

Form No. J(2)

In the High Court at Calcutta
Civil Appellate Jurisdiction
Appellate Side

Present: The Hon'ble Justice Sabyasachi Bhattacharyya
And
The Hon'ble Justice Supratim Bhattacharya

MAT 751 of 2021
IA No: CAN 2 of 2021
CAN 3 of 2025

Chayan Kumar Mondal
Vs.
The State of West Bengal and others

For the appellant	:	Md. Sarwar Jahan, Mr. Karunamoyee Shamanta, Ms. Tapati Sarkar, Ms. Shalini Sen, Ms. Sahina Parvin
For the State	:	Mr. Tapan Kr. Mukherjee, AGP, Ms. Tapati Samanta
For the Vidyasagar University	:	Ms. Debjani Sengupta, Mr. Abhijit Chatterjee, Ms. Koyel Bag
Heard on	:	09.12.2025 and 16.12.2025
Judgment on	:	16.12.2025

Sabyasachi Bhattacharyya, J.:-

1. The present challenge has been preferred against an order whereby the writ petition of the present appellant, challenging the process of

selection for the post of Library Clerk in the respondent college was assailed.

2. The premise of the challenge in the writ petition was that the private respondent is the wife of the President of the governing body of the said college and had a direct role to play in the selection process. Moreover, learned counsel for the appellant argues before us, the private respondent received additional favours in the examination hall as well, which made it evident that the selection process was tainted by apprehension of bias.
3. Thirdly, by drawing our attention to certain portions of the impugned order, it is submitted that the records of the case were produced by the college authorities only at the time of hearing of the writ petition. By placing reliance on the same, without the records being brought on record by way of a proper affidavit and/or copies being served on the present appellant, it was contended that the private respondent secured higher marks in the written examination than the present appellant. Learned counsel for the appellant submits that whereas the total marks allotted for the written test was 75, allegedly the private respondent obtained 116 marks, which is even more than the total marks allotted.
4. It is reiterated that the appellant himself took the written test for only 75 marks. Thus, it is argued that the selection process was vitiated by fraud or, at least, favouritism and bias and ought to have been set aside by the learned Single Judge.

5. We note from the records that despite repeated service of notice and direction by a coordinate Bench on June 11, 2025 for the college authorities to produce the records before this Court, the college authorities chose to remain absent on each occasion. Even at the last hearing, that is, on December 09, 2025, an affidavit-of-service was filed by the appellant indicating further service having been effected on the respondents. Despite the same, only the State and the concerned University, under which the college is affiliated, are represented through counsel before us today.
6. Thus, we have no other option but to dispose of the appeal in the absence of the private respondent and the college authorities.
7. An application for production of additional evidence in the nature of Order XLI Rule 27 of the Code of Civil Procedure has been filed by the appellant before this Court to bring on record the question paper of the written examination for the impugned selection test, which indicates that the total number of questions in the examination was 75 and the marks allotted to each question was 1 (one). Thus, the said document acquires vital relevance in the adjudication of the matter.
8. It is rightly contended by learned counsel for the appellant that the appellant took an examination for 75 marks and it was only at the final hearing of the writ petition that the college authorities apparently produced records, without service of any copy of the same on the appellant, and took the plea that 116 marks were obtained by the private respondent in the written test.

9. Hence, there was no opportunity of the appellant to bring to the notice of the writ court as to the palpable discrepancy in such allotment of marks. Only upon subsequently acquiring a copy of the question paper, the present application for production of additional evidence, bearing CAN 3 of 2025, has been filed.
10. Thus, we are of the opinion that the document sought to be brought on record has vital bearing on the adjudication of the *lis* and the same could not be produced by the appellant at the time of hearing of the writ petition despite the exercise of due diligence on the appellant's part.
11. As such, CAN 3 of 2025 is allowed, thereby permitting the appellant to produce the document annexed to the application, that is, the question paper for the written examination of the selection test-in-question, as additional evidence.
12. There will be no order as to costs.
13. We find from the impugned order that there are certain disparities therein. First, the records of the selection process were produced for the first time at the hearing and relied on by the learned Single Judge, without those being brought on record earlier by way of affidavit, which denied the writ petitioner/appellant the opportunity to controvert the same and took the appellant by surprise.
14. As rightly pointed out by learned counsel appearing for the University, the records ought to have been brought before the Court by way of a proper affidavit.

15. The appellant also relies on *Sri Rabindra Nath Majhee vs. Sri Bijoy Chatterjee & Ors.*, reported at (2012) 2 CHN 43, where a coordinate Bench of this Court had discussed the principles of bias in similar circumstances and had observed that likelihood of bias would vitiate a proceeding. In the said judgment, the Division Bench considered as an exception to the doctrine “Justice must not only be done but also appear to be done”, the doctrine of necessity. The doctrine of necessity implies that where situation so demands that as the only option, the person against whom allegation of bias is made has to operate as a functionary in the concerned examination/selection process, for dearth of availability of other persons to take his position. However, in the present case, no such defence was taken by the college authorities or the private respondent at all. During hearing before the writ court, it was submitted by the college authorities that prior to the written test dated December 08, 2019, the President of the governing body of the college, who is the spouse of the private respondent/successful candidate, tendered his resignation from the selection committee through a representation dated November 16, 2019, since his wife was a participant in the selection process, and such resignation was accepted by the governing body by a resolution dated November 22, 2019.
16. However, it is not borne out by the records that either the said resignation letter or the acceptance of the same or the resolution accepting such resignation was ever brought on record in the writ petition or before this Court.

17. Thus, a question arises even as to such purported resignation of the husband of the private respondent from the selection committee and/or acceptance of the same by the college authorities/governing body.
18. That apart, even if we proceed on the premise that the President of the governing body, that is, the husband of the private respondent, tendered his resignation from the selection committee itself, fact remains that as a President of the governing body, he had overall control over the appointment of the selection committee itself as well as the entire conduct of the examinations. There is nothing on record to indicate that the said President recused himself from the entire selection process and the nomination/selection of the selection committee itself, although he himself might have resigned from the selection committee.
19. Moreover, no plea has been taken before the writ court or before this Court by the college authorities or the private respondent that necessity demanded that the President of the governing body had to be an integral part of the process of selection or the selection committee and the conduct of the examinations. Thus, the doctrine of necessity is not applicable to the respondents in the present case, having been neither pleaded nor proved. It is well-settled that the question in such cases would not be whether the selectors would be biased but whether there is reasonable ground for believing that there is likelihood of apparent bias. The coordinate Bench, in *Rabindra Nath Majhee (supra)*, watered down such test in the Indian context

and held that the test in our context is whether there is a real danger or suspicion of bias.

20. In the present case, from the facts and circumstances of the selection process as indicated above, we are convinced that definitely, a likelihood of bias and a reasonable apprehension of the same was implicit in the selection process itself.
21. That apart, in the absence of the college authorities before us, and in view of the failure of the college authorities, despite specific direction of a co-ordinate Bench in this appeal, to produce the relevant records, it remains unexplained and unanswered as to whether the total marks allotted for the written examination in the selection process-in-question was 75 marks or 150 marks. We have a document brought by the appellant before us, which we have permitted to be produced as additional evidence, to show that the question paper itself was of 75 marks in total, but there is nothing on record to rebut the same by showing that the marks carried in the written examination was 150. The veracity and validity of the selection process would centre around such factor, since obviously, a candidate could not have secured 116 marks if the total marks allotted in the written test was only 75.
22. Thus, we find that the impugned order is vitiated on such counts, which were not taken into consideration by the learned Single Judge, who proceeded only on the basis of the purported resignation by the President of the governing body from the selection committee, without going into the question as to whether he had a role to play over the

selection of the selection committee itself and the selection process in general otherwise.

23. Thus, in the light of the above observations, we find that there is sufficient reason for the matter to be decided afresh in the light of our findings above.

24. Accordingly, MAT 751 of 2021 is allowed in part, thereby setting aside the impugned judgment dated January 27, 2020 passed in W.P. No. 24220 (W) of 2019 and remanding the matter to the learned Single Judge having determination to rehear the writ petition in the light of the above observations and decide it afresh, by particularly taking note of the following:

- (i) The document annexed to CAN 3 of 2025 in the preset appeal, that is, the question paper of the written test in the disputed selection process, shall be taken into consideration by the learned Single Judge while deciding the writ petition;
- (ii) The learned Single Judge shall, on the basis of materials before the said Bench, also consider the question as to what was the total marks actually allocated for the written examination in the impugned selection process and proceed to decide the matter with regard to such aspect, also taking into account the fact that the private respondent secured 116 marks and whether it would have been possible to obtain such marks taking into

consideration the total marks allotted for the written test;

- (iii) The learned Single Judge shall also take into account as to whether the spouse of the private respondent/successful candidate, being the President of the governing body, actually resigned from the selection committee and such resignation was accepted, on the basis of the materials which may be produced before the learned Single Judge;
- (iv) The learned Single Judge shall also consider as to whether, even if resignation was tendered by the President of the governing body from the selection committee, the said President, who is the spouse of the private respondent, had a dominant role to play and/or he was in a position to influence the appointment of the selection committee as well as the conduct of the selection process as a whole, which might have created an apprehension in the mind of a reasonable person as to the likelihood of bias in the conduct of the selection process.

25. It is expected that the learned Single Judge now having determination shall re-adjudicate the issues and decide the writ petition afresh, taking into consideration the above aspects of the matter, as expeditiously as the business of the said Court permits.

26. In view of the above, CAN 2 of 2021 is disposed of as well.
27. There will be no order as to costs.
28. Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Sabyasachi Bhattacharyya, J.)

I agree.

(Supratim Bhattacharya, J.)