

Ct. 08
Item No.01
12.12.2023
(**Suvendu**)

FMA 970 of 2022
With
CAN 1 of 2022
CAN 2 of 2023
CAN 3 of 2023
CAN 4 of 2023
CAN 5 of 2023

Dr. Sekhar Chandra Set
Vs.
The State of West Bengal & Ors.

Dr. Sekhar Chandra Set
..... Appellant(in-person)

Mr. Biswabrata Basu Mallick
Mr. Sanjib Das
....for the State

Ms. Chandrayi Alam
.....for the respondent no. 3

1. The appeal is arising out of an order dated 13th June, 2022 in a writ petition in which the petitioner has, inter alia, prayed for cancellation of the notification /advertisement dated 25th December, 2020 and the selection result for filling up the “Indian Ministry of Culture Vivekananda Chair” for visiting professorship at the University of Chicago. The said notification was challenged on

the ground that the selection procedure adopted by the respondent no. 3 was not in consonance with the order dated 17th July, 2017 passed in an earlier writ petition being WP 14076(W) of 2017.

2. In the writ petition apart from challenging that there has been arbitrary procedure of selection, it was alleged that his representation to the respondent no. 3 was not considered. It is incumbent upon the respondent no. 3 to act transparently in terms of the order passed by Justice Arijit Banerjee in WP 14076(W) of 2017 and there has to be a joint selection procedure to be adopted for the purpose of filling up the said Chair. The petitioner, however, at the same time stated that the decision of the University of Chicago cannot be questioned by the writ court in view of the fact that the writ Court cannot extend its territorial jurisdiction beyond the country. His essential grievance was that there has been a manipulation in the data and the selection procedure was not fair. However, in the grounds he has alleged arbitrariness on the part of the

respondent and Chicago University in the selection procedure.

3. Justice Amrita Sinha in deciding the writ petition after going through the affidavits filed, has observed as follows :-

“It appears from the submissions made on behalf of the parties that the initial advertisement published in the year 2018 could not be finalized because of the pendency of the writ petition being W.P. 20999(W) of 2018 and the interim order passed therein. As the selected candidate ideally holds a position for a period of two years, accordingly, the Chair could not be filled up.

The University of Chicago published a further advertisement in the year 2020. The same could not be concluded in view of the pendency of the earlier writ petition and the present writ petition filed by the petitioner.

The earlier writ petition being W.P. 20999(W) of 2018 stood disposed of by the Court on 10th June, 2022 and the stay order passed with regard to filling

up the Chair has been vacated. As of now there is no impediment on the part of the respondent authority to take steps for filling up the said Chair.

As the petitioner has already applied pursuant to the advertisement, it is not open for him to challenge as to whether the said advertisement is vague or not. Being completely aware of the terms and conditions of the advertisement, he has submitted his application.

The process of selection is yet to be over. It is not open for the writ court to take a decision at this stage whether the petitioner is the most competent candidate or not. It is for the authorities to take a decision in the matter after looking into the comparative merit of the applicants.

Accordingly, the instant writ petition is disposed of by granting liberty to the respondent to take steps for conclusion of the selection process initiated for filling up of the aforesaid Chair, strictly in accordance with law.”

4. In arriving at the said conclusion the learned Single Judge has taken into consideration the procedure to be followed for the selection of the said Chair.
5. The writ petitioner himself has disclosed the agreement between the Ministry of Culture and the University of Chicago regarding the procedure for selection of a distinguished scholar for the said Chair. Under the said agreement, University of Chicago would give wide publicity to the establishment of the said Chair as part of commemoration of the 150th birth anniversary of Swami Vivekananda and such publicity would also be displayed prominently in the University. University of Chicago would welcome the feedback of the Government of India as to which candidates best meet the goals and purposes articulated in paragraph 3 of the said agreement, namely a person possessing a demonstrated record of scholarly excellence and pedagogical accomplishment and after receiving such feed back, the University of Chicago would then provide the Indian Government with the names and dossiers of the two or

three whose work epitomizes the legacy of Swami Vivekananda and upon receiving the feedback the University of Chicago would make a final selection amongst the pool of suitable candidates.

6. In course of arguments, it is submitted by the petitioner that in spite of having the requisite qualification, in fact outstanding as claimed by him, his candidature was not considered.
7. In the response affidavit affirmed by the petitioner on 11th December, 2023, the petitioner has disclosed that he himself has forwarded his bio-data to the University of Chicago for consideration. He has not aware of the outcome of the same.
8. Dr. Set has argued that in view of the order passed by Justice Arijit Banerjee on 17th July, 2017, it is incumbent upon the respondent no. 3 to consider suitability of a candidate by a duly constituted selection committee. The publication inviting applications should specify the sufficient particulars like the eligibility criteria required for the candidates and the selection process. Needless to say, the

selection process should be completed transparently shorn of arbitrariness. The said direction was passed on the basis of submission made by Mr. Singhania on behalf of the Union of India that the advertisement inviting applications from aspiring candidates has not been published in newspapers as also on the website of the Ministry of Culture. Thereafter on 25th December, 2020 an advertisement was published by the University of Chicago specifically stating the eligibility criteria and required qualifications of a candidate duly considered for the said Chair. This advertisement was a subject matter of challenge in the writ petition.

9. In course of argument, Dr. Set has submitted that this is not in conformity with the order passed by the Justice Arijit Banerjee and that the Union of India has never argued before the learned Single Judge that the University of Chicago would have final say in the matter and the selection would be solely at the discretion of the University of Chicago. The selection process for the said Chair has to follow

the procedure to be adopted by the respondent no. 3.

10. It appears that Justice Arijit Banerjee has passed the order without an affidavit being filed on behalf of the Union of India disclosing the procedure to be followed and the nature of involvement of the respondent no. 3 in the selection process. These facts have now come in this proceeding. In any event, the Court cannot direct the University of Chicago the manner in which the selection should take place. The selection procedure and suitability of the distinguished scholar are in the domain of the University of Chicago and the writ court cannot interfere with the selection process to be adopted by the University of Chicago in this regard.
11. In order to ascertain the steps taken by the respondent no. 3 pursuant to the order passed by Justice Arijit Banerjee, we direct the respondent no. 3 to file the affidavits.
12. The respondent no. 3 has filed two affidavits. The second affidavit is more detailed and useful. In the said affidavit, the respondent no. 3 has disclosed the

communication dated 8th June, 2023 between the Consulate General of India, Chicago to Ministry of External Affairs, New Delhi and also to authorities at Washington in which it has been recorded that the University of Chicago has suggested a panel of three renowned scholars for consideration of the Chair.

13. The agreement with the University of Chicago envisaged that the University of Chicago would conduct an international search in terms of its policies and academic principles to identify a pool of candidates and the Ministry of Culture, Government of India is expected to confirm the best suited candidate out of that pool for final selection. The communication between Ministry and the University of Chicago would show that it is not the University's policy or practice to seek application through open advertisement. The University maintains the highest global benchmark in education and research and that is reflected in, among others achievements, 97 Nobel Laureates from the University. The communication shows the following

names as three renowned scholars for consideration of the Chair :-

- (i) Dr. Francesca Orsini –University of London, Professor of Hindi and South Asian Literature;
- (ii) Dr. Tapati Guha –Thakurta (Center for the Study of Social Sciences –Calcutta, Professor of History);
- (iii) Dr. Esther Duflo (Massachusetts Institute of Technology, Professor of Economics)

14. The agreement unmistakably shows that the University of Chicago has the final say with regard to the suitability of the candidate for the Chair. The suggestion of the Ministry of Culture is only advisory and not final. The selection was made by the University of Chicago after Dr. Set appears to have sent his bio-data directly to the University as stated in his response affidavit.
15. Dr. Set has strenuously argued that the selection procedure is arbitrary and the court cannot make out a third case for the purpose. In this regard, he has relied upon few decisions of the Supreme Court and the Calcutta High Court.
16. We are unable to accept the said submissions as in the instant case the

Court has proceeded on the basis of the record exercising its certiorari jurisdiction.

The Ministry has filed an affidavit disclosing all the relevant documents.

17. Dr. Set himself has admitted that no order could be passed against the University of Chicago. The role of the respondent no. 3 with regard to the selection procedure is minimal. The Chair is of the University of Chicago and the same is also completely funded by the said University. The Court has no jurisdiction to interfere with the decision taken by the University of Chicago with regard to the selection of the distinguished scholar.
18. In such circumstances we do not find any reason to interfere with the order passed by Justice Amrita Sinha.
19. The appeal is hence dismissed
20. All connected applications are accordingly disposed of.
21. Urgent photostat certified copy of this order, if applied for, be given to the parties on usual undertakings.

(Uday Kumar, J.)

(Soumen Sen, J.)

