

(2013) 10 DEL CK 0460

In the Delhi High Court

Case No : LPA 342 of 2008 and C.M. 12746 of 2008

East India Hotel Ltd. and Another

APPELLANT

Vs

Union of India and Another

RESPONDENT

Date of Decision : 10-10-2013

Acts Referred:

Constitution of India, 1950 — Article 14, 143, 77(3)
Contract Act, 1872 — Section 199

Citation : (2013) 139 DRJ 459

Hon'ble Judges : S. Ravindra Bhat, J;Najmi Waziri, J

Bench : Division Bench

Advocate : Dushyant. A. Dave, Sh. R. Singh, Sh. Ravi Sikri and Sh. Aniruddha Deshmukh, for the Appellant; Rajeeve Mehra, ASG, Sh. B.V. Niren, CGSC, Sh. Prasouk Jain, Sh. Kartikey Mahajan and Sh. Aditya Malhotra, for the Respondent

Final Decision : Dismissed

Judgement

S. Ravindra Bhat, J.—This is an unsuccessful writ petitioner's appeal against the judgment and order dated 03.07.2008 of the learned Single Judge rejecting its claim. The facts leading up to this dispute can be divided into three phases. The first starts in 1981, when the Land and Development Officer (L & DO) of the Ministry of Urban Affairs, Government of India, allotted 2.762 acres of land (the property in question in the present dispute and hereafter called "the plot") to the Appellant to build a 250 room hotel and other related facilities for the Asian Games in terms of a letter dated 21.02.1981. As the construction was to be completed in time for the Asian Games in 1982, the Appellant informed the L & DO that such a project was not feasible in that time span and thus, the allotment was cancelled. This cancellation is not disputed by either party in this case.

2. The second phase begins on 18th June, 1983, when the land was allotted by the Ministry of Urban Affairs, Government of India to the Delhi Tourism Development Corporation Ltd. (DTTDC) to construct a budget hotel. Clause 8 of the said agreement is pertinent to this dispute. It reads:

8. The DTTDC shall not sub-lease the land in favour of any other party. They can, however, make such arrangement for constructing and running the hotel as will not involve sub leasing of the plot.

For eight years, no action was taken by DTTDC under this agreement to construct such a hotel. Ultimately, on 24th February, 1992, an advertisement was issued, inviting global tenders for the construction of the hotel. The present Appellant responded with a bid, along with 12 other bidders. The Appellant's bid was subsequently accepted (through the DTTDC's letter dated 8th May, 1992) for building and running, on its behalf, a three star hotel on license basis for a period of 33 years. A license agreement was then entered into between the Appellant and DTTDC on 24.07.1992. Before construction began, however, the Union Ministry of Urban Development informed the Managing Director, DTTDC, New Delhi by a letter (No. L-III/8/13(16)/83/392 dated 01.02.1993) that the allotment to it (the DTTDC) of the plot had been cancelled as a result of its failure to construct a budget hotel up until that time, and for violation of Clause 8 of the Agreement between the two parties by way of entering into a license agreement with the Appellant. This letter of cancellation, in its relevant part, reads as follows:

This land was allotted to you at highly concessional rates without recovery of premium for setting up a Budget Hotel charging low tariff. However, the Budget Hotel has not been constructed and commissioned. But it has come to the notice that you have entered into an agreement with M/s. East India Hotels Ltd. to run the hotel which is against the terms and conditions of the allotment offered on 18.6.83.

Notice of this cancellation was also provided to the DTTDC by another letter dated 04.06.1993 [No. L. III/8/13(16)/83/107].

3. The Appellant made several representations, subsequent to cancellation of the allotment, to the concerned authorities, claiming to be aggrieved (by the letter of cancellation). Eventually a decision was taken by the Union Ministry of Urban Development to cancel the allotment to the DTTDC, but allot the land directly to the Appellant. This is clear from the Counter Affidavit of one Mr. LD Ganotra, Engineering Officer with L & DO, Union Ministry of Urban Affairs in W.P. (C) 3016/2000, where it was stated in paragraph 3 that:

Since the DTTDC had acted in clear breach of the terms and conditions of allotment, the allotment was cancelled by the L& DO on 1.2.1993. The DTTDC as well as the Delhi Government made representations to the Union of India against the said cancellation. The matter was discussed in a number of meetings in the various departments and finally on 19th October 1993 in a meeting presided by the Secretary, Union Ministry of Urban Development (in the meeting representatives of DTTDC were present), a decision was taken to allot the land to the Appellant. The minutes suggest that the decision was that the land would be allotted on the terms and conditions as those contained in the Agreement for

License Agreement executed between the DTTDC and the Petitioner.

4. The Union Government later issued an order on 7th June, 1995 to the L & DO conveying its sanction in the following terms:

3. Sanction of the President is conveyed to the utilization of land by the East India Hotels Ltd. as per the terms and conditions enumerated in the license agreement dated 24.7.92 which shall be suitably modified/endorsed and executed for compliance by the hotelier with the Land and Development Office on usual terms and conditions, which shall inter alia, include the following;

(i) The terms and conditions as enumerated in the License Agreement for construction/running of the hotel will be the same as contained in the enclosed Agreement and license-thereof will be in accordance with statement annexed in Schedule II thereto.

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5. The third and operative phase of the dispute began after this. By an allotment letter/license deed (No. I. III/8/13(16)/82-187, dated 27.06.1995), the plot was allotted to the Appellant for the purposes of setting up a budget hotel. This letter indicated that an agreement on the lines of the earlier agreement between the Appellant and DTTDC was to be executed to give effect to the allotment letter. The L & DO, however, did not - for reasons which would be apparent hereafter - conclude any agreement with the Appellant. Consequently, the Appellant filed W.P. (C) 3016/2000, seeking a writ of mandamus against the Respondents to act pursuant to the allotment letter dated 27.06.1995. As a measure of interim relief, the Respondents were restrained from dispossessing the Appellant from the land in question. This Court also directed the Respondents to take a final decision on the allotment and the conclusion of the agreement by its order dated 24.01.2005.

6. Pursuant to this Court's order, the Appellant received a letter (No. L-III/8/13(16)/82/148, dated 11.04.2005) stating that after due consideration, a decision had been taken to cancel the earlier allotment to the Appellant. It is this action of the Respondents that is in question in the present proceedings.

7. The appellant instituted writ proceedings. In those writ proceedings, it was contended that the allotment made to the Appellant was a concluded contract and that amounts had been paid towards consideration. Accordingly, it was argued that the Union Government was estopped from contending that its decision to make the allotment was in any manner flawed or procedurally irregular, because the earlier allotment to the DTTDC was consciously cancelled and direct allotment of the plot (to the appellant/Petitioner) was resorted to.

8. The Learned Single Judge considered the questions involved and held that whilst the Respondents were entitled to cancel the allotment of land - because of irregularities in the manner of allotment to the Appellant and the consequent arbitrariness that were discovered later - it (the Appellant) was entitled to the

refund of the entire sum of Rs. 3.35 crores paid in installments as regards the hotel construction project along with 18% interest per annum from the respective dates of payment till the time of refund. The Learned Single Judge also noted that the correct forum for decision on the question of facts which arose in the case would be the civil courts to enforce private law remedies available to the Appellant, rather than through public proceedings in a writ court.

9. Two issues arise from the present proceedings: first, whether the Appellant has any remedy under public law - i.e. whether the remedy that the Appellant is seeking for - that of specific performance of the allotment letter that came to be cancelled - can be and should be granted by this Court in the circumstances of this case, and secondly, as a corollary, whether the correct forum for such disputes are the civil courts with original jurisdiction.

10. The Appellants argue firstly, that the cancellation of the allotment to DTTDC for violation of the terms of the allotment on account of sub-licensing was incorrect. Learned senior counsel, Shri Dushyant Dave argued that the original allotment was made after following a publicly advertised global tender, followed by evaluation by a duly constituted committee which consisted representatives of the Union of India. That committee chose the Appellant's bid over the others, since it afforded the best terms for the plot. The acceptance was subject to signing the contract and furnishing a security deposit of Rs. 1 crore. Later a license deed was entered into for the specific purpose of constructing a hotel; the arrangement envisaged was to last for 33 years. The Union Government's concerns were adequately addressed because Clause 18 of the License Deed categorically stated that no interest in the land was passing to the licensee/Appellant. It is also argued that the license deed had calculated the fixed annual rental at Rs. 720.50 crores for a period of 30 years and further provides the percentage of gross turnover at 10% to 11% from the operating period of first year till the thirtieth year, three years being kept for planning and construction. On 28th July, 1992, the Appellant was given possession of the plot. Learned counsel claims that despite this, and also the circumstance that the requisite amounts were paid, the Union Government cancelled allotment to DTTDC on 01.02.1993 for an utterly untenable reason, i.e. allotment had been made to the present Appellant contrary to terms of the allotment to DTTDC. It is argued that the Union Government was aware of the tendering process which preceded the allotment to the appellant; the advertisement was under its aegis and its officer was part of the tender evaluation process. Though the appellant's representation was initially rejected, the Union Government ultimately decided in its highest quarters to allot the land directly, on 19.10.1993, as evidenced by the affidavit of an officer of the L & DO in W.P. (C) 3016/2000.

11. Mr. Dave submitted that following the decision, the Government of India issued a letter conveying sanction of the President to allot the plot directly to the Appellant, sanctioning the utilization of the land by the terms and condition of the Agreement dated 24.07.1992 to be suitably modified to indicate that the

arrangement is a license and would not be considered as a lease without a perpetual deed.

12. It was argued next that the decision to allot land directly to the Appellants was based on due consideration of the facts by all relevant authorities and is thus not arbitrary. Counsel stressed on the fact that a detailed note dated 17.07.1995 was prepared by the concerned Ministry which was then sent to the Office of the Prime Minister who having seen the same on 14.08.1995 had directed the matter to be referred to the Finance Ministry. The Ministry of Finance had accordingly examined the file dated 24.08.1995, which was discussed in the said Ministry in August 1995, and necessary approval was given by the said Ministry. Accordingly, on 03.02.1996, after the receipt of the file by the concerned Ministry from the Finance Ministry, necessary notings were made to the clearance by the Prime Minister and Finance Ministry to the effect that there were no deviations in the procedure followed by this Ministry and hence retracing our steps at that juncture was not recommended. Counsel stated that these were followed by notes by the Finance Ministry dated 06.03.1996, leading to a decision on 06.06.1996 in favour of allotment, culminating in the Union Urban Affairs Ministry's decision dated 11.06.1996 to execute the lease deed in favour of the appellant, especially when a competitive bidding process is not a mandated prerequisite in all cases. Counsel also laid emphasis on the allotment letter issued to the appellant on 27.06.1995 and the amounts appropriated towards the first five years' license fee, by the Central Government. Reliance was placed on the decisions in *Shri Sachidanand Pandey and Another Vs. The State of West Bengal and Others*, and *Kasturi Lal Lakshmi Reddy, Represented by its Partner Shri Kasturi Lal, Jammu and Others Vs. State of Jammu and Kashmir and Another*, to justify the argument that there was no necessity for the Central Government to again re-advertise and seek bids and that in any case, the allotment to the Appellants was premised on the earlier joint global tender issued by DTTDC and the Ministry of Tourism. Counsel also relied on the Constitution Bench ruling of the Supreme Court, in its advisory jurisdiction under Article 143 of the Constitution (*In re Special Reference No 1 of 2012* (2012 (3) SCR 147)), where it was held that auction is not the invariable method for disposal of public property by the state:

...in conclusion, the submission that the mandate of Article 14 is that any disposal of a natural resource for commercial use must be for revenue maximization, and thus by auction, is based neither on law nor on logic. There is no constitutional imperative in the matter of economic policies-Article 14 does not pre-define any economic policy as a constitutional mandate. Even the mandate of 39(b) imposes no restrictions on the means adopted to subserve the public good and uses the broad term "distribution", suggesting that the methodology of distribution is not fixed. Economic logic establishes that alienation/allocation of natural resources to the highest bidder may not necessarily be the only way to subserve the common good, and at times, may run counter to public good. Hence, it needs little emphasis that disposal of all

natural resources through auctions is clearly not a constitutional mandate.

13. The third submission made was that the internal functions and procedural requirements are not to be known by citizens in their dealings with the Government, and that once dealings between the citizen and Government are transparent, it is not open to a Court, much less the Government which took the decision in the first place, to question the legality and propriety of the decision on grounds of procedural irregularity (reliance here is placed on the decisions in *Collector of Bombay Vs. Municipal Corporation of The City of Bombay and Others*, and *Bejgam Veeranna Venkata Narasimloo and Others Vs. State of A.P. and Others*, . Likewise, the Appellants rely on the judgment reported as *State of Punjab Vs. Nestle India Ltd. and Another*, where it was held that:

44...the Government cannot rely on a representation made without complying with the procedure prescribed by the relevant statute, but a citizen may and can compel the Government to do so if the factors necessary for founding a plea of promissory estoppel are established. Such a proposition would not "fall foul of our constitutional scheme and public interest....

The Appellants contend that the representations made to it trigger a right in equity through the doctrines of legitimate expectation and promissory estoppel and that the Union Government cannot resile from its decisions. It is contended that apart from the license fee paid, it has expended considerable amounts for planning towards development of the property. Learned senior counsel also highlighted the fact that the Central Government's actions have resulted in the deprivation of a sum of over Rs. 700 crores to the public exchequer, which would have been earned if the period for which the license had been allowed to stand.

14. Mr. Dave urged that allotment to DTTDC on 18.06.1983 did not enable grant of any sub-lease. However Clause 8 enabled DTTDC to make arrangements for constructing and running the hotel as would not involve sub-lease of the plot. The advertisement issued on 24.02.1992 was relied on to say that it invited offers from hotel chains for setting up and running a new hotel. This was not contrary to Condition No. 8. The licence agreement of 24.07.1992, was not a lease or a sub-lease but merely a licence. It did not confer any right or interest in the land, as apparent from Clauses 17 and 18 of which read as under:

17. The Licensee/Sub-Licensee shall not further underlet, sublet, encumber, assign, alienate or otherwise transfer their rights and interest or part with possession of the land and the building thereon or any part thereof or share therein to any person, directly or indirectly without the previous written consent of the Licensor except as provided in clause 24 & 25 (twenty four & twenty five) of this agreement.

18. The Licensee has been granted a licence only to enter upon the piece of land to be made available by the Licensor for the purpose of facilitating setting up of a 3 (Three) Star Hotel as specified hereinabove and granting of such a Licence shall in no case confer, create any right or interest or demise in the said land in

favour of the Licensee or the Sub-licensee nor shall this Licence imply an exclusion of the possession title, legal or otherwise or interest of the Licensor in the land licenced for the purpose of facilitating and securing the construction of hotel and that this Licence is understood by the parties in all respects to be in conformity with the rights and powers of the party of the first part in the matter of the grant of this Licence.

15. It was urged that the licence agreement of 24.07.1992 was entered into between DTTDC and the Appellants after global offers were invited, bids were submitted by various parties and the appellant's bid was accepted after following a transparent process. It was contended that the argument and finding of the learned single judge that the license was granted without following a proper procedure was unsustainable.

16. The learned Additional Solicitor General, who appeared for the Union, argued that the DTTDC's allotment on 18.06.1983 was exclusively for the setting-up of a budget hotel. It was urged that the advertisement of 24.02.1992 was not issued by the Government but by DTTDC, which could not lease out the lands; clause 5 stipulated that DTTDC itself had to establish and manage a hotel. Clause 7 mandated that construction was to be completed within 24 months, before the grant of lease could be considered. Clause 8 of the allotment letter stipulated that DTTDC could not sub-let the land though it could make arrangements for constructing and running the hotel. The ASG stated that DTTDC was never a lessee. For over 10 years it did nothing. The allotment in favour of DTTDC being only a licence, (as evident from Clause 14) the invitation to invest in a new hotel contravened Clause 5 of the 1983 allotment letter. In terms, specific permission of the Union Government was necessary. The ASG argued that DTTDC had no authority to issue any such advertisement. Since DTTDC did not even have a lease in its favour, the acceptance of the offer by DTTDC on 08.05.1992, the grant a licence in favour of the Appellants to set up a three star hotel for a period of 33 years was untenable.

17. As regards the licence agreement between the first appellant and DTTDC and Oberoi Palaces & Resorts International Ltd. executed on 24.07.1992, it was urged that DTTDC was a licensee of the Union Government which unauthorizedly described itself as a licensor. The first appellant was called a "licensee" and the Oberoi Palaces & Resorts Ltd. was described as the "sub-licensee". The ASG relied upon the recitals which stated that the licence was for use of the plot by Novotel. Referring to various clauses of the agreement, he submitted that the same could not be entered into by DTTDC and was in complete violation of the allotment made by the Government of India in favour of DTTDC.

18. The learned ASG argued that in terms of the (Transaction of Business) Rules, 1961 of the Government of India, grant of land/lease/licence had to be approved by the Finance Ministry. It was submitted that no concurrence of the Finance Ministry was given to the arrangement. The ASG then argued that the property in question could not have been handed over to the first petitioner. Reliance was

placed on the letter dated 01.02.1993 (under which the allotment in favour of DTTDC was cancelled). Referring next to the allotment letters of 07.06.1995 and 27.06.1995 issued by the Central Government, Ministry of Urban Affairs, Land & Development Office as well as the letter dated 01.07.1996 (issued by the Central Government, Ministry of Urban Affairs and Employment to the Land & Development Officer informing the latter that it may go ahead with the execution of the licence agreement with the first appellant after modifying the earlier licence agreement-executed between DTTDC and the said appellant) it was submitted that between 07.06.1995 and 27.06.1995, no approval from the Finance Ministry was obtained. Therefore, the allotment letter of 27.06.1995 was without any authority. Likewise, the clearance given by the letter of 01.07.1996 was not concurred with by the Finance Ministry. In this context, it was submitted that the Finance Ministry having not cleared the allotment, determinations or decisions of the Ministry of Urban Affairs and Employment could not prevail.

19. The Central Government next argues that the challenge to the letter dated 11.04.2005 by which the allotment of the plot to the appellant on 27.06.1995 was cancelled is misplaced as the said letter itself indicates that the reason for cancellation was that there were improprieties. The allotment was made without following the proper procedure and without resorting to a transparent and open procedure. He further submitted that the letter dated 07.06.1995 indicated that there would be a licence agreement executed in favour of the first appellant after suitably modifying the earlier licence agreement dated 24.07.1992. No such licence agreement was executed. The appellant, therefore, could not claim any enforceable right.

20. It was contended in the appellant's counter-affidavit that on the issue of utilisation of the land, the Union Ministry of Finance advised that the plot should be disposed to a private party for a hotel etc., only after an open auction to ensure a free and fair transaction. The Ministry of Finance alternatively suggested that the plot could be used by the Central Government itself. Based on a request from DTTDC, the plot was offered for allotment to it for construction of a budget hotel, on specified terms and conditions in consultation with the Ministry of Finance. It was argued that the allotment was made at highly concessional rates which required an annual payment @ 61/2% of the notional premium calculated on the residential rates of Rs. 2,000/- per sq. mtr.; thus no premium was charged and only the licence fee at concessional rates was levied. The allotment was subject to the terms and conditions contained in the letter of allotment dated 18.06.1983. It was also pointed out that DTTDC failed, during the period 1984-1992, to set up the budget hotel as per the terms of the allotment and also failed to pay the licence fee. In 1992, DTTDC, without obtaining any permission from the Government of India, violating the conditions of allotment, invited tenders from private parties for setting up a 3-5 Star Hotel on the plot of land. The terms of allotment envisioned the setting up of a budget hotel by DTTDC alone. The Central Government asked DTTDC to immediately stop its violation of the allotment terms and also to pay arrears of licence fee.

The ASG argued that there was no rationale for DTTDC to pass on the advantages of highly concessional licence fee to a third party or to sub-lease the land. Therefore, the allotment and agreement with the first was found to be in gross violation of the conditions of the allotment letter and the allotment in favour of DTTDC was cancelled by the said letter dated 01.02.1993.

21. The Central Government stated that DTTDC represented against the cancellation. In terms of the procedures of the Government, before taking any final decision in favour of a private party, in such a matter, the case should have been shown to the Ministry of Finance. Relying on the file notings, which were made available to the Court, and copies of which were also made available to the appellants' counsel, it was argued that during the earlier consultation, the Ministry of Finance had given its opinion that the plot of land should be disposed off by open auction to ensure a free and fair transaction. These procedures were not adhered to while issuing the letter of allotment to the petitioner on 27.06.1995. The earlier licence agreement was adopted and the fee payable by the Appellants to the L & DO were kept at the same despite lapse of time. It was submitted that in spite of the allotment letter of 27.06.1995, no licence deed was drawn up nor was a formal contract entered into between the Government of India and the Appellants.

22. It was pointed out from the counter-affidavit, that in the course of the review of the case, the Union Urban Development Secretary was of opinion that the transaction would result in heavy financial losses. Besides, the Union Government would in effect have entered into a commercial deal with a private party, without following the normal procedure of competitive bidding and without consulting the Ministry of Law on the terms and conditions of such a contract. In the course of re-examination of the allotment, the case was referred to the Prime Minister's Office, which, in turn, advised that the opinion of the Attorney General be sought. The opinion of the Attorney General was received on 21.05.2000. But, before a final decision could be taken by the Central Government on the basis of the advice, the appellants had already filed the earlier writ petition and an order was made restraining the Government of India from dispossessing the appellants from the plot. This Court had directed the Government to take a final decision in the matter within six weeks. The Central Government reviewed the matter in the light of the Attorney General's opinion and had decided to cancel the allotment letter. This resulted in the impugned cancellation letter of 11.04.2005. The ASG relied on the decisions reported as *Godavari Shamrao Parulekar Vs. State of Maharashtra and Others*, ; *State of Uttar Pradesh Vs. Om Prakash Gupta*, and *Narmada Bachao Andolan Vs. State of Madhya Pradesh*, and contended that the Rules of Business framed under the Constitution have to be adhered to for a decision to be considered as binding and enforceable upon the Government. It is not all decisions and determinations that are communicated to third parties, but only those which can be validly supported as binding decisions, that are enforceable. In the present case, the allotment made on 27.06.1995 could not be supported as communication of a valid decision, despite some of the later

notings of various Central Government functionaries. The highest authorised decision makers, upon being made aware of the irregularities apparent, decided not go to ahead with the allotment, and later these culminated in the cancellation order of 2005 impugned in the writ petition. In these circumstances, argued the ASG, the impugned judgment and order did not require any interference.

23. On the first question of the cancellation of the allotment to the DTTDC based on a violation of the terms of the allotment through a sub-license, the Appellant argues that the agreement between itself and the DTTDC was only a sub-lease for the purposes of construction of the hotel under Clause 8 of the allotment letter and not a license contrary to the terms of allotment. This question, however, need not be decided by this Court as the Appellant's subsequent representations to the Government to allot the land afresh to it - with which these present proceedings are concerned - and silence on the illegality of that action for a period of almost 15 years forecloses its ability to agitate that question currently. Nevertheless, since considerable arguments were made on this aspect, the Court deems it appropriate to record its opinion on the issue.

24. The kingpin of the appellant's submission on this score is that the Central Government was privy to - as well as a party to - the entire decision making process which led to the previous allotment of 1992, because the advertisement issued in the public domain, inviting bids for running a hotel on the plot, was that of DTTDC as well as the Central Government. The only reason for this is the statement in the advertisement that it was issued by the "Delhi Tourism and Transportation Development Corporation, Government of India". Apart from this assertion, there is no support for the allegation that the Central Government was ever involved in the processing of the bids, or that it had at any stage approved the license arrangement between DTTDC and the appellants. The license deed of 24.07.1992 similarly did not involve the Central Government, or recite its approval to the arrangement. Rather, the two parties to the agreement were the DTTDC and the East India Hotels Ltd. No other party signed the document. The schedule to the document proposed the licensing fee - an arrangement which indicated that the property was given out on license for 33 years for a total fee of Rs. 720.50 crores. It was in these circumstances that the Central Government issued the cancellation letter dated 01.02.1993. That letter cited two reasons: non-payment of license fee by the DTTDC and its violation of the lease terms, since it entered into the license arrangement for 33 years, without Central Government approval. The Central Government went on to record that the action of DTTDC was unsupportable because it had been given the land at highly concessional rates for constructing a budget hotel, a condition which stood violated by the terms of the license deed of 24th July, 1992. This Court fails to see how this cancellation can be termed either as unfair or arbitrary. The mere recital or nomenclature of an arrangement as a license is never determinative of its true nature. What has to be seen is the intent of the parties, emerging from an overall consideration. The grant of land for 33 years, with permission to put up constructions and at license fees decided without reference to the owner of

the land, amount to creation of long term arrangements which can even be termed irrevocable. That is the reason why the Central Government cancelled the allotment to DTTDC. The appellant - by its own concession a mere license - could not possibly object to this action; it did not question the Central Government's action. In the circumstances, this court holds that it is too late in the day for the appellants to say that the cancellation of the DTTDC's allotment in 1993 was not legal. Crucially, the validity of that cancellation is independent of the present cancellation, the reasons for both being separate and distinct, and indeed, the cancellation of the first allotment being a necessary factual requisite for the present allotment to have been given. This Court, therefore, holds the appellants' arguments on this aspect to be insubstantial and meritless.

25. The second and third questions are whether the cancellation was justified in this case. The relevant question here - though the distinction may appear slight - is not whether the original allotment letter (of 27.06.1995) was arbitrary, but whether the cancellation made on 11.04.2005 is arbitrary. The Appellants contended that the Learned Single Judge erred in holding that the Central Government was entitled to cancel the allotment based on the reason that the earlier allotment suffered from procedural irregularities and the absence of a competitive bidding process. It is contended that after the cancellation of the land allotment to DTTDC, fresh representations were made by the Appellant to the Ministry of Urban Affairs, and the decision to allot the land to the Appellants was made only after a detailed consideration of this request, as displayed by the counter-affidavit of Shri L.D. Ganotra, Engineering Official, in the first W.P. (C) 3016/2000:

The matter was discussed in a number of meetings in the various departments and finally on 19th October 1993 in a meeting presided by the Secretary, Union Ministry of Urban Development (in the meeting representatives of DTTDC were present), a decision was taken to allot the land to the Appellant. The minutes suggest that the decision was that the land would be allotted on the terms and conditions as those contained in the Agreement for License Agreement executed between the DTTDC and the Petitioner.

26. Furthermore, on 7th June, 1995, the Government directed the Land and Development Officer in the following terms, indicating that the matter had indeed been considered in detail and the concurrence of the Finance Ministry had been taken:

In compliance of the above, the modified allotment letter should be issued by Land and Development Office and shown to Ministry before issue. In the process, if necessitated modified agreement with East India Hotels Ltd./CIF can even be executed.

This (sic) issues with the concurrence of Finance Division vide their U.O. No. 757-F dated 6.6.1995.

The Appellants rely on various communications within the Government between

July 17, 1995 and June 11, 1996 considering the grant of the allotment letter to demonstrate that the decision was indeed taken after due consideration, concluding the following observation from the Government to the Land and Development Officer on July 1, 1996:

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In continuation of this Ministry's letter of even number dated 7.6.95, this is to inform you that you may go ahead with the execution of the license agreement after suitably modifying the license agreement earlier executed between the DTDC and East India Hotels Ltd.

27. On the aspect of propriety of allotment without an action or competitive bidding process, it is clear that an auction or competitive bidding process is not necessary in all circumstances. In *Shri Sachidanand Pandey and Another Vs. The State of West Bengal and Others*, , the Supreme Court noted that:

40. On a consideration of the relevant cases cited at the bar the following propositions may be taken as well established. State-owned or public-owned property is not to be dealt with at the absolute discretion of the executive. Certain precepts and principles have to be observed. Public interest is the paramount consideration. One of the methods of securing the public interest, when it is considered necessary to dispose of a property, is to sell the property by public auction or by inviting tenders. Though that is the ordinary rule, it is not an invariable rule. There may be situations where there are compelling reasons necessitating departure from the rule but then the reasons for the departure must be rational and should not be suggestive of discrimination....

28. In that case, an arm's length negotiation between the Central Government and Taj Hotels was considered to be sufficient, and the Court did not insist upon an auction or a competitive bidding process to ensure conformity with Article 14. In the present case, the question before the Court is not whether the mere fact of the absence of a bidding process rendered the allotment arbitrary and thus subject to cancellation by the Court, but whether the absence of such a process entitled the Government itself to cancel its allotment based on the principle of public interest that is paramount in such decisions, and importantly, subject to the evaluation of the Union executive, which owns the property.

29. In this background, the Court must examine the discussions that precede the cancellation in the present case. Here, to note broadly, the file notings demonstrate that subsequent to the allotment to the Appellants, several dissident voices appeared within the Ministry's discussions: the Secretary (Urban Development), who felt that the transaction would result in heavy financial losses [Para 7 noting in Lands Division; Counter-Affidavit, pg. 206, para 7], and the Attorney General (whose opinion was requested by the Prime Minister's Office) on 21.05.2000. Indeed, the Principal Secretary to the Prime Minister recorded on 30.10.1998 - after the allotment of land - that the matter was

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Discussed with PM. He is of the opinion that as a matter of abundant caution, Minister (UAE)'s decision may be referred to the Attorney General of India before it is implemented.

(Emphasis supplied)

Subsequently, the Urban Development Minister noted on 08.10.1999 that no competitive bids were issued and thus, Rs. 720.50 crores will accrue from Appellants as opposed to at least Rs. 1802 crores which could be reasonably expected. The Minister also noted, significantly that the concurrence of the Finance Ministry had never been elicited, or obtained.

30. In this case, it is clear that the sub-license between the Appellant and the DTTDC of 24.07.1992 traced its existence to the license granted to DTTDC on 18.06.1983. Thus, once the latter was cancelled due to a violation of its terms, the former's existence was also vitiated. Subsequently, the Ministry of Urban Affairs, Government of India revived the arrangement in substance through the allotment of 27.06.1995 by substituting itself for the DTTDC and allotting land to the Appellants directly. Crucially, this allotment was not subject to any global tender. Indeed, the decision to cancel the allotment was based on the fact that it was made without a competitive bidding process in respect of this allotment. The reasoning of the Single Judge relies in the fact that after the cancellation of the license agreement between the DTTDC and Appellant, the global tender and its results stood vitiated ipso facto, thus unavailable to be the basis for any subsequent allotment. In this case, the decision to cancel the allotment was based on a subsequent assessment of the facts by various authorities, and not based on irrelevant considerations, as the file notings above clearly demonstrate, concluding that the absence of a competitive bidding process qua the second allotment mandated cancellation. The question, thus, is not whether the Government must have had a competitive bidding process when it allotted the land to the Appellant (as was the dispute in *Kasturi Lal and Shri Sachidanand Pandey*), but whether, it is open for the Government to have such a process now, and thus, cancel the allotment on that basis. Indeed, the validity of a competitive bidding process is beyond question and thus, the decision to cancel the allotment letter cannot be characterized as arbitrary. As to the Appellant's contention that the Government may not back-track on its decision based on procedural irregularities in its own functioning, the Appellants rely on various decisions of the Supreme Court (*Sunil Pannalal Banthia and Others Vs. City and Industrial Development Corpn. of Maharashtra Ltd. and Another*, ; *Collector of Bombay Vs. Municipal Corporation of The City of Bombay and Others*, , and *Bejgam Veeranna Venkata Narasimloo and Others Vs. State of A.P. and Others*, to argue that the cancellation letter was arbitrary and that Government may not rely on its own irregularities to defeat the rights of citizens. However, these decisions do not support such a blanket and broad legal principle. Not only has the Supreme Court recognized in *Vishal Properties Pvt. Ltd. Vs. State of U.P. and Others*, that

"we are not bound to direct any authority to repeat the wrong action done by it earlier", repeating a similar ratio in *Hira Tikkoo Vs. Union Territory, Chandigarh and Others*, that:

19...When a scheme of development of land and the allotments made thereunder are found to be in contravention of any law and contrary to general public interest, no claim based on so-called vested right can be countenanced....

In *Sunil Pannalal*, the Court negated the argument that the decision of the City and Industrial Development Corporation of Maharashtra to allot land cannot be backtracked based on an assessment on facts that its original decision was not opposed to public policy on facts; in *Collector of Bombay*, the decision revolved around the limited question of the effects of a Government resolution within the meaning of Section 8 of the Bombay Act II of 1876; in *Bejgam Veeranna*, the Government's argument was that it was entitled to recoveries of excess payment to rice farmers based on a notification that it claimed was not notified was rejected. This, however, was because the Government itself collected rice compulsorily from the farmers based on that memorandum and thus could not claim that it had no legal effect. The question of whether sufficient reasons existed, as in this case, to revoke an earlier decision was never considered.

31. Traversing the discussions in this case between and within the relevant ministries, a clear picture emerges as to why the allotment was cancelled. To begin with, the official notings from the file of the Central Government no doubt show that on 11.06.1996, a view was expressed that having regard to the previous conspectus of circumstances, the request made by the appellants to allot the land directly, since it had participated in the previous auction of 1992 and was the highest bidder, was accepted. It was in these circumstances that it was issued. A similar note of the concerned Director (in the Ministry of Urban Development), i.e. Sh. B.R. Dhiman, who also made the note of 11.06.1996, was reiterated on 31.07.1996. When the official decision had to be taken, the Minister of State, UA & E on 31.07.1996 was of the view that a comprehensive note had to be prepared. The subsequent observations of the Joint Secretary (Urban Development) wondered why direct allotment was proposed instead of an auction of the land, which was the normal method adopted by the Ministry on 23.09.1996. In these circumstances, a detailed note was prepared on 22.01.1998 by the Director (UD), Central Government. This noted that before the allotment order was issued, the file was marked to the Finance Division of the Urban Development Ministry and that the Director was clearly of the opinion that:

legal opinion be taken in this case before any order is issued. However, JS (F) ruled that since the Minister has agreed to allocate the land to EIH on the same terms & conditions, the draft order may be agreed to. It is extremely important to note at this stage that the clear-cut instructions of the Government that before taking any official decision in favour of a private party in such a case, each case should be shown to the Ministry of Finance, were neither mentioned

nor taken note of, even though these instructions were issued on 11.11.94 by the Lands Division....

The note went on to state that the appellants had sought for execution of lease and the matter was sent to the Legal Advisor who, in his opinion of 08.09.1996 expressed doubts and returned the file. It was highlighted more than once in this note that the absence of consultation with the Finance Ministry rendered the whole decision dubious.

32. In these circumstances, the Minister of UA & E, on 16.10.1998 noted that it was stated that since the appellant was in possession of land and had paid Rs. 4.61 crores, it would be illegal to avoid the contract. This note of 16.10.1998 appears to have received the concurrence of the Principal Secretary to the Prime Minister on 30.10.1998. It was in these circumstances that the Attorney General's opinion was sought. In the meanwhile, the Union Minister of UA & E, in another note of 08.10.1999, reviewed the entire matter and noticed that the allotment to the appellant after cancellation of DTTDC's allotment was not preceded by competent bids as required by the official rules and that the Ministry of Finance and Law Ministry were consulted.

33. The Minister noted that "[c]learly, there is a huge financial loss. If competitive bids had been invited by the Ministry, the amount of premium and ground rent would have been much higher. Even calculations made, on conservative assumptions, at the portion marked 'X' on page 335/N, show that Rs. 1802 crores would have accrued as against Rs. 720.50 crores which East India Hotels would pay under the present arrangements, in thirty-three years as license fee".

34. The Minister went on to state that his views could also be referred to the Attorney General. The Attorney General's written opinion of 17.05.2000 discussed the various nuances of the matter and stated that the decision of 27.06.1995 was questionable and was arrived at by following a procedure not sanctioned by the Business Rules. He also expressed the opinion that the said allotment should be cancelled. All these materials appear to have been taken into account by the Central Government which decided not to go ahead with the license arrangement and also later decided to issue the impugned letter of 2005.

35. As noticed previously, the decision impugned in this case is not the allotment of land itself but the Central Government's later opinion that the public interest would not lie in going ahead with the transaction. During the hearing, the petitioner's counsel had attempted to state that the decision of the Central Government was not only illegal but that it was based on fundamentally erroneous propositions and sought to rely upon calculations about the return of investments in such circumstances. In this Court's opinion, delving into that aspect would not be appropriate. What is at issue here is fundamentally whether the Central Government's communication of 27.06.1995, alienating the plot to the appellants resulted in an enforceable right. The Central Government heavily

relies upon the Government of India (Transaction of Business Rules), 1961 as amended upto 1982 framed under Article 77(3) of the Constitution of India. Rule 4 (which, deals with the inter-departmental communications), provides by sub-rule 2 that:

(2) Unless the case is fully covered by powers to sanction expenditure or to appropriate or re-appropriate funds, conferred by any general or special orders made by the Ministry of Finance, no department shall, without the previous concurrence of the Ministry of Finance, issue any orders which may-

(a) involve any abandonment of revenue or involve any expenditure for which no provision has been made in the appropriation act;

(b) involve any grant of land or assignment of revenue or concession, grant, lease or license of mineral or forest rights or a right to water power or any easement or privilege in respect of such concession.

(c) relate to the number or grade of posts, or to the strength of a service, or to the pay or allowances of Government servants or to any other conditions of their service having financial implications; or

(d) otherwise have a financial bearing whether involving expenditure or not.

36. In the present case, the entire relevant records were shown to the Court. The only approval of the Minister on the record - the note of 06.03.1996 expressly stated that the concurrence was given for cancellation of allotment made earlier to DTTDC as it had defaulted on the terms and conditions of the lease agreement. However, there is no note or approval of the Finance Minister or the competent authority empowered to decide or approve the allotment of the plot, in the Finance Ministry. It was thus a glaring omission which compelled various officials in the Urban Affairs Ministry at middle and senior levels, the Minister of State and eventually the Union Cabinet Minister in 1999 to state that the allotment could not be sustained.

37. As observed earlier, there can be no quarrel with the proposition that allocation of natural and public resources need not invariably be preceded by public auction. As long as the Court is satisfied that the method adopted by the State - even for allowing or disposing of the land or other valuable asset, is through a transparent and fair method, the public agency or the state's exercise of discretion would not be interfered with. In this case, however, what is in issue is not grant of land; it is the decision of the Government not to proceed ahead with its previous opinion, embodied in the allotment letter of 27.06.1995. The Central Government relies upon the Government of India (Transaction of Business) Rules, 1961 as well as some judgments of the Supreme Court. The judgments relied upon by the Central Government - Smt. Godavari Shamrao Parulekar (supra); State of Uttar Pradesh v. Om Prakash Gupta (supra) and Narmada Bachao Andolan (supra) have held that the provisions in the Government of India (Transaction of Business) Rules should be complied with. In

Narmada Bachao Andolan (supra), the Court relied upon later rulings, i.e. M.R.F. Ltd. Vs. Manohar Parrikar and Others, to hold that substantial compliance with the rules can validate the action. In the present case, however, the Transaction of Business Rules, which unequivocally mandate prior consultation with the Finance Ministry before land is dealt with, were not observed. There is nothing on record to show that the file was ever referred to the Finance Ministry; rather, only Director level officials in the Ministry of Urban Affairs expressed their concurrence with the view that direct allotment could be made to the appellant after the previous arrangement with DTTDC was cancelled.

38. In these circumstances, the argument of the appellant at both levels that the decision, i.e. allotment of 27.06.1995 was legal and enforceable and also that in any event it was the highest bidder in 1992, leading to the allotment by DTTDC, cannot prevail. The Central Government's has unquestionable power to review its own decisions. The decision communicated to the appellant through the allotment letter was not complete or sustainable for the reasons that it was not concurred with the Finance Ministry. The Central Government, therefore, acted within its rights to say that it would not proceed ahead and enter into the lease arrangement which the appellant wanted. The power of administrative review is inherent with the executive agency and can be exercised having regard to the peculiar exigencies and circumstances. In this case, concededly, the Central Government was not exercising its statutory power while making the allotment. It was dealing with its own property held for and on behalf of the general public under the Constitution. Its decision not to go ahead and enter into a lease deed, therefore, was in exercise of such inherent administrative power and is, therefore, supportable in law, taken to correct a flawed decision (ref. R.R. Verma and Others Vs. Union of India (UOI) and Others, and State of Uttar Pradesh and Others Vs. Maharaja Dharmender Prasad Singh and Others,). In R.R. Verma, the Court held that:

5...Surely, any Government must be free to alter policy or its decision in administrative matters. If they are to carry on their daily administration they cannot be hidebound by the rules and restrictions of judicial procedure though of course they are bound to obey all statutory requirements and also observe the principles of natural justice where rights of parties may be affected....

In another decision, i.e. M. Satyanandam Vs. Deputy Secretary to Government of A.P., General Administration (Accom. C) Department, Secretariat and Another, , it was observed that "In the facts of this case as noted by the High Court, we are unable to entertain these contentions. We are unable to accept the contention that the Government cannot review its own order."

39. As far as the argument with respect to the appellants being the highest bidders in the bidding process conducted by the DTTDC in 1992 is concerned, as discussed earlier, that process ended with the cancellation of allotment to DTTDC. The Central Government's objection to that process precisely was that a long time arrangement was sought to be entered into without its involvement,

approval or concurrence. Once that allotment - to the DTTDC - became final, one of the steps leading upto the cancellation, i.e. the bidding process, cannot, in the opinion of this Court, be assaulted to uphold the appellant's contention. In other words, the entire decision of the DTTDC to allot the plot to the appellant, being a case for cancellation of the DTTDC's own allotment, the appellant cannot be permitted to rely upon the fact that it was the highest bidder in such process. The fact remains that the allotment made directly to the appellant on 27.06.1995 was not preceded by any fair or transparent procedure inviting or involving other interested bidders - either through open tender bidding or by calling eligible parties for negotiations. Had such a process been resorted to, the appellant could have been justified in stating that the decision of the Central Government to review such allotment could not be allowed to stand on account of estoppel or other compelling principles.

40. The Appellants have also argued that u/s 199 of the Contract Act, the Central Government has by way of a subsequent decision to allot the plot in favour of the Appellant directly ratified the action of the DTTDC. While the effect of ratification is indeed what the Appellants claim to be - that of relating back to the date of the original contract (Central National Bank Ltd. Vs. United Industrial Bank Ltd.,), in this case, the allotment to the Appellants was distinct, in the legal form, from the sub-license granted by the DTTDC - thus rendering this argument incorrect. In a case of ratification, the original action which is sought to be ratified comes into existence once again, whereas in this case, a fresh offer was made by the Government on 27.06.1995. Indeed, the admitted position of the Appellants is that the license agreement (the contractual agreement that may act as ratification) has not yet been concluded by the Land and Development Officer although, it is alleged, that the Government had mandated the Officer do so. In such a case, the argument that ratification fails as there is neither an express nor an implied ratification of the previous act "as its (the Government's) own", where in fact, the letter of cancellation of the allotment to DTTDC qualifies as a "clear repudiation" (Kadiresan Chettiar Vs. Ramanathan Chetti and Another,)

41. This brings us to the fourth question of any right vested created in the Appellants in equity, i.e. through the doctrines of promissory estoppel and legitimate expectation, which could injunct the Government. The Appellants note that over the passage of 13 years, equities had been created in its favour, as also the fact that the representation made by the Land and Development Officer through the letter of allotment on 27th June, 1995, precludes the Government from back-tracking on that promise or assurance: "Accordingly, I am directed to convey the sanction of the President to the construction and commissioning of the Hotel by the East India Hotel Ltd./Centurion Hotels Ltd. on the aforesaid plot of land subject to compliance of the terms and conditions as enumerated in the license agreement dated 24.07.92 (copy enclosed) on usual terms and conditions which shall, inter alia, includes (sic) the following ..." For this, the Single Judge has rightly noted that the doctrine cannot create an expectation as against a public authority acting in public interest. The Supreme Court noted in Hira Tikkoo

Vs. Union Territory, Chandigarh and Others, that:

22. In public law in certain situations, relief to the parties aggrieved by action or promises of public authorities can be granted on the doctrine of legitimate expectation but when grant of such relief is likely to harm larger public interest, the doctrine cannot be allowed to be pressed into service....

In this case, the larger public interest would no doubt be served through a fresh competitive bidding process today which will lead to greater accrual of revenue, as the Secretary, Urban Ministry has also alluded to.

42. Crucially, once the Central Government itself formed the opinion that disposal of its property by the allotment letter dated 27.06.1995 was not preceded by any fair or transparent procedure - which in the opinion of the Court is not a faulted conclusion - the argument of estoppel cannot prevail or apply. Estoppel as has been reiterated time and again is an equitable principle which would yield to substantive provisions. The State cannot, consistent with its mandate to follow the non-discriminatory principle underlying Article 14, be bound down by what essentially was an unsupportable bargain shrouded in secrecy as the allotment of 27.06.1995 unquestionably was. To direct the Central Government in the facts and circumstances to follow up the allotment letter dated 27.06.1995 by application of the principle of promissory estoppel would be, in the opinion of the Court, contrary to its obligations under the Constitution to dispose of public property through fair and transparent process.

43. Furthermore, the doctrines of promissory estoppel and legitimate expectations - doctrines of equity - translate into a specific performance of the promise made. Indeed, such remedies of specific performance - even, for example, under the Specific Relief Act, though it is not applicable here - are available when "injustice can be avoided only by enforcement of the promise" (Motilal Padampat Sugar Mills Co. Ltd. Vs. State of Uttar Pradesh and Others,). As observed in Att. Gen. For New South Wales v. Quin 1990 (64) Aus LJ. Rep 327 the doctrine of legitimate expectations ought not to "unlock the gate which shuts the court out of review on the merits," and that the Courts should not trespass "into the forbidden field of the merits." Thus, the argument of the cancellation (of allotment dated 27.06.1995) contravening the legitimate expectations of the appellant and the resultant arbitrariness is of no avail. In this case, the Single Judge has ordered a return of the investment made by the Appellant in the property by way of payment to the Government. Indeed, neither has the Appellant has referred in its pleadings to any independent damage that cannot be compensated but for the specific remedy it requests.

44. Finally, it is important to note that the present proceedings involve the writ jurisdiction of this Court, and are not an alternative to the ordinary jurisdiction of civil courts. Indeed, if the Appellants believe that a contractual or quasi-contractual right exists between them and the Government, or if any right under common law or equity is violated, in such opinion, the proper forum for such a

dispute would be the civil courts, with the proceedings in the writ courts limited to a question of arbitrariness on the part of the State or public agency's action. In this case, it is disputed between the parties whether a contract actually existed between them, in that the Land and Development Officer did not, in fact, conclude the license agreement on the terms of the DTTDC agreement as was the order of the Government through its letter dated 7th June, 1995. The question whether a contract was formed between the parties under the Indian Contract Act, and if a breach occurred as to justify either damages or specific performance, would engage the writ court in a matter properly reserved for the civil courts. A contrary conclusion would mean that any matter involving the State, a sovereign, in a plausible contractual relationship with a private entity would engage this Court's writ jurisdiction - a proposition contrary to well-settled law. Accordingly, for the reasons set out above, this Court finds no reason to interfere with the judgment of the learned Single Judge; the appeal is dismissed with no order as to costs.