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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 22.03.2022

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P. (MD) No.9740 of 2021

and

W.M.P. (MD) Nos.7442, 7443, 7444 & 7445 of 2021

1.Bala Murugan

2.Anish.T.

... Petitioners

vs.

1.The State of Tamil Nadu

rep.by its Principal Secretary
Home (Police) Department, Secretariat
Fort St.George, Chennai-600 009

2.The Chairman & Managing Director

Tamil Nadu Uniformed Services Recruitment Board
Pantheon Road, Egmore
Chennai-600 008

3.The Inspector General of Police /

Member Secretary
Tamil Nadu Uniformed Services Recruitment Board
Pantheon Road, Egmore
Chennai-600 008

4.The Director General of Police

Dr.Radhakrishnan Salai
Mylapore, Chennai-600 004

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of writ of certiorarified mandamus calling for the records pertaining the final selection list dated 15.04.2021 for the posts of Sub Inspector of Police (Taluk, Armed Reserve (Men Women / Trans Gender) and Tamil Nadu Special Police (Men)) - 2019 pursuant to Notification No.2/2019, dated 08.03.2019 issued by the 3rd respondent and quash the same as illegal and consequently issue a direction to the Respondents to re-conduct the oral test for the posts of Sub Inspector of Police pursuant to Notification No.2/2019, dated 08.03.2019 issued by the 3rd respondent within a time stipulated by this Court.



For Petitioners : Mr.Murugan.R.

For Respondents : Mr.Veera Kathiravan
Additional Advocate General
assisted by Mr.A.K.Manikkam
Special Government Pleader

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O R D E R

The petitioners have filed this writ petition questioning the final selection list, dated 15.04.2021, on the ground that viva voce test was not properly conducted and the petitioners were discriminated in awarding of marks in viva voce test.

2. The learned counsel appearing for the petitioners made a submission that the other candidates secured more marks in viva voce, but the similar treatment was not given to the petitioners and therefore, they were constrained to move this writ petition.

3. A question arises whether High Court can interfere with the selection process, more specifically regarding viva voce test conducted by the Authority concerned.

4. The power of judicial review under Article 226 of the Constitution of India is to ensure the process during which a decision is taken in consonance with the rules in force, but not the decision itself.

5. Regarding the scope of judicial review in the matter of selection, the Full Bench of Madhya Pradesh formulated questions of laws in respect of such selections in the case of **Ashutosh Pawar vs. High Court of Madhya Pradesh and others**, reported in **2018 (1) CTC 353** and question Nos.2 and 3 are relevant, which are extracted hereunder:

"2. Whether the High Court in exercise of its powers under Article 226 of the Constitution of India, can step into the shoes of the Appointing Authority and determine as to whether the person concerned is fit for appointment or whether the High Court on finding that the Authority concerned has wrongly exercised its discretion in holding the candidate to be ineligible should, after quashing the order, remit the matter back to the authority concerned for reconsideration or for fresh consideration as to the eligibility of the person?

3. Whether the High Court while allowing a petition in exercise of its powers



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under Article 226 of the Constitution of India can issue a further direction to the authority to appoint the person concerned on the post from the date his batchmates were appointed and to grant him back dated seniority and all other benefits or whether the High Court should simply remit the matter back to the authority for taking a decision in this regard?"

6. The Full Bench further considered the scope of judicial review under Article 226 of the Constitution of India by the High Courts.

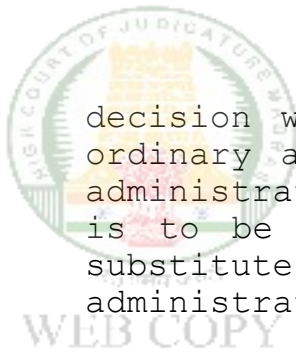
7. In the case of **Chief Constable of the North Wales Police v. Evans [(1982) 3 All ER 141, 154]**, Lord Brightman said that judicial review, as the words imply, is not an appeal from a decision, but a review of the manner in which the decision was made. Judicial review is concerned, not with the decision, but with the decision-making process. Unless that restriction on the power of the court is observed, the court will in my view, under the guise of preventing the abuse of power, be itself guilty of usurping power.

8. In the same case, Lord Hailsham commented on the purpose of the remedy by way of judicial review under RSC, Ord. 53 that this remedy, vastly increased in extent, and rendered, over a long period in recent years, of infinitely more convenient access than that provided by the old prerogative writs and actions for a declaration, is intended to protect the individual against the abuse of power by a wide range of authorities, judicial, quasi-judicial, and, as would originally have been thought when I first practiced at the Bar, administrative. It is not intended to take away from those authorities the powers and discretions properly vested in them by law and to substitute the courts as the bodies making the decisions. It is intended to see that the relevant authorities use their powers in a proper manner.

9. In **R. v. Panel on Takeovers and Mergers, exp Datafin plc (1987) 1 All ER 564**, Sir John Donaldson, M.R. Commented that an application for judicial review is not an appeal.

10. In **Lonrho plc v. Secretary of State for Trade and Industry [(1989) 2 All ER 609]** Lord Keith said that judicial review is a protection and not a weapon. It is thus different from an appeal. When hearing an appeal the Court is concerned with the merits of the decision under appeal.

11. In **Amin v. Entry Clearance Officer [(1983) 2 All ER 864]**, Re, Lord Fraser observed that judicial review is concerned not with the merits of a decision but with the manner in which the



decision was made.... Judicial review is entirely different from an ordinary appeal. It is made effective by the court quashing the administrative decision without substituting its own decision, and is to be contrasted with an appeal where the appellate tribunal substitutes its own decision on the merits for that of the administrative officer.

12. In *R. v. Panel on Take-overs and Mergers, exp in Guinness plc [(1989) 1 All ER 509]*, Lord Donaldson, M.R. referred to the judicial review jurisdiction as being supervisory or 'longstop' jurisdiction. Unless that restriction on the power of the court is observed, the court will, under the guise of preventing the abuse of power, be itself guilty of usurping power.

13. The duty of the Court is to confine itself to the question of legality. Its concern should be:

- (i) Whether a decision-making authority exceeded its powers?
- (ii) Committed an error of law,
- (iii) Committed a breach of the rules of natural justice,
- (iv) Reached a decision which no reasonable tribunal would have reached or,
- (v) Abused its powers.

14. Therefore, it is not for the Court to determine whether a particular policy or particular decision taken in the fulfillment of that policy is fair. It is only concerned with the manner in which those decisions have been taken. The extent of the duty to act fairly will vary from case to case. Shortly put, the grounds upon which an administrative action is subject to control by judicial review can be classified as under:

- (i) **Illegality:** This means the decision-maker must understand correctly the law that regulates his decision-making power and must give effect to it.
- (ii) **Irrationality,** namely, **Wednesbury unreasonableness.**
- (iii) **Procedural impropriety.**

15. This Court is of the considered opinion that viva voce is the prerogative of the Selection Committee. The assessment of the Selection Committee regarding comparative merit of the candidates cannot be interfered with by the High Courts. The Members of the Committee are the appropriate Authority for the purpose of making assessment of suitability and eligibility and also the merit of the candidates. High Court in exercise of the powers of judicial review cannot interfere with such decision taken by the Selection Committee regarding merit assessment made between the candidates. The process of viva voce conducted by the Selection Committee in the present case has been stated in Paragraph No.7 of



the counter affidavit filed by the second respondent, which is extracted hereunder:

"7.It is submitted that, the DGP/HoPF, Tamil Nadu had nominated Officers in the rank of DGP, ADGP, IGP, DIG and SP for Viva-Voce panel to the recruitment of Sub Inspectors of Police 2019 vide Chief Office proceedings in Rc.No.19252/Rect.II (1)/2019, dated 16.10.2020 and 24.09.2020. The concerned officers were nominated for conducting Viva-Voce at TNUSRB Head Quarters from 17.12.2020 to 07.01.2021. Four Boards were setup for conducting Viva-Voce. Each Board/Panel was headed by Chairman and comprising of three other Members (Police Officers). Each Board also had one Woman Member. Each Board conducted two sessions each day. The morning session commenced from 09.30 hrs and the afternoon session commenced at 14.00 hrs. A total number of 141 (morning 60 + afternoon 81) candidates were called for attending Viva Voce per day. The Chairman and the Members for each Board are randomly drawn by lot method on the date of Viva-Voce by the IGP/Member Secretary in the presence of the ADGP/Member, TNUSRB. Until then the officers (members) will not know in which Board they will sit. A similar random lot method was also followed for the candidates, through which the candidates get allocated to any of the four interview boards. The very process of assigning of officers and allotment of candidates in a random manner obliterates the possibility of any supposed nexus between them. Each candidate is assessed independently by the Chairman and the members of the Board, who are senior police officials and marks awarded. This is solely based on the conduct and response to the questions by the candidates. The assessment of the candidates is the prerogative of the Chairman and members of the Board. Thus, the Viva-Voce was carried out meticulously and ensuring a near foolproof method devoid of human manipulations. Further, the entire process of Viva-Voce was video graphed to avert malpractices and for transparent conduct of the proceedings. The petitioners with no knowledge of the performances of other candidates are flinging unsubstantiated insinuations against the Board. Instead of accepting of their assessment, they are questioning the assessments of other candidates impetuously and recklessly. The petitioners are casting aspersions on



responsible senior police officials out of frustration."

16. In such view of the matter, the writ petition is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (AE)

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/ /2022

Sub Assistant Registrar(CS)

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To:

- 1.The Principal Secretary,
Home (Police) Department, Secretariat,
State of Tamil Nadu,
Fort St.George, Chennai-600 009.
- 2.The Chairman & Managing Director,
Tamil Nadu Uniformed Services Recruitment Board,
Pantheon Road, Egmore, Chennai-600 008.
- 3.The Inspector General of Police /
Member Secretary,
Tamil Nadu Uniformed Services Recruitment Board,
Pantheon Road, Egmore,
Chennai-600 008.
- 4.The Director General of Police,
Dr.Radhakrishnan Salai,
Mylapore, Chennai-600 004 .

+2 CC to M/s.R.MURUGAN, Advocate (SR-13432[F] dated 22/03/2022)

+1 CC to M/s.SPL GP (SR-14258[F] dated 24/03/2022)

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RD(30.03.2022) 6P 8C