

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition NO. 1446 OF 2017

Swati Dashrath Rajbhar Alias
Swati Himanshu Panchal

...Petitioner

Versus

State Of Maharashtra
And Ors.

...Respondents

....

Mr.P.S. Dani, Senior Advocate a/w. Pramod Bhosale, Priya Rita,
Pooja Surashe i/b. Disha Karambar & Asso. for the Petitioner.

Mr. Sachin Kankal, AGP for respondent No.1-State.

Mr. Vaibhav M. Parashurami, Advocate for Respondents No.2, 3
and 4.

Mr. Tanveer Nizam i/b. Priyanka Ghosh, Advocate for respondent
No.5.

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CORAM : R. G. KETKAR, J.

DATE : 25th APRIL, 2017

P.C.

1. Heard Mr.P.S. Dani, learned Senior Counsel for the petitioner, Mr. Sachin Kankal, learned A.G.P. for respondent No.1, Mr. Vaibhav Parashurami, learned Counsel for respondents No.2

to 4 and Mr.Tanveer Nizam, learned Counsel for respondent No.5, at length.

2. By this Petition under Article 227 of the Constitution of India, the petitioner has challenged (1) order dated 27.4.2016 passed by the Authorized Officer-cum-Public Relation Officer of Mumbai Housing and Area Development Board (for short, 'MHADA'), (2) order dated 17.6.2016 passed by the Public Relation Officer/Authorized Officer of MHADA, as also (3) order dated 15.10.2016 passed by the Appellate Authority/Chief Public Relations Officer. By orders dated 27.4.2016 and 17.6.2016, the petitioner was declared as ineligible for allotment of flat at Gavanpada, Mulund under the scheme of MHADA and she was instructed to file appeal before the Chief Public Relations Officer/Appellate Authority within 15 days. The appeal preferred by the petitioner was dismissed by the Appellate Authority on 15.10.2016. It is against these orders, the petitioner has instituted present petition. The relevant and material facts giving rise to filing of the present Writ Petition, briefly stated, are as under.

3. In February, 2015 MHADA had formulated a policy laying

down terms and conditions and eligibility criteria . The controversy in the present petition is in respect of allotment of flat under the Middle Income Group [M.I.G.], family's monthly income limit was from Rs.40,001/- to Rs.70,000/-. The applicant has to submit his/her family's average monthly income for the year 2015-16 (basic+D.A.+Bonus+City Allowance). In pursuance of that policy, sometime in April, 2015 the petitioner made application on MHADA website for allotment of a flat at Gavanpada, Mulund under the scheme and was provided application No.6000021981, under Code No.312.

4. On 31.5.2015 MHADA opened draw and the petitioner was selected in Journalist Category (JR). On 20.7.2015, the petitioner was informed that Flat No.A/10/1002 in building No.6 is allotted to her. She was called upon to submit the documents as regards eligibility on or before 7.9.2015. On 30.8.2015, the petitioner submitted all the documents. It is the case of the petitioner that she realized that inadvertently she had selected the status of 'single' instead of 'married' against the column of 'marital status' at the time of filling up application form on-line. It is her case that as she was recently married at the time of making application and as she uses her maiden name at all places there

was inadvertent error on her part. On 19.12.2015, she applied for logging in to her profile for which she received O.T.P. for logging in at 11:25 a.m. The petitioner logged in the website of the second respondent and changed the marital status from 'single' to 'married'. She also received SMS on her mobile confirming that her profile has been updated.

5. It appears that respondent No.5 made complaints on 11.11.2015, 17.11.2015 and 25.11.2015 raising grievance that the petitioner has submitted bogus documents in support of her category as a Journalist. The petitioner did not disclose the fact that she is married and that she has misled the authorities of MHADA by not submitting the documents pertaining to her husband. As the complaints were received as regards eligibility of the petitioner, by letter dated 5.1.2016, the petitioner was called upon to submit original documents and appear before the Chief Secretary and Vigilance Officer at 3:30 p.m. on 16.1.2016. On 16.1.2016, the petitioner visited MHADA and provided all the documents including the documents proving that she being a Journalist, she is eligible. She further clarified that inadvertently against the 'marital status' in the application form, she marked it as 'single' instead of 'married'. On 21.1.2016, the petitioner

addressed a letter to the Chief Vigilance and Security Officer of MHADA dealing with doubts/questions raised about her being a Journalist. She reiterated that she is a married woman. While filing MHADA form, by mistake she stated that she is unmarried which is an oversight and there was no intention to cheat. She assured that neither her husband nor she has any house or any property in Mumbai. On 24.2.2016 the petitioner addressed a letter to the Vigilance Department of MHADA and clarified as regards her marital status. She provided relevant information regarding her marital status, such as, date of her marriage, information of her marriage, information of income source and enclosed copy of marriage certificate, I.T. Return for financial year 2014-15. After considering the documents submitted by the petitioner by order dated 27.4.2016, the Authorized Officer declared the petitioner ineligible on the ground that in her original application, her marital status was disclosed as 'other'. Application submitted under the post lottery system along with the documents disclosed her marital status as 'single'. Along with application, she had submitted declaration. She however did not disclose the details of her husband, namely, his income and whether any property stands in the name of her husband within

the Municipal limits of Mumbai Municipal Corporation. By suppressing information, the petitioner misled MHADA and, therefore, she was declared as ineligible. The petitioner was also instructed that she can prefer appeal within 15 days before the Appellate Authority, namely, Chief Public Relations Officer/Appellate Authority.

6. On 5.5.2016 the petitioner preferred appeal before the Appellate Authority. By communication dated 30.5.2016 the petitioner was called upon to remove the deficiencies by (i) submitting salary certificate (format-A), (ii) submitting payment receipts for period 1.4.2014 to 31.3.2015. The petitioner submitted the documents. By order dated 17.6.2016, the Public Relations Officer/Authority declared the petitioner ineligible and instructed her to prefer appeal within 15 days before the Chief Public Relations Officer/Appellate Authority. On 1.7.2016, the petitioner preferred appeal. By order dated 15.10.2016 the Appellate Authority dismissed the appeal.

7. In support of this petition, Mr. Dani submitted that the appeal was decided by the Appellate Authority without hearing the petitioner. He submitted that on 2.9.2016 notice was issued to

the petitioner informing her that the appeal will be heard on 14.9.2016. On 14.9.2016, as the Public Relations Officer Mr.Hemanth Patil was on leave she was informed that the next date of hearing will be intimated to her. He submitted the appeal was decided on 15.10.2016 without issuing notice to her and without hearing the petitioner. In short, he submitted that the impugned order is passed in gross violation of principles of natural justice.

8. Mr. Dani further submitted that on 24.2.2016 the petitioner submitted documents of her husband as well. Even if the monthly income of the petitioner and her husband is taken into consideration, her application cannot be rejected on the ground that the income of the petitioner exceeds the permissible limits in respect of Middle Income Group, namely, Rs.40,001/- to Rs.70,000/-. He submitted that in fact the petitioner had also clearly stated that her husband does not have any premises either on rental/leave and licence or on ownership basis within the Municipal limits of Mumbai Municipal Corporation. He submitted that the authorities below ought to have scrutinized the documents submitted by the petitioner of her husband as well. However, that exercise is not done. He, therefore, submitted that

the impugned order deserves to be set aside.

9. On the other hand, Mr. Parashurami supported the impugned order. He has invited my attention to the affidavit-in-reply dated 16.1.2017 filed on behalf of respondents No.2 to 4 and in particular paragraphs-4 to 6 thereof. He submitted that respondent No.5 had made complaints on 11.11.2015, 17.11.2015 and 25.11.2015. In all the complaints, respondent No.5 made grievance that the petitioner has submitted bogus documents in respect of her category as Journalist. She did not disclose the fact that she is married. He submitted that basically the petitioner has misled the authorities of MHADA as she did not submit documents pertaining to her husband on 30.8.2015.

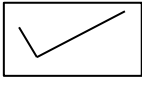
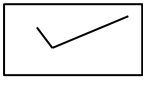
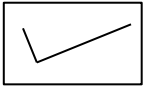
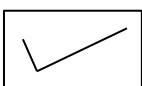
10. Mr. Nizam invited my attention to (i) the affidavit-in-reply filed by respondent No.5, (ii) the written submissions, (iii) the application form submitted by the petitioner and (iv) the check-list. He further submitted that the petitioner was present at the time of hearing before the Appellate Authority. Respondent No.5 had submitted written argument on 14.10.2016. He, therefore, submitted that the contention raised on behalf of the petitioner that the order of the Appellate Authority dated 15.10.2016 is

passed in gross violation of principles of natural justice is factually incorrect and contrary to record. He submitted that the petitioner has suppressed the material facts and in fact played fraud on the authorities of MHADA. He, therefore, submitted that no case is made out for invocation of powers under Article 227 of the Constitution of India. In support of his submission that the petitioner has suppressed the material facts and played fraud, he relied upon the decision of Apex Court in *Motilal Songara v. Prem Prakash alias Pappu and another*, (2013) 9 SCC 199.

11. I have considered the rival submissions advanced by learned Counsel appearing for the parties. I have also perused the material on record as also original record produced by Mr. Parashurami for perusal of this Court. A perusal of the material on record shows that the petitioner had filed application under the category 'JR' [Journalist]. In respect of Item No.8 of the application dated 31.8.2015 relating to marital status, she mentioned it 'single'. In the declaration submitted along with the application, she disclosed herself as Ku.Swati Dashrath Rajbhar. She declared that the information furnished by her in the application is true and correct. She acknowledged that if the information is found to be false, it would result in cancellation of

her application, cancellation of allotment of tenement if any made in her favour and she will be liable for legal action for making false declaration. Along with the application, she submitted her Income Tax Return for A.Y. 2015-16. Along with the application she also submitted check-list. Item No.6 deals with documents showing income during the year 1.4.2014 to 31.3.2015 and which reads thus :

Checklist

Sr. No.	Criterion of eligibility	Certified copies of documents/ certificates/ evidences to be submitted	Applicant to ensure submission by tick marking in the box	Officer accepting the document to ensure submission of the same by tick marking in the box	Remarks
(1)	(2)	(3)	(4)	(5)	(6)
6	Document Showing income during year 01/04/2014 to 31/03/2015				
6A	If applicant is in service	(1) Salary certificate (Format A) AND (2) Income Tax Return	 	 	

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12. A perusal of the check-list, extracted hereinabove, shows that the petitioner did not submit documents showing income of her husband during the period 1.4.2014 to 31.3.2015 as required by Sr. No.6A(3)(4)(5) as also in respect of Sr.No.6B (2)(3)(4) and Sr. No.6C (2)(3)(4) as regards information of spouse. Sr. No.7 requires submission of proof of the applicant that he/she does not possess house/plot in MCGM area. The applicant is required to furnish affidavit in format-A.

13. A perusal of the affidavit submitted by the petitioner on 31.8.2015 (pages-41-43) shows that it is stated therein that her monthly income is Rs.455500/-. For the last 12 months (1.4.2014 to 31.3.2015) her income is Rs.1,20,964/-. In another affidavit dated 31.8.2015, she declared that no property either on ownership basis, rental basis or on leave and licence basis stands in her name and that she has not acquired any residential flat/plot. A perusal of the affidavits dated 31.8.2015 also shows that she has described herself as Kumari Swati Dashrath Rajbhar. A perusal of the documents submitted on 31.8.2015 clearly shows that though the petitioner was married on

25.5.2014, at the time of submitting documents on 31.8.2015 (i.e. after one year and not recently married as claimed by her) she suppressed her marriage and in fact represented that she is 'single'. Apart from that in the check-list, she also did not annex the salary certificate and income tax returns of her husband. She also did not submit any information about any property in the name of her husband on rental basis or leave and licence basis or ownership basis. As noted earlier, respondent No.5 made complaints to the MHADA authorities. It is only because of the complaints, the matter was referred to the Vigilance Department and the enquiry was conducted.

14. After considering the report as also the documents furnished by the petitioner, by order dated 27.4.2016, Authorized Officer/Public Relations Officer declared the petitioner as disqualified on the ground that in the original application, the petitioner disclosed her marital status as 'others'. Similarly the document submitted along with the application post lottery system, the petitioner disclosed her marital status as 'single'. Along with the applications, the petitioner also submitted declarations. After considering the documents as also the declaration submitted by the petitioner, it was observed that

though the petitioner is married, she represented that she is unmarried and did not disclose income of her husband as also did not declare that no property stands in the name of her husband. Accordingly the petitioner was declared ineligible.

15. The petitioner preferred appeal against that decision on 5.5.2016. In paragraph-4 of that appeal, she stated that as regards to the marital status, this error was inadvertently due to typographical error and oversight and continued till date. She did not intend to conceal the information and all information relating to marital status could not be disclosed due to continuous oversight. Along with appeal she enclosed copy of the marriage certificate and the income tax return for 2014-15. The petitioner was given one more opportunity by issuing letter dated 30.5.2016 calling upon her to remove the deficiencies in her application. After considering the documents furnished by the petitioner, by order dated 17.6.2016, she was declared ineligible for the following reason.

“1) OTHERS- On the basis of CVSO/A report & your submitted DECLARATION with the application forms you are ineligible.

Reason- On your application form your Marital Status mentioned is OTH. On submitted documents

through Post Lottery System your Marital Status is Single. On above mentioned submitted applications form you have submitted DECLARATION also. After receiving complaint against you from applicant who is on waiting list our Chief Vigilance & Security Officer/Authority had an inquiry. After inquiry they have submitted a report. On the basis of CVSO/A report & your submitted DECLARATION with the application forms you are ineligible. Even though you are married still on application form you have mentioned that you are unmarried. Through that you hide the following information from Mumbai Housing & Area Development Board i.e. your husbands income, a house which owned by husband (or he may not have owned a house) in Municipal Corporation of Greater Mumbai's jurisdiction. You also misguide the Mumbai Housing & Area Development Board through this information.”

16. Aggrieved by this decision, the petitioner preferred appeal before the Appellate Authority/Chief Public Relation Officer. By order dated 15.10.2016, after referring to the decision of Apex Court in the case of Motilal Songara (supra), Appellate Authority came to the conclusion that false information was submitted by the petitioner to MHADA authorities with intention to gain advantage in obtaining flat.

17. Mr.Dani submitted that the order dated 15.10.2016 was passed in gross-violation of principles of natural justice. It is in that regard material to consider the case made out in the petition. In paragraph-3(r), the petitioner has asserted thus :

“(r) The Petitioner received another letter from the Respondent No.3 M.M./Code NO./11437 dated 2nd September 2016 received on 10th September, 2016. The petitioner went to the Respondent No.3's office and she was informed the PRO Mr. Hemanth Patil is on leave and she would be intimated when to meet. On 13th October, 2016 Petitioner was informed by phone she should come on 14.10.2016 at 12.00 noon ground floor. Copy of letter dated 2nd September 2016 is hereto annexed as Exhibit”N”.”

18. A perusal of the above extracted portion clearly shows that the petitioner was informed that the PRO Mr. Hemanth Patil is on leave and she would be intimated next date. On 13.10.2016 the was informed by phone that she should come on 14.10.2016 at 12.00 noon ground floor. In other words, the petitioner was informed about hearing on 14.10.2016. Even respondent No.5 had submitted her written arguments on 14.10.2016. Mr.Nizam submitted that the petitioner was present at the time of hearing before the Appellate Authority. The petitioner does not assert that she was not present before the Appellate Authority on 14.10.2016. Positive averment is not made in that regard. In fact the petitioner has also withheld information in the present petition by not disclosing positively whether she was present or not on 14.10.2016. After considering ground (r) extracted above, it cannot be said that the petitioner was not given hearing of the matter. It, therefore, cannot be said that behind her back the impugned

order was passed.

19. Mr. Nizam relied upon the decision of Apex Court in the case of **Moti Lal Songara (supra)**. In that case the appellant as informant had lodged First Information Report No.428/2007 on 23.11.2007 at police station Pratapnagar, District – Jodhpur for the offences punishable under Sections 341, 323, 324, 307 and 379 Indian Penal Code, 1860 (for short, 'I.P.C.'). On the basis of the cognizance taken by the learned Chief Judicial Magistrate, accused Shamlal and Premprakash (respondent) were sent up for trial and the matter was dealt with by the learned Additional District and Sessions Judge No.3, Jodhpur. On 27.7.2009, after hearing the counsel for the parties, charges were framed by the learned Sessions Judge for offences punishable under Sections 341, 323/34, 324/34, 307 in the alternative under Section 307/34 of IPC. Accused were discharged as far as offence under Section 379 IPC is concerned. Though the charges were framed on 27.7.2009, said fact was not brought to the notice of the learned Additional District Judge in Criminal Revision Application No.7/2009 filed by the respondent challenging the order of taking cognizance against the respondents for the offences punishable under Sections 323, 324, 307 and 379 IPC.

By order dated 14.10.2009, the learned Sessions Judge set aside the order summoning the respondent through arrest warrant. In short, while passing order on 14.10.2009 the respondent suppressed the order dated 27.7.2009 framing charges after hearing the parties by the learned Sessions Judge. It is in that context, Apex Court observed in paragraph-19 thus :

“19. The second limb of the submission is whether in the obtaining factual matrix, the order passed by the High Court discharging the accused-Respondent is justified in law. We have clearly stated that though the Respondent was fully aware about the fact that charges had been framed against him by the learned trial Judge, yet he did not bring the same to the notice of the revisional court hearing the revision against the order taking cognizance. It is a clear case of suppression. It was within the special knowledge of the accused. Any one who takes recourse to method of suppression in a court of law, is, in actuality, playing fraud with the court, and the maxim *supressio veri, expressio falsi*, i.e., suppression of the truth is equivalent to the expression of falsehood, gets attracted. We are compelled to say so as there has been a calculated concealment of the fact before the revisional court. It can be stated with certitude that the accused-Respondent tried to gain advantage by such factual suppression. The fraudulent intention is writ large. In fact, he has shown his courage of ignorance and tried to play possum.”

20. A perusal of the entire material on record clearly shows that the petitioner had suppressed her marriage from the

authorities of MHADA as also did not furnish information pertaining to her husband's income as also whether any property stands in his name within the Municipal limits of Mumbai Municipal Corporation. It is only because of the complaints made by respondent No.5, enquiry was conducted and the report was submitted by the Vigilance Department. But for the complaints made by the fifth respondent, MHADA authorities would have allotted the flat to the petitioner. Thus the petitioner had suppressed the material facts and misled authorities of MHADA with a view to gaining unfair advantage. The decision in **Moti Lal Songara (supra)** applies on all fours to the present case.

21. It has come on record that the petitioner was married on 25.5.2014. In April, 2015, the petitioner made application on MHADA website for allotment of a flat. On 31.5.2015, the petitioner was selected in Journalist category. On 20.7.2015 the petitioner was informed that flat No.A/10/1002 in building No.6 is allotted to her and was called upon to submit the documents on or before 7.9.2015. On 30.8.2015, the petitioner submitted all the documents. A perusal of these documents shows that the petitioner submitted her documents only. In other words, she did not submit her husband's documents as regards income proof and whether any property stands in his name within the Municipal limits of

Mumbai Municipal Corporation. Even if I accept submission of Mr. Dani that in the application, the petitioner inadvertently mentioned her status as 'others' or 'single', there is no explanation worth the name for not submitting her husband's documents. A perusal of the check-list also substantiates the contention of the fifth respondent that the petitioner has suppressed relevant, material and vital facts pertaining to her husband.

22. In view thereof, I do not find that the authorities below committed any error in holding that the petitioner is ineligible. Hence no case is made out for invocation of powers under Article 227 of the Constitution of India. Petition fails and the same is dismissed.

23. At this stage, Mr.Bhosale orally applies for stay of this order for a period of 12 weeks. Mr.Parashurami opposes this prayer. I have already upheld the orders declaring the petitioner as ineligible. By staying the impugned orders, it will not amount to automatic revival of the letter dated 20.7.2015 as regards allotment of flat No.A/10/1002 in building No.6, Gavanpada, Mulund, Mumbai. Therefore, there is no question of staying this order. Hence oral application for stay is rejected. Order accordingly.

(R. G. KETKAR, J.)