

**IN THE GAUHATI HIGH COURT
(THE HIGH COURT OF ASSAM; NAGALAND; MIZORAM AND ARUNACHAL PRADESH)
ITANAGAR BENCH**

WP(C) No. 173(AP)2017

Shri. Dusu Loder,
S/o Lt. Dusu Tagur,
Permanent resident of Hari Village,
P.O. & P.S- Ziro, Lower Subansiri District, Arunachal Pradesh.
Mobile No. 87944168866

..... **Petitioner**

-Versus-

1. The State of Arunachal Pradesh through the Commissioner, Directorate of Food & Civil Supplies, Government of Arunachal Pradesh, Naharlagun.
2. The Commissioner, Directorate of Food & Civil Supplies, Government of Arunachal Pradesh, Naharlagun.
4. The Director, Directorate of Food & Civil Supplies, Government of Arunachal Pradesh, Naharlagun.
5. The Joint Director, Directorate of Food & Civil Supplies, Government of Arunachal Pradesh, Naharlagun.
6. The Departmental Selection Committee constituted for selecting candidates for the post of Driver in terms of the advertisement dated 25.10.2016 under the Directorate of Food & Civil Supplies, Government of Arunachal Pradesh, Naharlagun through its Chairman, the Assistant Director, Food & Civil Supplies (MV).
7. Shri. Bado Dini, C/o. Directorate of Food & Civil Supplies, Government of Arunachal Pradesh, Naharlagun.
8. Dana Buru, C/o. Directorate of Food & Civil Supplies, Government of Arunachal Pradesh, Naharlagun.
9. Oterson Modi, C/o. Directorate of Food & Civil Supplies, Government of Arunachal Pradesh, Naharlagun.
10. Tamik Gamoh, C/o. Directorate of Food & Civil Supplies, Government of Arunachal Pradesh, Naharlagun.

.....**Respondents**

**-BEFORE-
HON'BLE MR. JUSTICE S.SERTO**

For the petitioner : Mr. D. Panging,
Mr. V. Jamoh
Ms. D. Tamuk,
Ms. E. Perme,
Mr. M. Doji,
Ms. M. Tamut,
Ms. M. Kadu, Advs.

For the State respondents : Ms. P. Pangu, Govt. Adv.

For the private respondents : Mr. C. Modi,
Mr. H. Deka,
Mr. A. Saring,
Mr. N. Rama,
Mr. K. Gara, Advs.

Date of hearing : 21.03.2018
Date of judgment : **23.03.2018**

JUDGMENT & ORDER (CAV)

Heard Mr. D. Panging, learned counsel for the petitioner. Also heard Ms. P. Pangu, learned Government Advocate appearing for the State respondents and Mr. C. Modi, learned counsel appearing for the respondents No. 7 to 9.

2. Vide Advertisement No. DFCS/ESTT/EDD-406/08/(Pt-II), dated 25.10.2016, published in local daily paper, the Directorate of Food & Civil Supplies, Government of Arunachal Pradesh, invited application from interested persons for filling up four posts of drivers. Following the advertisement, the petitioner along with several other candidates applied for the same.

On 17.01.2017 and 18.01.2017, driving test of the candidates was held and among all the candidates 17 candidates were declared successful and they were called for the interview/viva voce test on 19.01.2017. After viva voce was held result was declared vide Notification dated 23.01.2017, and the result is given here below;-

***“GOVERNMENT OF ARUNACHAL PRADESH
DIRECTORATE OF FOOD & CIVIL SUPPLIES***

NAHARLAGUN

No. DFCS/ESTT/EDD-640/08(Pt) Dated, Naharlagun, 25th Jan. 2017

RESULT

In continuation of the Driving Test and Viva Voce conducted on 18th & 19th Jan. 2017 for recruitment 04(four) post of Driver under the Directorate of Food & Civil Supplies, the following candidates are selected for the post of Driver;-

1. Shri. Kenli Rina
2. Shri. Tobiyang Borang
3. Shri. Byabang Matha
4. Shri. Bado Dini

The waiting list candidates are;-

1. Shri. Dana Buru
2. Shri. Oterson Modi
3. Shri. Tamik Gamoh

The list is in order of merit.

Sd/- (L. Borang),
Director,
Food & Civil Supplies,
Govt. of Arunachal Pradesh, Naharlagun".

On the same day, appointment order of the four successful candidates was issued being No. DFCS/ESTT/EDD-640/08(Pt-II), dated 23.01.2017. Not being satisfied with the result, the petitioner through RTI applied for the mark sheet of the driving test and the interview/viva voce. As per the information received the marks scored by the four selected candidates and the petitioner in both the driving test and in the viva voce which are not disputed are as follows;

Marks scored in driving test;-

Sl. No.	Name of candidates	Marks allotted			Total
		1 st member	2 nd member	3 rd member	
1.	Kenli Rina	5	5	8	18
2.	Tabiyang Borang	7.5	3	8	18.5
3.	Byabang Mat	9	6	8	23
4.	Bado Dini	9	6	6	21
5.	Dasu Loder	9	6	9	24

Marks scored in viva-voce test:-

Sl. No.	Name of candidates	Marks allotted				Total
		1 st member	2 nd member	3 rd member	4 th Member	

1.	<i>Kenli Rina</i>	9	8	9	7	33
2.	<i>Tobiyang Borang</i>	9	7	8	5.5	29.5
3.	<i>Byabang Mat</i>	9	7	6	6.5	28.5
4.	<i>Bado Dini</i>	7	4	5	7	23
5.	<i>Dasu Loder</i>	8	3	5	4.5	20.5

Total marks obtained by the candidates after adding the marks of driving test and viva voce;-

<i>Sl. No.</i>	<i>Name of candidates</i>	<i>Marks obtained in driving test</i>	<i>Marks obtained in viva-voce</i>	<i>Total</i>
1.	<i>Kenli Rina</i>	18	33	51
2.	<i>Tobiyang Borang</i>	18.5	29.5	48
3.	<i>Byabang Mat</i>	23	28.5	51.5
4.	<i>Bado Dini</i>	21	23	44
5.	<i>Dasu Loder</i>	24	20.5	44.5

3. The case of the petitioner as submitted by Mr. D. Panging briefly is that while selecting the candidates, the DPC had not taken into account the marks scored by them in the driving test but had only taken the marks scored in the viva voce, therefore, the assessment was not as per the provision of the recruitment rules. Further, the case of the petitioner is also that if the marks scored by the candidates both in the driving test and viva voce were taken into account together the petitioners' marks would have been higher than that of the respondent No.7, and he not respondent No.7 would have been selected and appointed to the post of driver.

According to the learned counsel, the word 'test' mentioned in the recruitment rules should be understood as driving test, therefore, the marks scored by the candidates in the driving test ought to have been taken into account in the final selection of the candidates. The learned counsel further submitted that the words of 'recruitment rules' should be interpreted keeping in view the object and purpose the legislature intended to achieve with the same. Therefore, the

recruitment rules of the drivers has to be interpreted in such a way that it will achieve its objective and purpose. In support of his submission, the learned counsel referred to the decisions of the Hon'ble Supreme Court in the case of **Atma Ram Mittal –Vrs- Ishwar Singh Punia**, reported in **AIR 1998 SCC 2031**, particularly, paragraph-8. He also referred to the decision of the Hon'ble Supreme Court in the case of **District Mining Officer and Ors., -Vrs- Tata Iron and Steel Co. & Another**, reported in **(2001) 7 SCC 358**, paragraph-18.

4. Lastly, Mr. D. Panging submitted that interview alone cannot be the only method of assessment of the candidates as the same will not lead to selection of the best for the job. The learned counsel submitted that this principle of law has been settled and followed in catena of cases. For one, the learned counsel referred to the decision of the Hon'ble Supreme Court in the case of **Praveen Singh –Vrs- State of Punjab & Ors.**, reported in **(2000) 8 SCC 633**, paragraphs-9, 10, 13 & 14.

5. Ms. P. Pangu, learned Government Advocate appearing for the State respondents submitted that selection was based on the interview and the driving test was only preliminary test, therefore, those who scored higher marks in interview were selected.

6. Mr. C. Modi, learned counsel for the private respondents submitted that neither in the recruitment rule nor in the notification inviting application it is stated that the driving test would be held and the result of such test would be added for selection of the candidates for the post of driver, therefore, the DPC was right in not taking into account the marks scored by the candidates while making the final selection. The learned counsel also submitted on the same line with that of the learned Government Advocate that driving test was only a preliminary test, therefore, the marks scored by the candidates in that test was not carried forward and the selection was based only on the marks scored in the oral interview.

Mr. C. Modi also submitted that anybody who comes for selection test of a driver is expected to know how to drive as required

under the recruitment rule, therefore, the driving skill was not made a criteria for selection to the post of driver. As such, the DPC was right in selecting the candidates based on the marks scored by them in the oral interview alone.

The learned counsel further submitted that since the petitioner by taking his chance had already faced the interview he cannot now turn around and challenge the recruitment process after he is not selected. In support of his submission, Mr. Modi referred to the judgments of Hon'ble Supreme Court in the following cases;

(i) **D. Sarojakumari –Vrs- R. Helen Thilakom & Ors.**, reported in **(2017) 9 SCC 478**, paras-4 to 12.

(ii) **Madan Lal & Ors., -Vrs- State of J & K & Ors.**, reported in **(1995) 3 SCC 486**, paras -9 to 10,

(iii) **Chandra Prakash Tiwari & Ors. –Vrs- Shakuntala Shukla & Ors.**, reported in **(2002) 6 SCC 127**, paras-33 & 34, and

(iv) **Dhananjay Malik & Ors –Vrs- State of Uttaranchal & Ors.**, reported in **(2008) 4 SCC 171**, paras-8, 9 & 10.

Since the judgment cited by the learned counsel are all on the same point, only the relevant portions of the judgment of the Hon'ble Supreme rendered in the case of **Madan Lal & Ors., -Vrs- State of J & K & Ors.**, reported in **(1995) 3 SCC 486**, (paragraphs-9 & 10) are reproduced here below;-

“9. Before dealing with this contention, we must keep in view the salient fact that the petitioners as well as the contesting successful candidates being concerned respondents herein, were all found eligible in the light of marks obtained in the written test, to be eligible to be called for oral interview. Upto this stage there is no dispute between the parties. The petitioners also appeared at the oral interview conducted by the concerned Members of the Commission who interviewed the petitioners as well as the concerned contesting respondents. Thus the petitioners took a chance to get themselves selected at the said oral interview. Only because they did not find themselves to have emerged successful as a result of their combined performance both at written test and oral interview, that they have filed this petition. It is now well settled that if a candidate takes a calculated chance and appears at the interview then, only because the result of the interview is not palatable to him he cannot turn round and subsequently contend that the

process of interview was unfair or Selection Committee was not properly constituted. In the case of Om Prakash Shukla v. Akhilesh Kumar Shukla and Ors., (AIR 1986 SC 1043), it has been clearly laid down by a Bench of three learned Judges of this Court that when the petitioner appeared at the examination without protest and when he found that he would not succeed in examination he filed a petition challenging the said examination, the High Court should not have granted any relief to such a petitioner.

10. Therefore, 'the result of the interview test on merits cannot be successfully challenged by a candidate who takes a chance to get selected at the said interview and who ultimately finds himself to be unsuccessful. It is also to be kept in view that in this petition we cannot sit as a Court of appeal and try to reassess the relevant merits of the concerned candidates who had been assessed at the oral interview nor can the petitioners successfully urge before us that they were given less marks though their performance was better. It is for the Interview Committee which amongst others consisted of a sitting High Court Judge to judge the relative merits of the candidates who were orally interviewed in the light of the guidelines laid down by the relevant rules governing such interviews. Therefore, the assessment on merits as made by such an expert committee cannot be brought in challenge only on the ground that the assessment was not proper or justified as that would be the function of an appellate body and we are certainly not acting as a court of appeal over the assessment made by such an expert committee'.

7. After having heard the learned counsel appearing for the parties and considering their submissions it transpires that the issue to be decided in this case is only that, that is whether the marks scored by the candidates in the driving test should also be taken into account while selecting the candidates or not.

The advertisement inviting application for recruitment to the four posts of driver as published in the local paper does not specify the mode or modes of recruitment process. The same reads as follows;

**"GOVERNMENT OF ARUNACHAL PRADESH
DIRECTORATE OF FOOD & CIVIL SUPPLIES NAHARLAGUN
No.DFCS/ESTT/EDD-640/08(Pt-II) Dated,Naharlagun,25th Oct. 2016**

ADVERTISEMENT

The Directorate of Food & Civil Supplies, Government of Arunachal Pradesh intends to recruit 4(four) post of drivers in the scale of pay PB-1 Rs.5200-20200 + GP Rs. 2400/- pm plus other allowances as admissible under relevant Rules and Order from time to time. Last date of submission of application is 30/11/2016.

Further details can be obtained from the office of the under signed during the office hours by payment of Rs. 100/- through treasury challan in the H/A-3456-CS in between 07/11/2016 to 18/11/2016.

*Sd/- (L. Borang),
Director, Food & Civil Supplies,*

The Government of Arunachal Pradesh, Ministry of Personnel, Administrative Reforms & Training, (Department of Administrative Reforms), notified the recruitment rules of driver vide Notification No.98/2006, dated 05.02.2007. As per the notification the rule was made under Article 309 of the Constitution of India. The relevant portion of the recruitment rules is given in the schedule of the rules are as follows;

“Educational and other qualification required for direct recruits;

Light motor vehicle driver

(I)(i) A pass certificate in the 8th standard from a recognized board/institution.

(ii) Possession of valid driving license for light motor vehicle.

(iii) Experience of driving light motor vehicle for at least 3 years.

(II) Method of recruitment. Whether by direct recruit or by deputation/transfer & percentage of the vacancies to be filled by various methods.

(a) 75% direct recruitment. Recruitment will be on the basis of the recommendation of Selection board/DPC after necessary **interview/test**.

8. From the above stated relevant portion of the recruitment rules, it would be seen that the recruitment to the post of driver will be on the basis of the recommendation of the Selection board/DPC after conducting interview/test, meaning thereby the selection of the candidates for appointment to the post of driver would be based on their performance both in the interview and the driving test. Since the selection test intended in the recruitment rules is for choosing the most suitable persons for driver the same (recruitment rules) has to

be interpreted in such a way that the purpose and objective of the same would be achieved. To interpret otherwise as suggested by the learned counsels of the respondents and as stated by the Government respondents in their affidavit-in-opposition would be to render the recruitment rules meaningless as that would not lead to achievement of the objective and purpose for which the same was made. Therefore, to achieve the objective and purpose the marks obtained/scored by the candidates in both the driving test and in the viva voce has to be taken into account while selecting the most suitable among the candidates for appointment to the post of driver. The intention of the legislature could not have been otherwise. For the sake of clarity the words of the Hon'ble Supreme Court stated in the judgment referred to by the learned counsel for the petitioner (at paragraph-18 of the judgment passed in the case of **District Mining Officer and Ors., -Vrs- Tata Iron and Steel Co. & Another**, reported in **(2001) 7 SCC 358**) and are hereby quoted "The most fair and rational method for interpreting a statute is by exploring the intention of the legislature through the most natural and probable signs which are either the words, the context, the subject-matter, the effects and consequences, or the spirit and reason of the law. In the court of law what the legislature intended to be done or not to be done can only be legitimately ascertained from that what it has chosen to enact, either in express words or by reasonable and necessary implication. But the whole of what is enacted "by necessary implication" can hardly be determined without keeping in mind the purpose or object of the statute. A bare mechanical interpretation of the words and application of legislative intent devoid of concept or purpose will reduce most of the remedial and beneficent legislation to futility".

9. It is crystal clear from the above that while interpreting a statute the words used in the statute and the object and purpose of the statute has to be kept in mind. As stated already the schedule of the recruitment rules provides the method of recruitment of driver. The very words used in the recruitment rules that is '**interview/test**' shows that the recommendation would have to be based on the result

of both interview and driving test. Further, the purpose and object of the recruitment test also clearly indicates that selection of a driver would have to be based on the result of both driving test and viva voce. Based on this point of view if the marks of the petitioner and that of the respondent No.7 scored both in the driving test and viva voce are taken together, the petitioners' marks would be higher by 0.5 as shown in the table given at para-2 of this judgment. Therefore, the petitioner, whose marks higher has to be selected and appointed instead of the respondent No.7.

10. The submission of the learned counsel of the private respondents that the petitioner cannot challenge the process or outcome of the interview after having participated in the process is based on the principle of law enunciated by the Apex Court in the case of **Madan Lal & Ors., -Vrs- State of J & K & Ors.,** reported in **(1995) 3 SCC 486**. In my view the same is not applicable as the facts and circumstances of the two cases are different and the context under which the said principle was enunciated and applied is also different from this case. Therefore, the submission of the learned counsel cannot be accepted.

In view of the discussions and the conclusion drawn, the recommendation of the DPC dated 19.01.2017, in respect of the respondent No.7 whose name appeared at Sl. No. 4 of the recommendation of the candidates is quashed and set aside. Further, the appointment order No. DFCS/ESTT/EDD-640/80(Pt.II), dated 23.01.2017, in respect of the respondent No.7 is also quashed and set aside. In place of the respondent No.7, the respondents are directed to appoint the petitioner as driver. The entire exercise should be carried out within a period of 1(one) month from the date of receipt of a copy of this judgment and order.

With this, the writ petition is disposed. There is no order as to cost.

JUDGE