

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

Present :-

The Hon'ble Justice PARTHA SARATHI SEN

WPA 13677 of 2010

Sandip Singha and Ors.

Vs.

The State of West Bengal and Ors.

With

W.P.A. 14366 of 2010

Prodip Kumar Guchait and Ors.

Vs.

The State of West Bengal and Ors.

With

W.P.A. 8072 of 2012

With

With CAN 4 of 2024

Tamal Goswami and Ors.

Vs.

The State of West Bengal and Ors.

For the Petitioner in
(WPA 13677 of 2010 & :
WPA 8072 of 2012)

Mr. Sarwar Jahan, Adv.,
Ms. Anulekha Bera Maiti, Adv

For the Petitioner in :
(WPA 14366 of 2010)

Mr. Sudeep Sanyal, Sr. Adv.,
Mr. Snehasis Jana, Adv.,
Mrs. T. Das, Adv.
Mr. Chandrachur Lahiri, Adv.

For the DPSC, Paschim Medinipur: Mr. Aurobinda Chatterjee, Senior Adv.,
Mr. Ranjan Saha, Adv.

For the State:

Mr. Mrinal Kanti Ghosh, Adv.,
Mr. Karti Chandra Kapas, Adv

Hearing concluded on: 02.04.2025.

Judgment on: 10.04.2025.

PARTHA SARATHI SEN, J. : –

1. Since in the instant three writ petitions the subject matters of challenge are identical and since common questions of facts and laws are involved, the instant three writ petitions are taken up together for hearing and this Court thus proposes to dispose of the instant three writ petitions by passing a common judgement.

2. In the instant three writ petitions the writ petitioners have prayed for issuance of appropriate writ/writs against the respondents/authorities more specifically against respondent Paschim Mednipur District Primary Council (herein after referred to as the said 'council' in short) and its functionaries for cancellation of the selection procedure for appointment of primary teachers pursuant to the revised notification as published in the year 2009 by the said council.

3. In course of hearing Mr. Jahan, learned advocate appearing on behalf of the writ petitioners in WPA 13677 of 2010 at the very outset draws attention of this Court to paragraph 6 of the said writ petition. It is argued by Mr. Jahan that from the later part of the said paragraph 6 it would reveal that five candidates were placed in the final panel as published by the said council though the said five candidates could not qualify in the written examination and were thus not selected for interview. It is further submitted by Mr. Jahan that in the affidavit-in-

opposition as filed by the said council as affirmed on 19.11.2015 it has been practically admitted by the said council that due to some data base error of one M/S UMC Technologies Pvt. Ltd. (who were entrusted with the responsibility to publish the result of 2009 examination by the said council) some mistakes cropped up for which some results were not correctly reflected in the website in respect of the result of 2009 examination.

4. Mr. Jahan also draws attention of this Court to the supplementary affidavit as affirmed on 08.02.2017 by the writ petitioner no.4 in connection with WPA 13677 of 2010. It is submitted by Mr. Jahan that from the said supplementary affidavit dated 08.02.2017 the following illegalities and/or irregularities have been noticed by the writ petitioners namely:-

- a. A good number of candidates have been awarded excess marks by manipulating ENM marks,
- b. A good number of candidates have been awarded higher marks by way of manipulation in the average marks obtained by them in Madhyamik or equivalent examination.
- c. Several candidates have been selected who are of over age i.e. more than 40 years as on 01.01.2009.
- d. Some candidates belonging to Schedule Castes category have been empanelled adding higher marks in their academic qualification disobeying the rules of the said examination.

- e. Several candidates have been selected in the Scheduled Tribe category though they do not belong to the Scheduled Tribe category.
- f. In the category of Exempted Candidates excess marks have been awarded by manipulating ELM marks.

5. At this juncture Mr. Jahan draws attention of this Court to the counter affidavit as filed on behalf of the said council in connection with WPA 13677 of 2010 and as affirmed on 17.06.2019. It is submitted by Mr. Jahan that though in the said counter affidavit the said council had denied the allegations as made in the supplementary affidavit dated 08.02.2011 by the writ petitioner no.4 but such denials are evasive one and no documents have been annexed with the said counter affidavit to show correctness of the panel as prepared by the said council in respect of the persons whose names have been mentioned in the said supplementary affidavit. Mr. Jahan further draws attention of this Court to page no.27 of the said counter affidavit dated 17.06.2009 being a copy of a memo dated 14.09.2018 whereby and whereunder the Chairman of the said council had stated the following:-

“They mainly pointed out about Hundred (100) candidates of the panel who were given higher marks than the actual one in the academic score which is quietly true.”

6. It is thus submitted by Mr. Jahan that the illegalities and/or irregularities as made by the said council while preparing the said panel

are apparent on the face of record and thus it is a fit case for grant of appropriate relief/reliefs as prayed for by the writ petitioners.

7. Mr. Jahan further submits that identical relief/reliefs may be granted to the writ petitioners in WPA 8072 of 2012.

8. While adopting the argument as advanced by Mr. Jahan, Mr. Sanyal, learned Senior Counsel appearing on behalf of the writ petitioners in WPA 14366 of 2010 at the very outset draws attention of this Court to page no.58 of the writ petition being WPA 14366 of 2010 vis-à-vis to page no.9 of the supplementary affidavit of the writ petitioners as affirmed on 22.11.2011 in connection with WPA 14366 of 2010. It is submitted by Mr. Sanyal that on comparative study of the aforesaid two pages it would reveal that complete result of the said recruitment examination was published in the newspaper on June 15, 2010 whereas one Tara Shankar Chopra was given appointment by the Chairman of the said council on June 09, 2010 i.e. prior to the publication of the result. Mr. Sanyal again draws attention of this Court to page no.35 of the writ petition being a copy of the advertisement with regard to the recruitment examination of 2009. It is submitted by Mr. Sanyal that from Clause 1 of the said advertisement it would reveal that several numbers of vacancies have been declared for the post of Assistant Teacher of the Primary School in different categories namely; Unreserved, Scheduled Castes, Scheduled Tribes, Other Backward Class, Exempted Categories, Ex-servicemen and Physically Challenged. It is submitted by Mr. Sanyal that from page nos. 58 to 69 of the writ petition being the copies of the list of successful

candidates of the said examination as published by the said council it would reveal that the said result has been published without disclosing the categories under which the said successful candidates belonged to. It is thus submitted on Mr. Sanyal that on account of such glaring illegality and/or irregularity in the result as published by the said council the recruitment examination for the year 2009 may be cancelled.

9. Mr. Sanyal further requests this Court to make a comparative study of page nos. 70 and 75, 71 and 76, 73 and 78 and 74 and 79 of the writ petition in WPA 14366 of 2010. It submitted by Mr. Sanyal that on comparative study of the said pages it would reveal that a good number of candidates who were not selected for interview were however finally selected.

10. It is argued by Mr. Sanyal that in the affidavit-in-opposition of the said council as affirmed on 05.10.2010 in WPA 14366 of 2010 the said council had practically admitted such mistakes. It is further submitted by Mr. Sanyal that though the said council have taken a specific plea that they have rectified the mistakes but the said affidavit-in-opposition contains no documents showing any rectifications as have been indicated in the writ petition being WPA no.14366 of 2010. It is further argued by Mr. Sanyal that as against the supplementary affidavit of the writ petitioner no.4 as affirmed on 22.11.2011 in WPA no.14366 of 2010 no exception has been filed by the said council.

11. In course of his submission Mr. Sanyal places his reliance upon the following reported decisions namely:-

“i. Karnataka Rare Earth and Anr. vs. Senior Geologist, Department of Mines and Geology and Anr. reported in (2004) 2 SCC 783;

ii. Bharat Singh and Ors. vs. State of Haryana and Ors. reported in (1988) 4 SCC 534;

iii. Citi Bank N.A vs. Standard Chartered Bank and Ors with Canara Bank and Ors. vs. Citi Bank N.A and ors reported in (2004) 1 SCC 12;

iv. Union of India and Ors. vs. O. Chakradhar reported in (2002) 3 SCC 146;

v. Veerendra Kumar Gautam and Ors. vs. Karuna Nidhan Upadhyay and Ors. reported in (2016) 14 SCC 18; and

vi. Mukul Kumar Tyagi vs. State of U.P with Rajiv Kumar And Ors. vs. State of U.P and Ors. and Ravi Prakash and ors. Vs. State of U.P and Ors. reported in (2020) 4 SCC 86.”

12. It is further submitted by Mr. Sanyal that the writ petitioners in WPA no.14366 of 2010 ought not to be deprived of the reliefs as prayed for on account of delay if there be any, since such delay is not attributable to the writ petitioners and the delay if there be any, occurred on account of the multiplicity of the business of the court which is founded upon the maxim *Actus Curlae Neminem Gravabit- An act of the Court shall prejudice no man*. In this regard reliance was placed upon the reported decision of ***Bharat Damodar Kale and Anr vs. The State of Andhra Pradesh reported in (2003) 8 SCC 559.***

13. Mr. Sanyal thus submits that it is a fit case for issuance of appropriate writ/writs for quashing of the entire selection procedure of 2009.

14. Per contra, Mr. Chatterjee, learned senior advocate appearing on behalf of the said council at the very outset draws attention of this Court to the writ petition being WPA 13677 of 2010. It is submitted by him that undoubtedly the instant three writ petitions have been filed at the stage of selection. Drawing attention to paragraph nos.6 to 9 of WPA 13677 of 2010 it is submitted by Mr. Chatterjee that the writ petitioners in WPA 13677 of 2010 had alleged some illegalities and/or irregularities on the part of the said council in respect of the selection of candidates.

15. At this juncture Mr. Chatterjee draws attention of this Court to order dated 22.06.2012 as passed by a Co-ordinate Bench in connection with WPA 13677 of 2010. It is submitted by Mr. Chatterjee that pursuant to the order dated 22.06.2012 the photo copy of the panel as has been published by the said council was supplied to the writ petitioners in WPA 13677 of 2010. At this juncture Mr. Chatterjee also draws attention of this Court to the supplementary affidavit of the writ petitioner no.4 in WPA 13677 of 2010 as affirmed on 08.02.2017. It is submitted that in paragraph nos. 7, 8, 9, 10, 11 and 12 the writ petitioners have pointed out some alleged illegalities and/or irregularities on the part of the said commission while preparing the panel. It is submitted by Mr. Chatterjee that from the averments of the said supplementary affidavit dated 08.02.2017 it would thus reveal that the alleged irregularities and/or

illegalities according to the writ petitioners in WPA 13677 of 2010 were limited to certain number of candidates belonging to several categories. It is thus submitted that in view of such, the writ petitioners in all the aforementioned three writ petitions cannot pray for cancellation of the entire recruitment process in absence of any materials to show that the entire recruitment process has been vitiated by not placing the successful candidates in the selection panel.

16. It is further submitted by Mr. Chatterjee that from the pleadings of the aforementioned three writ petitions it nowhere reveals that the writ petitioners have obtained qualifying marks. It is submitted by Mr. Chatterjee that final panel for the said selection process has been prepared in respect of those successful candidates who have not only obtained qualifying marks obtained but also have obtained cut off marks for selection. It is further argued by Mr. Chatterjee that since after receipt of the copy of the entire panel the writ petitioners in WPA 13677 of 2010 have already identified the alleged illegal and or irregular selection of the candidates by the said council in the year 2010 there cannot be any justification on the part of this Court to make a roving enquiry in respect of the correctness of the said panel in connection with the said recruitment process in absence of any material on record.

17. At this juncture Mr. Chatterjee draws attention of this Court to the counter affidavit of the respondent no.3 as affirmed on 17.06.2009 in WPA 13677 of 2010. Attention of this Court is also drawn to paragraph nos.4 of the said counter affidavit vis-à-vis to the different annexures to

the said counter affidavit at page nos.20, 24, 25, 27, 28 and 31 to 33. It is argued by Mr. Chatterjee that in paragraph 4 of the said counter affidavit dated 17.06.2019 the respondent no.3 categorically stated that after initial publication of the panel on 24.04.2010 the said council received several complaints and on enquiry it was found that there was some inadvertent mistakes and accordingly a correct list after rectification of the mistakes was published on 17.05.2010 and 18.05.2010 in the notice board of the said council and in the website of the said council respectively.

18. It is submitted further by Mr. Chatterjee that from the said counter affidavit dated 17.06.2019 it would reveal that after obtaining a copy of the supplementary affidavit of the writ petitioner no.4 dated 08.02.2012 in WPA 13677 of 2010 a five men committee was constituted and the said committee thereafter prepared a report/chart indicating some irregularities in the panel published on 24.04.2010. It is further submitted by Mr. Chatterjee that the said report of the committee was forwarded to the office of the Commissioner of School Education and thereafter the said office of the Commissioner of School Education directed the Chairperson of the said council to review the chart prepared by said council as first published on 24.04.2010 and after reviewing a rectified chart was prepared as has been annexed in page nos. 31 to 33 of the said counter affidavit dated 17.06.2019.

19. It is further submitted by Mr. Chatterjee that the said corrected report of the Chairman of the said council was subject matter of challenge

in WP 19133 (W) of 2010 wherein a Co-ordinate Bench of this Court by its judgement and order dated 04.03.2011 dismissed the said writ petition holding that the said Court was satisfied with the explanation given by the council in connection with the said report as submitted before it. In course of his argument Mr. Chatterjee also draws attention of this Court to page no. 12 of WPA 13677 of 2010 vis-à-vis page no.24 of the counter affidavit of the respondent no.3 dated 17.06.2019. It is submitted by Mr. Chatterjee that the subject matter of selection of one Mamata Shit, one Soham Kundu, one Pradipta Das, one Santu Dhar and one Ananya Singha whose names have been mentioned at paragraph no.6 of WPA 13677 of 2010 were also the subject matter for consideration in WP 14650 (W) of 2010 before another Co-ordinate Bench of this Court and the said Co-ordinate Bench of this Court by its judgement and order dated 07.02.2020 found no merit with regard to the allegations as levelled against the said five candidates and thus the said writ petition was dismissed.

20. It is further submitted by Mr. Chatterjee that the instant writ petition is liable to be dismissed on account of non-joinder of necessary and proper parties in view of the fact that even after receipt of the copies of the alleged defective panel from the said council, the writ petitioners have made no attempt to make the persons as party-respondents whose names have been mentioned in the supplementary affidavit dated 08.02.2017 and who according to the writ petitioners in WPA 13677 of

2010 have been illegally and/or irregularly selected in the said recruitment process.

21. In course of his argument Mr. Chatterjee further draws attention of this Court to order dated 26.07.2019 as passed by a Co-ordinate Bench of this Court while dealing with the instant three writ petitions. It is submitted on behalf of the said council that pursuant to the order dated 26.07.2019 the respondent nos. 3 and 4 had filed an affidavit as affirmed on 20.08.2019.

22. At this juncture Mr. Chatterjee requests this Court to compare page nos. 5 to 9 of the said affidavit of the respondent nos. 3 and 4 dated 19.08.2019 with page no.35 of the counter affidavit of the respondent no.3 as affirmed on 17.06.2019. It is submitted that from page no.35 of the counter affidavit it would reveal that cut off marks for unreserved candidates in the said recruitment process was 28.56 while in respect of scheduled castes category the said cut off marks was fixed at 24.18. It is further submitted by Mr. Chatterjee upon instruction that cut off marks in respect of other backward class candidates were fixed at 28.06 and cut off marks in respect of scheduled tribes was fixed at 22.96. It is submitted that from page nos.5 to 7 of the affidavit of the respondent nos. 3 and 4 as affirmed on 20.08.2019 it would reveal that none of the writ petitioners, particulars of whom have been mentioned at page nos. 5 to 9 of the said affidavit dated 20.08.2019 achieved the requisite cut off marks in respect of their respective categories. Mr. Chatterjee thus submits that the present writ petitioners have got no locus to challenge the said

selection process since none of the writ petitioners could achieve the cut off marks. In this regard Mr. Chatterjee places his reliance upon the reported decisions of ***Trivedi Himanshu Ghanashyambhai vs. Ahmadabad Municipal Corporation and Ors.*** reported in **(2007) 8 SCC 644**. It is further argued by Mr. Chatterjee that in none of the instant writ petitions a case has been made out by the writ petitioners that because of grant of excess marks to the empanelled candidates the present writ petitioners have been left out and/or deprived.

23. Drawing attention of this Court to the affidavit-in-reply of Sumanta Roy (the writ petitioner no.4 in WPA 13677 of 2010) as affirmed on 01.07.2019 it is submitted by Mr. Chatterjee that in such affidavit-in-reply evasive and wild allegations have been made against the said council. It is thus submitted that for the reason stated hereinabove the entire selection process which is the subject matter of challenge in the instant three writ petitions ought not to be cancelled. It is also submitted by Mr. Chatterjee that none of the reported decisions as cited by the writ petitioners in connection with WPA 14366 of 2010 has got any relevance in connection with the facts and circumstances as involved in the instant writ petitions and the reported decisions are thus distinguishable.

24. In course of his reply Mr. Sanyal appearing on behalf of the writ petitioners in WPA 14366 of 2010 submits before this Court that from the affidavit of the said council it would reveal that there was no basis of fixing cut off marks and therefore the question of locus of the present writ petitioners to file the instant three writ petitions ought not to be

questioned. Drawing attention to the order dated 24.04.2019 as passed in connection with the instant three writ petitions it is further submitted by Mr. Sanyal that delay if there be any, occurred at the instance of the said council and therefore the writ petitioners cannot be held to be responsible and thus the writ petitioners ought not to be deprived of the reliefs as prayed for merely on the ground of delay.

25. Before entering into the factual aspects of this case this Court at the very outset proposes to look to the reported decisions as cited on behalf of the writ petitioners in WPA 14366 of 2010.

26. In the reported decision of ***Karnataka Rare Earth (supra)*** the Hon'ble Supreme Court had occasion to deal with the doctrine of *actua curiae neminem gravabit*. In doing so the Hon'ble Court expressed that the said doctrine was not confined in its application only to such acts of the court which was erroneous but the said doctrine is applicable to all such acts as to which it can be held that the court would not have so acted had it been correctly approved by the facts and laws. It has been further held that when on account of an act of the party, persuading the court to pass an order, which at the end is held as not sustainable, has resulted in one party gaining advantage which it would not have otherwise earned, or the other party has suffered an impoverishment which it would not have suffered but for the order of the court and the act of such party, then the successful party finally held entitled to a relief, assessable in terms for money at the end of the litigation ,is entitled to be compensated in the

same manner in which the parties would have been if the interim order of the court would not have been passed.

27. In the reported decision of **Bharat Singh (supra)** the Hon'ble Supreme Court has distinguished the pleadings and the evidence in a trial with those of in a writ proceeding. It has been held by the Hon'ble Supreme Court that before a trial court in course of pleading the facts and not evidence are required to be pleaded, however in a writ petition or in the counter affidavit not only the facts but the evidence in proof of such fact are required to be pleaded and also required to be annexed to it.

28. In the reported decision of **Citi Bank N.A (supra)** the Hon'ble Supreme Court has dealt with the provisions of Section 114(g) of the Indian Evidence Act.

29. In the reported decision of **O. Chakradhar (supra)** the Hon'ble Supreme Court expressed the view that in a proceeding where the subject matter of selection is under challenge, the nature and the extent of illegalities and/or irregularities committed in conducting a selection shall have to be scrutinized in each case so as to come to a conclusion but future course of action to be adopted in the matter.

30. In the reported decision of **Veerendra Kumar Gautam (supra)** the Hon'ble Supreme Court adopted the same view as has taken by it in the reported decision of **O. Chakradhar(supra)**.

31. In the reported decision of **Mukul Tyagi (supra)** the Hon'ble Supreme Court held that the cause of action arises in favour of the writ

petitioners in a judicial review only when the persons who do not fulfill the essential qualifications were included in the select list.

32. In the reported decision of **Trivedi Himanshu (supra)** the Hon'ble Supreme Court held that the candidates who are unsuccessful in the examination and whose names did not figure in the merit list, it was not open to them to challenge the said selection list.

33. Keeping in mind the aforementioned legal aspects, if I look to the factual aspects of this case it reveals from page no.58 of the writ petition in WPA 14366 of 2010 that the publication of the selected panel was made on 15.06.2010. It further appears that WPA 14366 of 2010 was filed on 07.07.2010 whereas WPA 13677 of 2010 was filed on 25.06.2010. Admittedly WPA 8072 of 2012 was filed on 18.12.2012 i.e. after two years but this Court finds no delay in filing WPA 13677 of 2010 and WPA 14366 of 2010. Since identical question of facts and laws are involved in the instant three writ petitions the delay in filing WPA 8072 of 2012 does not appear to be very crucial.

34. In course of argument attention of this Court is drawn to the various orders as passed by different Co-ordinate Benches in order to arrive at a logical conclusion of the instant three writ petitions and in compliance of such orders affidavits-in-opposition, affidavits-in-reply, supplementary affidavits, exception to such affidavits, even counter affidavits have also been filed by the respective parties to the instant three writ petitions.

35. Though Mr. Chatterjee in course of his argument was very vocal with regard to the delay of the writ petitioners in filing affidavits this Court finds not much merit in such submission in view of the fact that delay in reaching at a logical conclusion of the instant three writ petitions if there be any, cannot be said to be attributable to the writ petitioners solely.

36. In course of hearing Mr. Jahan, learned advocate appearing on behalf of the writ petitioners in WPA 13677 of 2010 and WPA 8072 of 2012 and Mr. Sanyal, learned Senior Advocate appearing on behalf of writ petitioners in WPA 14366 of 2010 have strenuously argued with regard to the alleged discrepancy in the panel as published on 15.06.2010 as well as with regard to the alleged illegal and/or irregular selection of candidates by the said council in respect of the recruitment process in question. Since the alleged discrepancy and/or illegalities and/ or irregularities have been canvassed in the foregoing paragraphs of the instant judgement, this Court finds no reason to recapitulate the same all over again in order to avoid repetition.

37. Admittedly by an order dated 22.06.2012 as passed in connection with the instant three writ petitions the said council was directed to supply photocopies of the panel and the other documents to the writ petitioners. Pursuant to such order the copies of the said panel along with supporting documents have been supplied to the writ petitioners. On 10.12.2014 the writ petitioners in WPA 13677 of 2010 affirmed a supplementary affidavit and filed the same before the Court indicating

various discrepancies in the said panel. On perusal of the counter affidavit of the respondent no.3 in WPA 13677 of 2010 as affirmed on 17.06.2019 it reveals that it is the case of the said council that after publication of the said panel the said council received various complaints with regard to the correctness of the said council and thereafter an enquiry was caused where some inadvertent mistakes were pointed out. It is the further case of the said council that the said council thereafter approached the Commissioner of School Education for rectifying the mistakes and after obtaining necessary permission rectification was done and rectified panel was published in the notice board of the said council as well as in their website on 17.05.2010 and 18.05.2010 respectively.

38. In course of hearing Mr. Chatterjee, learned Senior Advocate appearing on behalf of the said council draws attention of this Court to page nos. 28 to 33 of the counter affidavit dated 17.06.2019 as filed in connection with WPA 13677 of 2010 as discussed earlier and in course of his submission Mr. Chatterjee pointed out that while publishing the selected panel for the first time some mistakes cropped up due to wrong awarding of ENM marks in respect of certain number of candidates which had been rectified by the said council after obtaining necessary permission from the Commissioner of School Education of West Bengal.

39. This Court has meticulously gone through the entire materials as placed before this Court including the supplementary affidavit as filed in connection with WPA 13677 of 2010 as affirmed on 10.12.2014, the counter affidavit of the respondent no.3 as affirmed on 17.06.2019 as well

as the affidavit-in-reply of the writ petitioner no.4 in WPA 13677 of 2010 as affirmed on 18.07.2019.

40. Admittedly while filing the instant three writ petitions, the writ petitioners have indicated certain discrepancies in the said panel and while filing supplementary affidavit (s) after receipt of the copy of the said panel the writ petitioners have also indicated some more discrepancies in respect of certain candidates as have been discussed in the foregoing paragraphs.

41. On careful scrutiny of the counter affidavit of the respondent no.3 dated 17.06.2019 it reveals to this Court that necessary steps have been taken by the said council for rectification of the mistakes of the panel as published on 15.06.2010 after taking due permission from the Commissioner of School Education. It further appears to this Court that in support of such contention the said council has annexed certain documents with their counter affidavit dated 17.06.2019. It appears to this Court that it is the case of the said council that in most of the cases it was found that ENM marks were wrongly posted in the panel but the calculation of awarding marks were correct. It further reveals the it is the case of the writ petitioners that in case of two or three candidates there occurred mistake in awarding correct academic scores which is why the position of one Jafar Ali Khan and one Samit Manna in the said panel were altered while in case of one Mina Rani Das her name was excluded from the panel.

42. On perusal of the affidavit-in-reply dated 01.07.2019 as filed by writ petitioner no.4 in WPA 13677 of 2010 it appears to this Court that though the writ petitioners have denied the contention of the said council as made in its counter-affidavit dated 17.06.2019 but the writ petitioners have failed to indicate any other illegalities and/or irregularities in the said panel after rectification.

43. It thus appears to this Court that the alleged illegality and/or irregularity and/or discrepancy in the said panel is/are limited to certain candidates only. Sufficient materials have been placed before this Court by the council that after noticing the said discrepancy a revised panel was prepared and published by the said council removing such discrepancy.

44. In course of his argument Mr. Sanyal though contended that the said council has got no power and/or authority and/or review its own decision this Court finds no force in such submission in view of the fact that the said council after noticing some discrepancies made a positive effort to rectify such mistakes. No case has been made out by the writ petitioners that on account of rectification of such mistakes a serious prejudice has been caused to the writ petitioners especially when sufficient materials have been placed before this Court on behalf of the said council that the writ petitioners before this Court had failed to achieve either the qualifying or the cut off marks.

45. At this juncture this Court proposes to look to the reported decision of **O. Chakradhar (supra)** wherein the Hon'ble Apex Court expressed the following view:-

“8. In our view the nature and the extent of illegalities and irregularities committed in conducting a selection will have to be scrutinized in each case so as to come to a conclusion about future course of action to be adopted in the matter. If the mischief played is no widespread and all pervasive, affecting the result, so as to make it difficult to pick out the persons who have been unlawfully benefited or wrongfully deprived of their selection, in such cases it will neither be possible nor necessary to issue individual show cause notices to each selectee. The only way out would be to cancel the whole selection. Motive behind the irregularities committed also has its relevance.”

46. In the reported decision of **Veerandra Kumar Gautam (supra)** the Hon’ble Apex Court held thus :-

“In this context, it will be worthwhile to refer to the decisions relied upon by Mr. Jitendra Mohan Sharma, learned senior counsel who appeared for the intervenors viz., the decisions reported in O. Chakradhar (supra) and Krishan Yadav [(1994)4 SCC 165]. The above decisions fully support the stand of the private respondents that when the whole process of selection is challenged, individual cases are of no consequence.”

47. In considered view of this Court if the reported decisions of **O. Chakradhar (supra)** and **Veerandra Kumar Gautam (supra)** are considered in the perspective of the instant three writ petitions, it appears to this Court that the alleged mischief are not widespread and all pervasive and therefore it would be not very difficult to pick out the persons who have been allegedly benefitted or deprived in the said selection process on account of alleged illegality and /or irregularity

committed by the said council. On the contrary it appears to this Court that the discrepancies as noticed by the said council in awarding ENM marks were subsequently rectified and to that extent sufficient materials have been placed before this Court.

48. It further appears to this Court that in respect of selection of candidates namely; Santu Dhar, Ananya Singha, Mamata Shit, Pradipta Das and Soham Kundu two Co-ordinate Benches of this Hon'ble Court in two earlier round of litigation did not interfere with the said selection process basically on the ground of absence of any element of mala fide on the part of the said council as well as on account of the corrective measures as taken by the said council to rectify the mistakes which occurred inadvertently.

49. This Court thus considers that in absence of any cogent materials this Court should not take any contrary view as already taken by two separate Co-ordinate Benches where the selection of the aforementioned five candidates under the same selection process were challenged.

50. In course of his argument Mr. Chatterjee had placed sufficient materials to substantiate that none of the writ petitioners in the instant three writ petitions had obtained either qualifying marks or cut off marks in respect of their respective categories. Though Mr. Sanyal, learned Senior Advocate in course of his reply disputed such contention of Mr. Chatterjee but no materials could be placed before this Court from the side of the writ petitioners to substantiate that fixing of cut off marks in respect of different categories of candidates were wrong.

51. This Court further finds that the writ petitioners are also unsuccessful in establishing as to how the writ petitioners were deprived of getting place in the said panel especially when the said council under cover of its affidavit as affirmed on 20.08.2019 in WPA 13677 of 2010 had clearly indicated the marks obtained by the writ petitioners in the written test (both subjective and objective), interview score, extracurricular activities including total marks in respect of their respective categories namely; UR, SC, ST, OBC, etc. At this juncture I propose to look to the relevant portions of the reported decision of **Trivedi Himanshu (supra)** wherein the Hon'ble Supreme Court held thus:-

“16. As noted herein earlier, Respondents 2 and 3 who had filed the writ petition before the High Court, challenging the appointment of the appellant were themselves unsuccessful in the examination, even though they claimed that they had passed the written examination but failed in the interview. Since the names of Respondents 2 and 3, who were the writ petitioners before the High Court, did not figure in the merit list, in our view, it was not open to them to challenge the said selection list and the appointment of the appellant before the High Court.”

52. The other reported decisions as cited from the side of the writ petitioners in WPA 14366 of 2010 in considered view of this Court, are distinguishable from the facts and circumstances of the present case.

53. In view of the discussion made hereinabove this Court thus finds that the writ petitioners of the instant three writ petitions have miserably failed to make out a case for obtaining the reliefs as prayed for.

54. This Court thus considers that the instant three writ petitions are devoid of any merit and are thus liable to be dismissed.

55. As a result WPA 13677 of 2010, WPA 14366 of 2010 and WPA 8072 of 2012 along with CAN 4 of 2024 are hereby dismissed.

56. There shall be however no order as to costs.

57. Urgent photostat certified copy of this judgement, if applied for, be given to the parties on completion of usual formalities.

(PARTHA SARATHI SEN, J.)