
(1999) 03 CAL CK 0037

In the Calcutta High Court

Case No : Civil Appellate Jurisdiction, A.P.O.T. No. 260 of 1998, G.A. No. 1341 of 1998, W.P. No. 4624 of 1988 and W.P. No. 186 of 1997

West Bengal Housing Board and Others

APPELLANT

Vs

Papiya Bain

RESPONDENT

Date of Decision : 10-03-1999

Acts Referred:

Constitution of India, 1950 — Article 14, 19, 21, 226

Citation : AIR 2000 Cal 180 : (1999) 2 CALLT 71

Hon'ble Judges : Satyabrata Sinha, J; Samarendra Nath Bhattacharjee, J

Bench : Division Bench

Judgement

S.B. Sinha, J.—This appeal is directed against a judgment and order dated 10th March 1998 passed by a learned single Judge in Writ Petition No. 186/97 whereby and whereunder the learned trial Judge allowed the writ application in favour of the petitioner/first respondent.

2. The writ petitioner/first respondent herein filed a writ application inter alia for following reliefs:--

"(A) (i) To do and to discharge their statutory duties in accordance with law;

(ii) To direct the respondents to give delivery of possession of the flat being "E" type flat No. 8/9 at E.C-T.P. Phase-IV forthwith on acceptance of the balance of the consideration money which your , petitioner was and is ready and willing to pay;

(iii) To direct the respondents authorities to dispose of the representation in accordance with law by handing over possession of the flat in question within a specified period;

(B) A writ of Certiorari do issue, commanding the respondents to transmit the all the records relating to the present proceedings for the purpose of giving conscionable justice to this case and for the purpose of passing orders of handing

over possession of the flat being No. "E" type 8/9, at E.C.I.P., Phase-IV:

3. Admittedly a scheme was floated for allotment of various types of flats by the appellant/board, general terms and conditions whereof are contained in a brochure known as Allotment and Sale of Housing Accommodation which is contained in annexure "H" to the said application. Clause 1.0 of the said brochure relates to "who can apply," which reads thus:--

1. An adult indian citizen or a foreign citizen of indian origin other than the territory now in Pakistan, Bangladesh, Afghanistan, Bhutan, Nepal and Sri Lanka, whether resident in india or outside, who does not own any house/flat/house building plot in the Calcutta Metropolitan Area (Calcutta Metropolitan area means and includes Calcutta Corporation area and added areas namely, Garden Reach, South Suburban Jadavpur and Salt Lake Notified Area) or in the area where the scheme is being implemented outside Calcutta Metropolitan area. In his/her name or in the name(s) of his/her family members and who has the required annual income as shown in the information guide may apply for allotment of a flat under the scheme. For the purpose of this regulation foreign citizen shall be of indian origin provided;

(a) he/she held an Indian passport at any time.

(b) he/she or his/her father or grandfather was an Indian Citizen by virtue of Constitution of India or Indian Citizenship Act.

1.2 Anyone who had obtained allotment of flat/house/plot from the Board on any occasion earlier will not have the eligibility to apply for the scheme advertised. One person can submit one application singly or Jointly for any particular category under one project Joint application is permitted only by the members of the same family, which includes husband, wife, dependent parents and dependent children.

1.3 if more than one member of the same family applies for purchase of a dwelling unit in any other category or categories or in any category in any other scheme advertised by the Housing Board he/ she must disclose the information in the application form. Failure to do so shall be sufficient ground to reject his/ her application. In the event of an applicant becoming successful in the lottery for allotment in more than one housing scheme, he/she will be given option to decide in which housing scheme the dwelling unit is desired. The option once exercised shall be final and Irrevocable.

1.4. If the members of the same family are successful in lottery to draw more than one dwelling unit, only one dwelling unit shall be allotted at the discretion of the Housing Board. For this purpose, family means and includes husband/wife, dependent parents and children.

1.5. The Board at its discretion can relax any of the conditions of allotment without assigning any reason.

4. Clause 2.2 providing for eligibility criteria in the case of non salaried applicant, who are not Income Tax payers, is as follows:--

2.2. An application shall accompany documentary evidence of gross income of the applicant. Salary certificate from the Employer for the salaried applicants in the organised sector and documentary evidence of gross income together with last income Tax Clearance Certificate for non-salaried applicants who are income Tax payers has to be submitted. In the case of non-salaried applicants who are not income Tax payers, documentary evidence of income from the local authority must be submitted alongwith application. Only the head of local authority or its Chief Executive Officer is competent to issue such certificate for this purpose. The salaried applicants in the organised sector shall have to furnish his/her salary certificate showing gross monthly income for the month preceding the month for submission of application and the same should be issued by the Drawing & Disbursing Officer with signature, date and official seal.

Non-salaried applicants have also to furnish along with the application documentary evidence of gross income immediately preceding the year in which the application is made and income tax clearance certificate or signed and sealed acknowledgement by income Tax Officer in acknowledgement of submission of income tax returns in which gross income must be shown, has to be submitted. Where the non-salaried applicants do not pay income tax, an income certificate from local authority has to be submitted.

Salaried applicant in the unorganised sector has to submit an income certificate from the local authority. Unless these documents are received application will be rejected. (Organised sector includes Government Sector, public Undertakings and large companies or Trading Organisations. Small scale sector comes within the purview of unorganised sector.)

5. Clause 2.3 which provides for determination of the gross annual income inter alia provides that in deciding the total annual income the decision of the board shall be final and binding. Clause 3.2 reads thus :-

If an application is rejected on scrutiny for any deficiency, the applicant will get refund of his/her application money without any interest thereon and without any deduction. Final scrutiny will be done after holding of the lottery and before the issue of letter of allotment. Application will be rejected if any deficiency is detected in the final scrutiny even if the applicant is successful in the lottery.

6. Clause 4 of the said brochure provides how the allotment will be made. Clause 4.2 reads thus:--

"Only one dwelling unit will be allotted to one person or more than one person of the same family applying Jointly. Not more than one dwelling unit shall be allotted to a family."

7. In pursuance of or in furtherance of the aforementioned advertisement the petitioner applied for allotment of LIG Flat. it is stated that she is a practising

advocate of Chandannagore court and, thus, was entitled to apply on the basis of her own income. A lottery was held for the purpose of allotment of flat and the petitioner was informed about the result thereof by the appellant herein by letter dated 18.7.94 as contained in annexure "C" to the said application. Curiously enough although no stipulation was made in the brochure nor the printed proforma provides for disclosure of any income of the petitioner's husband, such information was also required of the petitioner. Admittedly the petitioner had supplied all informations.

8. Despite the aforementioned assurance as there was no allotment of the flat in terms of the said letter dated 18.7.94 and despite the fact that the petitioner had complied with all informations, as neither any flat had been allotted nor the money was refunded she filed the writ application.

9. It is stated that during the pendency of this application a policy decision in the matter has allegedly been taken by the board to the effect that for the purpose of allotment particular type of flat the total income of the family shall be taken into consideration. However, admittedly the said decision had not been communicated to the petitioner or other allottees.

10. The learned trial Judge in the aforementioned situation inter alia held that the policy decision in the matter was also not disclosed in the affidavit-in-opposition. The entire policy decision has not been annexed and merely an unsigned minutes purported to have been held on 11th February, 1997 I.e. well after the communication of the interim order passed by the learned trial Judge was disclosed, but the same was also an unsigned one.

11. In the aforementioned situation the learned trial Judge did not place any reliance thereupon and allowed the writ application by directing the appellant to take Immediate steps to proceed with the matter and to give possession of the flat allotted in favour of the petitioner. Mr. Das, learned counsel appearing on behalf of the petitioner, inter alia submitted that from a perusal of the receipt of the application filed by the writ petitioner it would appear that it is clearly stated therein that even if she was successful in the lottery, allotment should not be made if she fails to file necessary document as may be called for after the lottery and do not fulfil the eligibility criteria as prescribed in the brochure. it has further been submitted that keeping in view the scheme particularly, the fact that the LIG flats are allotted to persons of tow income group the policy decision adopted by the appellant cannot be said to be unreasonable or arbitrary.

12. It has been pointed out that whereas the price of LIG flat is a subsidised one and more instalments are granted for the purpose of making entire payments therefore, more stringent conditions had been imposed in respect of HIG flats.

13. It is a well settled principle of law that the State for the purpose of distribution of largess must act fairly and reasonably. The petitioner had applied for allotment of a flat as far back as in 1994 on the basis of the terms and conditions laid down in the brochure.

14. The eligibility of a person to apply for such allotment as has been noticed hereinbefore does not debar more than one member of a family to apply therefore. In fact, the said brochure provides for an individual application as also a joint application and also an application by different members of the same family. Only an embargo had been placed in clause 1.4 to the effect that if the members of the same family are successful in lottery, so as to be allotted more than one dwelling unit, only one dwelling unit shall be allotted at the discretion of the Housing Board. This goes to show that a husband and wife having different income could file separate applications for allotment of different types of flats and in the event if more than one member of the same family become successful in the lottery one dwelling unit could be allotted in favour of one of the applicants. The aforementioned provision is a clear pointer to the fact that the petitioner was having a legal right to apply for allotment of a LIO flat despite the fact that her husband comes within the purview of eligibility for consideration an allotment of H1G flat but might not have been entitled to allotment of a LIG flat.

15. The submission of Mr. Das to the effect that, in term of clause 1.5 of the brochure the board could exercise its discretion in relaxing, any of the conditions of allotment without assigning any reason does not advance the case of the appellant, rather in the considered opinion of the court it goes against their contention. Power in terms of the aforesaid clause i.e. clause 1.5 is only for the purpose of relaxation of any of the conditions and not to Impose a more stringent condition. The interpretation as sought to be put by the learned counsel, thus, is wholly unacceptable.

16. So far as clause 2.3 of the brochure is concerned, as noticed hereinbefore, the discretion conferred upon the Board for the purpose of computation of total annual income is confined only to computation of gross annual income which includes total income for the financial year Immediately preceding the year in which the application is made and not for any other purpose. The provision contained in the said clause has no application to the facts and circumstances of this case.

17. So far as clause 3.2 is concerned it clearly states that application should be rejected on scrutiny of any deficiency. No such deficiency has been pointed out that the writ petitioner had not fulfilled the criteria for allotment of the fiat.

18. In fact the writ petitioner had been denied the benefit of the said lottery on the basis of a purported policy decision which had been taken after filing of the writ application and in respect whereof no provision has been made in the brochure.

19. It may be true that by reason of allotment, a person belonging to a lower income group obtains more benefit but that does not mean that even if the concerned person fulfils all criterion, he/she will be deprived from the said benefit on the ipse dixit of the authorities of the Board. if the intention of the appellant was to consider the total income of the family for the purpose of

considering as to whether the family falls within the purview of the lower income group or higher income group, the same could have been expressly stated in the brochure. As it was not so stated the appellant, as has rightly been held by the learned trial Judge, exceeded its jurisdiction in imposing the said condition which are ex-facie bad in law.

20. It is now a well settled principles of law in view of the decision of the apex court in Ramana Dayaram Shetty Vs. International Airport Authority of India and Others, that the State is bound to disclose the terms and conditions at the lime of issuing advertisement. it can neither later relax any condition in favour of one nor can impose any more stringent condition in favour of the other. In New India Public School & Ors. v. HUDA & Ors. reported in 1996 (5) Supreme 756 it has been held that when the public authority discharges its public duties the word "otherwise" would be construed to be consistent with the public purpose and clear and unequivocal guidelines or rules are necessary and which are not to be exercised at the whims and caprice of the public authorities or under a cloak or an extraneous consideration. The question as to whether the policy decision is valid or not would depend upon the nature of the scheme and the object of public purpose sought to be achieved. In all cases relevant criterion should be pre determined by specific rules or regulations and published for the public. Therefore, the public authorities are required to make necessary specific regulations or issue valid guidelines to exercise their discretionary powers laying down the statutory for holding public auction.

21. In view of the aforementioned well settled principles of law there cannot be any doubt that the appellant could not have adopted any purported policy decision in contravention of the provision of the brochure on the basis whereof the petitioner had applied for allotment of the flat. Had the fact that in the matter of allotment of the flat her husband's income was to be taken into consideration, instead and in place of the petitioner her husband would have applied for allotment of flat of higher income group.

For the reasons aforementioned we do not find any merit in this appeal which is accordingly dismissed with costs.

Counsel's fee assessed at 100 G.Ms.

All parties are to act on a Xeroxed certified copy of this judgment to be delivered on priority basis on the usual undertaking.

S.N. Bhattacharjee, J.

22. I agree.

23. Appeal dismissed with Cost