

(2003) 04 AP CK 0021

In the Andhra Pradesh High Court

Case No : Writ Petition No. 26182 of 1999

Ch. Raji Reddy and Others

APPELLANT

Vs

APSRTC and Another

RESPONDENT

Date of Decision : 08-04-2003

Acts Referred:

Constitution of India, 1950 — Article 16, 16(2), 16(3)

Citation : (2003) 4 ALD 96 : (2003) 4 ALT 36

Hon'ble Judges : Goda Raghuram, J

Bench : Single Bench

Advocate : M.V. Raja Ram, for the Appellant; K. Harinath, SC for Respondent No. 1 and Government Pleader for G.A.D., for the Respondent

Final Decision : Allowed

Judgement

Goda Raghuram, J.—Heard Mr. M.V. Raja Ram, learned Counsel for the petitioners; Mr. K. Harinath, learned standing Counsel for the 1st respondent and the learned Government Pleader for GAD for the 2nd respondent. The learned Additional Advocate-General Mr. D. Prakash Reddy assisted the Court at request.

2. The petitioners, in substance, seek a declaration that the action of the respondents in not following the procedure while initiating recruitment to the posts of Conductors, Drivers and Shramiks (Cleaners); and not following the Presidential Order, 1974 (for short "Order, 1974") or considering the rule of Reservation therein as between the locals and non-locals is illegal and arbitrary; and for a declaration that the notification of the respondent-Corporation dated 5-10-1999 published in the daily press is illegal and arbitrary.

3. The petitioners are unemployed persons belonging to Nalgonda district, temporarily residing at Hyderabad. The 1st respondent-Corporation issued a notification dated 5-10-1999 inviting applications for filling up the anticipated posts of Drivers and Conductors, both in Hyderabad city region and Ranga Reddy region and for Shramiks (Cleaners) in Hyderabad city region only. Earlier, the

respondent-Corporation issued a notification dated 29-3-1997 published on 31-3-1997 in Eenadu Telugu daily calling applications for recruitment to the posts of Conductors and Drivers in Hyderabad city region.

4. In para-6 of the notification dated 29-3-1997, it was stated that persons residing in Hyderabad district, who are eligible and interested, could apply. The petitioners applied pursuant to the said notification and were not issued call letters for the interviews commencing from 5-1-1998. Call letters were issued only to certain candidates, who applied for the posts. The petitioners did not receive such call letters. When they made enquiries, they were informed that they were not issued call letters as they were not locals, though residing in Hyderabad. Thereafter, another notification was issued on 5-4-1997 in Vartha daily extending the benefits to the residents of neighbouring districts i.e., persons belonging to Ranga Reddy district were also treated as eligible to apply to the posts of Drivers and Conductors.

5. As they were not called for interviews on the stated reason that they did not belong to Hyderabad district, the petitioners filed W.P. Nos. 27132 of 1998 and 32950 of 1998. At the hearing of these writ petitions, having noticed that the individuals, who were already selected, have not been impleaded, the petitioners have withdrawn the writ petitions with leave to file writ petitions afresh.

6. Thereafter another notification dated 5-10-1999 was issued by the respondent-Corporation notifying the posts both in Hyderabad City Region and Ranga Reddy region. The vacancies of about 1000 posts of drivers and Conductors each and 88 posts of Shramiks in Hyderabad City region, were enumerated in the notification. Having been deprived of selection pursuant to the 1997 notification on the ground that they were not the locals belonging to Hyderabad city region, apprehending supersession of their claims in the present recruitment also, the petitioners have instituted this writ petition seeking appropriate relief.

7. On behalf of the 1st respondent, two counter-affidavits have been filed, one by the Chief Law Officer and another by the Vice-Chairman and Managing Director.

8. The counter-affidavit of the Chief Law Officer states that pursuant to the request made to the Corporate Office, vacancies were notified calling for applications from the candidates hailing from the particular district in which recruitment was to be made. The counter proceeds to state that having regard to the fact that the jurisdiction of the Hyderabad city region of the A.P.S.R.T.C., spread to Ranga Reddy region the candidates belonging to Ranga Reddy district were also permitted to apply for the posts. The counter-affidavit also admits that the candidates, who have prosecuted their S.S.C. course in Hyderabad and Ranga Reddy district have been identified among the applicants, who have ranked in merit and such candidates have been called for verification of original certificates and physical fitness certificates. After verification during 5-1-1998 to 18-1-1998 by the Departmental Selection Committee, the list of selected

candidates was displayed on the notice board on 25-2-1998. These facts have been stated in the counter- affidavit, in respect of the recruitment notification issued in the year 1997. It is admitted in the counter-affidavit that in W.P. No. 17352 of 1998 filed by one Mr. M. Thirupathaiah against the proceedings dated 7-3-1998 of Regional Manager, Mahabubnagar treating the petitioner therein as a non-local candidate, this Court allowed the writ petition by the judgment dated 10-6-1998 and directed the Regional Manager, Mahabubnagar, to consider the case of the petitioner for appointment as Conductor, without insisting on his being local candidate, in view of the Presidential Order, 1974. It is also admitted that in the said judgment, this Court declared that the provisions of the Andhra Pradesh Public Employment (Organisation of Local Cadres and Regulation of Direct Recruitment) Order, 1975 (for short "the Presidential Order") is inapplicable to the Andhra Pradesh State Road Transport Corporation (for short "the A.P.S.R.T.C"). The counter admits that as per Regulation 8(1) of the Andhra Pradesh State Road Transport Corporation Employees (Recruitment) Regulations, 1966 (for short "1966 Regulations"), any person, who is a citizen of India can apply to the post in the establishment of the A.P.S.R.T.C. The counter-affidavit further admits that the Presidential Order is not applicable to the respondent-Corporation as these posts are not civil posts and the A.P.S.R.T.C. is not a local authority as defined in the Presidential Order.

9. Counter-affidavit of the Vice-Chairman and Managing Director of the 1st respondent-Corporation reiterates what has been stated in the counter-affidavit filed by the Chief Law Officer. This counter-affidavit also admits that there is no Regulation in the 1966 Regulations restricting the appointment to the post of Drivers and Conductors of the candidates belonging to the district in which the recruitment is contemplated. The counter however, states that the respondent-Corporation is in the process of amending the recruitment regulations to restrict the recruitments to the posts, to the candidates belonging to the district for which a recruitment is made; and that such an amendment has been drafted and forwarded to the Government of Andhra Pradesh for its approval and that approval is awaited.

10. This Court by the order dated 31-12-1999 suo motu impleaded the Government of Andhra Pradesh represented by it's Chief Secretary, Hyderabad as party respondent and has directed the Chief Secretary to the Government to file an affidavit clearly spelling out stand of the State.

11. The Chief Secretary to the Government of A.P. has filed a counter-affidavit stating that the posts in the A.P.S.R.T.C are not civil posts, the service in A.P.S.R.T.C. is not civil service and that in the circumstances, the Presidential Order is not applicable to recruitments in the A.P.S.R.T.C. The Chief Secretary also avers that the Managing Director of the A.P.S.R.T.C. has submitted proposals on 21-5-1998 to the Government for amendment of Regulation No. 8 of the 1966 Regulations for forming separate units for appointment with a Revenue District being a unit in respect of recruitment to the posts of drivers and conductors, to

restrict appointment opportunities to the local candidates of the Revenue District in which the recruitment is to be made and that the proposal is under consideration of the Government.

12. At the hearing of the writ petition today, nothing is brought to the notice of this Court as to whether the proposal has received the approval of the State Government.

13. It is an admitted position that under Regulation 8 of the 1966 Regulations of the 1st respondent-Corporation, all persons, who are citizens of India are entitled to apply to the posts in the Corporation notified for recruitment, including the posts of Conductors and Drivers. It is also an admitted position that the Presidential Order does not apply to the posts in the A.P.S.R.T.C. and that the stand taken by the respondent-Corporation, including by the State Government is a stand, which accords with the text and structure of the extant law.

Article 16(1) of the Constitution of India ordains a fundamental obligation on the State to ensure equal opportunity for all citizens in the matters relating to employment or appointment to any office in the State.

Article 16(2) enacts that no citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for, or discriminated against in respect of, any employment or office under the State.

Article 16(3) reads as under:

"(3) Nothing in this article shall prevent Parliament from making any law prescribing, in regard to a class or classes of employment or appointment to an office under the Government of, or any local or other authority within, a State or Union territory, any requirement as to residence within that State or Union territory prior to such employment or appointment."

14. Part-XI, Chapter I, of the Constitution of India enumerates the legislative relation between the Federal and Provincial Governments. The legislative powers devolve in accordance with the presents, enumerated in Article 246 of the Constitution of India read with the fields of legislation enumerated in the three lists in Schedule-VII of the Constitution. The contours of an available legislative power is, also, subject to specific provisions of the Constitution.

15. Article 16 disables any legislation or executive exercise of power, which has the effect of disabling equal opportunity to all citizens in matters relating to employment or appointment to any office under the State, inter alia on grounds only of place of birth or residence. Therefore, any State action be it by a legislative instrument, a regulation or an executive instrument, which denies any citizen an equal opportunity for access to public employment on the ground only of place of birth or residence, would be invalid, qua the provisions of Article 16(2) of the Constitution of India. Article 16(3) however, enacts an exception to the limitations upon legislative and executive power under Article 16(2) of the Constitution of India. Article 16(3) enables legislation by Parliament prescribing

in regard to a class or classes of employment or appointment to an office under the Government of, or any local or other authority within, a State or Union territory, any requirement as to residence within that State or Union territory prior to such employment or appointment. On a true and fair construction, Article 16(3) of the Constitution enables a federal legislation prescribing a residence qualification in a State, as requirement for appointment or employment to a public office in that State. Even the federal legislation enacted under the presents of Article 16(3) of the Constitution of India is confined to enabling but a residence qualification in a State as a whole. Thus, the Parliament could make a law prescribing a residence qualification in a State as a prior requirement for a public office within that State. No legislation is permissible even by the Parliament making the requirement of "residence" in a part of the State for employment or appointment to a public office in that State.

16. This Constitutional position is no longer *res integra*. The validity of the Public Employment (Requirement as to Residence) Act, 1957 (for short "the 1957 Act") was considered in *A. V. S. Narasimha Rao and Others Vs. The State of Andhra Pradesh and Another*, . Pursuant to an enabling provision of Section 3 of the 1957 Act, the A.P. Public Employment (Requirement as to Residence) Rules, 1959 (for short "the Rules") were made. Rule 3 of the Rules posited a requirement of "residence" prior to appointment and stipulated that the person shall not be eligible for appointment to a post within the Telangana area under the State Government of Andhra Pradesh or a local authority (other than a Cantonment Board) in the said area unless: he resided continuously within the said area for a period of not less than fifteen years immediately preceding the prescribed date. Aggrieved persons challenged these Rules as also the provisions of the enabling Act. The Supreme Court had thus the occasion to interpret the Article 16 of the Constitution of India. The Supreme Court held as under:

4. Article 16 on which the Act, the Rules and the present action are all based reads:

"16. Equality of opportunity in matters of public employment:

(1) There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State.

(2) No citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for, or discriminated against in respect of, any employment or office under the State.

(3) Nothing in this article shall prevent Parliament from making any law prescribing, in regard to a class or classes of employment or appointment to an office under the Government of, or any local or other authority within, a State or Union territory, any requirement as to residence within that State or Union territory prior to such employment or appointment.

(4) x x x x

(5) x x x x

5. The question is one of construction of this article, particularly of the first three clauses, to find out the ambit of the law-making power of Parliament. The first clause emphasis that there shall be in India equality of opportunity for all citizens in matters of employment or appointment to any office under the State. The word "State" here is to be understood in the extended sense given to it by the definition of that word in Article 12. The second clause then specifies prohibition against discrimination only on the grounds of religion, race, sex, descent, place of birth, residence or any of them. The intention here is to make every office or employment open and available to every citizen, and inter alia to make offices or employment in one part of India open to citizens in all other parts of India. The third clause then makes an exception. This clause was amended by the Constitution (Seventh Amendment) Act, 1956. For the original words of the clause under any State specified in the first Schedule or any local or other authority within its territory any requirement as to residence within that State", the present words from "under the Government" to "Union territory" have been substituted. Nothing turns upon the amendment, which seeks to apply the exception in the clause to Union Territory and to remove ambiguity in language.

6. The clause thus enables Parliament to make a law in a special case prescribing any requirement as to residence within a State or Union Territory prior to appointment, as a condition of employment in the State or Union territory. Under Article 35(a) this power is conferred upon Parliament but is denied to the Legislatures of the States, notwithstanding anything in the Constitution, and @ page-SC 425 under (b) any law in force immediately before the commencement of the Constitution in respect of the matter shall subject to the terms thereof and subject to such adaptations that may be made under Article 372 is to continue in force until altered or repealed or amended by Parliament.

7. The legislative power to create residential qualification for employment is thus exclusively conferred on Parliament. Parliament can make any law, which prescribes any requirement as to residence within the State or Union territory prior to employment or appointment to an office in that State or Union Territory. Two questions arise here. Firstly, whether Parliament, while prescribing the requirement, may prescribe the requirement of residence in a particular part of the State; and, secondly, whether Parliament can delegate this function by making a declaration and leaving the details to be filled in by the rule-making power of the Central or State Governments.

8. Mr. S.V. Gupte, for the petitioners, points out that the Constitution is speaking of State and Union Territory. It has already made a declaration that no person shall be disqualified for any office in the territory of India because of his residence in any particular part of India. The exception, therefore, must be viewed narrowly and not carried to excess by interpretation. The article speaks of residence in a State and means only that. If it chose to speak of residence in parts of State such as Districts, Taluqas, cities, towns, etc., more appropriate and

specific language could have been used such as "any requirement as to residence within that State or Union territory or part of that State or Union territory". Having used the word State, the unit State is only mean and not any part thereof. Reference is made to the history of the drafting of the Article and the debates in the Constituent Assembly, which bear out this contention.

9. On the other hand, Mr. Setalvad bases his argument on two things. He contends that the power is given to Parliament to make any law and, therefore, Parliament is supreme and can make any law on the subject as the article says. He very ingeniously shifts the emphasis to the words "an requirement" and contends that the requirement may be as to residence in the State or any particular part of State.

10. The claim for supremacy of Parliament is misconceived. Parliament, in this, as in other matters, is supreme only in so far as the Constitution makes it. Where the Constitution does not concede supremacy, Parliament must act within its appointed functions and not transgress them. What the Constitution says is a matter for construction of the language of the Constitution. Which is the proper construction of the two suggested? By the first clause equality of opportunity in employment or appointment to an office is guaranteed. By the second clause, there can be no discrimination, among other things, on the ground of residence. Realising, however, that sometimes local sentiments may have to be respected or sometimes an inroad from more advanced States into less developed States may have to be prevented, and a residential qualification may, therefore, have to be prescribed, the exception in Clause (3) was made. Even so, that clause spoke of residence -within the State. The claim of Mr. Setalvad that Parliament can make a provision regarding residence in any particular part of a State would render the general prohibition lose all its meaning. The words "any requirement" cannot be read to warrant something, which could have been said more specifically. These words bear upon the kind of residence or its duration rather than its location within the State. We accept the argument of Mr. Gupte that the Constitution as it stands, speaks of a whole State as the venue for residential qualification and it is impossible to think that the Constituent Assembly was thinking of residence in Districts, Taluqas, cities, towns or villages. The fact that this clause is an exception and came as an amendment must dictate that a narrow construction upon the exception should be placed as indeed the debates in the Constituent Assembly also seem to indicate. We accordingly reject the contention of Mr. Setalvad seeking to put a very wide and liberal construction upon the words "any law" and "any requirement". These words are obviously controlled by the words "residence within the State or Union Territory" which words mean what they say, neither more nor less. It follows, therefore, that Section 3 of the Public Employment (Requirement as to Residence) Act, 1957, in so far as it relates to Telangana (and we say nothing about the other parts) @ page-SC 426 and Rule 3 of the Rules under it are ultra vires the Constitution.

17. In the light of the law declared supra, it is clear that neither the 1st

respondent-Corporation nor the State of Andhra Pradesh has competence to prescribe a qualification of "residence" in a part of the State as a condition precedent for appointment to a public office in the State. In the circumstances, the petitioners are entitled to compete for the post of Conductors; Drivers and Shramiks (cleaners) notified for any region in any part of the State by the A.P.S.R.T.C. Consequent on the position, if they have applied, their applications shall be considered, on merits, and the respondent-Corporation shall not decline consideration of their applications on the ground that they are not locals of the region or district, in which, the vacancies notified for recruitment, arise.

18. On the analysis above, the writ petition is allowed and it is declared that in respect of the posts of Conductors; Drivers and Shramiks (cleaners) notified by the 1st respondent-Corporation, all persons, who are citizens of India possessing the prescribed qualifications residing in any part of the territory of India, are eligible to apply and to be considered; and the 1st respondent-Corporation shall not decline consideration of their cases on the ground that they are not local residents of a particular area in the State of Andhra Pradesh. The writ petition is allowed as above.

19. There shall be no order as to costs.