

(2002) 04 OHC CK 0043

In the Orissa High Court

Case No : Original Jurisdiction Case No. 7516 of 1999

Pradipta Kumar Mohanty

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 10-04-2002

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2002) 2 OLR 96

Hon'ble Judges : P.K. Mohanty, J;P.C. Naik, J

Bench : Division Bench

Advocate : R. Behera, S.A. Nayeem and P.K. Pattnaik in O.J.C. No. 7516 of 1999, G.A.R. Dora, G. Rani Dora and J.K. Lenka in O.J.C. No. 12873 of 2001, A.K. Mishra, J. Sengupta, D. Panda and P.R.J. Dash in O.J.C. No. 14441 of 2001, A.C. Sarangi and A.K. Sarangi in O.J.C. No. 14458 of 2001 and J.K. Rath, S.N. Rath, P.K. Rout, S. Misha, C.K. Rajguru and D.N. Rath in O.J.C. No. 792 of 2002, for the Appellant; A.G.A. for O.Ps. 1 to 4 and N.C. Panigrahi and S.K. Patnaik, for O.P. No. 5 in O.J.C. No. 7516 of 1999, A.G.A. in O.J.C. No. 12873 of 2001, A.G.A. for O.Ps. 1, 2 and 4 and N.C. Panigrahi and S.K. Patnaik, for O.P. 3 in O.J.C. No. 14441 of 2001, A.G.A. for O.Ps. 1, 2 and 4 and N.C. Panigrahi, B.K. Patnaik, P. Sinha, P. Choudhury, S.R. Panigrahi and N.K. Tripathy in O.J.C. No. 14458 of 2001 and A.G.A. for O.Ps. 1 and 2 and N.C. Panigrahi and S.K. Patnaik for OP. 3 in O.J.C. No. 792 of 2002, for the Respondent

Final Decision : Dismissed

Judgement

P.K. Mohanty, J.—In all these writ petitions, common question of fact and law being involved, on the prayer and with consent of the learned counsel for the parties, the writ applications were heard together and are being disposed of by this common order.

2. The brief facts of the case is that the petitioners in all these writ applications are Graduate Engineers in Electrical discipline. They obtained their qualification between 1987 and 1996 and because of non-availability of posts, they remained unemployed. The State Government considering the acute unemployment

problem in respect of Degree Engineers in the State decided as many of them as possible should be given appointment as Stipendary Engineers in the Government Departments and Undertakings including the Corporations on a consolidated stipend of Rs. 2,000/- per month. An advertisement was issued on 18.6.1990 calling upon the unemployed Graduate Engineers to file applications for empanelment and effectual placement. In response thereto about 3300 applicants filed their applications. The Government in their resolution in Planning and Co-ordinate Department dated 22.9.1990 decided the procedure to be adopted for discipline-wise empanelment of the unemployed Engineers for appointment as Stipendary Engineers against the vacancies in different Government Departments and Undertakings, stipulating therein that 25% of the posts shall be filled up on merit basis and for that purpose equal number will be taken from each batch starting from the batch 1984 upto the batch of 1989.

3. The petitioners claim that they have all been empanelled in terms of the Government resolution for being placed as stipendary Engineers in different Government Departments and Undertakings. The second advertisement was issued on 11.8.1991 and the third advertisement inviting names from the Graduate Engineers in order to prepare the panel of stipendary Engineers was issued on 22.8.1994. The petitioners in all these writ petitions have been empanelled and placed in the merit list for placement. According to the petitioners the Government Departments, its Undertakings including the GRIDCO are to appoint Graduate Engineers from the panel prepared by the Government in accordance with the merit list and the procedure laid therein, but cannot have their own recruitment by making fresh advertisement. It is the case of the petitioners that after Electricity Reforms Act came into force with effect from 1.4.1990 the opposite party GRIDCO framed Officers' Service Regulations. It issued office order with regard to question of regularisation of services of the stipendary Engineers in both Electrical and Telecommunication discipline on their permanent absorption in GRIDCO service on Energy Department Notification dated 29.3.1997. It was further decided that steps should be taken promptly to regularise their services with GRIDCO with effect from 1.4.1997, it was further decided that those stipendary Engineers whose names do not find place in the aforesaid select list of the State Government are to be allowed to continue as stipendary Engineers in the existing consolidated pay of Rs. 2,000/- till their cases are considered by the D.P.C. for promotion to the level of Assistant Managers. The stipendary Engineers who are found suitable by the D.P.C. of GRIDCO will be considered and decided separately. The GRIDCO issued an advertisement on 16.4.1998 for filling of the posts of Graduate Engineers in Electrical Engineering as Management Trainees and it was stipulated therein that the candidates sponsored by the State Government from the panel maintained by them will have no age restriction. The Planning and Co-ordination Department intimated the Director, H.R.D., GRIDCO that since the panel has been discontinued with effect from 1.4.1994, there is no scope for the State Government to sponsor any candidates for the Management Trainee post of

GRIDCO from these panel. In these circumstances the original applications received in response to GRIDCO's advertisement was forwarded for necessary action. The GRIDCO was requested to decide with regard to age concession in consultation of Energy Department. On 14.7.1998 the Government in Planning the Coordination Department intimated the GRIDCO to consider the applications/ names of some stipendary Engineers. The Joint Director, P. and C Department wrote a letter to the GRIDCO for recruitment of Management Trainee (Graduate Engineers) in Electric discipline. The GRIDCO Officers' Recruitment Rules were framed on 19.6.2000 by the resolution of the Board in their 57th meeting held on 29.6.2000. The GRIDCO cancelled the advertisement issued for recruitment of Engineers as Management, Trainee on 29.8.2000. The O.H.P.C. Ltd. issued an advertisement for filling of the posts of Management Trainee on 6.9.2000, but on 3.10.2000 the O.H.P.C. wrote a latter to the Government in Energy Department pointing out that All Orissa Unemployed Degree Engineers Association had represented the Corporation that the recruitment will violate the instructions of the Government in this issue and representation was also made to the same effect to the Government. The Chief Minister on 30.9.2000 asked for a discussion and there after the advertisement issued were not acted upon. It is averred that the GRIDCO had appointed Electrical Engineers on contract basis for a period of six months and paid a consolidated salary of Rs. 7500/- per month with Departmental accommodation and Rs. 8500/- without Departmental accommodation during the contract period of service.

4. On 5.10.2001 the GRIDCO issued advertisement inviting application for recruitment to the post of Management trainee in Electrical and Telecommunication Engineering without mentioning the total number of posts. But however, according to the petitioners 300 posts were available to be filled in, but without considering the cases of the petitioners who are continuing without any employment and have been included in the panel are deprived of being absorbed by the GRIDCO by virtue of the advertisement which is the subject matter of challenge in all these cases. Accordingly, the petitioners have prayed for quashing the Advertisement issued by the opposite party-GRIDCO of recruitment and for a direction to appoint the petitioners in terms of the Government resolution and the panel prepared by it.

5. The opposite party-GRIDCO has filed the counter affidavit denying the claim of the petitioners. It is their specific stand that the empanelled list of stipendary Engineers prepared by the State Government in the year 1989-90 was valid up to 30.9.1994 and it was discontinued with effect from 1.10.1994 in terms of the Government instructions. It is stated that the list of stipendary Engineers was prepared by the Government when the O.S.E.B., a statutory body was in existence. The O. S. E. B. was dissolved with effect from 31.3.1996 and the GRIDCO was created with effect from 1.4.1996 in terms of the Orissa Electricity Reforms Act, 1995. When the first advertisement was issued by the GRIDCO on 16.4.1998 the State Government panel was not in existence and none of the petitioners in pursuance to the said advertisement had applied. In pursuance to

GRIDCO's query, the State Government vide their letter, copy of which are Annexure B/3, C/3 and D/3 refused to send any name since there was no valid list in existence. Owing to valid reasons, no appointment could be made and therefore, by resolution dated 19.8.2000 the Board of Directors of the GRIDCO after expiry of the terms of the list resolved that the selection made in pursuance to the advertisement shall cease to operate after one year. A fresh advertisement was issued on 10.9.2001 by the GRIDCO inviting applications for appointment to the post of Management Trainee, but none of the petitioners have applied in response to that advertisement. It is therefore the stand of opposite party GRIDCO that, there exist no valid panel of Graduate Engineer prepared by the State Government nor the GRIDCO is bound to follow the said list and make appointments from the said list, since it is an independent company registered under the Companies Act having its own set of recruitment rules. The petitioners having not made applications pursuant to the advertisement, they are otherwise not eligible to be considered for appointment. The petitioners however refuted the assertions made in the counter by filing a rejoinder.

6. In view of the pleadings of the parties, the main question that needs consideration is, as to whether, the policy decision of the State Government for preparing and preparing a panel of Graduate Engineers in different disciplines for engaging/ appointing them as stipendary Engineers in different Government Departments and Government Undertakings, is binding on the GRIDCO and the GRIDCO is obliged to make appointments of Graduate Engineers in different posts from the said empanelled list prepared by the Government and as to whether the GRIDCO can recruit and appoint its own required staff in accordance with its Service Regulations.

7. The Orissa Electricity Reforms Act, 1995 (hereinafter called as "the Reforms Act") came into force with effect from 1st April, 1996 providing for restructuring of the electricity industry for the rationalisation of the generation, transmission, distribution and supply of electricity for a venue for participation of private sector entrepreneurs in the electricity industry and generally for taking measures for development and management of electricity industry in the State. Section 13 of the Reforms Act contemplates that the Grid-Corporation of Orissa Ltd. incorporated under the provisions of the Companies Act, 1956 with effect from the 20th day of April, 1995 with the main objects of engaging in the business of powers of the State Government u/s 12 thereof and is the principal company to undertake planning and coordination in regard to transmission and to determine the electricity requirements in the State in co-ordination with the Generating Companies, State Government, contiguous States, the Commission, the Regional Electricity Board and the Central Electricity Authority. The GRIDCO so required to discharge such powers, duties and function of the Board including those under the Indian Electricity Act. 1910 and the Electricity (Supply) Act, 1948 or the rules framed thereunder as the Commission may specify in the licence and it shall undertake and duly discharge the powers, duties and functions so assigned. u/s 57 of the Reforms Act, the State Government is entitled to issue all policy

directives and undertake overall planning and coordination as specified in Section 12 and to this extent, the powers and functions of the Board as set out in the Indian Electricity Act, 1910 and the Electricity (Supply) Act, 1948 and Rules made thereunder shall vest in the State Government and the State Government shall coordinate and deal with the Central Government and Central Electricity Authority. The State Government in S.R.O. 254 of 1996 in exercise of its powers u/s 55, Sections 53 and 54 of the Orissa Electricity Reforms Act, 1955, framed a rule called "Orissa Electricity Reforms (Transfer of Undertakings, Assets, Liabilities, Proceedings and Personnel) Scheme Rules, 1996, which seems to have come into force on their publication in the Gazette on 1.4.1996. Under Rule 6(1), all personnel of the Board (Orissa State Electricity Board) who are either in the employment of the Board or deputed to and have been working for the Board on the effective date, shall be subject to transfer as provided in the rules without any further act or thing to be done by the Board the State Government or the personnel, as the case may be. Under Clause (iii), the State Government is to classify the personnel into different groups in so far as practicable having regard to the classification of the undertakings residuary assets and residuary liabilities. Under Clause (iv), upon transfer, the personnel shall form a part of the service of the GRIDCO. It was stipulated therein under Clause (viii) that the transfer of personnel shall be subject to the condition that the terms and conditions of the services applicable to them on the effective date shall not in any way be less favourable to them than those applicable to them immediately before such date and all benefits of their respective services rendered before the effective date shall be recognised and taken into account while fixing the condition of services under the Transferee, except as otherwise provided under the rules. Under Sub-clauses (b), the GRIDCO is authorised to frame Regulations governing the conditions of services of personnel so transferred under the rules. Under Clause (ix) certain service Rules applicable to the Board is to mutatis mutandis applied to such transfer to the GRIDCO until the GRIDCO frames its own rules on the subject and the personnel so transferred are to be guided by such Rules. Under Clause (x)(a), except what has been specifically provided therein in respect of statutory and other scheme and employment related to the matters including provident funds, gratuity and superannuation including all interests and other accruals of the personnel under the benefits of the personnel on the effective date, the transferee of the relevant personnel shall stand substituted for all purposes whatsoever and all the rights, powers and obligations of the Board or the State Government, shall become those of the transferee empanelled by the GRIDCO. Thus, on a reading of the aforesaid provisions of law there cannot be any manner of doubt that the GRIDCO, which is an independent company registered under the Companies Act, is to have its own Rules and Regulations for recruitment and appointment of its staff. The learned counsel for the petitioners have not been able to put their finger on any of the provisions of law wherein the policy of the State Government with regard to the recruitment and appointment is binding and to be followed by the Grid Corporation. The contention of the learned counsel that the policy decision of the Government for recruitment of

Graduate Engineers in different disciplines including that of electrical engineers is binding on the GRIDCO, therefore has to be rejected. The GRIDCO, therefore is fully empowered and competent to appoint its own staff in accordance with its own set of rules, governing recruitment.

8. The matter can also be considered from another angle, as to whether in fact the panel prepared by the State Government of Graduate Engineers in accordance with the policy decision still exists to be acted upon. The Government in Planning and Coordination Department in their letter No. 9830 dated 22.6.1998 addressed to the Director (HRD) Grid Corporation, made it clear that the panel of unemployed Graduate Engineers maintained in Planning and Coordination Department have been discontinued with effect from 1.10.1994 in accordance with the Government orders and therefore there is no scope for the State Government to sponsor any candidate for management training staff of GRIDCO from these panels. It is also indicated that after 1.10.1994, the Government have decided not to engage Stipendary Engineers any further and the Government is to decide only with regard to age concession, if at all it is admissible. The petitioner have tried to controvert such stand by filing a rejoinder, but it is clear from the minutes of Second meeting of the Committee of Minister to examine the problem of unemployed Graduate Engineers held on 5.8.1999, copy whereof has been annexed by the petitioners in O.J.C. No. 14441 of 2001 as Annexure-17 that vacancies in the post of Assistant Engineers is to be referred to the Public Service Commission for recruitment in accordance with the Rules in force and the Graduate Engineers already engaged as stipendary Engineers and those included in the panel will be free to apply for the P.S.C. recruitments. The Stipendary Engineers, who do not qualify in the recruitment conducted by the P.S.C. will be disengaged. It was also decided that the same procedure *mutatis mutandis* shall apply to the post in Public Sector Undertakings and Co-operative Societies. It was also made clear in the aforesaid decision that the Stipendary Engineers will have no right to claim recruitment without qualifying in the P.S.C. or in the recruitment test of other organisations as applicable.

9. In view of the above position, it is manifestly clear that the Government wanted to dispense with the panel of Graduate Engineers since after 1.10.1994 and that any person for recruitment to the post of Assistant Engineer has to qualify in the P.S.C. or recruitment tests, as the case may be. In such circumstances, if the Grid Corporation of Orissa Ltd., which has a set of recruitment rules itself, intends to appoint its own staff and advertised for some posts, the same cannot be faulted nor the petitioners can claim any right for recruitment in view of their names being in the empanelled list without taking recourse to the recruitment procedure, as of right. The contention of the learned counsel for the petitioners that the Grid Corporation having made selection pursuant to the advertisement dated 6.4.1998, there was no reason or rhyme to cancel the same, has no direct bearing in the case and has to be rejected in view of the specific stand taken by the GRIDCO that since no appointment could be

made, the Board took a decision in its meeting dated 19.8.2000 that the terms of the list having expired after lapse of one year, by then the same could not be acted upon. The petitioners not being applicants for the post, could not also challenge its cancellation. The decision of the High Level Committee dated 18.8.1994 to discontinue the panel of Graduate Engineers prepared by the State Government with effect from 1.10.1994, is also not under challenge in this writ petition.

10. In any view of the matter, we do not find any merit in the writ applications calling for our interference in exercising of powers under the writ jurisdiction. The same are accordingly dismissed.

P.C. Naik, J.

11. I agree.