
(2023) 04 J&K CK 0040

In the Jammu And Kashmir High Court

Case No : Others Writ Petition No. 229 Of 2018

Piyaray Lal Pandita And Others

APPELLANT

Vs

State And Others

RESPONDENT

Date of Decision : 27-04-2023

Acts Referred:

Citation : (2023) 04 J&K CK 0040

Hon'ble Judges : Wasim Sadiq Nargal, J

Bench : Single Bench

Advocate : P.N. Bhat, Vishal Bharti

Final Decision : Disposed Of

Judgement

Wasim Sadiq Nargal, J

BRIEF FACTS

1. The petitioners are migrants, residing at Jagti Township, Nagrota, Jammu, were carrying on small scale business in erstwhile campus. The petitioners through the medium of present writ petition are seeking the following relief: -

WRIT OF MANDAMUS

a. Commanding the respondents to issue formal allotment letters of the shops as per the list shown in Annexure-C to the petitioners at Jagti Township for their livelihood so that the grievance of the petitioners is redressed.

b. Commanding the respondents not to make allotment of shops to any other person except the persons shown in Annexure-C & B.

SUBMISSIONS OF THE PETITIONERS

2. It is specific case of the petitioners that the office of respondent no. 2 constructed various shops at Jagti township which were meant for allotment to the eligible registered migrants who were carrying small business in erstwhile

campus so that their livelihood not get effected. The migrants were residing in various campus all over Jammu which were ultimately shifted to Jagti Township. It is submitted by the learned counsel of the petitioners that respondent No. 2 and 3 invited applications from eligible persons and accordingly petitioners submitted their application forms for allotment of the shops, at Jagti. It is further submitted by the learned counsel for the petitioners that respondent No. 2 and 3 circulated notice vide No. 2RCM/PS/15- 16/1132 dated 28.03.2016, showing the persons who applied for the allotment of shops and who have been found running shops in erstwhile campus.

3. It is contended by the learned counsel for the petitioners that the list of the eligible persons was prepared for allotment of shops which was circulated in campus as well as through leading newspaper namely 'Daily Excelsior' on 29.03.2016 calling upon general public to file objections, if any, about the names shown in the said notice and none has filed objections to the list.

4. Learned counsel for the petitioners has further submitted that none has filed objections to the said notice and consequently, the respondent No. 2 and 3 were supposed to make allotment of shops as per the notice dated 28.03.2016 but the respondents did not take any further step for allotment of shops to the petitioners at Jagti, who had been found eligible and entitled for the said shops. The petitioners were directed to deposit requisite CDR in the Banks for issuance of formal letter of allotment.

5. Learned counsel for the petitioners has further submitted that the petitioners have deposited Rs 15,000/- each with the respondents.

6. Learned counsel for the petitioners has submitted that the part of the said list vis-a-vis erstwhile Purkhoo Camp was operated upon by making allotment to 10 persons out of 12 while as rest of the list was not being operated upon for malafide and extraneous considerations. It is further submitted by the learned counsel that the petitioners approached the respondents for operating the entire list so that petitioners were also allotted the shops at Jagti as per Annexure-C & D attached with the petition, but no concrete steps were taken.

7. Learned counsel for the petitioners has submitted that the respondents have deprived the eligible and poor shopkeepers from their allotment and livelihood though petitioners completed all the formalities and deposited the requisite fee, as such, the action of the respondents being patently illegal, laconic, uncalled for, unreasonable, arbitrary in nature.

SUBMISSIONS OF THE RESPONDENTS

8. Learned counsel for the respondents has submitted that in order to ascertain the livelihood of the migrants who were shifted from ORTs (One Room Tenements) to TRTs (Two Room Tenements), the Relief Organization started the construction of the shops in a phased manner and in the Ist phase, 60 shops were constructed in Jagti and allotted by draw of lots. It is further submitted that

taking into consideration the demands of the migrant shopkeepers for construction of additional shops, a decision was taken in the Apex Advisory Committee Meeting held on 06/09/2013 under the Chairmanship of the then Chief Minister that the Relief Organisation shall construct additional 150 shops for migrant shopkeepers who were running their business in erstwhile camps (earlier ORTs) in Jammu and Udhampur and have been rendered without any means of livelihood owing to their shifting to TRTs.

9. It is further submitted by the learned counsel for the respondents that out of the 150 shops, 60 shops were completed and the 11 shops were at different stages of construction at that point of time and against these 77 shops, 563 applications were received for the allotment of shops. It is further submitted that taking into consideration the huge number of applications, it was decided by the then Minister for Law, Justice and Parliamentary Affairs and Relief and Rehabilitation to verify these applications for allotment of shops through CID in order to identify genuine shopkeepers who were actually running their shops in erstwhile ORTs and have been rendered without any means of livelihood due to their shifting in TRTs so that these shops can be allotted to those needy migrants only.

10. It is specific stand of the respondents that the applications for the allotment of shops at Jagti TRTs were invited by the respondent organization by way of advertisement in the local newspaper "Daily Excelsior" on 26-03-2011 and it was clearly mentioned that the allotment will be made through draw of lots and applicants were required to submit CDR of Rs. 15000/- which will subsequently be released in favour of those persons who will not qualify for the allotment and will be retained as security in respect of those persons in whose favour shops will be allotted.

11. Learned counsel for the respondents has submitted that after the receipt of the verification report from CID of 576 applicants, impugned notice dated 28-03-2016 were issued, wherein, the list of migrants reported to be running business in ORTs was reflected and objections were sought to their consideration for allotment of shops in TRTs situated at Jagti, Nagrota and Purkhoo and in return as many as 228 objections were reported in the Relief Organization with respect to the migrants claiming shops at Jagti. It is further mentioned by the learned counsel that no objections were received from any quarter for the list of migrants claiming shops at Purkhoo as such the shops were allotted to the genuine applicants in a transparent manner through draw of lots after verification by the Committee constituted specifically for Purkhoo shops by the Relief Organisation on 23 of November, 2017.

12. It is further submitted by the learned counsel for the respondents that the department has arrived at 576 number of applicants whose status had been verified by the CID and the same were to be published in the leading dailies for inviting objections for the reason that the process had been initiated after 2 years. It has further been submitted that since the department didn't have the

status of each individual regarding their employment whether they have been benefitted from the Hon'ble PM's Employment Package or not, whether they have continued their profession or not, whether the applicant is alive or not and this was the reason that the shops couldn't be allotted.

13. Learned counsel for the respondents further submitted that they shall abide by the direction issued by this Court for allotment shop as per the interim laid down by relief organization.

LEGAL ANALYSIS / DISCUSSION

14. Heard learned counsel for the parties and perused the record.

15. Admit.

16. It is evident by virtue of the notice vide no. 2RCM/PS/15-16/1132 date 28.03.2016 that the petitioners /migrants who being forty in number applied for the allotment of shops at Jagti township constructed by Relief Organization and have been found running the shops in erstwhile campus.

17. In the light of the criteria for the allotment of shops, which is referred by the respondents in their objections, it is clear that the petitioners participated in the draw of lots, and have fulfilled the criteria for allotment of shops, as such, the petitioners are found eligible and entitled for the shops in question. For facility, the criteria for allotment is reproduced as under:

Criteria- 1

- (i) Applicant running shop in Kashmir Valley before migration.
- (ii) Applicant was running shop in erstwhile Migrant Camps.
- (iii) Applicant is currently running shop in camp / non camp.
- (iv) Applicant is presently residing in the camp.

Criteria-2

- (i) Applicant was running shop in erstwhile camp
- (ii) Applicant is currently running shop in camp/non camp.

Criteria-3

- (i) Applicant is a lady running shop in camp / non camp.
- (ii) Applicant is a specially abled person.

18. On the asking of the court, the record was produced which has been examined by this court and from the record it is evident that a meeting was held under the chairmanship of Secretary to Government, Department of DMRRR (Disaster Management, Relief, Rehabilitation and Reconstruction) on 28.12.2022, with regard to the criteria proposed by the Relief and Rehabilitation

Commissioner (M), J&K vide no. RRCM/Sgr/22/65 dated 17.11.2022 for allotment of shops to Migrants in Migrant Camps. After threadbare analysis, the following decisions were taken for better and holistic drive and transparency: -

1. Instead of the percentage reservation system, a point based criteria should be adopted as per the proposed laid down procedure e.g. a total of 100 criteria should be adopted and weightage should be in proportionate the proposed set of criteria like: Economically weaker section, residence, the locality, who already runs a shop and non-relief holder, widow, etc.

2. Based on achieving higher number of points by the applicant, the allotment of shops should be made.

3. The applicants need to fill the forms, and points be awarded as per Greater the number of points achieved shall make the applicant obtain allotment accordingly till the quota is completely filled.

4. Clauses for Security Deposit, applicability of Municipality rates, maintenance rules etc should be there to eliminate the imminent.

19. From the record it is evident that a proposal was made by respondent no. 2 to Secretary DMRRR vide communication no. RECM/Estt/2022-2023/2446 dated 15.03.2023 for consideration of the minutes of the meeting held on 28.12.2022 .The observations/suggestions with regard to the decision arrived at in the meeting are as under :

(i) The categories have been proposed keeping in view the requirements, the needs assessments and the rightful utilization of the assets created. For each criteria, we may adopt the point based weightage.

(ii) The department may notify the security deposit for each category.

(iii) The allotment shall be conditional with responsibility on the allottee for payment of electricity charges, water connection, sanitation and maintenance of the shops.

(iv) The allotment shall not confer any ownership rights on the allottees.

(v) In case the category of an allottee changes at any point of time the allotment shall be subjected to scrutiny by the allotting authority.

(vi) The shops allotted shall be made functional by the allottee for the purpose secured within 60 days of the allotment order failing which the allotment shall be cancelled.

(vii) Applicability of Municipal rates in the non municipal areas is not advisable as camps (Jagti, Nagrota, Purkhoo) fall outside the municipal limits.

CONCLUSION

20. In view of the aforementioned facts and submissions made, it is evident that

the petitioners participated in the shop allotment process and are found eligible for the same. Accordingly, the writ petition is disposed of with a direction to the respondents to verify the status of such applicants whose verification has not been done regarding their employment, whether they have been benefitted from the Hon'ble PM's Employment Package or not, whether they have continued their profession or not and, accordingly, issue formal allotment order of the shops to the petitioners strictly in consonance with the decision taken by the committee which finds mention in the minutes of meeting held on 28.12.2022 regarding criteria of allotment of shops and communicated by respondent No. 2 to Secretary to Government, Disaster Management, Relief, Rehabilitation and Reconstruction Department dated 15.03.2023 and also the criteria formed by the respondents and in case if such allotment is not possible, then the respondents are directed to refund the deposited amount to such petitioners, who were allotted shops in question pursuant to which they have deposited Rs. 15,000/- each. Let the entire exercise be carried on by the respondents within a period of two months from today and to convey individually the decision thereof.

21. Registry to return the record to Mr. Vishal Bharti, learned Dy. AG.

22. Disposed of, accordingly.