

(2016) 06 SHI CK 0002
In the High Court Of Himachal Pradesh
Case No : CWP No. 4308 of 2015

Gulshan Kumar

APPELLANT

Vs

State of H.P.

RESPONDENT

Date of Decision : 15-06-2016

Acts Referred:

Citation : (2016) AIR(HP) 137 : (2016) ILRHP 1899

Hon'ble Judges : Mansoor Ahmad Mir, C.J. and Sandeep Sharma, J.

Bench : Division Bench

Advocate : Ms. Rita Goswami, Advocate, for the Appellant; Mr. Shrawan Dogra, Advocate General with Mr. Anup Rattan and Mr. M.A. Khan, Additional Advocate Generals and Mr. Kush Sharma, Deputy Advocate General, Mr. R.K. Bawa, Senior Advocate with Mr. Arun Kumar, Advoc

Final Decision : Disposed Off

Judgement

Sandeep Sharma, J.—By way of present petition the petitioner has prayed for the following reliefs:-

"(1) It is most respectfully prayed that a writ of certiorari may kindly be issued to quash the impugned Annexure P-6 dated 22.09.2015 passed by the respondent-3.

1(a) That the operative part of the order dated 29.06.2015 Annexure P-5, P-7 & P-8 may kindly be set-aside in view of the submissions made in para 31(a) & 6 of the petition.

(2) That a writ of mandamus may kindly be directed to the respondents to grant the relaxation in the same manner as has already been granted to all the three cases along with the case of the petitioner. The petitioner may kindly be allowed to run the fair price on the same analogy as in all the three cases fair price shops are allowed to run by the respondents.

(3) That the entire record pertaining to the case may kindly be summoned for

the kind perusal of this Hon''ble Court.

(4) Any other or further writ, order or direction may be made in the given premises."

2. This Court has taken on record the amended petition and aforesaid reliefs reproduced herein above have been claimed by the petitioner in the amended petition.

3. On 18th May, 2016, while hearing the case, respondents were directed to make available record pertaining to the decision taken by the competent authority with regard to the allotment of fare price shop (in short 'FPS'). Accordingly, the record was made available by the respondents on 25th May, 2016, when the matter was heard at length.

4. Briefly stated the facts necessary for adjudication of the present case are that pursuant to public notice dated 20.4.2011 issued by the respondent-Department for opening FPS, petitioner, being unemployed youth having no source of livelihood, applied for the FPS at Chammo, District Solan, well within stipulated time. It also emerges from the record that respondent No.4 i.e. Nali Dharti Agricultural Services Cooperative Society (in short 'Cooperative Society') vide resolution dated 2.3.2012 resolved that since Secretary of the Society has been appointed in the Jogindera Central Cooperative Bank, therefore, the Cooperative Society is not in a position to run FPS at Chammo. Accordingly, on the basis of aforesaid resolution, the District Level Public Distribution Committee (in short 'Distribution Committee') in its meeting held on 12.3.2012 approved the FPS in favour of the petitioner. However, further perusal of the record depicts that respondent No.4, subsequently passed another resolution dated 1.4.2012, wherein decision was taken to withdraw the resolution dated 2.3.2012. But fact remains that letter conveying the decision taken vide resolution dated 1.4.2012 was communicated to the respondent-authority after the approval made in favour of the present petitioner.

5. Perusal of Annexure P-1 annexed with the petition suggests that since the population as well as numbers of ration cards, registered in the area where FPS was to be opened, were less than the limit prescribed by the Department of Food and Civil Supplies, respondent No.3 vide communication dated 22.5.2012 sent the case of the petitioner as well as other three similarly situate persons for relaxation to respondent No.2. However, pending decision of relaxation, respondent No.3 vide communication dated 1.1.2014 (Annexure P-3) granted licence in favour of the petitioner authorising him to run the FPS in the area. Since then the petitioner had been running the same without there being any complaint. It appears that the aforesaid allotment of FPS in favour of the petitioner was challenged by way of CWP No.5468 of 2012-G by respondent No.4. However, this Court vide order dated 3.12.2013 (Annexure P-2), while dismissing the writ petition, passed the following orders:-

"Other than what is discussed herein above, nothing is pointed out, highlighting

the manner in which directions issued by this Court stand violated by the respondents. It cannot be said that action of the respondents is arbitrary, illegal, capricious or unreasonable in any manner or in violation of directions issued by this Court. As such, present petition, devoid of any merit, is dismissed."

6. Feeling aggrieved and dis-satisfied with the judgment dated 3.12.2013 passed by the Hon''ble Single Judge, respondent No.4 assailed the same by way of LPA bearing No.3 of 2014 before the Hon''ble Division Bench of this Court. The Hon''ble Division Bench of this Court, after hearing the parties as well as perusing the record, observed as under:-

"2. While going through the impugned judgment and the averments contained in the writ petition, it transpires that disputed questions of fact are involved and the writ petitioners have alternate remedy available.

3. At this stage, learned counsel for the appellant stated at the Bar that he may be permitted to withdraw the Letters Patent Appeal along with the Writ Petition, with liberty to seek appropriate remedy available under the law. His statement is taken on record. Other side has no objection.

4. In view of the above, the Letters Patent Appeal and the Writ Petition are dismissed as withdrawn, with liberty as prayed for.

5. In the given circumstances, the impugned judgment loses its efficacy."

7. Further scrutiny of the record suggests that pursuant to passing of order dated 1.7.2014 (Annexure P-4) by the Division Bench of this Court, respondent No.4 filed an appeal under Clause-17 of the H.P. Specified Articles (Regulation of Distribution) Order, 2003, before the Appellate Authority-cum-Director, Food, Civil Supplies & Consumer Affairs, Himachal Pradesh, Shimla (in short 'Appellate Authority') against the order dated 22.5.2012 issued by the respondent No.1, whereby the Distribution Committee recommended the FPS at Chammo in favour of the present petitioner. Perusal of the order dated 29.6.2015 passed by aforesaid Appellate Authority suggests that present petitioner was duly represented by his counsel at the time of passing of the aforesaid order (Annexure P-5).

8. It also emerges from the averments contained in the writ petition that petitioner was served with the notice dated 7.5.2015 intimating therein the filing of appeal, as stated above, before the Appellate authority, who vide order dated 29.6.2015 though concluded that any resolution passed by respondent No.4 received post facto could not possibly be considered by the Committee hence the recommendation of Committee as well the letter dated 22.5.2012 requesting relaxation of norms cannot be faulted with. However, learned Appellate Authority while upholding the decision of the Distribution Committee, whereby the case of the petitioner was recommended to the Government for relaxation of norms, held that the decision of the respondent No.3, allowing the petitioner to run FPS without there being approved relaxation from the Government, is illegal from its

very inception and the same cannot be allowed to stand. Accordingly, direction was issued to close the FPS till the time relaxation is received from the Government. Operative part of the order passed by the Appellate Authority dated 29.6.2015 is reproduced herein below:-

"..... I am convinced that the Public Distribution Committee did not fail in its due diligence and has gone as per the merits of the cases before it in its meeting dated 12.03.2012. Since the application of the appellant society stood withdrawn before this committee went to commiserate, the same could not be considered, and the committee recommended the best candidate for the FPS. Any resolution received post facto could not possibly be considered by the committee, as rightly pointed out by the Hon"ble Single Bench in the CWP No.5468/2012. Hence, the recommendation of the committee as well as the letter dated 22.05.12 requesting relaxation of norms from the Govt. being based on merit, is beyond reproach and hence allowed to stand."

However, this Court is pained and surprised to note that the Distt. Controller, FCS&CA, Solan has issued authorisation to the respondent No.2 without any approved relaxation from the Govt. Thus, FPS was allowed to be created without any legal approval, and as such was illegal from its very inception. The FPS carried on its operation while this grave lacuna was not in the notice of the govt. or this Court. Now that such a lacuna has been brought before this Court, the same cannot be allowed to stand. The illegal FPS must be closed unless allowed to be run after relaxation from the Govt. Thus, the FPS shall cease to operate from the date of issue of this order. The authorisation issued by the Distt. Controller, FCS&CA stands quashed immediately."

9. Pursuant to passing of aforesaid order dated 29.6.2015 by the Appellate Authority, respondent No.3 vide communication dated 22.9.2015 informed the petitioner that authorisation granted vide communication dated 1.1.2014 to run FPS is cancelled in terms of decision taken by the competent Authority in order dated 25.7.2015 (Annexure P-6). However, perusal of this Annexure, nowhere discloses the reasons for cancelling the authorization/allotment made in favour of petitioner vide communication dated 1.1.2014.

10. Feeling aggrieved and dis-satisfied with the order dated 29.06.2015, passed by the Appellate Authority, order dated 25.7.2015 issued by Principal Secretary (Food and Civil Supply) to the Government of Himachal Pradesh, order dated 10.8.2015 issued by Director, Civil Supplies, State of Himachal Pradesh and 22.9.2015 issued by respondent No.3, whereby allotment/authorization made in favour of petitioner to run FPS at Chammoh was cancelled, filed present petition praying the relief(s) reproduced herein above.

11. Ms. Reeta Goswami, learned counsel representing the petitioner, vehemently argued that the impugned orders passed by the respondents deserves to be quashed and set aside being unsustainable in the eyes of law because perusal of the record clearly suggests that while passing aforesaid orders, principles of

natural justice were not complied with at all by the respondents. She forcefully contended that orders passed by the Appellate Authority dated 29.6.2015 inasmuch as holding that the decision of respondent No.2, allowing the petitioner to run the FPS pending relaxation is illegal from its very inception, is totally contradictory to the findings returned by the Appellate Authority, wherein it has been specifically concluded by the Appellate Authority that "Distribution Committee did not fail in its due diligence and had gone as per the merits of the case before it in its meeting dated 12.3.2012," where admittedly decision was taken to allot FPS in question to the petitioner and case was sent to the Government for relaxation in the norms for the reasons stated in Annexure-P1. She contended that while passing order dated 29.6.2015, learned Appellate Authority failed to appreciate that there was no fault at all of the present petitioner who was authorised/granted permission to run FPS on the basis of application submitted by the petitioner in terms of advertisement issued by the respondent department. It is also contended that learned Appellate Authority failed to acknowledge that since petitioner was granted permission on 1.1.2014, to run the FPS and since then he has been continuously running the same to the utmost satisfaction of the public of the area and there was no complaint whatsoever against working of the petitioner. She forcefully contended that learned Appellate Authority while passing impugned order failed to take note of the fact that this Court vide judgment dated 3.12.2013, passed in CWP No. 5468 of 2012-G, had already upheld the decision of the respondent as far as grant of authorisation in favour of petitioner to run the FPS is concerned. She invited the attention of this Court to para-7 of the judgment passed by the learned Single Judge, whereby while dismissing the petition of respondent No.4, it is held that "it cannot be said that "action of the respondent is arbitrary, illegal and unreasonable in any manner whatsoever or in violation of the direction issued by this Court." She also contended that even LPA filed by respondent No. 4 against the judgment dated 3.12.2013, was dismissed by this Court vide judgment dated 1.7.2014 and no opinion whatsoever qua the merits of the judgment passed by the Hon''ble Single Judge was expressed by the Division Bench while dismissing the appeal. She forcefully contended that since action of the respondent inasmuch as granting permission to the petitioner to run FPS was upheld by Hon''ble Single Judge as well as Division of this Court, learned Appellate Authority, had no authority, whatsoever to direct the respondents to close the FPS till the time, relaxation is granted by the respondents-State.

12. On the other hand, Shri Shrawan Dogra, learned Advocate General, stated that there is no illegality and infirmity in the impugned order passed by the learned Appellate Authority dated 29.6.2015 and as such same deserves to be upheld and no interference of this Court whatsoever, is called for in the facts and circumstances of the case. Mr. Dogra, learned Advocate General, forcefully contended that the respondent-Department has rightly cancelled the permission of authorization/permission granted in favour of the petitioner to run the FPS after passing of the judgment by the Appellate Authority. He contended that

admittedly petitioner was granted authorization/permission to run FPS pending relaxation from Government vide communication dated 1.1.2014 but since Government has declined to grant any relaxation in favour of the petitioner, he has no locus or indefeasible right to insist for grant of authorization/permission to run FPS at Chammo.

13. Mr. Dogra forcefully contended that since initial decision to authorize/ permit the present petitioner to run FPS was taken in the public interest especially when respondent No. 4 had refused to run the FPS now at this stage petitioner cannot claim it as a matter of right. Moreover, now Government has decided not to grant any relaxation in favour of the petitioner in public interest and, as such, present petition deserves to be dismissed being not maintainable.

14. Mr. R.K. Bawa, learned Senior Counsel representing respondent No.4 also supported the order dated 29.6.2015 passed by the Appellate Authority and contended that petitioner has no right, whatsoever to continue to run FPS which was admittedly granted to him in violation of the rules as has been specifically pointed by the learned Appellate Authority while passing order.

15. We have heard the learned counsel for the parties and have gone through record of the case.

16. Careful perusal of the pleadings on the record as well as original record produced by the respondent at the time of hearing suggests that petitioner pursuant to the advertisement issued by the respondent applied for the authorization/permission to run the FPS at Chammo. Since respondent No.4 itself vide resolution dated 2.3.2012 had informed the concerned authority that in view of the appointment of the Secretary of Co-operative Society in Jogindra Cooperative Bank, it is not in a position to run FPS at Chammo, respondent N.3 in its meeting held on 12.3.2012 resolved to authorize/permit petitioner to run FPS. Though resolution dated 2.3.2012 passed by respondent No.4 was sought to be withdrawn by respondent No.4-Society by passing resolution dated 1.4.2012 but certainly same could not be taken into consideration by the competent authority at the time of authorizing/permitting petitioner to run FPS which was admittedly granted in favour of the petitioner on 1.1.2014 i.e. prior to passing of second resolution by respondent No.4. A perusal of annexure P-1 clearly suggest that decision to authorize/permit petitioner to run fair shop was taken in public interest but since petitioner as well as three other similar situate person were not fulfilling the norms laid down for this purpose, decision was taken to the send the case of the petitioner along with other three persons to the State of Himachal Pradesh for relaxation, if any, under the rules. But fact remains that during this period i.e. 1.1.2014 till passing of impugned order dated 22.9.2015 petitioner continued to run the FPS without there being any complaint to the satisfaction of the public of that area. This Court had occasion to sift entire record made available by the respondent and nothing adverse could be found suggesting anything adverse against the petitioner. Since decision to allot FPS in favour of the petitioner was taken by the respondent No. 3 keeping in view public interest

and petitioner was admittedly allowed to run the FPS w.e.f. 1.1.2014, no fault whatsoever can be found with the petitioner, who admittedly under bona-fide belief that relaxation would be granted by the respondent-State to continue to run FPS. Similarly, resolution filed by respondent No.4 after allotment of FPS in favour of the petitioner could not be taken into consideration by respondent No.3. We have no hesitation to conclude that respondent No.4 has no right to assail the decision of the respondent in as much as grant of FPS in favour of the petitioner is concerned, when it stand duly proved on record that respondent No.4 itself opted not to run the FPS when the allotment was being made by respondent-Department. Rather, it appears that decision to allot FPS in favour of petitioner was only taken when respondent No.4 refused to run the shop and as such action of respondent No.4 challenging the allotment in favour of the petitioner cannot be held tenable at all and justified in the given facts and circumstances. Moreover, this Court while passing judgment dated 3.12.2013 in CWP No.5468 OF 2012 filed by respondent No. 4 had already upheld the action of the respondent in as much as granting permission in favour of the petitioner to retain the FPS. Even, in the appeal filed by respondent No.4, Appellate Authority, upheld the decision of the respondent. Respondent No.4 never challenged aforesaid findings returned by learned Appellate Authority and as such Society (R-4) cannot be allowed to rake up that issue at this stage.

17. Now, advertng to the order dated 29.6.2015 whereby learned Appellate Authority though upheld the decision of the Committee, whereby vide letter dated 22.5.2012 case of the petitioner as well as the similarly situate person was sent for the relaxation, but direction was issued to close FPS till the time relaxation is granted by the government. This Court is of the view that the aforesaid findings returned by the appellate Authority in the appeal preferred by the respondent No. 4 is admittedly contradictory, wherein decision taken by Distribution Committee in its meeting dated 12.2.2012 has been upheld. It is pertinent to notice here that District Level Public Distribution Committee in its meeting held on 12.2.2012 as has been referred in the order passed by learned Appellate Authority had decided to allot the FPS in favour of the petitioner being more meritorious. Hence, in view of the aforesaid findings returned by the learned Appellate Authority, subsequent direction issued to close the FPS till the time case of relaxation is decided by the Government cannot be allowed to sustain being totally contrary to its findings, whereby decision of the respondent authority to send the case of the petitioner for relaxation has been upheld.

18. Perusal of the pleadings on record as well as the arguments having been made by learned counsel representing the petitioner also suggest that State of Himachal Pradesh vide impugned order dated 25.7.2015 decided not to grant any relaxation in favour of the petitioner as a result of which, respondent No.3 vide communication dated 22.9.2015 intimated the present petitioner that allotment made in his favour to run FPS vide communication dated 1.1.2014 stands cancelled. Since specific allegations/averments have been made in the writ petition that respondent-state has granted relaxation in another three cases,

which were forwarded to the State of Himachal Pradesh vide communication dated 22.5.2012(Annexure P-1) along with the case of the petitioner, this Court with a view to ascertain the genuineness/ correctness of the aforesaid averments as well as arguments advanced by the counsel representing the petitioner had summoned the complete record from the respondent -State. This Court before passing instant judgment carefully perused the entire record made available to this Court with regard to FPS as well as cases sent to the respondent-State for relaxation in norms in terms of Annexure P-1. Perusal of the record clearly suggest that the case of the petitioner was not dealt with at all prior to passing of order dated 25.7.2015 on the pretext of pendency of the cases with regard to allotment of FPS in question firstly before the Hon'ble Single Judge and thereafter before the Hon'ble Division Bench of this Court. This Court while sifting entire record, was enable to lay its hand to any document suggestive of the fact that the case with regard to relaxation in favour of petitioner was ever dealt with by the authorities rather all notings while dealing with the case of the petitioner suggests that the matter with regard to grant of relaxation was deferred on the pretext of the pendency of the litigation. However, perusal of one document suggest that after passing of the order dated 29.6.2015 by the Appellate Authority noting was made that since case stands decided, case with regard to relaxation in favour of the petitioner as prayed vide annexure P-1 may be decided. But we are pained to see that even after passing of the order dated 29.6.2015 there is no document which could demonstrate that any deliberation/ discussion took place amongst the concerned officer with regard to relaxation, if any in the case of the petitioner for the grant of FPS in question. Court could only lay its hands to communication dated 25.7.2015 purportedly written at the behest of Principle Secretary Food and Civil Supply addressed to the Director, Food and Civil Supply, intimating therein that the case of the petitioner namely Gulshan Kumar stands rejected after examination. But admittedly, there is no document available on record from where it could be inferred that the matter was actually examined by the competent authority as far as relaxation is concerned.

19. Interestingly, as has been alleged by the petitioner in the petition other three cases which were recommended along with the case of the petitioner have been allowed by the respondent-State. Close perusal of the record disclosed that the competent authority vide separate communication allowed relaxation in favour of the other three persons named in Annexure P-1. But even in those cases, we are unable to find any discussion or deliberation held between the authorities, which compelled/persuaded the authority to grant relaxation in their favour for running FPS. After careful perusal of the record made available to this Court, this Court has no hesitation to conclude that principles of natural justice have not been complied with at all. Rather, competent authority while deciding the case of the petitioner as well as other similar situated persons have acted on its own whims and fancies and has for the reasons best known to them singled out the petitioner while granting the relaxation in other three cases as mentioned in Annexure P-1.

Perusal of communication dated 25.7.2015 available on record itself suggest that actually no deliberation /discussion took place while rejecting the case of the petitioner for grant of relaxation. Similarly, a perusal of letter conveying therein the approval in favour of the other similar situated person suggest that they were granted relaxation by the authority without their being any examination of the matter at hand.

20. In the aforesaid view of the matter, this Court is of the view that action of the respondent in not granting relaxation to the petitioner as has been done in the case of the other similarly situate person is discriminatory, arbitrary and certainly it can be termed as colourable exercise of powers and, as such, same cannot be allowed to sustain. After perusing order dated 25.7.2015, it cannot be said that authorities while rejecting the case of the petitioner actually passed any speaking order from where it could be inferred that all pros and cons were taken into consideration while considering the case of the petitioner for relaxation is concerned. Rather, documents available on the record suggest that matter as sent by Annexure P-1 was not at all discussed by the authorities and case of the petitioner was rejected without there having any discussion, whereas cases of other three similarly situate persons were allowed that too without examining the merits and demerits of their cases. Hence, action of respondent in not granting relaxation in favour of the petitioner deserves to be rejected out rightly, especially, when same appears to be not taken in consonance with the provisions of the natural justice.

21. In the present case, respondent being instrumentalities of the State was expected to act fairly without there being any bias and mala-fide, especially when it deals with public establishments or issuance of any grant of licence etc. In this regard the Hon'ble Apex Court in City Industrial Development Corporation through its Managing Director v. Platinum Entertainment and Others, (2015)1 SCC 558, held:-

"37. It is well settled that whenever the Government dealt with the public establishment in entering into a contract or issuance of licence, the Government could not act arbitrarily on its sweet will but must act in accordance with law and the action of the Government should not give the smack of arbitrariness. In the case of Ramana Dayaram Shetty v. International Airport Authority of India & Ors., (1979) 3 SCC 489, this Court observed as under: (SCC pp.504 & 506 paras 11 &12)-

"11. Today the Government in a welfare State, is the regulator and dispenser of special services and provider of a large number of benefits, including jobs, contracts, licences, quotas, mineral rights, etc. The Government pours forth wealth, money, benefits, services, contracts, quotas and licences. The valuables dispensed by Government take many forms, but they all share one characteristic. They are steadily taking the place of traditional forms of wealth. These valuables which derive from relationships to Government are of many kinds. They comprise social security benefits, cash grants for political sufferers and the whole scheme

of State and local welfare. Then again, thousands of people are employed in the State and the Central Governments and local authorities. Licences are required before one can engage in many kinds of businesses or work. The power of giving licences means power to withhold them and this gives control to the Government or to the agents of Government on the lives of many people. Many individuals and many more businesses enjoy largesse in the form of Government contracts. These contracts often resemble subsidies. It is virtually impossible to lose money on them and many enterprises are set up primarily to do business with Government. Government owns and controls hundreds of acres of public land valuable for mining and other purposes. These resources are available for utilisation by private corporations and individuals by way of lease or licence. All these mean growth in the Government largesse and with the increasing magnitude and range of governmental functions as we move closer to a welfare State, more and more of our wealth consists of these new forms. Some of these forms of wealth may be in the nature of legal rights but the large majority of them are in the nature of privileges. But on that account, can it be said that they do not enjoy any legal protection? Can they be regarded as gratuity furnished by the State so that the State may withhold, grant or revoke it at its pleasure?"

"12.It must, therefore, be taken to be the law that where the Government is dealing with the public, whether by way of giving jobs or entering into contracts or issuing quotas or licences or granting other forms of largesse, the Government cannot act arbitrarily at its sweet will and, like a private individual, deal with any person it pleases, but its action must be in conformity with standard or norms which is not arbitrary, irrational or irrelevant. The power or discretion of the Government in the matter of grant of largesse including award of jobs, contracts, quotas, licences, etc. must be confined and structured by rational, relevant and nondiscriminatory standard or norm and if the Government departs from such standard or norm in any particular case or cases, the action of the Government would be liable to be struck down, unless it can be shown by the Government that the departure was not arbitrary, but was based on some valid principle which in itself was not irrational, unreasonable or discriminatory."

39. In *Kasturi Lal Lakshmi Reddy & Ors. v. State of Jammu and Kashmir & Anr.*, (1980) 4 SCC 1, this Court observed as under: (SCC pp.13-14, paras 14-15).

"14. Where any governmental action fails to satisfy the test of reasonableness and public interest discussed above and is found to be wanting in the quality of reasonableness or lacking in the element of public interest, it would be liable to be struck down as invalid. It must follow as a necessary corollary from this proposition that the Government cannot act in a manner which would benefit a private party at the cost of the State; such an action would be both unreasonable and contrary to public interest. The Government, therefore, cannot, for example, give a contract or sell or lease out its property for a consideration less than the highest that can be obtained for it, unless of course there are other

considerations which render it reasonable and in public interest to do so. Such considerations may be that some directive principle is sought to be advanced or implemented or that the contract or the property is given not with a view to earning revenue but for the purpose of carrying out a welfare scheme for the benefit of a particular group or section of people deserving it or that the person who has offered a higher consideration is not otherwise fit to be given the contract or the property. We have referred to these considerations only illustratively, for there may be an infinite variety of considerations which may have to be taken into account by the Government in formulating its policies and it is on a total evaluation of various considerations which have weighed with the Government in taking a particular action, that the court would have to decide whether the action of the Government is reasonable and in public interest. But one basic principle which must guide the court in arriving at its determination on this question is that there is always a presumption that the governmental action is reasonable and in public interest and it is for the party challenging its validity to show that it is wanting in reasonableness or is not informed with public interest. This burden is a heavy one and it has to be discharged to the satisfaction of the court by proper and adequate material. The court cannot lightly assume that the action taken by the Government is unreasonable or without public interest because, as we said above, there are a large number of policy considerations which must necessarily weigh with the Government in taking action and therefore the court would not strike down governmental action as invalid on this ground, unless it is clearly satisfied that the action is unreasonable or not in public interest. But where it is so satisfied, it would be the plainest duty of the court under the Constitution to invalidate the governmental action. This is one of the most important functions of the court and also one of the most essential for preservation of the rule of law. It is imperative in a democracy governed by the rule of law that governmental action must be kept within the limits of the law and if there is any transgression, the court must be ready to condemn it. It is a matter of historical experience that there is a tendency in every Government to assume more and more powers and since it is not an uncommon phenomenon in some countries that the legislative check is getting diluted, it is left to the court as the only other reviewing authority under the Constitution to be increasingly vigilant to ensure observance with the rule of law and in this task, the court must not flinch or falter. It may be pointed out that this ground of invalidity, namely, that the governmental action is unreasonable or [pic]lacking in the quality of public interest, is different from that of mala fides though it may, in a given case, furnish evidence of mala fides.

15. The second limitation on the discretion of the Government in grant of largess is in regard to the persons to whom such largess may be granted. It is now well settled as a result of the decision of this Court in *Ramana D. Shetty v. International Airport Authority of India* that the Government is not free, like an ordinary individual, in selecting the recipients for its largess and it cannot choose to deal with any person it pleases in its absolute and unfettered discretion. The

law is now well-established that the Government need not deal with anyone, but if it does so, it must do so fairly without discrimination and without unfair procedure. Where the Government is dealing with the public whether by way of giving jobs or entering into contracts or granting other forms of largess, the Government cannot act arbitrarily at its sweet will and, like a private individual, deal with any person it pleases, but its action must be in conformity with some standard or norm which is not arbitrary, irrational or irrelevant. The governmental action must not be arbitrary or capricious, but must be based on some principle which meets the test of reason and relevance. This rule was enunciated by the court as a rule of administrative law and it was also validated by the court as an emanation flowing directly from the doctrine of equality embodied in Article 14. The court referred to the activist magnitude of Article 14 as evolved in *E.P. Royappa v. State of Tamil Nadu* and *Maneka Gandhi case*, (1978) 1 SCC 248 and observed that it must follow "as a necessary corollary from the principle of equality enshrined in Article 14 that though the State is entitled to refuse to enter into relationship with anyone, yet if it does so, it cannot arbitrarily choose any person it likes for entering into such relationship and discriminate between persons similarly circumstanced, but it must act in conformity with some standard or principle which meets that test of reasonableness and non-discrimination and any departure from such standard or principle would be invalid unless it can be supported or justified on some rational and nondiscriminatory ground". (*Ramana Dayaram Shetty case*, SCC p.512.para 21)

This decision has reaffirmed the principle of reasonableness and non-arbitrariness in governmental action which lies at the core of our entire constitutional scheme and structure."

(pp.576-580)

22. In *B.A. Linga Reddy and Others v. Karnataka State Transport Authority and Others*, (2015)4 SCC 515, the Court held:

"16. The *pari materia* provisions contained in sections 99 and 102 of the Act of 1988 are reproduced hereunder:

"99. Preparation and publication of proposal regarding road transport service of a State transport undertaking.-[(1)] Where any State Government is of opinion that for the purpose of providing an efficient, adequate, economical and properly co-ordinated road transport service, it is necessary in the public interest that road transport services in general or any particular class of such service in relation to any area or route or portion thereof should be run and operated by the State transport undertaking, whether to the exclusion, complete or partial, of other persons or otherwise, the State Government may formulate a proposal regarding a scheme giving particulars of the nature of the services proposed to be rendered, the area or route proposed to be covered and other relevant particulars respecting thereto and shall publish such proposal in the Official

Gazette of the State formulating such proposal and in not less than one newspaper in the regional language circulating in the area or route proposed to be covered by such scheme and also in such other manner as the State Government formulating such proposal deem fit.

(2) Notwithstanding anything contained in sub-section (1), when a proposal is published under that subsection, then from the date of publication of such proposal, no permit shall be granted to any person, except a temporary permit during the pendency of the proposal and such temporary permit shall be valid only for a period of one year from the date of its issue or till the date of final publication of the scheme under section 100, whichever is earlier.

102. Cancellation or modification of scheme.-

(1) The State Government may, at any time, if it considers necessary, in the public interest so to do, modify any approved scheme after giving-

(i) the State transport undertaking; and

(ii) any other person who, in the opinion of the State Government, is likely to be affected by the proposed modification, an opportunity of being heard in respect of the proposed modification.

(2) The State Government shall publish any modification proposed under subsection (1) in the Official Gazette and in one of the newspapers in the regional languages circulating in the area in which it is proposed to be covered by such modification, together with the date, not being less than thirty days from such publication in the Official Gazette, and the time and place at which any representation received in this behalf will be heard by the State Government."

17. It is apparent from the provisions that the scheme is framed for providing efficient, adequate, economical and properly coordinated road transport service in public interest. Section 102 of the Act of 1988 does not lay down the requirement of recording any express finding on any particular aspect; whereas the duty is to hear and consider the objections. It requires the State Government to act in public interest to cancel or modify a scheme after giving the State Transport Undertaking or any other affected person by the proposed modification an opportunity of hearing. The State is supposed to be acting in public interest while exercising the power under the provision. However, that does not dispense with the requirement to record reasons while dealing with objections. Modification of the scheme is a quasi-judicial function while modifying or cancelling a scheme. The State Government is duty-bound to consider the objections and to give reasons either to accept or reject them. The rule of reason is anti-thesis to arbitrariness in action and is a necessary concomitant of the principles of natural justice.

18. In *Siemens Engineering & Manufacturing Co. of India Ltd. v. Union of India*, [1976 (2) SCC 981, it was held : (SCC pp. 986-87, para 6)

"6.It is now settled law that where an authority makes an order in exercise of a quasi-judicial function, it must record its reasons in support of the order it makes. Every quasi-judicial order must be supported by reasons. That has been laid down by a long line of decisions of this Court ending with *N.M. Desai v. Testeels Ltd.*. But, unfortunately, the Assistant Collector did not choose to give any reasons in support of the order made by him confirming the demand for differential duty. This was in plain disregard of the requirement of law. The Collector in revision did give some sort of reason but it was hardly satisfactory. He did not deal in his order with the arguments advanced by the appellants in their representation dated December 8, 1961 which were repeated in the subsequent representation dated June 4, 1965. It is not suggested that the Collector should have made an elaborate order discussing the arguments of the appellants in the manner of a Court of law. But the order of the Collector could have been a little more explicit and articulate so as to lend assurance that the case of the appellants had been properly considered by him. If courts of law are to be replaced by administrative authorities and tribunals, as indeed, in some kinds of cases, [pic]with the proliferation of Administrative Law, they may have to be so replaced, it is essential that administrative authorities and tribunals should accord fair and proper hearing to the persons sought to be affected by their orders and give sufficiently clear and explicit reasons in support of the orders made by them. Then alone administrative authorities and tribunals exercising quasi-judicial function will be able to justify their existence and carry credibility with the people by inspiring confidence in the adjudicatory process. The rule requiring reasons to be given in support of an order is, like the principle of *audi alteram partem*, a basic principle of natural justice which must inform every quasi-judicial process and this rule must be observed in its proper spirit and mere pretence of compliance with it would not satisfy the requirement of law."

19. This Court in *Rani Lakshmi Bai Kshetriya Gramin Bank's* case while relying upon *S.N. Mukherjee v. Union of India*, 1990 (4) SCC 594 case, SCC p.243, para 8):

"8. The purpose of disclosure of reasons, as held by a Constitution Bench of this Court in *S.N. Mukherjee v. Union of India* (1990 (4) SCC 594), is that people must have confidence in the judicial or quasi-judicial authorities. Unless reasons are disclosed, how can a person know whether the authority has applied its mind or not? Also, giving of reasons minimises the chances of arbitrariness. Hence, it is an essential requirement of the rule of law that some reasons, at least in brief, must be disclosed in a judicial or quasi-judicial order, even if it is an order of affirmation."

20. A Constitution Bench of this Court has laid down in *Krishna Swami v. Union of India & Ors.* [1992 (4) SCC 605] that if a statutory or public authority/functionary does not record the reasons, its decision would be rendered arbitrary, unfair, unjust and violating Articles 14 and 21 of the Constitution. This Court has

laid down: (SCC p.637, para 47)

"47Undoubtedly, in a parliamentary democracy governed by rule of law, any action, decision or order of any statutory/public authority/functionary must be founded upon reasons stated in the order or staring from the record. Reasons are the links between the material, the foundation for their erection and the actual conclusions. They would also demonstrate how the mind of the maker was activated and actuated and their rational nexus and synthesis with the facts considered and the conclusions reached. Lest it would be arbitrary, unfair and unjust, violating Article 14 or unfair procedure offending Article 21. But exceptions are envisaged keeping institutional pragmatism into play, conscious as we are of each other's limitations.

21. In *Workmen of Meenakshi Mills Ltd. & Ors. v. Meenakshi Mills Ltd. & Anr.* [1992 (3) SCC 336] while considering the principles of natural justice, it has been observed that it is the duty to give reasons and to pass a speaking order; that excludes arbitrariness in action as the same is necessary to exclude arbitrariness. This Court has observed thus : (SCC pp.374 & 378, paras 42 & 49)

"42. We have already dealt with the nature of the power that is exercised by the appropriate Government or the authority while refusing or granting permission under sub-section (2) and have found that the said power is not purely administrative in character but partakes of exercise of a function which is judicial in nature. The exercise of the said power envisages passing of a speaking order on an objective consideration of relevant facts after affording an opportunity to the concerned parties. Principles or guidelines are insisted on with a view to control the exercise of discretion conferred by the statute. There is need for such principles or guidelines when the discretionary power is purely administrative in character to be exercised on the subjective opinion of the authority. The same is, however, not true when the power is required to be exercised on objective considerations by a speaking order after affording the parties an opportunity to put forward their respective points of view.

49. We are also unable to agree with the submission that the requirement of passing a speaking order containing reasons as laid down in sub-section (2) of Section 25-N does not provide sufficient safeguard against arbitrary action. In *S.N. Mukherjee v. Union of India*, 1990 (4) SCC 594, it has been held that irrespective of the fact whether the decision is subject to appeal, revision or judicial review, the recording of reasons by an administrative authority by itself serves a salutary purpose, viz., "it excludes chances of arbitrariness and ensures a degree of fairness in the process of decision-making." (SCC p.612, para 36)"

(pp.528-530)

23. Consequently, in view of the aforesaid discussion as well as law referred herein above, this Court has no hesitation to conclude that the action of the respondent-State in cancelling the permission granted to the petitioner to run the FPS is unjust, discriminatory and in complete violation of principle of natural

justice and as such same deserves to be quashed and set aside.

24. Admittedly, in the present case petitioner had applied for the FPS pursuant to the advertisement issued by the respondent and he was selected on merits by the respondent-State. Decision to send the case for relaxation was also taken by the respondent in public interest and it also stands proved after perusing of the record that the respondents acted arbitrarily and despite there being any reasons, rejected the case of the petitioner for relaxation, whereas, three similarly situate persons were granted relaxation.

25. Hence, present petition is allowed and Annexures P-5, P-7 and P-8 are quashed and set-aside. Further direction contained in Annexure P-6, order dated 22.9.2015 to close the FPS being run by petitioner, is also quashed and set-aside. Respondents are directed to allow the present petitioner to run the FPS which was granted to him vide order dated 1.1.2014 after relaxing the norms, as has been done in the cases of all other similar situate persons mentioned in Annexure P-1, within fifteen days from the receipt of copy of the judgment.

26. Interim direction, if any, is vacated. All miscellaneous applications are disposed of.