

(2019) 03 UK CK 0118

In the Uttarakhand High Court

Case No : Writ Petition (S Of B) No. 163, 471 Of 2018

Jonit Kumar And Others

APPELLANT

Vs

State Of Uttarakhand & Others

RESPONDENT

Date of Decision : 26-03-2019

Acts Referred:

Companies Act, 1956 — Section 617

Citation : (2019) 03 UK CK 0118

Hon'ble Judges : Ramesh Ranganathan, CJ; Narayan Singh Dhanik, J

Bench : Division Bench

Advocate : Anil Kumar, Pradeep Joshi, D.S. Patni

Final Decision : Disposed Off

Judgement

Ramesh Ranganathan, CJ

1. Though the application, listed before us today, is to fix an early date of hearing, we heard learned Counsel on either side and, with their consent, we are disposing of these writ petitions at this stage.

2. The relief sought in these writ petitions is for a writ of mandamus commanding the respondents to declare the result of the competitive examination and hold an interview as recommended by the Enquiry Authority vide letter dated 7.12.2016; and a writ of mandamus commanding the respondents not to make any recruitment of Assistant Engineers (Trainee) for which petitioners had appeared in the recruitment examination.

3. The petitioners, in both these writ petitions, are employees working in the Uttarakhand Power Corporation Limited. They participated in the selection process, pursuant to advertisement no. UPCL/2015-16/Rectt.-01 published by the respondent-Corporation in January, as in-service candidates. The recruitment process was undertaken by a private agency at the behest of the respondent Corporation. The advertisement stipulated that there would be no maximum age limit for departmental candidates. After a written examination was held, and

before the exercise of conducting interviews could be undertaken, an enquiry was caused on the basis of complaints, made by certain public representatives, and the Enquiry Officer, in his report, pointed out certain discrepancies including that no maximum age limit was stipulated for in-service candidates; and failure to provide copies of the question paper and the answer sheet to the candidates had adversely affected the transparency of the process of selection. On receipt of the report of the Additional Secretary dated 30.10.2016, the impugned order dated 13.12.2017 was passed by the Secretary (Energy) informing the Managing Director of the Uttarakhand Power Corporation Limited that she (i.e. the Secretary) was directed by the Government to cancel the recruitment examination immediately.

4. While several contentions have been put forth by Mrs. Neetu Singh and Sri Anil Kumar, learned Counsel appearing on behalf of the petitioners, we are impressed with the submission that the Secretary (Energy), State of Uttarakhand lacked jurisdiction to pass the impugned order dated 13.12.2017. When we asked Sri Pradeep Joshi, learned Standing Counsel for the State Government, the source of power of the Government to pass an order, of the nature impugned in the writ petitions, relating to recruitment in a State Public Sector Undertaking, learned Standing Counsel would place reliance on Clause 68(iii) of the Articles of Association of the respondent Corporation.

5. The distinction between the Government, and a Public Sector Undertaking under the ambit of Section 617 of the Companies Act, 1956, must be borne in mind. While the respondent company, as a result of its entire share capital being held by the Government of Uttarakhand, would constitute a government company under Section 617 of the Companies Act, it has, in law, an identity distinct and different from that of the State Government. As the company can sue and be sued in its own name, it cannot be treated as a department of the State Government, including as part of the Department of Energy, over which the Secretary (Energy) would exercise control. The respondent Corporation is administered by its Board of Directors, and has a Managing Director as its whole-time executive. Any decision to cancel the selection process, undertaken by the Corporation, can only be taken by the Corporation, and not by the Government.

6. Since reliance is placed by Sri Pradeep Joshi, learned Standing Counsel, on Article 68(iii) of the Articles of Association of the respondent Corporation, it is necessary to refer to the said provision. The said clause reads as under:

"The Government of Uttarakhand may, from time to time, issue directive to the company as to the exercise and performance of its functions in matter involving the security of the State or substantial public interest and to the finances and conduct of business and affairs of the company and, in the like manner, may vary and annul any such directive(s) so issued."

7. Even if the decision of the Secretary (Energy), on the instructions of the Government, is taken to be in substantial public interest, all that Clause 68(iii) of

the Articles of Association of the respondent Corporation enables the Government to do is to issue a directive to the company regarding exercise and performance of its functions. While the said clause confers power on the Government of Uttarakhand to issue directions to the Corporation, it does not confer any power on the Government to take a decision, by itself, to cancel the entire selection process. It could, at best, have issued a direction to the Corporation to cancel the selection process and since, it does appear, that such a direction would bind the Corporation, the Corporation may then be obligated to cancel the selection process. That does not, however, mean that, under the cover of Clause 68(iii), the State Government can, itself, take the decision to cancel the process of selection.

8. Since the Secretary (Energy), and the Government of Uttarakhand, lack jurisdiction to straightway cancel the selection process, the order impugned in these writ petitions is set aside. Suffice it to make it clear that the order, now passed by us, shall neither disable the Government of Uttarakhand to issue necessary directions to the Corporation, under Clause 68(iii) of the Articles of Association, nor the Managing Director of the respondent Corporation to take an independent decision on whether or not to cancel the process of selection. Both the writ petitions are, accordingly, disposed of. No costs.

9. Needless to state that, since the exercise of selection has come to a standstill, both the Government of Uttarakhand and the Managing Director of the respondent Corporation shall take a considered decision in the matter with utmost expedition and, in any event, not later than two months from the date of receipt of a copy of this order.