

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
APPELLATE SIDE

Present:

The Hon'ble Justice Tapabrata Chakraborty
&
The Hon'ble Justice Partha Sarathi Chatterjee

MAT 484 of 2020

(Md. Jahidul Islam & Ors. –vs- The State of West Bengal & Ors.)

with

IA No.CAN 1 of 2020 (Old No. CAN 4135 of 2020)

with

IA No.CAN 2 of 2020 (Old No. CAN 4619 of 2020)

with

IA No.CAN 3 of 2020 (Old No. CAN 4621 of 2020)

with

IA No.CAN 4 of 2020 (Old No. CAN 4623 of 2020)

with

IA No.CAN 5 of 2020 (Old No. CAN 4624 of 2020)

With

MAT 519 of 2020

(Sahar Ali Laskar –vs- The State of West Bengal & Ors.)

with

IA No.CAN 1 of 2020 (Old No. CAN 5389 of 2020)

with

IA No.CAN 2 of 2020 (Old No. CAN 5390 of 2020)

with

IA No.CAN 3 of 2020 (Old No. CAN 5392 of 2020)

with

IA No.CAN 4 of 2020

For the Appellants

:

Mr. Samim Ahammed,
Ms. Saloni Bhattacharya,
Ms. Ambiya Khatoon,
Mr. Arka Ranjan Bhattacharyya.

For the Respondents

:

Mr. Partha Sarathi Bhattacharya, Ld. Sr. Adv.,
Mr. Sujit Sankar Koley,
Mr. Swagatam Deb.

Hearing is concluded on : 4th October, 2023.

Judgment On : 23rd November, 2023.

Tapabrata Chakraborty, J.

1. As both the appeals being MAT 484 of 2020 and MAT 519 of 2020 have been preferred challenging the judgment dated 13th May, 2020 delivered in the writ petitions being W.P. No.22018 (W) of 2018 and W.P. No.22019 (W) of 2018 respectively, the same have been taken up for analogous hearing.

2. The West Bengal State Electricity Distribution Company Limited (in short, WBSEDCL) published an advertisement dated 25th February, 2017 for recruitment to the posts of Sub-Assistant Engineer (Electrical) and Assistant Engineer (IT & C). In the said advertisement it was stated *inter alia* that for the post of Sub-Assistant Engineer (Electrical) the eligibility qualification would be '*Diploma in Electrical Engineering from Institute/College duly recognized by any of the State Council of Technical Education*' and that for the post of Assistant Engineer (IT & C) the eligibility qualification would be '*Degree in Computer and Engineering from Institute/College duly recognized by any of the State Council of Technical Education*'. The selection would be made on the basis of performance in a Written Test (in short, WT), Computer Proficiency Test (in short, CPT) and interview. In response thereto, the appellants in MAT 484 of 2020, who belong to OBC-A category and had obtained Bachelor of Technology in

Electrical Engineering degree from Aliah University, applied. Similarly, the appellant in MAT 519 of 2020, who belong to OBC-A category and had obtained Bachelor of Technology in Computer and Engineering degree from Aliah University, applied. After participation in WT as well as CPT, they were not called for viva voce and they came to learn that WBSEDCL had decided to short list candidates by fixing cut-off marks based on the results of WT and CPT. The appellants, accordingly, submitted applications under the Right to Information Act, 2005 (in short, RTI Act) and came to learn that the cut-off mark was stipulated to be 68 and that they have secured more than such cut-off marks. Thereafter to know the reason for denial of participation in the viva voce, the appellants again submitted applications under the RTI Act and by a letter dated 7th September, 2018, it was intimated by WBSEDCL that *'the B. Tech course completed by the RTI applicant was not approved by AICTE. Hence, the candidature of the RTI applicant could not be considered for further processing'*. Aggrieved thereby, the appellants preferred the writ petitions which were disposed of by the judgment impugned in the present appeal.

3. On behalf of the writ petitioners/appellants it was argued before the Writ Court that WBSEDCL could not have rejected their candidature on the ground of non-approval of their B. Tech course by the All India Council of Technical Education (in short, AICTE) since they obtained the B. Tech degree from the Aliah University, a State Funded University recognized under the University Grant Commission Act (in short, UGC) and such degree does not require the approval of AICTE. In support of such contention

reliance was placed upon the judgment delivered in the case of *Bharathidasan University and Another -vs- All-India Council for Technical Education and Others*, reported in (2001) 8 SCC 676, wherein it has *inter alia* been observed that *'the power to grant approval for starting new technical institutions and for introduction of new courses or programmes in consultation with the agencies concerned is covered by Section 10(k) which would not cover a 'university' but only a 'technical institution'*. It was also argued that in appreciation of the fact that there was no requirement for approval of AICTE in a case where degrees have been obtained from a UGC recognized University, WBSEDCL modified its recruitment policy, 2010 excluding the requirement for approval of such degrees by AICTE.

4. Before the Writ Court, WBSEDCL contended that the appellants participated in the selection process without challenging the advertisement in which required eligibility qualification was Degree/Diploma in Computer and Engineering/Electrical Engineering from Institute/College duly recognized by any of the State Council of Technical Education. Admittedly, the appellants' degrees were not approved by AICTE. In support of such contention reliance was placed upon a letter dated 31st August, 2017 issued on behalf of the Aliah University informing that B. Tech course offered by Aliah University were not approved by AICTE during the academic years 2010 to 2014 and 2011 to 2015.

5. Upon exchange of affidavits and contested hearing, the writ petitions were disposed of by the judgment impugned. The appellants' claim was rejected since the eligibility criterion specified in the selection process

was not challenged by the appellants. The argument that the appellants were having higher qualification and that in respect of their bachelors' degree no approval from AICTE was necessary was discounted by the Court observing *inter alia* that *'there may be candidates from various other universities possessing similar degree/diploma not approved by AICTE/SCTE, who may have applied in response to the said advertisement, and may have met the same fate. Many may not have even applied, knowing fully well, that their degree was not approved by AICTE. The petitioners participated in the selection process without any murmur. Being unsuccessful, they cannot turn around and raise issue with the prescribed minimum essential qualification fixed by the employer. At the same time, they ought not to get any preferential treatment only because they have approached the court for relief'*.

6. Mr. Samim Ahammed, learned advocate appearing for the appellants submits that the judgment delivered in the case of *Bharathidasan University (supra)* on 24th September, 2001 laid down the law that degree obtained from a recognized University does not require approval of AICTE. WBSEDCL is an instrumentality of the State and it was an obligation on this part to follow the mandate of the law. WBSEDCL incorporated the eligibility criterion in the advertisement in derogation to the law laid down restricting participation as well as only amongst candidates whose degree are approved by AICTE. For such fault on the part of the WBSEDCL the appellants cannot be made to suffer. The said argument, as advanced, was glossed over by the learned Writ Court and no finding was returned on the said issue.

7. He argues that the appellants were not unsuccessful candidates. They secured more than the cut off marks after WT and CPT. Their candidature was rejected on the basis of a condition contrary to the law laid down in the case of *Bharathidasan University (supra)*. In view thereof, the learned Writ Court ought not to have rejected the appellants' claim on the ground that they did not challenge the selection process.

8. He further argues that during the pendency of the writ petition the appellants were enjoying an interim order restraining the respondents from filling up the posts in questions. In the appeal also similar interim order was passed which continued till the month of April, 2019. Thereafter, the appellants filed an application for extension of interim order which was disposed of by an order dated 28th August, 2020 observing *inter alia* that '*if the subject post/posts have been filled up, that decision abides by the result of the appeal. If the post have not been filled up till today status quo regarding those posts shall be maintained till the disposal of the appeal*'. From such sequence, it is explicit that during pendency of the litigation the appellants enjoyed an interim order and posts are still vacant in which the appellants can be accommodated on the strength of the observation of the Court that '*since however it appears that the Company has modified its recruitment policy and have taken a decision that the candidates possessing B.Tech degree from any University, duly recognized by UGC will be eligible to apply, and as the University awarding degree to the petitioners was duly recognized by UGC it will be open for the Company to reconsider the case of the petitioners for appointment in the post in question*'.

9. Mr. Ahammed further argues that admittedly the appellants were having qualification higher than the qualification prescribed for the advertised post of Sub-Assistant Engineer (Electrical) and such higher qualification could not have been construed to be a bar towards participation in the selection process. In support of such contention reliance has been placed upon the judgment delivered in the case of *Puneet Sharma and Others -vs- Himachal Pradesh State Electricity Board Ltd. and Another*, reported in 2021 SCC OnLine SC 291.

10. *Per contra*, Mr. Bhattacharya, learned senior advocate appearing for WBSEDCL submits, upon instruction, that there are no vacancies and no candidate having a degree from a University not approved by AICTE has been allowed to participate in the selection process. In view thereof, the allegation of arbitrariness and *mala fide* as levelled against WBSEDCL are absolutely unfounded.

11. Mr. Bhattacharya further argues that a candidate has right to be considered in accordance with the terms and conditions set out in the advertisement as his right crystallises on the date of publication of the advertisement, however, he has no absolute right to seek employment when he does not fulfil the terms and conditions specified in the advertisement. The appellants herein being aware of the required qualification participated in the selection process and as such they are estopped from urging that the eligibility criterion laid down was not sustainable in law. In support of such contention reliance has been placed upon the judgment delivered in the case

of *N. T. Bevin Katti –vs- Karnataka Public Service Commission and others*, reported in *AIR 1990 SC 1233*.

12. Heard the learned advocates appearing for the respective parties and considered the materials on record.

13. Indisputably, the appellants have obtained the B. Tech degrees from the Aliah University. The said degrees were not approved by AICTE during the academic years 2010 to 2014 and 2011 to 2015, as would be explicit from the memo dated 31st August, 2017 issued on behalf of the Aliah University. In the advertisement there was a specific requirement that the B. Tech degree/diploma requires the approval of AICTE. In the said conspectus, the learned Single Judge opined that the appellants ought to have challenged the advertisement itself. On the basis of the qualifications specified in the advertisement, the candidates applied. The learned Single Judge rightly observed that *‘there may be candidates from various other universities possessing similar degree/diploma not approved by AICTE/ SCTE, who may have applied in response to the said advertisement, and may have met the same fate. Many may not have even applied, knowing fully well, that their degree was not approved by AICTE’*. We do not find any infirmity in such reasoning.

14. The argument on behalf of the appellants that as WBSEDCL upon appreciating the error in the required qualification specified in the advertisement, modified its recruitment policy specifying that in respect of degree obtained from Universities recognized by UGC, no approval from AICTE would be required and that as such in rectification of its mistakes the

appellants need to be accommodated, was rightly negated by the learned Single Judge as by such modification there had been no breach of any fundamental or statutory right of the appellants.

15. It is well known that a decision is an authority for what it decides and not what can logically be deduced therefrom. Even a slight distinction in fact or an additional fact may make a lot of difference in decision making process. The judgment is a precedent for the issue of law that is raised and decided and not observations made in the facts of any particular case. There is no dispute as regards the proposition of law as laid down in the judgments upon which reliance has been placed by Mr. Ahammed, however, the same are distinguishable on facts.

16. It is not a case that the WBSEDCL authorities have acted in a perfunctory manner. No *mala fide* can be attributed to their actions and it also cannot be said that the authorities acted in a manner which would benefit any particular group of candidates. The appellants have failed to establish any arbitrariness or unreasonableness in the selection process. Upon dealing with the factual issues the learned Writ Court arrived at specific findings and we do not find any error in the same or in the decision making process.

17. In view thereof, the appeals being MAT No. 484 of 2020 and MAT 519 of 2020 are dismissed.

18. The applications being CAN 4619 of 2020, CAN 4621 of 2020, CAN 4623 of 2020, CAN 4624 of 2020 and CAN 4135 of 2020 filed in connection

with MAT No.484 of 2020 have already been disposed of earlier by an order dated 28th August, 2020.

19. There shall, however, be no order as to costs.

20. Urgent Photostat certified copy of this judgment, if applied for, shall be granted to the parties as expeditiously as possible, upon compliance of all formalities.

(Partha Sarathi Chatterjee, J.)

(Tapabrata Chakraborty, J.)