
(2013) 09 OHC CK 0003
In the Orissa High Court
Case No : RVWPET No"s. 24 and 25 of 2013

Shri Niranjana Sethi

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 24-09-2013

Acts Referred:

Citation : (2013) 09 OHC CK 0003

Hon'ble Judges : Pradip Mohanty, Acting C.J.; Biswajit Mohanty, J

Bench : Division Bench

Advocate : Ganeswar Rath, for the Appellant; S.D. Das, Asst. Solicitor General of India for Opposite Party Nos. 1 and 2, Additional Government Advocate for Opposite Party Nos. 3 to 5, Mr. S.K. Padhi, S.K. Singh and Miss. S. Das, T.K. Kamila for Opposite Party No. 6 in RVWPET No. 24 of 2013 and Opposite Party No. 7 in RVWPET No. 25 of 2013 and Shakti Prasad Panda and R.R. Swain for Opposite Party No. 6 in RVWPET No. 25 of 2013, for the Respondent

Final Decision : Dismissed

Judgement

Biswajit Mohanty, J.—Both the Review Petitions have been filed by one Niranjana Sethi with a prayer to review the common judgment dated 21.12.2012 passed by this Court in W.P. (C) Nos. 24325 and 24106 of 2011 and confirm the order dated 22.6.2011 passed by the Central Administrative Tribunal, Cuttack Bench, Cuttack in O.A. No. 33 of 2011. Said Niranjana Sethi was opposite party No. 6 in W.P. (C) Nos. 24325 and 24106 of 2011 and an applicant in O.A. No. 33 of 2011 before the learned Tribunal. Shortly stated the undisputed facts are as follows:

The Government of Orissa in General Administrative Department vide its letter dated 17.7.2010 called for nomination of Non-State Civil Service Officers for consideration of appointment to two posts of Indian Administrative Service for the year 2010. The above noted selection to Indian Administrative Service is guided by the Indian Administrative Service (Appointment by Selection) Regulations, 1997 (in short "1997 Regulations"). The said Regulations refer to a Committee in Regulation-2(a). Regulation-2(a) makes it clear that "Committee"

means the committee constituted under Regulation-3 of the Indian Administrative Service (Appointment by Promotion) Regulations, 1955 (in short "1955 Regulations"). Regulation-3 of 1955 Regulations provides for constitution of a committee to make selection and refers to the Schedule which contains details of members of the Committee. The Committee indicated at Sl. No. 3 of the Schedule is relevant for the present purpose. As per the said Schedule, it has to consist of Chairman of UPSC/his representatives, Chief Secretary of State Government, Senior-most officer of the Cadre serving in the State, other than the Chief Secretary, Heads of General Administrative Department/Personnel Department/Revenue Department of State Government not below the rank of Secretary and two nominees of Government of India not below the rank of Joint Secretary. Thus the Selection Committee consists of very high officials. 1997 Regulations prescribe different stages for selection. Regulation-4 of 1997 Regulations makes it clear that the number of persons proposed for consideration of the Committee shall not exceed five times number of vacancies proposed to be filled up during the year. Thus it prescribes an outer limit with regard to number of persons to be considered. Regulation-5 of 1997 Regulations states that the Committee shall meet every year to consider proposal of the State Government made under Regulation-4 of 1997 Regulations and recommend the names of persons not exceeding the number of vacancies for appointment to IAS. Regulation-5 is the most important Regulation as it speaks of preparation of a list of suitable officers after scrutiny of service records and personal interview.

In the present case, the dispute started with non-recommendation of the name of Niranjn Sethi under Regulation-4 of 1997 Regulations. In fact, initially, the name of said Niranjn Sethi was recommended but later a revised list of 9 officers was forwarded excluding the name of said Niranjn Sethi as some of his official actions were under investigation by the Vigilance Department. Accordingly, 9 officers whose names appeared in the revised list, were directed to appear before the Selection Committee. Against such action, said Niranjn Sethi submitted a representation and later approached the Central Administrative Tribunal, Cuttack Bench, Cuttack by filing Original Application No. 718 of 2010. The Tribunal disposed of the said Original Application directing the Union Public Service Commission to consider the representation of Niranjn Sethi. UPSC rejected his representation on 19.1.2011. Upon rejection, said Niranjn Sethi filed O.A. No. 33 of 2011 before the Central Administrative Tribunal, Cuttack Bench, Cuttack. In the meantime, on 9.11.2010, the Selection Committee held its meeting for preparing a list of suitable officers as required under 1997 Regulations by scrutinizing service records and by holding personal interview. Nine officers as indicated above appeared in the said personal interview. Accordingly, Niranjn Sethi filed the above O.A. No. 33 of 2011 with the following prayers:

(i) To declare the Selection Committee meeting held on 9th November, 2010 for appointment to IAS in terms of "Indian Administrative Service (Appointment by Selection) Regulations, 1997" as illegal, arbitrary and ab initio void being

contrary to the Regulation and direct the Respondents to conduct selection afresh;

(ii) To quash the order of rejection under Annexure- A/6 on 19th January, 2011 being contrary to the Rule, law and without due application of mind;

(iii) And/or to direct the Respondent to consider the case of the Applicant for appointment to IAS as per "Indian Administrative Service (Appointment by Selection) Regulations, 1997" against the two vacancies of IAS 2010; and

(iv) to pass any other order/orders as deemed fit and proper.

Though in the said Original Application filed by Niranjn Sethi, it was made clear at Paragraph-4.6 that the Selection Committee sat on 9.11.2010 interviewed 9 officers, however, despite praying for declaring the Selection Committee meeting held on 9.11.2010 as illegal; Niranjn Sethi did not make those 9 officers as parties in the said Original Application. Later on, it appears that two out of the 9 officers who attended the interview, intervened in the matter and were added as respondent Nos. 6 and 7, namely, Gopabandhu Sathpathy and Pradeep Kumar Biswal. Still 7 officers who participated in the selection were left out and were not made parties in O.A. No. 33 of 2011.

W.P. (C) Nos. 24325 and 24106 of 2011 out of which the present Review Petitions arise, were filed by Gopabandhu Satpathy and Pradeep Kumar Biswal respectively. Said Gopabandhu Satpathy and Pradeep Kumar Biswal are opposite party Nos. 6 and 7 in Review Petition No. 24 of 2013 and opposite party Nos. 7 and 6 in Review Petition No. 25 of 2013. The Tribunal vide its order dated 22.6.2011 allowed Original Application No. 33 of 2011 holding that the selection held on 9.11.2010 for filling up two posts of I.A.S. from Non-State Civil Service Officers is unsustainable in the eyes of law and directed the official respondents to conduct selection afresh confining the same to originally recommended 10 officers including Niranjn Sethi, as indicated in Annexure-A/1 of O.A. No. 33 of 2011. Challenging the same, Gopabandhu Satpathy filed W.P. (C) No. 24325 of 2011 and Pradeep Kumar Biswal filed W.P. (C) No. 24106 of 2013 before this Court with prayer to declare the order dated 22.6.2011 passed by the Tribunal to be bad in law and further prayed that the UPSC be directed to publish the final result of selection and accordingly, the appointments be given. The said writ applications were disposed of on 21.12.2012. While disposing of the said writ applications, this Court held that the findings reached by the Tribunal that Niranjn Sethi has been deprived of his right to be considered by the Selection Committee are absolutely just and proper but the direction to quash the entire selection held on 9.11.2010 by the Tribunal was unjust and improper. This Court made it clear that without setting aside the selection held on 9.11.2010, the interest of Niranjn Sethi will be protected by directing the UPSC to consider the case of Niranjn Sethi alone. Thereafter, the Selection Committee should publish the result of selection that was held on 9.11.2010 along with the result of selection of Niranjn Sethi and accordingly, make necessary recommendations. It

was made clear that this course was being adopted as the same would not cause any prejudice and harassment to the parties.

2. Taking exception to such directions of this Court, Niranjan Sethi filed the present Review Petitions with prayer to review the judgment dated 21.12.2012 passed by this Court in W.P. (C) Nos. 24325 and 24106 of 2011 and to confirm the order dated 22.6.2011 passed by the Tribunal in O.A. No. 33 of 2011.

3. Mr. G. Rath, learned Senior Advocate appearing for the review petitioner (Niranjan Sethi) submitted that the ordering portion as contained in Paragraph-16 of the judgment dated 21.12.2012 altering the directions of the Tribunal to quash the entire selection and confining the same to his client needs to be reviewed and for such alteration no reason has been given. In this context, he relied on a decision of the Hon''ble Supreme Court reported in Kunhayammed and Others Vs. State of Kerala and Another, He submitted that altering/modifying the direction of the Tribunal for quashing the entire selection process without giving any reason amounts to error apparent on the face of record. Secondly, he submitted that no prejudice would be caused to all 10 candidates as they will attend the selection afresh. Thirdly, he submitted that by altering the direction of the Tribunal uniformity cannot be maintained in the process of selection as there would be a gap of more than two years in between the selection held on 9.11.2010 and one which would be held presently confining the same to Niranjan Sethi after direction of this Court. Mr. Rath further submitted that the persons constituting the new Selection Committee would be different than the persons who constituted the Selection Committee on 9.11.2010. Thus, no uniformity can be maintained. In this context, he relied on a decision of this Court reported in Nirmal Chandra Mohanty Vs. State of Orissa and Others, an unreported decision of Jammu and Kashmir High Court in the case of Gazla Masoodi and other v. State and others in SWP No. 1506 of 2011 & CMP Nos. 2436, 3357, 3318, 3319 and 3422 of 2012 decided on 04.12.2012, a decision of Gauhati High Court reported in State of Assam and Others Vs. Rimki Buragohain and Others, an unreported decision of Madras High Court in the case of UPSC v. Sivakumar in WP Nos. 4371, 4374 and 4375 of 2001 and PMP No. 6168 of 2001 decided on 30.6.2006 and Ajay Hasia and Others Vs. Khalid Mujib Sehravardi and Others, Lastly he submitted that after issuance of Annexures-R 6/1 and R 6/2 pursuant to the order dated 22.6.2011 passed in O.A. No. 33 of 2011 by the Tribunal fresh cause of action has arisen. Since Gopabandhu Satpathy and Pradeep Kumar Biswal, who are opposite parties in the Review Petitions, never challenged the same, those communications still stand and accordingly, no relief ought to have been granted to Gopabandhu Satpathy and Pradeep Kumar Biswal in W.P. (C) Nos. 24325 and 24106 of 2011. In this context, he relied on a decision of the Hon''ble Supreme Court reported in J. Parihar Vs. Ganpat Duggar and others,

4. Mr. S.K. Padhi, learned Senior Advocate appearing for opposite party No. 6 in the Review Petition submitted that the scope of review is very limited and it has got its well-defined parameters as settled by the Hon''ble Supreme Court. In this

context, he relied on a decision of the Hon"ble Supreme Court reported in Smt. Meera Bhanja Vs. Smt. Nirmala Kumari Choudhury, wherein the Hon"ble Supreme Court has made clear that the review proceedings are not by way of an appeal and have to be strictly confined to the scope and ambit of Order 47, Rule 1 of the Civil Procedure Code. The Review Petition has to be entertained only on the ground of error apparent on the face of record and not on any other ground. An error apparent on the face of record must be such an error which must strike one on mere looking at the record and would not require long-drawn process of reasoning of points where there may be conceivably be two opinions. The limitation of powers of the Court under Order 47, Rule 1 of the CPC is similar to the jurisdiction available to the High Court while seeking review of the orders under Article-226 of the Constitution of India. Secondly, he submitted that the submission of the learned counsel for the review petitioner that no reason has been given for modifying/altering the order of the Tribunal is not correct. Paragraph-16 of the common judgment rendered in W.P. (C) Nos. 24325 and 24106 of 2011 itself contains the reasons, i.e., no prejudice/harassment be caused to the parties. Here all recommendees were not made parties before the Tribunal though a prayer was made for setting aside the entire selection held on 9.11.2010. On the question of maintaining the uniformity in the selection process, Mr. Padhi learned Senior Advocate for opposite party No. 6 submitted that the process of appointment by selection under 1997 Regulations passes through many stages as delineated under Regulations 5, 6 and 7 of 1997 Regulations. Since the Selection Committee consists of very high level officials, it is expected that these officials would act in a fair and reasonable manner. Therefore, the apprehension of the review petitioner is without any basis. Further Mr. Padhi pointed out that detail guidelines have been issued for distribution of marks in the process of selection. As per the guidelines out of maximum 100 marks, 50 per cent is assigned to evaluation or ACRs for the 5 preceding years and 50 per cent has been assigned to personal interview. The guidelines further make it clear that the question in the interview can be asked on regional/national/international issues and an indicative list containing the subjects covering the regional, national and international issues have been indicated. All those are contained in Annexures-B/6 and B/7 filed along with the counter-affidavit of Gopabandhu Satpathy in both the Review Petitions. Regarding various decisions cited by Mr. Rath, learned Senior Advocate for the review petitioner, Mr. Padhi submitted that those decisions are distinguishable on fact and even if persons are interviewed by the same Board consisting of same persons there is no bar for them to accept/to adopt different modalities while interviewing different candidates.

5. Mr. Padhi further submitted that in the Original Application the review petitioner at Paragraph-iii of his prayer which has been quoted earlier has clearly made an alternative prayer to consider his case and since this Court vide its judgment dated 21.12.2012 has allowed the said prayer, the review petitioner can have no grievance in the matter. Lastly, he submitted that so far as non-

challenging of documents under Annexures R-6/1 and R-6/2 is concerned, the same being consequential to the order dated 22.6.2011 passed by the Tribunal in O.A. No. 33 of 2011, nothing much can be read into it as the original order dated 22.6.2011 of the Tribunal was challenged in W.P. (C) Nos. 24325 and 24106 of 2011.

6. In such background, let us examine whether there exists error apparent on the face of judgment dated 21.12.2012 rendered by this Court in W.P. (C) Nos. 24325 and 24106 of 2011 warranting review of the same.

The submission of the learned counsel for the review petitioner that there exists no reason for modifying the order of the Tribunal which set aside the entire selection held on 9.11.2010 is not correct. It has been clearly indicated in the judgment that modification has been done keeping in mind that the same would not cause any prejudice/harassment to the parties. In this context, it may be noted here that though the Review Petitioner in Original Application before the Tribunal made a prayer to set aside the entire selection held on 9.11.2010 and though he knew that in the said process, 9 officers have already been interviewed, he deliberately did not make all the recommended officers as parties. Therefore, setting aside of the entire selection would have prejudiced the rest of the officers who have not been made parties and have already attended the interview. Setting aside of entire selection would have been a great harassment to such officers. Further since no allegation of malafide or improper functioning of members of Selection Committee was made by the Review Petitioner, setting aside of entire selection was improper. The Tribunal in its reasoning for setting aside the entire selection mainly referred to the fact that the Selection Committee was fed with an incomplete list, in which the name of Niranjana Sethi even though eligible was not there thus he was prevented from appearing before the Selection Committee. Accordingly, the selection held on 9.11.2010 was quashed by the Tribunal, though there was no allegation of malafide or improper functioning of members of the Selection Committee. Regulation-4 of 1997 Regulations makes it clear that number of officers required for consideration of selection shall not exceed five times of the number of vacancies proposed to be filled up during the year. But nowhere says that it is bound to consider the number of officers who must be five times of the number of proposed vacancies. Thus here for two vacancies 9 officers were considered. Therefore, it cannot be said that the Selection Committee was fed with an incomplete list. On this account also the entire selection cannot be set aside. Lastly, more important thing is that the review petitioner has made an alternative prayer to consider his case alone, which has been allowed by this Court vide its judgment dated 21.12.2012. In such background, the review petitioner cannot say that he will be greatly prejudiced by the said order and uniformity in the selection cannot be maintained, particularly, when he himself has not acted in a fair manner by not making all the recommendee officers as parties to the Original Application. It lies ill in his mouth to plead about equality and uniformity when his conduct does not show him to be a believer in such

concepts. Though the review petitioner pleads about equity, equality and uniformity, he wanted to get the entire selection quashed without making all the officers as parties whom he knew have already appeared in the interview for selection. Therefore, the decisions cited by the learned counsel for the review petitioner on the question of uniformity are distinguishable on facts, as all the officers, who are going to be affected if the entire selection is set aside, are not before us and neither they had opportunity to address the Tribunal on issues raised.

In this context, Mr. G. Rath, learned Senior Advocate relied on a decision reported in *Nirmal Chandra Mohanty Vs. State of Orissa and Others*, . In that case the petitioner prayed for seniority over opposite party Nos. 3 to 9 and for quashing of the gradation list. Thus, he made officers as opposite parties over whom he claimed relief. Whereas in the present case as indicated earlier the recommendee officers were not made parties before the Tribunal. In such background, it will not be equitable to quash the entire process of selection for maintaining uniformity in selection process. The question of maintaining uniformity in selection process could have been considered only if all necessary parties were there before the Tribunal. Thus, the factual scenario of the present case is different from that of the above noted case.

So far as the judgment rendered in *Gazala Masoodi's* case (supra) by the High Court of Jammu and Kashmir is concerned, there the select list was challenged on the ground of violation of statutory rules as well as process for selection being vitiated for want of uniformity. There it was held that interview of the candidates, who formed one class, by three committees offended the rule of uniformity. It was also found that there has been violation of the statutory rules. However unlike the present case from Paragraph-19 of the judgment, it appears that the private candidates were made parties in that case. However, it is not clear whether all the selected candidates were made parties in that case. In fact in that case no issue was framed as to whether the entire selection can be set aside in absence of all the selected candidates. Since that issue was not raised, it cannot be presumed that in the said case all the selected candidates were made parties. Thus, the case of *Gazala Masoodi* (supra) is distinguishable on facts.

So far as the decision of Gauhati High Court in *Rimki's* case (supra) case is concerned, it is clear from the judgment that though the selected candidates were not arrayed as parties in the case filed before the High Court of Gauhati, however, later, on account of direction of Gauhati High Court, public notification of the proceeding was made in four news papers so as to enable selected candidates and others interested in the proceeding to appear before the court if they so desired. Thus in that case, enough opportunity was given to the selected candidates to participate in the proceeding. Thus, the facts are different from present case.

So far as the decision of Madras High Court in the case of *UPSC v. R. Shivkumar* is concerned, in the said case from Paragraph-5, it is clear that the persons

included in the select list were all arrayed as respondents in the three Original Applications.

So far as Ajay Hasia and Others Vs. Khalid Mujib Sehravardi and Others, cited by Mr. Rath is concerned, in that case no issue is there as to whether the entire selection process can be set aside in the absence of persons who have undergone the process of selection. At the cost of repetition, it can be stated that if all the recommendee officers, who have undergone selection process/personal interview were there as parties before the Tribunal, we could have gone into the question of maintaining uniformity. Since these officers were not there before the Tribunal, it would be improper to quash the entire selection and direct fresh selection for maintaining uniformity.

In this context, we would like to draw attention of everybody to a judgment of the Hon'ble Supreme Court reported in Haryana Financial Corporation and Another Vs. Jagdamba Oil Mills and Another, which inter alia deals as to how the precedents are to be relied upon. The Hon'ble Supreme Court in this case has made it clear that the Court should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which the reliance is placed. Observations of Courts are not to be read as Euclid's theorems nor as provisions of the statute. These observations must be read in the context in which they appeared. Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases. Each case depends on its own facts and a close similarity between one case and another is not enough because even a single significant detail may alter the entire aspect. For the above noted reasons, the decisions cited by Shri G. Rath, learned Senior Counsel are factually distinguishable and have no application to the present case.

7. Further the contentions of the review petitioner that no prejudice would be caused if 10 candidates attend the selection afresh cannot be accepted inasmuch as by such course of action, the officers, who are not parties before us would have to undergo rigorous process of interview once again and that will cause them much prejudice and harassment. Further it is reiterated that no prejudice would be caused to the review petitioner to undergo process of interview alone as the same stands granted in tune with his alternative prayer. In this context we accept the contention of Mr. Padhi that since the selection committee is a high power body consisting of high officials it is expected that it would act fairly.

8. So far as submission of Mr. Rath on Annexures-R-6/1 and R-6/2 relying on a decision reported in J. Parihar Vs. Ganpat Duggar and others, , it may be noted here that the facts of the above decision stand on a different footing than that of the present case. Moreover since the original order of the Tribunal dated 22.6.2011 in O.A. No. 33 of 2011 has been challenged and modified, at this stage arguments advanced by Mr. Rath on Annexures-R6/1 and R6/2 are of little use or impact. For all the reasons, there exists no error apparent on the face of the judgment dated 21.12.2012 of this Court and accordingly, both the Review

Petitions stand dismissed. No costs.

Pradip Mohanty, Actg. C.J.

I agree.