

Before D. V. Sehgal, J.

JASWANT SINGH AND OTHERS,—*Petitioners.*

versus

STATE OF HARYANA AND OTHERS,—*Respondents.*

Civil Writ Petition No. 1022 of 1988.

May 5, 1988.

Constitution of India, 1950—Arts. 14, 15(1)—Admission to diploma in education course—Admission confined to bona-fide residents of Haryana—Priority to candidates from Mewat area—Allocation of 10 marks to such candidates—Such allocation whether discriminatory—Interview—Marks allotted at interview—Average 45 seconds spent on each candidate for interview—Validity of admission on such basis.

Held, that 10 marks allocated to each of the candidates who were domicile of Mewat area is wholly discriminatory. It is not only violative of Article 14 of the Constitution of India, 1950 but also ultra-vires of Article 15(1) of the Constitution. The allocation of 10 marks for the domicile of Mewat area while selecting the candidates against 50 per cent of the seats meant for general category has virtually resulted in 100 per cent reservation of the seats which is unconstitutional. Therefore, the same cannot be sustained.

(Paras 17 and 18)

Held, that the Selection Committee spent less than one minute to interview each candidate. To be more precise, it spent 45 seconds on an average on each candidate. Now the Committee was to interview each candidate at least to assess his personality on three aspects namely; physique, intelligence and suitability. How, the Committee could do it in 45 seconds per candidate and then allocate the marks boggles imagination. As such the interview of the candidates for the course held, by the Committee was a mere farce and as such the marks allocated to each of the candidates for interview were wholly arbitrary and whimsical.

(Paras 11 and 12)

Civil Writ Petition Under Articles 226/227 of the Constitution of India praying that:—

- (i) complete records of the case be summoned;
- (ii) this Hon'ble Court be pleased to quash the selections made to the Diploma in Education Course for the session 1987—89 on the basis of the interviews conducted on 21st December, 1987, 22nd December, 1987, 23rd December, 1987, and 24th December, 1987;
- (iii) a Writ in the nature of Mandamus be issued directing the respondents to admit the petitioners to the Diploma in

Education Course, 1987—89 in accordance with the merit obtained by them in Matric or higher qualifications;

- (iv) this Hon'ble Court may also issue any other suitable Writ, Order or Direction deemed fit and proper in the circumstances of the case;*
- (v) costs of the petition be also awarded;*
- (vi) condition regarding filing of certified copy of Annexure P/1 be dispensed with;*
- (vii) condition regarding service of advance notice of the Writ Petition be also dispensed with.*

S. S. Nijjar, Advocate, for the Petitioners.

M. S. Jain, Addl. A.G.(H) with Viney Jain, Advocate, for the Respondents.

JUDGMENT

D. V. Sehgal, J.

This judgment shall dispose of Civil Writ Petition Nos. 791, 792, 1022, 1114, 1145 and 1394 of 1988. All these petitions are directed against selection for admission to the Diploma in Education Course 1987-89 Session in the Government J.B.T. School, Ferozpur Namak (Gurgaon). Hence these are being disposed of together. Reference to the parties, facts and the documents unless otherwise specifically mentioned, shall be made from Civil Writ Petition No. 1022 of 1988.

(2) The respondents issued prospectus, Annexure P.1 inviting applications for admission to the diploma course known as "Diploma in Education Course" (Hindi and Urdu) at Government J.B.T. School, Ferozpur Namak (Gurgaon). The minimum qualification for admission to the course as given in Annexure, P.1 is Matric/Higher Secondary Part-I or any other equivalent examination. Another condition laid down is that the candidate seeking admission should be a bonafide resident of Haryana. It is further provided that preference will be given to bonafide candidates of Mewat area of Gurgaon and Faridabad. The candidates were required to submit their applications on the prescribed forms which were available from respondent No. 4 at Rs. 3 per form. The applications were to be submitted in duplicate to respondent No. 4 with a copy to respondent No. 3. The last date for receipt of applications was 14th December, 1987. The petitioners submitted their applications

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for the said course. All the candidates who had submitted their applications were required to appear for interview on the following dates :—

(i) All women candidates (Hindi and Urdu)	21.12.1987
(ii) Men candidates (Urdu)	22.12.1987
(iii) Men candidates (Hindi) from 1—500	23.12.1987
(iv) Rest of the candidates.	24.12.1987

The petitioners possessed minimum qualification for admission to the course. They submitted their applications on the prescribed form by the stipulated date. It is averred that as many as 15,000 candidates had applied for admission. Out of them 10,000 were aspirant for Hindi course and 5,000 for Urdu course.

(3) There were in all 200 seats for the course 100 seats out of them were for Hindi course and 100 for Urdu course.

(4) The petitioners contend that they were not selected for the course inspite of the fact that they had passed the Matriculation/ Higher Secondary Part-I examination with high marks. Some of them were even Graduates, Prabhakar or had passed Pre-University Examination. It is alleged that the interview conducted by the respondents was a farce and the marks allotted to different candidates as a result of the interview were a camouflage to select for admission only the favoured candidates. It is further alleged by them that no preference could be given to the candidates from Mewat area. Such a preference is violative of the fundamental rights guaranteed by the Constitution. The respondents only allocated 10 marks to each of those candidates who were from Mewat area thus giving them an advantageous position to get admission.

(5) In Civil Writ Petition No. 1114 of 1988, the petitioners have alleged malafides against Chaudhry Khurshid Ahmad, Education Minister, Haryana, respondent No. 4. According to them, admissions were made under his pressure and at his instance and the merit list is the result of favouritism and nepotism. Candidates with lesser marks in the academic career have been selected for admission while those with higher marks have been left out. In this petition,

respondents No. 5 to 8 who are selected candidates for admission to the course were also impleaded. Respondent No. 4 filed his written statement vehemently denying the allegation of malafide levelled against him. He has stated that the merit list was prepared by a Selection Committee. He never interfered in the said selection. In view of this categoric denial, I consider it wholly unnecessary to go into these allegations made by the petitioners against respondent No. 4. The selected candidates, respondents No. 5 to 8 were duly represented before me by Shri S. K. Sardana, Advocate and I have considered their defence.

(6) Written statement on behalf of respondents No. 1 to 4 in Civil Writ Petition No. 1022 of 1988 was filed. Before the start of the arguments, an additional affidavit has also been filed by the District Education Officer, Gurgaon, respondent No. 3. It has been averred that out of 100 seats each for Hindi course and Urdu course, the following seats were reserved for various categories as per criteria/formula, Annexure R. II for admission to the course :—

(i) Scheduled Caste/Scheduled Tribes.	...	20 per cent.
(ii) Backward Class.	...	10 per cent.
(iii) Backward Area/Rural Area (excluding the number of merit cases)	...	13 per cent.
(iv) Deserted / Legally divorced/Widow women candidates.	...	2 per cent.
(v) Children and dependent of Armed Forces Personnel/Ex-servicemen.	...	5 per cent.
(vi) General.	...	50 per cent.

It is further mentioned in the criteria, Annexure P. II that maximum of 45 marks were allocated for the minimum qualification of Matriculation/Higher Secondary Part-I. Out of total marks obtained from such an examination by a candidate, the left hand 2 digits were divided by 2 to work out the marks to be allocated to the candidates for the minimum qualification i.e. if a candidate had obtained 800 marks, 80 was to be divided by 2 and the marks to be allocated were worked out as 40. 15 marks were allocated for higher education i.e. Higher Secondary Part-I, Intermediate/B.A

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Part-I, B.A. and M.A. Another 5 marks were to be awarded to those who had passed Adeeb Alam/Prabhakar/Shastri examination. 8 marks allocated for sports/co-curricular activities etc. organised by the Education Department. I may point out here that the formula for working out the marks to be allocated to each of the candidates aforementioned has not been challenged before me.

(7) However, in the criteria, Annexure R. II, 12 marks were allocated for interview i.e. to test suitability, physique and intelligence *et cetera* of the candidates. Another 10 marks were allocated for candidates belonging to the Mewat area. It is these two categories of marks fixed for determining the merits of the candidates to be selected for admission which is the subject-matter of dispute before me.

(8) In the additional affidavit filed by respondent No. 4, it has been stated that 7820 candidates had applied for admission to the diploma course in education both Hindi and Urdu. Out of them as many as 5580 candidates appeared for interview. It has been further averred that the interviews were held on 5 days from 21st December, 1987 to 25th December, 1987 by a Selection Committee consisting of a Chairman and three members named below :—

- (i) Shri D. S. Pramar, District Education Officer, Gurgaon. ... Chairman.
- (ii) Shri W. R. Gupta, Sub-Divisional Education Officer, Nuh. ... Member.
- (iii) Shri N. D. Sudan, Headmaster, Government J. B. T. School, Ferozpur Namak (Gurgaon) ... Member.
- (iv) Shrimati Kusum Lata, Headmistress, Government Girls High School, Nuh. ... Member.

(9) It is stated that the Committee allocated marks to each one of 5580 candidates after interviewing them and no favouritism has been shown. It is pointed out that many of the petitioners were awarded 8 to 11 marks out of 12 marks ear-marked for interview.

(10) As regards the allegation that allocation of 10 marks for the candidates from Mewat area is discriminatory, it has been stated

in the written statement in Civil Writ Petition No. 1114 of 1988 that preference/priority has been given to the candidates of Mewat area because the said area is backward. It does not have adequate representation in the field of education. It is further explained that the Government feels a lot of difficulty in finding teachers of that area to serve there. Therefore, it was decided to give priority to candidates belonging to this area so that after completing the course, the successful candidates could serve in schools located there. The preference given is justified on the ground that it was in the larger public interest and in the interest of the residents of Mewat area.

(11) I have heard the learned counsel for the parties. I am of the considered view that the interview of the candidates for the course held by the Committee was a mere farce and as such the marks allocated to each one of the candidates for interview were wholly arbitrary and whimsical. I have also no doubt in my mind that allocation of as many as 10 marks to each one of the candidates from Mewat area was wholly discriminatory and worked injustice to the candidates who did not belong to that area. The chances of selection for admission to the course for candidates not belonging to Mewat area had thus been virtually rendered non-existent.

(12) I first come to the question of validity of the interview of the candidates for the course and the marks allocated to them. It is admitted by the respondents that as many as 5,580 applicants appeared for interview. Interviews were held for five days from 21st December, 1987 to 25th December, 1987. The learned Additional Advocate General, Haryana submitted that the Selection Committee devoted 12—14 hours each day to interview the candidates. I take it that on each day, the Selection Committee devoted as many as 14 hours for the purpose and in these 14 hours per day they interviewed 1116 candidates per day. This would mean that the Selection Committee spent less than one minute to interview each candidate. To be more precise, it spent 45 seconds on an average on each candidate. Now the Committee was to interview each candidate at least to assess his personality on three aspects namely, physique, intelligence and suitability. How the Committee could do it in 45 seconds per candidate and then allocate the marks boggles imagination. The following observations of the Supreme Court in *Ashok Kumar v. State of Haryana*, (1) bring out how an

(1) 1985 (3) S.L.R. 200

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interview should be conducted and how much time generally is it likely to take :—

“It is indeed difficult to see how a viva-voce test for properly and satisfactorily reasuring the personality of a candidate can be carried out, if over 1,300 candidates are to be interviewed for recruitment to a service. If a viva-voce test is to be carried out in a thorough and scientific manner, as it must be in order to arrive at a fair and satisfactory evaluation of the personality of a candidate, the interview must take any thing between 10—30 minutes. In fact, Herman Finer in his book on “Theory and Practice of Modern Government” points out that “the interview should last at least half an hour”. The Union Public Service Commission making selections for the Indian Administrative Service also interviews a candidate for almost half an hour. Only 11-12 candidates are called for interview in a day of 5½ hours. It is obvious that in the circumstances, it would be impossible to carry out a satisfactory viva-voce test if such a large unmanageable number of over 1,300 candidates are to be interviewed. The interviews would then tend to be casual, superficial and sloppy and the assessment made at such interviews would not correctly reflect the true measure of the personality of the candidate. Moreover, such a course would widen the area of arbitrariness. For even a candidate who is very much lower down in the list on the basis of marks obtained in the written examination, can, to borrow an expression used by the Division Bench, ‘gate-crash’ into the range of selection, if he is awarded unduly high marks at the *viva-voce* examination.”

(13) Another aspect to be considered is whether the interview was at all advisable in the case of raw-Matriculates who were to be admitted to the course. In *Lila Dhar v. State of Rajasthan*, (2) even in the case of admission to a college, the Final Court has observed that the candidates’ personality is yet to develop and it is

too early to identify the personal qualities for which greater importance may have to be attached in later life, greater weight has to be given to performance in the written examination. The importance to be attached to the interview must be minimal.

(14) While reconverting 12 marks allocated for interview to bring them at parity with the marks obtained by a candidate in the Matriculation/Higher Secondary Part-I Examination on the formula mentioned above, it would be found that compared to 900 maximum marks for the aforesaid minimum qualification, 240 marks have virtually been allocated for interview. Thus, the marks given to each candidate in the interview were aimed at converting merit into demerit and demerit into merit. The marks allocated for interview are more than 25 per cent of the maximum 45 marks allocated for the minimum educational qualification which in no case can be sustainable.

(15) On going through the chart regarding the marks allocated for interview to different candidates and comparing particular cases of the candidates selected for admission with those who have been rejected, I find that there are instances galore where a candidate having secured very high marks in Matriculation Examination has been rejected by giving him very low marks in the interview. On the contrary, a candidate having secured far less marks in Matriculation Examination had been given comparatively high marks in the interview to place him higher on merit so as to facilitate his selection for admission to the course. If I cite some of these instances, it would result in minimising the extent of distortions which have been brought about by allocating interview marks to different candidates.

(16) The learned Additional Advocate General, Haryana, has no doubt pointed out instances where as many as 11 marks have been allocated in interview to some of the rejected candidates. In fact, these are the cases of those candidates who had secured extremely low marks in the Matriculation Examination and even by adding 11 marks, they could not find a place high enough in merit to be selected for admission to the course. This in fact shows the wholly arbitrary and capricious manner in which marks for interview have been allocated by the Selection Committee. I have no doubt in my mind that the instances cited on behalf of the respondents are simply aimed at taking in the gullible to believe that the Selection Committee had been fair and liberal in allocating interview marks to the rejected candidates. This rather depicts the

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ugly manner in which manipulation has been done. I need not dilate further on this matter. I have no hesitation to conclude that the marks have been awarded to different candidates at the whim and caprice of the members of the Committee to facilitate the selection of those whom it wanted to admit to the course and rejection of those whom it wanted to exclude from admission.

(17) Now coming to the second aspect of the matter, I am again very clear in my mind that 10 marks allocated to each of the candidates who were domicile of Mewat area is wholly discriminatory. The explanation of the respondents that the Mewat area is backward educationally and economically cannot justify allocation of these marks. It is to be noted that while, reserving 50 per cent of the total seats for different categories of candidates, 13 per cent seats have been reserved for candidates from backward area/rural area. Candidates from Mewat area could very well get admission against these reserved seats. Allocation of 10 marks for the domicile of Mewat area while selecting candidates against 50 per cent of the seats meant for general category has virtually resulted in 100 per cent reservation of the seats which is unconstitutional. I find support for this view from *P. Rajendran v. State of Madras* (3) *A. Periakarupper v. State of T. N.* (4) and *State of Maharashtra v. Raj Kumar*, (5).

(18) On persual of the merit list prepared for the candidates for general category, I find that not a single candidate outside Mewat area has been selected for admission to the course. Allocation of 10 marks to the candidates from Mewat area virtually gives them a jump of 200 marks (when we convert these marks to bring at parity with the marks obtained by a candidate in Matriculation or equivalent examination) over candidates from outside the Mewat area. The natural result, therefore, was that not a single candidate from outside Mewat area was admitted to the course. The allocation of these marks to candidates from Mewat area is wholly arbitrary. It is not only violative of article 14 of the Constitution but also *ultra vires* the article 15(1) of the Constitution. Therefore, the same cannot be sustained.

(3) AIR 1968 S.C. 1012

(4) AIR 1971 S.C. 2303.

(5) AIR 1982 S.C. 1301.

(19) As a result of the above discussion, I allow these writ petitions with costs, quash the selection for admission to diploma in education course 1987—89 in Government J.B.T. School, Ferozepur Namak (Gurgaon). I direct respondents No. 1 to 4 to prepare the merit list afresh without giving any weightage for Mewat area and also by excluding the marks allocated for interview to each one of the candidates. The merit list for admission should be prepared in pursuance of the above directions and admission to the course should be made on its basis within one month from today. The costs are assessed at Rs. 500 in each of these writ petitions.

S.C.K.

Before I. S. Tiwana, J.

PUNJAB STATE THROUGH LAND ACQUISITION
COLLECTOR,—*Appellant.*

versus

GURBACHAN SINGH AND OTHERS,—*Respondents.*

Regular First Appeal No. 1628 of 1979.

and Cross—Objections No. 15-C-I of 1980.

July 27, 1988.

Land Acquisition Act (I of 1894)—Ss. 23(1A), 23(2) and 28—Compulsory acquisition—Compensation—Market value—Damages—Benefit of section 23(1A) and 23(2)—Whether payable only on market value.

Held, that the amount of damages cannot possibly be treated as part of the market value. Therefore, the additional amount and solatium as envisaged by section 23(1-A) and sub-section (2) respectively are payable only on the market value as determined under clause (i) of section 23 and not on the amount as determined under clause thirdly of this sub-clause. The interest as envisaged by section 28 of the Land Acquisition Act, 1894, is of course payable on the entire amount of compensation i.e. the market value and the damages under clause thirdly of clause (2) of section 23 of the Act.

(Paras 7 and 8)