CGHC010106282023 2026:CGHC:45511

AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

VISHAKHA BEOHAR Digitally signed by VISHAKHA BEOHAR

WPC No. 1594 of 2023

1 - Satish Birha S/o Shri Heera Lal Birha Aged About 42 Years R/o Ward No. 5, Indira Nagar, Karbala Chowk, Dongargarh, District Rajnandgaon (Chhattisgarh)

... Petitioner(s)

versus

1 - State Of Chhattisgarh Through The Secretary, Accommodation Environment And Urban Development Department, Mantralaya, Mahanadi Bhawan Naya Raipur, Atal Nagar, P.O. And P.S. Naya Raipur, District Raipur (Chhattisgarh)

2 - The Collector Rajnandgaon (Chhattisgarh)

3 - The Sub Divisional Officer Revenue, Dongargarh, District Rajnandagaon (Chhattisarh)

4 - The Chief Municipal Officer Municipal Council, Dongargarh, District - Rajnandgaon (Chhattisgarh)

... Respondents

(Cause-title taken from the Case Information System)

For Petitioner :- Mr. V.K. Pandey, Advocate

For State :- Mr. Abhyuday Tripathi, P.L.

For Respondent No. 4 :- Mr. Shikhar Shukla, Advocate

SB- Hon'ble Shri Justice Amitendra Kishore Prasad

Order On Board

28.10.2026

1. By way of the present writ petition, the petitioner has prayed for a direction to the respondent authorities to consider his case for allotment of a shop constructed under the Mukhya Mantri Swalamban Yojna, in accordance with the eligibility criteria and the prescribed procedure, and further to restrain the respondents from allotting the said shop to any other person without following due process of law.

2. Facts of the case are that the petitioner has filed the present writ petition alleging that the respondent authorities have failed to consider his claim for allotment of a shop constructed under the Mukhya Mantri Swalamban Yojna. It is submitted that the petitioner belongs to the Scheduled Caste category and is an unemployed and economically weaker person, who has been running a cycle repairing business since 2012–13 from a permanent thela (handcart). The petitioner claims that he is eligible for allotment of a small shop constructed by respondent No.4 under the aforesaid scheme. It is further submitted that the respondent authorities have constructed certain small shops behind the place where the petitioner has been carrying on his business. However, instead of inviting applications through a

public advertisement and following a transparent procedure for allotment, the authorities have allegedly initiated the process of allotting the shops to other persons, who, according to the petitioner, are not eligible under the scheme. It is further contended that despite repeated representations and requests made by the petitioner, his claim for allotment of a shop has not been considered by the respondent authorities. The petitioner submits that he is ready and willing to fulfil all the terms and conditions prescribed for allotment under the scheme. However, the authorities are proceeding to allot the shops to other persons without considering his legitimate claim.

3. Following reliefs have been prayed in this petition:-

> *"10.1 issue notices to the respondents, returnable within early date of hearing.*
>
> *10.2 to direction the respondents No.2 to 4 to consider the request made by the petitioner for allotment of the shop constructed under Mukhya Mantri Swalamban Yojna at Ward No.5, Dongargarh, Distirct Rajnandgaon (C.G.).*
>
> *10.3 issue any other relief(s)/ order(s)/ direction(s) in favour of petitioners, which deemed fit & proper in the facts & circumstances of the case, in the interest of justice.*
>
> *10.4 Cost of the petition."*

4. Learned counsel for the petitioner submits that the petitioner is a poor person who earns his livelihood by running a small bicycle repair shop, which has been removed by respondent No. 4. It is further submitted that respondent No. 4 has constructed certain small shops under the Mukhyamantri Swavalamban Yojana, some of which are lying vacant. Learned counsel, therefore, prays that the petitioner may be considered for allotment of one of the vacant shops, provided the same has not already been allotted to any other person, so that he may earn his livelihood. Learned counsel for the petitioner further submits that the petitioner is ready and willing to abide by all the terms and conditions prescribed by the respondent authorities for allotment of the shop.

5. Learned counsel appearing for respondent No. 4 submits that the petitioner is above 40 years of age and, therefore, is not eligible for allotment of a shop under the Mukhyamantri Swavalamban Yojana, in view of the age criteria prescribed under the scheme.

6. Learned State counsel submits that the petitioner's claim for allotment of a shop under the Mukhyamantri Swavalamban Yojana is required to be considered in accordance with the eligibility criteria and other terms and conditions prescribed under the scheme.

7. Having regard to the facts and circumstances of the case, this Court is of the considered view that the petitioner, who earns his livelihood by running a small bicycle repair shop, deserves

consideration for allotment of a shop under the Mukhyamantri Swavalamban Yojana. Article 19(1)(g) of the Constitution of India guarantees to every citizen the right to practise any profession or to carry on any occupation, trade or business, subject to reasonable restrictions as contemplated under Article 19(6) of the Constitution of India. The right to carry on an occupation is an important facet of the petitioner's constitutional freedom to earn his livelihood. Therefore, the object of the scheme ought to be interpreted in a manner that facilitates the petitioner in earning his livelihood, rather than defeating the very purpose for which such a scheme has been introduced.

8. Recently, the Hon'ble Supreme Court in the matter of ***Kulsum Nisha v. State of U.P. and Others 2026 SCC OnLine SC 1059*** has held as under:-

> ***"14.*** *Article 14 of the Constitution of India, guarantees equality before the law and equal protection of the laws. Article 15(1) prohibits discrimination on the grounds of religion, race, caste, sex or place of birth. Article 21 protects the right to live with dignity. These guarantees must be interpreted in light of the constitutional commitment to secure social and economic justice embodied in the Directive Principles of State Policy. Article 39(a), in particular, mandates that the State direct its policy towards securing that men and women equally have the right to an adequate means of livelihood. Article 39(c)*

provides that the State shall direct its policy to ensure that operation of economic system does not result in the concentration of wealth and means of production to the common detriment.

17. *A Constitution Bench of this Court Shri Ram Krishna Dalmia v. Shri Justice S.R. Tendolkar 1958 SCC OnLine SC 6 after taking note of a decision rendered by seven Judge Bench of this Court Budhan Choudhry v. Staeof Bihar (1954) 2 SCC 791 has held that Article 14 of the Constitution forbids class legislation, but permits reasonable classification for the purposes of legislation. A classification, however, must satisfy two conditions, firstly, it must be founded upon an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group, and secondly the differentia must have a rational relation to the object sought to be achieved by the statute in question. The doctrine of equality has, over time, evolved beyond a narrow classification test. State action, which is arbitrary, irrational, capricious, or founded on impermissible stereotypes is equally vulnerable to challenge under Article 14."*

9. Also, the High Court of Calcutta in ***Sudip Sakar v. State of West Bengal and Ors. WPA 6533/2025*** has held as under:-

"45. A policy that is capricious or lacks rational justification is liable to be struck down. The state practice of allowing older individuals to obtain licences through compassionate appointment while debarring them from general vacancies weakens the rationale of physical fitness or

technical proficiency. Imposing an upper age limit of 45 years under Clause 11(v) of the 2024 order, without a similar limit in other allotment categories, creates an uneven 'playing field'. The State's authority to regulate a trade under Article 19(6) has crossed into "Manifest Arbitrariness" which is a ground for invalidating subordinate legislation under Article 14.

46. The primary principle, as per the Supreme Court's interpretation of Article 14, is that a law is manifestly arbitrary if it is unfair, unreasonable or imposed without adequate guiding principles. The State has failed to furnish empirical data showing that a person aged 46 to 60 years are significantly less efficient in operating a retail shop. In absence of a rational basis, the age limit of 45 years is deemed to be an impermissible whim under the Constitution.

50. Digital literacy is a skill and not a biological trait type to age. A 50 year old may be more tech savvy than a 25 year old. If the State wants tech savvy dealers, it should mandate the computer proficiency certificate as an eligible criteria rather than banning an entire age group. The longevity of service is a weak state interest compared with the citizen's right to compete for a licence. Even if a dealer starts at 46 he can serve for 14 years before reaching the typical retirement age of 60 which is sufficient longevity. The Act does not grant the State the power to impose moral or arbitrary personal qualification that are unrelated to the actual distribution of food grains.

51. By imposing an age gap that restricts the pool of eligible distributors without a functional reason, the state has exceeded the rule making power granted to it by the Parliament. Clause 11(v) violates the basic structure of Article 14 and compels the state to accept applications from all eligible individuals, irrespective of the 45 year age ceiling.

59. The contention of the State that subordinate legislation can be challenged only on limited grounds such as violation of fundamental rights is erroneous and contrary to settled law. Policy decision is generally within the domain of the executive, they are subject to judicial review if they offend the basis requirements of Article 14 of the Constitution of India. The Hon'ble Supreme Court in Indian Express Newspapers vs Union of India reported in MANU/SC/0406/1984 : 1984:INSC:231 : (1985)1 SCC 641 has held that subordinate legislation is subject to judicial review not only on the ground of violation of fundamental rights but also on the grounds of unreasonableness, arbitrariness, and if it ultra vires the parent act. Further, in State of Tamil Nadu vs P Krishnamurthy, reported MANU/SC/1581/2006 : 2006:INSC:177 : (2006) 4 SCC 517 the Court laid down that subordinate legislation can be struck down if it is manifestly arbitrary, violative of constitutional provisions, or beyond the scope of delegated authority. Thus, the scope of challenge is wide and not restricted as contended by the respondents. In the present case, the impugned clause is manifestly arbitrary and lacks rational nexus with the object sought to be achieved, thereby violating Article 14 of the Constitution of India. The doctrine of Arbitrariness, makes it clear that any provision which is capricious or irrational is liable to be struck down. Moreover, the impugned restriction unreasonably curtails the petitioner's right to practice a profession guaranteed under Article 19(1)(g) of the Constitution of India and is not saved by the test of reasonableness under Article 19(6). The arbitrary exclusion also adversely affects the petitioner's right to livelihood, which forms an integral part of Article 21 of the Constitution of India. Therefore, the impugned subordinate legislation, being arbitrary, unreasonable, and violative of fundamental rights, is ultra vires the Constitution and is liable to be struck down.

> *60. Although the classification based on age constitutes an intelligible differentia, the impugned age limit of 45 years lacks rational nexus with the object sought to be achieved. In absence of any reasonable justification, the classification becomes arbitrary and violative of Article 14, thereby rendering the impugned provision ultra vires. The impugned classification must satisfy the twin test laid down in State of West Bengal vs Anwar Ali Sarkar reported in MANU/SC/0033/1952 : 1952:INSC:1 : AIR 1952 SC 75 and elaborated in Ram Krishna Dalmia vs Justice Tendolkar reported in MANU/SC/0024/1958 : 1958:INSC:29 : AIR 1958 SC 538, namely intelligible differentia and rational nexus. While the age-based classification may satisfy the former, it fails the latter as no reasonable nexus with the object sought to be achieved is demonstrated. Further, as held in E.P. Royappa and Ramana Dayaram Shetty reported in MANU/SC/0380/1973 : 1973:INSC:213 : (1974) 4 SCC 3, arbitrariness is antithetical to equality. The impugned rule, being capricious and without determining the principle, falls foul of the doctrine of 'Manifest Arbitrariness' as affirmed in Shayara Bano vs Union of India reported in MANU/SC/1031/2017 : 2017:INSC:785 : (2017) 9 SCC 1. Accordingly the provision is ultra vires and violates Article 14 of the Constitution of India."*

10. In the facts and circumstances of the present case, this Court is of the considered view that the prescription of an age limit, insofar as it operates to disentitle the petitioner from consideration for allotment of a vacant shop despite his willingness to comply with all other prescribed conditions, warrants reconsideration in the light of the constitutional protection under Article 19(1)(g) of the Constitution of India. Accordingly, the

respondent authorities are directed to provide and allot a shop to the petitioner under the Mukhyamantri Swavalamban Yojana, subject to fulfilment of all other prescribed terms and conditions of the scheme, except the condition relating to the age of the petitioner, so that he may earn his livelihood. The petitioner shall abide by the terms and conditions applicable to the allotment of the shop.

11. This Court is further of the view that the petitioner's claim ought not to be rejected solely on the ground that he has crossed the prescribed age limit, particularly when the allotment sought is intended to enable him to carry on his small occupation and earn his livelihood. The respondent authorities are, therefore, directed to complete the process of providing and allotting a suitable vacant shop to the petitioner within a period of **45 days** from the date of receipt of a copy of this order, subject to compliance with the aforesaid conditions.

12. In view of the aforesaid observations and directions, the writ petition is **allowed**.

sd/-

(Amitendra Kishore Prasad)
Judge

Vishakha

HEAD-NOTE

“Age-based unreasonable restriction cannot be imposed curtailing the right of the petitioner to practice a profession as guaranteed under Article 19(1)(g) of the Constitution of India. An otherwise eligible person cannot be denied an opportunity to earn livelihood on the basis of an arbitrary age criterion.”