
(2016) 03 BOM CK 0199

In the Bombay High Court

Case No : Writ Petition Nos. 6368 and 6642 of 2011

Suresh and Others

APPELLANT

Vs

The Union of India and Others

RESPONDENT

Date of Decision : 18-03-2016

Acts Referred:

Citation : (2016) 288 CurTR 203 : (2016) 385 ITR 1

Hon'ble Judges : S.S. Shinde and V.L. Achliya, JJ.

Bench : Division Bench

Advocate : R.R. Mantri, Advocate, for the Appellant; Alok Sharma, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

S.S. Shinde, J.—1. This Writ Petition takes exception to the advertisement dated 27th July, 2011 [Annexure-D Page-80] for selection of distributors for LPG issued by the respondents. It further also prays for quashing the April, 2011 Guidelines [Annexure-C Page-60].

2. The learned counsel Mr. R.R. Mantri appearing for the petitioner submits that, it is settled position of law that, while distributing public largesse, the same are to be distributed based on the criteria, which have nexus to the object of the particular grant by selecting beneficiaries for effecting transparent procedure. Any law made contrary to the above cannot stand to the scrutiny of test of constitutional validity, and would amount to arbitrariness. In order to achieve the objective of directive principles of State policy and to uplift the members of Scheduled Caste and Scheduled Tribes etc., the provision is made for making available the infrastructure as well as corpus funds for Scheduled Castes and Scheduled Tribes candidates. The relaxation in age, educational qualification and financial requirement was also made, while considering the candidature of the afore-mentioned categories for distribution of petroleum products. It is submitted that, sometime in the past, there were various arbitrary allotments of such dealerships by respondent No. 1, most of which came to be cancelled by the

Hon''ble Supreme Court and the then Minister Incharge of the Department of respondent No. 1 was also held personally liable. In support of this contention, the learned counsel appearing for the petitioner pressed into service exposition of the Hon''ble Supreme Court in the case of Common Cause A Registered Society v. Union of India and others , AIR 1996 SC 3538. The learned counsel also invited our attention to the Judgment of the Hon''ble Supreme Court in the case of T.R. Kothandaraman v. Tamil Nadu Water Supply and Drainage Board Engineers Association , 1994 [6] SCC 282 and submits that, the classification should be based upon the intelligible differentia. However, in the present case, the criteria laid down by the afore-mentioned guidelines are not based upon the intelligible differentia.

3. It is submitted that, once roster is finalized for new location, locations falling under "Open" category of the roster are offered to the State Government for direct award of distributorship. It is submitted that, such allotment in favour of State, without following proper procedure like followed in the individual cases, is not proper. It is further submitted that, there is no basis for prescribing minimum age of 21 years and maximum age of 45 years on the date of application for all categories except GP category. The learned counsel appearing for the petitioner invited our attention to the clause 7.2 of the specific eligibility criteria for different categories, and submits that, there is no reason why there should be direct award of the distributorship in favour of State. It is submitted that, if the category of Defence Personnel is considered, it is only who died in harness due to attributable causes and disabled in peace due to attributable causes should be entitled to apply. However, the same is not being followed by the respondents. He further invited our attention to the relevant clause in the guidelines, which provides for a 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 for the said category for distributorship. It is submitted that, when such personnel is continued in service, there is no reason for granting distributorship to them simultaneously.

4. The learned counsel further invited our attention to the clause 17 of the guidelines, and submits that, a person selected for the distributorship will have to personally manage the operation of the LPG Distributorship and will not be eligible for taking up any other employment. Contrary to the said clause, the distributorship have been given to such personnel, who are in the service and who cannot personally supervise. The learned counsel further invited our attention to the relevant clause, providing for qualification for applying for the distributorship, and submits that, it is difficult to understand that, why such higher qualifications are necessary for allotting distributorship. He further invited our attention to the other clauses of the guidelines, and submits that, said guidelines have no nexus to the object to be achieved, and therefore, the said guidelines deserve to be quashed.

5. Writ Petition No. 6642/2011 is filed taking exception to the advertisement dated 27.07.2011, like in earlier Writ Petition, and also there is prayer seeking directions to the respondents to carry out the selection process in respect of LPG Distributorship by adopting the old procedure laid down in Brochure dated March, 2010. The learned counsel appearing for the petitioner in the said Writ Petition adopted the arguments advanced by the learned counsel appearing for the petitioner in Writ Petition No. 6368/2011. In addition to that, he submits that, outer age limit was not prescribed in earlier guidelines, and therefore, there is no any rational for providing outer age limit in 2011 guidelines. He submits that, in earlier guidelines, residents of the concerned District only were eligible for filing application for distributorship. Therefore, relying upon the pleadings in the Petition, annexure thereto, the learned counsel appearing for the petitioner submits that, Petition deserves to be allowed.

6. The learned counsel appearing for the respondent No. 2 in Writ Petition No. 6368/2011, relying upon the averments in the affidavit-in-reply on behalf of respondent No. 2 submits that, the new guidelines have come into existence from October, 2010 for selection of LPG Distributors from approved locations, which are to be advertised. Based upon the said guidelines, the advertisement for the distributorship in Maharashtra State was given on 27th July, 2011, and as per the guidelines, the selection of the candidates for the distributorship was done by the draw of lots amongst all the eligible candidates, who fulfill the eligibility criteria.

7. The learned counsel invited our attention to the procedure for applying as per the said guidelines and submits that, the said process is done with an intent to ensure that, the selection process is transparent and no favoritism is being shown to any individual. It is submitted that, based upon the past experience and the business requirement, the guidelines for selection of distributors are revised from time to time. The said guidelines were made applicable to all locations advertised, re-advertised on or before 1st October, 2010. It is submitted that, in the said selection guidelines, there is no mark basis evaluation system or interview for final selection. All the applicants meeting the eligibility criteria qualify for the draw. The selection is carried out based upon the draw of lots. It is submitted that, the eligibility criteria has been so defined that, it needs minimum requirements of educational qualification, finance and infrastructure for LPG distributorship. The entire selection process was revised with a view to ensure that, there is no scope for arbitrary, illegal, unfair, and favoritism to any individual. Each and every applicant was given fair opportunity to make an application and selection of candidates was based upon draw of lots. Based upon the said guidelines, an advertisement has been issued on 27th July, 2011, for selection of LPG distributors at various advertised locations.

8. It is submitted that, quota for physically handicapped persons was 5% and quota for outstanding sport person was 2% i.e. 7% combined quota. As per the earlier guidelines, the SC/ST category quota was 25% and the same is retained

in the new guidelines, which also does not deprive the petitioner of any reservation. In fact, the said guidelines ensure that, the award of LPG distributorship is done by eliminating the possibility of any unfair, arbitrary and illegal favoritism to any individual, who has applied for the distributorship. It is submitted that, in the earlier policy, there was selection process, based upon evaluation of candidates on various parameters like personality, business acumen, experience, educational qualification, capability to arrange funds and capability to arrange finance, and therefore, the same has been change in the revised policy. It is submitted that, the minimum qualification has been prescribed and all the candidates who fulfill the same were eligible to participate in the draw. It is submitted that, the maximum age limit of 60 years is kept for GP category and in respect of all others, who are ages 21 to 45 are made eligible for applying the distributorship. It is submitted that, the personal supervision is a condition, which has already been given in the policy as well as in the Brochure.

9. It is submitted that, though the reservation is provided for SC/ST category is re-categorized, however, the percentage of the total SC/ST category is maintained by adjusting the other open categories location under SC/ST category in the roster. If any shortfall of SC/ST category on account of re-categorization then the said shortfall is made good by converting corresponding number of distributorship locations under Open category to the SC/ST category. It is submitted that, the policy decision has been made with intent to ensure that, dependents of the Government/Central, State and Public Sector Unit including Defence Personnel, who have died while performing duties and employees of Government/Central, State and Public Sector Unit including Defence Personnel who become disabled while performing duties can apply under GP category. It is submitted that, the time limit prescribed for submitting the application and the documents is reasonable period. It is submitted that, some of the provisions in the existing guidelines were also part of the earlier guidelines, there is no substance in the contention of the petitioner that, 50% distribution ship is given to the State. It is submitted that, merely because additional qualifications are prescribed for maintaining minimum qualification for applying further distributorship cannot be said to be unreasonable. It is submitted that, none of the provisions in the guidelines can be said to be unreasonable, arbitrary or contrary to the legal provision, and therefore, in the said policy decision is in the nature of guidelines, therefore, the Petition may be rejected.

10. The learned counsel appearing for the respondent No. 3 relying upon the averments in the affidavit in reply filed by the said respondent submits that, in pursuant to the guidelines, the advertisement for the distributorship had been given. Accordingly, final selection of the candidates is done by the draw of lots amongst all the eligible candidates, who fulfill eligibility criteria. The selection for the LPG distribution ship is made by the draw of lots with intent to ensure that, no favoritism is being shown to any individual. All the eligible candidates who fulfill the norms become eligible for considering LPG distributorship, and therefore, there was no need for evaluation of an individual separately. All the

candidates who were eligible were considered. It is submitted that, the petitioner was not eligible to apply, and therefore, petitioner has no locus to challenge selection process and guidelines.

11. It is submitted that, so far time limit for submitting application is the same as was prescribed in the earlier policy. It is submitted that, 540 applications were received for 36 locations advertised by the respondents. Thereafter, as per the policy so as to cure defects of technical nature, individuals were called upon to give reasons within 21 days.

12. In Writ Petition No. 6642/2011, the respondent No. 2 i.e. Bharat Petroleum Corporation Ltd. has filed affidavit in reply. Relying upon the said affidavit in reply, the learned counsel appearing for the respondent No. 2 submits that, it is true that, the respondent No. 2 has cancelled the earlier selection process by issuing fresh process as per the brochure dated 1st April, 2011. It is submitted that, it is the prerogative of oil companies to provide qualification and selection criteria and guidelines for appointing distributors. The selection guidelines of 2011 has been prepared to bring more fairness and transparency in the selection process. As per the advertisement dated 14th September, 2002 for LPG distributorship, the petitioner was granted the distributorship. However, subsequently, it is cancelled in the year 2008. It is submitted that, the petitioner has not disclosed about the said facts. He has also not stated why his distributorship was cancelled in the year 2008. It is submitted that, by reading clause 6 of the said guidelines, it is abundantly clear that the draw would be done only from the eligible candidates. The draw would be done by the invited guest in presence of at least 50% eligible candidates and the entire proceeding is videographed. The result of draw is published on the same day on the notice board and the company website. After the issuance of letter of intent, the field verification is carried out and, if in case the information given by the candidate is not correct, the company is entitled to take an appropriate decision. It is submitted that, the present age limit prescribed in the new brochure is neither discriminatory nor irrational. If the entire scheme is taken into consideration, it will be clear that, none of the conditions in brochure are discriminatory or arbitrary. The oil companies have authority under procedure to prescribe the qualification and age for selection of its distributorship. It is the prerogative of the oil companies to prescribe the eligibility or selection criteria for appointing the LPG distributorships. A person can apply for more than one location and in case such person is selected for more than one location than the distributorship can only be commissioned for only one location. Clause 7.4 of the Brochure clearly prescribe that all the candidates have to fulfill the multiple dealership/distributorship norm as provided thereunder.

13. It is submitted that, in the earlier policy the candidates who have secured maximum marks were entitled for selection and because of that reason only person having higher qualification were entitled. However, as per the new guidelines, all qualified candidates are entitled for selection and it gives

opportunity to different categories. It is submitted that, the aggrieved person can file a statutory appeal under Rule 14 before the Grievance Redressal System and he is also entitled to file a Writ Petition, and hence, there is no substance in the contention of the petitioner that, there is no remedy to agitate the grievance.

14. We have given careful consideration to the submissions of the learned counsel appearing for the petitioners, and the learned counsel appearing for the respective respondents. With their able assistance, perused the pleadings in the Petition, grounds taken therein, annexure thereto and the replies filed by the respective respondents. It is the contention of the petitioners that, while awarding the distributorship to the State, the respondents have not kept in view that, the State may without any criteria would allot distributorship to even ineligible candidates. Upon careful perusal of the pleadings in the Petition, no single instance has been mentioned showing that, State has favoured a particular person by allotting distributorship with arbitrary exercise of the power. It is also relevant to mention that the guidelines, for which exception is taken by the petitioner, have also been undergone change and now new procedure is in place. It is also relevant to mention that, even petitioner in Writ Petition No. 6368/2011 could not participate in the draw since he was not eligible candidate in view of the said guidelines. Therefore, the petitioner has no locus to question the selection process and also selection of the candidates in pursuant to the aforementioned selection process. None of the candidate who has been given distributorship in pursuant to the advertisement are made party in the Petitions, and therefore, in our opinion, the petitioners are not entitled for any relief. It is needless to observe that, even in absence of any specific provision for affording hearing to the aggrieved person, it is well settled by this time that, if the direction/order is going to affect a particular individual, the principles of natural justice needs to be followed. Therefore, in absence of any selected candidate party to this Petition, we are not inclined to entertain these Petitions. Even upon considering the case in its entirety on merits, we do not find any reason to hold that, the provisions/guidelines under challenge were unreasonable.

15. In our opinion, prescribing age limit, qualifications providing reservations for the candidates from SC/ST categories and other categories and also providing reservation for the defence personnel etc. would fall exclusively within the domain of the respondents as long as same is not unreasonable and illegal. Upon considering the case in its entirety, and in view of the subsequent events occurred after filing Petitions, and change in the policy, and also on merits, we do not find any substance in the Writ Petitions. We are not inclined to entertain Writ Petitions, hence both the Writ Petitions stands rejected.