

06.12.2022
Item No.13.
Court No.6.
S. De

**M.A.T. 1881 of 2022
with
I.A. No. CAN/1/2022**

**Dr. Avijit Chakraborty.
Vs.
Kolkata Municipal Corporation & Ors.**

Mr. Arijit Dey,
...for the appellant.
Mr. Alope Kumar Ghosh,
Mrs. Tanushree Das Gupta,
...for the K.M.C.
Mrs. Koyeli Bhattacharyya,
...for the West Bengal
Municipal Service Commission.

This is an appeal against a judgment and order dated November 25, 2022 whereby the appellant's writ petition was dismissed.

The appellant is an employee of the Kolkata Municipal Corporation (in short 'KMC') who is posted at one of the burning ghats in Kolkata.

An advertisement was issued by the West Bengal Municipal Service Commission on July 29, 2022, for recruitment of Sub-Registrars. The last date for filing on-line application was September 4, 2022. Upper age limit for candidates was forty-five years as on January 1, 2022. Age limit was relaxable by five years for candidates who are working in Government/semi-Government, local/statutory bodies/urban bodies in similar posts on either permanent or contractual basis

in burning ghats/burial ground/mortuary etc. for at least five years. The essential qualification that a candidate is required to have was also mentioned in the notification.

Before the learned single Judge, the appellant said that he had the essential educational qualification. He has been working at a burning ghat for the last five years. He said that he came to know of the advertisement only in the month of October, 2022, and immediately thereafter made a representation before the K.M.C. on October 17, 2022, for issuance of a 'no objection' certificate permitting him to participate in the recruitment process. However, such permission was not granted.

Essentially what the appellant wanted from the learned Single Judge is permission to file application off-line although the last date for filing such application expired on September 4, 2022.

The learned Judge noted that the West Bengal Municipal Service Commission, on November 10, 2022, announced that the written examination is to be held on December 18, 2022. The appellant had filed the writ petition on November 15, 2022. Finally, the learned Judge came to the following conclusion :-

“Having heard the submissions made on behalf of the parties and on perusal of the materials on

record it appears that the petitioner has approached this Court long after the last date of filing the application.

Had the petitioner been genuinely interested to participate in the recruitment process, he ought to have been more vigilant and applied in proper time for necessary relief.

Lately the Commission has declared the date of the written examination. The initial process of the Commission for scrutinizing the applications is nearly over.

The application filed by the petitioner before the Corporation seeking issuance of the 'no objection' also does not bear any seal or signature of the employer. The Court has no other option but to infer that the petitioner approached this Court on 15th November, 2022 after the date of written examination was declared by the West Bengal Municipal Service Commission on 10th November, 2022.

If the prayer of the petitioner to participate in the recruitment examination after the last date of filing the application is accepted, the same may open floodgate and there may be similarly

circumstanced candidates who may approach the Court for relief.

As time frame has already been fixed by the recruiting authority within which the application is required to be filed, the candidate ought to follow the same and not approach this Court at a delayed point of time seeking permission to participate in the recruitment process.

The Court is not inclined to exercise jurisdiction in the matter.”

Being aggrieved, the writ petitioner is before us by way of this appeal. We have heard learned advocate for the appellant. We have not called upon learned advocates for K.M.C. or the West Bengal Municipal Corporation to make submission.

We are completely in agreement with the learned Single Judge. Had the appellant been serious enough about participating in the concerned recruitment process, he ought to have approached the Court much earlier. He sat over the matter. He slept over his alleged right. Last date for filing on-line application was September 4, 2022. He says that he came to know about the recruitment process only in October 2022. We are not convinced. Further the learned Judge has noted there is no seal of receipt on the representation dated October 17, 2022, which the appellant allegedly made to K.M.C.

However, learned advocate for the appellant draws our attention to a document at page 54 of the stay petition which contains the decision of the K.M.C. authorities regarding the appellant's prayer for issuance of 'no objection' certificate. It appears from the said document that the K.M.C. recorded its inability to issue such 'no objection' certificate. This document was admittedly not part of the writ petition before the learned Single Judge. Hence, the observation of the learned Single Judge as regards the representation of the appellant not being filed before the K.M.C. authorities, cannot be faulted.

Delay defeats equity. One cannot say exactly what amounts to delay. It depends on the facts of each case. In this case, the delay of about two months was bad enough. No compelling reason has been cited by the appellant as to why more than two months after the last date for filing application on-line, he should be permitted to file application off-line. We agree with the learned Single Judge that this would open floodgates and put the Corporation authorities in undue difficulty.

A Division Bench hearing an intra-court appeal would only interfere when the order impugned is perverse or so reasonable that no reasonable person would have arrived at such a conclusion or there is jurisdictional error or breach of natural justice. Just

because the appeal Court may have a different view, that would not be good ground for interference if the view of the learned Single Judge is a plausible view. In the present case, we find no glaring infirmity in the order under appeal.

The appeal being M.A.T. 1881 of 2022 is dismissed without any order as to costs along with I.A. No. CAN/1/2022.

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

(Apurba Sinha Ray, J.)

(Arijit Banerjee, J.)