SUPREME COURT OF INDIA

Secretary

Vs.

A.B. Natarajan

C.A.Nos.5877-78 of 2014

(Anil R. Dave and Dipak Misra JJ.)

30.06.2014

JUDGMENT

ANIL R. DAVE, J.

1. Leave granted. As all these appeals have been filed against a common judgment dated 4th March, 2011, delivered by the High Court of Judicature at Madras in Writ Appeal Nos. 1063 and 1287 of 2009, they have been heard together and decided by this common judgment.

2. The facts giving rise to the present litigation in a nutshell are as follows.

> The Tamil Nadu Public Service Commission (hereinafter referred to as 'the Commission') had issued an advertisement on 27th December, 2000, inviting applications for 95 posts for Group I Services. Subsequently, the vacancies had been decreased and it was notified that in all 91 vacancies had to be filled up.

3. In pursuance of the aforesaid advertisement, several candidates had submitted their applications and ultimately they had also appeared in the preliminary examination. The candidates who had been declared qualified in the preliminary examination were asked to appear in the main written examination. Subsequently, oral interviews had been conducted of the candidates who were selected in the main examination and thereafter a final select list had been prepared by the Commission.

4. Writ petitions had been filed in the Madras High Court contending that the scaling technique was not properly applied by the Commission and certain irregularities had been committed in the examination. There were amendments in the petitions and subsequently it was also alleged that there were some malpractices and a prayer was made to the effect that the Central Bureau of Investigation should be directed to look into the matter.

5. When the petitions were heard by the learned Single Judge of the High Court, an advocate was appointed as the Court Commissioner to look into the alleged irregularities and in pursuance thereof a report had been submitted by the learned advocate. Once again, another advocate was appointed as the Court Commissioner to look into the allegations and inspect the answer books to find out whether the instructions given to the candidates had been strictly adhered to while answering the question papers. A report was also submitted by the other learned advocate. Both the reports had been considered by the learned Single Judge and ultimately the learned Single Judge had dismissed the petitions. Being aggrieved by dismissal of the petitions, appeals had been filed before the Division Bench of the High Court, which had been heard at length. After hearing the learned Counsel appearing for the parties, the appeals had been allowed by a common judgment, which has been challenged in these appeals.

6. The appellate Court came to the conclusion that there were material irregularities committed by the candidates while answering the questions. Several instructions given to the candidates had been grossly violated by the candidates. Details with regard to the irregularities committed by the candidates, which could have resulted into malpractices, have been detailed by the appellate Court in the impugned judgment.

7. Upon perusal of the judgment it is clear that most of the candidates had not adhered to the instructions given to them, which were to be followed while answering the questions. The candidates had made several unwarranted indications or markings in their answer books, which ought not to have been made by them. Though use of coloured pens had been prohibited, several candidates had used colours other than blue, blue-black and black, which were the only permissible colours. Use of pencil was not permitted and yet pencil markings were

made by several candidates, Several candidates had given different indications by putting certain religious symbols. Moreover, certain pages of answer books were deliberately kept blank though they were supposed to write on each page. All these indications given by the candidates, which were not called for, were considered very seriously by the Division Bench of the High Court and after referring to all these irregularities, the Division Bench had allowed the appeals.

8. The learned Counsel appearing for the Appellants, namely, the Commission and the selected candidates, had mainly submitted that the Division Bench had exceeded its jurisdiction and had violated not only the principles of natural justice, but had also decided the appeals, though all the selected candidates were not before the Court. It had also been submitted that use of colours other than the colours prescribed in the instructions given to the candidates or use of pencil was not very serious. Moreover, giving an indication with regard to any religion should not have been taken seriously by the appellate Court. It had also been submitted that proper notice had not been effected upon all the selected candidates and therefore, also the appellate Court was not right in allowing the appeals. It had also been alleged that the State of Tamil Nadu, the appointing authority, had not been impleaded as a party Respondent at the time when the petitions had been filed, though the State of Tamil Nadu was a necessary party. For the aforestated reasons, it had been submitted by the learned Counsel appearing for the Appellants that the impugned judgment deserved to be quashed and set aside. The learned Counsel had also supported their submissions with certain judgments delivered by this Court.

9. On the other hand, it had been submitted by the learned Counsel appearing for the Respondents, mainly appearing for the candidates who had not been declared successful, that the appeals deserved dismissal for the reason that the appellate Court had duly considered all relevant facts and had come to a clear finding that serious irregularities had been committed by the candidates which might have given rise to serious malpractices and therefore, the final select list prepared by the Commission had been rightly ordered to be modified by the High Court. It had been further submitted that a clear indication was given in the order of appointment that appointments of all the selected candidates were subject to final outcome of the writ petition which had been filed in the High Court. Moreover,

not only notices had been issued to the selected candidates, pendency of the litigation had been duly advertised so as to enable the selected candidates to appear before the Court, but for the reasons best known to the concerned candidates, they did not appear before the High Court and ultimately the appellate Court had passed the impugned judgment. In the circumstances, they must thank themselves for their non-appearance before the Court. It had also been submitted that initially the State of Tamil Nadu had not been joined for the reason that the entire selection process had been challenged and the selection process had been conducted by the Commission and not by the State. The learned Counsel had also supported their submissions with certain judgments delivered by this Court. For the aforestated reasons, the learned Counsel appearing for the Respondents had submitted that the impugned judgment is just and proper and the appeals deserved dismissal.

10. We had heard the learned Counsel at length and had also considered the judgments cited by them.

11. Upon hearing the learned Counsel and considering the facts of the case, in our opinion, the impugned judgment is just and proper and does not deserve any interference.

12. It is an admitted fact that serious irregularities had been committed by the candidates in their answer books. If one looks at the instructions, which had been given to the candidates for writing the answer books, it is clear that they had been informed in unequivocal terms that they had to use only blue, blue-black or black ink and they were supposed to use only fountain pen, steel pen or ballpoint pen. In spite of the said instructions, several candidates had used sketch pens, pencils and pens or pencils with different colours. Use of different colours or pencil could have giver some indication to the examiner about the identity of the candidate. These facts clearly show that either the candidates were absolutely careless or they wanted to give some indication with regard to themselves to the examiner. If a candidate writes his answer book giving some indication with regard to himself with the help of a different ink or pencil - other than the prescribed writing instrument and the colour of ink, one can definitely presume that the candidate did not act in a bona fide manner.

13. There was a specific direction that the candidates had to start writing the answer books from the first page and no page should be left blank. In spite of the said clear instruction, several candidates kept several pages blank and what is most astonishing is that some of the candidates, after keeping the entire page blank i.e. without answering the question had written some irrelevant words or names. As for example, in one case on the entire page 'MANI' was written. This is nothing but some indication to the examiner, which is definitely not permitted.

14. Many of the candidates had given some indication with regard to some religion by writing the words or signs connected with a particular religion. A candidate is not supposed to give his identity or any indication with regard to himself in the answer books. If he does so, he is violating the instructions given to him which would amount to nothing but misconduct.

15. In all competitive examinations, an effort is always made to see that the answer books are examined impartially and without any bias. An effort is always made to see that identity of the candidate is not revealed to the person examining the answer books so as to see that the identity i.e. the name or roll number of the candidate is not revealed. A code number is given to each answer book. The roll number given to the candidate is normally replaced by another number so that even the examiner may not know the correct roll number of the candidate. This is done so as to remove the possibility of giving any indication by anyone to the examiner about the identity of the candidate. Upon completion of the examination work, original roll number of the candidate is put on the answer book or on the sheet prepared for the purpose of assigning marks, but in any case, the examiners are not permitted to know anything about the candidate or his identity.

16. If the candidates start giving indications with regard to themselves by writing their name or some code word or some indication with an intention to convey the same to an examiner, so that he may have some undue favour, is a thing which is not approved. If such an attempt is permitted to be made, sanctity of the examination work would not be maintained. The entire object behind giving code number etc. would be frustrated if all these things are permitted or tolerated.

17. Normally, a straightforward candidate, who does not want to indulge in any malpractice, would never make any effort to reveal his identity or make any

special marking in his answer book. The purpose behind doing something abnormal or something which is not permitted, can be said to be an indication to the examiner about the identity of the candidate. Such an action on the part of the candidate cannot be tolerated if one wants clean, fair and transparent process of selection.

18. In the instant case, it is an admitted fact that there were serious violations of the instructions given to the candidates while answering the questions. Although all these details were placed before the learned Single Judge, the learned Single Judge did not give importance to these irregularities and dismissed the petitions, but when the appeals were filed, in our opinion, the Division Bench of the High Court rightly understood the importance of such irregularities and allowed the appeals by setting aside the selection of the candidates who had committed such irregularities while writing their answer books. We are of the view that if such a strict view is not taken by a constitutional body which has been entrusted with the work of selecting best candidates, the entire purpose behind having the Commission or any other such body for examining merit of candidates would be frustrated. We are, therefore, of the view that the appellate Court was absolutely justified in allowing the appeals and by holding that all those candidates who had committed material irregularities could not be declared selected.

19. Several allegations had been made with regard to the procedural aspect. It had been submitted that all the selected candidates had not been joined as Respondents and even the State of Tamil Nadu had not been joined as a Respondent initially. Initially only one petition had been filed when the result had not been declared and it was also not possible for the Petitioners to join all selected candidates. Subsequently, an advertisement had been given in the newspapers giving indication about the pendency of the petition so as to enable the selected candidates to appear before the Court. Moreover, the appointment letters gave an indication of the fact that a litigation challenging their appointment was pending in the High Court. In spite of the aforesaid fact being stated in the appointment order and the advertisement, if selected candidates did not bother to appear before the Court, by no stretch of imagination, it can be said that the selected candidates were not given an opportunity to represent their case. We, therefore, do not find

any substance in the allegations with regard to non-joinder of selected candidates or even the State of Tamil Nadu.

20. The candidates who had applied for Class-I post, if selected, were to be Class-I Officers of the State of Tamil Nadu. Not following the instructions given to them while appearing in the examination, which had been conducted for their selection, would either mean that they were so careless that they did not read or bother about the instructions to be followed or they wanted to give some indication to the examiner about their identity. In either case, such a candidate can not be selected. A candidate, who is so careless that he does not bother about his own interest, cannot be expected to become a good officer. Interest of the candidate is to get through the examination and for that purpose he has to follow the instructions. By not following the instructions, he does not take care of his own interest. So, if he has written the answer books carelessly without bothering about the instructions given to him, he is a careless person who must not be appointed as an officer and if he has done it deliberately, then also he should not be appointed as an officer because one who plans such illegalities even before joining his service, cannot be expected to become a fair and straightforward officer. So, in either case, such a candidate cannot be selected for appointment as an officer and that too a Class-I Officer of any State.

21. For the reasons recorded hereinabove, we are of the view that the Division Bench of the High Court was justified in delivering the impugned common judgment. The law propounded in the judgments referred to by the counsel for the Appellants cannot be disputed, but looking at the facts of the instant case, we are of the view that the said judgments would be of no help to them. In the circumstances, the appeals are dismissed with no order as to costs.

2014 INSC 0988

SUPREME COURT OF INDIA

Crl.A.No.2139 of 2014

Sesami Chemicals Pvt. Ltd.

Vs.

State of Meghalaya

(Jasti Chelameswar and Arjan Kumar Sikri JJ.)

JUDGMENT

JASTI CHELAMESWAR, J.

1. Leave granted in both the SLPs.

Criminal Appeal arising out of SLP (Criminal) No. 9348 of 2013

2. Aggrieved by the judgment and order of the High Court of Meghalaya dated 21.5.2013 in Criminal Petition (SH) No. 68 of 2011, the fourth Respondent therein has preferred the instant appeal.

3. The abovementioned criminal petition was filed by Respondents No. 2 and 3 herein (for short "contesting Respondents/accused") praying in substance to quash the First Information Report (FIR) dated 12.10.2011 in Umiam Police Station Case No. 43(10) of 2011 (G.R. No. 185 of 2011) Under Sections 120-B/418/520 Indian Penal Code.

4. At the outset, we may mention that all the facts are disputed barring the following.

5. That, the Appellant company is engaged in the business of manufacturing ferrosilicon. It appears that pursuant to an agreement between the Appellant company and the contesting Respondents/accused, the Appellant sold a huge quantity of ferrosilicon (the details of which are not available on record) to the contesting Respondents/accused and dispatched four consignments of ferrosilicon valued at Rs. 46,79,890/- out of which the contesting Respondents/accused paid amount of Rs. 10,00,000/- and the balance amount of Rs. 36,79,890/- was outstanding.

6. On 12.10.2011, FIR No. 43(10) of 2011 Under Sections 120-B/418/520 Indian Penal Code, which is the subject matter of present case, came to be registered at Umiam police station at the instance of the Appellant herein.

7. On 31.10.2011, the learned Additional District Magistrate, Nongpoh Court issued non-bailable warrants (NBWs) against the contesting Respondents/accused.

8. The rest of the facts are in dispute. According to the Appellant, after coming to know of the registration of the abovementioned case, the contesting Respondents/accused entered into a compromise with the Appellant and agreed to make payment of an amount of Rs. 71,34,489/- towards the balance of the price of the material purchased by them along with the interest accrued on such delayed payment.

9. It is the case of the Appellant that on 3.11.2011, the contesting Respondents/accused made payment of Rs. 40,00,000/- and for the balance amount of Rs. 31,34,489/-, an account payee cheque was issued. The said cheque was entrusted by the Appellant to its banker for collection and on presentation to the payee banker the same was returned with an endorsement "Payment Stopped by the Drawer".

10. In the meanwhile, the contesting Respondents/accused filed the abovementioned criminal petition No. 68 of 2011. During the pendency of the said matter, in view of the dishonoured cheque mentioned above, the Appellant initiated another criminal proceeding in crime case No. 87(S)/2012 before Judicial Magistrate, First Class, Shillong.

11. By impugned judgment, the abovementioned criminal petition No. 68 of 2011 came to be allowed quashing the first of the abovementioned two FIRs i.e. Case No. 43(10) of 2011 dated 12.10.2011.

12. The case of the contesting Respondents/accused is as follows.

13. The contesting Respondents/accused admit the fact that on 02.3.2008 they purchased ferrosilicon worth Rs. 46,79,890/- from the Appellant company and paid Rs. 10,00,000/-. On receipt of the goods, they found that the goods were

substandard and informed the same to the Appellant and demanded their money back.

14. According to the contesting Respondents/accused, the Appellant initially agreed to return their money and to take back its goods but later the Appellant instructed the accused to sell off the goods in the open market and appropriate the same. But subsequently the signatures of the contesting Respondents/accused were taken on certain blank papers at gun point at the instance of the Appellant. The cheque which is the subject matter of crime case No. 87(S)/2012 is one such document obtained at gun point.

15. It is in the background of the abovementioned disputed question of fact, the learned Judge of the High Court thought it fit to quash the FIRs i.e. Case No. 43(10) of 2011 dated 12.10.2011 with a cryptic order. The only relevant portion for the present purpose reads as follows:

> After hearing the submissions advanced by the learned Counsel at Bar, considering the fact and circumstances of the case, I am of the considered view that, the matter of disputes is purely covered by civil law and not by criminal law, therefore, I do not see any reason that FIR dated 12.10.11 has any stand in the eye of law, so it needs to be quashed.

16. We are of the opinion that the petition filed by the contesting Respondents Under Section 482 of the Code of Criminal Procedure, 1973 is an abuse of the process of the Court. As already noticed, the facts are seriously in dispute. The truth or otherwise of such facts can only be established by evidence at the trial. We are, therefore, of the opinion that the High Court erred in quashing the FIR No. 43(10) of 2011 dated 12.10.2011. We, therefore, set aside the order of the High Court. The first Respondent is directed to proceed with the FIR No. 43(10) of 2011 dated 12.10.2011 in accordance with law.

17. The appeal stands allowed accordingly.

Criminal Appeal arising out of SLP (Criminal) No. 5317 of 2014

18. Aggrieved by the judgment and order of the Gauhati High Court, Shillong Bench dated 14.9.2012 in Criminal Petition (SH) No. 40 of 2012 by which the

High Court quashed the proceedings in case No. 87(S)/2012 Under Section 138 of the Negotiable Instruments Act, 1881, Respondents No. 1 and 2 therein have preferred the instant appeal.

19. The parties are the same as in the earlier appeal. The facts are interconnected and highly contested. Therefore, we are of the opinion that the High Court erred in quashing the case. We, therefore, set aside the impugned order and direct the case No. 87(S)/2012 to be proceeded with in accordance with law.

20. Both the appeals are allowed accordingly.