

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH : NAGPUR.

WRIT PETITION NO.877/2019

Raju s/o Sudamji Vaidya and others

Vs.

Union of India through its Secretary Ministry of Skill Development and Entrepreneurship, New Delhi and others.

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Shri U.K.Bisen, Advocate for petitioners.

Shri N.S.Deshpande, Assistant Solicitor General of India for respondent no.1.

Ms S.s.Jachak, Assistant Government Pleader for respondent nos. 2 and 3.

Shri Sunil Manohar, Senior Advocate with Shri N.R.Rode, Advocate for respondent nos. 4 to 6.

CORAM :- A.S.CHANDURKAR AND G.A.SANAP, JJ.

DATE :- FEBRUARY 17, 2022.

In view of notice for final disposal issued earlier, the learned counsel for the parties have been heard at length.

2. The petitioners are project affected persons as the lands owned by them have been acquired for Thermal Power Project at Mouda, District Nagpur by the respondent nos. 4 to 6 - National Thermal Power Corporation Limited (for short, NTPC).

3. In a meeting held between the NTPC and the Collector, Nagpur a demand for providing employment to a family member of those families whose lands were acquired was considered. This led to an agreement being entered into between the State of Maharashtra through the Honourable Governor and the NTPC on 05.04.2013. Under that agreement, the NTPC

agreed to give preference to one person from a project affected family in employment in the workman category subject to availability of vacancies and suitability of candidates. With a view to implement the aforesaid agreement, various steps were taken by the concerned Authorities and ultimately on 27.12.2014 a meeting was conducted between various public representatives and the representatives of the NTPC. In that meeting the NTPC agreed to provide necessary training to interested candidates to enable them to undertake the qualifying examination. The candidates who had failed in the qualifying examination were to be trained again with a view to provide them employment.

4. On 25.05.2016 the NTPC issued an advertisement calling upon such project affected persons to seek employment by undergoing a written test. The successful candidates were thereafter to be imparted training. About 102 posts were accordingly advertised by the NTPC. The petitioners contend that though they had appeared in the said examination, their results were not declared. It is their case that out of 76 candidates who had appeared in the examination, 51 candidates were appointed and the petitioners were excluded. In the aforesaid context, the petitioners have approached this Court by seeking a declaration that the selection process adopted by the respondent nos. 4 to 6 thereby excluding the petitioners be declared as arbitrary and discriminatory. During the pendency of the writ petition, a fresh advertisement was issued by the NTPC on 01.09.2021 and by amending the writ petition a challenge is raised to the subsequent advertisement.

5. Shri U.K.Bisen, learned counsel for the petitioners submitted that the NTPC by failing to provide employment to the petitioners had acted contrary to the terms that were agreed by its officers in the meeting that was held on 27.12.2014. The petitioners were entitled to be sent for training to facilitate their appointment on posts reserved for project affected persons. In fact, the petitioners had completed the requisite training which was evident from the affidavit filed by the Assistant Director, Vocational Education and Training, Nagpur and despite that the petitioners were not being provided employment. Placing reliance on the decision in ***Suresh s/o Tikaram Pustode vs. State of Maharashtra and others 2004 (1) Mh.L.J. 157*** it was submitted that by virtue of the conditions agreed by the officials of NTPC in the meeting held on 27.12.2014, the petitioners could not have been denied employment. By issuing a fresh advertisement the NTPC was seeking to defeat the claim of the petitioners. It was thus submitted that the petitioners were entitled for reliefs sought in the writ petition.

6. Shri Sunil Manohar, learned Senior Advocate for the respondent nos. 4 to 6 opposed the aforesaid submissions. He invited attention to the recruitment policy and procedures as prevailing and especially Clauses 4.1 and 4.5 thereof. On that basis it was submitted that it was only a preference given to the candidates from the project affected category to seek employment. This was subject to the provisions of the Rehabilitation Action Plan and the prevalent Statutes. It was necessary for a candidate to undertake a written test after which, based on such performance the candidates were to be shortlisted and thereafter trained. Since the

petitioners did not qualify in the written test, there was no question of further consideration of their candidature. Inviting attention to the judgment of the Full Bench of this Court in ***Rajendra Pandurang Pagare and another vs. State of Maharashtra and others 2009 (4) Mh.L.J. 961*** it was submitted that quota for project affected persons was only in the nature of horizontal reservation and it was necessary for the candidates from the project affected category to compete amongst themselves prior to being selected. As regards the Minutes of Meeting held on 27.12.2014, it was submitted that the said Minutes would not be enforceable in Court of law and the matter was governed by the recruitment policy as well as the provisions of the Maharashtra Project Affected Persons Rehabilitation Act, 1999 (for short, 'the Act of 1999'). It was thus submitted that the petitioners having appeared in the written test that was held pursuant to the advertisement dated 20.07.2016 and having failed therein, it was not permissible for the petitioners to now turn around and contend that the advertisement itself was liable to be quashed. The learned Senior Advocate submitted that in view of the interim order passed on 14.09.2021, 13 posts of the 53 posts that were required to be filled in as per advertisement dated 01.09.2021 had not been so filled in. It was open for the petitioners to apply for recruitment pursuant to that advertisement and if such applications were made, the NTPC would consider the same in accordance with law. It was submitted that the petitioners were not entitled for any relief whatsoever.

Shri N.S.Deshpande, learned Assistant Solicitor General of India for the respondent no.1 and Mrs. S.S.Jachak, learned Assistant Government

Pleader for the respondent nos. 2 and 3 submitted that recruitment was undertaken by the respondent nos. 4 to 6 and respondents represented by them did not have much role to play.

7. We have heard the learned counsel for the parties at length and with their assistance we have perused the documents on record. The acquisition of the lands belonging to the petitioners for the Thermal Power Project of NTPC is not in dispute. As a result of such acquisition the petitioners are project affected persons and are entitled to seek benefit of the agreement dated 05.04.2013 between the State Government and the NTPC. By the said agreement the NTPC has agreed to give preference to a family member from each project affected family while employing workman subject to availability of vacancies and suitability of the candidates. It is on the strength of this agreement and the advertisement issued on 20.07.2016 that the petitioners seek to agitate their rights. By the said advertisement 102 posts for various categories were sought to be filled in by inviting applications only from project affected persons. Accordingly the NTPC had received 122 applications from the candidates belonging to the project affected persons category. Out of those 122 applications/candidates, 76 candidates were found eligible for appearing in the written test. Of those 76 candidates, 51 candidates qualified in the said examination. The petitioners appeared in the said examination but could not qualify in the written examination. It is in the aforesaid backdrop that the grievance of the petitioners will have to be considered.

8. The provision of reservation for project affected persons is considered as horizontal reservation and the candidates from that category are required to compete amongst themselves under the Recruitment Rules. This position can be seen from the decision of the Full Bench in *Rajendra Pandurang Pagare* (supra) in the light of the observations in paragraph 39 which read as under :

“39. We are, therefore, of the considered view that the directions given by the Division Bench in Sunil’s case, that the project affected persons should be appointed strictly according to the seniority list maintained by the Collector and that, they are not required to compete between themselves and that they are entitled to be appointed without any competitive examinations, are inconsistent with the mandate of the Constitution of India under Articles 14 and 16. We find, that the same is also not permissible under the said Act and the relevant Government Resolutions. As we have already held, 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.”

It may be noted that the provisions of Act of 1999 were considered by the Full Bench while observing as aforesaid. For this reason the ratio of the decision in *Suresh Tikaram Pustode* (supra) relied upon by the learned counsel for the petitioners cannot assist the case of the petitioners.

9. It deserves mention that as per Clause 3 of the agreement dated 05.04.2013 the suitability of the candidates from the project affected persons category was required to be examined before providing employment. The said Clause 3 of the agreement reads as under :

“3. NTPC Ltd. Mouda will give preference to one person of the project affected family for employment in workman category, subject to availability of vacancies and suitability of the candidate.”

10. Once the aforesaid position is clear it would be obvious that the parties would be governed by the aforesaid law and the terms of the agreement in question. Much emphasis was sought to be placed by the petitioners on the minutes recorded of the Meeting held on 27.12.2014 attended by the various public representatives including the Hon'ble Ministers from the Central Government as well as from the State Government and officers from the NTPC. One of the considerations was that the candidates who were unsuccessful in the written examination could be given fresh training and thereafter employment in the project affected persons category. On this basis it was urged that the NTPC was bound by the decision as recorded in the said Minutes since its officers had agreed to the suggestions made therein. It would not be possible to accept this contention for the reason that what would be enforceable against the NTPC would be the right of preference as required to be given to project affected persons as per Section 6 (c) of the Act of 1999. Admittedly, the posts advertised were only for the candidates from the project affected persons category and this would be in consonance with Section 6(c) of the Act of 1999. Even under the Recruitment Policy and Procedures, Clause 4.5 thereof stipulates that the eligibility of land outstees would be in line with the provisions of rehabilitation action plan/local agreements/the agreements entered into with the State Government. What was recorded on

27.12.2014 are only the minutes of the Meeting as held. We find therefore that the advertisement dated 20.07.2016 has been issued in tune with Section 6(c) of the Act of 1999 and keeping in mind Clause 6.2 of the recruitment policy, the further process has been undertaken. This advertisement has been issued much after the meeting dated 27.12.2014. Thus if the petitioners were unsuccessful in the written test, they were not liable to be further considered in that particular selection process. We find that the petitioners have not been deprived of their right to seek employment as their candidature as project affected persons pursuant to the advertisement dated 20.07.2016 has been considered.

11. In the light of aforesaid discussion, we do not find any reason to interfere with the recruitment process that was undertaken on 20.07.2016 by the NTPC. One relevant aspect that cannot be ignored is that pursuant to that advertisement each petitioner had appeared for the written test but had failed to clear the same. After having failed to clear that written test, the advertisement dated 20.07.2016 has been subjected to challenge. In other words, after participating in the selection process and failing to succeed therein the petitioners have now sought to challenge the advertisement dated 20.07.2016 which is not permissible in law. Before participating in the selection process on the basis of advertisement dated 20.07.2016 it was open for the petitioners to have challenged the same vis-a-vis the minutes of the Meeting dated 27.12.2014. This has not been done.

12. As regards the subsequent advertisement dated 01.09.2021, 53 posts have been advertised again for candidates from the project affected

persons category. The learned Senior Advocate for the NTPC on instructions submitted that even if the petitioners now apply pursuant to the aforesaid advertisement for seeking employment, their candidature could be considered alongwith other project affected candidates. It may be noted that by the interim order dated 14.09.2021, NTPC was directed not to fill up 13 posts pursuant to the said advertisement until further orders.

13. In the light of the statement made on behalf of the NTPC, it would be open for the petitioners to apply for their consideration for appointment against the posts that are advertised. Accordingly the following order is passed :

- (1) The challenge raised to the advertisement dated 20.07.2016 as well as subsequent advertisement dated 01.09.2021 issued by NTPC fails.
- (2) If the present petitioners seek employment in the project affected persons category pursuant to the advertisement dated 01.09.2021, they can apply for the same. If such applications are made by the petitioners within a period of three weeks from today, the respondent nos. 4 to 6 shall consider their candidature in accordance with law and thereafter proceed to complete the recruitment process.
- (3) Subject to aforesaid observations and liberty granted to the petitioners, the writ petition stands dismissed with no order as to costs.

(G.A.SANAP, J.)

(A.S.CHANDURKAR, J.)

Andurkar..