

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 11936 OF 2017

1. Jitendra Dattatreya Raut, Age : 39 years
Residing at – Mande (Saphale West)
Post – Virathan (B.K.), Tal & Dist.
Palghar, 401 102.

...Petitioner

Versus

1. Nuclear Power Corporation, a
Government of India Enterprise, having
its office at Human Resource
Department, Tarapur Maharashtra Site,
PO: TAPP – 401 504.

AND

- Vikram Sarabhai Bhavan,
Central Avenue Road, Anushakti Nagar,
Mumbai 400 094.
2. Union of India
Through the Department of Atomic
Energy, Having office at
Anushakti Bhavan, C.S.M. Marg,
Mumbai – 400 001.

...Respondents

Mr. Makarand Bakore, for the Petitioner.

Mr. Arsh Misra, I/b M. V. Kini & Co., for Respondent nos.1 &
2.

CORAM: R. M. BORDE &

N. J. JAMADAR, JJ

RESERVED ON: 28th March, 2019

PRONOUNCED ON: 10th April, 2019.

JUDGMENT:- (Per N. J. Jamadar, J.)

1. Rule. Rule made returnable forthwith. With the consent of
the Counsels for the parties heard finally.

2. By this petition under Article 226 of the Constitution of India, the Petitioner, who is a Project Affected person, seeks a direction to Respondent no.1, an instrumentality of State, to permit the Petitioner to apply for the post of 'stipendiary trainee (technician)', in response to the advertisement, though the Petitioner does not fulfil the criteria of age requirement, prescribed thereunder.

3. Shorn of superfluities, the background facts leading to this petition can be stated as under:

(a) The agricultural lands of the Petitioner's grandfather were acquired by the State for commissioning Taraporwala Atomic Energy Project. The Petitioner's grandfather was declared a Project Affected Person. The Petitioner came to be nominated for employment as a Project Affected Person. The Petitioner has completed ITI certificate course, for the trade of 'Fitter'.

(b) Pursuant to the advertisement, in the year 2001, the Petitioner had applied but was not selected. In the subsequent recruitment process, of the year 2011, the Petitioner was not allowed to participate. Hence, the Petitioner had approached this Court by filing Writ Petition No.1808 of 2011. The said writ petition came to be disposed of after recording a statement on

behalf of the Respondents that if the Petitioner applies against the future recruitment - advertisement, his claim would be considered on its own merits subject to eligibility and availability of vacancy.

(c) In the year 2017, Respondent no.1 again issued the advertisement, inviting the applications for the post of 'stipendiary trainee (technician)'. However, the maximum age limit of 24 years, as of 25th October, 2017, was prescribed therein. Since the Petitioner is 39 years old, the Petitioner made a representation seeking relaxation in the upper age limit. As the representation did not elicit a positive response, the Petitioner has invoked the writ jurisdiction of this Court.

4. The Respondents have contested the claim of the Petitioner on the count that as per the extant norms and policy, age relaxation is not applicable to the post of 'stipendiary trainee (Category-II)', for which the Petitioner seeks employment. Therefore, the relief sought by the Petitioner cannot be granted.

5. We have heard Mr. Bakore, the learned Counsel for the Petitioner and Mr. Misra, the learned Counsel for the Respondents, at length.

6. Mr. Bakore advanced a two-fold submission. Firstly, the claim of the Petitioner is required to be considered in the backdrop of the fact that the Petitioner has been deprived of the ownership of the land and the Respondents have not yet honoured their commitment to provide employment to one of the family members of the Project Affected Person. The obligation of the Respondents to provide employment far outweighs the prescription of the requirement of age. Thus, according to Mr. Bakore, the refusal of the Respondents to allow the Petitioner to participate in the recruitment process is wholly unjust and arbitrary as it impinges on the right of the Petitioner to get an employment, under the category of Project Affected Person, and is also in breach of the obligation of the Respondents. Secondly, it was submitted that the Petitioner has demonstrated, by placing reliable material on record, that the Respondents have employed over-aged candidates for the same trade, for which the Petitioner is seeking employment. Thus, the Respondents can't now turn around and shut the door upon the Petitioner on the count that the Petitioner is over-aged.

7. As against this, the learned Counsel for the Respondents countered the aforesaid submissions on behalf of the Petitioner on the premise that the rules and norms which govern the

recruitment can't be cast aside. Since the extant norms do not permit relaxation of age in case of the candidates applying under the category of Project Affected Persons, the claim of the Petitioner is totally unsustainable. It was urged that a Project Affected Person can not seek employment as a matter of right in complete derogation to governing rules and norms as to eligibility.

8. We have carefully considered the aforesaid submissions. The controversy sought to be raised lies in a narrow compass. The facts are few and rather undisputed. The Petitioner seeks to apply for the post of 'stipendiary trainee (technician category-II)' for the discipline of 'Fitter' (ITI). Concededly, the maximum age prescribed is 24 years. The Petitioner claimed to be 39 years old. The question which, thus, wrenches to the fore is, whether the Petitioner can be directed to be considered for the said post despite being over-aged. It may be appropriate, at this stage, to note few clauses of the procedure and guidelines for recruitment of 'stipendiary trainee (category – 2)' which have been notified by Respondent no.1, with effect from January – 2015, in respect of the requirement of age. Clause 4.3.2 reads as under:

“4.3.2. Age : Age should be between 18 to 24 years with relaxation for SC/ST/OBC/PWD candidates as applicable

under the relevant Govt. orders. The age shall be reckoned as on the last date for receipt of application.”

It would be contextually relevant to note that the relaxation in respect of Project Affected Person is also envisaged therein and the relevant Clause reads as under:

“4.5 Relaxation to Project Affected Persons (PAPs) whose land has been acquired for Nuclear Power Plants.

4.5.1 The educational qualification for recruitment of Category II trainees shall be relaxed for PAPs whose land has been acquired for NPPs as given below:-

Educational Qualification for Operator Trainees	Educational Qualification for Other Trainees
Pass in HSC (12 th Std.) with not less than 40% marks in Science and Mathematics individually with English as one of the subjects at least at SSC level examination.	Pass in SSC with Science and Mathematics and English as one of the subjects at SSC level examination with 2 years ITI. Wherever for trades for which the ITI course is less than 2 years, 1 year experience in the relevant area after completion of the course shall be required.

9. Evidently, neither the general requirement of age (Clause 4.3.2, extracted above) nor the special relaxation to Project Affected Persons provides for the age relaxation for the Project Affected Persons. The age relaxation is only for the candidates belonging to SC/ST/OBC/PWD categories, as applicable under the relevant Government orders. Whereas the special relaxation in favour of the Project Affected Persons is in the matter of educational qualification only.

10. Mr. Bakore made a tenacious attempt to surmount the aforesaid policy impediment by canvassing an emotive submission rested on the plight of the Project Affected Persons. It was submitted that the Court can not loose sight of twin factor. First, the necessity of employment for a Project Affected Person, who has been divested of the ownership of land for a public cause. Second, the obligation of the Respondents to honour its solemn commitment to provide an employment. If viewed through this prism, according to the learned Counsel for the Petitioner, the norms and the policy guidelines do not impinge upon the power of this Court to issue an appropriate writ for advancing substantial justice.

11. In order to lend support to the aforesaid submission, the learned Counsel for the Petitioner placed a strong reliance upon the observations of a Division Bench of this Court in the case of **Suresh Tukaram Pustode vs. State of Maharashtra and others¹**, wherein a Project Affected Person had approached this Court alleging non-compliance of the Government Resolution No.EM/1080/35-96-A, dated 21st January, 1980, which envisaged providing a job to one of the family members of the

1 2004(2) Bombay C.R. 233.

Project Affected Person. In the said background, this Court had observed as under:

5. The State Government must honour its commitment given in the Government Resolution and they must do it forthwith in this case and in other cases they must do within a reasonable period of six months from the date of acquisition of land. The routine reply of the State Authorities that the land owners have been awarded compensation cannot be accepted as it is a case of compulsory acquisition under law and not voluntary sale of the land by the land owners. So grant of compensation is no reply to the demand made by such land owners to provide a job to them, as assured under the Government Resolution.

(emphasis supplied)

12. Reliance was also placed on another judgment of this Court in the case of ***Executive Engineer and another vs. Member, Industrial Court and another²***, wherein also somewhat similar observations were made; which read thus:

“5.The lands of the respondents/complainants were acquired by the government for project and in terms of the said legislation they were also appointed but then they were suddenly asked to go. It is not the case of the petitioners that the lands which were acquired by the Government and which were their source of income were returned to them. The said legislation is a welfare legislation and is a sort of compassion being shown to the person whose land is taken by the Government for project depriving him of his source of livelihood. This compassion shown by the government is in the form of legislation and the petitioners cannot be allowed to defeat the will of the legislature.”

(emphasis supplied)

13. The aforesaid observations, according to the learned Counsel for the Petitioner, correctly lay down the approach to be adopted while dealing with the claims of the Project Affected

2 2008(3) Bombay CR 798.

Persons. The aforesaid observations undoubtedly underscore the obligation of the authorities to rehabilitate the Project Affected Persons. The fact that compensation may not be adequate to ameliorate the situation of the Project Affected Persons, who have been divested of their properties, and, in a given case, the source of livelihood, can hardly be questioned. However, we are afraid to accede to the submission of Mr. Bakore that the above pronouncements support the proposition that the Project Affected Persons be appointed de hors the governing recruitment rules and policy.

14. A profitable reference, in this context, can be made to a Full Bench judgment of this Court in the case of ***Rajendra Pandurang Pagare and another vs. State of Maharashtra and others***³, wherein the following question arose for consideration;

“Whether Project Affected Persons can be appointed without advertising posts, ignoring their qualifications and merit?”

The Full Bench answered the question in the ‘negative’. The observations of the Court in paragraphs 41 and 42 are relevant and thus extracted below:

“**41.** No doubt, that under the Government Circulars, the Collectors are also required to sponsor the names of eligible candidates to the recruitment authority. However, since we

3 2009 (4) Mh.L.J. 961.

have already held hereinabove, that the district-wise reservation is not permissible under the Constitution, the candidates from the other districts, who are project affected persons, would also be entitled to compete with the candidates who are sponsored by the collector. In the absence of the advertisement, it will not be possible for them to get knowledge about recruitment process initiated in the areas beyond their district. We, therefore, find that in order to ensure the equality of opportunity which is guaranteed in the matter of employment under Article 16 of the Constitution, it would be necessary that the posts reserved for project affected persons are advertised so that all the eligible candidates can submit their applications and get an opportunity to compete with others in their category.

42. We accordingly answer the issue referred to us as under:

“That, the project affected persons cannot be appointed without advertising the posts ignoring their qualifications and merit.”

(emphasis supplied)

It is imperative to note that the Full Bench adverted to various judgments of this Court including the judgment in the case of **Suresh Pustode** (supra), wherein directions were issued by this Court that the Project Affected Person whose name appeared in the seniority list should be recommended for appointment, and, thereafter, observed, in paragraph 36, that the said directions were issued by the respective Benches, in the facts of the respective cases, without considering the larger issue, determined by the Full Bench. The Full Bench further observed that the quota of 5% fixed for Project Affected Persons is nothing but a horizontal reservation provided for Project Affected Persons and the candidates from that category will have to compete amongst themselves under the recruitment

rules and the best amongst them would be entitled to be appointed.

15. The learned Counsel for the Petitioner made a faint attempt to urge that the aforesaid pronouncement deals with qualifications and merits but does not address the issue i.e. eligibility qua age requirement. This submission is required to be noted to be repelled. The term qualification is of wide import. In the context of public employment it refers to the possession of the certain qualities or fulfilment of certain conditions so as to make the candidate eligible for the employment. The word qualification is, therefore, not restricted to educational qualification alone. It may subsume in its fold the eligibility qua age requirement as well.

16. It is trite that the employment to a public service should be in conformity with the requirement rules and notified policy. Nobody can claim a right to be considered for appointment de hors the rules and norms for selection. In the absence of a power of age relaxation a public authority would not be justified in permitting the candidates who are over-aged to appear for the recruitment process. Ordinarily, the Court would not be justified in issuing a direction to the authority to consider an age-barred candidate as eligible.

17. A useful reference, in this context, could be made to a judgment of Supreme Court in the case of ***Kendriya Vidyalaya Sangathan and others vs. Sajal Kumar Roy and others***⁴, wherein, the Supreme Court had set aside the direction of the High Court to consider relaxation of age in respect of the candidates, when the rules did not permit the same. Paragraph 11 of the aforesaid judgment is relevant and thus extracted below:

“11. The respondents are not members of the Scheduled Caste or Scheduled Tribe. Age-limit is prescribed for appointment to the general category of employees. The upper age-limit for appointment to the post of LDC is 25 years. The advertisement also says so. The rules, as noticed hereinbefore, are in two parts. The first part talks about the age-limit. The second part provides for relaxation. Such relaxation can be granted for the purpose specified i.e. in favour of those who answered the descriptions stated therein. Relaxation of age-limit even in relation to the Scheduled Caste and the Scheduled Tribe candidates or the retrenched Central Government employees, including the defence personnel is, however, not automatic. The appointing authorities are required to apply their mind while exercising their discretionary jurisdiction to relax the age-limits. Discretion of the authorities is required to be exercised only for deserving candidates and upon recommendations of the Appointing Committee/Selection Committee. The requirements to comply with the rules, it is trite, were required to be complied with fairly and reasonably. They were bound by the rules. The discretionary jurisdiction could be exercised for relaxation of age provided for in the rules and within the four corners thereof. As the respondents do not come within the purview of the exception contained in Article 45 of the Education Code, in our opinion, the Tribunal and consequently, the High Court committed a manifest error in issuing the aforementioned directions.”

(emphasis supplied)

4 (2006) 8 Supreme Court Cases 671.

18. In view of the aforesaid consideration, we are not inclined to accede to the first submission on behalf of the Petitioner.

19. The second submission, in our view, is also unworthy of acceptance. The endeavour of the learned Counsel for the Petitioner to show that the Respondents have appointed few over-aged candidates and, thus, there was no reason to treat the Petitioner differently, can not be countenanced. It is well recognised that the quality envisaged under Article 14 of the Constitution of India is a positive concept. Merely because an irregularity or illegality is committed by an instrumentality of State, in the case of one candidate, it doesn't warrant a direction that the same dispensation be made available to another candidate. It would amount to putting a premium on irregularity or illegality, and even perpetuating a wrongful act. To put it in other words, no quality can be claimed in the cases where the referred action is itself unsustainable.

20. Since the aforesaid proposition is well nigh settled, it would be suffice to make a reference to a judgment of the Supreme Court in the case of **South Eastern Coalfields Ltd vs. Prem Kumar Sharma and others**⁵, which also arose out of the claim of a Project Affected Person for employment. In the

5 (2007) 14 Supreme Court cases 508.

said case, the High Court had given direction to provide employment to the Respondent therein, though he did not fulfil the criteria for such employment. When the order impugned therein was sought to be sustained on the premise that other similarly situated persons were appointed, the Supreme Court negatived such contention, with the following observations:

“9. The concept of equality as envisaged under Article 14 of the Constitution of India is a positive concept which cannot be enforced in a negative manner. When any authority is shown to have committed any illegality or irregularity in favour of any individual or group of individuals the others cannot claim the same illegality or irregularity on the ground of denial thereof to them. Similarly, wrong judgment passed in favour of one individual does not entitle others to claim similar benefits.”

(emphasis supplied)

21. The upshot of aforesaid consideration and discussion is that the Petitioner is not entitled to the relief on either of the submissions, canvassed by the learned Counsel for the Petitioner.

22. There is another factor, which has a material bearing on the claim of the Petitioner. By the own showing of the Petitioner, the Petitioner had participated in the selection process in the year 2001 but was not selected. In the subsequent recruitment process the Petitioner could not participate as the Petitioner was not given adequate notice thereof. It is evident that the present case is not a case wherein

the Petitioner had no opportunity at all to participate in the recruitment process for being selected under the category of Project Affected Persons. Thus, it cannot be said that the Respondents made an illusory representation of employment without providing any opportunity to participate in the selection process. In this view of the matter, we are inclined to dismiss the petition.

23. The petition stands dismissed. In the circumstances, there shall be no order as to costs.

24. Rule discharged.

[N. J. JAMADAR, J.]

[R. M. BORDE, J.]