

(1993) 06 MAD CK 0044
In the Madras High Court
Case No : W.Ps. No's. 2210 and 9810 of 1993

R. Gnanasekar

APPELLANT

Vs

Tamil Nadu Public Service Commission, Madras

RESPONDENT

Date of Decision : 22-06-1993

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 320, 345

Citation : AIR 1994 Mad 8 : (1994) 1 MLJ 22

Hon'ble Judges : Bakthavatsalam, J

Bench : Single Bench

Advocate : R. Singaravelan, for the Appellant; V. Raghupathy, Addl. Govt. Pleader, for the Respondent

Judgement

W.P. No. 2210/93 :

1. The writ petition is for the issue of a writ of certiorarified mandamus to quash the second sentence of para (iv) of the notification issued by the respondent dt. 15-6-92 and direct the respondent to consider the petitioner along with other candidates for selection to Group I Services in the State of Tamil Nadu on his writing the said subject in Tamil.

W.P. No. 9810/93:

2. The writ petition is for the issue of a writ of mandamus directing the respondent to value the paper of "National Security" written by the petitioner in Tamil without prejudice to the merits and demerits of the case in W.P. No. 2210/93.

3. The petitioner had applied for selection to Group I Service examination conducted by the respondent in the month of October, 1992 in response to the notification issued by the respondent in Thina Thanthi and other newspapers on 27-6-1992. Though the petitioner had applied for earlier occasion in 1990 and passed in the preliminary examination but had failed in the main examination.

4. Even in the year 1992 also the petitioner had passed the preliminary examination, and therefore, eligible to appear for the main examination. The main examination consists of six papers, out of which three will be optional subjects. Out of three optional subjects, each subject has to be taken in each Division, i.e., from Division I, Division II, and Division III. One of the optional subject in Division III, is "National Security". The petitioner wrote the preliminary examination in Tamil, according to his choice. As per the Notification published, the optional subject "National Security" has to be written in English language only. According to the petitioner, the particular sentence in paragraph 3(ii) of the Notification to the effect that the question paper for the subject "National Security" will be in English language only and the answers to the said subject "National Security" has to be written only in English language only, had been introduced only for the selection during 1992 and it was not so in the previous years. According to the petitioner, when the preliminary examination was conducted, the candidates, including the petitioner, were not put on notice that the optional subject "National Security" would be answered only in English language and there is no reference even in the "Instructions to candidates" supplied to candidates that the question paper for the subject "National Security" would be in English language and the answers should be written in English language only. Only after the results of the preliminary examination came to be announced, it was brought to the notice of the concerned successful candidates that the question papers for the optional subject "National Security" would be in English language and the candidates should write the answers to the said subject "National Security" only in English. According to the petitioner since the medium of language so far as question paper and the answer paper in the optional subject "National Security" has been suddenly changed, the chances of the petitioner to come out successfully in the main examination had become bleak. According to the petitioner, there is no such practice being followed in the Union Public Service Commission and the Union Public Service Commission itself has given an option to the candidates to write optional subjects and general knowledge also in the regional languages as mentioned in Schedule VIII of the Constitution of India. When the respondent has allowed the candidates to write the other optional subjects either in English or in Tamil, the act of the respondent in compelling the candidates, including the petitioner, to write the optional subject "National Security" in English language only, particularly for the year 1992, is violative of An. 14 of the Constitution of India. According to the petitioner, he came to know about the insertion of paragraph 3(ii) in the Notification just two weeks before the filing of the writ petition and hence, he has filed W.P. No. 2210/93 for the abovesaid relief.

5. Pending W.P. No. 2210/93 this Court in W.M.P. No. 3493/93 directed the respondent to receive the application of the petitioner subject to the result in the writ petition.

6. During the pendency of W.P. No. 2210 93, the respondent had conducted the Group I Service examination, in which the petitioner wrote the optional subject

"National Security" in Tamil. Apprehending that the petitioner's answer paper in the optional subject "National Security" may not be valued, as he had written the said optional subject against the directions given by the respondent, the petitioner has filed W. P, No. 9810. 93 for the abovesaid prayer. Though the earlier W.P. No. 2210/93 was directed to be listed for final disposal on 1-3-1993 and though it was listed before another learned Judge for final disposal, it could not be disposed of.

7. In view of the above circumstances and since the subject-matter of both writ petitions is one and the same, both the writ petitions are taken up together for final disposal.

8. In the counter-affidavit filed by the respondent it is stated that though the preliminary examination is a screening test, the main examination will consist of six subjects, of which three will be optional subjects, for Group I Services. One of the optional subject under Division III is "National Security", In June, 1992. the respondent invited applications from candidates for the preliminary examination for Group I Service recruitment, mentioning about the details of vacancies, qualifications prescribed for the post, the scheme of examination and syllabus prescribed for the preliminary examination and an outline of the scheme of examination prescribed for the main examination and the format of application. In the said advertisement, it was mentioned that candidates who were declared as qualified for admission to the main written examination will have to apply again in the prescribed application form. It is further stated that though in the previous years, the optional subjects were allowed to be written in either English or Tamil, for the recruitment in the year 1992, the respondent decided to set up the question paper in the optional subject "National Security" in English only and the candidates were required to answer the said optional subject "National Security" only in English, in view of the fact that Examiners in the said optional subject were not available in adequate numbers in Tamil Nadu and to maintain the quality of the examination and the confidentiality of the examination. It is further stated that as per Art. 320 of the Constitution of India, it shall be the duty of the Commission to conduct examination for appointment to the services of the State and none has locus standi to question the procedure of examination conducted by the respondent. According to the respondent, the Commission has taken the impugned decision in its wisdom and after deep consideration of its constitutional obligations. It is further stated that the impugned decision has been taken because of the past experience of the respondent in conducting such examinations. The preliminary examination is only a screening test. After the result of the preliminary examination was announced, detailed scheme for the main examination including the medium of language, etc.. were sent to the candidates who were qualified for admission into the main written examination. That is why, it is stated, separate application was insisted upon from the candidates, who successfully completed the preliminary examination and while applying for main written examination, further instructions including medium of language, in which the examination would be held, would be supplied to the

candidates. Accordingly, as soon as the results of the preliminary examinations were announced, copy of the application form and Notification had been sent to the successful candidates for admission to main examination in January, 1993. It is further stated that there is no indication in the application of the petitioner for the main written examination, as to the special knowledge of the complex subject of National Security, which has been chosen by the petitioner as one of the optional subjects.

9. It is further stated in the counter that of the 300 candidates selected for admission into the main written examination, 294 candidates have submitted their applications and out of 294 candidates, 128 candidates have opted for the subject "National Security". In view of the limited number of examiners available in Tamil Nadu and in order to maintain the quality of the examination and the confidentiality of the examination process and to maintain equity in the selection process as between candidates, the respondent has taken the decision of appointing Professors from other States for setting up papers and for evaluation of answer books in the optional subject "National Security". It is further stated that as per Art. 320 of the Constitution, the powers conferred on the Public Service Commission to conduct examinations includes impliedly the power to maintain the purity and the strict standard of the examination. Out of 128 candidates who have opted for the optional subject "National Security", 13 candidates have opted to write it in Tamil but none of the 13 candidates has studied "National Security" or "Defence Studies" at the college level.

10. Mr. R. Singaravelan, learned counsel for the petitioner contends that all these years the optional subject "National Security" was allowed to be written in English or in Tamil and the petitioner wrote the said optional subject in the previous years only in Tamil, as he is well versed in Tamil. All of a sudden, the learned counsel for the petitioner contends, that in the year 1992, the medium of language so far as the optional subject "National Security" has been changed to only English, and thus affecting the fair chance of the petitioner to come out of the main examination successfully and this is violative of Art. 14 of the Constitution of India, It is further contended that the petitioner wrote twice the said examination in the said optional subject only in Tamil and the sudden change in the medium of language in the said optional subject alone in English is arbitrary and there is subjectwise discrimination and the reasons given by the respondent in changing the medium of language in the Group I Service Examination, particularly the optional subject "National Security" are not sustainable in law.

11. Mr. R. Singaravelan, learned counsel for the petitioner further contended that there are enough number of Lecturers and Examiners in the State of Tamil Nadu itself for setting up the question paper on the optional subject "National Security" in Tamil and for valuing the same. When there were enough number of Examiners and Lecturers till the last year, to set up the question paper in the optional subject "National Security" in Tamil and to value the same, the reason

given by the respondent for changing the medium of language in the examination in the optional subject "National Security" alone only to English is arbitrary and has to be struck down, as it violates Art. 14 of the Constitution of India.

12. According to the learned counsel for the petitioner, at the time of inviting applications for preliminary examinations by means of an advertisement in "Thina Thanthi" on 27-6-1992, the scheme of publication for the main written examination had not been notified (the publication of advertisement has been produced by the respondent as Advertisement No. 24/92). It is further contended by the learned counsel for the petitioner that it is not denied by the respondent that when an advertisement was made in June, 1992 as to the conduct of the preliminary examination for Group I Service recruitment, no reference or instruction was made that the optional subject "National Security" in Division III, had to be answered only in English language. In this connection, the learned counsel for the petitioner relies upon Ashok Kumar Yadav and Others Vs. State of Haryana and Others, for the proposition that even the action of the Service Commission can be interfered with under Art. 226 of the Constitution of India. The learned counsel also relies upon R.R. Dalavai Vs. The State of Tamil Nadu, . In support of his contention, the learned counsel for the petitioner also refers to Art. 345 of the Constitution of India, which speaks of Regional language and Art. 320 of the Constitution of India, regarding the duty of the Service Commission.

13. Mr. V. Raghupathy, learned Additional Government Pleader contends that the Notification dated 15-6-1992 issued by the respondent had not been published by the newspapers fully but the fact remains that the Notification issued by the respondent consists of a clause that the optional subject "National Security" has to be answered only in English. According to the learned Additional Government Pleader by January, 1993 itself, the petitioner was aware of the fact that the optional subject "National Security" had to be written in English language only. Admittedly the date of examination was on 31-3-1993 and the petitioner having come to know about the medium of language to be answered in the optional subject "National Security", could have prepared for the said optional subject "National Security" for writing in English medium and instead of doing so, the petitioner has chosen to file W.P. No, 2210/ 93, followed by another W.P. No. 9810/93.

14. According to the learned Additional Government Pleader Mr. K. Raghupathi, under Art. 320 of the Constitution, the Service Commission, the respondent herein, has got power to fix the procedure or methodology of conducting its examination for recruitment in the service of the State and it is not for the petitioner to question the same. It is further contended by the learned Additional Government Pleader, that this Court sitting under Art. 226 of the Constitution of India, cannot interfere with the procedure to be adopted by the Service Commission and it is for the Service Commission, which is a constitutional

functionary, to decide about the practice and procedure to be adopted in the conduct of the examination for recruitment to State services. Admittedly the petitioner wrote the examination in the optional subject "National Security" in Division III, in Tamil language, against the instructions given by the respondent, and therefore, the answer paper written by the petitioner in the optional subject "National Security" in Tamil language, instead of English, has got to be ignored and it has to be treated that the petitioner has not written the examination in the said optional subject at all. Therefore, it is not as if the equals have been treated unequally and there is no violation of Art, 14 of the Constitution. No candidate was allowed to write in Tamil language the optional subject "National Security".

15. I have heard the arguments of Mr, R. Singaravelan, learned counsel for the petitioner and Mr. K. Raghupathi, learned Additional Government Pleader for respondent, and perused the records produced by the respondent.

16. The short point for consideration in both these writ petitions is whether the petitioner is to write the examination in one of the optional subject, i.e., "National Security" in English or in Tamil as against the decision of the respondent-Commission, and whether this Court sitting under Art. 226 of the Constitution of India, can interfere with the decision of the respondent in matter of procedure and practice in conducting the examination for recruiting into State Services.

17. In my considered view, this Court sitting under Art. 226 of the Constitution of India, has no jurisdiction to interfere lightly with the internal affair of procedure and practice in conducting the examination for recruitment into State services, by the respondent-Commission. Further, the petitioner has to take up the examination in the optional subject "National Security" only in the medium of English language and ought to have written the same in English language, as per the instructions in the Notifications issued by the respondent, unless and until the petitioner is permitted to write otherwise. Simply because, the petitioner had been writing the optional subject "National Security" in Tamil in the previous years, that will not entitle the petitioner to write the said optional subject in Tamil language during 1992 also, much against the Notification of the respondent-Commission. I am not convinced of the argument advanced by the learned counsel for the petitioner that the petitioner had not been put on notice about the change of medium of language in the examination concerning optional subject "National Security". When the Notification was issued by the respondent on 15-6-1992 for the competitive examination for Group 1 Services, the petitioner, who is interested to participate in the competitive examination, ought to have taken the trouble of approaching the respondent-office and obtained a copy of the Notification. Had he obtained a copy of the Notification from the respondent-Commission, the whole misfortune could have been avoided. The petitioner had sufficient time to verify the exact details of Notification issued by the respondent and to prepare for the examination accordingly. But he has not done so. Therefore, I am unable to agree with the learned counsel for the

petitioner that the sudden decision of the respondent to compel the candidates to write one of the optional subjects, i.e., "National Security" in English language only from 1992 onwards, will amount to subjectwise discrimination. It is true that other optional subjects were allowed to be written either in English or in Tamil. But when the respondent-Commission decided, on account of past experience, to hold the examination in the optional subject only in English, namely, "National Security", I do not see any reason to differ from the same, as it is not for this Court sitting under Art. 226 of the Constitution to go into the same and sit on appeal on that decision. Therefore, what is the procedure to be followed in conducting the competitive examination for Group 1 Service by the respondent is purely a matter for the respondent-Service Commission and not for the petitioner-candidate to suggest or to find fault with the procedure adopted by the respondent.

18. In *Lila Dhar Vs. State of Rajasthan and Others*, the Supreme Court had an occasion to consider whether for the selection of District Munsifs, allotment of 25% of mark's to viva voce, is violative of Arts. 14 and 16 of the Constitution and in that case the Supreme Court has held that-

".....There cannot be any rule of thumb regarding the precise weight to be given. 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. It is a matter for determination by experts. It is a matter for research. It is not for Courts to pronounce upon it unless exaggerated weight has been given with proven or obvious oblique motives."

If the above principle of the Apex Court is applied to this case. I am of the view, that the reasons stated by the respondent against the claim of the petitioner for changing the medium of language in the examination for the optional subject -- "National Security"--have got to be accepted, and it is not arbitrary. The decision of the respondent to change the medium of language in the competitive examination for the optional subject --"National Security" cannot be said to be erroneous or unreasonable or it will amount to subjectwise discrimination. In this case, no candidate was allowed to write the examination in the optional subject -- "National Security" -- in Tamil and according to the Notification issued by the respondent-Commission, all the candidates who have taken the optional subject "National Security" -- have to write and said optional subject only in English. Therefore, it cannot be said that equals have been treated unequally and no question of arbitrariness will arise. Since I take the view that the Notification issued by the respondent-Commission is perfectly valid and there is no violation of The provisions of Arts. 14 and 16 of the Constitution, I do not see any merit in the writ petition (W.P, No. 2210/93) and is accordingly dismissed.

19. In view of the dismissal of W.P. No. 2210/93, I do not see any valid ground to entertain The claim of the petitioner that his answer paper written in Tamil in the

optional subject -- "National Security" -- has to be valued at all as the petitioner has not obtained any interim order to write the optional subject "National Security" in Tamil. After all by way of an interim order in W.M.P. No. 3493/ 93, the respondent-Commission was directed to receive the application of the petitioner. That is all. The interim order obtained in W.M.P. No. 3494/93 is also subject to the result of the writ petition in W.P. No. 2210/ 93. Since I have dismissed the writ petition in W.P. No. 2210/93, the interim order obtained as abovesaid, will automatically get vacated. Consequently W. P. No. 9810/93 is also dismissed. There will be no order as to costs in both the writ petitions.

20. The respondent-Commission being a statutory body, should have been more careful in causing its advertisements pertaining to appointments in the newspapers. Because of some negligence on the part of the respondent-Commission office, in the matter of publication of its Notification, unnecessarily, it has resulted in the filing of these writ petitions. At least in future, I do hope that the respondent-Commission will ensure its utmost care in such matters, especially in matters of public employment.

21. Petition dismissed.