

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 12.2.2021

CORAM

THE HON'BLE MR.JUSTICE B.PUGALENDHI

W.P.No.2542 of 2021
and
W.M.P.No.2879 of 2021

Tamilnadu Spinning Mills Association
Registration No.330/1997,
No.2, Karur Road, Modern Nagar,
Dindigul 624 001.
rep. by its Chief Advisor
Dr.K.Venkatachalam Petitioner

vs.

1. The State of Tamilnadu rep. by
The Principal Secretary to Government (FAC),
Energy Department,
Fort St. George, Chennai 600 009.
2. The Chairperson,
Selection Committee,
No.HR-21, 45th Street,
8th Sector, K.K.Nagar,
Chennai 600 078.
3. The Tamilnadu Electricity
Regulatory Commission,
4th Floor,
SIDCO Corporate Office Building,
Thiru.Vi.Ka.Industrial Estate,
Guindy, Chennai 600 032.
rep. by its Secretary.

Respondents

Writ Petition filed under Article 226 of the Constitution of India seeking issuance of a writ of mandamus directing the 1st respondent to release suitable advertisements in the leading Newspapers, about the availability of such a vacancy in the 3rd respondent, State Commission for the information and knowledge of the common public and also to issue a revised and modified G.O. by way of specific and clear terms of reference, to make the Selection Committee, to select and sponsor panel of two names, only from the fields of finance, commerce, economics or management and that too not from TANGEDCO or TANTRANSCO, in

total compliance of Section 84(1) read with Section 85(5) of the Electricity Act, 2003, for the consideration of posting as Member in the 3rd respondent, State Commission.

For Petitioner : Mr.S.P.Parthasarathy

For R1 : Mr.Vijay Narayan, Advocate General
assisted by Mr.P.S.Sivashanmugasundaram
Special Government Pleader

For R3 : Mr.S.R.Rajagopal, AAG assisted by
Mr.Abdul Saleem

For R2&R4 : No Appearance

ORDER

This writ petition is filed for a mandamus directing the first respondent to release suitable advertisements in the leading newspapers about the availability of a vacancy in the third respondent State Commission for the Information and Knowledge of the common public with specific and clear terms of reference to make the selection Committee to select and sponsor a panel of two names from the fields of Finance, Commerce, Economics or Management without confining with TANGEDCO or TANTRANSCO officials alone.

2. Mr.Parthasarathy, learned counsel appearing for the petitioner, by referring the object of the constitution of Electricity Regulatory Commission made his submission that the Regularly Commission is enacted as per the Electricity Regulatory Commission Act, 1988 with an object to provide for distancing of the Government from determination of tariffs. By this Act, the Central Electricity Regulatory Commission, State Electricity Commissions are established. The functions of the Electricity Regulatory Commission are specified in sub-section (1) of Section 86 of the Electricity Act and the advisory functions of the State Commission are specified in subsection (2) of that Section. The Commission is also guided by the National Electricity Policy, National Electricity Plan and Tariff Policy. Further, the said Commission should ensure transparency while discharging its functions and exercise its powers.

3. A vacancy arose in the Regulatory Commission due to the demitting of the Office by a Member. Anticipating the vacancy, the Selection Committee had constituted the Committee consisting of a retired Judge of this High Court as Chairperson, the Chief Secretary of the State of Tamil Nadu and the Chairperson of Central Electricity Authority as Members to finalize the selection of a Member within three months vide G.O.Ms.50 Energy Department dated 9th October 2020. The petitioner, an Association

of Yarn Spinning Mills, with an apprehension that the vacancy is intended to be filled up from the existing officials of TANGEDCO or from TANTRANSCO has filed this writ petition.

4. The learned counsel appearing for the petitioner has made his submission that the Members and the Chairperson are selected mostly from TANGEDCO or TANTRANSCO and this Regulatory Commission in Tamil Nadu is almost functioning as an extended arm of the TANGEDCO. The Commission is expected to act as an independent quasi-judicial Body and the retired officers or the existing officers of the TANGEDCO cannot sit over their own cause. The learned counsel appearing for the petitioner has also highlighted that though the Act prescribes for persons from eminence of various fields such as Finance, Commerce, Economics and Management, only persons from the field of Engineering and Law alone were accommodated so far and ultimately the Tamil Nadu Electricity Board is not functioning properly and facing a huge loss around Rs.1,30,000 crores.

5. By referring a communication dated 31.12.2020, the learned counsel appearing for the petitioner made his submission that applications were invited for the selection of Members in the Tamil Nadu Electricity Regulatory Commission only from few Departments without any paper publication and in the absence of paper publication, the eligible candidates in the fields of Finance, Commerce, Economics and Management are deprived from participating in the selection process and ultimately, the object of forming a Regulatory Commission itself is defeated.

6. He further submits that the Selection Committee is appointed vide G.O.Ms.No.50 Energy Department dated 9th October 2020 anticipating the vacancy and this Selection Committee is supposed to complete the selection process within three months from the date on which reference is made to it and after a period of three months without an order of extension, the Committee is not having any authority to continue the process of selection.

7. Mr Vijay Narayan, the learned Advocate General, in response to this writ petition, submits that this writ petition is filed without even verifying whether adequate paper publication has been made or not, with some vested interest in the last minute to prevent the process of selection of Member to the Regulatory Commission. The learned Advocate General has produced a bunch of paper publications issued for selection process of the Regulatory Commission in various newspapers including the newspaper in vernacular language and the publications made in various other States also.

8. The learned Advocate General, pointing out the letter dated 31.12.2020 referred by the petitioner, made his further submission that even this communication has been addressed to

the following departments:-

"(1) The Chief Secretary of all States.

(2) The Secretary to Government, Ministry of Power.
Government of India, New Delhi.

(3) The Secretary to Government of India.
Ministry of Law and Justice,
Government of India New Delhi 110 001.

(4) All Central Public Sector Undertakings

(5) The Chairman NTPC
NTPC Bhawan, Core 7 Scope Complex
Seven Institutional Area, Kirti Road New Delhi.

(6) The Chairman/CEOs of DISCOMS of All States.

(7) The Chairman and Managing Director
Power Grid Corporation of India
B-9 Qutab Institutional Area Karwaria Sarai,
New Delhi -110 016

(8) The Secretary,
Central Electricity Authority,
2nd Floor, Sewa Bhawan,
R.K. Puram New Delhi -110 066.

(9) The Chairperson and Chief Executive Officer
Central Electricity Regulatory Commission,
3rd and 4th Floor Chandercok Building,
36, Janpath New Delhi - 110 001.

(10) The Chairman and Managing Director,
Power Finance Corporation.
"Urjanidhi", 1, Barakhamba Lane,
Connaught Place, New Delhi.

(11) The Registrar General,
High Court of Madras. Chennai -600 104."

and therefore, it cannot be contended that the selection process is confined only to the officials of the TANGEDCO alone.

9. The Selection Commission has been constituted as per Section 85 of the Electricity Act headed by a retired Judge of this High Court and the Chief Secretary to the State of Tamil Nadu and the Chairperson of the Central Commission and this Committee would certainly take into consideration the qualification prescribed for the Members of the Commission and the petitioner cannot substitute his views in the process of selection and it is premature to make a submission that the Selection Committee would select only from the officials of TANGEDCO or TANTRANSCO. The learned Advocate General has also relied upon the Judgment of the Hon'ble Supreme Court in STATE OF GUJARAT AND OTHERS V. UTILITY USERS' WELFARE ASSOCIATION AND OTHERS (2018) 6 SCC 21, wherein a very similar such selection of a Member of the Gujarat Regulatory Commission and Tamil Nadu Commission were challenged and the Hon'ble Supreme Court has held as follows:-

"122. The challenge laid in TCs(C)Nos.139 and 138 of 2015 is to the appointments made to the Tamil Nadu State Commission and the exercise of the powers suo motu by the Commission. The fundamental plea is of financial bias of the two members as they were working in their erstwhile avatars. The name of Mr. G.Rajagopal was recommended when he was still working as the Director, TANGEDCO and he opted for voluntary retirement after his name had been recommended. Mr.Akshayakumar retired from the post of Managing Director of TANTRANSCO on 31.5.2014 and was appointed as Chairman of the Commission on 6.6.2014. The tariff hike was approved by a majority of 2:1 with these two members being part of the majority view.

123. In respect of the aforesaid, reliance was placed on the judgment in Rajesh Awasthi and Mor

Modern Coop. Transport Society Ltd. We, however, find that those judgments would not apply in the present case. The nature of financial interest was examined in the narrower sense as well as the wider sense and in the wider sense, it was held to include the direct or indirect interest of a person in relation to a financial undertaking. The situation arose when the person concerned was holding both the posts simultaneously, which is not so in the present case (as noticed in para 60 to 62, above). It is also pointed out by the learned counsel appearing for the State of Tamil Nadu that the orders of appointment have been exclusively assailed right till the Supreme Court. It may be added that the Selection Committee was presided over by a retired Judge of the High Court.

124. We, thus, find no merit in the plea sought to be advanced assailing either the appointment or the suo motu tariff revision."

10. The learned Advocate General also pointed out that in the absence of the Members of the Regulatory Commission, the entire function would be jeopardized and in view of the pandemic situation, one of the Members of the Selection Committee from New Delhi could not attend the Meeting in Chennai and the first Meeting itself was convened only on 28.12.2020 and immediately thereafter, the paper publication has been effected on the selection process and the same was published in the daily newspapers on 5.1.2021 and this condition in sub-clause (3) of section 85 is directory in nature and this time limit prescribed would not vitiate the entire process of selection.

11. This court paid its anxious consideration to the rival submissions made and also perused the materials placed on record. The main contention of the writ petition is that the Regulatory Commission, which is functioning with more powers and which is expected to act as quasi-judicial Body on the powers of the TANGEDCO is made as an extended arm of the TANGEDCO and therefore, the very object for which the Commission has been established itself is defeated and the Electricity Board is also suffering heavy loss in the absence of any competent persons from the fields of Finance, Commerce, Economics and Management.

12. This writ petition is filed under the impression that the selection process is commenced without any paper publication and with an intention to appoint the existing or retired officials of TANGEDCO as Member of the Regulatory Commission. The learned Advocate General has produced the paper publications made with regard to the selection process inviting applications for the post of Member in Tamil Nadu Electricity Regulatory

Commission in leading newspapers both in vernacular language and in English Newspapers all over India. The learned Advocate General has also produced a list of applicants received by the Selection Committee. Around 124 Applications have been received by the Selection Committee from various fields and among them 9 are from the field of law either Advocates or from retired Judges.

13. The State Regulatory Commission in Tamil Nadu is constituted as per section 82 of the Electricity Act consisting of one Chairperson and two Members. Considering the importance and the powers of the Members of the Commission, the selection process is also made by constituting a Selection Committee as per Section 85 of the Act consisting of a Judge of this High Court as Chairperson, the Chief Secretary of the State concerned and the Chairperson of the Central Commission as Members. The State Government shall, within one month from the date of occurrence of any vacancy by reason of death, resignation or removal of a Chairperson or Member and within six months before the date of superannuation or end of tenure of the Chairperson or Member, make a reference to the Selection Committee for filling up the vacancies. The Selection Committee is also expected to finalize the selection of the Chairperson and Members within three months from the date of the reference made to it.

14. The Regulatory Commission constituted under the Act is conferred with more powers on the administration of Board as a quasi-judicial authority including the decision on tariffs. Therefore, certain qualifications have also been prescribed under Section 84 of the Electricity Act that the Chairperson and the Members of the State Commission shall be the persons of ability, integrity and adequate knowledge and have shown capacity to deal with the problems relating to Engineering, Finance, Commerce, Economics, Law or Management.

15. The selection of Member to the existing vacancy is commenced by appointing a Committee as per Section 85 of the Electricity Act vide G.O.Ms.No.50 Energy Department dated 9.10.2020. The selection of a Member is the prerogative of the Selection Committee constituted as per section 85 of the Act to complete the selection process among the candidates who have applied for this post and the Selection Committee is also expected to consider the qualification as prescribed under section 84 of the Act. It is premature to agitate the selection process on surmises and conjectures that the Selection Committee would select the Member only from TANGEDCO or TANTRANSCO.

16. In fact, sub-section (3) of section 85 stipulate a time limit to finalise the selection process from the date on which the reference is made to it. The Selection Committee consists of a retired Judge of this High Court and the Chief Secretary

to this State and the Chairperson of the Central Commission. According to the learned Advocate General, the Chairperson of the Central Commission from New Delhi could appear for the Meeting at Chennai due to the pandemic only on 28.12.2020 and the first meeting itself was convened only on that day and immediately the selection process has commenced by issuing the publication in the newspapers on 5.1.2021. The Act also stipulates the time limit from the date of reference made to the Committee and therefore, on this ground alone, the process of selection cannot be stalled.

17. This writ petition has been filed with an apprehension that the selection process for the existing vacancy in the Commission is not proceeding in accordance with law and it is being done in order to accommodate the existing employee of the TANGEDCO. This selection process is widely published in the daily newspapers both in Tamil and English Newspapers and also all over India. The Selection Committee has also received 124 applications from various fields.

18. Therefore, this court is not inclined to entertain this writ petition. Accordingly, it is dismissed. However, the Selection Committee shall consider the financial loss being faced by the Electricity Board and the need of Members to the Regulatory Commission from the fields of Finance, Commerce, Economics and Management also as per Section 84 of the Electricity Act. No costs. The connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

ssk.

To

1. The Principal Secretary to Government (FAC),
Energy Department,
Fort St. George, Chennai 600 009.
 2. The Chairperson,
Selection Committee,
No.HR-21, 45th Street,
8th Sector, K.K.Nagar, Chennai 600 078.
 3. The Secretary,
Tamilnadu Electricity
Regulatory Commission,
4th Floor, SIDCO Corporate Office Building,
Thiru.Vi.Ka.Industrial Estate, Guindy, Chennai 600 032.
- +1cc to Mr.Abdul Saleem , Advocate SR.No. 8769

W.P.No.2542 of 2021

A.SK(17.02.2021).