

(2014) 08 BOM CK 0229
In the Bombay High Court
Case No : W.P. No. 8057 of 2013

Laxman

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 14-08-2014

Acts Referred:

Constitution of India, 1950 — Article 226(2)
Electricity Act, 2003 — Section 2(8) 9

Citation : (2015) 5 MhLj 311

Hon'ble Judges : S.V. Gangapurwala, J;A.M. Badar, J

Bench : Division Bench

Advocate : S.S. Patil, Advocate for the Appellant; A.V. Gondhalekar, Additional Government Pleader, Advocate for the Respondent;

Final Decision : Dismissed

Judgement

S.V. Gangapurwala, J.

1. Heard. The unsuccessful candidate in the selection process conducted by respondent Nos. 2 to 4 for the post of Chief Engineer is before the Court.

2. Mr. Patil, learned counsel for the petitioner strenuously contends that the necessary experience and qualification for the post of Chief Engineer which is to be filled in by direct recruitment is laid down in the advertisement itself. As per the advertisement the candidate shall possess 15 years experience in power sector, out of which at least five years in the area of power generation in selection post like Executive Engineer and above out of which one year in the position of Superintending Engineer and above or three years in the position of Superintending Engineer and above.

3. The respondent No. 5 who is selected in the said selection process pursuant to the advertisement does not possess 15 years experience in power sector. The learned counsel submits that respondent No. 5 was appointed with respondent Nos. 2 to 4 in the year 2003. 15 years experience as laid down was required to

be possessed by the candidate as on 20-5-2013. It can only be stated that respondent No. 5 is having experience with power sector only after 2003, as such he does not fulfill 15 years experience in power sector. The service rendered with the public limited Companies, such as L and T (now known as Ultratech Cement) and Ballarpur Industries cannot be said to be an experience in power sector. These industries deal in production of cement and paper. There is no concern of these two companies in power generation, transmission and distribution for commercial use in power sector. Even brochure of these two Companies obtained from Wikipedia through internet and Collector Office would show that their aim and object is production of cement and paper.

4. The learned counsel further submits that electric power sector would mean an energy consuming sector that consist of electricity only and combined heat and power plants whose primary business is to sell electricity and heat to the public. Combined heat and power plants that identify themselves as primarily in the commercial or industrial sectors are reported in these sectors. The learned counsel further submits that even in the list of Industries engaged in power sector which is published the name of these two Companies i.e. L and T now Ultratech Cement and Ballarpur Industries do not appear. The learned counsel submits that the contention of the respondents that the experience rendered by respondent No. 5 with these two Industries can be considered to be an experience in power sector is absolutely erroneous. These two industries are having their plants only for captive power which cannot be said to be a power sector. If the candidate does not possess the necessary qualification then he cannot be selected. The illegality cannot be allowed to be continued. The learned counsel relies on the judgment of the Apex Court in a case of Md. Ashif and Others Vs. State of Bihar and Others, . According to learned counsel, even applying the amplified essential qualification, the respondent No. 5 did not possess the same. The Selection Committee did not have power to relax essential qualification pertaining to experience and in such a case this Court shall interfere. The learned counsel relies on judgment of Apex Court in a case of P.K. Ramachandra Iyer and Others Vs. Union of India (UOI) and Others, . The learned counsel further submits that this Court has jurisdiction to entertain the present Writ Petition as the advertisement was issued in the newspapers of this region. Even the communication was made by the petitioner with the respondents and vice-versa within the territorial jurisdiction of this Court and the appointments could be made anywhere in the State of Maharashtra.

5. The learned counsel for respondent Nos. 2 to 4 submits that no illegality has been committed while conducting selection process. In the test which have been taken, the petitioner secured 203 marks. The respondent No. 5 secured 224 marks and one other candidate Mr. Sanjay Manoharrao Marudkar secured 223 marks. All these three candidates were from OBC category. One post was reserved for OBC category of Chief Engineer. The learned counsel submits that respondent No. 5 holds total experience of 17 years 10 months as on 20-5-2013. The experience of respondent No. 5 in L and T and Ballarpur Industries

(Commissioning and O. and M. of Thermal Power Plant) was considered as power sector experience at the time of selection for the post of Executive Engineer in the year 2003. The qualification was 7 years experience in power sector. Later on respondent No. 5 applied for the post of Deputy Chief Engineer under direct recruitment in the year 2010. His experience was considered on the same grounds. The learned counsel submits that the Head General Manager also considered the aspect about the experience of the petitioner in the thermal power plant with L and T and Ballarpur Industries and observed that the respondent No. 5 holds necessary qualification and experience. The learned counsel relies on the concept of power sector as published in the report of the working group on power for 12th plan by the Government of India, Ministry of Power.

6. Learned counsel also relies on section 2(8) of the Electricity Act, which defines captive power.

7. The learned counsel for respondent No. 5 submits that as the whole selection process was conducted at Nagpur, this Court would not get territorial jurisdiction. No part of cause of action has arisen within the territorial limits of this Court. The learned counsel relies on the judgment of the Division Bench of this Court in the case of VSP Acqua Mist Fire Private Limited Vs. Maharashtra State Electricity Transmission Co. Limited and Others, , so also the judgment of the Apex Court in a case of Oil and Natural Gas Commission Vs. Utpal Kumar Basu and Others, .

8. The learned counsel further submits that petitioner is having necessary experience. The certificates of having worked in power sector are filed on record. The petitioner has worked in Captive Thermal Power Plant of 46 MW at Awarpur while working with L. and T. The petitioner worked with L. and T. from 1st October, 1997. The power sector consist of:

"(a) Power Generation.

(b) Power Transmission.

(c) Power Distribution.

(d) Power Generation, Transmission and Distribution Equipments Manufacturers.

(e) Power Project Construction.

(f) Power Sector Financers.

(g) Power Traders and Power Exchangers (h) Govt. and Regulatory Bodies.

(i) Power Sector Researchers Academician.

(j) Training and Energy Auditors."

The learned counsel submits that the captive power plant is set up to generate electricity primarily for its own use. The experience has been rightly considered. The learned counsel submits that it is for the authorities to consider the

experience. The entire service profile has been taken into consideration and this Court may not substitute the views of the authorities. The learned counsel relies on the judgment of the Apex Court in a case of Union of India and Others Vs. Lt. Gen. Rajendra Singh Kadyan and Another, , so also judgment in a case of Joginder Singh and others vs. Roshan Lal and others, reported in (2002) 9 SCC 765 , to contend that if the selection process known to law is fair to all then the High Court would have no jurisdiction to go into a question whether Selection Committee conducted the test properly or not. Relying on the judgment of the Apex Court in a case of M. Rathinaswami and Others etc. Vs. State of Tamil Nadu and Others etc., , it is submitted that the question whether the educational qualification is sufficient or not has to be left to the authorities to decide. They have expertise in the same and it is ordinarily not proper for this Court to sit in appeal over their decision. The learned counsel laid emphasis on the judgment of the Apex Court in a case of Jagat Bandhu Chakraborti vs. G.C. Roy and others, reported in (2000) 9 SCC 739 , to contend that it is basically for the experts to determine whether the requisite experience was possessed by the candidate or not. The learned counsel submits that it is only the authority who can take ultimate decision about the candidate possessing proper experience. It is not for the Court to direct or prescribe qualification for a particular post. The learned counsel relies on the judgment of the Apex Court in a case of Sanjay Kumar Manjul Vs. The Chairman, UPSC and Others, .

9. We have considered the arguments canvassed by the learned counsel for respective parties, so also the pleadings and the documents. As far as objection of jurisdiction raised by respondent No. 5 is concerned, the same need not detain us. The advertisement was issued for filling in the posts throughout the State of Maharashtra. The petitioner had applied from Bhusawal, Jalgaon. Upon a question being asked to the learned counsel for respondents that in case a candidate was selected, whether he would have been posted at Nagpur only or anywhere in the State of Maharashtra. The learned counsel replied that the selected candidate could be posted any where in the State of Maharashtra, even he could have been posted at Jalgaon. In view of this aspect of the matter we do not think that the question of jurisdiction would arise. A part of cause of action has arisen within the territorial jurisdiction of this Court. The advertisement was for filling up various posts. There were four (4) posts of Chief Engineer vacant. The petitioner and respondent No. 5 had applied for the post of Chief Engineer. The same was for a vacancy which could be filled in at any place in State of Maharashtra. As such it cannot be said that no part of cause of action has arisen within the territorial jurisdiction of this Court. Even as per Article 226(2) of the Constitution of India, this Court would possess the jurisdiction to try and entertain the present Writ Petition.

10. The major emphasis of the petitioner in challenging the selection and appointment of respondent No. 5 as a Chief Engineer is on the premise that respondent No. 5 does not possess 15 years experience in power sector. As his earlier service with L. and T. and Ballarpur Industries was in thermal power plant

meant for captive use.

11. Section 2(8) of the Electricity Act, 2003 defines captive generating plant which reads as under:

2(8) "Captive generating plant" means a power plant set up by any person to generate electricity primarily for his own use and includes a power plant set up by any co-operative society or association of persons for generating electricity primarily for use of members of such cooperative society or association.

12. The advertisement laid down experience for the post of Chief Engineer thus:

Qualification and Experience as on 20th May, 2013:

The experience acquired by the petitioner since the year 2003 with respondent Nos. 2 to 4 is not disputed. The petitioner had 5 years experience in area of power generation is not disputed. The dispute is on the ground that petitioner has worked in the power plant meant for captive use, the said experience ought not to have been counted. The experience as laid down in the advertisement is that a candidate should have 15 years experience in power sector and out of those 15 years, 5 years in area of power generation in selection post. The Captive generation is defined in section 9 of the Electricity Act, 2003 which reads as under:

"9. Captive generation. -- (1) Notwithstanding anything contained in this Act, a person may construct, maintain or operate a captive generating plant and dedicated transmission lines:

Provided that the supply of electricity from the captive generating plant through the grid shall be regulated in the same manner as the generating station of a generating company."

Perusal of the aforesaid provisions, it is abundantly clear that, the Statute authorises a person for constructing, maintaining or operating a captive generating plant and dedicated transmission lines. The supply of electricity from the captive generating plant through grid is regulated in the same manner as the generating station of a generating Company.

13. The power sector consist of generation, transmission and distribution utilities. The large number of captive plants including cogeneration power plants of varied types and sizes exist in the country, which are utilised in process industry and in-house power consumption. A number of industries set up their captive plants to ensure reliable and quality power. Surplus power, if any, from captive power plants could be fed into the grid as the Electricity Act, 2003 provides for non-discriminatory open access. The captive power plants cannot be said to be alien to the power sector. Captive power plants also are meant for generation and transmission of electricity may be for its own consumption. However, the same would come within the ambit and purview of power sector. The concept of power sector cannot be viewed in a microscopic manner. The concept of power sector is

wide enough to include all sorts of power generating and transmitting plants.

14. Moreover, the members of the Selection Committee are the persons from the power sector. They are the best judge as to whether the person has got sufficient experience in power sector as is required. It is the expert who would basically determine whether the requisite experience was possessed by the respondent No. 5 or not. It is ordinarily not proper for the Court to sit in appeal over their decision, unless it is arbitrary, unreasonable or shocking. The certificates produced on record do show that the respondent No. 5 was involved and associated with power plants with L and T and Ballarpur Industries. The same have been assessed by the Selection Committee.

15. This is not the first time, this experience was being considered. In the year 2010 the advertisement was issued for the post of General Manager. For the post of General Manager, the qualification and experience acquired on account of his services with L. and T. and Ballarpur Industries were counted. Respondent No. 5 was selected as General Manager and appointed as such. The said selection was also challenged by the petitioner. However, subsequently, the said Writ Petition was disposed of as the petitioner sought leave to withdraw the Writ Petition with liberty to file fresh comprehensive representation with the respondent No. 1 therein. The respondent No. 5's appointment as General Manager was intact. Even when the petitioner was appointed in the year 2003 as Executive Engineer, wherein minimum 7 years experience was required in power sector. At that time also earlier experience of the petitioner with L. and T. and Ballarpur Industries captive power plants was considered. As such since 2003 consistently the experience of the petitioner with the captive power project of L. and T. and Ballarpur Industries was considered as a requisite experience in power sector. Considering all the aforesaid aspects of the matter, we do not find any merit in the Writ Petition. The Writ Petition as such is dismissed. No costs.