

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.07.2015

CORAM

The Hon'ble MR.SANJAY KISHAN KAUL, CHIEF JUSTICE
AND
The Hon'ble MR.JUSTICE T.S.SIVAGNANAM

W.P.No.3270 of 2010

NLC Workers' Progressive Union
(Reg.No.3463/1971) Anna Road,
Block-25, Neyveli, Rep. by its
General Secretary, R.Gopalan

... Petitioner

-vs-

1. The Chairman and Managing Director,
Neyveli Lignite Corporation Limited
Neyveli Post, Cuddalore District.
2. The General Manager (P & A),
Neyveli Lignite Corporation Limited,
Neyveli Post, Cuddalore District.

... Respondents

Petition filed under Article 226 of the Constitution of India
praying for issue of Writ of Declaration to call for the entire
records connected with the Circular in
Cir.No.CORP/P&A/Rules/1913/2009 dated 30.11.2009 of the 2nd respondent
and declare the same as violative of Articles 14 and 16(1) of the
Constitution of India.

For Petitioner : Mr.S.Sathia Chandran

For Respondents : Mr.N.Nithianandam
for Mr.N.A.K.Sarma.

O R D E R

(Order of the Court was made by The Hon'ble Chief Justice)

The petitioner is the Workers' Union of the respondents, a public sector enterprise, stated to be constituting the largest section of the Union, as it holds 41.08% of votes. The grievance of the petitioner arises from a circular issued by the second respondent dated 30.11.2009, whereby an amendment was made to the recruitment rules. The amendment is to Rule 1.12.2 of Chapter 1 of Volume 1 of Personnel Manual of the respondents-Corporation, in the following terms:

Existing	Revised
The induction of the Executive Cadre at E-2 Grade shall be made through the Graduate / Executive Trainee Scheme on Open Selection on All India basis through press notification.	The recruitment at induction level in Executive Cadre shall be made either by open Selection on All India basis through Press Notification or through Campus selection in reputed educational Institutions. The Institutions to be empanelled for the purpose of Campus selection shall be decided with the approval of the Chairman-cum-Managing Director at the time of recruitment, including the modalities of selection.

2.It is the case of the petitioner-Union that the aforesaid revised rule seeks to deny the opportunity to its members relating to appointment of an office-level post and in fact, takes away the opportunity of the existing members, who are eligible to apply for the post of Executive at E-2 Grade. A list of such eligible members is enclosed at pages 10 to 12 of the typed set.

3.The counter-affidavit filed by the respondents-Corporation, however, seeks to deny this allegation and in para 5, it has been stated as under:

'5. .. The workmen are in different grades, starting from W-1 to SG-4, and their career movement is based on time scale promotion upto SG-4 grade. The Executives are placed in Scales E-1 to E-9 and their movement is by time scale upto E-5 grade and is by vacancy & merit-based selection to E-6 and above. In the case of workmen, the induction is as Industrial Worker-Grade II (W-1 Scale-1.W-11). In the case of the Executives, the induction is as 'Graduate Executive - Trainee (GET)' in E-1 Scale. The workmen are also eligible to move by DPC selection process to E-1 Grade. In addition, whenever there is an open selection for direct recruitment to E-1 Grade, workmen possessing the necessary qualification, are also eligible to apply and participate in the selection process. For this purpose, age relaxation and certain other concessions are provided to existing workmen. Thus, existing workmen have two avenues to move to Executive position (E-1 Grade) - (i) in the normal course, based on selection by DPC, they are eligible progressively to move to E-1 Scale; (ii) whenever any press notification is issued for open selection to E-1 grade, a project notification is also issued, whereby existing workmen and other non-executive employees, fulfilling the eligibility qualifications are also eligible to apply and participate in the selection. This position, as it existed prior to issue of the impugned proceedings, has not been in any way, disturbed or modified by the impugned proceeding dated 30.11.2009.'

(Emphasis supplied)

4.It is also stated by the respondents-Corporation that it is due to its eminence that it has been bestowed with 'Navaratana' status and it is under the administrative control of the Ministry of Coal. The modus of campus selection from reputed educational institutions has been adopted in view of its being found as an effective method to attract suitable talent at induction level. This is a practice which is stated to be widely prevalent for corporate recruitment and one of the reasons for the same is stated to be that if the aspiring candidates are already employed somewhere else, the chances of their appearing for written test/interview is lower and thus, the respondents may be deprived of recruiting the best talent. It has also been averred that the impugned proceedings are more in the nature of enabling provision and even for campus selection, there would be open notifications to the respective institutions and others as considered necessary and thus, does not in any way alter the scope

and nature of recruitment rules. It is also the case of the respondents that there is no allegation from any one so far that there has been an improper selection or the institutions selected for campus recruitment were not reputed, the same being restricted to institutions like IIT, RECs, IIM, etc.

5. We have heard the learned counsel for parties.

6. The State has ventured into economic activities. There is certainly a difference of role to be performed in the two categories of the traditional executive administration and the commercial activity. The fact that the Court gives a slightly different look at matters dealing with business activities is well known. In this economic activity, the State must be able to perform to its best. The fact is that there are number of public sector institutions, which have to be wound up because of lack of performance, though there are some which are performing well and have attained the Navaratna status, like that of respondents. Thus, we have no doubt that adequate leeway must be given to the respondents to recruit the best talent available for furtherance of the economic activity of the respondent organisation.

7. The important aspect in this case is that it is not as if the recruitment is to be confined to only campus interview. In fact, the submission of the learned counsel for the respondents is that there is no reason for such apprehension in view of what has been set out and extracted by us before, a part of para 5, that the rights of the qualified workmen are not to be affected, as their channels of recruitment would not in any manner be prejudiced. Apart from the departmental channel, the second channel is to remain open for such persons, if it is stated, by reference to the amended rule, that the selection is by both processes of All India notice through press notification and campus selection and that is the reason why the stand taken is that campus interview is another mode of recruitment. This is the reason why in para 11 it has been stated 'the impugned proceedings is more in the nature of an enabling provision'. This view of ours is fortified by the judgment of the Kerala High Court in Federation of Central Government vs. Kochi Refineries Ltd., (2006) 3 KLT 9, the relevant observations in para 9 read as under:

'9. Persons who sought to be recruited through campus recruitment form a class by themselves. Classification of those categories of persons as a group keeping in view of the administrative exigencies and efficiency cannot be said to be arbitrary or violative of Article 16(1) of the Constitution of India. Campus

recruitment has a reasonable nexus to the office to which such recruitment is to be made. Classification based on some qualities or characteristics of the persons grouped together cannot be found fault with, provided those qualities have a reasonable nexus to the objects sought to be achieved. Guarantee of equality does not imply that same recruitment rules should be made applicable to all persons in spite of differences in their circumstances and conditions. Articles 14 and 16 though forbid hostile discrimination do not forbid reasonable classification and equality of opportunity in the matter of appointment. When State indulges in Business or in Commercial venture and there is cut throat competition new and novel methodologies have to be adopted lest they may lose in the race which will be against national interest. International Market Economy driven by strident advance of technology necessitated dynamics of technology management. In order to remain competitive in international markets, it becomes imperative that, public enterprises should have quality managers who know nuances of latest management technology, who can develop systems and strategies sounded for new business environment. Advent of globalization, process elimination of trade barriers and more sophistication and development around the world demand new strategies and methods to overcome competition, especially when State is indulging in commercial activities. Viewed in the above mentioned perspective campus recruitment, if adopted as one of the sources of recruitment, will have a rational nexus with the objects sought to be achieved.

10. Campus recruitment is a method adopted to recruit personnel from the campus even before they pass out of the college after making screening. If recruitment is resorted to after they qualify inviting applications best talents by the time would have been absorbed by their competitors. In selected areas, in our view, where respondent has to compete with other multinational and private sector companies in the present economic scenario methods like campus recruitment can be resorted to. We are not prepared to say that the recruitment through campus recruitment adopted by the respondent is illegal unless and until it is shown that there is arbitrariness in the selection process undertaken by the respondent. .. ''

The Special Leave Petition filed against the order, being Civil Appeal No.4290 of 2007, was dismissed vide order dated 08.05.2008, without commenting on the observations of the Kerala High Court.

8. We may note the submission of the learned counsel for the respondents that according to him, there is no locus for the petitioner- Union to approach this Court, as really there is no aggrieved person, in the sense that it is nobody's case that a person eligible has been ignored or has been prevented from participating in an open selection process. In this context, he relies on the same judgment as referred to aforesaid in Federation of Central Government vs. Kochi Refineries Ltd., supra, to substantiate his plea, while relying on the latter part of para 10, which reads as under:

' ' 10. Petitioners' grievance is against the method of recruitment and not the manner of recruitment. No candidate who is in any way affected by the campus recruitment has approached this Court challenging the selection process. Since the selection process is not challenged by any prospective candidate we have to take it that the process is transparent.' '

9. In the aforesaid context, learned counsel for the petitioner, however, points out that in Civil Appeal No.4290 of 2007, vide order dated 08.05.2008, it has been observed that since the appeal is representative in nature and not by an affected person, as and when any affected person will come, the matter can be examined on merits and the Supreme Court expressed its disinclination to interfere, since it was a representative appeal. He, thus, states that the aforesaid point of view of the Division Bench of the Kerala High Court has not received the imprimatur of the Supreme Court by the dismissal of the Civil Appeal.

10. We may say in nutshell, the opinion thus remains that of the Division Bench of the Kerala High Court, with which we have agreed.

11. We feel that for the commercial expediency, the very objective for which organisations like respondents are created, they should have a play in the management and recruitment process, as they are competing with the private sectors. The affidavit filed by the respondents and as explained by the learned counsel, to our mind, addresses the concerns of the members of the petitioner-Union.

10.We, thus, close the writ petition with the aforesaid observation. No costs.

Sd/-
Assistant Registrar(CS IV)

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Sub Assistant Registrar

sra

To

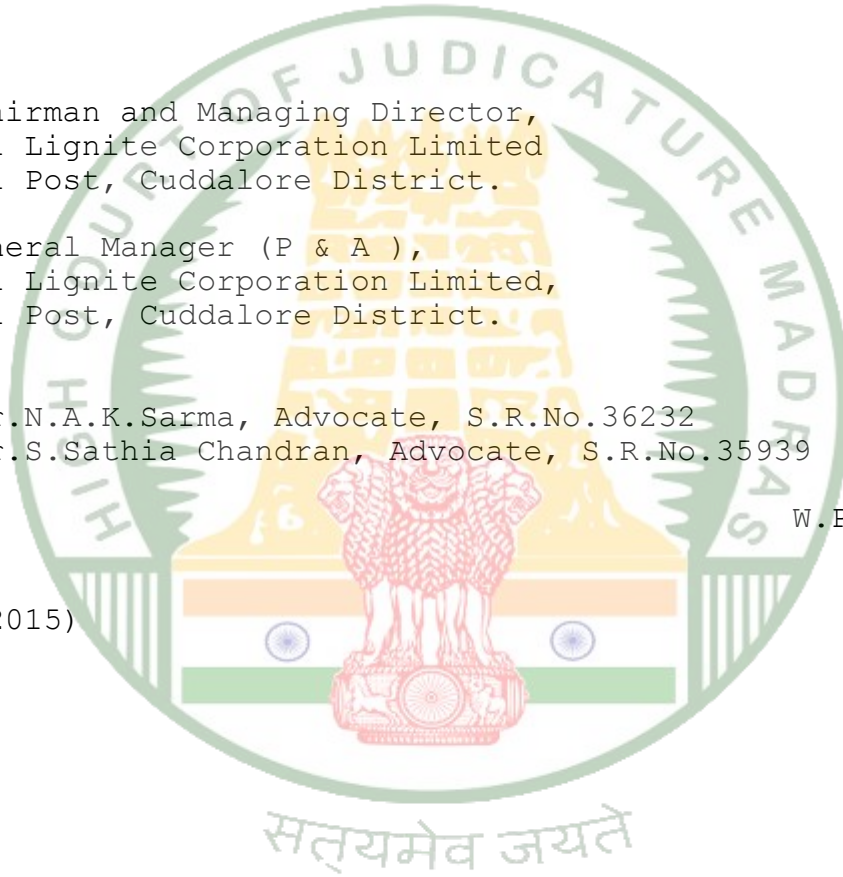
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+1cc to Mr.N.A.K.Sarma, Advocate, S.R.No.36232

+1cc to Mr.S.Sathia Chandran, Advocate, S.R.No.35939

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NM(CO)
CA(31/07/2015)



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