

Mona Thakur Vs. Uoi and anr

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Court : Delhi

Decided On : Jan-24-2012

Appellant : Mona Thakur

Respondent : Uoi and anr

Advocate for Def. : Mr. Sachin Datta, Mr. Abhimanyu Kumar

Advocate for Pet/Ap. : Mr. Siddharth Yadav, Mr. K.B. Thakur, Mr. Wasim Ashrar

Judgement :

*IN THE HIGH COURT OF DELHI AT NEW DELHI Date of decision: 24th January, 2012 + W.P.(C) 8748/2008 % MONA THAKUR Petitioner Through: Mr. Siddharth Yadav, Mr. K.B. Thakur and Mr. Wasim Ashrar, Adv. Versus UOI and ANR Respondents Through: Mr. Sachin Datta, CGSC with Mr. Abhimanyu Kumar, Adv. CORAM :- HON'BLE THE ACTING CHIEF JUSTICE HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW JUDGMENT RAJIV SAHAI ENDLAW, J..

1. The petition impugns Rule 58(b)(ii) of the Army Welfare Housing Organization Rules, 1987 as violative of Article 14 and 21 of the Constitution of India and consequently seeks quashing of the list of allottees of the dwelling units constructed by the respondent no.2 Army Welfare Housing Organization (AWHO) at Sector 22 and 23, Dwarka and seeks a mandamus to the respondent no.2 AWHO to allot a dwelling unit in the construction aforesaid to the petitioner, under the category of War Widows. Rule was issued and the respondent no.2 AWHO

has filed its counter affidavit to which rejoinder has been filed by the petitioner. The W.P.(C)8748/2008 *Page 1 of 8* counsels have been heard..

2. The respondent no.2 AWHO is a Society registered under the Societies Registration Act, 1860 with the objective inter alia to promote and provide dwelling units to serving and retired Army Personnel and their widows at "No Profit No Loss" basis. Its Board of Management in exercise of the powers vested in it under para 12 of its Regulations framed the Rules aforesaid to regulate the housing schemes, eligibility for allocation of dwelling units, management and maintenance of projects/colonies resolution of disputes etc. Rule 12(b) inter alia makes widows of all ranks who are in receipt of family pension eligible for allocation of dwelling units constructed by the respondent no.2 AWHO. However Rule 58(b)(ii) (supra), vires whereof are challenged in this petition, provides for reservation of up to 3% dwelling units in each type in a particular project or scheme of respondent no.2 AWHO for those widows who apply within two years of the demise of their husband. It is not as if a widow of an Army Personnel after two years of the demise of her husband is not eligible to apply; however in that case she would not be entitled to allocation out of the 3% reservation (supra) and would be entitled to allocation in the unreserved category..

3. The petitioner herein claims that her husband Maj. Puran Chander was killed on 23rd November, 1965 during the war. The scheme for construction of dwelling units at Sectors 22 and 23, Dwarka was advertised W.P.(C)8748/2008 *Page 2 of 8* on 11th May, 2007. The petitioner applied thereunder but her name did not figure in the list of successful allottees published by the respondent no.2 AWHO. It is the case of the petitioner that had her name been considered for allocation in the reserved category prescribed under Rule 58 (b)(ii) supra, she would have been eligible for allotment of a dwelling unit. She contends that being a widow and that too a war widow, the denial of reservation under Rule 58(b)(ii) supra to her and providing benefit thereof to only those widowed within two years prior to the application, is arbitrary, irrational and discriminatory. It is further contended that neither the DDA, in the matter of allotment of dwelling units, nor the government, in the matter of allotment of LPG distributorships, petrol/diesel pumps to the war widows, discriminates on the basis of date of widowhood and there is no reason

for respondent no.2 AWHO to so discriminate. It is contended that providing reservation to only those applying within two years of widowhood is unconstitutional and has no nexus with the object for which the rules are framed and all war widows are at par irrespective of the date of their widowhood..

4. The petitioner has in the petition itself disclosed that she had in the year 2000 also applied for allotment of a dwelling unit in the scheme / project of respondent No.2 AWHO then underway at Sector 43, Gurgaon and was indeed allotted a dwelling unit therein and had also accepted the said allotment but owing to financial constraints forced to withdraw from the same and hence cancelled the allotment. W.P.(C)8748/2008 Page 3 of 8.

5. The advertisement inviting applications with respect to the Dwarka scheme (supra) provides for allotment thereunder by a random computerized draw, in which the petitioner was not successful. The petitioner has not made any grievance with respect to the said draw; she claims allotment under the reservation provided in Rule 58(b)(ii) supra..

6. The respondent no.2 AWHO in its counter affidavit has inter alia averred that the petitioner was aware of the Rules aforesaid at least since the year 2000 when she had applied in Sector 43, Gurgaon scheme and was even then not considered under the reserved category (under Rule 58(b)(ii) supra) and was allotted a dwelling unit under the unreserved/general category and the challenge now is belated and speculative. It is contended that since the Dwarka scheme is a prestigious one, the petitioner to enrich herself has challenged the Rule..

7. The question to be adjudicated is, whether those widowed within two years prior to the application can be said to constitute a class unto themselves and whether such classification is reasonable and has a rational nexus to the object for which respondent no.2 AWHO is set up. As aforesaid, it is not as if the other widows are not eligible to apply. The question is only of priority in allotment..

8. The concept of compassionate appointment/allotment though a matter of policy, is by now well entrenched in our jurisprudence. The W.P.(C)8748/2008 *Page 4 of 8* purport thereof is to provide relief to the family / dependents in immediate need

of assistance, in the face of crisis / tragedy; to enable the family / dependents to tide over the sudden distress. The same has been carved out as an exception to the constitutional scheme of equality as adumbrated under Article 14 and 16 of Constitution of India (see *Yogender Pal Singh Vs. UOI* (1987) 1 SCC 631, *Umesh Kumar Nagpal Vs. State of Haryana* (1994) 4 SCC 138 and *Food Corporation of India Vs. Ramkesh Yadav* AIR 2007 SC 1421). AWHO has been set up as a welfare measure for army / ex-army men, to provide cheap housing to them. Rule 58(b)(ii) supra though not very happily worded appears to be a facet of compassion i.e. of creating a class for such compassionate allotment. It is obvious that while the projects / schemes of AWHO and the dwelling units therein are limited, the demand therefor is much in excess. Hence, the allotment by draw of lots. The purport of said Rule is to give priority in the matter of allotment of dwelling units in projects / schemes of respondent No.2 AWHO to widows of army men applying therefor within two years of losing their husband. In our opinion such women do form a class unto themselves and such classification is found to have reasonable and rational nexus to the objective with which AWHO is established. Rule 58(b)(ii) is intended to provide priority in allotment of a dwelling unit to those women who have lost their support in the recent past and who may then still be grappling with the tragedy by which they have been struck and who on demise of husband may be in urgent need of such dwelling unit. On the contrary, *W.P.(C)8748/2008 Page 5 of 8* once the widow/family has come to terms with the bereavement and made provisions for settlement, need for priority has not been felt..

9. We were during the hearing told that the aforesaid rule has since been further amended and a further limitation has been introduced therein i.e. of the widow being under 65 years of age. The reason therefor is not difficult to fathom. A widow about 65 years of age is not considered to be in need of immediate support, perhaps for the reason of having a family around her..

10. Though it may well be argued that the need may exist even after two years of widowhood and with which challenge we are concerned in the this petition but even in the matter of compassionate appointment the consistent view of the Courts has been that such appointment is given only for meeting immediate

hardship faced due to death and should be kept confined only to the purpose it seeks to achieve (I.G. (Karmic) Vs. Prahlad Mani Tripathi (2007) 6 SCC 162). Similarly in M/s Eastern Coalfields Ltd. Vs. Anil Badyakar AIR 2009 SC 2534, it was held that compassionate appointment is not a vested right which can be exercised at any time in future and cannot be claimed and offered after a lapse of time and after the crisis is over..

11. It would thus be seen that exception on the ground of compassion is always linked to the date of the event occasioning compassion. In this W.P.(C)8748/2008 *Page 6 of 8* light Rule 58(b)(ii) supra providing for compassionate allotment within two years of demise of husband cannot be faulted with..

12. As to whether the time for such compassionate allotment should be two years or more or as to whether such compassion should be shown merely on account of widowhood and without any further assessment, we are of the opinion that the same is a matter of policy in which the Courts generally do not interfere. AWHO which has been set up as a welfare measure for army men and / or their widows is expected to have made the said Rule after assessing the needs. In LIC of India Vs. Asha Ramchandra Ambekar (1994) (2) SCC 718, it was held that such compassion can be exercised only in accordance with the Rules and not by Executive action. As per the Rule in the present case, the petitioner is not entitled to compassion in the matter of allotment of a dwelling unit..

13. We therefore do not find the Rule 58(b)(ii) supra to be suffering from the vice of arbitrariness, discrimination, unconstitutionality etc..

14. The counsel for the petitioner has referred to Mohan Mahto v. Central Coal field Ltd. (2007) 8 SCC 549, Shalimar Gas v. Indian Oil Corporation Ltd. (2010) 13 SCC 760 and to Indian Oil Corporation Ltd. v. Meena Kumari (2007) 4 SCC 322 but we find the same not applicable to the matter in issue. Also merely because DDA or the Ministry of Petroleum of the Govt. of India follow different criteria is no ground for W.P.(C)8748/2008 *Page 7 of 8* holding the criteria evolved in the matter of allotment of dwelling units by the AWHO to be bad. The purport and purpose of different organizations is different and one cannot be forced to follow the criteria of the other..

15. Before parting with the case we may notice that the respondent no.2 AWHO in its counter affidavit has made detailed pleadings as to the non- maintainability of the writ petition against itself. However since no arguments were addressed before us on the said aspect we clarify that we have not gone into the same..

16. The petition is therefore dismissed. No order as to costs. RAJIV SAHAI
ENDLAW, J ACTING CHIEF JUSTICE th JANUARY 24 , 2012 pp
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