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**(2015) 09 SHI CK 0013**  
**In the High Court Of Himachal Pradesh**  
**Case No : CWP No. 9492 of 2014**

Shashi Bhushan

APPELLANT

Vs

State of Himachal Pradesh and Others

RESPONDENT

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**Date of Decision :** 02-09-2015

**Acts Referred:**

Constitution of India, 1950 — Article 12, 136, 14, 16, 162  
Road Transport Corporations Act, 1950 — Section 10, 19, 2(b), 3, 34

**Citation :** (2016) 1 ShimLC 302

**Hon'ble Judges :** Mansoor Ahmad Mir, C.J; Tarlok Singh Chauhan, J

**Bench :** Division Bench

**Advocate :** Ajay Sharma, for the Appellant; Sharwan Dogra, Advocate General, Anup Rattan, Romesh Verma, Additional Advocate Generals and J.K. Verma, Deputy Advocate General, Advocates for the Respondent

**Final Decision :** Allowed

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## Judgement

Tarlok Singh Chauhan, J—By medium of this petition, the selection for the posts of Transport Multipurpose Assistants (Conductors) in the Himachal Pradesh Road Transport Corporation (for short "Corporation") has been questioned by the petitioner.

2. The facts in brief may be noticed:

The Corporation in its 126th meeting of Board of Directors held on 27th June, 2014 took a decision to fill up 680 posts of TMPAs by cancelling the earlier process for recruitment of conductors (contract basis) initiated on 22.7.2012 and 20.5.2013, respectively. Thereafter, advertisement was published on 18.7.2014 in the newspapers, pursuant to which the written test was conducted by respondent No. 3 and thereafter the interviews were conducted by respondent No. 2.

3. It is averred by the petitioner that the respondents have failed to maintain transparency and therefore, the entire process stands vitiated and should be

quashed and set aside. In addition thereto the selection has also been challenged on the following amongst other grounds:-

(a) That change as is made with respect to question papers, particularly of General Knowledge from the previous years is malafidely made in order to confer an advantage upon the favorites.

(b) Selection process of TMPAs was not handed over as per guidelines to respondent No. 5, which is an independent selecting agency specifically engaged for appointment of Class III posts in all boards, corporations, undertakings etc. in the State of Himachal Pradesh.

(c) Respondent No. 2, HRTC and respondent No. 3 Technical Services Board are headed by one Hon'ble Minister.

(d) Respondent No. 3 was not having particular expertise available with it to conduct the selection.

(e) Panel of paper setters is provided by respondent No. 2 to respondent No. 3 which has no nexus sought to be achieved.

(f) Though the test is to be conducted by respondent No. 3 but yet interviews are to be again conducted by respondent No. 2, resulting in illegal selection.

(g) Before conducting interviews result of screening test have been illegally handed over by respondent No. 3 to respondent No. 2.

(h) Respondent No. 2 has continuously interfered in the selection conducted by respondent No. 3.

(i) There are certain candidates whose addresses are through missing in their admit cards yet they have been interviewed and selected.

4. The Corporation in its reply after raising certain preliminary objections has categorically maintained that it has ensured complete transparency in the entire selection process.

5. The H.P. Technical Education Board, which has been arrayed as respondent No. 3 has in its reply averred that it has sufficient experience in the field of conducting the entrance tests/screening tests and therefore, the task of filling up the posts of TMPAs was rightly assigned to it by the Corporation. It is further claimed that it had earlier conducted the screening tests for the recruitment of Pump Operators, which was entrusted to it by the Irrigation and Public Health Department. It also maintained that the entire process in the instant case was carried out in a transparent, impartial and secret manner and no complaint of any kind of any irregularity was ever received.

6. The H.P. Subordinate Service Selection Board, i.e. proforma respondent No. 5 in its reply maintained that except for recruitment of some posts which have specifically been kept out of its purview by the State Government, it has been assigned the task of making recruitments of all Class-III posts of all Government

Departments, Boards, Corporations etc. and for this purpose has relied upon Sub-Rule 4.2 of the Rules of Business and Procedure of the Board, which provides "all such Class-III posts of the State Public Sector Undertaking, Boards, Corporations, Universities and Local Bodies as may be entrusted to the Board by such Boards/Corporations/Universities and Local Bodies etc. keeping in view the Acts and byelaws governing them".

We have heard the learned counsel for the parties and have gone through the records of the case as also the instructions and other records, including records of selection as were made available to us at the time of final hearing.

7. The learned counsel for the petitioner has vehemently contended that respondent No. 2, Himachal Pradesh Road Transport Corporation Limited is admittedly constituted under the provisions of Road Transport Corporation Act, 1950 (for short the "Act") and is, therefore, bound by the directions issued by the State Government from time to time, more particularly the directions relating to recruitment, condition of service etc., of its employees. He would contend that State Government vide notification dated 6th October, 1998 had issued general instructions, whereby all the State Public Sector Undertakings, Boards, Corporations, Universities and Local Bodies were directed to fill up all Class-III posts, falling within their purview only through respondent No. 5.

8. Respondent No. 5 in turn has supported this claim of the petitioner and would contend that respondent No. 5, Board in fact has been primarily constituted to make appointments to Class-III posts in all Public Sector Undertakings including respondent No. 2, Corporation.

9. It is not in dispute that as per Section 34 of the Act, the State Government has been vested with power to give directions to the Corporations by way of general instructions, which are required to be followed by the Corporations and such instructions may include directions relating to recruitment, condition of service and training of its employees etc.

Section 34 of the Act reads thus:-

"34. Direction by the State Government.--(1) The State Government may, after consultation with a Corporation established by such Government, give to the Corporation general instructions to be followed by the Corporation, and such instructions may include directions relating to the recruitment, conditions of service and training of its employees, wages to be paid to the employees, reserves to be maintained by it and disposal of its profits or stocks.

(2) In the exercise of its powers and performance of its duties under this Act, the Corporation shall not depart from any general instructions issued under subsection (1) except with the previous permission of the State Government."

10. However, the moot question is as to whether the notification issued on 6.10.1998 (supra) can be considered to be "directions" issued by the State government, as contemplated under Section 34 of the Act. The relevant portion

of this notification reads thus:-

"2. Function of the Board:- (1) All initial appointments to the Class. III services or posts, under the Himachal Pradesh Government, except the following, shall be made on the advice of the Board:-

(i) Posts in the High Court of Himachal Pradesh;

(ii) Posts in the HP Vidhan Sabha;

(iii) Posts in the HP Administrative Tribunal and posts in HP Public Service Commission;

(iv) Appointment to Class. III posts of wards of Govt. servants who die in harness;

(v) Class III posts/service recruitment to which is to be made against reserved vacancies for ex-servicemen including one dependent of the defence service personnel killed in action or disabled in action and rendered unfit for civil employment and Physically Handicapped;

(vi) Such other posts, as may, from time to time, be excluded by the State Govt. from the purview of the Board.

(2) All such Class III posts of the State Public Sector, Undertakings, Boards, Corporations, Universities and Local Bodies etc. as may be entrusted to the Board by such Boards, Corporations, Universities and Local Bodies etc. keeping in view the Acts and Byelaws governing them."

11. Here we may also note that the State Government vide notification dated 28.1.2004 has framed "Rules of Business & Procedure" of Himachal Pradesh Subordinate Service Selection Board, setting out there in a detailed procedure and mechanism for filing up Class-III posts.

12. Now in case the notification dated 6.10.1998 (supra) is minutely perused, it reveals that it is far too general in nature and makes no specific reference to the Himachal Pradesh Road Transport Corporation and therefore, mere mentioning of the "Corporations" in the notification would not make it applicable to all the Corporations, unless it is further proved that the notification was in fact issued after consultation with the respondent-Corporation, as envisaged under Section 34 of the Act.

13. Similar issue came up before the Hon"ble Andhra Pradesh High Court regarding the applicability of a Government order issued by the State Government of Andhra Pradesh laying down policy to be adopted by Public Sector Undertakings for payment of stipend to direct recruits as trainees. There was no reference of Andhra Pradesh State Road Transport Corporation or its being consulted in the Government order and it was held by learned Single Judge that mere mentioning of all Public Sectors at the beginning of the Government order would not make it applicable to all the Public Sector Undertakings and

accordingly the order was held to be beyond the purview of Section 34 of the Act.

14. The judgment of learned Single Judge was affirmed by learned Division Bench and finally when the matter was carried before the Hon"ble Supreme Court in case reported as A. Srinath and Others Vs. A.P. State Road Transport Corporation and Others, (2001) 89 FLR 572 : (2001) 4 JT 121 : (2001) 1 LLJ 1397 : (2001) 1 SCALE 359 : (2002) 9 SCC 750 , it was held that the employees of the Corporations would be governed by the Rules and Regulations framed by the Corporations, as it was creation of statute and Government orders relating to the condition of service, as such, would not apply to the Corporation employees. It was observed as under:-

"3. On examining the relevant provisions of the Act, Rules and the Regulations framed and the materials on record, we do not find any substance in the aforesaid contentions raised by the learned Counsel appearing for the appellants. The very advertisement that was issued nowhere indicated that the officer under training during the period of training should be given any particular scale of pay. Notwithstanding the provisions contained in the Act conferring powers on the Corporation to frame regulations governing the service conditions of its own employees and such regulations having been framed there is no provision shown to us which says that such trainees would be given a specific scale of pay. The Corporation being the employer and having conferred the power to determine the service conditions of its own employees and no such stipulation being there in any of the Rules and Regulations framed by the Corporation, the stipend that was being given to these appellants cannot be said to be arbitrary or unreasonable so as to be interfered with by this Court in exercise of its power under Article 136 of the Constitution of India, It is no doubt true that the Government in exercise of its powers under Article 162 of the Constitution of India has issued a GOMs which would be applicable to the employees of the Government. Until and unless the Corporation itself adopts the same or by a general order accepts that all conditions of service issued by the Government for its own employees would also be applicable to the employees of the Corporation, it is difficult for us to accept the condition of Mr. Sita Rama appearing for the appellants that the Corporation employees like the appellants should have been governed by the aforesaid GOMs issued by the State Government."

15. In view of the aforesaid, it can safely concluded that the instructions issued vide notification dated 6th October, 1998 cannot be held to be directions as contemplated under Section 34 of the Act.

16. In this background, the next question which then falls for our consideration is as to on what basis was the advertisement inviting applications for filing up the posts of TMPAs issued on 18.7.2014 and published in newspapers i.e. Divya Himachal and Tribune.

17. As per the minutes of the 126th meeting relating to appointment of TMPAs, the Rules were yet under contemplation and had been ordered to be finalized by

a committee consisting of Principal Secretary (Transport), Managing Director, HRTC and Executive Director, HRTC and at the same time the process earlier initiated for recruitment of Conductors (on contract basis) on 12.7.2012 and 20.5.2015 had been ordered to be cancelled. It is apt to reproduce relevant agenda item, which reads thus:-

"126.02 AI Policy for Passenger Services Assistant in Himachal Road Transport Corporation.

The BOD approved to designate Passenger Services Assistant as TMPA. Rules will be finalized by the Committee consisting of Principal Secretary (Transport), Managing Director, HRTC and Executive Director, HRTC.

The processes initiated for recruitment of Conductor (on contract) on 12.07.2012 and 20.05.2013 were cancelled.

Fresh applications will be called for recruitment of TMPAs on monthly remuneration of Rs. 4000/- + 1/2 % incentive on the revenue generated. The application forms will be printed by H.P. Takniki Siksha Board Dharamshala and sold by the Regional Managers, HRTC. The HRTC will charge Rs. 100/- per candidate as processing fee. The candidates will submit their applications in the office of Secretary, H.P. Takniki Siksha Board Dharamshala by the stipulated date. The Admit cards will be prepared and posted by H.P. Takniki Siksha Board Dharamshala and uploaded on website by them. They will provide Centerwise list, cutlist and attendance sheet to the HRTC. The question papers will be set by the H.P. Takniki Siksha Board Dharmshala and printed question papers & answer sheets will be provided to HRTC as per requirement. The test will be conducted by HRTC and answer sheets will be handed over to H.P. Takniki Siksha Board by HRTC. The evaluation process will be done by H.P. Takniki Siksha Board Dharamshala. The categorywise list of candidates for conducting interviews will be provided by H.P. Takniki Siksha Board. Interviews will be conducted by the HRTC Offices. Interview marks will be handed over to H.P. Takniki Siksha Board and final result after incorporating the marks of interview will be prepared by H.P. Takniki Siksha Board Dharamshala. The HRTC will pay Rs. 20 lakhs for these activities to the H.P. Takniki Siksha Board Dharamshala."

18. Why the issuance of advertisement assumes great relevance in the instant case is because admittedly despite there being no mechanism in place whether by way of guidelines, draft Rules, or even a decision by any authority, much less a competent authority, the advertisement surprisingly lays down certain conditions with respect to age and other eligibility conditions and also makes reference to the reservation etc. Here it would be apt to reproduce the relevant extract of the advertisement, annexed with the reply as Annexure R-1, which reads thus:-

"2. Age & other eligibility conditions:-

A person/candidate shall be eligible to be selected as Transport Multi Purpose

Assistant if:

- a) His/her age on 1st January of the year in which he/she applied for the post is between 18 to 45 years relaxable to SC & ST candidates for five years.
- b) He/She is bonafide resident of Himachal Pradesh.
- c) He/She is of sound mind and good health. He has not been disqualified for appointment for Public Service or removed from Public Services on disciplinary ground or has sought voluntary retirement under any Government policy.
- d) He/She has not been convicted for any offence criminal or on moral turpitude."

3. Category-wise number of vacancies is mentioned below:-

7. The last date for receipt of application is 14.08.2014 up to 5.00 P.M.

12. The written test will be of matric standard consisting of English, Hindi, Math and G.K. The detail is available on HRTC website.

15. The applicants who have applied in response to our earlier advertisement dated 12.07.2012 & 20.05.2013 have to apply afresh on the prescribed application form for this post."

It is evident from clause 7 of the advertisement that last date for receipt of application was 14.8.2014, whereas the Rules came to be finalized and notified only on 30.8.2014.

19. Now, in absence of any rules, regulations, executive orders, guidelines or instructions or even a decision by a competent authority, how the aforesaid qualifications came to be incorporated in the advertisement, is anybody's guess. When called upon, the learned counsel for respondent No. 2 was at a total loss to explain this position and has candidly conceded that he could not improve the position, as was available on record.

20. It is a trite that an important requirement of public appointment is that of transparency. Therefore, the advertisement is required to specify the Rules or instructions under which the applications are being invited and upon the basis of which the selection is to be made. The advertisement has essentially to comply with the procedure prescribed in the Rules or guidelines of selection.

21. The requirement of the advertisement being in consonance to the procedure adopted for conducting the selection is necessary to prevent arbitrariness and to avoid change of criteria of procedure during or after the selection process. The absence of arbitrary power is the first postulate of rule of law upon which our whole constitutional edifice is based. In a system governed by rule of law, discretion when conferred upon an executive authority must be confined within clearly defined limits. If the discretion is exercised without any principle or without any rule, it is a situation amounting to the antithesis of rule of law. Discretion means sound discretion guided by law or governed by known principles of rules and not by the whim or fancy or caprice of the authority.

22. Learned counsel for respondent No. 2 would however vehemently argue that the advertisement has no relevance in view of the Rules now formulated by it under Section 45 of the Act.

23. Before advertng to the provisions of Section 45 of the Act, it is necessary to examine certain other provisions of the Act, which have important bearing on the subject matter of the instant case. Section 2(b) defines "Corporation" to mean the Road Transport Corporation established under Section 3 of the Act. Section 3 relates to establishment of Road Transport Corporation in States. Under Section 4, every Corporation shall be a body corporate, by the name notified under Section 3, having perpetual succession and a common seal, and shall by the said name sue and be sued. Section 5 relates to the management of the Corporation and to its Board of Directors and under Sub-section (1), the general superintendence, direction and management of the affairs and business of a Corporation shall vest in a Board of Directors which, with the assistance of its committees and Managing Director, may exercise all such powers and do all such acts and things as may be exercised or done by the Corporation. Section 45 relates to the power to make regulations and reads as under:-

"45. Power to make regulations.--(1) A Corporation may, with the previous sanction of the State Government, make regulations, not inconsistent with this Act and the rules made thereunder, for the administration of the affairs of the Corporation.

(2) In particular, and without prejudice to the generality of the foregoing power, such regulations may provide for all or any of the following matters, namely:--

(a) the manner in which, and the purposes for which, persons may be associated with the [Board] under section 10;

(b) the time and place of meetings of the [Board] and the procedure to be followed in regard to transaction of business at such meetings;

(c) the conditions of appointment and service and the scales of pay of officers and [other employees of the Corporation other than the Managing Director, the Chief Accounts Officer and the Financial Adviser or, as the case may be, the Chief Accounts Officer-cum-Financial Adviser];

[(d) the issue of passes to the employees of the Corporation and other persons under section 19;

(e) the grant of refund in respect of unused tickets and concessional passes under section 19.]"

24. Undoubtedly, Section 45 of the Act empowers the Corporation to make regulations, but that is subject to the previous sanction of the State Government. This necessarily requires three steps:-

(i) The Corporation "frames or "proposes" regulations by its resolution. These have to be sent to the State Government for according sanction.

(ii) The State Government then accords its sanction. In this power of the Government it is implicit that it may reject or suggest amendment or modification in the proposed regulations and eventually accord its sanction.

(iii) After the State Government accords its sanction, the Corporation "makes" regulations.

This third step is necessary because the expression "previous sanction of the State Government" necessarily denotes that the Corporation in order to "make" the regulation has to do something "after" the sanction of the State Government. To put it differently the "previous sanction" is a step earlier than the "making of the regulations." (refer M.P.S.R.T.C. Vs. Ramchandra and Others, AIR 1977 MP 243 : (1977) 22 MPLJ 341 : (1977) MPLJ 341 . Indisputably, none of the aforesaid processes has been followed by respondent No. 2 before issuing notification dated 30.8.2014.

25. The power conferred on the Corporation to make regulations is a power which, under Section 5(1), vests in and is exercised by the Board of Directors of the Corporation. Whereas, the power to make regulations relating to the conditions of service of officers and other employees of the corporation, under Section 45(2)(c) is vested in the Board of Directors of the Corporation and such a power to make regulations (commonly termed as Rules by the Corporation) can only be exercised with the previous sanction of the State Government.

26. Once statute is clear and unambiguous and clearly uses the words "previous sanction", there can be no matter of doubt that before resorting to any exercise which would fall within the purview of Section 45 of the Act, the concurrence of the State Government is required whereas the records reveal that no such sanction has been obtained. Therefore, it can safely be concluded that the so called Rules/regulations have not legally come into force.

27. It is more than settled that public offices, both big and small, are sacred trusts. Such offices are meant for use and not abuse and in case large scale fraud is committed so as to shock the conscious of the Court, then the law is not that powerless and would step into quash the entire selection. This was so observed by the Hon'ble Supreme Court in Krishan Yadav and another Vs. State of Haryana and others, AIR 1994 SC 2166 : (1994) 4 JT 45 : (1995) 2 LLJ 77 : (1994) 2 SCALE 889 : (1994) 4 SCC 165 : (1994) 3 SCR 1045 : (1994) 2 SLJ 192 : (1994) 2 UJ 594 as under:-

"16. Having regard to all the above, the irresistible conclusion is "fraud has reached its crescendo". Deeds as foul as these are inconceivable much less could be perpetrated. We are reminded of the words of Shakespeare:

"Thus much of this, will make Black, white; foul, fair; wrong, right; Base, noble; Ha, you gods! why this?" (Timon of Athens, Act IV, Sc. 3)

17. It may not be too much to draw an inference that all these were motivated by extraneous considerations. Otherwise, how does one account for selection

without interview, fake and ghost interviews, tampering with the final records, fabricating documents, forgery? Each of this would attract the penal provisions of Indian Penal Code. They have been done with impunity.

18. The story does not end here. From out of the "selection list" secret Communications have been sent to the candidates. Selections were made without medical test or verification of antecedents.

19. It is highly regrettable that the holders of public offices both big and small have forgotten that the offices entrusted to them are sacred trusts. Such offices are meant for use and not abuse. From a Minister to a menial everyone has been dishonest to gain undue advantages. The whole examination and the interview have turned out to be farcical exhibiting base character of those who have been responsible for this sordid episode. It shocks our conscience to come across such a systematic fraud. It is somewhat surprising the High Court should have taken the path of least Resistance stating, in view of the destruction of records, that it was helpless. It should have helped itself. Law is not that powerless.

20. In the above circumstances, what are we to do? The only proper course open to us is to set aside the entire selection. The plea was made that innocent candidates should not be penalised for the misdeeds of others. We are unable to accept this argument. When the entire selection is stinking, conceived in fraud and delivered in deceit, individual innocence has no place as "fraud unravels everything". To put it in other words, the entire selection is arbitrary. It is that which is faulted and not the individual candidates. Accordingly we hereby set aside the selection of Taxation Inspectors.

24. All these efforts by us are aimed at cleansing the public administration. No doubt, it may be stupendous task but we do hope this small step will make great strides in the days to come. Accordingly, the appeals stand allowed."

28. In M.P. State Coop. Bank Ltd., Bhopal Vs. Nanuram Yadav and Others, (2007) 11 JT 369 : (2007) 11 SCALE 439 : (2007) 8 SCC 264 : (2007) 2 SCC(L&S) 883 : (2007) 10 SCR 307 : (2008) 1 SLJ 368 the Hon"ble Supreme Court has culled out the following principles to be followed in the matter of public appointments:-

"24. It is clear that in the matter of public appointments, the following principles are to be followed:

(1) The appointments made without following the appropriate procedure under the Rules/Government Circulars and without advertisement or inviting applications from the open market would amount to breach of Articles 14 & 16 of the Constitution of India.

(2) Regularisation cannot be a mode of appointment.

(3) An appointment made in violation of the mandatory provisions of the statute and in particular, ignoring the minimum educational qualification and other

essential qualification would be wholly illegal. Such illegality cannot be cured by taking recourse to regularization.

(4) Those who come by back door should go through that door.

(5) No regularization is permissible in exercise of the statutory power conferred under Article 162 of the Constitution of India if the appointments have been made in contravention of the statutory Rules.

(6) The Court should not exercise its jurisdiction on misplaced sympathy.

(7) If the mischief played so widespread and all pervasive, affecting the result, so as to make it difficult to pick out the persons who have been unlawfully benefited or wrongfully deprived of their selection, it will neither be possible nor necessary to issue individual show-cause notice to each selectee. The only way out would be to cancel the whole selection.

(8) When the entire selection is stinking, conceived in fraud and delivered in deceit, individual innocence has no place and the entire selection has to be set aside."

29. Respondent No. 2 being creation of statute is admittedly a State within the meaning of Article 12 of the Constitution of India and cannot therefore, act like a private individual, who can act in a manner whatsoever he likes, unless it is interdicted or prohibited by law. Rather its power as an employer are more limited than that of a private employer inasmuch as it is subject to constitutional limitations and cannot be exercised arbitrarily. It is trite that the State and its instrumentalities have to act strictly within the four corners of law and all its activities are governed by rules, regulations and instructions. It is more than settled that when a statutory authority is required to do a thing in a particular manner then the same must be done in that manner or not at all.

30. Now once it is established that there was no credible mechanism in place whether, by way of guidelines, rules, regulations or instructions, or even a decision by any authority, much less a competent authority on the basis of which the advertisement for filling up the posts of TMPAs has been issued and thereafter the selection conducted, the entire process of selection as undertaken by respondent No. 2 stands vitiated and is therefore, declared as null and void, besides being arbitrary and is accordingly set aside. In such circumstances, the other contentions as raised in this petition are rendered academic and therefore, need not be adverted to.

Accordingly, the writ petition is allowed, leaving the parties to bear their costs.