

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
NAGPUR BENCH, NAGPUR

WRIT PETITION NO. 6155 /2014

( Nittin Ganesh Chandraliya and 20 others vs. The Nagpur Municipal Corporation and three others )

Office Notes, Office Memoranda of  
Coram, appearances, Court's orders  
of directions and Registrar's orders

Court's or Judge's order

Mr.Rahul D.Dhande, Advocate for petitioners  
Mr. J.B. Kasat, Advocate for Nagpur Mun.Corporation/Res.1 and 2  
Mrs. Bharati Dangre, Govt. Pleader for respondents 3 & 4

**CORAM : SMT. VASANTI A. NAIK &**  
**A.M. BADAR, JJ.**

**DATED : 7<sup>th</sup> May, 2015.**

Heard.

By this Petition, the petitioners impugn the seniority list published by the Nagpur Municipal Corporation, for granting appointment to the dependents of the erstwhile sweepers and *safai kamgars*, of the Corporation. The petitioners seek a direction to the respondent–Nagpur Municipal Corporation, to include the names of the petitioner nos. 2,4,17 and 21 in the new list for the period from 17.11.1975 to 30.7.1995.

The petitioners claim to be the dependents of the erstwhile sweepers and *Safai Kamgars* of the Nagpur Municipal Corporation. In view of the policy decision implemented by the State of Maharashtra by the Government Resolutions based on the recommendations of the Lad Committee, the petitioners claim employment on the posts of sweepers and *Safai Kamgars* in Class

IV category. According to the petitioners, some of the petitioners were not considered for appointment on the post of *Safai Kamgars*, whereas some others were not placed in the seniority list, as per their application. The petitioners have challenged the seniority list published by the Nagpur Municipal Corporation on 14.10.2013, on the ground that the same does not give placement to the petitioners, as per their application. The petitioners have sought a direction to the Corporation to consider the applications of the petitioners for appointment on the post of *Safai Kamgars*, within a stipulated period.

The Respondent-Corporation has filed an affidavit-in-reply. It is stated therein that the petitioners who had submitted their application during the period from 1975 to 1995 were considered and their names are included in the provisional or proposed list of *Safai Kamgars*, dated 14.10.2013, impugned in the instant petition. It is stated that after the objections were secured to the provisional list, dated 14.10.2013, a final seniority list, dated 20.12.2014, is prepared. It is stated that some of the petitioners are eligible and others are ineligible for appointment. It is stated that the petitioner no.21 had not applied at all. It is stated that after receiving the objections to the seniority list, dated 14.10.2013, 270 applicants were found to be eligible as their applications pertain to the period from 1995 to 2010. It is lastly stated that since disputed questions in regard to the eligibility or ineligibility of the petitioners fall for consideration, the said questions may not be adjudicated in exercise of the writ jurisdiction.

It is disputed on behalf of the petitioners that the petitioner no.21 had not applied for appointment as a *Safai Kamgar*. It is stated that the new seniority list published on 20.12.2014 is also arbitrary, irrational and illegal, as some of the petitioners who are actually eligible for appointment, are not included in the list

and it is stated that they are ineligible.

On hearing the learned counsel for the parties and on a perusal of the affidavit-in-reply filed on behalf of the respondent-Corporation, it appears that the issue involved in this Writ Petition cannot be decided in exercise of the writ jurisdiction. Several disputed questions of facts arise for determination in this case. On one hand, it is asserted on behalf of the petitioners that they are eligible for appointment on the post of *Safai Kamgar* and, on the other, it is the case of the Corporation that some of the petitioners are ineligible. Some of the petitioners claim to be the grand daughters and grand daughters-in-law of erstwhile *Safai Kamgars*, who allegedly worked in the respondent-Municipal Corporation. In the absence of any record to show that the petitioners are actually the dependents of the persons who allegedly worked in the Corporation several years earlier, it would not be possible for the Corporation to hold them eligible. If some of the petitioners who are held to be ineligible are aggrieved by the action of the Corporation, they are free to avail appropriate remedy. However, it would not be proper for this Court to consider the disputed documents in exercise of the writ jurisdiction to consider whether all the petitioners are eligible for appointment. Also, we find that the petitioners are seeking appointment on the basis of the Government Resolutions issued in pursuance of the Report of the Lad Committee, of the year 1975. In exercise of the discretionary writ jurisdiction, we would not like to show indulgence, especially when it appears, *prima facie*, that the policy is bad in law, in the present scenario and several disputed questions of facts are involved in this Writ Petition.

Hence, in the circumstances of the case, we dismiss the Writ Petition, with no order as to costs.

During the hearing of the Writ Petition, we found that the 'Vashila Padhhati' i.e. partisanship method or favouritism method, of appointing the legal heirs and dependents of the *Safai Kamgars* and sweepers was based on the report of the Lad Committee that was prepared more than 40- years earlier. It is informed to this Court, by the learned counsel for the Corporation, that in view of the policy decision of the State Government, based on the Lad Committee Report, the Corporation is not entitled to follow the normal procedure of selection and appointment on the Class IV posts of *Safai Kamgars* and sweepers and the appointments in the vacancies are made only as per the policy found in the Government Resolutions issued by the State Government from time to time, after the submission of the Lad Committee Report, 40 years earlier. We were shocked and surprised that the recommendations of the Lad Committee, which are based on the conditions prevailing 40 years earlier, the State Government is continuing with the policy of making appointments in the vacancies, on the posts of *Safai Kamgars* and sweepers, only by the partisanship method or favouritism method. It was brought to the notice of this Court, on one of the previous dates of hearing that the Aurangabad Bench of this Court, had struck down an advertisement by which all the posts of *Safai Kamgars* and sweepers were reserved for candidates from the "Mehtar" community. The said advertisement was struck down on the ground that there could not have been 100% reservation for any category. The case in hand is worse. In the case in hand, the reservation is not even for a particular caste or community, but is only for the legal heirs, dependents or nominees of the *Safai Kamgars* of a particular caste, who had worked in public bodies like the Corporation. It is informed to this Court that for the past more than 40-years, the appointments to the post of Sweepers and *Safai Kamgars* are made by following the partisanship method, which is found in the Government Resolutions, issued from time to

time after the preparation of the Lad Committee Report. Earlier, till the year 2014, only the dependents of the *ex-Safai Kamgars* of the Corporation, were eligible, but by the Government Resolution, dated 26.2.2014, the Government has directed the appointment of the 'nominee' of a *Safai Kamgar*, who had earlier rendered services in the Corporation. Now, an erstwhile *Safai Kamgar* can nominate anybody. We are told that it could be also for a price.

At this stage, we would like to mention that the Lad Committee was constituted at a time when dry latrines and toilets were in vogue and human excreta and faeces, including night soil, were required to be removed by manual scavenging. At the relevant time, when the Committee was constituted, human faeces were removed manually by persons who belonged to a particular Scheduled Caste and carried on the occupation of sweeping and scavenging. The Lad Committee was constituted for devising the measures for stopping the practice of carrying night soil and human faeces manually and keeping the toilets and latrines clean by modern methods, like flush or water-borne toilets. The Committee also considered the upliftment of the sweepers and scavengers who belonged to a particular caste i.e. "Mehtar" caste and other Scheduled Castes. In the circumstances mentioned herein-above, the Lad Committee decided to apply the 'partisanship' or 'favouritism method', while making appointment on the post of *Safai Kamgars* and sweepers. After more than 40-years from the preparation of the report by the Lad Committee, the times and circumstances have changed considerably. So also there is a vast change in the condition of the toilets. Almost every public toilet is modernised and has a flush. We are of the view that the Government cannot reserve 100% posts, either for a particular community or for the dependents of the persons belonging to a particular community who had earlier worked as *Safai Kamgars* in the Corporation. The posts are not only reserved for a particular

caste but they are reserved in totality for the relatives or the nominees of the sweepers who had earlier worked in the offices of the State Government and the other public bodies. No appointment was made by the Corporation, as we are told during the past more than 40-years by following the regular procedure of recruitment. A *Safai Kamgar* may be required to clean a toilet, but some of the *Safai Kamgars* are only required to work as a sweepers, on the city roads and other public places. The salary and wages of the sweepers and *Safai Kamgars* are substantial. The appointments of the *Safai Kamgar* as per the '*Vashila Paddhat*' are initially made in clear vacancies on probation for a period of one year and then they are granted permanency in service. If that be so, persons from all the castes and communities would like to compete on the post, for seeking appointment on the post of *Safai Kamgar*. There is a great change in the trend in law relating to public employment. It is held by the Hon'ble Supreme Court in the recent past that the appointments made without following the due process of selection, are illegal and no person could be regularized in service in pursuance of such appointments. It would be necessary to refer to the judgments reported in 2007 6 Mh.L.J. 667 ; 2011 AIR SCW 1332; 2014 2 Scale Page 262 and 2014 (7) SCC 223, in this regard. If this Court has quashed the advertisement providing 100% reservation for the "Mehtar" community while making appointments to the posts of *Safai Kamgars* and sweepers, by the judgment reported in 2009 (50) Mh.L.J. 243, we fail to fathom how by the policy of the State Government, the grand-daughters and great grand daughters-in-law of the erstwhile *Safai Kamgars* could be appointed in permanent vacancies without following the due procedure prescribed by law. We are sure that several unemployed persons would like to compete on the post of *Safai Kamgars* or sweepers. In view of the change in the circumstances, after a lapse of 40-years from the preparation of the Lad Committee Report, we do not find

that there is any propriety in the action of the State Government to continue the 'Vashila Paddhat' or the 'partisanship' or 'favouritism method' of appointing the dependents and nominees of the erstwhile *Safai Kamgars*, in public employment.

On the previous date of hearing when these facts were noticed by this Court, the learned Government Pleader had made a statement, on instructions that the State would reconsider the policy decision evolved in view of the Lad Committee Report, in the changed scenario, if this Court so directs. Hence, though the Writ Petition is dismissed for the reasons recorded in the order dismissing the same, for the reasons recorded herein-above, we take *suo motu* cognizance in the matter of appointments to the posts of sweepers/*Safai Kamgars* in Government, Semi Government undertakings and the local bodies, like the Corporation and direct the State Government to make a statement on the next date of hearing, within what time a decision would be taken in the said matter, after reconsidering the policy. The aforesaid statement should be made on behalf of the State Government by taking necessary instructions from the Chief Secretary, State of Maharashtra, the Principal Secretary, Urban Development Department, the Director of Municipal Administration, the Principal Secretary, Social Justice and Special Assistance Department, Principal Secretary, Social Welfare Department as well as the Principal Secretary, Labour Department.

Stand over to 17<sup>th</sup> June 2015, for further consideration.

Steno copy is granted.

**JUDGE**

**JUDGE**

*safai*