

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

Writ Petition No.375 of 2016

Dilip Bhagwan Kathane

Vs.

The Nagpur Municipal Corporation, through its Municipal Commissioner, Nagpur and 4
other.

AND

Writ Petition No.943 of 2016

Sajay Gajanan Sonkusre

Vs.

The Nagpur Municipal Corporation, through its Municipal Commissioner, Nagpur and 4
other.

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

Court's or Judge's orders.

Mr. R.D. Dhande, counsel for petitioner in both petitions.

Mr. J.B. Kasat, counsel for R-1 to 3 in both petitions.

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

DATE : 21st April, 2016.

Since common issues arise for determination in these writ petitions and the relief sought by the petitioners is the same, they are heard together and are decided by this common order.

By these petitions, the petitioners seek a direction to respondent Nagpur Municipal Corporation to appoint the petitioners on the post of Safai Kamgars – Sweepers.

According to the petitioners, they are the dependents of the erstwhile employees – Safai Kamgars - sweepers of the Nagpur Municipal

Corporation. It is the case of the petitioners that the grand fathers of the respective petitioners were working as Safai Kamgars – Sweepers with the Nagpur Municipal Corporation. According to the petitioners, as per the Lad and Page committee recommendations that were accepted by the state government, the legal heirs of the Safai Kamgars-Sweepers that had worked in the various departments of the State, including the Nagpur Municipal Corporation are entitled for appointment on the posts of Sweepers. In view of the resolutions passed by the state government from time to time and adopted by the Nagpur Municipal Corporation, the petitioners applied for their appointment on the post of Safai Kamgars. Since the applications were not decided, the petitioners along with others filed writ petitions seeking a direction to the respondent Corporation to decide their applications. The writ petitions were partly allowed and the Corporation was directed to decide their applications along with the others. Since the applications of the petitioners were not decided, the petitioners and some others filed a contempt petition seeking action against the concerned officers of the Corporation. In the contempt petition, certain affidavits were filed and some eligible applicants were appointed by the Nagpur Municipal Corporation as Safai Kamgars.

Since the claim of the petitioners was rejected by the Corporation, the petitioners have filed these petitions seeking a direction to the Nagpur Municipal Corporation to appoint them on the post of Safai Kamgars – Sweepers.

Shri Dhande, the learned counsel for the petitioners, submitted that in view of the policy of the state government, as reflected in the government resolutions and based on the Lad and Page committee recommendations, the legal heirs of Safai Kamgars are entitled for appointment on the posts of Safai Kamgars – Sweepers. It is submitted that even in accordance with the latest resolution of the state government, dated 11.3.2016 a relative of a Safai Kamgar would be entitled for appointment. It is submitted that the government resolutions have not been challenged before any court of law and therefore it would be necessary to direct the respondent Corporation to appoint the petitioners on the post of Safai Kamgar in terms of the government resolutions. It is submitted that this is the second round of litigation, inasmuch as, by the order in the earlier petition, the Corporation was directed to consider their case and since the filing of the first petition, various affidavits are filed by the Nagpur Municipal Corporation and the contents of the affidavits are contradictory. It is submitted that since

the policy of the state government is not challenged, it would be necessary for this court to grant the relief to the petitioners in terms of the policy. The learned counsel relied on the judgments of the Hon'ble Supreme Court reported in **2000(2) SCC 223** and **2007 (10) SCC 712** to substantiate his submission. It is submitted that the case of the Corporation that the petitioners have committed trace-forgery by forging the signature of the Medical Officer on the notice of retirement of their grand fathers, need not be considered in exercise of the writ jurisdiction. It is submitted that the disputed questions of facts may not be decided by this court in exercise of the writ jurisdiction.

Shri Kasat, the learned counsel for the Nagpur Municipal Corporation, supported the order rejecting the applications filed by the petitioners for their appointments as Safai Kamgars. It is stated that the petitioners had tendered the copies of the notice of retirement of their grand fathers to the Nagpur Municipal Corporation for seeking employment. It is submitted that since the Corporation found that the documents were doubtful, the said documents were referred to the handwriting expert and it was found that the petitioners had committed trace-forgery, inasmuch as the signature of the Medical Officer on the said documents was forged by the petitioners. It

is submitted that in this background, the petitioners cannot be appointed on the posts of Safai Kamgars – Sweepers. The learned counsel sought for the dismissal of the writ petition.

On hearing the learned counsel for the parties, it appears that the relief sought by the petitioners cannot be granted for more reasons than one.

The petitioners have claimed appointment on the basis of the policy of the state government to appoint the relatives of the erstwhile Safai Kamgars – Sweepers. For seeking appointment, the petitioners have relied on the notice of retirement of the grand fathers of the petitioners. The said documents were referred by the Nagpur Municipal Corporation to the handwriting expert as the genuineness of the documents was doubted. The Nagpur Municipal Corporation received the hand-writing expert's opinion that trace-forgery was committed by the petitioners, inasmuch as the signature of the medical officer on the said documents was forged. On a reading of the affidavits filed by the respondent Corporation, we do not find that the stand taken by the Corporation in any of the affidavits is belied by the stand taken in the other. Since the very documents on which the petitioners have based their claim are allegedly forged, the relief sought by the

petitioners cannot be granted in exercise of the writ jurisdiction. It would not be proper for this court to decide the factual issues that need to be decided only after granting an opportunity to the parties to tender evidence, both oral and documentary. Since no relief is sought against the State and since the state is not a necessary party to this writ petition, the application made by the petitioners for permission to join the state government as a party respondent is rejected. We find that the learned counsel for the petitioners has argued the matter against the petitioners by submitting that disputed questions of facts cannot be gone into, in exercise of the writ jurisdiction. We agree with the submission of the learned counsel for the petitioners that the disputed questions of facts, including the allegations of forgery cannot be decided in exercise of the writ jurisdiction. If the petitioners are really desirous of securing a declaration that the documents are not forged, the petitioners are free to file appropriate proceedings, if so advised.

Apart from the aforesaid position, there is an additional reason for dismissal of the writ petition. The documents annexed to the writ petition show that the 'Vashila Padhati' i.e. the 'partisanship' or 'favouritism' method of appointment of heirs and relatives of Safai Kamgars/Sweepers was based on the report of Lad and Page 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 permitted to follow the normal procedure of recruitment on Class-IV posts of Safai Kamgars and Sweepers and all the appointments are made only as per the policy laid down in the government resolutions issued by the state government from time to time, after the submission of the Lad committee report that was prepared before 40 years. We find that the recommendations of the Lad and Page Committee are based on the conditions that were prevailing more than 40 years earlier and we are shocked that the state government is continuing with the policy of making public appointments in the vacancies on the post of Safai Kamgars – Sweepers only by the 'partisanship' or 'favoritism' method. The Aurangabad Bench of this court has by the judgment reported in **2009 (5) Mh.L.J. page 243** struck down an advertisement by which all the posts of Safai Kamgars were reserved for 'Mehtar' community. The said advertisement was struck down by holding 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 for a particular caste or

community but is provided only for the heirs, relatives or nominees of the Safai Kamgars that had worked in public bodies like the Corporation. It is informed to this Court that for the past more than 40 years, recruitment to the posts of Sweepers and Safai Kamgars is made only by following the 'partisanship' method, on the basis of the Government Resolutions that are issued from time to time, till the issuance of the last government resolution dated 11.3.2016. Earlier, only the relatives of the ex-Safai Kamgars of the Corporation were eligible but by the resolution dated 26.2.2014, the Government has permitted the appointment of the 'nominee' of an erstwhile Safai Kamgar. Now, an erstwhile Safai Kamgar can nominate anybody. We are told that it could also be for a price as the nominee need not be a relative of the erstwhile Safai Kamgar.

At this stage, we would like to mention that the Lad and Page 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 Mehtar Scheduled Caste and carried on the occupation of sweeping and scavenging. The Lad and Page 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 waterborne 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 recruitment on the post of Safai Kamgars and sweepers. Since more than 40 years from the preparation of the report by the Lad Committee, the 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 legal heirs of the employees belonging to a particular community that 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 that had earlier worked in the offices of the State Government and the other public bodies. No appointment was made by the Corporation, we are

told, during the past more than 40 years by following the regular procedure of recruitment. Some Safai Kamgars may be required to clean toilets, but most of them are only required to work as 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 Kamgars as per the 'Vashila Paddhat' are 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 for the posts. There is a great change in law relating to public employment. It is held by the Hon'ble Supreme Court in the recent past that 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 (5) Mh.L.J. 243, we fail to fathom how by the policy of the State

Government, the grandsons, 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. It is well settled that public employment cannot be hereditary or secured by nomination. We are sure that several unemployed persons would like to compete for the post of Safai Kamgars or sweepers. In view of the change in the scenario after a lapse of 40 years from the preparation of the Lad Committee Report, prima facie we do not find any propriety in the action of the State Government to continue the 'Vashila Paddhat' or the 'partisanship' or 'favouritism method' of appointing the heirs and nominees of the erstwhile Safai Kamgars, in public employment. However, since nobody has challenged the 'Vashila Paddhati' it would not be proper to quash the same in this writ petition.

However, in exercise of the writ jurisdiction, which is discretionary in nature, we would decline to grant appointment to the dependents of the Safai Kamgars, even if they prove that they are heirs or nominees of the erstwhile Safai Kamgars. The jurisdiction under Article 226 of the Constitution of India is discretionary and the court would not be bound to grant the relief only because the right is based on a particular policy which could

be violative of the constitutional provisions. If the court finds that it would not be proper in the larger interest of the public to grant the relief, the court would decline to grant the same. Hence, irrespective of the fact that the petitioners do not have a case on merit, we decline to exercise the discretion in favour of the petitioners on the basis of the policy. The judgments reported in 2011 AIR NCW 1332, 2007(10) SCC 712 and (2014) 7 SCC 223 and relied on by the counsel for the petitioners cannot be made applicable to the facts of this case.

The writ petition is dismissed with no order as to costs.

JUDGE

JUDGE

Hirekhan