

Sujith vs Union of India

Sujith vs Union of India

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Court : Kerala

Decided On : Apr-02-2024

Judge : Honourable Mr. Justice Gopinath P.

Appeal No. : WP(C)/17564/2017

Appellant : Sujith

Respondent : Union of India

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE GOPINATH P.
TUESDAY, THE 2ND DAY OF APRIL 2024 / 13TH CHAITHRA, 1946
WP(C) NO. 17564 OF 2017 PETITIONER/S: SUJITH AGED 37 YEARS
SL ELECTRICAL WORKS, S.L. TOWER, UR 43, NEAR BSNL,
THIRUVANANTHAPURAM, RESIDING AT LITTY COTTAGE,
MELARIYODU, VELIYAMCODE PO, NEYYATTINKARA,
THIRUVANANTHAPURAM BY ADV SRI.M.SREEKUMAR
RESPONDENT/S:

1 UNION OF INDIA REPRESENTED BY SECRETARY, MINISTRY OF
URBAN DEVELOPMENT, ROOM NO.122C NIRMALAN

BHAWAN,MOULANA AZAD ROAD, NEW DELHI 110011 2
SUPERINTENDING ENGINEER TRIVANDRUM CENTRAL
ELECTRICAL DIVISION,CENTRAL PUBLIC WORKS
DEPARTMENT,THIRUVANANTHAPURAM 695001 3 EXECUTIVE
ENGINEER TRIVANDRUM CENTRAL ELECTRICAL
DIVISION,CENTRAL PUBLIC WORKS
DEPARTMENT,THIRUVANANTHAPURAM 695001 BY ADVS.
SRI.KRISHNADAS P.NAIR, CGC SRI.KRISHNADAS P.NAIR CGC

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 02.04.2024, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING: WP(C) NO. 17564 OF 2017 2

JUDGMENT

Petitioner has approached this Court, challenging Ext.P14 proceedings, through which the application of the petitioner for enlistment as a contractor in Class IV category (Electrical), has been rejected by the 2nd respondent.

2. Learned counsel appearing for the petitioner would

submit that the criteria for enlistment as a contractor is contained in Ext.P3. It is submitted that, despite the petitioner having all the qualifications necessary for enlistment, the claim of the petitioner for enlistment as a Class IV contractor was arbitrarily rejected by Ext.P9 order dated 06.06.2016. It is submitted that the petitioner, therefore, challenged Ext.P9 order, by filing W.P.(C.) No.23363 of 2016, which was disposed of by Ext.P10 judgment, directing the competent authority to take a fresh decision in the matter, after finding that Ext.P9 communication suffers from the vice of arbitrariness and illegality.

3. The petitioner was, thereafter, called upon to submit

certain details of the works done by him, to consider his claim of experience. The works were also inspected by the 3rd respondent WP(C) NO. 17564 OF 2017 3 as is evident from Ext.P12, series of inspection reports. It is submitted that though the work of the petitioner was graded as very good, the 2nd respondent, through

Ext.P14 order, rejected the application of the petitioner for untenable reasons. It is submitted that the findings in Ext.P14 that the work of Replacement of Energy Meter Panel of Nanthancode staff Quarters of RBI is not a work of Internal electrification of building cannot be accepted considering the provisions of Ext.P3. It is submitted that the finding that the work of Supply, installation, testing and commissioning of Low Tension Panel at Main office building, Reserve Bank of India is also not a work of internal electrification of building, is grossly arbitrary and illegal. It is submitted that the rejection of the work done by the petitioner at the show room of SUZUKI at ESSCO Motors, Karamana (TVM), on the ground that the petitioner had not produced copy of the agreement, work order and copies of final bills, also cannot stand to reason. It is submitted that the rejection of the work done by the petitioner namely, Electrical installation work in connection with renovation of 8 flats in G Block, Kowdiar for the Reserve Bank of India, on the ground that the same was not claimed as experience in the original application and since the work was non-existent on the date of WP(C) NO. 17564 OF 2017 4 application, is also not a reason to not consider the said experience, especially considering the fact that the enlistment would not, at any rate, be from the date of the original application. It is pointed out, with reference to the counter affidavit filed in this writ petition by the 2nd respondent, that it is settled law that the impugned order must sustain on itself and supplemental reasons provided through the filing of a counter affidavit cannot be considered while testing the legality of Ext.P14 order.

4. Learned Central Government Counsel appearing for

the respondents would submit that it is clear from a reading of Ext.P14 that the experience claimed by the petitioner was not meeting the necessary criteria and it is therefore that the competent authority had rejected the application for enlistment as a contractor. It is submitted that the question as to whether the petitioner is qualified in terms of the criteria is a matter to be decided by the competent authority and it is not for the petitioner to contend that certain works done by him should be treated as sufficient qualification for the work. It is submitted that, in the absence of any mala fides, it is not open to the petitioner to contend before this Court that the rejection of certain qualifications claimed by the petitioner for the

purpose of WP(C) NO. 17564 OF 2017 5 enlistment is not in accordance with the law. In other words, it is the submission of the learned Central Government Counsel appearing for the respondents that, when a bona fide decision has been taken by the 2nd respondent in the matter of enlistment of the petitioner as a contractor, on the finding that experience obtained by him does not qualify for such enlistment, this Court cannot, in exercise of power under Article 226 of the Constitution of India, take a contrary view.

5. Having heard the learned counsel appearing for the

petitioner and the learned Central Government Counsel appearing for the respondents, I am of the view that the petitioner must be given an opportunity to establish before the competent authority that he has the necessary experience for being enlisted as a Class-IV contractor (Electrical) under the Central Public Works Department. While it is true that Ext.P14 proceeds to hold that the petitioner does not meet the necessary criteria, I notice that the experience claimed by the petitioner has been found ineligible on account of the fact that it is not deemed to be the works of internal electrification of buildings. As rightly contended by the learned counsel appearing for the petitioner, there is nothing in which Ext.P3 would suggest that internal electrification of the building is confined to the works mentioned WP(C) NO. 17564 OF 2017 6 in Ext.P14 as qualifying for enlistment. Another reason mentioned in Ext.P14 is that the experience claimed by the petitioner, after the date of submission of the application for enlistment cannot be considered, does not appear to be correct. Since the enlistment of the petitioner will be from a future date, any subsequent experience after the submission of the application for enlistment can also be considered for the purposes of enlistment. Therefore, the matter requires reconsideration at the hands of the 2nd respondent. In order to enable reconsideration of the matter by the 2nd respondent taking into consideration the observations of this Court, Ext.P14 is set aside. The application filed by the petitioner for enlistment shall be reconsidered by the 2nd respondent within a period of three months from the date of receipt of a certified copy of this

judgment having regard to the above observations. The

petitioner shall appear before the 2nd respondent with a copy of this writ petition, copy of the counter affidavit and a certified copy of this judgment, for due compliance. The writ petition is disposed of as above. Sd/- GOPINATH P., JUDGE
ajt WP(C) NO. 17564 OF 2017 7 APPENDIX OF WP(C) 17564/2017 PETITIONER
EXHIBITS EXHIBIT P1 TRUE COPY OF THE ELECTRICAL CONTRACTORS

LICENSE CLASS B NO. CB 4690 DATED 13.07.2005 ISSUED BY SECRETARY,
KERALA STATE ELECTRICITY LICENSING BOARD TO THE PETITIONER

EXHIBIT P2 TRUE COPY OF THE REGISTRATION CARD NO. K/EL/I/395 (13
B/EE (ELE)/13-14) ISSUED TO THE PETITIONER EXHIBIT P3 TRUE COPY OF
THE RULES OF ENLISTMENT OF CONTRACTORS IN CPWD 2005 WITHOUT
ANNEXURES EXHIBIT P4 TRUE COPY OF THE GUIDELINES FOR
ENGLISTMENT OF CONTRACTORS EXHIBIT P5 TRUE COPY OF THE
APPLICATION SUBMITTED BY PETITIONER DATED 27.08.2013 BEFORE THE
2ND RESPONDENT EXHIBIT P6 TRUE COPY OF THE REPRESENTATION
FILED BY PETITIONER BEFORE THE 2ND RESPONDENT DATED 31.01.2014
EXHIBIT P7 TRUE COPY OF THE APPLICATION SUBMITTED BY PETITIONER
BEFORE THE PRIME MINISTER OF INDIA DATED 26.03.2016 EXHIBIT P8
TRUE COPY OF THE LETTER NO. PMOPG/D/2016/0090403 DATED 07.04.2016
ISSUED TO THE PETITIONER EXHIBIT P9 TRUE COPY OF THE LETTER
DATED 06.06.2016 TO THE PETITIONER BY THE 3RD RESPONDENT EXHIBIT
P10 TRUE COPY OF THE JUDGMENT OF THIS HON'BLE COURT IN WPC.NO.
23363/2016 DATED 29.11.2016 EXHIBIT P11 TRUE COPY OF THE LETTER
NO. 59(1) TCEC/2017/16 DATED 02.02.2017 ISSUED FROM THE 2ND
RESPONDENT TO THE PETITIONER EXHIBIT P12 TRUE COPY OF THE
PERFORMANCE REPORT SUBMITTED BY THE 3RD RESPONDENT DATED
07.03.2015 EXHIBIT P13 TRUE COPY OF THE LETTER NO.
SLE/CPWD/992016- 17 DATED 10.02.2017 SUBMITTED BY PETITIONER TO
2ND RESPONDENT EXHIBIT P14 TRUE COPY OF THE ORDER NO. 55(1)
(2)/AB/TCEC/17/12/ DATED 01.03.2017 OF THE 2ND RESPONDENT
RESPONDENTS EXHIBITS

EXHIBIT R3 1

THE TRUE COPY OF THE ENLISTMENT RULES 2005EX

DATED 9.8.2012 EXHIBIT R3 3 THE TRUE COPY OF THE CLIENT CERTIFICATE REG. DATED 26.8.2013 EXHIBIT R3 (4) THE TRUE COPY OF THE COMPLETION CERTIFICATE DATED 27.02.2012 EXHIBIT R3 (5) THE TRUE COPY OF THE CLIENT CERTIFICATE REG. DATED 26.8.2013 BY ASSISTANT MANAGER, RBI, TRIVANDRUM EXHIBIT R3 (6) THE TRUE COPY OF THE CLIENT CERTIFICATE REG. DATED NIL ISSUED BY THE MANAGING DIRECTOR, KEK TOWERS EXHIBIT R3 (7) THE TRUE COPY OF THE PERFORMANCE CERTIFICATE OF CONTRACTOR ISSUED BY CLIENTS EXHIBIT R3 (8) THE TRUE COPY OF THE COMMUNICATION LETTER TO

THE PETITIONER'S APPLICATION FOR ENLISTMENT IN CLASS IV CATEGORY (ELECTRICAL) CONTRACTOR WAS REJECTED BY THE 2ND RESPONDENT

EXHIBIT R3 (9) THE TRUE COPY OF THE LETTER DATED 2.2.2017 EXHIBIT R3 (10) TRUE COPY OF THE CLIENT CERTIFICATE REG. DATED NIL ISSUED BY THE MANAGING DIRECTOR , KEK TOWERS EXHIBIT R3 (11) THE COPY OF BILL PASSED FOR AN AMOUNT OF RS.2,85,956/- EXHIBIT R3 (12) THE COPY OF CERTIFICATE OF TAX DEDUCTION AT SOURCE BY CLIENT (FORM 16A) FOR AN AMOUNT OF RS.2,85,956/- EXHIBIT R3 (13) THE COPY OF BILL PASSED FOR AN AMOUNT OF RS.11,24,650/- EXHIBIT R3 (14) THE COPY OF CERTIFICATE OF TAX DEDUCTI8ON AT SOURCE BY CLIENT (FORM 16A) FOR AN AMOUNT OF RS.11,24,650/- EXHIBIT R3 (15) THE TRUE COPY OF THE LETTER DATED 1.3.2017 EXHIBIT R3 (16) THE TRUE COPY OF THE INSPECTION REPORT

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