

(2014) 12 CAL CK 0097
In the Calcutta High Court

Case No : APO 218, 219, 256 of 2014 and WP 1190 of 2014

Swapan Kumar Das

APPELLANT

Vs

Biswajit Maji

RESPONDENT

Date of Decision : 23-12-2014

Acts Referred:

Constitution of India, 1950 — Article 12

Citation : (2015) 2 CHN 581 : (2016) 1 WBLR 639

Hon'ble Judges : Ashis Kumar Chakraborty, J; Ashim Kumar Banerjee, J

Bench : Division Bench

Advocate : Arunava Ghosh, Soumya Majumdar, Sunny Nandy, Prateep Bera and Ricky Rai, Advocate for the Appellant; Partha Ghosh, Anindya Lahiri and Shamik Chatterjee, Advocate for the Respondent

Judgement

Ashis Kumar Chakraborty, J.—All the above appeals are directed against the order dated March 31, 2014 passed by a learned Single Judge holding that the entire recruitment process adopted by Eastern Coalfields Ltd. (hereinafter referred to as "ECL") for the post of Security Guard-Technical and Supervisor Grade "G" (hereinafter referred to as the said post) is illegal. APO No. 218 of 2014 that is the first appeal is filed by ECL. The second and the third appeal being APO No. 219 of 2014, and APO No. 256 of 2014 are filed by candidates who were successful till the stage of written test and are allowed to participate in the interview (hereinafter referred as the successful candidate). The writ petitioners, whose prayers were allowed by the learned Single Judge also filed a cross-objection alleging that one of their grounds of challenge was not accepted as stated hereinafter.

2. On June 25, 2011 ECL published an advertisement inviting applications from Ex-Army/EX-BSF personnel or NCC, B & C Certificate holder or Sportsman of All India repute for the said post. 215 vacancies were notified in the said notice and the eligibility criteria relating to educational qualification was fixed as Metric or equivalent examination from any recognized Board or examination. The appellant

received 6,400 applications and 2580 applications were found to fulfill the eligibility criteria indicated in the said notice. The first step of the selection process required the applicants to pass the Physical Eligibility Test, thereafter they would appear in the written test and those successful in written test could finally appear in the oral interview. Those successful in the Interview, would be finally selected to the said post.

3. After a period of nearly one year a date was notified for conducting the Physical Efficiency Tests (PET) and the names of 2580 candidates were published for participating in the said PET. It was indicated in the first notice that, in the said PET, the male candidates, to be successful, had to run 5 kilometers within 24 minutes and the female candidates had to run 1.6 kilometers within 8.30 minutes. However, due to extremely high temperature of weather, the said PET could not be held on the first schedule date. The PET was held on a later held when 524 candidates appeared out of which 149 candidates could qualify. Subsequently, by a notice dated February 28, 2013 ECL relaxed the standard of PET to the effect that, in order to be qualified a male candidates had to run 1600 meters within 10 minutes and a female candidate had to run 400 kilometers within three minutes. The said notice, however, permitted the unsuccessful candidates who could not complete the distance within specified time on the first occasion to be eligible for reparticipation. This time, when PET was conducted between March 20, 2013 and March 25, 2013, 406 candidates participated and 392 candidates could qualify. Before proceeding further for the written test and interview, ECL issued a corrigendum dated May 10, 2013 to the said notice/ advertisement allowing candidates having NCC-"A" certificate holders to participate in the said recruitment process. This time, 2546 candidates were found to be eligible for PET and under the relaxed condition, the PET was scheduled to be held from August 26, 2013 to August 31, 2013. The candidates who could run the distance within the notified time under the first condition and the second relaxed condition were allowed to sit in the written examination held on October 6, 2013 and the result of such written examination was published on December 6, 2013 and 641 candidates were short listed for interview.

4. On December 4, 2013 the above writ petition being WP 1190 of 2014 was filed and on December 24, 2013 the learned Single Judge passed an interim order restraining ECL and the other respondents/authorities from filling up the post without obtaining leave of this Court but permitted to complete the process of interview with clear stipulation that all candidates should be made known that such interview is subject to the result of the writ petition.

5. During the pendency of the writ petition many of the unsuccessful candidates approached this Court and obtained themselves to be impleaded in the above writ petition. They supported the writ petition for cancellation of the said recruitment process. By a supplementary affidavit, it was disclosed before the learned Single Judge that one of the members of the evaluation committee formed by ECL, Shri Dipak Prasad engaged himself in the activities of illegal

gratification from the candidates for himself and other members and to illegally confer benefit to the candidates in the said recruitment process. The details of conversation between the said officer of ECL and two of the petitioners were translated in English and the same was disclosed before the learned Single Judge by a Compact Disc. Even complaints with full details were lodged with the Superintendent of Police, Central Bureau of Investigation. Petitioners contended that the repeated relaxation of the standard of the said PET was done by the ECL and concerned officers to allow the candidates who were ineligible to qualify the standard set for the first the PET requiring a male candidate to run 5 kilometers within 24 minutes and the female candidates to run 1.6 kilometers within 8.30 minutes. The writ petitioners and the supporters challenged the said recruitment process of the said post on the ground that once the selection process had commenced, ECL had no right to alter or change the conditions of the said recruitment process either by relaxing the eligibility criteria originally for PET or by allowing the persons holding NCC "A" certificate, far below the NCC "B & C" certificate.

6. On the other hand, ECL contended, before the learned Single Judge that once the writ petitioners had participated in the said PET and the written examination they cannot challenge the said selection process to the said post. The further contention of ECL was that there was no rules or regulations governing the recruitment process to the said post and as such there was no prohibition/ embargo on them to relax the said conditions of the said PET or to allow the NCC-"A" certificate holders to be eligible to apply for the said post. Although they had set the high standard for PET at par is the standard for recruitment of constables in BSF, CISF and SSB, but subsequently, they realized such high physical efficiency is not required in case of normal security guards in the collieries the criterion for recruitment of constable in police are more akin. According to ECL such relaxation in physical standard of the candidates for PET and making persons holding NCC-"A" certificate as eligible was done as the criterion as laid down in the original notice was proved to be very stringent and the same prevented a good number aspirants to apply for the said post (paragraph 9 of the Affidavit of ECL).

7. By the judgment under appeal, the learned Single Judge held that alteration and/or change or the conditions of the recruitment process and inviting the undeserving candidates under the original conditions, vitiated the entire selection process and the reasoning sought to be assigned behind such changes/ alterations smacks arbitrariness and offends the fair play policy. His Lordship, further held that when the Court finds there is a glaring illegality in the selection process affecting an individual's right, the unsuccessful candidates can legitimately question the same and the principle of estoppel by conduct/ acquiesce/waiver has no application.

8. The learned Single Judge directed that the finding of the illegality in the said selection process should not be any fetter on the part of the CBI to proceed on

the basis of the complaint in accordance with law, nor shall stand in the way of the respondent authorities in the writ petition, in initiating any departmental proceedings against the said erring member.

9. Assailing the decision of the learned Single Judge Mr. Partha Sarathi Sengupta, learned Senior Advocate, on behalf of the appellant ECL strenuously contended that once the original writ petitioner and other petitioners supporting them had appeared in the said PET and the written test, they participated in the said selection process and as such they cannot challenge the said selection process to the said post. He stressed that it is the settled principle of service jurisprudence that once a candidate participates in the selection procedure, he/she, subsequently becoming unsuccessful cannot challenge the selection process. Thus, according to Mr. Sengupta, the learned Single Judge erred in entertaining the writ petition filed by the petitioners.

10. Mr. Sengupta further argued that the standard of the said PET was relaxed by the concerned authority of ECL and the holders of NCC-"A" certificate holders were made eligible to apply for the said post as the requirement of the security guard was for large numbers, whereas only a few people could fulfill the standard of eligibility criteria specified by the original notice. He strenuously urged that ECL is not interested to stall the proceeding initiated by the CBI against one of the members of its evaluation committee of the said recruitment process and if ultimately, the charge against the said member is proved by CBI, the selection of those candidates having connection with the said member may be cancelled. However, the entire recruitment process should not be interfered by the Court.

11. Mr. Arunava Ghosh, learned counsel appearing for the appellants in the second and third appeal being the successful candidates allowed to appear in the interview, adopted the submissions of Mr. Sengupta and further contended that only 11 persons have challenged the said selection process. Mr. Ghosh further submitted that since there were no rules or regulations governing the said selection process, ECL had the full authority to relax the said standards for the PET and to allow the NCC-"A" certificate holders to be eligible to apply for the said post of the selection process had already commenced. According to him, even if CBI finds that some of the members of the evaluation committee of ECL guilty of the serious misconduct as complained by the writ petitioners, then the appointments of only the tainted candidates having connection with those members of the evaluation committee may be cancelled. In support of such contention he relied on the decision of the Supreme Court in the cases of *Joginder Pal and Others etc. Vs. State of Punjab and Others*, . He also cited the decision of the Supreme Court in the case of *Tej Prakash Pathak and Others Vs. Rajasthan High Court and Others*, .

12. On the other hand, Mr. Partha Ghosh and Mr. Anindya Lahiri, learned Advocates appearing for the original writ petitioners and the added petitioners respectively, all being the respondents in these appeals, strenuously urged that once the selection process had commenced, ECL being an authority within the

meaning of Article 12 of the Constitution of India, could not change or alter the prescription of eligibility criteria for the said PET or make the NCC-"A" certificate holders eligible to apply for the said post. According them, in absence of any Rule or Regulation for the selection process to the said post, the concerned officers of ECL acted arbitrarily and after commencement of the selection process, relaxed the eligibility criteria for the said PET and allowing NCC-"A" certificate holders to be eligible for the said post resulting in inviting the undeserving candidates. Mr. Lahiri placed reliance on the decision of the Supreme Court in the case of Maharashtra State Road Transport Corporation and Others Vs. Rajendra Bhimrao Mandve and Others, . In paragraph 15 of the said decision the Supreme Court reiterated the well settled principle that the criteria for selection cannot be altered by the authorities concerned in the middle or after the process for selection has commenced.

13. The other ground urged by Mr. Lahiri is so far as the cross-objection filed the same is directed against the refusal of the learned Single Judge to set aside the said recruitment process on the ground that some of the unsuccessful candidates who had passed out from Bengali Medium Schools, had poor knowledge in English and Hindi, the only two languages fixed by the notice inviting applications and Bengali was excluded as a language for the written test. However, admittedly when the said applicants applied to participate in the said recruitment process they were fully aware that the medium of language was fixed as Hindi and English. It is also not the case of those applicants that Bengali was subsequently, after commencement by the selection process, excluded as the medium of language for filing application or for written test. Thus, we find no merit in the cross-objection and the same is accordingly rejected. In reply, Mr. Anubhav Sinha, learned Advocate on behalf of ECL repeated that if any of the successful candidates is found to have indulged in illegal gratification with said member of the evaluation committee, his/her service may terminated and the Court should not interfere with the selection process at this stage. He relied on the decision of the Supreme Court in the case of G.N. Nayak Vs. Goa University and Others, where the Supreme Court refused to entertain a challenge to the change in the eligibility criteria for the concerned post on the ground that applicant knew that there was a change in the eligibility criteria for the post, he applied for the post, and in spite thereof and appeared in the interview without protest.

14. Now we proceed to deal with the merit of the main appeals filed by ECL and the candidates who hold NCC-"A" certificate and were successful in the PET with the aforesaid relaxed standard, and the written test. In the instant case, admittedly ECL an authority under Article 12 of the Constitution of India was seeking to fill up the vacancies in the said post Security Guard-Technical and Supervisor Grade for its various collieries in the State of West Bengal and Jharkhand. There is no rule or regulation framed for fixation of the physical eligibility criteria for the applicants to the said post or for conduct of the selection process. From the affidavit in opposition filed on behalf of ECL, before the learned Single Judge, it is evident that the authorities of ECL themselves

considered the said post is required to be manned by persons who fulfill the high level of physical fitness of Ex-Army, Ex-BSF or NCC "B&C" Certificates holders or sportsmen of all India repute. This decision must have been on basis of requirement of the high level of fitness of the security guards to be posted at the different collieries and the safety requirement of the said collieries. Further, as we are all aware, at times, the law and order condition at the collieries are far from normal. Although, the concerned officials of ECL should be aware of the well settled principle relating to appointment procedure that once the selection process commences, the eligibility criteria cannot be altered and in spite thereof, they after a long period of more than one and a half year from the date advertisement inviting applications to the said post; even after publication of the result of the said first PTE relaxed eligibility criteria for physical fitness of the interested candidates not only once but twice and even made the NCC-"A" certificate holders to be eligible to apply to the said post. The result of these relaxations is that the candidates whom ECL itself consciously and with full application of mind considered to be ineligible for the said post, by issuing successive corrigenda, were made eligible for the said post. Mr. Arunava Ghosh, learned Advocate appearing for the appellants in the second and third appeal, supporting ECL, contended since there is no rule or regulation governing the selection procedure for the said post, there was no prohibition and ECL was entitled to alter the eligibility criteria for the said PET even after commencement of the selection process. We are, however, unable to accept such contention of Mr. Ghosh. In paragraph 9 of their affidavit-in-opposition, it is the case of ECL that after the commencement of the selection process they took a new decision to relax the standard of physical fitness from that of Ex-Army/Ex-BSF personnel (paramilitary force) to the physical fitness requirement of constable in police, as they felt for the purpose of selection of the said Security Guards very high standard of physical fitness is not necessary. However, no record was disclosed by ECL either in their affidavit-in-opposition before the learned Single Judge or in their stay petition before us, towards the said decision making process for relaxing the eligibility criterion for the said post. The Supreme Court, has repeatedly held, as also in the said case of Maharashtra State Road Transport Corporation (supra) cited by Mr. Lahiri that after commencement of a selection process in respect of a post, the eligibility criteria cannot be changed/altered, which is now the settled principle of service jurisprudence. The object of such wholesome principle is to prevent arbitrary or capricious exercise of power by the appointing authority towards securing candidates who were otherwise ineligible to the concerned post are subsequently made eligible. In the instant case, it is evident that ECL has, in violation of this settled principle, after commencement of the selection process went on relaxing the eligibility criterion to apply to the said post and the same is per se illegal. Thus, we find no infirmity in the decision of the learned Single Judge, the action of that ECL by altering and/or changing the conditions of recruitment process and inviting the ineligible candidates under the original conditions vitiates the entire selection process.

15. In view of the above finding that the relaxation of the eligibility criteria of the said PET by and allowing the NCC-"A" certificate holders to be eligible to apply for the said post ECL vitiated the entire selection process, the reliance placed by Mr. Ghosh in the decision of the Supreme Court in the said case of Jaginder Pal (supra) that where in the appointment procedure when the entry of some candidates are based on their merit and not tainted with the misconduct/illegality committed by appointing authority, only the appointment of those tainted candidates are liable to be cancelled is misplaced. It seems that the said decision was cited by Mr. Ghosh with the apprehension that CBI may find the allegation against the members of the evaluation committee of claiming illegal gratification from the candidates to be correct. The same was also the tenor of submission of Mr. Sengupta, we wonder we cannot accept such contention of the appellants. Further, in the case of Tej Prakash Pathak (supra) relied on by Mr. Ghosh there is no decision, the three Judges' Bench of the Supreme Court referred the matter to a larger Bench for an authoritative pronouncement on the issue whether the principle that State and its instrumentalities tinker with the eligibility criteria, after the selection process has commenced should be applied when the eligibility criteria is sought to be changed to impose a more rigorous scrutiny. Thus, the said decision also does not dispel the settled principle prohibiting relaxation of the eligibility condition, after commencement of selection process. Even the decision in the said case of G.N. Nayak cited by Mr. Sinha for ECL does not deal with a case of relaxation of eligibility criteria after the selection process has commenced.

16. Now, the question arises, whether even after finding that the repeated relaxation of the eligibility criteria for the said post by ECL to be per se arbitrary and illegal, did the learned Single Judge commit, any error as the original writ petitioners and the added petitioners supporting the challenge to the selection process only on the ground that they had already appeared in the PET and the interview.

17. We are of the view, that once the Court found that taking advantage of the absence of any rule or regulation governing the selection process to the said post, ECL, an authority within the meaning of Article 12 of our Constitution, vitiated the entire selection process by relaxing the eligibility criterion for the candidates and allowed the undeserving candidate under the original condition to be eligible to apply for the said post, the learned Single Judge committed no error in not accepting the contention of ECL for rejection of the writ petition.

18. In view of the reasons as aforesaid, we find no merit in any of above appeals and the same are accordingly rejected, without, however, any order as to costs.

19. The CBI is directed to proceed and conclude the investigation against the said member of the evaluation committee of ECL expeditiously.

Ashim Kumar Banerjee, J.

20. I agree