

FARAD CONTINUATION SHEET  
IN THE HIGH COURT OF JUDICATURE OF BOMBAY  
BENCH AT NAGPUR

**WRIT PETITION NO.1276/2014**

( Farooq Shaikh s/o Md. Shaikh Vs. The Chairman, Nagpur Improvement Trust &  
another)

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| Office Notes, Office Memorandum of<br>Coram appearances, Court's orders or<br>directions & Registrar's orders. | Court's or Judges Order |
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Shri M.S. Wakil, Advocate for the petitioner.  
Ms. Joshi, AGP for the respondent no.2.

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

**DATED : MARCH 17, 2015.**

By this petition, the petitioner seeks a direction to the respondent no.1 to conduct a proper enquiry on the application of the petitioner dated 23.1.2013 and rectify the marks given to the petitioner in Paper-I and Paper-II of the examination held in pursuance of the advertisement issued on 22.2.2012.

An advertisement was issued by the respondent no.1 calling applications for appointment of candidates on various posts including the post of Civil Engineering Assistant. The petitioner applied for the post of Civil Engineering Assistant in the OBC category. As per the advertisement, a candidate was required to secure at least 45 marks in each of the two question papers posed by the respondent no.1 and was

required to secure 90 marks at the written examination. The petitioner admittedly secured 74 marks out of 200 marks and was not qualified for being selected. On 10.1.2013 a fresh advertisement was issued by the respondent no.1 inviting applications for appointment on various posts. The petitioner again applied for the post of Civil Engineering Assistant from OBC category, though the petitioner was age-barred. The petitioner secured nearly 130 marks in Paper-I and Paper-II of the examination and according to the petitioner, he is qualified for being considered for appointment. It is the case of the petitioner that the key answers to 40 questions were wrong in Paper-I and the key answers to 15 questions were wrong in Paper-II of the examination conducted in pursuance of the first advertisement issued on 22.2.2012. According to the petitioner, when the petitioner appeared for the examination in pursuance of the first advertisement, he was eligible but the answers mentioned in the answer keys were wrong and he was illegally declared failed in the written examination. It is stated that the petitioner was not eligible, being age-barred to appear for the examination conducted in pursuance of the second advertisement dated 10.1.2013, though he has secured more marks. By this petition, the petitioner is, therefore, seeking a re-checking of the answer-sheets in Paper-I and Paper-II of the examination held in pursuance of the first advertisement.

We find that the petitioner has abused the process of the Court by filing the instant petition. If the petitioner was dissatisfied with the wrongful valuation of the papers by the respondent no.1 in the examination conducted in pursuance of the first advertisement dated 22.2.2012, the petitioner could have challenged the action of the respondent no.1 at that time. The petitioner, however, did not challenge the issuance of the second advertisement on 10.1.2013. The petitioner applied in pursuance of the second advertisement, though the petitioner was age-barred. It is a well settled position of law that a candidate participating in the selection process, cannot challenge the selection process at a subsequent stage of the same. The petitioner had never challenged the issuance of the advertisement dated 10.1.2013 on the ground that an illegality was committed in the selection process conducted in pursuance of the first advertisement dated 22.2.2012. After having failed in the examination conducted in pursuance of the first advertisement and after his candidature was rejected in pursuance of the second advertisement dated 10.1.2013, the petitioner being admittedly age-barred at that time, the petitioner has turned around and has challenged the alleged wrongful awarding of marks by the respondent no.1 in the examination conducted in

pursuance of the first advertisement. Such a course is not open to the petitioner.

In the result, the writ petition is dismissed with costs.

**JUDGE**

**JUDGE**

*Ambulkar.*