

**HIGH COURT OF TRIPURA**  
**AGARTALA**

WA No.189/2019

1. Smt. Bindusmita Bhowmik, D/o Late Bimalendu Bhowmik,  
W/o Sri Papan Debnath, R/o Vill. Dhaleshwar, Jail Ashram Road,  
P.O. Dhaleshwar, P.S. East Agartala, District – West Tripura.
2. Smt. Manika Shil(Biswas), W/o Sri Biswanath Biswas, R/o North  
Badharghat, P.O. & P.S. A. D. Nagar, District – West Tripura.

..... *Petitioner(s)*.

**Vs.**

1. The Tripura State Legislative Assembly represented by its  
Secretary, Tripura State Legislative Assembly Secretariat, P.O.  
Kunjaban, P.S. New Capital Complex, District – West Tripura.
2. The Secretary, Tripura State Legislative Assembly Secretariat,  
P.O Kunjaban, P.S. New Capital Complex, District – West Tripura.
3. Smt. Alpana Das, W/o – Unknown, serving as Junior Reporter,  
Tripura State Legislative Assembly Secretariat, P.O Kunjaban, P.S.  
New Capital Complex, District – West Tripura.
4. Sri Paritosh Debnath, S/o Unknown, serving as Junior Reporter,  
Tripura State Legislative Assembly Secretariat, P.O Kunjaban, P.S.  
New Capital Complex, District – West Tripura.
5. Sri Dipankar Deb, S/o Unknown, serving as Junior Reporter,  
Tripura State Legislative Assembly Secretariat, P.O Kunjaban, P.S.  
New Capital Complex, District – West Tripura.

..... *Respondent(s)*.

**\_B\_E\_F\_O\_R\_E\_**  
**HON'BLE THE CHIEF JUSTICE MR. AKIL KURESHI**  
**HON'BLE JUSTICE MR. S G CHATTOPADHYAY**

For Petitioner(s) : Mr. Arijit Bhowmik, Advocate.

For Respondent(s) : Mr. S Lodh, Advocate.

Date of hearing & Judgment : 22<sup>nd</sup> December, 2020.

Whether fit for reporting : No.

**J U D G M E N T ( O R A L )**

(Akil Kureshi, CJ).

This appeal is filed by the original petitioners. They have challenged the judgment of the learned Single Judge dated 19<sup>th</sup> September, 2019 in WP(C) No.336/2018.

[2] Brief facts are as under :

The Tripura State Legislative Assembly issued an advertisement on 27<sup>th</sup> May, 2017 for filling up 6 posts of Junior Reporter in the pay scale of Rs.5,700-24,000/- in Pay Band-2 with Grade Pay of Rs.4,000/-, 3 of which vacancies would be filled up through unreserved candidates. Both the petitioners belonging to unreserved category applied in response to the said advertisement. The selection process would comprise of a typing speed of a minimum 30 words per minute in English as well as in Bengali. The candidates who clear this test would be called for written test followed by oral interview. The petitioners as well as the private

respondents No.3, 4 and 5 qualified in the typing test. The Legislative Assembly issued call letters to them on 24<sup>th</sup> October, 2017 for a written test to be conducted on 8<sup>th</sup> November, 2017 followed by oral interviews on the same day. These call letters specified that the written test would consist of 10 marks of English and Bengali, each carrying 5 marks. The viva voce would carry 20 marks. Case of the petitioners is and with respect to which there is no serious dispute by either the official or the private respondents that minutes before the candidates entered the examination hall on 8<sup>th</sup> November, 2017 for written examination, it was conveyed to the candidates that the written examination would carry 50 marks with the duration of one hour. The petitioners despite these changes appeared in the written test as well as oral interviews, so did the private respondents. The Legislative Assembly selected the respondents No.3 to 5 and appointed them on the 3 vacancies of unreserved category candidates. The petitioners were excluded. They, therefore, filed the said writ petition and raised the contention of the allocation of marks for written test being changed at the last minute.

[3] The learned Single Judge dismissed the petition by the impugned judgment primarily on two grounds. Firstly, in the opinion of the learned Judge, the petitioners who had participated in the selection process were estopped from challenging the legality of the decision of the Legislative

Assembly to change the allocation of marks for written test. On behalf of the Legislative Assembly it was pointed out that the Speaker of the Assembly in exercise of his discretionary powers under sub-rule (2) of Rule 5 of the Tripura Legislative Assembly Secretariat (Recruitment and Condition of Service) Rules, 1972 (*hereinafter to be referred to as "the said Rules"*) had changed the allocation of marks for written test from 10 to 50 for greater transparency. The learned Single Judge was of the opinion that the decision of the Speaker of the Assembly was not shown to be arbitrary or unreasonable.

[4] Appearing for the appellants, learned counsel Mr. Arijit Bhowmik submitted that the change in allocation of marks for the written test was communicated to the candidates minutes before the examination was to begin. Since this communication was made at the last moment, participation of the petitioners in the written examination cannot be a ground to preclude them from challenging the validity of this change. He submitted that the recruiting agency had changed the rules of the game after the game had begun which is contrary to series of judgments of the Supreme Court. He contended that even the fact that the same was changed as per the decision of the Speaker of the Assembly was not duly established. No order of the Speaker was produced on record. He brought to our notice a communication dated 15<sup>th</sup> February, 2018 received by the

petitioners answering their queries under Right to Information Act. This communication contains the breakup of marks secured by the petitioners and the selected candidates in the written test as well as viva voce. Inviting our attention to this data Mr. Bhowmik submitted that the petitioners were given extremely low marks in the oral interviews.

[5] Though served no one appeared for the State Legislative Assembly. Learned counsel, Mr. S Lodh appearing for the selected candidates, opposed the appeal contending that the petitioners waited for the entire process of selection to be over, took their chances with the selection and challenged the selection process only after they found out that their names were not included in the select list. He further submitted that the increase in allocation of marks of written test was pursuant to the decision of the Speaker of the Assembly in order to achieve greater transparency. The learned Single Judge has given cogent reasons for dismissing the writ petition.

[6] It is undisputed that in the call letters issued to the petitioners and other candidates on 24<sup>th</sup> October, 2017, the official respondents had conveyed that in the tests that will be conducted on 8<sup>th</sup> November 2017, the written test would comprise of 10 marks and oral interview would carry 20 marks. It is equally true that the question paper which was given

to the candidates for written examination, was for 50 marks. In the reply filed by the State Legislative Assembly before the learned Single Judge, the reason for this change that has been projected is that the Speaker of the Assembly expressed an opinion that for greater transparency written examination should be conducted for 50 marks. This was in exercise of his powers under sub-rule (2) of Rule 5 of the said Rules. The said respondents had also objected to the petitioners' raising such a grievance after having voluntarily participated in the written test. It was, however, equally undisputed that this major change in allocation of marks for written test from 10 to 50 was communicated to the candidates only minutes before they entered the examination hall. In that view of the matter, the petitioners cannot be faulted for not refusing to participate in the selection process without the pain of shutting out their challenge to the legality of the selection process. The well settled principle of a candidate who willingly and voluntarily participates in the selection process is precluded from challenging legality of the selection process, is based on *estoppel*. Often times it is stated that if a candidate was selected, surely he would not have challenged the legality of the selection process. Thus, one who takes the chance in the selection process by participating in the same without any protest or demurrer, cannot then turn around and challenge the selection process merely because he finds that he has not been

selected. However, any such logic in the present case would fail. The petitioners who were applying for a Government post and who obviously were not legally trained persons, were to make a choice whether to participate in the selection process and be told later on that they cannot challenge the validity of a major change in the selection criteria or to stay away from the selection with a possibility of their challenge not succeeding and to make such a decision in matter of minutes when their concentration would be focused on the ensuing written test followed by oral interviews. Their participation in the written test followed by oral interview, therefore, cannot be fatal to their challenge.

[7] We also find considerable substance in the grievance of the petitioners that once when in advance the allocation of marks for written test and viva voce were declared, there could not have been such a drastic change at the last minute. This is more so because the petitioners were told minutes before the examination that the written test would now consist of 50 marks instead of 10 marks as was originally declared. Whatever be the justification in making such a change and justification there was in the preset case, as correctly pointed out by the official respondents, the Speaker of the Assembly for greater transparency make this change; the same had to be announced well in time and candidates should have been given sufficient time for preparation for this major

modification . In the present case, however, it is not necessary to go into this issue any further since for some strange reason eventually what the selecting agency did was to project the marks of all candidates in the written examination, out of 10. This can be seen from the reply the petitioners received in response to their queries under Right to Information Act relevant portion of which reads as under:

“3. Total 12 Nos. UR candidates applied for the post of Junior Reporter.

The Following candidates are listed according to merit basis.

Name of candidates under UR category/who got as UR post as per merit	Roll No.	Marks obtained			
		Written test	Type & Shorthand test	Viva-voce	Remarks
1. Smt. Alpana Das	04	7	66	15	She got UR post as per merit
2. Sri Patitosh Debnath	15	6	52	18	
3 Sri Dipankar Deb	21	8	49	18	
4. Sri Debabrata Choudhury	05	9	62	03	
5.Smt. Manika Shil	03	6	56	06	
6. Smt. Bindusmita Bhowmik	01	7	44	06	

We may record that the candidates at Sl. No.1, 2 and 3 above are respondents No.3 to 6, the selected candidates and petitioners No.1 and 2 are candidates at Sl. No.6 and 5 respectively. The marks allotted to all the candidates in the written test clearly indicate that the same have been



assigned out of 10 and not 50 marks and that is why the candidates have scored marks in the range of 7 to 9 in written examination. Thus, even after projecting the marks in the written examination out of 10 as originally declared, the petitioners were not found meritorious enough to be included in the select list. Their challenge, therefore, must fail.

[8] In the result, appeal is dismissed. Pending application(s), if any, also stands disposed of.

( S G CHATTOPADHYAY, J )

( AKIL KURESHI, CJ )

