

Shaikh Latif Shaikh Maheebub Vs State Of Maharashtra Through Its Secretary And Others

Court: Bombay High Court (Aurangabad Bench)

Date of Decision: Jan. 17, 2025

Acts Referred: Constitution of India, 1950 " Article 226

Hon'ble Judges: Mangesh S. Patil, J; Prafulla S. Khubalkar, J

Bench: Division Bench

Advocate: Sayyed Tauseef Yaseen, Neha B. Kamble, Rahul A. Tambe

Final Decision: Dismissed

Judgement

Prafulla S. Khubalkar, J

1. Rule. Rule made returnable forthwith. By consent of the respective parties, the petitions are taken up for final hearing.

2. These petitions, under Article 226 of the Constitution of India, deal with common grievance of the petitioners who have impugned the decision of

respondent Nos.2/MAHAGENCO and 3/MSEDCL, declaring each of them ineligible for the posts of "Additional Executive Engineer" and

"Deputy Executive Engineer", on account of absence of requisite experience of working at "Independent Power Producer" (IPP). Since

the grievance of these petitioners is identical raising similar challenge against respondent Nos.2 and 3, all these three petitions are heard and decided

together.

3. The factual set up is succinctly put herewith. The Maharashtra State Power Generation Company Limited (MAHAGENCO) the respondents no.2

published an advertisement No.09/2022, dated 09/10/2022 inviting applications for the posts of "Executive Engineer", "Additional Executive

Engineer" and "Deputy Executive Engineer". The advertisement contained details about the eligibility including the qualifications and

experience required for the respective posts. In response to the advertisement, the petitioners applied for the respective posts of "Additional

Executive Engineer" and "Deputy Executive Engineer" and submitted their experience certificates of having worked in "M/s Gangakhed

Sugar and Energy Limited", which they claimed to be an IPP i.e. "Independent Power Producer". The petitioners appeared for the written

examination and having stood qualified, their names were shortlisted for the stage of Documents Verification, as per the list published on 05/04/2023.

4. On 28/10/2023, after the documents verification, a list of ineligible candidates was published which included the names of the petitioners being held

ineligible due to absence of experience certificate of IPP as required by the advertisement. On being declared ineligible, the petitioners submitted

representations to the respondents pointing out that Gangakhed Sugar and Energy Ltd. is an IPP and therefore, requested that their experience need to

be counted for deciding their eligibility. Since there was no decision on their representation and their grievance remained unredressed, they filed the

instant petitions challenging the decision declaring them ineligible and seeking a direction to consider them for appointment to the posts of Additional

Executive Engineer and Deputy Executive Engineer as per their applications.

5. In response to the petitions, the respondent nos.2 and 3 filed reply dated 27/03/2024 taking a specific stand that the petitioners have been declared

as ineligible on the basis of assessment and scrutiny of documents by an Expert Committee of the respondents, comprising of two Executive Engineers

(Technical Experts) and DGM-HR (HR-Experts), which was constituted for deciding the eligibility for both the posts. The respondents opposed the

petition by contending that the expert committee had scrutinized the documents of the petitioners in the light of pre-requisites as per the advertisement

and since the petitioners do not have experience of working in IPP, they are rightly declared ineligible. The respondents have categorically stated that

the experience of Gangakhed Sugar and Energy Ltd. cannot be considered as requisite experience as per the advertisement since Gangakhed Sugar

and Energy Ltd. is primarily a sugar factory with major business of production of sugar from sugarcane and it is a Co-generation Power Producer

which means the primary reason for operating the power plant is to ensure that the heat and energy requirement for producing sugar. It is stated that,

only surplus energy generated is sold to the grid and as such, Gangakhed Sugar and Energy Ltd. cannot be termed as an Independent Power

Producer (IPP) as the power generation work is subsidiary in sugar production. It is also stated that the representations submitted by the

petitioners were considered by the Chairman and the Managing Director of the respondents and after considering the earlier opinions of expert

committee, the Chairman and the Managing Director had maintained the decision of the expert committee declaring the petitioners ineligible.

6. To controvert the stand of respondent Nos.2 and 3, the petitioners submitted rejoinder affidavit dated 03/05/2024, stating therein that the manner of

production of electricity by the Gangakhed Sugar and Energy Ltd. through bagasse which is essentially a residue and is renewable source of energy.

Amongst other contentions, it is stated that generation of electricity through coal or bagasse does not make any difference for the purpose of

categorizing the company as a producer of electricity and therefore, it is submitted that Gangakhed Sugar and Energy Ltd. has to be categorized as an

IPP for the purpose of deciding eligibility of the petitioners. Along with the rejoinder, the petitioners have filed on record a Gazette copy of the

Maharashtra Electricity Duty Act, 2016 (for short "the 2016 Act") and Energy Purchase Agreement (EPA) between the MSEDCL and M/s

Gangakhed Sugar and Energy Ltd. (GSEL), Gangakhed, Dist. Parbhani.

7. In response to this, respondent Nos.2 and 3 filed an affidavit by way of a sur-rejoinder dated 10/06/2024 thereby pointing out that even after

considering the contentions of the petitioners, Gangakhed Sugar and Energy Ltd. can be at the most considered to be a "Captive Power Plant" and not an IPP.

Along with other contentions, the respondents pointed out the specific stipulation contained in the advertisement which provided that experience

certificate issued by private contractors, proprietors, Captive Power Plants, etc. shall not be included as "power generation experience" and on

this basis put forth its stand that the experience of the petitioners in Gangakhed Sugar and Energy Ltd. cannot be considered for deciding their

eligibility.

8. In the backdrop of these pleadings, the learned counsels submitted their extensive arguments. We have considered the rival contentions and perused

the record.

9. Advocate Sayyed Tauseef Yaseen, learned counsel for the petitioners in all these petitions, strenuously argued that the decision of the respondents

in declaring the petitioners ineligible is grossly illegal in view of the fact that Gangakhed Sugar and Energy Ltd. is IPP for all purposes and therefore,

the experience of petitioners cannot be discarded. He invited our attention to the advertisement and the definitions of the terms "Captive

Generation", "Co-generation" and "Independent Power Producer" (IPP) as stated in the 2016 Act. He vehemently argued that the

parameters of determining an entity to be an IPP are exclusively governed by the statutory regime and therefore the petitioners must be held to be

eligible candidates. He also invited our attention to the Energy Purchase Agreement between the MSEDCL and M/s Gangakhed Sugar and Energy

Ltd. to point out that Gangakhed Sugar and Energy Ltd. is referred to as "Generator Developer". Additionally, he invited our attention to the

extract of STU Five year Transmission Plan for the year 2010-11 to 2014-15 which contains a list of various plants under the caption, "Proposed

Year wise Generation Addition by IPPs/ Biogas/Bagasse/Biomass Plants, etc. for which PPA with various Distribution companies in State,

which contains name of M/s Gangakhed Sugar. Apart from these submissions, by pointing out that the respondents have earlier employed one

Dnyaneshwar Dhondiram Balwant, who had similar experience in Gangakhed Sugar and Energy Ltd. and the same was taken into consideration and

on this basis petitioners are claiming similar benefit.

10. In support of their contentions, the petitioners filed on record written notes of arguments and have relied on following judgments :-

(a) Dr. (Major) Meeta Sahai Vs. State of Bihar, [AIR OnLine 2019 SC 1766];

(b) Ankita Thakur Vs. H. P. Staff Selection Commission, [AIR OnLine 2023 SC 925];

(c) Rakesh Kumar Vs. The State of Jharkhand and others, [Civil Appeal No.9217/2018(Supreme Court) arising out of Special Leave Petition (Civ.)

No.2316/2018];

(d) Parvaiz Ahmad Parry Vs. State of Jammu and Kashmir and others, [(2015) 17 SCC 709];

(e) Monnet Ispat & Energy Ltd. etc. Vs. Union of India and others, [2017 SCC OnLine SC 2190]; and

(f) Mayur Arun Tapase Vs. State of Maharashtra, Thr. Additional Chief Secretary, Home Department (Transport and Ports) and others, [2023 SCC

OnLine Bom. 817].

11. By referring to various extracts from the aforesaid judgments, the learned counsel for the petitioners submitted that, since the advertisement did

not contain any specification with respect to IPP and since there was an ambiguity in the advertisement, the petitioners should be given the advantage

while deciding their eligibility.

12. Per contra, Advocate Rahul A. Tambe, learned counsel for respondent Nos.2 and 3 made extensive submissions by placing reliance on the clauses

of the advertisement, which categorically mention the condition of experience in power generation company. He invited our attention to the specific

stipulation in the advertisement which reads as under :-

“The experience certificate issued by Private Contractors, Proprietors, Captive Power Plants etc shall not be included as a Power Generation experience. The

experience certificate in respect of the company/organisation other than Central, State Govt. Power Generation Utilities submitted by candidate shall be self

explanatory i.e. in the experience certificate area / nature of work shall clearly be mentioned so as to enable to decide his /her eligibility and there shall not be any

ambiguity for deciding their eligibility.”

13. By inviting our attention to the documents on record, he would submit that the decision to declare the petitioners as ineligible was taken by the

expert committee which has scrutinized the documents submitted by the petitioners as well as considered the status of Gangakhed Sugar and Energy

Ltd. vis a vis the requirements of the respondents. He submitted that, since the decision is based upon and backed by the opinion of the expert

committee, interference of this Court under Article 226 of the Constitution of India is not warranted.

14. He would further submit that the petitioners cannot claim any advantage on the basis of employment to Dnyaneshwar Dhondiram Balwant since

he was selected through MSPGCL, Advertisement No.06/2014 and the criteria of experience as mentioned in that advertisement was entirely

different. In support of their contentions, respondent Nos.2 and 3 have also filed written notes of arguments dated 19/09/2024. To highlight their

contentions, the respondents have relied upon following judgments :-

(a) Maharashtra Public Service Commission, thr. its Secretary Vs. Sandeep Shriram Warade and others, [(2019) 6 SCC 362];

(b) Tajvir Singh Sodhi and others Vs. State of Jammu and Kashmir and others, [2023 SC OnLine 344]; and

(c) Ritu Bhatia Vs. Ministry of Civil Supplies Consumer Affairs & Public Distribution and others, [2019 (3) SCC 422].

15. On the basis of these judgments relied upon by respondent nos.2 and 3, Advocate Tambe vehemently submitted that the final decision about

eligibility based on experience has to be taken by the employer and since the decision in these cases is based on the decision of the expert committee,

the petitioners' challenge cannot sustain.

16. Advocate Ms. Neha Kamble, learned A.G.P. for respondent No.1 supported the arguments made on behalf of respondent Nos.2 and 3.

17. The rival contentions of the parties now fall for our consideration. The controversy revolves around the issue as to whether the experience of

working at Gangakhed Sugar and Energy Ltd. can be considered as a requisite experience as per the advertisement for the purpose of deciding

eligibility for the post of Additional Executive Engineer and Deputy Executive Engineer. The advertisement specifically mentions that,

for the post of Additional Executive Engineer, the requirement of experience is of seven years in Power Generation Company of

Central/State/Independent Power Producer (IPP) under principal employer and for the post of Deputy Executive Engineer, similar

requirement of experience is of three years.

18. The petitioners have relied upon the experience certificate issued by Gangakhed Sugar and Energy Ltd. which document is not disputed by

respondents. However, crucial issue which falls for consideration is as to whether Gangakhed Sugar and Energy Ltd. can be categorized as IPP as

per the requirement of the advertisement.

19. The terms "Captive generation", "Co-generation" and "Independent Power Producer (IPP)", are defined in the 2016 Act, which

are reproduced below :-

"(a) "Captive generation" means an energy generated from a "Captive generating plant" defined in clause (8) of section 2 of the Electricity Act, and the

rules made thereunder by the Central Government in this behalf;

(b) "Co-generation" means an energy generated in a process, which simultaneously produces two or more forms of useful energy including electricity;

"Independent Power Producer (IPP)".

(l) "Independent Power Producer (IPP)" means a producer of electrical energy which is not a public utility but which makes electrical energy available for sale to

utilities or end users;

20. It is pertinent to note that the advertisement does not state that the term IPP would bear the meaning as defined in the statute. Therefore, the issue

as to whether M/s Gangakhed Sugar factory falls strictly within the definition of the term contained in the 2016 Act is irrelevant, since the requirement

of IPP has to be determined qua the perception of the employer.

21. Even if taking into consideration the above mentioned definitions, the further issue which falls for our consideration is regardless of categorisation

of Gangakhed Sugar and Energy Ltd. as a "Captive Power Generation Plant" or "Independent Power Producer (IPP)", whether the

respondents had the final authority to decide the requisite eligibility as per the advertisement. Another crucial issue is about the scope of interference

by this court under Article 226 of the Constitution of India.

22. Before we delve into this controversy, it is necessary to take note of the legal position as laid down by the judgment of Maharashtra Public Service

Commission, thr. its Secretary (supra), which deals with the issue about finality of the decision regarding eligibility as per the advertisement. Relevant

paragraph No.9 from the judgment is reproduced below :-

"9. The essential qualifications for appointment to a post are for the employer to decide. The employer may prescribe additional or desirable qualifications,

including any grant of preference. It is the employer who is best suited to decide the requirements a candidate must possess according to the needs of the employer

and the nature of work. The court cannot lay down the conditions of eligibility, much less can it delve into the issue with regard to desirable qualifications being

on a par with the essential eligibility by an Interpretive re-writing of the advertisement. Questions of equivalence will also fall outside the domain of judicial

review. If the language of the advertisement and the rules are clear, the court cannot sit in judgment over the same. If there is an ambiguity in the advertisement or

it is contrary to any rules or law the matter has to go back to the appointing authority after appropriate orders, to proceed in accordance with law. In no case

can the court, in the garb of judicial review, sit in the chair of the appointing authority to decide what is best for the employer and interpret the conditions of the

advertisement contrary to the plain language of the same.

23. As regards the scope of interference by the Courts in the selection process for public employment, the following paragraphs of the judgment in

Tajvir Singh Sodhi and others (supra) need to be noted :-

65. Before proceeding further, it is necessary to preface our judgment with the view that Courts in India generally avoid interfering in the selection process of

public employment, recognising the Importance of maintaining the autonomy and Integrity of the selection process. The Courts recognise that the process of

selection Involves a high degree of expertise and discretion and that it is not appropriate for Courts to substitute their judgment for that of a selection committee.

It would be indeed, treading on thin ice for us if we were to venture into reviewing the decision of experts who form a part of a selection board.

66. Thus, the inexorable conclusion that can be drawn is that it is not within the domain of the Courts, exercising the power of judicial review, to enter into the

merits of a selection process, a task which is the prerogative of and is within the expert domain of a Selection Committee, subject of course to a caveat that if there

are proven allegations of malfeasance or violations of statutory rules, only in such cases of inherent arbitrariness, can the Courts intervene.

24. As regards the controversy involved in the matter, it is pertinent to note that the advertisement required possessing of experience of IPP and it also

specifically stated that the experience of Captive Power Plant shall not be considered for the purpose of eligibility. It is to be noted that

Gangakhed Sugar and Energy Ltd. is a sugar factory with major business to produce sugar from sugarcane. It is claimed by the petitioners that, since

Gangakhed Sugar and Energy Ltd. is engaged in two different projects, one pertains to production of sugar and other is electricity generation which is

30 Mega-Watt (MW), and therefore it has to be categorized as an Independent Power Producer of energy. The petitioners have also referred

to the agreement to demonstrate that Gangakhed Sugar and Energy Ltd. provides 20.1 MW electricity in a season and in off-season it provides 26.8

MW and that the electricity generation is done for 240 days which includes seasonal period of 180 days and off-season period of 60 days.

25. It has to be noted that, for the purpose of deciding the status of Gangakhed Sugar and Energy Ltd. as an IPP, the details of energy production as

submitted by the petitioners cannot be made the sole basis since the same is not recognised by the respondents. Requirement of the employer has to

be understood according to the perception to meet the requisite experience. The existence of experience from an entity which is simultaneously

involved in power generation, cannot be imposed upon the employer to mandatorily categorise it as requisite experience. As such, irrespective of strict

categorisation of M/s Gangakhed Sugar Ltd. as "Captive Power Generation Plant" or "Independent Power Producer" (IPP), the final

decision for the purpose of deciding the requisite experience has to be with the respondents.

26. It also has to be noted that the recruitment advertisement does not specifically mention that the term IPP has to be understood in the strict sense

as per the statutory definition or guidelines. As such, the issue as to whether Gangakhed Sugar and Energy Ltd. falls in the definition of IPP as per the

2016 Act, would be redundant. It will have to be decided by the perception of the expert committee of respondent Nos.2 and 3. As regards the

manner of production of electricity by Gangakhed Sugar and Energy Ltd. by use of bagasse and resultant power generation etc., will also have to be

given due weightage according to the decision of expert committee which decided the eligibility qua the advertisement.

27. Reliance placed by the learned counsel for the petitioners upon the judgment of the Supreme Court in Monnet Ispat & Energy Ltd. etc. (supra) to

fortify his submission about parameters to categorise a power generation company as "Captive Power Plant" based on the annual generation

and consumption of electricity, has to be read in the context of facts of that case. In the instant cases, even by considering power consumption of

Gangakhed Sugar and Energy Ltd. being less than 51% of the aggregate electricity generated, whether it has to be considered as "Captive Power

Generation Plant" or an IPP, the decision of the expert committee of the respondents from the perspective of requirement per their advertisement

will be determinative.

28. Reliance placed by the learned counsel for the petitioners on the judgments in the matters of Ankita Thakur Vs. H. P. Staff Selection Commission

(supra); Rakesh Kumar Vs. The State of Jharkhand and others (supra) and Parvaiz Ahmad Parry Vs. State of Jammu and Kashmir (supra), to

highlight his contention that, in case of ambiguity in the advertisement, the benefit must fall in favour of the candidate, cannot be of any assistance to

the petitioners since no ambiguity in the advertisement is pointed out. The advertisement requires experience of IPP although no specifications of IPP

are mentioned. Therefore, the decision of expert committee becomes more crucial. It is pertinent to note, no judgment is cited by either parties, holding

specifically that Gangakhed Sugar and Energy Ltd. is an IPP for all purposes. In view of the overall circumstances, the contention of the petitioners

that Gangakhed Sugar and Energy Ltd., cannot thus be accepted to nullify

the decision of the expert committee of the respondents.

29. A quick reference to the judgment in the matter of Ritu Bhatia (supra) is necessary. While deciding the issue as to whether the appellants fulfilled

the eligibility for the post of Company Secretary, in view of the advertisement which provided that the candidate must possess experience of five

years as Company Secretary, the Supreme Court has held that the respondent was the author of the advertisement and was the best person to

consider what was meant by use of the word "author" in the advertisement.

30. The position of law is fairly clarified by the apex court in the matter of Maharashtra Public Service Commission (supra) that, it is for the employer

to decide the essential qualifications for a particular post and that the employer may prescribe any additional or desirable qualification including grant

of preference. It is the employer who is best suited to decide the requirements a candidate must possess according to the needs of the employer and

the nature of work. The Courts cannot delve into the issue with regard to desirable qualifications being on par with the essential eligibility, by

interpretive re-writing of the terms of advertisement and that the questions of equivalence will fall outside the domain of judicial review. The position

of law when applied to the instant case, it will have to be held that the Courts cannot sit over the decision of the expert committee of the employers

which is conscious of the exigencies of the employer. The decision as to whether the experience of a particular entity is requisite experience for a

particular post falls within the domain of the employer and any interference in that arena is uncalled for.

31. In the light of the factual and legal position as considered herein above, we are of the considered view that indulgence under Article 226 of the

Constitution of India is not necessary. Hence, these petitions are liable to be dismissed.

32. The Writ petitions are dismissed with no order as to costs. Pending civil applications also stand disposed of.

33. Rule is discharged.

34. After pronouncement of the judgment, the learned advocate for the petitioners submits that ad interim relief has been in operation till date and

requests for its extension to enable the petitioners to approach the Supreme Court.

35. Learned advocates for the contesting respondents strongly oppose the request on the ground that the ad interim relief was granted ex parte, which

fact the learned advocate for the petitioners denies.

36. In stead of extending the ad interim relief, we declare that any appointment made hereafter within four weeks in respect of the seats, which were

directed to be kept vacant, shall be subject to the final outcome of the matter to be preferred before the Supreme Court.