

(2015) 05 CAL CK 0035

In the Calcutta High Court

Case No : W.Ps. 16171 (W) of 2009 and 13166 (W) of 2011

Mijanur Alam

APPELLANT

Vs

The State of West Bengal and Others

RESPONDENT

Date of Decision : 04-05-2015

Acts Referred:

Citation : (2015) 3 CALLT 94 : (2015) 3 ESC 1515

Hon'ble Judges : Samapti Chatterjee, J

Bench : Single Bench

Advocate : Kamalesh Bhattacharya, Rezaul Hossain and Pervez Hossain, Learned Advocates, for the Appellant; Jaharlal De and Shamim U.L. Bari, Learned Advocates, Advocates for the Respondent

Judgement

Samapti Chatterjee, J.—The petitioner filed the instant writ petition praying inter alia for issuance of mandamus against the District Inspector of School (S.E), Uttar Dinajpur, respondent No. 3 to approve the panel for appointment of Group D staff under the Bhupal Chandra Vidyapith (H.S), Bhupalpur under P.S.-Raiganj, District-Uttar Dinajpur after quashing/canceling the name of the private respondent No. 6, Mijanur Alam (writ petitioner in W.P. 13166(W) of 2011).

2. The petitioner's case in brief is as follows:-

"The School authority on 2nd December, 2014 issued an advertisement for the Group D post of the Bhupal Chandra Vidyapith (H.S), under P.S.-Raiganj, District-Uttar Dinajpur in the newspaper namely "Uttar Banga Sambad". Since the petitioner belongs to schedule caste category and a VIII passed candidate his name was sponsored by the employment exchange against the said vacancy along with others. The petitioner came to learn that one post under the general category was also lying vacant. Therefore, though the petitioner belongs to schedule caste category the petitioner requested the school authority to consider his candidature for the said Group D post under the general caste category since his name has been sponsored by the employment exchange and he possesses all the requisite qualifications and also within the zone of prescribed age limit.

The school authority fixed the interview on 9th and 10th July, 2009 and the petitioner along with the private respondent Nos. 6 and 7 duly appeared before the selection committee constituted by the Managing Committee of the said school. Thereafter the selection committee prepared a panel of three candidates namely (1) Mijanur Alam, (2) Babul Hossain (3) Atul Chandra Barman.

After being unsuccessful in the selection process the petitioner filed the present case for cancellation of the selection of private respondent No. 6 (Petitioner in the W.P. 13166 (W) of 2011) on the grounds indicated below:-

"(i) That one Rafiquel Alam is a influential person in that locale and also a member of the Managing Committee of the said school who is the father of the respondent No. 6 who stood first in the panel;

(ii) The said Managing Committee took resolution on 4th June, 2006 in respect of the selection committee for appointment of Group D staff in the said school when Rafiquel Alam being one of the members of the Managing Committee was very much present.

(iii) The said panel of three candidates was sent by the Managing Committee for approval to the respondent No. 5 where Rafiquel Alam's (father of respondent No. 6) name was very much present being one of the members of the Managing Committee.

(iv) That being the position Rafiquel Alam being the father of the respondent No. 6 influenced the Managing Committee to select his son as first candidate in the so called three candidates panel prepared by the selection committee. As a result the panel was prepared in biased and closed mind by the selection committee being influenced by the father of the respondent No. 6 who stood first in the panel."

3. Mr. Chinmoy Pal, learned Advocate appearing for the petitioner contended that the candidature of the respondent No. 6 should be cancelled as the selection committee being influenced by the father of the respondent No. 6 (who is one of the members of the Managing Committee of the said school) declared respondent No. 6 as first in the panel, depriving the candidature of the petitioner.

4. Mr. Pal also contended that the selection committee being influenced by the father of respondent No. 6 awarded higher marks to respondent No. 6 and motivatedly awarded lower marks to the petitioner.

5. Mr. Pal also vehemently urged that the Managing Committee in collusion with the father of the respondent No. 6 selected him first in the panel though according to Mr. Pal the petitioner's candidature was better than the respondent No. 6. In support of his contention Mr. Pal relied on one Supreme Court decision reported in (1970) 1 S.C.R. 457 (A.K. Kraipak and Ors, etc v. Union of India and Ors), 1984 AIR1572 (J. Mohapatra and Co. and Another v. State of Orissa and Another), Rattan Lal Sharma Vs. Managing Committee, Dr. Hari Ram (Co-education) Higher Secondary School and others, AIR 1993 SC 2155 : (1993) 3 JT

487 : (1993) LabIC 1808 : (1993) 2 LLJ 549 : (1993) 2 SCALE 924 : (1993) 4 SCC 10 : (1993) 3 SCR 863 and also an unreported decision of this Hon"ble Court in A.P.O No. 247 of 2010 with W.P. No. 1299 of 2009 with G.A. No. 1928 of 2010 (State of West Bengal and Others v. Arun Agarwal).

6. Therefore, Mr. Pal finally submitted that Court should quash/cancel the so called selection of respondent No. 6 as the said selection was made by adopting unfair and unjust means and biased manner.

7. Per contra, Mr. Jaharlal De, learned Advocate appearing for the State submits that no unfair, unjust, arbitrary manner was adopted at the time of selection as the selection was made after following the procedure as laid down in the existing rules.

8. Mr. Dey referred to the procedure laid down for the post of clerk and Group D staff. "Procedure for the post of clerk and Group D is quoted below:

"For the post of Clerk and Group-D Staff:

1. Approved Headmaster/Headmistress/Teacher-in-Charge in recognised High/H.S./High Madrasahs on the Sub-division.

2. Secretary of the Managing Committee/Ad hoc committee/Administrator. If the Headmaster and the Secretary of the School are one and the same person, the President of the Committee shall be included as a member.

3. One approved Headmaster/Headmistress of High/Higher Secondary High Madrasah in the same Sub-Division to be selected by the Managing committee.

4. One nominee of the Panchayat Samity for School situated in rural areas to be nominated by the Sabhapati, Panchayat Samity. For other area one member of the M/C to be selected by the M.C. The nominee of the Panchayat Samity however shall not be a member of the Staff of the School."

9. Mr. De also referred to Sub-Rule (b) of Rule 5 which is quoted below:-

"(b) No person who is related to any of the candidates to be interview shall be a member of the Selection Committee and in such cases the position of the member of the Selection Committee shall remain vacant. A certificate indicating the actual position in this regard shall be submitted to the D.I. of Schools (S.E.) along with every Panel."

10. Mr. De also vehemently urged that no illegal, arbitrary, unfair means was adopted by the selection committee at the time of presenting the panel where respondent No. 6 stood first position and petitioner stood third position.

11. It was also vehemently contended by Mr. De that nothing was mentioned in the writ petition that illegal, unfair or biased means was adopted by the selection committee at the time of preparing the three men panel where the petitioner secured third position. Therefore, in the conclusion Mr. Dey contended that since nothing was raised in the writ petition regarding illegality, arbitrariness or any

unfair manner adopted by the selection committee at the time of selecting, preparing panel of three candidates therefore, the present writ petition should be dismissed by the Hon''ble Court for lack of merit.

12. Mr. Kamalesh Bhattacharya, learned Advocate appearing for Mijanur Alam, the petitioner in W.P. No. 13166 (W) of 2011 (respondent No. 6 in W.P. No. 16171 (W) of 2009) vehemently contended that the writ petitioner being No. W.P.16171 (W) of 2009 was filed without any merit. No allegation regarding illegality, arbitrariness, malpractice committed by the selection committee was raised in the said writ petition.

13. Mr. Bhattacharya further contended that it was also not the case of the writ petitioner that there were several procedural lapses, or illegalities or irregularities at the time of forming the selection committee that being the position mere raising allegation without any substance does not deserve any credence. No allegation of illegality, arbitrariness was at all raised against any of the members of the selection committee which deserves interference of this Hon''ble Court.

14. Mr. Bhattacharya also strongly urged that the petitioner after being unsuccessful in the selection process filed the writ petition with the intention to jeopardize the selection of respondent No. 6 which should not be entertained by this Hon''ble Court.

15. Mr. Bhattacharya also vehemently argued that the writ petitioner knowing fully well that Rafiqul Alam the father of respondent No. 6 as one of the members of the Managing Committee signed the resolution adopted for formation of the selection committee and also said Rafiqur Alam signed the documents at the time of sending the panel to the concerned D.I., (S.E) under P.S-Raiganj, District-Uttar Dinajpur, the writ petitioner Atul Chandra Barman (in W.P. No. 16171 (W) of 2009) appeared/participated in the interview without raising any objection against the selection committee. That being the position now being 3rd in the said panel he lost his right to raise any allegation against the selection committee.

16. Mr. Bhattacharya in support of his contention relied on a Supreme Court decision reported in B. Ramanjini and Others Vs. State of Andhra Pradesh and Others, AIR 2002 SC 2023 : (2002) 4 JT 526 : (2002) LabIC 1697 : (2002) 4 SCALE 197 : (2002) 5 SCC 533 : (2002) 3 SCR 506 : (2002) 2 SCT 1049 : (2002) 3 SLJ 28 : (2002) AIRSCW 2069 : (2002) 3 Supreme 617 which is quoted below:-

"(8) Further, even if it was not a case of mass copying or leakage of question papers or such other circumstance, it is clear that in the conduct of the examination, a fair procedure has to be adopted. Fair procedure would mean that the candidates taking part in the examination must be capable of competing with each other by fair means. One cannot have an advantage either by copying or by having a foreknowledge of the question paper or otherwise. In such matters wide latitude should be shown to the Government and the courts should not unduly

interfere with the action taken by the Government which is in possession of the necessary information and takes action upon the same. The courts ought not to take the action lightly and interfere with the same particularly when there was some material for the Government to act one way or the other. Further, in this case, the first examinations were held on 19.4.1998. The same stood cancelled by the order made on 15.5.1998. Fresh examinations were held on 11.7.1998 and results have been published on 29.7.1998. Interviews were however held on 29.7.1998 (sic 27.8.1998) in such cases. The events have taken place in quick succession. The parties have approached the court after further examinations were held and after having participated in the second examination. It is clear that such persons would not be entitled to get relief at the hands of the court. Even if they had not participated in the second examination, they need not have waited till the results had been announced and then approached the Tribunal or the High Court. In such cases, it would lead to very serious anomalous results involving great public inconvenience in holding fresh examinations for a large number of candidates and in Anantapur district alone nearly 1800 candidates were selected as a result of the examinations held for the second time. Therefore, we think, the High Court ought not to have interfered with the order made by the Government on 15.5.1998 in canceling the examinations and holding fresh examination."

17. Therefore, before parting with his argument Mr. Bhattacharya contended that writ petition being W.P. No. 13166 (W) of 2011 filed by Mijanur alam should be allowed by this Hon"ble court by directing the respondent authorities to accord approval of the panel prepared on 9th and 10th July, 2009 for appointment to the post of Group D staff at Bhupal Chandra Vidyapith (H.S) District-Uttar Dinajpur.

18. After considering the submissions advanced by the learned Advocates appearing for the respective parties and after perusing the records I am of the view that the writ petitioner in W.P. 16171 (W) of 2009 did not raise any allegation regarding formation of the selection committee or any allegation regarding malpractice, illegality unfair manner, arbitrariness adopted by the members of the selection committee at the time of selecting/preparing the panel where Mijanur Alam stood first and the petitioner Atul Chandra Barman stood third. Only allegation made in the Barman's writ petition that selection committee was biased and influenced by the father of the Mijanur Alam who was one of the members of the Managing Committee of the said school and who was very much present when the resolution was adopted for formation of selection committee who put his signature as member of the selection committee when the said panel was sent to the concerned D.I. for approval.

19. After going through the procedural aspects as relied on by Mr. De I am of the view that no illegalities was committed at the time of formation of selection committee by the school authorities. The selection committee was formed after fulfilling all the formalities as laid down in the said rule. In the present writ

petition 16171(W) of 2009 there is no whisper regarding illegality, arbitrariness and malpractice adopted by the members of the selection committee at the time of selecting Mijanur Alam as first in the panel and also there was no challenge to the effect that entire selection process should be vitiated as the committee adopted illegal and unfair means at the time of selecting Mijanur as first in the panel.

20. It was also not the case of the petitioner that Mijanur Alam being the son of Rafiqui Alam had been debarred to appear in the selection process. Nothing was proved by the writ petitioner/Barman against the members of the selection committee that they were influenced by the father of Mijanur Alam, mere fact that father of Mijanur Alam is one of the member of the Managing Committee does not give any right to the petitioner to file the present petition questioning selection of respondent No. 6.

21. It is true that likelihood of bias can also vitiate a selection process which otherwise deserves to be transparent and strictly based on merit. This is fundamental norm in a civilized society, which believes in the rule of law. Any deviation in this regard certainly demands a close allegation of bias is required to be proved and established by the person who claims the same and this has to be done to the satisfaction of the judicial conscience of the Court. There is no such material so as to hold that the Member of the Managing Committee acted in a manner, which even remotely could influence the selection process.

22. I also find some substance in the argument advanced by Mr. Bhattacharya that the Barman knowing fully well that Rafiqui is the father of Mijanur Alam did not raise any objection but participated in the selection process when he was selected in the third position whereas Mijanur Alam was selected in the first position in the panel by the selection committee, then feeling aggrieved he filed the said writ petition which as per Mr. Bhattacharya's contention he (Barman) lost his right to challenge the selection of the panel after participating in the said selection process. In my considered view I cannot ignore that said Barman did not challenge the entire selection process. He filed the present writ petition only on the ground that the members of the selection committee were biased and influenced by the father of Mijanur Alam as he was one of the members of the Managing Committee.

23. Now I have to deal with the decisions relied on by Mr. Pal in support of the case.

In case of Rattanlal Sharma (Supra) it appears from Paragraph "12" that in the said case one Sri Maruram who was not only one of the members of the enquiry committee but said Maruram appeared as an witness against the appellant to prove the charge. Therefore, the said charge was vitiated as held by the Hon'ble Supreme Court on the ground that the participation of said Maruram as a member of the enquiry committee vitiated the entire proceedings and caused violations of principles of natural justice.

But in the present case there was no direct allegation against Rafiquil Alam(father of Mijanur Alam) who being in the selection committee selected Mijanur as first candidate in the panel of three candidates. Therefore, in my considered view this case has no manner of application in the facts of the present case in hand.

Other decisions relied on by Mr. Pal in my considered view have no manner of application in the present case, as the father of Mijanur was not the member of the selection committee.

24. That being the position since there was no procedural lapses regarding declaration of vacant post, invitation of candidature from employment exchange as well as wide publication in newspaper namely "Uttar Banga Sambad" and formation of selection committee as per rule, therefore, it is improper to hold that the selection of Mijanur was made in closed and biased manner. In my considered view there was no violation of natural justice committed by the selection committee in selecting Mijanur Alam as first in the panel and in selecting Barman as third in the panel. The rule provides that no person who is related to any of the candidates to the interview shall be a member of the selection committee and in the present case in hand it is evident that Rafiquil Alam being father of Mijanur Alam was not in the selection committee where Mijanur Alam participated. Rafiquil was one of the members of the Managing Committee only and not the member of the selection committee where Mijanur Alam appeared.

25. Considering the above, I have no hesitation to hold that the writ petition being No. W.P. 16171 (W) of 2009 has no merit therefore no relief can be granted by this Hon"ble Court. The same should be dismissed.

26. Accordingly, the writ petition being No. W.P. 16171(W) of 2009 is dismissed without any order as to costs and W.P. 13166 (W) of 2011 in my considered view should be allowed. Therefore the writ petition being No. 13166 (W) of 2011 is allowed by directing the respondent to disburse the salary of the petitioner from the date of his joining to the said post of Group "D" in Bhupal Chandra Vidyapith, (H.S), P.O.-Bhupal, under P.S.-Raiganj, District-Uttar Dinajpur.

27. Since a considerable period has elapsed, therefore, respondent authorities are directed to complete the entire exercise within eight weeks from the date of communication of this order.

28. Urgent photostat certified copy if applied for, be supplied to the parties after fulfilling all the formalities.