

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

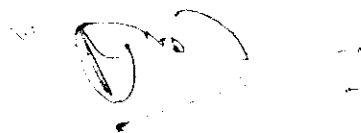
ORIGINAL APPLICATION NO.1018 OF 2013

DISTRICT : PUNE

Miss Sonali Keval Aher,)
Planning Assistant in the office of the)
Director of Town Planning, M.S,)
Central Building, Pune)
Address for service of notice:)
Shri A.V. Bandiwadekar, Advocate,)
9, Ram Kripa, Lt. Dilip Gupte Marg, Mahim,)
Mumbai 400016)..Applicant

Versus

1. The Chairman/Secretary,)
Maharashtra Public Service Commission,)
3rd Floor, Bank of India Building,)
M.G. Road, Fort, Mumbai 400001)
2. The State of Maharashtra,)
Through the Principal Secretary,)
Urban Development Department,)
Mantralaya, Mumbai 400032)



3. Smt. Jyoti Sunendra Kawade,)
Assistant Director, Town Planning,)
R/o C-23/04, Palm Beach Society,)
Nerul, Sector 4, Navi Mumbai 400706)..Respondents

Shri A.V. Bandiwadekar – Advocate for the Applicant

Shri K.B. Bhise – Presenting Officer for Respondents No.1 and 2

Shri K.R. Jagdale – Advocate for Respondent No.3

CORAM : Rajiv Agarwal, Vice-Chairman
R.B. Malik, Member (J)
DATE : 29th February, 2016
PER : R.B. Malik, Member (J)

J U D G M E N T

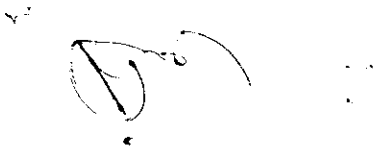
1. This OA is brought by a candidate for the post of Assistant Director of Town Planning Group A (Gazetted) (to be hereinafter called the said post). The reason why she was not called was that she supposedly did not have a total experience of 5 years in a responsible post. The OA was initially brought against the respondent no.1. By way of amendment the State of Maharashtra and the successful appointee came to be impleaded as respondents no.2 and 3 and the relief sought ultimately is for being called for the interview for the said post



and quashing of the recommendation of respondent no.3 and her appointment.

2. The sum and substance of the case of the applicant is that she belongs to the category of Other Backward Class (OBC). She is an M. Arch. She had worked as Junior Architect from 2.8.2007 to 13.3.2008 in the office of the Aid Architects Interior Designers, Pune. She then worked as Executive Architect from 1.3.2008 to 30.6.2012 in the office of Fourth Dimension Architect Private Limited, Pune. Lastly, she joined as Planning Assistant Group 'B' (Gazetted), office of Director of Town Planning, Maharashtra State, and she was working as such from 8.7.2012 till date which would include the date of the advertisement and application made by her pursuant thereto.

3. At this stage itself it needs to be noted that in so far as the last appointment of the applicant was concerned it was under the Maharashtra State. She joined that post on 9.7.2012. However, as far as the earlier two appointments are concerned it would appear from the certificates at page 18 r/w 18-A and 18-B that they were what can broadly be described as private appointments. To the certificates the nature of duties has already been annexed. This aspect of the matter assumes significance when one considers the fact as to whether in the



context of 5 years experience in a responsible position this experience could be counted.

4. It may also be noted that the last appointment under the Government that the applicant took up was governed by Planning Assistant and Junior Engineer (Group B) Non-Gazetted in the Maharashtra Town Planning and Valuation Services in the Directorate of Town Planning and Valuation under the Urban Development Department of the Government of Maharashtra (Recruitment) Rules, 2010 issued under the proviso to Article 309 of the Constitution of India. It is not necessary to read those rules in detail and it would suffice to mention that the applicant was found eligible to be appointed to that post.

5. At this stage itself it can be noted that the respondent no.1 did not consider it worth taking note of the first two appointments of the applicant in the private sector and, therefore, they held that the applicant did not answer the requirement of "responsible position" aspect of the matter. This approach of the respondent no.1 was challenged in this OA before amendment thereto.

6. Proceeding further in so far as the said post is concerned, they are governed by the Director of Town Planning Group A, Joint Director of Town Planning, Group A, Deputy



Director of Town Planning, Group A, Assistant Director of Town Planning, Group A, Town Planner, Group A, Assistant Town Planner, Grade I, Group B and Assistant Town Planner, Grade II, Group B in the Maharashtra Town Planning and Valuation Service in the Directorate of Town Planning and Valuation (Recruitment) Rules, 2011 (Recruitment Rules).

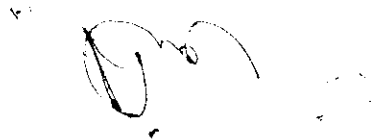
7. In this OA we are concerned with Rule 6 which deals with the said post. It provides that the appointment thereto would be made either by promotion as laid down in 'A' or by nomination as provided by 'B'. This 'B' needs to be reproduced hereinbelow:

"(B) by nomination from amongst the candidates who –

(i) are not more than forty five years of age:

Provided that the age limit may be relaxed by five years for the candidates who are already in the service of Government.

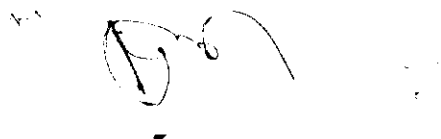
(ii) possess a Degree in Civil Engineering or Civil and Rural Engineering or Urban and Rural Engineering or Architecture or Construction Technology or Urban Planning of a University equivalent qualification and having experience not



less than five years in Town Planning or Town Planning and Valuation of Lands and Buildings in a responsible position, after obtaining the above qualification.”

8. It is not disputed that only distinguishing factor between the applicant who was not even called for interview and the respondent no.3 being the successful appointee was the experience in the context of responsible position. In so far as respondent no.3 is concerned, we shall presently discuss her case to the extent warranted hereby but all other eligibility criteria were not the undoing of both, the applicant as well as respondent no.3. We may also note here that the selection of the respondent no.3 from open female category was a point that became the bone of contention as the hearing of this OA proceeded towards its conclusion. We shall to the extent necessary deal with that aspect of the matter.

9. Now at this stage let us turn to the advertisement for the said post such as it was and a copy of which is at Exhibit 'I' page 34-C of the paper book. It is in Marathi and is advertisement no.334/2013 dated 31.1.2013. 7 posts were advertised. It appears that two posts were for open category and one for open female category. Thus, totaling 3. One post was for SC, one post was for ST (carried forward). One post was for NT(C) and one for OBC. The eligibility criterion was set

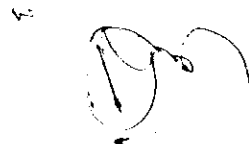


out in Para 4.4 and the same needs to be reproduced in Marathi:

“४.४ शैक्षणिक अर्हता:- मान्यताप्राप्त विद्यापीठाची स्थापत्य अभियांत्रिकी किंवा नागरी व ग्रामीण अभियांत्रिकी किंवा शहरी व ग्रामीण अभियांत्रिकी किंवा वास्तुशास्त्र किंवा बांधकाम तंत्रज्ञान किंवा नागरी रचना यातील पदवी अथवा समतुल्य अर्हता धारण करित असतील आणि उपरोक्त अर्हता संपादन केल्यानंतर नगररचना किंवा नगररचना आणि जमिनी व इमारती यांचे मुल्यनिर्धारण यामधील जबाबदारीच्या पदावरील किमान ५ वर्षांचा अनुभव आवश्यकत.”


10. In so far as this OA is concerned the responsible position aspect of the matter to which reference has been made above was clearly set out in the advertisement practically quoting it from the recruitment rules above discussed.

11. It is in the above factual and legal background that the crucial issue thrown up for determination is to be determined. We have perused the record and proceedings and heard Shri A.V. Bandiwadekar, the learned Advocate for the Applicant, Shri K.B. Bhise, the learned Presenting Officer for Respondents No.1 and 2 and Shri K.R. Jagdale, the learned Advocate for Respondent No.3.



12. The case of the respondent no.1 MPSC is that they have performed their duties strictly in accordance with the rules in vogue, especially the rules in force at the time the process culminating into appointment to the said post which took place. The State of Maharashtra being the respondent no.2 has practically thrown the burden on the co-respondent MPSC. The respondent no.3 has filed two affidavits and has pointed out that though she belongs to SC category but by not claiming what can be described as the benefit of creamy layer she was for all practical purposes a female candidate from open category. According to her, the applicant claimed through OBC category and also sought the benefit of the horizontal reservation for female. The respondent no.3 has assailed the application for non impleadment of Mr. M.M.O. Ejaj Hussain a successful candidate from OBC category. By affidavits in sur-rejoinder the applicant has reiterated her case.

13. It is an admitted position that the applicant was not called for interview though she claims to have cleared the stages up to that level. The select list that was ultimately prepared is at Exhibit R 3-7 Coll. page 91 of the paper book. The perusal thereof would show that S/Shri Ashok Patil and S.B. Deshmukh came to be appointed from open category. Shri D.S. Khot was appointed from NT(C) category, Shri V.B. Shinde and Shri A.H. Uike were appointed from ST and SC categories respectively and the respondent no.3 was shown to have been

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appointed from open female category (अराखीव (महिला) करिता राखीव असलेल्या पदाकरिता).

14. At this stage it may also be noted that as far as respondent no.3 is concerned there is no dispute that she has been serving MMRDA as Junior Planner from 1.2.2008 till date and till relevant date. She had an experience in excess of 5 years and there was no hitch as such in so far as respondent no.3 is concerned.

15. Now as far as the applicant is concerned, the respondent no.1 MPSC decided against her candidature on the ground that she did not serve for 5 years in a responsible position. We have perused the relevant rules and the material on record. There are no express terms to guide in so far as the precise words "responsible position" is concerned. Shri A.V. Bandiwadekar, Ld. Advocate for the applicant told us that it would be fallacious to work on the basis of salary that the applicant drew from her earlier appointments. The crux of the matter was the nature of duties. Now in so far as her present posting is concerned even otherwise it is a job under the State of Maharashtra and she was appointed under recruitment rules issued as per the proviso to Article 309 of the Constitution of India. However, it is also indisputable that her experience in that capacity was lesser than 5 years. And in that context as far as the earlier appointments of the applicant were concerned



from the record it would appear that they inter alia included study of environmental impact or feasibility study etc. Final construction plans created by architect and used by builders as step in aid. Then the nature of the work of the architect was mentioned. Another part of the duty included communication between the owner and contractor and architect consultant and site visits. The job also included the task of working according to the building codes, fire regulation etc and remaining up-to-date on policy, regulation etc. Further it included work on estimation and valuation and lastly the job concerned with technology. Her another job profile was more or less the same.

16. Therefore, even if we were to examine the job requirements in the private establishment that the applicant did it will not be possible for us being the lay persons in the field to conclusively hold anything for or against the responsible position aspect of the matter. Therefore, regard being had to the nature of the constitutional functions that the MPSC has to perform in the present set of facts it is not possible for us to find fault with their decision because after all the Tribunal cannot what can be described as the micro manage the performance of duty by the MPSC. It is absolutely clear that granting all latitude to the applicant it cannot by any stretch of imagination be held that there has been discrimination much less hostile between the applicant on one hand and the successful candidate on the other. There is also nothing to

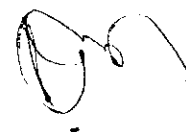


show that there was any discrimination between the applicant and others that ran for that post. It is not necessary for us to delve into the academic aspect of the theory of burden of proof or onus. The fact remains, however, that on the record such as it is there is nothing to show that the performance of duty by the MPSC suffered from the vices or vice capable of vitiating their decision. In matters such as this one the Tribunal exercising the power of judicial review of administrative action has to show awareness to the jurisdictionally and judicially circumscribed limitations. The constitutional selecting authority possesses the expertise in the matter which we in the Tribunal may not be able to lay a claim on and, therefore, unless there is a clearly discernible legal or factual bias, unfairness, injustice or discrimination writ large ex facie it will not be possible for us to interfere just for the asking. Here barring the use of words like unfairness etc there is no material to successfully demonstrate that the case of the applicant was processed in a manner which was untenable. After all even as some time is bound to be consumed in judicial proceeding but still there should be strong reasons to interfere with and unsettle the select list after two years of its finalization and effectuation. It is not possible for us therefore to uphold the case of the applicant. It is not possible for us to find fault with the MPSC in drawing the conclusion against the applicant on the anvil of responsible position aspect of the matter. It is no doubt true that by an order dated 13.1.2015 we granted leave




to amend the OA and make respondents no.2 and 3 as parties hereto. We also directed the respondents to furnish the list of selected candidates. In fact thereafter by our order on MA No.42/15 in this OA we removed a technical hitch of bar of limitation by our order of 5.5.2015. However, now in the totality of circumstances and having examined the matter in extenso, finally it is not possible for us to grant any relief to the applicant and the OA will have to be dismissed.

17. It is, therefore, not necessary now to examine the validity of appointment of respondent no.3 because if the applicant was the only contestant then she was ousted at the threshold for which the respondent no.3 could not be blamed at all. It is not as if the applicant was held ineligible or disqualified on the anvil of responsible position aspect of the matter because of the respondent no.3. The others, if any, in case for same post vying for appointment with the respondent no.3 are not before us. Therefore, in our view no occasion arise for us to examine the validity of the appointment of the respondent no.3 as such. We have already discussed above as to the nature of the advertisement such as it was along with the reservations etc. and it can by no stretch of imagination be said that the advertisement was so vice affected as to be categorized as void ab initio. In certain circumstances even if the applicant before the Tribunal brings up an action seeking relief for himself it is not impossible that depending upon the facts and



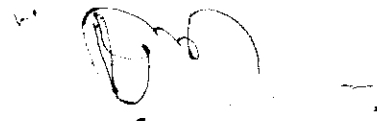
gravity of the impropriety and illegality coming to the fore if it is found that the whole process of selection was completely vitiated including the factor of reservation then of course the Tribunal can in those set of circumstances even annul the entire process of selection. And, why, even we did it in deciding **OA No.649/15 (Mumbai) (OA No.392/14 - Aurangabad) in the case of Mohammad Akif Abrar Versus State of Maharashtra & Ors, 16.2.2016.** That was a matter where the entire process of selection beginning from the reservation aspect were all illegal and, therefore, even if we did not grant any relief to the applicant in that matter the selected candidates were also held disqualified because of the totally faulty manner in which the process of selection went underway right from the inception. Such is not the state of affairs in this particular matter. Here we find that the applications were online. If we juxtapose from the record of this OA itself the application of the applicant Exhibit 'B' page 19 and of the respondent no.3 Exhibit R 3-1 page 82 it would appear that formats of those two applications were not exactly the same though both applied for the same post. Just for an example in the first application which is in English in the column of experience the first sub column is post held whereas in the said sub column in the second application (of respondent no.3) it is office/section which columns are to be found in the later half in the first application. In the applicant's application it is in the column of other information (इतर माहिती) that the information



about citizenship, domicile, mother tongue and category are there. The information is sought about whether the candidate was within the non creamy layer. There are serial numbers given. Now, on the other hand the respondent no.3's form in the 6th column there is the Marathi word 'वर्गवारी' category. Therefore, she mentioned SC. The next column was sub caste which was not there in applicant's form. In the column of non creamy layer by answering in affirmative the applicant disclaimed the benefit of SC.

18. In that view of the matter, therefore, there ought to have been compelling circumstances to hold that the respondent no.3 did not claim from open category. In so far as the horizontal reservations are concerned in the respondent no.3's form it was only for physically handicapped and sports person. While in applicant's form it was in addition to physically handicapped and sports in addition there was a column of ex-servicemen. There was no such column as reservation for females.

19. That being state of affairs in our view in the context of our findings against the applicant on the main issue we find that it is not possible for us to summarily dismiss the appointment of respondent no.3 on the basis of her claim that though SC by birth but she applied through open female category. Further, there is no material on record to show that



any other candidate suffered on account of the appointment of the respondent no.3. This Tribunal is empowered to call for the record from the MPSC but that would be in a deserving case. We have already indicted hereinabove that in the particular set of present circumstances the applicant has not been able to make out a case for quashing the entire process of selection because the applicant had been ousted at the threshold. That being the state of affairs we do not think the present facts provided an occasion to us to enter into some kind of a roving enquiry which would be merely academic as to the validity of the appointment of the respondent no.3.

20. In view of the foregoing we hold that the applicant has not been able to make out a case for relief and there is no justification for interfering with the select list in this matter. The OA is accordingly dismissed with no order as to costs.

Sd/-
(R.B. Malik)
Member (J)
29.2.2016

Sd/-
(Rajiv Agarwal)
Vice-Chairman
29.2.2016

Date : 29th February, 2016

Dictation taken by: S.G. Jawalkar.