

Manoj Kumar and ors. Vs. Union of India (Uoi) and ors.

Manoj Kumar and ors. Vs. Union of India (Uoi) and ors.

SooperKanoon Citation : sooperkanoon.com/510867

Court : Madhya Pradesh

Decided On : Nov-17-2004

Reported in : 2005(3)MPHT250

Judge : Arun Mishra, J.

Acts : [Constitution of India](#) - Articles 14 and 21

Appeal No. : Writ Petition No. 310/2004

Appellant : Manoj Kumar and ors.

Respondent : Union of India (Uoi) and ors.

Advocate for Def. : Dharmendra Sharma, Sr. Standing Counsel for the Respondent No. 1 and ;Greeshm Jain, Adv. for the Respondent Nos. 2 and 3

Advocate for Pet/Ap. : R.K. Gupta, Sr. Adv. and ;A. Singh, Adv.

Judgement :

ORDER

Arun Mishra, J.

1.In this writ petition the petitioners have challenged the office order (P-1) dated 29-4-2002/4-5-2002 by which decision has been taken by the respondents to provide civil engineering contract up to value of Rs. 5 lacs to the Project affected

people only whose land has been acquired.

2. It is averred in the petition that petitioners are degree/diploma holder engineers in civil/mining engineering. Petitioner No. 7 is association of unemployed engineering contractor. It is submitted that earlier an order (P-2) was issued on 28th April, 1999 in which it was provided that civil engineering contract will remain open to all the contractors up to Rs. 10 lacs; unemployed engineer holding degree/diploma shall be given preference by relaxing eligibility criteria for the value of contract up to Rs. 10 lacs. Another circular (P-3) was issued on 21st December, 2001 by which preferential treatment to the unemployed engineers holding degree/diploma was continued while relaxing the eligibility criteria. It is submitted by the petitioners that purpose of the circulars (P-2 & P-3) was to get rid of the unemployment problem of civil/mining engineers having requisite qualifications. Petitioners have enjoyed the benefit of relaxation of eligibility. It has been wrongfully withdrawn as per order (P-1) dated 4-5-2002. Petitioners possessed better technical skill, their work was excellent, thus, order (P-1) deserves to be quashed. As opportunity of hearing has not been given, order is violative of principles of natural justice. Earlier the benefit was rightly extended which has been wrongfully taken away; action is arbitrary. Petitioners have invested the amount. Now they can not participate in the contract up to the value of Rs. 5 lacs, hence, the order is bad in law.

3. In the return filed by respondent Nos. 2 and 3 it is contended that Northern Coal India Ltd. is subsidiary of Coal India Ltd. and engaged in the extraction of the coal. The relaxation in eligibility criteria has been provided to the project affected people, as their land has been acquired, they have lost right their livelihood, in order to provide them alternative employment; benefit is available to the petitioners in the contract of the value above Rs. 5 lacs; it has not been taken away from them, however, in the petty works of up to Rs. 5 lacs, preference has to be given to the project affected people, they are economically weak local villagers, they were not capable to secure contract after competing with the established contractors of general category as well as the contractors of degree/diploma engineering category. Project affected people have been given only preferential treatment by relaxation of eligibility criteria. NCL is having system of registration of

contractors. Registration for contractors under which all the contractors including project affected people and degree/diploma holders engineers were allotted category and grade depending upon their past experience/value/nature of civil work executed by them in past; as per decision the contract up to the value of Rs. 5 lacs will be awarded to the project affected people, it can not be said that there is everything equal between the project affected people and degree/diploma holder engineers; policy can not be said to be arbitrary; it is to provide alternate source of income and livelihood as they have been made land losers. Answering respondents have moral/social obligation to provide rehabilitation, hence, petitioners can not claim similar treatment; policy can not be said to be illegal.

4. Shri R.K. Gupta, learned Sr. Counsel with Ms. A. Singh, appearing on behalf of petitioners, has submitted that the action of the respondents in changing the policy (P-2 & P-3) is bad in law. Giving of priority to the project affected people as per order (P-1) is bad in law. Same is discriminatory, illegal and has the effect of taking away the livelihood of the petitioners, degree/diploma holder engineers; opportunity of hearing has not been afforded, hence order (P-1) deserves to be quashed.

5. Shri Dharmendra Sharma, learned Sr. Standing Counsel for respondent No. 1, has supported the action of respondent Nos. 2 and 3. He has submitted that no equality can be claimed by the petitioner with project affected people, hence no interference is called for.

6. Shri Greeshm Jain, learned Counsel for the respondent Nos. 2 and 3, has submitted that policy is to provide livelihood to project affected people whose livelihood has been snatched away; they are poor persons, unable to compete with established contractors and degree/diploma holder engineers in order to provide them succor; decision has been taken in fulfillment of the social justice and to provide rehabilitation, hence no interference is called for. Petitioners have the priority in the work above Rs. 5 lacs, hence, there is no discrimination; opportunity of hearing is not necessary in such a policy matter, hence, no interference is called for.

7. It is clear that order (P-1) has been issued in order to provide succor to the poor villagers who have lost their valuable land and source of livelihood under the project. Order (P-2) gives certain benefits to the degree/diploma holders by relaxing eligibility criteria for value of the contract up to Rs. 10 lacs. Reading of the office order (P-3) makes it clear that order (P-2) was modified and civil engineering contract up to Rs. 10 lacs value will remain open to all the contractors fulfilling the eligibility criteria. In the case of the project affected people eligibility criteria was not to be applicable for a period of next one year, thereafter order (P-3) has been further modified and management has taken a decision to provide civil engineering contracts up to the value of Rs. 5 lacs to project affected people only.

8. Petitioners can not claim parity with project affected people which constitute a different class. The benefit which has been given by the management is in furtherance of their obligation to provide rehabilitation to the poor villagers who have lost their valuable land in the project as their livelihood has been adversely affected by the project, thus, giving of preferential treatment to project affected people can not be said to be illegal or arbitrary in the matter of contracts up to the value of Rs. 5 lacs. It is clear that eligibility criteria was relaxed, earlier as per order (P-3) for project affected people in the matter of contracts up to Rs. 10 lacs, now as per office order there is modification made and project affected people are entitled for the contract up to Rs. 5 lacs of civil engineering. Thus, it is clear that works of small nature up to the value of Rs. 5 lacs are to be assigned to the project affected people only which can not be said to be arbitrary in any manner.

9. The submission raised by learned Counsel for the petitioners that opportunity of hearing was necessary; in my opinion, in formation of such a policy, no opportunity of hearing is required to be granted.

10. Shri R.K. Gupta, learned Sr. Counsel with Ms. A. Singh for petitioner, has placed reliance on a decision of Apex Court in *Ramana Dayaram Shetty v. International Airport Authority of India and Ors.*, : (1979)ILLJ217SC , where in the Court has laid down that in the matter of offering the job contracts, Government can not act arbitrarily. Learned Sr. Counsel has pressed into service Para 11 which reads thus :-

'11. Today the Government in a welfare State, is the regulator and dispenser of special services and provider of a large number of benefits, including jobs, contracts, licences, quotas, mineral rights etc. The Government pours forth wealth, money, benefits, services, contracts, quotas and licences. The valuables dispensed by Government take many forms, but they all share one characteristic. They are steadily taking the place of traditional forms of wealth. These valuables which derive from relationships to Government are of many kinds. They comprise social security benefits, cash grants for political sufferers and the whole scheme of State and local welfare. Then again thousands of people are employed in the State and the Central Governments and local authorities. Licences are required before one can engage in many kinds of business or work. The power of giving licences means power to withhold them and this gives control to the Government or to the agents of Government on the lives of many people. Many individuals and many more businesses enjoy largesse in the form of Government contracts. These contracts often resemble subsidies. It is virtually impossible to lose money on them and many enterprises are set up primarily to do business with Government. Government owns and controls hundreds of acres of public land valuable for mining and other purposes. These resources are available for utilization by private corporations and individuals by way of lease or licence. All these mean growth in the Government largesse and with the increasing magnitude and range of Governmental functions as we move closer to a welfare State, more and more of our wealth consists of these new forms. Some of these forms of wealth may be in the nature of legal rights but the large majority of them are in the nature of privileges. But on that account, can it be said that they do not enjoy any legal protection Can they be regarded as gratuity furnished by the State so that the State may withhold, grant or revoke it at its pleasure Is the position of the Government in this respect the same as that of a private giver We do not think so. The law has not been slow to recognize the importance of this new kind of wealth and the need to protect individual interest in it and with that end in view, it has developed new forms of protection. Some interests in Government largesse, formerly regarded as privileges, have been recognized as rights while Ors. have been given legal protection not only by forging procedural safeguards but also by confining/structuring and checking Government discretion in the matter of grant of

such largesse. The discretion of the Government has been held to be not unlimited in that the Government can not give or withhold largesse in its arbitrary discretion or at its sweet will. It is insisted, as pointed out by Prof. Reich in an especially stimulating article on 'The New Property' in 73 Yale Law Journal 733, 'that Government action be based on standards that are not arbitrary or unauthorized'. The Government can not be permitted to say that it will give jobs or enter into contracts or issue quotas or licences only in favour of those having grey hair or belonging to a particular political party or professing a particular religious faith. The Government is still the Government when it acts in the matter of granting largesse and it can not act arbitrarily. It does not stand in the same position as a private individual.'

11. Testing the order (P-1), in the light of law laid down in R.D. Shetty (supra) it can not be said that undue favour has been done and petitioners have been discriminated, it can not be said to be political favour or a favour on the basis of impermissible consideration. The purpose is to provide rehabilitation by providing employment by offering the contract, thus, I find that action is not arbitrary on the touch stone law laid down by the Apex Court in the above decision. Learned Sr. Counsel has further relied upon the decision of LIC of India and Anr. v. Consumer Education & Research Centre and Ors., : AIR 1995 SC1811 , wherein the Apex Court has laid down that every action must be reasonable. The Apex Court has laid down in Paras 25 and 27 thus :-

'25. In MahabirAuto Stores v. India Oil Corporation, : [1990]1SCR818 , it was held that the State when acting in its executive power, enters into contractual relations with the individual, Article 14 would be applicable to the exercise of the power. The action of the State or its instrumentality can be checked under Article 14. Their action must be subject to rule of law. If the Governmental action even in the matter of entering or not entering into contracts, fails to satisfy the test of reasonableness, the same would be unreasonable. Rule of reason and rule against arbitrariness and discrimination, rules of fair play, natural justice are part of the rule of law applicable in situation or action by State/instrumentality in dealing with citizens. Even though the rights of the citizens, therefore, are in the nature of contractual rights the manner, the method and motive of a decision of entering or not entering

into a contract are subject to judicial review on the touchstone of relevance and reasonableness, fair play and natural justice, equality and non-discrimination. It is well settled that there can be 'malice in law'. It was also further held that whatever be the act of the public authority in such monopoly or semi-monopoly, it must be subject to rule of law and must be supported by reasons and it should meet the test of Article 14. 27. In the sphere of contractual relations the State, its instrumentality, public authorities or those whose acts bear insignia of public element, action to public duty or obligation are enjoined to act in a manner, i.e., fair, just and equitable, after taking objectively all the relevant options into consideration and in a manner that is reasonable, relevant and germane to effectuate the purpose for public good and in general public interest and it must not take any irrelevant or irrational factors into consideration or appear arbitrary in its decision. Duty to act fairly is part of fair procedure envisaged under Articles 14 and 21. Every activity of the public authority or those under public duty or obligation must be informed by reason and guided by the public interest.'

12. I find that action is reasonable one, can not be said to be unreasonable in the facts of the case, it is in the public interest. Learned 5th Counsel for the petitioner has further relied upon *State of Punjab and Ors. v. Ram Lubhaya Bagga and Ors.*, : [1998]1SCR1120 , wherein the Apex Court has laid down that Court can consider whether the policy is arbitrary or violative of law. The Apex Court has further laid down that financial constraint are valid consideration for framing or modifying a policy; considering the financial condition of the poor villagers whose land has been taken away; order (P-1) has been issued which can not be said to be arbitrary in any manner, thus, I find no ground to make interference in this writ petition.

13. In view of above discussions. I find no merit in this writ petition. Same is liable to be dismissed, thus, writ petition is hereby dismissed. Parties to bear their own costs as incurred.