

(2012) 04 KAR CK 0094

In the Karnataka High Court

Case No : Writ Petition No. 1064 of 2012 (BDA)

Smt. M. Varalakshmi

APPELLANT

Vs

The Bangalore Development Authority and State of Karnataka

RESPONDENT

Date of Decision : 18-04-2012

Acts Referred:

Citation : (2012) 04 KAR CK 0094

Hon'ble Judges : Mohan Shantanagoudar, J

Bench : Single Bench

Advocate : P.V. Chandrashekar, for the Appellant; B.V. Shankaranarayan Rao, for R1 and Sri Vijayakumar A. Patil, HCGP., for R2, for the Respondent

Final Decision : Allowed

Judgement

Mohan Shantanagoudar

1. Petitioner hails from Economically Weaker Section (sic) of the society and Rural Backward Community. According to her, her date of birth is 20.7.1958. However, in her application seeking allotment of site, she did not mention the actual date of birth. Column relating to date of birth is left blank. However, the age of the petitioner was shown as 43 years. Considering the application filed by the petitioner, she was allotted site No. 64 in Block No. 10 of Arkavathi Layout under Economically Weaker Section Category on 21.2.2004. But, the said order of allotment of site came to be cancelled by the subsequent order dated 25.7.2008 as per Annexure-E, on the ground that the site in question was wrongly allotted in favour of the petitioner, inasmuch as the petitioner was born on 24.10.1961 and in order to get site under Economically Weaker Section Category (Category No. 8) the applicant ought to have been born prior to 10.12.1959. The said order of cancellation of allotment was questioned by the petitioner before this Court in WP. No. 4682/2010. The writ petition came to be disposed of on 3.8.2010 as per the order at Annexure-L by observing thus:-

In the circumstances, the order dated 25.7.2008 Annexure-E and the

endorsement dated 20.7.2009 Annexure-H being unsustainable are accordingly quashed. The respondent is directed to consider the petitioner's representation dated 19.2.2009 Annexure-F5 enclosing the admission extract Annexure-F6 in relation to her date of birth and take action, in accordance with law. Writ petition is ordered accordingly.

It is relevant to note that the admission extract at Annexure-F6 produced in WP. No. 4686/2010 is once again is produced along with this writ petition at Annexure-F6. Same reveals the date of birth of the petitioner as 20.7.1958.

2. After disposal of WP. No. 4686/2010 by this Court, it seems that the petitioner's case is considered once again. It appears that the BDA tried to get information from Government Kannada Lower Primary School, Kondamari, Srinivaspura Taluk, which had issued the admission extract at Annexure-F6 to find out as to whether the said admission extract was genuine or not. However, no information was received from the Head Master of the said school till passing of the impugned order. In that context, the BDA having felt that there is no official record relating to date of birth of the petitioner, proceeded to issue the impugned order cancelling the allotment of site on the ground that the date of birth mentioned in the admission extract cannot be relied upon.

3. The BDA was justified in getting information from the concerned school to satisfy itself as to whether the date of birth as mentioned in the School Register is correct or not, more particularly when the date of birth of the petitioner is not registered in the office of the Tahsildar.

Be that as it may, in order to put an end to the litigation this Court directed the learned Government Advocate on 11.4.2012 to get information from the concerned Head Master of the Government Kannada Lower Primary School Kondamari to find out as to whether the document at Annexure-F6 is genuine or not.

4. A memo is filed by the learned Government Advocate today along with the records maintained by the school authorities. The memo as well as the records are taken on record. The Head Master of the said School is also present before the Court. The Register maintained by the school and the photostat copy of the relevant extract of the School are also produced. The same reveal that the date of birth of the petitioner is 20.7.1958 and at the time of admission to the I Standard she was aged about 6 years. She was admitted to I Standard in the month of July 1965. These facts clearly go to show that the date of birth of the petitioner is 20.7.1958. The Head Master of the School has issued certificate to the effect that the particulars of Smt. Varalakshmi, W/o. late Subbachari, studied in Kondamari Govt. Lower Primary School tally with the original records maintained in the school. The information as found in Annexure-F is also correct.

In view of the above, the impugned order is liable to be quashed.

It is brought to notice of the Court by Sri B.V. Shankaranarayana Rao, learned

advocate appearing for BDA that the application of the petitioner was unsigned. But the petitioner cannot be suited on technical ground. It is not in dispute that all the particulars mentioned in the application are correct. Petitioner is admittedly a coolie. In view of the aforementioned, technical defect mentioned supra is condoned.

Since the date of birth of the petitioner is 20.7.1958 and as the cut off date fixed by the BDA for getting site under Economically Weaker Section was 10.12.1959, the allotment made by the BDA is just and proper and accordingly the impugned order dated 9.5.2011 at Annexure-M, is quashed. The allotment of site No. 64 in Block No. 10 Arkavathi Layout, Bangalore, measuring 6 x 9 mtrs. is held to be valid. The respondent-BDA is directed to execute necessary deeds in favour of the petitioner.

Petition is allowed accordingly.