

(1999) 05 P&H CK 0048

In the Punjab And Haryana At Chandigarh

Case No : Letters Patent Appeal No. 289 of 1998

Hero Cycles Limited

APPELLANT

Vs

International Cycle and Strips Ltd. and Others

RESPONDENT

Date of Decision : 18-05-1999

Acts Referred:

Constitution of India, 1950 — Article 14, 162, 226

Citation : AIR 1999 P&H 327 : (1999) 123 PLR 78 : (1999) 3 RCR(Civil) 343

Hon'ble Judges : N.K. Agrawal, J;Jawahar Lal Gupta, J

Bench : Division Bench

Advocate : Gopal Subramaniam, K.K. Lehari and Deepak Sibal, for the Appellant; Sumeet Mahajan, for the Respondent

Final Decision : Dismissed

Judgement

Jawahar Lal Gupta, J.—In free India, bonanzas are fairly frequent, petrol pumps and plots have been freely provided. The chosen few have been invariably favoured. But, these allotments have often been axed by judicial intervention. So is the position in these appeals. Herein, 340 acres of prime land in the industrial town of Ludhiana provide the bone of contention. This land had been allotted to six industrial houses. It was challenged as being totally arbitrary. The challenge was sustained. It was inter alia held that-

- (1) "no press advertisement was given";
- (2) "no objective criteria or procedure was evolved so as to rule out arbitrariness or favouritism in allotting plots.....";
- (3) "the land.... .was acquired for setting up industrial focal point at Ludhiana. The purpose of developing this focal point was to relocate dyeing and electroplating units located in congested areas..... and to draw plan for next 10 to 15 years to accommodate new units and stop their haphazard growth. However, while allotting plotsthese factors were not taken into consideration";

(4) "allotments were made either on account of political and bureaucratic patronage or some other extraneous consideration";

(5) in almost "all the cases, there were no formal applications supported by project reports or documents containing details of proposed projects.....".

2. Thus, the writ petition was allowed. The allotments were set aside. Aggrieved by the judgment, the allottees and the Government etc. have filed these seven appeals. In the peculiar circumstances of the case, we have considered it appropriate to hear the learned counsel at length and to dispose of these appeals at the stage of preliminary hearing.

3. Mr. Gopal Subramaniam referred to the facts as appearing on the record of LPA No. 289 of 1998 (Messrs. Hero Cycles Ltd. v. The International Cycles and Strips Ltd.). He also referred to the compilation of documents supplied by him to the Bench during the course of the hearing of the case. The sequence of events may be briefly noticed.

4. On May 7, 1991, the Government of Punjab, Deptt. of Industries, issued a notification u/s 4 of the Land Acquisition Act, 1894. This was for the acquisition of land measuring 796.5 acres for the public purpose of setting up an industrial focal point at Ludhiana. Less than a year later, on March 18, 1992, the notification u/s 6 was issued. On March 15, 1994, the Land Acquisition Officer had given an award in respect of 774 acres of land. The aforesaid notifications were challenged by filing Civil Writ Petition Nos. 5135, 7871 and 11626 of 1994. These petitions were dismissed by a Division Bench of this Court vide judgment dated Aug. 26, 1994. This decision is reported as 1995 (1) PLR 52 (Sh. Pawandeep Sandhu v. The State of Punjab).

5. On November 24, 1992, the Govt. of Punjab, Directorate of Industries prepared a "comprehensive policy for the allotment of plots in the already developed area and the new acres. ..." The allotment policy was to be applicable to "all the areas developed/to be developed for industrial purposes...." Detailed reference to the provisions in the policy shall be made at the appropriate stage. It may only be noticed that a provision for "Allotment under Off-the-Shelf Scheme" to the extent of "30% of the Plots above the size of 2500 sq. yards" had been made. It was also provided that "the applications under "Off-the-Shelf Scheme" would be received and scrutinised by Udyog Sahayak". Thereafter, the application had to be "placed before the Committee under the Chairmanship of the Chief Secretary.. ..with the members..."

6. On Dec. 13, 1993, the third meeting of the allotment committee was held. The Committee had inter alia decided that "the request of M/s. Vardhman/Mahavir Spinning Mills and M/s. Oswal Oils and Fats" for allotment of 60 and 100 acres of land respectively "may be approved... .. However, formal approval of the C.M. as a policy matter may be obtained before making allotment."

7. On March 7, 1994, the Chief Minister inter alia observed that "it would be

appropriate if after retaining a suitable chunk of land for development by PSIEC for the benefit of smaller units, the remaining land is allotted to the larger industrial houses, export houses for development of their large scale industrial units" certain conditions to ensure an immediate payment of the initial price were also indicated.

8. On Mar. 9, 1994, the Committee met. It approved the allotment of 100 acres and 60 acres of undeveloped land in focal point, phase VIII, Dhandari Kalan, Ludhiana, to M/s. Oswal Oils and Fats and M/s. Vardhman/Mahavir Spinning Mills respectively, in addition, the Committee had also ordered the allotment of land as under:--

(1) PSIEC 350 acres(2) M/s. Avon Cycles 20 acres(3) M/s. Hero Cycles 100 acres(4) Ritesh Industries 40 acres.(5) M/s. Royal Industries 25 acres(6) PSIEC for Export Promotion Park 60 acres.

9. The committee had also directed that the allottees shall deposit the full price of the land allotted to each one of them at the rate of Rs. 6.30 lacs per acre (Rs. 126 per sq. yard) by Mar. 31, 1994. Reference to the other conditions shall be made at the appropriate stage.

10. On April 22, 1994, formal letters of allotment were issued to the aforesaid allottees. The allotment of land to the above mentioned six (all except PSIEC) industrial houses is the subject-matter of the present controversy:

11. On Dec. 22, 1994, the writ petitioner (now respondent No. 1) viz. M/s. International Cycles and Strips Limited had submitted an application for the allotment of 10 acres of land. Vide letter dated Jan. 6, 1995, the respondent was advised to "deposit 20% of the cost of land as earnest money @ Rs. 350 per sq. yard" within 15 days. It was also directed to forward a detailed project report "along with the effective steps taken for the implementation of the proposed project... ."The first respondent had sent its reply vide letter dated Jan. 13, 1995. However, in the seventh meeting held on Jan. 19, 1995, the committee decided to reject the application on the ground that the company had not made the necessary deposit and submitted the Project Report. This was so done despite the fact the 15 days" time given to the company had not yet expired. The order was conveyed vide letter dated Feb. 2, 1995. A copy of this order is on the file as Annexure P-8. It was conveyed that the committee had decided to reject the application "since you failed to deposit 20% earnest money and submit a copy of the Project Report along with details of other effective steps taken to implement the project speedily despite opportunity to do so". This order led to the filing of the writ petition out of which the present appeals have arisen.

12. This is the sequence of events. It is in the background of these facts that the counsel for the parties have made their submissions.

13. Mr. Gopal Subramaniam opened the arguments on behalf of M/s. Hero Cycles, the appellant in LPA No. 289 of 1998. He submitted that the learned

single Judge had not appreciated the writ petitioner's grievance in its correct perspective and had erred in proceeding to consider the validity of the allotment of land to the various appellants. According to the learned counsel, the allotment satisfied the test of reasonableness. The decision of the Government was fair. It was actuated by considerations of public interest. The contrary view as taken by the learned single Judge is not just. He further contended that the challenge to the allotment of land to the appellant suffered from the vice of laches. He urged that on the ground of delay alone, the claim should have been negatived. It was also contended that the petition was actually calculated to promote private interest. It should not have been treated as a petition to serve any public cause. The allottees were taken by complete surprise. They were never made aware of the issues, which were raised and considered by the Hon"ble Single Judge. It was also urged that the learned single Judge while setting aside the allotment of land had failed to give a direction for the refund of the money paid by the appellant.

14. Mr. Hira Lal Sibal, learned counsel for the appellants in LPA Nos. 283, 284 and 285 of 1998 emphasised that the State of Punjab had gone through a turmoil. It was to restore the peoples confidence that the Government had notified the industrial policy in the year 1992. It was with the object of ensuring the development of industry and providing employment that the decision to allot undeveloped land under "Off the Shelf Scheme" had been taken. The scheme embodied a policy for economic growth. The Court was not concerned with the wisdom of policy. The appellants had bought the land and have invested money. They had no control over the action of the authority. Even if the provisions of the policy pr any other law have been violated, the orders of allotment cannot be said to have been vitiated. It was further contended that the learned single Judge had erroneously taken the view that an objective criterion had not been laid down and that proper procedure had not been followed. Learned counsel submitted that the appellants were well known industrial houses. This fact was duly recognised by this Court when the civil writ petitions filed in the year 1994 to challenge the acquisition were dismissed. It would be harsh, unfair and inequitable to now set aside the allotments. Mr. Sibal was at pains to point out that M/s. Avon Cycles, the appellant in LPA No. 283 of 1998 had set up a big industrial plant at a substantial cost and that it would be unjust to now quash the allotment.

15. Mr. M.L. Sarin, learned counsel for M/s. Ritesh Industries, the appellant in LPA No. 275 of 1998 adopted the contentions raised by Mr. Gopal Subramaniam and Mr. H.L. Sibal. He further contended that the very acquisition of land could be treated as being under Chapter VII of the Land Acquisition Act, 1894. He further contended that the writ petitioner having not challenged the industrial policy, it is debarred from challenging the allotment made under the policy. It was also submitted that the appellant had spent substantial amount of money. Two of the units had already started production. Therefore, it would not be just and fair to set aside the allotment.

16. Mr. Amarjeet Singh, learned counsel for M/s. Royal Industries, the appellant in LPA No. 286 of 1998 contended that a shed covering an area of 65,000 square feet has already been constructed. No useful purpose would be served by cancelling the allotment at this stage.

17. Even the State of Punjab has filed an appeal. Mr. Hemant Gupta, the Addl. Advocate General for the State had, however, produced a photo copy of the letter dated August 21, 1998, issued by the State Government to the Director, Prosecution and Litigation, Punjab. By this letter, the Director was informed that the Governor had accorded "sanction to file the LPA... on a limited question i.e. regarding the adverse remarks passed by the learned single Judge of Hon'ble High Court of Punjab and Haryana against the civil servants who were acting in good faith in the discharging of their duties at Government expenses." A copy of this letter was also endorsed to the Advocate General. The copy produced by the learned counsel has been placed on record along with the other documents filed by him, In conformity with the aforesaid instructions issued by the State of Punjab, the counsel contended that the officers had acted bona fide. However, it was conceded with a disarming fair-ness that the applications submitted by the six allottees were not processed by anyone, These were just mentioned in the agenda note put up before the committee constituted for the allotment of land. It was also conceded that the committee had assigned no reasons while selecting some applicants for allotment of land and rejecting the request made by the other applicants. The counsel also conceded that the authorities had not collected any evidence regarding the market price of the land at the time of allotment in the year 1994. The Collector's rate was adopted mechanically without any ado.

18. Mr. Sumeet Mahajan, learned counsel for the writ petitioner (now respondent No. 1 in the appeals) submitted that the authorities had not issued any advertisement or notified the availability of undeveloped land for immediate allotment. There was nothing on record to indicate as to how the six allottees had come to know about the availability of land. It was submitted, with a degree of plausibility, that if a proper notice had been given, a much larger number of applications would have been received. The State would have got more money. Good industrial houses would have set up large units. Public interest would have been promoted. Learned counsel pointed out that in respect of the 486 acres of land that had been allotted to the PSIEC Punjab State Industries and Export Corporation), 1429 applications had been received. There was keen competition. Ultimately, lots had to be drawn. If the Government were to be acting in public interest, it would have given people a chance to apply for allotment and compete. He further submitted that there was actually no delay on the part of the writ petitioner in approaching this Court. Dealing with the submission that the petition that the petition did not involve any public interest and that the appellants did not have a fair opportunity, it was pointed out that the learned single Judge had summoned the record for ascertaining the procedure followed by the committee for making the impugned allotments. The counsel for the parties were allowed inspection of the record. Some of the appellants and

particularly M/s. Avon Cycles and M/s. Vardhman Spinning and Weaving Mills had filed additional written statements after inspection of records. Counsel for the parties had addressed arguments to justify the allotments. He submitted that the judgment would promote public interest as the State would get the correct price for the land. Thus, the counsel urged that no ground for interference with the findings recorded by the learned single Judge was made out.

19. In view of the above contentions, the question that arise for consideration are :--

(1) Did not Government prepare a policy for allotment of plots under "off-the-shelf" scheme before proceeding to make the allotments?

(2) Do the allotments made by the committee even conform to the stipulations in the notification dated Nov. 24, 1992 and satisfy the basic test of reasonableness ?

(3) Was the 1st respondent guilty of laches and, thus, not entitled to claim any relief ?

(4) Did not Hon'ble single Judge err in treating the writ petition as proceedings by way of Public Interest Litigation ?

(5) Did the allotment committee act wrongly in rejecting the Writ Petitioner's application (now the 1st respondent)?

(6) Should the illegalities be overlooked and the allotments be upheld because some of the appellants have spent money?

Regarding (1). Did the Government prepare a policy for allotment of Plots under Off-the-Shelf Scheme before proceeding to make the allotment ?

20. Mr. Gopal Subramaniam contended that the decision as notified by the Government on Nov. 24, 1992, applied not only to the "areas developed", but also to the areas which were "to be developed for industrial purposes". Thus, the learned single Judge had erred in taking the view that "no objective criteria or procedure was evolved so as to rule out arbitrariness or favouritism". Is it so?

21. First, the relevant facts. Admittedly, the six appellants have been allotted totally undeveloped pieces of land. In fact, it appears that after the acquisition of land, no demarcation was done. No plots were carved out. Totally undefined and unmarked land was just allotted. In fact, Mr. H.L. Sibal, learned counsel for the appellant M/s Vardhaman/Mahavir Spinning Mills, was at great pains to point out that no work for the setting up of an industrial unit could be undertaken as the authorities were not in a position to give possession of the 60 acres of land that had been allotted. It was also mentioned that certain people were in occupation of some area.

22. What is an off-the-shelf scheme? Does it not mean or indicate something that is ready for use? Can an unfinished product or an undeveloped piece of land be hold under "off-the-shelf" scheme? Did the Government lay down any

conditions of eligibility; a criterion for adjudging suitability and the guidelines for the allotment committee to help it in making the selection? What was the perception of the allotment committee itself? What was the Government's Policy in this behalf? Who had prepared it? Had the competent authority in the Government approved it?

23. The answer to the first three of these questions is clearly available in the proceedings, of the committee that had been constituted for making the allotment of land. It had met on Mar 9, 1994 and made the impugned allotments. In the proceedings, the Committee had unambiguously and unreservedly recorded as under :--

"The committee was of the view that detailed guidelines on allotment, utilisation, development, apportionment of development charges for allotment of undeveloped land were not available. The Chief Secretary desired that the Secretary Industries should prepare a Policy Note in consultation with Secretary Housing and Urban Development and bring up in the next meeting of the Committee".

24. The observations are clear and forthright. These leave no room for doubt. There were no guidelines for allotment, utilisation, development and the other relevant matters. In particular, the Committee had observed that no guidelines for apportionment of the cost of development of land had been laid down. This was truly the factual position. The Committee had been provided no guidance. It had obviously felt the difficulty. It had asked the Secretary, Department of Industries to prepare a note. There would have been no occasion for such a direction if any criteria had been actually laid down.

25. Regarding the other issues as noticed above, nothing has been placed on the file. There is no material to show as to what was the intended idea behind "off-the-shelf" scheme. Except the notification itself, there is nothing on record, that may indicate as to who had prepared the said Scheme. Nothing was produced to show as to how the matter was processed by the department. Was it placed before the Council of Ministers or even the Minister in-charge of the concerned department? Everything appears to be shrouded in mystery.

26. Thus, we find that the view taken by the learned single Judge that no criteria had been laid down is in complete conformity with the material on record. Consequently, we hold that the Government had not prepared any policy for the allotment of undeveloped land. No guidelines had been laid down. No procedure for submission of applications, consideration of the claim for allotment and the other cognate matters had been prescribed. In such a situation, proper allotment of valuable land was not possible.

Regarding (2). Do the impugned allotments conform to the parameters laid down in the notification of Nov. 24, 1992? Do the instant allotments satisfy the basic test of reasonableness?

27. It was vehemently urged by Mr. Subramaniam that the allotments were governed by the parameters laid down in the notification dated Nov. 24, 1992. Let us assume that the counsel is right. Proceeding on that assumption, the first thing that deserves notice at the outset is -- What were the actual conditions ? Secondly, were these observed ?

28. A cursory examination of the notification and the pleadings of the parties shows that the Government wanted to "further boost the growth of industry and meet the demand of entrepreneurs for developed plots". It was with this object in view that various provisions were made. Some of the stipulations and the actual action taken by the concerned authority may be briefly noticed.

(1) Under para 2(ii), only 30% of the plots above the size of 2500 sq. yards could be reserved for allotment under off-the-shelf scheme.

29. The notification contains a clear mandate that only 30% of the plots above the size of 2500 sq. yards can be reserved for allotment made under off-the-shelf scheme. Consequently, it was incumbent upon the concerned authority to carve out all the plots. The number of plots above the size of 2500 sq. yds. had to be fixed. Then, out of the available plots the permissible number could have been allotted. This was admittedly not done.

30. In fact, this condition was given a complete go-bye. Out of 774 acres, land measuring 340 acres was allotted to the six appellants. The number of plots was never worked out. The question of restricting the allotment to 30% of the plots above the size of 2500 sq. yards did not arise.

(2) Under para 3.1, the applications for allotment of land were required to "be invited by the Director of Industries, Punjab through advertisement in the press."

31. However, in respect of allotment under off-the-shelf scheme and the quota for discretionary allotment by the Chief Minister, an exception was made.

32. Why was an exception made ? There is no indication.

33. The requirement to advertise was salutary. An advertisement guarantees an open invitation. It ensures an equality of opportunity to all. It is in conformity with the requirements of Article 14. It is in consonance with the principles of fair play. It widens the field of choice. It reduces the chances of unfair differentiation. It excludes arbitrariness. It helps in the selection of the best. It was obviously on account of these reasons that the condition of advertisement had been laid down in the notification.

34. However, in respect of allotment under off-the-shelf scheme the procedure of advertisement was not to be followed. Similar was the position in case of the discretionary allotment by the Chief Minister. Why? What were the reasons for ruling out an open competition? Why was the choice being restricted ? If open advertisement was good in the case of small plots, why not in case of allotment of plots measuring 20 to 100 acres ? Or is it that the allotments under off-the-

shelf scheme were like the discretionary allotments by the Chief Minister ? Both falling within the exclusive domain of absolutely unguided and unbridled discretion of bureaucrats and politicians ? The counsel for the appellants could offer no explanation except to say that different dignitaries had addressed seminars and meetings to invite industrialists to apply for allotment of land. Is it really so ? Who had addressed ? When ? And where? The record does not support the claim.

35. A perusal of the record show that none of the applicants has referred to any seminar or meeting in the application. No one claims to have applied in pursuance to any public announcement. By way of an instance it may be mentioned that in the application dated Jan. 22, 1994, submitted by M/s. Ritesh Industries, the request for allotment of land had been made after having come "to know from some reliable sources.....". Which source ? Who had given the "reliable" information ? There is no answer.

36. Still further, the claim as made on behalf of the Government and the allottees is lacking in specific details. More than that, the results belie the claim. Even a cursory examination of the applications would show that these were submitted to different authorities at different times.

To illustrate: A copy of the application dated Oct. 4, 1993, submitted by M/s Oswal Fats and Oils Ltd. has been produced as a part of the compilation of documents filed by Mr. Hemant Gupta, Addl. Advocate General, Punjab. It is at page 114 of the compilation. It was addressed to the Chief Minister. It was *inter alia* stated-- "We understand that the State Govt. is establishing an Industrial Estate Phase VII, at Mundian Kalan, Near Ludhiana and for this purpose"

A copy of the application dated Jan. 17, 1994, submitted by M/s. Hero Cycles has been produced at pages 49-50 of the compilation filed by the counsel for the appellant. It was given to the Managing Director of the Punjab State Industrial Export Corporation Ltd. It referred to certain "discussion".

During the course of hearing, Mr. Hemant Gupta also furnished the details of the applications submitted by the other appellants. On a perusal of these documents, it appears that M/s. Avon Cycles had submitted the application dated Dec. 14, 1993, to the Chief Minister for allotment of "20 acres of land either in Focal Point, Phase 4, 5 and in one piece or at three different sites depending upon availability". Similarly, M/s. Mahavir Spinning Mills had addressed the application dated Jan. 7, 1994, to the Director of Industries. A reference was also made to the earlier applications dated Nov. 5 and Dec. 13, 1993. Likewise, M/s. Royal Industries had submitted an application dated Mar. 3, 1994, to the Director of Industries. M/s. Ritesh Industries submitted the applications dated Jan. 22, 1994 and March 9, 1994 to the Managing Director, PSIEC. The latter appears to have been received on Mar. 15, 1994. An application also appears to have been submitted to Mr. Karam Singh Gill, a Minister in the State Cabinet.

37. Thus, it is clear that the applications were submitted to different authorities

at different times for allotment of land in different localities. If there had been any advertisement with regard to the 340 acres of land in phase VIII, there would have been proper applications for allotment of that land. It was not so. It appears that the information regarding the availability of land was selectively leaked out by different persons to different applicants at different times. The reasons are not difficult to imagine. Nor far to seek. In fact, these are fairly obvious.

(3) Under para 5.3, it had been provided that applications shall be examined keeping in view- the -- (a) Viability of the project; (b) Impact on environment; (c) Technology involved; (d) Export obligation undertaken; (e) Value addition; (f) Scope of employment; (g) Import substitution; (h) Qualification, experience, resourcefulness and suitability.

38. These are very relevant considerations while considering claims for the allotment of land. The proceedings of the committee show that none of these factors were taken into consideration while allotting land to the appellants. Why? There is no answer.

39. If the conditions as mentioned at (a) to (h) were relevant in case of a small plot of say 500 or 1000 sq. yards, these factors should have been all the more important while considering claims for allotment of large pieces of land.

40. The notification required the scrutiny of applications for allotment of plots by keeping in view the above noted parameters. In particular, the applicant was required to disclose his qualifications and experience etc. so as to establish his threshold credentials. All these factors were relevant and reasonably related to the purpose of selecting suitable persons and promising projects for the allotment of industrial plots. Strict adherence to these standards would have only helped in selecting the best entrepreneurs. Yet, these parameters were considered relevant to and applied only in case of the applicants for small plots. Not to the big fish. When asked, Mr. Subramaniam conceded, with a disarming fairness, that there was an obvious "anachronism". We are satisfied that there was no justification for such a differential procedure. No basis for excluding such pertinent considerations. The action militates against the claim of a bona fide and fair exercise of power.

(4) In para 7.1 it was provided that "the applications under "off-the-shelf" scheme would be received and scrutinised by Udyog Sahayak."

41. Apparently, the object was to ensure that all applications should be received and examined by one authority viz. the Udyog Sahayak. These should be examined and evaluated by applying a common standard. Unaffected by all outside influence. The obvious purpose was to ensure a uniform and fair consideration. Even this simple condition was followed more in its violation than observance. Factually, anyone and everyone received the applications. These were actually received by the Chief Minister, the Minister and at various other levels. These applications were not only considered, but even allotments were

made only to such applicants as had not submitted their requests to the prescribed authority. Why ? Again no justification could be offered.

(5) Under para 7.3 (iv) it has been inter alia provided that the allottee shall within a period of "one year from the date of allotment of the plot" -- (a) Start the construction of the factory building; (b) Place firm orders for the purchase of plant and machinery; (c) Have loan application appraised from the financial institution; and (d) Make arrangements for power connection. Under para 7.4 it has been provided that in the event of failure, the allotment is liable to be cancelled.

42. Admittedly, there have been defaults. But, with no consequence. To illustrate; M/s. Hero Cycles, the appellant was allotted 100 acres on March 9, 1994. More than five years have already elapsed since then. Still, not a brick has been laid at site. Except making tall and unfounded claims, nothing tangible is shown to have been done. Yet, not a little finger has been raised. Similar is the position regarding Oswal Oils and Fats. It has been allotted 100 acres. No unit has been set up. There are others also in the same boat. Yet, no action. Why ? Because, the hens that lay the golden egg should not be touched ? Counsel for the State deserves to be complemented for not even trying to justify the unjustifiable.

(6) Under para 9.1, there is a bar regarding the transfer of the plots allotted under off-the-shelf scheme.

43. One of the allottees viz. M/s. Ritesh Industries had violated this condition with the help of the Committee. How ? It is interesting to notice the events.

44. The appellant had been allotted 40 acres of land in the meeting held on March 9, 1994. The letter of allotment had been issued on April 22, 1994. In Jan. 1995, the Managing Director submitted an application dated Jan. 18, 1995, with the request "to please divide the allotment of 40 acres in the various companies of our group as required by us to put up various projects" as under :

(1) Ritesh Industries Limited. 11 Acres.(2) Ritesh Spinning Mills Ltd. 15 Acres.(3) Ritesh Impex Pvt. Ltd.. 7 Acres.(4) H.B. Fibres Limited. 5 Acres.(5) Oxford Processors. 2 Acres. (proprietors Sukhchain & Co.)

45. It was mentioned in the application that Ritesh Impex is a "new company formed by promoters of Ritesh Industries Ltd....." It was further stated that H.B. Fibres Ltd. "is another company promoted by promoters of Ritesh Industries". With regard to the Oxford Processors it was mentioned that "Sukhchain and Co." were the proprietors.

46. The request was immediately placed before the committee in the meeting held on Jan. 19, 1995. It was readily granted under Item No. 7.9 Commendable efficiency. Promptness par excellence. Why was the condition contained in the policy decision violated ? And so readily ?

47. It was a clear request for permission to transfer. It was not permissible to grant it. The order was clearly contrary to the declared policy. Why was the permission given? There was not even an attempt to answer.

48. The stipulations as noticed above were reasonable and relevant. These contained good guidelines. Definite parameters had been laid down for considering the applications. Factors like viability, impact on environment, technology, export obligation, import substitution and the scope of generating employment all very relevant in Indian conditions, had to be taken into consideration for the allotment of even the smallest of the plots. But, not in case of allotment of 100 acres to just one company. Almost each of the parameters was observed in its breach. Why ? There is no answer.

49. Inevitably, we have to hold that the allotments do not conform to the requirements for allotment of industrial plots as embodied in the notification dated Nov. 24, 1992.

50. Can it be still said that the impugned allotments satisfy the basic test of reasonableness ?

51. It was contended on behalf of the appellants that courts to do not embark upon judicial review in matters involving questions of policy.

52. Environment engineers attitudes. During the war, the army may enjoy some latitude. In an emergency, the executive may get away with excesses. Sometimes, the rights of the citizen may be allowed to run subservient to a larger public interest. Not surprisingly, the "precedents laid down in war time and emergency cases continued to colour judicial attitudes in normal times". Even in the 1950s "judicial self-restraint appeared to have won a decisive victory over judicial activism....." Not long ago, Lord Parker had declared -- "In modern Britain it would be disastrous if courts did not eschew the temptation to pass judgments on an issue of policy. Judicial self-preservation may alone dictate restraint."

53. As the memories of war faded, there was review of the scope of Judicial Review. It was recognised that the Court's role "is to protect individual rights against the abuse of official power". It was acknowledged that the rule of law is better than the rule of men. Today, this is the basic postulate in a free society.

54. In India, the Constitution is our Bible. It lays down the basic standards for governmental action. It guarantees equality. It bars unjustifiable differentiation, It ensures procedural fairness and propriety. Every executive action must be just and fair. It must be predictable. It must be reasonable. It must not be arbitrary.

55. Undoubtedly, the public authorities must enjoy the freedom to act. They must be free to discharge their duties. They should have the liberty to perform their functions. However, it is equally important that all public authorities must be conscious of their duty to act fairly. Justly. They must be conscious of the rights of the citizen. They must act to promote public and not private interest.

They must strike a fair balance between the rights of the individual citizen and the interest of the state.

56. Undeniable, public authorities must have discretion to act according to the situation. They must have discretionary powers. However, it is essential that the basic principles governing the "lawful decision making " be scrupulously observed. When they disobey this commandment, judicial intervention would be inevitable.

57. In today's India, it has been recognised that the rules of procedure are primarily meant to promote justice. These must provide the "golden key to unlock the doors of justice". However, this key cannot remain in the hands of the rich and the privileged. Nor a chosen few. Nor the favourites. Thus, the conservative rule of locus standi has now been Denounced as a "jural hangover of the Victorian bra". Mere letters have been treated as writ petitions. In certain cases the courts have even taken suo motu cognisance of newspaper reports or letters to the Editor. While it is not necessary to enlist the categories of cases in which the courts would review an administrative decision or act suo motu, it can be broadly said that whenever any action appears to cause an unjust differentiation or is lacking in procedural propriety and fairness, the Court, even by the conservative standards, shall not be a dumb, mute and silent spectator. In particular, the Court shall not hesitate to intervene when it is satisfied that public interest demands intervention.

58. In a society that professes to be governed by the Rule of Law, the arrogance of money cannot prevail over the guarantee of equality. Personal preferences cannot outweigh considerations of equity and fair play. Individual's interest cannot displace public good. In this context, the courts have a solemn duty to keep the functionaries of the State within the legal bounds. Very often, they have to be directed to, perform their functions in accordance with law. Whenever the authorities are found wanting, the courts shall not hesitate to take and even enforce the necessary corrective steps. It is true that the Courts have placed certain restrictions regarding intervention upon themselves. But, these are self-imposed restraints. No more.

59. When can order be said to be unreasonable ? What are the ingredients of a good decision ? It may not be possible to give a complete list. Broadly and without intending it to be exhaustive, it can be said that the action should be -- (i) in accordance with the law governing the matter; (ii) it should guarantee an equal opportunity to all those who are similarly placed. It should not create an unjust differentiation; (iii) it should be procedurally fair; and (iv) it should be just and reasonable. If it is found that an action does not satisfy any one of these tests, it may be held to be unreasonable.

60. Do the impugned allotments satisfy these tests?

61. Admittedly, there was no advertisement in the press. The proceedings of the committee show that no ascertainable criteria had been laid down. No conditions

of eligibility were prescribed. No method of selection was laid down or followed. The criteria and guidelines, which had been laid down in the notification dated Nov. 24, 1992, were admittedly not followed. No reasons for selecting some and rejecting others were given. Even during the hearing and despite being asked, none were disclosed. Some were just selected. Others were blatantly ignored. In fact, Mr. Hemant Gupta, the Additional General for the State of Punjab, had very frankly conceded that there was nothing on record to show that the committee had given any reasons. Why ? There is no answer. Was it fair ? The answer is an obvious No.

62. It was vehemently contended that the notification dated Nov. 24, 1992, contains the necessary criteria, guidelines and the procedure. Assuming it is so, the question arises -- Was the criteria followed ? The matter has been noticed above. Even at the cost of repetition, it deserves to be mentioned that the conditions as contemplated under the notification were not followed. Why ?

63. Mr. H.L. Sibal very strenuously offered an omnibus explanation on behalf of the appellants. It was contended that the State had passed through a turmoil. It had faced very bad times. It was slowly gaining normalcy. It was imperative to build up peoples' confidence. The immediate need was to give employment to the young men so as to bring them back into the main stream.

64. If true, it may really be laudable. But, is it the truth ? Let the facts speak.

65. As noticed above, M/s. Hero Cycles have not laid a brick at site till today. It has not employed a soul at the spot. It has not done anything except making tall claims on paper. When asked, it was very promptly pointed out that the learned single Judge had given interim directions on Feb. 3, 1997 whereafter the appellants were not expected to raise any construction or set up an Industrial unit. True. But, what had the appellant done till Feb. 2, 1997 ? Pretty little. Except talking of tie ups, nothing concrete was shown to have been done. Similarly, even M/s. Oswal Fats and Oils is not shown to have been decided upon the project. M/s. Vardhman and Mahavir Spinning Mills were not even able to get the land demarcated. Till Feb. 1997, when the learned single Judge had issued the interim directions, none of the allottees is shown to have set up any unit or started any production.

66. The facts speak. No elaboration is necessary. The laudable object was like the popular promises. These are regularly made. But seldom kept. The sentiments expressed at the bar are only a cover for the settlement.

67. There is another aspect of the matter. Even when the authority charged with the duty of performing a function, has not laid down any ascertainable criteria or guidelines, it can still act fairly. Its order can display objectivity. It can per-se appear to be just and reasonable.

68. What is the position in the present case ? The answer can be available from the record only. What does it show ? First, the record as produced before the

Bench. The relevant extract of the Agenda note and the Proceedings deserve to be noticed.

69. The relevant part of the Agenda note reads as follows:--

"Allotment of undeveloped land in Focal Point, Phase, VIII, Dhandari Kalan, Ludhiana.

After restoration of law and order in the State, a number of big industrial houses have started approaching the government for allotment of undeveloped land in Focal Point, Phase VIII, Dhandari Kalan, Ludhiana, as they are all prepared to put up large and medium units but for availability of land. The total area being acquired for Phase, VIII, Dhandari Kalan, Ludhiana is 774.62 acres. Out of this, the Allotment Committee in its meeting held on 13-12-1993 had recommended allotment of 60 acres to M/s. Vardhman Spinning and General Mills and M/s Mahavira Spinning Mills Group. Similarly, 100 acres were recommended in favour of M/s Oswal Oil and Fats, Ludhiana. Since, many more applications were received for allotment of big plots from different Industrial Houses, the case was submitted to Chief Minister for decision, as a policy matter, whether allotment of undeveloped land should be taken up by the Allotment Committee or not. After taking into account all the connected issues with regard to acquisition of land, especially the financial constraints being experienced by PSIEC, the Chief Minister has desired that after retaining a suitable chunk of land for development by PSIEC for the benefit of smaller units, the remaining land be allotted to larger industrial Houses/Export Houses with the following stipulations:--

(a) The allottees must pay full amount of land acquisition price within the date of the notification.

(b) They must develop and put to industrial use the land allotted to them within three years.

(c) They must give a guarantee to the State Govt. that they will be responsible for making payments of any enhancement in compensation, made by the Courts and shall always pay the same as per the orders of the Courts.

(d) They must give an undertaking that they shall pay all external development charges to the PSIEC.

(e) They must also undertake that they will ensure a proper industrial development of the area allotted to them,

As already mentioned, out of the total area of 774.62 acres of Phase, VIII, Dhandari Kalan, 160 acres have already been allotted by the Committee and, therefore, 614.60 acres are available for allotment. The following applications have been received and their details are as under :

(i) Application of M/s Eastman Industries Ltd., Ludhiana.

M/s. Eastman Industries Ltd. have proposed to set up export Development park

in an area of 100 acres. The targeted export during the first 5 years of operation of this project is estimated at Rs. 1500/- crores.

The allotment committee may consider and decide.

(ii) Application of M/s Vardhman Spinning and General Mills Ltd., Chandigarh Rd. Ludhiana.

M/s. Vardhman Spg. & Genl. Mills Ltd., Chandigarh Road, Ludhiana have proposed to set up textile manufacturing and process house with an investment of Rs. 120 crores with employment potential for 1500 persons. The land requirement has been projected at 75 acres. In this connection, it is pointed out that the Allotment Committee under "Off-the-Shelf Scheme" in its meeting held on 13-12-1993 has already recommended allotment of 60 acres in Phase, VIII of Focal Point, Ludhiana, in favour of this group for setting up a Textile Mill and a spinning thread manufacturing unit.

In view of this, the Allotment Committee may consider and decide as to whether 15 acres more are to be allotted to this Industrial House.

(iii) Application of M/s Hero Cycles Ltd. GT Road, Ludhiana.

M/s Hero Cycles Ltd. is a known bicycle manufacturing unit. They are proposing to set up a Modern Industrial Complex in an area of 267 acres on the Ludhiana -- Chandigarh Road. This complex will be equipped with modern in-frastructural facilities like Banking, Training, Tele-conferencing, Security System etc.

The Allotment Committee may consider and decide.

(iv) Application of M/s. Avon Cycles GT Road, LDH.. M/s. Avon Cycles have put up a proposal for the manufacture of hot rolled and special type of alloy steel wire, cold-rolled steel strips and 100% Export Oriented unit. For this they have asked for 20 acres of land.

The Allotment Committee may consider and decide.

(v) M/s. Aarti International Ltd. GT Road, Miller Ganj, Ludhinana.

This company has proposed to put up steel cord and steel radial manufacturing unit at an estimated cost of Rs. 100 crores and they have requested for 20 acres of land for this project.

The Committee may consider and decide.

(vi) Application of M/s. Bestavision Electronics Ltd., Noida, District Ghaziabad, U. P.

Shri Raja Singh, Chairman, Bestavision Electronics Ltd., has put up a proposal for the manufacture of VCRs, Audio-Video Cassettes, Cassettes Recorders, Washing Machines etc., on the pattern of Japan, Taiwan and Singapore. These articles have tremendous export potential. The Company has arranged tie-up with

Goldstar, a Company based in Korea. The promoter has asked for 200 acres of land for the aforementioned project.

The Allotment Committee may consider and decide this case.

(vii) The request for allotment of land received through PSIDC.

The MD/PSIDC has recommended the cases of Royal Industries Ltd., Gazebo Spinners Ltd., and a Project for manufacture of Derailleurs and Multi-Speed Freewheels. The PSIDC has signed MOUs with these parties and has, therefore, proposed that land measuring 100 acres may be reserved for them.

The Allotment Committee may consider and decide.

(viii) Application of M/s. Ritesh Industries Ltd, 356, Industrial Area "A", Ludhiana.

M/s. Ritesh Industries Ltd., Ludhiana, have proposed to set up Silk, Wool Combing and Cotton Spinning Plants. They have asked for 70 acres of land for the purpose.

The Committee may consider and decide."

70. The allotment committee met on March 9, 1994. The above mentioned agenda was placed before it. After the meeting, the proceedings were recorded. These read as follows :--

"Allotment of undeveloped land in Focal Point, Phase VIII, Dhandari Kalan, Ludhiana.

It was noted that while 774.62 acres was being acquired in Phase VIII, the award for which is to be announced before 17-3-94, another site, adjacent to this, measuring 562.08 acres was also being acquired. The acquisition proceedings are at an advanced stage and this land (562.08 acres) would also be available for allotment soon.

2. The Committee was of the view that detailed guidelines on allotment, utilization, development, apportionment of development charges for allotment of undeveloped land were not available. The Chief Secretary desired that the Secretary. Industries should prepare a Policy Note in consultation with Secretary Housing and Urban Development and bring up in the next meeting of the Committee.

3. The Committee also observed that complete details of the project were not available. It was, therefore, decided to allot land, as under, and ask the remaining applicants to submit detailed Project Reports and the pending requests would be considered for land which is being acquired in Phase IX (562.08 acres).

In the 2nd meeting of the Committee, the following allotment of land was approved :--

(i) M/s. Oswal Oil and Fats 100 acres(ii) M/s. Vardhman and Mahavir 60 acres

In addition, the following allotments are approved.

(i) P.S.I.E.C. 350 acres(ii) MA. Avon Cycles 20 acres(iii) M/s. Hero Cycles 100 acres(iv) Ritesh industries 40 acres(v) M/s. Royal Industries 25 acres(vi) P.S.I.E.C. for Export 60 acres

Promotion Park.

The terms and conditions of allotment to private entrepreneurs would be as follows :--

- (a) The allottees must pay full price/cost of land by 31st March, 1994.
- (b) They must develop and put to industrial use the land allotted to them within three years.
- (c) They must give a guarantee to the State Government that they will be responsible for making payments of any enhancement in compensation made by the Courts and shall always pay the same as per the orders of the Courts.
- (d) They must give an undertaking that they shall pay all external development charges to the PSIEC.
- (e) They must also undertake that they will ensure proper industrial development of the area allotted to them.

It was also decided that, the applicant should deposit the full price/cost of land by 31st March, 1994. The initial deposit of cost per acre would be as under:--

(i) Cost of land (Collector's rates) (per acre)

Rs. 3.00 lacs

(ii) Solatium @ 30%

Rs. 0.90 lacs

(iii) Appreciation at the 12% from 19-6-91 to 13-5-94

Rs. 1.30 lacs

(iv) Super structure @ 10% of land cost

Rs. 0.30 lacs

(v) 14% Acquisition charges (i to iv)

Rs. 0.77 lacs

Total

Rs. 6.27 lacs

Say

Rs. 6.30 lacs

71. A perusal of the above agenda note and the proceedings would show that

besides others, M/s. Eastman and M/s. Bestavision had applied for the allotment of land. The former of the two applicants had represented that it proposed to set up an export development park in an area of 100 acres. It promised to achieve an export of Rs. 1500 Crores during the first five years of its operation. Similarly, M/s. Bestavision had requested for 200 acres of land. The Company had put up a proposal for setting up a unit to manufacture of VCRs, Audio-Video Cassettes, Recorders and Washing Machines etc. It claimed to have a "tie-up with Goldstar, a company based in Korea" . Besides these two, the original file produced before the Bench during the course of hearing indicated that the United Cycle Parts Manufacturers' Association had also submitted an application for the allotment of land.

72. A perusal of the proceedings of the Committee, which have been reproduced above shows that it had noted that "detailed guidelines on allotment... were not available". It was further observed that "complete details of the project were not available. It was, therefore, decided to allot land, as under, and ask the remaining applicants to submit detailed Project Reports....". Who had submitted a project report? None. Who had examined the project report? No one. And still, the land was allotted to the appellants. Why were the appellants preferred to the aforesaid two applicants by the allotment committee? Why was the request of The United Cycle Parts Manufacturers' Association not even put up before the Committee? There is no answer to these questions on the record. During the hearing, none was offered.

73. There is no prescribed mode of establishing arbitrariness. There is no mathematical formula. No hard and fast rule can be laid down. The conclusion has to be necessarily drawn on an examination of the established facts and the attendant circumstances.

74. In the present case, it is obvious that huge areas of prime land have been allotted to the six appellants. No criterion was laid down before making the allotments. None was followed while considering the claims. No reasons were assigned for selecting some and rejecting the others. The proceedings of the allotment committee show that all the applicants had not been treated alike. The applicants were not judged by any ascertainable, reasonable or uniform yardstick. There was, thus, an unfair differentiation. The action was not even procedurally fair. It was vaguely observed that details of the project were not available. It was also directed that the "remaining applicants be asked to submit detailed Project Reports." Factually, the project reports were neither asked for nor shown to have been furnished by any of the appellants.

75. In this behalf it is relevant to notice that even in the agenda note put up before the committee, it has not been suggested that any of the appellants had submitted a project report. Admittedly, in case of allotment under off-the-shelf scheme, submission of a detailed project report was not even treated as a necessary requirement. Yet, while making the allotment the above noted observations were made. Still further, it is the admitted position on the record

that the writ petitioner's (now the 1st respondent's) request for the allotment of land was rejected inter alia on the ground that it had "failed to submit a copy of the Project Report along with details of other effective steps taken to implement the project speedily...". It was also seeking the allotment of land under off-the-shelf scheme. Then why this differential treatment? And why was the 1st respondent asked to pay at the rate of Rs. 350.00 per sq. yard while the appellants had paid at the rate of Rs. 126.00 per sq. yard?

76. Why these two different yardsticks? Neither the pleadings nor the arguments at the bar have given any clue. The truth seems obvious. The reasons are not difficult to imagine.

77. It was contended that the appellants are under an obligation to pay whatever may be demanded from them in pursuance to the orders of the Court or otherwise. It may be so. Still, the fact remains that the appellants were asked to pay at a much lower rate. It was said that the price had been fixed as per the collector's rate. But, where is the collector's rate laid down? When was it laid down? On what basis? Why was the current market value of the land not ascertained? Why could the authorities not refer to the recent sale transactions? If the price had been ascertained, the State would have got more money. The future is always uncertain. The committee did not even make an attempt to ascertain the real price. Why? There is no answer.

78. And then, we cannot lose sight of the fact that the conveyance deeds have already been executed. Even before the full price of the land has been determined. It is no doubt true that in the deed, an "undertaking of the Transferee to pay to the Vendor such further amount(s) as it may at any time become liable to pay on account of enhancement of compensation for acquisition of land, by the Court or otherwise" has been recorded. Yet, the fact remains that the ownership of the property has passed to the purchaser. It becomes entitled to the benefit of the continuing increase in value despite the fact that it has not even paid the full price. So far as the government is concerned, it is clearly bad economics and poor financial management.

79. In view of the above, we hold that the allotments to the appellants do not satisfy the test of reasonableness. The allotments were not made by the committee on the basis of any ascertainable criterion. The criterion contained in the notification of Nov. 24, 1992, was reasonable and relevant. But, for some inexplicable reason, it was not followed. The action of the committee created an unreasonable differentiation. Those similarly placed were treated differently. The procedure adopted by the committee was not fair. No reasons for accepting the request of some applicants and rejecting those submitted by the others were given by the committee. The reasons, which are now sought to be given, appear to be an afterthought. Even otherwise, the reasons do not justify the wholesale departure from the norms of fairness and propriety. The orders cannot be sustained even on the basis of these arguments. Thus, the impugned allotments cannot be upheld. Regarding (3). Was the 1st respondent the writ petitioner,

guilty of laches and, thus not entitled to claim any relief?

80. Mr. Gopal Subramaniam contended that the 1st respondent was aware of the allotment of land to the appellants. Yet, he had waited for too long before approaching the Court. Thus, he was not entitled to the grant of any relief in proceedings under Article 226 of the Constitution. Is it so?

81. Admittedly, the 1st respondent's application for allotment of 10 acres of land had been rejected by the committee in its meeting of Jan. 19, 1995. The order was conveyed to it vide letter dated Feb. 2, 1995. The respondent had approached the Court through the petition under Article 226 in April, 1995. An affidavit was filed in August, 1995, indicating that no land was available. Thereafter, additional reply was presented to the Court on Sept. 9, 1995, in which the names of the allottees viz. the present appellants were disclosed. Thereafter, in Jan. 1996, the application being Civil Misc. Petition No. 2346 of 1996 for impleading the allottees as parties was filed. It appears that the application had remained pending for some time. While the writ petition was listed before one Court, the Misc. applications were listed before another bench. However, while the application for impleading the allottees was pending, a request for permission to amend the petition was made on July 23, 1996. On August 2, 1996, the petition for permission to amend the writ petition was filed.

82. On the basis of the above sequence of events, it was claimed by Mr. Sumeet Mahajan, learned Counsel for the 1st respondent that there was no culpable delay. We think that the counsel is right in his submission. Why?

83. Firstly, it appears that prior to Sept. 9, 1995, there was nothing to show that the 1st respondent was aware of the allotment of land to the appellants. Mr. Subramaniam had pointed out that in its letter dated Jan. 13, 1995, the 1st respondent had stated that "rate of undeveloped land is much lower than" Rs. 350.00 per sq. yard that had been demanded from it. We have perused the copy of this letter, which has been produced on record as Annexure P-5. This was in reply to the letter of Jan. 6, 1995, sent by the office of the Director of Industries. On an overall examination of the letter, it appears that the 1st respondent was only informing the authority that the demand for deposit of earnest money @ Rs. 350.00 per sq. yard was excessive. It had further conveyed that the Project Report of which a copy was sought, had already been furnished. The letter does not show that the respondent was even aware of the allotment to the appellants. In fact, there is nothing on record to show that the 1st respondent knew of the particulars of the industrial houses to which the allotments had been made at any time prior to Sept. 9, 1995, when the affidavit had been filed in Court. In fact, the 1st respondent has specifically pleaded in para 4 of the writ petition that "the allotment made to respondents No. 6 to 11 was kept as closely guarded secret and for a long time the petitioner and many other industrialists did not come to know of the allotment and the rate at which the land was allotted". Undoubtedly, this averment was vaguely denied in the written statement. However, nothing was pointed out to show that the allotment was made public.

Or that it was announced. In fact, a perusal of the proceedings shows that the committee had observed that "the Director of Industries was asked to inform the concerned (six allottees) on telephone in anticipation of approval of minutes as the time available was very short".

84. The facts speak for themselves. It appears that even though the Committee was making allotment of public property, yet, it did not want the allotment to become public.

85. Secondly, it is clear that after having become aware of the allotment, the respondent had moved for impleading the allottees as respondents to the writ petition. The filing of the amended petition was a matter of advice to the litigant. The respondent had fired the first salvo by filing C.M.P. No. 2346 of 1996, in Jan., 1996.

86. Thirdly, it deserves mention that the plea of delay and laches was raised by the learned counsel for M/s. Hero Cycles. Ironically, since the allotment, the appellant's own performance is Zero. It has done nothing on the land. It also deserves notice that despite the allotment, the formal Sale Deed was executed on Feb. 6, 1997. Prior to that, the State was the owner of the property. Keeping in view the terms of allotment, it was open to the State Government or the PSIEC to refuse to execute the sale deed as the allottee had not performed its part. Furthermore, the challenge had been actually raised before the property was even transferred in the name of the appellant. We were also informed that the position in respect of the remaining appellants was also similar. Still further, in the conveyance deed executed in favour of M/s. Hero Cycles, it had been specifically recorded that "the transferee shall commence construction within one year from the date of allotment of the land and bring the project or projects into commercial production within two years thereafter".

87. Admittedly, the formal letters of allotment had been issued on April 22, 1994. By the date of the execution of the Conveyance Deed, a period of 2 years and 9 months had already elapsed. The construction had not even commenced till then. No wonder, the learned single Judge had considered it appropriate to issue interim directions informing the appellants that they would set up a project only at their own risk and responsibility.

88. Fourthly, we are satisfied that in the circumstances of this case, the appellants should not be allowed to legitimise the illegitimate gain by relying upon the plea of delay. We have found that the action of the authorities in making the allotments was not fair. It was not legal. In such a situation, the plea of delay does not deserve to succeed.

89. Besides the above, we are also of the view that the writ petition having been entertained by the Court in the year 1996, it would not be fair to sustain the plea of delay at this belated stage. If the objection had been raised and sustained in 1996, the 1st respondent could have sought its remedy before the civil Court. Now, the suit would have become barred by limitation.

90. In view of the above, we find that the 1st respondent was not guilty of laches. The appellants cannot claim any relief on that account. Sustaining the plea would lead to miscarriage of justice. We, therefore, reject the plea.

Regarding (4). Did the learned single Judge err in treating the writ petition as proceedings by way of Public Interest Litigation?

91. Despite 50 years of independence, we do not seem to have as yet shed our colonial heritage. The days of Bara Sahibs showing favours to their favourites and rewarding the subjects are not gone. The small man is still treated like a slave. While the Constitution ordains equality, the system works on the principle that some are more equal than the others. It is the duty of the Courts to guard against such unjust and unreasonable classification or differentiation. The archaic rules of procedure like locus standi cannot be allowed to perpetrate and perpetuate injustice.

92. Equally, all laws must be the instruments for social change. These must enable the society to achieve the desired objectives. The law Courts must act as the instrumentalities for achieving justice. Both should combine to act as instruments of "social engineering".

93. In a nutshell, the Courts have a duty to "reach injustice wherever it occurs". In the faithful discharge of this duty, the Courts shall not allow the technicalities of law to block the path. It should not really matter as to how the case or the abuse of power comes to the notice of the Court. Through a petition or a postcard. Through a selfish suitor or a social activist. Through a self-seeking plaintiff or a purely selfless petitioner. If the Court is satisfied that silence shall not be the right option, it must act and intervene. To promote justice. And also to prevent injustice.

94. What was the position in the present case? The petitioner (now respondent No. 1) had undoubtedly approached the Court with the grievance that its application for the allotment of land had been arbitrarily rejected. The written statement revealed that the 340 acres of land had already been allotted to the six industrial houses. The allotment was challenged. A prayer for quashing the allotment was also made. The Court was, thus, properly seized of the matter. It was entitled to examine the legality of the allotments. It was bound to pronounce upon the validity of the action of the Committee that had been constituted to make the allotments. On finding that certain other aspects also needed to be looked into, the learned Judge did not hesitate to examine the issues and the records. His Lordship acted in strict conformity with law.

95. It was contended on behalf of the appellants that the injustice had been caused to the 1st respondent. It could have been undone by ordering the authorities to allot land to it. The validity of the allotment of land in favour of the appellants was not required to be gone into. An offer to give 10 acres of the land allotted to them was also made.

96. The generosity, in fact, is clearly an attempt to save the allotments. The offer does not appear to have been made at threshold. However, even if it is assumed that such an offer had been made, it would be only a desperate attempt to save the sinking ship. In the circumstances of the case, the acceptance of such a request would amount to putting a seal of approval on an illegal act. We are not, for obvious reasons, inclined to adopt this apparently easy course of settling the controversy. It would only encourage repetition. It would breed unfair favours and encourage illegalities. It would be against public interest. We are not persuaded to adopt this course.

97. It was vaguely submitted that before embarking upon an enquiry into the validity of the allotments, the Court should have clearly spelt out the issues. This would have helped the appellants in projecting their viewpoint.

98. We find no merit in the contention. It is the admitted position that the writ petition had specifically challenged the allotments. Still further, during the course of the hearing of the case, the learned Judge had sent for the record of the case. It was examined by the counsel for both the sides. In fact, compilation of some of the documents (copies of which had been obtained on inspection) were produced before us. Some of the appellants had even filed additional replies before the hon"ble single Judge after inspection of the files. Thus, it is clear that the parties were fully alive to the fact that the Court was examining the legality of the allotments. The issues were known. No prejudice was shown.

99. Moreover, learned counsel did not specify any issue, which had been gone into by the learned Judge without any notice to the appellants. In fact, it appears that the primary issue related to the fairness of the allotments. The parties were fully alive to the real controversy. Secondly, during the hearing of the appeals, not even a suggestion of any prejudice was made. Despite being asked, learned counsel could not indicate as to what more could have said on behalf of the appellants.

100. Thus, we find that there was no illegality in the view taken by the learned single Judge. The question is answered against the appellants.

Regarding (5). Did the allotment committee act wrongly in rejecting the writ petitioner's application for the allotment of 10 acres of land?

101. The sequence of events has been noticed above. The application of the 1st respondent had been rejected in the meeting held on Jan. 19, 1995. The decision was conveyed vide letter dated Feb. 2, 1995. A copy of this letter is on record as Annexure P-8. It was inter alia observed as under :--

"The allotment committee in its meeting held on 19-1-1995 has decided to reject your application since you failed to deposit 20% earnest money and submit a copy of the Project Report along with details of other effective steps taken to implement the project speedily despite opportunity given to do so."

102. The order enumerates two reasons. First -- the failure to deposit the

earnest money despite opportunity. Second -- the failure to submit a copy of the project report and the details of the effective steps taken by the respondent to implement the project speedily.

103. So far as the first ground is concerned, it is the admitted position that vide letter dated Jan. 6, 1995, the 1st respondent had been informed as under:--

"In reference to your request for the allotment of an industrial plot measuring 10 acres at Focal Point phase 8, Ludhiana, under "off-the-shelf scheme", you are hereby advised to deposit 20% of the cost of land as earnest money for the difference thereof (if part of the earnest money has already been deposited) by way of Demand Draft payable in the name of Punjab Small Industries and Export Corp. Punjab @ Rs. 350/- per sq. yard..... Requisite information and earnest money, should be submitted within 15 days of the issue of this letter at the following address..."

104. Even if it is assumed that this letter had been issued on Jan. 6 itself and that the respondents were entitled to ask for everything that they had, the 1st respondent could have made the deposit and submitted the Project Report etc. on or before Jan. 21, 1995.

105. However, the application was actually rejected on Jan. 19, 1995. This could not have been done. It was wholly illegal.

106. There is another aspect of the matter. The application was admittedly being considered under "off-the-shelf scheme". No applicant for allotment of land under this scheme had been asked to deposit earnest money or to submit a copy of the project report. Why was the 1st respondent asked to do so? Still further, it is the admitted position that all the six appellants to whom land had been allotted under the scheme had been asked to deposit the price at the rate of Rs. 6.30 lacs per acre or Rs. 126.00 per sq. yard. The 1st respondent was asked to make the deposit at the rate of Rs. 350.00 per sq. yard. Why this differential in treatment, both in respect of the Project Report and the price? Despite being asked the counsel could offer no explanation. We find that there was no justification.

106A. In view of the above, we answer the above question in favour of the writ petitioner, now the 1st respondent, and hold that the application had been illegally rejected.

Regarding (6) Should all the illegalities be ignored merely because some of the appellants have spent substantial amount of money?

107. In the end, a plea of desperation was raised. It was contended on behalf of some of the appellants viz. M/s. Avon Cycles, Ritesh Industries and Royal Industries that in pursuance to the impugned allotments, they had started construction work. Substantial amounts of money had been spent on construction and setting up sizable -industrial units. No useful purpose would be served by cancelling the allotment of land to the appellants at this stage.

108. Is it so?

109. Firstly, it deserves notice that the learned single Judge had given interim directions vide order dated Feb. 3, 1997 to "respondents 6 to 11 (now the appellants) that construction, if any, made shall be entirely at their risk and responsibility and it shall not be open to them to plead equitable considerations on this count". They were also enjoined from installing "any furnace or bhatti till further orders". The directions of the Court had to be complied with. In any case there was a clear warning. The parties could disobey only at their own peril.

110. Despite the clear and unambiguous directions, it appears that the three appellants as mentioned above had admittedly continued with the construction work etc. They had apparently not felt bound by the direction given by the Court. Unfortunately, they cannot escape the consequences of their own actions. They had voluntarily taken the risk. They have to suffer the loss, if any.

111. Besides the above, we may also add that acceptance of the plea would lead to unfair results. Those who obeyed the Court's interim direction would be at a disadvantage as compared to those who did not obey. It would be inequitable to allow such a result. Still further, we are also of the view that the appellants shall be entitled to remove whatever they can.

112. Thus, we reject the contention. We hold that the appellants having proceeded with the construction etc. despite the interim directions, they cannot be permitted to take advantage of their own wrong. It would be legally incorrect and morally wrong to do so.

113. During the course of the hearing, it was half heartedly submitted by Mr. Sarin that the acquisition of land should be deemed to have been made under the provisions Chapter VII of the Land Acquisition Act, 1894. By this method, the allotments would be legalised.

114. The contention, it appears, betrays the truth that right from the beginning, the authorities intended to give the land to the appellants. However, legally speaking, the contention has to be merely noticed to be rejected. It is well settled that it is the case pleaded that has to be proved. It is not the case of the appellants that the land had been acquired for them. The procedure laid down under Chapter VII was never even alleged to have been resorted to. This being the factual position, the submission cannot be sustained.

115. A grievance was also made that despite setting aside the allotments, the Court had not given any direction for the refund of the price already paid by the appellants. The apprehension is unfounded. It is implicit in the judgment that they will be entitled to the full refund of every penny paid by them. The appellants shall also be entitled to remove the structures, plant and machinery etc. that may have been placed or installed at the site.

116. Lastly, we may notice that learned-counsel for the State and the Chairman of the allotment committee had not challenged the decision of the learned single

Judge on merits. His only contention was that the officers had acted bona fide. It was also submitted that the members of the committee had not been individually impleaded as parties. Thus, nothing should have been said against them.

117. In this behalf, we may point out the learned single Judge had delivered the decision on April 17, 1998. The appeals were heard in April, 1999. Prior to that the State Government had issued clear instructions vide letter dated Aug. 21, 1998, that the appeal has to be filed on the limited question regarding the adverse remarks made by the Court against the civil servants. Despite accepting the correctness of the decision of the learned single Judge on merits, the Government has taken no steps to undo the wrong and to implement the order. Why this inertia? If everyone was acting bona fide, why no steps have been taken so far to comply with the directions? Still further, on the merits of the contention, we shall only point out that the learned single Judge has made no adverse comment against any particular officer. No observation has been made against any individual member of the committee. The observations are general and in respect of the action of the allotment committee. No direction for any action against any member has been given. Thus, the fact that the members had not been impleaded as parties is of no consequence. Furthermore, the Chairman of the committee had been duly impleaded as a party in the petition. Still more, we have looked into the documents that have been produced by Mr. Hemant Gupta. No inaccuracy in any particular observation was pointed out. Learned Counsel submitted that it was a "capable committee". We entertain no doubt. It was capable of anything.

118. After the arguments had been concluded by the counsel, a "short explanatory note" was handed over by the learned counsel for the appellant in LPA No. 289 of 1998. In this note, it has been stated that "allotments of large tracts of undeveloped land have been made to other industrial houses e.g. Ranbaxy (150 acres), Godrej (75 acres), Shri Ram Group (350 acres), the former two being allotments made in Mohali and the third being an allotment in Rajpura under the Industrial Policy of 1992 on the assumption that the 1992 Policy also related to undeveloped land". On this basis, it has been suggested that if no policy existed "all allotments of undeveloped land... must of necessity be quashed. Otherwise, it would be extremely inequitable for the appellants".

119. We cannot accept the submission. Firstly, the allottees are not before the Court. Secondly, the full facts regarding each of the allottees have not been placed before the bench. No foundation on facts having been laid down, the bench cannot record a definite finding. Thirdly, if any of the appellants or any other person whose claim may have been overlooked, has any grievance, a remedy can be sought in accordance with law. In such proceedings, the precise grievance that may be raised shall be examined by the Court. However, as at present, there is nothing on which a definite opinion may be recorded. Lastly, it may be pointed out that two wrongs never make a right. Even if it is assumed that there was some impropriety in any other allotment, it would not help the

appellants in these proceedings. At this stage, we shall say no more.

120. Learned counsel for the appellants also submitted that the learned single Judge had sent for a report from a specially constituted committee to check up as to whether or not care had been taken to ensure that there was no pollution. The report was received. It was in favour of the appellants. However, it was not even noticed by the Hon"ble Judge while deciding the case.

121. It is true that vide order dated Feb. 26, 1997, a direction had been given to the State Government to constitute a committee to "determine after looking the records of the case of the allotment whether all the questions relating to the industrial development in and around Ludhiana city... were taken into consideration or not". The "expert committee" had submitted its report. This fact had been duly noticed in the order dated April 29, 1997. The counsel had been directed to give copies to Mr. Sibal and Mr. Chhibbar who had appeared for the present appellants. What more was required to be done? Were any arguments addressed to the Court regarding the re-port? The Hon"ble Judge had only to consider the submissions that were actually made. There was not even a suggestion that this had not been done.

122. We may record that counsel for the parties had referred to various decisions. Mr. Subramaniam had cited the decision reported in State of M.P. and Others Vs. Nandlal Jaiswal and Others, to support the plea of delay. Mr. Sibal had referred to the decisions in The Chairman, Board of Mining Examination and Chief Inspector of Mines and Another Vs. Ramjee, and in Synthetics and Chemicals Ltd. and Others Vs. State of U.P. and Others, to contend that every mistake would not make the allotment illegal. Likewise, Mr. Sarin had placed reliance on the decisions reported in Pannalal Binjraj Vs. Union of india (UOI), to persuade us to hold that the policy decision regarding the allotment of land having not been challenged, the orders in favour of the appellants were immune from attack. He also invoked the principles from the Service Jurisprudence and placed reliance on the decision reported in G. Sarana Vs. University of Lucknow and Others, to contend that if the constitution of the selection committee is not challenged, the selection cannot be questioned.

123. There is no quarrel with the principles laid down in these decisions. However, it appears to us that the question of delay, the effect of an error and the wisdom or otherwise of a policy have to be considered in the light of the facts of each case. In these appeals, we have found that the writ petitioner was not guilty of a culpable delay; the action of the allotment committee was totally arbitrary and unreasonable and that the committee had followed no criterion. Thus, it does not appear to be necessary to notice these decisions at length.

The Conclusions.

124. In view of the above, we hold as under:--

(i) Normally, all things come to him who waits. It appears that neither the

appellants nor the committee were willing to exercise patience. In an anxiety to make allotments at the earliest, the committee did not lay down or follow any ascertainable criterion or principle. In the circumstances, a fair, just and proper allotment of valuable land was not possible.

(ii) Not only that no criterion had been laid down, but, even those conditions which had been prescribed by the Government for the allotment of smaller plots had not been followed. The committee had not observed the parameters contained in the notification of Nov. 24, 1992. It had acted arbitrarily in making the allotments. Its action was not reasonable. It had issued no advertisement. It had given no chance to the industry to compete for the allotment of hundreds of acres of prime land. Still more, it had treated equals unequally. It had followed different criteria while considering claims of parties that were similarly placed. While the claim of the writ petitioner was rejected inter alia on the ground that it had not submitted the Project Report, the land was actually allotted to the appellants despite the fact that they had also not submitted any such report. Still further, even in the matter of price there was an obvious and invidious discrimination. While the appellants had paid at the rate of Rs. 126.00 per sq. yard, the rate quoted for the 1st respondent was Rs. 350.00 per sq. yard.

(iii) The parameters like the viability of the project, impact on the environment, technology involved, export obligation undertaken, value addition, scope of employment, import substitution, and the qualifications etc. of the applicants had been duly laid down in the notification dated Nov. 24, 1992. These were relevant to determine the suitability of the contenders for the allotment of land. However, none of these were applied or even kept in view while making the impugned allotments in favour of the six appellants.

(iv) Even if the above noted parameters are totally overlooked, the committee did not follow any reasonable or just method while allotting the land. It did not record any reasons for selecting some and rejecting others. There is no indication on the record as to why the appellants were preferred to others whose applications were rejected without indicating any reason or cause.

(v) The sentiments expressed at the bar are only a cover for the settlement. The plea that the allotments had been made to promote peace and prosperity or to restore normalcy cannot justify a totally arbitrary allotment of prime land.

(vi) The action of the committee in rejecting the writ petitioner's application for allotment of 10 acres of land while 340 acres had been allotted to the six appellants was wholly arbitrary. The committee had asked for deposit of earnest money and a copy of the project report by Jan. 21, 1995. The application was rejected in the meeting held on Jan. 19, 1995. This was even before the time for complying with the directions had expired. Still further, the writ petitioner and the appellants were treated differently without any justifiable basis.

(vii) The mere fact that some of the appellants had set up sizable units at substantial cost despite the interim order dated Feb. 3, 1997, does not entitle

them to claim that the illegalities should be overlooked and that the allotments be upheld. The action in setting up the units was taken by the appellants despite the interim directions given by the learned single Judge. Those who act in violation of the directions of the court cannot be at an advantage in comparison to those who follow the law in letter and spirit. Nor can the arrogance of money have an edge over principle and propriety. Condoning such defaults as have been noticed in this case would only encourage the wrong doers. It would be improper to allow it.

(viii) The plea of delay as raised on behalf of the appellants is wholly untenable. It appears that even though the committee had allotted public property, yet, it appears that the allotments did not become public. We are also satisfied that the 1st respondent had challenged the allotments soon after the factum of allotment and the particulars of the allottees were disclosed to the Court and made public.

(ix) Lastly, we shall only say that a poor man wants a few things. A rich man wants many. An avaricious man wants all. Like the barren sandy ground, the greedy man sucks in all the water. But, he yields no fruit. Gives nothing for the benefit of others. In fact, his greed is insatiable. It only increases with the increasing pile of gold. The greedy man becomes a slave to the servant. Gold and not God becomes his master. This is precisely what appears to have happened in this set of appeals that have been placed before the bench.

125. The allotment of land in the instant case gives the indication of an extravagant extravaganza. There was clearly a plot behind the allotment of the plots. Thus, we find no merit in these appeals. Consequently, these are dismissed. It is directed that the directions given by the learned single Judge shall be carried out forthwith. However, we leave the parties to bear their own costs. The compilations/documents produced by the counsel shall be kept in a sealed cover.