

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CWP No. 16063 of 2015 (O&M)

Date of decision: 11.12.2015

Dayal Singh

....Petitioner

Versus

State of Haryana and others

.... Respondents

**CORAM: Hon'ble Mr. Justice Surya Kant
Hon'ble Mr. Justice P.B. Bajanthri**

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

Present: Ms. Swati Batra, Advocate for the petitioner.

Ms. Kirti Singh, DAG, Haryana.

P.B. Bajanthri, J.

In this petition, the petitioner has questioned the rejection of his candidature for allotment of 100 square yards plot as per Government policy and has also sought for directing respondents No. 1 to 4 to order an enquiry regarding allotment of 100 square yards plot to ineligible persons whose names are reflected in Annexure P-5 at Sr. No. 30, 31, 32, 34, 35, 38 and 40.

2. State of Haryana evolved policy called Mahatama Gandhi Gramin Basti Yojna for allotment of 100 square yards plot to needy and homeless

persons including Scheduled Caste/Schedules Tribes and backward class persons (BPL and APL card holders). For the purpose of allotment of 100 square yards plot persons should satisfy certain conditions which are stipulated in policy.

3. The Gram Panchyat, Aklimpur Sohna, District Gurgaon under the supervision of Sub-Divisional Officer (Civil), Gurgaon (South) proceeded to implement the policy of allotment of 100 square yards plots to the eligible candidates. The petitioner was one of the candidate who had applied for allotment of 100 square yards plot under the Mahatama Gandhi Gramin Basti Yojna.

4. The petitioner was declared ineligible on the ground that his father is a DTC employee (Inspector) and he owned 75 square yards land and the petitioner is living with his father. This is evident from Annexure P-11, Ration Card issued by the Inspector, Food and Supplies, Badshahpur, Gurgaon on 18.07.2005 wherein petitioner's father Sh.Balbir Singh has been shown as Head of the family and the petitioner's name reflects at Sl. No. 5. The petitioner was thus declared ineligible and his name was not considered.

5. Feeling aggrieved by non-consideration of his name for allotment of 100 square yards under the aforesaid policy, the petitioner has presented this petition.

6. Learned counsel for the petitioner vehemently contended that petitioner is fully eligible for allotment as he fulfills each one of the conditions stipulated therein for allotment of 100 square yards plot. It was contended that respondents have adopted pick and choose method in allotting plots. 8th respondent had a grouse against the petitioner since he had given complaint against 8th respondent's family members regarding abuse of Sarpanch post.

Learned counsel for the petitioner contended that petitioner's grandfather had 150 square yards land. He had two sons, one is petitioner's father Sh. Balbir Singh and another Shri Hari Chand. After the death of petitioner's grandfather, 150 square yards land was divided between Shri Balbir Singh and Shri Hari Chand. Petitioner's father's share was 75 square yards only. The petitioner's family consists of his parents, two sisters and one younger brother. Even if 75% square yards is distributed among them, the petitioner is likely to get hardly 15 to 20 square yards. Therefore, one of the reasons assigned in the written statement by the respondents that the petitioner would get 20 square yards or that his father was working as DTC Conductor (wrongly mentioned as Inspector instead of Conductor), hence he is not eligible for allotment of 100 square yards plot, cannot sustain. Since petitioner is having his own family which is evident from ration card issued on 25.02.2014 by the Inspector Food and Supplies, Badshahpur, Gurgaon, comprising himself, his wife and son, therefore, the petitioner is not living in a joint family and he constitutes an independent family unit. Thus, the petitioner fulfills all the eligible conditions and is entitled for allotment of 100 square yard plot as per the scheme/policy.

7. Learned counsel for the petitioner further contended that the respondents have allotted 100 square yard plots irrespective of APL and BPL card holders and even to the ineligible candidates as has been cited in the prayer. The petitioner no doubt pointed out that certain ineligible candidates have been allotted 100 square yard plot but they have not been arrayed as party to this proceeding. Therefore, we are not in a position to probe the allotment, if any, made to the cited ineligible persons (Annexure A-5) without hearing them. The petitioner has made out his own case for allotment of 100 square yard as he fulfills the conditions. Therefore, it is appropriate to direct the respondents to

reconsider his claim for allotment of such plot.

8. The State Government policy to allot 100 square yards plots to those poor persons including SC, ST and backward class persons who are below the poverty line as well as those above the poverty line falls within the sphere of Article 46 of the Constitution of India which endeavours that :-

“The State shall promote with special care the educational and economic interests of the weaker sections of the people, and, in particular, of the Scheduled Castes and the Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation”

9. The Apex Court has repeatedly emphasized that State must endeavour in implementing directive principles of the State with reference to Article 46.

(1) In ***State of Kerala versus N.M.Thomas*** (1976)2 SCC 310 it has been held that:

“134. A break-up of Rule 13AA of the rules certainly given power to Government to extend the time to harijan officials of 'subordinate services' for passing tests prescribed for occupying promotional posts. But it does not for ever exempt these hands but only waive for a specified, presumably, short term. Nor does it relax the minimal qualifications held necessary for these posts from the point of view of basic administrative efficiency. The subsidiary need of passing certain new tests, for which all employees get some period (from the time of their introduction) is relaxed for a longer period in the case of harijan hands under Rule 13A and still more under Rule 13AA.”

10. The jurisprudential growth of equality as the hallmark of social justice was reiterated in ***M/S. Shantistar Builders vs Narayan Khimalal Totame,*** (1990)1 SCC 520, wherein the Apex Court held that :-

“9. Basic needs of man have traditionally been accepted to be three-food, clothing and shelter. The right to life is guaranteed in any civilized society. That would take within its sweep the right to food, the right to clothing, the right to decent environment and a reasonable accommodation to live in. The difference between the need of an animal and a human being for shelter has to be kept in view. For the animal it is the bare protection of the body; for a human being it has to be a suitable accommodation which would allow him to grow in every aspect - physical, mental and intellectual. The Constitution aims at ensuring fuller development of every child. That would be possible only if the child is in a proper home. It is not necessary that every citizen must be ensured of living in a well- built comfortable house but a reasonable home particularly for people in India can even be mud-built thatched house or a mud- built fire-proof accommodation.

17. We are of the view that allotment shall be on the basis of 'one family - one flat' and the family shall include husband, wife and dependent children. A family which has one flat in any urban agglomeration within the State shall not be entitled to allotment or acquisition by transfer of a flat under this Code.”

11. If policy is for allotment of plot for shelter of poor persons the policy should be sufficiently pragmatic so as to include even the border line poor persons with reference to eligibility criteria. The benefit of doubt of a welfare policy must tilt towards the class of persons for whose benefit such policy is formulated. In this background we direct the respondents to reconsider the claim of petitioner for allotment of 100 square yard plot. Ignoring the fact that petitioner's father was DTC employee (Conductor) they jointly own 75 square yard plot. The petitioner being married, with a child he is having his own independent family which is evident from the material on

record. The same shall be taken into consideration and allot 100 square yard plot to him within the period of 4 months from today.

12. Accordingly, petition is allowed.

(SURYA KANT)
JUDGE

(P.B. BAJANTHRI)
JUDGE

11.12.2015
pooja saini