

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.9100 of 2018

1. Ajit Kumar S/o Sri Dhananjay Kumar, Resident of Village- Parsurai, P.O. Panhar, P.S. Khodaganj, District- Nalanda.
2. Manish Kumar S/o Sri Mehilal Singh, Resident of Village- Saurbahar, P.O. Betaha, P.S. Bela, District- Sitamarhi.
3. Ashutosh Kumar S/o Sri Ashok Kumar Sah, Resident of Village and Post- Harauli, P.S. Hajipur Sadar, District- Vaishali.
4. Sanjay Kumar S/o Sri Kalo Yadav, Resident of Village- Barheta, P.O. Jamuara Kalan, P.S. Bankey Bazar, District- Gaya.
5. Niranjan Kumar S/o Sri Chamaklal Pandit, Resident of Village- Tilakpur, P.O. Manjhali Matihani, P.S. Belhar, District- Banka.
6. Pranav Kumar S/o Sri Madhu Kant Yadav, Resident of Village- Sakarpur, P.S. and District- Madhepura.

... .. Petitioner/s

Versus

1. The Union Of India through the Ministry of Power, Shram Shakti Bhawan, Rafi Marg, New Delhi
2. NTPC Limited, A Govt. of India Enterprise, having its Office situated at - NTPC Bhawan, Scope Complex, Institutional Area, Lodhi Road, New Delhi-110003, through its Chairman-cum-Managing Director
3. Chairman-Cum-Managing Director, NTPC Limited, having its Office Situated at NTPC Bhawan, Scope Complex, Institutional Area, Lodhi Road, New Delhi-110003
4. NTPC Limited, ER-1, having its Eastern Region-1 Headquarters Situated at Second Floor, Lok Nayak Jai Prakash Bhawan, Dak Bunglow Chowk, Patna-800001 through its Executive Director
5. NTPC Limited, NR, having its Northern Region Headquarters situated at -TC/33/V-1, Vibhuti Khand, Gomti Nagar, Lucknow-226010, Uttar Pradesh, though its Executive Director
6. NTPC Limited, SR, having its Southern Region Headquarters situated at- NTPC Bhawan, Kavadiguda Main Road, Secunderabad -500080, Telangana
7. NTPC Limited, WR-1, having its Western Region Headquarters Situated at- 2nd Floor, Samrudhi Venture Park, MIDC, Marol Andheri (East), Mumbai- 400093



8. NTPC Limited, WR-II, having its Western Region Headquarters Situated at-
4th Floor, Magneto Offizo, Magneto – The Mall, GE Road, Labhandi,
Chhattisgarh -492001

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Bipin Kumar, Advoacte
For the Respondent UOI : Ms Kanak Verma, CGC
For the Respondent NTPC : Mr. Tuhin Shankar, Mr. Gopal Kumar,Advocates

CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN
and
HONOURABLE MR. JUSTICE ANJANI KUMAR SHARAN
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE JYOTI SARAN)

Date : 22-04-2019

Heard Mr. Bipin Kumar, learned counsel representing
the petitioners, Ms. Kanak Verma, learned Standing Counsel for
the Union of India and Mr. Tuhin Shankar, learned counsel
appearing for the National Thermal Power Corporation of India
Limited and its functionaries.

With consent of learned counsel for the parties the writ
petition has been heard with a view to its final disposal at the stage
of Admission itself.

The 6 petitioners by filing this writ petition under Article
226 of the Constitution of India while seeking direction to the
authorities of the National Thermal Power Corporation Limited
(hereinafter referred to as ‘the Corporation’) to allow them to
participate in the examination for appointment to the post of



Diploma Trainees in the respondent-Corporation pursuant to the Advertisement at Annexure-2 series have also prayed for quashing the Note present in the Advertisement which only allows such candidates who have passed their examination in the year 2017 or were examinees in 2018 to be eligible for application while exempting the land oustees from such restriction. It is this Note which has aggrieved the petitioners forcing them to come to this Court through the present writ petition.

This matter was heard on 28.06.2018 when a Co-ordinate Bench recording prima facie satisfaction on the stipulation present in the 'Note' to be unreasonable, as an interim measure, allowed the petitioners to participate in the process of selection subject to the final outcome of the writ petition. The expression of the Co-ordinate Bench holding the 'Note' prima facie unreasonable has not been questioned by the Corporation before the superior court rather they have implemented the interim order to accept the application forms of the six petitioners and also allowed them to participate in the selection process in which while the petitioner no.1 coming from General Category in the Mechanical branch has been selected for the western region and petitioner no.4 is selected in the Backward Category for the eastern region but the rest of the petitioners, i.e. the petitioner nos.



2, 3, 5 and, 6 have failed to qualify in the selection. This writ petition thus survives only for petitioner nos. 1 and 4 and since in terms of the earlier order of Co-ordinate Bench, the petitioners' participation in the selection was by way of interim measure subject to the final outcome of the proceeding, it is the only issue which requires adjudication in the present writ petition.

We have heard learned counsel for the parties and we have perused the records. While according to Mr. Bipin Kumar, learned counsel representing the petitioners, the classification to permit only such Diploma Trainees who have passed in the year 2017 or were examinees in the year 2018 to participate in the selection, is an unreasonable classification specially where the age limit prescribed in the Advertisement is 25 years, the 'Note' on the other hand is being defended by Mr. Tuhin Shankar appearing for the Corporation on the ground that it is to select young blood and fresh diploma holders that such a stipulation has been fixed which neither is a sub-classification nor unreasonable rather has an object behind it.

An objection has also been raised by Mr. Shankar as to the maintainability of the writ petition in so far as petitioner no.1 is concerned who had opted for the western region and as per Clause-13 of the Advertisement any such claim is to be raised



before the forum in the region concerned which, according to Mr. Shankar, would be the Chhattisgarh High Court.

Having heard learned counsel for the parties, and having taken note of the nature of the contest, we would keep the preliminary objection on a back seat because even if the petitioner no.1 was an applicant for the western region, the writ petition is much maintainable at the instance of petitioner no. 4 who has succeeded in the selection for the eastern region and thus any opinion expressed on the issue raised would govern the petitioner no.1 as well.

Normally, a Court exercising extraordinary jurisdiction under Article 226 of the Constitution would not be interfering with the stipulation present in the Advertisement either on selection process adopted or on the prescription and the case in hand is no exception. However, the subject matter of dispute is not connected with the terms of the Advertisement rather it is a 'Note' which causes restriction on eligibility which is the subject matter of the application. The 'Note' undisputably allows only such Diploma Holders who have either passed their examination in 2017 or were examinees in 2018 batch, to apply. May be what Mr. Tuhin Shankar has canvassed on behalf of the Corporation is correct and the Corporation is within its right to select its candidates as per its



requirement but then the age qualification of 25 years does not correspond to the object sought to be achieved. In our opinion, by allowing only those who have either passed in 2017 or were examinees in 2018, to make application for the appointment, the age qualification should have been fixed accordingly, but the 'Note' in fact, is acting as a proviso to the age qualification and restricts its operation to only such candidates who have passed their examination in 2017 or were examinees in 2018. Unquestionably, the Note not only renders the age qualification redundant but also restricts the Advertisement on the qualification front, while making concession for the land oustees.

In our opinion, where the Advertisement specifically provides for eligibility criteria of a trainee on age limit as well as on qualification then the 'Note' creating a sub-classification on the educational qualification gives a restricted operation and overrides the principal provision on qualification as well as on the age front which is definitely a sub-classification and neither sustains the explanation advanced by Mr. Tuhin Shankar nor has a sound foundation.

The Corporation has not chosen to question the order of the Co-ordinate Bench dated 28.06.2018 rather has proceeded to comply with the same to allow the petitioners to participate in the



selection process in which the petitioner nos. 1 and 4 have succeeded. In the circumstances noted and for the discussions above, we only take the interim order to its logical conclusion by striking down the 'Note' as being unreasonable and striking at the root of Article 14 of the Constitution of India to hold that all the petitioners including petitioner nos. 1 and 4 are qualified for selection. Let the selection process so held following the order dated 28.06.2018, be taken to its conclusion expeditiously and preferably within a period of four weeks from the date of receipt/production of a copy of this judgment.

The writ petition is allowed.

(Jyoti Saran, J)

(Anjani Kumar Sharan, J)

mrl./-

AFR/NAFR	AFR
CAV DATE	N.A.
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