
(2013) 07 P&H CK 0197
In the Punjab And Haryana At Chandigarh
Case No : CWP No. 1999 of 2011

Sanjay Kumar

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

Date of Decision : 03-07-2013

Acts Referred:

Citation : (2013) 172 PLR 339

Hon'ble Judges : Rajiv Narain Raina, J

Bench : Single Bench

Advocate : Amar Vivek, for the Appellant; T.N. Sarup, Addl. A.G. Punjab, Mr. A.P.S. Sandhu and Mr. Balram Singh, for the Respondent

Judgement

Rajiv Narain Raina, J.—The petitioner's mother was a staff-nurse serving at Shri Guru Teg Bahadur Hospital, Amritsar and was a government servant. She died in harness on 19.9.2004. The petitioner is her son. There are chemist shops in the hospital open to allotment. A policy was framed by the Punjab Government notified on 8.9.2004 which permitted allotment of shops/booths/space in medical/dental/ayurvedic colleges and their attached hospitals to be given on rent after calling tenders through open auction after public advertisements inserted in the press. The reserve price would be fixed on the basis of market rent determined by a committee headed by the Director, Research and Medical Education, Punjab, and comprising the Principal of the Institution concerned and the Assistant Controller (F&A). Clause 6 of the policy reserved one shop/booth/space for those widows/children of deceased government employees as had served the Medical Education Department, Punjab who had declined a job offered to them by the department on compassionate grounds. The process of allotment was by way of auction. To run a chemist shop a drug licence is mandatory. It is issued by the competent authority, that is, the State Drugs Controller, Punjab. Even before the death of the mother of the petitioner and coming into existence of the 2004 instructions, earlier executive instructions had been issued on 13.7.2000 by the Principal Secretary to Government of Punjab-cum-Chairman Punjab Health

Systems Corporation, Department of Health and Family Welfare, Punjab, Chandigarh that no chemist shop should be allowed within the Hospital premises. However, if there is a proposal from the District Administration, it should be forwarded to Government for approval. A directive was issued that no one should be allowed, including the District Administration, to make commercial use of Hospital land without approval of the Government and proposals, if any, should be forwarded to the Government by the Civil Surgeons etc. for consideration. These instructions are found at Annexure R-II at page 68 of the paper-book with the reply of the Assistant Drugs Controller, Punjab.

2. The 2004 policy was modified by superseding the previous policy by policy dated 12.5.2006 with respect to allotment of booth/shop/space in which it is laid down that chemist shops should be allotted in open auction on three years lease through proper publication of tenders, with the stipulation of increase of rent by 5% every year, subject to the reservations to be given to various categories mentioned in the policy.

3. Clause 7A of the new policy was akin to Clause 6 of the previous policy but contained a new restriction that only one shop/booth in each college/hospital, as the case may be at a particular station would be ear marked for families of widows and dependent children of deceased government employees of the Medical Education Department who have declined the job offered to them on compassionate grounds.

4. It is not clear from the record whether the petitioner was offered a job which he declined following the death of his mother. Allotment of booth/shop would come in operation only in a case where right to appointment on compassionate grounds is surrendered. Be that as it may, the petitioner was able to secure allotment of a chemist shop No. 2 in Eye & ENT Hospital, Amritsar on compassionate basis on 7.1.2010 from the hand of the Medical Superintendent, Shri Guru Teg Bahadur Hospital, Amritsar (P-6). In translation the order reads as follows:

Subject: Allotment of a shop/booth on compassionate basis. Please refer to dispatched letter No. 186/N/12.2.2008, from the office of Hon''ble Minister for Research and Medical Education, Government of Punjab, and letter issued vide diary No. 1284/7.9.2005 from the office of learned Deputy Chief Minister, Punjab and letter No. DA/10/8/6489 dated 22.2.2008, from office of Principal, Government Medical College, Amritsar.

On the subject noted above, in accordance with the policy decision of the Government of Punjab No. 5306, dated 8.9.2004, the documents of applicant Shri Sanjay Kumar were deposited in this office.

After perusing all the documents, the applicant is made the allotment of shop No. II in Eye & ENT Hospital, Amritsar under mentioned conditions:--

i) The applicant is hereby made the allotment of a shop for a period of three years.

ii) The applicant shall pay rent of the shop at the rate of Rs. 140/- per sq. feet which has been fixed in the meeting headed by the Hon"ble Minister for Medical Research & Education, Punjab on 14.1.2009 at 11:00 A.M. as per which the area of the shop is about 250 sq. feet and its total rental works out to be Rs. 37,100/- per month which has to be deposited on or before 7th day of each month in this office.

iii) Applicant shall deposit six month"s advance rent as security in this office.

iv) The applicant shall deposit the electricity and water charges.

Sd/- Medical Superintendent, Shri Gum Teg Bahadur Hospital, Amritsar.

5. It seems apparent that the allotment dated 7.1.2010 (P-6) was made contrary to para 3 of the 2008 policy which mandated allotment through public auction. Worse still, the allotment dated 7.1.2010 was in breach of the directions issued by the learned Single Judge of this Court in Civil Writ Petition No. 4425 of 2008 decided on 15.12.2009 in a matter relating to allotment of chemist shops. This Court had directed as follows:

After hearing counsel for the parties, this Court is of the view that the respondents should strictly comply with the policy circulated by the government for reservation of the shops for different categories. The government may also take a decision whether the shops are to be allotted by way of auction. In that case for the each category, a separate auction be held and the successful bidder allotted the shop. If the government chooses not to follow the mode of auction, they may adopt the criteria which rules out discrimination and arbitrary allotment of shops. "Then by giving advertisement and giving the opportunity to everybody, allotment of shops be made taking into consideration the interests of the organization. The needful shall be done by the State within three months. With the observations made above, present writ petition is disposed of.

6. On the basis of these directions the petitioner"s allotment has been rescinded and the amount of Rs. 2,22,600/- representing advance rent for six months @ Rs. 37,100/- per month deposited by him have been ordered to be refunded vide letter dated 2.8.2010 (P-8). The allotment order stands nullified.

7. Aggrieved the petitioner has approached this Court to insist that he should be given allotment of the shop and be delivered possession on the additional ground that he has invested large sums of money in renovating the shop which he has done apparently at his own peril without receiving the green signal, for want of issuance of no objection certificate from the Government of Punjab in the department of Research and Medical Education. Hospital land cannot be put to commercial use without approval of Government under the administrative instructions dated 13.7.2000. Consequently, a drug licence cannot be issued in favour of a party claiming to run a chemist shop on hospital land without obtaining a no objection from the State Government. No drugs licence has been issued to the petitioner. No vested right has accrued to the petitioner for this

Court to enforce or to command the Government by court fiat to legalize the allotment not made through public auction after advertisement.

8. Respondent No. 6 in his reply has highlighted that the petitioner was not dependent on the deceased employee at the time of allotment as the petitioner was working in the insurance industry from 8.10.2008 to 31.12.2009 and prior to it, the petitioner worked in MND Brokerage House for about four years. Para No. 13 of the affidavit of the petitioner has been placed on record as Annexure R-2 in which the above statement is made by him on solemn affirmation. In any case, it is only such policies which deal with compassionate allotments or appointments which are relevant and as are in existence on the date of death. If illegal allotments have been made to the private respondents those will be of no help to the petitioner. They are equally bad and unsustainable. Besides, the petitioner has not placed on record an order rejecting compassionate appointment to him following the death of his mother to make him even remotely eligible for consideration for compassionate allotment of a shop or booth to validly run a chemist shop in hospital premises. The impugned order has been passed on the strength of an order passed by this Court in the aforesaid writ petition decided prior to the petitioner procuring the order of allotment dated 7.1.2010 contrary to law. Those who come by the back door should go back by the same door.

No merit.

Dismissed.