HIGH COURT OF TRIPURA
AGARTALA

WP(C)No.745 of 2019

Sumit Chowdhury

…….Petitioner(s)

Versus

State of Tripura & Others

…….Respondent(s)

For Petitioner(s)	:	Mr. K. Nath, Adv.
For Respondent(s)	:	Mr. D. Bhattacharya, G.A. Mr. D. Sarkar, Adv.

HON'BLE MR. JUSTICE S. TALAPATRA

Order

14/12/2020

Heard Mr. K. Nath, learned counsel appearing for the petitioner as well as Mr. D. Bhattacharya, learned G.A. appearing for the respondents No.1 and 2 and Mr. D. Sarkar, learned counsel appearing for the remaining non-official respondents.

2. By means of this petition, the petitioner has challenged the selection of the respondents No.3 to 7 on the ground that during evaluating the need, those respondents have been favoured with advantageous marks and as a result, the petitioner did not achieve more or required marks vis-à-vis the selected candidates particularly those are placed at the bottom of the select panel under the need category.

3. Mr. K. Nath, learned counsel appearing for the petitioner has submitted that from the information as revealed under the Right to Information Act it appeared as under :

Sl. No.	Name	Total Marks Obtained	BPL/Adhoc BPL/APL	Family Income (P.M.)	Marks given in Need Criteria
1.	Sumit Choudhury (Petitioner) [Sl. No.6076]	58 (Page 38)	Adhoc BPL (Page 25)	Rs.4500/- (Page 26)	10 (Page 38)
2.	Bidyut Ghosh (Respondent No.3) [Sl. No.860]	60 (Page 37)	BPL Page 86	Rs.3000/- (Page 79)	16 (Page 37)
3.	Rahul Datta (Respondent No.4) [Sl. No.959]	60 (Page 37)	Adhoc BPL (Page 96)	Rs.4000/- (Page 95)	16 (Page 37)
4.	Sukanta Debnath (Respondent No.5) [Sl. No.964]	60 (Page 37)	BPL (Page 102)	Rs.4500/- (Page 101)	16 (Page 37)
5.	Sanjib Paul (Respondent no.6) [Sl. No.1629]	60 (Page 37)	(Page 110)	Rs.3500/- (Page 111)	18 (Page 37)
6.	Sukanta Debnath (Respondent No.7) [Sl. No.5890]	60 (Page 38)	APL (Page 123)	Rs.3500/- (Page 121)	15 (Page 38)

4. Mr. K. Nath, learned counsel appearing for the petitioner has quite stoutly submitted that the marks given under the need category to the different candidates is grossly arbitrary and there is no transparent yardstick. By that faulty method, the petitioner has been excluded from appointment to the post of Lower Division Clerk [LDC, in short] in terms of the employment notification No.F.2(1-203)-MS/SET/2016(Sub-V) dated 24.05.2016 [Annexure-1 to the writ petition].

5. Mr. Nath, learned counsel has further submitted that the petitioner admittedly falls in the ad hoc BPL category having monthly family income of Rs.5000/-. In support of his contention, the petitioner

has placed the documents with the writ petition. According to Mr. Nath, learned counsel, by the Revised Employment Guidelines for All Departments of the State Government for Selection of Candidates by Open Interview for Group-C and Group-D Posts to Be Filled up by Direct recruitment vide memorandum No.F.23(8)-GA(P & T)/14 dated 23.07.2016 [Annexure-6 to the writ petition], the State Government has determined a method for four categories of selection processes. A special category has been created on the basis of the criteria of need and the need has been explained in the said policy in the following terms :

> **"(iv) 'Need**
> **Criteria 'Need' shall be as hereunder :**
> **(a) Total income of the family of candidate shall not exceed Rs.1.50 lakh per year and**
> **(b) There is no member in the family having Government employment.'"**

6. According to Mr. Nath, learned counsel when someone falls in the need category there will be no question of further evaluation, they would be given 25 marks and there cannot be further classification between the candidates in the need category. That apart, Mr. Nath, learned counsel has submitted that the way the marks have been allotted defies all reasons and smacks of whim and arbitrariness. Even, in response to paras-11 and 14 of the writ petition, the official-respondents could not provide any analysis for the evaluation made by the interview board. In para-11 of the writ petition, the petitioner has averred that as per the chart, the petitioner secured total 58 marks in the following heads :

Seniority	Qualification	Interview	Need Criteria
8	20	20	10

In the said chart, the names of 45 candidates belonging to UR category who were selected for the post of LDC are available and from the said chart it is found that the candidate who got 60 in the interview has been selected. The petitioner since has got 58 has not been selected and not called for type test. In para-14, the petitioner has given a table for demonstrating the marks obtained by the respondents and some other candidates. But those candidates namely Sri Sisir Sovan Chakraborty, Sri Biswajit Datta and Sri Biman Dey vice whom the discrimination has been challenged have not been arraigned as the party in this proceeding.

7. Having queried by this court, Mr. Nath, learned counsel has submitted that since Sri Sisir Sovan Chakraborty, Sri Biswajit Datta and Sri Biman Dey got equal marks under the need category, they were not made party as they all got 10 marks in the need category. But he has not denied that they are the successful candidates.

Mr. Nath, learned counsel has submitted that from that table, it is clear that the respondents have resorted to arbitrariness in assessing the petitioner under the need criteria and as a result of such arbitrariness, "instead of giving 25 marks, the petitioner has been given 10 marks under the need criteria and as a result thereof the petitioner was not selected for the post of LDC."

8. Finally, Mr. Nath, learned counsel has urged this court that the appointment of the respondents No.3 to 7, pursuant to the offer of appointment dated 30.08.2017, be cancelled and set aside and the petitioner be considered afresh for appointment under the need criteria.

9. Mr. D. Bhattacharya, learned G.A. appearing for the respondents No.1 and 2 has submitted that the allegation of arbitrariness is grossly unfounded and the person who got 10 marks under the need criteria for their securing better marks on the other heads, they could achieve the selection. Mr. Bhattacharya, learned G.A. has submitted that table provided by the petitioner in para-14 itself is the indicator that the petitioner cannot have any grievance against the appointment of Sri Sisir Sovan Chakraborty, Sri Biswajit Datta and Sri Biman Dey who had also secured 10 marks. Therefore, the petitioner's grievance is not that why he has not been given 25 marks but why he has not been selected in the process.

10. In this regard, Mr. Bhattacharya, learned G.A. has referred to the averments of the respondents made in para-10 of the reply filed by the respondents No.1 and 2. In para-12, those respondents have stated that the petitioner has secured 10 marks out of 25 marks under need criteria along with many other candidates. The interview board on examination of the documents had awarded that marks and those who obtained 60 marks have been selected for the

next test i.e. type test. The petitioner along with other candidates who did not secure 60 marks were not selected for the type test.

11. Mr. D. Bhattacharya, learned G.A. has further submitted that the said memorandum dated 23.07.2016 [Annexure-6 to the writ petition] provides that 'need' to be evaluated for 25 marks if fallen under the definition of 'Need.' Therefore, the interpretation as provided by Mr. Nath, learned counsel appearing for the petitioner is completely unacceptable. If someone falls within the need category, then his need to be evaluated under 25 marks. Mr. Bhattacharya, learned G.A. has emphatically submitted that from the table as formed by the petitioner, the distinguishing factors can be located, and thus, the evaluation as made by the interview board by awarding different marks to the candidates cannot be faulted with. Mr. Bhattacharya, learned G.A. has submitted that based on the documents, the finer tool has been devised for evaluating the need of each candidate.

12. Before this court provides the reason for decision, a note provided by Mr. Nath, learned counsel for the petitioner may be appreciated as it has come handy to this court. In the said note, the income of the non-official respondents and the petitioner has been provided, along with their general category viz. BPL/APL/Ad hoc BPL etc. For this reason, a part of that note is reproduced by this court :

Sl. No.	Name	Total Marks Obtained	BPL/Adhoc BPL/APL
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13. What Mr. Nath, learned counsel has submitted that those who falls under the 'need' category are entitled to get 25 marks cannot be accepted inasmuch as Clause-iv(i) below Category-2 of the said memorandum dated 23.07.2016 [Annexure-6 to the writ petition] provides as under :

> **(iv) 'Need' to be evaluated for 25 marks if fallen under the definition of 'Need.'**

14. It clearly gives the power to the Interview Board or the Selection Committee to evaluate the degree of 'need' and to provide marks under 25. From the said note it is evident that the monthly income has been taken as "factor for evaluating the need." For example, the monthly income of the petitioner is Rs.4,500/- and he has been given 10 marks against ad hoc BPL category. The respondent No.3 has been shown having monthly income as Rs.3000/-. As he belongs to BPL category, he has been given 16 marks. The respondent No.4 who belongs to ad hoc BPL category but as his income is Rs.4000/- he has been given 16 marks. The respondent No.5 falls in the BPL category. His monthly income is Rs.4,500/- and he has been given 16 marks. The respondent No.6 whose poverty line category is not available, but his monthly income as reflected is Rs.3,500/-. The respondent No.6 has been given 18 marks whereas the respondent

No.7 has got 15 marks though he belongs to APL and his monthly income is shown as Rs.3,500/-. The 'poverty' category and the monthly income having taken as the relevant factor marks under 'Need' category have been awarded.

15. What has surfaced, thus is that the Interview Board has assessed the need taking those two important factors into consideration. The category under poverty and the monthly family income have been evaluated and granted the marks for 'need' assessment. There can be several questions about rationality of adopting that method but the said method has been uniformly applied in respect of all the candidates by ensuring interplay of those two factors.

Having considered materials on records and submission of the counsel for the parties, this court is not inclined to interfere with the selection process or the appointment following from the outcome of the said selection process.

In the result, this writ petition stands dismissed.

There shall be no order as to costs.

JUDGE

Sabyasachi B