

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 7019 OF 2021
(Arising out of SLP (C)No. 9125 of 2018)

THE KARNATAKA POWER TRANSMISSION
COMPANY LIMITED & ANR.

Appellant(s)

VERSUS

VISHAL RATHOD

Respondent(s)

WITH

CIVIL APPEAL NO. 7020 OF 2021
(Arising out of SLP (C)No. 15126 of 2018)

O R D E R

Leave granted.

Both being connected matters, we dispose of the appeals by the following common judgment:

The appeal arising from SLP (C)No. 9125 of 2018 is filed by the Karnataka Power Transmission Company Limited. The said Company will be hereinafter referred to as 'Company' in short. The other appeal is arising from SLP(C)No. 15126 of 2018.

An advertisement was issued on 12.06.2015 calling for applications from persons for filling up the post of Junior Station Attendant. The advertisement indicated the qualification to be possessed as follows:

"SSLC or pass in 10th Standard examination from the institutions of the State of Karnataka."

The respondent in appeal (from SLP (C)No. 9125 of 2018) applied being possessed of what he considered to be qualification in conformity with the advertisement, viz., the certificate issued by the National Institute of Research and Development Council, New Delhi. The appellant in appeal (arising from SLP (C)No. 15126 of 2018) on the other hand, applied on the basis of having requisite qualification based on the certificate issued by the Karnataka Secondary Education Examination Board (Karnataka Open School Examination). Their applications were not acted upon on the basis that the Company found that they were not in conformity with the advertisement. The two writ petitions filed by the respective candidates were dismissed by the learned Single Judge. In appeals carried by the candidates, the appeal filed by one of them was not successful while the other appeal was allowed. This has resulted in present appeals, one being filed by the company and the other by the defeated candidate.

We have heard Mr. S. K. Kulkarni, learned counsel for the appellant-company and Shri S. N. Bhat, learned counsel appearing on behalf of both the candidates.

As far as the appeal filed by the company is concerned, the certificate reveals the following contents, *inter alia*:

It is issued by the National Institute of Research and Development Council, New Delhi, recognised by the Government of India, Department of Distance Education, New Delhi, Ministry of Human Resource Development (followed by Central Board of Secondary Education Syllabus). It also indicated two other aspects which we need to consider. One is name and address of the college shown as Social Development and Education Society(R) Banahatti, Karnataka State. The other feature to be noticed in this case is that the examination was allegedly held in January, 2015. Learned counsel for the company would point out that in the first place, certificate itself shows that the candidate (respondent) passed the examination allegedly by distance education mode. The company insists on regular education. He further points out that actually the examination of the institutions affiliated to the CBSE was held some time in March, 2015. Surprisingly, the certificate would indicate that the examination was held in January, 2015. He would further highlight the Rule which reads as follows:

Sl.No.	Nomenclature	Category & Grade	Cadre	Method of recruitment	Minimum Qualification	Appointing Authority
9.	Junior Station Attendant	'J'	Division wise	By direct recruitment	I. Should have passed SSLC or 10 th Standard examination from the State of Karnataka. ii. should have the knowledge to Read and Write in Kannada. Iii. Should have normal eye sight. iv. Should have satisfactory Physical Fitness and Mental	EEE of the Division

					Ability. Note: The above aspects to be ascertained by the Competent Authority. v. Should have successfully completed 3 years of Training in the Corporation. vi. Should be on Probation for Two Years after successful completion of Training	
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He would point out that, therefore, the High Court was in error in proceeding to allow the writ appeal in the case of the respondent.

Regarding the other appeal, it is the contention of Shri S.N. Bhat, learned counsel, that the High Court erred in dismissing the appeal. The certificate in this case reads as follows, *inter alia*:

It is issued by the Karnataka Secondary Education Examination Board. It is obvious the appellant passed in the Karnataka Open School Examination. The argument of Shri S. N. Bhat is that though the appellant has not passed the SSLC, the advertisement clearly provides for the alternate qualification which is pass in the 10th standard from the institution in Karnataka. The institution from which the appellant passed is from Karnataka. The objection pointed out by the learned counsel for the Company is that what is contemplated is regular education. Neither distance

education nor pass in Open School Examination will suffice. In one case, it is distance education and in the other case, it is open school examination. It is the specific case of the Company that the rule and advertisement does not provide for equivalent qualification and the Court should not go on a hunt for finding out whether it is an equivalent qualification.

To the said argument, Shri S. N. Bhat would point out that the question is not whether it is an equivalent qualification but the question is whether it is an alternate qualification and when the advertisement is issued, the employer is bound by the terms of the advertisement and therefore, since the appellant has passed the examination from an institution in Karnataka though through open school examination, he must be considered.

We are dealing with a notification which is issued by the employer which is intended to be based on the rules which have been framed. We have noticed the rule. We have noticed the terms of the advertisement.

There is undoubtedly ambiguity which has, in fact, resulted in a clearly avoidable litigation which has reached the highest Court.

The second thing which the Court must bear in mind is, given the ambiguity, the view taken by the employer cannot be brushed aside unless it is pointed out and found to be perverse or unsustainable. Regarding the case where the

High Court allowed the writ appeal, we do notice that the candidate is held to have passed examination which is recognised by the Government of India but which is through the Board of Distance Education. We have noticed also the discrepancy pointed out regarding the date of holding of the examination by reading of the certificate and the fact that CBSE examination was held on other dates in other schools. We must here record the stand taken by the counsel for the Company. Learned counsel for the Company would point out that his instructions are to submit that if education is pursued in a school in Karnataka which is affiliated to the CBSE or ICSE and the candidate passed the 10th standard, he would still not be regarded as qualified. We are baffled by the stand having regard to the terms of the advertisement and the rule. However, this is not the question we are called upon to decide in these appeals.

As far as the appeal filed by Shri S. N. Bhat is concerned, we have noticed the undeniable fact that the appellant has passed 10th standard examination from Karnataka Open School Examination. It is admittedly not through the regular mode. We further notice undeniably that while it may be true that open school education is being conducted by the Government including the State of Karnataka but proceedings of the Government of Karnataka produced by the appellant would indicate that the students at the secondary level of Karnataka Open School should have studied up to 7th

standard (pass in 7th standard is not compulsory). In other words, the scheme of the Karnataka Open School is, undoubtedly, that even without passing the 7th standard, a candidate is entitled to sit and is eligible for the examination held in the Karnataka Open School. We are not for a moment suggesting that the open school education is not to be encouraged or not to be recognised. But, here again, we would reiterate the importance of the perspective of the employer. We would notice further also that there is a case of the appellant-Company that there are no vacancies and all the vacancies are filled. We must do justice to the stand of Shri S. N. Bhat that the Division Bench has ordered for two vacancies to be maintained. The upshot of the above discussion is as follows:

The appeal filed by the company will stand allowed. The impugned judgment passed in Writ Appeal No. 100173/2017 will stand set aside. The appeal filed against the judgment in Writ Appeal No. 100172 of 2017 will stand dismissed. Before parting with this case, we are constrained, as a natural corollary, of what we have already observed to make certain observations.

Much of the litigation which is generated in the courts culminate in cases being filed in the highest Court which arise from the use of words in the Rules or Executive Orders which are shrouded in ambiguity. It is one thing to say that due deference must be given to the intention of the

employer. The difficulty, however, arises in discerning the intention. We would therefore hope that the appellant-company will bestow its attention in this regard on the need for bringing about clarity in the Rule so that while it is fair and reasonable, its purport is made clear and free from doubt. A copy of this judgment will be placed before the Managing Director of the appellant-Company so that the needful is done.

No orders as to costs.

....., J.
[K.M. JOSEPH]

....., J.
[PAMIDIGHANTAM SRI NARASIMHA]

New Delhi;
November 24, 2021.

ITEM NO.7

COURT NO.10

SECTION IV-A

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Civil Appeal No. 7019/2021

(Arising out of SLP (C)No. 9125/2018)

(Arising out of impugned final judgment and order dated 09-02-2018 in WA NO. 100173/2017 passed by the High Court of Karnataka, Dharwad Bench)

THE KARNATAKA POWER TRANSMISSION
COMPANY LIMITED & ANR.

Appellant(s)

VERSUS

VISHAL RATHOD
(FOR ADMISSION and I.R.)

Respondent(s)

WITH

C.A. No. 7020/2021 (IV-A)

(Arising out of SLP (C)No. 15126/2018)

(FOR ADMISSION and I.R.)

Date : 24-11-2021 These matters were called on for hearing today.

CORAM : HON'BLE MR. JUSTICE K.M. JOSEPH

HON'BLE MR. JUSTICE PAMIDIGHANTAM SRI NARASIMHA

For parties

Mr. S. N. Bhat, AOR
Ms. Parvati Bhat, Adv.
Mr. D.P. Chaturvedi, Adv.

Mr. S. K. Kulkarni, Adv.
Mr. M. Gireesh Kumar, Adv.
Mr. Ankur S. Kulkarni, AOR
Ms. Uditha Chakravarthy, Adv.

UPON hearing the counsel the Court made the following
O R D E R

Leave granted.

Civil Appeal No. 7019 of 2021 is allowed and Civil
Appeal No. 7020 of 2021 is dismissed in terms of the signed
order.

(NIDHI AHUJA)
AR-cum-PS

(RENU KAPOOR)
BRANCH OFFICER

[Signed order is placed on the file.]