

**ODISHA INFORMATION COMMISSION
BHUBANESWAR**

**Present : Shri Sunil Kumar Misra,
State Chief Information Commissioner**

Date 22th June, 2020

Second Appeal No.857 /2015

Prafulla Kumar Pradhan,
At-Tapoban Basti, Barabari,
PO/PS-Khandagiri
Bhubaneswar.....Appellant

-Vrs-

1. Public Information Officer,
Office of the Superintendent of Police,
Special task Force, CID, CB, Odisha
Kalpana Square, Bhubaneswar.
2. First Appellate Authority
Office of the Superintendent of Police,
Special task Force, CID, CB, Odisha
Kalpana Square, Bhubaneswar.....Respondents

Decision

1. Appellant, Prafulla Kumar Pradhan, is not present. Prasanta Kumar Bhoi, PIO-cum-Superintendent of Police, Special Task Force (STF), Bhubaneswar and Bidhu Bhusan Mohanty, Public Prosecutor, EOW/STF, CID, CB Odisha, Bhubaneswar are present.
2. In this case the appellant had sought certain information relating to 12 candidates who had been provisionally selected for recruitment as contractual Peons in pursuance of an advertisement issued by the Superintendent of Police, CID, CB in the year 2015. The required information included copies of their Character Certificates and Caste Certificates; copies of broad-sheet in respect of the UR, SC & ST (Women) categories; copies of the written test answer-sheets and marks awarded to the candidates in the written and viva-voce tests.

2.1 The PIO of the office of the Special Task Force, Crime Branch denied the information by referring to a Notification issued by the State Government under Section 24 of the RTI Act whereby the Crime Branch was exempted from the purview of the Act. The First Appellate Authority confirmed the decision of the PIO. Aggrieved with the above decision, the appellant approached this Commission through this second appeal.

3. The appellant contended that the Notification issued under Section 24 would not apply to the facts of the case since there had been infringement of the fundamental rights guaranteed under Articles 14 & 16 of the Constitution of India. It was also contended by the appellant that there were exceptions to Section 24 as provided in the second proviso thereto, one of them being violation of human rights. In the present case, there had been deviations from the advertisement which had been issued for the posts. While no post had been earmarked in the advertisement for the SC (women), category at the time of the selection a candidate belonging to the said category, was selected. In this connection, several decisions were relied upon to argue that such deviations from the norms specified in the advertisement would render the very process of selection null and void.

3.1 On the other hand, it was clarified by the Learned Public Prosecutor that while at the time of issuing the advertisement no post had been earmarked for women in the SC category, at the time of the selection the District Welfare Officer brought this omission to the notice of the Board which decided to set apart one post out of the 2 posts earmarked for SC category (Men) for SC category(Women). It was also contended by the Learned Public Prosecutor that even though there was a deviation, the fact remains that the appellant's wife was a candidate in the General category(Women). Two candidates got selected in this category. The appellant's wife was not selected. The appellant's wife not having applied in the SC category(Women), her human right was not affected in any manner because she could not have been considered in the General category in any case. It was accordingly argued by the Learned Public Prosecutor that the contentions raised by

the appellant and his Learned Advocate were without basis since no human right violation was involved. For the same reason, the exception provided in the second proviso of Section 24 would not come into play. Consequently, the Notification would hold good with the resultant exemption to the public authority from the operation of the RTI Act, 2005.

4. The Commission considered the rival submissions. The Commission also called for and perused the applications of the selected candidates as well as of the appellant's wife. Copies of certain other documents such as broad-sheets, mark-sheets etc. were also called for and perused. On such perusal, the Commission observed that the facts submitted by the respondents' Learned Public Prosecutor were borne out by records. The Commission therefore enquired of the appellant and his Learned Advocate as to how the appellant's wife could be said to have been aggrieved with the selection or to have suffered any loss or detriment due to the alleged human rights violation when she was an applicant only in the General category and not in the SC category. Moreover, as it appeared to be a case of irregularity rather than human rights violation, the Commission sought to know from the appellant why the ground raised on this score should be adjudicated upon by this Commission when the same could be agitated before an appropriate forum.

5. Complying with the direction thus given, the appellant made further submissions dated 12.06.2019 and 22.07.2017. It was contended that the irregularity in and deviation from the selection procedure would come within the ambit of corruption. Moreover, as the irregularity and the corrupt measures adopted in the process of selection affected the right of the appellant's wife, the same would also come within the purview of violation of human rights. It was further contended by the appellant that if a person from the Scheduled Caste Women category had to be recruited, then fresh advertisement should have been issued and a fresh examination should have been conducted. Instead of doing so, the respondents selected a relative which would indicate their motive.

5.1 On the other hand, the PIO and the Learned Public Prosecutor argued vide their submission dated 17.09.2019 that the appellant had not raised any ground relating to corruption earlier. Such a ground was raised for the first time only during the course of proceedings before this Commission, that too at a belated stage. The ground which had been raised earlier was regarding violation of human rights. The ground raised by the appellant at a highly belated stage would not relate to a pure question on law. Rather the same appeared to be a mixed question of facts and law; and, therefore, could not be raised for the first time. Submitting thus, the PIO and the Learned Public Prosecutor stated that the ground of allegation of corruption was untenable as well as baseless; hence needed to be brushed aside.

6. The submissions made from time to time have been considered. The respondents who are present have reiterated the contentions raised in the submission dated 17.09.2019. After careful consideration, the subject appeal is disposed of as under:

6.1 First coming to the point raised by the Leaned Public Prosecutor that the appellant himself was not a candidate, suffice would it to observe that the Right to Information Act is a fundamental right guaranteed to the citizen and not restricted to an aggrieved person alone. Therefore it is not relevant whether or not a person seeking the information has any personal stake in it. A citizen can ask for information relating to the public authorities, and in fact the system of governance at large, irrespective of whether or not he or she stands to gain any thing by seeking information. Promoting accountability and transparency in the public sphere and containment of corruption being the basic objectives of the Act, it is but logical that such a Fundamental Right can be exercised by any citizen. Hence the contention that the appellant was not a candidate is of no consequence.

6.2 The next ground is that the appellant had not raised a specific ground regarding corruption in the grounds of appeal. The Commission finds that in the first appeal as well as second appeal memos, the appellant had alleged "Chanchalata" and "Aniyamata" in the recruitment. Perhaps the respondents have it in mind that the word "Durnity" was not used. However, the word "Chanchalata" can be construed as

broad enough to take malpractice in its sweep. Malpractice includes corruption. Therefore the contention raised by the respondents in this matter has no force.

6.3 No doubt the Commission itself raised several queries during the proceedings and sought to know from the appellant why the deviations made by the public authority during the selection processes should not be treated as irregularity rather than as involving violation of human rights or corruption. The queries thus raised were not in the nature of pre-judgements. In any case, the appellant's reply to the queries has been noted. He has argued that there was infringement of Article 16 of the Constitution of India as a Scheduled Caste (Women) candidate was selected even though no post had been earmarked for such candidates and no advertisement had been made for any such post. Instead of deviating from the advertisement and the prescribed procedure, the public authority ought to have conducted a fresh examination after making a fresh advertisement. The fact that these were not done would indicate that deviations were made to show favours.

6.4 The fact that there were deviations has been accepted by the public authority. The argument of the public authority relates to the applicability of the proviso under Section 24(4). As per them, there was no violation of Human Right; and, moreover, no case has been made out by the appellant to show that there was corruption. In the Commission's view, the deviation from the advertisement procedure only with a view to accommodating a few who were not even eligible to apply by itself also amounts to denial of such opportunity to others similarly placed. Such denial by itself amounts to violation of Article 16 of the Constitution of India. Now a question gets raised. Why was the violation made? The impression which has been given by the respondents is that the District Welfare Office advised on the spot that as per the ORV Act, the two posts reserved for the SC (Male) category should be distributed equally in the men and women category. But it has not been explained as to how the applications from the S.C (Women) category were considered to begin with and were not rejected on the ground of in-eligibility. It is also not explained why they were asked to come with their certificates for verification. It has further not been explained why they were called for the interview. Therefore, the contention that a last minutes decision was

made to change the procedure does not get support from facts. The irregularity prima facie had commenced much before; and, in fact, soon after the advertisement had been issued. This in itself lends credence to the suspicion of the appellant that there was favouritism. The Commission is persuaded to believe that if only the correct procedure had been followed, other similarly placed candidates would have got a chance which they did not. Alternatively, if the advertisement had been issued afresh and the examination had been conducted again, perhaps others including the appellant's wife would have got a chance. Therefore, what emerges is a mixture of denial of rights as well as indication of malpractice.

7. In the light of the above, the Commission holds that the information sought by the appellant falls within the purview of the first proviso to Section 24(4) of the RTI Act, 2005.

7.1 Having decided thus, the Commission nonetheless also holds that even where a case comes out of the exemption provided in Section 24, the information sought by the appellant would still have to be subjected to the exemptions provided in Section 8 of the Act. It is, therefore, directed that information such as marital status, personal identification mark, physical standards and addresses of the candidates, if contained in the required documents, shall be protected and shall not be furnished.

7.2 The PIO is accordingly directed to send the information to the appellant, except as referred in sub-para 9.1, within seven days from the receipt of this order under intimation to the Commission.

8. With the above observations and directions, the case is hereby closed and the subject second appeal stands disposed of.

Pronounced in open proceedings

Given under the hand and seal of the Commission this day, the 22nd June, 2020.

State Chief Information Commissioner

22.06.2020