

(2000) 07 CAL CK 0005

Calcutta High Court

Case No: MAT No. 1313 of 2000 with 3953 of 2000 with APOT 430 of 2000 - GA. 2041 of 2000

Nibesh Bala and Another

APPELLANT

Vs

Municipal Service Commissioner
and Others

RESPONDENT

Date of Decision: July 10, 2000

Acts Referred:

- Constitution of India, 1950 - Article 14

Citation: 104 CWN 1006

Hon'ble Judges: Saytabrata Sinha, J; Hrishikesh Banerji, J

Bench: Division Bench

Advocate: Ashok Nath Mukherjee, Monoj Ghosh and Debasish Ghosh and Md. Z. Rahaman, for the Appellant; Dipankar Dutta, Alok Kumar Ghosh, Mihir Kundu and T.P. Haider, for the Respondent

Final Decision: Allowed

Judgement

Saytabrata Sinha, J.

These appeals and the writ applications involve an interesting question of law as regards allocation of marks of viva voce. Having regard to the facts and circumstances of these case, we are of the opinion that we need not go into the said question at this stage. Suffice it to point out that the Municipal Service Commission, a body constituted under the Calcutta Municipal Corporation Act on 30th November, 1998 issued an advertisement calling for applications for filling 200 posts of Block Sarkars Grade IV. In the said advertisement it was mentioned that they will have to appear at an examination, the total marks wherefor would be 100 followed by a viva voce test. Pursuant thereto examinations were held on 18th April, 1999. Those candidates who came within the purview of the zone of consideration had been called for interview whereafter recommendations were made. Writ applications were filed questioning the method of selection on the ground that allocation of 50

marks for viva voce smacks of arbitrariness and is violative of Article 14 of the Constitution. The said contention is upheld by the learned trial Judge. The learned Trial Judge directed -

Neither the petitioners nor anyone who has approached the Court has raised even a finger against the selector or against the marks awarded by them to the candidates. No-one has alleged, nor anyone has made effort to demonstrate mala fide in the matter of granting of marks by the selectors. There is, therefore, no question of interfering with the marks so given by the selectors. The only thing that is required to be done is to reduce the percentage of the marks of the viva voce test.

i. therefore, allow this writ petition by directing the Commission to prepare the panel of 250 candidates afresh on the basis as if the written examination comprised of 100 marks and viva voce test comprised of 20 marks and to submit such panel to the Corporation within a month from today. It is made clear that the panel must be prepared on the aggregate marks obtained by the candidates in the written examination and viva voce test. To simplify the same I give an example, suppose a candidate has got 50 marks in written test and 25 marks in viva voce test and accordingly his aggregate stands at 105 out of 150 marks, he should be awarded 80 marks for written examination and 10 marks for viva voce test aggregating to 90 marks out of 120 marks.

The successful candidates had questioned the said decision. They enblock were not impleaded as parties, but some of them had filed applications for intervention and were heard before the impugned order was passed.

2. The learned counsel appearing on behalf of the successful candidates. inter alia, submitted that by reason of the process directed to be adopted by the learned Trial Judge various successful candidates had gone out of the select list, whereas unsuccessful candidates had come in. The learned Counsel submits that the Municipal Service Commission even did not produce the broadsheet before the learned trial Judge. Our attention has been drawn to the statements made in paragraphs 9 and 11 of the writ application for the purpose of showing that the petitioners had questioned the bona fides of the members of the selection committee and had further shown that they had all along been visiting the office of the Commission for the purpose of ascertaining the actual state of affairs.

3. In view of the catena of decisions referred to by the learned trial Judge, there cannot be any doubt that fixation of marks of viva voce would depend upon the nature of the job. There cannot be a straitjacket formula. Admittedly, service of the Block Sarkars. Group IV is to supervise the group of Jamadars Appointment in such a post, in our opinion, did not call for an elaborate interview meriting fixation of 50 marks whereas 100 marks had been fixed for written examination.

4. Having considered the matter, we are of the opinion that when the learned trial Judge arrived at a conclusion that the policy decision adopted by the Municipal

Service Commission to fix 50 marks for viva voce examination is hit by Article 14 of the Constitution of India, (he same ought to have set aside as a whole. It appears that by reason of the formula of the learned trial Judge several persons who succeeded in the interview and obtained very high marks had gone out of the list. Keeping in view the aforementioned two factors, we are of the opinion that the interest of justice will be subserved if the successful candidates who come within the purview of zone of consideration, be asked to appear at the viva voce test with the marks fixed therefore at 20. However, those officers who had earlier participated in the said examination, would not be the members of the committee which would take viva voce examination. This order is being passed not with a view to casting any stigma or otherwise nor do we have any doubt as regards their impartiality and integrity, but only with a view to showing that having regard to the suspicion that the candidates have in their mind, justice may not only be done but must be manifestly seemed to be done.

5. The learned counsel for the Commission very fairly stated that his client has no objection in relation thereto.

6. Mr. Dutta, learned counsel appearing on behalf of the writ-petitioners-respondents submits that ratio of the candidates who were eligible for viva voce test should be 183. We do not intend to lay down any such rule. We are of the opinion that such a policy decision should be left at the hands of the Municipal Service Commission itself. But we are of the opinion that having regard to the number of posts and the number of vacancies which might have occurred since after publication of the advertisement and till the selection process is over and which we are told at the Bar would be about 250. we do not see any reason to say that the opinion of the Municipal Service Commission to call 1000 persons for interview is so irrational which merit interference by this Court.

7. We. therefore, allow these appeals to the aforementioned extent and with the aforementioned directions. All applications are also disposed of accordingly.

8. Having regard to the fact that an advertisement had been issued as far back as in the year 1998. we would request the respondent. Service Commission to consider the desirability of completing the selection process as early as possible and preferably within eight weeks from the date of communication of this order. The other conditions fixed by the Commission, it is made clear, are not varied by this order. Let a plain copy of this order duly countersigned by Assistant Registrar (Court) be given to the learned Counsel appearing on behalf of the Municipal Service Commission on usual undertaking.

H. Banerji, J.

I agree.