

11.8.2023

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WPA 8441 of 2020
Sanchita Saha Ray
Vs.
The State of West Bengal & Ors.

Mr. Ekramul Bari
Mr. Siddhartha Sankar Mandal
Mr. Sk. Imtiazuddin
... For the petitioner.

Mr. Soumya Majumder
Ms. Sanjukta Dutta
... For Jadavpur University.

Mr. Anil Kr. Gupta
... For UGC.

In this writ petition, the petitioner has, inter alia, prayed for the finalisation of the selection process for the post of Assistant Professor in the Department of Computer Science at Jadavpur University. The petitioner submitted an application for the post in response to an advertisement notification dated September 21, 2017. Subsequently, she appeared before the selection committee, which was composed of the following members:

- 1. Prof. Debasish Saha (Chairman)**
- 2. Prof. Sudeshna Sarkar (Nominee of the Chancellor)**
- 3. Prof. Kaushik Roy (Subject Expert)**
- 4. Prof. R. C. Hasda (Subject Expert)**
- 5. Prof. Amit Das (Subject Expert)**
- 6. Prof. Chiranjib Bhattacharjee (The Dean, Faculty of Engg. & Tech.)**
- 7. Prof. Mahantapas Kundu (The Head, Dept. of Comp. Sc. & Engg.)**

However, on the date of the interview, Prof. Sudeshna Sarkar, the nominee of the Chancellor was

absent and five members including the Chairman recommended the name of the petitioner for the post in question.

The Head of the Department expressed disagreement with the majority decision. On March 26, 2019, he conveyed his dissent to the Chairman of the selection committee in a formal letter. The relevant excerpt from this letter is quoted below:

“1) The branch of engineering in which Ms. Sanchita Saha Ray has graduated is not listed within the Relevant/Appropriate branches of Computer Science and Engineering (CSE) as specified by the AICTE. As per the Memorandum (No. 142- Edn (U)/1U-91/10 dated 28.02.2011) the candidate must have the degree in relevant branch of Engineering and Technology”.

Here Ms. Sanchita Saha Ray lacks that as she has graduated in Electronics and Communication Engineering (ECE) from Sikkim Manipal Institute of Technology.

2) Out of the 29 candidates appeared for the interview many have high API scores in respect to Research Performance including Post-doc and other fellowships, and Academic Record including PhD degrees compared to the scores Ms Sanchita Saha Ray has obtained.

High scores put in favour of Ms. Sanchita Saha Ray by the other members of the selection committee for the Domain Knowledge and Teaching Skill, and Interview Performance are not at all consistent with her API scores on Research Performance and Academic Record.

3) Since Ms. Saha Ray has graduated in ECE, a field having small intersection with CSE, she will not be able to teach any of the core subjects of CSE in the department along with the most of the subject specializations given in the Advertisement. Moreover, since her research skill in terms of publications in high quality journals, Doctoral and Post Doctoral research, coordinating research Projects is quite insignificant compared to some other candidates appeared in the interview, her inclusion in the CSE department will serve no real purpose especially for achieving academic excellence of the department.”

According to Section 26 (2) of the West Bengal Laws (Amendment) Act, 2011, the nominee of the Vice-Chancellor, who also chaired the selection committee, forwarded the recommendations along with all relevant records to the Vice-Chancellor.

On July 21, 2019, the Vice-Chancellor referred the matter back to the selection committee for reconsideration.

Consequently, another meeting of the selection committee took place on July 30, 2019.

It is apparent that the Chancellor's nominee, who was absent in the earlier meeting held on March 25, 2019, objected to the petitioner's selection by her letter dated July 30, 2019 expressing concerns regarding the petitioner's academic background for the absence of an undergraduate degree in the relevant subject and the lack of a Ph.D. degree.

The Head of the Department also reiterated his opinion that the petitioner was not suitable for the position.

On the other hand, the four members who had previously supported the petitioner's selection on March 25, 2019, maintained their stance that there was no need to amend or revise the recommendation made during the initial selection process.

It is noteworthy that the university's disclosed documents do not provide the view of the Dean, Faculty of Engineering & Technology, during the review meeting held on July 30, 2019, who had initially endorsed the petitioner's selection on March 25, 2019.

Later, he presented a revised note sheet dated December 11, 2019 for the Vice-Chancellor recommending cancellation of the post in question and for re-advertisement of the same.

The Vice Chancellor, armed with the aforesaid proposal, referred the matter to the Hon'ble Chancellor

in accordance with Section 27 (2) of the West Bengal University Laws (Amendment) Act, 2011.

The university has asserted that, in the absence of any response from the office of the Chancellor for approximately three years, it decided to re-advertise the post. Subsequently, a fresh advertisement for the same position was published in April, 2022 targeting potential candidates

Mr. Bari, learned advocate representing the petitioner, has contended that the rules governing the convening of meeting of the selection committee has been prescribed under Section 27 of the West Bengal University Laws (Amendment) Act, 2011. Notably, Section 27 (1) stipulates that a minimum of four members, including two external subject matter experts, shall constitute the quorum for a selection committee meeting. The committee, being fully assembled, resolved to propose the petitioner's nomination.

Mr. Bari asserts that the missive dated July 02, 2019, elucidates that the Vice-Chancellor neither endorsed nor rejected the selection committee's suggestion. Consequently, the provisions of Section 27 (2) of the West Bengal University Laws (Amendment) Act, 2011, are not applicable in this case.

According to Mr. Bari, when the Vice-Chancellor refers the proposal back to the selection committee, it is imperative that the committee's composition remains same. The prerogative to reconsider a candidature should solely rest with those committee members who were present during the interview.

In the present circumstances, where the quorum is undisputed in the absence of one member, the question of referral under Section 27 (2) of the aforementioned 2011 Act does not arise.

According to Mr. Majumder, learned advocate for the University, upon an integrated analysis of Sections 26 and 27 of the 2011 Act, it becomes evident that "selection committee" does not exclusively pertain to the prior members, but rather encompasses the composition in accordance with University Grants Commission Regulations. This underscores the nuanced difference between the usage of the terms "a selection committee" and "the selection committee" in Section 27 (2) of the 2011 Act. This dialectical play indicates that the term "selection committee" signifies a committee formed pursuant to Section 27 of the 2011 Act, tasked with determining references to the Vice-Chancellor. Mr. Majumder emphasis that the reconsideration of a candidate's case by the selection committee should be regarded as a reference, rather than a review, a term omitted from the West Bengal University Laws (Amendment) Act, 2011. Furthermore, Mr. Majumder contends that both the Vice-Chancellor and the Chancellor were not personally involved in the candidate's interview. Consequently, limiting the reconsideration process to members present during the original selection committee meeting would obstruct the evaluative process by statutorily mandated selectors, who hold a recommendatory function.

Before addressing the pivotal issue at hand, it is imperative to delineate Sections 26 and 27 of the West Bengal University Laws (Amendment) Act, 2011, which are reproduced below:

“26. (1) A University Professor or a University Associate Professor or a University Assistant Professor shall be appointed by the Vice-Chancellor, on the recommendation of a Selection Committee, and the constitution of such Selection Committee as well as the procedure for holding its meetings shall be in consonance with the University Grants Commission Regulations and Recruitment

Rules framed by the State Government from time to time.

(2) Notwithstanding anything contrary to the provisions of University Grants Commission Regulations, the nominee of the Vice-Chancellor shall be the head of the Selection Committee, which shall send its recommendations in writing to the Vice-Chancellor of alongwith reasoned record of assessment of the persons appeared before it for selection.”;

27. (1) At least four members, including two outside subject experts, shall constitute the quorum for a meeting of the Selection Committee.

(2) If the Vice-Chancellor does not accept the recommendation of a Selection Committee, it shall refer the recommendation back to the Selection Committee with reasons for reconsideration and if the Vice-Chancellor does not accept the reconsidered views of the Selection Committee, the matter shall be referred to the Chancellor with reason and the decision of the Chancellor shall be final.”

In circumstances where no specific rules, regulations, or provisions govern the quorum, a valid meeting is constituted by the presence of a majority of members. Decisions taken by such present members cannot be invalidated.

In this context, it is enlightening to reference the following pronouncements of the Supreme Court:

- a) (1972) 3 SCC 383 (*Ishwar Chandra v. Satyanarain Sinha*);**
- b) (2005) 5 SCC 363 (*People's Union for Civil Liberties v. Union of India*) and**
- c) (2016) 5 SCC 1 (*Supreme Court Advocates-on-Record Assn. v. Union of India*).**

In light of the aforementioned legal proposition, it becomes evident that decisions made through a majority vote or by quorum are legitimately attributed to the selection committee.

Having said this, it has to be noticed that within the statutory framework of the West Bengal University

Laws (Amendment) Act, 2011, the Vice-Chancellor is not obliged to accept the recommendation of a Selection Committee even if the same is made by the majority members. The discretion vests with the Vice-Chancellor either to accept the recommendation or send it back to the committee for reconsideration. Therefore, I cannot accept the contention of Mr. Bari that the petitioner acquired a vested right to be appointed for the post in question since in the meeting held on March 25, 2019, the majority members recommended her name.

I am, however, of the view that the nominee of the Chancellor, who was absent on March 25, 2019, should not have been allowed to participate in the subsequent meeting held on July 30, 2019 to reconsider the petitioner's candidature.

The selection committee, comprising members present during the interview, collectively constituted the authoritative committee. The member who was not present at the interview and therefore did not engage with the petitioner's candidacy should not be permitted to reconsider the case.

The statutory framework pertinent to this case does not allow a selection committee member to revisit a candidate's candidature if he was absent during the interview. This is because reconsideration can only be entrusted to those who have considered the candidacy.

In my assessment, Mr. Bari's reliance on a judgment reported at **(2012) DLT 195 (Kwality Restaurant & Ice-Cream Co. v. Commissioner of VAT, Trade and Tax Department)** is apt. In a similar context, a Division Bench of the Delhi High Court ruled that the third member of the Appellate Tribunal, Value Added Tax, who was absent during a substantial portion of the hearing, should not partake in the proceedings.

Given the above conclusions, it is my view that the second meeting held on July 30, 2019, wherein the Chancellor's nominee was allowed to participate, cannot be deemed valid. Therefore, the decision of the said meeting is set aside.

The Vice-Chancellor is free to endorse the recommendation of the first meeting held on March 25, 2019, within two weeks from the date of communication of this order. Should the Vice-Chancellor endorse the recommendation of the selection committee, the appointment letter to the petitioner shall be issued within a span of two weeks thereafter.

Should the Vice-Chancellor opt not to concur with said recommendation, he shall refer it back to the selection committee, detailing the reasons for reconsideration. The only members present during the petitioner's interview on March 25, 2019 should be entrusted with this reconsideration process.

In the event that the Vice-Chancellor remains unconvinced by the re-evaluated perspective of these members, he may escalate the matter to the Chancellor, accompanied by reasoning. In that event, the Vice-Chancellor is expected to expedite the conveyance of its decision.

Given the submissions from both parties indicating the current absence of a Vice-Chancellor at the University, this order shall be enforced upon the assumption of duty by a new Vice-Chancellor.

WPA 8441 of 2020 is accordingly disposed of.

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.)