

**Deepak Kumar Das Vs. State of Orissa and Others**

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**SooperKanoon Citation :** [sooperkanoon.com/1084456](http://sooperkanoon.com/1084456)

**Court :** Orissa

**Decided On :** Sep-20-2012

**Appellant :** Deepak Kumar Das

**Respondent :** State of Orissa and Others

**Judgement :**

HIGH COURT OF ORISSA: CUTTACK W.P.(C) Nos.1331, 1332 and 1334 of 2012  
In the matter of an application under Articles 226 and 227 of the Constitution of India.

-----W.P.(C) No.1331 of 2012 Biswajit Mohapatra .

Petitioner Versus State of Orissa and others .

For Petitioner Opposite parties -- M/s.A.K.Mishra, Jaydev Sengupta,  
D.K.Nanda,G.Sinha, A.Mishra & P.P.B.Behera.

For Opp.

Parties -W.P.(C) No.1332 of 2012 Adikanta Bhatta Mr.Bishnu Prasad Pradhan  
Addl.

Government Advocate .

Petitioner Versus State of Orissa and others .

For Petitioner -- M/s.A.K.Mishra, Jaydev Sengupta, D.K.Nanda, G.Sinha, A.Mishra & P.P.B.Behera.

For Opp.

Parties -W.P.(C ) No.1334 of 2012 Deepak Kumar Das Opposite parties Mr.Bishnu Prasad Pradhan Addl.

Government Advocate Petitioner Versus State of Orissa and others For Petitioner Opposite parties -- M/s.A.K.Mishra, Jaydev Sengupta, D.K.Nanda, G.

Sinha, A.Mishra & P.P.B.Behera.

For Opp.

Parties -- Mr.Bishnu Prasad Pradhan Addl.

Government Advocate 2 PRESENT: THE HONOURABLE SHRI JUSTICE L.

MOHAPATRA AND THE HONOURABLE SHRI JUSTICE C.R.DASH Date of hearing 11.09.2012 : Date of judgment:

20. 09.2012 L.

**Mohapatra, J.**

The prayer and issues involve in all the three writ applications being same, we heard the matters together and dispose of in this common judgment.

An advertisement was issued by the Additional Secretary to Government, Department of Water Resources, Government of Orissa published in daily Samaj dated 2.11.2011 inviting applications for appointment to the post of Director, WALMI (Water and Land Management Institute).The petitioners in all the three writ applications had submitted their respective applications for appointment to the said post.

They also went through the selection process and having not qualified, filed these writ applications seeking for quashing the advertisement and also for a direction to issue a fresh advertisement for appointment to the post of Director, WALMI by specifying the requisite qualification, experience and remuneration at par with Institutes of National/State importance or for consideration of their cases for appointment to the post of Director/Joint Director/Professor/ Associate Professor/Deputy Director taking into account their qualifications, teaching and relevant research experiences etc.2.

Shri A.K.Mishra, learned Senior Counsel appearing for the petitioners in all the three writ applications challenged the advertisement, 3 selection procedure and also selection of a candidate for appointment to the post of Director, WALMI on the ground that WALMI is a Society registered under the Societies Registration Act, 1860.

The Memorandum of Association provides that there shall be a Governing Council, which will consist of official members as set out therein.

Under Clause-36 of the Memorandum of Association, the business and affairs of the society shall be carried on and managed by the Governing Council and one of the powers and duties of the Governing Council is to sanction appoint officers posts and and employees in its office or officers and fields and regulate the terms and conditions of their service.

Referring to Clause-40 of the Memorandum of Association, it was further contended by the learned Senior Counsel appearing for the petitioners that it is the Governing Council, who shall appoint a person possessing the prescribed qualifications to be the Director of the Society.

Referring to the above provision contained in the Memorandum of Association, Shri Mishra, learned Senior Counsel appearing for the petitioners challenged the advertisement on the ground that the same has been issued by the Additional Secretary to Government, Department of Water Resources, Government of Orissa, and the Selection Committee has been constituted by the said Water Resources Department and the selection has also been made by the Water

Resources Department.

According to Shri Mishra, learned Senior counsel appearing for the petitioners. the advertisement, constitution of the Selection Committee and selection of a candidate for the post of Director done by the Water Resources Department are in contravention of the Memorandum of Association and right to appoint the Director, WALMI only vests with the Governing Council and the Department of Water Resources had no authority to do so.

Learned counsel for the State submitted that the petitioners having submitted their applications in response to the advertisement, appeared in the selection test and being unsuccessful, not have come up challenging the advertisement, constitution of the Selection Committee and selection of candidate made by the said Selection Committee.

Learned counsel for the State referred to some decisions of the Honble Supreme Court in this regard, which we will deal with later on.

It was further contended by the learned counsel for the State that the Governing Council by Resolution dated 17.3.2007 had authorised the Department of Water Resources to conduct the test and select a candidate for the post of Director, WALMI and, therefore, the Governing Council of WALMI had divested its power to appoint the Director of WALMI in favour of the Water Resources Department.

3. Undisputedly, the Resolution dated 17.3.2007 passed by the Governing Council, WALMI, the power for selection and appointment of Director for WALMI was given to the Water Resources Department.

Resolution of the Governing Council dated 17.3.2007 is not disputed.

Therefore, the authority of the Department in issuing the advertisement in Annexure-1 to all the writ applications inviting applications for selection of a candidate for appointment to the post of Director, WALMI cannot be questioned.

5 From the record, we find that the Selection Committee had been constituted by the Department of Water Resources to conduct the selection test and the

Selection Committee consisted of Agriculture Production Commissioner, Odisha, Principal Secretary to Government, Department of Water Resources, Principal Scientist and in-charge Director, Water Technology Centre for Eastern Region, Bhubaneswar and Prof.

Bipin Bihari Das, representative of Director of Xavier Institute of Management Bhubaneswar.

The Committee met on 27.6.2012 and thirteen candidates were interviewed separately and three were selected in order of merit for appointment to the said post.

The petitioners undisputedly participated in the said selection test and were not selected by the Selection Committee for appointment to the said post.

not the question arises as to whether the petitioners can maintain the writ applications challenging constitution of the said Selection Committee and the process of selection, having taken a chance by appearing before the Selection Committee or not.

In the case of Dr.G.Sarana VRs.University of Lucknot and others reported in (1976) 3 Supreme Court Cases 585 , the applicant voluntary appeared before the Selection Committee and took a chance of having a favourable recommendation from it and accordingly having done so, it was no more open for him to turn round and question the constitution of the Selection Committee.

Failure to take the identical plea at the earlier stage of proceedings created an effective bar of waiver against him.

It was contended by Shri Mishra, learned Senior Counsel appearing for the petitioners that constitution of the Selection Committee whether proper or not can only be questioned when a candidate appears before the Selection 6 Committee and looks at its constitution.

There is no scope to challenge constitution of a Selection Committee before appearing in an interview conducted by such Selection Committee.

Answer to this question is also available in the above reported judgment.

In the said reported decision, the Court also held that even at the time of interview the applicant therein did not raise his little finger against constitution of the Selection Committee.

Therefore, if any one of the petitioners had any doubt or objection in relation to constitution of the Selection Committee, he could have questioned the same at the time of interview also.

Similar views have been expressed by the Honble Apex Court in the case of Union of India and others VRs.S.Vinodh Kumar and others reported in (2007) 8 Supreme Court Cases 100, Vijendra Kumar Verma VRs.Public Service Commission, Uttarakhand and others reported in (2011) 1 Supreme Court Cases 150 as well as Om Prakash Shukla VRs.Akhilesh Kumar and others reported in 1986 (Supp.) Supreme Court Cases 285.

4. As stated earlier, on verification of the record produced by the learned counsel for the State, we did not find any irregularity in constitution of the Selection Committee and, on the other hand, the Selection Committee constituted consists of very senior officers and profess ORS.The petitioners having not objected to constitution of the Selection Committee either before the interview or even at the time of interview and having taken a chance, it is no more open for them to turn round and challenge constitution of the Selection Committee.

5.

For the reasons stated above, we find no merit in any one of the writ applications and, accordingly, dismiss the same.

..L.Mohapatra, J.C.R.

**Dash, J.**

I agree.

. C.R.Dash, J.

Orissa High Court, Cuttack.

The 20th September, 2012/C.R.Biswal.

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