

Court No. 17

WPA 13700 of 2021

03.03.2022

(AD 4)

(S. Banerjee/
g.b./BP)

Setab Uddin & Ors.
Vs.
The State of West Bengal & Ors.

(Via Video Conference)

Mr. Bikash Ranjan Bhattacharyya, Sr. Advocate
Mr. Firdous Saim
Ms. Gopa Biswas

... for the petitioners

Mr. Sunit Kumar Ray

... for the Respondent No.8

Mr Rajib Kumar Basak

.....for the Respondent No.10

Mr. Partha Sarathi Bhattacharyya, Sr. Adocate
Mr. Raju Bhattacharyya
Mr. Partha Sarkar

.....for the Respondent No.6

Mr. Kishore Datta, Sr. Advocate
Dr. S. K. Patra
Ms. Supriya Dubey

.....for the WBCSSC

Mr. Kamalesh Bhattacharyya
Mr. Anindya Bhattacharyya

.....for the Respondent No.9

Mr. Raja Saha
Mr. Shamim ul Bari

.....For the State

Mr. Partha Sarathi Deb Burman
Mr. K. K. Bandopadhyay
Mr. Rameshwar Sinha

.....for the Respondent No.7

As the respondent no. 8 Mr. Ashok Kumar Saha could not affirm his affidavit yesterday due to his illness, as was submitted by his learned advocate, Mr. Sunit Kumar Roy, the affidavit affirmed on 3rd March,

2022, i.e., today, has been filed in court today. Copies of such affidavit have been served upon the petitioners and also upon the learned advocate for the Commission in court today.

A startling revelation in paragraph no. 5 of such affidavit is – “It is also stated that generally recommendation letters are issued in favour of the empanelled waitlisted candidates on the date of counseling after opting the school by the respective candidates, but here in the instant case the respondent no. 6 was not called for counseling in spite of that recommendation letter was issued in favour of the respondent no. 6.”

This paragraph no. 5 of the affidavit, part of which has been quoted above, is affirmed by the deponent as ‘true to his knowledge’.

At the relevant point of time he was the Secretary as well as the Chairman-in-Charge of the Commission.

After going through the above quoted lines from the affidavit of Mr. Saha, I asked the learned advocate for the Commission, Dr. Patra, as to his submission in this regard. He has submitted that the not holding of counseling was not an act of the Commission and Commission cannot be held responsible for that. He further submitted that the Commission is a statutory authority and the affidavit has been affirmed by Mr. Saha in his personal capacity.

(Abhijit Gangopadhyay, J.)

Later:

1. This writ application was filed by four petitioners with the prayers for quashing the panel and de novo panel to be published; de novo counseling to be held; de novo merit list with breaking of marks is to be disclosed; recasting of the interview list. These were the main prayers of the petitioners.

2. For making such prayers the allegation was that the selection process was conducted by the Commission arbitrarily. The respondent Commission whimsically did not call the petitioners in counseling who are all OBC-A candidates.

3. In page 6 of the writ application a table has been given which makes the allegation of the petitioners clear wherefrom it is found that one Sk. Insan Ali, who is the respondent no. 6 in this writ application, was in the waitlisted rank of W-144 whereas the petitioners nos. 1, 2 and 3 were all above the said Sk. Insan Ali in the waitlist and the petitioner no. 4 had equal marks with Sk. Insan Ali.

4. In this regard specific pleadings have been made in paragraph 26 of the writ application wherein the petitioners have stated that one Sk. Insan Ali a below rank holder (rank W-144 in OBC-A male/female category) than the petitioners in OBC-A male/female merit list, has got appointment letter and has joined in the Bani Niketan R.M. Vidyalaya (High) despite the petitioners being in higher rank holder in OBC-A male/female, have not received any call letter or

intimation letter for counseling and also naturally did not get any appointment letter.

5. Here I must record one objection of the learned advocate for the Commission yesterday, (his other objections will be recorded latter) as to the delay in preferring this application.

6. I have found that the recommendation was done surreptitiously. Today it has come to light that no counselling was held before recommending Sk. Insan Ali in a school. If an authority acts surreptitiously in giving recommendation then the persons who are suffering has to act like a sleuth.

7. We are fortunate, today in our country there is an Act, namely, Right to Information Act. The petitioners on 1st February, 2021 filed one application under Right to Information Act to the school for knowing certain facts and the school gave its reply stating that the said Sk. Insan Ali joined the school on 1st December, 2020 under category OBC-A for classes IX and X.

8. So the petitioners for the first time came to learn specifically that the respondent no. 6, who was a below-ranked candidate, was appointed in February, 2021. This writ application has been affirmed in August, 2021 and I cannot blame the petitioners for filing it after six months keeping it in mind that the unemployed youth are facing a mammoth authority namely West Bengal Central School Service Commission.

9. After considering that particular objection of the learned advocate for the Commission, Mr. Dutta, the

court's observation is that there is no delay in filling the application in the facts and circumstances of the case.

10. It was also the allegation of the petitioners that the respondent authority created opportunity to their favourite less-meritorious candidates which is pleaded in paragraph 18 of the writ application. Further allegation is that some candidates have been appointed after getting recommendation from the Commission by way of pick and chose method. To show this I will come to the exception taken by the petitioners in respect of the report of the Commission.

11. The petitioners made their submissions initially on that basis and this court (Cor. Saugata Bhattacharyya, J.) directed the Commission to file a report in the form of an affidavit which was filed by them on 3rd November, 2021. This order was passed on 15th September, 2021. On 30th September, 2021 the Hon'ble Court granted further time to the Commission for filing its report. On 21.02.2022 when the matter was being heard and the Commission filed its report in the form of affidavit, the respondent No. 6 produced in court two recommendation letters and two appointment letters along with one envelope of the Commission. After going through the said two recommendation letters, one dated 18th December, 2019 and the other dated 25th February, 2020, I directed the Commission on that day to intimate certain facts which were recorded in paragraph 6 of the order of that date. Those facts have not been intimated to this court till date, which I have noted.

12. On 22nd February, 2022 I was told that at the relevant point of time of issuance of the two recommendation letters one Soumitra Sarkar was the Chairman and one Mr. Ashok Kumar Saha in some intervals acted as the Chairman-in-charge in the absence of the Chairman and I directed them to appear before this court on the next date and they were added as parties.

13. On the next date, i.e., on 28.02.2022, I found from the statement of Mr. Sarkar that when those two recommendation letters were issued to the respondent no. 6, (who was a candidate below the rank of the three petitioners and equal in marks to the fourth petitioner) he was on leave at the time of the first recommendation due to her mother's death and at the time of the second recommendation letter he was released from the Commission. Therefore, he had no involvement in this matter.

14. Nobody has raised any objection in respect of his statement. However, I directed him to file an affidavit in respect of the statements made by him which he did and the affidavit was filed yesterday (02.03.2022) in court with the similar statements.

15. On 28.02.2022 Mr. Ashok Kumar Saha, who worked as the Chairman-in-charge during the absence of Mr. Sarkar and some days after Mr. Sarkar was released from his duty as Chairman, was asked as to who signed those recommendation letters, he stated that he had been totally ignorant about issuance of such recommendation letters because the signatures on

the recommendation letters were mechanically printed and those were scanned signatures and he never signed those two recommendation letters and he did not have absolutely any idea as to how this was done. He further submitted that before discussion of the matter with his advocates about this writ application after receiving a copy of this court's order dated 22nd February, 2022 and while going through the orders passed by this court, he did not have any idea about such recommendations. However, in reply to the court's question he disclosed names of two persons. 1) Dr. Santi Prasad Sinha (who worked as the Advisor of the West Bengal Central School Service Commission and according to Mr. Saha, who handled all such recommendations and not Mr. Saha) and 2) Mr. Samarjit Acharya (The Programme Officer of the Central School Service Commission).

16. Those two persons were also added as parties by this court and I directed those two persons to appear before this court on 2nd March, 2022 at 2 p.m.

17. On 2nd March, 2022 I first asked some questions exercising my power under Section 165 of the Indian Evidence Act to Mr. Samarjit Acharya who replied on oath. Some of the questions asked to him and his reply thereto are quoted below:

“Q.9) Was this particular recommendation letter was printed at the instruction of the Chairman-in-Charge or the advisor?”

Ans. No, it was not under the instruction of the then Chairman, it was done by the instruction of the then Advisor.

Q.10) Can you name the advisor?”

Ans. Dr. Santi Prasad Sinha.

Q.13) On whose instruction you printed this second recommendation letter?

Ans. The printout of the second recommendation letter was also done by me as per the instruction of the Advisor, Dr. Santi Prasad Sinha.

Q.18) Why did you act on the instruction of Mr. Santi Prasad Sinha?

Ans. Mylord, I have received that order from the Government and the Chairman told me that I should act accordingly as per the order.

Q.19) Please see this order. What are the names and designations of the members of the committee?

Ans. 1) Sri S. P. Sinha, Advisor to the Central School Service Commission, Convenor

2) Sri. S. Acharya, P.S. to Hon'ble MIC of this department.

3) P. K. Bandyopadhyay, OSD to the Hon'ble MIC of this department.

4) Sri A. K. Sarkar, Deputy Director (GA Section), Directorate of School Education.

5) Sri T. Panja, Senior Law Officer of this department.

Q.20) Who has signed this document?

Ans. The Joint Secretary to the Government of West Bengal.

Q.22) How Mr. Sinha gave you the instruction to print the recommendation letters, orally or in writing?

Ans. He used to instruct verbally.

Q.25) Can you remember for how many times over a period Mr. Sinha gave you instruction to print recommendation letters at this instruction?

Ans. I do not remember the exact number of instructions given by Mr. Sinha. But he has started giving me instruction from the end of 2019. ”

18. None of the parties prayed for this court's leave to cross examine the two persons who were asked questions by the court.

19. While replying to question no. 18 Mr. Acharya produced one document which was marked by this court as Exhibit-1, which is an order passed by the Joint Secretary of the Government of West Bengal of Secondary Branch of School Education Department of Government of West Bengal. That order is reproduced in the next page:

Cast-2
Ecbt-2

T.D. No. 10380
5-11-19.

Date: 1.11.2019
Advisor / Secretary
Please take necessary action
Chairman, W.B.C.S.S.C.

ORDER

For the purpose of supervision and monitoring of pending recruitment process conducted by the West Bengal Central School Service Commission, the Committee consisting of following members has been constituted :-

- 1) Sri S.P. Sinha, Advisor to the West Bengal Central School Service Commission – Convenor
- 2) Sri S. Acharjee, P.S. to Hon'ble MIC of this Department
- 3) Sri P. K. Bandyopadhyay, OSD to Hon'ble MIC of this Department
- 4) Sri A. K. Sarkar, Deputy Director (G.A. Section) Directorate of School Education
- 5) Sri T. Panja, Sr. Law Officer of this Department

The Chairman of the Commission shall be the Ex-Officio Chairman of the Committee.

The said Committee shall supervise and guide the Commission for smooth functioning of Commission in respect of pending selection with immediate effect.

This order is issued with the concurrence of the competent authority.

Sd/-
Joint Secretary
to the Govt. of West Bengal.

Date: 01.11.2019

No. 1271/1(8)-SE/S/1S-26/2010 (Pt.-II)

Copy forwarded for information and necessary action to:-

- 1) The Chairman, West Bengal Central School Service Commission.
- 2) Sri S.P. Sinha, Advisor to the West Bengal Central School Service Commission.
- 3) Sri S. Acharjee, P.S. to Hon'ble MIC of this Department
- 4) Sri P. K. Bandyopadhyay, OSD to Hon'ble MIC of this Department
- 5) Sri A. K. Sarkar, Deputy Director (G.A. Section) Directorate of School Education
- 6) Sri T. Panja, Sr. Law Officer of this Department
- 7) PA to Principal Secretary of this Dept.
- 8) Office Copy

Joint Secretary
to the Govt. of West Bengal.

Sd/-

20. This order issued by the Joint Secretary contains five names including the advisor with whom the Committee was constituted and the Chairman of the Commission was given the post of ex-officio Chairman of the Committee.

21. This order of the School Education Department dated 01.11.2019 is extremely surprising. There is no mentioning under what provision of law such an order was issued by the School Education Department naming five persons as have been given in the said letter as member. Under what provisions of law this order was issued is not understood by this court. Learned Advocate for the state has not made any submissions in this regard. Why suddenly supervision and monitoring of pending recruitment process were required to be taken up by this Committee is not mentioned in the said order. The Commission was a complete body constituted by a statue full of experts and it has its own work force for doing all the jobs done which the Commission did for several recruitment processes wherein an average three lakhs or so candidates participated. Why this time such a Committee was constituted shall always remain a question until some enquiry is made in respect of the role of these members of the Committee. That order of the School Education Department was issued with the concurrence of the competent authority; who was the competent authority is also to be found out.

22. There is a provision under Section 19 of the West Bengal School Service Commission Act, 1997 where the State Government can issue directions. The provision is reproduced hereinbelow:

Section 19:

Directions by State Governments.- *In the discharge of its functions the Commission shall be **guided by such directions** as may be given to it by the State Government from time to time in conformity with the provisions of this Act.*

23. In the said order issued by the School Education Department signed by the Joint Secretary dated 01.11.2019, no such directions is found. It was only for constitution of the committee. Therefore, this order was not at all an order under Section 19 of the aforesaid Act. At this juncture a reply of Mr. Acharya becomes very important which he gave on oath before this court yesterday.

In reply to question no.25 Mr. Acharya stated as follows:

Q: 25) Can you remember for how many times over a period Mr. Sinha gave you instruction to print recommendation letters at this instruction? (sic)

Ans: I do not remember the exact number of instructions given by Mr. Sinha but he has started giving me instructions from the end of 2019.

24. It is a matter to be noted that Mr. Sinha became the convenor of the Committee on 01.11.2019 i.e at the end of the 2019.

25. In the course of the hearing yesterday learned advocate for the private respondent intimated me that he had preferred an appeal which was pending but there was no order of stay in the said appeal. Today at the time of passing this judgement I am intimated by the learned advocate for the State and the learned advocate for the petitioners that the appeal was taken up for hearing yesterday but no stay was granted.

26. Learned Senior advocate for the School Service Commission Mr. Kishore Dutta made the following submissions:

- i) Delay in filing this application. I have dealt with that above.
- ii) The application has lost its force because now Commission has detected the mistake that it recommended the names of the petitioners. However, the replies on oath were given by Mr. Acharya is that this was done at the instruction of the advisor (who was the convenor of the Committee) by Mr. Sinha. The advisor/convenor of the Committee Mr. Sinha, however, stated that it was incorrect. Therefore, now is to be found who is correct. The stance taken by the Commission in its report filed by the Secretary of the Commission Mr. Gani affirmed on 03.11.2021 is wholly incorrect. Such statement of Mr. Gani in the report (in

the form of an affidavit) of the Commission made in paragraph 4(d) were matters of records which he believed to be true. It is found from the said report that Mr. Gani did not take any meaningful step to know the actual state of affairs from the Programme Officer Mr. Acharya as to how such recommendation letters were printed and by whose direction. It is found that Mr. Gani is trying to hide some truth from this court of law. It has already been held by me that such selective recommendation as has been given to the Respondent No.6 cannot be a result of mistake and now it has come to light that it was in fact not a mistake. It was printed by the instruction of the then advisor and the convenor of the Committee, though it has been denied by the said convenor before this court. I made it clear in my order dated 21.02.2022 that the shelter under the expression 'mistake' cannot be used by the Commission. In the facts and circumstances of the case the stance of the Commission as to inadvertent mistake is not accepted by this court.

- iii) Mr. Dutta submitted that some papers produced before this court cannot be taken into account by this court. Those papers were produced by the respondent No. 6 and nobody stated that those papers are false and fabricated. Therefore, those non-controversial documents were accepted by this court and court has the power to accept such documents.
- iv) Mr. Dutta has further submitted that this is an adversarial proceeding and there is no

proper pleading for adjudication of this adversarial proceeding. But it appeared from the report in the form of an affidavit filed by the Commission that they did not dispute the illegality in the recommendation and subsequent appointment of the private respondent. This court intimated Mr. Dutta specifically that what is coming to the fore in this matter is nothing but a scam and corruption and no technical point as was raised by him would be accepted by this court because this Writ Court wants to go to the root of the matter to unearth the scam as a court of equity.

27. Now I come to some examples from the exception taken by the learned advocate for the petitioners (to the report of the Commission) wherein particulars of a large number of illegal recommendation were given:

(i) In the subject Mathematics (GRAD) wait list rank 275 in Medium Bengali got appointment whereas wait list rank 217 was not even called. (Henceforth WL stands for wait list).

(ii) WL 253 in SC Male/Female category in Mathematics (Grad) got appointment and joined a school whereas higher rank holder being WL 226, WL 214, WL 250 and WL 207 in the same subjects and category was not called for counselling and they got no appointment.

(iii) Rank WL 64 in SC Female category in Subject History (Grad) got appointment

letter but rank WL 38, WL 47 and WL 55 in the same category did not get any call.

(iv) Rank WL 138 under Male/Female OBC-B in the subject Geography got recommendation whereas rank above WL 138 under same category did not get any call.

(v) Even one **non-listed** candidate, namely, Sumita Das got appointment in the subject Geography in Tapan Balika Vidyalaya (H.S.) whereas several waiting listed candidates did not receive any call letter.

(vi) Rank WL 194 in OBC-A Male/Female category and WL 123 in OBC-A Female category in subject Bengali (GRAD) got recommendation letter and joined the school but Rank WL 146 in OBC-A Male/Female and Rank WL 87 in OBC-A Female in the same subject and category got no call for counselling.

(vii) One **non-listed** candidate, namely, Jnui Das got appointment in one school, namely, Gujarpur Shibganj Bishalaxmi High School whereas several waiting listed candidates did not get any call letter.

(viii) Another **non-listed** candidate Md. Azad Ali Mirza got recommendation letter from the Commission in the subject Bengali whereas similar subject and category wait listed candidates did not get any call.

(ix) One Md. Golam Rabbani being rank holder WL 174 in OBC-A Male/Female category in subject English (GRAD) got appointment letter though in the same

category and subject WL 131 and WL 134 did not get any call for counselling.

(x) One Mou Sarkar being rank holder WL 168 in OBC-B Female category got appointment letter in subject English but higher rank holders in the same subjects and category being rank holder WL 65, WL 90, WL 141 and WL 154 did not receive any call letter for counselling.

(xi) One **non-listed** candidate, namely, Imam Momin got appointment letter in the subject English in a school whereas several waiting listed candidates did not get any appointment letters.

(xii) Another **non-listed** candidate Jayasri Sarkar got recommendation letter in the subject English whereas other WL candidates did not get any call letter.

(xiii) One Runa Laila being rank holder WL 58 in OBC-A Female category in subject English got appointment letter but higher rank holders being rank WL 50 and WL 53 in OBC-A Female category in same subject did not get any call letter for counselling.

(xiv) Another **non-listed** candidate Gurupada Gharai got appointment letter in the subject Life Science (GRAD) whereas several waiting listed candidates in the same subject did not get call letter for counselling.

(xv) Another **non-listed** candidate Md. Tazuddin Ahamed Shafil Imam got appointment letter in the subject Physical Science (Grad) whereas several waiting listed candidates in the same subject did not get call letter for counselling.

(xvi) Another **non-listed** candidate Arun Kumar Sinha got appointment letter in the subject Physical Science (Grad) whereas several waiting listed candidates in the same subject did not get call letter for counselling.

(xvii) Another **non-listed** candidate Dibyendu Samajdar got appointment letter in the subject Physical Science (Grad) whereas several waiting listed candidates did not get call letter for counselling.

Such allegations have not been denied by the Commission.

28. In this view of such illegal appointments what is coming into light is only tip of the iceberg and the objections raised by Mr. Dutta, being in the nature of technical objections that too after admission of his client as to inadvertent mistake (which is not accepted by this court).

29. While I was hearing the technical objections raised by Mr. Dutta not the legal principles but two lines of a poem in the collection named 'Naibedya' by Rabindranath Tagore came into my mind.

“...যেথা তুচ্ছ আচারের মরুবালুরাশি
বিচারের স্রোতঃপথ ফেলে নাই গ্রাসি...”

(Where technicalities have not gulped the course of justice). And I started thinking as to why the court of law has become the playground of fantastic law-knowing advocates who can make speech by referring

to thousands of fantastic legal principles, none of which is applicable in view of the corruption that is coming to the fore and fraud is being practiced upon a large number of educated and unemployed youth. I have not accepted the contentions of Mr. Dutta Learned Senior Advocated .

30. In reply to the objection of Mr. Dutta, Mr. Bikash Ranjan Bhattacharya, learned senior advocate appearing for the petitioners has submitted:

Now the names of some Government Officers have come into light from the said Government Order dated 01.11.2019 and naturally the Government is behaving in a steadfast matter for resisting the enquiry (not even an investigation) by one independent agency like C.B.I. He further submitted that in all the cases where this Court gave direction for enquiry by C.B.I. are covered by this Order dated 01.11.2019 hitherto unknown to the public in general and petitioners in particular and this scam in public employment cannot be continued. As such, this is a fit case to be investigated by C.B.I.

31. As the order of the Government has already been quoted above, I am not repeating the names of the highly placed persons with whom the Committee was constituted. Hence in this matter

also, I direct the C.B.I. enquiry, as the C.B.I. is an expert agency which is not under the control of State Government, in a scam where a Committee has been formed with the important officers of the State Government by the School Education Department. Therefore, I direct the Director, Central Bureau of Investigation to constitute a Committee immediately, headed by an officer not below the rank of Joint Director with officers not below the rank of D.I.G. to initiate the enquiry. It is expected that all the persons named in the said order of the Government including the 'competent authority' with whose concurrence the order was issued and any other person from whom CBI want to gather facts for inquiry of the matter should come under the umbrella of the enquiry. It is not that I do not have any confidence upon the police of this State. But the police is controlled by the State and in effect they are chained by orders ect. from the different quarters. Otherwise, I have the belief that the Kolkata Police or the West Bengal Police is fully capable to enquire into the matter.

32. For this reason, as C.B.I. is an agency outside the control of this State, I am directing the C.B.I. to hold this enquiry which has happened in this State wherein a Committee constituted by the

State of highly placed officials was acting and the tip of 'corruption-ice-berg' is found.

33. Unless the highly placed persons having huge influence had the hands in committing such scam in public employment, such illegality could not have happened. Such illegal appointees, who are sometimes below some deserving rank holders or sometimes not in the list even, which is unthinkable, have got public employment in schools where salaries are paid from public exchequer which could not have happened had there not been the interference and/or directions by the extremely influential persons.

34. C.B.I. shall also enquire whether there is any money trail in respect of such appointment. Admittedly, it appears from the aforesaid report of the Commission and answers given by one of its officers indicating the corruption at the instance of the convenor of the Committee that the appointed person's rank was below the first three petitioners and equal to the marks of the fourth petitioner.

35. This morning one startling fact has been placed before this court when Mr. Saha, who acted as Chairman-in-Charge and is the Assistant Secretary of the Commission for some time has placed one affirmed statement that the particular

respondent no.6 was not even called for counselling. Without any counselling, recommendation letter was issued in favour of the respondent no.6 which has been recorded in the order passed today at the very inception of this matter before I started dictating this order.

36. This court directs the C.B.I. to take steps immediately in respect of the five named persons in the order of the Government of West Bengal dated 01.11.2019 and others and further start enquiring the matter as extreme illegality is found which has irresistibly brought me to the question of corruption. Thus the C.B.I. has two functions:-

- i) take steps to know in respect of the five persons in the order of the Government of West Bengal dated 01.11.2019 and others felt necessary by CBI immediately and to file an interim report by fifteen days from date of service of a copy of the order before this court and
- ii) start enquiring the matter forthwith and to file an interim report as to the enquiry by one month from the date of starting enquiry. The report is to be filed before this court.

37. Mr. Samim ul Bari, learned advocate for the State has prayed for stay of operation of this order

on the ground that in a similar matter the appeal court has stayed C.B.I. enquiry yesterday. In reply to court's question, he has fairly submitted that in the said matter this Committee of five persons of highly placed Government Officials was not before this court or the appeal court- which throws a completely different light in the matter to be inquired. Considering the prayer for stay, I reject the prayer.

38. I expect that zero tolerance to corruption which is now a policy of State will be followed by all.

39. The personal appearances of all the persons whom I directed to appear personally in this matter are dispensed with until further orders.

40. This matter will appear in the list on 21st March, 2022 for the interim report in respect of the said five persons of the committee and the competent authority at whose direction the order was passed and thereafter on 20th April, 2022 for filing the interim report by C.B.I.

41. The petitioner is directed to serve a copy of this order upon C.B.I. immediately.

This matter is marked as heard-in-part.

(Abhijit Gangopadhyay, J.)