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## **Aniruehdha Mukherjee Vs Calcutta Municipal Corporation**

## Matter No. 1359 of 1989

Court: Calcutta High Court

Date of Decision: March 21, 1990

**Acts Referred:** 

Calcutta Municipal Corporation Act, 1980 â€" 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

Corporition. The Petitioner having all the requisite qualifications for the said post applied through the proper charnel 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 originilly 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 Roard

3. The Petitioner has now come to learn that the Municipal Service Commission has recommended the respon- dent 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 conservency 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 Scivice 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::eport 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 sl^ge 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 vr 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 lima:s 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 dead July 1, 1988, being the Recruitment Regulations for the port 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 arc 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 beggers, persons suffering from loathsome diseases, dogs, etc., come inside the market.
- (g) To regularly examine weights, scales aid 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 rsports to the Superintendent daily.
- (I) To see that no unlicensed colies ply for hire inside the market,
- (m) Daily diary noting time of attendance, etc., should  $\tilde{A}^-\hat{A}_{\dot{c}}\hat{A}'_{\dot{c}}$  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 ; nd 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 autholities have been specified

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-Inspector 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

deposites 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 tlv 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 of 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 personel 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 na,me 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 conider 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.