

**IN THE HIGH COURT OF ANDHRA PRADESH : AMARAVATI**

**HON'BLE MR. JUSTICE ARUP KUMAR GOSWAMI, CHIEF JUSTICE**

**&**

**HON'BLE MR. JUSTICE NINALA JAYASURYA**

**WRIT PETITION Nos.7965 of 2019 and 24371 of 2020**

*(Taken up through video conferencing)*

**W.P.No.7965 of 2019**

K. Shravan Raju S/o. K. Ramanjaneyulu,  
Aged about 26 Yrs, Occ: Advocate,  
R/o: D.No.76-54, Sivaiah Nagar, SAP Camp,  
Kalluru SAP Gate, Kurnool, Andhra Pradesh.

.. Petitioner

Versus

The State of Andhra Pradesh,  
Rep. by its Principal Secretary,  
Law Department, Secretariat,  
Velagapudi, A.P. and another.

.. Respondents

Counsel for the petitioner : Mr. Y. Balaji  
Counsel for respondent No.1 : GP for Law & Legislative Affairs  
Counsel for respondent No.2 : Mr. P.S.P. Suresh Kumar,  
Standing Counsel for High Court

**W.P.No.24371 of 2020**

Shaik Nishad Naaz D/o. Shaik Jaffer,  
Aged about 32 years, Occ: Advocate,  
R/o: H.No.12-1081, Rahamat Nagar,  
Chilakaluripeta, Guntur,  
Andhra Pradesh – 522 616.

.. Petitioner

Versus

The State of Andhra Pradesh,  
Rep. by its Principal Secretary,  
Law Department, Secretariat,  
Velagapudi, A.P. and another.

.. Respondents

Counsel for the petitioner : Mr. Y. Balaji  
Counsel for respondent No.1 : GP for Law & Legislative Affairs  
Counsel for respondent No.2 : Mr. P.S.P. Suresh Kumar,  
Standing Counsel for High Court  
Dates of hearing : 01.09.2021 & 03.09.2021  
Date of judgment : 23.09.2021

### **COMMON JUDGMENT**

*(per Arup Kumar Goswami, CJ)*

Heard Mr. Y. Balaji, learned counsel for the petitioners. Also heard Mr. P.S.P. Suresh Kumar, learned standing counsel for High Court, appearing for respondent No.2.

2. The petitioner in W.P.No.7965 of 2019, by name K. Shravan Raju, is a practicing Advocate belonging to Yadava (Golla) Community, which comes under Category BC-D in reservation classification in the State of Andhra Pradesh. The Registrar (Recruitment), High Court of Andhra Pradesh, had issued a Notification, vide Notification No.5/2019-RC dated 17.06.2019, for filling up 38 posts of Civil Judge (Junior Division) in Andhra Pradesh State Judicial Service, out of which 31 posts are to be filled up under Direct Recruitment and 7 posts are to be filled up under Recruitment by Transfer. The Notification stated that the recruitment process shall be governed by Andhra Pradesh State Judicial Service Rules, 2007 (for short, 'Rules of 2007').

3. The petitioner in W.P.No.7965 of 2019 has assailed Rule 6(f) of the Rules of 2007 as arbitrary and ultra vires to the provisions of the Constitution and has also challenged Clause VIII of the aforesaid Notification dated 17.06.2019, which stipulates that OC/BC category

candidates must secure at least 60% marks in aggregate in written examination and viva voce while SC/ST category candidates must secure at least 50% marks in aggregate in written examination and viva voce to become eligible for selection.

4. The petitioner in W.P.No.24371 of 2020, by name Shaik Nishad Naaz, is also an Advocate and she professes Muslim religion. She comes under BC-E (Shaik – BC-E) category as per the reservation classification in the State of Andhra Pradesh. When the Notification dated 17.06.2019 was issued, she was not eligible to apply as she had not put in three years of practice as an Advocate as on 01.06.2019 as stipulated in Clause III(a) of the Notification meant for the candidates under Direct Recruitment. She had filed a writ petition, being W.P.No.9166 of 2019, and an interim order was passed directing the authorities to accept the application of the petitioner if it was otherwise found to be in order and to permit her to sit for the examination, if she was eligible and fulfilled all other requirements. On the strength of the said interim order, she had appeared in the preliminary examination with Hall Ticket No.1255 and having passed the said preliminary examination, she had qualified for the written examination. She had also qualified for the oral interview/viva voce along with four other candidates with Hall Ticket Nos.1184, 1263, 1274 and 1284.

5. After the interview process was over, results were declared on 23.11.2020. While only one candidate was declared selected, the result of three candidates was withheld because they had not completed three years of practice, providing that their result would be declared subject to the outcome of W.P.Nos.9140 and 9166 of 2019 or other connected writ

petitions, if any. The name of the writ petitioner in W.P.No.24371 of 2020 did not appear in the final select list and it was informed to her orally that she had not achieved 60% aggregate marks as per Clause VIII of the Notification. It is at that stage, she had filed W.P.No.24371 of 2020 challenging the validity of Rule 6(f) of the Rules of 2007 and Clause VIII of the Notification dated 17.06.2019 and seeking a direction to respondent No.2- Registrar (Recruitment) to select her for the post of Civil Judge (Junior Division) without reference to the stipulation of 60% aggregate marks in written examination and viva voce. It is pleaded that out of 31 posts to be filled up under Direct Recruitment, one post is meant for BC-E (Women) category and the petitioner in W.P.No.24371 of 2020 is the only candidate from the said category to have been selected for viva voce.

6. Mr. Y. Balaji, learned counsel for the petitioner in both the cases, submits that while candidates belonging to BC category who secure not less than 50% marks in each paper and not less than 55% of marks in aggregate in written examination are made eligible for viva voce, such concession is not provided at the time of final selection and therefore, the concession allowed at the stage of written examination becomes illusory as BC category candidates would become eligible for selection only if they secure at least 60% marks in aggregate in written examination and viva voce. However, in respect of SC/ST category candidates, concession has been maintained at two stages, by providing that they shall secure 50% marks in aggregate in the written examination to become eligible for viva voce and 50% marks in aggregate in written examination and viva voce to become eligible for selection. It is submitted that such a stipulation of

60% marks in aggregate in written examination and viva voce for BC category candidates nullifies the very purpose for which concession was granted fixing a lower eligibility prescription of aggregate of 55% marks in the written examination to take part in the viva voce. It is submitted that Rule 6(f) of the Rules of 2007 to the extent it is under challenge is wholly arbitrary, discriminatory and has got no rational basis to the object sought to be achieved and rather, it is contrary to the object of providing reservation to the BC category candidates. It is submitted by him that in the written examination, the petitioner in W.P.No.24371 of 2020 had secured 167.5 marks, i.e., 55.83% marks in aggregate, and in viva voce, she got 30 marks out of 50 marks and she had obtained overall aggregate of 56.42% of marks in the written examination and viva voce. Learned counsel has relied on a judgment of the Hon'ble Supreme Court in the case of ***Dr. (Major) Meeta Sahai v. State of Bihar***, reported in ***2019 SCC OnLine SC 1632***, to contend that there is no bar to challenge the provision of Rule 6(f) after participating in the selection process and failing to succeed therein and that the petitioner can successfully maintain such a challenge and obtain relief. He further submits that the petitioner in W.P.No.7965 of 2019 had not appeared in the selection process and, therefore, even if the challenge to the Rule 6(f) of the Rules of 2007 and Clause VIII of the Notification succeeds, he may not be entitled to any consequential benefit.

7. Mr. P.S.P. Suresh Kumar, learned standing counsel for High Court, abiding by the stand taken in the counter-affidavit, has submitted that the petitioner in W.P.No.24371 of 2020, having participated in the selection process, cannot challenge the amendment of Rules at the fag end of the

selection process and as such, the writ petition filed by her is not maintainable. It is submitted that the impugned Rule cannot be treated as arbitrary and the contention advanced to the contrary is not sustainable in law. He has also relied on paragraph 16 of ***Manish Kumar Shahi v. State of Bihar and others***, reported in ***(2010) 12 SCC 576***, and paragraphs 18 and 24 of ***Ramesh Chandra Shah and others v. Anil Joshi and others***, reported in ***(2013) 11 SCC 309***. It is further submitted by him that in view of the judgment dated 04.03.2021 of the Division Bench of this Court in W.P.No.7934 of 2019 and batch, fresh Notification for 68 posts of Civil Judge (Junior Division) was issued on 20.07.2021 and in view of the pendency of W.P.No.24371 of 2020, one post of Civil Judge (Junior Division) in the category of BC-E is kept reserved till final outcome of the writ petition.

8. We have considered the submissions of the learned counsel for the parties and have perused the materials on record.

9. Before proceeding further, it will be relevant to note that a batch of writ petitions, being W.P.No.7934 of 2019 and batch, were filed before this Court, wherein challenge was mounted to Rule 5(2)(a)(i) of the Rules of 2007, which stipulates that a person to be appointed to the category of Civil Judges shall be one who has been practicing for not less than 3 years as an Advocate as on the date of publication of the advertisement in the newspapers. The writ petitions were divided into two categories, one arising out of the Notification dated 17.06.2019 and the other arising out of the Notification dated 03.12.2020. This Court disposed of the said batch of writ petitions, by a common judgment and order dated 04.03.2021. While holding Rule 5(2)(a)(i) of the Rules to be

unconstitutional, so far as the writ petitions arising out of the Notification dated 17.06.2019, which were referred to as 'first batch', are concerned, this Court, at paragraph 29 of the judgment, held as under:

"29. So far as the first batch of writ petitions is concerned, as is already noticed, those who had approached this Court were permitted by way of interim order to take part in the recruitment process. As such, there is no necessity to set aside the Notification dated 17.06.2019. As the challenge regarding unconstitutionality of the Rule has been upheld, the Registry will take steps in respect of the three writ petitioners whose results were not declared. Depending on the result, further steps, as may be called for, shall be taken by the Registry. Following the interim order dated 12.07.2019, we also make it clear that the three candidates cannot claim any equities, such as, seniority, etc."

10. In exercise of the powers conferred by Articles 233, 234, 235, 237 read with the proviso to Article 309 and proviso to Clause (3) of Article 320 of the Constitution of India, amendments were made to the Rules of 2007 issued under G.O.Ms.No.119, Law (LA&J-SC.F) Department, dated 02.08.2008, vide G.O.Ms.No.29, Law (LA&J-SC.F) Department, dated 28.07.2017. By the aforesaid amendment, Rule 6 was substituted. Rule 6, as substituted, provides for recruitment, methodology for conducting examination, selection process, fee, etc. In the context of the case, it will be relevant to reproduce hereinbelow Rule 6(e) and (f) of the Rules of 2007, for better appreciation:

**"6. ...**

**(e).** (i) The High Court shall hold written examinations consisting of three papers i.e. (I) Civil Law, (II) Criminal Law and (III) English (Translation and Essay Writing) carrying 100 marks each, having a duration of 3 hours each respectively, for the post of Civil Judge and for the post of District Judge.

(ii) The medium of examination for writing the examination is English.

(iii) The syllabus for the screening test and written examination for Civil Judge/ District Judge recruitment is as detailed in Schedules C and D appended to the rules.

**(f).** The candidates applying for being appointed under Direct Recruitment who secures not less than 55% of marks in each paper and not less than 60% of marks in aggregate in the written examination shall be eligible for viva voce carrying 50 marks.

Provided that the candidates belonging to Backward Class category who secure not less than 50% marks in each paper and not less than 55% of marks in aggregate in the written examination shall be eligible for the viva voce.

Provided further that the Scheduled Castes and Scheduled Tribes Candidates who secure not less than 45% marks in each paper and not less than 50% of marks in aggregate in the written examination shall be eligible for the viva voce.

Provided also that, the High Court shall call the candidates for viva voce for the post of Civil Judge / District Judge in the ratio of 1:3 of the available vacancies to the successful candidates.

Provided also that if there are more than one candidate who have secured identical cut off marks, for maintaining the ratio of 1:3, all such candidates shall be called upon to appear for Viva Voce.

Provided also that only such candidates who secure at least 60% marks in aggregate in written examination and viva voce and above in respect of OC/BC category and 50% marks in aggregate in written examination and viva voce and above in SC/ST category shall be eligible for selection."

11. It will also be appropriate to reproduce Clause VI(a) of the Notification dated 17.06.2019 providing for minimum marks to be secured in the written examination to qualify for viva voce by the candidates under Direct Recruitment, which reads as under:

**"VI. Minimum Marks to be secured in the Written Examination to qualify for Viva-Voce:**

**a) Under Direct Recruitment:**

The candidates applying under Direct Recruitment who belong to OC category must secure not less than 55% of marks in each paper and not less than 60% of marks in aggregate in the written examination to become eligible for Viva-Voce.

The candidates belonging to Backward Class category under Direct Recruitment must secure not less than 50% marks in each paper and not less than 55% of marks in aggregate in the written examination for calling for Viva-Voce.

The candidates belonging to Scheduled Castes and Scheduled Tribes categories must secure not less than 45% marks in each paper and not less than 50% of marks in aggregate in the written examination for calling for Viva-Voce.”

12. Clause VIII of the Notification provides for minimum aggregate marks to be secured in the written examination and viva voce for selection to the post of the Civil Judge (Junior Division) and the relevant portion thereof reads as under:

“For selection to the posts of Civil Judge (Junior Division) under Direct Recruitment and Recruitment by Transfer, the OC/BC category candidates must secure at least 60% marks in aggregate in Written Examination and Viva-Voce and SC/ST category candidates must secure at least 50% marks in aggregate in written examination and Viva-Voce. (Candidates who secure less than the said percentage will become ineligible for selection to the post).”

13. The written examination contains three papers on three subjects, carrying 100 marks each, and viva voce is for 50 marks. Thus, the total marks of the selection process is 350. For better appreciation, the

minimum marks a candidate has to obtain in viva voce if he obtains minimum aggregate marks in written examination making him eligible for viva voce, and minimum aggregate marks in written examination and viva voce to make him eligible for selection in terms of Rule 6(f) of the Rules of 2007 are indicated in a tabular form in respect of three categories, i.e., OC, BC and SC/ST categories:

<b>Category</b>	<b>Minimum Marks to be obtained in Main Examination (out of 300 Marks)</b>	<b>Aggregate Marks In written examination and viva voce</b>	<b>Minimum Marks to be obtained in Vivo Voce (out of 50 Marks)</b>
<b>OC</b>	180 Marks (60%)	210 Marks (60%)	30 Marks
<b>BC</b>	165 Marks (55%)	210 Marks (60%)	45 Marks
<b>SC/ST</b>	150 Marks (50%)	175 Marks (50%)	25 Marks

14. The table above goes to show that OC category candidates and BC category candidates have to secure total 210 marks in the written examination and viva voce to become eligible for selection. To become eligible for viva voce, OC category candidate has to secure 180 marks (60% of marks in aggregate) in the written examination, whereas a BC category candidate has to secure 165 marks (55% of marks in aggregate). However, by reason of prescription of 60% aggregate marks, i.e., 210 marks, in written examination and viva voce to become eligible for selection for BC category candidates on par with OC category

candidates, a BC category candidate has to obtain 45 marks out of 50 marks in viva voce, while a OC category candidate has to secure 30 marks out of 50 marks. So far as SC/ST category candidates are concerned, aggregate in the written examination as well as overall aggregate in the written examination and viva voce have been maintained at 50% each.

15. There is no reasonable basis as to why the bench mark is increased for BC category candidates at the stage of consideration for selection by prescribing minimum aggregate marks in the written examination and viva voce on par with OC category candidates, while the bench mark to be achieved by them in the written examination to become eligible for viva voce was fixed lower than OC category candidates. The table above demonstrates how disadvantageous a BC category candidate would stand *qua* the candidates in OC category and SC/ST category who qualify for the viva voce after obtaining prescribed minimum marks in the written examination in that while a general category candidate would have to obtain 30 marks and a SC/ST category candidate would have to obtain 25 marks out of 50 marks in the viva voce, to achieve the 60% of aggregate marks in written examination and viva voce, a candidate of BC category has to obtain 45 marks out of 50 marks in the viva voce. Fixation of minimum aggregate marks of 60% to be obtained by BC category candidates in the written examination and viva voce, while making them eligible to appear in the viva voce provided they get not less than 50% marks in each paper and not less than 55% marks in aggregate in the written examination, is clearly discriminatory and arbitrary and the same does not achieve the purpose for which

concession was made available to them at the level of written examination.

16. Bearing in mind the scheme in respect of OC category and SC/ST category candidates and to maintain the parity, what would have been reasonable is to prescribe minimum of 55% marks in aggregate in written examination and viva voce to the candidates belonging to BC category. On the anvil and touchstone of the prescription of the marks as contemplated in the impugned Rule 6(f) of the Rules of 2007, prescribing minimum of 60% marks in written examination and viva voce is blatantly discriminatory, so far as BC category candidates are concerned.

17. Accordingly, proviso to Rule 6(f) of the Rules of 2007 prescribing that to be eligible for selection, a BC category candidate must secure at least 60% marks in aggregate in written examination and viva voce is held to be arbitrary, unreasonable and ultra vires and the same is, accordingly, struck down. Consequently, Clause VIII of the Notification dated 17.06.2019 to the extent it contains corresponding stipulation in so far as it relates to BC category candidates, is set aside.

18. Mr. P.S.P. Suresh Kumar had submitted that even if the impugned Rule is held to be ultra vires, then also the petitioner in W.P.No.24371 of 2020 will not be entitled to get any benefit although one post of BC-E (Women) category is kept reserved due to pendency of the present writ petition filed by her. So far as the petitioner in W.P.No.7965 of 2019 is concerned, the issue does not arise for consideration as he had not participated in the selection process.

19. The decision in ***Manish Kumar Shahi*** (supra), upon which Mr. P.S.P. Suresh Kumar places reliance, was considered by the Hon'ble Supreme Court in ***Dr. (Major) Meeta Sahai*** (supra) and at paragraphs 17 and 18 of the judgment, it is observed as follows:

“17. It is well settled that the principle of estoppel prevents a candidate from challenging the selection process after having failed in it as iterated by this Court in a plethora of judgements including *Manish Kumar Shahi v. State of Bihar*, observing as follows:

“16. We also agree with the High Court that after having taken part in the process of selection knowing fully well that more than 19% marks have been earmarked for viva voce test, the appellant is not entitled to challenge the criteria or process of selection. Surely, if the appellant's name had appeared in the merit list, he would not have even dreamed of challenging the selection. The appellant invoked jurisdiction of the High Court under Article 226 of the Constitution of India only after he found that his name does not figure in the merit list prepared by the Commission. This conduct of the appellant clearly disentitles him from questioning the selection and the High Court did not commit any error by refusing to entertain the writ petition.”

The underlying objective of this principle is to prevent candidates from trying another shot at consideration, and to avoid an impasse wherein every disgruntled candidate, having failed the selection, challenges it in the hope of getting a second chance.

18. However, we must differentiate from this principle insofar as the candidate by agreeing to participate in the selection process only accepts the prescribed procedure and not the illegality in it. In a situation where a candidate alleges misconstruction of statutory rules and discriminating consequences arising therefrom, the same cannot be condoned merely because a candidate has partaken in it. The constitutional scheme is sacrosanct and its violation in any manner is impermissible. In fact, a candidate may not have locus to assail the incurable illegality or derogation of the provisions of the Constitution, unless he/she participates in the selection process.”

20. In ***Ramesh Chandra Shah*** (supra), it is observed that a person who consciously takes part in the selection process cannot, thereafter, turn around and question the method of selection and its outcome.

21. The petitioner in W.P.No.24371 of 2020 had successfully maintained her challenge to the requirements of the impugned Notification in the earlier round of litigation in respect of the same selection process and by virtue of the interim order passed in the earlier writ petition filed by her, had taken part in the selection process. It is true that she had challenged Rule 6(f) of the Rules of 2007 and Clause VIII of the Notification dated 17.06.2019 only after final selection list was published. However, it is also to be remembered that Rule 6(f) of the Rules of 2007 on the very same issue was already under challenge in W.P.No.7965 of 2019 filed by K. Shravan Raju.

22. Though question has not arisen so far as the petitioner in W.P.No.7965 of 2019 is concerned, let us hypothetically assume that he had appeared in the examination and successfully reached the stage of viva voce and finally did not get selected on the ground that he did not secure 60% marks in aggregate in written examination and viva voce. He had mounted the challenge at the threshold. If his challenge is upheld and the provision is struck down, there would have been no stipulation so far as BC category candidates are concerned with regard to securing of minimum marks in written examination and viva voce and he would have been entitled to be appointed. We have already expressed an opinion that it would have been reasonable to prescribe 55% marks in aggregate in written examination and viva voce to the candidates belonging to BC category. The petitioner in W.P.No.24371 of 2020 had obtained 56.42% aggregate marks in written examination and viva voce as could be seen from page 444 of the material papers filed along with the Memo dated 02.09.2021 in W.P.No.24371 of 2020.

23. Having struck down the relevant proviso to Rule 6(f) of the Rules of 2007 and the corresponding portion in Clause VIII of the Notification dated 17.06.2019, as indicated hereinabove, in the peculiar facts and circumstances, we are of the considered opinion that it will be wholly inequitable to deny selection to the petitioner in W.P.No.24371 of 2020 as she had obtained more than 55% marks in aggregate in written examination and viva voce and, more particularly, in view of the fact that a post in BC-E (Women) category has been kept reserved.

24. Accordingly, we hold that the petitioner in W.P.No.24371 of 2020 is eligible for selection to the post of Civil Judge (Junior Division) pursuant

to the Notification dated 17.06.2019 and, therefore, steps as are required to be taken consequent upon selection, shall be taken by the respondents.

25. The writ petitions are allowed in terms of the observations made hereinabove. No costs. Pending miscellaneous applications, if any, shall stand closed.

**ARUP KUMAR GOSWAMI, CJ**

**NINALA JAYASURYA, J**

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