
(2006) 09 DEL CK 0191

In the Delhi High Court

Case No : Writ Petition (C) 13200 and 13201 of 2005

Goswami Vidyapitha Society and Another

APPELLANT

Vs

Lt. Governor and Others

RESPONDENT

Date of Decision : 11-09-2006

Acts Referred:

Citation : (2006) 132 DLT 638

Hon'ble Judges : S. Ravindra Bhat, J

Bench : Single Bench

Advocate : B.J. Nayar and S. Rajpal, for the Appellant; Anusuya Salwan, for the Respondent

Final Decision : Dismissed

Judgement

S. Ravindra Bhat, J.—The Petitioners claim to have established a school, in Malcha Marg, which is recognised by the NDMC and caters to 300 students of the weaker sections of the society. The Petitioners had approached the Respondent-DDA for allotment of a suitable plot. Reliance has been placed upon letters dated 12.7.03, 1.8.03, 29.9.03 and 10.11.03, addressed to the Respondent Delhi Development Authority (DDA). The latter by its communication dated 8.12.03 indicated the terms on which the request for allotment could be considered.

2. As per the existing norms applicants seeking allotment of primary school plot had to be a society and a no profit making organization. It was also required to produce certain documents including a sponsorship certificate issued by the appropriate Government, income tax clearance etc. The Petitioners submitted the application as per the format indicated, apparently with necessary documents sometime in early 2004. They kept reminding to the Respondent-DDA with requests to take early action for allotment of a suitable plot. When their attempts met with no success, they approached this Court.

3. The DDA in its counter affidavit relied upon what is termed as a change in policy which took place by resolution dated 19.1.2006. It is averred and

contended on behalf of the DDA that as per the new policy the applicants cannot be allotted plots but would have to participate in auction for such lands and make appropriate bids.

4. This Court while entertaining the writ petition had required DDA to specifically deal with the action taken pursuant to the Petitioner's application seeking allotment. In response the DDA has averred inter alia that though the Petitioners had applied for allotment of a school plot, it could not be considered since the policy for allotment was being re-considered and no fresh allotments were made, at that period.

5. It was contended during the course of hearing that the rules embodying the change of policy were struck down by a Single Judge of this Court in its judgment dated 27.4.2006 and that the matter is pending consideration before the Division Bench.

6. Learned Counsel for the Petitioner contested the position taken by the DDA and stated that once the application was furnished, in accordance with the existing policy in January, 2004, the Petitioner had a right to expect that it would be dealt with fairly and within reasonable time, in accordance with the existing policy, subsequent changes notwithstanding. It was contended that once the applicant applied under an existing policy he was insulated from subsequent changes and the DDA could not insist on the application of a subsequent policy.

7. The facts do show that had DDA acted in a reasonable manner by indicating within a reasonable time that action would not be taken and the Petitioner would not be allotted a plot, it would perhaps have sought further resources and purchased or acquired a plot independently of its application (to the DDA). However, the DDA chose to respond only when the Petitioner moved the Court. The question Therefore is whether in such circumstances the DDA can be compelled to follow its earlier policy.

8. The factual matrix in the above narrative is largely undisputed. The Petitioner's claim in line with the existing policy of the DDA made in January, 2004 was admittedly taken on record by the DDA. However, no action appears to have been taken for more than two years which led to initiation of the present writ proceedings. It is only in response to the show cause notice issued by the Court that the DDA has taken a position about its inability to allot the plot, necessitated by change of policy which occurred in January, 2006.

9. The right of an applicant to a plot, is a right to be treated fairly and considered in accordance with the policy; it cannot be equated with a vested right. In other words as long as a policy exists the applicant could have to acted in accordance with the policy. However, the question as to whether his right subsists in accordance with such policy would have to be dealt with in the light of any change in the policy. As per the policy existing today (although it is under scrutiny by the Division Bench) allotments as were being made hitherto, cannot be resorted to. Although this is a hardship, it cannot by itself lead the Court to

conclude that an applicant who moves the public authority on the basis of existing policy can insist that his application or request ought to be considered only in the light of that scheme, excluding further changes or developments. Unless a transitional provision is made enabling such consideration the DDA or any public authority is bound to take action only in accordance with the policies framed from time to time. As stated earlier, the delay in reasonable and prompt response by the DDA can undoubtedly cause inconvenience and hardship. However, that alone cannot support a finding of arbitrations or unreasonableness. That apart, there is authority (Ref. Howrah Municipal Corpn. and Others Vs. Ganges Rope Co. Ltd. and Others, and S.B. International Ltd. and Others Vs. Asstt. Director General of Foreign Trade and Others, to suggest that no applicant, in such cases involving change of policy pending requests by individuals for plans or orders, on the basis of pre-existing policies, has a "vested" or accrued right, to insist that the old policy has to be applied.

10. In the light of the above discussion, the relief claimed cannot be granted. However, the analysis of facts disclose that the DDA neither indicated to the Petitioner that its application was not considered or that it would not process in view of impending change in its policy for more than two years. In the light of this inaction although I am not granting relief on the petition, the DDA is directed to pay costs assessed at Rs. 10,000/- which shall be paid to the Petitioner within four weeks.

11. The writ petition is dismissed, subject to the direction to pay costs.