



W.P.Nos.11026 and 9491 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved on: 13.10.2022

Orders Pronounced on : 18.10.2022

Coram:

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

W.P.Nos.11026 and 9491 of 2022

and

W.M.P.Nos.10613, 10615, 9245 and 9253 of 2022

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Elambarathy.S

.. Petitioner in W.P.No.11026 of 2022

V.B.Abhishiek Raj

.. Petitioner in W.P.No.9491 of 2022

Vs.

1. NLC India Limited,
Rep. by its Chairman,
No.135, EVR Periyar High Road,
Kilpauk, Chennai-600 010.

2. Chief General Manager (HR)/Recruitment,
Recruitment Cell/HR Department,
No.135, EVR Periyar High Road,
Kilpauk, Chennai-600 010.

.. Respondents in W.P.No.11026 of 2022

1. The Chairman cum Managing Director,
NLC India Limited,
Corporate Office,
Block-1, Neyveli-607 801,
Cuddalore District.

2. The Chief General Manager (HR)/Recruitment,
Recruitment Cell/HR Department,
NLC India Limited, Corporate Office,
Block-1, Neyveli-607 801,
Cuddalore District.

.. Respondents in both writ petitions

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Writ Petition No.11026 of 2022 filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus to call for the records relating to the Advertisement No.02/2002 issued by the second respondent, dated 26.03.2022 for recruitment to the post of Graduate Executive Trainee (GET) and quash the same and consequently direct the respondents to recruit by issuing a similar Notification No.02/2020 issued in the year 2020.

Writ Petition No.9491 of 2022 filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorari to quash the impugned Advertisement No.02/2022 advertised by the second respondent for recruitment of Graduate Executive Trainees through GATE-2022 as the same is arbitrary, not fair, illegal and against law.

For petitioner in W.P.No.11026 of 2022: Mr.N.G.R.Prasad for M/s.K.C.Karl Marx

For petitioner in W.P.No.9491 of 2022 : Mr.V.Rajesh Babu

For respondents in both the Writ Petitions: Mr.R.Sankaranarayanan,
Addl. Solicitor General of India
assisted by Mr.N.Nithianandam

COMMON ORDER

The issue that arises for consideration in these Writ Petitions is whether a public sector undertaking can impose higher educational qualification in its Recruitment Notification, in a particular year, without prior public notice enabling the aspirants for the subject post to be aware of the same and be prepared to achieve the higher educational qualification.

2. The petitioners being aspirants to the post of Graduate Executive



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Trainee in the first respondent-Public Sector Undertaking Company, has challenged the advertisement issued by the second respondent on 26.03.2022 inviting the aspirants for recruitment to the post of Graduate Executive Trainee on the following grounds:

(i) The impugned Advertisement/Notification is illegal, as it violates Articles 14 and 21 of the Constitution of India.

(ii) The second respondent, before issuing the impugned Recruitment Notification, did not inform the candidates that they should have passed the GATE (Graduate Aptitude Test in Engineering) examination.

(iii) Only in the impugned Advertisement inviting the aspirants for recruitment to the post of Graduate Executive Trainee, the second respondent has prescribed the higher qualification, namely passing of GATE examination for selection to the post of Graduate Executive Trainee.

(iv) Previously, if passing the GATE was to be the qualification, the first respondent used to inform in advance that the candidates should get through the GATE examination and only thereafter, the recruitment Advertisement will be issued.

(v) In the year 2020, the second respondent asked the aspirants to appear for a computer based on-line examination and GATE was not required then. Therefore, the respondents have always not taken the GATE score for selection and whenever the GATE score was taken for selection, the candidates



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were informed well in advance.

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(vi) As per the impugned Advertisement, the second respondent chose to conduct the recruitment based on the GATE examination's score, whereas the last date for submitting the application for the GATE 2022 examination, was over by 13.02.2022 itself. The action of the respondents had deprived the petitioners and other similarly placed aspirants from applying to the subject post.

(vii) Another public sector company, namely Indian Oil Corporation, has also invited well in advance, i.e. on 19.09.2021 itself that the recruitment for the year 2022 would be made only based on the marks secured in GATE 2022 examination enabling the aspiring candidates to apply for the GATE examination. According to the petitioners, if the respondents had notified earlier that the aspirants will have to pass the GATE examination for employment to the first respondent-Company, the petitioners would have applied for the GATE too.

(viii) The impugned Advertisement/Notification has suddenly prescribed the GATE requirement and therefore, the number of applications to the subject post, had been considerably reduced when compared to the last recruitment. According to the petitioners, during the last recruitment in the year 2020, for 259 posts, totally 1,11,059 candidates had applied, out of which, 59,545 appeared for the computer based on-line examination, whereas, to the knowledge of the petitioners, subsequent to the impugned Advertisement/Notification, the second respondent has received only 3700 applications, out of which, only 12

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applications were received from Tamil Nadu, which is far less the number of applicants who had applied for the previous recruitment. Therefore, the petitioners have lost the opportunity of applying and seeking employment because of the impugned illegal Advertisement/Notification.

3. A Counter affidavit has been filed by the respondents denying the allegations of the petitioners. They contend as follows:

(i) The Writ Petitions are not maintainable, since the petitioners have no legal protection and judicially enforceable right to challenge the impugned Advertisement issued by the second respondent.

(ii) It is the discretion of the recruiting agency and/or employer to prescribe the educational qualification for the post in consonance with the nature of the post. It is settled law that the qualification to be prescribed for appointment to a post, has to be decided only by the employer. The question of prescription of qualification is outside the domain of the recruiting agency under Article 226 of the Constitution of India.

(iii) The challenge to the recruitment process already initiated at the verge of completion, is unsustainable.

(iv) The GATE examination score is required for getting admission into IITs, IISC, IIITs, NITs and many other renowned institutions. The GATE qualification is also a minimum requirement to apply for various Fellowships



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awarded by many Government organisations by the DRDO, BARC, ISRO, etc.

Likewise, the GATE score of a candidate is also used by several public sector undertakings (i.e. Government owned Companies like IOC, GAIL, Hindustan Petroleum Corporation, etc.) for recruiting the Graduate Engineers in Entry Level position to get Fellowship programmes from CSIR and scholarship in ME/M.Tech etc. This requirement is not a new phenomenon to the aspirants who apply for all the above stated higher studies and jobs.

(v) The official web-site of GATE-2022 manifestly makes it clear that the GATE marks/score is compulsory for recruitment in public sector companies, which is known to all the candidates accessing the GATE web-site.

(vi) In the present scenario, the GATE score is utilised to measure and test the calibre of the Engineering students, which is possible only through the GATE examination. As such, the requirement and/or imposition of the condition that the candidates must possess GATE marks for participation and/or applying to the subject recruitment, is reasonable and justified.

(vii) The first respondent, for its various activities in mining and power generations for the renewable energy sector, requires competent skilled Engineers well-versed in various disciplines across the country and only to achieve the said objective, GATE score is prescribed as mandatory criterion for selection to the post of Graduate Trainees.

(viii) Total number of 3546 applications were received from the eligible



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candidates for the subject post from all over India and on receipt of the same, and on scrutiny, the Selection Committee has provisionally short-listed 299 candidates to be called for document verification and the same was disseminated in the first respondent's web-site on 23.04.2022. Thus, the entire process of recruitment was scrupulously followed by the respondents and there is no infirmity and/or illegality or arbitrariness in the recruitment process of the respondents.

(ix) The petitioners themselves have admitted in the affidavit filed in support of the Writ Petitions that they were aware about the requirement of GATE marks for participating in the recruitment process for public sector undertakings since 2016 onwards. This requirement of GATE marks for participating in all the recruitment of the public sector undertakings had become publicly known to all concerned. There was no requirement in law or otherwise to inform the candidates for every recruitment of Graduate Executive Trainee by the first respondent about the requirement of GATE score.

4. Heard both sides and perused the materials available on record.

5. Mr.N.G.R.Prasad, appearing for M/s.K.C.Karl Marx, learned counsel for the petitioner in W.P.No.11026 of 2022 and Mr.V.Rajesh Babu, learned counsel for the petitioner in W.P.No.9491 of 2022, drew the attention of this Court to the

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Recruitment Rules governing the appointment and promotion by the first respondent-Company and submitted that as per the said Recruitment Rules, GATE qualification has not been prescribed. According to the learned counsel, the first respondent has not followed their own Rules, and therefore, the impugned Advertisement making it mandatory for any aspirant to have GATE score, is arbitrary and illegal.

6. Learned counsel for the petitioners relied on the following authorities in support of the petitioners' contentions in these two Writ Petitions:

(i) a Division Bench judgment of Madhya Pradesh High Court in W.A.No.363 of 2015, dated 14.12.2017 in the case of Madhya Pradesh Road Development Corporation and another Vs. Udit Pratap Singh and others.

(ii) A decision of the Supreme Court in the case of Yogesh Kumar Vs. Government of NCT, Delhi, reported in 2003 (3) SCC 548.

(iii) A decision of the Supreme Court in the case of Malik Mazhar Sultan Vs. U.P. Public Service Commission, reported in 2006 (9) SCC 507.

(iv) A decision of the Supreme Court in the case of Krishna Rai (dead) through LRs. and others Vs. Banaras Hindu University through Registrar and others, reported in CDJ 2002 SC 688.



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7. Per contra, Mr.R.Sankaranarayanan, learned Additional Solicitor General, after reiterating that an aspirant cannot question the mode of selection by the first respondent (employer), relied upon the following authorities in support of the contentions of the respondents:

(i) Judgment of the Supreme Court, dated 03.05.2019 in Civil Appeal No.4597 of 2019 (arising out of SLP (Civil) No.8494 of 2018) (The Maharashtra Public Service Commission through its Secretary Vs. Sandeep Shriram Warade and others).

(ii) A decision of the Supreme Court, dated 03.11.2020 in Civil Appeal No.3602 of 2020 (arising out of SLP (C).No.8343 of 2020) (Chief Manager, Punjab National Bank and another Vs. Anit Kumar Das).

8. The aspirants for the post of Graduate Executive Trainee in the first respondent/public sector Company, do not have a vested right on the mode of recruitment and/or qualification prescribed by the recruiting agency/employer. The second respondent under the impugned Advertisement, has prescribed GATE score as mandatory requirement for applying to the subject post. GATE is an examination conducted by the agency established by the Central Government. GATE is an examination that primarily tests the comprehensive understanding for various under-graduate subjects in Engineering and Science for admission in the Master's programme for recruitment by some public sector

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undertaking Companies like that of the first respondent. The purpose for GATE examination is to test the students' knowledge and understanding of undergraduate level subjects in Engineering and Science. GATE is utilised to measure and test the calibre of the Engineering students. The requirement of GATE score under the impugned Advertisement/Notification therefore cannot be held to be unreasonable.

9. The Recruitment Rules relied upon by the learned counsel for the petitioners, are not statutory Rules. Further, the said Rules also do not prohibit the first respondent from imposing higher qualification like requirement of GATE score for selection to the post of Graduate Executive Trainee. When the Rules have no statutory force, and further, when there is no prohibition under the said Rules of the first respondent-Company to prescribe GATE score for recruitment to the post of Graduate Executive Trainee, the contention of the petitioners that the first respondent has given go-bye to their own Rules, has to be necessarily rejected by this Court.

10. Even in the previous years, excepting for the last two years due to Covid-19 Pandemic, the first respondent-Company had prescribed the GATE qualification for selection to the post of Graduate Executive Trainees. The petitioners' counsel also admits the fact that in the previous years, GATE was

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prescribed as a qualification. However, his contention is that when the impugned Advertisement/Notification was given, the GATE examination for the year 2022, was already over, and therefore, the petitioners could not pass the GATE examination in the year 2022. According to the petitioners, the impugned Advertisement/Notification is arbitrary and illegal on the ground that, had the petitioners been made aware earlier, they would have written the GATE examination for the year 2002. This Court is of the considered view that the petitioners' contention will have to be rejected for the following reasons:

(a) The prescription of educational and other required qualifications for a post, is within the domain of the recruiting agency/employer, unless and until they will have to follow any statutory law/Rules prescribing a particular educational qualification criteria for a particular post. No statutory provision/Rule prohibits the first respondent-Company from prescribing GATE score as a mandatory qualification for applying to the post of Graduate Executive Trainee. The first respondent has a discretion to prescribe the required and relevant educational and other necessary qualifications for the required post in consonance with the nature of the post. The petitioners have no legally recognised/protected and judicial enforceable right to compel and/or dictate the respondents to follow the same yardstick for all times in the recruitment for the post required by the respondents. This legal position had also been confirmed by the Honourable Supreme Court in the decision dated 03.05.2019 in Civil Appeal

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No.4597 of 2019 (cited supra) as well as in the judgment, dated 03.11.2020 in Civil Appeal No.3602 of 2020 (cited supra), relied upon by the learned Additional Solicitor General appearing for the respondents.

(b) The scope of judicial review under Article 226 of the Constitution of India with regard to the prescription of qualifications and other conditions for a post prescribed by the employer/recruiting agency, is outside the domain of the High Court. As there is no illegality or infirmity in the prescription of condition that the candidates must have GATE marks/score for participating in the selection process, challenge to the same by way of Writ Petition under Article 226 of the Constitution of India, is not maintainable. It is not for the Court to consider the relevance of the qualification prescribed for various posts. This legal principle has also been upheld by the Supreme Court in the case of Rangasmy Vs. Government of Andhra Pradesh, reported in 1990 (1) SCC 288.

(c) Moreover, there is no violation of Articles 14 and 21 of the Constitution of India, as alleged by the petitioners, because in the present case, the impugned Advertisement/Notification is legal and valid.

(d) The decisions relied upon by the learned counsel for the petitioners referred to supra, have no bearing to the facts of the instant case, in view of the fact that the Recruitment Rules relied on by the learned counsel for the petitioners do not prohibit prescribing GATE score as a qualification criteria, and further the said Rules do not have any statutory force.

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11. For the foregoing reasons, this Court does not find any merit in both the Writ Petitions, which are accordingly dismissed. There shall be no order as to costs. Consequently, the miscellaneous petitions are closed.

18.10.2022

Index: Yes

Speaking Order: Yes/no

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ABDUL QUDDHOSE, J
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Order pronounced on : 18.10.2022