IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

LPA No. 383 of 2014 (O&M)
Date of Decision: 18.02.2015

Uttar Haryana Bijli Vitran Nigam Ltd. and another ..Appellants

versus

Pawan Kumar and others ..Respondents

CORAM: HON'BLE MR. JUSTICE S.J.VAZIFDAR, ACTING CHIEF JUSTICE.
HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH.

1. Whether Reporters of local papers may be allowed to see the judgment?
2. Whether to be referred to the Reporters or not ?
3. Whether the judgment should be reported in the Digest?

Present : Mr. Pardeep S.Poonia, Advocate, for the appellants.

Mr. R.K.Malik, Sr. Advocate with
Mr. Vijay Dahiya, Advocate, for the respondents.

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S.J.VAZIFDAR, ACTING CHIEF JUSTICE

This is an appeal against the order of the learned Single Judge allowing the petition by setting-aside the order dated 02.12.2012 of the Standing Committee of Bureau of Public Enterprises declining the proposal of the Board of Directors of appellant No.1.

2. The appellants are the Uttar Haryana Bijli Vitran Nigam Ltd. and its Financial Advisor. Respondents No.1 to 12 are the petitioners. Respondents No. 13 and 14 are the original respondents No.3 and 4, namely, State of Haryana and Haryana Bureau of Public Enterprises through its Managing Director.

3. The Board of Directors of Haryana Power General Corporation Ltd. (HGPCL)-appellant No.1 at a meeting held on

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19.02.2009 constituted a committee of the Managing Directors' of all the Haryana Power Utilities under the Chairmanship of the Managing Directors for proposing the pay revision, time scales, amendment to "Recruitment and Promotion Policy" for Company Secretary, Finance Accounts & Audit and HR Wings. The Committee finalized its report on 08.07.2009. In line with the decision taken by the HPGCL, the proposals were put up for the consideration and approval of the Board of Directors of UHBVNL-appellant No.1.

The present petition concerns posts of Accounts Officers and Senior Account Officers. The relevant proposal in this regard reads as under:-

> "b) The post of Accounts Officer, Senior Accounts Officer and FA & FAO be designated as Assistant General Manager, Deputy General Manager & General Manager (Finance Accounts & Audit) respectively."

4. Appellant No.1 by a Memorandum placed the proposal before the Board of Directors for their consideration and approval. The relevant part of the Memorandum reads as under:-

> "(h) The pre-revised pay scales of Dy.GM, GM and CGM in finance and accounts cadre be equated with that of XEN, SE and CE respectively with effect from 01.01.2006.
>
> i) xx xx xx
>
> The matter is placed before the Board of Directors for their consideration and approval of the recommendations of the Co-ordination Committee of Managing Directors subject to approval of the State Government in the Haryana Bureau of Public Enterprises.

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> This carries approval of the Managing Director UHBVNL for placing the same before the Board of Directors"

5. An internal communication from the Company Secretary of Appellant No.1 to its Financial Advisor reads as under:-

> "Subject: Revamping of Finance, Accounts & Audit.
>
> Following are the extracts of Minutes of Meeting of the Board of Directors held on 27.11.2009 on the above cited subject:
>
> *The proposal as contained in the memorandum was considered and approved by the Board of Directors. It was decided that the benefits to be given shall be from prospective effect as has been decided in DHBVN.*
>
> Further necessary action in the matter may please be taken accordingly and the compliance be intimated to this office latest by 15.12.2009 positively."

It is important to note that the letter, which refers to the minutes of the meeting of the Board of Directors held on 27.11.2009, does not state that the proposal was subject to anything especially the decision of the State Government. We will, however, for the purpose of this judgment, assume that it must be deemed to be subject to the approval of the State Government in the Haryana Bureau of Public Enterprises as the resolution approved the proposal contained in the Memorandum which in turn made the proposal subject to the approval of the State Government. As we will indicate later, this makes no difference to the result in this case as the approval was sought only because of the directions of the State Government and our attention has

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not been invited to any provision of law that requires the approval of the State Government in such cases.

6. The approval was apparently sought from the Government of Haryana. The Government of Haryana by a letter dated 14.12.2009 declined the proposal stating that:-

> "2 (i) xx xx xx
>
> (ii) It is not advisable to equate the cadres in Finance & Accounts Wing in the Nigam with engineering cadres i.e. XEN, SE and Chief Engineer as they have no similarity in terms of qualification/experience, job profile, nature of work etc. If this proposal is approved, all other cadres will also demand the same.
>
> iii) xx xx xx"

7. A draft report of the Pay Anomaly Committee made a recommendation in favour of the petitioners i.e. respondents No.1 to 12 to this appeal. The recommendations were on the pattern of the decision of the Co-ordination Committee of the Managing Directors which we referred to earlier. The recommendations were made regarding the time-scales to be allowed to the officers of Finance, Audit & Accounts Cadre. The pay scales were recommended for the posts of Accounts Officer and Senior Accounts Officer.

8. An internal letter dated 18.06.2010 from the Company Secretary of appellant No.1 to its Financial Advisor states that the Pay Anomaly Committee report had been approved by the Whole Time Directors of appellant No.1 in circulation on 12.04.2010. The letter further states that it was issued with the approval of the Managing Director of appellant No.1.

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9. It is important to note that the decision taken by the Managing Directors and by the Whole Time Directors was not subject to any reservation of having the same approved by the State Government.

10. What falls for consideration, therefore, is the effect of the State Government having rejected the proposal regarding the pay fixation which was approved by appellant No.1. Appellant No.1 had the power to do so under its '*Articles of Association'* and even otherwise appellant No.1 did not itself think it necessary to obtain the approval of the State Government.

11. It is important to note paragraph 6 of the written statement filed on behalf of the appellants as well as the Haryana-Bureau of Public Enterprises, who was the respondent in the petition. In paragraph 6, the above facts are admitted including the fact regarding the recommendation of the Committee. It is also important to note that in paragraph 6 it is stated that the said Memorandum containing the recommendations of the Committee of the Managing Directors constituted by the Board of Directors of HPGCL was placed before the Board of Directors of appellant No.1 which stated that the recommendations are further subject to the approval of the State Government 'as per Notification dated 20.11.1989 of Finance Department, Corrigendum dated 18.09.1990, letter dated 15.12.2000 and 22.08.2005'.

As Mr. Malik, learned Senior Counsel rightly pointed out that this averment makes it clear that the proposal was sent to the State

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Government only due to these instructions. This is clear from the words '*as per*'. The words '*as per*' establish that the appellants considered themselves bound by the instructions and it is for that reason that they sent the proposal to the State Government for its approval. The letter dated 22.08.2005, *inter-alia*, requires the State Public Enterprises to get their proposals pertaining to the revision of pay scales etc. approved from the Board of Directors and subsequently the Administrative Department should take the approval of the competent authority as per the standing order of the Department.

12. A learned Single Judge of this Court by a judgment dated 26.11.2010 passed in Civil Writ Petition No. 5993 of 1990 ***Deva Singh and others v. State of Haryana and others***, held that :-

> "**24**. It is held that the 3rd respondent is the sole authority to take a decision as to the revision of pay of its employees. In the guise of an instruction with respect to the policy decision, the 1st respondent cannot issue an instruction with respect to the pay scales of the employees or the revision of pay scales of the employees of 3rd respondent-Corporation. The instructions, issued by the 1st respondent in the above facts and circumstances of this case, would not bind the 3rd respondent Corporation. The 3rd respondent has virtually surrendered its powers with respect to the revision of pay scales of its employees to the State Government which has no say in the matter. As the State Government has no authority to interfere with the revision of pay scales of the employees of the 3rd respondent-Corporation, the impugned order passed by the 2nd respondent has no legal sanctity. Therefore, the impugned order passed by the 2nd respondent is liable to be quashed."

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We do not think it necessary for the purpose of this case to express an opinion regarding the correctness of the judgment. It was not contended before us that the State Government has the power under any statute or other principle of law to issue the directions to the Haryana Power General Corporation Ltd. (HGPCL). Nor was it their case that there was any separate agreement or understanding entitling the State Government to issue such directions to it. It is also important to note that neither the Board of Directors of HGPCL-appellant No.1 nor the Committee of the Managing Directors made their decision subject to the approval of the State Government on the basis that the State Government being only the share-holder ought to have a say in the matter. The decision, therefore, was not for the purpose of obtaining the consent of the State Government as a majority share-holder. The decision was taken purely on the basis of the said instructions.

13. It was admitted that the appellant No.1 has the power to fix the pay scale and/or remove any anomaly. The only objection was that it was to be subject to the approval of the State Government. It is not necessary, therefore, to refer to the Articles of Association of the appellant No.1 in this regard.

14. In the circumstances, the appeal is dismissed.

(S.J.VAZIFDAR)
ACTING CHIEF JUSTICE

(AUGUSTINE GEORGE MASIH)
JUDGE

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