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

+ W.P.(C) 652/2009

KALSANG CHOEMPHEL & ORS. Petitioners
Through: Mr. Bimlesh Kumar, Advocate.

versus

GOVT. OF N.C.T. OF DELHI & ORS. Respondents
Through: Mr. Sanjeev Narula, Advocate for
respondent No.1 with Mr Vedpal,
Assistant Divisional Officer, Delhi Fire
Service.

% Reserved on : 18th March, 2014
Date of Decision : 16th April, 2014

CORAM:
HON'BLE MR. JUSTICE MANMOHAN

J U D G M E N T

MANMOHAN, J:

1. Present writ petition has been filed seeking the following prayers:-

"(I) writ in the nature of mandamus or any other appropriate writ(s) order(s) direction(s) for commanding the respondent authorities for providing relaxation in to the installation of two out of twelve Fire Safety Parameters of the Delhi Fire Service, on account of impossibility of performance/installation thereof at the Dharamsalas run by petitioner mentioned above by taking into account the special socio-economic religious and morphological condition and circumstances as has been done in the similarly circumstances area/localities of Delhi viz. Pahar Ganj, and to grant other consequential relief and compensation admissible under law in the facts and circumstances of the present case and in the interest of justice.

(II) To grant other consequential relief and compensation admissible under law in the facts and circumstances of the present case and in the interest of justice."

(III) Any other of further order, which this Hon'ble Court deem fit and proper under the facts and circumstances of the case, in the interest of justice."

2. The facts of the present case are that the petitioners are seeking relaxation of two out of twelve Fire Safety Parameters of Delhi Fire Service, for buildings above fifteen metres. The two Fire Safety parameters relevant in the present case are mentioned hereinbelow:

- (a) Approach road of 6 metres to the premises concerned; and
- (b) Storage tank of 50,000 litres to be installed at the premises concerned.

3. Mr. Bimlesh Kumar, learned counsel for the petitioners submitted that the respondents herein had already given similar relaxations in certain other hotels like Hotel Kabir, Hotel Sunny etc in Paharganj, New Delhi.

4. The petitioners in their written submission have stated that they have already sealed the fourth floor of their Dharamshalas and consequently, the height of their buildings is in conformity with the building heights parameter. In the written submission, it is stated that in view of this latest development the notional or practical heights of the building did not cross the limit of fifteen metres and thus the property of the petitioners may be treated to be beyond the net of the Delhi Fire Prevention and Fire Safety Act, 1986 and Rules 1987.

5. Mr. Sanjeev Narula, learned counsel for the respondents relying on the counter-affidavit stated that the petitioners could not claim parity with the other hotels mentioned in the petition.

6. With regard to Hotel Kabir, he stated that since the upper floor of the building had been sealed by the MCD, the usable portion of the building was less than fifteen metres. Even otherwise only the requirement of 50,000 ltr. water tank was relaxed. The requirement of six metres access road was not exempted.

7. With regard to Sunny Lodge, he stated that its owner had filed an affidavit of a registered architect stating that the height of the building was 14.90 metres and hence the said building would fall under the category of 'low rise building' being below fifteen metres.

8. Further, learned counsel of the respondents also pointed out that Sunny Lodge falls in *PSS* area i.e. Pedestrian Shopping Streets. Under the Master Plan 2021, *PSS* would be treated as non-motorable road and therefore, it would not be open to the respondents to insist that the concerned Lodge must have a six metre wide approach road.

9. Keeping in view the facts of the present case, this Court is of the opinion that examples given by the petitioners are not apt. After all, one cannot compare apples and oranges. The petitioners cannot draw any parity with the two buildings mentioned above as the places where petitioners' buildings are situated are neither in *PSS* category nor in any special area. Consequently, petitioners will have to abide by the safety norms which are in the petitioners' interest as well as interest of all the people living in the area or visiting the area.

10. Further, this Court is satisfied that the conditions/parameters stipulated by the Government are legal, valid and germane to the issue at hand.

11. It is well settled that Courts neither devise a policy nor strike down a policy merely because it has been urged that a different policy would have been fairer or wiser. The Supreme Court in ***Balco Employees' Union (Regd.) vs.***

Union of India and Others, (2002) 2 SCC 333 has held as under:-

“46. It is evident from the above that it is neither within the domain of the courts nor the scope of the judicial review to embark upon an enquiry as to whether a particular public policy is wise or whether better public policy can be evolved. Nor are our courts inclined to strike down a policy at the behest of a petitioner merely because it has been urged that a different policy would have been fairer or wiser or more scientific or more logical.

12. This Court also finds that the contention that the fourth floor of the Dharamsalas had been sealed to bring the height of the building under fifteen metres is not mentioned in the writ petition. It has been taken for the first time in the written submission which is not even supported by an affidavit. Consequently, this Court is of the opinion that this averment cannot be looked into.

13. This Court is further of the view that even otherwise the respondents have provided sufficient reasons to treat the two buildings differently from that of the petitioner. Thus, there is no question of any discrimination on part of the respondents.

14. In addition to the above, in a catena of judgements it has been held that negative equality is not a valid legal ground. In ***Union of India and Others vs. M.K. Sarkar, (2010) 2 SCC 59***, the Supreme Court has held as under:-

"26. A claim on the basis of guarantee of equality, by reference to someone similarly placed, is permissible only when the person similarly placed has been lawfully granted a relief and the person claiming relief is also lawfully entitled for the same. On the other hand, where a benefit was illegally or irregularly extended to someone else, a person who is not extended a similar illegal benefit cannot approach a court for extension of a similar illegal benefit. If such a request is accepted, it would amount to perpetuating the irregularity. When a person is refused a benefit

to which he is not entitled, he cannot approach the court and claim that benefit on the ground that someone else has been illegally extended such benefit. If he wants, he can challenge the benefit illegally granted to others. The fact that someone who may not be entitled to the relief has been given relief illegally, is not a ground to grant relief to a person who is not entitled to the relief."

(emphasis supplied)

15. Accordingly, the present writ petition is dismissed with a direction that petitioner should immediately comply with the safety norms in order to get the required fire clearance. Interim order dated 28th April, 2011 stands vacated.

MANMOHAN, J

APRIL 16, 2014

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