

(2019) 01 GUJ CK 0088
In the Gujarat High Court

Case No : R/Special Civil Application No. 11200 Of 2017

Vikram Bhikhabhai Desai

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 18-01-2019

Acts Referred:

Constitution of India, 1950 — Article 14, 226

Citation : (2019) 01 GUJ CK 0088

Hon'ble Judges : N.V.Anjaria, J

Bench : Single Bench

Advocate : Yatin Oza, Ritu Guru, Srushti A Thula, Premal R Josh

Final Decision : Dismissed

Judgement

1. Vigilance of a litigant keeps his right alive and enforceable.
2. By filing the present petition under Article 226 of the Constitution, the petitioner has prayed, "to direct the Respondent Authorities to put the petitioner higher on the Merit/Waiting list than the Candidates who had appeared in the Examination for the post of Class III Deputy Section Office and Deputy Mamlatdar candidates who have secured lesser marks than the petitioner after addition of the 1.5 marks to his current grant total and consequently direct the respondent authorities to give appointment to the petitioner for the post of Class III Deputy Section Officer and Deputy Mamlatdar".
3. Respondent No.2 - Gujarat Public Service Commission issued Advertisement No.51/2014-15 for recruitment on the post of Deputy Section Officer/Deputy Mamlatdar, Class III. The petitioner who belonged to the category of Socially and Economically Backward Class, applied pursuant to the advertisement. The petitioner was given 153 marks and was listed at Serial No.161 in the waiting list. The result of the examination pursuant to which the petitioner scored the aforesaid marks and placed in the list as above, was declared on 28th October, 2016.

3.1 It is the case of the petitioner that he felt that he ought to have been given more marks than scored, therefore, as averred by the petitioner in paragraph 3.3 of the petition, he requested for his answer-sheet by making application under the Right to Information Act, 2005. It is the further case of the petitioner that when he received the answer-book of the General Knowledge examination, question No.4(b)

(i) was correctly attempted by the petitioner, however he was not given marks for the same. It is further averred by the petitioner that in answer-sheet of the candidate who ranked first and was above the petitioner in the merit-list, also reflected the same answer to the said question. According to the petitioner, therefore, he cross-checked his answer to be the right answer. It is the further say of the petitioner that in the English main examination paper, the petitioner had given correct answer to question No.5(d)(iii), where also 0.5 marks ought to have been given to the petitioner.

3.2 It is the case that accordingly the petitioner was awarded less marks by 1.5 marks though he had answered the questions as above correctly. It is stated that if said 1.5 marks were added, the petitioner would have secured 154.5 marks and his ranking would have been higher at 124 but due to the aforesaid mistake, he was pushed below to Serial No.161.

3.3 On 09th January, 2019 the petitioner sought permission to place on record xerox copy of receipt of payment of Rs.138/-. The said receipt was physically shown to the Court during the course of the hearing, which was in respect of the aforementioned application which the petitioner made under the Right to Information Act, 2005.

3.4 In the affidavit-in-reply, respondent No.2 - Gujarat Public Service Commission highlighted condition No.17 in the advertisement which contemplated that the candidate has to apply within 45 days for getting their marks checked, if desired, from the date of declaration of result with requisite fees.

4. Heard learned senior advocate Mr.Yatin Oza assisted by learned advocate Ms.Shrushti Thula for the petitioner, learned Assistant Government Pleader Ms.Ritu Guru for respondent No.1 - State and learned advocate Mr.Premal Joshi for the respondent No.2 - Gujarat Public Service Commission.

4.1 Making submissions with elaboration and vehemence, learned senior advocate contended that there was a gross negligence on part of the examiner. He submitted that result was declared on 28th October, 2016 and on 10th November, 2016 petitioner made an application under the Right to Information Act, that the petitioner received copy of the answer-book on 15th December, 2016 and at that juncture he saw that marks given to him were not proper. Therefore, he requested the authorities to apply the correction. According to submission of learned senior counsel, prescription of time limit of 45 days in the advertisement for the purpose of making verification was not mandatory, but was

required to be treated as directory. It was submitted that the respondent - Commission applied the same as penal provision which was not permissible and that the marks of the petitioner ought to have been corrected, and that in any case, delay was not inordinate.

4.2 On the other hand, learned advocate for the respondent - Commission reiterated on the contentions raised in the affidavit-in-reply. He further pressed into service the decision of this Court in Kalyan Ashokkumar Vyas v. State of Gujarat being Special

Civil Application No.13435 of 2015 decided on 08th September, 2015 and confirmed in Letters Patent Appeal No.37 of 2016 as per order dated 16th February, 2016.

5. From the facts born out from the record and from the contentions canvassed by both the sides, what is conspicuous is the condition No.17 in the advertisement. This condition dealt with re-verification of the marks of the candidates. It stipulated that a candidate desirous to get his marks verified, shall have to apply to the Commission within 45 days from the date of declaration of result of the examination by paying re-verification fees of Rs.50/- per answer paper. It was stated that the candidate shall have to mention his name, seat number and address and the application could be submitted along with payment of fees at the counter of the office of the Gujarat Public Service Commission. It was stated earlier that it would be permissible for the candidate to send the application for re-verification by post which would have to be addressed only to the Secretary, Gujarat Public Service Commission, accompanied by crossed postal order towards fees. Re-evaluation of the answer-sheet was provided to be not permissible, what was only permitted was only re-verification of marks.

5.1 The result was declared on 28th October, 2016. It is further not in dispute that application dated 09th February, 2017 was made by the petitioner to the Chairman, Gujarat Public Service Commission seeking addition of 1.5 marks on the premise that answers in two questions were correctly attempted but marks were not given. This application was admittedly made much beyond the requisite period of 45 days.

5.2 What was harped on behalf of the petitioner was that application was made on 10th November, 2016. Now, this application was never an application contemplated in condition No.17. It was not an application for verification of marks. By the said application, petitioner requested to supply his answer-book invoking the provisions of the Right to Information Act, 2005. He obtained the answer-book and thereafter raised his contention that marks were not correctly awarded in respect of two questions in two papers. It would be erroneous to treat the application dated 10th November, 2016 as an application for verification which was required to be made in terms of condition No.17. In other words, there is no gainsaying on facts that the petitioner had not made any application for verification of marks within the time together with the fees as required under

condition No.17 in the advertisement.

5.3 At this stage, the decision in Kalyan Ashokkumar Vyas (supra) relied on by the respondent - Commission may be looked at. In that case, the petitioner had appeared for the post of Assistant Inspector of Motor Vehicles advertised by the Gujarat Public Service Commission. He was declared successful, was shown in the merit-list; whereafter he was required to send the certificates and testimonials for verification which were also scrutinised. The next stage was the physical test, in which the petitioner was to appear. The Commission communicated on 24th March, 2015 to remain present for physical test on 15th April, 2015. It was the case of the petitioner that on 26th March 2015 he was detected with Hepatitis A, therefore, addressed letter to the Commission on 13th April, 2015. The petitioner could not remain present in the physical test. The representation of the petitioner was not accepted by the Commission, therefore he approached this Court.

5.3.1 Learned Single Judge in Kalyan Ashokkumar Vyas (supra) dismissing the petition observed that the petitioner was communicated on 24th March, 2015 to remain present on 13th April, 2015 for physical test. He had 21 days' time in-between. On that basis the Court observed that if the petitioner was serious, he ought to have taken all measures to communicate within the time. The petitioner was not granted any relief. The decision came to be challenged before the Division Bench in the Letters Patent Appeal which was also dismissed.

5.3.2 The Letters Patent Bench, while dismissing the Appeal, observed and held that "In the recruitment process pertaining to public employment when number of candidates participate for the posts in question, every candidate is expected to be vigilant and careful considering the nature of competition and the posts for which recruitment process is undertaken". This statement of law does apply in the facts of the present case.

6. Nor the submission made on behalf of the petitioner that condition No.17 in the advertisement in the present case stipulating 45 days period for making application for verification of marks was required to be treated as directory and not mandatory, could be accepted. If this submission is accepted, there may be umpteen number of applications at different point of times. The cut-off line and prescription of time period was necessary and such condition was served a definite purpose. If the petitioner is granted relief by relaxing 45 days and treating the condition as directory, it may also mean that several similarly placed candidates who may have similar grievance would be denied the opportunity to their discrimination. This, in turn, would be in breach of Article 14 of the Constitution itself.

7. For the reasons recorded above, no case is made out for granting any relief to the petitioner. The petition is, therefore, dismissed. Notice is discharged. Interim orders are vacated.