

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No.15929 of 2015 O&M)
Date of Decision: August 2, 2017

Ankur

---Petitioner

Versus

Haryana Urban Development Authority and others

---Respondents

**CORAM:HON'BLE MR. JUSTICE S.J. VAZIFDAR, CHIEF JUSTICE
HON'BLE MR. JUSTICE HARINDER SINGH SIDHU**

Present: Mr. D.K. Tuteja, Advocate and
Mr. Dishant D. Tuteja, Advocate
for the petitioner.

Mr. Pankaj Jain, Advocate
for the respondents

HARINDER SINGH SIDHU, J.

This petition has been filed praying for directions to quash Memo dated 03.03.2015 (Annexure P-4), whereby plot No. 2042, Sector 33 Part- I, Hissar, allotted to the petitioner in the handicapped category through draw of lots has been cancelled on the ground that her disability is less than 70% which is required as per the policy of Haryana Urban Development Authority dated 11.06.2009.

The petitioner is a physically handicapped person with permanent disability of 50% as certified by a Medical Board.

On 8.7.2013 the respondents advertised for the allotment of freehold residential plots in Sector 14 (Part-II) and Sector-33 (Part-I) Hissar. Certain percentage of plots were reserved for various categories including for the physically handicapped. The petitioner applied for the plot in the handicapped category. Vide letter dated 07.07.2014 she was informed she had been successful in the draw of lots held on 30.12.2013 for allotment of

handicapped category. She was required to submit certain certificates and affidavits within seven days. It is the case of the petitioner that she submitted the required certificates and also deposited the requisite part of the cost of the plot with the respondents. Suddenly, without issuing any show cause notice, she was sent letter dated 3.3.2015 informing her that the allotment of the plot had been cancelled as her disability was 40 % and she was not eligible for the allotment as per the HUDA policy dated 11.06.2009 as per which those with disability less than 70% were not entitled for plot under this category.

Thereafter petitioner submitted various representations and legal notices against the cancellation but did not receive any response.

Hence the present petition.

Ld. Counsel for the petitioner contended that the policy dated 11.06.2009 is in derogation of the provisions of the Persons with Disabilities (Equal Protection of Rights and Full Participation) Act, 1995 (for short “the Act”), because as per Section 2(t) thereof “person with disability” means “a person suffering from not less than forty per cent of any disability as certified by a medical authority.” Further the policy of 2009 had since been amended by the decision of the Board dated 07.08.2014 as per which the percentage of disability has been reduced from 70% to 40%. The amended policy was circulated vide memo dated 26.08.2014 i.e., before the petitioner's allotment was cancelled. He further contended that the petitioner has been discriminated against as even during the currency of the un-amended 2009 policy a number of persons with disability less than 70% had been allotted plots under the handicapped category. In this regard he first referred to one Sanjeet Kumar son of Sh. Jagir Singh who had been allotted a plot in the handicapped category in the draw of lots held on 30.08.2011.

The plot was later cancelled on the ground that his disability was 45% per

cent. Sanjeet Kumar filed CWP No. 11482 of 2015 wherein the respondents stated that they had withdrawn the order of cancellation. Thereby the petition was rendered infructuous. The petitioner also referred to information received under the Right to Information Act, 2005 which had been annexed with that petition as per which in Sector 18 and 21 of Urban Estate Kaithal alone at least four persons whose disability was less than 70% had been allotted plots under the handicapped category. It was also stated that their allotments had not been cancelled. The details of such persons are:

SECTOR 21

Sr. No.	Applicant Name	Father/Husband Name	Plot No.	Size of Plot	Sub Category Code	Scheme Name	Date of Draw	Disability in% Age
1.	Vikash Sharma	Som Dutt Sharma	1458	8-M	Handi	Sector 21	05/04/2011	56%
2.	Sonia	Rajesh Kumar	597	6-M	Handi	Sector 21	05/04/2011	60%

SECTOR 18								
3.	Shri Ved Parkash	Shri Ram Diya	911	6-M	Handi	Sector 18	21.04.2010	45%
4.	Smt. Meena Rani	Shri Nand Lal	236 GP	8-M	Handi	Sector 18	21.04.2010	60%

Ld. Counsel for the respondents on the other hand contended that the amendment was specifically made applicable with prospective effect. Hence the petitioner cannot claim the benefit of the amended policy. He, however was not able to controvert the fact of persons with disability less than 70% having been allotted plots and such plots having not been cancelled.

Heard Ld. Counsel for the parties and perused the record.

We are of the view that the petition deserves to be allowed.

As noted in the Memo dated 26.8.2014, the 2009 policy was framed pursuant to the directions of a Division Bench of this Court in CWP

Vs. State of Haryana'. In that case the State of Haryana and HUDA were directed to formulate a scheme u/s 43 of the 1995 Act.

The 2009 policy restricted the benefit only to those domiciles of Haryana whose disability was 70% or more.

CWP No. 278 of 2014 was filed by one N.S. Bhinder challenging the policy as being contrary to the provisions of the 1995 Act urging that as the Act defines “person with disability” as a person suffering from not less than 40% of any disability, the policy could not lay down a different percentage . The said petition was disposed of on 23.01.2014 with directions to the concerned authority to take a decision on the representation of the petitioner by passing a speaking order.

Thereafter the issue was deliberated by the Board of HUDA and it was felt that as the 1995 Act had itself defined a “person with disability” to mean a person suffering from not less than 40% of any disability, no rule or policy should be framed in contravention to that. It was noted that State of Haryana in its policy dated 01.01.2009 had fixed the quantum of disability at 40% for the posts reserved for the handicapped in Government service. Hence it was decided to amend the policy dated 11.06.2009 and reduce the disability limit from 70% to 40%. However it was directed that this would be made applicable with prospective effect.

A perusal of the memo makes it clear that the change in the percentage of disability was made to bring the policy in conformity with the Act. It was thus an amendment which was curative in nature. It is well settled that a curative amendment, whether of a Statute or Rule or of any instruction or policy is generally intended to have retrospective effect.

The recital in the policy that it will be made applicable with prospective effect could only mean that it is not intended to unsettle actions

of allotments already made and finalized before the issuance of this policy

by anyone raising a claim relying on the amended policy.

The present is not such a case. Here no fresh allotment is being sought. It is only urged that after the amendment in the 2009 policy, the allotment could not have been cancelled relying on the 2009 policy which stood modified. We find merit in this contention.

The petitioner has referred to a number of instances where plots were allotted in the handicapped category to persons with disability less than 70%. And their allotments have not been cancelled. It appears, therefore, that the respondents themselves have understood the policy in this manner. The respondents cannot be permitted to apply a different yardstick in the case of the petitioner and thereby discriminate against him.

Also, it is not the case of the respondents that there was any concealment on the part of petitioner. The respondents, on scrutiny of the application, considered him eligible and on his being successful in the draw of lots allotted the plot.

Thus this writ petition is allowed. The impugned order dated 3.3.2015 (Annexure P-4) cancelling the allotment of the plot is quashed. The allotment of plot No. 2042, Sector 33, Part -I, Hissar to the petitioner is directed to be restored.

(S.J. VAZIFDAR)
CHIEF JUSTICE

(HARINDER SINGH SIDHU)
JUDGE

August 2 , 2017

Atul