

(2024) 10 CAL CK 0009

In the Calcutta High Court

Case No : MAT 1116 Of 2022 With IA No. CAN 1 Of 2022

Eastern Regional Electrical Contractors? Association (India)
Ltd. & Ors

APPELLANT

Vs

Union Of India & Ors

RESPONDENT

Date of Decision : 07-10-2024

Acts Referred:

Constitution of India, 1950 — Article 14, 19(1)(g), 19(2), 19(3), 19(4), 19(5), 19(6), 32, 162
Electricity Act, 2003 — Section 2(6), 53, 70(1), 177, 177(2)(b), 178(1), 178(ze), 180, 180(2)
Advocates Act, 1961 — Section 24
Factories Act, 1948 — Section 2(n)
West Bengal Electrical Licensing Rules, 2017 — Rule 23(c), 31(5)

Citation : (2024) 10 CAL CK 0009

Hon'ble Judges : Debangsu Basak, J;Md. Shabbar Rashidi, J

Bench : Division Bench

Advocate : Pratik Dhar, Samir Halder, Sirsanya Bandopadhyay

Final Decision : Dismissed

Judgement

Debangsu Basak, J

1. Appellants have assailed the judgement and order dated May 20, 2022 passed by the learned Single Judge in WPA 2484 of 2018. By the impugned judgement and order, learned Single Judge has dismissed the writ petition filed at the behest of the appellants.

2. Learned Senior Advocate appearing for the appellants has submitted that, the appellants challenged the legality of Rule 23 (c) and 31 (5) of the West Bengal Electrical Licensing Rules, 2017 which purports to impose an age-based prohibition on the issuance and renewal of certificates for electrical supervisors under the Electricity Act, 2003 on the grounds that the same are ultra vires the Rule-making legislative competence of the State and being violative of Article 19 (1) (g) of the Constitution of India.

3. Learned Senior Advocate appearing for the appellants has submitted that, State traced its powers to promulgate the Rules of 2017 to Section 180 of the Electricity Act, 2003 and Regulation 29 of the Central Electricity Authority Regulations, 2010. He has contended that, Section 180 of the Electricity Act, 2003 does not empower the State to make Regulations laying down an age bar for issuance and renewal of license. He has referred to Sections 2 (6), 53, 177 (2) (b) and 180 of the Electricity Act, 2003 in support of his contentions.

4. Referring to the Rules of 2017, learned Senior Advocate appearing for the appellants has contended that, the impugned Rules are not a policy decision under Article 162 of the Constitution of India. He has contended that, age bar prescribed is a regulatory measure, not a policy, and must comply with the required competence under the Electricity Act, 2003 and Article 19 (1) (g) of the Constitution of India.

5. Referring to Articles 19 (1) (g) and 19 (6) of the Constitution of India, learned Senior Advocate appearing for the appellants has contended that, the term "qualification" mentioned in Article 19 (6) does not extend to an age-based prohibition in private profession. He has pointed out that, it can be considered as a qualification in the context of employment contracts but not when a person is in self-employment. According to him, "qualification" under Article 19(6) of the Constitution of India has referred to technical skills, competence and other necessary requirements but not age. According to him, State cannot impose an age restriction in nature of complete prohibition under the guise of qualification in safety domain under the Electricity Act, 2003 as it would have directly violated the right to practice the profession guaranteed under Article 19 (1) (g) of the Constitution of India. He has contended that, the term "qualification" used in Article 19 (1) (g) of the Constitution must be interpreted narrowly.

6. Learned Senior Advocate appearing for the appellants has contended that age inherently is not a measure of competence. He has contended that, age-based restriction does not address a person's capability to perform the duties required of an electrical supervisor and therefore cannot be justified as a qualification within the meaning of Article 19 (6) of the Constitution of India. He has contended that, imposing an age limit without any direct connection to the professional competence of the individual effectively converts "qualification" into a blanket prohibition which the Constitution does not permit. State has failed to produce any empirical data establishing that, after a particular age, grant of license or renewals thereof would be against public safety.

7. Learned Senior Advocate appearing for the appellants has submitted that, right to profession without unreasonable restriction is guaranteed under Article 19 (1) (g) of the Constitution of India. He has contended that, none of the grounds stated in the affidavit of the State purporting to justify the imposition of the age bar are acceptable.

8. Learned Senior Advocate appearing for the appellants has contended that, the

impugned Rules are not a piece of legislation and therefore cannot qualify as a valid ground for the purpose of restricting the rights under Article 19 (1) (g) of the Constitution. He has relied upon 2017 Volume 10 Supreme Court Cases 1 (Justice KS Puttaswamy versus Union of India) in this regard.

9. Learned Senior Advocate appearing for the appellants has contended that, Regulation 29 of the Regulations of 2010 does not impose any age prohibition. Such absence is not an omission or gap which has to be filled, rather a deliberate recognition of the constitutional guarantee under Article 19(1)(g) of the Constitution of India.

10. In support of his contentions, learned Senior Advocate appearing for the appellants has relied upon 2003 Volume 7 Supreme Court Cases 309 (B P Sharma versus Union of India and others), 2012 SCC Online Del 2477 (WG. CRD. (Retd.) V.A. Joshi & Ors. vs. Union of India & Another), 1995 Volume 1 Supreme Court Cases 732 (Indian Council of Legal Aid and Advice & Others versus Bar Council of India and Another), 2015 Volume 13 Supreme Court Cases 427 (H D Sailor versus Bar Council of Gujarat), 2024 Volume 5 Supreme Court Cases 217 (Ramesh Chandra Sharma and Others versus State of Uttar Pradesh and Others) and 2010 Volume 4 Supreme Court Cases 603 (PTC India Ltd versus Central Electricity Regulatory Commission).

11. Learned Junior Standing Counsel appearing for the State has pointed out that, although the appellants challenged Rule 13 (6), 23 (c) and 30 (5) of the Rules of 2017, they had given up challenge to Rule 13 (6) during the course of the hearing of the writ petition.

12. Learned Junior Standing Counsel has contended that the source of Rule-making power for the Rules of 2017 can be traced to Section 180 of the Act of 2003. He has contended that, under the Act of 2003 public safety is the responsibility of the Central Electricity Authority as defined under Section 2 (6). He has drawn the attention of the Court to the provisions of Section 53 of the Act of 2003 and contended that, safety measures required to be in place are stated therein. The Act of 2003 in Section 177 thereof has empowered the Central Electricity Authority to make Rules. In exercise of powers under Section 177 of the Act of 2003, Central Electricity Authority has formulated the Regulations of 2010.

13. Learned Junior Standing Counsel has referred to Regulations 3, 29 and 115 of the Regulations of 2010 and contended that, such Regulations read with Section 2 (5) of the Act of 2003 specifies that the State Government is the "appropriate Government" for the purpose of issuance of licenses and in determining the qualification required for issuance of such license to designated persons as supervisors, who are required to hold certificate of competency. In discharge of such powers, State has framed the Rules of 2017. Not only has the State of West Bengal framed Rules, other State Governments have framed similar Rules. He has referred to the Rules framed by the States of Odisha,

Rajasthan and Delhi in this regard. He has contended that, these three States have also put in place similar provisions with regard to age.

14. Relying upon 1982 Volume 2 Supreme Court Cases 7 (V T Khanzode versus Reserve Bank of India) learned Junior Standing Counsel has contended that, Section 180 (2) illustrates some of the areas over which State can exercise Rule-making power. Such illustration is not exhaustive and, in this regard, he has pointed out the opening words of Section 180 (2).

15. Learned Junior Standing Counsel has contended that, the entire responsibility to determine qualification has been delegated to the State. He has contended that, the nature of the work has 3 major components namely consumer, workmen and supervisor. The qualification of the latter two is to be determined by the State for the safe and effective execution of the work. He has referred to the dictionary meaning of the word "qualification" and contended that, such word includes a standard necessary to do a job. In this regard he has relied upon 2009 volume 4 Calcutta High Court Notes 252 (Union of India versus Business Corporation Private Limited). He has contended that, standard necessary to do a job cannot be limited to educational and technical qualifications but also must include age, designation, experience amongst others.

16. Learned Junior Standing Counsel has contended that, licensing authority must have the power to determine qualification. In support of such contention, he has relied upon 1978 SCC OnLine Del 185 (Vinod Kumar Malhotra versus Indian Airlines Corporation).

17. Learned Junior Standing Counsel has submitted that, the Act of 2003 does not prevent fixing an upper age limit. Consequently, the age bar specified cannot be said to be repugnant to the Act of 2003 nor does the doctrine of occupied field apply. He has pointed out that, the factual reasons for imposing age bar are specified in paragraphs 3 (f) to (o) of the affidavit filed by the State before the learned Single Judge. Moreover, similar provisions have been incorporated by three States.

18. Learned Junior Standing Counsel has contended that, determination of age bar or upper age limit is essentially a matter of policy and that, such policy decision as in the present case, cannot be struck down as capricious or arbitrary. He has relied upon 2021 Volume 5 Supreme Court Cases 638 (Rachna And Others vs. Union of India And Another), 2007 Volume 4 Supreme Court Cases 737 (Directorate of Film Festivals And Others vs. Gaurav Ashwin Jain And Others), 2008 Volume 14 Supreme Court Cases 702 (Government of Andhra Pradesh And Others vs. N. Subbarayudu And Others).

19. Relying upon 2003 Volume 11 Supreme Court Cases 614 (Prafulla Kumar Das And Others vs. State of Orissa And Others) learned Junior Standing Counsel has contended that, hardship is no ground to strike down a valid legislation.

20. Learned Junior Standing Counsel has contended that, State Government

retains the power to regulate the electrical supervisors. In support of such contention, he has relied upon 1996 Volume 3 Supreme Court Cases 342 (Dr. Haniraj L. Chulani vs. Bar Council of Maharashtra & Goa), 1998 Volume 7 Supreme Court Cases 579 (Mukhtiar Chand (Dr.) And Others vs. State of Punjab And Others) and 1996 Volume 6 Supreme Court Cases 665 (J. K. Industries Ltd. And Others vs. Chief Inspector of Factories And Biolers And Others).

21. Learned Junior Standing Counsel has also relied upon 2024 SCC OnLine SC 1796 (Mineral Area Development Authority and Another vs. Steel Authority of India and Another).

22. Learned Senior Advocate appearing for the writ petitioner has contended that, at least 7 of the States in India have issued similar Rules which do not contain any age bar. He has contended that, right to private profession should not be regulated by the State by imposing an age bar.

23. Appellant No. 1 as an association has espoused the cause of Government electrical supervisors. Appellant No. 1 is a company within the meaning of Companies Act, 2013. The other appellants have claimed themselves to be members of the appellant No. 1.

24. Appellants initially had challenged the constitutionality of Rules 13(6), 23(c) and 31(5) of the Rules of 2017. At the hearing of the writ petition, the appellants had given up the challenge to Rule 13 of Rules of 2017.

25. Essentially, the appellants have challenged Rules 23(c) and 31(5) of the Rules of 2017 on the basis that, age bar prescribed therein is beyond the scope of Regulation 29 of the Regulation of 2010 and violative of Article 19 (1) (g) of the Constitution of India.

26. In our view therefore, two issues have fallen for consideration in this appeal which are as follows:-

(i) Does the age bar prescribed under the two impugned Rules violate Article 19(1)(g) of the Constitution of India?

(ii) Does the State Government have the requisite competence to prescribe an age bar for the renewal of licence of an electrical supervisor as done by the impugned Rules?

27. On both the issues the appearing parties in the appeal have relied upon various authorities which require consideration in the factual matrix obtaining in the present case.

28. Justice KS Puttaswamy (supra) has held that, a law imposing any restriction on the fundamental right prescribed under 19(1)(g) must be within the parameters stipulated in Clauses (2) to (6) of Article 19 of the Constitution of India. It has held as follows:-

"364. The interrelationship of Articles 19 and 21, if understood, as Stated in para

363, the authority of the State to deprive any person of his liberty is circumscribed by certain factors:

(1) It can only be done under the authority of law.

(2) "Law" in the context means a valid legislation.

(3) If the person whose liberty is sought to be deprived is a citizen and that liberty happens to be one of the freedoms enumerated in Article 19(1), such a law is required to be reasonable within the parameters stipulated in clauses (2) to (6) of Article 19, relevant to the nature of the entrenched freedom(s), such law seeks to abridge.

(4) If the person whose liberty is sought to be deprived of is a non-citizen or even if a citizen is with respect to any freedom other than those specified in Articles 19(1), the law should be just, fair and reasonable."

29. Since the two Rules of the Rules of 2017 under challenge have prescribed an age bar to a citizen of India carrying on an independent profession as electrical supervisor, the restriction imposed may be tested on the parameters noted in Justice KS Puttaswamy (supra).

30. Contesting parties before us have relied upon several authorities dealing with prescription of age bar with regard to the fundamental right under Article 19(1) (g) of the Constitution of India. One of these is WG. CRD. (Retd.) V.A. Joshi & Ors.(supra) where the Delhi High Court has allowed a pilot above the age of 65 years to fly a non-commercial aircraft. One has to note that the exposure of the public to a pilot flying a non-commercial aircraft is way different than one flying a commercial one.

31. Indian Council of Legal Aid and Advice and others (supra) has struck down a Rule seeking to bar the entry of persons to the Bar on completion of 45 years on the date of application. It has noted that while Section 24 of the Advocates Act, 1961 prescribes the minimum age for enrolment as 21 years, there is no provision which prescribe the maximum age for entry into the profession.

32. Similarly, in H D Sailor (supra), Supreme Court has quashed enrolment Rules to the Bar Council prescribing age limit of 45 years.

33. In B P Sharma (supra), age prescription with regard to a guide has been struck down. It has observed that the validity of age limit cannot be tested mainly on the basis of physical fitness. It has also held that, in absence of any master and servant relationship or any relationship contractual in nature, ordinarily there would be no good reason for the State to completely prohibit at its choice to carry on a private profession or self-employment on attaining a certain age. It has also observed that, even total prohibition upon carrying on one's profession can be imposed by way of a regulatory measure, but for doing so condition of public interest must be fulfilled. Prohibition has to pass through a stringent test. Freedoms guaranteed under the Constitution should be allowed to

be enjoyed by citizens to the fullest possible extent without putting shackles of avoidable cobweb of Rules and Regulations putting checks and restrictions in the enjoyment of such freedom.

34. Ramesh Chandra Sharma and Others (supra) has laid down five-pronged proportionality test, to test the validity of State action in curtailing or restricting the fundamental rights. It has held that, in order to be valid, State action must pass the following proportionality test –

- (i) Interfering with the fundamental rights must have a State purpose;
- (ii) The rights infringing measure must be based on a rational nexus between the interference and the State aim;
- (iii) The measures must be necessary to achieve the State aim;
- (iv) The restrictions must be necessary to protect the legitimate objective;
- (v) The State should provide sufficient safeguards for the possibility of an abuse of such rights infringing interference.

35. Ramesh Chandra Sharma and Others (supra) has also held that, for any classification to survive the test of Article 14 of the Constitution of India, the classification must be based on intelligible differentia, and it must have a rational nexus to the object sought to be achieved by the law. If it is found that, the object sought to be achieved is unlawful and if the object of the law itself is found to be discriminatory then the discrimination must be struck down.

36. PTC India Ltd (supra) has considered Regulation making power of the Central Electricity Regulatory Commission. It has held that, Sections 178 (1) and 178 (ze) of the Act of 2003 has conferred wide powers on CERC to frame Regulations of general application. It has held in paragraph 28 as follows:-

“28. The 2003 Act contemplates three kinds of delegated legislation. Firstly, under Section 176, the Central Government is empowered to make Rules to carry out the provisions of the Act. Correspondingly, the State Governments are also given powers under Section 180 to make Rules. Secondly, under Section 177, the Central Authority is also empowered to make Regulations consistent with the Act and the Rules to carry out the provisions of the Act. Thirdly, under Section 178, the Central Commission can make Regulations consistent with the Act and the Rules to carry out the provisions of the Act. SERCs have a corresponding power under Section 181. The Rules and Regulations have to be placed before Parliament and the State Legislatures, as the case may be, under Sections 179 and 182. Parliament has the power to modify the Rules/Regulations. This power is not conferred upon the State Legislatures. A holistic reading of the 2003 Act leads to the conclusion that Regulations can be made as long as two conditions are satisfied, namely, that they are consistent with the Act and that they are made for carrying out the provisions of the Act.”

37. V T Khanzode (supra) has considered writ petitions under Article 32 of the

Constitution challenging the decision of Reserve Bank of India as regards the introduction of common seniority and inter-group mobility amongst different grades of officers with retrospective effect. In such context, it has construed various provisions of the Reserve Bank of India Act. It has observed that, where specific power is conferred without prejudice to the generality of a power already conferred, the specific power is only illustrative and cannot restrict the width of the general power.

38. *Rachna And Others* (supra) has held that, policy decisions are open for judicial review only for limited purpose and the Court can interfere into the realm of public policy only if it is either absolutely capricious, totally arbitrary or not informed with reasons. It has also observed that, it is within the realm of the executive to take a policy decision based on the prevailing circumstances for better administration and in meeting the exigencies. At the same time, it is not within the domain of the Courts to legislate.

39. In *Directorate of Film Festivals And Others* (supra), Supreme Court has held that, Courts do not and cannot act as Appellate Authorities examining the correctness, suitability and appropriateness of a policy, nor are courts advisors to the executive on matters of policy which the executive is entitled to formulate. The scope of judicial review when examining a policy of the Government is to check whether it violates the fundamental rights of the citizens or is opposed to the provisions of the Constitution, or opposed to any statutory provision or manifestly arbitrary. Courts cannot interfere with policy either on the ground that it is erroneous or on the ground that a better, fairer or wiser alternative is available. Legality of the policy, and not the wisdom or soundness of the policy, is the subject of judicial review.

40. In *N. Subbarayudu And Others* (supra), Supreme Court has held that, even if no reason is forthcoming from the executive for fixation of a particular date as the cut off date, it should not be interfered with by the Court unless the cut-off date leads to some blatantly capricious or outrageous result.

41. *Prafulla Kumar Das And Others* (supra) has held that, mere hardship cannot be a ground for striking down a valid legislation unless it is held to be suffering from the vice of discrimination or unreasonableness. A valid piece of legislation, thus, can be struck down only if it is found to be ultra vires Article 14 of the Constitution of India and not otherwise.

42. While considering the eligibility condition prescribed for enrolment of an advocate, Supreme Court in *Dr. Haniraj L. Chulani* (supra) has held that, while the Rule impugned falls within the parameters of Rule making power as entrusted by the legislature, it cannot be said that any disqualification laid down would not be legitimately imposed.

43. *Mukhtiar Chand (Dr.) And Others* (supra) has considered declaration issued by the State Governments under Clause (iii) of Rule 2(ee) of the Drugs and Cosmetics Rules, 1945 which defines registered medical practitioner. Under such

declarations notified vaid/hakims has claimed right to prescribe allopathic drugs covered by the Indian Drugs and Cosmetics Act, 1940. It has held that, Rule 2(ee)(iii) as effected from May 14, 1960 is valid and does not suffer from the vice of want of legislative competence and the notifications issued by the State Governments thereunder are not ultra vires such Rule and are legal.

44. J. K. Industries Ltd. And Others (supra) has considered the constitutional validity of proviso (ii) to Section 2(n) of the Factories Act, 1948. It has held that, Article 19(1)(g) of the Constitution guarantees to a citizen the right to practise any profession or to carry on any occupation, trade or business. This right, however, is subject to Clause (6) of Article 19 which lays down that nothing in sub-Clause (g) of Article 19(1) shall affect the operation of any existing law insofar as it imposes, or prevents the State from making any law imposing in the interest of the general public reasonable restrictions on the exercise of the right. Clause (6) of Article 19 is intended to strike a balance between individual freedom and social control. It has also held that, there is nothing unreasonable in fixing the liability on a director of a company and making him responsible for compliance with the provisions of the Act and the Rules made thereunder and laying down that if there is contravention of any of the provisions of the Act or an offence is committed under the Act, the notified director, and in the absence of the notification, any one of the directors of the company, shall be prosecuted and shall be liable to be punished as the deemed occupier.

45. Parties have referred to Sections 2(6), 62, 53, 177 and 180 of the Act of 2003 which are as follows:-

"2. Definitions: - In this Act, unless the context otherwise requires,-

(1) *** **

(2) *** **

(3) *** **

(4) *** **

(5) *** **

(6) "Authority" means the Central Electricity Authority referred to in sub-Section(1) of Section 70"

"(7) *** **

(8) *** **

(9) *** **

(10) *** **

(62) "specified" means specified by regulations made by the Appropriate Commission or the Authority, as the case may be, under this Act"

"53. Provisions relating to safety and electricity supply:-The Authority may in consultation with the State Government, specify suitable measures for –

- (a) protecting the public (including the persons engaged in the generation, transmission or distribution or trading) from dangers arising from the generation, transmission or distribution or trading of electricity, or use of electricity supplied or installation, maintenance or use of any electric line or electrical plant;
- (b) eliminating or reducing the risks of personal injury to any person, or damage to property of any person or interference with use of such property ;
- (c) prohibiting the supply or transmission of electricity except by means of a system which conforms to the specification as may be specified;
- (d) giving notice in the specified form to the Appropriate Commission and the Electrical Inspector, of accidents and failures of supplies or transmissions of electricity;
- (e) keeping by a generating company or licensee the maps, plans and Sections relating to supply or transmission of electricity;
- (f) inspection of maps, plans and Sections by any person authorised by it or by Electrical Inspector or by any person on payment of specified fee;
- (g) specifying action to be taken in relation to any electric line or electrical plant, or any electrical appliance under the control of a consumer for the purpose of eliminating or reducing the risk of personal injury or damage to property or interference with its use."

"177. Powers of Authority to make Regulations:

- 1. *** **
- 2. *** **

(b) suitable measures relating to safety and electric supply under Section 53."

"180. Powers of State Governments to make Rules. -

- (1) The State Government may, by notification, make Rules for carrying out the provisions of this Act.
- (2) In particular and without prejudice to the generality of foregoing power, such Rules may provide for all or any of the following matters, namely: -
 - (a) the payment of fees for application for grant of licence under subsection (1) of Section 15;
 - (b) the works of licensees affecting the property of other persons under sub-Section (2) of Section 67;
 - (c) such other matters which may be prescribed under clause (c) of sub-Section (2) of Section 68;

(d) the salary, allowances and other terms and conditions of service of the Chairperson and Members of the State Commission under subsection (2) of Section 89;

(e) the form and manner in which and the authority before whom oath of office and secrecy should be subscribed under sub-Section (3) of Section 89;

(f) any other matter required to be prescribed by the State Commission under clause (g) of sub-Section (1) of Section 94;

(g) the manner of applying the Fund under sub-Section (3) of Section 103;

(h) the form in which and time at which the State Commission shall prepare its annual accounts under sub-Section (1) of Section 104;

(i) the form in which and time at which the State Commission shall prepare its annual report under sub-Section (1) of Section 105;

(j) the form in which and time at which the State Commission shall prepare its budget under Section 106;

(k) manner of service of provisional order of assessment under subsection (2) of Section 126;

(l) manner of holding inquiry by an adjudicating officer under subsection (1) of Section 143;

(m) the form in which and the time at which notice to the Electrical Inspector under sub-Section (1) of Section 161;

(n) the manner of delivery of every notice, order or document under sub-Section (1) of Section 171; and

(o) any other matter which is required to be, or may be, prescribed."

46. Parties have also drawn the attention of the Court to Regulations 3, 29 and 115 of the Regulations of 2010 which are as follows:-

"3. Designating person(s) to operate and carry out the work on electrical lines and apparatus.-

(1) A supplier or a consumer, or the owner, agent or manager of a mine, or the agent of any company operating in an oil-field or the owner of a drilled well in an oil field or a contractor who has entered into a contract with a supplier or a consumer to carry out duties incidental to the generation, transformation, transmission, conversion, distribution or use of electricity shall designate persons for the purpose to operate and carry out the work on electrical lines and apparatus.

(2) The supplier or consumer, or the owner, agent or manager of a mine, or the agent of any company operating in an oil-field or the owner of a drilled well in an oil field or a contractor referred to on sub-Regulation (1) shall maintain register

wherein the names of the designated persons and the purpose for which they are engaged, shall be entered.

(3) No person shall be designated under sub-Regulation (1) unless-

(i) he possesses a certificate of competency or electrical work permit, issued by the Appropriate Government.

(ii) his name is entered in the register referred to in sub-Regulation (2)."

"29. Precautions to be adopted by consumers, owners, occupiers, electrical contractors, electrical workmen and suppliers-() No electrical installation work, including additions, alterations, repairs and adjustments to existing installations, except such replacement of lamps, fans, fuses, switches, domestic appliances of voltage not exceeding 250V and fittings as in no way alters its capacity or character, shall be carried out upon the premises of or on behalf of any consumers, supplier, owner or occupier for the purpose of supply to such consumer, supplier, owner or occupier except by an electrical contractor licensed in this behalf by the State Government and under the direct supervision of a person holding a certificate or competency and by a person holding a permit issued or recognised by the State Government.

Provided that in the case of works executed for or on behalf of the Central Government and in the case of installations in mines, oil fields and railways, the Central Government and in other cases the State Government, may by notification in the Official Gazette, exempt on such conditions as it may impose, any such work described therein either generally or in the case of any specified class of consumers, suppliers, owners or occupiers.

(2) No electrical installation work which has been carried out in contravention of sub-Regulation (1) shall either be energised or connected to the works of any suppliers." "115. Supervision. -

(1)(i) One or more electrical supervisors as directed by the Inspector shall be appointed in writing by the owner, agent or manager of a mine or by the agent or the owner, of one or more wells in an oil field to supervise the installation.

(ii) The electrical supervisor so appointed shall be the person holding a valid Electrical Supervisor's Certificate of Competency, covering mining installation issued under sub-Regulation (1) of Regulation 29.

(iii) One or more electricians as directed by the Inspector shall be appointed in writing by the owner, agent or manager of a mine or by the agent or the owner, of one or more wells in an oil field for compliance with the duties specified in this Regulation.

(iv) The Electrician shall be a person holding license under sub-Regulation (1) of Regulation 29.

(v) For small open cast mines and below ground mines receiving supply at

voltage not more than 650 V and not having portable or transportable apparatus, electrical supervisor and electrician shall be appointed for more than one mine by the Inspector.

(2) Every person appointed to operate, supervise, examine or adjust any apparatus shall be competent to undertake the work which he is required to carry out as directed by the Engineer.

(3) The electrical supervisor shall be responsible for the proper performance of the following duties, by himself or by an electrician appointed under sub-Regulation (1).

(i) thorough examination of all apparatus, including the testing of earth conductors and metallic coverings for continuity, as often as may be necessary to prevent danger;

(ii) examination and testing of all new apparatus, and of all apparatus, re-erected in the mine before it is put into service in a new position.

(4) In the absence of any electrical supervisor, the owner, agent or manager of the mine and oil field shall appoint in writing a substitute electrical supervisor.

(5) (i) The electrical supervisor or the substitute electrical supervisor appointed under sub-Regulation (4) to replace him shall be personally responsible for the maintenance at the mine or oil-field, of a log-book made up of the daily log sheets prepared in the form set out in Schedule – XIII.

(ii) The results of all test carried out in accordance with the provisions of sub-Regulation (3) shall be recorded in the log-sheets prepared in the form set out in Schedule - XIII.”

47. Parties have referred to Rules 23(c) and 31(5) of the Rules of 2017 which are as follows:-

23. Examination for Certificate of Competency of Supervisors-

(c) After coming into force of these Rules, no application for new or further Parts for Supervisor Certificate of Competency, shall be entertained from the candidate attaining the age of 65 years. In respect of renewal of such Certificate, candidate of 65 years shall produce a medical fitness certificate. However, in any case Supervisor Certificate of Competency of a person is liable to be ceased/cancelled upon attaining his age of 70 years.”

31. Examination for National Certificate of Supervisors-

(5) After coming into force of these Rules, no application for new or further Parts

for National Certificate of Supervisor, shall be entertained from the candidate attaining the age of 65 years. In respect of renewal of such Certificate, candidate of 65 years shall produce a medical fitness certificate for renewal of National Certificate of Supervisor (N.C.S). However, in any case National Certificate of Supervisor's Licence of a person is liable to be ceased/cancelled upon attaining his age of 70 years."

48. Section 2 (6) of the Act of 2003 has defined "Authority" to mean the Central Electricity Authority referred to in sub section (1) of Section 70. Section 2 (62) has defined the word "specified" to mean specified by Regulations made by the Appropriate Commission or the Authority as the case may be under the Act of 2003.

49. Section 53 of the Act of 2003 has made provisions relating to safety and electricity supply. It has empowered the Authority under the Act of 2003, to specify suitable measures for protecting the public including the persons engaged in the generation, transmission or distribution of trading of electricity from the dangers arising from the generation, transmission or distribution or trading of electricity or use of electricity supplied or installation, maintenance or use of any electric line electrical plant, amongst others. The authority has been authorised to consult the State Government in this regard.

50. Section 70 of the Act of 2003 relates to the constitution of the Central Electricity Authority and has empowered such authority to exercise such functions and perform such duties as are assigned to it under the Act of 2003. Section 177 of the Act of 2003 has enumerated the powers of the Authority to make Regulations. It has provided in subsection (2) (b) thereof that it would make Regulations, consistent with the Act of 2003 and the Rules, laying down suitable measures relating to safety and electric supply under Section 53 of the Act of 2003.

51. Section 180 of the Act of 2003 has empowered the State Governments to make Rules for carrying out the provisions of the Act of 2003. Sub Section (2) of Section 180 of the Act of 2003 has enumerated some of the matters, in which, the State Government may by notification, make Rules for carrying out the provisions of the Act of 2003 without prejudice to the generality of the powers granted under sub section (1) of Section 180 of the Act of 2003 to make Rules. Therefore, sub section (1) of the Act of 2003 has empowered the State Government to make Rules for carrying out the provisions of the Act of 2003 and that, sub section (2) has enumerated some of the areas in which, the State Government may make the Rules to carry out the provisions of the Act of 2003.

52. Regulation 3 of the Regulations of 2010 has mandated the designation of a person for the purpose of operating and carrying out work on electrical lines and apparatus. It has required, the category of users specified therein, to maintain a register bearing the names of the designated persons and the purpose for which they are engaged, to be entered. Sub Regulation (3) has specified that no person

shall be designated under sub regulation (1) unless he possesses a certificate of competency or electrical work permit, issued by the appropriate Government and its name is entered in the register referred to in sub regulation (2).

53. Regulation 29 of the Regulations of 2010 requires certain precautions which have to be adopted by consumers, owners, occupiers, electrical contractors, electrical workmen and suppliers. It has required electrical work to be carried out by an electrical contractor licensed in this behalf by the State and under the direct supervision of a person holding a certificate of competency and by a person holding a permit issued or recognised by the State Government.

54. Regulation 115 of the Regulations of 2010 has prescribed the presence of one or more electrical supervisors, as directed by the Inspector in respect of installation made in a mine or an oil field.

55. Central Electricity Authority has promulgated the Regulations of 2010 in exercise of powers conferred to it under Section 177 of the Act of 2003. Section 53 of the Act of 2003 has obligated the Central Electricity Authority to make provisions relating to safety and electricity supply.

56. The Regulations of 2010 has been framed in exercise of powers under Section 177 of the Act of 2003 and is binding upon the State Government. Regulation 3, 29, and 115 of the Regulations of 2010 have permitted the State Government to issue licenses and determine the qualification required for issuance of such license for persons who are designated as Electrical Supervisors.

57. State Government has promulgated the Rules of 2017 which inter alia provides for the examination for certificate of competency of supervisors in Rule 23 and examination for national certificate of supervisors in Rule 31. Both in Rules 23 and 31, State Government has laid down that, no application for new supervisor certificate of competency or national certificate of supervisor shall be entertained from a candidate attaining the age of 65 years. In respect of renewal of a certificate, it has specified that the candidate of 65 years shall produce a medical fitness certificate for renewal and, in any case, such certificate will be cancelled upon the candidate attaining the age of 70 years.

58. Central Electricity Authority has required the State Governments to issue licenses of electrical supervisors. State Government has laid down express criteria under which, it will issue or renew licenses for the electrical supervisors. In doing so, in its wisdom, it has specified that, beyond the age of 65 years till 70 years, it will require a medical fitness certificate for issuance or renewal and that, beyond 70 years, it will neither renew nor issue a certificate.

59. Acting under the requirement of the Central Electricity Authority to issue licenses of electrical supervisors, various State Governments have framed Rules governing the same. In aggregate, the appearing parties have drawn the attention of the Court to Rules framed by ten State Governments. Seven State Governments while framing Rules acting in the same provisions of law as that of

the State Government herein, have not prescribed any age prohibition for the purpose of issuance or renewal of licenses for electrical supervisors, while 3 States have in various degrees and forms imposed restrictions after a given age.

60. State Governments across the country have understood the requirement under the Act of 2003 in issuance and renewal of licenses of electrical supervisors and proceeded to frame their respective Rules governing such field.

61. The Rules of 2017 framed by the State Government including those, the vires of which have been challenged, seek to advance objects of the Act of 2003. The impugned Rules have sought to regulate persons who are to deal with electricity, its distribution and consumption. Electrical supervisors, which is the category of persons involved in the present writ petition and sought to be regulated by the impugned Rules of 2017, would be interacting with such devices which a member of the public is likely to come into contact. They are to ensure that the duties when energised would be safe for human beings. Public safety is of utmost importance. Section 53 of the Act of 2003 has enjoined upon the Central Electricity Authority to specify suitable measures relating to public safety and electricity supply, if required, in consultation with the State Governments.

62. No doubt, there is no master servant relationship between an electrical supervisor and the State Government. Absence of such relationship also does not prevent the State Government to make appropriate legislation to regulate the affairs of an electrical supervisor. It is more so when, provisions of the Act of 2003 through the Central Electricity Authority have required the State Government to certify and license an electrical supervisor.

63. Even if there is no master servant relationship between the regulating authority and the person sought to be regulated, BP Sharma (*supra*) has recognised that, the regulating authority may regulate the affairs of a private profession or self-employment when there is public interest required to be fulfilled.

64. The authorities cited above have noted that, freedom guaranteed under Article 19 (1) (g) of the Constitution of India is not absolute. Such freedom can be restricted by law which however has to be reasonable within the parameters stipulated in clauses (2) to (6) of Article 19 of the Constitution of India. Such law has to survive the test of Article 14 of the Constitution of India. In other words, the classification must be based on intelligible differentia and must have a rational nexus to the object sought to be achieved by law.

65. Freedom guaranteed under Article 19 (1) (g) of the Constitution of India is not absolute. It is circumscribed by the parameters of Article 19 (6). Freedom guaranteed under Article 19 (1) (g) can be restricted under Article 19 (6). What is required to be tested is whether the law imposing the restriction of the freedom guaranteed under Article 19 (1) (g) is within the parameters stipulated in Article 19 (6) or not.

66. The so called offending Rules of 2017 have prescribed an age bar prohibiting renewal grant of license to Electrical Supervisors beyond 70 years. State has delineated various grounds which prompted it to impose such age prohibition. Amongst the grounds so delineated is the concern of public safety and in the estimation of the State Government, a person beyond 70 years of age would not be agile enough to discharge onerous duties that have been imposed upon an electrical supervisor, therefore, compromising the element of public safety.

67. Public safety and its maintenance in the supply chain of electricity commencing from its production to its ultimate consumption is one of the areas that the Act of 2003 has sought to address. It cannot be gainsaid that, under Section 53 of the Act of 2003 the Central Electricity Authority has to put in measures, if need be, in consultation with the State Government, ensuring public safety in the entire production, distribution and consumption ecosystem of electricity.

68. Section 180 of the Act of 2003 has empowered the State Government to make Rules for carrying out the provisions of the Act of 2003. In our view, none of the two so called offending Rules have prescribed any prohibition which impedes carrying out the provisions of the Act of 2003. Quite to the contrary, the so called offending Rules have endeavoured to advance the cause of public safety mandated under the Act of 2003. State Government has thought so. Such a view is a plausible view which has been taken by the State Government. The prescription has a rational nexus with the object sought to be achieved. The object that has been sought to be achieved is public safety. The prohibition prescribed has an intelligible differentia.

69. As noted above, the impugned Rules of 2017 have been promulgated in exercise of powers derived through the Act of 2003. The entirety of the Rules of 2017 has not been assailed on the grounds of excessive legislation or legislation beyond competence. Appellants therefore have acknowledged that, the Rules of 2017 at least so far as the non-offending portions thereof, are within the legislative competence of the State Government to promulgate. Parties have drawn the attention of the Court to Rules framed for the purpose of regulating the issuance of license and renewal of electrical supervisors by 10 States.

70. Restricting the term "qualification" as has been used in Article 19 (6) of the Constitution of India in the facts and circumstances of the present case, as contended on behalf of the appellants is not warranted. Prescription of age has to be considered as a valid qualification within the meaning of Article 19 (6) in the factual matrix of this case. A restrictive interpretation would have ramifications with regard to public safety. That would be prejudicial to the contours of the Act of 2003.

71. Although Regulation 29 of the Regulations of 2010 does not impose any age prohibition, it has left the State Government with the responsibility to issue a certificate or competency to an electrical supervisor who is to supervise the

work. Logically therefore, State Government has to frame rules governing such field which promotes the objects of the Act of 2003. It is nobody's case that, the Act of 2003 does not require adherence to public safety.

72. There is substance in the contention on behalf of the state that, the Regulations of 2010 read with Section 2 (5) of the Act of 2003 has ordained the State Government to issue licenses and in determining the qualification required for issuance of such license to designated persons are supervisors, to frame appropriate rules with regard thereto.

73. Section 180 (1) of the Act of 2003 has empowered the State Government to make rules for carrying out the provisions of the Act of 2003. Public safety has been recognised in Section 53 of the Act of 2003. Subsection (2) of Section 180 of the Act of 2003 illustrates some of the areas in which, the State Government can make rules to advance the provisions of the Act of 2003. By reason of the user of the opening words in subsection (2) of section 180 of the act of 2003, and on the strength of the ratio of VT Khanzode (supra) subsection (2) of Section 180 of the Act of 2003 does not limit the rule making power to the matters prescribed in subsection (2).

74. The word "qualification" cannot be limited to educational and technical qualifications only and must necessarily include age, designation, experience amongst others as has been held in Business Corporation Private Limited (supra). Age has a ramification when considered in the context of maintenance of public safety.

75. None of the parties have drawn the attention of the Court to any Rule or Regulation framed under the Act of 2003 by any authority or appropriate Government prescribing any age with regard to electrical supervisor, save and except the so called offending Rules. Therefore, State Government has not promulgated the so called offending Rules where any prescription on the subject exist.

76. In view of the discussions above, we are not in a position to arrive at a finding that, State Government does not have the requisite competence to prescribe an age bar for the renewal of the license of an electrical supervisor as done by the impugned Rules or that the age bar prescribed under the two impugned Rules violate Article 19 (1) (g) of the Constitution of India.

77. We therefore answer the first issue in the negative and as against the appellants. We answer the second issue in the affirmative and in favour of the State Government, against the appellants.

78. MAT 1116 of 2022 along with all connected applications are dismissed without any order as to cost.