GAHC010016522019

THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C) 514/2019

1:AJOY KUMAR BHATTACHARYYA
S/O LATE ANANDA CHANDRA BHATTACHARYYA,
R/O QUARTER NO. B PLUS 2, ASSAM GAS COMPANY LTD. P.O. DULIAJAN,
DIST.DIBRUGARH, ASSAM, PIN - 786602.

VERSUS

1:THE STATE OF ASSAM AND 3 ORS.
REP. BY THE CHIEF SECRETARY TO THE GOVT. OF ASSAM,
DISPUR, GUWAHATI - 781006.

2:THE ADDITIONAL CHIEF SECRETARY
TO THE GOVT. OF ASSAM

PUBLIC ENTERPRISES DEPARTMENT

DISPUR
GUWAHATI - 781006.

3:THE ADDITIONAL CHIEF SECRETARY TO THE GOVT. OF ASSAM
INDUSTRIES AND COMMERCE DEPARTMENT

DISPUR
GUWAHATI – 781006.

4:THE ASSAM GAS COMPANY LTD.
REP. BY THE MANAGING DIRECTOR
DULIAJAN
DIST. DIBRUGARH
ASSAM

PIN - 786602

B E F O R E

HON'BLE MR. JUSTICE N. KOTISWAR SINGH

JUDGMENT AND ORDER (CAV)

Advocates for the petitioner: Mr. K.N. Choudhury, Senior Advocate
Mr. R.M. Deka, Advocate
Mr. D.J. Das, Advocate
Mr. B.K. Kashyap, Advocate

Advocates for respondents: Mr. D. Das, Senior Advocate
Mr. A. Kalita, Advocate.
Mr. M. Mahanta, Advocate

Date of hearing : 04.04.2019
Date of judgment : 30.04.2019

Heard Mr. K.N. Choudhury, learned senior counsel assisted by Mr. R.M. Deka, learned counsel for the writ petitioner. Also heard Mr. D. Das, learned senior counsel assisted by Mr. A. Kalita, learned counsel for the Assam Gas Company Ltd. and Mr. M. Mahanta, learned Standing Counsel for the Industries & Commerce, Government of Assam.

2. The present writ petition has been filed by an in service candidate challenging the fixation of the upper age limit in the advertisement for appointment to the post of Managing Director of the Assam Gas Company Limited (AGCL) by which the petitioner has been kept out of reckoning for consideration for appointment to the said post.

3. The petitioner is presently serving as a Deputy General Manager (Technical) in the DNP Limited and was earlier serving in various capacities in the Assam Gas Company Ltd. after entering service therein as an Assistant Engineer (Mechanical) in 1985.

4. The Respondent no. 3 issued an advertisement dated 6.10.2018 for appointment to

the post of General Manager of Assam Gas Company Limited by publishing it in the Daily Local News, *Assam Tribune,* wherein the eligibility criteria as regards age was notified by showing the minimum age of the applicant to be not less than 45 years and maximum age not to exceed 57 years for outside candidates as on 1st October, 2018. It was also notified that the age of superannuation is 60 years. While fixing the maximum age limit for outside candidates as 57 years, there was no such stipulation for the in-service candidates. Another advertisement was issued on the same day for the same post where the maximum limit was fixed as 57 years for outside candidates as on 1.10.2018. The petitioner whose date of birth is 31.12.1960 applied for the said post and he completed 57 years on 31.12.2017. As far as the other terms and conditions for appointment to the said post are concerned, no issue has been raised in this petition.

5. The petitioner contended that though he was allowed to submit his application in terms of the initial advertisement issued on 6.10.2018 and was expecting to be called for interview, he was not called for the same and the interview was held without considering him. It is stated that later on the petitioner came to know that he was not called for interview on the purported ground that he had crossed the maximum limit of 57 years as on 1.10.2018.

Being aggrieved, he has filed this writ petition.

6. The petitioner contended that the Assam Gas Company Limited was bound by the guidelines issued by the Public Enterprises Selection Board, Department of Personnel and Training, Ministry of Personnel Public Grievances & Pension, Government of India, New Delhi in the matter of appointment to the post of Managing Director of the Company, which provide for relaxation of maximum age for in service candidates by one year i.e. in-service candidates upto the age of 58 years could apply for such post, where the age of superannuation is 60 years.

7. The aforesaid submission of the Ld. Senior Counsel for the petitioner is based on the following premises.

7.1 It is not in dispute that the Assam Gas Company Ltd. is engaged in certain business activities involving natural gas associated with petroleum and other crude oil. As far as the subject relating to natural gas, petroleum gas etc. is concerned, this is clearly covered by

Entry No.53 of List I of the 7th Schedule of the Constitution which deals with regulation and development of oil fields and mineral oil resources; petroleum and petroleum products; other liquefied substances declared by the Parliament by law to be dangerously inflammable and not covered by Entry No. 25 of the State List.

7.2 Learned Senior Counsel for the petitioner submits that Entry No. 25 of the State list/List No. II which mentions of "gas and gas-works", is relatable only to gas-works only and the word "gas" used therein does not extend to natural gas or petroleum products as the same has been finally determined by the Hon'ble Supreme Court in ***Association of Natural Gas and Others Vs. Union of India and Others (2004) 4 SCC 489***.

It has been submitted that in the aforesaid decision, the Hon'ble Supreme Court had very categorically held that "gas" referred to under Entry No. 25 of List II does not include natural gas or liquefied natural gas for which reference may be made to Para Nos.43 & 44 of the aforesaid judgment, which are reproduced hereinbelow.

> "*43. Natural gas being a petroleum product, we are of the view that under Entry 53 List I, Union Govt. alone has got legislative competence. Going by the definition of gas as given in Section 2(g) of the Gujarat Act wherein "gas" has been defined as "a matter of gaseous state which predominantly consists of methane", it would certainly include natural gas also. We are of the view that under Entry 25 List II of the Seventh Schedule, the State would be competent to pass a legislation only in respect of gas and gas-works and having regard to collocation of words 'gas and gas works', this Entry would mean any work or industry relating to manufactured gas which is often used for industrial, medical or other similar purposes. Entry 25 of List II, as suggested for the States, will have to be read as a whole. The expressions therein cannot be compartmentally interpreted. The word 'gas' in the Entry will take colour from other words 'gasworks'. In Ballantine's Law Dictionary, 3rd edition, 1969 'Gas Works' is defined as "a plant for the manufacture of artificial gas". Similarly in Webster's New 20th Century dictionary, it is defined as "an establishment in which gas for heating and lighting is manufactured". In the www.freedictionary.com 'gas works' is explained as "a manufactory of gas, with all the machinery and appurtenances; a place where gas is generated." The meaning*

of the term 'gas works' is well understood in the sense that the place where the gas is manufactured. So it is difficult to accept the proposition that 'gas' in Entry 25 of List II includes Natural Gas, which is fundamentally different from manufactured gas in gas works. Therefore, Entry 25 of List II could only cover manufactured gas and does not cover Natural Gas within its ambit. This will negative the argument of States that only they have exclusive powers to make laws dealing with Natural Gas and Liquefied Natural Gas. Entry 25 of List II only covers manufactured gas. This is the clear intention of framers of the Constitution. This reading will no way make that entry a 'useless lumber' as feared by the States, because Natural Gas was never intended to be covered by that entry. It is also difficult to accept the argument of States that all 'gas' could be categorized as dangerously inflammable and thus arriving at the conclusion that Natural Gas is also covered in State List because this differentiation is based not on the characteristics of gas, but on the manner of its origin. Entry 25 of List II covers the gas manufactured and used in gas works. In view of this specific Entry 53, for any petroleum and petroleum products, the State Legislature has no legislative competence to pass any legislation in respect of natural gas. To that extent, the provisions-contained in the Gujarat Act are lacking legislative competence.

44. In the result, the Reference is answered in the following terms :

> *Q.1. Whether Natural Gas in whatever physical form including Liquefied Natural Gas (LNG) is a Union subject covered by Entry 53 of the List I and the Union has exclusive legislative competence to enact.*
>
> *A .1. Natural Gas including Liquefied Natural Gas (LNG) is a Union subject covered by Entry 53 of List I and the Union has exclusive legislative competence to enact laws on natural gas.*
>
> *Q. 2. Whether States have legislative competence to make laws on the subject of natural gas and liquefied natural gas under Entry 25 of List II of the Seventh Schedule to the Constitution.*
>
> *A. 2. The States have no legislative competence to make Saws on the*

> *subject of natural gas and liquefied natural gas under Entry 25 of List II of the Seventh Schedule to the Constitution.*
>
> *Q. 3. Whether the State of Gujarat had legislative competence to enact the Gujarat Gas (Regulation of Transmission, Supply & Distribution) Act, 2001.*
>
> *A.3. The Gujarat Gas (Regulation of Transmission, Supply & Distribution) Act, 2001, so far as the provisions contained therein relating to the natural gas or liquefied natural gas (LNG) are concerned, is without any legislative competence and the Act is to that extent ultra vires of the Constitution."*

Learned Senior Counsel submits that matters relating to natural gas is squarely covered by Entry No. 53 of List I as held by the Supreme Court in the aforesaid case.

7.3 Learned Senior Counsel for the petitioner has referred to the decision of the Hon'ble Supreme Court in the ***State of West Bengal and Others Vs. Committee for Protection of Democratic Rights, West Bengal and Others (2010) 3 SCC 571***, wherein the scope of Article 246 has been clearly explained in which it has been held that even though the State legislature has exclusive power to make laws for such State with respect to any of the matters enumerated in List II and also power to make laws with respect to any matters enumerated in List III, the same will be subject to laws made by the Parliament in this regard and as if there be conflict between an Entry in List I and an Entry in List II, which is not capable of reconciliation, the power of the Parliament to legislate with respect to the matter enumerated in List II must supersede pro-tanto, the exercise of the power of the State Legislature.

Further, reference was made to the decision of Hon'ble Supreme Court in the case of ***P. Kannadasan and Others Vs. State of Tamil Nadu and Others, (1996) 5 SCC 670*** wherein it has been held that where the Parliament or Union has made a law in respect of any matter relating to List I, to that extent the State is denuded of the power to make any law in that regard.

7.4. Based upon the aforesaid principles, Learned Senior Counsel for the petitioner submitted that in the present case, what is seen is that there is one set of guidelines issued by the Union Government relating to appointments in Public Sector Units (PSUs) and some of these PSUs are involved in and deal with natural gas and petroleum products, which are relatable to Entry No.53 of the Union List and once the Union Government has made certain laws in the form of executive instructions which govern the functioning of these Public Sector Units, to that extent, the State Government would have no authority to make any law with reference to such similar public sector undertakings, and if the same is made, to the extent it is inconsistent, would be inoperative and the law made by the Union Government would prevail.

7.5. It has been submitted that in view of the above, the guidelines issued by the Public Enterprises Selection Board laying down the norms for appointment in Public Section Organizations including matters relating to relaxation of age would be squarely applicable in the present case, and the decision taken by the Assam Gas Company Ltd. which does not provide any relaxation for in service candidates is contrary to the guidelines issued by Public Enterprises Selection Board under the Union Government and to that extent inapplicable.

7.6. It has been submitted that the appointment relates to an organization which is directly involved and dealing with natural gas, which is covered by Entry 53 of the List I.

7.7. Accordingly, it has been submitted that the impugned corrigendum issued on 10.10.2018 to the extent it is inconsistent with the guidelines issued by the Public Enterprises Selection Board would be illegal and void and cannot be implemented by the Company.

7.8. Learned Senior Counsel for the petitioner referring to the Industries (Development and Regulation) Act. 1951 has further submitted that the aforesaid Act was enacted by the Parliament with the stated purpose of taking control of the important industries, activities of which affect the country as a whole and such industries have been specified in the First Schedule to the Act.

Entries 2 (2) and (3) under the heading “Fuels” of the First Schedule to the said Act relate to mineral oil(crude oil), motor and aviation spirit, diesel oil, kerosene oil, divers hydro-carbon oils and their blends including synthetic fuels, lubricating oils and the like; and fuel gases (coal gas, natural gas and the like).

7.9. As provided under Section 2 of the aforesaid Act, the Union Government took under its control the industries mentioned in the First Schedule in the public interest. In view of the above Act, the Union government would have the competency and authority to manage the industries coming under the purview of First Schedule to the Act.

7.10. Accordingly, it has been submitted that since the Assam Gas Company Ltd. is dealing with natural gas, it will come within the purview of the aforesaid Act. Though, it may be managed by the State Government. Hence, the Union government would be competent to frame such rules including executive instructions governing the operation of such industry which would also govern AGCL.

8. On the other hand, Mr. D. Das, learned Senior Counsel for the AGCL has submitted that reliance placed by the writ petitioner on the aforesaid guidelines issued by the Public Enterprises Selection Board, Ministry of Personnel, Public Grievances and Pensions, Government of India is totally misconceived for the simple reason that the Company is a State company registered under the Companies Act to undertake the functions of purchase or otherwise to acquire natural gas associated with petroleum or other crude oil or non-associated natural gas and to collect and refine etc. The Company has been constituted for carrying out the activities mentioned in Para 2 of the Memorandum of Association which essentially is confined to trading and management of the natural gas and other related products and not with exploration of natural gas etc. It has been submitted by the Learned Senior Counsel that the Company being a State Government sponsored company comes under the supervision of the State Government and the Company is answerable to the State Government and not to the Central Government. It has been submitted that the Assam Gas Company Limited is not in any way connected with the Union Government. As such, apart from the Articles of Association which govern the functions of the said Company, it also subject to such decisions taken by the State Government in exercise of its power under Article 166 and not under Article 77 of the Constitution of India.

8.1. It has been contended that however, the petitioner has sought to project the Company as being governed or under the control of the Union of India, so as to bring it within the purview of Public Enterprises Selection Board.

8.2 Learned Senior Counsel for the Company submits that the aforesaid State Public Enterprises Selection Board was created by the Department of Personnel and Training, Ministry of Personnel, Public Grievances Pension, Government of India to keep a close and constant watch on the recruitment and filling of vacancies of various Public Sector Enterprises under the control of the Central Government in connection with which the aforesaid Public Enterprises Selection Board issues policies and guidelines from time to time which have been relied on and referred to by the writ petitioner. However, since the Assam Gas Company Limited does not come under the control of the Central Government, nor the Central Government has any stake in the said Company, the Company would be out of the purview of the Public Enterprises Selection Board meant for the Central government controlled PSUs.

8.3. It has been submitted by the Learned Senior Counsel for the Company that the petitioner is seeking to wrongly project the Company as an enterprise under the Central Government whose activities come within the purview of Entry no.53 of the Union List of the Seventh Schedule of the Constitution of India. Entry no.53 of the Union List deals with regulation and development of oil fields and mineral oil resources; petroleum and petroleum products; other liquids and substances declared by Parliament to be dangerously inflammable. It has been submitted by the learned Senior Counsel for the Company that the purpose and objective for establishing of the Assam Gas Company Limited is nowhere relatable to the aforesaid subject as the Company is not at all concerned with regulation and development of oil fields and mineral oil, petroleum products resources in the State of Assam but is merely engaged in trading and transportation of natural gas as referred to above and as such, the functioning of the Assam Gas Company Limited is not at all relatable to Entry no.53 of the Union List, so as to bring within the purview of the Central Government. It has been submitted that on the other hand, it comes under the purview of Entry No.25 of the State List, which deals with "gas and gas works". Accordingly, it has been submitted that reliance on certain policies and guidelines issued by Public Enterprises Selection Board under the control of the Union Government is misconceived and accordingly, no case is made out for interference by this Court.

8.4. Mr. D. Das, Learned Senior Counsel for Company responding to the submission advanced by the writ petitioner based on ***Association of Natural Gas (Supra)*** submits that reliance by the petitioner on the aforesaid decision of the Hon'ble Supreme Court is misplaced as in the aforesaid case, the Hon'ble Supreme Court was dealing with a statutory enactment made by the State of Gujarat, which was found to be encroaching upon the area of law already made by the Parliament and in the present case there is no such issue involving any statute made by the State of Assam or the Parliament. It has been submitted that the matter purely relates to appointment of a Managing Director of a State run company with which the Union Government or the Parliament has nothing to do.

8.5. Learned Senior Counsel for the Company also submitted that even if assuming that the Union Government has power to issue such guidelines through the Public Enterprises Selection Board, the said guidelines are merely directory in nature and not mandatory and as such, if the State Government had not followed the same, the same cannot be faulted with.

9. On examination of the rival contentions referred to above, it seems the core issue raised in this petition revolves round applicability of the Entry No. 53 of the Union List in the present case, which would determine the fate of the petitioner.

10. The present dispute relates to the eligibility criteria concerning the age for appointment to the post of Managing Director of the Company. As mentioned above, the petitioner claims that he, being an in-service candidate ought to have been given the benefit of relaxation of the upper age limit upto 58 years in terms of the guidelines issued by the Public Enterprises Selection Board, which has been opposed by the Company on the ground that the Company, being a State controlled public enterprise, is not bound by such guidelines issued by the Central Government and will be governed by the criteria adopted by the State Government.

11. Normally, service conditions of the employees of the Union or the State Government are governed by the provisions of Article 309 of the Constitution of India. It is the Parliament or the State Legislature, as the case may be, which is to make the necessary enactments to regulate the service conditions of the employees of the Union or the State Government as the case may be, failing which, power has been delegated to the Union Government or the State Government to frame the service rules under proviso to Article 309 till such enactments are made by the Parliament or the State as the case may be.

12. In the present case, since the post in issue is of a company, the terms of service conditions would normally be governed by the Articles of Association and such Bye-laws or Regulations as may be framed by the Company. As such, the provisions of Article 309 of the Constitution may not be strictly applicable in the present case.

13. However, the principles underlying Article 309 will be applicable as regards the respective fields of operation of law made by the Union Government and the State Government. Since the Respondent Company is a State controlled company, certainly, the State Government would have some say in the management of the Company. As per the Articles of Association of the Company, the Governor of the State has been given significant powers. Regarding allotment of shares, it has been provided that it would be subject to rights of the Governor. Increase or reduction and issue of shares of the Company will be subject to the approval of the Governor as provided under Articles 41, 42, 45 etc. Alteration of Memorandum would require approval of the Governor as provided under Article 46. Borrowing powers of the Company under Article 48 is also depended upon approval of the Governor. Similarly, issue of bonds, debenture etc. would require the approval of the Governor. The Governor would also determine the number of Directors from time to time (Article 92). The Directors, Chairman and Deputy Chairman would be appointed by the Governor under Article 93 and the Governor has the power to remove them. The Managing Director, General Managers, Managers, Financial Advisors and Chief Accounts Officers of the Company are to be appointed by the Governor (Article 94). The powers of the Chairman is also subject to the approval of the Governor in respect of certain matters. Under Article 142, the Governor may, from time to time, issue such directives or instructions as many be considered necessary in regard to the finances, conduct of business and affairs of the Company and the Company shall give immediate effect to the directives or instructions so issued.

14. From the above, it is clear that the Governor has pervasive hold and control over the affairs of the Company and has power to issue such directives or instructions which the Company has to invariably follow. Since the Governor functions and acts with the aid and on the advice of the Council of Ministers as provided under Article 163 of the Constitution, it is the State Government which has effective control over the affairs of the Company.

These are aspects of the Company regarding which there are no disputes in the present proceeding.

It is in this context that the Company, being a State controlled company has to follow the executive instructions, guidelines issued by the State Government.

15. As regards appointment to the post of Managing Director of the Company, there does not seem to be any specific criteria laid down by the Company and the executive instructions or guidelines laid down by the State Government are followed.

16. In view of the above, Learned Senior Counsel for the Company has taken this Court to the Assam Rules of Executive Business, 1968 framed under Article 166 of the Constitution. It has been provided under Rule 54.C (b) of the aforesaid Executive Business Rules that "All appointments to the Board of the Directors and appointments of the Chief Executive of Public Sector Undertakings should be done in consultation with the Public Enterprises Department", indicating thereby that the State Government has the competency and power to issue such guidelines in consultation with Public Enterprises Department in the matters relating to appointment of Managing Director of the Company. It has been submitted that such power and authority of the State to issue such guidelines which emanates from Article 166 of the Constitution of India, has not been challenged by the petitioner and as such the petitioner cannot have any grievance.

17. As regards the aforesaid submission made on behalf of the Company, the Learned Senior Counsel for the petitioner contended that Article 166(3) of the Constitution of India merely lays down the power to the Governor to make rules for convenient transaction of the business of the Government of the State and the power of the State Government to frame such rules or guidelines is not traceable to the aforesaid Article but to Article 162 of the Constitution of India, but such power exercised by the State Government is subject to power of the Union to make laws under Article 73 of the Constitution of India in terms of Article 246.

18. This difference in opinion as regards the power of the State to make the Rules of Executive Business may not detain us. If the Company is controlled by the State Government, the State Government would normally have a say in the matters relating to the affairs of the Company. To that extent, the Rules of Executive Business framed by the State Government

would be applicable, with the caveat, that the activities of the Company must also substantially be out of purview of the power of the Union Government and exclusively within the domain of the State Government.

19. It would, therefore, be necessary to examine the scope of the operation of the Company, to see whether, it is within the exclusive domain of the State Government. If that is so, since it is a State Government controlled Company, the relevant rules of the State Government would be applicable and not the ones framed by the Union Government.

20. That the present Company is a State Government controlled company is not in dispute. But what exactly is the business of the Company? The Memorandum of Association clearly indicates the objects of the Company and the nature of business which is carried on by the Company.

21. The Assam Gas Company Limited is admittedly a profit making and dividend paying company and a public sector undertaking of the State of Assam incorporated under the Company Act, 1956.

Article 1(a) of the Memorandum of the Association mentions the objects for which the Company has been established, that is, to purchase or otherwise acquire natural gas associated with petroleum or other crude products or non-associated natural gas and to collect, treat, refine, store,hold, transport, distribute, use, market, exchange, supply, sell or otherwise dispose of, import, export, trade and generally deal with in any or all kinds of natural gas for any purpose for which natural gas is, or could be, used.

Article 1(b) of the Memorandum of the Association further states that the objects are to purchase either directly or through agents or otherwise acquire liquefied petroleum gas and either directly or through agents to collect, treat, refine, store, hold, exhibit, package, distribute, use market, exchange, supply, sell or otherwise dispose of, import, export, trade and generally deal with in any or all kinds of it for any purpose for which liquefied petroleum gas is, or could be used.

Article 2 mentions the business activities of the Company, which is to carry on business in India, all kinds of business relating to utilization and processing of natural gas in every way, fractionalization or stripping of natural gas, transmission, distribution, supply etc. and various related activities.

From the above, it is very clear that the Company is essentially and primarily dealing with and engaged in trade and business relating to natural gas associated with petroleum or other crude oils and various forms of derivatives of natural gas and other ancillary activities.

22. The aforesaid primary objective for setting up the Company and business activities relates to natural gas and petroleum and allied products which undubitatively comes within the purview of Entry No. 53 of the Union List, as also held in ***Association of Natural Gas (Supra)***

Entry No.53 of the Union List reads as follows:

> "*53. Regulation and development of oil fields and mineral oil resources; petroleum and petroleum products; other liquids and substances declared by Parliament by law to be dangerously inflammable."*

24. The Company is engaged in activities which come within the ambit of Entry No.53 of the Union list. On the other hand, the contention of the Company that its activities come within Entry No.25 of the State List, does not seem to be the correct view. Entry No.25 of the State List reads as follows:

> "*25. Gas and gas-works."*

The scope and ambit of the aforesaid Entry No.25 of the State List had been already discussed by the Hon'ble Supreme Court in ***Association of Natural Gas (Supra)*** referred to above. In view of the above decision, it cannot be said that the activities of the Company as mentioned above, pertain to the field of "gas and gas works" under Entry No.25 of the State list. On the contrary, it pertains to Entry No. 53 of the Union List.

23. The question which arises for consideration in the present case is, whether a company controlled by the State Government which is engaged in certain activities which are relatable to any of the fields covered by the Union List, can ignore the related and ancillary laws governing the aforesaid field made by the Parliament or the Union Government?

24. In this context it may relevant to refer to the provisions of Article 246 of the Constitution. It is clearly provided under Article 246(3) of the Constitution that subject to

Clauses (1) and (2) of Article 246, the Legislature of any State has exclusive power to make laws for such State or any part thereof with respect to any of the matters enumerated in the List II in the Seventh Schedule referred to as the "State List".

Article 246 of the Constitution reads follows:

> **246. Subject-matter of laws made by Parliament and by the Legislatures of States**.—(1) Notwithstanding anything in clauses (2) and (3), Parliament has exclusive power to make laws with respect to any of the matters enumerated in List I in the Seventh Schedule (in this Constitution referred to as the "Union List").
>
> (2) Notwithstanding anything in clause (3), Parliament, and, subject to clause (1), the Legislature of any State also, have power to make laws with respect to any of the matters enumerated in List III in the Seventh Schedule (in this Constitution referred to as the "Concurrent List").
>
> (3) Subject to clauses (1) and (2), the Legislature of any State has exclusive power to make laws for such State or any part thereof with respect to any of the matters enumerated in List II in the Seventh Schedule (in this Constitution referred to as the "State List").
>
> (4) Parliament has power to make laws with respect to any matter for any part of the territory of India not included in a State notwithstanding that such matter is a matter enumerated in the State List.

25. Clause (1) of the Article 246 provides that notwithstanding anything in clauses (2) and (3), Parliament has exclusive power to make laws with respect to any of the matters enumerated in the List I in the Seventh Schedule referred to as the "Union List".

Clause (2) of the Article 246 provides that- notwithstanding anything in clause (3), Parliament, and, subject to clause (1), the Legislature of any State also, have power to make laws with respect to any of the matters enumerated in the List III in the Seventh Schedule referred to as the "Concurrent List".

26. Reading the aforesaid Article would clearly show that the Parliament has exclusive

power to make laws with respect to any of the matters enumerated in the List I and the State Legislature can make laws only in respect of matters under List II. The State Legislature also has power to make laws in respect of the matters enumerated in the List III which however, will be subject to any law made by the Parliament on the same subject.

27. It is now well settled that even if no law has been made specifically by the Parliament or the State Legislature under Article 246 of the Constitution of India, the executive power of the Union to make rules and regulations will extend to matters with respect to which Parliament has power to make laws under Article 73, and similarly under Article 162 the executive power of the State to make rules and regulations shall extend to the matters with respect to which Legislature of the State has to power to make laws.

Therefore, even if no law had been made by the Parliament or State in any of the corresponding subjects, the executive powers of the Union and the State would extend to the subjects in the aforesaid entries in the respective Lists.

If the Union Government had framed certain rules and issued certain guidelines for the management of a body or institution whose activities are relatable to any of the entries in the Union list, to that extent such instruction or guidelines would prevail over any instruction or guidelines issued by the State in respect of the said matter.

28. As regards service rules governing offices or posts coming within the purview of the Union or the State, the same are governed by the respective laws or statutes enacted by the Parliament or the State as the case may be as provided under Article 309 of the Constitution of India.

However, pending such enactment by the Parliament or State as the case may be, the service regulations can be made by the President in respect of services and posts connected with the affairs of Union or the Governor in respect of services in connection with the affairs of the State, as provided under proviso to Article 309 of the Constitution of India.

29. It is nobody’s case that there is any legislative enactment made by the State Government to regulate the service conditions of the employees and posts connected with the Company. If the Company, controlled by the State Government, makes appointments to the posts in the Company, the same will be governed by the executive instructions or

guidelines issued by the State Government in this regard. However, since the Company is dealing with the matters which come within the purview of the Union List, if there be any statutes or executive instructions or guidelines issued by the Central Government, to that extent, such guidelines/statutes/instructions would prevail over those issued by the State Government.

In view of the Clause (1) of Article 246, had there been no such guidelines or instructions or statutes made by the Union Government, there would have been no occasion of any conflict with the guidelines/instructions issued by the State Government. In such an event, there would have been no problem in following the guidelines/instructions issued by the State Government in matters relating to the affairs of the Company, even if the Company was dealing with the matters which come within the purview of the Union List.

30. On the other hand, even if the guidelines issued by the Public Enterprises Selection Board are meant for the Central Public Sector Enterprises, these would be applicable with equal force to the public enterprises set up by the State, if these State enterprises engage in activities which come within the purview of the Union List.

31. In the present case, even if AGCL is admittedly a company exclusively controlled by the State Government in which the Union Government may not have any stake, yet the core activities of the Company relate to matters which fall within the ambit of the Union List, and as such, any instructions or guidelines issued by the Union Government will also be applicable to the State Government enterprise like the AGCL.

32. Once it is held that AGCL is engaged in the business in matters which come within the scope of the Union List, law made by the Parliament or the Union Government will be applicable to it. The ancillary matters relating to the activities of the Company will also be covered by such laws made by the Parliament/ Union Government. Therefore, though the matter relating to service conditions, including laying down the eligibility criteria for appointment to the post in the Company, are not directly covered by any Entry in the Union List, since these are ancillary to the main activities of the Company which are covered by Entry No.53 of the Union List, such ancillary matters relating to appointment to the State company will also be covered by the instructions and guidelines issued by the Union

Government. As mentioned above, the Company is engaged in business in matters which are directly connected with Entry No. 53 of the Union List.

33. This Court is of the view that as regards appointment to the post of Managing Director of the Company which is dealing with natural gas, which is under the Union List is concerned, the Company may follow the instructions and guidelines issued by the State Government, so long as these are not in conflict with such guidelines or instructions issued by the Union government. However, if there are already guidelines and instructions issued by the Union Government in existence in that regard, to that extent, the Company has to follow those issued by the Union Government.

34. One may however, raise this issue that the service conditions for the office of the Managing Director of the Company, is a matter which does not fall under the field occupied by Entry No.53 of List I and is not even remotely connected with the subject matter of Entry No.53, i.e., regulation and development of oil fields and mineral oil resources; petroleum and petroleum products; other liquids and substances declared by Parliament by law to be dangerously inflammable. As such the question of invoking Article 246 may not arise.

35. Of course, matter relating to eligibility criteria for appointment to the posts in the Company is neither covered by Entry No. 53 of the Union List or Entry No. 25 of the State List. But we are dealing with appointment in an organization whose activities fall within an arena which is covered by the subject under Entry No. 53 of the Union List. It may be also noted that the post of Managing Director of the Company is of vital importance, without whom the Company cannot effectively function. At the same time, appointment to the post of Managing Director is certainly an ancillary matter to the main activities of the Company relating to natural gas. It is now well settled that the legislative power conferred by an Entry would extend to all ancillary matters which may fairly and reasonably be said to be comprehended in that topic of legislation.

36. In ***United Provinces v. Mst. Atiqa Begum : (*****AIR 1941 FC 16** at p. **25)** Gwyer, C.J. said,

> "The subjects dealt with in the three Legislative Lists are not always set out with scientific definition. It would be practically impossible for example to define each

> item in the Provincial List in such a way as to make it exclusive of every other item in that list, and Parliament seems to have been content to take a number of comprehensive categories and to describe each of them by a word of broad and general import .... I think however that none of the items in the Lists is to be read in a narrow or restricted sense, and that each general word should be held to extend to all ancillary or subsidiary matters which can fairly and reasonably be said to be comprehended in it. I deprecate any attempt to enumerate in advance all the matters which are to be included under any of the more general descriptions; it will be sufficient and much wiser to determine each case as and when it comes before this Court."

37. In the opinion of this Court, the terms and conditions for appointment to such an important functionary of the Company like the Managing Director of the Company, which is engaged in the activities relating to natural gas, would be an ancillary matter to the main object and purpose for setting up the Company. The terms and conditions of such important offices, would correspondingly depend upon the nature of activities being carried out by the entity and would have a correlation to the peculiar requirements of the entity engaged in a particular activity. Thus there cannot be any doubt that matters relating to appointment to such important post would be ancillary to the main functions of the Company.

38. If the terms and conditions of service for the post of Managing Director of the Company are held to be ancillary to the main functions of the Company, and since the main functions of the Company fall within the ambit of Entry No.53 of the Union List, the rules and regulations or guidelines issued by the Union Government would prevail over any such rules, regulations or guidelines framed by the State Government, in view of Article 246 of the Constitution of India.

39. For the reasons discussed above, the writ petition succeeds.

The impugned Corrigendum dated 10.10.2018 to the Advertisement dated 6.10.2018 isset aside.The petitioner would be entitled to the relaxed upper age limit upto 58 years in terms of the guidelines issued by the Public Enterprises Selection Board under the Department of Personnel and Training, Ministry of Personnel Public Grievances & Pension, Government of India, which provide for relaxation of the maximum age for the in service candidates by one year upto the age of 58 years, where the age of superannuation is 60 years, in the matter of appointment to the post of Managing Director of the Assam Gas Company Ltd.

Since, the petitioner was within the aforesaid relaxed upper age limit on the date of issuance of the Advertisement dated 6.10.2018, he would be eligible for consideration for appointment to the post of Managing Director and hence entitled to be called for interview.

In the result, the petition is allowed by directing the Respondents to call the petitioner for interview for appointment to the post of Managing Director of the Company and the result of the interview will be declared only after considering the case of the petitioner.

JUDGE

Comparing Assistant