

(2015) 05 KL CK 0015

In the High Court Of Kerala

Case No : Writ Petition (C) Nos. 19204 (J), 26208/2005, 19427/2009, 5126, 6316, 20180, 30569, 33110/2010, 9959 and 32207 of 2011

P.P. Suresh

APPELLANT

Vs

The Welfare Fund Inspector and Others

RESPONDENT

Date of Decision : 29-05-2015

Acts Referred:

Contract Act, 1872 — Section 23

Citation : (2015) 05 KL CK 0015

Hon'ble Judges : A. Muhamed Mustaque, J

Bench : Single Bench

Advocate : K. Reghu Kottappuram, for the Appellant; Sojan James, M.K. Chandra Mohandas, SCs and Muhammed Shafi, Government Pleader, Advocates for the Respondent

Final Decision : Disposed off

Judgement

A. Muhamed Mustaque, J.—These batch of writ petitions are filed by abkari workers who lost their employment due to the ban on arrack in the State as per GO(MS) No. 285/95/TD dated 20/12/1995.

2. The Government, as a welfare measure to rehabilitate the abkari workers employed in arrack shops who lost their employment due to imposition of ban, issued G.O.(Rt). No. 81/2002/TD dated 20/02/2002. By the aforesaid government order, the Government has decided that 25% of all the daily wage employment vacancies arising in the Kerala State Beverages Corporation (for short, "BEVCO") in future will be filled by the abkari workers, registered with Abkari Workers Welfare Fund Board, and who have been terminated from service due to arrack ban with effect from 01/04/1996. These writ petitions are essentially to implement the aforesaid government order.

3. There were series of litigations pertaining to rehabilitation of the abkari workers.

4. The Government issued another G.O.(Rt). No. 567/2004/TD dated 07/08/2004 thereby modifying the earlier order, G.O.(Rt). No. 81/2002/TD dated 20/02/2002 and decided to fix new criteria for rehabilitation of the abkari workers. The new criteria was that 25% of the daily wage employment vacancies arising in BEVCO should be earmarked for the dependent sons of the arrack workers, who had perished consequent on the loss of employment due to the ban on arrack.

5. The Government also amended the Kerala Abkari Shops Disposal Rules, 2002 (for short, the "Rules"). The Government brought the following amendment to Rule 4(2) of the aforesaid rules:-

"4(2). The shops so notified under sub-r. (1) above shall be such shops as are retained after abolition of certain existing shops. Grantees of privilege of such retained shops shall undertake to engage the existing workers and such eligible workers of the abolished shops who were registered with the Toddy Workers Welfare Fund Board as on 31-3-2000 and as are redeployed to their shops. Grantee of privilege shall also undertake to engage one Arrack worker of the abolished Arrack Shops of the State as would be allotted to his shop for rehabilitation, on the basis of district level seniority."

The amendment was also subject matter of challenge before this Court. Though this Court affirmed validity of the amendment, the Hon"ble Supreme Court in Kerala Samsthana Chethu Thozhilali Union v. State of Kerala [2006 (2) KLT 270 (SC)] held that Rule 4(2) of the aforesaid Rules is ultra vires.

6. The aforesaid rule, essentially, to engage one arrack worker of the abolished arrack shops of the State in the toddy shops by the grantees of privilege.

7. It is in the back drop of the above facts, the issue in these writ petitions has to be examined. It is to be noted that in all these writ petitions the subsequent G.O. (Rt). No. 562/09/TD, dated 22/06/2009 is under challenge. This order happened to be passed consequent upon the direction of this Court in W.P.(C). No. 26878/2007. By the aforesaid government order, the Government declined to implement the original order on rehabilitation of displaced Abkari workers in Toddy Shops.

8. One of the reasons stated in the impugned government order, G.O.(Rt). No. 562/09/TD, dated 22/06/2009 is as follows:

"2. Though there was a decision to reserve 25% of the daily wage employment vacancies arising in the KSBC to be filled up by the said Abkari workers, the same could not be implemented due to a variety of practical difficulties such as want of sufficient number of vacancies fixing of a suitable criteria to accommodate them, etc. Accordingly, it was decided as per Ext. P2 order (G.O. read as second paper above) to limit the reservation of 25% of the daily wage employment vacancies in the Kerala State Beverages Corporation, for the appointment of dependent sons of arrack workers who had perished consequent to the loss of employment due to the ban of arrack in the State."

Another reason stated therein was that in the light of judgment of the Hon''ble Supreme Court in Samsthana Chethu Thozhilali Union's case (supra), the petitioners cannot claim a right for appointment in Bevco.

9. The learned counsel for the petitioners point out the various findings in the judgment of this Court in W.P.(C). No. 26878/2007 dated 03/04/2009. In para. 7 of the aforesaid judgment, it is stated as follows:

"7. I find no justifiable reasons for not implementing Ext. P1 order which confers benefits to a large group of abkari workers rendered jobless from 1996. I also find no justification for limiting the benefit to a small group whose names are mentioned in Ext. P3 list."

It is further observed in para. 13 as follows:

"13. As I have stated earlier the modification of Ext. P1 order by Ext. P2 order denying employment to unemployed abkari workers cannot be justified. Government shall reconsider Ext. P2 order to the extent of denying the benefits conferred on a larger group of beneficiaries by Ext. P1 order. Government may consider that the 25% of the future vacancies shall be filled up by the beneficiaries under Ext. P1 order who are none other than the abkari workers. For the said purpose it is open to the government to modify Ext. P2 Government order so that the abkari workers who lost employment consequent to the ban of arrack can be rehabilitated. A decision shall be taken within a period of 3 months from the date of receipt of a copy of this judgment. Ext. P6 order is quashed."

10. This Court already found that non implementation of G.O.(Rt). No. 81/2002/TD, dated 20/02/2002 is not justifiable and the Government was directed to reconsider the matter to rehabilitate those workers. That rehabilitation is now being denied by the impugned government order stating that it is not possible to implement it for want of sufficient vacancies. It is to be noted that the petitioners' claim can be accommodated only if vacancies exist. Therefore, instead of accommodating the petitioners' claim for any of the future vacancies, their claim could not have been declined. The Government do not have a case that no future vacancies would arise in any of the outlet of BEVCO. Therefore, in the light of the directions of this Court in the judgment in W.P.(C). No. 26878/2007, dated 03/04/2009, I am of the view that all the petitioners shall be considered for future vacancies based on G.O.(Rt). No. 81/2002/TD, dated 20/02/2002.

11. Next ground on which the petitioners' claims have been rejected is with reference to the decision of the Hon''ble Supreme Court in Samsthana Chethu Thozhilali Union's case (supra). The above case is in fact in relation to vires of Rule 4(2) of the Rules. The above rule has nothing to do with the policy decision taken by the Government to implement government decision in government undertakings. In para. 55 of the above judgment it is observed as follows:

"55. When an employer gives employment to a person, a contract of employment

is entered into. The right of the citizens to enter into any contract, unless it is expressly prohibited by law or is opposed to public policy, cannot be restricted. Such a power to enter into a contract is within the realm of the Indian Contract Act. It has not been and could not be contended that a contract of employment in the toddy shops would be hit by S. 23 of the Indian Contract Act. So long as the contract of employment in a particular trade is not prohibited either in terms of the statutory or constitutional scheme, the State's intervention would be unwarranted unless there exists a statutory interdict. Even to what extent such a legislative power can be exercised would be the subject matter of debate but in a case of this nature there cannot be any doubt that the impugned rules are also contrary to the provisions of the Indian Contract Act as also the Specific Relief Act, 1963."

In fact, the Hon"ble Supreme Court declared that the aforesaid provision is ultra vires for the obvious reason that State has only a limited power to intervene for providing employment in non-State entities.

12. In this case, there is no dispute that State's policy is being implemented in State's own undertaking. It is for the State to decide the manner in which the appointment has to be made in that undertaking. The State having decided to rehabilitate Abkari workers as per G.O.(Rt). No. 81/2002/TD, dated 20/02/2002 cannot turn around and take a stand that the above government order cannot be implemented for want of vacancies or any other reasons. It is to be noted that there is no challenge against the judgment rendered by the learned Single Judge in W.P.(C). No. 26878/2007, dated 03/04/2009. It is also to be noted that the Government has not revoked the original order, namely, G.O.(Rt). No. 81/2002/TD, dated 20/02/2002.

13. In Home Secretary, U.T. of Chandigarh and Another Vs. Darshjit Singh Grewal and Others, (1993) 4 JT 387 : (1993) 3 SCALE 218 : (1993) 4 SCC 25 : (1993) 1 SCR 321 Supp it was held as follows:

"15. It may be relevant to emphasise at this juncture that while the Rules and Regulations referred to above are statutory, the policy guidelines are relatable to the executive power of the Chandigarh Administration. It is axiomatic that having enunciated a policy of general application and having communicated it to all concerned including the Chandigarh Engineering College, the Administration is bound by it. It can, of course, change the policy but until that is done, it is bound to adhere to it."

14. In Food Corporation of India Vs. M/s. Kamdhenu Cattle Feed Industries, AIR 1993 SC 1601 : (1992) 6 JT 259 : (1992) 3 SCALE 85 : (1993) 1 SCC 71 : (1992) 2 SCR 322 Supp it was held in para. 8 as follows:

"8. The mere reasonable or legitimate expectation of a citizen, in such a situation, may not by itself be a distinct enforceable right, but failure to consider and give due weight to it may render the decision arbitrary, and this is how the requirement of due consideration of a legitimate expectation forms part of the

principle of non-arbitrariness, a necessary concomitant of the rule of law. Every legitimate expectation is a relevant factor requiring due consideration in a fair decision-making process. Whether the expectation of the claimant is reasonable or legitimate in the context is a question of fact in each case. Whenever the question arises, it is to be determined not according to the claimant's perception but in larger public interest wherein other more important considerations may outweigh what would otherwise have been the legitimate expectation of the claimant. A bona fide decision of the public authority reached in this manner would satisfy the requirement of non-arbitrariness and withstand judicial scrutiny. The doctrine of legitimate expectation gets assimilated in the rule of law and operates in our legal system in this manner and to this extent."

15. In *Union of India and others Vs. Hindustan Development Corpn. and others*, AIR 1994 SC 988 : (1993) 3 JT 15 : (1993) 2 SCALE 506 : (1993) 1 SCALE 56 : (1993) 3 SCC 499 it was held as follows:

"The protection of such legitimate expectation does not require the fulfillment of the expectation where an overriding public interest requires otherwise. In other words where a person's legitimate expectation is not fulfilled by taking a particular decision then decision-maker should justify the denial of such expectation by showing some overriding public interest. Therefore even if substantive protection of such expectation is contemplated that does not grant an absolute right to a particular person. It simply ensures the circumstances in which that expectation may be denied or restricted. A case of legitimate expectation would arise when a body by representation or by past practice aroused expectation which it would be within its powers to fulfill. The protection is limited to that extent and a judicial review can be within those limits. But a person who bases his claim on the doctrine of legitimate expectation, in the first instance, must satisfy that there is a foundation and thus has locus standi to make such a claim. In considering the same several factors which give rise to such legitimate expectation must be present. The decision taken by the authority must be found to be arbitrary, unreasonable and not taken in public interest."

16. The reason stated for change of policy is not on account of any overriding public interest. The legitimate expectation can be bogged down only on change of policy based on overriding public interest. The want of sufficient vacancies can be a reason for non appointment but it cannot be a reason to deny a quota for appointment. The appointment would arise only when there are vacancies. In that view of the matter, the Government is bound to honour the promise made as per government order, namely, G.O.(Rt). No. 81/2002/TD, dated 20/02/2002.

17. The writ petitions are disposed of in the light of the above discussions and the following directions are issued:

i. The Government shall take necessary steps to implement G.O.(Rt). No. 81/2002/TD, dated 20/02/2002 in BEVCO for all future vacancies.

ii. Necessary orders shall be passed by the Government to implement the same

within a period of two months from the date of receipt of a copy of this judgment.

iii. There shall also be a direction to BEVCO to follow the government order as above for all future vacancies hereafter. No costs.