

(2007) 09 CAL CK 0082

In the Calcutta High Court

Case No : Writ Petition No. 11613 (W) of 2007

Noor Emam Khan

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 12-09-2007

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959 — Section 4, 4(1)

West Bengal Regulation of Recruitment in the State Government Establishment Act, 1999 — Section 16, 4

Citation : (2008) 1 CHN 105

Hon'ble Judges : Tapen Sen, J

Bench : Single Bench

Advocate : Sahid Ali Khan, in W.P. No. 11613 W of 2007 and Haridas Das, in W.P. Nos. 11613 and 13742 W of 2007, Manik Ch. Das, in W.P. Nos. No. 13742 W of 2007 and Dilip Kr. Saha and Durba Bandyopadhyay, in W.P. Nos. 11388 and 11763 W of 2007, for the Appellant; P.S. Deb Barman and Rajdeep Biswas for State and Alok Kr. Ghosh, for Registrar General in W.P. Nos. 11613, 13742, 11388 and 11763 (W) of 2007 and Manas Kr. Gupta in C.A.N. No. 5796 of 2007, for the Respondent

Final Decision : Allowed

Judgement

Tapen Sen, J.—All these writ petitions have been heard together. In W.P. No. 11613(W) of 2007, the petitioner (Noor Emam Khan) has stated that he passed his School Final Examinations in the year 1992 and thereafter, the Higher Secondary Examinations in 1995 and the Bachelor of Arts from the University of Calcutta in 1997. He has experience of typing and shorthand and he is in possession of valid certificates. He has stated that pursuant to an advertisement published on 16.2.2007 in the "Juger Khabar", he applied for being appointed in the post of a Lower Division Clerk (Group - "C") on 19.2.2007. He subsequently came to learn that the written test for Group - "C" and Group - "D" posts in the judgeship of Howrah had been fixed on 11.3.2007. The petitioner has stated that

thereafter, he, along with a large number of similarly situated persons/applicants, visited the office of the District Judge, Howrah on 9.3.2007 when they were told that interview letters had been duly dispatched. With such a reply, they became agitated and thereafter, duplicate interview letters were issued to all of them including the petitioner informing him that the written tests for selection of Lower Division Clerks (Group - "C") in the judgeship of Howrah would be held on 11.3.2007. The petitioner has stated in paragraph - 5 that on enquiry many of the applicants including the petitioner came to learn that their interview/call letters did not reach the post offices at all.

2. The petitioner thereafter appeared in the written test on 11.3.2007 and according to him, he did extremely well and was expecting that his name would surely appear in the list of eligible candidates for the subsequent process of selection. After a long lapse of time on 28.5.2007, the office of the District Judge, Howrah published a list of those candidates who were supposed to appear for personality test on 20.6.2007 and 21.6.2007. However, the petitioner did not find his name appearing in the said list. He then came to learn that the Selection Committee had selected the candidates by adopting a pick and choose policy and also came to learn that some ineligible and incompetent candidates who had been called for the personality test, were close relatives of the staff working under the Chairman of the Selection Committee. The petitioner then made a written complaint/representation on 6.6.2007 which was addressed to the Secretary, Judicial Department, Government of West Bengal as well as to the District Judge, Howrah but nothing was done. According to the petitioner, the date of publication was 16.2.2007 which was a Friday asking the intending candidates to submit their applications in the prescribed proforma along with attested copies of documents to the office of the District Judge, Howrah latest by 5 p.m. on 19.2.2007. In the said advertisement, it was also mentioned that no applications would be entertained under any circumstances after 5 p.m. of 19.2.2007.

3. In other words, the date of publication being a Friday, the only working days that could have been counted were 3 (three) working days (Friday, Saturday and Monday). Thus what the respondents actually wanted were duly filled up applications within 72 hours and that too through publication in a paper like the "Juger Khabar" which, according to the Learned Counsel for the petitioner, is only a bi-monthly local News Magazine confined to Howrah. According to the petitioner, as has been stated in paragraph "11", the newspaper is an almost unknown newspaper and is not at all a familiar newspaper even in the Howrah town.

4. Similar is the case presented in W.P. No. 11388(W) of 2007 with the only difference that the petitioner of that case (Suparna Sarkar) has stated that she passed the School Final Examinations in the year 1999 securing 2nd division whereafter she passed the Higher Secondary Examinations in the year 2001 and Bachelor of Arts (Honours) from the University of Calcutta in 2004.

5. In this case an interlocutory application has been filed being CAN No. 5758 of 2007 by one Chaitali Das who has prayed that she should be allowed to be impleaded as a party in this case because she also appears to have applied pursuant to the advertisement issued 16.2.2007 in the "Juger Khabar". This applicant has given the names and/or details of the successful candidates in paragraph - "7" and has stated that they are related to the Selection Committee in one way or the other. It is on the basis of the aforementioned facts and circumstances that this application is also taken into consideration by treating it to be on the day's list, as per prevalent procedure of this Court.

6. Similarly, another applicant namely, Satyanarayan Paria has also filed the application being C.A.N. No. 5813 of 2007 wherein he has also given similar details and has also stated that he had applied pursuant to the advertisement. It is in that background that this applicant has prayed for being added as a party which has, therefore, also been considered along with this case by treating it to be on the day's list, as per prevalent procedure of this Court.

7. In the 3rd application being C.A.N. No. 5932 of 2007, the applicant is one Sandip Kr. Gangopadhyay who had also applied. He has also given the names and/or details of the successful candidates who, according to him, are closely related to the members of the Selection Committee in one way or the other. This application is also considered along with the writ petition by treating it to be on the day's list, as per prevalent procedure of this Court.

8. In W.P. No. 11763(W) of 2007, the petitioner, Subhasis Sarkar has also presented similar facts relating to the mode and manner of publication in the "Juger Khabar" stating clearly in paragraph "6" that the same is a bi-monthly newspaper. This petitioner passed his School Final Examinations in the year 1997 whereafter he did his Higher Secondary Examinations in 1999 and got his Bachelor of Commerce (Honours) Degree from the University of Calcutta in 2002.

9. In all these writ petitions, when the matters were called out on the first day, this Court had passed an order restraining the District Judge, Howrah from taking any action pursuant to the aforementioned advertisement and on the said day, the point argued by the Learned Counsel for the petitioner was that an advertisement published in a bi-monthly news magazine namely, "Juger Khabar" on 16.2.2007 which was a Friday was not proper at all and therefore, this Court was of the view that the point argued appeared to be of some substance and therefore, directed the respondents to file their affidavits. The order-dated 19.6.2007 passed in all the three cases above are similar but for the sake of convenience, one of the orders which was passed in W.P. No. 11613 (W) of 2007 is quoted below and the same reads as follows:

19.6.2007

W.P. No. 11613 (W) of 2007

Mr. Sahid Ali Khan, Mr. Haridas Das for the petitioner;

Mr. Rajdcep Biswas for the Stale:

Mr. Alok Kr. Ghosh for the Registrar General.

One of the points argued by the Learned Counsel for the petitioner is that an advertisement was published in a bi-monthly news magazine namely, "Juger Khabar" on 16.2.2007 which was a Friday indicating therein that applications for the posts of Group - C and Group - D staff must be submitted by 5 p.m. on 19.2.2007 (Monday). Learned Counsel submits that the publication having been made Friday, the only days that the candidates got notice of this advertisement to act for purposes of submitting the forms was half a day on Saturday and on Monday because the intervening days i.e. Saturday was half working day and Sunday was holiday. He further submits that in any event, for filling up these posts, the concerned office of the District Judge should have taken steps by way of publication in proper daily newspapers and not in a vague unknown news magazine, and that too a bi-monthly magazine known as "Juger Khabar".

The aforementioned point raised by the Learned Counsel for the petitioner appears to be of some substance and therefore this Court is inclined to direct the respondents to file their affidavits.

Mr. Rajdeep Biswas, Learned Counsel appearing for the respondent Nos. 1, 2 and 4, submits that he will also be seeking instructions on behalf of the respondent No. 3. He is given ten days' time to seek instructions and file affidavit. Mr. Rajdeep Biswas submits that the writ petition is at the instance of unsuccessful persons and therefore the same should be dismissed. The point is left open for consideration on the next date.

Since the matter pertains to the judgeship of Howrah, the Learned Counsel for the petitioner prays that he may be allowed to implead the Registrar General of this Court as respondent No. 5. He may do so during the course of the day.

Mr. Alok Kr. Ghosh, Learned Counsel who is present in Court and who normally represents the High Court, is directed to seek instructions in this matter also.

Learned Counsel for the petitioner shall serve two copies of the pleadings along with all annexures upon Mr. Alok Kr. Ghosh as well as Mr. Rajdeep Biswas by tomorrow.

Till further orders are passed, the District Judge, Howrah shall refrain from taking any action pursuant to the aforementioned advertisement.

Considering the urgency of the matter, put up this case under the same heading at the top of the list on 2.7.2007.

Let xeroxed plain copies of this order, duly countersigned by the Assistant Registrar (Court), be handed over to the Learned Counsel for the parties on usual undertakings.

(Tapen Sen, J.)

(Quoted Verbatim)

10. In this case, an interlocutory application being C.A.N. No. 5796 of 2007 for addition of party has been filed by four applicants, namely, Partha Som, Prabir Bag, Uttam Kr. Das and Ganesh Methor. They have stated that they are successful candidates but they have not been made parties in the instant writ proceeding and therefore any order that may be passed without hearing them, may affect them.

11. Therefore, before reserving these cases for judgment, this application being C.A.N. No. 5796 of 2007, was also considered. Mr. Manas Dasgupta representing the applicants of C.A.N. 5796 of 2007 adopted the entire arguments of Mr. Aloke Ghosh as well as of Mr. P.S. Deb Barman, Learned Counsel appearing for the respondents. He submitted that a copy of the writ petition had already been handed over to him and he has not filed any affidavit-in-opposition because of such adoption of submissions indicated above. He further submitted that if the petitioners succeed, they can be dealt with separately without disturbing them.

12. In W.P. No. 13742(W) of 2007, the petitioner is one Sourav Saha. He has also made similar grievances against the selection process. However, he had not applied pursuant to the advertisement published in "Juger Khabar". His case is that being eligible and having got himself registered with the local employment exchange, he was in search of a job which would be commensurate to his educational qualifications. He came to learn from a leading daily newspaper on 20.6.2007 that the process of selection of Group - "C" Lower Division Clerks in the judgeship of Howrah had been stayed by this Court. He has stated that having so come to learn, he was able to collect a copy of the said bimonthly magazine known as "Juger Khabar". In paragraph - 8 he has stated that he did not have any scope to notice the said advertisement dated 16.2.2007 issued in "Juger Khabar" since he was expecting advertisement of vacancies only in daily newspapers. He has further stated that the period given for submission of the forms was not at all sufficient and therefore, the action of the respondents was illegal and although he had the requisite qualifications, he could not apply and could not appear in the selection process. He has further stated in paragraph 12 that if the advertisement had been published in any leading daily Newspaper or other media giving a reasonable period of time, he would have been able to file the application but in the absence of such open advertisement, it was not so possible.

13. In their affidavit-in-opposition, sworn by Pradip Kumar Bandhopadhyaya, Chairman of the Selection Committee-cum-Addl. Distt. and Sessions Judge, 1st Court, Howrah, it has been stated that admit cards of all eligible candidates for the written tests to be held on 11.3.2007 were duly despatched with extreme care and caution and therefore the allegation to the effect that only after agitations, duplicate interview/call letters were issued, are not correct. This deponent has also stated in paragraph 9 infra as well as in paragraph 14 that in response to the advertisement dated 16.2.2007 published in "Juger Khabar",

many people had applied not only from the Home District of Howrah but also from the Districts of Hooghly, Midnapore-East and West, Burdwan and South 24-Parganas and in response to the said advertisement published in "Juger Khabar", a total number of 380 applications were received in the following manner:

(a) From Howrah : 308 (b) From Hooghly : 26 (c) From Burdwan : 3 (d) From East Midnapore : 5 (e) From West Midnapore : 14 (f) From South 24-Pgs., North 24 pgs. and Kolkata 24 ----- Total 380

14. In the affidavit-in-reply to the aforementioned affidavit-in-opposition, the petitioner has stated in para 4 that the one of the selected candidates, namely Smt. Aditi Dhara having Roll No. 166 is the wife of Pradipta Dhara who is the stenographer attached to the Chairman of the Selection Committee. He has further stated that two other persons namely Partha Sinha and Jayanta Sinha are cousins of one Ashok Kumar Ghosh, a Bench Clerk attached to the Chairman of the Selection Committee. These two candidates, according to the petitioner, had Roll Nos. 275 and 276 and they have also been selected for the personality test.

15. This petitioner has further stated that the son of Kamal Bhunia (peon of the Chairman of the Selection Committee) has also been selected for the personality test in the Group - D category.

16. The petitioner has also named one Tudu, son of a security staff of the said Chairman of the Selection Committee and has stated that he has also been selected for the personality test.

17. This petitioner has given further names. He has stated that one Prabir Bag, son of one Saila Bag, orderly of District Judge, Howrah having Roll No. 182 has also been selected. Similarly one Billwa Naskar son of Phatik Naskar, office peon of the District Judge, Howrah having Roll No. 613 has also been selected.

18. The petitioner has also named one Partha Sarathi Saha, having Roll No. 186, and son of one Banabehari Saha, Bench Clerk of the Chief Judicial Magistrate, Howrah as having been selected. He has further stated that Sri Saha is an influential leader who is actively associated with the "Adalat Karmachari Sangathan".

19. The petitioner has also named one Sujoy Chail, nephew of Tripura Chail, an Upper Division Clerk of the Court as having been selected. This petitioner has further named one Samir Banerjee, Shankar Dutta and Ashru Roy Chowdhury, being staff of the Court who were given charge of printing the question papers. He has stated that relatives and favoured persons have been selected. He has stated that out of these 3, Shankar Dutta has been staying as a paying guest in the residence of one Smt. Sabita Dolui who is also a staff in the Copying Department of the Court and her sister, Smt. Sumita Dolui, having Roll No. 135, has been selected.

20. This deponent has further stated that hundreds of candidates had agitated in the District Judge, Howrah as they had not received their admit cards and

therefore they have disputed the contention of the Chairman in his affidavit-in-opposition to the effect that all eligible candidates were issued with admit cards or that the same were despatched with extreme care and caution.

21. From the aforementioned facts and circumstances what appears is that for 36 vacancies of Lower Division Clerks (Group - C) in the judgeship of Howrah [split into different categories such as General, SC, ST, OBC, Handicapped, Ex-serviceman, General (EC) and SC (EC)] and for 33 vacancies of Peon/Farash/Nightguard/Sweepers (Group - D) in the same judgeship [split into different categories such as General, SC, ST, OBC, Ex-serviceman, General (EC) and SC (EC)], the respondents published an advertisement (Annexure-P3) in a bimonthly news magazine published locally from the District of Howrah known as "Juger Khabar" inviting applications for filling up those posts. The publications was made on 16.2.2007, which was a Friday.

22. In the said advertisement, it was indicated that "applications must be submitted in the prescribed proforma along with attested copy of documents in type written/hand written to the office of the District Judge, Howrah latest by 5 p.m. on 19.2.2007." (Quoted verbatim)

23. In the same advertisement, it was also indicated that no application will be entertained under any circumstances after 5 p.m. on 19.2.2007." (Quoted Verbatim)

24. Mr. Deb Barman Learned Counsel appearing for the State respondents, has submitted that all the petitioners in all the writ petitions, save and except the writ petitioner of W.P. No. 13742 (W) of 2007. had applied pursuant to the same advertisement and they had also appeared in the written tests on 11.3.2007. They did not qualify and were not at all successful and therefore, having not been successful and having participated in the selection process by appearing in the written test, they cannot subsequently turn around and challenge the selection process on the ground that the notification was not proper. He further submits that on the basis of the letter dated 19th January, 2007, sent by the Registrar General-in-charge being letter No. 353 which was received in the office of the District Judge, Howrah on 1.2.2007 (as appended at page 21 to the affidavit-in-opposition) the respondents took action by publication in the "most circulated local newspaper" of the District. Mr. Deb Barman refers to the aforementioned letter which reads as follows:

No. 353/17 RG R.N. Ray REGISTRAR GENERAL HIGH COURT, CALCUTTA

19th January, 2007

To The District Judge, Howrah.

Sub: Selection of Group "C" and Group "D" employees in your Judgeship/Court.

Sir,

With reference to the aforementioned subject, I am directed to ask you to follow

the principle laid down by the Full Bench of this Hon"ble Court in the case of Rabindra Nath Mahata v. State of West Bengal and Ors. reported in 2005 (2) CLJ (Cal) at page 161: 2005 (3) CHN at page 337 (paragraphs 39-40) at the time of initiating the process of selection of Group "C" and Group "D" employees in your judgeship. You will publish advertisement of the process of selection in most circulated local newspaper in the district regarding the vacancies in question and will consider the applications received pursuant to such advertisement along with the candidates sponsored through employment exchange.

Yours faithfully, R. Ray Registrar General-in-charge.

(Quoted verbatim)

25. Mr. Deb Barman submits that since the Registrar General's letter clearly directed that the publication was to be made in a most circulated local newspaper and since the District Information Department, Howrah informed that there was no daily newspaper from Howrah except "Juger Khabar" which was published fortnightly from Howrah, therefore the notices were published in that newspaper and therefore, there was no irregularity.

26. In the background of the aforementioned facts it is necessary to answer the question as to whether the procedure for selection adopted in this case was lawful or was it illegal and/or irregular. In order to find out the answer to this question, we have to go back to some of the paragraphs of the affidavit-in-opposition filed by the Chairman of the Selection Committee who is also the Addl. District & Sessions Judge, 18th Court, Howrah. The statements in paragraph 9 made in the said affidavit-in-opposition have been incorporated/made in such a manner that, according to this Court, the same suggests an unnecessary linking up of a story of 1997 with the present selection process.

27. The Chairman of the Selection Committee of the judgeship of Howrah, in his affidavit-in-opposition, has stated that in the year 1997 an advertisement was published in a newspaper inviting applications for the recruitment of 5 (five) Lower Division Clerks and in response thereto, 22, 533 applications were received and the scrutiny of those applications took a very long time and in the meantime, the State Government imposed an embargo on new appointments.

28. The Chairman of the Selection Committee has then stated that in the course of the last 10 years, the number of vacancies increased due to retirement/ death of employees and thereafter, the High Court, by its letter No. 3887-RG dated 10.10.2006 directed the District Judge, Howrah to fill up the vacant posts after following the Recruitment Rules. According to this deponent, vacancies can be filled up by those persons who have been sponsored by the employment exchange in terms of Section 4 of the West Bengal Regulation of Recruitment in the State Government Establishment Act, 1999.

29. This deponent has further stated in paragraph 9 that in terms of Section 16 of the aforementioned Act, recruitment in terms of the advertisement of 1997,

had to be made as those applications would be deemed to be valid as the process of selection, though initiated in 1997, could not be completed and upon scrutiny, 6791 Applications out of 22,533 were found to be valid. He has further stated that due to lack of infrastructure, the Public Service Commission was requested to conduct the examinations to find out suitable candidates for appointment but the said Commission regretted to do so by their letter No. 444 PSC(1) dated 23.10.2006.

30. Just after having made the aforesaid statements, the deponent to the said affidavit-in-opposition (in para-9 at page 8 of the affidavit-in-opposition) has unnecessarily attempted to link a story of 1997 with the present case by saying that "finding no other alternative the District Judge, Howrah started taking steps to arrange for holding examination of those candidates and also for the recruitment of Groups C and D staff for this judgeship in view of the Hon"ble Court's letter No. 3887-RG dated 10.10.2006. In doing so, the District Judge, Howrah made requisition to the Employment Exchange, Howrah for sponsoring the names of the candidates for filling up of such vacancies." (Quoted Verbatim)

31. According to this Court, the statement beginning with the words "and also for the recruitment of Groups C and D staff..." (Quoted above) is a statement that has been cleverly inserted at a place and in such a manner that it conveys an impression that the instant process of selection, which is subject-matter of these writ petitions, has a direct nexus with the process that was initiated in 1997. In reality, we are concerned with the selection process that has been initiated on the basis of an advertisement published in "Juger Khabar" calling for applications. This Court therefore does not comprehend as to how an event of 1997 has any nexus with the subject-matter of the present case. In the opinion of this Court, such an attempt is misleading and it is not appreciated at all.

32. Similarly the statement to the effect that the respondents were in a hurry to limit the receipt of the applications by 19.2.2007 as, by their letter No. 44-J (F) dated 9.2.2007, the State Government had sanctioned and allotted a sum of Rs. 2,22,500/- for conducting the examinations with a condition to exhaust the fund within financial year 2006-07, cannot be accepted because the petitioner, in his reply in W.P. No. 11613 (W) of 2007, has correctly "pooh-poohed" such a contention by stating in para-12 therein that the deponent has ridiculously taken a plea that the period of submitting application for such recruitment was given short because the whole recruitment process which requiring of incurring of expenses was to be completed within the period of March, 2007. It is noted that financial year starts from 18th April to 31" March. Purported written test held on 11.3.2007 and after lapse of 100 days i.e. on 20.6.2007 was fixed for personality test and therefore plea of submitting application within a period of three days from the date of advertisement as also the plea of financial year commencing from 1st April, 2006 to 31st March, 2007 have no leg to stand upon." (Quoted Verbatim)

33. This Court is inclined to accept the reply of the petitioner because if the

deponent and/or the respondents were in such a great hurry, then there is actually no explanation as to how, even after a lapse of 100 days from 31st March, the dates 20th June, 2007 and 21st June, 2007 were fixed for personality tests, as stated in para 7 of the affidavit-in-opposition.

34. Now let us examine the other excuse of this deponent wherein he has attempted to shift the responsibility upon the High Court by taking shelter of the letter of the Registrar General by saying that in the meantime, the High Court by its letter No. 353/17-RG dated 19.1.2007 directed the District Judge, Howrah for publication of an advertisement in a local newspaper. He has further stated that upon telephonic enquiry from the District Information Department, Howrah, it was learnt that there was no newspaper published daily from Howrah but a fortnightly newspaper known as "Juger Khabar" was available every fortnight and therefore an advertisement for filling up the Groups C and D post was published on 16.2.2007 fixing 19.2.2007 as the last date for submitting applications.

35. In this context, the letter of the Registrar General also indicates that he had specifically mentioned that the District Judge, Howrah should follow the principles laid down in paras 39-40 of the judgment passed by the Hon''ble Full Bench of this Court in the case of Rabindra Nath Mahata Vs. State of West Bengal and Others,

36. This Court also however notices that thereafter, the Registrar General directed that the advertisement should be published in a most circulated local newspaper in the District. Paragraph 39 of the judgment of the Full Bench referred to above has noticed two very important judgments of the Hon''ble Supreme Court and they are the judgments passed in the cases of Excise Superintendent Malkapatnam, Krishna District, A.P. Vs. K.B.N. Visweshwara Rao and Others, and Raj Kumar and Others Vs. Shakti Raj and Others, respectively. In the Full Bench judgment itself, the view taken by the Hon''ble Supreme Court in Visheshwara Rao's case (supra) has been noticed in paragraph 41 therein and which inter alia directs that for purposes of appointment, names should be called for by publication in newspapers having wide circulation and also by display in the office notice board or announcement on radio and television and only then, to consider all the candidates who have applied. The aforementioned judgment passed in Visheshwara Rao s case was further clarified by the Hon''ble Supreme Court in Raj Kumar's case (supra) in paragraphs 14 and 15 therein with the observations that the publication should be made in the local and in the national newspapers. The observations of the Hon''ble Full Bench of this Court in paragraphs 39 to 41 of 2005 (3) CHN 337 in the case oiRabindra Nath Mahata and the observations of the Hon''ble Supreme Court in the case of Raj Kumar v. Shakti Raj in paragraphs 14 and 15 thereof read as follows:

Re: Rabindra Nath Mahata Vs. State of West Bengal and Others,

39. In such a situation in the decision in Abu Taker (supra), the Apex Court had

held:

On a writ petition being filed, the learned Single Judge disposed of the matter holding that for the appointment of a Teacher in Arabic, the candidate should possess B.A. with Arabic combination and not with B.A. Special Arabic. Appropriate direction was given to the District Inspector of Schools, Murshidabad to ignore the candidature of the present appellant, who was respondent No. 6, since he had the qualification of B.A. with Special Arabic and not B.A. Arabic combination. Against the Judgment of the learned Single Judge, the appellant approached the Division Bench. The Division Bench without considering the ground on which the appellant is held to be disqualified for being appointed went into the question as to whether his name had been sponsored by the employment exchange and then following the earlier decision of the said Court [namely Debasis Dutta (supra)] came to hold that since appellant's name had not been sponsored by the employment exchange, he was ineligible for being considered for the post in question. It is this order of the Division Bench which is being assailed.

Mr. Krishnamani appearing for the appellant contended that the aforesaid conclusion of the Division Bench of the Calcutta High Court is erroneous in view of the decisions in Excise Superintendent Malkapatnam, Krishna District, A.P. Vs. K.B.N. Visweshwara Rao and Others, and Raj Kumar and Others Vs. Shakti Raj and Others, We find sufficient force in the aforesaid contention and as such the name of the appellant cannot be excluded from consideration merely because his name had not been sponsored by the Employment Exchange. In that view of the matter, the Division Bench of Calcutta High Court not having applied its mind to the merits, namely whether B.A. with Special Arabic can be said to be the same of B.A. with Arabic combination on which reasoning the learned Single Judge allowed the writ petition, it would meet [be fit] and proper to direct the Calcutta High Court to decide the case on merits. We, therefore, set aside the impugned Judgment of the Calcutta High Court and remit the appeal to the Calcutta High Court for re-consideration on merits.

40. As already observed that the guidelines were never given the character of statute or of containing any statutory force in the decision in Debasis Dutta (supra). It may now be considered whether the compulsory requirement of consideration only of candidates sponsored by Employment Exchange can be derived from the Employment Exchange (Compulsory Notification of Vacancies) Act, 1959. The answer would be simply no in view of the fact that the 1959 Act was related to compulsory notification of vacancies to the employment exchange. Apart from the title of the Act, Section 4 of the 1959 Act prescribes:

(1) After the commencement of this Act in any State or area thereof, the employer in every establishment in public sector in that State or area shall before filling up any vacancy in any employment in that establishment, notify that vacancy to such employment exchange as may be prescribed.

(4) Nothing in Sub-sections (1) and (2) shall be deemed to impose any obligation upon any employer to recruit any person through the employment exchange to fill any vacancy merely because the vacancy has been notified under any of those sub-sections.

41. The question whether the choice to be restricted only among the candidates sponsored by the employment exchange came up for consideration in K.B.N. Visweshwara Rao (supra) in which the Apex Court (Three-Judges' quorum) had held:

We are of the view that contention of the respondents is more acceptable which would be consistent with the principle of fair play, justice and equal opportunity. It is common knowledge that many a candidate is unable to have the name sponsored, though their names are either registered or are waiting to be registered in the employment exchange, with the result of the choice of selection is restricted to only such of the candidates whose names come to be sponsored by the employment exchange. Under these circumstances, many a deserving candidate is deprived of the right to be considered for appointment to a post under the State. Better view appears to be that it should be mandatory for the requisitioning authority/establishment to intimate the employment exchange, and employment exchange should sponsor the names of the candidates to the requisitioning departments for selection strictly according to the seniority and reservation, as per requisition. In addition, the appropriate department or a undertaking or establishment should call for names by publication in newspapers having wide circulation and also display on their office notice boards or announce on radio, television and employment news bulletin and then consider the cases of all the candidates who have applied, if this procedure is adopted, fair play would be subserved. The equality of opportunity in the matter of employment would be available to all eligible candidates.

Re: Raj Kumar and Others Vs. Shakti Raj and Others,

14. A Bench of three-Judges of this Court in Excise Supdt v. K.B.N. Visweshwara Rao had held thus: (SCC pp. 217-18, para 6)

It is common knowledge that many a candidate is unable to have the names sponsored, though their names are either registered or are waiting to be registered in the employment exchange, with the result that the choice of selection is restricted to only such of the candidates whose names come to be sponsored by the employment exchange. Under these circumstances, many a deserving candidate is deprived of the right to be considered for appointment to a post under the State. Better view appears to be that it should be mandatory for the requisitioning authority/establishment to intimate the employment exchange, and employment exchange should sponsor the names of the candidates to the requisitioning departments for selection strictly according to seniority and reservation, as per requisition. In addition, the appropriate department or undertaking or establishment should call for the names by publication in the

newspapers having wider circulation and also display on their office notice boards or announce on radio, television and employment news bulletins, and then consider the cases of all the candidates who have applied. If this procedure is adopted, fair play would be subserved. The equality of opportunity in the matter of employment would be available to all eligible candidates.

15. In view of this legal position, the necessary requirement should be that they should necessarily not only notify but also call the names from employment exchange; in addition, they should give wide publicity in the media inviting applications from qualified persons for selection. Instead, they have adopted the procedure under the 1955 Rules. They did not call the names from the employment exchange and conducted the examinations for them. After the selection of the candidates, names of selected candidates were called from the employment exchange. Obviously, the successful candidates in the written examinations were asked to approach the employment exchange of the circle concerned and accordingly, names came to be sponsored. The procedure adopted is clearly illegal denying equal opportunity to many a candidate waiting in the register of the employment exchange concerned. Therefore, the Government hereafter should strictly follow the procedure by not only calling their names from the employment exchange, but also by publishing in the local and national newspapers and giving wide publicity in the media as well as getting the written examination and the interview conducted by the SSSB; marks should be awarded strictly according to the procedure.

(Quoted verbatim but emphasis by bold fonts is by this Court)

37. In view of what the Hon^{ble} Supreme Court has said in the aforementioned judgements read with the judgment of the Full Bench passed in the case of Rabindra Nath Mahata, this Court holds that the names should not only be called for from the employment exchange but they should also be called for by publication both in the local as well as national newspapers and by giving wide publicity in the media as well. Consequently, the excuse being doled out that the advertisement has been made pursuant to the letter of the Registrar General is only a feeble attempt to justify an irregularity. The respondents ought to have at least looked into the judgment of the Hon^{ble} Supreme Court and should have also applied their minds because the Registrar General of this Court had clearly stated that they were to follow the principles of the Full Bench judgment of this Court at the time of initiation of the process of selection. The Full Bench, in its turn, had duly noticed the two judgments of the Supreme Court referred to above. The procedure laid down by the Apex Court has apparently not been followed and therefore, the same goes against the spirit of the judgment of the Hon^{ble} Supreme Court and is therefore, illegal.

Moreover it would also be relevant to notice that this is not a case where, for justifiable and Constitutionally permissible reasons, a criteria was or has been fixed restricting the zone of consideration only amongst candidates belonging to the District.

In that view of the matter, the submissions of Mr. Alok Ghosh cannot be accepted. Mr. Alok Kumar Ghosh, Learned Counsel appearing for the Registrar General of this Court has submitted that none of the petitioners can be said to be prejudiced because all of them had participated in the selection process except one, namely, the writ petitioner of W.P. No. 13742 (W) of 2007. He submits that therefore, the petitioners cannot turn around after having failed at the interview and contend that the notification was improper. He relies upon paragraph 75 of a judgment of the Hon'ble Supreme Court passed in the case of K.H. Siraj Vs. High Court of Kerala and Others,

The aforesaid judgment cannot apply in the facts and circumstances of this case because of two reasons. Firstly, at least we have one writ petitioner before us namely the writ petitioner Saurav Saha in W.P. No. 13742 (W) of 2007, who has stated that he was deprived from applying pursuant to this advertisement in the "Juger Khabar". Secondly, in the case before the Supreme Court, it was not a case that an advertisement was made in a bi-monthly news magazine published locally from a particular district.

In these circumstances and in view of paragraph 16 of the judgment passed in the case of Raj Kumar and Others Vs. Shakti Raj and Others, , the submission of Mr. Ghosh cannot be accepted. Paragraph 16 of the said judgment reads as follows;

Yet another circumstances is that the Government had not taken out the posts from the purview of the Board, but after the examinations were conducted under the 1955 Rules and after the results were announced, it exercised the power under the proviso to para 6 of 1970 notification and the posts were taken out from the purview thereof. Thereafter the Selection Committee was constituted for selection of the candidates. The entire procedure is also obviously illegal. It is true, as contended by Shri Madhava Reddy, that this Court in Madan Lal v. State of J & K and Ors. decisions referred therein had held that a candidate having taken a chance to appear in an interview and having remained unsuccessful, cannot turn round and challenge either the constitution of the Selection Board or the method of selection as being illegal; he is estopped to question the correctness of the selection. But in his case, the Government have committed glaring illegalities in the procedure to get the candidates for examination under the 1955 Rules, so also in the method of selection and exercise of the power in taking out from the purview of the Board and also conduct of the selection in accordance with the Rules. Therefore, the principle of estoppel by conduct or acquiescence has no application to the facts in this case. Thus, we consider that the procedure offered under the 1955 Rules adopted by the Government or the committee as well as the action taken by the Government are not correct in law.

(Quoted verbatim but emphasis by bold fonts is by this Court)

38. The action of the respondents in publishing the advertisement in only "Juger Khabar" appears to this Court to be not the correct application of the judgments

of the Hon''ble Supreme Court referred to above and therefore, the matter requires a fresh consideration.

39. For the foregoing reasons, the entire selection process, having been initiated on the basis of publication in a by-monthly local newspaper giving only 72 hours time to the applicants to apply, is held to be bad, irregular, not in consonance of Articles 14 and 16 of the Constitution of India as it deprived others from having any knowledge of the vacancies.

The other aspect which is shocking is the statement made by the petitioner of W.P. No. 11613 (W) of 2007, in his reply disclosing the names of those who have been selected saying that they are related or known to the members of the Selection Committee in one way or the other. However since these are disputed questions of fact, this Court does not therefore proceed to give any finding with regard to such allegations save and except to only take note of what the petitioner/applicants in some of the C.A.N, applications have stated.

40. Since the selection process is held to be illegal, bad, irregular and not in consonance with Articles 14 and 16 of the Constitution of India, it is not necessary to hear or to give notice to persons who may have been selected in such a selection process. Reference in this context may be made to the judgment of the Hon''ble Supreme Court of India passed in the case of Biswa Ranjan Sahoo and others Vs. Sushanta Kumar Dinda and Others, . As a consequence, C.A.N. No. 5796 of 2007 is disposed of by observing that even if the applicants thereof may have been selected, they were done so through an illegal and irregular procedure. Therefore no right is conferred upon them save and except to observe that they would be at liberty to participate, subject to their eligibility, in any fresh procedure for selection which may be undertaken as a consequence of this judgment.

41. For the foregoing reasons, all these writ petitions are allowed and the entire selection process which was resorted to on the basis of the publication made on 16.2.2007 in "Juger Khabar", is set aside and the respondents are directed to take recourse to a fresh process of selection in accordance with law following strictly the judgments of the Apex Court referred to above and which should include the widest publication including publication in the national newspaper.

42. upon appropriate application(s) being made, urgent xeroxed certified copy of this order, may be given/issued expeditiously subject to usual terms and conditions.