

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 384 OF 2014

Shaikh Abdul Salam s/o Abdul Nabi	...	Petitioners
V/s.		
The State of Maharashtra & ors.	...	Respondents

Mr. Alok Bagla i/b. Mr. M.V. Ghatge for the petitioners.

Mr. C.P. Yadav, AGP for State respondent no.1.

Mr. Kiran S. Bapat i/b. Mr. V.S. Kapse for respondent no.2.

**CORAM : NARESH H. PATIL AND
A.S. GADKARI, JJ.**

**RESERVED ON 9th January, 2015.
PRONOUNCED ON 11th February, 2015.**

P.C.

The petitioner in this petition seeks following reliefs:-

a) The record and proceedings of selection process pursuant to advertisement No. R-P-1602/2012 may kindly be called for from respondent no.2.

b) The selection process conducted by respondents in pursuance to advertisement No. R-P-1602/2012 to the extent of not selecting the petitioner be declared as illegal and hence respondents may kindly be directed to select the petitioner on the post of Court Manager in pursuance to

above advertisement.

c) Any other appropriate relief in favour of petitioner may kindly be granted.

2. The petitioner submits that against the advertisement issued by respondent no.2 on 9th October, 2012 he participated in the selection process for the posts of Court Manager. The respondent no.2 had published list of candidates for on-line examination and written examination. The petitioner's name appeared at Sr. No.134 out of 249 candidates. He was given call letter by the respondent no.2. After the said examination the respondent no.2 published mark list of candidates who had appeared in the said examination. Name of petitioner appears at Sr. No.118 having secured 101 marks in the written-examination. The respondent no.2 thereafter published a list of provisional eligible candidates likely to be called for assessment and viva-voce for the said posts. In the said list name of petitioner appeared at Sr. No.23 in Court Manager's category.

3. It is contended that respondent no.2 published Programme of Assessment scheduled at Welingkar Institute of Management Development and Research (WeSchool), Mumbai. The petitioner appeared for interview

on 9th May, 2013. The interview was conducted by faculty of Welingkar Institute. The candidates were put through different tests such as psychometric test, group discussion test, in-basket programme, presentation etc. The programme was exhaustive and assessment was made by faculty of Welingkar Institute.

4. The petitioner further contends that respondent no.2 published programme of viva-voce scheduled between 1st July, 2013 to 11th July, 2013. As per the schedule the petitioner was likely to be interviewed on 6th July, 2013 by panel of learned Judges of the High Court. The scheduled date was revised and was fixed from 1st July, 2013 to 6th July, 2013. The petitioner appeared before the panel of judges on 6th July, 2013. It is alleged by petitioner that he was asked two questions. Other candidates were also asked similar questions of general nature. After viva-voce a select list and wait list was published by respondent no.2 on 1st August, 2013. The respondent did not publish marks secured by the candidates. The petitioner was aggrieved by the select list. He sought information from respondent no.2 in regard to viva-voce marks and the assessment programme by filing an application dated 26th August, 2013 under the Right

to Information Act. The concerned authority vide communication dated 12th September, 2013 rejected the application of petitioner on the grounds stated therein.

5. The learned Counsel appearing for the petitioners submits that the selection process was vitiated. The petitioner was not aware that his performance will be assessed by Welingkar Institute apart from written tests and viva-voce assessment. The petitioner's viva-voce marks were not disclosed even under the Right to Information Act which has caused prejudice to the petitioner. It is further submitted that the candidates who had obtained less marks under the written-examination were selected. In respect of conducting viva-voce test it is submitted that two questions were asked by the judges to the petitioner and other candidates which were of general nature. Therefore, the interview conducted by panel of judges was not in accordance with settled procedure.

6. The respondent no.2 filed affidavit-in-reply through Mr. Rajendra G. Avachat, Registrar (Legal & Research) Appellate Side, Mumbai. The deponent contended that as the petitioner had participated in the process of

written-test assessment made by the Welingkar Institute as well as viva-voce conducted by the Selection Committee without any protest, he cannot be permitted to challenge the process after it was over.

The posts in question was a tenure post for a period of two years which will come to an end in March 2015.

The candidates were thereafter sent for screening tests which was conducted by Welingkar Institute of management as per the decision unanimously taken by the Selection Committee.

7. The deponent denied the contention raised in respect of procedure adopted by the Committee. The deponent submitted that the Selection Committee interviewed the candidates in a transparent manner and weightage was given to candidates' overall performance in written-test, screening tests as well as the viva-voce. The petitioner appeared for screening test of Welingkar Institute on 9th May, 2013. According to deponent there was nothing illegal in seeking help of reputed private institute in assessment of management graduate candidates in respect of the area in which their expertise was required to be checked. The deponent denied the contention that the Welingkar Institute has given marks to the

candidates. The institute had conducted several tests and had given the gradation as per the assessment made by their team. A report was accordingly submitted by the institute to the High Court. The expenditure made on the assessment conducted by the institute was an administrative expenditure.

8. The learned Counsel appearing for the respondent no.2 High Court of Bombay represented through Registrar General, Bombay High Court submitted that as petitioner participated in the selection process, he is not entitled to raise challenge to the selection process. The learned Counsel placed reliance on the contentions raised in the affidavit-in-reply filed on behalf of respondent no.2. In the submissions of learned Counsel, the procedure adopted by respondent no.2 and Selection Committee was transparent and fair. There is no reason for the petitioner to get prejudiced. The candidates were referred to Welingkar Institute with a view that experts in the field would assess the performance of candidates and submit report of their performance. The Selection Committee had unanimously opted for the procedure and the candidates had participated in the selection process. The learned Counsel submits that the information sought for by

the petitioner under the Right to Information Act requesting for disclosure of viva-voce marks under the Right to Information Act was rejected. The petitioner had efficacious remedy to file appeal against the said order which the petitioner did not opt for. The allegations made by the petitioner in respect of the issues concerning weightage of marks, selection of candidates securing less marks than the petitioner were denied by the Counsel.

9. The learned Counsel for the petitioner placed reliance on following judgments:-

i) M/s. J. Mohapatra & co. and anr. v/s. State of Orissa & anr. AIR 1984 Supreme Court 1572, ii) Ajay Hasia etc. v/s. Khalid Mujib Sehravardi & ors. Etc. 1981 AIR 487, iii) K. Manjusree vs State of A.P. & anr. Supreme court on India on 15/2/2008.

10. The learned Counsel for respondent relies on following case laws:

i) Amlan Jyoti Borroah v/s. State of Assam (2009) 3 SCC 227, ii) Manish Kumar Shahi v/s. State of Bihar & ors. (2010) 12 SCC 576.

11. We have perused the judgments cited (*supra*). The petitioner participated in the selection process i.e. written-examination, screening test and viva-voce. He did not raise any objection during the process and the tests conducted. After the results were declared and the list was published, the petitioner preferred to file the present petition. As regards screening test conducted by Welingkar Institute, it is submitted that Selection Committee had unanimously adopted such a procedure with a view to get report from the expert Institute regarding the performance of the candidates. The Institute assessed the performance of the candidates in the respective fields and submitted report. As regards the marks obtained by the petitioner in viva-voce, he filed an application under Right to Information Act. The concerned authority rejected the application by saying that marks of the viva-voce are not to be disclosed. The petitioner had effective alternate remedy against the said order of filing appeal but no such appeal seems to have been filed by the petitioner.

12. The petitioner's further contention is that viva-voce was not conducted properly by the Selection Committee as only two questions were asked to the petitioner and other similarly situated candidates. It is for the

Selection Committee to frame questions and interview a candidate and accordingly the Selection Committee had conducted viva-voce test. The deponent had denied the contentions of the petitioner on this count. It is necessary to appreciate that tenure of subject post is going to end in the month of March 2015. The post is not a substantive post. The petitioner has challenged the selection process, at the sametime the petitioner seeks direction to select the petitioner on the said post of Court Manager. Such a prayer would be self contradictory.

13. The reliefs prayed for by the petitioner cannot be granted. There is no merit in the petition. The petition is accordingly dismissed.

(A.S. GADKARI, J.)

(NARESH H. PATIL, J.)

L.S. Panjwani, P.S.