
(2009) 10 AHC CK 0140

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 14145 of 2008

Rajesh Kumar Yadav and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 09-10-2009

Acts Referred:

Uttar Pradesh Procedure for Direct Recruitment of Group C Posts (Outside the Purview of Public Service Commission) (First Amendment) Rules, 2003 — Rule 5

Citation : (2009) 10 AHC CK 0140

Hon'ble Judges : Sabhajeet Yadav, J

Final Decision : Allowed

Judgement

Sabhajeet Yadav, J.—By this petition, the petitioners have challenged the order dated 8.2.2008 (Annexure4 of the writ petition) passed by Superintending Engineer, Nalkoop Mandal Basti (respondent no.4), whereby selection dated 25.1.2008 on the post of Nalkoop Mistri against backlog vacancies of Group C posts was cancelled.

2. The brief facts leading to the case are that initially backlog vacancies of Group C posts of Nalkoop Mistry of Basti Tube well Circle were advertised on 13.8.2007. In pursuance of which the Selection Committee had held interview on 17.11.2007 and 18.11.2007 but the aforesaid selection was cancelled on 20.11.2007 by the Superintending Engineer Tube well Circle, Basti. On the same day the aforesaid backlog vacancies were again advertised and the petitioners were selected by the Selection Committee. The select list was approved by competent authority respondent no.4 himself. Thereafter he had sent the said select list vide office order dated 25.1.2008 for joining the petitioners on the posts shown in the select list against their names to the office of Executive Engineer, Nalkoop Division, Basti. The advertisement dated 20.11.2007 and office order dated 25.1.2008 containing the names of the selected candidates sent to the office of Executive Engineer, Nalkoop Division, Basti are on record as Annexures2 and 3 of the writ petition. However, before appointment letters were issued by the respondent no.5 to the petitioners in pursuance of direction of

Superintending Engineer dated 25th January, 2008, he himself has cancelled the said selection and select list dated 25.1.2008 without disclosing any reason therefor merely stating therein that the selection has been cancelled for inevitable reasons. The order of respondent no.4 dated 8th February, 2008 is on record as Annexure4 of the writ petition. Feeling aggrieved against which the petitioners have filed the instant writ petition.

3. Heard Sri D.S.P. Singh, learned counsel for the petitioners and Sri K.R. Singh, learned standing counsel for the respondents.

4. Learned counsel for the petitioners has submitted that since the impugned order passed by the respondent no.4 does not disclose any reason therefor, hence in given facts and circumstances of the case the impugned order is wholly arbitrary, illegal and is not sustainable in the eye of law. Further submission of the learned counsel for petitioners is that once the selection of Nalkoop Mistry was approved by the Respondent No.4 himself vide office order dated 25.1.2008 and he himself had directed the Executive Engineer respondent no.5 to issue appointment letters to the selected candidates/the petitioners, in that eventuality the Respondent no.4 himself could not cancel the said selection without any material on record and with out any justification therefor but from the perusal of counter affidavits filed by the respondents it is clear that there was no material before the respondent no.4 on the basis of which he could arrive at a such conclusion which could justify the cancellation of said selection. The mere complaint of Member of Parliament and any unsuccessful candidate that the selection was vitiated on account of malpractice in said selection without any material in support thereof and without any inquiry thereon to substantiate the said complaints the selection in question and pursuant select list could not be cancelled.

5. Besides this, learned counsel for the petitioners has further submitted that the irregularity pointed out by the respondents that the selection was held in violation of certain rules of recruitment cannot be held to be sufficient ground for vitiating the entire selection unless on account of violation of alleged rules of recruitment the selection in question is otherwise found to be tainted by any malpractice. In support of his aforesaid submissions he has placed reliance upon a decision of this Court rendered in Ram Prakash Singh and others Vs. State of U.P. and others reported in 2009 (2) ESC 1241 and other decisions of Hon''ble Apex Court which would be referred hereinafter.

6. In justification of impugned action taken by the respondents against the petitioners learned standing counsel has placed reliance upon the assertions made in three counter affidavits filed in the writ petition. The details of which shall given hereinafter at relevant places. Besides this, learned standing counsel has also placed reliance upon two decisions of Hon''ble Apex Court rendered in Union of India and others Vs. Tarun K. Singh and others AIR 2001 SC 2196 and in All India SC & ST Employees'' Association and another Vs. A Arthur Jeen and others (2001) 6 SCC 380.

7. On the basis of rival submissions of learned counsel for the parties, the first question which requires consideration of this Court is that as to whether the impugned order dated 8.2.2008 passed by Superintending Engineer respondent no.4 cancelling the selection in question is arbitrary for want of reasons? From the perusal of order dated 8.2.2008 (contained in Annexure4 of the writ petition) passed by Superintending Engineer, Nalkoop Mandal Basti, it is clear that the impugned order does not disclose any reason therefor. It has merely stated that the approved select list dated 25.1.2008 is cancelled with immediate effect for inevitable reason. What was actual reason, is not communicated or disclosed in the impugned order.

8. In this connection, a reference can be made to a decision of Hon"ble Apex Court rendered in Liberty Oil Mills and others Vs. Union of India and others, AIR 1984 S.C. 1271, wherein while dealing with the provision of Imports and Exports (Control) Act and (Control) Order, it has been held that where the decision may be taken without assigning any reason, it does not mean that reason for decision is not necessary, it merely implies that the decision has to be communicated but the reasons for such decision have not to be stated. The expression "without assigning any reason" only means that there is no obligation to formulate the reasons and nothing more. Reason of course must exist for decision, otherwise the decision would be arbitrary. For ready reference it would be appropriate to extract the relevant portion of the observation made by Hon"ble Apex Court in para 22 of the decision as under:

22. "The expression "without assigning any reason" implies that the decision has to be communicated, but reasons, for the decision have not to be stated. Reasons of course, must exist for the decision since the decision may only be taken if the authority is satisfied that the grant of licence or allotment of imported goods will not be in the public interest. We must make it clear that "without assigning reasons" only means that there is no obligation to formulate reasons and nothing more. Formal reasons may lead to complications when the matter is still under investigation. So the authority may not give formal reasons, but the skeletal allegations must be mentioned in order to provide an opportunity to the person affected make his representation. Chapter and verse need not be quoted. Details may not mentioned and an outline of the allegation should be sufficient."

9. In M/s. Dwarkadas Marfatia and Sons Vs. Board of Trustees of the Port of Bombay, AIR 1989 S.C. 1642, the Hon"ble Apex Court observed that every action of the executive authority must be subject to rule of law and must be informed by reason so whatever be the activity of public authority, it should meet the test of Article 14. Where there is arbitrariness in State action, Article 14 springs in and judicial review strikes such an action down. The pertinent observation made in para 25 of the decision is extracted as under:

25. "Where there is arbitrariness in State action, Article 14 springs in and judicial review strikes such an action down. Every action of the Executive authority must

be subject to rule of law and must be informed by reason. So, whatever be the activity of the public authority, it should meet the test of Article 14."

10. The aforesaid decisions have been reiterated and followed by Hon"ble Apex Court in Kumari Shrilekha, Vidyarthi etc. etc. Vs. State of U.P. And others, (1990) 2 UPLBEC 1174. The pertinent observation made in para 13 and para 30 of the said decision are extracted as under:

"13.. . . .However, "without assigning any cause" is not to be equated with "without existence of any cause". It merely means that the reason for which termination is made need not to be assigned or communicated to the appointee. It was held in Liberty Oil Mills and others Vs. Union of India and others, (1984) 3 SCC 464 that the expression" without assigning any reason" implies that the decision has to be communicated, but reasons for the decision have not to be stated, but the reasons must exist, otherwise, the decision would be arbitrary."

30. In M/s Dwarkadas and Marfatia Sons Vs. Board of Trustees of the Port of Bombay, (1989) 3 SCC 293, the matter was reexamined in relation to an instrumentality of the State for applicability of Article 14 to all its actions. Referring to the earlier decisions of this Court and examining the argument for applicability of Article 14, even in contractual matters, Sabyasachi Mukherji,J.(as the learned Chief Justice then was), speaking for himself and Kania,J., reiterated that "every action of the State or an instrumentality of the State must be informed by reason. . . . actions uninformed by reason may be questioned as arbitrary in proceedings under Article 226 or Article 32 of the Constitution." The basic requirement of Article 14 is fairness in action by the State and we find it difficult to accept that the State can be permitted to act otherwise in any field of its activity, irrespective of the nature of its function, when it has the uppermost duty to be governed by the rule of law. Nonarbitrariness, in substance, is only fair play in action. We have no doubt that this obvious requirement must be satisfied by every action of the State or its instrumentality in order to satisfy the test of validity."

11. From a close analysis of the aforesaid decisions, it is clear that even if the authority is not obliged to communicate the reasons for its decision or the decision can be taken without assigning any reason, it merely means that there is no obligation to formulate the reasons and nothing more, but the reasons for decision must exist, otherwise, the decision would be arbitrary. The basic requirement of Article 14 is fairness in action by State and State cannot be permitted to act otherwise in any field of its activity irrespective of the nature of its function when it has the upper most duty to be governed by the rule of law. The nonarbitrariness in substance is only fair play in action.

12. Now next question arises for consideration is that as to whether there exist sufficient material on the basis of which the cancellation of aforesaid selection can be justified. But before probing such materials it necessary to refer a decision of Honble Apex Court, rendered in Inderapreet Singh Kahlon and others

Vs State of Punjab and others A.I.R. 2006 SC 2571, wherein en mass cancellation of selection of Civil Service Officers of Executive and Judicial Branches on the ground of large scale fraud in selection procedure at behest of Chairman of State Public Service Commission was under consideration. In para 41 and 42 of the said decision Hon"ble Apex Court held that before termination of services of employees whose selection was tainted the compliance of three principles at the hands of state was imperative. The pertinent observation made in para 41 and 42 of the decision are extracted as under:

41."If the services of the appointees who had put in few years of service were terminated; compliance of three principles at the hands of the State was imperative, vis., to establish (1) Satisfaction in regard to the sufficiency of the materials collected so as to enable the State to arrive at its satisfaction that the selection process was tainted; (2) determine the question that the illegalities committed go to the root of the matter which vitiate the entire selection process. Such satisfaction as also the sufficiency of materials were required to be gathered by reason of a thorough investigation in a fair and transparent manner; (3) Whether the sufficient material present enabled the State to arrive at satisfaction that officers in majority have been found to be part of the fraudulent purpose or the system itself was corrupt."

42."Once such findings were arrived at, all appointments traceable to the officers concerned could be cancelled."

13. In para 61 of the said decision, the Hon"ble Apex Court, held that, when the services of the employees are terminated inter alia on the ground that they might have aided and abetted corruption, and thus either for sake of probity in governance or in public interest their services should be terminated, the court must satisfy itself that conditions therefor exist. The court while setting aside a selection may require the state to establish that the process was so tainted that entire selection process is liable to be cancelled. The pertinent observations made in this regard in para 61 of the decision are as under:

61.....But, when the services of the employees are terminated inter alia on the ground that they might have aided and abetted corruption and, thus, either for the sake of probity in governance or in public interest their services should be terminated; the court must satisfy itself that conditions therefor exist. The court while setting aside a selection may require the State to establish that the process was so tainted that the entire selection process is liable to be cancelled.

14. Now coming to the materials placed by the respondents in justification of the impugned action taken by the respondent no. 4. Three counter affidavits have been filed by the respondents in pursuance of various directions given by this Court. In the first counter affidavit sworn on 24th April, 2008 filed by Rama Shanker Gupta posted as Assistant Engineer, Mechanical Tube well Division, Basti the reasons for cancellation of the aforesaid selection are given in paras 6, 7 and 10 of the counter affidavit as under:

"6. That in reply to the contents of paragraph nos. 4 & 5 of the writ petition it is submitted that namely Sri Lal Mani Prasad, Member of Parliament, District Basti had made a complaint to the Superintendent Engineer, Tubewell Circle, Basti regarding serious malapractice in the selection process and alleged that complete process was vitiated on several accounts, thereafter Senior Official has directed not to issue any appointment letter in favour of the selected candidates. Thereafter, due to serious allegations the respondent no. 4 had cancelled the Selection Committee and its selection process. Thereafter the Chief Engineer vide letter dated 29.01.2008 had given clear cut direction to the Superintendent Engineer not to issue any appointment letter in favour of the selected candidates. A photo copy of the complaint dated 28.01.2008 made by the Mr. Lal Mani Prasad, Member of Parliament and letter dated 29.01.2008 issued by Chief Engineer are being filed herewith and marked as Annexure No. CA1 & 2 to this affidavit.

7. That the contents of paragraph no. 6 of the writ petition are not admitted as stated, hence vehemently denied. It is further submitted that the serious allegations had been leveled against the said selection and its process. Thereafter it had been found that namely Sri Angad Prasad, Executive Engineer, Nalkoop Division Siddharth Nagar was a Chairman of the Selection Process and other members namely Sri Sohan Ram Executive Engineer, Sri Virendra Singh Executive Engineer and Sri Shiv Shankar Gupta Sub Divisional Magistrate, Sadar District Basti and Sri Vishwanath Gupta Executive Engineer were other members of the Selection Committee. The interview were taken place on 17.11.2007 and 18.11.2007, after completing the interview it had been found that the Chairman of the Selection Committee had breached the secrecy and without any approval from the Competent Authority had declared the result on the notice board. The result of the said selection was declared without any approval from the Superintending Engineer Nalkoop Circle Basti, the conduct of the Chairman was against the rules and regulations. It is pertinent to mention here that the Appointing Authority is Superintending Engineer, in this regard the departmental enquiry has already been commenced, therefore, under these circumstances the alleged selection was cancelled by the Competent Authority.

10. That the contents of paragraph no. 9 of the writ petition are not admitted hence vehemently denied. It is submitted that the whole process of selection was vitiated and tainted on various grounds and also serious allegations had been levelled against the Chairman and its members, thereafter departmental enquiry has also been initiated under these circumstances the whole selection was cancelled. Under these circumstances individual notice to the petitioners were not required and there is no violation of natural justice."

15. From a close analysis of averments made in the said counteraffidavit and enclosures appended thereto, it appears that averments contained in para 7 of the counteraffidavit pertain to the earlier selection in respect of which interview was held on 17.11.2007 and 18.11.2007 which was cancelled on 20.11.2007.

The aforesaid selection is not in dispute, but respondents have tried to mixed up the facts of earlier selection, with the present selection which is subject matter of the dispute. In respect of instant selection, only this much is stated that Sri Lal Mani Prasad Member of Parliament had made a serious complaint about the selection to the Superintending Engineer Tubewell circle Basti on 28.1.2008, the copies of which were also endorsed to the Chief Engineer Tubewell and Engineer in Chief of irrigation department. On receipt of said complaint, the Chief Engineer, Tubewell wrote a letter to the Superintending Engineer Tubewell circle Basti on 29.1.2008, directing him, that Executive Engineers of concerned divisions may be, directed not to appoint selected candidates nor they be given charge of the work until further, orders. The aforesaid complaint and letter of Chief Engineer are on record as Annexure CA1 and CA2 to the counteraffidavit. Except the aforesaid complaint and the letter of the Chief Engineer, no other materials are placed on record. Therefore after going through the aforesaid counteraffidavit on 1.8. 2008 this Court has directed the respondents to bring on record those materials on the basis of which the approved select list dated 25.1.2008 was cancelled. Thereafter another counteraffidavit sworn by Sri Rakesh Sharma posted as Superintending Engineer in the office of Chief Engineer at Lucknow has been filed.

16. In the para 3,4,5,6 and 7 of the said counteraffidavit, it is stated that three posts of Tubewell machines (Nalkoop mistri) were advertised in various Newspapers on 20.11.2007, in pursuance of which interview of all eligible candidates was held by selection committee on 23.1.2008 and 24.1.2008. The selection was based on the marks obtained in qualifying examination as well as interview. The petitioners were selected by the selection committee and their selection was approved by Respondent No 4. vide his order dated 25.1.2008. However before the appointment letter could be issued to the selected candidates/petitioners, the Respondent No 4 received very strong complaint from Sri Lal Mani Prasad Member of Parliament stating therein that the earlier selection (which was cancelled) has been restored by the Chairman/Member of Selection Committee by taking heavy amount of gratification consequently the Chief Engineer vide his letter dated 29.1.2008 directed the Respondent No 4 not to issue appointment letters to the petitioners and not to permit them to join.

17. In Para 8 to 11 of the said counter affidavit it is further stated that apart from complaint made by Member of Parliament, there have been complaints from many other candidates levelling the same allegation against the selection in question. A true copy of one such complaint is enclosed as Annexure 1 of the said affidavit. It is stated that the Respondent No 4 immediately made an inquiry to fortify the allegations levelled in the letter of Member of Parliament by writing a letter to him on 31.1.2008, requesting him to submit the evidence in support of allegations levelled against Chairman and Member of Selection Committee. A true copy of the said letter dated 31.1.2008 has been filed as Annexure 2 of the said affidavit. Not only this but the Respondent No 4, has also sought explanation from the Chairman of the Selection committee namely Sri Sohan Ram Executive

Engineer vide his letter dated 31.1.2008 in respect of allegation levelled by the Member of Parliament. A true copy of said letter dated 31.1.2008 has been enclosed as Annexure 3 of the said counter affidavit. It is stated that when no explanation was submitted by the Chairman of the Selection committee, the Respondent No 4, wrote another letter on 5.2.2008 asking him to submit his explanation by 7.2.2008 so that superior officers may be apprised in this regard. A copy of said letter has been enclosed as Annexure CA 4 of the said counter affidavit.

18. In Para 12,13 and 14 of the said counter affidavit it is further sated that in the inquiry the Respondent No.4, found the allegations levelled against the Chairman and Member of Selection Committee to be prima facie correct, and as such he had no option but to cancel the said selection. It is stated that departmental proceeding have been initiated against the erring members of the Selection committee to take appropriate action against them. For ready reference the averments made in para 12,13 and 14 of the said counter affidavit are extracted as under:

12. That in the inquiry, the Respondent No. 4 found the allegations leveled against the Chairman/Members of the Selection Committee to be prima facie correct and as such he had no option but to cancel the appointment with immediately affect the Respondent No. 4.

13. That the Respondent No. 4 has cancelled the Selection in order to ensure fair selection in future and to prevent repetition of such activities.

14. That the Departmental Proceedings have been initiated against the erring Members/Chairman of the Selection Committee in order to take appropriate action against them."

19. From the perusal of averments contained in and materials placed through, the aforesaid counter affidavit, only this much is clear that on receipt of the complaint about the selection in question, the Respondent No 4 had written letter to the complainant Sri Lal Mani Prasad, M.P. to adduce his evidence in support, of the allegation levelled in the complaint and also sought explanation from Chairman of the Selection Committee namely Sohan Ram Executive Engineer. There is nothing to indicate that complainant Sri Lal Mani Prasad and/or any other such complainant has adduced any evidence before Respondent No 4 or before any other Inquiry Officer in support of of the allegations contained in the said complaint. Apart from it no material has been brought on record to show that Respondent No 4 and/or any other officer had held any inquiry in respect of allegation levelled against said selection. There is nothing on record to show that allegations levelled against Chariman and Member of Selection committee, are found prima facie, correct. No finding of any sort of inquiry is brought on record through the aforesaid counter affidavit, so as to enable the court, to know on the basis of which such conclusion was drawn by the Respondent No 4, therefore, in my considered opinion mere allegation in the said affidavit cannot take the place

of proof. Further no material has been brought on record to show initiation of any departmental proceeding against Chairman/Member of Selection Committee as such mere allegation in this regard cannot take the place of proof as it is well settled principle of law.

20. Thus in view of aforesaid discussion, there can be no scope for doubt to hold that the impugned order dated 8.2.2008 passed by the Respondent No 4, cancelling the selection and select list of the petitioners dated 25.1.2008, is wholly erroneous, arbitrary and without any justification. Except the complaint of Member of Parliament and an unsuccessful candidate upon which the explanation from the Chairman/Member of Selection Committee was asked for, the Respondent No 4, or any other authority had not held any inquiry in respect of said complaint. No material was collected to find out that the allegations of complaint is correct and true, so as to record its satisfaction that selection in question was found to be so tainted that entire selection is liable to be cancelled. Therefore, in view of law laid down by the Hon'ble Apex Court referred herein before, in my considered opinion the impugned order dated 8.2.2008 passed by the Respondent No 4 cannot be sustained, accordingly same is hereby quashed.

21. At this juncture, before further proceeding with the case, it is necessary point out that in aforesaid situation after quashing the impugned order ordinarily this court does not issue writ of mandamus or direction to the authorities to offer appointment to the selected candidates unless the selection is found to be fair and proper, but instead of leaving matter with the authorities to hold fresh inquiry in a fair and transparent manner that as to whether the selection is fair or is tainted by any malpractice and take appropriate decision thereon, in order to avoid further litigation, and leaving the selected candidates for running pillar to post, this court has directed the authorities to bring the materials on record, even if such inquiry is held subsequently, after cancelling the said selection, and file the same on affidavit, by keeping the petition pending consequently another supplementary counteraffidavit sworn on 3.7.2009 has been filed, by Sri Rama Shanker Gupta Assistant Engineer.

22. The averments made in para 2 to 6 of the said supplementary counter affidavit are extracted as under:

23. From the perusal of abovenoted supplementary counteraffidavit and enclosures attached therewith, it appears that after cancellation of selection dated 25.1.2008 vide impugned order dated 8.2.2008, a preliminary inquiry was held by the authorities wherein as transpires from the records (AnnexureCA2 to the supplementary counteraffidavit) that Sri D.C. Agrawal Chief Engineer (Mechanical) level I poseted in the office of Engineer in Chief, Irrigation department vide his letter dated 1.5.2008 had directed the Chief Engineer (Tubewell) (East) Irrigation Department U.P. Faizabad, to send his pointwise comments, in respect of complaints of Sri Vijai Kumar Sharma (candidate) and Sri Lal mani Prasad Member of Parliament regarding irregularities committed in selection of Nalkoop Mistri, held by the office of tubewell circle Basti. By the

aforesaid letter, pointwise comments/reply of total six questions were sought for. In compliance of the said direction, the Superintending Engineer Tubewell circle Basti, vide his report dated 20.5.2009 (as revealed from AnnexureCA3 of the said supplementary counteraffidavit) has submitted his comments on the aforesaid points to the Chief Engineer tubewell (East) Irrigation Department Faizabad which are dealt with herein after.

24. While replying the question No 1, in respect of nomination of Chairman and Members of the earlier selection committee in new selection committee the superintending Engineer Tubewell circle Basti has stated that, in the earlier selection committee. Sri Angad Prasad, Executive Engineer, Tubewell Division, Siddharth Nagar, was Chairman, and Sri Sohan Ram, Executive Engineer (attached with the Tubewell circle Basti), Sri Virendra Singh, Executive Engineer, Tubewell Division Basti, Sri Vishwanath Gupta Executive Engineer Tubewell Division Sant Kabir Nagar, and nominee of the District Magistrate were Members. Besides other things it is also stated that Sri Rakesh Sharma, the then Superintending Engineer, had written a letter to the Chief Engineer on 22.11.2007 for fresh nomination of Chairman and Member of new Selection Committee by changing earlier Chairman and Members, but finding no response, from, the Chief Engineer, he himself, within his discretion has nominated Chariman and Members of Selection Committee by excluding Sri Angad Prasad, Executive Engineer, Tubewell Division, Siddharth Nagar and Sri Vishwanath Gupta, Executive Engineer. Tubewell Division Sant Kabit Nagar. who were nominated as Chairman and Member in earlier Selection Committee. In the new selection committee, Sri Sohan Ram, Executive Engineer, who was Member of earlier Selection Committee, was nominated as Chairman and Sri Virendra Singh who was member of Earlier committee was again nominated as Member of new Selection Committee besides other new Members, It is also stated that since no inquiry was pending against Sri Sohan Ram, Executive Engineer, and Sri Virendra Singh, Executive Engineer, in respect of earlier selection which was cancelled on 20.11.2007, therefore, aforesaid Chairman and Member of the new Selection Committee cannot be said to be tainted.

25. While making reply of question No2, that what was reason for cancellation of earlier selection held prior to 23.1.2008 and 24.12008, it is stated that earlier select list was published by Sri Angad Prasad the then Chairman of the Selection Committee without prior approval of the Superintending Engineer Tube Well, Circle Basti and it was cancelled on the ground that, it was found tainted. Whereas in respect of reply of question No3 that as to whether the money was demanded by the Selection committee from the Selected candidates, it is stated that there is no material on record on the basis of which it can be held that Selection Committee had demanded any money from selected candidates.

26. However, while replying fourth question that as to whether, selection process was transparent, it is stated that while interviewing the candidates the provisions of SubRule4 (c) of Rule5 of Uttar Pradesh Procedure for Direct Recruitment for

GroupC Posts (Outside the Purview of the Uttar Pradesh Public Service Commission) (First Amendment) Rules, 2003 notified and published on 21.6.2003 in extraordinary Gazette of U.P. have been violated, therefore, Sri Rakesh Sharma, the then Superintending Engineer, has been found prima facie guilty for violation of said rules. It is stated that under aforesaid Rules, it is provided that the marks secured by the candidates under SubRule3 (a), (b) and (c) of Rule5 of rules in question shall not be disclosed to the Chairman and Members of the Selection Committee at the time of interview, but from the perusal of broadsheet, prepared at the time of interview, it appears that the marks obtained by the candidates under the aforesaid provisions of rules were disclosed to the Chairman and Members of the Selection Committee at the time of interview, thus thereby the provisions of the aforesaid rules were violated.

27. While replying the question No 5, that as to whether Virendra Singh, Executive Engineer and Sri Sohan Ram, Executive Engineer are prima facie guilty of committing any irregularity in selection process, it is stated that Sri Sohan Ram, Executive Engineer, chairman, and Sri Virendra Singh Ex Engineer, Member of the Selection committee are not found prima facie guilty of committing any irregularity in selection process. However, it is further stated that marks obtained by the candidates were communicated to the selection committee by the Superintending Engineer, Tubewell circle Basti, resulting which transparency of selection process has been violated.

28. While making reply of question No 6, that as to whether selection was held under supervision of the Superintending Engineer Tubewell circle Basti, it is pointed out as earlier in reply of question No 4 that the provisions of Subrule 4 (c) of Rule5 of Rules in question were violated by the then Superintending Engineer Tubewell Circle Basti, consequently the transparency of selection process was offended. It is also stated that nothing transpires from record, that the selection was held under supervision of the superintending Engineer Tubewell circle Basti. Except the aforesaid comments no other opinion is expressed by the Superintending Engineer in respect of the selection in question in his preliminary report dated 20.5.2009 sent to the Chief Engineer. Therefore in order to arrive at a correct conclusion about the fairness of selection in question, it is necessary to analyse the aforesaid findings of preliminary inquiry report dated 20.5.2009.

29. From a close analysis of the aforesaid report of preliminary inquiry, it is clear that Sri Angad Prasad, Executive Engineer, Tube well Division Siddharth Nagar and Sri Vishwanath Gupta, Executive Engineer, Tube well Division, Sant Kabir Nagar who were respectively Chairman and member of the earlier selection committee were not nominated as Chairman and member of new selection committee in question again, rather they have been excluded therefrom. In new selection committee Sri Sohan Ram, Executive Engineer attached with Tubewell Circle Basti was nominated as Chairman and Sri Virendra Singh, Executive Engineer, Tubewell Division was also nominated as member, therefore the allegation levelled in the complaint, that earlier Chairman and members of

selection committee have been again nominated as Chairman and members of new selection committee, is factually incorrect. It is no doubt true that Sri Sohan Ram, Executive Engineer and Sri Virendra Singh, Executive Engineer were members of earlier selection committee, but no inquiry was found pending against them in respect of earlier selection which was cancelled on 20.11.2007. Beside this, they were also not found prima facie guilty of committing any irregularity nor the new selection committee was found to have demanded money from selected candidates. The finding of preliminary inquiry report to the effect that there is nothing to indicate that the selection in question was held under the supervision of the Superintending Engineer, Tubewell Circle Basti, in my considered opinion, appears to be misconceived and without any legal consequence, which could adversely affect the process of selection particularly in wake of fact that the new selection committee which has held the selection in question was constituted by him.

30. However, so far as violation of provisions of subrule 4 (c) of Rule 5 of Procedure for Direct Recruitment for Group C Posts (First Amendment) Rules, 2003 is concerned, it is to be noted that the recruit on the posts of Tube Mechanics (Nalkoop Mistri) is governed by a set of Rules framed under the proviso to Art. 309 of the Constitution of India namely Tubewell Mistri Service Rules 1951, but since aforesaid service is a Subordinate service and posts falling thereunder come within the purview of Group C posts, therefore, having overriding effect upon the relevant service rules, the recruitment for such posts is governed by the U.P. Procedure for Direct Recruitment for Group C Posts (Outside the Purview of U.P. Public Service Commission) Rules, 2002 as amended from time to time including amended Rule 2003.

31. It is to be noted that, while making comments or reply to the question No. 4 vide his preliminary report dated 20.5.2009 sent to the Chief Engineer, the Superintending Engineer has stated the violation of aforesaid provisions of the rules in the selection in question. Therefore, at this juncture the question which arises for consideration is that as to whether violation of subrule 4 (c) of Rule 5 of (First Amendment) Rule 2003 would ipso facto vitiate the entire selection in question or it requires something more? In order to find out accurate answer to this question, it is necessary to have a survey of Rule 4 of the U.P. Procedure for Direct Recruitment for Group C posts (outside the Purview of U.P. Public Service Commission) Rules 2002 and amended rule 5 of 2003 Rules which reflects entire process of selection for Group C posts under the said rules.

32. Rule 4 of 2002 Rules deals with the determination of vacancies by the Appointing authority for the purpose of selection to be made in the recruitment year. In case Chairman of Selection Committee is an officer other than the Appointing authority, the Appointing authority is required to intimate the vacancies to the Chairman of the Selection Committee who shall thereupon proceed to hold selection according to the procedure prescribed for recruitment under Rule 5 of the said rules. For ready reference the provisions of Rule 4 of 2002

Rules are extracted as under:

"4. The appointing authority shall determine the number of vacancies to be filled during the course of the year as also the number of vacancies to be reserved for candidates belonging to the Scheduled Castes, Scheduled Tribes and other categories in accordance with the relevant service rules. In case the Chairman of the Selection Committee is an officer other than the appointing authority, the appointing authority shall intimate the vacancies to the Chairman of the Selection Committee."

33. By rule 2 of the Uttar Pradesh Procedure for Direct Recruitment for Group C posts (Outside the Purview of the U.P. Public Service Commission) (First Amendment) Rules 2003 the entire provisions of existing Rule 5 of 2002 rules have been substituted by amending rules 2003 as under:

"5.(1) For making direct recruitment the vacancies shall be notified in the following manner:

(i). ;

(ii). ;

(iii)....

(2)

(3)The selection shall carry one hundred marks. The merit list of the candidates shall be prepared in the following manner:

(a) (1) Such posts for which only academic qualifications are prescribed, the marks shall be awarded to each candidate in the following manner:

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(b) Marks to a retrenched employee shall be awarded in the following manner subject to the maximum of fifteen marks:

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(c) Marks to a sportsman shall be awarded in the following manner subject to the maximum of five marks:

(d)

(4)(a) After the results of the evaluations under clauses (a),(b),(c) and (d) of subrule (3) have been received and tabulated, the Selection Committee shall, having regard to the provisions of reservation referred to in rule 4, hold an interview. The number of candidates to be called for interview against the number of vacancies shall be such as is considered appropriate by the Selection

Committee, but in any case it shall not exceed ten candidates for one vacancy.

(b) The interview shall carry fifty marks. Marks at the interview shall be awarded in the following manner:

(i) Subject/General Knowledge Up to ten marks.

(ii) Personality Assessment Up to twenty marks.

(iii) Power of Expression Up to twenty marks.

(c) The Chairman and Members of the Selection Committee shall, in no case, be provided any information with regard to marks obtained by candidates under clauses (a), (b) and (c) of Subrule (3) at the time of interview.

(5) The marks obtained by each candidate at the interview under subrule (4) shall be added to the marks obtained under subrule (3). The final select list shall be prepared on the basis of aggregate of marks so arrived. If two or more candidates obtained equal marks in the aggregate, the candidate senior in age shall be placed higher in the select list."

(6) The select list referred to in subrule (5) shall be forwarded to the appointing authority.

34. From a joint reading of Rules 4 and 5 of the said rules it is clear that appointing authority is obliged to determine the number of vacancies to be filled up during the course of year as also the number of vacancies to be reserved for the candidates belonging to the Scheduled Castes, Scheduled Tribes and other categories in accordance with the relevant service rules and where the Chairman of Selection Committee is an officer other than the appointing authority, the appointing authority shall intimate the vacancies to the Chairman of the Selection Committee who shall thereupon advertise the vacancies and shall proceed to hold selection as provided under Rule 5 as amended by amended Rules 2003.

35. From a careful reading of entire provisions of Rule 5 of Procedure for Direct Recruitment for Group C Posts Rules 2002, which is substituted by Rule 5 of First Amendment Rules 2003, it appears that entire process of selection of candidates has to be carried out by Selection Committee constituted for said purpose. As revealed from subrule 3, of rule 5 of said rules, it appears that the marks of candidates has to be computed in the manner given under clauses (a),(b),(c) and (d) of said rules and under subrule 4(a) of Rule 5 of Amended Rules 2003 it appears that after the result of evaluation under clauses (a), (b), (c) and (d) of subrule 3 have been received and tabulated, the Selection Committee shall having regard to the provisions of reservation referred to in Rule 4 hold an interview. The number of candidates to be called for interview against the number of vacancies shall be such as is considered appropriate by the Selection Committee but in any case it shall not exceed ten candidates for one vacancy. Subrule 4(b) of Rule 5 provides that the interview shall carry 50 marks and

manner of allocation of marks in interview under different heads have also been provided thereunder. Subrule 4(c) of Rule 5 of said rule stipulates that the Chairman and members of Selection Committee shall, in no case, be provided any information with regard to the marks obtained by candidates under clauses (a), (b) and (c) of subrule 3 at the time of interview. Subrule 5 of Rule 5 of 2003 rules provides that the marks obtained by each candidate at the interview under subrule 4 shall be added to the marks obtained under subrule 3. The final select list shall be prepared on the basis of aggregate of marks so arrived. Subrule 6 further provides that select list referred to in subrule 5 shall be forwarded to the appointing authority.

36. Thus, from a careful reading of the aforesaid rules it indicates that the rules are silent as to whether there exist any other separate authority or agency which would undertake the task of evaluation and tabulation of marks secured by the candidates under clauses (a), (b), (c) and (d) of subrule 3 of Rule 5 of the said rules. In absence of any separate authority for said purpose it can be readily assumed that the aforesaid task of evaluation and tabulation of marks of candidates under subrule 3 of Rule 5 of 2003 rules has to be undertaken by the Selection Committee itself. In such situation it is very difficult to assume that while undertaking the aforesaid task, the Selection Committee would not be informed or aware of the marks obtained by the candidates under clauses (a), (b), (c) and (d) of subrule 3 of rule 5 of 2003 Rules. Therefore, in my opinion, legal embargo contained under subrule 4 (c) of Rule 5 of 2003 Rules to the effect that in no case the Chairman and members of Selection Committee shall be provided any information with regard to the marks obtained by the candidates under clauses (a), (b) and (c) of subrule 3 of Rule 5 of the rules in question at the time of interview appears to be impracticable and unworkable unless Rules in question provides for separate authority to carry out the task of evaluation and tabulation of marks of candidates under subrule 3 of Rule 5 of rule in question and after completing the aforesaid task, the said authority would further undertake to withhold the aforesaid information with it and after determination of number of the candidates to be called for interview, they would be forwarded to the Selection Committee.

37. But contrary to it from careful reading of subrule 4 (a) of Rule 5 of the Rules in question it appears that after the result of evaluation under clauses (a), (b), (c) and (d) of subrule 3 have been received and tabulated, the Selection Committee shall having regard to the provisions of reservation hold an interview. The number of candidates to be called for interview against the number of available vacancies has to be determined by the Selection Committee, which does not appear to be practicable unless the Selection Committee peruse or is informed about the tabulated marks obtained by the candidates under subrule 3, and take into account while calling the appropriate number of candidates for interview. In other words unless the selection committee would go through the merit list prepared on the basis of marks obtained by the candidates under subsub rule 3 of rule 5 of the said Rules, it would not be practicable for the

Selection Committee to call the requisite number of candidates for interview which has to be found appropriate by it. It leaves no room for doubt to hold that the Selection Committee being in the helm of affairs of entire process of selection under the existing set of rules of recruitment cannot be prevented from perusing the marks obtained by the candidates under subrule 3 of rule 5 of the rules even if the marks obtained by the candidates are not provided to the Chairman and members of the Selection Committee at the time of interview. Thus, in my opinion, under the existing set of rules, the marks obtained by the candidates under clauses (a), (b) and (c) of subrule 3 of Rule 5 of rules in question cannot be kept secret from the Chairman and members of Selection Committee as it does not appear to be practicable and workable.

38. It is no doubt true that subrule 4(c) of Rule 5 seems to be enacted to maintain secrecy in respect of marks obtained by the candidates under subrule 3 of Rule 5 at the time of interview from Chairman and members of Selection Committee so that the Selection Committee may not be capable to favour the candidates intended to be selected by it by awarding excessive marks to such candidates in interview. But unless there exist any other separate authority/agency for evaluation and tabulation of marks obtained by the candidates under subrule 3 and further such authority/agency would undertake to determine the number of candidates to be called for interview having regard to the number of vacancies available for such selection, it is very difficult to assume that secrecy of marks obtained by the candidates under subrule 3 of Rule 5 of rules in question can be maintained from the Chairman and members of Selection Committee particularly where the same Chairman and members of Selection Committee has to carry out the task of evaluation and tabulation of marks obtained by the candidates under subrule 3 of Rule 5 and further task of determination of number of candidates to be called for interview on the basis of marks obtained by the candidates under subrule 3 of Rule 5 of the said Rules. Therefore, in my opinion, unless it is found that the Selection Committee has unduly favoured the selected candidates by awarding excessive marks to them in the interview, the mere fact that the Chairman and members of Selection Committee have been informed about the marks obtained by the candidates under clauses (a), (b) and (c) of subrule 3 of Rule 5 of rules at the time of interview, as revealed from the broad sheet of selection, would not ipso facto vitiate the selection in question.

39. Now, coming to the facts of the case as revealed from preliminary report of Superintending Engineer dated 20th May, 2009 contained in Annexure CA3 to the supplementary counter affidavit filed on behalf of respondents there is nothing to indicate that the selected candidates have been unduly favoured in interview by awarding excessive marks to them by the Chairman and members of Selection Committee instead thereof it has been shown that the Chairman and members of Selection Committee are not found prima facie guilty of committing any irregularity in process of selection and it was further reported that the Selection Committee has not demanded any gratification/money from the candidates, as such in given facts and circumstances of the case in my

considered opinion the selection in question cannot be held to be tainted on account of any malpractice in said selection. Any alleged irregularity in respect of violation of subrule 4 (c) of Rule 5 of 2003 Rules would not automatically vitiate the entire selection unless any malpractice is found to be proved in the said selection. In given facts and circumstances of the case the decisions of Hon''ble Apex Court cited by learned standing counsel rendered in Union of India and others Vs. Tarun K. Singh and others reported in AIR 2001 SC 2196 and All India SC & ST Employees'' Association and another Vs. A Arthur Jeen and others (2001) 6 SCC 380 have no application, as such can be of no assistance to the case of respondents.

40. In view of aforesaid discussion I am of the considered opinion that the selection in question is fair and proper and cannot be held to be tainted by any malpractice in the process of said selection so as to enable the respondents to record his satisfaction to cancel the said selection. Accordingly, the respondents have no justification to cancel the selection in question and withhold the appointment of selected candidates included in the select list dated 25.01.2008. Since it is not in dispute that the names of the petitioners are found in the select list dated 25.01.2008 as approved by Superintending Engineer, Tube Well, Circle Basti contained in Annexure3 to the writ petition, and I have already quashed the impugned order dated 8.2.2008 passed by respondent no.4 (Annexure3 of the writ petition), therefore, the concerned respondent is directed to offer appointments to the petitioners on the post of Tube Well Mistry within a period of one month from the date of production of certified copy of the order passed by this Court before Superintending Engineer, Tube Well, Circle Basti.

41. With the aforesaid observation and direction, writ petition succeeds and stands allowed.