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17.08.2023
Ct. No. 15
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W.P.A. 18433 of 2015

**Biswajit Adhikary
Vs.
The State of West Bengal & Ors.**

Mr. Amritam Mondal
Ms. Jeenia Rudra
Ms. Megha Chanda
Ms. Ananya Cakraborty

....for the petitioner

Mr. Suman Sengupta
Mr. Sambuddha Dutta

...for the State

Mr. Saidur Rahaman
Mr. Arnab Mondal

...for the respondent nos. 2 and 3

Mr. Khairul Alam

...for the respondent no. 5

The writ petition is instituted, *inter alia*, challenging the selection process for appointment in the post of Sub Assistant Engineer in Mekligunj Municipality. Learned advocate representing the petitioner has drawn attention of this Court to the employment notification dated 21st May, 2015 issued by the Chairman, Mekligunj Municipality, Coochbehar whereby desirous candidates having requisite qualifications were asked to apply for four posts –(1) Sub-Assistant Engineer, (2) Accountant, (3) Sanitary Inspector, (4) Clerk.

It has been submitted at the threshold on behalf of the petitioner that present petition centers around the selection process which was initiated by the respondent authorities for appointment in the post of Sub-Assistant Engineer. Therefore, the selection process which was followed for filling up other three categories of posts need not be examined in the present writ petition.

The main thrust which has been placed before this Court in order to attack the selection process initiated by Mekligunj Municipality is participation of the Chairman in the selection process for filling up the post of Sub-Assistant Engineer who happens to be the wife of the candidate who was selected for the post of Sub-Assistant Engineer. In order to buttress this fact reliance has been placed on page-32 of the writ petition wherefrom it appears that the Chairperson, Mekligunj Municipality issued letter dated 3rd July, 2015 asking the Additional Director of Local Bodies, District Municipal Development Officer, Executive Engineer, ME, Directorate, Jalpaiguri, Vice Chairman, Mekligunj Municipality and also the Executive Officer Mekligunj Municipality to be present on the date of examination which was scheduled on 12th July, 2015. According to the petitioner, such letter dated 3rd July, 2015 reveals participation of the Chairperson of the Municipality in the selection process on conclusion of which husband of the Chairperson got the appointment. Therefore, the said selection process got vitiated.

In addition thereto, petitioner relies upon the notice dated 6th July, 2015 which goes to show that eligible candidates were invited on receipt of admit cards to participate in the examination which was to be held on 12th July, 2015 and information in this regard was disseminated to the aspiring candidates. According to the petitioner, this notice dated 6th July, 2015 is erroneous since the notice includes filling up the aforesaid four categories of posts and since the same was issued by the Chairman of the Municipality the selection process for appointment in the post of Sub-Assistant Engineer needs to be cancelled.

Reliance has been placed on the judgment of the Supreme Court reported in **(2022) 1 SCC 294** (*Mohd. Mustafa Vs. Union of Indian & Ors.*), paragraph 39.

It needs to be recorded herein that this Court has taken up this matter on number of occasions and lastly, it was taken up on 20th July, 2023 when opportunity was given to the respondent no. 5 to file affidavit-in-opposition as well as to the writ petitioner to file affidavit-in-reply. However, in spite of granting such opportunity to the petitioner no affidavit-in-reply has been filed today, but affidavit-in-opposition has been filed by the respondent no. 5 which is taken on record.

Mekligunj Municipality is represented by learned advocate who has defended the selection process initiated by the municipality for filling up the post of

Sub-Assistant Engineer upon placing reliance on averments made in the affidavit-in-opposition affirmed on 11th September, 2015. It appears from the said affidavit-in-opposition that Government of West Bengal, Department of Municipal Affairs through its Joint Secretary issued a notification dated 14/26th June, 2007 providing composition of Selection Committee for appointment in the posts of A, B and C category posts. It has also been stated in the affidavit that Sub-Assistant Engineer is a B category post. Therefore, the composition of Selection Committee would include the Chairman of the Municipality, Deputy Director of Local Bodies of the concerned division, District Municipal Development Officer, B.S.M.E.D of the concerned Division (in respect of all technical staff of Group A & B) and Executive Officer of the Municipality. It has been submitted that it is true that composition of the Selection Committee for appointment in the post of Sub-Assistant Engineer includes Chairman of the Municipality, but in the present case since husband of the Chairman was one of the candidates who was to participate in the selection process for the post of Sub-Assistant Engineer vide letter dated 18th June, 2015, the Chairman of the Municipality delegated her power to the Vice Chairman of the Municipality in order to discharge the functions and duties of the Chairman in connection with selection for the post of Sub-Assistant Engineer. Such letter dated

18th June, 2015 is annexed at page 16 of the affidavit-in-opposition.

It has been submitted that since there is delegation of power in favour of the Vice Chairman of the Municipality there is no illegality in selecting the respondent no. 5 for the post of Sub-Assistant Engineer since the Chairman did not participate in the selection process.

The learned advocate representing the respondent no. 5 has also used an affidavit-in-opposition wherein it has been averred that the selection process was consisting of two parts - first part was written examination and the second part was viva voce. On 12th July, 2015 respondent no. 5 participated in the written test along with other candidates including the petitioner but the respondent no. 5 was selected for participating in viva voce whereas petitioner was not selected. It has also been stated that the petitioner obtained 42 marks out of 80 in the written test which was below the qualifying marks for participating in the viva voce. The last candidate who was allowed to participate in the selection process was awarded 49 marks and six candidates including the respondent no. 5 ultimately participates in viva voce and on preparation of panel respondent no. 5 was appointed. Considering the performance of the respondent no. 5 and the petitioner it has been submitted on behalf of respondent no.5 that even if the

selection of respondent no. 5 is cancelled the petitioner would not have come within the zone of consideration since petitioner was not selected to participate in the viva voce.

Learned advocate representing the State-respondents has also opposed the prayer of the petitioner on the ground that petitioner participated in the selection process and thereafter on being not selected questioned the selection process and prayed for cancellation of the selection process which is impermissible.

Having considered the submissions made on behalf of respective parties and on perusal of the materials available on record including the affidavit-in-opposition used by some of the parties it appears that pursuant to the employment notification dated 21st May, 2015 Mekligunj Municipality initiated the selection process for four categories of posts as aforesaid and petitioner offered his candidature for being appointed in the post of Sub-Assistant Engineer. According to the petitioner, since wife of respondent no. 5 was the Chairperson of the Municipality who participated in the selection process, the said selection process which was initiated for appointment of Sub-Assistant Engineer was vitiated.

In order to appreciate the case made out in the writ petition seeking cancellation of the selection process for filling up the post of Sub-Assistant Engineer the test is

whether the Chairperson of the Municipality took part in the selection process or not. It is true that in terms of Government Notification dated 14/26th June, 2007 Chairman is one of the members of the Selection Committee consisting of five members for filling up the post of Sub-Assistant Engineer being B category post, but it appears that vide letter dated 18th June, 2015 the Chairperson of the Municipality delegated her power in favour of the then Vice Chairman of the Municipality to discharge the duties and functions of the Chairman in view of the fact that husband of the Chairperson was one of the candidates who participated in the selection process for the post of Sub-Assistant Engineer.

On perusal of Section 19 of the West Bengal Municipal Act, 1993 it appears that such delegation of power is permissible. For better understanding of the issue Section 19 of the Act of 1993 is quoted below:-

“19. Vice-Chairman.- (1) *The Vice-Chairman shall, in the absence of the Chairman, preside over the meetings of the Chairman-in-Council as well as the Board of Councillors.*

(2) *When –*

(a) *the office of the Chairman falls vacant by reason of death, resignation, removal or otherwise, or*

(b) *the Chairman is, by reason of leave, illness or other cause, temporarily unable to exercise the powers, perform the functions and discharge the duties of his office,*

the Vice-Chairman shall exercise the powers, perform the functions and discharge the duties of the Chairman until a Chairman is elected under sub-section (3) of section 17 and assumes office or until the Chairman resumes his duties, as the case may be.

(3) The Vice-Chairman shall, at any time, perform such other duty or exercise such other powers as may be delegated to him under the provisions of this Act.”

In view of delegation of power made by the Chairman of the Municipality in favour of Vice Chairman as it emanates from the letter dated 18th June, 2015 which is before the scheduled date of written examination i.e. 12th July, 2015 it does not appear that the Chairperson participated in the selection process as a member of the Selection Committee. Excepting the letter dated 3rd July, 2015 nothing is shown from which it can be inferred that there was participation by the Chairperson being the member of the Selection Committee for filling up the post of Sub-Assistant Engineer. The letter dated 3rd July, 2015 of the Chairperson does not go to show any involvement in connection with the selection process initiated for the post of Sub-Assistant Engineer since vide said letter dated 3rd July, 2015 five authorities were requested to remain present on the date of written examination on 12th July, 2015.

Therefore, the contention of the petitioner that the selection process was vitiated in view of involvement of the Chairperson is not corroborated from any of the documents relied upon behalf of the petitioner.

I hasten to add that this Court cannot shut its eyes to the fact that the respondent no. 5 was appointed after completion of the selection process in 2015 and in the

event the selection of respondent no. 5 is cancelled petitioner would not come within the zone of consideration since he was not selected on merit after written examination to participate in the interview.

In ***Mohd Mustafa*** (supra) in paragraph 39 in reference to '*Ashok Kumar Yadav Vs. State of Haryana*' it has been considered that there can be no doubt that if a Selection Committee is constituted for the purpose of selecting candidates on merits and one of the members of the Selection Committee is closely related to a candidate appearing for the selection, it would not be enough for such member merely to withdraw from participation in the interview of the candidate related to him but he must withdraw altogether from the entire selection process and ask that authorities to nominate another person in his place on the Selection Committee, because otherwise all the selections made would be vitiated. It is settled principle of law in view of the dictum of the Apex Court that the member who is closely related to a candidate cannot participate in the selection process as one of the members of the selecting authority.

In the present case, this Court has already held that nothing is found which substantiates participation of the Chairperson of the Municipality as a member of the selecting authority in the entire process which culminated into selection of respondent no. 5 for the post of Sub-Assistant Engineer.

In view of aforesaid discussion, this Court does not find any merit in the writ petition.

Accordingly, the writ petition stands dismissed.

However, there shall be no order as to costs.

Urgent photostat certified copy of the order, if applied for, be given to the parties, upon usual undertakings.

(Saugata Bhattacharyya, J.)