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*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Judgment delivered on 22.05.2012

+ W.P.(C) 2674/2012

KAVITA MEENA & ORS

..... Petitioners

versus

**GOVERNMENT OF NATIONAL CAPITAL TERRITORY OF DELHI
& ORS**

..... Respondents

Advocates who appeared in this case:

For the Petitioner : Mr Kumar Parimal

For the Respondent : Mrs Avnish Ahlawat for SCERT
Mr Mohit Shah for Private Respondents

With

+ W.P.(C) 2706/2012 and W.P.(C) 2746/2012

MEENAKSHI YADAV AND ORS

..... Petitioners

versus

GOVT. OF NCT AND ORS

..... Respondents

Advocates who appeared in this case:

For the Petitioner : Mr Naresh Kaushik
For the Respondent : Mohd Noorullah for Mr Anjum Javed for R-1
Mrs Avnish Ahlawat for SCERT
Mr Mohit Kumar Shah for Private Respondents

AND

+ **W.P.(C) 2841/2012**

MEENAKSHI YADAV AND ORS

..... Petitioners

versus

**GOVT OF NCT THROUGH SECRETARY (EDUCATIOIN) AND
ORS**

..... Respondents

Advocates who appeared in this case:

For the Petitioner : Mr Naresh Kaushik
For the Respondent : Mohd Noorullah for Mr Anjum Javed for R-1
Mrs Avnish Ahlawat for SCERT
Mr Mohit Kr. Shah for Private Respondent

AND

+ **W.P.(C) 2890/2012**

RITIKA DABAS

..... Petitioner

versus

GOVT. OF NCT OF DELHI & ANR

..... Respondents

Advocates who appeared in this case:

For the Petitioner : Mr Mr Pradeep Sehrawat
For the Respondent : Mrs Avnish Ahlawat for SCERT
Mr Mohit Kr. Shah for Private Respondent

AND

+ W.P.(C) 2946/2012

GOVT. OF NCT OF DELHI AND ORS

..... Petitioners

versus

KALP NATH SHASHTRI AND ORS

..... Respondents

Advocates who appeared in this case:

For the Petitioner : Mrs Avnish Ahlawat
For the Respondent : Mr Mohit Kr. Shah for Private Respondent

AND

+ W.P.(C) 2948/2012

GOVT. OF NCT OF DELHI AND ORS

..... Petitioners

versus

SUMAN LATA AND ORS

..... Respondents

Advocates who appeared in this case:

For the Petitioner : Mrs Avnish Ahlawat
For the Respondent : Mr Mohit Kr. Shah for Private Respondent

AND

+ **W.P.(C) 2958/2012**

GOVT. OF NCT OF DELHI AND ORS

..... Petitioners

versus

PRAVEEN KULSHRESHTA AND ORS

..... Respondents

Advocates who appeared in this case:

For the Petitioner : Mrs Avnish Ahlawat and Ms Latika Chaudhary

For the Respondent : None.

AND

+ **W.P.(C) 2970/2012**

SEEMA YADAV

. Petitioner

versus

PRAVIN KULSHRESTHA AND ORS

..... Respondents

Advocates who appeared in this case:

For the Petitioner : Ms Lalita Kohli

For the Respondent : Mrs Avnish Ahlawat with Ms Latika Chaudhary

CORAM:

HON'BLE MR. JUSTICE BADAR DURREZ AHMED

HON'BLE MR. JUSTICE V.K.JAIN

JUDGMENT

BADAR DURREZ AHMED, J. (ORAL)

1. The petitioners, being aggrieved by the common order dated 16.02.2012, passed by the Central Administrative Tribunal, Principal Bench, New Delhi in OAs

No. 3693/2010, 1200/2011 and 2468/2011 have filed these writ petitions. Some of the petitioners are those who have been selected for the post of Senior Lecturer with the State Council of Education Research and Training (SCERT)/District Institute of Education and Training (DIET), pursuant to the selection by the Committee, appointed under the relevant Recruitment Rules of SCERT. In some petitions, the petitioners are the Government of NCT of Delhi as also the SCERT. It is also understood that DIET is a part of SCERT. Consequently, indirectly DIET is also a petitioner in these writ petitions. Some of the respondents are those who were not selected and who had filed the said OAs.

2. The sole question which was there before the Tribunal was with regard to the composition of the Selection Committee which conducted the interviews. According to the applicants in the Original Applications before the Tribunal, the Selection Committee was not composed of the members as per the requirement under the relevant Recruitment Rules and, therefore, the entire selection process was vitiated. As per column 13 of the relevant Recruitment Rules, the composition of the Selection Committee, if the selection was to be done by the DPC/SSB, was as follows:-

- “1) Chairman, SCERT, Executive Committee—Chairman
- 2) Director, SCERT—Member
- 3) Director Education, Dte of Edn.—Member
- 4) Representative of SC/ST to be nominated by Chairman SCERT—Member

5) Two experts to be nominated as Chairman, SCERT—Member”

It is an admitted fact that on the dates when the interviews were held on 08.07.2010 to 28.07.2010, the Chairman, SCERT, who was also the Principal Secretary of Education in the Government of NCT of Delhi, did not attend the said interviews. It is also an admitted position that the Director of Education, Department of Education also did not attend the said interviews. However, in some of the meetings his nominee, being the Additional Director of Education in the Department of Education, was present. The interview meetings were chaired by the Director, SCERT.

3. The plea of the applicants in the Original Applications before the Tribunal was two-fold. First of all, it was submitted that when the composition of the Committee had been provided by the said column 13 in the relevant Recruitment Rules, there could not be any alteration thereof and it was only that Committee and that Committee alone which could be regarded as a duly constituted Selection Committee. As a result of the fact that Chairman, SCERT and the Director of Education, Department of Education were not present when the interviews were held, the Selection Committee cannot be regarded as having been duly constituted and consequently, the entire selection process was vitiated. The second plea taken by the applicants in the Original Applications (some of whom are respondents before us), was that since no quorum has been prescribed under the Rules for the

Selection Committee meeting, it was imperative that all the members of the Selection Committee should have been present. The fact that there were two absentees, the selection process was vitiated.

4. The Tribunal accepted the pleas raised by the applicants in the Original Applications and held as under:-

“19. Considering the totality of facts and circumstances of the case, it is admitted fact that Selection Committee conducted the interview in the absence of its Chairman as well as one member. It is well settled proposition in law that the absence of the Chairman for the entire process and interview from 08th to 28th July, 2010, proper selection would not have taken place. As such, the grounds of prejudice on the basis of improper constitution of the Selection Committee raised by the applicants have justification. Fairness and reasonableness are the guiding principles, besides the equality of treatment and opportunity in the selection process. In the instant case, the selection process in the absence of its Chairman and one Member would not be considered to be fair and reasonable. On this ground, the applicants would succeed and the selection having been vitiated by unfair and unreasonable composition of the Selection Committee, would be liable to be quashed and set aside. We order accordingly. Resultantly, we direct the respondents to constitute the Selection Committee as per the Recruitment Rules for the said Committee to conduct interview of all the short listed candidates including the selected candidates and the applicants for the respective posts they have been found eligible.

20. However, we note that the selected candidates have already joined their respective posts. Once the selection is quashed in the present order, they would lost their job but as they might get selected in the fresh selection

process, they shall not be dislodged/disturbed on the basis of the judgment till the approved result of the fresh selection is complete. The exercise, as ordained above, shall be undertaken and completed within a period of four months from the date of receipt of a certified copy of this order.”

The petitioners are aggrieved by the said decision of the Tribunal and are before us by way of these writ petitions.

5. The learned counsel appearing on behalf of the petitioners contended that once the majority of the members of the Selection Committee were present in the interviews held for selecting candidates, the selection process cannot be said to have been vitiated. It was also contended that as no quorum has been prescribed under the Recruitment Rules, the only requirement was that the majority of the members of the Committee should be present. In the present case, there were actually 4 to 5 members present in each of the interviews held during the period from 08.07.2010 to 28.07.2010. Therefore, the majority of the members of the Selection Committee were present in each and every interview meeting which was held. It was also submitted on behalf of the petitioners that the absence of the Chairman of SCERT did not make any difference inasmuch as the members present could nominate one amongst them to chair the meetings. In the present case, all the meetings were chaired by the Director, SCERT. The learned counsel for the petitioners placed reliance on two decisions of the Supreme Court in the

case of **Ishwar Chandra v. Satyanarain Sinha & Ors** (1972) 3 SSC 383 and **People's Union for Civil Liberties v. Union of India and Anr.** (2005) 5 SCC 363 in support of the aforesaid contention.

6. The learned counsel for the respondents, who were applicants before the Tribunal, reiterated their stand before the Tribunal and supported the decision of the Tribunal. In addition, they referred the decision in the case of **State of Andhra Pradesh & Anr. v. Dr. Mohanjit Singh and Ors.** 1988 (Supp) SCC 562. It was contended that because of the said decision, the absence of a person from the Selection Committee vitiated the selection process.

7. Having heard the learned counsel for the parties, we are of the view that the decision rendered by the Tribunal is not in accordance with law and has to be set aside. The reason is that the two Supreme Court's decisions cited by the learned counsel for the petitioners clearly hold the field and in so far as the decision cited by the learned counsel for the respondents is concerned, that is clearly distinguishable.

8. In **Ishwar Chandra** (*supra*), the case before the Supreme Court was concerning the appointment of the Vice-Chancellor of Saugar University. For the purpose of the appointment of the Vice-Chancellor, a Selection Committee was to be constituted under Section 13(2) of the University of Saugar Act, 1946. The Committee to be constituted was to consist of three persons; two of whom were to

be elected by the Executive Council by single transferable vote from amongst persons not connected with the University or a College and the third was to be nominated by the Chancellor who was also empowered to appoint one of them as Chairman of the Committee. The two persons elected by the Executive Council of the University were Mr G.K. Shinde, a former Chief Justice of a High Court and Justice T.P. Naik of the Madhya Pradesh High Court while the third member, Shri C.B. Agarwal, a former Judge of the Allahabad High Court, was nominated by the Chancellor. Justice Naik was, however, unable to attend the meeting which was slated to be held on 04.04.1970 and in his absence the other two persons, namely, Shri Shinde and Shri Agrawal met as a Committee and submitted a panel of names from which the Chancellor appointed the appellant before the Supreme Court as Vice-Chancellor. The question that arose was whether only two members of the Committee, who were present, could have validly selected the appellant as a Vice-Chancellor. The Supreme Court, after considering the various facts and circumstances of the case, came to the following conclusion:-

“If for one reason or the other one of them could not attend, that does not make the meeting of others illegal. In such circumstances, where there is no rule or regulation or any other provision for fixing the quorum, the presence of the majority of the members would constitute it a valid meeting and matters considered there at cannot be held to be invalid”.

9. The Supreme Court in arriving at this conclusion has placed reliance on the said proposition as stated in Halsbury's Laws of England, Third Edition (Vol. IX, page 48, para 95), which reads as under:-.

“95. Presence of quorum necessary. The acts of a corporation, other than a trading corporation, are those of the major part of the corporators, corporately assembled. In other words, in the absence of special custom or of special provision in the constitution, the major part must be present at the meeting, and of that major part there must be a majority in favour of the act or resolution contemplated. Where, therefore, a corporation consists of thirteen members, there ought to be at least seven present to form a valid meeting, and the act of the majority of these seven or greater number will bind the corporation. In considering whether the requisite number is present, only those members must be included who are competent to take part in the particular business before the meeting. The power of doing a corporate act may, however, be specially delegated to a particular number of members, in which case, in the absence of any other provision, the method of procedure applicable to the body at large will be applied to the select body.

If a corporate act is to be done by a definite body along, or by a definite body coupled with an indefinite body, a majority of the definite body must be present.

Where a corporation is composed of several select bodies, the general rule is that a majority of each select body must be present at a corporate meeting; but this rule will not be applied in the absence of express direction in the constitution, if its application would lead to an absurdity or an impossibility. Thus, where such a select body is composed of four members and two of them happen to vacate their offices at the same time, an

election will be valid although only the remaining two are present at it.”

10. The second decision relied upon by the learned counsel for the petitioner was that of **People’s Union for Civil Liberties** (*supra*). In that case, the appointment of a member of the National Human Rights Commission was in question. Section 4 of the Protection of Human Rights Act, 1993, stipulated that the appointment of Chairperson and other Members of the National Human Rights Commission has to be made, after obtaining recommendations of a Committee comprising:-

The Prime Minister

- The Speaker of the House of People
- The Minister Incharge of the Ministry of Home Affairs in the Government of India
- Leader of Opposition in the House of People
- Leader of Opposition in the Council of States
- Deputy Chairman of the Council of States

It so happened that the selection in the case before the Supreme Court took place by a Committee in which the Leader of Opposition in the House of People was absent. Therefore, the selection was under challenge. The Supreme Court held as under:-

“15. It is nextly argued by the learned counsel for the petitioner that there was no proper consultation amongst the members of the Selection Committee. This is based on the fact that one of the members who was then the leader of the Opposition in the Council of the States did

not respond to the intimation sent to him in regard to the selection of the members since he was in the hospital at that point of time. A perusal of the Act does not show that there is any quorum fixed for the selection nor does it provide for any meeting nor any particular procedure has been provided. Under the Act consultation by circulation is not impermissible. In such a situation, if one out of six did not respond, it would not vitiate the opinion of the other five Members. On the contrary Sub-clause 2 of Section 4 specifically says that no appointment of a Chairperson or a member shall be invalid merely by reason of any vacancy in the Committee. In the instant case the Prime Minister, the Speaker of the House of the People, Minister Incharge of the Ministry of Home Affairs in the Government of India, Leader of Opposition in the House of People and Deputy Chairman of the Council of States having agreed on the appointment of the second respondent, we find no statutory error in the appointment of the second respondent.”

11. It is apparent upon a consideration of the said two decisions of the Supreme Court that when there is no rule or regulation or any other provision fixing a quorum of the meeting, the presence of the majority of the members would in itself constitute a valid meeting and the matters considered in such a meeting cannot be held invalid solely on the ground that all the members were not present. Therefore, the contention of the learned counsel for the respondent that as all the members of the Selection Committee were not present in the interviews held in the present case, the selection process is vitiated, is not tenable. We have seen that at least 4 and sometimes 5 members of the Selection Committee were present in the interview

meetings. The total strength of the Selection Committee was 6 and, therefore, a majority of the members were present in each of the interview meetings held during the relevant period.

12. The main thing to be seen in the present case is whether all the members of the Selection Committee had been given valid notices of the meetings or not. There is no dispute that all the members of the Selection Committee were duly notified of the interview meetings. If some of them could not attend those meetings, the meetings and the result of the meetings cannot be vitiated provided a majority of the members of the Selection Committee were present in each of those meetings. This requirement stands fulfilled in the present case and, therefore, the interview meetings cannot be held to be invalid on account of the fact that some of the members were not present.

13. As regards the aspect of the Chairman not being present, we find that there is no merit in this submission also. The Chairman, SCERT was merely a member of the Selection Committee, though he was to chair the meetings if he was present. Even in the case before the Supreme Court in **People's Union for Civil Liberties** (*supra*), an important Member as such the Leader of the Opposition of the House of People (Lok Sabha) was not present in the meeting, yet the meeting and the selection process was not held to be invalid. In the absence of the Chairperson, SCERT, the meetings were chaired by the Director, SCERT, who was the next

senior-most member in the Committee. There is also no grievance raised by the Chairman, SCERT with regard to this. Even the Director, Education, Department of Education who was not present in the meetings, has not raised any objection to the meetings having been held in his absence. On the contrary, the Chairman SCERT as also Director, Education have approved the selection.

14. We, now, come to the decision cited by the learned counsel for the respondents in the case of **Dr. Mohanjit Singh and Ors.** (*supra*). In that case, we find that there was a Government order dated 21.09.1976 where there was a specific requirement to the following effect:-

“The presence of at least one representative of the University and the representative of the Director of Higher Education in the Selection Committee meeting should be regarded as essential for completing the quorum.”

It is in those circumstances that the Supreme Court came to the conclusion that the absence of such individuals from the Selection Committee meeting meant that the meeting was without a proper quorum. The Supreme Court held that in the absence of a quorum, the Selection Committee cannot function under the scheme envisaged by the Government order dated 21.09.1976. That decision is clearly distinguishable because in the present case, there is no stipulation with regard to quorum. On the contrary, the cases which apply directly are those which have been

relied upon by the learned counsel for the petitioner and which we have discussed above.

15. We may also point out that in the present case, the Committee was also to comprise of a representative of Scheduled Castes/Scheduled Tribes, to be nominated by the Chairman, SCERT, as also of two experts to be nominated by Chairman, SCERT. All such individuals were present in each of the meetings. Therefore, it cannot even be said that there were no experts or representatives of a particular caste or tribe present in the said meeting which could have been regarded as an essential requirement.

16. Considering the foregoing, we are of the view that interview process and the selection is absolutely valid and does not suffer from any infirmity. The impugned order passed by the Tribunal is set aside.

The writ petitions are allowed. There shall be no order as to costs.

BADAR DURREZ AHMED, J

V.K.JAIN, J

MAY 22, 2012
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