

HIGH COURT OF BOMBAY AT GOA
WRIT PETITION NO. 235 of 2010
WITH
WRIT PETITION NO. 744 OF 2010

WRIT PETITION NO. 235 of 2010

- 1 Shri Prabhu C. Chawadi,
s/o. Chawadi, aged 24 years Indian
National, r/o. House No.MPT Colony,
BuildingNo.78/3/4, Type B, Biana, Vasco-
da-Gama, Goa.
- 2 Shri Mahantesh B. Madar,
S/o. Madar, aged 27 years Indian
National, r/o. House No.414, Mangor Hill,
Vasco-da-Gama, Goa.
- 3 Shri Yellappa S. Harijan,
s/o. S. Harijan, aged 35 years Indian
National, r/o. Near Ambedkar Sport Club,
Kantem, Baina, Vasco-da-Gama, Goa.
- 4 Shri Sangamesh C. Holer
S/o C. Holer, aged 28 years, Indian
National, r/o. House No.10, Mundvel,
Vaddem, Near Goa Shipyard,
Vasco-da-Gama, Goa.
- 5 Shri Sharnappa V. Harijan,
s/o. Y. Harijan, aged 19 years, Indian
National, r/o. House No.137, Near Fulacho
Khurias, Kantem Baina, Vasco-da-Gama,
Goa.

- 6 Shri Parshuram M. Chalwadi,
s/o.M. Chalwadi, aged 23 years, Indian National, r/o House No.56, Gurudwara Road, Near J.B. Shetty Shop, Vasco-da-Gama, Goa.
- 7 Shri Sudhakar B. Matri,
s/o. B. Matri, aged 22 years, Indian National, r/o. Quarter No.226-C, Defense Civilian Quarters, Varunapuri, Vasco-da-Gama, Goa.
- 8 Shri Yellappa U. Chalwadi,
S/o. U. Chalwadi, aged 24 years, Indian National, r/o. House No.352, Gurudwara Road, Near J.B. Shetty Shop, Vasco-da-Gama, Goa.
- 9 Shri Mantesh S. Harijan,
S/o. S. Harijan, aged 28 years, Indian National, r/o. Plot No.7, Near Old Pump House, Shantinagar, Vasco-da-Gama, Goa.
- 10 Shri Nilesh B. Madar,
s/p. B. Madar, aged 24 years, Indian National, r/o. House No.261/II/1, MPT Colony, Sada Headland, Vasco-da-Gama, Goa.
- 11 Shri Vinayak M. Jadhav
s/o. M. Jadhav, aged 24 years, Indian National, r/o. House No,230/1/2, Type A, MPT Colony, Sada Headland, Vasco-da-Gama, Goa.

- 12 Shri Krishnakumar S. Madar,
s/o. S. Madar, aged 23 years, Indian
National, r/o. G-1, Coelho Residency,
Building A, Maimollem, Mangor, Vasco-da-
Gama, Goa.
- 13 Shri Shankareppa S. Angadgeri
S/o. S. Angadgeri, aged 34 years, Indian
National, r/o. G-1, Coelho Residency,
Building A, Moimollem, Mangor, Vasco-da- Petitioners
Gama, Goa.

Versus

- 1 The Board of Trustees,
Mormugao Port Trust, Mormugao, Goa
- 2 Shri Praveen Agarwal,
The Chairman, Mormugao Port Trust,
Mormugao, Goa.
- 3 Shri D.P. Kudalkar,
The Chief Medical Officer,
Mormugao Port Trust, Mormugao, Goa.
- 4 Union of India,
Through Secretary, Ministry of Shipping,
1, Sansad Marg, New Delhi.
... Respondents

Shri J.P. Supekar and Shri S. Sayed, Advocates for the petitioners.

Shri Y.V. Nadkarni and Shri S. Kamat, Advocate for respondents
No.1 to 3.

WRIT PETITION NO. 744 OF 2010

1 Shri Mahesh C. Mesta

R/o. H.No.3324, Bandehalla
Road, Honawar Road, Karnataka 581
334

2 Shri Shivraj N. Bhandari

Flat No.104, Nr. Ele-Month, Sushila
Niketan, Vasco da Gama.

3 Shri Nilesh Krishna Janodkar

R/o. H.No.26, Colony No.1, Vaddem, ... Petitioners
Sanquem, Goa.

Versus

1 The Board of Trustees,

Mormagao Port Trust, Mormugao,
Goa.

2 Shri Praveen Agarwal

The Chairman, Mormugao Port Trust,
Mormugao, Goa.

Deleted as per Order
dated 29/11/2010

3 Shri D.P. Kudalkar,

The Chief Medical Officer,
Mormugao Port Trust, Mormugao, ...
Goa.

Deleted as per Order
dated 29/11/2010

Respondents

Ms. A. Nagvenkar, Advocate for the petitioners.

Shri Y.V. Nadkarni and Shri S. Kamat, Advocates for respondents
No.1 to 3.

**Coram: S. C. GUPTE &
NUTAN D. SARDESSAI, JJ.**

Date: 7th June, 2019.

ORAL JUDGMENT:

1. Heard learned Counsel for the parties.
2. This Writ Petition (Writ Petition No.235 of 2010) challenges the order passed by respondent No.1 withdrawing offers of appointment made to the petitioners.
3. Sometime in November, 2009, respondent No.1 advertised 11 posts of Sanitary Sweepers and 3 posts of Sanitary Khalasees, all posts reserved for members of Schedule Caste. The advertisement was under the streamer of what was called "Special Recruitment Drive for the SC's, ST's and OBC's". Petitioner Nos.1 to 11 applied for the posts of Sanitary Sweepers, whilst petitioner Nos.12 and 13 applied for the posts of Sanitary Khalasees. After the petitioners' applications and accompanying documents were found to be in order, the petitioners were invited for interviews. It is the petitioners' case that upon completion of the selection procedure, a merit list was prepared and published, declaring petitioners Nos. 1 to 11 as candidates selected for the posts of Sanitary Sweepers

and petitioner Nos. 12 and 13 and one more candidate for the posts of Sanitary Khalasees. Based on this selection, offers of appointment were issued to the petitioners. The petitioners claimed to have duly accepted these offers in writing. It is the petitioners' case that on acceptance of the offers of Appointment, the petitioners were required to, and did, report to the Medical Department for medical examination, as directed by respondent No.1, whereupon they were found to be medically fit for the appointment concerned. It is the grievance of the petitioners that within a few days of their medical examination, they received a one line order (Order dated 25/28 February,2010) from respondent No.3 stating that due to administrative reasons, the offers of appointment issued to the petitioners were to be treated as cancelled. Being aggrieved, the petitioners have presented the present petition.

4. Learned Counsel appearing for the petitioners submits that respondent No.1, which is a State, has acted in a wholly arbitrary manner in canceling the offers of appointment issued to the petitioners. It is submitted that the impugned orders of withdrawal do not state any reason whatsoever. The only omnibus reason

indicated in the impugned order is "administrative reasons". Learned Counsel relies on a decision of this Court in the case of **Anil Barmu Patil v/s. State of Goa and Another** [2014 (7) Bom.C.R. 596] in support of his case that arbitrary or unreasonable approach of Government in depriving appointee to State office of their rights is not sustainable.

5. Mr. Nadkarni, learned Counsel appearing for the respondents, submits that the posts advertised were on adhoc basis; the posts were temporary and were to be held for a period not exceeding 6 months at the most. Learned Counsel relies on the very offers of appointment in support. Learned Counsel secondly submits that due to genuine grievances voiced by members of public and supported by political parties in the State of Goa, the entire appointment procedure was duly scrutinized by the respondents by appointing a committee of high ranking officers. Learned Counsel submits that the committee has made a detailed report indicating, firstly, that due to unfortunate circumstances reflecting on technical aspects of Caste Scrutiny Certificates produced by candidates of Goa, none of the local candidates could be selected for the posts. The report, secondly, indicates that there were

certain material irregularities in the matter of selection procedure applied by the functionaries of the respondent at the time of selection of candidates for the posts advertised by respondent No.1. Learned Counsel submits that this report was duly accepted by respondent No.1 and the selection of candidates was cancelled and offers of appointment issued to the selected candidates were withdrawn by respondent No.1. Learned Counsel submits that this has been a well informed and duly conducted exercise, making it imperative for the respondents to cancel the appointments. Learned Counsel relies on the Supreme Court decision in the case of **Union of India and others v/s. O. Chakradhar** [(2002) 3 SCC 146] in support of his case that whenever illegalities or irregularities were so intermixed with the whole process of selection that it became impossible to sort out right from the wrong or vice versa, result of such selection could not be relied or acted upon; this is irrespective of the fact that candidates selected were not guilty of any error or irregularity.

6. It is apparent from the offers of appointment issued to the petitioners that the posts themselves were merely on "ad hoc basis for a period not exceeding 6 months or till receipt of VCA report

from the District Magistrate, whichever is earlier". [VCA report is the verification of character and antecedent report.] It is secondly to be noticed that we are merely at the stage of an offer of appointment; there has not been any appointment in fact which is sought to be recalled or cancelled. It is nonetheless true that the respondents, who are State, cannot conduct themselves in an arbitrary or capricious manner in the matter of appointment to the offices under the State but then, if we have regard to the records of this case, it is apparent that cancellation of the offers of appointment is not on an arbitrary or capricious basis. The respondents, in fact, after public outcry, constituted a committee comprising of Deputy Chairman and Deputy Conservator and Secretary (Statutory) of the respondents to review the entire selection process for the posts of Sanitary Sweepers and Sanitary Khalasees in the port hospital. On an extensive review and scrutiny of the record, the Committee found that candidates of State of Goa, who had submitted Caste Certificates issued by the Mamlatdar were not called for interview. The Committee found that this was due to the peculiar circumstances in the State of Goa. Whereas candidates from other States like Karnataka, Maharashtra, Tamilnadu, Andhra Pradesh etc. could submit Caste

Certificates of Tahasildars/ Mandal Revenue Officers, whose Caste Certificates were valid and accepted as proofs of caste, in Goa there were no posts of Tahasildar and as a matter of fact, certificates were issued by Mamlatdars at least upto April,2001. Since April,2001, as per Goa Government's Notification, Deputy Collectors were authorised to issue Caste Certificates. As a result, the Committee found that Goan candidates, who had submitted Caste Certificates issued by Mamlatdar prior to April, 2001, were wrongfully denied the opportunity to participate in the actual selection process. The committee also noticed that there were material irregularities in the matter of conduct of the selection process. In the selection procedure, 10 marks were earmarked for practical and 60 marks for personal interview. As regards practical marks, a committee of a Staff Nurse and a Nurse was constituted to supervise toilet cleaning by each candidate and allot marks to them as per their performance. It was found that the marks given by the committee for practical performance of the candidates and the mark sheets were signed by only one member, i.e. Staff Nurse, whereas the other member had not signed the same. Thirdly, it was noticed that there were irregularities even in the matter of allotment of marks in personal interview. The Committee also

noticed that some receipts of applications were noted in pencil, whilst some applications were noticed as having been received on holidays. On review of the interview call letters, the Committee found that three candidates were not issued call letters on the ground that their Certificates were not attested, whereas three other candidates whose Certificates were not attested were issued interview call letters. The findings of the enquiry Committee were duly placed before respondent no.1 for a final decision and the latter decided to cancel the selection on the basis of the findings. All this clearly indicates that there has been a proper application of mind; relevant aspects and circumstances of the case have been duly considered by the respondents; and an informed decision has been taken in the matter of cancellation of the selections made for the posts.

7. The Supreme Court, in the case of **O. Chakradhar**(supra), was faced with a selection process applied by railways for their employees. In this case, candidates were not only selected but actually appointed and holding office for about 3 years. Afterwards irregularities were noticed in the process of selection of candidates. The Court was of the view that the nature and extent of illegalities

and irregularities in conducting the selection would have to be scrutinized in each case so as to come to a conclusion about future course of action to be adopted in the matter; But if the mischief played was so widespread and all-pervasive, affecting the result, so as to make it difficult to pick out the persons who had been unlawfully benefited or wrongfully deprived of their selection, in such cases it would neither be possible nor necessary to issue individual show cause notices to each selectee; the only way out would be to cancel the whole selection.

8. In our case, far from the State having interfered with the appointed candidates, who actually held office, the matter was at the stage of offer of appointment. It is at that stage that, pursuant to public outcry, a duly constituted Committee was constituted to look into the selection process; the Committee found material irregularities in the matter of selection of candidates. It was noticed that the irregularities undermined the entire process of selection. The informed decision of the State based on such enquiry cannot be faulted on the ground of arbitrariness.

9. In **Jitendera Kumar and others v/s. State of Haryana and another** [(2008)2 SCC 161], the Supreme Court was concerned with a recruitment process which was similarly flawed. The Court observed that whenever the State was of the view that the selection process was under a cloud and no appointment could be made, the Court, by invoking any doctrine, could not ask the State to proceed with the appointment, unless a positive and definite finding was reached that the State's stand was fraught with arbitrariness. As we have indicated above, there is not a shred of arbitrariness in the decision or action of the State in the present case.

10. There is accordingly no merit in the challenge. The Writ Petition deserved to be dismissed.

11. The companion petition is filed by candidates, who were not even called for interview for the posts of Hospital Attendants. In their case, there is not even an offer of appointment to any of them. The same objections and irregularities, which have undermined the selection process as indicated in the order above, strike at the root of the selection even in this case and for the

same reasons as indicated above, even this petition deserves to be dismissed.

12. Accordingly, Rule is discharged and both petitions are dismissed. In the facts of the case, there shall, however, be no order as to the costs.

NUTAN D. SARDESSAI, J.

S.C. GUPTE, J.

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