

**(1997) 05 DEL CK 0099**

**In the Delhi High Court**

**Case No :** Civil Writ Petition No. 4446 of 1995

Dev Raj Chadha

APPELLANT

Vs

Administrator, New Delhi Municipal Committee and Another

RESPONDENT

**Date of Decision :** 09-05-1997

**Acts Referred:**

Constitution of India, 1950 — Article 226

**Citation :** (1997) 70 DLT 70

**Hon'ble Judges :** R.C. Lahoti, J; Lokeshwar Prasad, J

**Bench :** Division Bench

**Advocate :** Ravinder Sethi and B.B. Gupta, for the Appellant;

## Judgement

Lokeshwar Prasad, J.

(1) The present petition is the second round of litigation by the petitioner. Earlier the petitioner, an ex-serviceman, had filed a writ petition (C.W.P. No. 3393/89) claiming disability pension as an ex-serviceman. In that writ petition the petitioner made a statement that he did not press the prayer made in that writ petition and that his application for allotment of a parking lot may be forwarded to the Administrator, New Delhi Municipal Committee (hereinafter referred to as the NDMC) through the Director General of Resettlement. In view of the above statement, made by the petitioner, that writ petition was disposed of by this Court vide order dated 29.11.1994 with the observations that the petitioner would handover such an application to the Counsel for the respondent who would forward the same to the Director General of Resettlement, who in turn would forward the same to the Administrator, NDMC. The petitioner, despite repeated requests from the Director General Resettlement, did not submit the application in the prescribed form. However, the Director General Resettlement (respondent No. 2) in pursuance of the above orders of this Court sponsored the name of the petitioner to Ndmc (respondent No. 1) for the allotment of a parking lot vide letter dated 16.1.1995. On the basis of the recommendations made by the Director General of Resettlement (respondent No. 2), the name of the petitioner

was included in the open draw of lots held by respondent Ndmc on 17.11.1995 and the petitioner was allotted a parking site, at Parad Road, New Delhi. The main grievance of the petitioner in the present writ petition is that the respondent Ndmc and Director General of Resettlement have malafidely allotted an uneconomical parking other persons who had availed of their chance of participating in the draw of lots and who were reluctant to take the parking lots which were non-profitable, had been included in the draw of lots held on 17.11.1995 and that the respondent Ndmc had asked for names for 28 parking lots whereas draw was held for 52 parking lots and in the draw the name of certain persons who retired after the display and demand of parking lots were included.

(2) The respondents to whom the notice of the writ petition was issued, have filed counter affidavits explaining in detail the procedure being followed by them for allotting the parking lots to army personnel. Respondent No. 2 in his counter has stated that the Ndmc (respondent No. 1) sends the requests to respondent No. 2 for allotment of parking sites to the ex-servicemen. Based on the requests, so received from the end of respondent No. 1, the vacancies are notified in the local dailies and the applications so received from the ex-servicemen are processed and the exact number of candidates to be sponsored are taken by a draw of lots from amongst the received applications who fulfill, the eligibility criterion. Such draw of lots are held in the presence of senior officers of Director General of Resettlement (respondent No. 2), representative of Ndmc (respondent No. 1) and the ex-servicemen present there and the lots are drawn by the ex-servicemen themselves. After such draw of lots, a list of eligible ex-servicemen together with a reserved list is forwarded to respondent No. 1 (NDMC) who make the allotment of actual parking site.

(3) In so far as the petitioner is concerned it is contended in the counter that a prescribed application form was sent to the petitioner by a registered letter dated the 20th July, 1995 for completion so that the petitioner could be considered for allotment of parking site Along with the other eligible ex-servicemen. The petitioner as contended by respondent No. 2, did not care to respond and never applied in the prescribed form despite repeated requests. As per the contention of respondent No. 2, though the petitioner did not comply with the requirement of submitting an application in the prescribed form yet in pursuance of the directions of this Court, without ascertaining his eligibility, the said respondent forwarded the name of the petitioner to respondent No. 1-NDMC vide letter dated 16.1.1995 for allotment of a parking site. Thus as per the stand taken by the respondent No. 2, the decision i.e. actual allotment of parking site is taken by respondent No. 1 (NDMC) on the basis of the draw of lots held by Ndmc and the said respondent i.e. respondent No. 2 is only a sponsoring agency who sponsors the names of eligible ex-servicemen for allotment of parking sites. The name of the petitioner was sponsored by the said respondent i.e. respondent No. 2 not on the basis of his eligibility but in pursuance of the orders of this Court dated 29.1.1994 passed in C.W. 3393/89.

(4) The Ndmc (respondent No. 1) in its counter has stated that as per policy, being followed by the said respondent the parking lots are allotted to ex-servicemen who are duly sponsored by respondent No. 2 by "open draw of lots". It is contended that the name of the petitioner was sponsored by respondent No. 2 for allotment of a parking site and on petitioner's name being sponsored by respondent No. 2, his name was included in a draw of lots held on 17th November, 1995. It is contended that in the draw of lots held earlier on 5th August, 1994 his name could not be included as the same by then had not been sponsored by respondent No. 2. The respondent-NDMC in its counter has explained in detail the procedure being followed by it for drawing the lots for allotment of parking sites and the circumstance under which the names of 52 persons were included in the draw of lots held on 17th November, 1995 for allotment of parking sites. It has also been explained in the counter filed by the Ndmc that it is wrong to allege that the policy of the Ndmc is to give only one chance to a candidate in the draw of lots. It is stated that in case the site allotted to person is not acceptable to him, his case is considered in the next draw of lots as and when held. The respondent-NDMC has specifically denied the allegation that anybody whose name has been forwarded by respondent No. 2 for being included in the draw of lots is a close relation of the Administrator, NDMC.

(5) We have heard the petitioner, the learned Counsel for the respondents and have also carefully gone through the documents/material on record. With a view to satisfy ourselves we have also perused the records which were produce before us during the hearing of the petition by the respondents for our perusal in pursuance of our directions.

(6) From a perusal of the material on record and the documents made available to us for our perusal. It is apparent that the Ndmc (respondent No. 1) from time to time sends requests to respondent No. 2 for sponsoring the names of ex-servicemen for allotment of parking sites. On receipt of such a requisition the respondent No. 2 notifies the same in the local dailies and the applications so received are processed in the office of respondent No. 2 and thereafter the exact number of candidates to be sponsored is determined by the said respondent by holding a draw of lots from amongst die received applications who fulfill the eligibility criterion. Such draw of lots, by respondent No. 2, for the above said purpose, are held in his office in the presence of the senior officers of respondent No. 2, representative of the Ndmc and the ex-servicemen. Thereafter a list of ex servicemen and a reserve list is forwarded to the respondent-NDMC. The respondent -NDMC on the basis of the names being sponsored by respondent No. 2 makes the actual allotment of the parking lots by means of an open draw of lots. In the counter, it is contended that the name of the petitioner was sponsored by respondent No. 2 vide letter dated 16th January, 1995 and on the basis of his name being sponsored by respondent No. 2, respondent No. 1 included his name in the draw of lots held on 17th November, 1995 in which the site in question was allotted to the petitioner. The respondent-NDMC in its counter has clearly spelled out the circumstance under which the names of 52

persons, eligible for allotment, were included for allotting 52 parking sites which were available with the respondent- Ndmc at the relevant time. We find no infirmity in the same. In our opinion, no fault can be found with the procedure being adopted either by respondent No. 2 while sponsoring the names of the eligible ex-servicemen for allotment of parking sites and in the procedure being followed by respondent No. 1-NDMC for allotting the parking sites to such persons who are sponsored by respondent No. 2. Respondent No. 1, in its counter in all fairness has contended that as per the policy of the said respondent in case the site allotted to the petitioner at Baired Road is not acceptable to him, his case would be considered by the said respondent in the next draw of lots as and when held. It appears that the petitioner, being not satisfied with the parking lot allotted to him as a result of draw of lots held on 17th November, 1995 has filed the present writ petition with a view to bring pressure on the respondents so as to force them, to allot some other site of his choice in his favour. In our opinion, the petitioner has not approached this Court with clean hands. The petitioner is placing reliance on an earlier order passed by this Court in C.W.P. 3393/89 dated the 29th November, 1994. In terms of the above order, the petitioner was required to hand over his application (for allotment of a parking lot) to the learned Counsel for the respondent who was to forward the same to the Director General of Resettlement (respondent No. 2) who in turn was expected to forward the same to the Administrator-NDMC. Respondent No. 2 in its counter affidavit has clearly stated that the prescribed application form was sent to the petitioner by a registered letter dated the 20th July, 1995 for its completion so that the case of petitioner could be considered for allotment of parking site Along with the other eligible ex-servicemen. However, the petitioner did not care to respond. He never applied in the prescribed form despite repeated requests and as such did not comply with the requirement of submitting the application in the prescribed form like other eligible could not be ascertained. With a view to verify the correctness of the above facts, we have also perused the records, filed by respondent No. 2 in the Court for our perusal. During the hearing also we specifically put to the petitioner as to whether he applied in the prescribed form to respondent No. 2, to which the petitioner could not give any satisfactory answer and the only inference that can be drawn is that no such application in the prescribed form was submitted by the petitioner to respondent No. 2 despite repeated requests and as such the conduct of the petitioner himself cannot be stated to be above board.

(7) Coming to the specific allegations leveled in the petition, in our opinion, the same too are also without substance. As regards giving of two opportunities, the position is that as the procedure being followed by the respondent-NDMC if the site allotted to a person is not acceptable to him his case is considered in the next draw of lots as and when the same is held. Therefore, it would not be correct to state that only one chance is given to every person. The respondent-NDMC in its counter has convincingly explained the circumstances under which the names of 52 persons were included in the draw of lots held on 17 the

November, 1995 for allotment of 52 parking sites then available with the said respondent. As regards the allegations of inclusions of other persons in draw of lots, the respondent-NDMC and the respondent No. 2 have denied these allegations specifically. The petitioner at one stage alleged that the name of a close relations of the Administrator-NDMC had been included in the draw of lots. This allegation too has been specifically denied by the respondent-NDMC in its counter which we have no reason to disbelieve in the absence of any cogent proof. The allegation that the petitioner has been allotted malafidely a parking lot which has been rejected earlier by a person too is devoid of substance because the parking lot in question has been allotted to the petitioner as a result of draw of lots held on 17th November, 1995 and no fault can be found with the same. If the same is not acceptable to the petitioner, the petitioner is at liberty to intimate the same to respondent-NDMC who as per its policy is bound to include his name in the next draw of lots as and when the same is held.

(8) During the hearing the petitioner submitted that his name was not included in the draw of lots held earlier by a respondent-NDMC for allotment of parking sites. In so far as the above aspect is concerned, from a perusal of the counter filed by respondent-NDMC, it is apparent that prior to 17th November, 1995 the draw of lot was held on 5th August, 1994. The name of the petitioner could not have been included in the draw of lots held on 5th August, 1994 because the name of the petitioner was sponsored by respondent No. 2 vide letter dated 16th January, 1995 in pursuance of the orders of this Court dated the 29th November, 1994 passed on C.W. No. 3393/89.

(9) In view of the above discussion, in our opinion, the petition is devoid of substance. The same merits dismissal. Accordingly the same is dismissed. However, as per the policy of the respondent-NDMC, as put forth by it before this Court, it is directed that in case if the petitioner intimates the respondent-NDMC within 15 days from the date of passing of this order that the parking lot, allowed to him in the draw of lots held on 17th November, 1995 is not acceptable to him, his name will be included by the respondent-NDMC in the next draw of lots for allotment of parking sites as and when held. In the facts and circumstances of the case, no order as to costs.