

***THE HONOURABLE SRI JUSTICE P. NAVEEN RAO**

+ WRIT PETITION NO.2400 OF 2015

%30.07.2015

Sri Mahesh Kumar Sharma, s/o. Nandlal Sharma,
Aged 51 years, R/o. 5-1-123, Jambagh, Gowliguda,
Hyderabad

.... Petitioner

Vs.

\$State of Telangana, Welfare of Disabled & Senior
Citizens Department, rep.by its Secretary to
Government, Secretariat, Hyderabad and others.

.... Respondents

!Counsel for the petitioner: Sri K Raji Reddy

Counsel for the respondent Nos. 1 & 6 : G.P. for Welfare, Disabled & Senior
Citizen

Counsel for the Respondent No.5 : G.P. for Revenue (T)

Counsel for Respondent Nos.2 to 4 : Sri P Keshav Rao – Standing counsel
for GHMC

<Gist :

>Head Note:

? Cases referred:

2000 (4) ALD 390= 2000 (4) Alt 305.

AIR 1978 SC 851

2012 (6) SCC 501.

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH**

WRIT PETITION NO.2400 OF 2015

Between :

Sri Mahesh Kumar Sharma, s/o. Nandlal Sharma,
Aged 51 years, R/o. 5-1-123, Jambagh, Gowliguda,
Hyderabad

.... Petitioner

And

State of Telangana, Welfare of Disabled & Senior
Citizens Department, rep.by its Secretary to
Government, Secretariat, Hyderabad and others.

.... Respondents

DATE OF JUDGMENT PRONOUNCED : 30.07.2015

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SUBMITTED FOR APPROVAL:

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THE HON'BLE SRI JUSTICE P.NAVEEN RAO

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1. Whether Reporters of Local Newspapers may : / No

Be allowed to see the Judgments ? :

2. Whether the copies of judgment may be marked : Yes /

To Law Reporters/Journals :

3. Whether Their Lordship wish to see the fair : Yes /

Copy of the Judgment ? :

HON'BLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION No.2400 of 2015

ORDER:

This writ petition is filed alleging inaction of respondents 3 and 4 in not allotting Shop No. 16, GHMC Shopping complex, Abids, Hyderabad under 3% quota for disabled persons in accordance with letter dated 1.2.2014 of the sixth respondent even though petitioner was selected for allotment of said shop.

2. The respondent corporation issued notification dated 23.11.2011 calling for applications for allotment of one shop to physically handicapped person at Abids Municipal complex in addition to shops reserved in favour of Scheduled Caste and Scheduled Tribe candidates in Budda Bhavan Municipal Complex and Putlibowli Municipal Complex. Petitioner applied in response to the said notification. Thirteen disabled persons responded to the said notification. Municipal corporation forwarded the list of thirteen candidates to the Assistant Director, Welfare of

Disabled and Senior Citizens, Hyderabad district-sixth respondent. The District Collector (5th respondent) constituted a selection committee for selection of eligible candidate for such allotment. The committee deliberated on the suitability of applicants and on personal interview, selected the petitioner as suitable for such allotment. After completion of selection process, the sixth respondent forwarded the name of petitioner for allotment of shop as notified. As per the said recommendation, shop no.16 was prescribed as shop which should be allotted to the petitioner. Having waited for considerable time and in spite of several representations including the representation made to the Hon'ble Chief Minister, petitioner instituted this writ petition.

3. This Court by order dated 6.2.2015 directed implementation of the proceedings dated 1.2.2014 by allotting shop no.16 in GHMC Shopping Complex, Abids. Praying to vacate the said interim order, respondent municipal corporation filed W.V.M.P.No.1125 of 2015 and filed counter affidavit and additional counter affidavit in support of its contentions. Petitioner filed reply and additional reply affidavits.

4. Heard learned counsel for petitioner and learned standing counsel for GHMC.

5. Learned counsel for petitioner contended that petitioner is Orthopedically Handicapped person having 60 % disability. He submitted that the committee on scrutiny of eligibility of petitioner has selected him for allotment of shop No. 16 in Abids shopping complex. Thus, it is illegal on the part of respondent corporation not to allot the shop No. 16. It amounts to arbitrary exercise of power and authority.

6. Learned counsel for petitioner submitted that Kiosk in Koti Sub-way was allotted in lieu of Kiosk he was operating in the road margin on Koti main road and not as disabled person and that he is paying normal rent as applicable to all. He denied that petitioner has sublet the shop in Koti Sub-way. The Kiosk is not running well and petitioner is incurring losses. He is willing to give up said Kiosk, if shop no.16 in Abids Shopping complex is allotted to petitioner. He further submitted that

only temporarily he was allowed to undertake photocopying operations in Women's Degree College and it is not permanent and, therefore, merely because petitioner is undertaking photocopying operations, it cannot be a ground for denial of shop validly allotted to him. He further submitted that recommendations of respondents 5 and 6 are binding on municipal corporation.

7. Learned counsel for the petitioner further contended that Section 148 of the Act, has no application to the facts of this case. When the illegality is committed by the respondents in leasing out the corporation property, the Court cannot be a silent spectator and technicalities should not come in the way to set right the illegality. In support of the said contention, he placed reliance on the decision of this Court in **Dasari Sree Rama Murthy V. Vijayawada Municipal Corporation**. He further submitted that in terms of the provision contained in Rule 6 of the Hyderabad Municipal Corporation (Acquisition and Disposal of Immovable Property) Rules, 1970 read with Sections 124 and 148 of the Act, 1955 once selection committee has recommended the name of the petitioner, the Commissioner is bound to give shop allotted to him on lease.

8. He further contended that the order that is impugned in the writ petition has to be seen on the face of it and same cannot be improved upon or the respondents cannot rely upon the averments made in additional counter-affidavit to support of the illegal action. In support of the said contention, he placed reliance on the decision of the Supreme Court in **Mohinder Singh Gill Vs. Chief Election Commissioner**.

9. He further submitted that public policy cannot be a camouflage for abuse of the power and trust entrusted with a public authority or public servant for the performance of public duties; that policy decision should not be opposed to basic rule of law or the statutory law in force. In support of the said contention, he placed reliance on the decision of the apex Court in **Brij Mohan Lal v. Union of India**.

10. Learned standing counsel contended that municipal corporation, in compliance of the policy of the Government notified in G.O.Ms.No.63 dated 14.2.1996, is applying the principle of reservation to an extent of 3 % to disabled persons in allotment of shops belonging to the corporation. Corporation also

charges nominal amount of rent @ Rs.2.50 per sq feet as against high prevailing market rents. In case of Abids Shopping Complex, prevailing market rent is about Rs.59/- per sq feet. Notification was issued on 23.11.2011 notifying one shop in Abids shopping complex to be filled up by handicapped person. After processing the applications received, the list was forwarded to the sixth respondent with a request to select eligible person with reference to nature of disability. The sixth respondent vide his letter dated 1.2.2014 informed the corporation that District Collector decided to allot shop no.16 to petitioner. Learned counsel submitted that the corporation also received another letter bearing same number and date wherein shop no.6 was allotted to petitioner. Having noticed two different letters emanating from same office on the same day, clarification was sought from the sixth respondent vide letter dated 1.5.2015, but no reply was furnished.

11. Learned standing counsel further submitted that Section 148 of the Act vests power in the Commissioner to deal with properties belonging to the corporation. The Abids shopping complex belongs to the Corporation. Thus, Commissioner alone is competent to grant lease of corporation properties. The District Administration was only concerned with selection of suitable person to grant benefit of scheme to disabled persons and no way concerned regarding allotment of particular shop. By the time selections were finalized, there were three shops vacant. No indent was placed on District Administration to make selection to a particular shop and thus it is not known how they have recommended shop No.16.

12. He further contended that shop no.16 was leased to one Smt P Padmavathi and on account of accumulated arrears of rent of more than Rs.41 lakhs she was evicted on 20.3.2010. Subsequently, she submitted representations offering to pay the arrears of rent and requested for reallocation of the shop. Accordingly on 31.7.2014 she paid Rs.7 lakhs by giving an undertaking to pay the balance amount. Considering the issue, Commissioner passed orders in the note circulated to him on 5.2.2015 for reallocation of shop no.16 to Smt P.Padmavathi and accordingly proceedings were issued on 9.2.2015. Smt K.Bharati also claimed allotment of shop No.16 and she filed W.P.No.22800 of 2014 for allotment of shop no.16 on the ground that she is wife of an ex-serviceman. Shop no.8 was allotted to her, but she refused to take the same and filed C.C No.1762 of 2011 alleging non compliance of

the interim order. However, considering the rival claims said contempt case was closed. Said writ petition is pending consideration before this Court.

13. Learned counsel further submitted that petitioner is gainfully employed and therefore does not deserve allotment of shop under disabled persons quota. Such claim would amount to depriving deserving disabled person and defeating the very object of the scheme. Petitioner was allotted Kiosk No.61 in Koti Sub- way. He became defaulter in payment of rent. It has also come to the notice of the corporation that petitioner has sublet the shop to one Shaik Riaz and said person has informed the officials of corporation that he is paying monthly rent of Rs.12,000/- to petitioner. It has also come to the notice of the corporation that petitioner is allotted photocopying shop under physically handicapped quota in Government Women's College, Koti which he is successfully running as on today.

14. The point for consideration is whether petitioner is entitled to grant lease of Shop No.16 in Abids Shopping Complex of respondent corporation under disabled persons quota ?

15. Basic facts are not in dispute. Corporation adopted the principle of reservation of shops to an extent of 3 % in favour of disabled persons. The corporation is also extending discounted lease amount to such persons. Maximum lease amount that is chargeable is only Rs.2.50 ps irrespective of prevailing market rent. In compliance of its policy, corporation decided to allot one shop to disabled person in Abids shopping complex and notification was issued on 23.11.2011. 13 persons responded to the said notification. On preliminary scrutiny of the applications, corporation has forwarded the list to sixth respondent for the purpose of assessing the claim of the individuals on their disability based on various norms for identification of suitable and desirable person for granting such reservation.

16. Section 124 of the Act, 1955, vests power in Commissioner to execute contracts on behalf of the Corporation. Section 148 of the Act deals with disposal of

property and interest therein. According to these sections, Commissioner is competent to enter into lease of any immovable property belonging to the Corporation for a period not exceeding 12 months; with the sanction of the standing committee, not exceeding 3 years; with the previous sanction of the Corporation and the Government, lease can be granted even beyond three years. The cumulative reading of Sections 124 and 148, makes it clear that the power of granting lease of immovable properties vests in the Commissioner. The Commissioner alone is competent. The Act does not vest any power in the District Administration to deal with the grant of lease. If the action of the District Administration recommending the allotment of shop No.16/6 in Abids Municipal Complex is treated as command, it violates Section 148 as it, in effect, curtails the power vested in the Commissioner. When a specific power is vested in the Commissioner to grant lease on the properties of the municipal corporation, in what manner and how the commissioner exercise such power cannot be constrained by any authority other than the standing committee, corporation and the Government. The proposals submitted by the respondents 5 and 6, at the most amount to recommendation and ultimate decision has to be taken by the Commissioner. Merely because a suggestion is made for allotment of particular shop, it does not vest right in a person for enforcement of such recommendation as a mandatory requirement.

17. Based on the request made by corporation, what was required by district Administration was determination of eligibility of one of the applicants for provision of lease of a shop with normal rent under quota for disabled persons. On making such recommendation, it is for the respondent corporation to grant lease or not and if decided to grant lease, to grant lease of appropriate shop. Perusal of note file show that initially District Administration was not in favour of undertaking the exercise as requested by the municipal corporation on the ground that the property belongs to municipal corporation and the District Administration has no role to play. However, on a further reference the District Collector constituted a committee for making selections. Midway through the running of the note file there is a reference to shop no.16 and at some place shop No.6. However, there is no material on record to show how committee was considering the allotment of particular shop but suddenly, when it comes to the final selection, shop no.16 has cropped up. There were two proceedings emanated from the office of the sixth respondent and both proceedings

bear same number but strangely in one proceedings shop No.16 is mentioned and in another shop no.6 is mentioned. It appears no clarification is issued to the municipal corporation, even though request was made. In the instant case, the corporation has not placed an indent on the respondents for selection of candidate for shop no.16. It is also pertinent to note that by the time notification was issued, there were three shops vacant i.e., shop Nos. 6, 8 and 16, but how shop no.16 was allotted, is not clear.

18. The scheme of providing reservation in favour of disabled persons for allotment of shops with a very small fixed rental value is a social welfare measure to enable a disabled person to earn on his own. Allotment of a shop as a disabled person is one thing and insisting to allot a particular shop is another. Person who is seeking relaxed standard of allocation, cannot as a matter of right, insist for grant of lease of a particular shop more particularly when the notification has not indicated a particular shop. It is the discretion of the Commissioner of municipal corporation to grant lease of its shops. To attend to various developmental activities municipal corporation requires huge funds and the shopping complexes are the major source of revenue to the municipal corporation. In the opinion of municipal corporation if shop no.16 fetches more rental value and the same cannot be allotted to a disabled person, such a decision cannot be found fault with. It cannot be said that discretion is not validly exercised.

19. In addition to the claim of the petitioner for grant of lease of a particular shop, in fact, he is not eligible to grant lease of any shop under the disabled category, as he was already granted lease of a shop in Koti Sub-way and is running a photocopying centre in Koti Women's college.

20. Petitioner was allotted shop in sub-way as a measure of rehabilitation on account of removal of road side kiosks where several persons were selling books for years. As per assertion of the respondent corporation, petitioner was in default of rents payable to the corporation and has also sublet the premises. Records produced disclose that petitioner was served notice of default on 24.04.2015. In reply affidavit filed on 12.4.2015 he has stated that he was earlier running a book

stall on the Women's College main road and he was allotted Kiosk No.61 in Koti subway complex. Learned counsel stated that petitioner is unable to run the shop and is suffering huge financial loss, therefore he has applied for allotment of shop in Abids shopping complex and would give the said shop. However, that was not his case when he applied. To prove his *bona fides*, he ought to have stated in his application and placed correct facts on record.

21. Further more, as ascertained by the respondent corporation, petitioner was also having a photocopy centre in Koti Women's college which was allotted to him under the disabled persons quota. This fact is not seriously disputed. It was sought to be contended that it is only temporary allotment for a brief period. However, no material is shown in support of said assertion.

22. There is clear suppression of crucial facts by the petitioner in the affidavit filed in support of the writ petition as well as in the application submitted pursuant to notification dated 23.11.2011. In the application submitted by the petitioner he had only stated that he is doing petty business and eaking out livelihood with great difficulty. He has not disclosed that he was allotted a Kiosk and on the contrary, he claims of proficiency in textiles and garments businesses and entitled to do such businesses. Even in the affidavit filed in support of the writ petition, petitioner has not disclosed that he was allotted shop in Koti subway and running of photocopy center. Even in the reply affidavits also petitioner is only trying to dodge the issue without answering the contentions of the respondent corporation that petitioner sublet the shop in Koti subway complex and person who is in occupation of the said shop is now paying the rent of Rs.12,000/- to petitioner and petitioner was allotted photocopying centre in Koti Women's college under physically handicapped quota. The petitioner has not come to this Court with clean hands and therefore not entitled to any equitable relief in the hands of this Court. Record discloses that having come to know that there are three shops vacant (shop Nos.6, 8 and 16) in Abids shopping complex, he made representations to various authorities to recommend his name for allotment of one of the shops vacant much prior to public notification issued on 23.11.2011. This correspondence shows that petitioner was aware there were three shops vacant, but was not keen to get any particular shop.

23. Further more, since petitioner is already having Kiosk in subway shopping complex and operating photocopying centre in Koti Women's college, petitioner is gainfully employed for sustenance and, therefore, cannot be extended the benefit of policy of the municipal corporation to provide lease of its shops on nominal rent as a social welfare measure to the disabled persons to enable them to stand on their own and earn some income for the family. On account of the claim set up by the petitioner, more deserving candidate was denied of such entitlement.

24. **Brij Mohan Lal** is the case concerning continuation of Fast Track Courts, regularization of temporary/ad-hoc judges appointed under temporary Fast Track Courts scheme and power of constitutional Court to issue writ of mandamus when policy decision of state undermines/destroys independence of judiciary. It is not stated how said decision applies to the facts of the case on hand. There is no quarrel with the well settled principle laid down by Supreme Court in **Mohinder Singh Gills** case. In the instant case, petitioner is not assailing any decision of respondent corporation. He challenges inaction in allotting a particular shop in Abids shopping complex as per recommendations of District Administration. In the counter affidavit and additional counter affidavit filed on behalf of the respondent corporation, reasons are assigned why petitioner is not entitled to allotment of shop as requested by him. Thus, in the facts of this case, **Mohinder Singh Gill** principle has no application.

25. In **Darsi Sree Rama Murthy**, the Court considered grant of lease dispensing public auction and prior Government permission as arbitrary and illegal. Court held that Commissioner cannot act in a manner which would benefit a private party at the cost of municipal corporation. Lease of public properties must be preceded by open auction. Only in exceptional circumstances, such procedure can be dispensed with where such as a present one. The Court found fault with granting of lease in the said matter since larger extent of property was leased, whereas the extent noted was smaller and with less fixed rent. The Court found that non-application of mind by the Commissioner and standing committee and that the Commissioner has acted in hurried manner in leasing out the property and failed to

safe guard the public interest and revenues of the corporation. Learned counsel was relying on the observation made by the Court in para-23, wherein Court held that if it is brought to the judicial notice the illegality committed by the official respondent in leasing out the property, the Court cannot be a silent spectator. Certainly the Court has to hold the law and set right the illegality committed by any Executive authority. In the facts as analysed above, the precedents relied upon by counsel for petitioner and principles propounded therein do not come to the aid of petitioner.

26. In the instant case, on the analysis of the above facts, I do not see any illegality committed by respondent corporation in not granting lease to the petitioner on a particular shop. As petitioner is not satisfying the requirements to grant such lease, the action of the respondent corporation cannot be found fault with. Petitioner is not entitled to any relief.

27. For the foregoing reasons, writ petition fails and accordingly dismissed. No costs. Miscellaneous petitions if any pending in the writ petition shall stand closed. There shall be no order as to costs.

_____**JUSTICE P.NAVEEN RAO**

Date : 30.07.2015

Tvk/kkm

