

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
(Appellate Side)

WPA(P) 335 of 2022

Reserved on: 15.11.2022

Pronounced on: 13.12.2022

Pijus Patra

...Petitioner

-Vs-

The State of West Bengal and Others

...Respondents

Present:-

Mr. Bikram Banerjee,
Mr. Sudipta Dasgupta,
Mr. Arka Nandi,
Ms. Dipa Acharyya,
Mr. Sutirtha Nayek,
Ms. Shalini Ghosh, Advocates

... for the petitioner

Mr. S.N. Mookherjee, learned Advocate General
Mr. Samrat Sen,
Mr. Nilotpal Chatterjee,
Ms. Manali Ali, Advocates

... for the State

Coram: THE HON'BLE JUSTICE PRAKASH SHRIVASTAVA,
CHIEF JUSTICE

THE HON'BLE JUSTICE RAJARSHI BHARADWAJ,
JUDGE

Prakash Shrivastava, CJ:

1. By this public interest petition the petitioner has challenged the Selection Committees constituted by order dated 26.11.2021 relating to selection of contractual employees for appointment under the Department of Health & Family Welfare in different Districts and Health Districts of West Bengal. The grievance of the petitioner is that

all the Selection Committees constituted in different district are having political leaders, MLAs or Ministers of the ruling party as Chairperson. Hence, nepotism and malpractice is apprehended in the selection process and such a selection process in the public employment is unfair.

2. Submission of learned Counsel for the petitioner is that the Selection Committee is headed by the political leaders, Ministers and MLAs of the ruling party, therefore, there is serious apprehension and danger of bias as there is likelihood of giving preference to the supporters of the ruling party and the candidates connected thereto. It has further been submitted that the selection is to be made for different posts of Health & Family Welfare Department, therefore, such political leaders are not the experts of the field and there is no justification to include them as Chairperson. It has been alleged that the political leaders, chairmen are influential persons of the area, therefore, all other members of the Committee will be under their pressure and no fair selection will take place.

3. Opposing the prayer, learned Advocate General has submitted that there is no bar to have politicians as Chairpersons of the Selection Board and the Chairpersons had not been impleaded as party in this petition and there is no possibility of bias. He has further submitted that the issue of bias can be raised only by the prospective candidates and that the interview has little weightage in the selection process. Hence, no case for interference is made out.

4. We have heard learned Counsel for the parties and perused the record.

5. The State Government had issued the order dated 26th of November, 2021 for constituting the Committees for selection of

contractual employees to be engaged under the Department of Health & Family Welfare in Districts and Health Districts West Bengal. The composition of the Committee is as under:

- i. An eminent person to be Chairman of the Committee.
- ii. Other members of the Selection Committees are as follows:
 - a. Chief Medical Officer of Health – Member Secretary
 - b. Representative of the District Magistrates – Member
 - c. Programme Officer of the concerned Programme/Shceme – Member
 - d. MSVP in case of concerned Medical College & Hospital – Member
 - e. One Expert of the concerned discipline – Member

6. In the order dated 26.11.2021, the names of the Chairmen of the Committees constituted in 28 different districts have been disclosed. The petitioner has produced the chart of name of Chairpersons of district level Selection Committee along with their present status. The details of these Chairmen are as under:

Sl. No.	Name of the District	Name of the Proposed Chairperson	Present Status
1	Alipurduar	Shri Mridul Goswami	TMC President in Alipurduar District
2	Bankura	Shri Subhasish Batabyal	MLA, Chhatna (Bankura) (Ex)
3	Basirhat Health District	Shri Jyotipriyo Mullick	Minister for Department of Forest Affairs and

			Non-Conventional and Renewable Energy Sources
4	Birbhum	Shri Chandranath Sinha	Minister for fisheries in the Government of West Bengal
5	Bishnupur Health District	Shri Shyamal Santra	TMC leader of Bankura District
6	Cooch Behar	Shri Binoy Barman	TMC leader EX MLA from Mathabhanga MLA constituency
7	Dakshin Dinajpur	Shri Goutam Das	Ex MLA TMC lost in 2021 Assembly elections from 41 Gangarampur MLA constituency
8	Diamond Harbour Health District	Shri Sankar Naskar	MLA from Falta Assembly Constituency, South 24 Pgs, West Bengal, Chairperson, Diamond Harbour Health District South 24 Pgs
9	Darjeeling GTA	Smt. Shanta Chhetri	Hon'ble Mrs. Shanta Chhetri is a member of Parliament, Rajya Sabha, elected from Trinamool Congress.

10	Darjeeling SMP	Shri Goutam Deb	Cabinet Minister of Department of Tourism in the Government of West Bengal, TMC leader North Bengal
11	Howrah	Shri Pulak Roy	Minister of Public Health Engineering in the Government of West Bengal.
12	Hooghly	Shri Dilip Yadav	Defeated TMC candidate in 2021 Election from Pursurah (constituency).
13	Jalpaiguri	Smt. Mitali Roy	Ex-MIC and MLA of Falakata.
14	Jhargram	Shri Churamani Mahato	MLA of Gopiballavpur Vidhan Sabha Constituency in West Bengal, TMC Leader.
15	Kalimpong	Smt. Shanta Chhetri	Hon'ble Mrs. Shanta Chhetri is a member of Parliament, Rajya Sabha, elected from Trinamool Congress.
16	Malda	Dr. Moazzem Hossain	TMC leader of Malda District.
17	Murshidabad	Shri Jakir	TMC leader of

		Hossain	MLA Jangipur Constituency 2021 Assembly Election
18	Nadia	Shri Kallol Khan	Social Worker, MLA in the 2021 West Bengal Assembly elections.
19	Nandigram Health District	Sk. Supian	Election Agent of the Hon'ble Chief Minister & TMC Leader in Nandigram Assembly Constituency 2021 Election
20	North 24 Pgs.	Shri Jyotirpriyo Mullick	Minister for Department of Forest Affairs & Non Conventional Renewal Energy Sources.
21	Paschim Bardhaman	Shri Malay Ghatak	Cabinet Minister Department of Law & Public Works, Government of West Bengal.
22	Paschim Medinipur	Shri Ajit Maity	MLA 2021, Pingla Assembly Constituency
23	Purba Bardhaman	Shri Swapan Debnath	From MLA Purbasthali Dakshin (Bardhaman) in

			2021, Assembly Election
24	Purba Medinipur	Shri Akhil Giri	Present Minister of Fisheries in the Government of West Bengal. He is also an MLA & TMC leader.
25	Purulia	Shri Santiram Mahato	TMC Leader of Purulia District lost in 2021 Assembly Election
26	Rampurhat Health District	Shri Ashish Banerjee	M.L.A. of Rampurhat Assembly Constituency West Bengal, TMC leader.
27	South 24 Pgs	Shri Subhasish Chakraborty	TMC leader & MP Rajya Sabha.
28	Uttar Dinajpur	Shri Kanhaiya Agarwal	Contested and lost 2021 Election from Raiganj Assembly Constituency. TMC leader.

7. The above clearly demonstrates that the Ministers, MLAs and leaders of the ruling party in the State, have been appointed as Chairman of the district level Committee in all the districts. None of the Chairman except one, is doctor connected with or having expertise in the field of health services. In paragraph 5 of the affidavit in opposition, the respondent Nos. 1 and 2 have admitted that these Chairmen have been

appointed because they are well-known to the public. The pleading contained in this paragraph suggests that influential leaders have been appointed as Chairman.

8. Since, the matter relates to public employment, therefore, it is necessary to have fair selection. The argument raised by the Counsel for the petitioner that if political leaders of the ruling party are appointed as Chairman of the Selection Committee in all the districts, then there is every likelihood that these Chairmen will give preference to the candidates who had supported them or their party in the election or the kith and kin of the supporters of the ruling party. Such an argument carries weight. That apart, it has also been pointed out that the members of the Committee will have no say under the influence of such a powerful political leader connected with the ruling party.

9. Hon'ble Supreme Court in the matter of **A. Umarani vs. Registrar, Cooperative Societies and Others** reported in **(2004) 7 SCC 112** while considering the issue of regularisation of irregular appointment has disapproved appointment on political consideration by observing that:

“49. It is trite that appointments cannot be made on political considerations and in violation of the government directions for reduction of establishment expenditure or a prohibition on the filling up of vacant posts or creating new posts including regularisation of daily-waged employees. (See *Municipal Corpn., Bilaspur v. Veer Singh Rajput.*)”

10. Thus, appointment of political consideration cannot be given a seal of approval.

11. If the influential political leaders at the district level are made Chairman of the Selection Committee, then there is always the

likelihood of bias. Even if the weightage of interview is 10-15% but any incidence of bias can render the process non-transparent and cause serious prejudice to the candidates appearing in the interview.

12. Hon'ble Supreme Court in the matter **Kumoan Mandal Vikas Nigam Ltd. vs. Girja Shankar Pant and Others** reported in (2001) 1 SCC 182 in a case relating to departmental inquiry has held that the issue of bias ought to be decided on the fact and circumstances of the individual case. In this regard, it has been held that:

“34. The Court of Appeal judgment in *Locabail* though apparently as noticed above sounded a different note but in fact, in more occasions than one in the judgment itself, it has been clarified that conceptually the issue of bias ought to be decided on the facts and circumstances of the individual case — a slight shift undoubtedly from the original thinking pertaining to the concept of bias to the effect that a mere apprehension of bias could otherwise be sufficient.

35. The test, therefore, is as to whether a mere apprehension of bias or there being a real danger of bias and it is on this score that the surrounding circumstances must and ought to be collated and necessary conclusion drawn therefrom — in the event however the conclusion is otherwise inescapable that there is existing a real danger of bias, the administrative action cannot be sustained: If on the other hand, the allegations pertaining to bias is rather fanciful and otherwise to avoid a particular court, Tribunal or authority, question of declaring them to be unsustainable would not arise. The requirement is availability of positive and cogent evidence and it is in this context that we do record our concurrence with the view expressed by the Court of Appeal in *Locabail case* .”

13. In the present case, there is not only likelihood of bias but real danger of bias.

14. Hon'ble Supreme Court in the matter of **A.K. Kraipak and Others vs. Union of India and Others** reported in **1969 (2) SCC 262** in a case where a candidate was included as member of Selection Board while considering the issue of bias has held that in deciding the question of bias one has to take into consideration human probabilities and ordinary course of human conduct. In this regard, Hon'ble Supreme Court has held as under:

“15. It is unfortunate that Naqishbund was appointed as one of the members of the selection board. It is true that ordinarily the Chief Conservator of Forests in a State should be considered as the most appropriate person to be in the selection board. He must be expected to know his officers thoroughly, their weaknesses as well as their strength. His opinion as regards their suitability for selection to the All-India Service is entitled to great weight. But then under the circumstances it was improper to have included Naqishbund as a member of the selection board. He was one of the persons to be considered for selection. It is against all canons of justice to make a man judge in his own cause. It is true that he did not participate in the deliberations of the committee when his name was considered. But then the very fact that he was a member of the selection board must have had its own impact on the decision of the selection board. Further admittedly he participated in the deliberations of the selection board when the claims of his rivals particularly that of Basu was considered. He was also party to the preparation of the list of selected candidates in order of preference. At every stage of his participation in the deliberations of the selection board there was a conflict between his interest and duty. Under those circumstances it is difficult to believe that he could have been impartial. The real question is not whether he was biased. It is difficult to prove the state of mind of a person. Therefore what we have to see is whether there is reasonable ground for believing that he was

likely to have been biased. We agree with the learned Attorney General that a mere suspicion of bias is not sufficient. There must be a reasonable likelihood of bias. In deciding the question of bias we have to take into consideration human probabilities and ordinary course of human conduct. It was in the interest of Naqishbund to keep out his rivals in order to secure his position from further challenge. Naturally he was also interested in safeguarding his position while preparing the list of selected candidates.”

15. Hon’ble Supreme Court in the matter of **Ashok Kumar Yadav and Others vs. State of Haryana and Others** reported in (1985) 4 SCC 417 in a case relating to the issue of bias in viva voce test when the close relative of member of the PSC was appearing in the interview, has reiterated the principle laid down in the earlier judgment in the case of **A.K. Kraipak and Others (supra)**.

16. Hon’ble Supreme Court in the matter of **P.D. Dinakaran (1) vs. Judges Inquiry Committee and Others** reported in (2011) 8 SCC 380 while considering the issue of bias in reference to inclusion of a member in the Committee has taken note of the earlier judgment in the case of **S. Parthasarathi vs. State of Andhra Pradesh** reported in (1974) 3 SCC 459 and finally held as under:

“64. In *S. Parthasarathi v. State of A.P.* Mathew, J. applied the “real likelihood test” and restored the decree passed by the trial court which invalidated compulsory retirement of the appellant by way of punishment. In SCC para 16 of the judgment, Mathew, J. observed: (SCC p. 465)

“16. ... We think that the reviewing authority must make a determination on the basis of the whole evidence before it, whether a reasonable man would in the circumstances infer that there is real likelihood of bias. The court must look at the impression which other people have.

This follows from the principle that justice must not only be done but seen to be done. If right-minded persons would think that there is real likelihood of bias on the part of an inquiring officer, he must not conduct the enquiry; nevertheless, there must be a real likelihood of bias. Surmise or conjecture would not be enough. There must exist circumstances from which reasonable men would think it probable or likely that the inquiring officer will be prejudiced against the delinquent. The court will not inquire whether he was really prejudiced. If a reasonable man would think on the basis of the existing circumstances that he is likely to be prejudiced, that is sufficient to quash the decision....”

17. The Division Bench of this Court in the matter of **Sk. Golap and others vs. Bhuban Chandra Panda and others** reported in **AIR 1991 Cal 295** in a case where learned Judge who heard the matter, had past professional association with the petitioner, considering the issue of bias has held that the test to be applied in such case is not whether bias has affected the judgment, but whether there is real likelihood of bias, by observing that:

“7. The decision in *Manak Lal's case* is illustrative of the applicability of the principle *nemo debet esse judex in propria causa*. Against the background of the said ruling and the facts and circumstances of the present case, there is no doubt that the learned single Judge ought not to have heard and decided the instant case. It is farthest from anyone's mind to suggest that as a matter of fact his decision of the case was influenced by his past professional association with the writ petitioners. We have no reluctance in assuming that the learned Judge, when he heard this matter initially, might not have remembered that he had appeared on behalf of the Writ Petitioners in the previous writ proceeding. We have no

hesitation in believing also that he had no personal contact with the writ petitioners who were his erst-while clients since the previous writ petition was not decided in the recent past. These considerations do not, however, detract from the validity of the legal objection raised on behalf of the appellants. It is not necessary for the appellants to establish that the learned single Judge actually had a bias and that the said bias was the cause of the adverse verdict. The test to be applied in such cases is not whether in fact a bias has affected the judgment but whether there was a real likelihood of bias. The answer depends not upon what actually was done but upon what might appear to be done. Justice must be rooted in confidence; and confidence is destroyed when right minded people may have reason to go away thinking: “the Judge might have been biased.””

18. Thus, it is settled if there is real likelihood of bias on the part of a member of a Selection Committee then it is not proper to include such a person in the Committee. In the present case, we find that not only there is likelihood of bias but real danger of bias if the political leader having influence in the area concerned is made Chairman of the district level Committee for selection of the candidate for public employment. Effect of bias will be stronger when the plea is that that there is no other strong and equally effective member in the Committee to counter the influence of the Chairman.

19. Learned Advocate General has placed reliance upon the judgment of the Hon’ble Supreme Court in the matter of **Abraham Kuruvila vs. S.C.T. Institute of Medical Sciences & Technology and Others** reported in (2005) 9 SCC 49 wherein one of the unsuccessful candidate had approached the High Court contending that two of the respondents were bias against him and the writ petition and LPA were

dismissed. Hon'ble Supreme Court had held that general statement would not meet the requirement of law and that not only existence of factual bias is to be proved but it must also be shown that the same had resulted in miscarriage of justice. In that case correspondence/orders passed against the petitioner long back were held to be not meeting the requirement of law to prove bias. Present case stands on different footing. Hence, benefit of said judgment cannot be extended.

20. Learned Advocate General has also placed reliance upon the Single Bench judgment of this Court in the matter of **Asim Kumar Giri & Ors. vs. State of West Bengal & Ors.** reported in **2016 SCC OnLine Cal 388** wherein the panel prepared by the members of the Selection Committee for recruitment to the post of primary teachers was questioned raising the issue that the composition of the Selection Committee was not in accordance with the rule and that the Selection Committee comprised of persons having particular political disposition. Learned Single Judge refused to interfere noting that the manner of appointment of the elected representative to the Selection Committee was not under challenge and the vires of the act or rules prescribing such appointment was also not questioned. Whereas in the present case, the Committee has not been constituted under any statutory rule and very composition of the Committee having political leader as Chairman has been questioned, therefore, no benefit can be extended to the respondent on the basis of the Single Bench judgment.

21. Learned Advocate General has also placed reliance upon the judgment in the matter of **Mahesh Chandra Gupta vs. Union of India and Others** reported in **(2009) 8 SCC 273** and in the matter of **M. Manohar Reddy and Another vs. Union of India and Others**

reported in **(2013) 3 SCC 99** on the proposition that once eligibility condition is filled, the issue of suitability cannot be gone into by the Court. There is no dispute to this proposition but it has no applicability in the present controversy relating to the appointment of a politically influential person as Chairman of the Committee.

22. Learned Advocate General has also questioned the locus of the petitioner in filing the present petition. The rule of locus does not strictly apply in the public interest petition. That apart, the appointment is to be made on different posts including the post of medical officers, staff nurse and other staff relating to medical services. Hence, the quality of appointment on such post involves a larger public interest. Petitioner is stated to be a social worker who has collected the relevant material to file the present petition.

23. Hon'ble Supreme Court in the matter of **M.S. Jayaraj vs. Commissioner of Excise, Kerala and Others** reported in **(2000) 7 SCC 552** has held that:

“12. In this context we noticed that this Court has changed from the earlier strict interpretation regarding locus standi as adopted in *Nagar Rice & Flour Mills v. N. Teekappa Gowda & Bros.* and *Jasbhai Motibhai Desai v. Roshan Kumar* and a much wider canvass has been adopted in later years regarding a person's entitlement to move the High Court involving writ jurisdiction. A four-Judge Bench in *Jasbhai Motibhai Desai* pointed out three categories of persons vis-à-vis the locus standi: (1) a person aggrieved; (2) a stranger; and (3) a busybody or a meddlesome interloper. Learned Judges in that decision pointed out that anyone belonging to the third category is easily distinguishable and such person interferes in things which do not concern him as he masquerades to be a crusader of justice. The judgment has cautioned that the High

Court should do well to reject the petitions of such busybody at the threshold itself. Then their Lordships observed the following: (SCC p. 683, para 38)

“38. The distinction between the first and second categories of applicants, though real, is not always well demarcated. The first category has, as it were, two concentric zones; a solid central zone of certainty, and a grey outer circle of lessening certainty in a sliding centrifugal scale, with an outermost nebulous fringe of uncertainty. Applicants falling within the central zone are those whose legal rights have been infringed. Such applicants undoubtedly stand in the category of ‘persons aggrieved’. In the grey outer circle the bounds which separate the first category from the second, intermix, interfuse and overlap increasingly in a centrifugal direction. All persons in this outer zone may not be ‘persons aggrieved’.”

13. A recent decision delivered by a two-Judge Bench of this Court (of which one of us is a party — Sethi, J.) in *Chairman, Railway Board v. Chandrima Das* after making a survey of the later decisions held thus: (SCC pp. 478-79, para 17)

“17. In the context of public interest litigation, however, the Court in its various judgments has given the widest amplitude and meaning to the concept of locus standi. In *People's Union for Democratic Rights v. Union of India* it was laid down that public interest litigation could be initiated not only by filing formal petitions in the High Court but even by sending letters and telegrams so as to provide easy access to court. (See also *Bandhua Mukti Morcha v. Union of India* and *State of H.P. v. A Parent of a Student of Medical College* on the right to approach the court in the realm of public interest litigation.) In *Bangalore Medical Trust v. B.S. Muddappa* the Court held that the restricted meaning of aggrieved person and

the narrow outlook of a specific injury has yielded in favour of a broad and wide construction in the wake of public interest litigation. The Court further observed that public-spirited citizens having faith in the rule of law are rendering great social and legal service by espousing causes of public nature. They cannot be ignored or overlooked on a technical or conservative yardstick of the rule of locus standi or the absence of personal loss or injury. There has, thus, been a spectacular expansion of the concept of locus standi. The concept is much wider and it takes in its stride anyone who is not a mere 'busybody'.”

24. This Court also in the matter of Tapas Ghosh vs. The State of West Bengal and others vide order dated 12th of July, 2022 passed in WPA(P) 203 of 2022 has rejected the similar preliminary objection when the appointment of primary teachers without minimum prescribed eligibility condition was questioned by a social worker and public spirited person.

25. In view of the above, the petitioner being a public spirited person who has raised the public cause cannot be ousted on the plea of locus.

26. In the aforesaid circumstances, we are of the opinion that the Selection Committees constituted by the order dated 26th November, 2021 should be headed by the Chairman who is a neutral person and in respect of whom there is no real likelihood or danger of bias in selecting the candidates. Hence, the order dated 26.11.2021 needs reconsideration. Therefore, we direct respondent No.2/competent authority to reconstitute the Selection Committees within two weeks by appointing the eminent person as Chairman whose presence in the Selection Committee will wipe off any apprehension or danger of bias.

Such reconstitution of the Selection Committees with neutral Chairman having no political lineage will ensure fair selection in the public employment. Till that time selection process by existing Committees is expected to be kept on hold.

27. The petition is accordingly disposed of.

(PRAKASH SHRIVASTAVA)
CHIEF JUSTICE

(RAJARSHI BHARADWAJ)
JUDGE

Kolkata
13.12.2022

PA(SS)

(A.F.R. / N.A.F.R.)