

as to whether his application was allowed or not, the petitioner filed the instant writ petition with a prayer for grant of benefit of the Scheme to him.

The University of Calcutta has filed an affidavit in opposition to the writ petition disclosing that the petitioner appeared before the Standing Committee of the University but the Standing Committee did not find the candidature of the petitioner to be acceptable. The performance of the petitioner was duly assessed by the Standing Committee and the same was not found satisfactory. The petitioner did not appear to be a suitable candidate and accordingly the petitioner's application has been rejected.

It has further been mentioned that traditionally, only successful candidates are communicated about the acceptance of their prayer and regarding grant of benefit to them. As the petitioner's case stood rejected, accordingly the same was not intimated to him.

Learned Advocate General appearing on behalf of the University of Calcutta submits that the decision to extend the benefit of the Scheme is an administrative decision. No reasons are required to be recorded if the prayer of an aspiring candidate is either accepted or rejected. There is no statutory provision for recording the reasons for rejection at the time of considering the prayer of an applicant for grant of benefit in terms of the Scheme. The Rules of the University also does not require reasons to be recorded or communicated to the candidate who has applied for obtaining the benefit of the Scheme.

It has been submitted that the petitioner was directed to appear for a hearing. The Standing Committee assessed the performance of the petitioner for the purpose of extending the benefit to him, but according to the Standing Committee the petitioner's performance was not satisfactory and he was not a suitable candidate, as such, the benefit has not been extended to him.

In reply to the submission of the learned Advocate General, the learned advocate for the petitioner has tried to impress upon the Court that had the performance of the petitioner not been satisfactory, the University would not have imposed upon the petitioner additional duty of acting as the Drawing and Disbursing Officer, which the petitioner is performing satisfactorily, without any adverse remark, since 2015. It has further been mentioned that there is no adverse remark in his ACR. The petitioner prays for grant of the benefit of the Scheme to him.

In support of his case the learned advocate for the petitioner has relied upon the following judgments:

- 1) ***Shanti Devi –vs- State of UP & Ors.; (1997) 8 SCC 22*** paragraph 22
- 2) ***T. P. Senkumar, IPS –vs- Union of India & Ors.; (2017) 6 SCC 801*** paragraphs 93 and 94
- 3) ***Bhikhubhai Vithlabhai Patel & Ors. –vs- State of Gujarat & Anr.; (2008) 4 SCC 144*** paragraphs 26 and 29
- 4) ***Bharat Petroleum Corp. Ltd. –vs- Maddula Ratnavalli & Ors.; (2007) 6 SC 81*** paragraphs 13-16

The respondents in their support have relied upon the following decisions:

- 1) ***National Institute of Mental Health and Neuro Sciences –vs- Dr. K. Kalyana Raman & Ors.; 1992 Supp (2) SCC 481*** paragraph 7
- 2) ***K. A. Nagamani –vs- Indian Airlines & Ors.; (2009) 5 SCC 515*** paragraph 46
- 3) ***B. C. Mylarappa @ Dr. Chikkamylarappa –vs- Dr. R. Venkatasubbaiah & Ors.; (2008) 14 SCC 306*** paragraphs 28 and 29

In *Bharat Petroleum (supra)* the Court was of the opinion that the appellant Company is a 'State' within the meaning of Article 12 of the Constitution of India. It was its duty to act fairly and reasonably. Just because it has been conferred with a statutory power, the same by itself would not mean that exercise thereof in any manner whatsoever will meet the requirement of law. The Statute used the words 'if so desired by the Central Government'. Such a desire cannot be based upon a subjective satisfaction. It must be based on objective criteria. The Court held that an executive action must be informed by reason. An unfair or unreasonable executive action would not be sustained. Objective satisfaction must be the basis for an executive action.

According to the respondents the aforesaid decision will not be applicable in the instant case as no executive action is under challenge here. The facts of the case in *Bharat Petroleum (supra)* are completely different from the facts of the case at hand. In the aforesaid case an executive action was under challenge. The executive was supposed to act in accordance with a Statute. There was a statutory provision according to which the executive ought to have acted. As the executive action was contrary to the statutory provision, the Court passed the said order.

In the instant case, the action on the part of the University to allow the petitioner to perform the work of Drawing and Disbursing Officer is an administrative decision. The act of the Selection Committee in selecting candidates suitable for grant of benefit under the Scheme is also an administrative act.

At the time of directing the petitioner to perform the additional work of Drawing and Disbursing Officer the performance of the petitioner as the Accounts Officer was not assessed. Merely because there was a vacancy in the post of Drawing and Disbursing Officer, the petitioner, as an interim arrangement, was directed to perform the work of the Drawing and Disbursing Officer. The same does

not mean that the petitioner was assessed on merits and thereafter was directed to perform the work of the Drawing and Disbursing Officer.

In T. P. Senkumar (supra) the Hon'ble Supreme Court held that the subjective satisfaction of the State Government must be based on some credible material, which the Court might not analyse but can certainly be looked into. The make-believe prima facie satisfaction by itself cannot take out judicial review of administrative action in the garb of subjective satisfaction of the State Government.

According to the respondents the facts of the case in T. P. Senkumar is completely different from the facts of the case at hand and accordingly the aforesaid decision will not come to the aid and assistance of the petitioner in any manner. It has been submitted that the Supreme Court was dealing with a statutory provision where the State Government was mandated to act in a particular manner. In the instant case, there is no statutory provision for recording the satisfaction of a candidate at the time of consideration of his application for grant of benefit in accordance with the Scheme.

In Bhikhubhai (supra) the Court was of the opinion that the decision taken by the State Government without applying its mind to the aspect of necessity or without forming an honest opinion on the subject is void.

According to the respondents, in the said case the Court was examining certain statutory provisions which required the State Government to act in a particular manner. As the State did not act in accordance with the said statutory provision, the Supreme Court interfered in the same. In the present case, there is no statutory provision in support of the petitioner's prayer.

In Santi Devi (supra) the Hon'ble Supreme Court held that the word 'satisfied' means that there must be evidence of application of mind by the authority concerned. There was no finding regarding 'satisfaction' of the Assistant Collector as

required by the rule. The respondents contend that the said decision will not come to the aid of the petitioner as in the instant case there is no rule pursuant to which satisfaction is required to be recorded.

The Supreme Court in Mylarappa (supra) held that in the absence of any rule or regulation requiring the Board to record reasons and in the absence of mala fide attributed against the members of the Board, the selection made by the Board without recording reasons cannot be faulted with. At the time of deciding the aforesaid case the Hon'ble Supreme Court took into consideration the case of National Institute of Mental Health and Neuro Sciences (supra) and was of the opinion that there was no dispute that the selection was made by the assessment of relative merit of rival candidates determined in the course of the interview of the candidates and after thoroughly verifying the experience and service of the respective candidates selected the appellant to the post. The Court ought not to interfere with the selection of the Expert Committee of the University particularly when the selection is not challenged on the ground of mala fide.

In National Institute of Mental Health and Neuro Sciences (supra) the Supreme Court was of the opinion that the function of the Selection Committee is neither judicial nor adjudicatory. It is purely administrative. In the absence of any legal requirement to record reasons the selection made without recording the reasons cannot be found fault with. Administrative authority is under no legal obligation to record reasons in support of its decision. Even the principles of natural justice do not require an administrative authority or a Selection Committee or an examiner to record reasons for the selection or non-selection of a person in the absence of statutory requirement.

In Nagamani (supra) the Supreme Court was of the opinion that the Court cannot sit in appeal over the assessment made by the Selection Board and substitute its own opinion for that of the Board.

In the instant case, the candidature of the petitioner was duly considered by the Selection Committee which was constituted for the said purpose. The Selection Committee considered the relative merit of the prospective candidates and came to an opinion that the petitioner is not suitable for being extended the said benefit. The petitioner has not alleged mala fide on the part of the Selection Committee. The petitioner has however alleged that there has been discriminatory action on the part of the respondents without assigning any reasons. The petitioner has alleged that though he possessed the required eligibility criteria to avail the benefit of the Scheme, but the same has not been allowed in his case.

In the opinion of the Court, the Selection Committee considered the candidature of all the candidates who possessed requisite criteria for being extended the benefit in accordance with the Scheme. The fact that the Committee found a candidate suitable and the other unsuitable does not imply that the action on the part of the Selection Committee was discriminatory. For the purpose of grant of benefit the Committee was required to assess the relative merit of the candidates, which the Committee has done. According to the Committee, the petitioner was not a suitable candidate to be extended the said benefit. When a Committee is constituted to screen candidates, then the Committee naturally possesses the authority to select the best candidate(s). If the Committee, in the absence of any prescribed provision of law, is required to record the reasons for either selecting or not selecting a candidate, then the same will be an additional burden on the Committee. Moreover, the Committee cannot be mandated to perform any duty not prescribed in law. An aspiring candidate has to repose full faith upon the Committee or the body conducting the selection, or else the Committee cannot function. Certainly, nobody likes to be rejected, but at the same time it has to be accepted that a better candidate has been selected.

In any Office / Organisation /Institution, Committees are formed for selecting suitable candidates for very many purposes. It may be for recruitment, promotion, Career advancement benefit etc. It is not that each and every candidate who appears before the selection committee gets selected. There are several candidates who are rejected. If the Selection Committee is required to record reasons for every selection or rejection and the same is brought before Court for judicial review, then the selection process will get delayed and there may be no end to litigations. In the absence of a rule or in the absence of allegation of mala fide, the selection process has to be taken as sacrosanct. The petitioner has not been able to produce any rule or provision of law which mandates the Selection Committee to record reasons for not extending the benefit to him. Only if the action of the Committee is tainted with mala fide or malice is alleged, can the action of the Committee be open for judicial review.

The Selection Committee being an expert body constituted for the purpose of assessment of candidates for grant of such benefit thought it fit not to extend the benefit to the petitioner. In the absence of a specific rule requiring the Committee to record reasons, the action of the Committee in not recording the reasons for not granting the benefit to the petitioner cannot be faulted.

The petitioner has failed to come up with a case requiring interference by the Court. The writ petition fails and is hereby dismissed.

W.P.O. No. 48 of 2019 is dismissed. No costs.

Urgent photostat certified copy of this judgment, if applied for, shall be given to the parties as expeditiously as possible on compliance of all necessary formalities.

(Amrita Sinha, J.)