

(2006) 08 CAL CK 0001
In the Calcutta High Court
Case No : F.M.A. No. 147 of 2003

The General Manager, Eastern Railway and Others	APPELLANT
Vs	
Suvankar Das and Others	RESPONDENT

Date of Decision : 21-08-2006

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (2007) 1 CALLT 581 : 111 CWN 986

Hon'ble Judges : Prabuddha Sankar Banerjee, J; Bhaskar Bhattacharya, J

Bench : Division Bench

Advocate : R.N. Das and Asit Kumar Banerjee, for the Appellant; Amalesh Roy and Debasis Goon, for the Respondent

Final Decision : Allowed

Judgement

Bhaskar Bhattacharya, J.—This mandamus-appeal is at the instance of the Union of India and is directed against the order dated April 22, 2002 passed by a learned single Judge thereby allowing a writ application filed by the respondents by setting aside the decision of the Chief Commercial Manager, Eastern, Railway dated 5th October, 2001 and directing the present appellants to allot the S.T.D./P.C.O. booths in different Stations in the Sealdah Division, Eastern Railway after finalising the tender-process in accordance with the policy of the year 2000 taken by the Railway Administration without any further delay.

2. Being dissatisfied, the Eastern Railway represented by the Union of India has come up with the present mandamus-appeal.

3. The facts giving rise to filing of this mandamus-appeal may be epitomized thus:

(a) Applications were invited from the handicapped unemployed youth and ladies for allotment of S.T.D./P.C.O. booths in different stations under the Sealdah Division by the Railway authority on 26th February, 2000 but such advertisements were treated to be cancelled due to administrative reason on

12th July, 2000.

(b) In the meantime, on 28th April, 2000 a revised-policy-guideline for allotment of S.T.D./P.C.O. booths was issued by the Ministry of Railways and pursuant to such policy-decision, the Divisional Railway Manager, Sealdah Division, issued advertisements in the newspapers inviting sealed tender in two-packet-system on 10th September, 2000 for allotment of S.T.D./P.C.O. booths in different Stations under the Sealdah Division. The writ petitioners dropped their sealed tenders on 11th September, 2000.

(c) On 29th March, 2001 the Deputy Regional Manager published the form numbers to those participants who were found successful in form "A" system thereby informing that the packet "B" would be opened on 4th April, 2001. The writ petitioners were all found successful in tender form "A" system.

(d) On April 4, 2001 the Tender Committee opened the financial bids/packet "B" system in the presence of the writ petitioners and other successful bidders in packet "A" system and subscribed the names of the highest bidders in tabulation sheet for allotments of S.T.D./P.C.O. booths of different Stations under Sealdah Division and the writ petitioners were found successful.

(e) As the Railway authority did not allot the S.T.D./P.C.O. booths to the successful applicants, the writ petitioners on 18th July, 2001 made representation for allotment of S.T.D./P.C.O. booths. On 25th July, 2001 the Chief Commercial Manager (PS) wrote to the Senior Divisional Commercial Manager, Eastern Railway that the Executive Director informed that the amendment of the guideline of the year 2000 regarding allotment of S.T.D./ P.C.O. booths would be finalised within a fortnight and he was advised not to refund the earnest money taken from the writ petitioners.

(f) On 5th September, 2001, the Chief Commercial Manager further informed the Senior Divisional Commercial Manager that the decision was still awaited and asked him to return the Bank-draft or B.G. Bond to the applicants.

(g) On 27th September, 2001 the writ application out of which the present mandamus appeal has arisen was filed thereby praying for direction upon the respondents to allow the S.T.D./I.S.D./ P.C.O. booths on different Stations under the Sealdah Division in favour of the petitioners pursuant to the tenders issued on the basis of the policy-decision of the year 2000.

(h) The present appellants filed affidavit-in-opposition to the aforesaid writ application thereby contending that the Chief Commercial Manager, Eastern Railway by a letter dated 5th September, 2001 intimated to the Senior Divisional Commercial Manager of various Divisions including the Sealdah Division that subject matter had been referred to the Railway Board for detailed clarification and further advised the concerned Officer to return the Bank Draft to the bidders with further information that the selection made recently for filling up the S.T.D./ P.C.O. booths in accordance with the policy-decision of the year 2000 should be

cancelled. According to the Union of India, a new policy-decision has already been taken on the date of delivery of the Judgment impugned herein for grant of S.T.D./P.C.O. booths and as such, the writ petitioner cannot now be given appointment on the basis of process of tender which was initiated in the year 2000 and was kept in abeyance during the pendency of the writ application.

(i) The learned single Judge by the order impugned herein by relying upon the decision of the Supreme Court in the case of Food Corporation of India Vs. M/s. Kamdhenu Cattle Feed Industries, held that even in contractual sphere the State and its instrumentalities are required to conform to the Article 14 of the Constitution and by applying the aforesaid principle held that in the present case, the respondent authorities wrongly took decision of abandoning the tender procedure in respect of allotments of S.T.D./P.C.O. booths even after selecting the candidates as per policy-decision prevailing at that time. His Lordship further held that no opportunity was given to the successful candidates before taking the aforesaid decision even though the interest of the successful candidates were likely to be affected by the said decision and such decision of the respondent authority was totally unreasonable.

4. Being dissatisfied, the Union of India has come up with the present mandamus-appeal.

5. Mr. Das, the learned senior advocate appearing on behalf of the appellant, by relying upon the decision of the Supreme Court in the case of Shankarsan Dash Vs. Union of India, vehemently contended before us that candidates included in the merit list has no indefeasible right to be appointed even if a vacancy exists and the State while filling up the vacancy has to act bona fide and not arbitrarily. Mr. Das submits that in the case before us, the Union of India having decided to take a new policy-decision during the process of the tender, rightly kept the pending process of selection in abeyance and now having already published the new policy-decision which is at variance with the earlier one, there was no scope of selecting the writ petitioner on the basis of old policy at a point of time when new policy has already been given effect to. Mr. Das, thus, contends that the learned single Judge erred in law in forcing the appellant to adopt its old policy-decision pending finalisation of the new decision which was published on the date of the order impugned herein. Mr. Das contends that his client did not commit any illegality in suspending giving appointment in accordance with the old policy so long the new policy is not finalised.

6. Mr. Roy, the learned advocate appearing on behalf of the respondent has, on the other hand, supported the order passed by the learned single Judge and has contended that the process of tender being almost complete except that no actual appointment was given, his clients had the right to get the work-order on the basis of old policy decision. Mr. Roy further contends that virtually there was no new policy-decision but by the so-called new decision, only percentage of reservation was varied. Mr. Roy, thus, prays for dismissal of the appeal. In support, of such contentions, Mr. Roy relied upon a decision of the Supreme

Court in the case of Bannari Amman Sugars Ltd. Vs. Commercial Tax Officer and Others,

7. After hearing the learned Counsel for the parties and after going through the materials on record we find that the only question that falls for determination in this mandamus-appeal is whether the writ petitioners had an existing right, either legal or fundamental, to have an allotment in terms of the process of tender which was initiated on the basis of policy-decision of the 2000 though no allotment was given and whether the Railway Administration had the right to suspend the process of tender already initiated pending finalisation of the new decision.

8. In our view, Mr. Das is correct in his submission that by merely becoming the most successful bidder in a process of tender, a participant does not get any right to be selected unless Rules otherwise provide. There is no dispute that before the actual allotment of the booths, a new policy-decision had been under active consideration, as a result, the Railway Administration decided to keep the pending process of selection in abeyance and on the date of disposal of the writ application, such new policy-decision has been taken by the Railway authority by which the percentage of reservation among handicapped, women and scheduled castes and schedule tribes category have been varied from the previous one prevailing. Such being the position, the Railway authority was within its right in staying the pending processes of selection so long the new policy was not finalised and to abandon the earlier process of selection after the finalisation of the new policy and to follow the latest one. In this connection, reference may be made to the decision of the Supreme Court in the case of State of Uttar Pradesh and Others Vs. Vijay Bahadur Singh and Others, where the Apex Court held that even after the acceptance of the provisional bid, the Government was entitled to change its policy and reject the highest bid.

9. Position, however, would have been different, if the allotment had already been given to the writ petitioners and in that case, by taking aid of new policy-decision, the Railway authority could not cancel the existing allotments.

10. We, thus, find that in the present case the learned single Judge erred in law in directing the Union of India to allot the writ petitioners with the S.T.D./P.C.O. booths merely because they were the highest bidders in accordance with the previous policy-decision notwithstanding the fact that such policy-decision was kept in abeyance and ultimately new decision has come on the date of pronouncement of the Judgment passed by the learned single Judge.

11. Although, Mr. Roy tried to convince us that at the time of hearing, no new policy-decision was taken and as such, there was no mistake on the part of the learned single Judge in passing the direction, we are not at all impressed by such submission. If before finalisation of the new policy as regards percentage of reservation, the Administration decides to stay all further processes of selection, such decision cannot be branded as mala fide or against the public interest so as

to interfere in a writ application.

12. We find that on the date of delivery of the impugned order the new policy-decision was published. The new policy-decision cannot by any stretch of imagination be labelled as mala fide one only to deprive the writ-petitioners of their right to have allotment but the same was made applicable to the whole of India. After going through the new policy decision we find that it is within the province of the Railway authority to take such policy-decision and such decision cannot be regarded as arbitrary so as to uphold the right of the writ-petitioners on the basis of their selection based on old policy.

13. We now propose to deal with the decision cited by Mr Roy.

14. In the case of Banmari Amman Sugar Ltd (supra), exemption from purchase-tax on sugarcane was granted in favour of sugar mills established in co-operative and public sector which exceeded Rs. 300 lakh during the period of five years. Such exemption was withdrawn with retrospective effect. The industrial unit of the appellant before the Supreme Court was, however, established prior to the grant of exemption. In such a situation, it was held that the benefit could be withdrawn at any time and the appellant had no vested right to claim exemption. While answering the question of legitimate expectation raised by the appellant, the Supreme Court held that the plea of legitimate expectation without anything more ipso facto could not give any right. According to the Apex Court, it can be one of the grounds to be considered but if the State acts within its bounds of reasonableness, it would be legitimate to take into consideration the national priorities and adopt trade policies. The ultimate test, the Court proceeded, is whether on the touchstone of reasonableness, the policy-decision comes out unscathed.

15. Applying the aforesaid principle in our case, we find that the Government has changed its earlier policy-decision on reservation of the woman, handicapped and the persons belonging to the Scheduled Caste and the Scheduled Tribe by varying the earlier percentage of reservation and such policy-decision has been adopted in conformity with its power and as such, there is no scope of review of such decision. We have already indicated that the appellants were not given appointment pursuant, to the process of selection and as such, no right accrued in their favour. The said decision, thus, is of no avail to the appellants.

16. In the case of Food Corporation of India (supra), relied upon by the learned single Judge, the Supreme Court in paragraph 8 of the Judgment itself pointed out that the question whether the expectation of the claimant is reasonable or legitimate depends upon the facts of each case. Whenever such question arises, the Apex Court proceeded, it is to be determined not according to the claimant's perception but in the larger public interest wherein other more important considerations may outweigh what would otherwise have been the legitimate expectation of the claimant. According to the Supreme Court, a bona fide decision of the public authority reached in this manner would satisfy the

requirement of non-arbitrariness and withstand judicial scrutiny. In the case before us, the Railway Administration having decided to adopt a new policy on the basis of the power conferred upon it by the Constitution of India regarding the percentage of reservation, we do not find any unfairness on the part of the appellant in suspending the ongoing process of selection awaiting the finalisation of such policy. The respondents have failed to prove that the new policy adopted by the appellant is tainted with malice or is otherwise arbitrary. The said decision relied upon by the learned Judge rather supports the contention of the appellant before us.

17. At this stage, it will not be out of place to refer to a decision of the Supreme Court in the case of P.T.R. Exports (Madras) Pvt. Ltd. and others Vs. Union of India and others, where a Bench consisting of three Judges held that an applicant for license has no vested right or accrued right to have a license in accordance with the policy subsisting at the time of submission of the application and the Government has power to evolve its new policy in public interest, which includes its power to withdraw the old policy and the Government to its previous policy by invoking the doctrine of legitimate expectation of the applicant for license unless the change in policy is vitiated by mala fides or abuse of power, which the applicant must plead and prove to the satisfaction of the Court. The Supreme Court further held that the doctrine promissory estoppel is equally inapplicable in such circumstances. The learned single Judge, thus, misapplied the doctrine of legitimate expectation to the fact of the present case.

18. We thus, find substance in this appeal and accordingly, allow the appeal by setting aside the order impugned and dismissing the writ application. We, however, direct the Railway authority to refund the application-money deposited by the writ petitioners with 10 per cent interest per annum from the date of deposit of such amount till actual repayment. Amount must be paid within a month from today.

In the facts and circumstances, there will be, however, no order as to costs.

Prabuddha Sankar Banerjee, J.

19. I agree.