



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Special Original Jurisdiction)

Thursday, the Eighth day of August Two Thousand Nineteen

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PRESENT

The Hon'ble Mr. Justice M. SATHYANARAYANAN
and
The Hon'ble Mr. Justice B. PUGALENDHI

WMP (MD) No. 19142 of 2018
IN
WP (MD) No. 15626 of 2018

1 THE NUCLEAR POWER CORPORATION OF INDIA LTD,
(A GOVERNMENT OF INDIA ENTERPRISE)
7TH FLOOR, NORTH WING,
V.S. BHAVAN, ANUSHAKTHINAGAR,
MUMBAI - 400094,
MAHARASHTRA STATE.

2 THE DIRECTOR,
KUDANKULAM POWER PROJECT,
KUDANKULAM POST, RADHAPURAM TALUK,
TIRUNELVELI DISTRICT,
TAMILNADU - 627133.

... PETITIONERS/RESPONDENT Nos. 1 & 2

Vs

1 M. APPAVU

.... 1st RESPONDENT/PETITIONER

2 THE DISTRICT COLLECTOR,
TIRUNELVELI DISTRICT,
TIRUNELVELI.

3 THE TAHSILDAR,
RADHAPURAM TALUK,
TIRUNELVELI DISTRICT.

4 THE SUPERINTENDENT OF POLICE
TIRUNELVELI DISTRICT,
TIRUNELVELI.

5 THE INSPECTOR OF POLICE
KUDANKULAM POLICE STATION,
KUDANKULAM,
TIRUNELVELI DISTRICT.



Petition praying that in the circumstances stated therein and in the affidavit filed therewith the High Court will be pleased to vacate the order of interim stay granted on 18.07.2018 in WMP(MD) NO.14030 of 2018 in WP(MD)NO.15626 of 2018.

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Prayer in WP(MD)No. 15626/ 2018 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus to call for the notification under reference Advertisement No.01 / KKNPP / HRM / 2018 published by the 1st respondent on 18/04/2018 in the newspaper with regard to selection of candidates to the post of C and D other than the Project Affected Persons (PAP) who are liable to be appointed as per the memorandum of understanding dated 18/02/1999 and quash the same as illegal and invalid and consequently direct the respondents 1 and 2 to provide employment in the cadre of C and D to the Project Affected Persons in Pursuance of the memorandum of understanding under reference Na.Ka.No.C3/2954/98 dated 03.99 forthwith.

ORDER : This petition coming on for orders upon perusing the petition and the affidavit filed in support thereof and upon hearing the arguments of Mr.C.Muthusaravanan, Advocate for the petitioners and of Mr.J.Sankarapandian, Advocate for R1, the court made the following order:-

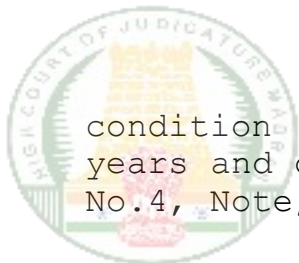
(Order of this Court was made by **M.SATHYANARAYANAN, J**)

The first respondent/writ petitioner made a challenge to the impugned advertisement, dated 18.04.2018, issued by the petitioner/first respondent, with regard to the selection of candidates to the post of "C" and "D" other than the Project Affected Persons (PAP), who are liable to be appointed as per the memorandum of understanding, dated 18.02.1999.

2. The Writ Petition was entertained and this Court, vide order dated 13.02.2019, granted interim orders, leaving 56 posts, which is not subject matter of the writ petition.

3. The first respondent in the writ petition came forward to file this petition to vacate the interim order.

4. The learned Counsel appearing for the petitioner/first respondent has drawn the attention of this Court to the impugned notification and would submit that admittedly the persons from whom, lands were acquired for the said project have been compensated and taking into their claim also, has relaxed the upper age limit in the case of Project Affected Persons (PAPs) applying for the post of Assistant Grade-I (Finance & Accounts) and Assistant Grade-I (Human Resources) shall be relaxed upto 45 years for General candidates, 48 years for OBC and 50 years for SC/ST candidates, subject to



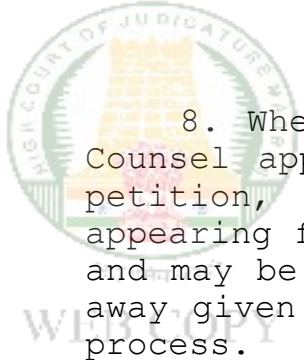
condition that maximum age of the applicant shall not exceed 56 years and drawn the attention of this Court in this regard to Clause No.4, Note, relating to the relaxation of upper age limit.

5. The learned Counsel for the petitioner/first respondent in the writ petition has further invited the attention of this Court to Clause No.1 and 9 of the general instructions and would submit that as per Clause No.1, Project Affected Persons (PAPs), who are also Persons with Disabilities, applying for the posts S.No.2 and 3 must be having valid "Land Looser Certificate" and as per Clause.9, as regards over qualification, minimum qualification prescribed for recruitment has to be fulfilled and any other qualification including higher qualification over and above the minimum qualification will not disqualify the candidate to appear in written examination or interview for all the advertised posts.

6. The learned Counsel appearing for the petitioner/first respondent would further submit that the present writ petition came to be filed, to enforce the decision taken in the peace committee meeting conducted by third respondent, in the light of the adjudication and dharna and to enforce the peace committee meeting, a mandamus won't lie and therefore, prays for vacating the interim orders.

7. Per contra, Mr.J.Sankarapandian, learned Counsel appearing for the first respondent/writ petitioner has drawn the attention of this Court to the decision of the peace committee meeting, dated 18.02.1999 and would submit that the officials of the first respondent in the writ petition/the petitioner herein had also participated and the submission was also recorded and it is relevant to extract hereunder the same:

*"The project affected persons (PAP) are given reference is fresh recruitment to posts in the ground C and D in the Nuclear Power Corporation of India Limited (NPCIL) subject to their fulfilling the criteria for selection. If a sufficient number from the project affected persons do not fulfill the requisite norms, recruitment to these categories would be done from the local area and through the District Employment Exchange only after all these channels are exhausted is resorted to for this recruitment, the policies of the Government of India on reservation etc., in different categories are followed. A clause is inserted in all the contract documents that the contractors deployed and working for TAP-344 will give preference to the Project Affected Persons for employment. In general, the policies and rehabilitation package determines by the State Government are followed. ** recruitment through open advertisement."*



8. When this Court has put a specific question to the learned Counsel appearing for the writ petitioner/first respondent in this petition, what is he meant by preference, the learned Counsel appearing for the first respondent did not give any plausible answer and may be the affected persons expect that they should be straight away given employment, as per qualifications, without any selection process.

9. This Court is *prima facie* of the view that for enforcing the decision taken in the peace committee meeting came to be held, on account of adjudication and dharna, held by a group of people, a mandamus won't lie and however, it can be considered and adjudicated at the time of final disposal of the writ petition.

10. In paragraph No.21 of the affidavit filed in support of the vacate stay petition, the details of the recruitment at the Kudankulam Plant have also been given and it is relevant to extract hereunder the same:

Total recruitment made	Tamil Nadu	Tirunelveli	Radhapuram	Local in and around
626	606	341	186	125
Percentage	97%	54%	30%	20%

11. It is also *prima facie* appeared that the residents of that locality have also been given accommodation.

12. It is a settled position of law that the selection and appointment is prerogative of the employer and we cannot compel to resort the selection process by merely considering the application for employment under the project affected persons (PAP) category. The notification also makes it clear that taking into consideration the grievance of the project affected persons, age relaxation have also been given.

13. It is also represented that category "D" posts has been abolished and the recruitment is being done for category "C" posts.

14. In the light of the above facts and circumstances, the interim order already granted by this Court in W.M.P.(MD)No.14030 of 2018 in W.P.(MD)No.15626 of 2018, dated 18.07.2018, is modified and any appointment and selection to Clause "C" posts, as per the impugned notification, is subject to the result of the writ petition.



15. List the writ petition for hearing on **17.09.2019.**

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sd/-
08/08/2019

Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

TO

- 1 THE DISTRICT COLLECTOR,
TIRUNELVELI DISTRICT,
TIRUNELVELI.
- 2 THE TAHSILDAR,
RADHAPURAM TALUK,
TIRUNELVELI DISTRICT.
- 3 THE SUPERINTENDENT OF POLICE
TIRUNELVELI DISTRICT,
TIRUNELVELI.
- 4 THE INSPECTOR OF POLICE
KUDANKULAM POLICE STATION,
KUDANKULAM,
TIRUNELVELI DISTRICT.

+1 CC to M/s.RAMASUBRAMANIAM ASSO, Advocate
(SR-13277[I] dated 08/08/2019)

+1 CC to M/s.S.PALANI VELAYUTHAM, Advocate
(SR-13369[I] dated 09/08/2019)

ORDER
IN
WMP (MD) No.19142 of 2018
IN
WP (MD) No.15626 of 2018
Date :08/08/2019

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ES/PN/SAR 4/20.08.2019/5P/7C