
(2006) 09 DEL CK 0190
In the Delhi High Court
Case No : WP (C) 9871 of 2006

Sunita Rani

APPELLANT

Vs

D.D.A.

RESPONDENT

Date of Decision : 04-09-2006

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (2006) 09 DEL CK 0190

Hon'ble Judges : S. Ravindra Bhat, J

Bench : Single Bench

Advocate : Richa Kapoor, for the Appellant; Sangeeta Chandra, for the Respondent

Final Decision : Allowed

Judgement

S. Ravindra Bhat, J.—These writ proceedings are a second round of litigation, as it were, between the parties. All petitioners claim directions, in identical terms that they should be allotted shops, in specified areas, on the basis of the costing policy of the respondent (hereafter called "DDA").

2. The writ Petitioners had registered themselves in a scheme for allotment of shops by the DDA. According to the scheme, 57 per cent of the shops constructed by DDA is to be disposed off by the auction; the balance are to be allotted amongst various reserved category applicants. All the petitioners are reserved category registrants; they belong to SC/ST categories.

3. Shops were allotted from time to time, among others, to various SC/ST categories. One such allottee, Santosh, had approached this Court under Article 226, claiming that the DDA had demanded market rates instead of reserved cost, which amounted to violation of its policy. The Court had subjected the allotment to final orders. The relevant relief clause in the writ petition, WP No. 1827/01 was as follows:

(C) Issue a writ, order or direction in the nature of a Writ of Mandamus thereby

directing the respondent to allot the shop to the petitioner on the basis of reserve price.

4. During pendency of writ proceedings, the Court disposed off the petition on 04/03/03, by an order (hereafter "the first order") in the light of the development that the petitioner's grievance did not subsist, in the following terms:

CW NO. 1827/01

Rule. Mr. Sushant Kumar accepts notice of rule.

With the consent of learned Counsel for the parties, the matter is taken up for final hearing.

The petitioner applied under the Scheduled Castes category for allotment of a shop. In terms of a policy of the respondent the shop had to be allotted to the petitioner at the reserve price. The petitioner applied for a larger shop and in pursuance to a draw of lots held in March 1999, the petitioner was allotted a shop but at a much higher price. The petitioner is aggrieved by the charging of a higher price than the reserve price.

A reading of the counter-affidavit shows that the defense taken by the petitioner is that the petitioner applied for a bigger shop. Be that as it may, the issue still remains that in terms of the policy, the petitioner is entitled to the shop at a reserve price. In case the respondent was not in a position to allot a bigger shop at the reserve price, it should have been intimated to the petitioner accordingly and the petitioner could have been allotted the smaller shop at the reserved price. Learned Counsel for the petitioner states that the petitioner is willing to accept a smaller shop but at the reserve price even if it be the current reserve price.

In view of the aforesaid, it is directed that the respondent should include the name of the petitioner in the draw of lots for the allotment of the shop in the category where shops are being given at reserve price and the petitioner be allotted the shop at the current reserve price. The needful be done within a period of eight weeks from today.

It is made clear that there is no question of any deduction of cancellation charges etc. from the petitioner.

Writ petition is allowed in the aforesaid terms leaving the parties to bear their own costs.

CM No. 3135/01

No further orders are called for in this application in view of the disposal of the writ petition.

The CM stands disposed of.

5. In the meanwhile, another reserved category registrant, Sunil Kumar, had approached the Court with an identical grievance. His claim, in WP No. 5456/01, was as follows:

(C) Issue a writ, order or direction in the nature of a Writ of Mandamus thereby directing the respondent to allot the shop to the petitioner on the basis of reserve price.

The writ petition was disposed off, by an order (hereafter "the second order") in terms of the order in Santosh, on 24/04/03. The order reads as follows:

CW No. 5456/01

It is agreed by learned Counsel for the parties that the matter in controversy stand settled in view of the judgment of this Court in CW No. 1827/01 Ms. Santosh v. Delhi Development Authority decided on 04.03.03. The only difference that in the present writ petition the issue of the smaller or bigger shop does not arise.

In view thereof it is directed that the respondent should include the name of the petitioner in the draw of lots for the allotment of the shop in the category where shops are being given at the reserve price and the petitioner be allotted the shop at current reserve price. The needful be done within a period of eight weeks from today.

It is made clear that there is no question of any deduction of cancellation charges etc. from the petitioner.

Writ petition is allowed in the aforesaid terms leaving the parties to bear their own costs.

dusty to learned Counsel for the parties.

6. The petitioners, in these proceedings had been allotted shops, as reserved category registrants. They too had an identical grievance, as in the cases of Santosh and Sunil Kumar. They filed writ petitions. Their claims, in the writ petitions, were in identical terms; they claimed inter alia, the following relief:

(b) Issue a writ of Mandamus thereby directing the respondent authority to allot a shop to the petitioner on the basis of the reserve price, as per its policy, guidelines and terms & conditions of allotment.

All their petitions (CWPS 7408/00, 4993,5537 &5794/02, 2673 &5773 & 7969/03) were disposed off by a common order, (hereafter "the third order") having regard to the DDA's change in policy, on 28/11/03 in the following terms:

CWPS 7408/00, 4993,5537 &5794/02, 2673 &5773 & 7969/03

After hearing both learned Counsel for the parties, learned Counsel for the petitioner states that the petitioner is not in a position to pay such a high price as is sought to be demanded, since the petitioner belongs to the SC/ST

community or physically handicapped. Learned Counsel states that the anomaly, which according to the petitioner existed has been sorted out in future draws and the allotment in favor of the petitioner may be cancelled and the name of the petitioner be included in the next draw of lots held for such persons.

In view of the aforesaid statement by learned Counsel for the petitioner, it is directed that the allotment in favor of the petitioner be cancelled without deduction of cancellation charges. Two of the petitioners, who have taken possession, shall return the possession to DDA within 15 days from today. The amount deposited by the petitioner as interim arrangement shall continue to remain with DDA. The name of the petitioner will be included in the subsequent draw of lots and on allotment being made, the amount deposited by the petitioner shall be adjusted against the price to be recovered for new allotment, but with no interest being granted on the amount deposited by the petitioner.

Needless to say that the fresh allotment to be made and the price to be charged shall be per the policy of the DDA.

The writ petition stands disposed of accordingly.

dusty to learned Counsel for the parties.

7. After disposal of the proceedings in Sunil Kumar's case, by the second order, the DDA had sought, through an application dated 23/07/03, a clarification (CM 6214/03) as to whether the registrants had to be given a shop irrespective of his success in the draw of lots. The application was rejected on 12/09/03 in the following terms:

The reply filed by the respondent gives no cogent Explanation for the failure to comply with the order dated 24/04/03. In fact they are seeking to justify what prima facie appears to be a contemptuous conduct even after the application of respondent for clarification of the said order has been dismissed on 29/07/03. However, in view of the fact that the writ petition already stands disposed of, it is open to the petitioner to file appropriate contempt proceedings for which liberty is granted.

Application stands disposed of.

8. At this stage, it may be noticed that the above narrative shows that the Court, in the three sets of writ proceedings, moved at the behest of reserved SC/ST category allottees, claiming wrongful action by DDA in demanding more than the reserve price, noticed that the dispute had been resolved. In Santosh and Sunil Kumar's case, the Court had directed inclusion of names of the allottees and handing over of possession; the order in the petitioner's previous writ petition had likewise recorded that the costing dispute had been resolved, and ordered inclusion of the allottees' names in a draw of lots. No express direction was given to allot a shop or hand over possession, in the order dated 28/11/03. This factual detail (or the lack of it) has fuelled further dispute.

9. Santosh and Sunil Kumar, the petitioners in terms of the first and second order on 04/03/03 and 24/04/03, were granted or allotted and handed over shops. The petitioners (who had secured the third order on 28/11/03) were not allotted or handed over possession. Being aggrieved, they filed contempt proceeding being CCP No. 7374/04 and CC 285/05 & 1257/05. The earlier petition CCP 7374/05 was rejected on 02/04/05. The other two contempt petitions were rejected on 21/02/06 in the following terms:

CONT. Case (C) 285 & 1257/05

1. Writ petition filed by the petitioners along with a few other writ petitions was disposed of by a common order dated 28/11/03. Operative part of the order reads as under:

In view of the aforesaid statement by learned Counsel for the petitioner, it is directed that the allotment in favor of the petitioner be cancelled, without deduction of cancellation charges. Two of the petitioners, who have taken possession, shall return the possession to DDA within 15 days from today. The amount deposited by the petitioner as interim arrangement shall continue to remain with DDA. The name of the petitioner will be included in the subsequent draw of lots and on allotment being made, the amount deposited by the petitioner shall be adjusted against the price to be recovered for new allotment, but with no interest being granted on the amount deposited by the petitioner.

Needless to say that the fresh allotment to be made and the price to be charged shall be as per the policy of DDA.

2. Grievance of the petitioner is that neither is their name included at a draw of lots, nor has a shop been allotted to them.

3. Stand of DDA is that petitioners were required to submit fresh applications. They have not done so.

4. Learned Counsel for the petitioner submits that purport of the order dated 28/11/03 is that the petitioners must get a shop and that entitlement would flow from the applications already submitted to DDA.

5. To buttress the argument counsel states that CM. 8197/03 was filed by DDA in a connected petition bearing WP (c) No. 5456/01. It is stated that vide said application DDA sought clarification whether the order dated 28/11/03 required that a shop must be allotted to the petitioners or that it required name of the petitioners to be included at a draw of lots. Counsel states that said application was dismissed vide order dated 12/09/03 holding that no clarification was required as the order was clear.

6. In my opinion, as asserted by counsel for DDA issue stands covered as per decision dated 04/02/05 passed in Cont. Case (C) 737/04. The order reads as under:

Cont.Cas(c) 737/05

By the present writ petition, the petitioner seeks initiation of proceedings for contempt against the Vice-Chairman and the Director of the respondent/DDA. The operative part of the order is as under:

The name of the petitioner will be included in the subsequent draw of lots and on allotment being made the amount deposited by the petitioner shall be adjusted against the price to be recovered for new allotment, but no interest being granted on the amount deposited by the petitioner.

Petitioner, it appears, did not apply for being included in the draw of lots and hence the question of allotment pursuant to the draw of lots did not arise.

Mr. Sumit Bansal, learned Counsel for the petitioner firstly submitted that the petitioner was obliged to apply and DDA was required to process the petitioner's allotment in terms of the order.

Learned Counsel for the respondent disputes this assertion. He submits that an application by the petitioner is a sine qua non for his name to be included in the draw of lots.

Mr. Sapra rightly states that in every advertisement, the response of the petitioner or other applicants is required inasmuch as preferences are required to be indicated as regards locality, size and price applicable. There appears to be merit in this contention. The matter could have been over with a direction to the petitioner that they should apply for allotment and their name would be included in the draw of lots. At this stage, learned Counsel for the petitioner submits that the petitioner's understanding of the order is that the draw of lots was a necessary sequel to the order. The language of the order does not prima facie so suggest and it appears to be a direction only for inclusion in the subsequent draw of lots. However, learned Counsel for the petitioner states that he would seek a clarification from the Court which passed the order. Petitioner is free to make such steps as he is advised. In any event, no case is made out for proceeding for contempt.

Petition is dismissed.

7. Identical issue was raised in Cont.Cas (C) No.737/04. In my opinion, present contempt petition is liable to be disposed of directing that the order dated 04/02/05 in Cont. Cas(C) No. 737/04 requires to be complied with by the parties.

Notice of contempt is discharged. Contempt petition stands disposed.

10. Pursuant to the view expressed by the Court, declining initiation of contempt proceedings, the petitioners in the present writ petitions moved the court for clarification of the order dated 28/11/03 in their favor, (i.e the third order) to the effect that DDA had to allot and hand over possession of shops and not merely include their names in the draw of lots. The application was rejected on 10/03/06. The order reads as follows:

CMNO.3041/06

The writ petition was disposed on 28/11/03. In identical matters, the respondent has issued a letter dated 13/02/06 (Annexure E) since there was a batch of writ petitions which had been disposed of by the order dated 28/11/03. Learned Counsel for the respondent states that the petitioner will be treated at par with Sh. Madan Lal. In my considered view, no further directions are required. In case there are any grievances of the petitioner, the petitioner will have to take recourse to independent proceedings.

The application stands disposed of.

11. In these circumstances, the petitioners have approached the court under Article 226 claiming directions that they should be allotted and handed over flats. The position taken by the DDA that they can merely claim a right to be included in the draw of lots, based on the third order, has been assailed as arbitrary.

12. The DDA, in its counter affidavit, in WP 9825/06 (which was stated to be treated as a common response in all these proceedings) has highlighted the difference in language between the first two orders, on the one hand, and the third order, on the other. It has also averred that the scheme under which allotment has been claimed, requires that the registrant has to opt for a shop, upon which his name would be included in a draw of lots, and if he is successful, he would be allotted and handed over possession of the shop concerned. In the absence of a positive direction, in the petitioner's cases, in the third order, the DDA cannot be compelled to hand over possession, by merely including the name of a registrant in a draw of lots.

13. Ms. Richa Kapoor, learned Counsel submitted that the petitioners were situated similarly, and identically with Santosh and Sunil Kumar, in whose favor the first two orders were passed. All the litigants had an identical grievance, i.e that the DDA was seeking to charge market rates, or higher rates, over and above the reserve price, which was contrary to the scheme of allotment. All filed writ petitions; in the first two orders, the DDA was asked to ensure allotment; in the third order, issued in identical circumstances, the court directed inclusion of the names in draw of lots, which implied that the petitioners had to be granted the shops. Any other interpretation would result in violation of Article 14, and render the whole objective of approaching the court a mockery. It was contended that were the DDA's contentions to be accepted, there was no need for the petitioners to have approached the court at all, and the intervention of the court, as well as the third order, would be devoid of content. There was no need for a registrant to approach the court in order to be told that if he opted, his name would be included in the draw of lots.

14. Counsel underlined the importance of the parallels in all the petitions, leading to the three orders; in all the cases, the registrants had been given allotments, were aggrieved by the demand for higher price, and in all the cases, the court did not have to decide the merits of the case, because during the pendency of the petitions, the issue which led to the petitioners approaching the court, had

been resolved. Learned Counsel laid great stress on the fact that in the order of 28-11-2003, the court, while recording that the allotments would stand cancelled, had directed that the amounts paid, towards consideration, would be retained by the DDA. It was submitted that the first two orders did not contain such a condition; if the DDA's contentions are to be accepted, the registrants in such cases would have to wait indefinitely for their turn, even while the amounts deposited by them would be enjoyed by DDA.

15. Ms. Sangeeta Chandra, learned Counsel for the respondent submitted that the wording and phraseology of the first and second orders, on the one hand, and the third order, on the other, made all the difference. The DDA was bound to ensure allotments in terms of the first two orders; in the third order, the direction was merely to include the names of the petitioners, not for an assured allotment. It was submitted that in the case of one of the original six petitioners, Madan Lal, who had benefited in the order dated 28-11-2003, the DDA had included his name in the draw; he accepted the position.

16. Counsel said that there was nothing arbitrary or unreasonable in the distinction made by the DDA, on the basis of the two sets of orders; in fact the differentiation had the approval of the court, which declined to interfere in contempt proceedings, and even disposed off the application for clarification of the order dated 28-11-2003. As such the petitioners had no surviving cause of action. After conclusion of hearing, and after the matters were reserved for judgment, the files in the previous proceedings, being CW NO. 1827/01; CW 5456/01; CWPS 7408/00, 4993,5537,5794/02, 2673, 5773 & 7969/03 were called, and considered.

17. The above facts may be summarized as follows:

(a) Santosh and Sunil Kumar had approached this Court, complaining that the demand for disposal cost of the shop allotted in excess of the reserve price was arbitrary; the petitioners too, had the same grievance. They filed writ petitions in 2003.

(b) The earlier two writ petitions, of Santosh and Sunil Kumar, were disposed off, not on merits, but by a simulative order, since the DDA had resolved the costing issue. The court directed inclusion of their names, and allotment of shops;

(c) DDA had earlier sought a clarification of the second order, to the effect that the same would mean only inclusion of the name of registrant in the draw of lots; the application was dismissed;

(d) The petitioner's writ petitions were also, like those of Santosh and Sunil Kumar, not disposed off on merits, but by a simulative order, containing directions. The order, dated 28-11-2003, recorded that:

- i) the petitioner's allotments would be cancelled;
- ii) their names would be included in the next draw of lots;

iii) the amounts paid by the two petitioners would be retained by DDA;

iv) the price of the shop would be on the basis of DDA's policies.

(e) DDA took the stand that the petitioner's cases were different, and that their names had to be merely included in the draw of lots; they were not assured allotments.

(f) The petitioner's attempts to initiate contempt proceedings were unsuccessful; they were given liberty to seek clarification of the order dated 28-11-2003;

(g) The application for clarification was rejected.

18. The DDA has highlighted the difference in the phraseology of the orders; however, it has not seriously disputed that the petitioners, also members of the SC/ST categories like Santosh and Sunil Kumar, had identical grievance about the cost of the shops being more than the reserve price. Also not disputed, are two crucial facts, i.e that all orders of court, were not issued upon adjudication of merits of the cases, but on the basis of a clarification/ policy change by DDA; all the petitioners, here as well as Santosh and Sunil Kumar, were beneficiaries of allotments.

19. A look at the structure of the three orders no doubt lends support to the contentions of DDA. The question however, is should the court base its decision only on the phraseology employed in the three orders, without delving into the substance, or the commonalities that admittedly existed as between all sets of petitioners.

20. The issue which Therefore arises is whether the litigation/ court order based differential treatment, by the DDA is justified.

21. Consistency and uniformity in state action, and even handed treatment of persons falling within one class is the bedrock of the equal protection clause decreed by Article 14 of the Constitution of India. Asymmetrical, or dissimilar treatment, based on artificial distinction, destroys the fabric of the equality principle.

22. In State of Mizoram and Another Vs. Mizoram Engineering Service Association and Another, , the Supreme Court held as follows:

the State Government had duly accepted the recommendations of the Fourth Central Pay Commission. Having done so, it cannot be permitted to discriminate between individuals and not allow the same to the rest. In this context the learned Counsel for the appellant submitted that it is not unusual that sometimes special pay is granted to an individual and the same does not become a precedent for others. As a proposition it may not be disputed. But there has to be special reason for this. In the facts of the present case we do not find any justification for confining the higher scale to a particular individual and deny the same to others. There may be special reasons, for instance, special merit, expertise or the like, for giving special pay to a particular individual. In the

present case no such reason is forthcoming. On the other hand the reason given is that since he was holding the post on 1-1-1986, the date from which the Fourth Central Pay Commission recommendations were given effect to, he was being allowed the higher pay scale. This reason rather supports the case of the respondent. It shows an admission on the part of the appellant that the revised pay scales for the post of Chief Engineer as per the recommendations of the Fourth Central Pay Commission was Rs 5900-6700 and was allowed to a Chief Engineer. The State Government cannot be permitted to discriminate between similarly placed individuals in this behalf between those holding the post at the time of revision of pay scales and future incumbents of the post. The argument has no merit.

23. In *S. Amarjit Singh Kalra (dead) by Lrs. and Others and Smt. Ram Piari (dead) by L.Rs. and Others Vs. Smt. Pramod Gupta (dead) by Lrs. and Others*, , the Supreme Court was concerned with whether decrees of individuals clubbed together, and where some litigant or the other had died, had to be treated differently, and whether the content of the decrees were determinative. The court, speaking through a Constitution Bench, held:

32. The area of differences in the catena of decisions brought to our notice is not so much with reference to the principles to be applied to different nature of decrees but only as to which of the decree(s) falls, when or under what circumstances under one or the other of the classification i.e. joint and inseverable or joint and severable or separable. This aspect seems to have been adjudged in different cases depending upon the nature/source of rights, the cause of action, the manner they were asserted by the parties themselves and the contradictory nature of decrees impossible of execution, likely to result when considered differently. It is for this reason any standardised formula was avoided and the matter left for the consideration of courts, on the peculiar nature of the cases coming for determination. Having regard to the peculiar facts and circumstances noticed by us that the appellant claimants have each their own distinct, separate and independent rights, the principles enumerated in *Harihar Prasad case*¹ and *Indian Oxygen Ltd. case*⁹ squarely apply with all force. The appeals even de hors the claims of the deceased and others who have not chosen to approach the High Court or this Court, were neither rendered incapable of consideration nor impossible of according any relief nor could be held difficult to enforce the decree that may be passed, in favor of the remaining appellants without suffering the vice of inconsistency. Even if it is likely to result in two different sets of judgments of varying content, purport or reason, as long as the enforcement of the decrees passed therein is not rendered impossible due to mutual contradiction in terms of self-destructive nature, there is no justification whatsoever to assume them to be inconsistent or contradictory decrees, at all. The mere fact that in a set of similar or identical nature of cases two different nature or type of decrees were necessitated is no reason to treat them to be inconsistent or contradictory decrees, so long as both can be executed and enforced without either of them being destructive of the other. Contradictory or

inconsistent decrees, consequently, could be held to have resulted only in a given case when the relief granted in one cannot be enforced/realized without denying the relief in the other or totally nullifying or setting at naught the relief granted in the other, and in no other class of cases.

24. In yet another decision of the Constitution Bench, in *Executive Engineer, Dhenkanal Minor Irrigation Division, Orissa, Vs. N.C. Budharaj (Dead) by Lrs. etc. etc.*, the Supreme Court held that a contention that past interest could be granted by an arbitrator only where a litigant approached the court, and not where arbitration was resorted to under an agreement, was arbitrary and artificial.

25. The above analysis would show that in order to successfully set up a case of valid classification, the points of difference pressed into service ought to be real, substantial, and reasonable. Here, the only point of difference between the petitioners on the one hand and the petitioners in the first and second orders, is the content of the order, nothing else. I am left unpersuaded with the contention of the DDA, and its counsel; it is less than fair, and attributes an intention to discriminate to the court, which is not borne out from the record. The counsel for the DDA was unable to show that the previous orders which were issued in identical circumstances, were brought to the notice of the court, or that the later order dated 28-11-2003, made a distinction, consciously for some reason. Hence, the "litigation" or "court order" based classification, and differential treatment is not only unjustified, it is invidious.

26. There is yet another reason which impels me to conclude as I have, in returning the above finding. It is settled law that no order or judgment of court can be read as a statute; it has to be interpreted as a whole, in the light of the surrounding circumstances. (*Ref Ramesh Chand Daga Vs. Rameshwari Bai, and Bombay Dyeing and Mfg. Co. Ltd. Vs. Bombay Environmental Action Group and Others, . In Karnataka Rare Earth and Another Vs. The Senior Geologist, Department of Mines and Geology and Another, , the Supreme Court explained the maxim actus curiae neminem gravabit and held as follows:*

the doctrine was not confined in its application only to such acts of the court which were erroneous; the doctrine is applicable to all such acts as to which it can be held that the court would not have so acted had it been correctly apprised of the facts and the law.

Nothing on record exists, suggestive of the court being apprised, in the order dated 28-11-2003 of the previous orders dated 4-3-2003 and 24-4-2003. On the other hand, the order dated 24-4-2003 clearly refers to the decision in Santosh's case. No reason for the difference and omission exists; hence, it cannot be concluded that the court was granting permission to discriminate between two identically situated sets of litigants or suitors. The points of similarity as between the petitioners' cases and Santosh and Sunil Kumar far outweigh the points of dissimilarity. Moreover, the direction in the petitioners' cases that the amounts

deposited by two petitioners would be retained by the DDA, in my opinion, places these cases a fortiori on a sounder footing than the earlier two cases, leading to the first two orders. Hence, the DDA could not have relied on the phraseology of the order dated 28-11-2003 to deny allotments to the petitioners, who had already been allotted shops. Upholding the contention of the DDA would be rendering the entire basis of the previous litigation futile, and the gains of the petitioners, a mirage.

27. As a result of the above conclusions, the DDA is directed to include the petitioner's name, in the next draw of lots, for the allotment of a shop in the category where shops are being given at reserve price and the petitioner shall be allotted the shop at the current reserve price. The directions shall be complied with, in eight weeks from today.

28. The writ petitions are allowed in the above terms. Each petitioner shall be entitled to costs, quantified at Rs. 10,000/- which shall be paid within eight weeks.