

WP(C) 1056/2001  
BEFORE  
THE HON'BLE MR. JUSTICE I. A. ANSARI

( 1 ) Challenging not only the legality but also fairness and transparency of the selection process for the recruitment of medical Officer (Allopathy) and Junior Dental Surgeons adopted by Arunachal Pradesh Public Service Commission (hereinafter as \the commission\), the petitioners have approached this Court with the present application made under Article 226/227 of the Constitution of India seeking issuance of appropriate writ (s) on the respondents

( 2 ) In a nutshell petitioners' case runs thus : By an advertisement publishing on 8. 8. 2001, in Echo of Arunachal Pradesh, an English daily, in the State of Arunachal Pradesh, the Commission invited applications for filling up of 20 (twenty) posts of Medical Officer (Allopathy) and 4 (four) posts of Dental Surgeon under Arunachal Pradesh Health and Family department (hereinafter called \the said department\ ). The advertisement mentioned that selection would be made through viva voce test-interview. The writ petitioners, who, too, had applied for the said posts, were called for the said viva voce test/interview conducted by the commission. The respondents No. 6 to 28 were, eventually, declared successful. The writ petitioners were amongst unsuccessful candidates. The said selection was made on the basis of Arunachal Pradesh Health services Rules, 1990 (hereinafter called \service Rules of 1990\ ). However, at the time of making the said selection, the service Rules of 1990 already stood superseded by a new set of Rules known as Arunachal Pradesh Health Services rules, 2000 (hereinafter as \service Rules of 2000\ ). The Rules of 2000 clearly laid down that selection of the Medical Officer shall be made by direct recruitment on the basis of written examination to be conducted by the commission followed by interview. Under these Rules as far as recruitment for the post of Junior Dental Surgeon is concerned, the same shall be made either by written examination, to be conducted by the Commission, which is to be followed by interview or on the basis of interview only. In the present case, the selection was made on the basis of viva-voce/interview, which gave scope for manipulation to the persons constituting the Commission, Selection having, thus been conducted contrary to the provisions of Service Rules, 2000, entire Selection process is illegal and ineffective, because it allowed the Commission to adopt a method of pick and choose of their near and dear ones. In fact, Dr. Tana Jeshi Tara and Dr. Tana Natung namely, respondents no. 14 and 8 respectively are closely related to Chairman of the Commission and respondents No. 6, 7, 9 to 13 and 15 to 28 are closely related to members of the commission and of other political high ups and they have been found placed in the selected list not because of their merit and experience, but by manipulations of the procedure of the interview/viva voce in gross violation of the Rules. The whole selection suffers from gross partiality, discrimination and favoritism. The selections so made, thus, need to be quashed.

( 3 ) Repelling the above allegations, respondent Nos. 2 and 3, namely, the commission, represented by its Chairman and the Secretary of the Commission have filed their affidavit-in-opposition, their case being, briefly stated, thus: As per the requisition received by the Commissioner from the Government vide letter No. MEST-97/194, dated 2. 7. 2001, and subsequent letter, dated 1. 8. 2001, the said department had forwarded the Service rules of 1990 (Notified vide No. MEST-77/150, dated 12. 1. 1990, for recruitment to the posts of Medical Officers (Allopathy), Dental Surgeons and Junior specialists. Accordingly, the Commission, as per the laid down norms, conditions and terms of the said rules, issued advertisement for filling up the posts. Service Rules of 2000 had not been forwarded to the Commission by the department, while submitting the requisition. The Commission was not aware that the recruitment Rules so received had already been repealed and, hence, the interview was conducted as per the Service Rules of 1990. The total marks kept for the interview was 100. In the entire process of recruitment, the Department had, at no stage, highlighted the existence of the new rules nor

forwarded a copy of the same to the Commission. None of the candidates had raised the issue and the petitioners are raising the issue after the results have been declared, because the results are not palatable to them. The commission had conducted the interview on the basis of the Service Rules of 1990, which allows selection on the basis of viva voce only. The Commission received altogether 94 (ninetyfour) applications and out of the same, 12 applications were rejected and the rest 82 candidates were called for the interview. The Commission has selected the candidates as per merit and not by manipulation of the procedure of the interview as alleged.

( 4 ) As far as state respondents Nos. 1, 4 and 5 are concerned, their case, in brief, is that the Department concerned submitted a representation to the Commission for selection of candidates to fill up the posts of M. O. (Allopathy)/dental Surgeons on 2. 7. 2001 by Government letter No. MEST-97/94/2001, dated 02. 7. 2001 as per existing service rule of APRS-1990. Subsequently, another requisition was submitted to the commission vide letter No. MEST-97/94/ 1067, dated Itanagar 1st August, 2001. After submission of requisition to the commission on 1st August, 2001, the relevant Service Rules were amended and the said amended Service Rules came into force with effect from 3rd August, 2001, from the date of its publication in the official Gazette, but the syllabus for the written examination was yet to be finalised. The Government of Arunachal Pradesh received the list of selected candidates, on 03. 12. 2001, from the Commission vide letter No. PSC /r/27/2000, dated 28. 11. 2001. Because of pendency of this writ petition, the Government could not issue appointment orders to the selected candidates, whose services are urgently needed, because there is shortage of doctors in the Medical Department far deputing them to service at primary medical Health Centres in various districts specially in the remote areas. The commission has rightly acted upon the requisition sent by the Department for recruitment of 41 numbers of Group 'a' post under the Department as per Service rules of 1990. Since the new amended service Rules came into effect after requisition was already submitted to the commission by the Department, the selections are valid. The unsuccessful candidates, who had already participated, can not claim any relief in this writ petition, because they have no locus standi to challenge the recruitment.

( 5 ) By their affidavit, respondents No. 6 to 28 who are the successful candidates, have also contested this case contending, inter alia, that the writ petitioners having participated in the process and having been rejected due to their poor performances cannot, now, challenge the legality of the selection process or its fairness. As the selection process had started before coming into force of Service Rules of 2000, the selection made on the basis of the Service Rules of 1990 is a valid selection.

( 6 ) The respondents No. 12, 13, 25 and 26, who had applied for the post of Junior dental Surgeon, have contested this case on the ground, inter alia, that even under the Service Rules of 2000, recruitment for the post of Junior Dental Surgeon can be made either on the basis of written examination to be followed by interview or on the basis of interview alone and, hence, written examination for recruitment of Junior Dental Surgeon was not mandatory. The selection does not suffer from any illegality or infirmity. Writ petitioners, being unsuccessful candidates, cannot challenge the legality or fairness of the selection process or of the selection made.

( 7 ) I have carefully perused the relevant records. I have heard Mr. T. Son, learned counsel for the petitioners, Mr. R. H. Nabam, learned Additional Senior government Advocate, who has appeared on behalf of the respondents No. 1, 4 and 5. Mr. M. Pertin, learned standing counsel for the Commission, who has appeared on behalf of respondents No. 2 and 3 and Mr. T. Michi, learned counsel, who has appeared on behalf of the remaining respondents.

( 8 ) Shorn off lengthy and immaterial details and legal rhetorics, what emerges

from the allegations and counter allegations levelled by the parties against each other is that the petitioners have challenged the entire selection process on two grounds, namely, (a) selection was not held in accordance with the Service Rules of 2000, which were in force at the relevant time of selection and (b) successful candidates, namely, respondents No. 6 to 28 were close relatives of the Chairman/ members of the Commission and other high ups and, hence, the selection process suffers from not only illegality but also fairness and bias inasmuch as the selection made on the basis of interview alone was not only in contravention of the relevant rules of 2000, but that it also provided the commission with vast scope for manipulation and nepotism.

( 9 ) In support of his contention that the recruitment ought to have been made under the Service Rules of 2000 and the same having not been adhered to by the commission, entire process of selection is wholly illegal, Mr. T. Son, had placed reliance on Nagaland Assembly secretariat Staff Association -vs- State of Nagaland and others, 1999 (1) GLT 412.

( 10 ) It is also contended by Mr. T. San that selection on the basis of the interview alone leaves vast scope for manipulation of results and selection made on the basis of interview alone is highly improper and should not be allowed. In support of this submission Mr. T. Son has placed reliance on Praveen Singh -vs- State of Punjab and others, AIR 2001 SC 152.

( 11 ) Controverting the above submissions made on behalf of the petitioners, Mr. R. H. Nabam, learned addl. Senior Govt. Advocate, has pointed out that from the undisputed materials on record, as reflected from the affidavit of the Commission and also of the government, it clearly transpires that the requisition was sent by the concerned department to the Commission for making selection for the purpose of filling up of 20 (twenty) posts of Medical Officer, (Allopathy)/ Dental Surgeons on 2. 7. 2001, when the service Rules of 1990 were still in force. Even when the requisition was repeated by another letter of the department concerned, the date of issuance of the letter was 01. 08. 2001, whereas new Service rules of 2000 came into force on its publication in the Gazette with effect from 03. 08. 2001. Thus, the process of selection already stood initiated before the new service Rules of 2000 came into force. So contends Mr. Nabam. It is also pointed out by Mr. Nabam that since there are shortage of doctors in the Medical Department to serve at Public Health Centres in remote areas and preparation of syllabus for written examination (as envisaged in the new Rules of 2000) was yet to be finalised, the recruitment had to be held under the service Rules of 1990 and the recruitments so made are valid recruitments.

( 12 ) It is also submitted by Mr. Nabam that the petitioners have no locus-standi to challenge the legality of the selection process on the ground that the same was not in conformity with the Service Rules of 2000, because petitioners had participated in the selection test and only because they have become unsuccessful, they cannot challenge the validity of the recruitment process on the ground of its having been held under the service Rules, of 1990, which had ceased to be in force on the date of selection. In support of this contention, Mr. Nabam has relied on Madanlal and Others -vs- State of Jammu and Kashmir 1995 (3) SCC 486.

( 13 ) Let me, first, deal with the question as to whether the petitioners have locus standi to challenge the selection process on the ground that it was conducted under the Service Rules of 1990, which had ceased to be in existence on the date of making of the selection ?

( 14 ) Without entering into the merit of the submission, made on behalf of the state, that since the recruitment process had started before the Service Rules of 2000 came into force, the selection held under the old Rules of 1990 is not illegal, suffice it to mention here that the consistent view of law is that the candidate, who has fully participated in a selection process and failed to qualify

the same, cannot turn around and challenge the legality of the selection process on the ground that it was not held as per relevant rules. Reference made by Mr. R. H. Nabam, in this regard, to the case of Madanlal vs- State of Jammu and Kashmir (Supra) is not misplaced inasmuch as the Apex Court has, on the above crucial subject succinctly laid down the position of law as follows :

\before dealing with this contention, we must keep in view the salient fact that the petitioners as well as the contesting successful candidates being respondents concerned herein, were all found eligible in the light of marks obtained in the written test, to be eligible to be called for oral interview. Up to this stage there is no dispute between the parties. The petitioners also appeared at the oral interview conducted by the Members concerned of the commission who interviewed the petitioners as well as the contesting respondents concerned. Thus the petitioners took a chance to get themselves selection at the said oral interview.

Only because they did not find themselves to have emerged successful as a result of their combined performance both at written test and oral interview, they have filed this petition. It is now well settled that if a candidate taken a calculated chance and appears at the interview, then, only because the result of the interview is not palpable to him, he can not turn round and subsequently contend that at the process of interview was unfair or the Selection committee was not properly constituted. In the case of Om Prakash Shukla Vs. Akhilesh Kumar Shukla it has been clearly laid down by a Bench of three learned Judges of this court that when the petitioner appeared at the examination without protest and when he found that he would not succeed in examination filed a petition challenging the said examination, the high Court should not have granted any relief to such a petitioner. \ a. I am also guided to adopt the above view from the law laid down in Om Prakash Shukla Vs. Akhilesh Kumar Shukla (AIR 1986 SC1043), wherein it has been laid down as follows:

\moreover, this is a case where the petitioner in the writ petition should not have been granted any relief. He had appeared for the examination without protest. He filed the petition only after he had perhaps realised that he would not succeed in the examination. The high Court itself has observed that the setting aside of the results of examinations held in the other districts would cause hardship to the candidates who had appeared there. The same yardstick should have been applied to the candidates in the District of Kanpur also. They were not responsible for the conduct of the examination. \

(Emphasis is supplied by me)

( 15 ) Because of what have been discussed above, it becomes clear that petitioners are not, now, entitled to challenge the validity of the selection of the process on the ground that the same was not held as per law in force on the date of selection, Viewed from this angle, reference made by Mr. T. Son to the case of Nagaland Secretariat Staff Association (Supra) and Praveen Singh (Supra) are wholly misplaced.

( 16 ) Now, coming to the second ground on which the petitioners have impugned the selection process, merely, that the selection process was unfair and manipulated for extraneous considerations, it is worth noticing that out of altogether 94 applications received by the commission 12 applications were rejected and the rest 82 candidates were called for the interview.

( 17 ) I have very closely scrutinised all the affidavits filed by contesting respondents, but I do not find that any of the respondents have specifically denied or disputed the allegations made by the petitioners as regards the relationship between the Private respondents and chairman/members of the Commission, to a pointed query made, in this regard, by this court, Mr. Pertin as well as Mr. Nishi has, though reluctantly conceded that there is no specific denial on record regarding the relationship of the private respondents with persons responsible for, and intervenely associated with, the entire selection process.

( 18 ) Situated thus, one has no escape from the conclusion that respondents Nos. 8 and 14 are closely related to the chairman of the Commission and respondents Nos. 6, 9, 10, 11, 16, 17, 18, 19, 20, 22, 27 and 28 are closely related to the other members of the Commission. Since the averments in the affidavit are not controverted, this court has to proceed on the basis that averments stand admitted. (Smti Naseem Banu Vs. State of UP and others may be ).

( 19 ) In view of the fact that two of the selected candidates are, admittedly, closely related to the Chairman of the Commission and as many as 12 number of candidates are closely related to the members of the commission, the likelihood of bias adversely affecting the process of selection cannot be boldly and confidently ruled out. When a selection made is brought for scrutiny before a Court of law on the ground of bias and unfairness the selection has to withstand the test of fairness and impartiality. If reasonable possibility of bias or nepotism exists, such a selection procedure cannot, by any means, be allowed to stand good on record. When a member of a Selection Commission has an interest of his own, then, even if such a member does not participate in assessing merit of the candidate in whose welfare he may be interested in yet the fact remains that while judging merit of the others, whose interest obviously clash with the interest of the candidate concerned, possibility cannot be ruled out of bias affecting the judgment/assessment of the selector, even while assessing the merit of the others. As indicated in AK Kraipak and others Vs. Union of India and others (AIR 1970 SC 150), the real question is not whether such a person was biased, because it is difficult to prove the state of mind of a person. When the Court has to judge as to whether there is reasonable ground for believing that he was likely to have been biased, this bias can be inferred by taking into consideration human probabilities and ordinary course of human conduct.

( 20 ) Since the present selection was made by State Public Service Commission, the case is squarely covered by the landmark judgment of the Apex Court in Ashok Kumar Yadav and ors. Vs. State of Haryana and ors. AIR 1987 SC 454. It has been clearly laid down in this case that when a close relative of a member of public Service Commission appears for interview such member must be dropped from participation in the interview of the candidate and must not take part in any discussion with regard to the merits of the candidate and even marks/credits given to that candidate should not be disclosed to him.

( 21 ) In the case at hand, from the available materials on record, I do not find even semblance of assertion on the part of the contesting respondents that when the respondent Nos. 8 and 14 were interviewed chairman of the Commission, who was, admittedly, a relative of the two candidates, had withdrawn from participation in the interview and/or that the marks obtained by respondent Nos. 8 and 14 had not been not disclosed to the chairman. Similarly, there is not even an iota of assertions anywhere in the record that the members of the Commission had withdrawn, whenever their relatives had participated in the interview and/or that the marks obtained by such candidates were kept withheld from the member, whose relative was interviewed.

( 22 ) Situated thus, this Court is constrained to hold that reasonable possibility of likelihood of bias creeping in mind and adversely affecting the entire selection process, held for recruitment to the post of Medical Officer (Allopathy) and Dental Surgeon, cannot be confidently ruled out. Selections made on the basis of such selection process cannot, therefore, be allowed to stand good on record.

( 23 ) On behalf of the respondent Nos. 12, 13, 25 and 26, who are applicants for the post of Junior Dental Surgeon, it has been submitted that since even the Service rules of 2000 provide making of recruitment on the basis of the written examination to be followed by interview or on the basis of interview alone, the commission, in effect, acted, within the ambit of Service Rules of 2000, by choosing

sing to make selection on the basis of interview alone. In this regard, suffice it mention that I have already held that since the petitioners have participated in the selection process, they cannot, now, turn around and challenge legality of the selection process, but in view of the fact that the entire selection process, as held above, is marked by strong possibility bias, the selection made on the basis of such a process cannot be allowed to stand good on record.

( 24 ) I may pause hereto point out that in Praveen Singh (supra), the Apex Court has disapproved the choice of making recruitments on the basis of interview alone, because the scope for manipulations giving the tactics of manipulations a facade of interview is not impossible. I am guided to adopt this view from the law laid down in Praveen Singh (supra) in the following words :-

\while it is true that the administrative or quasi judicial authority clothed with the power of selection and appointment ought to be left unfettered in adaptation of procedural aspect but that does not however mean and imply that: the same would be made available to an employer at the cost of fairplay, good conscience and equity. This Court in the case: of J. P. Kulshreshtha Vs. Chancellor Allahabad University, AIR 1980 SC 2141 : (1980 Lab 1c 692 : 1980 All LJ 571) did recognise the undetectable manipulation of results being achieved by remote control tactics and masked as viva voce test resulting (in) the sabotaging of the purity of proceedings. This court held \interviews as such are not bad but polluting it to attain illegitimate ends is bad. \ what does Kulshreshtha's case (supra.) depict ? Does it say that interview should be only method of assessment of the merits of the candidates ? The answer obviously cannot be in the affirmative. The vice of manipulation we are afraid cannot be ruled out. Tough interview undoubtedly a significant factor in the matter of appointments. It plays a strategic role but it also allows creeping in of a lacuna rendering the appointments illegitimate. Obviously, it is an important factor but not to be the sole guiding factor since reliance thereon only may lead to a \sabotage of purity of the proceedings. \

( 25 ) It needs to be borne in mind that when the service Rules of 2000 provide the commission with the option of making recruitment of Dental Surgeons on the basis of either written examination, to be followed by interview, or on the basis of interview alone, the Commission has to satisfy the Court, if the fairness of the selection process is challenged, as to way it chose to make recruitment on the basis of interview only and did not resort to holding of written examination to be followed by viva voce test/interview. The affidavit filed by the Commission is, as already indicated above, completely silent in this regard.

( 26 ) Coupled with the above it is of immense importance to note that though it is true that the requisition for making recruitment was sent by the said department to the Commission initially on 2. 7. 2001 and, then, repeated on 1. 8. 2001, yet the fact remains that the Service Rules of 2000 came into force barely two days thereafter i. e. on. 3. 8. 2001. It is difficult to believe that the Department concerned, on publication of Gazette notification on 3. 8. 2001, did not come to know that the new recruitment rules have already come into force and the selection, if any, should be made on the basis of new recruitment rules. In fact, the State respondents do not deny their knowledge of the changes that had taken place. This becomes crystal clear from the fact that in the affidavit, the State respondents have contended to the effect that since syllabus for written examination was yet to be finalised and posting of doctors at primary Health centres was necessary, the selection was made on the basis of the Rules of 1990. However, no material has been placed before this Court to show that any serious study was done either by the Department concerned or by the commission to ascertain if in view of the changes in the relevant recruitment rules, written examinations should be held before calling candidates (meant for post of Dental Surgeons) for viva voce or interview. Far from this, the commission has expressed its complete ignorance by asserting that it did not know that the recruitment rules stood changed.

anged. If the syllabus for any written examination to be conducted by a Public Service commission, is to be prepared, it has to be really prepared by the Commission, because it is the commission, which knows what it needs to test in a candidate to determine his/her suitability for the post for which the recruitment has to take place.

( 27 ) In the face of the fact that the commission nowhere claims that it made any effort to finalise the syllabus for written examination, one cannot readily believe the assertions of the State respondents that as finalisation of syllabus would have taken time, recruitment was held under the service Rules of 1990. I am not questioning here the legality of making of recruitment on the basis of Service Rules of 1990, but testing whether the holding of selection process under Service Rule of 1990 was aimed at making recruitment hastily of some persons already chosen for the post advertised. Viewed from this angle, not holding of written examination and making of selection based entirely on interview, fairness of which is vigorously shaken, one has no option, but to hold that the selection made smacks of bias and favoritism.

( 28 ) In short, attempting to make selection on the basis of interview alone coupled with the fact that the entire selection process is found to smack of bias, the recruitment made, with the help of such process, cannot but be interfered with by court in exercise of powers under Article 227 of the Constitution of India.

( 29 ) In the result, and for the reasons discussed above, this writ petition, succeeds. The entire selection process as well as selection of the private respondents namely, respondent Nos. 6 to 28 and the appointments, if any, already made, in consequence of such selection, shall stand set aside and quashed as a whole. No order as to costs.