

(2011) 03 P&H CK 0514

High Court Of Punjab And Haryana At Chandigarh**Case No:** Civil Writ Petition No. 15560 of 2007

Amar Vivek

APPELLANT

Vs

Union of India and others

RESPONDENT

Date of Decision: March 21, 2011**Citation:** (2011) 164 PLR 33**Hon'ble Judges:** Ranjit Singh, J**Bench:** Single Bench**Final Decision:** Dismissed

Judgement

Ranjit Singh, J.

This order shall dispose of writ petition Nos.15560, 15535, 15563, 15565, 15552, 15652 & 15545 of 2007. The facts are being taken from CWP No. 15560 of 2007 as common question of law is involved in these writ petitions.

2. The petitioners in these petitions have asked for discretionary allotment of dwelling unit in a special categories like social welfare at the national level or are as sports persons etc. An advertisement was issued in the news papers on 30.7.2005 for allotment of Category II house under Special Housing Scheme, by way of discretionary allotment. The grievance of the petitioners primarily is that they were eligible for this preferential allotment of dwelling units as per the regulations framed by the Union Territory, and for which they were considered eligible, but have now been held ineligible by changing the criteria, which would not be fair and just approach.

3. Special Housing Scheme was advertised in the newspapers and the applications for allotment under Regulation of Chandigarh Housing Board (Allotment, Management and sale of tenements) Regulations, 1979, were invited for allotment of houses to specialized categories of War widows, terrorist victims, Gallantry awardees and those working in field of social service, sports, and literature etc. at the national level. Number of applications were received by the last date i.e.

31.8.2005 along with earnest money of Rs. 2.00 lacs. The petitioner in this case claiming himself to be working in the field of social service, had submitted an application for allotment of the dwelling unit. The petitioner claims that he was held eligible, but still was not allotted the dwelling units by changing the criteria, which would be unfair. Grievance in this regard is that all of a sudden, through an executive fiat, a new criteria was proposed, somewhere in December, 2006 and without affording any opportunity of hearing to the petitioner the criteria itself was changed to restrict the allotments only to those persons who were recipient of Bharat Ratana or Padam Shree series of awards. The petitioner would plead that this is contrary to Regulation 26 and also contrary to the terms of the advertisement and brochure. The amount of Rs. 2.00 lacs deposited by the petitioner was, thus, refunded after 2 years by holding him ineligible. The petitioner has filed this writ petition to make a claim for allotment in terms of the then existing Regulation and has impliedly challenged the change introduced in the year 2006, which is termed as unfair and arbitrary.

4. This advertisement was issued on 30.7.2005 and the last date of submitting the applications was 31.8.2005. The applications complete in all respects were required to be submitted along with earnest money of Rs. 2.00 lacs through Bank draft. The applications so submitted were scrutinized. The counsel for the petitioner has made reference to the certificates, issued to the petitioner to show that he had done social service at the national level and it stood recognized as such. Reference, in this regard, is made to Annexures P-1 & P-2. The copy of the public notice issued for allotment of these houses dated 30.7.2005 is annexed with the petition as Annexure P-3. Reference is made to the communication vide which the petitioner, was held ineligible and a copy of this is at Annexure P-4. With the communication, approved criteria is also annexed to which reference is made. A copy of the scheme and eligibility of person is at Annexure P-5. In para 10 of the scheme, requirement of certificate is mentioned and it states that in case of a person, who has distinguished himself/herself in any field, such as sports, social welfare, education & academics or fine arts at the national level, and has furnished a certificate to prove that he/she has distinguished himself/ herself in the field of sports, social welfare, education & academics or fine arts. Annexure P-5 is a note, where applications were considered for allotment in different categories. After consideration, the applicants appear to have been considered eligible for allotment of residential plots/houses. The name of the petitioner was not reflected in those, who were not found eligible in the category of allotment of discretionary quota plot. As per the counsel for the petitioner, a sum of Rs. 2.00 lacs deposited by the petitioner was also not refunded to him. In fact, list of the applicants, who have applied in Special Category Housing Scheme for allotment of built up dwelling units, contains the name of petitioner at serial No. 38, where he is shown as eligible person for allotment.

5. The reference is also made to Minutes of the Screening Committee. The documents have been placed on record showing the manner of consideration of the

applicants, who were so considered eligible. Suddenly, however, the respondents decided to issue order dated 19.6.2007 to the petitioner refunding his amount along with interest. The criteria proved for allotment of a plot is also placed on record along with this communication and the decision now is that the recipients of awards like Bharat Ratana, Padma Vibhushan, Padma Bhushan and Padam Shri are only to be considered for allotment of dwelling units in the field of social service. The petitioner has, accordingly, impugned this communication through the present writ petition to urge that the criteria has been changed and it cannot be retrospectively applied but may prospectively govern such allotment.

6. In the reply filed by the respondents, it is stated that no criteria has been changed and it is only that gaps have been filled and standard has been laid down, where there was no identifiable criteria laid down. In this context, it is submitted that first four categories were allotted 20 dwelling units. The categories were like War widows and widows of defence service personnel, the persons who have suffered 50% or more disability in war, counter insurgency or counter terrorism operations anywhere in India and widows of victims of terrorism or the persons who have performed act of heroism to save human lives. 18 houses were allotted to widows and 2 dwelling units were allotted to persons, who had suffered 50% or more disability. The allotment to the applicants falling in category of persons who have performed acts of heroism to save human lives and Gallantry Award winners and persons who have distinguished themselves in any field such as sports, social welfare, education & academic or fine arts at the national level, was deferred. The Benchmark for considering such applications under above two categories were to be further considered. The criteria for considering the applications in these categories was to be evolved and thereafter, following criteria was proposed and considered for approval:

1. Persons who have performed acts of heroism to save human lives. The applicants who have saved human lives at the risk of their own lives and their act of heroism/bravery has been recognized by way of issuing commendation certificate by the State or Central Govt. may be considered under this category.

2. Gallantry award winners and persons who have distinguished themselves in any field such as sports, social welfare, education and academics or fine arts at the national level.

(i) Gallantry award winners

The applications who have been awarded for displaying gallantry, courage and devotion to duty by the President of India or Govt. of India and these awards have been listed in the President Secretariat Notification dated 26.4.2001.

(iii) Persons who have distinguished themselves in any fields such as Sports, Social Welfare, Education and academics or fine arts at the National Level.

7. Ultimately, recipient of the following awards were held entitled to be considered for allotment of dwelling units:

(a) Bharat Ratna

(b) Padam Vibhushan

(c) Padam Bhushan

(d) Padam Shree

8. In addition, the criteria fixed for considering the applicants for allotment of dwelling units in Sports was approved as under:

The applicants who have had obtained first, second, or third position in any event recognized by Indian Olympic Association at the National or International level or have been bestowed with Arjuna Award, Draunacharya Award, Dhyan Chand Award and Rajiv Gandhi Khail Ratan only be considered.

9. In social welfare category, the persons, who have contributed in the field of social services and their services have been recognized by the President of India or Government of India. Similarly, the persons in the field of education and academics and fine arts were also approved. It is stated that it is a well recognized principle of administrative law that while exercising delegated legislation gaps or lacunae can be filled up. It is also pointed out in the reply that criteria was not changed, but the standards, earlier were too vague and the respondents have now laid down a standard of distinction within the broad parameters which already existed. The submission that any criteria has been changed, thus, is denied.

10. I have heard counsel for the parties.

11. I have not been able to convince myself that there is any change of criteria in this case. The broad criteria for allotment of dwelling units continues to be the same and so to the category to which such allotment can be made. Thus, war widows, widows of defence service personnel, and those police persons, who killed in counter terrorist operations/counter insurgency or the persons who have suffered 50% or more disability in war etc. as well as the sports persons and Gallantry award winners, still remain eligible for allotment of dwelling units. The categories have not been changed in any manner. Even criteria has also not been changed. The criteria, which was earlier rather broad based, has been more specified and this appears quite rationale. By this, the most suitable and eligible person alone would be entitled to allotment. Counsel for the respondents is justified that there is no change, but only objective verifiable criteria has now been provided so that discretion of pick and chose is ruled out. In my view, the mere decision earlier taken to consider the petitioner eligible would not entitle him to seek allotment if some better objective verifiable criteria, which is just & proper, is introduced to rule out the possibility of any arbitrary pick and choose. Rather it seems fair action on the

part of the respondents to provide an objective method of determining persons suitable and eligible for allotment in such like cases. The action of the respondents is fair, reasonable, just and proper and is bona fide as well. There is, thus, no merit in the writ petitions.

The writ petitions are dismissed accordingly.