

(1975) 11 CAL CK 0001

In the Calcutta High Court

Case No : Civil Revision No. 11608 (W) of 1975

Amulya Kumar Chakravarti

APPELLANT

Vs

Nirmalya Kumar Mukherji

RESPONDENT

Date of Decision : 17-11-1975

Acts Referred:

Calcutta Municipal Act, 1951 — Section 82(2)

Calcutta Municipal Act, 1953 — Section 81(2), 81(3), 81(4), 81(5), 81(6)

Calcutta Municipal Service Commission Rules, 1953 — Rule 29, 30, 31, 32, 33

Citation : (1976) 1 ILR (Cal) 157

Hon'ble Judges : M.N. Roy, J

Bench : Single Bench

Advocate : Sudhir Kumar Basu, Haraprasad Ghose and Manjuli Sengupta, for the Appellant; Pradip Kumar Ghose, Rabindra Nath Mitra, B.C. Mondal, Smriti Kumar Roychowdhury and B.K. Rej, for the Respondent

Judgement

M.N. Roy, J.—In this Rule the Petitioners have challenged a recommendation made by the Municipal Service Commission, the Respondent No. 5, in favour of Shri Sourendra Nath Basu, the Respondent No. 4, by their letter No. 806MSC/1P-5/75 dated April 24, 1975, in preference to them for substantive appointment to the permanent post of Deputy Licence Officer, Corporation of Calcutta, in the grade of Rs. 535-20-555-25-780-30-840-35-875 on a consequential vacancy created by the promotion of one Shri Gouranga Nath Banerjee.

2. The Petitioners who are employed as Senior Inspectors of the Licence Department of the Corporation of Calcutta have alleged that they have duly crossed the efficiency bar and are entitled to be considered for promotion to the post of Deputy Licence Officer which incidentally carries a maximum salary above Rs. 700 but below Rs. 1,500 per month.

3. The relevant provisions of the Calcutta Municipal Act, 1951, as amended from time to time and those of the Calcutta Municipal Service Commission Rules,

1953, framed in exercise of the powers conferred by Section 82(2) of the said Act relevant for the purpose of this case are:

Calcutta Municipal Act, 1951

Section 81(1)

Section 81(2) : Appointments to posts carrying a maximum salary (above three hundred rupees) but below one thousand and five hundred rupees per month shall be made on the recommendation of the Municipal Service Commission.

Section 81(3)

Section 81(4)

Section 81(5)

Section 81(6)

Calcutta Municipal Service Commission Rules, 1953

Rule 29 : In matters for which no provision is made by these Rules, the Commission may regulate its proceeding in such manner as it thinks fit.

Rule 30 : The Commission may at any time call for any record, report or information, which may, in its Opinion, be necessary to enable it to discharge its functions from the Corporation and such record, report or information shall be forwarded to the Commission without undue delay by the Corporation.

Rule 31 : When an examination referred to in Sub-section (3) of Section 81 of the Act is to be held for the purpose of recommending candidates for appointment, the Commission shall

- (i) prescribe necessary rules for the examination including the syllabus;
- (ii) announce the probable number of vacancies to be filed;
- (iii) conduct the examination;
- (iv) finalise the results and arrange the candidates in order of merit on the results of the examination; and
- (v) recommend as many candidates as there are vacancies, to the appointing authority, subject to sufficient number of qualified candidates being available.

Rule 32 : When appointments are to be filled by direct recruitment otherwise than on the results of an examination referred to in Rule 31 the Commission shall

- (i) announce the probable number of vacancies and invite applications;
- (ii) consider all applications received and interview such candidates (after holding a preliminary written test, if deemed necessary) as it considers most suitable for appointment;

(iii) recommend to the appointing authority as many candidates as there are vacancies subject to sufficient number of qualified candidates being available.

Rule 33 : When recruitment is to be made by promotion, the Commission consider the claims of officers eligible for promotion, on examination of their records of service and after interviewing them, where considered necessary and recommend to the appointing authority as many officers as there are vacancies, subject to the sufficient number of officers being found suitable. Rule 34 : In any case in which the advice or recommendation of the Commission is sought, the record of the case shall be forwarded to the Commission and the opinion given or recommendation made by the Commission shall form part of the record of the case.

4. The admitted position in this case is that in 1974 there was a vacancy for one post of Deputy Licence Officer and pursuant to the requirements of Section 81(2) of the Calcutta) Municipal Act, 1953, read with Rule 33 of the Rules as mentioned hereinbefore, recruitment was made on the recommendations of the Municipal Service Commission. It appears that the then Commission, which was constituted by Sarbashri J.L. Kundu, Sunil Munshi and Mihir Lal Ganguli, interviewed the Petitioners, apart from Subodh Chandra Palit and the Respondent No. 4 Shri Sourendra Nath Basu and also examined their service records and recommended the said Shri Palit for appointment in the vacancy in question and they also nominated the said Respondent No. 4 and kept his name in reserve for any other vacancy that might occur within that year. It may be mentioned that as one vacancy was created in the said post of Deputy Licence Officer owing to the retirement of Shri Sailendra Nath Roychowdhury, so the Corporation of Calcutta, in accordance with the provisions of Section 81(2) of the Act read with Rule 33 of the said Rules, made the necessary report to the Respondent Municipal Service Commission by their letter of April 4, 1975 and the said Commission made their recommendation in the manner as mentioned hereinbefore. The Petitioners have impeached the said action of the Respondent Commission in recommending the name of the Respondent Sourendra Nath Basu in preference to them and without considering their cases duly, as unauthorised, irregular and void as there was only one vacancy and there is no provision or power with the said Commission for keeping another officer in reserve or as stand by for any other future vacancy. Alternatively, they have contended that even if the Commission had the power to keep any officer in reserve, that power, if at all, was exercised for the purpose of meeting the exigencies that would have arisen in case the officer so selected refused or failed to avail of the promotion for any reason whatsoever and since the said officer had admittedly accepted the said promotional posting, so the Respondent Sourendra Nath Basu had lost all his rights as such reserve candidate.

5. There is also no dispute that in 1975 there again arose a vacancy in the post of Deputy Licence Officer consequent to the promotion of Shri Gouranga Nath Bainerjee. This time, the said Commission, which was composed of Sarbashri A.J.

Tayab, Satindra Nath Chakravarty and Mihir Lal Ganguli, recommended the name of the Respondent Sourendra Nath Basu, as he was found suitable at the interview in May 1974, for appointment by promotion to a post of Deputy Licence Officer. As soon as the said matter came to the knowledge of the Petitioners they raised objections to the said action and contended that they along with others were not only eligible for selection to the post but they were also much more meritorious than the said Shri Basu in many respect and as such, their cases were also deserved to be duly considered by the then Commission who in fact had no occasion to judge and consider their service records in the selection of 1974. Apart from such objections, the Petitioners also raised objections to the unauthorised manner and procedure as followed by the Respondent Commission in the matter of keeping the said Shri Basu as a reserve for future vacancies. As the objections of the Petitioners produced no result, so on or about May 14, 1975, they moved and obtained the Rule. The further admitted position in the case is that owing to an order of injunction the Corporation of Calcutta and its authorities have not been able to give effect to the impugned recommendation of the Respondent Commission.

6. Mr. Basu appearing for the Petitioner, after placing the relevant provisions of the Statute and the Rules as mentioned hereinbefore, made his submissions against the impugned action on the basis of the objections as noted hereinbefore and in addition, he argued amongst others that as the recommendation in the instant case was made in violation of Rule 33 of the Rules, so such recommendation cannot have any force or effect in respect of the permanent appointment inasmuch as there could not have been more than one recommendation under the said Rules in respect of the appointment in question. He also argued that in terms of Section 81(2) of the Act read with Rule 33, as aforesaid, it was obligatory and incumbent on the part of the Respondent Commission to invite applications from the eligible candidates and to make necessary recommendation after considering them and so also their service records. Mr. Basu further argued that the vacancy in which the said Shri Basu's case was recommended for appointment having been referred to the Respondent Commission long after the interview in May 1974, it was also not justified on the part of the Commission to recommend his appointment on the basis of the results of the interview of May 1974. It was further contended on behalf of the Petitioners that the entire action was not bona fide and furthermore the same was against all principles of natural justice.

7. Although three sets of affidavit-in-oppositions have been filed by the Respondents Nos. 1 and 2, 4 and 5 respectively, the cause as sought to be made out by the Petitioners have really been contested by the Respondents Nos. 4 and 5 and the other appearing Respondents have in fact supported the cause of the Petitioners.

8. It was contended by Mr. Roychowdhury appearing for the Respondent Commission that in May 1974, after interview and consideration of the

confidential reports of twelve senior Inspectors of the Licence Department, the case of the said Shri Palit was recommended for the said existing one vacancy and the name of the said Shri Basu, who was junior to the Petitioners, was kept in reserve for any other vacancy that might occur within one year as he was also found suitable. The Commission has further contended that in fact there were two vacancies and since the Municipal authorities asked for filling up one vacancy, they had to recommend the name of the said Shri Palit and thus to keep the other name of the said Shri Basu in reserve. It has further been contended that the name of the said Shri Basu, who was kept in reserve after the said test in May 1974, was immediately recommended when the Municipal authorities asked for filling up the other vacancy within one year of the filling up of the earlier vacancy. It has also been contended that such selection and recommendation was made after considering the claims of all eligible candidates, examining their records and interviewing them. It may be noted that the aforementioned averments by the Respondent Commission have reference to the selection of 1974 as admittedly for the concerned vacancy, as notified for filling up in 1975, there was neither any interview of the eligible candidates including the Petitioners nor there is any evidence of the consideration of their service records. Mr. Roychowdhury submitted that in view of the position as disclosed above there was no violation of the Rules of the said Commission and more so, when such recommendation in 1975 had been made in accordance with the Commission's decision keeping the said Shri Basu in reserve for any vacancy that might occur within a year. In view of the above, it has also been contended that there was no necessity to call the Petitioners for interview or to invite applications from them. Apart from these, Mr. Roychowdhury also submitted that under Rule 29 the said Commission had and still has the right and authority to determine and regulate its own procedure and to proceed in such a manner as it thinks fit in matters where the provisions of the said Rules are silent. He, in fact, wanted to submit that the procedure for keeping the said Shri Basu in reserve for future vacancies that might occur in future was thus authorised under the said Rule 29 as, the provisions of the said Rules are silent for future vacancies or for vacancies as in the instant case which would arise within a year. The above contentions have also been adopted by Mr. Mitra, the learned Advocate for the said Shri Basu.

9. The Municipal authorities, viz. the Respondents Nos. 1 and 2, through Mr. Ghose, have made submissions contrary to those of the other Respondents and in fact, they have supported the case of the Petitioner. They have further disclosed in their affidavit, a letter from the Secretary of the said Commission bearing No. 540 M.S.G/1P-12/73 dated May 21, 1974, which is in the following terms:

I am directed to refer to your letter No. S-1853 dated the 16th October 1973 and subsequent correspondence on the subject noted above and to state that the departmental candidates whose cases had been forwarded by the Corporation in this connection were interviewed and their service records also were considered.

The Commission recommends Shri Subodh Chandra Palit for substantive appointment to the permanent post of Deputy Licence Officer vide Shri Sailendra Nath Roychowdhury in the scale of Rs. 535-20-555-25-780-30-840-35-875 plus T.A. of Rs. 50 and other usual allowances.

A copy of the order appointing the candidate as recommended above may please be forwarded to this office for record as usual.

10. From the letter it thus appears that when the name of the said Shri Palit was recommended for substantive appointment, the said Commission did not either mention the fact of keeping the name of the said Shri Basu as reserve for the exigencies as mentioned hereinbefore or the fact of formation of any panel to meet such exigencies. It appears from another letter dated July 9, 1975, written by the Respondent No. 1 to the Secretary of the said Commission that immediately on receipt of the recommendations regarding the appointment of the said Shri Basu, they were informed about the resentment and dissatisfaction amongst the employees who were also eligible for selection to the said post or at least for consideration for the same. The Municipal authorities not only challenged the said action as unauthorised, but they have also placed on record that the cases of those employees which were considered earlier and also the cases of other employees who have become eligible later, have not at air been considered. They have contended that the cases of all the eligible candidates including those of the Petitioners should have been considered afresh without recommending the case of the said Shri Basu in the manner as has been sought to be done. In fact and in effect, the Municipal authorities have not only expressed their astonishment to the procedure which has been followed by the said Commission but they have also contended the said procedure to be unauthorised and against all principles of natural justice and have requested the said Commission to reconsider the matter.

11. Thus, on consideration of the pleadings and the relevant provisions of the Act and the Rules as mentioned above, it will have to be seen whether the action as taken is saved by Rule 29, as, the Petitioners would not be entitled to the reliefs as claimed unless the answer to such question is in the negative,. The Rules as, mentioned hereinbefore and more particularly Rules 31(V) and 33, amongst others, are included in Pt. VIII, i.e. the Rules of Procedure, which make it clear that when examination as referred to in Section 81(3) of the Act is to be held for the purpose of recommending candidates for appointment, the Respondent Commission shall recommend as many candidates as there are vacancies to the appointment authority subject to sufficient number of qualified candidates being available and in the case of such promotional recruitment it is also obligatory on the Respondent Commission to consider the claims of officers eligible for promotion, examine their records of service and to interview them when considered necessary and then recommend to the appointing authority as many officers as there are vacancies", subject to sufficient number of officers being found suitable. The terms of the aforementioned Rules of recruitment are

unambiguous and mandatory. On consideration of the Rule, I am of the view and I hold, accordingly, that there is no scope for keeping an employee in reserve for future appointment either when the vacancy occurs or expected to occur within the year in question or in a subsequent year. Each vacancy, according to me, gives other eligible candidates a right to have their cases duly considered in terms of the Rules in question and more particularly in terms of Rule 33. Since in the instant case, admittedly there was no vacancy, which was notified for being filled up to the Respondent Commission by the Municipal authorities and since there was only one vacancy and more so, when the Rules are quiet explicit on that point, so there was no scope for invoking the pretended powers under Rule 29. As mentioned hereinbefore, since there is no ambiguity regarding the Rules of recruitment by promotion, so Rule 29 had no application and thus the action of the Respondent Commission to keep the name of the said Shri Basu in reserve for the purposes as disclosed was completely unauthorised and without jurisdiction. Furthermore, in each and every case of separate vacancy which is notified for being filled up by promotion by the Municipal authorities, it is incumbent on the Respondent Commission to consider the cases of all eligible candidates either with reference to their service records or by interview and when admittedly such steps have not been taken in the instant case, the recommendation of the name of the said Shri Basu cannot stand and such action is not only void and unauthorised but is also violative of the Petitioners' and other eligible candidates' right to have their cases duly considered and furthermore against all principles of natural justice.

12. In view of the above, this Rule should succeed and as such, the same is made absolute. The impugned recommendation in favour of the said Shri Basu by the letter in annex. B is thus set aside and quashed by a writ of certiorari and a writ of mandamus is also issued against the Respondents Nos. 1 and 2 from giving effect to the said impugned recommendation or to act on the basis of the same. The said Respondents-are further prohibited from appointing the Respondent No. 4 as Deputy Licence Officer on the basis of the said recommendation. There will, however, be no order for costs. But I make it clear further, that this would not preclude and prejudice the Respondent Commission, if they so like, from considering the cases of all the eligible candidates afresh and in accordance with law for the purpose of making a further recommendation for the vacancy in question.

13. Mr. Mondal asked for stay of operation of this order for four weeks. The said prayer is refused.