

IN THE HIGH COURT OF TRIPURA
AGARTALA

W.P(C) No.269 of 2015

Shri Anirban Dasgupta,
son of Shri Arup Dasgupta of
North Banamalipur, B.K. Road,
P.O. Agartala, District – West
Tripura

..... **Petitioner**

- V e r s u s -

- 1. The State of Tripura,**
represented by the Secretary-
cum-Commission, Public Works
Department, Secretariat Building,
New Capital Complex, P.O.
Kunjaban, Agartala, West Tripura
- 2. Engineer-in-Chief,**
Public Works Department,
Secretariat Building, New Capital
Complex, P.O. Kunjaban,
Agartala, West Tripura
- 3. The Secretary,**
Tripura Public Service
Commission, having its office at
A.K. Road, near Old Secretariat
Building, Agartala, West Tripura
- 4. The Chairman,**
Tripura Public Service Commission,
having its office at A.K. Road, near
Old Secretariat Building, Agartala,
West Tripura
- 5. The Joint Secretary,**
Tripura Public Service Commission,
having its office at A.K. Road, near
Old Secretariat Building, Agartala,
West Tripura
- 6. Shri Debasish Naha,**
son of Dulal Chandra Naha, posted at
Office of the Executive Engineer, DWS
Division, Udaipur, Gomati District,

P.O. R.K. Pur, Near Old Hospital, PIN-799120

7. **Shri Shibabarata Bardhan**,
son of late Satyabrata Bardhan,
posted at Bidyut Bhavan, North
Banamalipur, Agartala, West Tripura,
PIN -799001

.....**Respondents**

B E F O R E
THE HON'BLE MR. JUSTICE S. TALAPATRA

For the petitioners	:	Mr. R. Datta, Advocate Ms. R. Purakayasta, Advocate				
For the respondent Nos.1 & 2	:	Mr. S. Chakraborty, Addl. G.A.				
For the respondent Nos.3,4 & 5	:	Mr. P. Dutta, Advocate				
For the respondent No.6	:	Mr. S.M. Chakraborty, Sr. Advocate Mr. Sekhar Dutta, Advocate, Mr. D. Sengupta, Advocate Ms. P. Sen, Advocate Ms. B. Chakraborty, Advocate Ms. D. Das, Advocate				
For the respondent No.7	:	Mr. S. Deb, Sr. Advocate Mr. S. Dutta, Advocate Mr. B. Debnath, Advocate				
Date of hearing	:	15.10.2015				
Date of delivery of Judgment & Order	:	18.12.2015				
Whether fit for reporting:		<table border="1"><tr><td>YES</td><td>NO</td></tr><tr><td>√</td><td></td></tr></table>	YES	NO	√	
YES	NO					
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JUDGMENT & ORDER

By the advertisement No.09/2014 dated 22.07.2014, Tripura Public Service Commission, the T.P.S.C. in short, invited application for three permanent posts (ST-1 & UR-2) of the Financial Controller (Group-A Gazetted) under the Public Works Department, Govt. of Tripura in the pay scale of Rs.13,575-

37,000/- P.B.-4 with Grade Pay of Rs.4,500/-. The essential qualification and other qualifications as required had been mentioned in the said advertisement, Annexure-A to the writ petition. The required qualification is Chartered Accountancy or its equivalent qualification from a recognized university with minimum 4(four) years' experience in the audit and accounts branch of any Government Department/Government Undertaking/Public Sector Unit or Master of Business Administration (MBA) or its equivalent qualification from a recognized university with minimum of two years' experience in the audit and account branch of any Government Department/Government Undertaking/Public Sector Unit. It was further provided in the said advertisement that candidates having experience in (i) Accounting procedure in PWD/CPWD/CPSUs/State PSUs etc. in Tally Software having preferable knowledge of Bengali. There is no dispute that the petitioner has all those qualifications. The petitioner applied for the post as he is having an MBA degree from a recognized university. That apart, he has Masters in Commerce and have experience of working as the Financial Controller on contract basis w.e.f. 15.12.2007 to 12.11.2012 in the Public Works Department (PWD) and he has also worked as the Nodal Officer for the said department for 13th Finance Commission related matters. At present, the petitioner has been working as the State Mission Manager (Finance), under Tripura Rural Livelihood Mission (TRLM) w.e.f. 25.06.2013 till date. The respondent No.3 by the

notification dated 25.05.2015 declared the date, time and venue of the interview for appointment in the said post of Financial controller under the PWD. Two days after the said notification dated 25.05.2015 another notification dated 27.05.2015 had been issued by the PWD-respondents whereby the list of eligible candidates for the post of Financial Controller was published in the TPSC website. The said list contains 11 candidates out of which there was one candidate from SC category. All the remaining candidates were from UR category. It has been categorically mentioned in the said list that '*all other candidates applied for the post are ineligible.*' In the said notification dated 27.05.2015, Annexure-D to the writ petition, the name of the respondent Nos.6 and 7 did not figure but they are allowed to appear in the said interview. Even the T.P.S.C. recommended their names for appointment as the Financial Controller, Group-A (Gazetted) under the Public Works Department, Govt. of Tripura from the UR category. According to the petitioner, for recommending the names of the respondents No.6 & 7 by the notification dated 06.07.2015, Annexure-F to the writ petition, the TPSC has acted arbitrarily and illegally. As such, the said notification dated 06.07.2015 is liable to be interfered with.

[2] The TPSC by filing the counter affidavit has refuted the allegations made by the petitioner. They have categorically stated in Para 5(iii) of their counter affidavit that two candidates namely, Sri Biswanath Majumder and Sri Debasish Naha not finding their

names in the list of eligible candidates notified by the TPSC in the website on 27.05.2015 made representation with their relevant documents to the TPSC. The TPSC found that only for not submitting the certificates in respect of their experience what they mentioned in the application, their names could not be included in the list of eligible candidates notified by the TPSC. In Para-6 they have stated as under:

"The Commission received representation from Sri Biswanath Majumder on 01.06.2015 and from Sri Debasish Naha on 04.06.2015 respectively. After re-verification of the documents, the Commission was satisfied that both the candidates possessed the requisite qualifications and experiences at time of submission of their applications and also confirmed that there was no additional acquired qualification or experiences after the last date of submission of the application for the post of Financial Controller. Therefore, subsequently they were added in the eligible list. So, the Commission considered them eligible for interview and issued call letters in favour of them on 04.06.2015 and 09.06.2015 respectively. Hence, in total the number of eligible candidates raised from 11(eleven) to 13(thirteen) numbers."

But they have not raised any question about the eligibility of the petitioner.

[3] By filing the rejoinder, the petitioner has stated that *'this clearly shows the premeditated scheme of respondent Nos.3,4 & 5.'* Some other allegations in respect of holding the interview have been raised by the petitioner. It would be reflected from the order dated 08.10.2015 that the TPSC has produced the records covered by the File No.F.11(57-3)Rectt./TPSC/2014. The seal was broken in the Court and the records were verified.

What has transpired from the record does not support the statement made by the TPSC in Para-6 of their counter affidavit. The advertisement which is generated in terms of Note No.5 of the said file has categorically stated that the candidates who are the chartered accountant or having its equivalent qualification from the recognized university should have minimum 4 years experience in the audit and account branch of any Govt. Department/Govt. Undertaking/Public Sector Unit or Master of Business Administration (MBA) or its equivalent qualification from a recognized university with minimum of 2(two) years experience in audit and account branch of any Govt. Department/Govt. Undertaking/Public Sector Unit. The further experience as sought is however desirable qualification. From Note No.12 dated 03.06.2015 what transpires is as under:

"1(one) representation received from Sri Biswanath Majumder, S/O- Late Rudra Narayan Majumder regarding for reconsideration for the post of Financial Controller under the Public Works Department, Govt. of Tripura, reference Commission's Advt. No.09/2014 (item No.1) dated 22.07.2014 which may kindly be seen vide flag-A.

On scrutiny of the Tabulation sheet it appears that Sri Biswanath Majumder, being Sl. No.22 is ineligible as per Commission Note No.8. Now Sri Majumder submitted supported documents for the aforesaid post and requested to the Commission, his case may be considered for interview to the post of Financial Controller.

In view of the above, the file may be placed before the authority for kind decision in this regard."

[4] Thereafter, in Note No.13 dated 03.06.2015 the following notings are available:

"Sri Biswanath Majumder has submitted experience certificate afresh where it is clearly mentioned that he possess experience in accounts and audit which is as per R/R."

In Note No.20 dated 06.06.2015 another noting is available in respect of the respondent No.6 which reads as under:

"Another 1(one) representation received from Sri Debasish Naha, S/O-Dulal Ch. Naha regarding for reconsideration for the post of Financial Controller under the Public Works Department, Govt. of Tripura, reference Commissions Advt. No.09/2014 (item No.1) dated 22.07.2014 which may kindly be seen vide flag-B.

On scrutiny of the Tabulation sheet it appears that Sri Debasish Naha, bearing serial No.28 is ineligible as per Commission Note No.8. Now Sri Naha submitted supporting documents (Departmental) for the aforesaid post and requested to the Commission, his case may be considered for interview to the post of Financial Controller.

In view of the above, the file may be placed before the authority for kind decision in this regard."

With reference to Note No.20, the following entry is available in that file:

"Sri Debasish Naha has submitted an incomplete application form which his eligibility could not be ascertained. Now he has submitted experience certificate issued by appropriate authority and his work experience is as per R/R eligibility of Sri Naha may kindly be decided."

The said note was given on 06.06.2015.

[5] On scrutiny of the application filed by Sri Debasish Naha, the respondent No.6, it appears that even though he

applied through the proper channel but while forwarding his paper, the department did not enclose the experience certificate. Without the NOC or the experience certificate issued by the competent authority, the application form cannot be treated complete for the candidates who are in the service. The Director, Directorate of Audit issued to him the experience certificate after completion of the departmental formalities much after the last date. His representation is available in the same file at Page-45. The certificate of experience was issued in favour of the respondent No.6 on 03.01.2015. From the statement of particulars of the candidate as prepared by the TPSC, it would be apparent that as the applications of two candidates, namely Sri Udayan Datta and Sri Prasenjit Pal were received after the closing date, their candidature was not accepted. But in the case of the respondent Nos.6 & 7, what has transpired is that the formal application of the respondent No.6 with some documents were received by the TPSC on 08.09.2014, whereas the last date was fixed on 23.08.2014. It has surfaced that one experience certificate of the respondent No.6 dated 03.01.2015 was taken into consideration and he was declared of having the requisite experience. The said certificate in the form of memorandum dated 03.01.2015 is available in the file at page-67. Similarly, one certificate dated 22.05.2015 in support of the experience of the respondent No.7 has been entertained by the TPSC and that certificate was issued by the General Manager, Tripura State Cooperative Bank Ltd. on 22.05.2015, which is available at page-

31 of that file. It is really shocking that when the last date of receiving application in full form expired on 23.08.2014 as clearly mentioned in Advertisement No.09/2014, Annexure-A to the writ petition, the said experience certificate dated 22.05.2015 has been accepted by the TPSC. Thus, the statement of TPSC at Para-6 of the counter affidavit was circuitous in nature as the respondents No. 6 and 7 could not furnish any experience certificate of worth at the time of filing the application. On the basis of the certificates filed afresh much after the last date, they were declared eligible. Even in the list shown in the website of the TPSC their names were not shown as eligible. But they did not disclose how for purpose of purported re-verification, the requisite experience, the certificates which were issued much after the last date of receiving the application could be considered by the TPSC. Is it not an example of compromising with the integrity of the selection process? As there was no experience certificate with the applications of the respondents No.6 & 7, the TPSC declared them ineligible and their names did not figure in the list of eligible candidates but later on, '*after so called re-verification*' they were found eligible. But the corrected list was never published in the website. Even when the petitioner sought disclosure about how these two persons i.e. the respondents No.6 & 7 were interviewed, the TPSC did not disclose those facts to the petitioner. The TPSC is a constitutional body. It is supposed to maintain unimpeachable integrity of the process and is supposed to keep its process beyond above all suspicions. The record as produced have

eloquently pointed out that for purpose of interviewing the respondents No.6 & 7, the TPSC did not maintain the integrity of the process. As already stated as the referred two applications were received belatedly, they were never considered but the respondents No.6 and 7 have been allowed to insert new documents, as identified and indicated, in their applications. This Court cannot shut its eyes to such process.

From the Note No.12, it clearly transpires that how the process was compromised. There it has been noted that on scrutiny of the tabulation sheet it appeared that Sri Biswanath Majumder bearing Sl. No.22 is ineligible as per Commission Note No.8. Thereafter, Sri Majumder was permitted to submit supporting documents for the aforesaid post and on his representation, the Commission has reconsidered his case. He was declared eligible and permitted to appear in the interview for the post of Financial Controller. The said note was given on 03.06.2015. Similarly, from the Note No.20 it would also appear that *'on scrutiny of the tabulation sheet it appears that Sri Debasish Naha bearing Sl. No.28 is ineligible as per commission Note No.8. Now Sri Naha submitted supporting documents (departmental) for the aforesaid post and requested to the commission, his case may be considered for interview to the post of Financial Controller.'*

On culmination of the process, both the respondents No.6 & 7 were interviewed and against the two vacancies in the

UR category, the respondents No.6 & 7 have been recommended by the TPSC. The said selection and recommendation is under challenge by the petitioner by means of this petition.

[6] Mr. P. Dutta, learned counsel appearing for the TPSC-respondents has stated that the TPSC did not compromise with the integrity of the process. The petitioner submitted those documents with their application form. But their impact was not clear to the TPSC and as such, when they made their experience intelligible to the TPSC, the respondents No.6 & 7 were treated as eligible. There is no infraction of their process. The respondents No.6 & 7 were eligible from the very beginning but for not having clear import of their statement, they were not declared eligible. Thereafter, Mr. Dutta, learned counsel raised a jurisprudential objection against the petition. According to Mr. Dutta, learned counsel for the TPSC that the petitioner cannot after appearing in the interview turn round and challenge the process. The apex court has in the similar circumstances shot down the petition for judicial review. In this regard, he has referred a few decisions viz. **Om Prakash Shukla vs. Akhilesh Kumar Shukla and others**, reported in **AIR 1986 SC 1043**, **Madan Lal and Others vs. State of Jammu and Kashmir and Others**, reported in **(1995) 3 SCC 486**, **Chandra Prakash Tiwari and Ors. vs. Shakuntala Shukla and Ors**, reported in **(2002) 6 SCC 127** and **Ramesh Chandra Shah and Ors. vs. Anil Joshi and Ors.**, reported in **AIR 2013 SC 1613**.

To denote the law decided in those reports, some relevant passages are reproduced hereunder.

[7] In **Madan Lal and Ors. Vs State of J & K**, reported in **1995(3) SCC 486**, the apex court held as follows:

"9. ... It is now well settled that if a candidate takes a calculated chance and appears at the interview then, only because the result of the interview is not palatable to him he cannot turn round and subsequently contend that the process of interview was unfair or Selection Committee was not properly constituted.

10. Therefore, the result of the interview test on merits cannot be successfully challenged by a candidate who takes a chance to get selected at the said interview and who ultimately finds himself to be unsuccessful."

In **Chandra Prakash Tiwari & Ors. Vs. Shakuntala Shukla & Ors.**, reported in **(2002) 6 SCC 127**, the apex court held as follows:

"34. There is thus no doubt that while question of any estoppel by conduct would not arise in the contextual facts but the law seem to be well settled that in the event a candidate appears at the interview and participates therein, only because the result of the interview is not 'palatable' to him, he cannot turn round and subsequently contend that the process of interview was unfair or there was some lacuna in the process."

In **Ramesh Chandra Shah Vs. Anil Joshi**, reported in **AIR 2013 SC 1613**, the Apex Court held as follows :

"24. In view of the propositions laid down in the above noted judgments, it must be held that by having taken part in the process of selection with full knowledge that the recruitment was being made under the General Rules, the respondents had waived their right to question the advertisement or the methodology adopted by the Board for making selection and the learned

Single Judge and the Division Bench of the High Court committed grave error by entertaining the grievance made by the respondents."

[8] Mr. S. Deb, learned senior counsel appearing for the respondent No.7 has submitted that not only the petitioner is estopped from raising the selection after he participated in the said process but also the scope of judicial review is very limited as it cannot go beyond the examination of the process. The merit of the decision cannot be assessed. In support of that, Mr. Deb, learned senior counsel relied on a decision of the House of Lords in **Reid vs. Secretary of State for Scotland**, reported in **1991 All ER 481** where it has been held that while exercising the power of judicial review it is not open to examine the evidence with a view to forming its own view about the merits of the case. He has also relied on a decision of the apex court in **Heinz India Pvt. Ltd. and Anr. vs. State of U.P. and Ors**, reported in **(2012) 5 SCC 443**, where the power of judicial review has been described as neither unqualified nor unlimited. For reference, the relevant passage therefrom are extracted hereunder:

"60. The power of judicial review is neither unqualified nor unlimited. It has its own limitations. The scope and extent of the power that is so very often invoked has been the subject-matter of several judicial pronouncements within and outside the country. When one talks of 'judicial review' one is instantly reminded of the classic and oft quoted passage from *Council of Civil Service Unions (CCSU) v. Minister for the Civil Service (1984) 3 All ER 935(HL)*, where Lord Diplock summed up the permissible grounds of judicial review thus:

Judicial Review has I think developed to a stage today when,

without reiterating any analysis of the steps by which the development has come about, one can conveniently classify under three heads the grounds on which administrative action is subject to control by judicial review. The first ground I would call 'illegality', the second 'irrationality' and the third 'procedural impropriety'.

By 'illegality' as a ground for judicial review I mean that the decision-maker must understand correctly the law that regulates his decision-making power and must give effect to it. Whether he has or not is par excellence a justiciable question to be decided, in the event of dispute, by those persons, the judges, by whom the judicial power of the State is exercisable.

By 'irrationality' I mean what can by now be succinctly referred to as 'Wednesbury unreasonableness'. It applies to a decision which is so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it. Whether a decision falls within this category is a question that judges by their training and experience should be well equipped to answer or else there would be something badly wrong with our judicial system....

I have described the third head as 'procedural impropriety' rather than failure to observe basic rules of natural justice or failure to act with procedural fairness towards the person who will be affected by the decision. This is because susceptibility to judicial review under this head covers also failure by an administrative tribunal to observe procedural rules that are expressly laid down in the legislative instrument by which its jurisdiction is conferred, even where such failure does not involve any denial of natural justice."

66. That the Court dealing with the exercise of power of judicial review does not substitute its judgment for that of the legislature or executive or their agents as to matters within the province of either, and that the Court does not supplant 'the feel of the expert' by its own review, is also fairly well-settled by the decisions of this

Court. In all such cases judicial examination is confined to finding out whether the findings of fact have a reasonable basis on evidence and whether such findings are consistent with the laws of the land. (See *Union of India v. S.B. Vohra* : (2004) 2 SCC 150, *Shri Sitaram Sugar Co. Ltd. v. Union of India*: (1990) 3 SCC 223, and *Thansingh Nathmal and Ors. v. Supdt. of Taxes*: AIR 1964 SC 1419).

* * * *

49. We may while parting with the discussion on the legal dimensions of judicial review refer to the following passage from *Reid v. Secretary of State for Scotland* (1999) 1 All ER 481 HL), which succinctly sums up the legal proposition that judicial review does not allow the Court of review to examine the evidence with a view to forming its own opinion about the substantial merits of the case.

'Judicial review involves a challenge to the legal validity of the decision. It does not allow the court of review to examine the evidence with a view to forming its own view about the substantial merits of the case. It may be that the tribunal whose decision is being challenged has done something which it had no lawful authority to do. It may have abused or misused the authority which it had. It may have departed from the procedures which either by statute or at common law as a matter of fairness it ought to have observed. As regards the decisions itself it may be found to be perverse or irrational or grossly disproportionate to what was required. Or the decision may be found to be erroneous in respect of a legal deficiency, as for example, through the absence of evidence, or of sufficient evidence, to support it, or through account being taken of irrelevant matter, or through a failure for any reason to take account of a relevant matter, or through some misconstruction of the terms of the statutory provision which the decision maker is required to apply. But while the evidence may have to be explored in order to see if the decision is vitiated by such legal deficiencies it is perfectly clear that in case of review, as distinct from an ordinary appeal, the court may not set about forming its own preferred view of evidence.' "

[9] In **Air India Ltd. vs. Cochin International Airport Ltd.**, reported in **(2000) 2 SCC 617**, the apex court held as under:

"7.....But the State, its corporations, instrumentalities and agencies are bound to adhere to the norms, standards and procedures laid down by them and cannot depart from them arbitrarily. Though that decision is not amenable to judicial review, the Court can examine the decision making process and interfere if it is found vitiated by mala fides, unreasonableness and arbitrariness. The State, its corporations, instrumentalities and agencies have the public duty to be fair to all concerned. Even when some defect is found in the decision making process the Court must exercise its discretionary power under Article 226 with great caution and should exercise it only in furtherance of public interest and not merely on the making out of a legal point. The Court should always keep the larger public interest in mind in order to decide whether its intervention is called for or not. Only when it comes to a conclusion that overwhelming public interest requires interference, the Court should intervene."

[10] In **Noble Resources Ltd. vs. State of Orissa and Anr.**, reported in **AIR 2007 SC 119**, the apex court restated the law in the following words:

"28. Although the scope of judicial review or the development of law in this field has been noticed hereinbefore particularly in the light of the decision of this Court in *ABL International Ltd.* (supra), each case, however, must be decided on its own facts. Public interest as noticed hereinbefore, may be one of the factors to exercise power of judicial review. In a case where a public law element is involved, judicial review may be permissible. [See *Binny Ltd. and Anr. v. V. Sadasivan and Ors.* : (2005) 6 SCC 657 and *G.B. Mahajan and Ors. v. Jalgaon Municipal Council and Ors.* : (1991) 3 SCC 91] .

* * * *

30. Another field where judicial review is permissible would be when mala fide or ulterior motives is attributed. In *Asia Foundation and Construction Ltd. v. Trafalgar House Construction India Ltd. and Ors.* : (1997) 1 SCC 738 , this Court held:

'...We are of the considered opinion that it was not within the permissible limits of interference for a court of law, particularly when there has been no allegation of malice or ulterior motive and particularly when the court has not found any mala fides or favouritism in the grant of contract in favour of the appellant....'

It was further held:

'Therefore, though the principle of judicial review cannot be denied so far as exercise of contractual powers of government bodies are concerned, but it is intended to prevent arbitrariness or favouritism and it is exercised in the larger public interest or if it is brought to the notice of the court that in the matter of award of a contract power has been exercised for any collateral purpose. But on examining the facts and circumstances of the present case and on going through the records we are of the considered opinion that none of the criteria has been satisfied justifying Court's interference in the grant of contract in favour of the appellant....''

[11] Mr. Deb, learned senior counsel has submitted that the experience as gathered by the respondent No.7 was much before the last date of receiving the application. As such, it cannot be stated that the essential qualification or the experience was acquired after the last date. The TPSC has its discretionary power to take clarification from anyone if there is any confusion or ambiguity in any document or as to its interpretation. The TPSC cannot be taken for a ride as in this institution the public trust resides. It is the sentinel of probity and for that reason its function has been made so wide as described in Article 320 of the

Constitution of India. By allowing the respondent No.7 to appear in the interview no prejudice has been caused to the petitioner. Moreover, the selection and the recommendation as made is based on comparative merit. The petitioner had taken a calculated chance, appeared in the interview and thereafter turned round to contend that the process of interview was unfair.

[12] Mr. S.M. Chakraborty, learned senior counsel appearing for the respondent No.6 has adopted the submissions of Mr. Deb, learned senior counsel. He has also stated that there is no allegation of *mala-fide* and as such, the selection process may not be interfered by this Court. He has also stated that the respondent No.6 has been held eligible correctly.

[13] Appearing for the petitioner, Ms. R. Purakayasta, learned counsel has referred a decision in **Dr. Amit Sharma vs. State of J & K and others** (the judgment and order dated 09.07.2015 in SWP No.1332 of 2010) where the High Court of J & K disapprove the decision holding someone eligible after declaring him ineligible. Ms. Purakayasta, learned counsel has further submitted that the entire process has been manipulated and such manipulation is apparent on the face of the notes.

[14] Mr. S. Chakraborty, learned Addl. G.A. has distanced the Government from the controversy stating that the Government made requisition for appointment in the posts of the Financial Controller under the PWD and the TPSC has made the

recommendation. He has further submitted that the TPSC has followed their process. On examination of the process, if no infraction is located, the selection may not be interfered with.

[15] Having regard to the submissions made by the learned counsel appearing for the parties, it should be made abundantly clear that the petitioner has failed to make out any case that the entire process of assessing the comparative merit has been visited by *mala-fide* or illegality. But the issue is not of comparative merit but it relates a larger issue how the TPSC has allowed the respondents No.6 and 7 participate in the process after declaring them ineligible or lay some important papers in support of their essential experience. Such action by discretion or any other consideration is obnoxious, ante-thesis to the fair action and subversive to integrity of the process of the selection. It is unthinkable that an institution like the Public Service Commission can take such ride on their own process in such a clandestine manner. The selection of respondents No.6 & 7 might be coincidence but it would create an indelible impression that the process has been manipulated to select the respondents No.6 & 7 and for that purpose, they were allowed to place some essential documents which are dated much after the last date of receiving the application. Whether such process can be allowed to survive? Answer is a definite no. Their action declaring the respondents No.6 & 7 ineligible was appropriate but later on the basis of so called re-verification of the experience certificates, which were

placed with their application after the date of interview was notified when they declared the respondents No.6 and 7 eligible, they indulged in impropriety. Hence, the TPSC owed an explanation. The explanation that has been provided in Para-6 of their counter affidavit is nothing short of an eye wash. When their own records were scrutinized the truth sprang out. The truth is nothing but a telling episode of manipulation, inappropriate interference in the process and an attempt to hide the fact. Public interest demands that such action is castigated and interfered with. The PSC has been entrusted with the public examinations for selection, other assignments including the expanded functions. They cannot compromise the integrity of the process. In **Ashok Kumar Yadav and Others vs. State of Haryana**, reported in **AIR 1987 SC 454**, the apex court observed having due regard to the constitutional position of the Public Service Commissions as under:

"Before we part with this judgment we would like to point out that the Public Service Commission occupies a pivotal place of importance in the State and the integrity and efficiency of its administrative apparatus depends considerably on the quality of the selections made by the Public Service Commission. It is absolutely essential that the best and finest talent should be drawn in the administration and administrative services must be composed of men who are honest, upright and independent and who are not swayed by the political winds blowing in the country. The selection of candidates for the administrative services must therefore be made strictly on merits, keeping in view various factors which go to make up a strong, efficient and people oriented administrator. This can be achieved only if the Chairman and members of the Public Service Commission are

eminent men possessing a high degree of calibre, competence and integrity, who would inspire confidence in the public mind about the objectivity and impartiality of the selections to be made by them. We would therefore like to strongly impress upon every State Government to take care to see that its Public Service Commission is manned by competent, honest and independent persons of outstanding ability and high reputation who command the confidence of the people and who would not allow themselves to be deflected by any extraneous considerations from discharging their duty of making selections strictly on merits. Whilst making these observations we would like to make it clear that we do not for a moment wish to suggest that the Chairman and members of the Haryana Public Service Commission in the present case were lacking in calibre, competence or integrity."

When the court would jealously guard the Public Service Commissions independence at the same time the court would not hesitate to stem out the rot.

[16] The jurisprudential objection as raised based on the doctrine of estoppel is entirely misplaced. Prerequisite of estoppels is constructive knowledge and legality. Both these elements are mutually inclusive. In **Raj Kumar and Ors. Vs Shakti Raj and Ors.**, reported in **(1997) 9 SCC 527**, the apex court held as follows :

"16. It is true, as contended by Shri Madhava Reddy, that this Court in *Madan Lal v. State of J and K*, (1955) 3 SCC 486 : (1995 AIR SCW 1109) and other decisions referred therein had held that a candidate having taken a chance to appear in an interview and having remained unsuccessful, cannot turn round and challenge either the constitution of the Selection Board or the method of selection as being illegal; he is estopped to question the correctness of the selection. But in his case, the Government have committed glaring illegalities in the procedure to

get the candidates for examination under 1955 Rules, so also in the method of selection and exercise of the power in taking out from the purview of the and also conduct of the selection in accordance with the Rules. Therefore, the principle of estopped by conduct or acquiescence has no application to the facts in this case."

[17] Similarly, in **Nar Singh Pal Vs Union of India and Ors.**, reported in **(2000) 3 SCC 588**, the apex court held as follows :

"..... Fundamental Rights under the Constitution cannot be bartered away. They cannot be compromised nor can there be any estoppel against the exercise of Fundamental Rights available under the Constitution. As pointed out earlier, the termination of the appellant from service was punitive in nature and was in violation of the principles of natural justice and his constitutional rights. Such an order cannot be sustained."

[18] The cumulative impact of that observation is that the selection of the respondents No.6 & 7 through the impugned process cannot be sustained inasmuch as unless the certificate or document of experience which were accepted after the respondents No.6 and 7 were declared ineligible, are considered the respondents No.6 and 7 admittedly would not be declared eligible. Such acceptance was not only clandestine, but also was manuvoured to get the respondents No.6 and 7 declared eligible. However, this observation has nothing to do with the comparative merit. Such gross and inappropriate interference has subverted substantially the integrity of the process. The TPSC has unexpectedly compromised with their process. Hence, the recommendation of the TPSC selecting the respondent Nos.6 & 7

is set aside and quashed. The respondent Nos.1 & 2 are prohibited from acting thereon. However, the TPSC may hold the selection afresh. In that event, the petitioner and the respondents No.6 & 7 shall be entitled to participate along with other eligible candidates for appointment to the post of the Financial Controller in the Public Works Department, Govt. of Tripura.

[19] In the result, the writ petition is allowed to the extent as indicated above.

A copy of the file as produced by the TPSC under the sealed cover shall be maintained with the perennial records. Only the court having jurisdiction will break open the same. The original records as produced by the TPSC are returned under the sealed cover.

No order as to costs.

JUDGE

Sujay