
(1992) 03 GAU CK 0009
In the Gauhati High Court
Case No : Civil Rule No. 281 of 1990

Kemo Lollen

APPELLANT

Vs

State of Arunachal Pradesh and Others

RESPONDENT

Date of Decision : 30-03-1992

Acts Referred:

Arunachal Pradesh Civil Service (Competitive Examination) Regulations, 1988 — Regulation 10, 8, 9
Arunachal Pradesh Civil Services Rules, 1985 — Rule 29, 7(2)
Constitution of India, 1950 — Article 226
Council of Agricultural Research Rules, 1977 — Rule 13, 13, 14, 14

Citation : (1995) 1 GLR 294

Hon'ble Judges : Manisana, J;J. Sangma, J

Bench : Division Bench

Advocate : A.B. Choudhury and A. Hai, for the Appellant; A. Roy, Government Advocate for Arunachal Pradesh and N.K. Singh, for the Respondent

Final Decision : Allowed

Judgement

Manisana, J.—Facts giving rise to this application under Article 226 of the Constitution of India are as follows. Sometime in the month of September 1988, the Arunachal Pradesh Public Service Commission (which we shall term as the "Commission") invited applications for recruitment to the posts of Arunachal Pradesh Civil Service (Grade-II) "APCS (Grade-II)" for short, and three posts of Arunachal Pradesh Civil Service (Junior) which we shall refer to as the APCS (Jr.). In the advertisement, it was provided that there would be a composite test consisting of written examination followed by viva voce; that total marks for written examination would carry 700 marks (3 compulsory papers carrying 100 marks each and 2 optional subjects, each subject containing two papers carrying 100 marks each paper); and that minimum qualifying marks in the written examination would be fixed by the Commission. At the time of viva voce test the vacancies increased from 10 to 22 in respect of APCS (Grade-II). Therefore, 52 candidates were called for viva voce test. The Commission allocated 300 marks

for viva voce, viz, 30 % of the total marks of 1000 (700+300), and fixed minimum qualifying marks for viva voce test at 50%. After completion of the composite test the Commission, under its letter dated 29.12.89, recommended 22 candidates for APCS (Grade-II) and 3 candidates for APCS (Jr) in order of merit.

2. The Petitioner Kemo Lellen was one of the candidates who secured 379 marks in written examination and 135 in viva voce, total being 514. The Respondent-4 was impleaded as a party-Respondent at his instance and he was one of the selected candidates who secured 492 marks in total. The Petitioner was not selected on the ground that he failed to pass viva voce test. The Petitioner has challenged the selection and/or the select list.

3. The learned Counsel for the Petitioner has attacked the selection and/or selection list on the ground that the Commission has no authority to fix the minimum qualifying marks for the viva voce test, and that 30% of the total marks allocated for viva voce test is excessive and arbitrary.

4. The question which arises for consideration is whether the Commission has the authority to fix minimum qualifying marks for viva voce test. For recruitment by competitive examination, the Government of Arunachal Pradesh has, in pursuance of Rule 29 and Sub-rule (2) of Rule 7 of the Arunachal Pradesh Civil Service Rules, 1974, made the Arunachal Pradesh Civil Service (Competitive Examination) Regulations, 1988 ("Regulations" for short). The relevant regulations are regulations 8, 9 and 10 of the Regulations which are as under:

8. The competitive examination shall comprise:

(a) Written examination in:

(i) three compulsory subjects Essay, General English and General Knowledge, each with the maximum of marks as shown in Part I of Schedule I; and

(ii) two optional subjects set out in Part-II of Schedule I.

(b) Interview for Personality Test, of such candidates, as may be called, carrying maximum of 300 Marks.

9. Candidates who obtain such minimum qualifying marks in the written examination as may be fixed shall be summoned for an interview for a personality test:

10. After the interview, the candidates will be arranged in the order of merit as disclosed by the aggregate marks finally awarded to each candidate and in that order so many candidates as are found to be qualified at the examination shall be recommended for appointment upto the number of unreserved-vacancies decided to be filled on the results of the examination:....

The rule making authorities have provided scheme for selection of candidates for appointment to services. Regulation 8(a) is in respect of written examination.

Regulation 8(b) provides that viva voce test shall carry 300 marks in maximum. Under regulation 9, only those candidates who obtain minimum qualifying marks in the written examination as may be fixed shall be called for viva voce test. Therefore, regulation 9 contemplates obtaining minimum marks in the written test so as to be eligible for being called for viva voce test, but the regulation does not prescribe for minimum marks to be secured in the viva voce test. Regulation 10 provides the manner in which the merit list to be arranged. Under regulation 10, after both written and viva voce tests are held the candidates will be arranged in order of merit as disclosed by the aggregate marks finally awarded to each candidate and such candidates as are found by the Commission to be qualified at examinations shall be recommended for appointment. On a combined reading of regulations 9 and 10, it indicates that the candidates must obtain minimum qualifying marks in the written test before becoming eligible for viva voce test, and after the candidate obtained minimum marks or more at the written test he becomes eligible for being called for viva voce test and he has to appear at viva voce test. Neither regulation 9 nor regulation 10 nor any other regulation enables the Commission to prescribe minimum qualifying marks to be obtained by the candidates at the viva voce test.

5. At this stage, it will be helpful to refer to a decision of the Supreme Court reported as P.K. Ramachandra Iyer and Others Vs. Union of India (UOI) and Others, One of the questions canvassed in that case was whether the Selection Board could prescribe minimum qualifying marks of 40 out of 100 in viva voce test in view of Rules 13 and 14 of the Rules framed by Indian Council of Agricultural Research in 1977. Para 43 of the judgment runs as follows:

The relevant Rules are Rules 13 and 14 of the 1977 Rules, which may be extracted:

13. Candidate who obtain such minimum marks in the written examination as may be fixed by the Board in their discretion shall be summoned by them for viva voce.

14. After the examination, the candidates will be arranged by the Board in the order of merit in each category (professional-subjectwise) as disclosed by the aggregate marks finally awarded to each candidate and such candidates as are found by the Board to be qualified by the examination shall be recommended for appointment upto the number of unreserved vacancies decided to be filled on the result of the examination.

In that case the Supreme Court has held that prescribing minimum marks by the Selection Board for being qualified in viva voce test was not permissible as it would amount to prescribing additional qualification by the Commission, which is against the rules, and quashed the selection list as the selection list was prepared contrary to the rules. Rules 13 and 14 of the Rules referred to above are similar to regulations 9 and 10 respectively and, therefore, the decision of the Supreme Court referred to above is squarely applicable to the present case.

PK Ramachandra's case (supra) was followed in Umesh Chandra Shukla Vs. Union of India (UOI) and Others, and Durgacharan Misra Vs. State of Orissa and Others, In that view of the matter, the selection made by the Commission is to be quashed as the Commission has no authority to prescribe minimum marks for the viva voce test.

6. On perusal of the list submitted before the Court, it is found that about six candidates who secured less marks than the Petitioner had been selected and recommended and, therefore, the procedure adopted by the Commission affects the results of the selection.

7. The next question which arises for consideration is whether 30 % of the total marks reserved for viva voce test is excessive and arbitrary. In Ashok Kumar Yadav and Others Vs. State of Haryana and Others, a Constitutional Bench of the Supreme Court has suggested that the Public Service Commission in the States should also adopt 12.2% of the total marks for the viva voce test as is adopted by the Union Public Service Commission so that there should be uniformity in the selection process throughout the country. The said observation of the Supreme Court was reiterated in State of U.P. Vs. Rafiquddin and Others, and Mohinder Sain Garg Ors. Vs. State of Punjab and Others, In the present petition, regulation 8 under which marks for viva voce is provided has not been challenged. Be that as it may, for want of adequate materials on record, we are not inclined to deal with the question. Therefore, we prefer to leave the question to be dealt with later if ever raised. It is, however, left to the wisdom of the rule making authority to examine regulation 9.

8. Ms Hazarika, learned Counsel for the Respondent 4 has contended that the Petitioner is estopped from challenging the selection and/or selection list for the reason that the Respondent-4 appeared and took a chance for being selected. We are of the opinion that on the facts and in the circumstances of the case, the doctrine of estoppel is not attracted.

9. For the reasons stated above, we allow the writ petition and quash the selection made by the Arunachal Pradesh Public Service Commission with a direction to re-do the selection list on the basis of the aggregate marks obtained by the candidates in the written and viva voce tests. It is made clear that the Commission shall add whatever marks obtained in the viva voce test by the candidates who were called for viva voce test to the marks obtained by them in the written examination. While considering the number of candidates to be forwarded, the Commission is given liberty to consider the number of vacancies available on the date of recommendation. Persons who fall within the revised list, if they have already been in service need not be disturbed . Their inter se may however be regulated as per ranking in the revised list. No costs.