

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

THE HON'BLE MR.ABHAY S. OKA, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE MOHAMMAD NAWAZ

WRIT PETITION NO.8340 OF 2018 (GM-RES) PIL DATED:18-10-2019

BHOJAPPA K, VS. THE STATE OF KARNATAKA, AND ANOTHER

ORDER

Overview

The prayer in this petition under Article 226 of the Constitution of India is for declaring certain portions of the Karnataka Housing Board (Allotment) Regulations 1983 (for short ' the said Regulations ') as amended by the Karnataka Housing Board (Allotment) (Amendment) Regulations, 2017 (for short " the amendment Regulations " as unconstitutional being violative of Article 14 of the Constitution of India.Regulation 4 and Regulation 9A of the said Regulations were substituted by the amendment Regulations.The challenge is to the category- A and category- C in the table which is forming a part of substituted Regulation 4 and category C of the table which is a part of Regulation 9A. Relevant parts of substituted Regulation 4 and Regulation 9A are reproduced for the sake of convenience, which read thus:

" 4. Reservation of houses/sites:

(1) Subject to these regulations the Board may on their own or under directions from the Government reserve houses/sites in any area for allotment to any specified class of persons as per regulation 9 and such class of persons may consist of employees in any office or establishment in the City, Town or other places in which the houses/sites are formed/houses are constructed. There shall be reserved in each area where houses/sites are notified a discretionary quota up to maximum ten per cent in each category of houses/sites, subject to guidelines specified below and to a maximum of which shall be disposed off by the Board with the prior approval of the Government.

(2) Where ten percent of such discretionary quota of houses/sites are reserved under sub-regulation (1), the procedure to be followed for allotment among different categories shall be as follows:

Category	Description	Percent -age
A	Disposal of Board Quota to persons in public life	Twenty five
B(i)	Persons who have recognition in the field of sports representing for	Twenty

	the State of Karnataka at international / National Level as recognized by the Indian Olympic Association (IOA)	
B (ii)	Persons who have special recognition in the field of Art , Painting , Sculpture , Music , Dance , Drama , Films , Science , Literature , Education , Medicine , Press and electronic media and public administration at the National / International level and sitting or former members of Higher Judiciary	Twenty
B (iii) (a)	Freedom fighters who are residing in the State for not less than ten years	
(b)	Dependents of Karnataka Government Servants who died while on duty	
(c)	Ex - Military personnel or military personnel or families of the deceased military personnel .	Twenty five
C	Disposal of Government Quota to persons in public life	

" Explanation for the purpose of,

(a) Category " A " and " C " " persons in public life " means " persons who were/are serving in public field as a social worker, in the interest/welfare of the Nation/State " and " persons who were/are involved in different fields of social service for the uplift of poor and suffering people, which is left to the discretion of the Government. "

(Underlines supplied)

" 9A. Allotment of stray Houses/Sites:

(1) Notwithstanding anything contained in these Regulations, allotment of stray Houses/Sites shall be in accordance with the provisions hereinafter provided.

(2) The Board shall at least once in six months cause to prepare a list of stray houses/sites, giving details of layouts and dimension of houses/sites and offer, any or all the houses/sites for allotment under this regulation to persons eligible for allotment after the allotments under clause (d) of regulation 9.

(3) Where houses/sites are reserved under sub regulation (2) the procedure to be followed for allotment among different categories as follows:

Category	Description	Percent age
A	Disposal through Auction	Forty
B (i)	Persons who have recognition in the field of sports representing for the State of Karnataka at International / National Level as recognized in Indian Olympic Association (IOA)	Twenty
	Persons who have special recognition in the field of Art , Painting , Sculpture , Music , Dance , Drama , Films , Science , Literature , Education , Medicine , Press and electronic media and public administration at the National / International level and sitting or former members of Higher Judiciary	Twenty
(iii) (a)	Freedom fighters who are residing in the State for not less than ten years	Ten
(b)	Dependents of Karnataka State Government Servants who died while on duty	
(c)	Ex - Military personnel or military personnel .	
C	Disposal of Government Quota to persons in public life	Ten

" Explanation for the purpose of,

(a) Category " C " " Persons in public life ",-means " persons who were/are serving in public field as a social worker, in the interest/welfare of the Nation/State " and " persons who were/are involved in different fields of social service for the uplift of poor and suffering people, which is left to the discretion of the Government. '99

(Underline supplied)

2. The basic contention of the petitioner is that unguided and arbitrary discretion has been conferred on the State Government to decide which applicants belong to the category of " persons in public life " and therefore, the said provisions are arbitrary and violative of Article 14 of the Constitution of India.

3. The learned counsel for the petitioner has submitted that the category of " persons in public life " has been loosely defined which confers unguided and arbitrary discretion on the Government. He submitted that the vice of the Article 14 of the Constitution of India is attracted. He invited our attention to category B (ii) incorporated in both the Regulations by way of illustration. He submitted that as far as this category is concerned, there are sufficient guidelines. He also invited our attention to other categories mentioned in the table and submitted that except the categories A and C, there are enough guidelines for the other categories in the said Regulations as even a dependent of a deceased Government servant is defined. He submitted that conferring such an unguided discretion by explanation (a) incorporated in both Regulation 4 and Regulation 9A renders the provisions unconstitutional as the procedure for allotment of houses/sites in categories A and C cannot said to be fair and transparent. He, therefore, submits that the relevant provisions are to be declared as unconstitutional.

4. The learned Additional Government Advocate submitted that the explanation in both the Regulations is sufficient and there are safeguards which contain sufficient guidelines. He submitted that only those persons who are serving in public field as a social worker or those who are doing the social service are entitled to the allotment. He submitted that the Government is bound to examine the entire record of the candidates and thereafter, make allotment. He submitted that there is nothing arbitrary about it. The learned counsel appearing for the 2nd respondent also supported the submissions of the learned Additional Government Advocate .His submission is that those who are rendering service to the society will be benefitted by the reservation and the State has adequate machinery to ensure that the provisions are not misused.

5. We have given careful consideration to the submissions. The said Regulations have been framed in exercise of the powers conferred by Section 76 of the Karnataka Housing Board Act, 1962 (for short ' the said Act ').Section 76 of the said Act read thus:

" 76. Regulations.-The Board may from time to time with the previous sanction of the State Government, by notification, make regulations consistent with this Act and with any rules made under this Act:

(a) for the management and use of buildings constructed under any housing scheme;

(b) the principles to be followed in allotment of tenements and premises; (c) for regulating its procedure and the disposal of its business. "

(Underline supplied)

6. Regulation 3 of the said Regulations provides that whenever the board established under the said Act has formed sites and constructed houses in pursuance of any scheme, it may offer any of sites for allotment to persons eligible for allotment under the said Regulations. Regulation 4 provides that the board may on its own or under directions of the Government reserve sites/houses for allotment to any specified class of persons. Under clause- 1 of substituted Regulation 4, it is provided that there shall be reserved in each area where houses/sites are notified, the discretionary quota up to 10% in each category of houses/sites, subject to the guidelines specified in the said Regulation, which may be disposed off by the Board at its discretion with the prior approval of the Government. Substituted Regulation 9A deals with disposal of stray houses and sites. Regulation 4 deals with discretionary quota of maximum 10% in each category of houses/sites available to the board subject to guidelines specified below clause- 1 of Regulation 4. Regulation 9A relates to disposal of stray houses/sites.

1. As regards Regulation 4, in the discretionary quota of 10%, 25% of houses/sites are reserved for disposal as a Board quota to " persons in public life " and 25% of houses/sites are reserved as a Government quota to " persons in public life ". Under Regulation 9A, 10% of the stray houses/sites are reserved as a Government quota for " persons in public life ".

8. It is true that there is a proviso to Regulation 4 which provides for inviting applications even for discretionary quota after giving publicity. It is provided that the applications received shall be scrutinized by the Board which shall be forwarded to the State Government for approval.

9. Under categories A and C of Regulation 4 and category C of Regulation 9A, quota for " persons in public life " is provided for disposal as a Board quota and as a Government Quota, as the case may be. Explanation (a) to both Regulation 4 and Regulation 9A are identical which we have quoted above. It defines " persons in public life ". According to the said definition, following persons will fall in the category of " persons in public life ":

(a) Persons who were/are serving in public field as a social worker, in the interest/welfare of the Nation/State;
(b) Persons who were/are involved in different fields of social service for the uplift of poor and suffering people.

Most important thing in the said explanation is the last part which provides that which person belongs to the category of " persons in public life " is left to the sole discretion of the Government. Thus, the issue whether a person falls in the category of " persons in public life " or not can be decided by the State Government at its sole discretion. There are guidelines laid down as to how the discretion will be exercised. The word ' social worker ' and the words " interest/welfare of the Nation/State " are very vague. Everybody and anybody can

claim to be the persons serving in public field as a social worker in the interest/welfare of the Nation/State. The same is the case with the persons involved in different fields of social service for the uplift of poor and suffering people. The concept of ' social service ' is very vague. There are no guidelines or qualifications laid down under the said Regulations to decide which category of persons will form a part of the categories of social worker and the persons who are doing social service. This gives a scope to the Government to fit in anyone and everyone in the category of " persons in public life ".

All the elected representatives of Houses of legislature, local authorities, municipalities etc., can be fitted in this category.

10. At this stage, it is necessary to refer to the decision of the Apex Court in the case of Akhil Bhartiya Upbhokta Congress Vs. State of Madhya Pradesh '.Paragraphs 65 to 67 of the said decision read thus:

" 65. What needs to be emphasized is that the State and/or its agencies/instrumentalities cannot give largesse to any person according to the sweet will and whims of the political entities and/or officers of the State. Every action/decision of the State and/or its agencies/instrumentalities to give largesse or confer benefit must be founded on a sound, transparent, discernible and well defined policy, which shall be made known to the public by publication in the Official Gazette and other recognized modes of publicity and such policy must be implemented/executed by adopting a non-discriminatory and non-arbitrary method irrespective of the class or category of persons proposed to be benefitted by the policy. The distribution of largesse like allotment of land, grant of quota, permit licence, etc. by the State and its agencies/instrumentalities should always be done in a fair and equitable manner and the element of favoritism or nepotism shall not influence the exercise of discretion, if any, conferred upon the particular functionary or officer of the State.

66. We may add that there cannot be any policy, much less, a rational policy of allotting land on the basis of applications made by individuals, bodies, organizations or institutions de hors an invitation or advertisement by the State or its agency/instrumentality. By entertaining applications made by individuals, organisations or institutions for allotment of land or for grant of any other type of largesse the State cannot exclude other eligible persons from lodging competing claim. Any allotment of land or grant of other form of largesse by the State or its agencies/instrumentalities by treating the exercise as a private venture is liable to be treated as arbitrary, discriminatory and an act of favoritism and/or nepotism violating the soul of the equality clause embodied in Article 14 of the Constitution.

67. This, however, does not mean that the State can never allot land to the institutions/organizations engaged in educational, cultural, social or philanthropic activities or are rendering service to the Society except by way of auction. Nevertheless, it is necessary to observe that once a piece of land is earmarked or identified for allotment to institutions/organisations engaged in any such activity, the actual exercise of allotment must be done in a manner consistent with the doctrine of equality. The competent authority should, as a matter of

course, issue an advertisement incorporating therein the conditions of eligibility so as to enable all similarly situated eligible persons, institutions/organisations to participate in the process of allotment, whether by way of auction or otherwise. In a given case the Government may allot land at a fixed price but in that case also allotment must be preceded by a wholesome exercise consistent with Article 14 of the Constitution. "

(Underline supplied)

11. In the decision in the case of Meerut Development Authority vs Association of Management Studies, in paragraph 28, the Apex Court held thus:

" It is so well-settled in law and needs no restatement at our hands that disposal of the public property by the State or its instrumentalities partakes the character of a trust. The methods to be adopted for disposal of public property must be fair and transparent providing an opportunity to all the interested persons to participate in the process. "

(Underline supplied)

The Apex Court has emphasized the requirement of having a transparent, discernible and defined policy. Moreover, the distribution of property vesting in the State has to be made in a fair and reasonable manner. In the present case, there is no policy or guidelines which lay down who can be categorized as " social worker " and who can be categorized as falling in the category of persons involved in " social service. " A very vague criterion is fixed as can be seen from explanation (a). It is specifically provided therein that the decision on the question who are " persons in public life " is left to the discretion of the Government. It confers a very wide and arbitrary discretion on the State Government to decide which persons fall in the category of " persons in public life " as per its whims and fancies. A procedure which confers such a wide and unfettered discretion on the State Government to decide who falls in the category of " persons in public life " cannot be said to be a fair procedure. There is a complete absence of a sound and transparent policy in the Regulations 4 and 9A as far as this category is concerned.

12. On this aspect, it will be necessary to make a reference to a decision of the Apex Court in the case of Delhi Transport Corporation vs D T C Mazdoor Congress ANB³. What is held in paragraph 230 is material which reads thus:

" 1 There is need to minimise the scope of the arbitrary use of power in all walks of life. It is inadvisable to depend on the good sense of the individuals, however high-placed they may be. It is all the more improper and undesirable to expose the precious rights like the rights of life, liberty and property to the vagaries of the individual whims and fancies. It is trite to say that individuals are not and do not become wise because they occupy high seats of power, and good sense, circumspection and fairness does not go with the posts, however high they may be. There is only a complaisant presumption that those who occupy high posts have a high sense of responsibility. The presumption is neither legal nor rational. History does not support it and reality

does not warrant it. In particular, in a society pledged to uphold the rule of law, it would be both unwise and impolitic to leave any aspect of its life to be governed by discretion when it can conveniently and easily be covered by the rule of law. "

(Underline supplied)

13. Therefore, the Apex Court has deprecated the tendency to leave any aspect of life to be governed by discretion when it can be conveniently and easily be covered by rule of law.

14. Under both Regulations 4 and 9A, whether an applicant who applies for allotment of houses or sites in the discretionary quota of Government and Board falls in the category of " persons in public life " or not will be decided by the State Government at its discretion. The explanation which seeks to state the meaning of " persons in public life " is very vague. Vague terms such as persons serving in public field as a social worker in the interest/welfare of Nation/State and persons involved in different fields of social service for the uplift of poor and suffering people have been used. The explanations (a) in both the Regulations leave it to the sole discretion of the Government to decide who will fall in the category of " persons in public life ". There is a complete absence of guidelines. Thus, the said Regulations while providing for allotment of the houses/sites vesting in the Government or in Board to the ' persons in public life ', permit the Government to act at its pleasure. Complete absence of guidelines make clauses A and C in the tables forming part of Regulations 4 and clause C in the table in Regulation 9A as well as the explanations (a) manifestly arbitrary and violative of the Article 14 of the Constitution of India. The said provisions virtually permit the Government to act at its pleasure according to its whims and fancies. Such unguided provisions conferring absolute discretion on the State Government in the matter of allotment of houses/sites vesting in the Government or Board will attract the vice of violation of Article 14 of the Constitution of India. Therefore, the categories A and C in Regulation 4 and category C in Regulation 9A along with explanations (a) will have to be struck down as violative of Article 14 of the Constitution of India.

15. However, the State Government can always exercise Regulation making power by incorporating a fair, transparent and reasonable procedure for allotment of the houses/sites in Board/State Government quota.

16. Therefore, the petition must succeed and we pass the following:

ORDER

The petition is allowed.

The categories ' A ' and ' C ' in the table in Regulation 4 and category ' C ' in the table in Regulation 9A as well as explanation (a) to both Regulations are hereby struck down being unconstitutional.

There will be no order as to costs.