

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 6995 OF 2009

Uddhav S/o Shivram Chavan,
Age : 28 Years, Occu. : Service,
presently working as Clerk-cum-Typist,
in the office of the Regional Transport
Officer (R.T.O.), Latur
R/o Pona-Tanda, Tq. Kandhar,
District Nanded. .. Petitioner

Versus

1. The State of Maharashtra,
through its Secretary,
Home Department, Mantralaya,
Mumbai.
2. The Transport Commissioner,
Administrative Building, 4th Floor,
Bandra, Mumbai.
3. The Maharashtra Knowledge Corporation
Limited (M.K.C.L.), Pune.
4. Pradeep S/o Baburao Rathod,
Age : 28 Years, Occu. : Nil,
R/o Snehanagar, Nanded,
Dist. Nanded. .. Respondents

Shri S. R. Barlinge, Advocate for the Petitioner.
Mrs. A. V. Gondhalekar, Addl.G.P. for the Respondent Nos. 1 and
2.
Shri S. G. Chapalgaonkar, Advocate for the Respondent No. 3.
Shri G. N. Chincholkar, Advocate for the Respondent No. 4.

**CORAM : S. V. GANGAPURWALA AND
MANGESH S. PATIL, JJ.
DATE : 18TH AUGUST, 2017.**

ORAL JUDGMENT (Per S. V. Gangapurwala, J.) :-

. The petitioner assails the order of the Maharashtra Administrative Tribunal thereby setting aside the selection of the present petitioner for the post of clerk-cum-typist and directing to appoint the respondent No. 4.

2. Mr. Barlinge, the learned counsel for the petitioner submits that, in the selection process pursuant to the advertisement conducted for the post of clerk-cum-typist in the office of the Regional Transport Officer, Latur, the petitioner was the most meritorious candidate. Present respondent No. 4 was at Sr. No. 4. According to the learned counsel the Tribunal has set aside the selection of the present petitioner only on the ground that the application of the petitioner was received after the last date specified for making application. The application of the petitioner was submitted on 27.03.2008. According to the learned counsel, the last date for filing application was 11th April, 2008 as per the changed programme. Even in absence of persons standing at Sr. Nos. 2 and 3, the Tribunal set aside their selection and directed selection of the respondent No. 4, which is also illegal. The learned counsel submits that, Maharashtra Knowledge Corporation Limited (for short "M.K.C.L."), has

conducted the selection process and who has also stated on affidavit that last date of submitting application was 11.04.2008. The learned counsel submits that, pursuance to the interim orders passed by this Court petitioner continued in service.

3. Mr. Chincholkar, the learned counsel for the respondent No. 4 submits that, present respondent No. 4 had applied under the Right to Information Act and information was supplied to the respondent No. 4 pursuant to his application dated 21st July, 2009 that last date for receiving application was 14.03.2008. Even before the Tribunal, the State Government did not come up with the case that the last date of receiving the applications was 11.04.2008. There is no reason for the Information Officer to supply wrong information. Even if, the schedule has to be changed, then same has to be notified in the news paper. There is no notification in the news paper of the changed schedule. The learned counsel submits that, the Tribunal has rightly considered that the persons at Sr. Nos. 2 and 3 also did not possess non creamy layer certificate and the candidature could not be accepted. Mr. Chincholkar, the learned counsel further submits that, the Tribunal has not committed any error and has rightly passed the order.

4. Mr. Chapalgaonkar, the learned counsel for the respondent No. 3/M.K.C.L. submits that, M.K.C.L. has conducted selection

process as per the directions of the respondent Nos. 1 and 2. Initially as per the advertisement last date for accepting applications was 10.03.2008. The said date was extended to 14.03.2008 and thereafter the said last date for receiving applications was extended upto 11th April, 2008. Present petitioner had applied on 27.03.2008. The respondent No. 4 had applied on 06.03.2008 and the written examination was conducted on 27th April, 2008 as per the schedule given by respondent Nos. 1 and 2 and the same was followed. Fees pursuant to application was paid on 01st April, 2008 by the petitioner herein.

5. The learned Additional Government Pleader supports the arguments of Mr. Chapalgaonkar, the learned counsel for the respondent No. 3/M.K.C.L. and submits that, the deadline for submitting applications pursuant to the advertisement for the post of clerk-cum-typist was extended upto 11.04.2008.

6. We have considered the submissions canvassed by learned counsel for respective parties.

7. The respondent No. 2 has filed his affidavit through Regional Transport Officer. In the affidavit it has stated thus :

"6. In this context, this deponent would like to inform that, the deadline for submitting the applications which was fixed

as 10.03.2008 was later on extended upto 14.3.2008 and then again upto 11.4.2008. The revised final date of submission of application was also published on the MKCL's web site. Therefore, even though the application of the petitioner was filed on 27.3.2008 and the exam fee was paid on acceptance of the application was extended upto 11.4.2008. The petitioner is also a meritorious candidate amongst all the four candidates. Therefore the selection of the petitioner was made on the post of Clerk-Cum-Typist."

8. The respondent No. 3 has also filed affidavit thereby stating that the changes in recruitment programme were published on official website as per communication dated 13.03.2008 (page 72).

9. The only ground on which the respondent No. 4 assailed the selection of the present petitioner is that, the application of the petitioner pursuant to the advertisement was received on 27.03.2008 i. e. after the last date for submitting applications.

10. Letter dated 13.03.2008 issued by the office of the Transport Commissioner states that, the last date for submitting applications is extended to 11th April, 2008 and the written examination which was to be conducted initially on 12.04.2008 stood extended to 20th April, 2008, was further extended to 27th April, 2008.

11. It is not disputed that the written examination has been conducted as per the changed programme that is on 27.04.2008. The hall ticket issued to the respondent No. 4 also suggests that the written examination is held on 27.04.2008.

12. The application is submitted by the petitioner on 27.03.2008. Fees is said to have been paid on 01.04.2008. The receipt of which is issued by the respondent No. 3 on 05.04.2008. All these dates are within the prescribed and extended dates i. e. 11.04.2008. As per the affidavit filed by the respondent No. 2, the deadline for submitting applications initially was fixed as 10th March, 2008 and was extended to 14.03.2008. The same appears to be on the website only. There is no further advertisement extending the deadline of submitting applications to 14.03.2008. As such, the grievance of the respondent No. 4 that, no notification was published in news paper while extending the date of 27.03.2008 to 11.04.2008 would not survive.

13. There is no reason to disbelieve the affidavit filed by the respondent No. 2, when it is supported by the document dated 13.03.2008 giving schedule of changed date for submission of application and holding the written examination.

14. It is also not a matter of debate that, the present petitioner was more meritorious to the respondent No. 4 and in between the petitioner and the respondent No. 4, there were two other candidates, who were not parties before the Tribunal and the tribunal has held them to be disqualified in their absence directing the respondent Nos. 1 and 2 herein to select the respondent No. 4. The same also was not permissible.

15. Be that as it may, as it is held that the application of the petitioner was well within time as per the changed schedule, the judgment and order of the Tribunal deserves to be set aside and is hereby set aside.

Rule accordingly is made absolute in above terms. No costs.

Sd/-
[MANGESH S. PATIL, J.]

Sd/-
[S. V. GANGAPURWALA, J.]

bsb/Aug. 17