

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

Present :-

The Hon'ble Justice Moushumi Bhattacharya.

WPA 30376 of 2014

Sudeb Kanti Banerjee & Anr.

Vs.

The State of West Bengal & Ors.

For the petitioners	:	Mr. S.P. Lahiri, Adv. Ms. Diksha Ghosh, Adv. Mr. Rajesh Naskar, Adv.
For the respondent no. 14	:	Mr. Saibal Kumar Acharya, Adv. Mr. Tarun Kumar Das, Adv. Mr. S.B.Mukhopadhyay, Adv.
For the respondent no. 6	:	Mr. Lalit Mohan Mahata, Adv. Mr. Prasanta Behari Mahata, Adv. Mr. Amit Bikram Mahata, Adv. Mr. Aditya Bikram Mahata, Adv.
For the respondent nos. 9 to 13 & 15	:	Mr. Saikat Banerjee, Adv. Mr. Uttam Kumar Roy, Adv.
For the State	:	Mr. Swapan Banerjee, Adv. Mr. Sougata Mitra, Adv.

Last Heard on : 10.08.2022.

Delivered on : 11.08.2022.

Moushumi Bhattacharya, J.

1. The petitioners before the Court responded to an advertisement of 14.1.2011 for filling up a few designated posts for non-teaching staff in the Bikramjeet Goswami Memorial College, Purulia. The petitioners applied for the said posts and appeared in the written examination on 6.2.2011. The petitioners state that they successfully completed the written examination and received a call for appearing before the Standing Committee for an interview on 13.6.2011. The interview was however not held as scheduled. The petitioners allege that several persons were appointed in the advertised posts thereafter. The petitioners further allege that all the appointees were related to members of the Governing Body or the Principal of the College. The petitioners seek quashing of the selection and the appointments of the candidates being respondent nos. 9-15, to the posts of non-teaching staff in the College.

2. Learned counsel appearing for the petitioners alleges bias on the part of the Governing Body and submits that each of the appointees was related in some manner or the other to the President and Members of the Governing Body as well as the Standing Committee of the College. Counsel further submits that despite the petitioners receiving letters for an interview, the petitioners were not allowed to participate in the oral

test round which was scheduled to be held on 13.6.2011. It is further submitted that the appointments did not follow any proper process which would be evident from the Government nominee on the Board of the Governing Body lodging a complaint before the competent authority on the mode and manner of the appointments.

3. Learned counsel appearing for the State defends the appointments and submits that the panel was prepared by the Selection Committee and was approved by the Director of Public Instructions on 2.1.2012. Counsel submits that the complaint made in the writ petition is an after-thought and suffers from unexplained delay. It is further submitted that the petitioners are unsuccessful candidates and hence do not have *locus standi* to challenge the selection of the private respondents.

4. Learned counsel appearing for the private respondents, namely respondent nos. 9-13 and 15 submits that the petitioners were contenders for the posts of clerk and typist and are hence not entitled to challenge the appointments in the other five posts. Counsel places a statement of the marks awarded to the petitioners; that the petitioner no. 1 who applied for the post of clerk secured 39 out of 50 in the written test and 4 out of 5 for academics hence having a total score of 43. The petitioner no. 2 who applied for the post of typist secured 24 out of 50 in the written examination and 3 out of 5 in academics with a total

score of 27. Counsel defends the selection of the respondent no. 12 to the post of clerk as the said respondent got a total score of 49 and the respondent no. 11 to the post of typist as the said respondent obtained a total score of 39. Counsel submits that none of the petitioners stood a chance of being selected and that cancelling the interview did not make a difference to the overall performance or the marks awarded to the petitioners. Counsel disputes the fact of the Government nominee making a complaint in relation to the selection. It is also submitted that the petitioner no.1 is now gainfully employed as a primary teacher with effect from 13.2.2017. Counsel further submits that the interviews were held for the posts of two peons and one guard and that respondent nos. 10, 13 and 14 were selected to the said posts. It is also submitted that although a plea of bias is taken by the petitioners, the father of the petitioner no. 2 was also a member of the Governing Body of the College at the relevant point of time. It is also submitted that the doctrine of necessity was pressed into service by the College and the private respondents were appointed to the posts without delay.

5. Before this Court comes to the controversy raised by the parties, it should be mentioned that by an order dated 30.8.2018, a Coordinate Bench noted that the private respondents are the sons of members of the Selection Committee as well as the Governing Body of the College and held that the entire selection process was vitiated by bias. The appointments of the private respondents were quashed. The Division

Bench by its order dated 12.12.2019 set aside the order of the Single Judge and directed status quo with regard to the selection till the disposal of the writ petition. Hence, the private respondents continue to hold their positions as on date.

6. The undisputed fact, as corroborated by the petitioners, the State, the Principal of the College and the private respondents, is that the College is a government-aided College. The *ad hoc* Governing Body of the College consisted of 16 members including the President, the Secretary, the Teacher-in-charge and the Pradhan, Joypur Gram Panchayat. The Standing Committee/Selection Committee consisted of 3 members including a Chairman and a Government Nominee. Seven non-teaching staff posts of one accountant, one cashier, one clerk, one typist, two peons and one guard were advertised on 30.11.2010 and a further advertisement was published on 16.01.2011 for the said posts fixing schedules for written tests as well as oral tests for some of the posts. The written tests for some of these posts were held on 6.02.2011 and the oral tests for the post of two peons and one guard were held on 19.02.2011 and 20.02.2011. The interview was however not held as per schedule and the panel was prepared on the basis of the marks awarded to the candidates in the written test and on the basis of the academic qualifications of the candidates. The selections were approved by the Governing Body and the Standing Committee on 13.06.2011.

7. No explanation has been forthcoming from the respondent College as to the reason of the cancellation of the interview. Hence, the selection process as advertised, was subsequently altered without any intimation given of such to the candidates. This itself, amounts to arbitrary conduct on the part of the respondent College in complying with the process adopted for selection of the candidates to the seven non-teaching posts. The sudden change of procedure in the selection process was noted by the Supreme Court in *Ramjit Singh Kardam vs. Sanjeev Kumar*; (2020) 20 SCC 209 and the Supreme Court opined that this amounted to giving a go-by to a fair and reasonable process for shortlisting the candidates.

8. The point whether an unsuccessful candidate can challenge the selection process was decided by a Division Bench of this Court in *Mriganka Mondal vs. Asitabha Das*; 2019 (1) CHN (CAL) 310. The Court disagreed with the view that a participating candidate forfeits his right to challenge the process. The Court opined that if the unsuccessful candidate does not have the information at the relevant point of time and gets access to such information subsequent to the appointments and the selection is challenged on the ground of patent illegality, then the illegality of the selection process can always be made the subject of judicial scrutiny. This Court is also of the view that the petitioners cannot be deprived of their right to challenge the appointments merely on the ground that the petitioners unsuccessfully participated in the

same. This is all the more so since the cancellation of the interview could not have been in the knowledge of the petitioners at the relevant point of time.

9. The basis of selection of the candidates is shrouded in an absence of accountability. In *Ramjit Singh Kardam*, the Supreme Court highlighted the discrepancies in the selection process where the written examination, which was notified earlier, was subsequently scrapped. The Supreme Court was of the view that the process of selection, once announced, cannot be subsequently altered.

10. The other admitted facts are that the son of the President of the Governing Body was appointed as the accountant, the son of the Secretary was appointed as peon, the son of a member of the Governing Body was appointed as the typist, the son of another member of the Governing Body was appointed as the clerk, a relative of a member of the Governing Body was appointed as the guard, a relative of another member of the Governing Body was appointed as peon and a nephew of a member of the Governing Body was appointed as the treasurer. Hence, all the seven appointees to the advertised posts were closely related to one member or the other of the Governing Body. This coupled with the fact of three of the members of the Governing Body being the only members of the Standing Committee completes the picture of a family-run enterprise masquerading as appointments following due

process. The facts are indeed startling; it is difficult to conceive of a situation where all seven appointees were closely-related to seven of the members of the Governing Body, three of who were also members of the Standing Committee for selection of candidates to these posts. The counter argument of the 2nd petitioner also being part of the unwholesome family-frame inasmuch as the father of the 2nd petitioner was also a part of the Governing Body of the College, is not an answer to the first impression which one would inevitably draw from the admitted facts. It is too much of a coincidence that all the candidates who emerged successful in the selection process had a close relative in the Governing Body of the College.

11. It may be difficult to pin down the impugned appointments on the ground of bias as alleged by the petitioners, since this court does not have enough material before it to come to an indefensible conclusion on that count. Having said that, any allegation of bias is a matter of evidence with a fair mix of presumption. This is perhaps the reason why courts have held that the accepted threshold of annulling any process on the ground of bias is the perception of it. The settled position is to test whether there is a real likelihood of bias and whether the circumstances combine to give rise to a reasonable apprehension in the mind of a third party that the decision was the outcome of bias and not objective criteria. This rule has been extended to the decision-making process of a Selection Committee (Ref: *A.K. Kraipak v.*

Union of India; AIR 1970 SC 150). In *Lila Dhar v. State of Rajasthan*; (1981) 4 SCC 159, relied on in *Ramjit Singh Kardam*, the Supreme Court emphasized that the object of entry into public service is to secure the best person for the job without patronage and favouritism. The Supreme Court went on to advise that selection should be based on merit where selection of candidates is decided impartially and objectively and the appointment should be determined by a neutrally disinterested body on the basis of objective criteria. In *Chanchal Kumar Patra vs. The State of West Bengal*; 2016 SCC OnLine Cal 5054, a learned Single Judge of this Court dwelt on personal friendship and personal hostility as being recognized grounds for which Courts have proceeded to nullify a decision on the finding of real likelihood of bias. A 4-Judge Bench of Supreme Court in *Ashok Kumar Yadav vs. State of Haryana*; (1985) 4 SCC 417 reiterated the principle that the question is not whether there is actual bias but whether there is real likelihood of bias. The Supreme Court noted that the objectionable part is not that the decision is actually tainted with bias but that the circumstances are such as to create a reasonable apprehension in the mind of others that there is likelihood of bias affecting the decision. In *Mohd. Mustafa vs. Union of India*; (2022) 1 SCC 294, a 3-Judge Bench of the Supreme Court relied on *Ranjit Thakur vs. Union of India*; (1987) 4 SCC 611 to explain that the test of real likelihood of bias is whether a reasonable person, in possession of relevant information, would have thought that

bias was likely and whether the concerned authority was likely to be disposed to decide the matter only in a particular way. The test was reiterated as the reasonableness of the apprehension in the mind of the party.

12. On a combined consideration of the facts, the irrefutable conclusion is that the appointments to the posts for which the petitioners participated were processed in a manner which was a departure from a fair and objective method of selecting the most eligible candidates. As held in *Ranjit Thakur*, what is relevant is the reasonableness of the apprehension in the mind of a third party who is witness to the facts. The apprehension of a likelihood of bias also has the effect of colouring all related decisions. In other words, once a person is convinced that a decision may have been actuated by other considerations, the entire factual conspectus gets drawn into the web of bias. Doubtless, the fact that all seven of the appointees were closely related to members of the Governing Body would satisfy the test of bias.

13. This court is also not convinced of the argument of “necessity” put forth on behalf of the private respondents. The doctrine of necessity has a primary nexus to the particular facts at a given point of time and is essentially one of expediency. The doctrine is pressed into service where compliance with the rules of natural justice is not feasible and may lead to failure of the object sought to be achieved. In *Charan Lal*

Sahu v. Union of India; (1990) 1 SCC 613, a full-Bench of the Supreme Court, speaking through Justice Sabyasachi Mukharji, opined that the common law doctrine of necessity in the case of disqualification would apply where no other person is competent or authorized to be an adjudicator or a quorum cannot be formed without that person or no other competent tribunal can be constituted. The Supreme Court was answering the objection taken by the victims of the Bhopal Gas Tragedy that there was conflict of interest between the victims and the Government representing the case of the victims. The Supreme Court applied the doctrine of necessity and rejected the point of violation of principles of natural justice on that score. In the present case, there is no evidence to show that the members of the Governing Body of the College and the Standing Committee, who were in-charge of the selection process, could not be substituted by persons not related to the candidates. There is also no evidence of a pressing urgency for appointment to the seven posts or that failure to do so would have resulted in irretrievable damage to the College. Hence, this court is not inclined to accept the argument that the respondent College had to fall back on the doctrine of necessity for pushing through the impugned appointments.

14. It hence follows that the defence of the private respondents that the 1st petitioner got only 39 out of 50 whereas the selected candidate (respondent no. 12) got 45 out of 50 and the 2nd petitioner got 24 out of

50 whereas the selected candidate (respondent no. 11) got 36 out of 50 is no defence since the process is found to be tainted for the reasons as stated above. Once the source is compromised, everything that follows becomes vulnerable to challenge. The fact that the Governing Body decided to only treat the written test as a benchmark further sullies the picture.

15. Notwithstanding the above, the petitioners applied for only two of the seven non-teaching posts; namely, the petitioner no. 1 for clerk and the petitioner no. 2 for typist. The petitioners cannot hence be permitted to challenge the other five posts which were advertised and candidates were given appointments in relation to the same. The Supreme Court in *B. Srinivasa Reddy vs. Karnataka Urban Water Supply & Drainage Board Employees' Assn.*; (2006) 11 SCC 731 (II) opined that certiorari jurisdiction can be exercised only at the instance of a person who is a candidate for the post. The Supreme Court relied on *Umakant Saran (Dr.) v. State of Bihar*; (1973) 1 SCC 485 to hold that a person would have a right to nomination provided he competes for the seat. Therefore, this Court is inclined to limit the challenge to the appointments only to the two posts which the petitioners applied for, namely, clerk and typist. Since the selection process has been found to be arbitrary and actuated by other considerations, the appointments of respondent nos. 11 and 12 are set aside.

16. Since this Court has only accepted the challenge in relation to the two posts as stated above, the points raised regarding the legitimate appointments of respondent nos. 14 and 15 as being independent and without any connection to any of the members of the Governing Body is not being gone into.

17. WPA 30376 of 2014 is allowed by quashing the appointments of respondent nos. 11 and 12. The respondent College will be at liberty to publish a fresh advertisement for the said two posts and conduct a selection process for the two posts in a fair and objective manner. The College should ensure that the appointments are regulated and decided by persons who have no relationship with any of the candidates who appear for the selection process. The College is also directed to be assisted by an independent body of selectors / Committee who would also frame the rules and process all the stages of the selection and appointments.

18. The writ petition is accordingly disposed of.

Urgent Photostat certified copy of this judgment, if applied for, be supplied to the parties after fulfillment of the requisite formalities.

(Moushumi Bhattacharya, J.)