
(2005) 09 MP CK 0037

In the Madhya Pradesh High Court

Case No : Writ Petition No. 1314 of 2000

Jagriti Bal Mandir Society

APPELLANT

Vs

State of M.P. and Another

RESPONDENT

Date of Decision : 20-09-2005

Acts Referred:

Constitution of India, 1950 — Article 12, 14

Citation : AIR 2006 MP 75 : (2006) 1 CTLJ 189

Hon'ble Judges : S.L. Kochar, J

Bench : Single Bench

Advocate : D.R. Shah, for the Appellant; Rashni Pandit and Polekar, for Respondent 2, for the Respondent

Final Decision : Dismissed

Judgement

S.L. Kochar, J.—The petitioner, a registered society under the Societies Registrikaran Adhiniyam 1972, running a school in the name and style of Jagriti Bal Mandir Society, has filed this petition for quashing the order Annexure P/3, issued by Respondent No. 2, the Chief Executive Officer, Indore Development Authority (IDA) dated 9-6-2000 whereby the tender application Annexure P/2 filed by the petitioner for allotment of plot for the use of Educational purposes in Scheme No. 74-C, Sector-D, admeasuring 23,432 sq. mtr. in pursuance of publication annexure P/I inviting tenders by Respondent No. 2 for allotment of plots on the basis of fixed price was rejected. The petitioner has also sought relief for quashment of notice inviting tenders dated 10-6-2000 (annexure P/4) this notice was issued after cancellation of notice inviting tenders for allotment of plots (annexure P/I) dated 28-7-1999.

2. The short resumes of the facts necessary for disposal of this petition are that the petitioner-society is running a school in a rented premises. At present total number of students registered in its school are about 600 and its expectation take up this number is up to 1,300/-. The petitioner No. 2 IDA invited the applications for allotment of one plot of land of about 24,432 sq. mtr. in sector-D

of Scheme No. 74-C by its notice No. 198/99 dated 28-7-1999 published in daily newspaper "Agniban". The rent of the land was fixed at Rs. 948/- per sq. mtr. This notice is filed as Annexure P/1 by the petitioner. On the basis of notice Annexure P/1, the petitioner submitted an application Annexure P/2 on 31-8-1999 for allotment of plot of Sector-D of Scheme No. 74-C. Along with the application, required documents were also filed. This application is filed as Annexure P/2. The petitioner received the letter Annexure P/3 dated 9-6-2000 whereby the Respondent No. 2 rejected the application of the petitioner for allotment of plot and also mentioned the fact in this rejection order that the authorised officer would have exclusive powers to accept or reject the application without assigning any reason. All the applications have been dismissed by the State Government received in pursuance of the notice inviting tenders dated 28-7-1999 (Annexure P/1). It is also mentioned in the order Annexure P/3 that for 18 plots fresh tenders will be invited and notice inviting tenders will be published in the newspaper at the earliest and the petitioner would submit tender according to the conditions of notice inviting tenders.

3. The Respondent No. 2, therefore, issued notice inviting tenders and the same was published in daily evening newspaper "Prabhat Kiran" (Annexure P/4). In this notice inviting tenders (for short, hereinafter referred to as "NIT") according to condition No. 3 to accept the tender or not, would be under the exclusive power of the authorised Officer. The petitioner has challenged this NIT and also sought relief for quashing of rejection order (Annexure P/3) and issuance of direction to the Respondents to allow application Annexure P/2 for grant of plot as mentioned hereinabove, as well as quashing of Second NIT (Annexure P/4).

4. learned Counsel for the petitioner has submitted that the condition of right to reject without giving any reason by the State Government was not mentioned in the advertisement Ex. P/1, nor in the application form. Therefore, the Respondents had no right to reject or accept the application. This right was with the Committee appointed by the Government and that the decision of the State Government rejecting the recommendation of the committee for allotment of plot, would be final and interference of the State Government is wholly illegal, without jurisdiction and motivated for earning profit against the declared policy. The petitioner has also criticized and challenged the new advertisement (Annexure P/4) No. 103 whereby eligibility criteria was relaxed and security money was demanded by demand draft along with tender form, whereas by earlier publication, the price was fixed and the same could not be enhanced. The petitioner has also pointed out some illustrations about advertisement got published by the M.P. Housing Board functioning under the same Ministry of State Government, who had invited applications for allotment of plot to the institutions engaged in Educational Activities at a fixed rate. Therefore, the Respondents should also stick to the publication inviting applications (Annexure P/1) regarding grant of plot on the basis of fixed price.

5. Both the Respondents have filed their returns and they have submitted that

the inviting applications by publication of notice Annexure P/1 for grant of plot on the basis of fixed price to educational institutions, hospital and community-hall was not practicable and there was every chance of discrimination and favouritism because the plots were limited and the applicants were more than that. Therefore, there was no criteria left with the Committee constituted by the Government-Respondent No. 1 to select out of the applicants to maintain the parity and avoid discrimination as well as chances of favouritism. The policy was changed and all the applications submitted by the societies including the petitioners on the basis of Annexure P/1 inviting applications were dismissed and fresh policy was formed and in pursuance thereof fresh NIT was got published in daily newspaper (Prabhat Kiran (Annexure P/4).

6. According to this NIT, the plots would be allotted to the society whose tender would be highest and would be able to fulfil the conditions. It has also been contended that the petitioner has incorrectly pleaded and argued that in the application Annexure P/2 submitted by the petitioner, it is not mentioned that the applications can be dismissed by the Committee without assigning any reason. In the last page of the application it is specifically mentioned that on the basis of merit the Committee appointed by the State Government-Respondent No. 1 will have power to accept and/or reject the applications of the institutions. This right was with the Committee for which no reasons would be required to be given and while submitted this application (Annexure P/2), the petitioner has accepted this condition along with other conditions enumerated therein and signed the last page. Therefore, he has no right to question if the policy is changed by the State Govt. It has also been contended that the State Government has control over the IDA which is an instrumentality or Department of the State Government as defined in Article 12 of the Constitution of India. It has also been contended that by dismissal of the application of the petitioner, its fundamental rights as enshrined in the Constitution of India have not been infringed, and the respondent has full authority and power to change the policy before its final implementation in the interest of the State as well as to avoid controversy, discriminatory action and favouritism by the authorised-officer/Committee/State and the same has been done in the instant case whereby the policy of providing plots to the society dealing with parting of education, health-facility and community hall on fixed price because the plots were limited and the applicants were more than that. Therefore, it was found difficult to select out of those applicants to allot plot and if plots would have been allotted, the question would have been raised by all other applicants against the allotment. Therefore, to avoid all these controversies and to have transparent and fair dealing being the State for distribution of public largess, policy was changed.

7. The State Government Respondent No. 1 and the IDA-Respondent No. 2 thought it just to change the policy and accordingly the policy was changed under which the second NIT was published vide Annexure P/4. learned Counsel for the Respondents have also pointed out that in pursuance to the NIT (Annexure P/4), all the eligible societies had filed their tenders and the same

were considered by the Committee constituted by the State Government-Respondent No. 1 and sent the same for approval to State Government-Respondent No. 1 by letter Annexure R/7 dated 24-8-2000 and by order Annexure R/8, the State Government/ Respondent No. 1 granted approval to allot plots to Educational Societies and community hall in Scheme No. 74-C in Sector-D. The learned Counsel for the Respondents made the statement on the basis of the information given to him by Shri Amritlal Raghuvanshi, Accounts Officer at present also looking after the work of Estate Officer of I.D.A. present in Court that all the plots which are mentioned in NIT Annexure P/4 have been allotted to the Highest Bidder. learned Counsel has also submitted that since there is no order in favour of the petitioner in this petition, the whole scheme has been executed as mentioned in the NIT (Annexure P/4).

8. Having heard learned Counsel for the parties and after perusing the record, this Court is of the opinion that no fundamental right of the petitioner has been infringed and the respondents have changed the policy regarding distribution of plots to the Registered societies who are engaged in parting education, health-facilities and community-hall, on the basis of allotment on fixed price, because plots were limited and the applicants were more than that, therefore, there was possibility of discrimination by the committee appointed by the State Government and Committee was also not in a position to select the required societies for allotment of plot. Under this situation, if policy has been changed by the Respondents the same cannot be considered as illegal and arbitrary by inviting tenders in closed envelope as per NIT Annexure-P/1. Proper and equal opportunity was given to all the desirous participants and the plots could be allotted to the applicants who were the highest bidder. The question of providing plots to the societies on the basis of "no-profit and no loss" principle was not possible for the respondents because the plots were limited and the applicants were more than that.

9. learned Counsel for the petitioner has submitted that the petitioner was having "legitimate expectation" of allotment of plot on the basis of First NIT (Annexure P/1), but, by changing the same and also another NIT with harsh conditions, the Respondents have not fulfilled the "legitimate expectation" of the petitioner. Having considered this submission, this Court is of the view that by change of policy especially when initial policy was not executable and there was also chance of discrimination and, therefore, by change of policy, it cannot be said that the respondents have not fulfilled the doctrine of "legitimate expectation". The Supreme Court in the case of State of West Bengal v. Niranjan Singha (2001) 2 SCC 326 : 2000 AIR SCW 4547 has held regarding doctrine of "legitimate expectation" as under :-

The doctrine of "legitimate expectation" is only an aspect of Article 14 of the Constitution in dealing with the citizen in a non-arbitrary manner and thus, by itself, does not give rise to an enforceable right but in testing the action taken by the Government authority whether arbitrary or otherwise it would be relevant.

The claim of the respondent for extension of the period of the agency would not come in the way of the Government if it is economically more beneficial to have a fresh agreement by enhancing the consideration payable to the Government. In such an event, it cannot be said that the action of the Government inviting fresh bids is arbitrary. Moreover, the respondent can also participate in the tender process and get his bid considered.

10. In the case of Biman Krishna Bose Vs. United India Insurance Co. Ltd., , it is observed by the Supreme Court that "The State and its Instrumentalities are duty bound to act with fairness and take into consideration only relevant materials when reaching decisions even with regard to contractual relations".

11. Again in the case of M/s. Ugar Sugar Works Ltd. Vs. Delhi Administration and Others, , the Supreme Court has considered about change of policy and interference of Courts power of judicial review and observed as under (para 24) :-

The argument that since MSF laid down for the year 1994-1995 were not changed till 1998-1999 there was no need to increase MSF requirement in 1999-2000 or to further increase the same in the year 2000-2001 for the lowest price tag brand of liquor from 60,000 case (7.2 lac bottles) to 75,000 cases (9 lac bottles for the current year, suffers from the basis infirmity that it invites the Court to enter into an area of testing the executive policy, not on grounds whether it is "just, fair and reasonable", but whether the object could not have been achieved by fixing a lower MSF requirement in other words Court is being invited to prescribe MSF requirements in exercise of its powers of judicial review. That is not permissible area. It is not within the province of Supreme Court to lay down that the executive policy must always remain static, even if its revision is just, fair and reasonable. What is relevant is to find out whether the executive action is mala fide, unreasonable or irrational as a criterion. The Court, in exercise Of its power of judicial review cannot sit in judgment over the policy of Administration except on the limited grounds already noted. Each State is empowered to formulate its own liquor policy keeping in view the interest of its citizen. Determination of wide scale acceptability of a particular brand of liquor, on the basis of national sales figures, does not strike as being unreasonable, much less irrational. The basis for determination can be given or expected from the Court regarding the "correctness" of an executive policy unless while implementing such policies, there is infringement or violation of any constitutional or statutory provision.

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12. In view of the aforesaid factual and legal discussion, this Court is of the opinion that by change of policy by Inviting fresh tenders for allotment of plots to the person who would be the highest bidder and would also fulfil the other conditions is not in any way illegal, arbitrary or unfair on the part of the Respondents. Therefore, there is no force in this petition of the petitioner and the same is accordingly dismissed with no orders as to costs.