State of Maharashtra and Others

Vs

Husen S/o Jafar Sheikh and Others

Civil Appeal Nos. 2828, 4279 and 3163 of 1989 With Civil Appeal No. ... of 1993

(A. M. Ahmadi, Dr. A. S. Anand JJ)

12.05.1993

ORDER

1. All these three special leave petitions arise out of interim orders passed by the High Court. The writ petitions have been admitted to hearing and are pending adjudication by the High Court. We are not inclined to interfere with the interim order passed by the High Court at this stage. It will be open to the petitioners herein to move the High Court for early hearing of their writ petitions. The special leave petitions will stand disposed of accordingly.

Civil Appeal Nos. 2828, 4279 and 3163 of 1989 and SLP No. 7054 of 1989

2. Special leave granted in SLP No. 7054 of 1989

3. The question which arises for our determination in this group of appeals is whether the decision rendered by the High Court in the case of Husen Zafar Sheikh which has given rise to Civil Appeal No. 2828 of 1989 and which was followed in the other cases which have given rise to the Civil Appeal Nos. 4279 and 3163 of 1989 and Civil Appeal arising from SLP No. 7054 of 1989 is sustainable in law having regard to this Court's decision in Mehmood Alam Tariq v. State of Rajasthan ((1988) 3 SCC 241 : 1988 SCC (L&S) 757 : (1988) 7 ATC 741 : 1988 Supp (1) SCR 379). The question arises in the backdrop of the following facts.

4. Selection of police constables for the Police Training Course at Nasik for the post of Sub-Inspectors was made by a Selection Committee. There are three streams, namely, (i) direct recruitment by the State Government through the Maharashtra Public Service Commission (ii) selection from amongst qualified head constables and (iii) selection from amongst police constables. We are concerned with the last stream only. The process of selection was through written as well as an oral test. The written test comprised three papers, each carrying 100 marks, namely - Essay, General Knowledge, and Law, 50 marks were reserved for outdoor test and 50 marks for record of service, 100 marks were reserved for interview. The candidate was required to secure a minimum of 45 per cent marks for each written paper to qualify for outdoor test and interview. Insofar as the interview is concerned, a candidate to be successful had to secure a minimum of 40 per cent marks. The aggregate marks that he was required to secure for being declared successful was 50 per cent. We are not dealing with candidates belonging to the first and the second category but only with candidates belonging to the third category of police constables. They admittedly had failed to secure a minimum of 40 per cent marks in the interview and therefore, they were not selected for training.

5. The High Court held in their favour in Civil Appeal No. 2828 of 1989 on two counts : (1) that the 40 per cent requirement for passing the interview test was excessive and therefore, invalid and (2)

the Selection Committee which ought to have comprised four members, actually comprised three and hence the entire selection was vitiated. The second ground concerning the constitution of Selection Committee or Interview Board is not a ground on which High Court has held in favour of the respondents of Civil Appeal No. 3163 of 1989 and Civil Appeal No. .... [arising out of SLP No. 7054 of 1989]. In those two cases the High Court held against the State on the first ground, namely, that the rule requiring the candidate to obtain a minimum of 40 per cent marks at the interview was invalid. In Civil Appeal No. 4279 of 1989, High Court struck down the selection on both the grounds following the decision in Husen's case.

6. When the State's appeal against the decision in Husen's case came up for admission before the learned Vacation Judge of this Court on May 11, 1989, the learned Vacation Judge after noticing the two points on which the High Court held against the State, admitted the appeal insofar as the first point is concerned, on the contention that the High Court's view was unsustainable in view of this Court's decision in Mehmood Alam Tariq case ((1988) 3 SCC 241 : 1988 SCC (L&S) 757 : (1988) 7 ATC 741 : 1988 Supp (1) SCR 379). However, in regard to the second contention this Court felt that the State had no answer and, therefore, the learned Vacation Judge did not see any reason to interfere with the relief granted to Husen and directed that his case will be governed by the decision of the High Court. Since it was stated at the Bar that a large number of petitions were pending in which the first ground was raised, special leave was granted to consider the correctness of the High Court's view on the first ground. Before we proceed to answer the contention in regard to the first ground, we must state that the three respondents in Civil Appeal No. 4279 of 1989 sail in the same boat as Husen inasmuch as in their cases also, one of the grounds raised before the High Court was in regard to the constitution of the Committee. They must, therefore, get the same benefit which Husen got by the order of May 11, 1989. Although Mr. Dholakia made an attempt to persuade us to re-examine the matter on facts in regard to the constitution of the Committee, we have declined to do so because it is a question of fact and is sought to be raised for the first time before this Court. In their cases also, therefore, we see no reason to interfere with the relief granted to them and their cases will also be governed by the judgment of the High Court.

7. We now proceed to answer the main contention, that is, the first point on which Civil Appeal No. 2828 of 1989 was admitted by the order of May 11, 1989. The High Court after referring to the decision in Ajay Hasia v. Khalid Mujib ((1981) 1 SCC 722 : 1981 SCC (L&S) 258) and A. Peeriakaruppan v. State of Tamil Nadu ((1971) 1 SCC 38) observed as under :

> "A percentage of the aggregate marks may be prescribed for clearing the test. Similarly, the aggregate marks may be taken into account for the purpose of a merit list since the available seats may be limited. However, compulsory minimum passing marks in an interview by which a candidate who is otherwise successful may be disallowed from admission cannot be legally permitted. Such "interview" cannot be accepted as a supplemental test but has the characteristics of an inclusive act which is legally impermissible."

It is the correctness of this view which is challenged in this group of appeals.

8. In Mehmood Alam Tariq ((1988) 3 SCC 241 : 1988 SCC (L&S) 757 : (1988) 7 ATC 741 : 1988 Supp (1) SCR 379) the question which this Court was required to consider was a provision in the Rajasthan State Rules which provided that candidates should secure a minimum of 33 per cent marks in the viva voce test. Those who failed to secure the minimum marks challenged the validity of the rules in the High Court. The High Court declared the provision as unconstitutional. The

matter was brought to this Court by way of an appeal by special leave. It was urged by the selected candidates whose selection was quashed that the High Court fell into a serious error in importing the principle relating to the question whether setting apart of an excessive or disproportionately high percentage of marks for viva voce in comparison with the marks of a written examination would be arbitrary. However, urged counsel, the prescription of minimum qualifying marks for the viva voce test would not violate any constitutional principle or limitation, but was on the contrary a salutary and desirable provision. After referring to a long line of decisions beginning with Ajay Hasia ((1981) 1 SCC 722 : 1981 SCC (L&S) 258) this Court upheld the contention urged on behalf of the selected candidate. In paragraph 11 of the judgment this Court concluded as under : (SCR p. 394 : SCC p. 254, para 24)

> "It is important to keep in mind that in this case the results of viva voce examination are not assailed on grounds of mala fides or bias etc. The challenge to the results of the viva voce is purely as a consequence and incident of the challenge to the vires of the rule. It is also necessary to reiterate that a mere possibility of abuse of a provision, does not by to itself, justify its invalidation. The validity of a provision must be tested with reference to its operation and efficiency in the generality of cases and not by the freaks or exceptions that its application might in some rare cases possibly produce. The affairs of Government cannot be conducted on principles of distrust. If the selectors had acted mala fide or with oblique motives, there are administrative law remedies to secure reliefs against such abuse of powers."

9. We do not consider it necessary to refer to a long line of cases which have laid down that no hard and fast rule in this behalf can be laid down as to the weight to be given to the performance of a candidate at the interview. We, however, cannot agree with the High Court when it says that compulsory minimum passing marks for a viva voce test cannot be permissible in law. The High Court overlooked the fact that the viva voce test has relevance in regard to the factors other than those which are taken care of by the written test. Much would depend on the nature of service but it cannot be said that prescription of minimum marks for passing the viva voce test would always be constitutionally unsustainable. The performance of a candidate besides his knowledge in the academic field etc. also has relevance depending on the nature of the service or the duties and functions that he would be required to discharge from time to time. Take for example a service where it becomes necessary to test the reaction of the candidate in his dealing with the public. Next, whether he maintains his calm in panic situations or reacts sharply without weighing the situation confronting him. In such a service it is not enough that he has fairly good knowledge regarding the rules, the law and administrative requirements but it is equally important to see how he reacts in certain situations. We do not propose to multiply illustrations but it is sufficient to say that the viva voce test is as important as a written test and prescription of minimum pass marks will not per se make a rule unconstitutional. His performance both at the written test and the oral test would give the selector an integrated idea of the candidate's personality. This Court had an occasion to consider more or less a similar point in Mohinder Sain Garg v. State of Punjab ((1991) 1 SCC 662 : 1991 SCC (L&S) 555 : (1991) 16 ATC 495), Munindra Kumar v. Rajiv Govil ((1991) 3 SCC 368 : 1991 SCC (L&S) 1052 : (1991) 16 ATC 928) and Indian Airlines Corpn. v. Capt. K. C. Shukla ((1993) 1 SCC 17 : 1993 SCC (L&S) 114 : (1993) 23 ATC 407) wherein also this Court pointed out that no hard and fast rule could be laid down as to the percentage of minimum marks to be prescribed for clearing the viva voce test because much would depend on the diverse factors which must enter consideration for evaluating the candidate's worth. In Mohinder Sain case ((1991) 1 SCC 662 : 1991 SCC (L&S) 555 : (1991) 16 ATC 495), this Court pointed out in paragraph 30 at page 680 as under.

> "In Ashok Kumar Yadav v. State of Haryana ((1985) 4 SCC 417 : 1986 SCC (L&S) 88) it was held that there cannot be any hard and fast rule regarding the precise weight to be given to the viva voce test as against the written examination. It must vary from service to service according to the requirement of the service, the minimum qualification prescribed, age group from which the selection is to be made, the body to which the task of holding the viva voce test is proposed to be entrusted and a host of other factors. It is essentially a matter determined by experts. The court does not possess the necessary equipment and it would not be right for the court to pronounce upon it ...."

10. Recently in Civil Appeal No. 123 of 1992, C. P. Kalra v. Air India (1994 Supp (1) SCC 454), decided on April 8, 1993, we have reiterated that no hard and fast rule in this behalf can be evolved as much would depend on the diverse factors which enter the selection process. We do not think it necessary to burden this judgment by referring to the case law in detail because much water has flown after the decision of the High Court impugned in these appeals.

11. We may, however, point out that the selection in the instant case is for training to be imparted to constables for ultimate absorption as Sub-Inspectors. The total number of marks for the written, oral as well as outdoor test and in-service record is 500, 100 marks for viva voce therefore works out to 20 per cent of the total marks. The candidate must secure a minimum of 40 per cent marks in the viva voce which means 8 per cent of the total marks which cannot by any stretch be said to be excessive. We also must clarify that the observation made by the High Court in paragraph 14 of the judgment to the following effect :

> "In our opinion an appropriate and a thorough interview would be desirable but that would be at the stage when the candidates clear the training and not at the stage of admission."
>
> is not correct as it cannot be said that the requirement of a test for admission to the course is not relevant because once the candidate completes the training course, he is entitled to be appointed as a Sub-Inspector. No other submission was made.

12. For the foregoing reasons we dispose of Civil Appeal Nos. 2828 of 1989 and 4279 of 1989 accordingly. We allow Civil Appeal No. 3163 of 1989 and Civil Appeal No. ... of 1993 arising out of SLP (C) No. 7054 of 1989 setting aside the order of the High Court. Parties to bear their own costs. Rs. 10,000 deposited for payment to the respondent may be withdrawn by the concerned respondent of SLP No. 7054 of 1989.

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