

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

**Present:
The Hon'ble Justice Smita Das De**

W.P.A. No. 20443 of 2022

**Parul Kujur (Oraow) & Ors.
Vs.
The State of West Bengal & Ors.**

For the petitioner : Mr. Fazrul Haque,
: Mr. Badal Saha

For the State : Mr. Avijit Sarkar

Reserved on : **16/05/2025**
Judgment on : **23/05/2025**

Smita Das De, J.:-

1. The petitioner in the instant case challenges inter alia, the impugned Memo No. 58/ICDS/BG dated 2nd March, 2022 and also the Order dated 29th May, 2022 being Annexure P5 and P3 respectively annexed to the writ petition.
2. Appropo the facts of the case is that 99 vacancies were declared within the jurisdiction of Bamongola, ICDS Project area for the post of Anganwadi Sahayika (Helper). Petitioner had the requisite qualification and duly appeared in the viva-voce test in the month of February and March, 2010 before the selection committee. The panel of 99 candidates were prepared featuring the names of the petitioners

in the merit list as prepared by the selection committee on 1st of March, 2011. Since no appointment was given to the petitioners therefore, the petitioners were compelled to file a Writ Proceeding being **WPA No. 1080 of 2022 (Mayasankar Kirtania & Ors. Versus State of West Bengal and Ors.)**. The matter was disposed of by an order dated 2nd of February, 2022 directing inter alia, the Child Development Project Officer (hereinafter referred to as CDPO for the sake of brevity and convenience) being the respondent No. 4 herein to consider the petitioner's representation dated 8th of October 2021 within a period of two months from the date of communication of the order. In pursuance of such order the respondent no. 3 being the appointing authority considered and issued the appointment letter on 23rd of February, 2022 individually to all the petitioners. Consequently, the petitioners joined the respective posts on different dates and intimated the authority accordingly. It is alleged that, after their joining the petitioners received a letter issued by the respondent No. 4 dated on March 2, 2022 intimating inter alia, that the approval for joining was compelled to be postponed until further orders due to some discrepancies and irregularities as unravelled subsequent thereto. Being aggrieved by such action of the respondent authorities the petitioner again filed a Writ Petition being **WPA No. 4474 of 2022 (Parul Kujur and Ors. Vs. The State of West Bengal and Ors.)**. This Hon'ble Court by an order dated 10th of May 2022 was pleased to dispose of the said matter directing inter alia, the District Magistrate, Malda being the Respondent No. 3 herein to cause an enquiry on the

basis of the request made by the Director of ICDS, West Bengal by his letter dated May 3, 2022 and to pass necessary order within two months from the date of communication of the order.

- 3.** The Respondent No. 3 herein in compliance of the Order dated May 10, 2022 passed an order dated May 29, 2022 which is also the subject matter of challenge in the instant Writ Petition.
- 4.** The Learned Advocate appearing for the petitioner submits that at the time of hearing on May 29, 2022 the respondent No. 3 did not comply the direction given in the Order dated May 10, 2022. Moreover, the said respondent No. 3 passed an order based on new facts which were never the queries of the Director of ICDS, West Bengal. The Respondent No. 3 without making any independent enquiry mechanically on the basis of a borrowed satisfaction rejected the petitioner's case. The Respondent No. 3 failed to act in terms of the order wherein the specific direction was to pass necessary orders and to take such action in accordance with law, after causing an enquiry, as requested by the Director of ICDS, West Bengal by his letter dated 3rd of May 2022. The Respondent No.3 instead of considering and adjudicating the issues involved in the letter of the Director of ICDS, West Bengal overreached by observing that the petitioners may not come within the zone of consideration for appointment to the post of Anganwadi Helpers under Bamangola ICDS Project, Malda as the Project Level Selection Committee became defunct on March 1, 2011 due to the introduction of the Model Code of conduct by way of a notification of General Election to WBLA, 2011 by the Election

Commission of India on even date. Thus a panel reflecting individual marks of all the members of the selection committee might not be called valid.

5. The Learned counsel for the respondents submitted and relied upon the model code of conduct which is reproduced below :-

“The Model Code of Conduct comes into effect immediately from now onwards. All the provisions of the Model Code will apply to the whole of Tamil Nadu, Kerala, Puducherry, Assam and West Bengal and will be applicable to all candidates, political parties, the State Governments of Assam, Kerala, Tamil Nadu, West Bengal and UT Administration of Puducherry and the Union Government from today itself. Attention of the political parties and candidates is particularly invited to the following provisions of the Model Code:-

“There shall be no appeal to caste or communal feelings for securing votes. Mosques, Churches, Temples or other places of worship shall not be used as forum for election propaganda.”

6. Per contra, the learned counsel for the respondent strenuously argued and submitted that despite assertions made by the petitioners, that there is no allegation of discrepancies or irregularities in preparation of panel, however on the contrary, several gross irregularities were identified and observed in the process as stated in various sub paragraphs of paragraph 7 of the affidavit in opposition.

- 7.** The respondent further submitted that the selection committee decided to stick to the decision taken in the meeting dated 1st of March, 2011 since there was a disparity in number of vacancies which had been notified as being 80 in number and the number of candidates included in the panel was 99, and secondly for the respective Gram Panchayat, number of post of Anganwadi Helper and number of candidates were not indicated, which was required as per recruitment guidelines for Anganwadi Helper and also the post reserved for OBC candidates and disabled candidates were not indicated in the panel, which was required as per 100 point roster regulations.
- 8.** The respondents by relying upon the model code of conduct submits that it is an established procedure of code of conduct of business of any Government and upon publication of such model in respect of any ensuing election to the legislative assembly, no developmental work on recruitment process etc are executed.
- 9.** After hearing the rival contentions of the parties and considering the materials available on records I am of the view that the District Magistrate has passed an order without complying the directions given in the Order dated May 10, 2022 and also failed to comply to act in terms of the order for consideration of the queries raised in the communication of the Director, ICDS, West Bengal dated 3rd of May 2022. The Respondent No. 3 passed an order by importing certain new facts which were never the queries of the Director of ICDS, West Bengal. The Respondent No. 3 rejected the petitioner's case

mechanically by passing the impugned order based on the model code of the conduct which does not speak of the issues involved herein. Moreover, the said issue pertains particularly to draw the attention of the political parties and candidates inviting the provisions of the model code which is reproduced hereinbelow :-

“There shall be no appeal to caste of communal feelings for securing votes, mosques, churches, temples or other places of worship shall not be used as forum for election propaganda.”

10. From the bare reading of the model of conduct it appears that there is no whisper about any appointments invalidating the panel.
11. It is a settled proposition of law that as held in *Mohinder Singh Gill and Anr. Versus Chief Election Commissioner* on December 2, 1977 reported in 1978 AIR 851.

“when a statutory functionary makes an order based on certain grounds its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to Court on account of a challenge, gets validated by additional grounds later brought out. Public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanation subsequently given by the officers making the order of what he meant, or of what was in his

mind, or what he intended to, do. Public orders made by the public authorities are meant to have public effect and are intended to effect the actings and code of conduct of those to whom they are addressed and must be construed objectively with reference to the languages used in the order itself,”

12. In the conspectus of the case I am of the considered view that the order has been passed arbitrarily on a wrong premises without complying the directions given in the order dated May 10, 2022 when there was a specific direction to make an independent enquiry and arrive at a finding on the basis of the queries raised by the Director of ICDS, West Bengal in the letter and spirit of the communication dated May 3, 2022. Accordingly, I set aside the Order dated May 29, 2022 passed by the Respondent No. 3 directing, inter alia, the Director of ICDS, West Bengal to make an independent inquiry and pass a reasoned order in accordance with law on the basis of the query raised by the communication dated May 3, 2022 as indicated in the Order dated May 10, 2022, preferably within six weeks from the date of communication of the order by affording opportunity of hearing to all the parties and communicate the said order to all the parties preferably within a week thereafter.
13. However, it is made clear that I have not gone into the merits of the case but the Director of ICDS, West Bengal shall consider the applicability and validity of the memo No. 58/ICDS/BG dated March 2, 2022 in the context of the instant case.

14. If it is otherwise held, the Director of ICDS, West Bengal shall take care of the interest of the petitioners in the instant case.
15. With the above observations and directions, the writ petition being **WPA 20443 of 2022** stands disposed of. No order as to costs.
16. Urgent certified copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Smita Das De, J.)