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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Date of decision: 02nd May, 2023*

+ LPA 267/2019 & CM APPL. 18210/2019 (stay)

AMITESH GROVER Appellant
Through: Mr. Samar Bansal and
Mr. Madhav Gupta, Advocates.
versus

NATIONAL SCHOOL OF DRAMA & ORS..... Respondents
Through: Ms. Tamali Wad, Advocate for
R-1.
Mr. Ripu Daman Bhardwaj,
CGSC with Mr. Kushagra
Kumar, GP and Mr. Vijay
Joshi, Advocate for R-2/UOI.
Mr. Rajeev K. Mishra and
Mr. Nirmal Mishra, Advocates
for R-3.

+ LPA 391/2019 & CM APPL. 27307/2019 (stay)

NATIONAL SCHOOL OF DRAMA Appellant
Through: Ms. Tamali Wad, Advocate for
R-1.
versus

SANTANU DAS & ORS Respondents
Through: Mr. Rajeev K. Mishra and
Mr. Nirmal Mishra, Advocates
for R-1.
Mr. Samar Bansal and
Mr. Madhav Gupta, Advocates
for R-2.
Mr. Ripu Daman Bhardwaj,
CGSC with Mr. Kushagra
Kumar, GP for R-3/UOI.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

HON'BLE MR. JUSTICE SUDHIR KUMAR JAIN

NAJMI WAZIRI, J. (ORAL)

The hearing has been conducted through hybrid mode (physical and virtual hearing).

1. This appeal impugns the judgment dated 12.04.2019 of the learned Single Judge passed in W.P.(C) 7800/2012. R-3/Santanu Das had impugned his non-selection for the post of Assistant Professor (Extension) at the National School of Drama (NSD), New Delhi on the ground that no reasons were given, not even the performance sheet was produced by the Selection Committee, for his non-selection or for the present appellant being selected. Therefore, the entire selection process lacked transparency. The impugned judgment had set aside the selection of the appellant Amitesh Grover. The judgement has recorded the submissions of Santanu Das as under:

“...7. Learned counsel further submits that the petitioner being not satisfied by the selection procedure, vide an application dated 11.05.2012 under the Right to Information Act, sought the copy of interview performance mark sheet, detail profile of the candidates who had applied for the post and the details of the selectors. Accordingly, respondent no. 1 vide its reply

dated 27.06.2012 informed that there is no provision to prepare performance sheet in NSD at all.

8. It is further submitted that the selection of the teacher ought to have been done through a transparent procedure and any interview or assessment can be done transparently and fairly only by recording the observations of the selectors and then judging the most suitable candidate for the post on the basis of those observations. It provides an authenticity to the entire selection process. However, the non-preparation of the performance sheet apparently depicts the arbitrariness and extraneous consideration in the selection procedures. Thus, action of the respondent is in violation of fundamental rights acquainted under Article 14 and Article 16 of the Constitution of India. The respondent cannot curtail rights of citizens which guarantees the right to be treated equal. Article 16 ensures statutory right to the applicant to have equality of opportunity in public employment.

9. The respondent no. 1 has failed to justify the transparency of the selection procedure, in view of the fact that respondent no.1 did not prepare and maintain any performance sheet of the candidates who appeared in the interview for the post in question. Thus, the whole process of selection is illegal and contrary to public policy and public interest and it is therefore, liable to be set aside.

*10. In case of **Jaskaran Singh vs Punjabi University Patiala and Another**, decided on 15.05.2015 by the Punjab and Haryana High Court, held that if neither grading nor criteria is laid down, then how the performance of the candidates has been assessed by the Interview Board and how a candidate, who has an excellent academic and research record, was found to have been weak before the Interview Board.*

*Accordingly, the Court set aside the selection on the ground that the Selection Committee has failed to adopt any criteria for assessing the respective merits of the candidates and the respondents were directed to make fresh selection by calling all shortlisted candidates for interview after laying down the criteria. The said judgement has been upheld by the division bench of the aforesaid court in the case of **Babita Rani vs Punjabi University, Patiala and others**, LPA no. 2081/2011 vide order dated 14.11.2011 whereby observed that the selection is to be made only on the performance of the candidates before the Selection Board...*

2. The learned Single Judge has reasoned as under:

“...20. As admitted, NSD is an institution fully funded by the Central Government through the Ministry of Culture, therefore, the Brochure on SC/ST reservation is applicable. When the petitioner was not selected for the post in question he made an application dated 11.05.2012 under the Right to Information Act, 2005 and sought information regarding list of teaching staffs who belongs to the SCs category alongwith details of possession.

21. Accordingly, the respondent no. 1 vide its reply dated 15.06.2012 admitted that there was not a single teacher from the SC/ST community. The aforesaid reply of respondent no. 1 establishes that in such prestigious institutions none of the teachers are from the SC/ST, this caste upon a serious doubt of implementation of the government reservation policy which is required to be followed by the government institutions.

22. In addition to above, the petitioner vide application dated 11.05.2012 under the Right to Information Act sought the copy of interview performance, mark-sheet, details of the candidates who had applied for the post and details of the selectors. In reply to the said

application dated 27.06.2012, the respondent no. 1 admitted that there is no provision to prepare performance sheet in National School of Drama at all.

23. It is a requirement for every institutions under the Central/State Government, the Selection ought to be done through a transparent procedure and any interview or assessment should, be done transparently and fairly only by recording of observations of the Selectors then judging the most suitable candidates for the post on the basis of those observations. However, non preparation of the performance sheet apparently depicts the arbitrariness and erroneous selection procedure. In such a situation the action of any institution including respondent no. 1 here is in violation of fundamental rights enshrined under Articles 14 & 16 of Constitution of the India. The respondents cannot curtail the right of citizen which guarantees the right to be treated equal...”

3. For the said reasons, the selection process for the post of Assistant Professor (Extension) was quashed. A fresh selection process was directed to be initiated within a period of six weeks from the date of receipt of the said judgment.
4. On 16.04.2019, the impugned judgment was stayed in this LPA. The appellant has continued to work with the NSD from the year of his being selected and appointed, i.e. in 2012. More than a decade has passed by. As of January 2023, he was promoted to the post of Associate Professor and is being paid his regular salary.
5. On a query put to the learned counsel for R-3, the court is informed

that R-3 is employed as a Teacher at the Rabindra Bharti University, Kolkata on a regular basis since 2001 and continues to discharge his responsibilities there.

6. Mr. Samar Bansal, the learned counsel for the appellant submits that the impugned order has erred in assuming that a performance sheet should be maintained but the Rules do not so mandate. He relies on the dicta of the Supreme Court in *National Institute of Mental Health & Neuro Sciences vs K. Kalyana Raman*, 1992 Supp (2) SCC 481, which held as under:

*“...7. We will first consider the second point. In the first place, it must be noted that the function of the Selection Committee is neither judicial nor adjudicatory. It is purely administrative. The High Court seems to be in error in stating that the Selection Committee ought to have given some reasons for preferring Dr Gauri Devi as against the other candidate. The selection has been made by the assessment of relative merits of rival candidates determined in the course of the interview of candidates possessing the required eligibility. There is no rule or regulation brought to our notice requiring the Selection Committee to record reasons. In the absence of any such legal requirement the selection made without recording reasons cannot be found fault with. The High Court in support of its reasoning has however, referred to the decision of this Court in *Union of India v. Mohan Lal Capoor*. That decision proceeded on a statutory requirement. Regulation*

5(5) which was considered in that case required the Selection Committee to record its reasons for superseding a senior member in the State Civil Service. The decision in Capoor case was rendered on September 26, 1973. In June 1977, Regulation 5(5) was amended deleting the requirement of recording reasons for the supersession of senior officers of the State Civil Services. The Capoor case cannot, therefore, be construed as an authority for the proposition that there should be reason formulation for administrative decision. Administrative authority is under no legal obligation to record reasons in support of its decision. Indeed, even the principles of natural justice do not require an administrative authority or a Selection Committee or an examiner to record reasons for the selection or non-selection of a person in the absence of statutory requirement. This principle has been stated by this Court in R.S. Dass v. Union of India in which Capoor Case was also distinguished.

8. As to the first point we may state at the outset that giving of reasons for decision is different from, and in principle distinct from, the requirements of procedural fairness. The procedural fairness is the main requirement in the administrative action. The 'fairness' or 'fair procedure' in the administrative action ought to be observed. The Selection Committee cannot be an exception to this principle. It must take a decision reasonably without being guided by extraneous or irrelevant consideration. But there is nothing on record to suggest that the Selection Committee did anything to the contrary. The High Court however, observed, that Dr Kalyana Raman did not receive a fair and reasonable consideration by the Selection Committee. The inference in this regard has been drawn by the High Court from the statement of

objections dated February 18, 1980 filed on behalf of the Selection Committee. It appears that the Selection Committee took the stand that Dr Kalyana Raman did not satisfy the minimum requirement of experience and was not eligible for selection. The High Court went on to state that it was somewhat extraordinary for the Selection Committee after calling him for the interview and selecting him for the post by placing him second, to have stated that he did not satisfy the minimum qualifications prescribed for eligibility. According to the High Court the stand taken by the Selection Committee raises serious doubts as to whether the deliberations of the Selection Committee were such as to inspire confidence and reassurance as to the related equality and justness of an effective consideration of this case. It is true that selection of the petitioner and the stand taken by the Selection Committee before the High Court that he was not eligible at all, are, indeed, antithetical and cannot co-exist. But the fact remains that the case of Dr Kalyana Raman was considered and he was placed second in the panel of names. It is not shown that the selection was arbitrary or whimsical or the Selection Committee did not act fairly towards Dr Kalyana Raman. The fact that he was placed second in the panel, itself indicates that there was proper consideration of his case and he has been treated fairly. It should not be lost sight of that the Selection Committee consisted of experts in the subject for selection. They were men of high status and also of unquestionable impartiality. The Court should be slow to interfere with their opinion...”

(emphasis supplied)

7. The said judgment has been relied upon by the Supreme Court in *Md. Mustafa vs Union of India*, 2022 1 SCC 294, which held

as under:

“...18. Conditions prompted by extraneous or irrelevant considerations are unreasonable and liable to be set aside by Courts in exercise of its power under judicial review. (See State of U.P. v. Raja Ram Jaiswal, Sheonandan Paswan v. State of Bihar, Sant Raj v. O.P. Singla, Padfield v. Minister of Agriculture, Fisheries & Food. A decision can be arrived at by an authority after considering all relevant factors. If the discretionary power has been exercised in disregard of relevant consideration, the Court will normally hold the action bad in law. Relevant, germane and valid considerations cannot be ignored or overlooked by an executive authority while taking a decision. It is trite law that Courts in exercise of power under judicial review do not interfere with selections made by expert bodies by reassessing comparative merits of the candidates. Interference with selections is restricted to decisions vitiated by bias, mala fides and contrary to statutory provisions. (See Dalpat Abasaheb Solunke v. B.S. Mahajan, Badrinath v. State of T.N., National Institute of Mental Health & Neuro Sciences v. K. Kalyana Raman, I.P.S. Dewan v. Union of India, UPSC v. Hiranyalal Dev, M.V. Thimmaiah v. UPSC and UPSC v. M. Sathiya Priya.)...”

(emphasis supplied)

8. The advertisement, which itself provided the complete set of Rules, is not under challenge.
9. Ms. Tamali Wad, the learned counsel for R-1/NSD submits that the Selection Committee comprised eminent persons from the field of dramatics and other experts, including a representative from the

Ministry of Culture and a member from the SC/ST/Minority community.

10. It is also not in dispute that 32 people had applied for the post of Assistant Professor (Extension), an unreserved post and 28 candidates had appeared for the interviews. From amongst them the present appellant was selected.

11. The learned counsel for R-3/Santanu Das submits that: i) since its inception, the NSD never employed in its faculty, any member from the SC community; ii) R-3/Santanu Das, hailing from the SC community, is an alumni of NSD and he is fully qualified for the post and ought to have been considered favourably for appointment; and iii) *Albeit* R-3/Santanu Das is currently engaged in teaching in the similar field in West Bengal, he would be more than happy to join his alma mater-NSD, to impart education to budding theatre artists.

12. It is always open to an individual to nurture any such noble hope and desire. However, as far as this court is concerned, we have to see whether the NSD had erred in its decision making process.

13. The learned counsel for R-1/NSD submits that the NSD faculty

composition has now much altered and it has members from both the SC & ST community. In a way then, the larger effort of R-3/Santanu Das has found some fruition.

14. Insofar as the Rules do not require for the maintenance of a Performance Sheet for grading of the interviewees, reading anything more into the rules would be unwarranted and unsustainable in law. Therefore, for an impugned order to hold that there is a lack of transparency in the interview process is not justified because *Kalyana Raman* (supra) holds that:

“In the absence of any such legal requirement, the selection made without recording reasons cannot be found fault with.”

15. Interestingly, R-3/Santanu Das *albeit* belonging to the SC community, competed for an unreserved post and there is no note of objection, which he can point apropos his selection by any member of the selection committee, in particular, by the member representing the SC/ST/Minority community. No specific bias is alleged or made out. The Selection Committee comprised persons from the relevant field and was of diverse composition. It had the following members:-

Details of selectors for the post of Assistant Professor (Extn.)

Name	Designation	Contact No.
Mrs. Amal Allana	Chairperson, NSD Society	23073647
Ms. Roopa Srinivasan	Director, MoC Representative of MoC	23381198
Ms. Usha Ganguly	Outside Expert	09830151114
Dr. Anuradha Kapur	Director, NSD	23387137
Mrs. Kirti Jain	Professor, NSD	23389469
Sh. Suresh Bhardwaj	Member, NSD Society	23388890
Sh. Suresh Shetty	Assistant Professor & Dean Academic, NSD	23389138
Sh. Suresh Chand	Special Officer, M/o H.R.D. (Representing SC/ ST)	9891151800

16. In the absence of the Rules mandating recording of reasons or for maintaining a Performance Sheet, the court would be slow in venturing to write down fresh Rules. The Rules not being challenged, would be fully applicable.

17. For the aforesaid reasons, the appeal is allowed and the impugned order is set aside.

18.The present appeals, along with pending applications, if any, stand disposed off.

NAJMI WAZIRI, J

SUDHIR KUMAR JAIN, J

MAY 02, 2023
N/SW

