

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment reserved on: July 26, 2017
Judgment delivered on: July 31, 2017

+ W.P.(C) 823/2012

PARAMJIT SINGH

..... Petitioner

Through: Mr. Saurabh Sharma, Adv.

Versus

IOCL & ORS

..... Respondents

Through: Mr. V.N. Koura and Ms. P.K. Benipal,
Adv.

CORAM:

HON'BLE MR JUSTICE V. KAMESWAR RAO

J U D G M E N T

V. KAMESWAR RAO, J

1. The present petition has been filed by the petitioner with the following prayers:

“In view of the above facts and circumstances and in the interest of justice, it is most humbly prayed that this Hon’ble Court may be pleased to:

- (a) Summon the records and issue order, directions or writ in the nature of certiorari quashing impugned decision of the IOCL prescribing Minimum Qualifying Marks in Interview for the post of Junior Operator Grade-I, if any passed by Respondents and final Result for the post of Junior Operator Grade-I selecting the Respondents No. 3 and 4 despite their having lesser marks (combining Written & Interview Marks) than the petitioner in OBC Category for the State of Uttar Pradesh and appointment of the Respondents No. 3 & 4.*
- (b) Order, direction, or writ in the nature of Mandamus directing the IOCL to prepare the result afresh for the post of Junior Operator Grade-I taking into consideration the combined marks obtained by the candidates in Written Test and Interview*

Or

Declare the petitioner as selected for the post of Junior

Operator Grade –I

- (c) Direct the IOCL to appoint the petitioner as Junior Operator Grade-I with all consequential benefits including seniority and arrears of pay.*
 - (d) Cost of the proceedings may also be awarded in favor of petitioner and against the respondents.*
 - (e) Any other orders, writ or direction that may be deemed appropriate under the facts and circumstances of the case be also be passed.*
- And for this act of kindness the petitioner as is duty bound shall ever pray”*

2. It is the submission of the learned counsel for the petitioner that the respondent- Indian Oil Corporation Ltd. (IOCL) had issued advertisement for the post of Junior Operator Grade-I, in February, 2011, which included three vacancies in OBC category for the State of Uttar Pradesh. The advertisement mentioned the method of selection based on Written Test and Interview, meaning thereby that the merit list will be based on the combined marks of Written Test and Interview. He would state that the advertisement did not prescribe any minimum qualifying marks for Written Test and Interview separately. The petitioner, who belonged to OBC category, applied for the said post under OBC category for the State of Uttar Pradesh. He secured 98.6 marks out of total 150 marks and secured second rank in Written Test under OBC category for the State of Uttar Pradesh i.e. the second highest in the said Test after Vinod Kumar, who secured 99.45 marks. He would state, in October, 2011, IOCL issued final result of selection, whereby, it selected the respondent Nos. 3 and 4. On December 19, 2011, IOCL informed the petitioner that he was not selected since the Interview was of qualifying nature in which a candidate was to secure minimum 1.3125 out of 3.75 marks. He states that this stand of the respondent-IOCL is illegal as it could not have

prescribed cut off marks in the Interview. He states, it was only with the intent to select the respondent Nos. 3 and 4 that such cut off marks were prescribed for Interview. In substance, the plea of the learned counsel for the petitioner is the rules of the game could not have changed once the game has started. He would also state that the policy dated July 28, 2010 on which, the respondents have relied, does not have the effect of law as the same has not been approved by the competent authority. He would rely upon the following judgments in support of his contentions:

(i) Ramesh Kumar Vs. High Court of Delhi and Another (2010) 3 SCC 104

(ii) Vikas Singh & Ors. Vs. Airport Authority of India, W.P.(C) 5767/2011, decided on 2nd August, 2013

(iii) Bishnu Biswas & Ors. Vs. Union of India & Ors., Civil Appeal Nos. 4255-58 of 2014, decided on April 2, 2014

(iv) Subhash Baloda and Ors. Vs. Lok Sabha Secretariat and Ors., W.P.(C) 4835/2011, decided on September 1, 2011

3. On the other hand, Mr. V.N.Koura, learned counsel for the respondent would justify the selection. According to him, the Written Test was conducted through Institute of Banking Personnel Selection (IBPS). On 28th July, 2010, the Corporate Office of respondent no.1 in response to a proposal received from its Marketing Division formulated a policy for recruitment of a certain number of Blue Collar Workers in a phased manner from 2010/2011 to 2014/2015 on account of vacancies created by superannuation; promotion from the Staff Cadre to the Office Cadre, voluntary retirement and attrition due to deaths. Under the policy it has been decided

that the weightage for the Written Test and Personal Interview shall be in the ratio of 85:15. It was also decided that the candidates will be short listed in the ratio of 1:6 after Written Test for Interview and there will be minimum qualifying standards for the Written Test and Interview. Based on the Policy decision, guidelines dated August 31, 2011 were issued. It was decided that minimum marks to be obtained by the candidate in the Interview, shall be 35% for the General/OBC Category and the Interview Committee was to allot marks out of 25. Accordingly, the candidate has to secure minimum of 1.3125 out of 3.75 marks. It is his submission that this decision was taken before the Interview could be held, on 8th September, 2011. The petitioner could only secure 1.125 in the Interview which was less than 1.3125, whereas the respondent Nos. 3 and 4 had secured 1.65 and 3 marks in the Interview, their cumulative marks in the Written Test and Interview were added and as they were at Merit Nos. 2 and 3 respectively, they were appointed. Mr. Koura states that there cannot be any malice in the conduct of the recruitment process as the Written Test was conducted by an outside agency and the Interview Committee was not privy to the marks obtained by the candidates in the Written Examination. In this regard, he states that the Interviews of the candidates including the petitioner were held on September 8, 2011, whereas the marks of the Written Examination were sent by the IBPS only on September 21, 2011, hence, he states, the apprehension of the petitioner, that the cut off marks in Interview were so awarded to benefit the respondent Nos. 3 and 4, is untenable. He also states, in the selection process held in the year 2012, the marks for the interview were reduced to 30% for General and OBC candidates and at 25% marks for SC/ST candidates because

large number of candidates had failed to qualify in the interview. In the year 2011 Recruitment, 277 candidates out of 797 interviewed, did not qualify for the interview which means that about 35% of the candidates interviewed did not qualify for the interview. It is his endeavour to state that same process and procedure as was adopted in 2011, was adopted in 2012 recruitment. He would rely upon the judgment in case ***Mahinder Kumar and Others Vs. High Court of Madhya Pradesh (2013) 11 SCC 87***, in support of his contention.

4. Having heard the learned counsel for the parties, the question which arises for consideration is whether the fixing of cut off marks of 35% for General/OBC candidates by the respondent before the Interview process could commence, is justified. Suffice to state, that this decision for fixing minimum qualifying standards for each stage, was taken on July 28, 2010, much before the advertisement was issued, but the advertisement did not prescribe so for the reasons best known to the respondents. This fact has been conceded by Mr. Kaura. Even the guidelines issued on August 31, 2011 were after the advertisement. The issue whether cut off marks can be prescribed for Written Test/Interview once the recruitment process has started, has come up for adjudication on several occasions, including in the case of ***K.Manjusree Vs. State of Andhra Pradesh (2008) 3 SCC 512*** wherein the Supreme Court has held that the selection criterion has to be adopted and declared at the time of commencement of recruitment process. The rules of the game cannot be changed after the game is over. The competent authority, if the statutory rules do not restrain, is fully competent to prescribe minimum qualifying marks for written examination as well as for interview,

but such prescription must be done at the time of initiation of selection process. The change of criterion of selection in the midst of selection process is not permissible. Even the Supreme Court in the case of ***Himani Malhotra v. High Court of Delhi 2008 7 SCC 11*** has upheld the contention on behalf of the petitioner in the said case, wherein the petitioner has stated that the respondent could not have fixed the minimum benchmarks at the interview level for the purpose of selection.

5. The question would arise, in the absence of such a stipulation in the advertisement whether the respondents could have stipulated 35% as the cut-off marks for OBC candidates. The answer to the said question has to be in the negative, i.e., “NO” in view of the judgments of the Supreme Court in the case of ***K. Manjushree (supra); Himani Malhotra (supra); Ramesh Kumar (supra) and Vikas Singh and Ors. Vs. Airport Authority of India (supra)***. But the stand of the respondents in their counter-affidavits more specifically Para “g” page 5 of the counter-affidavit which I reproduce as under is of some relevance:

“It is submitted that while conducting the aforesaid recruitment process, it was ensured that the marks obtained by the shortlisted candidates in the written test were not disclosed to the members of the selection committee who conducted the interviews of the said candidates till the time all the interviews were over and the final marks had been allotted for the personal interview session. This exercise was undertaken to ensure complete transparency in the selection methodology and to rule out any manipulation in marks to be awarded during the personal interview session. Such a methodology has been approved of by the Hon’ble Supreme Court in the case of Ashok Kumar Yadav v. State of Haryana and Ors. [reported as (1985) 4 SCC417], wherein the Apex Court was pleased to hold as under:

14.....In fact, far from there being any material supportive of such observation, we find that there is one circumstance, which, in our opinion,

completely militates against the view taken by the Division Bench and that circumstance is that the marks obtained by the candidates at the written examination were not disclosed to the members of the Haryana Public Service Commission who held the viva voce examination. If the members, who interviewed the candidates, did not know what were the marks obtained by the candidates at the written examination, it is difficult to see how they could have manipulated the marks at the viva voce examination with a view to pushing up the three candidates related to Shri R.C. Marya and Shri Raghubar Dayal Gaur or any other candidates of their choice so as to bring them within the range of selection.”

6. The aforesaid stand of the respondent nos. 1 and 2 has been reiterated by the respondents in Para 4 and 5 of the additional affidavit filed on 30th April, 2015. A reading of the aforesaid paras would reveal that written test was conducted by the IBPS, which is an outside agency and the marks obtained by the candidates in the written test were kept confidential by the IBPS and the members of the Interview Committee were not aware of the marks which the candidates appearing for the interview had secured in the written test. This would suggest that the marks allotted by the Interview Committee were without the knowledge of the marks of the written examination. Hence, the apprehension of the petitioner that the interview marks were so given to the respondent nos. 3 and 4 to ensure their selection is not tenable. In this regard, I would like to reproduce the Para 22 of the judgment of the Supreme Court in the case of **Barot Vijaykumar Balakrishna and Ors. v. Modh. Vinaykumar Dasrathlal and Ors. 2011 7 SCC 308** wherein the Supreme Court has held as under:

“22. Further, as noted above the marks obtained by the short listed candidates in the written test were kept in a sealed cover and those were taken out only after the oral interview of all the

candidates was over. At the time a candidate appeared for the interview the members of the interview board had no means to know the mark obtained by him/her in the written test. In such a situation we don't see how it could be possible for the interview board to purposefully exclude a candidate by giving less than the minimum qualifying mark for the viva voce even though he/she might have been selected on the basis of the mark obtained in the written test alone."

7. I may state here that during the course of the hearing, this Court had called for the record of the selection process. Mr. Koura has shown me the communication of the IBPS dated 21st September, 2011 by which the IBPS has transmitted the results of the written examination to the respondent nos.1 and 2 which means that the stand of the respondents that the members of the Interview Committee were not privy to the marks secured by the respondent nos. 3 and 4 appears to be justified. The aforesaid is a very important aspect which would demonstrate that even agreeing with the contention of the learned Counsel for the petitioner that the cut-off marks for the interview have been prescribed after the advertisement / selection process had commenced, the same has not caused any prejudice to the petitioner and advantage to the respondent nos. 3 and 4 resulting in their selection.

8. In so far as the judgment relied upon by the learned counsel for the petitioner in the case of ***Bishnu Biswas and Ors. (supra)*** is concerned, I may state here that the Supreme Court noting its judgments in the cases of ***Ramesh Kumar (supra)*** and ***Himani Malhotra & Ors. (supra)*** and also the fact that the issue of the change of rule of the game has been referred to Larger Bench in the case of ***Tej Prakash Pathak and Ors. v. Rajasthan High Court and Ors. 2013 4 SCC 540*** decided the Appeal, i.e., ***Bishnu Biswas and Ors. (supra)*** in the light of the finding of facts recorded by the

Courts below inasmuch as the Courts below recorded a finding that the awarding of marks indicated lack of transparency in the matter, the Supreme Court agreed with the findings of the Courts below and dismissed the Appeal. So on facts, the case is distinguishable.

9. In view of my above finding that in the facts of this case, as no prejudice has been caused to the petitioner, this Court in exercise of its power under Article 226 of the Constitution of India would not like to interfere with the impugned action.

The petition is dismissed. No costs.

JULY 31, 2017
Akb/jg

V. KAMESWAR RAO, J



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