
(2007) 09 GAU CK 0062
In the Gauhati High Court

Sri Ranjit Debnath

APPELLANT

Vs

State of Tripura and Another

RESPONDENT

Date of Decision : 28-09-2007

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 162, 233
Criminal Procedure Code, 1973 (CrPC) — Section 25A

Citation : (2008) CriLJ 250 : (2007) 4 GLT 438

Hon'ble Judges : H.N. Sharma, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

H.N. Sarma, J.—Heard Mr. K.N. Bhattacharjee, learned Counsel for the petitioner and Mr. T.D. Mazumdar, learned Govt. counsel appearing for the respondents.

2. The pleaded case of the writ petitioner is that he is the practicing Advocate since 1989 both in civil and criminal side.

3. The respondents issued an advertisement being No. 01/2007 inviting application in prescribed form for the post of Director and Deputy Director for the State Prosecution Directorate established under Home Department, Government of Tripura. In the said advertisement the qualification laid down for the post of Director Prosecution is stated as follows:

1. The Candidate must possess a Law Degree.
2. The Candidate must be a practicing Advocate for not less than 10 years.

Desirable:

1. Candidate having experience as a prosecution lawyer.

Age:

1. The candidate must have attained the age of 35 years and not exceed the age of 45 years as on 1-8-2007.

4. The aforesaid Directorate of Prosecution has been established by the State Government as per the provision of Section 25A of the Code of Criminal Procedure 1973 which makes necessary provision of the establishment of such a Directorate of Prosecution.

5. The grievance of the petitioner is that Section 25A of the Cr. P.C. does lay down the minimum and maximum qualification as provided in the advertisement nor it has provided the desirable qualification of having experience as prosecution lawyer as stated in their advertisement.

6. By filing CM Application No. 355/07, the petitioner, by amending the writ petition, has also challenge the condition Nos. 3 and 4 of the Notification No. F. 13 (36)-PD/2003 dated 31-7-07 laid down the qualification and age for being appointed a Prosecution Director under the said Directorate in terms of which the impugned advertisement No. 01/2007 was issued.

7. The grievance of the writ petitioner is that Section 25A of the Cr. P.C., not having provided such restrictive qualification regarding age and experience the State Government by issuing the impugned notification dated 31-7-07 cannot fix such qualification by issuing the executive order. According to the learned Sr. counsel by fixing the maximum age, the petitioner has been denied to apply for the said post which is an arbitrary exercise of the power. Learned Counsel further submits that the respondents/authorities by providing the experience as prosecution lawyer as a desirable clause, has excluded the other lawyers who do not have such experience as a prosecution lawyer. It is submitted by the learned Sr. counsel that on both the counts the respondents/authorities have acted in arbitrary and unfair manner to exclude the aspirants for the said post from making an application and accordingly the said clause should be struck down.

8. Mr. Mazumdar, learned Govt. counsel, per contra, submits that with a view to establishment of the prosecution Directorate the Govt. has laid down necessary criteria in the impugned Notification published on 31-7-07 and the said criteria fixed by the Govt. would hold the field. As per the said criteria the Govt. has fixed the maximum age for holding the post of Director Prosecution and Deputy Director Prosecution as maximum 45 years and minimum 35 years. Further, in both the cases, the essential qualification has been laid down as possessing a Law Degree and a candidate should be a practicing Advocate for not less than 10 years and it is further provided that the candidates should have experience as a Prosecution Lawyer for both the cases. Learned Counsel submits that in view of the nature and duty attached to the post the said order cannot be said to be arbitrary or illegal. It is further contended by the learned Counsel that the Article 233 of the Constitution of India providing for appointment of District Judge, necessary other qualifications have been incorporated by framing the relevant Rules and such a course of action in the matter of appointment of an officer is always permissible and consequently there is no merit in this writ petition.

9. I have considered the rival submissions made by the learned Counsel for the

parties.

10. Section 25A of the Cr. P.C. provides for an establishment of a Directorate of Prosecution consisting of a Director as well as Deputy Director Prosecution as it thinks fit. It is also provided therein that for being appointment of Director or Deputy Director of Prosecution, he should have in the practice as an Advocate for not less than 10 years. No other conditions have been laid down u/s 25A of the Cr. P.C. for appointment of a Director and Deputy Director Prosecution.

11. The aforesaid provision makes it abundantly clear that the State Government in establishing a Directorate of Prosecution the eligibility criteria for being appointed a Director or Deputy Director, the minimum qualification has been laid down as a practicing Advocate for not less than 10 years and such appointment shall be made with the concurrence of the Chief Justice of the High Court.

12. The question that falls for adjudication, in the conspectus of the grievance raised by the petitioner is as to whether in the absence of an express prohibition to lay down certain necessary qualification in Section 25A of the Cr. P.C. the State Govt. is precluded from fixing the same and if so to what extent such a power extends.

13. It is no longer *res integra* that the power to make appointment includes the power to prescribe necessary qualifications to select suitable candidate for the post. (See *S. Satyapal Reddy and Others Vs. Govt. of A.P. and Others*, . However, such qualification should be reasonably relevant to the purpose for which the post is created and the function attached to the post. It is the privilege of the employer to decide the relevance of the requisite qualification vis-a-vis the post. The power of the appointing authority to lay down requisite qualifications for recruitment to Govt. service pertains to the domain of policy. (See *The Commissioner, Corporation of Madras Vs. Madras Corporation Teachers' Mandram and others*, , *All India Judges' Association and others Vs. Union of India and other*,

14. Establishment of a Directorate is an execution function of the State. To man the office of such directorate, naturally fixation of the qualification and other service conditions is entitled to be laid down by the State Government. Although Section 25A of the Cr. P.C., provides that the essential qualification to hold the post of Director and Deputy Director should be not less than 10 years of practicing as an Advocate, the State Government is not precluded from the laying down other necessary conditions for such appointment, having reasonable nexus to the post.

15. A set of executive instruction, in this regard, has been issued by the State Government vide impugned Notification dated 31-7-07 laying down the qualification, age, scale of pay, administrative control and other conditions relating to the suitability and fitness. The said instruction also covers the matter relating to the seniority, promotion, retirement, leave, pension, discipline etc. The State Government is empowered under Article 162 of the Constitution of

India to exercise its executive power with respect to which the legislature of the State has the power to make laws. However, in any matter the legislature or the parliament have the power to make laws, the executive power of the State shall be subject to and limited by executive power expressly conferred by the Constitution or by any law made by parliament or Union or authorities thereof. There is no dispute that no statutory Rules regulating the appointment of the Director and Deputy Director prosecution has been framed and in the absence of such statutory Rule, the aforesaid executive instruction issued vide the Notification dated 31-7-07 shall hold the field.

16. In the matter of any public employment the minimum and maximum age to enter into the service are required to be prescribed and such fixation is made looking into the nature and responsibility of the post. In view of the nature and responsibility of the post of Director Prosecution it cannot be said that the fixation of the maximum and minimum age qualification to hold the post of Director Prosecution is arbitrary and/or fanciful. So far the essential qualification for holding the post, it is prescribed u/s 25A of the Cr. P.C. to the effect that the concerned candidate should be in practice as an Advocate for not less than 10 years and appointment would be made in consultation with the Chief Justice of the High Court, the impugned notification has not changed these aforesaid basic qualifications by framing the executive instruction, but looking into the nature and function to be rendered by a Director prosecution it has also been provided that preference would be given to those having experience as a practicing prosecution lawyer. The apparent function of the Director Prosecution is to act and monitor the prosecution cases of the State and the State is the biggest prosecutor and requires to conduct maximum numbers of prosecution cases in dealing with crime and law and order situation of the State. As such fixation of such qualification of having experience as a prosecution lawyer also cannot be said to be arbitrary and illegal. In prescribing such qualifications, there must have some rational with the requirement of the service.

We may profitably rely on the ratio of the decision of the Apex Court in the case of S. Satyapal Reddy and Others Vs. Govt. of A.P. and Others, in this regard.

17. The qualification including the fixation of age as got reasonable nexus to the objects to be achieved by such appointment and the same is neither fanciful, arbitrary or irrational. Such fixation is the prerogative of the State authorities and in the absence of any legal infraction the same cannot be said to be illegal or arbitrary and violation of Article 14 or 16 of the Constitution, as sought to be projected. In view of the aforesaid discussion, I do not find any merit in this writ petition and accordingly the same stands dismissed.