
(1998) 04 AP CK 0082

In the Andhra Pradesh High Court

Case No : Writ Petition No. 10944 of 1996 and Batch

N. Venkata Rao

APPELLANT

Vs

District Telecom Manager, Karimnagar and others

RESPONDENT

Date of Decision : 03-04-1998

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1998) 4 ALD 191 : (1998) 3 ALT 799

Hon'ble Judges : B.S. Raikote, J

Bench : Single Bench

Advocate : Mr. P. Venkata Swamy, Mr. I. Laxmikanth Rao and Mr. L. Prabhakara Reddy, for the Appellant; Mr. T. Ramakrishna Rao, Mr. P. Phalguna Rao, Mr. T. Ramulu, Mr. B. Adinarayan Rao, Mr. V.R. Avula, Addl. Senior Counsels for Central Government, Mr. S. Bhooma Gouda and Mr. Y. Venkata Satyam, for the Respondent

Judgement

1. In these writ petitions common question of fact and law arises for consideration. Hence, by passing a common judgment I am disposing of all of them.

2. There are implead petitions in three writ petitions viz., WP MP No.9312 of 1997 in WP No. 10945 of 1996, WB MP No.1375 of 1998 in WP No.11194 and WP MP No.4955 of 1997 in WP No.10943 of 1996. The petitioners in these petitions are the selected candidates in pursuance of the impugned proceedings and they are necessary parties. Accordingly, these implead petitions are allowed.

3. In Writ Petition Nos. 10943, 10944, 10945, 126S3, 12532 and 11194 of 1996 the petitioners are challenging the selection and allotment of Telephone Booths in pursuance of the notification issued by the respondent No.1, dated 17-3-1996 on the ground that the entire selection is illegal and arbitrary and that the guidelines issued by the Department of Telecommunications have not been followed. It is further stated that even though the petitioners are qualified and eligible and are more meritorious than the persons selected, the respondents have not selected

them and such action of the respondents is illegal. It is argued on behalf of the petitioners that no merit criteria is followed and no interview was conducted. On the basis of the selection list published on the notice board, they came to know that they were not selected and such non-selection of the petitioners is illegal and without jurisdiction.

4. Learned Counsel appearing on behalf of the petitioners further contended that in the counter-affidavit filed by the official respondent except stating that the guidelines have been followed, the counter docs not indicate as to what was the method that was adopted in making such selection. It is further argued that the candidates have been selected on the basis of arbitrary choice of the Selection Committee. On the other hand. Counsel appearing for the respondents contended that as per the guidelines, they made the selection on Exchange wise basis since the applications also were received as per the Exchange wise and the committee has scrupulously followed the guidelines issued by the Department of Telecommunications dated 3-8-1993 vide Memo No.TA/PR/8-1/93 and as modified vide proceedings dated 13-4-1994 in No. TA/PR/23-1/94/Vol.II. It is stated in the counter-affidavit that there are in all 195 booths available for allotment in 14 Telephone Exchanges in Karimnagar District. In pursuance of the notification dated 17-3-1996 in all 1862 applications were received by the last date (i.e. 8-4-1996) and the allotment was done according to the guidelines issued by the Department of Telecommunications. Therefore, there are no merits in the writ petitions and the same are liable to be dismissed.

5. Writ Petition No. 15933 of 1996 is filed for a writ or direction directing the respondents to allot and release the telephone connections to the petitioners in pursuance of the selection letter dated 7-5-1996 issued by the 1st respondent, by declaring the action of the respondents in not releasing the Telephone connections to the petitioners as illegal and without jurisdiction. In the affidavit filed in support of the writ petition it is stated that in pursuance of the notification dated 17-3-1996 the petitioners have applied for the allotment of the Telephone Booths and in pursuance of the proceedings dated 7-6-1996 vide letter No.P-103/JKT/96-97/16, the petitioners have been intimated that they have been selected provisionally for the allotment of STD/ISD PT connection at Jammikunta village. And in pursuance of the said letter the petitioners produced necessary certificate and thereafter the first respondent told them that necessary communication would be issued shortly. It is further stated that in pursuance of the selection letter the petitioners have purchased necessary machinery required, by investing a huge amount by borrowing from others. It is also stated that the petitioners have paid advance amounts to the owners of the leased premises towards deposit of rentals. It is further stated that petitioners 1 and 2 belong to B.C-B category and petitioners 3 and 4 belong to Scheduled Caste community and all the petitioners are educated unemployed persons belonging to Jammikunta Village. It is stated that in spite of their representations necessary Telephone connections have not been given by the respondent-Department. Therefore, this Court may be pleased to issue necessary writ or direction

directing the respondents to provide necessary Telephone connections in pursuance of the selection letter.

6. From the pleadings in Writ Petition No.15933 of 1996 and in Writ Petition No.10944 of 1996 and batch it is clear that the point that is required to be decided by me is whether the selection process conducted on 5th June, 1996 is in accordance with the guidelines issued by the respondents from time to time.

7. It is stated by the learned Counsel appearing on behalf of the respondent No.1 that all the applications received in pursuance of the notification dated 17-3-1996 were considered by the Selection Committee on 5th June, 1996. He invited my attention to the averments made in the counter affidavits in the respective writ petitions. I find that the substance of the counter-affidavits in all the writ petitions is the same. For instance, in the counter-affidavit filed in Writ Petition No.10944 of 1996, the relevant paragraph reads as under:

"I submit that the Department of Telecommunication constituted a Five Member Committee to select applicants for providing STD, Public Telephone for 195 eligible applicants. I submit that in response to the Notification, 1862 applications were received by the last dated i.e. 8-3-1996. The allotment was for 14 Telephone Exchanges in Karimnagar Secondary Switching Area and the Category-wise is as follows:

SI. No. Category Karimnagar Switching area Comprising 14 Exchanges in including Karim- nagar Exchange) Breakup of Karim- nagar Exchange

(1) Physically Handicapped 35 09

(2) SC/ST 49 21+02

(3) Ex-servicemen/War Widows: 01 Nil

(4) Retired D.O.T. Employees 02 Nil

(5) Dependants of Freedom Fighters 08 03

(6) Charitable Institutions; Hospitals Nil Nil

(7) Unemployed Educated 100 Nil

Total

195

35

I submit that in view of the guidelines, the Committee has selected 9 physically handicapped candidates and 21 SC candidates, 2 ST candidates and 3 Dependants of Freedom Fighters. I submit that the selection was based on the basis of the Certificates and other documents submitted by the applicants."

On the basis of this Counter, learned Counsel for the respondents submitted that

the selection process has been conducted as per the guidelines issued by the Department of Telecommunications. Relevant portion of the guidelines vide communication dated 3-8-1993 issued by the Department of Telecommunications reads as under:

"I. General

1. Eligibility:

Only educated unemployed persons are eligible to apply for allotment of STD/PCO's. They should produce an unemployment certificate from their local MP's/MLA's/Revenue authorities of the rank of Tahsildar and above/employment officer/Chairman or Member of Zilla Parishads/Panchayat or Village Pradhan or Secretaries of Recognised Social Organisations like Rotary Club/Lions Club etc. who have jurisdiction over the locality where the applicant resides. The educational qualifications for the applicants are:

(i) for rural areas : 8th or middle school pass and above.

(ii) for urban areas : atleast matriculate or high school and above.

Application is to be submitted in the prescribed proforma enclosing the unemployment certificate and agreeing to the terms and conditions prescribed by the Department of Telecom for the operation of STD, PCO's.

2. Selection of Bona fide persons :

A committee with a composition as given below will select the applicants for allotment of STD, PCO's after proper scrutiny and verification of bona fides. As a check against possible frauds, photocopy of the unemployment certificate may be sent by registered letter to the issuing authority with a covering letter requesting for getting it verified. The committee will allot the available number of PCO's giving preference to following categories of persons:

(a) Handicapped including blind persons.

(b) SC/ST applicants.

(c) Ex-servicemen/War Widows.

(d) Retired DOT employees or their dependents.

(e) Dependents of Freedom Fighters,

(f) Charitable Institutions/Hospitals.

The Committee will be fully authorised to allot STD, PCO's and also decide the location of new PCO's.

3. Procedure for allotment:

The Committee will meet atleast once every month depending on the amount of work relating to allotment of STD PCO to scrutinise and select the applications

from the eligible persons for STD PCO allotment.

Above guidelines have been modified by the Department of Telecommunications by issuing subsequent order dated 13-4-994. Relevant part of the subsequent order has been extracted hereunder:

".....

As regards allotment of STD PCO's among the preferential categories it is clarified that there is no specific percentage for these categories and the allotment should be so made that it covers cases as evenly as possible from all preferred categories in order of the priority determined by the allotment committee."

On the basis of these G.Os. it is contended by the learned Counsel appearing on behalf of the respondent No. 1 that guidelines issued in these G.Os. have been followed and proceedings have been accordingly issued. Relevant part of the proceedings dated 5th June, 1996 reads as under:

".....

It was also pointed out by the Chairman that the Selection of 100 candidates in general category is very high, but the members insisted that out of 195 selections, general category (unemployed educated) is 100 and it is reasonable. The list of the candidate shown in the annexure are provisionally selected and the STD PT connections will be given as and when it is technically feasible.""

8. I have given very anxious consideration to these facts. From the guidelines extracted above, it is clear that the Committee has to make selection of the candidates for the allotment of Telephone booths in respect of each exchange, since the applications are required to be submitted with reference to exchange-wise. The notification calling for the applications itself stated that the applications should be submitted exchange wise and the candidates are required to submit only one application regarding only one exchange. In other words, any candidate whoever wishes to be considered shall submit only one application in one exchange only. As per the notification there are only 14 exchanges and in every exchange there are number of booths to be allotted for the candidates.

9. The complaint of the petitioners is that the Committee has not adopted any criteria or method for the purpose of selection of the candidates and the candidates are just selected at random arbitrarily. It is the case of the petitioners that they are more eligible than the candidates who are selected and it is further submitted that even the guidelines issued by the Telecom Department also have not been followed, in selecting the candidates.

10. Counters are filed by the third official respondent regarding each exchange. Regarding the Karimnagar exchange, it is stated that there are only 195 booths in Karimnagar District and out of them 35 booths are in Karimnagar exchange proper and regarding these 35 booths, the Committee had selected 9 physically

handicapped candidates, 21 SC/ST candidates and 3 dependants of Freedom Fighters. It is further submitted that the selection was based on the basis of the certificates and documents submitted by the applicants. In order to verify the same, I directed the Counsel for the Telecom Department to produce the material or at least tabular form prepared on the basis of relative merit of the candidates either based on SSC, marks or any other criteria. It is submitted on their behalf that nothing of that sort was prepared. From this it follows that the selection has been only on random basis without preparing any list in order to find out the comparative merit of the candidates. It is submitted that either the notification or the guidelines do not provide any interview, therefore, no interview was conducted. If that is so, the Committee could have evolved a method either for short-listing the candidates or for the purpose of selection, at least the Committee could have taken into account the marks obtained by the candidates in SSC or some other economic factor or the seniority of their registration in the employment exchange etc. No such method is adopted in selecting the candidates in the Karimnagar Exchange. From this it follows that the entire selection process is arbitrary and the candidates have been selected just like that without any criteria or without any basis. Moreover, in the paragraph No.2 of the guidelines issued by the department of Telecommunications dated 24-7-1993 circulated under letter dated 3-8-1993, it is made clear that the Committee has to allot the available number of PCs, giving preference to the persons belonging to the handicapped category including blind persons, SC/STs applicants, Ex-Servicemen/or other dependants, dependants of Freedom Fighters and Charitable Institutions/Hospitals. These guidelines does not specify any reservation to any category in terms of any percentage. To avoid this kind of ambiguity only vide communication dated 13-4-1994 it is further made clear that as regards the allotment of STD PCOs among preferential categories no specific percentage for this category is made, but the allotment has to be made "as evenly as possible from all the preferred categories" in order of priority determined by the allotment committee. From this it follows that if there are candidates belonging to the preferential category the candidates belonging to general category stand excluded. In other words, if there are no candidates belonging to any one of the preferential category, those booths may be allotted in open competition. From these guidelines it appears that the allotment of these telephone booths shall be made amongst the categories of persons specified in paragraph No.2 and only in such case when candidates belonging to the preferential category are not available or they are less than the required candidates, the candidates belonging to general category may be considered. From the statement given regarding the Karimnagar Exchange it is no doubt true that none of the candidates belonging to general category has been selected, but even otherwise, the principle that from amongst the preferential category of candidates, the allotment shall be made "as evenly as possible" has not been followed. For instance, among the physically handicapped there are 93 applications out of them 9 have been allotted whereas under the category of SC/STs there are 91 applications out of them 23 were allotted and so far as the

Freedom Fighters category is concerned there are 8 applications and 3 are allotted. From these figures, it follows that the principle that the allotment shall be made in the preferential category "as evenly as possible" is not followed so far as the Karimnagar Exchange is concerned. Taking up the Korutla Exchange, I find that there are 74 applications under the category of Physically Handicapped and 8 have been selected and under the category of SC/ STs there are 47 applications out of which 2 have been selected and under the category of Freedom Fighters there are 2 applications and two have been selected. From this also, it follows that the principle that the allotment shall be made in the preferential categories "as evenly as possible" has not been followed. Moreover, I find that under the general category 22 candidates have been selected. But, when there are candidates belonging to preferential category no general candidates could have been selected in view of the guidelines. Therefore, 22 persons belonging to general category were selected as against the 74 applications belong to SC/STs etc. From this also it follows that the principle of preferential treatment to be given to the specified category is violated. So is the case with Jammikunta Exchange. Regarding this exchange there were 23 applications of the Physically handicapped persons and only one has been selected whereas there were 21 applications belonging to SC/ ST category, but four have been selected and under the General Category there are 24 applications and 5 have been selected. From this also it follows that the principle "as evenly as possible" has not been followed. When the persons belonging to preferential categories were available, no candidates belonging to general category could have been selected. But, as against 23 applications of the SC/STs, 5 general category candidates have been selected. Even regarding the Korutla Exchange and also Jammikunta Exchange no separate merit list has been prepared either on the basis of the marks in SSC, or on any other factor. From this it follows that the selection regarding even other two exchanges is arbitrary and violative of the guidelines issued.

11. On the basis of this illegality committed, the learned Counsel for the petitioners, appearing in all these writ petitions, contend that the entire selection should be set aside. However, the learned Counsel appearing for the department contended that the writ petitions relate to three exchanges only viz., Karimnagar, Korutla and Jammikunta, therefore, if the selection is to be set aside it should be set aside regarding the three exchanges only. He further submitted that regarding other exchanges no writ petitions are filed, and already allotment orders have been issued and the persons who have been allotted have already been running those booths by purchasing necessary machinery viz., computer, phone booths, furniture and by spending huge amounts required for establishing telephone booth. Therefore, the Counsel for the respondents submits that if the writ petitions are to be allowed they are to be allowed only with regard to three exchanges referred to above since the petitioners who are aggrieved belongs to these three exchanges only. I find that there is substance in this argument and in these circumstances, the selections pertaining only to these three exchanges

only are required to be set aside.

12. In WP No.15933 of 1996 it is contended that in pursuance of the selection the petitioner has already received the selection letter even before the interim orders dated 8-8-1996 were granted and that he is seeking direction of this Court to direct the respondents to allot a particular booth in pursuance of the allotment letter.

13. I have perused the allotment letter filed in the WP No.15933 of 1996 at page No.2 of the material papers. In the letter it is stated that the petitioner's candidature for allotment has been provisional and subject to technical feasibility and the petitioner was asked to produce certain certificates or documents for verification. From this it follows that this petitioner has not been given any allotment of booth and this petitioner belongs to Jammikunta Exchange. I have already held above that the selection process in Jammikunta Exchange was based on no criteria and was contrary to the guidelines, and consequently the selection pertaining to the Jammikunta Exchange is liable to be set aside. In this view of the matter, the selection of this petitioner also stand cancelled. For these reasons, this writ petition has to fail. Accordingly, I pass the order as under :

Writ Petition Nos. 10944, 10945, 11194, 12532, 12683 and 10943 of 1996 are allowed and selection of the candidates regarding the allotment of telephone booths pertaining to Karimnagar, Korutla and Jammikunta exchanges is hereby set aside and the respondents and the Committee are hereby directed to consider the cases of the petitioners and others on the basis, of the tangible criteria keeping in view all the guidelines issued by the Telecom Department. This exercise shall be made within a period of one month from the date of receipt of a copy of this order, regarding only those applications received in pursuance of the notification dated 17-3-1996 issued by the Telecom Department. Consequently, the Writ Petition No.15933 of 1996 is hereby dismissed. No costs.