

IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on: May 31, 2010
Decision on: July 12, 2010

WRIT PETITION (CIVIL) 9478/2007 & CM APPL 17858/07

WING COMMANDER M.P. SETHI (RETD.) & ORS Petitioners
Through: Mr. Rakesh Tikku with
Mr. Prakash Gautam, Advocate

versus

UNION OF INDIA & ANR Respondents
Through: Ms. Jyoti Singh, Advocate

WRIT PETITION (CIVIL) 9525/2007 & CM APPL 17931/07

EX. N.K. KRISHAN KUMAR & ORS Petitioners
Through: Col. K. Digambar Singh, Advocate

versus

UNION OF INDIA & ANR Respondents
Through: Ms. Jyoti Singh, Advocate

WRIT PETITION (CIVIL) 9546/2007 & CM APPL 17954/07

CHANDRO DEVI Petitioner
Through: Col. K. Digambar Singh, Advocate

versus

UNION OF INDIA & ANR Respondents
Through: Ms. Jyoti Singh, Advocate

WRIT PETITION (CIVIL) 9568/2007 & CM APPL 17981/07

EX. HONY. CAPT BALBIR SINGH KADIAN Petitioner
Through: Col. K. Digambar Singh, Advocate

versus

UNION OF INDIA & ANR Respondents
Through: Ms. Jyoti Singh, Advocate

WRIT PETITION (CIVIL) 6447/2008 & CM APPL 12315/08

JAGDISH PRASAD Petitioner
Through: Col. K. Digambar Singh, Advocate

versus

UNION OF INDIA & ANR Respondents
Through: Ms. Jyoti Singh, Advocate

WRIT PETITION (CIVIL) 6494/2008 & CM APPL 12381/08

VIJENDER SINGH Petitioner
Through: Col. K. Digambar Singh, Advocate

versus

UNION OF INDIA & ANR Respondents
Through: Ms. Jyoti Singh, Advocate

WRIT PETITION (CIVIL) 6761/2008 & CM APPL 13005/08

EX. HONY. SUB MAJ RAM PAL & ANR Petitioners
Through: Mr. Rakesh Tikku with Mr. Prakash
Gautam, Advocate

versus

UNION OF INDIA & ANR Respondents
Through: Ms. Maneesha Dhir with Ms. Preeti
Dalal and Mr. K.P.S. Kohli, Advocate

WRIT PETITION (CIVIL) 7366/2009 & CM APPL 3210/09

DEVAYANTI Petitioner
Through: Col. K. Digambar Singh, Advocate

versus

UNION OF INDIA & ANR Respondents
Through: Ms. Jyoti Singh, Advocate

And

WRIT PETITION (CIVIL) 14034/2009 & CM APPL 16083/09

EX. SEP VIRENDER SINGH Petitioner
Through: Col. K. Digambar Singh, Advocate

versus

UNION OF INDIA & ANR Respondents
Through: Ms. Jyoti Singh, Advocate

CORAM: JUSTICE S. MURALIDHAR

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| 1. | Whether Reporters of local papers may be allowed to see the judgment? | No |
| 2. | To be referred to the Reporter or not? | Yes |
| 3. | Whether the judgment should be reported in Digest? | Yes |

JUDGEMENT

1. The non-renewal of the licences in respect of the shops located in the shopping complex under the control of the Ministry of Defence, Union of India (Respondent No. 1) in favour of the Petitioners pursuant to a policy decision made effective from 30th April 2007, is the subject matter of the challenge in this batch of writ petitions.

Background facts

2. The Petitioners belong to categories of ex-servicemen (and their family members) who died either in war and/or while being in service and/or having suffered battle casualties and/or discharge from the armed forces and/or those armed personnel who retire after rendering full service. The case of the Petitioners is that among various measures adopted by the Directorate General of Resettlement ('DGR') was the allocation of the shops in the areas manned and managed by the Station Commander in various localities in Delhi such as S.P. Marg, Delhi Cantt., Arjun Vihar, Dhaula Kuan, Shankar Vihar etc.

3. It is stated that with a view to streamline the allotments made of the above shops in the shopping complexes, the Respondents have been issuing guidelines from time to time known as Standing Operating Procedure ('SOP'). In terms of Clause 6 of the SOP issued on 10th August 2001, as

and when any of the shops fall vacant, the Station Commander at Station Headquarters was expected to give wide publicity through the DGR in local newspapers. The allotment of shops was to be done on yearly basis. Clause 11 of the SOP dated 10th August 2001 provided for priorities in the allotment of shops. Various parameters have been laid down for allotment. On meeting such parameters a person was given a licence for a period of 11 months subject to renewal. Clause 17 of the SOP dated 10th August 2001 reads as under:

“17. Renewal of licence deed: Renewal of licence deed will be done on the recommendation of residential associations, which will be obtained three months in advance from the date of expiry of licence deed by DDA & QMG, Station. HQ Delhi Cantt. If the recommendations are in favour of allottee, then the Station Commander may renew the licence deed for the subsequent year. However, the licence deed may be terminated at any time by the Station Commander at his discretion.”

4. According to the Petitioners, till the policy of 13th April 2007 which is challenged in this petition was announced, as a matter of practice, the licences were being renewed from time to time. Many of the Petitioners have been occupying the shops in their possession for over nine years. In fact, the Petitioners including Wing Commander M.P. Sethi and two others in Arjun Vihar have been in occupation of their respective shops for over 21 years. It is stated that in terms of Clause 17 of the SOP only where the Residents' Association did not favour any particular allottee of a shop, was the renewal withheld. In terms of Clause 28 of the SOP a defaulting allottee

has to be referred to the Estate Officer for the purposes of initiation of eviction proceedings under the Public Premises (Eviction and Unauthorized Occupants) Act, 1971 ('PP Act').

5. It is stated that 1982 onwards many of the Petitioners were allotted their respective shops and licence deeds were also executed. The licence deeds were last extended in the year 2000 and were to expire in the latter part of 2007. It is stated that the Petitioners had legitimate expectation that the licence deeds may indeed be renewed. However, on 13th April 2007 the new policy effective from 30th April 2007 was issued.

6. Clause 18 of the new policy reads as under:

“18. Renewal of licence deed: Renewal of licence deed will be done on the recommendation of residential associations, which will be obtained three months in advance from the date of expiry of licence deed by AQMG, Station Head Quarter, Delhi Cantt. If the recommendations are in favour of allottee, then the Station Commander may renew the licence deed for the subsequent year. However, the licence deed may be terminated at any time by the Station Commander at his discretion. No extension beyond five years will be given under any circumstance. The same person can apply after a gap of minimum three years of clear break (not running in any Army Colony of NCR).”

7. In terms of the above Clause 18, the right to get the licences renewed immediately on the expiry of five years has been withdrawn. The allottees are expected to apply again after a minimum break of three years. In terms

of the revised policy, the Respondents issued letters to the Petitioners declining renewal of licences. The copies of letters requiring the Petitioners to vacate the shops under their occupation have been enclosed with the petition.

8. Petitioner Nos. 1, 2 and 4 to 9 [Wing Commander M.P. Sethi (Retd.), Ex. JWO A.S. Chadha, Ex. GNR Narender Dev, Ex. Naik Unni Krishnan-TP, Ex. Sepoy Dharam Chand, Smt. Chandro Devi, Ex. Subedar R.K. Pawar, Smt. Vimla Devi] in W.P. (C) 9478 of 2007; Petitioner Nos. 1, 2, 5, 9, 12, 14, 15 and 17 [Ex. N.K. Krishan Kumar, Lt. (Retd.) Colonel Rameshwar, Mrs. Veena Muldiyar, Smt. Narangi Devi, Ex. Sigmn Ishwar Singh, Hony. Capt. (Retd.) Dhanraj Sharma, Mrs. Shakuntla Devi and Smt. Lilawati] in W.P. (C) 9525 of 2007; Smt. Chandro Devi, wife of late N.K. Hoshiyar Singh, the Petitioner in W.P. (C) 9546 of 2007; Ex. Hony. Capt. Balbir Singh, the Petitioner in W.P. (C) 9568 of 2007 were served vacation notices dated 23rd November 2007 requiring the said Petitioners to vacate the shops in their possession within one month. However, the Court is informed by the Respondents that Chandro Devi, Petitioner No. 7 in W.P. (C) 9478 of 2007 has already vacated the shop in her possession.

9. Shobhawati Devi, the wife of Ex. Hony Captain Satpal Yadav, Petitioner No. 11 in W.P. (C) 9478 of 2007 made a representation to the Respondents requesting them to transfer the licence to the shop allotted to her deceased husband to her. On 3rd October 2007, the Respondents in reply to this representation dated 17th August 2007 stated that there was no policy to

transfer the allotted shop from the original allottee to the spouse in case of the former's death. The licence for the shop allotted to her deceased husband had already expired on 19th August 2007. However, on compassionate grounds she was allowed to continue till 31st December 2007. This stand was reiterated by the Respondents by a communication dated 13th November 2007 in reply to the Petitioner's representation dated 17th November 2007.

10. Shri Magan Lal, Petitioner No. 10 in W.P. (C) 9478 of 2007 whose licence expired on 27th October 2007 and Shri Havman Singh, Petitioner No. 18 in W.P. (C) 9525 of 2007 whose licence expired on 25th November 2007 received vacation notices dated 27th November 2007 requiring them to vacate the shops in their respective possession within one month. Shri M.P. Singh, Petitioner No. 3 in W.P. (C) 9478 of 2007 received a similar notice on 28th November 2007 after his licence expired on 27th November 2007. The licence of Shri Jagdish Prasad, the Petitioner in W.P. (Civil) 6447 of 2008 expired on 14th August 2007. He was served a vacation notice by the Respondents on 21st May 2008 asking him to vacate the shop in his possession by 25th June 2008. Similarly, the licence of Shri Virender Singh, the Petitioner in W.P. (C) 6494 of 2008 expired on 19th January 2008. He was served a vacation notice dated 3rd May 2008 asking him to vacate the shop in his possession by 25th June 2008. However, the Respondents informed the Court that the Petitioner in W.P. (C) 6494 of 2008 has already vacated the shop. The licence of Shri Rampal, Petitioner No. 1 in W.P. (C) 6761 of 2008 expired on 20th April 2008 and of Shri Kameshwar Prasad

Singh, Petitioner No. 2 in W.P. (C) 6761 of 2008 on 28th February 2008. They were served vacation notices on 8th May and 24th April 2008, respectively, requiring them to vacate the shops in their possession by 16th September 2008. Smt. Devyanti Devi, the Petitioner in W.P. (C) 7366 of 2008 was issued a vacation notice on 15th January 2009 when her licence had expired on 6th July 2008. She was required to vacate the shop by 2nd February 2009.

11. The licence of Shri Virender Singh, the Petitioner in W.P. (C) 14034 of 2009 expired on 31st January 2007. However, by a letter dated 21st December 2006 the Respondents had cancelled his licence under para 15 of the licence deed due to subletting of the shop. By a letter dated 30th November 2007 he was asked to vacate the shop within 30 days. Consequently, the Respondents served an eviction notice dated 18th August 2008 on the Petitioner.

12. Lt. Col. (Retd.) B.M. Kapoor, Petitioner No. 4 in W.P. (C) 9525 of 2007 was served a vacation notice on 19th December 2007 while his licence had expired on 7th July 2007. Similarly, Lt. Col. (Retd.) D.K. Debnath, Petitioner No. 1 in W.P. (C) 9525 of 2007 was served a vacation notice dated 14th August 2007 when his licence expired on 24th March 2008. Petitioner Nos. 3, 6, 7, 11, 13 and 16 in W.P. (C) 9525 of 2007 have also been served with similar vacation notices, which are impugned, after expiry of their licences.

The Petitioners' case

13. It is submitted by the Petitioners that the very purpose of DGR allocating shops in favour of the Petitioners was to enable them to have some reasonable means of subsistence. It is stated that continued allotment was a rule and non-renewal an exception. Continued allotment automatically followed if there were no negative reports from the residents' associations. It is stated that primarily the Petitioners are selling grocery items, eatables, vegetables, limited items of electrical goods etc. in their shops. These are made available to the residents of the localities where defence shopping complexes are located, at reasonable rates. The basic idea is to make available things of day-to-day use to the residents of these areas near their door steps. The very purpose of allocating these shops to various allottees was to enable the servicemen and their family members to earn a decent living.

14. It is stated that the new policy made effective from 30th April 2007 gives a complete go-by to this philosophy. It introduced a break in the continuity of their rehabilitation process with the Respondents pressurising the Petitioners to vacate the shops.

15. At the initial date of hearing i.e. on 20th December 2007, this Court passed the following order:

“Issue notice. Ms. Jyoti Singh, Advocate accepts notice on behalf of Respondents. Counter affidavit shall be filed within two weeks. Rejoinder, if any, may be filed within two weeks thereafter.

List on 8th February 2008.

CM APPL 17850/2007 (stay)

I have considered the materials on record. The applicants' grievance is that they were allotted the premises by the Respondents as a measure of rehabilitation, on account of their being ex-serviceman or being war widows. It is contended that sudden change of policy has gravely and irreparably affected them. Learned counsel for the Petitioners relied upon the documents. They suggest that Respondents took a conscious decision that the allotment in case of rehabilitation was understood as not to the subject of later cancellation.

However, learned counsel for the Respondents has disputed the applicability of the documents. According to her, the letter pertained to allotment of premises in Regimental Areas. It is not disputed that the allotment of these spaces were given as a measure of rehabilitation to the Petitioners. The objective of the new Scheme, it is emphasized, is to ensure availability of these premises to as many beneficiaries as possible, having regard to the limited resources available with the force. It is contended that a large number of applications were filed and are pending consideration.

While the discretion of public authority to allot the premises within its possession, control and ownership and the parameters for such treatment can never be denied yet the question here appears to be one of balancing competitive disadvantages, as it were. The debate here is whether having allotted the premises, as a measure of rehabilitation, the Respondents can, after some time reverse that process and insist that such allottees who admittedly were eligible for the benefit should return the premises and wait for three more years to claim allotment for the same and other such spaces. I am of the opinion that while the Respondents' power to frame a policy

cannot be questioned yet the considerations which the authority has to keep in this regard, i.e. the level of prosperity or income attained by the allottees who were given premises earlier, the sufficiency of such income to make them tide over the difficult situation and other objective factors can certainly be gone into under Article 226 of the Constitution.

In view of the above, the Respondents are hereby restrained from taking any steps to dispossess the Petitioner during the pendency of this writ petition.”

Case of the Respondents

16. In the counter affidavit filed in W. P. (C) 9546 of 2007, which is more or less similar to the counter affidavit filed in other petitions, the Respondents have categorically stated that “the dominant purpose of these shopping complex/centres is the welfare of the servicemen and their families residing in the vicinity thereof and NOT resettlement of a war widow, a widow, battle casualty and ex-servicemen which is only ancillary rather than allot shop to outsiders. It may be further re-emphasised that the shops in the shopping complexes/shopping centres are allotted on contractual basis on the normal rental basis and no promise has been held out to the allottees that their licence will be necessarily renewed/extended in perpetuity.”

17. The rationale for changing the policy as set out in the SOP dated 10th August 2001 is attributed to the requests made by a large number of war widows, widows, battle casualties and ex-servicemen approaching the Respondents for allotment of shops in shopping complexes/shopping centres. It is stated that in a period of five months, 47 such applications

were received but none of them could be entertained since the existing allottees were continuing since inception and the number of shops available was limited. The reasons for the change in the policy as introduced in the SOP dated 13th April 2007 are stated to be the following:

- (a) assisting those families registered in the waiting list for allotment of shops.
- (b) illegal sub-letting of shops by the existing allottees whose licences have been kept renewed for a long duration.
- (c) the fact that there is no increase in the number of shopping complexes even while the demand for allotment keeps increasing.
- (d) since the allotment of shops is a welfare measure, it is necessary to rotate the allocation so that a larger number of ex-servicemen are benefitted.

18. The Respondents claim that the changed policy was made known to all licencees including the Petitioners in June 2007. In the additional affidavit filed on 22nd February 2010, the Respondents have drawn a distinction between unit shops (Regimental Shops) and shops in shopping centres/complexes which are located in the “main married complex”. Enclosed with the affidavit is a copy of the ‘Scales of Accommodation 1983 (‘SOA 1983’). Regimental shops are authorized by para 3.41 of the SOA 1983 and provide for trades such as tailor, boot maker (EBR), cycle repair and grocer (unit baniya and wet canteen). These unit shops “are meant purely for troops and their families as a welfare activity and are located in unit lines wherein civilian population has limited or no access.”

19. The additional affidavit proceeds to state that shops in shopping centres/complexes as described in para 3.42.1 of SOA 1983 and are located at military stations “where no civil shopping complex exists within a reasonable distance from the main married complex. The trades can be selected out of categories like aerated water, barber, book and stationary, car and scooter repair, cloth, chemist and druggist, dry cleaner, cycle, gas, furniture, restaurant, milk dairy, bakery, vegetable and fruits and other trades which meet the requirements of the troops and their families.” It is stated that these shops have a clientele of the dependent civilian population also.

20. The Respondents point out that there are two sub-categories of shops in shopping complexes/centres. One category is covered by para 3.42.1 of SOA 1983 which are created on defence lands from government funds. The other category is shops created on defence lands using non public funds. On 14th September 2008, the Ministry of Defence (‘MoD’) Government of India, brought out ‘Guidelines for running shopping centres/complexes and unit shops’. Para 8(b) of the guidelines states that the Defence Shopping Centres/Complexes (Maintenance and Administration) Rules, 2006 (‘DSC Rules 2006’) framed by the MoD and issued on 13th June 2006 would be applicable to both categories of shopping complexes, i.e., those created with government funds and those with non public funds.

21. The DSC Rules, 2006 make it clear that they do not apply to Regimental shops created exclusively for military personnel and their

families. Rule 2(c) defines a shopping complex to mean “a composite area comprising shops established on A-1 or analogous defence land under the management of the Army/Navy/Air Force but would not include Regimental shops created exclusively for military personnel and their families.” Under Rule 3(a) the existing allottees were allowed to continue till the expiry of their licence period and such of those in unauthorized occupation of the shops, i.e., where the period of licence has expired, would be given six months time to vacate in terms of Rule 3(c) failing which the Estate Officer would initiate action to evict them in accordance with law.

22. Under Rule 7 no transfer was permissible except in case of demise of the allottee, in which case it would be transferred to the dependent/legal heir for the residual period of the licence. Under Rule 12, 60% of the shops in each shopping complex were to be reserved in the order of priority as under:

- (i) war widows/widows of defence personnel killed while on duty.
- (ii) disabled soldier
- (iii) ex-servicemen
- (iv) spouses/widows of ex-servicemen.

The remaining 40% were to be allotted to the following:

- (i) Government agencies including public sector undertakings and
- (ii) civilians whose spouse or dependent family member do not own any shops in the complex/military station/cantonment.

Any unallotted shops in the 60% quota were to be considered for being given to the civilian category.

23. Under Rule 13, allotment was to be given under licence for a period of three years. Further allotment was to be made “strictly under the Rules framed herein.” Under Rule 18, on termination of the licence, if the shops were not vacated, action was to be initiated under the PP Act. Under Rule 25(a) any matter not covered by the DSC 2006 would be decided by the MoD in consultation with the Director General of the Defence Estates and the Headquarters of the Army/Navy/Air Force.

24. A further additional affidavit was filed on 27th April 2010 clarifying that the shops in Army Hospital, Raj Rifle Centre, Base Hospital, Pallavi Shopping Complex, Taurus CSD Canteen, Army Headquarters and Parade Ground are Regimental shops to be administered by their respective commandants. These were different from Station shopping complexes where the shops allotted to the Petitioners were located. Statistics of the applications received for allotment of shops and the actual allotments made from 2005 till date have been set out to show that only 10% of the applicants have been allotted due to unavailability of shops. The last affidavit was filed in response to new facts stated in the Rejoinder by the Petitioners on 30th March 2009 listing out some of the shops occupied by civilians.

25. The Petitioners also filed an additional rejoinder affidavit on 12th May

2010 giving details of shops run by civilians in Delhi Cantonment. Photographs of some of these shops were also enclosed. The basic contention of the Petitioners is that if there is a shortage of shops for allotment for those in the waiting list, then these civilians should be asked to vacate.

Submissions of counsel

26. This Court has heard the submissions of Mr. Rakesh Tikku, Col. K. Digambar Singh and Mr. Sanjay Rathi, learned counsel for the Petitioners and Ms. Jyoti Singh, learned counsel for the Respondents.

27. The central plank of the submissions on behalf of the Petitioners is based on the doctrine of legitimate expectation. It is submitted that the aforementioned notices sent by the Respondents requiring the Petitioners to vacate the shops in question are arbitrary and unreasonable. The refusal by the Respondents to renew the Petitioners' licences is stated to be arbitrary and violative of Article 14 of the Constitution when tested on the touchstone of the doctrine of legitimate expectations.

28. There is both a procedural and substantive component to the right asserted. The procedure followed here is that each of the Petitioners has been given thirty days' advance notice to vacate and hand over vacant possession of the premises. This is exactly what the terms of the licence stipulate. However, it is contended that the Petitioners were not aware when such licence was issued that there would be no renewal after five years and

therefore such requirement can only apply to those whose licences were issued for the first time after the new policy dated 13th April 2007 came into force i.e. 30th April 2007. In other words a conditionality, of non-renewal after five years, cannot be applied retrospectively to the Petitioners. The procedure followed by the Respondents is attacked for its unfairness. It is submitted by the Petitioners that had they known in advance that such a five-year rule would be applied then they could have made alternative arrangements which according to them requires some time.

29. The doctrine of legitimate expectation is invoked as regards the substantive content of the policy. It is contended that, notwithstanding these were licences for a year at a time, as a matter of practice the licences were being renewed year after year by following the pre-amended policy as expressed in Clause 17 of the SOP dated 10th August 2001. In other words, there was a legitimate expectation even this time around that their licences would be renewed. The frustration of this legitimate expectation is said to attract Article 14.

30. Independent of the ground based on legitimate expectation, it is submitted that the policy to restrict the initial licence period to five years, after the licence has already been renewed in terms of the existing policy i.e. the SOP dated 10th August 2001, is arbitrary since it runs contrary to the very object of providing rehabilitation to the ex-servicemen and their relatives who, having set up shops, cannot be expected to suddenly wind up their business and move on. Given the restrictions as to the price at which

they can sell their commodities, and the advanced age at which some are, they cannot be expected to find alternative means of livelihood. They cannot be reasonably expected to have made substantial profits in the short period that would help them to sustain themselves after losing their shops. Also, alternative commercial space in the same area, or any other area, would be unaffordable. They would be back to being reduced to penury which will defeat the object of their being extended a welfare measure for sustenance. A commercial shop has to be run on borrowings and it takes some time to even break even. It cannot be abruptly stopped at the end of five years just about when it is possible to make some profits. Being made to wait for three years thereafter before re-applying, only compounds the uncertainty and is based on a non-understanding of how the retail trade in goods works. It is submitted that the period of five years, which has been arbitrarily fixed, does not subserve the purpose and object of the welfare measure and therefore is also irrational. Forcing the Petitioners to make way for other ex-servicemen who may be waiting in the queue, and then granting them shops for a maximum period of five years, does not help either group of ex-servicemen. It is submitted that there is no supervening public interest that justifies such a drastic change in the policy. The answer to the demand for allotment of such shops was perhaps to construct more shops or decrease the existing quota of 40% for civilians instead of curtailing the licence period of the shops given to the ex-servicemen.

31. The other limb of this argument is that there cannot be a discrimination between 'regimental' shops and shops in a commercial shopping complex as both are after all as a measure of welfare and are on defence land.

32. Appearing for the Respondents Ms. Jyoti Singh, learned counsel first submits that the cause of action in the present petition admittedly arises out of and seeks the continuation of a contractual agreement and therefore a writ petition under Article 226 of the Constitution seeking such relief is not maintainable. Secondly, it is submitted that the Petitioners have an efficacious remedy under the PP Act. Thirdly, it is submitted that the Petitioners have not come with clean hands and are trying to mislead the Court that they have been allotted “regimental shops” as against shops in a shopping complex. It is pointed out that policy for allotment makes a clear distinction between ‘regimental shops’ and shops in a ‘shopping complex’. While the former may be said to be allotted by way of rehabilitation, the shops in a shopping complex are for the families residing in the vicinity where there are no shops at a reasonable distance.

33. Ms. Singh emphasized that the shops in question were given under licence deeds for terms of 11 months renewable at the discretion of the Station Commander. It is submitted that there is a growing demand from the very same categories of ex-servicemen and their family members, who have become eligible later for the allotment of shops on licence basis. It is claimed that there is a waiting list of such prospective allottees. Given that the number of shops are limited, and in order to ensure equal treatment, the policy of 30th April 2007 has been devised. It is pointed out that there are other ex-servicemen equally deserving in the queue and cannot possibly be accommodated unless the current occupiers are asked to vacate. It is denied that the non-refusal to renew the licences is either arbitrary or mala fide as

alleged. It is further denied that any specific unequivocal promise was made or assurance given to any of the allottees that the shops would be allotted for life or in perpetuity.

34. Statistics giving details of allotment of shops in the shopping complexes have been produced by the Respondents which show that against 87 applications received in the year 2005 only 4 shops were allotted; against 37 applications received in the year 2009, 3 shops were allotted, and 26 applications have already been received for 2010, while there has been no allotment since there is no vacancy.

35. With this background of facts, this Court is called upon to examine whether the policy decision announced by the Respondents effective 30th April 2007 is arbitrary or unreasonable and whether the non-renewal of the licences in favour of the Petitioners is arbitrary or unreasonable.

Preliminary objections as to maintainability

36. The scope of the jurisdiction of this Court under Article 226 of the Constitution to review a policy decision is limited. The Court normally does not interfere in the matters of policy except where it directly impacts on fundamental rights. The right being asserted here is essentially the right to be treated fairly and reasonably. To that extent the judicial review of the impugned actions of the Respondents is indeed permissible. Also, the scope of the proceedings under the PP Act is limited to showing why the continued occupation of the shops is not unauthorized and why the occupier should not be asked to pay penal rates during such period of unauthorized

occupation. A challenge cannot be raised in proceedings under the PP Act to the validity of any policy change or to the impugned orders on the ground that they are arbitrary and violate Article 14. In other words the remedy under the PP Act is neither an efficacious nor an alternative remedy to the present petitions. The preliminary objections of the Respondents as to maintainability of these petitions are accordingly overruled.

Legitimate expectation

37. Turning to the merits, the first issue to be considered is whether the impugned actions are rendered arbitrary in that they frustrate the legitimate expectations, both procedural and substantive, of the Petitioners thus rendering them arbitrary and unreasonable under Article 14? Our Supreme Court has developed the doctrine of legitimate expectation largely on the basis of the decisions of the courts in England. In ***Council of Civil Service Unions v. Minister for Civil Service 1984 All ER 935***, it was contended by the Unions that an employee had a legitimate expectation that the Minister would follow the existing practice of consulting the Unions before their membership could be withdrawn. It was explained that the procedural part of the expectation was that the appropriate procedure, including an opportunity of being heard would be followed, before the benefit or the advantage was withdrawn. The substantive part was that a representation was made that the benefit of a substantive nature would either be granted or continued and not substantially varied. It could be a representation to the individual or generally to a class of persons. The Australian High Court in ***Attorney General for New South Wales v. Quin 1990 (64) Aust LJ 327*** apprehended that “to strike down the exercise of administrative power

solely on the ground of avoiding the disappointment of legitimate expectations of an individual would be to set the courts adrift on a featureless sea of pragmatism. Moreover the notion of a legitimate expectation (falling short of a legal right) is too nebulous to form a basis for invalidating the exercise of a power when its exercise otherwise accords with law.” The House of Lords in *Re Findlay 1984 (3) All ER 801 HL* rejected the argument that there was any substantive legitimate expectation that the policy relating to parole for certain category of prisoners could not be changed and required prior consultation. It was held that “the most that a convicted prisoner can legitimately expect is that his case be examined individually in the light of whatever policy the Secretary of State sees fit to adopt provided always that the adopted policy is a lawful exercise of the discretion conferred upon him by the statute. Any other view would entail the conclusion that the unfettered discretion conferred by statute upon the minister can in some cases be restricted so as to hamper, or even to prevent changes of policy.”

38. The above was the stage of development of the law when in *Navjyoti Co-operative Group Housing Society v. Union of India (1992) 4 SCC 477* the Supreme Court adopted the principle to grant relief to the Petitioners in that case. The facts were that the existing list of co-operative societies for allotment of land was altered under a changed policy by reckoning the seniority with reference to the date of approval of the final list by the Registrar. The Supreme Court accepted the argument that affected societies had a legitimate expectation that the past consistent practice would be

followed particularly since the Respondents failed to show any overriding public interest.

39. In *Food Corporation of India v. Kamadhenu Cattle Feed Industries (1993) 1 SCC 71* the action of the appellant in refusing to accept the Respondent's highest tender for purchase of stocks of damaged food grains was challenged. It was submitted that there could not be any subsequent negotiation to improve upon the highest bid and that the person offering the highest tender had a legitimate expectation that the bid would be accepted. Negating the plea of the Respondent it was held that,

“8. The mere reasonable or legitimate expectation of a citizen, in such a situation, may not by itself be a distinct enforceable right, but failure to consider and give due weight to it may render the decision arbitrary, and this is how the requirement of due consideration of a legitimate expectation forms part of the principle of non-arbitrariness, a necessary concomitant of the rule of law. Every legitimate expectation is a relevant factor requiring due consideration in a fair decision making process. Whether the expectation of the claimant is reasonable or legitimate in the context is a question of fact in each case. Whenever the question arises, it is to be determined not according to the claimant's perception but in larger public interest wherein other more important considerations may outweigh what would otherwise have been the legitimate expectation of the claimant. A bona fide decision of the public authority reached in this manner would satisfy the requirement of non-arbitrariness and withstand judicial scrutiny. The doctrine of legitimate expectation gets assimilated in the rule of law and operates in our legal system in this manner and to this extent.”

40. The doctrine was further developed in *Union of India v. Hindustan Development Corporation* (1993) 3 SCC 499 where it was explained in para 28 that:

“The legitimacy of an expectation can be inferred only if it is founded on the sanction of law or custom or an established procedure followed in regular and natural sequence. Again it is distinguishable from a genuine expectation. Such expectation should be justifiably legitimate and protectable. Every such legitimate expectation does not by itself fructify into a right and therefore it does not amount to a right in the conventional sense.”

It was further explained in para 33:

“The doctrine does not give scope to claim relief straightaway from the administrative authorities as no crystallised right as such is involved. The protection of such legitimate expectation does not require the fulfillment of the expectation where an overriding public interest requires otherwise. In other words where a person's legitimate expectation is not fulfilled by taking a particular decision then decision-maker should justify the denial of such expectation by showing some overrating public interest. Therefore even if substantive protection of such expectation is contemplated that does not grant an absolute right to a particular person. It simply ensures the circumstances in which that expectation may be denied or restricted. A case of legitimate expectation would arise when a body by representation or by past practice aroused expectation which it would be within its powers to fulfill. The protection is limited to that extent and a judicial review can be within those limits.”

41. After emphasising that the burden was on the person who bases his claim on the doctrine of legitimate expectation to satisfy that there has been a representation or a past practice that has given rise to such expectation, it must be shown that the decision of the authority was “arbitrary, unreasonable and not taken in public interest”. It was observed: “If it is a question of policy, even by way of change of old policy, the courts cannot interfere with the decision”. Even if the court was satisfied that a case of legitimate expectation was made out, it can grant relief only where the failure to give an opportunity of hearing prior to such decision has resulted in failure of justice.

42. In *Madras City Wine Merchants' Association v. State of T.N. (1994) 5 SCC 509* the licence holders invoked past practice to claim a legitimate expectation of renewal of bar licences under the Tamil Nadu Prohibition Act, 1937 read with the Tamil Nadu (Vending in Bar) Rules 1992. Before the bar licencees could apply for renewal, a policy decision was taken not to renew their licences. It was held that even under the earlier policy, a licence under the Bar Rules was only for a period of one year and renewal was based on payment of 15% more than the “privilege amount at which the sale of the privilege was confirmed the previous year”. Renewal for the third year was on payment of 10% more than the privilege amount. It was held that “if there is a change in policy or in public interest the position is altered by a rule or legislation, no question of legitimate expectation would arise.” It was observed that the expectation that the licence would be renewed at best was at best “a hope”.

43. The law regarding legitimate expectation was discussed in great detail thereafter in ***Punjab Communications v. Union of India (1999) 4 SCC 727***. The facts were that the Asian Development Bank (‘ADB’) agreed to lend to the Government of India US \$113 million for providing digital wireless telecom facility to 36,000 identified villages in Eastern U.P. The appellant and another company were short-listed after examination of the offers of several Indian and foreign companies. However, a high level committee thereafter disqualified the appellant to enable the calling of fresh tenders on the basis of the analog system. The Union of India took a policy decision not to avail the ADB loan. The previous tenders were accordingly cancelled. The appellant invoked legitimate expectation of a substantive nature to urge that that even if the government was funding the project on its own, the policy could not be changed and the original tender notification could not be abandoned. Negating these arguments, it was held that:

“change in policy can defeat a substantive legitimate expectation if it can be justified on *Wednesbury* reasonableness (***Associated Provincial Pictures Houses Ltd. v. Wednesbury Corp [1948] 1 KB 223 CA***). We have noticed that in *Hindustan Development Corporation case*, also it was laid down that the decision maker has the choice in the balancing of the pros and cons relevant to the change in policy. It is, therefore, clear that the choice of the policy is for the decision-maker and not for the Court, The legitimate substantive expectation merely permits the Court to find out if the change in policy, which is the cause for defeating the legitimate expectation is irrational or perverse or one which no reasonable person could have made”.

44. The above law has been reiterated in a large number of cases in different contexts. The most recent judgment being ***Jasbir Singh Chhabra WP (C) Nos. 9478/07, 9525/07, 9546/07, 9568/07, 6447/08, 6494/08, 6761/08, 7366/09 & 14034/09***

v. State of Punjab 2010 (2) SCALE 754, where the plea of legitimate expectation of being allotted residential plots only on the basis of past practice of the Punjab Small Industries and Export Corporation Ltd. was negated by the Supreme Court.

45. To complete this narration, it must be noticed that the English courts continue to redraw the contours of the doctrine. Laws LJ in *R (on the application of Bhatt Murphy (a firm) v. Independent Assessor [2008] EWCA Civ 755* pointed out the difficulties in drawing the line between substantive legitimate expectation and ordinary judicial review of a new policy. He explained that while the latter might require application of the traditional *Wednesbury* standard of review, substantive legitimate expectation would require a more involved consideration. He observed:

“It seems to me, however, that on the face of it the existence of a promise or practice of present and future substantive policy serves as a somewhat fragile boundary by which to set limits to substantive legitimate expectations. Once set in place, *every* policy of a public authority, not subject to a stated terminal date or terminating event, may no doubt be expected to continue in effect until rational grounds for its cessation arise. **A promise of its continuance, if it points to no particular date or future event to mark the end of the policy, represents little more than this ordinary expectation. And nothing is added by referring to a practice of the policy in operation over time.**”
(emphasis supplied)

Laws LJ proceeded to observe:

“Authority shows that where a substantive expectation is to run the promise or practice which is its genesis is not merely a

reflection of the ordinary fact (as I have put it) that a policy with no terminal date or terminating event will continue in effect until rational grounds for its cessation arise. **Rather it must constitute a specific undertaking, directed at a particular individual or group, by which the relevant policy's continuance is assured.**" (emphasis supplied)

46. The upshot of the above discussion, particularly in the realm of policy making, is that the burden is on the Petitioners who claim legitimate expectation to show that there was a specific representation made that their licences would be renewed for an indefinite period notwithstanding Clause 17 of the earlier policy as this was the standard practice; that there was a legitimate expectation that the change in the policy restricting the maximum period to five years would be only after giving them an opportunity of being heard; that the changed policy has frustrated the substantive legitimate expectation thus rendering the decision not to renew the licences arbitrary and unreasonable.

47. This Court finds that the Petitioners have not been able to, in the first place, show that there is any specific representation either to any of them or to all of them generally that their licences would stand automatically renewed year after year by the Respondents. The mere fact that as a matter of practice the licences were renewed does not constitute the specific representation by the Respondents to each of them that indeed their licences would be renewed. The renewal, it must be recalled, was only for a year at a time and was in accordance with the prevailing policy and Clause 17. In other words, the only 'representation' or 'assurance' to each of them was that at the most the licence would be renewed for one more year at the

discretion of the Respondent. No challenge was laid to Clause 17 of the SOP date 10th August 2001 which left it to the discretion of the Respondents to renew the licence at the end of a year. The reasons for the change in the policy as explained by the Respondents appear to this Court to constitute sufficient justification for such change. The scope of judicial review of such policy change is indeed limited. Unless it is shown to be not informed by any reasonable criterion or not being in public interest, the Court cannot and should not interfere. Given the fact that the number of shopping complexes is unlikely to increase, and the waiting list of applicants is a growing one, the concern of the Respondents that those ex-servicemen waiting in the expectation of allotment of a shop should also be accounted for, cannot be said to be an unreasonable one. Both groups of ex-servicemen, i.e, the present allottees and those awaiting allotment are from the same 'catchment'. The demand for shops far exceeds the supply. There has to be a balancing of these two sets of 'expectations'. If the Respondents take a call and decide to change the policy so that the chances of those in the queue waiting for allotment of shops improves, the Court cannot be expected to judicially review such policy. As explained in *Madras City Wine Merchants'*, no question of legitimate expectation would arise if there is a change in policy or the position is altered by a rule or legislation.

48. The Petitioners have not questioned the DSC Rules 2006 or the Guidelines issued in September 2008. It appears that each of these Petitioners has been a beneficiary of renewal of licence several times over. Each of them has been granted renewal for more than three years which is the maximum period of licence envisaged under Rule 13 of the DSC Rules.

It has been made clear in Clause 8 of the September 2008 Guidelines that the DSC Rules would apply to the shopping complexes covered by 3.42.1 of SOA 1983. Consequently, even procedurally, none of the Petitioner can harbour a legitimate expectation of being consulted before a change in the policy.

49. For the aforementioned reasons, this Court negatives the plea that the impugned changed policy as announced by the SOP dated 13th April 2007 frustrates any legitimate expectation, either substantive or procedural, of the Petitioners and is therefore rendered arbitrary or unreasonable.

Impugned orders neither discriminatory nor arbitrary

50. The SOA 1983, the DSC Rules 2006 and the Guidelines date 4th September 2008 leave no manner of doubt that Regimental shops (unit shops) are distinct and different than shops in shopping complexes and both sets of shops are not governed by the same conditions. The plea of the Petitioners that there is any discrimination on this score does not merit acceptance. The classification of such shops into two distinct categories appears to be based on rational criteria subserving different objects. Regimental shops are essentially for providing daily needs of troops. Shopping complexes serve the civilian population as well. The fact that the DSC Rules 2006 provide a 40% quota for civilians in shopping complexes (Rule 12), which Rule has not been challenged, is a pointer to the fact that the shops in shopping complexes are not meant exclusively for ex-servicemen. The 60% quota for the ex-servicemen is indeed a welfare

measure and therefore, there cannot be any vested right of being allotted such shops. The fact that civilians have been allotted some of the shops is therefore consistent with the above provision in the DSC Rules 2006. The contention of the Petitioners that any shortage in the shops available for allotment to ex-servicemen can be made up by asking the civilians to vacate the shops allotted to them is therefore misconceived.

51. This Court is unable to find the decision of the Respondents to restrict the licence period in respect of shops in shopping complexes to five years with the opportunity of again applying after a break of three years to be either discriminatory or arbitrary. Also, any prejudice that may be caused to the Petitioners in whose cases the licences were renewed prior to the change in the policy has been neutralized by the fact that they have continued in possession for nearly three years thereafter (amounting to more than two renewals) under the interim orders of this Court. As regards those Petitioners seeking transfer of the existing licence in their capacity as widows of ex-servicemen, they would be governed by Rule 7 of the DSC Rules 2006 and in any event, they too have continued to be in the premises far beyond the period of licence under the interim orders of this Court.

52. Before concluding this portion of the judgment, this Court would like to observe that there are at present at least five documents that govern the licence granted to the allottee of a shop in a shopping complex. First we have the SOA 1983, para 3.42.1 of which describes what a shopping complex is. Then there is the licence deed itself which sets out some of the

applicable terms and conditions. Then there are the DSC Rules 2006. There appears to be some inconsistency between the Rules and the conditions of the licence. Then we have the 'Guidelines' of 4th September 2008, Clause 8 of which in fact states that the DSC rules 2006 will apply to shopping complexes covered by para 3.42.1 of the SOA 1983. Lastly, the SOPs which are issued from time to time. In fact it is the SOP dated 13th April 2007 that has given rise to these set of petitions. For the purposes of grant and renewal of licences there is some inconsistency in these five documents which require to be reconciled by the Respondents. Although the Petitioners have themselves not raised any objection on this score, this Court finds that any inconsistency between the DSC rules 2006 and the SOP is not to the advantage of any of the Petitioners here as each of them has already overstayed their respective periods of licence by many years. Nevertheless, it is imperative for the Respondents to reconcile these different documents and bring out a uniform set of Rules.

Extension of time to vacate the shops

53. The further aspect to be considered is of the hardship faced by these Petitioners by relatively sudden change of policy. Considering that many of the Petitioners have been getting their licences renewed for the past several years, the announcement made in June 2007 of a policy made effective 30th April 2007, stating that there would be no renewal beyond five years must have indeed come as an unpleasant surprise. The nature of retail trade is such that most shop keepers have to buy stock on credit and are under constant pressure as to liquidity. Unless sufficient time is given for vacating the shops, it will undoubtedly cause severe prejudice. It is understandable

that finding alternative commercial space to run a shop may neither be easy

nor affordable in the cases of the Petitioners before the Court. However, given the number of years they have enjoyed the benefit, the need to give the others in the queue a similar opportunity would outweigh such hardship. Having said that, with a change in policy having been made after nearly six years, a time period of thirty days to vacate the premises cannot be said to be a reasonable one.

54. Under Rule 3(a) of the DSC Rules 2006, the existing allottees were allowed to continue till the expiry of their licence period and such of those in unauthorized occupation of the shops, i.e., where the period of licence has expired, would be given six months time to vacate in terms of Rule 3(c) failing which the Estate Officer would initiate action to evict them in accordance with law. The minimum time to vacate the shops in question having been set out in Rule 3(a) itself ought to be six months and therefore the impugned notices giving the Petitioners' thirty days' time for the purpose were contrary to the above provision in the DSC Rules 2006. However, as a result of the interim orders the Petitioners have continued well beyond the six months' period.

55. In the peculiar facts and circumstances of the case, as far as the Petitioners before the Court are concerned, this Court is of the view that a further period of six months must be given to each of them to vacate the shops under their occupation. This would not include such of those Petitioners which have vacated the shops during the pendency of the present case.

56. It is accordingly directed that each of these Petitioners, except those who have already vacated the shops allotted to them, shall be given six months' time to vacate the shops in their respective occupation. In other words, they should hand over the shops on or before 15th January 2011. This would be further subject to each of them filing an affidavit before this Court undertaking that: (i) they will hand over vacant and peaceful possession of the shop(s) in their occupation on or before 15th January 2011, (ii) that they will promptly pay the licence fee as and when it falls due, (iii) and further they will not sublet the premises or induct any other person or entity into the shop(s) in their occupation. It is made clear that this undertaking should be filed within ten days from today, i.e., on or before 21st July 2010, failing which it would be open to the Respondents to forthwith initiate proceedings under the PP Act for eviction of the Petitioners. Where such proceedings have already been initiated and such of those Petitioners file the above undertaking within the time granted by the Court, the PP Act proceedings would remain stayed till 15th January 2011 or upon the Petitioners violating any of the terms of the undertaking. It is needless to say that where the Petitioners after giving the undertaking to this Court, violate any of the terms of the undertaking, they will be liable to be proceeded with forthwith both for contempt of court and proceedings under the PP Act.

57. It is made clear that the directions issued by the Court granting time to the Petitioners to vacate the shops under their occupation is limited only to the Petitioners before the Court who have not vacated the premises and is not to be treated as a precedent for any other allottee. The allotments made

of shops in shopping complexes hereafter would strictly be in accordance with the DSC Rules 2006 and the other relevant instruments which have been referred to earlier, as amended from time to time.

58. For all the above mentioned reasons and subject to the directions issued, the writ petitions are dismissed. The interim orders stand vacated and the pending applications stand disposed of.

S. MURALIDHAR, J

JULY 12, 2010

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