

(2014) 11 KL CK 0122

In the High Court Of Kerala

Case No : Writ Petition (Civil) No. 7711 of 2011 (L)

Sureshkumar. R.

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 28-11-2014

Acts Referred:

Citation : (2014) 11 KL CK 0122

Hon'ble Judges : Alexander Thomas, J

Bench : Single Bench

Advocate : Sebastian Philip and R. Anil, Advocate for the Appellant

Judgement

Alexander Thomas, J.—The 3rd respondent-District Supply Officer, Pathanamthitta, had issued Ext. P1 notification dated 14.7.2009 inviting applications from eligible applicants for selection and appointment as Authorised Retail Distributor (ARD) of Depot No. 150 in Ward No. VII of Konni Panchayat situated in Pathanamthitta district. It is explicitly made clear in Ext. P1 notification that the applications invited are in the "general category". The petitioner and two others had submitted their applications in response to Ext. P1. Petitioner's application in this regard is produced as Ext. P2 and he claims preference as unemployed rural youth and experience as salesman in conducting the ration shop as envisaged in Clause 45(1) of the Kerala Rationing Order. It is further pointed out that none among the classes eligible for reservation for appointment as ARD had applied and that there was no claim of legal heirs of any deceased original licensee of any ARD. Aggrieved by the inaction on the part of the respondent authority in making appointment of the ARD pursuant to Ext. P1, the petitioner had approached this Court earlier by filing W.P.(C) No. 24885/2009 before this Court. This Court, by judgment dated 27.8.2009 (produced as Ext. P3 herein), finally disposed of W.P.(C) No. 24885/2009 by directing that if the selection process in relation to Depot No. 150 of Konni Panchayat has been completed, then a final decision in the matter of appointment of a suitable person shall be taken within six weeks from the date of

receipt of a copy of the judgment by the respondent-District Supply Officer, Pathanamthitta.

2. The petitioner avers that the 3rd respondent-District Supply Officer, did not comply with the directions issued by this Court in Ext. P3 judgment and that upon enquiry, the petitioner was informed that appointments of all ARDs have been stayed by this Court in orders issued in W.A. No. 1217/2009 and thereafter in W.A. Nos. 906 and 927 of 2010, etc. It is stated that though the Division Bench by interim order had directed in W.A. No. 1217/2009 that the respondent therein is not to make any appointment of ARDs pending final decision of the Writ Appeal, the said Writ Appeal, W.A. No. 1217/2009 has been disposed of as per judgment rendered on 22.12.2009, holding in favour of a general candidate like the petitioner and overruling the contentions of a physically handicapped candidate, who sought claim of reservation in that case. It is also submitted that W.A. Nos. 906/2010 and 927/2010 were preferred by the legal heirs of deceased original licensees of Authorised Retail Distributor shops seeking licence under Clause 45(1) proviso of the Kerala Rationing Order, wherein also appointments of ARDs were stayed by this Court and that these Writ Appeals, W.A. Nos. 906 and 927 of 2010 along with a batch of Writ Petitions were finally disposed of by a common judgment dated 3.12.2010, in view of Ext. R2(a) amendment to Clause 45(2a) of the Kerala Rationing Order. It is thus submitted that though the aforementioned cases, W.A. No. 1217/2009 and W.A. Nos. 906/2010 and 927/2010 have been disposed of as early as on 22.12.2009 and 3.12.2010 respectively and that there are no reasons for non-consideration of the application of the petitioner pursuant to Ext. P1 notification. The petitioner contends that he is eligible on all counts in terms of the provisions envisaged in the Kerala Rationing Order and that the non-consideration of the application of the petitioner, in spite of the directions issued by this Court in Ext. P3 judgment, is nothing but illegal and improper and amounts to violation of the directions issued by this Court in Ext. P3 judgment. It is in the conspectus of these facts and circumstances that the petitioner has chosen to file this Writ Petition (Civil) on 10.3.2011 with the following prayers:

"(i) Issue any appropriate writ, order or direction, directing the 2nd and 3rd respondents to make selection and appointment of authorized retail distributors of Depot No. 15 in ward No. VII of Konni Panchayat of Pathanamthitta District in pursuance to Notification No. CS3-2770/06 dated 14.7.2009 in accordance with Clause 45(1) of the Kerala Rationing Order; And

(ii) Issue any other appropriate writ, order or direction as this Hon"ble Court deems fit and necessary in the facts and circumstances or the case."

3. Later the writ petitioner has filed an additional affidavit dated 1.4.2011 producing therewith Ext. P4, which is a notice dated 22.3.2011 issued by the 3rd respondent-District Supply Officer, Pathanamthitta, inviting the applicants for hearing in connection with the petitioner's application for appointment as ARD in Depot No. 150 pursuant to Ext. P1 notification.

4. The 2nd respondent-Commissioner of Food and Civil Supplies has filed counter affidavit dated 3.7.2012 in order to resist the pleas and contentions of the petitioner.

5. The fact that Ext. P1 notification was in the general category is admitted in para 2 of the counter affidavit. It is stated in para 3 of the counter that the reason for non-compliance of the directions of this Court issued in Ext. P3 judgment is in view of the directions issued by this Court in the judgment dated 11.12.2009 in W.P.(C) No. 35583/2009 and in W.P.(C) No. 11447/2010, etc. It is stated that the Government has brought an amendment as per Ext. R2(a), whereby in sub clause (2a) of Clause 45 of the Kerala Rationing Order, 1966, after the existing Explanation, the following proviso shall be added, viz., "Provided further that the vacancies which arose pursuance to the first proviso to sub-clause (2) from 19th day of April, 1994 shall not be reckoned for appointment under this sub-clause". It is accordingly submitted that after Ext. R2(a) amendment effected as per G.O.(P) No. 40/2010/F and CSD dated 18.11.2010 as S.R.O. No. 1066/2010 published in Kerala Gazette Extra Ordinary No. 2600 dated 19.11.2010, the vacancies for filling up reservation quota are (i) by way of fresh appointments (ii) vacancy arising due to surrender of existing of licence, (iii) vacancy arising due to cancellation of existing licence. It is thus contended that the claim of the petitioner could not be considered in view of the litigations as in W.P.(C) No. 35583/2009, W.P.(C) No. 11447/2010 and W.A. Nos. 906 and 927 of 2010. It is further contended that issuance of notification inviting applications for appointment as ARD does not confer any legal right, whatsoever to an applicant and does not mean that the submission of the application will entitle the applicant to claim appointment. It is further contended in paragraph 6 of the counter affidavit that the validity of Ext. P1 notification inviting applications for appointment of ARD No. 150 has been ceased in view of the various orders and directions issued by this Court as stated above and that after the aforementioned directions of this Court and the amendment carried out in the Kerala Rationing Order, fresh appointments of all ARDs in the State should be done after observing quota and rotation and that the claim raised by the petitioner lacks any merits and the respondents may not be compelled to act upon Ext. P1 in view of earlier judgments and amendments carried out in the Kerala Rationing Order as aforesaid.

6. Heard Sri Sebastian Philip, learned counsel for the writ petitioner and the learned Government Pleader appearing for the respondents.

7. The parties through their respective counsel reiterated their respective submissions based on the pleadings on record.

8. Though the respondents would rely on the judgment dated 22.12.2009 rendered by the Division Bench in W.A. No. 1217/2009 [arising out of W.P.(C) No. 7895/2008] in order to rebut the claim of the petitioner, after perusal of the said judgment, this Court is of the considered opinion that the said judgment would only go in favour of the claim of the petitioner. In paragraph 5 of the said

judgment, it is clear that a notification was issued for making appointment in the notified vacancy published in the year 2007 and the said vacancy was notified without earmarking it for physically disabled persons as provided in the Kerala Rationing Order and it was open for general category candidate. The appellant therein, who belonged to the general category made the application and he was duly selected and appointed. The writ petitioner therein contended in the Writ Petition that the said vacancy ought to have been earmarked for physically disabled persons, etc. The learned Single Judge in W.P.(C) No. 7895/2008 upheld the above contention of the writ petitioner and directed that the percentage of reservation set apart for physically disabled persons as stipulated in Clause 45(2a)(v) of the Kerala Rationing Order shall be applied and that every 20th vacancy shall be set apart for physically disabled person. The Division Bench in judgment in the above said W.A. No. 1217/2009 held that as the vacancy notified in the notification was not earmarked for physically disabled persons and as the entire vacancies available in the Ernakulam District were not identified and the quota was not fixed as stipulated under the Rule, it cannot be said that the vacancy notified in the notification in question ought to have been set apart for physically disabled candidates, especially since the selection process in respect of the said vacancy was set in motion in 2007. The Division Bench held that unless and until all the vacancies had been identified and quota and rotation fixed, it cannot be said that the vacancy at Karukutty ought to have been given to the physically disabled persons. Thus, the Division Bench ultimately in the judgment dated 22.12.2009 in W.A. No. 1217/2009 upheld the claim of the candidate in the general category, who responded to the notification issued for the selection and appointment. Thus the Division Bench repelled the plea of the respondents that the vacancy ought to have been set apart for physically handicapped candidate, etc. As far as the judgment dated 11.12.2009 in W.P.(C) No. 35583/2009 rendered by the Division Bench is concerned, it is found on a perusal of the said judgment that the issue was essentially arising out of the claim of a legal representative of a deceased original licensee, who contended that she should be given regular appointment as ARD, etc. It is in the factual context of this claim that the Division Bench rendered the said judgment taking the view that the priority in clause 45(2) meant for legal representatives of deceased original licensees will also have to be subservient to the reservation envisaged in Clause 45(2) of the Kerala Rationing Order. It was not a case where the notification issued was one in the general category and it was not a claim put forward by an applicant like the petitioner herein, who had responded in pursuance to such a notification inviting applications as ARD in the general category. In that case, the original licensee had died and the widow of the original licensee put up a claim that she should be straightaway given regular appointment as ARD in the place of her deceased husband in view of the priority envisaged in Clause 45(2) proviso of the Kerala Rationing Order. As far as the judgments in W.P.(C) No. 11447/2010, W.A. No. 906 and 927 of 2010 is concerned, the said judgment related to a batch of Writ Petitions in W.P.(C) No. 11447/2010 and W.A. No. 906 and 927 of 2010, wherein the Division Bench

rendered the judgment on 3.12.2010 ordering that in view of the amendment made as per Ext. R2(a) herein, the claims of each one of the appellants/petitioners in those cases should be decided in the light of the amended provision as in Ext. R2(a) herein within a period of eight weeks from the date of the judgment. In the judgment in W.P.(C) No. 35583/2009, the Division Bench had specifically directed the official respondents to ensure that the appointment to the reserved categories under Clause 45(2)(a)(i) is completed within six months from the date of that judgment (11.12.2009). In the common judgment in W.P. (C) No. 11447/2010 and W.A. Nos. 906 and 927 of 2010, the Division Bench specifically directed that the respondents shall finalise necessary action pursuant to Ext. R2(a) herein within eight weeks from the date of that judgment (3.12.2010). Those time limits have expired long ago.

9. In the instant case, the petitioner is the beneficiary of Ext. P3 judgment rendered as early as on 27.8.2009, which directed the respondent-District Supply Officer, Pathanamthitta, to take a final decision in the matter of appointment of a suitable person as ARD in Depot No. 150 of Konni Panchayat, pursuant to Ext. P1 herein within a period of six weeks from the date of receipt of the copy of the judgment. The said period has expired long ago in November, 2009 itself. The respondents have not chosen to file any review petition or appeal to impugn the correctness of Ext. P3 herein or for modification of the directions of this Court rendered in Ext. P3.

10. As stated hereinabove, respondent No. 3, who is the competent authority, has subsequently issued Ext. P-4 proceedings dated 22.3.2011 directing the petitioner to appear before the 3rd respondent in connection with the hearing pertaining to the application submitted by the petitioner for appointment as Authorised Retail Distributor in depot No. 150 in Ward No. VII of Konni Panchayat and accordingly, the petitioner appeared on 25.3.2011 for the hearing process and all the documents of the petitioner have been verified, etc. As noted earlier, the time limit for the compliance of the directions in the Division Bench judgment dated 11.12.2009 in W.P.(C) No. 35583/2009 pertaining to the claims for appointments to the reserved categories under clause 25(2)(a)(i) and the time limit for compliance of the judgment dated 31.12.2010 in W.P.(C) No. 11447/2010 and W.A. Nos. 906 and 907 of 2010, has expired long ago. As held in the Division Bench judgment in W.A. No. 1217/2009, the vacancy notified in the notification therein was not earmarked for disabled persons and as the entire vacancies available in the district concerned were not identified, the quota was not fixed as stipulated under Rule 45(2)(a)(i), it was held by the Division Bench that the said vacancy notified therein cannot be said to have been set apart for reservation, especially since the selection process in respect of the said vacancy was already set in motion. The Division Bench therein thus held that unless and until all the vacancies had been identified, the quota and rotation fixed, it cannot be said that the vacancy ought to have been given to a reserved turn and thus the Division Bench upheld the claim of the candidate in the general category, who responded to the notification issued for selection and appointment.

11. In the instant case, as Ext. P-4 proceedings dated 22.3.2011 has been issued pursuant to Ext. P-1 notification dated 14.7.2009, it can only be held that the respondents were actively pursuing the said selection process as per Ext. P-1. This is more so, in view of Ext. P3 judgment of this Court on the said selection process, which specifically directed that a final decision in the matter of appointment of a suitable person as ARD should be taken, if the selection process in relation to that depot notified as per Ext. P-1 herein has been completed. As Ext. P-4 has been issued subsequently on 22.3.2011, the issuance of Ext. P-4 dt. 22.3.2011 reflects a conscious decision taken by the respondents to finalise the action in the matter of appointment of the suitable person as ARD pursuant to Ext. P-1 and this conscious decision could only have been taken as the respondents have decided to complete the selection process. The issuance of Ext. P-4 dt. 22.3.2011 is to be appraised and assessed in the light of Ext. P-3 judgment rendered by this Court. The respondents have no case that the setting apart of the vacancy in Ext. P-1 to the general category is wrong, based on the total number of identified vacancies in the district reckoned for reservation purpose and that therefore Ext. P-1 is wrong. The respondents have no case that Ext. P-4 dt. 22.3.2011 has been issued wrongly. If there were bona fides in the contentions of the respondents that the validity of Ext. P-1 notification has ceased in view of the various orders and directions of this Court as stated in the counter affidavit, then they could have taken such a stand only after being convinced that the vacancy in Ext. P-1 could not have been set apart in the general category after adverting to the total number of the identified vacancies. If there were any bona fides in the present plea of the respondents that Ext. P-1 notification has ceased to have any effect, then the respondents would not have subsequently issued Ext. P-4 proceedings dated 22.3.2011. Therefore, this Court is not impressed with the plea now sought to be projected by respondents that Ext. P1 has ceased to have any effect. The respondents are obliged to consider and take a decision pursuant to Ext. P-4. The view taken by the Division Bench of this Court in the judgment in W.A. No. 1217/2009 is relevant in the facts of this case. It is also to be noted that Ext. R-2(a) amendment has come into force on 19.11.2010. It is only thereafter that the respondents have issued Ext. P-4 proceedings on 22.3.2011 for proceeding with the petitioner's application pursuant to Ext. P-1 notification. In such circumstances, it is only to be held that Ext. P-4 was issued for compliance of Ext. P-1 judgment after taking into consideration of all relevant aspects.

12. On a consideration of the conspectus of the aforementioned facts and circumstances of this case, it is directed that the 3rd respondent shall consider further aspects pursuant to Ext. P4 and take final decision thereon in the matter of Ext. P1, within a period of six weeks from the date of production of a certified copy of this judgment.

With these observations and directions, the Writ Petition (Civil) stands finally disposed of.