
(1983) 01 OHC CK 0017
In the Orissa High Court
Case No : O.J.C. No. 790 of 1978

Surya Narayan Sahu

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 11-01-1983

Acts Referred:

Constitution of India, 1950 — Article 19(1), 245, 246
Electricity Act, 1910 — Section 37
Electricity Rules, 1956 — Rule 45, 45(1)

Citation : AIR 1983 Ori 131 : (1983) 55 CLT 267

Hon'ble Judges : R.N. Misra, C.J; R.C. Patnaik, J

Bench : Division Bench

Advocate : S. Misra-1, for the Appellant; Govt. Advocate, for the Respondent

Final Decision : Dismissed

Judgement

R.N. Misra, C.J.—The petitioner has been working as a professional Electrical Supervisor. He appeared at an examination held in 1972 and having passed it was granted a class "C" certificate of competency for domestic wiring only up to and including 660 volts. The certificate was renewed from time to time on annual basis and the last renewal was to expire on 10-1-79. The Central Electricity Board in exercise of powers vested u/s 37 of the Electricity Act of 1910 framed a set of rules called "The Indian Electricity Rules, 1956". Rule 45 (1) thereof provided :--

"No electrical installation work, including additions, alterations, repairs and adjustments to existing installations, except such replacement of lamps, fans, fuses, switches, low voltage domestic appliances and fittings as in no way alters its capacity or character shall be carried out upon the premises of or on behalf of any consumer or owner for the purpose of supply to such consumer or owner except by an electrical contractor licensed in this behalf by the State Government and under the direct supervision of a person holding a certificate of competency and by a person holding a permit issued or recognised by the State Government."

A set of regulations were framed by the State Government on 11-11-74 and were published in the State Gazette of Dec. 27, 1974, purporting to be pursuant to Sub-rule (1) of Rule 45 of the Electricity Rules of 1956, to regulate the grant of licence, certificate of competency and permits to electrical contractors, supervisors and electrical workmen. Regulation 2 (a) contemplated an Electrical Licensing Board to be appointed by the State Government and Sub-regulation (b) indicated the constitution of that Board, These Regulations made provision for holding of examinations for different categories. Under the Regulations, Supervisors were to be divided into 3 grades, being Supervisor "A". Supervisor "B" and Supervisor "C". Regulation 25-A provides :--

"Existing holders of Supervisor's certificate of competency of different grades to be brought over to the grade on a par with the Supervisor's certificate of competency issued according to Rule 25.

At present, according to the existing syllabus adopted and examination conducted, three categories of S.C.C., namely S.C.C. "A", S.C.C. "B" and S.C.C. "C" are issued by the Electrical Licensing Board, Orissa. Due to the adoption of the common syllabus, only one category of S.C.C. will be issued. The Board may, therefore, prescribe such conditions or adopt such measure as may be considered necessary for bringing over the existing different categories of Supervisors to one grade on par with the S.C.C. issued on the basis of the examination conducted according to the common syllabus."

A notice was given by the Electrical Licensing Board under Annexure 2 to the following effect :--

"In accordance with the provisions of Rule 25-A of the Regulations under Rule 45 (1) of the Indian Electricity Rules, 1956 published in the Notification No. 29341-EI-III-21/74 dated 11th Nov. 1974 of the Government of Orissa, Irrigation and Power Department, the Electrical Licensing Board, Orissa, have resolved that the following procedures shall be applicable for bringing the different existing categories of Electrical Supervisors to one grade as contemplated under the new rules.

(a) and (b) xx xx xx (c) Persons who are possessing "C" class Supervisor's certificate of competency or have qualified in the written test for Supervisor's certificate of competency "C" class conducted in 1973 (as in the case of the petitioner) will be eligible to appear in a written test in one paper to be specially conducted for them. Besides qualifying in the written test, they will also have to appear and qualify in the viva voce test to be conducted for the existing Supervisors having "B" class competency as in (b) above. If they qualify in both the written and viva voce tests they will be treated as competent Supervisors under the new rules.

Those of the existing Supervisors and candidates who have qualified in the written test held in 1973 and are desirous of becoming Supervisors under the existing rules may avail of three chances and appear in the written and/or viva

voce test as required. Three such examinations both for the written and viva voce tests shall be held within June, 1978 after which there will be only one class of Supervisors operating in the State. As such, those who have not been able to qualify in the tests as required during this period shall cease to function as Electrical Supervisors "C" class or "B" class.

XX XX XX XX"

The petitioner did not qualify himself in terms of the, aforesaid notice but filed this application on 6-6-1978 before his licence expired with effect from 10-1-79 challenging the notice as also the scheme itself.

2. The petitioner has contended, that-

(i) The Regulations made by the State Government are without authority of law and shall be held to be an instance of excessive delegation of authority;

(ii) Conceding that regulations could be made with a view to implementing the Statute and the Rules, they should be prospective and cannot affect those already in the trade;

(iii) Regulation 25-A intended that the Board was to prescribe such conditions or adopt such measures as may be considered necessary for bringing over the existing category of Supervisors to one grade and this power could not be exercised in such manner as to totally exclude existing Supervisors from being brought over; and

(iv) It was wholly inappropriate to enforce an examination for people like the petitioner who had been carrying on his profession for many years and at any rate, experience should have been given its place of importance.

3. A counter affidavit has been filed denying the allegations of the petitioner,

4. Section 37 of the Electricity Act of 1910 authorises that the Central Electricity Board, may make rules to regulate the generation, transmission, supply and use of energy, and, generally, to carry out the purposes and objects of the Act, The Electricity Rules of 1956 had been made under the aforesaid provision of the Act and Rule 45 (1) confers authority on the State Government to regulate grant of licence, certificate and permit. Sub-rule (3) provides that Sub-rule (1) would come into force in respect of a State or a part thereof on such day as the State Government by notification in the official gazette appoint. The Regulations in this case appear to have been made by the State Government with a view to facilitating the working of the scheme in the Rule. Obviously, they are not regulations as defined in Section 2 (37) of the Orissa General Clauses Act of 1937. It may be that Rule 45 did not expressly authorise making of regulations, but that by itself is no ground to strike down the Regulations as being incompetent. A Bench of the Allahabad High Court in the case of Electric Inspector to Govt. of U.P. Vs. R.J. Singh, was considering the validity of the rules made by the State Government of U. P. under Rule 48 of the very same Rules.

That was a case where the Central Electricity Board made rules and conferred power on the State Government to grant and cancel licences. The Court stated (at p. 331):--

"So, even if the Central Electricity Board had conferred, upon the State Government the power to make rules regarding the grant and cancellation of licences it would have been conferment of a new power and not of its own power. What the maxim means is that the power that is delegated to a person cannot be sub-delegated by him to a third person.

The Central Electricity Board itself created the system of licensing electrical contractors and could confer upon the State Government the power of granting and cancelling licences and, also the power of making rules for the grant and cancellation of licences. In this view we receive support from *Amaravathi Motor Transport Co. v. State of Andhra* AIR 1956 AP 232 in which Subba Rao, C. J., as he then was, and Satyanarayana Raju, J. held that Rule 134-A of the Madras Vehicles Rules made by the State Government empowering the Transport Board to delegate certain functions to its Secretary was valid,"

A Bench decision of the Karnataka High Court in the case reported in (1978) 2 KLJ 441 : AIR 1979 NOC 174 (*Venkateswamy K. R. v. State of Karnataka*) supports the same principle. In the instant case, there is no scope for the contention that there is delegation by the delegated authority of any power. The power of the State Government under Rule 45 has been vested in the Licensing Board. According to the petitioner's counsel, in the Karnataka case the power had not been delegated but was being ultimately exercised by the State Government itself. The delegation in the Andhra Pradesh case referred to above was in favour of the Secretary and was found to be valid. We are inclined to take the view that in this case the exercise of power by the Licensing Board is not hit by the maxim *delegatus non-potest delegare*.

5. There is no force in the contention of the petitioner that qualification could not be prescribed for one already in the trade, nor is there any force in the contention that while the Board was intended to bring over the existing category of Supervisors to one grade, the power given for that purpose could not be exercised in a manner which would totally exclude some existing Supervisors from being brought over to the new scheme. With the advancement of science and invention of new machines and availability of new modes of utilising electricity, it has become necessary for new techniques to be learnt for the purpose of laying the lines and handling the jobs connected therewith. Safety for the workmen and the Supervisors as also for those for whom the work is being done is of paramount consideration. The requirement of passing the test prescribed by the State Government has been brought in for that purpose.

This is not a case where the petitioner's right to carry on his profession has been taken away. He has been given reasonable notice and opportunities to obtain the requisite qualification. The scheme under the Regulations provides three annual

opportunities by way of separate chances to obtain the qualification. We may point out that even in course of hearing of this application we suggested to parties that one more opportunity could be provided to the petitioner to obtain the qualification. While the opposite parties were agreeable to extend the opportunity, the petitioner was not prepared to avail such opportunity and take the examination. We do not think, there is any bar for statutory authority prescribing an additional qualification for one already in the trade if for efficiency of the profession that becomes necessary. As we have already pointed out, the necessity in the instant case arises out of considerations of safety.

6. It may be pointed out that the Supervisors were divided into three grades. Those with adequate qualification were taken over as such as Grade "A". Those who had some qualification were required to appear for an oral test and were to be taken over in Grade "B". The residuary professionals were required to take a written examination as also the oral test and were to be adjusted in Grade "C". For the purpose of taking over, three opportunities were given, as already indicated. We are satisfied that the scheme intended to absorb the existing people subject to regulations which, in our opinion, were healthy, justified and appropriate. It may be that the petitioner had the fundamental right to carry on his profession as protected under Article 19(1)(g) of the Constitution. Sub-article (6) authorises imposition of reasonable restrictions on the exercise of the right, and we are satisfied that the qualifications prescribed were intended to prescribe professional or technical qualifications necessary for carrying on the occupation and, therefore, cannot be challenged as being affected by Article 19(1)(g) of the Constitution.

7. Counsel for the petitioner has stated that the petitioner has been in the trade for many years and has been efficiently discharging his work and since the petitioner has gathered sufficient experience, he should have been allowed exemption from the examination. To require the petitioner to take an examination at the belated stage of his career was inappropriate. It has been further argued that the syllabus prescribed is wide, clumsy and irrelevant. It is not for the Court to decide as to what should be the appropriate qualification of a Supervisor. The syllabus does not cover matters unconnected with the subject. The field of human knowledge has been fast expanding. The requirements of professional trades are also widening everyday. In such background, if the State Government or the Licensing Board prescribes the qualifications to be obtained, by the Supervisors, we do not think we should accept the petitioner's stand that these are inappropriate or irrelevant. Full opportunity has been given to the petitioner to obtain the requisite qualification and, as already indicated, we were even prepared to extend another opportunity to him but as he has not agreed to it, we do not think our interference in the matter would be justified.

8. All the contentions of the petitioner fail and the writ application is dismissed. No costs.

Patnaik, J.

9. I agree.