

**WEST BENGAL ADMINISTRATIVE TRIBUNAL  
BIKASH BHAVAN, SALT LAKE CITY  
K O L K A T A – 7 0 0 0 9 1**

*Present :-*

**The Hon'ble Justice Soumitra Pal,  
CHAIRMAN**

**-AND-**

**The Hon'ble Sayeed Ahmed Baba  
MEMBER ( A )**

**J U D G M E N T**

**-of-**

**Case No. OA- 430 of 2020**

**Akash Bhunia and 397 Others.....Applicants**

**-Versus-**

**The State of West Bengal & 4528 others....Respondents,**

**AND**

**Case No. OA- 479 of 2020**

**Suman Kar and 60 Others.....Applicants**

**-Versus-**

**The State of West Bengal & 7 others....Respondents**

**AND**

**Case No. OA- 210 of 2021**

**Sampad Mandal and 6 Others.....Applicants**

**-Versus-**

**The State of West Bengal & 6 others....Respondents**

**Judgment is delivered on 28<sup>th</sup> day of January, 2022**

**OA-430 of 2020 : Akash Bhunia and 397 Others –vs- The State of West Bengal  
and 4528 Others.**

For the 397 Applicants : Mr. Subir Sanyal,  
Mr. Dibyendu Chatterjee,  
Mrs. Jhuma Chakraborty,  
Mrs. Reshmi Ghosh,  
Mr. P. Majumder,  
Mr. Sagnik Roy Chowdhury,  
.....Advocates.

For the State Respondents : Mr. Goutam Pathak Banerjee,  
Mrs. Sunita Agarwal,  
..... Advocates.

For the Added 4521 Respondents : Mr. Kamalesh Bhattacharyya,  
Mr. Gourav Halder,  
.....Advocates.

**OA-479 of 2020 : Suman Kar and 60 Others –vs- The State of West Bengal and  
7 Others.**

For the Applicants : Mr. Gopal Das  
Mrs. Sonali Mitra  
Mr. Sagnik Roy Chowdhury,  
.....Advocates

For the State Respondents : Mr. Goutam Pathak Banerjee,  
.....Advocate.

**OA-210 of 2021 : Sampad Mandal and 6 Others –vs- The State of West Bengal  
and 6 Others.**

For the Applicants : Mr. Subir Sanyal,  
Mr. Dibyendu Chatterjee,  
Mrs. Jhuma Chakraborty,  
Mrs. Reshmi Ghosh,  
Mr. P. Majumder,  
Mr. Sagnik Roy Chowdhury,  
.....Advocates.

For the State Respondents : Mr. Goutam Pathak Banerjee,  
.....Advocate.

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1. As issues are similar, all matters were heard analogously and are disposed of by a common judgment.

2. For the sake of brevity and clarity, reference is made to the facts of the case being OA-430 of 2020 (Akash Bhunia and Others-Versus-The State of West Bengal and Others).

3. The application (Akash Bhunia and Others-Versus-The State of West Bengal and Others) was filed on 18<sup>th</sup> November, 2020. The applicants have prayed for certain reliefs which are as under :-

*“a) An order quashing the entire process of selection for recruitment to the post of Constables (male) in the West Bengal Police – 2019 of the declared vacancies and directing the respondents to commence the process of recruitment afresh maintaining the lack of transparency by publishing cut off marks of the Preliminary Written Test and the Final Written Test and the result of the respective candidates with breakup of marks.*

*b) An order directing the respondents to publish the result of all the provisionally selected candidates with breakup of their marks for Final Written Test and interview and also to publish category wise Merit List and also to publish the key answers with MCQ of the Final Merit List.*

*c) Such further and/or other order or orders and/or direction or directions as this Hon’ble Tribunal may deem fit and proper.”*

4. Prayer has also been made for granting interim order which is as under :-

*“An order restraining the respondents from giving any effect or further effect to and/or making any appointment of any of the provisionally selected candidates of the Merit List published on 15<sup>th</sup> October 2020 for the post of Constables (male) in the West Bengal Police – 2019 at least fortnight before publication of the result of all the provisionally selected candidates with the breakup of their marks for Final Written test and interview and also the category wise Merit List of all category and key answer with MCQ with the Website of the Board.”*

5. It appears that the West Bengal Police Recruitment Board ('Board' for short) had published a notification inviting applications for recruitment to 8419 vacancies to the post of Constables (male) in West Bengal Police 2019 as evident from annexure-A to the original application. The applicants filed their applications. The applicants were called upon to appear in the Preliminary Written Test. All of them succeeded in the said test. They were called for Physical Measurement Test and Physical Efficiency Test in which they appeared and came out successful. Thereafter, the respondents issued admit cards for final written test which was held on 16<sup>th</sup> February, 2020 in which the applicants appeared. According to the applicants, no result of the final written test was published by the Board and as a result, the applicants were not aware of the marks secured by them in the final written test. No qualifying / cut off marks was declared by the Board. Instead the Board published a notification in its website calling upon the applicants and / or candidates to take out print of their respective admit cards for interview by putting their roll numbers. The applicants after having obtained their respective admit cards for interview, came to know that they were eligible for interview as they got the necessary cut off marks. They participated in the interview which was held on and from 12<sup>th</sup> August, 2020 under different ranges of the Board. It has been alleged prior to the interview, on 5<sup>th</sup> August, 2020 some of the applicants got messages from the West Bengal Police regarding the constitution of the nine range recruitment boards for interview and the names of its members. Allegation is the names of the members of the interview board was disclosed prior to interview to their favourite candidates to enable them to get in touch with them and to get appointment which is unfair and leaves room for corrupt practice making the entire process for recruitment void. As the applicants were in dire need of employment, they did not have the sufficient courage to raise objection before the interview. All the applicants appeared before the nine range recruitment board for interview on their respective dates with the belief that their names would figure in the final merit list on the basis of their performance in the recruitment process and would be selected. However on 15<sup>th</sup> October, 2020 they were astonished to find that their names did not figure in the merit list which did not contain the details of breakup of marks in the final written examination, interview and the category of candidates. Allegation is no final merit list was published by the Board in its website. The Board, however, published a notice intimating that the final result has been uploaded on the website of the Board and the candidates were advised to search for the result in the website by keying in their application with a serial number and the

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date of birth. The list of provisionally selected candidates would also be on the notice board. The applicants visited the official website of the Board to know their individual marks. However they came to know only their individual total marks without any breakup of the marks obtained in the final written test and interview. As a result, none of the applicants could compare their marks with the marks of the selected candidates. They also could not find out the merit list of the provisionally selected candidates in the website of the Board. According to the applicants, there was clear violation of the reservation policy as reserved candidates were selected in the unreserved category without disclosing the particulars and details with regard to the merit of the candidate which revealed that there was lack of transparency in the process of public recruitment. It has been alleged that Suman Pati – the applicant no. 9, came to know that Diptimoy Ghosh – the private respondent no. 6, belonging to unreserved category did not have the minimum height and ranked against serial no. 2831 in the unreserved category, had been selected. Similar allegation has been made against Tutun Halder – the private respondent no. 7. It may be noted while relying on the original application, the learned advocate for the applicants did not place reliance on paragraph 5(v) as the statements are incorrect. It has been alleged that no categorywise merit list with breakup of marks of the provisionally selected candidates was published by the Board which revealed that there was nepotism and favouritism in the process of selection as well as violation of the reservation policy.

6. During hearing, on a query, it was found that pursuant to the advertisement for recruitment, 4,42,218 applicants had applied for the posts. 3,22,275 applicants appeared in the Preliminary Written Test and 86,738 were successful. Thereafter, 63,820 appeared in the Physical Measurement Test and Physical Efficiency Test of which 28,529 were successful. In the final written test 28,265 candidates appeared and 12,786 passed the examination and 12,694 appeared in the interview. Thereafter, final selection was made with regard to 8419 vacancies.

7. The original application was moved on 18<sup>th</sup> November, 2020 when, after hearing the learned advocates for the applicants and the State respondents, directions were issued for filing of reply and rejoinder and the matter was directed to appear under the heading “Reply, Rejoinder and Objection” on 18<sup>th</sup> January, 2021. Regarding the prayer for interim order, the direction was as under :-

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*“So far the prayer for interim order is concerned as the applicants had appeared in the interview on 12<sup>th</sup> August, 2020, though it has been alleged that the names of the members of the Recruitment Board has been disclosed and as it is submitted by Mr. Banerjee on instruction from the officers present in Tribunal that Washim Sk., –the private respondent no. 8, has not been selected, let there be an interim order to the extent the appointments made will abide by the result of the application.”*

8. Aggrieved the applicants filed writ petition being WPST-101 of 2020 : Akash Bhunia and Others –Vs- The State of West Bengal and Others before the High Court. The writ petition was taken up on 22<sup>nd</sup> December, 2020 and an order was passed, the relevant portion of which is as under :-

*“Some preliminary anomalies appear in the selection process, but it is not necessary to immediately indicate whether they go to the root of the matter or amount to material irregularity that tends to illegality. There are allegations that no candidate could discover the marks of any other and the website only revealed the marks obtained by such candidate. The petitioners claim that in the absence of a person being able to view the marks of others and his relative position in the field, the exercise would be meaningless. There are other allegations that the reservation policy, which ought to have guided the selection process, may not have been followed. Some material is produced to reveal that the cast or like status of the candidates were not indicated in any list and the hundred point roster may not have been followed at all.*

*In particular, the petitioners suggest that once a recruitment process is completed without any fetters, it is difficult to imagine that the process would be undone, irrespective of the outcome in any pending challenge.*

*There is sufficient basis to the petitioners’ grievance. When serious allegations questioning the very propriety of a process is brought before an adjudicating authority, some prima facie assessment is called for. It is possible that such prima facie assessment may reveal nothing untoward. However, the exercise is unavoidable.*

*Since the order impugned herein does not delve into any of the aspects*

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*highlighted in the petition before it questioning the selection process undertaken by the State, such order cannot be sustained. At the same time, the fact-finding exercise that the tribunal is required to undertake cannot be usurped in this extraordinary jurisdiction under Article 226 of the Constitution. Indeed, the very purpose of carving out service matters and parking them before a specialised tribunal was to ensure that the fact-finding exercise would not be undertaken by the High Court and the High Court in exercise of its authority under Article 226 of the Constitution would exercise the power of judicial review. Further, the fact-finding exercise undertaken at this stage may prejudice the party against whom judgment is rendered and the scope of judicial review could be narrowed in such a situation.*

*In the circumstances, it is deemed necessary, fit and proper and in the interest of justice for the matter to be remanded to the tribunal. Since the preliminary fact-finding exercise was not undertaken and considerable time has elapsed, the State is directed to file its affidavit before the tribunal at an early date.*

*Leave is given to the petitioners to file a supplementary affidavit before the tribunal by December 24, 2020. Affidavit-in-opposition to the petition and the supplementary affidavit be filed by January 4, 2021; reply thereto, if any, be filed by January 11, 2021 before the tribunal.*

*Considering the seriousness of the matter, it would be appreciated if the tribunal makes every effort to ensure that the matter is disposed of by the end of January, 2021 itself, or so soon thereafter as may be convenient to the tribunal.*

*The observations here are tentative and will not bind the tribunal or prejudice either side. It will be open to the tribunal to take an appropriate view, uninfluenced by whatever has been recorded above.*

*WPST 101 of 2020 is disposed of, but without any order as to costs.”*

9. After issuing notification dated 24<sup>th</sup> December, 2020 issued in exercise of the powers conferred under sub section (6) of section 5 of the Administrative Tribunals Act, 1985, the matter was taken up by the single Bench of the Tribunal on 18<sup>th</sup> January, 2021 and an order was passed, the relevant portion of which is as under :-

*“I find the affidavits have been filed and are on record which is not disputed by the learned advocates for the parties. The High Court had directed to dispose of the matter by the end of January, 2021 or so soon thereafter as may be convenient to the Tribunal. Since at present Division Bench is not available in the Tribunal and questions of law and fact are involved, in my view, the matter be taken up by the Division Bench. Therefore, no further order is passed at this stage.*

*Let the matter appear under the heading “Reply/Rejoinder and Objection” on 15<sup>th</sup> February, 2021.”*

**10.** Aggrieved the applicants moved a writ petition being WPST 6 of 2021 : Akash Bhunia and Others –Vs- The State of West Bengal and Others and after hearing the learned advocates for the parties it was disposed of on 27<sup>th</sup> January, 2021 by passing an order, the relevant portion of which is as under :-

*“Under this section, in our opinion, the Chairman or any other Member authorised by the Chairman in this behalf can function a single-member bench to hear out any matter of any class which includes the original application. We are further of the opinion that the petitioners should not suffer because of the prevailing situation in the tribunal.*

*We request the Hon’ble Chairman of the tribunal to exercise his powers under this section and constitute a bench so that the original application filed by the applicants before the tribunal is heard out, not later than three months of communication of this order.*

*Let this order be communicated by the Registrar General of this court to the Hon’ble Chairman, West Bengal State Administrative Tribunal immediately.*

*We also direct that for a period of two weeks from date, the respondents shall not take any further steps with regard to the notified appointments in question in relation to the posts of Constables (Male) in West Bengal Police – 2019 and also shall not take any further action with regard to the notification without obtaining express leave of the tribunal.*



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*WP.ST No. 6 of 2021 is disposed of accordingly.”*

11. Thereafter, the matter came up for hearing before the single Bench. On 19<sup>th</sup> March, 2021 after hearing the learned advocates for the parties, an order was passed, the relevant portion of which is as under :-

*“Keeping in mind the memo dated 17<sup>th</sup> March, 2021 and the submission made by the learned advocates for the parties, the West Bengal Police Recruitment Board, - the respondent no. 4 is directed to upload the marks obtained by all the candidates in the written test and interview in the selection process on the website of the Commission within ten days from the date of communication of this order downloaded from the internet/website.*

*Let the matter appear under the heading “For Hearing” on 12<sup>th</sup> April, 2021.*

*Let there be an interim order directing each of the respondents not to take any action regarding the filing up of the vacancies on the basis of recommendation made by the Public Service Commission, West Bengal till 19<sup>th</sup> April, 2021”.*

12. It appears from the order dated 19<sup>th</sup> April, 2021 passed by the Tribunal that pursuant to the direction by the Tribunal, the Board had published the results, the relevant portion of the order is as under :-

*“Mr. D. Chatterjee, learned advocate for the applicant prays for extension of the interim order which is expiring today.*

*Mr. G.P. Banerjee, learned advocate for the Police Recruitment Board, West Bengal submits that as directed by the Tribunal, the Board has published the result of the written test, viva voice or interview and the final merit list with break ups. Let the report filed be kept on record.*

*Let the matter appear along with MA 29 of 2021 under the heading “Hearing” on 25<sup>th</sup> August, 2021. Interim order already granted is extended till 10<sup>th</sup> September, 2021 or until further order whichever is earlier.....”*

13. On 6<sup>th</sup> August, 2021, an application for addition of party, being MA 57 of 2021, was filed in connection with OA 430 of 2020 by the candidates who have

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been selected and recommended for appointment on the ground that they have acquired a substantive right to be appointed. Directions were issued to file reply and rejoinder to the application for addition of parties and the matter was directed to appear on 13<sup>th</sup> August, 2021 under the heading “Admission Hearing”. By order dated 7<sup>th</sup> September, 2021 the application for addition of parties was allowed. By an order the original application was directed to appear for hearing on 13<sup>th</sup> September, 2021. It is to be noted the Division Bench was constituted on 13<sup>th</sup> September, 2021 and thereafter the matter was heard by the Division Bench.

14. It is to be noted that the original applicants had filed a supplementary affidavit on 24<sup>th</sup> December, 2020 to bring certain facts, documents and subsequent events on record in terms of the direction dated 22<sup>nd</sup> December, 2020 passed in WPST 101 of 2020 by the High Court. In the said first supplementary affidavit, it was stated that no result for final written test had been published by the Police Recruitment Board at any stage and as a result the applicants were not aware of the marks secured by them and other candidates in the final written test and no qualifying /cut off marks after the final written test was declared by the Board. It has been alleged that at least ninety-seven candidates were favoured by the Recruitment Board by empanelling them in the merit list though they failed to secure minimum qualifying height of 167 cms. It has been alleged that the State respondents did not provide information pursuant to the application under the Right to Information Act, 2005. Allegation is the panel containing the list of successful candidates has been prepared district wise instead of State wise, which is illegal, arbitrary and discriminatory and violative of Article 14 of the Constitution of India.

15. Thereafter the original applicants had filed a second supplementary affidavit on 20<sup>th</sup> April, 2021, wherein the applicants have alleged that they have found favouritism shown to certain candidates by the Board. Submission was 401 candidates belonging to reserved category - Scheduled Caste, Scheduled Tribe, OBC-A and OBC-B, having availed themselves of the benefit of age relaxation, have been kept in the merit list of the unreserved category and recommended, which is illegal. It has been stated in the said affidavit that candidates in the reserved category having availed the benefits of the reserved category once they come within the zone of consideration of selection, cannot be appointed in the unreserved vacancy. It has also been alleged that it transpired that the Board favoured the candidates in the reserved category by allotting them increased and /

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or adjustable marks in the interview intentionally so that they could be appointed by superseding the meritorious candidates. Allegation is sixty-seven candidates, whose names appeared in the merit list, are not conversant in Bengali language. Citing instances allegations are some candidates have been favoured by allotting them adjustable marks in interview compared to the marks obtained by the general candidates so that they can get a chance to be recommended. It has been alleged that it appears from the merit list that a majority of the candidates got marks in fraction which is not permissible in the eye of law.

**16.** Be it also mentioned that replies and rejoinders to the first supplementary affidavit and second supplementary affidavit were filed and are on record.

**17.** Mr. Subir Sanyal, learned advocate appearing on behalf of the applicants, relying on the Original Application and the first and second supplementary affidavits submitted that pursuant to the order dated 19<sup>th</sup> March, 2021 marks of the candidates in the written test and interview were published. It has been demonstrated in paragraph 14 of the first supplementary affidavit that there has been intermingling in the allotment of marks. Though Abhijit Swarnakar, a candidate has been shown in the OBC category, the respondents in the reply could not demonstrate how he could be shown in the UR category. Candidates who availed themselves of the benefits in the reservation category have been placed in the unreserved category. It has also not been spelt out how many and on what basis empanelled candidates have been converted from OBC to UR category. Moreover, in the general category there is no basis for cut off marks. SC, ST, OBC-A and OBC-B candidates have been recommended by reducing the number of candidates from the general category candidates. Regarding fixation of cut off marks it was submitted that there is no basis or there is wrong fixation of cut off marks in different categories. Fixation of cut off marks was not intimated before the written test and interview. Referring to the second supplementary affidavit, particularly paragraph 5A thereof, it was submitted that a candidate is entitled to concession in his or in the same category but not in the other categories. Under the law laid down by the Supreme Court the State authorities are not permitted to encroach upon the vacancies of unreserved category. Since candidates have been empanelled in a district-wise manner, it was at variance with the advertisement. Regarding allotment of marks it was submitted that the applicants who got lesser marks in the written test secured more marks in the interview so that an applicant

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could be placed in the higher level. Thus, the marks were manipulated to facilitate recommending undeserving candidates and for subsequent empanelment. Reliance has been placed on the judgements in *Krishan Yadav v. State of Haryana* : (1994) 4 SCC 165 ; in *K. Manjusree v. State of Andhra Pradesh* : (2008) 3 SCC 512 and in *Niravkumar Dilipbhai Makwana v. Gujarat Public Service Commission* : (2019) 7 SCC 383. Mr. Sanyal has filed a note on the “Points of law and list of judgments for the applicants” which is on record.

18. Mr. Gautam Pathak Banerjee, learned advocate appearing on behalf of the Board, relying on the replies filed submitted that the original applicants belonging to different categories have come together and have filed this Original Application which is contrary to Section 19 of the Act and thus the application is not maintainable. Though the applicants have prayed for quashing the entire process of selection for recruitment to the post of Constable (Male) in the West Bengal Police 2019, however, as all along the applicants participated in the selection process without protest and as they cannot approbate and reprobate, the application be dismissed. As total vacancies were 8419 and as before interim order was passed by the High Court 1871 persons have been appointed and have joined in their respective posts and none have been made parties, the application is hit by the principles of non-joinder of parties. The applicants having participated in the selection process having full knowledge of the stipulations in the advertisement, cannot now go back and challenge the said selection process. With regard to grant of marks it was submitted that interviews were conducted at 34 venues across the State of West Bengal having different sets of members. As members were changed by rotation, the question of nepotism does not arise. Such allegation is based on assumption and not on evidence. It is a mere conjecture that in the interview lesser marks have been given to many candidates. The allegations against the members are unfounded as there is no whisper of personal bias against the members of the interview Board who have not been made party respondents.

19. With regard to the prayers it was submitted since the results of the final written test and interview have been published pursuant to the direction of the Tribunal, prayer (b) of the Original Application has already been granted in favour of the applicants. So far as prayer (a) is concerned, since the applicants had participated in every stage of the selection process, the question of quashing the entire process of selection is without any foundation. So far the allegation

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regarding publication of district-wise panel is concerned, it was submitted that it was for the convenience of the candidates and as the figures tally with the total vacancies there is no room for controversy. Moreover, allegations have been made against candidates who were not parties to the dispute. Reliance has been placed on the judgements in Lila Dhar v. State of Rajasthan: 1981(3) SLR 56 ; in Dalpat Abasaheb Solunke v. B.S. Mahajan : AIR 1990 SC 434 ; in Madan Lal v. State of J & K : (1995) 3 SCC 486 ; in Sadananda Halo v. Momtaz Ali Sheikh : (2008) 4 SCC 619 ; in Jitendra Kumar Singh v. State of Uttar Pradesh : (2010) 3 SCC 119 ; in Ashok Kumar v. State of Bihar : (2017) 4 SCC 357 and in Saurav Yadav v. State of Uttar Pradesh : (2021) 4 SCC 542.

20. Mr.Kamalesh Bhattacharya, learned advocate for the private respondents adopting the submissions on behalf of the Board / State respondents submitted that the Original Application does not contain any material fact. Rather facts have been supplanted in the supplementary affidavits. It was submitted that on 27<sup>th</sup> November, 2020, 1871 candidates had joined their respective posts. Though 2342 candidates have received letters of appointment, they could not join due to the interim order passed by the High Court. Though the original applicants belong to various caste groups, they have joined for a common cause of action which is impermissible under Section 19 of the Act. Further the Original Application affirmed on 18<sup>th</sup> November, 2020 is not maintainable as the entire selection process has been sought to be quashed without making 1871 candidates who have joined in their posts. So far as the supplementary affidavits are concerned, the scope of the original application is sought to be enlarged which is not permissible in law. Submission was more than 4,42,000 candidates had applied for the vacancies of which only 12,694 were called for interview. Thus, more than four lakh candidates, who could not ultimately qualify, have not made any objection and / or complaint against the entire recruitment process. Had there been lack of transparency or had the Board resorted to any unfair practice, at least some of them would have complained.

21. So far as the fixation of qualifying marks and the cut-off mark are concerned, it was submitted that fixation was made in accordance with the advertisement and all had participated without any protest. Though allegations have been made against the interview Board, however, as no specific case of nepotism has been made out, the same cannot stand scrutiny as the members have

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not been made parties. Reliance has been placed on the following judgements in Jitendra Kumar Singh v. State of Uttar Pradesh : (2010) 3 SCC 119 ; Ranjan Kumar v. State of Bihar : (2014) 16 SCC 187 and Saurav Yadav v. State of Uttar Pradesh : (2021) 4 SCC 542. It is to be noted that the private respondents have not filed any reply to the Original application and to the supplementary affidavits.

22. There are several issues which require consideration. The first and foremost whether disclosure of names of the members of the interview Board prior to interview amounted to lack of transparency and nepotism. Though it was argued on behalf of the applicant that it had resulted in breach of transparency, however on a perusal of the petition we find that allegations made against the members are general in nature and flimsy as they are not based on facts. There is no specific pleadings that due to such disclosure candidates, whose names have not been disclosed in the petition, have been favoured with recommendation and appointment. Though allegations have been made against the members of the interview Board, their names have not been disclosed. In *Sadananda Halo (supra)* where the recruitment of the post of Constable was challenged the Supreme Court held there was no requirement of testing the administrative or management capacity of the candidates and / or any other quality which is required for the higher post. All that is necessary is to see their physical fitness in terms of physical endurance, their smartness in appearance and intelligence level test are required for the post of Constable including their general knowledge. In the case in hand the applicants did not specifically plead any fault of the Board causing prejudice to them apart from the general allegation of favouritism without sighting any specific instance.

23. Another issue is that 97 candidates, in spite of having failed in the Physical Measurement Test and Physical Efficiency Test have been recommended. In this regard reference was made to Annexure-L of the first supplementary affidavit. We find that the allegation is without foundation as the said annexure does not speak about the physical characteristics of a candidate.

24. It has further been pleaded that recommendations have been made in the district wise manner when the advertisement speaks of 8419 vacancies throughout the State of West Bengal. On behalf of the Board it was submitted that for the convenience of the candidates such measure was taken. In our view as the ultimate

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recommendation matches with the total number of vacancies, the argument on behalf of the applicants cannot be accepted.

25. There is another issue relating to fixation of cut off marks. It was strenuously submitted on behalf of the applicant that the cut off marks should have been fixed prior to written test and interview. Since in the instant recruitment process the number of candidates participating in the selection process was very high, in our view prefixation of cut off marks would have resulted in anomalies. We accept the submission on behalf of the Board / State respondents that it would not been feasible if cut off marks was fixed too high or too low then Board / State might either have faced a problem of excess candidates or paucity of candidates and for that reason the fixation of cut off marks after the results were available with the Board was a sound proposition and would not have caused prejudice to any of the applicants. The contention on behalf of the Board that there cannot be any prefixed minimum marks to qualify in the examination to be eligible for interview is reasonable. Such fixation of cut off marks especially, when lakhs of candidates were appearing, in our view is to be left to the discretion of the Board / State respondents. We are unable to accept the submission of the learned counsel for the applicant that fixation of cut off marks was wholly arbitrary and is opposed to the principle of equality enshrined under Article 14 of the Constitution of India as the power of the Board to fix cut off marks is neither denied nor disputed.

26. Allegation has been made on behalf of the applicants that 67 candidates who are not conversant with the Bengali language have been recommended. In this regard it is appropriate to refer to pages 29 to 32 of the second supplementary affidavit filed by the applicants. In our view mere names and surnames of candidates cannot be the basis of attack for not having knowledge of Bengali language. Moreover the applicants have not disclosed their basis of information regarding candidates alleged to be not conversant with the Bengali language.

27. It has also been alleged since majority of the candidates have been awarded marks in the interview in fraction figure, such as 12.33, 12.17, 9.17, 8.92,10.67,8.83,5.33, which is impermissible in the eye of law, the selection process and the recommendation made are arbitrary and illegal. In our view, since the applicants have not brought to light any law which prohibits award of marks on a fractional basis, particularly in a selection process where lakhs of candidates are

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competing, such submission cannot be accepted. The facts in the judgments in Leela Dhar (supra), Madan Lal (supra) and Manjushree (supra) related to judicial service which is totally different from the facts of the present case as requirements therein cannot be the criteria for appointment of Constables. Moreover it is reiterated that therein only a few hundred applicants were competing for the posts whereas herein lakhs of candidates had participated in the selection process.

28. The question of quashing the entire selection process, as prayed for, does not arise as the applicants had participated in the said selection process without any protest at any stage whatsoever.

29. An important issue-whether selection and recommendation of the candidates belonging to reserved categories – Scheduled Caste, Scheduled Tribe, Other Backward Classes-A and B against unreserved vacancies, in spite of availing benefits of age relaxation, height, is permissible or not in the light of the provisions contained in West Bengal Scheduled Castes and Scheduled Tribes (Reservation of vacancies in Services and Posts) Act, 1976 ('1976 Act' in short) has been raised. In this regard it is appropriate to refer to section 4(2) of the 1976 Act which is as under:

*“(2) The member of any Scheduled Caste or Scheduled Tribe candidate qualifying on merit for appointment to any unreserved vacancy in a service or post in any establishment to be filled up by direct recruitment shall not be deducted from the quota reserved in such service or post for such candidate under sub-section (1).”(Emphasis supplied)*

30. Section 5 (a) and (b) of the West Bengal Backward Classes (Other than Scheduled Castes and Scheduled Tribes) (Reservation of Vacancies in Services and Posts) Act, 2012 (for short '2012 Act') says as follows:-

*“(a) Subject to the other provisions of this Act, ten per cent of the vacancies shall be reserved for candidates belonging to the Other Backward Classes denoted as “Other Backward Classes Category A” category and seven per cent of the vacancies shall be reserved for candidates belonging to the “Other Backward Classes B” category of the Other Backward Classes in the manner set out in Schedule III.*



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(b) *the members of the Other Backward Classes qualifying on merit in an open competition on the same standard as of the unreserved candidates for appointment to any unreserved post in a service or post in an establishment to be filled up by direct recruitment shall not be adjusted against the quota reserved in such service or post for such candidate under sub-section (a)."*

31. While dealing with the issue it is appropriate to refer to the eligibility criteria as set out in the advertisement which is as follows:-

3. "Eligibility.

*b. Age:- The applicant must not be less than 18 (eighteen) years old and must not be more than 27 (twenty seven) years old as on 01/01/2019. The Upper-age limit shall be relaxed for the SC/ST applicants of West Bengal only by 05 (five) years and OBC applicants of West Bengal only by 03 (three) years. The upper age limit is also relaxable for NVF and Home Guards Personnel (serving in West Bengal Police only) as per existing Government Rules. However Age relaxation is NOT available to Civic Volunteers."*

32. Perusing the statutory provisions as noted hereinbefore, it is evident that the members of the Backward classes- qualifying on merit in an open competition on the "*same standard*" as of unreserved candidates for appointment to any unreserved service or post in an establishment shall not be adjusted against the quota in such service or post.

33. It is to be noted that though in the 1976 Act the words "*same standard*" are missing, the scheme for reservation and migration of the reserved categories in 1976 Act and 2012 Act are similar. There is no doubt that both under the 1976 Act and under the 2012 Act, candidates belonging to Scheduled Caste, Scheduled Tribe, Other Backward Classes-A and B cannot be placed under the unreserved category, if they have availed the benefit of age and other relaxations. To put it in another way, if a candidate avails himself of age relaxation, he violates the parameter of "*same standard*" as of the unreserved candidate.

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34. During hearing no specific provision under the 1976 Act has been shown on behalf of the Board / State respondents which allows the SC, ST candidates, despite having availed the benefits of relaxation of age, can be placed under the unreserved category.

35. In the case of Jitendra Kumar Singh versus State of Uttar Pradesh reported in (2010)3 SCC 119, the Supreme Court of India has *inter alia* decided the issue as to whether relaxation in age and fee would deprive and outsource him from competing against an unreserved seat in an open competition with general candidates in the context of recruitment process in the posts of Sub Inspectors in Civil Police and Platoon Commanders in Uttar Pradesh in the light of U.P. Public Services (Reservation for Scheduled Castes and Scheduled Tribes) Act, 1994.

36. In Jitendra Kumar Singh (supra), the Supreme Court has emphasized on various constitutional provisions including Article 16 (4) of the Constitution of India. The relevant part of the said judgement is set out hereinbelow for adjudication of the present case:-

*“Section 8 of the Act of 1994 reads as under:-*

*"8. Concession and relaxation- (1) The State Government may, in favour of the categories of persons mentioned in sub-section (1) of Section 3, by order, grant such concessions in respect of fees for any competitive examination or interview and relaxation in upper age limit, as it may consider necessary.*

*(2) The Government orders in force on the date of commencement of this Act, in respect of concessions and relaxations, including concession in fees for any competitive examination or interview and relaxation in upper age limit and those relative to reservation in direct recruitment and promotion, in favour of categories of persons referred to in Sub-section (1), which are not inconsistent with the provisions of this Act, shall continue to be applicable till they are modified or revoked, as the case may be."*

*51. Schedule II gives a list of category of persons to whom reservation under Section 3 (1) would not be available, as they fall within the category of persons commonly known as "creamy layer". A perusal of Section 3 (1) would show that it*

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*provides for reservation in favour of the categories mentioned therein at the stage of direct recruitment. The controversy between the parties in these appeals is limited to sub-section (6) of Section 3 and Section 8 of the 1994 Act. It was strenuously argued by Mr.Rao and Dr. Rajeev Dhawan that Section 3 (6) of the Act of 1994 does not permit the reserved category candidates to be adjusted against general category vacancies who had applied as reserved category candidate. In the alternative, learned counsel had submitted that at least such reserved category candidate who had appeared availing relaxation of age available to reserved category candidates cannot be said to have competed at par in Open Competition with General category candidates, and therefore, cannot be adjusted against the vacancies meant for General Category Candidates. We are of the considered opinion that the concessions falling within Section 8 of the Act of 1994 cannot be said to be relaxations in the standard prescribed for qualifying in the written examination. Section 8 clearly provides that the State Government may provide for concessions in respect of fees in the competitive examination or interview and relaxation in upper age limit. Soon after the enforcement of the 1994 Act the Government issued instructions dated 25.03.1994 on the subject of reservation for Scheduled Caste, Scheduled Tribe and other backward groups in the Uttar Pradesh Public Services. These instructions, inter alia, provide as under:-*

*"4. If any person belonging to reserved categories is selected on the basis of merits in open competition along with general candidates, then he will not be adjusted towards reserved category, that is, he shall be deemed to have been adjusted against the unreserved vacancies. It shall be immaterial that he has availed any facility or relaxation (like relaxation in age limit) available to reserved category."*

*52. From the above it becomes quite apparent that the relaxation in age limit is merely to enable the reserved category candidate to compete with the general category candidate, all other things being equal. The State has not treated the relaxation in age and fee as relaxation in the standard for selection, based on the merit of the candidate in the selection test i.e. Main Written Test followed by Interview. Therefore, such relaxations cannot deprive a reserved category candidate of the right to be considered as a general category candidate on the basis of merit in the competitive examination. Sub-section (2) of Section 8 further provides that Government Orders in force on the commencement of the Act in respect of the*

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*concessions and relaxations including relaxation in upper age limit which are not inconsistent with the Act continue to be applicable till they are modified or revoked.”*

37. On a plain reading of the aforesaid judgment, it clearly transpires the distinguishable factual aspects where the State of Uttar Pradesh has issued a Government Order thereby relaxation of age has no role to play in allowing the reserved candidates to compete in the unreserved category on the basis of merit. As we discussed above, in this State, there is no such policy decision to make the reserved candidates having availed age relaxation eligible in securing their place under the unreserved quota. The aforesaid view has been accepted by the Supreme Court in the case of Niravkumar Dilipbhai Makwana (supra).

38. In the case of Niravkumar Dilipbhai Makwana (supra) the Supreme Court has held as follows:

*“26. Now, let us consider the judgment in Jitendra Kumar Singh (supra). In this case, this Court was considering the interpretation of Sub-section (6) of Section 3 of U.P. Public Services (Reservation for Scheduled Castes, Scheduled Tribes and Other Backward Classes) Act, 1994 (for short "1994 Act") and the Government Instructions dated 25.03.1994. Sub- section (6) of Section 3 of this Act provided for reservation in favour of Scheduled Castes, Scheduled Tribes and other Backward Classes which is as under:*

*"(6) If a person belonging to any categories mentioned in sub-section (1) gets selected on the basis of merit in an open competition with general candidates, he shall not be adjusted against the vacancies reserved for such category under sub-section (1)."*

*7. The State of U.P. issued Instructions dated 25.03.1994 on the subject of reservation for Scheduled Castes, Scheduled Tribes and Other Backward Groups in the Uttar Pradesh Public Services. Last line of these instructions is as under:- "It shall be immaterial that he has availed any facility or relaxation (like relaxation in age- limit) available to reserved category."*

28. On consideration of sub-section (3) of Section 6 of the 1994 Act and the Instructions dated 25.03.1994, this Court held that grant of age relaxation to a

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*reserved category candidate does not militate against him as general category candidate if he has obtained more marks than any general category candidates. This judgment was based on the statutory interpretation of 1994 Act and the Instructions dated 25.03.1994 which is entirely different from the statutory scheme under consideration in the instant appeal. Hence, the principle laid down in Jitendra Kumar Singh (supra) has no application to the facts of the present case.”*

39. From the facts in the judgement of Jitendra Kumar Singh (supra), it is evident that the State of U.P had issued instructions on 25<sup>th</sup> March, 1994 on the subject of reservation of SC, ST and OBCs in the UP public services. The last line of the instructions is as under *"It shall be immaterial that he has availed any facility or relaxation (like relaxation in age limit) available to reserved category."* In the backdrop of such policy decision of the State of UP, the Supreme Court held that the grant of age relaxation is within exclusive domain of the State.

40. In this regard, it is noteworthy that the Supreme Court, in no uncertain terms has upheld the discretion of the State Government to lay down a policy of concession, exemption, preference for suitable accommodation of the reserved quota candidates in the direct recruitment of the public service as evident from the judgement in Niravkumar Dilipbhai Makwana (supra) wherein it has been held:-

*“Article 16(4) of the Constitution is an enabling provision empowering the State to make any provision or reservation of appointments or posts in favour of any backward class of citizens which in the opinion of the State is not adequately represented in the service under the State. It is purely a matter of discretion of the State Government to formulate a policy for concession, exemption, preference or relaxation either conditionally or unconditionally in favour of the backward classes of citizens. The reservation being the enabling provision, the manner and the extent to which reservation is provided has to be spelled out from the orders issued by the Government from time to time”.*

41. Therefore, the prerogative of the State to make any provision for reservation for appointment or posts in favour of backward classes is not in dispute. However in course of hearing the Board or the State respondents did not show any such circular, notification, instruction reflecting the State policy akin to the instruction of the State of Uttar Pradesh which empowers the candidates belonging

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to Scheduled Caste, Scheduled Tribe, Other Backward Classes-A and B categories, who can secure his position on merit under the unreserved category in spite of availing the benefit of age relaxation. In the absence of such policy, it is impermissible to allow under the 1976 Act SC and ST candidates, having availed the benefits of age relaxation to secure their positions in the merit list under the unreserved categories.

42. In Sourav Yadav (supra) the Supreme Court has dealt with the methodology in placing the candidates entitled to vertical reservation within the horizontal reservation in the recruitment to the post of Constables in Uttar Pradesh. Therein the Supreme Court has approved the methodology applied by the High Courts of Rajasthan, Bombay, Uttarakhand and Gujarat whereas the view of the High Courts of Allahabad and Madhya Pradesh has been rejected. In the said judgement the Supreme Court also upheld the principles as laid down in the cases of Jitendra Kumar Singh (supra) and Deepa E.V. (supra) keeping in mind the state policies of the concerned states in terms of Article 16 (4) of the Constitution of India.

43. In the present case, the dispute relates to placement of the candidates belonging to reserved categories having availed relaxation of age in the unreserved category i.e. the dispute of the placement within vertical or social reservation. Therefore, the principle laid down in Sourav Yadav (supra) is in no manner applicable in the present case.

44. It is pertinent to mention that even if the words “*same standard*” have not been mentioned in Section 4 (2) of the 1976 Act, it does not make any difference or to grant concession in allowing the reserved candidates, having availed the benefit of age relaxation, to be placed under the unreserved category. There cannot be any discrimination between the candidates belonging to the reserved categories under the 1976 Act and 2012 Act within the sphere of vertical or social reservation. The words “*same standard*” demonstrate equality among the candidates similarly situated who are to be placed only and only on merit under all categories. Therefore, we find non-compliance of the Act and principle of law in placing the 401 reserved category candidates, having availed age relaxation in the UR category, is impermissible in law.

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45. In the background of the aforesaid legal position it is appropriate to consider the statements in the Original application, supplementary affidavits, the replies and the rejoinder.

46. In the paragraph 5 (t) of the Original application it has been stated that *“there has been a clear violation of the reservation policy in as much as candidate applied for OBC-B Category has been selected in the unreserved category without disclosing the particulars of the details in regard to the merit of the candidates. This act also points out the lack of maintenance of transparency in the process of public recruitment.”*

47. The said paragraph has been dealt with in paragraph 19 of the reply filed by the State which is as under:-

*“19. With reference to paragraph 5(t) of the original application, I deny each and every allegation and dispute the correctness thereof save and except what are matters of record.*

*It is reiterated that categorywise merit list was prepared by the respondent Board but not published since the Rules does not require so. Since such publication is not provided in the Recruitment Rules, non-publication of the categorywise merit list does not result in lack of transparency in the public recruitment process as alleged or at all.”*

48. Paragraph 9(a) of the second supplementary affidavit is as under:

*“9 (a) Candidates belonging to Reserved category as Scheduled Caste, Schedule Tribes, OBC-A, OBC-B and different categories availed the benefit of age relaxation and inspite of availing such benefit of relaxation they have been kept in the Merit List of Unreserved category and recommended against unreserved vacancies illegally, arbitrarily and in a mala fide way.”* A chart showing such illegalities is reproduced below.....” and a *“List of 402 candidates recommended against UR vacancies”* have been set out.

49. Paragraph 5 of the reply deals with paragraphs 9 (a) to 9 (d) of the second supplementary affidavit which is as under:

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*“That with reference to the statements made in paragraph nos. 9 (a) to 9(d) of the said supplementary affidavit, the state respondents strongly deny and dispute everything contained therein save and except what are matters of record. The State respondents submits the following:*

*(a) It is clearly stated under clause 4(c) of The West Bengal Scheduled Castes and the Scheduled Tribes (Reservation of vacancies in Services and Posts) Act, 1976 that “the members of Scheduled Castes and the Scheduled Tribes shall be entitled to a concession of five years over the prescribed maximum age limit for appointment to any service or post.”*

*Apart from the above the members of Other Backward Classes shall be entitled to a concession of three years over the prescribed maximum age limit for appointment to any service or post vide Memorandum No. 378-F dated 10.01.1997 of Principal Secretary to the Government of West Bengal. Hence relaxation of age is entitlement for the members of reserved category candidates for appointment.*

*It is clearly stated under clause 4(2) of The West Bengal Scheduled Castes and the Scheduled Tribes (Reservation of vacancies in Services and Posts) Act, 1976 that “the member of any Scheduled Caste and the Scheduled Tribe candidate qualifying on merit for appointment to any unreserved vacancy in a service or post in any establishment to be filled up by direct recruitment shall not be deducted from the quota reserved in such service or post for such candidate under sub- section (1).”*

*Apart from above it is clearly stated under clause 5(b) of the West Bengal Backward Classes (other than Scheduled Castes and Scheduled Tribes) (Reservation of vacancies in Services and Posts) Act, 2012 that “the members of the Other Backward Classes qualifying on merit in an open competition on the same standard as of the unreserved candidates for appointment to any unreserved post in a service or post in a establishment to be filled up by direct recruitment shall not be adjusted against the quota reserved in such service or post for such candidate under sub-section (a).”*

*As a result a total no. of 401 reserved candidates under different categories availed the benefit of age relaxation were recommended under Unreserved*



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*Category.”*

50. Scanning the statements and the reply it is evident that the Board / respondents in the reply have not specifically denied that Scheduled Caste, Scheduled Tribe, OBC-A and OBC-B candidates after having availed the benefits of age relaxation etc. have been placed in the unreserved category. Moreover, the statement made by the applicants in paragraph 12 of the rejoinder against the reply of the respondents has not been denied or disputed at the time of hearing by the Board / State respondents. The relevant statement from paragraph 12 of the rejoinder is set out as under:

*“.....The contention made by the applicants in their supplementary affidavit are not only affirmed by the West Bengal Police Recruitment Board but also the deponent has supported the case of the applicant in respect of 401 candidates without making any denial in this respect. I state that on 13<sup>th</sup> July, 2021 the Public Service Commission, West Bengal issued a list of recommended candidate for appointment in the West Bengal Police Service on the basis of the result of the West Bengal Civil Service (Executive) ETC Examination, 2019-Group-B service. The said list dated 13<sup>th</sup> July, 2021 makes it evident that the candidates who have availed the benefit of relaxation of age/ qualifying marks at any stage of the selection process, they are recommended in their respective reserved category and they are not placed in the unreserved category.”*

51. In the absence of any denial of the aforesaid statement of facts in the rejoinder either by supplementary reply by the Board / State respondents or by furnishing any circular, notification or instruction issued by the Board / State respondent at the time of hearing, leaves no room for doubt that an organization in the State – West Bengal Public Service Commission, in the case of recruitment adopts a different stand in giving effect to the policy of the State as regards placement of the reserved candidates, who have availed themselves of the benefit of relaxation of age, in the reserved category and they are not placed under the unreserved category. Therefore, there cannot be two conflicting policies in the State for the same identical issue relating to the recruitment process.

52. The Board / respondents have not denied the correctness of the list of 402 candidates set out in a tabulated form in the second supplementary affidavit. Since

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there is no specific denial by the Board / the State respondents in the replies to the Original application and to the second supplementary affidavit that SC, ST, OBC-A and OBC-B candidates after availing age relaxation having been placed in the unreserved category, the Board / State respondents have accepted the fact that there has been a breach of the provisions of 2012 Act and 1976 Act. The Board / State respondents have not shown any instruction, policy or memorandum issued by the State of West Bengal as was done by the State of Uttar Pradesh as noted in the judgement in Jitendra Kumar Singh (Supra). Mere denial as sought to be done by the Board / State respondents in the two replies to the Original application and to the second supplementary affidavit are far from sufficient. Rather there should have been a specific denial to the statements made by the applicants in the paragraphs concerned in the Original application and in the second supplementary affidavit. In the absence of any specific denial to the allegations made in the paragraph 5 (t) of the Original application and in paragraph 9 (a) of the second supplementary affidavit, the allegations are deemed to have been admitted in respect of migration of the candidates of the reserved categories to the unreserved posts despite availing age relaxation.

53. Therefore, since the State of West Bengal has not framed any policy regarding reservation, and accordingly has not issued any instruction or notification under Article 16 (4) of the Constitution of India as was done by the State of Uttar Pradesh and as there has been a breach of the provisions of “same standard” under the 2012 Act, and the policy of reservation in the State is reflected from the recruitment process conducted by the Public Service Commission, West Bengal as discussed hereinbefore, the panel of the recommended candidates published on 26<sup>th</sup> March, 2021 for the post of Constables in the West Bengal Police 2019 by the West Bengal Police Recruitment Board (Respondent no.4 in O. A. No.-430 of 2020) cannot be sustainable in law and is, thus, set aside and quashed.

The applications being OA-430 of 2020, OA-479 of 2020 and OA-210 of 2021 are allowed in part.

However, we make it clear that as the applicants have appeared in every stage of the selection process without any protest and moreover as we do not find any illegality in the recruitment process save and except as indicated above, we refrain from quashing the entire selection process.

Accordingly, the West Bengal Police Recruitment Board (the respondent no.4 in OA-430 of 2020) is directed to prepare a panel afresh for recommendation to the post of Constables in West Bengal Police within four (4) weeks from the date of presentation of a copy of this judgment in respect of :

- (i) The Unreserved category, that is open category, on merit excluding the candidates who have availed age relaxation, and
- (ii) The Reserved (Scheduled Caste, Scheduled Tribe, Other Backward Classes-A and Other Backward Classes-B) categories in accordance with the prevailing laws in force.

The revised panel be published on the website of the Police Recruitment Board (Respondent No.4 in OA-430 of 2020) at the end of the fourth week as directed above.

The miscellaneous applications being MA-29 of 2021, MA-107 of 2021 and MA-108 of 2021 are disposed of accordingly.

No order as to costs.

(SAYEED AHMED BABA)  
MEMBER(A)

(SOUMITRA PAL)  
CHAIRMAN