

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE V.G.ARUN

TUESDAY, THE 19TH DAY OF APRIL 2022 / 29TH CHAITHRA, 1944

WP(C) NO. 13351 OF 2021

PETITIONER/S:

SURESH GEORGE
AGED 50 YEARS
S/O.GEORGE P. KORUTHU, FLATT NO.6B, PHASE III,
SILVERLAWNS APARTMENTS, MAROTTECHODU, EDAPPALLY,
COCHIN 682 024, KERALA
BY ADV JOHN NELLIMALA SARAI

RESPONDENT/S:

- 1 KOCHI METRO RAIL LTD. - KMRL
4TH FLOOR, JLN METRO STATION, KALOOR, KOCHI PIN 682
017 REP. BY ITS MANAGING DIRECTOR
- 2 DIRECTOR (FINANCE)
KOCHI METRO RAIL LIMITED, 4TH FLOOR, JLN METRO
STATION, KALOOR, KOCHI PIN 682 017
- 3 CHIEF GENERAL MANAGER (HR, ADMN & TRG)
KOCHI METRO RAIL LIMITED, 4TH FLOOR, JLN METRO
STATION, KALOOR, KOCHI PIN 682 017
- 4 MANAGER (HR)
KOCHI METRO RAIL LIMITED, 4TH FLOOR, JLN METRO
STATION, KALOOR, KOCHI PIN 682 017
- 5 STATE OF KERALA
REP. BY ITS PRINCIPAL SECRETARY (TRANSPORT)
SECRETARIAT, TRIVANDRUM 695 001
- 6 NIREESH CHAKKUMKULANGARA
GENERAL MANAGER (MARKETING ALTERNATE REVENUE AND
CORPORATE COMMUNICATIONS), KOCHI METRO RAIL LIMITED,
4TH FLOOR, JLN METRO STATION, KALOOR, KOCHI PIN 682
017
BY ADVS.
K.JAJU BABU (SR.)
K.A.ABDUL SALAM
SMT.M.U.VIJAYALAKSHMI, SC, KOCHI METRO RAIL LTD.
SUNIL V.MOHAMMED
K.A.THANU MOL
MANOJ N.

OTHER PRESENT:

GP VENUGOPAL V.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HERAD ON
21.01.2022, THE COURT ON 19.04.2022 DELIVERED THE FOLLOWING:

JUDGMENT

Dated this the 19th day of April, 2022

The challenge in this writ petition is against the selection and appointment of the 6th respondent as General Manager (Marketing, Alternate Revenue and Corporate Communications) of the first respondent, Kochi Metro Rail Limited. The essential facts are as under;

The first respondent had published Ext.P1 advertisement dated 23.09.2020, inviting applications for appointment to various key positions, including that of General Manager (Marketing, Alternate Revenue and Corporate Communications). Ext.P2 is the copy of the notification published in the official website of the first respondent. Relevant portion of the notification is extracted hereunder for easy reference;

| | |
|--|--|
| Name of the post | General Manager (Marketing, Alternate Revenue & Corporate Communications) |
| Total no. of Posts | One |
| Grade | E8, Rs.120000-280000 (IDA) |
| Educational Qualification | Graduate in Any discipline with Masters/post Graduate degree/diploma in business administration with specialization as marketing from a recognized university/institute of repute. |
| Experience | Minimum 20 years Post qualification experience in the area of marketing including formulation and implementation of Marketing strategy, Market planning, identification of alternate revenue opportunities, property development, client handling, space selling, Institutional marketing, PPP projects structuring, market research studies, marketing campaigns, promotional events, Public Relations etc. |
| Job Description | The candidate shall be responsible for all the Marketing, Alternate Revenue activities & also the Corporate communication activities of the company |
| Minimum & Maximum Age Limit (as on 1 st September 2020) | Minimum age 45 & Maximum age 55 Years |

2. The petitioner responded to the notification by submitting Ext.P3 application. As the petitioner had the requisite qualification,

experience and satisfied the age criterion, he was issued with Ext.P4 call letter for attending the interview scheduled on 02.12.2020. Accordingly, the petitioner appeared for the interview and found that, including himself, only four persons had been shortlisted. According to the petitioner, he had performed exceptionally well in the interview, but sensed something amiss from the bearing and demeanour of some of the members in the Interview Committee.

3. While so, appointment to the post of General Manager (HR, Admn and Trg), notified under Ext. P1 itself; was subjected to challenge in WP(C) No.28857 of 2020. The challenge therein was on the premise that the selected candidate did not have the notified educational qualification and experience. The challenge was upheld by Ext.P9 judgment and the Interview Committee was directed to review the credentials and experience of the selected candidate through

an exercise of due diligence, particularly with respect to the certificate of experience produced by that candidate. Accordingly, the review was conducted, resulting in Ext.P10 Minutes, cancelling the selection to the post of General Manager (HR, Admn and Trg).

4. The news about the irregularity in the selection process and interference by this Court, strengthened the petitioner's suspicion of foul play in the selection conducted to the post of General Manager (Marketing, Alternate Revenue and Corporate Communications). Thereupon, the petitioner gathered details about the 6th respondent under the Right to Information Act, which revealed the startling fact that the 6th respondent had not attained the notified minimum age of 45 years as on 01.09.2020, his date of birth being 19.09.1975. Hence the writ petition.

5. Heard Adv. John Nellimala Sarai for the petitioner, Senior Counsel K.Jaju Babu for the

first respondent and Adv.K.A.Abdul Salam for the 6th respondent.

6. Learned Counsel for the petitioner contended that the 6th respondent having not attained the minimum age prescribed, acceptance of application, shortlisting of his name and selection are *ex facie* illegal. Attention is drawn to Ext.R1(c) proceedings of the Scrutiny Committee to point out that, even after noticing that the 6th respondent did not satisfy the requirement of minimum age, his name was recommended for interview. The folly was repeated by the Interview Committee, as revealed from Ext. R1(b). Not only is the decision to interview the 6th respondent illegal, but also reeks of *mala files*, evidenced by the huge difference in marks awarded to the 6th respondent and the other candidates. It is contended that, being a public authority falling within the definition of

'State' under Article 12 of the Constitution of India, the officers of the first respondent cannot dole out favours to persons of their choice. Relying on the decision in **Shankar K.Mandal v. State of Bihar [(2003) 9 SCC 519]**, it is argued that when the cut off date is stated in the notification, candidates should satisfy the prescribed qualification relating to age with reference to the notified date.

7. Learned Senior Counsel refuted the allegation of favoritism and contended that the writ petition is liable to be rejected on the ground of delay, the 6th respondent having been selected to the notified post on 17.12.2020, while the writ petition is filed only on 02.07.2021. It is argued that, having failed to secure the requisite marks, the petitioner has no legal right to challenge the 6th respondent's appointment. Only a person having legal right can

be termed as an aggrieved person entitled to challenge the selection of the appointed candidate. To bolster this contention, reliance is placed on the decision in **Dr. Umakant Saran v. State of Bihar and others [1973 KHC 471]**. It is submitted that, even though the 6th respondent had not completed 45 years as on 01.09.2020, he had crossed the prescribed minimum age as on the date of notification, date of submission of application and the last date prescribed for submission of application. As such, non-attainment of the minimum notified age is of no avail. Even otherwise, suitability being the prime consideration, minor deviation in qualification with reference to age is not substantial enough to render the selection irregular. It is submitted that the Interview Committee consisting of the Managing Director, three functional Directors of the Company and an

external expert, had unanimously selected the 6th respondent based on his performance and experience. The selection committee had decided to relax the minimum age criteria by 19 days keeping in view the organisation's best interest.

8. Learned Counsel for the 6th respondent submitted that his client had outperformed the other candidates and the Committee found him to be the best suited person with relevant experience and required skill set. As such, this Court will not be justified in interfering with the selection and appointment, in exercise of the power of judicial review. It is submitted that the 6th respondent has accepted the appointment after resigning another high profile post, and hence, interference with his appointment at this point of time will cause substantial prejudice.

9. Indubitably, the 6th respondent did not satisfy the minimum age criteria. After taking note of this fact, the Scrutiny Committee

recommended his name and the Interview Committee selected him, finding the 6th respondent to have broadly complied with the conditions. The question is whether the Committees are bestowed with the power to alter the qualifications after the selection process has commenced. As held in **Shankar K.Mandal**, when prescription regarding age is stipulated in the notification, qualification based on age can only be in accordance with such stipulation. In this context, the following observation of the Apex Court in **Ashok Kumar Sharma v. Chander Shekhar and another [(1997) 4 SCC 18]** assumes relevance;

"The proposition that where applications are called for prescribing a particular date as the last date for filing the applications, the eligibility of the candidates shall have to be judged with reference to that date and that date alone, is a well-established one. A person who acquires the prescribed qualification subsequent to such prescribed date cannot be considered at all. An advertisement or

notification issued/published calling for applications constitutes a representation to the public and the authority issuing it is bound by such representation. It cannot act contrary to it. One reason behind this proposition is that if it were known that persons who obtained the qualifications after the prescribed date but before the date of interview would be allowed to appear for the interview, other similarly placed persons could also have applied. Just because some of the persons had applied notwithstanding that they had not acquired the prescribed qualifications by the prescribed date, they could not have been treated on a preferential basis. Their applications ought to have been rejected at the inception itself. This proposition is indisputable and in fact was not doubted or disputed in the majority judgment. This is also the proposition affirmed in Rekha Chaturvedi v. University of Rajasthan [1993 Supp (3) SCC 168 : 1993 SCC (L&S) 951 : (1993) 25 ATC 234]. The reasoning in the majority opinion that by allowing the 33 respondents to appear for the interview, the recruiting authority was able to get the best talent available and that such course was in furtherance of public interest is, with respect, an impermissible justification. It is, in our considered

opinion, a clear error of law and an error apparent on the face of the record."

Therefore, the irrefragable position is that the Scrutiny and Interview Committees had no authority to deviate from the notified qualification with respect to the minimum age of a candidate, whether it be for nineteen days or one day.

10. As rightly pointed out by the learned Counsel for the petitioner, the very fact that the 6th respondent submitted his application knowing fully well that he did not satisfy the criterion regarding age, coupled with the act of the Scrutiny Committee in recommending his name and that of the Interview Committee in finding him to be the most suitable candidate, that too by awarding him 30 marks more than the next candidate, casts a cloud of suspicion over the selection process. Being a public body, the action of the first respondent has to be

transparent and above suspicion. The following exposition of the Supreme Court in **State of Karnataka v. Umadevi [(2006) 4 SCC 1]** is contextually relevant;

" The obligation cast on the State under Article 39(a) of the Constitution is to ensure that all citizens equally have the right to adequate means of livelihood. It will be more consistent with that policy if the courts recognise that an appointment to a post in government service or in the service of its instrumentalities, can only be by way of a proper selection in the manner recognised by the relevant legislation in the context of the relevant provisions of the Constitution. In the name of individualising justice, it is also not possible to shut our eyes to the constitutional scheme and the right of the numerous as against the few who are before the court. The directive principles of State policy have also to be reconciled with the rights available to the citizen under Part III of the Constitution and the obligation of the State to one and all and not to a particular group of citizens. We, therefore, overrule the argument based on Article 21 of the

Constitution."

11. Having found the appointment of the 6th respondent to be illegal, this Court cannot shirk away from its responsibility by reason of delay in challenging the appointment. An illegal appointment will not get legitimised or sanctified by efflux of time. The contention that the petitioner has no legal right to challenge the appointment is liable to be rejected in view of the admitted position that the petitioner had participated in the selection process and secured second rank. The plea of prejudice and hardship raised on behalf of the 6th respondent cannot also be countenanced, since hard cases cannot be allowed to make bad law.

In the result, the writ petition is allowed. The selection and appointment of the 6th respondent as General Manager (Marketing, Alternate Revenue and Corporate Communications), based on Exts.P1 and P2 notifications, is held to

be illegal. The first respondent shall take necessary consequential action within one month of receipt of a copy of this judgment.

Sd/-
V . G . ARUN
JUDGE

scl/

APPENDIX OF WP(C) 13351/2021

PETITIONER EXHIBITS

Exhibit P1 TRUE COPY OF THE NEWSPAPER
ADVERTISEMENT DATED 23.9.2020

Exhibit P2 TRUE COPY OF THE RECRUITMENT
NOTIFICATION UPLOADED IN THE 1ST
RESPONDENT'S WEBSITE

Exhibit P3 TRUE COPY OF THE APPLICATION SUBMITTED
BY THE PETITIONER

Exhibit P4 TRUE COPY OF THE INTERVIEW CALL LETTER

Exhibit P5 TRUE COPY OF THE RTI APPLICATION DATED
25.3.2021 SENT BY ADV. BIJU CHACKO TO
THE FIRST RESPONDENT

Exhibit P6 TRUE COPY OF THE REPLY LETTER
FOLLOWING THE RTI APPEAL WITH THE
ANNEXURES

Exhibit P7 TRUE COPY OF THE PETITIONER'S RTI
APPLICATION DATED 25.5.2021 TO THE
FIRST RESPONDENT'S PIO

Exhibit P8 TRUE COPY OF THE FIRST RESPONDENT'S
REPLY DATED 23.6.2021 IN REPLY TO THE
PETITIONER.

Exhibit P9 TRUE COPY OF THE JUDGMENT IN WP(C)
NO.28857/2020

Exhibit P10 TRUE COPY OF THE MINUTES OF THE
MEETING DATED 10.5.2021 IN THE LIGHT
OF EXT. P9 JUDGMENT

Exhibit P11 TRUE COPY OF A NEWS ITEM THAT APPEARED
IN THE TIMES OF INDIA DAILY ON 1ST
AUGUST 2020 WITH RESPECT TO ONE OF THE
SHAM RECRUITMENTS CONDUCTED BY THE
FIRST RESPONDENT

RESPONDENT'S EXHIBITS:

EXT.R1(a) : TRUE COPY OF THE APPLICATION DATED
14.10.2020 SUBMITTED BY THE 6TH
RESPONDENT FOR THE POST OF GENERAL
MANAGER (MARKETING, ALTERNATE REVENUE

- & CORPORATE COMMUNICATIONS) .
- EXT.R1 (B) : TRUE COPY OF THE MINUTES OF THE SELECTION COMMITTEE OF 1ST RESPONDENT OR SELECTION TO THE POST OF GENERAL MANAGER (MARC) HELD ON 02.12.2020.
- EXT.R1 (C) : TRUE COPY OF THE PROCEEDINGS OF D(F) & D(P) ON SELECTION OF GENERAL MANAGER (MARC) OF THE DIRECTOR (PROJECTS) AND DIRECTOR (FINANCE) .
- EXT.R1 (D) : TRUE COPY OF THE OFFER OF APPOINTMENT VIDE NO.KMRL/FIN/HR/APPT/2020 ISSUED TO THE 6TH RESPONDENT ON 17.12.2020.
- EXT.R1 (E) : TRUE COPY OF THE JOINING ORDER VIDE NO.KMRL/IN/HR/00/IND/2021 DATED 24.02.2021 IN FAVOUR OF THE 6TH RESPONDENT.
- EXT.R1 (F) : SCREESHOT OF THE RELEVANT WEBPAGE SHOWING THE LAST DATE OF SUBMISSION OF APPLICATION OF THE 1ST RESPONDENT.
- EXT.R1 (G) : TRUE COPY OF THE EDUCATIONAL QUALIFICATIONS AND EXPERIENCE SUBMITTED BY THE 6TH RESPONDENT.
- EXT.R1 (H) : TRUE COPY OF THE REPLY SUBMITTED BY THE 6TH RESPONDENT.
- EXT.R1 (I) : TRUE COPY OF EXPERIENCE CERTIFICATE OF THE 6TH RESPONDENT DATED 9.11.2020.

EXT.R1 (J) : TRUE COPY OF THE REPLY SUBMITTED BY
THE PETITIONER ON 4.11.2020 TO
MR.RATHEESH S.

EXT.R1 (K) : TRUE COPY OF THE REPLY SUBMITTED BY
ANOTHER SHORTLISTED CANDIDATE ON
3.11.2020 TO THE CLARIFICATION SOUGHT
TO MR. RATHEESH S.