
(2021) 01 GAU CK 0028
In the Gauhati High Court
Case No : Writ Appeal No. 337 Of 2019

Ms. Kabyashree Dutta And Anr	Vs	APPELLANT
Rahul Tamuli And 6 Ors		RESPONDENT

Date of Decision : 25-01-2021

Acts Referred:

Assam Energy Development Agency Service Regulations, 2015 — Regulation 6, 13

Citation : (2021) 01 GAU CK 0028

Hon'ble Judges : Sudhanshu Dhulia, CJ;Suman Shyam, J

Bench : Division Bench

Advocate : D Das, F Khan

Final Decision : Allowed

Judgement

Sudhanshu Dhulia, CJ

1. Heard Mr. Mr. D. Das, Sr. Adv. assisted by Mr. R. Sarmah, Adv and Mr. H.K. Nath, Adv, learned counsel appearing for the appellants. Also

heard Mr. H. Gupta, learned counsel for the respondent nos. 1 and 2, Mr. T.C. Chutia, learned Additional Senior Government Advocate, Assam,

representing the respondent no. 3 and Mr. P.J. Saikia, learned counsel for the respondent nos. 4 to 7.

2. This appeal has been filed against the judgement and order dated 04/10/2019 passed by the learned Single Judge of this Court in WP(C) No.

3158/2017, by which the writ petition was allowed setting aside the selection and appointment of the private respondent nos. 6 and 7 in the writ

petition, who are now before this Court in appeal.

3. At this stage we may also state that the order passed by the learned Single Judge is a combined order passed in three writ petitions, viz. WP(C)

3157/2017, WP(C)6719/2018 and WP(C) 3158/2017. However, since the present matter only relates to WP(C) No. 3158/2017, the facts which would

be stated here will pertain only to the WP(C) No. 3158/2017.

4. Brief facts of the case are that Assam Energy Development Agency (herein after referred to as AEDA) which is a Government body and an

authority as contemplated under Article 12 of the Constitution of India, had issued an advertisement dated 26/10/2016 inviting application from eligible

candidates for two posts of Junior Scientific Officer. Out of the two posts (with which we are presently concerned) 1 (one) is unreserved and 1 (One)

was reserved for OBC or MOBC. The eligibility criteria was that the candidate should not be less than 18 years of age and not more than 43 years of

age as on 01-01-2016. As per the educational qualification, a candidate must be a Bachelor of Engineering/Technology in

Electrical/Electronics/Mechanical with uniform and excellent academic career and further the candidates must have experience in renewable energy

field during their course or later would be preferred. Thereafter, the process of selection was also advertised, which broadly prescribed that first step

would be that the candidates would be short listed and only the shortlisted candidates will then be called for the written test and the date of written test

will be intimated individually and also through the website. It was also stated that the venue and time of the written test, practical test as well as viva-

voce would be fixed by the authority and would be notified in due course. The selection to the aforesaid posts was to be made in accordance with the

Service Regulations, 2015, which is known as Assam Energy Development Agency Service Regulations, 2015 (herein after referred to as the

Regulations). Regulation 6 of the aforesaid regulations reads as under :-

6. DIRECT RECRUITMENT

1) Direct recruitment shall be made on the basis of recommendations made by the Selection Committee in accordance with the procedures

here-in-after provided :

(a) Keeping in view the minimum qualification for posts to be filled up by direct recruitment, as indicated in Schedule-III, the Director, in

consultation with members of the Selection Committee, shall determine additional qualifications as may be considered necessary.

(b) The Director shall then advertise the posts in local prominent newspapers

and through Employment Exchange, taking care of necessary

clauses on reservations for candidates belonging to Scheduled Castes and Scheduled Tribes or any other categories under the Rules of the

State Government.

(c) The Selection Committee may hold written test or both, and undertake scrutiny of certificates and documents as may be considered necessary.

(d) The Selection Committee shall furnish to the Appointing Authority a list of candidates recommended by it, in order of preference, found

suitable for direct recruitment. The number of candidates in such a list may be according to the actual number of vacancies.

(e) On receipt of the select list of candidates the Director will take necessary steps for appointment in accordance with the order of

preference given in the list with prior approval of the appointing authority as per Schedule IV.

2) The list mentioned in Clause (d) of Sub-Reg.(1) of this Regulation shall remain valid for 12 calendar months from the date of

recommendation/ approval.â??

5. The Selection Committee for selection was to be constituted in terms of Regulation 13 of the aforesaid Regulations, which is quoted here under :-

â??13. SELECTION COMMITTEE

The Selection Committee as referred in Regulation 6 shall consist of the following.

1) Selection Committee for considering the appointment to the post of Director, AEDA

Members of the Committee:

(a) Chief Secretary to the Govt. of Assam - Chairman

(b) Commissioner & Secretary, Science & Technology- Member Secretary
Department To the Govt. of Assam

(c) One Member to be nominated by the Chairman of the- Member
governing Body of the agency

The post of the Director shall be a tenure post for a period of three years.

The minutes of the Selection Committee shall be sent to the chairman for approval.

2) Selection Committee for considering direct recruitment to the posts in Class I (other than Director) and Class II Service up to Executive Engineer Level.

Members of the Committee:

- a. Commissioner & Secretary/ Secretary to the Govt.- Chairman of Assam, Science & Technology Department (Vice Chairman , Governing Body).
- b. Director, AEDA - Member Secretary
- c. Director of Employment & Craftsman Training,- Member Govt. of Assam
- d. An expert to be nominated by the Director, AEDA - Member
- e. One representative from Personnel Dept., Govt. of- Member Assam

Note: The presence of any three members will form the quorum.

3) Selection Committee for considering direct recruitment to the posts in Class III and Class IV Service.

Members of the Committee:

- a. Director, AEDA - Chairman
- b . Nominated Member, Science & Technology- Member Department, Govt. of Assam
- c. Director of Employment & Craftsman Training,- Member Assam or his nominee
- d . An expert to be nominated by the Director,- Member AEDA
- e . Administrative Officer/ Dy. Administrative- Member Officer Or any other officers to be nominated bySecretary the Director as Member Secretary

Note : The presence of any three members will form the quorum

The above mentioned Committee in 13(2) & (3) will act as Assessment Committee for promotion of post for Class I & II and III and IV respectively. â??.

6. Since admittedly, the appointment was made for the Class â??I posts, the Selection Committee would have to be constituted as per Regulation

13(2). Ideally, it has to be a 5 (five) member committee but the note given to Sub-Rule 2 makes it clear that presence of 3 (three) members would

complete the quorum. The first meeting of the Selection Committee was attended by three members including the Director, AEDA. In this meeting, it

was decided as to how Junior Scientific Officer and Senior Accountant would be selected. The committee came to a conclusion that for the post of

Junior Scientific Officer, 20 (twenty) marks are to be given for past academic record and 5 (five) marks for academic record and experience. 100

marks are to be given for written examination and thereafter, it formed an opinion that 75 marks to be given for viva-voce and there were reason

assigned as to why such a high percentage of marks was to be given for viva-voce. The reasons given by the Selection Committee were that since the

â??engagement of the candidates was primarily intended for smooth execution of the rooftop solar power project which demanded expertise in

specialized areas of grid interfacing solar power; in order to derive knowledge of the candidate in this specialized sector, more stress should be laid

upon in obtaining knowledge of the candidate in the area through viva-voce and as such more weightage should be given on higher side during

evaluation.â??[minutes of the meeting dated 05/01/2017 of the Selection Committee).

7. With the process adopted above the Selection Committee proceeded forward and admit cards were issued to the short listed candidates for the

written test. Both the writ petitioners as well as the respondents (writ appellants before this Court) appeared in the written test on 26/03/2017. After

the written test, only 14 (fourteen) candidates qualified for the viva-voce test, which was done on 29/03/2017. Both the writ petitioners as well as the

respondents appeared in the viva-voce examination in which, ultimately the present appellants before this Court were selected. Appellant No.1 was

selected for reserve category as she had applied for reserved category and appellant no. 2 has been selected for general category. Their appointment

was challenged by the other short listed candidates who were also called for the interview. These are presently respondent nos. 1 and 2 before this

Court.

8. The case of the petitioners was that they were the two candidates who had attained maximum number of marks in the written examination, which is 92 out of 100 and since the entire selection was to be based on evaluation of written test alone, they were liable to be selected and subsequently appointed. The precise averments made by the petitioners in para 6 of their writ petition is as follows :-

6. That both the petitioners equally obtain 92 marks which was highest among the shortlisted candidates and where (sic were) expecting appointment as the advertisement postulated merely a written test. The petitioners were expecting appointment as the petitioner jointly emerged in the first position in the written test.

9. This is, however, not the correct position as the learned counsel for the appellant has taken us to the advertisement and regulations and other documents which show that it was up to the Selection Committee to chalk out a programme as to how selection is to be made. It could have been only written examination or interview or a combination of both. The selection committee had decided that there will be a written examination and viva-voce and about 25 marks out of total 200 were also kept for academic qualification. Reference to this has already been made above. Therefore, the writ petitioners were not correct in making out a case before the learned Single Judge that the examination was based purely on a written test and since they had achieved the highest mark in the written test, they were liable to be appointed. The other ground raised by the writ petitioners was that the final list of selected candidates had to be uploaded on the website of AEDA, which has not been done.

10. When the matter came before the learned Single Judge, in order consider the matter in a better perspective, the learned Single Judge had summoned the entire record and on perusal of the same, the learned Judge came to the conclusion that the procedure adopted for the selection process was not a fair procedure, for two reasons. Firstly, the Selection Committee were already having the knowledge of the number of marks each candidate had obtained in the written examination while they were evaluating the same candidate for the viva-voce. Hence, there was likelihood of bias. The second aspect which was in the mind of the learned Single Judge was that one of the members in the selection committee (who was an

expert), was a professor from the Tezpur University and one of the candidates who had been selected (appellant No. 1) had studied at Tezpur

University for her M. Tech. The marks given by the selection committee were also before the learned Single Judge and, therefore, the learned Single

Judge was of the view that this was not a fair selection. The relevant portion of the said judgement is quoted herein below for ready reference :-

“51. In the present case, as mentioned above, there was no need or necessity on the part of the authorities to make available the marks

obtained by the candidates in the written test to the members of the Interview Board as the marks obtained in the written test had no

relevance for proper assessment of the candidates in the interview by the Selection Committee. This Court fails to understand why there was

any need to furnish the marks obtained by the candidates in the written test to the members of the Selection Committee. The distinct

possibility of the members of the selection committee being influenced by the marks obtained by the candidates in the written test so as to

have the effect of changing the merit position on the basis of the marks obtained by the candidates in the written test cannot be totally ruled

out. In fact, the petitioners in their representation dated 24/05/2017 had expressed the apprehension that one of the experts was from

Tezpur University and more than 4 (four) candidates were from Tezpur University. It may be noted that the Respondent no. 6 (Kabyashree

Dutta) had completed her M.Tech from Tezpur University and the Expert Member of the Selection Committee, Dr. Sadhan Mahapatra was

an Assistant Professor from Department of Energy from Tezpur University. If that is so, this Court would hold that furnishing of marks

obtained by the candidates in the written test to the members of the Interview Board would have the potential and possibility of muddying the

purity of the interview process, thus vitiating the selection process as there would be a distinct possibility of bias, even if the same has not

been proved or shown to have actually occurred. On this ground alone, this Court is inclined to interfere with the recruitment process in

respect of the two posts of Junior Scientific Officer.”

11. The learned Single Judge also came to the conclusion that it is not a case of suspicion or bias but a distinct possibility and a real danger of bias.

Referring to the judgement of the Honâ??ble Apex Court rendered in the case of N.K. Bajpai Vs. Union of India reported n (2012) 4 SCC 653,

came to the conclusion that there is every likelihood of bias in this case.

12. And consequently thereafter, it was held as under :-

â??57. Having held that the said recruitment process for appointment to the two posts of Junior Scientific Officer is vitiated, what should be

the future course of action to fill up these two posts. One possible course of action is to nullify the entire recruitment process and initiate a

fresh recruitment process which would involve holding of written test again, which course of action, may however cause certain hardships

to the candidates who had already written the test. The other course of action is to direct the authorities to hold a fresh interview. However

considering the peculiar facts and circumstances as discussed above, when the result of the written test held is already in public domain and

if the respondent authorities were to hold a fresh interview, it may not make any difference, for the members of the Selection Committee are

already aware of the marks obtained by the candidates in the written test. Therefore, the legal vice which is sought to be remedied will

become illusory if the Selection Committee is directed to hold a fresh interview.

Adopting the second course of action, could have avoided inconveniences and hardships to the candidates who have already appeared in

the written test, but under the circumstances, it may not perhaps be the best option. The result of the written test is known not only to the

members of the Selection Committee but also to all the candidates and the world at large. As such, there is no more confidentiality about the

result of the written test. Under the circumstances, the distinct possibility of the members of the interview board, even if reconstituted of

being influenced by the result of the written test, cannot be completely ruled out. Hence, this Court is of the opinion that though holding of a

fresh written test and the interview again may entail and cause hardships to the candidates and inconvenience to the appointing authority, it

would perhaps be the best option available under the circumstances, in order to uphold the sanctity and purity of the recruitment process

for public employment and enhance public confidence.

Credibility as well as the public confidence on the recruitment process conducted

by the state authorities may ensure transparency, confidentiality and purity of the recruitment process is of paramount importance and is certainly a facet of the valuable right to equality and of opportunity in matters of public employment as guaranteed under Articles 14 and 16 of the Constitution of India.

Written test and interview are two vital components of a recruitment process. While the written test would normally assess the knowledge of the candidates in the particular field, interview covers a larger area of the knowledge and personality of the candidates. Though the shortlisting of candidates for interview may be based on the performance in the written test, yet it would be expected that the assessment of the candidates made in course of the interview would be independent of the performance of the candidates in the written test. Assessment of a candidate in the written test and assessment of a candidate in the interview are of different and independent nature. Thus, for having a fair and independent assessment of the candidate during the interview, it ought not to be allowed to be influenced by the performance of the candidate in the written test by which may be ensured by not disclosing the marks obtained by the candidates in the written test to the members of the interview board.â??

13. Undoubtedly, the two selected candidates (Ms. Kabyashree Dutta and Mr. Manjil Deka) have got the highest marks in the interview 45 and 55 respectively out of 75 whereas both the writ petitioners had obtained 30 marks each out of 75 marks though they had got the highest in the written test i.e. 92 marks each out of the total of 100 marks. But are these facts sufficient in bringing out a case of Bias. That is the question.

14. In any case consequent to the above findings, the writ petition was allowed and the appointment of the two junior Scientific Officers was quashed.

The main ground for challenge of the order of the learned Single Judge here is that the writ petitioners had full knowledge of the procedure being adopted for the selection, as they knew well in advance that there were 100 marks for the written test, 75 for Viva-voce and 25 marks for Academic Qualification and Work Experience. Having submitted themselves to this procedure and then having failed to qualify in the selection they cannot now cry foul and say the procedure was faulty. In the case of Ramesh Chandra Shah

Vs. Anil Joshi, reported in (2013) 11 SCC 309, the apex Court has observed that :-

18. It is settled law that a person who consciously takes part in the process of selection cannot, thereafter, turn around and question the method of selection and its outcome.

15. Moreover, as to the fact that the selection committee was in the knowledge of marks obtained by the candidates (who were appearing before the

board for viva voce), we have to see what the Rules and Regulations prescribe in the present case. The Regulations 6 which has already been

referred above clearly stipulates that under Regulation 1(c), it is the selection Committee which holds the written test or interview or both and

undertakes scrutiny of certificates and documents which is necessary. In this procedure, the selection committee is bound to know the written marks

obtained by the candidates which had subsequently been short listed for viva voce as it is the same selection committee which conducts the written

test as well as the interview and marks the candidates in each of the two stages. Therefore, though, in all fairness, it is desirable that a selection

committee does not have the knowledge of the written marks obtained by the candidates, who were appearing before it in viva-voce, but in the present

regulations on which the selection was being carried out, it was impossible for the selection committee not to know the written marks of the candidate,

while they were evaluating the candidates in viva voce. The Regulations permitted this to happen. These Regulations have not been challenged.

Moreover, merely because the selection committee was in the knowledge of marks of the candidates in the written test, a presumption cannot be

drawn that there was every likelihood of bias. In *Mehmood Alam Tariq Vs. State of Rajasthan* reported in (1988) 3 SCC 241, the Apex Court

reiterated the above position that a mere possibility of abuse of a provision, does not, by itself, justify its invalidation. The validity of a provision

must be tested with reference to its operation and efficiency in the generality of cases and not by the freaks or exceptions that its application might in

some rare cases possibly produce. The affairs of government cannot be conducted on principles of distrust. [Mehmood Alam Tariq Vs. State of

Rajasthan, para 24].

16. As far as one of the members of the selection committee being a Professor in

the Tezpur University and the writ petitioner had brought this to the knowledge of the selection committee, we must say that this was done after the viva voce were over and the result had been announced. So, again it was an unsuccessful candidate challenging the composition of the Committee. Moreover, merely because a candidate appearing before the selection committee is from the same University as one of the member of the selection committee, it is not a real danger of bias but again it has only a probability of bias. A selection process cannot be set aside on a mere probability of bias. We do not wish to elaborate on the concept of bias, which our Courts have applied in a given case from time to time. The settled position of law, all the same, is that where bias is alleged there should be a real danger of bias, as different from a mere apprehension of bias. A mere apprehension of bias will not vitiate the entire selection process, as was the case at hand. [Kumaon Mandal Vikas Nigam Ltd vs Girja Shankar Pant & Ors reported in (2001) 1 SCC 182 and Chandra Prakash Singh and others Vs. Chairman, Purvanchal Gramin Bank and others reported in (2008) 12 SCC 292].

17. Apart from what we have already stated above, we must note two important facts which have an important bearing on this case. One of the selected candidates in the general category (Mr. Manjil Deka), has obtained very high mark in the written examination i.e. 88 out of 100 and the same candidate had again obtained high marks in the viva voce which is 55. The other selected candidate which is from the reserved category of MOBC also has a special equity in her favour. We have been informed that this selected candidate who belongs to the More Other Backward Class i.e. MOBC was working as an Assistant Professor in the Department of Electronic and Communications in Assam Down Town University and having been selected and appointed for the post of Junior Scientific Officer under AEDA, she resigned from the post of Post of Professor and had joined the present post. This aspect was also placed by the respondents before the learned Single Judge. Since she has already resigned from the post earlier held by her, she cannot go back to that post. Under these circumstances, we are of the view that though there may be a probability of bias in the selection process, but there were no real danger of bias which calls for setting aside the entire selection and appointment.

18. Consequently, the appeal stands allowed. The judgement and order of the learned Single Judge dated 04/10/2019 passed in WP(C) No 3158/2017 is hereby set aside.