
(2004) 03 AP CK 0044
In the Andhra Pradesh High Court
Case No : Writ Petition No. 3347 of 2003

G. Rajesh

APPELLANT

Vs

Bharat Petroleum Corporation Limited and Others

RESPONDENT

Date of Decision : 16-03-2004

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2004) 3 ALD 411 : (2004) 3 ALT 636 : (2005) 1 CTLJ 169

Hon'ble Judges : L. Narasimha Reddy, J

Bench : Single Bench

Advocate : S. Niranjan Reddy, for the Appellant; J. Prabhakar and B. Vijayasen Reddy, for the Respondent

Final Decision : Dismissed

Judgement

L. Narasimha Reddy, J.—The petitioner was issued a letter of intent by the Bharat Petroleum Corporation Limited, 1st respondent herein, on 18-1-1993 permitting him to start a petroleum outlet at Kukatpally, Hyderabad. The entire establishment was to be undertaken by the 1st respondent, and the invested amount was required to be paid in (100) instalments. The letter of intent is said to have been issued as a measure of providing benefits to "Socially Objective Category".

2. Steps were taken to secure suitable land at Kukatpally with the A.P. Housing Board, the 4th respondent, and Government of A.P. in the Housing and Municipal Administration Department, the 3rd respondent. After certain correspondence, a plot of 1,500 sq. yards abutting National Highway No. 9, was allotted by the 4th respondent in favour of the 1st respondent at a concessional rate of Rs. 700/- per sq.yard. The outlet started operating from the year 1995.

3. Public interest litigation was initiated before the Supreme Court in relation to allotment of petroleum outlets by the Ministry, at the relevant point of time, and it was dealt with as "Common Cause v. Union of India 1997 (1) ALD 51 : (1996)

6 SCC 530. Through its judgment reported in (1996) 6 SCC 530, the Supreme Court took exception to the discretionary allotment of outlets and dealership of petroleum products. It directed cancellation of all such allotments and disposal by way of public auction. As a sequel to this, identical proceedings i.e., C.W.No. 4003 of 1995 were initiated before the Delhi High Court by an Agency known as Centre for Public Interest Litigation. The petitioner was impleaded as Notice No. 64. Following the judgment of the Supreme Court, the Delhi High Court issued similar directions in relations to the outlet of the petitioner also.

4. It was in view of these developments, that the 1st respondent issued an auction notice dated 20-1-2003, proposing to auction the petroleum outlet held by the petitioner. The petitioner filed an application before the Delhi High Court, being C.M.No. 1840/2003 in CW No. 4003 of 1995, contending that he was issued the letter of intent as a candidate belonging to Schedule Caste (SC) and in that view of the matter, the auction be restricted to SC candidates alone. Through order dated 13-2-2003, the Delhi High Court declined to accede to the request of the petitioner and held that the same was outside the scope of the proceeding before it.

5. The 1st respondent proceeded with the auction on 14-2-2003. The petitioner participated in the same. The 5th respondent emerged as the highest bidder. This writ petition is filed seeking a writ of mandamus declaring the action of the respondents in conducting the auction, without restricting the participation therein to the members of SC category, as illegal, arbitrary and unconstitutional, and for a consequential direction to the respondents to allot the dealership to a person belonging to SC category.

6. The petitioner contends that the various correspondence that ensued between himself and the Respondents 1 to 4 discloses that the letter of intent was issued to him under "social objective category"; the land was transferred by Respondents 3 and 4 on an exclusive consideration that an outlet is going to be established by a person belonging to Schedule Caste, and that being the case, the auction needs to be restricted to persons belonging to SC.

7. On behalf of Respondents 1 and 2, a counter-affidavit is filed. They state that the letter of intent was issued to the petitioner, on the basis of a discretionary allotment by the then Minister, and no reservation as such was provided for, or implemented in the process. Extensive reference is made to the orders that came to be passed by the Supreme Court and Delhi High Court from time to time on the issue, in general, and in relation to the petitioner, in particular. It is their specific case that the dealership was offered to the petitioner solely on the basis of an advice given to them by the Ministry of Petroleum and Natural Gas, and there is nothing to disclose that the allotment to the petitioner was on the ground that he belongs to SC category. Specific reference is made to the order dated 11-10-1999 passed by the Delhi High Court in relation to the petitioner and it is stated that, taking all the aspects into account, the High Court had cancelled the allotment. It is pleaded that, when the Supreme Court and Delhi

High Court directed that the petroleum outlets be put to public auction, restricting the same to a particular category of persons, would amount to violation of the directions.

8. On behalf of the 3rd respondent, the Assistant Secretary to Government in the concerned department, filed a counter-affidavit. The circumstances under which an extent of 1,500 sq.yards belonging to the A.P. Housing Board, the 4th respondent was allotted and sold in favour of the 1st respondent, are narrated. Reference is made to the resolution of the 4th respondent-Board held on 30-3-1994 and the acceptance of the proposal by the Government through the orders in G.O. Ms. No. 51, dated 8-6-1994, It is ultimately stated that the concessional rate was fixed on the ground that the outlet is allotted to a person belonging to Schedule Caste, and that in case it is transferred or permitted to run by any other candidate, the difference between the market value and the concessional rate would be recovered. The 4th respondent filed counter-affidavit almost to the same effect.

9. In his counter-affidavit the 5th respondent has stated that the auction of the outlet was held strictly in terms of the directions issued by the Supreme Court and the Delhi High Court. It is alleged that, as many as (99) bidders have participated, and that he emerged as the successful bidder for a sum of Rs. 210 lakhs. It is also stated that the claim of the petitioner for restricting the auction to the persons belonging to SC category, cannot be supported either on facts or in law, and that such a course of action would run contrary to the specific directions issued by the Supreme Court and the Delhi High Court.

10. Sri K. Pratap Reddy, learned Senior Counsel appearing for the petitioner submits that the letter of intent was issued to the petitioner exclusively under "social objective category", and thereby, it indicates the implementation of reservation in favour of SC candidates. He contends that the Supreme Court took exception to the procedure adopted in allotment, and the judgments do not have any effect on the character or category of such allotment. He places reliance upon the letter of allotment as well as the correspondence undertaken by the 1st respondent, with the Respondents 2 and 3, to buttress his contention. He also relies upon the contents of G.O. Ms. No. 51, dated 8-6-1994, issued by the 3rd respondent, in particular the conditions incorporated, for according permission for transfer of the land, which are to the effect that the outlet is to be allotted to a SC candidate and that it be named as "A.P. Housing Board Kukatpally Colony Petroleum Pump". The learned Senior Counsel submits that the failure of the respondent to restrict the auction to candidates belonging to SC category, amounts to violation of the fundamental rights guaranteed under Articles 14 and 15(4) of the Constitution of India.

11. Sri E. Manohar, learned Senior Counsel for the Respondents 1 and 2 submits that the issuance of letter of allotment in favour of the petitioner was only on the basis of advice or direction issued by the Ministry of Petroleum, and no process of selection or reservation was involved therein. He submits that unless the

outlet was specifically reserved in favour of the candidates belonging to SC category and the allotment was made on the basis of selection, the petitioner cannot insist on restriction of the auction to candidates belonging to that category. It is also his case that, if the petitioner had any grievance in this regard, the only course open to him was to seek appropriate directions from the Delhi High Court or the Supreme Court, as the case may be. He contends that having permitted the matter to become final, the petitioner cannot raise the objection at this stage.

12. Sri Y. Rama Rao, learned Government Pleader for the 3rd respondent submits that the correspondence that ensued between the 1st respondent, on the one hand, and Respondents 3 and 4, on the other, discloses that much emphasis was laid on the fact that the letter of intent was issued to candidates belonging to SC category, and to a large extent, the same weighed with Respondents 3 and 4, as is evident from the terms of G.O. Ms. No. 51, dated 8-6-1994. He submits that different considerations would have arisen, had the allotment been to a person other than SC candidate. So far as the auction is concerned, he submits that it is a matter between the petitioner and the 1st respondent and the 1st respondent does not have much to say in the matter.

13. Sri J. Prabhakar, learned Standing Counsel for the 4th respondent has almost repeated the contentions of the learned Government Pleader for Housing and Municipal Administration.

14. Sri B. Vijaysen Reddy, learned Counsel for the 5th respondent submits that there is nothing on record to disclose that either the Union of India or the 1st respondent have framed any rules or issued any orders reserving any petroleum outlets in favour of any particular category, and in the absence of the same, reservation in favour of SC category, cannot be claimed as a matter of right. He contends that the auction was held strictly in compliance with the judgment of the Supreme Court and Delhi High Court, and any relief claimed by the petitioner herein is barred.

15. The petitioner was issued a letter of intent in respect of an petroleum outlet at Hyderabad. Across the country, number of persons were issued similar letters of intent. In *Common Cause v. Union of India* (supra), the Hon'ble Supreme Court dealt with the legality of such allotments, and ultimately set aside them. The outlets were directed to be allotted to fresh candidates after conducting open auction. The case of the petitioner was dealt with by the Delhi High Court in C.W No. 4003 of 1995. It was in pursuance of these orders, that the 1st respondent had issued a tender notice for the purpose of allotting the outlet. Petitioner approached the Delhi High Court with an application to restrict the participation to SC candidates only, since the initial allotment was on that basis. The application was not entertained on the ground that it is outside the scope of the subject-matter of the proceedings before it.

16. The respondents contend that such a claim of the petitioner is barred by res

judicata, or at least constructive resjudicata, since this plea ought to have been considered by the Delhi High Court or the Supreme Court. In view of the fact that the petitioner approached the Delhi High Court with an application in this regard and it was observed therein that the same is outside the proceedings before that Court, for the present, it can be proceeded as though the plea of the petitioner is not barred.

17. In effect, the petitioner seeks reservation of the petroleum outlet in question to the candidates belonging to SC category. Reservation by its very nature, is an exception to general principle of equality. There are certain instances where treating of unequals as equals, was held to be violative of Article 14 of the Constitution of India. Whatever be the circumstances, the measures providing for reservation contemplated under Article 15(4), are required to be undertaken through a valid law within the meaning of Article 13 of the Constitution. There are hardly any instances where provisions prescribing reservations, are discerned through the implication, or inference.

18. It was contended on behalf of the petitioner that he was issued letter of intent because he is a candidate belonging to SC, and thereby, the allotment can be treated on the basis of reservation. Respondents 1 and 2 have flatly denied the existence of any reservation. Counsel for the petitioner refers to certain observations in the letter of allotment as well as the correspondence that ensued between the Respondent 1 and 2 on the one hand, and 3 and 4, on the other. In the letter of intent, dated 18-11-1993, it is only in the subject that a reference occurs to the expression "SC". It reads as under:

"Sub: Letter of intent for proposed retail outlet dealership at Hyderabad, Hyderabad District, Andhra Pradesh State on compassionate grounds under SC category".

19. Except this, there is nothing in the letter of intent to disclose that there existed any reservation. The 1st respondent addressed a letter to the 3rd respondent for the allotment of land. The subject of this letter reads as under;

"Sub: Allotment of a suitable site on lease terms for developing a MS/HSD Retail Outlet under Social Objective Category".

The reference in this letter is to "Social Objective Category"

20. In Para 8 of the counter-affidavit, the 1st respondent stated as under:

"These Respondents submit that the dealership in the instant case was offered to the Petitioner based on the advise given by the Ministry of Petroleum and Natural Gas and from the order dated 11-10-1999, it is clear that the said advise of MOP&NG was issued not on the basis of the Petitioner being a member of the Scheduled Caste Category but for some other reasons as stated in the operative part of the order dated 11-10-1999 reproduced hereinabove".

21. In view of such vague and inconsistent state of affairs, the only way to

ascertain the correct position is, to verify as to whether there existed any scheme framed by the Union of India or the 1st respondent in the matter of allotment of outlets. Petitioner is not able to place any material in this regard. The Delhi High Court had an occasion to peruse the entire record and adjudicate upon the method of allotment in favour of the petitioner. In its order dated 11-10-1999, the Delhi High Court held as under, with reference to the petitioner himself:

"Having perused the original file we are unable to sustain the allotment because we find that except for the aforementioned application there is no other material on record on the basis whereof the Minister could have come to the conclusion, he did, as neither the bio data of the applicant was asked for nor any verification with regard to the financial status of the family was got conducted before exercising discretion in favour of the Noticee. The allotment is directed to be cancelled."

22. Under these circumstances, it cannot be said that the petitioner was allotted the outlet on the ground that he belongs to SC category. It is true that the Respondents 3 and 4 transferred the land in favour of the 1st respondent on the ground that the allottee was a candidate belonging to SC. That, however, is of little consequence, so far as the original allotment of dealership is concerned. At the most, as contended by the 3rd respondent itself, it may be a case for recovery of the difference between the then market value and the concessional rate, prevailing at the relevant point of time.

23. Learned Senior Counsel for the petitioner submits that even if there existed any uncertainty as regards the existence of reservation in favour of SC candidates, necessary direction can be issued to the Respondents 1 and 2, to reserve this outlet in favour of SC candidates. It needs to be observed in this regard that Articles 15(4) and 16(4), which are exceptions to Articles 14, 16 and 16(1), enable the State to make reservations in the matter of employment or other aspects. These provisions enable the State to undertake certain measures for giving effect to directive principles of state policy. It is too difficult to treat them as mandatory. In *P and T Scheduled Caste/Tribe Employees' Welfare Association (Regd.) and Others Vs. Union of India (UOI) and Others*, , the Supreme Court held that no Writ can be issued ordinarily, compelling the Government to make reservations. Relief was granted in that case on the ground of discrimination and discontinuance of the benefit, which the employees were enjoying earlier. In *Indra Sawhney etc. etc Vs. Union of India and others, etc.*, , Articles 15(4) and 16(4) of the Constitution of India were not treated as exception, but are very part of the very concept of the equality itself. However, there is nothing to indicate that there is any deviation from the general principal that no Writ can be issued to effect reservations.

24. The executive, the Government is conferred with the power or duty, as one may treat it, to make necessary provisions for effecting reservations. Such measures are to be resorted to, taking into account several factors, such as, the

field of activity involved; the effect of reservation on the functioning of the concerned institution as a whole; the extent of reservation, the manner of implementing it, identification of units to be reserved etc. This process in turn, needs collection of material, study of the same and emergence of a policy decision by the concerned authority. Courts cannot direct the Government to provide for reservation in favour of a particular category in a specified field of activity. The role of the Courts is more to ensure that the provisions so made, conform to the principles enshrined under the Constitution. They cannot undertake active role in the matter of implementation of reservations.

25. In the auction that was held on 14-2-2003, as many as (99) tenderers participated. The petitioner and the 5th respondents are among them. The petitioner did not record any protest. It is only when he did not emerge as successful bidder, he has approached this Court. He had acquiesced in the legality and correctness of the proceedings. Valid rights have accrued to the 5th respondent. It is not permissible for the petitioner to turn around and challenge the proceedings because he did not emerge as the successful bidder.

26. Viewed from any angle, this Court does not find any basis to grant the relief claimed by the petitioner.

27. The writ petition is accordingly dismissed. No order as to costs.