

Before Ravi Shanker Jha, C.J. & Arun Palli, J.

RAJENDER PRASAD AGGARWAL AND OTHERS—*Petitioners*

versus

UNION OF INDIA—*Respondents*

CWP-18833-2019

February 10, 2019

Constitution of India, 1950, Articles 14, 19 and 226 - Notification - 100% reservation to ex-servicemen and other categories of defence personnel(s) in relation to allotment of regimental shops - Held, apparent that shop in question was allotted to exclusively cater to military personnel and their families - No averment, assertion or factual foundation laid by petitioners in petitions to claim or establish that shops in question are not regimental shops- Thus, notification regarding 100% reservation to ex-servicemen and other categories of defense personnel(s) in relation to allotment of regimental shops not violative of petitioners' fundamental rights.

Held, that from the aforesaid it is apparent that the shop in question was allotted to exclusively cater to military personnel and their families. It is also an undisputed fact that the shops are situated on A-1 defence land, in a military station.

(Para 23)

Further Held that, In view of the aforesaid facts prevailing in the present case, it is evident that the shops in question are regimental shops. It is pertinent to note that from a perusal of the petitions, it is also evident that there is no averment, assertion or factual foundation laid by the petitioners in the petitions to claim or establish that the shops in question are not regimental shops. Though, feeble attempt in this regard has been made in the replication filed by the petitioners, however, in view of the facts narrated in the preceding paragraphs, it is evident that the shops in question are regimental shops. Thus, the notification dated 17.01.2018 (Annexure P-3) is fully applicable to the same.

(Para 24)

Puneet Bali, Senior Advocate, with
Vibhav Jain, Advocate, and
Sachin Jain, Advocate

for the petitioners in CWP No. 18833 of 2019.

Anuj Garg, Advocate

for the petitioners No.1 to 3 in CWP No. 19682-2019.

Sandip Singh Majithia, Advocate

for petitioner No.4 in CWP No. 19682-2019.

SKS Bedi, Advocate

for the petitioners in CWP No. 19996-2019.

Satyapal Jain, Additional Solicitor General of India with
Rohit Verma, Central Government Counsel
for UOI-respondents.

RAVI SHANKER JHA, CHIEF JUSTICE (oral)

(1) This petition has been filed by the petitioners praying for quashing the notification dated 17.01.2018 (Annexure P-3) issued by respondent No.1 providing 100% reservation to ex-servicemen and other categories of defense personnel(s) in relation to allotment of regimental shops on the ground that providing of 100% reservation has obliterated the right of the petitioners to seek allotment of those shops and is therefore violative of the petitioners' fundamental rights under Articles 14 & 19 of the Constitution of India.

(2) The petitioners have also prayed for quashing the impugned notice dated 30.04.2019 (Annexure P-10 colly) issued by the respondents asking the petitioners to vacate the shops allotted to them being arbitrary, illegal and against the principle of natural justice.

(3) The petitioners have also prayed for issuance of a writ in the nature of mandamus directing the respondents not to deviate from the earlier policy of allotment of shops in cantonment areas, regimental areas and other institutions and defence establishments.

(4) All these petitions involve similar and identical issues and are, therefore, heard and decided concomitantly.

(5) The undisputed facts are that the petitioners were allotted shops in Chakra Suvidha Complex, Chandimandir military station, Panchkula. Though initially the petitioners had been granted lease for occupying those shops for a period of one year, however, subsequently from 2015 onwards, the said shops were given on licence pursuant to a licence agreement entered into between the parties for 11 months. Concededly, the licence period and even the extensions have since

expired on 30.11.2018. Significantly, vide notification/order dated 17.01.2018 (Annexure P-3) issued by the respondents, a policy decision was taken to allot all the shops in the regimental centres/stations to the war widows/widows of defence personnel killed while on duty/disabled soldier/Ex-servicemen and spouses/widows of Ex-Servicemen etc. Accordingly, the respondents have issued notices to the petitioners to vacate the shops occupied by them vide impugned notices dated 30.04.2019 annexed as Annexure P-10 (colly) along with Civil Writ Petitions No. 18833 of 2019 and 19996 of 2019.

(6) Learned senior counsel appearing for the petitioners submits that the petitioners have been in occupation of the shops in question since long and prior to issuance of the notification/order dated 17.01.2018, the policy prevalent in the establishment envisaged reservation only up to 30% of the shops for Ex-servicemen, their widows etc. And pursuant to the said policy, the petitioners were allotted the shops in their occupation in the military area. However, the respondents' authorities have now unilaterally taken an arbitrary decision to reserve all the shops i.e. 100% of the shops for allotment to the Ex-servicemen, their widows, defence personnel(s) and other army related defence categories.

(7) Learned senior counsel appearing for the petitioners further submits that the said policy dated 17.01.2018 is arbitrary, unreasonable and causes discrimination for it violates the fundamental rights of the petitioners owing to 100% reservation in favour of Ex-servicemen, their widows and other defence personnel and related categories excluding the petitioners who have been doing business in the said shops for the last several decades.

(8) Learned senior counsel further submits that the policy decision dated 17.01.2018 in any case relates to and is only confined to the regimental shops in various formations/establishments under the Army, whereas the petitioners have been allotted shops in a shopping complex for doing their business, to which the said policy does not apply. Thus, learned senior counsel submits that respondents authorities by wrongly applying the said policy to the shops occupied by the petitioners situated in a shopping complex, have issued the impugned notices for vacating those shops which are contrary to law and are arbitrary.

(9) Learned senior counsel appearing for the petitioners further submits that the shops in question are situated in the shopping complex

and are not regimental shops and therefore, the impugned notices dated 30.04.2019 based on a policy, which is not applicable to the petitioners, deserve to be quashed. And the petitioners are entitled to continue in occupation of the shops.

(10) Learned senior counsel appearing for the petitioners on the basis of the aforesaid submission has prayed for a direction to adhere to the earlier policy for allotment of shops under cantonment areas, regimental areas and other institutions and defence establishments.

(11) Learned Additional Solicitor General of India appearing for the respondents-Union of India submits that the shops in question are situated in Chakra Suvidha Complex, Chandimandir Military Station, Panchkula and not in the cantonment area, as alleged by the petitioners. He further submits that the shops in question are regimental shops and the policy in question dated 17.01.2018 is fully applicable to the shops occupied by the petitioners. It is submitted that in recent times, number of casualties in the armed forces have increased and therefore, the respondents with a view to provide necessary support to the family of Ex-servicemen have formed a policy with 100% reservation of regimental shops for the war widows/widows of defence personnel killed while on duty/disabled soldier/Ex-servicemen and spouses/widows of Ex-Servicemen etc. It is submitted that in such circumstances, a policy decision taken by the respondents' authorities with a view to achieve the specific object is in accordance with the constitutional mandate and therefore, the contentions to the contrary deserve to be rejected.

(12) He further submits that the petitioners are mere licencees and their licence period has already expired on 30.11.2018. It is stated that as per the provisions of law the impugned notices to vacate the shops in question have been issued to the petitioners on 30.04.2019 affording them three months' time to vacate the same. Thus, the impugned notices are issued in accordance with law and the challenge thereto deserves to be rejected.

(13) He further submits that as per the provisions of the rules governing regimental shops, which have been annexed as Annexure P-3 with the petition, it is evident that regimental shops are constructed on A-1 defence land which caters exclusively to the military personnel and their families. It is submitted that as per the specific terms of the licence agreement Annexure R-7 dated 14.03.2018, the petitioners had been permitted to sell their products from the allotted shops on the

terms and conditions detailed in the licence; for the welfare of troops and their dependents in the military station. It is also submitted that as per the document Annexure P-17 filed by the petitioners, this fact was further clarified by the authorities on 06.06.2018 by emphasizing that shops allotted to the petitioners are exclusively meant for defence personnel and their families as a welfare measure. It is submitted that in such circumstances the policy dated 17.01.2018 (Annexure P-3) is clearly applicable to the shops in occupation of the petitioners and the impugned notices issued by the authorities for vacating those shops are in accordance with law.

(14) We have heard learned counsel for the parties at length.

(15) Before we advert to the issues raised in the petitions, it is worth noticing that these petitions were filed giving reference of certain interims orders passed by the Delhi High Court and the Madhya Pradesh High Court in respect of similar and identical issues. During the course of hearing, learned senior counsel appearing for the petitioners has fairly stated before this Court and placed on record the orders passed by Delhi High Court finally deciding and dismissing the similar petitions.

(16) From a perusal of the decision of Delhi High Court rendered in the case of W.P.(C) No. 6026 of 2018 and CM No. 23417 of 2018 ***Danish Akhtar*** versus ***Union Of India And Another***, it is evident that Delhi High Court has dismissed the petition assailing the impugned notification dated 17.01.2018 (Annexure P-3) and has also upheld the notice of vacation. From the aforesaid, it is evident that similar challenge made by identically placed persons before Delhi High Court has suffered dismissal and the similar grounds raised before the said Court were considered and rejected.

(17) From a perusal of the licence agreement entered into between the parties, it is evident that licence was for the period 01.01.2018 to 30.11.2018 and option to renew the same was with the respondents. The licence further provided that in case the licensee wanted to seek renewal, he was required to file an application requesting therefor six months prior to expiry of the licence. It is also evident from the licence Annexure R-7 that petitioners had accepted the conditions mentioned in the licence restricting sale of their products for the welfare of troops and their dependents, separated families, Veer Naris and Veterans in the military station. In such circumstances, as the lease agreement between the parties had come to an end, the petitioners never applied

for renewal, the respondents authorities, who had an option to even refuse renewal, issued notices for vacation of the shops and in terms of the licence agreement dated 30.04.2019, the petitioners were granted three months' time to vacate. Thus, in the given facts, we are of the considered opinion that the licence granted to the petitioners has come to an end and that the respondents have duly followed the procedure for terminating and for seeking vacation of the shops and therefore, the same is in accordance with law and cannot be found fault with.

(18) As far as the challenge to the letter/notification dated 17.01.2018 (Annexure P-3) is concerned, it is evident that the shops in question are situated in the military station and that the authorities with a view to provide support to the war widows/widows of defence personnel killed while on duty/disabled soldier/Ex-servicemen and spouses/widows of Ex-Servicemen etc., have taken a policy decision to reserve 100% regimental shops for allotment to the aforesaid categories.

(19) The object and purpose of the notification is laudable. Furthermore, it cannot be disputed that the categories for which the benefit is provided is required to be given the same by the army establishment itself and therefore, the decision is in furtherance of the object sought to be achieved. Quite apart from the above, the contention of the petitioners that the impugned notification results in violating the petitioners' fundamental rights under Articles 14 & 19 of the Constitution of India, is patently misconceived inasmuch as the impugned notices do not deprive or deny the petitioners from doing business or earning their livelihood but only provides that regimental shops situated in the military station would be reserved 100% only for the specific categories mentioned therein. The petitioners are free to undertake any business or earn their livelihood in any area outside the military station. Therefore, in such circumstances, the contention of the petitioners that they have been totally prohibited from doing business by the impugned notification, is factually misconceived. In the wake of the above, we do not find force in the submissions of the petitioners or any ground to declare the impugned notification violative of Articles 14 and 19 of the Constitution of India.

(20) As far as the contention of the petitioners regarding applicability of the impugned notification dated 17.01.2018 to the shops in occupation of the petitioners situated in the shopping centre is concerned, it is observed that as per the documents filed by the petitioners themselves Annexure P-3 as well as the respondents as

Annexure R-3, the regimental shop has been defined to mean a shop constructed out of public fund, non-public fund or re-appropriation of government buildings on A-1 defence land which caters exclusively to military personnel and their families and that such a regimental shop can be a unit shop or shopping centre. The said documents also define the unit shops and shopping centres.

(21) A perusal of the definition of the regimental shop makes it clear that the regimental shop, which could be a unit shop or a Shopping Centre, is one which is (a) constructed out of public fund, non-public fund or re-appropriation of government buildings; (b) situated on A-1 defence land and (c) which caters exclusively to military personnel and their families.

(22) From a perusal of the licence agreement Annexure R-7 dated 14.03.2018, it is clear that there was a specific stipulation in the licence that the shop situated in Chakra Suvidha Complex, Chandimandir, Military Station, was granted to the petitioners for sale of their products for welfare of troops and their dependents, separated families, Veer Naris and Veterans in the station. The document Annexure P-17 dated 06.06.2018 issued by the respondents reiterates that the shops allotted to the petitioners were exclusively meant for the defence personnel and their families as a welfare measure and that no civilian/unauthorized person should be entertained.

(23) From the aforesaid it is apparent that the shop in question was allotted to exclusively cater to military personnel and their families. It is also an undisputed fact that the shops are situated on A-1 defence land, in a military station. It is also undisputed that the shops have been constructed by the respondents and in such circumstances, even though it is situated in a Shopping Centre, it is a regimental shop as it squarely falls within the three requirements as mentioned and stipulated in the definition of regimental shops contained in the guidelines for allotment of shops issued by the respondents vide Annexure P-3 and R-3 respectively.

(24) In view of the aforesaid facts prevailing in the present case, it is evident that the shops in question are regimental shops. It is pertinent to note that from a perusal of the petitions, it is also evident that there is no averment, assertion or factual foundation laid by the petitioners in the petitions to claim or establish that the shops in question are not regimental shops. Though, a feeble attempt in this regard has been made in the replication filed by the petitioners, however, in view of the

facts narrated in the preceding paragraphs, it is evident that the shops in question are regimental shops. Thus, the notification dated 17.01.2018 (Annexure P-3) is fully applicable to the same.

(25) In such circumstances, we are also of the considered opinion that the impugned notices dated 30.04.2019 issued by the respondents' authorities to the petitioners to vacate the shops relying on the notification dated 17.01.2018 (Annexure P-3) cannot be found fault with and are in accordance with law. We are also of the opinion that the notices to vacate the shops are also in accordance with the procedure prescribed by law.

(26) At this stage, learned counsel appearing in CWP No. 19682 of 2019, prays that he be permitted to withdraw the petition qua petitioner No.4, for the petition on his behalf was filed under a misconception. He submits that a formal application in this regard shall be moved. The prayer of the learned counsel is accepted and liberty is granted to move a formal application on behalf of petitioner No.4 in this regard.

(27) In the wake of the above, all the writ petitions are dismissed being bereft of merit, except CWP No. 19682 of 2019 on behalf of petitioner No.4, to enable him to move the necessary application, as indicated above, for withdrawal of the petition.

Ritambhara Rishi