

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 44 OF 2008

ARIF MEDICAL FOUNDATION

(Registered Trust, Under the provisions
of Bombay Public Trust Act, 1950)

Through : Its Secretary,

Mohd. Sadiq Abdul Taher Shaikh

Age : 32 yrs, occ : medical practitioner

R/o N-4, F-121, CIDCO, Aurangabad.

.. Petitioner.

Versus

1. The State of Maharashtra
Through The Secretary,
Urban Development Department,
Mantralaya, Mumbai – 32.
(Copy to be served on the
Govt. Pleader, High Court of
Bombay, Bench at Aurangabad.

2. The Administrator,
City and Industrial Development
Corporation, New Aurangabad
(Copy to be served on the Standing
Counsel for CIDCO in High Court
of Bombay, Bench at Aurangabad)

.. Respondents.

Mr. V.D. Hon, Senior Advocate for the petitioner.

Mr. A.R. Borulkar, A.G.P. for respondent No.1/State.

Mr. A.S. Bajaj, Advocate for respondent No.2.

**CORAM : R.D. DHANUKA &
SUNIL K. KOTWAL, JJ.**

Reserved on : 31.08.2017.
Pronounced on : 12.09.2017.

JUDGMENT : (PER SUNIL K. KOTWAL,J.)

1. This petition is filed under Article 226 of the Constitution of India by petitioner registered Trust under Bombay Public Trust Act, 1950 and Society registered under Societies Registration Act, 1860, for the relief of writ of certiorari or any other appropriate writ or direction to set aside the impugned order dated 31.08.2007 passed by respondent No.2 City and Industrial Development Corporation (hereinafter referred as "CIDCO"), Aurangabad, rejecting the application of the petitioner for allotment of plot bearing Survey No.117 situated in N-13, Aurangabad, for rendering social services by the Trust in the form of dispensary.

2. Claim of the petitioner in brief is that on 03.11.2006 respondent No.2 published an advertisement in Daily "Sakal" newspaper and thereby invited the applications from registered Trusts or Societies, interested to acquire plot on lease for the fixed premium for the period of 60 years, exclusively to be

utilized for social services like library, gymnasium, schools, community centre, dispensary, college and hospital. In response to that advertisement, the petitioner being proposed registered Trust in the name and style "Arif Medical Foundation" submitted application for allotment of plot bearing Survey No. 117, admeasuring 349.86 sq. mtrs. situated at N-13, CIDCO, Aurangabad for the fixed premium of Rs. 1000/- per square metre, total Rs. 3,49,860/-, to start social service of dispensary on the said plot. The petitioner also deposited an amount of Rs. 35,000/- through Challan bearing No. 316546 dated 18.11.2006 towards earnest money deposit. The petitioner was the sole claimant for the above-said plot.

3. On 31.08.2007, the application of the petitioner for allotment of the plot was rejected by respondent No.2. The said order was communicated to the petitioner. Therefore, after obtaining the requisite information and documents from respondent No.2 Office, this petition is filed for issuance of an order and direction to respondent No.2 to consider the case of the petitioner for allotment of plot situated in N-13, Survey

No.117, notified vide advertisement published in daily “Sakal” dated 03.11.2006.

4. By filing an affidavit-in-reply, the respondent No.2 opposed this petition on the ground that all the rights in respect of the said Scheme are reserved with CIDCO and nowhere assurance is given by CIDCO that if the applicant makes an application, he would be allotted the land. It is contended that the advertisement dated 03.11.2006 is nothing but an invitation calling offer for allotment of the plot in question. This invitation for an offer does not amount to an offer as contemplated in the Contract Act. Therefore, no rights are created in favour of the petitioner. Next contention of respondent No.2 is that there was only one application of the petitioner for allotment of said plot and the petitioner did not have any experience of the activity in the field of running dispensary. Therefore, the application of the petitioner came to be rejected. The decision to re-advertise and to call fresh applications was taken in the interest of public and with intention to achieve the purpose for which the plot is provided.

Therefore, rejection of the application of petitioner is not at all arbitrary or illegal.

5. By filing re-joinder as well as additional affidavit, the petitioner submitted that two trustees of the petitioner Trust have got vast experience as Medical Practitioner since 1997. The particulars of practice and work done by those two doctors, who are the trustees of the Trust, have been furnished by the petitioner. Next contention of the petitioner is that in the noting of CIDCO Authority dated 09.01.2006, the CIDCO Authority has specifically given remark that the proposal may be approved and below that an endorsement is for re-advertisement as only one offer has been received. No other ground is mentioned in the said order. The Administrator, CIDCO, Aurangabad when re-submitted the proposal on 24.04.2007, the Higher CIDCO Authorities for the first time have picked up the ground regarding non registration of Trust and absence of the record regarding the work done by the Trust. Those grounds are only picked up for denying the claim of the petitioner.

6. Mr. V.D. Hon, learned Senior Counsel for the petitioner submits that by the impugned order dated 31.08.2007 respondent No.2 simply informed the petitioner that his application for allotment of plot has been rejected by Corporation, without assigning any reason for the same. His next limb of argument is that after obtaining the copies of relevant documents from respondent No.2 Office, it revealed that on 09.01.2007 Assistant Marketing Officer, CIDCO Office, Aurangabad submitted proposal for approval of the application of petitioner to CIDCO Office at Bombay and on 30.03.2007, simply an endorsement has been made on that proposal by the concerned office as "it is suggested that re-advertise may be made as only one offer has been received". Thereafter again CIDCO Office, Aurangabad re-submitted proposal to CIDCO Office, Bombay through Administrative Officer, Aurangabad Office and on that re-submitted proposal on 09.08.2007 an endorsement has been made by the concerned Officer that "the Trust is still not registered so far under BPT Act of 1950. In fact, as seen at P/Y, it has applied registration on 17.11.2006, after the application came out on 03.11.2006. No record of its

work is visible in file. Rejected”. “We may re-advertise this plot, dated 9/8”.

7. According to the learned Counsel for the petitioner, these both the orders passed by the concerned CIDCO Officer were not communicated to the petitioner, but on 31.08.2017 the petitioner was simply informed that his application was rejected. Contention of the learned Senior Counsel is that the respondent No.2 had invited application to lease out the disputed plot on a fixed premium and when only the petitioner submitted application for obtaining that plot for the said fixed price, its application could not be rejected only on the ground that it was a sole application. He pointed out that in the advertisement or in the information booklet no condition is embodied that if the application is submitted by only one applicant, the same will be rejected.

8. Learned Counsel drew our attention towards the information submitted by respondent No.2 to the petitioner under Right to Information Act that though one Sharad

Pratishthan, Aurangabad was the only sole applicant for Community Centre Plot, that application was allowed by respondent No.2. This shows clear discrimination on the part of respondent No.2, which is not permissible under law. The learned Advocate for the petitioner submitted that respondent No.2 in his reply affidavit has raised objection that “the petitioner did not have any experience of the said activity in the field and it was only one application for the said plot, and therefore, the same was rejected”. But this reasoning is not included in the order dated 31.08.2007 which was communicated to the petitioner. Relying on the judgment of the Supreme Court in the case of Mohinder Singh Gill Versus Chief Election Commissioner, New Delhi, reported in (AIR 1978 SC 851), the learned Senior Counsel submitted that the reasons for rejecting the application cannot be supplemented by fresh reasons in the shape of affidavit.

9. Mr. A.S. Bajaj, learned Counsel for respondent No.2 in reply submitted that though in the advertisement inviting applications, no condition was included, in the information

booklet provided to the applicant alongwith application, the eligibility criteria was given and as per that criteria, application for the plot could be submitted only by a registered Trust and Societies and for running dispensary, the applicant Trust shall have past experience of 3 years in the similar field. As the petitioner did not fulfill this criteria, the application submitted by the petitioner was rejected by CIDCO Authority. Learned Counsel submitted that the petitioner filed application for registration of the Trust only after filing of the application with CIDCO Office for allotment of the plot. Therefore, on the date of the application for allotment of plot, the petitioner was not the 'proposed Trust'. However, Mr. Bajaj, learned Counsel fairly stated that both the orders dated 30.03.2007 and 09.08.2007 passed by CIDCO Authority assigning the reasons for rejection of the application, were not communicated to the petitioner.

10. At the outset, it must be observed that only on 31.08.2007 respondent No.2 informed the petitioner that his application for allotment of plot has been rejected by the Corporation. Therefore, the order dated 31.08.2007, which was

communicated to the petitioner, can be treated as the 'impugned order' rejecting the application of petitioner for allotment of plot. After going through this order, it emerges that in that order no reason has been assigned by respondent No.2 for rejection of application of the petitioner. In the case of **Mohinder Singh Gill Versus Chief Election Commissioner, New Delhi** (cited supra) the Apex Court ruled that, "when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise". Thus, when on 31.08.2007 respondent No.2 rejected the application of the petitioner without assigning any reason for the same, additional reasons cannot be supplemented in reply affidavit that (1) the application of the petitioner being the sole application and (2) it did not have any experience in the field of running dispensary. We therefore cannot allow the respondent No.1 to supplement the reasons in the affidavit-in-reply. The reasons must form part of the order itself. In our view, the reasons recorded in the internal files cannot form part of the order unless the same are forming part of the order and

are communicated to the party.

11. In so far as the order passed by respondent No.2 on 30.03.2007 is concerned, it is clear that it was absolutely unreasoned order. No reason is assigned by the concerned officer as to why the application of petitioner for plot was rejected. In our view, recording of reasons is an important facet of natural justice.

12. Even assuming that the second order dated 09.08.2007 is the order of rejection wherein 3 reasons are assigned i.e. (1) that the applicant is not registered Trust; (2) the applicant submitted application for plot before applying for registration of the Trust and (3) the applicant did not have past experience in the field of running dispensary, in our view none of these recorded in the file can sustain in eyes of law and in the facts of this case.

13. The first and second reasons assigned by respondent No.2 for rejection of the application of petitioner are that on the

date of filing of application the applicant was not registered Trust and the application for plot was submitted before applying for registration of the Trust. However, after going through the eligibility criteria given on page No.4 of the information booklet, it emerges that any registered/proposed institution can apply for the allotment of plot. In view of this clearly worded eligibility criteria though on the date of filing of application with CIDCO, the petitioner was not registered Trust, it was eligible to file such application provided that it can show that on the date of submission of application for plot, at least it was a 'proposed Trust'.

14. The registration certificate of the Trust shows that it was registered on 28.09.2007. However, the letter dated 17.11.2006 issued by Superintendent, Public Trust Registration Office, Aurangabad spells out that the application of the petitioner for registration of the Trust was received by the Trust Registration Office, Aurangabad on 15.11.2006. Copy of the application (Exhibit-C) for allotment of plot submitted by petitioner with respondent No.2 Office shows that it was

received by respondent No.2 Office on 20.11.2006. It is thus clear that on the date of filing of application for allotment of plot, the petitioner was a 'proposed Trust' whose application for registration was pending with Public Trust Registration Office, Aurangabad since 15.11.2006. Thus the petitioner was eligible for filing an application for allotment of plot in the capacity of proposed Trust. Thus, the first and second reasons assigned by respondent No.2 for rejection of the application of the petitioner are contrary to the conditions of eligibility and are factually incorrect.

15. The third reason for rejection of the application of petitioner was that the applicant did not have past experience in the field of running dispensary. In the information booklet, Condition No.9 (D) provided that the applicant Trust shall have 3 years experience of running dispensary. In our view, this condition would clearly apply only if an application would have been made by a registered Trust. It is obvious that in natural course the proposed Trust cannot have past experience of running dispensary. In case of the proposed trust, the past

experience of the proposed trustees only can be considered. The proposed then trustees have already filed various certificates and documents issued by Government Shishu Sadan Preet Mandir, Unit-III, a home for abandoned children, Faiz-E-Aam Trust, Taheri Charitable Medical Clinic, Alna Mission Hospital, a registered Trust and Vasantrao Naik Government Medical College, Yeotmal, showing that Dr. Mohammad Sadiq Shaikh, who is the Treasurer of the petitioner Trust, had vast experience as Medical Practitioner as Pediatrics. Certificate of registration issued by Maharashtra Medical Council, Mumbai also shows that since 29th July, 1998 Mohammad Sadiq, who is Treasurer of the Trust, was registered as a Doctor. Even the wife of Secretary of the Trust, who is also Treasurer of the Trust namely Siddiqui Ruhi had cleared her M.B.B.S. on 20th August, 2001. Thus, at least Secretary and Treasurer of the then proposed petitioner Trust had past experience as Medical Practitioner in the field of medical science.

16. We are thus not inclined to accept the reason that the proposed dispensary would be run by inexperienced persons

in medical science. In our view, the petitioner Trust has also fulfilled the eligibility criteria of past experience in running the dispensary for the period of at least 3 years. Thus, the third reason assigned by respondent No.2 for rejection of application of petitioner for allotment of plot holds no substance. Conditions of eligibility have to be read and construed harmoniously.

17. It is not in dispute that there was no condition prescribed in the booklet issued by the respondent No.2 that if only one application would be received, it would be rejected. Be that as it may, since the plot was offered on lease based on fixed premium and the petitioner having accepted the offer of respondent No.2 within prescribed time, the application of the petitioner could not have been rejected by the respondent No.2.

18. In our view, the respondent No.2 has also discriminated while deciding the application of petitioner with the similarly placed application of Sharad Pratishtan who was also a sole applicant in respect of another plot. The impugned

order dated 31.08.2007 passed by respondent No.2 thus deserves to be quashed and set aside. The petitioner has also made out a case for issuance of direction to respondent No.2 to consider the case of the petitioner for allotment of plot situated in N-13, Survey No.117, notified vide advertisement published in daily "Sakal" dated 03.11.2006.

19. We, therefore, pass the following order.

ORDER

- a) Writ Petition No 44 of 2008 is allowed in terms of prayer Clause (B) & (C).
- b) The order dated 31.08.2007 passed by respondent No.2 rejecting the application of petitioner for allotment of plot is quashed and set aside.
- c) Respondent No.2 is directed to allot the petitioner plot situated in N-13, Survey No.117 notified vide advertisement published in daily "Sakal" newspaper, dated 03.11.2006, within 8 weeks from the date of passing of this order.
- d) Rule is made absolute in aforesaid terms.
- e) Parties to bear their respective costs.

(SUNIL K. KOTWAL)
JUDGE

(R.D. DHANUKA)
JUDGE
