

HR Law Hotline

November 20, 2023

INDIAN STATE LAW ON EMPLOYMENT OF LOCAL CANDIDATES DECLARED UNCONSTITUTIONAL

- The Haryana State Employment of Local Candidates Act, 2020 was passed by the Haryana government on March 2, 2021 for 75% reservation of certain vacancies for local candidates domiciled¹ in Haryana (which includes Gurgaon city).
- The Punjab & Haryana High Court in its judgment dated November 17, 2023 has declared the law as unconstitutional.
- As a result, employers no longer need to employ locally domiciled candidates in the state.

BACKGROUND

The Haryana State Employment of Local Candidates Act, 2020 ("HSELC Act") was enacted in 2021 to provide for 75% employment of local candidates by employers (including private employers) in the north-Indian state of Haryana (which includes Gurgaon city). The HSELC Act was expected to become effective from January 15, 2022 as per notification issued by the Haryana government. *Please see our previous legal updates on this topic available at: Update on Proposed Law on Employment of Local Candidates in Gurugram (Gurgaon): Part I & Part II.*

The constitutionality of the law was challenged in multiple petitions which were presented before the High Court of Punjab & Haryana. The High Court of Punjab & Haryana stayed the operation of the law until the matter is decided².

The staying of the legislation was, thereafter, challenged by the Haryana government before the hon'ble Supreme Court. In February 2022, the Supreme Court lifted the stay on operation of the law as the High Court order³ was deficient in not providing sufficient reasons for staying the legislation. The Supreme Court in the same judgment requested the High Court to expeditiously provide its decision on the matter. The Haryana government was directed not to take any coercive steps against employers under the said law.

JUDGMENT

In its ruling on November 17, 2023 in the matter *IMT Industrial Association and Another v. State of Haryana*⁴, the Punjab and Haryana High Court has declared the HSELC Act to be unconstitutional. In arriving at this conclusion, the court deliberated upon the following issues and concluded as below:

1. ***Whether the writ petition would be maintainable keeping in view the fact that the HSELC Act has been challenged principally by an association of persons and whether they could claim the violations of the fundamental rights under Part-III of the Constitution of India and whether they are liable to be heard on merits?***

The hon'ble court discussed Supreme Court's earlier judgments in multiple matters to answer this query in favour of the petitioners (employers) against the state (respondent), upholding maintainability of the petition.

2. ***Whether it was within the ambit of the State to legislate upon the issue in question in view of the specific bar provided under Article 35 of the Constitution of India and whether the legislation would be covered under Entry No.81 of the Union List?***

The hon'ble court considered that there is a specific bar to a state legislature legislating on matters which are under Article 16(3) of the Indian Constitution, which provides for equality in matters of public employment. The court also considered that there is a bar under the Indian Constitution regarding discrimination against Indian citizens relating to employment based on their place of birth and residence, making them ineligible or discriminated against in respect of employment in a state.

In this context, the court highlighted a person's absolute freedoms guaranteed under Part III of the Indian Constitution (Fundamental Rights) including an individual's right to move freely within India, and right to free trade, commerce and intercourse throughout the territory of India. The court referred to the Justice KS Puttaswamy case⁵ stating:

"However, it has been held that the drill to which the right related must be scrupulously followed and State's action could be restrained if it is arbitrary and unreasonable and it had to pass muster while doing the balancing act between the individual, societal and State interest and the exercise had to be conducted by a judicial mind."

In context of IR Coelho's case⁶, the court further noted:

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"It can be noticed that the Apex Court at that stage in 1980s had already noticed the disturbing trends in part of Indian polity. It was accordingly held that the Court must interpret the Constitution in a manner which would enable the citizens to enjoy the rights guaranteed by it in the fullest measure and that Articles 14 and 19 could not be put out of operation."

The court observed that the powers of the state legislature cannot be to the detriment of national interest and directly encroaching upon the power of the Union. The effect of the HSELC Act is to make it impermissible for employers to engage employees from rest of the country in certain vacancies, leaving the employer limited discretion to choose their workforce on account of the state. The court upheld the value of maintaining the concept of "India as a Nation" which is being imperilled by the law.

In view of the above, the court cited the HSELC Act to be *"a manifestation of the discriminatory policy that you are not one of us"* leading to ineligibility in employment for Indian citizens. Accordingly, the court decided that it was beyond the purview of the state to legislate on the matter and restrict private employers against recruiting from the open market for the relevant category of employees (i.e. those receiving salaries up to INR 30,000 as provided under HSELC Act).

3. If Question No.2 is answered either way, whether the State could provide for a legislation to private employers to do what was forbidden for it to do under the Constitution of India?

The court stated in this context that the freedom provided under Article 19 of the Indian Constitution cannot be infringed and the provisions of HSELC Act falling foul of the same are liable to be declared unconstitutional:

"Thus, keeping in view the principles laid down by the Apex Court itself on the principles of morality, the State cannot direct the private employers to do what has been forbidden to do under the Constitution of India. It cannot as such discriminate against the individuals on account of the fact that they do not belong to a certain State and have a negative discrimination against other citizens of the country..."

It is not for the State as such to direct the private employer who it has to employ keeping in view the principles of laissez faire that "the lesser it governs, the better itself". Once there is a bar under the Constitution of India, we do not see any reason how the State can force a private employer to employ a local candidate as it would lead to a large scale similar state enactments providing similar protection for their residents and putting up artificial walls throughout the country, which the framers of the Constitution had never envisaged."

Accordingly, the court answered this query in favour of the petitioners.

4. Whether the legislation provides reasonable restrictions in the interest of the general public and thus gives the right to the State under Article 19(5) and 19(6) of the Constitution of India to justify the same?

The hon'ble court in this context discussed that the HSELC Act imposes an unreasonable restriction on an individual's right of free movement throughout the territory of India. The court stated:

"The restrictions imposed upon all types of private employers as defined under Article 2(e) are gross to the extent that a person's right to carry on occupation, trade or business is grossly impaired under Article 19(1)(g) of the Constitution of India. The requirement to register any employee on the designated portal within three months who was being paid less than Rs.30,000/- per month upto 75%, thus, is violative of the fundamental rights protected under the Constitution of India."

Accordingly, the court allowed the petition and declared the HSELC Act to be unconstitutional being violative of Part III of the Indian Constitution. To that extent, the law was declared to be ineffective from the date it came into force.

ANALYSIS

The judgment comes in as a huge relief to employers, particularly the huge IT/ITES sector in Gurgaon and the vibrant manufacturing sector in other parts of the state. It also acts as a relief to employers in some of the other Indian states where the state government was planning similar measures as part of their election campaign.

The HSELC Act was intended to provide preference in employment opportunities to the individuals domiciled in Haryana state within the state against other non-domiciled candidates. In this judgment, the Punjab & Haryana High Court has rightfully assessed a state's right to legislate and the limitation of such right when it infringes upon freedoms guaranteed to all citizens of India under Indian Constitution.

While the applicability of the principle of *laissez faire* (in context of the query #3 above) in the Indian context can be debated, the hon'ble court's decision to strike down the law is a step in the right direction to promote freedom of business within India. As the court rightly said:

"Merely since the State resources are poor and limited, the private employer could not be forced to employ on the basis of the reservation policy in favour of local candidates."

The court also stated that if such a law is allowed, it will lead to multiple states coming up with similar laws. Similar law was also proposed by the states of Andhra Pradesh and Jharkhand. Based on news reports dating back to 2021, we understand that while the law in Andhra Pradesh was passed by the state legislature in the past, its implementation is yet to be robust⁷. In Jharkhand, the Governor had returned back the bill to the state legislature for their re-evaluation earlier in January 2023⁸. However, subsequently, the Jharkhand state government, in March 2023, has inaugurated a portal for employers to register themselves and share business and manpower related information⁹.

There are news reports suggesting that the Haryana state government may challenge the decision moving the Supreme Court of India¹⁰. These developments will be keenly tracked.

To conclude, India as a nation wins! This decision should help bring an end of laws promoting regionalism in employment and instead make India look more attractive to domestic and foreign investors.

– Nipasha Mahanta, Sayantani Saha and Vikram Shroff

You can direct your queries or comments to the authors.

¹As per HSELC Act, "Local Candidate" means a candidate who is domiciled in the State of Haryana.

²Punjab and Haryana High Court order dated February 2, 2022

³https://main.sci.gov.in/ supremecourt/ 2022/3725/3725_2022_5_6_3357 4_ Order_ 17-Feb-2022.pdf

⁴CWP Nos. 26573, 24967,25037, 25539 and 25998 of 2021

⁵AIR 2017 SC 4161

⁶AIR 2007 SC 861

⁷<https://www.hindustantimes.com/ cities/others/ andhra-pradesh-s-local-job- quota-law-cleared-20-months -ago-yet-to-pick-up-pace-101615641920960.html>

⁸<https://www.hindustantimes.com/ india-news/jharkhand-governor- sends-back-soren-govt-s-local- domicile-bill- 101675017357021.html>

⁹<https://indianexpress.com/article/india/jharkhand- govt-launches-job-portal-to -ensure-75-local-quota-in-pvt-sector- 8504060/>

¹⁰<https://legal.economictimes.indiatimes.com/ news/litigation/haryana-govt-to-move-sc- against-quashing-of-law-on- 75-pc-quota- in-pvt-jobs-for-locals-dycm-chautala /105328534>.

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