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

Date of Decision: 21st September, 2023.

+ W.P.(C) 3683/2022

AAKASH GOEL

..... Petitioner

Through: Mr. Rahul Sagar Sahay, Mr. Raghav Rajmalani and Mr. Prince Kr. Singh, Advocates.

versus

DEPARTMENT OF SOCIAL WELFARE DELHI GOVT

..... Respondent

Through: Mr. Anuj Aggarwal, ASC with Ms. Ayushi Bansal, Ms. Arshya Singh and Mr. Yash Upadhyay, Advocates for R-1 & 2.

+ W.P.(C) 15394/2022

DHARAM CHAND ARORA

..... Petitioner

Through: Mr. Rahul Sagar Sahay, Mr. Raghav Rajmalani and Mr. Prince Kr. Singh, Advocates.

versus

GOVERNMENT OF NCT DELHI

..... Respondent

Through: Mr. Prashant Manchanda, ASC with Mr. Angad Singh, Ms. Nancy Shah and Ms. Jay Shree, Advocates.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE SANJEEV NARULA

JUDGEMENT



SANJEEV NARULA, J. (Oral):

1. The Old Age Assistance Rules, 2009 (“**Rules**”), promulgated by the Government of NCT of Delhi (“**GNCTD**”), fundamentally serve as a scheme devised to provide financial aid to the indigent above the age of sixty years. As it stands, the benefits of the scheme are earmarked for a limited number of beneficiaries. This numerical cap has undergone revisions over time; nonetheless, an upper limit remains. In W.P.(C) 3683/2022, the Petitioner *inter alia* impugns this upper limit, advocating for an extension of the Rules’ benefits to a higher number of qualifying applicants. Concurrently, in W.P.(C) 15394/2022, the Petitioner raises similar concerns, having faced a rejection of his enrolment application owing to the exhaustion of available slots. Given the analogous foundation of the challenges presented, a common judgment is being passed.

2. In order to comprehend the contentions raised in the instant petitions, it would be appropriate to briefly delineate the factual backdrop. The Rules were introduced with the objective of proffering financial support to destitute elderly individuals bereft of any means of sustenance or familial support. Rule 4 provides the eligibility criteria, whereby applicants for financial aid must be aged 60 years or above, should have resided in the NCT of Delhi for a minimum span of five years preceding the date of application, and the annual family income from all sources should not exceed INR 1,00,000, among other conditions. Under the Rules (including the subsequent amendments), a financial stipend of Rs. 2,000/- is granted to the beneficiaries aged between 60 to 69 years, and a sum of Rs. 2,500/- is extended to those aged 70 years and beyond.



3. The Petitioners' grievance emanates from the notification dated 01st September, 2014 ("**Impugned Notification**"),¹ whereby an overall ceiling on the number of applications was introduced by substituting Rule 7(b) as follows:

"New applications under the Old Age Pension Scheme shall be received within the overall ceiling applicable at the time, subject to the approval of the Competent Authority. Thereafter, if found eligible, the assistance would become payable from the month subsequent to the month of application."

Petitioners' Contentions

4. The Petitioners contend that the Impugned Notification arbitrarily and discriminatorily creates a classification in violation of Article 14 of the Constitution of India, 1950, as it seeks to discriminate between classes of equally placed people. It is unreasonable as no rationale or basis was provided for deviating from the parent notification, i.e., the Rules, and introducing a ceiling. Further, the restriction on number of applications clashes with the Rules' fundamental objective of dispensing financial assistance to all eligible destitute individuals. Relying upon data received through an RTI reply, the Petitioners submit that only 4.02 lakh senior citizens were served under the scheme in 2020-21, well below the limit of 5.3 lakh citizens fixed in 2016.

5. The Petitioners highlight lack of a transparent mechanism through which an applicant can access details regarding available slots or a waiting list on the official website, exacerbating the afore-mentioned issues and grievances. They cast doubt over the manner of implementation of the scheme by emphasizing absence of a transparent application process, underscoring ignorance regarding the availability of vacancies. This opacity,

¹ Bearing F 41(169)/FAS/DSW/Enhance of Cap- OAP (LG)/'14-'15/718-27.



they assert, unjustly augments the discretionary powers of the deciding officer, creating scope for arbitrary decisions.

Analysis and findings

6. We have considered the contentions put forth by the Petitioners. Prior to articulating our opinion, it is imperative to acknowledge an earlier decision concerning a similar issue in W.P.(C) 469/2015 titled as ***Social Jurist, A Civil Right Group v. East Delhi Municipal Corporation and Others***.² In this case, the Court was addressing the issue of payment of old age pension under the Old Age Stipend Scheme of the erstwhile Municipal Corporations of Delhi. In the said decision, the Court was also apprised of the Rules which led to Court making few critical observations, which read as under:

“This writ petition was initially filed with regard to the issue of payment of old age stipend/pension under the Old Age Stipend Scheme of the Municipal Corporations of Delhi. It transpires that the Municipal Corporations of Delhi do not have the financial wherewithal to provide stipend under the said scheme and, therefore, although the scheme has not been shut down, for all practical purposes, there are no beneficiaries under the scheme.

[...] As per the said affidavit, the Department of Social Welfare of the Government of NCT of Delhi is implementing, inter alia, two schemes of financial assistance:-

- (1) Old Age Assistance Scheme (Old Age Pension); and*
- (2) Financial Assistance to Persons with Special Needs (Disability Pension)*

[...]

Only one issue calls for attention and that is the fact that the Old Age Assistance Scheme has a cap of 4.3 lakh beneficiaries. At present, 3,84,545 beneficiaries are being remitted assistance and have been remitted such assistance for the quarter ending December, 2015. Certain other cases for pension are subject to verification and are pending. It is stated that the exercise is likely to be completed by 31.01.2016. It is also indicated that an

² Dated 20th January, 2016



expenditure of Rs 456.95 crores has been incurred against the budget allocation of Rs 600 cores for the current financial year.

Although it is not clearly indicated in the affidavit as to why there is a cap of 4.3 lakh beneficiaries under the scheme, we would request the Government of NCT of Delhi to re-examine this cap, particularly in the light of the actual number of persons requiring such assistance and to review the said cap.

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In view of the steps taken by the Government of NCT of Delhi, no further directions are necessary in this writ petition.

In case there are applicants who have sought pension from the Municipal Corporations of Delhi, but have not been receiving any pension on account of paucity of funds, the said Municipal Corporations of Delhi shall provide a list to the Government of NCT of Delhi and other details which would be necessary to ensure that the persons meet the eligibility criteria under any of the two schemes. The said list be provided by the Municipal Corporations of Delhi to the Social Welfare Department, Government of NCT of Delhi within four weeks from today. Further steps be taken by the Government of NCT of Delhi under the said schemes.

The writ petition stands disposed of.”

7. Subsequently, CONT.CAS(C) 250/2016 was filed, wherein on 01st June, 2016, an observation was made which is relevant to the issue at hand:

“Vide order dated 20th January, 2016, the Division Bench had directed the Govt. of NCT of Delhi to re-examine the cap of 4.3 lakh beneficiaries of the old age assistance pensioners. No decision has been taken by Govt. of NCT of Delhi till date.”

8. Eventually, the afore-said petition was disposed of without specific instructions regarding the beneficiary cap. Nonetheless, in the present cases, the Respondents have submitted a detailed tabulation indicating the revisions in the ceiling from time to time in their counter-affidavit,³ which is reproduced below:

³ Filed in W.P.(C) 3683/2022.



<i>S. No.</i>	<i>Year</i>	<i>Capping limit on number of beneficiaries</i>
1.	2000-2001	1.00 lakh
2.	February 2004	1.00 lakhs to 1.5 lakhs
3.	July 2006	1.5 lakhs to 1.75 lakhs
4.	January 2008	1.75 lakhs to 2 lakhs
5.	May 2008	2 lakhs to 2.15 lakhs
6.	December 2008	2.15 lakhs to 2.5 lakhs
7.	March 2010	2.5 lakhs to 3.5 lakhs
8.	May 2013	3.5 lakhs to 3.9 lakhs
9.	July 2014	3.9 lakhs to 4.3 lakhs
10.	Sept 2016	4.3 lakhs to 5.3 lakhs

9. As per decision dated 30th September, 2016, the Cabinet of GNCTD has established a ceiling of 5.3 lakh beneficiaries. The eligible beneficiaries are enrolled on a first-come first-serve basis. GNCTD entertains further applications as vacancies materialize. Although no rationale for the imposition of the cap has been elucidated in the counter-affidavit itself, the Cabinet decision dated 30th September, 2016, accompanied with the Note for the Council of Ministers placed before the Cabinet (“**Cabinet Note**”), annexed to the counter-affidavit, sheds some light on it, which is discussed later in the judgement.

10. This Court acknowledges the concerns articulated by the Petitioners regarding the cap on the beneficiaries under the Rules, but these apprehensions alone cannot be the basis for judicial intervention. It is essential to highlight that the Rules in question do not emanate from any statute. It is fundamentally a policy decision, which is borne out of executive



decisions, and hence, the Court's ambit to intercede is circumscribed, unless there emerges a manifest arbitrariness or unreasonableness. In our assessment, the contention of the Petitioners – that a sub-class has been arbitrarily created due to the accommodation of only a specified number of applicants by the Government – does not hold substantial weight as no sub-class has been created and the mechanism for admitting applications does not discriminate against any particular group or individual. Furthermore, the eligibility criteria set forth by the Rules is uniformly applied to all applicants, and by effect, the cap is applied homogenously too, ensuring equitable treatment in assessing qualification for financial assistance. This consistent and uniform application of eligibility criteria reinforces lack of arbitrariness. GNCTD has adopted a first-come first-serve approach, which maintains fairness and uniformity in the selection process, ensuring that the assistance is distributed to as many eligible individuals as possible within the established ceiling limit, without any partiality or bias. The uniform application of eligibility criteria, while unable to accommodate all, nonetheless, ensures a methodical and equitable distribution of available resources to a significant number of beneficiaries.

11. We also understand that any limitation on the number of beneficiaries would naturally lead to the exclusion of some individuals who are in need. However, such exclusions, while unfortunate, do not automatically translate to arbitrariness or unconstitutionality. The policy decisions are often set by assessing various factors such as the available resources, financial constraints, equitable distribution of aid etc. Governments operate on limited budgets. Allocating funds to one scheme might mean diverting them from another equally crucial project. The cap could be an attempt to balance



multiple needs with finite resources. In view of these considerations, we are not inclined to interfere in this policy decision and quash the cap on the number of beneficiaries.

12. It is also crucial to highlight that the rejection of the application in W.P.(C) 15394/2022 was not solely based on lack of vacancies. The Petitioner's family income, submitted by the applicant-Petitioner himself as INR 10,00,000, substantially exceeded the scheme's financial eligibility limit of INR 1,00,000, leading to the rejection of the application. The physical verification by the Anganwadi worker also confirms the same. Regardless, the Court sees no cause for intervention at this juncture, especially given the absence of available vacancies. Should a vacancy arise and the said Petitioner applies under the Rules, the Respondents must consider the application on its own merits.

Shortcomings of the mechanism and Directions

13. At this juncture, it is pertinent to note that no arguments have been presented before this Court suggesting that the Respondents have enforced the limitation on number of beneficiaries to regulate disbursement of assistance because of financial constraints/ lack of resources. GNCTD has not furnished any data or research to substantiate that such a cap is imperative to ensure an optimal benefit for a pre-determined number of beneficiaries, or that exceeding this number might compromise the Rules' effectiveness. Mr. Anuj Aggarwal, learned ASC, has submitted that the rationale of the cap is perhaps the shortage of funds, however, this submission remains speculative, as it is neither explicitly nor implicitly articulated in the counter-affidavit or the accompanying Cabinet Note.



Rather, the Note distinctly outlines the following:

“7. The existing system of cap for old age pension and its allocation in Assembly Constituencies is arbitrary. When a deserving senior citizen applying for Old Age Pension is informed that his application cannot be accepted due to the breach of cap, he goes back dissatisfied. He finds the response illogical. If a person is entitled to assistance under the scheme, he should not be denied the benefit on the plea of cap. In the absence of free flow of the applications, the department is also not able to know actual demand for Old Age Pension from various localities. Obviously, the demand will vary from one locality to another depending on socio-economic profile of its population. The allocation of the increase in cap amongst assembly constituency, as done in the past, is also therefore an artificial exercise. Uncertainty in finding a place within the cap tends to be a source for patronization and malpractice. Furthermore, a situation of scarcity resulting from cap also tends to exclude poorer group among potential beneficiaries. It is pertinent to mention here that the cap of beneficiaries exists only in respect of old age pension scheme and not the other schemes namely, the schemes for financial assistance to persons with special needs and women in distress. Removing the cap will however imply additional financial outgo.”

[Emphasis Supplied]

14. The afore-mentioned Note indicates Government’s recognition of arbitrariness in the current system. It reflects the Government’s implicit acknowledgment that all aged destitute individuals should be accorded equal benefits, provided they fit the criteria. However, we also notice that while this issue was distinctly brought to the fore before the Cabinet, a troubling absence of deliberations is evident, implying that the cap remains intact. It is indeed disconcerting that some aged destitute individuals are granted welfare, while others, equally deserving, are sidelined. We can only venture a guess that, as suggested by Mr. Aggarwal, this is due to inadequacy of funds or an “additional financial outgo”. In the perception of the citizenry, the integrity of any Governmental policy hinges on the equitable allocation of resources, particularly in schemes designed to aid the most vulnerable



sections.

15. The Respondents' policy decision to limit the number of beneficiaries under the Rules cannot be categorized as manifestly arbitrary or irrational but requires further introspection. However, the concerns raised by the Petitioners do bring forth certain issues that need to be addressed. It is noteworthy that the most recent adjustment to this cap dates back to 2016. A considerable period of time has lapsed since then. Given this extended interval, it is incumbent upon GNCTD to solicit feedback, gauge the program's impact, and implement requisite modifications, especially since it is intrinsically tied to NCT of Delhi's population dynamics (as referenced in paragraph 2 of the Cabinet Note).⁴ The demographics have witnessed substantial growth since 2016, accompanied by significant economic shifts. The ever-evolving socio-economic landscape demands periodic reviews of such thresholds to ensure the Rules' continued relevance and effectiveness. Such measures are pivotal to guarantee that the assistance remains attuned to contemporary economic realities, thereby achieving its fundamental objective: offering a support system for the elderly populace.

16. Another concern pertains to the transparency of the Rules' execution. The conspicuous lack of a transparent and easily accessible system for potential beneficiaries to determine available slots under the Rules, poses a substantial obstacle to its efficient administration. This deficit in making vacancy-related information publicly accessible diminishes the credibility of case Rules' and exacerbates the difficulties encountered by eligible

⁴ "2. A cap on the number of beneficiaries was prescribed by the Finance Department based 'on the population of Delhi in 2000. Subsequently, the cap has been revised from time to time. The existing cap on the number of beneficiaries is 4.30 lakh. As per the census 2011 data, the persons above 60 years are estimated to be 11,47,445."



individuals in accessing the promised benefits.

17. A transparent and accessible mechanism must be instituted for timely dissemination of information concerning the availability of vacancies under the Rules. These features are essential to enhance the Rules' functionality, accessibility, and overall impact, thereby positioning it more closely with its foundational objective of providing effective financial assistance and social security to the elderly populace.

18. Thus, following directions are issued:

(a) The Respondents are hereby directed to conduct an exhaustive review of the existing cap on the beneficiaries under the Old Age Assistance Rules, 2009, taking into account the contemporary socio-economic conditions and the emerging needs of the elderly population. Since a review of the cap is being directed, we find it appropriate to direct the Respondents to also relook at the eligibility criteria of annual family income of INR 1,00,000 per annum. Appropriate data-driven surveys may be conducted to ascertain the actual demand for the scheme and the changes in economic conditions, and the Rules must be revised on the basis of such a survey.

(b) In the interim, and immediately, the Respondents must promptly establish and operationalize a transparent mechanism for real-time dissemination of information regarding the status of vacancies under the Rules, along with details of current enrolees. This system should ensure potential applicants are timely and accurately informed about the availability of opportunities to apply for, and receive benefits under the Rules.

(c) Additionally, the Respondents are instructed to consider the establishment of a systematic waitlist of applicants. This waitlist, operated on a first-come first-serve basis, must facilitate enrolment of eligible



individuals (in the event of arising vacancies), through a seamless and efficient process, enhancing the overall accessibility to the Rules.

(d) The process for application must be simplified and made accessible in a manner that it does not cause undue hardship to indigent applicants.

19. With the above directions, the present petitions are disposed of.

SANJEEV NARULA, J

SATISH CHANDRA SHARMA, CJ

SEPTEMBER 21, 2023

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