

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K. SURENDRA MOHAN
&
THE HONOURABLE MR. JUSTICE SHAJI P. CHALY

TUESDAY, THE 20TH DAY OF OCTOBER 2015/28TH ASWINA, 1937

O.P. (CAT).No. 24 of 2014 (Z)

AGAINST THE ORDER IN OA 1215/2012 OF CENTRAL ADMINISTRATIVE TRIBUNAL,
ERNAKULAM BENCH DATED 17-12-2013.

PETITIONER(S)/APPLICANT:

SWAPNA SURENDRAN,
SANTHI BHAVAN, LBSRA 307, LBS ROAD,
THIRUVANKULAM, ERNAKULAM.

BY ADVS. SRI. GEORGE VARGHESE (PERUMPALLIKUTTIYIL)
SRI. A. R. DILEEP
SRI. MANU SEBASTIAN
SRI. K. J. SHARATH KUMAR

RESPONDENT(S)/RESPONDENTS:

1. UNION OF INDIA,
REPRESENTED BY THE SECRETARY TO GOVERNMENT
IN THE MINISTRY OF AGRICULTURE,
CENTRAL SECRETARIAT, NEW DELHI - 110 011.
2. COCONUT DEVELOPMENT BOARD,
REPRESENTED BY ITS SECRETARY, KERA BHAVAN,
SRVHS ROAD, KOCHI - 682 011.
3. THE SECRETARY,
COCONUT DEVELOPMENT BOARD, KERA BHAVAN, S R V H S ROAD,
KOCHI - 682 011.
4. JEETHU M. GOPALAN,
MAKKATH HOUSE, CHAVAKKAD P.O., CHETTUVAR ROAD,
CHAVAKKAD - 680 656.

5. VINCY VARGHESE,
THOTTATHIL HOUSE, CHEEYAMBAM P.O., PULPALLY,
WAYANAD - 673 579.
6. SIMI THOMAS
VATTATHARA HOUSE, NAYARAMBALAM P.O.,
ERNAKULAM PIN-682 509.
7. P. MURUGANANDAM,
T.KOVIL PATTY, PAPPANAMPATTY POST, REDDIEARCHATIRAM- VIA,
DINDIGUL DISTRICT, TAMIL NADU - 624 622.

R1 BY ADV. SRI.N.NAGARESH, ASSISTANT SOLICITOR GENERAL OF INDIA
R2 & 3 BY ADV. SRI.O.V.MANIPRASAD
SRI. SUNIL JACOB JOSE
R5, R6 BY ADV. SRI.T.N.MANOJ

THIS OP (CAT) HAVING BEEN FINALLY HEARD ON 05-10-2015, THE COURT ON
THE 20.10.2015 DELIVERED THE FOLLOWING:

P.T.O.

OP (CAT).No. 24 of 2014 (Z)

APPENDIX

PETITIONER(S)' EXHIBITS:

EXHIBIT-P1- TRUE COPY OF THE ORDER DATED 17/12/2013 IN O.A 1215/2012 IN THE
FILE OF THE CENTRAL ADMINISTRATIVE TRIBUNAL, ERNAKULAM BENCH.

EXHIBIT-P2- TRUE COPY OF THE O.A 1215/2012 FILED IN THE CENTRAL
ADMINISTRATIVE TRIBUNAL, ERNAKULAM BENCH.

EXHIBIT-P3- TRUE COPY OF THE REPLY STATEMENT FILED BY THE RESPONDENTS.

EXHIBIT-P4- TRUE COPY OF THE REJOINDER FILED BY THE APPLICANT.

RESPONDENT(S)' EXHIBITS: NIL

//TRUE COPY//

P.S. TO JUDGE

St/-

**K. SURENDRA MOHAN
&
SHAJI P. CHALY, JJ.**

O.P.(CAT) No.24 of 2014

Dated this the 20th day of October, 2015

JUDGMENT

Shaji P. Chaly, J.

This Original Petition is filed by the applicant against the order dated 17.12.2013 in O.A. No.1215 of 2012 of the Central Administrative Tribunal, Ernakulam Bench. By the said order, Tribunal dismissed the Original Application holding that the selection conducted by Respondents 2 and 3 to the post of Technical Assistant was in accordance with law.

2. Brief facts necessary for the disposal of the Original Petition are as follows:

3. By Annexure-A1 notification dated 21.05.2012, applications were invited for filling up of one vacancy in the post of Technical Officer, by the 2nd Respondent. As per Annexure-A1, required qualifications were Degree of a recognized University in Agriculture/Horticulture preferably with experience in noting and drafting in technical matters. Thereafter, Annexure-A2 memo dated 06.09.2012 was issued

to the applicants and it was informed that they would have to appear for a written test on 27.09.2012 at the office of the 2nd Respondent. It was further stated in Annexure-A2 that the candidates should bring the admit card enclosed duly affixing their passport size photograph at the time of written test and the original documents showing the date of birth, caste, educational qualifications, experience, etc. should also be brought for verification at the time of interview.

4. The written test for the post was held on 27.09.2012 and on the same date, a list of 12 candidates who were shortlisted for the interview was published as per Annexure-A3 dated 27.09.2012. The name of the petitioner figures as Sl.No.7. Thereafter, on 28.09.2012, the shortlisted candidates were subjected to interview and group discussion. On 28.09.2012 itself, the rank list was published as per Annexure-A4 and the petitioner was placed at 4th rank with 115 marks.

5. Respondents 4 to 6 were ranked 1 to 3 respectively in Annexure-A4 rank list and the 7th Respondent is the 5th rank holder. Although 4th Respondent was placed first, she did not accept the post for the apparent reason that the posting was in

Pittapally, Odisha and consequently the post was filled up by appointing the 5th Respondent. It was challenging the said action of Respondents 2 and 3, petitioner filed O.A. No.1215 of 2012, basically contending that the selection process conducted by Respondents 2 and 3 was not in accordance with law and particularly contending that as per Annexure-A2, interview was intended as a process for verification of the credentials of the candidates and not as a competitive process for assessing the *inter se* merit of the candidates. Moreover, there was no mention regarding group discussion at all. Therefore, awarding marks for the purpose of interview and group discussion and reckoning such marks for final assessment amounts to changing the rules of the game after it started and the same is impermissible under law. It was further contended that allotment of 50% marks for interview and group discussion together in the absence of any notification regarding the same was arbitrary and unreasonable. Allotment of 50% marks for interview and group discussion for selection to an entry level post is unreasonable, especially so, when all that was intended by the original notification was to assess the basic knowledge and

drafting skills of the candidates.

6. Respondents 1 and 2 have filed a reply statement justifying the procedure adopted by them and further contending that even before the written test, the procedure proposed to be adopted was intimated to each and every candidate and therefore after having participated in the entire selection process, petitioner cannot turn around and attack the process of selection. Further, it was contended that the claim of the petitioner before the Tribunal was that the applicant secured 68 marks out of 100 marks and was placed at first position after written test and group discussion and further that there were no circumstances or reference to make her believe otherwise. Further, it is contended that they have the right to choose appropriate procedure to screen the eligible candidates. It was also contended that the allegation regarding allocation of 50% marks for interview was not true or correct.

7. The Tribunal after taking into account the rival submissions, settled legal position on the issue and evaluating the factual situation, dismissed the application filed by the petitioner and it is thus challenging the said order, this Original

Petition is filed.

8. Heard Advocate Sri. George Varghese Perumpallikuttiyil for the petitioner, Sri. N. Nagaresh, Assistant Solicitor General of India for 1st Respondent, Advocate Sri. O.V. Maniprasad for Respondents 2 and 3 and Advocate Sri. T.N. Manoj for Respondents 5 and 6.

9. The main contention advanced by learned counsel for the petitioner is that Annexure-A2 did not have any indication regarding the marks allotted for the written test and the interview and further that interview was never intended for evaluating the *inter se* merit of the candidates and it could only be understood from the same that, interview was intended as a verification process. So also, learned counsel contended that the marks secured by the candidates in the written test were not disclosed in Annexure-A3 and further that group discussion was not at all contemplated by Annexure-A2 memo and the candidates were kept under dark regarding the ranks allotted for written test, interview and group discussion and they had to undergo all processes with absolute ignorance about the same. It is also the contention of the learned counsel that the non-mention of marks allotted for interview

apparently had the impression also, that the same was intended only as a verification process. Learned counsel also contended that 2nd Respondent did not disclose in Annexure-A4, separate marks allotted for each process of selection and the petitioner could know about the separate marks after obtaining Annexure-A7 score sheet under the Right to Information Act. It was thereupon only the petitioner came to know that the entire selection process was out of 200 marks and that out of the total marks, 100 marks were allotted for written test, 80 marks for interview and 20 marks for group discussion. Learned counsel also expressed concern that the petitioner who has performed well in the written test was awarded palpably low marks for interview and that generally the petitioner could observe that the pattern in the marking scheme whereby a candidate who had put in good performance in the written test emerged as poor performer in the interview and the candidates who had scored less in the written test had secured high marks in the interview. Therefore, learned counsel contended that the selection process was surrounded with vitiating circumstances and clouded with patent arbitrariness and unreasonableness.

10. On the other hand, learned counsel for Respondents 2 and 3 contended that in the Application filed before the Tribunal as well as in this Original Petition, petitioner is expressing her baseless and untenable apprehensions. The entire selection process was conducted by the 2nd Respondent in accordance with law. Learned counsel also contended that the method of selection was intimated to each and every applicant individually and therefore all the candidates were aware of the nature of proceedings that were proposed by the 2nd Respondent for the selection process. Moreover, learned counsel contended that the marks allotted to written test, interview and group discussion were in a balanced manner and therefore the allotment of marks made for the selection process cannot be attacked under any circumstances. He contended that 50% marks was allotted for the written test, 40% marks for interview and 10% marks for the group discussion. Learned counsel also contended that it was specifically mentioned in Annexure-A1 notification that preference will be given to candidates who have experience in "noting and drafting in technical matters" and therefore interview and group discussion were inevitable. Further, the

thrust of the contention advanced by the learned counsel was that petitioner has participated in the entire selection process without any sort of objection and thereafter she is not legally entitled to turn around and contend that a part of the selection process was bad. Therefore, learned counsel canvassed for dismissal of the Original Petition.

11. Learned counsel for the petitioner to substantiate his contentions has invited our attention to the following judgments of the Hon'ble Apex Court:

(1) **'N.T.Bevin Katti and Others v. Karnataka Public Service Commission and Others'** [1990 (3) SCC 157].

(2) **'Ashok Kumar Yadav and others v. State of Haryana and others'** [AIR 1987 SC 454].

(3) **'Inder Prakash Gupta v. State of Jammu and Kashmir and others'** [2004 AIR SCW 2737]

(4) **'P. Mohanan Pillai v. State of Kerala and others'** [(2007) 9 SCC 497]

(5) **'K.Manjusree etc. v. State of A.P. & Anr.'** [AIR 2008 SC 1470]

(6) **'Hemani Malhotra v. High Court of Delhi'** [AIR 2008 SC 2103]

(7) **'The Director General, Indian Council for Agricultural Research and Ors. v. D. Sundara Raju'** [2011 AIR SCW 2122]

(8) **'Bishnu Biswas and others v. Union of India and others'** [(2014) 5 SCC 774].

12. Learned counsel for the petitioner has invited our attention to paragraph 11 of the judgment in '**N.T.Bevin Katti's** case (*supra*) and contended that prior advertisement must be issued inviting applications for direct recruitment to a category of posts expressly stating that selection shall be made in accordance with the existing rules or Government Orders and further indicating the extent of reservation in favour of various categories. The selection of candidates in such a case must be made in accordance with the then existing rules and Government Orders. Further, learned counsel contended that candidates who had applied and undergone written or viva voce test acquired vested right for being considered for selection in accordance with the terms and conditions contained in the advertisement, unless the advertisement itself indicates a contrary intention and further that generally a candidate has a right to be considered in

accordance with the terms and conditions set out in the advertisement as his right crystallises on the date of publication of advertisement. In our view, the said judgment will not render any assistance to the petitioner at all since the consideration under the said judgment was with regard to the selection process in which already a rule was in existence or a particular mode was announced in the advertisement and the Court considered violation of such circumstances.

13. In '**Ashok Kumar Yadav**' case (*supra*), the Hon'ble Apex Court was considering the question of bias and *malafides* found out by the High Court against the Chairman of the Public Service Commission, and held as follows in paragraph 26:

"26. We may now in the background of this discussion proceed to consider whether the allocation of as high a percentage of marks as 33.3% in case of ex-service officers and 22.2% in case of other candidates, for the viva voce test renders the selection process arbitrary. So far as ex-service officers are concerned, there can be no doubt that the percentage of marks allotted for the viva voce test in their case is unduly high and it does suffer from the vice of arbitrariness. It has been pointed out by the Division Bench in a fairly elaborate discussion that so far as the present selections in the category of ex-service officers

are concerned, the spread of marks in the viva voce test was inordinately high compared to the spread of marks in the written examination. The minimum marks required to be obtained in the written examination for eligibility for the viva voce test are 180 and as against these minimum of 180 marks, the highest marks obtained in the written examination in the category of Ex-service officers were 270, the spread of marks in the written examination thus being only 90 marks which works out to a ratio of 22.2%. But when we turn to the marks obtained in the viva voce test, we find that in the case of Ex-service officers the lowest marks obtained were 20 while the highest marks secured were 171 and the spread of marks in the viva voce test was thus as wide as 151 in a total of 200 marks which worked out to an inordinately high percentage of 76%.

The said law laid down by the Hon'ble Apex Court if tested against the marks allotted to the petitioner as well as other candidates, which is discernible from Annexure-A7, it is categoric and clear that such a wide disparity is not existing in Annexure-A7 score sheet. Even the petitioner is ranked No.4 out of the total 12 eligible candidates who attended the interview. Therefore, the facts and circumstances in '**Ashok Kumar Yadav**' case is different from the facts and circumstances involved in this case.

14. In '**Inder Prakash Gupta**' case (supra), the Hon'ble Apex Court was considering the question of Jammu and Kashmir Medical (Gazetted) Service Recruitment Rules (1979), therein Rule 51 framed by the Service Commission provided 100 marks for viva voce test against 40% for other criteria. Therefore, according to us, the said factual circumstances are not available in this case and therefore the Hon'ble Apex Court was considering the question whether the rules so framed by the Public Service Commission were *ultra vires* the Constitution.

15. In '**P. Mohanan Pillai's**' case (supra), Hon'ble Apex Court was considering the question of providing 50% marks for interview in the selection for the post of Watchmen/Messenger/Attender and held that such posts does not require a high intellectual ability or any particular trait of the candidates which is required to be judged by an expert. Above judgments will not apply to the facts of this case and render any assistance to the petitioner, since the post to which the selection process conducted was a Technical Officer's post in the Coconut Development Board and therefore definitely viva voce test and the group discussion were inevitable in the

selection process. Moreover, in the said judgment, Hon'ble Apex Court had held that no hard and fast rule can be laid down in recruitment process for viva voce test and allocation of maximum marks. Therefore, the factual situation evaluated in the said case is entirely different from the factual situations in the case at hand.

16. In '**K.Manjusree's** case (*supra*), the question considered by the Hon'ble Apex Court was concerning the selection of District and Sessions Judges Grade-II in the State of Andhra Pradesh and held that the Andhra Pradesh State Higher Judicial Service Rules, 1958 provided that 1/3rd of total number of permanent posts of Districts and Sessions Judges (Grade-II) should be filled by direct recruitment. It prescribed the qualification for appointment but does not prescribe any procedure for selection and the rules only prescribe qualification for appointment, but did not lay down the selection procedure. That the manner and method of selection is decided by the High Court for every selection, as and when the vacancies are notified for selection. Learned counsel has invited our attention to paragraph 24 of the said judgment wherein the Apex Court held as follows:

"Therefore, introduction of the requirement of minimum marks for interview, after the selection process (consisting of written examination and interview) was completed, would amount to changing the rules of the game after the game was played which is clearly impermissible". Further in paragraph 29 it was held as follows:

"29. The resolution dated 30.11.2004 merely adopted the procedure prescribed earlier. The previous procedure was not to have any minimum marks for interview. Therefore, extending the minimum marks prescribed for written examination, to interviews, in the selection process is impermissible. We may clarify that prescription of minimum marks for any interview is not illegal. We have no doubt that the authority making rules regulating the selection, can prescribe by rules, the minimum marks both for written examination and interviews, or prescribe minimum marks for either written examination or interview. Where the rules do not prescribe any procedure, the Selection Committee may also prescribe the minimum marks, as stated above. But if the Selection Committee want to prescribe minimum marks for interview, it should do so before the commencement of selection process. If the selection committee prescribed minimum marks only for the written examination, before the commencement of selection process, it cannot either during the selection process or after the selection process, add an

additional requirement that the candidates should also secure minimum marks in the interview. What we have found to be illegal, is changing the criteria after completion of the selection process, when the entire selection proceeded on the basis that there will be no minimum marks for the interview”.

There the Hon'ble Apex Court was considering the question of minimum marks provided for interview against the resolution dated 30.11.2004. According to us, the factual situation is entirely different from the case at hand.

17. In '**Hemani Malhotra's case** (*supra*), Hon'ble Apex Court was considering the question of prescribing minimum marks for viva voce after written test was conducted and held as follows in paragraph 5:

"5. x x x x x x x x
 x x x x x x x x

According to the petitioners what weightage should be attached to written test and interview depends upon the requirement of service for which selection is being made, but minimum cut off marks could not have been prescribed for viva voce test, after process for selection had commenced. It is stressed that the oral interview was the only criteria adopted by the respondent for selection to the posts in question which is illegal and therefore the notice dated April 10, 2007 issued by the Registrar (Vig.), High Court of Delhi

should be directed to be amended to include names of the petitioners also as selected candidates for appointment to the posts in question.

x	x	x	x	x	x	x	x	x
x	x	x	x	x	x	x	x	x".

18. There also, in the matter of selection to the Delhi Higher Judicial Service a departure from the announcement of rules was made by fixing a minimum marks for the viva voce test after conduct of the written examination was introduced. Therefore, the Hon'ble Apex Court held that since such a prescription was made after the written examination for which alone minimum marks was prescribed, the selection process was held to be arbitrary and therefore struck down. As is stated by us earlier, there is no such factual situation existing in the present case.

19. In the case of '**The Director General, Indian Council for Agricultural Research and Others**' (supra), the Hon'ble Apex Court was considering the question of award of 50% marks for the viva voce test. But, here in this case, the marks awarded for the viva voce test was 40% and therefore according to us, the factual situation in the present case is different from the one considered by the Apex Court.

20. In ' **Bishnu Biswas and others**' case (*supra*), Hon'ble Apex Court was considering a question of selection process in variation of recruitment rules/advertisement midway into selection process. There also, 50% marks was awarded to interview and that too the same was prescribed after written test and therefore the Hon'ble Apex Court held that the Rules of game had been changed after conducting written test and admittedly not at the stage of initiation of selection process. But, as we have found earlier, here, in this case, the entire selection process was intimated to the applicants individually by post and therefore the facts and circumstances stated in the said case are not applicable to this case. Further, the Hon'ble Apex Court has cautioned that the award of higher percentage of marks to those who got lower marks in the written test in comparison to some who had got higher marks in written examination, an adverse inference from certain number of such instances can be drawn. However, in the absence of any allegation of malafides against the Selection Committee or any member thereof, a negligible few such instances would not justify the inference that there was a conscious effort to bring some candidates within the

selection zone. Therefore, according to us, not only in such a factual situation not available in the facts and circumstances of this case, it was held that the allocation of marks for written test and interview would depend upon the nature of post and no straight-jacket formula can be laid down and further the Court has drawn a distinction between an admission to academic course and selection process for employment. It was also held that for the purpose of admission in an educational institution, the allocation of interview marks would not be very high, but for the purpose of employment, allocation of marks for interview would depend upon the nature of post.

21. On the other hand, learned counsel for Respondents 2 and 3 invited our attention to the decision of the Hon'ble Apex Court in '**Lila Dhar v. State of Rajasthan & Others**' [AIR 1981 SC 1777] and invited our attention to paragraph 8 of the judgment and canvassed the proposition that the rules themselves do not provide for the allocation of marks under different heads at the interview test and further that since the criteria for the interview test has been laid down by the rules, it is for the interviewing body to take a general decision whether to allocate marks under different heads or to award

marks in a single lot. It was also held that the award of marks under different heads may lead to a distorted picture of the candidate on occasions. On the other hand, the totality of the impression created by the candidate on being interviewed, may give a more accurate picture of the candidate's personality. It is for the interviewing body to choose the appropriate method of marking at the selection to each service. There cannot be any magic formulae in these matters and courts cannot sit in judgment over the methods of marking employed by interviewing bodies unless, it is proven or obvious that the method of marking was chosen with oblique motive. Therefore, the learned counsel canvassed for the proposition that since there are no *malafides* or any other oblique motives attributed against the Respondents, the marks awarded are not open to attack.

22. Learned counsel has invited our attention to the judgment in '**Ashok Kumar Yadav and Others v. State of Haryana and Others**' [(1985) 4 SCC 417] to canvass the proposition that in the case of services to which recruitment has necessarily to be made from persons of mature personality, interview test may be the only way subject to

basic and essential academic and professional requirements being satisfied. Further, the learned counsel also relied on the judgment and canvassed the proposition that there may also be services to which recruitment is made from younger candidates whose personalities are on the threshold of development and who show signs of great promise and in case of such services where sound selection must combine academic ability with personality promise, some weight has to be given to the viva voce test. It was also held in the said judgment at paragraph 25 that: "There cannot be any hard and fast rule regarding the precise weight to be given to the viva voce test as against the written examination. It must vary from service to service according to the requirement of the service, the minimum qualification prescribed, the age group from which the selection is to be made, the body to which the task of holding the viva voce test is proposed to be entrusted and a host of other factors. It is essentially a matter for determination by experts. The Court does not possess the necessary equipment and it would not be right for the Court to pronounce upon it, unless to use the words of Chinnappa Reddy, J. in '*Lila Dhar case*' "exaggerated weight has been

given with proven or obvious oblique motives”.

23. The next decision cited by the learned counsel is the judgment in '**Indian Airlines Corporation v. Capt. K.C.Shukla and Others**' [(1993) 1 SCC 17] and has invited our attention to paragraph 3 of the judgment wherein the judgment in '*Ajay Hasia, Lila Dhar, Ashok Kumar Yadav* etc. etc. were taken into account and held as follows: “Distinction appears to have been drawn in interview held for competitive examinations or admission in educational institutions and selection for higher posts. Effort has been made to eliminate scope of arbitrariness in the former by narrowing down the proportion as various factors are likely to creep in. But same standard cannot be applied for higher selections. *Lila Dhar* case brings it out fully. In respondent's case the personality of the respondent was being judged by a Committee constituted under the rules for purposes of higher promotional posts and, therefore it was governed by the ratio laid down in *Lila Dhar* case and it would be unsafe to strike down the rules as arbitrary when the evaluation was job oriented. Marks to be allotted by the Committee were on professional ability and management capacity. Further the Corporation has amended

the rules and narrowed it down in 1991 by reducing the interview marks to 40 percent only. Moreover after examining the record, which was examined by the High Court, as well, it appears the Committee was neither guilty of arbitrariness nor it violated any rule or regulation in allotting the marks which of course were very low in interview."

24. Learned counsel also invited our attention to the judgment in '**Anzar Ahmad v. State of Bihar**' [AIR 1994 SC 141] with particular reference to paragraph 14 and contended that in the matter of weight to be adopted to interview and allocation of marks for interview vis-a-vis marks for written examination can arise when written examination as well as viva voce test are both accepted as essential features or proper selection. There also it was held that no hard and fast rule regarding the precise weight to be given to the viva voce test as against the written examination can be laid down and the said weight must vary from service to service according to the requirement of the service.

25. Learned counsel has also invited our attention to the judgment in '**K.A. Nagamani v. Indian Airlines and Others**' [AIR 2009 SC 3240] with specific reference to

paragraph 25, which reads as follows: "Yet another aspect remains to be dealt with. The appellant made an attempt to challenge the selection procedure in which 50% marks were reserved for interview and balance 50% marks on the evaluation of the annual confidential reports. The High Court in this regard rightly relied upon the decision in *R.S.Parti v. Indian Airlines Corporation & Others* in W.P.(C) No.3364/90 dated 31.08.1995 in which the Court took the view that post of Deputy Manager belongs to upper managerial cadre and allocation of 50% marks for the interview and 50% marks on the evaluation of the ACRs is not arbitrary". So also, in the said judgment, relying on the '*Indian Airlines Corporation v. Capt. K.C.Shukla & Others*' referred supra, it was held as follows in the last portion of paragraph 25 "This authoritative pronouncement of this Court, in our considered opinion, should put an end to the controversy raised by the appellant. It is not necessary to dilate any further on the subject".

26. Learned counsel has also invited our attention to the judgment in '***Bishnu Biswas case***' cited supra, the principles of which were canvassed by the learned counsel for the petitioner also. The learned counsel for the Respondents

particularly invited our attention to paragraphs 15 and 18 of the judgment which read thus:

"15. The appropriate allocation of marks for interview, where selection is to be made by written test as well as by interview, would depend upon the nature of post and no straight-jacket formula can be laid down. Further there is a distinction while considering the case of employment and of admission for an academic course. The courts have repeatedly emphasized that for the purpose of admission in an education institution, the allocation of interview marks would not be very high but for the purpose of employment, allocation of marks for interview would depend upon the nature of post".

"18. In Anzar Ahmad v. State of Bihar & Ors., AIR 1994 SC 141, allocation of 50% marks for viva test and 50% marks for academic performance was upheld by this Court while considering the appointment of Unani Medical Officer observing that court must examine as to whether allocation of such higher percentage may tend to arbitrariness".

27. In order to substantiate the sheet anchor contention advanced by the learned counsel for the Respondents 2 and 3 with regard to the importune attitude of the petitioner participating in the entire selection process including group discussion and viva voce test and then turning around and attacking the selection process, brought our attention to the

judgment in '**Madan Lal and others v. State of Jammu and Kashmir and others**' [AIR 1995 SC 1088] and invited our attention to paragraphs 6(1) and (4) wherein the factual contention akin to the facts of this case are involved which read as follows:

"6(1) The impugned viva voce test conducted by the Respondent No.2, Commission is patently illegal as there is nothing to show that the Members who conducted the test had assigned separate marks faculty-wise for assessing the performance of the concerned candidates as per rule 10 of the rules.

6(4) The petitioners fared very well in the written test as compared to the selected candidates, respondents herein and still at the viva voce test they were pushed down by assigning very low marks as compared to contesting respondents and thus they were treated unfairly at the said viva voce test".

28. After evaluating the said facts and circumstances, it was held as follows in paragraphs 8 and 9:

"8. It is now time for us to deal with the contentions canvassed by the learned senior counsel in support of the petition. We shall deal with these contentions seriatim.

Contention No.1

Before dealing with this contention, we must keep in view the salient fact that the petitioners as well as the contesting successful candidates being

concerned Respondents herein, were all found eligible in the light of marks obtained in the written test to be eligible to 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 concerned Members of the Commission who interviewed the petitioners as well as the concerned contesting respondents. Thus the petitioners took a chance to get themselves selected 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, that they have filed this writ petition. 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. In the case of Om Prakash Shukla v. Akhilesh Kumar Shukla, AIR 1986 SC 1013, 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 he filed a petition challenging the said examination, the High Court should not have granted any relief to such a petitioner.

9. *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. It is also to be kept in view that in this petition we cannot sit as a Court of appeal and try to re-assess the relative merit of the concerned candidates who had been assessed at the oral interview nor can the petitioners successfully urge before us that they were given less marks though their performance was better. It is for the Interview Committee which amongst others consisted of a sitting High Court Judge to judge the relative merits of the candidates who were orally interviewed in the light of the guidelines laid down by the relevant rules governing such interviews. Therefore, the assessment on merits as made by such an expert committee cannot be brought in challenge only on the ground that the assessment was not proper or justified as that would be the function of an appellate body and we are certainly not acting as a court of appeal over the assessment made by such an expert committee”.

29. We have considered the rival submissions, perused the records and assimilated the facts, circumstances and the legal principles laid down by the Hon'ble Apex Court in the decisions cited *supra* by either side. Learned counsel for the petitioner reiterated his contentions narrated by us above, and mainly contended that as per Annexure-A1 notification the manner of selection was not prescribed and even though Annexure-A2 communication was issued to the petitioner, the

same mainly speaks only about the written test conducted on 28.09.2012 at the office of the 2nd Respondent. But, so far as the interview was concerned, it only stated that the original documents showing the date of birth, caste, educational qualifications, experience etc. should also be brought for verification at the time of interview. The foremost contention advanced by the learned counsel for the petitioner is that the marks in the written test as well as the interview were not made known to the petitioner before the selection process started. Yet another contention raised by the learned counsel is that the manner in which the interview scheduled was not stipulated either in Annexure-A2 or at any time before the selection process started. Yet another contention raised was that 40% marks awarded to the viva voce test was on the higher side and in the nature of the post i.e. Technical Officer, awarding of so much of marks is arbitrary, which may lead to nepotism and large scale corruption. Thereupon, learned counsel contended that the petitioner has fared very well in the written test and if the marks of the written test and group discussion allotted to the petitioner are taken into account, she is to be awarded Rank No.1.

30. Learned counsel also contended that on a perusal of Annexure-A7, persons who have secured higher marks in the written test were given lesser marks for the viva voce test and canvassed that favouritism was shown by the Interview Board and therefore the selection is arbitrary. Relying on the principles laid down in the judgments of the Hon'ble Apex Court, learned counsel contended that the award of 40% marks to the viva voce test cannot be sustained for the reason that the post of Technical Officer is only an entry level post and therefore the ability, intelligence, capacity etc. etc. need not be tested by applying 40% marks for the interview. According to the learned counsel, such a procedure was adopted by the Interview Board only with the intention of favouring interested persons.

31. On the other hand, learned counsel for the Respondents 2 and 3 contended that, petitioner has not raised any allegation of arbitrariness, *malafides* or corruption against the Members of the Interview Board. Further, he contended that mere statement made during the time of argument relying on the judgments of the Hon'ble Apex Court is not sufficient and there should be proper pleading with regard to the nature

of arbitrariness, *malafides* and corruption practised so as to lead arguments with regard to the same. Learned counsel further contended that having not done so, the oral arguments advanced cannot be taken into account to decide the issues raised with regard to the selection procedure adopted by the 2nd Respondent. Learned counsel has also invited our attention to Annexure-A7 and contended that on a perusal of the same, there are no large disparities with regard to the award of marks in the written test, group discussion and viva voce test. It was also contended that petitioner is awarded Rank No.4 from among the 12 eligible candidates participated in the interview and there is no much disparity between Rank Nos.1 to 3 and the petitioner. Moreover, learned counsel contended that petitioner got the second highest mark in the group discussion and substantially fair mark of 47 out of 80 in the viva voce test. Therefore, the petitioner cannot be heard to canvass for the proposition that the maximum marks awarded to the viva voce test was on the higher side. Learned counsel also pointed out that so far as the written test and the group discussion was concerned, petitioner has not raised any objection since she fared in both the said processes very well.

Learned counsel also contended that having accepted part of the selection process i.e. written test and group discussion, the petitioner cannot be allowed to make a contention against the marks stipulated for viva voce test merely because she received only a lesser mark than Rank Nos.1 to 3. Learned counsel has also canvassed for the dismissal of the Original Petition on the ground that the petitioner having participated in the entire selection process without any objection, cannot turn around and attack a part of the selection process alone i.e. viva voce test. Learned counsel, relied on the principles laid down in the judgments cited *supra* and mainly canvassed for the proposition that the nature of selection process depends on the facts and circumstances of each case. Thereupon, learned counsel contended that so far as the post of Technical Officer is concerned, same is a very key and vital post and lot of field operations are involved in which the capacity of the candidate with regard to public relations, ability, intelligence, foresight etc. are to be considered and in order to evaluate the same, group discussion and viva voce test were equally important like the written test. By contending so, learned counsel canvassed for dismissal of the Original Petition.

32. Having considered the rival submissions and understanding the factual and legal situations involved in the case, we are of the considered opinion that, petitioner has not made any allegation against the Interview Board with regard to arbitrariness, *malafides* or any other illegality, which is a *sine qua non* for any interference in the process evolved by the 2nd Respondent for selection of a candidate as notified as per Annexure-A1, invoking jurisdiction conferred on this Court under Article 226 of the Constitution. We are also of the opinion that even though in Annexure-A1 the method of selection was not stipulated, before the written test, the selection process was indicated by the 2nd Respondent as per Annexure-A2. The contention raised by the petitioner in that regard, that since in Annexure-A2, verification of records alone was mentioned during the time of interview, the objective test conducted by viva voce was a surprise cannot be sustained. The term 'interview' itself was an independent terminology applied thus giving an impression that there will be objective assessment and verification of records was only a subsidiary part. Even though the marks for the interview and the written test were not mentioned in Annexure-A2, the same will not

stand any way in the matter of participation in the written test and interview. Even though learned counsel for the petitioner contended that, non-mentioning of marks for the viva voce test would lead to nepotism and large-scale corruption, no contentions are raised with regard to the same practised in the case at hand, we are unable to appreciate the said contention advanced by the petitioner. Moreover, there is no quarrel for the petitioner with regard to the marks awarded for the written examination and group discussion. As is stated earlier, group discussion and written test were only part of the selection process and having accepted the said marks, the petitioner is not at liberty to challenge a part of the selection process i.e. viva voce test. Moreover, we have perused Annexure-A7 score sheet and are of the considered opinion that merely because more marks were awarded to Rank Nos.1 to 3 in the interview, it cannot be held that any manner of arbitrariness, corruption or nepotism had taken place in the selection process. Apart from the same, it was contended by the learned counsel for the 2nd Respondent that in fact the first rank holder did not join in view of the posting offer in the State of Odisha and therefore Rank No.2 joined in that post. Viewed in that

circumstances also, it can be seen that there was no illegal action from the part of the 2nd and 3rd Respondents in the matter of conduct of the selection process. Moreover, taking into account the factual situations, we are unable to subscribe to the views expressed by the learned counsel for the petitioner that 40% marks awarded to the viva voce test is arbitrary. Arbitrariness is to be tested against a pleading and factual situation arising particularly in a case and according to us, the factual situations in this case disclose that there was no manner of arbitrariness or other illegality in the selection process.

33. We find force in the contention of the learned counsel for 2nd and 3rd Respondents and also the learned counsel for the party respondents who supported the arguments of learned counsel for Respondents 2 and 3 that, having participated in the entire selection process, the petitioner cannot be allowed to turn around and attack the selection process, especially when the selection process was intimated to all the candidates as per Annexure-A2. We also feel that 40% marks awarded to viva voce test cannot be said to be on the higher side in view of the nature of post for which

the selection was conducted. According to us, the Technical Officer's post with the 2nd Respondent is a responsible post in which, the Technical Officer will have to involve in various activities including field operations and therefore it was necessary for the candidate to be objectively tested with regard to his potential for public relations, intelligence, ability, evaluation of men and matters, capacity, common sense, pleasing manners and attitude etc. etc. Therefore, the viva voce test and group discussion were inevitable procedures necessary to identify a suitable candidate. Moreover, petitioner participated in the entire selection process, fared well and has secured Rank No.4 also. petitioner has also contended in the Original Application that she is Rank No.1 taking into account the marks scored by her in the written test as well as the group discussion. We also find that having accepted the marks awarded to the petitioner in the written test and group discussion, she is not at liberty to attack only a portion of the selection process.

34. Therefore, by applying the principles laid down by the Hon'ble Apex Court in the decisions in '**Madanlal v. State of Jammu and Kashmir & Others** (*supra*) and '**Siraj v.**

High Court of Kerala' [AIR 2006 SC 2339], petitioner is not at liberty to challenge the selection process having participated in the same. We also do not find any legal infirmity or any other violation of settled legal principles of law in order to arrive at a different conclusion than that was arrived at by the Administrative Tribunal. Moreover, in the order of the Administrative Tribunal, it is stated that the original records of the selection process were called for and examined and the Administrative Tribunal did not find any illegality in the selection process. In that view of the matter also, we find that the conclusions arrived at by the Tribunal are legal and justified and therefore interference with the same invoking our powers conferred under Article 227 of the Constitution of India, is not warranted.

The challenge fails and accordingly, the Original Petition is dismissed.

Sd/-
K. SURENDRA MOHAN
JUDGE
Sd/-
SHAJI P. CHALY
JUDGE

//true copy//

P.S. to Judge

St/-
20.10.2015