

2011 SCEJ 002

SUPREME COURT OF INDIA

(Before : Justice Surinder Singh Nijjar, Justice Altamas Kabir, J)

BEDANGA TALUKDAR — Appellant

versus

SAIFUDAULLAH KHAN AND OTHERS — Respondent

I.A. No's. 5-8 in Civil Appeal No's. 8343-8344 of 2011 (Arising out of S.L.P (C) No's. 20152-20153 of 2010)

28.09.2011

Constitution of India, 1950 – Article 14, Article 16 – Even if power of relaxation is provided in the rules, it must still be mentioned in the advertisement.

Cases Referred

1. Karnataka Public Service Commission and others Vs. B.M. Vijaya Shankar and others, AIR 1992 SC 952

Counsel for Appearing Parties

Jayant Bhushab, V. Hazarika, Manish K. Bishnoim, AOR, Gautam Talukdar, Shakunt Saumihra, R.B. Phookan, Goodwill Indeavar, AOR, Rajiv Mehta, AOR, Vartika Sahay and Deepika, for Corporate Law Group, for the Appellant; Vartika Sahay and Deepika for Corporate Law Group, for the Respondent

ORDER

1. Leave granted.
2. These appeals are directed against the impugned judgment and order dated 4th March, 2010 in Writ Petition (C) No. 950 of 2010 and impugned judgment and order dated 2nd July, 2010 in Writ Petition (C) No. 3382 of 2010 passed by the High Court of Guwahati, allowing the writ petitions filed by the Respondent No. 1 whereby Assam Public Service Commission (hereinafter referred to as "Respondent No. 3") was directed to examine the entitlement of Respondent No. 1 by taking into account the identity card produced by him.
3. We may notice the bare essential facts necessary for the determination of the controversy involved in these appeals.
4. The Respondent No. 3 issued an advertisement on 10th August, 2006 bearing advertisement No. 6/2006, announcing its intention to hold the preliminary examination of

the Combined Competitive Examination, 2006 for screening candidates for the Main Examination for recruitment to various posts educated in the advertisement. The last date for the receipt of the completed application forms was fixed as 11th September, 2006. In this advertisement, although, posts had been reserved for various categories such as OBC/MOBC, SC, ST(P) and ST(H), but there was no reservation in favour of the disabled candidates as required under the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation), Act,1995.

5. Consequently, a Public Interest Litigation being P.I.L. No. 61/2006 was filed in the High Court by Order dated 13th March, 2007. The High Court by an interim order directed Respondent No. 3 not to conduct any examination during the pendency of the petition. By order dated 13th March, 2007, the High Court directed Respondent No. 3 to make a fresh advertisement on the basis of the requisitions to be received from the Government of Assam (Respondent No. 2) incorporating reservation of 3% for persons with disabilities.

6. In compliance with the orders of the High Court dated 13th March, 2007, Respondent No. 3 issued a corrigendum on 5th June, 2007 reserving three per cent vacancies for Physically Handicapped persons, in terms of Persons with Disabilities [Equal Opportunities, Protection of Rights and Full Participation], Act,1995. Applications were invited for one post in the Assam Civil Service Class-I (Jr. Grade) from persons suffering from Locomotor Disability, in connection with the conduct of Combined Competitive (Preliminary) Examination, 2006 for screening candidates for the Main examination for the posts already mentioned in the earlier advertisement No. 6/2006. It is evident that this corrigendum was issued in continuation of advertisement No. 6/2006 dated 10th August, 2006. It was provided therein that candidates, who had applied earlier to the advertisement No. 6/2006 dated 10th August, 2006, need not apply again but the candidates with Locomotor Disability must produce supporting documents in the office of the Assam Public Service Commission or in the examination hall before the commencement of the examination. The Last date for submission of the applications under the corrigendum was 6th July, 2007.

7. Respondent No. 1 had applied in response to the advertisement dated 10th August, 2006. Since there was no requirement for submission of any details with regard to any disability, he had not submitted any disability certificate. Although, in view of the corrigendum, Respondent No. 1 was not required to make an application afresh, he was required to produce necessary supporting documents in the office of the Commission or in the examination hall before the commencement of the preliminary examination. Respondent No. 1 had been certified by the District Medical Board, Dhubri, to be physically disabled to the extent of 50% on 21st January, 2004. On the basis of this certificate, Respondent No. 1 was issued an identity card by the District Social Welfare Officer, Dhubri on 18th February, 2004 which specified his disability to be Locomotor Disability to the extent of 50%. The preliminary examination was held on 23rd September, 2007.

8. We may notice here that Respondent No. 1 did not submit the mandatory documents, to substantiate his candidature in the seat reserved for candidates with "Locomotor Disability", on or before 6th July, 2007, i.e. the last date for submission of applications. He also did not submit the mandatory documents even at the time when he appeared in the

preliminary examination. Therefore, he appeared in the examination as a general category candidate.

9. Both the Appellant and Respondent No. 1 successfully participated in the preliminary examination. The advertisement had clearly specified that "candidates who are declared by the Commission to have qualified for admission to the Main examination will have to apply again in the prescribed application form, which will be supplied to them." It was the claim of Respondent No. 1, that he had specifically indicated in Column No. 11 of his application in the prescribed form for the Main examination that he suffers from Locomotor Disability upto 50%. According to him, he had submitted the certificate dated 21st January, 2004 issued by the District Medical Board, Dhubri. Being satisfied Respondent No. 3 had permitted him to appear in the Main examination.

10. Having successfully completed the written examination, both the candidates, i.e. Appellant and Respondent No. 1, were called for interview on 1st December, 2008. It was the case of Respondent No. 1 that he had produced the necessary documents in support of his claim of Locomotor Disability to the extent of 50%, along with the other certificates and testimonials at the time of interview. The Commission, Respondent No. 3, published the list of selected candidates on 15th June, 2009. The name of Respondent No. 1 did not appear in the said list. In fact, the Appellant was shown to have been selected for appointment in the Assam Public Service Commission as a physically handicapped candidate.

11. Respondent No. 1 made an application under the provisions of Right to Information Act, 2005 before the appropriate authority seeking the details of the marks scored by him as well as the details of the marks obtained by other physically handicapped candidates called for the interview. From the information supplied to him, Respondent No. 1 came to know that he had scored 817 marks, whereas the Appellant had scored 695 marks. Respondent No. 1 thereafter made a representation dated 14th September, 2009 addressed to the Chairman of Respondent No. 3 as well as the Secretary of the Commission making a grievance that his candidature had been arbitrarily rejected, even though, he had scored more marks than Appellant in the examination. It appears that Respondent No. 1 had also reiterated that his claim for being considered in the Locomotor Disability category, was duly supported by the necessary documents, i.e. certificate issued by the District Medical Board, Dhubri dated 21st January, 2004 and the identity card issued by the District Social Welfare Officer.

12. He had further stated that at the time of interview, he had produced the necessary documents in support of his claim. According to Respondent No. 1, on 4 the December, 2009, the Deputy Secretary of the Commission (Respondent No. 3) had informed him that the identity card showing Respondent No. 1 to be suffering from Locomotor Disability was not submitted along with the application form for the Main examination, though the same was a compulsory document. Respondent No. 1 was accordingly asked to submit the same to the Commission as early as possible on receipt of the communication dated 4th December, 2009. Respondent No. 1 replied vide his letter dated 10th December, 2009 addressed to the Deputy Secretary of the Commission, stating that all necessary documents showing that he is a physically handicapped person suffering from Locomotor

Disability were submitted along with the application form of the Main examination. Respondent No. 1 also reiterated his claim that all documents were verified by the Commission at the time of interview on 1st December, 2008. In the letter dated 10th December, 2009, Respondent No. 1 also mentioned that as directed by the Deputy Secretary of the Commission, an attested copy of the ID card issued to him by the District Social Welfare Officer, Dhubri is being forwarded.

13. It would be relevant to notice here that the select list dated 15th June, 2009 was challenged in Writ Petition No. 2755 of 2009 and other connected cases. The aforesaid writ petition was disposed of by the High Court by remitting the matter back to Respondent No. 3 to take a fresh decision and publish a revised list. The reservation in the category of Locomotor Disability was not the issue before the Court in the aforesaid writ petition. The procedural anomaly related to women candidates.

14. Subsequently, Respondent No. 1 filed Writ Petition No. 67 of 2010 seeking a direction to include his name in the fresh list to be issued by the Respondent No. 3, Commission. This writ petition was dismissed by the High Court being premature on 7th January, 2010. Thereafter, on 5th February, 2010, the Commission published a revised list, wherein name of Respondent No. 1 was again not included in the list of candidates selected for the appointment.

15. Respondent No. 1, therefore, challenged the select list by Writ Petition No. 950 of 2010. The writ petition was filed on 8th February, 2010. The High Court granted an ex-parte order on 11th February, 2010 directing Respondent No. 3 not to issue the appointment / posting orders to the Appellant.

16. In the counter affidavit filed to this writ petition, Respondent No. 3 specifically stated that the documents had not been submitted by the Respondent No. 1 within the prescribed time. On 14th March, 2010, the writ petition filed by Respondent No. 1 was allowed. A direction was issued to Respondent No. 3 to reconsider the matter afresh based on the identity card submitted on 10th December, 2009. We may notice here that this direction had been issued by the High Court in spite of the categorical assertion made by the Respondent No. 3 that the candidature of the Respondent No. 1 had been rejected on the basis of the resolution dated 8th January, 2010. In its meeting dated 8th January, 2010, Respondent No. 3 had resolved that Respondent No. 1 did not submit the identity card along with the form. This was vital to support the claim of Respondent No. 1 to be considered for the post reserved for the candidates having Locomotor Disability. Therefore, his candidature was rejected for non-fulfillment of an essential condition. However, pursuant to the directions issued by the High Court in its order dated 4th March, 2010, Respondent No. 3 in its meeting held on 21st May, 2010 again thoroughly examined the matter relating to the entitlement of Respondent No. 1 for final selection as a physically handicapped (Locomotor Disability) candidate. Upon a thorough scrutiny and re-examination of the facts and the material on record, the claim of Respondent No. 1 was not accepted. The name of Appellant was duly reiterated as the candidate selected for appointment. A communication to that effect was sent to the Appellant as well as Respondent No. 1 on 31st May, 2010.

17. At this stage, Respondent No. 1 filed Writ Petition No. 3382 of 2010 challenging the minutes dated 21st May, 2010 and the communication dated 31st May, 2010. The aforesaid writ petition has been allowed by the High Court with observations that Respondent No. 3 was under a legal obligation to examine the Petitioner's entitlement for selection by taking into account his identity card. The High Court notices that the resolution of the Respondent No. 3 contained in the minutes of the meeting dated 21st May, 2010 would indicate that the Commission had resolved not to consider the case of Respondent No. 1 for selection for appointment against the solitary post earmarked for physically handicapped candidates on the ground that the identity card, which was required to be submitted by Respondent No. 1 at different stages. The High Court has held that the aforesaid decision, is not rendered in the light of the directions given by the High Court in Paragraph 13 of the order dated 4th March, 2010 passed in Writ Petition (C) No. 950 of 2010. It has been observed by the High Court that the question of belated submission of the identity card having been already answered by the Court and directions having been issued to take into account the same, the Public Service Commission could not have acted in the manner it has done. This writ petition was, therefore, allowed with the following observations:

For the aforesaid reasons, we set aside the resolution dated 21.5.2010 of the Commission as well as the communication dated 31.5.2010 and direct that the Public Service Commission will now examine the entitlement of the Petitioner by taking into account the identity card produced by him. For the purpose of clarification, we deem it appropriate to add that while considering the case of the Petitioner the acceptability, veracity or otherwise of the contents of the identity card and the effect of the said contents, if found to be acceptable, would be considered by the Commission.

These directions are challenged by the Appellant in these appeals.

18. We have heard the counsel for the parties.

19. Mr. Jayant Bhushan, learned senior counsel, appearing for the Appellant herein submits that in the advertisement dated 5th June, 2007, one post was reserved for person suffering from Locomotor Disability only. The advertisement also further provided that those who applied earlier in response to advertisement No. 6/2006 dated 10th August, 2006 need not apply again, but the candidates with Locomotor Disability must produce supporting documents in the office of Assam Public Service Commission or in the examination hall before commencement of the examination. The advertisement further provided that candidates who are declared by the Commission to have qualified for admission to the main examination will have to apply again in prescribed application form, which will be supplied to them. All candidates applying in the category of persons with Locomotor Disability upto 50% were required to send a certificate of Locomotor Disability from the appropriate authority. According to Mr. Bhushan, Respondent No. 1 did not submit the necessary certificate in the office of the Respondent No. 3 or in the examination hall before commencement of the examination. In fact, he did not submit even the ID card till after the interview. By the time, he submitted the ID card, even the Select List of the successful candidates had been published. Since Respondent No. 1 had not submitted the requisite disability certificate within the stipulated period as provide in the advertisement,

Respondent No. 3 rejected his candidature for valid reasons in its resolution dated 8th January, 2010.

20. Mr. Bhushan submits that direction issued by the High Court are contrary to the settled principle of law that there can be no variation in the conditions of eligibility as laid down in the advertisement, unless a specific stipulation is made about any particular condition being relaxable at the discretion of the concerned authority. Learned senior counsel submits that the High Court has erred in holding that the rigour of Article 14 would not be automatically applicable “to the domain of appointment in public office where the employer must strive to pick the best talent available. To achieve such result, the employer must be conferred a wide discretion to act in relaxation of the rigour of the terms of an advertisement. The requirements spelt out in an advertisement for appointment in public service must, therefore, not to be understood to be inflexible leaving no room for elasticity”. Learned senior counsel further submitted that the High Court failed to appreciate that claim of Respondent No. 1 had been rejected upon due consideration by Respondent No. 3 after according him an adequate opportunity by resolution dated 8th January, 2010.

21. According to the learned senior counsel, the High Court has proceeded on the erroneous assumption that the Commission had itself treated candidature of many candidates to be provisional on account of the fact that requisite certificates of age or educational qualifications had not been submitted along with the application form. According to Mr. Bhushan, the High Court has wrongly concluded that the Public Service Commission had itself treated the condition about the submission of necessary certificates to be not mandatory and inflexible requirements. According to the learned senior counsel, the aforesaid conclusion of the High Court is factually incorrect.

22. The learned senior counsel submits that Respondent No. 3 had in fact rejected the candidature of Respondent No. 1 strictly in accordance with the instructions issued in the “Information to the candidates on the Combined Competitive (Main) Examination”. Instruction No. 13 clearly stipulates that “any application form received without all or some of the enclosures is liable to be summarily rejected. Any enclosure which was not sent along with the application earlier but sent subsequently by the candidates will not be entertained. Thus candidates must ensure that the application form is properly filled in and is accompanied by all the relevant documents.” Mr. Bhushan submits that in the case of Respondent No. 1, he was required to submit an attested copy of certificate of Locomotor Disability. The High Court records that the necessary certificate was not submitted by Respondent No. 1 before the last date of receipt of applications, which was 11th September, 2006. Learned senior counsel has also relied on a judgment of this Court in the case of Karnataka Public Service Commission and others Vs. B.M. Vijaya Shankar and others,

23. On the other hand, Mr. V. Hazarika, learned senior counsel submits that the Respondent No. 3 reconsidered the entire issue after the High Court set aside the resolution passed by Respondent No. 3 on 8th January, 2010. Respondent No. 1 had to file W.P. (C) No. 950 of 2010 as Respondent No. 3 again illegally rejected his candidatures. He, therefore,

challenged the selection of the Appellant.

24. In the aforesaid writ petition, it was stated that in the application, Respondent No. 1 had specifically mentioned against Column No. 11 of the application form that he suffers from Locomotor Disability upto 50%. He had submitted a certificate issued by the District Medical Board, Dhubri dated 21st January, 2004 in support of his claim to be a physically handicapped person along with the identity card issued by the District Social Welfare officer. It was further his claim in the writ petition that he had qualified in the main examination and was called for interview by call letter dated 1st December, 2008. It was further the case of the Respondent No. 1 that he had produced the necessary documents in support of his claim of Locomotor Disability to the extent of 50% along with the other certificates and testimonials at the time of interview. However, when the select list was published on 15th June, 2009, the name of Respondent No. 1 was not included therein. It was in fact the Appellant, who had been selected for appointment. It was also the case of the Respondent No. 1 that the Appellant had scored 695 marks whereas Respondent No. 1 had scored 817 marks in the examination. In spite of having scored higher marks, he was illegally and arbitrarily not selected.

25. The Respondent No. 1 had, therefore, submitted a representation on 14th September, 2009 to Respondent No. 3, seeking to question the selection of the Appellant, who had scored lesser marks. In the representation, Respondent No. 1 had specifically stated that he had submitted the necessary supporting documents along with the application form. The said documents were verified at the time of interview on 11th December, 2008. The documents were also enclosed with the representation dated 14th September, 2009. Therefore, on 4th December, 2009, the Deputy Secretary of the Commission had informed Respondent No. 1 that the identity card showing him to be suffering from Locomotor Disability was not submitted along with the application form for the main examination. Though the same is a compulsory document. Respondent No. 1 was, therefore, asked to submit the same to the Commission as early as possible. On receipt of the communication dated 4th December, 2009, Respondent No. 1 through his letter dated 10th December, 2008 addressed to the Deputy Secretary of the Commission reiterated that the documents had already been submitted and verified by the Commission. However, he again sent an attested copy of the identity card issued to him by the District Social Welfare Officer, Dhubri.

26. Learned senior counsel submits that taking into consideration the aforesaid facts, the High Court correctly came to the conclusion that Respondent No. 3 had not specifically denied the claim of the Appellant that he had produced the identity card at the time of interview on 11th December, 2008. The High Court had also taken into consideration that the candidature of three other candidates, who had not submitted the necessary documents was treated as provisional. These candidates were included in the select list. Therefore, the High Court has rightly concluded that the condition with regard to submission of certificates and testimonials along with the application or before the preliminary examination was not mandatory. The action of the Respondent No. 3 in rejecting the candidature in the resolutions dated 8th January, 2010 and 21st May, 2010 were rightly quashed by the High Court.

27. Mr. Bhushan, in reply, submitted that upon a thorough examination of the entire fact situation, Respondent No. 3 in its resolution dated 21st May, 2010 has clearly observed that Respondent No. 1 was treated as a general candidate all along in the examination process and was not treated as physically handicapped with Locomotor Disability. The Respondent No. 3 also looked into the question whether any other candidate, who had not furnished any essential document with the application or at the time of interview but submitted them after the interview were accepted or not. Upon examination of the issue, Respondent No. 3 has observed that in fact the candidature of one applicant namely Smt. Anima Baishya was specifically rejected as she had submitted the application before the Chairperson of Respondent No. 3 on 26th February, 2009, claiming herself to be a SC candidate for the first time. In the case of Respondent No. 1, the identity card was submitted for the first time with the letter dated 10th December, 2009 much after the examination process was over.

28. We have considered the entire matter in detail. In our opinion, it is too well settled to need any further reiteration that all appointments to public office have to be made in conformity with Article 14 of the Constitution of India. In other words, there must be no arbitrariness resulting from any undue favour being shown to any candidate. Therefore, the selection process has to be conducted strictly in accordance with the stipulated selection procedure. Consequently, when a particular schedule is mentioned in an advertisement, the same has to be scrupulously maintained. There can not be any relaxation in the terms and conditions of the advertisement unless such a power is specifically reserved. Such a power could be reserved in the relevant Statutory Rules. Even if power of relaxation is provided in the rules, it must still be mentioned in the advertisement. In the absence of such power in the Rules, it could still be provided in the advertisement. However, the power of relaxation, if exercised has to be given due publicity. This would be necessary to ensure that those candidates who become eligible due to the relaxation, are afforded an equal opportunity to apply and compete. Relaxation of any condition in advertisement without due publication would be contrary to the mandate of quality contained in Articles 14 and 16 of the Constitution of India.

29. A perusal of the advertisement in this case will clearly show that there was no power of relaxation. In our opinion, the High Court committed an error in directing that the condition with regard to the submission of the disability certificate either along with the application form or before appearing in the preliminary examination could be relaxed in the case of Respondent No. 1. Such a course would not be permissible as it would violate the mandate of Articles 14 and 16 of the Constitution of India.

30. In our opinion, the High Court was in error in concluding that the Respondent No. 3 had not treated the condition with regard to the submission of the certificate along with the application or before appearing in the preliminary examination, as mandatory. The aforesaid finding, in our opinion, is contrary to the record. In its resolution dated 21st May, 2010, the Commission has recorded the following conclusions:

Though Shri S. Khan had mentioned in his letter dated 10.12.2009 that he was resubmitting the Identity Card with regard to Locomotor Disability he, in fact, had submitted the documentary proof of his Locomotor Disability for the first time to the office of the A.P.S.C.

through his above letter dated 10.12.2009. However, after receiving the Identity Card the matter was placed before the full Commission to decide whether the Commission can act on an essential document not submitted earlier as per terms of advertisement but submitted after completion of entire process of selection.

The Commission while examining the matter in details observed that Shri S. Khan was treated as General candidate all along in the examination process and was not treated as Physically Handicapped with Locomotor Disability. Prior to taking decision on Shri S. Khan it was also looked into by the Commission, whether any other candidate's any essential document relating to right/benefits etc. not furnished with the application or at the time of interview but submitted after interview was accepted or not. From the record, it was found that prior to Shri S. Khan's case, one Smt. Anima Baishya had submitted an application before the Chairperson on 26.2.2009 claiming herself to be a S.C. candidate for the first time. But her claim for treating herself as a S.C. candidate was not entertained on the grounds that she applied as a General candidate and the caste certificate in support of her claim as S.C. candidate was furnished long after completion of examination process.

31. In the face of such conclusions, we have little hesitation in concluding that the conclusion recorded by the High Court is contrary to the facts and materials on the record. It is settled law that there can be no relaxation in the terms and conditions contained in the advertisement unless the power of relaxation is duly reserved in the relevant rules and/or in the advertisement. Even if there is a power of relaxation in the rules, the same would still have to be specifically indicated in the advertisement. In the present case, no such rule has been brought to our notice. In such circumstances, the High Court could not have issued the impugned direction to consider the claim of Respondent No. 1 on the basis of identity card submitted after the selection process was over, with the publication of the select list.

32. In view of the above, the appeals are allowed and the impugned judgment and order dated 4th March, 2010 passed in W.P. (C) No. 950 of 2010 and impugned judgment and order dated 2nd July, 2010 passed in W.P. (C) No. 3382 of 2010 of the High Court are set aside.