



W.A.No.3587 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.12.2023

CORAM :

**THE HONOURABLE MR. JUSTICE R.SURESH KUMAR
and
THE HONOURABLE MR.JUSTICE G.ARUL MURUGAN**

**W.A.No.3587 of 2019
and C.M.P.No.23018 of 2019**

1.The Secretary
Tamil Nadu Public Service Commission
Frazer Bridge Road, VOC Nagar, Park Town
Chennai 600 003.

2.The Controller of Examinations
Tamil Nadu Public Service Commission
Frazer Bridge, V.O.C.Nagar, Park Town
Chennai - 600 003.

... Appellants

-Vs-

1.B.Balachandran

2.The Secretary to Government of Tamil Nadu
Housing and Urban Development Department
Fort St.George, Chennai 600 009.

3.The Director
Directorate of Town and Country Planning
Chennai.

... Respondents

Prayer : Writ Appeal under Clause 15 of the Letters Patent against the order in
W.P.No.5436 of 2019 dated 08.07.2019.

For Appellant	:	Mr.R.Bharanidaran Standing Counsel
For Respondents	:	Mr.V.Vijay Shankar - for R1 Mr.M.Murali Government Advocate - for R2 & R3



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J U D G M E N T

(Judgment of the Court was delivered by **R.SURESH KUMAR, J.**)

This appeal has been directed against the order passed by the writ Court dated 08.07.2019 made in W.P.No.5436 of 2019.

2. The first respondent herein in this appeal was the writ petitioner who was holding a Master's degree in Town Planning and his basic degree is Civil Engineering. After securing his Master's degree in Town Planning, he had enrolled himself as the Member of the Institute of Town Planners of India. He belongs to MBC - De-notified Community (DNC).

3. While so, on 11.09.2018 the appellant / Tamil Nadu Public Service Commission (in short 'Service Commission / TNPSC) had issued a notification giving advertisement No.505 calling for applications from eligible candidates for filling up the post of Architectural Assistant / Planning Assistant in the Department of Town and Country Planning (DTCP) and the total number of vacancies that were notified was 13.

4. The educational qualification that has been prescribed in the notification, which reads as under:



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(B) Educational Qualification : (as on 11.09.2018)

Applicants should possess the following or its equivalent qualification :-

Educational Qualification :

- i. Must possess a Degree of Master of Town Planning or its equivalent.*
- ii. Associate Membership of the Institute of Town Planners of India or Institute of Architects of India.*
- iii. A Degree in Civil Engineering*
- iv. A Degree in Architecture*
- v. An A.M.I.E. (Civil) ie., Associate Member of the Institute of Engineers (India).*

5. Since the first respondent / writ petitioner was having the Master of Town Planning degree and also he became a member of the Institute of Town Planners of India, and also is having a degree in Civil Engineering, since he has fulfilled the educational qualification criteria, he fully became eligible to be considered for selection for the aforesaid post. Therefore, he made an application for the said selection process.

6. In the selection process, the scheme of examination is by way of objective type ie., OMR method and there were two papers. The distribution of marks as given in the notification reads thus,



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Subject	Duration	Maximum Marks	Minimum Qualifying marks for selection	
			SCs, STs, BCs and BCMs	SC(A)s, Others
i. Paper-I (200 Questions) <u>Any one of the following subjects</u> (i) Town Planning (P.G.Standard) (Code No.153) (or) (ii) Architecture (Degree standard) (Code No.154) (iii) Civil Engineering (Degree Standard) (Code No.155)	3 Hours	300		
ii. PAPER-II General Studies (Code No.003) (100 Questions) General Studies (Degree Standard) 75 Questions and Aptitude and Mental Ability Test (SSLC Standard) - 25 Questions.	2 Hours	200	171	228
iii. Interview and Records		70		
Total		570		

Note :

- The question paper in the subjects Town Planning and Architecture will be set in English only. The question paper in the subject Civil Engineering will be set both in English and Tamil.
- Candidates should choose and specify in the application, only the prescribed subject in which they have obtained the educational qualification for appearing to the examination.



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- iii. *Refer para 22 of "Instructions to Applicants" in regard to instructions to be followed while appearing for competitive examinations conducted by the Commission.*
- iv. *The Syllabus for Examination is furnished in the Annexure-II of this notification."*

7. Therefore, insofar as Paper-II is concerned, it is General Studies, Therefore, it will be a common examination for all candidates. However, insofar as Paper-I is concerned, it is subject paper; three different subjects' examination was conducted, the first subject is Town Planning, second subject is Architecture and the third one is Civil Engineering. Insofar as the second and third subjects are concerned, the question paper will be set at degree standard and insofar the first one ie., Town Planning subject is concerned, the question paper will be set in PG standard. That is how the examination was conducted and the selection process was completed. However, when the examination results ie., the selection list was published, the name of the writ petitioner was not found and when he verified, all those selectees belonged to the Civil Engineering group and none of them were from Town Planning group, that means, those who have taken Town Planning as a subject paper in the first examination had not been selected.

8. In this context, it is the further case of the writ petitioner before the writ court that the Town Planning paper was very tough as it was set in PG standard. Even though the writ petitioner was a post graduate degree holder, not only the writ



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petitioner, but all similarly placed persons who have taken Town Planning as subject paper found it very difficult to meet the question paper set in PG standard. Resultantly, none of them in the Town Planning group have reached the zone of consideration and they were not selected. But, all those selected for interview as well as ultimate selection were only from Civil Engineering group.

9. In this context, it is the contention of the writ petitioner that, in a situation like this, where the method of selection is from different subjects, there is always a procedure called 'Scaling' method to be applied. The method of scaling is always adopted, according to the petitioner, when there is uneven distribution of marks caused by subjective variability among heterogenous subjects. When candidates take examination in different subjects, their inter se merit is assessed by evolving a method known as 'scaling', so that, an equitable opportunity is given to all individuals appearing for a group of posts with different examinations, in different subjects.

10. Therefore, in that circumstances, the petitioner had approached the writ court by filing the said writ petition seeking to quash the proceedings dated 13.02.2019 and consequently for a direction to evaluate the marks by adopting the method of scaling in order to ensure equality among the candidates, who have taken different optional subjects in Paper-I for the post of Architectural Assistant / Town Planning Assistant in the Tamil Nadu Town Planning Subordinate Services



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11. The said writ petition was heard and a detailed judgment has been rendered by the writ Court, which is impugned herein.

12. The learned Judge, in fact had accepted the plea raised by the writ petitioner that, there has been a subject bias or examiner bias and therefore, in view of the subject variability among heterogenous subjects, to have a same level playing field for all those candidates who made applications in a common competitive examination and for selection process, to eliminate such bias on the subject or examiner, the known method is scaling method, which should have been adopted. Failure to adopt such scaling method would cause injustice to one particular group of candidates, who have taken a particular subject viz., Town Planning, which in fact was very relevant for the post for which applications are called for and no one from that group since has reached the zone of consideration, it shows that definitely there has been a subject bias in the examination pattern itself. Therefore, the examination pattern has not provided level playing field for all those candidates and accordingly the learned Judge has come to the conclusion that the TNPSC should constitute a Committee of Experts to evaluate the performance of the petitioner vis-a-vis the selected candidates. Such committee shall be constituted within a period of eight weeks from the date of receipt of a copy of the order. The TNPSC was also directed to instruct the Committee to submit its report within a



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reasonable time and based on the recommendation of the Committee, if it is in favour of the selection of the petitioner on the basis of the assessment, by adopting scaling method, the Commission may consider accommodating the petitioner in the present selection without disturbing the selection list already prepared in respect of other candidates.

13. Aggrieved over the said order passed by the writ Court, the TNPSC has preferred the present writ appeal.

14. Heard Mr.R.Bharanidharan learned Standing Counsel appearing for the appellant / TNPSC, who would submit that, in the very notification itself it has been clearly mentioned about the educational qualifications to be possessed by the candidates to participate in the selection process. It is not only the Master's degree in Town Planning, but also a degree in Civil engineering or a Degree in Architecture as well as AMIE (Civil) are all the essential subjects, wherein if anyone has got such qualification, he would be able to make an application to participate in the selection process. He would further submit that, in the scheme of examination, which is an objective type examination, there are two papers. The second paper General Studies will be common question paper for all candidates. Insofar as the first paper is concerned, it will be based on the subjects. There are three subjects taken into account ie., Town Planning, Architecture and Civil Engineering. Insofar as Architecture and Civil Engineering, degree level standard question paper will be set



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and insofar as Town Planning is concerned, the question paper will be set in PG standard.

15. What is the total marks to be distributed also has been mentioned, according to which, 300 marks for the first paper, 200 marks for General Studies and 70 for interview, altogether 570 marks. If this is the method of selection specified in the very notification itself and after going through the notification since the petitioner and other candidates have made applications and participated in the selection process, but however at the final stage ie., at the time of issuance of final list of candidates selected, the petitioner cannot turn around and seek the indulgence of this Court to adopt the scaling method. In the notification itself, the scheme of examination and selection process since has been specifically mentioned, where there is no scope for scaling method, that cannot be expected to be implemented, for which the petitioner cannot approach this Court after completion of the selection process.

16. In this context, the learned Standing Counsel for the appellant TNPSC would contend that, the law is well settled in this regard, where, once the selection process is commenced, the qualification and the conditions imposed therein as well as the brochure if any issued by the recruiting agency would be binding on both sides. It is also well settled law that, once the game is started, the rules of the game cannot be changed during midstream. If that logic is applied in this case also, as the law is also well settled by number of pronouncements, the petitioner has no locus to



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challenge the selection list on the ground that scaling method should have been implemented.

17. Therefore, on that ground itself the writ petition ought to have been dismissed. But the learned Judge, having entertained the writ petition, has gone to the extent of saying that, in order to eliminate the subject bias in heterogenous subject examination, such a scaling method should have been invoked and non-invoking of the scaling method defeats the purpose of making a level playing field for all those candidates, who participate in the selection process. Therefore, on that ground the learned Judge interfered with the selection and gave a direction to constitute a Committee to compare the marks obtained by the selected candidates as well as the petitioner and based on the suggestion to be made by the Committee, the TNPSC was directed to consider the candidature of the writ petitioner alone for selection.

18. This kind of extra method apart from the selection process already been envisaged by the TNPSC and had been adopted and concluded, has no legs to stand because, such kind of method cannot be introduced newly only in order to help a person or a group of persons, who participated in the selection process. Therefore, the learned counsel for TNPSC contended that, the reasoning given by the learned Judge and the conclusion reached by him is totally erroneous and hence it is liable to be interfered with.



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19. However, Mr.V.Vijaya Shankar learned counsel appearing for the first respondent has contended that, how a subject bias surfaced in this selection process has been evaluated by the learned Judge because, none of the candidates from Town Planning group has been selected and all those selectees belonged to Civil Engineering group and that itself would go to show that there has been a complete subject bias available during the entire selection process. Therefore, absolutely there had been no level playing field provided by TNPSC for all those candidates.

20. He would also submit that the very post for which the applications have been sought for is Architectural Assistant / Planning Assistant. Insofar as Architectural Assistant / Planning Assistant, the subject Town Planning is very nearer. Even though the other subjects like Civil Engineering / Architecture are relevant subjects, insofar as the Town Planning is concerned, the very qualification sought for itself is a Degree of Master of Town Planning and the question paper also would be set in P.G. standard.

21. When that being so, the candidates belongs to Masters in Town Planning must be given equal opportunity by having a level playing field. In the absence of any such kind of level playing field, the entire selection in fact is vitiated. However,



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the learned Judge did not want to interfere with the entire selection process and only with regard to the one vacancy out of the 13 vacancies which has been kept vacant, the said method was directed to be adopted by constituting a committee. Therefore, such a view taken by the learned Judge, of course rightly, does not warrant any interference from this Court, he contended.

22. We have considered the submissions made by the learned counsel for both sides and have perused the materials placed on record.

23. Insofar as the challenge that has been made by the writ petitioner, after the entire selection process is over, whether is to be accepted or not, is the first question to be answered.

24. In this regard, as has been rightly pointed out by the learned Standing Counsel for TNPSC, once the notification has been issued, having gone through the notification only all those candidates made applications and have participated in the selection process. That means, they subjected themselves to the conditions imposed in the notification. Once the selection process commenced, even the TNPSC does not have any power to change the pattern of examination or selection process and that will amount to change of the rules of the game, which is impermissible as per the settled law.



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24. When that being so, the rule is equally applicable to all the candidates who participated in the selection process. Therefore, the petitioner being one of the candidates who has participated in the selection process till the end, cannot turn around and say that the scaling method should have been adopted in the selection process. Since such a method has not been adopted by TNPSC and it has not been mentioned in the notification, the petitioner, in our considered view, does not have any right to ask for introduction and implementation of such scaling method.

25. Therefore, to that extent the writ petitioner's case ought to have been rejected out-rightly. However, if we look at the end result, the entire selectees belonged to Civil Engineering group and not even a single candidate who had been selected for interview was from the Town Planning group.

26. As has been rightly pointed out by the learned counsel for the writ petitioner / first respondent, Town Planning is one of the important and nearer subject for the post, for which the notification is called for and it is in the P.G standard and therefore, at least some of the candidates from that group ought to have been selected. If none of them can be selected by TNPSC for the said post from the Town Planning group, it can be construed that eligible candidates with apt qualification are kept out of the purview of the selection process because of the subject bias.



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27. It is brought to our notice that, in the subsequent selection processes, in order to remove such subject bias, the question paper pattern has been entirely changed, where all the three subjects are put together and accordingly marks are evenly distributed by way of a common question paper. If that being the examination pattern, there would be no subject bias in respect of any of the subjects like Town Planning, Architecture, Civil Engineering etc., as the questions would be asked from all these three subjects as provided in the examination pattern which has been subsequently adopted by the TNPSC itself.

28. However, in this particular selection process only, three different question papers in Part-I has been planned, under which each of the subjects will have one question paper, where the question paper for Town Planning set in PG standard appears to be a tough one. That is the reason why none of them could make any dent in the selection process to reach even the zone of consideration. Therefore, it is a clear case where there had been a subject bias, which was prevailing during the entire selection process and in order to eliminate the same, scaling method has not been adopted.

29. If at all the TNPSC has come forward belatedly to adopt such scaling method, one can welcome it. However, by way of mandamus whether this Court can compel the TNPSC to adopt such method that too when such method has not been envisaged in the notification, is a question.



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30. Scaling method may be one of the proven or good method to eliminate the subject bias or examiner bias, but in each and every stage of the selection process, one cannot expect that such a scaling method should be adopted. Moreover, if the recruiting agency has not come forward to adopt such method, the Court cannot express its view and instill its views on the selection process by giving a direction by way of a mandamus to adopt such scaling method.

31. However, in the present case the learned Judge has directed not to disturb the selection already made except one out of the 13 vacancies, with regard to one vacancy which has been kept vacant because of the pendency of this litigation is concerned, such a direction was given by the learned Judge.

32. Insofar as the said direction is concerned, he has given such a direction to the TNPSC to constitute a committee to evaluate the performance of the petitioner vis-a-vis the candidates who became successful, that kind of direction, in our considered view, ought not to have been issued because, the writ petitioner alone cannot be treated differently or no special treatment can be shown to the petitioner alone. If at all there is a subject bias, that subject bias is meted out to the entire Town Planning group candidates. That means, whoever have taken the said subject and wrote the examination, in respect of all of them such a subject bias



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could have made an impact and therefore all of them should have been given equal opportunity and therefore, if at all any direction to be given to the TNPSC to constitute a committee to evaluate the performance of the candidates, that must be for all such candidates who have taken the Town Planning subject and wrote the examination and not for the writ petitioner alone.

33. In that view of the matter and the discussion which we have made herein above, we are inclined to dispose of this writ appeal with the following orders.

- That the impugned order passed by the learned Judge dated 08.07.2019 in W.P.No.5436 of 2019 is set aside with the following modification.
- That there shall be a direction to the TNPSC / appellant to constitute a committee as directed by the learned Judge in the order impugned to evaluate the performance of all the candidates who wrote Paper-I of the examination in subject Town Planning and accordingly ranking can be prepared. Thereafter, the one vacancy kept vacant out of the 13 vacancies, can be filled up with the candidate whoever comes first among the Town Planning candidates.
- It is made clear that, if the first candidate does not turn up, it will go to the second candidate and it will go on until a candidate comes forward to take up the job. If no one has come forward to take up the job till the turn of the writ petitioner, it goes without



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saying that he is entitled to get it. To that extent, the order passed by the learned single Judge which is impugned herein is modified.

- Accordingly, the modified order, which we have made herein above shall be complied with by the appellant TNPSC within a period of twelve (12) weeks from the date of receipt of a copy of this order.
- We make it clear that we have passed the aforesaid order sustaining the direction given by the learned Judge with the aforesaid modification only in view of the peculiar facts and circumstances that one particular vacancy has been kept vacant for the present purpose, as the litigation has been pending for some years. Otherwise, this direction should not be taken as a precedent in future selections of the TNPSC in respect of any other appointment, where such a subject bias or examiner bias is alleged, unless and until the TNPSC comes forward to adopt the scaling method in their selection process.

34. With the above clarification and modification, the writ appeal is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

(R.S.K.,J.) (G.A.M.,J.)
21.12.2023

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To

- 1.The Secretary to Government of Tamil Nadu
Housing and Urban Development Department
Fort St.George, Chennai 600 009.
- 2.The Director
Directorate of Town and Country Planning
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and
G.ARUL MURUGAN, J.

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