

entrepreneurs with disabilities.”

2. It is not in dispute that in discharge of the above statutory obligation, the Ministry of Urban Development, Government of India had formulated a scheme notified in terms of notification dated 17th November, 2003 providing for preferential allotment of land at concessional rates to persons with disabilities. The said scheme was, it appears, reviewed and a modified scheme published in terms of notification dated 19th April, 2004. Even this scheme was, it appears, reviewed by the Government pursuant to directions issued by this Court in “Sarita Sinha Vs. DDA”, CWP 8877/2005 and a revised scheme/policy published in terms of a memorandum dated 9th October, 2006. A copy of the said scheme/memorandum has been produced by the respondents as 'Annexure R-1' to the counter affidavit filed by them. A reading of the said revised scheme would show that the same *inter alia* provides for reservation of 1% in allotment of flats and plots and 5% in allotment of shops for persons with disability as defined in Section 2 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995. Para I(i) of the scheme is in this regard relevant which may be extracted:

“(I) **PREFERENTIAL ALLOTMENT:**

(i) 1% reservation in allotment of flats and plots and 5% reservation in allotment of shops will henceforth be provided to the Persons with disability as defined in Section 2 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995. The above reservation will not be applicable in case of auction mode of disposal.”

3. The petitioner's grievance in the present writ petition now is that although he is a handicapped person eligible for an allotment

against the 5% quota reserved in connection with allotment of shops, his claim has not been considered by the DDA. He has also found fault with the scheme dated 17th November, 2003 prevalent earlier providing for preferential allotment of land among those eligible for the same.

4. When this petition came up for hearing before this Court on 6th November, 2007, this Court directed the DDA to state on affidavit as to how many shops/commercial units had been allotted after coming into force the policy of reservation dated 19th April, 2004 and how many out of the said allotments have been made in favour of persons suffering from disabilities. The Court observed that the said information would be necessary for determining whether 5% of the total number of shops available with the DDA have been allotted to person suffering from disabilities. The respondent/DDA has, in compliance with the said direction, filed an additional affidavit *inter alia* pointing out that for the year 2004-05, a total of 204 new shops were added to the inventory out of which 116 were set apart for allotment in general category while the remaining 88 were earmarked for allotment to people belonging to different reserved categories including the physically handicapped persons. Similarly, for the year 2005-06, the DDA claims to have added 65 more shops the inventory out of which 37 were earmarked for general category candidates while the remaining 28 were reserved for other reserved categories including the physically handicapped candidates. For the year 2006-07, the DDA claims to have received 398 additional shops out of which 224 were earmarked for general category candidates while the remaining 174 were set apart for reserved categories including the physically handicapped.

5. Mr. Bansal, learned counsel for the DDA explained that 10 shops

available during the year 2004-05 for physically handicapped candidates and 3 shops available during the year 2005-06 have already been allotted but 20 shops available in the year 2006-07 for the handicapped candidates have yet to be allotted. He further stated that these shops are as per the prevalent practice offered for allotment together with other shops reserved for other categories and that since certain legal impediments remain to be sorted out in a petition pending before this Court in regard to the said reserved categories including the question of price chargeable for the same, the DDA has not yet advertised the 20 shops available in the physically handicapped category. He submits that the DDA shall take appropriate steps for an early advertisement of the available shops for physically handicapped candidates so that the benefit of reservation available under Section 43 of the Act is extended to those entitled to the same without any delay or procrastination.

6. On behalf of the petitioner, it was on the other hand argued by Mr. Aagney that the figures given by the respondents in the additional affidavit especially those relating to the number of shops allotted to the physically handicapped candidates and the number of actual available in that category are not accurate. Our attention was drawn to the averments made in the counter affidavit as also the additional affidavit to point out that there are certain discrepancies in the statement made on behalf of DDA as to the number of shops that were allotted over the years and those that were available against the 5% quota reserved for physically handicapped candidates. It was also contended by the learned counsel that the petitioner is, no doubt, a minor but was eligible for being considered for an allotment in the handicapped quota. It was urged that the respondents could be directed to expedite the process of advertisement and allotment of the

shops among the eligible candidates as the delay in the conclusion of that process denies to the eligible candidates their valuable right under Section 43 of the Act.

7. We have given our careful consideration to the submissions made at the bar and perused the record. The writ petition, as noticed earlier, makes a twin prayer, viz; one relating to the validity of the reservation policy published in November, 2003 and the other seeking a direction to the respondents to allot a shop in favour of the petitioner, Jitesh Singh who has filed this petition through his father. Insofar as the challenge to the reservation policy is concerned, the same has, in our opinion, become academic keeping in view the fact that the policy has undergone two reviews since the year 2003. Upon the first review the Government have published a policy in April, 2004 which was then reviewed for the second time pursuant to the directions issued by this Court in Sarita Sinha's Case referred to earlier. That review has eventually culminated in the issue of a memorandum dated 9th October, 2006. What is significant is that the said revised policy has not been assailed by the petitioner in the present writ petition nor has anyone of the terms and the conditions stipulated in the said policy come under attack. In that view, therefore, there is no need for this Court to examine whether the impugned policy which already stands revised and superseded by subsequent two policies and schemes, suffers from any legal infirmity. The first limb of the petitioner's challenge in the writ petition must, therefore, fail and is accordingly rejected.

8. That brings us to the question whether the petitioner was entitled to be considered for allotment of a shop in the physically handicapped category against the 5% reservation made under the statute. The answer to that question has been made easy by Mr.

Bansal making a candid submission that as and when the shops available for the physically handicapped category are advertised, the petitioner, Jitesh Singh could make an application for consideration and allotment of a shop, in which event the DDA would consider the said claim strictly in accordance with the terms and conditions of the scheme and allotment including the question whether the petitioner was entitled to consideration even when he is a minor. All that we need to add is that in case the petitioner, Jitesh Singh is found to be ineligible on account of his being a minor, he shall be free to agitate the issue in proper proceedings before this Court. We also make it clear that it is unnecessary for us to go into the precise number of shops that are available in the physically handicapped category. Since the DDA has itself conceded that there are as many as 20 such shops available in the said category, it is evident that the application which the petitioner may make can be considered against the said shops provided he is otherwise eligible for the consideration.

9. With the above observations, this writ petition is disposed of leaving the parties to bear their own costs.

T.S. THAKUR,J

ARUNA SURESH, J

JANUARY 30, 2008
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