

(2012) 08 P&H CK 0087
In the Punjab And Haryana At Chandigarh
Case No : C.W.P. No. 2297 of 2007

Bareja Automobiles Pvt. Ltd.

APPELLANT

Vs

State of Haryana and others

RESPONDENT

Date of Decision : 17-08-2012

Acts Referred:

Constitution of India, 1950 — Article 136, 14, 226, 227, 32
Haryana Urban Development Authority Act, 1977 — Section 15, 15(3)

Citation : (2012) 08 P&H CK 0087

Hon'ble Judges : Rajiv Narain Raina, J; Hemant Gupta, J; A.N. Jindal, J

Bench : Full Bench

Advocate : Arun Palli, with Mr. Tushar Sharma, Mr. D.S. Bali, with Mr. D.K. Jha and Mr. D.K. Sharma and Mr. N.P. Nehra, for the Appellant; Manish Bansal, Advocate for Haryana Urban Development Authority, Mr. Ashwani Chopra with Mr. G.S. Sullar, Sanjay Malhotra and Ms. Devki Anand, Advocates, Mr. R.K. Malik with Ms. Renu, Advocate, Mr. Sanjiv Sharma, with Mr. Vikramjit Sharda, Advocate, Mr. B.S. Rana, Advocate, Mr. I.P. Singh, Advocate, Mr. Deepak Sibal, Advocate, Mr. Hemant Bassi, Advocate, Mr. Ashok Jindal, Advocate, Mr. Vikas Jain, Advocate, Mr. Sumeet Goel, Advocate, Mr. M.B. Jain, Advocate, Mr. A.S. Narang, Advocate, Mr. C.B. Goel and Mr. Nitin Jain, Advocates, Mr. S.S. Saini, Advocate, Mr. A.P. Bhandari, Advocate, Mr. Virender Arora, Advocate, Mr. Sidharth Batra, Advocate, Mr. Kuljeet Rawal, Advocate, Mr. Sanjay Malhotra, Advocate and Mr. Jatinder Gupta Advocate, for the Respondent

Judgement

Hemant Gupta, J.—The following questions of law were referred for the decision by a Larger Bench on 6.2.2012 while hearing the writ petition mentioned above and CWP Nos. 3821 of 2008 and 14643 of 2008 filed by Career Launcher (I) Ltd. and M/s RSG Educational & Charitable Society (Regd.) respectively, inter alia, finding conflict in two judgments and also keeping in view the importance of the issues arising in large number of cases:

1. Whether a scheme for allotment of sites by mode otherwise than public auction is required to be published separately by way of regulations or can be culled down from the brochure?

2. Whether the criteria of staff education & training centre relates to training of in-house staff or training to the third persons in view of intention made know in the subsequent clause, when the commercial and manufacturing activities are not permissible in the institutional site?

3. Whether the principle of promissory estoppel can be invoked against the petitioners having participated in the selection process and which of the judgment lays down correct principle of law i.e. Delhi Assam Roadways Corporation Ltd. case (supra) on the one hand and Anil Kumar and U.G.Hospital Pvt. Ltd. cases (supra) on the other?

4. Whether this Court in exercise of powers of judicial review, can take a different view regarding suitability of applicants for allotment of plots in the absence of any proof of allegations of mala fide, favouritism or nepotism?

Though CWP 2297 of 2007 alone was referred to the Larger Bench, but liberty was given to all the learned counsel in the other cases to assist this Bench. We have heard not only the counsels representing the parties in CWP No. 2297 of 2007, but also the counsels representing parties in the other petitions.

2. The facts in brief, giving rise to the present order, are that all the writ petitioners applied for allotment of institutional plots in Sectors 20-A & 20-B, Faridabad, advertised for sale by Haryana Urban Development Authority (for short "the Authority") constituted under Haryana Urban Development Authority Act, 1977 (for short "the Act").

3. Initially, the Authority had invited applications to allot "freehold institutional plots for Corporate Offices, Research & Development Centres, Corporate Towers and Staff Training Institutes" in Sectors 20-A and 20-B, Faridabad in the year 2004. The allotments were to be made on an on-going "first come first served" basis. There were plots for Government Organizations as well as for Private/ Non-Government Organizations contemplating separate rates for Government Organizations and for Private/Non-Government Organizations. In terms of such process of sale, it appears that only 16 applications were received. Thereafter, another advertisement was published in respect of the same plots, which were part of the earlier process of advertisement, but with stipulation that the booking of these plots commences on 10.02.2006 and closes on 10.03.2006. There was marginal increase in the cost of the plots as well. The plots allotted at Faridabad in pursuance of the second advertisement are the subject matter of challenge in these writ petitions.

4. The primary ground of challenge is based upon the decision of the Hon"ble Supreme Court in New India Public School and other etc. Vs. HUDA and others etc., and some of the judgments of this court following the said judgment. The Supreme Court judgment in the aforesaid case arose in pursuance of an advertisement issued in 1988 by the Authority inviting applications for school sites located in Urban Estate, Panchkula. The applications were to be received on or before 30.03.1988. The allotment of school sites in pursuance of the said

advertisement became subject matter of challenge before this Court in CWP No.1303 of 1989. The advertisement so published (as appended in CWP No. 1303 of 1989) reads as under:-

...The individuals/institution should apply to the Estate Officer, HUDA, Panchkula, on the following proforma with earnest money of Rs. 2500/- in shape of Bank Draft payable at Panchkula in favour of Estate Officer, HUDA, Panchkula.

1. Name of Institution
2. Constitution whether trust or registered Society, its aims and objects, the name and particulars of members of the Governing Body, last audit report Financial position and details of similar institutions already set up at other places etc.
3. Requirement of land
4. Purpose for which the land is required
5. Financial position of the institution (with bank reference)
6. Requirement of electricity and water supply
7. Any other relevant information, which the institution may like to give
8. Bank draft of Rs. 2500/- in the name of Estate Officer, HUDA
9. Land Utilization plan
10. Recommendation of concerned D.C.

Organizing Secretary

Preference will be given in following orders:-

1. Haryana Education Department
2. Central Schools Organization/Education Department of Government of India
3. Prominent national level/regional level institutions
4. Existing schools with good reputation
5. Others

5. The aforesaid writ petition was allowed by learned Single Bench on 11.09.1992 in a judgment reported as Seven Seas Education Society Vs. The Haryana Urban Development Authority and others, Learned Single Judge found that the Selection Committee, which considered the applications of all the applicants took into account the reputation of the institution, its creditability, quality of education and the financial position before making its recommendations and that some reasons have been given for selecting the private respondents for allotment of school sites, but no reason whatsoever was forthcoming for rejecting the claim of the petitioners and other applicants. Thus,

the learned Single Judge concluded that allotment of school sites was considered by HUDA and its selection committee in a most arbitrary manner without adopting any uniform yardstick in weighing the merits and demerits of the applicants. After returning such finding, the learned Bench issued following directions:

(1) HUDA will frame and adopt objective and uniform guidelines for the purpose of making selection of applicants for the allotment of school sites.

(2) The claims of the petitioner herein, if they apply, will be considered for the allotment of school sites by HUDA on priority basis meaning thereby that other things being equal, the petitioners will be preferred in the matter of allotment.

(3) Those of the petitioners who are already running their schools in residential houses at Panchkula will not be evicted therefrom till their applications for allotment have been finally decided. In case, an allotment is in their favour, they will be given reasonable time to construct the school building. The petitioners, however, undertake that in the event of their applications for allotment being rejected, they will vacate the existing premises within six months from the intimation received by them in this regard.

6. The Division Bench accepted the appeal in a judgment reported as Seven Seas Educational Society Vs. The Haryana Urban Development Authority & others AIR 1996 P&H 228. The Bench observed that without ascertaining the tentative price of the site, acceptance of Rs. 2500/- as earnest money appears to be against the interest of the authority. It also found that a school site was allotted in Sector 12, when it had not applied for allotment of site in the said Sector. From the record, the Bench observed as under:

28. The skeleton record of the respondent-authority produced before us and the pleading of the parties reveals:

(i) that before advertising the school site, the area of such site was neither determined nor notified;

(ii) that no tentative premium as required under the Regulations was determined before inviting applications;

(iii) that the applications were not invited in accordance with the procedure prescribed under Regulation 5;

(iv) that the amount of earnest money was not determined as mandated by Regulation 5(2);

(v) that no terms and conditions were specified to be applicable upon allotment;

(vi) that no criterion was determined before initiating the process of allotment;

(vii) that the Committee was constituted as per some alleged instructions issued by the Authority which were not brought on record or produced before the Court during the pendency of the writ petitions or Letters Patent Appeals;

- (viii) that the so called criterion adopted by the Committee was more observed in breach than in compliance;
- (ix) that the criterion adopted was neither reasonable nor proper and did not achieve the object for which the allotments were being made;
- (x) that the allotments are shown to have been made or rejected mainly on the ground of the recommendations of the Deputy Commissioner;
- (xi) that no reason was assigned for resorting to the method of allotment by ignoring the method of allotting by auction;
- (xii) that the interests of the HUDA were admittedly not protected; and
- (xiii) that the school sites have been allotted without specifying the amount to be paid as premium for such sites on allotment.

The Bench concluded with the following observations:

38.....The writ petitions filed by the appellants shall be deemed to be disposed of with the following directions:

- (a) All the school sites required to be allotted or sold shall be notified afresh strictly in accordance with the provisions of the Act and the Regulations. All the petitioners, the private respondents and all other eligible persons shall be permitted to participate in the process of sale or allotment;
- (b) preference shall be given for sale or allotment by open auction;
- (c) In case, the respondent authority decides not to resort to the method of open auction, it may invite applications in accordance with the provisions of Regulation 5 and on the prescribed proforma;
- (d) The tentative price/premium of each site shall be pre-determined and proportionate earnest money received alongwith the applications, if filed;
- (e) appropriate reasonable uniform criterion for making the allotments, if so desired, be notified in advance;
- (f) Before initiating action for sale or allotment of the school sites, value of the construction/building raised by the private respondents herein shall be got determined by the Committee of experts headed by a Chief Engineer;
- (g) The intending allottees would be intimated that if they succeed in getting the school sites allotted in their favour, they will take its possession alongwith the building, staff and the students who offer to remain in their employment/institutions;
- (h) In case, it is decided to transfer the land by open auction it shall specifically be mentioned in the notice that in case the present allottee succeeds in such auction, they shall be given the benefit of 10 per cent of the bid amount offered by them;

(i) Out of the amount realized by sale or lease on account of the price-premium, the erstwhile allottees shall be paid the amount spent by him/it in raising construction of the building at his own risk and responsibility during the pendency of the writ petition, as calculated by Expert Committee alongwith the amount already paid to the HUDA such a provision would not be applicable where the allottee exercises his option to remove the construction raised by him/it at his/its own risk and responsibility;

(j) The process be initiated within two months and completed within four months;

(k) Till the process of fresh allotment is completed, the private respondents shall be permitted to remain in possession of the school sites allotted to them. The appellants are held entitled to the payment of costs which are assessed at Rs. 2000/- per appeal.

7. The Hon''ble Supreme Court in New India Public School's case (supra) while considering the statutory provisions and the Regulations framed thereunder, returned the following findings:

5. A reading thereof, in particular Section 15(3) read with Regulation 3(c) does indicate that there are several modes of disposal of the property acquired by HUDA for public purpose. One of the modes of transfer of property as indicated in sub-section (3) of Section 15 read with sub-regulation (c) of Regulation 5 is public auction, allotment or otherwise. When public authority discharges its public duty the word "otherwise" would be construed to be consistent with the public purpose and clear and unequivocal guidelines or rules are necessary and not at the whim and fancy of the public authorities or under their garb or cloak for any extraneous consideration. It would depend upon the nature of the scheme and object of public purpose sought to be achieved. In all cases relevant criterion should be pre-determined by specific rules or regulations and published for the public. Therefore, the public authorities are required to make necessary specific regulations or valid guidelines to exercise their discretionary powers; otherwise, the salutary procedure would be by public auction. The Division Bench, therefore, has rightly pointed out that in the absence of such statutory regulations exercise of discretionary power to allot sites to private institutions or persons was not correct in law.

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7. The HUDA also is directed to frame an appropriate scheme for allotment of the sites under discretionary power or other mode otherwise than by public auction and then place the scheme before the first Court of the High Court and obtain approval of the validity and correctness of the scheme and would thereafter proceed with the disposal of the properties in future. As far as allotment to the petitioners, viz., Ajay Memorial School, Ashok Trehan Memorial Charitable Trust and Manav Mangal Society and Lt. Col. Y.P.Mahindru, in these special leave petitions is concerned, the same will be subject to the above directions and in the event of their non-acceptance, the properties should be put to public auction

alongwith other sites and buildings. The plots allotted to the rest of the petitioners other than those cases where notices were issued, will be subject to the directions issued by the Division Bench. The other unallotted plots also should be put to public auction as ordered by the Division Bench.

8. In terms of the directions issued, the Authority framed a policy auctioning such public sites by public auction, as is noticed by a Bench of this Court in a judgment reported as *Seven Seas Education Society & etc. Vs. The Haryana Urban Development Authority & others* AIR 2002 P&H 83, when it observed as under:

5. In furtherance to the direction issued by the Hon''ble Apex Court, the Haryana Urban Development Authority has framed a policy for auctioning such public sites by public auction and as such that direction is not in question before the Court nor any aspect thereof has been challenged by any of the parties to the petition.

9. Vide the aforesaid order, this Court determined the amount Payable by the allottees. The matter rested with the said order. However, the advertisement in question published for allotment of institutional plots at Faridabad also advertised for allotment of plots at Gurgaon. A Division Bench of this Court set aside the allotments made at Gurgaon vide judgment rendered in *Delhi Assam Roadways Corporation Ltd. Vs. The Haryana Urban Development Authority and others* 2008 (3) RCR (Civil) 389. On the basis of pleadings and the record produced, the Division Bench found the following main features to set aside the allotments:

26. After perusing the pleadings of the parties and record produced by the respondents before us, the following main features in these matters are desrenable:

1. That initially in Sectors 18, 32 and 44 Gurgaon 22 plots were advertised for private/non Government Organizations as per brochure Annexure P-3 and 35 plots were advertised for Government Organizations. However, in the category of private/non government organization allotment has been made to 54 persons.

2. The number of applicants in the category of private/non?government organizations were 382 which were much more than the number of plots.

3. No pre-determined criteria was published nor any terms and conditions which were to apply for allotment were made known.

4. That some guidelines were framed by the Committee. Even those were not "kept in mind".

5. That there is no emphasis explicit even from the guidelines which were to be kept in view that the allottees would be using the allotted plots for permissible use of research and development center or Staff Education and Training Centre or offices of professional groups/ associations/societies who are not engaged in commercial/manufacturing activities. There is no indication in the record that any of those permissible uses were kept in mind which were indicated in the

brochure. No reasons have been highlighted for adopting method of allotment in preference to the method of sale by auction.

6. That interview for allotment in respect of 371 applicants from non-Government Organization were conducted on 9.6.2006, 10.6.2006, 12.6.2006, 13.6.2006, 14.6.2006, 17.6.2006 and 19.6.2006. In other words, 371 applicants were interviewed in seven days interviewing 53 candidates in one day.

7. That the record further shows that M/s BRC Electronic Limited, M/s Gautam Bultron Private Limited, M/s Kalyan Harbals Private Limited, M/s Trishla Internationals Private Limited-respondents No. 6 to 9 in C.W.P. No. 11501 of 2007 had never applied for allotment of plots in Sector 32. They had applied for allotment of Y2 acre plots in Sectors 18 and 44, Gurgaon. However, they were allotted Y2 acre plot each in Sector 32. There is nothing on record to clarify as to how their applications were considered for Sector 32 and it was for the aforementioned reason that when application for withdrawal of the petition was filed vide order dated 10.10.2007 we allowed the petitioner to withdraw but substitute the titled "Court its own motion". We are not able to understand as to how plots in Sector 32 have been allotted to those applicants, who never applied for allotment in that Sector.

10. The Authority filed an appeal against the said order before the Hon''ble Supreme Court bearing Special Leave to Appeal (Civil) No. 10818-10823 of 2008. The Hon''ble Court on 29.04.2011 passed the following order:

Delay condoned.

Learned Additional Solicitor General, on instructions, submits that the petitioner, namely, Haryana Urban Development Authority shall be making available half an acre of plot, as far as possible, Plot No. 55-P, Sector 44 (Institutional), Gurgaon to the first respondent in SLP (C) No. 10818-10823 of 2008, namely, Delhi Assam Roadways Corporation Ltd.

In the circumstances, there shall be a direction directing the Authority to allot the said plot, as expeditiously as possible, preferably within four weeks from today. The allotment shall be made on the same terms and conditions on which the other respondents had been earlier allotted. Obviously, no further dispute, as such, survives so far as the allotments made in favour of other respondents are concerned.

In such view of the matter, no further orders, as such, are required to be passed and the order of the High Court shall stand modified to the extent.

It is made clear that allotments already made in favour of the other respondents is not interfered with.

The impleadment application in SLP (C) No. 10818-10823 of 2008 is allowed.

The special leave petitions are, accordingly, disposed of.

11. Another writ petition, wherein the statutory provisions and the Regulations came up for consideration is Babbar Bhan & another Vs. State of Haryana & others 2010 (2) PLR 82, wherein allotment of industrial plots at Bhiwani became subject matter of challenge. The Division Bench, inter alia, relied upon New India Public School and Delhi Assam Roadways Corporation Ltd. cases (supra) to quash the allotments made and observed as under:

35. The question, which we have asked ourselves, is whether the procedure adopted by the Committee that "allotment of plot will be after due assessment of the application/project report & on basis of individual merits/financial capabilities of entrepreneurs" satisfies the test of rational and relevant principle, which is non-discriminatory? It makes us conclude that until and unless each applicant was compared, it vested arbitrary power in the Committee to discriminate and say that candidate "A" is better than candidate "B". Thus, the procedure adopted by the Committee, in no way, can be termed as rational in answering all the requirements of Article 14 of the Constitution of India.

36. In these circumstances, we accept the present writ petitions, quash the allotments made in pursuance of the recommendations of the Committee and direct the respondent Haryana Urban Development Authority to evolve a criteria, which is in accordance with the requirements of law and observations made by us and to re-assess the comparative merit of the applicants. We propose no costs.

12. It appears that the order passed by the Division Bench has attained finality.

13. Another advertisement for allotment of 158 industrial plots at Faridabad and 44 industrial plots at Gurgaon was published. The same statutory provisions and the Regulations were the subject matter of interpretation before the said Division Bench in CWP No.10319 of 2006 titled "Horizon Rubber Products Ltd. & others Vs. State of Haryana & others" and other connected cases decided on 19.04.2011. The Court relied upon the judgment of Hon'ble Supreme Court in New India Public School and of this court in Babbar Khan's cases (supra) and found that the Authority is yet to frame a fresh policy for allotment of industrial plots in question and that the claims of the petitioners have to be considered in the light of the new policy as are required to be framed in terms of the directions of the said Bench as well as in Babbar Khan's case (supra). The Bench noticed that there is no allegation that the allottees had obtained such allotments on the basis of their relationship or connection with the people in power and that there is nothing on the record to substantiate that they were in any way responsible for the allotments made in their favour which have now been found to be illegal by the Court. Therefore, the claim of the allottees based on equity cannot be brushed-aside. The Bench held as under:

Following the principles laid down in the aforesaid judgment we are of the view that all such allottees including the 5 petitioners, who have been offered allotments be allowed to retain the same on payment of market price of the industrial plots calculated with reference to the date of allotment. In making the

aforesaid calculation the Chief Administrator, Haryana Urban Development Authority, who will personally intervene in the matter, will go by the reports of the Collectors of the Districts. In the event the allottees are ready to pay the amount either in one installment or in equated installments of a reasonable number to be determined by the Chief Administrator, they will be allowed to retain the plots and carry on their industrial activities. In the event such allottees are not agreeable to pay the price, the plots will be resumed and put up for auction. In such a situation the allottees would be entitled to the value of the buildings constructed on the land, the valuation of which will be determined in a similar manner by the Chief Administrator of Haryana Urban Development Authority. Necessary action in terms of the present directions be carried out as expeditiously as possible and in any case within a period of six months from the date of the present order.

14. The Special Leave Petitions against the order dated 19.04.2011 are stated to be pending before the Hon"ble Supreme Court.

15. The relevant statutory provisions necessary for interpreting the aforesaid questions such as Section 15 of the Act and the Haryana Urban Development (Disposal of Land and Building) Regulations, 1978 (for short the Regulations) read as under:

Haryana Urban Development Act, 1977

2. Definitions - In this Act, unless the context otherwise requires :-

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(c) "building" includes -

(i) a house, out-house, stable, latrine, godown, shed, hut, wall and any other structure whether of masonry, bricks, mud, wood, metal or any other material whatsoever;

(ii) a structure on wheels or simply resting on the ground without foundations;

(iii) a ship, vessel, boat, tent, van and any other structure used for human habitation or used for keeping or storing any articles or goods; and

(iv) the gardens, grounds, carriages and stables, if any, appurtenant to any building which is intended to be used for residential, industrial, commercial or other purposes, whether in actual use or not.

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(w) "transfer" includes a sale or lease of land or building u/s 15;

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15. Disposal of land - (1) Subject to any directions given by the State Government under this Act and the provisions of sub-section (5), the Authority

may dispose of -

(a) any land acquired by it or transferred to it by the State Government without undertaking or carrying out any development thereon; or

(b) any such land after undertaking or carrying out such developments as it thinks fit, to such persons, in such manner and subject to such terms and conditions, as it considers expedient for securing development.

(2) Nothing in this Act shall be construed as enabling the authority to dispose of land by way of gift, but subject to this condition, reference in this Act to the disposal of land shall be construed as reference to the disposal thereof in any manner, whether by way of sale, exchange or lease or by the creation of any easement right or privilege or otherwise.

(3) Subject to the provisions hereinbefore contained, the Authority may sell, lease, or otherwise transfer whether by auction, allotment or otherwise, any land or building belonging to it on such terms and conditions as it may, by regulations, provide.

(4) The consideration money for any transfer under sub-section (11) shall be paid to the Authority in such manner as may be provided by regulations.

(5) Notwithstanding anything contained in any other law, for the time-being in force, any land or building or both, as the case may be, shall continue to belong to the authority until the entire consideration money together with interest and other amount, if any, due to the Authority, on account of the sale of such land or building or both is paid.

(6) Until the conditions provided in the regulations are fulfilled, the transferee shall not transfer his rights in the land or building except with the previous permission of the Authority, which may be granted on such terms and conditions, as the authority may deem fit.

Haryana Urban Development (Disposal of Land and Building) Regulations, 1978

3. Mode of disposal - Subject to any direction issued by the State Government under the Act and to provisions of sub-section (5) of Section 15 of the Act -

(a) the Authority may dispose of any land belonging to it in developed or an undeveloped form;

(b) any land or building of the Authority may be disposed of by Authority by way of sale or lease or exchange or by the creation of any easement right or privilege or otherwise;

(c) the Authority may dispose of its land or building by way of sale or lease either by allotment or by auction, which may be by open bid or by inviting tenders.

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5. Procedure in case of sale or lease of land or building by allotment - (1) In the case of sale or lease of residential and industrial land or building by allotment the intending purchaser shall make an application to the Estate Officer concerned in the prescribed form (annexed to these regulation) as given in forms "A" and "B" respectively.

(2) No application under sub-regulation (1) shall be valid unless it is accompanied by such amount as may be determined by the Authority, which shall not be less than ten per cent of the price/premium in the form of a demand draft payable to the Estate Officer, and drawn on any scheduled bank situated at the local place of the Estate Officer concerned or any other such place as the Estate Officer may specify.

(3) In the case of residential plot/building when the application has been so tendered, the Estate Officer or such other officer as may be empowered, shall subject to such directions as may be issued by the Authority in this behalf consider the applicant for allotment of a plot or building of the size applied for. The allotment may be on "first come first served" basis or by draw of lots, as may be determined by the Authority and the successful applicant shall be sent allotment letter, in form "C" and "CI" by registered post; provided that for the purposes of proper planning and development of an urban estate, land or building may be reserved for groups or individuals or for persons practicing any profession or carrying on any occupation, trade or business or for such other category of persons, Government Departments and Institutions, charitable institutions and other organizations of public welfare, as may be decided by the Authority from time to time.

(4) In the case of industrial land or building, allotment shall be made in accordance with the recommendations of the Directorate of Industries as to the genuineness of the party, priority of the industry, the area required for the industry etc.

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6. Sale or lease of land or building by auction - (1) In the case of sale or lease by auction, the price/premium to be charged shall be such reserve price/premium as may be determined taking into consideration the various factors as indicated in sub-regulation (1) of Regulation 4 or any higher amount determined as a result of bidding in open auction.

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16. In pursuance of the advertisement published in the year 2006, the Authority has published a brochure containing application form as well. The relevant extract from the brochure published is as follows (the last column has been added in the table to give the details of the number of the plots allotted):

Sector - 20A & 20B

These sector are located on Delhi Mathura Road, opposite City Centre Sector 12, Faridabad. The sectors are ideal for setting up of Corporate Offices, Institutions, Research and Development Centres etc. These sectors are strategically located with easy accessibility and exclusively planned for Institutional use.

Details of plots, Rates & Earnest Money

Category of plots/site in Mtrs.

No. of Plots for Govt. Organizations

No. of plots for private/ Non- Govt. Organizations

Rate per sq. mtrs. (inRs.)

Earnest money @ 10% of the total tentative cost (in fig.)

No. of plots allotted to private/ Non-Govt. Organizations

For Govt. Organizations

For private/ Non-Govt. Organizations

For Govt. Organizations

For private/ Non-Govt. Organizations

Sector 20-A

2 acres

(93.76x80)

1 acre (50x80)

1/2 acre (30x60)

1/4 acre (20x40)

6 10 2 16

6 10 2 16

4,500/- 4,500/- 4,500/- 4,500/-

5,625/- 5,625/- 5,625/- 5,625/-

35,55,000/- 18,00,000/- 8,10,000/- 3,60,000/-

44,43,750/- 22,50,000/- 10,12,500/- 4,50,000/-

4 10 1 16

Sector 20-B

2 acres

(8000 sq.mtr.)

1 acre (50x80)

1/2 acre (2000 sq.)

1/4 acre (20x50)

6

8

1

5

6

8

1

5

4,500/-

4,500/-

4,500/-

4,500/-

5,625/-

5,625/-

5,625/-

5,625/-

36,00,000/-

18,00,000/-

9,00,000/-

4,50,000/-

45,00,000/-

22,50,000/-

11,25,000/-

5,62,000/-

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ELIGIBILITY:

A) Govt. Organization: State and Central Govt. Deptts, Boards and Corporations and Public Sector Undertaking of the State and Central Govt.

B) Non-Govt./Private Companies/Organizations

PERMISSIBLE USES:

Only following uses shall be permitted in the buildings to be constructed in the institutional plots

1. Corporate Offices;
2. Research & Development Centres;
3. Staff Education & Training Centres;
4. Offices of Professional Groups, Associations or Societies not engaged in Commercial/Manufacturing activities
5. Other institutional Uses

10% of the floor areas of the buildings can be used for a purpose ancillary to any of the above uses with the approval of Chief Administrator.

PROCEDURE FOR ALLOTMENT

The applicant will apply on the prescribed form. The applications shall be scrutinized/applicants interviewed by a Standing Screening Committee, constituted for the purpose.

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17. In terms of advertisement published, as many as 160 applications were received. The interviews of all such applicants desirous to seek institutional plots were fixed on 20.07.2006 vide communication dated 13.07.2006 (Annexure P-13). All the applications were considered by a Committee consisting of the Administrator, HUDA, Faridabad; the Deputy Commissioner, Faridabad; the Estate Officer, Faridabad and; the District Town Planner, Faridabad. After interviewing all the applicants on three dates i.e. 20.7.2006; 21.7.2006 and on 11.08.2006 including the petitioners, 33 applicants were shortlisted and a draw for allotment of institutional plots was held on 28.09.2006 allotting a plot to each of the shortlisted applicants. The number of plots allotted in terms of the process initiated is also mentioned in the last column of the table reproduced above. Thereafter, the earnest money deposited by the petitioners as also all other unsuccessful applicants was refunded on 03.10.2006.

18. Before we notice and consider the respective contentions raised by the learned counsel for the parties, we may notice that 108 plots were advertised as

per the table reproduced above though as communicated by Mr. Manish Bansal, learned counsel for the Authority, only 91 plots were available for allotment. The total applications received were 285 including the applications received in pursuance of the old advertisement published in the year 2004 for 93 plots. Out of the plots available, only 49 plots have been allotted, including to the Government and Public Sector Undertakings. With this background, the stage is now set to consider the respective arguments of the learned counsel for the parties.

Question No. 1 Whether a scheme for allotment of sites by mode otherwise than public auction is required to be published separately by way of regulations or can be culled down from the brochure?

19. Learned counsel for the petitioners have vehemently argued that in terms of sub-Section (3) of Section 15 of the Act, the Authority is competent to sell, lease, or otherwise transfer whether by auction, allotment or otherwise, any land or building belonging to it on such terms and conditions, as it may, by regulations, provide. Regulation 3 permits the Authority to dispose of any land belonging to it in developed or an undeveloped form; any land or building of the Authority by way of sale or lease or exchange or by the creation of any easementary right or privilege or otherwise; or its land or building by way of sale or lease either by allotment or by auction. In terms of sub-Section (3) of Section 15, the Regulations have been framed for sale or lease of residential and industrial land or building (see Regulation 5) or sale or lease of land by auction (see Regulation 6). For institutional plots, such as in the case in hand, there is no specific regulation framed. Therefore, in the absence of Regulations, the Authority could sell or lease the institutional plots only after a policy was framed and published for the information of all concerned. Such policy is required to be transparent, objective, fair and reasonable. Since the Authority has not published any policy for sale of the institutional plots any time before the advertisement, the procedure for allotment of plots through the medium of Selection Committee does not satisfy the test of a reasonable criteria on the touch-stone of Article 14 of the Constitution of India. Therefore, the entire process of allotment of plots in the manner adopted by the Authority, lacks transparency, objectivity, fairness and thus, not sustainable in law. It is argued that the Hon'ble Supreme Court in New India Public School case (supra) has categorically ordained that the Authority should frame specific regulations or valid guidelines to exercise their discretionary powers otherwise the salutary procedure would be by public auction. Since the allotments have not been conducted by public auction nor any specific regulations or guidelines have been framed, the allotments made are contrary to the directions issued by the Hon'ble Supreme Court. It is argued that the criteria adopted has to be pre-determined and such criteria has to be published. Since none of the directions have been followed by the Authority, therefore, the allotments cannot be sustained.

20. On the other hand, Mr. Bansal, learned counsel for the Authority has argued

that the Authority is competent to sell, lease, or otherwise transfer its land or building, which includes by way of gift or exchange, as mentioned in sub-Section (2) of Section 15. Such process of sale, lease or otherwise of transfer can either be by auction or allotment. The expression "otherwise" as a mode of transfer has to be read as ejusdem generis to the expression "auction" or "allotment". The process of short-listing of suitable applicants by the Selection Committee for the purpose of suitability for allotment of plots is the process of allotment and does not fall within the expression "otherwise". Therefore, the action of the Authority inviting applications and to determine suitability of the applicants for the allotment of plots, falls within the scope of sub-Section (3) of Section 15 of the Act. It is argued that auction is not always the best process, as the deserving and upcoming entrepreneur may not be able to participate in the auction process and, thus, defeating the purpose of setting up of an Authority for a planned development. If all plots have to be auctioned, then the big corporate and industrial houses would corner plots leaving no room for developing or start up companies and organizations awaiting allotment. Thus, the process of auction will negate the very object of setting up of an Authority i.e. for development of urban areas in the State to carry out the objects and purpose of advertising plots. After determining the suitability of the applicants, the plots have been allotted to them. Since there are different sizes of plots and the users, the requirements are different and each category of applicant cannot be compared with the other. After determining the eligibility, if the eligible applicants were more than the number of plots advertised, the plots could be allotted by draw of lots, but not otherwise. Since the eligible and suitable applicants were almost equal to the number of plots available, such plots have been allotted in fair, transparent manner and on the basis of pre-determined criteria.

21. It is contended that the Hon"ble Supreme Court permitted the framing of guidelines to regulate the allotment of plots. Such guidelines were available in the advertisement and the information sought in the application form. Firstly, the eligibility in respect of non-government, private companies and organizations, the permissible uses such as Corporate Offices, Research & Development Centres, Staff Education & Training Centres and Offices of Professional Groups, Associations or Societies not engaged in Commercial/Manufacturing activities gave sufficient indication of the eligibility of the organizations intending to seek plots. The brochure containing the application form provided the Floor Area Ratio (FAR) and the maximum permissible coverage as well. The application form was to disclose the type of activity envisaged as also the ancillary use, if any, not exceeding 10% of the floor area and total floor area required. The application form asked applicants to disclose number of employees expected to work in the premises and number of trainees expected to attend training in case building is to be used for education and training. Since the plots were to be allotted for institutional purposes, no two institutions could be compared with each other as their requirements and purpose could be entirely different. Therefore, the Selection Committee consisting of the Administrator, HUDA, Faridabad; the

Deputy Commissioner, Faridabad; the Estate Officer, Faridabad and; the District Town Planner, Faridabad has examined the credentials of each applicant, the intended use, the profile of the organization and the Directors and found the petitioners ineligible for allotment of institutional plots. Therefore, the directions of the Hon"ble Supreme Court in New India Public School case (supra) have been complied with in letter and spirit. Therefore, the process of allotment does not warrant any interference in the writ jurisdiction of this Court.

22. A reading of the Act and the Regulations discloses that Section 15 of the Act has given liberty to the Authority to dispose of the land without undertaking or carrying out any development work thereon or; after undertaking or carrying out such developments, to such persons subject to terms and conditions, as it considers expedient for securing development. However, sub-Section (3) empowers the Authority to sell, lease, or otherwise transfer whether by auction, allotment or otherwise, any land or building belonging to it on such terms and conditions, as it may, by regulations, provide. The procedure of allotment is contained in Regulation 5, but it is in respect of residential and industrial land, whereas Regulation 6 describes the procedure for sale or lease by auction. The expressions "residential" and "industrial" have not been defined in the Regulations, but such expressions have been defined in the Haryana Urban Development Authority (Erection of Building) Regulations, 1979 (for short the Building Regulations). The relevant extract from such regulations read as under:

2. Definitions - In these Regulations, unless the context otherwise requires :-

xx

(xi) "Building" shall mean any structure constructed for whatsoever purpose and of whatsoever materials and every part thereof whether used as human habitation or not and includes foundation, plinth, walls floors, roofs, chimneys, plumbing and building services fixed platforms, verandah, balcony, cornice or projection part of a building or anything affixed thereto or any wall enclosing or intended to enclose any land or space and signs and outdoor display structures, tents shamianas and tarpaulin shelters shall not be considered as building;

xx

(xiii) "Class of Building" shall mean a building in one of the following four categories -

- (a) residential buildings;
- (b) commercial building;
- (c) warehouse and industrial buildings; and
- (d) publish buildings

xx

(xvi) "Commercial building" shall mean a building used wholly or partially for

shops, offices, banks or other similar purpose, but shall not include industries and motor garages;

xx

(xlii) "Residential building" shall mean a building used or constructed or adapted to be used wholly or partially for human habitation and includes all garages, stables and other out buildings appurtenant thereto;

xx

(Li) "Warehouse and industrial building" shall include a factory, a workshop or a motor garage;

xx

23. The Division Bench of this Court in Seven Seas Educational Society case (supra) have issued directions, which were approved by the Hon''ble Supreme Court in New India Public School case (supra). As per the directions of the Division Bench, the Authority, in the present allotment process, has fixed tentative price and also received proportionate earnest money. The direction is to frame reasonable uniform criteria for making the allotments and if so desired to be notified in advance. The Hon''ble Supreme Court in New India Public School case (supra) observed that in all cases relevant criteria should be pre-determined by specific rules and regulations published for information of general public. The public authorities are required to make specific regulations to exercise their discretionary powers. In terms of such directions, the stand of the Authority is that the criterion for allotment of plots is available from the combined reading of the brochure and the information required in the application form. The information sought in respect of number of workers, the extent of investment and the experience etc. are relevant to determine the suitability by an applicant for allotment of an institutional plot. On the basis of such information received from all the applications and on the basis of supporting documents filed, the Selection Committee has assessed all the applicants as eligible and suitable for allotment of plots or not.

24. The advertisement published and the terms in the brochure substantially complies with the intention of the order passed by the Hon''ble Supreme Court when the information in respect of the financial status, number of employees, requirement of site is sought. In the brochure issued, the procedure for allotment is also specified, which is to the effect that the applications shall be scrutinized/ applicants interviewed by a Standing Screening Committee constituted for the purpose. In New India Public School case (supra), the Hon''ble Supreme Court has observed that the allotment of plots would depend upon nature of scheme and object of the public purpose sought to be achieved. Since the plots are to be allotted for institutional purpose, the requirement of each of the applicant has to be assessed on the basis of requirement projected, the financial status keeping in view the permissible uses. Therefore, we find that in the present case, with

the publication of brochure, the terms of allotment of institutional plots were specified with reasonable certainty and the process of allotment has been undertaken in accordance with the procedure advertised.

25. Though Regulation 5 does not deal with sale or lease of institutional plots, but the process adopted by the Authority is on the lines of such procedure specified in Regulation 5 and such procedure is also fair and reasonable. Though the learned counsel for the petitioners have vehemently argued that without framing regulations or issuing guidelines, the institutional plots could not be allotted, but in terms of New India Public School case (supra), the allotment can be made on the basis of the published guidelines as well. There are different ways of issuing guidelines i.e. by issuing a consolidated circular or by making it public in the manner adopted by the respondents. The advertisement and the brochure details the plots available; the price fixed for each plot; permissible uses of the plots and also that the applicants shall be shortlisted by a Selection Committee. It could not be pointed out that there was any other requirement, which was required to be included in the brochure published by the Authority, but not published. Therefore, the advertisement and the conditions in brochure satisfy the mandate of the directions given by this Court in Seven Seas Educational Society case (supra) and as observed by the Hon''ble Supreme Court in New India Public School case (supra).

26. The judgment in New India Public School case (supra) was arising out of a fact where the Authority has not given any process of determining the eligibility nor even fixed the earnest money payable in terms of the regulations. The applications were invited for school sites, but apart from the financial position and recommendation of the Deputy Commissioner, there was no other information, which could form a reasonable yardstick for determining the eligibility of the applicants. Therefore, the facts out of which New India Public School case (supra) arose are materially different than the facts of the present case.

27. The reliance of the learned counsel for the petitioners on the Division Bench judgment of this Court in Delhi Assam Roadways Corporation Ltd. case (supra) is again not tenable for the reason, inter alia, that Hon''ble Supreme Court in SLP has modified the order passed by this Court, as the aggrieved person has been allotted a plot. The modification of the order by Supreme Court has the effect of nullifying the order passed by this Court as otiose.

28. Even otherwise, the Division Bench has recorded a finding that no pre-determined criteria was published nor any terms and conditions, which were to be applied for allotment were made known. It was also found that the guidelines framed by the Committee were not kept in mind. However, we find that the said observations are not sustainable for the reason that the criteria for allotment of plots could be made out from the brochure on the basis of which, all the applications were received and the applicants shortlisted as discussed above. In fact, the findings recorded by the Division Bench are that even the guidelines

were not kept in view and that plots have been allotted in a sector for which the applications were not even submitted.

29. In Babbar Bhan's case (supra), the allotment of industrial plots was set aside for the reason that unless and until each applicant is compared, it vested arbitrary power, in the Committee to discriminate. In the present case, applications were invited not from homogeneous groups, but from the organizations engaged in the activities not connected with each other. Only the similar can be compared and not the organizations dealing with the diverse subjects. In such like situation, the process adopted by the Selection Committee to short-list the organizations, who satisfy the eligibility and suitability conditions and declare the others as ineligible is fair and reasonable. In view of the above, we find that the judgment in Babbar Khan's case (supra) is based upon its own facts.

30. In Horizon Rubber Products Ltd. case (supra) the applications had been invited for allotment of industrial plots. Since the matter is pending before the Hon'ble Supreme Court, we refrain ourselves from commenting upon the judgment in any manner.

31. Learned counsel for the petitioners have referred to two other judgments reported as Akhil Bhartiya Upbhokta Congress Vs. State of Madhya Pradesh and Others, and Centre for Public Interest Litigation and Others Vs. Union of India (UOI) and Others, in support of their contention that the State or its instrumentalities cannot dispose of public property without adopting fair, transparent and reasonable criteria. It is argued that since no criteria was framed, therefore, the allotment process negates the concept of fairness in public actions by public authorities.

32. We do not find any merit in the said argument. In Akhil Bhartiya Upbhokta Congress case (supra), a plot of land was allotted to a Trust without any advertisement and without inviting other similarly situated organizations/institutions to participate in the allotment process. Such process was said to be violative of Article 14 of the Constitution of India. The Court considered the various judgments including that of the Hon'ble Supreme Court in New India Public School case (supra) and returned the following findings:

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.

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67. This, however, does not mean that the State can never allot land to the institutions/organisations 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/organizations 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.

33. In fact, a perusal of the above judgment would show that what is expected of a public authority is issuance of advertisement incorporating therein conditions of eligibility so as to enable all similarly situated eligible persons, institutions/organizations to participate in the process of allotment, whether by way of auction or otherwise. The Court has recognized the fact that the Government may allot land at a fixed price, but such allotment process must be preceded by a wholesome exercise consistent with Article 14 of the Constitution.

34. In the present case, an opportunity was given to all eligible organizations to participate in the process of allotment on an application form, which contemplated information regarding the financial status, number of employees, requirement of site etc. The brochure also contemplated that there will be a Selection Committee, which will short-list the organizations. Therefore, the procedure adopted by the Authority is consistent with Article 14 of the Constitution of India.

35. In Centre for Public Interest Litigation case (supra), the challenge was to allotment of 2G Spectrum on "first come first serve basis". While considering the said policy, the Hon"ble Supreme Court observed as under:

95. This Court has repeatedly held that wherever a contract is to be awarded or a licence is to be given, the public authority must adopt a transparent and fair method for making selections so that all eligible persons get a fair opportunity of competition. To put it differently, the State and its agencies/instrumentalities must always adopt a rational method for disposal of public property and no attempt should be made to scuttle the claim of worthy applicants. When it comes to alienation of scarce natural resources like spectrum etc., it is the burden of the

State to ensure that a non-discriminatory method is adopted for distribution and alienation, which would necessarily result in protection of national/public interest.

36. In view of the aforesaid judgment as well, the public authority is expected to adopt a transparent and fair method for making selections so that all eligible persons get a fair opportunity of competition. The same test is satisfied by the respondents in the present allotment process.

37. In view of the above, the first question is, thus, answered to the effect that the scheme of allotment of institutional plots can be made out from the terms laid down in the brochure and that nothing more was required to be included in the brochure. We may state that it would have been advisable for the Authority to formalize the guidelines and/or terms of the sale published in the brochure by way of regulations. Such process would have avoided the number of cases filed in respect of the allotment of plots by the Authority.

Question No. 2 Whether the criteria of staff education & training centre relates to training of in-house staff or training to the third persons in view of intention made know in the subsequent clause, when the commercial and manufacturing activities are not permissible in the institutional site?

38. There is no dispute in respect of permissible use of a plot for corporate office, but different interpretations are sought to be applied in respect of specified use for Research & Development Centres; Staff Education & Training Centres and Offices of Professional Groups, Associations or Societies not engaged in Commercial/Manufacturing activities. Learned counsel for the petitioners have argued that the expression "not engaged in commercial/manufacturing activities" is only in respect of use mentioned at serial number 4 and does not qualify the uses specified as that for Research & Development Centres and Staff Education & Training Centres.

39. We do not find any merit in the said argument of learned counsel for the petitioners as well. The applications have been invited for institutional plots. It is specified in the brochure that the plots are situated in the sectors, which are ideal for setting up of Corporate Offices, Institutions, Research & Development Centres etc. These sectors are strategically located with easy accessibility and exclusively planned for institutional use. The Building Regulations defines commercial building to mean building used wholly or partially for shops, offices or other similar purpose, but shall not include industries and motor garages. The institutional use appears to be inclusive of some of the uses specified for commercial use such as offices excluding industries and motor garages. The institutional use is part of the commercial use. Thus, we are inclined to accept the argument raised by Mr. Bansal that the industrial use of the institutional plots is not permitted. Such intention is exemplified when the expression "not engaged in commercial/manufacturing activities" is used in respect of specified use at serial number 4. Though such condition has not been specifically mentioned in respect of permissible uses mentioned at serial number 2 & 3, but keeping in

view the fact that though applications have been invited for institutional plots and in an institutional sector, the same cannot be permitted to be used for manufacturing/industrial purposes.

40. The petitioners in the present case i.e. Bareja Automobiles Pvt. Ltd. as well as in CWP No. 3821 of 2008 i.e. Career Launcher (I) Ltd. have applied for allotment of plots for staff education and training centre. Whether the staff education and training centre means education or training to third person or to the employees of the said organization is the question required to be examined. The expression "staff" is not defined in the Regulations, therefore, the meaning as generally understood by the person in the trade is to accepted or even the dictionary meaning of such expression can be helpful to understand the meaning of such expression. As per the Law Lexicon, "staff" means the following:

The personnel responsible for the functioning of an institution or the establishment or the carrying out of an assigned task under an overall discretion of a head.

41. As per Webster's Encyclopedic Unabridged Dictionary "staff" means as under:

5. a group of assistants to a manager, superintendent or executive.

6. a group of persons, as employees, charged with carrying out the work of an establishment or executing some undertaking.

42. The primary objective of the permitted use is education and training to staff. M/s Bareja Automobiles Pvt. Ltd. has sought allotment of a plot to train the local roadside mechanics/local garage owners and their employees to know about the new advanced techniques of 4-Stroke engine, so that they could give satisfactory services to their valued customers. The petitioner has an authorized dealership of TVS Two Wheeler and has an experience of more than 7 years in the field of trading and service.

43. On the other hand, M/s Career Launcher (I) Ltd. has applied for allotment of plot for "Corporate Office". But at the time of interview, the petitioner specifically mentioned that it requires the plot for use as its Corporate Office and Content Development Centre. The minutes of "high-powered committee" has been produced by Mr. Manish Bansal, learned counsel representing Authority considering all the applications. The minutes in respect of the petitioners read as under:

CWP No. 2297 of 2007

Interview held on 20.07.2006

Sr.

Particulars of the

Remarks

The

No.

applicant

Grading of the institution during interview

recommendatio n of committee after completion of all interview

165.

Kanwar Pal Bareja, Director of Bareja

Automobile (P) Ltd., Sushma Place

Sector 20-B,

Ajronda Chowk,

Faridabad

The applicant appeared before committee, the applicant wants to impart motor training to mechanics and other customers, which is not permissible under the scheme, the applicant is graded in "c" grade.

Not

Recommended

CWP No. 3821 of 2008

Interview held on 21.07.2006

Sr.No.

Particulars of

the applicant

Remarks

Grading of the institution during

interview

The

recommendation of

committee after

completion of all

interview

10.

Nikhil Mahajan,
Director of Career Launcher India Ltd., B-52,
Okhla Industrial Area, New Delhi

The applicant appeared before the
Committee. The applicant is running a coaching centre for entrance examination
and proposes to have content development
and faculty training centre. The Committee observed that the site is likely to be
misused for running coaching
centre. The Committee therefore rated company in "c" grade.

Not Recommended

CWP No. 14643 of 2008

Interview held on 11.08.2006

Sr.No.

Particulars of
the applicant

Remarks

Grading of the institution during
interview

The
recommendation of
committee after
completion of all
interview

16.

Rajiv K. Chopra,
President, RSG
Educational &
Charitable
Society (Regd.) C-75, Sector 33, Noida
(1/4 acre)

The applicant appeared before the

Committee. The applicant wants to start staff Education and Training Institute. The applicant has failed to convince the committee that why such Institute is being established at Faridabad, where he does

not have any existing Institute. Both institutes of sister society of the applicant are located at Ghaziabad (UP) &

Gurgaon. There are stated to be only

seven employee with the applicant society, how the training of such small number of employees require such a large space is beyond comprehension of the

committee. From the interview the committee can safely conclude that the purpose appears to be purely speculative. The committee therefore rated the Society in "c" grade.

Not recommended.

44. As per the minutes of the Committee, as reproduced above, it is not a case of staff education and training, but a commercial venture, which is not within the scope of staff education and training centre in respect of M/s Bareja Automobile Pvt. Ltd. and M/s Career Launcher (I) Ltd.

45. In fact, M/s Bareja Automobile Pvt. Ltd. had applied for allotment of plot in pursuance of an earlier advertisement contemplating allotment of plots on "first come first serve" basis. Subsequently, the said petitioner was called upon to make up deficiency in the earnest money, so as to become eligible for consideration of allotment of plot in pursuance of advertisement published in the year 2006. The petitioner has made up the said deficiency in the amount of earnest money without submitting any other document. The petitioner in the communication Annexure P-10 in response to the letter dated 20.12.2005 of the respondents, stated that the plot and building shall be mortgaged with their existing bankers i.e. Indian Bank Faridabad to procure loan of Rs.50 lac. The said condition of availing loan is in contravention of condition No.7 of the broucher, which clearly stipulates that an allottee was not permitted to mortgage the plot. The petitioner has, thus, violated the terms of the advertisement as well.

46. Still further, even if one has to take a different view than the one taken by the Committee that will not entitle this Court in exercise of judicial review to substitute its decision to that of the Selection Committee unless such decision is found to be totally perverse, irrational and arbitrary. None of such tests is made out to question the decision of the Selection Committee finding that the petitioners are not entitled to institutional plots for the purposes alleged.

Question No. 3 Whether the principle of promissory estoppel can be invoked against the petitioners having participated in the selection process and which of the judgment lays down correct principle of law i.e. Delhi Assam Roadways

Corporation Ltd. case (supra) on the one hand and Anil Kumar Vs. State of Haryana and others 2009 (1) RCR (Civil) 559 and U.G.Hospital Pvt. Ltd. Vs. State of Haryana and others 2009 (2) RCR (Civil) 162. on the other?

47. None of the petitioners have disputed the process of allotment at any time before the allotment process was completed. The petitioners have not even submitted a representation disputing such allotment process, as advertised alleging the same to be violative of directions of the Hon''ble Supreme Court in New India Public School case (supra). The petitioners have participated in the allotment process inasmuch as not only they applied, but also appeared before the Selection Committee. Having remained unsuccessful, the petitioners have invoked the jurisdiction of this Court alleging violation of the directions of the Hon''ble Supreme Court. Though we have found while dealing with Question No. 1, that there is no violation of the directions of the Supreme Court, but even if it is assumed that there is violation of the directions of the Hon''ble Supreme Court in New India Public School case (supra), we find that the petitioners are estopped to dispute the allotment process by way of the writ petition.

48. A Division Bench of this Court in Delhi Assam Roadways Corporation Ltd. case (supra) has returned a finding that there cannot be estoppel against Statute as the Regulations were not framed in terms of the directions of the Court, therefore, the plea of estoppel against the unsuccessful applicants is not tenable. It was held to the following effect:

36. The arguments raised by Mr. Sarin on the basis of the judgment of Hon''ble the Supreme Court in Madan Lal and Others Vs. State of Jammu and Kashmir and Others, would not require any detailed consideration for the reason that no estoppel or principle in the nature of estoppel would apply to the petitioners merely because the petitioners have participated in the selection process for allotment of plots. We have reached a categorical conclusion that there is flagrant violation of statutory provisions of Section 15 of the Act especially when 12 years ago, the petitioners were told in clear terms by Hon''ble the Supreme Court that before making allotment of plots by interviewing candidate, it is obligatory on its part to publish a criteria or any such criteria could have been published by the Government by framing rules....

49. As a matter of fact, two Division Benches of this Court in Anil Kumar's and U.G. Hospitals Pvt. Ltd. cases (supra) have taken a contrary view. In Anil Kumar's case (supra), challenge was to allotment of Chemist Shop on the basis of new policy framed. The Court found that once the petitioner has participated in the selection process initiated in pursuance of a public notice, the petitioner is estopped to challenge the same. It held to the following effect:

9. After hearing learned counsel for the parties and perusing the record with their able assistance, we are of the considered view that this petition is liable to be dismissed on the short ground of estoppel. It is admitted position that the petitioner has participated in the selection process initiated in pursuance to

public notice dated 03.03.2007. Merely because the petitioner has remained unsuccessful would not mean that he becomes entitled to challenge the selection on the basis of the argument that the policy of allotment of chemist shops, dated 09.09.2005 suffers from various legal lacunae. It has come on record that the petitioner had obtained a copy of the policy dated 09.09.2007 alongwith the revised Condition No.1 will before the draw of lots on 19.01.2007. The draw of lots were held on 23.01.2007. The petitioner preferred to participate and has failed. It is in the aforementioned circumstances that the principle of estoppel would apply, as has been held by Hon"ble the Supreme Court in the cases of Madan Lal and Others Vs. State of Jammu and Kashmir and Others, and Chandra Prakash Tiwari and Others Vs. Shakuntala Shukla and Others, and the latest judgment following the view taken in Madan Lal's case (supra) namely Dhananjay Malik and Others Vs. State of Uttaranchal and Others,

50. In another judgment i.e. U.G. Hospitals Pvt. Ltd. case (supra), the allotment of hospital sites by the Authority was itself under challenge. The Court returned the following findings:

7.....It is well settled that once the petitioner has participated in the selection process for allotment of a plot then it loses the right to question the allotment on the ground of adopting irrational criterion. The principle in the nature of estoppel would be attracted in such a case. In a number of cases where the candidate has participated in the selection process for induction in service, the Supreme Court has held that such a candidate cannot be permitted to question the selection process when he has remained unsuccessful. The principles laid down in those cases would fully apply to the facts of the present case.

51. The finding of the Division Bench in Delhi Assam Roadways Corporation Ltd. case (supra), as noticed above, is not sustainable for the reason that the said order would be deemed to be modified in terms of the Hon"ble Supreme Court order in appeal. Even otherwise, the said judgment, in fact, relies upon the Hon"ble Supreme Court order in Jalandhar Improvement Trust Vs. Sampuran Singh (1999) 3 SCC 634. In Sampuran Singh's case (supra), the Jalandhar Improvement Trust has allotted plots contrary to the statutory rules framed. It was, thus, rightly observed that there cannot be any estoppel against Statute. But in Delhi Assam Roadways Corporation Ltd. case (supra), the rule of estoppel was applied for the reason that the Authority has not framed any criteria for allotment. Non-framing of criteria is not per se a violation of Statute or even the precedent. It is a case, where the petitioners are presumed to be aware of the judgment as is the law and, therefore, still participated in the allotment process. The petitioners are estopped to dispute the allotment process having participated in the allotment process by intending to take benefit of the same process. The petitioners have chosen to dispute the allotment process only for the reason that they were unsuccessful. This cannot be permitted. In fact, the petitioners have waived their right to dispute the allotment process by participating in the same. The Hon"ble Supreme Court in Manish Kumar Shahi v. State of Bihar and others,

(2010) 12 SCC 576, held to the following effect:

16. We also agree with the High Court that after having taken part in the process of selection knowing fully well that more than 19% marks have been earmarked for viva voce test, the petitioner is not entitled to challenge the criteria or process of selection. Surely, if the petitioner's name had appeared in the merit list, he would not have even dreamed of challenging the selection. The petitioner invoked jurisdiction of the High Court under Article 226 of the Constitution of India only after he found that his name does not figure in the merit list prepared by the Commission. This conduct of the petitioner clearly disentitles him from questioning the selection and the High Court did not commit any error by refusing to entertain the writ petition. Reference in this connection may be made to the judgments in *Madan Lal and Others Vs. State of Jammu and Kashmir and Others*, *Marripati Nagaraja and Others Vs. The Government of Andhra Pradesh and Others*, *Dhananjay Malik and Others Vs. State of Uttaranchal and Others*, *Amlan Jyoti Borooah Vs. State of Assam and Others*, and *K.A. Nagamani Vs. Indian Airlines and Others*,

52. In *Babulal Badriprasad Varma Vs. Surat Municipal Corporation and Others*, held:

43. In *Halsbury's Laws of England*, Vol. 16(2), 4th Edn., Para 907, it is stated:

The expression "waiver" may, in law, bear different meanings. The primary meaning has been said to be the abandonment of a right in such a way that the other party is entitled to plead the abandonment by way of confession and avoidance if the right is thereafter asserted, and is either express or implied from conduct. It may arise from a party making an election, for example whether or not to exercise a contractual right... Waiver may also be by virtue of equitable or promissory estoppel; unlike waiver arising from an election, no question arises of any particular knowledge on the part of the person making the representation, and the estoppel may be suspensory only... Where the waiver is not express, it may be implied from conduct which is inconsistent with the continuance of the right, without the need for writing or for consideration moving from, or detriment to, the party who benefits by the waiver, but mere acts of indulgence will not amount to waiver; nor may a party benefit from the waiver unless he has altered his position in reliance on it.

44. As early as in 1957, the concept of waiver was articulated in a case involving the late assertion of a claim regarding improper constitution of a *Manak Lal Vs. Dr. Prem Chand*, in the following terms: (AIR p. 431, para 8)

8. ... It is true that waiver cannot always and in every case be inferred merely from the failure of the party to take the objection. Waiver can be inferred only if and after it is shown that the party knew about the relevant facts and was aware of his right to take the objection in question. As Sir John Romilly, M.R. has observed in *Vyvyan v. Vyvyan* (118611) 30 Beav 65: (Beav p. 75 : ER p. 817)

"Waiver or acquiescence, like election, presupposes that the person to be bound is fully cognizant of his rights, and that being so, he neglects to enforce them, or chooses one benefit instead of another, either, but not both, of which he might claim".

(emphasis supplied)

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48. Significantly, a similar conclusion was reached in *Krishna Bahadur Vs. Purna Theatre and Others*, though the principle was stated far more precisely, in the following terms: (SCC p. 233, paras 9-10)

9. The principle of waiver although is akin to the principle of estoppel; the difference between the two, however, is that whereas estoppel is not a cause of action; it is a rule of evidence; waiver is contractual and may constitute a cause of action; it is an agreement between the parties and a party fully knowing of its rights has agreed not to assert a right for a consideration.

10. A right can be waived by the party for whose benefit certain requirements or conditions had been provided for by a statute subject to the condition that no public interest is involved therein. Whenever waiver is pleaded it is for the party pleading the same to show that an agreement waiving the right in consideration of some compromise came into being. Statutory right, however, may also be waived by his conduct.

(emphasis supplied)

(See also *Bank of India and Others Vs. O.P. Swarnakar etc.*,

49. In *Ramdev Food Products Pvt. Ltd. Vs. Arvindbhai Rambhai Patel and Others*, , this Court observed: (SCC pp. 761-62, paras 73-74)

73. The matter may be considered from another angle. If the first respondent has expressly waived his right on the trade mark registered in the name of the appellant Company, could he claim the said right indirectly? The answer to the said question must be rendered in the negative. It is well settled that what cannot be done directly cannot be done indirectly.

74. The term "waiver" has been described in the following words:

"1471. Waiver.-Waiver is the abandonment of a right in such a way that the other party is entitled to plead the abandonment by way of confession and avoidance if the right is thereafter asserted, and is either express or implied from conduct.... A person who is entitled to rely on a stipulation, existing for his benefit alone, in a contract or of a statutory provision, may waive it, and allow the contract or transaction to proceed as though the stipulation or provision did not exist. Waiver of this kind depends upon consent, and the fact that the other party has acted on it is sufficient consideration....

It seems that, in general, where one party has, by his words or conduct, made to

the other a promise or assurance which was intended to affect the legal relations between them and to be acted on accordingly, then, once the other party has taken him at his word and acted on it, so as to alter his position, the party who gave the promise or assurance cannot afterwards be allowed to revert to the previous legal relationship as if no such promise or assurance had been made by him, but he must accept their legal relations subject to the qualification which he has himself so introduced, even though it is not supported in point of law by any consideration."

(See Halsbury's Laws of England, 4th Edn., Para 1471.)

In this view of the matter, it may safely be stated that the appellant, through his conduct, has waived his right to an equitable remedy in the instant case. Such conduct precludes and operates as estoppel against him with respect to asserting a right over a portion of the acquired land in a situation where the scheme in question has attained finality following as a result of the appellant's inaction.

(Emphasis Supplied)

53. A Full Bench of this court in a judgment reported as Amardeep Singh Sahota Vs. State of Punjab 1993(2) PLR 212, while examining the challenge to the admission process concluded that the terms of the prospectus are binding on the candidates. The same analogy is applicable in respect of allotment of plots on the basis of brochure published. It was held in the said case as under:

22. It may at this stage further be stated that the Notification dated July 13, 1992 goes contrary to the policy which was laid down for admission in the Notification dated May 20, 1992 on the basis of which the Prospectus had been issued to the students and the students appeared for test on the basis of the policy laid down in the prospectus. The Prospectus cannot subsequently be changed by the State Government to the detriment of the students to benefit certain other students. In Ravdeep Kaur v. State of Punjab and others, ILR (1985) 1 P&H 343, a Division Bench of this Court had an occasion to consider the value of a Prospectus issued for admission to an entrance examination. It was held that the eligibility for admission to a course has to be seen according to the prospectus issued before the entrance examination and that the admission has to be made on the basis of instructions given in the prospectus as the instructions issued have the force of law. We agree with the view taken by the Division Bench. Since the Prospectus issued for admission to the 1992-93 course in the medical college has the force of law and the students appeared in the examination on the basis of the instructions laid down in the said Prospectus, it was not open to the State Government to issue contrary instructions and as such also the Notification dated July 13, 1992 issued by the State Government is invalid in law.

54. Recently another Full Bench, in a judgment reported as Gurleen Kaur Vs. State of Punjab 2009(3) PLR 324, applied the principle of promissory estoppel in a case of admission on the basis of prospectus. In the said case, the challenge

was to the admission against the quota reserved for Sikh candidates. It was held:

143. Having considered the submission advanced by the learned counsel for the petitioners, we are of the view that the contention noticed in the foregoing paragraph, deserves to be rejected on two counts. Firstly, the prospectus issued by the respondents expressly highlighted the fact, that only such candidate would be considered eligible, who "...practices the Sikh faith and maintains Sikh appearance i.e. he/she does not cut or trim their hair...". Stated in other words, the prospectus clearly defined the essential pre- requisites for admission under the Sikh minority community quota. Since the aforesaid precondition for eligibility was depicted in the prospectus itself, and since all the petitioners applied for admission under the Sikh minority community quota, without raising any contest or protest against the aforesaid precondition, they cannot now be allowed to contest the validity of the same when the entire process of selection is over, after their claim has been rejected on the ground, that they do not fulfil the aforesaid precondition. This contention was advanced during the course of hearing, by Shri Chetan Mittal, Additional Advocate General, Punjab, who inter-alia relied on the judgment rendered by the Supreme Court in *Madan Lal and Others Vs. State of Jammu and Kashmir and Others*, , wherein the Apex Court held as under :-

Before dealing with this contention, we must keep in view the salient fact that the petitioners as well as the contesting successful candidates being concerned respondents herein, were all found eligible in the light of marks obtained in the written test, to be eligible to be called for oral interview. Upto this stage there is no dispute between the parties. The petitioners also appeared at the oral interview conducted by the concerned Members of the Commission who interviewed the petitioners as well as the concerned contesting respondents. Thus the petitioners took a chance to get themselves selected at the said oral interview. Only because they did not find themselves to have emerged successful as a result of their combined performance both at written test and oral interview, that they have filed this petition. It is now well settled that if a candidate takes a calculated chance and appears at the interview then, only because the result of the interview is not palatable to him he cannot turn round and subsequently contend that the process of interview was unfair or Selection Committee was not properly constituted. In the case of *Om Prakash Shukla Vs. Akhilesh Kumar Shukla and Others*, it has been clearly laid down by a Bench of three learned Judges of this Court that when the petitioner appeared at the examination without protest and when he found that he would not succeed in examination he filed a petition challenging the said examination, the High Court should not have granted any relief to such a petitioner.

Reliance was also placed on the judgment rendered by a Full Bench of the Madras High Court in *Dr. R. Murali v. Dr. R. Kamalakkannan and others*, 2000(2) SCT 371, wherein the question posed in paragraph 36, was to the following effect :-

36. Learned counsel Mr. C. Selvaraj submitted that fixation of quota is in the nature of concession and writ petitioners have with open eyes applied for admission on the basis of prospectus and also have written examination are incompetent to challenge that policy, once they were not selected. Counsel submitted that principle of estoppel bars writ petitioners from challenging the same.

After referring to various judgments of the Apex Court, including Kumari Chitra Ghosh v. Union of India, AIR 1970 SC 35 State of Uttar Pradesh and Others Vs. Pradip Tandon and Others, Om Parkash Shukla v. Akhilesh Kumar Shukla, 1986 SCC (Supp) 285, Dinesh Kumar v. Moti Lal Nehru Medical College, Allahabad, AIR 1986 SC 1877, Mohan Kumar Singhania v. Union of India, 1992(1) SCT 546 : AIR 1992 SC 1, Dr. Preeti Srivastava v. State of Madhya, 1994(1999)(4) SCT 133 (SC), Ritesh R. Sah Vs. Dr. Y.L. Yamul and others, , Union of India and Another Vs. N. Chandrasekharan and Another, , the Full Bench in paragraph 55 answered the question by holding that the "writ petitioners are not entitled to challenge the selection process after having participated in the written examination on the principle of estoppel." Reliance was also placed on a judgment rendered by a Division Bench of this Court in Yoginder Singh Yadav v. State of Haryana, 2002(2) SCT 281, wherein it was, inter-alia, held as under :-

In the circumstances, the petitioners appear to have raised grievance to assail the result of the entrance test only when they did not find the result favourable to them. It is well settled that a candidate who has submitted to the selection process and has participated and was considered cannot challenge the same if subsequently the result of the selection is not favourable to him. It has been so held in the decision of the Supreme Court in Madan Lal and Others Vs. State of Jammu and Kashmir and Others, and Mohan Lal Aggarwal and others v. Bhubaneswari Prasad Mishra and others, JT 2001(9) SC 21.

We are in agreement with the view expressed by Shri Chetan Mittal, Advocate. We are satisfied that it is not open to the petitioners to raise the instant issue at this stage, as they acquiesced to the precondition for eligibility under the Sikh minority community quota. It does not lie now in their mouth to raise a challenge thereto, having been found unsuccessful.

55. Thus, we find that the findings recorded by the Division Bench of this Court in Delhi Assam Roadways Corporation Ltd. case (supra) not only run counter to the view expressed by two other Division Benches, but also against the principles of law enunciated above. We are unable to agree with such findings. Thus, we hold that petitioners are estopped to dispute the allotment for their failure to dispute the allotment process prior to their participation in the interview.

Question No.4 Whether this Court in exercise of powers of judicial review, can take a different view regarding suitability of applicants for allotment of plots in the absence of any proof of allegations of mala fide, favouritism or nepotism?

56. The minutes produced by Mr. Bansal contain a short note in respect of the

process of determining of eligibility of each of the applicants. Such note in respect of the petitioners has been reproduced above. It is well-settled that this Court in exercise of power of judicial review examines the decision making process and not the decision itself. Reference may be made to *Heinz India (P) Ltd. v. State of U.P. & others* (2012) 5 SCC 443, wherein the Court observed as:

60. The power of judicial review is neither unqualified nor unlimited. It has its own limitations. The scope and extent of the power that is so very often invoked has been the subject-matter of several judicial pronouncements within and outside the country. When one talks of "judicial review" one is instantly reminded of the classic and oft-quoted passage from *Council of Civil Service Unions v. Minister for the Civil Service* 1985 AC 374, where Lord Diplock summed up the permissible grounds of judicial review thus: (AC pp. 410 D, F-H and 411 A-B)

... Judicial review has I think developed to a stage today when without reiterating any analysis of the steps by which the development has come about, one can conveniently classify under three heads the grounds upon which administrative action is subject to control by judicial review. The first ground I would call "illegality", the second "irrationality" and the third "procedural impropriety"....

By "illegality" as a ground for judicial review I mean that the decision-maker must understand correctly the law that regulates his decision-making power and must give effect to it. Whether he has or not is par excellence a justiciable question to be decided, in the event of dispute, by those persons, the Judges, by whom the judicial power of the State is exercisable.

By "irrationality" I mean what can by now be succinctly referred to as "*Associated Provincial Picture Houses Ltd. Vs. Wednesbury Corporation* (1948) 1 KB 223 unreasonableness". It applies to a decision which is so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it. Whether a decision falls within this category is a question that Judges by their training and experience should be well equipped to answer, or else there would be something badly wrong with our judicial system....

I have described the third head as "procedural impropriety" rather than failure to observe basic rules of natural justice or failure to act with procedural fairness towards the person who will be affected by the decision. This is because susceptibility to judicial review under this head covers also failure by an Administrative Tribunal to observe procedural rules that are expressly laid down in the legislative instrument by which its jurisdiction is conferred, even where such failure does not involve any denial of natural justice.

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63. Reference may also be made to the decision of this Court in *State of Punjab and Another Vs. Gurdial Singh and Others*, where Krishna Iyer, J. noticed the

limitations of judicial review and declared that the power vested in the superior courts ought to be exercised with great circumspection and that interference may be permissible only where the exercise of the power seems to have been vitiated or is otherwise void on well-established grounds. The Court observed: (SCC p.475, para 8)

8.... The court is handcuffed in this jurisdiction and cannot raise its hand against what it thinks is a foolish choice. Wisdom in administrative action is the property of the executive and judicial circumspection keeps the court lock jawed save where the power has been polluted by oblique ends or is otherwise void on well established grounds. The constitutional balance cannot be upset.

64. There is almost complete unanimity on the principle that judicial review is not so much concerned with the decision itself as much with the decision-making process. (See *Chief Constable of the North Wales Police v. Evans* (1982) 1 WLR 1155.) As a matter of fact, the juristic basis for such limitation on the exercise of the power of judicial review is that unless the restrictions on the power of the court are observed, the courts may themselves under the guise of preventing abuse of power, be guilty of usurping that power.

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66. That the court dealing with the exercise of power of judicial review does not substitute its judgment for that of the legislature or executive or their agents as to matters within the province of either, and that the court does not supplant "the feel of the expert" by its own review, is also fairly well settled by the decisions of this Court. In all such cases judicial examination is confined to finding out whether the findings of fact have a reasonable basis on evidence and whether such findings are consistent with the laws of the land. (See *Union of India v. S.B. Vohra* (22004) 2 SCC 150, *M/s. Shri Sitaram Sugar Co. Ltd. and another Vs. Union of India and others*, and *Thansingh Nathmal and Others Vs. A. Mazid, Superintendent of Taxes*,)

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68. We may while parting with the discussion on the legal dimensions of judicial review refer to the following passage from *Reid v. Secy. of State for Scotland* (1999) 2 AC 512 which succinctly sums up the legal proposition that judicial review does not allow the court of review to examine the evidence with a view to forming its own opinion about the substantial merits of the case. (AC pp. 541 F-H and 542 A)

Judicial review involves a challenge to the legal validity of the decision. It does not allow the court of review to examine the evidence with a view to forming its own view about the substantial merits of the case. It may be that the tribunal whose decision is being challenged has done something which it had no lawful authority to do. It may have abused or misused the authority which it had. It may have departed from the procedures which either by statute or at common

law as a matter of fairness it ought to have observed. As regards the decisions itself it may be found to be perverse, or irrational or grossly disproportionate to what was required. Or the decision may be found to be erroneous in respect of a legal deficiency, as for example, through the absence of evidence, or of sufficient evidence, to support it, or through account being taken of irrelevant matter, or through a failure for any reason to take account of a relevant matter, or through some misconstruction of the terms of the statutory provision which the decision-maker is required to apply. But while the evidence may have to be explored in order to see if the decision is vitiated by such legal deficiencies it is perfectly clear that in case of review, as distinct from an ordinary appeal, the court may not set about forming its own preferred view of evidence.

57. In view of the well settled principles of law as recently summarized in the above judgment, we hold that in exercise of power of judicial review, this court will examine the decision making process and not the decision itself. We do not find any illegality in the process, though there is always scope of better mechanism to undertake the process of allotment of plots. There is no allegation of any mala-fide or favouritism or nepotism in the process of allotment. Learned counsel for the petitioners have argued that it is case of legal mala-fides and have referred to judgments in support of such argument. We do not find that the present is the case for any legal malice or mala fides. Merely because the petitioners have remained unsuccessful, will not be a ground to infer any such malice or irregularity or illegality in the allotment process.

58. During the course of arguments, learned counsel for the parties addressed arguments on the following additional question of law as well. The same is:

Question No. 5 Whether the writ petitions suffer from delay and laches having been filed more than 18 months of the date of allotments to the successful applicants and also whether the writ petitioners can dispute the allotments having accepted the refund of the earnest money?

59. In the present case, the allotments were made in the month of September, 2006. CWP No. 2297 of 2007 was filed on 12.02.2007 i.e. within six months of the refund of the earnest money, whereas other two writ petitions i.e. CWP Nos. 3821 of 2008 and 14643 of 2008 were filed after 17 or 23 months later, respectively. The earnest money deposited by the petitioners was received by them without demur. The receipt of the earnest money is not disputed by any of the petitioners. In *Manjul Srivastava Vs. Govt. of U.P. and Others*, wherein it was held to the following effect:

15. Before we conclude, we may also mention that the Commission was also justified in rejecting the claim of the appellant for allotment of a plot in Govindpuram Housing Scheme at Ghaziabad as we find the entire amount of refund with 5% interest was initially accepted by the appellant, but subsequently, as noted herein earlier, she returned the like amount to the GDA. Having accepted the amount and encashed the same, it is no longer open to the

appellant to turn around and claim allotment of plot from the GDA.

60. The Hon"ble Supreme Court in Civil Appeal No. 804 of 2011 titled "U.G. Hospitals Pvt. Ltd. Vs. State of Haryana & others" decided on 19.01.2011, an appeal arising out of the order passed by this Court in U.G.Hospitals case (supra) also found that invocation of writ jurisdiction of this Court after 11/2 year after allotment suffers from delay and laches. It observed as under:

9. Even though the application of fifth respondent for the plot at Sector 51 was not in the prescribed form, the allotment was made as long back as on 27.09.2005 and the fifth respondent has constructed and running the hospital even from 2007. The appellant filed the writ petition only on 02.04.2007, nearly one and a half years after the allotment. In the circumstances, the High Court was justified in not interfering with the allotment that was made to the fifth respondent. We find no reason to interfere with the decision of the High Court.

61. It is well settled that there is no period of limitation for invoking the writ jurisdiction of this Court. But since it is an extra ordinary constitutional remedy, the aggrieved person must invoke the writ jurisdiction without any delay and with due diligence. In Royal Orchid Hotels Limited and Another Vs. G. Jayarama Reddy and Others, the court held that the delay is good ground to decline the issuance of writ if in the meantime, the rights of third person have come into existence.

24. The first question which needs consideration is whether the High Court committed an error by granting relief to Respondent 1 despite the fact that he filed the writ petition after a long lapse of time and the explanation given by him was found unsatisfactory by the learned Single Judge, who decided the writ petition after remand by the Division Bench.

25. Although the Framers of the Constitution have not prescribed any period of limitation for filing a petition under Article 226 of the Constitution of India and the power conferred upon the High Court to issue to any person or authority including any Government, directions, orders or writs including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari is not hedged with any condition or constraint, in the last 61 years the superior courts have evolved several rules of self-imposed restraint including the one that the High Court may not enquire into belated or stale claim and deny relief to the petitioner if he is found guilty of laches. The principle underlying this rule is that the one who is not vigilant and does not seek intervention of the Court within reasonable time from the date of accrual of cause of action or alleged violation of the constitutional, legal or other right is not entitled to relief under Article 226 of the Constitution. Another reason for the High Court's refusal to entertain belated claim is that during the intervening period rights of third parties may have crystallised and it will be inequitable to disturb those rights at the instance of a person who has approached the Court after long lapse of time and there is no cogent explanation for the delay. We may hasten to add that no hard-and-fast

rule can be laid down and no straightjacket formula can be evolved for deciding the question of delay/laches and each case has to be decided on its own facts.

62. In *Tridip Kumar Dingal and Others Vs. State of West Bengal and Others*, , the Court observed that the petitioner should come to court at the earliest reasonable opportunity. It observed:

56. We are unable to uphold the contention. It is no doubt true that there can be no waiver of fundamental right. But while exercising discretionary jurisdiction under Articles 32, 226, 227 or 136 of the Constitution, this Court takes into account certain factors and one of such considerations is delay and laches on the part of the applicant in approaching a writ court. It is well settled that power to issue a writ is discretionary. One of the grounds for refusing reliefs under Article 32 or 226 of the Constitution is that the petitioner is guilty of delay and laches.

57. If the petitioner wants to invoke jurisdiction of a writ court, he should come to the Court at the earliest reasonably possible opportunity. Inordinate delay in making the motion for a writ will indeed be a good ground for refusing to exercise such discretionary jurisdiction. The underlying object of this principle is not to encourage agitation of stale claims and exhumed matters which have already been disposed of or settled or where the rights of third parties have accrued in the meantime (vide *State of Madhya Pradesh Vs. Bhailal Bhai and Others*, *Moon Mills Ltd. v. Industrial Court* AIR 1967 SC 1450 and *Bhoop Singh Vs. Union of India and others*, . This principle applies even in case of an infringement of fundamental right (vide *Tilokchand and Motichand and Others Vs. H.B. Munshi and Another*, *Durga Prasad Vs. Chief Controller of Imports and Exports*, and *Rabindranath Bose v. Union of India* (1970) 1 SCC 844).

58. There is no upper limit and there is no lower limit as to when a person can approach a court. The question is one of discretion and has to be decided on the basis of facts before the court depending on and varying from case to case. It will depend upon what the breach of fundamental right and the remedy claimed are and when and how the delay arose.

59. We are in respectful agreement with the following observations of this Court in *P.S. Sadasivaswamy Vs. State of Tamil Nadu*,

2.... It is not that there is any period of limitation for the courts to exercise their powers under Article 226 nor is it that there can never be a case where the courts cannot interfere in a matter after the passage of a certain length of time. But it would be a sound and wise exercise of discretion for the courts to refuse to exercise their extraordinary powers under Article 226 in the case of persons who do not approach it expeditiously for relief and who stand by and allow things to happen and then approach the court to put forward stale claims and try to unsettle settled matters.

(emphasis supplied)

63. The delay in invoking the jurisdiction of this Court becomes meaningful

where the respondents have altered their position, their rights settled meanwhile and they would be adversely affected or taken by surprise. Though the first petition was filed within months of the allotment, but keeping in view the intended use and the reasons recorded, there is no ground to interfere in the allotment process in that writ petition. The other two writ petitions were apparently filed after long delay. The respondents have not only paid substantial amounts towards the price of the sites but in certain cases have raised construction as well. In view of these facts, we find that the writ petitions challenging allotment of institutional plots suffer from delay and laches.

64. The uncertainty in the matter of allotment of plots be the industrial, institutional or commercial and the frequent intervention of the Courts is not conducive to the socio-economic growth of the country. It is equally true that the Authority is also bound to act fairly and diligently and in a transparent manner, so as to build confidence with the entrepreneurs to set up either industries or corporate offices. Therefore, the delay in invoking of jurisdiction of the Court affects the working of the organizations. The petitioners and the successful allottees are competing for the limited plots and in such process not all applicants can be successful. Mere fact that some of the applicants are unsuccessful does not entitle them to invoke the jurisdiction of this Court only for the reason that there could be an alternative or better method of allotment though none of which is suggested by the petitioners in the present case. In fact, recently the Hon'ble Supreme Court in *ITC Ltd. Vs. State of Uttar Pradesh and Others*, , expressed concern over the matter of allotment of plots, when it observed:

107. The position is, however, different in public law. Breach of statutory provisions, procedural irregularities, arbitrariness and mala fides on the part of the Authority (transferor) will furnish grounds to cancel or annul the transfer. But before a completed transfer is interfered on the ground of violation of the regulations, it will be necessary to consider two questions. The first question is whether the transferee had any role to play (fraud, misrepresentation, undue influence, etc.) in such violation of the regulations, in which event cancellation of the transfer is inevitable.

107.1. If the transferee had acted bona fide and was blameless, it may be possible to save the transfer but that again would depend upon the answer to the further question as to whether public interest has suffered or will suffer as a consequence of the violation of the regulations:

(i) If public interest has neither suffered, nor is likely to suffer, on account of the violation, then the transfer may be allowed to stand as then the violation will be a mere technical procedural irregularity without adverse effects.

(ii) On the other hand, if the violation of the regulations leaves or is likely to leave an everlasting adverse effect or impact on public interest (as for example when it results in environmental degradation or results in a loss which is not

reimbursable), public interest should prevail and the transfer should be rescinded or cancelled.

(iii) But where the consequence of the violation is merely a short-recovery of the consideration, the transfer may be saved by giving the transferee an opportunity to make good the shortfall in consideration.

107.2. The aforesaid exercise may seem to be cumbersome, but is absolutely necessary to protect the sanctity of contracts and transfers. If the Government or its instrumentalities are seen to be frequently resiling from duly concluded solemn transfers, the confidence of the public and international community in the functioning of the Government will be shaken. To save the credibility of the Government and its instrumentalities, an effort should always be made to save the concluded transactions/transfers wherever possible, provided (i) that it will not prejudice the public interest, or cause loss to public exchequer or lead to public mischief, and (ii) that the transferee is blameless and had no part to play in the violation of the regulation.

107.3. If the concluded transfer cannot be saved and has to be cancelled, the innocent and blameless transferee should be reimbursed all the payments made by him and all expenditure incurred by him in regard to the transfer with appropriate interest. If some other relief can be granted on grounds of equity without harming public interest and public exchequer, grant of such equitable relief should also be considered.

65. In the present case, we do not find that any case is made out or even alleged in respect of any fraud or misrepresentation or undue influence on behalf of the successful allottees. The plots were allotted on fixed price, so there is no question of loss to public interest. If the successful allottees were not to be selected, some other would be selected. It is only change of an allottee. The public interest is not jeopardized, if the allotment is upheld. The questions of law having been answered, the matter be placed before the Division Bench for further proceedings and decision according to law.