

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
APPELLATE SIDE

Present:

The Hon'ble Justice Tapabrata Chakraborty
&
The Hon'ble Justice V.M. Velumani

MAT 793 of 2023

with

IA No.CAN 1 of 2023

with

IA No. CAN 2 of 2023.

Eastern Zonal Cultural Centre

-Versus-

Laipubam Upendro Sharma & Ors.

with

MAT 796 of 2023

with

IA No. CAN 1 of 2023

with

IA No. CAN 2 of 2023

Ashis Kumar Giri

-Versus-

Laipubam Upendro Sharma & Ors.

with

MAT 838 of 2023

with

IA No. CAN 1 of 2023

Shyama Prasad Chattopadhyay

-Versus-

Union of India & Ors.

with

MAT 845 of 2023

with

IA No CAN 1 of 2023

with

IA No. CAN 2 of 2023

Union of India

-Versus-

Laipubam Upendro Sharma

- For the Appellant (E.Z.C.C.)
(in all appeals)* : *Mr. L.K Gupta, Sr. Adv.,
Mr. Sandipan Banerjee.*
- For the State respondent* : *Mr. T.M. Siddique,
Mr. Supratim Dhar.*
- For the Appellant
(in MAT 796 of 2023)&
for the private respondent in
other appeals* : *Mr. Joydeep Kar, Sr. Adv.,
Mr. Pinaki Ranjan Chakraborti.*
- Appellant-in-person
(in MAT 838 of 2023)* : *Mr. Shyama Prasad Chattopadhyay*
- For the Appellant in MAT 845 of
2023 and for the respondent no.2
in MAT 793 of 2023 & in MAT 796
of 2023 & for the respondent no.1
in MAT 838 of 2023* : *Mr. Ashok Kumar Chakraborty, Ld. A.S.G.,
Ms. Amrita Pandey,
Ms. Anamika Pandey.*
- For the respondent no.3 in
in MAT 793 of 2023, respondent no.4
in MAT 796 of 2023, & respondent no.2
in MAT 845 of 2023* : *Mr. Billwadal Bhattacharya, Ld. D.S.G.,
Mr. Anish Kumar Mukherjee.*
- For the respondent no.1 in all appeals
except in MAT 838 of 2023* : *Mr. Soumya Majumder,
Mr. Victor Chatterjee,
Mr. Barnomoy Basak.*

Hearing is concluded on : *5th January, 2024.*

Judgment On : **12th February, 2024.**

Tapabrata Chakraborty, J.

1. All the above four appeals have been preferred against the judgment dated 4th May, 2023 passed in two writ petitions heard analogously being WPA 18906 of 2022 preferred by one Laipubam Upendro Sharma (in short, Upendro) and WPA 28493 of 2022 preferred by one Shyama Prasad Chattopadhyay (in short, Shyama). The appeal being MAT 793 of 2023 has been preferred by Eastern Zonal Cultural Centre (in short, EZCC), the appeal being MAT 796 of 2023 has been preferred by one Ashis Kumar Giri (in short, Ashis), the appeal being MAT 838 of 2023 has been preferred by Shyama and the appeal being MAT 845 of 2023 has been preferred by the Union of India (in short, UOI).

2. Shorn of unnecessary details the facts are that EZCC, an autonomous body under the Ministry of Culture, Government of India (in short, the said Ministry) published an advertisement dated 17th/23rd July 2021 inviting applications for filling up the post of Director, EZCC, Kolkata. Upendro, Shyama, Ashis along with others applied for the said post. As per decision of the said Ministry, a Scrutiny Committee consisting of four members was constituted for scrutiny of the applications received in the office of the Hon'ble Governor of West Bengal cum Chairperson of EZCC. The said Committee held its meeting on 13th May, 2022 and prepared a list of eleven suitable candidates out of a total of forty-one applicants for appearing in the interview before the Search-cum-Selection Committee (in short, Search Committee). The Search Committee consisting of six members was constituted as per the Recruitment Rules for the post of Director, EZCC, as would be explicit from the memo dated 10th May, 2022 issued by the Under Secretary to said Ministry and it conducted the interview on 20th May, 2022 virtually in which over and above the eleven short listed candidates, twenty more candidates were interviewed. Five members unanimously prepared a panel in which Ashis stood first and a dissenting member being the Joint Secretary (ZCC, MOC) submitted a separate panel in which one Madhurima Baruah Sen was first. In both the

panels, Upendro secured the second position. The panel prepared by the majority members was approved by the said Ministry and the Chairman, EZCC issued the appointment letter in favour of Ashis, the first empanelled candidate, on 5th July, 2022. Subsequent thereto, in response to an application dated 14th July, 2022 submitted under the provisions of the Right to Information Act, 2005, Upendro was forwarded several documents pertaining to the selection process.

3. Mr. Gupta, learned advocate appearing for the EZCC submits that the learned Single Judge erred in law in observing that the Governor as the Chairman of the Search Committee chose to override the decision of the Scrutiny Committee and to widen the scope of selection process by interviewing 20 candidates over and above the eleven candidates short-listed by the Scrutiny Committee. The Search Committee, having the expertise, was not divested of the authority to scrutinise the acts of the Scrutiny Committee.

4. He contends that the function of the Scrutiny Committee was to examine the applications and to short-list the eligible candidates. Further process for filling up the post was left to the Search Committee, as would be explicit from the memo dated 12th May, 2021 issued on behalf of the said Ministry. It is thus unreasonable to construe that the word '*selection*' only as the factum of preparation of the select list.

5. He argues that the Hon'ble Governor did not act on his own discretion in calling further twenty candidates in the interview. The said decision to include all the candidates, who met the eligibility criteria was taken upon due deliberation and discussion with the members of the Search Committee. Such fact would be explicit from the trail mails issued contemporaneously.

6. He contends that the integrity of the members of the Search Committee has not been doubted in the writ petitions. The members were high officials having the competence to evaluate the eligibility of the candidates who applied for the post. In absence of any allegation of *mala*

fide or arbitrariness, the decision of the Search Committee ought not to have been interfered with.

7. Mr. Gupta further argues that prior to appearing in the interview on 20th May, 2022, Upendro was aware of the fact that over and above the eleven candidates shortlisted by the Scrutiny Committee, twenty more candidates have been called for interview by the Search Committee. Without lodging any protest towards such alleged enhancement of the zone of consideration, Upendra participated in the interview. As the ultimate results were not palatable, he could not have turned back and challenged the participation of twenty more candidates in the interview on an alleged ground of procedural impropriety. In support of the arguments as advanced reliance has been placed upon the judgments delivered in the cases of *Madras Institute of Development Studies and Anr. versus K. Sivasubramaniyan and Ors.*, reported in (2016) 1 SCC 454, *Anupal Singh and Ors. versus State of Uttar Pradesh through Principal Secretary, Personal Department and Ors.*, reported in (2020) 2 SCC 173 and *A.P Public Service Commission, Hyderabad and Anr. versus B. Sarat Chandra and Ors.*, reported in (1990) 2 SCC 669.

8. Mr. Kar, learned advocate appearing for Ashis argues that in the writ petitions the approval of appointment of Ashis was not under challenge. While consulting the records, the members of the Search Committee found that twenty candidates had been illegally left out and accordingly, they were directed to appear in the interview.

9. He further argues that delegation of the authority to shortlist the candidates is not an instance of complete handing over or transference of power from one person or body of persons to another. Delegation may be defined as the entrusting of the exercise of power but such entrustment is purely derivative and the ultimate powers always remains in the delegator and is never renounced. The inclusion of twenty eligible candidates cannot be construed to be an act without jurisdiction on the part of the Search Committee. It is not a case that Search Committee had treated similarly

situated candidates dissimilarly. In support of the arguments as advanced reliance has been placed upon the judgments delivered in the cases of *B. Amrutha Lakshmi versus State of Andhra Pradesh and Ors.*, reported in (2013) 16 SCC 440, *Irrinki Srinagesh versus State of Andhra Pradesh and Ors.*, reported in (2013) 16 SCC OnLine Sc 994 and *Gwalior Rayon Silk Mfg. (WVG) Co. Ltd. versus The Asstt. Commissioner of Sales Tax and Ors.*, reported in (1974) 4 SCC 98.

10. Mr. Shyama Prasad Chattopadhyay, appearing in person, submits that the Search Committee illegally empanelled and recommended Ashis for appointment being oblivious of the fact that he was not enjoying the appropriate scale of pay and he applied for selection without resigning from his parent office and despite being a government servant, his application was not forwarded through proper channel. The learned Single Judge erred in law in dismissing his writ petition being oblivious of the fact that while calling him for the interview, the authorities had considered and relaxed the period of six months and nine days over the cut-off age of 65 years.

11. Mr. Ashoke Kumar Chakraborty, learned Additional Solicitor General appearing for UOI submits that the selection process was pertaining to grant of appointment on contractual basis. Such selection does not attract the rigors of a regular selection process moreso when the writ petitioners failed to establish any *mala fide*, the learned Single Judge in exercise of powers of judicial review ought not to have interfered with the selection conducted by a specialist body.

12. According to Mr. Chakraborty, on the ground of alleged procedural impropriety the learned Single Judge ought not to have interfered with the selection at the instance of an unsuccessful candidate moreso when there is no allegation to the effect that the entire selection process was a nullity.

13. Drawing our attention to the provisions of Article 163 of the Constitution of India, Mr. Chakraborty argues that the decision of the Hon'ble Governor in exercise of his discretion is final and the validity of

anything done by the Hon'ble Governor cannot be called in question on the ground that he ought or ought not to have acted in his discretion.

14. Mr. Bhattacharya, learned advocate appearing for the Search Committee, adopting the arguments advanced by Mr. Chakraborty, submits that the Scrutiny Committee sent the list of the candidates shortlisted to the Hon'ble Governor's Secretariat. At that time pandemic was prevailing. The Chairman scrutinized the entire file and after a meaningful discussion and deliberation with the other members of the Search Committee found that twenty candidates fulfilling the eligibility criteria have been left out by the Scrutiny Committee and accordingly the decision was taken to call the said candidates for the interview. None of the other members of the Selection Committee found fault with such decision and accordingly thirty-one candidates were interviewed in a virtual meeting.

15. Mr. Majumdar, learned advocate appearing for Upendro submits that the recruitment rules provided towards constitution of a Scrutiny Committee for shortlisting the candidates first and then it was within the domain of the Search Committee to evaluate the performance of the said shortlisted candidates in the interview. Such rules existing during initiation of selection process were altered in the subsequent stage of selection. The Chairman of the Search Committee had no jurisdiction to sit in appeal or to review the decision of the Scrutiny Committee. Furthermore, it would be explicit from the minutes of the meeting dated 20th May 2022 that the Hon'ble Governor in his individual capacity and in exercise of his discretion included twenty candidates over and above the eleven candidates shortlisted by the Scrutiny Committee. Ashis's name was not included in the list of eleven candidates prepared by the Scrutiny Committee. By enhancing the zone of consideration, the Search Committee had in fact frustrated the very purpose for which the Scrutiny Committee was constituted. In derogation to the recruitment rules, the zone of consideration was illegally enhanced and Ashis was a beneficiary of the illegalities perpetrated by the authorities.

16. He argues that the Hon'ble Governor was discharging his functions as a Chairman of the Search Committee and not as the Executive Head of the State and as such the argument of Mr. Chakraborty, citing the provisions of Article 163 of the Constitution of India, has no manner of application in the facts and circumstances of the present case.

17. He further argues that the Chairman of the Search Committee had no jurisdiction to appoint the Director. Such jurisdiction stands conferred upon the executive board, as would be explicit from the rules and regulations. In the said conspectus, the learned Single Judge rightly allowed the writ petition being WPA18906 of 2022 by quashing the subsequent list of twenty candidates, the letter of recommendation dated 26th May, 2022 and the appointment letter of Ashis dated 5th July, 2022.

18. We have heard the learned advocates appearing for the parties at length and we have given our anxious consideration to the facts and circumstances of the case.

19. The primary issue that can be culled out from the adversarial arguments is as to whether the Hon'ble Governor/ Chairman of the Search Committee in his sole discretion or at the behest of the Search Committee could have called twenty candidates over and above the eleven candidates shortlisted and recommended by the Scrutiny Committee.

20. Indisputably, in the writ petition preferred by Upendro there is no challenge against the decision of the said Ministry towards approval of appointment of Ashis. There is also no pleading in the said writ petition to the effect that the selection process was sham or that the respondents have acted *mala fide*. Upendro also did not plead any bias or favouritism. From the annexure to the minutes of the Scrutiny Committee dated 13th May, 2022, it would be explicit that the criteria of eminence and requisite experience in the field of Art and Culture were not assessed while recommending eleven candidates for interview. Upon perusal of the records, twenty more candidates were found to be eligible and were called to participate in the interview.

21. It has been strenuously argued on behalf of Upendro that the Chairman of the Selection Committee chose to act in his own discretion. In support of such contention reliance has been placed upon the minutes of the meeting dated 20th May, 2022. It is well settled that the records need to be considered together and not in isolation. A particular line/clause cannot be taken up and highlighted. The contents of the minutes of the meeting dated 20th May, 2022, the memo dated 10th June, 2022 and the fact that the none of the members of the Search Committee protested against participation of the twenty candidates over and above the candidates shortlisted by the Scrutiny Committee, rule out the finding that such decision was an act of '*individual discretion*' of the Chairman of the Search Committee.

22. It is well settled that even though the power granted to the executive authority is not totally immune from judicial review but the Court makes an almost extreme presumption in favour of *bona fide* exercise of such power. Two indispensable riders for scrutinizing the validity of a recruitment process are to prevent '*miscarriage of justice*' and to secure '*fair play in action*'. In the absence of any specific or categorical finding supported by any concrete and relevant material that wide spread infirmities of an all-pervasive nature, which could be really said to have undermined the very process itself in its entirety or as a whole and in the absence of any allegation that fraud, misrepresentation or malpractice had been committed, there was hardly any justification in law to interfere with the selection process.

23. A composite perusal of the memorandum of association and the rules and regulations of EZCC would reveal that the Executive Board comprising of high Government officers had been conferred the jurisdiction towards constitution of Search Committee and other committees and that the appointment of Director is subject to the approval of the concerned Ministry. Such approval is not under challenge. In the said conspectus and moreso when the selection process stood intervened by the pandemic, we

are unable to hold that the rules of the game had been altered by the authorities after the process of selection had commenced.

24. Upon arriving at a categoric finding that *'the eligibility criteria or the criteria for selection'* had not been changed after the process of selection had commenced, Court observed that the procedure for selection had been altered by one committee/Hon'ble Governor by taking upon themselves the duties and functions of another committee. The contents of the memo dated 12th May, 2021 by which the constitution of the Scrutiny Committee was approved, clearly reveal that the said Scrutiny Committee was constituted to examine the applications and to shortlist the eligible candidates with a rider that *'thereafter further process for filling up the post of Director will be initiated'*. The document annexed at page 118 of the paper book also reveals that the Search Committee was constituted to take further steps towards filling up the post of Director after shortlisting of candidates. It thus does not establish that the Search Committee was not conferred with any jurisdiction to consult the records for ascertaining as to whether any eligible candidate had been left out from the zone of consideration moreso when the annexure to the minutes of the Scrutiny Committee dated 13th May, 2022 does not reveal that the riders towards eminence and requisite experience in the field of Art and Culture of the candidates were taken into consideration. It is thus not a case that a prescription existing at the time of the initiation of the selection process was amended and dropped after the process of selection had commenced. Erroneously proceeding on the basis that the Chairman of the Selection Committee had acted on his *'individual discretion'*, the learned Judge proceeded to review the decision taken by the expert body to call Ashis for the interview failing to appreciate the Court should be slow to interfere with the decision of any expert body. The view of the expert should not be disturbed unless it is perverse or not based on evidence.

25. For the reasons discussed above, the learned Single Judge ought not to have quashed the subsequent list of twenty candidates, the letter of recommendation dated 26th May, 2022 and the letter of appointment of

Ashis dated 5th July, 2022 and accordingly, the said directions are set aside and Upendro's writ petition is dismissed. In view thereof, the direction to consider the suitable candidate from the panel recommended by the Joint Secretary, ZCC for appointment to the post of Director, EZCC is also not sustainable and is set aside.

26. With the above observations and directions the appeals being MAT 793 of 2023, MAT 796 of 2023 and MAT 845 of 2023 along with the connected applications are disposed of.

27. The learned Single Judge rightly arrived at a finding that Shyama, being over aged, was ineligible to challenge the appointment of Ashis. As there was no illegality in calling twenty more candidates for the interview over and above the shortlisted candidates by the Scrutiny Committee, we do not find any reason to interfere with the direction towards dismissal of Shyama's writ petition. The appeal, being MAT 838 of 2023 along with connected application, preferred by Shyama are, accordingly, dismissed.

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

Urgent Photostat certified copy of this judgment, if applied for, be given to the parties, as expeditiously as possible, upon compliance with the necessary formalities in this regard.

(V.M. Velumani, J.)

(Tapabrata Chakraborty, J.)