

CASE NO.:
Appeal (civil) 1492 of 2000

PETITIONER:
MAHARASHTRA STATE ROAD TPT. CORPORATION & ORS.

Vs.

RESPONDENT:
RAJENDRA BHIMRAO MANDVE & ORS.

DATE OF JUDGMENT: 20/11/2001

BENCH:
S Rajendra Babu & Doraiswamy Raju

JUDGMENT:

RAJU, J.

The appellants, the Maharashtra State Road Transport Corporation and authorities of the said Corporation, challenge the judgment dated 7.5.1997 of the Bombay High Court, Nagpur Bench, in W.P. No.2053 of 1996, sustaining a challenge made to the selection list for appointment of Drivers displayed on 26.7.1996 and as a consequence thereof, set aside the said selection list while declaring that the claims of the ten petitioners are also to be considered for selection to the post of Drivers. In coming to the said conclusion, the Division Bench of the High Court held that the claims have to be considered in terms of Circular No.15/95 dated 4.4.1995 which was said to be in force when the applications were called for and that Circular No.17/96 dated 24.6.1996 has got to be ignored as being arbitrary, illegal and, at any rate, not retrospective in effect.

The third appellant issued an advertisement, inviting applications for the posts of Drivers and Conductors in the Newspapers on 20.9.1995, and the ten persons, who were petitioners before the High Court, applied for the post of Drivers along with several others. Since the Writ Petitioners were found to satisfy the requisite qualifications and experience, they were called for Driving Test held on 27.11.1995. Since they also were said to have passed the Driving Test, were again called for personal interview by a Letter dated 3.7.1996, which was held on 26.7.1996. Thereafter, the selection list was also said to have been displayed by the third respondent on 26.7.1996. The grievance of the Writ Petitioners before the High Court was that the Selection Committee, which conducted the personal interview, exercised the power of allotment of 25% marks, arbitrarily and in such a manner that the marks obtained in the Driving Test lost significance. It was also the grievance of the Writ Petitioners that the Circulars, which really should govern the selection, are those dated 23.1.1995 and 4.4.1995 and not the one dated 24.6.1996. As noticed earlier, the grievance espoused found favour of acceptance with the High Court, resulting in this appeal.

Shri Altaf Ahmad, learned Additional Solicitor General, for the appellants and Shri Shrish Kumar Mishra, learned counsel for the private party respondents, were heard. We have been taken through the different Circular Orders on which either party staked their respective claims and contentions. Certain case law was also brought to our notice. We have carefully considered the submissions of the learned counsel on either side.

During the relevant point of time and in respect of the selections in

question, there are no statutory Rules or Regulations to govern the selections and it is the common stand that only Circular Orders issued by the Corporation governed the same. Circular No.52 of 1980 dated 21.8.1980 contained instructions relating to the constitution of Screening Committees for selection of Drivers with effect from 1.11.1980, at the Regional Level and the procedure to be adopted therefor. The same was provided for initial screening of candidates with reference to the applications submitted by verification of the credentials on the basis of qualifications and past experience. Thereupon, the candidates have to undergo physical examination in respect of height, weight, measurements, etc. Thereafter, one has to undergo Driving Test and finally Personal Interview. The next Circular relevant and brought to our notice is dated 23.1.1995 and in this Circular, after adverting to the Resolution of the Board of the Corporation dated 26.8.1992 in para 4, it was stated as follows:-

Taking into consideration the above facts, it is informed by this circular again that the procedure laid down by the Corporation in the matter of taking into consideration 60% marks obtained in the written test / trade test and 40% marks obtained in their personal interview, both should be taken into consideration while preparing the final selection list, and this procedure should be followed strictly. The same procedure should be followed while preparing the final selection list for the post of Driver. The final list of the marks obtained during the test taken by the second Scrutiny Committee will be required for preparing the final selection list. Therefore, the said list of the marks obtained should be treated as confidential and should be in the custody of the Divisional Controller. After the meeting of the sub-selection committee is over, the final selection list should be prepared after giving weightage of 60% as instructed earlier.

There can be no controversy or dispute over those Circular Orders.

The serious dispute and controversy raised relates to the claim of the Corporation that the Circular No.17 of 1996 dated 24.6.1996, only came to be issued by way of clarification and it was not only necessary to be issued but also governed the selection of Drivers in question. The Writ Petitioners, who were unsuccessful, asserted that it is the Circular dated 4.4.1995 which should govern the selection and consequently the selections ought to have been made by assigning 87½% marks for Written/Trade Test and 12½% for the oral test (Personal Interview) and results declared, accordingly. On going through the above Circular Orders, we find that the procedure for recruitment of Drivers is separate from recruitment for other categories where Written Test/Trade Test has been specifically laid down and that it is only where the Written Test and Interview are stipulated, the percentage of weightage for Written Test/Interview has been resolved by the Board, under the directions of the State Government, to be fixed at 87.5% and 12.5% respectively. The directions of the State Government in their Letter dated 2.1.1995 only fixes the weightage to be given between marks obtained in Written Test and those in Interview and no reference is found therein of any Trade Test or Driving Test. The Resolution of the Board dated 21.3.1995 also seems to be on the same lines and is with reference to marks obtained in Written Test and Interview respectively and not otherwise. Apparently, in view of the above and in the absence of reference to Driving Test or other Trade Test too, that the Corporation claims to have issued the Circular Order No. 17/1996 dated 24.6.1996, on the basis of the earlier Circulars Nos.52/80 for pass in Driving Test to be presented to the S.T. Committee and 25/90 dated 2.7.1990 pertaining to award of marks in the Interview, by fixing the average of the marks awarded by the S.T. Sub-Committee to be the final and deciding factor in the matter of selection of a candidate. Therefore, the High Court cannot be said to be correct in holding that the Circular Order dated 24.6.1996 is illegal or arbitrary or against the orders of the State Government or the Resolution of the Board of the Transport Corporation. Instead, it would have been well open to the High Court to have declared that the criteria sought to be

fixed by the Circular dated 24.6.1996 as the sole determinative of the merit or grade of a candidate for selection long after the last date fixed for receipt of application and in the middle of the course of selection process (since in this case the Driving Test was stated to have been conducted on 27.11.1995) cannot be applied to the selections under consideration and challenged before the High Court. It has been repeatedly held by this Court that the games of the rules meaning thereby, that the criteria for selection cannot be altered by the authorities concerned in the middle or after the process of selection has commenced. Therefore, the decision of the High Court, to the extent it pronounced upon the invalidity of the Circular Orders dated 24.6.1996, does not merit acceptance in our hand and the same are set aside.

We have held that the Circular Orders dated 24.6.1996 will have no relevance or application to the selections in question, undertaken pursuant to the advertisement issued on 20.9.1995. It has also been noticed by us that the Circular Order dated 4.4.1995, on the face of it, will apply only in cases where the selection has to be finalized on the basis of any Written Examination and Interview. There being no Written Examination for selection of Drivers for appointment, the selection process has to be on the basis of only Circular Orders dated 21.8.1980 and 23.1.1995. These aspects were left to lie in a nebulous state, leaving much for assumptions on either side to be possible. This should have been averted by the Corporation, by proper and appropriate action at the crucial and relevant point of time before setting the selection process in motion. It is high time that the Board takes up this for consideration resolve it by an appropriate decision. For such lapses, neither the candidates, who got selected and appointed, nor the Writ Petitioners, who lost in the selection, could be entirely blamed. The Writ Petitioners also have not chosen either to allege or substantiate any malafides or bias against any member of the Selection Committee, except making a grievance that within the course of the time available on a single day about 322 applicants could not have properly subjected to interview for assessment of merits or assignment of marks for selection. The learned counsel for the appellants would seek to place reliance upon the decisions of this Court reported in *Sardara Singh & Ors. Vs. State of Punjab & Ors.* [(1991)4 SCC 555] and *Madan Lal & Ors. Vs. State of J & K & Ors.* [(1995)3 SCC 486] to contend that such contentions are not sufficient to warrant interference with the selections made.

On an overall consideration of all the above noticed factors, we are of the view that this is a case most suitable for adjustment of equities, taking into account the fate of the Drivers, who already got appointed and serving all along though subject to the result of this appeal. The Writ Petitioners are only ten in number and their claims may be considered for appointment favourably keeping into account their performance in Driving Test and the marks obtained by them in the said test and Personal Interview and accommodate them unless they are medically found unfit to the posts. This would help to give a quietus to the controversies with reference to the selection on hand and avoid reopening the selection process to be undertaken afresh, dislocating the persons, who have been serving for quite some substantial period.

The appeal is allowed to the extent indicated above and the decision of the High Court, insofar as it set aside selections published on 26.7.1996, is set aside. No costs.

J.
(S. Rajendra Babu)

J.
(Doraiswamy Raju)

November 20, 2001.