

(2011) 05 AHC CK 0417

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 48579 of 2010

Om Prakash and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 31-05-2011

Acts Referred:

Citation : (2011) 6 ADJ 881

Hon'ble Judges : S.P. Mehrotra, J; Pankaj Mithal, J

Bench : Division Bench

Advocate : Vivek Mishra and V.C. Mishra, for the Appellant; R.K. Tiwari and C.S.C., for the Respondent

Final Decision : Dismissed

Judgement

1. Petitioners are three in number. They have filed this writ petition challenging the order dated 1.7.2010 passed by the District Supply Officer, Muzaffarnagar (respondent No. 3) classifying and reserving the unallotted 94 fair-price shops within the urban area of Muzaffarnagar in favour of general category, Scheduled Castes/Scheduled Tribes and Other Backward Class (in short "SC/ST" and "OBC") persons. The only thrust of the argument of learned counsel for the petitioner is that under the Government Order dated 17th August, 2002 (Annexure - 2 to the writ petition) which has also been relied upon by the respondents, the unallotted fair-price shops in the urban area of Muzaffarnagar are to be allotted in accordance with the reservation quota which in no case can exceed 50% of the seats/shops.

2. The pleadings of the writ petition shows that reservation of 21% in favour of Scheduled Caste, 2% in favour of Scheduled Tribe and 27% in favour of Other Backward Class, total 50% is admitted to the petitioners. Out of 41 fair-price shops, the respondent No. 3 has reserved 11 shops for SC as against 9 of their quota and 15 shops for OBC as against 11 of their quota. In this way out of 41 shops 26 shops have been reserved which exceeds the reservation limit.

3. In the supplementary affidavit dated 3.8.2010 filed on behalf of the petitioners, altogether different statistics have been given though the basic contention remains the same. It has been stated that in the urban area of Muzaffarnagar the unallotted shops are 94 in number. Out of aforesaid, 27 shops have been reserved for SC as against their quota of 20 shops, 30 shops have been reserved for OBC as against their quota of 25 shops while no allotment is proposed in favour of ST candidates against their 2% quota. Thus, out of 94 unallotted fair-price shops, 57 shops have been reserved for the SC and OBC which exceeds 50% of the reservation limit.

4. In the counter-affidavit filed on behalf of respondent No. 3 it has been clearly stated that the reservation/allotment of fair-price shop has been done strictly in accordance with the Government Order dated 17.8.2002. In Muzaffarnagar there are 16 urban areas. In these urban areas there are 307 sanctioned fair-price shops. Out of the 307 shops, 213 shops have already been allotted and are running. Thus 94 shops are open for allotment. According to sanctioned strength the quota of general category is 154 shops, that of SC and ST together is 71 and that of OBC 83 (after rounding of to the next higher number). The general category candidates already hold 115 shops, whereas SC and ST together are holding 43 shops and OBC 55 shops. In this way, only 39 fair-price shops of general category 27 shops of SC and ST and 28 shops of OBC remain unallotted. The unallotted shops reserved for SC and ST and OBC comes to $27 + 28 = 55$ and the reservation to that extent in their favour would not exceed 50% of the total sanctioned strength of the fair-price shops in the urban area. This can be better explained by means of the following chart:

5. There is no dispute that the reservation limit cannot exceed 50% of the total seats/shops available and that the rule of rounding of is applicable where the number is in fractions. In State of U.P. and Another Vs. Pawan Kumar Tiwari and Others, , the three Judges Bench of the Supreme Court approved the rule of rounding of in the matter of applying reservation. It held, if the figure arrived at by applying the percentage of quota happens to be in fraction of half or more than half of a number it shall be increased to the next higher number and if it is less than half then its value shall be ignored. It further lays down that in applying the rounding of system the general category seats cannot be reduced to less than 50% of the total seats; meaning thereby that in the event of rounding of, the number of total seats get increased, it is proper to reduce the reserved seats as reservation cannot exceed 50% of the total seats.

6. In the instant case, if the seats/shops in each category are determined as per the percentage of quota provided, on the total seats/shops i.e. 307 sanctioned shops, the general category seats/shops comes to 154; that of SC and ST together comes to 71 and OBC 83, total 154, However, this would increase the total shops to 308, and therefore, one shop from the reserved category has to be reduced which brings the number of reserved shops to 153 only. In short, on the total of 307 sanctioned fair-price shops, 154 shops would go to general category

and the balance 153 shops to the reserved categories.

7. Sri V.C. Mishra, Senior Advocate assisted by Sri Vivek Mishra, learned counsel for the petitioners argued that irrespective of the pleadings, in view of condition No. 2 of paragraph 4 of the Government Order dated 17.8.2002, 50% reservation limit has to be applied only against the unallotted 94 fair-price shops and not on the basis of the total sanctioned fair-price shops in the area.

8. The submission that the reservation in the present case has to be applied on the basis of the number of unallotted shops has to be tested logically and then legally. Admittedly, the total fair-price shops in the urban area of Muzaffarnagar which is taken as a unit, are 307 only. Out of these 307 shops the general category persons are entitled 154 shops and the remaining 153 shops together will go to the reserved categories. Now when the general category persons already hold 115 shops then only 39 more shops can be allotted to them and no more. Therefore, the argument that out of 94 unallotted shops 47 more shops be allotted to the general category is totally misconceived and cannot be accepted on simple logic.

9. In R.K. Sabharwal and others Vs. State of Punjab and others, , the five Judges Constitution Bench of the Supreme Court while considering reservation in the matter of appointment and promotion of the Engineers of the Irrigation Department of the State of Punjab laid down that, "the percentage of reservation has to be worked out in relation to the number of posts which form the cadre strength. The concept of "vacancy" has no relevance in operating the percentage of reservation."

10. The aforesaid principle laid down by the Apex Court was followed by it in the case of Union of India and others etc. Vs. Virpal Singh Chauhan etc., and it was observed as under:

The percentage of reservation has to be worked out in relation to number of posts in a particular cadre, class, category or grade (unit for the purpose of applying the rule of reservation) and not with respect to vacancies.

Even in Mangat Ram v. State of Punjab and others, (2005) 9 SCC 313, the above principle has been reiterated in the following words:

The reservation has to be worked out in relation to the post and the concept of vacancy has no relevance.

11. Thus legally also, the conclusion is inevitable that reservation has to be provided on the strength of the total seats/shops and not on the basis of vacancy/unallotted shops.

12. The relevant part of the aforesaid Government Order dated 17.8.2002 reads as under:

13. The Government Order dated 17th August, 2002 apart from the providing reservation to the extent of 21% + 2% in favour of SC and ST and 27% in favour

of OBC, provides horizontal reservation in favour of women, ex-army men/their relatives, freedom fighters and disabled persons. It also stipulates that while allotting remaining fair-price shops the reservation quota aforesaid shall be kept in mind and in achieving the said quota the existing allotment shall not be disturbed. It further envisages that urban area of the district shall be treated as one unit for the purposes of applying reservation.

14. In view of aforesaid Government Order one thing is certain that reservation in the allotment of fair-price shops has to be applied by treating all the 16 urban areas of the district Muzaffarnagar as one unit. In applying reservation in respect of the unallotted/vacant shops in the present, the quota provided for reservation has to be kept in mind though status quo in respect of existing shops will be maintained. Therefore, the number of shops to be allotted to each category of candidates is to be worked out on the basis of the total sanctioned strength of the fair-price shops in the urban area of Muzaffarnagar taking it to be a single unit.

15. The aforesaid Government Order dated 17.8.2002 speaks about the ceiling limit of 50% for the reserved category and that the allotment of the shops has to be made keeping in mind the quota provided for each category but without disturbing the allotments which have already been made. It further provides that in fulfilling the quota of various categories of reserved categories the allotment of existing shops shall not be cancelled/disturbed and fresh allotment shall be made keeping in mind the over all percentage of each of the reserved category.

16. The expression in clause (2) of paragraph 4 of the above Government Order cannot be read in isolation. It has to be read in harmony with paragraph 3 of the Government Order especially the later part of paragraph 3 of the Government Order which states that . The aforesaid part of the Government Order clearly states that the percentage of reservation provided has to be kept in mind while applying reservation in connection with the present vacant shops. Thus, it leaves no scope for argument that in allotting the vacant shops reservation has to be applied on the basis of unallotted shops. The limit of 50% in reservation referred to in clause (2) of paragraph 4 of the above Government Order is in context with the total sanctioned strength of the fair-price shops and is not referable to the vacant/unallotted shops only. This alone appears to be the true interpretation of the Government Order, if read as a whole, otherwise it may not prove to be workable. In view of above, the submission made by the learned counsel for the petitioner is misconceived and cannot be accepted. The writ petition as such is devoid of merits and is dismissed with no order as to costs.