

(2016) 12 KL CK 0025

In the High Court Of Kerala

Case No : Writ Petition (C) No. 12956 of 2014 (T)

Sanuja B.

APPELLANT

Vs

Kerala State Beverages Corporation Ltd.

RESPONDENT

Date of Decision : 13-12-2016

Acts Referred:

Constitution of India, 1950 — Article 14, Article 15, Article 226
Kerala Abkari Shops Disposal Rules, 2002 — Rule 7(37)

Citation : (2017) 1 ILRKerala 573 : (2017) 1 KerLJ 245 : (2017) 1 KLT 44

Hon'ble Judges : Mr. Anu Sivaraman, J.

Bench : Single Bench

Advocate : Govt. Pleader Sri. P.K. Vijayamohanan, for the Respondent No. 4; Sri. Kaleeswaram Raj, Advocate, for the Petitioner; Sri. C.S. Ajith Prakash, SC and Sri. Naveen T, SC, for the Respondent Nos. 1 and 2; Sri. P.C. Sasidharan, SC, for the Respondent No. 3

Final Decision : Disposed Off

Judgement

Anu Sivaraman, J. - The petitioners in these writ petitions are challenging the constitutional validity of Clause No.37 of Rule 7 contained in Chapter VI of the Kerala Abkari Shops Disposal Rules, 2002 (hereinafter referred to as "the Rules") and the Licence Condition No.36 of the Foreign Liquor Rules. It is stated that the petitioners are persons, who had participated in the selection and had been included in the ranked list for appointment to the post of peon/helper in the Kerala State Beverages (Manufacturing & Marketing) Corporation Ltd. (hereinafter referred to as "the Corporation"). By virtue of the condition contained in Rules and Government Orders to the effect that no women shall be employed in any capacity in a toddy or foreign liquor-1 shop, the petitioners were not given appointment in their turn in the vacancies which arose in the shops under the Corporation. In W.P.(C).No.12956 of 2014, there is an additional challenge against the condition contained in the notification issued by the Kerala Public Service Commission to the effect that women will not be entitled to appointment in shop vacancies.

2. Heard learned counsel for the petitioners, the learned Government Pleader and the learned Standing Counsel appearing for the Corporation as well as the Kerala Public Service Commission.

3. The learned counsel for the petitioners would place reliance on the decisions of the Apex Court reported in *Anuj Garg and others v. Hotel Association of India and others* [(2008) 3 SCC 1], *Government of A.P. v. P.B. Vijayakumar and another* [(1995) 4 SCC 520] and *Charu Khurana and others v. Union of India and others* [(2015) 1 SCC 192], and of this Court in *Charu Khurana and others v. Union of India and others* [(2015) 1 SCC 192] and *Dhanyamol v. State of Kerala* [2015 (4) KHC 791] to contend that the condition contained in the Rules making a hostile discrimination against women candidates is bad in law. After considering the constitutional and statutory provisions as well as the case law on the point, the Apex Court came to the conclusion that restrictions based on sex cannot stand the scrutiny of law and that such prescriptions stating that women cannot be employed in the premises in which liquor or intoxicating drugs are consumed by the public are violative of the mandate of Articles 14 and 15 of the Constitution of India. Taking a similar view, similar provisions of law have been struck down by this Court as well.

4. The learned Government Pleader would submit that Rule 7 (37) of general conditions in the Rules pertains to both toddy shops as well as foreign liquor-1 shops. Rule 2(c) of the said Rules defines a toddy shop as distinct from a foreign liquor shop or outlet which is separately defined in Rule 2(k). The petitioners in these writ petitions are concerned only with appointments in foreign liquor shops run by the respondent Corporation and they are unconcerned with the restrictions on employment of women in toddy shops. It is therefore submitted that the question of legal validity of the rule regarding appointment of women in toddy shops does not arise for consideration in these writ petitions and therefore the validity of the Rule to the extent it applies to toddy shops should not be considered in these writ petitions.

5. The learned counsel for the respondent Corporation would submit that all male candidates in the main list have been appointed from the ranked list. It is submitted that without such candidates, who have already been appointed being on the party array, an order directing the appointment of all female candidates from the ranked list cannot be issued, since such a direction may result in some of the advised candidates being thrown out of service.

6. I have considered the contentions advanced on all sides. In W.P.(C).No.8958 of 2015, the prayer is against the provisions contained in the Kerala Abkari Shops Disposal Rules, 2002, the Foreign Liquor Rules and Exhibit P2 Government Order to the extent they prohibit the engagement of women in foreign liquor shops and outlets. It is stated that the conditions contained therein that women cannot be engaged in foreign liquor shops or outlets is violative of Articles 14 and 15 of the Constitution of India. The said provision under the Rule is the reason for denying appointment of the petitioner from the ranked list in spite of her

ranking therein. Since women were not being appointed against the vacancies which arose in shops or outlets by the Corporation, it is submitted that, persons who are lower down in the ranked list had been appointed only for the reason that they are male candidates.

7. In W.P.(C).No.8958 of 2015, there was an interim order dated 20.03.2015 directing the Corporation to keep one post of peon/helper vacant to accommodate the petitioner in case she succeeds in the writ petition. In W.P. (C).No.12956 of 2014, there was an interim order dated 10.04.2015 to report all vacancies of peon/helper to the PSC but interdicting further appointment from the ranked list.

8. The appointment to the post of peon in Kerala Last Grade Service and the prescriptions contained therein that the candidates should know cycling for appointment against the said post was considered by a Division Bench of this Court in Rajamma's case (supra). It was held that denial of appointment to women which was the end result of operation of the added requirement of cycling was irrational, unjust and unfair and militated against the guarantee of equality. The PSC was therefore directed to advise women also for appointment to the post of peon. The Apex Court in P.B. Vijayakumar's case (supra) considered the scope of Article 15(3) of the Constitution of India and held that the said provision contemplates reservation and affirmative action but cannot be used to perpetuate discrimination against women on the ground of sex. In Anuj Garg's case (supra) the specific provision contained in the Excise Act, 1914 (Punjab) prohibiting employment of women in premises in which liquor or intoxicating drugs are consumed by the public was considered and it was held that such a prohibition suffers from the vice of discrimination and cannot be sustained. In Charu Khurana's case (supra) the refusal of the Cine Costume and Make-up Artists and Hair Dressers Association of Maharashtra to allow women to work as make-up artists was considered and it was held that any such restriction would suffer from the vice of discrimination and could not be allowed to stand in view of the willingness of the women concerned to do the work. It was stated that every citizen was entitled to equal opportunity of consideration in the matter of employment and any restriction thereon on the ground of sex would violate Article 14 and 15 of the Constitution of India. A learned single Judge of this Court in Dhanyamol's case (supra) held, construing the Foreign Liquor Rules, 1974 (Kerala) that there is no prohibition for women being employed in bars for serving liquor and the condition incorporated for prohibiting such engagement is violative of Articles 14, 15(1), 15(3), 16(1) and 19(1)(g) of the Constitution of India.

9. Having gone through the decisions relied upon by the learned counsel for the petitioners, I am of the opinion that the condition contained in the notification and the stipulation in Rule 7(37) of the Rules as also condition No.36 contained in the Foreign Liquor Rules as well as in Exhibit P2 Government Order to the effect that women cannot be engaged to work in foreign liquor shops are

violative of Article 14 and 15 of the Constitution of India and are therefore unsustainable.

10. In the above view of the matter, there will be a direction to the Kerala Public Service Commission to advise the petitioners for appointment to the post of peon/helper in the Corporation from the ranked list immediately, in view of the fact that the persons who are lower down in the ranked list have already been appointed. This shall be done within a period of two weeks from the date of receipt of a copy of this judgment. The petitioners in these writ petitions shall be accommodated against the available vacancies without reference to whether such vacancies are in shops or otherwise. If no such vacancies are available to accommodate the petitioners, they shall be accommodated against the supernumerary vacancies and adjusted against the next arising vacancies.

11. The respondents shall also take steps to re-work the appointments made from the ranked list in accordance with the declarations given above at the earliest, in accordance with law. In view of the fact that all vacancies have already been reported to the PSC, the 3rd respondent shall also re-work the ranked list and pass orders accordingly within a period of one month from the date of receipt of a copy of this judgment.

This writ petition is ordered accordingly.