

HIGH COURT OF ORISSA: CUTTACK.

O.J.C NO.8432 of 1999

In the matter of an application under Articles 226 and 227 of the Constitution of India.

Debi Prasad Badu Petitioner

- Versus -

Mahanadi Coalfields Limited and others Opp. Parties.

For Petitioner : M/s. B.S. Tripathy-1, J. Sahoo,
H.S. Sahoo and P.S. Das

For Opp. Parties : M/s. Somadarshan Mohanty
and G.C. Das
M/s. S. Mohanty, N.C. Sahoo,
S.P. Panda, D. Mohanty,
S. Pattanaik. P.K. Muduli,
S. Nayak, S. Mohanty & G.C. Das
(O.P.3)

PRESENT:

**THE HONOURABLE SHRI JUSTICE PRADIP MOHANTY
AND
THE HONOURABLE SHRI JUSTICE B.K. PATEL**

Date of hearing - 4.8.2011 : Date of judgment -30.8.2011

B.K. PATEL, J. In this writ application, petitioner has made prayer to quash the written test held on 4.7.1999 by the opposite parties for recruitment to the posts of Junior Overman and Mining Sirdar.

2. Opposite party nos.2 and 3 are Chief General Managers of Jagannath Area and Ib Valley Area respectively under opposite party no.1 Mahanadi Coalfields Limited.

3. Petitioner's case is that he has completed three years Diploma course in Mining Engineering in the year 1993. He worked as an Apprentice Trainee for one year with Mahanadi Coalfields Limited after which he was granted "Certificate of Practical Experience". In the month of February, 1999 opposite party nos.2 and 3 requested different employment exchanges in the State for sponsoring the names of eligible apprentices and other eligible candidates for appointment to the posts of Junior Overman and Mining Sirdar in their establishments. Accordingly, names were sponsored by the employment exchanges. Petitioner directly submitted applications with complete bio-data before opposite party nos.2 and 3 on 26.4.1999. He was communicated with call letters under Annexures-1 and 2 to appear in the written test to be held on 4.7.1999 for appointment to the posts of Junior Overman and Mining Sirdar respectively. However, he was not allowed to appear in the written test. Instead he was handed over with communications under Annexures-3 and 4 to the effect that call letters issued to him were cancelled as his name was not sponsored by any employment exchange. It is averred that not only the petitioner but also several other similarly placed candidates were prevented from appearing in the written test. It is contended that by restricting the choice of recruitment only to the candidates sponsored

through employment exchanges, opposite parties have violated the mandates under Articles 14 and 16 of the Constitution of India.

4. Opposite parties filed counter affidavit stating that the posts of Mining Sirdar and Junior Overman are statutory posts under the Mines Act and Regulations made thereunder. These are very important posts for mining activities and safety in mines. By letters dated 16.9.1998 and 17.12.1998 under Annexures-A/1, the Deputy Director General of Mines Safety issued letters to opposite party no.1 to immediately fill up the vacant posts of Overmen and Mining Sirdars. By letter dated 18.11.1998 under Annexure-B/1 opposite party no.1 sanctioned recruitment though there was embargo on fresh recruitment by Coal India Limited. By requisitions dated 19.12.1998 and 24.12.1998 under Annexure E/1 series, authorities of Jagannath Area requested employment exchange to sponsor the names for appointment as Mining Sirdar and Overman. By letter dated 31.12.1998 under Annexure-F/1 opposite party no.1 apprised the Deputy Director General of Mines Safety regarding the steps taken for the recruitment. 214 names for 30 posts of Mining Sirdar and 166 names for 10 posts of Junior Overman from all over the State were sponsored by employment exchanges to the authorities of Jagannath Area whereas 93 names for 12 posts of Mining Sirdar and 206 names for 8 posts of Junior Overman were sponsored by employment exchanges to the authorities of Ib Valley Area. Petitioner and some others directly submitted applications alongwith their bio-data

to the authorities of Jagannath Area and Ib Valley Area. By letter dated 5.1.1999 under Annexure-C/1, authorities of Jagannath Area sought instructions from opposite party no.1 as to whether there should be open advertisement by publication in the Newspaper. By letter dated 13.4.1999 under Annexure-D/1, specific instruction was issued by opposite party no.1 to consider only the cases of the candidates whose names were sponsored by the concerned employment exchange. As the authorities were required to fill up the vacancies at the earliest and names of adequate number of eligible candidates were sponsored by the employment exchanges, opposite parties proceeded ahead with the recruitment through employment exchanges. It is categorically averred that though petitioner's name had been registered in Talcher employment exchange, his name was not sponsored by the employment exchange as on the date of sponsoring of names, petitioner did not have Overman's Competency Certificate. Petitioner obtained Overman's Competency Certificate on 26.2.1999 and submitted it directly to the authorities of Jagannath Area on 29.4.1999. Petitioner's Overman's Competency Certificate, possession of which is a requisite qualification, under Annexure-G/1 series, would go to show that petitioner did not have the requisite qualification when the names were sponsored by the employment exchange. It is further averred that opposite parties had to proceed ahead with the recruitment expeditiously in view of the fact that any vacancy in the posts of Mining Sirdar and Overman was liable to

attract penal consequences. Due to inadvertence, call letters had been issued to petitioner and other similarly placed candidates though their names had not been sponsored by employment exchanges. On scrutiny, call letters were cancelled.

5. Petitioner filed rejoinder to the counter affidavit reiterating the stand taken in the writ application. It is also averred in the rejoinder that even after sending requisitions to the employment exchanges to sponsor names of eligible candidates, the opposite parties sought clarification from higher authorities as to whether only the candidates whose names were sponsored by employment exchanges would be considered for selection or there should be open advertisement inviting applications. Further, corrigendum was issued by the opposite parties on 11.5.1999 to employment exchanges requesting to read designation of the post to be filled up as "Junior Overman" instead "Overman" as indicated in the original requisitions. On the basis of such averments it is contended that opposite parties had not fixed any cut off date for submission of applications or for sponsoring the names of eligible candidates by the employment exchanges. By the time corrigendum was issued, petitioner was already in possession of Overman's Competency Certificate. Therefore, denial of opportunity to the petitioner of being considered in the impugned selection is not sustainable.

6. Learned counsel for the petitioner vehemently contended that restriction put by the opposite parties on the selection to only those

candidates whose names were sponsored by the employment exchanges is violative of Articles 14 and 16 of the Constitution of India inasmuch as it deprived other eligible candidates of their right of being considered for such posts. It was submitted that requisitions under Annexure E/1 series were sent for the post of Mining Sirdar on 19.12.1998 and for the post of Overman on 24.12.1998 requesting the employment exchange to forward the names of sponsored candidates within 15 days from the date of issue of notification. In the requisitions it was stated that if suitable candidates were not available and were not sponsored within the specific time, opposite parties would be at liberty to release notification for recruitment in the press. It was mentioned in the requisitions that opposite parties were willing to wait and consider applicants from other exchange areas in case local applicants were not available. Also, so far as requisition for the post of 'Overman' is concerned, opposite parties issued a corrigendum on 11.5.1999 to the employment exchange to read designation of the post as 'Junior Overman'. Letter under Annexure C/1 dated 5/6.1.1999 was issued by Deputy Chief Personnel Manager, Jagannath Area seeking clarification from opposite party no. 1 as to whether vacancy was required to be published/advertised in the 'Employment News' and notified in all office notice boards, in response to which letter dated 13/16.4.1999 under Annexure D/1 was issued from the office of opposite party no. 1 to follow the old practice i.e. considering the cases whose names have been

sponsored by the concerned employment exchange in view of administrative convenience. It was argued that seeking of clarification as well as issuance of corrigendum, even after expiry of time stipulated in the requisitions to employment exchange for sponsoring the names of the candidates would go to show that opposite parties had not fixed stipulation of 15 days in the requisitions as the cut off date for receipt of applications. Petitioner having submitted applications with bio-data on 26.4.1999 along with Overman's Competency Certificate dated 26.2.1999, it was obligatory on the part of the opposite parties to consider the petitioner's applications. It was argued that by the date of submission of his applications, petitioner had already obtained required certificate of competency. Therefore, it was not permissible for the opposite parties to deny the petitioner of the opportunity of being considered for the posts. In support of his contentions learned counsel for the petitioner relied upon decisions of the Hon'ble Supreme Court in **Mohinder Singh Gill and another vs. Chief Election Commissioner, New Delhi and others**: 1977 STPL (LE) 8890 SC and **Excise Superintendent Malkapatnam, Krishna District, Andhra Pradesh vs. K.B.N. Visweshwara Rao**: 1996 STPL (LE) 21266 SC as well as decision of this Court in **Susanta Kumar Kar vs. Registrar (Judicial), Orissa High Court, Cuttack**: 83 (1997) CLT 335 and the guidelines in DPE O.M. No. 24 (11)/96 (GL-010/GM dated 2.11.1998).

7. In reply, it was contended by the learned counsel for the opposite parties that due to acute shortage in the posts of Mining Sirdar and Overman, opposite party no.1 was impressed upon by the Director General of Mines Safety to the Government of India under Annexure A/1 series to take immediate action to fill up the vacant posts. Such posts were required to be filled up in the interest of safety of the mines. Keeping the posts vacant involved penal consequences. In such circumstances, expeditious steps were taken to fill up the vacancies by requesting the employment exchanges to sponsor the names of eligible candidates within 15 days. Employment exchange duly sponsored the names of eligible candidates. As applications were received directly from some persons, clarification was sought for from the Head Office as to whether selection was to be restricted to the candidates whose names were sponsored by the employment exchange which was an internal communication between Jagannath Area and opposite party no. 1. Also, it was detected that in the requisitions wrongly the post of Junior Overman had been mentioned as Overman. Therefore, a corrigendum was issued for rectification of inadvertent typographical error. The clarification and corrigendum, it was contended, cannot be construed to have extended the cut off date for receipt of names from the employment exchange. Admittedly, it was submitted, possession of Overman's Certificate of Competency is a requisite qualification for appointment to the posts of Mining Sirdar and Overman and such certificate was issued

to the petitioner on 26.2.1999. Therefore, employment exchange could not have sponsored the name of the petitioner. As petitioner's name was not sponsored by the employment exchange, call letters inadvertently issued to the petitioner to appear in the written selection test were cancelled. A plain reading of call letters under Annexures 1 and 2 would reveal that petitioner was wrongly called to appear for written test on the assumption that his name had been sponsored by the employment exchange. Therefore, upon scrutiny, the error was rectified and call letters were cancelled.

8. It is obvious that grievance of the petitioner in this case is non-consideration by the opposite parties of his candidature for the posts of Mining Sirdar and Overman. It is also not disputed that Overman's Certificate of Competency which is a requisite qualification for consideration for the above said posts was issued to the petitioner on 26.2.1999. Petitioner's name was not sponsored by the employment exchange. Opposite parties had required the employment exchange to forward particulars of eligible candidates within 15 days in view of urgency of situation to fill up vacant posts of Mining Sirdar and Overman. In course of his argument, learned counsel for the petitioner made an attempt to argue that though initially opposite parties took the stand that petitioner's case was not considered for selection as his name was not sponsored by the employment exchange, in this writ application opposite parties had taken new ground by urging that the petitioner was

not in possession of Overman's Competency Certificate on the date of sponsoring of the names of the candidates by the employment exchange. Placing reliance on decision of the Hon'ble Supreme Court in **Mohinder Singh Gill and another vs. Chief Election Commissioner, New Delhi and others** (supra), it was argued that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons. Otherwise, an order bad in the beginning may, by the time it comes to court on account of a challenge, gets validated by additional grounds later brought out. However, it is the consistent stand of the opposite parties that call letters issued to the petitioner were cancelled as his name was not sponsored by the employment exchange. Petitioner has not challenged the action of the employment exchange in not sponsoring his name and the employment exchange is not a party to this application. It is not disputed by the petitioner that Overman's Competency Certificate was issued to him long after the date of sponsoring of names by the employment exchange. Therefore, decision in **Mohinder Singh Gill and another vs. Chief Election Commissioner, New Delhi and others** (supra) is of no assistance to the petitioner.

9. In the requisitions opposite parties had requested to the employment exchange to forward names of suitable candidates within 15 days from the date of requisition. The stipulated period was never extended by the opposite parties. It is evident that having received some

applications directly from the candidates there was internal communication between the authorities of Jagannath Area and opposite party no. 1 regarding the issue as to whether selection be confined among the candidates whose names were sponsored by the employment exchange or advertisement was required to be issued inviting applications from open market. Specific instruction was issued by opposite party no. 1 to confine the selection among the candidates whose names were sponsored by the employment exchange. Corrigendum under Annexure E/1 series to the employment exchange related to rectification of the designation of post of Overman as Junior Overman. Neither the corrigendum extended the date of forwarding of the names by the employment exchange nor the corrigendum contemplated consideration of applications received directly from the candidates. In none of the decisions relied upon by the learned counsel for the petitioner, it has been laid down that recruitment shall not be confined among the candidates whose names were sponsored by the employment exchange. Rather, placing reliance upon decision of the Hon'ble Supreme Court in **Excise Superintendent Malkapatnam, Krishna District, Andhra Pradesh vs. K.B.N. Visweshwara Rao** (supra), it has been held by this Court in **Susanta Kumar Kar vs. Registrar (Judicial), Orissa High Court, Cuttack** that sponsorship through the medium of employment exchange would not violate Articles 14 and 16 of the Constitution of Indian. In DPE office memorandum dated 2.11.1998 also

it has been provided that Public Sector Enterprises are required to make recruitment through employment exchange. In addition, it has been provided that the requisitioning authority may arrange for the publication of recruitment notice keeping in view administrative/budgetary conveniences. In the present case, it is noted that opposite parties have elaborately pointed out urgency in the matter of requisition for expeditious filling up the vacancy posts of Mining Sirdar and Overman. Therefore, the procedure adopted by the opposite parties for the impugned selection is neither violative of Articles 14 and 16 of the Constitution of India nor against the guidelines prescribed in the office memorandum.

10. In view of the above, this Court finds the petitioner to have made out no ground for interference with the impugned selection. Hence, the writ petition is dismissed.

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B.K.Patel,J.

Pradip Mohanty, J. I agree.

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Pradip Mohanty,J.