



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

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Judgment reserved on: 19.11.2024

Judgment delivered on: 06.12.2024

+ W.P.(C) 7977/2007
TEJ KISHEN & ORS

.....Petitioners

versus

UOI & ORS

.....Respondents

Memo of Appearance

For the Petitioners: Mr. Samrat Nigam, Mr. Abhimanyu and Ms. Ishani Pillai,
Advocates

For the Respondents: Mr. Bhagvan Swarup Shukla, CGSC with Mr. Sarvan
Kumar, Advocates for UOI
Mr. Sanjay Katyal, Standing Counsel for DDA

CORAM:

HON'BLE MR. JUSTICE MANOJ JAIN

JUDGMENT

MANOJ JAIN, J

1. All the six petitioners are permanent residents of Jammu & Kashmir and are registered as “*Kashmiri Migrants*” in Delhi.
2. Respondent No. 3/Authority (Delhi Development Authority), sensing the difficulties faced by Kashmiri Migrants, came up with two different schemes for such migrants i.e. “Housing Scheme for Rehabilitation of Kashmiri Migrants” (hereinafter referred to as ‘*First Scheme*’) and “Special Housing Registration Scheme for Retired/Retiring J&K Migrants” (hereinafter referred to as ‘*Second Scheme*’).
3. As far as the first scheme i.e. *Housing Scheme for Rehabilitation of Kashmiri Migrants* is concerned, it targeted those 237 families/persons who had migrated from Kashmir and were staying at the designated refugee camps of GNCTD. They were permitted to apply for allotment of one room



set on “*hire purchase basis*”. These flats were built up in Dwarka, Narela and Rohini. There were certain eligibility conditions, which were also required to be met by any such applicant. The construction cost of each flat was Rs. 1,80,000/-. A sum of Rs. 10,000/- was to be deposited along with application form and Rs. 50,000/- was to be deposited as per the demand-cum-allotment letter and for the balance amount of Rs. 1,20,000/-, there was a provision of payment of the same in 180 EMIs of Rs. 1,500/- per month.

4. By virtue of *second scheme*, 100 Flats in Dwarka were earmarked for *retiring/retired Jammu & Kashmiri Migrants Central Government Employees*. It was meant exclusively for the Central Government Employees. Applications for allotment of flats were invited between 19.08.2003 and 18.09.2003 from eligible employees.

5. Evidently, the *second scheme* was for a different set of applicants.

6. Though, the *second scheme* was also meant for Jammu & Kashmir Migrants but it was specifically to provide housing safety and concessions to those migrants who were retired/retiring Central Government Employees. The applications were invited, exclusively, from those Central Government Employees who had retired or were retiring within next five years and the payment terms were both ‘*cash down basis*’ and ‘*hire purchase basis*’. There were 100 such flats which were earmarked in Dwarka Residential Scheme and these were of two categories i.e. MIG category (two bedrooms set) and LIG category (one bedroom set). Though the “retiring employees” were permitted to avail the facility on *hire purchase basis* but no such provision was there for retired employees and for any such retired employee,



payment was only by way of “cash down basis”. This was specifically mentioned in Clause-15 of the second scheme, which reads as under:-

“Mode of payment

The allotment of flats shall be made on cash down/hire purchase basis for retiring people depending upon the preference of the applicants. However, hire purchase facility would be restricted up to the date of superannuation. The successful allottee of hire purchase will have to furnish a guarantee from the Government Deptt. for payment of due balance from the superannuation benefit of the employee. Allotment to retired people will be made on cash down basis only.

However, the allottees on hire purchase have the option to make cash down payment instead on hire purchase basis. For making cash down payment allottee need not to make a request for change of mode of payment. Allottees opting cash down will have to pay full cost of the flat within 90 days after the date of issue of demand letter including the charges mentioned in para-13 (excluding ground rent and fire risk charges but including conversion charges) above and inform the DDA accordingly.

In hire purchases cases the initial demanded amount will be 50% of the total cost and rest 50% will be equally divided by the number of months remaining for the superannuation. The remaining cost shall be recovered in equal monthly instalments computed along with interest @ 15% p.a. on monthly rent basis. This will be applicable only for retiring government servant.”

7. The petitioners, as averred in the petition, applied for allotment of flats under such *second scheme*.
8. According to petitioners, such *second scheme* was not at par with the first scheme which, too, had been formulated for rehabilitation of Kashmiri Migrants and felt that the conditions stipulated in the *second scheme* were extremely onerous and, therefore, even the eligible employees were in no position to avail the benefits thereof.
9. Petitioners, pursuant to their superannuating from service, addressed



various representations in this regard and since they were already occupying ‘government accommodation’ in Delhi, which they kept on retaining even after their superannuation, the proceedings under *Public Premises (Eviction of Unauthorised Occupants) Act, 1971* were initiated against them.

10. Fact remains that as on date, they are no longer in occupation of any such *government accommodation*.

11. According to petitioners, because of the arduous conditions in the *second scheme*, they were in no position to avail the benefits thereof.

12. When they sought information under *Right to Information Act, 2005*, they learnt that out of the 100 flats allocated for such Central Government Employees, only 12 flats had been allotted and 88 flats remained unallotted.

13. It is in the above factual backdrop that the present writ petition has been filed by them seeking issuance of Writ of Mandamus or any other appropriate writ or direction, directing the respondents to *amend the second scheme* insofar as the terms of payment were concerned so that it is brought in consonance with the first scheme and thereby they seek directions that they may be permitted to pay sale-consideration in 240 equal monthly installments (EMIs) as per the provision contained in the first scheme.

14. A careful perusal of the terms and conditions mentioned in the two schemes would reveal that the scope and sphere of the aforesaid two schemes is totally different.

15. Interestingly, in the entire writ petition, petitioners have not bothered to mention as to when did they retire and at what position.



16. However, when asked, learned counsel for petitioners submitted that, perhaps, they all had acquired the status of Class-I Officers.

17. Though, it has been specifically averred in the writ petition that all such petitioners had applied for allotment in the second scheme between the provided window of 19.08.2003 to 18.09.2003, the petition is conspicuously silent about the fate of their such applications.

18. The petitioners have argued that the *right to shelter* is a fundamental right under Article 21 of the Constitution of India, which guarantees every citizen the right to live with dignity, including the right to adequate shelter. They have referred to the case of *Union of India & Ors. v. Vijay Mam*: 2012 SCC OnLine Del 3218, wherein learned Division Bench of this Court held that it is the duty of the State to provide adequate shelter to individuals who have lost their residences, particularly when they are unable to return to their places of origin due to circumstances beyond their control. The Court emphasized that throwing individuals out of government accommodation without providing alternative shelter would constitute a violation of their fundamental rights under both Article 14 (Right to Equality) and Article 21 (Right to Life and Personal Liberty) of the Constitution.

19. However, the facts in the *Vijay Mam (supra)* case do not stand on the same pedestal as the facts projected herein. In *Vijay Mam*, the respondents were permanent residents of Jammu & Kashmir who had lost their homes and were unable to return due to the situation in their region. In contrast, the petitioners in the present case, while being migrants from Kashmir, were Central Government Employees who were eligible under the *second scheme*



for accommodation. It is evident that the petitioners' request for the extension of the *hire purchase* facility under the second scheme does not align with the purpose sought to be achieved by the second scheme. The second scheme was designed with the clear understanding that *hire purchase* would be available only until the employee's superannuation. Therefore, the petitioners' claim for the applicability of the *hire purchase* mode beyond the superannuation period does not hold any water.

20. It is also apprised by respondent No. 3 that in response to the aforesaid scheme, Authority had received only 12 applications (10 for MIG and 02 for LIG) and all such applicants were allotted flats under the said scheme and, thereafter, the scheme was closed, while reiterating in the counter-affidavit that the petitioners never applied under the second scheme and, therefore, at such a belated stage, when the scheme had already been closed, the writ petition was liable to be dismissed.

21. It has also been categorically stated by the learned Counsel for DDA that the *second scheme* was not a rehabilitation scheme, but it was meant only to provide 'housing facilities' to those Jammu and Kashmir migrants who were Central Government Employees.

22. Mr. Katyal, learned Counsel for DDA has also placed reliance upon *Satya Dev Bhagaur & Ors vs State of Rajasthan & Ors.*: 2022 SCC OnLine SC 206 wherein Hon'ble Supreme has held that the Court would not interfere with a policy decision when the state is in a position to point out that there is *intelligible differentia* in application of policy and that such *intelligible differentia* has a nexus with object sought to achieve. Further, in



Anun Dhawan & Ors vs Union of India & Ors.: 2024 SCC OnLine SC 179
Hon'ble Supreme Court had observed that the scope of Judicial Review in examining policy matters is very limited and *legality of the policy* and not the wisdom or soundness of the policy would be subject of Judicial review.

23. Interestingly, as per the counter-affidavit filed by respondent no. 3/DDA, no such petitioner had ever applied for allotment under the second scheme and, therefore, after more than four years, they were neither entitled to seek benefit of said scheme nor they could challenge the criteria prescribed under the aforesaid scheme. It has been claimed that petitioners have rather concealed vital facts and suppressed and misrepresented fundamental facts and, therefore, the petition is liable to be dismissed, outrightly.

24. In view of above startling disclosure appearing in counter affidavit, learned counsel for petitioners was asked about the correct factual position. To my utter astonishment, learned counsel for petitioners divulged that as per the information received from the petitioners, none of them had ever applied for allotment under the second scheme.

25. Such kind of somersault and baffling revelation is certainly not in good taste.

26. Petitioners, as already noticed above, very specifically claimed in their petition that they all had applied for the allotment of flats under the *second scheme* within the time-stipulated and since such fact has now been retracted, the petition is liable to be dismissed on the aforesaid aspect of misrepresentation of facts.



27. Be that as it may, this Court has no hesitation in observing that, even otherwise, there is no merit and substance in the present petition.

28. It is quite obvious and evident that there is difference of *chalk and cheese* between the two schemes.

29. First scheme targeted Kashmiri Migrants as a class whereas the second scheme targeted those Kashmiri Migrants who were retiring or retired Central Government Employees.

30. Moreover, keeping in mind the fact that second scheme was meant for Central Government Employees, the petitioners cannot equate themselves with the persons who were eligible under first scheme.

31. Obviously, keeping in mind the financial constraint which any Kashmiri Migrant might be facing, there was provision in the first scheme of making balance payment by repaying the same in 180 EMIs of Rs. 1,500/- per month.

32. However, a Central Government employee is in totally different position. The financial condition of applicants under second scheme would be much better vis-à-vis the applicants of first scheme. After all, the applicants under second scheme were central government employees.

33. If any such Central Government employee is yet to retire, he can avail the facility of *hire purchase* but as far as retired employees are concerned, the allotment was only on *cash down basis* and there cannot be said to be any impropriety in creating the aforesaid different parameters for a retiring employee and retired employee.



34. Moreover, as per the second scheme, there was a fixed window within which any such eligible Central Government employee could have applied and during such window of around one month, the respondent merely received 12 applications and all those applicants were allotted flats under second scheme and, thereafter, the scheme was closed.

35. Even if the respondent had earmarked 100 flats for such Central Government Employees, it would not mean that these flats could not have been dealt with otherwise, once the date of receiving the applications was over and the scheme was closed.

36. Naturally, since the requisite number of applications were not received, respondents were fully justified in making use of the surplus flats elsewhere. Merely because these flats were initially earmarked for Jammu & Kashmir Migrants of Central Government Employees, it would not automatically mean and indicate that these could have been utilized for Jammu & Kashmir Migrants of Central Government Employees only.

37. After all, there was no point in keeping those vacant and unoccupied.

38. These petitioners, who had not even applied under the second scheme, cannot be, even otherwise, permitted to challenge the same, that too, at a belated stage i.e. after four years of the closure of such scheme.

39. Clearly, the second scheme was not a rehabilitation scheme and, therefore, the petitioners are grossly mistaken in seeking any parity. First scheme was, evidently, a rehabilitation scheme and, therefore, the eligibility criteria have to be much more relaxed and, therefore, the second scheme,



formulated for providing housing facility to Central Government Employees, need not be at par with the first scheme.

40. The foregoing discussion would clearly suggest that present writ petition lacks any substance.

41. Petitioners have not only come up with false and incorrect facts, they have not been able to give any rationale as to why the payment terms of the first scheme should have been applied to the second scheme as well. Moreover, for the reasons best known to them, they neither applied under the aforesaid second scheme nor challenged the scheme at the relevant time. As noted, since the second scheme was 'single window scheme' and the scheme had already been closed, petitioners, who have approached the Court after four years of the closure of such scheme, cannot be permitted to seek claim over the flats in question even otherwise or for that matter can pray for relaxation of the terms mentioned in the second scheme.

42. Resultantly, finding no substance in the present writ petition, same is hereby dismissed.

(MANOJ JAIN)
JUDGE

DECEMBER 06, 2024/dr