
**Jinka Chinna Tirupelaiah Vs The Government of Andhra Pradesh and
Others
 Jyothi Manila Podupu Group Vs The Government of Andhra
Pradesh and The Tahsildar, Machavaram Mandal, Machavaram, Guntur
District**

Writ Petition No"s. 3553 and W.P.No. 4038 of 2012

Court: Andhra Pradesh High Court

Date of Decision: Feb. 24, 2012

Acts Referred:

Constitution of India, 1950 – Article 14, 16

Citation: (2012) 4 ALT 189

Hon'ble Judges: Nooty Ramamohana Rao, J

Bench: Single Bench

Advocate: Gangisetty Rajeswara Rao, in W.P. Nos. 3553 of 2012, Sri K. Srinivas, in W.P.No. 4038 of 2012 and Sri S. Dushyanth Reddy, in W.P.No. 4368 of 2012, W.P.No. 4412 of 2012, W.P.No. 4457 of 2012 and W.P.No. 4458 of 2012, for the Appellant;

Judgement

@JUDGMENTTAG-ORDER

Nooty Ramamohana Rao

1. This batch of cases can be dealt with together, as a common question has been raised by the writ petitioners. The State Government, with a

view to ensure that essential commodities are made available to the cardholders for a reasonable and affordable price, has been supplying the

essential commodities through a network of fair price shops established across the breadth and length of the State. It is stated that approximately

42,000 fair price shops have been established. The State Government also makes available ration cards for each family. Depending upon the

income of the family, cardholders are identified, on a broad basis as below poverty line or above poverty line, as the case may be. The essential

commodities become available to each family at specified quantities. As a regulatory measure, the prices of all these essential commodities are

heavily subsidized. Thus, the social objective of ensuring that a large section of the society sustains itself, at the same time, for ensuring that the

respective dealers, who undertake distribution of the essential commodities to the ration cardholders also survive, a small percentage of margin

money is provided as their commission. For the purpose of ensuring this viability of the dealers in rural areas, a minimum of 500 cards are sought to

be attached to each such ration shop, while in urban areas, a minimum of 400 to 450 such cards are attached to every dealer. Since the dealership

of a fair price shop has almost acquired the status of decent employment/entrepreneurship at the grass root level, fairly large number of aspirants

are getting interested in being selected and appointed as fair price shop dealers. The State Government also with a view to ensure that all social

segments of "the society make a decent progress, has set apart, at fixed percentages, dealerships to be filled in by candidates belonging to

scheduled castes, scheduled tribes, backward classes, physically challenged category candidates and ex-servicemen. 30% of these dealerships are

also sought to be filled in by women candidates.

2. In these set of circumstances, the State Government, for securing transparency and fairness in the matter of selection of dealers, has formulated

certain guidelines as a policy measure to be followed by all the appointing authorities and announced the same through their G.O.Ms.No. 4,

Consumer Affairs, Food and Civil Supplies (CS.I) Department, dated 19.02.2011. The appointing authority of a fair price shop dealer is the

Revenue Divisional Officer or the Sub-Collector or the District Supply Officer, as the case may be. Paragraph 2 of Annexure to G.O.Ms.No. 4,

dated 19.02.2011 has furnished the detailed guidelines as to how to conduct the written test and interview as part of the selection procedure. It

was now made obligatory for the appointing authority to conduct a written examination for 50 marks. There are also qualifying marks specified

indicating that all candidates should secure 20 marks out of 50 for being declared to have qualified in the written examination. In effect, 40% of

marks are now prescribed as the qualifying marks in the written test. For the purpose of conducting viva voce test/interview and to secure

finalization of the dealership in quick time, a ratio of 1:5 is prescribed. Such of those candidates, who have secured 20 or more number of marks in

the order of merit position, will be called for interview. This will be of help in case more number of candidates secured qualifying marks, so that the

first five meritorious candidates alone will be called for the interview test. In case the total number of qualified candidates itself is less than five, all

such qualified candidates would be subjected to the interview test. This far there is no problem. The selections are required to be finalized on the

basis of the merit ranking and that merit will be assessed based upon the marks secured at the interview also. For the interview test, as many as 50

marks are set apart. This is where all the petitioners are making a grievance.

3. The learned counsel, who presented their respective view points, are uniform in their criticism that no doubt the appointing authorities are fairly

responsible officers of the State's public administration, but nonetheless, awarding marks at the interview could lead to distortion of the merit

ranking of the respective candidates. They submit that when a written test was already conducted to test the basic general knowledge of the

candidates and also their knowledge as to the nature of the job requirements of a fair price shop dealer as well as the policy behind the distribution

of essential commodities through the network of the fair price shops by the State Government, the interview test should not have carried equal

number of marks. There will be record vouching for the performance of the respective candidates at the written test. Since 20 marks must be

secured by the respective candidates at the written examination, while allocating 50 marks to the viva voce test, the good performance of the

candidates at the written test can be very easily and effectively neutralized by awarding very liberal marks in favour of certain candidates while

awarding relatively far lesser marks to some other candidates. This, according to the learned counsel for the writ petitioners, will impact the final

merit position of the candidates. Therefore, they suggest that a reasonable number of marks alone should have been allocated for the interview

component.

4. 20 marks out of 50 is the minimum that is needed to be secured by every candidate at the written examination for one to qualify for the next stage

of selections. The highest marks one can secure in any written test can be 100%. In the instant case, since the test is conducted for 50 marks, the

difference between the highest and the lowest of those qualified is only 30 marks. This 30 marks differentiation can easily be neutralized by

awarding very liberal marks to certain candidates while, at the same time, downplaying the performance of certain other candidates. For instance, if

one candidate is awarded 18 out of 50 marks for interview, it may not appear to be a case of an unreasonable assessment. At the same interview,

if any candidate is awarded 48 out of 50 marks, whatever be the difference that existed between these two candidates by virtue of their written test

performance, gets completely neutralized. Since there cannot be any record for the performance of candidates at the oral interview test, mostly, it

is the subjective satisfaction of the performance of the respective candidates as perceived and assessed by the interviewer, that will be the sole

criteria. While the integrity of the officers need not be unduly doubted, but at the same time, the elements of subjectivity that normally creep in, in

the matter of assessment of performance of candidates at the interview test cannot be completely ruled out. It is no doubt true that the pleasant

manners of the candidates, the courteous way of answering questions put to them and the depth of knowledge of the respective candidates in

answering the questions would certainly play a very significant role in the assessment of the performance of candidates at the interview test. Such

traits or features make them stand apart from the rest of the competing candidates. But at the same time, Courts have been consistently viewing

making available unduly high percentage of marks for the oral interview test is not a desirable feature when our systems are attuned to the concept

of fairness in action. Justice must not only be done but must appear to have been done, is a norm, which pervades and permeates all our public

institutions. It is also equally true that those cases dealt with the recruitment process to various civil services, where the performance of the

candidates at the interview test is considered to be an equally significant factor for assessing the merit of the respective candidates. Even in such

cases, the Courts have treaded very cautiously the line and suggested that the marks for the interview test should bear a reasonable proportion for

the performance of the candidates assessed when a written test is conducted. Courts have never frowned upon the idea of assessing the merit of

the candidates only by the oral interview test, but such cases are a rarity and such type of cases dealt with selections of highly qualified teachers or

professionals such as Lecturers at degree/post graduation level, doctors both primary and specialized, or technical experts such as engineers for

posts such as Executive Engineer and above. In my humble opinion, selection of a fair price shop dealer does not therefore, require allocation of a

huge percentage of marks for the interview component. While one cannot discount completely the acceptability of an oral interview test, but at the

same time, the principle that it must bear a reasonable proportion to the assessment made at the written test should not be lost out. In the instant

case, as many as 50 marks are allocated for the oral interview test, while 50 marks are allocated for the written test. Therefore, allocating 50

marks to the oral interview test appears to be on a very higher side. It is therefore, appropriate that the State Government should consider fixing

the marks for the interview as 20 or at best 25 when the written test is conducted for 50 marks.

5. With profit I recall as to how the Supreme Court reflected upon this nature of a controversy in Lila Dhar Vs. State of Rajasthan and Others,

which is to the following effect:

Shri Mehta learned counsel for the petitioner raised two principal contentions before us. The first was that the entire selection was vitiated by the

allocation of 25 percent of the total marks for the viva voce examination. The submission was that the allocation of so high a percentage of marks

for the interview-test introduced an irredeemable element of arbitrariness so as to offend Articles 14 and 16 of the Constitution. In support of this

submission reliance was placed on the decisions of this Court in Ajay Hasia etc. Khalid Mujib Sehravardi & Ors. etc.(1) Shri Mehta's second

contention was that marks were awarded in the interview-test in a single lot instead of sub dividing and awarding marks separately under various

heads for the various matters tested in the interview. Reliance was placed on *Periakaruppan v. State of Tamil Nadu* (2).

The object of any process of selection for entry into a public service is to secure the best and the most suitable person for the job, avoiding

patronage and favouritism. Selection based on merit, tested impartially and objectively, is the essential foundation of any useful and efficient public

service. So, open competitive examination has come to be accepted almost universally as the gateway to public services". "The ideal in recruitment

is to do away with unfairness (3)". "Competitive examinations were the answer to the twin problems represented by democracy and the

requirements of good administration. They were the means by which equality of opportunity was to be united with efficiency. By this means

favouritism was to be excluded and the goal of securing the best man for every job was to be achieved (4)". "open competitive examinations are a

peculiarly democratic institution. Any qualified person may come forward. His relative competence for appointment is determined by a neutral,

disinterested body on the basis of objective evidence supplied by the candidate himself. No one has "pull"; everyone stands on his own feet. The

system is not only highly democratic it is fair and equitable to every competitor. The same rules govern, the same procedures apply, the same

yardstick is used to test competence (5).

How should the competitive examination be devised ? The Kothari Committee on Recruitment Policy and selection methods in their report said:

A system of recruitment almost totally dependent on assessment of a person's academic knowledge and skills, as distinct from ability to deal with

pressing problems of economic and social development, with people, and with novel situations cannot serve the needs of today, much less of

tomorrow. We venture to suggest that our recruitment procedures should be such that we can select candidates who can not only assimilate

knowledge and sift material to understand the ramifications of a situation or a problem but have the potential to develop an original or innovative

approach to the solution of problems.

It is now well recognized that while a written examination assesses a candidate's knowledge and intellectual ability, an interview test is valuable to

assess a candidate's overall intellectual and personal qualities. While a written examination has certain distinct advantage over the interview test

there are yet no written tests which can evaluate a candidate's initiative, alertness, resourcefulness, dependableness, cooperativeness, capacity for

clear and logical presentation, effectiveness in discussion, effectiveness in meeting and dealing with others, adaptability, judgment, ability to make

decision, ability to lead, intellectual and moral integrity. Some of these qualities may be evaluated, perhaps with some degree of error, by an

interview test, much depending on the constitution of the interview Board. O. Glenn Stahl in his *Public Personnel Administration* points out:

Any form of written test possesses certain administrative advantages over the oral and performance types. The written form is much easier and

cheaper to administer. It can be given to a large number of individuals at the same time, thus conserving the time of the examiners. As a general rule

it is easier to evaluate objectively, and the technical proficiency demanded in rating is usually, although not always, less. The oral test has long

served as a basic selection tool in private employment but has been more slowly accepted in the public field. This conservatism arises out of three

considerations : (1) the difficulty of developing valid and reliable oral tests; (2) the difficulty of securing a reviewable record of an oral test; and (3)

public suspicion of the oral as a channel for the exertion of political influence through the destruction of anonymity. Despite these acknowledged

disadvantages, however, orals have been used increasingly in public personnel testing and have become important instruments wherever tests of

personal attributes are considered essential. As we have noted no satisfactory written tests have yet been devised for measuring such personal

characteristics as initiative, ingenuity and ability to elicit cooperation, many of which are of prime importance. When properly employed, the oral

test today deserves a place in the battery used by the technical examiner. The general principle is that resort should never be had to an oral if the

relevant factor to be tested can be measured at some other point in the examining process. The reason is that the reliability of the oral, even under

the best of conditions, tends to be lower than that of the well designed written test. The oral test should be confined, then, to the evaluation of

relevant traits which cannot be measured in any other way"" (p.92)

In the United Nations Hand Book on Civil Service Laws and practice it is said:

... the written papers permit an assessment of culture and intellectual competence. The interview permits an assessment of qualities of character

which written papers ignore; it attempts to assess the man himself and not his intellectual abilities.

Thus, the written examination assesses the man's intellect and the interview test the man himself and ""the twain shall meet"" for a proper selection. If

both written examination and interview test are to be essential features of proper selection, the question may arise as to the weight to be attached

respectively to them. In the case of admission to a college, for instance, where the candidate's personality is yet to develop and it is too early to

identify the personal qualities for which greater importance may have to be attached in later life, greater weight has per force to be given to

performance in the written examination. The importance to be attached to the interview test must be minimal. That was what was decided by this

Court in *Periakaruppan v. State of Tamil Nadu, Ajay Hasia etc. v. Khalid Mujib Sehravardi & ors. etc.*, (supra) and other cases. On the other

hand, in the case of services to which recruitment has necessarily to be made from persons of mature personality, interview test may be the only

way, subject to basic and essential academic and professional requirements being satisfied. To subject such persons to a written examination may

yield unfruitful and negative results, apart from its being an act or cruelty to those persons. There are, of course, many services to which recruitment

is made from younger candidates whose personalities are on the threshold of development and who show signs of great promise, and the

discerning may in an interview test, catch a glimpse of the future personality. In the case of such services, where sound selection must combine

academic ability with personality promise, some weight has to be given, though not much too great weight, to the interview test. There cannot be

any rule of thumb regarding the precise weight to be given. It must vary from service to service according to the requirements of the service. The

minimum qualifications prescribed, the age group from which the selection is to be made, the body to which the task of holding the interview test is

proposed to be entrusted and a host of other factors. It is a matter for determination by experts. It is a matter for research. It is not for Courts to

pronounce upon it unless exaggerated weight has been given with proven or obvious oblique motives. The Kothari Committee also suggested that

in view of the obvious importance of the subject, it may be examined in detail by the Research Unit of the Union of Public Service Commission.

In this background, let us now examine the situation presented by the Rajasthan rules. The Rajasthan Judicial Service rules have been made by the

Governor of Rajasthan in consultation with the High Court of Rajasthan and the Rajasthan Public Service Commission. The High Court may be

expected to know the precise requirements of the judicial service of the State and the caliber of the available source-material, while the Public

Service Commission is an expert body thoroughly conversant with recruitment policies and selection methods. Both the High Court and the Public

Service Commission are independent bodies, outside executive control, occupying special positions and enjoying special status under the

constitution. Neither is an outside agency. Both are well-acquainted with the particular needs of their State and the people. If the Governor, in

consultation with the High Court and the Public Service Commission of the State makes rules stipulating seventy five percent of the marks for the

written examination and twenty five percent for the interview test, on what basis can a Court say that twenty five percent for the interview test is on

the high side ? It must not also be forgotten that the interview test is generally conducted and was, in the present case, conducted by a body

consisting of a Judge of the High Court, the Chairman and a member of the Public Service Commission and a special invitee-expert. There can

surely be no legitimate grievance or hint of arbitrariness against this body. Yet another factor worthy of consideration is that the candidates

expected to offer themselves for selection are not raw Graduates freshly out of college but are persons who have already received a certain

amount of professional training. The source material is such that some weightage must be given to the interview test and can it possibly be said that

twenty five percent of the total marks is an exaggerated weightage.

6. Though the above said case dealt with selections to public services, but nonetheless, it bears appropriate weight of consideration even in the

matter of selection of fair price shop dealers.

7. I therefore, consider it appropriate to direct the State Government, the 1st respondent herein, to review the policy guidelines formulated by it, in

particular paragraph 2 of the Annexure to the G.O.Ms.No. 4, dated 19.02.2011 by appropriately fixing the maximum marks for the oral interview

test and communicate the said decision to all the appointing authorities within a period of four weeks from the date of receipt of a copy of this

order. Till the revised guidelines in this regard are formulated and communicated by the State Government, no selection of dealers be finalized by

the respective appointing authorities. These Writ Petitions are disposed of at the admission stage, after hearing the submissions of the learned

Government Pleader for Civil Supplies, who received necessary instructions in the matter. No costs.