

(2013) 12 CAL CK 0007

In the Calcutta High Court

Case No : MAT 1421 of 2013 and CAN 10184 of 2013

State of West Bengal

APPELLANT

Vs

Somashree Khatun

RESPONDENT

Date of Decision : 06-12-2013

Acts Referred:

Citation : (2014) 2 CHN 82

Hon'ble Judges : Tapash Mookherjee, J;N. Patherya, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. The order under appeal is dated 13th August, 2013 whereby the Trial Court held that as the Chairman of the Municipality as well as M.L.A., in whose constituency the petitioner resides, had submitted the certificate, the eligibility criteria had been fulfilled by the respondent No. 1/writ petitioner and the defect cured. Therefore, the respondent No. 1/writ petitioner ought to be allowed to participate in the selection process. Counsel for the appellants submits that the advertisement for admission to the General Nursing & Midwifery (G.N.M.) course was published. By Clause 7 it was mandated that the applications be accompanied by original or photostat copies of the documents. One of the requirements, was the residential certificate, issued by the Chairman of the Municipality. In the case of the respondent No. 1/writ petitioner, as she is the resident of Krishnanagar Municipality, the Chairman's certificate would be needed but while submitting her application, the respondent No. 1/writ petitioner submitted a certificate, issued by the Councillor of Ward No. 15 of the said Municipality, which is contrary to the criteria set out in the advertisement. Therefore, her candidature was not considered and she was not called for the interview. This non-call to interview was challenged in W.P. 23989(W) of 2013 by the candidate, respondent No. 1/writ petitioner and after considering the submissions of the parties the Trial Court held that in view of the subsequent certificate, issued by the concerned authorities, the same ought to be accepted.

As the defect had been cured the respondent No. 1/writ petitioner ought to be permitted to participate in the selection process after satisfying the eligibility criteria. Admittedly the said order is contrary to the terms of the advertisement and as held in *Bedanga Talukdar Vs. Saifudaullah Khan and Others*, , *Ashok Kumar Sonkar Vs. Union of India (UOI) and Others*, and *State of Gujarat and Others Vs. Arvindkumar T. Tiwari and Another*, the order under appeal ought to be set aside.

2. Opposing the said appeal it has been submitted on behalf of the candidate, respondent No. 1/writ petitioner, that the decisions cited are distinguishable on facts. In the reported decisions, on the date of advertisement, the candidate was not qualified, therefore, the criteria could not be relaxed. Such is not the case here as the candidate, respondent No. 1/writ petitioner, was a resident of the area and she had participated on earlier occasions for the same course and the interview letter was also issued at the said address. Therefore, it was well within the knowledge of the authorities that she was a resident of the said area and, submission of the certificate, issued by the Chairman of the Municipality was only a technical flaw as stated by the Trial Court which could have been cured. Therefore the direction of the Trial Court to cure such defect was justified, and the order under appeal calls for no interference. In fact, on an earlier occasion the Additional District Magistrate had issued the certificate and, on the basis thereof, the respondent No. 1/writ petitioner was called for the interview. The Chairman is also a Councillor of the Municipality. Therefore, the issuance of the certificate by the Councillor ought not to be ignored when on a subsequent date the certificate, issued by the Chairman, has been submitted. It involves the career of a student and therefore the order under appeal ought to be upheld.

3. Having considered the submissions of the parties the document that calls for scrutiny is advertisement for admission to the General Nursing & Midwifery (G.N.M.) course. It is true that 2.5% seats was reserved for Lady Civil Defence Volunteers under Home (Civil Defence) Department, Government of West Bengal. It is also true that a candidate must be a citizen of India and a permanent resident of West Bengal for at least five years. The Clause which is of most importance is Clause 7 and sub-Clause (c) thereunder. Clause 7 has made it mandatory for the application to be accompanied by original or photostat copies of the documents required. It is clear that in the event the documents are not submitted the application will be rejected and the same will be strictly followed. Sub-Clause (c) mandates submission of the original copy of the residential certificate to be issued in this case by the Chairman of the Municipality. The application was to reach by 12th April, 2013, and was dispatched on 30th March, 2013. The certificate was issued by the Councillor of the Municipality. It has not been contended by the Counsel for the appellant that the application did not reach in time but on a perusal of the certificate issued, the same does not seem to be in order. According to Clause 7 (c) the certificate is to be issued by the Chairman of the Municipality and on the date of submitting the application it was the Councillor who was entitled to issue the certificate. There is no averment in

the writ petition that the Chairman of the Municipality was on leave and in the absence of the Chairman it was the Councillor who was entitled to issue the certificate. Therefore, in the absence of any certificate issued by the Chairman, the certificate issued by the Councillor was no proof of residence of the respondent No. 1/writ petitioner. The plea of submitting all documents on earlier occasion and therefore the authorities being aware of the residence of the respondent No. 1/writ petitioner will be of no assistance to the respondent No. 1/writ petitioner as the records of earlier proceedings was not a part of the present selection process and none of the candidates is a favoured candidate of the appellant, the State. Therefore, based on the advertisement, the application has to be considered, may be year after year. Admittedly, as will also appear from the order under appeal that the certificate, issued by the Chairman of the Municipality, was issued on 1st August, 2013 and submitted on 2nd August, 2013, i.e. beyond the date when the application was to reach the office. By the order under appeal the Trial Court has held that the defect was cured. This is contrary to the advertisement as the advertisement does not provide for acceptance of any document beyond 12th April, 2013 and accordingly the findings of the Trial Court cannot be supported and the order dated 13th August, 2013 is set aside. An emotional submission was sought to be made by the Counsel for the respondent No. 1/writ petitioner that the respondent No. 1/writ petitioner is a student whose career is at stake.

4. We have looked into the age criteria and any candidate between 17 and 27 years is entitled to apply for the said post. The respondent No. 1/writ petitioner is only 21 years of age. Therefore, in the next selection process she will also be eligible to participate and, therefore, the emotional submission of the respondent No. 1/writ petitioner cannot be accepted. In view of the aforesaid, the order dated 13th August, 2013 is set aside. The appeal is allowed and disposed of alongwith the connected application being CAN 10184 of 2013.