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**(2001) 02 MP CK 0014**

**In the Madhya Pradesh High Court**

**Case No : Writ Petition No. 1009 of 2000**

Santosh Kumar

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

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**Date of Decision :** 19-02-2001

**Acts Referred:**

Constitution of India, 1950 — Article 226, 227

**Citation :** (2002) 1 JLJ 376

**Hon'ble Judges :** Dipak Misra, J

**Bench :** Single Bench

**Advocate :** Intiaz Husain, for the Appellant; S.K. Mukherjee, for Respondents 1 and 2 and Ashok Lalwani, for the Respondent

**Final Decision :** Dismissed

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## Judgement

Dipak Misra, J.—Invoking the extraordinary jurisdiction of this Court under Articles 226 and 227 of the Constitution of India, the Petitioner has prayed for calling for the records from the Respondents No. 1 and 2 relating to screening and selection process for grant of licence for ?Fruit Stall? on platforms No. 2 and 3 of Itarsi junction of Central Railway and further to quash the licence granted in favour of Respondent No. 3. The further Prayer in the writ petition is to command the Respondents No. 1 and 2 to invite fresh application for grant of aforesaid licence.

2. The facts which are essential for disposal of the writ petition are thus:

The Respondent No. 1, by advertisement, invited application from persons belonging to Scheduled Caste for availing ?Fruit Stall? for the platforms No. 2 and 3 of Itarsi junction. In pursuance of the advertisement, the Petitioner submitted an application for the same after completing all the necessary formalities and attaching all the necessary documents. An acknowledgement receipt of the application was also issued to the Petitioner. While he was expecting that he would be called for interview, he came to know that interview

letters have been issued to other applicants but the same was not sent to him. It is set forth that he was not even communicated about the rejection of his application. In this factual matrix the Petitioner preferred Writ Petition No. 230/99, seeking the relief that the interview conducted by the Respondent No. 2, Divisional Railway Manager, Commercial Branch, Bhopal, on 11.1.1999 be quashed and appropriate direction be issued to consider the case of the Petitioner. A return was filed to the said writ petition taking the stand that the Petitioner was not found suitable to be called for interview by the Screening Committee on account of non-submission of required documents by him alongwith the application. During the pendency of the writ petition, the licence of the disputed ?Fruit Stall? was granted in favour of Respondent No. 3 and due to this subsequent event, the Petitioner withdrew the said writ petition with liberty to file a fresh one challenging the selection of the Respondent No. 3 as well as the whole selection process. It is averred in the writ petition that the Ministry of Railways (Railway Board) has formulated a policy on 6.1.1992 for allotment of catering licences. As per the said policy, the applications received in response to the advertisement are to be scrutinised by the Screening Committee consisting of three officers of not less than Junior Account Grade in case of large/important units and not less than Senior Scale Officers in respect of other units. It is also pleaded that the Screening Committee has not been properly constituted inasmuch as the three officers which were members of the Screening Committee were not of JAG Grade inspite of the fact that the Itarsi junction is a large and important unit. It is also urged that as the Screening Committee has not been properly constituted, the shortlisting done by it is illegal and arbitrary. It is also contended in the writ petition that the Selection Committee which has considered the case of shortlisted candidates has also not been properly constituted, and therefore, the whole selection process is vitiated.

3. A return has been filed by the answering Respondents contending, inter alia that the Petitioner?s application was incomplete inasmuch as he had not submitted any document indicating his business turnover, financial status and Income Tax clearance certificate alongwith his application as required by the advertisement issued by the Respondent No. 2. The said advertisement has been brought on record as Annexure R-3. It has also been pleaded that the Petitioner did not submit his character certificate from Collector/Superintendent of Police alongwith his application. It has been clarified in the counter-affidavit that as per the policy guidelines, the applications are to be invited from the professional and reputed caterers and the said applications are to be scrutinised by the Screening Committee. It is pleaded that for the ?Fruit Stall? licence at Itarsi junction, in all thirteen applications were received and out of them six candidates including Petitioner were not found suitable by the Screening Committee. It has been further put forth in the return that the Central Railway Headquarters had issued a letter No. C. 180, F/639/IV/Policy dated 12.10.1995 (Annexure R-4) wherein it has been mentioned that pantry cars running by Rajdhani, Shatabdi and other trains on which catering charges are prepaid, are classified as large/important

units for the purpose of allotment and renewal of contracts and that the allotment and renewal of all catering contracts other than large/important units will be done by DRMs. It is also put forth in the return that as Itarsi is not a large/important unit for the purpose of allotment of catering licences, the formation of Screening Committee has to consist of Senior Scale Officers. It has been pleaded that two Senior Scale Officers were taken in the Committee and one Junior Scale Officer from Accounts side was taken as the scrutiny of the applications involved scrutiny of several documents relating to finance, viz, business turnover, Income Tax clearance certificate and such other ancillary documents. As far as Selection Committee is concerned, it is pleaded that as Itarsi is not classified as large/important unit, there is no need to constitute Zonal Selection Committee.

4. I have heard Mr. Imtiaz Husain, learned Counsel for the Petitioner; Mr. S.K. Mukherjee, learned Counsel for the Respondents No. 1 and 2; and Mr. Ashok Lalwani, learned Counsel for the Respondent No. 3. It is submitted by Mr. Imtiaz Husain that the Screening Committee was not constituted in accordance with the policy and, therefore, the whole process of selection is vitiated. Mr. Mukherjee, learned Counsel for Railways on the contrary, has submitted that the committee has been constituted by taking two Senior Scale Officers and one Junior Scale Officer and the shortlisting by them would not vitiate the whole process of selection. Learned Counsel for the Railways has also highlighted that the Petitioner has not filed the necessary and relevant documents alongwith the application and even if there is irregularity in the formation of Committee, that would not vitiate the ultimate selection. Mr. Ashok Lalwani has adopted the submissions advanced by Mr. Mukherjee. To justify the action of the Railways, Mr. Mukherjee has produced the file relating to the decision taken by the Screening Committee as well as by the Selection Committee.

5. To appreciate the rival submissions raised at the Bar, it is apposite to refer to the Policy dated 6.1.1992 which has been brought on record as Annexure P-3. The said policy provides policy for allotment of catering vending licences and inviting applications. The Clause 1 deals with applications and reads as under:

Applications:

(a) Catering/vending licences should be awarded by calling applications. Tender system for selection of licences shall not be followed. Applications should be invited only from professional and reputed caterers through Press advertisement.

Applications received in response to the advertisement shall be scrutinised by a Screening Committee consisting of 3 officers of not less than JAG Grade in case of large/important units and not less than Senior Scale officers in respect of other units. The Screening Committee shall shortlist the applicants keeping in mind following factors:

(i) Reputation/business standing of the applicant:

(ii) Turnover of the applicant's business, if any;

- (iii) Catering experience of the applicant;
- (iv) Financial standing of the applicant;
- (v) Size of the establishment and staff required for the unit;
- (vi) Location of the unit/units: and
- (vii) Any other factor considered relevant by the Screening Committee.

Clause 2 deals with Selection Committee which reads as under:

Selection Committee;

In case of large/important units, there shall be a Zonal Selection Committee at the Headquarter level. A list of large/important units should be drawn up by the Railways and intimated to the Board. The Zonal Selection Committee for such large/important units should be drawn up by the Railways and intimated to the Board. The Zonal Selection Committee for such large/important units shall consist of two principal HQLs (one being the CCS) and Principal/Professor of recognised catering institute. A member of the ZRUOO could be co-opted where the ZRUOO is in existence.

On a bare reading of the aforesaid clauses, it is quite vivid that in case of large/important units, the applications are to be scrutinised by the Screening Committee consisting of three officers of JAG Grade and not less than of Senior Scale Officer in respect of other units. The guidelines have also been provided by the Selection Committee. Submission of Mr. Imtiaz Husain is that the Screening Committee has not been properly constituted, and therefore, all other subsequent action is vitiated. As has been indicated earlier, a stand has been taken by the Railway Administration that the Itarsi Railway Station is not classified as large and important unit. In view of the aforesaid stand and the facts borne out on record, the constitution of Screening Committee by three officers not less than JAG Grade is not necessary and the said requirement as stipulated in clause I is not attracted. As far as the second part of the clause is concerned, the Committee is to consist of Senior Scale Officers. It is the stand of the Railways that two Senior Scale Officers were taken in the Committee but one Junior Scale Officer was taken from the Accounts side and justification has been given for taking such officer. It is worth noting here that a stand has also been taken that there is no post of Senior Scale Officer in the Accounts Branch under Divisional Railway Manager, Bhopal, and therefore, a Junior Scale Officer was nominated in the Screening Committee. When the policy provides that Screening Committee is to consist of Senior Scale officers, the Local Administration of the Railways could not have consisted a Committee by taking Junior Scale Officer. The moot question that falls for determination is whether due to improper constitution of the Screening Committee the whole process of selection should be declared as vitiated. In the obtaining factual matrix, I am inclined to delve into the stand taken by the Railways that by improper constitution of Screening Committee no prejudice has been caused to the Petitioner. Submission of Mr.

Mukherjee is that Petitioner's application was absolutely vague and he had not submitted the necessary documents as per the advertisement. To appreciate the aforesaid submission of Mr. Mukherjee, I have perused the advertisement contained in Annexure R-3. On a scrutiny of the same, it appears that a candidate is required to give experience certificate, business turnover, catering experience, certificate with regard to financial status and character certificate given either by Superintendent of Police or Collector of the District. Keeping the aforesaid advertisement in view, I have perused the application form submitted by the Petitioner. On a scrutiny of the same, it is apparent that it does not indicate submission of certificate with regard to business turnover. As far as financial status is concerned no information has been provided. The character certificate either from Superintendent of police or Collector of the District has not been attached and there is also no certificate indicating Income Tax clearance issued by Income Tax Officer. On a perusal of file it is apparent that the Screening Committee has taken note of this and come to the conclusion that the Petitioner is not entitled to be shortlisted. Thus, it is perceptible that the decision taken by the Screening Committee is neither unjust nor unfair. Hence, the decision taken by it cannot be faulted.

6. While not finding fault with the decision taken by the Screening Committee in not shortlisting the Petitioner, I am inclined to observe that in future the Respondents shall constitute the Committees as per policy and guidelines and would not deviate from the same. The Railway Administration should remember that the policy is framed to be followed with all sincerity and there should be not any deviation in its adherence.

7. In view of the aforesaid premises, I do not find any merit in the writ petition and the same is dismissed without any order as to costs.