

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

&

THE HONOURABLE MR.JUSTICE MOHAMMED NIAS C.P.

MONDAY, THE 4<sup>TH</sup> DAY OF JULY 2022 / 13TH ASHADHA, 1944

WA NO. 793 OF 2022

AGAINST THE JUDGMENT IN WP(C) 30638/2021 OF HIGH COURT OF

KERALA

APPELLANTS/RESPONDENTS 2-6:

- 1 NTPC LTD.  
(ERSTWHILE KNOWN AS NATIONAL THERMAL POWER CORPORATION LTD)  
REPRESENTED BY CHAIRMAN AND MANAGING DIRECTOR  
NTPC BHAWAN, SCOPE COMPLEX, 7,  
INSTITUTIONAL AREA, LODHI ROAD,  
NEW DELHI - 110003, PIN - 110003
- 2 CHAIRMAN AND MANAGING DIRECTOR  
NATIONAL THERMAL POWER CORPORATION LIMITED  
(NOW KNOWN AS "NTPC LTD.")  
NTPC BHAWAN, SCOPE COMPLEX, 7,  
INSTITUTIONAL AREA,  
LODHI ROAD, NEW DELHI - 110003, PIN - 110003
- 3 GENERAL MANAGER (HR)  
NATIONAL THERMAL POWER CORPORATION LIMITED  
(NOW KNOWN AS "NTPC LTD.")  
NTPC BHAWAN, SCOPE COMPLEX, 7,  
INSTITUTIONAL AREA,  
LODHI ROAD, NEW DELHI - 110003, PIN - 110003
- 4 DEPUTY GENERAL MANAGER (HR)  
NATIONAL THERMAL POWER CORPORATION LIMITED  
(NOW KNOWN AS "NTPC LTD.")  
NTPC BHAWAN, SCOPE COMPLEX, 7,  
INSTITUTIONAL AREA,  
LODHI ROAD, NEW DELHI - 110003, PIN - 110003

5       MANAGER (HR)  
NATIONAL THERMAL POWER CORPORATION LIMITED  
(NOW KNOWN AS "NTPC LTD.")  
NTPC BHAWAN, SCOPE COMPLEX, 7,  
INSTITUTIONAL AREA,  
LODHI ROAD, NEW DELHI - 110003, PIN - 110003  
  
BY ADV MANU SRINATH

**RESPONDENTS/PETITIONER & IST RESPONDENT :**

1       AISHWARYA MOHAN  
AGED 25 YEARS  
D/O RAMMOHAN P.P.,  
RESIDING AT FLAT NI. 6B,  
VISHRRAM PALAIS GRANDE, KANATTIKARA,  
THRISSUR-680011, PIN - 680011

2       UNION OF INDIA  
THROUGH MINISTRY OF POWER,  
SHRAM SHAKTI BHAWAN,  
RAFI MARG, NEW DELHI-110001, PIN - 110001  
  
BY ADVS.  
MAITREYI SACHIDANANDA HEGDE  
N.S.DAYA SINDHU SHREE HARI

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 04.07.2022,  
ALONG WITH WA.742/2022, THE COURT ON       25.7.2022 DELIVERED THE  
FOLLOWING:

**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT**

**THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR**

**&**

**THE HONOURABLE MR.JUSTICE MOHAMMED NIAS C.P.**

**MONDAY, THE 4<sup>TH</sup> DAY OF JULY 2022 / 13TH ASHADHA, 1944**

**WA NO. 742 OF 2022**

**AGAINST THE JUDGMENT IN WP(C) 30638/2021 OF HIGH COURT OF  
KERALA**

**APPELLANT :**

AISHWARYA MOHAN  
AGED 25 YEARS, D/O.RAMMOHAN P.P.,  
RESIDING AT FLAT NO. 6B,  
VISHRAAM PALAIS GRANDE, KANATTUKARA,  
THRISSUR - 680011 , PIN - 680011

BY ADVS.  
MAITREYI SACHIDANANDA HEGDE  
ANJALI ANIL A.

**RESPONDENTS :**

- 1 UNION OF INDIA  
MINISTRY OF POWER,  
SHRAM SHAKTI BHAWAN, RAFI MARG,  
NEW DELHI-1, PIN - 110001
- 2 NATIONAL THERMAL POWER CORPORATION LIMITED  
REPRESENTED BY CHAIRMAN AND MANAGING DIRECTOR,  
NTPC BHAWAN, SCOPE COMPLEX, 7,  
INSTITUTIONAL AREA, LODHI ROAD,  
NEW DELHI - 110003, PIN - 110003
- 3 CHAIRMAN AND MANAGING DIRECTOR,  
NATIONAL THERMAL POWER CORPORATION LIMITED,  
NTPC BHAWAN, SCOPE COMPLEX, 7,  
INSTITUTIONAL AREA, LODHI ROAD,

NEW DELHI - 110003, PIN - 110003

4 GENERAL MANAGER (HR),  
NATIONAL THERMAL POWER CORPORATION LIMITED,  
NTPC BHAWAN, SCOPE COMPLEX, 7,  
INSTITUTIONAL AREA, LODHI ROAD,  
NEW DELHI - 110003, PIN - 110003

5 DEPUTY GENERAL MANAGER (HR),  
NATIONAL THERMAL POWER CORPORATION LIMITED,  
NTPC BHAWAN, SCOPE COMPLEX, 7,  
INSTITUTIONAL AREA, LODHI ROAD,  
NEW DELHI - 110003, PIN - 110003

6 MANAGER (HR),  
NATIONAL THERMAL POWER CORPORATION LIMITED,  
NTPC BHAWAN, SCOPE COMPLEX, 7,  
INSTITUTIONAL AREA, LODHI ROAD,  
NEW DELHI - 110003, PIN - 110003

BY ADV MANU SRINATH

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 04.07.2022,  
ALONG WITH WA.793/2022, THE COURT ON 25.7.2022 DELIVERED THE  
FOLLOWING:

**“C.R.”**

**A.K.JAYASANKARAN NAMBIAR & MOHAMMED NIAS C.P., JJ**

-----  
WA Nos. 742 & 793 of 2022  
-----

Dated this the 25<sup>th</sup> day of July 2022

**JUDGMENT**

Mohammed Nias.C.P., J.

The above appeals arise from the judgment of the learned single Judge in WP(C)No.30638 of 2021 dated 6.6.2022.

2. The facts leading to these writ appeals are as follows:-

The second respondent, National Thermal Power Corporation Ltd. (NTPC Ltd.), invited applications for the post of Assistant Law Officer at EO level for its various projects/stations as per Ext.P3 notification which mandates an eligibility criteria as having an LLB Degree and to have appeared for CLAT -2021 (Common Law Admission Test 2021) Post Graduate Programme conducted by the Consortium of National Law Universities. The writ petitioner, the first respondent in WA No.793 of 2022, and who is also the appellant in WA No.742 of 2022, challenged the above clause in Ext.P3 notification which makes the appearance in CLAT 2021 mandatory to be considered for the post. The first respondent/writ petitioner

contended that the said condition in Ext.P3 resulted in a classification between the candidates who appeared for CLAT 2021 examination and the ones who did not appear for the said examination, and that the said classification had no nexus with the object sought to be achieved namely choosing the best available candidate. It was also urged on behalf of the writ petitioner that thousands of qualified candidates who did not appear for CLAT, since they did not choose to pursue LL.M from the National Law Schools, were thrown out of the zone of consideration. It was the further argument that the zone of consideration was limited to person who appeared for CLAT 2021 and not the candidates who appeared in the CLAT PG of any other year though the upper age limit was fixed as 30 for the candidates. Thus, several candidates who appeared for CLAT examinations in the previous years and who were below 30 years were also excluded. According to the petitioners, therefore, Ext.P3 notification failed the test of the equality protected under Article 14 of the Constitution of India apart from being a case of indirect discrimination. It was also the argument that the National Law Universities are public universities where the tuition fee is high and therefore many candidates cannot afford higher studies there and resultantly they do not appear for the CLAT examination. The social factors such as language barrier were also pointed out as reasons for not appearing in the CLAT PG. The petitioner also argued that Ext.P3

notification issued in the month of December required the candidates to appear in an examination which was conducted six months ago thus throwing out several thousands of candidates from the zone of consideration. It was also argued that the second respondent that answers to the description of State should be a model employer and constitutional morality should be the under current of all their decisions. The discretion of the employer to fix the selection method and the eligibility criteria not being unbridled, the same had to be interfered if found arbitrary. The petitioner also relied on the judgments in **Lt. Col. Nitisha and others v. Union of India and others** [(2021) SCC OnLine SC 261] and the judgment of the Bombay High Court in **Sonali Pramod Dhawade and Others v. Central Bank of India and Another** [(2013) 5 MHLJ 549] in support of her contentions.

3. The respondents in the writ petition however resisted the reliefs sought by pointing out that the second respondent is a Navaratna Government of India Company involved primarily in the power generation business and also foraying into other field such as renewable energy, power distribution, power trading etc., in view of the ever-changing and dynamic nature of the power sector in the country. It required the executive law officers who were recruited to have certain specific set of skills to understand the nuances of the

power sector. Conducting an independent examination for recruitment of executives was a cumbersome procedure that would require years for completion and the delay would frustrate the very purpose of recruitment. Thus, taking into account the sensitivity and urgency of such requirements, the most fair and rational mode of recruitment through an impartial and neutral examination like the CLAT was utilised. CLAT being a National Level examination by the Consortium of National Law Universities for admission to various reputed law universities in country which produces bright law candidates/graduates from all over the country, the ranking in such examination is being utilised by most of the Maharatna/Navaratna PSUs for recruitment of law executives. Documents were also produced to prove the same. In the year 2016 also NTPC Ltd. had recruited law executives based on the performance in the CLAT PG examination. It was also their argument that the appointing authorities had the prerogative in fixing the eligibility criteria and the selection process in the instant case was fair, uniform, equal and rational without any discrimination or arbitrariness. They also highlighted the uniform Industry Practice and contended that the scope of judicial review in such matters was limited.

4. The learned single Judge who considered the matter found that from out of the 1721 law colleges in India, only 23 are



members of the Consortium of National Law Universities and the argument that apart from the law graduates passing out from the NLUs, graduates from other law colleges would also have appeared for the CLAT - 2021 PG Programme was not accepted holding that such candidates would only be a minuscule minority among the law graduates. It was also found that fact that the selection was based on a test conducted much prior to the issuance of Ext.P3 notification that confined to the candidates who appeared for CLAT - 2021 PG Programme amounted to indirect discrimination. The learned single Judge also found that the focus of the test was on academics and not assessment of the skill set expected from future Law Officers and accordingly held that the selection process had no rational nexus with the objective. The learned single Judge also relied on the judgment in **Lt.Col.Nitisha and others** and **Sonali Pramod Dhawade and Others** (supra) and agreed with the findings of the Bombay High Court in **Sonali Pramod Dhawade and Others** (supra) and held that even if the argument that the students graduating from NLUs acquire more skill and knowledge than their less fortunate brethren is accepted, there is no reason to deny a level playing field to the others. The learned single Judge held that the process now adopted was more like a walkover to the finals for a chosen few, without competing in the preliminaries. Thus finding that the selection process fails the test of Article 16 of the Constitution of India, the

writ petition was allowed holding that Ext.P3 notification in so far as it confines the selection process only to candidates who had participated in the CLAT - 2021 PG Programme, was legally unsustainable and that the petitioner's application had to be considered by testing her eligibility for appointment. The selection process however was not interfered with. As stated above, WA No.793 of 2022 is filed by respondents 2 to 6 in the writ petition aggrieved by the judgment in toto, whereas, WA No.742 of 2022 is filed by the writ petitioner being aggrieved by that portion of the judgment that refused to quash the entire selection process.

5. We have heard the learned senior counsel and learned Solicitor General of India, Sri.Tushar Mehta instructed by Sri.Adarsh Tripathi & Manu Srinath for the appellant and Adv.Maitreyi S.Hegde for the respondents.

6. The learned Solicitor General of India Sri. Tushar Mehta assails the judgment broadly on five grounds namely (1) there is limited scope for judicial review/intervention in a selection process (2) by the impugned judgment the prerogative and authority of an employer to select its employees is encroached upon (3) criteria for CLAT PG for selection is well known, widespread, fair, just and reasonable (4) it is impractical to employ resources for conducting All India Examination, *vis a vis* limited number of vacancies and (5) the

established, uniform and prevalent Industry Practice of using the CLAT score is also interfered with. The judgment of the Supreme Court in **Surinder Singh v. Union of India & Ors** [(2007) 11 SCC 599] as well as the judgment of this Court in **Nisha A.B. v. State of Kerala** (WPC(N)o.21794 of 2020] are also relied on to question the judgment under appeal.

7. In elaboration, the learned Solicitor General of India argues that the impugned judgment failed to appreciate that the prerogative of the employer to decide on the questions of qualifications and method of appointment to posts under them, is in the best interest of the organization and therefore, there is nothing in the said notification which calls for intervention by this Court. He relies on the dictum laid down in the judgment in **Surinder Singh** (supra). It is his further argument that the impugned judgment failed to appreciate the fact that the NTPC Ltd., had issued Ext.P3 notification after a span of almost 5 to 6 years for recruitment of 10 Law Officers, as primarily the company has a very limited requirement of law officers and therefore, it is impractical and impossible to conduct an all India level examination for recruitment of 10 Law Officers that too once in every 5 to 6 years. He further argues that there could not have been any other selection which could be more transparent or unbiased as CLAT 2021 is a National

Level unbiased independent and transparent examination of all law graduates across the country who wish to pursue LL.M. It is pointed out that in 2021, approximately 8000 students took the examination for CLAT PG and the said examination has nothing to do with the Universities or where the candidates pursued their graduation. The independence and fairness of the CLAT examination has not been challenged in the past 15 years. Thus, there is a rational nexus between the eligibility criteria applied and the object sought to be achieved, namely the selection of the best candidate among the eligible and competent candidates. It is the further submission that the candidates after being appointed necessarily undergo appropriate training in the company and gather the requisite skill to act as law officers and no candidate can be expected to possess the perfect skillset for the position of law officers as the majority of work performed by the law officers may be related to Electricity Act, 2003, which is not a subject taught in most of the law schools. The reasoning that CLAT is a more academic nature examination while the law officers must possess practical knowledge is not logical. The same practice has been followed by the major PSUs in the country as is seen from the exhibits produced. Finally it is pointed out that in the absence of any order staying the recruitment process, the NTPC Ltd. proceeded with the recruitment process and offer letters were issued to 10 candidates out of which 7 candidates joined and others are yet

to join. The fact that 663 candidates who had appeared for CLAT PG 2021 had applied under Ext.P3 notification itself shows the fairness and unbiased nature of the selection.

8. Per contra, the learned counsel for the first respondent in WA No.793 of 2022 and the appellant in WA No.742 of 2022 Adv.Maitreyi S.Hegde aggrieved by that portion of the judgment which did not interfere with the entire selection process, apart from reiterating the contentions urged before the learned single Judge as also before us argues that the learned single Judge having found that the offending clause is unconstitutional ought to have set aside the entire selection process as interviewing the writ petitioner alone will not be proper as it will result in two different yardsticks for assessing merit. The learned counsel also argues that it is nowhere mentioned by the Consortium of National Universities while conducting CLAT examination that the ranking in the same would be used for future selection processes and as such the writ petitioner or others similarly situated are disadvantaged by not participating in the CLAT examination.

9. Heard the rival contentions at length, perused the records and considered the judgments cited at the Bar.

10. At the very outset, we find that the

discrimination urged by the writ petitioner was in respect of the fixation of eligibility criteria by the NTPC, while calling for applications for appointment of Law Officers. It was the case of the writ petitioner that in confining the zone of consideration to only those who had appeared at the CLAT PG examinations, the NTPC had excluded those who could not appear at the said examinations and therefore discriminated against them in a matter of public employment. While examining the said contention we have to remind ourselves of the well-settled position in law that the eligibility criteria is at the discretion of the employer. No doubt, in the case of an employer who answers to the description of "State" as defined in Article 12 of the Constitution there is a further requirement that the policy decision that informs such prescription must not be vitiated by any arbitrariness or malafides. The question however is whether or not there was any such vitiating factor in the instant case, which admittedly questions the legality of the prescription of eligibility conditions by a Central PSU in an employment notification published by it.

11. Although the learned counsel for the writ petitioner has argued that the insistence of appearing at the CLAT examinations is discriminatory in that it targets those who are not desirous of pursuing their post graduate legal studies in premier

legal institutions for discriminatory treatment, we are at a loss to understand how the action of the NTPC can be seen as discriminatory. We are given to understand that the practice of insisting on an appearance at the CLAT PG examination, as a requirement for applying for the post of Law Officer is one that has been in vogue in many Central PSU's at least from 2016. That apart, the CLAT PG examination does not impose any restrictions as regards the law graduates who can appear for it. We also note that it is not the case of the writ petitioner that she was not permitted to appear for the examination. Her contention is essentially that the CLAT PG examination for the particular year was conducted earlier in point of time than the employment notification in question and hence she could not appear for it. This, in our view, cannot be a ground to allege discrimination since the exclusion of the writ petitioner from consideration was essentially on account her inability to satisfy an eligibility requirement in the notification. The plea of discrimination can be raised and maintained only if it is demonstrated that among those equally eligible, one or some are treated differently by denying them a privilege that is granted to the others. That is not the case here. The fact that there were 663 persons who were found eligible for consideration for the post, clearly reveals that the eligibility requirement of appearance at the CLAT PG exam was not one that

was impossible of compliance.

12. We are also not impressed with the argument that through the notification calling for candidates, NTPC had made it obligatory for candidates to appear at the CLAT PG examination and to that extent it had compelled a category of applicants to write the exam in order to render them eligible for consideration. The argument ignores the fact that there was no compulsion on any qualified candidate to write an examination to the exclusion of others similarly placed. Rather, writing the examination was an eligibility requirement for all candidates interested in the job. We fail to see how the insistence on such a requirement can be categorized as discriminatory to the writ petitioner.

13. A classification between persons must not produce artificial inequalities and the has same to be founded on a reasonable basis and must bear nexus to the object and purpose sought to be achieved to pass the muster of Articles 14 and 16. Judicial review in the of classification is limited to a determination whether the classification is reasonable and bears a nexus to the object sought to be achieved. The courts cannot indulge in a mathematical evaluation on the basis of classification or replace the wisdom of the appointing authorities/employer. If it



were permissible, then courts would substitute their own Judgment for that of the employer or speak on the need to classify or the desirability of having a particular object. One who assails a classification must carry the burden of showing that it does not rest upon any reasonable basis. Upon consideration of the argument raised, we hold that the criteria filed in Ext.P3 is not in violation of any constitutional provision or principles.

14. The learned counsel for the writ petitioner heavily relied on the judgment in **Sonali Pramod Dhawade and Others** (supra) to argue that the petitioner's case is squarely covered by the said judgment and that the Special Leave Petition against the same was also rejected. It is pertinent to note that the challenge in the said writ petition was against filling of vacancies in officers cadre earmarked for direct recruits through campus interview or campus recruitment process from selected campuses and selected institutions, thus, depriving the chance of several similarly situated eligible and qualified candidates. The Bombay High Court found that there was no public advertisement that enabled all the eligible candidates to compete for selection and thus, there was violation of Article 16 of the Constitution. Thus, holding that the constitutional scheme does not envisage appointment through campus

recruitment/campus interview against any office under the State and factually finding that there was no wide publicity inviting applications from all the eligible candidates, the selection process was interfered with, as illegal and unconstitutional. There is no allegation in the instant case that there is any lack of public advertisement or that all the eligible candidates could not partake in the selection process. The writ petitioner indisputably did not meet the eligibility criteria fixed in Ext.3 notification. **Sonali Pramod Dhawade and Others** (supra) in our opinion has no application to the facts of the case now before us.

17. In the instant case a rational criteria for judging the *inter se* merit of the candidates who applied in response to Ext. P3 notification was fixed and we have already found that there cannot be any discrimination alleged in issuing Ext. P3 notification. The CLAT examination is conducted on Pan India basis for students through out India to be evaluated uniformly. Article 16 surely guarantees equality of opportunity for all citizens in matters relating to public employment in any office under the State or the instrumentality of the State. All that is required is a public advertisement which enables all “eligible” persons to compete for selection on merits. The object of any recruitment is to secure the most suitable person who answers the demands of

the requirement of the job. Of course, in that selection arbitrariness should be eliminated and there must be uniformity of standards and orderliness in the matter of employment. Accepting the contentions of the writ petitioner would amount to virtually changing the eligibility criteria fixed by the employer and the same cannot be countenanced. The directions in the impugned judgment that the petitioner should be allowed to participate in the process in which she is ineligible would result in a violation of the constitutional principles. The learned single Judge found that the graduates from law colleges other than the National law Universities, who appeared for CLAT - 2021 PG programme, would only be minuscule minority among the law graduates. We are afraid that the said finding is rendered without any empirical data to support it. Like wise, the finding that the CLAT test focus on academics and not assessment of the skill set expected of future officers also cannot be accepted. We are also not in agreement with the findings of the learned single Judge that the process now adopted is more like a walkover to the finals for a chosen few, without competing in the preliminaries. The finding that the present notification and its eligibility criteria violates Article 16 of the Constitution of India cannot be upheld for the view we have taken above. Equal treatment is to be given only to the eligible persons in a selection process and not otherwise. We

cannot lose sight of the argument on behalf of the learned Solicitor General that the appellant company is primarily involved in the power generation business as well as in other in other fields such as renewable energy, power distribution, power trading and that the ever-changing and dynamic nature of the power sector in the country requires certain specific skill sets and the recruitment which they make are also done with the above aspects in mind. The appellant must be presumed to know what is best in public interest and in the absence of any constitutional infirmity, their decision cannot be faulted. The qualifications fixed being reasonable and relevant to the recognized purpose of the service, we hold that the privilege of the employer to decide on the relevance of the requisite qualifications *vis a vis* the post in question has to be conceded. Accepting the argument of the writ petitioner would result in the court reading down the eligibility prescribed to confer eligibility on those who do not fulfill the criteria. In these matters, we are of the firm view that judicial wisdom is judicial restraint. Matters of policy have little adjudicative disposition.

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.

Resultantly, we set aside the judgment impugned in these appeals. W.A. 793 of 2022 is allowed by dismissing W.P.C.

No.30638/2021 and W.A. No. 742/2022 is dismissed.

Sd/-

**A.K.JAYASANKARAN NAMBIAR,  
JUDGE**

Sd/-

**MOHAMMED NIAS C.P.,  
JUDGE**

dlk 13.7.2022

**APPENDIX OF WA 742/2022**

PETITIONER'S ANNEXURES

Annexure1

COPY OF THE STATEMENT FILED BY THE  
CENTRAL GOVERNMENT ON BEHALF OF THE  
RESPONDENTS

**APPENDIX OF WA 793/2022**

PETITIONER ANNEXURES

|                         |  |
|-------------------------|--|
| Statement               | COPY OF THE STATEMENT FILED BY THE<br>CENTRAL GOVERNMENT COUNSEL ON BEHALF OF<br>THE RESPONDENTS |
| Reply Affidavit         | COPY OF THE REPLY AFFIDAVIT FILED BY THE<br>PETITIONER   |
| Additional<br>Affidavit | ADDITIONAL AFFIDAVIT FILED BY THE<br>PETITIONER ALONG WITH EXHIBIT P4                            |