(2014) 12 P&H CK 0173

In the Punjab And Haryana At Chandigarh

Case No : C.W.P. No. 3198 of 2014 (O&M)

Sunita Rani APPELLANT

Vs

Union of India and Others RESPONDENT

Date of Decision : 16-12-2014

Acts Referred:

Citation : (2015) 2 SCT 308

Hon'ble Judges : K. Kannan, J

Bench : Single Bench

Advocate : Girish Agnihotri, Senior Advocate and Tarlok Singh Chauhan, Advocates for the Appellant; Gurmail Singh, Advocates for the Respondent

Judgement

K. Kannan, J.—The petitioner would refer to the policy which was issued though a gazette notification on 2.7.1992 providing for reservation of 25% to SC/ST and making further provision for diluting the requirement of offer of land and buildings for locating the LPG facilities. The policy took note of the fact that the dealers/distributor under the SC/ST found it difficult to arrange funds required for commissioning of the distributorship and as a consequence, the allottees were forced to enter into arrangements with wealthier persons resulting in becoming only nominal owners. The consideration, therefore, yielded to the following result.

"The LPG distributorship complete in all respects will be provided to the SC/ST allottees by the Oil Industry and, therefore, the oil companies will make provision for the following facilities to such allottees:

(i)1. Land & its development

2. Godown Buildings

3. Delivery System.

4. Office-cum-Sale Room.

(ii) Appropriate working capital

The Oil Industry will recover Rupees one per cylinder towards the company''s investment. The entire working capital for the operation of the distributorship will be provided by the Oil Industry at 11 per cent p.a. rate of interest recoverable in hundred monthly installments commencing from the 13th month of operation of the distributorship.

The scheme will come into force with immediate effect."

Admittedly, this operated for sometime but for the advertisement notification which was issued in August, 2013, the provision regarding the entire absorption of cost for infrastructure by the oil companies was withdrawn and a new policy spelt out that made difficult to any person who belonged to SC/ST with no adequate financial support to even make an application. The petitioner would explain the fact that she had not applied within the date was only because of the fact that the conditions brought out in the brochure required the petitioner, who was a SC, to provide for a minimum total amount of Rs. 5 lakh for urban markets and Rs. 2.5 lakh for urban-rural and rural markets as closing balance as the last date of submission of application. The petitioner''s grievance is that the deposit of the amount as well as further requirement of identification of property as a pre-requisite for giving the application literally undermined the policy spelt out through the gazette notification and kept the person, such as the petitioner, who was financially weak away to compete for allotment. The 2013 brochure requirement as regards the property qualification was that the candidate should own as on the last date as specified in the advertisement. The expression ''own'' has been defined as having ownership as title of the property as under:-

"''Own'' means having ownership title of the property or registered lease agreement for minimum 15 yrs in the name of applicant/family member (as defined in multiple distributorship norm of eligibility criteria) as on the last date for submission of application as specified in the advertisement or corrigendum (if any). In case of ownership/co-ownership by family member (s) as given above, consent in the form of a Notarized Affidavit from the family members) will be required."

The petitioner has no property to offer before hand and this new condition brought in the brochure which is at variance with the policy spelt out through gazette notification is bad in law.

2. There are two objections taken by the petitioner as being in conflict with the policy decision issued by the Union through the department of Petroleum industries, namely, assignment of 25% reservation for SC/ST applicants and provision for financial assistance for establishing necessary infrastructure including the land and building for locating the LPG cash distributorship.

3. The counsel for the respondents explains that the percentage of 25% was reduced to 22-1/2%, since additional reservation was made to the extent of 25%

for the OBC and, therefore, a marginal reduction in percentage of reservation for SC/ST to be undertaken. Even with regard to the financial assistance, the original policy providing for the Corporation to identify the property and establish the infrastructure and later collect the investment cost over 100 installments was given up only because of the difficulty in securing the property by the oil companies themselves. The petitioner on his part would explain difficulty in identifying the property and taking on lease before hand when there was no sure guarantee for allotment that would render the policy of assistance even in the altered situation to be unworkable.

4. Learned counsel appearing on behalf of the 8th respondent joins issue on the change of condition for ownership of property became necessary in view of the past experience of the policy not being possible to put into effect on account of inability of the oil companies to identify suitable property at their own initiative and that several cases where the allotments had been made for SC/STs have not been finalized only on account of the fact that he property is not available. The counsel would explain that it is in that context the requirement of ownership was spelt out in the brochure and it was explained also in response to a notice issued by the Commission for SC/ST that they have made other facilities for financial assistance both for the deposit as it required, as well as for identification of the property. The explanation given in the reply to the SC/ST Commission, refers to the following clauses which are as under:-

"1. MOP & NG vide their letter No. P-25011/4/2011-MKT dated 24.12.2012 (Annexure-1) has approved replacement of the then Corpus fund scheme by a bank mediated financial assistance scheme for SC/ST LOI holders in respect of Regular Distributors. Under this scheme, the selected candidate for the location reserved under SC/ST category has the option to avail the following Financial Assistance Scheme:

OMCs shall facilitate the selected candidate in obtaining the loan from scheduled commercial bank for providing the LPG Godown, Showroom and LPG cylinder delivery infrastructure. In this regard, if the banks require any margin money to be invested by the candidate in providing the above mentioned facilities, OMCs shall extend financial assistance by way of a secured loan towards such margin money. The margin money shall however be limited to Rs. 1 lakh for urban market Distributorships and Rs. 0.60 lakh for Urban-Rural and Rural market Distributorship or 20% of the total project cost against which the loan has been sanctioned by Bank, whichever is lower.

The secured loan towards the margin money will be provided to Distributorships reserved for SC/ST categories at (SBI PLR+1%) interest per annum. This secured loan as well as the interest will be recovered at he rate of 20% of distributor''s commission.

In addition to the above, adequate working capital loan at (SBI PLR+1%) interest per annum, for a full operation cycle of the operation of the distributorship will be provided. Both the working capital as well as interest thereon will be recovered in 100 equal monthly installments from the 13th month of commissioning of the Distributorship.

2. xx xx xx

3. It may be noted that as per para 6 (vi) of Brochure on Selection of Distributorships of Aug'' 2013 the fund requirement by the applicants for all other categories (except SC/ST) is Rs. 15 lakhs for Urban markets and Rs. 10 lakhs for Urban-Rural & Rural markets whereas the fund requirement in case of locations reserved under SC/ST category is Rs. 5 lakhs for Urban markets and Rs. 2.5 lakhs for Urban-Rural & Rural markets. Thus, there is already a relaxation available for locations advertised under SC/ST category. The above parameter also has the approval of MOP &NG vide their letter dated 25.06.2010."

5. The counsel would submit that the corpus scheme by the bank to meet out the financial assistance will enable a selected candidate for a location to avail the financial assistance for obtaining loan from a scheduled commercial bank for providing LPG godowns and LPC cylinders delivery infrastructure and in the event of the bank requiring any margin money to be invested, the OMC will themselves extend the financial assistance by way of securing a loan. The loan is also to be provided on certain terms as the above clause will reveal.

6. The learned counsel for the respondents, therefore, would contend that change in the policy was dictated by the realities of the inability of the oil companies to identity the property themselves.

7. I considered for a while of the manner in which the changed policy could be accommodated within the notified policy in the Government Gazette and ensure that there is a balance of interest where the prospective applicant undertakes the responsibility for identifying the property without being compelled to make the investment and where the financial institutions and OMC will themselves provide for financial assistance initially and recover the same over a period of time in the manner already provided under the changed condition in the brochure. Some amount of policy adjustment would be required, though I am aware that the courts cannot normally prepare fresh terms of contract. It could be done only in an extraordinary situation to see that some minimal tweaking is done and formulated policy is given effect without detriment to both the parties. If the declared policy is that an allottee belonging to SC/ST who has no command or financial resources does not lose out of competition by being forced to have a collaborator who has the financial resources and reduce himself merely as a nominal owner, then it is absolutely essential that the working capital and the cost of infrastructure shall be provided with the active assistance of the oil companies before hand. If there is a difficulty for the Corporation to identify the property which they have experienced in the past, the best method of resolving the issue will only be to leave the initial task to identify the property to the applicant himself and this requirement could either be a proposal for land which

he is able to identify and furnish the said details in the application form or be given a time which is appropriate in the range of 2-3 months after the allotment is made. If such an allotment is made and the allottee could be helped to finalize the property or at the option of OMC, to allow the prospective allottee to identify the property and provide the financial assistance in the manner contemplated under the altered terms and conditions mentioned in the brochure. It will be meaningless to enforce the terms in the manner brought out in the brochure 2013, for it cannot be expected that a member of SC/ST could secure a land on lease even without a firm commitment from a oil company for an allotment. A lease that may be for a long period from the owner of the property cannot happen, if the owner/lessor has no sure method of reckoning that his own prospective lessee will surely abide the terms of the lease. If only a lease will operate in future after the firm allotment is made, then an applicant will have to assume that he will get allotment for sure and if per chance the allotment is not made, he will expose himself to an action for specific performance or damages from the owner. The whole scheme will subvert the lofty policy initiated in 1992 and as modified in 2013, such financial assistance will become unworkable if there is no means of assessing before hand whether applicant will be successful allottee or not.

8. I find no reason to sustain the challenge made for reduction reservation from 25% to 22.5% in a new situation of having to accommodate 25% to OBC category. However, the requirement of "ownership" of land even at the time of application and producing proof, therefor, for SC/ST candidates is unviable and cannot operate to support the policy which is brought out through the gazette notification in the year 1992. The requirement of ownership of land for SC/ST before hand at the time of application, is therefore, quashed. The oil company is directed to issue a modified term that will allow for a person belonging to SC/ST category to apply for allotment with an undertaking to secure appropriate property who will be obligated on a successful allotment to provide within a period of three months from the date of formal allotment or on such terms that the OMC thinks as reasonable and the terms of financial assistance as brought out in the modified brochure will then operate.

9. The learned Senior Counsel appearing for the petitioner states that an advertisement has been issued for draw of lots for 18.12.2014 for all categories, including SC/ST. The clause relating to consideration and allotment for SC/ST shall remain stayed and it is open to the oil company to go ahead in so far other categories are concerned. As far as the SC/ST category is concerned, the respondent is mandated by this order to issue a fresh notification setting out modified terms withdrawing the precondition for ownership of adequate land for a candidate belonging to SC/ST and making fresh provision for an obligation to provide for such land after the formal allotment is made on the above terms. This order will operate in future and will take care of the interest of the petitioner as well. In respect of the matter where the draw of lots is complete and selections have been made at he instance of other oil companies or for other

notification this order will not operate and I do not pronounce on the validity or otherwise of such allotment made at other centres or brought through different notification. The writ petition is allowed on the above terms.

