

SUPREME COURT OF INDIA

Gayatri Devi Pansari

Vs.

State of Orissa

(S.Saghir Ahmad and Doraiswamy Raju JJ.)

11.04.2000

ORDER

1. Special leave granted.

2. The appellant herein was selected to open a 24 hours Medical Store in the Campus of Sub-divisional Hospital, Patnagarh, District Bolangir, Orissa, pursuant to the advertisement made by the Government of Orissa published on 12.10.96 inviting application from the unemployed registered Pharmacists (Gents and Ladies) or persons having medical shops, who have engaged registered Pharmacist/person who undertakes to engage a registered Pharmacist. It appears, apart from the appellant and the fifth respondent herein who was the writ petitioner before the High Court, three others also submitted their applications. The first respondent by the orders dated 12.5.97 selected the appellant taking into account the guidelines governing such selection, the revised and latest of which were said to have been issued on 26.5.97. The selection of the appellant, apart from the fact that she was found eligible, was on account of preference shown to her as a lady applicant in furtherance of and giving effect to the Policy-decision of the Government to provide self-employment opportunities to ladies. Pursuant to such selection and in compliance with the terms of the orders as communicated by the Chief District Medical Officer, the appellant appears to have not only deposited the required fee of Rs. 50,000/-, but executed the necessary Agreement on 22.5.97 and commenced operating the day and night Medical Store.

3. Aggrieved, the fifth respondent herein, the unsuccessful applicant, filed a Writ Petition OJC No. 7778/97 before the High Court challenging the selection of the appellant mainly contending that she was not eligible or qualified for the same and that extraneous considerations weight with the selection by the authorities. Respondents 1 to 4, the authorities of the State, have filed a common Counter Affidavit opposing the Writ Petition and justifying the selection of the appellant. The appellant, who was arrayed as fifth respondent before the High Court, also filed a separate Counter Affidavit denying the allegations made against the appellant and the contentions raised by way of challenge to her selection. The sum and substance of the stand taken for the respondents in the High Court was that not only the appellant was fully qualified and eligible for being awarded the right to run the Medical Store in question, but that she being a lady and the Policy of the Government also being to accord preference to lady candidates even by providing for a reservation of 30% of the day and night medical shops in the District to lady candidates, no exception could be taken to the selection of the appellant. Reliance in this regard, to justify the preference, was placed on the Government Order dated 9.11.93, which was said to have issued on 27.11.93, and the relevant portion of which reads as follows:

30% of the 24 hours medical stores within a district shall be reserved for ladies. The C.D.M.O. concerned should identify the medical stores which would be reserved exclusively for ladies and issue advertisement accordingly. Similarly 30% of the 24 hours medical stores of all Medical College Hospitals taken together shall be reserved for ladies. The D.M.E.T. shall identify the medical stores to be exclusively reserved for ladies. If no lady candidate is willing to run any such store a fresh advertisement shall be issued inviting applications from general public irrespective of sex for allotment of medical store.

4. The Division Bench of the Orissa High Court by its Order under challenge in this appeal purported to not only doubt the claim made that the appellant was a registered Pharmacist under the Orissa Pharmacy Council, but also observed that the controversy about the claim of the appellant being a qualified Pharmacist need not be gone into and that the same was not relevant too, in the opinion of the High Court, so far as the present Writ Petition was concerned. Such a view seems to have been taken for the reason that her case was not considered solely on the ground of being a qualified Pharmacist, but also on account of the preference given to her, as a lady candidate. Thereupon, the High Court proceeded to consider the claim based on such preference in terms of the Order of the Government, noticed supra, and ultimately, the High Court arrived at the conclusion that the question of reservation envisaged under the Government Orders referred to above, would arise only after the Medical Store for the purpose of reservation as contemplated in the Government Order is identified and specified. Since the Department has not undertaken any such exercise in this case and the Medical Store in question was not one of the identified or specified stores for purposes of reservation in favour of a lady, the selection of the appellant, in the opinion of the High Court, stood vitiated. While quashing the selection of the appellant, the High Court directed the authorities to consider the matter afresh taking into account the respective merits, acceptability of the application and all other relevant factors, if need be and advised to do so, by calling for fresh applications, too.

5. Aggrieved, the above appeal has been filed. While issuing notice, status quo was ordered to be maintained and the appellant, indisputably, running the Medical Store in question. The respondents in the appeal have filed their respective replies. The appellant has also filed her rejoinder.

6. The learned senior counsel appearing for the appellant contended that the appellant, a Pharmacist duly registered under the Pharmacy Act in another State, in this case the State of Madhya Pradesh, whose Registration Certificate is valid till 2000 and who is entitled to conduct the business in Pharmacy even in a different State, satisfy the norms and the eligibility criteria for being selected and awarded her the right to run the Medical Store in question, particularly when she was entitled under Section 32 of the Pharmacy Act, 1948 to get her name registered as Pharmacist by virtue of her having been registered as such in a different State for which she was said to have applied even as early as in 1988 in the State of Orissa by paying the necessary fee. It was also contended that the High Court committed an error in adjudging the issues on the out dated guidelines contained in the Government Order dated 13.5.93 ignoring the revised and latest Orders, which rendered eligible for being considered not only a registered Pharmacist, "but a person who can engage a Pharmacist irrespective of whether he himself is a Pharmacist or not". Adverting to the reason assigned that in the absence of proper identification and specification of the Medical Store in question, the appellant could not have been selected as against the reserved quota of 30% envisaged for ladies, the learned senior counsel for the appellant contended that it proceeded on a wrong understanding of the purport of the orders and that even in the absence of actual identification of any particular Store for

reservation, showing of preference to a lady candidate cannot be said to be per se a vitiating factor having regard to the above Policy of the Government, which has been duly declared in the Government Order itself and that, therefore, the order of the High Court is liable to be set aside. Equities have also been urged by pleading investment of substantial amount running to few lakhs and the running of the Store all along. The learned Counsel appearing for the authorities of the State of Orissa also joined hands with the learned senior counsel for the appellant in defending the action of the Government.

7. Per contra, the learned Counsel for the fifth respondent herein, who succeeded before the High Court, reiterated the reasons urged and assigned in the Order of the High Court and contended that the order of the High Court does not suffer any infirmity in law to warrant interference in this appeal. Argued the learned Counsel further, that the appellant could not claim herself to be a registered Pharmacist within the State of Orissa, which, according to the fifth respondent, is a must to render her eligible for being selected for the assignment in question. Our attention has been invited to the provisions contained in the Pharmacy Act, 1948. Even, at this stage, we may indicate that neither such a claim has no basis or support in the advertisement calling for applications or criteria governing such selection as was in force, in terms of the Government Order dated 26.5.97, which held the field of selection.

8. We have carefully considered the submissions of the learned Counsel appearing on either side. In our view, the challenge to the order of the High Court is well merited. Even from the gist of the criteria for selection as found noticed in paragraph 2 of the order of the High Court, it could be seen that a person could be considered eligible for the purpose whether he is a registered Pharmacist himself or even if he can engage a Pharmacist irrespective of whether he himself is a Pharmacist or not. An unemployed person, who had previous experience of running a Medical Store, could be given preference. If that be the position, dehors the controversy as to whether the appellant was a registered Pharmacist within the meaning of Section 2(i) of the Pharmacy Act with the Council at Orissa, she cannot be rendered ineligible, particularly having regard to the factual position disclosed in this case that the appellant was a registered Pharmacist in the State of Madhya Pradesh and a Certificate of such registration valid upto 2009 A.D. has been placed on record and that she can also engage any body else. Even in the Writ Petition filed before the High Court, the petitioner therein (the fifth respondent herein) seems to have stated in paragraphs 10, 12 and 13 of his Petition that the appellant was owning a shop, but sold the same since she could not manage it to some other person. In addition to this, the Certificate of the Drug Inspector, Balangir Range, placed on record also disclosed that the appellant was being engaged as a Pharmacist at M/s. Mukesh Medicals since 06.04.1994. In the light of such factual details disclosed, the appellant could not be considered to be ineligible either for applying or her claims being considered for selection for the purpose on hand.

9. The High Court also did not purport to negate her claims once and for all on such a ground.

10. Coming to the question of the alleged illegality or impropriety, if any, involved in the selection of the appellant by showing preference to her as a lady candidate, we are of the view that the High Court was too technical and pedantic in construing the Government Orders dated 9.11.93 issued on 27.11.93 and relying upon the rhetoric of the same to invalidate the selection of the appellant. The High Court should have construed the order of the Government by keeping in view the purpose and substance as well as the object underlying the same, more with a view to promote the same rather than stifle it. In our view, the High Court has completely overlooked and also failed to keep into consideration the substantial difference involved between a case of reservation on the one hand and

an instance of showing a preference on the other. As the relevant portion of the orders extracted by the High Court itself disclosed if only the Medical Store for the purpose of 30% of reservation is identified and specified, the question of inviting applications from members of both sexes for the purpose did not at all arise and such identified and specified Medical Stores could be allotted for being run only from out of the lady applicants and that even the advertisement to be issued has to be only for inviting applications from ladies, for such identified and reserved shops. So far as the case in question is concerned, it could be seen that the application were invited from both gents and ladies. It is only because the store was not actually exclusively reserved for being run by the ladies that applications were invited from members of both sexes and finding that among the applicants there was a lady, duly eligible, preference came to be shown in the matter of selection. It is not the case of the fifth respondent that the ladies otherwise have been already selected and allotted shops against the 30% reserved quota in the District or that if any further preference is shown to the appellant for being a lady candidate, it will exceed and offend the 30% quota of reservation. The Policy of the State Government, indisputably being to provide 30% of the 24 hours Medical Stores within a District in favour of ladies by virtue of specific orders passed, therefore, that would itself provide sufficient and valid as well as legal basis for extending preference in favour of a lady applicant, as long as the ceiling limit is not violated. Otherwise, by the mere fact of any lapse or omission on the part of the ministerial officers to identify a shop, the legitimate claims of a lady applicant could not be allowed to suffer defeating the very purpose and object of reservation itself. The view taken by the High Court has the consequence of overriding and defeating the laudable object and aim of the State Government in formulating and providing welfare measures for the rehabilitation of women by making them self-reliant by extending to them employment opportunities. Consequently, we are of the view that the High Court below ought not to have interfered with the selection of the appellant for running the 24 hours Medical Store in question.

11. For all the reasons stated above, the order of the High Court is hereby set aside, the Writ Petition filed in the High Court shall stand dismissed and the appeal shall stand allowed. No costs.