
(1996) 11 KL CK 0037
In the High Court Of Kerala
Case No : O.P. No. 15924 of 1996

Dr. G. Santhana Krishnan

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 22-11-1996

Acts Referred:

Andhra University Act, 1925 — Section 34A

Citation : (1996) 2 KLJ 775

Hon'ble Judges : C.S. Rajan, J

Bench : Single Bench

Advocate : Sumathi Dandapani, for the Appellant; C.C. Thomas, (A.C.G.S.C.), P.R. Raman, M.A. Firoz, C.S. Ullasan and P.N. Ravindran, for the Respondent

Final Decision : Dismissed

Judgement

C.S. Rajan, J.—The petitioner working in the service of the second respondent as Joint Director. The post to which the petitioner is aspiring to be appointed is Resident Director, Trade Promotion Office, New York. The method of selection and qualification to the above post have been prescribed by Exhibit P-1 notification by the second respondent. The selection to the above post is to be made by the Government of India after considering recommendation of the Committee consisting of a representative of the Ministry of Commerce, Chairman, Marine Products Export Development Authority (MPEDA) (Second respondent) and the Director, MPEDA. The appointment will be made by the MPEDA subject to the approval of the Government of India. The prime objection to the selection of the fourth respondent, who is an I.A.S. Officer is that as required under the rules (Exhibit P-1) no Committee was constituted including the representative of the Ministry of Commerce, Chairman, MPEDA and Director of MPEDA. Therefore, it was stressed in the Original Petition that the committee itself has not been constituted with an ulterior motive to appoint the 4th respondent and it is malafide and biased. A statement has been filed on behalf of the first respondent. The above statement discloses the following facts. A Committee was

constituted by the first respondent which included a representative of the Ministry of Commerce and the Chairman of MPEDA. It is admitted that the Director of MPEDA was not included in the selection committee. But a high level committee in the Ministry of Commerce considered the eligible candidates for the post. This committee included the Chairman of MPEDA as well. No malafide could be attributed just because the Director of MPEDA was not included in the Selection committee.

2. Smt. Sumathi Dandapani, learned counsel for the petitioner on the basis of the admitted facts disclosed in the statement filed by the first respondent argued that the very constitution of the committee is illegal and inconsistent with Exhibit P-1 rules. Therefore, it is argued that the very basis of the selection is illegal and therefore cannot be sustained. In order to drive home the above point the learned counsel cited the ruling of the Supreme Court reported in *State of A.P. v. Mohanjit Singh* (1988 (Supp.) SCC 562). In the above ruling the Supreme Court held as follows:

In view of the G.O. making essential presence of a particular member of the selection committee in the meeting of the committee, in his absence in the meeting, it cannot be said that there was a proper selection committee constituted on the date when the selection was made. Ratification by that member at a later point of time cannot validate the proceeding of the selection committee as there was no quorum and in its absence, the committee was not entitled to transact business. The Government order makes it clear that the selection committee is intended to function as a body. In case all the members were present at the selection there would have been scope for exchange of view when the candidates appeared and the selection would have been in terms of the scheme. Once a decision is taken the conclusion already reached, it becomes a very different type of activity.

In order to understand the scope of the above ruling it is necessary to refer the Government order by which the selection committee was constituted. The above Government Order was quoted in paragraph 3 of the above judgment. According to the Government Order, the presence of atleast one representative of the University and the representative of the Director of Higher Education in the Selection Committee meeting should be regarded as essential for completing the quorum. On the basis of the above stipulation in the Government Order the Supreme Court held that the decision of the selection committee without the presence of a Director of Higher Education is bad in law. Yet another ruling relied on by the learned counsel for the petitioner is mat of a Division Bench of the Andhra Pradesh High Court reported in *K.V.L. Kameswari v. Andhra University* (1994 (1) SLR 788). In the above judgment the Andhra Pradesh High Court was considering the validity of the selection made by the selection committee constituted u/s 34-A of the Andhra University Act, 1925. The above Section specifically mentions the names of the members of the selection committee to be constituted in regard to appointment of Professors, Readers of Lecturers. The

selection committee constituted for the purpose of selection of persons in the above case did not include nominee of the University Grants Commission. Considering the mandatory nature of the above Section in the University Act the Court held that the constitution of the Committee was not in compliance with the section irrespective of provision for quorum.

3. In this case the process of appointment of a Resident Director involves three stages. First the Committee consisting of representative of the Ministry of commerce, Chairman, MPEDA and Director of MPEDA must recommend the name. Considering the above recommendation the Government of India will make the selection. Thereafter, the MPEDA makes the appointment. Therefore, the nomination of the selection committee is not the final word on the selection of Resident Director. The duty of the committee is only recommendatory in nature. Needless to say that no quorum was also insisted in the rules.

4. The learned counsel appearing for the respondents brought to my notice a ruling of the Supreme Court reported in *Ishwar Chandra Vs. Satyanarain Sinha and Others*, Wherein it was held that where there is no rule or regulation or any other provision for fixing the quorum, the presence of the majority of the members would constitute it a valid meeting and matters considered there cannot be held to be invalid. In that case the question of appointment of Vice-Chancellor under the University of Saugar Act arose before the Supreme Court. The above ruling of the Supreme Court was followed with approval in *Union of India v. Somasundaram* (AIR 1988 SC 2255). Considering all these aspects I do not find that the absence of the Director of MPEDA in the selection committee will vitiate the whole process of selection. The Chairman, MPEDA who is the Head of the organisation was a member of the Committee. The other member of the committee was an officer in the Ministry of Commerce, Government of India. Therefore, it is impossible to presume that these two high-ranking officers, who constitute the selection committee will go wrong in making the selection. There is absolutely no foundation for the apprehension made by the petitioner in the Original Petition that the selection is either malafide or biased. Therefore the Original Petition is dismissed.