

Ntpc Ltd. vs Aishwarya Mohan

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Court : Kerala

Decided On : Feb-07-2022

Judge : Honourable Mr. Justice Alexander Thomas, Honourable Mr. Justice Viju Abraham

Appeal No. : WA/122/2022

Appellant : Ntpc Ltd.

Respondent : Aishwarya Mohan

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS & THE HONOURABLE MR. JUSTICE VIJU ABRAHAM MONDAY, THE 7TH DAY OF FEBRUARY 2022 / 18TH MAGHA, 1943 WA NO. 122 OF 2022 AGAINST THE ORDER IN WP(C) 30638/2021 OF HIGH COURT OF KERALA APPELLANTS/RESPONDENTS 2-6:

1 NTPC LTD. (ERSTWHILE KNOWN AS NATIONAL THERMAL POWER CORPORATION LTD.), THROUGH ITS AUTHORISED REPRESENTATIVE NTPC BHAWAN, SCOPE COMPLEX, 7, INSTITUTIONAL AREA, LODHI ROAD, NEW DELHI - 110 003. 2

CHAIRMAN AND MANAGING DIRECTOR NATIONAL THERMAL POWER CORPORATION LIMITED (NOW KNOWN AS BHAWAN, SCOPE COMPLEX, 7, INSTITUTIONAL AREA, LODHI ROAD, NEW DELHI - 110 003. 3 GENERAL MANAGER (HR) NATIONAL THERMAL POWER CORPORATION LIMITED (NOW KNOWN AS BHAWAN, SCOPE COMPLEX, 7, INSTITUTIONAL AREA, LODHI ROAD, NEW DELHI - 110 003. 4 DEPUTY GENERAL MANAGER (HR) NATIONAL THERMAL POWER CORPORATION LIMITED (NOW KNOWN AS BHAWAN, SCOPE COMPLEX, 7, INSTITUTIONAL AREA, LODHI ROAD, NEW DELHI - 100 003. 5 MANAGER (HR) NATIONAL THERMAL POWER CORPORATION LIMITED (NOW KNOWN AS BHAWAN, SCOPE COMPLEX, 7, INSTITUTIONAL AREA, LODHI ROAD, NEW DELHI - 110 003. BY ADV MANU SRINATH

W.A. No.122 of 2022 2 RESPONDENTS/PETITIONER & 1ST RESPONDENT: 1 AISHWARYA MOHAN AGED 25 YEARS, D/O.RAMMOHAN P.P., RESIDING AT FLAT NI.6B, VISHRRAM PALAIS GRANDE, KANATTIKARA, THRISSUR - 680 011. 2 UNION OF INDIA THROUGH MINISTRY OF POWER, SHRAM SHAKTI BHAWAN, RAFI MARG, NEW DELHI - 110 001.

OTHER PRESENT: SRI.THUSHAR MEHTA, SGI, SMT.MAITHREYI SACHIDANANDA HEGDE, SRI.S.MANU,ASGI THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 07.02.2022, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: W.A. No.122 of 2022 3 ALEXANDER THOMAS & VIJU ABRAHAM, JJ. =====

W.A. No.122 of 2022 [Arising out of the impugned interim order dated 5.1.2022 in W.P.(C).No.30638/2021]

===== Dated this the 7th day of February, 2022

JUDGMENT

Alexander Thomas, J.

Being aggrieved by the impugned interim order dated

05.01.2022 rendered by the learned Single Judge in the instant Writ Petition (Civil), W.P.(C) No.30638 of 2021, official respondents 2 to 6 in the said W.P.(C), viz., the National Thermal Power Corporation Ltd., NTPC and its officials have preferred the instant intra-court appeal under Section 5(i) of the Kerala High Court Act.

2. Heard Sri.Thushar Mehta, learned Solicitor General of India instructed and assisted by Sri. Manu Srinath, learned Standing Counsel for the NTPC appearing for the appellants/R2 to R6 in the

W.P.(C), Ms.Maitreyi Sachidananda Hegde, learned counsel appearing for R1 in the WA/writ petitioner and Sri.S.Manu, learned Assistant Solicitor General of India, appearing for the Union of India [R2 in the WA/ R1 in the W.P.(C)].

3. Aggrieved by the conditions imposed by the appellants in

W.A. No.122 of 2022 4 the instant Ext.P3 selection notification issued by the NTPC for selection of 10 Law Officers of the NTPC, the writ petitioner has filed the instant Writ Petition(Civil) with the following prayers:

- i) To issue a Writ of certiorari quashing Ext.P3 to the extent to which it mandates appearance of candidates for CLAT-2021 and fixes the ranking in the said examination as a basis for selection to the post of Assistant Law Officer at EO level at 2nd respondent Corporation; ii) To declare that the clauses in Ext.P3 that mandate appearance of candidates for CLAT-2021 and that fix the ranking in the said examination as a basis for selection to the post of Assistant Law Officer at EO level at 2 nd respondent Corporation are unjust, illegal, arbitrary and violative of fundamental rights of the petitioner under Articles 14, 16 and 21 of the Constitution of India; iii) To issue a Writ of mandamus directing the 2 nd respondent to conduct the selection process to the post of Assistant Law Officer at EO level at 2 nd respondent Corporation on the basis of other criteria such as academic excellence etc as fixed by

this Hon'ble Court or to conduct a fresh selection process based on such other criteria; iv) To issue a writ of mandamus directing the 2 nd , 3 , 4 , 5th and 6th respondent to accept the application of rd th the petitioner to the post of Assistant Law Officer at EO level at 2nd respondent Corporation and to consider her candidature based on academic excellence of any other criteria this Hon'ble Court deems fit; v) To issue such other orders, directions or writs as may be prayed for and that this Hon'ble Court may deem fit under the facts and circumstances of the case.

The interim prayer sought for in the above Writ Petition (Civil) is as follows:

i) To direct the 2 nd, 3rd, 4th, 5th and 6th respondent to provisionally accept the application of the petitioner to the post of Assistant Law Officer at EO level at 2nd respondent Corporation; and ii) to stay the selection process initiated vide Ext.P3 notification until this writ petition is heard and finally disposed of.

W.A. No.122 of 2022 5 The learned Single Judge after hearing both sides, has rendered the impugned interim order dated 5.1.2022. The operative portion of the said order reads as follows:

.....Hence, the competent among the respondents is directed to accept the application to be submitted by the petitioner, subject to the final outcome of this writ petition. It is pointed out that applications are to be submitted online and the system may not accept the applications which are not in conformity with the notification. For the present, the petitioner is permitted to submit her application by logging on to the website mentioned in Exhibit P3. If the application is not accepted by the system, that can be brought to the notice of this Court. The respondents shall file detailed counter affidavit.

4. It is the above impugned interim order rendered by the learned Single Judge on 5.1.2022 in the instant Writ Petition (Civil), that is under challenge in the present

intra-court appeal.

5. Sri.Thushar Mehta, learned Solicitor General of India

instructed and assisted by Sri.Manu Srinath, learned Standing Counsel for the NTPC, appearing for the appellants would urge that going by the conditions imposed in the impugned Ext.P3 selection notification, it has been stipulated therein that the eligible candidates must have appeared for the Common Law Admission Test (CLAT)- 2021 Post Graduate Programme conducted by the Consortium of National Law Universities and that candidates will be short listed for the above selection process based on their performance in the CLAT- 2021 PG Programme, etc., and that no other method for short listing

W.A. No.122 of 2022 6 of merit determination is stipulated in Ext.P3 other than the one based on performance of the candidates who have undergone the CLAT PG-2021 examination. It is an elementary aspect of service jurisprudence, that matters relating to qualifications and eligibility conditions for participation in the selection process would be ordinarily within the exclusive domain of the competent authority concerned and those aspects relating to eligibility conditions ordinarily are not amenable for interference at the hands of judicial review courts, unless it is shown that the said selection process is against the statutory provision or that it is so unreasonable that no ordinary reasonable person could have arrived at such a conclusion or that it is in violation of any constitutional provision, etc. That in the instant case, the appellant NTPC has been following this norm for quite some time and that they are in urgent need of recruitment of 10 Law Officers as the NTPC is in a Public Sector Agency, which is mainly concerned with the generation and supply of electricity and in view of the rapid changes in the laws relating to electricity, the appellant NTPC is constrained to emergently recruit Law Officer personnel, etc. Further that the sole method of submission of the application is through the online mode and the online mechanism does not accept application submitted by a candidate, if he/she does not have the

W.A. No.122 of 2022 7 eligibility condition of having participated in CLAT-2021 and it is also stipulated therein that the admit card number of CLAT PG-2021 should also be forwarded along with the online application, etc. That even if

assumed that physical mode application submitted by the present writ petitioner is accepted in the physical mode by the NTPC, then various other candidates, who may have the same grievance as the writ petitioner, will not be able to apply and it will amount to hostile discrimination as against such candidates.

6. Per contra, Ms.Maitreyi Sachidananda Hegde, learned

counsel appearing for R1 in the WA/writ petitioner would point out that the interim order by itself does not create any onerous liability for the respondents in the W.P.(C)/appellants except to receive the application on board and further that this Court may ensure the early final disposal of the main matter in the W.P.(C).

7. After hearing both sides and without getting into the

merits of the controversy in any manner, it is to be noted that the operative portion of the interim order by itself may not create any onerous liability to the appellants except to receive the application on board and the learned Single Judge has not issued any further directions restraining the further proceedings in the impugned

selection process at Ext.P3. So we have suggested that the rights of

W.A. No.122 of 2022 8 interest of both sides may be duly protected by requesting the learned Single Judge to ensure the early disposal of the main matter in the W.P.(C). After hearing both sides, we are given to understand that both sides may not have any serious objection to the said course of action adopted by us. Accordingly, it is ordered in the interest of justice that the respondents in the W.P.(C) may file their counter affidavit in the main W.P.(C), without any further delay, at any rate,

within two weeks and we would respectfully request the learned Single Judge to ensure the early consideration and final disposal of the main matter in the W.P.(C), without much delay, preferably within a reasonable time limit that may be appropriately fixed by the learned Single Judge. With these observations and directions, the above Writ Appeal will stand finally disposed of. sd/- ALEXANDER THOMAS, JUDGE sd/- VIJU ABRAHAM, JUDGE pm