
(2008) 12 P&H CK 0028
In the Punjab And Haryana At Chandigarh

U.G. Hospitals Pvt. Ltd.

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 01-12-2008

Acts Referred:

Citation : (2009) 153 PLR 329 : (2009) 2 RCR(Civil) 162

Hon'ble Judges : M.M. Kumar, J;Jora Singh, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

M.M. Kumar, J.—The petitioner is a private limited company providing medical services and is running hospitals. The company is aggrieved by non allotment of hospital site in Sector 51, Gurgaon and has also challenged the allotment made in favour of another private limited company-respondent No. 5. Consequently a prayer for quashing allotment letter dated 27.9.2005 (Annexure P-4) has been made on the principal ground that the allotment is against the terms and conditions of public notice and is wholly arbitrary.

2. Brief facts which have lead to the filing of the instant petition are that Haryana Urban Development Authority issued a public notice on 14/15.6.2005 (Annexure P-1) inviting applications for allotment of hospital sites at Gurgaon and Faridabad. Last date for submission of application was 29.6.2005. However, on account of poor response, the HUDA-respondent No. 2 issued a re-advertisement on 7.7.2005. The petitioner submitted its application on 28.6.2005 (Annexure P.2). The respondent No. 5 also submitted its application on 15.6.2005 (Annexure R.1). The application of respondent No. 5 initially was for allotment of the hospital site in Sector 23 A Gurgaon which was bigger size of plot of 12 acres whereas the site for Sector 51 has smaller size of plot of 8.30 acre. Respondent No. 5 had also mentioned in the application that in case it was not successful in the allotment of a plot in Sector 23 A then its application be considered for allotment in Sector 51 which was of smaller size. However, after the re-advertisement on 7.7.2005 wherein the last date for submission of application

was extended to 20.7.2005, respondent No. 5 sent another letter dated 18.7.2005 pointing out that the area of hospital site in Sector 23A infact is almost the same i.e. 8.66 acres as that of plot in Sector 51. Therefore, they showed their preference for hospital site in Sector 51 and not in Sector 23 A. Respondent No. 5 had also mentioned that the hospital site in Sector 23 A had an ammunition depot which divides the plot and no construction is permitted in that area of 5.20 acres. The construction area thus left to be used was 3.46 acres. In addition, it was also pointed out that 15 meters on the front side and 10 meters each on the left and right sides of the plot has to be left open which leaves only 2.36 acres of usable area. Respondent No. 5 also highlighted that there was a cremation ground adjacent to the plot and the approach roads to the site are only 18 meters wide as compared to other hospital sites having 30 meters wide road. On that basis respondent No. 5 shifted its priority from hospital site in Sector 23 A to the one in Sector 51, Gurgaon.

3. The allegation of the petitioner is that it was fully eligible in terms of the public notice and respondent No. 5 had only applied for allotment of hospital site in Sector 23A. Hence, the petitioner was the sole applicant for the hospital site in Sector 51 whereas respondent No. 5 was the sole applicant for hospital site in Sector 23A. However, the allegation is not correct as per the reply filed by HUDA and its officers - respondent Nos. 2 to 4, which has already been noticed in the preceding paras. The application of the petitioner viz.a.viz respondent No. 5 was considered by the Screening Committee of seven members comprising of:

1. Chief Administrator, HUDA-Head of the Committee;
2. Director General, Health Services;
3. Chief Town Planner, HUDA;
4. Chief Controller of Finance, HUDA;
5. Administrator, HUDA
6. Estate Officer, HUDA
7. Eminent Doctor associated by Director General, Health Services.

4. The afore-mentioned committee not only considered the applications but also interviewed, interacted with both the petitioner as well as respondent No. 5. After detailed discussion it recommended the allotment of hospital side in Sector 51, Gurgaon to respondent No. 5. Accordingly a letter of intent for allotment of hospital site in Sector 51 was issued in favour of respondent No. 5 on 6.10.2005. The petitioner never questioned the allotment of hospital site of respondent No. 5 from 6.10.2005 to 2.4.2007 when he filed the instant petition. It is also pertinent to notice that as against the earnest money of Rs. 1,60,68,800/- for allotment of hospital site in Sector 51, respondent No. 5 had deposited Rs. 2,32,32,000/- for hospital site in Sector 23 A which was much more than the required amount for allotment of hospital site in Sector 51.

5. Mr. Ashwani Chopra, learned senior counsel has argued that no criterion for allotment was followed and the allotment made to respondent No. 5 is wholly arbitrary. He has also pointed out that the application for hospital site in Sector 51, Gurgaon should "have been made on a proper proforma by respondent No. 5 and the letter Annexure R/2/2 cannot be accepted as its application for allotment of hospital site in Sector 51. Therefore, allotment of hospital in Sector 51 could not have been made in favour of respondent No. 5. Learned Counsel has further submitted that the project plan and project report was liable to be different in respect of a plot of the size of 12 acres and 8.30 acres which were situated in Sector 23A and Sector 51, Gurgaon, respectively. 6. Mr. Dinesh Nagar, learned Counsel for the respondent Nos. 2 to 4 has submitted that the revised application (Annexure R/2/2) sent by respondent No. 5 has been rightly entertained and there is no illegality in allotment of hospital site to respondent No. 5 in Sector 51, Gurgaon. According to the learned Counsel as a result of re-advertisement respondent No. 5 exercised option for preferring the hospital site in Sector 51 rather than his earlier preference to Sector 23 A, Gurgaon. He has also submitted at the Screening Committee of the high profile officers had interviewed both the applicants i.e. the petitioner as well as respondent No. 5 and had recommended for allotment of site in Sector 51 to respondent No. 5 which has been accepted by the Government.

6. Having heard the learned Counsel for the parties and perusing the paper book with their able assistance we are of the considered view that according to the criterion an individual/society/trust/institution/company was eligible to apply but preference was to be given to (i) reputed/renowned institution/trust/society already running multi specialty hospitals (ii) NRI professionals in the field of Medical Science (iii) A team/group of Doctors/Specialists (iv) Retired Doctor/Retiring Doctors in the near future from an eminent medical institutions/government hospitals (v) Doctors already running hospitals/nursing homes. It is stipulated that preference was to be given to applicants hailing "from Haryana State and (vi) allotment was to be made on the basis of professionals as well as financial capability to run the hospital. The petitioner as well as respondent No. 5 had applied in time alongwith requisite earnest money. Both the applicants are private limited companies. The petitioner is associated with Metro Heart Institute whereas respondent No. 5 has been attached with Apollo Hospital Group. After interview of both the applicants, the high profile committee recommended the case of respondent No. 5 for allotment which has been accepted by the Government. It is well settled that once the petitioner has participated in the selection process for allotment of a plot then it loses the right to question the allotment on the ground of adopting irrational criterion. The principle in the nature of estoppel would be attracted in such a case. In a number of cases where the candidate has participated in the selection process for induction in service, the Supreme Court has held that such a candidate cannot be permitted to question the selection process when he has remained unsuccessful. The principles laid down in those cases would fully apply to the facts of the present

case. We may place reliance in that regard on the judgments of Hon''ble the Supreme Court in the case of Chandra Prakash Tiwari and Others Vs. Shakuntala Shukla and Others, ; Madan Lal and Others Vs. State of Jammu and Kashmir and Others, and Om Parkash Shukla v. Akhilesh Kumar Sharma 1996 supp scc 285.

7. For the reasons mentioned above, this petition fails and the same is dismissed.