
(2010) 03 GAU CK 0018

In the Gauhati High Court

Case No : Writ Petition (C) No"s. 336 (AP) , 408 (AP) of 2009 and 30 (AP) of 2010

Onyo Apang and Others

APPELLANT

Vs

State of Arunachal Pradesh

RESPONDENT

Date of Decision : 30-03-2010

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (2010) 4 GLR 645 : (2010) 2 GLT 630

Hon'ble Judges : P.K. Musahary, J

Bench : Single Bench

Advocate : P.K. Tiwari, Tony Pertin, L. Tenzing, A.K. Singh, S. Tapin, X. Gyati, K. Ete, N. Ratan, M. Kato, K. Tasso and D. Padu, for the Appellant; D. Majumdar, R. Saikia, B. Habung, R. Sarma and T. Tamang, for the Respondent

Final Decision : Allowed

Judgement

P.K. Musahary, J.—The facts and issues involved being same, all these cases are heard together for disposal by this common judgment and order.

2. The relevant facts are that the Commissioner and Secretary to the Government of Arunachal Pradesh, Tax & Excise Department issued an advertisement dated 19th September, 2007 inviting applications for "Walk-in-Interview" for some posts of Group "C" and "D", namely, UDC and Assistant Inspector (T&E), LDC-cum-Computer Operator, Constable (T&E) and Chowkidar without conducting any written examination/test. Some unemployed aspirants challenged the said advertisement in WP(C) No. 388(AP)/2007, which was disposed of by this Court vide order dated 19.11.2007 and set aside and quashed the said advertisement. The State respondents preferred writ appeal being WA No. 49(AP)/2007. A Division Bench of this Court disposed of the said writ appeal on 8.1.2008 holding that since no recruitment rules are prescribed for selection and appointment of Constables and Chowkidar in the Department of Tax & Excise, the posts of Constables and Chowkidar should be filled up by a method in

conformity with Articles 14 and 16 of the Constitution of India so as to ensure selection of the best candidates from a wider base of job seekers. However, the Division Bench of this Court upheld the part of the order of the learned Single Judge where direction was issued for making recruitment to the posts of UDC, Assistant Inspector (T&E) and LDC-cum-Computer Operator, in conformity with the Recruitment Rules.

2.1 In compliance with the aforesaid judgment, the respondent authority published a fresh advertisement in local news paper on 6.3.2008 for filling up the posts of Assistant Inspector (T&E), UDC and LDC-cum-Computer Operator. The petitioners along with others applied for the respective post and accordingly they were issued admit cards/call letters for written examination scheduled to be held on 8.11.2008 and 9.11.2008. They appeared in the written examination accordingly and the result of the eligible candidates found qualified was also published in the local news paper on 20.1.2009 asking the eligible candidates to appear before viva-voce test to be conducted on 9.2.2009, 10.2.2009 and 11.2.2009 in the office of the Commissioner (Tax & Excise), Itanagar. The selected candidates were also issued separate call letters individually from the respondent authority asking them to appear in the viva-voce test. One unsuccessful candidate, viz., Shri Tamo Ketan made an application dated 23.1.2009 to the Minister, Tax & Excise Department for rechecking of his original answer scripts along with the answer sheets and mark sheets of the selected candidates. An MLA, Shri Tani Loffa also made a written complaint on 28.1.2009 to the Minister, Tax & Excise Department alleging malpractices in holding the written examination.

2.2 Some of the unsuccessful candidates filed complaints before the Minister of the concerned department on 23.1.2009, 28.1.2009 and 2.2.2009 alleging irregularities in conducting the said written examination.

2.3 On receipt of the said complaints, the Commissioner and Secretary, Department of Tax & Excise, published notification dated 3.2.2009, which were also published in the local news paper notifying that the viva-voce test scheduled to start has been postponed until further orders due to unavoidable administrative reasons.

2.4 By another notification dated 4.2.2009, the aforesaid Commissioner and Secretary constituted an Inquiry Committee headed by himself and two other members, namely, Shri K. Waghe, Superintending Engineer (Coord), PWD and Shri K. Lomi, Deputy Secretary, O&M. The terms and reference the Committee was to examine, verify and scrutinize the allegation of irregularities in conducting the written examination. The Inquiry Committee submitted its report on 6.2.2009 holding inter alia that there is no substantive evidence to prove the allegation made in the complaints. However, to ensure impartiality and fairness in selection, the Committee recommended that all the answer scripts of the selected candidates for viva-voce test should be kept under sealed cover and marks secured by the candidates should not be provided to the Interview Board.

It was also recommended that the department should prepare comparative statements of marks secured in the written examination and viva-voce test by the candidates and thereafter declare the result on the basis of marks secured by the candidates as per comparative statements.

2.5 The respondent-Government not being satisfied with the said report, by an order dated 6.4.2009 issued by the Chief Secretary of the State, reconstituted a fresh enquiry committee under the Chairmanship of the Commissioner, PWD with two other members namely, Shri K. Waghe, Superintending Engineer (Coord), PWD and Shri P. Potom.

2.6 The second enquiry committee submitted its report with its finding on 6.7.2009. It recommended for fresh recruitment process taking all necessary precautions and safeguards to prevent recurrence of shortcoming and lacunae in the current examination so as to achieve public confidence in the recruitment process.

3. It may be stated that the petitioners in all the writ petitions were selected in the written test and were called for to appear in the viva-voce test as aforesaid. They support the report of the first enquiry committee and holding of viva-voce test on the basis of result of the written test announced earlier. In the present petition, they challenge the report of the second enquiry committee dated 6.7.2009. It may be mentioned here that the petitioners in WP(C) 408(AP)/2009 were selected for the post of LDC-cum-Computer Operator in the written examination.

4. Before going into the merit of the cases, the following important facts relating to written examination are to be noted

(i) Total 11,726 candidates registered their names for written examination, out of which, 5,755 were for 30 posts of Assistant Inspector (T&E), 4,496 for the 4 posts of UDC and 1,475 for 17 posts of LDC-cum-Computer Operator.

(ii) The written examination had three papers of 100 marks, namely, Mathematics, General Knowledge and English. For viva-voce test, 50 marks were allotted.

(iii) The question papers were common for the post of Assistant Inspector (T&E) and UDC. For LDC-cum-Computer Operator, there was another set of papers.

(iv) The written examinations were conducted in 21 centers, which were educational institutions spread across Nahalagun and Itanagar. Each centre was headed by Centre Superintendent, who was either principal or Head Master of the educational institution concerned.

(v) The complaints of malpractices and irregularities, etc., in conducting the written examinations are confined to the posts of Assistant Inspector (T&E). There was no such allegation in respect of written test for UDC and LDC-cum-Computer Operator.

5. Before going into the merit of the cases, it is also necessary to have a glance at the complaints made by the MLA on 28.1.2009 and also by 10 unsuccessful candidates on 2.2.2009. For better appreciation, it would be appropriate to quote the said complaints below:

Annexure-P/9

To

The Hon"ble Minister, Tax & Excise, etc.

Government of Arunachal Pradesh, Itanagar.

Sub: Complaint against the Miss-conduct of the Recent Written Interviews of Assistant Inspectors and UDC, Department of Tax & Excise.

H/Sir,

It is to inform you that the recent Written Examination for the post of above mentioned has totally violated interviews systems:

(1) It is informed that the Papers for Assistant Inspector has leakages e.g. one of candidate who staying with Shri A. Pangkam, Deputy Commissioner who is mainly looking after the all the interviews process who's roll No. is placed at Serial No. 4 in the News Papers, his actual Answerscribed papers were replaced at the midnight accordingly re-write the answer papers, whereas he cannot compete with the maximum of Candidates those are not qualified in written Examinations, as per knowledge capacities of candidates is concern.

(2) The checkers of the all subjects has also been instructed to give full marks to the selected Candidates of Mr. Pangkam.

(3) The Subject wise Checkers Teachers from Arunadya School was also collected huge money from the appears candidates for, e.g., Miss Payeng Sangdo has also paid Rs. 5,000 (Rupees five thousand) for particularly Mathematics Subject which she got 92 marks, other Subjects which actually she attempted has got more then 50-60 marks only. Sir the very Big questioned marks is that how a candidates could know to their marks before result has declared or published on News Papers. The name of the Subject Teachers are: (1) Shri Abay Kumar, J/T English from Government Secondary School Arunadya Itanagar, (2) Shri Upadya J/T Mathematics from same School, and (3) one Shri Bora Tuition Teacher was also engaged to checks the papers by Shri Upadya on behalf of him, he has collect money from Miss Payeng Sangdo one of appear Candidate.

It has violated the system and became a mockery of the interviews system set up by the Government. Therefore, you are requested to take necessary action against the Erring Officers and Cancel the result accordingly and re-conduct the interviews please with a fresh advertisement.

Your"s Sincerely,

Sd/- TANI LOFFA, MLA

Arunachal Pradesh.

Copy to all concerned:

Annexure-P/10

To

The Hon"ble Minister,

Tax & Excise,

Government of Arunachal Pradesh, Itanagar.

Dated Itanagar, the 2nd February, 2009

Sub: Complain against unfair written examination conducted by Tax & Excise Department for the post of LDC, UDC and Assistant Inspector on 9th November, 2008.

Hon"ble Sir,

In reference to the above cited subject, we would like to inform you for your kind information and take needful action please.

1. As the interview for the post of LDC, UDC and Asstt. Inspector was conducted on 9th November, 2008 by Tax & Excise Department which is unfair and taking bribe from the few selected candidates.

2. As one of the paper checker Shri Ranjit Boruah was clearly disclosed and given all the statements in the residence of Shri Ando Pangkam, (Dy. Commissioner, Tax & Excise) on 31st January, 2009 at around 8.00 p.m.

3. As Deputy Commissioner, Tax & Excise has been taking huge amount from the few selected candidates and directed to Shri Abey Kumar Das, A/T teacher posted at Arunodaya Government Secondary School, Itanagar to select his candidate by correcting the wrong answer sheet for awarding 100 marks each to all the answer sheets.

4. On 31st January, 2009 as Mr. Ranjit Boruah, who was assist Mr. Abey Kumar Das in the unfair paper checking has been disclosed and giving all statements in front of Mr. Ando Pangkam, Dy. Commissioner, Tax & Excise Department which the video mobile is being clipped by the aspirant candidates which is available to us.

5. As the illegal selected candidates which is going to conduct a viva interview on 9th February, 2009 should be immediately cancelled and the fresh written interview should be conduct immediately.

6. The officials involved in the bribe by taking huge amount from the few selected candidates of LDC, UDC and Asstt. Inspector should be terminated as

per the provision of law.

Therefore, your honour may kindly to cancel those illegal selected candidates and give direction for fresh interview to the concerned department on or before 5th February, 2009. Otherwise, all the aspirants candidates will move a democratic agitation as per the provision of law.

With regards.

Yours faithfully,

1. Sd/- Shri Nich Kojum.
2. Sd/- Shri Toko That.
3. Sd/- Shri Toko Tatam.
4. Sd/- Shri Toko Jerjo.
5. Sd/- Shri Nich Teli.
6. Sd/- Shri Maru Magre.
7. Sd/- Shri Nich Rika.
8. Sd/- Shri Toko Taje.
9. Sd/- Shri Toko Rido.
10. Sd/- Shri Byabang Durga.

6. I have heard Mr. P.K. Tiwari, learned Counsel for the petitioners in WP(C) 336(AP)/2009, Mr. L. Tenzing, learned Counsel for the petitioners in WP(C) 408(AP)/2009 and Mr. K. Ete, learned Counsel appearing for the petitioners in WP(C) 30(AP)/2010. Also heard Mr. D. Majumdar, learned Counsel, appearing on behalf of the respondent authorities in all the writ petitions.

7. Mr. Tiwari, learned Counsel for the petitioners submits that the allegations of malpractices and irregularities, etc., as made in the aforesaid complaints have been enquired into by the first inquiry committee and the report was submitted on 6.2.2009 holding that the allegations made in the complaints are devoid of merit and substance on the basis of evidence adduced before it. The first inquiry committee has also made a positive recommendation to the effect that the department should prepare comparative statements of marks secured in written examination and viva-voce test secured by the candidates and thereafter declare the result on the basis of marks secured as per comparative statements. Supporting the report of the first inquiry committee, Mr. Tiwari, submits that -

(i) The original answer script of candidate at aerial No. 4 of the result sheet was examined and it was found that there was no tempering of the answer script nor was their any overwriting and, hence, the allegation was found baseless and devoid of any substance.

(ii) The enquiry committee found that the department gave fictitious roll numbers to each and every answer script after hiding the original roll numbers and names of the candidates before sending the answer scripts to the various examiners and as such, it was not possible for any examiners to identify the names of the candidates from the answer scripts. Thus, the allegation that Shri Ando Pangkam, the then Deputy Commissioner, Tax and Excise, instructed the examiners to give full mark to the candidates of his choice was found to be without any substance.

(iii) Similarly, the allegation that one Miss. Payeng Sangdo gave Rs. 5,000 for getting higher marks in Mathematics paper was also found by the committee as baseless and the committee rightly suggested the authority should lodge a complaint for such type of allegation for investigation by the police.

8. Referring to the complaints made by the MLA and 10 unsuccessful candidates, it is submitted by Mr. Tiwari that the mischief, if any, played by the Deputy Commissioner (Tax & Excise) are not found to be widespread and all pervasive so as to vitiate the entire selection process. The allegation relates only taking of bribe by two teachers who have allegedly helped one Shri Opang Apang to secure 100 marks in mathematics paper and thereby no situation arose to make it difficult to pick out the persons who have been unlawfully benefited and wrongfully deprived of their selection. If such situation is found absent, the cancellation of the entire selection, as has been done by the respondent authorities, is unsustainable in law as it has been held so in *Union of India and Others Vs. O. Chakradhar*, He further submits that cancellation of entire selection could be upheld, if it is found that the entire selection is stinking, conceived in fraud and delivered in deceit. In support of his submission, he refers to *Krishan Yadav and another Vs. State of Haryana and others*, . In the said case, CBI enquired into the matter and submitted report revealing acts of favouritism, selections without interview as also on the basis of fake or ghost interviews, tampering with final records, fabrication of documents, forgery, keeping the selection list a secret, issuing appointment letters after calling selected candidates and obtaining joining reports from them on the spot without any medical test and verification of antecedents and destroying the original records including the answer scripts. In the present case, according to Mr. Tiwari, if the allegations are taken to be true, the Deputy Commissioner, Tax & Excise committed favouritism, nepotism, bribery, etc., for getting the candidates of his choice selected but unfortunately most of them have become unsuccessful in the written test and, therefore, no case has been made out by the respondent authorities for cancellation of the entire select list.

9. Mr. Tiwari, learned Counsel for the petitioners furnishes a laboriously prepared summary of evidence relating to fairness of written examination and alleged malpractices in conducting the written examination on the basis of which, the report of the second enquiry was submitted, as under -

(A) Summary of evidence relating to fairness of written examination

- (i) For the post of LDC-cum-computer operator the examination was different with different set of question papers.
- (ii) There is no complaint or allegations from any quarter of malpractices in the written examination for selection/ appointment to the 17 post of LDC-cum-computer operator.
- (iii) There is also no complaint or allegations from any quarter of malpractices in the written examination for selection/ appointment to the 4 posts of UDC.
- (iv) The examination was conducted in 21 centers spread across Itanagar and Naharlagun out of which there is no evidence of any problem or of malpractices in the 20 centers. There was a report of chaos and order in conducting the written examination at Government M.E. School, Itanagar, P-Sector. However, witness No. 13 attributed chaos and disorder to the rush of candidates which also resulted in delayed collection of answer scripts.
- (v) Except the two answer scripts of Mathematics paper belonging to witness No. 1 (a successful candidate) and the witness No. 2 (an unsuccessful candidate), no other answer script was examined by the committee.
- (vi) Except hearsay evidence no evidence was found to support the allegations of payment of money for obtaining high marks.
- (vii) No evidence was found of any tempering of the answer script.
- (viii) There was no evidence to support the allegations of favouring certain candidates. The evidence shows the department had given a fictitious roll number to each and every answer scripts and hidden the roll numbers and names of the candidates before sending the answer scripts to various examiners. Hence, it was not possible for the examiners to identify the names of the candidates from the answer scripts.
- (ix) The Deputy Commissioner, Tax and Excise who was in charge of conducting the examination, in his evidence as witness No. 21 controverted the allegations of malpractices and favouritism and elaborately explained the procedure followed in conducting the examination and preparation of the list of successful candidates who had qualified for interview. There is no evidence available on record which controverts the evidence of this witness.
- (x) The witness No. 11 Sri Abhay Kr. Das who is a junior teacher in Government Higher Secondary School, Arynodaya, Itanagar and was entrusted with the work of totalling and tabulation of marks, denied the allegations of malpractices and of receiving any improper instruction from the Deputy Commissioner, Tax and Excise, Sri Ando Pangkam (witness No. 21).
- (xi) Likewise witness No. 14 Sri R.C. Gond, who was one of the centre superintendents and principal of Kendriya Vidyalaya-II, Chimpu, denied the allegations of malpractices in his centre, and stated that in his centre examination was conducted smoothly without difficulties of any kind.

(B) Summary of evidence relating to malpractices in written examination.

(i) There are allegations of payment of money for scoring higher marks and/or leakage of question papers. There are also allegations against the Deputy Commissioner, Tax and Excise, who was entrusted with the responsibility of conducting the examination, of favouring certain candidates, especially witness No. 1 Sri Opang Apang. These allegations were made by an MLA of West Seppa constituency Sri Tani Loffa (witness No. 3) and his niece (witness No. 2 who was an unsuccessful candidate). Similar allegations were made by witness No. 5(a) to 5(i) all unsuccessful candidates. The allegations of all these witnesses are speculative and based on hearsay.

(ii) The committee examined the Mathematics script of Opang Apang (witness No. 1) who scored 100 out of 100 marks in Mathematics. The committee also separately tested the ability of Sri Opang Apang and found that he was not of such merit to have scored 100 out of 100, in Mathematics.

(iii) The witness No. 4 Sri Tamo Ketan was shown absent in English paper whereas according to him he appeared in all the three papers. In the attendance sheet also Sri Tamo Ketan (witness No. 4) was shown present in all the three papers and his signatures were authenticated by the invigilator in all the three papers.

(iv) Witness No. 13 Sri Tajay Dagam, the Head Master of M.E. School, P-Sector, Itanagar, stated about chaos and disorder in his centre due to rush of candidates and also about delayed collection of the answer scripts.

(v) The witness No. 13 Sri Tajay Dagam also stated about defect in the English question paper as the total marks mentioned in the paper were 100 but questions were set for only 80 marks.

(vi) Exhibit 17 also shows that the total marks in English were 100 but the questions were set for only 80 marks. However, there is no indication as to what is Exhibit 17.

(vii) In the case of Opang Apang (witness No. 1), it was found that he was given 91 marks in English whereas the questions were set only for 80 marks, The English answer script of Sri Opang Apang is Exhibit 18.

(viii) In order to maintain anonymity of the answer sheets, the department took steps to assign dummy numbers to all the answer sheets before sending them for evaluation. In so doing, the original roll numbers on the answer sheets were masked with black tape. However, in some of the answer sheets which were produced before the committee (Exhibit No. 19), the marking was done only on the roll numbers in the front page. The candidate's roll numbers written on subsequent pages of the answer sheet remained unmasked. By this failure, the entire effort of the department to mask the roll numbers of the candidates and maintain anonymity became useless.

(ix) The question papers and answer keys had many lacunae and inconsistencies giving room for confusion. Some of the answers in the answer key were also found to be incorrect.

10. On the basis of the aforesaid evidence, it is submitted by Mr. Tiwari, learned Counsel for the petitioners that the allegations of favouritism, leakage of question papers and/or availability of question papers in the market for a price including the guarantee of selection on payment of huge money have been found to be hearsay evidence which are nothing but speculative in nature. As regard the lapse in English question paper, it may, at the most, warrant separate examination in English only for the post of Assistant Inspector (T&E) without cancelling the entire selection. The methodology adopted by the committee to test the abilities of witness Nos. 1 and 2 in the subject, of Mathematics was badly flawed. By asking those two candidates on the questions of Mathematics in course of enquiry, proper assessment of their abilities in the subject of Mathematics could not have been made inasmuch as possibilities of nervousness in course of enquiry resulting in incorrect answers cannot be ruled out and by testing the abilities of said two candidates in the aforesaid subject, no adverse inference could have been drawn about the fairness of the entire selection. Such methodology of testing, according to Mr. Tiwari, has been discouraged by the Apex Court in *Sadananda Halo and Others Vs. Momtaz Ali Sheikh and Others*,

11. Per contra, Mr. Majumdar, learned Counsel appearing for the respondent-State would contend -

(i) A fresh cause of action arose soon after the respondents authority passed an order cancelling the entire process of recruitment vide No TAX (E)-126/05 dated 15.12.2009 on the basis of report of the 2nd inquiry committee. The said order having not been challenged by the petitioners, it would amount to acceptance of the 2nd inquiry report as valid by the petitioners and accordingly, the present writ petitions are liable to be dismissed as infructuous.

(ii) The writ court is not expected to appreciate the evidence recorded by the inquiry committee.

(iii) The writ court is only to examine the correctness and conclusion of the 2nd inquiry report.

(iv) It is not necessary to enquire into the malpractices committed by each and every candidate. Providing of opportunity of hearing to the selected candidates is also not required, more so, when there is no pleadings of violation of principle of natural justice in the writ petitions. Testing of each and every successful candidate in the written test by the 2nd inquiry committee was not necessary in view of the disclosures made by several persons and the witnesses examined by the 2nd inquiry committee who have given evidence on leakage of question papers, unfair evaluation of answers in the written test and bribery of the evaluator as recorded in the 2nd inquiry report.

(v) The 2nd inquiry was made by the Chairman and members who are not connected with the Tax and Excise Department and as such the report submitted by it is impartial being free from biasness and influence from any corners and the same is acceptable by all concerned.

12. Mr. Majumdar, learned Counsel for the respondents submits that the learned Counsel for the petitioners has read certain portions of the report of the 2nd inquiry committee, which are to their advantage leaving aside the other portion thereof, which are not in their favour. He has given special emphasis on the evidence of some important witnesses as reflected in the inquiry report, namely, Miss Payeng Sangdo (witness No. 2), Shri Tani Loffa, MLA (witness No. 3), Shri Tamo Ketan (witness No. 4), Shri Nich Kojum (witness No. 5), Shri Ranjit Bora (witness No. 10), Shri Abhay Kr. Das (witness No. 11) and Shri Upadhya (witness No. 12). As per the evidence of Shri Tani Loffa, MLA (witness No. 3), Miss Payeng Sangdo was taking tuition from Shri Ranjit Bora (witness No. 10) in a tuition centre run by Shri Abhay Kr. Das (witness No. 11), who is a Junior Teacher in English in Arunadoya Government Secondary School, Itanagar. She came to know that Abhay Kr. Das was apparently employed by the Tax and Excise Department as an evaluator of the written test conducted for selection of Assistant Inspector (T&E), UDC, etc. The said Abhay Kr. Das entrusted his colleague Ranjit Bora to work for him and Shri Bora informed Miss Payeng Sangdo that upon payment of money, good marks would be given in the written examination and Miss Sangdo came to him and demanded Rs. 30,000 only for the purpose. However, herefused to comply with the demand and told her that it would not be advisable to pay the money but because of her insistence, he paid Rs. 5,000. He latter stated that the money was paid to Shri Ranjit Bora for the Mathematics subject for which she got good marks, i.e., 92 out of 100. Since he did not pay for all the subjects, she could not get good marks in other two subjects.

13. The inquiry committee in his report discussed the evidence of Miss. Payeng Sangdo (witness No. 2). She is the niece of MLA Tani Loffa and she was a candidate for the post of Assistant Inspector (T&E). She came to know about some malpractices that were going on in the appointment process and she informed the same to the MLA, who in his turn, made complaint to the hon"ble Minister of Tax and Excise vide his letter dated 28.1.2009. She had taken private tuition from Shri Ranjit Bora for her preparation of the written test in English, Mathematics and General Knowledge. According to her in the morning of 7.11.2008, she came to know from Draí Konjuju (witness No. 6) that question papers of the examination were available in the market and if she wanted, he could get one for her. The said witness also told her that if she could pay Rs. 30,000, he would manage good marks in the written test but she refused to do so. After written test, she met witness No. 6 again in MLA's house, who told her that the posts are being sold at Rs. 5-7 lakh and just merit would not help her in getting the job. She was also told by the said witness that if she wanted, he could manage but she could pay the necessary amount. She expressed her

inability to pay the amount as she hails from a poor family. He again met her and told her to think about his offer seriously. She then started to think about his offer and contacted her brother Shri Lambo Sangdo, who is a teacher of Bana Government Secondary School. Her brother told her that he could manage only Rs. 2.00 lakh and when it was conveyed to Drai Konjuju (witness No. 6), he told her that even though the amount is insufficient, he would talk to Shri. A. Pangkam, DC (Tax & Excise) and try to convince him to accept the amount. On 15.11.2008, she along with her said brother paid Rs. 2.00 lakhs to Shri Drai Konjuju at his resident. Thereafter at about 7.00 p.m. on the same day, she along with Shri Drai Konjuju went to the house of Mr. Pangkam, DC (Tax & Excise) from MLA cottage in his Scorpio vehicle. After reaching Pangkam's house, she waited in the car outside when Shri Konjuju went inside the house with money. He told her that her work has been done and assured her the job. Mr. Majumdar also refers to the relevant portion of the report, to the effect that on 27.7.2009, Miss Panyeng Sangdo was called and asked to solve elementary Mathematics problems but she could not give any convincing answer before the committee for which the committee was of the view that the candidate was not of the quality as to get 97 out of 100 in Mathematics. The committee, on the basis of evidence of Shri Nich Kojum and 09 others also recorded that Shri Ranjit Bora confessed the connivance of Shri Pangkam with Shri Abhay Kr. Das in giving 100 marks to the candidates of Shri Pangkam. Shri Bora also confessed that the answer scripts were checked by himself and Shri Abhay Kr. Das at the residence of the later. It was also confessed by Mr. Bora that 100% marks were awarded to some candidates whose names were given by Shri Pangkam.

14. On the basis of the report of the 2nd inquiry committee, which is founded on the evidence of witnesses examined by it, according to Mr. Majumdar, the respondents have rightly taken decision to accept the said report and cancel the entire selection inasmuch as the malpractices and irregularities found are widespread and all pervasive affecting the results and the authorities are left with no other alternative but to cancel the entire selection.

15. I have carefully gone through the pleadings of the parties along with the reports of the 1st and 2nd inquiry as produced and relied upon by the parties. The petitioners, who stood qualified in the written test for the post of Assistant Inspector (T&E) have supported the report of the first inquiry committee and obviously demanded for holding of viva-voce test cancelling the report of the 2nd inquiry committee. The State Government rejected the 1st inquiry report as it "thought it proper to go for a fresh inquiry by a different committee to verify the truth", as it received three written complaints "alleging irregularities in holding the selection and in evaluation of answer script in particular, apart from widespread public resentments". This ground has been taken in para 7 of the additional affidavit filed on behalf of the respondents on 29.1.2010. It has however, not spelt out what type of widespread public resentment was created or expressed on the 1st inquiry report. There is no indication in the said affidavit that a large or a considerable number of people made representations before the

Government for rejection of the 1st inquiry report, cancellation of entire selection and holding of fresh written test. Not even, except MLA, Tani Loffa, any public representative had demanded cancellation of the selection and holding of fresh interview, not to speak of any public agitation in support of it. The Government has taken a blanket ground that there was a widespread public resentment without any materials in support of it and as such, the said ground taken by the respondent authorities cannot be accepted and the same is liable to be rejected as wholly untrue and imaginative.

16. The petitioners in WP(C) 336 (AP) 2009, in para 15, alleged that the report of the 1st inquiry committee was not on the accepted line of certain groups having political connection. The said allegation has not been denied in the affidavit-in-opposition filed by the respondent No. 1 on 21.12.2009. It simply says that the deponent offers no comments being matter of records. However, the said allegation, of the petitioner was denied in para 7 of the additional affidavit and tried to justify the constitution of 2nd inquiry committee as stated above, mainly due to widespread public resentment. The denial of the aforesaid allegation has no basis if the complaint dated 28.1.2009 of the MLA, Shri Tani Loffa, is read with complaint dated 23.11.2009 lodged by one Shri Tamo Ketan and complaint dated 2.2.2009 made by 10 unsuccessful candidates, all addressed to the hon'ble Minister, Tax and Excise Department. All those complaints were made after the result of the written examination was declared. The said complaints are targeted at the selection of candidates for the posts of Assistant Inspector (T&E) and cancellation thereof. The said MLA is the uncle of Miss Payeng Sangdo, an unsuccessful candidate and he took the active role in pursuing the matter for an inquiry and cancellation of the entire selection. He succeeded at least in getting an inquiry committee appointed by the Government. The 1st inquiry report, unfortunately, went against the interest of the said MLA and the unsuccessful candidates inasmuch as the said committee found that the allegations made are not justified and the question of favouring candidate has been ruled out and did not recommend for holding of fresh interview.

17. The admitted position in these cases is that the result of the written examination was declared on 20.1.2009 and all the three complaints were made after the aforesaid results were declared, It is also an admitted position that the 1st complaint made by Shri Tamo Ketan on 23.1.2009 and by 10 other persons on 2.2.2009 are all from unsuccessful candidates. From the above complaints of the unsuccessful candidates, it has been made clear by them that they had the knowledge about the malpractices and mischief done by the Deputy Commissioner (Tax & Excise) and Shri Ranjit Bora, Abhay Kr. Das and Shri Upadhyaya but before announcement of the results of the written test, they did not bother to make any complaint before any authority. Significantly, Miss Payeng Sangdo, herself admitted to have paid Rs. 5,000 to Shri Ranjit Bora for securing good marks in Mathematics paper and she, in fact, secured 92 marks out of 100 but she could not get good marks in other two subjects for which she become

unsuccessful in the written examination. All these complainants in spite of knowing about the alleged malpractice (taking of bribe) by the aforesaid Shri Ranjit Bora and others appeared in the examination without protest. They filed the complaints only when they could not succeed in the written examination out of disappointment and frustration.

18. Law has been well settled by now that if a candidate takes a calculated chance and appears in the interview, then, only because of result of the interview is not palatable to him, he cannot turn round and subsequently contend that the process of interview was unfair or the selection committee was not properly constituted. The Apex Court held so in *Madan Lal and Others Vs. State of Jammu and Kashmir and Others*, Here in the present case, the unsuccessful candidates, no doubt, have not questioned the fairness of the interview or the constitution of the selection committee, they have questioned the fairness and acceptability of the selection due to alleged malpractices and mischief done by the persons connected with the conduct of the written examination, which they knew before the written examination was held or before the result of the selection was announced. The principle laid down in the above cited case, in my considered view, is applicable to the present case.

19. In an earlier case, the Apex Court in *Om Prakash Shukla Vs. Akhilesh Kumar Shukla and Others*, it has similarly been held by a Bench of three hon"ble Judges that when the petitioner appeared in the examination without protest and when he found that he would not succeed in examination, he filed the petition challenging the examination, the High Court should not have granted any relief to such a petitioner. In the present case, the unsuccessful candidates are not petitioners before this Court but they made complaints before the administrative authorities for cancellation of results of the written examination and re-conduct of the interview. The principle laid down so far, in my considered view, is applicable to unsuccessful petitioners who approach the court of law as well as the other unsuccessful, candidates, who approach the administrative authorities for cancellation of the results of the written examination. The bona fide intention of the unsuccessful candidates, who have approached the respondent authority/ authorities, is not-free from doubt, for, they intended to get the entire selection cancelled by/through the administrative authorities by exercise of their executive power.

20. It is found admitted that as desired by the complainants (some unsuccessful candidates and an MLA, Tani Loffa), the Government ordered inquiry almost immediately on 4.2.2009 by constituting a 3-member inquiry committee asking it to examine, verify, scrutinize the allegation of bribery, etc., and as to whether there exists a prima facie case beyond all doubt which warrant cancellation of last written interview of Assistant Inspector, UDC and LDC-cum-Computer Operator. With an unprecedented quickness, the said inquiry committee completed the enquiry and submitted a report on 6.2.2009. The said inquiry report comprises following observations:

1. Original answer script of roll No. as appearing at serial No. 4 of the result has been examined and found that there is no tempering of the answer script has been observed not any over writing on the script. Hence, the allegation is not justified.

2. It has also been alleged that Shri Ando Pankam, Deputy Commissioner has instructed the paper checkers (examiners) to give full marks to the selected candidates. In this regard, it has been observed that the department has given a fictitious roll No. to each and every answer scripts and hidden the original roll No. and name of the candidates before sending the answer script to various examiners. This has proved that the examiner cannot identify the name of the candidate from the answer script. Hence, the question of favouring a candidate is ruled out.

3. It was also claimed that Miss Payeng Sando has paid Rs. 5,000 for getting higher mark in mathematics paper is a clear case of attempt to manipulation and bribery which can be construed as a criminal case. Making of an allegation can be proved after proper investigation by the police. If the authority consider, may consider to lodge a complaint in the nearest Police Station for investigation of the allegation.

4. Request for supply of information under the provision RTI, may be taken up as per the rules/procedure laid down for the purpose.

5. Third complaint is a pseudonymous letter signed by 10 persons without any address or roll number of each person in the said examination nor any case has been established by the complainants. Hence, the complainants cannot be considered as aggrieved party to the said examination,

21. The said committee did not recommend cancellation of the entire selection, nor for holding of fresh written examination. There is no material to establish the nexus between the complainants (unsuccessful candidates) and the authorities in sphere-heading the move for cancellation of the entire selection and conducting fresh written interview but it has become amply clear that the MLA, whose niece was one of the unsuccessful candidates, exercised his power and influenced the Minister concerned for appointing an inquiry committee but unfortunately, the inquiry report did not come out in their favour. There are other unsuccessful candidates, who are not signatories to the complaints made by some unsuccessful candidates but they are found to be having some relation with the Chief Minister and the Minister of the Tax and Excise Department, who have given their communication address under care of the aforesaid Ministers. The petitioners have brought this aspect by filing an additional affidavit on 2.3.2010, wherein at least 10 persons have been named in Para-4, who have given their correspondence address under C/o Chief Minister Bungalow, Itanagar, OSD to Chief Minister, etc. Having perused the same, this Court by an order dated 4.3.2010 passed in MC [WP] 21(AP)/ 2010 in WP(C) 336(AP)/2009, directed the official respondent, namely, the Commissioner and Secretary to the Government

of Arunachal Pradesh, Tax and Excise Department to produce the original application forms duly filled up and submitted by the candidates mentioned in the said additional affidavit. Accordingly, the said original applications were produced by Mr. Majumdar, learned Counsel for the respondents at the time of hearing. The same are perused and found that all the 10 candidates have given their address under C/o Chief Minister Bungalow and OSD to Chief Minister. A prima facie case has been made out that at least some unsuccessful candidates sought appointment showing relationship; personal or otherwise, with the Chief Minister. But the public representatives, like the Chief Minister or other Ministers cannot be held liable for the same unless it could be shown by sufficient materials that they consented to using their addresses and thereby using their influence in securing the employment. Such materials are lacking in the present case and as such, the said allegation can not be accepted as correct and substantiated.

22. The bona fide intention of the Government in inquiring into the alleged malpractices/irregularities by appointing inquiry committee has been turned out to be doubtful when it declined to accept the report and constituted 2nd inquiry committee. The details of the reasons for rejecting the 1st inquiry report have not been made available. However, it has been reflected in the order dated 6.4.2009 whereby the 2nd inquiry committee was appointed. It is clearly stated therein that the Government was not satisfied with the report of the 1st inquiry committee. Nothing more has been said as to why the Government was not satisfied with the 1st inquiry report. However, while appointing the 2nd inquiry committee, the Government laid down the following terms of reference:

- (1) To get all the answers scripts thoroughly re-checked by subject experts.
- (2) Call upon the complainants to be heard to their satisfaction.
- (3) To investigate, if any tempering has been made as alleged, and if necessary.
- (4) Result of the written test may be revised to make the whole process fair and transparent.

23. Now it is to examine whether the 2nd inquiry committee conducted the inquiry as per the aforesaid terms of reference. I have, during the course of hearing, read the report, at least twice, along with the learned Counsel for the parties. I repeated alone.

In respect of first term of reference, it is found from the report that the 2nd inquiry committee did not indulge itself in re-checking of any answer script by subject experts. As already noted earlier, as many as 5,755 candidates appeared for 30 posts of Assistant Inspector (T&E), 4,496 for 4 posts of UDC and 1,475 for 17 posts of LDC-cum-Computer Operator. It was possible to re-check each and every answer script of 11,726 candidates through subject experts provided sufficient time was made available to the committee. It has not been expressed by the committee that such re-checking of all the answer scripts was not possible

for want of sufficient time but it had chosen to check the answer scripts of Mathematics paper of Miss Panyeng Sangdo and Shri Opang Apang.

24. The 2nd committee, during enquiry, examined some of the complainants including the MLA, Tani Loffa (witness No. 3), Tamo Ketan (witness No. 4) and Nich Kojum along with 9 others [witness No. 5(a) to (i)]. It also examined Miss. Payeng Sangdo (witness No. 2), Shri Opang Apang (witness No. 1) Shri Abhay Kr. Das (witness No. 11), Shri Upadhya (witness No. 12) and Shri Ando Pangkam (witness No. 21), Deputy Commissioner (Tax & Excise). After examination of the witnesses and verification of records, the committee came to a definite conclusion that "the allegation of payment of money for high marks/ posts, the evidence available before the Committee, was only hearsay evidence". It also observed that "direct evidence regarding this aspect could only have been given by Shri Draï Khonjuju, and Shri Ranjit Bora, whose presence could not be secured despite the efforts of the Committee and therefore, no definite conclusion could be arrived at, regarding these allegations".

25. Surprisingly, the 2nd inquiry committee, with the aforesaid conclusion recommended to the Department for taking necessary action to conduct recruitment process afresh taking all necessary precautions and safeguards to prevent recurrence of shortcoming and lacunae present in the current examination and thereby to achieve public confidence in the recruitment process. It must be noted that the 2nd inquiry committee was called upon to "revise" the result of the written examination/test to make the whole process fair and transparent. It was not called upon to recommend fresh recruitment process. The 2nd inquiry committee is found to have embarked upon an area not called upon it and, therefore, in my considered view, the recommendation made by it for fresh recruitment process is as much unauthorised as unwarranted and such recommendation is not acceptable as it had gone beyond the terms of reference.

26. The correctness of the recommendation of the said committee for fresh recruitment process is to be examined in the light of the law laid down by the Apex Court. It has already been held in Chakradhar case (supra) that the whole selection should be cancelled if the mischief played is so widespread and all-pervasive affecting the result, so as to make it difficult to pick out the persons who have been unlawfully benefited or wrongfully deprived of their selection, it will neither be possible nor necessary to issue individual show-cause notices to each selectee. In Chakradhar's case (supra), the Railway Board took a decision to cancel the entire panel and to terminate the services of all the Junior Clerk-cum-typists appointed earlier after taking into account the report of the CBI. In the said case, the CBI found serious nature of irregularities in the conduct of the examination and could identify the beneficiaries of the irregularities "and could also name the persons against whom action should be taken. The CBI, in its report, recorded its findings that the whole selection smacks of mala fides and arbitrariness. But the position in the cases at hand is totally different inasmuch as the inquiry committee appointed by the Government could not detect any

irregularities of serious nature nor could they identify any person involve or connected with the alleged malpractice and irregularity. The inquiry committee in its own report, as stated earlier, came to a conclusion, that the allegation of bribery could not be proved or established and whatever evidence was found was only hearsay. If such is the position, is there any basis to say that the alleged malpractices or mischief committed by some individuals are so widespread and all-pervasive warranting fresh recruitment process, cancelling the entire selection? In the said judgment, it has not been spelt out what is meant by all-pervasive. Yet, the literary meaning would be enough to understand it. The term "pervasive", as per "Oxford Advanced Learner's Dictionary", means "existing in all parts of a place or thing spreading gradually to affect all parts of a place or thing".

27. There is no finding in the report of the 2nd inquiry committee that the entire selection is stinking, conceived in systematic fraud and delivered in deceit, shocking the conscience of the court to agree with the recommendation of the committee for fresh selection. There is no finding or conclusion that some officers responsible in conducting the written examination have abused the power or acted dishonestly to gain undue advantages from the candidates and it was necessary to cancel the entire selection process as a measure of cleansing the public administration. Existence of such situation have been emphasised by the Supreme Court in Krishan Yadav case (supra) for cancellation of the entire selection process. Such situation having not been found in the present case, I would desist from agreeing with any proposition for fresh selection and the same must be disapproved.

28. By an order dated 15.12.2009, the respondent-Secretary, Tax and Excise Department has accepted the recommendation of the 2nd inquiry committee to consider the entire process of recruitment and go for a fresh recruitment process. No consequential order has, however, been passed by the respondent authorities cancelling the entire selection process and as such, I would not agree with Mr. Majumdar, learned Counsel for the respondents that the present writ petitions have become infructuous for not challenging the said order dated 15.12.2009. The challenge of the petitioners is on the report of the 2nd inquiry committee dated 6.7.2009, and if the said report stands quashed, the aforesaid order dated 15.12.2009, would also stand quashed. There is, therefore, no force in the submissions of Mr. Majumdar in this respect.

29. Considered in the light of the law laid down by the Apex Court in regard to holding of fresh recruitment process/selection test cancelling the earlier one, as discussed above, I fail to persuade myself to accept the recommendation of the 2nd inquiry committee and I have to hold that the decision taken by the respondent authorities to accept the said report is not backed by any legal proposition. Accordingly, the reports of the 2nd inquiry committee, action of the Respondents accepting the same and cancelling the entire selection process are liable to be set aside and quashed, which I do hereby. Consequently, the

respondent authorities are directed to accept the 1st inquiry report dated 6.2.2009 and proceed to hold viva-voce test in respect of all categories of posts by issuing individual call letters to the successful candidates in the written examination as announced already and also by publishing the schedule in both print and electronic media, as early as possible and complete the viva-voce test within a period of 2(two) month from the date of this order.

30. With the above observations and directions all these writ petitions stand allowed. However, there shall be no order as to costs.