

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION**

**WRIT PETITION NO.1771 OF 2014  
WITH  
INTERIM APPLICATION NO.10058 OF 2024  
IN  
WRIT PETITION NO.1771 OF 2014**

Municipal Corporation of Greater  
Mumbai and Ors.

*....Petitioners*

**V/s.**

Ashish Shashikant Chitre and Ors.

*....Respondents*

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**Mr. A.V. Bukhari**, senior advocate with Mr. B.V. Bukhari, Mr. Om  
Suryawanshi and Mr. Pradeep Patil for Petitioners

**Mr. Sanjay Singhvi**, senior advocate i/b. Mr. Rahil Fazelbhoy for  
Respondent Nos.1, 3 and 5

*Mr. Mukund Manwadkar (Dy. Chief Security Officer), present.*

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**CORAM : SANDEEP V. MARNE, J.**

**Dated : 26 July 2024.**

**ORAL JUDGMENT:**

1) Municipal Corporation for Greater Mumbai (**MCGM**) has filed this  
Petition challenging judgment and order dated 21 December 2013 passed by  
the Industrial Court, Mumbai, in Complaint (ULP) No.73 of 2009. The  
operative order passed by the Industrial Court reads thus:

1. Complaint (ULP) No.73/2009 filed by the Complainant No.1, 3, 6, 7, 9 and 10  
is hereby disposed of with direction to the Respondents to consider the case  
of above Complainants by considering their NCC-'B' and 'C' Certificates for  
the post of ASO and to send them for training for 4 months required for the

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post of ASO by considering their NCC- 'B' and 'C' certificates as per decision of the Municipal Commissioner and by considering their experience of 7 years on the post of Security Guard, within 30 days from the date of the receipt of this order.

2) On 8 December 2003, Municipal Corporation had issued a Circular inviting from qualifying and willing employees from all its departments applications for filling up vacant posts of Assistant Security Officer (ASO). As per the said circular the candidates were required to undergo- (i) physical and ground test, (ii) interview, (iii) training of four months and (iv) prescribed examination after training. It appears that on 11 June 2004, physical test of the candidates was conducted, in which 89 out of 123 candidates could not clear the same, 22 candidates passed while 12 candidates were absent.

3) In the meantime, the Municipal Corporation issued another advertisement dated 21 August 2004 inviting applications for filling up 16 reserved category post of ASO from open market. In pursuance of the selection held, 32 candidates were passed in the written test. They were further subjected to physical test, in which 28 candidates passed. It appears that second physical test was also held in which only 18 candidates were found eligible.

4) It appears that Mumbai Mahanagar Palika Karyalayeen Karmachari Sanghatna (**Union**) filed Complaint (ULP) No.461 of 2005 on behalf of 22 internal candidates, who had passed on 11 June 2004 in which Industrial Court passed interim order dated 28 October 2005 directing 22 internal candidates be subjected for interview and to complete the process of their appointments. Accordingly, interviews were held in respect of 22 internal as well as 18 external candidates on 4 April 2006. It appears that the Union

filed application for further interim orders in Complaint (ULP) No.461 of 2005, in which Industrial Court passed order on 24 April 2006 for filling up of posts of ASO from amongst candidates who had passed written test, physical test and interview and not to consider any candidate, who had failed in the written test. It appears that Respondent Nos.1 to 6 filed an application for intervention in Complaint (ULP) No.461 of 2005, but the Industrial Court rejected the same. This led to filing of Writ Petition No.621 of 2007 by Respondent Nos.1 to 6 in this Court, which came to be allowed by order dated 18 January 2007 and Respondent Nos. 1 to 6 were permitted to intervene in Complaint (ULP)No.461 of 2005. Thereafter Respondent Nos.1 to 6 filed applications in the said complaint seeking stay on Industrial Court's earlier order dated 24 April 2006. The Industrial Court however refused to stay order dated 24 April 2006.

5) It appears that out of 22 internal candidates, only 17 were considered as selected and 4 were put on waiting list. Out of the said 17 candidates, two internal candidates were sought to be disqualified on account of the alleged representation made with regard to passing of SSC examination with Marathi as one of the subjects. The said two candidates filed Writ Petition No.758 of 2008 in this Court, in which this Court directed to take decision with regard to internal and external candidates based on the test already held. In view of the Industrial Court's order dated 24 April 2006 and this Court's order dated 1 October 2008, 17 internal and 12 external candidates were treated to be selected and sent for four months training. After completion of the training said 17 internal candidates and 12 external candidates were appointed on the post of ASO.

6) In the above background, Respondent Nos.1 to 6 alongwith four other employees, filed Complaint ULP No.73 of 2009 before the Industrial Court for deputing them for training at par with other successful candidates and for their appointment as ASO after deputing them for training. Complaint (ULP) No.73 of 2009 has been allowed by the Industrial Court by judgment dated 21 December 2013 directing the Petitioner-Municipal Corporation to consider the cases of Respondent Nos.1 to 6 on the basis of NCC – ‘B’ and ‘C’ certificates possessed by them and depute them for training required for the post of ASO as per the decision of the Municipal Commissioner. Petitioner -Municipal Corporation is aggrieved by the Judgment dated 21 December 2013 and has filed the present Petition. It appears that the directions of the Industrial Court have been stayed by this Court during pendency of the present Petition.

7) I have heard Mr. Bukhari, the learned senior advocate appearing for the Petitioner-Municipal Corporation and Mr. Singhvi, the learned senior advocate for Respondent Nos. 1 to 6.

8) At the outset Mr. Singhvi would clarify that only Respondent Nos.1-Ashish Chitre, Respondent No.3-Hasan Khan Hamid Khan and Respondent No.5-Sanjeev Kamble are really interested and still want to pursue their claim for appointment as ASO in pursuance of the selection underwent by them.

9) After having considered the submissions canvassed by the learned counsel appearing for the parties, there is no dispute to the position that Respondent Nos.1, 3 and 5 have failed in the physical test, which was conducted in pursuance of selection convened vide Circular dated 8 December 2003. There is also no dispute to the position that clearing of

physical test was one of the necessary steps for subjecting the candidate for further process of selection comprising oral interview, training and prescribed examination. It is Mr. Singhvi's submission that the physical test conducted by Municipal Corporation was tainted with irregularities. I have gone through the concerned record of the case placed by the learned counsel before me. Mr. Singhvi relied upon letter dated 20 April 2006 addressed to one of the Security Guards-Mr. Pravin Ganpat Ravrane directing him to remain present for physical ground test and interview on 28 April 2006. This shows that despite failure of the 89 candidates for physical test conducted on 11 June 2004, on account of various representations made by the Union as well as by the concerned candidates, the Municipal Corporation did decide to subject them to fresh physical test. Mr. Singhvi would read this conduct on the part of the Municipal Corporation as an implied admission of irregularities having been taken place in the physical test conducted on 11 June 2004. Without delving deeper into the said aspect, it would be necessary to take note of the fact that four days after issuance of letter dated 20 April 2006, Industrial Court passed order dated 24 April 2006 restraining Municipal Corporation from considering cases of any of the internal candidates, who had failed in the physical test held on 11 June 2004. On account of restraint order passed by the Industrial Court, it appears that the Municipal Corporation could not subject the failed candidates, including Respondent Nos.1, 3 and 5 (contesting Respondents), from being subjected to fresh physical test.

10) It appears that the issue of alleged irregularities in the conduct of physical test remained under consideration of the Municipal Corporation and the same was discussed in the meeting of Municipal Corporation on 11 December 2008 between Union representatives and Municipal Officers, in

which directions were given to Chief Security Officer for creation of additional posts possibly for accommodation of the failed candidates. It appears that accordingly a further meeting was held with the Municipal Commissioner on 8 June 2009 in which the irregularities in the physical test were brought to the notice of the Municipal Commissioner. Therefore, the Municipal Commissioner approved decision of 15 June 2009 for scrapping of the entire selection process for internal filling up of post of ASO. The Municipal Commissioner decided to implement fresh selection process for declaring the eligibility with regard to various physical reports in a transparent manner. He also called for a report from selection process already implemented.

11) It appears that in pursuance of the decision taken by the Municipal Commissioner on 15 June 2009, a proposal was placed by Chief Security Officer on 14 October 2009 making reference to the decision taken by the Municipal Commissioner for scrapping of the selection process. When the report placed by the Chief Security Officer reached the Municipal Commissioner, he made following endorsement thereon on 21 October 2009:

चर्चा झाली. आमदार श्री जगताप यांच्या तक्रारीमुळे प्रक्रियेस स्थगिती दिली होती. उर्वरित पात्र 15 उमेदवार व अपात्र 10 उमेदवार यांचे NCC 'C' cert व इतर record तपासावे तसेच अपात्र उमेदवारांसाठी रिक्त जागा आहेत का हे तपासून निर्णय घ्यावा.

12) The above endorsement made by the Municipal Commissioner on 21 October 2009 can be translated as under:

“ Discussed. Stay was granted on account of complaint by Mr. Jagtap, MLA. Examined NCC 'C' certificates and other records of 15 eligible and 10 ineligible candidates. Further decision be taken after examining availability of vacant posts for ineligible candidates.’

13) The Industrial Court has treated the aforesaid endorsement made by the Municipal Commissioner on 21 October 2009 as a direction for consideration of cases of 10 ineligible candidates on the basis of NCC 'C' certificates. Here it would be relevant to clarify that on account of failure of the said 10 candidates in the physical test, demands were raised for considering them as eligible on the basis of NCC 'C' certificates possessed by them. It appears that Municipal Commissioner accordingly explored the possibility of accommodating the said 10 ineligible candidates on the strength of NCC 'C' certificate as well as other records rather than subjecting them to fresh physical test.

14) Mr. Bukhari has placed on record further proposal initiated by the Chief Security Officer vide File Noting dated 6 March 2010. After aforesaid endorsement of the Municipal Commissioner dated 21 October 2009 it appears that Chief Security Officer recommended that it would not be prudent to grant second opportunity to the candidates, who were declared failed in the written test nor it was appropriate to conduct a fresh selection for internal candidates. He opined that since the post of ASO is to be filled by direct recruitment, it would be appropriate to issue open market advertisement against which departmental candidate can also apply. It was proposed that condition of age should however be relaxed for internal candidates. It appears that said proposal came to be accepted by the Municipal Commissioner on 2 April 2010. However, this proposal initiated by the Chief Security Officer on 6 March 2010 or acceptance thereof by Municipal Commissioner on 2 April 2010 was apparently not brought to the notice of the Industrial Court. It appears that thereafter in a meeting held with the Union on 16 April 2010 and the decision was communicated to the representative of the Union that it was not possible to accommodate the 10

ineligible internal candidates on the post of ASO. Minutes of the said meeting were prepared on 17 April 2010. Again this document dated 17 April 2010 was apparently not placed before the Industrial Court.

15) After considering the above developments that occurred in the case, it appears that the Municipal Corporation did find some irregularities in the conduct of physical ground test held on 11 June 2004. This could only be the reason why candidates were offered one more opportunity to appear in fresh physical test vide letters dated 20 April 2006. However, as observed above, the interim order passed by the Industrial Court on 24 April 2006 came in the way of Municipal Corporation subjecting the candidates to fresh physical test as per letter dated 20 April 2006. It appears that Municipal Commissioner thereafter decided to scrap the entire selection process by decision taken on 15 June 2009. In ordinary course, the Municipal Corporation ought to have implemented the said decision of the Municipal Commissioner and ought to have scrapped entire selection and conducted a fresh selection as was directed by the Municipal Commissioner on 15 June 2009. However, it appears that Municipal Commissioner reconsidered his decision subsequently and made the above quoted endorsement on the report submitted by the Chief Security Officer on 21 October 2009. The above quoted endorsement of the Municipal Commissioner, which obviously will have to be treated as his 'decision', would indicate that he did consider accommodating 10 failed candidates in physical test on the basis of their NCC 'C' certificate and other records. He only directed verification of vacancy position for accommodation of the said 10 candidates. In my view therefore, the Industrial Court cannot be entirely faulted for treating the above quoted endorsement of the Municipal Commissioner dated 21 October 2009 to be his 'decision'. However, it appears that the Industrial

Court went a step ahead and gave a declaration on his own that vacancy existed at the relevant time in the cadre of ASO and this is how it proceeded to pass impugned directions for consideration of cases of Respondent Nos. 1, 3, 6, 7, 9 and 10 before it by sending them for training for the post of ASO.

16) As observed above, the subsequent decisions dated 2 April 2010 and 17 April 2010 were not placed by the Municipal Corporation before the Industrial Court. The issue that now arises for consideration is about salvation of the situation which exists as of now. One way to cure this error is to remand the complaint for fresh decision to determine correctness of decisions dated 2 April 2010 and 17 April 2010. However, by now it has been 15 long years after the complaint was initially filed by the contesting Respondents. Also of relevance is the fact that out of 10 Complainants, 6 of them apparently lost interest on account of long pendency of litigation and withdrew themselves from the complaint. Out of the remaining 6 candidates, 3 more have lost interest in pursuing the claim for appointment on the post of ASO and only Respondent Nos.1, 3 and 5 are pursuing the said claim. In my view therefore, instead of remanding the complaint for fresh decision by Industrial Tribunal, it would be appropriate that this Court takes the decision *qua* grievance of contesting Respondents.

17) As observed above, the Municipal Commissioner initially sought to scrap the selection on account of irregularities in the physical test and later explored the possibility of accommodating 10 failed candidates on the basis of their NCC- 'C' certificate. Out of said 10 candidates now only 3 candidates remain interested. It would now be improper to subject the said three contesting Respondents to give physical test considering their advanced ages. This was possibly the reason why the Municipal

Commissioner had decided to consider their cases for appointment on the post of ASO on the basis of NCC- 'C' certificate possessed by them. Therefore, ends of justice would meet if the said decision taken by the Municipal Commissioner on 21 October 2009 is taken to its logical end.

18) In my view therefore, no serious error can be traced in the order passed by the Industrial Court directing consideration of cases of the contesting Respondents for appointment on the post of ASO. Considering the passage of time, some modification would be needed in the operative portion of the order passed by the Industrial Court.

19) Accordingly, Municipal Commissioner shall depute Respondent Nos.1, 3 and 5 for training for the post of ASO within a period of four weeks from today and thereafter subject them to prescribed examination. If Respondent Nos.1, 3 and 5 complete the training and clear the prescribed examination, they shall be considered as having been appointed on the post of ASO from the date of the order of the Industrial Court i.e. 21 December 2013 with all consequential benefits. It is however clarified that this Order is passed in the unique facts and circumstances of the case and shall not be treated as a precedent in any other case.

20) With the above observations, the Writ Petition is disposed of.

21) Civil Application also stands disposed.

[SANDEEP V. MARNE, J.]