

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.03.2020

CORAM

THE HON'BLE MR.JUSTICE N.ANAND VENKATESH

W.P.No.1063 of 2018

and

WMP Nos.1283/2018 & 3794/2020

B.Sumitha

..Petitioner

.v.

1.Union of India,
rep.by its Secretary,
Department of Industries and Commerce,
Chief Secretariat, Puducherry.

2.The Director,
Directorate of Industries and Commerce,
Thattanchavady,
Puducherry-605 009.

..Respondents

Prayer:- Writ petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, directing the 2nd respondent to consider the petitioner's representation dated 27.12.2107 and reminder dated 09.01.2018 and pass orders on the same by permitting the petitioner to participate in any selection process for allotment of industrial plot in Thattanchavady Industrial Estate, Thatanchavady Village, Puducherry.

For Petitioner : Mr.Sai Srujan Tayi
for M/s.Giridhar and Sai

For Respondents : Mr.A.V.Ramalingam
Additional Government Pleader

O R D E R

The present writ petition has been filed for the issue of a Writ of Mandamus, directing the 2nd respondent to consider the representation made by the petitioner and to permit the petitioner to participate in the selection process for allotment of the Industrial Plot.

2.The case of the petitioner is that she owns a Plot in which she is carrying on a small enterprise. There was a Plot measuring 772 Sq.Mts., which is situated opposite to the plot of the petitioner. The petitioner earlier had made a representation to the respondents to allot the said Plot. It is stated in the affidavit that the respondents had informed the petitioner that as and when any allotment is made, the same will be informed to the petitioner. The grievance of the petitioner is that the respondents without any wide publication have proceeded to allot the Plot by means of an advertisement in the official gazette. The petitioner had given representations to the respondents to permit the petitioner also to participate in the allotment of the industrial Plot. Since the same was not considered, the present writ petition has been filed before this Court seeking for appropriate directions.

3.The learned counsel for the petitioner submitted that the Plot in question is valued at nearly Rs.1.75 crores therefore, it was the duty of the respondents to have widely published in the newspapers before carrying on with the process of the allotting the Plot. The learned counsel submitted that when the State or its instrumentalities proceed further to allot a land on the basis of applications made by individuals or organisations, wide publicity must be given since this allotment is a type of largesse of the State and therefore, the best rate must be secured while allotting the land. In support of his submission, the learned counsel drew the attention of this Court, the judgment of the Hon'ble Supreme Court in Akhil Bhartiya Upbhokta Congress .v. State of Madhya Pradesh and Others reported in [(2011) 5 SCC 29]. The relevant portions in the judgment is extracted hereunder:

"45. We shall now consider whether the State Government could allot 20 acres of land to Respondent 5 without issuing an advertisement or adopting a procedure consistent with the doctrine of equality so as to enable other similar organisations/institutions to participate in the process of allotment.

65. What needs to be emphasised is that the State and/or its agencies/instrumentalities cannot give largesse to any person according to the sweet will and whims of the political entities and/or officers of the State. Every action/decision of the State and/or its agencies/instrumentalities to give largesse or confer benefit must be founded on a sound,

transparent, discernible and well-defined policy, which shall be made known to the public by publication in the Official Gazette and other recognised modes of publicity and such policy must be implemented/executed by adopting a non-discriminatory and non-arbitrary method irrespective of the class or category of persons proposed to be benefited by the policy. The distribution of largesse like allotment of land, grant of quota, permit licence, etc. by the State and its agencies/instrumentalities should always be done in a fair and equitable manner and the element of favouritism or nepotism shall not influence the exercise of discretion, if any, conferred upon the particular functionary or officer of the State.

66. We may add that there cannot be any policy, much less, a rational policy of allotting land on the basis of applications made by individuals, bodies, organisations or institutions de hors an invitation or advertisement by the State or its agency/instrumentality. By entertaining applications made by individuals, organisations or institutions for allotment of land or for grant of any other type of largesse the State cannot exclude other eligible persons from lodging competing claim. Any allotment of land or grant of other form of largesse by the State or its agencies/instrumentalities by treating the exercise as a private venture is liable to be treated as arbitrary, discriminatory and an act of favouritism and/or nepotism violating the soul of the equality clause embodied in Article 14 of the Constitution.

67. This, however, does not mean that the State can never allot land to the institutions/organisations engaged in educational, cultural, social or philanthropic activities or are rendering service to the society except by way of auction. Nevertheless, it is necessary to observe that once a piece of land is earmarked or identified for allotment to institutions/organisations engaged in any such activity, the actual exercise of allotment

must be done in a manner consistent with the doctrine of equality. The competent authority should, as a matter of course, issue an advertisement incorporating therein the conditions of eligibility so as to enable all similarly situated eligible persons, institutions/organisations to participate in the process of allotment, whether by way of auction or otherwise. In a given case the Government may allot land at a fixed price but in that case also allotment must be preceded by a wholesome exercise consistent with Article 14 of the Constitution.

68. The allotment of land by the State or its agencies/instrumentalities to a body/organisation/institution which carry the tag of caste, community or religion is not only contrary to the idea of secular democratic republic but is also fraught with grave danger of dividing the society on caste or communal lines. The allotment of land to such bodies/organisations/institutions on political considerations or by way of favouritism and/or nepotism or with a view to nurture the vote bank for future is constitutionally impermissible.

4. The respondents have filed a counter affidavit in this Case. The specific stand that has been taken in the counter affidavit is that the petitioner is aware of the fact that the Plot was going to be allotted and in spite of the same, the petitioner never submitted any applications before the due date which was fixed as 30.11.2017. The further stand that has been taken in the counter affidavit is that the petitioner in order to get over the same, has submitted a representation and approached this Court. Para 14 and 17 of the counter affidavit is also extracted hereunder:

"14. I respectfully submit that, adequate publicity has been given as mandated in the Government Order No.10/16-Ind., dated 1507.2016 and the petitioner has failed to apply within the time prescribed. Having failed to apply in time, the petitioner has coe with a new demand of giving publicity through paid advertisement in the newspapers, just to cover up her failure.

17. I respectfully submit that, the acceptance and consideration of the petitioner to take part in the allotment process will unduly affect the allotment process, will derail the selection process and will be unfair to the applicants who have submitted the applications for allotment in the prescribed form along with the EMD within the stipulated dated and time.

5.The learned Additional Government Pleader appearing on behalf of the respondents apart from reiterating the stand that was taken in the counter affidavit, submitted that as on today, the procedure to be adopted for the allotment of Plot is by issuing a publication in the official gazette. That apart, the learned counsel submitted that the advertisement is also published in the official website of the respondents. The learned counsel submitted that this procedure was scrupulously followed and in fact eight applications have been received by the respondents. The learned counsel further submitted that the petitioner after having missed the due date has successfully staled the allotment of Plot by filing the present writ petition and therefore, the present writ petition is liable to be dismissed.

6.This Court has carefully considered the submissions made on either side and the materials available on record.

7.The only issue that requires the consideration of this Court is as to whether the respondents will have to be permitted to proceed further with the allotment of the Plot which measures 772 Sq.Mts., and which is valued at nearly Rs.1.75 crores, by merely making a publication in the official website and in the gazette.

8.It is the specific stand taken by the respondents that the petitioner is well aware about the Plot being brought for sale and in spite of the same, he failed to submit his application before the due date and therefore to get over the same, the petitioner has made a subsequent representation and filed the present writ petition.

9.The petitioner is also owning a Plot right opposite to the Plot which is now going to be allotted by the respondents. The petitioner had also made an earlier request in this regard to the respondents. In view of the same, the respondents are coming up with a plea that the petitioner was aware about the steps taken by the respondents to allot the Plot.

10.The main issue that arises for consideration is whether the respondents must be allowed to go ahead with the allotment of the Plot without a wide publication. This Court is more concerned about a public property being brought on sale by the respondents, than the individual right claimed by the petitioner. The judgment that was cited by the learned counsel for the petitioner makes it very clear that while the State or its agency/instrumentality proceeds to allot any land or gives any grant of any type, wide publicity/invitation/advertisement must be given in order to ensure that maximum number of persons are allowed to participate to enable the State to get the best rate before the property is allotted. Only by resorting to this process, there will be transparency and the State will have the advantage of receiving the maximum revenue, before allotting any property. In the considered view of this Court, even though publishing in the official gazette or in the official website, may satisfy the legal requirements, when it comes to a State largesse, the publication must be even more widespread through newspapers.

11.A cue can be taken from the Tamil Nadu Transparency in Tenders Act, 1998, wherein, while issuing the guidelines that should be followed while publishing advertisements for various works, the more the value of the work, the more the publication is prescribed under the Act and rules. This is done only to ensure that there is a large scale participation and State is able to get the maximum revenue at the time of allotment.

12.If this Court is to proceed to grant a relief to the petitioner by directing the respondent to allow him to participate in the selection, that will result in directing the respondents to entertain an application after the due date. Therefore, this Court does not want to give such a direction. On the other hand, this Court would want to direct the respondents to issue a fresh advertisement in the official gazette, in the official website and also in two of the leading newspapers one in English and one in Tamil. The previous advertisement was given in the year 2017 and it is almost 2 1/2 years since it was given. Therefore, a fresh advertisement can be given by the respondents by giving wide publicity and thereby the respondents will be benefited with the maximum revenue while allotting the Plot. By giving such a direction, the interest of the Union territory will be protected before the Plot is allotted in favour of any party. This process of advertisement shall be completed by the respondents within a period of four weeks from the date of receipt of copy of this order. Thereafter, the respondents can proceed to consider the applications and allot the property to the highest offer made during the participation.

This writ petition is disposed of with the above directions. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

KP

To

- 1.The Secretary,
Union of India,
Department of Industries and Commerce,
Chief Secretariat, Puducherry.
- 2.The Director,
Directorate of Industries and Commerce,
Thattanchavady,
Puducherry-605 009.

+1cc to M/s.Giridhar and Sai, Advocate, S.R.No.20955
+1cc to the Government Pleader, Puducherry, S.R.No.20862

W.P.No.1063 of 2018

JP (CO)
nvi/28.05.2020

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