

**IN THE HIGH COURT
OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH**

* * * *

WRIT PETITION No.11677 of 2015

Between:

Y.Kanakalingeswara Rao

....Petitioner

and

Insurance Regulatory and Development Authority,
5-9-98/B, 3rd Floor, Parishrama Bhavan,
Basheerbagh, Hyderabad – 500 004,
Rep.by its Chairperson,
And others.

....Respondents

JUDGMENT PRONOUNCED ON : 26.09.2016

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO :

1. Whether Reporters of Local newspapers : Yes
may be allowed to see the Judgments?
2. Whether the copies of judgment may be : No
Marked to Law Reporters/Journals?
3. Whether Their Ladyship/Lordship wish to : No
see the fair copy of the Judgment?

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

WRIT PETITION No.11677 of 2015

ORDER:

The petitioner is a practising Advocate. When the first respondent issued a notification on 23.10.2010 inviting applications for the posts of Assistant Director (Legal) along with other posts of Assistant Director (Actuary) and Assistant Director (Accounts), the petitioner applied. As per the notification, five posts of Assistant Director (Legal) were notified out of which two posts were earmarked for Scheduled Tribes, one each was allocated to Scheduled Caste and OBC category keeping the remaining post for unreserved. The petitioner attended the written examination on 23.01.2011. The mode of selection specified in the notification is as follows:

“Mode of Selection

- a. Screening committee constituted by the Authority will examine the applications and candidates qualifying the criteria may be considered for being called for written test/interview.
- b. Written Examination in relevant area of specialization will be held. Candidates would have to secure the minimum marks as decided by the Competent Authority.
- c. The Written Examination will be held in Hyderabad. Candidates will be required to appear for the Written Examination at their own cost.
- d. Merely fulfilling the eligibility conditions as regards age/qualifications/experience, after short-listing of candidates, would not automatically entitle any candidate to be called for the interview.
- e. The selected candidates will be posted in the office of the Authority located in Hyderabad and

at such other places where the Authority may establish its offices.

- f. The Authority reserves the right to modify the selection procedure, if deemed fit.”

The petitioner was successful in the written test conducted by the first respondent on 23.01.2011 and he was called for interview by letter dated 11.03.2011 through e-mail. Interview was held on 24.03.2011 and 31 candidates appeared for the interview. Out of 31 candidates, 13 candidates belonged to OBC, 7 candidates to SC, 1 candidate to ST and 10 candidates are general. The petitioner states that he is eligible for being considered to the unreserved post as well as to the reserved post under OBC category. No communication was received from the first respondent after the petitioner attended the interview. When a candidate belonging to ST category approached this Court in W.P.No.28304 of 2011 challenging his non-selection, this Court disposed of the said Writ Petition on 01.10.2013 allowing the Writ Petition. The Writ Appeal preferred in W.A.No.1816 of 2013 was dismissed by this Court by order dated 05.02.2014. Accordingly, the petitioner in the said Writ Petition was appointed as Assistant Director (Legal) and he joined the service in February, 2014. After coming to know of the same, the petitioner obtained information under the Right to Information Act. On the basis of the said information, he filed the present Writ Petition challenging the action of the first respondent in appointing respondent Nos.2 to 5 pursuant to the notification dated 23.10.2010.

In view of the delay in approaching the Court, this Court, by order dated 22.04.2015, while issuing notice before admission, recorded the statement made on behalf of the petitioner by the learned Senior Counsel, Sri C.V.Mohan Reddy that the petitioner is only interested in his case to be considered insofar as the OBC vacancy that is available with the first respondent and he is not so much interested in challenging the orders of appointment of respondent Nos.2 to 4, which were made more than three years back.

It was stated across the bar that the fifth respondent, who was recruited under OBC category, left the Organisation in 2013 and the post has become vacant.

A counter affidavit was filed on behalf of respondent Nos.1 to 5 stating that the Writ Petition cannot be entertained as the same is filed with inordinate delay and liable to be dismissed on the ground of laches. The petitioner could not be selected since his performance failed to satisfy the selection committee in the interview. No irregularities are committed in the recruitment. The petitioner is eligible for consideration in the OBC category as he crossed the maximum age limit prescribed for general category candidates in the notification. The petitioner was aged about 37 years and 3 months as on 30.06.2010, and thus, he was not eligible to apply under the general category as the upper age limit of 35 years was prescribed in respect of those candidates. 86 applications were received to the post of

Assistant Director (Legal) and out of the said applications 75 were found to be eligible. In order to shortlist the candidates, a written examination was held on 23.01.2011 and 31 candidates were called for the interview. One candidate did not attend the interview and the Selection Committee, after interviewing the remaining 30 candidates, recommended for selection of six candidates. Since the name of the petitioner did not figure in the list of selected candidates, no information was sent. The first respondent decided to appoint four persons in the ranking order as Assistant Directors, three against unreserved category and one against OBC category. The first respondent followed a transparent and fair procedure in the selection process. Though only one vacancy was notified under the unreserved category, in view of the necessity to fill up the candidates, legal opinion was sought by the Authority and based on the said legal opinion, vacancies were filled up from the merit list drawn. A reference to the order in W.P.No.28304 of 2011, dated 01.10.2013, has no bearing to the present case. The Selection Committee comprised of three members as follows: i) Legal Advisor of the Authority ii) Joint Director (Health) and iii) Officer on Special Duty. The petitioner did not secure the highest marks among the candidates under the OBC category, as alleged by him. One Sri Yashowant Ram Patel secured 282 marks above the petitioner.

An additional counter affidavit was filed denying the violation of reservation policy in the filling up of posts. The

vacancy reserved for OBC category was filled up by appointing one candidate belonging to OBC category, who was ranked third by the Selection Committee. The filling up of more posts by candidates belonging to unreserved category was only to fill the urgent need of officers with legal background at that point of time by utilizing the available unreserved vacancies and carrying forward the unfilled reserved vacancies.

A reply affidavit was filed to the additional counter affidavit by the petitioner stating that the first respondent appointed respondent Nos.2 to 5 against the posts meant for reserved candidates in violation of the reservation policy. The Selection Committee recommended the names of two other candidates apart from the fifth respondent under OBC category. But, they have not challenged the appointment of the fifth respondent.

Learned Senior Counsel, Sri C.V.Mohan Reddy, appearing for the petitioner submitted that the entire recruitment process was arbitrary and in view of the observations made by this Court in W.P.No.28304 of 2011 dated 01.10.2013 filed by the ST candidate, it is established that the first respondent has not followed the prescribed procedure. He further submitted that in view of the availability of vacancy due to relinquishment of post by the fifth respondent, the case of the petitioner should be considered. He relied on a number of decisions in support of his contention.

Learned Senior Counsel, Sri K.G.Krishna Murthy, appearing for the first respondent submitted that the petitioner is not the highest scorer in order to enable him to be appointed in the existing vacancy caused by the fifth respondent and the Writ Petition is liable to be dismissed on the ground of laches. He further submitted that the petitioner is over-aged as on the date of the application and his case has to be considered only under the OBC category, but not under unreserved quota, as he has crossed the upper age limit of 35 years. In the absence of any malafides attributed to the Selection Committee, the selections cannot be interfered with. He relied on **Shiv Dass v. Union of India**¹, **Bharat Sanchar Nigam Limited v. Ghanshyam Dass (2)**² and **Mohd. Ameeruddin v. Osmania University**³.

The points that remain for consideration are:

- i) Whether the selections were made in accordance with the procedure?
- ii) Whether the non-selection of the petitioner is valid or not?

With regard to the first point, this Court had an occasion to examine the issue in W.P.No.28304 of 2011 and observed that the respondents went about making recruitments pursuant to the subject notification in a totally whimsical and arbitrary manner with scant respect for settled norms and in utter disregard of the high level of transparency required from it as a

¹ (2007) 9 SCC 274

² (2011) 4 SCC 374

³ 2002 (1) ALD 675

State instrumentality. It was further observed that the records reflect that the recruitment process adopted was not above board and left ample room for arbitrariness. Accordingly, this Court allowed the Writ Petition of the candidate belonging to ST category, who applied to the post of Assistant Director (Legal). The observations of the learned single Judge in the said Writ Petition in coming to the said conclusion are relevant and worth reproduction:

“The original record pertaining to the subject selections was placed before the Court by Sri Siva, learned counsel appearing for the IRDA. Perusal of the record reflects that 31 candidates were cleared for the interview for the notified posts of Assistant Director (Legal). Of these, 30 candidates appeared for the interview on 24.03.2011 and their performance was assessed on the following parameters.

1. Technical skills and knowledge.
2. Interpretation skill.
3. Initiative
4. Communication skills.

Ranking seems to have been allotted to the candidates individually by each of the members of the Committee. On the basis of this ranking, six candidates belonging to open category and OBC category were short listed and recommended by the Committee. The Minutes of the Selection Committee, signed by the members, indicate that against the two ST posts notified, only one candidate, viz., the petitioner had appeared but the Committee found that he did not fulfill the ‘required’ competence in terms of the parameters.

The record relating to the recruitment to the posts of Assistant Director (Actuary) reflects that 37 candidates were in the fray. 17 of these 37 candidates had passed more than seven actuarial papers while 6 other candidates had passed six papers, on par with D.Narasimha Lakshmi Murthy. One candidate had passed as many as 11 papers. Further, there were other candidates who had experience in the IRDA itself or in other insurance companies who had cleared more papers than him. There is no indication as to whether these candidates were also exempted from appearing for the interview or whether a special favour was shown to only this individual.

The note file indicates that the total number of candidates called for the written test for the posts of Assistant Director (Legal) was 75 but the total number of candidates who actually appeared was only 44. 35%, approximating to 180 marks, was fixed as the cut-off mark for open and OBC categories, while 30%, approximating to 150 marks, was fixed as the cut-off mark for SC and ST categories. This decision was taken on 24.02.2011. There is no indication in the record that the cut-off mark was reduced for SC and ST candidates because such candidates failed to secure 180 marks, as averred in the counter affidavit.

The legal advisor of the IRDA, the Joint Director (HR) and the Officer on Special Duty (Legal) were the members of the Selection Committee which conducted interviews for these posts. The note file reflects that out of the six candidates recommended by this Committee, the first recommended candidate was proposed to be considered under unreserved category and the third recommended candidate under the OBC category. Basing on legal advice, the IRDA decided to fill up the notified vacancies from out of the merit list and the increase in the number of posts was to be accounted thereafter. The note file further reflects that the IRDA initially considered recording the first four rankers from unreserved category and OBC category and for the SC category. Further, appointment was to be offered to one of the four candidates from NALSAR after completion of his degree by waiving the desirable experience of two years, as it had already been communicated to the NALSAR during the campus interviews. This step was proposed so as to reduce the requirement for Assistant Director posts by one. However, this proposal was not acted upon.

Though the record contains the individual interview rankings awarded by the three members of the Selection Committee for the posts of Assistant Director (Actuary), there is no such record found as to the rankings allotted by the Selection Committee for the posts of Assistant Director (Legal). The ranking lists available in the record however indicate that marks were awarded by individual members of the Selection Committee.

The aforestated record manifests complete disregard on the part of the IRDA not only to the reservation policy but also settled service law principles in the process of making appointments. The IRDA itself admitted in the counter that it was required to provide reservations by maintaining roster points separately for specified posts. Having committed itself to this stand, the IRDA surprisingly seeks to justify its action in playing around with the notified reserved vacancies to suit its own convenience! The

liberty reserved by the IRDA, in the notification dated 23.10.2010, was only with regard to varying the number of posts in each category depending on the need and to modify the qualification prescribed for the post. This liberty was obviously to enable the IRDA to make more appointments than specified, in terms of the vacancies notified, basing on the urgent need to fill such unnotified vacancies and no more. This liberty, unfortunately, is being construed by the IRDA to mean that it could cast the notified reservation point to the winds and make appointments as it chose. There is no getting away from the fact that there was only one open category vacancy notified, whereas the IRDA made three appointments under the open category. The justification for this action is that none of the reservation category candidates, including the petitioner, were found suitable for the reserved posts!

In so far as the petitioner is concerned, there is no dispute as to the fact that he secured more than the requisite cut-off marks in the written examination, having obtained 156 marks as against the required 150 marks. While so, the manner in which the interviews were conducted thereafter by the Selection Committee leaves a lot to be desired. In this regard, it is relevant to note that Clause-6 of the notification dated 23.10.2010 stated as under:

“6. Mode of Selection

(a) Screening Committee constituted by the Authority will examine the applications and candidates qualifying the criteria may be considered for being called for written test/interview.

(b) Written Examination in relevant area of specialization will be held. Candidates would have to secure the minimum marks as decided by the Competent Authority. ”

Though minimum marks were prescribed for the written examination, no such cut-off mark was prescribed for the interview. On the other hand, it is now baldly stated by the IRDA that no marks were awarded for the interview, but rankings were allotted by the members of the Selection Committee. As stated supra, the individual records of the Selection Committee are not available in so far as the posts of Assistant Director (Legal) are concerned. The available record pertaining to the posts of Assistant Director (Actuary) however demonstrates that marks were in fact awarded. In the absence of a cutoff mark being prescribed by the competent authority for the interview, there is no justification for the IRDA to shut out the petitioner, a reservation category candidate, at that stage despite his securing the minimum marks prescribed for the written examination. The

justification offered by the IRDA to support its action in ignoring the petitioner despite his clearing the written examination is that he did not fulfill the parameters on the basis of which the Selection Committee assessed his performance during the interview. In essence, though no minimum mark was prescribed for the interview, some sort of gradation/ranking was admittedly introduced and adopted during the interviews, though there is no mention of the same in the notification, whereby the petitioner stood ousted from consideration.”

In view of the above observations, as the present case also arises out of the same notification, they are equally applicable to this case also and this Court has no hesitation to hold that the selection process was not in accordance with the notification and concurs with the observations made above.

Coming to the next point of non-selection of the petitioner, the record produced before this Court showed the merit list of OBC candidates as follows:

S.No.	Name of the Applicant	Category	Roll No.	Correct Answers	Positive marks
1	Mr Yashovant Ram Patel	OBC	2301110039	94	282
2	Mr Kanakalingeswara Rao	OBC	2301110047	88	264
3	Mr Siddi Ramulu Gondlala	OBC	2301110075	88	264
4	Mr S.Dhakshnamoorthy	OBC	2301110028	82	246
5	Ms Omkar Singh Devi	OBC	2301110045	82	246
6	Ms Dhanya Kumbhakappillil Ayyappan	OBC	2301110041	81	243
7	Mr P.Senthil	OBC	2301110038	70	210
8	Mr Chandrakanta Das	OBC	2301110032	69	207
9	Mr Shanmugavadivelu Murugaier	OBC	2301110048	67	201
10	Mr Rama Lakhimi Sangana	OBC	2301110033	66	198
11	Mr Sunil Kumar Yellammagudem	OBC	2301110042	63	189
12	Mr Venkataraju Vanga	OBC	2301110049	63	189
13	Mr Kalyana Durga Prasad Karri	OBC	2301110050	60	180

The Selection Committee, which interviewed the candidates, merely recommended the names of the selected candidates without any transparency and the above table, it is

assumed, contains the marks obtained by the candidates in the written examination or can be construed as a merit list. Even assuming otherwise also, the fifth respondent did not secure the maximum marks as could be seen above and no reason is shown for selecting him disregarding the merit. This Court in W.P.No.28304 of 2011 also noticed that the entire selection is liable to be set aside, but, since the appointed persons were not made parties and no challenge was made to their appointment, their appointments were not set aside. In the present case also, in view of the admission in the counter affidavit that three candidates were appointed against one unreserved post, such appointments are liable to be set aside, but in view of the restriction placed at the time of admission, the present challenge is confined to the fifth respondent. Now it is stated by the learned Senior Counsel for the petitioner as well as by the learned Senior Counsel for the respondents that the fifth respondent left the organisation in 2013 itself and a vacancy under the OBC category exists. The Writ Petition is sought to be opposed on the ground that there are three meritorious candidates above the petitioner and the petitioner is not entitled for consideration of his case. But, the issue that is being considered is with regard to the selection procedure adopted and the consequential effect on the selection of the candidates. It is clear from the averments made in the counter affidavit that though one post was unreserved, three candidates were appointed under OC category and as observed by this Court in

the earlier Writ Petition, neither the selection procedure nor the rule of reservation was properly followed. In view of the disposal of this Writ Petition on the basis of the facts and contentions, the decisions cited by both the learned Counsel on either side are not considered.

In view of the above circumstances, this Court has to normally set aside the entire selections, but in view of the restriction placed at the time of admission of the Writ Petition, the selection under OBC category is set aside, and the respondents are directed to fill up the OBC vacancy on the basis of the merit obtained in the written examination, within a period of four weeks from the date of receipt of a copy of this order.

The Writ Petition is accordingly allowed to the extent indicated above. The miscellaneous petitions pending in this Writ Petition, if any, shall stand closed. There shall be no order as to costs.

26.09.2016
vs

(A.RAMALINGESWARA RAO, J)