

**(1990) 03 CAL CK 0001**

**Calcutta High Court**

**Case No:** Matter No. 1359 of 1989

Aniruehdha Mukherjee

APPELLANT

Vs

Calcutta Municipal Corporation

RESPONDENT

**Date of Decision:** March 21, 1990

**Acts Referred:**

- Calcutta Municipal Corporation Act, 1980 - Section 20, 602

**Citation:** (1994) 1 ILR (Cal) 49

**Hon'ble Judges:** M.R. Mallick, J

**Bench:** Single Bench

**Final Decision:** Allowed

### **Judgement**

M.R. Mallick, J.

The Petitioner joined the Calcutta Municipal Corporation as Checking Inspector in the Market Department on March 31, 1977, and was posted at College Street Market. The said post has been redesignated as Inspector, Market Deptt. He continued in that post till March 15, 1984. Thereafter, he was promoted to the post of Superintendent (Grade II) and was attached to the Ultadanga Municipal Market. He was then transferred to Entally Market as Superintendent (Grade II). On and from December 1, 1985, the Petitioner was further transferred to S. S. Hogg Market on administrative basis and then by an order of the Respondent No. 2 asked to look after in addition to his duties in the Entally Market, the gutted portion of the S. S Hogg Market. He is now seniormost Market Superintendent (Grade II).

2. An advertisement being No. 6/88-89 of the Municipal Service Commission was published in the Statesman and also in Ananda Bazar Patrika on June 10, 1988, inviting applications for a permanent post of Senior Superintendent (Market) under the Respondent No. 1, Calcutta Municipal Corporation. The Petitioner having all the requisite qualifications for the said post applied through the proper channel and the Municipal Service Commission fixed the date of interview on February 14, 1988. The

other candidates who were all juniors to the Petitioner were asked to appear before the Interview Board. As the Petitioner was not called for the interview he made a representation to permit him to appear in the Interview Board. This was originally refused but only when the Petitioner produced the certificate to show his experience in handling revenue collection for more than the period required for getting the chance for the interview was ultimately given chance to appear in the Interview Board.

3. The Petitioner has now come to learn that the Municipal Service Commission has recommended the respondent No. 8 for the post and the Respondent No. 1 had decided to appoint the Respondent No. 8. The Petitioner submits that the said recommendation of the Municipal Service Commission and the decision of the Calcutta Municipal Corporation is bad and not tenable in law. The Respondent No. 8 should not have been called for interview as he lacked the requisite qualifications mentioned in the advertisement and is not an eligible candidate. The Respondent No. 8 joined the service of the Respondent No. 1 as Sergeant in the Market Department and subsequently promoted to Sergeant Grade I. The duties of the Sergeant are to so maintain the conservancy work and to maintain law and order in the market. The Respondent's own statement is that he has been officiating the post of Superintendent of Sri Gurudas Market for two years as on February 24, 1988, which means that the Respondent No. 8 has never gained experience in revenue collection in a full time employment. Moreover, the date of birth of the Petitioner being April 11, 1945, he was 43 years 3 months on the date when he applied for the post, but according to advertisement the age of the candidate shall not exceed 40 years as on January 1, 1988.

4. Therefore, the Respondent No. 8 not having requisite experience of 7 years in revenue collection of the Corporation and being not less than 40 years of age as on January 1, 1988, was not eligible for appointment of Senior Market Superintendent. Therefore, the recommendation by the Municipal Service Commission and the decision of the Respondent No. 1 to appoint him is illegal. On the contrary, the Petitioner had more than 7 years experience in revenue collection and was less than 40 years of age as on January 1, 1988.

5. Therefore, the Petitioner has moved this Court and prayed for a writ of mandamus commanding the Respondent No. 1 to 7 not to give any effect or further effect to the recommendation of Respondents Nos. 6 and not to appoint the Respondent No. 8 to the post of Senior Superintendent (Market) and to rescind, recall and withdraw the said recommendation and appointment of the Respondent No. 8 to the post of the Senior Market Superintendent and to consider the case of the Petitioner to that post.

6. Respondents Nos. 1 to 5 have filed a joint affidavit-in-opposition to contest the writ petition. They contend that for the purpose of selection of the post of Senior Superintendent, Market, the Respondent No. 6, Municipal Service Commission, is

entrusted with the duty of selection and these Respondents have nothing to do in the matter. They deny that the Respondent No. 8 had no requisite qualification for appointment and the personnel department of the Respondent committed any illegality in forwarding his candidature to the Commission. It is contended that the Municipal Service Commission is the best authority to say whether the Respondent No. 8 fulfilled the requisite qualifications to appear at the interview before the Selection Committee and that it appears that the said Commission after scrutinising the facts relating to qualifications, experience of the Respondent No. 8 was duly satisfied in this regard and ultimately selected the Respondent No. 8 and recommended him for the post. It is also contended that as the Petitioner had not been, selected for the post by the Respondent No. 6, the Respondents cannot give him the appointment to the above post.

7. Respondent No. 8 has filed a separate affidavit-in-opposition and subsequently a supplementary affidavit. His case is that the Municipal Service Commission has recommended his name for appointment to the post of Senior Superintendent, Market, on the basis of the report of the Interview Board and the Board has selected, him as the fittest candidate for the said post after considering the cases of all the candidates. He denies that he was not eligible for the interview or that he did not have the requisite qualifications. His case is that he had sufficient experience for more than 7 years not only in revenue collection but also in revenue administration, that the authorities of the Respondent No. 1 would not have forwarded the name of the Respondent No. 8 if he did not have requisite qualification and that the Petitioner who was working as Checking Inspector did not have the requisite experience for being considered for the post of Senior Superintendent, Market. He further states that regard being had to his exceptional qualifications the upper age limit can be relaxed and such relaxation was made under the special circumstances by the authorities who had discretionary power to relax the age and qualifications in the advertisement for appointment. It is further submitted that when the Respondents considered the Petitioner's candidature along with the Respondent No. 8 and other candidates and selected the Respondent No. 8, the Petitioner cannot have any grievance against such selection.

8. The Respondent No. 8 has in the, supplementary affidavit reiterated his contentions made in the original affidavit in details and has stated that he has been issued the letter of appointment on July 26, 1989, for the post of Senior Superintendent, Market, and on the same day he joined the post and has been discharging his duties effectively and with integrity. It is also pointed out that the Deputy Municipal Commissioner (Personnel) issued the Circular No. 43 of 1988-89 dated June 23, 1989, regarding the relaxation of the upper age limit of departmental candidates in case of direct recruitment and having regard to that Circular he was entitled to get relaxation of age and the age was relaxed in his case in consideration of the fact that he had special training regarding "revenue sources for Local Government" which he received from Training Institute of the Calcutta Municipal

Corporation.

9. The writ Petitioner has filed an affidavit-in-reply to the affidavit-in-opposition filed and has refuted all the contentions of the Respondents and have challenged the selection of the Respondent No. 8 as illegal and void and the non-selection of the Petitioner as violative of Arts. 14 and 16 of the Constitution.

10. An advertisement was published from the Municipal Service Commission (hereinafter referred to as M.S.C.), Annex. "B" to the writ petition in several news-papers published from Calcutta being No. 6/1988-89 cf June 10, 1988, inviting applications for the post of Senior Superintendent, Market, under Respondent No. 1 Calcutta Municipal Corporation. The M.S.C. on receiving 32 applications called eight candidates for interview on February 14, 1989. The Petitioner complains that at first he was not selected for interview and did not receive any interview letter, but after he submitted a fresh certificate he was called for interview. The M.S.C. did not file any affidavit-in-opposition to dispute this contention but has produced the relevant file from the same it is gathered that at one stage it was proposed not to call the Petitioner for interview but that decision was reversed and ultimately he was among the eight candidates who were called for interview. From the file it is gathered that out of eight candidates six candidates appeared before Interview Board, and the Interview Board selected Respondent No. 8 for the post and kept the Petitioner and one Utpal Kanti Chowdhury in reserved panel in order of preference.

11. Every candidate having the essential qualifications could apply and the departmental candidates were to apply through proper channel. All the above three candidates are the employees of the Calcutta Municipal Corporation. The writ petition challenges the selection of the Respondent No. 8 on the ground that he was not an eligible candidate, not having the requisite qualification of 7 years experience in a responsible position of Revenue Collection in a Government office/Semi-Government office or a local or statutory body and his age being more than 40 years of age as on October 1, 1988 as his date of birth was April 11, 1945. Relevant extract of the said advertisement is reproduced below:

Applications, are invited for one permanent post of Senior Superintendent (Market) under the Calcutta Municipal Corporation. Scale of pay Rs. 1100-60-1300-60-1900 plus other admissible allowances.

Qualifications: Essential: (i) A degree of a recognised University or its equivalent; (ii) 7 years' experience in a responsible position of Revenue Collection in a Govt. office/Semi-Govt. office or a Local/Statutory Body; (iii) Age not more than 40 years on the 1st January, 1988. The upper age limit is relaxable by 5 yrs. for exceptionally qualified candidates. The prescribed Essential Qualifications are minimum and mere possession of the same does not entitle candidates to be called for interview. Where the number of applications received in response to the advertisement is large and it will not be convenient or possible for the Commission to interview all these

candidates, the Commission may restrict the number of candidates for interview to a reasonable limit on the basis of qualifications and experience higher than the minimum prescribed in the advertisement or by holding a screening test. Where a number of years of experience is prescribed as an item of qualifications experience would mean only experience gained in full-time employment.

12. This advertisement is in accordance with the Circular No. 51 of 1988-89 dated July 1, 1988, being the Recruitment Regulations for the post of Senior Superintendent, Market Department, under the Respondent No. 1 which has been framed u/s 20 of the Calcutta Municipal Corporation Act read with Section 602 of the Act. Method of Recruitment for the above post states as follows:

Method of Recruitment.

By promotion on seniority-cum-merit basis.

By direct recruitment after observing necessary formalities:

Qualifications

For direct recruitment:

Essential (i) a degree of a recognised University or its equivalent.

(ii) 7 years experience in a respectable" position of revenue collection in a Govt. policy/Semi-Govt. Office/Local/Statutory body.

(iii) Age not more than 40 years on the 1st January of the year in advertisement/notifications. The upper age limit is however relaxable by 5 years for exceptionally qualified candidates.

For Promotion:

(i) Superintendent (Gr. I) possessing a degree of recognised University or its equivalent and having 10 years experience in the Municipal Market will be eligible.

(ii) No age limit.

13. It is the Petitioner's case that Sadhan Bose, the Respondent No. 8, is the Sergeant Grade I, that he was appointed as Sergeant and has been promoted to Sergeant Grade I, that since 1982 he had been officiating as Market Superintendent according to own statement of the Respondent, but his substantive post is Sergeant Grade I and that duties of the Sergeant according to Market Manual of the Corporation is. to maintain conservancy and also to maintain law and order of the market and has no concern with revenue collection and, therefore, he did not possess the requisite essential qualification No. (ii) of the advertisement and the recruitment regulations. He was also over-aged. So, according to the Petitioner, the Respondent No. 1 should not have been called for interview by M.S.C. and, therefore, the selection of the Respondent No. 8 being illegal is liable to be quashed

and the Petitioner being the best eligible candidate should have been selected by M.S.C. and appointed by the Respondent No. 1 as Senior Market -Superintendent. On behalf of the Respondent No. 8 above contentions have been sought to be refuted. It is conceded that his substantive post is Sergeant Grade I. But his case is that as Sergeant he has also been entrusted with revenue collection of the Corporation since 1972, that he had also been discharging his duties as Market Superintendent of Entally Market from March 4, 1982 to March 16, 1984, and on and from June 15, 1985, till date of the filing of the affidavit-in-opposition had been Superintendent, Gurudas Market, and also officiating as Superintendent, Ultadanga Municipal Market, as per order of the authority. Therefore, it is clear that the Respondent No. 8 was holding a substantive post of Sergeant Grade I, but when this application for the post of Senior Market Superintendent was made by him he was acting as Market Superintendent. As market Superintendent, he was overall in-charge of market including market administration and revenue collection and could have gathered for about 5 years experience in revenue collection.

14. Therefore, if the contention of the Petitioner that as Sergeant the Respondent No. 8 did not have any connection with revenue collection and was concerned only with the law and order problem of the market is accepted, then it has to be held that the Respondent No. 8 did not have the minimum essential qualifications of having 7 years experience of responsible position of revenue collection in the local body like Corporation. I may point out here that the minimum essential qualification is 7 years experience in responsible position of revenue collection.

15. The duties of the Sergeant in a municipal market are contained in the Market Manual of the Corporation. A copy of the said Manual has been produced before me. From the same it is gathered that the function of the market department of the Corporation is two-fold, namely, (i) the general administration of the markets for the maintenance of the discipline and order and for keeping them in a cleanly state and (ii) revenue administration (para. 3). Every. municipal market shall be under the management of the Superintendent who shall be in general charge of the administration of the market (para. 4). From the duties allotted to him by para. 7 of the the Manual it is gathered that Superintendent is an over-all in-charge of both the general administration and revenue collection. In para. 28 of the Manual the duties of the Sergeant are enumerated. They are as follows:

Duties of Sergeants are:

- (a) To keep the muster roll of the sweepers and other labour staff.
- (b) To see that the fire appliances are in order.
- (c) To hold fire drills at least once a month.
- (d) To attend to complaints.
- (e) To deal with crime cases and to submit monthly reports to the Committee.

(f) To see that no beggars, persons suffering from loathsome diseases, dogs, etc., come inside the market.

(g) To regularly examine weights, scales and measures used in the market and to keep a register block by block.

(h) To look after the washing and general cleansing of the market and to supervise the work of the sweepers,

(i) To be in charge of all jamadars, guards, peons, fire khalasis and other menial staff,

(j) To report on all encroachments, obstruction of the passages in front of shops and stalls and to take action under orders of the Superintendent,

(k) To make night rounds and to submit reports to the Superintendent daily.

(l) To see that no unlicensed colies ply for hire inside the market,

(m) Daily diary noting time of attendance, etc., should be kept and submitted to the Superintendent regularly once every week,

(n) To attend Court in connection with prosecutions for breach of bye-laws,

(o) To keep a register of all cases instituted in the Municipal Magistrate's Courts,

(p) The Sergeants are provided with Police powers and hold licence for carrying a revolver as a retainer under the Chief Executive Officer.

16. From the above there can be no doubt that the essential duties of the Sergeant of a municipal market is to maintain law and order in the market and to maintain the cleanliness in the market and for that purpose he is provided with Police powers and hold licence for carrying a licensed revolver under a retainer under the Chief Executive Officer. According to the Respondent No. 8, the Sergeant is also in-charge of revenue collection because whenever any person liable to pay fails to pay any amount of rent to the Corporation in spite of notice or otherwise it is the duty of a Sergeant to collect such revenue on behalf of the Corporation ; and to deposit the same in the fund of the Corporation. Chapter III of the Market Manual of the Corporation deals with revenue administration. In the said chapter various authorities have been specified who are responsible for revenue collection and its supervision. From a perusal of the same it is gathered that the revenue collection is the primary duty of the collecting Sircars whose work is supervised by Sub-Inspectors and the work of both collecting Sircars and Sub-Inspectors are supervised by the Inspectors-Sergeants are not in any way concerned with revenue collection.

17. It is provided in para. 136 of the Manual that when no payment is made by the shop-keeper or stall-holder for over three months, Chief Law Officer shall be instructed under order of Deputy Executive Officer to take legal steps against defaulters for realisation of the same. Sergeant has not been entrusted with the

duty of realisation. But if under order of the Deputy Executive Officer the Sergeant makes such collection and deposits the same to the Corporation fund that does not form part of the essential part of the duties of Sergeant. It is also submitted by the Respondent No. 8 that the Sergeant collects fines and deposits the same in collection fund. But under para. 154 of the Manual the Superintendent may impose fines on vendors as a disciplinary measure for disturbance, breach of peace, using short weights, encroachment etc. Market Manual does not indicate how the said fines are recovered. If the Superintendent realises the same through the Sergeant and the Sergeant realises such fine, this is part of general administration of the market.

18. It is also urged by the Respondent No. 8 that the method of recruitment of the post of Market Superintendent shows that when such post is filled up by promotion, the feeder posts are Head Assistant, Sergeants and Checking Inspectors and if the Sergeants did not have experience in revenue collection they should not have been regarded as feeder posts for the post of Superintendent. The above submission does not have any force whatsoever. In the general administration of the market Sergeant is next to Market Superintendent. He is to assist the Superintendent in maintaining law and order in the market that is why the Sergeant has the promotional avenue for the post of Superintendent. From that it cannot be held that the Sergeants are also involved in revenue collection in the market. But the Market Manual clearly indicates as to who are the staff of the Corporation dealing with revenue collection. With the abolition of the post of Revenue Officer, the following are the said staff below the Superintendent in the Revenue Department, namely, Inspector (formerly Checking Inspector), Sub-Inspector and Collecting Sircars. Even if it be conceded that the Sergeants did collect arrear rent or fine under the order of their superior officer and deposited the same to the municipal fund that was not part of the regular duty of the Sergeant nor that work amounts to being in responsible position of the revenue collection. Their main and primary duty is to maintain law and order, discipline and cleanliness in the market and not revenue collection. Therefore, it cannot be held that the Respondent No. 8 while working as Sergeant under the Respondent No. 1 held any responsible post of revenue collection in the Calcutta Corporation. For the period he was officiating as Market Superintendent, he had acquired the necessary experience in revenue collection no doubt, but that period of appointment though on officiating basis did not make him an eligible candidate for the post of Senior Superintendent, because he was acting as Market Superintendent for about 5 years.

19. It is unfortunate that before calling the Respondent No. 8 for the interview, M.S.C. did not direct its, attention to that aspect of the case. Even though M.S.C. questioned the eligibility of the Petitioner who was appointed as Checking Inspector in 1979 and on his producing certificate called him for interview being satisfied about his eligibility, it did not question the eligibility of the Respondent No. 8 even though he was not eligible for the post of Senior Superintendent, Market. The

learned Advocate for the M.S.C. has submitted that as the name of the Respondent No. 8 was forwarded by the personnel department of the Respondent No. 1. M.S.C. thought that his name was forwarded as he was eligible. But in my view it was the duty of the M.S.C. to scrutinize each case of the candidate independently to decide about his eligibility. The M.S.C. appears to have questioned the eligibility of the Petitioner even though his name was forwarded by the personnel department of the Respondent No. 1. There is no doubt that being Checking Inspector, which post has since been redesignated as Inspector, he had been supervising the revenue collection of the Municipal markets since 1977 and had been promoted as Market Superintendent Grade II in 1984 and has been working in that post since then. So he had the minimum qualification of Clause (ii) of the advertisement.

20. Another ground of challenge of the candidature of the Respondent No. 8 as made by the Petitioner is that the Respondent No. 8 was over-aged and crossed more than 40 years of age as on January 1, 1988, as his date of birth is April 11, 1945.

21. There is no doubt that the Respondent No. 8 did not have the age qualification and he was more than 40 years of age on January 1, 1988! But it is submitted on behalf of the Respondent No. 8 that M.S.C. had the discretion to relax the age bar in the case of well-qualified and well-experienced candidates in view of the circular No. 43 of 1988 dated June 23, 1988, and relaxed his age, and this Court cannot interfere with such discretion used by the Service Commission. In support, decision of the Supreme Court in Maheshwar Prasad Srivastava Vs. Suresh Singh and Others, has been referred to. The said circular has been produced before me. Even in the recruitment regulations there is a provision for age relaxation for well-qualified and well-experienced candidates. But it is silent as to who would relax the age. But the circular No. 45 of 1988-89 has given M.S.C. that discretion.

22. I find from the file of M.S.C. that by the order dated January 19, 1989, the M.S.C. had decided not to issue interview letters to Respondent No. 8 2nd another candidate due to over-age. But the matter was placed again before the M.S.C. on January 31, 1989, drawing the attention of the circular No. 76 of the 1988-89 wherein it has been stated that upper age limit is relaxable by the M.S.C. in the case of municipal employees. That circular is not in the file of the M.S.C. nor has that circular been produced by the Respondent. The Respondent No. 8 produces the circular No. 43 dated June 23, 1988, and submits that under this circular his case was considered by M.S.C. and age was relaxed as he was well-qualified and well-experienced candidate. But the file of the M.S.C. does not indicate that the said circular was considered or that M.S.C. decided to relax the age of the Respondent considering him to be well-qualified and well-experienced candidate. I have already indicated that the Respondent No. 8 did not have the essential minimum qualification. Therefore, M.S.C. could not consider such a candidate to be well-experienced. The Respondent No. 8 submits that he holds the LL.B. degree and a certificate from

Municipal, Training Institute. It is, however, found that the Petitioner also holds the LL.B. degree and a certificate from the same Training Institute. He was within the age-limit. The M.S.C. considered him the next best candidate. Therefore, there was no material before M.S.C. to relax the age of Respondent No. 8 on the ground that he was well-qualified and well-experienced candidate. Moreover, I have already indicated that the M.S.C. in its order dated January 31, 1989, did not indicate that it was relaxing the age of the Respondent No. 8 on the ground that he was well-qualified and well-experienced candidate. Only because the Respondent No. 8 and serial No. 23 Aloke Kumar Roy were employees of Calcutta Corporations, M.S.C. by that order decided to call them for the interview.

23. The Respondent No. 8 has also submitted that the M.S.C. allowed another Sergeant, Utpal Kumar Chowdhury, to be called in the interview and that shows that M.S.C. was satisfied that the Sergeant had the necessary experience in revenue collection.

24. In my view the M.S.C. also committed illegality by interviewing Utpal Kumar Chowdhury also and placing him in the reserved list No. 2 even though as Sergeant of the Market Department he did not have essential qualification.

25. in the result, the writ petition is allowed. The selection of the Respondent No. 8 by the M.S.C. for the post of Senior Market Superintendent of Calcutta Municipal Corporation is hereby quashed. The ad hoc appointment given by the Respondent no 1 during the pendency of the writ Petitioner with the leave of the Court is also quashed. The name of the Petitioner, who is the only eligible candidate selected by the M.S.C. and placed as number one in the Reserve list, shall be sent by the M.S.C. within two weeks to Respondent No. 1 as the only eligible candidate selected for appointment as Senior Market Superintendent and within four weeks thereof the Respondent No. 1 shall give the Petitioner appointment as Senior Superintendent, Market.

26. No order for costs is passed. All interim orders are vacated.

27. All parties shall act on the signed copy of the operative part of this judgment upon usual undertaking.