P. Mohanan Pillai vs State Of Kerala & Ors on 23 February, 2007

Equivalent citations: AIR 2007 SUPREME COURT 2840, 2007 (9) SCC 497, 2007 AIR SCW 5157, 2007 LAB. I. C. 3414, (2008) 3 SERVLJ 144, (2007) 2 JCR 187 (SC), 2007 (3) SCALE 548, (2007) 3 SUPREME 727, (2007) 3 SERVLR 876, (2007) 113 FACLR 442, (2007) 2 KER LT 551, (2007) 2 SCT 604, (2007) 3 SCALE 548

Author: S.B. Sinha

Bench: S.B. Sinha, Markandey Katju

CASE NO.:
Appeal (civil) 927 of 2007

PETITIONER:
P. Mohanan Pillai

RESPONDENT:
State of Kerala & Ors

DATE OF JUDGMENT: 23/02/2007

BENCH:
S.B. Sinha & Markandey Katju

JUDGMENT:

J U D G M E N T [Arising out of SLP (Civil) No. 5064 of 2006] S.B. SINHA, J :

Leave granted.

Oil Palm India Limited is a Government Company (for short, 'the Company). The Union of India and the State of Kerala are its shareholders. It is indisputably a 'State' within the meaning of Article 12 of the Constitution of India. Appellant herein was appointed as a worker in the services of the Company in the year 1982. 12 posts of Watchman/Messenger/Attender fell vacant. Recruitment to the said post is not governed by any statutory rules. Admittedly, all the workmen who were in service of the Company were to be considered therefor. Applications having been invited for filling up of the said 12 posts, 253 persons applied therefor. A written test was conducted on 18.01.2001. Appellant herein stood first in the written examination. The said written examination was conducted by the Kerala State Productivity Council in terms of the resolution of the Board of Directors of the Company dated 13.06.2000. It is not in dispute that the written test was conducted for eliminating those who had failed to secure the minimum qualifying marks in the written test. It

has also not been disputed that out of 253 applicants, only 197 appeared therein. However, keeping in view the total number of posts which were required to be filled up, only 36 candidates who got the highest marks were called for interview, appellant being one of them. It is furthermore not in dispute that after a policy decision was taken to call only those candidates who had come within the zone of three times of the number of posts, the minimum qualification was reduced to 46 marks and 11 more persons were permitted to appear at the interview. It has furthermore not been disputed that 100 marks were fixed both for written test as well as viva-voce.

Appellant, having not been selected, filed a writ petition, on the premise that Respondent Nos. 4 and 5 were appointed by the company, although not eligible therefor. It had categorically been stated that they were called for interview only one day prior to the holding thereof. It was alleged that the top officers of the Company personally went to the houses of Respondent Nos. 4 and 5 and handed over the appointment orders on 22.05.2001, which was a Sunday. It was also contended that the list of the selected candidates had not been published.

The Writ Petition of the appellant was dismissed by a learned Single Judge of the High Court by a judgment and order dated 22.12.2005, holding :

" From the counter affidavit and also from the lists furnished by the petitioners themselves it is clear that of the 11 included in the additional list only two were appointed and they are serial Nos. 6 and 8 in the additional list. It is also stated in the counter affidavit that 50% marks were given to the written test and 50% marks for the interview. That will not vitiate the selection as held by the Supreme Court in Subash Chandra Verma v. State of Bihar 1995 Supp. (12) SCC

325. Selection is a matter of policy and if the Selection Committee thought it fit to have the ratio of 1:4 for the purpose of selection, it cannot be said that the selection is vitiated on that only ground. It is now settled law that it is for the party who alleges vitiating factors like favouritism, malafides etc. to plead and prove the same "

A Writ Appeal preferred thereagainst by the appellant was also dismissed by a Division Bench of the High Court, opining :

"7. We find hardly any substance in the arguments as above. Interview was a mandatory step to be followed. In the matter of selection to the post of Watchman, we feel it is more appropriate to set apart 50% marks for the interview. Physical fitness and personality are essential requirements for a watchman; Resourcefulness, aptitude and initiative are qualities essential for a Messenger and Attender, apart from the bookish knowledge. The above qualities are best assessable by an interview."

Dr. K.P. Kylasanatha Pillay, the learned counsel appearing on behalf of the appellant, assailed the judgment of the learned Single Judge as also the Division Bench of the High Court, contending :

1) The High Court committed a manifest error in passing the impugned judgment in so far as it failed to take into consideration the fact that the zone of consideration cannot be enlarged arbitrarily.

2) Having regard to the nature of the duties required to be performed by the Watchman/Messenger/Attender, 100 marks could not have been fixed for oral interview.

Mr. C.N. Sree Kumar, the learned counsel appearing for the company and Mr. G. Prakash, the learned counsel appearing on behalf of Respondent No. 5, on the other hand, would support the judgment.

Selection of the candidates was to be made from amongst the workers who had been working in the Company for a long time. Although there may not have been any statutory rules governing recruitment to the posts in question, evidently a practice therefor was prevailing. Rule of the game for the said purpose was fixed, namely, 36 persons would be called for interview from amongst those who were successfully competed the written examination. The fact that the appellant obtained more than 73% marks in the written examination and topped the list is not in dispute. The fact that he was eligible for consideration for appointment in the post is also not in dispute. It has furthermore not been in dispute that the minimum qualifying marks in the written test was fixed. It is, however, not known whether the same was 50% or not, but then it was admittedly higher than 46%. The Managing Director of the Company in his counter affidavit categorically stated :

"Since the number of posts that were available to be filled up was 12, initially it was decided to call 36 candidates who had scored the highest marks in the written test and these candidates were called to appear for an interview on 22.3.2001. However, it was then decided by the Company to enlarge the zone of consideration to 1:4 and on the basis of this decision, call letters were again issued to the next 11 candidates, fixing a cut off mark of 46 out of 100. The candidates who were thus called for the interview were interviewed on 22.3.2001 by a panel consisting of the Company's Chairman, Managing Director, Under Secretary to the Department of Agriculture, Government of Kerala and an outside expert member from the Kerala State Productivity Council, Kalamassery "

Why such a decision had been taken after the publication of the result of the written examination and after calling 36 candidates for interview is not known. Why the Company intended to enlarge the zone of consideration from 1 : 3 to 1 : 4 has also not been disclosed. Why the cut-off mark was also lowered remained a mystery.

It may be that in a given situation, a decision of the State may be changed, but therefor good and sufficient reasons must be assigned. The Company failed to do so. The decision taken in this behalf smacks of arbitrariness. It prejudiced the candidates like the appellant.

It is now well-settled that ordinarily rules which were prevailing at the time, when the vacancies arose would be adhered to. The qualification must be fixed at that time. The eligibility criteria as also the procedures as was prevailing on the date of vacancy should ordinarily be followed.

In Pitta Naveen Kumar & Ors. v. Raja Narasaiah Zangiti & Ors. [2006 (9) SCALE 298], a rule framed by the State of Andhra Pradesh reducing the cut-off mark was struck down by this Court, holding :

> "55. The question, however, remains as to whether the State could reduce the cut-off marks. If the cut-off mark specified by the State is arbitrary, Article 14 would be attracted. The Tribunal did not have any jurisdiction to pass an interim order directing reduction in the cut-off mark. The cut-off mark at 66% was fixed having regard to the ratio of the candidates eligible for sitting at the written examination at 1:50. An interim order as is well- known is issued for a limited purpose. By reason thereof, the Tribunal had jurisdiction to grant a final relief.
>
> 56. Moreover, the Tribunal could not have directed the Commission to do something which was contrary to rules. An interim order is subject to variation or modification. An interim order would ordinarily not survive when the main matter is dismissed. The Commission also did not intend to abide by the said directions. It wanted the State to pass an appropriate order. It was, pursuant to or in furtherance of the said desire of the Commission as also the direction of the Tribunal as contained in its interim order dated 6.1.2005, GOMs 200 was issued. The said Government Order was, thus, not issued by the State of its own. There was no independent application of mind. The statutory requirements for passing an government order independent of the interim directions issued by the Tribunal were wholly absent."

Reliance placed my Mr. Sree Kumar on Vijay Syal and Another v. State of Punjab & Others [(2003) 9 SCC 401] runs counter to the submission of the learned counsel. Therein, the appellants secured less marks than those whose appointments were in question. In that situation it was held that they were to be denied appointments on the ground that they were called for in the interview in the second list, the position of the appellant could not improve. Allegedly, when those candidates who belonged to Scheduled Caste and had secured higher marks and in that view of the matter, the appellant therein could not be selected in the general category.

In the said decision, however, the Bench categorically opined that the marks allocated for the viva voce should not normally exceed 12.5% noticing the decisions of this Court in Ashok Kumar Yadav v. State of Haryana [(1985) 4 SCC 417], All India State Bank Officers' Federation v. Union of India [(1997) 9 SCC 151] as also Jasvinder Singh v. State of J&K [(2003) 2 SCC 132]. The question as to how much marks should be allocated for interview would depend upon the post and nature of duties to be performed. The nature of duties to be performed on the post of Watchman/Messenger/Attender is not such which requires a high intellectual ability or any particular trait of the candidates which is required to be judged by an expert. [See e.g. I.I.T., Kanpur v. Umesh Chandra and Others (2006) 5 SCC 664] We may notice that in Inder Parkash Gupta v.

State of J&K and Others [(2004) 6 SCC 786], a three-Judge Bench opined :

> "34. It is true that for allocation of marks for viva voce test, no hard-and-fast rule of universal application which would meet the requirements of all cases can be laid down. However, when allocation of such marks is made with an intention which is capable of being abused or misused in its exercise, it is liable to be struck down as ultra vires Article 14 of the Constitution of India.
>
> 36. We would proceed on the assumption that the Commission was entitled to not only ask the candidates to appear before it for the purpose of verification of records, certificates of the candidates and other documents as regards qualification, experience, etc. but could also take viva voce test. But marks allotted therefor should indisputably be within a reasonable limit. Having regard to Rule 8 of the 1979 Rules higher marks for viva voce test could not have been allotted as has rightly been observed by the High Court. The Rules must, therefore, be suitably recast."

In this case allocation of marks for interview was in fact misused. It not only contravened the ratio laid down by this Court in Ashok Kumar Yadav (supra) and subsequent cases, but in the facts and circumstances of the case, it is reasonable to draw an inference of favouritism. The power in this case has been used by the Appointing Authority for unauthorized purpose. When a power is exercised for an unauthorized purpose, the same would amount to malice in law [See The Manager, Govt. Branch Press and Another v. D.B. Belliappa - AIR 1979 SC 429, Punjab State Electricity Board v. Zora Singh and Others (2005) 6 SCC 776 and K.K. Bhalla v. State of M.P. and Others (2006) 3 SCC 581].

For the reasons aforementioned, the impugned judgments cannot be sustained, which are set aside accordingly. Selection of Respondent Nos. 4 and 5 is set aside. The company is directed to appoint the appellant. The appeal is allowed with cost. Counsel's fee assessed at Rs. 10,000/-.