

Y. Srinivasa Rao

Vs

J. Veeraiah and others

C.A. No. 1806 of 1992

(L. M. Sharma, Dr. A. S. Anand JJ)

27.04.1992

JUDGEMENT

SHARMA, J.

1. Special leave is granted.

2. The case relates to the appointment of a dealer of a fair price shop in Andhra Pradesh. An advertisement for the purpose was issued on 16-4-1990 as per Annexure A inviting applications from the eligible candidates subject to, inter alia, the following conditions:

"5. Preference will be given to the candidates who are experienced in the business.

6. Preference will be given to unemployed educated persons, ladies and handicapped persons in case of equal qualifications among the candidates."

The appellant and the respondent No. 1 besides other applicants applied and the respondent No. 4, Revenue Divisional Officer, selected the respondent No. 1 on the basis of a brief interview. The appellant, after unsuccessfully moving the respondent No. 3, filed a revision petition before the Collector, respondent No. 2. On hearing the parties concerned, the Collector allowed the petitioner's claim by the judgment dated 8-2-1991 (Annexure F) holding thus:-

In the present case whatever is the angle from it is viewed Sri Y. Srinivasa Rao appears to be having better claim than Sri J. Veeraiah Babu. Sri Y. Srinivasa Rao passed B.Com., and he was F.P. shop dealer for a fairly long time. The experience as F.P./ shop dealer is now assessed for the purpose of marks, but on grounds of comparison this aspect also could not be ignored even if not taken advantage of in favour of the respective person.

The collector, thus, obviously did not interfere with the choice of the lower authorities in a casual manner as is clear from his judgment wherein he has observed that normally the orders of the lower authorities are not upset except for special circumstances. The respondent No. 1 challenged his order before the High Court by a writ petition, which was heard and allowed by a learned single Judge, and the Division Bench has, by the impugned judgment, confirmed the same.

3. Admittedly the appellant is an unemployed graduate in Commerce and has the experience of running a fair price shop in the past, while the only qualification claimed by the respondent No. 1, is that he has passed the school examination up to 10th class only. The impugned appointment was

made by the authority after holding an interview and it is the case of the appellant that the Revenue Divisional Officer merely enquired from him about his bio-data without putting any further question by which the merits could have been judged. On that sole basis the shop was allotted to the respondent. Considering the criteria, as mentioned in the advertisement, the Collector accepted the claim of the appellant, pointing out that the appellant was a better candidate from every angle. The High Court has quashed his judgment by condemning it as perverse but without indicating any reason for such a view.

4. One of the questions, which have been raised before this Court, is that there is no guideline indicating the nature of the interview which is said to be the sole basis for making a choice for the settlement of the fair price shops. In pursuance of the notice which was issued in the present special leave petition, indicating that the matter would be finally disposed of on the next date, the respondents appeared and a prayer was made by the State counsel for three weeks' time to get ready on the question as to how the interview without indicating any guideline could be validly adopted as the sole basis for selection. Time was granted for filing an additional affidavit explaining the situation, but no such affidavit has been filed. The learned State counsel has, however, relied upon a number of Government orders issued in this regard from time to time and contended that in the opinion of the State authorities in the matter of settlement of fair price shops in the villages, which are not as large as in towns, preference should be given to less educated persons as they are handicapped by reason of lack of education as compared to better qualified applicants. He developed his argument by saying that since a highly educated person is likely to obtain a better job, he may not be depended upon for running the shop on a permanent basis. He has relied upon the policy decision that "only unemployed persons shall be eligible for appointment as fair price shop dealers instead of giving preference to co-operatives" as mentioned in the Government Order No. 951 dated 16-5-1988. This Order, however, does not advance the case of the respondents. He has also referred to another Government Order issued subsequently which give support to his argument that preference has to be given to less educated persons. The learned counsel pointed out that in none of the Government Orders weightage was allowed to the educational qualifications of the candidates and the advertisement (Annex. A) was incorrectly issued mentioning preference in favour of a better educated person. The Collector should have ignored the conditions mentioned in the advertisement and should have respected the choice of the interviewing officer.

5. It appears that the question of settlement of fair price shops in the State of Andhra Pradesh has been the subject of controversy for some time and from the records of the Revenue Department it is manifest that the approach which has been adopted by the authorities has not been consistent. The nonspeaking orders of this Court dismissing many special leave petitions indicate that a good number of cases have been brought to this Court in the past but were not entertained. We have, therefore, considered it desirable to indicate our views on the policy adopted by the State in the light of the constitutional provisions.

6. The decision to prefer an uneducated person over an educated person amounts to allowing premium on ignorance, incompetence and consequently inefficiency. The only fault of the appellant is to have pursued his studies beyond 10th class of his school. If he had discontinued his career as a student even earlier, say after passing 7th or 8th class, he would have been running the shop today. This clearly amounts to gross arbitrariness and, therefore, illegal discrimination. Pursuing this line the State will have to be going in search of a more inefficient person and we do not know where this process would end. If we assume that since a better qualified person has got a better chance to succeed in life, an intelligent applicant who can run the shop efficiently should be rejected and a dim witted fellow should be selected. This is an absurd situation.

7. The argument of the learned State counsel that a better qualified person is not likely to stick to the job, is not spelt out by the Government Orders. In any event, with a view to ensure that a person not interested in running the business may not obtain the settlement of the shop merely on the basis of his qualifications, can be taken care of by imposing appropriate conditions, say, by restricting the choice to local inhabitants and, or requiring furnishing of guarantee for running the business for a number of years. We, therefore, do not find any rationale in adopting the policy as indicated on behalf of the respondent. So far the interview fixed as the sole criterion in the present case according to the impugned judgment is concerned, the same in absence of a guideline leaves the matter to the whims of the individual office holding the interview. The exercise of such unbridled power will be clearly violative of Art. 14. The policy referred to by the State counsel as contained in one of the Government Orders and relied upon before us in support of the impugned judgment, therefore must be held to be unconstitutional.

8. In the circumstances, the settlement in favour of the respondent No. 1 is quashed, the judgment of the High Court is set aside and the judgment of the Collector having the support of the advertisement in question is restored. We expect that the State, after taking into consideration all the legal and relevant aspects, shall expeditiously take a decision and issue an appropriate order dealing with settlement of fair price shops and not follow the unconstitutional instruction relied upon before us. The appeal is accordingly allowed, but in the circumstances the parties are directed to bear their own costs. Appeal allowed

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