocated for interview as compared to other parameters is not good in all cases, there can be no hard and fast rule in this regard as in certain cases, the Hon'ble Supreme Court has held that it would ultimately depend on the nature of the post and the facts of each case.

37. One thing must be borne in mind as far as the present case is concerned. The Selection Committee was in the process of recruiting an able and deserving candidate to the post of Director of the Institute - second respondent. The Director would not only require academic and other credentials but also qualities of leadership, organizational skills and such other human resource skills in order to give a leadership to the Institute. Thus, I do not express any opinion as to whether allocating 8 marks out of 15 for interview in the present case is illegal or ultra vires Article 14 of the Constitution. This is because 7 out of 8 marks have been allocated for the other segment of assessment which has to be followed for the present recruitment. However, the respondent authorities to also reconsider as to whether 8 marks out of 15 ought to be allocated for viva-voce, when on the previous occasion it was only 30 marks out of 100 and take a decision in the matter before notifying the post for future recruitments.

38. In the result, writ petition is allowed by quashing appointment of fifth respondent as Director of the Institute.

39. The respondent - authorities are directed to reissue a fresh notification for the purpose of making fresh recruitment to the post of Director of the second respondent - Institute, having regard to the observations made and directions issued above and in accordance with law. The same shall be done in an expeditious manner, so as to ensure that the post does not remain vacant.

40. Parties to bear their respective costs.