

**HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN
AND
HON'BLE DR. JUSTICE SHAMEEM AKTHER**

WRIT APPEAL No. 138 OF 2017

JUDGMENT: (per the Hon'ble the Acting Chief Justice Ramesh Ranganathan)

This appeal, under Clause 15 of the Letters Patent, is preferred against the order passed by the learned Single Judge in W.P.No.26043 of 2016 dated 14.12.2016. The 1st respondent herein filed the said writ petition seeking a mandamus to declare the recruitment process undertaken by NTPC by employment notification dated 15.05.2015, and their action in conducting oral interviews instead of holding a written examination as per the specific guidelines issued by the Government of India in Office Memorandum dated 29.12.2015, as illegal and arbitrary.

In the order under appeal, the learned Single Judge observed that the decision of NTPC, to proceed with conducting interviews between 26.12.2015 and 31.12.2015 inspite of instructions received from the Union of India not to conduct interviews for non-executive posts such as Junior Mazdoor grade, was arbitrary, illegal and violative of Article 14 of the Constitution of India. The employment notification dated 15.05.2015 issued by NTPC, and their action in conducting oral interview, was declared as illegal and arbitrary; and the earlier selection process, conducted pursuant to the notification dated 15.05.2015, was set aside.

Dr. K. Lakshminarasimha, learned counsel for the appellant (10th respondent in the writ petition), would submit that the employment notification dated 15.05.2015 was issued to provide employment to land oustees; while selection was being made was to the posts of Junior

Mazdoor, the notification issued on 15.05.2015 prescribed the mode of selection to be by way of interview; the subsequent office memorandum, issued by the Government of India dated 14.12.2015 could not be applied to the notification issued six months prior thereto on 15.05.2015; the Rules in force when the notification was issued are alone required to be followed, and not the subsequent Rules; the mere fact that the interviews were conducted from 26.12.2015 to 31.12.2015, after the Government of India passed O.M. dated 14.12.2015, is of no consequence; and the Government of India O.M. dated 14.12.2015 does not enable NTPC to change the mode of selection from that of interview to a written examination.

Sri C.V. Mohan Reddy, learned Senior Counsel appearing on behalf of the 4th respondent (NTPC), would submit that the Office Memorandum dated 14.12.2015 required NTPC to amend its Rules by 31.12.2015; the entire process of conducting interviews were completed by 31.12.2015; and NTPC has not amended its Rules till date.

Sri V. Ravi Kiran Rao, learned counsel for the respondent - writ petitioner, would submit that the entire selection process is vitiated by fraud; several irregularities were noticed in the selection process; one of the interviewers had himself addressed a letter to NTPC to cancel the selection process in its entirety, and commence the process of selection afresh; and, since interviews were conducted after the Office Memorandum dated 14.12.2015, selection to the posts of Junior Mazdoors should have been undertaken by conducting a written examination, and not by way of an oral interview.

As noted hereinabove, the writ petition was allowed solely on the basis of the Office Memorandum dated 14.12.2015 issued by the Ministry of Heavy Industries and Public Enterprises, Government of India, Department of Public Enterprises. The said O.M. relates to discontinuation of interview for recruitment to non-executive posts in Central Public Sector Enterprises. The said O.M. takes note of the decision of the Department of Personnel and Training to dispense with the practice of interview for all group 'C' and 'D' posts, and non-gazetted posts of group 'B' category; and those cases where the recruitment Rules, for the said categories of posts, specify the process of selection through interview, necessitated amendment immediately. By the O.M. dated 14.12.2015, and in pursuance of the decision of the Government, all Ministries/Departments were requested to advise the Central Public Sector Enterprises, under their administrative control, to adopt a revised mechanism of recruitment for non-executive level posts by dispensing with the practice of interview for such posts by effecting suitable amendments to the existing recruitment rules, wherever necessary; in case, for any particular post, interview is considered essential, the clearance of administrative Ministry/Department of the concerned CPSE was required to be obtained by the CPSE, or alternatively the CPSE may adopt alternate modalities to assess the required skills for recruitment to such posts in consultation with the concerned administrative Ministry/Department. The O.M. required the entire exercise to be completed by 31.12.2015, and a compliance report to be submitted to the Department of Public Enterprises by 07.01.2016.

The 4th respondent is a company incorporates under the Companies Act, 1956, and is a legal entity distinct from the Government of India. The

mode and manner in which appointments to posts in the 4th respondent is required to be made are governed by the Rules made by the 4th respondent. In fact, the O.M. dated 14.12.2015 itself requires the 4th respondent to amend its Rules to bring it in conformity with the requirement of dispensing with interviews and conducting selection to group 'C' and 'D' posts only by way of a written examination. The time stipulated in the said O.M, for NTPC to complete the exercise, was by 31.12.2015. Interviews, pursuant to the notification dated 15.05.2015, were held between 26.12.2015 and 31.12.2015 even before the time stipulated for NTPC to amend its Rules expired on 31.12.2015. It is also necessary to note that NTPC has not amended its Rules till date.

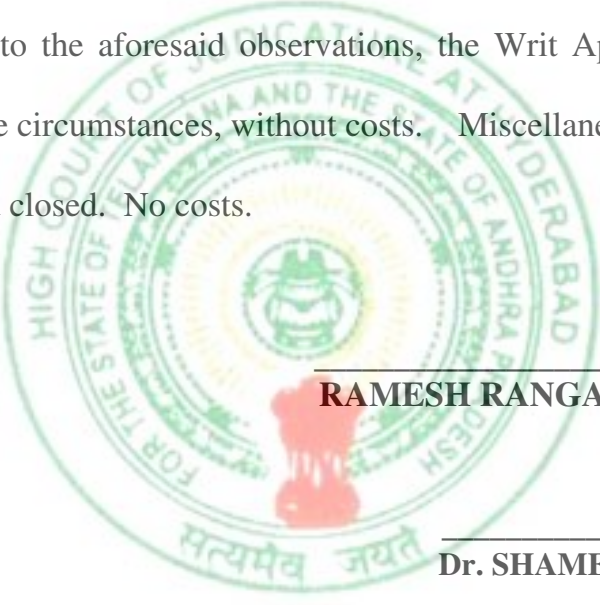
Since the selection process, for appointment to the posts of Junior Mazdoors in NTPC, is governed by Rules prescribed in this regard by the 4th respondent itself, the selection process initiated by them, for appointment of land oustees as Junior Mazdoors, cannot be faulted on the basis of the Office Memorandum dated 14.12.2015. Even otherwise, as held by the Supreme Court, in **K. Manjusree v. State of Andhra Pradesh**¹, the selection process cannot be changed midstream, and the amended Rules cannot be applied to employment notifications issued prior to the date on which the amended rules came into force. Viewed from any angle, the selection process could not have been interdicted on the basis of the Government of India O.M. dated 14.12.2015. On this short ground, the order under appeal is liable to be, and is accordingly, set aside.

While the submission of Sri V. Ravi Kiran Rao, that several irregularities were committed in the selection process, cannot be brushed

¹ (2008) 3 SCC 512

aside, it must also be borne in mind that the mere fact that interviews have been held does not confer any right on the participating candidates to claim appointment nor does it obligate NTPC to make appointments to the posts for which interviews were conducted. Whether appointments should be made pursuant to the selection process, or whether a fresh selection process should be undertaken, are all matters for the 4th respondent to decide. Needless to state that the action taken by NTPC in this regard can always be subjected to challenge, by any person aggrieved, in subsequent legal proceedings.

Subject to the aforesaid observations, the Writ Appeal is allowed. However, in the circumstances, without costs. Miscellaneous petitions, if any, shall stand closed. No costs.



RAMESH RANGANATHAN, ACJ

Dr. SHAMEEM AKTHER, J

Date: 31.01.2017
ES/SIVA