

(2013) 10 KAR CK 0280
In the Karnataka High Court
Case No : Writ Petition No. 29752 of 2011

Karnataka Public Service Commission

APPELLANT

Vs

The State Commissioner for Persons With Disabilities, The
Principal Secretary, Director Horticulture Department
Government of Karnataka and Principal Secretary
Department of Personnel and Administrative Reforms

RESPONDENT

Date of Decision : 29-10-2013

Acts Referred:

Citation : (2014) 2 KarLJ 410 : (2014) 1 KCCR 503

Hon'ble Judges : Vegi Suri Appa Rao, J

Bench : Single Bench

Advocate : Reuben Jacob, for the Appellant; Shashidhar S. Karamadi, HCGP for R-2 to R4 and Smt. Veena Rai, Human Rights Law Network for R1, for the Respondent

Final Decision : Allowed

Judgement

Vegi Suri Appa Rao, J.—The Karnataka Public Service Commission filed this writ petition for quashing the direction dated 3.5.2011 in Suo-Motto Case No. PDA/ Sec 62/04/11-12/87 passed by the 1st respondent at Annexure-A. Whereby, the Commissioner appointed u/s 60 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1955 passed the following order: 1. The Karnataka Public Service Commissioner, Bangalore, to withhold the recruitment process of 418 posts of Horticulture Assistants, in the Dept. of Horticulture, Govt. of Karnataka vide notification No. PSC 1 RT (4) B-1/2010 dtd. 6.9.2010 and to ensure employment opportunities for the persons with disabilities as per Sec. 2(h) of the Persons with Disabilities Act 1995, which includes the various categories of disabled persons under the Act.

2. The Horticulture Department to re-identify the posts to be reserved for persons with disabilities and ensure employment opportunities to the various categories of persons with disabilities as per the Persons with Disabilities Act 1995

3. The Karnataka Public Service Commissioner to take steps to ensure the proper reservation of posts for persons with disabilities as per the Persons with Disabilities Act 1995 and then notify recruitment notifications.

Aggrieved by the aforesaid order passed by the said Commissioner, the Karnataka Public Service Commission contend that the 1st respondent has no power under any of the provisions of the Act to pass such impugned order or direction. The 1st respondent Commissioner itself filed a public interest litigation before this Court in W.P. No. 13442/2011 (GM-RES) seeking for a direction to the Government and the Commissioner in respect of reservation of vacancies in the appropriate manner in the physically handicapped category which goes to show that the 1st respondent has no power to pass an impugned order. 2. Learned counsel for the petitioner submit that in pursuance the requisition received from the Government of Karnataka, the petitioner-Karnataka Public Service Commission initiated recruitment process for the purpose of recruiting suitable candidates to 418 posts of Horticulture Assistants in the Department of Horticulture, Government of Karnataka, by issuing a Notification dated 6.9.2010 by following the reservation policy. In the meanwhile, on 3.5.2011, the 1st respondent-Commissioner passed the impugned order in Suo-Motu case directing the Commission to withhold the recruitment process in respect of the said 418 posts of Horticulture Assistants.

3. On the interim application filed by the petitioner, this Court granted interim stay of Annexure-A on 11.8.2011. The interim order is continued till today. In the meanwhile, the selection process has been completed for 418 posts of Horticulture Assistants and the result has also been declared and list of selection has been sent to Government for issuing appointment orders.

4. However, the point for consideration in this case is:

Whether the 1st respondent-Commissioner is competent to pass order at Annexure-A directing the petitioner-Karnataka Public Service Commission to withhold the recruitment process for 418 posts of Horticulture Assistants?

5. The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 was introduced in the Lok Sabha in the year 1995 with the main objects to provide for the following:

(i) to spell out the responsibility of the State towards the prevention of disabilities, protection of rights, provision of medical care, education, training, employment and rehabilitation of persons with disabilities;

(ii) to create barrier free environment for persons with disabilities;

(iii) to remove any discrimination against persons with disabilities in the sharing of development benefits, vis-?-vis non-disabled persons;

(iv) to counteract any situation of the abuse and the exploitation of persons with disabilities;

(v) to lay down a strategy for comprehensive development of programmes and services and equalization of opportunities for persons with disabilities; and

(vi) to make special provision of the integration of persons with disabilities into the social mainstream.

5. It is therefore proposed to provide inter alia for the constitution of Co-ordination Committees and Executive Committees at the Central and State levels to carry out the above various functions assigned to them.

6. Section 60 of the Act provides for Appointment of Commissioners for persons with disabilities which reads as under:

60. Appointment of Commissioners for persons with disabilities -

(1) Every State Government may, by notification appoint a Commissioner for persons with disabilities for the purposes of this Act.

(2) A person shall not be qualified for appointment as a Commissioner unless he has special knowledge or practical experience in respect of matters, relating to rehabilitation.

(3) The salary and allowances payable to and other terms and conditions of service (including pension, gratuity and other retirement benefits) of the Commissioner shall be such as may be prescribed by the State Government.

(4) The State Government shall determine the nature and categories of officers and other employees required to assist the Commissioner in the discharge of his functions and provide the Commissioner with such officers and other employees as it thinks fit.

(5) The officers and employees provided to the Commissioner shall discharge their functions under the general superintendence of the Commissioner. (6) The salaries and allowances and other conditions of service of officers and employees provided to the Commissioner shall be such as may be prescribed by the State Government.

7. Section 61 of the Act reads as hereunder:

61. Powers of the Commissioner.--The Commissioner within the State shall-

(a) co-ordinate with the departments of the State Government for the programmes and schemes for the benefit of persons with disabilities;

(b) monitor the utilisation of funds disbursed by the State Government.;

(c) take step to safeguard the rights and facilities made available to persons with disabilities;

(d) submit reports to the State Government on the implementation of the Act at such intervals as that Government may prescribe and forward a copy thereof to the Chief Commissioner.

8. In the instant case, the petitioner-Karnataka Public Service Commission, with the consent of the Government of Karnataka initiated the recruitment process for the purpose of recruiting 418 posts of Horticulture Assistants in the Department of Horticulture and issued a suitable notification dated 06.09.2010 inviting applications from the suitable candidates. After the recruitment process has been started and before completion of the recruitment process, the Commissioner passed the impugned order on 03.05.2011 directing the Karnataka Public Service Commission, Bangalore, to withhold the recruitment process of 418 posts of Horticulture Assistants on the ground that the notification issued by the petitioner appears to be violative of the Act and by the said order, the State Commissioner further directed the petitioner to re-identify the posts to be reserved for persons with disabilities and ensure employment opportunities to the various categories of persons with disabilities as per the Act. Admittedly, the State Commissioner passed the order suo motu without any complaint by any persons covered by the Act.

9. Section 61 of the Act clearly indicates the Commissioner has to submit reports to the State Government on the implementation of the Act and forward the copy thereof to the Chief Commissioner. The order passed by the Commissioner is silent about the violation of the Act. Even if the Commission violates the provisions of the Act, the Commissioner is not competent to withhold the recruitment process taken up by the petitioner with the consent of the Government of Karnataka. At the most, the State Commissioner can bring it to the notice of the Government, if the provisions of the Act are violated by the petitioner in issuing the notification for filling up the posts of the Horticulture Assistants for the benefit of the persons with disability. Further, the Commissioner is supposed to co-ordinate with the Department of the State Government for the programmes and schemes meant for the persons with disability. The State Commissioner has not indicated in the order as to which the provision of the Act is violated by the petitioner in issuing the notification.

10. No doubt, the Chief Commissioner and the Commissioner, for the purpose of discharging their functions under the Act, have the same powers as are vested in a Court under the Code of Civil Procedure. Section 63 of the Act reads as under:

63. Authorities and officers to have certain powers of civil court.--(1) The Chief Commissioner and the Commissioners shall, for the purpose of discharging their functions under this Act, have the same powers as are vested in a court under the Code of Civil Procedure, 1908 (5 of 1908) while trying a suit, in respect of the following matters, namely:--

- (a) summoning and enforcing the attendance of witnesses;
- (b) requiring the discovery and production of any document;
- (c) requisitioning any public record or copy thereof from any court or office;
- (d) receiving evidence on affidavits; and

(e) issuing commissions for the examination of witnesses or documents.

(2) Every proceeding before the Chief Commissioner and Commissioners shall be a judicial proceeding within the meaning of sections 193 and 228 of the Indian Penal Code (45 of 1860) and the Chief Commissioner, the Commissioner, the competent authority, shall be deemed to be a civil court for the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974).

11. In the instant case, there is no complaint from any persons covered by the Act and admittedly the petitioner has provided adequate reservation to physically handicapped persons in the notification itself. Without violation of any of the provisions of the Act, the State Commissioner passed the impugned order withholding the recruitment process suo motu for which, the State Commissioner was not competent to pass such order stalling the recruitment process of the Karnataka Public Service Commissioner without any justifiable cause or reason. Moreover, the first respondent is also not competent to pass such order under the provisions of Section 61 of the Act. Therefore, the impugned order dated 03.05.2011 passed by the first respondent-State Commissioner is hereby quashed. Accordingly, the petition is allowed.