

**THE HON'BLE SRI JUSTICE NOOTY RAMAMOHANA RAO
AND**

THE HON'BLE MRS. JUSTICE ANIS

WRIT PETITION No. 24135 OF 2015

ORDER: *(per Hon'ble Sri Justice Nooty Ramamohana Rao)*

The Managing Director, Hyderabad Metropolitan Water Supply & Sewerage Board, Hyderabad, its Executive Director, Director and General Manager respectively are the petitioners before us in this Writ Petition. They have instituted this Writ Petition calling in question the correctness of the orders passed by the Andhra Pradesh Administrative Tribunal in O.A.No. 2143 of 2015 instituted by Respondents 1 to 16 herein.

The Hyderabad Metropolitan Water Supply Sewerage Act, 1989 has been made by the Legislature providing for all aspects relating to water supply, sewerage and sewage treatment in Hyderabad Metropolitan area and for matters connected therewith. Under Section 3 of this Act, the government, as soon as after the commencement of this Act, by notification, was required to constitute 'The Hyderabad Metropolitan Water Supply and Sewerage Board'. Accordingly, the Hyderabad Metropolitan Water Supply and Sewerage Board (henceforth referred to as 'the Board') has been constituted with effect from 01.11.1989. It will be important to notice that Section 7 dealt with the general duties entrusted and liable to be performed by the Board, *inter alia*, which include supply of potable water, planning, design, construction, maintenance, operation and management of water supply system, similarly providing for sewerage, sewage disposal. In section 8, general principles of finances of the Board have been provided for. It is spelt out therein that for carrying out the operations entrusted to it under the Act, the Board shall levy rates, fees, tariffs, rentals, deposits, contributions and other charges and was also granted the necessary power to vary such rates, fees, tariffs, rentals, deposits, contributions and other charges from time to time in order to

provide sufficient revenues to cover operating expenses, taxes, interest payments and also to provide for adequate maintenance and depreciation. The finances can also be planned in such a way that the Board will be able to meet repayment of loans and other borrowings and also finance for the year to year improvements to be made to its services. The Board is also required to provide for the capital works, which are necessary to be undertaken from time to time and also provide for some reserve fund for meeting any uneventful expenditure. Under Section 12, power has been conferred upon the Board to borrow from time to time, but however, with the previous sanction of the government. Similarly, under Section 11, the government also may make subventions to the Board for the purpose of carrying out the purpose entrusted under the Act to the Board. Under Section 13, government may furnish the necessary guarantee for the borrowings indulged in by the Board. Under Section 16, the Board shall cause proper accounts and other records to be maintained and make a statement of its income and expenditure account and prepare its balance sheet and they shall be audited by such person, as may be appointed by the government. The audited statement shall be submitted annually to the government and based thereon, the government may issue such instructions to the Board in respect thereof as they may deem fit and the Board shall comply with all such instructions. The government under sub-section (5) of Section 16 was required to cause the accounts of the Board to be published in the manner prescribed by the rules and make available copies thereof on sale at a reasonable price fixed therefor. Under Section 17 of this Act, on and from the date of coming into force of Chapter IV of the Act, all public reservoirs, tanks, cisterns, fountains, wells and bore wells, pumps, pipes, taps, conduits and other works connected therewith and all land, not being private property, adjacent and appertaining to the same, shall vest in the Board and be subject to its control. Under Section 22, payment shall be made at such rates, at such times and

under such conditions as may be prescribed by regulations, to the Board and different rates may be prescribed for supply of water for different purposes and for different quantities. Thus, a perusal of the various provisions of the Act would disclose the sweep of powers and autonomy conferred upon the Board for carrying out the purposes entrusted to it under this enactment. Similar are the provisions with regard to the sewerage and sewage treatment works, for which Chapter V makes a provision. But however, we must also make a note of the provision contained under Section 81. It dealt with the power of the government with regard to the policy formulations. Sub-section (1) of Section 81 clearly brings out that in the discharge of its functions, the Board shall be guided by such direction on question of policy as may be given to it by the government. However, the proviso under sub-section (1) has taken adequate care by pointing out that any such direction shall be given only after consultation with the Board. In this regard, all we need to notice and observe is that the government has been conferred necessary power under the statute to provide guidelines to the Board in all matters concerning the policy of the Board, so that the Board will be able to effectively and efficiently discharge its functions.

Insofar as the man-power required for discharging the functions is concerned, Section 6 of the Act has vested necessary power on the Board to appoint a Chief Engineer, Public Health Engineer and such other officers and employees as may be required to enable the Board to carry out its functions under the Act. The proviso to sub-section (1) of Section 6 holds some key for us to understand the contention canvassed by the learned Standing Counsel for the Board that unless the government clears the selections made by the Board, the selected candidates cannot be appointed. The proviso reads as under:

“ Provided that the appointment of the Chief Engineer and the Public Health Engineer shall be made in consultation with the government.”

It is therefore, clear that the consultation process required to be

undertaken by the Board is confined by the proviso to sub-section (1) of Section 6 of the Act only to the area of making appointment to the post of Chief Engineer and Public Health Engineer. Insofar as the appointment of other officers and other employees of the Board are concerned, the Board is under no obligation to indulge in prior consultation with the State Government. Therefore, we are clearly of the opinion that the contention canvassed by the learned Standing Counsel that since the Board has preferred to consult the State Government, till such time the State Government clears the issue relating to appointment, the Board is not liable to be compelled to complete the process of recruitment to posts, which are not clearly the posts of Chief Engineer and Public Health Engineer, is unsustainable. We may, in fact, observe that the Managing Director of the Board, more with a view to keep the State Government apprised of the developments that have taken place, could have possibly taken up the issue with the State Government, but not owing to any obligation arising out of the Act. Further, the reliance placed by the learned Standing Counsel on the provision contained in Section 81 is a completely misplaced one. Section 81 empowered the State Government to furnish necessary guidance to the Board in the matter of policy decisions. As we have noticed supra, the Board has been empowered to charge for the services rendered by it to various types and kinds of consumers. Therefore, the State Government, perhaps, can provide necessary guidance in that regard as it also owes an obligation to ensure that the rates fixed by the Board for various services to be rendered by it are not exorbitant and the citizens in the Hyderabad Metropolitan area to whom the services are rendered by the Board are not taxed too heavily. We are therefore, of the opinion that there is no policy involved for the Board to seek guidance of the State Government under Section 81 when it comes to the question of undertaking recruitment process of other employees than the Chief Engineer and the Public Health Engineer.

Coming to the principal subject in controversy, we noticed that the State Government in its Finance Department passed orders through their G.O.Ms.No. 323, Finance (SMPC-I) Department, dated 04.12.2013 announcing a kind of a policy decision therein, after examining the proposals of various departments and also keeping in view the actual man-power requirement with reference to the nature of work and activities of the departments and also keeping a careful concern for the overall financial implications, government accorded permission to fill 7173 vacancies in different categories in various departments through direct recruitment by the relevant recruiting agencies, as shown in the Annexure to the said order. A copy of this G.O.Ms.No. 323, dated 04.12.2013 is exhibited at page 113 of the paper book filed in support of this Writ Petition. In the Annexure to this G.O., at page 117 of the paper book, we have found the relevant entry with regard to the Board herein. Category of posts, which have been authorized by the State Government to be filled up through this general policy decision are two types; 1) General Purpose Employees (Sewerage Wing) and the number of vacancies authorized to be filled in are 208; and 2) General Purpose Employees (Water Supply Wing) and the vacancies are 450. Thus, it is more than clear that the State Government, as of 04.12.2013, authorized the Board to fill-up the vacancies of General Purpose Employees so far as Sewerage Wing is concerned of 208 numbers and so far as Water Supply Wing is concerned 450. Then followed another decision of the State Government contained in their G.O.Ms.No. 33, Municipal Administration & Urban Development (C) Department, dated 29.01.2014. This was specifically addressing the question relating to the selection process to be adopted by the Board while filling up the abovementioned 405/208 General Purpose Employees in the Board. The State Government, while prescribing the selection process to be adopted by the Board for accomplishing the above task, has also taken care to inform the Board that the additional financial commitment of

Rs.9.68 lacs per month will be met from the internal sources of the Board itself. Thus, no additional financial commitment is required to be passed on to the State Government on the count of making recruitment to the aforementioned 450/208 General Purpose Employees posts sanctioned to be filled up as of 04.12.2013. In paragraph 2 of the orders passed by the State Government in their G.O.Ms.No. 33, dated 29.01.2014, the total marks for selection have been split into three components. The first component related to experience in similar works, for which 50 marks are set apart. So far as the field test is concerned, 40 marks have been set apart and for qualifications, 10 marks are set apart. Now, based upon this selection process, selections have been carried out by the Board. The notification issued by the Board has drawn such a tremendous response from the general public that nearly 29,120 applications have been received. Though the post advertised is fairly a low-paid post, but still the tremendous response from the general public would only reflect the scale of unemployment and the anxiety of the willing candidates to get recruited. It is on record that the Board has scrutinized the applications and found 15,646 applications as responsive in all respects to the posts notified. The best amongst those applicants in the ratio of 1:3 have been subjected by the Board for a field test that was conducted on 16.06.2014, 17.06.2014 and 20.06.2014.

It is so obvious that out of nearly 16,000 applicants, less than 2000 applicants have been subjected to field test because conducting the field test is a hugely time-consuming affair and conducting the field test for all the 16,000 applicants, would take enormous time for completing the selection process. Consequently, nearly 14,000 of otherwise-qualified and suitable candidates find themselves left behind. As can be expected, in this test, the selection process undertaken by the Board has come for adverse criticism in media. Stunned by some of those reports, the Managing Director appears to

have taken necessary measures to ensure that the selection process is fair, transparent and as per the requirements of law. The existing employees of the Board, who have formed into one or more number of unions, were also upset about the selection process undertaken by the Board. Consequently, they also made various allegations about the selection process. We find that the list of selected candidates was published and out of them, 336 candidates for water supply and 174 candidates for sewerage works have been appointed by the Board as General Purpose Employees, leaving behind still substantial number of posts unfilled and the selected candidates got confined to the list of meritorious candidates only. Issuing appointment orders to 336/174 candidates to the respective wings as General Purpose Employees has given rise to the O.A. in question.

The contention canvassed by the selected candidates was that for no fault of theirs, they have been ignored. When we enquired from the learned counsel Sri Dinkar Kulkarni as to whether any of the candidates in the merit list who are down below have been selected and appointed already, the learned counsel has asserted that a good number of those candidates, who have been appointed out of 336/174, are included down below in the merit list published by the Board. This signifies that the Board has picked up some of the candidates obviously against whom no allegation has surfaced from any quarter and only such of those candidates against whom some remark or objection has been raised, have been left out.

At the initial stage, making appointments to the non-controversial candidates could be understandable, but however, even with regard to the other candidates, the selection process must be finalized in real quick time. The Board cannot go on dragging its feet on one pretext or the other. If it had entertained any doubt either with regard to their past experience or their academic record, it is certainly open to the Board to call for an appropriate report in the matter based upon the verification of facts. If there was any adverse material found

against any of the selected candidates, Board is also justified in not finalizing the selection in respect of such candidates, but entertaining an omnibus allegation that the selected candidates have not produced genuine certificates, the selection process cannot be held up. It is all the more so when some of the candidates from out of the same selection process have already been appointed. It is therefore, imperative of the Board to finalize the selections. If it had received any adverse material against the claims made by any of the selected candidates, it is certainly open to it to put the individual concerned on notice and then, cancel his selection, but so long as such an exercise has not been carried out, the Board cannot delay the process of selection and appointment in respect of such candidates. The plea raised by the learned standing Counsel that the State Government has been approached by the Board seeking a clarification in this matter and since the State Government has not furnished any such clarification, the selections could not be finalized, is only a ruse not to finalize and not to discharge the functions which the Board is required to perform. We have not appreciated any such delaying tactics on the part of the Board. Therefore, we leave it open to the Board to proceed against any individual member, who has been selected and included in the merit list in case the Board has received any specific adverse material against their past experience or academic record and take steps for cancellation of the selection(s) of the candidate(s), but so far as the other candidates are concerned, the process of selection has got to be given effect to.

We are conscious of the legal principle that a mere selection will not give any indefeasible right to the selected candidates to stake a claim for eventual appointment. When once the selection itself has been acted upon, and candidates, who are arrayed down below in the merit list, have been picked up and they have already been appointed, the candidates, who are figuring above in the merit list acquire a right to seek a similar treatment to those who have been appointed. It is

their right to have their candidature considered for appointment, which gets infringed. While it is open to an employer not necessarily to fill up all such vacancies, which have been notified by it earlier, but however, it has no permit or liberty to depart from the *inter se* merit ranking amongst the competing claimants and then pick up some candidates from the bottom of the merit list and appoint them leaving aside some one above them in the merit list. That would infringe the fundamental rights guaranteed to the candidates in the merit list under Articles 14 and 16 of the Constitution of India. We therefore, do not find any merit in this Writ Petition and it is accordingly, dismissed, but however, taking into consideration the precarious financial resources available with the Board, we are refraining ourselves from imposing exemplary costs against the Board. We grant, at request of the learned Standing Counsel, 60 days' time from today for the Board to complete the task. No costs.

Consequently, the miscellaneous applications, if any shall also stand dismissed.

NOOTY RAMAMOHANA RAO, J

ANIS, J

24th August 2015

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