

(2022) 06 CAL CK 0082

In the Calcutta High Court

Case No : WPO No. 431 Of 2017, IA No. GA 1 Of 2017 (Old No. GA 2860 Of 2017)

Kanchan Choudhary & Ors.

APPELLANT

Vs

State Of West Bengal & Ors.

RESPONDENT

Date of Decision : 24-06-2022

Acts Referred:

Constitution Of India, 1950 — Article 14
Mineral Concession Rules, 1960 — Rule 39
Essential Commodities Act, 1955 — Section 3(i)(f)

Citation : (2022) 06 CAL CK 0082

Hon'ble Judges : Amrita Sinha, J

Bench : Single Bench

Advocate : Shyamal Sarkar, Kumar Gupta, Rajesh Kumar Gupta, Nibedita Pal, Sonam Ray, Sirsanya Bandopadhyay, Arka Kumar Nag, Sukumar Sarkar

Final Decision : Dismissed

Judgement

Amrita Sinha, J

The petitioners are ration card holders of different districts in the State of West Bengal. They get supply of Superior Kerosene Oil ('SKO' in short) under Public Distribution System according to their entitlement under the West Bengal Kerosene Control Order, 1968.

The petitioners claim to file the present writ petition for the benefit of the ration card holders of different districts in the State in a representative capacity.

The petitioners are aggrieved by the notification dated 11th July, 2017 published by the Principal Secretary and Commissioner, Food and Supplies Department wherein the policy of distribution of SKO has been published.

The petitioners submit that the said policy came to be published in compliance of the direction passed by this Court on 15th June, 2016 in WP 7841 (W) of 2016 with WP 25 of 2007 with WP 1131 of 2010 affirmed by the Hon'ble Appeal Court

on 27th January, 2017 in GA 209 of 2017; APO 218 of 2016 arising out of WP No. 25 of 2007.

By the said order the Court directed the State respondents to frame a rational policy for distribution of kerosene oil to all the districts and hills areas in the State including Kolkata and Bidhannagar. The Court further directed that at the time of framing such policy, the State, for maintaining parity and rational distribution, shall consider requirement of SKO on account of i) availability of electrical power in remote areas ii) cold climatic situation and other geographical conditions, iii) irregular power supply/low voltage power supply and iv) persons having/not having LPG connections.

The petitioners submit that the impugned notification is contrary to and in violation of the direction passed by the Court on 15th June, 2016. The yardstick specified by the Court was not considered. Reasons have not been assigned for higher allotment of SKO in respect of a couple of districts. The notification is discriminatory and creates various classes within a single class. The impugned notification ought not to be acted upon as the same has not been published in the Official Gazette. Instead of creating parity and removing discrimination, the impugned notification creates hostile discrimination contrary to Article 14 of the Constitution of India. Neither parity nor rationality has been maintained while issuing the impugned notification.

The impugned notification has discriminated in scale of distribution of SKO to the ration card holders and has thus infringed the fundamental rights of the ration card holders. The same has been issued without considering the requirement of SKO.

There is no intelligible differentia in classifying the ration card holders in separate classes. The notification is beyond the legislative competence of the State Government and offends the delegating notification. The same is contrary to and in violation of the provisions of the Essential Commodities Act, 1955. Prior concurrence of the Central Government has not been obtained prior to publication of the impugned notification.

The petitioners pray for issuance of a writ of Mandamus, inter alia, praying for quashing the impugned notification.

In support of the aforesaid stand the petitioners rely upon the notification dated 30th November, 1974 published by the Ministry of Industry and Civil Supplies (Department of Civil Supplies and Cooperation) in the Gazette of India (Extraordinary) on 30th November, 1974 wherein it has been mentioned that all orders under Clause (f) of Section 3(i) of the Essential Commodities Act, 1955 shall require prior concurrence of the Central Government.

It has been submitted that as the notification has been published without taking any prior concurrence of the Central Government accordingly the same cannot be treated to be a valid one and as such cannot be acted upon.

In support of the aforesaid stand the petitioners rely upon the judgment delivered by the Hon'ble Supreme Court in the matter of District Collector, Chittoor & Ors. -vs- Chittoor District Groundnut Traders' Association, Chittoor & Ors. reported in (1989) 2 SCC 58 wherein the Court held that a delegate is not entitled to exercise powers in excess or in contravention of the delegated powers. If any order is issued or framed in excess of the powers delegated to the authorities, such order would be illegal and void.

State respondents have opposed the prayer of the petitioners. According to the respondents the petitioners cannot move the writ petition in a representative capacity as there is no commonness of interest among the card holders of the districts.

Learned advocate for the State respondents submits that all the card holders of the district are necessary and proper parties as any order passed in favour of the writ petitioners would affect the interest of the other card holders of the different districts/areas. In the absence of all the card holders, the writ petition suffers from non-joinder of necessary and proper parties.

It has been submitted that the writ petitioners do not have any legal right to move the instant writ petition. In the absence of a judicially enforceable right the petitioners cannot claim themselves to be an aggrieved party.

It has been submitted that the classification that has been made by the State in the matter of allocation of SKO is not arbitrary, unreasonable or in violation of Article 14 of the Constitution.

It has been contended that the State has framed the policy in strict accordance with the direction passed by the Court and the parameters laid therein.

It has been submitted that a detailed survey was conducted by the State and the classification was made after adopting a reasonable/rational and well-informed approach. Taking such policy decision is within the exclusive domain of the administrator and involves technical expertise. The Court ought not to decide whether a more reasonable decision could have been taken or not. No extraordinary circumstances have arisen to interfere with the policy and replace the same with another policy without any proper survey and collection of data.

The scope of judicial review in dealing with policy matters of this State is extremely limited. The decision of an expert ought not to be scrutinised by the non-expert Court. The advantage of expertise lies with the agencies who conducted the survey and the Court ought not to interfere with the same.

It has been submitted that the ration card holders identified as poorer sections have been selected for a higher allocation per month (@ 600 ml. per head) than others (@ 150 ml. per head). People living in geographically difficult and backward areas identified by specific parameters have been allowed a still higher scale (@ 1000 ml. per head).

Out of the 12 blocks of Cooch Behar district, five blocks are selected as poorer on the basis of a combination of three parameters, viz. a) higher SC-ST percentage, b) higher number of AAY families and c) lower percentage of electricity connection.

The policy has been based on two selection paradigms – first at the micro level and second at the macro level. The micro level selection was based upon the fact as to whether the ration card holders can be treated as poor people in need of higher PDS articles as per the Socio-Economic Caste Census. At the macro level it was considered whether a particular administrative unit is disadvantaged in terms of SC/ST concentration, access to electricity and LPG, forest coverage, tea gardens and other climatic conditions.

Alipurduar was selected to receive special scale at the rate of 1000 ml. per head per month as the said district has the highest forest coverage and tea gardens.

Certain gram panchayats located in the industrial area of Paschim Bardhaman and the agrarian area of Purba Bardhaman were selected for higher allocation depending upon the high percentage of degraded forests or laterite soil, low percentage of irrigated land together with very low livelihood opportunities for a population having substantial percentage of SC/ST members. The Jungle Mahal blocks comprising of Raipur, Serenga, Ranibandh and Simlapal in the district of Bankura mostly having heavy forest coverage, undulating landscape unsuitable for farming and unavailability of livelihood opportunities was allocated special scale on account of their remoteness.

The hill areas could not be selected for special scale because of more than 100% coverage of LPG as reported by the Oil Marketing Companies and as because subsidised SKO has not been recognized for heating purpose by the Government of India.

All ration card holders getting special package of foodgrains that is rice @ Rs. 2/- per Kg is eligible for the special scale of 1000 ml. per head per month.

It has been denied that the policy cannot be given effect to without publication of the same in the Official Gazette. It has also been denied that the notification is contrary to and in violation of the provisions of the Essential Commodities Act, 1955 as alleged or at all. It has been denied that the impugned notification creates any hostile discrimination and the same does not have any parity or rationality.

In support of the aforesaid stand the respondents rely upon the judgment delivered by the Hon'ble Supreme Court in the matter of Mani Subrat Jain -vs- The State of Haryana reported in (1977) 1 SCC 486 (paragraph 9).

Respondents also rely upon the judgment delivered by the Hon'ble Supreme Court in the matter of Shri Sitaram Sugar Co. Ltd. -vs- Union of India reported in (1990) 3 SCC 223 (paragraphs 59 and 60) on the issue that policy decisions taken in the best interest of the general public is exclusively within the province

of the government. Such matters do not ordinarily attract the power of judicial review.

Decision delivered by the Hon'ble Supreme Court in the matter of Premium Granites -vs- The State of Tamil Nadu reported in (1994) 2 SCC 691 (paragraph 54) has been relied upon by the respondents on the issue that it is not the domain of the Court to embark upon uncharted ocean of public policy in an exercise to consider as to whether a particular public policy is wise or a better public policy can be evolved. Such exercise must be left to the discretion of the executive and legislative authorities as the case may be.

On the aforesaid issue the respondents have also relied upon the three-judge decision of the Hon'ble Supreme Court in the matter of State of Madhya Pradesh -vs- Narmada Bachao Andolan & Anr. reported in (2011) 7 SCC 639 (paragraph 36).

Reliance has also been placed upon the judgment delivered by a three-judge Bench of the Hon'ble Supreme Court in Balco Employees' Union (Regd.) -vs- Union of India & Ors. reported in (2002) 2 SCC 333 (paragraphs 46 and 92).

Reliance has further been placed upon a three-judge decision delivered by the Hon'ble Supreme Court in the matter of Census Commissioner & Ors. -vs- R. Krishnamurthy reported in (2015) 2 SCC 796 (paragraph 33).

Reliance has also been placed on the judgment delivered by the Hon'ble Supreme Court in the matter of Jal Mahal Resorts Pvt. Ltd. -vs- K.P. Sharma & Ors. reported in (2014) 8 SCC 804 (paragraphs 138 and 139) wherein the Court held that the Courts although would be justified in questioning a particular decision if illegality or arbitrariness is writ large on a particular venture, excessive probe or restraint on the activity of a State is bound to derail execution of an administrative decision even though the same might be in pursuance of a policy decision supported by other cogent materials like survey and search by a reliable expert agency of a State after which the State project or private and public partnership project is sought to be given effect to.

The respondents heavily rely upon the judgment delivered by the three-Judge Bench of the Hon'ble Supreme Court in the matter of Tata Cellular -vs- Union of India reported in (1994) 6 SCC 651 (paragraphs 82 and 94).

The respondents also rely upon the judgment delivered by the Hon'ble Division Bench of this Court in the matter of Jharna Sarkar & Anr. -vs- State of West Bengal & Ors. reported in (2007) 1 CHN 514 wherein the Court held that in the matter of distribution of superior kerosene oil in the State of West Bengal the Kerosene Control Order, 1968 is the guide.

In reply to the submissions of the State respondents the petitioners have tried to distinguish the ratio laid down by the Hon'ble Court in the judgments referred to by the State.

In reply to the proposition laid down in the matter Mani Subrat Jain (supra) it has been submitted that the same is a very settled proposition of law. It has been submitted that the petitioners do have the locus standi and the legal right to file the writ petition.

The petitioners rely upon the judgment delivered by this Hon'ble Court in the matter of Nand Kishore Sonkar -vs- Howrah Municipal Corporation & Ors. reported in 2005 (3) CHN 140 (paragraphs 51-53) wherein the Court held that the traditional rigours on the concept of locus standi have been substantially watered down by the apex court in a series of judgments specially in the field of public law proceedings. Today the concept of locus in public law proceedings are decided on facts and in the interest of justice and not on any pre-conceived archaic rule of Anglo Saxon Vintage. When unfair treatment in violation of Article 14 is the complaint, it is the Court's duty to examine the grievance and reach a finding on merits. The Courts ought not to remain a mute spectator to injustice and unfairness indulged by the State or its agencies.

In reply to the ratio laid down in Shri Sitaram Sugar Co. Ltd. (supra) the petitioners rely upon paragraphs 45 and 46 of the said judgment and submits that the issue therein relates to price fixation and accordingly the ratio laid down in the said judgment cannot be made applicable in the facts and circumstances of the present case.

With regard to the ratio laid down in Premium Granites (supra) it has been submitted that Rule 39 of the Mineral Concession Rules was under challenge in the said matter and it was in consideration thereof that the decision of the Court was passed. The facts of the case being different from the facts of the present case the ratio laid down therein cannot be made applicable herein.

With regard to Balco (supra) it has been submitted that the Court can very well interfere with a policy of the State if there is any illegality committed in the execution of the policy or the same is contrary to law or mala fide. It has been submitted that the impugned notification is absolutely contrary to the order and the guidelines laid down by the Court and as such the impugned notification is liable to be struck down.

With regard to the decision in the matter of Jal Mahal (supra) paragraphs 132 and 142 has been relied upon by the petitioners. It has been submitted that the facts of the present case do not fit into the facts of the aforesaid case wherein the terms and conditions of a deed of lease was under scrutiny.

With regard to Tata Cellular (supra) paragraph 83 has been relied upon by the petitioners. It has been submitted that the Court can exercise power of judicial review to see whether the decision making body acted fairly and in accordance with law. If the decision making body is influenced by considerations which ought not to influence it, or fails to take into account matters which it ought to take into account, the Court will interfere. If the decision making body comes to its decision on no evidence or comes to an unreasonable finding - so unreasonable

that a reasonable person would not have come to it – then again the Courts will interfere. If the decision making body goes outside its powers or misconstrues the extent of its powers, then too, the Courts can interfere.

It has been submitted that the impugned notification has been influenced by considerations which are contrary to the guidelines framed by the Court relying upon which the impugned notification was published.

The respondents pray for dismissal of the writ petition.

Learned advocate for the private respondents adopts the submissions made on behalf of the petitioners.

I have heard and considered the submissions made on behalf of all the parties.

Though the impugned notification dated 11th July, 2017 does not specifically mention about the order in compliance of which the said notification came to be published, but in no uncertain terms it has been admitted by the State respondents that the impugned notification was indeed published in compliance of the order passed by the learned single judge on 15th June, 2016 affirmed by the Hon'ble Division Bench on 27th January, 2017.

The learned single judge directed the State respondents to form a rational policy for distribution of kerosene oil to all districts and hill areas in the State and to consider certain aspects at the time of fixing up the policy so that parity and rational distribution can be maintained. The learned single judge categorically laid down that at the time of framing the policy the guidelines indicated therein shall be considered. The Hon'ble Division Bench affirming the order passed by the learned single judge observed that the Court has laid down some guidance for framing the policy.

It is true that the Court not being an expert could not have framed the policy itself. The Court laid down certain guidelines relying on which the policy came to be framed. The guidelines laid down by the Court can certainly not be taken to be an exhaustive one. It has to be taken as an illustrative one as framing the guidelines for a policy requires definite fact finding, data collection and valid and legitimate inputs from the experts.

According to the respondents, the opinion of the experts along with the guidelines given by the Hon'ble Court was duly taken up for consideration at the time of framing the policy. Factors regarding concentration of SC/ST population, forest coverage, hill areas, LPG connections, non-agricultural topography, left wing extremist dominated areas and the under-developed areas like Jungle Mahal and Sunderbans were also taken into consideration at the time of framing the policy. Definite records and data, facts and figures were relied upon by the respondents for framing the policy.

According to the petitioners, the respondents ought to have taken into consideration case of individual persons having/not having LPG connections.

Instead of the same, the respondents have taken into consideration the LPG coverage or the number of LPG connections in an area. It has been submitted that in the metropolitan city and also in the developed areas of the State there are several consumers having multiple LPG connections, the same cannot be an indicative factor for deciding as to whether people of the said area is entitled to receive more kerosene oil supply than the regular ones.

The aforesaid contention, in my opinion, cannot be said to be a good and valid reason for interfering with the impugned policy. Individual interest ought not to be the determining factor when greater public interest is involved. Similarly, greater public interest cannot be sacrificed at the alter on account of an alleged error in framing a public policy.

Moreover, none of the individual party has approached the Court highlighting such grievance. As and when an aggrieved party approaches Court then individual cases may be looked into; but prior to that, interfering with the policy at the instance of parties without any independent grievance, will in my opinion, not be proper. The same will amount to embarking upon a roving enquiry to fish out evidence against the policy with the sole intention of dislodging the same. Occasion has not arisen, as of now, not to accept the data collected and the inputs given by the experts. Something more than what has been contended by the petitioners is required to displace the policy.

The State respondents have contended that parity and rational distribution cannot go hand in hand. The State has framed the policy keeping in mind the idea of equitable distribution of the PDS item. The petitioners do not have any legal right to claim a particular quantity of SKO. Unless the petitioners are able to demonstrate that they are entitled to a definite quantity of SKO, the petitioners cannot seek for issuance of a writ of Mandamus in their favour.

The present writ petition has been filed by thirteen petitioners residing in the district of South 24 Parganas, North 24 Parganas, Howrah and Kolkata. The allotment of SKO in respect of different districts is different. Any order passed in the present writ petition will invariably affect the right of the consumers of the other districts who are not parties in the present writ. Different sections of the society in the same district are also entitled to a different quantity of SKO. The writ petition, as such, suffers from non-joinder of necessary and proper parties. Any order passed herein will be prejudicial to the interest of persons not arraigned as party respondents in the present writ.

The submissions of the petitioners praying for moving the writ petition in the representative capacity also cannot be accepted by the Court. No notice of filing the writ petition was given to the persons whose interest and cause the petitioners seek to espouse.

The petitioners, however, can maintain the writ petition in their individual capacity; but till the petitioners are able to satisfy the Court that there has been any palpable illegality in framing the policy, the prayer of the petitioners cannot

be entertained. The ratio laid down in *Nand Kishore Sonkar* (supra) also does not come to the aid of the petitioners.

Even after exercise of the supervisory jurisdiction in review, the Court fails to accept the reasoning given by the petitioners seeking interference with the policy. The petitioners' grievance that the Court's order was not followed at the time of framing the policy, also remain unsubstantiated. The Court does not have the expertise to arrive at a decision whether a better policy could have been evolved or not, but the Court is sure that in the given situation with such huge population with varied financial, locational, geographical and social difference coupled with various other factors, framing a fool proof policy, suiting everybody's interest is practically implausible. It cannot be taken for granted that everyone's need would be taken care of in a single policy. Individual grievance can be redressed as and when such a case arises. As long as the policy is framed keeping in mind the greater public interest, it will not be proper for the Court to interfere with the same. The expectation of an individual consumer to receive higher quantity of SKO cannot and ought not override the public interest involved in framing the policy for public distribution of the ration item.

It has already been observed by the Court that the impugned policy was adopted based upon certain evidences and data collected by the concerned authority, prior to framing the policy. As the policy has been framed upon consideration of relevant data and evidences of the public in general, accordingly solitary instance of inconvenience cannot be taken into consideration for deciding the validity and effectiveness of the impugned policy. While dealing with the public policy the convenience of the public in general is primarily taken into consideration. However, an individual who is aggrieved by the policy may approach the authority for redressal. Individual inconvenience ought not to be the deciding factor for interfering with a public policy.

The submission of the petitioner that the impugned notification has not been published in the official gazette and as such it cannot be acted upon cannot be accepted by the Court. The impugned notification contains the policy of distribution of SKO. The same has been issued under the provisions of the Kerosene Control Order, 1968 and the same ought not to be taken to be published strictly under Clause (f) of Section 3(i) of the Essential Commodities Act, 1955. It does not appear that there is any legal requirement of publishing the policy in the official gazette. No such provision of law has been produced before this Court requiring publication of the policy in the official gazette prior to giving effect to the same.

The submission of the petitioner that there has been violation of Article 14 also cannot be accepted by the Court. It is settled law that there may be reasonable classification and unless the said classification is absolutely unreasonable, the Court ought not to interfere with the same. Article 14 prohibits hostile discrimination and not reasonable classification. The manner in which areas have been classified for distribution of SKO does not appear to be absolutely

unreasonable or discriminatory requiring interference. The classification appears to have been made relying upon available data and evidences.

From the discussions made herein above it does not appear that the impugned policy was adopted contrary to the order passed by this Court. It appears that the parameters laid down by the Court were duly followed. Over and above the same, other evidences were also considered and thereafter the policy was ultimately framed. The Court, accordingly, refrains from interfering with the same.

The writ petition accordingly fails and is hereby dismissed.

Urgent photostat certified copy of this judgment, if applied for, shall be given to the parties as expeditiously as possible on compliance of all necessary formalities.