

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
WRIT PETITION NO. 6901 OF 2021

1. Pawan s/o Uttam Marag,
Age : 23 years, Occ. Education,
R/o Wadachi Vadi, Post Golatgaon,
Tal. & Dist. Aurangabad.
2. Ramesh s/o Babanrao Shinde,
Age : 29 years, Occ. Education,
R/o Khodegaon
Tal. & Dist. Aurangabad.
3. Jayandrasing Mahajan Sundarde
Age : 29 years, Occ. Education,
R/o Varzadi, Post Takali.,
Tal. Gangapur & Dist. Aurangabad
4. Akash s/o Tryambak Naglod,
Age : 26 years, Occ. Education,
R/o Ladakwadi, Post. Khodegaon
Tal. & Dist. Aurangabad.
5. Rahul Vitthal Sundarde,
Age : 24 years, Occ. Education,
R/o Rajewadi, Post Shelgaon,
Tal. Badnapur, Dist. Jalna.
6. Ankita Raju Bombarde,
Age : 30 years, Occ. Education,
R/o Plot No. 7, Nandanvan Apartment,
Takhata Nagar, Dindori Road,
Dist. Nashik.
7. Nikita Madhukar Surve,

- Age : 32 years, Occ. Education,
R/o Shivaji Vesh, behind
Kalikamata Temple,
Tal. Khamgaon, Dist. Buldhana,
8. Dnyaneshwar Bhaurao Borude,
Age : 49 years, Occ. Ex-Army.
R/o Khamgaon No.1, Post Shirajgaon,
Tal. Newasa, Dist. Ahmednagar.
9. Mahesh Natyuji Badwaik,
Age : 46 years, Occ. LIC Agent,
R/o Tilakvard, Mohadi,
Tal. Mohadi, Dist. Bhandrara
10. Devidas Namdeo Gatve,
Age : 28 years, Occ. Education,
R/o Ghotikhurd, Post Sakur,
Tal. Igatpuri Dist. Nashik.
11. Ganesh s/o Manohar Borade,
Age : 23 years, Occ. Education,
R/o Botha, Post Varvand,
Tal. Mehkar Dist. Buldhana
12. Ganesh Haribhau Gawali,
Age : 27 years, Occ. Education,
R/o Valsawangi, Tal. Bhokardan
District Jalna.
13. Dwarkanath Pandurang Bulhe,
Age : 41 years, Occ. Ex-Army,
R/o Plot No. 02, Delaabi Apartment,
Jachak Nagar, Jay Bhavani Road,
Dist. Nashik

14. RavindraValuba Mane,
Age : 41 years, Occ. Ex-Army,
R/o Flat No. k 3 Shah Garden Residency,
Vijay Nagar, Devlali Camp
District Nashik.

15. Chandrakant Suresh Sonawane,
Age : 41 years, Occ. Ex-Army,
R/o Vadner Dhuyala (Gate)
Shivraj Nagar, post Dewlali Camp,
Dist. Nashik.

...PETITIONERS

VERSUS

1. The State of Maharashtra
Through its Principal Secretary,
Medical Education and Drugs Department,
Mantralaya Mumbai.

2. The Maharashtra University of
Health Sciences Nashik,
Through its Registrar.

... RESPONDENTS

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WITH

CIVIL APPLICATION NO. 10277 OF 2021

IN

WRIT PETITION NO. 6901 OF 2021

.....

Mr. S. S. Thombre, for the Petitioners.

Mr. M.A. Deshpande, Addl. G.P. for Respondent No.1/ State.

Mr. S.P. Brahme for Respondent No. 2/University.

Mr. S.G. Nandedkar, for the Applicant/ Intervenor.

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CORAM : C. V. BHADANG AND

SANDIPKUMAR C. MORE, JJ.

RESERVED ON : 29.06.2022

PRONOUNCED ON : 03.10.2022

JUDGMENT (PER: SANDIPKUMAR C. MORE, J.)

. Rule. Rule made returnable forthwith. Heard finally with consent of the parties at admission stage.

2. The present petitioners, who had taken part in the recruitment process conducted by respondent No.2 – The Maharashtra University of Health Sciences, Nashik (hereinafter referred to as the ‘University’) as per the advertisement No.2/2019 for selection in respect of various posts mentioned therein, initially, made a prayer seeking directions to the respondents, particularly respondent No.2-University, to complete the recruitment process in respect of the aforesaid advertisement and to issue appointment orders to them. However, since the Management Council of respondent No.2-University took a decision on 20.01.2021 to cancel the entire recruitment process, the petitioners, by way of amendment, challenged the aforesaid Resolution No.8/2021 dtd. 20.01.2021 and prayed for quashing the same.

3. The background facts are as follows :

Respondent No.2-University, as per the advertisement No.2/2019, initiated recruitment process for various posts as mentioned therein for B, C and D Cadres. The online registration for the said recruitment was from 18.07.2019 to 09.08.2019. The present petitioners and also other similarly situated candidates have cleared the computer based online examination and thereafter on 16.11.2019, respondent No.2 - University published a general merit list and all the candidates mentioned therein were called for document verification during the period from 25.11.2019 to 27.11.2019 for the respective posts which they had applied. Thereafter, on 2.12.2019 respondent No.2 - University published a provisional merit list for the posts of Group 'A' and Group 'B' Category and as per the notification the period from 17.12.2019 to 19.12.2019 was intimated to the candidates for document verification. The entire exercise was completed in the month of December 2019 itself. However due to Pandemic situation of Covid – 19, further process could not be completed by respondent No.2 - University. Then, vide letter dtd. 15.05.2020 the University sought permission from respondent No.1 – State to complete the recruitment process by mentioning that the final selection list was already prepared and only appointment letters to the selected candidates were to be issued. The said permission was sought mainly due to the

Government Resolution dtd.04.05.2020, whereby cost cutting instructions were issued by respondent No. 1 – State along with ban on further recruitment. However, as per Clause No. 14 of the said resolution, there was permission for Medical Education and Drugs Department for filling up the posts. Further, respondent No.1 - State also issued another resolution thereby giving 10 % reservation to the candidates from EWS category who had applied from SEBC category. However, in a meeting dated 20.01.2021 the Management Council of respondent No. 2 – University took a decision to cancel the entire recruitment process since there were many complaints received from the candidates about the alleged fraud in the recruitment process which was carried out by Maha Pariksha Portal. Therefore, the petitioners challenge the aforesaid decision being arbitrary, illegal and biased.

4. On the contrary, respondent No.2- University, vide replies dtd. 08.09.2021 and 03.01.2022, strongly opposed the petition as well as the subsequent amendment and prayers on the ground that the recruitment process, which the petitioners are claiming to be completed, was not in fact completed, but the said process was incomplete as many things were to be done, such as further scrutiny of documents of candidates. The University denied that the said process was almost complete and only letters of appointment were to be issued. Further, the

University has contended that there were many irregularities and malpractices committed by Maha Pariksha Portal through whom the online recruitment process was undertaken. The University contends that the complaints of serious nature including examination given by dummy candidates, advance tips of questions in the examinations, calling of ineligible candidates or selecting ineligible candidates having no proper qualifications etc. had taken place. It is further contended by the University that since it had not conducted the recruitment process, they sent all these complaints to Maha Pariksha Portal, which had, implemented the online examination part. The University further contends that even the Members of the Legislative Assembly had also requested the then Minister of Medical Education, Maharashtra State for cancellation of the recruitment on account of the aforesaid fraud and malpractices. Further, it is also contended that the respondent No.1- State cancelled its own decision of conducting the online recruitment through Maha Pariksha Portal vide Government Resolution dated 17.08.2020, and thereafter, appointed new service provider for conducting the recruitment afresh. Besides, the University also raised another aspect including the roster issue, SEBC reservation issue, revised guidelines of State Government, etc. The University further contended that since the complaints which they had forwarded to Maha Pariksha Portal were not enquired by the concerned, it was not possible

for them to ascertain which of the candidates were tainted and which were untainted. As such, they preferred to cancel the entire recruitment process. Thus, respondent No. 2-University prayed for dismissal of the writ petition.

5. The learned counsel for the petitioners submits that the decision of Management Council of respondent No.2 - University is arbitrary and apparently illegal. The University, without making any scrutiny in respect of the complaints, decided to cancel the entire recruitment process. According to him, the University ought to have ascertained the fact by enquiring into the complaints as to which of the candidates were involved in malpractices and which of them were deserving. The learned counsel for the petitioners also relied on following decisions -

(1) Prakash and others Vs. Union of India and others, [MANU/MH/0866/2019],

(2) Ahmednagar District Central Co-operative Bank Ltd. Vs. The State of Maharashtra and others, [MANU/MH/1678/2019],

(3) Anil Barmu Patil Vs. State of Goa, [2014 (4) ALL MR 791,

(4) Jogindar Pal and others Vs. State of Punjab and others, [2014(5) ALL MR (SC) 957],

(5) Union of India (UOI) and others Vs. Rajesh P.U.,

Puthuvalnikathu and others,
[MANU/SC/0509/2003].

6. On the contrary, the learned counsel for respondent No.2 -University as well as the learned AGP strongly opposed the submissions made on behalf of the petitioners and contended that there were many incidents of fraud under various categories, such as, examination attended by dummy candidates, issuing tips in advance in respect of the questions to be asked in the examination, selection of ineligible candidates for online examination without there being any proper qualification as per the advertisement etc., had taken place at the hands of Maha Pariksha Portal. They further submit that despite sending all such complaints to Maha Pariksha Portal, there was no scrutiny of those complaints. According to them, respondent No. 2 -University, who had not conducted the online examination, was unable to conduct such enquiry and therefore, it was the only choice left with the University to cancel the entire recruitment process. With these submissions, they prayed for dismissal of the writ petition. In support of the submissions, the learned counsel for respondent No.2 – University placed reliance on following decisions -

- (1) Punjab State Electricity Board and others v. Malkiat Singh, [AIR 2004 Supreme Court 5061]*
- (2) Union of India and others vs. Kali Dass Batish*

and another, [AIR 2006 Supreme Court 789]

(3) Sachin Kumar V. Delhi Subordinate Service Selection Board (DSSSB), [AIR online 2021 SC 126].

7. With the assistance of rival counsel of the contesting parties, we have carefully gone through the entire documents on record along with the judgments cited by either of the parties.

8. It is the case of petitioners that despite completion of entire recruitment process, respondent No. 2 -University failed to issue appointment letters to the selected candidates and arbitrarily cancelled the entire recruitment process by alleging that there were incidents of fraud in online process which was conducted by Maha Pariksha Portal. The record shows that the Maha Pariksha Portal had conducted the online recruitment process up to conducting written examination. Further, it is not in dispute that when the process for document verification was completed by December -2019, there was Pandemic situation due to Covid – 19 and therefore, respondent No. 1 -State had to issue Government Resolution dated 04.05.2020 for cost cutting and banning the further recruitment in various Government Departments. However, Clause 14 of the said Government Resolution indicates that

Health Department and Medical Education and Drugs Department were exempted from the same. However, despite that the University, vide letter dated 15.05.2020, had asked the Secretary of Medical Education and Drugs Department whether to give appointment letters to the selected candidates.

9. On perusal of said letter, it is evident that the University had mentioned therein that the final list of the eligible candidates was prepared and only appointment letters of those candidates were to be issued. In response to the said letter the Under Secretary of respondent No.1 -State, vide letter dated 15.09.2020 had communicated to the University that the University was competent to carry out the recruitment as per Government Resolution dated 04.05.2020. The learned counsel for the petitioners pointed out that as per Clause -14 of Government Resolution dtd. 04.05.2020, University was permitted to carry out the recruitment, but the University in its reply made complete U-turn contrary to the contents of letter dtd. 15.05.2020 and contended that the selection list was yet to be finalized as there was no complete document verification. Further, the University also raised the aspect of complaints, SEBC reservation, roster issue being an after thought.

10. The learned counsel, therefore, relied on the aforesaid judgments. We have carefully gone through those judgments

and the sum and substance of the judgments is that even though there are certain malpractices conducted in the examination for the selection process, then only those candidates, who had indulged into such malpractices, are to be segregated from the candidates, who are untainted and successfully passed in the examination without any malpractices. They can be given appointments being untainted candidates. The learned counsel for the petitioners also pointed out that the University did not verify the complaints and without conducting any enquiry or without segregating the tainted candidates from the untainted candidates, arbitrarily cancelled the entire process of recruitment.

11. To counter the same, the learned counsel for respondent No. 2 -University has relied upon the decisions as mentioned above.

The Hon'ble Apex Court in the case of ***Punjab State Electricity Board and others Vs. Malkait Singh, (AIR 2004 Supreme Court 5061)***), has observed as follows :

'It is settled law that mere inclusion of name of a candidate in the select list does not confer on such candidate any vested right to get an order of appointment. In the present case, when the names of suitable candidates were sought from the Employment

Exchange pursuant to the decision of the Board to create a post of Homeopathic Physician in the dispensary which was taken long after the policy-decision for providing employment on priority basis to one member of the affected family whose land has been acquired, it could not be said that the right of the respondent was taken away when he did not have any such vested right to get an appointment to Class-II post of Homeopathic Physician. The respondent was also not eligible to claim appointment on priority basis having regard to the changed policy inasmuch as the land acquired from him was less than 2 acres and he was also over-aged. Further the Scheme was devised on 18-7-1994 and subsequently it was revised only as a concession to give a helping hand as far as possible to rehabilitate the displaced families whose lands were acquired. The respondent has got compensation for his land which was acquired. The Scheme giving appointment on priority basis was only in the nature of concession to eligible candidates which the respondent could not claim as a matter of right having taken compensation amount which the respondent could not claim as a matter of right having taken compensation amount for his land which was acquired, more so when he did not fulfill the necessary requirements under the revised Scheme. Thus, the High Court committed an error in proceeding on the basis that the respondent had got a vested right for appointment and that could not have been taken away by the subsequent change in the policy, and the order of the High Court directing the appellant-Board to appoint the respondent to the post of Homeopathic Physician would not be proper”.

12. Further, the Hon’ble Apex Court in the case of ***Union of India and Others Vs. Kali dass Batish and Another*** [AIR 2006

SUPREME COURT 789], has also reiterated the same principle by holding that mere inclusion of name in select list does not give any right to the candidate for getting appointment. Thus, it is now settled law by the Hon'ble Apex Court that even if the name of the candidate is in select list, but the same does not give any right to him for being appointed. Further, the Honourable Apex Court in the case of ***Sachin Kumar V. Delhi Subordinate Service Selection Board (DSSSB)***, ***AIR Online 2021 SC 126***, has made following observations :

“Large scale irregularities including those which have the effect of denying equal access to similarly circumstanced candidates are suggestive of a malaise which has eroded the credibility of the process. At other end of spectrum are cases where some of participants in process who appear at examination or selection test are guilty of irregularities. In such a case, it may well be possible to segregate persons who are guilty of wrong-doing from others who have adhered to rules and to exclude former from process. In such a case, those who are innocent of wrong-doing should not pay a price for those who are actually found to be involved in irregularities. By segregating the wrong-doers, selection of untainted candidates can be allowed to pass muster by taking selection process to its logical conclusion. This is not a mere matter of administrative procedure but as a principle of service jurisprudence it finds embodiment in constitutional duty by which public bodies have to act fairly and reasonably. A fair and reasonable process of selection to posts subject to norm of equality of opportunity under Art.16(1) is a constitutional requirement. A fair and reasonable process is a fundamental requirement of

Art.14 as well. On the other hand, where it is possible to segregate persons who have indulged in malpractices and to penalise them for their wrong-doing, it would be unfair to impose burden of their wrong-doing on those who are free from taint. To treat the innocent and the wrong-doers equally by subjecting the former to consequence of cancellation of entire process would be contrary to Art.14 because unequals would then be treated equally. The requirement that a public body must act in fair and reasonable terms animates entire process of selection. Decisions of recruiting body are hence subject to judicial control subject to settled principle that recruiting authority must have a measure of discretion to take decisions in accordance with law which are best suited to preserve the sanctity of the process.”

13. It can thus be seen that when there are incidents of malpractices and fraud in the recruitment process to such an extent that it becomes difficult to segregate tainted participants from untainted participants, then the entire process becomes illegitimate and therefore, it can stand vitiated.

14. Further, this Court in the case of *Ajay s/o Bhagwanrao Chate and another Vs. High Court of Judicature at Bombay Through Registrar General and another [MANU/MH/1986/2010]*, has made following observations :

9. Thus, the Petitioners are not entitled to a writ of mandamus for their appointment in the post of Member, Industrial Court. As we find that there are no allegations of malafide made against the

Respondents, no exception can also be taken to the decision of the Respondents to cancel the process of selection and to initiate a fresh process of selection. Thereby no rights vested in the Petitioners are taken away or denied.

10. Taking overall view of the matter, therefore, there is no substance in the petition and it is liable to be rejected. It is accordingly rejected.”

15. Thus, in the light of the above decisions, the position which emerges is that there should be an attempt first to segregate the tainted participants from the untainted participants in the recruitment process by scrutinizing the complaints received in respect of commission of frauds and malpractices. If such segregation is not possible, then the entire process of recruitment can be vitiated. It is also settled that mere inclusion of the name of the candidate in the select list does not give any vested right to a candidate for getting appointed. In this backdrop, let us consider the material on record.

16. Admittedly, in the meeting of Management Committee of respondent No. 2 dtd. 20.01.2021 the decision of cancellation of entire recruitment process has been taken. So far as selection as claimed by the petitioners is mentioned regarding the tainted and untainted participants, we have to consider the nature of allegations in respect of the conduction

of online examination by Maha Pariksha Portal. The aforesaid minutes of meeting of Management dtd. 20.01.2021 clearly demonstrate that there were several issues which compelled the Committee to cancel the entire recruitment process. Those issues can shortly be reproduced herein :

- (i) Many complaints of malpractices on the part of Maha Pariksha Portal from various candidates were received.
- (ii) Mr. Subhash Zambad had also requested the concerned Minister of Medical Education vide letter dtd. 30.06.2020 for cancelling the entire recruitment process on account of commission of frauds.
- (iii) The decision of Government for cancelling the recruitment process as per Advertisement No. 2/19 through Maha Pariksha Portal by issuing fresh G.R. dtd. 17.08.2020.
- (iv) The cancellation of SEBC category quota in respect of Maratha Community.
- (v) The roster issue as there was no sufficient number of candidates to be appointed on the vacant posts by way of promotion.
- (vi) Non preparation of final list prior to the Government Resolution dtd. 04.05.2020.

17. So far as the first aspect is concerned, various complaints received by the University are placed on record. On going through the complaints, it appears that some of them are in

respect of allowing dummy candidates in respect of the original candidates. Some of them are in respect of giving advanced tip of the questions to be put in the online examination to certain candidates. Some complaints state that the date and time of the online examination was intimated to the participants on their individual login -ID and therefore, it was not made clear as to whether all the candidates appeared for such online examination at the same time. Further, there are certain complaints which indicate that some of the candidates, who were allowed to go through the online examination, were not having the required qualification as regards the experience mentioned in the advertisement. Further, there are certain complaints by the candidates themselves that some participants submitted false experience certificates. One of such complaints also indicates that at one centre the online examination could not be started as server was down. Thus, it can be seen that the complaints alleged various irregularities. The learned counsel for the petitioners submits that despite receiving such complaints, the University did not make any scrutiny and directly came to the conclusion of cancellation of entire recruitment process. However, documents on record clearly indicate that all these complaints were in respect of online examinations which was not conducted by the University, but Maha Pariksha Portal had conducted the same. Further, the University has already contended that those complaints were

sent to Maha Pariksha Portal for scrutiny, but Maha Pariksha Portal did not respond about the same.

18. It is extremely important to note that as per the judgments relied by the petitioners, the segregation of tainted participants from untainted participants was necessary, but it is to be noted here that the University did not conduct such online examination but it was Maha Pariksha Portal and therefore, the said portal was under obligation to make scrutiny of the same. It is further important to note that since respondent No.1-State vide Government Resolution dtd. 17.08.2020 had cancelled the recruitment process through Maha Pariksha Portal and appointed new service provider i.e. Khodegaon, it is quite natural that Maha Pariksha Portal might have lost the interest in making scrutiny of the aforesaid complaints as it was no more an agency for further recruitment. Even otherwise, also, considering the nature of complaints, it was highly impossible for the University to make scrutiny through itself and to segregate the tainted participants from untainted participants. Therefore, the observations of Hon'ble Apex Court in the case of *Sachin Kumar* (supra), become relevant in the current scenario wherein it is held that when it is difficult to segregate tainted from untainted participants in process, the entire process becomes illegitimate and can stand vitiated. In the instant matter also, the University was not

having any control over the alleged malpractices and incidents of fraud as mentioned in the complaint as the online examination was conducted by Maha Pariksha Portal which is already debarred by the Government from conducting any further online examination. Therefore, considering all these aspects, we come to the conclusion that decision of the Management Council of respondent No.2 -University of cancelling the entire recruitment process was not arbitrary or illegal, but was based on objective analysis by considering various issues before it as mentioned in the reply.

19. Accordingly, the Petition is dismissed.

20. Rule is discharged with no order as to costs.

21. Pending Civil Application No. 10277/2021 also stands disposed of.

SANDIPKUMAR C. MORE

C. V. BHADANG

shp/-