

(2004) 05 GAU CK 0020

In the Gauhati High Court

Case No : Writ Appeal No's. 206 and 229 of 2003

Oil India Ltd. and Another

APPELLANT

Vs

Prabhat Saikia and Others

RESPONDENT

Date of Decision : 18-05-2004

Acts Referred:

Constitution of India, 1950 — Article 14, 15, 16, 16(1), 16(2)

Citation : AIR 2005 Guw 130 : (2004) 3 GLT 19

Hon'ble Judges : P.P. Naolekar, C.J.;Ranjan Gogoi, J

Bench : Division Bench

Advocate : S.N. Sarma, Y.S. Mannan, H.B. Rao, J. Ahmed and A. Goswami, for the Appellant; A.K. Bhattacharyya, M. Singh, K.Gogoi and A. Bhuyan, for the Respondent

Final Decision : Dismissed

Judgement

R. Gogoi, J.—Clause 3(iv) of the Recruitment Policy of the Appellant-Company (Respondent in the Writ Petition) for recruitment of unskilled workmen had been put to challenge by the Respondents herein as the Writ Petitioners in the Writ Petitions, out of which the present Writ Appeals have arisen. Under the policy in force of the Appellant-Company, recruitment of unskilled workmen is confined to 3 categories of persons in the prescribed percentage. Clause 3(iv) thereof, however, imposes a prohibition on recruitment of a person belonging to a family, of which another person is already in employment with the Appellant-Company. The learned Single Judge, by judgment and order dated 11.4.2003, having held Clause 3(iv) of the Recruitment Policy to be constitutionally invalid on the ground that it introduces a discrimination based on descent which is prohibited by Article 16(2) and on that basis having passed consequential directions for consideration of the cases of the Respondents-Writ Petitioners, the Appellant-Company had preferred the present Writ Appeal. 2. We have heard Shri S N Sarma, learned Senior Counsel appearing on behalf of the Appellant and Shri AK Bhattacharyya, learned Senior Counsel appearing on behalf of the Respondents. 3. Before

proceeding any further, the categories of persons in respect of whom recruitment to the posts of unskilled workmen in the Appellant-Company has been confined by virtue of the policy in force as well as Clause 3(iv) thereof, which has been found to be constitutionally invalid, may be set out hereunder:

- (a) Land affected persons belong to operational areas of OIL-40%
- (b) Local persons hailing from districts where operation of oil is in progress - 35%
- (c) Employees children - 25%

Clauses (iv)

As per the existing policy of the company, if any candidate has any member of his/her family (father/mother/sister/brother/spouse (whether staying in joint family or otherwise) already employed in any job in the company, that candidate will not be considered for employment in unskilled category.

4. The challenge made in the Writ Petitions in respect of Clause 3(iv) of the Recruitment Policy was so made in the context of a Recruitment Drive undertaken by the Appellant-Company for filling up 295 vacancies of unskilled workmen through the Employment Exchange. The Respondents-Writ Petitioners, according to the Appellant, submitted their applications for the post without making the required declaration that a member of their family was already in service with the Appellant Company. In such a situation, the cases of the Respondents-Writ Petitioners were processed and considered and though they were selected for appointment, on subsequent discovery of the fact that they have suppressed material information with regard to employment of their relations with the Appellant-Company, appointment was not offered to them. Aggrieved, the Writ Petitions in question were filed assailing the constitutional validity of Clause 3(iv) of the Recruitment Policy. Elaborate arguments were advanced on behalf of the rival parties before the learned Single Judge fortified by voluminous case laws. The learned Single Judge after an extensive consideration of the rival cases of the parties as well as the case laws cited, came to the conclusion that Clause 3(iv) of the Recruitment Policy having made the Writ Petitioners ineligible for appointment and as such embargo was imposed by having regard to the fortuitous circumstances of being born in a particular family, a member of which was already employed with the Appellant-Company, Clause 3(iv) of the Policy introduces an ineligibility leading to discrimination based on descent which is prohibited by Article 16(2) of the Constitution. Having held as aforesaid, the learned Single Judge further took the view that as Clause 3(iv) of the policy was constitutionally invalid, the alleged suppression of the fact of employment of their relatives in the Appellant-Company, in the applications submitted by the Respondents-Writ Petitioners, would be of little consequence. The learned Single Judge was of the further view that though the writ Petitioners had participated in the recruitment process with clear knowledge of the prohibition imposed by Clause 3(iv) of the Recruitment policy, such participation would not estop the writ Petitioners from challenging the validity of Clause 3(iv).

Overruling the contentions raised on behalf of the Appellant Company that the declaration of unconstitutionality of Clause 3(iv) of the policy ought to be made prospective, the learned Single Judge further directed consideration of the cases of the Respondents-Writ Petitioners against vacant posts, without, however, causing any interference in the appointments already made. The features highlighted above, appears to be the salient aspects of the case, decided against the Appellant-Company, which needs to be considered by us in the present Appeals.

5. Shri SN Sarma, learned Senior Counsel appearing on behalf of the Appellant-Company, in course of his very elaborate arguments, has submitted that the object of Clause 3(iv) of the Recruitment Policy in so far as unskilled workman is concerned, is obvious. It is an attempt on the part of the Appellant-Company to make employment more broad based by giving employment to as many families belonging to the categories of persons for whom appointment as unskilled workman is earmarked. Each family belonging to the eligible categories under the policy should have at least one member in service of the Appellant-Company, A person, belonging to a family, having no member in employment with the Appellant-Company and another belonging to a family, which already has a member employed by the Appellant-Company, have been classified as two different categories. It is argued that keeping in mind the object behind Clause 3(iv) of the Policy, such classification is reasonable and permissible. Article 16 does not forbid reasonable classification, inasmuch as, it is the facet of Article 14. Clause 3(iv) of the Recruitment Policy, therefore, would be constitutionally permissible and the learned Single Judge has gone wrong in holding Clause 3(iv) of the Recruitment Policy to be constitutionally invalid. Mr. SN Sarma, learned Senior Counsel for the Appellant-Company has further argued that the Respondents-Writ Petitioners must be held to be estopped from challenging the validity of the allegedly offending Clause of the Recruitment Policy inasmuch as they had participated in the selection held with clear knowledge of the prohibition imposed by Clause 3(iv). He has further argued that in any case, the Respondents-Writ Petitioners having suppressed the feet of the employment of their relatives in the Appellant-Company in the applications submitted for appointment, no relief ought to be granted to them. Lastly, it is contended that even if this Court is inclined to uphold the conclusion of the learned Single Judge, the declaration of constitutional invalidity of Clause 3(iv), should be made prospectively. This, learned Counsel has argued, would be justified to take care of the cases of the persons not before this Court, who had not participated in the recruitment process on account of the prohibition imposed by Clause 3(iv) of the Recruitment Policy. Reliance has been placed in support of the contentions made on two decisions of the Apex Court in the cases of AIR India Vs. Nergesh Meerza and Others, and Air India Cabin Crew Association v. Y. Merchant 2003 6 SCC 276 Two other decisions of the Apex Court, reported in Javed Niaz Beg and Another Vs. Union of India and Another, and Saurabh Chaudri and Others Vs. Union of India (UOI) and Others, have also been pressed into service.

6. Replying to the arguments advanced on behalf of the Appellant-Company, Shri AK Bhattacharyya, learned Senior Counsel appearing for the Writ Petitioners-Respondents, has argued that Clause 3(iv) of the Recruitment Policy has been adjudged by the learned Single Judge to be ultra vires the provisions of Article 16(2) of the Constitution on the ground that it imposes a prohibition or discrimination against the Respondents-Writ Petitioner only on the ground of descent. The question of classification and the reasonableness thereof, according to the learned Counsel for the Respondents-Writ Petitioners, is a matter covered by Clause (1) and under Clause (2) of Article 16 of the Constitution, there can be no classification on the basis of the grounds mentioned therein including descent. Consequently, it has been argued by Shri AK Bhattacharyya, learned Senior Counsel for the Respondent Writ Petitioners that Clause 3(iv) of the Policy offends Article 16(2) of the Constitution and, therefore, the question of reasonable classification having regard to the object sought to be achieved by the Policy does not really arise. The question of suppression, as alleged by the Appellant-Company, even if it is assumed, would not fundamentally alter the situation as the fact/facts alleged to be suppressed, were required to be mentioned under a clause, which is constitutionally invalid. Mere participation in a selection process does not impose an absolute embargo on a candidate from challenging the selection process itself at a later stage. If the selection has been held by adoption of norms, which are constitutionally invalid, it would be open to a person, who had participated in the selection, to raise the said question. In so far as the grant of consequential relief by the learned Single Judge is concerned, Shri AK Bhattacharyya, learned Senior Counsel has argued that as additional posts were available, no fault can be attributed to the directions issued by the learned Single Judge for consideration of the cases of the Writ Petitioners-Respondents, against such vacant posts without affecting the appointments, already made.

7. The rival submissions advanced on behalf of the parties have received our most anxious consideration.

Articles 14, 15 and 16 of the Constitution are integral parts of the Constitutional scheme guaranteeing the fundamental right of equality. They supplement and complement each other. Article 16, which guarantees the right of equality in matters of employment, is a facet of the general guarantee contained in Article 14. Articles 15 and 16 really give effect to the guarantee enshrined by Article 14. While it is correct that Article 14 permits reasonable classification amongst equals, which reasonableness has to be judged by having regard to the object sought to be achieved, in so far as Article 16 is concerned, such reasonable classification is also permissible, but only to the extent, that is not prohibited by Article 16(2). The embargo imposed by Article 16(2) prohibiting discrimination on the grounds mentioned therein is absolute and there can be no classification on the basis of race, caste, descent, place of birth etc. This, in our considered view, would be the correct meaning that should be ascribed to Articles 14, 15, 16(1) and 16(2) of the Constitution having regard to the views of the Apex Court available

at para 37 in the case of State of Kerala and Another Vs. N.M. Thomas and Others, In the instant case, the learned Single Judge has found that Clause 3(iv) of the Recruitment Policy has the effect of introducing discrimination on the ground of descent. That the embargo imposed by Clause 3(iv) of the Policy excluding persons from consideration for appointment if a member of his/her family is already in the service of the Appellant Company, is a prohibition based on descent, has not been seriously challenged before us on behalf of the Appellant-Company and what has been sought to be contended is that Clause 3(iv) of the Policy embodies a reasonable classification, which, having regard to the object sought to be achieved, the Court must uphold. Notwithstanding the above, we have persuaded ourselves to delve into the exercise gone into by the learned Single Judge to reach the conclusion that Clause 3(iv) of the Policy introduces a discrimination based on descent. Clause 3(iv) of the Recruitment Policy having debarred/prohibited the Writ Petitioners-Respondents from being considered for appointment only on account of the fact that they belong to a family of which one person is already in the service of the Appellant-Company, we are of the considered view that the said Clause makes the Writ-Petitioners-Respondents ineligible for appointment only on account of their birth in a particular family and, therefore, they have been discriminated against on account of descent. The Writ Petitioners-Respondents would have been conferred appointment but for their descent and, therefore, on the core test relied upon by the Apex Court in the case of Air India Cabin Crew Association (Supra), Clause 3(iv) must be held to be contrary to Article 16(2) of the Constitution. The core test adopted by the Apex Court in the aforesaid case while adjudging a claim of discrimination based on sex, as evident from a reading of the judgment of the Apex Court, is whether female Cabin Crew would have received the same treatment with males "but for their sex".

8. Having held Clause 3(iv) of the Recruitment Policy to be constitutionally invalid, we do not find any substance in the arguments advanced on behalf of the Appellant-Company with regard to the correctness of other views taken by the learned Single Judge and the consequential directions issued. If Clause 3(iv) of the Policy is constitutionally invalid, even if the Respondents-Writ Petitioners had suppressed the required declaration to be made with regard to the employment of other members of their family in the Appellant Company, the same will be of little consequence. The fact that the Writ Petitioners-Respondents had participated in the recruitment process cannot be a sufficient ground for this Court to construe such participation as an acknowledgment of their acceptance of the validity of the said Clause of the Recruitment Policy so as to preempt them from challenging such validity. The learned Single Judge having directed for consideration of the cases of the writ Petitioners against available vacancies only we also see no infirmity with the said direction passed by the learned Single Judge.

9. For all the aforesaid reasons, while expressing our complete agreement with the conclusion reached by the learned Single Judge in the judgment under

challenge, we think it proper to dismiss both the appeals under consideration. However, having regard to the facts and circumstances of the case, we make no order as to cost.