

HIGH COURT OF MADHYA PRADESH : BENCH AT INDORE

S.B.: HON'BLE MR. S. C. SHARMA, J

WRIT PETITION NO. 11407 / 2010

Ganpatlal s/o Nanuram Parmar

Vs.

The State of MP & Ors.,

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[O R D E R]
07/12/2010

The petitioner before this court, a 100% physically disabled person, has filed this present petition being aggrieved by allotment of a shop by Rogi Kalyan Samiti, Primary Health Centre, Sarangi, Tehsil Petlawad, Distt. Jhabua in favour of respondent No.5. The petitioner himself has filed this present petition and has alleged irregularities in the matter of allotment of the shop. The petitioner was brought to this court room with the help of two persons as he cannot walk at all and as he was not able to argue his case and to place all facts before this court, a request was made to Mr. A S Garg, learned sr. counsel to act as amicus curiae in the matter. Mr. Garg, learned sr. counsel has argued the matter on behalf of the petitioner. In the present case an advertisement was issued inviting applications on 1/7/03 (Annexure R/1) by Rogi Kalyan Samiti, Primary Health Centre,

Sarangi for allotment of 16 shops on lease and the last date fixed as per the advertisement was 2/7/03. Applications were submitted in response to the aforesaid advertisement and a resolution was passed on 13/7/04. Based upon offers of various applicants, 15 shops were allotted and on 31/10/05 the Rogi Kalyan Samiti resolved to allot shop No.14 to a physically disabled person. It was also resolved that shop No.14 will be allotted to a physically handicapped person through a process of auction and an advertisement will be issued by Rogi Kalyan Samiti in that behalf. The contention of the petitioner is that no advertisement at any point of time was issued by Rogi Kalyan Samiti and 3 applications were considered as reflected from Annexure R/5 and the shop was allotted to one Gajendra Singh on 23/3/07. The aforesaid resolution is also on record as Annexure R/4. The contention of the learned sr. counsel is that as no advertisement was issued at any point of time there was no occasion on the part of the petitioner to submit all his certificates relating to his disability and his case was rejected by the committee on 23/3/07 as he has not submitted a medical certificate in respect of his disability. Annexure R/5 dt. 13/6/07 also provides details of 3 persons namely; Shantilal, Gajendra

Singh and Mr. Ganpatlal and in respect of petitioner Ganpatlal it has been categorically stated that Ganpatlal has not furnished percentage of his disability nor has submitted any medical certificate. Learned sr. counsel has vehemently argued before this court that allotment of the shop without there being any advertisement is contrary to resolution dt. 13/7/04 and by no stretch of imagination such an allotment can be said to be valid in law. A reply has been filed in the matter on behalf of respondents No.3 and 4 as well as on behalf of respondent No.5. This Court has carefully gone through the record. The reply filed on behalf of the Rogi Kalyan Samiti reveals that an advertisement was issued on 1/7/03 for allotting 16 shops through a process of auction and later on by resolution dt. 13/4/04 shop No. 14 was reserved for disabled person. It has also been stated by respondent Nos. 3 and 4 that 3 applications of disabled persons were considered in the matter of allotment of shop and the shop was allotted to Gajendra Singh based upon the recommendations of Rogi Kalyan Samiti. It has been stated that respondent No.5 was held to be a most deserving candidate in respect of allotment as he is 90% disabled person and he is a young man without job and therefore allotment was done in his

favour and there appears to be no justification in dislodging a disabled person who is carrying on his livelihood from the shop in question. The respondents have enclosed resolution dt. 13/7/04 by which shop was reserved for physically handicapped persons as well as resolution dt. 13/10/05 and resolution dt. 23/7/07 by which the shop was allotted to one Gajendra Singh. Respondents have prayed for dismissal of the writ petition. A reply has been filed on behalf of Gajendra Singh and learned sr. counsel has argued before this court that respondent No.5 is 80% disabled person and he does not have any other source of livelihood. It has also been stated that he has deposited a sum of Rs.75,000/- on 30/3/07 as a shop was allotted to him by the Rogi Kalyan Samiti and he is regularly carrying out the business from the shop in question. He has vehemently argued before this court that no fruitful purpose is going to be served by dislodging one handicapped person in order to accommodate another handicapped person in the present case. It has also been argued that the petitioner is aged about 65 years and is a retired clerk and therefore as respondent No.5 is a young man surviving on the shop in question there appears to be no justification in setting aside the allotment dt. 23/3/07.

Heard learned counsel for the parties at length and perused the record.

In the present case a notice was issued by Rogi Kalyan Samiti on 1/7/03 in respect of an allotment of 16 shops and the last date fixed as per the advertisement was 2/7/03. Applications were considered by Rogi Kalyan Samiti on 19/7/04. On 13/7/04 it was resolved by the Rogi Kalyan Samiti to reserve shop No.14 for disabled category and the resolution dt. 13/7/04 reads as under :

4. सर्वानुमति यह निर्णय लिया गया दुकान नंबर 14 जो खाली है, वह विकलांग व्यक्तियों के लिए सुरक्षित रखी जाती है। समिति उसे जब भी निलाम करेगी विधिवत् विज्ञाप्ति जारी करेगी एवं जिसकी बोली अधिक होगी निलामी में, उसे दी जावेगी। आज दिनांक 13.07.2004 को अंतिम रूप से 15 दुकानों के अलाटमेंट को सर्वानुमति से अंतिम रूप दिया गया जिसका विवरण निम्नानुसार है:-

दुकान क्रमांक	अलाटमेंट	कीमत
1. बसन्तीबाई बाबूलाल	:-	235000/-
2. बाबूलाल शम्भुलाल	:-	235000/-
3. बलवंतसिंह मोहनसिंह	:-	230000/-
4. संजय पिता गिरधारीलाल	:-	22,5000/-
5. श्री माधुवलाल भागीरथ	:-	23,6000/-
6. किरणबाला कृष्ण दिलीप कुमार	:-	23,6000/-
7. सीताबाई पति जयप्रकाश	:-	151101/-
8. श्री नवीनचन्द्रसिंह पिता गजराजसिंह	:-	80000/-

9.	श्री बद्रीलाल पिता दूल्ला चारेल	:-	75000/-
10.	श्री रमेश नानूराम सोलंकी	:-	75000/-
11.	श्री बाबुलाल जी मांगीलाल	:-	241000/-
12.	अजय कुमार कैलाशचन्द्र पालीवाल	:-	221000/-
13.	प्रकाश पिता गंगाराम	:-	151000/-
14.	विकलांग हेतु सुरक्षित	:-	
15.	मंजूबाला पति महेन्द्रसिंह कोठारी	:-	2,36,000/-

The aforesaid resolution reveals the decision of the Rogi Kalyan Samiti to reserve the shop for physically disabled person and it also further reveals that a fresh advertisement was to be issued for allotment of shop No.14. Thereafter on 31/10/2005 it was resolved to reserve Shop No.14 for the Office of Rogi Kalyan Samiti. However, on 23/3/07 a resolution was passed for allotment of Shop No.14 to respondent No.5 – Gajendra Singh. The resolution dt. 23/7/07 is on record as Annexure R/4. The aforesaid resolution reveals that 3 applications were received in respect of Shop No.14 from 3 persons namely; Shantilal, Gajendra singh and Ganpatlal. The resolution further reveals that on the basis of disability percentage of Gajendra Singh shop No.14 is being allotted to him. The resolution dt. 23/3/07 reads as under :

आज दिनांक 23/3/07 को तहसील कार्यालय पेटलावद में श्रीमान् तहसीलदार महोदय की अध्यक्षता में बैठक आयोजित कर समिति के सदस्यों की उपस्थिति में आवंटित 9 दुकानों की अंतिम शेष राशि पूर्ण जमा होने पर उनके द्वारा अपनी दुकानों का रूपये 100/- के स्थाम्प पर एग्रीमेंट लिखवाकर प्रस्तुत नहीं किया गया है। एग्रीमेंट प्रस्तुत करने हेतु सूचना पत्र जारी करने हेतु लिखा जावे एवं 5 दुकानदारों द्वारा अंतिम शेष राशि जमा करने एवं एग्रीमेंट प्रस्तुत करने हेतु सूचना पत्र जारी करने हेतु प्रस्ताव पास किया गया। श्रीमान् अनुविभागीय अधिकारी, राजस्वद्व पेटलावद द्वारा रो. क. स. सारंगी की दुकान नं. 14 को विकलांग हेतु आवंटित करने हेतु विकलांग गजेन्द्र सिंह पिता श्री सुरेन्द्रसिंह शक्तावत सारंगी द्वारा पुनः लिखित आवेदन प्रस्तुत करने पर लिखा गया है, दिनांक 31/10/05 की बैठक में रो. क. स. सारंगी कार्यालय हेतु लिए गए निर्णय में रो. क. स. की वित्तीय स्थिति सुधारने हेतु संशोधन करते हुए सर्व सहमति से विकलांगता के प्रतिशत के आधार पर श्री गजेन्द्र सिंह शक्तावत का 80 प्रतिशत विकलांग होने पर पूर्व में आरक्षित दुकान नं. 9 एवं 10 आवंटित की गई के अनुसार दुकान नंबर 14 भी इन्हें रूपये 75,000/- में आवंटित की जाती है। श्री गजेन्द्र सिंह पिता श्री सुरेन्द्र सिंह शक्तावत को आवंटित राशि रूपये 75,000/- जमा कराने एवं रूपये 100/- के स्थाम्प पर लिखित एग्रीमेंट प्रस्तुत करने एवं चाबी प्राप्त करने हेतु आदेश जारी किया जावे।

The aforesaid resolution reflects that the shop is allotted to Gajendra Singh as he is 80% disabled. The resolution does not mention about the percentage of disability of Shantilal or Ganpatlal Parmar. Though the respondents have filed Annexure R/5 dt. 13/6/07 which was some information forwarded to the Sub Divisional Officer and an attempt has been made to improve the illegal resolution in which favour was done to respondent No.5. Annexure R/5 is certainly not the resolution

passed by the Rogi Kalyan Samiti. The original resolution signed by 3 members and the President of the Rogi Kalyan Samiti is enclosed as Annexure R/4 and therefore the subsequent document which is an information submitted by the Secretary, Rogi Kalyan Samiti is a afterthought on the part of the Rogi Kalyan Samiti. Otherwise also no answer has been offered by the Rogi Kalyan Samiti in the matter of issuance of advertisement. No advertisement at any point of time was issued by the Rogi Kalyan Samiti for allotment of shop No.14 and therefore there was no occasion for the petitioner to submit his disability certificate. The petitioner who is a totally crippled person has submitted an application stating his 100% disability which was reflected in his Hitgrahi Card also as 100% and merely because the disability certificate was not on record and the same was not demanded at any point of time, his case was not considered for allotment of shop. This court is of the considered opinion that the entire exercise on behalf of respondent Rogi Kalyan Samiti is nothing but an attempt to favour respondent No.5 without following the prescribed procedure ie., without issuing an advertisement. Resultantly resolution dt. 23/3/07 for allotment of shop in favour of

respondent No.5 is hereby quashed. All consequential agreements / lease deed executed in favour of respondent No.5 are hereby quashed. Respondent Rogi Kalyan Samiti is directed to issue a fresh advertisement in respect of shop no. 14 and after considering all applications pursuant to advertisement issued by the Rogi Kalyan Samiti, the respondent Rogi Kalyan Samiti shall allot the shop in question in favour of the person who is found suitable based upon the disability in the matter.

With the aforesaid the writ petition stands allowed. In the present case an objection has been raised in the return in respect of delay and latches and contention of the learned sr. counsel appearing for the respondent No.5 is that the petition deserves to be dismissed on the ground of delay and latches alone. The petitioner in the present case is a 100% physically disabled person and the initial advertisement was issued by the Rogi Kalyan Samiti on 1/7/03. The shop was allotted in favour of respondent No.5 on 23/3/07. The petitioner immediately after allotment of the shop has approached the Collector by submitting a written complaint and the Collector vide letter dt. 26/4/08 has directed the Sub Divisional Officer, Petlawad, Distt. Jhabua to enquire into the matter. A report was submitted by the

Sub Divisional Officer to the Collector on 6/5/08 and thereafter no final order has been brought to the notice of this court passed by the Collector by the learned Government Advocate nor by the learned counsel appearing for the other respondents. In the present case a physically disabled person having 100% disability was made to run from pillar to post right from 23/3/07 and with great difficulty he has filed this present petition which is also not in prescribed format and therefore keeping in view the totality of the circumstances of the case, a disabled person who has already been thrown out by the Rogi Kalyan Samiti in order to accommodate respondent No.5 cannot be thrown out by this court on the ground of delay and latches.

Resultantly arguments canvassed by the learned sr. counsel stands repelled and the writ petition stands allowed. The exercise of issuing fresh advertisement and allotting a shop shall be positively concluded by the Rogi Kalyan Samiti within a period of 3 months from today and the Collector, Jhabua shall personally monitor the issuance of advertisement and allotment of shop in the present case. No order as to costs.

(S C SHARMA)
J U D G E