



**IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE**

BEFORE

HON'BLE SHRI JUSTICE SUBODH ABHYANKAR

ON THE 22nd OF APRIL, 2025

WRIT PETITION No. 39755 of 2024

VIVEK DWIVEDI

Versus

**UNION OF INDIA MINISTRY OF JAL SHAKTI DEPARTMENT
OF WATER RESOURCES RIVER DEVELOPMENT AND
GANGA REJ AND OTHERS**

Appearance:

Shri Vijay Kumar Asudani- Advocate for the petitioner.

Shri Himanshu Joshi- A.S.G. for Union of India.

ORDER

Heard finally, with the consent of the parties.

2] This petition has been filed by the petitioner under Article 226 of the Constitution of India, seeking the following reliefs:-

“In the facts and circumstances of the case, the Petitioner respectfully prays that this Hon’ble Court may kindly be pleased to:-

7.1 Quash and set aside the notice inviting application dated 15.10.2024 (Annex. P-6) issued by Respondent no. 1.

7.2 Quash and set aside final list of 25 participants for third training course of certification of water auditor dated 22.11.2024 (Annex.P-8).

7.3. Direct the Respondents to change the mode of selection from first come first serve basis to merit based, such as written examination followed by interview or some screening.

7.4. Allow this petition with costs.

7.5 Any other further orders as deemed fit to this Hon’ble Court in the facts and circumstances of the case may kindly be passed in favour of the Petitioners.”



3] The petitioner is aggrieved of the advertisement dated 15.10.2024, issued by the respondent No.1, whereby applications were called on the first come first serve basis for the training course in water auditing, on the basis of which the Water Auditors are to be appointed. The petitioner is also aggrieved by the select list dated 22.11.2024, whereby, certain persons have already been selected by the respondents pursuant to the advertisement dated 15.10.2024.

4] Counsel for the petitioner has submitted that this policy adopted by the respondents of entertaining applications on the basis of first come first serve, has already been deprecated by the Supreme Court in the case of ***Centre for Public Interest Litigation and Others Vs. Union of India and Others*** reported as (2012) 3 SCC 1, wherein, the Supreme Court has also pointed out the flaw in the first come first serve policy. Counsel has also relied upon another decision rendered by the Supreme Court in the case of ***Anant Raj Ltd. (Formerly M/S. Anant Raj Industries Ltd.) Vs. State of Haryana & Ors.***, passed in ***Civil Appeal No.6472/2021*** dated 27.10.2021. Thus, it is submitted that the impugned advertisement dated 15.10.2024 and the select list dated 22.11.2024 may be quashed, and the respondents may be directed to proceed in accordance with law on the basis of the merits of the applicants.

5] The prayer is vehemently opposed by the counsel for the respondent, and it is submitted that the advertisement was issued on 15.10.2024, in which, the applications were to be received within fifteen days' time from the date of advertisement. Counsel has also submitted that the training in the present case was to be held from 02.12.2024 to 10.01.2025, although wrongly mentioned as January, 2024 in the advertisement, and in such circumstances, when the



training has also been completed, and the petition itself has been filed on 10.12.2024, no case for interference is made out at this stage, as the petition has already become infructuous.

6] Heard. Having considered the rival submissions, and on perusal of the documents filed on record, this Court finds force with the submissions as advanced by the counsel for the petitioner that the policy of first come first serve basis ought not to have been adopted by the respondents. Reference in this regard may be had to the decision rendered by the Supreme Court in the case of ***Centre for Public Interest Litigation (Supra)***, relevant paras of which read as under:-

“Questions 3 and 4

94. There is a fundamental flaw in the first-come-first-served policy inasmuch as it involves an element of pure chance or accident. In matters involving award of contracts or grant of licence or permission to use public property, the invocation of first-come-first-served policy has inherently dangerous implications. Any person who has access to the power corridor at the highest or the lowest level may be able to obtain information from the government files or the files of the agency/instrumentality of the State that a particular public property or asset is likely to be disposed of or a contract is likely to be awarded or a licence or permission is likely to be given, he would immediately make an application and would become entitled to stand first in the queue at the cost of all others who may have a better claim.

95. This Court has repeatedly held that wherever a contract is to be awarded or a licence is to be given, the public authority must adopt a transparent and fair method for making selections so that all eligible persons get a fair opportunity of competition. To put it differently, the State and its agencies/instrumentalities must always adopt a rational method for disposal of public property and no attempt should be made to scuttle the claim of worthy applicants. When it comes to alienation of scarce natural resources like spectrum, etc. it is the burden of the State to ensure that a non-discriminatory method is adopted for distribution and alienation, which would necessarily result in protection of national/public interest.”

(Emphasis Supplied)

Whereas, in the case of ***Anant Raj Ltd. (Formerly M/S. Anant Raj Industries Ltd.) (Supra)***, it has been held as under:-



“40. In our considered view, the principle of first-come-first-serve basis which has been adopted by the respondent State in the facts of the instant case is neither held to be rational nor in public interest and is in violation of Article 14 of the Constitution of India.”

(Emphasis Supplied)

7] Thus, it is trite that the policy adopted by the respondents on the principle of first come first serve basis was inherently flawed, and this principle would also be applicable in the case of any public employment and however, considering the fact that much water has flown since the issuance of advertisement, and even the training has also been completed in the month of January, 2025, no purpose would be served to set the clock back by quashing the advertisement.

8] In such circumstances, although no case for interference is made out at this stage, however, the respondents are directed that hence forth they should not resort to the policy of first come first serve basis for imparting the training for water auditing, which is apparently a flawed policy, and cannot be allowed to be continued any further.

9] Accordingly, the petition is hereby ***disposed of*** with the aforesaid directions.

10] Needless to say, in future, the application filed by the petitioner for the said training shall be decided by the respondents, in accordance with law.

(SUBODH ABHYANKAR)
JUDGE