

## Purusottam Behera Vs State Of Odisha And Others

**Court:** Orrisa High Court

**Date of Decision:** Jan. 29, 2019

**Acts Referred:** Constitution Of India, 1950 – Article 226, 227  
Right to Information Act, 2005 – Section 8(l)(g), 8(l)(j)

**Hon'ble Judges:** Dr. B. R. Sarangi, J

**Bench:** Single Bench

**Advocate:** J.K. Rath, D.N. Rath, S.N. Rath, P.K. Rout, B. Senapati, Prasanta Pradhan, S.K. Pradhan

**Final Decision:** Dismissed

### Judgement

Dr. B.R. Sarangi, J

1. The petitioner, who was one of the applicants for the posts of Management Trainee (Technical), pursuant to the advertisement in Annexure-1

floated in the website of opposite party no.2, has filed this writ application seeking direction to the opposite parties to produce the relevant records

pertaining to the selection, and further to issue appointment order in his favour since six posts of Management Trainee (Technical) are still available to

be filled up.

2. The factual matrix of the case, in hand, is that the petitioner is a Graduate in Electrical Engineering. While he was continuing as Lecturer in the

Electrical Engineering Department of Balasore School of Engineering, Balasore, an advertisement was floated vide Annexure-1 in the website of

opposite party no.2 inviting applications for recruitment of 40 Management Trainees (Technical), 5 Management Trainees (HR) and 2 Management

Trainees (Finance) for its 1.1 MT integrated steel plant located at Kalinga Nagar Industrial Complex, Duburi in the district of Jajpur. The required

qualification for Management Trainees (Technical) was Engineering Degree in Metallurgy/Chemical/

Electrical/Mechanical/Refractory/Instrumentation from a recognized university/institute with minimum 65% marks in aggregate of all years/semesters.

The petitioner having requisite qualification applied for the post of Management Trainee (Technical). On consideration of his application, he was called

upon, by issuing admit card, to appear at the written test. On being qualified in the written test, he was called upon, vide letter dated 12.08.2009, to

appear at the group discussion test and interview to be held on 01.09.2009, in which he participated. When the petitioner was waiting for his result, the

same was neither published in the website of opposite party no.2 nor communicated to the petitioner in general process. When the petitioner made a

query from opposite party no.3, at first he came to learn that successful candidates would be issued with appointment order in a phased manner, but

subsequently he learnt that 34 persons have been appointed as Management Trainees.

2.1 Since the petitioner did not receive any communication, he made an application under the Right to Information Act, 2005 to supply necessary

information, i.e. final selection list, after the written test, psycho test, group discussion test and interview with the marks secured by him. Pursuant

thereto, the petitioner was communicated on 18.10.2011, that his name did not visible in the final list of candidates approved for appointment under the

opposite parties. He was also advised to prefer appeal, if he is aggrieved, within 30 days of receipt of the decision, before the first appellate authority.

Since the query made by the petitioner was not met in the reply given by the Public Information Officer, the petitioner preferred appeal seeking

information, as were sought in his application. Consequentially, it was communicated on 10.02.2012 that 36 persons have been selected for

Management Trainees, but other information, which was sought by the petitioner, was not given to him on the plea that such information is exempted

under Section 8(l)(j) and 8(l)(g) of the Right to Information Act, 2005. The first appellate authority also directed the Public Information Officer of

Neelachal Ispat Nigam, vide its order dated 09.01.2013, to communicate the results. In response to the same, it was communicated that the petitioner

had secured 86 marks in aggregate and, therefore, he could not be selected as the Management Trainee (Technical). The details of the marks secured

by the were that 68 in the written test, 11 in the group discussion test and 7 in the interview. Therefore, since the petitioner secured 86 marks in

aggregate, he could not be selected, hence this application.

3. Mr. J.K. Rath, learned Senior Counsel appearing along with Mr. A.K. Saa, learned counsel for the petitioner argued with vehemence that although

the candidates securing lesser marks than the petitioner have been selected and appointed, the petitioner has been ignored even though his

performance in the interview was quite satisfactory. It is further contended that the mark secured by the petitioner in the interview was not carried out

properly and there may be some manipulation in awarding such mark, for which he has been awarded very less mark in the interview. On perusal of

letter dated 24.01.2013 it appears that all the candidates who appeared at the interview have been awarded higher marks in the interview, whereas the

petitioner has been awarded only seven marks. Therefore, the petitioner seeks for production of interview records and a direction to the opposite

parties to give him appointment against the remaining six vacancies forthwith.

4. Pursuant to notice issued by this Court, though opposite parties no. 2 to 4 entered appearance through Mr. Prasanta Pradhan and associates and

filed counter affidavit, but at the time of call none was present. Perusing the counter affidavit filed by opposite parties no. 2 to 4, this Court finds that

the opposite parties no.2 to 4 have admitted the fact that the written test was held on 19.10.2008 and the petitioner was provisionally shortlisted for

group discussion test and interview. Out of 1749 applicants, 1337 were called for the written test, but 797 appeared and out of them 203 candidates,

who qualified in the written test, were called for group discussion and interview, which were held at Pantha Nivas, Lewis Road, Bhubaneswar on

01.09.2009 at 2.00 p.m. Out of 203 candidates qualified in the written test, 149 appeared in group discussion and interview and 36 candidates were

finally selected. The petitioner secured less mark than other selected candidates in his branch, i.e., electrical branch, as would be evident from the

break ups of the petitioner's mark, such as, written test 68 out of 150, group discussion 11 out of 20, interview 07 out of 30 and total marks 86 out

of 200. The petitioner is not disputing the marks awarded in the written test and group discussion and his only grievance is with regard to the marks

awarded in the interview, which is not tenable, as the group discussion test and interview were conducted in the same day, i.e., on 01.09.2009.

Therefore, the allegation of bias/improper marking by the committee in the interview cannot have any justification so as to warrant interference of this

Court at this stage.

5. In view of the arguments advanced and pleadings made by the respective parties, it is to be seen whether this Court, while exercising the power of

judicial review, can interfere with the marks awarded in the process of interview, as alleged by the petitioner, and further if a select list has already

been prepared and candidates have been given appointment, without impleading those selected candidates as parties to this writ application, whether

the same can be interfered with invoking the writ jurisdiction under Article 226 of the Constitution of India.

6. Admittedly, the petitioner filed application for consideration of his candidature for the post of Management Trainee (Technical). He appeared in the

written test and on being qualified was called upon to appear in the group discussion test and also interview, in which he participated. The petitioner,

having secured less percentage of marks than the persons selected, was not given appointment. While admitting the evaluation made in the written test

and also group discussion test, he only assails the award of marks in the interview. As a matter of fact, such relative assessment and awarding of

marks cannot be adjudged in exercise of power under Article 226 of the Constitution of India.

7. The petitioner has pleaded in paragraph-6 of the writ application to the following effect:-

“6. Though, the advertisement for Technical was 40 and for HR was 5. Be that as it may, no where it was indicated in the advertisement to have break

up of posts for different categories of Engineering Disciplines. Since the essential qualification was to have a Degree in Engineering, the merit list ought to be

prepared taking into consideration of the merit of the candidates as per the process of selection adopted by them. In the counter filed by the opposite parties it is

stated that the Management adopted a process of selection through a written test taking 150 marks, Group Discussion having 20 marks and interview having 30

marks. It is stated in the counter to the misc. case filed by the petitioner bearing No.21840 of 2014 that the minimum bench mark of 40 % was fixed both for

written test and as well as interview so as to qualify a candidate belonging to SC/ST Category. It is not in dispute that the petitioner was declared qualified in the

written test and in the group discussion test and therefore, was called to the viva voce test. Though the opposite parties have not filed the mark sheet of he

selected candidates either in the counter to the writ application filed by the petitioner or in the counter to the misc. case filed by the petitioner bearing No. 21840

of 2014, a copy of the final mark sheet of the selected candidate was supplied to the father of the petitioner on his application under Right to Information Act vide

letter No. 125 dated 19.03.2013, which clearly indicates that the statement made in the counter filed by the opposite parties are misleading, incorrect and

baseless one. To the best of the information of the petitioner, the opposite parties have adopted a standard for taking 50% marks for the unreserved candidates

and 40% marks for the reserved candidates for the purpose of selection. But from the list supplied to the petitioner's father, which is annexed to the writ

application as Annexure-7, it would be seen that persons not having 50% marks in the written test and as well as in the Group Discussion test were selected and

were issued with appointment order. It is pertinent to mention here that Shri Suresh Kumar Pari, who is shown at Sl. No. 7 of the Electrical Discipline and Deepak

Kumar Behera who is shown at Sl. NO.8 of the said discipline and are belonging to unreserved category having secured 7 marks each in the Group Discussion

and having secured 74 marks and 60 marks respectively in the written test, i.e. less than 50% of the marks in each of the test, were selected and issued with

appointment order. Similarly in the Mechanical Discipline, Shri Deepak Gupta, Shri Niraj Kumar Dube, Adharkanta Deo and Kalloprasad Das who have secured

in the Group Discussion 7, 7, 9 and 9 marks respective and Kalloprasad Das having secured 72 marks in the written test were selected and issued with

appointment order. It would not be out of place to mention here that the same principle having been made applicable even in the selection of the Management

Trainee (HR), Shri Siva Prasad Rout who is shown as Sl. No. 2 of HR discipline having secured 61 marks in the written test was selected and was issued with

appointment order, though he had not secured 50 % of the written test marks as required.

8. Pleadings made in paragraph-6 of the writ application have been answered by opposite parties no.2 to 4 in paragraph-7 of the counter affidavit,

which reads as follows:-

"That, the facts stated in Paras 5 and 6 are stoutly refuted and denied and the petitioner be put to strict proof of the same. The allegation of bias/improper

marking by the Committee duly in respect of interview is untenable. The petitioner being not aggrieved by the marking under written test and group discussion

has no right to allege bias/improper marking in respect of interview only.

The sole allegation of bias/improper marking in interview is purely speculative and afterthought. That, without prejudice to the interest of Opposite Party No.2 to

4 the present counter is filed with liberty to add/delete/amend the same of necessary.

In the rejoinder affidavit filed on 07.12.2014, no reply has been given to the averments made in paragraph-7 of the counter affidavit. Thereby, such

averments are conclusive and binding on the petitioner.

9. As regards the allegations made by the petitioner in paragraph-6 of the writ petition that some of the candidates, namely, Suresh Kumar Pati,

Deepak Kumar Behera, Deepak Gupta, Niraj Kumar Dube, Adharkanta Deo and Kalloprasad Das, belonging to different disciplines, having not

secured even 50% of marks in the written test as well as in the group discussion test, have been selected and issued with appointment orders, it is

worthwhile to mention that they have not been made parties to the writ application. With all fairness, if the petitioner alleged that the persons named

above, having not secured 50% of marks in written test as well as group discussion test, have been selected, they should have been impleaded as

parties, instead of making bald statement, so that they could have given opportunity to rebut the allegations made against them. Furthermore, the

opposite parties no.2 to 4 in paragraph-7 of the counter affidavit have averred that the petitioner, being not aggrieved by the mark awarded in the

written test and group discussion test, has no right to allege bias/improper marking in respect of interview. Be that as it may, if the petitioner alleges

that the candidates of various disciplines named above, having secured less than 50% of marks in the written test as well as group discussion test,

have been selected, they should have been impleaded as parties to the proceeding and opportunity of hearing should have been given to them in

compliance of the principle of natural justice. Furthermore, in course of hearing, pursuant to a query made by this Court in the above respect, learned

Senior Counsel appearing for the petitioner replied that since the petitioner has already pleaded in paragraph-6 of the writ application, the question of

impleading the above named candidates as parties may not arise. In view of such position, this Court is of the considered view that the candidates,

who have been selected having secured less than 50% of marks, as alleged by the petitioner, should have been impleaded as parties so as to give them

a fair chance to participate in the proceeding and to give their reply to the allegations made in the writ application.

Thereby, the writ petition suffers from non-joinder of proper parties.

10. In view of the above, the writ petition stands dismissed. No order as to costs.