

SAJEESH BABU K. A

v.

N.K. SANTHOSH & ORS.
(Civil Appeal No. 7599 of 2012)

OCTOBER 19, 2012 B

[P. SATHASIVAM AND RANJAN GOGOI, JJ.]

Constitution of India, 1950 - Article 226 - Writ-Pétition - Challenging selection for LPG distributorship and the genuineness of the experience certificates produced by the selected candidate - Selection done by qualified persons - Genuineness of the certificates also verified by the selector - Single Judge of High Court quashing the distributorship doubting the correctness of the certificates - Division Bench of High Court affirming the order - On appeal, held: In a matter of selection by Expert Committee consisting of qualified persons in a particular field, normally, the courts should be slow to interfere with the opinions expressed by the experts, unless there is allegation of mala fide against the experts - On facts, selection was by experts, no mala fide was alleged against them - Genuineness of the experience certificate was duly verified - On equity also selection was correct as the selected candidate was unemployed - High Court ought not to have sat as an appellate court on recommendations of the expert committee - Public Distribution - Equity.

Respondent No. 2, a Public Sector Oil Company, engaged in refining of crude oil and marketing of various petroleum products, invited applications for grant of LPG distributorship. 41 persons, including the appellant and respondent No. 1 and 3 applied for the same. Respondent No. 2 selected the appellant after holding interview and evaluating him as per the procedure prescribed under the guidelines. In order to ascertain the genuineness of

A the contents of the experience certificates (Exh. Nos. P2 and P3), respondent No. 2 deputed responsible persons.

Respondent No. 1 filed a writ petition, challenging the genuineness of the experience certificates produced by the appellant. Single Judge of the High Court allowed the petition quashing the distributorship. Writ appeal against the same was dismissed by Division Bench of High Court. Hence the present appeal.

Allowing the appeal, the Court

C HELD: 1. In a matter of appointment/selection by an Expert Committee/Board consisting of qualified persons in the particular field, normally, the Courts should be slow to interfere with the opinions expressed by the experts, D unless there is any allegation of mala fides against the experts who had constituted the Selection Committee. There is no allegation of mala fides against the 3 experts in the Selection Committee. In such circumstances, it would normally be wise and safe for the courts to leave E the decision of selection of this nature to the experts who are more familiar with the technicalities/nature of the work. In the case on hand, the Expert Committee evaluated the experience certificates produced by the appellant herein, interviewed him by putting specific F questions as to direct sale, home delivered products, hospitality/service industry etc. and awarded marks. In such circumstances, the High Court ought not to have sat as an appellate Court on the recommendations made by the Expert Committee. Interference by the High Court exercising extraordinary jurisdiction under Article 226 of the Constitution of India is not warranted. [Paras 15 and 18] [859-C; 861-F-H; 862-A]

2. In addition to the same, it is also asserted by the Corporation and informed to the High Court as well as H to this Court that in order to ascertain the genuineness

of the contents of experience certificates Exh. Nos. P2 and P3, respondent No. 2 deputed responsible persons for verification and, in fact, they met the issuing authority and were satisfied with the correctness of their statement. In view of this aspect, the Single Judge as well as the Division Bench committed an error in interfering with the decision of the Selection Committee. [Para 19] [862-B-D]

3. Even on equity, the appellant is an unemployed M.Tech post-Graduate and the contesting respondent No.1 is working as an Assistant Engineer in the State Electricity Board, in other words, he is fully employed on the date of the selection of LPG distributorship. From any angle, the High Court was not justified in upsetting the decision of the Selection Committee, particularly, in the absence of any mala fides against them and there is no warrant for direction to re-assess the marks of the appellant afresh by excluding the marks for certificates (Exh. Nos. P2 and P3), particularly, in the light of the detailed explanation offered by the respondent No. 2 about the mode of selection. [Para 19] [862-D-F]

The University of Mysore etc. vs. C.D. Govinda Rao and Anr. AIR 1965 SC 491: 1964 SCR 575 - followed.

Basavaiah (Dr.) vs. Dr. H.L. Ramesh and Ors. (2010) 8 SCC 372: 2010 (9) SCR 227 - relied on.

Case Law Reference:

1964 SCR 575 **Followed** **Para 16**

2010 (9) SCR 227 Relied on Para 17

**CIVIL APPELLATE JURISDICTION : Civil Appeal No.
7599 of 2012.**

From the Judgment and Order dated 06.04.2011 of the High Court of Kerala at Ernakulam in W.A. No. 464 of 2011.

A V. Giri, Roy Abraham, Mohammed Sadique T.A. (For C.K. Sasi) for the Appellant.

Vikram Ganguly, S.C. Ghosh (For Parijat Sinha), Siddhartha Chowdhury for the Respondents.

B The Judgment of the Court was delivered by

P. SATHASIVAM, J. 1. Leave granted.

2. This appeal is filed against the final judgment and order dated 06.04.2011 passed by the High Court of Kerala at Ernakulam in Writ Appeal No. 464 of, 2011 whereby the Division Bench of the High Court dismissed the appeal filed by the appellant herein.

3. Brief Facts:

D a) On 27.12.2007, the Bharat Petroleum Corporation Ltd., a Public Sector Oil Company engaged in refining of crude oil and marketing of various petroleum products (in short "the Corporation")-Respondent No. 2 herein invited applications for E grant of LPG distributorship for Edavanna, Malappuram District, Kerala, a distributorship reserved for Scheduled Caste applicants. In total, 41 persons including the appellant and respondent Nos. 1 and 3 herein applied for the grant of licence for the same.

F b) The Corporation, after conducting interviews and evaluating the merits and demerits of the candidates as per the procedure prescribed under the guidelines for the selection of Bharatgas Distributors, selected the appellant herein for grant of licence of LPG distributorship and issued him a Letter of G Intent dated 25.06.2009.

H c) Challenging the genuineness of the experience certificates produced by the appellant herein, Shri N.K. Santhosh-Respondent No.1 herein filed a petition being W.P.(C) No. 7622 of 2010 before the High Court of Kerala.

Learned single Judge of the High Court, by judgment dated 16.03.2011, allowed the petition and quashed the distributorship granted to the appellant herein. A

d) Against the said judgment, the appellant herein filed a Writ Appeal being No. 464 of 2011 before the High Court. The Division Bench of the High Court, by impugned judgment dated 06.04.2011, dismissed the said appeal. B

e) Aggrieved by the said judgment, the appellant has filed this appeal by way of special leave before this Court. C

4. Heard Mr. V. Giri, learned senior counsel for the appellant and Mr. Siddhartha Chowdhury, learned counsel for respondent No.1 and Mr. Vikram Ganguly, learned counsel for respondent No.2-Corporation. None appeared for respondent No.3. D

5. It is the claim of the appellant that the Corporation, after conducting interviews and evaluating the merits and demerits of the candidates as per the procedure prescribed under the guidelines for selection of Bharatgas Distributors, selected him for grant of licence of LPG distributorship for Edavanna, Malappuram District, Kerala. It is also pointed out that as per the tabulation sheet, the appellant had scored highest marks than the other candidates with reference to qualification, experience, age, business ability and personality and was placed in the first position whereas Respondent No.3 herein was placed in the second and respondent No.1 herein was placed in the third position. E F

6. Respondent No.1 herein, who is working in the Kerala State Electricity Board as Assistant Engineer, challenged the selection of the appellant herein before the High Court of Kerala by filing a petition being W.P.(C) No. 7622 of 2010 alleging the genuineness of the experience certificates (Exh. Nos. P2 and P3) produced by him and awarding of more marks on the basis of the same. He further claimed that the Selection Committee G H

- A ought to have preferred his application for LPG distributorship. Learned single Judge allowed the said writ petition holding that the experience certificates submitted by the appellant appear to be totally unacceptable as the appellant while studying M.Tech could not have been possible to work as part-time Marketing
- B Manager and an Insurance Consultant. On this ground, the learned single Judge quashed the grant of licence of LPG distributorship to the appellant and directed the Corporation to re-assess his marks afresh excluding the marks for the experience certificates. The very same decision was affirmed
- C by the Division Bench of the High Court.

7. In order to ascertain the correctness of the decision of the Selection Committee, the order of the learned single Judge setting aside the same and remitting it for fresh consideration as affirmed by the Division Bench, it is desirable to refer the

- D relevant guidelines for selection of Bharatgas Distributors. It is pointed out by the Corporation, in their counter affidavit, before the High Court as well as in this Court that as per Clause 14 of the guidelines, the LPG distributor will be selected on the basis of evaluation of all eligible applicants on the following
- E parameters:

<ul style="list-style-type: none"> a) Capability to provide infrastructure b) Capability to provide finance c) Educational qualifications 	- 35 marks - 35 marks - 15 marks
<ul style="list-style-type: none"> d) Age e) Experience f) Business ability/acumen g) Personality 	- 4 marks - 4 marks - 5 marks <u>- 2 marks</u>
Total	100 marks

- G It is also stated in their counter affidavit that the selection of the appellant was in accordance with the guidelines and norms governing the matter and there is no extraneous consideration in selecting him as an empanelled candidate. It is further explained that the evaluation on the parameters 'a' to 'd' will be
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done on the basis of the information given in the application A and the evaluation on parameters 'e' to 'g' will be done on the basis of the interview.

8. As per the guidelines, the maximum marks for experience in direct sale/home delivered products (including LPG distributorship), other petroleum products and for any other trade are 4, 3 and 2 respectively. It has been further elaborated in the guidelines that marks for the parameter 'Experience' are awarded based on the information furnished in the application for experience of running or working in an establishment for minimum one year and that too on the quality rather than amount of experience. It is the case of the Corporation that the quality of experience will be judged based on the response to the questions relating to experience in direct sale, home delivered products, trade of petroleum products, hospitality/ service industry etc. by the candidates in the interview. In the counter affidavit, it is also specifically stated that the appellant has been awarded with 4 marks for the parameter 'Experience' by the Selection Committee comprising of 3 senior officials of the Corporation who are well qualified and experienced in assessing the required experience for an LPG distributor. It is further explained that 4 marks were awarded to the appellant strictly in accordance with the guidelines for the distributorship of LPG and based on the response to the questions relating to the above in the interview.

9. Before proceeding further, it is relevant to note the decision by the learned single Judge with reference to Exh. Nos. P2 and P3 and the ultimate selection by the Committee. The learned single Judge, in paragraph 4 of his judgment, arrived at the following conclusion:

".....First of all, in Exts. P2 and P3 there is no mention that the second respondent was working part-time. Secondly, ordinarily, it would be very difficult for a M.Tech student to work part-time as a Marketing Manager of a gas distributor and an Insurance consultant. Thirdly,

- A as per Ext.P2 certificate the second respondent was working as Marketing Manager in Malappuram from December 2005 to March 2007. Ext. P3 certificate certifies that the second respondent worked as an Insurance consultant with Bajaj Allianz Life Insurance Company Ltd.
- B since August 2006. The period of Exts. P2 and P3 overlaps. Respondents 1 and 2 have not been able to give a satisfactory explanation for the same. Lastly, and more importantly as proved by Ext. P4, the second respondent was a M.Tech student of CUSAT which is at Ernakulam.
- C The fairly tale that a student studying for M.Tech in Cochin was working part-time as Marketing Manager and Insurance Consultant at Malappuram is totally unbelievable....."
- D When this conclusion was challenged by the appellant herein before a Division Bench of the High Court, the Division Bench without much discussion merely affirmed the same. In view of the decision by the learned single Judge and the Division Bench, it is worthwhile to refer the contents of Exh. Nos. P2 and P3 and to see whether it would be possible for the appellant
- E to have this experience while studying M.Tech., the assessment and the decision of the Selection Committee.

10. We have already quoted Clause 14 which deals with norms for evaluating the candidates. Before proceeding further, F it is relevant to note that as per the guidelines, in case of LPG distributorship reserved for SC category, there will be no evaluation on land and financial capabilities as mentioned in sub-clauses (a) and (b) of Clause 14. It is not in dispute that the present distributorship has been reserved for Scheduled G Caste applicants. In that event, the Selection Committee has to concentrate other clauses, namely, clauses (c) to (g) and select a suitable candidate based on their assessment.

11. The Selection Committee relied on the Experience Certificate issued by M/s Sree Agencies, ELF Gas Distributor, H

Malappuram, Kerala, which reads as under:

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"TO WHOMSOEVER IT MAY CONCERN"

This is to certify that Mr. Sajeesh Babu, Kavalappara, S/o Balan residing at Kavalapara house, Padinhattumuri P.O. Malappuram Dist. Was worked in this office as marketing Manager from December 2005 to March 2007. He performed very well and his conduct was also good.

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Place : Malappuram Stamp Yours faithfully

Date : 05.04.2007 sd/-

Manager"

12. The other certificate relied on by the Selection Committee is the Experience Certificate issued by Bajaj Allianz Life Insurance Company Limited which reads as under:

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"TO WHOMSOEVER IT MAY CONCERN

This is to certify that Mr. Sajeesh Babu, Kavalappara, S/o Balan K. residing at Kavalappara (House), Padinhattumuri (Post), Malappuram (Dist.) is being worked with us since August 2006 as an Insurance Consultant at our branch office Malappuram. His conduct during this period has been good.

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OFFICIAL SEAL

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Sd/-

Senior Branch Manager

Bajaj Allianz

Up Hill, Malappuram"

13. The Degree Certificate issued by Cochin University of Science and Technology, Faculty of Technology dated 23.12.2008 shows that the appellant has been awarded the degree of Master of Technology in Software Engineering and the appellant qualified with First class distinction at the

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A examination held in June, 2008.

14. The experience certificates issued by M/s Sree Agencies and M/s Bajaj Allianz Life Insurance Company Ltd. were evaluated by the Selection Committee. It has already been stated in the counter affidavit filed by the Corporation that the quality of experience will be judged on the basis of the response to the questions related to experience in direct sale, home delivered products, hospitality/service industry etc. by the candidates in the interview. It has also been informed to this Court that the appellant has been awarded 4 marks for experience by the Selection Committee consisting of 3 senior officials of the Company who are well qualified and experienced in assessing the required experience for LPG distributorship. It is further asserted that after the interview, field verification had been done by the Corporation to verify the genuineness and veracity of the documents submitted by the candidate as contemplated in clause 16 of the guidelines. It is further stated that the field verification had been conducted by a team comprising of 2 officers of the Corporation and that the team had met the Proprietor as well as Manager of M/s Sree Agencies, who confirmed that Mr. Sajeesh Babu K. (appellant herein) worked with them on a part-time basis. It is the stand of the Corporation that since the persons who have issued the experience certificate admitted its issuance, the Corporation treats the same as genuine. They also reiterated and verified that the certificates of experience have no relevance in granting marks under the parameter 'experience' as the same has been awarded on the basis of the response to the questions related to experience in the relevant field. The marks awarded by the Selection Committee are as follows:-

G	Name	Edu. Quali.	Ag	Experi- ence	Business ability	Per- sona- lity	Total Marks
	Santhosh N.K.	15	2	3	3.17	1.83	25.00
H	Sajeesh Babu K.	15	2	4	3.83	2.00	26.83

15. From the above discussion, it is clear that in terms of the guidelines, the Selection Committee consisting of 3 experienced persons assessed the ability of the candidates with reference to the answers for their questions and awarded marks. In the absence of any allegation as to mala fide action on the part of the selectors or disqualification etc., interference by the High Court exercising extraordinary jurisdiction under Article 226 of the Constitution of India is not warranted. A

16. To strengthen the above proposition, it is useful to refer a decision of the Constitution Bench of this Court in *The University of Mysore etc. vs. C.D. Govinda Rao & Anr.*, AIR 1965 SC 491. The issue therein relates to one Anniah Gowda to show cause as to under what authority he was holding the post of a Research Reader in English in the Central College, Bangalore. After considering the pleadings of both the parties, consultation by an expert and the stand of the University, this Court set aside the order of the High Court and dismissed the writ petition filed by the respondent therein. While considering the said issue, the following conclusion of the Constitution Bench as to the opinions expressed by the experts and interference by the Court is relevant. It is seen that in paragraph 13 of the judgment, the Constitution Bench has noted that the High Court has criticized the report made by the Board and rejecting the criticism of the High Court in such academic matters, held as under: B

".....We are unable to see the point of criticism of the High Court in such academic matters. Boards of Appointments are nominated by the Universities and when recommendations made by them and the appointments following on them, are challenged before courts, normally the courts should be slow to interfere with the opinions expressed by the experts. There is no allegation about mala fides against the experts who constituted the present Board; and so, we think it would normally be wise and safe for the courts to leave the decisions of academic matters to experts who are more familiar with the problems they G H

A face than the courts generally can be....."

17. In a recent decision of this Court in *Basavaiah (Dr.) vs. Dr. H.L. Ramesh & Ors.*, (2010) 8 SCC 372 wherein similar issue, namely, recommendations of Expert Committee and evaluation as well as judicial review under Art. 226 of the Constitution was considered by this Court. A short question involved in that case was that whether the appellants therein (Dr. Basavaiah and Dr. Manjunath) were qualified to be appointed as Readers in Sericulture? One Dr. H.L. Ramesh, respondent in both the appeals therein challenged the appointments of both the appellants on the ground that they were not qualified for the post of Readers in Sericulture. Learned single Judge, on 11.10.2004, after examining the pleadings and scrutinizing the arguments of the parties dismissed the writ petition filed by Dr. H.L. Ramesh - respondent in W.P. No. 24300 of 1999. Dr. H.L. Ramesh, aggrieved by the said judgment, preferred a writ appeal before the Division Bench of the High Court. The writ appeal was allowed and the appointments of the appellants therein were set aside leaving it open to the University of Mysore to make fresh selection in accordance with the law. The appellants, aggrieved by the said judgment, filed special leave petitions before this Court. In the High Court as well as in this Court, the University filed affidavit stating that the Expert Committee consisting of highly qualified 5 distinguished experts evaluated the qualification, experience and the published works of the appellants and found them eligible and suitable. In such circumstance, this Court observed in paragraph Nos. 20 & 21 as under:

"20. It is abundantly clear from the affidavit filed by the University that the Expert Committee had carefully examined and scrutinised the qualification, experience and published work of the appellants before selecting them for the posts of Readers in Sericulture. In our considered opinion, the Division Bench was not justified in sitting in appeal over the unanimous recommendations of the Expert

Committee consisting of five experts. The Expert Committee had in fact scrutinised the merits and demerits of each candidate including qualification and the equivalent published work and its recommendations were sent to the University for appointment which were accepted by the University.

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21. It is the settled legal position that the courts have to show deference and consideration" to the recommendation of an Expert Committee consisting of distinguished experts in the field. In the instant case, the experts had evaluated the qualification, experience and published work of the appellants and thereafter recommendations for their appointments were made. The Division Bench of the High Court ought not to have sat as an appellate court on the recommendations made by the country's leading experts in the field of Sericulture." D

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18. It is clear that in a matter of appointment/selection by an Expert Committee/Board consisting of qualified persons in the particular field, normally, the Courts should be slow to interfere with the opinions expressed by the experts, unless there is any allegation of mala fides against the experts who had constituted the Selection Committee. Admittedly, in the case on hand, there is no allegation of mala fides against the 3 experts in the Selection Committee. In such circumstances, we are of the view that it would normally be wise and safe for the courts to leave the decision of selection of this nature to the experts who are more familiar with the technicalities/nature of the work. In the case on hand, the Expert Committee evaluated the experience certificates produced by the appellant herein, interviewed him by putting specific questions as to direct sale, home delivered products, hospitality/service industry etc. and awarded marks. In such circumstances, we hold that the High Court ought not to have sat as an appellate Court on the recommendations made by the Expert Committee.

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19. In addition to the same, it is also asserted by the

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- A Corporation and informed to the High Court as well as to this Court that in order to ascertain the genuineness of the contents of experience certificates Exh. Nos. P2 and P3, the Corporation deputed responsible persons for verification and, in fact, they met the issuing authority and satisfied with the correctness of
- B their statement. In view of this aspect, we are satisfied that the learned single Judge as well as the Division Bench committed an error in interfering with the decision of the Selection Committee. We have already noted that there is no allegation of *mala fides* against the members of the Selection Committee.
- C Even on equity, the appellant is an unemployed M.Tech post-Graduate and the contesting respondent No.1 is working as an Assistant Engineer in the Kerala State Electricity Board, in other words, he is fully employed on the date of the selection of LPG distributorship. Looking at from any angle, the High
- D Court was not justified in upsetting the decision of the Selection Committee, particularly, in the absence of any *mala fides* against them and there is no warrant for direction to re-assess the marks of the appellant afresh by excluding the marks for certificates (Exh. Nos. P2 and P3), particularly, in the light of
- E the detailed explanation offered by the Corporation about the mode of selection.

20. In the light of the above discussion, we set aside the judgment of the learned single Judge of the High Court dated 16.03.2011 in W.P.(C) No. 7622 of 2010 as well as the F judgment of the Division Bench dated 06.04.2011 in W.A. No. 464 of 2011 and confirm the decision of the Selection Committee.

21. The civil appeal is allowed. There shall be no order as to costs.

G K.K.T. Appeal allowed