

(2008) 05 DEL CK 0073

In the Delhi High Court

Case No : CM No's. 964 of 2008, 13527 of 2007 and WP (C) 7129 of 2007

Maresh Kumar and Another

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 30-05-2008

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 309

Citation : (2008) 151 DLT 353

Hon'ble Judges : Anil Kumar, J

Bench : Single Bench

Advocate : Maninder Singh, for the Appellant; J.P. Sengh, for the Respondent

Judgement

Anil Kumar, J.—The petitioners have sought quashing of order dated 18th September, 2007 passed by the respondents and a direction to the respondents to include the name of the petitioners in the final list of selected candidates and to appoint them on the post of Security Assistant Grade-II in Rajya Sabha.

2. The brief relevant facts for the adjudication of this case are that the petitioners applied for selection to the post of Security Assistant Grade II pursuant to the advertisement No. 19(N) published in the employment news of 22-28 July, 2006. After verification of petitioners' application forms, the roll Nos. 5527 and 5522 were issued to both the petitioners by the respondents. Thereafter call letters dated 10th January, 2007 were issued to the petitioners. The petitioners contended that it was stipulated in the call letters that only those candidates who qualified the written examination would be called for Physical Measurement Tests and Physical Efficiency Tests. As the petitioners performed well in the written test held on 10th January, 2007, they were permitted to take up the Physical Measurement Tests and Physical Efficiency Tests by letters dated 13th April, 2007 in which it was provided that the candidates who qualify in the Measurement of physical standards test would be allowed to participate in the field test. As the petitioners qualified in the Physical Measurement Tests they were permitted to take part in the Field Test

3. Since the petitioner qualified in the Physical Measurement test and Field test Therefore they were permitted to appear in the personal interview for the recruitment to the post of Security Assistant Grade-II in Rajya Sabha by call letters dated 5th July, 2007. Interviews were conducted on 2nd August, 2007.

4. The petitioners contended that by order dated 18th September, 2007, the final list of the candidates selected for the post of Security Assistant Grade-II in Lok Sabha and Rajya Sabha Secretariat was declared and that 6 and 31 candidates respectively for the post of Security Assistant Grade-II in Lok Sabha and of Rajya Sabha Secretariat respectively were selected, however, the name of the petitioners were not included in the final select list despite the fact that the petitioner No. 1 and petitioner No. 2 had secured 178.1 and 161.04 out of total marks of 225 which marks were more than the marks secured by the last selected candidates in the general category as the topper in the examination had secured 179.13 marks and the last qualified candidate in the general category secured 160.71 out of total marks of 225.

5. The petitioners by way of the present petition have challenged the act of the respondents in not including the name of the petitioners in the final select list despite the fact that the petitioners had secured more marks than the last selected candidates and have claimed their right to selection to the post of Security Assistant Grade-II in the Rajya Sabha Secretariat.

6. The petitioners have challenged the order dated on 18th September, 2007 on the ground that the same is illegal, arbitrary, discriminatory, unjustified and in violation of Article 14 and 16 of the Constitution of India as it includes the name of candidates who have secured less marks than the petitioners and does not include the name of the petitioners despite the fact that the petitioners fulfill all the conditions mentioned in the Service Order, 2002 and also the conditions required for recruitment to the post of Security Assistant Grade II as mentioned in the advertisement and the call letters issued by the respondents.

7. The respondents have contested the writ petition and have filed a short reply refuting the averments made in the petition. According to the respondents there is no violation of fundamental rights of the petitioners as has been alleged in the petition as the parameters of test in the matter of the selection of candidates is determined by the experts after taking into consideration the nature of the job and that the same has been followed uniformly for past several years. According to the respondents the process of recruitment for the post of Security Assistant Grade-II comprised of four-level/stages namely, written test, Physical measurement tests, Field test/physical efficiency tests and Interview and that each test was an elimination round for the subsequent test and that the recruitment of the candidates hinges on their performance in each of the four stages and that a candidate was required to qualify each of the stages at the prescribed standards to qualify. The respondents asserted that the total marks secured by the candidates in the four stages, were considered for determining the inter-se seniority in the merit order/panel only and that was not the criteria

for selection.

8. According to the respondents the candidates who qualified in the written test of 100 marks were called for physical measurement tests; and those who were found "fit" in the physical measurement tests were called for Field test; and those who qualified the field test were called for the personal interview.

9. The Respondents have detailed the break up of the marks obtained by the topper, last qualified candidate in the general category and the petitioners at all the four stages in para 9 of the short reply filed by them. The respondents contended that the petitioners were not declared successful on account of their not securing the prescribed 50% marks in the personal interview as petitioner No. 1 and petitioner No. 2 scored only 9.34 and 11 marks respectively out of 25 in the interview whereas the topper had scored 14.33 marks and the last qualified candidate in the general category had scored 15.01 marks. Further negating the allegation of arbitrariness, illegal and discriminatory act of joint recruitment cell in the preparation of the results, submitted that the joint recruitment cell has been conducting the examination for the post of Security Assistant Grade-II for last many years as per the same procedure and that the scheme of examination has been approved by the Secretary General of both Lok Sabha and Rajya Sabha and that there was no scope for any discretion with the Joint Recruitment Cell in respect to selection of the candidates. The respondents alleged that since the petitioners did not qualify in the examination, Therefore, they were not entitled for any relief.

10. I have heard the learned Counsel for the parties and have perused the relevant record. The contention of the counsel for the petitioner is that personal interview, cannot be a sole determining factor for deciding the relative eligibility of a candidate for selection to a particular post and that the aggregate of the marks scored by a candidate in all the four stages/level should be taken into consideration for determining the eligibility. The learned Counsel for the petitioner asserted that giving 50% weightage to interview marks amounts to giving 100% weightage and that the same is arbitrary and unconstitutional and against the established law laid down by the Supreme Court. Reliance has been placed on decision of the division bench of this Court in CWP No. 127/ 2003, *AIIMS v. Dr. A.M.V.R Narendra* decided on 11th June, 2004 in support of its contention. The learned Counsel for the petitioner has also relied on (2001)1 SLJ 118 SC, *Inder Parkash Gupta Vs. State of Jammu and Kashmir and Others*, , *Inder Prakash Gupta v. State of J&K and Ors.*; *Lila Dhar Vs. State of Rajasthan and Others*, ; *Ashok Kumar Yadav and Others Vs. State of Haryana and Others*, ; *P.K. Ramachandra v. Union of India* 1983 (3) SLR 495; *Krishan Yadav and another Vs. State of Haryana and others*, and (1991)1 SLR 546, *Mohinder Sain Garg v. State of Punjab* to contend that the allocation of 50% marks for interview is ex facie arbitrary and that the same should be set aside.

11. Per contra the respondents contended that the allocation of marks for interview depends on the nature of service and that there is no rule of thumb for

allocation of interview marks. Also admission to service/ post cannot be equated with the admission to an academic institution. It was further contended that the process of selection to a particular post/service is decided by the experts in the field and that the court cannot sit in judgment over the same unless there is an allegation of malafide and no such allegation has been pleaded by the petitioners. The learned Counsel for the respondents has placed reliance on *Siya Ram Vs. Union of India (UOI) and Others*, , *Kiran Gupta and Others Vs. State of U.P. and Others Etc.*, ; WP(C) 9168/2004 *Sadhu Singh Sekhon v. The Executive Officer*, decided on 13th February, 2006; and CWP 4747/2001, *Suresh Kumar Sharma v. UOI and Anr.* decided on 16th May, 2002 in support of respondents' contentions.

12. The question which is to be adjudicated is whether personal interview could be the determining factor in selecting the candidates to the post of Security Assistant Grade II at Rajya Sabha after the written examination, physical measurement test and physical efficiency test and whether the selection on the basis of interview only is arbitrary and unconstitutional.

13. The procedure for selection to the post of Security Assistant Grade-II as stipulated in the call letter dated 10th January, 2007 issued to the petitioners is as under:

5. The candidates will have to qualify in each part of the written examination at requisite standards to be determined by the joint recruitment cell. Only those who qualified in the written test at requisite standards, will be called for the physical measurement tests and the physical efficiency test. The date, time and venue for the physical measurement tests and physical efficiency test will be intimated to the qualified candidates. Each test/event will be elimination round for the subsequent tests. The following will be the scheme of examination for the Physical Measurement Tests and Physical Efficiency Tests.

1. Measurement of Physical Standards.(The requirement of physical standards have been given at page-3)

(The preliminary list of those, whose measurements are not up to the requisite standards will be displayed on the notice board kept at the venue. Physical measurement of the candidates will also be displayed, along with the result. Candidates will be provided one final opportunity to improve physical measurements in regard to them. After this, a final copy of the physical measurement and results indicating "fit or unfit" will be displayed immediately).

2. Physical Efficiency Tests/Field Tests(for those who have been found " fit" in the Physical Measurement Tests). A list of field tests, the candidates will have to take, is enclosed.

3. Personal Interview (For those who qualified the field tests). The date, time and venue will be intimated to the successful candidates.

14. Thus the procedure for selection to the post of Assistant Security Guard

Grade II at Rajya Sabha comprised of four stages. Each stage/level was an elimination round to the next stage meaning thereby only those candidates who qualified in the preceding stage could make it to the next stage and requisite standards were prescribed for determining the question of inter-se eligibility of the candidates at each stage. The necessary corollary of the same is that the candidates who qualified in the written test could only make it to the Physical measurement tests; the candidates who qualified the Physical measurement tests could only make it to the Field test/physical efficiency tests; and the candidates who qualified in the Field Test /Physical Efficiency Tests could only make it to the final stage of the personal interview and for actually qualifying and making it to the final merit list the candidates were required to score 50% of the total marks allocated for interview (which is 25 marks). According to the respondents for qualifying at each stage there were standards prescribed. Like in the written test which was for 100 marks a candidate was required to score 50% -UR vacancies which cut off was subsequently raised to 60% for UR vacancies as more than the required number of the candidates qualified. Similarly in the Physical Measurement Test there were no marks awarded and the candidates were declared only "fit" or unfit and those who were declared fit in the physical measurement test only could qualify to the field test. The criteria for selection in the field test was as under:

Male: Clearance Test: 3.5 feet high jump 40 marks Efficiency Test: 1km race in 4 minutes 30 marks Female: 400m race in 2minutes 50 marks 8 feet long jump 50 marks

The respondents have also detailed the format for evaluation in personal interview, which is as under: a) Dress, manners and appearance 6 marks b) behavior in communication 6 marks (whether courteous and disciplined) c) General awareness and knowledge 6 marks of duties involved in Security service d) Skill and Extracurricular activities: 5 marks e) NCC C-Certificate 5 marks Or i. Sports International level/national level 5 marks University Level 4 marks Or ii. Para Military Forces 3yrs. and above: 5 marks iii. Certificate in computer operations 2 marks The approved cut-off percentage of marks for the personal interview was 50% for UR, 45% for OBC and 40% of SC/ST vacancies.

15. Thus for qualifying at every stage the candidates were required to fulfill the requisite criteria as was communicated to the petitioners by the respondents. Hence the argument of the petitioner that the marks obtained in the interview was the sole determining factor in selecting the candidates for the post, in the facts and circumstance is not acceptable, as all the stages were given due weightage taking into consideration the nature of service and that a candidate could reach the last stage which is that of personal interview and only after that he is declared successful. It appears that just because the interview stage was the last stage in the selection process the petitioner has challenged the same. Will the petitioners argue the matter with same vehemence had the interview stage been the 1st/2nd elimination stage and the Physical measurement test or

field test had been the last stage. The factum of equal weightage given to all the four elimination stage for selection cannot be overlooked.

16. The contention of the petitioner is that aggregate of all the marks scored at different stages/levels should be taken into consideration for preparing the final merit list as providing of minimum qualifying marks in interview will result in meritorious candidates being eliminated on account of their not obtaining the requisite marks in the interview even though they performed extremely well in the other tests. Such a plea may be accepted in cases of admission to academic institutions as written test may have a greater importance when it comes to admission to academic institutions but the same may not hold good in case of selection to a post. Where recruitment to a post/service is concerned the personality traits, aptitude, conduct, communication skills, alertness etc. may be important which can be judged more appropriately through an interview. Like for recruitment for a post in Human Resource Department wherein apart from academics the importance of the candidate being good in public relation cannot be overlooked which can be judged better through an interview. For recruitment to the post of security guard at the Rajya Sabha only qualifying in the written test and physical tests etc. may not suffice as for such post the importance of, inter-alia, behavior, mannerism, aptitude, communication skills cannot be overlooked and same can be appropriately determined by way of an interview giving maximum weightage to it. If aggregate of all the marks is taken into consideration, as has been argued by the petitioners, then even though a candidates who has scored less marks in interview may qualify to get the job on account of his better performance in the written test but he may not be a suitable candidate for the post, if his personality and other traits are taken into consideration.

17. For recruiting candidates to a particular post a procedure is prescribed by the experts in the field after carrying out the necessary research taking into consideration the requirement of the job and nature of employment. One should not lose sight of the fact that if the selection process is divided into series of steps then each step has a purpose to serve and has been included with an objective, be it written test/physical test or an interview. If the intellect of the person can be checked by way of a written test the behavior/conduct/mannerism/ personality/aptitude etc. can be judged through an interview. An interview is not only conversation between two or more people (the interviewer and the interviewee) where questions are asked by the interviewer to obtain information from the interviewee but observation of his personality and other traits which cannot be ascertained more appropriately by a written examination. The procedure devised by the respondent eliminates arbitrariness to a great extent as it is not just the whim of the members of the interview board. There is proper format for evaluation which is almost akin to another written examination. The format for evaluation has different marks for different traits which are detailed in earlier paragraphs.

18. The goal of such an interview is to assess a potential employee to see if he/she has the social skills and intelligence suitable for the workplace. Therefore the argument that even though the petitioners have not been able to obtain the minimum requisite marks in the interview they are eligible for appointment as they have excelled in other preceding tests and the aggregate marks scored by them are more than the marks scored by the last selected candidate does not appeal to reason in the facts and circumstances of the present case. The assessment of Dress, manner and appearance; Behavior in communication; General awareness and knowledge of duties involved in security service; skill and extracurricular activities with separate weightage during interview, makes this assessment different from the general interviews where no yardstick for marks during interview are laid. In fact if the aggregate is made the criteria for selection, it would amount to interfering with and diluting the entire selection process which will be beyond the jurisdiction of the court in the present facts and circumstances of the case. There is no allegation of malafide or oblique motive by the petitioners in the process of selection nor any oblique motives can be inferred in the facts and circumstances against the members of interview board.

19. In fact by raising such an argument the petitioners desire the court to interfere with the prescribed procedure for selection which is the prerogative of the authorities/experts concerned. It is no more rest integra that a court cannot sit and adjudicate on what procedure should be adopted for recruiting candidates for a particular post or in a given selection procedure as the same may vary from post to post and the same is to be decided by the experts in the field taking into consideration the nature of employment and various other factors which requires research and it is not for the court to sit in appeal over the decisions of the experts. Once the procedure has been evolved and implemented, then the court should be slow to interfere with the same unless it is arbitrary and there are malafides and bias and the procedure is such which will cause great prejudices. No plea of malafide or bias has been raised by the petitioner against the interview board comprising of Shri Rajagopalan Nair (Additional Secretary);, Shri S.K.Sharma (Additional Secretary);,Dr.(Smt.) P.K.Sandhu (Additional Secretary); Shri N.K. Sapra Joint Secretary and Shri R.C.Ahuja Joint Secretary. The performance in the interview has been assessed on the basis of different criteria for which separate marks had been prescribed. In absences of any malafide or plea of bias against the interview panelists it may not be appropriate to interfere with their decision by this Court in the facts and circumstances of the present case.

20. The plea of the petitioner of 100% weightage being given to the interview in the selection process being arbitrary and unconstitutional is also not sustainable as the candidates were required to qualify the preceding three stages for reaching the interview stage and only those who qualified the earlier stages, each being an elimination stage, could only make it to the final stage of personal interview and requisite eligibility was prescribed for each stage. Thus all the stages/level were given due weightage. It is not that only on the basis of

performance in interview the candidates were selected but in fact for getting selected the candidates were required to excel in all the four stages, interview being one of them, and that only excelling in two or three stages would not make them eligible for selection as has been sought by the petitioners. It has been consistently held that, what weightage is to be given to the different stages of the selection process is best left to the experts in the respective fields. It is they who would best comprehend the requirements of the job and the qualities a person should have to man the particular post. It is not for the court to interfere unless there is a proven case of oblique motive or malafide or the rules framed by the expert body are arbitrary. Other than making some bland and bald allegations that the minimum of 50% in interviews has been fixed with malafide intentions, the petitioner has placed nothing on record to show prima facie and malafide or oblique motive.

21. The judgments relied on by the petitioners are distinguishable and the inferences as has been sought to be drawn cannot be drawn in the present facts and circumstances. It is no more rest integra that a decision is only an authority for what it actually decides. What is of the essence in a decision is its ratio and not every observation found therein nor what logically follows from the various observations made in it. The ratio of any decision must be understood in the background of the facts of that case. It has been said long time ago that a case is only an authority for what it actually decides, and not what logically follows from it. It is well settled that a little difference in facts or additional facts may make a lot of difference in the precedential value of a decision. The Supreme Court in *Bharat Petroleum Corporation Ltd and Anr. v. N.R. Vairamani and Anr.* AIR 2004 SC 778 had observed:

Court should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations of Courts are neither to be read as Euclid's theorems nor as provisions of the statute and that too taken out of their context. These observations must be read in the context in which they appear to have been stated. Judgments of Courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it may become necessary for judges to embark into lengthy discussions but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgments. They interpret words of statutes; their words are not to be interpreted as statutes.

A case is only an authority for what it decides. As observed by the Supreme Court in *The State of Orissa Vs. Sudhansu Sekhar Misra and Others*, :

A decision is only an authority for what it actually decides. What is of the essence in a decision is its ratio and not every observation found therein nor what logically follows from the various observations made in it. On this topic this is what Earl of Halsbury, LC said in *Quinn v. Leatham* 1901 AC 495:

Now before discussing the case of *Allen v. Flood* (1898) AC 1 and what was

decided therein, there are two observations of a general character which I wish to make, and one is to repeat what I have very often said before, that every judgment must be read as applicable to the particular facts proved, or assumed to be proved, since the generality of the expressions which may be found there are not intended to be expositions of the whole law, but governed and qualified by the particular facts of the case in which such expressions are to be found. The other is that a case is only an authority for what it actually decides. I entirely deny that it can be quoted for a proposition that may seem to follow logically Page 2009 from it. Such a mode of reasoning assumes that the law is necessarily a logical Code, whereas every lawyer must acknowledge that the law is not always logical at all.

In *Ambalal Manibhai Patel Vs. State of Gujarat*, the Supreme Court observed:

The ratio of any decision must be understood in the background of the facts of that case. It has been said long time ago that a case is only an authority for what it actually decides, and not what logically follows from it.

Similarly in *Bhavnagar University Vs. Palitana Sugar Mill Pvt. Ltd. and Others*, , the Supreme observed:

It is well settled that a little difference in facts or additional facts may make a lot of difference in the precedential value of a decision.

Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases.

22. In *Praveen Singh v. State of Punjab* (Supra) relied on by the petitioners, the Supreme Court though had held that viva test cannot be the sole criterion for selection to the posts of Block development and Panchayat Officer but that was on account of the fact that interview being sole criteria was made contrary to the rules. In this Case Commission had made viva voce as the sole criterion for selection and this was contrary to the scheme which had been laid down in the rules. Rather rules and the information sheet had clearly specified that aggregate marks would be considered and it was no where mentioned in the rules that the written examination would be considered only as an elimination round. It was on these facts that the Court held that interview should not be the sole criterion for selection. But in the present case the rules nowhere lay down that the aggregate marks would be considered. Also in the call letters to the petitioners it was clearly specified that "Each test/event will be elimination round for the subsequent events". In this case the Court never held that Interviews should never be the sole criterion for selection to services. Rather it was observed that since the post of Development Officer does not require mature personality, it was not appropriate to recruit on the basis of interview only. The Court in para 13 stated, " Of course, there are posts and posts, where interviews can be a safe method of appointment, but to the post of a Block Development Officer or a Panchayat Officer wherein about 4500 people applied for 44 posts, interview cannot be a satisfactory method of selection though it may be a part selection

process. The court in this case also stressed the importance of viva voce tests. Paraphrasing its order in *Ashok Kumar Yadav v. State of Haryana* (supra) the Supreme Court observed-" There can Therefore be no doubt that the viva voce test performs a very useful function in assessing the personal characteristics and traits and in fact, tests the man himself and is Therefore, regarded as a important tool along with the written examination."

23. Another case relied on by the petitioners is *Mohinder Sain Garg v. State of Punjab and Ors.* (supra) where it was held that the percentage of viva voce test in that case at 25% of the total marks was arbitrary and excessive. It was also held that viva voce test could not be totally dispensed with, but taking note of the situation and conditions prevailing in our country, it would not be reasonable to have the percentage of viva voce marks more than 15 percent of the total marks in the selection of candidates fresh from college/school for public employment by direct recruitment where the rules provided for a composite process of selection namely written examination and interview. A plain reading of the judgment makes it clear that the Court in this case held so on the basis of two factors- (i) that around 1200 candidates were called for interviews against 54 vacancies, and (ii) Selection rules provided for a composite process of selection namely written examination and interview. The case of the petitioners in contradistinction differ on both the factors. In the case of present respondents against 31 vacancies, 139 candidates each of whom had qualified each of the previous stages were interviewed, which is well within the approved norm of calling 5 candidates for 1 vacancy. Also the selection rules clearly laid down that each/event will be elimination round for the subsequent events. In the circumstances it cannot be held that the Supreme Court had held that in no case the weightage of interview cannot be more than 15 per cent. In *Inder Parkash Gupta Vs. State of Jammu and Kashmir and Others*, , another case relied on by the petitioners, appointments to the post of lecturers were in question. Appointments to the said post were governed by statutory rules called the Jammu & Kashmir Medical Education (Gazetted) Service Recruitment Rules, 1979. The said rules did not have any provision for a viva voce test, yet the Public Service Commission kept interview as one of the stages of the recruitment process and allotted 100 marks to the interview out of a total of 140 marks and Therefore, the Supreme Court had held the selection process to be arbitrary and not merely on the ground that 100 marks out of 140 marks were allotted for interview. But in the case of the petitioners it is not their contention that the recruitment procedure is contrary to the statutory rules laid down for selection.

24. In another judgment of the Supreme Court relied on by the petitioners, *P.K. Ramachandra v. Union of India* (supra) , the ASRB an independent agency for recruiting personnel for IASRI had laid down an additional qualification of obtaining at least 40 marks in the viva voce to be eligible for being admitted in the merit list. Rules 13 and 14 of the rules framed by the ICAR on August 19, 1977, which governed the selection process, had no such provision and the act of ASRB amounted to a modification of the Rules. There was no such power in the

ASRB to add to the required qualifications. It was on these facts that the Court held the prescription of minimum marks in the viva voce test was illegal. However, in the case of the petitioners the candidates were required to qualify each of the four stages of the recruitment process at the prescribed standards. The scheme of the examination had been approved by the Secretary Generals of both Lok Sabha and Rajya Sabha. Also nothing has been placed on record to show that the 50% cut-off marks in personal interview has been prescribed by the Joint Recruitment Cell contrary to the selection scheme. In *Ashok Kumar Yadav and Ors. etc. v. State of Haryana (supra)* the Supreme Court had decided it considering the spread of marks for viva voce being so enormous compared with the spread of marks for written examination, that the viva voce test tended to become the determining factor. The questions whether minimum qualifying marks could be prescribed for a viva-voce examination or not and whether viva voce could be the sole criterion for selection to a particular post did not fall for consideration and Therefore, it is distinguishable. Rather apex court had held that there cannot be any hard and fast rule regarding the precise weight to be given to the viva voce test as against written examination as the requirement vary from service to service and host of other factors which are material. The Supreme Court had observed- "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 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 of 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 *Liladhar's* case "exaggerated weight has been given with proven or obvious oblique motives." The Supreme Court in the case of *Ashok Kumar Yadav* has also held that "While a written examination assesses a candidate's knowledge and intellectual ability, a viva voce test seeks to assess a candidate's overall intellectual and personal qualities. While a written examination has certain distinct advantages over the viva voce test, there are yet no written tests which can evaluate a candidates initiative, alertness, resourcefulness, dependableness, cooperativeness, capacity for clear and logical presentation, effectiveness in discussion, effectiveness in meeting and dealing with others, adaptability, judgment, ability to make decision, ability to lead, intellectual and moral integrity. Some of these qualities can be evaluated, perhaps with some degree of error by a viva voce test, much depending on the construction of the interview board. There can Therefore be no doubt that the viva voce test performs a very useful function in assessing personnel characteristics and traits and in fact, tests the man himself and is Therefore regarded as an important tool along with the written examination."

25. In *Krishan Yadav and Anr. v. State of Haryana and Ors. (supra)* relied on by the petitioner, the recruitment process was vitiated by fraud. A CBI investigation

had revealed acts of favoritism, selections without interview, ghost interviews, tampering with final documents etc. In contradistinction the process of selection has not been impugned by the petitioners on any of these ground. Another judgment relied on by the petitioners, *A.I.I.M.S v. Dr. A.M.V.R Narendra*, the Division Bench of the this Court was concerned with the issue of admission to an academic course. The case of the petitioners is of appointment to service. The provision for marks for interview test need not and cannot be the same for admission to colleges and entry in to public service. In *Kiran Gupta v. State of U.P* (supra) the Supreme Court had observed that "the decisions with regard to reasonableness of percentage of marks allotted for interview in cases of admission to educational institutions will not afford a proper guideline in determining the permissible percentage of marks for interview in cases of selection/appointment to the posts in various services. In *Kiran Gupta* (supra) one of the issues before the Apex Court was whether, the selection of candidates for the post of Headmaster solely on the basis of interview could be said to be arbitrary. The Supreme Court had observed-"It is difficult to accept the omnibus contention that selection on the basis of viva voce only is arbitrary and illegal and that since allocation of 15% marks for interview was held to be arbitrary by this Court, selection solely based on interview is a fortiori illegal. It will be useful to bear in mind that there is no rule of thumb with regard to allotment of percentage of marks for interview. It depends on several factors and the question of permissible percentage of marks for an interview test has to be decided on the facts of each case." In the *AIIMS* case (supra) the division bench of this Court held that 100% weightage cannot be given to the interview and that the interview cannot be sole determining factor in the selection process for admission to the course of DM(CH). This was a case where selection process for admission to a course was challenged and Therefore the ratio of the same is not applicable to the present case as the present case relates to the procedure for selection to a service. The Division bench in fact had carved out a distinction between selection to a post and selection to an academic course.

26. The petitioners have also relied on *Hemani Malhotra v. High Court of Delhi* WP(C) 490 of 2007 decided by Supreme Court on 3rd April, 2008. In this matter the petitioners had challenged their non selection on the ground that at the time of advertisement no cut off marks were prescribed for viva voce test and introduction of requirement of minimum marks for interview, after the entire selection process was completed would amount to changing the rules. The Apex Court had held that prescribing minimum marks for viva voce was not permissible after the written test was conducted. It was, however, held in para 9 of the judgment that the authority making rules regulating the selection can prescribe by rules the minimum marks both for written examination and viva voce. Relying on the report of Justice Shetty Commission it was observed that viva voce test should be in a thorough and scientific manner and it should be taken anything between 25 to 30 minutes for each candidates. Apparently the case of the petitioner is distinguishable. In *Hemani Malhotra* (supra) the Apex

Court did not consider the earlier judgment of Supreme Court in Siya Ram v. Union of India.

27. The respondents have placed reliance on Siya Ram Vs. Union of India (UOI) and Others, where the Supreme Court had held that provision for marks for interview test need not and cannot be the same for admission to colleges and entry into public service. It said that in the case of service to which recruitment had necessarily to be made from persons of mature personality, interview test may be the only way and subject to basic and essential academic and professional requirements being satisfied and that subjecting such persons to written test might yield unfruitful and negative results. There cannot be any rule of thumb regarding the precise weight to be given and that it must vary from service to service according to the requirements of the service, the minimum qualifications prescribed, the age group from which the selection is to be made, the body to which the task of holding the interview test is proposed to be entrusted and a host of other factors. The Court said that it was a matter for determination by experts and also a matter for research and that it was not for the Court to pronounce upon it unless exaggerated weight had been given with proven or obvious oblique motives. The Apex Court had held in paras 9,10 and 12 of the judgment as under:

9. In Ajay Hasia case¹ there was challenge to the validity of admission to the Regional Engineering College, Srinagar. On merits of the case various contentions were raised and it was submitted that marks obtained by the candidates at the qualifying examination were ignored and as many as 50 marks were fixed for viva voce examination as against 100 marks allocated for the written test and relying on viva voce examination as a test for determining comparative merit of the candidate was arbitrary. On the question of allocation of marks for oral interview this Court observed that allocation of as high a percentage as 33 1/3 of the total marks for the oral interview should be regarded as infecting the admission procedure with the vice of arbitrariness and selection of candidates made on the basis of such admission procedure could not be sustained. This Court said that under the existing circumstances allocation of more than 15% of the total marks for the oral interview would be arbitrary and unreasonable and would be liable to be struck down as constitutionally invalid. The principle laid by this Court in Ajay Hasia case¹ is not of universal application in all circumstances and in all cases though the court also touched upon the excessive marks allocated for viva voce in recruitment and promotion in public employment. In Lila Dhar v. State of Rajasthan³ this Court considered the decision in Ajay Hasia case¹ and explained the use of the expression "or even in the matter of public employment" in the context of allocation of marks for oral examination of the candidates seeking employment or promotion. In this case the High Court had struck down the selection for the post of Munsifs on that ground that more than due weightage was given to the interview test in that 25% marks were allocated to viva voce under the Rules and thus holding that the selection was arbitrary and violative of Articles 14 and 16 of the Constitution. This Court said that the

words "or even in the matter of public employment" 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 in the public service and 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 then went on to observe as under: (SCC p. 167, para 9) "Nor do we think that the Court intended any wide construction of their observation. As already observed by us the weight to be given to the interview-test should depend on the requirement of the service to which recruitment is made, the source-material available for recruitment, the composition of the Interview Board and several like factors. Ordinarily recruitment to public services is regulated by rules made under the proviso to Article 309 of the Constitution and we would be usurping a function which is not ours, if we try to redetermine the appropriate method of selection and the relative weight to be attached to the various tests. If we do that we would be rewriting the rules but we guard ourselves against being understood as saying that we would not interfere even in cases of proven or obvious oblique motive. There is none in the present case.

10. This Court held that the selection for the post of Munsifs was valid and could not be struck down. It said that the provision for marks for interview test need not and cannot be the same for admission to colleges and entry into public service. It said that in the case of service to which recruitment had necessarily to be made from persons of mature personality, interview test may be the only way and subject to basic and essential academic and professional requirements being satisfied and that subjecting such persons to written test might yield unfruitful and negative results. There cannot be any rule of thumb regarding the precise weight to be given and that it must vary from service to service according to the requirements of the service, the minimum qualifications prescribed, the age group from which the selection is to be made, the body to which the task of holding the interview test is proposed to be entrusted and a host of other factors. The Court said that it was a matter for determination by experts and also a matter for research and that it was not for the Court to pronounce upon it unless exaggerated weight had been given with proven or obvious oblique motives.

12. In the present case, the appointment was to the post of Chief Personnel Inspector in the Railways. It is a selection post. The Selection Board consisted of high ranking officials, well versed with the requirements of the post to which promotion was to be made. Norms had been laid for the Selection Board to follow. No fault can be found with the same. Apart from the objection that excessive marks had been allocated for viva- voce, the appellant has been unable to point out any illegality or irregularity in the selection process. Functions and duties attached to the post of Chief Personnel Inspector have nowhere been set out. It is not for this Court to suggest as to what marks should be allocated for interview in a case like the present one.

28. The Apex Court in the case of Ajay Hasia referred to the Passage on Public

Administration in Theory and Practice by M.P. Sharma who was of the view that interview is often in the nature of desultory conversation and marking differs greatly from examiner to examiner as the different interviewers have their own notion of good personality as for some it consists more in attractive physical appearance and dress rather anything else. It was also observed that there may be a great element of chance in the interview test as it is difficult to develop valid and reliable oral test and difficult and securing a reviewable record on an oral test. Despite this, the Supreme Court, in the case of Siyaram (supra) had held that the principle laid down by the Court in Ajay Hasia's case (supra) is not of universal application in all circumstances and in all cases. In Siyaram's case, the norms had been laid down for the selection board to follow by the high ranking officials well-versed with the requirements of the post to which selection was to be made and in absence of any irregularity or illegality in the selection process, such norms laid down by the Board consisting of high ranking officials, the selection procedure was approved.

29. In the present case, the norms were approved by the Secretary Generals of the Lok Sabha and Rajya Sabha and in order to minimize any arbitrariness or personal perception, separate marks were allocated for dress; manners and appearance; behavior in communication (whether courteous and disciplined); general awareness and knowledge of duties involved in security services; skill and extracurricular activities. In the oral interview, the marks were also to be given on the basis whether the candidates had participated either in NCC or sports or paramilitary forces and the weightage was also given for knowledge of computer operations. With this detailed breakup of different heads under which, in the interview the marks were awarded to the candidates, it is reasonable to infer that while assigning minimum 50% marks in viva voce; the decision was arrived at in a thorough and scientific manner. This has not been disputed by the petitioners that interviews were not conducted hurriedly or in a single day. For 31 posts only 139 candidates were called for interview. In the circumstances, it appears that prescribing 50% marks for the interview in the facts and circumstances was also in consonance with the recommendation of the Shetty Commission which was noticed by the Apex Court in the case of Himani Malhotra (supra). Since different marks were assigned for different facets in the interview, not fixing minimum marks for the interview could also lead to disastrous results in as much as the candidates not having any dress manners, behavior communication, general awareness and knowledge and duties involved in security services and skill and extra curricular activities for which the total marks were only 23 would have become entitled for selection. With these detailed yardsticks as have been evolved by the respondents, it is difficult to infer that oral interview in the present facts and circumstances is not a very satisfactory test for evaluating the capacity and caliber of the candidates for the job of Security Assistant Grade II in Rajya Sabha. It also cannot be inferred that in the circumstances, the result was based only on first impression and could be influenced by many uncertain factors and was capable of being abused. The

petitioners have also not made any specific allegations of malafide and abuse against the Selection Board which comprised of 3 Additional Secretaries and 2 Joint Secretaries. In the circumstances, it is not appropriate for this Court to infer that the selection for the post of Security Assistant Grade II in Rajya Sabha is vitiated on the grounds as alleged by the petitioners.