

THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 29.10.2014

+ **W.P.(C) 3380/2012 & CM 7152/2012**

SAINT TRAVEL SERVICES

..... Petitioner

versus

UNION OF INDIA AND ORS.

..... Respondents

Advocates who appeared in this case:

For the Petitioner : Mr Ayush for Mr R.K. Saini.

For the Respondents : Ms Inderjeet Sidhu for R-1 to R-3.

Mr Nitesh Kumar Singh and Mrs Avnish Ahlawat, Mr N.K. Singh and Mr Gunjan Bansal for R-5/GNCTD.

Dr Lalit Bhasin with Ms Ekta Bhasin, Mr R. Sudhinder, Mr Ranjan Jha and Mr Bhavna Dhami for R6.

Mr Rajiv Bansal with Ms Pallavi for High Court.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

JUDGMENT

VIBHU BAKHRU, J

1. The petitioner is engaged in providing services as a travel agent and has filed the present petition impugning an Office Memorandum dated 24.03.2006 which restricts the officers of respondent no.1 to only utilize the services of M/s Balmer Lawrie and Company (hereafter 'Balmer Lawrie') and M/s Ashok Travels and Tours (hereafter 'Ashok Travels'), as travel

agents. The relevant extract of the Office Memorandum dated 24.03.2006 is quoted below:-

“(viii) Wherever the officer seeks to utilise the service of travel agents, it should be limited to M/s Balmer Lawrie & Company and M/s Ashok Travels and Tours. The above agencies would also ensure that procurement of tickets is made on best available bargain across all airlines.”

2. It is contended that the petitioner offers similar services and the action of the respondents in restricting availing only the services of Balmer Lawrie and Ashok Travels, is discriminatory and violative of Article 14 of the Constitution of India.

3. The Office Memorandum dated 24.03.2006 was superseded by an Office Memorandum dated 16.09.2010. The said Office Memorandum is quoted below:-

“1. On Official Tours:

(i) For travel by Airlines other than Air India because of operational or other reasons or on account of non-availability of Air India flights, individual cases for relaxation to be referred to M/o Civil Aviation, as stated in this Ministry's OM No., 19024/1/2009-E.IV dated 13.07.09.

(ii) Air Tickets may be purchased directly from Airlines (at Booking counters/Website of Airlines) or by utilizing the services of Authorized Travel Agents viz. M/s Balmer Lawrie & Company, M/s Ashok Travels & Tours.

2. LTC:

(i) Travel by Air India only

(ii) In Economy class only, irrespective of entitlement.

(iii) LTC - 80 ticket of Air India only to be purchased

(iv) Air Tickets may be purchased directly from Airlines (at Booking counters/Website of Airlines) or by utilizing the services of Authorized Travel Agents viz. M/s Balmer Lawrie & Company, M/s Ashok Travels & Tours and IRCTC (to the extent IRCTC is authorized as per DoP& T OM No. 31011/6/2002- Estt. (A) dt. 02.12.09).”

4. Admittedly, Balmer Lawrie and Ashok Travels are arms of Public Sector Undertakings. The counter affidavit filed on behalf of respondent no.1 to 3 indicates that the Government has not only restricted availing of travel agent services to the aforesaid two travel agents but has also restricted air travel mostly to Air India.

5. The principal controversy to be addressed is whether the administrative decision of respondent no.1 in preferring Balmer Lawrie and Ashok Travels to the exclusion of other travel agents is violative of Article 14 of the Constitution of India.

6. It is well settled that Article 14 of the Constitution of India does not proscribe reasonable classification. The Supreme Court in the case of **Budhan Choudhry And Other v. The State Of Bihar**: AIR 1955 SC 191 has stated the aforesaid principle as under:-

“5. It is now well-established that while article 14 forbids class legislation, it does not forbid reasonable classification for the purposes of legislation. In order, however, to pass the test of permissible classification two conditions must be fulfilled, namely, (i) that the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group and (ii) that differentia must have a rational relation to the object sought

to be achieved by the statute in question. The classification may be founded on different bases; namely, geographical, or according to objects or occupations or the like. What is necessary is that there must be a nexus between the basis of classification and the object of the Act under consideration. It is also well established by the decisions of this Court that article 14 condemns discrimination not only by a substantive law but also by a law of procedure.”

7. Thus, the substratal question to be addressed is whether the action of the Government in preferring public sector entities over other entities would amount to an unreasonable classification falling foul of Article 14 of the Constitution of India.

8. The Supreme Court in the case of **Hindustan Paper Corporation Ltd. v. Government of Kerala**: (1986) 3 SCC 398 considered an exemption granted to government companies and cooperative societies alone for selling forest produce at less than selling price fixed under the Kerala Forest Produce (Fixation of Selling Price) Act, 1978 and held as under:-

“9. As far as government undertakings and companies are concerned, it has to be held that they form a class by themselves since any profit that they may make would in the end result in the benefit to the members of the general public. The profit, if any, enriches the public coffer and not the private coffer. The role of industries in the public sector is very sensitive and critical from the point of view of national economy.

10. Hence preference shown to government companies under Section 6 of the Act cannot be considered to be discriminatory as they stand in a different class altogether and the classification made between government companies and others for the purpose of the Act is a valid one.”

9. Further, the Supreme Court in the case of **Shashikant Laxman Kale and Another v. Union of India and Another**: (1990) 4 SCC 366, while examining the exemption provided under Section 10 (10C) of the Income Tax Act, 1961 to the employees of public sector companies to the exclusion of employees of private sector companies, referred to the decision in *Hindustan Paper Corporation* (*supra*) and held as under:-

“35. It is clear that the government or the public sector undertakings have been treated as a distinct class separate from those in the private sector and the fact that the profit earned in the former is for public benefit instead of private benefit, provides an intelligible differentia from the social point of view which is of prime importance for the national economy. Thus, there exists an intelligible differentia between the two categories which has a rational nexus with the main object of promoting the national economic policy or the public policy.”

10. In **Indian Drugs & Pharmaceuticals Ltd. v. Punjab Drugs Manufacturers Assn.**: (1999) 6 SCC 247, the petitioner (therein) contended that the policy decision of the State of Rajasthan, directing purchase of certain medicines for use in the hospitals, dispensaries and other institutions run by the State only from public sector companies, is violative of Article 14 and 19(1)(g) of the Constitution of India. The Supreme Court rejected the abovesaid contention of the petitioner (therein) and held as under:-

“16. It is clear from the various judgments referred to above that a decision which would partially affect the sale prospects of a company, cannot be equated with creation of monopoly. In *Ram Jawaya Kapur* and *Naraindas* cases the Constitution Bench also held that the policy restrictions, as discussed above, can be imposed by exercise of executive power of the State under

Article 162 of the Constitution. Therefore, the contention of the appellants in regard to creation of monopoly and violation of the fundamental right under Articles 19(1)(g) and 19(6) should fail. The judgments cited above also show that preference shown to cooperative institutions or public sector undertakings being in public interest, will not be construed as arbitrary so as to give rise to a contention of violation of Article 14 of the Constitution. We have noted above that this Court in the cases of Oil & Natural Gas Commission v. Assn. of Natural Gas Consuming Industries of Gujarat, Krishnan Kakkanth and Hindustan Paper Corpn. Ltd. v. Govt. of Kerala has held that the preference shown to cooperative institutions or public sector undertakings being in public interest, will not be construed as arbitrary so as to give rise to a contention of violation of Article 14 of the Constitution.”

11. The above principles enunciated by the Supreme Court are equally applicable to administrative actions. Undoubtedly, a governmental action which is malafide, capricious and/or is arbitrary would be violative of the equal protection clause and, therefore, liable to be struck down. However, the discretion vested with the government authorities to carry on the administrative functions is wide and cannot be restricted as long as the same is bonafide and informed by reason. Unless a decision is found to be unreasonable in the sense that no reasonable person could be expected to take such decisions, the administrative decision would not be amenable to judicial review.

12. If the above settled principles are applied to the facts of the present case, it is found that that the decision to avail services of a public sector enterprises over other private travel agents cannot be subjected to judicial review. First of all, the petitioner has no vested right to insist that the government authorities avail its services. Secondly, the decision of the

government to restrict its purchase of services from public sector entities cannot be called into question for being arbitrary or unreasonable; as it is neither malafide nor without reason. A person has an unfettered discretion to choose his service provider, however, the state would require to take its decision on some basis. In the present case, restricting availing of services from only public sector entities does provide an intelligible differentia. The action of a state to avail services of its extended arms, in the given facts, is clearly in public interest. Further, even if the said action is viewed to be akin to a business group preferring to avail services from its own group over others, the obvious rationale of the same cannot be called into question.

13. Insofar as respondent no.4 (Delhi High Court) is concerned, the Court has accepted the travel agents as approved by the Government of India and in addition has also approved M/s Airworth Travel and Tours Pvt. Ltd. (hereafter 'Airworth') for providing services. Airworth had been providing services for several years and pursuant to the representation received by the officers, the then Hon'ble Acting Chief Justice had passed an order dated 17.11.2011 which reads as under:-

“Since M/s. Airworth Travel & Tours Pvt. Ltd. is IATA approved travel agent and already approved by the High Court and providing services for the last no. of years, its services may continue to be utilized apart from those mentioned in the O.M. dated 19.07.2011.”

14. The above order clearly indicates that the reason for including Airworth was because Airworth had been rendering services for several years. This reason also cannot be stated to be without substance or not

germane to the decision at hand. Thus, the decision of respondent no.4 also cannot be assailed as arbitrary or unreasonable.

15. It is also relevant to note that the travel agency services availed by the respondents are not material given the overall volume of services required by non-government authorities. In this view, excluding the petitioner from business generated by the respondents would not disable the petitioner from carrying on its business.

16. As stated earlier, the petitioner has no vested right to insist that the respondents should avail its services. And, in the given circumstances, where the substantial business is generated by non-government authorities, the administrative decisions cannot be assailed on the ground of violating Article 19(1)(g) of the Constitution of India.

17. In the given circumstances, the writ petition and the application are dismissed. No order as to costs.

VIBHU BAKHRU, J

OCTOBER 29, 2014

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