

GAHC010009082014



**THE GAUHATI HIGH COURT**  
**(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)**

**Case No. : WP(C)/2281/2014**

RUPAK PAUL  
S/O RAJENDRA MOHAN PAUL, AMRITALAY, VIP CHOWK, GUWAHATI  
AIRPORT, DIST- KAMRUP, ASSAM

VERSUS

THE UNION OF INDIA and 4 ORS  
REPRESENTED BY THE SECRETARY, MINISTRY OF PETROLEUM AND  
NATURAL GAS, SHASTRI BHAWAN, NEW DELHI-01

2:INDIAN OIL CORPORATION LTD.  
REPRESENTED BY ITS CHAIRMAN  
INDIAN OIL BHAWAN  
G-9  
ALI YAVAR JUNG MARG  
BANDRA EAST  
MUMBAI-51

3:THE CHIEF MS MANAGER  
INDIAN OIL CORPORATION LTD. INDIAN OIL BHAWAN  
G-9  
ALI YAVAR JUNG MARG  
BANDRA EAST  
MUMBAI-51

4:THE GENERAL MANAGER HR  
INDIAN OIL CORPORATION LTD. INDIAN OIL BHAWAN  
G-9  
ALI YAVAR JUNG MARG  
BANDRA EAST  
MUMBAI-51

5:ARUP KALITA  
JUNIOR CHARGEMAN GR-3  
BCW  
INDIAN OIL CORPORATION LTD.  
TRIPURA  
NORTH EAST INTEGRATED OFFICE  
EAST POINT TOWER  
BAMUNI MAIDAN  
GHY-2

**Advocate for the Petitioner** : MR.R MAZUMDAR, MR.D DEKA,MR.J DAS,MR. M  
MORE,MR.N MAHAJAN,MR.P K SHARMA

**Advocate for the Respondent** : , SC, I O C,ASSTT.S.G.I.

B E F O R E

**HON'BLE MR. JUSTICE SANJAY KUMAR MEDHI**

Advocate for the petitioner : Shri R. Mazumdar, Advocate.

Advocate for the respondents : Shri P. Bharadwaj, Advocate.

Date of hearing : **19.08.2024**

Date of Judgment : **19.08.2024**

### **JUDGMENT & ORDER**

The instant writ petition has been filed in connection with a recruitment process initiated by the Indian Oil Corporation for various posts including the post of Junior Chargeman Grade-III. As per the facts projected, in the year 2011, a recruitment process was initiated by the IOC and the post in question, as mentioned above is Junior Chargemen Grade-III. The petitioner was interested for the said post in the State of Tripura where there was one number of vacancy in which he had applied. It is the case of the petitioner that he is Diploma holder from the Institute of Electronics and Telecom Engineers, New Delhi and is eligible and qualified for being considered for appointment. The

petitioner was issued an Admit Card whereby he was directed to appear for the Written Test scheduled on 29.05.2011.

**2.** The petitioner had accordingly appeared in the written test, but was not called for any further interview. The petitioner had accordingly submitted an application under the Right to Information Act to know the reasons which was replied on 15.11.2011. It was disclosed that the marks obtained by the petitioner in the written test was 40 out of 150. However, the reason was cited that he did not undergo a regular course for his Diploma. The petitioner contends that there being no issues with the qualification acquired by him as a Diploma holder, depriving him from a fair consideration is unreasonable and arbitrary.

**3.** I have heard Shri R. Mazumdar, learned counsel for the petitioner. I have also heard Shri P. Bharadwaj, learned counsel appearing for the Indian Oil Corporation-respondents. Shri Bharadwaj, the learned counsel has also submitted that affidavit-in-opposition has been filed on 19.02.2018.

**4.** Shri Mazumdar, the learned counsel for the petitioner, at the outset has submitted that there is no dispute with regard to the Diploma obtained by the petitioner. He has drawn the attention of his Court to the communication dated 29.09.2000 whereby the Institute in question was recognized. He submits that though such recognition was initially for 3 years, the same was extended from time to time which was up till 31.05.2013. It is submitted that the Diploma was acquired by the petitioner during the period when the Institute was under recognition. The learned counsel has also drawn the attention of this Court to the reply received under the Right to Information Act from where it appears that the selected candidate, who has been made party respondent had secured 33 marks in the written segment. He has also submitted that in a subsequent reply

under the RTI, it could be learnt that the selected candidate had got 12 marks in the interview segment and by the methodology adopted to work out the consolidated mark, the petitioner claims that he would have secured more marks than the selected candidate. The learned counsel for the petitioner has also referred to a subsequent advertisement published in November 2011 when there was a specific clause whereby it was stipulated that candidates for the aforesaid post should undergo a regular course.

**5.** The learned counsel has submitted that on the aforesaid issue, the petitioner had earlier approached this Court by filing WP(C)/1487/2013 which was however withdrawn on 21.03.2013 with a liberty to submit a representation. The representation was accordingly submitted on 05.04.2013 and the same was replied on 08.05.2013. In the said reply, the reason for rejecting the candidature of the petitioner has been cited that he was not a regular student. The learned counsel has referred to a certificate issued by the Administrative Officer of the Guwahati Centre to buttress that the Diploma obtained by his client included passing of all the theory papers, laboratory practice, project and practical conducted by the Institute. It also certifies that the petitioner was a 'regular student member' of the Institute. The learned counsel has also pointed out that in spite of the selected candidate be made party respondent and notice being served, the said respondent no. 5 has chosen not to contest the writ petition.

**6.** It is accordingly submitted that appropriate directions be issued to reconvene the interview by allowing the petitioner to participate in the same and give a fair chance to him for his appointment.

**7.** *Per contra*, Shri Bharadwaj, the learned counsel for the respondent-Corporation has submitted that the requirement of the Corporation for the post

in question was to have a Diploma holder who has been a regular student. By drawing the attention of this Court to the advertisement in question, he has submitted that in the qualification experience clause, there is a specific requirement that the candidate should have the prescribed qualification from our Government recognized University/ Institute as a regular student. He has emphasized that the job in question requires a course of diploma to be undertaken in regular manner by attending the classes and not through any other mode.

**8.** As regards the process undertaken for the recruitment, the learned counsel for the Corporation has submitted that as the number of candidates were many, only a preliminary scrutiny is done before the written examination and only of those candidates who come within the shortlisted candidates for interview, their documents are scrutinized in details. In such scrutiny, it was detected that the Diploma obtained by the petitioner was by distance mode. He clarifies that the aspect of recognition of the Diploma is not the issue at all and it is only the aspect as to how the said Diploma was obtained. He has also pointed out that in the certificate dated 21.06.2012 relied upon by the petitioner, it is specifically mentioned that the petitioner was a 'student member'. The learned counsel has also submitted that the reply dated 08.05.2013 to the representation of the petitioner had specifically mentioned the reasons.

**9.** The learned counsel for the respondents, by drawing the attention of the Court to the affidavit-in-opposition filed on 09.02.2018 has referred to the annexure appended there to as Annexure-A1, the Regulations and Syllabi for the examination in question has been enclosed and in the introductory part, there is a specific reference to the term "student members". He has also referred to the Annexure-A2, wherein, while applying for the course in question, the enrollment

is done as a 'student member'. There is also a specific reference that the learning of the subjects would be through self-study only. It is submitted that the aforesaid aspects have not been disputed by the petitioner by filing any rejoinder affidavit.

**10.** The learned counsel for the respondents also submits that the appointment of the private respondent was in the year 2011-12 and more than a decade has passed and there being no specific allegation against the qualification or eligibility of the said respondent, such appointment may not be disturbed.

**11.** In his rejoinder, Shri Mazumdar, the learned counsel for the petitioner has emphasized that the form which were required to be filled up by the candidates including the petitioner for undergoing the course itself specifies that the Certificate to be issued would be of practical experience/training/study. Clause-3 of the instructions also specifies that there would be Laboratory Practice Examination. The aforesaid aspects are also clarified according to the petitioner by the Certificate issued by the Guwahati Centre on 21.06.2012, which includes the aspect of Laboratory Practice, Project and Practicals.

**12.** The rival submissions have been duly considered and the materials before this Court have been carefully examined.

**13.** The claim of the petitioner is principally based on the submission that the advertisement not having specified that Diploma obtained through distance mode would not be eligible, a fair chance should have been given to the petitioner to compete in the same, more so when admittedly the marks secured by him in their written segment were more than the marks obtained by the selected candidate, namely, the respondent no. 5. The emphasis is also on the aspect that though the Diploma in question acquired by the petitioner may be

by distance mode, it will not mean that the petitioner was not a regular student as the Certificate itself makes it clear that the petitioner was a regular student. It is also the case of the petitioner that the Diploma obtained had the aspects of Theory, Practical and Laboratory Examination.

**14.** The aforesaid contentions raised on behalf of the petitioner has to be examined from the requirement as specified in the advertisement in question. For the post involved, namely, Junior Chargemen Grade-III, the qualification has been specified and there is a specific requirement that the candidates should be a regular student. Though it appears that Diploma obtained through distance mode was not specifically barred and such restriction was included only in the subsequent advertisement, the reason assigned by the respondent-Corporation for justifying their actions has to be examined from the point of view of the requirement of the employer Corporation. The post in question, as mentioned above is relating to field work and according to the respondents-Corporation, a candidate having a Diploma should be a regular student. While there is no dispute raised with the authenticity or otherwise of the Diploma, the mode by which such Diploma was acquired has to be seen. When the advertisement in question specifically mentions that it is only a regular student who would be held to be qualified, the interpretation sought to be given on behalf of the petitioner that a course of Diploma undertaken by distance mode is obtained as a regular student cannot be accepted. There is a vast difference between a course of Diploma undertaken by distance mode and one by attending regular classes in an institute. While there may not arise any question with regard to the validity of a Diploma obtained through distance mode, the ultimate decision would be of the employer who is to decide as to by what mode they would prefer a candidate to be eligible and qualified for such appointment. The

prerogative/exercise by the Corporation-respondents in the instant case does not appear to be unreasonable or arbitrary and rather this Court holds that such prerogative being a matter within the domain of the employer, this Court would be loath to interfere with exercise of such prerogative unless it is demonstrated that there has been any *mala fide* or illegality.

**15.** Under the aforesaid facts and circumstances and the discussions made, this Court is of the view that no relief can be granted to the petitioner in the instant case.

**16.** Petition accordingly stands dismissed.

**JUDGE**

**Comparing Assistant**