

16 15.9.2022
Sc Ct. no.22

WPA 11189 OF 2022

Pratima Samanta

Vs.

The State of West Bengal & Ors.

Mr. Shamit Sanyal
Ms. Priyakshi Banerjee
Mr. Sabyasachi Roy.

....For the Petitioner

Mr. Swapan Kr. Datta
Mr. Rajat Dutta.

....For the State

Pursuant to the direction dated September 12, 2022 passed by this Court, Mr. Swapan Kumar Datta, learned senior counsel appearing for the State files a report in the form of an affidavit affirmed on September 12, 2022, is taken on record. A copy of the said affidavit report is also made over to Mr. Shamit Sanyal, learned counsel appearing for the writ petitioner.

The petitioner had qualified ***Diploma in Nursing (GNM)*** from ***St. George School of Nursing, Bangalore*** under the ***Karnataka State Diploma in Nursing Examination Board*** in 2019. She obtained the Certificate of Registration after successfully qualifying the said diploma from the ***Karnataka State Nursing Council*** bearing ***Registration No.231395 dated January 23, 2020*** under the relevant law prevailing in Karnataka a part of ***Annexure-P2*** to the writ petition.

Subsequent to the advertisement issued by the sixth respondent for appointment for the post of “**Staff Nurse**” dated November 2, 2021 the petitioner intended to participate in the said selection process.

The applicable relevant condition to participate in the said selection process was that a candidate with the **registration from the West Bengal Nursing Council was mandatory**, as would be evident from **Clause (c)** under the heading “**Essential**” mentioned in **Annexure-P3** to the writ petition. The advertisement also spelt out that **only online registration and submission of application would be allowed on the official website between November 3, 2021 to November 18, 2021 (till 1-00 P.M.)**.

On behalf of the writ petitioner it was submitted that such period was extended till November 30, 2022.

Within the said cut-off date as mentioned above the petitioner submitted her relevant application seeking to participate in the selection process with her completion certificate dated December 21, 2019 issued by the **Karnataka State Diploma in Nursing Examination** issued by the **Karnataka State Diploma in Nursing Examination Board** being part of **Annexure-P2** to the writ petition.

When the result of the selection process was declared the petitioner found herself to be a disqualified candidate therein. Upon inquiry the petitioner had come

to learn that two candidates namely, **Mr. Dipa Das and Ms. Rumali Khatun** they were selected in the selection process though they could not produce their necessary **Certificate of Registration** within the said cut-off date but were ultimately declared to be qualified in the selection process. Being aggrieved by such arbitrary use of discretion by the selection authority, this writ petition was filed.

Mr. Shamit Sanyal, learned counsel appearing for the writ petitioner referring to the clauses of the said advertisement from **Annexure-P3** to the writ petition submitted that the expression used was “**Registration Form**” which was to be submitted by an intending candidate who wished to participate in the selection process and within the cut-off date and no further or other document.

Mr. Sanyal submitted that, after qualifying her course from Karnataka, the petitioner duly applied before the West Bengal Nursing Council and finally obtained the **Reciprocal Registration Certificate** from the **West Bengal Nursing Council** dated June 14, 2022, **Annexure-P18** to the writ petition. He submitted that, though the petitioner did not have this **Reciprocal Registration Certificate** issued by the West Bengal Nursing Council before the said cut-off date in terms of the advertisement issued for the selection process, but she deposited the **Completion Certificate of**

Registration obtained from **Karnataka State Diploma in Nursing Examination Board**, part of **Annexure-P2** to the writ petition, and had a right for being selected for this appointment, as the said two other candidates namely **Ms. Dipa Das** and **Ms. Rumali Khatun** were selected. This arbitrary exercise of discretion on the part of the selection authority, according to the petitioner is clearly in breach of the provisions laid down in Article 14 of the Constitution of India. According to Mr. Sanyal the petitioner was similarly placed as that of the said two other candidates namely **Ms. Dipa Das** and **Ms. Rumali Khatun**.

Mr. Sanyal further submitted that in this factual backdrop the final **Completion Certificate of Registration** obtained from the **Karnataka State Diploma in Nursing Examination Board**, part of **Annexure-P2** to the writ petition as was submitted by the petitioner in the said selection process should have been considered as a valid document in terms of the said advertisement issued for the selection process. He further submitted that, the petitioner should be treated at par with the said two others namely **Ms. Dipa Das** and **Ms. Rumali Khatun**.

Mr. Swapan Kumar Datta, learned senior counsel for the State referring to his affidavit report affirmed on September 12, 2022 drew attention of this Court at pages 10 and 11 thereof and submitted that, **Ms. Dipa Das**

obtained the ***Provisional Certificate dated December 4, 2019*** from the ***West Bengal Nursing Council***. He further drew attention of this Court to page 13 of the said affidavit report and submitted that, ***Ms. Rumali Khatun*** obtained her ***Provisional Certificate dated December 4, 2019*** from ***the West Bengal Nursing Council***. From the report it further appeared to this Court that, though the respective ***Final Certificate of Registration*** was obtained by the said two candidates much subsequent to cut-off date but selection was made on the basis of the said ***Provisional Certificates***, which were obtained and submitted prior to the cut-off date fixed in the advertisement and were obtained from the ***West Bengal Nursing Council*** respectively. Learned senior State counsel further submitted that, the specific stipulation in the advertisement issued for the selection process was that the candidates must have registration from the ***West Bengal Nursing Council***. He submitted that, the petitioner did not have such registration from the ***West Bengal Nursing Council*** within the said cut-off date and as a result, she could not produce the same before the selection authority within the said cut-off date. He further submitted that, the petitioner even could not produce any ***Provisional Certificate*** from the ***West Bengal Nursing Council*** before the selection authority before the said cut-off date.

Learned senior counsel further submitted that, the writ petition was misconceived and should be dismissed.

Considering the rival contentions urged on behalf of the appearing parties and considering the materials on record, it appeared to this Court on a scrutiny of the said advertisement issued for the selection process, that a mandatory condition was fixed that the intending candidates must have registration from the **West Bengal Nursing Council**. No other option in this regard was mentioned in the said advertisement.

This was one important **Rule of the Game** to participate in the said selection process. It is settled principle that a **Rule of the Game** unless is al wholly arbitrary or illegal or a result of *mala fide*, the same cannot be interfered with by a Court of law. The Court cannot change or alter such **Rule of the Game**.

On a scrutiny of the said advertisement, this Court is of the considered opinion that, this Court has no jurisdiction to interfere with the **Rule of the relevant selection process**.

From the materials on record it further appeared to this Court that, the petitioner did not have the relevant registration from the **West Bengal Nursing Council** as on the cut-off date fixed in the said advertisement for the selection process. The petitioner obtained the necessary Reciprocal Registration from the **West Bengal Nursing Council** in the month of **June 20, 2022** as would be

evident from **Annexure-P18** to the writ petition. It is also evident that, the petitioner could not furnish any provisional certificate issued by the **West Bengal Nursing Council** prior to the cut-off date fixed in the advertisement before the selection authority. Hence, this Court is of the considered view that, the petitioner cannot be terms a person who was similarly placed with that of **Ms. Dipa Das** and **Ms. Rumali Khatun**.

In view of the above discussions and reasons, this Court does not find any infirmity in rejecting the candidature of the petitioner. The petitioner did not qualify the requisite criteria to participate in the said selection process or for being considered for the selection therein.

In view of the above, this writ petition, **WPA 11189 of 2022** stands dismissed, without any order as to costs.

Photostat certified copy of this order, if applied for, be furnished expeditiously.

(Aniruddha Roy, J.)