

26.07.2023
ap
197-204

**WPA 22782 of 2022
with
WPA 22779 of 2022
with
WPA 22815 of 2022
with
WPA 22816 of 2022
with
WPA 22817 of 2022
with
WPA 22818 of 2022
with
WPA 22819 of 2022
with
WPA 22820 of 2022**

**Mugberia Gangadhar Mahavidyalaya & Anr.
Versus
The State of West Bengal & Ors.**

Mr. Biswarup Bhattacharjee
Mr. Soumyadip Saha

...for the Petitioners in
WPA 22782 of 2022.

Mr. Soumyadip Saha ... for the petitioners.

Mr. Santanu Mitra,
Ms. Rama Halder

...for the State in **WPA 22820 of 2022.**

Mr. Tapan Kr. Mukherjee,
Mr. Somnath Naskar

...for the State in **WPA 22815 of 2022 &
WPA 22819 of 2022.**

Mr. Biswabrata Basu Mallick,
Ms. Sangeeta Roy

...for the State in **WPA 22782 of 2022.**

Mr. Supriyo Chattopadhyay,
Mr. Arindam Ghosh

...for the State in **WPA 22817 of 2022.**

Mr. Debjit Mukherjee,
Mr. Ritesh Ganguly

...for the State in **WPA 22816 of 2022.**

Mr. Bhaskar Prasad Vaisya,
Mr. Nilay Baran Mondal

...for the State in **WPA 22779 of 2022.**

Mr. Bhaskar Prasad Vaisya,
Mr. Amit Halder
...for the State in **WPA 22818 of 2022**

Mr. Kuntal Ray
...for the Respondent No. 7.

Mr. Suman Saha
...for the Respondent No. 4 in **WPA 22816 of 2022**

Mr. Kapil Ch. Sahoo
...for the Private Respondent in **WPA 22819 of 2022.**

Mr. Kamal Kr. Mishra
... for the Respondent no. 7 in **WPA 22819 of 2022.**

Mr. Srinath Singha Roy
...for the State in **WPA 22816 of 2022.**

This batch of writ petitions is taken up for hearing together since similar facts are involved.

The relevant college, Mugberia Gangadhar Mahavidyalaya at Purba Medinipur, undertook a selection process for filling up of seven non-teaching posts and a position of 'Karmabandhu'.

The interview dates for the said selection process were scheduled for two days, i.e., March 02, 2022 and April 20, 2022.

As per the Government Notification dated February 15, 2018 issued by the Department of Higher Education, Government of West Bengal, a selection committee was constituted comprising the following members:

- (1) "A Nominee of the State Government,
- (2) A Nominee of the affiliating University,
- (3) A Nominee of the Governing Body/Administrator, as the case may be,

- (4) The Principal/the Vice-principal/the Teacher-in-Charge, as the case may be, of the concerned College,
- (5) An Expert, to be nominated by the West Bengal College Service Commission.

For the relevant selection proceedings, the local Sub-Divisional Officer was the nominee of the State.

It appears that the college by a letter dated February 01, 2022, informed the said Government nominee about the dates of interview for the posts of Lab Attendant of Physiology, Laboratory Attendant Zoology (Ex. Service man), Guard, Karmabandhu and Lab Attendant of Botany (S.T) as scheduled on March 02, 2022. For the posts of Attendant of Geography laboratory, Peon (S.C.), Lab Attendant Nutrition (General), the date was April 20, 2022 and the said member had been intimated by the college by a letter dated March 23, 2022.

The affidavit filed by the State goes to suggest that the said Government nominee could not attend the selection process since he was pre-occupied with the counting of municipal election vote on March 03, 2022. Nonetheless, the selection committee proceeded with the selection in his absence, prepared panels for the relevant posts and submitted the same to the Director of Public Instruction for approval.

The said nominee, thereafter by a letter dated June 15, 2022 addressed to the Principal Secretary,

Department of Higher Education, Government of West Bengal, inter alia, alleged that he was sidelined by the college from the selection proceedings. The college fixed that date of interview without any discussion with him. Since he was pre-occupied with the municipal election vote counting, he was unable to attend the selection proceedings. He proposed the interview to be declared as void *ab initio*.

By the order impugned dated September 09, 2022, the Director of Public Instruction intimated the college that he declined to approve the appointments accepting the stand of the Government nominee.

Mr. Tapan Kr. Mukherjee, learned senior advocate, appearing for the State submits that absence of Government nominee has vitiated the selection process. He submits that the Government nominee had a justified reason not to participate in the selection process, given his engagement in counting of municipal election votes. He further submits that a direction should be passed upon the college to hold a fresh interviews amongst the candidates who had applied for the relevant posts.

I find no justification in the stand of the State. It has not been disputed by the Government nominee that the college intimated him about the dates of interviews. It is his only allegation that the college

should have fixed the date of interview after discussion with him.

In a situation where a committee member is absent from a meeting and the relevant rules do not exclusively address how to take decisions in the absence of a member, the common practice is to rely on a majority view to determine the outcome.

In this context, the relevant parts of the judgment of the Supreme Court reported at **(1972) 3 SCC 383** (***Ishwar Chandra v. Satyanarain Sinha***) are quoted below:

“10. ...If for one reason or the other one of them could not attend, that does not make the meeting of others illegal. In such circumstances, where there is no rule or regulation or any other provision for fixing the quorum, the presence of the majority of the members would constitute it a valid meeting and matters considered thereat cannot be held to be invalid.”

Again in the case reported at **(2005) 5 SCC 363** (***People's Union for Civil Liberties v. Union of India***), it was, *inter alia*, held as follows:

“15. It is nextly argued by the learned counsel for the petitioner that there was no proper consultation amongst the members of the Selection Committee. This is based on the fact that one of the members who was then the Leader of Opposition in the Council of States did not respond to the intimation sent to him in regard to the selection of the members since he was in hospital at that point of time. A perusal of the Act does not show that there is any quorum fixed for the selection nor does it provide for any meeting nor has any particular procedure been provided for.

Under the Act, consultation by circulation is not impermissible. In such a situation, if one out of six did not respond, it would not vitiate the opinion of the other five members. On the contrary sub-section (2) of Section 4 specifically says that no appointment of a Chairperson or a member shall be invalid merely by reason of any vacancy in the Committee. In the instant case the Prime Minister, the Speaker of the House of the People, Minister in charge of the Ministry of Home Affairs in the Government of India, Leader of Opposition in the House of the People and Deputy Chairman of the Council of States having agreed on the appointment of the second respondent, we find no statutory error in the appointment of the second respondent.”

We may also refer to the judgement of the Supreme Court reported at **(2016) 5 SCC 1 (Supreme Court Advocates-on-Record Assn. v. Union of India)**. The relevant part is quoted below:

“395. ... In this behalf, it may be recorded that in case a statutory provision vests a decision-making authority in a body of persons without stipulating the minimum quorum, then a valid meeting can be held only if the majority of all the members of the body, deliberate in the process of decision-making. ...”

However, it must be remembered that this practice may not be followed in the cases where there is specific quorum requirements and in such cases, the decisions taken by the required number of members (quorum) should be considered to be valid regardless of majority view.

In that view of the matter, I am not inclined to interfere with the decision of the selection committee on the ground of absence of the Government nominee who remained absent despite being duly informed.

When the college duly intimated the Government nominee about the dates of interviews, it was open for the Government nominee to intimate the college in advance as to his prior commitments and request the college to reschedule the interview to a different date. He did not do so, instead, only after the selection process was completed, he raised his objection and suggested that the State should declare the selection process as void *ab initio*.

No doubt, it was the obligation of the college to intimate all the members of the selection committee about the date of interview. However, it was not incumbent upon the college to fix the date of interview after consulting with the members of the selection committee. Once the date of interview was intimated, if any member encountered any difficulty in attending selection process, it was his responsibility to promptly intimate the college and request alternative date of interview.

I am of the view that the selection process was not vitiated due to the absence of one of the members of the selection committee. Four members were present out of five and apart from the absence of the

Government nominee, no other illegalities have been alleged.

In that view of the matter, the order impugned dated September 09, 2022 issued by the Director of Public Instruction, is hereby set aside. These writ petitions are allowed with a direction upon the Director of Public Instruction to approve the appointments of the selected candidates within one month from the date of communication of this order, if there are no other infirmities in the selection process.

Accordingly, **WPA 22782 of 2022, WPA 22779 of 2022, WPA 22815 of 2022, WPA 22816 of 2022, WPA 22817 of 2022, WPA 22818 of 2022, WPA 22819 of 2022 and WPA 22820 of 2022** are allowed.

Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Kausik Chanda, J.)