

(2017) 10 DEL CK 0079

In the Delhi High Court

Case No : Civil Writ Petition No. 3929 Of 2013, Civil Miscellaneous Application No. 7330, 16805 Of 2013

Amit Kumar Mit

APPELLANT

Vs

Ministry Of Urban Development & Ors.

RESPONDENT

Date of Decision : 31-10-2017

Acts Referred:

Persons With Disabilities (Equal Opportunities, Protection Of Rights And Full Participation), Act, 1995 — Section 33, 37, 43

Citation : (2017) 10 DEL CK 0079

Hon'ble Judges : S. Ravindra Bhat, J;Sanjeev Sachdeva, J

Bench : Division Bench

Advocate : Anupam Anand, Ruchir Mishra, Abhishek Rana

Final Decision : Disposed Of

Judgement

S.Ravindra Bhat, J

1. The petitioner seeks directions for proper implementation of Section 43 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation), Act, 1995 (pre-existing Act). Section 43 reads as follows: -

"43. Schemes for preferential allotment of land for certain purposes. -

The appropriate Governments and local authorities shall by notification frame schemes in favour of persons with disabilities, for the preferential allotment of land at concessional rates of -

- (a) house;
- (b) setting up business;
- (c) setting up of special recreation centres;
- (d) establishment of special schools;

(e) establishment of research centres;

(f) establishment of factories by entrepreneurs with disabilities."

2. It is contended that the respondents, i.e., Union Ministry of Urban Development, Directorate of Estates flouted the mandate of Section 43 and not provided for effective means to ensure that 3% quota set apart for persons with disabilities is filled in matters of allotment of public spaces/shops etc within their control. The petitioner also refers to the Delhi Development Authority's letter dated 09.10.2006 which provides for 5% reservation for persons with disability with respect to allotment of shops.

3. On 15.12.2015, the Court after considering the materials existing passed the following order: -

"The learned counsel for the respondents states that no shop has been allotted after NIT of 07.05.2013 and there is no proposal for allotment of shops in 2016. However, we feel that in future there might be an occasion where the respondents may allot a shop. Since the 3% disability quota, because of rounding off and the low number of shops that are put up for allotment, does not result, normally, in an allotment to disabled persons, the respondents may consider adopting another principle, such as that adopted in service law by having a roster point system so that when the allotment of shops are considered cumulatively, at fixed points, disabled persons are entitled to allotment of shops. The respondents may take a decision on this and file an affidavit within six weeks."

Renotify on 10.03.2016."

4. Pursuant to the order, the respondents, i.e., the Union Ministry of Urban Development filed an affidavit. The relevant part of the Ministry's affidavit is extracted below: -

"2. In compliance of Honourable High Court Order dated 15/12/2015 in which it was suggested that the respondents may consider adopting another principle, such as that adopted in service law by having a roster point system so that when the allotment of shops are considered cumulatively, at fixed points, disabled persons are entitled to allotment of shops, this Directorate has taken a decision to adopt 200 point roster system (ANNEXURE-1) and to include shops of New Moti Bagh in the roster system (ANNEXURE-2).

3. As per the policy of Directorate of Estates (ANNEXURE-3):

i. 22.5% of the shops would be reserved for Scheduled Castes/Scheduled Tribes. In case there is no Schedule Tribe Candidate, it would be given to a Scheduled Caste candidate. In the event of no Scheduled Caste candidate coming forward, the shops would be made available to the general category.

ii. 3% reservation of the shops/stalls would be for "Physically Handicapped" category. The definition of "Physically Handicapped" would be such as is adopted

by the Govt. under any rules/laws framed by the Ministry of Welfare or as may be specified by the Ministry of Urban Development for this specific purpose from time to time. In the event of a shop being reserved for the physically handicapped category and no such candidate being available, the shop/stalls would be disposed of to the general category.

3. Keeping in view the policy of Directorate of Estates, 200 point roster system has been adopted in which 30 points are reserved for SC category, 15 points are reserved for ST category and 6 points are reserved for PH category. Further, PH category has been given Horizontal reservation in the roster register. Hence, it fulfills the reservation policy."

5. In support of the submission, the learned counsel relied upon the extracts of the roster register maintained and submitted that at present there is no scope for allotment of any shop or similar space to the petitioner and that he would have to wait for his turn.

6. Learned counsel for the petitioner points out that the roster system indicated, pursuant to the Court's order, provides little relief as the allotment to Physically Handicapped category would take place in the remote future. It was submitted besides that by virtue of the coming into force of The Rights of Persons with Disabilities Act, 2016 (the new Act), the quota has to be altered since the law mandates 5% quota instead of the existing 3%. It is also pointed out that in the past, allegations were made contrary to the guidelines inasmuch as blood relatives, i.e., father and son were allotted.

7. It is apparent from the above that what the petitioner seeks is the enforcement of Section 43 which directs a system of preferences unlike Section 33 of the pre-existing Act. Section 43 enjoins appropriate authorities and public establishments to give preferential treatment in allotment. Though, per se there is no quota system, however, for the practical achievement of Section 43, the Ministry of Urban Development as indeed other authorities seems to recognize that preference system is workable through quota.

8. DDA already had a 5% quota in place. Although late, this Court's order dated 15.10.2015 has alerted the respondents to the possibility of arbitrary and haphazard manner of allotment; this has resulted in issuance of instructions that have mandated a roster system for working out 3% quota. Having regard to the number of posts in a cadre in any given service, the vacancies in the shops will have to be appropriately filled in terms of the roster. Thus, the 22.5% roster for SC/ST will have to be filled and set apart for that category according to the roster at the appropriate slots. Likewise, in the case of persons with disabilities, the vacancies will have to be worked out at the 30th, 60th, 90th, 150th and 180th vacancy slots. This roster, in the opinion of the Court, also requires alteration given the fact that new enactment mandates 5% quota. A direction is, therefore, issued to the respondents to bring the roster points in line with the Section 37 of the new Act and workout the 5% quota.

9. So far as the petitioner's grievance with respect to violation of the guidelines of allotment of shops to those not eligible or not deserving is concerned, the respondents will look into the allegations, in case a representation is made in this regard within two weeks. The respondents shall also ensure that the fresh roster in accordance with the new Act is prepared and placed in the public domain appropriately within six weeks from today. The respondents shall also publish the allotments made to persons with disabilities, if any, and in any case, indicate the end of the tenure of all existing allotments, in the same publication.

10. The writ petition is disposed of along with all the pending applications.