

(2018) 09 GAU CK 0051
In the Gauhati High Court
Case No : Civil Writ Petition No. 853 of 2017

Shehnaz Begum

APPELLANT

Vs

State Of Assam And 17 Ors

RESPONDENT

Date of Decision : 25-09-2018

Acts Referred:

Indian Penal Code, 1860 — Section 387
Prevention of Corruption Act, 1988 — Section 7
Assam Public Service Commission (Procedure and Conduct of Business) Rules, 2010 — Rule 21(i), 23, 27, 28, 28(iii)
Punjab. Development and Panchayats (Class-II) Service. Rules, 1974 — Rule 5
Constitution of India, 1950 — Article 14, 320

Citation : (2018) 09 GAU CK 0051

Hon'ble Judges : Suman Shyam, J

Bench : Single Bench

Advocate : B.D. Das, H.K. Sarma, K.N. Choudhury, M. Choudhury

Final Decision : Disposed Off

Judgement

1. Heard Mr. B.D. Das, learned Sr. counsel assisted by Mr. H.K. Sarma, learned counsel for the writ petitioner. Also heard Mr. K.N. Choudhury,

learned Sr. counsel for the respondent Nos. 5, 8, 10, 12, 14, 15, 17 and 18, Mr. M. Choudhury, learned Sr. counsel appearing for the respondent No.

16, Mr. A. Matin, learned counsel representing the respondent Nos. 6, 7, 9 and 13, Mr. U. Dutta, learned counsel for the respondent No. 11 and Mr.

S.S. Roy, learned Govt. Advocate appearing for the respondent Nos. 3 and 4. Mr. R.K. Talukdar, learned standing counsel, APSC has appeared on

behalf of the respondent No. 2.

2. The facts of this case, as projected through the pleadings, are that the writ petitioner was earlier engaged as a District Vector Borne Disease

Consultant (DVBDC) under the National Vector Borne Diseases Control Programme (NVBCP) in the district of Nagaon by the order dated 02-11-

2012 pursuant where to, she had joined on 03-11-2012. Although the initial engagement of the petitioner was for a period of one year, yet, her

engagement as above had been extended by the authorities from time to time and that is how the petitioner is still working as a DVBDC. On 15-12-

2012, the Assam Public Service Commission (APSC) had issued an advertisement inviting applications for filling up various posts which included the

14 (fourteen) posts of District Malaria Officer under the Health and Family Welfare (A) Department, Assam. Responding to the said advertisement,

the petitioner had submitted her application and thereafter, took part in the screening test conducted by the APSC under Roll No. 0000814. The result

of the screening test was declared on 21-08-2015. Since the petitioner had qualified in the screening test, she was called for the viva-voce test to be

held on 18-09-2015. Accordingly, the petitioner had appeared in the viva-voce test and she claims to have fared well in the interview. But, when the

select list of candidates was published on 17-08-2016, the petitioner's name did not feature therein. Aggrieved thereby, the petitioner has

approached this Court by filing the instant writ petition assailing the entire selection process terming it as illegal.

3. The challenge made to the select list appears to be on two counts. Firstly, the APSC had prepared the final select list only on the basis of marks

obtained by the candidates in the viva-voce test by ignoring their scores in the written test. According to the petitioner, had the final select list been

prepared on the basis of the aggregate of scores of the written test as well as viva-voce/ interview then the total marks obtained by her would have

secured a place to the petitioner in the select list. Secondly, the petitioner claims that the selection process itself was vitiated by corrupt practices

indulged at the instance of the one of the members of the Interview Board, inasmuch as, she claims to have received a phone call from an unknown

number asking for money so as to ensure her selection. According to the petitioner, the caller was later identified as one Mofidul Islam, who was

serving as Forest Range Officer and shared close relation with one of the members of the Interview Board. Upon obtaining such information, the

petitioner had lodged an FIR dated 17-11-2016 before the Addl. Director General of Police, Vigilance and Anti-corruption, Assam, reporting the

incident, based on which, ACB P.S. Case No. 18/2016 has been registered under Section 387 of the Indian Penal Code (IPC) read with Section 7 of

the Prevention of Corruption Act, 1988 and the matter is currently under investigation by the Anti-corruption Department.

4. Mr. B.D. Das, learned Sr. counsel appearing on behalf of the writ petitioner has placed heavy reliance on the decision of the Supreme Court in the

case of *Ajay Hasia and Ors. Vs Khalid Mujib Sehravardi* reported in (1998) 1 SCC 722 to argue that in view of the law laid down by the Supreme

Court in the aforesaid decision, the merit list prepared only on the basis of viva-voce marks was impermissible in the eye of law thereby, having a

vitiating effect on the entire selection process. By relying upon two other decisions of the Supreme Court rendered in the case of *Director General,*

Indian Council for Agricultural Research & Ors. Vs. D. Sundara Raju reported in (2011) 6 SCC 605 as well as the decision of the Supreme Court in

the case of *Satpal & Ors. Vs. State of Haryana & Ors.* reported in 1995 Supp. (1) SCC 206, Mr. Das has further contended that law is well settled

that allocation of higher marks in the interview brings in an element of arbitrariness in the selection process. In the present case, submits Mr. Das,

since the merit of the candidates have been assessed solely on the basis of marks obtained in the interview, the select list prepared on the basis of

such a selection process was liable to be set aside by this Court as being in violation of the law laid down by the Supreme Court in the aforesaid

decisions. It is also the submission of Mr. Das that the phone call made by Mofidul Islam to the petitioner leading to her lodging the FIR dated 17-11-

2016 was sufficient ground to presume that the selection process was vitiated by wide scale irregularities. To buttress his argument, Mr. Das has also

submitted that there are media reports of rampant corruption in the various selection process conducted by the APSC during the relevant period,

which fact is also established from the charge-sheet filed by the police in connection with Dibrugarh P.S. Case No. 936/2016 and therefore, no further

enquiry was called for in this case so as to declare the selection process as illegal. On the basis of such argument, Mr. Das has prayed for setting

aside the entire selection process and has further submitted that a direction be issued for advertising the vacancies afresh.

5. Leading the arguments on behalf of the selected candidates, Mr. K.N. Choudhury, learned Sr. counsel, on the other hand, has submitted that the

rules framed by the APSC provides for holding a screening test for short-listing the candidates to be called for the viva-voce test and the petitioner

having participated in the screening test and the viva-voce interview, cannot now turn around and question the validity of the selection process which

had been conducted in terms of the applicable rules. Responding to the arguments made by the petitioner's counsel, Mr. Choudhury submits that

the decision in the case of Ajay Hasia (Supra) was rendered in the context of the admission procedure to be adopted in the Engineering College in

question and in that case there was no rules providing for selection of candidates only on the basis of oral interview. The learned Sr. counsel submits

that since in the present case the rules itself provide for holding a written test only for the purpose of screening of candidates, no illegality can be said

to have been committed by the APSC in preparing the select list based on marks obtained in the viva-voce test. Mr. Choudhury has further argued

that the allegation as regards the demand of money from the petitioner by one Mofidul Islam can at best be a matter of investigation by the Police in

connection with the case registered on the basis of FIR lodged by the petitioner on 17-11-2016 but the same cannot be a ground to set aside the select

list, particularly when the future of 14 selected candidates are at the stake in this case. The learned Sr. counsel has, however, fairly submitted that he

would have no objection if the writ petition is disposed of by making the appointment of his clients subject to the outcome of the investigation

conducted by the police in connection with the ACB P.S. Case No. 18/2016.

6. Joining issues, Mr. Manish Choudhury, learned Sr. counsel representing the other set of selected candidates has referred to the decision of the

Supreme Court in the case of Madhya Pradesh Public Service Commission Vs. Navnit Kumar Potdar and Anr. reported in (1994) 6 SCC 293 to argue

that the selection of candidates solely on the basis of marks obtained in the interview/ viva-voce test is a permissible mode of selection if the rules

provide so and in the present case, since the rules permitted the same, no illegality can be found with the process merely on the ground that the marks

obtained in the written test had not been finally added while preparing the select list.

7. Mr. Talukdar, learned standing counsel, APSC has relied upon the counter affidavit filed by the Secretary of the Commission to argue that the

selection process had been carried out strictly in compliance with the provision of the rules. Since the rules had provided for conducting a screening

test of candidates for holding interview/ viva-voce, hence, the Commission followed the said procedure.

8. Learned counsel for the remaining private respondents have adopted the submission advanced by the learned Sr. counsel appearing for the private respondents.

9. At the very outset, it needs to be noted herein that the selection of candidates was conducted by the APSC in accordance with the provisions of

Assam Public Service Commission (Procedure and Conduct of Business) Rules, 2010 (hereinafter referred to as the Rules of 2010), which was

notified on 02-08-2010. The said rules have been framed under the powers conferred by the proviso to Article 320 of the Constitution of India. It is not

in dispute that when the advertisement notice dated 15-12-2012 was issued, the Rules of 2010 were in force.

10. Chapter-III of the Rules of 2010 deals with the procedure for direct recruitment. As per Rule 21(i), the Chairperson of the Commission is required

to constitute the Boards for interview/ viva-voce test of candidates for various posts for which selection is to be made. Rule 23 provides that the

programme for interview shall be fixed by the Chairperson. Rule 27 lays down the procedure for holding the screening test where a large number of

applications are received. Rule 27 is quoted herein below for ready reference:

27. Where a large number of applications are received as a result of advertisement, the Commission may shortlist the candidates on the basis of

their marks in the qualifying academic examination required for a post in terms of advertisement. The Commission may thereafter call for interview

adequate numbers of eligible candidates in order of merit keeping in view the existing reservation policy of Govt.

11. Rule 28 lays down the proportion that is to be maintained by the Commission for short-listing of candidates for interview and as per Rule 28(iii), the

Commission can hold written examination for short-listing of candidates for interview.

12. Chapter-IV of the Rules deal with Combined Competitive Examination and from a plain reading of the various provisions contained in Chapter- IV,

it is apparent that for the purpose of holding the Combined Competitive

Examination, there is a provision for preliminary examination for short-listing candidates who would then be called for taking part in the written test and interview/ viva-voce. Thus, from a perusal of the various provision of rules, it is apparent that the marks obtained in the written test and interview would have to be counted in case of Combined Competitive Examination conducted under Chapter- IV but the same is not true in case of the selection procedure to be followed for direct recruitment under Chapter- III, where-under, the select list can be prepared on the basis of marks obtained in the viva-voce.

13. As noted above, Rule 28 (iii) under Chapter- III requires holding of written test only for the limited purpose of short-listing of candidates to be called for interview. There is nothing in the Rules coming under Chapter- III which requires the Commission to give credit to the candidates in respect of the marks obtained in the screening test. If that be the case, the preparation of select list dated 17-08-2016 based only on the marks obtained by the candidates in the interview/ viva-voce test would have to be held as a permissible mode under the applicable Rules.

14. In the context of the discussions made hereinabove, it would further be pertinent to note herein that the advertisement notice dated 15-12-2012 had also clearly mentioned that the Commission may shortlist the number of candidates either on the basis of their marks obtained in the qualifying academic examination required for the post or by holding written examination, which will be notified in due course. Being fully aware of the said conditions, the writ petitioner has not only participated in the written test but has also appeared in the interview/ viva-voce test without any protest.

15. In the case of *Ajay Hasia (Supra)* the Honâ??ble Supreme Court has held that preparation of select list solely on the basis of oral interview was impermissible in the eye of law. In that case, the petitioners had applied for admission in the Engineering College to the first semester of B.E. and had appeared in the written test consisting of 100 marks and interview consisting of 50 marks, but could not get selected. Alleging violation of their rights guaranteed under Article 14, the petitioners there-in had challenged the selection process firstly for ignoring the marks obtained in the written test, secondly for relying only on viva-voce marks for determining the final merit position, thirdly for awarding such high mark of 50 for viva-voce as

against 100 marks for written test and lastly for holding superficial interview lasting only 2 to 3 minutes. Taking note of the facts and circumstances of that case, the Supreme Court had observed that in the matter of admission to college or even in the matter of public employment, the oral interview test should not be relied upon as the exclusive test. What needs to be noted herein is that unlike in the present case, there was no Rules governing the selection process in the case of Ajay Hasia (Supra) permitting final selection of candidates only on oral interview. Since, the selection was made solely on the basis of marks obtained in the viva-voce test, this cannot also be termed as a case of allocating excessive marks for the interview as compared to the marks in written test.

16. In another decision of the Supreme Court rendered in the case of Praveen Singh Vs. State of Punjab & Ors. reported in (2000) 8 SCC 633, the recruitment process conducted solely on the basis of interview/ viva-voce test by ignoring the marks obtained in the written test was interfered by the court on the ground that the selection could not have been made exclusively on the basis of the viva-voce ignoring the marks obtained in the written test. But what must be noted herein that in that case also, Rule 5 of the Punjab Development and Panchayat Class-II (Services) Rules had prescribed that percentage of marks obtained in the aggregate in the written examination was a condition for appearing in the viva-voce test. It was on an interpretation of the relevant Rules that the Supreme Court had held that some percentage of the marks obtained in the written test ought to be added to the score in the viva voce test for preparing the merit list.

17. There is no dispute in this case about the fact that the select list had been prepared only on the basis of the marks obtained in the viva-voce test.

Therefore, there can hardly be any doubt about the fact that the recourse adopted by the APSC in preparing the select list solely on the basis of marks obtained in the viva-voce test is not in consonance with the letter and spirit of the decision in the case of Ajay Hasia (Supra). But as noted above, in this case the Rules permit such a recourse and the writ petitioner has also failed to make challenge to the validity of the said Rules in this writ petition.

As such, the ratio of the decision in the case of Ajay Hasia (Supra), in my considered opinion, would not have any application in the facts of this case.

18. In the case of Madhya Pradesh Public Service Commission (Supra) relied

upon by Mr. Manish Choudhury, the Supreme Court has held that screening test or written test for conducting interview is permissible where the statutes or prospectus which governed the selection of the candidates provided so but when the selection is to be made only on the basis of interview, the Commission or the Selection Board can adopt any rational procedure to fix the number of candidates who should be called for interview. The Apex Court has, however, observed that the interview/ viva-voce test must be carried out in a thorough and scientific manner in order to arrive at a fair and satisfactory evaluation of the personality of the candidates.

I find that the ratio of this decision would help the case of the selected candidates rather than the writ petitioner.

19. Coming to the second limb of attack made to the select list, according to the petitioner she had received an anonymous phone call demanding money from her on 16-08-2016 but the matter was admittedly reported by her to the Vigilance and Anti-corruption Branch by lodging an FIR only on 17-11-2016, i.e. after about 03 months from the date of the alleged incident. There is no explanation in the writ petition as to the reason for the delay in reporting the matter to the police.

20. I also find from the record that on 21-11-2016, the petitioner had submitted a representation before the Commissioner & Secretary to the Govt. of

Assam, Health and Family Welfare Department requesting him to institute an enquiry into the selection process and also to stop the appointment of the

14 selected candidates. Thereafter, on 31-01-2017, another representation was submitted by the petitioner before the Chairman and the Secretary of

the APSC with a prayer for cancellation of selection process. The question that would, therefore, invite the attention of this court is that if the

petitioner had indeed received an anonymous phone call demanding money from her for ensuring a berth in the select list on 17-11-2016 i.e. before the

publication of the select list, then why had she remained silent for nearly three months before lodging the FIR since it was a very serious matter. The

writ petition is totally silent on the aforesaid aspect of the matter and the learned Sr. counsel appearing for the writ petitioner also could not give a

convincing reply to the query made by this Court on such count.

21. In the instant case there is no allegation that the candidates who had scored less than the writ petitioner in the viva-voce have been selected. It is

also not the case of the petitioner that she had been assessed improperly by the Interview Board or that the selection procedure was contrary to the provisions of the Rules. The allegation made by the petitioner as regards phone call demanding money, no doubt, raises strong suspicion as regards the validity of the selection process. But as noted above, the said allegation is a matter of investigation by the Police and at this stage, it would not be possible for this court to take a conclusive view in the matter based on the materials available on record. Since, the matter is stated to be still under investigation, this court refrains from making any further comment on the validity of the allegation made by the petitioner.

22. For the reasons stated above, this court is of the opinion that the writ petitioner has failed to make out a case meriting interference with the select list dated 17-08-2016 by this court. As such, the relief as prayed for by the petitioner is declined.

23. Before parting with the record, it would be necessary to clarify herein that the discussions, observations and findings of this Court recorded in the foregoing paragraphs must be understood strictly in the context of the merit of the challenge made in the writ petition and those observations and findings shall in no way come in the way of the investigation in connection with the ACB P.S. Case No. 18/2016, which is stated to be under progress, nor shall it prevent the authorities from taking an independent view as regards the validity of the selection process depending upon the materials that may become available before them at any subsequent stage. With the above observation, this writ petition stands disposed of. No order as to cost.