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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Date of Judgment: 14.12.2022

+ **W.P.(C) 10618/2017**

SARTHAK R HATWAR

..... Petitioner

Through: Mr. Dinesh Kothari and Mr. B.S.
Randhawa, Advocates.

versus

THE GENERAL MANAGER AND ANR.

..... Respondents

Through: Mr. Rajesh Kumar, Ms. Ramneet
Kaur and Ms. Shaurya Katoch,
Advocates for respondent No. 1.
Mr. Pallav Mongia and Mr. Harsha
Gollamudi, Advocates for
respondent Nos. 2 & 3.

CORAM:

HON'BLE MR. JUSTICE GAURANG KANTH

GAURANG KANTH, J. (ORAL)

The hearing has been conducted through hybrid mode (physical and virtual hearing).

1. The present matter deals with the allotment of DMS Booth No.287-288.
2. Learned counsel for the petitioner states that he was initially allotted the present booth on 23.06.2017 vide allotment letter bearing No. 7-3/4930/017-(Distribution), Government of India, Delhi Milk Scheme dated 23.06.2017. The petitioner, on acceptance of booth No. 287-288, had deposited an amount of Rs. 40,000/- alongwith surety bonds of Rs.50,000/-.
3. Learned counsel for the petitioner further states that pursuant to allotment of the aforesaid booth, he spent additional money on the

renovation of the booth. Subsequently, by order dated 01.08.2017, allotment of the petitioner was cancelled/ revoked by stating that he shall be allotted another booth. Thereafter, booth No. 287-288 was allotted to respondent No. 2.

4. The petitioner filed the present petition seeking writ of mandamus & certiorari directing respondent No. 1 to allot DMS Milk Booth No. 287-288 to the petitioner. Since the respondent No. 2 had expired, learned counsel for the respondent No. 1 sought time to file an affidavit with regard to applicability of Clause 'O' of Booth Allotment Policy, Delhi Milk Scheme. Respondent No. 1 filed an affidavit, *inter alia*, stating as follows:-

“6. It is submitted that as the petitioner was allotted the booth no. 287-288 situated at Rajendra Prasad Road near Indira Gandhi National Centre for Arts, India Gate but he could not utilize the aforesaid booth for the period specified in the agreement due to the cancellation of the allotment and re-allotment of the booth to the respondent no. 2, the respondent no. 1 has no objection if this Hon'ble Court direct the respondent no. 1 to re-allot the subject milk booth to the petitioner as per terms and conditions mentioned in the previous agreement for allotment of the milk booth to the petitioner.”

5. During the pendency of the writ petition, legal heirs of respondent No. 2 were impleaded as parties. Legal heirs of respondent No. 2 filed objections to the short affidavit filed by respondent No. 1. Though the same is not on record, copy of the same is handed over to the petitioner in the Court and the same is taken on record.

6. A perusal of the objections filed by legal heirs of respondent No. 2 reflects that legal heirs of respondent No. 2 are seeking allotment to the

said milk booth on compassionate grounds, as reflected in their objections.

Relevant portion of objection filed by respondent No. 2 reads as under:-

“d. In fact, my survival is completely dependent on the milk booth in dispute before this Hon’ble court. However, as per the own case of the Petitioner and the Respondent no. 2, the petitioner refused to accept a milk booth that was allotted to the Petitioner after reallotting the milk booth in dispute to my mother who was the Respondent no.2 before this Hon’ble Court. I further say that, from the above it is clear that no prejudice will be caused to the Petitioner if the booth in dispute is allotted to the me on compassionate grounds as the Petitioner refused to accept the allotment of different mil booth. At the cost of repetition, I say that, my survival is dependent on the income generated from the milk booth only.

e. I further say that, the Respondent no. 1 in its affidavit stated that since there is no provision in the policy to allot the milk booth to the legal heir of the deceased allottee, the Respondent no. 1 is ready to allot the milk booth to the Petitioner subject to the direction of this Hon’ble Court. It is humbly submitted that the Respondent no. 1 had previously in different cases allotted the milk booth to the legal heirs of the deceased allottee as under compassionate grounds.

f. It is humbly requested that this Hon’ble court may be pleased to consider my case on the same compassionate ground and allot the said milk booth in my name. It is further respectfully submitted that the said policy is also silent on reallotment of the milk booth to the previous applicant/ allottee in case of demise of actual allottee. As such, the milk booth cannot be unilaterally allotted to the Petitioner.

g. I say that, even otherwise, as per the statement made by the Respondent no. 1 itself, the milk booth in dispute is available for re-allotment by way of inviting fresh applications. As such, it is respectfully submitted that the Petitioner cannot be given preferential treatment and allot the milk booth to it unilaterally.

h. I further say that I rely upon the counter affidavit filed by my mother who was the Respondent no. 2 before this Hon’ble Court in the captioned matter.”

7. While perusing the booth allotment policy, it is clear that there is no such provision in the policy which entitles the legal heirs to step into the shoes of the original allottee. To the contrary, the policy Clause 'O' states that *"DMS booth shall be run by the candidate himself/herself and subletting of DMS depots shall not be allowed at all"*.

8. A perusal of the policy makes it evidently clear that no allotment can be given on compassionate grounds or can be sublet to the legal heirs of the original allottee. Moreover, it is explicitly mentioned that the booth shall be run by the allottee only. Admittedly, respondent No. 2 had expired and the booth in question was run by the legal heirs of respondent No. 2 which is impermissible as per Clause 'O' of the aforementioned policy.

9. In view of Clause 'O' of Booth Allotment Policy and the stand taken by respondent No. 1, the present writ petition is allowed.

10. This Court directs respondent No. 1 to re-allot the DMS Milk Booth No. 287-288 to the petitioner within 4 weeks, as per the terms and conditions mentioned in the earlier allotment.

11. With the above directions, the petition stands disposed of.

GAURANG KANTH, J

DECEMBER 14, 2022

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