

BEFORE

**THE HON'BLE MR. JUSTICE RANJAN GOGOI**

**THE HONBLE MR. JUSTICE B.P. KATAKEY**

**DATE OF ORDER : 06/05/2010**

**(Ranjan Gogoi, J)**

Heard Mr. AM Mazumdar, learned senior counsel for the petitioner and Mr. C. Baruah, learned Standing Counsel, Assam Public Service Commission.

2. The petitioner took part in a selection conducted by the Assam Public Service Commission for selection of candidates for appointment in the Assam Civil Services (Junior Grade) & Other Allied Services. The selection process was conducted by the Assam Public Service Commission (hereinafter referred to as "the Commission") pursuant to an advertisement dated 10.8.2006. The petitioner did not clear the main written examination to be entitled to participate in the viva-voce segment of the selection process. The modified select list in terms of the order dated 1.9.2009 passed in W.P.(C) No.2755 of 2009 and other connected cases was published on 18th February, 2010. In the meantime, appointments have been made. At this stage, the writ petitioner has approached this Court seeking recall of the answer scripts of the main written examination of all candidates for evaluation and re-evaluation and consequential interference with the select list published.

3. The petitioner has not indicated either in the writ petition filed or in the course of the oral arguments advanced the precise marks that he had secured in the written examination and the last of the candidates, in order of merit, who was called for interview belonging to the category to which the

petitioner belongs. The petitioner has also not exercised his right under the Right to Information Act to have access to the answer scripts written by him so as to point out the anomalies therein, if any, before the Court. Rather, the petitioner relies on certain alleged irregularities in respect of some candidates in support of the prayer made.

4. The first candidate in respect of whom irregularities with regard to award of mark mentioned by the petitioner is one Ms. Mallika Mazumdar who has been selected for appointment in the cadre of Inspector of Taxes. In this regard, the petitioner has pointed that against one question in addition to 7 marks awarded by the Examiner, the Head Examiner had added 5 more marks. The resultant total should have been 12, whereas, according to the petitioner, the same was 14. In view of the aforesaid allegation made, we have called for the answer scripts of the aforesaid Ms. Mallika Mazumdar and on verification thereof we find the statements made by the petitioner to be correct. However, notwithstanding the above, the result of the selection of Ms. Mallika Mazumdar will not be affected in any manner inasmuch as the said candidate had secured a total of 910 marks (including the interview marks), whereas the last of the candidate selected belonging to the same category has secured 894 marks. Merely because an irregularity has been noticed by the Court in respect of the marks awarded against one question to one particular candidate, the same will not justify recall of the answer scripts of all the candidates for the purpose of evaluation and reevaluation, as prayed for. In this regard, it must be emphasized that this is the precise reason why the petitioner should have indicated the marks secured by him and the last of the qualified candidate belonging to his category so as to enable the Court to exercise its power depending on the difference of marks as may be existing. The aforesaid exercise not having been done by the petitioner, the Court is not in a position

to further appreciate the issue. In any event, as already indicated, in the decision of this Court in certain other cases, it has been acknowledged that a candidate who had taken part in a selection conducted by the Commission has a right under the Right to Information Act to receive photocopies of the answer scripts. The petitioner should have availed of the said right; examined the answer scripts and, thereafter, pointed out the anomalies, if any, to the Court as may have been noticed by him. The said course of action was also not attempted by the petitioner.

5. The second candidate mentioned by the petitioner is one Ms. Dipanjali Das. The allegation against her is with regard to the fact that the candidature of Dipanjali Das was canvassed by certain groups which should have resulted in her disqualification. Selection by the Commission is to be made on the basis of merit as determined in the selection held. If the candidate in question Dipanjali Das was eligible for selection on the basis of the marks secured by her, as she was, only because certain groups of citizens had submitted representations for her selection, without her knowledge, the candidate in question cannot be debarred on that ground alone.

6. The third candidate mentioned by the petitioner is one Bidyut Das Boro who was initially selected in the Assam Civil Services as a ST(P) candidate. In a separate writ proceeding before this court, it has been held that the aforesaid candidate does not belong to ST(P). It is alleged that in the revised select list dated 18.2.2010 the said candidate has again been selected, this time, to the Assam Police Service. The petitioner cannot have any legitimate grievance in this regard inasmuch as though it has been held that the candidate does not belong to the Scheduled Tribe category, the same would not disentitle him for selection as a general category candidate. Shri Bidyut Das Boro has in fact been selected to Assam Police Service as open category candidate in the

revised select list and not as a reserved category candidate. This is evident from the select list dated 18.2.2010 enclosed to the writ petition.

7. The last candidate mentioned by the petitioner is one Alee Bora. According to the petitioner, in the affidavit filed by the Assam Public Service Commission in W.P.(C) No.2755 of 2009, it has been stated that on revision of the select list as per the trend of the exchanges that took place in the course of hearing, 4(four) candidates would be out of reckoning. The grievance of the petitioner is notwithstanding the above, the said candidate Alee Bora has once again been selected for appointment in the cadre of Inspector of Taxes.

8. The grievance of the petitioner is wholly untenable. In the affidavit filed by the Assam Public Service Commission in W.P.(C) No.2755 of 2009 it has been mentioned that if the select list is to be revised on the lines that had surfaced during the course of hearing, four(4) candidates in all would be out of reckoning. In this regard the name of Alee Bora has been mentioned. In the original select list the name of the said candidate appears against the cadre of Inspector of Excise. If Alee Bora was not entitled to be in the select list of Inspector of Excise consequent to the revision thereof in accordance with the order of the Court, the same does not mean that the candidate would be ineligible for any other post even if her marks had permitted her inclusion in the list against any other cadre. In the revised select list the name of Alee Bora appears in the list prepared for the cadre of Inspector of Taxes. She had secured 848 marks and was selected as a female candidate belonging to the OBC. The marks secured by her i.e. 848 did not entitle her to be eligible for selection in the cadre of Inspector of Excise where the last candidate belonging to the said category had secured 850 marks. However, the said marks i.e. 848 makes Alee Bora eligible for selection in the cadre of Inspector of Taxes. This is

how the name of Alee Bora appears in the revised select list against the cadre of Inspector of Taxes.

9. The above facts would demonstrate that not only the allegations made by the petitioner are wholly unfounded and untenable, the same have been made without minimum verification of the basic/essential facts. The marks secured by the petitioner have been omitted from the writ petition. The writ petition indeed is frivolous and has been filed without exercising the minimum care and caution. The intended result would have cast an onerous burden both on the Public Service Commission and the Court. In such circumstances, we are of the view that not only the writ petition should be dismissed, a cost of Rs.5,000/- should be imposed on the petitioner.

10. It is ordered accordingly.