

(1998) 02 J&K CK 0017
In the Jammu And Kashmir High Court
Case No : O.W.P. No. 934 of 1997

Vikram Trisal

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 23-02-1998

Acts Referred:

Constitution of India, 1950 — Article 14
Telegraph Act, 1885 — Section 7

Citation : AIR 1998 J&K 92

Hon'ble Judges : T.S. Doabia, J

Bench : Single Bench

Advocate : K.S. Johal, for the Appellant; B.A. Bashir, for the Respondent

Judgement

T.S. Doabia, J.—Counsels heard.

2. Petition admitted.

3. With the consent of the learned counsel for the parties, this petition is taken up today for final disposal.

4. A policy decision taken by the respondent-authorities in the matter of allotting STD, PCOs is the subject matter in this petition.

5. On 24th July, 1993 a policy decision was taken. This decision was to the effect that educated unemployed persons can apply for the allotment

of STD, PCOs. They were supposed to produce certificate indicating that they were not employed. These were to be endorsed by the local

Member of Parliament, Member, Legislative Assembly or by Revenue authorities not below the Rank of Tehsildar. Some other functionaries were

also given the authority to issue the certificates. The qualification was mentioned eighth class or middle pass in Rural areas and matriculation or

higher school and above in Urban areas. There is no dispute, so far as the above

eligibility criteria is concerned. Challenge is, however, being made to the giving of preference to the following category of persons/institutions.

- (i) Handicapped including blind persons.
- (ii) SC/ST applicants.
- (iii) Ex-servicemen/War widows.
- (iv) Retired DOT employees of their dependents.
- (v) Dependents of Freedom Fighter, (vi) Charitable Institutions/Hospitals.

6. The argument raised is that if a preference is given to the aforementioned categories, then earlier eligibility criteria mentioned in para-I would stand totally diluted and in many cases, it may evaporate. It is this factor which has led these four petitioners to invoke extra-ordinary writ jurisdiction of this Court.

7. The challenge is made inter alia on the following grounds ;

- (i) That basically the allotment is to be made to educated unemployed persons.
- (ii) That if preference is to be given to the categories mentioned above, then the persons who are otherwise eligible may not get the chance of allotment.
- (iii) That a ex-servicemen and retired employees can not be said to be unemployed.
- (iv) That a charitable Institution or Hospital would not fall within definition of unemployed persons. It is accordingly suggested that the criteria indicated in para 2 should be struck down.

8. The further argument raised is that on 24th of May, 1997, another policy decision has been taken by the Government of India. It is stated mat any person can apply for STD, PCOs. The applications so received would be registered. Allotment would be made in the order in which the applications are filed. It is accordingly submitted that Department itself framed a fresh policy, therefore, allotments should be made in terms of a policy decision taken on 24th of May, 1997. However, at the same time stress is being given to contention that eligibility criteria originally fixed be taken note of after ignoring the special categories noticed above. With a view to advance the above argument, it is stated that if allotment is made to categories referred to above, then it would amount to 100% reservation in

favour of the categories referred to above. This according to the counsel appearing for the petitioners would be hit by a law laid in the decision of the Supreme Court of India in the case reported as State of U.P. and others etc. Vs. Janta In. Udyog and others etc., . Reliance is also being placed on another decision reported as Secy. (Health) Deptt. of Health and F.W. and Another Vs. Dr. Anita Puri and Others, . In the later decision selection was being made to the post of Dental Surgeon. In addition to the basic qualification, preference was sought to be given for some higher qualifications. The Supreme Court of India was of the view that all those persons possessing basic qualifications are to be considered. However, in the matter of giving preference higher qualifications could be taken note of. These candidates who possessed higher qualifications could be given additional weightage.

9. I am of the opinion that no fault can be found with the policy which has been evolved by the respondents. The basic qualification is that only a person who is educated unemployed can seek allotment in Rural areas. He has to possess at least 8th class. In the Urban areas, he must possess Matriculation certificate. In the case of handicapped blind, SC/ST, Ex-service man, war widows, retired DOT employees or their dependents, dependents of freedom fighter, charitable Institutions & Hospitals some preference has been given. This preference can be equated with additional weightage which was taken note of by Supreme Court of India in the case reported as Secy. (Health) Deptt. of Health and F.W. and Another Vs. Dr. Anita Puri and Others, referred to above. Thus the basic qualification remain the same. If every thing is equal then the categories which are referred to above are to be given additional weightage. This would not amount to a reservation in their favour. Therefore, what was said by the Supreme Court of India in the case referred to above would be attracted to this case also.

10. So far as the Charitable-Hospital are concerned a special category has been carved out. This is a reasonable classification. It is not hit by Article 14 of the Constitution of India.

11. In view of the above it cannot be said that the policy in question is any way violative of Article 14 of the Constitution of India.

12. So far as the decision taken on 20th of May, 1997, is concerned, it only lays

down that every person applying would be considered and the allotment would be made strictly in accordance with the order in which applications are received and registered. This policy has been made operative with effect from 20th of May, 1997. The learned counsel appearing for the respondent-authorities have said that any person who makes an application would be allotted a STD PCOs.

13. I am of the opinion no fault can be found with the policy decision taken by respondent-authorities. The respondent-authorities would consider the cases of the petitioners for allotment of STD PCOs in accordance with policy decision taken by them.

14. Disposed of accordingly.