
(2010) 05 AHC CK 0336
In the Allahabad High Court
Case No : C.M.W.P. No. 26195 of 2010

Muneem Ahmad

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 10-05-2010

Acts Referred:

Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 — Section 43
Companies Act, 1956 — Section 3
Constitution of India, 1950 — Article 39

Citation : (2010) 5 AWC 5082

Hon'ble Judges : Sunil Ambwani, J; Kashi Nath Pandey, J

Bench : Division Bench

Advocate : Suresh Chandra Verma and Deepak Gaur, for the Appellant; C.S.C., for the Respondent

Final Decision : Dismissed

Judgement

Sunil Ambwani and Kashi Nath Pandey, JJ.—Heard Shri Suresh Chandra Verma, learned Counsel for the Petitioner. Learned Standing Counsel appears for the State Respondents.

2. By this writ petition, the Petitioner has challenged the reservation for blind persons to run fair price shops under the Public Distribution Scheme vide Government Orders dated 17.8.2002, as clarified by Government order dated 12.8.2008 issued under the U.P. Scheduled Commodities (Distribution) Order 2004. He has also challenged the Government order dated 12.8.2008 in so far it provides for reserving the Gaon Sabhas filling up the backlog for such disabled persons on priority by giving first preference to blind persons, and to select a person from the block, if no blind person of the village applies for allotment. The challenge is made on the ground that a blind person cannot run the fair price shop. The Petitioner has relied upon definition of "Agent" and "Person" in the Control Order in Clauses 3 and 4, and Clause 26, which prohibits the transfer of the agency or appointment of sub-agent. Clause 2(c). Clauses (q), 3, 4 and

Clause 26 of the Control Order, 2004 are quoted as below:

2 (c) "Agent" means a person or a co-operative society or a Corporation of the State Government authorised to run a Fair Price Shop under the provisions of this order:

(q) "Person" means an individual, a partnership firm, a Co-operative Society or Company incorporated under the Companies Act, 1956;

3. Setting up of fair price shop.--With a view to effecting fair distribution of scheduled commodities the State Government may issue directions u/s 3 of the Act to set such number of fair price shops in an area and in the manner as it deems fit.

4. Running of fair price shop.-

(1) A fair price shop shall be run through such person and in such manner as the Collector, subject to the directions of the State Government may decide.

(2) A person appointed to run a fair price shop under Sub-clause (1) shall act as the agent of the State Government.

(3) A person appointed to run a fair price shop under Sub-clause (1) shall sign an agreement, as directed by the State Government regarding running of the fair price shop as per the draft appended to this order before the competent authority prior to the coming with effect of the said appointment.

26. Ban on Transfer of Agency.--No person authorized as agent by the competent officer shall appoint as sub-agent or transfer his agency to any other person by any means whatsoever and no person other than the person authorised as agent shall carry on business either as a sub-agent or as a transferee from the agent or otherwise on behalf of such agent.

3. It is submitted that a "person" defined in Clause 2(c) and Clause 2(q) may include an individual, but that such an individual, taking into account the nature of the business activity of a fair price shop, cannot be a blind person.

4. It is submitted that a blind person is not competent to manage and run a shop. By the nature of his disability it will be difficult for him to maintain store, the stock of scheduled commodities, maintain accounts and to do public dealing. The multifarious activities of a fair price shop keeper, including supplies in different schemes and mid-day-meal scheme require a person running the shop to be educated with full ability of all functions of body and senses.

5. The "blindness" is a class of disability, with which a person may unfortunately suffer, either from birth, or on account of any disease or accident. In all the cases of partial or total blindness, a person is handicapped to perform, a few functions in life, which a person endowed with vision may be able to perform. A blind person may be differently abled, but he may be educated before he was blinded or can learn and be educated thereafter. The modern methods of learning for

blind persons allow them to read and write, maintain accounts, work on computers, and to acquire knowledge as efficiently as normal persons. There are many examples in the society, where blind persons are successfully running business and carrying on professions. The blindness, as a disability does not restrict all the functions of normal life. The running of a shop is certainly not such an activity.

6. It is contended that the delimitation of the villages can be made only on the ground of caste as it is provided for the elections of the Gram Pradhan. The reservation for physically handicapped is not under the scheme of distribution of the scheduled commodities under the Public Distribution Scheme and that by necessity the blind person will either transfer or sublet the shop.

7. The Government, while distributing the largesses, can provide for reservation for physically challenged persons. The disability of a person is not a bar to the grant of agency to distribute scheduled commodities under the Public Distribution Schemes, either under the Control Order or any other provision in law. On the contrary, the law permits such reservations from Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995.

8. In *Union of India (UOI) Vs. Devendra Kumar Pant and Others*, the Supreme Court observed that the Act of 1995, is enacted to extend helping hand to persons with disabilities so that they can lead self reliant life with dignity and freedom.

9. In *Mahinder Kumar Gupta and Others Vs. Union of India (UOI)*, Ministry of Petroleum and Natural Gas, the Supreme Court approved the reservation in grant of dealership or distributorship of petroleum products as Government largesse prescribing the eligibility criteria including physically handicapped persons. The Supreme Court relied upon Article 39(b) of the Constitution of India, which postulates that the ownership and control of the material resources of the community are to be so distributed, as to best subserve the common good. Clause (c) prevents concentration of wealth and means of production to the common detriment. Since the grant of dealership or distributorship of the petroleum products belongs to the Government largesse. The Government in its policy of granting the largesse have prescribed the eligibility criteria. In case of physically handicapped persons only three classes of persons were made ineligible in the guidelines. The Supreme Court held that the physically handicapped persons have to be treated as a class by themselves and that any person other than physically handicapped cannot claim parity with such persons.

10. In *Sh. Salil Chaturvedi and Prajwala Vs. Union of India (UOI) and Others*, the Supreme Court in a public interest litigation is monitoring the implementation of Section 43 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995. Section 43 of the Act provides:

43. Scheme for preferential allotment of land for certain purposes.--The appropriate Governments and local authorities shall by notification frame

schemes in favour of persons with disabilities, for the preferential allotment of land at concessional rates for-

- (a) house ;
- (b) setting up business ;
- (c) setting up of special recreation centres ;
- (d) establishment of special schools ;
- (e) establishment of research centres ;
- (f) establishment of factories by entrepreneurs with disabilities.

11. A direction has been issued in Prajwala's case to the State Government or local authorities for allotment of land, for various purposes indicated in Section 43 of the Act and various items indicated in it, for giving preferential treatment to the disabled persons for allotment of land at concessional rates.

12. The physically disabled persons are a class by themselves. The provision for reservation of distribution of scheduled commodities under a Government grant as a largesses, to the physically disabled persons is both a social welfare measure and an affirmative action in consonance with Section 43 of the Act of 1995 to rehabilitate physically disabled (differently abled) persons in life. The reservation conforms both to the constitutional scheme and the provisions of the Act of 1995 for disabled persons.

13. Clause 26 of the Order of 2004, prohibits sub-agency or transfer of the agency. It does not prohibit taking help of a family member, friend, or employing a person to help the disabled person to run the agency.

14. The writ petition is dismissed.