

PETITIONER:
SODAN SINGH

Vs.

RESPONDENT:
N.D.M.C. & OTHERS

DATE OF JUDGMENT: 04/02/1998

BENCH:
S.B. MAJMUDAR, M. JAGANNADHA RAO.

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T

M. JAGANNADHA RAO, J.

I. 83/1995: (Bishwanath Roy)

Clemant has been found eligible but only for business in 'tea'. The applicant's place of garment business was not accepted. According to him he cannot, due to illness, carry on tea business.

The Committee found in its order dated 12.12.1990 that the applicant did the business from 1980 to 1989 was entitled only to trade only in tea and could get a stall/kiosk for tea business in I.O.B. area.

Petitioner then applied to NDMC on 9.3.1994 for change of trade to 'garments' on account of ill-health-NDMC filled reply dated 2.8.1995 before the Thareja Committee that they can consider change of trade from food items to other item only if no objection is given by Thareja Committee and thereafter they will consider the case on merits.

Committee noted the submissions on 2.8.1995 and said that the matter will be dealt with in main Report.

At pp. 41-42 of the main Report, the Committee pointed out that NDMC wanted to have the discretion in regard to applications for change of trade to be totally reserved to it. The Committee said that if discretion it to be given to the NDMC it is most likely that it will be abused. For example, the Committee said, if garment trade is allowed at Indian Oil Bhawan, a squatter can earn Rs. 2000/- per day.

We agree that the right to carry on trade in any permissible commodity cannot be allowed to be controlled totally by the NDMC at its sweet will. There is as yet no law made under Article 19(6), except the scheme framed under orders of this Court by the NDMC. Therefore, if a trader wants change in the trade, we do not see how it can be rejected, as long as it is a permissible trade. Such change of trade has to be granted subject of course, to any lawful conditions that the licensing authority could impose. What we have said above is, of course subject to the terms of the scheme regarding licensable or non-licensable tradings and also subject to the earlier observations of this Court in the first Sodan Singh's Case that the scheme is not meant for luxury items or smuggled goods.

We, therefore, hold that the applicant's application for change of trade to 'garments' cannot be denied. When he is an eligible squatter, there is no question of restricting his trade to tea business only. The NDMC will issue orders of change in trade from tea to garments because it had taken a stand earlier in its reply dated 2.8.1995 before the Thareja committee that it will take up the matter as and when no objection is received from the Thareja Committee. This IA is therefore allowed accordingly directing the NDMC to permit change in trade to 'garments' so far as the petitioner is concerned.

In case any change of trade is disallowed and parties are aggrieved, they shall be entitled to resort to appropriate legal remedies, subject to the principles laid down above. IA allowed as stated above.

IA 114.1997 (Smt. Laxmi & 30 Others)

This IA is by the verified eligible squatters as declared by the Thareja Committee. Their contention is that various states were referred to by the NDMC in its scheme of place submitted to the Court on 14.2.1997 but in a latter scheme dated 21.7.1997 of the places, Site No. 1 adjacent to boundary wall of NDMC parking and Jeevan Bharti - towards existing tehbazari sites/shops and also towards mochi tharas sites - for four kiosk-22 tehbazari, has now been omitted. It is pointed out further that this site which was accepted by the Thareja Committee in its report at various places (p. 105, 108, 110, 115 of its report) is now included in the list of objectionable items, at serial No. 33.

In view of the rejections of the objections of the NDMC in regard to the various places, we accept this application and the proposal to delete site No. 1 of the scheme dated 14.2.1997 is rejected. Site No. 1 shall remain as one of the accepted sites. IA is disposed of accordingly.

I.A. 33/994: (Shiv Kumar Sharma).

The claim of the petitioner has been rejected by the Thareja Committee on the ground that petitioner produced evidence of squatting only from 1986, 1987 and not after 1988 upto 1992, his claim has been rejected on the ground that for the period (the 3rd category) of 1981-87, he had shown evidence only for 2 years.

A principle that only a gap of one year will be condoned has been followed by the Thareja Committee uniformly. The Committee also found it necessary that the squatting or hawking of those in the three groups must be upto the date of inquiry. Were of the view that these principles are relevant and has been uniformly applied. We have dealt with this aspect in our main order also. Hence the rejection of the petitioner's case does not call for interference. IA is rejected.

I.A. 38 of 1994 (Sanjay Pamnani)

The petitioner has been found eligible but he was selling lotteries. Counsel for petitioner agreed that petitioner will apply for change into another trade which is permissible in law. He will apply to the NDMC accordingly and if the trade for which change is applied is lawful, the NDMC shall permit the same. (In fact, the question of change of trade from lottery was also there in IA No. 89/96 & IA No. 122/96 and the said parties have also to apply separately). Directions in this behalf are also contained in a general order passed in the main Civil Appeal today. IA disposed of accordingly.

I.A. 45-46 - (Vinod Kumar).

I.A. 46 for condonation allowed.

The petitioner is found to be a genuine squatter but not eligible because he had no proof after May 1988 and he

produced only photo copies for 1987-88. We are of the view that the rejection of his claim by the Thareja Committee is correct and the case does not warrant interference. IA is rejected accordingly.

I.As 47-48: (Satya Narain Vijay).

In this case, the claimant has been found eligible for a size of 6' x 4' to carry on trade of book and magazines, with stationery from 17.2.1983.

His case will be governed by the general directions given in the main order IA disposed of accordingly.

I.A. 56-57: (Ram Gopal)

I.A. 58-59: (Ram Gopal)

The claim of the petitioner was rejected by the Thareja Committee on 15.4.1991. Review Petition was also rejected on 26.8. 1992.

We have perused both the orders. In the first order, the Committee has given reasons to show that the petitioner had managed to obtain receipts of another person by name Ram Gopal dealing with fair articles at All India Radio. Photo copies were filed and not originals. Receipts related only to the period between 1978 to 1983. The claimant started squatting in 1988 after obtaining the receipts of one Ram Gopal who was dealing in Tikki. We do not find any reasons for interference with the findings of fact.

We have also seen the order passed in review. It is true that the first order was before the judgment in the second Sudan Singh's case dated 13.3.1992 complaining that the Thareja Committee was applying very strict standards of proof. But as stated in our main order, this plea was rejected by this Court in the second Sudan Singh's case. But as this Court permitted fresh applications, the review petition was filed. Alongwith the review application, the petitioner filed one cash receipt to say that he bought 800 fashion pieces at Rs. 6/-. The Committee once again considered the evidence now produced as well as the evidence produced before the first order dated 5.4.1991, and held that there was only one receipt for 3.8.1983 and the rest of the receipts were from August 1988: There was no proof at all from August 1983 to 1988. Hence the minimum proof was lacking. The evidence produced in the review application is not related to any receipts from Government of NDMC.

The petitioner obtained stay order from this court on 29.8.1988 and produced a large number of receipts after 23.8.1988 and in the absence of even one receipt for 1987, the Committee rightly rejected petitioner's claim.

It will be noticed that the three relevant periods are (1) prior to 1977 (2) 1978-80 and (3) 1981-1987. Petitioner had a gap of 4 years as he had no receipt after 1983, hence he cannot come in the third category. Merely filling receipts after 1988 cannot help because there is no such category falling for consideration.

Hence these applications are rejected.

I.A. 62-63: (Shankar Gupta & Anup Kumar)

The claimants are brothers and the claim has been allowed by the Thareja Committee in its order dated 14.2.1994 to the effect that they are together entitled to one site 6' x 4' with seniority from 4.7. 1964.

In the event of NDMC giving them both, tehbazari rights jointly, then the parties agreed that applicant No. 1 Shankar Gupta be given the rights. Accordingly the relief was granted by the Thareja Committee to Shankar Gupta.

In this petition before us, It is contended that Shankar Gupta was selling books and magazines in a verandah in N Block Connaught Circus since 1984 and Anup Kumar since 1986, in the same verandah, separately in books and

magazines. They are said to at a distance of 25' x 30' from each other.

The Committee agreed to give only one site since prior to filing claim in 1990, the brothers were joint in business, both selling from one site. The conclusion of the Committee that prior to 1990 both were selling at same site, has been attacked as being based on no evidence.

We are unable to interfere with the finding of the Committee as we are not sitting in appeal. As stated in our main order, it was intended that the Thareja Committee's decisions would be final. The Committee has, in fact, examined the ration cards, the place of living, and the documents and what the parties stated in cross-examination and arrived at its findings. We cannot agree that the findings are based on no evidence.

Hence these applications are rejected.

I.A. No. 65, 66 : (Laxmi Narain)

The Thareja Committee, by its order dated 5.1.1995, which run into nearly 10 pages, rejected the case of the petitioner. It was noticed that the applicant's father Prabhu Dayal had been allotted Shop No. 12, Mini Market, Janpath, in respect of same site which the applicant has been occupying and hence, the applicant cannot be given any other site.

Petitioner's case before us is that his father was occupying a place in the middle of Janpath while petitioner was occupying a place at the corner of Indian Oil Bhawan, near Janpath Lane.

The Thareja Committee said that the Committee visited the area of Indian Oil Bhawan, during the period, over 100 times. The inspection notes are set out and applicant was never there,. It was only on 9.9.1994, the applicant was found. Otherwise, only his servants were there. In fact, in the name of the applicant, there is a golegappa shop, choley-bhaturey shop, Alloo-tikki shop, a Bhelpuri Shop and dahi-bara shop. In addition, applicant has a shop at B-27 Dak Wali Gali, Shakarpur, Delhi. It was rightly inferred that applicant must have been busy attending to shop No. 12, Mini Market, Janpath of his father while he is running other shops with servants. The Committee verified records of the NDMC and from the receipts there, it was informed that applicant was found doing business only at this father's place. We are in agreement with the reasons given by Thareja Committee that the applicant has not made out any case for separate allotment of another site. The application is dismissed.

I.A. 73: (Kamla Devi)

The Thareja Committee, on a consideration of the evidence produced, stated that applicant is not a genuine or bonafide squatter and that other persons are working under her name. This was what was revealed even from inspections by the Committee on various dates. We agree with the finding. The I.A. is dismissed.

I.A. 96: (Madan Lal)

I.A. 97: (Chander Pal)

These two IAs have been put by the Thareja Committee under the 10% hardship quota. We accept the said recommendation. IAs disposed of accordingly.

IA 106-107: (Nam Dutt, Hiralal, Sita Ram, Khachera)

These IAs concern the above said four persons who were petitioner 1, 4, 6 and 9 in Writ Petition 1348/1987 filed earlier in this Court. Their cases were accepted by the Thareja Committee. Their cases for appropriate final allotment will be considered by the Chaturvedi Committee. IAs disposed of.

IAs 108, 109: (Ramesh Chander)

The Thareja Committee, in its order dated 30.8.1991, found that this applicant is entitled to a stall at Malcha Marg or with seniority from 2.7.1994. Petitioner has since died.

The Thareja Committee passed an order allowing the applicant's wife, Smt. Surema Devi to 'represent' but refused to grant any interim relief as she is not personally squatting.

We agree that she would be recognised in the place of her deceased husband and with the same seniority. Her case for allotment of stall/kiosk etc will be considered in accordance with the seniority of her deceased husband. Matter disposed of accordingly.

I.A. No/1997: (Lalit Kumar & Others)

It was contended in this case that while the Thareja Committee followed a principle of condoning one year gap for each of the periods (1) before 1977 (2) 1978-80 and (3) 1981-87, it was not applying the same rule for those who had been squatting say from 1987 and upto 1996- when the inquiry was completed and report was submitted. The matter was argued at length by Sri R.F. Nariman. (This aspect has been dealt with in the main order).

Upon hearing counsel, were found that the Committees has followed the same principle even after 1987. In other words for those who, for example, started squatting in 1987 and who continued upto say 1996 when the inquiry was completed, if there was a gap of one year, it was condoned but not if there was a gap of more than one year.

In this case, the gap after 1987 was for more than one year and the claims were rightly rejected. IA rejected.

I.A. 120/1997 (Jagdish)

Petitioner has been, in the order dated 30.7.1993 of the Thareja Committee, found eligible and entitled to a stall. The IA is filed only because the Committee did not pass interim orders in favour of the petitioner.

We are not passing any orders at this stage. petitioner's case will be dealt with by the Chaturvedi Committee. Petition disposed of accordingly.

IA 125-126/1997: (Smt., Manju Maini)

The case of the petitioner was rejected by the Thareja Committee by order date 3.9.1993. The order runs into 6 pages and considers the evidence in detail. It was found that petitioner manipulated the receipts. We agree with the findings. Application if rejected.

I.A. 67

This is application filed by Sri Thareja for fixing remuneration, etc. for the work done after being nominated to go into various issues concerning the squatters/hawkers in NDMC area. Inquiry was conducted for a period of more than five years.

During the course of the hearing of the main SLP, we had occasion to go through the papers and the enormous work done by the Committee with great industry, care and commitment to a cause. More than 5000 cases have been scrutinised and separate orders passed with reasons. Again, two volumes of the Report have been submitted to the Court. Elaborate inquiry was conducted as regards the places where the a kiosks/stalls could be located or business or tehbazari could be conducted. These details are in one volume. Another volume deals with seniority of the claimants. We have placed on record, in our main order, our deep appreciation of the services rendered by Sri Thareja.

After considering the extent of the work and keeping in mind all factors including the fact that Sri Thareja was

working full time on this work and was however receiving his normal emoluments as an Additional District & Sessions Judge. We are of the view that a reasonable sum be paid to him in addition to what Sri Thareja has drawn as his normal emoluments as a District Judge. We notice that in fact he had visited the various places where the squatters were claiming that they were conducting their business. Most of them were surprise visits. Several hundreds of such visits had to be made while checking up the claims of more than 5000 claimants. Keeping all these aspects in mind, we are inclined - in the place of the quantum claimed - to grant a sum of Rs. 50, 000/- only and we accordingly direct the NDMC to pay to Sri Thareja the said sum within two weeks from today. The IA is disposed of accordingly.