
(2014) 07 AP CK 0128
In the Andhra Pradesh High Court
Case No : Writ Petition No. 32689 of 2013

K. Narasa Raju

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 18-07-2014

Acts Referred:

Constitution of India, 1950 — Article 14, 15, 15(3), 15(4), 15(5)

Citation : (2015) 2 ALD 65

Hon'ble Judges : P. Naveen Rao, J

Bench : Single Bench

Advocate : V.S.R. Anjaneyulu, counsel, Advocate for the Appellant;
Vishnuvardhar Reddy, Nanda and D.V. Seetharam Murthy, Senior Counsel for B.
Mayur Reddy, Advocate for the Respondent

Final Decision : Dismissed

Judgement

P. Naveen Rao, J.—There are three petitioners, first petitioner is an ex-serviceman, petitioners 2 and 3 are war-widows. Petitioners intend to apply for grant of dealership in distribution of Liquefied Petroleum Gas (for short LPG) cylinders (domestic). This writ petition is instituted assailing certain clauses in the notification issued in the daily newspapers by the Petroleum companies. The notification issued was a combined notification concerning all the Petroleum companies. Petitioners challenge the clauses in the broacher of guidelines for selection of regular LPG distributors, notified by the oil companies as with reference to the policy of reservation to the defence personnel; prescription of educational qualifications; age restrictions and method of selection. Clause 2 deals with reservation. A new sub-category is now created which is called as Government Personnel category and defence personnel are grouped along with the Central /State Government and Central/State Government public sector undertaking employees and all of them put together are entitled to reservation of 8 % of the distributorship which include 2 % to SC/ST, 2% to OBC and 4% to open category.

2. With the consent of counsels for respective parties, this writ petition is disposed of at the admission stage.

3. Heard Sri V.S.R.Anjaneyulu, learned counsel for petitioners, Ms.Nanda, learned counsel appearing for Central Government, Sri D.V.Seetharam Murthy, senior counsel for Sri Mayur Reddy, learned standing counsel and Sri O.Manohar Reddy, learned standing counsel appearing for respondent companies.

4. Learned counsel for petitioner contended that the classification assigned to Ex-Servicemen/war widows is ex-facie illegal. He contended that there cannot be any comparison of defence personnel with the Government employees. Comparing persons who secured gallantry awards on account of service rendered by them in protecting the boundaries of the country are treated on par with the persons described as white collar employees working under the State or Central Government or their public sector undertakings and who might have suffered small disabilities, is wholly irrational and illogical.

5. On each of the contentions urged, learned counsel refers to the previous policy, which was in force. Learned counsel contended that the policy which was in force prior to the revised policy and based on which earlier distributorships were awarded, there was exclusive reservation in favour of the defence personnel to an extent of 8% and there is absolutely no justification to alter the said percentage of reservation.

6. While refuting the stand of the respondents that there was poor response from the defence personnel, therefore it was decided to club the defence category with other Government personnel learned counsel contended that there are enough safeguards provided in the policy and if in any particular reserved category, the response is poor or not available, the slot gets automatically transferred to another category and can be filled up by another category and there is no question of carrying forward the slot to the same category in future also. Thus, sufficient safe guards are incorporated which deals with the de-categorisation. He therefore contended that it was illegal in not adopting said procedure while retaining 8% reservation and the reasoning assigned is not justified.

7. Learned counsel further attacked the eligibility criteria prescribed in clause (6). It is contended that it is not possible to expect a Sipoy to possess such high qualifications and opt to serve as a Sipoi in Indian Army; normally with lower educational qualifications and persons belonging to lower strata of the society opt to serve the Army as Sipoi and better qualified persons normally opt to become Officers in the defence services. Therefore such employees in the defence services cannot be expected to possess such high qualifications as prescribed now. More so, the war-widows of such employees cannot be expected to possess higher qualifications. Learned counsel also contended that it is illegal to grant relaxations in favour of certain categories such as SKO dealers and freedom fighters. For an SKO dealer to apply for LPG dealership, possessing 10th standard is sufficient for his eligibility. In respect of Freedom Fighters category,

the age restriction is relaxed. There is no explanation forthcoming for granting such relaxation in favour of those categories and not extending such relaxation in favour of war-widows or ex-serviceman and contended that it is discriminatory and amounts to arbitrary exercise of power. The stand of respondents is self-contradictory. If prescription of higher educational and eligibility criteria is basic requirement, then there is no justification to extend such relaxation to an SKO dealer or to a Freedom Fighter.

8. Learned counsel contended that prescription of maximum age as 60 years is arbitrary and discriminatory. Normally war-widows would be more than 60 years of age and there is no justification to classify a war widow on the basis of maximum age. In the earlier policy, no such maximum age restriction was imposed and there is no good reason to alter such policy. It has no nexus to the object sought to be achieved.

9. Learned counsel contended that prescription of the selection by draw of lots is wholly illegal criteria and leads to illogical manner of selection. When detailed selection procedure is prescribed, there is no justification to resort to draw of lots to select a dealer and it is nothing but a chance and amounts to gambling and in the matter of selections to the agencies which have lot of public importance, such procedure of selection is illegal and the same is against public interest. Learned counsel submitted that earlier policy was transparent and stood the test of judicial scrutiny. The previous policy prescribes selection procedure dealing with each and every aspect which would ensure greater transparency and would avoid discrimination and avoid the pick and choose method. He therefore contended that the selection by draw of lots is illegal.

10. Learned counsel further contended that in the previous policy the principle of reservation in favour of women to an extent of 33% was adopted, such reservation system applies under Article 15(4) of the Constitution of India. There is no justification to relax such a condition. Making the spouse as co-owner has different objective and it is nothing to do with the enforcement of reservation policy in favor of women flowing out of the mandate of Article 15(3) of the Constitution of India. He therefore contended that the present notification for induction of LPG dealers is flawed for more than one reason and for all the contentions raised by him, the present selections cannot be continued. If the selections are permitted to be continued, there would be permanent denial of opportunity for the war-widows or ex-servicemen in securing dealership and present policy would obstinate the very objective of providing reservation to the defence personnel and would result in disincentive in seeking employment in defence services. Joining the defence service is not only for personal gain but the person would also strive hard and risk his life to secure the borders of the country and therefore provision of such incentives is necessary and it is in the public interest. The manner in which the policy is now sought to be enforced by the respondent oil companies, would frustrate the very objective of Government formulating special incentive schemes for ex-servicemen and war widows.

11. In support of his contentions, learned counsel placed reliance on the following decisions.

12. On the issue of validating the earlier policy, relied on Omkar Lal Bajaj and Others Vs. Union of India wherein 9.10.2002 guidelines were examined by the Hon"ble Supreme Court and upheld various clauses in the said policy. He placed reliance on the decision of the Supreme Court in Haryana State Industrial Dev. Corp Vs. Shakuntla And Others, Humanity And Another Vs State of West Bengal And Others and Common Cause, A Registered Society Vs. Union of India And Others in support of his contention that arbitrary exercise of power and arbitrary incorporation of clauses in the policy vitiate the entire policy and can be interfered by the writ Court.

13. State of Maharashtra And Another Vs Indian Hotel And Restaurants Association And Others for the proposition that if classification is alleged as arbitrarily made, it is for the State to justify by acceptable evidence as to how such classification is valid.

14. In Union of India And Another Vs. C.S. Sidhu, Supreme Court observed as under: The Army Personnel are bravely defending the country even at the cost of their lives and we feel that they should be treated in a better and more humane manner by the governmental authorities, particularly, in respect of their emoluments, pension and other benefits.

15. In the following cases, respective High Courts have upheld provision of reservation in favour of Ex-servicemen or their children:

Subhashini K Vs State of Mysore; Daya Ram And Others Vs State of Haryana; Jagdish Rai And Others Vs State of Haryana And Others, (Full Bench); and Mohinder Kumar Sood Vs H.P. Public Service Commission And Others.

16. Indian Medical Association Vs Union of India wherein Supreme Court upheld reservation provision in Article 15(5) of the Constitution of India.

17. Learned counsel placed reliance on the decision of Supreme Court in the case of Government of Andhra Pradesh Vs P.B. Vijay Kumar wherein it is held that reservation of posts in favour of women is permissible under Article 15(3) of the Constitution of India and such power is not whittled down in any manner by Article 16. He has relied on the decision in C.Masilamani Mudaliar And Others Vs IDOL of Sri Swaminathaswami Thirukoil And Others, wherein it is held that women have right to elimination of gender based discrimination and effectuating economic empowerment. Based on the said principles he contended that not providing reservation to women in LPG distributorships is unconstitutional.

18. Learned senior counsel Sri D.V.Sitarama Murthy, took serious objection to the agitation of the petitioners on their claim for a specific quota and exclusive consideration without applying the conditions as to age of eligibility and educational qualifications. Learned senior counsel submitted that mandate of Article 15(4) is not attracted. There is no constitutional backing for extension of

reservations to Ex-servicemen/war widows of Ex-servicemen in the matter of providing dealerships for distribution of LPG. It is a matter of policy evolved by oil companies in adhering to the policy of the State in providing reservation to various social groups and in the process, reservation is also envisaged to the Ex-servicemen/their dependents.

19. There is sufficient justification for deleting exclusive reservation to Ex-servicemen/their dependents and the decision is based on empirical study. The oil companies noticed that there was insufficient response whenever an advertisement is issued calling for applications for LPG dealership by the Ex-servicemen/their dependents and many times the earmarked quota was not filled up. Thus, it was not justified to maintain 8% quota earlier provided to them. In addition, on account of making provision for reservation to other backward classes, it has become necessary for re-adjustment of percentage of reservation to various social groups. These two circumstances impelled the oil companies to delete the exclusive reservation earlier granted to them and to club them with Government servants, servants of companies/their dependants who have also suffered some disability. Learned senior counsel therefore contended that it was neither illegal nor arbitrary in reducing the percentage of reservation and in clubbing the Ex-servicemen/war widows, their dependants with that of the civil servants, employees of companies or their dependants. The justification for clubbing them is disability suffered by both groups and therefore it is a valid classification.

20. Relying on the settled principle of law that a classification stands the test of Article 14 if an identifiable homogenous group is classified as a group to extend certain benefits. Extending this principle, learned senior counsel justified the special privileges conferred on the families of the freedom fighters as with reference to their age and the SKO dealers as with reference to educational qualifications. Learned Senior Counsel contended that freedom fighters are the persons who have participated in the freedom struggle which occurred more than 60 years ago and therefore, prescription of the age limit of 60 years to them or their dependants was found to be not justifiable and would amount to not granting them any reservation in provision of LPG distributorships. He further contended that freedom fighters are a class by themselves and there cannot be comparison with any other group. Freedom fighters is a group identifiable and classification based on the criteria of a person as a freedom fighter or family member is a valid classification and relaxation as to age was validly done. Armed forces personnel cannot be compared with freedom fighters, by saying so it was not intended to denigrate them in any manner.

21. Similarly kerosene dealerships were granted long ago when availability of LPG was limited and penetration of LPG usage was also restricted to urban areas. For various reasons the Government of India has evolved policy of reducing consumption of kerosene as fuel by the households and Government is encouraging usage of LPG as a cooking medium. Having regard to the experience

gained by SKO dealers and on account of increased penetration of usage of LPG which has a direct bearing on consumption of kerosene, and the background in which such dealerships were granted, a decision was taken to grant concession with reference to educational qualifications. Except for this, they were not given any benefit and they have to compete with the other groups in open competition for securing LPG distributorships. It is thus contended that the SKO dealers are class by themselves and certain concessions provided to them cannot be demanded by other groups.

22. Learned senior counsel contended that one of the issues that has been agitated upon was the manner in which selections of LPG dealers are made. There were allegations of personal bias and interference in selecting the dealer and manner of conducting interview was utilized for the purpose of choosing the persons of their choice. In order to eliminate the scope of pick and choose method and to ensure more transparency, the oil companies have decided to adopt draw of lots system. The draw of lots system envisages putting all the applications into a box and choosing the prospective dealer by picking up in random from among the applicants. A detailed criteria is prescribed for said system. Applications are scrutinized and are being short listed based on the criteria prescribed by excluding those applications which do not fulfill various requirements as advertised. Thus, the valid applications are put together and subjected to draw system. The parameters for screening of applications are laid down and they are transparent. Once those parameters are fulfilled by all the applicants, all of them would stand on par, there is no further scrutiny and there is no scope for picking A or B, since there is no discretion vested. A detailed procedure is envisaged in picking up the draw. High Level committee is constituted which has a representation from important sectors of the governance. Entire exercise is video graphed. It is always open for the aggrieved person to scrutiny the procedure followed. Thus, it leaves no elbow room for manipulation.

23. Para 6 of the Concept Paper (copy filed along with counter affidavit as material papers page No. 171) deals with Selection Procedure and para 6.4 deals with procedure for conducting draw of lots. Para 7 deals with field verification. Learned senior counsel submitted that in paras 6 to 10 and 12 enough safeguards are provided to ensure transparency and these safeguards are reflected in the brochure published calling for applications, which is placed at page 23 of the writ petition material papers. He has taken through various clauses in the concept paper and brochure in support of his contention that sufficient safeguards are provided for proper selection which ensures transparency.

24. Learned senior counsel emphatically asserted that the policy document of the oil companies dealing with grant of dealerships in LPG is not challenged. The policy document deals with various aspects of selection procedure, such as conditions of application, reservation and procedure of selection and all these

clauses are incorporated based on detailed study and assessment of the market dynamics. The policy does not violate constitutional mandate. The irregularities pointed out by the learned counsel for petitioner are not so glaring warranting interference by this Court. Learned senior counsel emphasized that scope of interference in policy matters is very limited.

25. In support of his contention that the Courts do not interfere in policy matters, he placed reliance on the decisions in Joint Action Committee of Air Line Pilots Association of India (Alpai) and others vs. Director General of Civil Aviation and others, Bajaj Hindustan Limited vs. Sir Shadi Lal Enterprises Limited and another, and Dharam Dutt and others vs. Union of India and others. What extent of reservation that can be given to a particular social group is also a matter of policy and Court cannot prescribe the percentage.

26. Dhampur Sugar (Kashipur) Limited Vs State of Uttaranchal And Others for the proposition that Court cannot annul a change in Government policy only on the ground that the earlier policy was better and suited to the prevailing situation.

27. He submitted that detailed exercise was undertaken as with reference to accommodation of various social groups and after such exercise only, since it was not possible otherwise, it was necessitated in grouping the Ex-servicemen or dependants with that of Government Servants/Servants of companies/their spouses, and the criteria for classification was the disability suffered by them.

28. Learned senior counsel submitted that taking note of previous deficiencies as pointed out by the Courts and on detailed analysis a new policy is now evolved, Courts cannot interfere with such policy. It is permissible for the oil companies to examine the working nature of the policy now evolved and there is always scope for improvement if the companies notice certain deficiencies in its implementation /enforcement. Learned senior counsel therefore heavily relied on the term trial and error to buttress his contention that it is necessary to grant elbow room to oil companies in formulating and enforcement of the policy. He further emphasized that so long as policy is in general terms and equal opportunity is afforded to all concerned and policy is made open to be known to all, it cannot be invalidated even assuming that there are certain lacunas.

29. Dealing with the decisions relied upon by the learned counsel for the petitioner, learned senior counsel submitted that those decisions do not come to the aid of the petitioner and the principles laid down in the said decisions has no bearing on the facts of the case on hand. He therefore emphatically submitted that the writ petition is not maintainable and the same is liable to be dismissed, as the petitioners do not have right much less a vested right to challenge the policy based on various parameters.

30. Ms.Nanda, learned counsel appearing for Government of India/first respondent made extensive submissions. Learned standing counsel supported the policy now formulated by the oil companies. It is her submission that the policy document stands as per the guidelines prescribed by the Government of

India. It is her case that the policy is as per the requirements of the industry and neither arbitrary nor violative of Article 19(1)(g) of the constitution. In support of her contentions, policy is validly made and that the scope of interference of the writ Court is very limited and in the facts of this case, in view of the principles laid down by the Supreme Court from time to time, the writ petition ought to be dismissed, she relied on following decisions:

31. For the proposition that Article 14 permits reasonable classification, she relied on Welfare Association, A.R.P. Maharashtra And Another Vs. Ranjit P Gohil And Others.

32. She relied on Rajasthan State Industrial Development And Investment Corporation Vs Subhash Sindhi Cooperative Housing Society, Jaipur And Others, for the proposition that (a) writ cannot be granted unless it is established that there is an existing legal right of the applicant or an existing duty of the respondent; (b) prime consideration for issuance of the writ is whether or not substantial justice will be promoted.

33. She relied on State of Madhya Pradesh Vs Narmada Bachao Andolan And Another for the proposition that (a) Courts cannot strike down a policy decision merely because it feels that another decision would have been fairer or more scientific or logical or wiser; (b) Government (here companies) has the power and competence to change the policy on the basis of ground realities; (c) unequals can not claim equality; (d) every instance of discrimination does not necessarily fall within the ambit of Article 14 of the Constitution.

73. Discrimination means an unjust, an unfair action in favour of one and against another. It involves an element of intentional and purposeful differentiation and further an element of unfavourable bias; an unfair classification. Discrimination under Article 14 of the Constitution must be conscious and not accidental discrimination that arises from oversight which the State is ready to rectify. [Vide Kathi Raning Rawat v. State of Saurashtra, and Video Electronics (P) Ltd. v. State of Punjab.]

34. As long as there is nexus between the basis of classification and object sought to be achieved, wrath of Article 14 is not attracted as held by Supreme Court in State of Maharashtra .

35. Sri V.S.R.Anjaneyulu, learned counsel for petitioner, in reply to the contentions of learned senior counsel Sri D.V.Sitarama Murthy as well as Ms.Nanda submitted that earlier policy envisaged specific reservation to each of the groups within Ex-servicemen category, which group is based on the disability suffered by the Ex-servicemen or death etc. Specific priorities assigned to each of those groups depending on the nature of the disability. For example, a person who suffered 80% disability in Indo-Pak war is given priority No. 1, so on and so forth. The earlier policy did not prescribe maximum age for a war widow.

36. Learned counsel pointed out that in earlier policy, there is a distinction

between widow and other dependants. Insofar as widow is concerned, no age restriction was prescribed but when it comes to other dependants, age restriction was imposed. Reservation percentage was prescribed exclusively for Ex-servicemen or their dependants and even the reservation priority is also prescribed. No justification is shown for change in the priority in the present policy. He further emphasized that earlier policy was notified in consultation with the Ministry of Defense, Government of India, whereas while notifying the present policy, Ministry of Defense was not consulted and on that ground present policy in not giving priority to the Ex-Servicemen and not providing exclusive reservation to Ex-Servicemen is per-se illegal.

37. He disputed the contention of the learned senior Counsel that at the stage of trial and error Court should allow the oil companies to experiment new concept. He cited the policy of the year 2010, where also this system was incorporated. On the issue of draw of lots, he further submitted that in the year 2010 also detailed guidelines were prescribed on various aspects of selection criteria, marks were stipulated on various aspects such as ownership of plot, age, educational qualifications etc and elaborate provisions were made in determining the eligibility. Thus, according to learned counsel the previous policy was more transparent except for the interview aspect. He has seriously disputed the contention of the learned senior counsel that the draw of lots system is adopted by dispensing with interview system and contended that the entire selection procedure is changed, awarding of marks system is removed. All the candidates who fulfill the requirements prescribed in the notification are grouped together by adopting the lot system and one of them is picked up. Thus, this is nothing but a chance and therefore lottery. The present policy does not prescribe any eligibility criteria for selection; no short-listing is made based on merit criteria as compared to earlier policy.

38. Learned counsel submitted that comparison of war widows and war disabled with civil servants or employees of the corporation is nothing but amounting to insulting the Jawans who served the country and Ex- servicemen cannot be classified with other people and they should be treated as class by themselves. He further emphasized that the grouping of the Ex-servicemen or their dependants with civil servant or dependants is not reasonable. There is no element of two groups forming part of homogeneous group to classify them as one group.

39. Relying heavily on various paragraphs of the counter affidavit filed on behalf of the Government of India, learned counsel for petitioners submitted that there has been representation from the Ex-servicemen category, though less percentage of response and selection is not commensurate with the reservation provided to them, therefore refuted the stand of the respondent that defense personnel were not available. He further submitted that burden lies on the oil companies to substantiate that there are reasons for classification as adopted by them, with special reference to Ex-servicemen or their dependants insofar as

reducing the percentage of reservation earlier earmarked to them, change of percentage earlier provided to them and grouping them with civil servants/employees of companies and their dependants. Unless justification is sufficiently supported by material on record, such classification is liable to be struck down as held by the Supreme Court.

40. The points that arises for determination are: (i) whether the changes brought out by the oil companies in the enlistment procedure which include the change of percentage of reservation to Ex-servicemen, not extending relaxation of eligibility criteria to ex-servicemen and not providing reservation to women are illegal; and (ii) method of selection by draw of lots is vitiated ?

41. In the instant case, reservation to Ex-servicemen/War widows etc is provided and the same is not under challenge. However, percentage of reservation is reduced and exclusive privilege is removed and they are clubbed with category of civilians who have also suffered some kind of disability. The respondent companies justify this change in the reservation system on two grounds, (1) that though exclusive reservation is provided to the Ex-servicemen/War widows etc but they are never filled/filled in a smaller percentage; and (2) that on account of introduction of reservation to OBC, there was a need to rework reservation percentages to various social groups.

42. The principle of law is well settled and needs no reiteration that no person can insist reservation/particular percentage of reservation in favour of a particular class of people or category of persons as a matter of right. Reservation is an enabling provision and it is for the respondent companies to provide reservation to various social groups and to prescribe the percentage of reservation in favour of various social groups. Thus, petitioners cannot as a matter of right insists that there should be exclusive reservation with fixed percentage in favour of Ex-servicemen and that they should not be clubbed with any category of persons in the process of selection of LPG dealerships. The respondent companies have given sufficient justification for changing the percentage of reservation and also clubbing Ex-servicemen category with Government service category. On account of introduction of reservation to OBC category to an extent of 27%, there was imminent need to rework the percentage of reservation to various other social groups. In the process, having noticed that even though large number of dealerships was earmarked to the Ex-servicemen, but most of the time the dealerships were not filled up due to improper response from the Ex-servicemen category, the oil companies have decided to reduce percentage of reservation granted to them earlier. They also have an obligation to provide reservation to Government servants/servants of the companies and their dependents, who have also suffered some kind of disability during the course of employment. Thus, all these categories are merged into one group and common percentage of reservation is prescribed. It cannot therefore be said that the decision is as a result of arbitrary or mala fide exercise of power. The justification shown by the respondent companies is valid and commends

acceptance. No person can as a matter of right insist provision of any assignment. A person has right to be considered to public employment or any public sector opportunities including the dealerships. A right of the ex-servicemen to compete is preserved. They are also provided with certain percentage of dealerships exclusively reserved along with other categories. How much percentage of reservation can be earmarked to them is within the domain of the respondent companies. Ex-servicemen have no right to insist fixed percentage or exclusive reservation to be given to them.

43. The burden of song was that ex-servicemen or their dependents cannot be compared with the civil servants and the amount of disability they suffer can never be equated with that of civilian employees. Defence personnel dedicate their life to the safety and security of the country and their sacrifice cannot be compared with the sacrifice or disabilities suffered by civil servants. The incentive in the form of LPG dealership is in addition to the incentive already given to them and they were provided sufficient opportunity to compete for such dealership. It cannot be said that by clubbing them with other Government Servants, their status is demeaned or their contribution to the security of the nation is lowered. Hence, the contention of the learned counsel that change in the percentage of reservation for Ex-servicemen and clubbing them with Government servants category is erroneous is rejected.

44. Prescription of appropriate qualifications and eligibility criteria falls within the domain of any employer. There may be some merit in the contention of the learned counsel that widows of Sipois cannot be expected to possess higher educational qualifications as compared to other persons and normally people from the lower strata of the society opt to the post of Sipois, but it is for the respondent companies to consider. The qualifications prescribed cannot be set aside in exercise of power of judicial review on that ground.

45. On account of increase of use of LPG, the use of kerosene has come down drastically. The SKO dealers have been dependent on this avocation for several years and they are on the verge of loosing their main source of earnings. Furthermore, they have gained sufficient experience in dealing with the consumers of the respondent companies. SKO dealers were demanding automatic conversion into LPG Dealership. This was not found to be feasible. Therefore, special concession was extended to them to enable them to migrate into LPG dealership and the companies have felt that the experience gained by them so far, as SKO dealer is sufficient for them to deal with the LPG dealership and, therefore, relaxation of educational qualifications were granted to them. With reference to the freedom fighters, the companies assert that freedom fighters are the persons, who have participated in the freedom struggle more than 66 years ago. Thus, fixing age limit to them would amount to denying their consideration. It was therefore decided to grant them age relaxation. Therefore, it cannot be said that the decision taken by respondent companies with reference to SKO dealers and Freedom Fighters category as arbitrary. The SKO dealers and

freedom fighters were treated as separate class by themselves and, therefore, to the identified groups of people some kind of relaxation was extended. Such classification and extension of some benefits is valid. Therefore, the said decision cannot be said to be arbitrary or discriminatory and the ex- servicemen cannot seek to extend the same benefits to them.

46. On the issue of reservation for women, at the first blush, the contention of petitioners sounded as formidable challenge but on a closer look, it fades into insignificance. It is settled principle of law that no person has a right to insist provision of reservation to any category. It is a policy choice of employer to provide or not to provide reservation to women. Respondent companies claim that condition is incorporated in the revised policy in Clause 15 which envisaged making a spouse as a co- owner. The clause is in mandatory terms. As soon as dealership is awarded the spouse becomes co-owner to the extent of 50 % of the share. On account of introduction of reservation to OBC, there was a need to rework out percentage of reservation to various social groups. This resulted in giving up exclusive reservation to women. However, a unique system of sharing is introduced whereby, spouse becomes co- owner of the dealership. In other words, in all dealerships allotted to men, women becomes 50 % share holder and vice versa. This is a unique system evolved and should go a long way in empowering the women. Thus, principal objective of empowering women is achieved.

47. The next issue of greater debate was to the challenge on method of identifying the prospective dealer. Earlier policy envisaged allocation of particular percentage of marks to each of the attributes of candidates, such as, educational qualifications, the ownership of land, location of the land, etc., and after the initial process of selection, the candidates were also subjected to oral interview and percentage of marks were given to oral interview. Final selection was based on marks secured in both categories. This selection process was subjected to criticism and litigation. It is not uncommon that these selections were subject to challenge before the Courts. Most of the time, the allegations were on improper awarding of marks on various attributes and boosting the eligibility of candidates by awarding indiscriminately higher marks in the interview etc. Criticism mounted on the ground that interview method was misused to propel the chances of a candidate. There were also complaints of improper awarding of marks on various attributes.

48. Having realized the short comings in the earlier selection process and in order to eliminate/reduce the discretionary area in the selections, the present method is evolved. Rigorous selection procedure is prescribed before short listing. As per the present method, the various requirements are to be fulfilled by the candidates applying and after initial scrutiny and once they satisfy the required qualifications and eligibility criteria, they were all put together. All candidates who are short-listed are equally eligible for final selection. From out of the qualified persons, required numbers of persons are picked up by way of draw

of lots. As all the short listed candidates stand on par, picking few out of many would not amount to discriminatory selection.

49. Draw of lots system is adopted since earlier system i.e., interview as part of selection procedure was subject of object criticism. The respondent companies assume that the system would eliminate the scope of individual discretion. It intends to eliminate the allegations of bias or preference. Elaborate mechanism is prescribed in conducting draw of lots and the entire exercise is also video graphed. Sufficient safeguards are incorporated in the selection process by draw of lots. Therefore, everyone has an opportunity of seeing the manner in which the draw of lots is conducted. In this manner, a new system is evolved by the respondent companies. This system is to be tested and if there are any deficiencies/shortfalls in their enforcement that can be looked into. This system is at the nascent stage and be given an opportunity to observe its effectiveness in eliminating the personal choice of selection.

50. It cannot be said that the selection procedure is vitiated warranting interference by this Court. It may be true that the earlier selection procedure was in force for a long time. But fact remains that there have been grievances of improper selection by the non-selected candidates. Difference between the candidates was marginal and scope of boosting the performance of a candidate in the interview could not be ruled out. Every selection method has advantages and disadvantages. Unless the new selection process is tested, it cannot be said that selection is vitiated. As contended by the learned senior counsel, in the financial sector and in business sector, the trial and error method is acceptable method of testing the policy and the companies have decided to experiment the new method of selection and as long as the method introduced is uniformly applied to all, the same cannot be interjected.

51. In *Bajaj Hindustan Limited*, Supreme Court held:

40. Economic and fiscal regulatory measures are a field where Judges should encroach upon very warily as Judges are not experts in these matters. The impugned policy parameters were fixed by experts in the Central Government, and it is not ordinarily open to this Court to sit in appeal over the decisions of these experts. We have not been shown any violation of law in the impugned notification or press note.

41. The power to lay policy by executive decisions or by legislation includes power to withdraw the same unless it is by mala fide exercise of power, or the decision or action taken is in abuse of power. The doctrine of legitimate expectation 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 within the executive or legislative power. In matters of economic policy, it is settled law that the court gives a large leeway to the executive and the legislature. Granting licences for import or export is an executive or legislative policy. The Government would take diverse factors for

formulating the policy in the overall larger interest of the economy of the country. When the Government is satisfied that change in the policy was necessary in the public interest it would be entitled to revise the policy and lay down a new policy.

52. It is for the respondent companies to adopt procedure of selection as deemed proper in the interests of the respondent companies and in the larger interests of the consumers. The selection procedure adopted by the respondent companies cannot be held as arbitrary and discriminatory. The new selection process now introduced is uniformly applicable to all the candidates. The respondent companies have competence and authority to determine the method of selection. In the facts of the case, it cannot be said that present selection method can be classified as one of lottery. Selection by draw of lots in matters concerning distribution of state largess is acceptable method of selection of prospective candidate.

53. As noticed above, the Ex-servicemen and War-widows challenge the conditions of eligibility, change in the percentage of reservation to Ex-servicemen/War-widows and method of selection. Respondent companies defend their action contending that on account of introduction of reservation to OBCs, it become necessary to change the percentage of reservation and the Ex-servicemen quota is reduced and they are clubbed with other similarly situated government employees category and that it is necessary for the candidates to fulfill the eligibility criteria as without the said qualifications and eligibility, they will not be able to do service and service to the consumers is primary motto of the respondent companies and that certain changes in selection procedure is also necessitated in view of the widespread criticism received on the earlier selection procedure. These are being in the realm of policy decisions taken by the respondent companies, the scope of judicial review is restricted. Various clauses in the selection notification are assailed as those clauses do not serve the interests of petitioners. The legitimate policy choice of respondent companies must prevail over any incidental or collateral prejudice that the petitioners might suffer. Recruitment/selection policy cannot be interdicted on the ground that interests of a group of people are affected. Such policy can be interdicted on the touch stone of inherent lack of jurisdiction, Arbitrary offending the mandate of Article 14 read with Article 15 and mala fide exercise of power. None of these parameters are satisfied in this case.

54. In Joint Action Committee, Supreme Court held as under:

31. It is a question of challenging the public policy and it is well settled that public authorities must be given a very long rope, full freedom and full liberty in framing policies, though the discretion of the authorities cannot be absolute and unqualified, unfettered or uncanalised. The same can be the subject-matter of judicial scrutiny only in exceptional circumstances where it can be shown to be arbitrary, unreasonable or violative of the statutory provisions. More so, the courts are not well equipped to deal with technical matters, particularly, where

the decisions are based on purely hypertechnical issues. The court may not be able to consider competing claims and conflicting interests and conclude on which way the balance tilts.

55. On the above analysis and on consideration of precedents cited at the bar, it cannot be said that the new selection procedure, eligibility criteria and reservation principles adopted by respondent companies are patently illegal warranting inference by this court in exercise of its extraordinary jurisdiction under Article 226 of the Constitution of India. Thus, the issues are answered against the petitioners and in favour of respondent companies.

56. I therefore see no merit in the contentions urged by the learned counsel. The writ petition fails. It is accordingly, dismissed.

Miscellaneous petitions if any pending in the writ petition, shall stand closed.