(2001) 01 CAL CK 0001

In the Calcutta High Court

Case No : Writ Petition No. 10633 (W) of 2000

West Bengal S.T.D./I.S.D. Owners'' Association APPELLANT

Vs

Union of India (UOI) RESPONDENT

Date of Decision : 05-01-2001

Acts Referred:
Constitution of India, 1950 — Article 32

Citation : (2001) 1 ILR (Cal) 456

Hon'ble Judges : Basudeva Panigrahi, J

Bench : Single Bench

Advocate : B.R. Bhattacharya, Prabal Kr. Mukherjee and Dwiya Das Chakraborty, for the Appellant; P.K. Ghosh, D.C. Roy and M.K. Kundu for Respondent Nos. 1 to 5, B.R. Ghosal, D.K. Mukherjee, Ujjal Kr. Dutta and Sanjib Mukherjee for Added parties C.A.N. 7810 of 2000, C.A.N. 8510 of 2000 and Atanu Roychoudhury and Kishore Dutta for Added Party C.A.N. 9229 of 2000, for the Respondent

Final Decision : Dismissed

Judgement

Basudeva Panigrahi, J.—The Petitioner No. 1 is an association comprising the body of unemployed youth who have availed the P.C.O./S.T.D./I.S.D. service franchises from the Respondents. The 2nd Petitioner is the elected President of the governing body of the association. There was a revolutionary change in 1982 whereby the Union Government has of the association have availed of the P.C.O./ S.T.D./I.S.D. Booths from the Respondents. It was stipulated that a minimum guaranteed revenue of Rs. 100.00 per month per P.C.O. should be yielded and a security deposit of Rs. 600,00 based on six months guaranteed revenue or a monthly average revenue whichever is higher has to be deposited by the allot tees of the S.T.D. rural P.C.O. So far as the S.T.D. nor rural P.C.O. is concerned a minimum guaranteed revenue per month per P.C.O. was fixed at Rs. 1,600.00 and a security deposit of Rs. 5,000.00 or an amount equal to the monthly revenue calculated on the basis of previous six months revenue was required to be deposited. A Selection Committee was constituted for granting franchise to the allot tees of S.T.D./I.S.D. and P.C.O. Booths. Certain categories of persons were given preference to others, such as Ex-servicemen/War Widows, retired DOT employees or their dependants, dependants of freedom fighters and charitable institutions/hospitals. The Selection Committee was given full authority to allot S.T.D., P.C.O.s and also decide the location of P.C.O.s.

2. The scheme was introduced only to generate more employment of the unemployed youth in urban as well as rural areas. It was also stipulated that it be ensured that the average earning of an allotted did not fall below Rs. 2,000.00 per month from the urban areas and Rs. 800.00 per month from the rural areas. From the policy it further envisaged that the licensee will have to abide by the current policy of the department as revised/ modified from time to time in respect of matters including the amount of security deposit, minimum guaranteed amount, significant charges to be levied, commission payable to the P.T. operators from time to time etc. The Petitioners have inter alia, alleged that the Respondent authorities by their memo No. 31-15/98-PHB dated November 29 1999, amended the policy of S.T.D./ P.C.O.s by introducing a new procedure of allotment. The amended policy adopted by the Respondents is in direct conflict with the initial liberalized policy. It has further been introduced with a sole object to augment the telecommunication''s revenue. The amended policy if allowed to be operated shall result in closure of many existing S.T.D. and P.C.O.s since the supply shall far exceed the demand. The Petitioners have further claimed that the present franchisees have opted to apply for the P.C.O. license only with an understanding that an average earning will be made from the business and the Respondent authorities while granting license should ensure that there should be no competition from other franchises within close proximity; The amended policy if enforced would only open the flood gate of ill feeling, spite, jealousy and rancor among the allottees. The grievance of the Petitioners was duly ventilated through the local Member of Parliament but when the Telecommunication Department did not pay any heed to such request they were obliged to file this writ petition seeking a writ of mandamus for quashing of the subsequent policy.

3. The Respondent Nos. 1 to 5 filed affidavit-in-opposition by denying the allegations stated in the writ petition. It has been, inter alia, stated that the revised policy of S.T.D., I.S.D. and P.C.O. which were circulated vide No. 31-15/98-PHB dated November 29 1999, was communicated after much deliberations, discussions and consideration of the opinion from various quarters. Such policy was introduced with a view to further liberalization of the. franchise. One of the important factors in further liberalization by providing more telephone booths franchise is to augment average earning of unemployed youths. This was introduced keeping in view of the need to provide more employment to the unemployed youths. License fee on fax machine has been removed. Conversation facility on S.T.D. and P.C.O. has been allowed to many subscribers without connecting S.T.D. I.S.D. on their telephones. They can make use of this facility by speaking to the S.T.,D./ I.S.D. Booth operators from their residence for making S.T.D./I.S.D. calls. This also enhances the revenue of the S.T.D./I.S.D. Booth operators. The interest has been allowed on the security deposit made by

the P.C.O. holders. The franchisees are also allotted to local P.C.O. terminated on a coil collection box if he they so desired. There were as many as eighteen thousand applications pending in West Bengal for allotment of S.T.D./I.S.D. and P.C.O. Booths. Thus if it is considered by seeing the number of applications, there shall be least doubt about the viability of the business. The policy from time to time will keep on changing depending on the changed circumstances, experience, technology, demand and supply. It has been further claimed by the Respondents that the Petitioner No. 1 is a body corporate and the Petitioner No. 2 who is the President of the Petitioner No. 1, who have no right to file such writ petition. Accordingly, the case is not maintainable at their instance.

4. Many applications have been filed during the pendency of the writ petition for being impleded in this case and accordingly they were allowed to be impleded. It has been stated in their application that the minimum income from a S.T.D. I.S.D. and P.C.O. Booths is not less than Rs. 9,000.00 after payment of revenue to the Respondent Nos. 1 to 5. The franchisee is realizing 1.20 p. per unit per call out of which only Rs. 1.00 payable to the Respondent Nos. 1 to 5 and he gets 20 p. for his commission. For S.T.D. call they get Rs. 2.00 from the customer per call. It has been stated that from Tamluk area the average income per month does not fall below Rs. 10,000.00. In Tamluk area itself there is acute shortage by 185 P.C.O.s. Such figures have been stated in their applications for addition which remain unassailed by the Petitioners. No figure has been stated by the Petitioners showing how their average monthly income from the franchises at different places would dwindle for the new policy. It cannot, however, be expected that income from Chowringhee P.C.O. booth will be same as the income at Connaught Place in Delhi and/or Noriman Point in Mumbai and/or Tamluk and/ or Mahisadal in the district of Midnapore, West Bengal. The newly added Respondents have invested huge amount for availing the S.T.D., I.S.D. and P.C.O. facilities. But for this case, they are suffering psychologically and financially.

5. Mr. Bhattacharya, the learned advocate appearing for the Petitioners has strongly contended that the Union of India while introducing liberalization Policy in the year 1993 had looked to the acute unemployment problem and to alleviate the youth from such severe unemployment problem laid down the policy to accommodate them so that they can derive an income of Rs. 2,000.00 per month out of which they may be required to pay Rs. 1,600.00 to the Respondent Nos. 1 to 5. By the present policy the income of the franchisees will come down to such a level, it shall not be possible for them to carry on their business and they shall be forced to close down the booth. In case they persist to carry on the business per-force, then, there will be ill feeling and business rivalry among the franchisees.

6. Even though the Respondent Nos. 1 to 4 further liberalized the policy, yet, when such policy was implemented with a view to create ill-feeling and jealousy among the earlier franchisees; such policy should be struck down by the Court. The subsequent policy decision is ante people which will adversely affect the

earning of the earlier franchisees and, therefore, it should be declared as invalid and unenforceable. The Petitioners legitimately expected to augment their income gradually but by introducing such policy their hope and aspiration has been fully shattered.

7. The learned advocate appearing for the Respondent Nos. 1 to 5 has stated that this telecom policy was introduced by the Central Government with view to augment the employment avenues among the rural and urban youth. There was liberalization of telecommunication system as it is one of the basic public utility of strategic importance: Nowadays it is experienced that telecommunication service has become available globally from one of the remotest corner to the other. It is realized that the economy is increasingly related to the way this telecom infrastructure functions for the purpose of processing and transmission of information which has acquired central stage in the economic world today.

8. As per the policy introduced in 1993 it was earmarked only for educated unemployed youths from the rural and the urban sectors. 8th and middle school pass and above candidates are eligible to apply in rural areas and at least matriculates in urban areas. The franchisee is expected to derive income of Rs. 2,000.00 per month from a telephone booth. Rs. 1,600.00 was earmarked as the revenue to be derived by the Respondent Nos. 1 to 5. Since the income from the franchisee has increased far beyond expectation and relatively, the number of requirements of the S.T.D., I.S.D. and P.C.O. Booths increased, therefore the Central Government further liberalized its policy to accommodate more and more unemployed youths so that they shall derive some income and the unemployment problem may be solved to some extent. It was further directed to allow interest on the security deposit lying with the Respondent Nos. 1 to 5. The commission was previously 20 p. per unit over and above Rs. 2.00 which could be realizable on S.T.D. call where there is a competition, the amount of commission may go up to 30 p. per unit. Therefore by the changed policy the franchisees will gate more income. It has been further contended that the Petitioners cannot maintain the writ petition as they have not individually established how they shall be adversely affected in case this changed policy is implemented. It has been strongly urged that they have significantly failed to establish as to what was the amount earned by them. In the aforesaid situation, the writ petition is liable to be dismissed.

9. In early part of 1993 the Central Government expressed its intention to liberalize S.T.D./Pay phone facility whereby more number of employments can be generated by accommodating more and more educated unemployed youths from urban as well as rural areas. The guidelines for offering franchisees were also published and accordingly huge number of applications had been received and in turn the unemployed youths were accommodated. The policy of the Government was to see that handicapped, S.C., S.T., Ex-servicemen, War widow candidates shall more and more be accommodated. There was a committee comprising of head of the S.S.A. and Officers from the Telecom Department and there non-

official members. The P.C.O. operators were allowed to derive 20 p. per call unit up to 10,000 calls, 15 p. per unit between 10,000 and 20,000 call units and 10 p. per call unit beyond 20,000 call units as commission. They were also given freedom to realize Rs. 2.00 per S.T.D. call. The Central Government from time to time used to introduced new conditions as per the need and requirement of the customer franchisees and also people at large. In the agreement it was further laid down that the licensee will have to abide by the current policy of the department as revised/modified from time to time in respects of matters including the amount of security deposit, minimum guaranteed amount and call charges to be levied and the commission payable to the P.T. operators. The franchisees with eyes wide open had signed in the agreement with an undertaking that they shall abide by the policy decision of the department.

10. On November 5, 1999, the Respondents further liberalized for giving franchise to different S.T.D. operators. Thereby move number of employments can be provided and maximum number of educated unemployed youths could be rehabilitated. In the revised policy certain financial concessions has also been given to the... franchisees. It was previously permissible to derive 20 p. per unit call but under the new policy it was increased up to 30 p. subject to concurrence of I.F.A.C. The interest on security deposit was also decided to be given to the franchisees.

11. The present fact situation has to be looked to ascertain how far the scheme introduced earlier was successful. It was decided that there should be one telephone booth at least for five hundred persons. But while reviewing the situation it was gathered that in West Bengal one telephone booth is available for a population of 1108 persons. From the figure it is noticed that it should have been doubled. Therefore, keeping in view of the increase of population, it is necessary to augment the strength of S.T.D., I.S.D. and P.C.O. Booths. It is disquieting to notice that even though the populous scheme was introduced in the country except the Petitioners no one has challenged the scheme by filing a writ, nor any protest from any corner was made. The Petitioners did not narrate as to how much amount they have been deriving from their booths and how their income would dwindle after such scheme is introduced.

12. The added Respondents have invested huge amount in anticipation of taking franchise from Respondent No. 5. In this regard reliance can be placed on a decision reported in the case of Delhi Science Forum and others Vs. Union of India and another, . In a similar situation the Central Government''s policy with regard to telecom privatization was challenged on the ground of arbitrariness. The Apex Court held that in policy cannot be said to have been taken with an ulterior motive: It has been held in the following manner:

What has been said in respect of legislations is applicable even in respect of policies which have been adopted by the Parliament. They cannot be tested in Court of Law. The Courts cannot express their opinion as to whether at a particular juncture or under a particular situation prevailing in the country any such national policy should have been adopted or not. There may be views and views, opinions and opinions which may be shared and believed by citizens of the country including the representatives of the people in the Parliament. But that has to be sorted out in. the Parliament which has to approve such policies. Privatization is a fundamental concept underlying the questions about the power to make economic decisions. What should be the role of the State in the economic development of the nation? How the resources of the country shall be used? How the goals fixed shall be attained? What are to be the safeguards to prevent the abuse of the economic power? What is the mechanism of accountability to ensure that the decision regarding privatization is in public interest? All these questions have to be answered by a vigilant Parliament. Courts have their limitation because these issues rest with the policy makers for the nation. No direction can be given or is expected from the court unless while implementing such policies, thee is violation or infringement of any of the constitutional or statutory provision. The new Telecom Policy was placed before the Parliament and it shall be deemed that Parliament has approved the same. This Court cannot review and examine as to whether said policy should have been adopted. Of course, whether there is any legal or constitutional bar in adopting such policy can certainly be examined by the Court.

13. The Petitioners have not stated that this policy was introduced by the Union Government maliciously. I do not find that any malice has been pleaded. Had the individual income of the Petitioners'' franchise has been disclosed, we could have known the actual income derived by them. But by making general allegation that their income will generally fall down, in case this liberalization policy will be introduced it cannot, however, be accepted even on its face value.

14. Reliance was placed on the maintainability of the writ petition by the Respondents. Great stress laid on the decision reported in the case of The Calcutta Gas Company (Proprietary) Ltd. Vs. The State of West Bengal and Others, Where it has been held that:

The legal right that can be enforced under Article 32, must ordinarily be the right of the Petitioner himself who complains of infraction of such right and approaches the Court for relief. The right that can be enforced under Article 226 also shall ordinarily be the personal or individual right of the Petitioner himself, though in the case some of the writs like habeas corpus or quo warrantor this rule may have to be relaxed or modified.

15. Therefore, from the ratio of the above judgment it has emerged that person can maintain a writ if his individual right is virtually affected. In the aforesaid situation I also otherwise hold that the writ petition is not maintainable at the instance of the Petitioner No. 1.

16. In a recent judgment of the Apex Court reported in the case of Mahinder Kumar Gupta and Others Vs. Union of India (UOI), Ministry of Petroleum and Natural Gas, , the Hon''ble Supreme Court has also discussed with regard to the

maintainability of the case at the instance of the association and it was held that the writ petition is not maintainable if it is not filed by a person who is likely to be affected by such action:

Under these circumstances, we find no arbitrariness or unjustness in prescription of the guidelines for the eligibility criteria. The second writ petition stands liable to be dismissed on the sole ground that the Association cannot file a writ petition as it has no fundamental right under Article 32 of the Constitution. One of the Petitioners/Appellants has claimed as having partnership, but the details thereof have not been given. We, therefore, dismiss the appeal as well as the writ petition with costs quantified at Rs. 20,000/- each.

17. A question has been raised as regard the enforcement of the subsequent policy of the Central Government. Mr. Bhattachariya, the learned advocate appearing for the Petitioners has relied upon a judgment of the Supreme Court in the case of M.P. Oil Extraction and Another Vs. State of M.P. and Others, , but I find on a careful consideration of the observation of the Supreme Court, it does not support the Petitioners:

After giving our careful consideration to the facts and circumstances of the case and to the submissions made by the learned Counsel for the parties, it appears to us that the Industrial Policy of 1979 which was subsequently revised from time to time cannot be held to be arbitrary and based on no reason whatsoever but founded on mere ipse dixit of the State Government of M.P. The executive authority of the State must be held to be within its competence to frame a policy for the administration of the State. Unless the policy framed is absolutely capricious and not being informed by any reason whatsoever, can be clearly held to be arbitrary and founded on mere ipse dixit of the executive functionaries thereby offending Article 14 of the Constitution or such policy offends other constitutional provisions or comes into conflict with any statutory provision, the Court cannot and should not out step its limit and tinker with the policy decision of the executive functionary of the State. This Court, in no uncertain terms, has sounded a note of caution by indicating that policy decision is in the domain of the executive authority of the State and the Court should not embark on the uncharactered ocean of public policy and should not question the efficacy of the statute or the Constitution of India. The supremacy of each of the three organs of the State i.e. legislature, executive and judiciary in their review of the executive and legislative action must be kept within the bounds of constitutional scheme so that there may be any occasion to entertain misgivings about the role of judiciary in out stepping its limits by unwarranted judicial activism being very often talked of in these days. The democratic set up to which the policy Is so deeply committed cannot function properly unless each of the three organs appreciate the need for mutual respect and supremacy in their respective fields.

18. In case the earlier franchisees have sustained loss by installing telephone i.e. S.T.D., I.S.D. and P.C.O. Booths, there is no reason why there has been as many as eighteen thousand applications filed for new telephone booths. The Central

Government has already observed in order to generate more employments, they further liberalized their policy. The Petitioners seems with a view to monopolies the franchise do not want to allow other persons to get new franchise which is not permissible in law. It has to be further considered whether the Petitioners expected a reasonable expectation to derive minimum income from out of the policy and other fees permissible by the Telecom authority. Firstly, they have not stated in detail as to what is their present income. One can normally expect that in pay phone booth situated within urban area, it goes not fetch less than Rs. 2,000.00. Had their income been decreased they should have stated these things in the affidavit-in-opposition. Their stoic silence about the income from the telephone booth speaks that they are earning more than the assured income from those booths. In this background, therefore, the Petitioners cannot be said to have suffered any loss on account of reasonable expectation.

19. On a careful cogitation of the case and from the totality of the facts and circumstances I hold that the writ petition is fully devoid of merits and, accordingly, dismissed without costs.