IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

Writ Petition No. 7267 of 2024

1. Sharad S/o.Shriram Salunke,
Age : 42 Years, Occ. Service,
R/o.Village Niwada, Post Shindhgaon,
Tq.Renapur,Dist.Latur.

2. Ganesh s/o. Govardhan Yeole,
Age : 44 Years, Occ. Service,
R/o. Mahavir Park, Barshi Road,
Latur.

3. Ravishankar s/o Balbhimrao Barmade,
Age : 52 years, Occ. Service,
R/o. Sadanand Niwas,Datta Nagar,
Ausa Road, Latur.

4. Ashok s/o Sh ankarrao Jadhav,
Age : 48 years, Occ. Service,
R/o. Sarswati Colony, Latur.

5. Satish s/o Venkatrao Wakade,
Age : 46 years, Occ. Service,
R/o. Bitargaon, Tq. Renapur.,
Dist.Latur. **...Petitioner**

Versus

1. The State of Maharashtra
Through The Secretary
Cooperation Textile and Marketing
Department,Mantralaya,Mumbai.

2. The Commissioner (Sugar)
Cooperative Sugar Factories,
Maharashtra State,Pune.

3. Vaikuth Mehta National Institute of
Cooperative Management, Savitribai Phule
Pune University Road,
Near Chatursingi Temple,Ganesh Khind,
Pune-411 007. **...Respondents**

WITH
Civil Application No.8430 of 2024 in
Writ Petition No. 7267 of 2024

Sadashiv Uttamrao Bahir and Others ...Applicants
versus
Sharad Shriram Salunke and Others ...Respondents

WITH
Civil Application No.10721 of 2024 in
Writ Petition No. 7267 of 2024

Vijay Namdeorao Gavande ...Applicants
Versus
Sharad Shriram Salunke and Others ...Respondents

WITH

Writ Petition No. 8489 Of 2024

1. Bapusaheb S/o Babasaheb Doshinge,
Age : 42 years, Occupation-Service,
R/o. Takali Kazi,
Tq. and Dist. Ahmednagar, **.. Petitioner**

Versus

1. The State of Maharashtra,
Through it's Secretary,
Co-operation, Textile & Marketing
Department, Mantralaya,
Mumbai-32

2. The Commissioner (Sugar)
Maharashtra State,Pune.

3. Vaikuth Mehta National Institute of
Cooperative Management, Savitribai Phule
Pune University Road,
Near Chatursingi Temple,Ganesh Khind,
Pune-411 007 **.. Respondents**

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* Mr. P.P.More Advocate for the Petitioner in WP No.7267 of 2024.

* Mr. Mahesh V.Ghatage, Advocate h/f. Mr. Mahesh S.Taur,
Advocate for Petitioner in WP No. 8489 of 2024

* Mr. P.S.Patil, AGP for Respondent/State No. 1 and 2.

* Mr. Anand P Akut, Advocate a/w Mihir Pethe Advocate for Respondent No.3

* Mr. Shyam C.Arora, Advocate for Applicant in C.A No. 8430 of 2024.

* Mr. V.D.Hon, Senior Counsel i/b Mr. A.D.Shinde in C.A No. 10721 of 2024.

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CORAM : S.G. MEHARE AND
SHAILESH P. BRAHME, JJ..

RESERVED ON : 20th JANUARY 2025

PRONOUNCED ON : 07th FEBRUARY 2025

J U D G M E N T (Per Shailesh P. Brahme, J.) **:**

1. Rule. Rule is made returnable forthwith. Heard the litigating sides finally at the admission stage.

2. Both petitions raise common questions of facts and law pertain to self-same selection process. Hence, they are decided by common judgment.

3. Intervenors have filed Civil Applications and they are also permitted to address the Court. The marks of the candidates who participated in the selection process are received in sealed envelope on the earlier occasion and today also.

4. These matters pertain to the selection process of 50 Managing Directors to be empanelled by the respondents. The process is regulated by Government Resolution dated 18.04.2022. The petitioners before the Court are aspirants from the open market. It is necessary to clarify that few candidates who were denied opportunity to appear for objective screening test had filed petitions before the Principal Seat and those were dismissed. Being aggrieved, in all 28 candidates had filed Special Leave Appeal No. 8750-8754 of 2023 before Hon'ble Supreme Court on or around 21.04.2023. Interim

orders were passed by Hon'ble Apex Court on 28.04.2023 permitting them to appear for examination to be held on 04.05.2023. It is informed that those matters are still pending before the Apex Court.

5. It is informed that in pursuance of orders of Supreme Court, candidates were permitted to appear for examination held on 04.05.2023. They did not qualify written/mains and therefore they are not figuring in the subsequent round of selections. The lawyers on both sides submitted that present petitions can be considered for final hearing. We find that the pendency of the petitions before the Hon'ble Apex Court is not an impediment in deciding the present petitions. There is no prohibitory order passed by the Hon'ble Apex Court. Under these circumstances, we propose to decide these petitions.

6. The respondent no. 1 had issued Government Resolution dated 18.04.2022 laying down modalities for selecting 50 candidates for the post of Managing Director. By notification dated 31.05.2022, advertisement was issued calling applications from aspiring candidates. It was stipulated that objective screening test of 200 marks would be conducted. Those who score more than 70 marks

would be eligible for the written examination/mains (hereinafter referred in short as 'written/Mains'). In written/mains, the candidates would be shortlisted for oral on the basis of merits in ratio of 1:3 . After considering the marks for written/Mains and the Oral, first 50 candidates would be selected for the post in question.

7. The objective screening test was conducted on 05.04.2023. In all 294 candidates had applied for it and 264 candidates had actually appeared for the examination. The list of 239 candidates scoring above 70 marks was shortlisted, to be eligible for written/Mains. No results of the candidates shortlisted for last stage/Oral were declared

8. A circular was issued on 17.04.2023 in an interregnum between objective screening test and written/mains held on 04.05.2023, setting out bench mark of minimum 27 marks in the written/mains out of 75 marks to be eligible for orals. On the same date, respondent No.2 addressed a letter to the respondent no.3 issuing the instructions for conducting written/mains. It was conducted on 04.05.2023. The results of mains were still not declared.

9. A list of 74 candidates who were found eligible for oral was

published. Interviews were conducted in between 18.07.2024 to 22.07.2024. They appeared for the interview. The petitioners did not figure in the list of 74 candidates appeared for the interview meaning thereby they were not shortlisted. Therefore, they are approaching this Court for directions to modify the list of the candidates declared to be eligible for interview by including them in the list and to declare the result of Mains. They are also seeking interim orders.

10. Learned counsel for petitioner Mr. More appearing for petitioners in Writ Petition No. 7267 of 2024 submits that the selection process was being regulated by Government Resolution dated 18.04.2022. Initially there was no bench mark of minimum 27 out of 75 marks in the written/mains to qualify for the interview which is for the first time introduced by Circular dated 17.04.2023 which amounts to change of rules in the midst of the selection process. Rather the criterion for calling the candidates for interview was ratio of 1:3 which is deviated. It is submitted that the super imposed benchmark of 27 out of 75 marks to qualify for interview is against the Clause 4 (ii) of Government Resolution dated 18.04.2022 and it is arbitrary and high handed. He would submit that as per the criterion which was well circulated, 150 candidates should have been called for

the interview but only 74 candidates were called for. There was no contingency or the special circumstances to introduce new bench mark when the process was half-way through. The respondents had no authority to introduce new criterion and the corrigendum dated 15.06.2022 did not spell out any change in the criterion. The respondents had no power to modify Government Resolution or to issue circular dated 17.04.2023.

11. Learned counsel for petitioner Mr. P.P.More further submits that results of the petitioners or any other candidates were not declared for the mains examination. The list of qualified candidates for interview was prepared in a non-transparent and clandestine manner depriving the opportunity to the petitioner to challenge the marks allotted in the mains. The process adopted by the respondents is arbitrary and perverse.

12. Mr. Mahesh Ghatage, learned counsel appearing for petitioner in Writ Petition No. 8489 of 2024 adopts the submissions of learned counsel Mr. More. Additionally he would submit that circular dated 17.04.2023 was neither issued by Respondent no.1 nor by Respondent no.2. There is no legal sanctity for issuing the circular. He would

submit that no reasons are coming forth for introducing new benchmark. He would advert our attention to the representation made by the petitioner on 05.07.2024 to the respondents before approaching High Court. He would lay emphasis on the judgment of Hon'ble Supreme Court of five Judges bench in the matter of **Tejprakash Pathak and Others Vs. Rajasthan High Court and Others** reported in 2013 (3) SCC 540 which affirms the decision in **K.Manjushree vs. State of A.P** reported in 2008 DGLS (SC) 232 to buttress a submission that fixation of minimum marks should have been done before the commencement of selection process. He would submit that the present petitions are maintainable though petitioners participated in the selection process.

13. In support of the petitioners they relied on following judgments :

I) **Tejprakash Pathak and others Vs. Rajasthan High Court and Others** (supra).

ii) **State of Kerala Vs. Govindan Nair** reported in 2022 DGLS (Ker.) 551 (Kerala High Court)

iii) **Pankaj Rane Vs. Goa Public Service Commission** reported in 2018 (2) Bom. CR 786.

iv) **K. Manjushree Vs. State of A.P and Anr.** reported in 2008 DGLS (SC) 232.

v) **Hemani Malhotra Vs. High Court of Delhi** reported in 2008 DGLS (SC) 525.

vi) **Maharashtra State Road Transport Corporation Vs. Rajendra Bhimrao Mandve** reported in 2001 DGLS (SC) 1466.

vii) **Sonali Pramod Dhawade and others Vs. Central Bank of India and another** reported in **2013 (5) Mh.L.J**

viii) **Rajendra Bhimrao Mandve and others vs. Maharashtra State Road Transport** reported in **1998 (2) Mh.L.J 114.**

ix) **M/s.J. Mohapatra and Co. and another vs. State of Orissa and another** reported in **AIR 1984 SC 1572.**

x) Vikaram Bawajya Valvi and Others Vs. State of Maharashtra and another reported in 2022 DGLS (Bom.) 3061

14. Learned AGP Mr. Pravin Patil relies on the reply filed on two different occasions. His submissions are that there was a letter issued on 17.04.2023 by the Respondent No. 2/ Commissioner to the Respondent No. 3 informing that there would be minimum 27 out of 75 marks for qualifying the oral examination. It was published on the website and the candidates were apprised of the change. Thereafter

mains was conducted on 04.05.2023. The petitioners did not raise any objection. It is submitted that benchmark of minimum marks was permissible to be introduced and it was to select best candidates. The petitioners did not qualify. They participated in selection process and they are estopped from challenging the minimum marks/Benchmark. He would further submit that the reasons for introducing minimum marks are set out in paragraph no. 17 of affidavit-in-reply dated 28.11.2024 filed in Writ Petition No. 8489 of 2024. It is submitted that there is no change in the criterion so as to cause prejudice to the petitioners. The petitioners are raising after-thought pleas having been unsuccessful in the selection process.

15. Learned counsel Mr. Pethe appearing for Respondent No. 3 which is Implementing Agency supports the submissions of respondent nos. 1 and 2. By referring to his reply he would submit that the Respondent No.3 was not duty bound to disclose the results after written/mains examinations. Rather to rule out any possibility of bias in ensuing oral examinations, the results of all the candidates were concealed. He would submit that the instructions were received on 24.05.2022 issued by respondent no. 2 for conducting the

examination. As per the special instructions, the candidates were under obligation to get apprised of the process by accessing the website. He would rely on instruction no. 8 empowering the selection committee to make changes in the criterion. It is reiterated by him that well in advance on 17.04.2023 candidates were apprised of the minimum/Benchmark which was not objected. Without any demur they appeared for written/Mains examination and now being unsuccessful they are resorting to the Writ Petitions. It is submitted that there is no illegality or arbitrariness in conducting the process and no prejudice is caused to the petitioners. He has tendered on record two sealed envelopes disclosing the results of written mains examination.

16. Mr. Pethe relies on the following Judgments :

i) **Tajvir Singh Sodhi & Ors. vs. The State of Jammu and Kashmir and Ors**. reported in 2023 Live law (SC) 253.

ii) **Jay Pramod Rikame vs. State of Maharashtra** reported in AIR Online 2013 BOM 1248.

17. Learned Senior Counsel Mr. Hon representing the intervenors submits that there is alternate remedy and the petitions are not

maintainable. Without approaching the respondent authorities, directly the petitions are being filed. The prayers in the petitions cannot be granted on the ground of non-joinder of necessary parties. It is submitted that no prejudice is caused to the petitioners due to introduction of minimum mark/benchmark. To buttress his submission, he places reliance on following judgments :

i) **Goenkrancho Ekvot Vs. Union of India and Others** reported in 2007 (6) AIR Bom R. 32.

ii) **Shekhar Kaduba More and others vs. The State of Maharashtra and anothers** of this Court in Writ Petition No. 5313 of 2024.

18. Learned counsel Mr. Arora representing intervenors submits that in fact there was no change in the criterion. No rule has been changed to the detrimental to the petitioners. He relies on the paragraph no. 13 of judgment of Hon'ble Supreme Court in the matter of **Tejprakash** (supra) to buttress that it was permissible for the employer to set bench mark at different stages of recruitment process. He would submit that object is to select the best available talent and for that there exists power to fix the minimum qualifying marks. Additionally, he relies on following judgments :

I) **Shekhar Kaduba More and another Vs. The State of Maharashtra**

and others in Writ Petition No. 5313 of 2024 with connected Writ Petitions.

II) **Tajvir Singh Sodhi & Ors. vs. The State of Jammu and Kashmir and Ors**. reported in 2023 Live law (SC) 253.

III) **Pranav Verma and Ors. Vs. Registrar General** reported in (2020) 15 SCC 377.

IV) **Ram Sharan Maurya and Ors Vs. State of U.P and Ors.** reported in AIR 2021 SC 954

19. Having heard the litigating sides at length, the issue that needs adjudication is as to whether it is permissible to introduce new bench mark or criterion after commencement of the selection process. Our opinion which we propose to justify by following reasons is that considering nature of the new bench mark or criterion it is permissible to do so.

20. There are preliminary objections raised by the intervenors as well as respondent no.3 for entertaining the petitions. We have considered special instructions nos. 11, 12 and 13 as pointed out by learned senior counsel Mr. Hon. Considering the grounds of objection and the questions of law raised by the petitioners, the remedy to

approach the respondent no.2/Commissioner or Selection Committee constituted under Government Resolution dated 18.04.2022 is not efficacious. Considering the constitution of the Selection Committee, it would not be fair to expect the petitioners to approach them. The respondent no.2/Commissioner has played role in introducing the minimum mark/bench mark. Relying on the various pronouncements of the Hon'ble Supreme Court, the petitioners have raised intricate questions which can be dealt with by this Court. We find that the petitioners had no alternate remedy.

21. Learned senior counsel Mr. Hon relies on ratio laid down by this Court in the matter of **Goenkrancho Ekvot** (supra) to bolster the submission that directly petition cannot be filed. We have gone through relevant paragraph no.4. In the facts and circumstances Supreme Court held in the cited matter that it was a luxury litigation where the petitioner was bent upon filing one litigation after another. In Writ Petition No. 8489 of 2024 representation was made through mail on 05.07.2024 and it was also replied by the respondent no.3. The cause of action was accrued in both matters after publication of list of the qualified candidates for interview on 18.07.2024. Considering the sequences of the events and the challenge raised in the petitions,

petitions cannot be nonsuited for not making detailed representations to the respondents ventilating their grievances. The judgment cited is of no assistance to the respondents.

22. We also overrule the objection of respondent no.3 that no specific plea has been raised by the petitioners for minimum mark/bench mark which is impermissible to be introduced after commencement of the process. The plea was being pressed into service since beginning and the parties have filed returns and the documents dealing with the pleas. It is hyper technical to reject the petitions on this count.

23. The next plank of objection to oppose the petitions is that having participated in selection process, they are estopped from challenging it. Following judgments are cited.

I) **Shekhar Kaduba More and others vs. The State of Maharashtra and anothers** of this Court in Writ Petition No. 5313 of 2024.

ii) **Madanlal vs. State of Jammu and Kashmir** reported in (1995) 3 SCC 486

iii) **Jay Pramod Rikame vs. State of Maharashtra** reported in AIR Online 2013 BOM 1248.

iv) **Tajvir Singh Sodhi & Ors. vs. The State of Jammu and Kashmir and Ors**. reported in 2023 Live law (SC) 253.

24. Our attention is invited to paragraph no. 28 of the case of **Shekhar** (supra). In that case, in the advertisement requisite qualification was prescribed for the post of 'Craft Inspector'(Class-III). The qualification prescribed was sought to be challenged by those petitioners by filing petitions. In that context observations were made in paragraph no.28. Facts of the present case are distinguishable. In the present case, none of the clauses of advertisement are under challenge. The introduction of minimum mark/bench mark after commencement of the selection process is the fulcrum of the submissions. This judgment will not help the respondents.

25. In case of **Madanlal vs. State of Jammu and Kashmir** reported in (1995) 3 SCC 486, the selection process was challenged by the unsuccessful petitioners on the ground of manner and method of conducting viva-voce. In that context it was held that the result of interview on merits could not be successively challenged by the candidates who took chance to get selected in the said interview and who ultimately found themselves to be unsuccessful. It was further

held that the assessment on merits by the Expert Committee could not be challenged. It was not a case that any new criterion was introduced for the first time after commencement of the selection process.The facts of the present case are distinguishable and the ratio cannot be made applicable.

26. Reliance is placed on the judgment of Supreme Court in the matter of **Tajvir Singh** (supra). In that matter subsequent to issuance of advertisement for the post of Drug Inspector, a corrigendum was issued recasting the weightage awarded to the candidates possessing the degree of Pharmacy or Pharmaceutical Chemistry or Post Graduation or Ph.D. Petitioners were declared unsuccessful and then petition was filed. A challenge was raised on the ground that the process is vitiated due to recasting. The challenge was turned down. In paragraph no. 13 various judgments are referred by Hon'ble Supreme Court for the proposition that having participated in the selection process without any protest it would not be open to the unsuccessful candidates to challenge the selection criterion subsequently. In that case the recasting of weightage was introduced on 12.06.2009. Select list was declared on 08.09.2009. The appointment orders were issued to the successful candidates on 15.10.2009. The petitioner had ample

opportunity to challenge the recasting of the weightage. In the case before us, petitioners had no cause of action when the change was introduced. Considering the difference in the facts, ratio cannot be made applicable to the present case.

27. The matter of **Jaypramod Rikame** (supra) was pertaining to the admission process. It was held that candidates who participated in examination cannot turn around to contend that holding of examination was unfair or there was lacunae in the normalisation. In the case in hand, the plea to change the rules after the process has begun is raised. This judgment would be of no help to the respondents.

28. The petitioners could not have foreseen that the respondent authority would introduce any new criterion after the commencement of the selection process. They had no cause to challenge anything before commencement of the process. The cause of action accrued to them after circular dated 17.04.2023 by which minimum mark/ bench mark was introduced. The petitioners were not aware of results. Therefore, they approached court at proper time. We overrule all the preliminary objections of the respondents and the intervenors and

proceed to examine the matters on merit.

29. The selection process is regulated by Government Resolution dated 18.04.2022. A selection committee was constituted for empanelling of 50 posts of Managing Director. The modus of the examination is stipulated by clause 4 of its annexure which is as follows :

> ४) परिक्षेचे स्वरूप :
>
> * पहिला टप्पा: वस्तूनिष्ठ बहुपर्यायी चाळणी परीक्षा (१०० प्रश्न प्रत्येकी २ गुण)
>
> * दुसरा टप्पा लेखी परीक्षा (५ मुख्य प्रश्न प्रत्येकी १५ गुण)
>
> * तिसरा टप्पा : मौखिक / तोंडी परीक्षा (२५ गुण)
>
> (i) पहिल्या टप्प्यातील वस्तूनिष्ठ बहुपर्यायी परीक्षा (Objective) ही चाळणी स्वरूपाची असेल. या परिक्षेत ज्या उमेदवारांना किमान ७० गुणांपेक्षा जास्त गुण मिळतील असे सर्व उमेदवार दुसऱ्या टप्प्यातील लेखी परीक्षेस पात्र राहतील.
>
> (ii) पहिल्या टप्प्यातील पात्र उमेदवार लेखी परिक्षेला पात्र असतील. लेखी परीक्षेतील उमेदवारांची गुणानुक्रमे यादी तयार करण्यात येईल. त्यापैकी सर्वोच्च गुणधारक उमेदवार १:३ पद्धतीने तोंडी परिक्षेस पात्र असतील.
>
> (iii) लेखी परीक्षा व तोंडी परीक्षेतील गुणांची बेरीज करून उमेदवारांची १०० मार्काची अंतिम गुणपत्रिका बनविली जाईल. त्यातील गुणानुक्रमाने जास्तीत जास्त पहिल्या ५० उमेदवारांना कार्यकारी संचालकांचे पॅनेलवर समाविष्ट केले जाईल.

30. Admittedly no bench mark or minimum marks was stipulated in clause 4 (ii) to qualify for the oral examination. Only ratio of 1:3 was prescribed for qualifying the candidates for interview. Pertinently only the performance in written/mains for 75 marks and oral for 25 marks

was to be considered for preparing the merit list of first 50 candidates.

31. After conducting screening test on 05.04.2023, 239 candidates were found to be eligible for written/mains having scored above 70 marks . On 17.04.2023 a circular was issued introducing bench mark of minimum 27 marks out of 75 marks for qualifying oral interview. Thereafter on 04.05.2023 written/mains was conducted. The results of neither objective screening test nor mains were declared. The list of 74 candidates was declared without disclosing marks secured, as qualifying for oral interview.

32. The bench mark of minimum 27 out of 75 marks to qualify oral examination was neither incorporated in Government Resolution dated 18.04.2022 nor in the advertisement dated 31.05.2022. This is first time introduced after commencement of the selection process. The petitioners who are not figuring in list of 74 candidates in mains are agitating against introduction of new benchmark.

33. It is pertinent to note that notwithstanding the objections of the petitioners admittedly they are neither figuring in the list of 239

candidates nor figuring in list of 74 candidates declared to be qualified for oral examination. They failed to secure minimum 70 marks out of 200 in the objective screening test. Needless to state that they are found to be ineligible for the further rounds. Interestingly even if the minimum benchmark of 27 out of 75 marks is removed or excluded they would not get any benefit. In any way they are not going to be in fray and eligible to claim the selection. Still we propose to examine the submissions of the petitioners on merits.

34. The rules of the game cannot be changed after the commencement of the game. For this proposition the parties have cited following judgments :

I) **Tejprakash Pathak and Others Vs. Rajasthan High Court and Others** reported in 2013 (3) SCC 540

ii) **State of Kerala Vs. Govindan Nair** reported in 2022 DGLS (Ker.) 551 (Kerala High Court)

iii) **K.Manjushree vs. State of A.P** reported in 2008 DGLS (SC) 232

iv) **Maharashtra State Road Transport Corporation Vs. Rajendra Bhimrao Mandve** reported in 2001 DGLS (SC) 1466.

35. A useful reference can be made to judgment of Hon’ble

Supreme Court in the matter of **Abhimeet Sinha vs. High Court of Judicature at Patna and others** reported in (2024) 7 SCC 262.

> 36. As argued by the learned Counsel for the High Courts, the legal position is that after participating in the recruitment process, the unsuccessful candidates cannot turn around and challenge the recruitment process3. However, it is also settled that the principle of estoppel cannot override the law. Such legal principle was reiterated by the Supreme Court in Meeta Sahai v. State of Bihar wherein it was observed as under : (SCC p.26, para17)
>
> "17. However, we must differentiate from this principle insofar as the candidate by agreeing to participate in the selection process only accepts the prescribed procedure and not the illegality in it. In a situation where a candidate alleges misconstruction of statutory Rules and discriminating consequences arising therefrom, the same cannot be condoned merely because a candidate has partaken in it. The constitutional scheme is sacrosanct and its violation in any manner is impermissible. In fact, a candidate may not have locus to assail the incurable illegality or derogation of the provisions of the Constitution, unless he/she participates in the selection process."
>
> 37. Guided by the above ratio, in matters like this, to non-suit the writ Petitioners at the threshold would hardly be reasonable particularly when the alleged deficiencies in the process could be gauged only by participation in the selection process.

36. We cannot be oblivious of couple of judgments placed on record on behalf of the respondent nos. 1 and 2 on earlier dates of hearing by the then learned AGP. One such judgment is very relevant. In the matter of **Yogesh Yadav vs. Union of India (UOI) and Ors.** reported in (2013) 14 SCC 623, the appellants therein had participated in the selection process for the post of Deputy Director. They had qualified written test and thereafter they had faced interview. They

were not figuring in the final select list which was the cause for them to prefer petition before Learned Single Judge. Being unsuccessful, they had approached the Division Bench and thereafter to Hon'ble Supreme Court. The written test was carrying 80% and interview was carrying 20 % marks. It was further stipulated that candidates having less than 50% of the marks in the written test would not be called for the interview. For the reserved category the cut-off was 40%. However, respondents therein fixed the benchmark of 70 marks for the General category and 60 marks for the reserved category to qualify for the interview. This was argued to be change in the criterion arbitrarily by the appellants. The Appeals were dismissed by Hon'ble Supreme Court. Following relevant observations are made :

> 13. The instant case is not a case where no minimum marks prescribed for viva voce and this is sought to be done after the written test. As noted above, the instructions to the examinees provided that written test will carry 80% marks and 20% marks were assigned for the interview. It was also provided that candidates who secured minimum 50% marks in the general category and minimum 40% marks in the reserved categories in the written test would qualify for the interview. Entire selection was undertaken in accordance with the aforesaid criterion which was laid down at the time of recruitment process. After conducting the interview, marks of the written test and viva voce were to be added. However, since benchmark was not stipulated for giving the appointment. What is done in the instant case is that a decision is taken to give appointments only to those persons who have secured 70% marks or above marks in the unreserved category and 65% or above marks in the reserved category. In the absence of any rule on this aspect in the first instance, this does not amount to changing the "rules of the game". The High Court has rightly held that it is not a situation where securing of minimum marks was introduced which was not

stipulated in the advertisement, standard was fixed for the purpose of selection. Therefore, it is not a case of changing the rules of game. On the contrary in the instant case a decision is taken to give appointment to only those who fulfilled the benchmark prescribed. Fixation of such a benchmark is permissible in law. This is an altogether different situation not covered by Hemani Malhotra case.

14. The decision taken in the instant case amounts to short listing of candidates for the purpose of selection/appointment which is always permissible. For this course of action of the CCI, justification is found by the High Court noticing the judgment of this Court in the State of Haryana v. Subash Chander Marwaha and Ors. In that case, Rule 8 of the Punjab Civil Service (Judicial Branch) Service Rules was the subject matter of interpretation. This rule stipulated consideration of candidates who secured 45% marks in aggregate. Notwithstanding the same, the High Court recommended the names of candidates who had secured 55% marks and the Government accepted the same. However, later on it changed its mind and High Court issued Mandamus directing appointment to be given to those who had secured 45% and above marks instead of 55% marks. In appeal, the judgment of the High Court was set aside holding as under:

> “12…. It is contended that the State Government have acted arbitrarily in fixing 55 per cent as the minimum for selection and this is contrary to the rule referred to above. The argument has no force. Rule 8 is a step in the preparation of a list of eligible candidates with minimum qualifications who may be considered for appointment. The list is prepared in order of merit. The one higher in rank is deemed to be more meritorious than the one who is lower in rank. It could never be said that one who tops the list is equal in merit to the one who is at the bottom of the list. Except that they are all mentioned in one list, each one of them stands on a separate level of competence as compared with another. That is why Rule 10(ii), Part C speaks of "selection for appointment". Even as there is no constraint on the State Government in respect of the number of appointment to be made, there is no constraint on the State Government in respect of the number of appointments to be made, there is no constraint on the Government fixing a higher score of marks for the purpose of selection. In a case where appointments are made by selection from a number of eligible candidates it is open to the Government with a view to maintain high-standards of competence to fix a score which is much higher than the one required for mere eligibility.

15. Another weighty reason given by the High Court in the instant case, while approving the aforesaid action of the CCI, is that the intention of

> the CCI was to get more meritorious candidates. There was no change of norm or procedure and no mandate was fixed that a candidate should secure minimum marks in the interview. In order to have meritorious persons for those posts, fixation of minimum 65% marks for selecting a person from the OBC category and minimum 70% for general category, was legitimate giving a demarcating choice to the employer. In the words of the High Court:
>
> "In the case at hand, as we perceive, the intention of the Commission was to get more meritorious candidates. There has been no change of norm or procedure. No mandate was fixed that a candidate should secure minimum marks in the interview. Obtaining of 65% marks was thought as a guidelines for selecting the candidate from the OBC category. The objective is to have the best hands in the field of law. According to us, fixation of such marks is legitimate and gives a demarcating choice to the employer. It has to be borne in mind that the requirement of the job in a Competition Commission demands a well structured selection process. Such a selection would advance the cause of efficiency. Thus scrutinized, we do not perceive any error in the fixation of marks at 65% by the Commission which has been uniformly applied. The said action of the Commission cannot be treated to be illegal, irrational or illegitimate."
>
> 16. It is stated at the cost of repetition that there is no change in the criteria of selection which remained of 80 marks for written test and 20 marks for interview without any subsequent introduction of minimum cut off marks in the interview. It is the short listing which is done by fixing the benchmark, to recruit best candidates on rational and reasonable basis. That is clearly permissible under the law. (M.P. Public Service Commission v. Navnit Kumar Potdar and Anr.

37. Thus it is laid down by Hon'ble Supreme Court that it is permissible to introduce the benchmark to fix the minimum marks. In the absence of any rules on this aspect, it did not amount to changing the rules of the game. It is open for the employer with a view to maintain high-standard of competence to fix a score which is higher

than the one required for mere eligibility. The object of the employer is to get meritorious candidates . There was no change of norms or the procedure. If the fixation of the minimum marks is with the object to have best hands in the field then such an introduction of benchmark is legitimate. It's only shortlisting by fixing the minimum mark/benchmark to recruit best candidates on rational and reasonable basis. We are bound by the above said ratio which is aptly applicable to the case in hand. We are cited with number of judgments with which we propose to deal with.

38. The petitioners vouched that they were kept in dark and results of written/mains were not declared. All the candidates who participated in the process were not disclosed the results. Even those who were included in list of 74 candidates also were not aware of the result of written/mains. The petitioners are unable to point out the prejudice caused to them. Only the faint submission is made that had the results been declared, attempt could have been made for revaluation of the marks. We do not find that there is any provision in the policy or the conditions for reverification or reviewing of the marks. It's not as a matter of right for the aspirants to claim revaluation. Learned counsel for Respondent No.3, Mr. Pethe,

adverted our attention to the provisions of G.R. dated 18.04.2022 especially clause 4 stipulating manner in which the examinations are to be conducted, circular dated 17.04.2023 as well as the instructions issued to respondent no.3. There is no provision for declaration of the results of written/mains. The respondent no. 3 is justified in contending that it was not bound to declare the results and there is no *per se* any arbitrariness or non-transparency.

39. In this regard it is worth referring the submissions of learned counsel Mr. Arora, appearing for the intervenors. The specific purpose for not disclosing the results is made out by him by relying on judgment of Hon'ble Supreme Court in the matter of **Pranav Verma and Ors. Vs. The Registrar General of the High Court of Punjab and Haryana at Chandigarh and Ors.** reported in (2020) 15 SCC 377. In that case, entire selection process and the evaluation method for appointing Judicial Officers was under challenge. Hon'ble Supreme Court addressed one of the specific issues as to whether "clause 4(iv) whether marks obtained in main examination should be disclosed before conducting viva-voce?" It is answered as follows :

> 28. As regards the Petitioners' plea that marks of the Main Exam should be disclosed before conducting viva-voce, we are of the considered opinion that such a practice may not insulate the desired transparency, rather will invite criticism of likelihood of bias or favouritism. The broad principles to be laid down

> in this regard must be viewed keeping in view the selections for various categories of posts by different Selecting Authorities, for such a self-evolved criteria cannot be restricted to Judicial Services only. If the Members of the Interviewing Boards are already aware of the marks of a candidate secured in the Written Examination, they can individually or jointly tilt the final result in favour or against such candidate. The suggested recourse, thus, is likely to form bias affecting the impartial evaluation of a candidate in viva-voce. The acceptance of the plea of the Petitioners in this regard will also run contrary to the authoritative pronouncement of this Court in Ashok Kumar Yadav and Ors. v. State of Haryana (1985) 4 SCC 417. As the written examination assesses knowledge and intellectual abilities of a candidate, the interview is aimed at assessing their overall intellectual and personal qualities which are imperative to hold a judicial post. Any measure which fosters bias in the minds of the interviewers, therefore, must be done away with.

40. The practice adopted by the respondents in not disclosing the marks is for impartial evaluation of candidates in viva-voce. It is to achieve the desired transparency. Therefore, we reject the submissions of the petitioners in this regard.

41. The rival submissions are made regarding authority of the respondents to introduce minimum mark of benchmark. As per G.R. dated 18.04.2022, respondent no. 3 was appointed as an implementing agency for undertaking the selection process. Accordingly by letter dated 24.05.2022 addressed by respondent no.2/Commissioner, respondent no. 3 was entrusted with the job of recruitment process. It was supposed to follow the instructions which were part of covering letter dated 24.05.2022 at Exhibit-R2 produced by respondent no.3. Its condition no. (8) is an enabling provision which

is as follows :

> ८) सदर निवड प्रक्रिया / परिक्षा स्थगित अथवा रद्द करणे, त्यात अंशतः बदल करणे, शैक्षणिक अर्हता. अनुभव यात बदल करणे इ. वावतचे अधिकार निवड समितीस राहतील. तसेच कार्यकारी संचालक निवड प्रक्रियेबाबतचा अंतिम निर्णय निवड समितीचा असेल.

. Invoking this power, circular was issued on 17.04.2023 by the Project Director of the respondent no.3 introducing minimum mark benchmark of 27 out 75 marks. The same was followed by the respondent no. 2 and respondent no.3 under the caption “Instructions for conducting written/mains”. The relevant portion is as follows :

> (२) दुसऱ्या टप्प्यातील लेखी परिक्षेतील सर्वोच्च गुणधारक उमेदवार १:३ पद्धतीने तोंडी परिक्षेस पात्र असतील. परंतु सदर उमेदवारांनी लेखी परिक्षेमध्ये ७५ पैकी किमान २७ गुण प्राप्त करणे आवश्यक आहे.

42. We find that the selection committee appointed under Government Resolution dated 18.04.2022 was having the powers to modify the eligibility criterion and accordingly minimum mark benchmark was introduced vide circular dated 17.04.2023. The circular was uploaded on 17.04.2023 on web portal well in advance. The written/mains was scheduled on 04.05.2023. During the interregnum period, neither the petitioners nor any other aspirants challenged the circular or questioned the authority to introduce minimum mark

criterion. We find substance in submissions of learned counsel for respondent no. 3. The petitioners have challenged minimum mark of benchmark after 18.07.2024 which can be said to be after-thought.

43. The petitioners as well as one of the intervenors relied on judgment of **Tej Prakash Pathak** (supra). Initially the matter was placed before three Judges Bench and later on referred to five judges bench. Our attention is invited to conclusions drawn in paragraph no. 42 which are as follows :

> 42. We, therefore, answer the reference in the following terms:
>
> (1) Recruitment process commences from the issuance of the advertisement calling for applications and ends with filling up of vacancies;
>
> (2) Eligibility criteria for being placed in the Select List, notified at the commencement of the recruitment process, cannot be changed midway through the recruitment process unless the extant Rules so permit, or the advertisement, which is not contrary to the extant Rules, so permit. Even if such change is permissible under the extant Rules or the advertisement, the change would have to meet the requirement of Article 14 of the Constitution and satisfy the test of non-arbitrariness;
>
> (3) The decision in K. Manjusree (supra) lays down good law and is not in conflict with the decision in Subash Chander Marwaha (supra). Subash Chander Marwaha (supra) deals with the right to be appointed from the Select List whereas K. Manjusree (supra) deals with the right to be placed in the Select List. The two cases therefore deal with altogether different issues;
>
> (4) Recruiting bodies, subject to the extant Rules, may devise appropriate procedure for bringing the recruitment process to its logical end provided the procedure so adopted is transparent, non-discriminatory/non-arbitrary and has a rational nexus to the object sought to be achieved.
>
> (5) Extant Rules having statutory force are binding on the recruiting body both in terms of procedure and eligibility. However, where the Rules are non-existent, or silent, administrative instructions may fill in the gaps;
>
> (6) Placement in the select list gives no indefeasible right to appointment. The State or its instrumentality for bona fide reasons may choose not to fill up the

> vacancies. However, if vacancies exist, the State or its instrumentality cannot arbitrarily deny appointment to a person within the zone of consideration in the select list.

44. Learned counsel Mr. Ghatage appearing for petitioner adverted our attention to paragraph nos.14,15,16,19 and 20. There is no dispute for the proposition laid down by larger bench judgment. The principles of reasonableness, equality, legitimate expectations, fairness are the parameters to which impugned action can be tested. The larger bench judgment also has taken care of the contingencies, when the power for changing the criterion or parameters can be invoked in the midst the selection process. Interestingly the judgment rendered in the matter of **Yogesh Yadav** (supra) was not placed for consideration before larger bench. The observations in paragraph no. 13 are in tune with the law laid down in Yogesh Yadav's case. The extract of paragraph no. 13 is as follows :

> 13. The instant case is not a case where no minimum marks are prescribed for viva voce and this is sought to be done after the written test. As noted above, the instructions to the examinees provided that written test will carry 80% marks and 20% marks were assigned for the interview. It was also provided that candidates who secured minimum 50% marks in the general category and minimum 40% marks in the reserved categories in the written test would qualify for the interview. Entire selection was undertaken in accordance with the aforesaid criterion which was laid down at the time of recruitment process. After conducting the interview, marks of the written test and viva voce were to be added. However, since benchmark was not stipulated for giving the appointment. What is done in the instant case is that a decision is taken to give appointments only to those persons who have secured

> 70% marks or above marks in the unreserved category and 65% or above marks in the reserved category. In the absence of any rule on this aspect in the first instance, this does not amount to changing the "rules of the game". The High Court has rightly held that it is not a situation where securing of minimum marks was introduced which was not stipulated in the advertisement, standard was fixed for the purpose of selection. Therefore, it is not a case of changing the rules of game. On the contrary in the instant case a decision is taken to give appointment to only those who fulfilled the benchmark prescribed. Fixation of such a benchmark is permissible in law. This is an altogether different situation not covered by Hemani Malhotra case.

45. Thus Hon’ble Supreme Court in the matter of **Yogesh Yadav**(supra) case and its larger bench judgment in the matter of Tejprakash Pathak (supra) do recognize the power of the employer to set out benchmark at different stages of the recruitment process when there is extant provision in rules or the instructions or the policies. We have already recorded a finding that the respondents were having competence to introduce the benchmark. It is relevant to refer the affidavit-in-reply filed by the respondent authorities in Writ Petition No. 8489 of 2024 to understand what compelled them to introduce the benchmark in question. In paragraph no. 17 it is spelt out that post of Managing Director is a responsible post. He has to deal with financial transactions worth Rs.1000 crores (one thousand crores) as well as to deal with administration of sugar factory in the State of Maharashtra. The best talent available is sought to be

achieved by introducing the minimum benchmark. This explanation tendered by the respondents cannot be doubted.

46. We need to examine as to whether there existed any larger public interest in introducing the minimum mark benchmark. If the explanation given in paragraph no. 17 of affidavit-in-reply of the State Government which we have referred above is considered and in the light of ratio laid down by Hon'ble Supreme Court in the matter of Yogesh Yadav (supra) and Tejprakash Pathak (supra), we have no iota of doubt that the decision was taken in larger public interest and it is bonafide.

47. After going through the pronouncements in the matter of **Yogesh Yadav** (supra), **Tajvir Singh** (supra), **Tejprakash Pathak** (supra) what transpires is that it cannot be a rule of thumb that employer or the authorities cannot effect any change in the criterion in the qualification or eligibility of the candidates or deviate from the benchmark after commencement of the process. There are number of relevant factors which are required to be considered while testing the action of the employer. It is not possible to comprehend all situations but few of them can be cited as follows :

a) The existence of enabling provision for introducing change, deviation or benchmark as well as prohibition in extant law, rule or norm .

b) Larger public interest and compelling circumstances.

c) Any prejudice likely to cause to the participants.

d) Rational or reasonableness and the object sought to be achieved.

48. We are of the considered view that it is relevant to consider the nature of the change or benchmark. There cannot be a straight jacket formulae applicable to every case. It depends on facts and circumstances of each case. Considering the above factors, we find that there is no arbitrariness or mala-fides in introducing minimum mark of benchmark in the midst of the selection process in the present matter. The submissions of the learned counsel for the petitioners can not be accepted.

49. Learned counsel Mr. More also referred to judgment of **State of Kerala Vs. Govindan Nair** (supra) to bolster the submission that rules of the game cannot be changed after game has begun. But this judgment is not helpful to the petitioners because we have already

recorded that the respondents were empowered to introduce the change in larger public interest. No prejudice was caused to the petitioners. The judgment cited by him in the matter of **K. Manjushree** (supra) also cannot help him because the facts in the present case are distinguishable. He also refers to judgment of **Hemani Malhotra** (supra). In that case there was no enabling provision for introducing minimum marks for viva-voce. The facts are distinguishable and therefore ratio can not be made applicable. The ratio of the next judgment of **Vikaram Bawajya Valvi and Others** (supra) is also not helpful to the petitioners.

50. Learned counsel Mr. Ghatage appearing for petitioner has relied on judgment of **Rajendra Bhimrao Mandve** (supra) to bolster the submission that the petitioners participated in the selection process. They are entitled to agitate their claims regarding wrong procedure undertaken. We have already overruled the objections of the respondents and the intervenors to non-suit the petitioners just because of their participation in the selection process. He has further referred to judgment of **Sonali Pramod Dhawade** (supra) to support the proposition of non suiting the petition on the ground of non-joinder of necessary parties. Then on similar line another judgment of

M/s.J. Mohapatra and Co. and another (supra) is also cited. However such a plea is raised by learned Senior Counsel Mr. Hon. We have not accepted the plea.

51. It is informed by learned AGP during the course of hearing that those persons who had approached Hon'ble Supreme Court are not figuring in the list of 74 candidates who are found to be eligible for viva-voce. We do not find it necessary to open the sealed envelopes tendered on record by the respondents. The Registry is directed to return the envelopes to the concerned lawyers.

52. A sequitur is we find no substance in both the petitions.

i) Both the Petitions are dismissed. Needless to state that the interim orders shall stand vacated.

ii) Civil Applications are disposed of.

iii) Sealed envelope shall be returned to Respondent No.3

iv) Rule is discharged.

v) There shall be no order as to costs.

[SHAILESH P. BRAHME]
JUDGE

[S.G. MEHARE]
JUDGE

53. After pronouncement of the judgment, Mr. More learned counsel for the petitioners prays for continuation of interim relief which was granted on 18.08.2024.

54. The learned counsel appearing for respondents strongly opposes the said prayer.

55. The matter pertains to selection of Managing Directors. The interviews were conducted on 22.07.2024. Due to the interim directions, the selection process could not be concluded and appointment orders could not be issued. Considering the time spent in concluding the process, we are of the considered view that the interim orders cannot be continued. We, therefore, reject the request of the petitioner.

[SHAILESH P. BRAHME]
JUDGE

[S.G. MEHARE]
JUDGE

vsj..