Before Ranjit Singh, J.

NARENDER AND OTHERS,—*Petitioners*

versus

HARYANA STAFF SELECTION COMMISSION, PANCHKULA,—*Respondents*

CWP No. 8721 of 2011

14th July, 2011

Constitution of India, 1950—Arts. 226 and 309—Selection to the post of Gram Sachiv, Panchayat Department—Notification issued under Article 309—Cut off marks provided—Criteria challenged—No unfairness pointed out—Wednesbury principle applied to see validity of administrative action—Courts can consider, whether such a decision was absurd or perverse but cannot go into correctness of choice made by administrator not can Court substitute its decision to that of the administrator—Held, while adopting mode no irrelevant factor percolated in decision—Writ petition dismissed.

Held, that the test to see the validity of such a administrative decision and the Court's jurisdiction to interfere in such administrative decisions is by now well settled. Such administrative decisions are generally and normally tested on the touchstone of well known Wednesbury principles in this Country as well as in England. The Wednesbury test is to be applied to find out if the decision was illegal or suffered from procedural improprieties or was one which no sensible decision maker could on the material before him and within the frame work of law, have arrived at. The job of the Court is to consider whether relevant material had been taken into account or whether any irrelevant matter has been taken into account or whether the action was *bona fide*. The Courts can also consider whether such a decision was absurd or perverse but the Courts cannot and would not go into the correctness of the choice made by the Administrator amongst the various alternatives open to him nor can the Court substitute its decision to that of the Administrator.

(Para 15)

Further held, that analyzing the action of respondent-Board in these parameters, it can very well be said that while adopting this mode for shortlisting the candidates, only relevant factors have been taken into consideration and no irrelevant factor has percolated into the decision. It can also not be said that such a decision could not have been reasonably arrived at.

(Para 17)

Vikas Malik, Advocates, *for petitioners*

Sunil Nehra, DAG, Haryana, *for the State.*

RANJIT SINGH, J.

(1) The petitioners seek quashing of the criteria fixed by the respondents for selection to the post of Gram Sachiv, Panchayat Department, with further prayer to command the respondents to shortlist the candidates by conducting a written test. Two questions, which were posed to counsel for the petitioners at the outset, thus, were :—

(a) What was wrong or arbitrary with the criteria as fixed by the respondents ?

(b) Can the petitioners make a grivance about the criteria so fixed and demand for fixing a particular criteria i.e. written test ?

(2) The counsel for the petitioners had no satisfactory answer to both the questions posed and he simply stated that the criteria was wrong and shortlisting ought to have been done by holding a written test.

(3) To be fair to the counsel, he candidly conceded that he would not dispute the right of the respondents to fix the criteria but was challenging the criteria so fixed. The counsel did make an effort to point holes in the criteria fixed but really could not say anything of substance to indicate if there is any arbitrariness, unreasonableness or unfairness in the criteria so fixed.

(4) From the pleadings, it would emerge that Haryana Staff Selection Commission had advertised 400 posts of Gram Sachivs on 22nd July, 2008. The petitioners being eligible had applied for the posts. The

respondents, however, issued a corrigendum on 19th July, 2010, increasing the posts from 400 to 870, which enabled the candidates, who were not earlier eligible to apply pursuant to this corrigendum. As per the petitioners, this resulted in about two lacs candidates making applications. On this basis, the counsel pleads that his chance of appointment was marred because of this corrigendum, which he tried to project as being an arbitrary, discriminatory and unfair.

(5) The qualifications for the posts as advertised has remained same and it is as follows :—

"1. 10+2 or equivalent.

2. Working knowledge of Computer.

3. Rural background (attach residential certificate).

4. Hindi/Sanskrit up to Matric Standard."

In the advertisement, special instructions to the following effect were also issued :—

> "The prescribed essential qualification does not entitle a candidate to be called for interview. The Commission may short list the candidates for interview by holding a Written examination or on the basis of a rationale criterion to be adopted by the Commission. The decision of the Commission in all matters relating to acceptance or rejection of an application, eligibility/ suitability of the candidates, mode of, and criteria for selection etc. will be final and binding on the candidates. No inquiry or correspondence will be entertained in this regard."

(6) Thus, the Commission has clearly given out in the advertisement that it may shortlist the candidates for interview either by holding a written test or on the basis of any rational criteria to be adopted by the Commission. As can be noticed, this decision of the Commission regarding mode of and criteria for selection was to be final and binding on the candidates.

(7) In the reply, reference is made to notification dated 28th January, 1970 as amended from time to time issued under Article 309 of the Constitution of India. Para 6(d) of the notification is as under :—

> "Method of recruitment and the principles to be followed in making appointments to the Group C and D posts under the State Government. The Commission shall devise the mode of selection and fix the criteria for selection of posts for which a requisition is sent to it by a Department or an office, as it may deem appropriate and the criteria for the selection of posts fixed earlier by the Board/Commission shall be deemed to have been fixed under this sub-paragraph."

(8) This notification obviously is being highlighted by the Commission to submit that the Commission had a complete right to fix the criteria for selection as it may deem appropriate. In exercise of these powers, the Commission had fixed the criteria for selection of these posts, which is on record as Annexure P-3. A perusal of the same would show that keeping in view large number of applications and on the basis of conditions of the advertisement, the Commission had decided to shorlist the candidates in the respective categories for the interview by providing a minimum cut of point as per the formula for each of the categories. the method of calculating the cut off point as given in Annexure P-3 is as under :—

Sr. No.	Qualification	Formula	Gen.	SC	BCA	BCB	OSP Gen.	PHC Ortho	PHC Blind/ Low Vision	PHC Deaf & Dumb
A	For 10+2	10+2 % age + 0.58	41	39.44	39.67	39.67	32.48	34.22	34.22	34.22
B	For Graduate and above	10+2 %age + 0.58+2	41	39.44	39.67	39.67	32.48	34.22	34.22	34.22

(9) The Commission also fixed 60 marks for academic qualification and 30 for viva-voca. It is also stated that the working knowledge of the computer would be tested at the time of interview.

The shortlisted candidates were to be called for interview.

(10) As per the shortlisted criteria, cut off points for different categories were fixed as under :—

Sr. No.	Category	Cut Off Points
1	Gen.	41
2	SC	39.44
3	BCA	39.67
4	BCB	39.67
5	ESM-Gen.	All Eligible
6	ESM-SC	All Eligible
7	ESM-BCA	All Eligible
8	ESM-BCB	All Eligible
9	OSP-Gen.	32.48
10	OSP-SC	All Eligible
11	OSP-BCA	All Eligible
12	OSP-BCB	All Eligible
13	PHC Ortho	34.22
14	PHC Blind/Low Vision	34.22
15	PHC-Deaf and Dumb	34.22
16	DESM-Gen., DESM-SC	(As per above cut off points DESM-BCA, DESM-BCB prescribed in their respective category i.e. Gen./SC/BCA/ BCB as the case may be."

(11) This criteria as fixed was equally to apply to all the candidates. The Commission can not be expected to call all the two lacs candidates either to hold a written test just to select 870 candidates. In view of the large number of applicants, some rational criteria could be adopted and clear intention in this regard had been conveyed in the advertisement itself. It can not be said that anybody is being taken by a surprise. Despite best

efforts, the counsel for the petitioners could not point out any unfairness or arbitrariness in the criteria so fixed. This criteria was to equally apply to all the candidates and it is unreasonable to make any grievance.

(12) The state counsel has in fact made reference to a decision in the case of Civil Writ Petition No. 2715 of 2010 **(Virender Singh** *versus* **The Haryana Staff Selection Commission, Panchkula).** decided on 19th July, 2010, where these very instructions were considered by this Court to challenge the action of the Commission to shortlist the candidates. The similar pleas were raised in this case, as can be noticed from the following :—

> "The petitioner contends that this criteria is not rationale and would lead to pick and choose. As per the petitioner, it would have been more reasonable and rationale to provide for entrance test, which was also provided in the advertisement issued."

Dealing with the issue, this Court has held as under :—

> "Even in the special instructions impugned by the petitioner, it is clearly provided that the decision of the Commission in all matters relating to acceptance or rejection of application, eligibility/ suitability of candidates, mode of, and criteria etc. will be final and binding on the candidates. Thus, it is only required to be seen if providing a cut off mark can be said to be unreasonable or arbitrary in any manner. The mode of providing cut off marks was held valid in Civil Writ Petition No. 9323 of 2009, decided on 16th July, 2009. In this regard, it was observed as under :—
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> > "Mode of providing cut off is a validly recognised one and the same if done cannot be termed arbitrary or discriminatory. In fact all examinations across the world always provide for some cut off marks, be it pass marks or different grades for the purpose of giving divisions. These cut off marks varies from one exam to another, depending upon the level of excellence/output expected from the candidate, who is to qualify in such examination. Thus, setting up of such cut off marks as eligibility condition cannot be termed as arbitrary, irrational or unconstitutional."

(13) In **Virender Singh's case** *(supra)*, the Court also noticed the fact that the pass marks for all the examinations generally is 33% but for making a candidate eligible for entrance test like pre-medical or pre-engineering, cut off marks are always provided and generally are in the range of 50% and that too on the basis of combination of subjects, which are relevant for further study in the course opted by the particular candidate. Thus, the right to fix a criteria and fixing the criteria on the basis of percentage of marks obtained was found just and reasonable.

(14) This Court in **Chatarpal and another** *versus* **State of Haryana and another, (1)** has upheld the action of the State in shortlisting of the candidates on the basis of cut off points in the qualifying examination for the purpose of holding interview but without conducting a written examination. In this regard, the Court has observed as under :—

> "There is no condition to compulsorily hold written test for selection. Thus, the very basis of challenge to Annexures P-6 and P-7 is non-existent and imaginary. It is further contended that since in the advertisement the selection was to be made only on the basis of qualifying marks, short listing is impermissible. As noticed above, the advertisement itself permits short listing. Short listing on the basis of the qualifying examination is one of the recognized and established mode of selection, where the large number of candidates apply and has received the approval of the Hon'ble Apex Court. In case of **State of Haryana** *versus* **Subhash Chander Marwaha and others reported, (2)** a similar question fell for consideration of the Hon'ble Apex Court. In the advertisement for selection to the judicial service in the State of Haryana minimum 45% marks were prescribed for qualifying the written examination. The High Court communicated the State Government to select candidates securing more than 55% marks in the examination. Accordingly, selection was made of the candidates who secured more than

(1) 2010 (4) SCT 507
(2) 1973 SLR 137

55% marks in the examination which resulted in non-fulfillment of all the advertised vacancies. Out of 15 advertised vacancies only 7 candidates were appointed. The candidates who ranked 8, 9 and 13 filed a writ petition seeking a direction for their appointment. While considering the issue, the Hon'ble Supreme Court observed as under :—

"It was, however, contended by Dr. Singhvi on behalf of the respondents that since rule 8 of Part C makes candidates who obtained 45 per cent or more in the competitive examination eligible for appointment, the State Government had no right to introduce a new rule by which they can restrict the appointments to only those who have scored not less than 55%. It is contended that the State Government have acted arbitrarily in fixing 55 per cent as the minimum for selection and this is contrary to the rule referred to above. The argument has no force. Rule 8 is a step in the preparation of a list of eligible candidates with minimum qualifications who may be considered for appointment. The list is prepared in order of merit. The one higher in rank is deemed to be more meritorious than the one who is lower in rank. It could never be said that one who tops the list is equal in merit to the one who, is at the bottom of the list. Except that they are all mentioned in one list, each one of them stands on a separate level of competence as compared with another. That is why rule 10(ii), Part C speaks of "selection for appointment." Even as there is no constraint on the State Government in respect of the number of appointments to be made, there is no constraint on the Government fixing a higher score of marks for the purpose of selection. In a case where appointments are made by selection from a number of eligible candidates it is open to the Government with a view to maintain high-standards of competence

> to fix a score which is much higher than the one required for mere eligibility. As shown in the letter of the Chief Secretary already referred to, they fixed a miunimum 55% for selection as they had done on a previous occasion. There is nothing arbitrary in fixing the score of 55% for the purpose of selection, because that was the view of the High Court also previously intimated to the Punjab Government on which the Haryana Government thought fit to act, that the Punjab Government later on fixed a lower score is no reason for the Haryana, Government to change their mind. This is essentially a matter of administrative policy and if the Haryana State Government think that in the interest of judicial competence persons securing less than 55% of marks in the competitive examination should not be selected for appointment, those who get less than 55% have no right to claim that the selections be made of also those candidates who obtained less than the minimum fixed by the State Government. In our view the High Court was in error in thinking that the State Government had somehow contravened rule 3 of Part C."

(15) In fact, it is an administrative decision taken by the Selection Board to fix a criteria for shortlisting the candidates. The test to see the validity of such a administrative decision and the Court's jurisdiction to interfere in such administrative decisions is by now well settled. Such administrative decisions are generally and normally tested on the touchstone of well known Wednesbury principles in this Country as well as in England. The position of administrative law in this regard can be summarized to say that to judge the validity of any administrative order or statutory discretion, normally the Wednesbury test is to be applied to find out if the decision was illegal or suffered from procedural improprieties or was one which no sensible decision maker could on the material before him and within the frame work of law, have arrived at. The job of the Court is to consider whether relevant material had been taken into account or whether any

irrelevant matter has been taken into account or whether the action was *bona fide*. The Courts can also consider whether such a decision was absurd or perverse but the Courts can not and would not go into the correctness of the choice made by the Administrator amongst the various alternatives open to him nor can the Court substitute its decision to that of the Administrator.

(16) The Courts do not interfere with the administrator's decision unless it was illegal or suffered from procedural impropriety or was irrational in the sense that it was in outrageous defiance of logic or moral standards. The position in administrative law, where no fundamental freedoms are involved, in our Country is that the Courts/Tribunals will only play a secondary roll while the primary judgment as to the reasonableness will remain with the executive or the administrative authority. The secondary judgement of the Court is to find if the executive or the adminristrative authority has reasonably arrived at its decision as the primary authority. On the other hand, in a case effecting fundamental freedom, the Courts will apply the principle of proportionality and assume the primary roll to decide in an appropriate case where such action is alleged to offend fundamental freedoms.

(17) Analyzing the action of respondent-Board in these parameters, it can very well be said that while adopting this mode for shortlisting the candidates, only relevant factors have been taken into consideration and no irrelevant factor has percolated into the decision. It can also not be said that such a decision could not have been reasonably arrived at. There is no allegation that the action is not a *bona fide* one. There were choices before the respondent-Board and it was open to it to decide upon the choice and it would not be for this Court to substitute its view.

(18) In view of the legal position as noticed above, I see no merit in the pleas raised in the writ petition and the writ petition is accordingly dismissed.

A. Agg.