

**In the High Court at Calcutta
Constitutional Writ Jurisdiction
Appellate Side**

The Hon'ble Justice Sabyasachi Bhattacharyya

**RVW 310 of 2023
+
CAN 2 of 2024
in
WPA No. 17565 of 2021
With
RVW 184 of 2024
+
CAN 1 of 2024
With
RVW 185 of 2024
+
CAN 1 of 2024**

**With
WPCRC 106 of 2023
arising out of
CPAN 1325 of 2022**

**Rubina Khatun
Vs.
T. Balasubranion and another**

For the review applicant in RVW 310 of 2023	:	Ms. Chaitali Bhattacharyya, Mr. Kartick Chandra Kapas.
For the review applicant in RVW 184 of 2024 and RVW 185 of 2024	:	Mr. Masud Karim,
For the State	:	Mr. Pantu Deb Roy, Mr. Subrata Guha Biswas,
For the writ petitioner	:	Mr. Tushar Kanti Mukherjee.
Hearing concluded on	:	04.10.2024
Judgment on	:	08.11.2024

Sabyasachi Bhattacharyya, J:-

1. Two separate review applications and the connected applications have come up for consideration before this Court.
2. The matter arises out of a writ petition bearing WPA No.17565 of 2021, filed by one Mijanur Rahaman Molla against the State and its instrumentalities, in which the review applicants were not parties. The grievance of the writ petitioner Mijanur was that on November 24, 2020, he had given a representation to the Authorities for being considered to be appointed as a temporary Muhammadan Marriage Registrar (MMR) for the Pujali Police Station area, which was not considered by the Authorities. By an order dated August 18, 2022 passed in WPA No.17565 of 2021, the court had directed the Authorities to consider the said representation upon giving an opportunity of hearing to the writ petitioner and other applicants, if any for the said post.
3. On February 24, 2023, an advertisement bearing No. Adv.1/2023/MMR/S-24 Parganas was published, inviting applications for the post of temporary MMR, Pujali Police Station area.
4. A contempt application was filed in the meantime, bearing No. CPAN 1325 of 2022, which prompted the court subsequently to issue a Rule of Contempt, giving rise to WPCRC 106 of 2023. By an order dated June 19, 2023 in the contempt application, the Authorities were directed to extend the time for submission of applications for the said post till July 15, 2023 by publishing a formal notification and to give personal hearing to the applicants.

5. Such order was complied with and out of a total number of eleven (11) candidates, a panel was prepared by the District Registrar where one Md. Salman Sk. was arrayed as first, Mijanur as second and one Rubina Khatun as the third successful candidates. Out of them, the District Registrar nominated Salman to be selected for the post and forwarded the entire panel of eleven candidates to the Inspector General of Registration (IGR). The nomination was made on July 19, 2023.
6. On August 9, 2023, the IGR disapproved of the District Registrar's choice and opted for Mijanur, the writ petitioner, recommending the name of the latter to the State Government for consideration. Both the communications, by the District Registrar and the IGR respectively, were supported by reasons.
7. The Contempt Rule came up for consideration before this Court on August 25, 2023, when the State was directed to consider the recommendation of the IGR and give approval to Mijanur, to be followed by his appointment as temporary MMR.
8. Salman and Rubina, the first and third candidates respectively in the original panel, took out two independent review applications which are now before the court. Rubina filed RVW No. 310 of 2023 and Salman, RVW No.185 of 2024, both seeking review of the order dated August 25, 2023 whereby Mijanur was directed to be given appointment as temporary MMR for the Pujali Police Station area by acting upon the recommendation of the IGR.

- 9.** It is argued by the learned advocates appearing for the respective review applicants that the court, while passing the order under review, failed to take into consideration the happenings in between and gave ago-bye to the legal rights accrued in favour of the review applicants. Salman argues that he was chosen as the first empanelled candidate and was also recommended by the District Registrar. Thus, the appointment of Mijanur by overlooking the same was patently erroneous on the face of the order. Rubina, while admitting that she came third and that the recommendation for the temporary post of MMR did not require a reference to the Permanent Committee as per the governing Rules, argues that the order dated August 25, 2023, failed to take into account the publication of a panel in between and also the fact that the same was not given effect to.
- 10.** Both the review applicants argue that when Mijanur had filed the representation, which was directed by the writ court to be considered, no selection process had been initiated as yet in respect of the post of temporary MMR for Pujali Police Station. As such, the direction of the court could not automatically lead to Mijanur being directed to be appointed in the post of temporary MMR, without taking into consideration that a due process of selection had intervened in between the passing of the writ court's order and the impugned order passed in the Contempt Rule, where Mijanur came second in the panel.
- 11.** The State has taken a neutral stand and it has been argued that due process of law was complied with in giving appointment to Mijanur;

thus, the review applications ought to be dismissed. The State relies on the respective recommendations by the District Registrar and the IGR and submits that the extant Rules were duly complied with.

- 12.** The writ petitioner opposes the review applications and also contends, in unison with the State, that due process of law was adhered to in giving him the appointment and that there is no error apparent on the face of the order under review.
- 13.** For a proper and comprehensive consideration of the matter, the governing Rules are required to be looked into. Vide Notification No. 620-Regn.-14th August, 1929, issued by the Law (Judicial) Department (Registration) of the Government of West Bengal, issued under powers conferred by Section 24 of the Bengal Muhammadan Marriages and Divorces Registration Act, 1876, read with Rule 2(2) of the Transferred Subject (Temporary Administration) Rules, Rules were framed in respect of appointment of MMRs for all Districts of the Presidency of Bengal. The said Rules are still in force.
- 14.** Rule 3(a) of the aforementioned Rules stipulates the procedure for selection of candidates for Muhammadan Registrarship in Districts other than Calcutta, which is supplemented by Rule 3(b), whereas sub-Rule(c) of Rule 3 deals with the procedure for filling up of vacancies, either temporary or permanent, in Calcutta.
- 15.** Since the present case relates to the Pujali Police Station, which does not fall within the territory of Calcutta, sub-Rules (a) and (b) of Rule 3 apply.

- 16.** Sub-Rule (a) of Rule 3 provides that on the occurrence of a vacancy in the post of MMR or on the creation of a new office in any District other than the District of Calcutta, the Registrar shall at once make a temporary appointment to carry on the work of the office, intimate the vacancy to the IGR and invite applications for the permanent post. The rest of the provisions in Rule 3(a) deal with the appointment of permanent MMRs, which requires the Registrar to send to the IGR all applications for the post after recommending in order of preference the best four. The IGR then refers the matter to the Permanent Committee formed for such purpose for consideration, along with his remarks and the remarks of the Registrar, and submit their recommendations by putting forward three names for such vacancy in order of preference. The said recommendations are to be communicated to the Government, which selects from the three names or, for any special reason, any other from the rest of the candidates.
- 17.** However, the provisions regarding permanent MMR need not bother us for the present, since those are not relevant here, as the present case deals entirely with the appointment of a temporary MMR for Pujali Police Station.
- 18.** Sub-rule (b) of Rule 3 sheds light on the procedure for appointment of temporary MMRs. Whereas Rule 3(a) does not require any applications to be invited for temporary appointment but empowers the Registrar to make such appointment and invite applications only for the permanent post, Rule 3(b) stipulates that the District Registrar shall nominate a suitable person for each vacancy of temporary

appointment. Such nomination is to be submitted to the Government by the IGR. Sub-rule (b) provides that in making temporary appointments, the Permanent Committee need not be consulted.

19. Upon the nomination of the Registrar for temporary appointment reaching the IGR, he has two options - either to refer such nomination for appointment as temporary MMR or, if he disapproves of the District Registrar's nomination, to recommend the appointment of any other candidate. Thereafter the local Government (here, the State Government) approves of the same and a temporary licence is issued to the nominee.

20. The following salient features may thus be culled out from the Rules for temporary appointment of MMR:

- i) For such appointments, the Permanent Committee need not be consulted;
- ii) The District Registrar nominates a suitable person and forwards the same to the IGR;
- iii) The IGR may either forward the same further to the Government or, if he disapproves of the District Registrar's nominee, recommend the appointment of any other candidate;
- iv) The local Government (State Government) shall approve the candidate and a temporary license shall be issued to him/her.

21. In the present case, the above provisions were fully complied with. The annexures to the affidavit-in-opposition to the contempt application filed by alleged contemnor no.1, who was the IGR at the relevant point of time, include the entire panel of eleven applicants for the post who

responded to the advertisement issued for the same. The recommendation/nomination of the District Registrar dated July 19, 2023 is also annexed thereto which shows that Salman was nominated by him.

- 22.** Annexure R/3 to the said opposition is the communication by the IGR dated August 9, 2023, to the Law Department whereby the IGR disapproved of the nomination of Salman by the District Registrar and recommended for the post Mijanur, the original writ petitioner.
- 23.** Both the nomination by the District Registrar and the recommendation by the IGR, including the latter's disapproval, were backed by elaborate and cogent reasons and cannot apparently be faulted at least on the ground of lack of reasons. Rule 3(b) clearly empowers the IGR to disapprove of the District Registrar's nominee and recommend his own who, incidentally in the present case, was the writ petitioner Mijanur. The matter was sent to the Government which was merely to give approval to the same.
- 24.** Let us now examine the order under review dated August 25, 2023 in the above backdrop. As opposed to the arguments of the review applicants, the court was aware and apprised of the facts which had happened in between at the time of passing the said order. In the order, the very first sentence records the submission of the alleged Contemnor/Authority, who filed a communication by the Deputy Commissioner of Stamp Revenue from which it appeared that the writ petitioner's prayer was considered by the Directorate which had forwarded its recommendation to the Law Department, Government of

West Bengal for further necessary approval. Adherence to due process was thus reflected in such submission and recording of the same by the court.

- 25.** It was accordingly held that the alleged contemnor had substantially complied with the order and the Rule was thus discharged and the contempt application disposed of. Importantly, it was observed in the order that the name of the writ petitioner had already been recommended in due course of law.
- 26.** Hence, it cannot be said that the court was not apprised of the recommendation which happened in between.
- 27.** Even if it were to be assumed that the entire facts were not placed before the court, we are to see as to whether the development in between, if considered, would or could have altered the order under review.
- 28.** Before doing so, however, it must be mentioned here that both the review applicants have *locus standi* to prefer review applications, since their legal rights, if any, would definitely be affected by the order. Also, the review applicants come within the contemplation of order XLVII of the Code, since they are persons who can legitimately consider themselves aggrieved by the order under review dated August 25, 2023, and could not produce the materials/evidences, which are now relied on by them, before the court at the time of passing the order, thus bringing the matter within the purview of “discovery of new matter” which is one of the valid grounds of review under Order XLVII Rule 1 of the Code of Civil Procedure.

- 29.** However, on facts, the first contention of the review applicants cannot be sustained, since the development in between would not have changed the outcome of the matter, even if considered and discussed at length by the court while passing the order under review.
- 30.** As held above, due process of law was complied with by the Authorities precisely in terms of Rule 3(b) of the governing Rules and it was recorded in the order under review that the recommendation of the writ petitioner Mijanur was done in due course of law.
- 31.** Even if on the date when the first representation was filed in 2020 by Mijanur, which was the subject matter of the writ petitioner itself, no selection process had commenced, subsequently applications were invited for the post of temporary MMR for the Pujali Police Station area, as borne out by the records, and the panel of candidates was duly forwarded to the IGR by the District Registrar with the latter's nomination.
- 32.** The IGR, also within the ambit of Rule 3(b), disapproved of the said nomination and, upon giving detailed reasons, chose the writ petitioner Mijanur for recommendation, which subsequently reached the State Government which is merely to approve the same.
- 33.** In fact, apparently for abundant caution and for the sake of transparency, the District Registrar had invited applications even for the appointment in the post of temporary MMR, whereas sub-rules (a) and (b) of Rule 3 do not require any such applications to be invited for a temporary post of MMR (applications are required to be invited under the Rules only for permanent appointments). Under the said

Rules, the District Registrar can directly nominate, even without inviting applications, a temporary MMR, whose name is then to be forwarded to the IGR who, in turn, would either agree or disapprove such nomination, in the latter case recommending his chosen candidate. Such candidate is thereafter to be approved and temporary license to be issued by the State.

- 34.** In fact, the entire procedure as provided in law was more than duly complied with by the Authorities, which was the premise on which the Contempt Rule was also discharged and the Contempt Application disposed of.
- 35.** Hence, the fact that initially there was no ongoing process of selection when the writ petitioner submitted his representation is irrelevant, since no “process” is envisaged prior to nomination by the District Registrar for such temporary appointment under Rule 3, sub-rule (a) and (b).
- 36.** In any event, such fact also pales into insignificance since subsequently due process of law was fully followed in terms of Rule 3(b) and the appointment of Mijanur, as directed by the order under review dated August 25, 2023, was in due compliance of law, since he was recommended by the IGR, who disapproved of the nomination of Salman by the District Registrar and gave his reasons. Nothing remains to be done thereafter but the approval of Mijanur and finalization of such appointment of Mijanur as temporary MMR by issuing a temporary license to him.

37. The impugned order dated August 25, 2023, directed the Authorities precisely to do so and thus does not suffer from any error, apparent or otherwise.
38. Also, the discovery of the new materials now placed before the court, even if available before the court on the relevant date of passing the order under review, would not and could not have altered the premise or the outcome of the said order.
39. Thus, there is no scope of interference with the order under review.
40. In such view of the matter, both the review applications fail.
41. Accordingly, RVW No.310 of 2023 and RVW No.185 of 2024 are dismissed on contest without any order as to costs.
42. Consequentially, all connected applications, being CAN2 of 2024 (in RVW No. 310 of 2023) and CAN 1 of 2024 (in RVW No.185 of 2024) also stand disposed of.
43. As a result, RVW No.184 of 2024 (filed by the writ petitioner) and the connected application bearing CAN 1 of 2024, having been rendered academic in the light of the earlier part of this order, stand disposed of as well.
44. Urgent certified server copies, if applied for, be issued to the parties upon compliance of due formalities.

(Sabyasachi Bhattacharyya, J.)

Later

Learned counsel for the review applicant in RVW 184 of 2024 and RVW 185 of 2024 seeks a stay of two weeks of the above order.

In order to enable the said review applicant to prefer a challenge, a stay of the operation of the above order is hereby granted for a period of two weeks.

(Sabyasachi Bhattacharyya, J.)