

Serial No.05
Regular List

HIGH COURT OF MEGHALAYA
AT SHILLONG

WA No. 26/2022

Date of order: 08.09.2022

Pynskhemlang Nongrang Vs. The Directorate of Soil and Water
Conservation & ors

Coram:

Hon'ble Mr. Justice Sanjib Banerjee, Chief Justice
Hon'ble Mr. Justice W. Diengdoh, Judge

Appearance:

For the Appellant : Mr. S.R. Lyngdoh, Adv with
Mr. H.R. Nath, Adv
Mr. K.V.E. Kharnongbak, Adv

For the Respondents : Mr. B. Bhattacharjee, AAG with
Ms. R. Colney, GA
Mr. S. Sengupta, Adv for R/3
Mr. K. Ch. Gautam, Adv R/4

i) Whether approved for reporting in Law journals etc.: Yes

ii) Whether approved for publication in press: Yes/No

JUDGMENT: (per the Hon'ble, the Chief Justice) (Oral)

The appeal has been carried against a judgment and order of June 10, 2022 passed on the appellant's petition under Article 226 of the Constitution. By the order impugned, the appellant's challenge to the selection process adopted by the Directorate of Soil and Water Conservation of the State in course of appointing two drivers has been repelled.

2. The order impugned records that the methodology adopted for the selection process was decided prior to the process being initiated, and as such, there was no change in the rules midstream, so to say. The order impugned notices that the selection process was divided into two parts: a practical driving test and an interview. The Single Bench perceived that the writ petitioner had no quarrel with the practical driving test but was aggrieved only with the manner in which marks were allotted in the interview. The Court observed that it was the settled law that a candidate having taken part in a selection process could not turn around and challenge the same upon being unsuccessful.

3. The primary feature that initially engaged the attention of this appellate court was that the appellant herein had secured the highest mark of 84 in the practical examination which tested the candidates' driving skills. However, some other candidates who barely met the qualifying marks to be called for the interview obtained exceptionally high marks in course of the interview to topple, inter alia, the appellant herein and bag the posts. Two of the private respondents herein were appointed and such appointments were made in or about March, 2021.

4. The methodology adopted for conducting the selection process was that equal weightage would be given to the practical examination on

driving skills and an interview would be conducted by seven designated officials. The methodology itself strikes as odd. High authorities now instruct that except in certain special cases, the weightage given to the objective examination should be about 70 or 75 per cent and the weightage given to the subjective assessment in course of an interview or viva-voce should not exceed 30 to 35 per cent. There is good reason for such rule. Oftentimes it had been seen that candidates faring exceeding well in the objective examination obtained low marks in the interview without any indication as to how or why they were found deficient.

5. To ensure that the objective part of the examination carries more weightage and the subjective part cannot completely override the objective assessment, the recent trend of judgments requires the subjective element to be kept to the minimum, depending, of course, on the nature of the job.

6. When it comes to the appointment of a driver, common sense instructs that it is the driving skill which should be the paramount consideration. Here was a candidate who obtained 84 marks out of the allotted 100 in the driving skill test conducted by the employer and one of the private respondents obtained only 70 marks in the same test. The rules of the game, as set out prior to the process being commenced,

provided that persons obtaining 70 or more marks in the driving skill test would be called for the subsequent interview. One of the private respondents who was ultimately selected barely scraped through and started with a 14-mark disadvantage as the selection process entered the second stage of the interview.

7. Since the system adopted of allotting equal marks to the objective examination and equal weightage to the interview appeared somewhat dubious, the records were called for. The records reveal that a completely arbitrary and unfair procedure was adopted at the interview unbecoming of any respectable or acceptable selection process.

8. Quite apart from the fact that the rules pertaining to the selection at the outset made it possible for nepotism to rule the day by giving equal weightage to the driving skill test and the subjective assessment at the interview, it is evident that seven members were to constitute the interview board. One of the members was absent and it is submitted on behalf of the respondent authorities that the rules require a five-member assessing team and, as such, the absence of one member out of seven did not stand in the way of the interview being conducted on the scheduled date.

9. Even if the absence of one of the seven members on the interview board is disregarded, the score-sheet of the interview conducted on February 25, 2021 throws up serious anomalies. As noticed earlier, 100 marks were allotted for the driving skill test and another 100 for the interview. If six members conducted the interview and each of them had to mark out of a maximum, elementary arithmetic would reveal that the maximum marks that could be allotted by each interviewer was 16.66.

10. The single-page score-sheet is divided into several columns. The two columns on the extreme left are the serial numbers of the candidates called for the interview and the roll numbers of such candidates, respectively. The next seven columns indicate the individual marks allotted by the interviewers, one of such columns remaining blank in view of the absence of the relevant interviewer. The column on the extreme right is the total marks obtained by adding up individual marks allotted by the individual interviewers. Since the total marks allotted for the interview was 100, the marks indicated in the extreme right column would be the marks obtained by the relevant candidate out of the maximum of 100.

11. Yet, it is evident from the score-sheets that the second member of the interview board allotted 18 marks to the candidate bearing roll

number 031 and the fifth member allotted 17 marks to the same candidate! Surprises never cease. As far as the other successful candidate was concerned, four of the six interviewers gave him 16 marks.

12. Thus, on the combined strength of the liberal manner in which the ultimate successful candidates were marked by the interviewers and the much less marks awarded to the appellant herein in the interview, the advantage of the 14 marks that the appellant enjoyed, at the time of entering the interview room, was whittled down and overhauled.

13. Ordinarily, any form of assessment would involve certain parameters. Keeping in mind that this was an interview for the post of a driver, the parameters may have been awareness of traffic regulations, knowledge of roads and even an element of presentability. However, it does not appear that any guidelines were followed in assessing the candidates called for the interview.

14. When it comes to a State or other authority within the meaning of Article 12 of the Constitution inviting applications for appointment, the selection process must be completely above board since every candidate who meets the eligibility criteria to participate in the process has to be dealt with fairly. It is for such purpose that greater weightage is desirable to be given to the objective part of the assessment since the Indian psyche

is such that the subjective part of the assessment, more often than not, is tainted, influenced or guided by nepotism or the usual uncle culture or even more disagreeable extraneous considerations.

15. Though it would do for the present purpose to confine the discussion to Article 16 of the Constitution and the equality of opportunity in matters of public employment that such provision mandates, the matter may be seen from the wider coverage under Articles 14, 15 and 16 of the Constitution. Article 14 of the Constitution, despite being one of the shortest, contains the world within it and is the safeguard against any form of prejudice, discrimination or arbitrariness. Article 15, in its first clause, prohibits the State from discriminating against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them. Similarly, clauses (1) and (2) of Article 16 ensure equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State with the further mandate that grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them may not be used as a ground for ineligibility or discrimination in respect of any employment or office under the State.

16. Article 15 of the Constitution saw an early change in the second year of the Republic by way of the first amendment that provided for

affirmative action. Similarly, the three clauses that followed the second clause in the original Article 16 made room for affirmative action, notwithstanding the general rule as provided in clauses (1) and (2) of such Article. In course of time, clauses (4A), (4B) and (6) have been incorporated in Article 16 to provide for different categories of reservation, including for the economically weaker sections by the 103rd amendment of 2019.

17. Notwithstanding the changes effected in both Articles 15 and 16 and the exception to the general rule being carved out for socially and economically challenged sections, the overwhelming spirit of equality embodied therein has not been diluted. Equality of opportunity, in the sense that the expression is used in Article 16 of the Constitution, read with the impermissible grounds of discrimination as illustrated in the second clause thereof, does not imply that every candidate applying for a post would have equal right to it without any other consideration. The overwhelming message conveyed by Article 16 of the Constitution, as it keeps close company with Articles 14 and 15, is that in the selection process pertaining to employment or appointment, irrelevant considerations must not come into play. Of course, the merits of a candidate will be assessed so that most suitable for the post is identified.

But just as religion, race, caste, sex, descent, place of birth, residence are to be kept out of the consideration, favouritism and nepotism would also have no role to play in the process of selection. At the end of the day it has to be a fair process and a reasonable procedure adopted for the selection; or it would fall foul of the constitutional ethos.

18. It is plain to see in this case that no objective criteria as to how the subjective assessment would be made at the interview were indicated. Ordinarily, the total marks allotted in course of an interview ought to be broken down and individual marks based on certain functional aspects awarded that would ensure an element of objectivity even in the subjective assessment. However, in this case all vestiges of objectivity were thrown to the wind and the marking procedure was completely arbitrary, even to the extent of two of the interviewers allotting more marks to the preferred candidate than the maximum marks that they could have awarded.

19. Ordinarily, since the record pertaining to the interview reeks of a completely unfair procedure being adopted and a vile charade being enacted in the guise of an interview, the entire process ought to have been annulled. However, other considerations come into play.

20. It appears that though the appellant herein was contemporaneously aware of the conclusion of the selection process and the publication of the list of successful candidates by the end of February, 2021 and the appellant also applied on March 31, 2021 under the Right to Information Act, 2005 to obtain information as to the marking at the two stages, he waited till August 1, 2021 before coming to the Court. By such time the appointments had already been made and rights had vested in the private respondent appointees for several months.

21. It is also evident, as is apparent from the order impugned, that the petitioner did not question the methodology adopted for selection but merely complained that he may have been awarded lower marks in the interview than what he deserved. Since the records had not been called for by the writ court, such court of the first instance could not appreciate the colossal mockery that was undertaken in the name of the interview.

22. The considerations that weigh with the Court at this stage in granting any relief to the writ petitioner, despite noticing the farcical manner in which the interview was conducted, are the delay in coming to Court; the policy of reservation that ought to have applied; and, that compensation in some form may assuage the appellant's understandable indignation. It is equally significant that the appellant did not question

the methodology, but participated in the process and complained only upon failing to make the cut.

23. It may be noticed at this stage that despite the policy of reservation being in place in the State since its inception in 1972, there was no roster system adopted until earlier this year. As it is elementary, no reservation policy can be appropriately applied without following the roster system. The official respondents point out that in the present case there were seven posts of driver and five posts had previously been filled up. The selection process in the present case was for the two remaining positions. The respondents further inform the Court that out of the five previous appointees, four belonged to the Khasi tribe and one to the Garo tribe. Of the two new appointees, one belongs to the Khasi tribe and the other to the Garo tribe.

24. As per the reservation policy of the State, 40 per cent of all posts are reserved for members of the Khasi and Jaintia tribes, 40 per cent for members of the Garo tribe, five per cent for persons belonging to other scheduled tribes and remaining 15 per cent seats are not reserved. In the absence of a roster system, the initial five of the seven posts were filled up without ensuring the reservation ratio. In any event, if there were four

appointees out of seven posts who belonged to the Khasi tribe, no other Khasi candidate could have been considered for further appointment.

25. However, so as not to reopen past and concluded matters and allow the historical blunder that continued till the fiftieth year of the formation of the State to be given a quietus, the roster system has been put in place prospectively with every department being required to prepare the rosters for all entry-level posts from the inception so that the future appointments can be made by strictly adhering to the reservation policy. Accordingly, since the appellant is a Khasi candidate, notwithstanding that one of the appointees was also a Khasi, as on date the appellant would not qualify to seek an appointment to the relevant post even if the selection process were to be annulled.

26. Further, despite it appearing that undue benefit may have been conferred on at least one or both of the private respondent appointees, it is evident that the writ petitioner-appellant was not vigilant and may have slept over his rights for a considerable period of time before approaching the Court. Though no period of limitation is prescribed for carrying a petition under Article 226 of the Constitution, the writ court is slow to extend any relief to a laggard. It must be appreciated in the same breath that even if the schedule to the Limitation Act, 1963 were to apply to the

writ petitioner, he approached this Court within months and not years of the selection process being completed. However, once the appointments are firmed up and the appointees are in place for several months, the Court is loath to throw out the appointees. In this case, the matter has to be considered from the situation as it prevails today, at the time that the appeal is being decided. However much it appears that the private respondents may have been unfairly selected, yet the private respondents had been occupying the position for some 16 or more months and the appellant herein did not enjoy any interim order since the inception of the writ petition. The appellant is entitled to some form of relief, though it may not be in the form that the appellant desires most.

27. On the basis of the things as they stand today, the appellant may not be entitled to obtain the cherished relief. However, since it is evident that the appellant has been unfairly treated by the State, the appellant will be considered favourably in any future selection process for appointment in any category for which the appellant is eligible to apply. In addition, in the event the appellant does not obtain any government job before the age bar comes into operation, as a result of the wrong done by the respondent authorities to the appellant, the appellant will be entitled to a

five-year latitude in respect of the age bar to be entitled to apply for government positions or in the State public sector undertakings.

28. As far as the respondents are concerned, the matter will be brought to the notice of the Chief Secretary to the State for it to be reported to the appropriate vigilance authorities for taking action against the members who conducted the interview on February 25, 2021 and hijacked a process without any adherence to ordinary norms of fairness. The State will also guard against the repetition of such exercise whether in respect of any State post at any level or in respect of posts under any State public sector undertaking or corporation or other authority which may be regarded as having the trappings of the State within the meaning of Article 12 of the Constitution.

29. The appropriate department of the State should undertake an awareness drive and educate the persons who would be involved in the future selection processes as to the present norms, including the weightage to be given to the skill or the objective test and the weightage to be given to the interview. It must be remembered at the end of the day that a driver may not be judged in how he dresses or how he looks but in how he manoeuvres the machine that is entrusted to him.

30. The selection process in the present case completely failed to look for the best person for the job and this faulty exercise should be made a model by the State as to what a selection process can never be.

31. Since it is evident that the writ petitioner has been unfairly treated and has lost on a lifetime opportunity to obtain a position that the writ petitioner appears to have deserved, the State and the concerned prospective employer will pay damages by way of costs assessed at Rs.3 lakh. Such costs have to be paid within three months, failing which it will carry simple interest at the rate of 7 per cent per annum from the expiry of three months from date. It will also be open to the State to extract the costs or a substantial portion thereof from the members of the interview board.

32. WA No.26 of 2022 is disposed of on the above basis.

33. The only silver lining to this sordid saga is the fair and transparent manner in which the respondent authorities acquitted themselves in course of this appeal.

(W. Diengdoh)
Judge

(Sanjib Banerjee)
Chief Justice

Meghalaya
08.09.2022
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