

# Koshal Kumar Gupta & Ors vs State Of J. & K. And Ors on 5 April, 1984

**Equivalent citations: 1984 AIR 1056, 1984 SCR (3) 407, AIR 1984 SUPREME COURT 1056, 1984 UPTC 774, 1984 ED CAS 269, 1984 UJ (SC) 645, (1984) 10 ALL LR 616, (1984) 1 ORISSA LR 21, (1984) 2 SCWR 59, 1984 SCC (L&S) 337, 1984 (2) SCC 652**

**Author: D.A. Desai**

**Bench: D.A. Desai, A.P. Sen, V. Balakrishna Eradi**

PETITIONER:

KOSHAL KUMAR GUPTA & ORS.

Vs.

RESPONDENT:

STATE OF J. & K. AND ORS.

DATE OF JUDGMENT 05/04/1984

BENCH:

DESAI, D.A.

BENCH:

DESAI, D.A.

SEN, A.P. (J)

ERADI, V. BALAKRISHNA (J)

CITATION:

1984 AIR 1056                      1984 SCR (3) 407

1984 SCC (2) 652                1984 SCALE (1) 661

CITATOR INFO :

F                1986 SC1224 (16)

R                1989 SC1899 (31)

ACT:

Educational Institutions-Admission to Engineering Colleges-Admission to-Viva-voce test-Allotment of 15 marks-Whether arbitrary. Dialogue between members of Selection Committee and candidate recorded on tape-recorder-Procedure-Whether fair and reasonable.

HEADNOTE:

The Third Respondent-Principal of the College by a public advertisement invited applications for admission to

the Bachelor Degree Engineering Course in the Regional Engineering College in the State. The candidates seeking admission were required to appear at a joint entrance examination, those who qualified had to appear at a viva-voce test, and the selection was to be based on the combined performance in the written and viva-voce examination.

The petitioners who applied and were admitted to the written test and on being qualified, were called for viva-voce test. In their writ petitions they challenged the manner, the method and the number of marks assigned for the viva-voce test. It was contended that the reservation of 15 marks for the viva-voce test conferred arbitrary, unguided and uncannalised power on those conducting the viva-voce test and that the reservation of 15 marks would have the pernicious tendency of affecting merit disclosed by the marks obtained at the written examination.

The writ petition was contested on behalf of respondents 1,2 and 3 by submitting that in order to avoid any charge of arbitrariness being levelled against the Selection Committee, 15 marks assigned for viva-voce test were further split-up under four heads, viz. (i) Science-5 marks, (ii) General Knowledge-4 marks, (iii) Curricular Activities-3 marks and (iv) Personality test-3 marks, and that the Selection Committee prepared cards on each of which a question was typed referable to Physics, Chemistry, Mathematics and General Knowledge and they were kept in 4 different boxes. When the candidate entered the room for interview, he was required to pick-up at random one card from each of the four boxes, each box containing 150 cards and answer the question. A tape-recorder was kept on the table in front of the members of the Selection Committee and the candidate appearing for the interview, and two-way dialogue was recorded in full. Marks were assigned under each head of viva-voce test depending upon the merit of the answer. Thereafter, the merit list was prepared on the basis of the total marks obtained at

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he written and viva-voce tests.

Dismissing the Writ Petitions & Transferred cases,

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HELD: Merit has been ascertained by the most scientific method that can be applied for selecting candidates on merit leaving no room for any arbitrary choice. The viva-voce test that was conducted was fair, free from the charge of arbitrariness, reasonable and just. [410 F]

In the instant case, respondents Nos. 1 to 3 have practically set at naught some of the drawbacks and deficiencies pointed out in *Ajay Hasia etc. v. Khalid Mujib Sehravardy & others etc.* [1981] 2 SCR 79 in the manner of holding of oral interview and the marks assigned at it. The respondents in order to avoid any charge of arbitrariness reduced the marks assigned to the viva-voce test, prepared the questions in advance kept them ready in the boxes and

the candidate had to pick-up his own question and answer it. The record of the answer was maintained in the Candidate's own voice. [410 G-411 E]

JUDGMENT:

ORIGINAL JURISDICTION : Writ Petition No. 8964 of 1982. (Under Article 32 of the Constitution of India) WITH Transfer Cases Nos. 13-15 of 1984.

Anil Dev Singh, Subhash Sharma and S.K. Sabharwal for the petitioners.

G.L. Sanghi and Altaf Ahmed for the respondents. K.R.R. Pillai for the Petitioner in Transfer Cases Nos. 13-15 of 84.

The Judgment of the Court was delivered by DESAI, J; At the conclusion of the hearing of the writ petition and the transferred cases on Jan 24, 1984, the Court pronounced the order dismissing the writ petition and the transferred cases, reserving that the reasons will follow later on. Here are the reasons.

To put into focus the controversy, the facts alleged in Writ Petition No. 8964 of 1982 may be taken as representative of the allegations in all allied cases.

Nine petitioners in this petition questioned the legality and correctness of admissions to Bachelor degree course for 1982-83 session in Regional Engineering Colleges at Srinagar, simultaneously praying for quashing the admissions of respondents Nos.

5 to 13 and seeking a direction that the petitioners be admitted to the same session.

A Regional Engineering College has been set up at Srinagar in the State of Jammu and Kashmir. Third respondent, Principal of the College by a public advertisement dated March 13, 1982 invited applications for admission to the Bachelor Degree Engineering Course for 1982-83 session not only in the Regional Engineering College, Srinagar but also in eleven Regional Engineering Colleges set up in different States. Candidates seeking admission had to fulfill the following requirements. They were required to appear at (i) a joint entrance examination in four papers viz. Physics, Chemistry, Mathematics and English; (ii) candidates who qualify in the written test had to appear at a viva-voce test; (iii) the selections were to be based on the combined performance in the written and viva-voce examination ; and (iv) the seats reserved for specified categories were also shown. Pursuant to this advertisement, the petitioners applied and were admitted to the written test and on being found qualified, they were called for viva-voce test. The challenge is to the manner, the method and the number of marks assigned for the viva- voce test. Broadly stated, the allegations were that reservation of 15 marks for viva-voce test conferred arbitrary, unguided and uncannalised power on those conducting the viva-voce test and that reservation of 15 marks for viva-voce test would have the pernicious tendency of affecting the merit disclosed by the marks obtained at written

examination. There were other allegations which do not merit examination.

On rule nisi being issued, respondents Nos. 1 to 3 appeared and one Dr. O.N. Koul, Head of the Mechanical Engineering Department (Coordinator Admissions for session 1982-83), Regional Engineering College, Srinagar filed an affidavit in opposition on behalf of the Principal of the College. After pointing out that 85 marks were assigned for written examination and 15 for viva-voce test, it was further pointed out that in order to avoid any charge of arbitrariness being levelled against the Selection Committee 15 marks assigned for viva-voce test were further split-up under four heads, namely, (i) Science-5 marks (ii) General knowledge-4 marks (iii) Curricular Activities-3 marks and

(iv) personality test-3 marks. It was pointed out that ultimately out of a total of 100 marks, only 3 marks were assigned for personality test and this is the area where if at all, discretion can be exercised which may not be reviewable on any documentary evidence. In respect of the three other heads, it was pointed out that the Selection Committee prepared cards on each of which a question was typed referable to the 4 subjects, namely, Physics, Chemistry, Mathematics and General Knowledge. and they were kept in 4 different boxes. When the candidate entered the room for interview, he was required to pick up at random one card from each of the four boxes, each box containing atleast 150 cards and answer the question. A tape recorder was kept on the table in front of the members of the Selection Committee and the candidate appearing for the interview and the two-way dialogue was recorded in full. Marks were assigned under each head of viva-voce test depending upon the merit of the answer. Thereafter, the merit list was prepared on the basis of the total marks obtained at written test and the viva-voce test and it was strictly adhered to save and except for reserved seats where also persons seeking admission to reserved seats had to stand in queue as in the merit list.

At the hearing of these petitions, the respondents Nos. 1 to 3 produced before the Court the cards on which questions were typed, the cassette and a tape recorder. They also produced the entire merit list with marks obtained by each candidate. The court at random directed them to point out which card was picked-up by one of the candidates from amongst the petitioners and then play the cassette on which his interview was taped. Learned counsel for the petitioners and some of the petitioners were present during this demonstration. We are fully satisfied that in this case merit has been ascertained by the most scientific method that can be applied for selecting candidates on merits leaving no room for any arbitrary choice.

There was no challenge to the written test and 85 marks assigned for the written test. In *Ajay Hassa etc. v Khalid Mujib Sehravardi & Ors. etc.* (1) wherein admission to this very Regional Engineering College for the year 1979-80 was challenged, this Court observed that `there can be no doubt that, having regard to the drawbacks and deficiencies in the oral interview test and the conditions prevailing in the country, particularly when there is deterioration in moral values and corruption and nepotism are very much on the increase, allocation of a high percentage of marks for the oral interview as compared to the marks allocated for the written test, cannot be accepted by the court as free from the vice of arbitrariness. The Court concluded by observing that in the existing circumstances, allocation of more than 15% of the total marks for the oral interview would be

arbitrary and unreasonable and would be liable to be struck down as constitutionally invalid.

The respondents took one from these observations of the Court and reduced the marks assigned for viva-voce test to

15. Not only that but some of the drawbacks and deficiencies pointed out by this Court in the manner of holding of oral interview and the marks assigned at it, the respondents split-up the marks under four heads and atleast in respect of three, there is direct evidence as recorded on the tape to show how the candidate has faired. And as for the dreaded personality test, the marks assigned are 3 only. Not a single case was pointed out to us in the course of the hearing in which the candidate otherwise being eligible for admission on merit, lost the same because of inability to get some marks under the personality test, the maximum being 3 only. It is to the credit of respondents Nos 1 to 3, how they in order to avoid any charge of arbitrariness reduced the marks assigned to viva-voce test, split them up under different heads and even in respect of questions to be put at the viva-voce test prepared the questions in advance, kept them ready in boxes and the candidate had to pick-up his own question and answer it. The record of the answer is maintained in candidates own voice. We must record our appreciation that respondents Nos. 1 to 3 have practically set at naught drawbacks and deficiencies in oral interview as pointed out by this Court. The viva-voce test conducted must be held to be fair, free from the charge of arbitrariness, reasonable and just.

Undoubtedly, the expectation of the Court which frowns upon anything arbitrary or unreasonable has added to the workload of the Selection Committee. But today when there is rush for admission to Engineering Colleges like the Ceasar's wife, the selection must be objective and beyond reproach. That has been scientifically achieved in this case. We hope that bodies charged with the difficult task of ascertaining merits for admission will take cue from what has been done by respondents Nos. 1 to 3 and the lead provided by them in this field would restore faith of young aspirants in the system. Therefor, the Court dismissed the writ petition and the transferred cases.

N.V.K. Petitions & Transfer Cases dismissed.