

**HIGH COURT OF TRIPURA
AGARTALA**

WP(C) No.606 of 2024

Sri Rajib Goswami,

S/o-Sri Brajalal Goswami,

R/o-Shyamalima Apartment, New Capital Complex, Block No.1, Flat No.104,
A3/A4, P.O.-Agartala Secretariat, P.S.-NCC, Dist.-West Tripura.

....Petitioner(s)

Versus

1. National Institute of Technology Agartala, represented by the Director,
Barjala, Jirania, District-West Tripura, PIN-799046.

2. The Director, National Institute of Technology Agartala, Barjala, Jirania,
District-West Tripura, PIN-799046.

3. The Registrar, National Institute of Technology Agartala, Barjala,
Jirania, District-West Tripura, PIN-799046.

4. Prof. Richi Prasad Sharma, Chairman, Interview Board, National
Institute of Technology Agartala, Barjala, Jirania, District-West Tripura, PIN-
799046.

5. Col.(Dr.) Ashish Badola, Registrar, NIT Agartala and Member, Interview
Board, National Institute of Technology Agartala, Barjala, Jirania, District-West
Tripura, PIN-799046.

6. Shri Tanmay Ghosal, Deputy Registrar, NIT Agartala and Member,
Interview Board, National Institute of Technology Agartala, Barjala, Jirania,
District-West Tripura, PIN-799046.

....Respondent(s)

For the Petitioner(s)	:	Mr. K. D. Singha, Advocate
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For the Respondent(s)	:	Mr. B. Majumder, Dy. SGI
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Date of hearing & delivery of judgment & order	:	16.12.2024
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Whether fit for reporting	:	Yes
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HON'BLE MR. JUSTICE ARINDAM LODH

Judgment & Order (Oral)

By way of filing the instant writ petition, the petitioner has prayed
for quashing and setting aside the impugned Advertisement dated 04.09.2024
issued by the respondents-National Institute of Technology inviting applications
for filling up of the post of Legal Advisor on contract basis without cancelling
the earlier selection process.

2. It is the case of the petitioner that National Institute of Technology (for short, NIT), Agartala had issued an advertisement dated 13.10.2023 for filling up the post of Legal Advisor on contract basis where essential qualifications were mentioned in the advertisement and a format which a candidate must fill up was also mentioned in the said advertisement. In terms of the advertisement, the petitioner submitted his application and duly filled up all the columns in the format for the said post. Having satisfied with the essential qualifications as mentioned in the advertisement, the respondent-NIT called him to appear before the Interview Board. The Interview Board was constituted by a number of experts. The petitioner appeared before the Selection Committee on the stipulated date and time. The Selection Committee interviewed him on 27.02.2024. All on a sudden, the petitioner had noticed that the respondent-NIT issued another advertisement for filling up of the same post of Legal Advisor on contract basis vide Advertisement dated 04.09.2024 without publishing the result of the interview. The petitioner submitted a representation on 11.09.2024 to the Director, NIT Agartala stating *inter alia* that the issuance of a new advertisement for the same post on similar and identical terms without cancelling the earlier one created procedural irregularities. The previous process of selection was not cancelled at all before the publication of new advertisement inviting applications from willing candidates for filling up the same post of Legal Advisor. It is further stated in his representation that one of the fundamental principles of public administration is transparency. The said representation was not responded to by the respondent-NIT, compelling the petitioner to approach this Court by way of filing the instant writ petition.

3. In the present writ petition, the petitioner has prayed for completing the earlier selection process by means of publication of result of the interview

and to complete the selection process forthwith and also to appoint suitable candidates. He has also prayed for compensating him adequately. The petitioner has also challenged the issuance of fresh advertisement for filling up the post of Legal Advisor without cancelling the selection process in which he had appeared.

4. On the aforesaid background of facts, I have heard Mr. K.D. Singha, learned counsel appearing for the petitioner. Also heard Mr. B. Majumder, learned Dy. SGI appearing for the respondent-NIT. I have also interacted with Col (Dr.) Ashish Badola, Registrar, NIT Agartala who is present before this Court today.

5. Mr. Singha, learned counsel appearing for the petitioner has submitted that in every recruitment process, the employer must follow the doctrine of fair play and fairness. At no point of time, during the process of selection, the respondent-NIT found loopholes in the application or in the information furnished by the petitioner. Having satisfied with the essential qualifications as mentioned in the advertisement, the petitioner was asked to appear before the Interview Board on 27.02.2024(Tuesday) at 3:00 p.m. sharp in the Registrar's Conference Room, Admin. Building(3rd Floor), NIT Agartala vide communication dated 22.02.2024(*Annexure-F* to the writ petition).

5.1. The petitioner appeared before the Interview Board at the scheduled time and venue when he performed very well despite being faced intense questioning. Thereafter, he was awaiting for the result of the interview and further action on the part of the respondent-NIT. But, all on a sudden, the petitioner noticed that the respondent-NIT had re-advertised to fill up the same post of Legal Advisor on contractual basis. The petitioner having noticed the said advertisement, submitted representation requesting the respondent-NIT to

complete the ongoing selection process as was undertaken by the respondent-NIT under advertisement dated 13.10.2023, but, the authority concerned of the NIT did not respond to the said representation. Mr. Singha, learned counsel for the petitioner has further drawn the attention of this Court to the statements made in the counter affidavit filed by the respondent-NIT wherein they have stated at para 5 that the respondents found the petitioner not suitable. The relevant portion is reproduced hereunder:

“5..... The Petitioner appeared before the selection panel duly constituted to conduct walk-in-interview for the post of Legal Advisor on contractual basis. But he was not found fit as per requirement of the Institute. The answering respondents wants to submit that petitioner is well known about the fact that decision of the appointing authority in all matter relating to eligibility, acceptance or rejection of applications will be final and binding on the candidates and no enquiry or correspondence will be entertained in this matter.”

5.2. Lastly, Mr. Singha, learned counsel for the petitioner has submitted that the respondent has failed to explain as to why he was not found fit and what requirements the petitioner could not fulfill.

6. Opposing the submissions of learned counsel appearing for the petitioner, Mr. Majumder, learned Dy. SGI appearing for the respondent-NIT has contended before this Court that the respondent-NIT maintained all transparency in the entire process of selection.

7. It is pertinent to mention herein that when this matter came up for the first time, this Court granted interim protection to the petitioner directing the respondent-NIT not to proceed with the selection process to be undertaken in view of the later advertisement dated 04.09.2024. The respondent-NIT have also come up with an application for vacating the interim order dated 23.09.2024. Drawing my attention to the statement made in the interim order, Mr. Majumder, learned Dy. SGI has submitted that the petitioner has secured 45 marks out of

100 marks in the interview and for that reason, he was not found eligible or suitable for appointment to the post of Legal Advisor. Mr. Badola, Registrar, NIT Agartala also has submitted that there was only one candidate who appeared before the interview and he secured 45 marks out of 100 marks and not found suitable.

8. At this juncture, Mr. Singha, learned counsel for the petitioner has submitted that this statement is neither found in the counter affidavit nor in the application for vacating the interim order dated 23.09.2024.

9. In view of this submission, I have gone through the statements made in the application for vacating the interim order and this statement is not found. However, Mr. Majumder, learned Dy. SGI has furnished the result sheet of the petitioner separately in an envelope.

10. I have considered the submissions of learned counsel appearing for the parties and have perused the documents enclosed with the writ petition as well as the counter affidavit filed by the respondent-NIT.

11. It is an admitted position that the respondent-NIT did not publish the result of the interview and they issued fresh advertisement for filling up the same post of Legal Advisor on similar terms and conditions without cancelling the previous selection process which was almost completed. The petitioner submitted representation, but, that even was not responded to. It is the specific plea taken by the respondent-NIT that they have the right to cancel the selection process and nobody has a right to question it, as it appears from the statements they made in para 5 of the counter affidavit.

12. Here, in my opinion, the action of the respondent-NIT suffers from clear arbitrariness. It is settled proposition that reasons are the soul of all fair administrative actions. It is true that there is no precise statutory or other

definition of the terms “arbitrary”. Hon’ble Supreme Court in the case of ***East Coast Railway and Anr. vs. Mahadev Appa Rao and Ors, (2010) 7 SCC 678*** while dealing with the meaning of the term “arbitrariness” observed thus: (SCC p 686-687, para 23)

“23. Arbitrariness in the making of an order by an authority can manifest itself in different forms. Non-application of mind by the authority making the order is only one of them. Every order passed by a public authority must disclose due and proper application of mind by the person making the order. This may be evident from the order itself or the record contemporaneously maintained. Application of mind is best demonstrated by disclosure of mind by the authority making the order. And disclosure is best done by recording the reasons that led the authority to pass the order in question. Absence of reasons either in the order passed by the authority or in the record contemporaneously maintained is clearly suggestive of the order being arbitrary hence legally unsustainable.”

13. In the instant case, even the result of the interview was not published or communicated to the petitioner. No record has been placed before this Court that before starting the selection process, the respondent-NIT made the candidates aware of the minimum marks to be secured to make them eligible or qualified for selection to the post of Legal Advisor.

14. I have noticed the result-sheet, which is reproduced here-in-below:

Sl. No.	Name of Candidate	Past Experience (10)	Presentation (20)	Subject Knowledge (50)	Attitude (20)	Total Marks obtained out of 100 (Col.3+4+5+6)	Remarks/ Rank
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
1.	Rajib Goswami, S/O. Sri Braja Lal Goswami, Shyamalima Apartment, New Capital Complex, Block No.1, Flat No.104, A3-A4, P.O. Agartala Secretariat Pin-799010 rajibgoswami6666@gmail.com	5	10	20	10	45	Not recommended

15. From the above result-sheet, it becomes clear that the Selection Committee even before starting the process of interview had not informed the petitioner that the interview would be conducted out of 100 marks *qua* the minimum mark a candidate was required to secure in the interview to make him eligible for the post. No minimum mark of eligibility was prescribed/mentioned neither in the advertisement nor before the commencement of interview. In the remark column, it is only stated “not recommended”, but the reason has not been given why he was not recommended.

16. *There is no quarrel that the candidates who participated in the selection process had no indefeasible right or absolute right to seek appointment, but, it does not give an unfettered license to the competent authority to act in an arbitrary manner by way of not declaring the result of the examination. Without publication of the result of earlier examination or without cancelling the process of selection, the competent authority cannot invite and start another process of selection for the same post or posts.*

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[emphasis supplied]

17. In the case of ***East Coast Railway(supra)*** Hon’ble Supreme Court has held that *while no candidate acquires an indefeasible right to a post merely because he has appeared in the examination or even found a place in the select list, yet the State does not enjoy an unqualified prerogative to refuse an appointment in an arbitrary fashion or to disregard the merit of the candidates as reflected by the merit list prepared at the end of the selection process. The validity of the State’s decision not to make an appointment is thus a matter which is not beyond judicial review before a competent writ court. If any such decision is indeed found to be arbitrary, appropriate directions can be issued in the matter.*

18. In *Kumari Shrilekha Vidyarthi and Ors. vs. State of U.P. and Ors.*, reported in (1991) 1 SCC 212, the Hon'ble Supreme Court explained the true import of the expression "arbitrariness".(SCC p 243 para 36)

"36. The meaning and true import of arbitrariness is more easily visualized than precisely stated or defined. The question, whether an impugned act is arbitrary or not, is ultimately to be answered on the facts and in the circumstances of a given case. An obvious test to apply is to see whether there is any discernible principle emerging from the impugned act and if so, does it satisfy the test of reasonableness....."

19. In the instant case, the respondent-NIT has miserably failed to explain or justify their action of not publishing the result of examination, and further, what prompted them to issue another advertisement for the same post of Legal Advisor on similar terms and conditions. Added to it, it is surprising that after receipt of representation from the petitioner, the respondent-NIT did not even respond to it, rather, in their counter affidavit they have taken a plea that it was their absolute right or prerogative not to declare the result and has clearly stated that nobody could question their authority or action. According to this Court, this kind of action and attitude of the respondent-NIT is unacceptable and fails to satisfy the test of Wednesbury's reasonableness.

[emphasis supplied]

20. In my ultimate analysis, initiation of fresh selection process without cancellation of the previous process for filling up the same post is *per se* illegal, arbitrary, discriminatory and violative of Article 14 of the Constitution of India. Another important aspect necessary to be noticed that the respondent-NIT neither in their counter affidavit nor in the petition for vacating the interim order has brought the fact that the petitioner was disqualified since he could not secure the cut off/qualifying marks in the interview. In the petition for vacating the

interim order which was registered as IA No.2 of 2024 , the respondent-NIT has stated that the petitioner did not possess requisite experience as was required (at para 5 of the petition for vacating the interim order). The marks obtained by the petitioner was placed before this Court only in compliance of the order passed by this Court under order dated 08.10.2024. This action on the part of the respondent-NIT raises serious doubt in the mind of this Court as regards the purity and integrity of the plea of the respondent-NIT that the petitioner was disqualified since he could not secure the qualifying marks in the interview. The Hon'ble Supreme Court in the case of ***East Coast Railway(supra)*** had observed thus:(SCC pp. 685, 686 and 687, paras 17, 18, 19, 20, 22 and 23)

17. It is trite that Article 14 of the Constitution strikes at arbitrariness which is an antithesis of the guarantee contained in Articles 14 and 16 of the Constitution. Whether or not the cancellation of the typing test was arbitrary is a question which the Court shall have to examine once a challenge is mounted to any such action, no matter the candidates do not have an infeasible right to claim an appointment against the advertised posts.

18. What then is meant by arbitrary/arbitrariness and how far can the decision of the competent authority in the present case be described as arbitrary?

19. Black's Law Dictionary describes the term "arbitrary" in the following words:

"Arbitrary.—1. Depending on individual discretion; specif., determined by a judge rather than by fixed rules, procedures, or law. 2. (Of a judicial decision) founded on prejudice or preference rather than on reason or fact. This type of decision is often termed arbitrary and capricious."

20. To the same effect is the meaning given to the expression "arbitrary" by Corpus Juris Secundum which explains the term in the following words:

"Arbitrary.—Based alone upon one's will, and not upon any course of reasoning and exercise of judgment; bound by no law; capricious; exercised according to one's own will or caprice and therefore conveying a notion of a tendency to abuse possession of power; fixed or done capriciously or at pleasure, without adequate determining principle, non-rational, or not done or acting according to reason or judgment; not based upon actuality but beyond a reasonable extent; not founded in the nature of things; not governed by any fixed rules or standard; also, in a somewhat different sense, absolute in power, despotic, or tyrannical; harsh and unforbearing. When applied to acts, 'arbitrary' has been held to connote a disregard of evidence or of the proper

weight thereof; to express an idea opposed to administrative, executive, judicial, or legislative discretion; and to imply at least an element of bad faith, and has been compared with 'willful'."

22. *Dealing with the principle governing exercise of official power Prof. De Smith, Woolf and Jowell in their celebrated book on Judicial Review of Administrative Action emphasised how the decision-maker invested with the wide discretion is expected to exercise that discretion in accordance with the general principles governing exercise of power in a constitutional democracy unless of course the statute under which such power is exercisable indicates otherwise. One of the most fundamental principles of the rule of law recognised in all democratic systems is that the power vested in any competent authority shall not be exercised arbitrarily and that the power is exercised that it does not lead to any unfair discrimination. The following passage from the above is in this regard apposite:*

"We have seen in a number of situations how the scope of an official power cannot be interpreted in isolation from general principles governing the exercise of power in a constitutional democracy. The courts presume that these principles apply to the exercise of all powers and that even where the decision-maker is invested with wide discretion, that discretion is to be exercised in accordance with those principles unless Parliament clearly indicates otherwise. One such principle, the rule of law, contains within it a number of requirements such as the right of the individual to access to the law and that power should not be arbitrarily exercised. The rule of law above all rests upon the principle of legal certainty, which will be considered here, along with a principle which is partly but not wholly contained within the rule of law, namely, the principle of equality, or equal treatment without unfair discrimination."

23. *Arbitrariness in the making of an order by an authority can manifest itself in different forms. Non-application of mind by the authority making the order is only one of them. Every order passed by a public authority must disclose due and proper application of mind by the person making the order. This may be evident from the order itself or the record contemporaneously maintained. Application of mind is best demonstrated by disclosure of mind by the authority making the order. And disclosure is best done by recording the reasons that led the authority to pass the order in question. Absence of reasons either in the order passed by the authority or in the record contemporaneously maintained is clearly suggestive of the order being arbitrary hence legally unsustainable.*

21. Applying the aforesaid principles to the case at hand, there cannot be any quarrel to the proposition that while candidates have no indefeasible or absolute right to seek appointments, at the same time, it does not give a license to the competent authority to act at their own whims and sweetwill. Based merely upon a clause in the advertisement for recruitment or making a statement in the counter affidavit that it is the absolute domain or prerogative of the

employer not to declare the result and none has any right to question their authority or actions. As a matter of re-iteration, I am constrained to observe that it is settled that reasons are the soul of all administrative actions. In the cases of **Maneka Gandhi vs. Union of India and another** reported in (1978) 1 SCC 248 and **Swadeshi Cotton Mills vs. Union of India** and other connected matters reported in (1981) 1 SCC 664, Hon'ble Supreme Court held that the doctrine of fairness in action is essential requirement of Law to be followed while discharging an administrative action. Doctrine of fairness is nothing but a duty to act fairly and reasonably. It is a doctrine developed in the administrative field. It is a doctrine that obligates a duty upon the authorities concerned to act fairly and reasonably. The doctrine of fairness and fairplay developed in the administrative field to ensure rule of Law and to prevent failure of justice where an action is administrative in nature.

[emphasis supplied]

22. In the instant case, the respondent-NIT has virtually failed to assign any reason to initiate fresh selection process under the advertisement dated 04.09.2024 without cancelling the previous selection process under advertisement dated 13.10.2023 for filling up the post of Legal Advisor in the same terms and conditions. Added to it, in absence of any prescribed minimum marks the candidature of the petitioner and his disqualification for appointment to the post of Legal Advisor is illegal and arbitrary. Following the principle laid down in **East Coast Railway(supra)** I aptly visualize the act of arbitrariness on the part of the respondent-NIT, and for this reason, they are to compensate the petitioner adequately and he is being dragged to the court under compulsion.

23. In the light of above analysis on the proposition of law and discussion made here-in-above, I direct the respondent-NIT to consider the

matter of selection of the petitioner in the post of Legal Advisor, which they have sought for filling up under the advertisement dated 13.10.2023 before undertaking fresh selection process to fill up the post of Legal Advisor. Considering the extent of arbitrariness and for failure to discharge their expected duty to act fairly, I direct respondents-NIT to pay a sum of Rs.50,000/- to the petitioner as compensation.

24. With the aforesaid observations and directions, the instant writ petition stands allowed and disposed of. The copy of the result sheet is kept on record.



JUDGE

Snigdha

SAIKAT KAR
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