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28-08-2023
(Ct. no.06)
debajyoti

FMA 708 of 2020
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IA NO:CAN/1/2018 (Old No:CAN/9316/2018)

Haydar Ali Molla & Ors.
Vs.
The State of West Bengal & Ors.

Mr. Rajdeep Bhattacharya
... For the Appellants.

Mr. Malay Singh,
Mr. Bibekananda Tripathi
... For the State.

Mr. Sauradeep Dutta,
Mr. Riju Bhowmik,
Ms. Mina Biswas
... For Respondent Nos.3-6.

By consent of the parties, the appeal and the connected application are taken up together for hearing.

A judgment and order dated August 02, 2018, whereby the writ petition of the appellants herein being W.P. No.13352(W) of 2018, was dismissed, is under challenge in this appeal.

The matter relates to a selection process for appointment in Group-C and Group-D posts of Dankuni Municipality. After the selection process was over, two writ petitions were filed, one by a group of unsuccessful candidates, being W.P. No.12365(W) of 2017, and the other by successful candidates, being W.P. No.11473(W) of 2017, challenging the process of selection.

It was contended on behalf of the unsuccessful candidates that the selection process is tainted by

bias inasmuch as two candidates, who had participated in the process and whose names found place in the panel that was prepared, were close relations of the Chairperson of the Municipality, who was also the Chairperson of the Selection Committee.

A learned Single Judge heard the two writ petitions together. The learned Judge observed that the allegation of bias cannot be decided by a writ court. Factual enquiry is necessary. Accordingly, by a judgment and order dated December 12, 2017, the learned Judge disposed of the writ petitions with the following directions:-

“ In view of the above as also considering that the fates of unemployed youths are involved in the selection process. The proper conclusion with regard to the allegation of likelihood of bias has to be arrived at after examining the relevant materials and information. Needless to point out that it is not possible for a Court to arrive at the above conclusion sitting in a writ jurisdiction.

Therefore, leave is granted to the respondent municipality to forward the panels prepared on the basis of the selection process to the office of the Director of Local Bodies within a period of 15 days. Leave is also granted to the petitioners in WP-I to furnish materials and information in support of their allegation of likelihood of bias in respect of the selection process in question before the Director of Local Bodies within a period of four weeks.

The Director of Local Bodies is directed to arrive at a conclusion with regard to the aforesaid allegation of likelihood of bias taking into consideration all relevant materials and information including those which may be supplied by the petitioners in WP-I in terms of the direction incorporated in this order before applying its mind with

regard to approval of those panels. In other words, in the event the conclusion with regard to the above allegation of likelihood of bias finds no legs to stand, in that event only the Director of Local Bodies will consider the panels for approval.

The entire exercise, as aforesaid, is directed to be concluded within three months. ”

Pursuant to the said order, the Director of Local Bodies (in short ‘DLB’), after hearing the concerned parties, passed an order, which was communicated to the concerned parties under cover of a letter dated March 14, 2018. The operative portion of the said order reads as follows:-

“ From representation submitted by the petitioners of WP-I it appears that near relatives of the Chairperson of Dankuni Municipality, who was also a member of the selection committee, were candidates in the selection process for recruitment to the said posts. It is also stated that after the selection process was over it was found that those near relatives of the Chairperson of Dankuni Municipality were selected for appointment. This fact was admitted by the Chairperson during the hearing on 12.03.2018 and she stated that names of those candidates in question were subsequently eliminated from the panel. The claim of the petitioner is substantiated by the fact that advocate appearing on behalf of Dankuni Municipality stated before the Hon’ble High Court that two relatives of the Chairman and the councillor were excluded from the selection process in question.

In these circumstances, Director of Local Bodies cannot completely rule out likelihood of bias in the selection process in question. Therefore, the said selection process that was initiated pursuant

to the notice dated 17.04.2013, for recruitment to Group C & D posts in Dankuni Municipality is declared null and void. ”

Being aggrieved by cancellation of the panel, the successful candidates challenged the order of the DLB before a learned Single Judge in the writ jurisdiction in the present round of litigation. That writ petition being W.P. No.13352(W) of 2018 was dismissed by the learned Single Judge by the order impugned in this appeal. The learned Judge observed that the DLB, after considering the entire material, had come to a factual finding of likelihood of bias in preparation of the panel. The learned Judge observed that the writ court should not act as an appellate authority. Accordingly, the writ petition was dismissed.

We have heard learned counsel for the parties at length. Learned advocate for the State, in his usual fairness, has left the matter to the Court.

It is not in dispute that the two candidates, who were empanelled and who were found to be closely related to the Chairperson of the Municipality, were removed from the panel. The DLB also noted the same in his order which was under challenge before the learned Single Judge. However, the DLB proceeded to scrap the entire panel by holding that the selection process that was initiated pursuant to the notice dated April 17, 2013, for recruitment to Group-C and Group-D posts in Dankuni Municipality, is declared null and void. The only sentence in support of such decision is that likelihood of bias in the selection process in question cannot be completely ruled out. No particulars have been furnished. No reason has been recorded as to why even after elimination of the two concerned candidates from the

panel, still likelihood of bias remains. In our view, since the two candidates, who were related to the Chairperson of the Municipality, were removed from the panel, the situation has been redressed sufficiently. We do not see why the entire panel should be cancelled, particularly, when no reason therefor has been recorded by the DLB excepting an *ipse dixit*, as indicated above.

Accordingly, we find that the order of the DLB is arbitrary, not being supported by cogent reasons. The order is set aside. The order of the learned Single Judge is also set aside.

The Director of Local Bodies is directed to accord approval to the panel in question within two weeks from the date of communication of this order by the appellants to him/her. We are told by learned advocate for the Municipality that there still are vacancies in Group-C and Group-D posts in the Municipality. Appropriate appointments be made in accordance with law once the panel is approved by the Director of Local Bodies.

The appeal and the connected application are, accordingly, disposed of.

Affidavits not having been called for, the allegations in the stay petition shall be deemed not to have been admitted by the respondents.

All parties shall act on the server copies of this order duly downloaded from the official *website* of this Court.

Urgent photostat certified copies of this order, if applied for, be supplied to the parties on compliance of all necessary formalities.

(Arijit Banerjee, J.)

(Apurba Sinha Ray, J.)