

GAHC010157042022



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/5137/2022

ARIF AHMED

VERSUS

THE UNION OF INDIA AND 3 ORS.
REP. BY SECRETARY, MINISTRY OF PETROLEUM AND NATURAL GAS,
SHRAM SHAKTI BHAWAN, RAFI MARG, NEW DELHI- 110001.

2:THE INDIAN OIL CORPORATION LIMITED
REP. BY CHAIRMAN AND MANAGING DIRECTOR
INDIAN OIL BHAWAN
NORTHERN REGIONAL OFFICE
SRI AUROBINDO MARG
YUSUF SARAI
NEW DELHI- 110016.

3:CHAIRMAN AND MANAGING DIRECTOR
INDIAN OIL CORPORATION LIMITED
INDIAN OIL BHAWAN
NOETHERN REGIONAL OFFICE
SRI AUROBINDO MARG
YUSUF SARAI
NEW DELHI- 110016.

4:DIRECTOR
INDIAN OIL CORPORATION LIMITED
INDIAN OIL STATE OFFICE
INDIAN OIL BHAWAN SECTOR- III

NOONMATI
GUWAHATI
ASSAM
PIN- 781020

Advocate for the Petitioner : MR. T DEURI

Advocate for the Respondent : ASSTT.S.G.I.

BEFORE
HONOURABLE MR. JUSTICE MICHAEL ZOTHANKHUMA

ORDER

Date : 09.08.2022

Heard Mr. T Deuri, learned counsel for the petitioner, who submits that the petitioner has not been allowed to participate in the Advertisement No. DP/5/5(Open) dated 21.07.2022 issued by the Indian Oil Corporation, for filling up of 9 (nine) posts of Senior Law Officer, on account of Clause 2(g) of the Advertisement, which requires a candidate to have the following details on the recruitment portal:

- (i) CLAT 2022 Admit Card Number
- (ii) CLAT 2022 Application Number
- (iii) Date of Birth (dd-mm-yyyy format)
- (iv) Score obtained in CLAT 2022 (up to two places of decimal without rounding off)

The Advertisement further states that the portal will allow the candidates to proceed further only when the entries made against the above queries match with the CLAT 2022 database.

2) The petitioner's counsel submits that the advertisement has restricted

the number of candidates, who can appear in the selection process, in violation of the equality of opportunity clause, as provided in Articles 14 and 16 of the Constitution of India. He further submits that only a miniscule proportion of candidates who have connections with elite Law institutions are eligible to apply, thereby depriving the petitioner, who is less fortunate than those who have studied in the law colleges that are not a part of the CLAT consortium.

3) The petitioner has relied upon the judgment of the Kerala High Court in WP(C) No. 30638/2021, (Aishwarya Mohan vs. Union of India & 5 Ors.) which was disposed of vide judgment dated 06.06.2022, in support of his submission that the petitioner should also be allowed to take part in the selection process.

The petitioner's counsel submits that there has been no appeal filed against the judgment dated 06.06.2022 passed by the Single Judge of the Kerala High Court in WP(C) No. 30638/2021.

4) The petitioner's counsel also submits that by restraining the participation of candidates, such as the petitioner who do not have the above criteria, the respondents have invoked the idea of indirect discrimination. The petitioner's counsel submits that advance copies of the writ petition cannot be served upon the learned Standing Counsel for the Indian Oil Corporation Limited, as they are refusing to accept the same, on the ground that in cases of this nature, the cases would have to be allotted to them by the Indian Oil Corporation. He accordingly submits that notices will have to be issued to the respondents. At the same time, the learned counsel for the petitioner submits that an interim order is required to be issued, to enable the petitioner to participate in the selection process and as the last date for submission of an

application is 14.08.2022.

5) The question that would have to be decided is whether the essential qualifications for appointment to a post, is the prerogative of an employer to decide and whether this Court under the garb of judicial review can delve into the issue, with regard to the employer's right to lay down essential qualifications and eligibility criteria for appointment to a post.

6) Though the learned counsel for the petitioner had stated that the judgment of the learned Single Judge of the Kerala High Court in WP(C) No. 30638/2021 has not been challenged by way of an appeal, the facts are otherwise. The Judgment of the Single Judge of the Kerala High Court passed in WP(C) No. 30638/2021 (*Aishwarya Mohan Vs. Union of India & 5 Ors.*), which was decided on 06.06.2022, has been set aside by the Division Bench of the Kerala High Court in W.A No. 793/2022 and W.A No. 742/2022, vide judgment dated 25.07.2022. In the judgment dated 06.06.2022 passed in WP(C) No. 30638/2021, the Single Bench of the Kerala High Court was to decide whether the eligibility criteria for recruitment to the post of Assistant Law Officer, requiring a candidate to have an LLB Degree and to have appeared for CLAT-2021, Post-graduate Program conducted by the Consortium of National Law Universities, was discriminatory. The learned Single Judge on considering the matter held that as the eligibility criteria confined candidates to those who only appeared for CLAT-2021 PG Program, which would be a minuscule minority among law graduates, the same amounted to indirect discrimination. The learned Single Judge allowed the writ petition holding that the petitioner therein, who had not appeared for CLAT-2021 PG Program, could not be denied a level playing field in being denied participation from the selection process.

7) The Division Bench of the Kerala High Court held that the eligibility criteria is the discretion of the employer and the practice of insisting on an appearance at the CLAT-PG Examination, as a requirement for applying for the post of Law Officer in the National Thermal Power Corporation Ltd., does not impose any restrictions as regards the law graduate, who can appear before it. The Division Bench also held that the guarantee of equality under Article 14 of the Constitution cannot imply qualifications should be prescribed to make everyone eligible, without conceding the right to the employer to choose what it considers as the best qualification, given the nature of the job to be undertaken. It further held that Article 16 of the Constitution only speaks of equality of opportunity and not opportunity to achieve equality and is also different from equality of the results. The operative portion of the judgment passed by the Division Bench of the Kerala High Court in W.A Nos. 742/2022 and 793/2022, which is at paragraph No. 18 is reproduced below:-

“18. The basic principle underlying Article 14 is only to ensure that law must operate equally on all persons under the like circumstances and a discretionary power conferred on the employer to fix the eligibility standards or qualification cannot be held to be discriminatory. Guarantee for equality cannot imply that qualifications should be prescribed to make every one eligible without conceding the right to the employer to choose what he considers as the best qualification given the nature of the job to be undertaken. Article 16 only speaks of equality of opportunity and not opportunity to achieve equality and is also different from equality of the results. We have to concede the power of the State to frame rules of classification to secure the standard of efficiency they aspire for and classifications always need not be arithmetically exact or to suit the majority. We have no doubt that the selection process in the instant case does not suffer from the vice of discrimination or arbitrariness and we uphold the selection process. For the view we have taken, we are of the opinion that it is not necessary for us to advert to the other contentions urged by the learned counsel. The contention that the majority of the

total population of India earns less than Rs.150/- per day and therefore, the clause in the notification will throw out huge number of eligible candidates from the zone of consideration, is also to be rejected as far fetched."

8) In the case of **Chief Manager, Punjab National Bank & Anr. Vs. Anit Kumar Das**, Civil Appeal No. 3602/2020, the Apex Court has held that it is for an employer to determine and decide the relevancy and suitability of the qualifications for any post and it is not for the Courts to consider and assess. A greater latitude is permitted by the Courts for the employer to prescribe qualifications for any post. There is a rationale behind it. Qualifications are prescribed keeping in view the need and interest of an Institution or an Industry or an establishment as the case may be. The Courts are not fit instruments to assess expediency or advisability or utility of such prescription of qualifications. However, at the same time, the employer cannot act arbitrarily or fancifully in prescribing qualifications for posts.

9) In the case of **Maharashtra Public Service Commission, through its Secretary Vs. Sandeep Shriram Warade & Ors.**, reported in **(2019) 6 SCC 362**, the Apex Court has held that the essential qualifications for appointment to a post is for an employer to decide, according to the needs and nature of work. Paragraph No. 9 of the judgment of the Apex Court in **Maharashtra Public Service Commission, through its Secretary** (supra) is reproduced below:-

"9. The essential qualifications for appointment to a post are for the employer to decide. The employer may prescribe additional or desirable qualifications, including any grant of preference. It is the employer who is best suited to decide the requirements a candidate must possess

according to the needs of the employer and the nature of work. The court cannot lay down the conditions of eligibility, much less can it delve into the issue with regard to desirable qualifications being at par with the essential eligibility by an interpretive rewriting of the advertisement. Questions of equivalence will also fall outside the domain of judicial review. If the language of the advertisement and the rules are clear, the Court cannot sit in judgment over the same. If there is an ambiguity in the advertisement or it is contrary to any rules or law the matter has to go back to the appointing authority after appropriate orders, to proceed in accordance with law. In no case can the Court, in the garb of judicial review, sit in the chair of the appointing authority to decide what is best for the employer and interpret the conditions of the advertisement contrary to the plain language of the same."

- 10) In case of ***Union of India Vs. Pushpa Rani & Ors.***, reported in ***(2008) 9 SCC 242***, the Apex Court has held at paragraph No. 37 as follows:-

"37. Before parting with this aspect of the case, we consider it necessary to reiterate the settled legal position that matters relating to creation and abolition of posts, formation and structuring/restructuring of cadres, prescribing the source/mode of recruitment and qualifications, criteria of selection, evaluation of service records of the employees fall within the exclusive domain of the employer. What steps should be taken for improving efficiency of the administration is also the preserve of the employer. The power of judicial review can be exercised in such matters only if it is shown that the action of the employer is contrary to any constitutional or statutory provision or is patently arbitrary or is vitiated due to mala fides. The Court cannot sit in appeal over the Judgment of the employer and ordain that a particular post be filled by direct recruitment or promotion or by transfer. The Court has no role in determining the methodology of recruitment or laying down the criteria of selection. It is also not open to the Court to make comparative evaluation of the merit of the candidates. The Court cannot suggest the manner in which the employer should structure or restructure the cadres for the purpose of improving efficiency of administration."

- 11) On considering the judgments of the Apex Court and the Division Bench judgment of the Kerala High Court, this Court is of the view that there is no

discrimination or arbitrariness in the respondents prescribing the essential qualifications required of a candidate, for the post of Law Officer, as the respondents, as an employer, would know best the type of candidate they require. Further, this Court does not find the action of the respondents to be arbitrary by not opening the field for all persons who have passed LLB or gone through CLAT in times gone by.

12) In view of the reasons stated above, this Court does not find any ground to allow the writ petition and the same is dismissed.

JUDGE

Comparing Assistant