

(1998) 05 DEL CK 0040
In the Delhi High Court
Case No : C.W.P.No. 2900 of 1997

DJ Singh (Retd.)(Commodore)

APPELLANT

Vs

New Delhi Municipal Council

RESPONDENT

Date of Decision : 20-05-1998

Acts Referred:

Citation : (1998) 4 AD 313 : (1998) 73 DLT 664 : (1998) 45 DRJ 573

Hon'ble Judges : Dr. M.K. Sharma, J

Bench : Single Bench

Advocate : Mr. V.K. Makhija, Ms. Vandana Khurana, Mr. Manmohan, Mr. P.S. Sudheer and Mr. B.L. Wali, for the Appellant; Mr. S.S. Sabharwal, Ms. Mona Aneja, Mr. Rakesh Tikku, Ms. Aruna Tikku and Mr. P.P. Khurana, for the Respondent

Judgement

Dr. M.K. Sharma, J.—Since all the three writ petitions (C.W. 2900/1997, C.W. 3456/1997 and C.W. 2053/1998) involve similar facts and identical question of law, I propose to dispose of all the aforesaid writ petitions by this common judgment/order.

2. The writ petitioners in all the three writ petitions are ex-Servicemen and are aggrieved by the resolution dated 29.4.1997 passed by the New Delhi Municipal Council (herein after called the Council) resolving that parking lots within the jurisdiction of the Council would be allotted on open tender out of which 50% parking lots would be reserved for ex-Servicemen, 15% for Scheduled Castes and Scheduled Tribes, 5% for handicapped and the rest for the general categories.

3. In pursuance of the said resolution passed by the NDMC a tender notice has also been issued and published in TIMES OF INDIA inviting sealed tenders for temporary allotment of 105 parking lots for 3 years from the date of allotment on monthly license basis. Tenders to be submitted are directed to be accompanied by an earnest money of Rs.15,000/-. It is also indicated in the said advertisement that NDMC reserves the right to reject any of the tenders without

assigning any reason whatsoever. In pursuance of the afore-said tender notice issued by the NDMC and published in the newspaper tenders have been received. However, in view of a restraint order passed by this court directing the Council not to open the tenders received as against 50% parking lots reserved for ex-Servicemen till the final order is passed, all the tenders as they were received in one box, have not been opened and allotment has not been made in pursuance of the public notice.

4. Prior to 1.4.1991 the Council in pursuance of the then existing policy used to allot the parking lots through the system of open tender which was open to one and all and there was no reservation for any category of persons. However, in view of receipt of certain complaints from the public regarding misbehaviour and over-charging by some of the allottees and their representatives the Council decided to allot the parking lots to ex-Servicemen whose names are sponsored by the Director General (Re-settlement), Ministry of defense. Council Therefore, vide its resolution No.18 dated 15.03.1993 revised the parking rates to be effective from 1.4.1993 by charging additional 10% of the existing license fee, and also took a decision to revise the policy and to make allotment of parking lots amongst the ex-Servicemen on the basis of open tender. Some of the petitioners submit-~~ted~~ a representation to the Council against the aforesaid move and the Director General (Re-settlement), respondent No.3 also wrote a letter to respondent No.1 stating that the policy proposed by respondent No.1 for inviting open tenders for allotment of parking lots from ex-Servicemen be not resorted to. On 15.10.1993 the Council passed a resolution to allot the parking lots on open tender basis.

5. Some of the petitioners filed writ petition in this court and this court by order dated 26.11.1993 directed that status quo shall be maintained with regard to the arrangement for allotment of parking lots by the Council. During the pendency of the aforesaid writ petition the Council resolved to continue with the existing policy in super session of resolution dated 15.10.1993 in respect of parking lots and also decided to extend the license period. In view of the aforesaid decision taken by the Council the writ petition was withdrawn.

6. On 29.4.1997, the Council again resolved that parking lots would be allotted through open tender system and out of the total parking lots 50% would be reserved for ex-servicemen, 15% for Scheduled Castes and Scheduled Tribes and 5% for the handicapped and rest for the general categories, to be allotted through open tender system. In pursuance of the said resolution the tenders were invited for allotment of parking lots through open tender system and hence the present writ petitions.

7. During the arguments the petitioners in all the three writ petitions were represented by Mr. V.K.Makhija, Senior Advocate, Mr. Manmohan and Mr. B.L.Wali, Advocates whereas the Director General (Resettlement), Ministry of defense was represented by Mr. Rakesh Tikku, Advocate and New Delhi Municipal Council was represented by Mr. S.S.Sabharwal, Advocate.

8. The grievances of the petitioners as were indicated during the course of arguments appear to be against the decision of the respondent No.1 of making the allotment of the parking lots through the process of inviting open tenders instead of restricting to those ex-servicemen who are registered with the Director General (Resettlement) and sponsored by him which is the prevailing practice being followed by the Council since 1991. Although in the writ petitions all the petitioners also challenge the decision of the Council laying down the policy of inviting open tenders earmarking 50% of the parking lots for the ex-servicemen and 30% of the parking lots made open for general category, yet during the course of arguments on the writ petitions the petitioners stated that their main grievance in the writ petitions is against the policy of respondent No.1 of inviting open tenders from all ex-servicemen as against 50% of the parking lots reserved for ex-servicemen registered with the Director General (Resettlement), and that they have no grievance as against rest 50% of the parking lots being reserved for Scheduled Castes/Scheduled Tribes and handicapped persons and made open for the general category. The said concession of the counsel appearing for the petitioners was recorded in my order dated 4.5.1998. Subsequent thereto however, petitioners in C.W.P. 3456/1997 have filed an application praying for review of the aforesaid concession made by the Counsel on behalf of the said petitioners on the ground that the said statement on the part of the counsel for the petitioner in the said writ petition was purely unintentional and was made by the counsel owing to lack of communication and misunderstanding resulting from no clear-cut instructions to the counsel for the petitioner. The aforesaid change of position after the arguments were heard and judgment reserved is unjustified and should not be allowed to be canvassed. Be that as it may, in order to do justice, I propose to adjudicate upon the aforesaid grievance as well.

9. The record placed before me discloses that prior to 1.4.1991 the policy adopted by the Council was to make allotment of the parking lots by calling tenders for the purpose of allotment of the parking lots through open tender system. At that point of time no reservation was also envisaged for any category of persons. However, the said policy came to be changed and the Council decided that the parking lots would be allotted to ex-servicemen only w.e.f. 1.4.1991 by draw of lots from amongst the names sponsored by the Director General (Resettlement), Ministry of defense. The said practice was being followed till very recently when again the Council took a conscious decision that the parking lots should be allotted through open tender system and that 50% of parking lots be allotted to ex-service-men, 15% for the Scheduled Castes/Scheduled Tribes, 5% for the handicapped and the the rest would be open to the general categories. Therefore, even under the present policy adopted by the Council the ex-servicemen would be entitled for allotment of 50% parking lots which are reserved exclusively for them and the said ex-servicemen would also be entitled to submit their tender as against the parking lots made open for the general category. If any of the ex-servicemen is a Scheduled Caste or Scheduled Tribe candidate he would also be entitled to put in his tender as against the quota of

parking lots reserved for such Scheduled Castes/Scheduled Tribes. The reasons for adopting the aforesaid fresh policy are also indicated in the agenda item placed before the Council which is annexed as ANNEXURE R-1 to the counter affidavit. One of the opinions which was considered by the Council was that once decision is taken to resort to open tender system it would not be advisable to restrict it to a particular category and that general public should also be allowed to quote. It was also noticed that the decision to allot the parking lots only to the ex-servicemen and that too only to those whose names were recommended by Director General (Resettlement) was not based on any Government directives or guidelines and the experience for the last 5/6 years with such allottees who are exclusively ex-servicemen had also not been very satisfactory. Therefore, it appears that the purpose and the object for which a change was envisaged from the position prior to 1.4.1991 did not change even after it was decided and a policy was adopted that parking lots should be allotted exclusively to ex-servicemen.

10. It is also stated by the respondent No.1 that the purpose and object for which the change has been envisaged and a fresh policy has been adopted by the Council through resolution dated 29.4.1997 is for better management, to create healthy competition and to augment revenue to respondent. In my considered opinion there cannot be any denial of the fact that allotment of parking lots is made not only for better management of the traffic and parking but also to augment revenue to the coffers of respondent No.1. The said purpose would be served only when open tenders are invited and there is equal competition so that the best bid could be accepted for the purpose of allotment of parking lots. Nobody could claim an exclusive right for allotment of parking lots to a particular class of citizens. The wider concept of equality before law and the equal protection of law is that there should be equality amongst equals. The formulation of the policy, in pursuance of which tenders have been invited for allotment of parking lots does not exclude ex-servicemen from submitting their tenders for allotment of parking lots exclusively reserved for ex-servicemen and Scheduled Caste/Scheduled Tribes categories, as also against those which are open for the general category. It cannot be said that the Council was not actuated with best of intentions in bringing about a change in the system of allotment of parking lots. The said policy also does not in any manner violate the right of the petitioners. The petitioners would be free to submit their tenders for the purpose of allotment of parking lots reserved exclusively for them as also those made open for the general public. Therefore, the policy adopted now by the Council making 30% of the parking lots open for the general public and 15% for the Scheduled Castes/Scheduled Tribes cannot be said to be arbitrary or irrational. The respondent No.1 is empowered to formulate a policy laying down the procedure for allotment of parking lots and in exercise of the said power a policy has now been formulated through resolution dated 29.4.1997. The Council has a right to change the policy from time to time according to the demands of situation and time and also according to its necessity. In respect of such a policy

interference of the courts is not called for. Reference may be made to the decision of the Supreme Court in *Madhya Pradesh Ration Vikreta Sangh Society and Others Vs. State of Madhya Pradesh and Another*, wherein the Supreme Court held that framing of schemes of distribution of food stuffs at fair prices through Fair Price Shops is a matter of government policy in which court's interference is not called for.

11. The next submission of the learned counsel for the petitioners is that the policy adopted by respondent No.1 for allotment of 50% of the parking lots reserved for Ex-Servicemen only through open tender system instead of restricted tenders limited to ex-servicemen sponsored by the Director General (Re-settlement) is arbitrary, capricious and irrational. The said submission, in my considered opinion is also misplaced. One of the intentions and purpose behind making allotment of parking lots is also to raise revenue for the coffers of respondent No.1. The said purpose would be best served only when people are invited to participate in such allotments by submitting their tenders and quoting their bids. Only when there is an open competition there is possibility of receiving just and proper bids which would in turn help in augmentation of revenue to the coffers of respondent No.1. On the other hand if the same is restricted only amongst those ex-servicemen who are sponsored by the Director General (Rehabilitation) there is no possibility of having healthy competition so far price angle is concerned. In that event, the competition would be confined to only few ex-servicemen and there is every possibility of disparity between the bid submitted by such ex-servicemen sponsored by the Director General (Resettlement) for a parking lot as against a bid in respect of a similar parking lot through the open competition amongst the general public in which there is possibility of having much higher value and price. In *Sterling Computers Ltd. Vs. M/s. M&N Publications Ltd. & Others*, 1993 1 S 445, the Supreme Court has held that while conferring State largesse invitation of tender is a recognised method to secure public interest.

12. Again in *Union of India Vs. Hindustan Development Corporation*, (1993) 3 S 499, the Supreme Court has held that the policy of the Government in the matter of fixation of price and in allotment of largesse from the point of view of prohibiting monopolistic tendencies and encouraging healthy competition among the units, was not unreasonable or arbitrary.

13. Next submission of the Counsel for the petitioner is that if the present policy adopted by the Council is allowed to stand the same may entail benami transactions and civilian contractors working behind the scene through an ex-servicemen. Although I am not convinced by the aforesaid argument, I feel that even if there is possibility of such benami transactions taking place in such allotments the same could be negated and could be protected against if a direction is issued to respondent No.1 to associate the Director General (Re-settlement), Ministry of defense, at the time of scrutiny of the tenders and at the time of taking a decision regarding allotment of the parking lots exclusively

reserved for the ex-servicemen. Such association of the Director General (Re-settlement) or his representative at the time of scrutiny and deciding the best bid would protect the interest and the cause for which such benefits are being given to the ex-servicemen. The Director General (Re-settlement) would be of assistance and guidance in selecting the best bid for allotment of parking lots exclusively reserved for ex-servicemen.

14. Mr. Tikku, appearing for respondents 2 & 3 submitted that there is an instruction of the Government of India that when there is a dispute between two departments of the Government or between a department of the Government and a Public Sector Undertaking such dispute should be referred to be decided by a Committee of Secretaries and in support of his contention the learned counsel relied upon the decision of the Supreme Court in *Oil and Natural Gas Commission Vs. Collector of Central Excise*, . In my considered opinion the said argument is misplaced inasmuch as the ratio of the decision and the principle laid down therein is not applicable to the facts of the present case as the respondent No.1 is neither a department of the Central Government nor it is a public sector undertaking.

15. On consideration of the facts and circumstances of the case and reasons given by the respondent No.1 for formulating the policy as adopted by its resolution dated 29.4.1997 does not suffer from any arbitrariness nor is irrational to the object sought to be achieved. The Council, after due deliberations took a responsible and conscious decision to allot the parking lots through open tender system for better management, better augmentation of revenue and also on being satisfied that 50% of such parking lots should be reserved for ex-servicemen and 30% should be made open for the general public. Such a policy decision, in my considered opinion, is to be left to the discretion of the Executive and the Court should not exercise its discretion and interfere with such powers unless it is shown that the decision is arbitrary, capricious or unreasonable. The change of policy is exclusively within the domain of the Executive/ Council which is vested with a power of adopting such policies and the court should not interfere with such policy decision of the competent authority.

16. In *Sterling Computers case* (supra), the Supreme Court in paragraph 12 has held thus:

"At times it is said that public authorities must have the same liberty as they have in framing the policies, even while entering into contracts because many contracts amount to implementation or projection of policies of the Government. But it cannot be overlooked that unlike policies, contracts are legally binding commitments and they commit the authority which may be held to be a State within the meaning of Article 12 of the Constitution in many cases for years. That is why the courts have impressed that even in contractual matters the public authority should not have unfettered discretion. In contracts having commercial element, some more discretion has to be conceded to the authorities so that they may enter into contracts with persons, keeping an eye on the augmentation of

the revenue. But even in such matters they have to follow the norms recognised by courts while dealing with public property. It is not possible for courts to question and adjudicate every decision taken by an authority, because many of the Government Undertakings which in due course have acquired the monopolist position in matters of sale and purchase of products and with so many ventures in hand, they can come out with a plea that it is not always possible to act like a quasi-judicial authority while awarding contracts. Under some special circumstances a discretion has to be conceded to the authorities who have to enter into contract giving them liberty to assess the over all situation for purpose of taking a decision as to whom the contract be awarded and at what terms. If the decisions have been taken in bona fide manner although not strictly following the norms laid down by the courts, such decisions are upheld on the principle laid down by Justice Holmes, that courts while judging the constitutional validity of executive decisions must grant certain measure of freedom of "play in the joints" to the executive."

In paragraph 18 the Court has held thus:

"While exercising the power of judicial review, in respect of contracts entered into on behalf of the State, the Court is concerned primarily as to whether there has been any infirmity in the "decision making process". In this connection reference may be made to the case of Chief Constable of the North Wales Police Vs. Evans where it was said that "the purpose of judicial review is to ensure that the individual receives fair treatment, and not to ensure that the authority, after according fair treatment, reaches on a matter which it is authorised or enjoined by law to decide for itself a conclusion which is correct in the eyes of the court.

By way of judicial review the court cannot examine the details of the terms of the contract which have been entered into by the public bodies or the State. Courts have inherent limitations on the scope of any such enquiry. But at the same time as was said by the House of Lords in the aforesaid case, Chief Constable of North Wales Police Vs. Evans the courts can certainly examine whether "decision-making process" was reasonable, rational, not arbitrary and vocative of Article 14 of the Constitution."

17. The submission of the Counsel for the petitioners that there is violation of the principles of promissory estoppel has also no merit. There was no promise made by the respondent No.1 that the policy adopted in 1991 would continue perpetually. Allotment of such parking lots could not be demanded as a matter of right also. Under such circumstances the submission is rejected.

18. For the reasons stated above, I hold that the resolution adopted by the Council on 29.4.1997 for inviting open tenders for allotment of the parking lots is neither arbitrary, nor irrational and Therefore, the respondent No.1 can proceed with allotment of such parking lots through the aforesaid policy. However, on the facts and circumstances of the case I issue a direction to respondent No.1 that while scrutinising and considering the tenders submitted by the ex-servicemen

for allotment of the parking lots exclusively reserved for the ex-servicemen and while taking decision for such allotment the Director General (Re-settlement) of the Ministry of defense or his representative shall be associated and there guidance and assistance shall be sought for while making the selection of the best bids amongst the said category.

19. The petitioner in C.W. 2053/1998 however, did not submit his tender as he was given an alleged promise that his name would be included in the next draw of lots. However, in view of change of policy decision his name cannot be included in the draw of lots. The petitioner has to submit his tender in accordance with the changed policy, which he could have done as against the tender notice. As he had opted out of his own choice no relief could also be granted to the petitioner in C.W.2053/1998 also.

20. Except for the aforesaid observations and directions no interference is called for in respect of the action of the respondents and the writ petitions along with all the pending applications as also the application seeking for review of the order stand dismissed but without any costs. The interim orders passed by this court also stand vacated.