

Delhi High Court

Shri Rajendra Wanchoo vs The State Trading Corporation Of ... on 13 August, 2013

Author: Valmiki J. Mehta

\* IN THE HIGH COURT OF DELHI AT NEW DELHI  
+ W.P. (C) No.7383/2011

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13th August, 2013

SHRI RAJENDRA WANCHOO

Through:

..... Petitioner

Mr. H.K. Chaturvedi, Advocate with  
Mr. Mohd. Aqil Saifi, Advocate.

versus

THE STATE TRADING CORPORATION OF INDIA LTD. AND ORS.

..... Respondents

Through: Mr. Ayushya Kumar, Advocate for respondent No.1.

Ms. Ritika Jhurani, Advocate for respondent Nos.2 and 3.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J. MEHTA

To be referred to the Reporter or not? Yes.

VALMIKI J. MEHTA, J (ORAL)

1. By this writ petition, the petitioner-Sh. Rajendra Wanchoo seeks implementation of the order dated 3.5.2011 passed by the Deputy Chief Commissioner for Persons with Disabilities. By the order dated 3.5.2011, the Deputy Chief Commissioner has directed that the post of Chief W.P.(C) No.7383/2011 Page 1 of 11 General Manager (Personnel & Administration) (for short â CGM (P&A)â ) be deemed to be identified for persons with disabilities. Petitioner is an orthopedically handicapped person having about 50% locomotor disability.

Petitioner claims that since the post of CGM (P&A) has been identified for the persons with disabilities such as the petitioner, thus the petitioner be given appointment to the said post.

2. With respect to the post in question advertisement was issued by the respondent No.1/State Trading Corporation of India Ltd on 7.12.2010, 8.12.2010 and 9.12.2010 in different newspapers being â Economic Timesâ , â Times of Indiaâ and â Navbharat Timesâ respectively.

Interviews were held on 18.5.2011 and the selected candidate Sh. S.K.

Sharma assumed charge w.e.f. 21.6.2011. Sh. S.K. Sharma was initially working with a PSU from where he got himself relieved for being appointed to the post of CGM (P&A) with the respondent No.1.

3. The only issue in this case is whether Deputy Chief Commissioner acting under the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (hereinafter referred to as the Act) can pass orders to treat a particular post as an identified post for appointment of a person with disabilities. The W.P.(C) No.7383/2011 Page 2 of 11 relevant provisions of the Act are Sections 58, 59, 61, 62 and 63. These provisions read as under:-

"58.Functions of the Chief Commissioner.- The Chief Commissioner shall-

(a) coordinate the work of the Commissioners:

(b) monitor the utilisation of funds disbursed by the Central Government:

(c) take steps to safeguard the rights and facilities made available to persons with disabilities;

(d) submit reports to the Central Government on the implementation of the Act at such intervals as that Government may prescribe.

59.Chief commissioner to look into complaints with respect to deprivation of rights of persons with disabilities.- Without prejudice to the provisions of sections 58 the Chief Commissioner may of his own motion on the application of any aggrieved person or otherwise look into complaints with respect to matters relating to-

(a) deprivation of rights of persons with disabilities ;

(b) non-implementation of laws rules, bye-laws, regulations, executive orders, guidelines or instructions made or issued by the appropriate governments and the local authorities for the welfare and protection of rights or persons with disabilities, and take up the matter with the appropriate authorities.

61.Powers of the Commissioner.- The Commissioner within the State shall-

(a) coordinate with the departments of the State Government for the programmes and schemes for the benefit of persons with disabilities;

(b) monitor the utilisation of funds disbursed by the State Government;

(c) take steps to safeguard the rights and facilities made available to persons with disabilities;

(d) submit reports to the State Government on the implementation of the Act at such intervals as that Government may prescribe and forward a copy thereof to the Chief Commissioner.

62. Commissioner to look into complaints with respect to matters W.P.(C) No.7383/2011 Page 3 of 11 relating to deprivation of rights of persons with disabilities.- Without prejudice to the provisions of section 61 the Commissioner may of his own motion or on the application of any aggrieved person or otherwise look into complaints with respect to matters relating to-

(a) deprivation of rights of persons with disabilities;

(b) non-implementation of laws, rules, bye-laws, regulations, executive orders, guidelines or instructions made or issued by the appropriate Governments and the local authorities for the welfare and protection of rights of persons with disabilities, and take up the matter with the appropriate authorities.

63. Authorities and officers to have certain powers of civil court.- (1) The Chief Commissioner and the Commissioners shall, for the purpose of discharging their functions under this Act, have the same powers as are vested in a court under the Code of Civil Procedure, 1908 while trying a suit, in respect of the following matters namely:-

(a) summoning and enforcing the attendance of witnesses;

(b) requiring the discovery and production of any document;

(c) requisitioning any public record or copy thereof from any court of office;

(d) receiving evidence on affidavits; and

(e) issuing commissions for the examination of witnesses or documents. (2) Every proceeding before the Chief Commissioner and Commissioner shall be a judicial proceeding within the meaning of sections 193 and 228 of the Indian Penal Code (45 of 1860) and the Chief Commissioner, the Commissioner, the competent authority, shall be deemed to be a civil court for the purpose of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974)."

4. The issue is that whether powers of Chief Commissioner or Commissioner under Sections 59 and 62 read with Section 63 are such to empower the Chief Commissioner or the Commissioner to issue the mandates/injunctions.

W.P.(C) No.7383/2011 Page 4 of 11

5. This issue is no longer res integra and the Supreme Court in the recent judgment in the case of State Bank of Patiala and Ors. Vs. Vinesh Kumar Bhasin (2010) 4 SCC 368 has held that the powers which a Chief Commissioner has are limited, and there is no power to pass injunction orders. Supreme Court in the judgment in the case of State Bank of Patiala (supra) relied upon an earlier judgment in the case of All India Indian Overseas Bank SC and ST Employees' Welfare Assn. Vs. Union of India (1996) 6 SCC 606 and in which judgment it was held that Commissions which are constituted under the specific Acts do not have all the powers of a civil court unless the powers are

so given under the Act. The relevant paras of the judgment in the case of State Bank of Patiala (supra) are paras 12 to 19 and the same read as under:-

"12. Under the Rules, an officer of the Bank, shall retire on completion of 30 years of service. The respondent was accordingly retired on completion of thirty years. He was not denied any retiral benefits. He was not entitled, as of right, to continue beyond thirty years of service. In fact, he did not want to continue in service, as his grievance was that he ought to have been permitted to retire under the Exit Policy Scheme. The grievance of the respondent had apparently nothing to do with his being a person with a disability.

13. Prima facie neither Section 47 nor any other provision of the Disabilities Act was attracted. But, the Chief Commissioner chose to issue a show cause notice on the complaint and also issued an ex parte direction not to give effect to the order of retirement. He overlooked and ignored the fact that the retirement from service was on W.P.(C) No.7383/2011 Page 5 of 11 completion of the prescribed period of service as per the service regulations, which was clearly mentioned in the letter of retirement dated 17.11.2006; and that when an employee was retired in accordance with the regulations, no interim order can be issued to continue him in service beyond the age of retirement.

14. The Chief Commissioner also overlooked and ignored the fact that as an authority functioning under the Disabilities Act, he has no power or jurisdiction to issue a direction to the employer not to retire an employee. In fact, under the Scheme of the Disabilities Act, the Chief Commissioner (or the Commissioner) has no power to grant any interim direction.

15. The functions of the Chief Commissioner are set out in Sections 58 and 59 of the Act. Section 58 provides that the Chief Commissioner shall have the following functions: "58. (a) coordinate the work of the Commissioners;

(b) monitor the utilisation of funds disbursed by the Central Government;

(c) take steps to safeguard the rights and facilities made available to persons with disabilities;

(d) submit: reports to the Central Government on the implementation of the Act at such intervals as the Government may prescribe."

16. Section 59 provides that without prejudice to the provisions of Section 58, the Commissioner may of his own motion or on the application of any aggrieved person or otherwise look into complaints and take up the matter with the appropriate authorities, any matters relating to (a) deprivation of rights of persons with disabilities; and (b) non-implementation of laws, rules, bye-laws, regulations, executive orders, guidelines or instructions made or issued by the appropriate Governments and the local authorities for the welfare and protection of rights of persons with disabilities. The Commissioners appointed by the State Governments also have similar powers under Section 61 and 62.

W.P.(C) No.7383/2011 Page 6 of 11

17. Section 63 provides that the Chief Commissioner and the Commissioners shall, for the purpose of discharging their functions under this Act, have the same powers as are vested in a court under the Code of Civil Procedure while trying a suit, in regard to the following matters:

- "63.(a) summoning and enforcing the attendance for witnesses;
- (b) requiring the discovery and production of any document;
- (c) requisitioning any public record or copy thereof from any court or officer;
- (d) receiving evidence on affidavits; and
- (e) issuing commissions for the examination of witnesses or documents."

Rule 42 of the Persons with Disabilities (Equal opportunities, Protection of Rights and Full Participation) Rules, 1996 lays down the procedure to be followed by the Chief Commissioner.

18. It is evident from the said provisions, that neither the Chief Commissioner nor any Commissioner functioning under the Disabilities Act has power to issue any mandatory or prohibitory injunction or other interim directions. The fact that the Disabilities Act clothes them with certain powers of a civil court for discharge of their functions (which include power to look into complaints), does not enable them to assume the other powers of a civil court which are not vested in them by the provisions of the Disabilities Act. In All India Indian Overseas Bank SC and ST Employees' Welfare Association v. Union of India 1996 (6) SCC 606 this Court, dealing with Article 338(8) of the Constitution of India (similar to Section 63 of the Disabilities Act), observed as follows: "It can be seen from a plain reading of Clause (8) that the Commission has the power of the civil court for the purpose of conducting an investigation contemplated in Sub-clause (a) and an inquiry into a complaint referred to in Sub-clause (b) of Clause (5) of Article 338 of the Constitution \* \* \* W.P.(C) No.7383/2011 Page 7 of 11

10. .... All the procedural powers of a civil court are given to the Commission for the purpose of investigating and inquiring into these matters and that too for that limited purpose only. The powers of a civil court of granting injunctions, temporary or permanent, do not inhere in the Commission nor can such a power be inferred or derived from a reading of Clause (8) of Article 338 of the Constitution."

19. The order of the Chief Commissioner, not to implement the order of retirement was illegal and without jurisdiction."

6. Therefore, in view of the categorical ratio of the Supreme Court in the case of State Bank of Patiala (supra) I am of the opinion that there is no power in the Chief Commissioner acting under the Act to direct that a particular post (in this case CGM (P&A)) be treated as an identified post. At best the Chief Commissioner could have taken up the matter with the appropriate authority.

7. I may also note that the post in question has already been filled up way back on 21.6.2011. The successful candidate Sh. S.K. Sharma who joined the respondent No.1 after leaving his job with an earlier PSU has not been made a respondent in this writ petition. Surely, if the writ petition was allowed, Sh. S.K. Sharma's rights would have been affected but in spite of Sh. S.K. Sharma being a necessary party, he has not been impleaded in this writ petition. The writ petition is liable to fail on this ground also.

8. Another reason for declining the reliefs in the facts of the W.P.(C) No.7383/2011 Page 8 of 11 present case is that the powers to be exercised under Article 226 of the Constitution of India are discretionary. Powers would not be exercised if by the time a person files a petition, the selection process is complete and the selected candidate assumes charge of this office. This writ petition was filed on 26.9.2011 when the selection process stood completed much earlier i.e when Sh. S.K. Sharma joined as CGM (P&A) with the respondent No.1 on 21.6.2011. I cannot disturb the rights which are created by appointment, more so of person who has left his earlier employment to join the respondent No.1.

9. Finally, it needs to be brought on record that respondent No.1 has passed an office order dated 24.6.2011 as per which the post of CGM (P&A) cannot be treated as an identified post for various reasons including that the job of General Manager (P&A) is not same as the job of CGM (P&A) and on which basis the Chief Commissioner had directed that there should be identification of the post of CGM (P&A) for appointment of persons with disabilities as per its identity with GM (P&A). The relevant portion of this order dated 24.6.2011 reads as under:-

"(3) In STC, the post of GM (P&A) does not exist at present. The function of Personnel/HR and Administration which are distinct in nature, are performed by the respective Joint GMs. The position of CGM (P&A) did not exist previously in the Corporation. The W.P.(C) No.7383/2011 Page 9 of 11 functions of Personnel and Administration were clubbed at the CGM- level keeping in view the administrative requirements of both the divisions. In STC, the position of CGM (P&A) is that of a "Group Head" who would lead both the Personnel and Administration Divisions of the Corporation. Therefore, the post of CGM (P&A) cannot be considered comparable to the post of GM (P&A). However, in the future, as and when the post of Joint GM (Personnel) or joint GM (Administration) is filled by Direct Recruitment, the same would be considered as an identified post.

(4) In the Corporation, in group A, out of four reserve points, two persons (one person having low vision and the other having hearing disability) have been recruited in the scale of Assistant Managers. The backlog of two vacancies will be filled through Campus recruitment or through open advertisement as per requirement and decision of the Corporation.

In view of the above, the extant norms of Government of India are being expressly followed regarding reservations and concessions for Persons with Disability in Government service."

10. Therefore, looking at the issue from any manner as to lack of powers/jurisdiction in the Chief Commissioner to pass mandates/injunctions, the fact that the post of CGM (P&A) by its very nature cannot be an identified post for a person with disabilities, the fact that the appropriate Government has not deemed it fit to make the post of CGM (P&A) as an identified post, the fact that the post of GM (P&A) and the post of CGM(P&A) have separate responsibilities whereby they cannot be taken as one, hence I am of the opinion that the petitioner cannot succeed in seeking implementation of the order of the Chief Commissioner acting under the W.P.(C) No.7383/2011 Page 10 of 11 Act.

11. In view of the above, the writ petition is dismissed, leaving the parties to bear their own costs.

VALMIKI J. MEHTA, J AUGUST 13, 2013 Ne W.P.(C) No.7383/2011 Page 11 of 11