

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Pronounced on: 23.01.2009

+ W.P. (C) 2593/2008

THE DELHI BROTHERHOOD SOCIETY Petitioner
Through: Mr. Vikram Nandrajog, Advocate.

versus

GOVT OF NCT OF DELHI & ANR Respondents
Through: Ms. Jyoti Singh with Mr. Ankur Chhibber,
Advocate for Resp-1.
Mr. JPN Shahi, Advocate for Resp-2.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to Reporter or not?
3. Whether the judgment should be reported in the Digest?

S.RAVINDRA BHAT, J. (ORAL)

% Issue Rule. Ms. Jyoti Singh and Mr. J.P.N. Shahi, learned counsel for the respondents waive notice of rule. With consent of counsel, the matter was heard finally.

2. The petitioner in these proceedings under Article 226 claims directions to quash the approval dated 14.2.2008 given to the second respondent for managing an Old Age Home at Lampur and further directions that it (the petitioner) should be allowed the management of the said Old Age Home.

3. The brief facts necessary to decide this case are that by a cabinet decision of the Government of NCT of Delhi a policy was framed for partnership with Non-Governmental Organizations (NGOs) having expertise and experience in that field, to manage and administer Night Shelters, and other Institutions for the benefit of destitute children, women, beggars, handicapped, and Old Age Homes. It is claimed that pursuant to this policy, the Delhi Government invited applications from Institutions and NGOs to apply on or before 24.11.2007. This process, involved the two Old Age Homes located at Dwarka & Lampur. It is not in dispute that the petitioner applied for managing the Dwarka Old Age Home. The second respondent along with 14 others applied for the Lampur Old Age Home.

4. The pleadings disclose that all the applications were considered together by a Committee constituted for the purpose, on 29.1.2008. The Committee, on the basis of the materials placed before it, noted that there were 19 applicants for Dwarka; it was of opinion that 6 of them could be short listed as they seemed capable to run the Old Age Home. They were accordingly invited to make presentations. The petitioner was one among such 6 short listed candidates. In respect of Lampur, the Committee noted that 15 applications were received, it proceed to give its recommendations, *inter alia*, in the following terms: -

"Out of the 19 applications on the basis of their experience, financial position and District Officers report, following 6 organisations were short listed who seemed to be capable of running institution. Hence they were invited to give their presentation before the selection committee."

1. Organisation of Understanding & Fraternity.
2. Society for Social Services.
3. Asian Society for Entrepreneurship, Education and Development.
4. Society for Advancement of Village Economy.
5. Delhi Brotherhood Society.
6. Ayudham Society for Old and Infirm.

3. On the basis of the criteria laid down for selection of the NGO, Organisation of Understanding and Fraternity, Asian Society for Entrepreneurship and Development (ASEED) and Delhi Brotherhood Society were proposed, but since Delhi Brotherhood Society showed their interest in running Old Age Home Lampur also, it was decided by the committee that both (ASEED) and Organization of Understanding and Fraternity will be given offer letters with terms and conditions laid down and the willing will be offered to run the Old Age Home Dwarka.

The Committee also considered the case of handing over the management of Old Age Home Lampur. In response to EOI invited on 19th Oct.07, following 15 applications were received.

Lampur List

1. Dr. Ambedkar Mission
2. Prabhat Organisation
3. R.S. Rohini Education & Charitable Society
4. Novlok Welfare Society
5. Shiva Jan Jagran Avom Kalyan Samiti
6. Surbhi Gyan Bharti
7. Jag Jivan Samaj Kalyan Sanstha
8. Dev's Educational Society
9. Women Educational & Welfare Society.
10. Antar Rashtriya Manav Sewa Sansthan
11. Samaj Sewa Yuva Dal
12. Indian Society for Integrated Women and Child Development
13. Art Rural Development Research Society
14. Nav Chetana Vikas Sanghtan
15. Bhartiya parivardhan Sansthan

After perusing all the applications the committee gave the considered opinion that none of the applicants had requisite experience and financial position sound enough to run the Old Age Home Lampur. However Delhi Brotherhood Society who had basically applied for running Old Age Home Dwarka showed inclination to run OAH Lampur, also because of the proximity of

Lampur to their project areas at Seema Puri, Shahid Nagar etc.

Hence the committee felt that Delhi Brotherhood Society may be handed over the management of OAH Lampur (as the building is ready and needed to be put in use) from out of the 15 Applicants stated above.

The meeting ended with note of thanks to the chair."

5. The petitioner contends that contrary to the recommendations, on 14.2.2008 the first respondent did a volte face and awarded the Lampur Old Age Home to the second respondent whose application was expressly rejected by the Committee.

6. The petitioner is further aggrieved that its case which had been positively recommended by the Committee, was reversed by the competent authority and instead the applicant who was rejected i.e. the second respondent was awarded the task of administering and managing the Old Age Home at Lampur. The petitioner contends that the materials on record show that after the recommendation made on 29.1.2008, internal notes were all in its favour. It claims to be a reputed and well established agency, engaged in welfare activities since long. It submits that although it had applied for the Dwarka Old Age Home, during the stage of consideration of its application as only two agencies could be awarded that Old Age Home, the Committee was of the opinion that its (the petitioner's) application should be considered and that its candidature was the most suitable for the Lampur Old Age Home. In the circumstances, without even recording that why the committee's recommendations were being rejected and an agency was deemed unsuitable, granted the benefit of the administration of the Old

Age Home, the respondents could not have proceeded arbitrarily to award the running and management to the second respondent.

7. The first respondent does not dispute that for taking over the management and day-to-day running of the Old Age Home at Lampur by advertisement dated 19.1.2007, it invited expression of interest from NGOs. It does not even dispute that the petitioner had applied for managing the Old Age Home at Dwarka. Its position may be best described in its return, in para 5 of the counter affidavit: -

“That in response to the Expression of Interest invited for Old Age Home, Lampur, 15 Applications were received while for Old Age Home, Dwarka, 19 Applications were received. During the preliminary scrutiny of the application, on the basis of their experience, financial position, fact finding report of the District Officers none of them was found suitable for Old Age Home, Lampur. However, in the case of proposals received in respect of Old Age Home, Dwarka, six Organizations were found suitable. During the assessment of these Organizations and in light of the fact that none of the Organization were found suitable for running the management of Old Age Home, Lampur it was decided to consider the case of these six Organizations for Old Age Home, Lampur also. From amongst these six Organizations, the Petitioner Organization voluntary offered to serve and undertake the running of the Old Age Home, Lampur. The matter was taken up with the higher authorities for taking a decision. After considering the facts and circumstances and materials records placed before the competent authority, a decision was taken by the Respondent No.1 in favour of Respondent No.2”

8. The second respondent, i.e., the successful NGO alleges being involved in the National Service Scheme and engaged in the field of welfare to HIV/AIDS patients. It submits that the petition should not be entertained by this Court since the Writ Petitioner never applied to manage and administer

the Old Age Home at Lampur. It is contended further that the Selection Committee which considered the cases of the applicants, no doubt had the power to recommend yet the competent authority i.e. the Government acting through the Minister was duly empowered to consider the matter and after being satisfied, he could take the most appropriate step including rejecting the recommendations and awarding the management to one of the applicants instead of someone who had not even applied.

9. The above narrative would show that there is no controversy about the fact that the petitioner had applied for managing and administering the Old Age Home at Dwarka. Out of 19 applicants, the petitioners and 5 others were short-listed; a common Selection Committee was set up, to consider the applications for both Dwarka and Lampur. That Committee having regard to the petitioner's track record, felt, after short-listing it from amongst the six that two of them including the petitioner could be awarded the management of a Home. Since in its determination, another agency could be granted the award of the Dwarka Old Age Home and further that the 15 applicants who had sought for the Old Age Home at Lampur, were unsuitable, the most appropriate course was to award the management of the Lampur Old Age Home to the petitioner.

10. The first question which this Court has to consider is whether the decision of the first respondent to award the Lampur Old Age Home to the second respondent is justified in the circumstances of the case. The original file was produced during the hearing. It disclosed that the Committee's

notings favourably recommended the award of management of the Lampur Home to the petitioner. In other words, the concerned Department i.e. the Social Welfare Department was of the opinion that the Committee's recommendations were reasonable and could be accepted. However, when the matter was referred to the Minister, he merely stated that as proposed by the Committee so far, Dwarka Old Age Home could be offered to the Sl. No. 1 (a) Organization of Understanding and Fraternity and that Lampur Old Age Home could be offered to the applicant at Sl. No.9 i.e. the second respondent in this case. Now the entire file and the notings, which has been carefully considered by this Court, discloses that the recommendations of the Committee were not that second respondent should be awarded the Lampur Old Age Home. No doubt as far as Dwarka Home is concerned, the Organization of Understanding and Fraternity was recommended. The Committee's recommendations as far as Lampur goes clearly stated that Sl. No.9 was found unsuitable. It went on to recommend the petitioner since it had experience and had been also short listed in two phase process evolved by it.

11. Although, there can be no two opinions that the highest authority in the Government would have the right to decide finally on any particular issue falling within its domain either in the rules of business or in any particular statute, yet one important aspect of non-arbitrariness and non-discrimination is that every public agency and authority has to make decisions based on some reasoning. One need not confuse such reasoning with a judicial order;

an administrator's choice of what should be rational may differ from what is recommended to him, however, some reasons should appear on the file as to why a particular choice of action is preferred over another. It is not even necessary that the ultimate order in such cases shall invoke that power of exercise of discretion have to be communicated, yet those reasons should be available on file, (**UOI & Ors.** v. **G. Nambudiri** AIR 1991 SC 1216). In this case, the entire file nowhere discloses any reasons why the candidature of second respondent found favour with the competent authority – GNCTD. In fact the recommendations of the Committee were to the contrary; inasmuch as the second respondent's application was not found suitable.

12. In this view of the matter, the award of the management of the Lampur Old Age Home to the second respondent is held to be arbitrary.

13. As far as the award of agency to the petitioner is concerned, this Court is of the opinion that the second respondent is, in its technical sense, correct in contending that application was not made for Lampur, yet the fact remains that the Committee which considered the application was a common one. It did take into account the relevant field experience of all the concerned parties and applied some criteria for Dwarka as well as Lampur. No infirmity can be found in that regard.

14. It is now well settled that in regard to the award of contracts and other largesse, the State or its agencies, have to act in a rational and non-arbitrary manner. As to what should be the appropriate procedure would be largely adopted by the circumstances of the case. Generally speaking, previous

decisions have noted that a procedure involving wide publicity and outlining clear procedures such as the nature of the applications to be elicited, the time frame evolved and essential eligibility conditions have to be spelt out to enable the applicants to approach and seek the benefit. However, at the same time, one cannot be unmindful of the fact that the agency in this case is essentially concerned with a social welfare measure. It is nobody's case that the Committee which went into the matter was not competent. The decisions of the various Courts including the Supreme Court in **Nitai Bag** v. **State of West Bengal** (2000 (8) SCC 262) and **Sachidanand Pandey** v. **State of West Bengal** (1987 (2) SCC 295) have held that the State or its Agencies have sufficient circumstantial flexibility in proceeding to award contracts wherever required having regard to the nature of the objective of the concerned scheme. In the circumstances of this case, the Court is of opinion that the approach and procedure adopted by the Committee in considering all the applications both for Lampur as well as Dwarka was perhaps appropriate. It certainly evolved a common criteria and applied it. In the process it was able to discern a common standard upon which it recommended the petitioner for the Lampur Home. Having regard to these facts, Court is of the opinion even while striking down the award of the contract to the second respondent, the report of the Committee submitted to the first respondent so far as it recommended the petitioner's case for award of the contract in the Lampur Old Age Home should be re-considered and appropriate orders be made within four weeks.

15. In the above circumstances, the following order is made: -

- (a) Letter dated 14.2.2008 (Annexure P/5) whereby the second respondent was awarded the management of the Old Age Home at Lampur is hereby quashed.
- (b) The first respondent is hereby directed to consider and process the candidature of the petitioner as recommended by the Selection Committee on 29.1.2008 and pass appropriate orders within four weeks.
- (c) Any communication in such regard shall be directly made to the petitioner.

The Writ Petition is allowed in the above terms.

Order dasti to the parties.

**S. RAVINDRA BHAT
(JUDGE)**

JANUARY 23, 2009

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