

(1992) 03 MAD CK 0007
In the Madras High Court

K.G.K. Prabha

APPELLANT

Vs

The State of Tamil Nadu and Others

RESPONDENT

Date of Decision : 25-03-1992

Acts Referred:

Citation : (1992) 2 MLJ 555

Hon'ble Judges : K.S. Bakthavatsalam, J

Bench : Division Bench

Judgement

K.S. Bakthavatsalam, J.—The prayer in the writ petition is as follows:

...to issue appropriate writs, orders or directions and in particular issue a writ in the nature of declaration declaring that the selection of secondary

grade assistants to fill up the vacancies in Kanyakumari district for the year 1989 made by respondents 2 to 4 as illegal and ultra vires of the

Constitution, award exemplary costs....

2. The petitioner having passed S.S.L.C. during the year 1982 underwent secondary grade training at St. Lawrence Higher Secondary School,

Madathattavilai, Kanyakumari District after having passed Higher Secondary Course in the year 1984. She came out successful during the year

1987 and got herself registered in the employment exchange. It seems that she was called for interview twice in the year 1988 for appointment as

secondary grade assistant, but she was not selected. The State of Tamil Nadu, the first respondent herein, has prescribed guidelines for the

purpose of recruitment to the post of secondary grade teachers by G.O. Ms. No. 909, Education, dated 27.5.1988 and marks were allotted for

various categories.

3. The petitioner alleges in the affidavit filed in support of the writ petition that during the year 1987, the second respondent herein recruited secondary grade teachers for over 500 posts from all over the State and that the selection was made on a centralised basis for the entire State. It is also alleged that in respect of the said selection list of the respondents, the names of those selected candidates were not removed from the live employment register maintained by the fifth respondent, that the fifth respondent deliberately kept the live register with names of employed teachers alive, that it acted contrary to the rules and regulations, and that when the second respondent called for names for filling up over 150 vacancies in primary and middle schools in Kanyakumari district, the fifth respondent sent names including names of persons who are already holding secured employments elsewhere. It seems that the petitioner was one of the candidates who was called for by the third respondent and that the interview was fixed on 2.9.1989. It is stated in the affidavit that to select the teachers to fill up the vacancies, a strange procedure was adopted, that the fourth respondent conducted the interview lasting 3 to 5 minutes for each candidate and that on each day 150 persons were asked to appear for the interview. It is also stated in the affidavit that in the said interview, the petitioner was questioned two questions, that she answered both the questions correctly, that the fourth respondent gave marks only in pencil and that there was no record of procedures kept with her with reference to the questions asked and the answers obtained from candidates. It is also alleged in the affidavit that the interview is a farce one, that the entire selection list was tinkered with by the second respondent who only sent the final list. It is also alleged in the affidavit that the sixth respondent herein who got selected, has done her Plus Two course and also teacher training in the vocational stream and got registered herself in the employment exchange only in the year 1989. It is also stated in the affidavit that several irregularities have taken place in the selection made for the post of secondary grade teachers, that the interview conducted by the fourth respondent under the orders of the second respondent was only a farce, and that for the head relating to general knowledge which carries 8 marks and personality and bearing for 5 marks it is largely left to the whims and fancies of the fourth respondent to award marks. It is also stated in the affidavit that the very concept of awarding marks in pencil and granting 3 to

5 minutes for an interview, there can hardly be any selection worth mentioning its name. It is also alleged in the affidavit that the interview marks

alone were to tilt the balance in favour of the candidates, and that if it is so such an interview has to be stated as arbitrary and violative of Arts.14

and 16 of the Constitution. It is alleged by the petitioner in the affidavit that two teachers, with X standard and vocational training for Secondary

Grade teacher and who were registered only in the year 1988, that the whole selection process conducted for selecting the teachers smacks of a

scandal and that the entire selection process is vitiated on account of favouritism, nepotism shown by the respondents in favour of selected

candidates.

4. Notice of motion has been ordered by Srinivasan, J. on 16.2.1990.

5. By order of this Court in W.M.P. No. 2377 of 1990 dated 13.2.1990 a notice has been published in the newspapers under Rule 2-B so as to

put on notice all the candidates who got selected in the said interview.

6. Two counter-affidavits have been filed in this writ petition, one by respondents 1 to 4 and another by the 5th respondent.

7. It is stated in the counter affidavit filed by respondents 1 to 4 that during the academic year 1989-90, the selection of secondary grade teachers

among the candidates sponsored by the concerned District Employment Officer was entrusted to the Chief Educational Officer of another district

or any other equivalent officer to the post of Chief Educational Officer, that the fourth respondent herein was nominated as an officer to hold the

interview of the candidates for the selection to the post of secondary grade teachers in Kanyakumari district, that the fifth respondent sponsored

1905 candidates for interview, that 1733 candidates were interviewed by the fourth respondent in a period 13 days at 133 candidates per day,

that only 116 candidates were selected to the post of secondary grade teachers purely on merit and that the candidates were selected on merit

after testing their aptitude for the requisite post of a teacher and on their other qualifications. It is also claimed in the counter affidavit that the

Government of Tamil Nadu by G.O. Ms. No. 636, Education Department, dated 6.6.1989 have stipulated certain guidelines for recruitment of

teachers and prescribed certain marking systems to be adopted for selection to the post of secondary Grade Teachers that there are opportunities

for candidates employed in private managements to register their names in the employment exchange after getting "no objection certificate" from

the employers concerned, that the petitioner has not given any specific instance in which candidate employed in Panchayat Union School in other

districts has appeared for interview to the post of Secondary Grade Teachers in Kanyakumari District in the year 1989. The allegation that the fifth

respondent has deliberately kept the employment numbers of the candidates alive who were already selected by the second respondent and

posted in other district so as to enable to appear for the interview for getting employment in Kanyakumari district is denied in the counter affidavit.

It is pointed out that the names of employed candidates will remain in the live register only until the fact of appointment was brought to the notice of

Employment Officer. It is also claimed in the counter affidavit that the fourth respondent issued check-slips to all the candidates, who attend the

interview to fill up the particulars regarding their waiting in the employment exchange, previous experience, possessing of higher qualifications,

proficiency of the candidates in the public examination, general knowledge and personality etc. to assess the marks as per the guidelines prescribed

in G.O. Ms. No. 636, Education Department, dated 6.6.1989 for the selection of candidates for the year 1989 and that there is no Government

Order to the effect that those who were already in employment should not be selected. It is also pointed out in the counter affidavit that the

interview time allotted for questioning 3 to 5 minutes, that the questions were asked to find out the aptitude of the candidate for the post of

Secondary Grade Teacher, that marks were awarded only in pen and not by pencil, that there is no necessity to keep a record of questions asked

and the answers obtained and that it was only an oral interview and not a written examination. In so far as the 6th respondent's selection is

concerned, it is pointed out in the counter affidavit that she answered all the questions in general knowledge very well and scored 8 marks, that she

got 5 marks for personality apt test, for her marks in the secondary grade teacher training certificate, she got five marks and one mark has been

awarded for waiting in the employment exchange totalling 19 marks and as such she got selected. A tabular column is given in the counter affidavit

to show as to how the reservation policy is maintained. It is further claimed in the counter affidavit that the petitioner has not given any specific

instance in which candidate employed in Panchayat Union School in other district has appeared for interview to the post of secondary grade teacher in Kanyakumari district in the year 1989.

8. With regard to the three candidates mentioned by the petitioner in the affidavit, it is pointed out in the counter affidavit that those candidates obtained 19, 20 and 19 marks respectively and as such they were got selected. It is further claimed in the counter affidavit that the questions were prepared well in advance, that the interview was conducted properly and that the petitioner's statement that the interview was only a farce is a statement out of frustration and that the interview was conducted observing the rules and regulations in force. It is further claimed in the counter affidavit that marks were awarded only by pen and not by the pencil, that 3 to 5 minutes were enough to test the aptitude of the candidate to the post of Secondary Grade Teacher, that during the interview marks were awarded for waiting in employment exchange, previous experience, proficiency, higher qualifications and extra curricular activities. The allegation of the petitioner that one G. K. Asha and T. Syamala had registered their names in the employment exchange only in the year 1988 is denied in the counter-affidavit stating that they were registered in the year 1987. It is further claimed in the counter affidavit that the petitioner has got only 12 marks, securing 2 marks for long waiting in the employment exchange, 5 marks for proficiency, 3 marks for personality bearing, and 2 marks for general knowledge. It is further claimed in the counter affidavit that the candidates of forward and backward community who have obtained marks from 18 and above has alone been selected, that the petitioner has got only 12 marks and that there is no justification to select the petitioner.

9. The fifth respondent has filed a separate counter affidavit in which it is claimed that the petitioner has registered her secondary grade training course certificate at District Employment Office, Nagercoil on 10.6.1987, that she was nominated twice in the year 1988 and that for the present selection of the year 1989, which is impugned herein, the petitioner's name was sponsored. It is also claimed in the counter affidavit that the names of the persons who secured employment were removed from the Live Register only on receipt of intimation regarding their selection and appointment either from the employer or from the candidate himself, that in the

absence of the same, the index cards of those candidates cannot be removed from the live register. It is also pointed out in the counter affidavit that the appointed candidates will not be considered again for nomination unless the candidates who seek re-registration of their names again in the role furnishes the order of termination of service. It is also stated that the employment exchange will not keep the live register with the name of the employed teachers alive at any point of time, that once the result of the selection is received from the employers, registration cards of the candidates who are appointed by the employers, will be removed from the live register. It is also pointed out that in response to the notification of the third respondent dated 1.6.1989, the fifth respondent sponsored the names of 1908 candidates including that of the petitioner to the third respondent, that the 6th respondent herein has registered with the 5th respondent in the year 1988, that she was nominated along with others to the third respondent under Serial No. 1359, that she was selected for appointment, that it was not deliberate and that only on the averments made in the affidavit it was brought to light. With regard to other three candidates it is pointed out in the counter affidavit that the fifth respondent herein has sponsored the said candidates as it has no information on its records to the effect that the said persons were already employed elsewhere. It is further claimed in the counter affidavit that the petitioner's name was sponsored along with other candidates and that the fifth respondent has not done any injustice to the petitioner.

10. Mr. K. Chandru, the learned Counsel appearing for the petitioner contends that the interview marks fixed by the Government are on the higher side, especially on the heads of personality and bearing and for general knowledge, which according to the learned Counsel appearing for the petitioner is vague. The learned Counsel also points out that out of 40 marks in the interview, that 13 marks were allotted for under two heads i.e. personality bearing and general knowledge without any basis, that an interview of 2 to 3 minutes will tilt the balance in favour of anybody and as such the entire selection has to be quashed. The learned Counsel cites various decisions of the Supreme Court in *Munindra Kumar and others Vs. Rajiv Govil and others*, , in *Mohinder Sain Garg Ors. Vs. State of Punjab and Others*, and in *Ajay Hasia and Others Vs. Khalid Mujib Sehravardi*

and Others, , for the proposition that the interview mark should not exceed a percentage of the mark in a particular viva voce test. The learned

Counsel also points out that this vitiates the entire interview and the system of interview itself is bad. The learned Counsel further points out that

persons working elsewhere were called for the interview, that the petitioner who has been registered in the year 1987 has not been selected just

because the petitioner has got lower marks in view of awarding of marks in the interview, when each candidate is interviewed for not more than

three minutes.

11. Per contra, Mr. B. Radhakrishnan, the learned Government Advocate appearing for the respondents contends that the interview has been

conducted properly, that guidelines were prescribed in G.O.Ms. No. 636, Education Department, dated 6.6.1989 to be followed by the Chief

Educational Officer for the selection of candidates for the year 1989 that the petitioner has been interviewed and that due to the low marks she

could not be selected. The learned Government Advocate also contends that there is no violation of guidelines and that just because the petitioner

has not been selected, it cannot be contended that the interview held in the year 1989 is arbitrary and bad in law.

12. I have considered the arguments of Mr. K. Chandru, the learned Counsel appearing for the petitioner and of Mr. B. Radhakrishnan, the

learned Government Advocate appearing for the respondents. By G.O.Ms. No. 636, Education Department, dated 6.6.1989 for recruitment of

teachers for the primary schools, middle schools and high schools, it has been decided by the Government to revise the marking system during

1989-90 and the marks to be awarded are in the following terms:

1. Marks for long waiting For every year of waiting one mark sub-

Employment Exchange ject to a maximum of 6 marks. (6 marks)

2. Previous experience. One mark for every year of service duly

authenticated by the Inspecting Officers

subject to a maximum of 6 marks.

(Marks 6)

3. For higher qualification

(i.e. for possession of Higher (Marks 5)

qualifications. viz. B.A., M.A.

etc. 3 marks and for B.Eds.

2 marks)

4. Proficiency Marks 5 (for 60% and above otherwise 3

marks in respect of Teachers Training

Course.

5. Personality - bearing Marks 5

6. General Knowledge. Marks 8

7. Social service/handicapped

persons and other extra

curricular activities having

distinctions in District/State

levels. Marks 5

Total 40 Marks

Whether this system is bad in law is the only question to be decided in this case. In *Mohinder Sain Garg Ors. Vs. State of Punjab and Others*, , it

has been held that allocation of more than 15 per cent of the total marks for viva voce test would be unreasonable and excessive, in a case of

composite process of selection comprising written examination and interview of candidates fresh from schools/colleges for public employment. It

was a case for the selection of Excise and Taxation Inspectors. In *Vikram Singh and another Vs. The Subordinate Services Selection Board*,

Haryana and others, , when considering the selection of Excise Inspectors by Subordinate Services Selection Board, the Supreme Court has held

that the allotment of 28.5 per cent of the total marks for viva voce test is unreasonable. In *Munindra Kumar and others Vs. Rajiv Govil and others*,

, the Supreme Court has held that where a selection comprises written test, group discussion and interview, maximum marks for group discussion

and interview should not exceed 5 per cent and 10 per cent respectively of the total marks. In that case, a Rule fixing 40 percent of the total marks

for group discussion and interview was held to be arbitrary. The above mentioned case was with regard to the selection of Assistant Engineers by

the U.P. State Electricity Board. In *Ajay Hasia and Others Vs. Khalid Mujib Sehravardi and Others*, , the Supreme Court has held that the

allocation of above 15 per cent of the total marks for interview was arbitrary and unreasonable. The case before me is not a written test-cum-oral

interview. It is purely an oral interview, wherein 40 marks have been awarded and guidelines have been fixed by the Government as to how the

marks should have been awarded under each head. So I am not able to see that the principle laid down by the Supreme Court in the

abovementioned cases will apply to the facts of this case. In all the abovementioned cases, a written test was there, apart from oral interview. In

that context, the Supreme Court has categorically stated that a viva voce test fixing certain per cent age of marks is unreasonable. It is not the case

here. But in *Ajay Hasia and Others Vs. Khalid Mujib Sehravardi and Others*, , after referring to a passage on ""public Administration in Theory and

Practice"" by M.P. Sharma and after referring to a passage from the book on ""public Personnel Administration"" the Supreme Court has observed

as follows (at p.743)

...the oral interview method continues to be very much in vogue as a supplementary test for assessing the suitability of candidates wherever test of

personal traits is considered essential. Its relevance as a test for determining suitability based on personal characteristics has been recognised in a

number of decisions of this Court which are binding upon us. In the first case on the point which came before this Court, namely, *R. Chitralekha*

and *Another Vs. State of Mysore and Others*, , this Court pointed out-In the field of education there are divergent views as regards the mode of

testing the capacity and calibre of students in the matter of admissions to colleges. Orthodox educationists stand by the marks obtained by a

student in the annual examination. The modern trend of opinion insists upon other additional tests, such as interview, performance in extracurricular

activities, personality test, psychiatric tests etc. Obviously we are not in a position to judge which method is preferable or which test is the correct

one....The scheme of selection, however, perfect it may be on paper, may be abused in practice. That it is capable of abuse is not a ground for

quashing it. So long as the order lays down relevant objective criteria and entrusts the business of selection to qualified persons, this Court cannot

obviously have any say in the matter.

and on this view refused to hold the oral interview test as irrelevant or arbitrary. It was also pointed out by this Court in *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 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 to college 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....

Following the principle laid down by the Supreme Court in the abovementioned case, I am of the view¹ that in the matter of public employment,

the oral interview test should not be relied upon as an exclusive test but it may be resorted to only as an additional supplementary test. In this case,

the oral interview test has been approved by the Supreme Court, taking into consideration the earlier cases decided by it in *R. Chitralkha* and

Another Vs. State of Mysore and Others, and *Minor A. Peeriakaruppan and Sobha Joseph Vs. State of Tamil Nadu and Others*, . It is also held

by the Supreme Court in *Ajay Hasia and Others Vs. Khalid Mujib Sehravardi and Others*, , as follows: (at p.746)

...Now there can be no doubt that if the interview did not take more than 2 or 3 minutes on an average and the question asked had no bearing on

the factors required to be taken into account, the oral interview test would be

vitiated, because it would be impossible in such an interview to assess the merit of a candidate with reference to these factors....

It has been further observed as follows: (at p.747)

...We think that it would also be desirable if the interview of the candidates is tape-recorded, for in that event there will be contemporaneous

evidence to show what were the questions asked to the candidates by the interviewing committee and what were the answers given and that will

eliminate a lot of unnecessary controversy besides acting as a check on the possible arbitrariness of the interviewing committee....

Though I am not inclined to accept the arguments of Mr. K. Chandru, the learned Counsel for the petitioner with regard to the percentage of

marks as arbitrary on the facts of this case as I have already stated that this is only an interview and not a written test-cum-interview, the principle

laid down on the decision of Ajay Hasia and Others Vs. Khalid Mujib Sehravardi and Others, , may apply to the facts of the case on hand.

Though in the counter affidavit it is denied that 3 to 5 minutes are enough to interview a candidate and marks were awarded according to the

norms fixed by the Government order in G.O. Ms. No. 636, Education Department, dated 6.6.1989 the fourth respondent, who has been

nominated to hold the interview by the second respondent has not filed any counter affidavit. This is a case similar to that Ajay Hasia and Others

Vs. Khalid Mujib Sehravardi and Others, . As such it has to be held that the oral interview must be held to be vitiated and the selection made in

this case is arbitrary. But I am not inclined to exercise my discretion to quash the entire selection made in the year 1989 since none of the selected

candidates has come up before me inspite of the fact that notice has been taken in the newspapers. Since the selection has been taken place in the

month of September, 1989 and posting orders were given in the month of December, 1989 and the petitioner thought it fit to approach this Court

in the month of February 1990 only, I am not inclined to set aside the entire selection made in the year 1989. In the result, the writ petition is to be

ordered as if any one of the Secondary Grade Assistants post is vacant or is kept vacant, it is for the respondents 1 to 4 to absorb the petitioner in

that post since no other candidate, who appeared for the interview is questioning the selection before me. The writ petition is ordered accordingly.

However, there will be no order as to costs.