
(1995) 09 KAR CK 0058

In the Karnataka High Court

Case No : Writ Petition No's. 24431 of 1992 etc.

Manjanna

APPELLANT

Vs

K.S.R.T.C.

RESPONDENT

Date of Decision : 27-09-1995

Acts Referred:

Road Transport Corporations Act, 1950 — Section 34

Citation : (1996) ILR (Kar) 724 : (1995) 6 KarLJ 653

Hon'ble Judges : M.F. Saldanha, J

Bench : Single Bench

Advocate : Ravivarma Kumar, for the Appellant; B.B. Mandappa and Ram Mohan Reddy for R-1 and R-2 and Chidananda Ullal, Government Advocate for R-4, for the Respondent

Final Decision : Allowed

Judgement

Saldanha, J.—These two Petitions raise an issue of deep seated legal propriety. The facts are very brief in so far as in the year 1992, the K.S.R.T.C. who are the main contesting respondents to this case had gone through the process of advertising certain posts of Junior Engineers (Civil Class 3) and the five petitioners were among the various persons who had applied for those posts. The written test was completed and the interviews followed thereafter. The Corporation had also indicated for the information of the candidates concerned the results of the aforesaid tests. Thereafter a very unfortunate situation occurred in so far as it is alleged that some complaints were received by the Government finding fault with the methodology adopted for purposes of recruitment. Pursuant to this, a direction was issued by the Secretary of the Department who is one of the respondents before the Court that interviews should be reheld. From the communication addressed to the Corporation, it appears that the allocation of marks under the different heads at the time of the interview was faulty and therefore directions were issued to recompute the marks in the manner as indicated in the Secretary's letter. This process was

completed in so far as the interviews were held once again and as a result thereof, the results appreciably differed. Consequently, the five persons who are petitioners before the Court were unsuccessful when the appointments were made. Out of the five petitioners before me, one was subsequently appointed and therefore, the dispute survives only vis-a-vis the remaining four.

2. The main contention raised on behalf of the petitioners is that even though the petitioners had not been formally appointed and the selection process came to be revised after it had virtually been completed on the earlier occasion, that they would be justified in law in claiming a relief provided they can demonstrate to the Court that the action which prevented the Corporation from appointing them was total and completely unjustified. In the present case, there is a serious charge of malafide which I shall examine presently. As far as the factual position goes, the petitioners' learned Advocate has demonstrated to the satisfaction of the Court that had the Government not intervened at the stage at which it did, that all the four persons who have been unsuccessful would have been appointed as they come within the prescribed quota under the different heads. The learned Advocate submitted that it is not only the aspect of reasonable expectation that he is canvassing but that he will be able to demonstrate in the present case that even though no formal select list had been published, that as the matter stood, the appointment of the petitioner was an absolute certainty. In support of this, he has taken me through the various allocations under the different categories, the results that had been finally declared and he points out that even if none of the persons in the list had backed out, that all the four petitioners would have been straightaway appointed. He therefore submits that it was not only a reasonable expectation but that their appointment was a certainty and that this process was thwarted through an action that cannot pass legal scrutiny and that the petitioner would still be entitled to a Mandamus to the respondents that the posts in question be awarded to them.

3. The learned Advocate who represents the Corporation has relied heavily on the provisions of Section 34 of the Road Transport Corporation Act, 1950. What he points out is that the State Government is the superior authority and that under this Section, the power vests with the Government to issue general directions which are required to be followed by the Corporation which may include directions relating to the recruitment, conditions of service etc. He emphasised that under Sub-clause (2) of Section 34 the Corporation is bound to follow these directions or instructions. Section 34 of the Act reads as follows;

"The State Government may, after consultation with a Corporation established by such Government, give to the Corporation general instructions to be followed by the Corporation, and such instructions may include directions relating to the recruitment, conditions of service and training of its employees, wages to be paid to the employees, reserves to be maintained by it and disposal of its profits or stocks."

4. The submission proceeds on the footing that the Corporation had no choice

except to follow the directions that had been issued in so far as they came from the Secretary of the Department who in turn was acting under instructions from the Minister. He states that the records seem to indicate that pursuant to certain complaints or representations made to the Government that such directions were issued and as a necessary consequence, that the earlier results were scrapped and the interviews were reheld. Learned Advocate submits that there is no fault whatsoever that can be attributed to the Corporation and that under these circumstances, the petitioners are not entitled to any relief. I need to observe here that the petitioners' learned Advocate has also not alleged any malafides as against the conduct of the Corporation nor has any wrongful act has been attributed to it. He submits that the petitioners are aggrieved by the unjustified intervention on the part of the State Government and that it may be that the Corporation was an unfortunate victim of the situation. This adequately summarises the position because to my mind the Corporation is right when it points out that it had no option except to follow the directions insofar as they came from a supervisory authority namely the State Government.

5. It is basically the learned Government Advocate who is required to defend the action. Though in the reply and in the submissions the contention has been raised that serious complaints were received by the Government calling into question the fairness and legality of the alleged process, the complaints in question have not been produced before the Court. This aspect of the matter is extremely important because the petitioners have cited the then Minister for Transport Sri Aziz Sail as one of the respondents and the Secretary of the Department who issued the directions as one of the other respondents. If the complaints were as genuine or as serious as they are made out to be, then the Department ought to have produced these complaints. I need to point out here that unless it was alleged that there was a serious fraud or that the manner in which the selections had been carried out was so faulty as to legally vitiate them, it was not open either to the Minister or to the Secretary to have intervened in the manner in which they have done. The non-production of the so called complaints lends considerable support to the fact that the charge levelled by the petitioners' learned Advocate that some aggrieved parties who had failed to get selected had moved at these levels and had unfairly got the selection process set aside in order that appropriate instructions can be issued to redo the process in the manner in which it would benefit them. This is an extremely serious aspect of the matter insofar as it would call into question the fairness of the action in question and even if the two respondents were exercising powers u/s 34 to my mind, the action would still be unjustified insofar as it would not constitute a valid exercise of power. One needs to draw a distinction between an authority genuinely and for good reason validly exercising power and an authority misusing the power vested in it. I am unable to hold on the record placed before me that this was a valid exercise of power.

6. There is another aspect to this case in so far as the petitioners' learned Advocate has submitted that the directions contemplated u/s 34 of the Act are

generally directions which are required to emerge after consultation with the Corporation. He is right when he points out that a supervisory authority if for purposes of carrying out important functions or for streamlining various procedural directions or instructions is required to issue orders, that these must be preceded by the process of consultation because Section 34 requires that. The directions in the present case were not preceded by any such consultation nor were they general directions but they constitute only specific interference in the manner in which the interviews had been conducted. I have carefully examined the letter issued by the Secretary and to my mind, the instructions are nothing more than a smoke screen or a cover or written directions which were merely an excuse to redo the interview process. This Court is aware of the fact that during the process of interview a very wide discretion is left to the persons carrying out the interviews. It is not always possible to ascertain as to why certain candidates are supposed to fair extremely well and certain others get very low marks in these interviews but in the manner in which these interviews are conducted, there is scope for favouring persons and prejudicing others. It is in this background, that I have examined the manner in which directions were issued to real lot the marks under different heads and as is not surprising the ultimate result was at a great variance to the earlier one. Even though the candidates were the same, the interview committee was reconstituted. Having examined these aspects of the matter, I am unable to hold that this is a case in which the power was validly exercised and therefore, the setting aside of the final selections would have to be interfered with.

7. A peculiar difficulty arises in service matters of this type in so far as the petitioners' learned Advocate contends that the petitioners must be directed to be appointed to the post from which they were wrongfully withheld. The Corporation's learned Advocate submits that they had not acquired any vested any right in so far as they had not as yet been appointed. He also submits that the vacancies having been filled, it is not possible to appoint the petitioners at this stage. He has, under instructions from the Court ascertained the position and stated that even if the petitioners are ordered to be appointed, that the Corporation has only two vacancies as of today whereas there are four petitioners. At this stage, petitioners' learned Advocate points out to me that the petitioners had been vigilant and had prayed for interim relief restraining the Corporation from appointing other persons in their place. At that stage, the Corporation was permitted to make appointments subject to orders that were to be passed in this Petition and it was further clarified that if the petitioners succeeded, that the Corporation would not plead that circumstance as an obstacle to appoint the petitioners. On behalf of the persons who are appointed and who are respondents, a submission is advanced that almost three years have gone by now and that it would be extremely harsh to dislodge them if the petitioners are required to be appointed in their place. Though by virtue of the earlier Orders of this Court they cannot plead any equities in their favour, I need to point out that as far as these respondents are concerned, that the Court has

to take into account the human factor. I am conscious of certain circumstances namely that these persons had not done anything unfair to get appointed, that the fault if any lay with the Government for having intervened with the selection process at the wrong point of time and in the wrong manner and therefore those respondents should not be punished for the acts of the authorities in question. It is only in these special circumstances that I refrain from directing that the respondents should be dislodged from their jobs.

8. The learned Advocate who represents the Corporation has drawn my attention to a Decision of the Supreme Court reported in Mysore State Road Transport Corporation Vs. Gopinath Gundachar Char, wherein he has pointed out that u/s 34 of the Act, the Corporation is required to act on directions from the State Government and that this position was upheld by the Court even in a situation where the Regulations were yet to be framed. The learned Advocate has thereafter advanced the submission that the petitioners themselves participated in the subsequent selections and therefore would be estopped from now claiming the posts in question. His contention is that having participated in the subsequent process that they are deemed to have waived their earlier objections and even though they have not been selected, they must be held to be precluded from still agitating the old grievance. For this purpose, he has placed reliance on a Decision of the Supreme Court reported in AIR 1978 SC 28 I.L. Honnegowda v. State of Karnataka and Ors.. That was a case in which a successful candidate had questioned the validity of certain Rules relating to the post of the Village Accountant and the Supreme Court in a short Judgment held that he was precluded from doing so. The facts and circumstances in that case are at great variance from the present one and that principle would not apply to the facts of the present case. To my mind, the petitioners were well within their rights to have tried for the subsequent selection and this cannot debar them from still agitating the grievance in relation to the earlier post if they are capable of sustaining the challenge. Lastly, the learned Advocate has drawn my attention to a Decision reported in Union of India and Others Vs. Anand Kumar Pandey and Others, In this case, it was disclosed that certain unfair means had been adopted and the selection process was set aside. On its being challenged, the Supreme Court held that there was no violation of the principles of Natural Justice insofar as on the facts and circumstances disclosed, the authorities were within their rights to have revoked the selection process. The Corporation's learned Advocate draws a parallel from this case because he submits that the Government came to the conclusion that the selection process was vitiated because the interviews had not been correctly conducted and therefore he submits that the cancellation in question cannot be challenged by the petitioners. I need to point out here that the challenge of the petitioners is precisely to the grounds on which the action was taken because it was not established to the satisfaction of this Court that there was anything improper in the original process. On the contrary, I have held that the interference and the exercise of power was unjustified and as a necessary consequence the original selection process would stand revived. The

present situation is therefore distinguishable on facts from the Decision in question. More over, the present challenge is not on the ground of violation of the principles of Natural Justice but it is a direct attack on grounds of malafides which to my mind have been established.

9. Having regard to the aforesaid situation, the Petitions succeed. It is necessary for this Court to mould the relief that can be granted in view of the changed circumstances. Having regard to the passage of time, I have already held that the persons appointed in the place of the present petitioners cannot be discharged from their services and consequently, a direction will follow that the respondent Corporation shall appoint the present petitioners to the posts in question with effect from 1.11.1995. The only reason why I have deferred the effective date is because that the Corporation's learned Advocate has submitted that there are two vacancies and it would not be fair to make a distinction between two of the petitioners as against the other two. The Corporation will have to be given a little time to make necessary arrangements for purposes of appointing all the four persons together. It is however necessary that the Corporation shall observe this direction strictly.

10. Rule is accordingly made Absolute and in the circumstances there shall be no order as to costs.