

\* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ **LPA 835/2004**

% Date of Decision: 29<sup>th</sup> **February, 2008**

SANDEEP ARVIND ..... Appellant  
Through Mr.Mohan Kumar, Advocate

versus

D.D.A. .... Respondent  
Through Mr.Ajay Verma, Advocate

**CORAM:**

**HON'BLE THE CHIEF JUSTICE**  
**HON'BLE MS. JUSTICE REVA KHETRAPAL**

1. Whether reporters of local papers be allowed to see the judgment ?no
2. To be referred to the Reporter or not ? no
3. Whether the judgment should be reported in the Digest ? no

**DR. MUKUNDKAM SHARMA, CJ:**

1. This appeal is preferred by the appellant on being aggrieved by the judgment and order dated 23<sup>rd</sup> August, 2004 passed by the learned Single Judge dismissing the writ petition filed by the appellant herein.
2. The appellant through his father was able to put pressure on the then Lt. Governor so as to get allotment of an agency of retail sale of liquefied petroleum gas (LPG) in an area of South Delhi not only out of turn but also in derogation of the Rules and Regulations prevalent during that period. This was probably possible because the father of the appellant was a Correspondent with the All India Radio. After the

allotment of said agency, pressure was also put on DDA from the office of the Lt. Governor to allot a shop to the appellant in South Delhi and give immediate possession thereof for the purpose of running the said gas agency.

3. Pursuant to the directions of the Lt. Governor, the DDA by letter dated 17<sup>th</sup> July, 1986 informed the appellant that he has been allotted a shop for gas agency. On 19<sup>th</sup> December, 1986, another letter was written by the DDA to the appellant informing him in the following manner:

“Shri Sandeep Arvind  
E-1158, Netaji Nagar,  
**New Delhi - 23**

Subject: Allotment of shop No.8 in Block  
AB/B-6, Safdarjung Enclave.

In continuation of this office letter of even number, dated 17.7.86, on the subject indicated above, I am directed to write that a sum of Rs.2/- lacs (Rupees two lacs only) may please be deposited “on account” basis along with an undertaking to the effect that you would pay the difference, if any, on demand from DDA immediately within 15 days of receipt of this office letter, so as to enable us to hand over the possession of the shop pending finalisation of its cost to be charged.

Yours faithfully,  
sd/-  
( SOM PARKASH )  
Deputy Director (CE)”

4. The aforesaid communication prima facie indicates that pressure was put on DDA not only for giving out of turn allotment of a shop at South Delhi to the appellant but also for immediate handing over of its possession, even before the price for the said shop could be determined by the competent authority. However, DDA directed the appellant to deposit "on account" an amount of Rs.2,00,000/- in order to take possession of the shop pending finalisation of the cost to be charged from the appellant. Instead of depositing the said amount, the father of the appellant again approached the Lt. Governor. The same can be inferred from the file noting dated 19<sup>th</sup> February, 1987, the contents of which are reproduced below for reference:

"Under the policy approved by the DDA, allotment to war widows is made at reserve rates while allotment to other categories is made at average auction rate. This shop was withdrawn from auction on the request of Sh.Arvind Jaiswal and allotted to his son Shri Sandeep Arvind. His request for charging reserve rate is not covered by the policy approved by the DDA. We may, keeping in view the special circumstances of the case, allow Shri Sandeep Arvind to make payment in easy instalments. If approved we may handover possession to Sh.Sandeep Arvind on payment of 50% of the reserve price and obtain an undertaking from him that he would pay the balance amount based on average auction rate within a period of 4 years together with usual interest. This is the maximum period which is permitted for making payment in instalments in exceptional cases. Although it is a hard case, the rules do not permit allotment at reserve rate, we have to charge auction rate in the present case."

5. Appellant mounted pressure on DDA, which is apparent from the following note dated 6<sup>th</sup> November, 1987 put up on the file:

“Shri Arvind Jaiswal, a Correspondent, All India Radio met the V.C. on 4.11.87 after the Press Conference. He represented that in spite of the orders of the L.G. to allot a showroom for running a gas agency to his son in Safdarjung Enclave the same has not been handed over so far. He informed the V.C. that while he was willing to pay the entire amount due at current auction rate, possession of the shop should be handed over to him on payment of 50% of the reserved price and the balance recovered in easy instalments within a period of 4 years together with the interest. The file had been submitted to Finance to calculate the current auction rate. As per the orders of the L.G. at page 5/N, the possession should be handed over to Shri Sandeep Arvind on payment of 50% of the reserved price which works out to Rs.38,500/-. Shri Arvind should be handed over the property on payment of 50% of the reserved price and demand letter issued. He should, however, be asked to execute an undertaking that the entire amount due against him at current auction rate plus interest thereon will be paid by him in instalments fixed by DDA within a period of 4 years. The file may thereafter be sent to Finance for ascertaining the current auction rate and total demand.

sd/-  
( P.K. Tripathi )  
Commissioner (Lands)  
6.11.87”

6. On perusal of the aforesaid note, it appears that the said note was the result of an endorsement made by the then Lt. Governor of

Delhi on a letter dated 31<sup>st</sup> October, 1987. The said endorsement note reads as under:-

“I had approved sale of shop on reserve price.  
Please process accordingly – immediately.

sd/-  
R. Bhandari”

7. In consonance with the note dated 6<sup>th</sup> November, 1987, a revised demand notice dated 12<sup>th</sup> November, 1987 was issued in the name of the appellant, wherein, Shop No.8, Block AB/B-6, Local Shopping Centre, Safdarjung Enclave, New Delhi was allotted to the appellant on payment of Rs.38,500/- being 50% of the premium of Rs.77,000/-, to be deposited by the appellant within 30 days from the date of issue of the said letter. The said letter was followed by letter dated 23<sup>rd</sup> November, 1987, whereby the appellant was informed that he was being handed over the possession of the shop on payment of 50% of the reserved price and on submitting an undertaking on a non-judicial stamp paper of Rs.2/- indicating that he would pay the balance amount of the shop price on an average auction rate in four equal instalments.

8. In accordance with the aforesaid, on 4<sup>th</sup> December, 1987, the appellant furnished the following undertaking to DDA on a non judicial stamp paper. The said undertaking is reproduced below for reference:

“I have been allotted shop No.8, in AB/B-6,  
Safdarjung Development Area Market, New

Delhi, by the Delhi Development Authority on average auction rate to be fixed by the DDA.

And whereas possession of the said shop is being handed over to me on payment of 50% of the reserved price of the shop and the balance amount of average auction rate to be fixed by the DDA is to be paid by me in four equal annual instalments of the balance amount.

I, Sandeep Arvind son of Shri A.C. Jaiswal, resident of E-1158, Netaji Nagar, New Delhi, hereby undertake to pay the balance cost of the shop to be fixed by the DDA on an average auction rate in four equal annual instalments and when demanded.

Sd/-  
(SANDEEP ARVIND)  
S/o Sh. A.C. Jaiswal  
R/o E-1158, Netaji Nagar,  
New Delhi."

9. On receiving the undertaking and 50% of the reserved price, DDA issued letter dated 11<sup>th</sup> December, 1987 intimating the appellant that he could take possession of the shop on 14<sup>th</sup> December, 1987.

10. Once possession was taken, the appellant started showing his true colours, which is manifest from the letter dated 27<sup>th</sup> December, 1987, written by the appellant to the Lt. Governor. The said letter is as under:

"The Hon'ble Lt. Governor,  
Delhi.

Sir,

As per your kind orders the DDA has handed over the possession of Shop No.8, in

AB/B-6, Safdarjung Enclave Market for my Cooking Gas Distributorship against payment of 50% of the Reserved Price i.e. Rs.77,000/-.

Sir, in this connection I wish to bring it to your kind notice that I have been allotted this LPG Distributorship on compassionate grounds as an unemployed graduate under the Government's Social Commitments Scheme. In accordance with Reserve Bank of India Circular for this Scheme, I have been sanctioned a loan of Rs.2.22 Lacs only for the entire project by a Nationalised Bank. I, therefore, request your kind honour that this shop may be allotted to me on Reserved Price only as a special case under your kind discretion and I may not be asked to pay the Average Auction Rate which will be too much for me. My father is a Government servant - a Correspondent in All India Radio and is a very serious Cardiac patient. As per your orders in this connection, I shall be paying the balance 50% i.e. Rs.38,500/- in four equal annual instalments as the project will start generating income.

Before handing over the possession of this Shop on 15.12.87 (although this was sanctioned by you in February, 1987), the DDA has taken an Undertaking that I should pay the balance of cost to be calculated on Average Auction Rate.

Sir, I once again request you to kindly allow me the allotment on Reserve Price only, as a special case on Compassionate Grounds as I have no other source of Income and my father is suffering from a terminal disease.

Thanking you,

Yours faithfully,

Sd/-

(SANDEEP ARVIND)

S/O ARVIND JAISWAL

A1/257, SAFDARJANG ENCLAVE,  
NEW DELHI - 110 029"

11. In the meantime, DDA by letter dated 5<sup>th</sup> April, 1998 raised a demand on the appellant, demanding a premium of Rs.3,44,400/- calculated on the basis of average auction rate. 50% of the said amount was required to be paid within 10 days from the date of issue of said letter after adjusting the amount already deposited and the balance 50% in eight equal bi-annual instalments.

12. It appears that instead of depositing the amount of instalments, the appellant had meetings with the various higher officers. Two reminders were also issued to the appellant, one on 7<sup>th</sup> June, 1988 and the other on 11<sup>th</sup> January, 1989 asking the appellant to clear the arrears of instalments. It was mentioned in the said two letters and also in the letter dated 25<sup>th</sup> January, 1990 that if the appellant fails to deposit the arrears of the instalments, action to cancel the allotment would be taken besides recovery of the dues. As the appellant did not pay any heed to the said letters and in spite of sufficient opportunity did not deposit the said amount, by letter dated 5<sup>th</sup> April, 1990 the allotment in favour of appellant was cancelled and the appellant was requested to hand over vacant possession of the said shop.

13. Thereafter, appellant again used his clout and through his father approached the Ministry of Urban Development. In March, 1999, under pressure, DDA finally agreed to restore the cancelled allotment,

subject to the appellant depositing an amount of Rs. 10,69,959/- which was calculated after adding interest and restoration charges. Even at this stage, the appellant did not deposit the amount. It appears that the appellant had exhausted his avenues of clout, as now he approached the learned Single Judge by filing the aforesaid writ petition, which came up for consideration and hearing before the learned Single Judge. The matter was heard in depth and the writ petition was consequently dismissed with a detailed reasoned order, which is under challenge in this appeal, on which we have heard learned counsel appearing for the parties, who have drawn our attention to the various records and the documents available.

14. The learned counsel appearing for the appellant submitted that the respondent could not have changed the stance by demanding average auction price instead of fixing the price of the allotment at a compassionate rate as available to war widows etc., having agreed to do so. Counsel appearing for the appellant also submitted that a fraud was played by the respondent by making a misrepresentation in the records and, therefore, due to such misrepresentation, the writ petition should have been allowed.

15. In order to appreciate the aforesaid contentions, we have very minutely perused all the records including the note sheets and other correspondence available in the original records of the respondent.

There cannot be any denial of the fact that the appellant was given a concession and, in fact, Rules and Regulations were bent by the authorities for giving allotment of shop to the appellant for the purpose of running an agency of retail sale of LPG on an out of turn basis, by taking out the same from the process of auction. Although the price on which the said allotment was to be made was not determined and finalised, pressure was put from the office of the Lt. Governor to put the appellant into possession of the shop. It appears that the Delhi Development Authority under the the said pressure put the appellant into possession without actually determining the price, which later on came to be determined with a decision taken for charging average auction rate for the shop. The aforesaid decision of charging average auction rate from the appellant was also approved by the Lt. Governor. The same is evident from the fact that on 28<sup>th</sup> February, 1987 the Lt. Governor by putting his signatures gave approval to the note dated 19<sup>th</sup> February, 1987 whereby the Deputy Director has clearly pointed out that the Rules do not permit allotment at reserve rate and, therefore, DDA has to charge average auction rate in the aforesaid case.

16. Even thereafter also there is a note appearing in the record which is dated 15<sup>th</sup> March, 1989 of the Deputy Director (CE), wherein he has pointed out that the allotment was made on the current auction

price to the appellant, as approved by the LG on 28<sup>th</sup> February, 1987. It was also mentioned therein that Shri Arvind Jaiswal even informed the Vice Chairman, when he met him on 4<sup>th</sup> November, 1987, as would be clear from the note of Commissioner (Lands) dated 6<sup>th</sup> November, 1987 that he is willing to pay the entire dues on current rate and possession of the shop may be handed over to him on payment of 50% of the reserve price and that the balance amount be recovered in easy instalments together with interest. It is also pointed out in the said note that in terms of the aforesaid demand and assurance given, the appellant was allowed to take over possession after he had deposited 50% of the reserve price. It is also indicated therein that after the market price was got fixed, the appellant was intimated under office letter dated 5<sup>th</sup> April, 1988 asking him to deposit the amount in eight equal half yearly instalments. Approval was also given to the said note by the Lt. Governor on 29<sup>th</sup> November, 1989 with a specific direction that the appellant should be informed and told to make his payments. In this connection we may refer to the aforesaid noting as appearing in the file.

“He should be informed and told to make his payments.

Sd/-  
L.G. 29.11.1989”

17. Although the Lt. Governor in his note has given an endorsement, yet such endorsement which is in violation of the Rules and Regulations was not rightly accepted by the Delhi Development Authority and instead the appellant was directed to pay average auction rate. He was allotted the shop out of turn and he took possession of the shop on 14<sup>th</sup> December, 1987 after giving an undertaking to the effect that he would pay the average auction rate, which is clear on a bare perusal of the undertaking, which is available on record. Even otherwise, the directive of the Lt. Governor dated 29<sup>th</sup> November, 1989, directing the appellant to make payment of demanded amount which is at the rate of average auction rate, would supersede any prior direction for charging reserve price. In any case, reference of the Lt. Governor to charge only reserve price was also contrary to the Rules and Regulations and the same could not have acted by the Delhi Development Authority, which rightly refused to accept the same.

18. On going through the records, we are satisfied that the Lt. Governor sought to bend the Rules and Regulations by asking the appellant to pay only the reserve price instead of paying the auction price, which was required to be paid for allotment of the aforesaid shop. Whatever action has been taken by the DDA, appears to have been taken in order to safeguard the interest of the public exchequer.

It is true that in the counter affidavit filed, there was a wrong statement made by the deponent contending that there was no endorsement of the Lt. Governor. The said endorsement and the letter is not contained in the main file but is a part of the part file of original record. It may so happen that the person, who had filed the said affidavit, might have come to the conclusion that there is no such letter and endorsement of the Lt. Governor on the representation of the appellant, as no such document was filed in the main file and it was only a part of the part file of the original file. Be that as it may, subsequently a proper affidavit was filed in the nature of an additional affidavit in which it was disclosed that such endorsement was received. In that view of the matter, we are not persuaded to accept the contention of the counsel appearing for the appellant that any fraud was played.

19. Even the contention of the appellant that the allotment of the shop in question had been made to the appellant on compassionate ground has no merit and it seems that the same is an afterthought and creation of the appellant's mind to serve his purpose, as there is no material to suggest the same. Even otherwise, the allotment on compassionate ground, if any, is given where there is extreme hardship, which in the opinion of the authority deserves sympathetic consideration in view of the special circumstances of a case at a given

time. Also, the discretionary power, if any, vested with the authority has to be exercised to advance and subserve the purpose for which the power exist. (See: Shiv Sagar Tiwari v. Union of India & Others reported (1997) 1 SCC 444). In the present case, as is clear from the above discussion, the clout of the appellant's father was capitalised in order to get the out of turn allotment of the said shop.

20. We are of the considered opinion that the appellant has enjoyed the property without making payment of the dues which was required to be paid. There could not have been allotment of the shop in question at a reserved price, as the appellant was not entitled to get allotment of a shop like that at a reserved price particularly when the same is a part of the auction sale and the price required to be paid for allotment of such shop is auction sale price. The appellant is bound to make payment in the aforesaid manner along with all arrears within eight weeks from today, failing which appropriate action could be taken by the respondent in accordance with law.

21. The appeal is dismissed with costs, which is quantified at Rs.20,000/-.

**CHIEF JUSTICE**

**REVA KHETRAPAL, J**

**29<sup>th</sup> FEBRUARY, 2008**  
**nm**