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**(2008) 11 BOM CK 0043**  
**In the Bombay High Court**  
**Case No : Writ Petition No. 7030 of 2008**

Gotiram Papa Jawale

APPELLANT

Vs

Chief Officer, Yeola Nagar Palika

RESPONDENT

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**Date of Decision :** 20-11-2008

**Acts Referred:**

Constitution of India, 1950 — Article 14, 16, 226

**Citation :** (2009) 4 BomCR 873 : (2009) 120 FLR 813 : (2009) 2 MhLj 229

**Hon'ble Judges :** Chandrachud D.Y., J

**Bench :** Single Bench

**Advocate :** V.P. Vaidya, for the Appellant;

**Final Decision :** Dismissed

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## Judgement

Chandrachud D.Y., J.—The petitioner filed a complaint of unfair labour practices under Items 9 and 10 of Schedule IV to the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971. The case of the petitioner is that he was employed as a Safai Kamgar at the Yeola Municipal Council on 20th February, 2004, in place of an employee who submitted his resignation and nominated the petitioner. The petitioner claims that he filed an affidavit that he would look after the aforesaid employee - Ravindra Aswale - and that he came to be appointed purportedly in pursuance of the recommendations of the Lad Committee. The petitioner filed a complaint of unfair labour practices apprehending termination of his services. The respondent claims that the appointment of the petitioner was a back door appointment and should not be continued. The Industrial Court dismissed the complaint. The order of the Industrial Court has been impugned in these proceedings.

2. The Industrial Court held that the appointment of the petitioner was a back door appointment and was validly terminated upon the directions of the Director, Municipal Administration. The petitioner admitted that his father was the President of the Municipal Council. The petitioner was appointed as a Safai Kamgar in place of an existing employee who had "nominated" him. The

petitioner was admittedly not a legal heir of that employee, nor did he fulfill the conditions for an appointment on compassionate grounds.

3. Counsel appearing on behalf of the petitioner submitted that the petitioner had filed an affidavit stating that he would look after an existing employee of the Municipal Council and that as a result, he came to be validly nominated by him.

4. There is no merit in the petition. The procedure which has been followed for engaging the petitioner is illegal. In matters of public employment, it is manifestly contrary to Articles 14 and 16 of the Constitution for a public body, like the Municipal Council, to recruit an employee on the "nomination" of an existing employee. In the recruitment of employees into the service of the government or its instrumentalities, all persons must have an equal opportunity to seek employment. That equality is infringed by allowing an existing employee to nominate a fresh recruit in his place. The limited exception which is carved out is for appointments on compassionate ground where an employee has died or has been incapacitated in harness and a scheme of compassionate appointments has been formulated. Allowing an existing employee - whether a Safai Kamgar or otherwise - to nominate a person for employment in his place is contrary to the principles which underlie Articles 14 and 16 of the Constitution. There has to be an equality of opportunity for all segments of society in the matter of public employment. Even if the post to which recruitment is to be made is that of a Safai Kamgar, all persons who are eligible for the post and who meet the criteria for appointment must have an equal opportunity to apply for the post and to be considered for appointment. Equal opportunity is destroyed by allowing existing employees to nominate persons in their place. Such a provision is liable to grave abuse since considerations wholly extraneous to merit will prevail. The State cannot be allowed to perpetrate such illegality and the Government was, therefore, entirely justified in expressing its disapproval to the appointment.

5. The dismissal of the complaint of unfair labour practices does not warrant interference in these proceedings under Article 226 of the Constitution of India. The petition is accordingly dismissed.