
(2015) 03 AHC CK 0004

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 50781 of 2013

Shanti Devi

APPELLANT

Vs

State of Uttar Pradesh and Others

RESPONDENT

Date of Decision : 25-03-2015

Acts Referred:

Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 — Section 32, 33

Citation : (2015) 5 ADJ 329 : (2015) 4 ALJ 472 : (2015) 110 ALR 181 : (2015) 3 AWC 2207 : (2015) 128 RD 110

Hon'ble Judges : Tarun Agarwala, J; Amar Singh Chauhan, J

Bench : Division Bench

Advocate : Pradeep Saxena, Sanjay Srivastava and Manoj Kumar Srivastava, for the Appellant; Manish Dev Singh, Advocates for the Respondent

Final Decision : Allowed

Judgement

Tarun Agarwala and Amar Singh Chauhan, JJ.—We have heard Sri Pradeep Saxena, the learned Counsel for the petitioner, Sri Manish Dev Singh, the learned Counsel for respondent No. 3 and the learned Standing Counsel for respondent Nos. 1 and 2. Since the gram panchayat failed to pass a resolution recommending any name for allotment of a fair price shop, the Sub-Divisional Magistrate issued an advertisement as per paragraph 11 of the Government Order dated 17th August, 2002 inviting applications for allotment of a fair price shop. This advertisement was issued on 7th May, 2013, which indicated that for village Kuthla the shop would be allotted to a candidate belonging to OBC (Female) category. Based on the said advertisement, the petitioner applied as she belongs to this category. The applications were processed by the Tehsil Level Committee, which found three candidates. The Committee recommended the name of respondent No. 3, Suraj Pal, S/o Babu Ram and, on this basis of this recommendation, the Sub-Divisional Magistrate passed the impugned order dated 7th June, 2013 allotting the shop in favour of respondent No. 3. The petitioner, being aggrieved by the aforesaid allotment of the shop in favour of

respondent No. 3, has filed the present writ petition.

2. The contention of the petitioner is, that the advertisement clearly indicated that the shop would be allotted to an OBC (Female) candidate, whereas the allotment of the shop has been made in favour of respondent No. 3, who is a male candidate.

3. The State Government has filed a counter affidavit and does not dispute the fact that Suraj Pal, respondent No. 3 had applied as a disabled male candidate and that the Tehsil Level Committee after considering the provision of paragraph 6 of the Government Order dated 17th August, 2002 recommended his name. Nothing has been indicated as to why a male candidate has been given the allotment, which shop was reserved for a female candidate.

4. Respondent No. 3 has filed a counter affidavit contending that he had applied as a handicapped candidate and that horizontal reservation was made applicable in the present case and, on that basis, the name of respondent No. 3 was recommended.

5. The learned Counsel for the respondent No. 3 has placed reliance upon a decision of the Supreme Court in Govt. of India through Secretary and Another Vs. Ravi Prakash Gupta and Another, (2010) 7 SCC 626 : (2011) 1 SLR 109 : (2010) 5 SLR 165 given under the Persons With Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 as well as a decision of a Division Bench of this Court in National Federation of The Blind U.P. Branch Vs. State of U.P. and Others, (2013) 7 ADJ 380 : (2013) 3 UPLBEC 2412 wherein a writ of mandamus was issued directing the Chief Secretary of the Government of U.P. to fill all vacancies including backlog quota giving opportunity to blind persons as well as to physically handicapped persons in accordance with the Rules.

6. Having heard the learned Counsel for the parties, we are of the opinion that the decision given by a Division Bench of this Court in National Federation of the Blind U.P. Branch (supra) is not applicable in the instant case. The said decision was delivered on 17th July, 2013 and a perusal of the decision indicates that the mandamus issued by this Court was only prospective in nature and could not apply to an advertisement issued prior to that date. In the instant case, the advertisement was made was issued on 17th May, 2013, whereas the decision of the Division Bench was given on 17th July, 2013. In any case, we are of the opinion that the directions to fill up the vacancies by applying horizontal reservations to physically handicapped persons, etc. can only be done pursuant to identification of posts/shops by the Government as per the provision of section 32 and 33 of the Act of 1995.

7. In the instant case, neither the State Government nor the private respondent has brought any material on record to indicate that the State Government had initiated any such exercise identifying the shops for horizontal reservations for the physically handicapped persons.

8. We find that under the impugned advertisement the shop was reserved for an OBC (Female) candidate. Assuming that horizontal reservation for physically handicapped person is applicable, we are of the opinion that such physically handicapped person can only be from an OBC (Female) candidate and not a male candidate. Consequently, for the reasons stated aforesaid, we find that the impugned order dated 7th June, 2013 allotting the shop to a male candidate respondent No. 3 for the shop, which was specifically reserved for an OBC (Female) candidate is wholly illegal and without jurisdiction. The said allotment order is quashed. The writ petition is allowed. The matter is remitted to the Tehsil Level Committee to reconsider the matter afresh on the basis of the applications received and recommend a name to the Sub-Divisional Magistrate within a period of four weeks from the date of production of a certified copy of this order. The Sub-Divisional Magistrate will pass appropriate orders within two weeks thereafter.