

(2007) 08 CAL CK 0007

In the Calcutta High Court

Case No : M.A.T. No. 2210 of 2007 with CAN No. 4810 of 2007, M.A.T. No. 2277 of 2007

Netai Chandra Das and Nirmal Kumar Roy

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 17-08-2007

Acts Referred:

Citation : 112 CWN 304

Hon'ble Judges : Rudrendra Nath Banerjee, J; Bhaskar Bhattacharya, J

Bench : Division Bench

Advocate : Asish Sanyal, Soumen Kumar Dutta, Amal Baran Chatterjee, Rakesh Sinha and C.K. Maity, for the Appellant; B.R. Patronobis and S. Sengupta, for the Respondent

Final Decision : Allowed

Judgement

Bhaskar Bhattacharya, J.—These two mandamus-appeals were heard analogously and are directed against the order dated May 17, 2007 passed by a learned Single Judge of this Court by which His Lordship allowed the writ-application and set aside the appointment of the respondent no, 6 of the writ-application to the post of Gram Panchayat Karmee on the ground that his selection was vitiated by various irregularities committed by the selectors. Being dissatisfied, the respondent No. 6 (hereinafter referred to as Netai) has preferred one of these two appeals; the other appeal has been preferred by the writ-petitioner (hereinafter referred to as Nirmal) being dissatisfied with the refusal of the prayer for direction upon the Panchayat Authority to appoint him in place of Netai.

2. There is no dispute that for the appointment to the post of a Gram Panchayat Karmee a process of selection was commenced wherein both Netai and Nirmal were applicants. Apart from Netai and Nirmal, there are other candidates, but we are concerned only with the entitlement of Netai and Nirmal in these mandamus-appeals.

3. The grievance of Nirmal was that he initially obtained 52.5 marks in the written test out of the total 85 marks whereas Netai obtained 38.5 marks but subsequently, there was re-examination of the answer-scripts and on such re-examination, the marks obtained by him was reduced to 47.5 marks whereas the marks obtained by Netai was increased to 44 marks. According to Nirmal, the members of the selection committee, for the purpose of giving employment to Netai, deliberately re-examined the answer-scripts and thereafter, in the viva voce examination for which 15 marks were allotted, Netai was given 13.08 whereas he was given only 4.16, as a result, Netai was declared selected. According to Nirmal, if the original marks obtained by the respective parties in the written examination were maintained, then even in spite of partiality made in viva voce, he would have been selected.

4. The aforesaid application was contested by the Panchayat authority and it was alleged that through mistake, a full mark of 5 was given to Nirmal on a particular Arithmetical Problem although he wrongly did the said problem and the answer was also wrong, whereas in spite of the fact that Netai correctly answered the said question, he was given zero, as a result, his marks was enhanced and consequently, they decided to re-examine the answer-scripts of the parties. It was further alleged that there was no partiality in the process of re-examination or in the viva voce examination.

5. The learned Single Judge on consideration of the materials on record came to the conclusion that there was no just reason for re-examination of the answer-scripts and in the process, the marks obtained by Nirmal was illegally reduced while the marks obtained by Netai was enhanced. Therefore, the learned Single Judge proceeded, it was a fit case for setting aside the selection. His Lordship, accordingly, set aside the selection of Netai. His Lordship, however, did not grant the prayer of the writ-petitioner for giving him appointment in place of Netai.

6. As indicated earlier, being dissatisfied both Netai and Nirmal have preferred these two appeals.

7. In view of the conflicting claims made by the parties, we called for the original answer-scripts for the purpose of verifying why the marks given to Nirmal was reduced while the marks given to Netai was enhanced.

8. We find that Nirmal originally obtained 52.5 marks but subsequently, his marks was reduced by 5 as according to the selectors, although he gave wrong answer in respect of question No. 12, i.e. an arithmetical problem and ought to have obtained zero, was given full mark of 5 and accordingly his 5 marks were deducted. We further find that another mark was deducted from the answer to the question No. 9 wherein he originally obtained 2 marks whereas on re-examination it was made 1. Further, in respect of question No. 8 although he obtained one and half, the half was subsequently deducted. The learned advocate appearing on behalf of the State-respondent as well as Netai has placed before us the model answer given to question No. 12 and it appears that Nirmal really

committed mistake in answering the said problem and in spite of such fact, he was given the full marks of 5 while Netai did the. said problem rightly, but he was given zero. Therefore, there was no mistake in re-examining the answer-scripts and in deducting 5 marks from the original marks obtained by Nirmal and adding 4 marks to the marks originally obtained by Netai although strictly speaking, Netai should have got 5 additional marks instead of 4 given on question No. 12 on re-examination.

9. As regards the answer-script of Netai is concerned, we find that although he obtained 38.5 marks and was entitled to get further 5 marks for question No. 12, an additional mark of one and half was subsequently given in respect of question No. 2 and further half mark was given for question No. 4 (ka) and therefore, in our view, Netai should get at least $38.5 + 5 = 43.5$ marks even if we deduct the aforesaid additional 2 marks. However, in fact 4 marks have been added to Netai on question No. 12 instead of 5 as mentioned earlier, as a result, his marks come to 42.5 based on re-examination of only the question No. 12.

10. In the viva voce test, there were six examiners and out of 15 marks allotted for such oral examination, the BDO and the EOP, the official examiners gave Netai 8 and 12 marks respectively whereas Sabhapati, Saha-Sabhapati, Pradhan and Upa-pradhan of the Panchayat gave him 14.5, 14.5, 15, 14.5 respectively and thus, he obtained an average of $78.5/6 = 13.08$; on the other hand, Nirmal obtained 10 and 11 respectively from BDO and EOP respectively but the Sabhapati, Saha-Sabhapati, Pradhan and Upa-pradhan, all gave him only 1 mark each, as a result, he obtained $25/6 = 4.16$

11. After addition of those two categories of marks, it appeared that Netai secured highest marks.

12. Mr. Chatterjee, the learned advocate appearing on behalf of Nirmal vehemently contended before us that having regard to the marks given by the members of the Panchayat it is apparent that they were all set to give appointment to Netai and that is why so much differences appeared in the viva voce examination. Mr. Chatterjee points out that so far the official respondents are concerned, difference was of 1 mark whereas the marks given by the four Panchayat members made the difference of 13.5 marks, as a result, Netai was illegally selected.

13. Mr. Sanyal, the learned advocate appearing on behalf of Netai, however, submitted that this Court sitting in a writ jurisdiction should not reassess the marks and in the case before us, the learned Single Judge illegally set aside the process of selection. Mr. Sanyal contends that even though his client in the written test got 4 marks less than Nirmal, having regard to the marks obtained in viva voce, he got higher marks in total and therefore, the learned Single Judge should not have interfered with the process of selection. He, therefore, prays for setting aside the order passed by the learned Single Judge.

14. Mr. Chatterjee, on the other hand, prays for dismissal of the appeal filed by

Netai and for allowing the appeal filed by Nirmal after declaring him the most suitable candidate with a direction upon the respondents to appoint him in place of Netai.

15. After hearing the learned counsel for the parties and after going through the materials on record, we find that in the re-examination, the deduction of 5 marks from Nirmal and addition of 4 marks to Netai was quite justified but deduction of further one and half marks from Nirmal and addition of further 2 marks to Netai was uncalled for. Even then, if we do not take into account the said deduction of one and half marks from Nirmal and addition of 2 marks to Netai, we find that Netai got $42.5 + 13 - 08 = 55.58$ whereas Nirmal got $47.5 + 4.16 = 51.66$ and thus, Netai got 3.92 marks more than Nirmal after addition of the marks obtained in viva voce.

16. Regarding marks obtained in viva voce, we are of the view that a Writ-Court cannot reassess such marks for the purpose of appointment of a Gram Panchayat Karmee, which is of a nature of job of Group-D where the brilliance in the written test is not the sole criterion. Moreover, even in the written test, Nirmal obtained at the most five marks more than the marks obtained by Netai (in our opinion it should be four marks) out of total 85 marks and as such, there is no "marked difference" between them in the written test consisting of 85 marks. In addition to the efficiency in the written test, the health, behaviour, temperament etc. are all to be taken into consideration for selecting a Group-D employee and those were best assessed on interview for which 15 marks were allotted. The learned Single Judge, therefore, should not have interfered with the process of selection merely because there was re-examination of the answer-scripts. We have already pointed out that the conferment of additional. 5 marks to Nirmal while deduction of 5 marks from Netai would have been justified as would appear from the plain answer of the question No. 12 which is reflected from the model answers although on reexamination, Netai has been given 4 marks on the question No. 12.

17. At this juncture, it will not be inappropriate to refer to the following observations of the Supreme Court in the case of Dalpat Abasaheb Solunke and Others Vs. Dr. B.S. Mahajan and Others, , where the Apex Court reiterated the well-settled proposition of law which should be followed by a Writ-Court while dealing with this type of a matter:

"It is needless to emphasise that it is not the function of the Court to hear appeals over the decisions of the Selection Committees and to scrutinize the relative merits of the candidates. Whether a candidate is fit for a particular post or not has to be decided by the duly constituted Selection Committee which has the expertise on the subject. The Court has no such expertise. The decision of the Selection Committee can be interfered with, only on limited grounds, such as illegality or patent material irregularity in the constitution of the Committee or its procedure vitiating the selection, or proved mala fides affecting the selection etc. It is not disputed that in the present case the University had constituted the Committee in due compliance with the relevant statutes. The Committee

consisted of experts and it selected the candidates after going through all the relevant material before it. In sitting in appeal over the selection so made and in setting it aside on the ground of the so called comparative merits of the candidates as assessed by the Court, the High Court went wrong and exceeded its Jurisdiction."

18. We, therefore, find that the learned Single Judge erred in law in interfering with the process of selection where Netai was selected when the selection committee was constituted in accordance with law and no specific allegations of mala fide against the writ-petitioner was established. It is apparent that in the original answer-scripts, wrong marking was given on question No. 12 and if only that mistake was cured, the difference of marks between them as it originally stood, should be reduced by 10 marks. Therefore, there was explicit justification of re-examination of papers at least for rectification of that plain mistake in giving marks on question No. 12.

19. We, accordingly, set aside the order passed by the learned Single Judge and dismiss the writ-application filed by Nirmal. Accordingly, the appeal filed by Netai is allowed and consequently, the one filed by Nirmal is dismissed. In the facts and circumstances, there will be, however, no order as to costs.

Bhaskar Bhattacharya, J.

I agree.