

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE V.G.ARUN

Friday, the 15th day of November 2024 / 24th Karthika, 1946

WP(C) NO. 40455 OF 2024(R)

PETITIONER:

ADV. P.U. ALI, AGED 58 YEARS, S/O P K UMMAR,
PANIKKA VEETIL HOUSE, OUTPOST, AYYANTHOLE P.O.,
THRISSUR, PIN - 680 003.

RESPONDENTS:

1. HIGH COURT OF KERALA, REPRESENTED BY REGISTRAR GENERAL, HIGH COURT OF KERALA, ERNAKULAM, PIN - 682 031.
2. THE KERALA STATE MEDIATION AND CONCILIATION CENTRE, REPRESENTED BY ITS DIRECTOR, RAM MOHAN PALACE, HIGH COURT OF KERALA, ERNAKULAM, PIN - 682 031.

Writ petition (civil) praying inter alia that in the circumstances stated in the affidavit filed along with the WP(C) the High Court be pleased to grant the following interim relief:

Stay Ext P2 notification to the extent it imposes a maximum age limit of 55 years for candidates, while extending the last date of submitting the applications for those candidates above 55 years by 10 days from the date of the orders of this Hon'ble Court or such other time prescribed by this Hon'ble Court, pending disposal of this Writ Petition.

This petition coming on for orders upon perusing the petition and the affidavit filed in support of WP(C) and upon hearing the arguments of SRI.G.KEERTHIVAS, Advocate for the petitioner, SRI.G.HARIKUMAR, Advocate for R1 and of SRI.SANTHOSH MATHEW (SENIOR ADVOCATE) along with M/S. ROSHEN D. ALEXANDER, TINA ALEX THOMAS, HARIMOHAN & KOCHURANI JAMES, Advocates for R2, the court passed the following:

P.T.O.

V.G.ARUN, J

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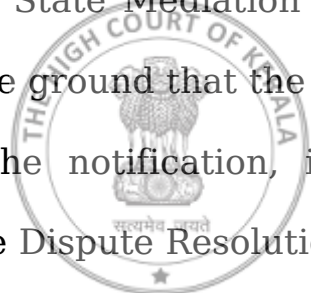
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Dated this the 15th day of November, 2024

ORDER

The petitioner, an advocate with over 34 years of standing at the Bar, is aggrieved by Ext.P2 notification issued by the 2nd respondent calling for applications from among lawyers for selection and empanellment as Mediators in the Mediation Centres of the Kerala State Mediation and Conciliation Centre. The challenge is on the ground that the maximum age limit of 55 years stipulated in the notification, is contrary to the Civil Procedure (Alternative Dispute Resolution) Rules, 2008 (the ADR Rules for short).



2.Heard Adv.Keerthivas Giri, for the petitioner, Adv.G.Harikumar for the 1st respondent and Senior Advocate Santhosh Mathew, as instructed by Adv.Roshan D Alexander, for the 2nd respondent.

3.Learned counsel for the petitioner drew attention to Rule 8 of the ADR Rules to point out that the only eligibility stipulated for legal practitioners is that they should have at least

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15 years standing at the Bar. Reference is also made to Rule 9 to submit that being aged more than 55 years is not a disqualification from being appointed as Mediator. It is submitted that the ADR Rules is prepared on the basis of the Draft Model Rules framed by the Justice Jagannadha Rao Committee, which is recorded in the 2nd Salem Bar Association case. In so far as the ADR Rules does not prescribe a maximum age limit, the notification, to the extent it excludes advocates above 55 years from the zone of consideration, is *ultra vires* and liable to be interfered with.

4. Learned Senior Counsel appearing for the 2nd respondent submitted that in previous selections also 55 years was fixed as the maximum age limit. It is pointed out that vacancies in the Thrissur District Mediation Centre is only 15, against which 63 applications are received till date. Therefore, it is essential to shortlist the candidates, for which the 2nd respondent is having power. The maximum age limit of 55 years is stipulated in exercise of such power. In support of the

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contention that the employer is empowered to set bench marks for the purpose of shortlisting, reliance is placed on the decision of the Apex Court in **Tej Prakash Pathak and others v. Rajasthan High Court and others** [2024 SCC OnLine SC 3184].

5. Rule 8 of the ADR Rules being the relevant provision is extracted hereunder for easy reference;

“Rule 8. Qualifications of persons to be nominated/appointed as mediators.-

The following persons shall be treated as qualified and eligible for being enlisted in the panel of mediators under Rule 6(b), namely:

- (a) (i) Retired Judges of the Supreme Court of India;
- (ii) Retired Judges of the High Court;
- (iii) Retired District Judge and Sessions Judges.
- (b) Legal practitioners with at least fifteen years standing at the Bar (at the level of the Supreme Court or the High Court; or the District Courts or Courts of equivalent status)
- (c) Experts or other professionals with at least fifteen years standing in the respective fields.”

As rightly contended by the counsel for the petitioner, the only eligibility prescribed for legal practitioners is minimum 15

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years standing at the Bar. In Rule 9, dealing with disqualifications from being nominated/ appointed as Mediators also, being a legal practitioner aged more than 55 years is not shown as a disqualification. The question therefore is whether, in exercise of its power to shortlist the candidates, the 2nd respondent could have included an eligibility condition which is not contained in the Rules. Here, the contention of the Senior counsel is that such power is inherent to the appointing authority. Support for this proposition is sought to be drawn from the larger Bench decision in **Tej Prakash Pathak** (supra). A careful scrutiny of the decision reveals that the question considered therein was whether the rules of the game, qua method or procedure for selection, can be changed after commencement of the selection process. After detailed consideration, the question was answered as under;

“ What is clear from above is that the object of any process of selection for entry into a public service is to ensure that a person most suitable for the post is selected. What is suitable for one post may not be for the other. Thus, a degree

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of discretion is necessary to be left to the employer to devise its method/ procedure to select a candidate most suitable for the post albeit subject to the overarching principles enshrined in Articles 14 and 16 of the Constitution as also the Rules/ Statute governing service and reservation. Thus, in our view, the appointing authority/ recruiting authority/ competent authority, in absence of Rules to the contrary, can devise a procedure for selection of a candidate suitable to the post and while doing so it may also set benchmarks for different stages of the recruitment process including written examination and interview. However, if any such benchmark is set, the same should be stipulated before the commencement of the recruitment process. But if the extant Rules or the advertisement inviting applications empower the competent authority to set benchmarks at different stages of the recruitment process, then such benchmarks may be set any time before that stage is reached so that neither the candidate nor the evaluator/ examiner/ interviewer is taken by surprise.”

6. Thus the law laid down by the Apex Court is that, in the absence of rules to the contrary, the employer can devise the procedure for selection of candidates suitable for the post and in doing so, can set benchmarks for different stages of the

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recruitment process. Therefore, it may be possible for the 2nd respondent to set the benchmark of maximum 55 years for shortlisting the candidates. Be that as it may, it is doubtful whether the maximum age limit can be included as an eligibility condition in the notification. In the opinion of this Court, the question requires detailed consideration.

7. Then the question is whether the petitioner is entitled for an interim order directing the respondents to stay Ext.P2 notification to the extent it imposes a maximum age limit of 55 years for candidates, while extending the last date for submitting the applications, for candidates above 55 years, by 10 days from the date of this order. The answer to this question can only be in the negative, since Ext.P2 notification was published way back on 10.10.2024, showing the last date for submission of applications as 14.11.2024, and this writ petition is moved as today motion only on 14.11.2024. Any interference at this stage will upset the selection process and will also prejudice the candidates who have already applied, unless a

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fresh notification is issued. For that Ext.P2 will have to be quashed, which is not possible at this stage. For the aforementioned reasons, the prayer for interim relief is declined.

Post the writ petition for hearing along with W.P. (c).No.40152 of 2024 on 02.12.2024.

sd/-

V.G.ARUN, JUDGE

sj



APPENDIX OF WP(C) 40455/2024

Exhibit P2

**TRUE COPY OF THE NOTIFICATION NO.1/2024 DATED
10.10.2024.**

