

**IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
(ORIGINAL SIDE)**

Present:

The Hon'ble Justice Rai Chattopadhyay

WPO 2626 of 2022

IA No: GA 1 of 2023

Debabrata Bera & Ors.

Vs.

The State of West Bengal & Ors.

WPO 2629 of 2022

Sanjib Chakraborty & Ors.

Vs.

The State of West Bengal & Ors.

WPO 2631 of 2022

Dipak Kumar Mistry & Ors.

Vs.

The State of West Bengal & Ors.

WPO 2632 of 2022

IA No: GA 1 of 2023

Prattay Banik & Ors.

Vs.

The State of West Bengal & Ors.

For the Petitioners

: Mr. Bikash Ranjan Bhattacharyya,
: Mr. R. N. Chakraborty,
: Ms. Tanushree Das.

For the K.M.C

: Mr. Alope Kr. Ghosh,
: Mr. Arijit Dey.

For the State : Mr. Jayanta Samanta,
: Mr. Kushal Biswas.

Heard on : 12/12/2023

Judgment on : 10/05/2024

Rai Chattopadhyay, J.

1. Four writ petitions being (i) WPO No. 2626 of 2022 with GA 1 of 2023 (ii) WPO No. 2629 of 2022, (iii) WPO No. 2631 of 2022, (iv) WPO No. 2632 of 2022 with GA 1 of 2023, have been heard together. Those are being disposed of by dint of a common judgment, as follows.
2. The writ petitioners are working for gain with respondent no. 3, that is, Kolkata Municipal Corporation. The writ petitioners are posted as *Sub-Assistant Engineers*. Until now their services have been controlled and guided by the Recruitment Regulations of the respondent Corporation, being a Circular dated August 10, 2020. Their promotional post is that of an *Assistant Engineer*. The promotional policy as was prevalent so far is as follows:-

“ by promotion from the posts borne in the common cadre for Sub Assistant Engineer (Civil/Mechanical/Electrical), 50% of the post of total Cadre strength of Assistant Engineer (Civil/Mechanical/Electrical) should be filled up by promotion from the post borne in the common cadre for Sub Assistant Engineer who would have at least 10 years experiences as Sub Assistant Engineer (Civil/Mechanical/Electrical) and

15% of the post of total cadre strength of Assistant Engineer (Civil/Mechanical/Electrical) shall be filled up by promotion from amongst the Sub Assistant Engineers (Civil/Mechanical/Electrical) having an Engineering Degree or equivalent from a recognized University; and having at least 10 years’ experience as Sub Assistant Engineer (Civil/Mechanical/Electrical) out of which a minimum of 5 years should be a degree (or equivalent) holder Sub Assistant Engineer (Civil/Mechanical/Electrical) in respective streams.

35% of the total cadre strength shall be filled up by direct recruitment observing necessary formalities.”

3. The writ petitioners have put forth their grievance that, in spite of vacancy having arisen, the process of promotion has not been initiated by the respondent No. 3/Corporation in due time, upon the vacancy being created. They say that in other areas and for other posts the authorities have duly conducted the process of promotion, so that the posts may be filled in time, but not in case of the writ petitioners. Such inaction on part of the respondent Corporation has been turned out to be a motivated one, for the reason as stated herein below. The writ petitioners say that to be an arbitrary as well as an illegal act, on the part of the respondent/Corporation, liable to be set aside.
4. In 2020, in the wake of pandemic due to spread of COVID-19 Virus, a general lockdown was experienced by the country, not to speak of the State and the respondent Corporation. This has prompted a notification to be published by the Government of West Bengal dated May 6, 2020. By dint of the same the “*Board of Administrators*” was appointed, for functioning of the respondent no. 3/Corporation, for the reason of inability to hold election of “*Mayor-in-Council*”, upon expiry of the statutory life of the previous “*Mayor-in-Council*”, due to pandemic and lockdown.
5. The “*Board of Administrators*” has introduced the impugned Circular dated July 22, 2022, by dint of which it had modified and changed the

Recruitment Regulations pertaining to the writ petitioners as mentioned above.

- 6.** The method of recruitment vide the said notification dated July 22, 2022, was directed to be

(i) *By direct recruitment through West Bengal Municipal Service Commission* - 60% of the post of total cadre strength of Assistant Engineer in Civil/Mechanical/Electrical wing.

(ii) *By promotion from the posts borne in the common cadre of Sub-Assistant Engineer (Civil/Mechanical/Electrical);* - the remaining 40% posts of total cadre strength of Assistant Engineer in Civil/Mechanical/Electrical wing shall be filled up by way of promoting from amongst the Sub-Assistant Engineer in respective stream by selection through the West Bengal Municipal Service Commission, subject to fulfilment of the conditions stipulated therein.

- 7.** Such change of service conditions of the writ petitioners has made them aggrieved that the same is to the detriment of their interests and as such to the vital right of life as guaranteed under which the Constitution of India. They have sought for adequate relief in these cases.
- 8.** Respondent No. 3 is the main answering respondent in these cases, that is, the Kolkata Municipal Corporation. It has contested the matter by filing written affidavits-in-opposition. The respondent No. 3 has

categorically stated that promotion is a phenomenon, typically within the power and authority of the employer and the employees would not have any vested right to the same. As such, according to the said respondent, the writ petitioners' case may not have any legs to stand. Thereafter, they have maintained that the modified Recruitment Regulations vide Circular dated July 22, 2022, is a valid piece of document amenable to no change thereto, on the ground of legitimacy and legality. It has been accorded approval by the State Government as per provisions under Section 604 of the Kolkata Municipal Corporation Act, 1980 and thus is sacrosanct. It has stated further that the "*Board of Administrators*" which was functioning at the relevant point of time, by dint of an order of the Government of West Bengal dated May 6, 2020, and for the reason of the "*Mayor-in-Council*" having not been elected within due time to resume office after expiry of the term of the previous "*Mayor-in-Council*", due to the extraordinary situation which arose in view of the pandemic – had ample power and authority granted under law to the same, to carry on any function of the respondent Corporation, as its business would require. It is stated that the power to frame rules is the statutory power bestowed upon the Corporation and in this case upon the "*Board of Administrators*" which has utilised the same by issuing the Circular dated July 22, 2022. The appointment of the "*Board of Administrators*" or its functioning cannot be put to any question in view of its legal origin

and justifiable functioning. The respondent Corporation has obviously, sought for that the writ petitions, as above, be dismissed.

9. Mr. Bikash Ranjan Bhattacharyya, learned Senior Advocate has represented the writ petitioners being assisted by Mr. R.N. Chakraborty and Ms. Tanushree Das. Mr. Bhattacharyya has put forth about alleged illegality and non-maintainability of the impugned Circular dated July 22, 2022, in his arguments. Mr. Bhattacharyya has pointed out to the administrative order issued by the Government of West Bengal dated May 6, 2020, at the outset. He has pointed out from there that as the “*Mayor-in-Council*” could not have been elected in the wake of COVID-19 pandemic, the “*Board of Administrators*” was appointed by the State Government, only to combat the exigency of the situation, by providing the essential services of the Corporation. He would say that a duty only to provide restraining and preventive measure against the dangerous disease is bestowed on the “*Board of Administrators*”, apart from providing other essential public utility services, which are inevitable and unavoidable in the day-to-day life of the people in the society. In absence of the elections being held, “*Mayor-in-Council*” could not have been appointed, after expiration of the office of the earlier “*Mayor-in-Council*”. But the works of eminent necessity to be carried on by the respondent Corporation could not have stalled for any reason whatsoever. This has prompted the State Government to appoint the “*Board of Administrators*”

for such limited purposes and period, he says. Mr. Bhattacharyya would point out that the notification issued by the State Government dated May 26, 2020, would show the purpose for appointment of “*Board of Administrators*”, to be not only for containing infections but also for rendering essential services, including water supply, drainage and sewerage, solid waste, community health, environmental sanitation and public safety. Ensuring municipal administration in Kolkata, in the manner as contained in the Kolkata Municipal Corporation Act, 1980, would be the motto of functioning of the “*Board of Administrators*”, as per the notification dated May 6, 2020. Thus, Mr. Bhattacharyya would submit that only the administrative disposition is the lookout for the “*Board of Administrators*” and it has not been granted any power to discharge the legislative functions of the Corporation, as is enshrined in the Act of 1980. Therefore, according to Mr. Bhattacharyya, it was beyond the authority and power of the “*Board of Administrators*” to change the Recruitment Regulations, in any manner whatsoever, not to speak about by promulgation of a Circular, that is, dated July 22, 2022.

10. Mr. Bhattacharyya has relied on various provisions of the 1980 Act, to submit the statute has provided for specific categories of powers and functions of the Corporation, which are likely to be discharged by the same. He has referred to Sections 28, 29 and 30 of the said Act of 1980, to state that there are certain general powers of the Corporation as well

as obligatory and discretionary functions of the same, as enumerated in the afore stated provisions of law. Additionally, he would refer to Section 20 of the said Act of 1980, to state that the Corporation would have the power to frame Regulations for recruitment, the method of it, regarding requisite classifications and the terms and conditions of service of the employees appointed including pension, gratuity and provident fund. The Regulations so framed by the Corporation shall provide also for discipline, control and conduct of officers and employees constituting the establishment of the Corporation as provided under Section 21 of the said Act. Mr. Bhattacharyya has termed this regulation making power of the Corporation as its legislative power. It is stated that the purport of the notification of the State Government dated May 6, 2020, creating “*Board of Administrators*” by dint of the same, would not be to bestow such legislative powers of the Corporation to the “*Board of Administrators*”, as the same would involve policy decision by a regular body, effect of which is to last for long. He indicates that the “*Board of Administrators*” was appointed only to take care of the exigency which arose as regards the functioning of the Corporation, day in and day out, in view of the wide spread pandemic.

11. Mr. Bhattacharyya would rely on the Division Bench judgment of this Court in ***Sharad Kumar Singh vs. The State of West Bengal & Anr.*** reported in ***2020 SCC OnLine Cal 1528***, to emphasise as regards the scope and ambit of

the power and function of the “*Board of Administrators*”, created by the State government vide notification dated May 6, 2020.

12. In the said judgment of **Sharad Kumar Singh** (*supra*) the Hon’ble Division Bench was concerned with the question of constitutional validity of the administrative order of the State, dated May 6, 2020, and whether the respondent Corporation could take shelter under the provisions of Section 634 of the Kolkata Municipal Corporation Act, 1980 to perceive the situation as a “*difficulty*” falling within the fold of difficulties envisaged in the said provision of law. After an enriching discussion by the Court, the constitutionality of the notification dated May 6, 2020, of the State government has been upheld, in that case. In doing so, the Court has at some place dealt with the scope of functioning of the “*Board of Administrators*”, as promulgated vide the said notification. According to Mr. Bhattacharyya the Court has held that the “*Board of Administrators*” as was constituted under the impugned notification of May 6, 2020, was to continue in a caretaker capacity. He says that the Court has acknowledged that the Corporation has a vital duty to discharge to resist the spread of pandemic and for providing measures for its containment and to restore public health and safety and societal hygiene. For this the Corporation must run under the duly formulated body, if not a duly elected “*Mayor-in-Council*”, then under the “*Board of Administrators*”, in absence of the “*Mayor-in-Council*”.

13. Thus, according to Mr. Bhattacharyya the “*Board of Administrators*” so appointed as a stop gap authority to discharge only the essential, imminent and inevitable functions of the Corporation, would not have the authority to legislate Regulations overturning the previous conditions thereof or else, as its in the present case, the same would be nullity in the eye of law and a gross abuse of power by the “*Board of Administrators*”, arbitrary in nature and thus illegal and liable to be set aside.
14. In addition to the point as raised by the writ petitioners as enumerated above, on their behalf the other point taken in this case is of prospective application of the modified Recruitment Regulations, that is, vide circular dated July 22, 2022, if at all it stands the tests of legality and maintainability.
15. Mr. Chakraborty would say that the vacancy arose in the posts of “Assistant Engineers” for which the writ petitioners have a right to come under the zone of consideration and be considered for promotion, arose much prior to the date of promulgation of the impugned circular, that is, dated July 22, 2022. It has stated that the vacancies arose on different dates but definitely not beyond the date of promulgation of the said notification, only prior to the same. Under such circumstances, he says that the Circular dated July 22, 2022, shall have only prospective application, if any, starting from the date of coming into force of the said

notification. The vacancies which arose prior to the same and to which the writ petitioners are eligible to come to the zone of consideration should have been filled up following the stipulations in the earlier Recruitment Regulations, that is, dated August 10, 2020. In support of his contention he has relied on the following judgments, which are as follows:-

(i) *Nirmal Chandra Bhattacharjee & Anr.* reported in (1991) Supp 2 SCC 363,

(ii) *State of Rajasthan vs. R. Dayal & Ors.* reported in (1997) 10 SCC 419,

(iii) *Kajal Dutta Roy & Ors. vs. Anil Kumar Joshi & Ors.* reported in (2017) 3 CHN 479.

- 16.** Mr. Chakraborty would further submit for the writ petitioners that even if the law has been settled as enumerated in the judgments as referred to above, and the employer is still desirous to bring in any change in the existing service conditions of employees, it should have been mandatorily extended an opportunity of hearing before any such change is brought into force. He says that such mandatory hearing at the stage before modification of the existing service conditions has been profoundly enumerated by different constitutional Courts. In support of his such submission, he has referred to the three Judges Bench decision of the Hon'ble Supreme Court reported in **(1989) 1 SCC 764 (*H.L Trehan & Ors. vs. Union of India & Ors.*)**

17. On the grounds as above the writ petitioners have sought for adequate relief of the process of promotion to be initiated immediately for the writ petitioners in terms of the Recruitment Regulations as was existent vide Notification dated August 10, 2020.
18. The Kolkata Municipal Corporation, as stated above have come up to contest the instant case by disputing and challenging the contentions and prayers of the writ petitioners. Mr. Alak Kumar Ghosh has represented the Kolkata Municipal Corporation. Mr. Ghosh has categorically submitted that as per the scheme of the said Notification, the entire functioning of the Corporation would devolve upon the “*Board of Administrators*”, pursuant to its appointment vide notification dated May 6, 2020. Mr. Ghosh would elaborately refer to various Clauses mentioned in the said notification to buttress his such submission. He would raise objection to the submission made on behalf of the writ petitioners that the Board of Administrators would not have any authority to promulgate the modified Recruitment Regulations, as an essential part of its functioning. He would emphasise that to meet the exigency the “*Board of Administrators*”, would have ample power to act within the purview of the statute and under its authority, in whatever manner it would deem necessary to do. Mr. Ghosh would not premit to mention that constitutional validity of the Notification dated May 6,

2020, has already been upheld by the Hon'ble Division Bench in the case of **Sharad Kumar Singh** (*supra*).

19. Mr. Ghosh would refer to the stringent condition prevalent during the spread of pandemic in the State. He would say that a greater member of manpower to work at the grass root level would have been necessary to tackle and resist the extreme unnatural and unprecedented situation, which arose pursuant to the lockdown. It necessitated revision of the staff structure to accommodate efficient ground level workforce. This exigency has prompted the "*Board of Administrators*" to take steps for change of the Recruitment Regulations, which he says, is well within the authority and power of the "*Board of Administrators*".
20. So far as the right of the writ petitioners is concerned, Mr. Ghosh is of the opinion that they would not have any right to promotion. They may have a right to come to the zone of consideration and take part in the process of promotion but that too is within the administrative domain of the employer to undertake a process of promotion as per the requirement of business. Mr. Ghosh would say that it is only imaginary and farfetched for the writ petitioners to allege any *mala fide* intention of the employer, not to initiate the process at the moment of creation of the vacancies and very naturally that would have depended upon multifarious factors and administrative convenience of the employer. So far as the ground made up by the writ petitioners and the prayer of them

are concerned, according to Mr. Ghosh, those would not be maintainable and the present writ petitions should be dismissed. During his arguments Mr. Ghosh has relied on a judgment reported in **(2023) 3 SCC 773 (State of Himachal Pradesh & Ors. vs. Raj Kumar & Ors.)** on the proposition that there is no rule of universal application to the effect that vacancy is most necessarily to be filled on the basis of Rules which existed on the date on which the vacancy arose. The Court in the same has upheld the justification shown by the respective authority for not filling up the vacancies that arose prior to the amendment of the respective Recruitment Rules, that is, the policy decision of the authority to restructure the cadre by creating additional posts and also providing for direct recruitment by amending the rules.

- 21.** Mr. Ghosh has sought for dismissal of the writ petition.
- 22.** The human clan was within the clutches of the dreadful virus, which had hauled pandemic and as if brought the life at a halt, pursuant to the lockdown introduced to arrest spread of it. This has been a worldwide phenomenon at a point of time and the State was no exception. Lockdown had largely affected the State's functioning also, compelled it to dwell on its baseline functionalities only, for the purpose to maintain the basic regulatory disposition. However, during this period, the typical works of the respondent Corporation achieved a different dimension altogether. As it is an authority under the Constitution of India,

formulated and dedicated for maintenance of public health, in the wake of unprecedented health hazard, faced by people, its due and proper functioning towards this cause, gained utmost importance.

23. The time spoken about is March 2020 onwards. The term of office of the Mayor-in-Council of the respondent Corporation had ended almost simultaneously with the outbreak of pandemic and introduction of the State wise lockdown. The prevailing conditions incapacitated the respondent Corporation to conduct fresh elections as no conglomerate of a large number of people was possible, at that time. On the other hand the herculean task of maintaining public health and other ancillary functions were to be discharged by the said respondent, that too, with much more promptitude, accuracy and efficiency, in the wake of the deadly virus. Neither the respondent Corporation nor the State could sit back, in such an emergent situation. The State came forward and in exercise of the statutory power, had appointed the “*Board of Administrators*”, vide its notification dated May 6, 2020.

24. The constitutional validity of the same was challenged in Court, but was upheld, vide Court’s verdict in ***Sharad Kumar Singh’s case (supra)***. That is, however, not a subject matter of this case. The petitioner’s challenge is with regard to the functioning of the “*Board of Administrators*”. The “*Board of Administrators*” started functioning pursuant to the notification dated May 5, 2020 and vide a Circular dated July 22, 2022, it had

modified the Recruitment Regulations of the Corporation, as was prevalent then. By dint of the said modification, the mode of appointment of the *Assistant Engineers* were changed and varied from that existed earlier. *Assistant Engineer* is the promotional post of the *Sub-assistant Engineer*, to which cadre, the writ petitioners belong. We will see how such mode of recruitment was changed and what such change would imply. But before that this Court would look into the scope of functioning of the said “*Board of Administrators*” under the notification dated May 6, 2020. If it is found that the “*Board of Administrators*” has exceeded its jurisdiction within which it was authorised to function, while adopting any modification to the Recruitment Regulations, the Court further may not be required to go in to the other questions raised on merit of this case and for want of jurisdiction by the “*Board of Administrators*” to promulgate the modified Recruitment Regulation, the same would be liable to be set aside.

25. The “*Board of Administrators*” came into functioning, a date after the 5 years tenure of the elected Mayor-in-Council ended. The special arrangement has been made as the civic elections cannot be held during the lockdown. So, till a new Council is formed, the “*Board of Administrators*” would function to ensure that civic essential services are not impeded in the city which has, as a matter of fact referred the highest number of containment zone in the State, at the relevant point of

time. In the notification dated May 6, 2020, mention has been made of a letter dated April 22, 2020, of the West Bengal State Election Commission. It opined that considering the situation of global pandemic the measures have been taken for containment by the Government /local self-Government and in such a situation a process of election including stages like nomination, campaign, organising polls, counting of votes could not have been possible. It has also opined that an election process involving a large number of people during different phases of the process would not be practicable or advisable at that point of time. The Election Commission as above concurred with the view of the State Government that situation would not be conducive for an election to be held. The opinion as above has been cited in the said notification dated May 6, 2020.

- 26.** The said notification has also specifically narrated about the specific works to be done by the respondent Corporation under the statutory mandate contained in Chapter XXIX of the Kolkata Municipal Corporation Act, 1980 as well as the Disaster Management Act, 2005 and the Epidemic Diseases Act, 1897, and also the several guidelines issued by the Central Government and the State Government from time to time during COVID-19 and lockdown period, directed to address condemnation and spread of pandemic and providing measures for

containment of the same. The other relevant portion of the said notification would be as follows:-

“AND WHEREAS the State Government is of the opinion that in view of the pandemic of COVID-19 and various restrictions imposed within the territorial limits of the said Corporation, exceptional circumstances have arisen regarding postponement of the election to the said Corporation and to give directions for exercise of all the powers and duties under the provisions of the Act and any rules or regulations made thereunder, including for effective implementation of the orders and directions issued by the Appropriate Government (s) under the Disaster Management Act, 2003 and Epidemic Diseases Act, 1897.

AND WHEREAS it is necessary and expedient in public interest public safety, public health and law and order to provide for effective measure for compliance of the municipal administration in Kolkata in the manner contained in the said Act, not only for the containing infections but also for rendering essential services, including water supply, drainage and sewerage solid waste community health, environmental sanitation and public safety.

AND WHEREAS the State Government is of the opinion that since no election can be held for the time being after expiry of the term of office of the Councillors, difficulties, will arise in giving effect to the provisions of the said Act during the period commencing 8th May, 2020 till the first meeting of the Corporation is held after a general election.

AND WHEREAS it would be expedient in the public interest to constitute and appoint a Board of administrators to ensure municipal administration in Kolkata in the manner contained in the said Act not only for the containing infections and taking measures to combat COVID-19, like insulating the community from transmission of the disease but also for rendering essential services and civic services, including water supply, drainage and sewerage, solid waste, community health, environmental sanitation and public safety till the elections are conducted and the first meeting of the Corporation after a general election is held and further to facilitate seamless transition with a continuity in administration of the said services and thereby difficulties in giving effect to the provisions of the said Act will stand removed.

AND WHEREAS the constitution and appointment of a Board of Administrators is also necessitated for the effective implementation of the orders and directions issued by the Appropriate Governments under the Disaster Management Act, 2005 and Epidemic Disease Act, 1897.

AND WHEREAS having regard to the supervening public equity the State Government finds it absolutely necessary to invite the power conferred under Section 634 of the said Act which enables the State Government to issue an order for removal of difficulty read with the executive power of the State

concerned by the Constitution of India to constitute and appoint a Board of Administrators for the said Corporation.

NOW THEREFORE in the exceptional and extraordinary circumstances existing at present to ensure continuity of functioning of the said Corporation for providing all emergency and normal public utility services in terms of the said Act and, for effective implementation of the orders, directions issued under the Disaster Management Act, 2005, Epidemic Disaster Act, 1897 COVID-19, Regulations and other laws from time to time the Governor in exercise, power of the State conferred by the Constitution of India is pleased to constitute and appoint a Board of Administrators (hereinafter referred to as the 'Board' of the said Corporation with effect from 8th May, 2020 till the first meeting of the Corporation is held after a general election. The Board shall have power(s) and functions as vested in the municipal authorities and the following persons shall be the members of the Board.....”

27. Therefore, primarily, for the purpose of “*combating the exceptional and extraordinary circumstances*”, existing at the point of time and in the teeth of the same to ensure continuity of functioning of the corporation “*for providing all emergency and normal public utility services in terms of the said Act*” and also for effective implementation of the orders, directions issued under the other statutes as mentioned above, the said “*Board of Administrators*” was formed. From the very expressions employed in the notification dated May 6, 2020, to form the “*Board of Administrators*”, it is well perceivable that the purpose for formation of such Board was not anything perennial or permanent but to act at a time when in one hand the “*Mayor-in-Council*” could not have been elected and in the other hand the Corporation, beyond its usual disposition, had to plunge and thrust to a great extent, for containment of a contagion and secure public health and life. Keeping in mind the primacy of the object for which the “*Board of Administrators*” was appointed as stated above,

the submission made on behalf of the respondent Corporation giving additional emphasis to the part of the said notification of May 6, 2020, that “*to give directions for exercise of all the powers and duties under the provisions of the Act*”, has to be assessed. One cannot lose sight of the fact that those words are qualified in the notification itself, by the other words “*for effective implementation of the orders and directions issued by the appropriate government(s) under the Disaster Management Act, 2005 and the Epidemic Diseases Act, 1897.*”

28. The elementary rule of interpretation would be reading and perceiving the provision as a whole and to understand it contextually. One can proudly borrow the words of Justice Krishna Iyer that “*A policy oriented interpretation when a welfare legislation falls for determination, especially in the context of a developing country, is sanctioned by principle and precedent and is implicit in Article 37 of the Constitution, since the judicial branch is, in the sense, part of the State. So it is reasonable to assign to “damages” a larger, fulfilling meaning*” [in the context of the case], in the case of ***Organo Chemical Industries and Anr vs UOI and Others*** reported in **(1979) 4 SCC 573**. The Court had propounded a policy oriented, contextual, larger and fulfilling meaning to be ascribed to the text. A salutary rule well established is that the intention must be found by reading the statute as a whole. The general words “*to give directions for exercise of all the powers and duties under the provisions of the Act*”,

should be given a restricted meaning bounded by the other expressions “for effective implementation of the orders and directions issued by the appropriate government(s) under the Disaster Management Act, 2005 and the Epidemic Diseases Act, 1897”, as the earlier takes its meaning from the later expressions. On a careful reading of the said notification, one can hardly find any manifested intention that the earlier be given a broader meaning than the latter requires. A provision cannot be interpreted in isolation or read or understood partially. Consistency of the earlier, with the context or subject matter, is the inferable understanding which is to be conferred to the whole text, unless a contrary intention is apparent. The principle being applied in the case in hand, the obvious conclusion can be arrived at, that scope of functioning by the “Board of Administrators” is limited to the implementation of the statutory provision, to arrest and combat spread of contagion. It is necessarily for the imminent and emergent purposes.

29. On bare reading of the notification to implement a “Board of Administrators”, by the State Government, should predominantly suggest the purpose and scope of jurisdiction of the “Board of Administrators” to be specified and bounded towards exercise of powers and duties conferred under the different statutes, upon the Corporation, towards maintenance of public life, health and security.

- 30.** It is necessary here to have a look to the nature of duties which law provides for a Corporation to discharge. Broadly the functions of the Corporation can be divided into two folds, firstly, the power to discharge executive functions in implementation of various statutory duties and functions and secondly, the legislative function to provide Rules. There are general powers of the Corporation as also obligatory and discretionary functions. Those are enumerated respectively in Section 28 (General Powers), Section 29 (Obligatory Functions), Section 30 (Discretionary Power) of the Kolkata Municipal Corporation Act, 1980. Separate provisions have been maintained in Section 470 to 489 enumerating the functions of the Corporation in restraining of infection. Chapter XXX would provide within Sections 490 to 523 regarding duties and powers of the Corporation as to the environment sanitation and public safety. There are other powers also of the Corporation enumerated under different chapters of the Act of 1980. However, the above noted provisions are required mention here, for the reason that it is relatable to the purpose of constitution of the “*Board of Administrators*” vide the notification dated May 6, 2020.
- 31.** In contrast of the power to be implemented for public health and safety, the Corporation also has the power to make rules and regulations and provisions thereof along with ancillary provisions have been provided in the Act of 1980, under Section 20 of the Act and Chapter XXXVI (from

Section 600 to 609). Corporation would have the power to make regulations in discharge of its legislative functions as per the provision under Section 20 and Section 602 of the said Act. According to the same it would have the power to promulgate regulations for recruitment and terms and conditions of service including pension, gratuity and provident fund and also for discharging its functions under the said Act being not inconsistent with the provisions of the Act and Rules made thereunder.

- 32.** The Court notes that the “*Board of Administrators*” has neither been defined in the Act of 1980 nor has any provision been made therein for its appointment or functioning.
- 33.** The reference may be made Section 14 (3) of the West Bengal Municipal Act, 1993, which is stated as follows:-

“14. Constitution of Board of Councillors.

(3) In a municipal area newly constituted, the State Government may appoint all the members of the Board of Councillors for a period not exceeding six months from the date of the notification under which such municipal area is constituted and the general election shall follow thereafter.”

- 34.** Reference may also be made to the relevant provision of the West Bengal Valuation Board Act, 1978. In terms of Section 2 (1) (aa) thereof, “Administrator or Board of Administrator” has the same meaning as in Sub-section 3 of Section 14 of the West Bengal Municipal Act, 1993.

- 35.** The reason for discussing as above is to understand the scope and ambit of functioning of the “*Board of Administrators*”. It is seen that the purpose of its appointment/constitution is only temporary and until and unless the elected members resume office. It is also discussed before, that the purpose of appointment of the “*Board of Administrators*” pursuant to notification dated May 6, 2020, is temporary and not a permanent feature. Creation of a body temporary in nature, would always justify discharge of certain duties which are imminent in view of certain exigency. This extraordinary measure is not to be taken to perform any action which are of regular or perennial nature, which the parent body would have to otherwise perform, in due discharge of its duty.
- 36.** Promulgation of a regulation in supersession of the other would be a policy matter to be decided, pursuant to the long term and short term goals of the said concern. The scope and ambit of functions of the “*Board of Administrators*”, would not be to consider any long term goal to be discharged by the parent body, the Corporation, as is revealed from the above discussions. No doubt, the circular under challenge, that is dated July 22, 2022, has substantially curtailed the scope of promotion for the present writ petitioners. Previously, when it has been 85% of the promotional posts, to be filled up by departmental feeder cadre candidates, pursuant to the impugned circular as above, the same has

been reduced to 40%. The circular has not revealed any reason therefore. No doubt, to frame a policy, the authority may not have to show any reason. However, an abrupt change in such policy, without any sound foundation, would amount to gross arbitrariness of the entire process when it would be negatively impacting a large portion of the workforce that was under a different policy until that point and reasonably expected to be considered for promotion into those vacancies. Also that, it will result in the Recruitment Regulation taking effect de novo. In the absence of a legally elected "*Mayor-in-Council*," the "*Board of Administrators*" would have the authority to execute and improve the Respondent/Corporation's policies, maintain the current workflow, and move it forward. However, it would not have the authority to alter the policy decisions made by a statutory body, such as the Corporation.

- 37.** On the premises as above, the Court reaches to the obvious finding and conclusion that, the circular dated July 22, 2022, is an arbitrary exercise, de hors the power and authority of law by the said "*Board of Administrators*". The writ petitioners have challenged the legality and propriety of the said circular in the present writ petition, though no specific prayer to that effect has been made. In that event this Court finds no impediment in dealing with the same and pass necessary order as regards the same. Hence, the same is liable to be set aside.

- 38.** On the discussions as made above the Court finds that the writ petition should be allowed.
- 39.** Writ petition Nos. WPO No. 2626 of 2022 with GA 1 of 2023, WPO No. 2629 of 2022, WPO No. 2631 of 2022, and WPO No. 2632 of 2022 with GA 1 of 2023 are allowed with the directions as mentioned below:-
- (i) Impugned Circular dated July 22, 2022, is set aside.
 - (ii) The concerned respondent may proceed to initiate a process for filling up the vacant posts of *Assistant Engineers* by giving promotion to the eligible departmental candidates in accordance with the rules which has prevailed prior coming into force of the illegal circular dated July 22, 2022, if it thinks so fit and proper.
- 40.** Writ petition Nos. WPO No. 2626 of 2022 with GA 1 of 2023, WPO No. 2629 of 2022, WPO No. 2631 of 2022, and WPO No. 2632 of 2022 with GA 1 of 2023 are disposed of, along with connected applications pending, if any.
- 41.** Urgent Photostat certified copy of this judgment, if applied for, be given to the parties upon compliance of all formalities.

RAI
CHATTOPADHYA
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Date: 2024.05.10
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(Rai Chattopadhyay, J.)