(2012) 03 DEL CK 0304

In the Delhi High Court

Case No : Writ Petition (C) 3792 of 2011 and C.M. No. 7921 of 2011

Aman Electric Works Pvt Ltd	APPELLANT
Vs	
Delhi State Industrial and Infrastructure Development Corporation Ltd and Anr	RESPONDENT

Date of Decision : 06-03-2012

Acts Referred:
Constitution of India, 1950 — Article 226

Citation : (2012) 189 DLT 386

Hon'ble Judges : Vipin Sanghi, J

Bench : Single Bench

Advocate : L.B. Rai, for the Appellant; Renuka Arora and Ms. Raashi Beri, Advocates for the Respondent No. 1/DSIIDC, for the Respondent

Judgement

Vipin Sanghi, J.—By this writ petition under Article 226 of the Constitution of India, the petitioner seeks a writ of certiorari to quash and set aside the cancellation of the industrial plot allotted to the petitioner, vide cancellation letter dated 09.03.2005. The allotment of Plot No. 43, Pocket-J, Sector-2, Bawana Industrial Area had been conveyed to the petitioner vide letter dated 23.10.2000. The petitioner also seeks a mandamus to the respondents, directing the respondents to allot the said plot to the petitioner, as originally allotted to the petitioner, or in the alternative, the petitioner seeks allotment of any other industrial plot at the rate prevalent in the year 2000. The case of the petitioner is that one of the Directors of the petitioner company, namely, Smt. Ram Shree Bhati was running her business as a proprietary concern under the name & style of "M/s Aman Electric Works" in a non-confirming area. Under the orders of the Supreme Court, the said works of the said director had to be closed down. She was entitled, under the relocation scheme, for allotment of an industrial plot in Bawana Industrial Estate. Accordingly, she made an application on 26.12.1996 for an industrial plot to the respondent. Before the allotment was made in favour of the petitioner or Smt. Ram Shree Bhati, she had already made a deposit of Rs.2,25,600/-. The allotment of the aforesaid plot was made in the name of M/s

Aman Electric Works vide allotment letter dated 23.10.2000. The cost of the plot indicated in the allotment letter was Rs.10,50,000/-. 50% of the estimated cost, i.e. Rs.5,25,000/- was required to be deposited initially. The date for making the said deposit was extended by the Supreme Court up to 31.03.2001. The remaining amount had to be paid in installments.

2. The case of the petitioner is that, in the meantime, the said proprietary business was taken over by the petitioner company, i.e. M/s Aman Electric Works Private Limited on 07.04.1997. The initial directors of the said company were Smt. Ram Shree Bhati and Sh. Mahesh Prakash Bhati, who are mother and son respectively.

3. The petitioner company applied for obtaining a loan from the Delhi Financial Corporation (DFC) on 15.12.2000 to make payment of the amount payable against the allotment of the aforesaid plot. The said loan was provisionally sanctioned for Rs.7,37,000/- vide letter dated 26.02.2001. In the meantime, the petitioner applied to the respondent No. 1/DSIIDC for change of constitution of the firm from a proprietary concern to a private limited company as also for issuance of a "No Objection Certificate" (NOC) to that effect as a mandatory condition of sanction letter by DFC, on 28.03.2001. The respondent allowed the said change vide letter dated 14.05.2001 from a proprietary firm to the private limited company aforesaid, of which Smt. Ram Shree Bhati and Sh. Mahesh Prakash Bhati were the two directors.

4. Upon scrutiny of the records of the petitioner company by the DFC, it transpired that there were, in fact, three directors in the petitioner company, namely Sh. Mahesh Prakash Bhati, Smt. Ram Shree Bhati and Sh. Naresh Chand Bhati. Since Sh. Naresh Chand Bhati was also a Director in the petitioner company and his name had not been disclosed earlier, the petitioner was required to obtain a No Objection Certificate (NOC) from the respondent No. 1/ DSIIDC.

5. The petitioner, accordingly, applied to the respondent No.1/DSIIDC on 10.08.2001 to add the name of Sh. Naresh Chand Bhati in the NOC. The petitioners have explained that the omission to mention the name of Sh. Naresh Chand Bhati initially, when the change in the constitution of the firm was sought from the respondent was accidental, as he was a director who was drawing salary from the petitioner company, and the petitioners were under the impression that his name need not be included. According to the petitioner, the said Sh. Naresh Chand Bhati had been the director of the petitioner company since as early as 01.01.1999, i.e. even prior to the issuance of the allotment letter.

6. On this request for addition of Sh. Naresh Chand Bhati''s name in the NOC, no action was taken by the respondent despite repeated reminders sent on 03.11.2001, 23.11.2001, 12.04.2002 & 22.04.2002. The petitioner submits that upon a personal visit to the office of the DSIIDC, it transpired from the records of

the DSIIDC that purportedly a communication dated 23.08.2001 had been sent to the petitioner requiring the petitioner to submit documents in respect of the request for addition of name of Sh. Naresh Chand Bhati. The petitioner submits that this communication was never sent to the petitioner or received by the petitioner, and a copy thereof was received for the first time on 25.07.2002. Since the respondents have chosen not to file the counter-affidavit, this averment of the petitioner goes unrebutted and there is no reason to disbelieve the same.

7. The petitioner further submits that vide letter dated 29.07.2002, the applicant provided the documents required by the petitioner, namely Form-32 acknowledgement, Ration Card of Sh. Naresh Chand Bhati and the affidavit from the Director and the newly appointed Director. The petitioner again did not hear from the respondent and, consequently, the petitioner vide communication dated 27.07.2004 enquired from the DSIIDC as to how much amount is payable by them. At that stage, the petitioner was informed vide impugned letter dated 09.03.2005 that since the petitioner had failed to make 50% payment, the allotment of the aforesaid plot had been cancelled.

8. The petitioner thereafter sought reconsideration of its case by the respondent but to no avail. The petitioner made various representations before filing this petition. Consequently, this petition has been preferred.

9. The submission of Learned Counsel for the petitioner is that under the relevant policy of the respondent, with regard to the induction of directors in an applicant company, contained in an order dated 14.09.2001 issued under the instructions of the Hon''ble Lieutenant Governor, in relation to the substitution/addition of the Director in the private limited company, it is provided that "Conversions of proprietorship concern on (or) (sic) partnership firm into Pvt. Ltd. co. or a Public Ltd. Company may not be permitted. Hence substitution/addition or deletion in the names of directors may be allowed only among the family members.

(Emphasis supplied).

10. Learned counsel for the petitioner submits that Sh. Naresh Chand Bhati is, in fact, the brother of Sh. Mahesh Prakash Bhati and the son of Smt. Ram Shree Bhati. He is, therefore, a family member of the existing directors of the petitioner company. Consequently, addition of his name was permissible under the policy of the respondent. He submits that upon a perusal of the file notings of the respondent, which the petitioner has obtained under the Right to Information Act, it appears that the case of the petitioner has not been considered by application of mind. Learned counsel submits that in the file noting dated 10.08.2002, the concerned officer has taken note of the fact that Sh. Naresh Chand Bhati and Sh. Mahesh Prakash Bhati are the sons of Smt. Ram Shree Bhati. It also appears that the necessary recommendation had been made at page C-29 of the file. However, the file noting dated 03.02.2005 shows that the said recommendation has not been accepted by merely stating that as per

guideline date 14.09.2001, conversion of proprietary concern or partnership concern into a private limited company is not permitted. It is argued by the petitioner that the factum that Sh. Naresh Chand Bhati was a family member has been ignored and that part of the policy, which permits the addition of a family member as a Director in the converted company has been ignored.

11. The submission of Learned Counsel for the petitioner is that the petitioner has already made payment of Rs. 2,25,600/- before the allotment of the said plot, including the earnest money deposit. The inability of the petitioner to make payment of the balance amount arose from the fact that the respondent did not properly consider the application of the petitioner to grant NOC in respect of addition of Sh. Naresh Chand Bhati as one of the Directors of the petitioner company. It is also submitted that the cancellation has come about after over seven months from the time the petitioner offered to make payment of the outstanding amount vide letter dated 27.07.2004. Learned counsel further submits that the petitioner is even now ready & willing to make payment of the outstanding amount with interest, as may be decided by the Court.

12. On the other hand, Learned Counsel for the respondent submits that the change in the constitution of the proprietary firm into a private limited company had taken place in the year 1997 itself. Yet this position was not informed to the respondent and NOC was not obtained by the petitioner. The respondent was, much later, called upon to grant its no objection to conversion of the proprietary firm into a private limited company which it did vide a communication dated 14.05.2001. Learned counsel submits that since the petitioner failed to make payment of 50% of the amount by 31.03.2001, the petitioner did not have the right to stake its claim to the plot, allotment whereof stood cancelled. It was for the petitioner to have arranged the money for making payment of the 50% amount by 31.03.2001 from whichever source, and if the loan from DFC did not materialize, the said failure could not be to the respondent''s account. Learned counsel further submits that the DFC issued a communication dated 01.06.2002 to the petitioner informing it that though the loan was provisionally sanctioned on 26.02.2001, for more than a year thereafter, nothing was heard from the petitioner of the said loan. It is submitted that the failure to mention the name of the third director was that of the petitioner. If the said failure resulted in the delay in the disbursement of the loan to the petitioner by the DFC, the terms of allotment cannot be changed and the allotment is liable to be cancelled as 50% amount was not paid by 31.03.2001. Learned counsel has also placed reliance on a decision of this Court in P.K. Jain Vs. Government of National Capital Territory of Delhi, L.P.A. No.615/2010 and a batch of other L.P.A.s decided by a Division Bench of this Court.

13. Having heard Learned Counsel for the parties, perused the record and the decisions cited before me, I am inclined to allow this petition. There are two aspects which arise for consideration in this case. One is with regard to the addition of the name of Sh. Naresh Chand Bhati as one of the Directors of the

petitioner company in the records of the respondent, and the manner in which the said request has been dealt with by the respondent. The second is with regard to the delay in the payment of the balance amount out of the 50% amount which was payable by 31.03.2010.

14. So far as the aspect of inclusion of the name of Sh. Naresh Chand Bhati in the records of the respondent as a director of the petitioner company is concerned, it is clear that the action of the respondents in rejecting the said request of the petitioner (as is evident from the office notings obtained by the petitioner under the RTI Act) is wholly mindless. As noticed above, the conversion of the business from a proprietary concern of Smt. Ram Shree Bhati into a private limited company, i.e. the petitioner took place on 07.04.1997. Smt. Ram Shree Bhati and Mahesh Prakash Bhati were the two initial directors of the company from the very inception. Subsequently, Sh. Naresh Chand Bhati was also inducted as a director with effect from 01.01.1999. This was even prior to the allotment of the plot in question on 23.10.2000. Not only Sh. Naresh Chand Bhati is a blood relation of the two existing directors, being the son and brother of Smt. Ram Shree Bhati and Sh. Mahesh Prakash Bhati respectively, the factum of his being so inducted in the year 1999 itself is evidenced by the fact that Form 32 was filed contemporaneously. In fact, this cannot even be said to be a case of induction of a fresh director subsequently. This is a case of an omission or a slip on the part of the petitioners in failing to mention the name of Sh. Naresh Chand Bhati as a director of the petitioner company when they initially sought the conversion from a proprietary concern to the petitioner private limited company.

15. The case of the petitioner, therefore, stood on an even higher pedestal than the case where subsequent to allotment, a fresh director is introduced in the allottee company. The purpose of not permitting addition/substitution of fresh directors in the allottee company only appears to be to prevent speculation and trading of the allotted plots by the allottee to third parties by resort to transfer of the shareholding and change of management of the allottee company. It is for this reason that the policy dated 14.09.2001 permits substitution/addition or deletion in the names of the directors only among family members.

16. The failure on the part of the respondent in including the name of Sh. Naresh Chand Bhati as a director of the petitioner company in its records and granting its no objection is, therefore, wholly mindless and unsustainable. It is clear that the officer who did not accept the recommendation made in favour of the petitioner to include the name of Sh. Naresh Chand Bhati in the no objection certificate, failed to even take notice of the fact that he was a family member of the two original directors of the petitioner company, and that he was a director from the date even prior to issuance of the allotment letter. He also ignored a relevant aspect of the said policy contained in the order dated 14.09.2011 which has been highlighted above.

17. Now I turn to the second issue with regard to the failure of the petitioner to make payment of the balance amount, and the consequence thereof. It is seen

from the record that the petitioner has made payment of an amount of Rs.2,25,600/-. The petitioner, without delay, applied to the DFC to obtain the requisite loan as early as on 15.12.2000. This loan was also sanctioned before the expiry of 31.03.2001 for an amount of Rs.7,37,000/-, which would have been sufficient to cover practically the entire costs of the plot, if one were to take into account the amount already paid.

18. Pertinently, even though, according to the respondent the last date for making payment of 50% of the amount was 31.03.2001, the respondent continued to entertain and deal with the petitioner. The respondent granted its no objection certificate for conversion from a proprietary firm to the private limited company on 14.05.2001. The petitioners application for the said purpose had been made on 28.03.2001, i.e. prior to 31.03.2001.

19. Even thereafter, when the petitioner sought inclusion of the name of Sh. Naresh Chand Bhati in the no objection certificate vide letter dated 10.08.2001 (i.e. after 31.03.2001), the respondent did not get back to the petitioner to say that since the 50% amount had not been paid by 31.03.2001, the allotment stood cancelled and therefore there was no purpose for adding the name of Sh. Naresh Chand Bhati in the no objection certificate.

20. Even when the petitioner issue reminders on 03.11.2001, 23.11.2001, 12.04.2002 and 22.04.2002, the respondent did not send any response and maintained sphinx like silence.

21. Pertinently, form the respondents records, it appears that the respondents indeed acted on the said requests of the petitioner and purportedly prepared the communication dated 23.08.2001 requiring the petitioner to submit various documents. The petitioner, it appears, did not receive this communication and was given a copy only on 25.07.2002 on a personal visit. Till then, the respondent did not claim that the allotment of the petitioner had been cancelled due to non payment of 50% of the amount by 31.03.2001. When the petitioner sent the letter dated 29.07.2002, providing the requisite information, then too, the respondent did not inform the petitioner that the allotment of the plot in question stood cancelled.

22. Only when the petitioner enquired from the respondent as to how much amount is payable vide letter dated 27.07.2004, after a lapse of seven months thereafter, the impugned communication was issued stating since the petitioner had failed to deposit the first 50% payment by 31.03.2001, the allotment of the plot had been cancelled.

23. The effect of this belated cancellation and of keeping the petitioner engaged in undertaking correspondence and providing documents has been that the petitioner has been kept waiting and given a legitimate hope and expectation that the petitioner would be able to secure the said plot once the formalities and hurdles are cleared and payment received from the petitioner.

24. If, according to the respondents, the petitioner became disentitled from receiving the allotment upon failure to make payment of 50% of the amount by 31.03.2001, the respondent should have communicated the cancellation and refunded the amount received by it from the petitioner soon after 31.03.2001, or within a reasonable time thereafter. In that eventuality, the petitioner would have known its position and status with regard to the allotment of the plot in question, and would have had the funds already invested by it in its hands to look for another appropriate place. By keeping the hopes of the petitioner alive and by retaining its moneys to the tune of Rs.2.25 lacs from 2000 to 2005 (and probably even thereafter, as it is not disclosed whether the amount has been offered for refund or refunded, even today), the respondent has seriously prejudiced the petitioner, by its own conduct.

25. In Reliable Laboratories P. Ltd. and Another Vs. Delhi Development Authority and Another, the petitioner participated in an auction for purchase of an industrial plot. The petitioner deposited 25% of the bid amount as a part of the sale price. The petitioner was called upon to make deposit of the balance amount. The petitioner moved an application for extension of time. The petitioner was issued a show cause notice to show cause as to why the petitioners bid may not be cancelled for breach of the terms and conditions in making the payment. Only thereafter, the petitioner made payment of the balance amount. Since the petitioner could not get possession of the plot, the petitioner served a notice on the respondent claiming damages besides seeking possession. Thereafter the impugned communication was issued by the respondent stating that as the amount had not been received within the stipulated period, the allotment/auction bid was cancelled. Consequently, the petitioner preferred the said writ petition. The Court allowed the writ petition on the basis that in several other cases, the time for payment had been extended. The Court observed that there was no valid explanation furnished by the respondents as to why the balance amount was accepted from the petitioners, and the bid was cancelled only after the petitioners had served a notice on the respondents, in which damages were also claimed.

26. In the present case, though the respondent has not accepted any payment, its conduct in continuing to entertain the petitioners application for grant of NOC even after 31.03.2001 signifies the clear intent of the respondent to deal with the petitioner and to process the petitioner''s case for allotment of the plot in question.

27. The decision in Reliable (supra) was applied by the Division Bench of this Court in Dimpy Fashions (India) Vs. Delhi Development Authority, . In this case as well, the auction bidder had failed to make payment of the balance amount in time after making the initial deposit of the bid amount. After issuance of the show cause notice, the allotment was cancelled. The Court permitted the petitioner to make payment of the balance amount along with interest.

28. In Shri Ashok Kumar Kanojia & Anr. v. Delhi Development Authority & Anr.,

ILR (2003) I Del 118, the petitioner upon allotment of the plot deposited 75% of the bid amount within time. A show cause notice was issued to the petitioner for cancellation of the plot in question on account of his failure to deposit the balance amount. Only thereafter, the petitioner deposited the balance amount with interest. After a lapse of 3 1/2 years, the DDA decided to cancel the allotment which was challenged before the Court. The Court held that what was material and crucial to the case was that the aspect of condonation of delay and extension of time for depositing the balance amount was kept pending over a period of 3 1/2 years, and only thereafter the petitioner was informed that extension of time could not be granted for deposit of the balance amount. The delay in taking the decision whether or not to grant extension of time itself was a consideration which should have weighed with the Central Government before whom the case for extension of time was placed. The Court relied upon the decision in Reliable (supra) and Dimpy Fashions (supra). The Court held that despite having made payments in 1993, the petitioners were without a plot for 10 years and had suffered enough, though their suffering was largely self created, the Court directed the petitioner to make payment of interest @ 18% p.a. on the delayed payment.

29. The decision in P.K. Jain relied upon by the respondent, in my view, is distinguishable. In those cases, the DFC had not forwarded the loan amount to the DSIDC, as, according to the DFC, the appellants/allottees had not executed all the documents and completed the formalities for issuance of loan. It appears that the DSIDC, therefore, proceeded to cancel the allotment. However, in the present case, the DSIDC did not cancel the allotment soon after 31.03.2001 or within a reasonable time thereafter. It continued to deal with the petitioner, as aforesaid, by firstly permitting the conversion from proprietary concern to a private limited company on 14.05.2001 (i.e. after 31.03.2001), and even thereafter, by issuing the communication dated 23.08.2001 in relation to the addition of name of Sh. Naresh Chand Bhati (which was not received by the petitioner). The cancellation came only on 09.03.2005, i.e. seven months after the petitioner initially enquired of the respondent as to how much amount is payable by the petitioner vide letter dated 27.07.2004.

30. The respondent, in my view, are, therefore, not entitled to, in equity, to cancel the allotment made to the petitioner at the belated stage that it did. The petitioner had paid a substantial amount, and made arrangement to pay the balance amount by applying for, and getting a provisional approval of loan from the DFC. At the same time, since the petitioners have not paid the balance amount, they cannot be permitted to profit from it, and should be required to make payment of the balance amount of the plot along with adequate interest to compensate the respondent. Accordingly, the respondent is directed to make allotment of a similar plot to the petitioner by adjusting the amount already paid by the petitioner and requiring the petitioner to make payment of the balance amount along with 18% p.a. with effect from 01.04.2001 onwards. The petitioner shall make payment of the balance amount within two months of the allotment

letter being issued. It is made clear that failure on the part of the petitioner to make payment of the balance amount with interest, as aforesaid, shall entail cancellation of the plot so allotted.

