

(2016) 08 MP CK 0028

In the Madhya Pradesh High Court

Case No : Writ Petition No. 17111 of 2014.

Smt. Devika Shukla - Petitioner @HASH Indian Oil Corporation Ltd. and Others

Date of Decision : 23-08-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2016) AIR(MP) 207 : (2016) 4 MPLJ 391

Hon'ble Judges : Shri Sanjay Yadav, J.

Bench : Single Bench

Advocate : Shri Manikant Sharma, Advocate Counsel, for the Petitioner; Shri Aditya Adhikari, Senior Advocate with Shri Ritwik Parashar, Advocate, for the Respondent Nos. 1 and 2; Shri Ajay Oza, Advocate, for the Respondent Nos. 3 and 4; Shri R.N. Singh, Senior Advoc

Final Decision : Disposed Off

Judgement

Shri Sanjay Yadav, J. - This case is a classic example as to how a Compensatory Benefit reserved in favour of various categories for setting up L.P.G distributorships has been misutilized by tinkering with the expression "family unit".

About the Policy

2. Indian Oil Corporation, a Government of India subsidiary, has framed guidelines on selection of Regular L.P.G Distributorship.

3. That, a percentage reservation for various categories in all the State is in the following terms:

"2. Eligibility Criteria

The percentage reservation for various categories in all the States except Arunachal Pradesh, Meghalaya, Nagaland and Mizoram are as under:-

A

Open Category (O)

50.50%

B

Schedule Caste/Scheduled Tribes (SC/ST)

22.50%

C

Other Backward Classes (OBC)

27.00%

4. In each of the above categories, there will be subcategories as under:

Sub Category

Reservation Categories (in %)

SC/ST

OBC

Open

Total

Government Personnel category (GP) consisting of Defence, Central/State Govt. and Central/State PSU employees

2

2

4

8

Combined Category (CC) consisting of Physically Handicapped Personnel (PH), Outstanding Sports Persons (OSP), Freedom Fighter (FF)

1

1

2

4

Any person from the respective category

19.5

24

44.5

88

TOTAL

22.25

27

50.5

100

The reservation under respective categories is SC/ST (GP)-2%, SC/ST (CC)-1%, SC/ST-19.5%, OBC (GP)-2%, OBC (CC)-1%, OBC-24%, Open (GP)-4%, Open (CC)-2%, Open-44.5%.

State-wise "200-point" roster is maintained on Industry basis (i.e. jointly by IOCL, BPCL and HPCL) to ensure the percentage reservations as mentioned above is achieved. The Distribution between SC and ST is as per the population ratio in the respective State.

5. We are presently concerned with Government Personnel category (GP) which consist of defense, Central/State Government and Central/State Public Sector employees.

About the petitioner:

6. Petitioner in paragraph 5.1 of the petition admits that under Open (GP) category the persons who are dependents of deceased Government employee who has died during the service are eligible to submit the application. She has, however, not given her resume which has been disclosed by the Respondent No. 5 in the Return. It is contended that the petitioner is married to one Shri Devendra Sharma on 12.6.2012 which is subsisting. It is urged that, father-in-law of the petitioner was a defence personnel. There are two distributor license given by the Indian Oil Corporation in the name of Smt. Abhilasha Sharma, mother-in-law of the petitioner which are being operated at Budni, Sehore in the name of M/s. Major K.K. Filling Station and another at Badi, district Raisen in the name as M/s. Pushkar Indane. It is further stated that the petitioner's father was employed as Store Incharge and Accountant in the Department of Health, Government of Madhya Pradesh, who expired on 12.2.1996. But to take an advantage of the reservation, petitioner though married and lives in Bhopal, had purchased a property at Shahdol on 7.10.2013 for L.P.G dealership showing her as dependent of deceased father, on the basis of dependency certificate issued by Chief Medical and Health Officer, Shahdol on 7.10.2013. Evidently, these facts are not disclosed by the petitioner nor has she denied by filing rejoinder.

About respondent No. 5

7. As borne out from record, and not disputed by respondent No. 5 that, his father was Sub Inspector in Chhattisgarh Police who died on 6.9.2001 while in service. He is survived by widow and two sons, viz., Siddharth Singh and Deobrat

Singh (respondent No. 5). That on the basis of certificate of dependency issued in favour of Siddharth Singh on 17.11.2009 he was awarded RGGLV at Shyampur on said dependency certificate. Respondent No. 5, second son of late Jogendra Singh was issued a dependency certificate on 26.3.2010 by the Superintendent of Police Raipur as the dependent of late Jogendra Singh. It is on the basis whereof he applied for L.P.G dealership at location E-08 Extension/Trilanga/Gulmohar/Bawadiyakalan/Aakriti Eco City and adjoining areas, district Bhopal under open (GP) category.

The controversy:

8. Controversy emanates from non-grant of dealership in respect of location "E-08 Extension/Trilanga/Gulmohar/Bawadiyakalan/Aakriti Eco City and adjoining areas, District Bhopal to the petitioner. The advertisement wherefore floated by the respondent Indian Oil Corporation, under open (GP) category. Petitioner and two others, including respondent No. 5, applied for the dealership. The draw for said dealership took place on 13.5.2014, whereby respondent No. 5 was selected for the allotment. As respondent No. 5 had sought allotment under G.P category supported by the eligibility certificate issued by Superintendent of Police, Raipur on account of death of father of respondent No. 5, late Jogendra Singh, while in service as Sub Inspector. The petitioner submitted an objection to the effect that the brother of respondent No. 5, viz., Siddharth Singh had already taken a dealership under CC category by adducing the eligibility certificate of late Jogendra Singh and he is running dealership at Shyampur. The petitioner, it is urged, also brought to the knowledge of respondent Indian Oil Corporation various anomalies in the candidature of respondent No. 5 and requested for rejection of allotment vide communication dated 4.9.2014. The representation given by the petitioner was rejected which has led the petitioner to file this petition.

9. These facts reveal that in a family various members of family by invoking dependency clause have been taking the LPG dealership. This is because of the arbitrary interpretation of the expression "Family Unit" which finds mention in clause 6.1 v of the guidelines as under:

"6.1 Common Eligibility Criteria for all Categories applying as individual

(1) Fulfil Multiple dealership/distributorship norm as under Multiple Dealership/Distributorship norms means that the applicant or any other member of "family unit" should not hold a dealership/distributorship/RGGLV of a PSU Oil Company i.e., only one Retail Outlet/SKO-LDO dealership/LGP distributorship/RGGLV of PSU Oil Company will be allowed to a "Family Unit". However, existing SKO dealers of OMCs operating below an average allocation of 75 KL of SKO per month during the immediate preceding 12 months prior to the month of advertisement will be eligible to apply under the category of individual applicant only and if selected will have to surrender their Kerosene dealership prior to issuance of letter of appointment for LPG Distributorship. The SKO dealers

applying for Regular LPG Distributorship will have to submit documentary proof of Kerosene allocation issued by the allocating authority of the State Govt./ Divisional/Territory/Regional Office of the Oil Marketing Company, as the case may be.

The aforementioned Multiple Dealership/Distributorship norms shall also be applicable to retailers/distributors appointed by PSU Oil Marketing Companies for exclusive marketing of NDNE (Non Domestic Non Essential) LPG cylinders.

"Family Unit" in case of married person/applicant, shall consist of individual concerned, his/her Spouse and their married son(s)/daughter(s). In case of unmarried person/applicant, "Family Unit" shall consist of individual concerned, his/her parents and his/her unmarried brother(s) and unmarried sister(s). In case of divorce, "Family Unit" shall consist of individual concerned, unmarried son(s)/unmarried daughter(s) whose custody is given to him/her. In case of widow/widower, "Family Unit" shall consist of individual concerned, unmarried son(s)/unmarried daughter(s)."

10. Thus, in case of married person/applicant a family unit consists of (a) individual concerned (b) his/her spouse and their unmarried son(s)/daughter(s). And in case of unmarried person/applicant family consists of (a) individual concerned, (b) his/her parent and (c) his/her unmarried brother(s) and unmarried sister(s). In case of divorce, family unit consists of (a) individual concerned (b) unmarried son(s)/daughter(s) whose custody is given to her. In case of widow/widower, family unit consist of (a) individual concerned (b) unmarried son(s)/daughters.

11. Furthermore, clause 6.2.2 (a) II lays down Specific Eligibility Criteria for sub-category "Government and Public Sector Personnel" in the following terms:

"II. Government and Public Sector Personnel

The personnel serving in different Departments of Central/State Governments and Public Sector undertakings of Central/State Government who are incapacitated or disabled while performing their duties will be eligible under this category. In case of death, while performing duties, their widows/dependents will be eligible to apply under this category.

Applicants under this category should attach a copy of relevant certificate from the concerned Organisation/Govt Department signed by the Head of the Office or an Officer not below the rank of Under secretary to the Government."

12. In the considered opinion of this Court the provisions contained in clause 6.1(v) and 6.2.2 (a) II of Policy Guidelines are to be read together being complementary to each other. And unless forming part of a "Family Unit"; a person claiming the distributorship under the reserved category will not be entitled for even consideration. Thus, in a case where one of the dependant has availed the benefit under the Reservation clause, in that event other dependent, even if he possesses a dependency certificate will not be entitled for

distributorship under the reservation quota This will be evident from the opening paragraph of 6.1 v(1) which mandates that the applicant or any other member of family unit should not hold a dealership/distributorship/RGGLV of a PSU Oil Company; i.e., only one retail outlet/SKO-LDO dealership/LPG distributorship/RGGLV of PSU Oil Co. will be allowed to a family. The principle will also apply to the case where one of the dependent on the basis of dependency certificate has been granted the distributorship and later on even he marries or even moves out of the family the family in which he has taken birth will not be entitled for another distributorship/RGGLV of a PSU Oil Company. Otherwise each member of the family on the basis of the dependency certificate will get the distributorship which would be contrary to the object to the purpose wherefore the quota is created. As the distributorship/RGGLV of a PSU Oil Company would then rest in few families rather than evenly awarded to the dependents in respective category(ies).

13. In the case at hand evidently one of the dependents of late Jogendra Singh, viz., Siddharth Singh was awarded the L.P.G distributorship on the basis of dependency certificate. Said Siddharth Singh is brother of respondent No. 5 is not disputed. Having constituted a family unit and there being allotment of RGGLV at Shyampur in the family, other members became ineligible for exercising the option under said category, because the quota got exhausted. Yet respondent No. 5 on the basis of another dependency certificate applied for L.P.G distributorship in respect of location E-08 Extension/Trilanga/Gulmohar/Bawadiyakalan/Aakriti Eco City and adjoining areas, district Bhopal. Respondents No. 1 and 2 interpreting the expression "Family Unit" to mean that since respondent No. 5 being married, he is not the member of the family of his elder brother has been recommended for allotment of the LPG distributorship, and selected respondent No. 5 for the grant of distributorship.

14. In AIR India Ltd. v. Cochin International Airport Ltd and others [(2000) 2 SCC 617], it has been observed in the context of award of a contract by the State, its corporations and bodies acting as instrumentalities and agencies that:

7. The law relating to award of a contract by the State, its corporations and bodies acting as instrumentalities and agencies of the Government has been settled by the decision of this Court in R.D. Shetty, v. International Airport Authority 1979 (3) SCC 488; Fertilizer Corporation Kamgar Union v. Union of India (1981) 1 SCC 568; CCE v. Dunlop India Ltd. (1985) 1 SCC 260, Tata Cellular v. Union of India (1994) 6 SCC 651; Ramnikal N. Bhutia v. State of Maharashtra (1997) 1 SCC 134 and Raunaq International Ltd. v. I.V.R Construction Ltd. (1999) 1 SCC 492. The award of a contract, whether it is by a private party or by a public body or the State, is essentially a commercial transaction. In arriving at a commercial decision considerations which are of paramount are commercial considerations. The State can choose its own method to arrive at a decision. It can fix its own terms of invitation to tender and that is not open to judicial scrutiny. It can enter into negotiations before finally deciding

to accept one of the offers made to it. Price need not always be the sole criterion for awarding a contract. It is free to grant any relaxation, for bona fide reasons, if the tender conditions permit such a relaxation. It may not accept the offer even though it happens to be the highest or the lowest. But the State, its corporations, instrumentalities and agencies are bound to adhere to the norms, standards and procedures laid down by them and cannot depart from them arbitrarily. Though that decision is not amenable to judicial review, the Court can examine the decision making process and interfere if it is found vitiated by mala fides, unreasonableness and arbitrariness. The State, its corporations, instrumentalities and agencies have the public duty to be fair to all concerned. Even when some defect is found in the decision making process the Court must exercise its discretionary power under Article 226 with great caution and should exercise it only in furtherance of public interest and not merely on the making out of a legal point. The Court should always keep the larger public interest in mind in order to decide whether its intervention is called for or not. Only when it comes to a conclusion that overwhelming public interest requires interference, the Court should intervene."

(emphasis supplied)

15. This Court is not oblivious of the decision in *Sanjay Kumar Shukla v. Bharat Petroleum Corporation Limited and others* [(2014) 3 SCC 493], wherein their Lordships were pleased to observe:

"15. The above highlights the need contain that was imperative on the part of the High Court while entertaining the writ petition...."

16. The question is, is it reasonable and rationale on the part of respondent Public Corporation to interpret its own provision in a manner which would be contrary to the very object of the provision. The reservation clause in vogue fairly suggests it is to provide some sort of economic independence to subcategories and their dependent. The interpretation put-forth by the respondent Corporation may fall true for the person/applicant happens to be the employee himself. But in case where the dependents are considered for the award then it is not the individual members of the family of Government servant, but the person through whom they claim benefit is the "family unit".

17. In the present case, since one of the son of the State Government employee, who died in service, was already granted the L.P.G dealership under the dependents quota, the said source so far as the concerned employee is concerned get exhausted as would create any right in other members of his family.

18. Considered thus, the decision by the respondent Nos. 1 and 2 in selecting respondent No. 5 cannot be given the stamp of approval. And by applying the same principle even direction cannot be given to consider the claim of the petitioner. The allotment of L.P.G distributorship at the location E-08 Extension/ Trilanga/Gulmohar/Bawadiyakalan/Aakriti Eco City and adjoining areas, district

Bhopal in favour of respondent No. 5 is set aside. Respondent Nos. 1 and 2 are directed to re-advertise the location under the Reserved Category, afresh.

19. It is contended on behalf of respondent No. 5 that he has invested lot of money in the infrastructure. There is, however, no material on record to substantiate. Even if it is true, that the respondent No. 5 has invested the money in infrastructure; the same has been at his own risk, because there was already an interim order on 20.11.2014 directing the parties to maintain status quo. The respondent No. 5 was very well aware of the fact as he entered appearance and was duly represented.

20. Even then, it is for respondent Nos. 1 and 2 to verify the fact as to whether any development work has been undertaken by respondent No. 5 before taking recourse to fresh advertisement and workout the equity by making mention thereof in the advertisement and compensating respondent No. 5.

21. With these observations and directions, the petition is finally disposed of. No costs.