
(2013) 08 GAU CK 0044
In the Gauhati High Court
Case No : Writ Petition (C) No. 4872 of 2008

Manabendra Kumar Das

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 21-08-2013

Acts Referred:

Citation : (2013) 5 GLT 118

Hon'ble Judges : A.K. Goswami, J

Bench : Single Bench

Advocate : S. Bhattacharyya, for the Appellant; C. Goswami and Mr. N.N. Upadhayay, for the Respondent

Judgement

A.K. Goswami, J.—Heard Mr. S. Bhattacharyya, learned counsel for the petitioner. Also heard Mr. C. Goswami, learned counsel appearing for the respondent Nos. 3 and 4 and Mr. N.N. Upadhayay, learned State Counsel for the respondent Nos. 1 and 2. The petitioner is a journalist by profession. The Assam State Housing Board, in short, ASHB, had undertaken certain housing projects in different urban areas in Assam. After the buildings are constructed, these are rented out. Housing projects were also undertaken in Bhetapara and Borsojai in Guwahati. Applications were invited by the ASHB for letting out on rent the residential flats in Bhetapara and Borsojai and the petitioner had also submitted his application. However, the petitioner was not allotted any flat on rent.

2. Mr. Bhattacharyya, learned counsel for the petitioner submits that he is not praying for cancellation of flats allotted to different persons on rent in Bhetapara and Borsojai. He will also not be assailing the action of the authorities in not selecting him for the purpose of allotment of a flat on rent. The sole point urged by Mr. Bhattacharyya is that the ASHB does not have any laid down norms for allotment of flats on rent which would make the allotment process transparent. According to him, ASHB must have norms/guidelines in view of the fact that while number of applicants are many, flats available to be given on rent are few. It is also pointed out by him that having a well laid down norms would help in

streamlining the process of allotment and eliminate arbitrariness.

3. Mr. C. Goswami, learned counsel appearing for the ASHB has submitted that presently no constructions have been undertaken by ASHB for offering it to the public on rent. He also submits that Rule 15 of the ASHB Rules, 1976 is the only norms in the matter of allotment of flats. He has further submitted that before the allotments were made at Bhetapara and Borsojai, some guidelines had been adopted in the meeting of Board of Directors dated 18.07.2007 in the matter of allotment of flats and in this connection, he draws the attention of the Court to paragraph 6 of the Affidavit. He also points out with reference to paragraph 10 of the affidavit that in the matter of new allotment, guidelines reflected in the minutes of the discussion of the Board of Directors held on 18.07.2008 is being followed. It is submitted by him that petitioner having been given a flat on rent earlier, he is not eligible for one more flat.

4. Mr. N.N. Upadhaya, learned State Counsel submits that guidelines/norms will make the process of allotment transparent and it is high time some norms are put in place.

5. I have heard the learned counsel for the parties.

6. There is no dispute that ASHB is a State within the meaning of Article 12 of the Constitution of India. Rule 15 of the Rules pertains to condition of occupation of housing accommodation and Rule 15(1) and Rule 15(2) are not at all related to allotment of flat on rent. Rule 15(3) provides that the Board shall decide and approve the names of persons who shall be allowed housing accommodation on the terms and conditions as mentioned in Rule 15(1) and Rule 15(2). From the Rules, it is not discernable the basis on which the Board shall decide and approve the names of persons for allowing them to occupy housing accommodation.

7. Though Mr. Goswami has mentioned about some guidelines which had been adopted in the minutes of the Board of Directors, copy of the guidelines or the minutes of the meetings have not been placed on record for the perusal of the Court. Learned counsel for ASHB is also unable to show on what basis statement was made that the petitioner is disqualified to apply for a flat as he was already in occupation of another flat of ASHB.

8. It is too late in the day to contend that the Board has absolute discretion in the matter of allotment of flats to the applicants. There may be some discretion but such discretion has to be exercised based on certain guidelines/norms. Action of the State, whether it relates to distribution of largesse, grant of contracts, allotment of land or allotment of quarters, is to be tested on the anvil and touchstone of Article 14 of the Constitution of India. The underlying object of Article 14 is to secure all persons, citizens or non-citizens, the equality of status and opportunity referred to in the Preamble to the Constitution. Equality and arbitrariness are sworn enemies and existence of arbitrariness in a State action results in violation of Article 14 of the Constitution of India. Article 14 strikes at arbitrariness in State action and ensures fairness and equality of treatment. It

requires that State action must be based on valid relevant principles applicable alike to all similarly situated persons and it must not be guided by any irrelevant or extraneous considerations as that would result in denial of equality. The State action has to be fair, reasonable, non-discriminatory, transparent and without any nepotism or favoritism. The mandate of Article 14 of the Constitution of India is that State action should conform to norms which are rational, informed with reasons and guided by public interest.

9. In *Ramana Dayaram Shetty Vs. International Airport Authority of India and Others*, the Apex Court laid down as follows:

12.....It must, therefore, be the law that where the Government is dealing with the public, whether by way of giving jobs or entering into contracts or issuing quotas or licences or granting other forms of largesse, the Government cannot act arbitrarily at its sweet will and, like a private individual, deal with any person it pleases, but its action must be in conformity with standard or norms which is not arbitrary, irrational or irrelevant. The power or discretion of the Government in the matter of grant of largesse including award of jobs, contracts, quotas, licences, etc. must be confined and structured by rational, relevant and non-discriminatory standard or norm and if the Government departs from such standard or norm in any particular case or cases, the action of the Government would be liable to be struck down, unless it can be shown by the Government that the departure was not arbitrary, but was based on some valid principle which in itself was not irrational, unreasonable or discriminatory.

10. Thus, the requirement or obligation of having well defined norms or guidelines in the context of allotment of flats by ASHB needs no emphasis. However, the materials on record do not satisfy the Court about existence of norms or guidelines in this respect. It is imperative that ASHB formulates comprehensive norms/guidelines on the subject of allotment of flats on rent.

11. Accordingly, it is directed that the respondents will frame norms/guidelines for allotment of flats on rent. The writ petition stands disposed of in terms of the above. No costs.