
(2007) 11 DEL CK 0269

In the Delhi High Court

Case No : Writ Petition (C) 1659 of 1996

Anil Kumar Sharma and Another

APPELLANT

Vs

The Additional District Judge and Others

RESPONDENT

Date of Decision : 21-11-2007

Acts Referred:

Citation : (2007) 11 DEL CK 0269

Hon'ble Judges : S. Ravindra Bhat, J

Bench : Single Bench

Advocate : Shiv Kumar Sinha, for the Appellant; Pankaj Batra, for Union of India, for the Respondent

Final Decision : Allowed

Judgement

S. Ravindra Bhat, J.

CM 2806/07 (restoration) & 2807/07 (condensation of delay)

1. These applications are for condoning the delay in seeking condensation and for restoration of the writ petition dismissed in default on 29.11.2006, when the parties were unrepresented, for non-prosecution of the petitioner.

I have considered the averments in the applications and I am of the opinion that a justice would be sub served if the claims made in these applications deserves to be granted. Accordingly, the applications are allowed; the writ petition is restored to its original position on the file of this Court.

WP(C) 1659/1996

1. With the consent of learned Counsel for the parties, the matter was heard for final disposal.

2. The petitioner claims a direction for quashing of the orders dated 9.4.1996 and 18.4.1996 made by the Estate Officer and the Appellate Authority. The effect of these orders is that his occupation of the quarter No. A-377, Minto Road, New

Delhi, was deemed unauthorized and he had to hand over the possession to the respondents. After that, he approached this Court and interim orders were made absolute to protect him from his dispossession.

3. The brief, uncontroversial facts of this case are that the petitioner's father, at the relevant time, was working as a Wireman in CPWD. He died, while still in employment, on 23.6.1993. Apparently, the petitioner was eligible and entitled to be so considered and appointed on compassionate grounds; yet the process entailed some delay. Eventually, the Central Government approved and appointed the petitioner to the post of Wireman (to which he was eligible) on 5.4.1995. It is not in dispute that as a holder of that post, the petitioner too is entitled to a similar category accommodation, in the Central General Pool. On 24.6.1995, he, Therefore, applied to the Central Government through the Directorate of Estates for regularization of his occupation, in tune with the existing policy. The application, however, was not considered favorably and the Estate Officer cancelled the license on 13.7.1995. After the above event, the Directorate of Estates issued a show cause notice under the Public Premises (Eviction of Unauthorized Occupants) Act, 1971; this culminated in an order of eviction on 9.4.1996. The petitioner appealed, although unsuccessfully, to the Appellate Authority, i.e., Additional District Judge who unfortunately rejected the appeal without issuing notices to the respondent. The petitioner is, Therefore, aggrieved and has approached this Court.

4. Counsel contended that, at the relevant time, the existing Guidelines dated 13.7.1981 provided that if compassionate appointment was made within one year of the demise of the allottee/licensee to his dependent, spouse or child, the occupation could be regularized. A copy of the policy dated 13.7.1981 is enclosed to the petition. It was contended that if the object of the policy were to be kept in mind, i.e. the regularization of occupation to those deserving compassionate appointment, the applicant cannot be saddled for the fault or delay of the Government.

5. It was submitted that an application for appointment was made within one month of the demise of the allottee; in which respondents never disputed or contested his entitlement to the appointment on that basis and, Therefore, granted that request on 5.4.1995. Unfortunately, having regard to the cumbersome process of considering the application for appointment inevitably the delay is the period of one year provided for in the Circular dated 13.7.1981 was not duly taken into account. The petitioner, Therefore, is now suffering for no fault of his.

6. Learned Counsel contended that during the pendency of these proceedings, on 20.5.1999, the Guidelines were amended to accommodate a larger period. In case the compassionate appointment matured within two years of the death of the allottee, the employee/dependent had to be allotted the quarter and his occupation could be regularized. A copy of these Guidelines as well as copy of the another letter/circular dated 31.8.2001 were produced and relied upon. In the

latest circular, i.e. of 2001, the Government reiterated that the permissible period for occupation, (i.e. the basis of regularization of such occupation), is two year and even proceeded to regularize the occupation of 32 employees who had exceeded that period.

7. In these circumstances, it is contended that the petitioner's request ought to have been acceded to as he has fell within two year period. His appointment was made within 21 months of the demise of his father.

8. In the counter affidavit, the essential facts were not disputed. However, the principal refrain of the respondents was that the period stipulated, at the relevant time, contained in the Guidelines dated 13.7.1981 has been exceeded.

9. I have considered the materials on record. In view of the undisputed position that the petitioner was eligible and in fact appointed to the post on 5.4.1999 on compassionate basis, it is clear that the Central Government itself being of the view that the circumstances of the demised employee's family were such that preferential treatment towards rehabilitation were necessary - the circumstance that the final appointment actually matured after the far period, in my opinion, is of great relevance. That should not be a disability and visit the petitioner (who had no control over the events) with drastic consequences. The subsequent thinking of the Central Government reflected in the orders dated 20.5.1999 and 31.8.2001 show that the period of "grace" or permissible period was liberalized and extended by one more year, i.e. the total period was two years. The intention of this extended period obviously was to entitle those genuinely found eligible, and appointed on compassionate basis to favorable treatment in terms of regularization of occupation. If that intention were to be kept in mind, the fact that the petitioner was appointed prior to its issuance should not be held against him.

10. In these circumstances, I am of the considered view that the impugned orders cannot be sustained. In any event, even the delay in appointment which is the only reason for the eviction orders impugned in these proceedings, was not attributable to the petitioner. Additionally, in view of the undisputed subsequent events, it would be inequitable for the respondent to implement the said orders.

11. In view of the above findings, the petition deserves to be allowed. A direction is accordingly issued to the respondents to regularize the occupation and allotment of the petitioner w.e.f. 5.4.1999. The impugned orders of eviction as well as directing the petitioner to pay penal rent are hereby quashed.

12. Rule is made absolute in terms without any order as to costs.