
(2008) 05 CAL CK 0055

In the Calcutta High Court

Case No : Writ Petition No's. 10366 (W) , 12311 (W) and 12409 (W) of 2001 and 409 (W) and 3760 (W) of 2003

Purnendu Biswas

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 02-05-2008

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 16(1), 21

Citation : (2008) 05 CAL CK 0055

Hon'ble Judges : Pratap Kumar Ray, J

Bench : Single Bench

Advocate : Chandan Mishra, in W.P. Nos. 12409W of 2001 and 409W of 2003 and Tulsidas Roy, in W.P. No. 12311W of 2001, for the Appellant; Kashikanta Moitra and Tulsidas Roy for Respondent No. 6 in W.P. No. 409(W) of 2003 and W.P. No. 12409(W) of 2001, for the Respondent

Final Decision : Allowed

Judgement

Pratap Kumar Ray, J.—Writ application being W.P. 409 (W) of 2003 filed by Sri Purnendu Biswas seeking a writ of mandamus commanding the respondents to delete the name of respondent No. 6, Sri Sukhen Sarkar and respondent No. 7, Sri Asim Chakraborty, from the panel of selected candidates for the post of Clerk of the Majdia Rail Bazar High School within the district Nadia, hereinafter referred to as "concerned school" for brevity, who stood first and second in the panel respectively and thereby recasting the panel to accord approval showing the writ petitioner as a first candidate for appointment, the writ application being W.P. No. 12409 (W) of 2001 filed by said Sri Purnendu Biswas as writ petitioner seeking writ of mandamus commanding the respondents to allow the appearance of the writ petitioner in the interview for the post of Clerk in the concerned school, wherein an interim order was passed on 24th August, 2001 directing the respondent to allow appearance of the writ petitioner in the interview subject to conditions stipulated thereto, the writ application filed by Sri Sukhen Sarkar as writ petitioner being W.P. No. 12311 (W) of 2001 praying for writ of mandamus

commanding the respondents to allow appearance of the writ petitioner in the interview in the said school, wherein an interim order was passed on 22nd August, 2001 directing his appearance in the interview subject to conditions stipulated thereto, writ application of the said writ petitioner, Sri Sukhen Sarkar, being W.P. No. 3760 (W) of 2003 seeking a writ of mandamus commanding the respondents to approve the panel for the post of Clerk for the concerned school where he stood first, all are taken up for final hearing analogously.

2. Earlier, all the aforesaid writ applications along with another writ application being W.P. No. 10366 (W) of 2001 filed by writ petitioner, Sri Asim Chakraborty, were heard analogously and a judgment was delivered on 1st February, 2006. Subsequently, on perusal of the records it was revealed that W.P. No. 10366 (W) of 2001 earlier was disposed of and as such, the said judgment as delivered was recalled suo motu by the Court by the order dated 17th February, 2006 to cure the mistake of the records by exercising the inherent power.

3. The writ petitioner, Sri Asim Chakraborty, of W.P. No. 10366 (W) of 2001 appeared in the said interview for the said post by the order of the Court dated 23rd July, 2001, which was allowed on the basis of pleading that he was working in the casual vacancy of the school. This order was confirmed while disposing of the said writ application on 25th February, 2002 by K.J. Sengupta, J. The said writ petitioner stood second in the panel and he is respondent No. 7 of the writ application W.P. No. 409 (W) of 2003 filed by the petitioner, Purnendu Biswas, seeking the relief for deletion of name of respondent No. 6 and 7 from the panel prepared by the Selection Committee. Sri Asim Chakraborty, respondent No. 7, of writ application W.P. No. 409 (W) of 2003 has filed an affidavit affirmed on 28th March, 2005 contending, inter alia, that he is not interested to be appointed in the said post of Clerk due to his joining in other school, wherein he is working. The relevant paragraph of the said opposition being paragraphs 3, 4, 5 and 6 reads such:

3. At the outset I say that the allegations made in the writ petition are all correct but since I am not interested to contest the said writ petition I make no further comments thereof.

4. I say that although I was placed in serial No. 2 of the re-casted panel, prepared by the Selection Committee of Majdia Rail Bazar High School, P.O. Majdia, District. Nadia for appointment to the post of Clerk and in the event of deleting the name of Sri Sukhen Sarkar, the first empanelled candidate of the said panel, I am not at all interested to join in the said school in the said post of Clerk for personal reason.

5. I submit that this Hon'ble Court be pleased to direct the School authorities and the District Inspector of Schools (SE), Nadia to delete my name from second position of the concerned panel and to recaste the same accordingly.

6. I say that since I was not at all interested to join in the said school, I did not come up before this Hon'ble Court earlier, but on receipt of the letter dated

18.2.06 written by the Ld. Advocate for the writ petitioner I have been advised to file this affidavit for expeditious disposal of the pending writ petition.

4. On reading of the aforesaid paragraphs, this Court is of the view that the prayer for deletion of the name of respondent No. 7 as made in the writ application W.P. No. 409 (W) of 2003, should be allowed and it is accordingly allowed.

5. Now the only dispute to be resolved is between the two candidates, namely, the writ petitioner Sri Purnendu Biswas of W.P. No. 409 (W) of 2003 and the respondent No. 6, Sri Sukhen Sarkar, who are empanelled under serial No. 3 and 1 respectively of a panel as prepared by the Selection Committee. In the writ application W.P. No. 409 (W) of 2003, writ petitioner, Sri Purnendu Biswas, assailed the selection of Sri Sukhen Sarkar who is a first candidate in the panel on the ground that he was not eligible to appear in the interview due to the reasons, namely, (1) as per recruitment procedure, he being a non-sponsored candidate from the Employment Exchange, had no right to appear in the interview; (2) due to such non-eligibility, he sought order from the High Court in his writ application W.P. No. 12311 (W) of 2001, for appearance in the interview, which was allowed by the order dated 22nd August, 2001 conditionally that if in the list of sponsored candidates sent by the Employment Exchange for the said post, there was reference of any name of junior than writ petitioner, either of handicapped category or any other category, his appearance would be allowed, which admittedly was not satisfied.

6. It is admitted fact that the writ petitioner Sri Purnendu Biswas though filed a writ application W.P. No. 12409 (W) of 2001 seeking his appearance in the interview by Court's order and an order was passed on 24th August, 2001 directing his appearance on the same condition as was imposed upon Sri Sukhen Sarkar. Employment Exchange Officer of concerned Employment Exchange, in his affidavit affirmed on 29th November, 2004 has disclosed that he was discriminated. Relevant paragraph of the said affidavit reads such:

9. The petitioner, Purnendu Biswas, son of Lt. Haripada Biswas, of Natipota, Tehatta, bearing Registration No. KM/2367/93 got registered with the employment exchange as H.S. passed on 18.8.82 and later on recorded his qualification as B.Sc. on 11.5.88 and as Farmasist on 12.5.93. He belonged to General category. The writ petitioner thus carried seniority of registration in essential qualification w.e.f. 18.8.82. As the Dist. Employment Exchange, Krishnanagar, Nadia sponsored list of candidates having seniority of registration upto 27.7.83 in essential qualification, the petitioner carrying seniority of registration in essential qualification with effect from 18.8.82 was within the seniority of registration and he fulfilled the eligibility requirements.

7. The list of candidates sponsored by the Employment Exchange did not contain the name of the petitioner, reason is however not known by me, since I was not in the office at the material point of time. Having regard to the affidavit of

Employment Exchange Officer as well as the documents as submitted by the School Authority disclosing the names of sponsored candidates, this Court is of the view that the writ application W.P. No. 12409 (W) of 2001 could be disposed of by recording that the writ petitioner's appearance was valid and legal. The writ application W.P. No. 12409 (W) of 2001 stand disposed of confirming the said interim order.

8. Sri Sukhen Sarkar moved a writ application on 22nd August, 2001 being W.P. No. 12311 (W) of 2001 praying the following reliefs:

(a) Writ of Mandamus commanding the respondents to allow the petitioner to appear in the interview to be held on 28th August, 2001 or any other subsequent date along with other candidates for the post of Clerk of Majdia Rail Bazar High School in the District of Nadia and to consider the candidature of the petitioner for the said post of Clerk.

(b) Writ of Certiorari directing the respondents to certify and produce all relevant records and documents, relating to the aforesaid case, so that, the conscionable justice may therein be administered.

(c) Rule Nisi in terms of Prayers (a) & (b) as above.

(d) Ad-interim order directing the respondents to allow the petitioner to appear in the interview for the post of Clerk of Majdia Rail Bazar High School scheduled to be held on 28th August, 2001 and/or any other subsequent date.

(e) Any other order or orders, direction or directions, as Your Lordship may deem fit and proper.

9. In support of his case, the writ petitioner Sri Sukhen Sarkar in the said writ application pleaded that despite sponsorship of names of many junior candidates who registered their names in the Employment Exchange long after him, Employment Exchange did not sponsor his name. The relevant paragraphs from his writ application read such:

7. That the petitioner states that your petitioner passed Madhyamik Examination in the year 1977 and also passed Higher Secondary Examination in the year 1980 and thereafter your petitioner enrolled his name in the Employment Exchange in the year 1977 and thereafter in the year 1987. But the petitioner came to learnt that who have registered their names in the Employment Exchange in the year 1989 their names have been sponsored by the Employment Exchange who have registered their names subsequently after the registration of the name of the petitioner.

8. That your petitioner states that your petitioner is a physically handicapped person and has all requisite qualifications, as such the said Employment Exchange should have sent the name of your petitioner to the said Majdia Rail Bazar High School for the interview for the post of Clerk to be held on 28.8.01.

9. That your petitioner states that service being the source of employment and

unless a call and/or chance to appear in the interview is given then the question of getting employment does not arise, which violates Article 21 of the Constitution of India and since your petitioner passed Madhyamik Examination in the year 1977 and know English Type writing, the name of the petitioner should have been sponsored by the Employment Exchange to the said school to appear in the said interview for the said post of Clerk.

10. In the ground of the writ application, the same point was taken about discrimination against Employment Exchange Authority regarding sponsorship of names. On the basis of said pleading Ashim Kumar Banerjee, J. passed an interim order on 22nd August, 2001 directing appearance in the interview subject to fulfillment of the conditions as stipulated thereto and the matter was kept pending for final hearing after exchange of affidavits. The order dated 22nd August, 2001 reads such:

The writ petition has registered his name in the handicapped category in the year 1995. His name has not been sponsored. He now seeks permission to appear at the interview. Hence I direct respondent No. 4 to allow the writ petitioner to participate at the interview scheduled to be held on 28th August, 2001 or any other subsequent date provided he is otherwise eligible for the said post and provided he is within the prescribed age limit and provided it is found that his juniors in the handicapped category or any other category have been sponsored by the employment exchange. Affidavit in opposition by 3-10-2001. Affidavit in reply by 19 10-2001. Let this matter appear in the monthly list of November, 2001 under heading "For Hearing". Liberty is given to communicate the gist of this order.

11. In terms of this order and with the help of this order he was allowed to appear in the interview, as non-sponsored candidate. Subsequently, on 14th March, 2008, an amendment application was moved being CAN No. 3277 of 2006 to amend the writ application W.P. No. 12311 (W) of 2001 for the purpose of incorporation of para 3 and 4 of the said amendment application in the original writ application. Para 3 and 4 of the amendment application reads such:

3. That this Hon''ble Court passed interim order on 22nd August, 2001 and the said order was communicated to the school authority and the school authority allowed all the six candidates who got order from the Hon''ble High Court, to appear in the interview held on 29.8.01.

4. That after the Full Bench decision of this Hon''ble Court, reported in 2005 (2) CLJ (Cal) 161 Sri Rabindra Nath Mahato v. State of West Bengal and Ors. now it became necessary to amend the writ petition on the following manner:

After paragraph 8 of the writ petition the following paragraphs to be inserted as paragraph 8(A). That your petitioner states that in view of the aforesaid judgment of the Hon''ble Full Bench of this Hon''ble Court reported in 2005 (2) CLJ (Cal) 161 the concerned authority can allow the candidate to appear in the interview for the post of Clerk of the said school even if the name of the

petitioner is not sponsored by the employment exchange. The Hon''ble Full Bench while passing the said order considered the various judgment of this Hon''ble High Court as well as the various judgments of the Hon''ble Supreme Court including the judgment passed in the case of Excise Superintendent Malkapatnam, Krishna District, A.P. Vs. K.B.N. Visweshwara Rao and Others, as such the petitioner was entitled to appear in the said interview even if the name of the petitioner was not sponsored by the concerned Employment Exchange.

4. That the following grounds to be inserted after ground No. (vi) as ground No. VI(a). VI(a) for that the petitioner is entitled to appear in the said interview even if the name of the petitioner is not sponsored by the concerned employment exchange and in view of the aforesaid judgment of the Full Bench reported in 2005 (2) CLJ (Cal) 161 Sri Rabindra Nath Mahato v. State of West Bengal and Ors., the concerned authority can allow the petitioner to appear in the interview even if the name of the petitioner is not sent by the concerned employment exchange.

12. A compiled copy of amendment application, accordingly, has been filed by reaffirming the same. This amendment application was allowed. The Court directed the Employment Exchange Officer to file an affidavit to ascertain the fact as to whether the writ petitioner Sri Sukhen Sarkar fulfilled the conditions stipulated for his appearance in the interview in terms of the order dated 22nd August, 2001. Records of the Employment Exchange also was directed to be placed before this Court and it was perused by the Court and the learned advocates appearing for the respective parties. The Employment Exchange Officer, namely, Sri Tarapada Biswas filed an affidavit affirmed on 29th November, 2004, contending, inter alia, that no junior candidate who registered his name in the Employment Exchange after the registration of writ petitioner Sri Sukhen Sarkar was sponsored for interview in the said school for the said post. The relevant paragraphs reads such:

6. It is stated that the Secretary, Majdia Rail Bazar High School, P.O. Majdia, Dist. Nadia, notified a vacancy of Clerk under Memo No. 04/8/2000, dated 16.8.2000. As per notification, the essential qualification for the said post was S.F/M.P. and desirable qualification was knowledge of typing.

8. Accordingly, a list of 20 (twenty) candidates, who got registered their names with the Employment Exchange Office as M.P. Pass or above under N.C.O. No. X01.10, X01.15, X01.30, X01.40, X01.50 within 27.7.83 were selected for the vacancy of clerk in the said school. Specifically a list of 20 candidates, who registered their names with the said employment exchange office, having seniority of registration in essential qualification upto 27.7.83 were sponsored by the Dist. Employment Exchange, Krishnanagar under the signature of the Employment Officer Sri S.K. Dutta under Memo No. Kri/P/80/2000/10472-73 dt. 21.6.2001. Copy of the said Memo dated 21.6.2001 and the list of 20 candidates are annexed hereto and marked with letter "R/1".

10. The Respondent No. 6, Sri Sukhen Sarkar, Son of Lt. Mohan Lal Sarkar, Purnagunj, Majdia, bearing Registration No. KM/5205/02 got his name registered with the Employment Exchange Office on 20.2.87 as B.Sc. pass and later on recorded typewriting on 23.11.95. He is a physically handicapped person. As such, the respondent No. 6 carries seniority of registration in essential qualification with effect from 20.2.87. As the Employment Exchange sponsored the candidates, having seniority of registration in essential qualification upto 27.7.83 the respondent No. 6 having seniority of registration with effect from 20.2.87 had no the seniority of registration, as required and as such, his name was not sponsored in the said list of 20 candidates.

13. Having regard to the said affidavit, accordingly, it is proved that writ petitioner Sri Sukhen Sarkar submitted a false statement in the writ application alleging against the respondent No. 3, District Employment Exchange, Krishnanagar that names of junior candidates were sponsored denying the right of the writ petitioner for being sponsored as a candidate for the said post. It was the specific case of the writ petitioner Sri Sukhen Sarkar in paragraph 7 and 9 as already quoted above that he accrued a right to appear in the interview seeking a judicial review of this writ Court on the pleading in terms of para 7 of the writ application. Having regard to such pleading, the Court passed an order on 22nd August, 2001, which is already quoted above, directing his appearance with the proviso "provided it is found that his juniors in the handicapped category or any other category have been sponsored by the Employment Exchange". The School Authority did not verify the same from the Employment Exchange by writing a letter, which ought to have been done to ascertain the condition whether a junior candidate was sponsored or not, but allowed his appearance in the interview on the basis of the order dated 22nd August, 2001 though condition stipulated in the said order was not verified. Now it appears that said condition was not fulfilled in view of the positive affidavit filed by the Employment Exchange Officer not only denying the allegation of paragraph 7 of the writ application but also with a positive averment that no junior candidate was sponsored and in view of such state of affairs as the writ petitioner Sri Sukhen Sarkar appeared in the interview on the strength of order dated 22nd August, 2001 passed by the High Court in his writ application, the legality and validity of his appearance as a non-sponsored candidate in the interview as held in the year 2001 should be considered in the angle of the order dated 22nd August, 2001 of this Court as passed in the writ application.

14. From the affidavit of Employment Exchange Officer now it is proved that he was not eligible to be sponsored from the Employment Exchange at the material time and no name of any junior candidate was sponsored from the Employment Exchange. As such, this Court is of the view that as the condition of his appearance as per Court's order dated 22nd August, 2001 on the basis of his pleading in paragraph 7 has not been fulfilled and as he submitted a false statement before this Court by affirming the paragraph 7 as true to his knowledge, the writ petition filed by Sri Sukhen Sarkar on the said pleading is a

fit case for an order to reject it on merit by vacating the interim order dated 22nd August, 2001 and its effect thereof. On the basis of pleading of paragraph 7 and 9 and the grounds of the original writ application, the order dated 22nd August, 2001 was passed, which now appears from the affidavit of Employment Exchange Officer was not the real state of affairs, as such, order dated 22nd August, 2001 stand vacated and its effect also is nullified by the Court as the writ petitioner submitted a false statement before this Court and by his false representation made the Court to believe the existence of a state of affairs, which was not at all the true state of affairs and thereby was successful to have an order in his favour for appearance in the interview. A clear case of exercise of fraud upon Court and suppression of real fact have been proved.

15. Now the question whether by amendment application, which has been allowed on 14th March, 2008, by this Court for the ends of justice to appreciate the point as raised in the amendment application, his appearance in the interview could be saved. This point now to be considered by this Court.

16. In the amendment application the applicant/petitioner has contended that on application of the judgment passed in the case Excise Superintendent Malkapatnam, Krishna District, A.P. Vs. K.B.N. Visweshwara Rao and Others, the petitioner got an independent right to appear in the interview as a non-sponsored candidate irrespective of the fact that the recruitment procedure provides reference of the names of sponsored candidates for consideration of appointment in the post of Clerk in a government aided school. There is no doubt to the principle of law that the K.B.N. Visweshwara Rao and Ors. (supra) is the law in the field, which has been considered and declared in the subsequent case Arun Kumar Nayak Vs. Union of India (UOI) and Others, In K.B.N. Visweshwara Rao and Ors. (supra) case the proposition of law about the right of a non-sponsored candidate has been clarified with the certain conditions mentioned thereto. Para 6 of the of the said report reads such:

Having regard to the respective contentions, we are of the view that contention of the respondents is more acceptable which would be consistent with the principles of fair play, justice and equal opportunity. 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.

17. On a bare reading of the said paragraph it appears that the ratio decidendi of the judgment of K.B.N. Visweshwara Rao and Ors. (supra) is not that a non-sponsored candidate as per his choice and/or due to showing of any favour by the employer, would be entitled to appear in the interview. Right of non-sponsored candidate to appear in the interview is subject to declaration of the vacancy and invitation of the names of eligible candidates for appearance in the interview by advertising the same in the daily newspaper and in the notice board of the employer along with alternative modes of declaration of the vacancy by the electronic media, namely, television, radio etc. If we consider that the ratio of the judgment in K.B.N. Visweshwara Rao and Ors. (supra) is to this effect that anybody as per his choice may appear in the interview or any person as per favour shown for any consideration by the employer would be allowed to appear in the interview without any wide publication of the vacancy in the daily newspaper and in the notice board inviting applications from the eligible candidates, same will hit the basic structure of the Constitution in terms of Article 14 and 16 of the Constitution of India, which speaks that equality in employment is the basic structure of the Constitution. That concept that equality of opportunity in employment is the basic features of the Constitution in terms of Article 14 and 16 has been summed up by Jagganath Rao, J. in the three Judges' Bench in the case *Indira Sawhney Vs. Union of India and Others*, by holding "neither Parliament nor the Legislatures could transgress the basic feature of the Constitution, namely, the principle of equality enshrined in Article 14 of which Article 16(1) is facet". Justice B.P. Jeevan Reddy speaking for the majority in the case *Indira Sawhney and Ors. v. Union of India and Ors.* reported in (1992) Suppl. (3) SCC 217, while acknowledging that equality and equal opportunity is a basic feature of our Constitution explained and exalted the position of the said Constitutional provision. Deducing therefrom, a Constitution Bench judgment in the case *Secretary, State of Karnataka and Others Vs. Umadevi and Others*, adherence to the rule of equality in public employment is a basic feature of our Constitution, so Court is responsible for ordering the need of compliance of Article 14 and 16". It is further held thereto that in public employment adherence to the rule of equality is a basic feature of Constitution by observing the role of High Court as sentinel and guardian of equal right protection to perform its duty. In the said case *Uma Devi (3) and Ors. (supra)*, it has been further held that appointment in violation of the constitutional scheme would be a nullity.

18. Having regard to the legal position that equality in public employment and equal opportunity thereto is within the domain of basic feature of the Constitution under Article 14 and 16 of the Constitution of India, in the *K.B.N. Visweshwara Rao and Ors. (supra)* Apex Court accordingly in the judgment

specifically expressed the views that along with sponsored candidates, non-sponsored candidates would be entitled to appear by directing the employer to advertise the vacancy in daily newspaper and in notice board or in electronic media. If a candidate out of his own will and desire or out of his connection with the employer otherwise and/or for any other consideration, is allowed to appear in the interview alone as a non-sponsored candidate though there was no advertisement inviting the eligible candidates to apply by declaring the vacancy by the employer, the very appearance of the person concerned would be nothing but a back door entry due to favour as shown by the employer, which directly will hit the equality doctrine under Article 14 read with Article 16 of the Constitution of India. If there is any advertisement inviting the names of eligible candidates by declaring the vacancy and declaration of the vacancy in the notice board of the employer and other media as stipulated in *K.B.N. Visweshwara Rao and Ors.* (supra), the identically situated persons would be entitled to get an opportunity being identically qualified and/or higher qualified to appear in the interview and by this process best meritorious candidate could be selected. The *K.B.N. Visweshwara Rao and Ors.* (supra) has mandated to that effect and the ratio of the said judgment never allows anybody to appear in the interview as per the mercy or favour of the employer without the post being advertised in the daily newspaper and a notice to the notice board inviting names of eligible candidate and in other electronic media.

19. This point has been considered by the Division Bench, wherein I was a member, in the case *Gaya Nath Rajbanshi v. State of West Bengal and Ors.* reported in 2007 (2) CLJ (Cal) 105 by holding that individual non-sponsored candidate has no right to appear in the interview unless there is any advertisement of the vacancy inviting the eligible candidates to apply by the employer and the High Court being the protector of the Constitution should not allow any individual non-sponsored candidate to appear in the interview when there is no advertisement of the vacancy by the employer by any order in a writ application. Considering the issue in that constitutional angle, the post facto identification of appearance of Sri Sukhen Sarkar in the interview suo motu as has been urged as valid and legal, relying upon the judgment of *K.B.N. Visweshwara Rao and Ors.* (supra), is not legally and constitutionally acceptable. Hence, amended portion of the writ application will not rescue Sri Sarkar, the writ petitioner, from the invalidity of his appearance in the interview as in the event such is considered, it will directly breach the equal opportunity theory and principle of equality in employment in terms of Article 14 and 16 of the Constitution of India, which are basic features of the Constitution.

20. As has been already discussed that Sri Sarkar made a false statement before this Court in his writ application to avail the interim order for his appearance in the interview by contending that many junior candidates who registered their names after him were sponsored for the said post, though fact was otherwise, which has been proved by the affidavit of Employment Exchange Officer, which has been quoted in extenso.

21. The very contention of the writ petitioner, Sri Sukhen Sarkar, in his writ application that the many junior candidates have been sponsored, practically became the nucleus of passing the interim order by Ashim Kumar Banerjee, J. allowing his appearance in the interview subject to fulfillment of the conditions stipulated thereto. Those conditions were not fulfilled as because there was no possibility of fulfillment of those conditions for the simple reason that no junior candidate was sponsored. The very fact speaks that the writ petitioner, Sri Sukhen Sarkar, made a false representation before this Court and thereby made the Court to believe that he has suffered discrimination so far as sponsorship of name. Hence, it is proved that he did not come in clean hand in the writ Court. It is a settled legal position that the Writ Court will be slow to pass any order when a party will not come on clean hands. Reliance may be placed to the judgment passed in the case Chancellor: The Chancellor and Another Vs. Dr Bijayananda Kar and Others,

22. Furthermore, it appears that writ petitioner, Sri Sukhen Sarkar, has exercised fraud upon the Court knowing very well that no junior candidate was sponsored. It is a settled position of law that if fraud is committed, it unravels everything. In the case *Lazarus Estates, Ltd. v. Beasley* reported in 1956 (1) All. E.R. 341, Lord Denning, L.J., held "no judgment of a Court, no order of Minister, can be allowed to stand if it has been obtained by fraud. Fraud unravels everything". Lord Parker, C.J., in the said case *Lazarus Estates, Ltd.* (supra) held "fraud vitiates all transactions known to the law of however high a degree of solemnity". The Apex Court was also of the same view as passed in the cases *Ram Chandra Singh Vs. Savitri Devi and Others*, , *Vijay Shekhar and Another Vs. Union of India (UOI) and Others*, About effect of an order, which is outcome of exercising fraud in a subsequent proceeding, the Apex Court has answered the point by holding that the later proceeding also will be a nullity in terms of the judgment passed in the case *T. Vijendradas and Another Vs. M. Subramanian and Others*, It is now proved that writ petitioner, Sri Sukhen Sarkar, exercised fraud upon the Court to appear in the interview and obtained an order by making the Court to believe that many junior candidates were sponsored being the order dated 22nd August, 2001 passed by Ashim Kumar Banerjee, J. Since the basis of the order is on false averment by making the Court to believe, the contention made in paragraph 7 as already quoted as real state of affairs, it goes to the root of the matter and accordingly his appearance in the interview and empanelment thereto, all have been vitiated and no relief could be granted to him by allowing his subsequent writ application seeking approval of the panel. The impact of availing any order on exercise of fraud and consideration of that issue, subsequently by the Court has been dealt with in details by the Apex Court in the case *Hamza Haji Vs. State of Kerala and Another*, wherein the appellant procured an order of the Forest Tribunal by exercising fraud, namely, by contending his eligibility to retain the land that the land was under his self cultivation though it was sold at the material time. In appeal, High Court dismissed the appeal as preferred by the State. A statutory review filed before the Tribunal failed. Subsequently, review

application to the High Court also was dismissed. But after long so many years High Court entertained a writ application filed by a body of citizens pointing out the fraud, which made the order of Tribunal, nullity. The High Court quashed the decision of Tribunal, set aside its own order of dismissal of appeal exercising power of review as the decision was obtained exercising fraud. Supreme Court did not interfere with the order and held that the second review application was justified as the initial first order by the Tribunal allowing retention of forest land was an order obtained by exercising fraud upon the Tribunal. The same principle could be applied in this case. Sri Sukhen Sarkar made the Court to believe when he moved his writ application W.P. No. 12311 (W) of 2001 that the persons who registered their names in the Employment Exchange after him have been sponsored. The Court believed it and passed the order of his appearance in the interview by passing an order dated 22nd August, 2001. The very basis/foundation of the order was by exercising fraud. So Sri Sarkar is not entitled to get any relief and/or benefit from the writ Court applying the aforesaid principle of law when someone exercise fraud upon the Court and the principle that writ petitioner must come in clean hand before the Court. Hence, writ application W.P. No. 12311 (W) of 2001 has no merit for consideration as from the records it appears that there was no discrimination made to sponsor the name. The writ application, accordingly, stand dismissed and the interim order directing appearance passed on 22nd August, 2001, accordingly, stand cancelled.

23. Having regard to such fact, since the writ petitioner, Sri Sukhen Sarkar, had exercised fraud upon the Court for his appearance in the interview and since even on application of K.B.N. Visweshwara Rao and Ors. (supra), his appearance in the interview could not be saved as because post was not advertised in the daily newspaper inviting applications from non-sponsored candidates following the principle of equal opportunity in employment and having regard to my finding and observation above, the writ application seeking approval of panel, wherein he stood first being W.P. No. 3760 (W) of 2003 will face the result of dismissal. Said writ application, accordingly, stand dismissed.

24. From the writ application of Sri Purnendu Biswas being W.P. No. 409 (W) of 2003 it appears that he was a duly sponsored candidate being supported by interim order of Court aforesaid for the post in question in terms of the guideline issued by Director of School Education, West Bengal for filling up the non-teaching post of an aided school. He has been empanelled as a third candidate of the panel. Having regard to my finding that Sri Sukhen Sarkar was not at all eligible to appear in the interview and his appearance was on exercise of fraud upon the Court by taking an interim order on misrepresentation, despite his position as first empanelled candidate, he cannot claim his appointment, as such, this Court not only is quashing his appearance in the interview as the writ application has been dismissed but also result of such, namely, his empanelment as a first candidate of the panel, which is vitiated for all purpose as nullity due to fraud as exercised. Reliance may be placed to the judgment passed in the case U.P. Junior Doctors" Action Committee Vs. Dr B. Sheetal Nandwani and Others,

Second candidate of the panel has already waived his right for appointment by filing an affidavit and his writ application has been disposed of accordingly. Having regard to such position, the writ petitioner, Sri Purnendu Biswas, who has been empanelled as a third candidate of the panel now would be entitled to get the benefit of appointment. In the normal situation, the Court would have directed recasting of panel by deleting the names of candidates empanelled as first and second candidate and thereafter to prepare a panel consisting the names of three candidates by empanelling the name of the writ petitioner, Sri Purnendu Biswas, as first candidate on elevating his position from third to first in the panel. But as it is a case of long back of the year 2001, when the interview was held and after long seven years, this Court is of the view that order of recasting of panel would be nothing but a technical formalities, whereby District Inspector of Schools concerned will only elevate the position of writ petitioner, Sri Purnendu Biswas, as a first candidate of the panel and will select other two names who appeared in the interview, but got less marks than Sri Purnendu Biswas to place them as second and third candidate of the panel. Considering that issue, this Court is of the view that there is no need of recasting of the panel in the same manner. The name of Sri Purnendu Biswas should be considered as only empanelled eligible candidate by deleting the names of empanelled first and second candidate whose empanelment stand cancelled by order of Court and the name of Sri Purnendu Biswas, accordingly, to be approved as the only candidate of the panel by the District Inspector of Schools concerned within two weeks from the date of communication of this order. Said officer thereafter will send such approval decision to the school within a week by Special Messenger when the school as per direction of the Court will give appointment to the writ petitioner, Sri Purnendu Biswas, in the post in question within two weeks from that date and will allow his joining in the post. The writ application of Sri Purnendu Biswas, accordingly, stand allowed on the aforesaid terms.

Later:

25. Stay as prayed for by Mr. Tulsidas Roy, learned Advocate appearing for the writ petitioner, Sri Sukhen Sarkar, stand refused.

26. Urgent xerox certified copy of this order, if applied for, be given.