
(2009) 08 KL CK 0029

In the High Court Of Kerala

Case No : Writ Petition (C) No. 12060 of 2006

Venugopal, K.N. and Another

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 07-08-2009

Acts Referred:

Constitution of India, 1950 — Article 320
Kerala Public Service Commission (Additional Functions as Respects the Kerala State Road Transport Corporation) Act, 1970 — Section 3, 3(1)
Road Transport Corporations Act, 1950 — Section 14, 34, 34(1), 34(2), 45

Citation : (2009) 08 KL CK 0029

Hon'ble Judges : Thottathil B. Radhakrishnan, J

Bench : Single Bench

Advocate : T.M. Raman Kartha, Babu Joseph Kuruvathazha, K.I. Sageer Ibrahim, N. Unnikrishnan, P.K. Ibrahim, K.P. Ambika, M. Ramesh Chander, G. Krishna Kumar, M.P. Rethnam and V. Ajith Narayanan, for the Appellant; V. Manu, Government Pleader for Respondent 1, Johnson P. John, S.C., KSRTC for Respondent No. 2, Alexander Thomas, S.C., KPSC for Respondent No. 3 and S. Muhammed Haneeff, Jency Micheal, P. Jayakumar and V.N. Mohanadasan, for the Respondent

Final Decision : Dismissed

Judgement

Thottathil B. Radhakrishnan, J.—These writ petitions relate to the validity of ?The Kerala State Road Transport Corporation (Recruitment of Assistant Transport Officers/Administrative Officers/Depot Engineers) Regulations, 2003?, hereinafter, the ?2003 Regulations?, issued by the Kerala State Road Transport Corporation, the ?Corporation? for short, constituted under the provisions of the Road Transport Corporation Act, 1950, hereinafter referred to as the ?RTC Act?. Among the captioned matters, W.P.(C). 118/09 is filed seeking a direction to cany on with and conclude the selection process commenced in terms of those Regulations in so far as it relates to the 15% quota earmarked for internal recruitment from the Corporation employees, to the posts of Assistant Transport Officers. Among others, W.P.(C). Nos.12938/06 and 37142/08 are filed

challenging the prescription of age limit of 40 years for recruitment of Assistant Transport Officers towards that 15% by internal recruitment. All the other writ petitions are filed by persons who can aspire for appointment as Assistant Transport Officers by promotion.

2. With the materials on record, including the pleadings of the Kerala Public Service Commission, hereinafter, the "PSC" for short, I have heard learned Counsel for parties in these matters.

3. The challenge to the 2003 Regulations is on different grounds. Firstly, it is contended that those regulations have been made without the previous sanction of the State Government in terms of Section 45(1) of the RTC Act as it then stood. It is next contended that the PSC was not consulted though that was a mandatory requirement. Thirdly, it is contended that though, at that point of time, the issuance of notification and its publication in the official gazette were not provided for, the regulations cannot be made operational without them being communicated, at least by circulars, to the employees of the Corporation. It is further contended that the prescriptions made in the 2003 Regulations are arbitrary and amount to hostile discrimination of personnel who, as part of their legitimate expectations, are awaiting avenues of promotion in the regular stream. It is also pointed out that the prescription of qualification has been so done that it is left to be vague to provide fair room for colourable exercise of authority in making the selection. The prescription of educational qualification, without even stating that the qualification prescribed should be from recognised university is criticized as sufficient to show that the intentions behind the 2003 Regulations are oblique. In the two writ petitions challenging the prescription of 40 years as the outer age limit for internal recruitment from the employees of the Corporation, it is contended that such a prescription is irrational and no object could be legitimately treated as sought to be achieved by such a prescription.

4. In supporting the 2003 Regulations, the arguments advanced are that consultation with the PSC is not mandatory, but only directory, as would be discernible from a consideration of the consultative process envisaged by Article 320 of the Constitution of India and so is the manner in which Section 3 of the Kerala Public Service Commission (Additional Functions as respects the Kerala State Road Transport Corporation) Act, 1970, hereinafter, the Additional Functions Act, is couched. It is further argued that the object sought to be achieved by making a provision for internal recruitment is to provide a fast track stream to bring up competent, efficient and competitive youngsters to the higher cadre in a manner conducive to boost the growth of the establishment. It is also argued that consultation may not be necessary since the field occupied by the RTC Act is not one, over which, the State Legislature could have transgressed and made the Additional Functions Act. This submission is made notwithstanding that the Additional Functions Act is not challenged in these writ petitions. It is also argued that even before the writ petitions in hand were filed, this Court had

issued directions in W.P.(C). No. 727/06, on 25-1-2006, requiring the Corporation to proceed to make selection and appointment to the internal recruitment quota. It is argued that by virtue of those directions, the issue raised regarding the sustainability of the provisions in the 2003 Regulations, in so far as they relate to internal recruitment, stands concluded.

5. I may at once notice that in answer to the reliance placed on the aforesaid judgment in W.P.(C). 727/06, the group aspiring for regular promotion would contend but, at least in one writ petition, W.P.(C). 30229/04, there was an interim order issued on 14-10-2004, interdicting the operation of a notification issued in terms of the 2003 Regulations. It has to be recalled that the said writ petition was ultimately allowed by judgment dated 26-11-2008 and that the subject-matter of that writ petition was confined to a notification issued by the Corporation for direct recruitment in terms of the 2003 Regulations with the involvement of the PSC. This Court referred to the above Additional Functions Act and clearly indicated that no appointment of regular nature could be made except in accordance with the provisions of that Act.

6. The Additional Functions Act was preceded by the Kerala Public Service Commission (Additional Functions) Ordinance, 1969, under which, the Kerala Public Service Commission (Consultation by KSRTC) Rules, 1969, hereinafter, the "Consultation Rules", for short, was issued. It was thereafter, while the Consultation Rules were in force, that the Additional Functions Act came into force. By virtue of Section 5 of the Additional Functions Act, notwithstanding the repeal of the aforesaid Ordinance, the Consultation Rules survive. This means that on and from the date of the coming into force of the Additional Functions Act by its publication on 9-2-1970, the Consultation Rules saved to continue to operate, as if they were made under the provisions of the Additional Functions Act.

7. On 7-2-1970, i.e., while the Ordinance was in force, and on the day on which the Additional Functions Act received the assent of the Governor, the Corporation issued an order through its General Manager, in exercise of power u/s 3 of the Ordinance, stating that in the matter of appointment by direct recruitment to the Corporation enumerated thereunder, the PSC shall be consulted. The post of Assistant Transport Officer is at Sl. No. 32 in that order.

8. The Additional Functions Act provides in Section 3(1) thereof that the Corporation may consult the PSC on all matters relating to the methods of recruitment of the officers and servants of the Corporation other than the Chief Executive Officer and the Chief Accounts Officer and on the principles to be followed in making appointments by direct recruitment of the officers and servants of the Corporation other than the aforesaid excluded posts. Consultation is also provided as regards the suitability of candidates for such appointments. In arguments, enormous thrust was given to the use of the word "may" in Sub-Section 1 of Section 3 of the Additional Functions Act in contradistinction to the use of the word "shall" in Article 320 of the Constitution. It was also pointed out

that the Corporation being an authority under the RTC Act, which is a piece of central legislation, consultation could not be compelled and thrust on it by a State Legislation and it may be therefore, that the word "may" is applied in Section 3(1) of the Additional Functions Act so as to provide for consultation, though it may not be mandatory.

9. This takes me to the provisions of the RTC Act. It contains Section 3 providing for the establishment of Road Transport Corporations. The power to establish a Corporation under the RTC Act is with the State Government. Having regard to the various elements that may flow into the decision making process in terms of Clauses (a) to (c) in Section 3, the State Government may establish a Road Transport Corporation. Section 5(2) provides that the Corporation shall have a Board of Directors consisting of a Chairman and such other Directors as the State Government may think fit to appoint. Section 5(3) provides that the State Government may appoint the Vice Chairman of the Board. It is the State Government which is empowered as per Section 8 to remove the Chairman or Directors of the Corporation from office. The State Government is also empowered by Section 8(2) to terminate the appointment of any Director after a notice period, though a Director appointed with the concurrence of the Central Government shall not be removed without the concurrence of that Government. The Managing Director, Chief Accounts Officer and Finance Adviser are to be appointed by the State Government in terms of Section 14 of the RTC Act. These provisions are noticed to reach Section 34 which provides the State Government with the power to issue directions to the Corporation. The State Government is empowered to issue general directions including those 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. The State Government are to issue such directions after consulting the Corporation. When directions are so issued, the Corporation is duty bound to follow them and could deviate from that only with the previous permission of the State Government, going by Sub-Section 2 of Section 34. This conspectus of the powers of the State Government in the management of the Corporation is relevant to decide the interest that the State Government has in relation to the affairs of the Corporation. In this view of the matter, reverting to the provisions of the Additional Functions Act, it needs to be examined whether use of the word "may" by the State Legislature in Section 3(1) is to be excused off as a directory provision, or whether there is anything intrinsic in the Additional Functions Act to hold that consultation is inexcusably mandatory. Though Section 3(1) uses the word "may" in relation to the provision for consultation, Section 4 of that Act while conferring on the Government the power to make rules in consultation with the PSC and the Corporation for carrying out the purposes of the Additional Functions Act provides in Section 4(2)(c) of that Act, in particular and without prejudice to the generality of the provision in sub-section 1 of Section 4, that Rules may provide for any matter in respect of which it shall not be necessary to consult the PSC. Though that provision, as it now stands, was brought in by the

Amending Act of 1990, it is deemed to have come into force on 9-2-1970, the date on which the Additional Functions Act was published in the first instance. When Section 4 empowers the Government to make a rule providing for any matter in respect of which it shall not be necessary to consult the PSC, as a necessary corollary, the legislature clearly intended that, except in cases where the Government makes such a rule, all matters which fall u/s 3 are matters for mandatory consultation. Therefore, the mere use of the word "may" in Section 3(1) does not retain the need for consultation as a directory requirement but provides that it is mandatory that the PSC is consulted in relation to matters which fell u/s 3, unless the State Government exercises the rule making power in Section 4(2)(c) and thereby takes the way in matters in respect of which it shall not be necessary to consult. Even if two views are available in this context, this appears to be the one that commends acceptance, having regard to the public interest involved in the Road Transport Corporation and the indisputable fact that service in the Road Transport Corporation is public service.

10. With the aforesaid view in mind, it also needs to be noticed that from 1970, posts of Assistant Transport Officers stood enlisted for compulsory consultation in relation to selection and appointment.

11. Another plea that requires consideration is as to whether the 2003 Regulations are bad for want of previous sanction of the State Government in terms of Section 45(1) of the RTC Act. While Section 45(1) provides for sanction of the Government for the Corporation to make regulations, Section 34(1) and (2) of the RTC Act provide room for the Government to issue directions of general nature, as already noticed, including on matters affecting the conditions of service. These provisions have to be read harmoniously because the ultimate object sought to be achieved by providing such measures in the RTC Act is to ensure that the Corporation does not do things at its whims and fancies and the State Government does not issue directions as an imposing big brother may do.

12. On facts, it needs to be remembered that the Government do not as such confront the action taken by the Corporation and the Corporation, on its own, does not beseech the directions, if any, issued by the Government. I say this in the context of the submission that the 2003 Regulations were generated by certain advisory role played by the coalition of political parties, which were the participants in the Government in power at the point of time. But a close reading of the minutes of the meeting of a committee, placed on record in one writ petition would show that initially, there was a report by the Chief Secretary to the Government of Kerala which, in turn, was made available for consideration and views of the United Democratic Front, the political coalition, which essentially concurred with whatever the Chief Secretary had stated. In the consultative process that the Chief Secretary had in the process of making that report, the Corporation was also consulted. Ultimately, nothing has turned out against the larger public interest of the establishment, to hold that there was either no consultation or that there was no previous sanction in terms of Section 34 or 45

of the RTC Act. At any rate, with the materials on record, such a plea is unavailable to those challenging the 2003 Regulations.

13. Reverting to the ground reality on facts, as they now stand; after the 2003 Regulations were issued, those aspiring for internal recruitment had obtained a judgment from this Court, in W.P.(C). 727/06, directing that the Corporation will expedite the exercise of completing the selection. It has necessarily to be presumed that by issuing that judgment, this Court never intended to direct the commission of any illegality. Any selection and appointment in relation to the internal recruitment quota of 15%, even on the strength of that judgment, could have been made only in accordance with law. In so far as the direct recruitment quota of 25% is concerned, the notification issued for such open market recruitment otherwise than through the PSC, stands quashed by this Court as per the judgment in W.P.(C). 6198/04. Contrasting the regulations that already stands with the approval of the PSC, it may even be possible to point out that the ratio has been modified by the 2003 Regulations only to the extent it is adverse to the interests of the inservice candidates who could aspire for a fast track internal recruitment and upward movement in the hierarchy. Whatever that be, as of now, the fact remains that in making the 2003 Regulations, the PSC was not consulted. Going by the materials on record, including the plea of the Corporation, not only the PSC, but the State Government also, insists for the consultation procedure to be carried out. Having held above that consultation is mandatory, if I were to answer the other incidental questions as to probable arbitrariness or other grounds on which the 2003 Regulations have been challenged, that would only stultify the consultation process and also deprive the parties to these writ petitions from raising any grounds at a later point of time. Though the PSC is also a constitutional authority, it would stand bound by the verdict rendered by this Court touching the validity of the legislative provisions.

14. It has also to be noted that as of now, there are only two persons who have been appointed against the internal recruitment quota of 15%, though others are pending for consideration for recruitment following the selection process for which notification was issued and applications invited. One of them is stated to be in the border line of the outer age limit prescribed for the recruitment of 15% from the establishment

15. Taking all the aforesaid factors into consideration, it is ordered that the Corporation will immediately take up necessary follow up action to commence and complete the consultation process with the PSC. The State Government will also do the needful and the PSC will ensure that such proceedings are not held up having regard to the fact that the regulations were conceived some time in 2003. As of now, those who have been given the benefit of the 2003 Regulations would continue to enjoy the same provisionally in terms of the orders of appointment issued by the Managing Director in their cases and any selection process could also be completed as regards the 15% internal recruitment candidates and even appointment orders could be issued however that, such

appointment orders and any incumbent joining duty in any such posts, would be provisional and subject to review by the Managing Director on the basis of the final outcome of the consultation process. These writ petitions are ordered accordingly.