

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Civil Writ Petition No. 17362 of 2015 (O&M)
Date of Decision: 29.02.2016

Shri Adinath Automotive through its partner Sh.Parvin Jain.

..Petitioner

Versus

Housing Board, Haryana and others

..Respondents

**CORAM: HON'BLE MR. JUSTICE S.J.VAZIFDAR, ACTING CHIEF JUSTICE.
HON'BLE MR. JUSTICE ARUN PALLI.**

Present : Mr. B.S.Rana, Senior Advocate with
Mr. Gagandeep Rana, Advocate, for the petitioner.

Mr. Sudeep Mahajan, Advocate with
Mr. Manjit Saini, Advocate, for respondent Nos.1 to 3.

S.J.VAZIFDAR, ACTING CHIEF JUSTICE

The petitioner seeks a writ of certiorari to quash letters dated 13.02.2015 and 14.08.2015 issued by the respondents stating that the draw of successful applicants of type-1 flats for industrial units/entrepreneurs which included the petitioner had been set-aside and informing the petitioners that it had been decided to refund the amount deposited by the petitioner and to hold a draw of lots of all the applicants afresh. The letters stated that the action had been taken as per the order and judgment of the Division Bench of this Court dated 08.05.2012 in *Kapil Dev v. Housing Board Haryana and others* in Civil Writ Petition No. 23774 of 2011. The petitioners have also sought a writ of mandamus directing the respondents not to include the flats allotted to them in the draw of lots to be conducted by the respondents.

2. In January, 2010, the respondents issued a brochure offering flats in the categories of industrial workers and industrial units/entrepreneurs of Haryana State at Bawal and Barhi on hire purchase basis. The period of registration was 19.02.2010 to 19.03.2010. The petitioner applied under the category of industrial units/entrepreneurs. The brochure stated that the allotment to industrial units/entrepreneurs would be made by a Committee constituted by the Chief Administrator, Housing Board, Haryana on prorata basis keeping in view the availability of flats. The eligibility conditions for industrial units/entrepreneurs were also stipulated. The industrial units/entrepreneurs were required to have an industrial plot in Haryana at the time of registration of flats and they were required to submit one application indicating the number of flats applied for alongwith earnest money equal to the number of flats applied for. It is apparent, therefore, that the industrial units/entrepreneurs were entitled to apply for more than one flat.

3. On 19.03.2010, the petitioner applied for the allotment of 21 flats at Bawal in the category of industrial units/entrepreneurs and deposited ₹ 15,12,000/- as earnest money with the application. In the draw of lots conducted on 30.07.2010 the petitioner was allotted 21 flats. On 01.09.2010, the petitioner was issued an allotment letter in respect thereof. 140 flats were available in this category viz. industrial units/entrepreneurs and only 35 flats were applied for by 11 applicants. Thus all the applicants in this category having been allotted the flats that they had applied for had no grievance. As 140 flats were available in this category and only 35 flats had been applied for and allotted therein, there were 105 surplus flats.

4. There were 140 flats available in the other category of industrial workers. Together with left over 105 flats in the category of industrial units/entrepreneurs, there were in all 244 flats available for allotment in the

category of industrial workers. There were, however, more applicants than flats available in this category of industrial workers.

5. It appears that on 30.11.2011, the registration in favour of one applicant Kapil Dev under the industrial workers category for allotment of type-1 flat had been cancelled and 10% of the earnest money forfeited. The allottee challenged this order by filing Civil Writ Petition No. 23774 of 2011. Similar orders had been passed in respect of various allottees many of whom had filed writ petitions in this Court. These writ petitions were disposed of by an order and judgment of a Division Bench of this Court dated 08.05.2012. The Division Bench dismissed the writ petitions. Those cases relate to the allotment under the category of industrial workers under the same brochure. The relevant eligibility conditions in those cases was that the applicant must have been an industrial worker, employed in the industrial units situated in Haryana and preference was to be given to industrial workers/employees of industrial units of the industrial estate of Bawal. The petitioners therein were successful in the draw of lots and were called upon to complete the formalities leading to the allotment. However, on 30.08.2011, a show cause notice was issued to them pointing out that they were not industrial workers belonging to Bawal industrial estate and therefore, were not eligible for allotment of flats in the category in which they had been declared successful. After considering the reply, the respondents cancelled the allotment. This order was challenged in those writ petitions. The Division Bench held that the process of allotment of tenements was not justified. The Division Bench referred to clauses 1 and 2 of Regulations 4 and 7 which read as under:-

“4. Issue of notice for inviting applications and power of Board to allot tenement-(1) The Board shall issue a notice in such newspapers as the Board may think fit for

inviting applications from person in need of residential accommodation in buildings constructed/likely to be constructed by the Board under any scheme before such date as may be specified in the notice.

(2) The notice shall specify the location of the building, the number of tenements available for allotment, the class of persons for whom the number of tenements in any scheme is reserved, the amount payable as earnest money as provided in sub-regulation (3), amount of initial payment to be made to the Board towards purchase of the tenement, payment of the balance of the purchase price to the Board either in lump sum or in such instalments together with such interest as may be determined by the Board, the amount of each instalment/monthly instalment together with interest in respect of each tenement, the stamp and registration charges, the last date for submission of applications and such other particulars as the Board may consider necessary.” (emphasis supplied...)

“7. Drawing of lots for purpose of allotment .. (1) Allotment of houses shall be made by “draw of lots” or in such other manner as may be determined by the Board.

(2) Unless otherwise specified by the Board out of total number of houses/flats floated in a scheme for allotment to the eligible income categories, i.e. Economically Weaker Section, Lower Income Group, Middle Income Group and Higher Income Group, the reservation for various categories of applicants shall be as follows-

Sr. No.	Category reservation	Percentage
1.	1 Haryana State Government Employees :- (i) Haryana State Government Employees and Employees of Boards/Corporation Improvement Trusts/State Co-operative Banks under Haryana Government who have more than five years of service at the time of application to retire (ii) Haryana State Government Employees and Employees of Boards/Corporation Improvement Trusts/State Co-operative Banks under Haryana Government who have less than five years service at the time of application to retire.	3%

2.	Retired Haryana Government Employees	2%
3.	Housing Board Haryana Employees	1%
4.	Schedule Castes	18.5%
5.	Handicapped and Blind persons	3%
6.	(i) War widows, disabled soldiers, Freedom fighters (including their children and grand children), defence personnel/Ex-servicemen personnel (residents of Haryana). (ii)Paramilitary forces like Central Reserve Police Force, Boarder Security Force, Indo Tibetain Board Police, Railway protection force, Central Reserve Force(residents of Haryana and legal heirs/dependent of the police personnel of Haryana killed in action)	8% 2%
7.	Backward Classes	5%
8.	Widows (excluding war widows)	2%
9.	Media Persons (Accredited)	1.5%
10.	Older persons/Senior Citizens	2%
	Total	50%

The benefit of reservation to all above mentioned categories shall only be admissible to the residents/domicile of Haryana.

33% reservation in each of the above reserved categories except widows and also in general category shall be for women applicants as first/solo applicant. In case sufficient women applicants are not forthcoming in any of the categories, balance of the shall be allotted to other applicants in that same category:

Provided that if sufficient applicants are not forthcoming from any of reserved categories mentioned above, the balance of the reserved houses shall be allotted to the applicants in the general category. The allotment of remaining houses after the allotment to the applicants belonging to the ten reserved categories referred to above shall be made to the applicants of general category.

Note :-

1. The above reservation shall be available only for residential property under Economically Weaker Section, Lower Income Group, Middle Income Group and Higher Income Group categories to be allotted under the hire purchase scheme and shall not be made applicable to

other category of allottees, whether residential or commercial. No reservation shall be applicable in case of sale of property by auction.

2. The spill over unsuccessful applicants in any of the reserved categories shall not be considered again in the general pool.

3. Where no house is available for women applicant(s) in any of the reserved category, registered women applicant(s) under that reserved category shall be considered along with general applicants of that reserved category.

The employees of autonomous bodies like university, employees of District Rural Development Agency and employees of the Cooperative Federations except Haryana State Cooperative Banks are not eligible for reservation under category 1.”

Construing these regulations, the Division Bench held that under Regulation 7(2) there is no reservation for industrial workers working in a particular estate and that all the tenements had been allotted to industrial workers of Bawal which was contrary to the scheme of reservation as contemplated in the Regulations. The respondents relied upon the following observations in the judgment:-

“As on today, the allotment of tenements by the Housing Board is governed by the statutory regulations. Therefore, any reservation, which is not in terms of the regulations, is not permissible. The Housing Board is not constructing tenements and handing over to Haryana State Infrastructure and Industrial Development Corporation. The Housing Board is constructing tenements and allotting to the interested persons as an independent scheme. Therefore, such allotment has to be in terms of the regulations already notified.

Consequently, the orders of cancellation of the registration are quashed. The respondents shall consider the applications, received in pursuance of the advertisement published in January 2010; re-determine

the eligibility of the applicants and then proceed to conduct draw of lots in terms of the regulations.”

5. Admittedly, the allotment in favour of the petitioners was cancelled only in view of this judgment. The impugned order in so far it cancels the allotment in favour of the petitioners only on the basis of the said judgment is clearly erroneous. The judgment does not apply to the petitioners’ case. It is distinguishable on more than one ground. Firstly, the petitioners therein and the petitioners before us applied under separate categories, namely, the industrial workers category and industrial units/entrepreneurs category.

6. Secondly, in the industrial units/entrepreneurs category, every allottee was allotted all the flats that they had applied for. There were in fact 105 surplus flats in this category which were transferred to the industrial workers category. In the industrial workers category, there were more applicants than the flats available for allotment. Thus even assuming that the condition that preference would be given to the industrial units in a particular area, is not sustainable in the eyes of law, it would make no difference as far as the petitioners are concerned for in their category the flats were allotted to all the applicants. There is no embargo against the allocation of flats to persons from the places mentioned therein. Nor did the Division Bench in Kapil Dev’s case (supra) consider the petitioners’ case with respect to the relevant regulations applicable thereto or with respect to the fact situation arising in this case. Thus as far as the petitioners are concerned, it would make no difference whether they have the benefit of the term of eligibility or not. In either case they would have been allotted the flats that they had applied for.

7. A preference to a category of applicants is not a term of eligibility. The preference provided in the category of industrial units/entrepreneurs did not, therefore, dissuade much less present persons from applying for allotment of flats even if they were not from Bawal. Had it been a term of eligibility and had that term been bad in law it may have been necessary to cancel the entire process for it would have prevented others from applying. As observed earlier there was no dispute between the applicants in the category of industrial units/entrepreneurs on account of the preference provided as the number of flats applied for was far less than the number of available flats and all the applicants were allotted the flats applied for. This was not so in Kapil Dev's case. There was actual prejudice in that case on account of the reservation and even the preference necessitating, therefore, the interference of the Court in that case.

8. It was not contended that the respondents were not entitled to have a separate allotment for the industrial units/entrepreneurs category. It is not necessary, therefore, to deal with this issue. Suffice it to note that the petitioners in this regard had relied upon Regulation 1(2)(v) of the Housing Board Haryana (Allotment, Management and Sale of Tenements) Regulations, 1972 and section 21 of the Haryana Housing Board Act, 1971.

9. In these circumstances, the writ petition is made absolute in terms of prayers (I), (II), (III) and (IV) which read as under:-

(I) Issue a writ in the nature of certiorari for quashing the letter dated 13.02.2015 (Annexure P-6) and letter dated 14.08.2015 (Annexure P-8) issued by the respondents.

(II) Issue a writ in the nature of mandamus directing the respondents not to include the flats allotted to the petitioner

in draw of lots scheduled to be conducted by the respondents
on 20.08.2015.

(III) Issue a writ in the nature of mandamus directing the
respondents to restore the allotment of flats allotted to the
petitioner vide Annexure P-4 in the draw of lots conducted
by the respondents on 30.07.2010.

(IV) Issue a writ in the nature of mandamus directing the
respondents to consider the application of the petitioner for
allotment of 21 flats in the category of industrial
units/entrepreneurs as per brochure Annexure P-1.

There shall be no order as to costs.

(S.J.VAZIFDAR)
ACTING CHIEF JUSTICE

29.02.2016
'ravinder'

(ARUN PALLI)
JUDGE

To be referred to the reporter	√Yes	No.
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