

3,4&5.
12.02.2021.
Ct. No. 11.
F.B.

**MAT 580 of 2020
with
IA No. CAN 1 of 2020
with
IA No. CAN 2 of 2020**

The Hooghly-Chinsurah Municipality & Ors.

-Vs.-

**Rajib Roy & Ors.
with
MAT 581 of 2020
with
IA No. CAN 1 of 2020
with
IA No. CAN 2 of 2020**

The Hooghly-Chinsurah Municipality & Ors.

-Vs.-

**Narayan Adhikari & Ors.
with
MAT 673 of 2020
with
IA No: CAN 1 of 2020
with
IA No: CAN 2 of 2020**

The State of West Bengal & Anr.

-Vs.-

Narayan Adhikary & Ors.

Mr. Tapas Kumar Ghosh,

Mr. Tanmay Chowdhury

**... For the Appellants in MAT 580 of 2020
& MAT 581 of 2020 and for the
Respondent Nos. 2 to 5 in MAT 673 of
2020.**

Mr. Sarwar Jahan,

Mr. Firoze Hassan

**.. For the Respondent No. 1 in MAT 580
of 2020.**

Mr. Tapan Kumar Mukherjee,

Mr. Somnath Naskar

.. For the Appellants in MAT 673 of 2020.

Mr. Tapan Kumar Mukherjee,

Ms. Tuli Sinha

.. For the State in MAT 580 of 2020.

**Mr. Tapan Kumar Mukherjee,
Ms. Susmita Chatterjee
.. For the State in MAT 581 of 2020.**

**Mr. Ekramul Bari,
Mr. Syed Mansur Ali,
Ms. Tanuja Basak
.. For the Respondent No. 1 in MAT 581
of 2020 & MAT 673 of 2020.**

Party/Parties is/are represented in the order of their name/names as printed above in the cause title.

This Court must commence this discussion by noticing the saying that when Kings fight, it is the soldiers who get slain.

The facts of this case, as have unfurled before this Court at the hearing, show the Municipal Affairs Department of the State headed by the Hon'ble Minister-in-Charge (MIC) at loggerheads with one of its constituents namely, the Hooghly/Chinsurah Municipality (for short the Municipality). As a result the present private respondents found their permanent posts to be abruptly terminated.

By the previous order of this Court dated 11th of February, 2021, analogous appeals were brought on board for consideration today. In the two appeals, *viz.* MAT 580 of 2020 and MAT 581 of 2020, the Municipality is the appellant. In the third appeal, i.e.

MAT 673 of 2020 the State/(read) the Municipal Affairs Department, is the appellant.

Under challenge in all the three appeals is the order of the Hon'ble Single Bench dated 19th of August, 2020 in two writ petitions filed respectively by the private respondents in MAT 580 of 2020 and MAT 581 of 2020 numbered as W.P. 6379 (W) of 2020 and W.P. 6360 (W) of 2020.

These two writ petitions filed by individual petitioners were dealt with at the *interim* stage by the Hon'ble Single Bench *vide*, the order dated 19th of August, 2020 and, the operative portion of the said orders reads as follows:

“Accordingly, there shall be an interim order directing stay of operation of the impugned letter of termination dated July 06, 2020 being Annexure P/3 to the writ petition until disposal of the writ petition. The petitioner shall be deemed to be in service of Hooghly-Chinshrah Municipality and he will be entitled to receive the salary until disposal of the writ petition.

Let the respondents file their respective affidavit within two weeks from date; if any, be filed within one week thereafter.

Parties may approach the appropriate bench for early hearing of the writ petition”.

Mr. Mukherjee, Learned Additional Government Pleader (AGP), appearing in support of MAT 673 of 2020, submits that such *interim* order could not have been passed in the face of a concurrent adjudication by another Hon’ble Single Bench which did not stay the termination order connected to the employment of 76 persons including the petitioners in W.P. 6379 (W) of 2020 and W.P. 6360 (W) of 2020. Learned AGP submits that procedural irregularities were found in the appointment process initiated by the Municipality for the 76 posts of Mazdoors. Such procedural irregularities were brought to the notice of the Hon’ble MIC of the Municipal Affairs Department by certain candidates. Pursuant to such communication to the Hon’ble MIC, the enquiry was initiated into the recruitment process. Such Enquiry Report has been annexed to the stay application of MAT 673 of 2020.

Learned AGP submits that the Enquiry Report is detailed. In view of the findings in the Enquiry Report the Municipality had been advised by the Director of Local Bodies (DLB) to terminate the services of the 76 persons recruited, including the present private respondents in the appeals.

It is submitted that the Hon'ble Single Bench overstepped its jurisdiction by staying the termination notice inasmuch as the cancellation of the appointments had already taken place.

Arguing on behalf of the Respondents/the Municipality, Mr. Chowdhury, Learned Counsel, submits that there is no procedural irregularity in the recruitment process. The recruitment process was held completely in conformity with the West Bengal Municipal (Employees' Services) Rules, 2010 (for short the 2010 Rules). The Municipality followed all legal procedures connected to such appointments and ultimately in March, 2020 the present private respondents were granted letters of appointment which carried a particular scale of pay. Needless to add, Learned Counsel submits that such appointments relate to two permanent posts.

Mr. Bari, Learned Counsel appearing for the private respondent in MAT 581 of 2020 and Mr. Jahan, Learned Counsel appearing for the private respondent in MAT 580 of 2020, have argued on a similarity of points. Both Learned Counsel submit that the purported procedure to terminate the appointments of their clients was initiated on the basis of an alleged communication by a section of candidates who were unsuccessful in the recruitment process. It is submitted

that the law is trite on the point that unsuccessful candidates once having participated in the selection process cannot turn around and assail the same selection.

It is also submitted that at the highest assuming that the stand of the said appellant is correct, only procedural irregularities have been noticed and no fraud is alleged. It is submitted that in any event, the individual candidates, particularly and including the present private respondents, have not been shown to be inflicted with any culpability connected to the alleged procedural irregularities. It is further submitted that the authority which was directed to conduct the recruitment process, *viz.* the Municipality itself, has supported the stand of the private respondents that the recruitment process was fair and square.

Having heard the parties and considering the materials placed, this Court must first notice that the appeals with their connected applications as well as the arguments of the parties are restricted to the *interim* adjudication by the Hon'ble Single Bench *vide* its order dated 19th of August, 2020.

At the very outset the attention of this Court is drawn to the purported Enquiry Report relied upon by the State Respondents. At page 64 of the said Enquiry

Report purported recommendations have been suggested on behalf of the DLB and the Commissioner, Urban Development Department with copy forwarded to the Municipal Affairs Department. The recommendations, *inter alia*, suggest that the lapses if any, on the part of the Municipality may have arisen out of conducting the recruitment process in haste. The recommendation further suggests that the Municipality may disengage the persons recruited, including the present private respondents. Another recommendation relates to compliance of Section 429(1) of the West Bengal Municipal Act, 1993 (for short the 1993 Act). The resolution, *inter alia*, further suggests that the approval of the appointments granted by the Governor to the recruitment process on the 20th of March, 2020 may be *shelved sine die* till a final decision is arrived at regarding the suspended resolution taken to initiate the recruitment process.

This Court *prima facie* finds the recommendation of the DLB and the Commissioner, Municipal Affairs Department to be purely an exercise in *ad hocism*. Even if legal sanctity for the sake of argument is presumed to be conferred on the recommendations flowing out of the Enquiry Report of the DLB (*supra*), the recommendations in favour of disengagement and *sine die* suspension of an approval

of the Governor to the recruitment process, do not take the colour of a lawful termination.

This Court is of the further considered view that since the issue has now travelled to Court and one of the crucial parties to the recruitment process, *viz.* the Municipality, is not *ad idem* with the Municipal Affairs Department on the perceived procedural irregularities in the recruitment process, the issue therefore requires to be thrashed out in depth before the appropriate Hon'ble Single Bench as directed by the order dated 19th of August, 2020 on affidavits.

Accordingly, at the *interim* stage this Court is again of the careful view that on the grounds on which an injunction can be granted and can be refused in law, the *interim* order of the Hon'ble Single Judge connected to present private respondents do not call for any intervention. The further fact cannot be lost sight of that with the receipt of their respective appointment letters, the private respondents have accrued a substantive right to be heard.

The appeals, being **MAT 580 of 2020, MAT 581 of 2020** and **MAT 673 of 2020** alongwith their respective **CANs 1 of 2020** stand **dismissed**.

CAN 1 of 2020 in connection with **MAT 580 of 2020** and **CAN 1 of 2020** in connection with **MAT 581**

of 2020, being applications for urgent hearing stand **disposed of**.

CAN 1 of 2020 in connection with **MAT 673 of 2020**, which is an application for condonation of delay stands **allowed** since, in view of the cause shown, this Court finds the delay fit to be condoned.

All parties to act in terms of the copy of the order downloaded from the official website of this Court.

Urgent photostat certified copies of this order, if applied for, be given to the parties upon compliance of all necessary formalities.

(Hiranmay Bhattacharyya, J.) (Subrata Talukdar, J.)