(2000) 12 AP CK 0013

In the Andhra Pradesh High Court

Case No : Writ Petition No. 1404 of 2000

Adoni STD PT Operators Welfare Association and others APPELLANT

Vs

Union of India and others RESPONDENT

Date of Decision : 07-12-2000

Acts Referred:

Constitution of India, 1950 — Article 14, 19(1), 21, 46
Telegraph Act, 1885 — Section 4(1), 4(2)

Citation : (2001) 1 ALD 274 : (2001) 1 ALT 292

Hon'ble Judges : Motilal B. Naik, J;A. Gopal Reddy, J

Bench : Division Bench

Advocate : Mr. V.S.R. Anjaneyulu, for the Appellant; Mr. P. Phalguna Rao, Addl. SC for Central Govt., for the Respondent

Judgement

A. GOPAL REDDY, J.—The petitioners assail the amendment made to the policy particularly clauses (iii) to (v) of procedure for allotment of STD/1SD, PCOs., in proceedings No.31-15/98-PHB dated 29-11-99 issued by the first respondent as illegal and ultra vires the provisions of the Articles 14, 19(1)(g) and 21 of the Constitution of India.

2. The first petitioner is the Welfare Association of STD Public Telephone Operators and 2nd and 3rd petitioners are the members of the first petitioner-Association. According to the petitioners, for installing STD Public Telephone one has to incur a minimum expenditure of Rs.50,000/- for the purpose of purchasing the telephone instrument, computer billing machine besides furnishing security deposit to the satisfaction of the authorities. The said public telephone has to be installed in an area accessible to the public by obtaining premises by paying reasonable amount in addition to the expenditure incurred for renovating premises suitably. The members of the first petitioner-Association were allotted STD/ISD PCOs as per the policy issued in proceedings No.31-13/91-PHB, dated 24-7-1993. As per the said policy and guidelines, a maximum of 5% exchange capacity was earmarked for STD PCOs and the period of licence is

three years subject to renewal. As per Clause 35 of the Guidelines/Terms and Conditions for Allotment STD PTs a minimum guarantee amount per PT per month of Rs. 1,600/- in case of urban area PT and for Rural area PT Rs.100/- has to be furnished. The same was revised by letter No.31-13/91 PHB dated 11-4-1994. In the revised policy for allotment of STD PCOs, it is specified that the aim of revised policy is to provide employment to as many unemployed as possible and it has to be ensured that the average earning of an STD PCO allottee does not fall below Rs.2,000/- per month in the case of urban STD PCOs and Rs.800/-per month in case of rural STD PCOs. The members of the first petitioner-Association and 2nd and 3rd petitioners though established STD PCOs and are operating the same, their earning range from Rs.500/-to Rs.7,000/- and a many of STD PT operators are getting less than Rs.2,000/-per month. While matter stood thus, the policy was revised by the impugned proceedings dated 29-11-99 and 10% is earmarked for STD/ISD/Local PCOs instead of 5% and PCOs can be allotted to any extent of the exchange capacity in order to clear the wait list wherever telephone is available on demand and at all other places 10% of the exchange capacity shall be utilised for PCOs. C1.5 of the new policy altogether removes the condition of average earning of the STD PCOs and irrespective of the average earnings of STD PCOs, the same will be allotted to the prospective entrepreneurs. The petitioners contend that they have spent considerable amount in obtaining and installing STD PT and if the STD PCOs are allotted indiscriminately to new entrepreneurs, that will affect their earnings, therefore, the same is in violation of Articles 14, 19(1)(g) and 21 of the Constitution of India and prays the Court to declare Cl.(iii) to (v) of procedure for allotment of STD PCOs by the impugned policy as illegal and for granting appropriate relief.

3. This Court while ordering notice on 7-2-2000 granted status-quo with regard to the implementation of the policy.

4. The respondents filed a detailed counter and petition to vacate the interim order, stating that as per the new policy, the third respondent has sanctioned 95 STD PTs under the jurisdiction of the fourth respondent, out of which 47 PTs were allotted to the preferential categories. In turn the fourth respondent issued intimation letter to all the allottees and out of them one allottee has completed all formalities of the conditions and entered into an agreement with the Department and physical connection has not been provided due to interim orders of this Court. According to the respondents, the Director of Telecom has evolved the new policy of sanctioning STD PTs to provide improved access to vast majority of general public who do not have a telephone of their own and earning of additional income by STD PT allottee in addition to his other sources of income is incidental as the main philosophy of establishing STD PTs is to provide access to the general public. There is also a proposal with the Director of Telecom to convert public telephones wherever justified into public Teleinfo centers aiming to provide more revenue to the licensee by extending the provision of E-Mail and Internet and to bring communication facility to the door steps of the general

public. The Government is targetting at least one public telephone for every 500 inhabitants in urban areas and one STD PT at every 10 Km., on the National Highways within the 9th plan, and to achieve the above objectives, new policy was evolved. Revenue of STD PT depends upon quality of service given/ marketing skills of STD PT allottee. Under C1.35 of the Guidelines and Terms and Conditions for allotment of STD PCOs, the licensee would be required to generate a minimum of Rs.1,600/- per month of call revenue in the urban areas and for rural area PT Rs.100/- is to be paid to the Department by the STD PT attendant. It is also denied by the respondents that many members of the first petitioner-Association are not earning minimum revenue and the average monthly revenue of STD PTs at Adoni for the past six months is about Rs.12,000/-. A similar WP No.1299 of 1996 has been filed before this Court and this Court dismissed the said writ petition at the stage of admission and negatived the plea of the petitioners therein not to allow any other STD booth within 500 meters from their booths.

5. Sri V.S.R. Anjaneyulu, learned Counsel appearing for the petitioners contends that under Article 46 of the Constitution of India, it is the duty of the State to promote economic interests of the weaker sections of the people and to provide employment, and to achieve the said objectives, the above policy was evolved for allotting STD PCOs as a measure of self employment. No rules have been framed in exercise of the powers conferred u/s 4(1) of the Indian Telegraphs Act, 1885. Once the petitioners established STD PCOs with legitimate expectation that they can earn minimum of Rs.2,000/- but by introduction of new policy, the minimum guarantee of income will be affected. The policy evolved to allot indiscriminate telephones will hamper the revenues of the STD PCOs allottees and the same was not taken note by the respondents while amending the policy. At the time of taking STD PT connection, the respondents promised that there will be minimum income of Rs.2,000/-and they are now estopped from changing the policy and prayed for allowing the writ petition.

6. On the other hand, learned Standing Counsel for Central Government would contend that the policy evolved was in the interest of general public and to encourage entrepreneurs by paying commission to the persons who come forward for establishing STD PCO booths. What is minimum guaranteed is only the revenue to the State as per the licence but for the larger interest of the public, it is always open for the Government to change the policy and there cannot be any estoppel in allotment of STD PCO booths. Even according to the petitioners some of the members are getting more than Rs.6,000/- income who were able to provide better facilities and some of the members of petitioner-Association who were lethargic are getting commission ranging from Rs.500/- to Rs.2,000/-, that does not prevent the authorities from enhancing the capacity earmarked for STD/ ISO PCOs. It is only a policy evolved to provide communication facilities to the general public and in achieving the same, they are allowing more STD PTs and it is not a case for interference by this Court.

7. In view of the rival contentions of the parties, the points that arise for consideration are:

1. Whether the respondents-authorities are precluded from changing the policy in the matter of allotment of STD PCO booths or not?

2. Whether the petitioners will have a fundamental right under Article 19(1)(g) of the Constitution of India for continuation of the policy at the time when the licences were granted to them?

8. u/s 4 of the Indian Telegraphs Act, 1885 it is the exclusive privilege of the Central Government for establishing, maintaining and working telegraphs. The Central Government may grant licence on such condition and in consideration of such payments as it deems fit to any person to establish, maintain or work a telegraph within any part of India. Under sub-section (2) of Section 4, the Central Government may by notification in the Official Gazette, delegate to the telegraph authority all or any of its powers under the first proviso to sub-section (1). Learned Counsel for the petitioners is not able to say whether Central Government has restricted the use of such power in granting licences for establishing STD PCO booths with the Director of Telecom as contemplated under sub-section (2) of Section 4.

9. In order to provide communication system to all the citizens of the country, the Government of India formulated a policy for allotment of STD PCO booths for every 500 people in the case of urban and rural areas. Similarly the said STD PTs are to be allotted to unemployed youth to provide employment by ensuring an income per month so that they can come forward for running STD PCOs. In order to achieve the twin objects, the members of the first petitioner-Association and 2nd and 3rd petitioners were granted licences for running STD/ISD PCOs as per the policy issued in Proceedings No.31-13/91-PHB dated 24-7-1993 of the first respondent. For effective implementation of the said policy, the same was clarified in letter No.31-2/94-PHB dated 11-4-1994 in which it is specified that by ensuring the allottee an average income of Rs.2,000/- per month in case of urban STD PCO and Rs.800/- in the case of rural STD PCO and for this purpose 5% exchange capacity is earmarked for STD/PCOs. To take the communication more nearer to the people, policy was revised by the impugned proceedings dated 29-11-1999. The said policy is evolved after due deliberations of the Standing Committee of the Parliament on Communications which opined that the penetration of PCOs is low in many areas of the country and unless the conditions are liberalised for allotment of STD/ISD PCOs and eligibility criteria, the communication facilities may not reach the common man. In order to achieve the same, two changes were made to the policy issued on 24-7-1993, one raising the exchange capacity earmarked for STD/ ISD PCOs from 5% to 10% to clear the wait list and the condition of average earning of the existing allottees for allotting new PCOs is abolished and STD/ISD PCOs are to be allotted irrespective of the amount of average earning of the existing PCOs. It is well settled that the power to lay policy by the executives or by Legislature includes

the power to withdraw the same, unless it is shown that the change of policy is by malafide exercise of power or decision or action is abuse of power Courts have no say in the matter. Equally the doctrine of legitimate expectations plays no role when the appropriate authority is empowered to take a decision by an executive policy or under law. The Court leaves the authority to decide its full range of choice either granting licence or conferring benefits with the executive or legislative powers, the authority concerned may be in a better position to have an over all picture, namely, the need of the public and the intentions of the Legislature in evolving the policy. Ultimately the interest of the public in general in the changed circumstances is the paramount consideration for evolving such policy. Any person who has derived a benefit out of the existing policy has no vested right for continuing the same and prevent the executive in revising its policy in view of the changed circumstances in the public interest. Whenever a complaint is made of such nature, the duty of the Court is to enquire in whose interest the policy is conceived/made. If it is conceived in the interest of the public at large, the interest of the individual cannot come in the way of implementing the said policy.

10. In the counter affidavit, it is specifically stated by the respondents that the DOT has evolved a new policy of sanctioning STD PTs to provide improved access to vast majority of general public who do not have a telephone of their own and the Government is targeting at least one public telephone for every 500 inhabitants in urban area and one STD PT at every 10 KM on the National Highways within the 9th plan and Government has been devising means to step up availability of STD PTs to public and the same necessitated to relook into the old policy frame work which envisaged new policy of allotment of STD PTs more liberally and to provide additional opportunities to generate additional revenue to the licensees. In view of the same, the contention of the petitioners that the petitioners were legitimately expected to have an income of Rs.2,000/- per month in the case of urban STD PCOs and if the new telephones are allotted, it will affect their income cannot be accepted in view of the law laid down by the Apex Court in District Collector and Another Vs. B. Suresh and Others, . The argument of the fair price shop dealers that by reducing the number of cards and allotting the same to the new dealers will affect the rights of existing fair price shop dealers and they are entitled to a notice before bifurcation of the shops was found favour by the High Court. The matter is carried in appeal to the Supreme Court. The Supreme Court while setting aside the decision of the High Court that respondents were to be given any notice prior to the impugned decision of the State Government held that the right to trade under Article 19(1)(g) of the Constitution of India is not being affected in any manner and the decision of the State Government to bifurcate the fair price shops and reduce the number of cards does not affect the rights of any of the Fair Price Shop Dealers.

11. Similarly the Apex Court in Ashok Kumar Vs. Union Territory, Chandigarh and another, , where the Chandigarh Administration had taken a policy decision to allot sites by public auction for putting up PCO booths and the same was

challenged by the STD PCO operators, repelling the contention put forward by the appellants that the authorities are estopped to lake up a contra stand nor can legally refuse their request to continue the licences for further period as they have already spent "considerable amount for establishing STD PCO booths, observed that it is for the STD PCO operators to negotiate with the successful bidders at the auction and they have to negotiate with them for taking out their costly equipment installed by them.

12. Similarly in the decision of State of Orissa and another Vs. Radheyshyam Meher and others, , the question that fell for consideration before the Apex Court was in the absence of any rule or regulation to the contrary, can the power of the State be abridged on the basis of an individual interest of certain trader, even to the extent of restricting the State''s capacity to advance larger public good. The Supreme Court repelling the contention of existing medical shop owners that opening of a medical store in the hospital campus by granting permission to open it for 24 hours will jeopardise their interest adversely affecting their business and they will not able to sustain themselves held that the paramount consideration should be the convenience of the patients and protection of their interest and not the hardship that may be caused to the existing medical store keepers who may be having their shops outside the Hospital campus. The intention of the appellants to open a medical store within the Hospital campus is to salvage the difficulties of the patients admitted in the hospital and the said object had direct nexus with the public interest particularly that of the patients and therefore the High Court should not have interfered with the decision of the State Government to settle the holding of a medical store in the Hospital premises.

13. The reliance placed by the learned Counsel in Delhi Science Forum and others Vs. Union of India and another, , for the purpose that the authorities while evolving a policy decision have to act in fair and reasonable manner also will not support the contention of the petitioner and the parameters of the judicial review was explained in para 7 of the above judgment. After scanning several decided cases in para 13 of its judgment, the Supreme Court pointed out that while exercising the power of judicial review, the Courts have to address while examining the grievance of the petitioner as to whether the decision has been vitiated on one ground or the other, namely, (1) decision has been taken in bad faith; (ii) decision is based on irrational or irrelevant considerations; (iii) decision has been taken without following the prescribed procedure which is imperative in nature.

14. After scanning the catena of decisions on this aspect, speaking for the Bench, Justice M. Jagannadha Rao, in Punjab Communications Ltd. Vs. Union of India and Others, , held as follows:

".....The result is that a change in policy can defeat a substantive legitimate expectation if it can be justified on Wednesbury reasonableness. We have noticed that in Union of India and others Vs. Hindustan Development Corpn. and others, also it was laid down that the decision maker has the choice in the balancing of the pros and cons relevant to the change in policy. It is, therefore, clear that the choice of the policy is for the decision-maker and not for the Court. The legitimate substantive expectation merely permits the Court to find out if the change in policy which is the cause for defeating the legitimate expectation is irrational or perverse or one which no reasonable person could have made." (Para 40)

15. In view of the foregoing discussion, we are of the view that the guidelines issued by the Telecom Department by the impugned proceedings are with an awesome object of providing improved access to vast majority of the general public and to take communication facilities nearer to the citizens and allotting STD PCO booths to the unemployed youth is only incidental to achieve the said object. Licences granted to the members of the first petitioner-Association and 2nd and 3rd petitioners under the guidelines issued in 1993 have already expired and the said guidelines cannot be static and have to be changed keeping in view the need of the general public at large. Moreover, the said policy was evolved after due deliberations of the Standing Committee on communications, it cannot be termed as irrational or perverse. The petitioners have no fundamental right to insist that the policy under which they were granted licenses should be continued for ever and the same cannot be changed. In view of the same, the writ petition is devoid of merits and the same is accordingly dismissed. Consequently, status quo order granted by this Court on 7-2-2000 shall stand vacated.