

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
APPELLATE SIDE

Present:

The Hon'ble Justice Tapabrata Chakraborty
&
The Hon'ble Justice Partha Sarathi Chatterjee

WPCT 106 of 2021

Suchismita Roy
versus
Union of India & Ors.

For the Petitioner : *Mr. Abhratosh Majumdar,*
Mr. Barun Chatterjee.

For the Respondent Nos. 1-5 : *Mr. Ajit Kumar Chaubey,*
Ms. Suparna Kundu,
Mr. Vaibhav Prakash.

For the Respondent No.6 : *Mr. Shibaji Kumar Das.*

Hearing is concluded on : *4th December, 2023.*

Judgment On : **21st December, 2023.**

Tapabrata Chakraborty, J.

1. The present writ petition has been preferred challenging the order dated 14th December, 2021 passed by the learned Tribunal in an original application being O. A. 350/01045/2020.

2. Records reveal that in response to an employment notice dated 6th August, 2018, the petitioner applied for recruitment in Postal Department, West Bengal Circle against sports quota in the discipline of Volleyball. From the results published on 18th February, 2020, the petitioner came to learn that a candidate less meritorious than her, being the respondent no. 6, had been selected for the concerned post. Aggrieved thereby, the petitioner preferred an original application being O.A. 350/361/2020 challenging the results and the appointment of the respondent no. 6. The said application was disposed of by an order dated 19th June, 2020 directing the petitioner to submit a comprehensive representation to the competent authority and further observing that in the event of such representation is submitted the same shall be duly considered and disposed of by a speaking order. Pursuant to such direction the respondent no. 4 passed an order on 15th October, 2020 rejecting the petitioner's claim. Challenging the said order, the petitioner preferred an original application being O.A. 350/1045/2020. The parties exchanged their affidavits and upon contested hearing, the said application was dismissed by the order impugned in the present writ petition.

3. Mr. Majumdar, learned advocate appearing for the petitioner submits that the learned Tribunal failed to appreciate that the petitioner was a better qualified and a better choice than the respondent no. 6. The intrinsic moot question in determining merit with regard to the nature of sports, which is a team game and not an individual display of talent, was not decided by the learned Tribunal.

4. According to Mr. Majumdar, as per the preferential criterion incorporated in the prospectus cum application form, *'between the candidates participating in Senior and Junior National Championship/Games, the candidates having participated and won medal in Senior National Championship/Games should be given preference'*. However, the respondent no.6, a participant in Junior National Championship was granted preference and selected disregarding the claim of the petitioner, who represented the State in Senior National Volleyball Championship. Such discrimination as practised and as argued was glossed over and no finding was returned by the learned Tribunal on the said issue.

5. He submits that during pendency of the original application, the petitioner came to learn that a proceeding was pending before the Hon'ble High Court at Delhi pertaining to the tenure of the then President of Volleyball Federation of India (in short, VFI) and from an order dated 1st June, 2018 passed in the said proceeding it was explicit that the tenure of the President of VFI had already lapsed in the month of March, 2017. The respondent no. 6 obtained certificates from VFI after the tenure of the President lapsed. On the rudiments of such facts, the petitioner preferred an amendment application being M.A. No. 350/635/2020. In the said application by an order dated 2nd December, 2020 the respondents were directed to clarify as to whether the relevant certificate of the respondent no.6 is to be considered in terms of the order of Ministry of Youth Affairs and Sports dated 20th July, 2017. In response thereto, a reply was furnished but the petitioner was not given an opportunity to file any exception to the

same and such denial is derogatory to the provisions of Section 22 of the Administrative Tribunals Act, 1985.

6. Drawing our attention to a sports quota notification issued by the Eastern Railway Recruitment Cell, Mr. Majumdar submits in view of the subsisting dispute as regards tenure of the President of VFI a specific clause was incorporated in the said notification to the effect that *'the sports achievements in the events conducted by Volleyball Federation of India or its affiliated units after 02.02.2017 will not be considered for recruitment. However, participation and medal winning performance after 20.07.2017 in the events organized by Volleyball Federation of India led by Sri Ramavatar Singh Jhakar as Secretary General will be considered for recruitment'*. However, a different stand has been taken by the Ministry of Communication & IT. When a particular Ministry of the Central Government has incorporated such bar towards acceptance of certificate of VFI pertaining to a prescribed period, the Ministry of Communication & IT could not have taken a different stand. The eligibility criteria ought to have been interpreted with reference to the exposition it has received from the other competent authority. Reliance has been placed upon the judgments delivered in the cases of *Elizabeth Jacob Vs. District Collector, Idukki and Others*, reported in (2008) 15 SCC 166 and *Rohitash Kumar and Others Vs. Om Prakash Sharma and Others* reported in (2013) 11 SCC 451.

7. Mr. Chaubey, learned advocate appearing for the respondents denies and disputes for the contention of the petitioner and submits that the respondents have acted in strict consonance with the recruitment

notification and as such the learned Tribunal rightly did not interfere with the selection process. There is no dispute that the private respondent no.6 did participate in the concerned championship and obtained valid certificate from the competent authority. In case of the respondent no. 6, certificate had been issued by the Secretary of West Bengal Volleyball Association in Form-2 as per instruction contained in the prospectus cum application form. The original participating certificate of the respondent no. 6 has been issued under the signature of Secretary General and Chairman, Control Committee of VFI for the period of participation from 19th April, 2017 to 25th April, 2017.

8. Mr. Das, learned advocate appearing for the respondent no. 6 submits that the petitioner has miserably failed to establish any arbitrariness or *malafide* in the selection process. It would explicit from the clause towards preference being clause 5 (ii) in the prospectus cum application form that preference would be given to those '*who have represented a State/UT in the Senior or Junior Level National Championship organized by the National Sports Federation recognized by Department of Youth Affairs and Sports or National Games organized by Indian Olympics Association and have won medals or positions upto 3rd place...*'. The respondent no.6 had admittedly fulfilled the said criterion to avail preference.

9. Drawing our attention to the notification dated 20th July, 2017 issued by the Ministry of Youth Affairs and Sports, Mr. Das submits that in compliance of the Court's order the Ministry decided to accept the selection

of VFI and the office bearers being the Secretary General and the Treasurer. It was also decided to revoke the suspension of VFI and restore its annual recognition for the 2017 and as such the argument of Mr. Majumdar that the respondent no. 6 did not obtain a certificate from the competent authority is not acceptable.

10. Mr. Das further submits that the argument of Mr. Majumdar as regards interpretation of the criterion in the prospectus cum application is an argument of desperation inasmuch as accepting the criterion specified participated in the selection process and without raising any objection the petitioner participated in the selection process. Since the result was not palatable, the petitioner cannot turn back and challenge the selection process. In support of such argument reliance has been placed upon the judgment delivered in the case of *Ramesh Chandra Shah and Others Vs. Anil Joshi and Others*, reported in (2013) 11 SCC 309.

11. He further submits that the selection has been conducted by an expert body in strict consonance with the criteria specified and the decision of such expert body cannot be interfered with and the learned Tribunal has rightly not entered into the arena of experts to re-assess the merit of the candidates. In support of such contention reliance has been placed upon a judgment delivered in the case of *U.V. Mahadkar Vs. Subhash Anand Chavan and Others*, reported in (2016) 1 SCC 536.

12. Heard the learned advocates appearing for the respective parties and considered the materials on record.

13. Indisputably, the petitioner participated in Senior National Volleyball Championship but her team did not secure any position upto 3rd place. Mere participation in such tournaments without securing the position (upto 3rd) is not a criterion to obtain preference. The respondent no. 6 represented the State in the 43rd National Junior Volleyball Championship conducted by VFI in the month of April, 2017 and her team secured the 2nd place. The petitioner's team did not secure 2nd place in the tournament as such her claim was rightly negated by the learned Tribunal.

14. The clarification as sought for by the learned Tribunal was answered by the respondents and from the notification of the Ministry of Youth Affairs and Sports dated 20th July, 2017 it clearly appears that the suspension of VFI was revoked and its annual recognition for the order 2017 was restored. The notification further states that in compliance of the order of the Hon'ble High Court, Delhi the Secretary General and the Treasurer of the VFI namely Sri. Ramavatar Singh Jhakar and Shekhar Bose were taken on record. In view thereof, the argument of Mr. Majumdar that the respondent no. 6 obtained certificate from an incompetent authority is not acceptable to us. No *mala fide* can be attributed to the action of the authorities and it cannot be said that the authorities have acted in a manner which would benefit a private party and in the said conspectus, the original application has been rightly rejected.

15. A decision is an authority for what it decides and not what can be deduced thereon. A slight difference in fact or an additional fact may create a huge difference making process. There is no dispute as regards the

proposition of law as laid down in the judgements, upon which reliance has been placed by Mr. Majumdar, however, the same are distinguishable on facts.

16. To attract writ of certiorari, a mere error of law is not sufficient. It must be one which is manifest or patent on face of record. Mere formal or technical errors, even of law, are not sufficient so as to attract writ of certiorari. Writ of certiorari is a high prerogative and should not be used on mere asking or as a matter of course. Certiorari is not an appellate but only supervisory jurisdiction. *[See the judgment delivered in the case of Central Council for Research in Ayurvedic Sciences & Another vs. Bikartan Das, reported in 2023 (6) Supreme 141].*

17. The learned Tribunal, upon dealing with all the factual issues, had arrived at specific findings and we do not find any patent error of law in the judgment impugned. The same also does not suffer from any jurisdictional error or any manifest injustice warranting interference of this Court.

18. For the reasons stated above, the writ petition is dismissed.

19. There shall, however, be no order as to costs.

20. Urgent Photostat certified copy of this judgment, if applied for, shall be granted to the parties as expeditiously as possible, upon compliance of all formalities.

(Partha Sarathi Chatterjee, J.)

(Tapabrata Chakraborty, J.)