

SUPREME COURT OF INDIA

NTPC Kahalagaon

Vs.

Nakul Das

C.A.No.8487 of 2014

(J. Chelameswar and A.K. Sikri JJ.)

05.09.2014

JUDGMENT

A.K. SIKRI, J.

1. Civil Appeal @ SLP(C) no. 31026 of 2011 Civil Appeal @ SLP(C) No. 33518-33519 of 2011 Civil Appeal @ SLP(C) No. 33772 of 2013 Civil Appeal @ SLP(C) No. 33784 of 2013 Leave granted.

2. Civil Appeal arising out of Special Leave Petition (Civil) No.31026 of 2011 is treated as lead case and the background facts culled therefrom are briefly mentioned below :

The appellant in this case is National Thermal Power Corporation, Kahalagaon (hereinafter referred to as the 'NTPC'). It established a Super Thermal Power Plant in the District of Kahalagaon, Bihar in the year 1986. While doing so, the NTPC had prepared a plan for the recruitment of labour in such plant, with preference to be given, in various classes of such labour, to persons whose lands had been acquired for the construction of the said plant (Land Oustees). Thereafter, the NTPC ran into industrial relations problems as the said Land Oustees demanded a larger share of preference in the employment in the various classes of posts. Accordingly, the NTPC made adjustments to the recruitment procedure on 28.05.1986. Subsequently, it ran into further labour

problems such as Bandhs, Gheraos, etc. by the said Land Oustees. On this account, the appellant was suffering huge loss on a daily basis. As a result, the NTPC resolved to exclusively employ Land Oustees in all the specific labour classes. This decision was communicated to the Government of India vide letter dated 20.07.1998. Thereafter, there was the creation of new vacancies due to expansion of the said Plant. The NTPC took a decision to allot these newly created posts entirely to the class of Land Oustees. This decision was communicated to the Parliamentary Committee, and as per the same, the local Employment Exchanges were notified. Further, the NTPC sent requests to all the concerned District Magistrates to publish information about the said vacancies. On these basis, the NTPC received applications, conducted interview procedures and appointed the successful candidates to the vacant posts, being all Land Oustees.

3. The Parliamentary Committee devised a complete scheme/ procedure for appointments. It was of the opinion that in the ministerial area, NTPC would not insist much for the experience of the candidates falling in the category of Land Oustees of priority group one. As per the Committee, the NTPC may induct people in the ministerial area and may keep them on such positions for such time that one acquires the requisite experience. Till such time the requisite experience is attained, appointee was to be treated as on casual / muster roll employee. However, no relaxation would be made in the area as far as the job requirement and as far as certificate of competency is concerned and a certificate of land would be issued was the Circle Officer Kahalagaon, which would duly be counter signed by respective LRDC. The Committee was of the opinion that only one job would be provided to one member of a family falling in the priority group. In the Interview Board, apart from the representatives of the NTPC, Special Land Acquisition Officer, District Employment Officer were also to be associated. For any reason, if one was not in a position to attend the interview, the validity of the interview so conducted was not to be challenged.

4. It may be mentioned at this stage that the vacancy notified were 101 against which 377 applicants, who were Land Oustees, were considered. Out of these 101 posts, 69 were meant for Artisan Trainee (ITI Fitter), 30 posts for Artisan Trainee (ITI Electrician) and 2 pots for Lab Assistant Trainee. The NTPC availed the services of Indian Institute of Psychometry, Kolkata to conduct the written tests. Thereafter, an

Interview Board comprising of representatives from the State Governments / Minority Community and senior officers of the NTPC was constituted which conducted the interview of those candidates who have passed the written test. In this manner, selection of 101 persons from the said category of Land Oustees was made.

5. Before the selected persons could be appointed, two writ petitions came to be filed in the High Court of Patna challenging the aforesaid selection. One writ petition was filed by respondents Nos.1 and 2 herein. Other was filed by some outsiders, namely those who were not the Land Oustees. In so far as writ petition of respondent Nos.1 and 2 is concerned, their main grievance was that the method for calling applications only through Employment Exchange and limiting the consideration of the candidates sponsored by the Employment Exchange was not fair and there should have been a wider publicity by means of public advertisement in the newspapers as well to make all such Land Oustees aware of the move of the NTPC for filling up of the said posts from the families of Land Oustees. It was contended that as this mode of advertising the vacancy through newspapers was not adopted, persons like respondents Nos.1 and 2 remained unaware of these vacancies and, therefore, they could not apply for the posts and thereby, were left out of consideration.

6. In so far as second writ petition filed by the non Land Oustees is concerned, their challenge was to the effect that 100% reservation in favour of Land Oustees was impermissible.

7. The learned single Judge of the High Court allowed both the writ petitions and interfered with the selection and appointment made by the NTPC. Challenging the order of the learned single Judge, few appeals were filed. One was by the NTPC and other appeals were filed by those who were selected but their selection was set aside by the learned single Judge. The Division Bench of the High Court has decided these appeals by the singular judgment dated 12.09.2011 which is impugned in these appeals. The High Court has modified the order of the single Judge partly. In so far as writ petition of non Land Oustees is concerned, their contention has not found favour with the Division Bench and it has held that the policy decision of the NTPC in order to compensate for the loss which the Land Oustees had suffered was taken treating such Land Oustees as a special class and such a decision could not be treated as a reservation on the lines of reservation policy provided to backward classes. Therefore, restriction of 50% by treating a policy to be a policy of reservation was not justified.

On this count, the decision of the learned single Judge has been set aside, meaning thereby, the writ petitions filed by the outsiders are dismissed.

8. However, in so far as inaction of the NTPC in not advertising the posts by publication in newspapers is concerned, the decision of the single Judge is upheld by finding fault with the approach of the NTPC. For taking this view, the Bench relied upon the judgment of this Court in the case of Excise Superintendent, Malkapatnam v. K.B.N. Vishweshwara Rao, (1996) 6 SCC 216. As a result thereof, direction is given to the NTPC to give opportunity to other eligible persons by giving advertisement in newspapers and complete the exercise of filling up of 101 posts expeditiously, preferably, within four months.

9. Not satisfied with the aforesaid outcome of the writ appeal, the NTPC has filed the instant appeal. Three other appeals arising out of SLP (C) No.33518-33519 of 2011, SLP (C) No.33772 of 2013 and SLP (C) No.33784 of 2013 are filed by those candidates who were selected and appointed to the posts but their selection has been set aside. Therefore, as far as these four appeals are concerned, they arise out of the same judgment of the High Court wherein aforesaid limited issue is to be considered namely whether it was incumbent upon the NTPC to give advertisement in the newspapers notifying the vacancies.

10. It is the submission of the learned counsel appearing for NTPC that having regard to the facts of this case namely where requirement is confined to class/category of persons (Land Oustees in the present case), it would not be necessary to bring out advertisements in newspapers and recruitment through the Employment Exchange and local circulation of Notice would be consistent with the principles of Articles 14 and 16 of the Constitution of India. It was argued that the Land Oustees reside in the village and sub-divisional towns and local circulation of notice in addition to the requisition from the Employment Exchange was appropriate. Distinction was sought to be drawn between direct recruitment open to public and recruitment confined to a particular class/category of persons. It was submitted that in the later category, this Court has held in the case of Nihal Singh & Ors. v. State of Punjab, (2013) 14 SCC 65 that such a procedure making recruitment through the Employment Exchanges is consistent with the requirement of Articles 14 and 16 of the Constitution, following the judgment in the case of Union of India v. N. Hargopal, (1987) 3 SCC 308. The learned counsel also relied on the judgment in the case of Arun Tiwari & Ors. v. Zila

Mansavi Shikshak Sangh & Ors., (1998) 2 SCC 332 where the earlier judgments in the N. Hargopal and K.B.N. Visveshwara Rao, (1996) 6 SCC 216 were duly considered.

11. The learned counsel for respondent Nos.1 and 2, on the other hand, sought to justify the order of the High Court, based on the judgment of this Court in N. Hargopal and K.B.N. Visveshwara Rao (supra). We may record that the learned counsel for respondent Nos.1 and 2 also ventured to submit that there were certain other irregularities as well, but as that was not the foundation of their case nor is the reason for setting aside the selections by the High Court, we declined to look into those alleged irregularities.

12. It would be pertinent to point out at this stage that during the pendency of these proceedings, some subsequent events have taken place which would demonstrate that it may not be even necessary to decide the issue involved.

13. In the special leave petitions filed by the NTPC and selected candidates, notices were issued and when these petitions came up for hearing on 09.05.2013 after notice, following orders were passed:

SLP (c) No.33518-33519 of 2011 Heard Learned counsel for the Petitioners.

Looking to the facts and circumstances of the case, it is directed that subject to final outcome of the Special Leave Petition, Eighty Six (86) persons are permitted to resume their duties, especially when it has been stated by NTPC that their working is adversely affected because of non availability of staff.

SLP (C) No.31026 of 2011 and SLP (C) No.4686 of 2012 Respondent Nos.1 and 2 in the above SLPs are the persons who have not been offered any appointment at this stage and their names are also not in the waiting list. The petitioner “ NTPC is directed to consider the eligibility of the said respondents and inform this Court whether they are eligible for appointment or not.

Rejoinder be filed within four weeks.

List in the month of August, 2013 on a non-miscellaneous day.

14. At this stage, two of the selected candidates, who had not filed separate SLP filed impleadment applications in SLP (C) No.33518-33519 of 2011 which was allowed on 19.08.2013. In respect of these two persons also, order was passed on 22.11.2013, directing NTPC to appoint them as well as they were at par with others who had been selected and in whose case order dated 09.05.2013 were already passed. Order dated 22.11.2013 read as under:

Heard Mr. S.B. Mahayana, learned senior counsel in support of these I.As.. He points out that two persons whom he is representing, namely, Bhaskar Bhushan and Dharendra Kumar Singh have been issued appointment orders. This is on the footing that their land has been taken over by NTPC. Mr. Sunil Kumar, learned senior counsel appearing for NTPC does not dispute it. We have also heard Mr. Prem Shankar Sharma, learned counsel appearing for respondent Nos. 1 & 2 in the above special leave petitions and also appearing in support of other intervenors in the main SLP. In our view, as observed by this Court in order dated 09.05.2013, these appointments will be subject to the final outcome of the special leave petitions. These I.As. Are accordingly disposed of. NTPC will act accordingly.

15. The reading of the aforesaid two orders reflects that on the one hand, all those who were selected in the selection process undertaken by the NTPC were appointed. On the other hand, in respect of respondents Nos.1 and 2 herein who could not apply for the post, direction was given to the NTPC to consider their eligibility and inform the outcome thereof to the Court.

16. Respondent Nos.1 and 2 were thereafter considered for the post on the same yardstick which were applied by the NTPC while making selections earlier. However, it is reported by the NTPC that these two persons have failed in the selection.

17. The position which emerges from the aforesaid narration of events is this: The persons who were selected were admittedly eligible to be considered as they were also Land Oustees. No doubt, the posts were not advertised by publication in the newspapers. Facts remains that only two persons namely respondent Nos.1 and 2 made a grievance in this behalf. These two persons have also been considered for the

posts under the orders of this Court. However, they have failed in the selection. Others who were selected have already joined the posts. In a matter like this, no useful purpose would be served in carrying out the directions of the High Court to have fresh selection process after issuing advertisements in the newspapers.

18. We may record at this stage that about 70 other persons have also filed I.A.'s supporting the stand of respondent Nos.1 and 2. However, it is of significance to mention that all these persons had duly participated in the selection process but could not make their mark and failed to get selected. Therefore, these persons have no right to raise any grievance about non-publication of the advertisement in the newspapers.

19. Having regard to these peculiar facts and aforesaid developments during the pendency of these appeals, we find that there is no necessity to carry out any fresh selection process as directed by the High Court in the impugned judgment. The appeals are allowed and the direction is set aside.

Civil Appeal @ S.L.P. (C) No.4686/2012 Leave granted.

20. This appeal is filed by five persons who also participated in the selection process and were selected.

21. Pursuant to the orders dated 09.05.2013 directing NTPC to appoint the selected candidates, two out of the aforesaid five appellants have given the appointment. However, cases of other three appellants are rejected as in the medical examination conducted, they are found medically unfit as suffering from 'colour blindness'. They are appellants Nos.1, 4 and 5. Learned counsel appearing for these appellants submitted that their medical examination was done in haste; they had made representation to the NTPC regarding constitution of Medical Board to re-examine their cases to which NTPC was not agreeing; they had got themselves medically examined from the same hospital and same doctor namely NTPC, Kahalagaon Hospital and also outside doctor and they had duly certified that these appellants were not suffered from 'colour blindness'. Additional affidavit dated 26th June, 2005 is filed including the result of their medical examination from Out- Patient Department of NTPC, Kahalagaon Hospital, as well as opinion of some private Doctors in support of the aforesaid submission.

22. Having regard to the aforesaid facts, we are of the opinion that it would be in the interest of justice that NTPC constitutes another Medical Board for re-examination of these three appellants and decide their fate on the basis of the opinion given and take further action on the basis of opinion given by the reconstitute Medical Board.

23. This appeal is disposed of on the aforesaid terms.