

(2023) 05 KL CK 0042

In the High Court Of Kerala

Case No : Writ Petition (C) No. 13007 Of 2020

Sreedevi S

APPELLANT

Vs

Selection Committee

RESPONDENT

Date of Decision : 02-05-2023

Acts Referred:

Citation : (2023) 05 KL CK 0042

Hon'ble Judges : N. Nagaresh, J

Bench : Single Bench

Advocate : Rinny Stephen Chamaparampil , K.G. Sarojini, T.B.Hood, M.Isha, Amal Kasha, Sanil Kunjachan, T.M.Reshmi

Final Decision : Disposed Of

Judgement

N. Nagaresh, J.

1. The petitioners are before this Court seeking to quash Ext.P17 select list and to direct the 4th respondent to appoint them in the vacancies of Anganwadi Workers in Anganwadi Centre Nos.81, 84, 96 and 155 of Chennithala Thriperumthura Grama Panchayat under the ICDS Mavelikkara Project.

2. The petitioners state that they had earlier worked as temporary Anganwadi Workers. Proceedings were initiated for making regular appointment to four existing vacancies of Anganwadi Workers in Chennithala Thriperumthura Grama Panchayat. According to the petitioners, the select list prepared is illegal and one drawn violating the conditions in GO dated 30.04.2018.

3. The petitioners state that they are qualified to be appointed as Anganwadi Workers. They have worked as temporary Anganwadi Workers earlier. Four permanent vacancies of Anganwadi Workers exist in Chennithala Thriperumthura Grama Panchayat in Anganwadi Centre Nos.81, 84, 96 and 155. The petitioners therefore submitted applications for permanent appointment. The respondents constituted a Selection Committee. As per Ext.P14 Government Order dated 22.12.2012, the Panchayat President is the Chairperson and the ICDS Project

Officer is the Convenor. There are three other ex-officio members. Five social workers are also included in the Committee. The petitioners would submit that the Panchayat is ruled by the Left Front and five representatives to the Committee were nominated purely based on political consideration.

4. As per Ext.P16 GO dated 30.12.2018, every fourth vacancy shall be set apart for promotion from Anganwadi Helpers and 10% vacancies in every project should be set apart for persons who donated land for Anganwadi or for their dependents. The 1st petitioner is therefore entitled to appointment to the first vacancy in the 10% quota. The 1st petitioner has around 400 days of working experience. The 2nd petitioner is the secondmost senior out of the temporary Anganwadi Workers.

5. The petitioners submit that an illegal selection was conducted on 28.12.2019. A select list of 60 persons was published as per Ext.P17 for appointment as Anganwadi Workers and another 39 persons for appointment as Anganwadi Helpers. Ext.P17 has not been prepared based on merit. Extraneous considerations have impacted Ext.P17. Persons selected are kith and kin of Selection Committee members. Close relatives of the Panchayat President are ranked top in Ext.P17 list. The selection itself is vitiated as the Interview Board consists of persons who are close relatives of the candidates who were assigned top rank in the select list. Aggrieved by Ext.P17 select list, the 1st petitioner submitted Ext.P18 representation before the 4th respondent-Child Development Project Officer. Ext.P18 did not yield any result.

6. The counsel for the petitioner argued that the select list contains close relatives of the nominated Selection Committee members. Applications were submitted by the close relatives after the nomination of the five Selection Committee members by the Panchayat Committee. Such relatives of candidates who are in the Selection Committee should not have participated in the selection process. Now, hasty steps are being taken to grant appointment to candidates who are ranked top on extraneous considerations.

7. The counsel for the petitioner relied on the judgment of the Apex Court in Asok Kumar Yadav and others v. State of Haryana and others [(1985) 4 SCC 417] and argued that in the process of taking decision in respect of several persons by an Administrative Body, if there is a real likelihood of bias on the part of a member of that Body in respect of even a single person, that member should withdraw from the entire process. The counsel urged that it is not necessary to establish bias but it is sufficient to invalidate a selection process if it could be shown that there is reasonable likelihood of bias.

8. As the selection is vitiated by bias, the selected candidates who are included in the select list will not get any right. The petitioners relied on Rakesh Kumar Gupta and others v. State of U.P. and others [2005 SCC 172] in this regard.

9. Respondents 1 and 4 opposed the writ petition. Respondents 1 and 4 submitted that the Selection Committee was constituted following the criteria laid

down in Ext.P14 GO. Respondents 1 and 4 are not expected to scrutinise the constitution of Selection Committee. The Selection Committee is to be finally approved by the District Social Justice Officer. The District Social Justice Officer has approved the constitution of Selection Committee as per Ext.R4(a), which approval is not under challenge.

10. As regards the claim of the 1st petitioner to get appointment based on donation of land, respondents 1 and 4 pointed out that the 1st petitioner's mother had only expressed a consent to the Panchayat to donate the land. Property is not transferred to the Panchayat. The 4th respondent has participated in the selection process in a fair manner. The petitioners have failed to advance any evidence to establish bias in giving marks to respondents 5 to 8. The writ petition is therefore devoid of any merits.

11. Respondents 5 to 8 also contested the writ petition filing counter affidavit. Respondents 5 to 8 submitted that all affected parties are not impleaded in the writ petition. The petitioners have no allegation that they have not been awarded marks based on the laid down criteria. There is no allegation that the petitioners were given lower marks. They don't even have case that respondents 5 to 8 were given higher marks. Respondents 5 to 8 further pointed out that the 1st petitioner's mother surrendered land to one Priyadarshini Mahila Samajam and not to the Panchayat. The 1st petitioner has no case that she is a dependent of the person who donated land.

12. It is further submitted on behalf of respondents 5 to 8 that Grama Panchayat Committee consists of various political parties and persons were nominated to the Selection Committee by the Grama Panchayat Committee. The five social workers who were nominated to the Selection Committee did not belong to one political party. In fact, all the five nominated members were qualified and competent to act as Selection Committee members. The petitioners have not advanced a definite case of bias. Respondents 5 to 8 possess higher qualifications and hence they were ranked above the petitioners.

13. The 9th respondent-Secretary to Grama Panchayat filed counter affidavit. The Panchayat Secretary is only a member in the Selection Committee. The Panchayat has no other role in the selection process. The decision to make appointment to the post of Anganwadi Workers or Helpers rest fully with the 1st respondent. The 1st petitioner or her mother has not assigned any property to the Panchayat for the purpose of constructing Anganwadi. The writ petition is therefore liable to be dismissed.

14. I have heard the learned counsel for the petitioner, the learned Government Pleader representing respondents 1 to 4 and the respective learned counsel appearing for respondents 5 to 9.

15. The petitioner has alleged specific case of bias in the selection process for appointment to the four existing vacancies of Anganwadi Workers in Chennithala Thriperumthura Grama Panchayat. Ext.R4(a) order dated 03.08.2019 of the

District Social Justice Officer contains the names of five persons who are nominated to the Selection Committee. The candidate selected and placed at Serial No.1 of Ext.P17 Alka V. Satheesan is daughter of Bini Satheesan who is an approved nominated member to Selection Committee as per Ext.R4(a). Serial No.15 Sreeja Sanjeevan is wife of Sanjeevan, Vazhappallil who is also a nominated member to the Selection Committee. The petitioners would allege that Miss. Mini K.G. placed at Serial No.3 is also a relative of Bini Satheesan. Mr. Prasanth who is selected and placed at Serial No.6 is a close relative of the Panchayat President. The petitioners would point out that the candidates at Serial Nos.1, 3, 6 and 15 who were awarded 14.83, 13.42, 10.68 and 12.71 marks respectively out of the total 15 marks for interview. The petitioners were awarded much lesser marks.

16. Assuming for argument sake that there is no serious anomaly in awarding marks to the candidates who participated in the interview based on their qualifications, even then it is obvious that the Selection Committee consisted of interested parties vis-a-vis the candidates participating in the selection process. The impact of bias in selection proceedings is well explained by the Hon'ble Apex Court in *A.K. Kraipak and others v. Union of India and others* [(1969) 2 SCC 262]. The Hon'ble Apex Court held that what is to be seen is whether there is reasonable ground for believing that a member of the Selection Committee is likely to have been biased. A mere suspicion of bias is not sufficient and there must be a reasonable likelihood of bias. In the case of candidates at Serial No.1 Alka V. Satheesan, she is daughter of Bini Satheesan who is a member of the Selection Committee. Serial No.15 Sreeja Sanjeevan is wife of Sanjeevan, Vazhappallil. When parents/spouse of candidates are actively involved in a Selection Committee, it has to be assumed that there is reasonable likelihood of bias taking into consideration human probabilities and ordinary course of human conduct.

17. In the judgment in *Asok Kumar Yadav and others (supra)*, the Hon'ble Apex Court held that one of the fundamental principles of our jurisprudence is that no man can be a Judge in his own cause and that if there is a reasonable likelihood of bias, it is in accordance with natural justice and commonsense that the person likely to be so biased should be incapacitated from sitting.

18. As regards the argument of the respondents that all candidates in the select list are not parties to the writ petition, the Hon'ble Apex Court in the judgment in *Mukul Kumari Thyagi and others v. State of Uttar Pradesh and others* [(2020) 4 SCC 86] has held that when the inclusion in the select list of large number of candidates is on the basis of an arbitrary or illegal process, the aggrieved parties can complain and in such cases, necessity of impleadment of each and every person cannot be insisted.

19. *Dr.(Mrs.) Kirti Deshmankar v. Union of India and others* [(1991) 1 SCC 104] was a case where the mother-in-law of the selected candidate was vitally interested in the admission of her daughter-in-law and participated in the

selection proceedings. The Hon'ble Apex Court held that the very presence of the mother-in-law in the meeting is sufficient to establish bias and it was not necessary to prove actual bias. It is sufficient to invalidate the selection process if it is shown that there is reasonable likelihood of bias.

20. It is true that the petitioners have approached this Court after participating in the selection process. Normally, a candidate cannot challenge selection process after participating in the same. The Hon'ble Apex Court has held in the judgment in Dr.(Major) Meeta Sahai v. State of Bihar and others [(2019) 20 SCC 17] that the said principle is differentiated in so far as candidate by agreeing to participate in selection process only accepts prescribed procedure and not the illegality in it. Therefore, I find that the writ petition at the instance of the petitioners is amply justified in the facts and circumstances of the case.

21. The selection process impugned in the writ petition is clearly vitiated by bias due to the facts and reasons given above. Ext.P17 select list is therefore quashed. Respondents 2 to 4 and 9 are directed to constitute a fresh Selection Committee and conduct selection process afresh, considering the candidature of those who have already participated in the selection process. This shall be done within a period of two months.

Writ petition is disposed of above.