

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.5828 of 2015

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Chhathu Lal Prakash, aged about 59 years, son of Late Upasu Manjhi, resident of Quarter No. 5, Road No. 9(B), Indrapuri, P.O. Keshri Nagar, District Patna, Bihar.

.... Petitioner/s

Versus

1. Bihar State Power (Holding) Company Limited, through its Chairman-cum-Managing Director, having its registered office at First Floor, Vidyut Bhawan Bailey Road, Patna.
2. Chairman-Cum-Managing Director, Bihar State Power (Holding) Company Limited, First Floor, Vidyut Bhawan Bailey Road, Patna.
3. North Bihar Power Distribution Company Limited, through its Managing Director, having its registered office at Second Floor, Vidyut Bhawan Bailey Road, Patna.
4. The Managing Director, North Bihar Power Distribution Company Limited, Second Floor, Vidyut Bhawan Bailey Road, Patna.
5. South Bihar Power Distribution Company Ltd., through its Managing Director, having its registered office at Second Floor, Vidyut Bhawan Bailey Road, Patna.
6. The Managing Director, South Bihar Power Distribution Company Ltd. Second Floor, Vidyut Bhawan Bailey Road, Patna.
7. The State of Bihar, through the Department of Energy, Government of Bihar, Patna.
8. Md. Gheyasuddin son of not known at present Director (Operations), South Bihar Power Distribution Company Ltd., Second Floor, Vidyut Bhawan Bailey Road, Patna
9. Sachindra Kishore Prasad Singh, son of not known at present Director (Project), North Bihar Power Distribution Company Ltd., Second Floor, Vidyut Bhawan Bailey Road, Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Nagendra Kumar Singh
For the State of Bihar	:	Mr. Lalit Kishore, Sr. Advocate, PAAG
	:	Mr. Partha Sarthi- GA11
For the Respondent No. 3:		Mr. Y. V. Giri, Sr. Advocate
For the Respondent No. 8:		Mr. Kamal Nayan Choubey, Sr. Advocate
		Mr. Anand Ojha
For the BSPHC & Others:		Mr. Binay Kriti Singh

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CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI

ORAL JUDGMENT

Date: 08-12-2015

08.12.2015

By virtue of the Notification No. 879, dated



28.02.2014 (Annexure – 5), five persons came to be appointed in different Power Holding Companies as Director (Projects) or Director (Operations). Since the petitioner, one of the applicants, was not selected or appointed, he wants quashing of the notification, especially relating to Respondent No. 8 as Director (Operations), South Bihar Power Distribution Company Limited as well as appointment of Respondent No. 9 as Director (Projects), North Bihar Power Distribution Company Limited.

The allegation is that the selection process was not based on any kind of parameters, and pick and choose method was adopted to select candidates of the personal like or dislike of the High Powered Committee, rather than on objectivity. The records reveal that subjectivity has prevailed, as it does not disclose the yard-stick used. This can never be permitted in matters of selection and appointment on a public post.

Short facts are that an Advertisement No. 1626 was issued by the Department of Energy, Government of Bihar for appointment on the post of Directors in Power Utilities Company. The advertisement indicated the posts, which were open at the level of Director (Projects) and (Operation). The qualification and

experience for such posts was specified by the respondents which they were looking for etc. etc.

The advertisement did beget response from interested candidates, which included the present petitioner, who wanted to be considered for the post of Director (Operations) as well as Director (Projects). It is his case that he fulfilled the requirements for both the posts. Petitioner was invited for an interview before the Board, headed by the Chief Secretary, Government of Bihar, Patna. Then followed issuance of Annexure – 5, where the notification indicating names of selected candidates has been notified, which did not include the petitioner.

Petitioner attacks the selection and especially of Respondent Nos. 8 and 9 on many a grounds. One of them being that both the persons had incurred punishment of withholding of two increments without cumulative effect for act of negligence and dereliction of duty. The punishment orders are Annexure – 6 and 6/A. Deliberately neither of them disclosed this fact as was the obligation under the application or if not misrepresented the facts. Petitioner's status as a scheduled-caste was ignored, so was his seniority. Both the private respondents are way way below in the



seniority position.

Petitioner, aggrieved by the decision, contained in Annexure-7, filed a detailed representation before the Chairman-cum-Managing Director of Power Holding Company as well as Principal Secretary, Finance; Principal Secretary, General Administration; and the Chief Secretary, Government of Bihar, Patna. But, since no cognizance was taken on his grievance, he decided to file the present writ application.

After hearing the parties to the dispute the Court directed the State counsel to produce the original record relating to the selection to verify actual state of affairs as well as the procedure and process, which was adopted by the so called High Powered Committee, consisting of the Chief Secretary, Government of Bihar; Principal Secretary, Department of Finance, Government of Bihar; Principal Secretary, General Administration; Secretary, Energy; and Chairman-cum-Managing Director, Bihar State Power Holding Company Ltd.

The Committee met on 16.02.2014, where the Principal Secretary, Finance; Principal Secretary, Energy-cum-Chairman-cum-Managing Director, Bihar State Power Holding Company Ltd.; Principal Secretary, General Administration participated and the meeting was



chaired by the Chief Secretary. The extract of the minutes is available in the file at page 183, which is File No. 58/2013, Part-II.

The Court meticulously went through the minutes, so recorded. One thing which stands out is that one Sandeep Pondrik, Secretary, Energy was playing a dual role in the sense that he was wearing two hats at the same time, besides being Secretary, Energy, he was also Chairman-cum-Managing Director, Power Holding Company. Besides the above fact, nothing is evident from the minutes as to what were the parameters, which were adopted by the Committee in selection and recommendation of the candidates. It only indicates the number of applicants, who came to be interviewed, followed by the recommendation of names, who were selected by the High Powered Committee.

When the Court did not get any kind of light as to what was the modality adopted by the so called High Powered Committee for zeroing down on the selected candidates, the Court gave an opportunity to the Secretary, Energy -cum- Chairman -cum- Managing Director of Bihar State Power Holding Company to file an affidavit and explain if there is any material which can throw light as to how the selection committee carried out

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the exercise of selection.

No doubt, an affidavit was filed. But the sum essence of the affidavit is that the records speak for themselves and nothing more can be added or subtracted.

The selections have been made for very senior positions in the various Power Companies of the State, which are public posts. No doubt, certain leeway is required to be given to the authorities making selection in terms of the requirement and the eligibility laid down in the advertisements, but when such selections are questioned and put under judicial scrutiny, it has to be explained in unambiguous terms. An administrative decision made, must speak for itself. If a question mark is raised and certain doubts are raised about the fairness as well as lack of objectivity in matters of selection on a public post, the authorities making such selection and appointments must be able to explain from the records, the basis used and adopted in making such selection and appointment.

The requirement of fair play and objectivity in matters of selection on a post is paramount and since these selections have been made in the various Power Companies, which are State Corporations, it is more so.





The selections may have been fair or square, but the prime question, which remains for consideration is whether there is element of subjectivity or objectivity. If the minutes and decision of the committee cannot reveal as to what prevailed upon the Committee to recommend only some candidates and if the respondents are not in a position to explain as to what modality was adopted in zeroing down on the recommended candidates, then surely there is a huge leeway, which was available to the Selection Committee, which can also be called unbridled and subjective.

The petitioner has pointed out that he is in the rank of a Chief Engineer, has a clean record with no punishments of any kind. Two of the selected recommended candidates, who are private respondents here, did incur punishment though the same has been explained by the respondents as to how the same came to be undone. But the question is when and at what stage and how.

The other aspect pointed out with regard to one of the selected candidate is that he was still working on the post of Executive Engineer and he has been raised to the level of a Director of the one of the companies. On the face of it, it raises doubts as to how

he was given such a big jump from Executive Engineer to work as a Director of one of the companies.

All these things, therefore, does not inspire confidence in the manner and the modality which was adopted by the so called High Powered Committee, who recommended candidates for appointment as Directors on various posts in different companies.

Counsels representing the private respondents repelled some of the insinuation and allegations made against them. Their stand is that the selection has been fair, based on merits and no interference is warranted in any manner.

Mr. Lalit Kishore, learned senior counsel, representing the State of Bihar relies on a decision of the Hon'ble Apex Court rendered in the case *National Institute of Mental Health & Neuro Sciences Versus Dr. K. Kalyana Raman and others, reported in AIR 1992 SC 1806* with emphasis on paragraph nos. 7 and 8 to urge that the Selection Committee has leeway in this regard. They may not record reasons and there is inherent presumption in favour of the selection so made, by the High Powered Committee. He also brings to the notice of this Court a decision rendered by a Learned Single Judge of Delhi High Court, which is the case of *R. P. Tolani Versus Union of*

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India & Others (WPC) 8639 /2010 and other analogous cases, decided on 23.05.2014, where the Learned Single Judge has also taken note of the Hon'ble Supreme Court decision of Dr. K. Kalyan (supra) in deciding the said case.

After going through the two decisions relied upon by Shri Lalit Kishore, Sr. Advocate, this Court can only remind him of a Constitution Bench decision, rendered in the case of *Delhi Transport Corporation Versus D.T.C. Mazdoor Congress and others, reported in AIR1991SC101*.

The Constitution Bench opined that there is no presumption of fairness in decision making merely because the person making such decision is holder of a high post. Para 223 of the Constitution Bench had this to say –

“In the year 1990, it is not necessary for me to discuss in detail the authorities which have widened the horizons of Article 14 of the Constitution. Some of these precedents are directly on the point inasmuch as the validity of similar service rules was considered there. It is enough if I summarize the position of law as it obtains today.

There is need to minimize the scope of the arbitrary use of power in all walks of life. It is inadvisable to depend on the good sense of the individuals, however high-placed they may be. It is all the more improper and undesirable to expose the precious rights like the rights of life, liberty and property to the vagaries of the individual whims and fancies. It is trite to say that individuals



are not and do not become wise because they occupy high seats of power, and good sense, circumspection and fairness does not go with the posts, however high they may be. There is only a complaisant presumption that those who occupy high posts have a high sense of responsibility. The presumption is neither legal nor rational. History does not support it and reality does not warrant it. In particular, in a society pledged to uphold the rule of law, it would be both unwise and impolitic to leave any aspect of its life to be governed by discretion when it can conveniently and easily be covered by the rule of law.

The employment under the public undertakings is a public employment and a public property. It is not only the undertakings but also the society which has a stake in their proper and efficient working. Both discipline and devotion are necessary for efficiency. To ensure both, the service conditions of those who work for them must be encouraging, certain and secured, and not vague and whimsical. With capricious service conditions, both discipline and devotion are endangered, and efficiency is impaired.

The right to life includes right to livelihood. The right to livelihood therefore cannot hang on to the fancies of individuals in authority. The employment is not a bounty from them nor can its survival be at their mercy. Income is the foundation of many fundamental rights and when work is the sole source of income, the right to work becomes as much fundamental. Fundamental rights can ill-afford to be consigned to the limbo of undefined premises and uncertain applications. That will be a mockery of them.

Both the society and the individual employees, therefore, have an anxious interest in service conditions being well-defined and explicit to the extent possible. The arbitrary rules, such as the one under discussion, which are also sometimes described as Henry VIII Rules, can have no place

in any service conditions.

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The Court is also tempted to quote from para

276 –

“..... In this context, it is important to emphasize that the absence of arbitrary power is the first essential of the rule of law upon which our whole constitutional system is based. In a system governed by rule of law, discretion, when conferred upon executive authorities, must be confined within defined limits. The rule of law from this point of view means that decisions should be made by the application of known principles and rules and, in general, such decisions should be predictable and the citizen should know where he is. If a decision is taken without any principle or without any rule it is unpredictable and such a decision is the antithesis of a decision taken in accordance with the rule of law. (See Dicey – “Law of the Constitution” – 10th Edn., Introduction cx). “Law has reached its finest moments”, stated Douglas, J. in *United States v. Wunderlich*, (1951) 342 US 98, “when it has freed man from the unlimited discretion of some ruler Where discretion is absolute, man has always suffered”. It is in this sense that the rule of law may be said to be the sworn enemy of caprice. Discretion, as Lord Mansfield stated it in classic terms in the case of *John Wilkes* “means should discretion be guided by law. It must be governed by rule, not by humour; it must not be arbitrary, vague and fanciful,” as followed in this Court in *S. G. Jaisinghani v. Union of India*, (1967) 2 SCR 703: (AIR 1967 SC 1427).”

Besides the above, there are catena of Hon'ble Supreme Court's decisions now where the requirement of openness and fairness in decision making as well as process of decision making, especially





if it relates to appointment on public post, is the need of the hour. The decision must speak for itself. The perusal of material or record must reflect as to what weighed with the authorities to come to a conclusion.

Coming to the present case, the records, the file as well as the minutes of the High Powered Committee, does not shed any light as to why only the recommended candidates were found to be the most suitable viz-a-viz other applicants and the basis for the said selection.

In view of the above, the Court is left with no option, but to quash Annexure – 5 in so far as it relates to selection of Respondent No. 8 and 9. Since the petitioner did not assail other recommendations / selection, the Court will not offer any comment upon such candidates, especially when they have not even been impleaded as a party and no relief was sought against them.

The respondents are, therefore, directed to hold a fresh exercise for selection on the post of Director (Operations), South Bihar Power Distribution Company Ltd. as well as Director (Projects) of North Bihar Power Distribution Company Ltd.

In fact, in the interest of things, it is advisable

that since these selections relate to advertisements issued in the year 2013 and more than two years have already gone past, the respondents should make a fresh advertisement and allow all such candidates who are eligible to be considered in the new exercise. They are also cautioned that they should not become victim to the same failings and pitfalls, which have been committed in the previous exercise of selection, which generated the present litigation.

The writ application is allowed in terms of above.

The original files are returned to the counsel for the State for safe keeping.

(Ajay Kumar Tripathi, J.)

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