

(2002) 06 JH CK 0045
In the Jharkhand High Court
Case No : CWJC No. 924 of 2001

Arbind Kumar Roy

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 17-06-2002

Acts Referred:

Constitution of India, 1950 — Article 226
Electricity (Supply) Act, 1948 — Section 4, 5
Executive Business Rules — Rule 32

Citation : (2002) 50 BLJR 2182

Hon'ble Judges : Vinod Kumar Gupta, C.J; M.Y. Eqbal, J

Bench : Division Bench

Advocate : Aparesh Kumar Singh, for the Appellant; M.M. Banerjee and S.B. Gadodia, for the Respondent

Final Decision : Dismissed

Judgement

M.Y. Eqbal, J.—This writ petition by way of Public Interest Litigation was filed by the petitioner seeking issuance of writ of mandamus upon the State of Jharkhand and its functionaries to appoint persons of impeachable and highest integrity and having specialised knowledge in their respective fields to the posts of Chairman and Members of the Jharkhand State Electricity Board.

2. Before entering into the merit of the case, it would be appropriate to first discuss about the developments which took place after the filing of the writ petition. Since petitioner had apprehension that during the pendency of the writ petition, the respondent namely, functionaries of the State of Jharkhand may fill up the post of Chairman and the Members of the State Electricity Board, this Court passed interim order on 7.3.2001 directing that if any appointment is made by the State Government to the post of Chairman or Members of the Board, that shall be subject to the result of the writ petition. The State Government during the pendency of the writ petition constituted a Board and notified the appointment of the Chairman and the Members of the Board. Besides

ex officio members, following persons were appointed as Chairman and Members of the Board :--

- (1) Shri Rajiv Ranjan as Chairman-cum-Member Administration.
- (2) Shri Sachida Nand Akhauri as Member-Distribution.
- (3) Shri Niranjana Rai as Member-Finance.

3. The learned counsel for the petitioner and the learned Advocate General were heard at length on the question of validity of appointment of the aforesaid persons as Chairman and Members of the Board. This Court thereafter by a reasoned judgment dated 21.9.2001 [see 2001 (3) JCR 296 (Jhr)] allowed the writ petition and the appointment of Mr. Rajeev Ranjan and Mr. Sachida Nand Akhauri, Chairman and the Members of the Board were quashed and set aside.

4. After disposal of the writ petition, Mr. Sachida Nand Akhauri filed civil review petition being Civil Review No. 120 of 2001 and the State of Jharkhand also filed civil review petition being Civil Review No. 110-of 2001. However, Mr. Rajeev Ranjan neither appeared nor filed any review petition with respect to the aforesaid judgment rather he moved the Supreme Court challenging the judgment by filing SLP (Civil) No. 18514/2001. In the said special leave petition, the Supreme Court passed the following interim order on 19.11.2001 :--"Counter affidavit be filed within two weeks. Rejoinder, if any, be filed within two weeks, thereafter. List thereafter.

Status quo in the meantime.

The pendency of this SLP will not prevent the High Court from deciding the review application."

5. When the aforementioned review applications were placed before this Court, the same were adjourned for the time being because of the pendency of the aforesaid SLP in the Supreme Court. However, on 18.3.2001 when those review applications again listed for hearing, learned Advocate General appearing for the State and Mr. S.B. Gadodia, learned senior counsel appearing for the review petitioner Mr. Sachida Nand Akhauri jointly prayed to the Court for disposal of the review applications. Consequently, those two review applications were finally heard. The sole grievance of the review petitioner Mr. Sachida Nand Akhauri was that the judgment dated 21.9.2001 was passed and his appointment as Member of the Board was quashed without issuing notice and without affording any opportunity of hearing to him, as admittedly he was not even made party respondent in the writ petition.

6. On the other hand, learned Advocate General's contention in the review petition was that the State would be satisfied if this Court hear the writ application to the only and limited extent of examining the validity of the aforesaid appointment after issuing notices to those persons.

7. As stated above, Mr. Rajeev Ranjan did not file any review petition. However,

before finally deciding the review applications, this Court by way of abundant precaution issued notices to Mr. Rajiv Ranjan in order to give him opportunity to participate in the hearing, if he so likes but Mr. Rajeev Ranjan, perhaps because of the pendency of the SLP before the Supreme Court, did not participate in the hearing of the review applications. The review applications were finally allowed by this Court in terms of judgment and order dated 4.4.2002 and the judgment dated 21.9.2001 passed in this writ petition was recalled to the only and limited extent, i.e. that part of the judgment whereby the appointment of Mr. Sachida Nand Akhauri as Member of the Board was declared as invalid was recalled.

8. After those two review applications were allowed and the writ application was ordered to be listed for hearing afresh, the State of Jharkhand and also the respondent Mr. Sachida Nand Akhauri filed their respective counter affidavits. On 3.5.2002. Mr. A.K. Mehta. Advocate had appeared on behalf of Mr. Rajeev Ranjan. Chairman of the Board and sought a week adjournment to file counter affidavit. Accordingly, the matter was adjourned to 14.5.2002. On 14.5.2002, instead of filing counter affidavit. Mr. Rajeev Ranjan filed interlocutory application making prayer for stay of further hearing in this writ application during the pendency of the special leave to Appeal No. 18514/2001 pending in the Hon"ble Supreme Court. This Court rejected the application filed by Mr. Rajeev Ranjan in terms of order dated 14.5.2002. The relevant portion of the order dated 14.5.2002 reads as under :--

"Mr. Amarendra Sharan, learned senior counsel appearing for Mr. Rajeev Ranjan, submits that we should allow his application and stay these proceedings. We simply fail to understand the relevance, logic of the import of his prayer. We by our order dated 4.4.2002 had clearly indicated and in unmistakable terms that the option to appear, or not to appear before us was of Mr. Rajeev Ranjan. We had given such an option to him because we were fully conscious and aware of the fact that his SLP was pending in the Supreme Court and because of the pendency of his SLP in the Supreme Court, he alone had to make a choice either to pursue his SLP in the Supreme Court (which was his right) or to respond to our notice and argue his matter before us (which was his option). Or if he thought so or considered it permissible to do both. But the present application clearly suggests that he either has not understood the import of our order or wants to misuse the privilege granted by us to him to exercise his option. Actually we were baffled by his application. Why we are saying so is because he had no compulsion to appeal before us. His SLP was already pending in the Supreme Court and he can very well pursue that matter. Why does he want these proceedings to be stalled is not understood by us. There was no obligation actually on his part even to respond to our notice. If, however, he elected to respond to our notice, the only course of action available to him, as well as permissible, was to argue his case in the light of the contents of our order dated 4.4.2002.

Why does he want these proceedings to be stalled ? What would he gain by this ? These are the questions, we have not been able to understand.

To us it appears that the application is totally misconceived.

For the foregoing reasons, the application is dismissed, but without any order as to costs."

9. This is how the instant writ petition has come up for hearing before this Court for deciding the validity of appointment of Mr. Sachida Nand Akhauri as Member of the Jharkhand State Electricity Board.

10. We have heard Mr. Aparesh Kumar Singh, learned counsel appearing for the writ petitioner, Mr. M.M. Banerjee, learned Advocate General and Mr. S.B. Gadodia, learned senior counsel appearing for the respondent Sachida Nand Akhauri.

11. As noticed above, in the earlier judgment dated 21.9.2001, passed in the instant writ petition, appointment of the contested respondent Mr. Sachida Nand Akhauri as Member of the Board was quashed mainly on the ground that there was nothing on the record to the Government whether he was possessing requisite qualification, experience and eligibility criteria for appointment as Member of the Board which was the mandatory requirement u/s 4 of the Electricity (Supply) Act. 1948. For better appreciation para 15 of the earlier Judgment is quoted herein below :--

"Also, apart from the fact that on the file there is nothing else by way of any material or information about these persons, there is no nothing by any State functionary, any bureaucrat, any Minister or the Chief Minister as to whether these persons possess any qualification, experience or eligibility criteria as is stipulated in Clauses (a), (b) or (c) of Sub-section (4) (supra). No such assessment, there is no nothing by anyone on any official file whether the Government at any stage of the formulation or consultation or decision making process considered whether these persons had any experience or had shown capacity in commercial matters and administration, whether anyone of them was an Electrical Engineer with wide experience and whether anyone had any experience of accounting and financial matters in a Public Utility Undertaking, preferably an Electricity Supply Undertaking. The expression "electricity Supply Undertaking" is of very important and vital connotation because even though a person may not be an Electrical Engineer or he may not have had experience in commercial matters and administration, yet if he has experience of accounting and financial matters, such experience must be obtained from a Public Utility Undertaking whose business, nature and job was of supplying electricity. The Legislature has very purposely used the expression "preferably an Electricity Supply Undertaking" because the clear intention appears to be that since the provision relates to the Membership of an Electricity Board person relates to an Electricity Supply Undertaking, but having experience of accounting and financial matters in that undertaking may also be eligible for consideration. The expression "Public Utility Undertaking", therefore, should not be read in disjunction with the expression "electricity Supply Undertaking". Both these

expressions should be read jointly and in conjunction with each other. The expression "Electricity Supply Undertaking" also must be given its true and natural meaning to clearly indicate and convey that an Undertaking which supplies electricity alone should be considered as "Electricity Supply Undertaking" and not an Undertaking which may or may not be directly or indirectly, remotely or proximately connected with any matter relating to electricity as such.

12. Respondent Mr. Sachida Nand Akhauri filed a detailed counter affidavit on 13.5.2002 justifying his appointment as Member of the Board by contending that he possessed necessary qualification and experience for the said post. The case of the respondent Mr. Akhauri is that he was appointed in the year 1963 in Bihar State Electricity Board, Patna (in short "BSEB") as Assistant Electrical Engineer after obtaining Graduation Degree in Electrical Engineer from B.I.T., Sindri and he successfully completed 38 years of service without any stigma. The respondent said to have promoted to the higher posts of Executive Engineer and Superintending Engineer. Thereafter, he was promoted as Chief Engineer in May 1998. Respondent further stated that due to his brilliant academic career and outstanding performance, he was even promoted to the post of Engineer-in-Chief of Bihar State Electricity Board, Patna with effect from 1.2.2000 vide Notification No. 118 dated 1.2.2000, which is the highest post in the Engineering Cadre in Electricity Board. It is further stated that his case was also considered by the Departmental Promotion Committee and due promotion was given after considering past performance and excellent Annual Character Rolls as also his integrity and efficiency. The deponent further stated that after creation of the State of Jharkhand, his case for appointment as Member of J.S.E.B. was considered for the reason that he was senior most Electrical Engineer occupying the highest post of Engineer-in-Chief of B.S.E.B. Respondent further stated in the counter affidavit that before his appointment as Member of J.S.E.B., the State of Jharkhand made necessary inquiry from B.S.E.B. and gathered detailed information including 10 years Annual Confidential Rolls, complete service history alongwith clearance certificate. It is stated that considering the case of the respondent in detail, the State of Jharkhand decided to appoint him as the Member of the Jharkhand State Electricity Board and notification to that effect was issued. After issuance of notification the respondent relinquished his office of Engineer-in-Chief, B.S.E.B., Patna and joined as Member of J.S.E.B, on 20.3.2001 at Ranchi.

13. In a separate counter affidavit filed on behalf of State of Jharkhand, it was stated inter alio that after the notification u/s 1(4) of the Electricity (Supply) Act, 1948 (in short 1948 Act) was issued creating a separate Jharkhand State Electricity Board, a proposal was moved for appointment of Chairman and Members of the Board. The Energy Minister suggested names of some persons for appointment of Chairman and the Members of the Board and the file was submitted directly to the Chief Minister. On the same day, the Chief Minister passed order in the file that Shri Hari Bansh Lal be made Chairman and Sri K.P. Sinha be made Member (Generation and Transmission). With the above

amendment remaining four proposals of Energy Minister, which includes name of respondent Shri S.N. Akhauri was approved. However, since file was not moved through the Chief Secretary in accordance with Rule 32 of the Rules of Executive Business, the file was placed by the Energy Secretary before the Chief Secretary for obtaining proper order of the Chief Minister. The Chief Secretary while submitting the file to the Chief Minister pointed out certain adverse facts against those persons and suggestion was made by the Chief Secretary for obtaining vigilance clearance of those candidates from their parent organisation. The respondent-State has further contended in the counter affidavit that a fresh proposal was submitted by the Energy Minister suggesting the names of persons including the name of Sri S.N. Akhauri as Chairman and Members of the Board. The file was sent to the Chief Secretary for obtaining appropriate order of the Chief Minister. The Chief Secretary again suggested to collect information regarding any pending criminal/ civil cases against the concerned persons. It is stated that so far case of the respondent Shri S.N. Akhauri is concerned, consent was obtained from the parent department and his past 10 years' Annual Confidential Report was also collected from the B.S.E.B. Considering the materials available on record, the appointment of Shri S.N. Akhauri as Member Secretary was approved and a notification was issued.

14. Before appreciating the case of the parties it would be useful to refer the relevant provisions of Electricity (Supply) Act, 1948, which lays down the provisions relating to appointment on the post of Chairman and Member of the Board. Section 5 of the said Act reads as under :--

"Constitution and Composition of State Electricity Boards.--(1) The State Government shall, as soon as may be after the issue of the notification under Sub-section (4) of Section 1, constitute by notification in the Official Gazette a State Electricity Board under such name as shall be specified in the notification.

(2) The Board shall consist of not less than three and not more than seven members appointed by the State Government.

(3) *** **

(4) Of the members,--

(a) One shall be a person who has experience of and has shown capacity in commercial matters and administration;

(b) One shall be an electrical engineer with wide experience; and

(c) One shall be a person who has experience of accounting and financial matters in a public utility undertaking, preferably an electricity supply undertaking.

(5) One of the members possessing any of the qualification specified in Sub-section (4) shall be appointed by the State Government to be the Chairman of the Board.

(6) A person shall be disqualified from being appointed or being a member of the

Board, if he is *** a member of Parliament or of any State Legislature of any local authority.

(7) No act done by the Board shall be called in question on the ground only of the existence of any vacancy in, or any defect in the Constitution of the Board."

15. From perusal of the aforesaid provision, it is manifest that Sub-section (4) of Section 4 prescribes experience, eligibility criteria and qualification etc. of the persons who can be appointed as Members of the Board. In so far as the eligibility criteria and the qualification of the Members of the Board including the Chairman. Clauses (a), (b) and (c) of Sub- section (4) lays down that such persons who have experience of and have shown capacity in commercial matters and administration, who are Electrical Engineer with wide experience and who have experience of accounting and financial matters in a public utility undertaking (preferably electricity supply undertaking) shall be eligible to be appointed as Member of the Board.

16. In the light of the aforesaid provisions of the Act, the only question that falls for consideration is whether the respondent Sri S.N. Akhauri possessed requisite qualification and experience for appointment as member of the Board. As noticed above, a person to be appointed as Member of the Board must be an Electrical Engineer with wide experience. In the counter affidavit filed by Shri S.N. Akhauri, it has been categorically stated that he is an Electrical Engineer and was appointed in 1963 as Assistant Electrical Engineer in the B.S.E.B. He completed 38 years of service in B.S.E.B. and considering that period he was promoted to the post of Executive Engineer and Superintending Engineer. He was also promoted as Chief Engineer in 1998 and due to brilliant academic career and outstanding performance, he was even promoted to the post of Engineer-in-Chief of B.S.E.B. with effect from 1.2.2000, fide Notification dated 1.2.2000. It is further stated that before promotion to the post of Engineer-in-Chief his case was considered by the Departmental Promotion Committee of which the present Chief Secretary of Jharkhand State was the Chairman. These facts have not been controverted by the writ petitioner or any of the respondents. It further appears from Annexure C to the counter affidavit that before appointment of Shri S.N. Akhauri as Member of the Board, the State of Jharkhand made inquiry from B.S.E.B. and obtained all necessary information about him. On perusal of the letter it further appears that B.S.E.B. sent 10 years" Annual Confidential Report Roll, service history along with clearance certificate in respect of Shri S.N. Akhauri to the State of Jharkhand. However, along with service history and confidential report. 5 more complaints, received against Shri S.N. Akhauri some time in the year 1996 from the politician were also sent against which inquiry was pending. So far these complaints which were received in 1996 is concerned has got no relevance because of the fact that subsequent to 1996 Mr. Akhauri was promoted to the post of Chief Engineer in 1998 and he was again promoted to the highest post of Engineer-in-Chief of B.S.E.B. in the year 2000 after his case was duly considered by the Departmental Promotion Committee of which

Shri V.S. Dubey, present Chief Secretary of the State of Jharkhand was the Chairman. In the earlier judgment dated 21.9.2000 the main ground for quashing the appointment of Shri S.N. Akhauri as Member of the Board was that this Court was not very sure whether Shri S.N. Akhauri actually possessed the prescribed qualification and had the requisite experience or knowledge to perform the job for which was promoted to be appointed. The qualification, experience and the knowledge of performing the job which has been stated in the counter affidavit filed by Shri S.N. Akhauri was not brought to the notice of this Court earlier by the State of Jharkhand.

17. As discussed above regarding movement of the file in the Secretariat, the Energy Minister. Government of Jharkhand initially sent a proposal to the Chief Minister on 2nd February, 2001 for the composition of the Board by suggesting names of 5 individuals and two ex officio Members of the Board. In this proposal, he suggested, amongst others the name of Shri Kapildeo Prasad Sinha, as Member Administration-cum-Chairman, Shri Niranjan Rai, Member-Finance and Shri S.N. Akhauri, Member-Distribution. On the same day, i.e. 2nd February, 2001, the Chief Minister approved the aforesaid proposal of the Minister, but by a modification of his own, to the limited extent that Chief Minister proposed the name of Shri H.B. Lal as Chairman and further suggested that Shri K.P. Sinha be made only as a Member-in-charge of Production etc. Since the said proposal was not routed through the Chief Secretary in compliance of the Rules of Executive Business, the Chief Secretary sent a note to that effect to the Chief Minister and also made adverse comments about Shri H.B. Lal, Shri K.P. Sinha, Shri Niranjan Rai and Shri Horo and suggested to the Chief Minister, that the points urged by him in his said note be considered and if needed, the Chief Minister may call the Chief Secretary for consultation and discussions. It further appears from the record that after receipt of the aforesaid noting from the Chief Secretary, the Chief Minister sought the opinion of Advocate General. However, in the meantime, a fresh proposal was sent by the Energy Minister of Constitution of the Board and this time, the Energy Minister proposed the name of Shri Rajeev Ranjan as Chairman-cum-Member Administration, Shri S.N. Akhauri as Member-Distribution and Shri Niranjan Rai as Member-Finance. This time, the Minister routed the file to the Chief Minister through the Chief Secretary. The Chief Secretary on receipt of the file made some relevant and pertinent facts with regard to the aforesaid proposal of the Minister. He, inter alia, suggested that the antecedents of the persons proposed and their experience, eligibility were not known, hence the Annual Confidential Reports of these persons for the past 10 years" should be obtained. So far as Shri S.N. Akhauri is concerned, as noticed above, his confidential reports and "no objection" from the B.S.E.B. were collected by the Government of Jharkhand and accordingly his name was approved for the post of Member of the Board. From the facts brought on record by Shri S.N. Akhauri regarding his qualifications, experience and other eligibility criteria, we are satisfied that no illegality has been committed by the Government of Jharkhand in appointing Shri S.N. Akhauri as Member of the

Jharkhand State Electricity Board and that Shri Akhauri's appointment does not suffer from any illegality or irregularity. The petitioner also has not been able to establish that the appointment of Shri S.N. Akhauri is either against the provisions of the Act or Rules or that he did not possessed the requisite qualifications and experience for the said post.

18. Taking into consideration all the facts and circumstances of the case, we hold that the action of the Government of Jharkhand in appointing Shri S.N. Akhauri to the post of Member of the Board is neither illegal nor in contravention of any provision of the Electricity (Supply) Act nor does it otherwise suffer from any vice of favouritism. This writ application in so far as it relates to the appointment of Shri S.N. Akhauri is accordingly dismissed.

V.K. Gupta, CJ.

19. I agree.