

(2015) 04 KAR CK 0351

In the Karnataka High Court

Case No : Writ Petition Nos. 13516 and 16397 of 2015 (LB-BMP)

Shanthraj and Others

APPELLANT

Vs

Bruhat Bengaluru Mahanagara Palike

RESPONDENT

Date of Decision : 25-04-2015

Acts Referred:

Constitution of India, 1950 — Article 14, 226
Karnataka Municipal Corporations Act, 1976 — Section 58(24)

Citation : (2015) 4 KarLJ 133

Hon'ble Judges : Ram Mohan Reddy, J

Bench : Single Bench

Advocate : Clifton D. Rozario, for the Appellant

Final Decision : Dismissed

Judgement

Ram Mohan Reddy, J.—Petitioners articulate that poura karmikas, employees of respondent-BBMP must and should be allotted residential accommodation, for stay, in the light of Section 58(24) of the Karnataka Municipal Corporations Act, 1976 and further that their families too be extended the benefit of allotment of quarters. To the reasonable queries of the Court, learned Counsel is unable to point out to any rule relating to allotment of residential quarters to families of employees or families of deceased employees of the Corporation.

2. Learned Counsel submits that petitioners' father, an employee of BBMP died while in harness and though allotted a residential quarters, on monthly rent of Rs. Ten, the building collapsed and the promise of an alternative allotment was not kept despite collecting rents and therefore, petitioners as sons of the deceased employee have a legal right for allotment of an alternative quarters.

3. Regard being had to the fact that the father of the petitioners an employee was allotted a residential quarters belonging to BBMP while in service, nevertheless on his death quarters belonging to BBMP cannot be allotted to his family not being employee of the BBMP. It is needless to state that quarters

belonging to BBMP are but few which are occupied by employees on rolls, and therefore, new recruits who join the BBMP will have to stand in the queue for allotment of quarters only after the employees in possession of the said quarters retire from service. In that view of the matter, petitioners cannot claim a legal right to allotment of quarters belonging to BBMP on the basis of being the sons of deceased employee of BBMP.

4. Learned Counsel's submission that under Article 14 of the Constitution of India every family of an employee must be allotted quarters belonging to local authority, is noticed only to be rejected.

5. The further submission of learned Counsel that out of 350 families 329 families of poura karmikas have been allotted quarters by respondent-BBMP and therefore, Article 14 will apply to petitioners too being family members of deceased poura karmika, is noticed yet again to be rejected. Under Article 14, equality is a positive concept and cannot be enforced in a negative manner. Benefits extended to some persons in an illegal or irregular manner cannot be claimed by others on the plea of equity. Wrong order or judgment passed in favour of one person does not entitle to others to claim benefits. This is the rule of law as pronounced by the Apex Court in the case of *State of Bihar and Others Vs. Kameshwar Prasad Singh and Another*, AIR 2000 SC 2306 : (2000) 5 JT 389 : (2000) 4 SCALE 417 : (2000) 9 SCC 94 : (2000) SCC(L&S) 845 : (2000) AIRSCW 2389 : (2000) 4 Supreme 197 and *State of Uttaranchal Vs. Alok Sharma and Others*, (2009) 2 CompLJ 353 : (2009) 121 FLR 816 : (2009) 6 JT 463 : (2009) 6 SCALE 277 : (2009) 7 SCC 647 : (2009) 2 SCC(L&S) 358 : (2009) 8 SCR 1 : (2009) 5 UJ 2201 .

6. So also the Apex Court in *Gursharan Singh and others etc. Vs. New Delhi Municipal Committee and others*, (1996) 2 AD 48 : AIR 1996 SC 1175 : (1996) 1 JT 647 : (1996) 1 SCALE 615 : (1996) 2 SCC 459 : (1996) 1 SCR 1154 : (1996) 1 UJ 628 observed that neither Article 14 of the Constitution conceives within the equality clause this concept nor Article 226 empowers the High Court to enforce such claim of equality before law.

7. In *Secretary, Jaipur Development Authority, Jaipur Vs. Daulat Mal Jain and Others*, (1996) 7 AD 550 : (1996) 8 JT 387 : (1996) 7 SCALE 135 : (1997) 1 SCC 35 : (1996) 6 SCR 584 Supp , it was observed thus:

"Suffice it to hold that illegal allotment founded upon ultra vires and illegal policy of allotment made to some other persons wrongly would not form a legal premise to ensure it to the respondent or to repeat or perpetuate such illegal order nor can it be legalised".

8. In *State of Haryana and Others Vs. Ram Kumar Mann*, (1997) 3 JT 450 : (1997) 2 LLJ 1039 : (1997) 2 SCALE 541 : (1997) 3 SCC 321 : (1997) SCC(L&S) 801 : (1997) 2 SCR 329 : (1997) 1 UJ 776 , the Apex Court observed the doctrine of discrimination is founded upon existing of an enforceable right.

9. Applying the aforesaid observations of the Apex Court to the facts of this case that the petitioners' father while as a poura karmika was allotted quarters belonging to BBMP for residence of himself and his family, that allotment by no stretch of imagination can be extended to each and every member of the family of the deceased employee. There is no legal right in the petitioners claiming to be the sons of deceased employee for an alternate allotment even if it is extended to other similar persons. Petitions devoid of merit, are rejected with costs quantified at Rs. 5,000/- payable to respondent-BBMP.