

BEFORE THE HON'BLE LOKAYUKTA
Justice Manmohan Sarin
Complaint No. C-1509/Lok/2012

In Re:-

Sh. Sunil Kumar Sharma
R/o 447/100, Main Road, Mauj Pur
Delhi

... Complainant
Vs.

1. Smt. Shiela Dikshit, Chief Minister
Govt of NCT of Delhi.

... Respondent

ORDER

(1) Complainant sh. Sunil Kumar Sharma vide a written communication sent in the month of May, 2012 complained that due to the recommendation of the respondent Chief Minister, Fair Price Shop (FPS) No. 6253, Mandal No. 65 had illegally been allotted despite non compliance of the requisite conditions. The Complainant alleged that:

- i. Licence was granted to a 8th class pass, while the eligibility was for Xth Class pass;
- ii. FPS was cancelled 5 to 10 years back and could not have been revived when there were many applications;
- iii. Shop was required to be abutting on minimum 15 ft. road whereas the licence was granted for a shop abutting a 10 ft. street;
- iv. The other shops had only 215 to 300 cards but this shop has been allotted 1000 to 1100 cards;
- v. Enquiry into the alleged false certificate of Xth pass submitted by the licensee was also sought.
- vi. Role of the officers in reviving the licence and granting of FPS be also enquired into.

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2. On receipt of the above complaint it was considered appropriate to hold a preliminary enquiry. Notice dated 15.5.2012 was issued to the Commissioner (Food & Supply){F&S} Department, to produce the complete record relating to the application of the allottee and the decision making process including the final order.
3. The Commissioner (F&S) filed a response through the Assistant Commissioner (F&S), North East on 6.6.2012. It was stated that the Fair Price Shop was originally allotted on 26.12.1981 to Mohan Singh who expired on 20.1.1999. Thereafter, Mrs. Mohan Kaur daughter-in-law of the deceased licensee, applied on 08.02.1999 for transfer of the licence in her name. She was served with the notices to appear. But upon her failure to appear, vide order dated 01.08.2003, the licence of FPS was cancelled and the security was forfeited to the State.
4. A representation was made by Smt. Bimla grand daughter-in-law of the deceased on 4.3.2011, for change of the constitution i.e. allotment in her favour which was later on withdrawn by her.
5. In April 2011, Sh. Bhikari Lal, son of the original allottee late Sh. Mohan Singh, made a request for change of the constitution in his name. The Department found that applicant Bhikari Lal was in possession of the shop and had first hand knowledge to run the shop as he was helping his father since 1981 in running the shop. Commissioner (F&S), being the Competent Authority, gave the relaxation in requirement of educational qualification. As regards width of the road, the

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revised policy requiring shop to be on 15 ft. street came into force on 16.3.2001 whereas the shop was being run at the existing site since 1981. Sh. Bhikari Lal was eligible, based on the relaxation in requirement of education which was made in his favour.

6. Having regard to the terms and conditions applicable in case of the death of an allottee, vide letter dated 26.6.2012, response was sought from the Department on the following:-

- (a) Licencee was required to be Xth class pass.
- (b) Application was to be made within 30 days of the death of the licencee.
- (c) Applicant licencee should be less than 60 years of age.

7. In the instant case the applicant licencee was only 8th Pass. Application was made after several years of the death of the allottee and cancellation of the licence besides he was more than 60 years of age. The complainant's grievance emanated from the revival of the FPS which was cancelled in 2003 after so many years. He questioned the relaxation in age and educational qualification.

8. The Assistant Commissioner in response explained that the application for change of constitution was forwarded by Smt. Mohan Kaur within 30 days of the death of the original allottee which remained in process till 2003, when it was cancelled due to non appearance. Hence when the application was made by Sh. Bhikari Lal for change of the constitution the same was taken up as there was no violation of the guidelines/rules under which the licence was

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cancelled. There is no time bar in this regard since a family member had sought substitution within time. It was after rejection of the application that the present applicant applied while the original application was in time. The Assistant Commissioner further stated that point No. 5 of the order No. F.3(10)/2002/F&S (P&C)/104 dated 17.6.2002, with regard to the age of the applicant, stipulates that the applicant should not be less than 18 years of age at the time of submitting application as such there is no violation of guidelines with regard to the upper age limit of the applicant.

9. Moreover it needs to be recognised and understood that for the purpose of enquiry into the allegations under the Delhi Lokayukta and Uplokayukta Act 1995, it is only the role and conduct of the respondent 'public functionary' which is material. It needs to be seen whether the 'public functionary' has misused/abused power for gain for self or for another or has breached the norms of integrity and conduct, expected of a 'public functionary'. The above needs to be established for constituting an allegation of misconduct. Any erroneous or wrong administrative decision can be challenged by the parties by invoking their remedies at law. There is no allegation of malafides against the respondent. Perusal of the entire record does not show any overt or covert act of the respondent or exercise of undue influence in the decision making process.

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10. Every citizen has a right to make representations to the Chief executive i.e. Chief Minister and other Ministers for redressal of their grievances. Remarks on the representation of a citizen addressed to the Chief Minister "pl. treat this sympathetically" cannot be treated as direction for approval or its favourable decision or exercise of undue influence or putting pressure. It would only mean that the representation be considered sympathetically in accordance with the rules. Moreover remarks of treating a citizen's representation sympathetically without any thing more cannot be made basis for a complaint against a 'public functionary' alleging violation of norms of intergrity and conduct.

The complaint has no merits. It is dismissed.


(Justice Manmohan Sarin)
Lokayukta, Delhi

Dated 8-08-2013

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