

(2011) 11 AHC CK 0422
In the Allahabad High Court
Case No : Writ - C No. - 36329 of 2011

Sri Brijesh Kumar

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 04-11-2011

Acts Referred:

Citation : (2011) 11 AHC CK 0422

Hon'ble Judges : Ashok Srivastava, J; Amitava Lala, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Ashok Srivastava, J.—By means of this writ petition the petitioner has challenged the advertisement dated 25.6.2011 issued by respondent no. 3, District Supply Officer, Etawah by way of which nine fair price shops" allotment in the Nagar Palika Kshetra, Etawah has been advertised. Out of these nine fair price shops, seven have been reserved and only two shops have been advertised for the general category which is in violation of the reservation policy and the Government Order dated 17.8.2002. Tracing the history regarding allotment of such shops in the past the petitioner has stated that at an early occasion similar advertisement was published for allotment of seven dealers/agents and after completing the necessary formalities the successful candidates were informed by the authorities concerned. In this regard a press release dated 11.1.2005 was also published. From the perusal of this press release it is evident that reservation policy in terms of the Government Order dated 17.8.2002 was adhered to and only three shops were earmarked for the reserved categories. Due to certain political interventions, certain complaints against the said allotment were made and without issuing a cancellation order, the allotments were cancelled. The aggrieved persons approached this Court by way of filing two writ petitions. This Court vide judgment and order dated 16.7.2007 directed the District Magistrate to call for the record and pass an appropriate order after hearing all the concerned parties. In pursuance of the order passed by this

Court, the District Magistrate, Etawah passed an order on 21.9.2007 and arrived at the conclusion that the allotments were irregular and illegal and he cancelled the aforesaid allotments. Thereafter nothing was done on the part of the authorities regarding fresh allotment of the aforesaid fair price shops. However, on the ground of dying-in-harness one shop was allotted to one Scheduled Caste candidate but no arrangement was made to allot other fair price shops. The petitioner has claimed himself as one of the eligible candidates. All of a sudden the advertisement dated 25.6.2011, impugned herein, was issued by respondent no. 3 in clear violation of the reservation policy and Government order dated 17.8.2002, The petitioner has levelled certain allegations against the local M.L.A. and respondent nos. 2 and 3 and claimed that the said advertisement is highly arbitrary and illegal. In these circumstances, he has prayed that the advertisement dated 25.6.2011 be quashed and a direction be issued to the concerned respondents to take appropriate steps for allotment of fair price shops strictly in accordance with the reservation policy as enumerated in the Government Order dated 17.8.2002. The petitioner has filed two supplementary affidavits in which he has mentioned certain additional facts. He has claimed that in all there are only 43 fair price shops. Out of which 12 shops have been allotted to a co-operative society. He has further stated that out of these 43 fair price shops, 31 are being allotted by the State authorities. Only six general category candidates have been allotted the shops in the Nagar Palika Kshetra, Etawah. He has further asserted that the stand taken by the State in this matter is misleading and in fact 18 shops have been allotted to the Scheduled Caste candidates as against their prescribed quota of 16 shops.

2. Counter affidavit and supplementary counter affidavit have been filed on behalf of respondent nos. 2 and 3 i.e. District Magistrate and District Supply Officer, Etawah. It has been stated by the answering respondents that at present 59 fair price shops are running in the Nagar Palika Kshetra, Etawah and nine shops are lying vacant. Thus, there are 68 fair price shops and keeping in view the reservation policy and the Government Order dated 17.8.2002, by treating one Nagar Palika Kshetra as one unit, various allotments have been made to various categories. 23% i.e. 16 shops were to be allotted to the S.C./S.T. candidates. Out of which only 10 shops were running by the S.C./S.T. candidates and six shops are yet to be allotted to the candidates of the said category. It has further been stated that keeping in view the 27% reservation for O.B.C. candidates, 18 shops are to be given to such category candidates, out of which 17 shops are running and there is only one shop which is to be allotted to the O.B.C. Category. The answering respondents have further mentioned that according to 50% reservation for General candidates, there should be 34 shops in the area concerned whereas there are only 32 shops running by them and, therefore, two shops were left for the general candidates and such fact has been mentioned in the advertisement concerned.

3. In reply to the above contention the petitioner has stated that out of nine advertised shops, seven are earmarked for reserved category and even for the

remaining two shops, horizontal reservation has been applied, therefore, all the shops in question have been earmarked for reserved category which is against the policy.

4. We have heard learned counsel for the parties and perused the records. According to the petitioner, the advertisement dated 25.6.2011 is violative of reservation policy and the Government Order dated 17.8.2002. From perusal of G.O. Dated 17.8.2002 (Annexure - 3 to the writ petition) it is evident that in supersession of certain previous government orders, 21% shops were to be allotted to the Scheduled Castes, 2% to the Scheduled Tribes and 27% to the O.B.C. In para 3 of the government order it has further been mentioned that there shall be a horizontal reservation of 20 percent for the women, 8% for the dependants of armed forces personals/ex-servicemen, 5% for freedom fighters/ their wives and 2% for physically handicapped persons. It has also been mentioned in this government order that while considering the allotment of shops for the urban area, one municipality is to be treated as one unit. It has also been mentioned that those shops will not be disturbed which are already running. The answering respondents have categorically mentioned that a total number of 68 shops are there in the Nagar Palika Area, Etawah, out of which 59 fair price shops were running and only 9 shops were lying vacant for allotment.

5. In supplementary affidavit dated 28.7.2011 the petitioner has annexed annexure S.A. -01. Referring this annexure it has been argued on behalf of the petitioner that from perusal of such annexure it is evident that there are only 43 shops in the Nagar Palika Area, Etawah. It has been further argued from the side of the petitioner that on 30.1.2004 respondent no. 3 had passed this order which is in fact an allotment order in respect of all the shops situated in Nagar Palika Area and in this allotment order only 43 shops have been enumerated. This contention has been opposed vehemently by the answering respondents.

6. We have examined annexure S.A. 01. This order is not an allotment order of fair price shops. In fact it is a direction by respondent no. 3 to one M/s. Novelty Oil Company which is a wholesale kerosene oil dealer of Etawah. From the language of this letter it is evident that respondent no. 3 had directed M/s. Novelty Oil Company that in the month of February, 2004, what amount of kerosene oil is to be supplied to which fair price shop. In this letter only 43 such shops have been mentioned. This letter by itself does not indicate the total number of fair price shops of Nagar Palika Area, Etawah. From the language of this letter it is evident that the respondent no. 3 after due calculation had directed that what amount of kerosene oil is to be given to which kerosene oil dealer/fair price shops. Terming this letter as the allotment of fair price shops is a misconceived argument.

7. It has been argued from the side of the petitioner that there are only 43 fair price shops in the Nagar Palika Area, Etawah but wherefrom such information has been received by the petitioner has not been disclosed. No information has been obtained in this regard by the petitioner by exercising his right under Right

to Information Act which he could have easily done.

8. On the other hand the answering respondents have given the exact number on the basis of the records available in the office concerned. If the total number is taken as 68, the advertisement impugned herein does not suffer from any irregularity or illegality. The argument as advanced by the petitioner that 12 Scheduled Caste candidates are there as ticked by him in Annexure No. S.A. -01 does not appear to be based on any factual information. On the basis of the above discussion, we are of the view that there is no force in this writ petition and accordingly it is dismissed, however, without imposing any cost.

9. The stay order, if any, stands vacated.