

In a recent [decision](#), (Ms. Anvita Singh v. Union of India and Another) the Delhi High Court (DHC), has directed the Patent Office to register a candidate as a patent agent who had passed the the written portion but failed in the viva-voce. In particular, the DHC has struck down the rule prescribing minimum 50 per cent marks in the viva-voce part of the patent agent examination. The patent office may now give less weightage to the viva voce examination by prescribing lesser minimum marks, but capped at a maximum of 25%. Hat tip: Sushant Singh, lawyer for the candidate Anvita Singh.

This decision is an extremely welcome one for candidates wishing to appear for the patent agent examination. We had on various occasions discussed about the viva portion of the examination and were of the opinion that the viva was not a true measure of the capability of a candidate.

For example, Shamnad in a previous [post](#) regarding the the legality of the patent agent examination had observed, "I personally think the viva [it] is useless (for want of a more sophisticated term), casts an undue administrative and financial burden on the government (as also on candidates), and is also unconstitutional. In another [post](#), regarding viva, he urged candidates, "[T]o immediately take this to court. Its not an open and shut case, but is an arguable one nonetheless."

In another [post](#), I had done a statistical analysis of the marks of candidates for the 2010 examination, and my observation was that the viva was subjective: "The standard deviation for viva is entirely a different matter for Mumbai, Chennai and Delhi. The standard deviation for viva should also be similar to that of paper-1 and paper-2. Statiscally, this is an anomaly and might reflect the subjectivity of the viva portion of the exam. The case of Kolkata highlights this portion-the stddev for viva and paper-1 and paper-2 is similar. The parameter stddev is even more remarkable when considered for individual cases: it is seen that even though a candidates personal score in viva is the highest, they have failed overall (low marks in paper-1 and paper-2)."

It remains to be seen whether the decision would be applicable to other similarly situated candidates who took the 2011 examination or even previous ones. These candidates (who had failed in viva but passed in papers 1 and 2) may have the option of approaching the patent office to register them as patent agents according to the decision in Anvita's case.

Background: Petitioner Anvita Singh, applied for the January 2011 patent agent examination conducted by our patent office. She secured 61 marks in Paper I, 72 marks in Paper-II, and 40 marks in the viva-voce. Because the patent office rules prescribe a minimum of 50% in each paper and the vice voce, Anvita did not qualify to be registered as a patent agent.

In her writ before the High Court, Anvita challenged the rule, requiring a minimum of 50% in the viva voce because, according to her, the requirement of 50% minimum in viva is too high a prescription and gives arbitrary power to the interview board to fail a candidate even when she has done extraordinarily well in the written examination.

In an extremely lucid and clear decision, Justice A.K. Sikri and Justice Rajiv S. Endlaw ruled in favor of Anvita, striking down the requirement of minimum 50% marks in viva.

The Court after referring to multiple Supreme Court and High Court decisions held, "[I]n the present case neither we can apply the test applicable for admission to an academic course in an

educational institution nor can we apply, *stricto sensu*, the test laid down by the Supreme Court giving less weightage to viva voce examination for appointment to a post/service. The case here is of slightly different nature which does not fall either in the aforesaid category. It is a case of self employment namely a person who gets registration as patent agent has to fend for himself/herself. The registration qualifies such a person to act as patent agent and gives certain rights stipulated in Section 127 of the Act which include entitlement to practice before the Controller as well as to prepare all documents, transact all business and discharge such other functions as may be prescribed under the Patents Act."

Conclusion: "Prescribing minimum 50 per cent marks in the interview may not be appropriate when the rule mandates securing 60 per cent marks in aggregate in all three papers i.e. two written and one viva voce test. This rule is therefore arbitrary and becomes violative of Article 14 of the constitution. To this extent namely prescribing minimum 50 per cent marks in the viva voce is struck down. We, however, leave it to the rule making authority to either give less weightage by prescribing lesser minimum marks which should not be more than 25 per cent."

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