

Before Surya Kant & Hari Pal Verma, JJ.

DEEP CHAND—Petitioner

versus

STATE OF HARYANA AND ANOTHER—Respondents

CWP No.27403 of 2015

May 22, 2017

Constitution of India, 1950—Art.226 and 227—Allotment of residential flat at Bahadurgarh—Eligibility conditions—Imposing an additional condition after draw of plots—Held, no additional eligibility conditions can be fastened on a person after the draw of lots.

Held that, in our considered view, once the terms and conditions of eligibility have been published in the Information Brochure for allotment of Type-A flats, the petitioner's eligibility has to be seen with reference to those conditions only. The subsequent change in the eligibility conditions can have no effect on the petitioner's entitlement. Similarly, no additional eligibility conditions can be fastened on him which were never included in the Information Brochure and was not made known to the general public. Once the rules of games have been set and put into motion, the same cannot be altered mid way.

(Para 7)

Further held that, the condition that the applicant should not own a house in his name or in the name of his wife, unmarried minor children or a relative dependent on him in Haryana, Delhi or Chandigarh applies *qua* those applicants only who have applied in EWS category. Thus the authorities consciously prescribed different eligibility conditions for different categories. There being no corrigendum or amendment in the eligibility conditions prescribed for Type-A flats, no additional condition could be imposed after the draw of lots.

(Para 9)

Jay Vijarana, Advocate
for the petitioner

Ravi Dutt Sharma, DAG Haryana

Satish Singh, Advocate

for Vishal Garg, Advocate
for respondent No.2

SURYA KANT, J. (Oral)

(1) The petitioner seeks quashing of the memo dated 23.10.2015 (P4) to the extent it requires him to furnish an affidavit in the format (P5) with a clause to the effect that no residential house is owned by him, his wife, unmarried minor children or a relative dependent on him, in Haryana, Delhi or Chandigarh.

(2) The facts are to the following effect. The petitioner applied for allotment of a residential flat of Type-A at Bahadurgarh for which applications were invited by Housing Board, Haryana. As per the Information Brochure, the applicants who had applied for a flat of Type-A, Type-B and Type-III (Bahadurgarh, Sirsa, Jind and Karnal) were required to fulfill the following eligibility conditions:-

I. The applicant must be a citizen of India.

II. The applicant must have attained the age of majority at the time of registration.

III. The applicant should not own any house/flat/apartment/plot originally allotted by Housing Board Haryana/HUDA at the station for which application for registration is being submitted i.e. Bahadurgarh/Sirsa/Jind/Karnal.

IV. The applicant shall be eligible to make one application for each category of flat. In case the applicant is successful for more than one flat at the time of draw, he/she shall be entitled to retain one flat

Note:

Suppression/concealment of facts at any stage would result in cancellation of registration/allotment of flat, besides forfeiture of the entire amount deposited.”

[emphasis applied]

(3) The petitioner was successful in draw of lots and consequently vide memo dated 23.10.2015 he has been offered a Type-A flat in Sector 9, Bahadurgarh against his final registration No.102. However, in total contrast to the eligibility conditions published in the Information Brochure, the petitioner has now been asked to furnish

affidavit to the effect that he does not own any residential house in his name or in the name of his wife or unmarried minor children or a relative dependent on him in Haryana, Delhi or Chandigarh.

(4) The aggrieved petitioner has approached this Court.

(5) The respondents have taken the plea that even before the petitioner succeeded in the second draw of lots, they extended the benefit of 'reservation' in terms of the Housing Board Haryana (Allotment, Management and Sale of Tenements) Regulations, 1972, in respect of the plots in Sector 9, Bahadurgarh and since the petitioner is the beneficiary under those Regulations as he belongs to the reserved category of Scheduled Caste, hence he is liable to furnish affidavit as per the revised format.

(6) We have heard learned counsel for the parties and gone through the record.

(7) In our considered view, once the terms and conditions of eligibility have been published in the Information Brochure for allotment of Type-A flats, the petitioner's eligibility has to be seen with reference to those conditions only. The subsequent change in the eligibility conditions can have no effect on the petitioner's entitlement. Similarly, no additional eligibility conditions can be fastened on him which were never included in the Information Brochure and was not made known to the general public. Once the rules of games have been set and put into motion, the same cannot be altered mid way.

(8) There is nothing on record to suggest that the petitioner is beneficiary of any reservation policy allegedly extended by the respondents before the draw of lots. There was already a reservation in Type-A category flats for Scheduled Castes when the petitioner had applied. He applied in the said reserved category only. There was thus no additional benefit extended to him by way of any subsequent decision.

(9) Still further, as per the Information Brochure, the condition that the applicant should not own a house in his name or in the name of his wife, unmarried minor children or a relative dependent on him in Haryana, Delhi or Chandigarh applies *qua* those applicants only who have applied in EWS category. Thus the authorities consciously prescribed different eligibility conditions for different categories. There being no corrigendum or amendment in the eligibility conditions prescribed for Type-A flats, no additional condition could be imposed after the draw of lots.

(10) For the reasons afore-stated, the writ petition is allowed and the impugned communication dated 23.10.2015 requiring the petitioner to furnish affidavit in a particular format is set aside and the respondent-authorities are directed to entertain the affidavit which the petitioner is required to submit as per the eligibility conditions reproduced in para 2 of this order. On furnishing such affidavit, the petitioner shall be treated eligible and the flat shall be allotted to him, he being successful in the draw of lots.

(11) The needful shall be done within a period of two months from the date of receipt of certified copy of this order.

Payel Mehta