(2014) 07 AP CK 0127

In the Andhra Pradesh High Court

Case No : Writ Petition Nos. 169 and 2586 of 2014

Vithanala Yagnesh APPELLANT

Vs

Bharat Petroleum Corporation Limited RESPONDENT

Date of Decision : 18-07-2014

Acts Referred:
Constitution of India, 1950 — Article 14, 15, 15(4), 16, 16(4)

Citation : (2014) 6 ALD 491 : (2014) 6 ALD(Cri) 491 : (2014) 5 ALT 334

Hon'ble Judges : P. Naveen Rao, J

Bench : Single Bench

Advocate : V. Harish Kumar, Advocate for the Appellant; B. Mayur Reddy, Advocate for the Respondent

Final Decision : Partly Allowed

Judgement

P. Naveen Rao, J.—In these two writ petitions, petitioners challenge various clauses in the combined notification issued by Bharat Petroleum Corporation (BPCL), Hindustan Petroleum Corporation Limited (HPCL), Indian Oil Corporation Limited (IOCL) published in the daily newspapers on 15.9.2013 calling for applications for appointment as LPG distributors in the entire state of Andhra Pradesh (Undivided). The notification calls for applications for enlistment as distributors at 499 locations. The procedure for selection, principle of reservation, eligibility criteria are all governed by the brochure of guidelines for selection on regular LPG distributors brought about by three oil companies in May, 2013. Clause 2 of the brochure deals with reservation to various categories. Clause 3 deals with arrangement of the reservation slots according to 200 point roster. Clause 5 deals with mode of selection. Clause 6 deals with eligibility criteria for new applicants. Clause 6.1 deals with common eligibility criteria for individual applicants, which include educational qualifications, age etc. Clause 6.2 prescribes specific eligibility criteria for different categories applying as individual. Clause 6.2.1 (c) deals with Other Backward Classes (OBC). Clause 9 deals with procedure for drawl. Clause 11.5 deals with spouse as co-owner.

2. In W P No. 169 of 2014, petitioner is a person belonging to Other Backward Class (for short OBC). Petitioner intended to apply at two locations which are earmarked to be filled up by a person belonging to OBC category, one at Samba Murthy Nagar, Kakinada (serial no.13) and Kakinada North (serial no. 137). Petitioner avers that, petitioner has taken on lease two sites within the specified distance limits of respective locations. Petitioner avers that he fulfils all the required criteria to be eligible for applying to the above locations except the criteria of providing Rs.10,00,000/- as deposit (bank balance). Since petitioner is unable to fulfil this criteria, he could not apply.

3. In W P No. 2586 of 2014, petitioner is a person belonging to OBC (women) category candidate applied for distributorship location in Vizianagaram.

4. In both the writ petitions, the challenge is to the criteria prescribed for selection for the distributorship which are earmarked to be filled up by OBC category. With the consent of counsel for the parties, both writ petitions are disposed of by this common order.

5. Since year 1997, 25 % LPG distributorships are earmarked in favour of SC and STs and for the purpose of identification of the locations 100 point roster system was adopted. In the year 2013, Government of India has resolved to introduce reservations in favour of OBCs in LPG distributorships. 27 % of the LPG distributorships are reserved for OBCs. In tune with the policy formulated by the Government of India, the impugned notification provides reservation for OBCs. For the purpose of identification of the slots, the roster system is now revised to 200 point roster. To fill the dealerships earmarked to OBC, the respondent oil companies have adopted non creamy layer criteria for consideration as OBC. A person having an annual income of Rs.6,00,000/- and less is classified as non creamy layer OBC eligible for claiming reservation. Both petitioners qualify the criteria to be classified as non creamy layer OBC. However, a candidate, irrespective of social status, except SC and ST, is required to show bank balance of Rs.15,00,000/- for urban markets and Rs.10,00,000/- for urban rural/ rural markets respectively as a closing balance on the last date for submission of the application as specified in the advertisement and other criteria as applicable to Open category. According to the assessment of the respondent companies, a successful dealer is required to invest huge amounts for the purpose of construction of godown, office, etc., and therefore it is mandatory for prospective applicant, irrespective of his social status to make provision for sufficient funds and minimum bank balance indicated in the brochure is required for the purpose of construction of LPG godowns. Grievance of the petitioners is that since they fall under the non-creamy layer category annual income is less than Rs.6,00,000/-, the other criteria prescribed by the respondent oil companies i.e., provision of bank deposit is anti-thesis to the reservation in favour of non creamy layer OBCs. They have also challenged not providing reservation to women and selection by draw of lots.

6. Heard Sri V.Harish Kumar and Sri P.V.A. Padmanabham, learned counsel

appearing for petitioners and Sri P Vishnuvardhan Reddy, learned Additional Solicitor General and Sri B.Mayur Reddy for respondents.

7. Learned counsel for petitioners Sri P.V.A. Padmanabham submitted that once the respondent companies have adopted the principle of reservation in favour of non-creamy layer OBCs, it is mandatory for them to comply with all the required conditions for the purpose of effective implementation of the reservation in favour of OBCs and all other relevant criteria should also match the requirement of the status. A person whose income should not exceed Rs.6,00,000/- per annum cannot be expected to have a bank balance of Rs.10,00,000/- in semi urban and rural areas and Rs.15,00,000/- in urban areas for the purpose of satisfying the requirement with the application in addition to insistence to make arrangement for providing godown and office establishment on his own is anti-thesis to very concept of reservation for OBC with non-creamy layer category status. Thus, while showing the benevolence in the form of reservation to non creamy layer OBC, the benefit of reservation is actually intended to be filled up by persons who otherwise camouflage themselves as non creamy layer category, but have sufficient means to establish the retail outlets or to tie up with someone having such means. Thus, very condition to provide the bank balance of Rs.10,00,000.00/ Rs.15,00,000.00 is arbitrary, discriminatory and offends Article 15(4) of the Constitution of India and principle of law laid down by the Supreme Court in catena of decisions. Respondent companies failed in their constitutional duty to safeguard the interest of the backward classes in rural areas who deserved helping hand after having opted to provide reservation.

8. The action of the respondents in insisting the conditions of eligibility which cannot be fulfilled by non creamy layer OBCs amounts to acting outside the scope/contours of Constitutional principles and thus amenable to judicial review. The conditions of eligibility are in conflict with non-creamy layer status and would deny and deprive the opportunity to obtain LPG distributorship to large sections of OBCs.

9. Learned counsel for petitioner placed reliance on various paragraphs of judgment of the supreme Court in Indra Sawhney etc. etc Vs. Union of India and others, etc. etc., And Indira Sawhney Vs. Union of India and Others, And Ashok Kumar Thakur Vs Union Of India to contend that, special provisions are required to be made for non creamy layer OBCs; once State or its instrumentality provides reservation, the procedure for providing reservation and method of selection should stand the test of provisions contained in Article 15(4) and 16(4) of the Constitution of India as interpreted by the Supreme Court in several decisions. The action of the respondents in prescribing the same financial requirements as made applicable to Open Competition candidates amounts to discrimination against non creamy layer OBCs. The principle of law as settled by catena of judicial pronouncements amplify that reserved category candidate has to be given relaxation of standard of eligibility in consideration. Having noticed that in OBCs there are several categories who are financially week and

educationally poor, they are being segregated for the purpose of providing the benefits of reservation. Thus, the less privileged of the OBCs alone are entitled to reservation. Such less privileged are required to be provided various incentives and concessions to fulfil the objective of reservation.

10. Learned counsel contended that prescription of the selection by draw of lots is wholly illegal criteria and leads to illogical manner of selection. When detailed selection procedure is prescribed, there is no justification to resort to draw of lots to select a dealer and it is nothing but a chance and amounts to gambling and in the matter of selections to the agencies which have lot of public importance, such procedure of selection is illegal and the same is against public interest.

11. Learned counsel further contended that it is illegal to remove reservation in favour of women to an extent of 33% and offends Article 15(4) of the Constitution of India. There is no justification to remove reservation to women.

12. Sri V. Harish Kumar, learned counsel appearing for petitioners in W P No. 169 of 2014 supplemented the contentions urged by learned counsel Sri P.V.A. Padmanabham. He further submitted that insofar as SC and ST categories are concerned, the requirement of bank balance is Rs.5,00,000/- in urban areas and Rs.2.5 lakhs in semi urban and rural areas. They are also provided financial assistance after the allocation of the dealership through banks for the purpose of establishment of godowns and offices. This would show that conditions mentioned in the brochure and the notification on financial aspect and other aspects are not inflexible and can be leveraged. No such provision is made insofar as OBCs are concerned. Learned counsel further submitted that petitioners are not seeking any concession on par with SC/ST candidates. Learned counsel submitted that the claim of the petitioners is that they should be given financial assistance for the purpose of establishment of godowns and offices and other infrastructure and running cost after dealership is awarded to them. Insistence of bank balance of Rs.10,00,000/- at the threshold itself is impossible of compliance by any OBC answering the description of the non creamy layer category.

13. Opposing the contentions of the learned counsel for petitioners, Sri D.V.Sitarama Murthy, learned senior counsel appearing for respondent companies submitted that it is the privilege of the respondent companies to provide or not to provide reservation to OBCs and no citizen can insist for applying the principle of reservation in any field. Provision of reservation is an enabling provision but no right vests.

14. The oil companies in consultation with the Government of India have decided to provide reservation to OBCs to an extent of 27 % in awarding LPG distributorships. Policy framework as notified is only for the purpose of providing reservation to a limited extent. Thus, a person can claim allotment of distributionship earmarked for OBC subject to the person fulfilling all other criteria i.e., educational qualifications and the financial criteria. It is mandatory

for a person to have minimum education so that he can properly interact with the consumers as well as the company. He must make provision for establishment of a godown which can have the storing capacity of 8000 cylinders and an office located at a central place, accessible to all consumers, within the area. Thus, the prospective dealer must have sufficient means to establish the godown and office. The widening of the dealerships is to help the consumers to receive better services from the oil companies. The revenue earning capacity of a distributor depends on quality of service he provides. A distributor cannot provide quality service unless he has sufficient means for establishment of a proper godown and office. Thus, these are essential and necessary conditions for a distributor and the same cannot be relaxed. Thus, reservation extended to OBC is constrained by the above requirements.

15. Learned senior counsel further contended that OBC candidates cannot compare themselves with SC/ST categories as certain special concessions are provided to SC/ST category persons for historical reasons and the principle of law on the same is well settled that same privileges cannot be insisted upon by OBC candidates.

16. Learned senior counsel further contended that decisions relied by learned counsel for petitioners are applicable to employment and education. Distribution of state larges is entirely different. While extending the reservation principle in state larges, the criteria for consideration is more influenced by economic viability. The respondent companies have to earn for themselves and the profits that respondents can earn depend on the quality of service provided to the consumers and therefore they require network of distributors with sufficient financial means. The OBC cannot request for provision of similar kind of privileges as applicable to employment and education. Provision of reservation in dealerships is a separate category by itself and cannot be compared with employment and education. Learned senior counsel compared the kind of reservation provided in distributionships to that of reservation provided to public offices and contended that while providing reservation to public offices no other relaxations are provided except for earmarking the locations in favour of backward classes. In other words, if a constituency is reserved for backward classes, only backward class candidates can alone compete, whereas backward class candidates can also compete against an unreserved constituency. Similar privilege is extended in distributionship. Competition is now confined to OBC classified as non-creamy layer persons but all such OBC non creamy layer persons are required to fulfil all other criteria. He therefore submitted that the policy adopted by the respondent company is not hit by the mandate of Article 14 read with Articles 15 and 16 of the Constitution of India.

17. Learned senior counsel submitted that this is a matter of policy evolved by the respondent companies and in matters of policy, the scope for judicial review is very limited. The policy is neither arbitrary nor discriminatory. The conditions prescribed are uniformly applicable to all OBCs and only an OBC who fulfils the

criteria would be considered. Therefore it is neither arbitrary nor discriminatory.

18. The only constitutional obligation on the OMCs is to remove creamy layer from the OBC category and there is no corresponding obligation to release the various conditions for selection of LPG outlet. Learned senior counsel relied on Ashok Kumar Thakur (cited supra) to contend that all that the appropriate government is required to do is to provide reservations to OBCs and it is not subject matter of judicial review/examine or ensure whether the benefits of reservations actually accrue to the members of the OBC category once creamy layer is excluded. Such analysis is beyond the purview of judicial review and hence cannot be examined.

19. Learned senior counsel placed reliance on the following decisions:

(A) M.R.Balaji &Amp; Others Vs State Of Mysore and Others :

Provision of reservation being discretionary any relaxation or benefits to be provided to OBC communities to get the full benefits of reservation is also discretionary and therefore writ petitions are not maintainable.

(B) Andhra Pradesh Public Service Commission Vs Baloji Badhavath for the proposition that no citizen can claim reservation as a matter of right and that provisions contained in Articles 15 and 16 of the constitution of India are only enabling provisions.

(C) Chattar Singh Vs State Of Rajasthan for the proposition that Scheduled Castes and Scheduled Tribes stand as two separate classes while OBCs stand apart. Though, OBCs are socially and educationally not forward, they do not suffer the same social handicaps inflicted upon Scheduled Castes and Scheduled Tribes.

(D) Indira Sawhney Vs. Union of India and Others, for the proposition that though there is no specific provision in regard to backward classes, the same principle underlying Article 225 of the Constitution of India is applicable to backward classes, Supreme Court held.. In our view, the Constitution has not envisaged that inadequately represented backward classes are to be placed on a more favourable footing than inadequately represented Scheduled Castes/Tribes for that would offend Article 14 as between two sets of backward classes namely the Scheduled Castes and the Other Backward Classes as pointed out by Sawant,J. In our opinion, the qualifications, standard and talent necessary for backward classes cannot be relaxed or reduced to a level which may affect the efficiency of administration.

(E) Union of India Vs Rakesh Kumar And Others for the proposition that Article 243(d) and 243(t) specifically relates to reservations in local self government institutions. Such reservation cannot be compared or related to reservations for OBCs under Article 15(4) of the Constitution of India.

Nor it can be said that Article 243(d) and 243(t) provide for relaxation of conditions for OBCs.

(F) Bajaj Hindusthan Limited Vs. Sri Shadilal Enterprises Limited for the proportion that in policy matters Courts should not interfere unless there is clear violation of statute or constitutional provision or arbitriness.

(G) Joint Action Committee Of Airline Pilots Association Of India (Alpai) Vs Director General Of Civil Aviation for the proposition that public policy can be subject matter of judicial scrutiny only in exceptional circumstances where it can be shown to be arbitrary, unreasonable or violative of the statutory provisions.

20. In reply, Sri Padmanabham contended that decision in Andhra Pradesh Public Service Commission is not relevant to this case. It was a case concerning shortlisting of candidates for main examination for Group I Services in the state of Andhra Pradesh and not fixing community wise cut off marks.

21. He further contended that in matters of reservations to local bodies creamy layer principle is not applied and therefore all these decisions relied on by learned senior counsel are not relevant to this case.

22. He further submitted that even while providing reservation in dealerships, the principles that are applicable to public employment also would equally apply. Income limit and financial capacity both run counter to each other. Insistence of financial capacity cannot meet the non creamy layer criteria. He further submitted that no basis is shown to prescribe such condition. What is required by the respondents is establishment of godown and office and all other basic requirements to run the dealership after the selection process is complete. For the prospective candidate to provide amenities financial assistance ought to have been extended, through scheduled banks as is provided to SC/ST category candidates. Thus, at the pre-application stage, insistence of a minimum balance of Rs.10,00,000/- in semi urban and rural areas and Rs. 15,00,000/- in urban areas is per-se illegal.

23. The points that arise for consideration are:

i) Whether prescription of the financial requirements to be fulfilled by the applicants belonging to OBC non creamy layer as prescribed to open category candidates, is valid?

ii) Whether not providing reservation to women is illegal ? and

iii) Method of selection by draw of lots is vitiated ?

24. Classification of backward classes is based on caste. However, it is well established fact that all persons in the same caste are not socially and economically backward. There are many who are comparable to forward class. They are described as creamy layer. Such of the Backward classes who answer the description of socially and economically backward are segregated by adopting the income as the basis. In order to focus on such of those backward classes who require special attention and State patronage, creamy layer among the backward

classes are excluded from the benefits of reservation. For the present, the income ceiling of Rs.6 lakhs per annum is prescribed to determine status of a person as belonging to non creamy layer. This segregation and income ceiling limit decided by the Government of India is adopted by the respondent companies for the purpose of extending the reservations to other backward classes in awarding dealerships.

25. There are millions of people belonging to OBC who are falling below the six lakhs Rekha to be eligible to avail the benefits of various schemes. While a person is made eligible to apply for LPG dealership and claim reservation provided for OBC, he is also asked to prove his capacity to establish the dealership and run the same. The guidelines framed by the respondent companies and consequential notifications prescribe possession of certain educational qualifications and they should also be able to provide the source of finances to support, as well as provision of land to establish a godown and an office. This dicotomy is the core issue. A person of income limit of Rs.6 lakhs or less per annum after attending to the domestic necessities cannot be expected to have savings of huge money i.e., minimum of Rs.10 lakhs, if a person intend to apply for rural areas and Rs. 15 lakhs if a person intend to apply for urban areas. In addition, he is also required to provide sufficient space for establishing godown and office. Thus, most of the OBCs cannot fulfil this criteria and therefore they cannot avail the reservation provided to them by the respondent companies.

26. Comparisons are drawn on reservation policy adopted by the respondent companies on one extreme to reservations in employment and education and on the other extreme to local bodies. In employment and education, income ceiling is applied and once a person answers the description of non creamy layer, he can seek employment to vacancies reserved for OBCs. Similarly if a person answers the description of OBC non creamy layer, he can seek admission into any course of study in the reservations provided for OBCs. For higher education, the amount of fee payable is far high. Thus, a person who answers the description of OBC non creamy layer, can not bear the fee payable to the institutions and therefore cannot avail the benefit of reservation provided to them in higher education. Having realised that the backward class students belonging to non creamy layer cannot bear the fee payable for higher education, Governments have stepped in to extend helping hand. Governments have extended financial support to those students in the form of fee reimbursement and hundreds of crores of rupees are spent by the Governments every year to reimburse the fee payable by the candidates belonging to non creamy layer backward classes to prosecute higher education.

27. Insofar as the employment is concerned, securing employment depends on the skill a person has acquired already or the performance by him in the competitive examinations. For a person competing for public employment or for employment in public sector organisations, he does not require to spend any

money once he acquire the requisite skill or educational qualification or secures merit in the competitive examination.. Thus, no further expenditure would involve in seeking employment for a person answering the description of non creamy layer OBC.

28. While providing reservations for OBC in local bodies, principle of creamy layer is not applied and therefore an OBC is entitled to contest without regard to income. There cannot be any comparison with reservation to local bodies with that of provision of LPG dealerships by the respondent companies.

In K. Krishna Murthy, Supreme Court held that political backwardness cannot be equated with social and educational backwardness. In a sense what is provided by the respondent companies is also a kind of employment. The oil companies having adopted creamy layer principle, cannot rely on principle adopted in reservation to local bodies.

29. The paradox is, unlike securing employment, a non creamy layer OBC is required to mobilise huge finances even to apply for a dealership. With meagre finance and resources at his disposal, he cannot compete and secure the dealership if conditions as imposed by the respondent companies are applied and enforced. Thus, there is merit in the contention of the learned counsel for the petitioners that very prescription of the provision of huge bank balance and provision of property at the threshold are antithetical to very principle of non creamy layer OBC. The respondent companies having adopted the principle of non creamy layer in providing reservations to OBCs while awarding LPG dealership could not have insisted at application stage requirement of possession of bank balance. Such condition can be insisted upon once person is identified to be eligible to secure the dealership and before he is awarded dealership. A feeble attempt was made by the respondent companies to contend that it is not necessary that a person should have savings of Rs.10 lakhs or more but he can reflect his bank account with the said amount. Thus, according to respondent companies bank balance can be shown, temporarily even by borrowing from known persons. This assertion means adoption of unethical means to boost income albeit temporary or inviting some wealthy person to support the venture. Such measures are antithetical to very concept of reservation. Such a course cannot be expected from people coming from rural background and it cannot be expected that such category of persons can be able to mobilise funds to that extent when they were only applicants for dealership. This could only make such person a puppet in the hands of wealthy. Reservation in employment, education and in distribution of State larges is intended to uplift the marginalised and to bring them into main stream. By insisting such higher requirements, the very purpose of provision of LPG dealership to OBC with non creamy layer description is defeated. As against employment, establishment of LPG dealership, involves financial support and non creamy layer OBC cannot be expected to have such huge resources at his disposal to start a dealership on his own. If any person makes a provision even before dealership is granted, obviously his status as non

creamy layer OBC would be in jeopardy as no person can legally claim to possess such huge money in his account and properties and still claim as a non creamy layer OBC.

30. In this context reference can be made to certain concessions extended to SC and ST candidates. It is no doubt true that there cannot be any comparison between SC and ST and OBCs but in the above analysis logically a scheme of similar nature could have been extended to OBCs and it is imperative to extend some relaxations to OBCs answering the description of non creamy layer, since establishment of dealership requires huge financial commitment which cannot, in the normal circumstances be attended to by a non creamy layer OBC. As held by the Supreme Court in Indra Sawhney and Ashok Kumar, it is permissible to prescribe relaxed standard of eligibility as compared to open category candidates.

31. In Indra Sawhney, Supreme Court held, We reiterate that while it may be permissible to prescribe a reasonably lesser qualifying marks or evaluation for the OBCs, SCs and STs consistent with the efficiency of administration and the nature of duties attaching to the office concerned- in the matter of direct recruitment. (para 831)

32. In Ashok Kumar Thakur, Supreme Court held as under: The Government can make relaxation to some extent so that sufficient number of candidates may be available for the purpose of filling up of 27 % reservation. (para 175)

The Central Government shall examine as to the desirability of fixing a cut off marks in respect of the candidates belonging to the Other Backward Classes (OBCs). By way of illustration it can be indicated that five marks grace can be extended to such candidates below the minimum eligibility marks fixed for general categories of students. This would ensure quality and merit would not suffer. If any seats remain vacant after adopting such norms they shall be filled up by candidates from general categories. {para 358 (3)}

The Union of India should appreciate in proper prospective that the root cause of social and educational backwardness is poverty The Government need not always provide the maximum limit. Reasonable cut off marks should be set so that standards of excellence greatly effect. The unfilled seats should revert to the general category. (para 371)

As regards cut-offs in institutions other than those mentioned in para 7, these may be placed somewhere midway between those for SC/ST and the unreserved category, carefully, calibrated so that the principles of both equity and excellence can be maintained. (para 627)

Balaji thus serves as an example in which this Court sought to ensure that reservation would remain reasonable. We heed this example. There should be no case in which the gap of cut off marks between OBC and general category students is too large. To preclude such a situation, cut off marks for OBCs should be set no lower than 10 marks below the general category. To this end, the

Government shall set up a committee to look into the question of setting neither the OBC cut off at nor more than 10 marks below that of the general category. Under such a scheme, whenever the non-creamy layer OBCs fail to fill the 27 % reservation, the remaining seats would revert to general category students. (para 629)

On the question as to would it be reasonable to balance OBC reservation with societal interests by instituting OBC cut-off marks that are slightly lower than that of the general category, Supreme Court held as under:

It is reasonable to balance reservation with other societal interests. To maintain standards of excellence, cut off marks for OBCs should be set not more than 10 marks out of 100 below that of the general category.(para 645)

33. The criteria to determine a person as belonging to non creamy layer OBC is the financial condition i.e., a person having an income of less than Rs.6 lakhs is classified as a person belonging to OBC non creamy layer and eligible to claim reservation. Thus, status of OBC non creamy layer is directly linked to the financial condition of the person claiming reservation. That financial criteria as applied by the Government of India to determine a person as a non creamy layer being Rs 6 lakhs per annum, the other financial requirements prescribed by the respondent companies, do not match and they are in fact contrary to the said prescription. There is a clear dichotomy. Having adopted the financial criteria as applied by the Government of India to determine status of a person as non creamy layer OBC for the purpose of awarding LPG Dealership, the prescription of other eligibility requirements as extended to Open Category candidates is violative of mandate of Article 15(4) of the constitution of India, is discriminatory and amounts to arbitrary exercise of power.

34. In the above analysis, the requirement prescribed in the impugned notification as well as brochure issued by the respondent companies prescribing the possession of bank balance of Rs.10 lakhs if a candidate is applying for a dealership in rural /semi urban areas and Rs.15 lakhs in urban areas in addition to requirement to own a premises or leased premises for establishment of godown and office as primary conditions to be satisfied at the time of applying for dealership cannot be sustained. It is accordingly, set aside and consequently respondents are directed not to insist at the application stage the possession of bank balance of Rs.10 lakhs if a candidate is applying for a dealership in rural / semi urban areas and Rs.15 lakhs in urban areas from the non creamy layer OBC candidates while applying to OBC reserved dealership points.

35. On the issue of reservation for women at the first blush, the contention of petitioners sounded as formidable challenge but on a closer look, it fades into insignificance. It is settled principle of law that no person has a right to insist provision of reservation to any category. It is a policy choice of employer to provide or not to provide reservation to women. Respondent companies claim that condition is incorporated in the revised policy in Clause 15 which envisaged

making a spouse as a co-owner. The clause is in mandatory terms. As soon as dealership is awarded the spouse becomes co-owner to the extent of 50 % of the share. On account of introduction of reservation to OBC, there was a need to rework out percentage of reservation to various social groups. This resulted in giving up exclusive reservation to women. However, a unique system of sharing is introduced whereby, spouse becomes co-owner of the dealership. In other words, in all dealerships allotted to men, women becomes 50 % share holder and vice versa. Thus, principal objective of empowering women is achieved.

36. The next issue of greater debate was to the challenge on method of identifying the prospective dealer. Earlier policy envisaged allocation of particular percentage of marks to each of the attributes of candidates, such as, educational qualifications, the ownership of land, location of the land, etc., and after the initial process of selection, the candidates were also subjected to oral interview and percentage of marks were given to oral interview. Final section was based on marks secured in both categories. This selection process was subjected to criticism and litigation. It is not un-common that these selections were subject to challenge before the Courts. Most of the time, the allegations were on improper awarding of marks on various attributes and boosting the eligibility of candidates by awarding indiscriminately higher marks in the interview etc. Criticism mounted on the ground that interview method was misused to propel the chances of a candidate. There were also complaints of improper awarding of marks on various attributes.

37. Having realized the short comings in the earlier selection process and in order to eliminate/reduce the discretionary area in the selections, the present method is evolved. Rigorous selection procedure is prescribed before short listing. As per the present method, the various requirements are to be fulfilled by the candidates applying and after initial scrutiny and once they satisfy the required qualifications and eligibility criteria, they were all put together. All candidates who are short-listed are equally eligible for final selection. From out of the qualified persons, required numbers of persons are picked up by way of draw of lots. As all the short listed candidates stand on par, picking few out of many would not amount to discriminatory selection.

38. Draw of lots system is adopted since earlier system i.e., interview as part of selection procedure was subject of object criticism. The respondent companies assume that the system would eliminate the scope of individual discretion. It intends to eliminate the allegations of bias or preference. Elaborate mechanism is prescribed in conducting draw of lots and the entire exercise is also video graphed. Sufficient safeguards are incorporated in the selection process by draw of lots. Therefore, everyone has an opportunity of seeing the manner in which the draw of lots is conducted. In this manner, a new system is evolved by the respondent companies. This system is to be tested and if there are any deficiencies/shortfalls in their enforcement that can be looked into. This system is at the nascent stage and be given an opportunity to observe its effectiveness

in eliminating the personal choice of selection.

39. It cannot be said that the selection procedure is vitiated warranting interference by this Court. It may be true that the earlier selection procedure was in force for a long time. But fact remains that there have been grievances of improper selection by the non-selected candidates. Difference between the candidates was marginal and scope of boosting the performance of a candidate in the interview could not be ruled out. Every selection method has advantages and disadvantages. Unless the new selection process is tested, it cannot be said that selection is vitiated. As contended by the learned senior counsel, in the financial sector and in business sector, the trial and error method is acceptable method of testing the policy and the companies have decided to experiment the new method of selection and as long as the method introduced is uniformly applied to all, the same cannot be interjected.

40. In Bajaj Hindustan Limited Supreme Court held:

40. Economic and fiscal regulatory measures are a field where Judges should encroach upon very warily as Judges are not experts in these matters. The impugned policy parameters were fixed by experts in the Central Government, and it is not ordinarily open to this Court to sit in appeal over the decisions of these experts. We have not been shown any violation of law in the impugned notification or press note.

41. The power to lay policy by executive decisions or by legislation includes power to withdraw the same unless it is by mala fide exercise of power, or the decision or action taken is in abuse of power. The doctrine of legitimate expectation plays no role when the appropriate authority is empowered to take a decision by an executive policy or under law. The court leaves the authority to decide its full range of choice within the executive or legislative power. In matters of economic policy, it is settled law that the court gives a large leeway to the executive and the legislature. Granting licences for import or export is an executive or legislative policy. The Government would take diverse factors for formulating the policy in the overall larger interest of the economy of the country. When the Government is satisfied that change in the policy was necessary in the public interest it would be entitled to revise the policy and lay down a new policy.

41. It is for the respondent companies to adopt procedure of selection as deemed proper in the interests of the respondent companies and in the larger interests of the consumers. The selection procedure adopted by the respondent companies cannot be held as arbitrary and discriminatory. The new selection process now introduced is uniformly applicable to all the candidates. The respondent companies have competence and authority to determine the method of selection. In the facts of the case, it cannot be said that present selection method can be classified as one of lottery. Selection by draw of lots in matters concerning distribution of state largess is acceptable method of selection of

prospective candidate.

42. Thus, point (i) is answered in favour of petitioners and points (ii) & (iii) are answered against petitioners. The Writ Petitioners are partly allowed. There shall be no order as to costs. Miscellaneous petitions if any pending in these writ petitions shall stand closed.