

1980 KHC 853

Supreme Court of India

**V. R. Krishna Iyer; R. S. Pathak, JJ.*

Kunda S. Kadam v. Dr. K. K. Soman

C. A. No. 1954, 1955 of 1978

13 February, 1980

Constitution of India, Art.226 - Writ petition -- Recruitment to post of Deputy Municipal Commissioner, Bombay, through Public Service Commission -- It was also open to the State Government even if the Corporation had made an appointment to confirm or not to confirm it, depending on its own view of the matter -- Writ petition to challenge recommendation on ground of lack of necessary qualification in recommended candidate, is premature. (Para 3)

JUDGMENT

V. R. Krishna Iyer, J.

1 These two civil appeals revolved round the appointment to the post of Deputy Municipal Commissioner in the Municipal Corporation of Greater Bombay. The appellant in C.A. No.1954 of 1978 was one of the applicants for the post. By way of an aside we mention that the other appeal, C.A. No.1955 of 1978 does not call for any adjudication or other consideration in the view we are taking and the order we are passing in this appeal. The other one is by the Public Service Commission and relates to certain observations which hurt the Commission.

2 The appellant was employed in various capacities in the Municipal Corporation of Greater Bombay, including as Ward Officer and also an Enquiry Officer. The qualifications required for the post of Deputy Municipal Commissioner are in cases where they are directly recruited through the Public Service Commission: (a) administrative experience in a large organisation of not less than ten years and (b) out of this period of ten years at least five years being in a responsible capacity. In the present case the Municipal Corporation instead of choosing the promotion source for appointment decided to request the Public Service Commission to recruit on application from the open market. This enabled even the in-service employees to apply and so the appellant, who was already an employee in the Bombay Municipal Corporation, applied for the post. Eventually, she was recommended by the Public Service Commission to the Municipal Corporation for appointment. While her name was under consideration by the Municipal Corporation, which was the appointing authority, a Writ Petition was filed by the respondents 1 and 2 challenging the recommendation itself on the score that the present appellant did not fulfil the required statutory qualifications. The power of appointment belongs to the Municipal Corporation. After the Corporation takes the decision to appoint a particular candidate, the confirmation of the Government is required and on such confirmation being given a regular appointment is made. These exercises have not been gone through at all. All that happened is that the Public Service Commission had recommended the name of the appellant and even before a decision was taken by the Corporation a writ Petition was filed. The writ petition was dismissed *in limine* by a learned Single Judge, but on appeal, a Division Bench of the High Court covered that decision and allowed the appeal. The Division Bench took the view that the appellant did not possess one of the qualifications, namely 10 years' administrative experience and, therefore, quashed the recommendation itself.

3 We consider that the time has not arrived for the court to adjudicate upon the merits and that the Writ Petition itself was premature. The normal procedure should have been for the recommendation of the Public Service Commission to be considered by the Corporation. It was open to the Municipal Corporation to accept the recommendation or not to accept the recommendation. The learned Attorney General, appearing for the Corporation, says that it was open to the Corporation to ask for other names and make its own choice. We are not called upon to state what the powers of the Corporation in such a situation are. It was also open to the State Government even if the Corporation had made an appointment to confirm or not to confirm it, depending on its own view of the matter. We mention all this only to emphasise that it was too early for a writ petition to be entertained and decided on the merits.

4 In this view we set aside the judgment of the Division Bench of the High Court of Bombay and leave the matter at large. This means that the recommendation of the Public Service Commission will be back before the Municipal Corporation of Greater Bombay. According to law the Corporation will take its decision and thereafter in due course it will go for confirmation to the State Government. if any party is aggrieved by the appointment made it will be time enough for such aggrieved party to challenge the appointment.

5 There is one difficulty which the Municipal Corporation may feel on our direction for a reconsideration of the matter. So long as the observations of the Division Bench of the High Court are there may be an indirect impression on the part of the Corporation that they are bound by them. We make it clear that the Corporation will arrive at its own independent judgment, untrammelled by any observations on the merits made by the High Court, either expressly or which may be implied. We say so because we have not heard counsel on the merits and must not be taken to have made any observations one way or the other affecting the rights of the parties.

6 Two further directions are required to be made. The Municipal Corporation shall take a decision regarding the appointment within three months from today. Further any ad hoc appointment, that may be made or may have been made meanwhile, will not affect the rights of the parties. We also make it clear that the question of seniority of the appointee who may eventually be chosen and appointment as Deputy Municipal Commissioner will have to be decided in other litigation and we should not be taken to have decided that question by this order.

7 We allow the appeal, set aside the judgment of the Division Bench of the High Court of Bombay and direct the Municipal Corporation of Greater Bombay to reconsider the matter in the light of the directions we have made above. The writ petition is dismissed. The parties will bear their respective costs in this Court and in the High Court.