

Shri Mahinder Kumar Gupta Etc vs Union Of India, Ministry Of Petroleum ... on 22 September, 1994

Equivalent citations: 1995 SCC (1) 85, JT 1995 (1) 11, 1994 AIR SCW 5139, 1995 (1) SCC 85, (1995) 1 MAD LJ 64, 1995 ALL CJ 1 29, (1995) 1 ALL WC 36, (1995) 57 DLT 284, (1995) 25 ALL LR 160, (1994) 3 CURCC 545, (1995) 1 JT 11 (SC)

Author: K. Ramaswamy

Bench: K. Ramaswamy, N Venkatachala

PETITIONER:

SHRI MAHINDER KUMAR GUPTA ETC.

Vs.

RESPONDENT:

UNION OF INDIA, MINISTRY OF PETROLEUM AND NATURAL GAS

DATE OF JUDGMENT 22/09/1994

BENCH:

RAMASWAMY, K.

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RAMASWAMY, K.

VENKATACHALA N. (J)

CITATION:

1995 SCC (1) 85 JT 1995 (1) 11

1994 SCALE (4) 803

ACT:

HEADNOTE:

JUDGMENT:

ORDER

1. This appeal arises from the judgment and order of the Division Bench of Delhi High Court in Civil Writ Petition No.3165 of 1991 dated 1.11.1991. Writ Petition No.253/93 was filed by an Association

and also a Partner as an individual. Writ Petition 64/1994 was filed by the petitioner who is a widow and daughter of a dealer in petroleum products. These matters relate to the contracts of dealership or distributorship of petroleum products awardable by the Government of India Undertakings. In the first case, admittedly, the appellant's son-in-law is already having a dealership for distribution of petroleum products. In the second case it is an admitted fact that one of the appellant's partners is already having a dealership of petroleum products and in the third case, the appellant's mother is already having a dealership of petroleum products.

2. The questions raised in these appeals/petitions are whether the government is justified in imposition of eligibility restrictions in the award of retail outlets (other than "" wheeler ROs), SKO-LD dealerships and LPG distributorships guidelines. Part III of the guidelines prescribes the eligibility criteria viz., nationality, age on the date of application, educational qualifications, residence, SC/ST Certificates, eligibility for freedom fighters and physically handicapped/government personnel disabled on duty/widows of govt. personnel who die in the course of duty. Then dealer's relationship (applicable for all categories) has been prescribed as one of the criteria which reads as under

:-

(a) No person or a Consumer Co-operative Society shall be awarded a new dealership/ distributorship if he/she or the Consumer Co-

operative Society already holds a dealership/ distributorship of LPG/Kerosene /LDO/HSD/MS/Lubricating Oil of any Oil Company.

(b) No person shall be awarded a new Dealership/Distributorship if any of the following close relatives (including step relatives) of the person already hold a dealership/distributorship of LPG / Kerosene/LDO/HSD/MS/Lubricating oil or ,my other petroleum products of any Oil Company.

For other than PH candidates in PH Category FF,DEF,SC/ST and OPEN] For PH candidates only
i0) Spouse] i) Spouse
ii) Father/Mother] ii) Father/Mother
iii)Brother/Sister] iii) Son/daughter-in-law
iv) Son/daughter]
v) Son-in-law/daughter in-law]
vi) Parents-in-law]

3. Clause 10 of the guidelines relates to Partnerships with which we are concerned in one of the matters. The procedure for selection has been prescribed in Part VI of the guidelines. Criterion No.2 relates to screening of the applicants for interview. Then, Rule 3 relates to norms for evaluation of. Competing claims of the candidates and Rule 5 regulates selection of dealer/distributors. In this ease, we are concerned with dealership of petroleum products applicable for all categories in which Clause (b) prescribes ineligibility of persons if one of the persons mentioned therein has already a dealership. It is seen that one of the conditions subject to which a candidate is entitled to apply for

grant of dealership is that his spouse, father/mother, brother/sister, son/ daughter, son-in-law/daughter-in-law and parents-in-law if already had been given dealership, he/she is made ineligible to apply for dealership. In the case of partner-

ships, partners should individually fulfil the above- mentioned eligibility criteria/conditions and all of them must appear for an interview together.

4. Shri Ravindra Bhat, learned counsel for the appellant/petitioners contended that under Art. 19(1)(g) all citizens have the right to practice any profession or to carry on any occupation, trade or business. Appellant/petitioners being eligible candidates to apply for the dealership or distributorship, then, one or the other of them cannot be made ineligible on the ground that his/her spouse, parents, son's-in-law or a relative is already having a dealership, because it is his/her own business and he has nothing to do with his son's-in-law and that, therefore, the prescription of ineligibility due to relationship is void under Art. 19(1)(g). It is also arbitrary, unjust and also it bears no reasonable nexus to the object sought to be achieved. He further contended that while prescribing the ineligibility criteria for persons other than the physically handicapped 'PH' category, discrimination has been made between the other persons and physically handicapped candidates in whose favour the ineligibility is only in respect of spouse, parents, son/daughter-in-law. The daughters and others having been excluded from the eligibility, the inclusion of parents-in-law, sons-in-law etc. in respect of others is also violative of Art. 14 of the Constitution. We find no force in the contention.

5. The preamble to the Constitution envisages the securing of economic and social justice to all its citizens; accorded equality of status and of opportunity assuring the dignity of the individual. Art. 39(b) postulates that the, ownership and control of the material resources of the community are to be so distributed as to best subserve the common good. Clause (c) prevents concentration of wealth and means of production to the common detriment. Since the grant of dealership or distributorship of the petroleum products belongs to the Govt. largesse, the govt. in its policy of granting the largesse have prescribed the eligibility criteria. One of the eligibility criteria is that one among the near relations or partners or associates in other words among a named group of persons alone should have dealership and there should not be any concentration by them in the distribution of its petroleum products through the dealership. The guidelines further intend to prevent frustration of the State policy by process of legal ingenuity or subterfuge One of the criteria is relationship- The relationship criteria has been prescribed to see that the persons who already had one dealership should not apply so that the above objectives of the Constitution are achieved. In Part II1, clause (b) of the relationship category, a person among specified near relatives has been made ineligible to apply for another dealership to any of the nationalised oil companies. The petitioners/appellants dehors the guidelines have no independent right to have business or avocation in the distribution or production or ownership of one of the petroleum products. Production and distribution of the :

Petroleum products are the exclusive monopoly of the State under Art. 19(6) of the Constitution. As a part of its policy of the distribution of its largesse government have prescribed the eligibility criteria to the persons to obtain dealership for distribution of petroleum products. The distribution of the largesse of the State is for the common

good and to subserve the common good of as many persons as possible. The Govt. of India intended to group together certain near relations as a unit and one among that unit alone was made eligible to apply for and claim for grant of dealership. Further economic and social justice as envisaged in the preamble of the Constitution is sought to be achieved. Therefore there is a reasonable nexus between the object and the prescription of the eligibility criteria envisaged in the guidelines. All those who satisfy the eligibility criteria alone are entitled to apply for the consideration for the grant of dealership. It is true that in case of physically handicapped persons were made ineligible. Physically handicapped persons have been treated as a class by themselves. Under these circumstances any other person other than PH cannot claim parity with PH persons. As far as partnership is concerned, if one of the persons either have a dealership or relations who were found to be eligible under the relationship criteria, and had the dealership, then clause 10 of the said guidelines gets attracted and such partnership also did not become eligible to apply for dealership/distributorship. The object of clause 10 appears to be that for those partners had dealership, the other partner or the specified relations also not be eligible to apply for grant of dealership individually or as a member of the partnership. Therefore the guidelines are based on public policy to give effect to the constitutional creed of Part IV of the Indian Constitution.

6. 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 Art.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 petitions with costs quantified at Rs. 20,000/- each.