

THE HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY

WRIT PETITION NO.33315 OF 2011

DATED:28-10-2015

Between:

T. Sreenivasa Rao ... Petitioner

And

Indian Oil Corporation Limited

Rep. by its Chairman & Managing Director

Corporate Off: 3079/3, Sadiqnagar

J.B. Tilo Marg, New Delhi

and others ... Respondents

COUNSEL FOR THE PETITIONER : Mr. P. V. Venkateswara Rao

COUNSEL FOR RESPONDENT NOs.1 and 2: Mr. G. Vidyasagar,

Senior Counsel,

for Smt. K. Udaya Sri

COUNSEL FOR RESPONDENT NO.3 : None appeared

THE COURT MADE THE FOLLOWING:

ORDER:

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This writ petition is filed for a mandamus to declare the selection procedure followed by respondent Nos.1 and 2 in awarding marks in written test and interview for the post of Operator Grade-I, as illegal and arbitrary.

2. In pursuance of the employment notification issued by respondent No.1 for certain posts, including that of Junior Operator Grade-I, the petitioner applied for the post of Junior Operator Grade-I in the State of Andhra Pradesh. The written test was held on 29.5.2011 at Hyderabad. As per the notification, 150 marks were prescribed for the

written test and no marks for interview have been specified though a reference was made to the effect that shortlisted candidates in the written test will be called for personal interview. The petitioner was shortlisted for interview and he was unsuccessful in the selection process. Later, the petitioner was communicated with the marks in the written test and interview as per which he has secured 56.95 marks in the written test and 3.3 marks in the interview. Feeling aggrieved by his non-selection, the petitioner has filed this writ petition.

3. In the counter affidavit filed by respondent No.2 he has *inter alia* stated that the selection comprises a written test and interview for shortlisted persons, that the conduct of the written test was entrusted to the Institute of Banking Personnel Selection (IBPS), an autonomous body set up by the Reserve Bank of India (RBI), Public Sector Banks and Central Financial Institutions, that 25 marks were prescribed for interview, wherein overall assessment of the candidates, on the parameters like general awareness, communication skills, job knowledge, personality and overall suitability, will be evaluated, that in order to shortlist the candidates for offer of appointment, the marks obtained in the written test were multiplied by 0.85 factor and the marks obtained in interview were multiplied by 0.15 factor and that the total marks were placed in descending order and the cut off was arrived for each category viz., General, OBC, SC/ST etc. It is further averred that the petitioner has secured 67 marks in the written test and 22 marks in the interview and by applying the above factors, which were applied to all candidates without exception, the total marks of the petitioner stood at 56.95 in the written test and 3.3 in the interview and that since there are meritorious candidates available in comparison with the writ petitioner in the OBC category, he was not selected. It is further stated that the marks obtained by the petitioner and all other candidates were communicated to him vide letter dt.2.12.2011.

4. In the reply affidavit filed by the petitioner various aspects have been raised which were not raised in his affidavit filed in support of the writ petition. Therefore, it is not necessary to refer to all those averments.

5. At the hearing, Mr. P. V. Venkateswara Rao, learned counsel for the petitioner, strenuously contended that respondent Nos.1 and 2 have changed the procedure after commencement of selection process and that such action cannot be sustained in law. He has further submitted that having allotted 25 marks for interview,

respondent Nos.1 and 2 have arbitrarily reduced the marks by applying percentage factor of 0.15 thereby putting the petitioner to great disadvantage. He has submitted that if the interview marks were taken as it is, the petitioner, who has secured 22 out of 25 marks in the interview, would have been selected.

6. As noted hereinbefore, the employment notification has not notified any marks for interview. However, Mr. G. Vidyasagar, learned Senior Counsel appearing for respondent Nos.1 and 2, submitted that even before the commencement of the selection process a decision was taken by the management of respondent No.1 that weightage for written test and interview shall be in the ratio of 85 : 15 vide Reference:HRD/4(C) dt.28.7.2010 issued by the Manager (HRD) and, approved by the Executive Director (HRD) and Director (HR).

7. In the matter of selection for public employment, the employer needs to follow a fair and transparent procedure. The law is well-settled that after commencement of the selection process, the employer shall not change the procedure which adversely affects the candidates. As observed above, the employment notification has specified marks for the written test as 150. However, in consonance with the decision taken by the management of respondent No.1 even before the commencement of the selection process, weightage for written test and personal interview was fixed in the ratio of 85 : 15. The selection process was entrusted to the IBPS, an autonomous body set up by RBI, Public Sector Banks and Central Financial Institutions, and it has applied 0.85 factor for written test and 0.15 factor for interview. Learned counsel for the petitioner has not disputed that this procedure adopted by the IBPS was applied uniformly to all the candidates. The only grievance of the petitioner is that by applying 0.15 factor for interview marks, his client was put to disadvantage. It is trite that the procedure to be followed in the selection process must be best left to the employer and the Court cannot sit in appeal so long as such procedure is uniform, transparent, and non-discriminatory, and it cannot interfere in the selection process merely because there is a possibility for following a different procedure as the Court will not substitute its own opinion to that of the employer.

8. The Courts always lean in favour of allocating highest possible marks for written test. In *Ashok Kumar Yadav v. State of Haryana* the Apex Court held that where the competitive examination consists of a written examination followed by a viva voce test, the marks allocated for the viva voce test shall not exceed 12.2% of the total marks taken into account for the purpose of selection.

In *Nishi Mughu v. State of Jammu and Kashmir* the Supreme Court held that reserving 50 marks out of a total of 150 for interview for admission into MBBS Course is arbitrary.

In *Ajay Hasia v. Khalid Mujib Sehravardi*, the Supreme Court held that if the marks allocated for the oral interview do not exceed 15% of the total marks and the candidates are properly interviewed and relevant questions are asked with a view to assessing their suitability with reference to the factors required to be taken into consideration, the oral Interview Test would satisfy the criterion of reasonableness and non-arbitrariness.

9. Unless the procedure followed by the employer has led to patent discrimination and arbitrariness, the Court will not interfere with such procedure. Even if the marks awarded to the petitioner in the interview were reduced drastically on account of adopting 0.15 factor, in my opinion, the petitioner cannot have any grievance for the simple reason that weightage in interview must be less than that given for written test as the true merit of a candidate will be reflected in written test and minimizing the marks for interview would reduce the subjectivity and arbitrariness to a major extent.

10. In the light of the above facts and circumstances of the case, I am of the opinion that the selection process undertaken by respondent Nos.1 and 2 does not suffer from any arbitrariness or discrimination warranting interference by this Court in exercise of its jurisdiction under Article 226 of the Constitution of India.

11. For the above mentioned reasons, the writ petition is dismissed.

As a sequel to dismissal of the writ petition, interim order dt.20.12.2011 shall stand vacated and W.P.M.P. No.41406 of 2011 and W.V.M.P. No.301 of 2012 shall stand disposed of as infructuous.

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C.V. NAGARJUNA REDDY, J

28-10-2015

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