
(2014) 08 GAU CK 0041

In the Gauhati High Court

Case No : Writ Appeal No. 53 of 2013 and M.C. No. 2287 of 2013

Ananta Rajkumar

APPELLANT

Vs

Gopa Choudhury

RESPONDENT

Date of Decision : 20-08-2014

Acts Referred:

Constitution of India, 1950 — Article 16

Citation : (2014) 4 GLT 265

Hon'ble Judges : Tinlianthang Vaiphei, J; Nishitendu Chaudhury, J

Bench : Division Bench

Advocate : S. Kalita, P. Barua, A. Baruah, T. Baruah, K.K. Mahanta, K. Konwar, K. Singha and K.M. Mahanta, Advocate for the Appellant; B.J. Talukdar, A.S. Bhattacharjee, C. Phukan, U.K. Nair, D. Sinha, H. Chutia, S. Saikia, P. Saikia and B. Bora, Advocate for the Respondent

Judgement

Nishitendu Chaudhury, J.—Judgment and order dated 14.12.2012 passed by the Hon"ble Single Judge in W.P.(C) 3464/2011 allowing the writ petition and setting aside the selection and appointment of respondent No. 4 to the post of Administrative Officer in the establishment of Deputy Commissioner of Dima Hasao district has been challenged in the present writ appeal. The writ petitioner is a Senior Administrative Assistant in the Office of the Deputy Commissioner, Dima Hasao district. The case of the writ petitioner is that on 6/13th July, 2009, the Deputy Commissioner of Dima Hasao district issued an advertisement inviting applications in standard form from eligible candidates to fill up the vacant post of Administrative Officer in his office stating that applicants must have rendered at least 15 years of service in any D.C's establishment having work experience in different branches in general and must be a graduate from any recognized university. The advertisement contained a stipulation that applications should reach the Office of the Deputy Commissioner on or before 05.06.2009 together with a copy of treasury challan for Rs. 5/- for candidates under general category and Rs. 2.50/- for SC/ST candidates. Writ petitioner along with two others submitted their candidature, namely, one D.K. Deb and one A. Teron of

the same office. The Deputy Commissioner thereafter by letter dated 13.07.2009 forwarded all the three applications along with all testimonials as well as A.C.Rs. upto date for consideration by the Selection Board. However, selection did not take place within next one year and a half. In the mean time on 21.02.2011, private respondent No. 4 (writ appellant herein) filed an application before the Deputy Commissioner with a request to forward his candidature to the Selection Board for consideration stating that as he was busy in pursuing a correspondence course. Although 19 months had elapsed after expiry of the last date stipulated in the advertisement, yet the Deputy Commissioner not only forwarded the application for consideration by the Selection Board but also recorded a comment certifying that respondent No. 4 has vast experience in almost all branches of the establishment. On 26.04.2011, the impugned notification selecting and appointing the private respondent as the Administrative Officer of the District Establishment of Dima Hasao district was issued. The writ petitioner immediately on 30.04.2011 submitted a representation registering her protest against the selection and appointment of the private respondent and prayed for reconsideration of the decision. The representation having failed to evoke any response, writ petitioner approached this court and not only prayed for setting aside the impugned notification dated 26.04.2011 as to selection and appointment of the private respondent but also made a prayer for appointing her as the Administrative Officer of the establishment in his place.

2. The official respondents as well as the private respondent No. 4 filed separate affidavits-in-opposition. The respondent No. 4 pleaded that although writ petitioner is an M.A. but she is much junior to him in the office. Of course, both of them were working as Upper Division Assistant. The respondent No. 4 claimed that stipulation as to last date of submitting application on 05.06.2009 was not mandatory or obligatory. Nowhere in the said advertisement it is stated that last date for submission of such application would not be extended. According to the respondent No. 4, the recruiting authorities had intention to give due weight to the seniority, merit and practical experience of having exposure to working in various branches of the Deputy Commissioner's establishment. It was not mandatory that personal interview must be held but it was proposed so in rare exceptional circumstances. The respondent No. 4 went further in stating that as per records writ petitioner herself filed application on 06.06.2009 after expiry of the prescribed date i.e. 05.06.2009. Taking advantage of working in the office, the writ petitioner subsequently tempered the date by overwriting and made it 05.06.2009. The respondent No. 4 stated that the equitable relief is not available to the writ petitioner from a Court of Equity. By filing an affidavit-in-reply, the writ petitioner stated in paragraph 8 that "she had submitted her application in time and at that time ethnic violence was extensive and the petitioner got her treasury challan after due date as she was employee of the department and the respondent No. 2, as District Magistrate, is well aware of the volatile situation due to ethnic violence". Replying to the recital made in affidavit-in-opposition of the respondent No. 4 that Deputy Commissioner had held an enquiry in regard to

alleged overwriting in regard to date of application, the writ petitioner replied that no such enquiry was done to her knowledge and that if done at all, it might have been done behind her back and so it cannot be taken into consideration. The writ petitioner reiterated that her application was forwarded by the Deputy Commissioner on 13.07.2009 and consequently deficiency, if there be any, had been waned. Coming to the belated application of the respondent No. 4, the writ petitioner reiterated that the Deputy Commissioner exceeded his jurisdiction in forwarding application of respondent No. 4 on 21.02.2011. In paragraph 11 of the affidavit-in-reply, writ petitioner raised another objection pleading that the Annual Confidential Report and other service records were not properly scrutinized by the authority and hence appointment of respondent No. 4 was illegal and void which cannot stand the scrutiny by way of judicial review. Respondent No. 2 in the writ petition who is the Deputy Commissioner of Dima Hasao district submitted affidavit in opposition. This affidavit was sworn by an employee in the office of the Additional Deputy Commissioner without, however, disclosing his official designation. In paragraph 5 of this affidavit, it is stated that writ petitioner submitted her application on 06.06.2009 bearing date 05.06.2009 without a copy of treasury challan for Rs. 5/- which was processed by the Deputy Commissioner on the same date. The treasury challan was subsequently submitted on 09.06.2009. The fact as to forwarding 3 (three) applications along with service records and Annual Confidential Record by letter dated 13.07.2009, however, was admitted in the same paragraph of the affidavit in opposition. In paragraph 8, on the other hand, a stand was taken to the effect that as there was no prescribed period of submission of application to the Selection Board, the Selection Board accepted all the applications of eligible persons having requisite qualifications and considered the cases of all the candidates for their selection and "found the private respondent as the Administrative Officer".

3. The Hon'ble Single Judge after hearing the learned counsel for the parties allowed the writ petition holding that the respondent No. 4 having submitted application beyond time specified in the advertisement and there being no formal extension of time for receipt of application beyond 05.06.2009 by way of any public notice, there was prejudice to other eligible candidates. Had there been a public notice informing all concerned that last date for acceptance of applications was extended, other eligible and intending candidates could have applied and thus they were kept in dark causing prejudice to them. The Hon'ble Single Judge did not accept the explanation for delayed submission to be bona fide or beyond control of the respondent No. 4. Explanation was found to be totally frivolous and delay being not of one or two days but of more than one year and a half, the acceptance of respondent No. 4 was held to be unjustified. The Hon'ble Single Judge also expressed disapproval of the comment of the Deputy Commissioner in favour of respondent No. 4 being a member of the Selection Board. On totality of the aforesaid considerations, the Hon'ble Single Judge held that selection and appointment of respondent No. 4 cannot be sustained and it was accordingly set aside and quashed. This judgment of the Hon'ble Single Judge has been brought

under challenge in the present writ appeal.

4. We have heard Mr. K.K. Mahanta, learned senior counsel assisted by Mr. K. Singha Advocate, Mr. S. Saikia, learned counsel for the respondent No. 4 and Mr. B.J. Talukdar, learned Government Advocate for the official respondents.

5. Mr. K.K. Mahanta, learned senior counsel has based his argument on two grounds. According to him, writ petitioner having submitted application on 06.06.2009 which is one day after the last date of advertisement he does not have locus standi to challenge the appointment of the respondent No. 4 on the ground of belated application. According to the learned senior counsel, this aspect of the matter has not been considered by the Hon'ble Single Judge. The other point argued in the alternative is that as per the advertisement there being no stipulation that no application would be accepted after 05.06.2009, there was really no last date for filing of application. This is because it is an in-house selection of candidate among the eligible employees of the establishment of the office of the Deputy Commissioner, Dima Hasao. Drawing attention of this Court to Rule 6(8) of the Assam Ministerial (District Establishment) Services Rules, 1967 (hereinafter referred to as "the Rules"), the learned senior counsel would argue that the respondent No. 4/writ appellant being the senior most among all the applicants was rightly selected by the Selection Board. The advertisement was neither necessary nor warranted by the Rules and consequently there cannot be any question of last date for submission of application, the learned senior counsel contended.

6. Per contra, Mr. S. Saikia, learned counsel for the writ petitioner (private respondent in this appeal) would argue that under Rule 6(8) of the Rules as well as, as per the recital of the advertisement, any graduate employee having 15 years of working experience in the establishment of any Deputy Commissioner is eligible to apply for the post of Administrative Officer lying vacant in the office of the Deputy Commissioner at Dima Hasao. Upon a joint reading of the Rule 6(8) of the Rules and the advertisement, it would be wrong to presume that employees of the establishment of Deputy Commissioner of Dima Hasao alone have the right to apply for the advertised post of Administrative Officer. Employees of other district establishments also have right to submit their candidature for the advertised post and under such circumstances, the action of the official respondents impliedly extending last date of receipt of application by accepting application of the writ appellant 19 months after the last date prescribed has caused prejudice to eligible candidates and so impugned selection is hit by Article 16 of the Constitution of India. According to the learned counsel writ petition having been admitted and thereafter taken for consideration on merit, the question of locus standi has paled into insignificance. The learned counsel also would argue that since eligible candidates from other district establishments are also entitled to apply for the post, the requirement of advertisement mentioned in regard to Rule 6(8) of the Rules is made.

7. Mr. B.J. Talukdar, learned Government Advocate appearing for the official

respondents in this appeal has taken a different stand than the one indicated in the affidavit in opposition submitted on behalf of the respondent No. 2. The learned Government Advocate submits that writ petition was admitted and then taken up for disposal on merit. Upon such scrutiny, it is found that application of the writ appellant was accepted after inordinate delay and that, too, without formal extension of time for receipt of applications. Accordingly, possibility as to deprivation of other eligible candidates from scope to subject their candidature cannot be ruled out. After all, it is an appointment to public office and this should not have been done in the manner it is done.

8. Upon consideration of the rival contentions of the learned counsel for all the parties, the questions that fall for determination by this Court can be formulated as follows:

(i) Whether because of filing application one day after the prescribed last date, the writ petitioner has lost locus standi to challenge appointment of the writ appellant?

(ii) Whether acceptance of the application of the writ appellant 19 months after the prescribed last date for the purpose without formal extension of time is justified?

9. Raising objection as to locus standi of a writ petitioner to scuttle judicial scrutiny at the threshold has been a widely practised strategy for successful candidate as respondent in adversarial litigation. The stand of Court's in this regard both at home and abroad has also been varied. While the classical view was of refusal to entertain writ petition at the threshold on such objection, the magnitude of objection of Equity Court in subsequent days appears to have been on the wane and finally this has gone to near obliteration in the case of Public Interest Litigations. The original view was that only a "person aggrieved" can maintain a writ petition before an Equity Court. Who is a "person aggrieved" also was debated and decided in catena of judicial pronouncements. In some of the judgments (see *Fertilizer Corporation Kamgar Union (Regd.) Vs. Union of India (UOI) and Others*, ; *Bangalore Medical Trust Vs. B.S. Muddappa and others*, the Court found that question of "person aggrieved" is different from the question whether the petitioner is entitled to relief as prayed by him. The expression "person aggrieved" denotes an elastic and to some extent an elusive concept. According to traditional theory, only a person whose right has been infringed can apply to the court but the later view as referred to above has liberalised the concept of aggrieved person and the right duty pattern commonly found in adversarial litigation has been given up. The only limitation is that such a person should not be a total stranger known as meddlesome interloper.

10. Celebrated author de Smith in his *Judicial Review of Administration Action* (Fourth Edition) considered the question of locus standi and the concept of the "person aggrieved" in an action challenging administrative decision. This cannot

be placed better than quoting verbatim what was stated in page 413 of the aforesaid work:-

"In other contexts a person aggrieved has been understood to mean one "who has a genuine grievance because an order has been made which prejudicially affects his interests." Hence a householder anticipating a serious loss of amenity as a result of an administrative decision to permit the building of a high block of flats nearby was entitled to appeal against the decision as a person aggrieved.....".

11. Coming to the question of "genuine grievance" or "legal grievance" as indicated above, consideration of fact situation of each case is necessary and perhaps no straight jacket formula can be prescribed for it. This expression may be of wide import. Lord Denning, J. in *Attorney General of Gambia vs. N' Jie*, reported in (1961) 2 All E.R. 504 construed "person aggrieved" as follows:

".....the words "person aggrieved" are of wide merit and should not be subject to a restrictive interpretation. They do not include all courts a mere busybody who is interfering in things which do not concern him; but they do include a person who has a genuine grievance because an order has been made which prejudicially affects his interests".

12. The Hon"ble Single Judge while considering the justifiability of belated application of the writ appellant noticed that the application was not filed after a delay of one or two days and it was submitted after more than one year and a half from the prescribed last date of receipt of application. Had the application been delayed by one day or two perhaps the delay would have been of technical nature but in the case in hand, the delay was not so. Even if it is considered for the time being that writ petitioner filed application one day after the last date of application even then such delay will be merely of technical nature not only for the quantum of delay but also for the facts stated at paragraph 4 of the affidavit in reply against the affidavit in opposition submitted by the present writ appellant in the writ petition. The ground taken was that the application was filed in time but in view of ethnic violence, law and order situation prevailing at the District Headquarter at that time was grim but for which the application dated 05.06.2009 could be accepted by the Deputy Commissioner only on 06.06.2009 and that, too, without treasury challan. The treasury challan could ultimately be collected on 09.06.2009 and annexed to the application. Acceptance of the application on 06.06.2009 by the Deputy Commissioner under the prevailing law and order situation appears to be a ground beyond control of the writ petitioner and under such piquant situation acceptance of the application of the writ petitioner by the Deputy Commissioner even after a technical delay of one day cannot be said to be unjustified. Per contra, belated application of the private respondent in the writ petition (writ appellant herein) is not attended by any Act of God or of such nature which can be said to be beyond control of the writ petitioner. The Hon"ble Single Judge is justified in observing that "the reason given for delayed submission of application cannot be said to be bona fide or

beyond the control of respondent No. 4. As a matter of fact, the ground given is totally frivolous and therefore, his application ought not to have been entertained. Thirdly, the delay is not of one or two days. The delay is more than 20 (twenty) months. Under such circumstances, acceptance of application of respondent No. 4 was not justified". According to the writ appellant, during all this period he was pursuing a correspondence course and since no selection was made for long period after the prescribed last date he filed his application before the Deputy Commissioner and Deputy Commissioner accepted it. This delay, therefore, is far from being technical.

13. Writ court is a Court of Equity. Its jurisdiction is wide and not bound by technicalities. It has the jurisdiction and duty to lift the veil and to see the real facts before arriving at a decision. The Hon"ble Single Judge in the case in hand has exercised power of Judicial Review within such acceptable and established norms of equity. Had the writ petition been refused at the threshold before entering into merit, the question would have been different. Here both the parties wanted the Writ court to delve deep into the facts of the case and thereafter to decide the correctness or otherwise of the decision making process. On being so invited, the Hon"ble Single Judge has rightly lifted the veil and discovered that application of the writ appellant was accepted with inordinate delay by overlooking the provisions of the Rule as well as the advertisement. The acceptance of such belated application amounts to implied extension of time for receipt of applications. So considered, it irresistibly indicates possibility of serious prejudice being caused to any number of eligible candidates who could have submitted their candidature for the advertised post and in that event possibility of some of them being selected for the post cannot reasonably be ruled out. It cannot be lost sight of that the eligible candidates working in other district establishments are also entitled to file application for the post and selection is required to be made on the basis of merit. This being the position, prejudice has been caused to eligible candidates. Having so found, writ court at this stage cannot shun its responsibility merely holding that the writ petitioner also is guilty of technical delay of one day. The points for determination, therefore, are to be decided accordingly holding that the writ petition could not have been dismissed on the ground of locus standi at the final stage when full facts disclosing error in the decision making process have already come to the fore and that the official respondents committed jurisdictional error and manifest illegality in accepting application of the writ appellant after inordinate delay of 19 months from the prescribed last date of application. The findings of the Hon"ble Single Judge are accordingly upheld.

14. The writ appeal is devoid of any merit. It is accordingly dismissed. Stay order, if there be any, is hereby vacated. No order as to costs.