
(2006) 01 BOM CK 0035

In the Bombay High Court

Case No : Writ Petition No. 288 of 1996 with Civil Application No's. 1763 of 1997 and 5593 of 1998

Arun Medekar

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 10-01-2006

Acts Referred:

Constitution of India, 1950 — Article 14, 32

Citation : (2006) 5 BomCR 784 : (2006) 3 MhLj 56

Hon'ble Judges : S.P. Kukday, J;A.P. Deshpande, J

Bench : Division Bench

Advocate : S.T. Shelke, holding for M.R. Andhale and C.K. Shinde, for the Appellant; Alok Sharma, Asst. Solicitor General for respondent No. 1, V.G. Gangapurwala, for respondent No. 2, Pradip Salunke and Dilip Bankar Patil for respondent No. 4, Sujit S. Bora and S.C. Bora for respondent No. 5, M.N. Navandar and K.G. Navandar for respondent No. 7 and S.V. Natu, for the Respondent

Final Decision : Dismissed

Judgement

S.P. Kukday, J.—The petitioner is challenging the distribution of dealership of LPG/SKO/LDO to various candidates by the Oil Selection Board in pursuance of the advertisements, issued by the Hindusthan Petroleum Corporation, Indian Oil Corporation and India-Burma Petroleum Co., in the year 1993.

2. The distribution of dealership of petroleum products has given rise to controversy on several occasions. In the present case, the petitioner, who belongs to "Gadilohar" caste which is included in Nomadic Tribe category, unsuccessfully contested for securing State largesse on as many as 15 occasions. Finally he made last attempt in response to advertisement dated 29-7-1993, issued by the Indo Burma Petroleum Company, for getting agency at Soyegaon Dist. Aurangabad, the advertisement dated 30th November, 1993 published by the Hindusthan Petroleum Corporation Limited, Pune, for retail outlet at Aurangabad and Jalna : and third advertisement published by Indian Oil

Corporation Limited on 22-9-1993 for retail outlet at Gangapur Dist. Aurangabad. In the advertisements itself, conditions of eligibility are mentioned, including the condition that the candidate should have five years residence in the concerned area, where the outlet is to be established and should not have income exceeding Rs. 50,000. The selection of allottees was to be made by the Oil Selection Board, comprising of three Members, one of which is the retired High Court Judge. In the present case, Justice P. Dayal, was the Chairman : Shri R. S. Nautiyal and Shri Naresh Pugalia, Members of the Selection Board. The Board held interviews of the candidates on 19th and 20th September, 1995 in Hotel Fariyas, at Colaba Bombay. To avoid possible controversy, the list of the selected candidates is published immediately after the interview. However, in the present case, the Board published the list of the candidates two months after the interview i.e. on 20th November, 1995, thereby selecting 39 persons for dealership/distributorship/agency, at various places in the State of Maharashtra.

3. During the course of interview from the questions put to him, the petitioner formed an impression that the selection is to be based on extraneous consideration. This is confirmed by the fact that out of 39 candidates, 18 to 20 candidates from the list are either relatives or proteges of the political bigwigs; whereas rest of the candidates represent affluent section of the society. The list prima facie, shows that favour is shown to the relatives of the influential political heavyweights and decision is taken on account of political pressure exerted on the Members of the Board. Apart from kith and kin of MPs and MLAs, dealership is also awarded to Mr. Avinash Agrawal, who is related to one of the Members of the Board, namely, Shri Naresh Pugalia; and to Rajkumar Phoolchand Jain, who is a protegee of another Member of the Board Shri R. S. Nautiyal. Respondents 4 to 7 do not fulfil the eligibility criteria as their near relatives are already having dealership and their income exceeds the permissible limits of Rs. 50,000. The petitioner claims that the list is an outcome of mala fides and arbitrariness shown by the Oil Selection Board. On this premise, the petitioner seeks to quash and set aside the said list. He further seeks a direction to the Oil Selection Board to award dealership in his favour for Aurangabad District as he fulfils all the conditions of eligibility and belongs to Scheduled Tribe.

4. There has to be probity in the Government action. The Government action must manifest fairness in its action and has to be in the public interest. The expressions "public interest" and "probity in governance" are not capable of being defined. However, what is in the public interest has to be decided on the facts of each case.

5. No doubt, marketing of petroleum products is a lucrative business and is largely controlled by the Oil Companies, such as, IOC, BPCL, HPCL and IBP. Distribution of dealership, thus, has always raised an eyebrow and thereby generated controversies. Reference can be made to the controversy raised in respect of distribution of dealership by the then Petroleum Minister in or around 1995. The action of the Minister was claimed to be discriminatory by the Centre

for Public Interest Litigation which knocked the doors of the Apex Court challenging the distribution of agencies. Several issues were raised. The petition was later on amended and was finally decided on 31st March, 1995, by laying down the guidelines for ensuring that the exercise of discretion in making such allotment shall be in conformity with the rule of law and for excluding likelihood of arbitrariness and minimizing the area of discretion. The judgment has been reported in the case of Centre for Public Interest Litigation v. Union of India, 1995 Supp (3) SCC 382 . Thereafter, Common Cause filed by a petition under Article 32 on the basis of news item in respect of 15 persons in whom the Minister for Petroleum was personally interested. After examining the material on record, the Apex Court cancelled the allotment made in favour of those 15 persons, in the case of Common Cause, a Registered Society v. Union of India (1996) 6 SCC 530. While Common Cause Petition was pending in the Apex Court, several Writ Petitions were filed in Delhi High Court by the Centre for Public Interest Litigation as PIL, concerning about 160 persons. An application was made to the Apex Court for transferring these petitions a common question of fact and law was involved. However, the Apex Court remitted the matter to the High Court for disposal of the petition in accordance with the provisions of law. The decision of the Delhi High Court was challenged in the Apex Court. In those appeals various questions were raised. It was contended that in view of the decision of the Apex Court in the Centre for Public Interest Litigation and Common Causes case, it must be held that the allotment made prior to decision of the Centre for Public Interest Litigation v. Union of India (supra) were tacitly approved by the Court and could not be made a subject-matter of controversy in subsequent petitions. Reference was also made to the Review Petition filed by the Minister in Common Causes case (supra). These submissions were considered by the Apex Court in the matter of V. Purushotham Rao v. Union of India and Ors. reported in (2001) 10 SCC 305. The Apex Court rejected the contention in respect of tacit approval of the Court regarding allotments made prior to 1995.

6. Similar controversy was raised seven years after the initial controversy, in respect of news item published by "Indian Express" as a lead story on 2nd August, 2002. News item criticizing the allotment of dealership of SKO/LDO and distributorship of LPG resulted in cancellation of all allotments since 1-1-2000 by the Hon'ble Prime Minister. This order was challenged and is the subject-matter of decision of Apex Court in the case of Onkar Lal Bajaj Vs. Union of India (UOI) and Another etc. etc., . Referring to the contention in respect of justification of the State action in cancellation of the allotment, reference is made to the decision in The Bihar School Examination Board Vs. Subhas Chandra Sinha and Others, , in which the Board Examination and the Centre was cancelled on account of en masse copying. The Court observed that only in cases where unfairness can be inferred without examination of the individual cases, the decision can be justified without examination of individual instances. Reference is also made to the decision in the case of B. Ramanjini and Others Vs. State of

Andhra Pradesh and Others, and Mahabir Auto Stores and others Vs. Indian Oil Corporation and others, ; and to the case of Kumari Shrilekha Vidyarthi and Others Vs. State of U.P. and Others, . Considering the law laid down in these cases, the Apex Court observed in para No. 36 of the Report as under:

36. The role model for governance and decision taken thereof should manifest equity, fair play and justice. The cardinal principle of governance in a civilized society based on the rule of law not only has to base on transparency but must create an impression that the decision -making motivate in consideration of probity. The Government has to rise above the nexus of vested interests and eschew window-dressing. The act of governance has to withstand the test of judiciousness and impartiality and avoid arbitrary and capricious actions. Therefore, the principle of governance has to be tested on the touchstone of justice, equity and fair play and if the decision is not based on justice, equity and fair play and has taken into consideration other matters, though on the face of it, the decision may look legitimate but as a matter of fact, the reasons are not based on values but to achieve popular accolade, that decision cannot be allowed to operate.

7. The distribution of public wealth has to be in a fair and just manner, as laid down by the observations of the Apex Court in the case of Onkar Lai Bajaj (supra). In para No. 46 the Apex Court observed as follows:

46. The aforesaid observations would apply with equal if not more force to DSBs if media exposure that the allotments were made either to the high political functionaries themselves or their near and dear ones is correct, the authorities would not only be justified in examining such cases but it would be their duty to do so. Instead of fulfilling that duty and obligation, the executive cannot unjustly resort to cancellation of all the allotments en masse by treating unequals as equals without even prima facie examining any cases exposed by the media.

8. In the present case, the petitioner contends that as majority of the candidates to whom dealership/distributorship is allotted are related to MPs and MLAs, this itself shows that the selection of candidates by the Board is arbitrary and violative of Article 14 of the Constitution of India. However, the fact that some of the candidates are relatives of MPs and MLAs ipso facto does not establish arbitrariness. It has to be shown that the guidelines were not adhered to for their selection, that the candidates themselves were not eligible and that there was hostile and invidious discrimination in showering concession on them. Learned Counsel Shri Gangapurwala appearing for the Indian Oil Corporation has rightly contended that bald and sweeping allegations are of no avail. There has to be material on record to establish mala fides or arbitrariness. No such material is placed on record to substantiate these general allegations. Specific allegations are made only against respondents 4 to 7. These respondents are made parties to the petition and, therefore, scrutiny will have to be restricted to specific allegations made against them.

9. Learned Counsel Shri Gangapurwala has pointed out that the respondent No. 4 was one of the beneficiaries. However, he declined the offer. Therefore, the dealership is allotted to Sanjay Vithalrao Jadhav, who was at Sr. No. 2. Shri Jadhav is not made a party to the petition. Some averment in respect of allotment to Shri Jadhav are found in the rejoinder. Be that, as it may, scope of the petition cannot be enlarged by filing a rejoinder. Shri Jadhav is not made a party to the petition and respondent No. 4 is not one of the beneficiaries and, therefore, it is not necessary to examine the case of respondent No. 4 - Krishna Sahebrao Dongaonkar.

10. On behalf of respondents 5 to 7, it is contended that the agreement has taken place between them and the Oil Companies in the year 1996 and the outlets are commissioned after formalities were completed. These respondents have invested life - time fortune by borrowing from Banks and other financial institutions/friends. As such, these allotments should not be reviewed after a lapse of several years. This contention cannot be sustained. If the allotment of dealership is shown to be arbitrary and discriminatory it, does not give rise to any right in favour of allottees. If it is shown that the allotment was based on mala fides, the respondents cannot claim sympathetic consideration on the ground of equity as it would be a case of misplaced sympathy. Therefore, the contention that selection of these respondents should not be reviewed after a lapse of 8-9 years, because they have invested huge fortune and funds and have commissioned the outlets in the year 1996 cannot be sustained.

11. Let us now turn to the controversy regarding selection of respondent Nos. 5 to 7. So far as respondent No. 5 is concerned, the allegations are that (i) he is son of an Ex.M.P., (ii) has transport business : (iii) owns a cinema theatre, and (iv) his income exceeds Rs. 50,000. In this behalf learned Counsel for the respondent No. 2 Shri Gangapurwala has pointed out that there was a complaint in respect of income of the respondent No. 5. Inquiries were conducted by the concerned authority in this behalf. The enquiries revealed that there is no substance in the allegations. In this background, in the absence of particulars regarding income, mere allegations made by the petitioner without furnishing requisite details cannot be made a foundation for conclusion that the respondent No. 5 was not eligible for dealership.

12. So far as the respondents 6 and 7 are concerned, the allegations are that their near relatives are already holding agencies of the Oil Companies. It is contended that the respondent No. 6 has kerosene Agencies as Karmad in the name of Arti Traders and Santosh Traders. Affidavit-in-reply of respondent No. 6 shows that he is separate in mess and estate from his brother since the partition. His elder brother - Vinayak, is a retail kerosene vendor and has secured licence from the Tahsildar. He is not having dealership of any of the Oil Companies. Kerosene agency of Arti Traders is in the name of Ashok Bhaurao Deshmane who is not a member of the family of the respondent No. 6. Similar allegations are levelled against respondent No. 7. It is alleged that her husband is running a

kerosene agency being Licence No. 3/1985 in the name and style Deluxe Enterprises at Mukundwadi, Aurangabad. In the affidavit in reply, the respondent No. 7 has made it clear that Deluxe Enterprises was not dealership of any company, but it was a retail business of kerosene under Licence granted by the Tahsildar. It is further clarified by the respondent No. 7 that in view of the policy of the Government that two persons from the same family are not entitled to carry on the same business, thus, licence granted in favour of her husband is cancelled and now she alone holds the licence. Respondents 5 to 7 are otherwise qualified and eligible for dealership. The facts brought on record, at the best show that relatives of these respondents are retailers of kerosene and not the dealers of Oil companies. Thus, the allegations made by the petitioner against these respondents cannot be sustained. The petitioner has utterly failed to show that the allotment of dealership in favour of respondents 5 to 7 is arbitrary or capricious. The petition, thus, fails and is accordingly dismissed. Rule discharged, with no order as to costs.

13. Both the Civil Applications do not survive. The same are disposed of.