
(2014) 12 BOM CK 0050
In the Bombay High Court
Case No : Writ Petition No. 9845 of 2013

Desale Kiran Suresh Rao

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 15-12-2014

Acts Referred:

Bombay Provincial Municipal Corporations Act, 1949 — Section 451, 451(1)

Citation : (2015) 2 ALLMR 616 : (2015) 3 BomCR 811 : (2015) 2 MhLj 476

Hon'ble Judges : N.M. Jamdar, J;Anoop V. Mohta, J

Bench : Division Bench

Advocate : A.A. Kumbhkoni, Senior Advocate and Amit B. Borkar, Advocate for the Appellant; A.I. Patel, AGP, Abhijeet P. Kulkarni and Party-in-Person, Advocate for the Respondent

Judgement

Anoop V. Mohta, J.—The Petitioners were selected by Respondent No. 2-Pune Municipal Corporation (PMC), as per the selection process and the procedure so declared in the year 2012. Respondent No. 1-State of Maharashtra by order dated 20 September 2012, however, quashed and set aside the whole selection process by accepting the case of complainant/Respondent No. 3 who was also named in the list dated 19 October 2011 of selected candidates for the appointment of Junior Engineer (Civil) along with the Petitioners and 1394 others. On 24 June 2012 written tests were held. About 121 candidates were passed. On 30 July 2012 those passed candidates were interviewed by PMC. The list of final selected candidates dated 3 August 2013, which includes the name of Petitioners and Respondent No. 3 was declared.

2. Some complaints were lodged. On 31 July 2012, the Vigilance Department of PMC submitted a report about the answer sheet in respect of one Ketan Ramchandra Jadhav. On 2 August 2012, the Deputy Commissioner submitted a report to the office of Respondent No. 2 stating that the inquiry report of Vigilance Department concluded that there were no irregularities in the answer-sheet of Shri Jadhav. The candidates were sent for a police verification by letter

dated 04.08.2012 and 07.08.2012. PMC by reply dated 5 September 2012, on affidavit, placed on record as to how the process so followed was within the frame of declared selection process.

3. On 27 August 2012, Respondent No. 3-Sashibhushan Maruti Hole, filed Writ Petition bearing No. 8160 of 2012 and challenged the process of selection. This Court granted order of status-quo with regard to appointments. The Petitioners filed Civil Application No. 615 of 2013 in Writ Petition No. 8160/2012 to implead themselves as Respondents. This Court on 10 April 2013 directed PMC to keep one post vacant and to fill up remaining posts with the candidates who were selected in the selection process and also directed to decide the representation.

4. On 2 May 2013, PMC requested Respondent No. 1 (the State) to pass appropriate orders as regards to process of selection. On 6 May 2013, the State sent a communication to PMC as to why process of selection which was subject matter of letter dated 01.08.2012 should not be cancelled by resorting to power under Section 451 of the Bombay Provincial Municipal Corporation Act, 1949 (BPMC Act).

5. The Petitioners made representations dated 18.05.2013 and 21.05.2013 and requested PMC to implement order passed by this Court dated 10 April 2013. On 29 May 2013, the Petitioners again made a representation with the State pointing out the legality of process of selection along with relevant documents. On 1 June 2013, the Petitioners made another representation to PMC to implement order dated and appoint the Petitioners. However, on 11 June 2013, the State suspended the select list of Petitioners invoking the power under Section 451(1) of BPMC Act on the ground that there was no confidentiality or transparency in the process of selection and the selection process affected the rights of other persons.

6. On 20 June 2013, in Writ Petition No. 8160 of 2012, this Court was of the opinion that in view of decision taken by the State, the Writ Petition became infructuous and therefore rejected the same. The Petitioners made several representations dated 1.7.2013, 4.7.2013 and 8.7.2013 to various authorities including Hon"ble Governor and PMC for the implementation of the selected list. On 9 July 2013, PMC submitted its say to the State and prayed for an appropriate decision under Section 451 of BPMC Act. On 20 September 2013, the Petitioners made representation for grant of an opportunity of hearing also. The State without issuing notices to the Petitioners and without considering documents submitted by the Petitioners rescinded the select list and the waiting list on the ground that the process of selection did not involve confidentiality and transparency. Hence, the writ Petition.

7. The State filed reply on 18 July 2014 in this Petition. Respondent No. 3 filed reply and resisted the Petition by filing on record the judgments in his support. PMC by vague reply dated 16 July 2014 opposed the Petitioners case, by overlooking their earlier affidavit dated 5 September 2012, supporting the case

of the Petitioners. In this affidavit, PMC has not dealt with the positive averments so made in the Petition, and the earlier orders so passed by the Courts. The self contradictory averments and the stand of PMC could not have been the reason for impugned order.

8. The following judgments are cited by the parties :

- (i) East Coast Railway and Another Vs. Mahadev Appa Rao and Others,
- (ii) Order dated 20 June, 2013 in Writ Petition No. 8160/2012-Shri Shashibhushan Maruti Hole v. Pune Municipal Corporation and ors (Division Bench of Bombay High Court)
- (iii) The Bihar School Examination Board Vs. Subhas Chandra Sinha and Others,
- (iv) Krishan Yadav and another Vs. State of Haryana and others,
- (v) Union of India v. O. Chakradhar, decided on 19.02.2002 in Appeal (Civil) No. 1326 of 2002 by G.B. Pattanaik & Brijesh Kumar JJ. of Supreme Court.
- (vi) Chairman, All India Railway Rec Board & anr v. K. Shyam Kumar & Ors., decided on 6.05.2010 by Aftab Alam & K.S. Radhakrishnan JJ of Supreme Court in Civil Appeal Nos. 5675-5677 of 2007.

9. The judgment cited by Respondent No. 3 are distinguishable on facts and circumstances. No material placed on record to show in the present case that there was a large scale of irregularities and mal practices. [Bihar school (supra)] This is not the case of proved leakage of question papers and/or selection without interview or fabrication of record. [Krishan Yadav(supra)] The Court is concerned with how the decision was reached by the State; whether it is within the frame work of law and the record and not in breach of principle of natural justice and the legitimate expectation. We have also to see whether the action is malafide and/or reflects arbitrariness; and the extent of illegalities and/or irregularities committed in conducting the recruitment process. [Union of India (supra)]-[Chairman, All India Railway Rec Board (supra)]

10. The Apex Court in East Coast Railway (supra), after considering the complaint received from the unsuccessful candidate recorded as under :

"16 Applying these principles to the case at hand there is no gainsaying that while the candidates who appeared in the typewriting test had no indefeasible or absolute right to seek an appointment, yet the same did not give a licence to the competent authority to cancel the examination and the result thereof in an arbitrary manner. The least which the candidates who were otherwise eligible for appointment and who had appeared in the examination that constituted a step-in- aid of a possible appointment in their favour, were entitled to is to ensure that the selection process was not allowed to be scuttled for mala fide reasons or in an arbitrary manner.

21Every State action must be informed by reason and it follows that

an act uninformed by reason, is arbitrary. The rule of law contemplates governance by laws and not by humour, whims or caprices of the men to whom the governance is entrusted for the time being. It is trite that "be you ever so high, the laws are above you". This is what men in power must remember, always.

"28 That is not, however, the position in the instant case. The order of cancellation passed by the competent authority was not preceded even by a prima facie satisfaction about the correctness of the allegations made by the unsuccessful candidates leave alone an inquiry into the same. The minimum that was expected of the authority was a due and proper application of mind to the allegations made before it and formulation and recording of reasons in support of the view that the competent authority was taking.

and ultimately directed as follows :

"34 The order passed by the High Court is to that extent modified and the present appeals disposed of leaving the parties to bear their own costs. In order to avoid any delay in the finalisation of the process of appointments which have already been delayed, we direct that the competent authority shall pass an appropriate order on the subject expeditiously but not later than two months from today."

11. The Court needs to see whether the allegations so made and the doubts so raised/created with regard to the genuineness and/or alleged illegality in the selection process as alleged are sufficient to quash and set aside the whole process which, according to the Petitioners and PMC was conducted by following all the procedure. Mere allegations of mis-representation and/or bias and/or conflict of interest and/or illegality and the candidates selected were close relatives of the employees of PMC, are not sufficient to dislodge the list published after following the due selection process. Respondent No. 3, admittedly appeared for the examination in the subject selection process. He was unsuccessful candidate. Thereafter he filed the Petition by raising issues including of bias and personal interest without any supporting material. The allegations of manipulation, bias and/or malafide, if unsupported by evidence, just cannot be used and looked to interfere with the process of selection, taking care of transparency and confidentiality. In earlier Writ Petition, PMC by an affidavit dated 5 September 2012 denied all these allegations. The Petitioners were not made party in earlier Petition, therefore, they filed the application and after hearing all the parties, by keeping one post vacant, and observed to fill up the post with the candidates who were selected. The Petitioners made various representations to appoint being selected candidates, but in vain. There was no question of invoking even power under Section 451 of BPMC Act. However, PMC, inspite of above background, by communication dated 15.05.2013 communicated to the State that process of selection created confusion and became complicated and to remove unnecessary confusion, submitted for an appropriate decision, to give fresh opportunity to all the concerned. The Petitioners made representations

again on 18.05.2013, 21.05.2013 and 01.06.2013 to implement order dated 10 April 2013 and pointed out that no illegalities were committed in the process of selection. The State, however, inspite of the court's orders and though there was no specific finding and/or material to show and justify the allegations and also for the fact that there was no specific finding given after inquiry even by the Commissioner (PMC) about the alleged irregularities and/or discrimination and/or arbitrariness, suspended the select list by invoking power under Section 451(1) of BPMC Act. This was mainly on the vague reason that "there was no confidentiality and/or transparency in the process of selection and that affects the rights of such persons.". In view of above, Writ Petition No. 8160/2012 was disposed of on 20 June, 2013. The pendency of a review against this order is of no consequence. The Petitioners representations to implement the selection process remained unattended. PMC on 9 July 2013, submitted its say to the office of the State and prayed for appropriate decision. The State, however, only because complaint was lodged and some confusion was created, but without any contra material in support of the irregularities and/or discrimination, under pressure and/or influence, passed the impugned order and taken away the rights of the Petitioners who were selected in due process of selection in accordance with law and thereby deprived of their right to be appointed based upon the select list on presumption & assumption. This definitely caused injustice and hardship to the Petitioners apart from issue of "age bar" to apply again for the post.

12. Admittedly, no opportunity whatsoever was given to the Petitioners as their various representations with detail supporting material, to convince them that the process of selection was well within the frame work of law and the record. There was no proved irregularities. The process was fair and transparent. Invocation of Section 451 of BPMC Act, in the present facts and circumstances, for want of contra material, in our view, is unjust and impermissible. There was no proved contravention of any selection process, the doubts and the pressure so put in by Respondent No. 3, cannot be the sufficient reason to say that PMC acted in contravention of the provisions of the Act or any declared policy of selection. There was no wastage of municipal funds. The selection process cannot be stated to be against the interest of public. The cancellation of selection list and the order inviting fresh applications, in our view, is not within the frame work of power under Section 451 of BPMC Act. The doubts and/or the pressure from outsiders cannot be the reason to invoke Section 451 of BPMC Act when there is no contra material placed on record and specifically by overlooking the material and the earlier affidavit dated 5 September 2012 so placed on record by PMC, that since beginning that they had followed the due procedure of law and there was no illegality. Therefore, the impugned order is beyond the scope and power of Section 451 of BPMC Act and needs to be interfered with.

13. The allegations made by the Complainant/Respondent No. 3 and the filming made during preparation of examination paper instead of taking it in favour of the transparency used as an additional ground to quash and set aside the

selection list, in our view, is also incorrect and improper way of dealing with the issue subject. The selection process cannot be disturbed and/or cancelled which affects the rights of the selected candidates of the year 2012. The action, if proved illegal or irregular, unfair, Respondents 1 and 2 are under obligation to take the decision in accordance with law, but not by overlooking the positive reports material in favour of the transparent selection process, merely to show their clear image to the people at large, based upon assumptions and presumptions. Union of India (UOI) and Others Vs. Rajesh P.U., Puthuvalnikathu and Another, This is in the background that this Court by order dated 10 April 2013 specifically directed the Respondents 1 and 2 to appoint all the selected candidates by keeping one post vacant, but instead of that Respondents 1 and 2 delayed the implementation. No challenge was made to this order by anyone.

14. Merely because some relatives of employees of PMC were selected that itself cannot be the reason to overlook the fact, that 1393 candidates participated and after following the due procedure and selection process, the Petitioners and such other candidates were selected. There is no bar that the relatives of employees should not participate in such selection process and/or apply for the post so advertised. Girjesh Shrivastava and Others Vs. State of M.P. and Others,

15. The marking system as averred, in the reply by PMC was quite intact. Mr. Jadhav or any other officer, of Establishment had no role in the written examination. The role of officials from the Establishment was limited to the extent of making available the place for examination and give direction to the candidates and sent orders for appointment of Controller of Examination and the Supervisor etc. This positive averments remained uncontroverted for want of contra material. The entire selection process divided into two parts, one was administrative and the other was actual process of selection. The different officials and officers and other staff were involved. There was no case of any mal practice and/or advance un-sealed of envelopes of examination. All the process of examination procedure started and finished as per the advertisement. In spite of notice, the officer from the Employment Exchange and Social Welfare Department was absent on the date of examination that itself cannot be the reason to declare the entire process of selection void and/or vitiated. The issue of reserved candidates, even if any, was a different facet and nothing to do with the complaint so filed and cannot be gone into at the instance of the Petitioners. The concerned candidates may raise such dispute, if any. The preparation of list was well within the power and jurisdiction of the members Committee, therefore, ought not to have been interfered on suspicion, only at the instance of vague complaint filed by Respondent No. 3. This communication by PMC dated 15.05.2013 just cannot be read in isolation by overlooking the affidavit so filed in Writ Petition No. 8160/2012 dated 5 September 2012, specifically when PMC never accepted and/or Respondent No. 3 able to prove any defect and/or irregularities and untransparency in selection process in question except bald averments.

16. The earlier stand of PMC in affidavit dated 5 September 2012 supported by the documents, including Vigilance Department's report stating that there were no irregularities happened during the process of conducting examination. They have unanimously concluded that there was no illegality and/or irregularity; and the process was valid. Respondents 1 and 2 are under obligation if allegations are proved, then only needs to take appropriate action in accordance with law and not under undue influence of the alleged complaint and/or private views of the party one who had participated in the proceedings without any objection.

17. The question is not of right to the Petitioners to claim appointment to the post being in the selected list, but the question is the decision taken by the State Government by invoking Section 451 of BPMC Act and to cancel the entire selection process, based upon the unproved material and only to avoid apprehension/suspicion of unnecessary allegations. This is not a case of any fraud but a case of unproved charges of irregularities. The question is also not of prejudice to the Petitioners. The question is of taking such drastic action by the State on unsupported allegations and doubts so raised specifically when there are no sufficient material on record to show that the due process of selection was not followed. This is not a case of breach of peace or to cause injury or annoyance to the public or shake public confidence or any class or body of persons which compelled the State to take such decision. It is expected from Respondents 1 and 2 to act within the frame of law and the record and not influenced or affected by extraneous pressure/allegations. The impugned order is passed in undue haste, without applying the mind to the record. Therefore, the order of the State rescinding the select list and of 35 candidates and waiting list 11 candidates is illegal, improper and bad in law.

18. By impugned order dated 20 September 2013, the State declared that the entire process of selection of Junior Engineers (Civil) is vitiated and decided to hold examination again. Because of the earlier interim orders passed by this Court, thereby restrained the Respondents to implement/execute the selected list of candidates, including of the Petitioners, PMC was unable to complete the process of appointment within one year. This itself, in our view, cannot be the reason to deny the appointment based upon the selection list in question. The theory of lapse of list within one year, in the present facts and circumstances, in our view, is not applicable.

19. We are inclined to observe that there is no procedural illegality and/or infirmity of such grave nature which requires to scrap the list. The selection procedure so adopted was well within the frame work of law and the record which needs no interference on the basis of apprehended unnecessary confusions on the complaint filed by Respondent No. 3. The State's action/order is unsustainable as acted on in impulse and mechanically and arbitrarily.

20. In view of above, the following order :

ORDER

- a) Impugned order of Respondent No. 1 dated 20.09.2013 is quashed and set aside.
- b) We direct Respondents 1 and 2 to proceed to complete without further delay the process of recruitment/appointment based upon the list in question and pass appropriate orders for the same as early as possible, and preferably within eight weeks from today.
- c) The Writ Petition is accordingly allowed and rule is made absolute accordingly.
- d) There shall be no order as to costs.