

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL**  
**MUMBAI BENCH**  
**ORIGINAL APPLICATION NO.1161 OF 2023**

Payal Govind Raut )  
Residing at Flat No.18, Vaishali Society, )  
Rajaji Road, Near Madrasi Mandir, )  
Dombivili (East), Thane. ) **....APPLICANT**

**VERSUS**

1. The State of Maharashtra, )  
Through Principal Secretary, )  
General Administration Department,) )  
Having Office at Mantralaya, )  
Mumbai 400 032 )
2. The Principal Secretary, )  
Urban Development Department, )  
Mantralaya, Mumbai. )
3. The Chairman/ Secretary, )  
Maharashtra Public Service )  
Commission, M.S. Mumbai, )  
Having Office at Trishul Gold Field, )  
Plot No.34, Sector 11, Opp. Sarovar )  
Vihar, Belapur CBD, )  
Navi Mumbai 400 614. )
4. Pandit Poonam Raju, )  
C/o. M.P.S.C. Office, Having Office )  
At Trishul Gold Field, Plot No.34, )  
Sector 11, Opp. Sarovar Vihar, )  
Belapur CBD, Navi Mumbai 400 614)

5. Namrata M. Bobde, )  
House No.21, Devaki Sharda Nagar, )  
Budnard Road Lane No. 1, )  
Behind Kushal Auto, Amravati Ukali)  
Maharashtra 444 605 )...**RESPONDENTS**

Shri A.S Gaikwad, learned Counsel for the Applicant.

Ms. S.P. Manchekar, learned Chief Presenting Officer for the Respondents No. 1 to 4.

Shri Abhishek Bhat with Dwanshi Bafna, learned counsel for Respondent no 5.

**CORAM** : **Justice Mridula Bhatkar, Chairperson**  
**Shri Debashish Chakrabarty Member (A)**

**RESERVED ON** : **30.11.2023**

**PRONOUNCED ON** : **11.01.2024**

**PER** : **Shri Debashish Chakrabarty Member (A)**

### **J U D G M E N T**

1. The applicant has invoked provisions of Section 19 of the Maharashtra Administrative Tribunals Act, 1985, challenging the selection process for the post of Assistant Director, Town Planning, Maharashtra Town Planning and Valuation Department, Group A) pursuant to advertisement no.3/2022, dated 28.01.2022 conducted by the Respondent No.3.

2. Learned counsel for the Applicant states that as per the advertisement, there were in all 12 total posts out of that 4 posts are for Woman Category, out of which, 2 posts which is reserved for Open Female Category and 1 post is reserved for OBC Female

Category. The Applicant challenges the results dated 02.06.2023 and 10.08.2023 and seeks direction to Respondent No.3 to quash and set aside recommendation made in respect of Respondent No.4 and further be directed to recommend the name of Applicant and revised the list of result. She further seeks direction to Respondent No.2 - Urban Development to - appoint her on the post of Assistant Director, Town Planning, Maharashtra Town Planning and Valuation Dept., Group-A.

3. Learned counsel for the Applicant further states that the Applicant belongs to Other Backward Class category and therefore, for the valid information to be submitted in the Application Form the category has been mentioned by the Applicant for this reason only. At this stage it is pertinent to note that the Applicant filed her Application Form and paid the amount of Rs. 449/- which is applicable for the OBC Female Category. After scrutinizing her On-line Application Form the Respondent No. 3, the written examination has been conducted on 8.2.2023 for the post of Assistant Director. Applicant appeared for that examination. The Applicant states that the Applicant secured 127 cut off marks in the said Screening Test and she has secured more number of marks than the Respondent No. 4, herein in the said Screening Test. The Respondent No. 3, M.P.S.C, issued the list of Qualified Candidates on 25.4.2023.

4. Learned counsel for the Applicant then states that Respondent, M.P.S.C issued call letter for interview which is conducted on 26.5.2023. Respondent, M.P.S.C issued the Merit List along with the recommended candidate list. The Respondent, M.P.S.C issued the list of non-eligible candidates in which the Applicant is at Sr. No. 8. The Applicant made a representation to the M.P.S.C and thereby taken an objection for selection of

Respondent No. 4 and further requested to revise the result of the Applicant in the interest of justice and according to her merit which is more than the Respondent No. 4.

5. Learned counsel for the Applicant states that the Applicant secured 127 cut off marks in the said Screening Test and she has secured more number of marks than the Respondent No. 4, herein in the said Screening Test. The Applicant received 127 marks in Screening Marks and 20 marks in Interview and therefore, the Applicant is otherwise eligible on merit to be selected and appointed on the post of Assistant Director, Town Planning, Maharashtra Town Planning and Valuation Department Group-A (Advertisement No. 003/2022 dated 28.1.2022). The Applicant is thus eligible, entitled and qualified all criteria education, non-creamy layer and also obtained all parameters and have applied from OBC Female Category, competed from OBC Female Category and also therefore, eligible, entitled to be selected only from OBC Female Category on the basis of her merit in Written Test/Screening Test and calculating the marks obtained by her in the interview, in totality is 147 marks than the candidate selected from OBC Female the Respondent No. 4 "Pandit Poonam Raju" who received only 123 marks (99 marks in Screening Test and 24 marks in Interview). Therefore, the Applicant deserves to be selected from OBC Female Category.

6. Learned counsel for the Applicant relies on 'Rules of Procedure' of M.P.S.C published on 6<sup>th</sup> May, 2014 wherein the following are relevant with the case of the Applicant.

"9. Direct Recruitment-

(viii) Whenever a screening test is held for selection by direct recruitment for the post/cadre which is:-

- (a) the lowest feeder/entry level, or
- (b) not specifying special qualifications, or
- (c) not seeking experience.

the marks of the screening test shall be considered only for short listing of the candidates and final recommendation shall be made on the basis of the marks obtained by the candidates in the interview/viva voce and for all other selections by direct recruitment to the posts/cadre other than those specified in a,b,c above, if a screening test is held the marks of the screening test shall be considered for final recommendation, so however that, the marks allocated for interview shall not exceed 25% of the marks allocated for the screening test:

Provided that the Commission shall determine as to which of the types mentioned above, a Screening Test falls in and notify accordingly before the conduct of the Screening Test:

Provided further that, if any question arises as to the type in which a particular Screening Test falls, the decision of the Commission shall be final.

(ix) Notwithstanding anything contained in these rules, only those candidates securing **at least 41% marks** in the interview/viva voce conducted for all types of direct recruitment shall be eligible for final recommendation.”

(x) Provided that in respect of the direct recruitment where marks of the screening tests are required to be considered for the recommendation, the final merit list shall be drawn for each category by adding marks obtained in the Screening Test by such eligible candidates to the marks secured by them in the interview/viva voce and in respect of all the other direct recruitments only on the basis of the marks obtained by such eligible candidates in interview/viva voce for each category.”

7. The condition of eligibility for recommendation based on Interview Marks is accordingly mentioned in Clause 10.6 of M.P.S.C Advertisement as follows:-

“१०- निवडप्रक्रिया-

१०.५ चाळणी परीक्षा घेतल्यास चाळणी परीक्षेचे गुण व मुलाखतीचे गुण एकत्रितरित्या विचारात घेऊनतर चाळणी परीक्षा न झाल्यास केवळ मुलाखतीच्या गुणांच्या आधार उमेदवाराची शिफारस करण्यात येईल

१०.६ मुलाखतीमध्ये किमान ४१: व त्यापेक्षा जास्त गुण मिळविणा-या उमेदवाराचाच विचार केला जाईल.”

8. Learned counsel for the Applicant argues that the criteria of minimum qualifying marks 41% could not arise calculating the total marks of her screening test and interview conducted by the Respondent No. 3, M.P.S.C bare perusal of provisions of Clause 10.5. The criteria fixing only 41% for interview separately would not arise when Screening Test is done and its result is declared without putting any such minimum criteria like interview for the said Screening Test. It is thus clear than the record that Condition No. 10.5 will prevail over Condition No. 10.6. In other words, the Condition No. 10.6 will not rise when Screening Test is taken. Then calculation of merits and marks would consider only under the Clause No. 10.5 of the said advertisement. The Applicant after issuance of the non-eligible candidate for the recommendation, made a representation dated 17.8.2023 to revise the results to the extent of OBC Female and declare him as selected candidate and accordingly recommend the Applicant to the Respondent Nos 1 and 2 for the post of Assistant Director, Town Planning, Maharashtra Town Planning and Valuation Department, Group-A and accordingly appoint him on the post of Assistant Director, Town Planning, Maharashtra Town Planning and Valuation Department, Group-A on the basis of merit of 147 marks.

9. Learned Advocate for the Applicant referred to judgment of the Hon'ble Bombay High Court in the case of **Smt Tjaswini Raghunath Galande Vs. The Chairman, Maharashtra Public Service Commission & Ors, 2019(6) ALL MR 384**, wherein it was observed as under:-

“18. In that view of the matter, we find that it is just and necessary that the petitioner be permitted to appear for oral

interview and after considering the marks obtained by the petitioner in the oral interview, respondent No. 1 – MPSC should by combining the marks of written examination as well as oral interview, consider her position as per merit and if the petitioner is found more meritorious than any of the candidate selected against the Open Women category, select the petitioner and recommend her name for the post of Assistant Commissioner/Project Officer-Grade-II, Group-B for appointment against Group ‘B’ post as per her merit rank in the said examination.....

20. The respondent No. 1- MPSC is directed to consider the candidature of the petitioner from Open Women category and hold her interview. The process of interview be completed within a period of six weeks from today. After combining the marks obtained by the petitioner in oral interview as well as the written examination, if it is found that petitioner has secured more marks than any of the candidate selected from Open Women category, the petitioner be selected and recommended for the appointment to the post of Assistant Commissioner/Project Officer-Grade-II, Group-B in accordance with her position in the merit in the said examinations.”

The above judgment of Hon’ble High Court of Bombay only directs that the Petitioner be permitted to appear for Interview and then after counting marks in Written Exam and Interview be selected and recommended for appointment. However, in the case of Applicant she has already appeared for Interview, but failed to secure Minimum Qualifying Marks of 41%.

10. Learned advocate for Respondent No. 5 relied on the decision of the Hon’ble Supreme Court in the case of **Director General, Indian Council of Agricultural Research Vs. D. Sundara Raju, (2011) 6 SCC 605**, referred to by the Hon’ble Bombay High Court in **Pratibha Mangilal Chavan Vs. Municipal Corporation of Greater Mumbai and Others, (2017) 2 AIR Bom R 6**, wherein it has been observed that:-

“the Hon'ble Supreme Court, while taking a review of the earlier judgments, particularly, in the cases of Liladhar

(supra) and Ashok Kumar Yadav (supra), came to the conclusion that it is not as if there is a certain percentage which is to be fixed and as an absolute measure for a viva voce test. Everything depend upon the facts and circumstances and in relation to a particular selection process. The Hon'ble Supreme Court found that it is not as if a particular prescription of marks or percentage can be termed as excessive or high. The Supreme Court evolved a test that best talent, and particularly, in relation to higher posts should be available. Interview is an accepted aid to selection and is designed to give the selectors some evidence of the personality and character of the candidates. Once it is taken to be an essential part, then, there is no substance in such complaints which are of general nature. Viva voce can be made a test of the candidate's alertness, intelligence and intellectual outlook. The Hon'ble Supreme Court reproduced certain principles evolved for efficiency of the civil service as an instrument of Government, rather than as a heaven-sent opportunity to find careers for our brilliant students. Thus, some principles would have to be adopted. Thus, it cannot be by applying a formula that one comes to the conclusion that particular percentage of marks can be termed as excessive.....

31. Once this is the test evolved by the Hon'ble Supreme Court and in all these judgments, then, we do not see how we can term the present allocation to be excessive and arbitrary. There are total marks which have to be seen and which are now seen while preparing the merit list. Minimum 35% marks have to be obtained in the written examination which is of 200 marks. 100 marks are assigned for oral interview in which 41 marks minimum have to be obtained. The post that was advertised and to be filled in is that of Ward Officer (Assistant Municipal Commissioner). The job of Assistant Municipal Commissioner requires the person to be in contact with the residents, attend to their day to day complaints, handle any situation and which may go out of hand in the best interest of administration.....

Therefore, a candidate who has not only qualified by obtaining the required marks in the written examination, but whose other traits and character can be judged and has been judged in an objective manner at an oral interview has to be selected. None would therefore dispute that this is a responsible post. This is the first Municipal Officer who comes in daily contact with the residents and at the ward level. He has also a team along with him which he has to manage. As a part of a team and sometimes performing the



role of a leader, he would have to solve the problems of the residents. He would have to maintain the image and reputation of the Municipal Corporation and its administration as well. Once it is he, who is looked at by his superiors for communicating with the public, then, it goes without saying that at an interview, these abilities have to be tested. A candidate cannot be selected merely because he is successful in the written examination. He also has to qualify in the viva voce test. Once his personality is judged and in an overall manner at such an interview, then assignment of 41% marks out of 100 cannot be termed as excessive and arbitrary. We have found that there are indeed candidates in the present selection process who have attained these marks. Therefore, merely because the petitioner was unable to attain them does not mean that the allocation is excessive and arbitrary. Once again going by the recent pronouncement of the Supreme Court, the petitioner has not challenged this allocation at any time on noticing the advertisement. The petitioner applied for the post by filling up the form. The petitioner took written examination and also appeared for the oral interview. After being unsuccessful, that she turns around and terms the allocation of marks in the viva voce as unduly high or excessive and arbitrary.”

11. Learned counsel for Respondent No. 5, relied on the decision of the Hon’ble Supreme Court in the case of **PRADEEP KUMAR RAI & ORS Vs. DINESH KUMAR KPANDEY & ORS, (2015) 11 SCC 493**, wherein the Hon’ble Supreme Court observed as under:-

“17. Moreover, we would concur with the Division Bench on one more point that the appellants had participated in the process of interview and not challenged it till the results were declared. There was a gap of almost four months between the interview and declaration of result. However, the appellants did not challenge it all that time. Thus, it appears that only when the appellants found themselves to be unsuccessful, they challenged the interview. This cannot be allowed. The candidates cannot approbate and reprobate at the same time. Either the candidates should not have participated in the interview and challenged the procedure or they should have challenged immediately after the interviews were conducted.”

12. The Maharashtra Public Service Commission Rules of Procedure of 2014, were notified on 3.9.2014 and came into force on 16.5.2014. Under these Rules of Procedure of 2014 under, Rule 9 relating to 'Direct Recruitment' in Sub-rule (ix) states the following:-

“(ix) Notwithstanding anything contained in these rules, only those candidates securing **at least 41% marks** in the interview/viva voce conducted for all types of direct recruitment shall be eligible for final recommendation.”

The Sub-rule (ix) beings with the “non obstante clause” states that it would be applicable “Notwithstanding anything contained in these rules. Hence Sub Rule (ix) has overriding effect over Sub Rule (viii) of Rule 9 of the Maharashtra Public Service Commission Rules of Procedure of 2014. Further Sub Rule (ix) also states “Only those candidates securing at least 41% marks in Interview/Viva Voce” thereby implying it is a mandatory requirement of the entire selection process. Sub Rule (ix) also states “all types of direct recruitment meaning thereby that it is applicable whether or not selection is based on “Screening Test and Interview” or only “Interview”. Needless to say it also mentions “shall be eligible for Final Recommendation”, hence no final recommendation can happen if the candidate does not achieve this threshold of atleast 41% marks in “Interview”.

13. The provisions of Sub-Rule 9(x) of the Maharashtra Public Service Commission, Rules of Procedure, 2014 come into operation only if the marks secured by candidates in 'Interview' is more than 41%. So in case of the candidates who has secured more than the Minimum Qualifying Marks in Screening Test, but has been not able to secure more than 41% Minimum Qualifying Marks in “Interview”, then such candidates will not be eligible for 'Final Recommendation' as per Sub Rule (x) of Rule 9 of Maharashtra

Public Service Commission, Rules of Procedure, 2014. Hence, the Applicant though having scored 147 marks out of 200 in the 'Screening Test' has received 20 marks out of 50 in the "Interview", which is less than Minimum Qualifying Marks of 41% and thus does not become eligible for Final Recommendation as per Maharashtra Public Service Commission Rules of Procedure, 2014. M.P.S.C has therefore rightly decided that the Applicant is not eligible for Final Recommendation for appointment to the post of Assistant Director of Town Planning.

14. We thus pass the following order:-

**ORDER**

(A) Original Application is Dismissed.

(B) No Order as to Costs.

**Sd/-**  
**(Debashish Chakrabarty)**  
**Member (A)**

**Sd/-**  
**(Mridula Bhatkar, J.)**  
**Chairperson**

**Place : Mumbai**  
**Date : 11.01.2024**  
**Dictation taken by : A.K. Nair.**