IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 30TH DAY OF DECEMBER, 2020

BEFORE

THE HON'BLE MR. JUSTICE M. NAGAPRASANNA

WRIT PETITION No.13544/2018 (S – RES)

BETWEEN

SRI RAGHUNANDA
S/O VENKATESH B.S.,
AGED ABOUT 26 YEARS,
R/AT NO.28/1,
6TH TYPE 1ST COLONY,
AMBIKANAGAR – 581 363
UTTARAKANNADA DISTRICT.

... PETITIONER

(BY SRI GURUPRASANNA, ADVOCATE FOR
SMT.PRIYANKA S ANGADI, ADVOCATE (VIDEO
CONFERENCING))

AND

1. STATE OF KARNATAKA
DEPARTMENT OF ENERGY
VIDHANA SOUDHA,
BENGALURU – 560 001
REPRESENTED BY ITS
PRINCIPAL SECRETARY.

2. KARNATAKA POWER TRANSMISSION
CORPORATION LIMITED
A COMPANY REGISTERED
UNDER THE PROVISIONS OF
COMPANIES ACT 1956,
HAVING REGISTERED OFFICE AT

KAVERI BHAVAN,
K.G.ROAD,
BENGALURU – 560 009
REPRESENTED BY ITS
MANAGING DIRECTOR.

3. SRI VINAY N.R.,
S/O SRI RAJA N.,
AGED ABOUT 24 YEARS,
R/AT DOOR NO.247,
8TH CROSS, 2ND STAGE,
M BLOCK, KUVEMPUNAGAR,
MYSURU – 570 023.

... RESPONDENTS

(BY SRI VENKAT SATYANARAYAN.A., HCGP FOR R-1(PHYSICAL HEARING);
SRI SRIGANGA.S., ADVOCATE FOR R-2 (VIDEO CONFERENCING);
SRI B.S.MAHENDRA, ADVOCATE FOR R-3 (VIDEO CONFERENCING))

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO DIRECT THE RESPONDENT NO.2 TO CORRECT THE 'FINAL SELECTION LIST' DATED 6.03.2018 (ANNEXURE-H) BY INCLUDING THE NAME OF THE PETITIONER AND CONSEQUENTLY DELETING THE NAME OF THE RESPONDENT NO.3 AND TO ISSUE APPOINTMENT ORDER IN FAVOUR OF THE PETITIONER.

THIS WRIT PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 07.10.2020, COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT MADE THE FOLLOWING :-

ORDER

The petitioner in this writ petition has sought for a direction directing the second respondent - Karnataka Power Transmission Corporation Limited (hereinafter referred to as 'the Corporation' for short) to correct the final select list dated 06.03.2018 by including the name of the petitioner in the list of selected candidates for the post of Assistant Engineer (Electrical) and consequently, deleting the name of the selected candidate – third respondent.

2. Brief facts of the case leading to the filing of the present writ petition in terms of the pleadings are that:

The second respondent issued a notification inviting applications for recruitment to various posts in the Corporation on 01.09.2016. The present case concerns appointment to the post of Assistant Engineer (Electrical). Both the petitioner and the third respondent finding themselves eligible, applied to the post by submitting their applications online. Pursuant

to the scrutiny of the application, examinations were conducted by the Corporation and a short list of candidates in the ratio of 1:2 was notified. The name of the petitioner was found at Sl.No.54 having secured 46.25 marks and the name of the third respondent was found at Sl.No.57 as he had secured 46 marks.

3. On 18.11.2017, the Corporation issued a call letter for verification of original documents of all the candidates short listed. The petitioner claims to have appeared and submitted all the original documents for verification. Pursuant to the process of verification of documents, the Corporation notified a provisional select list of candidates on 23.01.2018, wherein the name of the petitioner was left out and the name of the third respondent was included at Sl.No.49. The petitioner claims to have filed his objections to the provisional select list and notwithstanding the same, a final select list dated 06.03.2018 retaining the name of the third respondent was

notified. It is this final select list that the petitioner claims to be aggrieved of. The petitioner is claiming that he be considered under general merit – general category. The challenge of the petitioner is only *qua* the third respondent.

4. Heard Sri.Guruprasanna, learned counsel appearing for petitioner, Sri.Venkat Satyanarayan.A, learned High Court Government Pleader for respondent No.1, Sri.Sriranga.S, learned counsel for respondent No.2 and Sri.B.S.Mahendra, learned counsel for respondent No.3.

5. Learned counsel appearing for petitioner would contend that there is no reason whatsoever for non-selection of the petitioner as he has secured 46.25 marks as against the selected candidate who is at 46 marks. He further claims that his non-selection despite the fact that the petitioner is about two years older in age than the third respondent who would lose his chance very soon in getting public employment ought

to have been preferred, as the person older in age should be placed higher in rank and would have a preferential right in employment.

6. On the other hand, the learned counsel appearing for the Corporation vehemently contends that petitioner is guilty of misrepresentation right from the stage of filing of his application. He would submit that the notification clearly indicated that Kannada language should be the main language or optional subject to all the candidates who are applying to the posts under the notification and if they do not have, the candidates will have to take the Kannada language test conducted by the Corporation prior to conduct of the aptitude test. He would contend that the petitioner was denied employment only on the ground that Kannada was not the main language or the optional subject and the fact that petitioner had suppressed the information while uploading his application online. He would further contend that mere

inclusion of the name of the petitioner in the provisional select list will not give him any right as it is always subject to change after verification.

7. I have given my anxious consideration to the submissions made by the learned counsel for the parties and perused the material on record.

8. The Corporation issued employment notification on 01.09.2016 calling for applications from eligible candidates for appointment to various posts in the Corporation. One such post was Assistant Engineer (Electrical). Clause 8 of the Employment Notification which is germane to the issue raised in the present *lis* is extracted hereunder for the purpose of ready reference:

> *"8. *****KANNADA LANGUAGE TEST FOR APPLICANTS OF GROUP – A & B POSTS BEFORE THE APTITUDE TEST ONLY:***

Candidates applying for the posts of Assistant Executive Engineer (Elec.), Assistant Engineer (Elec./Civil) and Assistant Accounts Officer should have passed the SSLC examination or any other examination declared as equivalent to by the State Government or any examination higher than SSLC examination ***in which Kannada is the main language or an optional subject (but not one of the subjects in a composite paper) or if they have studied and passed in Kannada Medium are exempted from passing the compulsory Kannada Language Test.***

Candidates who have not studied and passed Kannada language, such candidates are required to pass a Kannada Language Test which will be conducted before the Aptitude Test. *The said test shall comprise of a maximum of 150 marks and the candidate must score a minimum of 50 marks. Candidates who pass the Kannada Language Test only are eligible to be considered for appearing for the APTITUDE TEST.*

The syllabus for Kannada Language Test, date and venue of Kannada Language Test will be intimated at a later date through KPTCL & ESCOMs Websites.

The Kannada Language Test will be conducted only at BENGALURU."

This prescription of Kannada as the main language or an optional subject in terms of clause 8 is in consonance with the Rules obtaining in the Karnataka Electricity Board Recruitment and Promotion Regulations', Employees (Probation) Regulations' and Employees (Seniority) (Amendment) Regulations', 2016, which reads as follows:

"8(5): Notwithstanding anything contained in the Regulations no candidate shall be eligible for selection in respect of Group – A & B posts ***unless he/she qualifies in a test in Kannada Language.*** *This test shall comprise of one paper carrying maximum of 150 marks. For qualifying in this paper a candidate must score minimum of 50 marks. The standard of this*

paper shall be that of first language Kannada at SSLC Level.

Note: ***Provided that candidates who have passed the SSLC examination or any examination declared as equivalent to by the State Government or any examination higher than SSLC examinations in which Kannada is the main language or second language or an optional subject (but not one of the subjects in a composite paper) or if they have studied and passed in Kannada Medium are exempted from passing the compulsory Kannada Language Test."***

(Emphasis applied)

9. Thus, the prescription in terms of Clause 8 in the notification cannot be held to be contrary to law. It is in terms of the said clause, the application of the petitioner in response to the notification is required to be considered. The petitioner submits his application online in which the questions

concerning the afore-extracted clause are answered by the petitioner in the following manner:

Have you studied Kannada in SSLC as?	*None*
Have you studied Kannada in PUC as?	*None*
Have you studied Kannada in Any other Higher examination other than SSLC & PUC as?	*Y*
SSLC Registration No.	*20080585678*

The answers given by the petitioner in the afore-extracted questions would indicate that the petitioner has not studied Kannada in SSLC or PUC, but has studied Kannada in higher examination other than SSLC and PUC, which is Engineering.

10. The respondent-Corporation has produced grade card of the petitioner of B.E. Degree wherein Kannada is chosen as an optional subject to which grading is not done. The grade card of the petitioner is extracted hereunder for the purpose of quick reference:

Sl. No.	*Subject Code*	*Subject Title*	*Credits*	*Grade Awarded*	*Grade Points*
1	*MA210*	*ENGG. MATHEMATICS-II (MULTIVARIABLE CALCULUS)*	*4.0*	*S*	*10*
2	*PH210*	*ENGG. PHYSICS*	*4.0*	*A*	*9*
3	*CV220*	*ELEMENTS OF CIVIL ENGINEERING & ENGG. MECHANICS*	*4.0*	*A*	*9*
4	*EE210*	*BASIC ELECTRICAL ENGG.*	*4.0*	*C*	*7*
5	*ME220*	*MECHANICAL ENGG. SCIENCE*	*4.0*	*A*	*9*
6	*PH22L*	*ENGG. PHYSICS LAB*	*1.5*	*S*	*10*
7	*EC2IL*	*ELECTRONICS LAB*	*1.5*	*A*	*9*
8	*HU210*	*CONSTITUTION OF INDIA & PROF ETHICS*	*0.0*	*PP*	*0*
9	***HU220***	***KANNADA***	***0.0***	***PP***	***0***

The afore-extracted grade card clearly indicates Kannada language chose by the petitioner in the Engineering degree was not subject to any certification or grading. The question now remains as to whether the Kannada language chosen by the petitioner as a third language in the SSLC and as an optional subject in the Engineering degree would be in compliance with the clause in the notification.

11. The respondent-Corporation has placed on record a clarification issued by the Government of Karnataka as to an optional subject would be equivalent to the main language and

the clarification given by the Government to the Corporation reads as follows:

> *"ಮೇಲ್ಕಂಡ ವಿಷಯಕ್ಕೆ ಸಂಬಂಧಿಸಿದಂತೆ, ಉಲ್ಲೇಖಿತ ಪತ್ರದ ಕಡೆಗೆ ಗಮನ ಸೆಳೆಯಲಾಗಿದೆ. ಎಸ್.ಎಸ್.ಎಲ್.ಸಿ ಯಲ್ಲಿ ಕನ್ನಡವನ್ನು ತೃತೀಯ ಭಾಷೆಯನ್ನಾಗಿ ಅಭ್ಯಾಸ ಮಾಡಿದ್ದಲ್ಲಿ, ಅದು " Optional Subject" ಗೆ ಸಮಾನಾಂತರವೇ ಹಾಗೂ "ಮುಖ್ಯ ಭಾಷೆಯು (Main Language)" ಯಾವ ಭಾಷಾ ಪತ್ರಿಕೆಗಳನ್ನು (Language) ಒಳಗೊಂಡಿರುತ್ತದೆ ಎಂಬ ಬಗ್ಗೆ ಸಾರ್ವಜನಿಕ ಶಿಕ್ಷಣ ಇಲಾಖೆ ನೀಡಿರುವ ಅಭಿಪ್ರಾಯದ ಉದ್ಧೃತ ಭಾಗ ಈ ಕೆಳಕಂಡಂತೆ ಇರುತ್ತದೆ.*
>
> > *"Kannada studied as third language in SSLC cannot be equated with first or second language. Further it is clarified that the third language cannot be considered as optional language as there is no concept of optional subject in SSLC examination. Kannada is compulsory as are of the language in SSLC"*
>
> *ಮೇಲ್ಕಂಡ ಅಭಿಪ್ರಾಯವನ್ನು ನಿಯಮಾನುಸಾರ ಪರಿಶೀಲಿಸಿ, ಮುಂದಿನ ಅಗತ್ಯ ಕ್ರಮ ಕೈಗೊಳ್ಳುವಂತೆ ಕೋರಲು ನಿರ್ದೇಶಿತನಾಗಿದ್ದೇನೆ."*

In terms of the clarification given, Kannada studied as a third language in SSLC cannot be equated to first or second language and third language cannot be considered as optional

language as there is no concept of optional subject in SSLC. Therefore, the third language Kannada that is taken by the petitioner in SSLC cannot be equated to the prescription in the notification in terms of the clarification given by the Government *supra*.

12. The petitioner was fully aware that third language cannot be equated to an optional subject or main language in terms of the notification. Though he had chosen Kannada to be the third language, deliberately answers the question with the remark "None" which would mean a 'No' with regard to whether he had taken Kannada as a language in SSLC and answers that he had studied Kannada in higher examination than SSLC and PUC i.e., Engineering.

13. The said clause in the notification clearly indicated that if candidates have not studied and passed Kannada language, such candidates are required to take part and pass

in a Kannada language test conducted by the Corporation. All that the petitioner in the fact situation had to do was to take part in the Kannada language text which was to be conducted before the aptitude test, he did not choose to do so. The clause in the notification clearly indicates that the candidates should have passed SSLC in which Kannada is the main language or optional subject. The credentials of the petitioner is not in consonance with the prescription in the notification. This Court would not sit in appeal over the opinion of the Government as to what can be considered to be an optional subject.

14. In the light of the petitioner not having passed SSLC in which Kannada is the main language or an optional subject and the clarification given by the Government *supra*, non consideration of his candidature by the Corporation cannot be found fault with.

For the aforesaid reasons, the writ petition lacks merit and is dismissed.

Sd/-
JUDGE

bkp
CT:MJ