

(2015) 05 NCDRC CK 0105

In the National Consumer Disputes Redressal Commission

Case No : 688 of 2015

MANAGING DIRECTOR, ARMY WELFARE

APPELLANT

Vs

RAJ KUMAR DHINGRA

RESPONDENT

Date of Decision : 22-05-2015

Acts Referred:

[Constitution of India](#), [Article 226](#) -
Power of High Courts to Issue certain writs

Citation : 2015 3 CPJ 376

Hon'ble Judges : J.M. Malik, S.M. Kantikar

Advocate : A.K.Tiwari

Judgement

1. The object of Army Welfare Housing Organisation (in short, "AWHO"), the petitioner/OP is to provide dwelling units to the serving and retired army personnel as well as to their widows, all over India, on "No Profit, No Loss" basis. Sh. Raj Kumar Dhingra, the complainant applied for an Economy Apartment in the Annual Registration Scheme and after the draw of lots, held on 09.07.2004, the complainant was allotted Seniority No.723 against 343 dwelling units in the Economy type apartments in a Group Housing Project at Sector 20, Panchkula, Haryana. An option to change over to a Group Housing Scheme proposed at Sector 27, Panchkula, Haryana, was given to all the wait-listed registrants, including the complainant, but the complainant declined the same. Thereafter, the wait-list for the Group Housing Project at Sector-20,

Panchkula, Haryana, was updated. The complainant was placed at wait-list No.1 for the Economy type apartment and till the completion of the project continued to be at wait list No.1, as no confirmed allottee opted out of the said scheme. The complainant was apprised of this fact vide letter dated 15.12.2008. Thereafter, he raised objection vide letter dated 23.07.2009 alleging that the allotment of the dwelling units to three widows, namely, Mrs.Puspha Bhagi, Mrs. Shivani Vats and Mrs. Sudha Nayyar, in "widows quota" was contrary to and in violation of the terms of the allotment. The relevant portion of his letter dated 23.07.2009, is reproduced here, as under :- " Mrs. Pushpa Bhagat, Mrs. Shivani

Vats and Mrs.Sudha Nayyar have been allotted against widow quota. Allocation rule 58 (b) (ii) says that for being considered against the reserved against the reserved quota, a widow must apply within two years of the demise of her husband. Their registration numbers confirm that all the three widows have made registration in between somewhere in Jun-July, 2004. Their names did never appear in the waiting list of EA type of DU of Sector-20, Panchkula, whereas in other categories of DUs the names of widows were very much there".

2. The complainant also picked up a conflict with the alleged unfair placement and allotment to one Brig. S. Sisodia and few other officers.

3. The complainant had filed a complaint against the OP with the following prayers :- " 13. That the complainant is resident of Panchkula and the property in question is also at Panchkula, hence this Hon"ble Forum has the territorial jurisdiction to decide and try the present complaint. It is therefore, respectfully prayed that the AWHO authorities may kindly be directed to allot me a house of EA type of DU which is my rightful claim and provide me justice".

4. The OPs contested this case. They denied that there was any deficiency on their part. They contended that the rules and regulations were strictly adhered to.

5. The District Forum, vide order dated 14.06.2010, observed as under :- " i) to allot the flat/Economy apartment to the complainant within a period of 6 months in Sandeep Vihar, Sec-20, or Sect-27, Panchkula, failing which, the complainant will be allotted an apartment in their housing project in Sec-114 (Mohali) as per his registration at the same price as well as on the same terms and conditions as detailed in (Ex.C-I).

ii) It is also made clear that complainant will retain his lien as per his present waitlist seniority on any vacancy that may arise in Sandeep Vihar, Sec-20 or Sec-27, Panchkula. Also, that in case the complainant exercises his right in case of vancancy in Sec-20/27, he will have to give up flat allotted to him Sec-114, Mohali .

iii) to pay Rs.2,000/- as compensation for harassmt suffered by the complainant".

6. Aggrieved by that order, the OP preferred an appeal before the State Commission. The State Commission dismissed the appeal on 06.12.2011, however, made the following observations in para No.13 of its judgment :- " 13. Though the organization was created for the welfare of serving / retired defence personnel and was expected to act in a transparent manner, however, the manner in which allotments have been made by adopting to a system of fixing security arbitrarily and in violation of allotment rules, presumably with a view to accommodate their own favourites, everything does not appear to have been done in a transparent manner. If enquired into deeply, this may again turn out to be another scam like Adarsh Society at Bombay. The grievance of the complainant was not even redressed by Director, Marketing, who happens to be

an Army Officer, Col. Joy K. and Managing Director, Major General S. Narasimhan".

7. Aggrieved by that order, the OP preferred revision petition No.1110/2012 before this Commission. This Commission in its judgment and order dated 22.04.2014, remanded the matter to the State Commission, while making the following observations :- " 10. From the facts on record, the most glaring example supporting the allegation that there has been an absence of transparency on the part of the petitioners is the case of Brig G.S. Sisodia. As per the own version of the petitioners, Brig G.S. Sisodia had been assigned Seniority No.999, whereas the complainant had been given Seniority No. 723 in the list drawn by the petitioner. The date of demand draft submitted by Brig G.S. Sisodia is 19.10.2005, whereas the date of demand draft in the case of complainant is 06.06.2004. It has not been explained anywhere by the petitioners how Brig. Sisodia acquired better seniority than the complainant in the list for allotment of such units. In their reply to the complaint filed in the shape of an affidavit before the District Forum, Col. K.Joy, Director Marketing (AWHO) stated that the application for deluxe apartment was received from Brig Sisodia on 24.10.2005. The officer later on shifted his registration for economy apartment and was then transferred to Dwarka, Delhi and finally he withdrew his registration. The petitioner/OP have not been thus able to clarify the manner of determination of seniority and hence, the observations of the State Commission about lack of transparency and arbitrariness, appear to be correct. From the material on record, one gets the impression that the petitioner have made the seniority list in accordance with the ranks of serving officers in the Indian Army, and not as per rules and regulations governing allotment of such flats/DUs.

11. The complainant has also alleged that the allotment made by the petitioner to the widows is also not in accordance with the rules. It is to be verified whether the widows of the Army personnel were given allotments in accordance with the scheme and whether they had applied within the prescribed time of two years from the demise of their husband as laid down in the rules.

12. In view of the position described above and looking at the entire factual matrix of the case, it would be appropriate that the entire record concerning the registration, determination of seniority and allotment of these DUs is called by the State Commission from the office of the petitioner and then scrutinised to determine whether there has been irregularity in not accommodating the complainant in the allotment of these flats/DUs. With these observations, this revision petition is allowed and the matter is remanded back to the State Commission with the direction that they should call for the entire record from AWHO and carry out the necessary scrutiny in the presence of the parties and then determine whether there had been any injustice done to the complainant on the part of the petitioner/OP. The parties have been directed to appear before the State Commission on 24.07.2014. There shall be no order as to costs".

8. The State Commission, again, dismissed the appeal, on 05.12.2014.

9. We have heard the counsel for the petitioners and respondent/ complainant, in person.

10. The counsel for the OPs made the following submissions. It is contended that the fora below have given the following findings :- " a) Respondent was denied allotment of a Type, Economy Apartment (for short, "EA"), in petitioner's Group Housing Scheme at Sector 20, Panchkula, Haryana by allotting EA dwelling units to 4 widows, i.e., Mrs. Anju Sharma at Sl. No.722, Mrs. Pushpa Bhagi at Sl. No.724, Mrs. Sudha Nayyar at Sl. No.728 and Mrs. Shivani Vats at Sl.No.729 who were allegedly junior to the Respondent whose seniority was Sl.No.723 and, therefore, in violation of the seniority list and of the provisions of Annual Registration Scheme.

b) Allotment of an EA dwelling unit to Mrs. Sudha Nayyar at Sl. No.728 was in violating to the Rules 58(b)(ii) of the Allocation Rules of the Dwelling Units to the widows since she was ineligible as being more than 65 years of age when she applied in the Annual Registration Scheme in the year 2004.

c) Respondent being at Sl.No.723 and as Wait Listed No.1, registrant, Brig. G.S. Sisodia at Sl. No.999 being junior to the Respondent was illegally placed as Wait Listed No.1 for EA.

d) Allotment of a Dwelling Unit to Lt. Col. Anutosh Sharma ought to have been cancelled under Rule 52 for making late payment of the last instalment towards the cost of the dwelling unit".

11. Counsel for the OPs have assailed these findings on the following grounds. As per Rule 20 of the AWHO's Master Brochure, 2000, Panchkula, Sector-20, Housing Project, was announced as a "Spot Scheme". The Spot Scheme means, that " as and when a project at a particular station has been finalized, a Spot Scheme will be announced. Registration for the Scheme will be open for a period of three months. Where demand is more than availability, allotment will be made by a computerized draw".

12. It is explained that in this Scheme, the total number of Economy Apartments planned for development were 348. As per Rule 58 (b) (ii) 3%, i.e., 15 Dwelling Units were reserved for widows in the "widows quota". Neither the above said widows nor the complainant nor Brig. G.S.Sisodia had applied for this project in the "Spot Scheme", announced in April, 2001. The Spot Scheme was to remain open only for three months. On 23.05.2001, as per Terms of Rule 31(b) (a), a computerized draw for fixing seniority was held, as 836 applicants/registrants had applied for 348 Economy Apartments. Consequently, the above said persons find no place in the seniority list, dated 31.05.2001.

13. On 24.05.2001, it transpired that only one eligible widow had applied at that point of time. Therefore, two Dwelling Units out of 14 were reserved in the "widow quota". The Competent authority, in the interest of justice to the widows, whose quota had been diluted, exercised its discretion that in case an eligible

widow was to apply in future, she be allotted on priority against the withdrawals by the General Pool allottees. The said policy is being regularly followed and this policy is being in six other Group Housing Schemes. The Managing Director of the petitioner exercised this discretion in view of Rules 100 & 101 of the Master Brochure, 2004, which are reproduced here, as under :- " 100. Final Acceptance of Application : Managing Director AWHO reserves the right for final acceptance of an application made to the Organisation for booking of a dwelling unit and his decision in the matter shall be conclusive and final. 101. Interpretation of Rules : Interpretation of the Rules as given by the Managing Director would be binding on the applicant / registrants and no appeal / representation against it would lie with any authority or would his decision in the matter of booking and allotment of dwelling units, servants quarters and garages be open to appeal / representation".

14. It was also argued that Annual Registration Scheme was announced to fill-up the residual vacancy of any sought or to create a waiting list as reserved for any project. The complainant, the four widows, above named and Brig. G.S.Sisodia, apart from others have got themselves registered for the Economy type apartment at Sector-20, Panchkula, Group Housing Scheme. In terms of Rule 31(a), seniority of the respondent, the four widows and Brig. G.S. Sisodia and all others who had applied in the Annual Registration Scheme, a seniority list was prepared, on 09.07.2004. The complainant was given seniority at Sl.No.723, Mrs. Pushpa Bhagi was given seniority number at 724, Mrs. Anju Sharma at Sl.No.722, Mrs. Sudha Nayyar at Sl.No.728, Mrs. Shivani Vats was given seniority at No.729 and Brig. G.S.Sisodia was given at 999. However, the complainant has alleged that this is a forged document. Brig. G.S.Sisodia, continued to be a wait-listed registrant at No.5 for the Economy Apartment , as on 16.07.2007. Thereafter, he withdrew from Sector-20, Panchkula and sought transfer of the same to the proposed Scheme to Dwarka, in New Delhi. On 16.07.2006, the complainant was having seniority and was placed at Sl.No.1 in the Wait List.

15. It is explained that the complainant's registration application was accepted on 15.06.2004. He paid a sum of Rs.90,500/- as the registration charges. Since there was a remote chance , therefore, the complainant and others were offered a confirmed allotment in a proposed Scheme at Sector-27, Panchkula vide letter dated 24.10.2005. Offer was repeated again, on 11.05.2009. The OP, vide its letter dated 29.06.2009 stated that all registrants had been handed over possession except one for which documentary formalities were still awaited from the allottee. Thereafter, the complainant filed complaint before the District Forum, on 28.08.2009.

16. We have heard the complainant, in person. He contended that he was given No.723. He argued that besides the four widows, mentioned above, four other persons were allotted apartments "out of turn".

17. This plea is more palliative and does not delve deep enough to the roots of

malady. Some glaring mistakes which are discernible, have been committed by the OPs. According to the complainant, a computerized draw was held on 09.07.2004. The complainant objected and required the OPs to produce the details as to who was the Presiding Officer and what was the composition of the Board, by whom, the draw was held, etc. It is unfortunate to note that the said record of infinite value was not produced on record. This smacks of a fig leaf job, i.e., the concealment of questionable nature.

18. Secondly, as a matter of fact, there is not even an iota of evidence which may go to reveal that any draw, has ever been held by the OPs. There is not even an iota of evidence which may go to reveal that the advance notice was given to the allottees/applicants about the manner, date, time, etc., of the draw to be held. All these important facts/ information was kept under the hat. Their actions are neither open or above board. It has given poor account of OPs.

19. Thirdly, Rule 31(a) clearly, specifically and unequivocally provides that in the Annual Registration Scheme, the seniority would reckon from the date of demand draft and the complainant was informed vide letter Ex.C-1 intimating about his seniority and that there was no scope of any draw. Consequently, the entire draw smacks of malafide intention on the part of the OPs. The procedure for drawing seniority amongst the applicants or in the lot of widows in their respective categories, the entire process lacks transparency.

20. The creation of two-three Schemes is itself confusing. When the apartments were to be allotted to 348 persons, what was the need of keeping waiting list, for as many as 999 and more persons in the wait list, when everybody was to pay around Rs.95,000/-. The OPs were well aware of the fact that they have got less apartments in this Scheme. Therefore, they should have kept waiting list for persons not exceeding 10 in number or at the most, 25 persons. The petitioners have chosen a new method to feather their own nest, i.e., to make profits at the expenses of others.

21. It is clear that one of the allottees did not comply the formalities, as per Rule 52, and his allotment should have been cancelled, which was not done. The draw was held in the year 2004 and the allotments had already been made further intimating in the letter mentioned at Ex.C-4, that all the allottees had paid more than 80% without naming the allottee. It was specifically informed that one of the allottees had not completed the formalities, till the year 2009. His allotment was to be cancelled as per Rule 52. The name of that person was disclosed at the eleventh hour, but no explanation about him saw the light of the day. It appears that the petitioners were trying to help that person, out of way.

22. The State Commission has observed, as under :- " 15. The opposite parties themselves have placed on the record, the office noting that as against the provision of twelve dwelling units in the widows quota, there was only one applicant, yet, the office of the opposite parties put up a note before the Managing Director suggesting that though there was only one applicant, yet

recommended that two dwelling units be kept reserved for widows and the remaining units reserved for widows be merged in general category.

16. There was only one eligible applicant in widows category. The opposite parties could not have kept two more units reserved. Yet, even if that, taking into consideration, yet, as per list of widows, who have been allotted dwelling units, exceeds the three. As per the list of widows (Annexure A-17/A) placed on the file, who have been allotted dwelling units, the names of Mrs. Anju Sharma, Sr.No.722, Mrs.Pushpa Bhagi, Sr.No.724, Mrs. Sudha Nayyar, Sr.No.728 and Mrs. Shivani Vats, Sr.No.729 appear. The complainant was at Sr.No.723. Thus the allotment to Pushpa Bhagi, Sudha Nayyar and Shivani Vats was not only against the rules but also in excess of the applicants against widows quota. Not only that, as discussed in the earlier part, as per the opposite parties, the draw was held on July 9 th , 2004, while all these widows had applied after that, that is July 9 th , 2004. Therefore, they were not even the applicants on the date the draw was held.

17. One of the widow, who is allottee, that is, Mrs.Sudha Nayyar was at Sr.No.728, was more than 65 years on the date of her application. In the application form submitted by her and placed on the file by the opposite parties, she has given date of birth as April 27 th ,1939 and has submitted the application on July 19 th , 2004. She completed 65 years on April 26 th , 2004. Thus, she could not have been allotted flat in the reserved category of widows out of widows quota".

23. Consequently, the orders rendered by the fora below cannot be faulted. The "pick and choose" policy followed by the AWHO is deprecated. In the eyes of law, nobody is senior or junior, low or high, rich or poor, senior rank or junior rank, but all are to be treated, equally. The revision petition is meritless and, therefore, the same is dismissed.