

(2005) 08 BOM CK 0034
In the Bombay High Court
Case No : Writ Petition No. 161 of 2000

Arun Ramchandra Shirke and Another	APPELLANT
Vs	
Pune Municipal Corporation and Others	RESPONDENT

Date of Decision : 23-08-2005

Acts Referred:

Bombay Provincial Municipal Corporations Act, 1949 — Section 53(1), 53(3)
Constitution of India, 1950 — Article 226
Pune Municipal Corporation Service Rules — Rule 10, 7

Citation : (2006) 1 ALLMR 312 : (2006) 2 BomCR 818 : (2005) 4 MhLj 1165

Hon'ble Judges : V.G. Palshikar, J; D.B. Bhosale, J

Bench : Division Bench

Advocate : S.N. Chandrachud, for the Appellant; R.S. Khadapkar, for R.G. Ketkar, for the Respondent

Final Decision : Dismissed

Judgement

D.B. Bhosale, J.—The petitioner, by this writ petition under Article 226 of the Constitution of India has assailed an appointment of respondent No. 3 on the post of Deputy City Engineer (Electrical) (for short "the said post") and are seeking directions to respondent Nos. 1 and 2 to appoint them on the said post.

2. The petitioners are the employees of respondent No. 1 - Corporation and at the relevant time they were working as Assistant City Engineer (Electrical). Pending this writ petition, petitioner No. 2 has been promoted to the post of Deputy City Engineer (Electrical) by order dated 26-9-2001 and in view thereof the learned counsel appearing for the petitioners pressed this petition only for petitioner No. 1 - Arun Shirke.

3. It is not disputed that both the petitioners were qualified and eligible for the said post which became vacant in March, 1996 in view of the retirement of Shri A. V. Harkare. The said post remained vacant till 2nd week of October, 1999. Respondent No. 3 came to be appointed on the said post after his selection sometime in October, 1999.

4. Mr. Chandrachud, learned counsel for the petitioners assailed the order of appointment of respondent No. 3 on the said post on two grounds. Firstly, that the appointment of respondent No. 3 on the said post was in blatant violation of Rules 7 and 10 of Chapter 14 of the Pune Municipal Corporation Service Rules (for short "the said Rules") which provide that the post of Deputy City Engineer has to be filled up from amongst the existing work force from out of open as well as reserved categories and if from amongst the existing work force suitable candidates are not available then only advertisement in local dailies be published and appointments on the above posts be made of the eligible and experienced candidates by interviewing them. Secondly, the Corporation did not follow the procedure while appointing respondent No. 3 on the said post and have wrongly denied promotion to the petitioners who were holding required qualification and were admittedly eligible to acquire the said post.

5. On the other hand the learned counsel for the Corporation opposed the prayers made in the writ petition mainly on the ground that the petitioners after having participated in the interview are not entitled to challenge the appointment made to the said post. He further submitted that insofar as the post on which respondent No. 3 came to be appointed is concerned it is not governed by Rule 7 and 10 of Chapter 14 of the said rules and, therefore, question of the appointment made in pursuance of the resolution dated 25-11-1983 was perfectly legal and cannot be faulted. He pointed out that by Resolution dated 25-11-1983, the respondent - Corporation created the said post in 1983 and it was decided to fill up the said post, inviting applications from open market, by issuing advertisement.

6. We perused the petition and annexures thereto as also the reply affidavit with its all annexures with the assistance of the learned counsel appearing for the parties and heard them in support of their case made out therein. We would like to state few facts as reflected in the petition and reply affidavit filed by respondent No. 1 in particular which may be relevant to consider whether the petitioners can challenge the appointment of respondent No. 3 on the said post after having appeared at the oral interview conducted by the selection committee of respondent No. 1. There is no dispute that the General Body of respondent No. 1 by its Resolution No. 567 dated 25-11-1983 created the said post and resolved to fill up the said post by issuing advertisement and giving a priority to the departmental employees. The said post was accordingly filled up from time to time and lastly it became vacant on 1st April, 1996 in view of the retirement of Shri A. V. Harkare. On 1st April, 1996 the Commissioner of respondent No. 1 - Corporation gave approval to fill up the said post and in pursuance thereof it was advertised on 31st May, 1996. The said advertisement was issued inviting application from the candidates belonging to the Scheduled Caste. Since there was no response a fresh advertisement was published on 27-9-1996. In response to the fresh advertisement few applications were received. Since there was a doubt as to whether they would get suitable candidates a request was made to M.S.E.B. for deputing a suitable person to the said post. Accordingly, one Shri R.

S. Kulkarni of M.S.E.B. came to be appointed and he resumed the said post from 1st March, 1997. The said Kulkarni was, however, repatriated finding that he was not suitable for the said post. One more effort to get suitable candidate for the said post on deputation was made and having failed to get such candidate it was decided to interview the candidates who had applied in pursuance of the advertisements dated 31-5-1996 and 27-9-1996. Five candidates were found eligible in the said interview process and only one candidate out of five was from reserved category. Since the said post came to be reserved on 2nd July, 1997 for scheduled caste once again the approval was sought for inviting applications by advertisement of the persons belonging to the said category. Accordingly, the advertisement was given in daily newspaper on 24th March, 1998 inviting applications from the candidates belonging to the scheduled caste. At the same time once again a request was made to the M.S.E.B. to depute some other officer to the said post. However, till 31st March, 1999 there was no response from M.S.E.B. In the meanwhile General Administration Department of the Government of Maharashtra by its order dated 21-9-1998 de-reserved the said post considering it to be a solitary post. As the said post came to be de-reserved, the Commissioner of respondent No. 1 - Corporation once again granted approval for publication of an advertisement inviting fresh applications from the open category to the said post. The advertisement was, accordingly, given on 26-2-1999 in the prominent newspapers published in the city of Pune. Pursuant to the advertisement as many as 25 applications were received. Admittedly, the petitioners also made applications in response to the said advertisement. The City Engineer upon scrutiny found only eight applicants to be eligible for the said post. It is pertinent to note that the petitioners and respondent No. 3 were amongst the eight candidates found to be eligible for the said post. The post being Class-I post the "Selection Committee headed by the Municipal Commissioner came to be constituted for conducting interview and selection of suitable candidate. All the eight candidates were interviewed by the said committee on 21-7-1999. Both the petitioners participated in that process. The petitioners have not denied their participation in the selection process and that they were interviewed by the said committee on 21-7-1999. The selection committee after interviewing all the candidates and considering the educational qualification, experience, nature of work and their potentiality to carry out the concerned work unanimously recommended the name of respondent No. 3 for an appointment to the said post. The Municipal Commissioner by Resolution No. 1/761 dated 22-10-1999 approved the report of the selection committee for appointing respondent No. 3 on the said post u/s 53(3) of the B.P.M.C. Act for a period of six months and forwarded the Docket to the General Body through the City Improvement Committee for its further approval. The General Body of respondent No. 1 - Corporation by Resolution No. 446 dated 25-2-2000 accorded its approval for the regular appointment of respondent No. 3 on the said post u/s 53(1) of the B.P.M.C. Act. The Municipal Commissioner as per the approval of the General Body, by his Resolution No. 1/34 dated 25-4-2000 passed the order of regular appointment of respondent No. 3 to the said post. It is against this

backdrop we would now like to consider whether it is open for the petitioners to challenge the selection and appointment of respondent No. 3 to the said post.

7. It is clear from the averments made by respondent No. 1 - Corporation in their reply affidavit and which has not been disputed or denied by the petitioners that the said post was advertised from time to time between May, 1996 and 26th February, 1999 and the efforts were also made to get a suitable person from M.S.E.B. During this period no grievance whatsoever was made by the petitioners against the said efforts. Admittedly, the petitioners also applied for the said post in response to the last advertisement dated 26-2-1999. The oral interview was conducted by the Selection Committee comprising of the Municipal Commissioner, Assistant Municipal Commissioner (Special), Assistant Municipal Commissioner (General), City Engineer and Chief Auditor. On 21-7-1999, the Committee interviewed the petitioners and six others, including respondent No. 3, who were found to be eligible for the said post. The committee after making overall assessment of the interviewed candidates selected respondent No. 3 for the said post and recommended him for an appointment to the General Body of respondent No. 1. It is thus clear that the petitioners took chance to get themselves selected at the said oral interview and only because they did not find themselves to have emerged successful as a result of their performance in oral interview, they have filed instant writ petition. It is now well settled that if a candidate takes a calculated chance and appears at the interview then, only because the result of the interview is not palatable to him he cannot turn around and subsequently contend that the process of interview was unfair or Selection Committee has not followed the procedure as contemplated in the Rules. In this connection we can usefully refer to the observations made by the Apex Court in *Om Prakash Shukla Vs. Akhilesh Kumar Shukla and Others*, wherein, while dealing with similar situation, it was observed "that when the petitioner appeared at the examination without protest and when he found that he would not succeed in examination he filed a petition challenging the said examination, the High Court should not have granted any relief to such a petitioner". In yet another judgment of the Apex Court in *Madan Lal and Others Vs. State of Jammu and Kashmir and Others*, the Supreme Court has reiterated the law laid down in *Om Prakash Shukla's* case (supra) and has further observed that the result of the interview test on merits cannot be successfully challenged by a candidate who takes a chance to get selected at the said interview and who ultimately finds himself to be unsuccessful. Keeping this well settled position of law in view and considering that in the instant case the petitioners did apply for the said post in pursuance of the advertisement and participated in the selection process by appearing for the interview it is not open for them to question the selection. In other words, after taking a calculated chance by appearing at the interview and only because the result of the interview is not palatable to them the petitioners cannot turn around and now contend that the process of the interview was faulty. In our opinion, on this ground alone the petition fails and deserves to be dismissed.

8. The submission that the appointment of respondent No. 3 was in violation of Rules 7 and 10 of Chapter 14 of the said Rules also deserves to be rejected. It is clear from Resolution No. 567 dated 25-11-1983 passed by the Corporation that the said post was created in 1983 when it was specifically resolved to fill up the said post by issuing advertisement and inviting the applications for the said post from open market and allowing the employees of the Corporation also to apply for it. In pursuance of this resolution dated 25-11-1983 admittedly the Corporation has been filling up the said post by following the procedure as contemplated in the said resolution. From perusal of the reply affidavit and other material placed before us, we found that respondent Nos. 1 and 2 did follow the procedure and acted fairly in the selection process. We did not find any fault much less any illegality as tried to be contended by the petitioners, in the selection process and the appointment of respondent No. 3 on the said post. We did not find a ground, worth the name, to set aside the appointment of respondent No. 3 made on the recommendation by the selection committee. In the result this writ petition fails and is dismissed as such.