

**IN THE GAUHATI HIGH COURT**  
(THE HIGH COURT OF ASSAM: NAGALAND: MIZORAM AND ARUNACHAL PRADESH)

ITANAGAR BENCH

**WRIT APPEAL NO.10 (AP)/2012**

1. Katan Komut,  
S/O Tanung Kamut  
R/O Boleng Town, P.O/P.S:- Boleng,  
Dist. East Siang, Arunachal Pradesh.
2. Gumku Maga,  
S/O Gumku Epak  
R/O Village Dui, P.O. Palin, P.S:- Sangram,  
District Kurung Kumey, Arunachal Pradesh.
3. Hage Yaku  
S/O Hage /taba  
R/O Itanagar Town, P.O/P.S:- Itanagar,  
District Papumpare, Arunachal Pradesh.
4. Tadh Logi,  
S/O Tadh Aai,  
R/O Sagalee, P.O/P.S:- Sagalee,  
Dist Papumpare, Arunachal Pradesh.
5. Ngurang Agung,  
S/O Nguram Yachung,  
R/O Itanagar, P.O/P.S:- Itanagar,  
Dist Papumpare, Arunachal Pradesh.

...Writ Petitioners/ Writ Appellants.

**-VS-**

1. The State of Arunachal Pradesh,  
Represented by the Chief Secretary,  
Government of Arunachal Pradesh.
2. The Arunachal Pradesh Public Service Commission,  
headed by its Chairman,  
P.O./P.S. – Itanagar,  
District – Papumpare, Arunachal Pradesh.
3. Hania Nabam Hina,  
R/o Sagalee,  
P.O./P.S. Sagalee,  
District – Papumpare, Pin 791109  
Arunachal Pradesh.
4. Nabam Titu  
R/o Sagalee,  
P.O./P.S. Sagalee,  
District – Papumpare, Pin 791109  
Arunachal Pradesh.
5. Bamang Raju (APPWD)  
R/o Papu Nallah,  
P.O./P.S. Naharlagun,  
District – Papumpare, Pin 791110  
Arunachal Pradesh.
6. Mano Tyeng,  
R/o Mowb-II,  
P.O./P.S. Itanagar,  
District – Papumpare, Pin 791110

- Arunachal Pradesh.
7. Hikkar Taipodia,  
R/o Bank Tinali  
P.O./P.S. Itanagar,  
District – Papumpare, Pin 791111  
Arunachal Pradesh.
  8. Dolong Kame,  
R/o Itanagar PWD Colony,  
P.O./P.S. Itanagar,  
District – Papumpare, Pin 791111  
Arunachal Pradesh.
  9. Taro Jeram,  
C/O- Sri Jomar Jeram,  
Directorate of Tourism,  
Itanagar, Pin-791111,  
Arunachal Pradesh.
  10. Keni Zirdo,  
C/O- Kermi Zirdo,  
D-Sector, Naharlagun,  
Pin 791110,  
Arunachal Pradesh.
  11. Sophia Lego,  
C/O- S.E. Cordinator,  
P.O./P.S. Sagalee,  
Vidyut Bhawan,  
Itanagar, Pin-791111  
Arunachal Pradesh.
  12. Nani Tade,  
Room No-55, Block-E,  
Nerist, Nirjuli,  
P.O./P.S. Sagalee,  
Pin- 791109.
  13. Thung Sono,,  
C/O- Yashila Sono,  
K.K. Mission,  
Itanagar, Pin-791111  
Arunachal Pradesh.
  14. Poyna Lollen,  
C/O- Rongloi Kasso,  
Deputy Director,  
Land Management Department,  
Pin-79111  
Arunachal Pradesh.
  15. Lienwang Hosai,  
C/O- M Abho,  
Parliamentary Secretary,  
Itanagar, Pin-791111  
Arunachal Pradesh.
  16. Shanam Yomso,  
C/O- Dao,  
Pasighat,  
Pin 791102  
Arunachal Pradesh.
  17. Tao Tadap,  
C/O- Taw Tamar,  
F-Block, Room No. 40,

- Nerist, Nirjuli, Pin-791109  
Arunachal Pradesh.
18. Kameng Tayeng,  
C/O- Chief Engineer PHE,  
C-Sector, Itanagar, Pin-791111  
Arunachal Pradesh.
  19. Anand Nonang,  
C/O- Daghom Nonang,  
Judicial Branch,  
Itanagar, Pin-791111  
Arunachal Pradesh.
  20. Jumdo Kena,  
C/O-Bakom Taba,  
Central Poultry Farm,  
C-Sector, Nirjuli, Pin-791111,  
Arunachal Pradesh.
  21. Otin Borang,  
C/O- J. Borang,  
Addl. PCCF,  
Itanagar, Pin- 791111  
Arunachal Pradesh.
  22. Migo Basar,  
C/O- Rigo Dirchi,  
Quatar No- 235,  
F-Sector, Naharlagun,  
Pin 791110,  
Arunachal Pradesh.
  23. Tumken Ete,  
C/O- Dr. Kene Ete,  
D-Sector, Naharlagun,  
, Pin 791110,  
Arunachal Pradesh.
  24. Tumken Lollen,  
C/O- Dr. Kene Ete,  
D-Sector, Naharlagun,  
Pin 791110, Paisghat,  
Dist- East Siang,  
Arunachal Pradesh.
  25. Kayon Pertin,  
C/O- H-Taye,  
Directorate of Textiles,  
C-Sector,  
Itanagar, Pin 791111,  
Arunachal Pradesh.
  26. Gayati Tani,  
C/O- S.E. PHE,  
P.O./P.S. Sagalee,  
Naharlagun, Pin 791111  
Arunachal Pradesh.
  27. Dojum Lollen,  
C/O- Ipu Koyu, PWD-SDO,  
Directorate of Tourism,  
Pasighat-791102  
Arunachal Pradesh.
  28. Rajen Mudang,  
C/O- Secretary APPSC,

P.O- Itanagar,, Pin 791111  
Arunachal Pradesh.  
29. Kaling Panggeng,  
C/O- Chief Engineer,  
PHE-Department,  
Itanagar, Pin 791111  
Arunachal Pradesh.

..... Respondents.

Advocates for the appellants:-

Mr. R. P. Sarmah  
Mr. N N Upadhyay  
Mr. C Modi  
Mr. A Saring  
Mr. U Deka  
Ms. B Lego.

Advocates for the respondents:-

Mr. R. H. Nabam,  
Sr. Govt. Advocate  
Mr. N Tagia and  
Mr. S K Medhi,  
Mr. R B Rabha &  
Mr. O Pada.

PRESENT  
**HON'BLE MR. JUSTICE HRISHIKESH ROY**  
**HON'BLE JUSTICE DR (MRS.) I SHAH**

Date of hearing & judgment : 02.04.2013.

JUDGEMENT AND ORDER (ORAL)

(Hrishikesh Roy, J)

Heard Mr. U Deka, learned counsel appearing for the appellants (writ petitioners). Mr. N Tagia, learned standing counsel, *Arunachal Pradesh Public Service Commissioner* (hereinafter referred to as '*the Commission*') represents the respondent No.2. Mr. R H Nabam, learned senior Govt. Advocate appears for the State authority. The selected candidates (respondent Nos.3 to 29) are represented by Mr. S K Medhi, learned counsel.

2. The appellants challenged the judgment dated 22.3.2012 (Annexure-J) in the *WP(C) No.89/2012*, whereby the learned Single Judge held that since the petitioners had participated in the selection process, the challenge by the

unsuccessful candidates is not maintainable. On this basis, the writ petition was dismissed without examining the merit of the challenge.

3. The writ petitioners had offered their candidature, by responding to the advertisement dated 8.12.2010 of the *Commission* for the post of *Assistant Engineers (C) & Urban Programmer Officers*. The total vacancies for which the recruitment process was undertaken were 27 and the advertisement indicated that selection will be made on the basis of written examination in *General English, General Knowledge, Civil Engineering/ Agriculture Engineering*. Those candidates securing minimum 33% in each written examination papers and who also secure *45% total aggregate marks*, were to be shortlisted for the *viva-voce* test.

4. After evaluation of the written examination marks, the *Commission* found that only 19 candidates have secured the prescribed *45% total aggregate marks* and accordingly the requirement of interviewing candidates on 3:1 ratio could not be satisfied. Accordingly, taking recourse to the *Govt. O.M.54/2006 dated 7.1.2008* of the Department of the Personal, Arunachal Pradesh, in a meeting held on 22.11.2011, the *Commission* decided to *relax* the qualifying criterion and all the candidates who have secured *33% marks* in individual written papers were allowed to participate in the *viva-voce* segment of the recruitment test. Since 49 candidates had secured 33% marks in each of the written papers, the *Commission* conducted interview for them and thereafter 27 of them were appointed on the basis of their performance.

5. Although the writ petition was *dismissed* on the issue of maintainability, it should be noted that the challenge was to the lowering of qualifying marks to allow *viva-voce* of those, who did not secure qualifying marks. The petitioners contend that change in the selection criteria midway through the process, vitiates the selection.

6. Although the learned Single Judge dismissed the case by holding that the writ petition was not maintainable as because challenge was made after failing to qualify in the selection, we are of the view that participation in the process of selection, should not *ipso facto* disqualify the writ petitioners to challenge the anomalies in the process of selection. Accordingly we have decided to examine the merit of the challenge to the recruitment process.

7. In the cause title itself of the *WP(C) No.443/2012*, the petitioners have alleged misuse of the discretionary power by the *Commission*, in violation of the *Govt. O.M.54/2006 dated 7.1.2008*. This *O.M.* published in the *Arunachal Pradesh Gazette* provides that for the *viva-voce* test, candidates shall be shortlisted in the ratio of 1:3. But it is also specified that all candidates securing 33% marks in each written examination paper shall only be *eligible* for the *viva-voce* test. In so far as the qualifying aggregate marks, the *Commission* has the *discretion* under *Clause 3* of the *O.M.*, to lower the *cut off* marks, in case of non-availability of sufficient number of *APST* candidates.

8. As can be seen from the affidavit of the *Commission* that only 19 candidates initially qualified by securing *45% aggregate marks* in the written test and accordingly, the requirement of *viva-voce* in ratio 1:3 i.e. 81 candidates for the 27 available vacancies, could not be achieved. Confronted with this situation, the *Commission* by resorting to *Clause 3* of the *Govt. O.M.54/2006 dated 7.1.2008* relaxed the norms and decided to shortlist all the candidates who have secured 33% marks or more in individual papers. With this exercise, 49 candidates were found eligible for the *viva-voce* test and on this basis, interview was conducted and selection was made.

9. While changes in the selection criteria midway through the recruitment process is avoidable, in this case the *Commission* possessed discretionary power to *relax* the criteria. As 81 candidates were needed and only 19 had qualified for the 27 vacancies, the *Commission* in their wisdom had *relaxed* the criteria of *45% total aggregate marks*. Having considered the rational for the *relaxation* decision and bearing in mind the requirement of interviewing candidates 3 times the number of vacancies, we are of the considered opinion that this decision of the *Commission* can't be said to be unreasonable or arbitrary.

10. It may also be noted that *relaxation* of 33% minimum marks in the each written examination papers is impermissible under the *O.M. dated 7.1.2008*, whereas *relaxation* of the *aggregate marks* is permissible under *Clause 3*, in the event of non-availability of sufficient candidates. In this matter all the 49 candidates who were interviewed for the 27 vacancies had secured 33 marks in the individual written papers and therefore it is apparent that no *relaxation* of individual marks was needed for their participation in the *viva-voce* test.

11. Moreover, none of the writ petitioners had secured 33% marks in the individual written papers and therefore under the advertisement and the *O.M. dated 7.1.2008*, they were *ineligible* for appearing in the *viva-voce* segment of the recruitment test. It may also be noted that on the earlier complaint of unfair evaluation, the *Commission* conducted a re-verification exercise and found that the complaints were unsubstantiated and only minor errors in the evaluation could be deleted, by the *4 Member Committee*, which gave their report on 9.1.2012.

12. Having noted that the writ petitioners did not secure the minimum qualifying marks in the individual papers, the challenge to selection at the instance of the *ineligible* candidates, mayn't be maintainable. Nevertheless, we have decided to examine the merit of the challenge and found that the *Commission* had exercised their discretionary power for *bona fide* reason in order to secure participation of the required number of candidates, in the *viva-voce* test. As the exercise is found to be *bona fide* and transparent and with due notice to all concerned, we see no reason to admit this Appeal even on merit. Consequently the same is dismissed.

**JUDGE**

**JUDGE**

*Barman*