
(2009) 07 RAJ CK 0062
In the Rajasthan High Court

B.L. Agarwal

APPELLANT

Vs

State and Others

RESPONDENT

Date of Decision : 27-07-2009

Acts Referred:

COMPANIES ACT, 1956 — Section 314
Constitution of India, 1950 — Article 31

Citation : (2009) 07 RAJ CK 0062

Hon'ble Judges : Mohammad Rafiq, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Mohammad Rafiq, J.—The petitioner has challenged the nomination of respondent No. 3 K.C. Gupta as Director (Technical) in the Board of Directors of the JVVNL, which is a company wholly owned by the government.

2. Shri Ashok Gaur, the learned Counsel for the petitioner is that the petitioner, who was Chief Engineer, was senior than respondent No. 3. He ought to have been therefore preferred for being nominated as Director (Technical). It has been consistent practice of the government that only Chief Engineers are nominated as the technical member of the Board on the basis of seniority. Instances of eight such persons have been given in para 17 of the writ petitioner had better and comparative cleaner service record while there were complaints against the respondent No. 3. Petitioner has asserted in para 23 that respondent No. 3 had not been taking keen interest in the matter of construction of 33 KV Line for Mahendra Sez. On that basis, Chairman of the JVVNL wrote to him. It is submitted that even though the government has the discretion to nominate any one as Director (Technical) but then such discrimination has to be exercised judicially consistent with the past practice and in a fair and reasonable manner.

3. Learned Counsel appearing for the State has opposed the writ petition and argued that according to Clause 31 of the Articles of Association, the Government of Rajasthan has the right to nominate and appoint all the Directors

of the Board of the company. It has also the right to remove any Director at any time at its absolute discretion and then fill in the vacancies occurred as a result of such removal. It is contended that it is not necessary for the government to Engineers of the same company. Even an outsider, who is considered suitable and competent to act as Director (Technical), can be nominated. Seniority therefore is not a criteria for making such nomination. Learned Counsel submitted that even then the government had considered both the petitioner and respondent No. 3 prior to making the nomination. Referring to comparative chart showing credences of both petitioner and respondent No. 3, learned Counsel submitted that respondent No. 3 was considered more meritorious than the petitioner because he holds the post graduate qualification i.e. M.E. (Electric) (Hons.) whereas the petitioner does not have any such qualification. Besides, it is submitted that the petitioner has not been keeping fit because he had recently undergone kidney transplantation and that the post of Director (Technical) requires onerous responsibilities to discharge and lot of field work is involved. It is therefore cannot be said that the nomination of respondent No. 3 has been made by way of

4. I have given my anxious consideration to the rival arguments and perused the material on record.

5. In order to appreciate the controversy involved in this writ petition, the Article 31 of the Articles of Association, which is a source of power with the government to make nomination of the Board of Directors, is reproduced here below for the facility of reference:

31.(i)(a) Subject to the provisions of the Act, so long as the entire paid up share capital in the Company is held by the Government of Rajasthan or by a subsidiary of a wholly owned Government Company, the Government of Rajasthan shall have the right to nominate and appoint all the Directors of the Board of the Company and shall have also the right to remove the Director(s) from Office at any time at its absolute discretion and appoint another / others in his/their place (s) and also fill any vacancy which may occur as a result of such Director (s) ceasing to hold office for any reason whatsoever;

(b) So long the entire paid up share capital in the Company is held by the subsidiary of a wholly owned Government Company, the Government of Rajasthan shall have the right to nominate and appoint one or more of the Directors to the office of the Chairperson of the Board of Directors of Managing Directors or Whole time Director of the Company for such term and on such remuneration and/or allowance as it may think fit subject to the provisions of the Companies Act, 1956 (Central Act No. 1 of 1956) and may at any time remove him / them from office and appoint another / others in his / their place(s);

(ii) In addition to the remuneration payable to the Directors in pursuance of the Act or of the Clause 31(1)(b), the Directors may be paid such sums as the Board may fix from time to time for travelling and other expenses incurred by them in

attending and returning from meeting of the Board of Directors or any Committee thereof or General meeting of the Company or in connection with the business of the Company. The Directors may also be paid subject to the provisions of Section 314 of the Act, such reasonable additional remuneration as may be fixed by the Board for extra or special services rendered by the Directors.

6. Article of Association would show that Government of Rajasthan has the power to nominate and appoint all the Directors of the Board or company and while it can nominate, it also has the power to remove any of them at any time. It has absolute discretion to make fresh nomination in the vacancies caused by such removal. It would be evident from the aforesaid Article 31 that it is not incumbent upon the government to make such nomination on the post of Director (Technical) always essentially from within the services or from amongst existing Engineers serving the JVVNL. Government can make such nomination even from outside including from other power companies. The rule of seniority therefore cannot be applied in the case of such nomination. There has to be drawn a distinction between the case of nomination and selection and for that matter of promotion. Therefore, the fact that the petitioner held the office of Chief Engineer at the relevant time and the respondent No. 3 was Deputy Chief Engineer nomination of Director (Technical). Neither any rule or law to the contrary has been produced on record. The respondents have assessed the capability and suitability of both the petitioner and respondent No. 3 and thus evaluated their comparative merit. The respondent No. 3 was considered a better choice, therefore, his nomination as Director (Technical) cannot be said to be vitiated by either any illegality or otherwise suffering from any legal defect.

7. I do not find any merit in this writ petition.

8. The writ petition is therefore dismissed.