

(2007) 09 DEL CK 0262

In the Delhi High Court

Case No : Writ Petition (C) No. 5356 of 1999 and CMs No's. 4904 and 10009 of 2007

Rajiv Kumar and Others

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 24-09-2007

Acts Referred:

Constitution of India, 1950 — Article 14, 142, 16

Citation : (2007) 98 DRJ 295 : (2008) 1 ILR Delhi 1167

Hon'ble Judges : Vipin Sanghi, J;A.K. Sikri, J

Bench : Division Bench

Advocate : B.B. Sawhney and Syeda Sabina Haque, for the Appellant; Rekha Palli, Punam Singh and Arun Kumar, Joint Director (Rectt), ESI Corporation, for the Respondent

Final Decision : Dismissed

Judgement

Vipin Sanghi, J.—This writ petition was disposed off by a consent order on 12th January, 2007. Thereafter, the petitioners filed CM No. 4904/2007 for recall of, inter alia, the order dated 12.1.2007 whereby the petition was disposed of and for a decision of the petition on its merits. Another application was also moved by the petitioners being CM No. 10009/07 for certain directions, which will be adverted to later in this judgment. We have heard arguments on the aforesaid two applications and thereafter proceeded to hear the arguments of the parties in the Writ Petition itself, since we were inclined to allow petitioner's application being CM No. 4904/2007 and recall the orders dated 4.1.2007 and 12.1.2007 whereby the petition was disposed of on consent terms and to hear and decide the matter on its merits. We shall deal with the aforesaid applications in greater detail as we go along with this judgment.

2. The Petitioners challenge the order dated 28th June 1999 passed by the Central Administrative Tribunal, Principal Bench, New Delhi in O.A. No. 2025/1998 whereby the Tribunal has dismissed their aforesaid O.A. The

Petitioners were seeking a direction to the Respondents to appoint them to the posts of Allopathic Pharmacists in the office of Respondent No. 3 i.e. Director (Medical) Delhi, ESIC, New Delhi on the basis of the Select list dated 28th June 1998.

3. According to the Petitioners, the Respondents placed a requisition with the Employment Exchange calling for names of duly qualified pharmacists registered with them for consideration for appointment as pharmacist through a selection process as per the recruitment rules. They state that 450 names were sponsored by the Employment Exchange. The Respondents issued interview letters to more than 400 candidates. The selection Board was constituted which interviewed the candidates and on 24th June 1998, the Respondents displayed two lists of selected candidates, one consisting of 21 names of Allopathic pharmacists and the other of one Ayurvedic pharmacist. The Petitioners found their names in the select list of Allopathic pharmacists. However, they were not issued appointment letters. It is contended that since certain influential persons were interested in getting their favourite candidates selected to the posts in question, the Respondents had failed to operate the select list and were now setting up a false defence to deny the applicants the opportunity of being appointed. Consequently, the Petitioners filed the aforesaid O.A. before the Tribunal.

4. The Respondents contended before the Tribunal that there were certain complaints, which were received regarding the selection process for selecting pharmacists. Upon their investigations, the Respondents found that the procedure was not in accordance with the directions issued by the Supreme Court in the case of Excise Superintendent Malkapatnam, Krishna District, A.P. Vs. K.B.N. Visweshwara Rao and Others, in as much as, no advertisement of the vacancies had been issued in the newspapers. Consequently, wide publicity was not given by the respondents as mandated by the law. The Respondents further contended that while awarding marks, the Selection Board did not allot separate marks for different parameters, such as, basic qualifications, added qualifications, experience, performance, etc., It was contended that the award of lump sum marks by the Selection Board was not transparent and was irregular. Consequently, the Respondents had decided not to operate the select list and to cancel the same.

5. The Tribunal rejected the allegations of mala fides made by the Petitioners as being too vague, generalized and non-specific to stand judicial scrutiny. It held that mere placement of a candidate in the select list does not give the candidate an enforceable legal right to be appointed. The Tribunal did not find anything wrong in the conduct of the Respondents in deciding not to operate the select list once they had found that advertisement of the vacancies was not given in accordance with the decision in Malkapattnam (Supra), and that there were other deficiencies in the procedure adopted by the Selection Committee. The Tribunal held that it could not be said that the Respondents had acted illegally, irregularly, or arbitrarily to warrant judicial interference.

6. Coming to the first submission of the petitioner, it is contended that the decision of the Hon"ble Supreme Court in Malkapatnam (Supra) did not mandatorily require notification of the vacancies in the daily newspapers. It merely stated that in appropriate case, in addition to intimation to Employment Exchange, the department or undertaking should call for the names by publication in newspaper having wider circulation and by displaying it on their office notice board, or by announcing in radio or employment news bulletins. It is argued that these modes of communications are illustrative and since vacancies in question had been notified through the Employment Exchange, there was no illegality in the mere failure of the Respondents to notify the said vacancies in the daily newspapers. It was also contended that the fact that about 450 candidates had applied against the notified vacancies, itself shows that there was wide publicity of the vacancies to the public in general. The Petitioners relied on the subsequent decision of the Supreme Court in Arun Tiwari and Ors. v. Zila Mansawi Shikshak Sangh AIR 1998 SC 331 wherein the Supreme Court had held that there are different methods of inviting applications and the method adopted in the exigency of that case could not be labeled as unfair. The selection made on the basis of names sponsored by the Employment Exchange was held as not being ipso facto irregular and/or liable to be canceled. The Petitioners further contended that the procedure adopted during the selection process was not challenged by any deserving candidate on the ground that he had been left out owing to lack of advertisement. The further contention of the Petitioner was that the same method of selection was adopted by the Respondents for purposes of making appointments to the post of ECG Technicians and Drivers on the basis of names of candidates sponsored by the Employment Exchange and interviews conducted by the Respondents. In June - July 1999, a similar process for making appointments was adopted for filling up 2000 posts of Staff Nurses. It was also contended that there was no mandatory requirement for the Selection Board to separately allot marks in respect of each attribute. It was contended that some of the Petitioners had, at the time of filing of the Writ Petition in the year 1999, become over age and stood disqualified from participating in any future process for the said post for no fault of theirs and were being denied appointment due to the scrapping of the Select List.

7. The Respondents filed their reply in the Writ Petition. It is stated that the matter relating to selection of pharmacist was investigated by the Chief Vigilance Officer of ESI Corporation who is of the rank of Joint Secretary to the Government of India. This report of the Chief Vigilance Officer was considered at the highest level in ESI Corporation and in the Ministry of Labour who even consulted with the Ministry of Law before scraping a select List. The select list was cancelled because of irregularities and infirmities in the recruitment and selection process, inasmuch as, the Selection Board;

(i) did not allocate separate marks for qualifications, additional qualifications, type of experience, as in large hospital or a small chemist shop, with the result that it was difficult to say whether any member was carried away by the

interview performance alone, or by the qualification or experience, as the case may be. In the absence of any tabular statement reflecting the comparative merit of candidates based on these criteria it was difficult to assess the relative merit of the candidates with reference to the said criteria/parameters.

(ii) gave unjustified weightage to performance in the interview which was only for a few minutes;

(iii) recommended 23 persons who had work experience of working in some private stores only, as opposed to 6, including 1 ex-serviceman out of 19 candidates, who had work experience in bigger reputed hospitals. In the absence of records, their actual performance in the interview could not possibly be gauged and whether the selection of the said 23 candidates in preference over others having work experience with bigger and better organisations was justified or not could not be stated with certainty.

8. The Respondents also relied on the decision of the Supreme Court in Union Territory of Chandigarh Vs. Dilbagh Singh and others, wherein the Hon'ble Supreme Court has upheld the award of 85% marks on the basis of educational qualifications of candidates, and only 15% marks for performance of the candidates at interviews, in the background that the earlier selection process was cancelled as being dubious.

9. The Respondents further stated that in view of the judgment of the Supreme Court in Malkaptnam (supra), the ESI Corporation had drawn up a detailed recruitment procedure for Group "C and "D" posts, which had been circulated to all field Unions vide letter dated 15.2.1999. The procedure is detailed but precise, mathematical in character and ensures transparency in allocation of marks for distinct parameters of the selection process. The relevant guidelines issued by the Respondents in their communication dated 15.2.1999 reads as follows:

2. The selection procedure as aforesaid had come up for scrutiny before the Supreme Court in the case of Excise Superintendent Malkapatnam, Krishna District, A.P. Vs. K.B.N. Visweshwara Rao and Others, . The Apex Court has laid down therein that even in cases where candidates are called from the Employment Exchange, the department concerned should publish the vacancies through newspapers, radio and television etc., and call for the applications from the general public from open market as well. Accordingly, the Government of India, Ministry of Personnel & Training vide their O.M. Bering No. 14024/2/96, Estt. (D) dated 18.5.98 has stipulated that in addition to notifying the vacancies to Employment Exchange wide publicity should be given to the recruitment notices by publishing an advertisement in the Employment News and displaying such recruitment notices on the office Notice Board.

3. The aforesaid instructions have been adopted and circulated to all the Regional Directors vide this Office letter bearing No. A-36/11/98-Exam, dated 13-07-98. A copy of the same is enclosed for ready reference.

4. In view of the modified requirements of notifying the vacancies in the Employment Exchange, Employment News, office Notice Board, etc., the number of applications received for any post in the Corporation would be very high and in such a case, it would be desirable to shortlist the candidates. It has, therefore, been decided that recruitment in respect of Group "C and Group "D" posts (para-medical, ministerial or otherwise) for which selection was hitherto made on the basis of interview alone, the following procedure shall be adopted.

a. The vacancies shall be notified to the concerned Employment Exchange, Simultaneously, a suitable advertisement shall be published in the Employment News as well. The copy of the advertisement given to the Employment Exchange shall be circulated to all the Offices of the Corporation in the Region for displaying on the Notice Boards. In respect of any recruitment by any authority or the corporation in Delhi, the same shall be circulated to all the offices of the Corporation in Delhi/New Delhi/Noida.

b. The receipt of the applications, scrutiny thereof and finalisation of the applications shall be done by the appointing authority. The candidates, whether sponsored through the Employment Exchange or direct applicants will be asked to send a copy of mark-sheet and other certificates of professional qualification and experience alongwith the application. Those, who possess the minimum essential qualifications alone will be considered for shortlisting.

c. Short listing of the candidates at this stage will be done only on the basis of educational qualification and professional qualification mentioned in para 5 by the appointing authority.

d. Interviews for selection shall be preceded by such shortlisting of the candidates and the number of candidates to be called for interviews shall be ordinarily in the ratio of 1:5. It must be ensured that at the time of the interview, the original certificates of the qualifications given by the candidates are verified.

5. The assessment of the candidates shall be made on the following basis:

(a) Educational Qualifications (the points to be awarded out of-100 on the basis of the percentage of grade of marks obtained by the candidates) 100 marks

(b) Higher/professional Qualifications where applicable, (the points to be awarded out of 100 as per the %age or grade of marks in the qualifying exam by the candidate) 100 marks

(c) Professional experience, (wherever applicable) 20 marks will be awarded for each year of experience. However if the experience is for more than 5 years, 100 marks will be awarded. 100 marks

(d) Interview including practical demonstration. Each member will award the marks and the final marks will be awarded based upon average of marks awarded by each member 100 marks.

6. The reservation for P.H, Sportsman, SC/ST/OBC categories will be made as per

Govt. instructions issued from time to time.

7. After the interview, the final select list shall be drawn by the concerned authority.

8. The concerned authority shall scrutinize the final select list, notify the same to all concerned and thereafter direct the concerned appointing authority to make appointments.

9. The Examination Cell of the Hqrs. Office will assist the concerned authority in all possible ways in the recruitment process and coordinate the work thereof.

10. These instructions shall come into effect immediately and all selections shall henceforth be made only in accordance with these instructions.

11. This issues with the approval of the Director General.

10. The respondents contend that the aforesaid guidelines had been ignored by the Selection Board and consequently there was complete justification in canceling the selection process altogether.

11. Before proceeding with the discussion of the case on merits, at this juncture we think it appropriate to deal with the aforesaid 2 applications filed by the petitioner.

12. This matter came up before the court for hearing on 23.11.2006, when the following order was passed:

Learned Counsel for the Respondent had brought the record in relation to a complaint which had led to initiation of the process of cancellation of the selection. She also pointed out that from the compilation of the interview results, it appeared that some of the candidates did not even produce the original diploma and experience certificates, which was an essential qualification. We find that, out of the 10 Petitioners, 6 Petitioners i.e., 1 to 4, 6 & 10 are prosecuting the petition and other Petitioners are stated to be not interested as of now.

To satisfy our judicial conscience, we have, as a random check called upon Petitioner No. 1 Rajiv Kumar, who as per the notes of the Respondent had failed to produce the original experience and diploma certificates to file an affidavit showing that these were duly produced during the interview and to produce these documents in court.

Renotify on 1.12.2006.

In the meanwhile, Respondent would seek necessary instructions.

13. As would appear, the aforesaid order was passed after perusing the record produced by the Respondents pertaining to the selection process in question. The matter was again taken up after a couple of adjournments on 14.12.2006, when the following order was passed:

Affidavit of Petitioner Nos. 1 to 4, 6 & 10 be filed in terms of the last order. Counsel for the Petitioner will file the copies in court with advance copy of the affidavits and originals of the certificates to counsel for the Respondent, who may in the meanwhile have the genuineness of the same verified. Ms. Palli to obtain further instructions with regard to accommodating these six Petitioners, subject to verification of their certificates and possessing the necessary experience and qualification, as they were suspected of not possessing the same and this was one of the factors which was taken into consideration while canceling the selection process. It has been made clear that in case the Petitioners are engaged, it would be with retrospective effect. Records have been returned to the counsel.

14. The matter was again taken up for hearing on 4.1.2007. After recording the background of the case, with the consent of parties, the court passed the following order:

We had heard counsel for the parties and also perused the record. Without prejudice to the rights and contentions of the parties and with their consent the following order is passed. Presently out of the 10 petitioners there are only 6 petitioners, namely, petitioners No. 1 to 4, 6 & 10, who are seeking employment. As a result of directions given during the hearing of the writ petition, the petitioners were required to furnish their original diploma certificates and experience certificates as the authenticity of the diploma/experience certificates of some of the candidates in the previous selection process was also being questioned. The petitioners assertion is that petitioners No. 1 to 4, 6 & 10 had furnished the original diploma certificates which have since been verified. They also claim to have submitted the experience certificates, some of which, according to learned Counsel for the respondents could not be verified.

Respondents have agreed to grant age relaxation to the aforesaid petitioners, namely, petitioners No. 1 to 4, 6 & 10, who were eligible at the time of last selection in the year 1998. Learned Counsel for the respondent states that a large number of vacancies are available and the petitioners need not entertain any misapprehension of their being prejudiced in any manner and assures that the selection would be impartial. The respondents would complete the entire selection process within 90 days from today. Petitioners No. 1 to 4, 6 & 10 would be sent interview letters within 30 days from today and due regard and consideration would be given to their experience for purposes of selection. The age relaxation to the petitioners have been granted in the peculiar facts of this case and would not operate as a precedent.

Learned Counsel for the petitioners wishes to take instructions whether the aforesaid would be acceptable to his clients as a final resolution of the disputes. List on 8.1.2007 at 2.00 P.M.

15. The matter could not be taken up by the Bench which passed the order dated 4.1.2007 on 8.1.2007 and was taken up on 12.1.2007. The apprehension

expressed by the Petitioners that the Respondents would be prejudiced against them in the selection process, or in the verification of their experience certificates were put to rest. Parties agreed by the consent order dated 24.1.2007 in the aforesaid manner, the Writ Petition was disposed of in terms. The Petitioners were granted liberty to approach the court in case there is any breach of the said order.

16. After the disposal of the Writ Petition, the Petitioners filed CM. No. 4904/2007. This application was filed for seeking recall of the orders dated 4.1.2007 and 12.1.2007 aforesaid. This application was first taken up on 17.4.2007. Delay in filing CM. No. 4904/2007 was condoned.

17. CM. No. 4904/2007 was filed on the premise that contrary to the specific representations made by the Respondents, and the orders passed by this Court that interview letters would be sent to the Petitioners within one month from the passing of the order dated 4.1.2007, no such letters were received by them. Belatedly, on 12.3.2007, they received a communication from the Respondent whereby they were informed that they would be granted age relaxation as per the orders of the court and they were also asked to submit their applications on the prescribed format by 31.3.2007. The Petitioners further complained that contrary to the representations made, that there were large number of vacancies, there were only 17 vacancies of pharmacist (Alopathic) notified which included 1 reserved post of ST, 7 for OBC, 2 for Ex-Servicemen and 1 for Physically Handicapped person. It was contended that the basic premise on which the consent orders dated 4.1.2007 and 12.1.2007 had been passed by the court had been belied by the Respondent. Consequently, the Petitioners sought recall of the order dated-4.1.2007 and 12.1.2007, as aforesaid, and the restoration of the interim orders of status-quo earlier passed in the Writ Petition, as well as the decision on the merits of the case.

18. While issuing notice on CM. No. 4904/2007, this Court recorded the submissions of the Petitioners that in fact, out of 17 notified vacancies, only 6 vacancies are falling in the General category. The submission of the Respondents that vacancies reserved for Ex. Servicemen and Physically Handicapped persons are horizontal vacancies was also noticed. The court directed the Respondents to disclose the details of the vacancies, which are likely to arise based on superannuation, or otherwise, in the next one year and the feasibility of extending the concessions given by the respondents, as recorded in the order dated 4.1.2007 to such future vacancies.

19. While the matter was pending consideration on the aforesaid aspect, the Petitioners filed another application being CM. No. 7278/2007 for seeking early hearing in the matter, this application was taken up on 21.5.2007. The Respondents informed the court that advertisements have already been issued for the notified vacancies and admit cards have been issued to the candidates for written test. It was also recorded that the Respondents had filed the affidavit explaining the reasons for the fall in the number of vacancies from 82 to 17. This

fall was stated to be largely on account of merger and closure of Unit's Dispensaries.

20. The petitioners thereafter filed yet another application being CM. No. 10009/2007. This application had been filed by the Petitioners seeking a direction that they should be issued interview letters instead of being excluded on the basis of written test for short listing of candidates for interview. The basis of this application was, that the consent orders dated 4.1.2007 and 12.1.2007 did not contemplate that the Petitioners would be required to first appear in the written test for short listing before being called for interview, since it was stated by the Respondents that interview letters would be issued to the Petitioner No. 1 to 4, 6 and 10 within 30 days of the passing of the order dated 4.1.2007. The Petitioner contended that they could not be subjected to written test and that they were only to be interviewed apart from being granted age relaxation as per the consent order. They also -Stated that they had been declared unsuccessful in the written test. According to the Petitioners the conduct of the Respondents was not in consonance with the letter and spirit of the understanding reflected in the two orders dated 4.1.2007 and 12.1.2007 passed by this court.

21. The aforesaid CM. No. 10009/2007 was taken up by the court on 25.7.2007 and notice was issued to the Respondents which was accepted by them in court. The Respondents also informed the court that a large number of applications, i.e., over 1400 were received. A written test for short listing the candidates had been held wherein the Petitioner Nos. 1 to 4, 6 and 10 had voluntarily participated, but they had not qualified.

22. From the aforesaid narration of the various proceedings of the court it appears that there is a dispute with regard to the purport of the orders passed on 4th January 2007 and 12th January 2007.

23. From the order dated 4th January 2007, it appears that the Respondent made the following statements/representations:

1. That the Petitioner No. 1 to 4, 6 and 10 would be granted age relaxation, who were eligible on the last selection in the year 1998;
2. That there are large number of vacancies available to be filled up;
3. That the Petitioners need not entertain any apprehension of their being prejudice in any manner and that the selection would be impartial.
4. That the Respondents would complete the entire selection process within 90 days from the date of the order i.e. 4th January 2007.
5. That the Petitioner Nos. 1 to 4,6 and 10 would be sent interview letters within 30 days from the date of the order, and due regard and consideration would be given to their experience for the purposes of their selection.

24. There is no quarrel so far as age relaxation is concerned, since the Respondents have admittedly granted the said relaxation to the Petitioner in

question. However, there seems to be a serious dispute about the requirement of the Petitioners having to sit in a written examination. According to the Petitioners it was represented to them that they would be issued interview letters within 90 days, there was no mention of any written test being conducted for the purposes of short listing candidates for calling them for interview, or subjecting the petitioners to any such written test.

25. The Respondents have, however, sought to justify the holding of the written test on the ground that there were large number of applicants, nearly 1400 in number, who had responded to the advertisement issued by the Respondents for 17 vacancies. Consequently, they had no option but to go in for a written test to short list the candidates.

26. While the Respondents may be justified in conducting a written test to create a short list of more meritorious candidates, a perusal of the order dated 4th January 2007 shows that no such written test was in contemplation in the minds of either of the parties or the court when the said order was passed. At the same time, it was not expressly stated that in case a written test would be held for other eligible candidates, the Petitioners in question would be exempted from the said test.

27. It also appears that the representation held out to the Petitioners by the Respondents on 4th January 2007 and 12th January 2007 was also that there were a large number of vacancies, whereas, as it turned out there were only 17 vacancies in all, which included 11 reserved vacancies (including the 3 horizontal vacancies for ex-servicemen and one handicapped person). There were 6 clear general category vacancies and the Petitioners in question are also 6 in number.

28. From the aforesaid facts and circumstances it appears to us that the representation made by the Respondents on 4th and 12th January 2007, when the aforesaid consent order was passed and the Writ Petition was disposed of, were materially at variance with the factual position (in relation to the number of vacancies) and the conduct of the Respondent (in so far as the Petitioners in question were subjected to written test and not issued interview letters consequent upon their failure in the said test). Normally, we would hold a party to its representation made to the opposite party before the court, and would not permit a party to resile from its representation, but in the facts of this case it appears that the representation that there were a large number of vacancies left to be filled up was made on the basis of the vacancies as they existed prior to the closure/merger of a large number of dispensaries, which led to the reduction in the number of vacancies by 65. The sanctioned strength, due to the aforesaid reasons came down from 341 to 276. The respondents have explained, with documentary proof, that out of these 276 posts, 259 were already filled up, thereby leaving a balance of 17 vacancies only.

29. The misrepresentation by the respondents, regarding the number of vacancies, if any, appears to be a result of a mistake rather than an intentional

attempt on their part to mislead the petitioner or this court. The cause for reduction in the number of vacancies, i.e., closure/merger of dispensaries arose from time to time over the years, and it is not that this reduction has taken place overnight.

30. Moreover, we also find that the petitioners also first opted for a recall of the orders dated 4.1.2007 and 12.1.2007 when they first filed CM. No. 4904/2007. In fact, CM. No. 10009/2007 was not even pressed by the petitioners at the time of argument. That being the position, we are inclined to allow the Petitioner's application for recall of the order dated 4th January 2007 and 12th January 2007.

31. At the same time, we do not find merit in the Petitioner's application being CM. No. 10009/2007 wherein the Petitioners seek issuance of interview letters despite their failure in the written test. This relief in our view is not justified since, as aforesaid, we cannot read into the order dated 4th January 2007 and 12th January 2007, a concession by the Respondents to the effect that Petitioners would be exempted from a written test. The question of grant of any such exemption as on the date of passing of the said orders did not arise, since, that question was not present to the mind of either the parties or the court. From the consent orders it appears that the parties had agreed in principle that the Petitioners would compete with the other applicants/candidates in the selection process and that the only relaxation or advantages that they would get would firstly relate to their age and secondly relate to their experience. The Court while passing these orders could not have intended to reduce the selection process into a farce, or an eye wash, so that only the Petitioners qualify in the said process and get selected. The Petitioners had in principle agreed to be subjected to the selection process, and the mention of the interview process in the consent orders was only indicative of what the parties had assumed the selection process to consist of. That did not prevent the Respondent from resorting to a written examination to narrow down the zone of consideration at the interview stage. As aforesaid, this application was not even pressed by the petitioners at the time of arguments. The relief prayed for in this application, in fact, runs counter to the first Option exercised by the petitioners viz., to seek the recall of the orders dated 4.1.2007 and 12.1.2007. The same is therefore dismissed.

32. In view of the aforesaid we now proceed to decide the Writ Petition on its merit.

33. Malkapatnam (Supra) was a case where the respondents were not considered for selection on the ground that their candidature has not been sponsored by the Employment Exchange. They had applied independently to compete for the selection process to the posts in question. In these circumstances they approached the Tribunal. The Tribunal directed, by interim order, that their candidature should be considered. Many of these candidates got selected and orders were issued to appoint them. The majority view of the Tribunal was that the sponsorship of the candidate through the medium of Employment Exchange was valid and not violative of Article 14 and 16 of the Constitution. The minority

view that the said procedure was violative of Article 14 and 16 of the Constitution. Before the Supreme Court the respondent contended that the restriction of the field of choice to the candidates sponsored through the medium of Employment Exchange denies the right to be considered for employment to a post under the state of the people who cannot reach the Employment Exchange to get their names sponsored and the Employment Exchanges are not adopting fair means and procedure to send the names strictly according to seniority in their record. It was contended by the respondents that the better course would be to adopt both the mediums, namely, of Employment Exchange and publication in the newspaper and that would subserve the public purpose better. The Supreme Court accepted the aforesaid submissions of the respondent in the following words:

Having regard to the respective contentions, we are of the view that contention of the respondents is more acceptable which would be consistent with the principles of fair play, justice and equal opportunity. It is common knowledge that many a candidates are unable to have the names sponsored though their names are either registered or are waiting to be registered in the V employment exchange, with the result that the choice of selection is restricted to only such of the candidates whose names come to be sponsored by the employment exchange. Under these circumstances many a deserving candidate are deprived of the right to be considered for appointment to a post under the State....

34. From the aforesaid, it is evident that the Supreme Court in exercise of its powers under Article 142 of the Constitution of India issued clear directions that it would be mandatory for the requisitioning authority which wishes to fill posts, to not only intimate the Employment Exchange but also, in addition, to undertake the publication in the newspapers having wider circulations, and to display on their office notice boards or announce on radio and employment news bulletins to call for names of eligible candidates. In our view, it cannot be said that the aforesaid directions of the Hon'ble Supreme Court were not binding on the respondents. The Respondent is, undoubtedly an instrumentality of the State and the posts that it fills up are open to be filled up by the public at large. All authorities are bound to follow the directions issued by the Supreme Court and such directions are binding and enforceable by virtue of Article 142 of the Constitution of India. Moreover, as a matter of fact, the respondents had itself adopted and circulated guidelines for compliance to all its Units on 15.2.1999 in the light of the Supreme Court decision in *Malkapatnam* (Supra). The Officers of the respondent and of selection boards constituted for making recruitments were bound to follow the said guidelines which clearly stipulates that "the vacancies shall be notified to the concerned Employment Exchange. Simultaneously, a suitable advertisement shall be published in the employment news as well. The copy of the advertisement given in the Employment Exchange shall be circulated to all the offices of the Corporation in the Region for displaying on the Notice Board. In respect of any recruitment by any authority of the Corporation in Delhi, the same shall be circulated to all the Offices of the Corporation in Delhi/New

Delhi/Noida."

35. Admittedly, the aforesaid guidelines was not complied with by the Selection Board in the present case.

36. The reliance placed by the petitioners on the decision of the Supreme Court in *Aran Tiwari (Supra)* is misplaced for two reasons; firstly, a perusal of that decision shows that in the peculiar facts of that case, since the procedure of inviting applications only from Employment Exchange instead of by advertising "has been resorted to looking to the requirements of a time bound scheme", only for the year 1993, the Supreme Court held that the said procedure was not unfair. Moreover, the Supreme Court upheld the procedure adopted in *Aran Tiwari (Supra)* since at the relevant time, when the applications were invited in that case, the earlier decision in *Union of India (UOI) and Others Vs. N. Hargopal and Others*, and *Delhi Development Horticulture Employees' Union Vs. Delhi Administration, Delhi and others*, were in vogue and the decision in *Malkapatnam (Supra)* was pronounced only on 22nd August 1996, whereas the recruitment process in *Aran Tiwari (Supra)* was undertaken in 1993. Secondly, *Aran Tiwari (supra)* is not relevant for the reason that in the case of the respondent, specific guidelines had already been circulated on 15.2.1999 i.e. prior to the process undertaken by the respondents wherein the petitioners claimed to have been selected, which even according to the petitioner, took place in March-April 1999.

37. In support of his proposition that the awarding of lump sum marks by the interview Board was legal and justified, learned senior counsel for the petitioners relied upon *Madan Lal and Others Vs. State of Jammu and Kashmir and Others*,

38. In the guidelines dated 15th February 1999, it clearly provides that the assessment of the candidates shall be made on the following basis:

(a) Educational Qualifications (the points to be awarded out of 100 on the basis of the percentage of grade of marks obtained by the candidates) 100 marks

(b) Higher/professional Qualifications where applicable, (the points to be awarded out of 100 as per the %age or grade of marks in the qualifying exam by the candidate) 100 marks

(c) Professional experience, (wherever applicable) 20 marks will be awarded for each year of experience. However if the experience is for more than 5 years, 100 marks will be awarded. 100 marks

(d) Interview including practical demonstration. Each member will award the marks and the final marks will be awarded based upon average of marks awarded by each member 100 marks.

39. Consequently, the guidelines themselves prescribe the different parameters that the Selection Board must take into consideration while assessing the candidates, and the maximum marks in respect of each of the parameters are also prescribed. The members of Selection Board are therefore required to award

marks to the candidates being invited on these parameters. Under attribute (d) i.e., "interview including practical demonstration" it clearly provides that each member will award the marks and the final marks will be awarded based upon average of marks awarded by each member. Consequently, each member of the Selection Board ought to have awarded separate marks for "interview including practical demonstration" which should then have been aggregated to arrive at the average. However, this has admittedly not been done in the present case. This procedure apparently was introduced to bring in objectivity and transparency in the functioning of the Selection Board so that the Selection remains fair and above board. The decision in Madan Lal (supra) does not apply to the facts of the present case, inasmuch, as in that case the Supreme Court held that the concerned rule regarding viva-voce test i.e. Rule 10(i)(b), which lays down "The object of viva-voce examination is to assess the candidates' intelligence, general knowledge, personality, aptitude and suitability", "does not provide for any separate assessment of marks for candidates at viva-voce examination faculty wise, that is on intelligence, general knowledge, etc., listed in the said rule. On the contrary, it appears that as per the said rule, while conducting the viva-voce examination the Committee has to keep in view the main object of assessing such candidate in the light of the guidelines given therein. In other words, the interviewing committee has to keep in view the overall performance of the candidates at the oral interview and while doing so their intelligence, general knowledge, personality, aptitude and suitability have to be kept in the centre. The rule merely lays down the object of assessing such candidates in the viva voce examination. It is a general guideline given to the interviewing committee members. Therefore, it is not possible to agree with the submission of the senior counsel for the petitioners that the members of the interview committee must separately assess and give marks on different listed topics faculty wise as per the said rule."

40. We also notice that the Supreme Court in Madan Lal (Supra) distinguished the earlier decision in Minor A. Peeriakaruppan and Sobha Joseph Vs. State of Tamil Nadu and Others, which concerned admissions to the MBBS course in the State of Tamil Nadu. In Peeriakaruppan (Supra) the Supreme Court had held that the Selection Committee ought to have awarded separate marks for different attributes. In Madan Lal (Supra) the Supreme Court held that since the Selection Committee in Peeriakaruppan (Supra) was asked to award marks on the basis of different attributes, namely, (1) Sports or National Cadet Corps Activities; (2) Extra Curriculars Special Services; (3) general physical condition and endurance; (4) General ability and (5) Aptitude. The Selection Committee acted illegally in awarding lump sum marks and not awarding marks under the various heads item wise. As aforesaid, in the present case, the Selection Board was required under the guidelines, to separately assess the candidates, inter-alia, for "interview including practical demonstration". The present case is therefore more akin to the fact situation in Peeriakaruppan (Supra) than to the facts of Madan Lal (Supra).

41. In view of our aforesaid discussion, we are of the view that the respondents were entirely justified in cancelling the Selection Process in question.

42. Apart from the aforesaid reasons there are few other reasons why we must decline any relief to the petitioners in the present case. The respondent clearly acted bonafide while deciding to cancel the selection process altogether. It acted on the basis of complaints, the consequent enquiry report and its reasonable understanding of the judgment of the Supreme Court in Malkapatnam (supra), and the breach of its guidelines dated 15.2.1999. The decision of the respondents in this regard cannot be said to be unreasonable or arbitrary.

43. Firstly, unless the decision of the respondent can be said to be arbitrary or mala fide, their administrative decision to scarp the selection process, which is based on the materials on record, has to be respected and cannot be interfered with.

44. Secondly, a candidate placed in the Select List has no right to seek a claim for being appointed, particularly, when the Select List is not operated at all and the entire selection process has been quashed [see Union Territory of Chandigarh Vs. Dilbagh Singh and others, A recruitment process can be recalled by the Government at any time before a candidate has been appointed. Where a recruitment process is recalled or terminated on a policy decision, a candidate participating therein has no right to get the process completed. The decision may only be assailed on grounds of malafide or arbitrariness and the Government may be called to justify its action on the touchstone of Article 14 of the Constitution [see S. Prakash and Another Vs. K.M. Kurian and Others, In the present case we do not find any malafide or arbitrariness in the decision of the Respondents.

45. Thirdly, in view of our discussion herein above, the selection process in question was initiated in early 1990. About 8 years have already passed since then. In the meantime, there would be hundreds if not thousands of other persons, who have become eligible to participate in and get selected in a fresh selection process. Even if the submissions of the petitioners were to be accepted, based on their reading of Malkapatnam (Supra) and Madan Lal (Supra) in our view, the respondents cannot be directed not to hold the fresh selection process without operating the previous selection panel or for placing the petitioners in the interview stage of any fresh process or in a fresh list prepared, for that would be inducting them via backdoor. This is clearly impermissible in our constitutional scheme [see Surendra Prasad Tewari Vs. Uttar Pradesh Rajya Krishi Utpadan Mandi Parishad and Others,

46. For the reasons aforesaid, we see no merit in the petition and dismiss the same.

47. No costs.