(2009) 11 P&H CK 0105

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 2677 of 2008 ; 3870 of 2008

Keshav Kumar Bansal|Surinder Kumar Sharma|Babbar Bhan APPELLANT

Vs

State of Haryana RESPONDENT

Date of Decision : 12-11-2009

Acts Referred:

Constitution of India, 1950 — Article 14
Haryana Urban Development (Disposal of Land and Buildings) Regulations, 1978 — Regulation 5(3)
Haryana Urban Development Authority Act, 1977 — Section 15

Citation : (2010) 2 PLR 82 : (2010) 1 RCR(Civil) 311

Hon'ble Judges : Kanwaljit Singh Ahluwalia, J and T.S.Thakur, J

Judgement

Kanwaljit Singh Ahluwalia, J.

1 Three writ petitions filed in this Court, question the allotment of industrial plots in Industrial Estate, Bhiwani to the successful allottees, on the ground that the same are vitiated by nepotism, favouritism and total lack of a fair and transparent procedure that could ensure fairness and objectivity. It is alleged that the successful allottees are relatives/friends and protigi of politicians and bureaucrats. They had, therefore, succeeded in getting the allotment, not on the basis of merit but. because authorities allowed them to steal march over the better candidates available. This, according to the petitioners, amounts to distribution of largesse, as the recipient of plots were less meritorious and no comparative criteria to evaluate claim of all those, who applied for allotment of plots, has been followed. It is prayed that since the entire allotment stands vitiated, the allotment letters issued be cancelled and an inquiry be ordered.

2 Petitioners'' challenge to the mode of allotment, questioning the procedure followed by the authorities, makes it imperative for us to first notice the broad parameters laid by the Hon''ble Supreme Court regarding distribution of public property to private individuals, so that on the touchstone of the same, we are able to evaluate the allotment of plots made, in the factual backdrop pleaded in these writ petitions.

3 The principle that the government while entering into contracts or distributing public largesse cannot act arbitrarily has been emphasized by the Supreme Court in a number of landmark decisions such as Ramana Dayaram Shetty v. Inter national Airport Authority of India, (1979)3 SCC 489 and Kasturi Lal Lakshmi Reddy v. State of J& K, (1980)4 SCC 1. After discussing the entire conspectus of law, it was held by the Supreme Court in New Horizons Ltd. v. Union of India, (1995)1 SCC 478 that

"7. At the outset, we may indicate that in the matter of entering into a contract, the State does not stand on the same footing as a private person who is free to enter into a contract with any person he likes. The State, in exercise of its various functions, is governed by the mandate of Article 14 of the Constitution which excludes arbitrariness in State action and requires the State to act fairly and reasonably. The action of the State in the matter of award of a contract has to satisfy this criterion. Moreover a contract would either involve expenditure from the State exchequer or augmentation of public revenue and consequently the discretion in the matter of selection of the person for award of the contract has to be exercised keeping in view the public interest involved in such selection. The decisions of this Court, therefore, insist that while 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 the standards or norms which are not arbitrary, irrational or irrelevant. It is, however, recognised that certain measure of "free play in the joints" is necessary for an administrative body functioning in an administrative sphere."

4 It has been held in the case of Sachidananda Pandey v. State of W.B., (1987)2 SCC 295 that:

"On a consideration of the relevant cases cited at the bar the following propositions may be taken as well established : Stateowned or publicowned property is not to be dealt with at the absolute discretion of the executive. Certain precepts and principles have to be observed. Public opinion is the paramount consideration. One of the methods of securing the public interest, when it is considered necessary to dispose of a property, is to sell the property by public auction or by inviting tenders. Though that is the ordinary rule, it is not an invariable rule. There may be situations where there are compelling reasons necessitating departure from the rule but then the reasons for the departure must be rational and should not be suggestive of discrimination. Appearance of public justice is as important as doing justice. Nothing should be done which gives an appearance of bias, jobbery or nepotism."

5 Similar observation have been made in the case of Haji T.M. Hassan v. Kerala Financial Corporation, (1988)1 SCC 166 wherein it was held that :

"The public property owned by the State or by any instrumentality of the State should be generally sold by public auction or by inviting lenders. This Court has been insisting upon that rule, not only to get the highest price for the property but also to ensure fairness in the activities of the State and public authorities. They should undoubtedly act fairly. Their actions should be legitimate. Theirdealings should be aboveboard. Their transactions should be without aversion or affection. Nothing should be suggestive of discrimination. Nothing should be done by them which gives an impression of bias, favouritism or nepotism. Ordinarily these factors would be absent if the matter is brought to public auction or sale by tenders."

6 The perusal of the aforesaid decisions makes it clear that whenever public property is distributed the same has to be ordinarily done by public auction or inviting tenders. The deviance from this rule ipso facto is not illegal but nothing should be done which gives as an appearance of bias or nepotism. As a matter of fact it has been held in the case of Netai Bag v. State ofW.B., 2000(4) RCR(Civil) 622 : (2000)8 SCC 262 that :

"There cannot be any dispute with the proposition that generally when any State land is intended to be transferred or the State largesse decided to be conferred, resort should be had to public auction or transfer by way of inviting tenders from the people. That would be a sure method of guaranteeing compliance with the mandate of Article 14 of the Constitution. Nonfloating of tenders or not holding of public auction would not in all cases be deemed to be the result of the exercise of the executive power in an arbitrary manner. Making an exception to the general rule could be justified by the State executive, if challenged in appropriate proceedings."

7 The principles of law propounded above by the Hon''ble Apex Court can be summed up as under :

(a) The State ought to dispose of public property by way of public auction or by inviting tenders as an ordinary rule. But if the State chooses to act otherwise, it has to act fairly and reasonably and action of the State must exclude arbitrariness;

(b) In case the State opts to make an exception to the general rule of disposing the property through public auction or by inviting tenders, the procedure followed should be so transparent that it overrules an impression of bias, favourtism or nepotism;

(c) In all the cases, where the general rule (sale through public auction or by invitation of tenders) is not adhered to, it must be in consonance with the criterion, which satisfies the expectation that the same is fair and reasonable.

(d) The criteria should be predetermined and published to rule out the allegation of any bias.

It is now time to state the facts.

8 Civil Writ Petition No. 2677 of 2008 has been filed by two advocates. They have filed this writ petition purportedly in public interest. Civil Writ Petition No. 3870 of 2008 has been filed by Surinder Kumar Sharma, Smt.Sarita Sharma and Ajay Kumar. They have pleaded that they are industrialists in their own right, having requisite experience and had applied for the allotment of 1/2 acre plots by depositing the earnest money, but they could not succeed as respondents Nos. 5 to 30 were well connected and had a say in the corridors of power. Civil Writ Petition No. 3915 of 2008 has been filed by Keshav Kumar Bansal. He is an industrialist, who appears to have applied for allotment of a 2 acre plot. His grievance and prayer for seeking cancellation of allotment of plots to the successful allottees is no different from that of the petitioners in other two writ petitions. For facility of reference, facts are gathered from Civil Writ Petition No. 2677 of 2008, as on all important aspects, i.e., facts and law, submissions made, all the three writ petitions are similar.

Haryana Urban Development Authority published a brochure offering freehold industrial plots at RojKaMeo, Hathin, Bahadurgarh, Hisar and Bhiwani. The booking had to commence from 3rd August, 2007. Since all the three writ petitions have assailed the allotment of plots at Bhiwani only, no reference is required to be made qua other Industrial Estates. As per the chart, which formed part of the brochure, one plot of 2 acre. 22 plots of 1/2 acre and 4 plots of 1/4 acre were to be allotted at the rate of Rs. 770/ per square meter. For 2 acre plot Rs. 6,31,400/, for 1/2 acre plot Rs. 1.57,850/ and for 1/4 acre plot Rs. 78,925/ were to be deposited as earnest money along with the application form.

9 The brochure describes Bhiwani as a fast developing industrial commercial town of Haryana, known for its temples and textiles. Bhiwani, being the district headquarter, is also headquarter of Haryana School Education Board. It is situated at a distance of 125 kms from Delhi and 50 kms from Rohtak and is equipped with all basic infrastructure facilities and public utilities like, General Hospital and a Mini Secretariat. The close proximity of Bhiwani to Delhi had enhanced the value of plots available.

10 The procedure for allotment of plots published in the brochure reads as under :

"Mere submission of an application would not necessarily entitle an application for allotment. Allotment of plot will be after due assessment of the application/ project report & on basis of individual merits/financial capabilities of entrepreneurs. The applications received shall be scrutinized and applicants interviewed by the Allotment Committee, and thereafter, the allotment shall be made in favour of the recommend''ee with approval of the Competent Authority."

11 According to the brochure, preference was to be given to the entrepreneurs belonging to the category of exservicemen, women, unemployed engineering graduates/Polytechnic/ITI trained candidates, oustees of that sector and expansion/shifting of existing units.

Copy of the brochure is attached as Annexure P2.

12 It is stated in the writ petitions that respondents Nos. 5 to 30 have been allotted plots solely on the ground that they were related to the people in prominence, which included Members of Legislative Assembly and senior Bureaucrats, constituting the ruling clique. Petitioners have enumerated the instances to prove this contention. These can be summed up as under :

(a) That the single plot measuring 2 acres was allotted to Kamla Bhardwaj respondent No. 4. She was in Government service till the application form was tiled. The petitioners have stated that the allottee was the wife of Shiv Shankar Bhardwaj, a sitting Member of Legislative Assembly from Bhiwani constituency.

(b) Naresh Aggarwal respondent No. 6 was allotted 1 acre plot. Petitioners aver that he had applied for 2 acre plot for allotment''to Chinar Multi Feb India Limited. There was no category of 1 acre plot in the brochure. Naresh Aggarwal had also applied for 2 plots of 1/2 acre each for allotment of the same to a company named Parshotam Dass Naresh Kumar Pvt. Ltd. 1 acre plot was not allotted to this company but to Chinar Multi Feb India Limited. Naresh Aggarwal is stated to be grandson of Ram Bhajan Aggarwal. who is former Home Minister and had also held the portfolio of Tourism Minister in the State of Haryana. 1 acre plot was not available in any category, but, was specially created to accommodate the said respondent by clubbing two plots. Furthermore, it is alleged that Naresh Aggarwal was ineligible for the allotment of plot, as earlier2 plots allotted to him bearing Nos. 241 and 242 were resumed for nonpayment of the installments. Therefore, from his conduct, authorities could not infer that he was having sound financial credentials.

(c) A 1/2 acre plot was allotted to Dalsher Singh respondent No. 13, who is nephew of Dharambir Singh, the Chief Parliamentary Secretary and Member of Legislative Assembly. According to the petitioners, it is perceived in large circles that this was a benami allotment to Dalsher Singh. In fact, the beneficiary was Dharambir Singh.

(d) Another 1/2 acre plot was allotted to Satyender Singh respondent No. 20. who is nephew of Sombir Singh, Member of Legislative Assembly from Loharu constituency.

(e) Respondent No. 17 Rani is related to Chhatarpal, Member of Legislative Assembly, as he is first cousin of her husband and it is stated that Rani belongs to a family of political influence, as her brotherinlaw is the president of Vaish College, Bhiwani and engaged in active politics.

(f) Respondent No. 23 Suresh Tanwar is.relative of Sandeep Tanwar, Secretary of Haryana Pradesh Congress Party.

(g) R.K. Sachdev respondent No. 25 is close relative of Rajiv Arora and Smt. Jyoti Arora. According to the petitioners, these husband and wife duo is posted as senior IAS officer in the State of Haryana.

13 The petitioners have laid much emphasis on the assertion that all other successful allottees were allotted plots because their close relations or friends were in position to exercise influence in the corridors of power. Petitioners have made following averments :

"3. (viii) That the petitioners have reliable information and strong reasons to believe that allotment that has been made in favour of Kishan Lal Jain respondent No. 29 for 1/4 acre has been made because he was the classfellow to Shri M.L. Tayal, IAS, presently posted as Principal Secretary to Chief Minister, Haryana. Shilpa Gupta (respondent No. 30) daughter of Shri Jai Kumar Gupta, who has been allotted 1/4 acre plot has been allotted the same for the reason that her father is a friend of Shri T.C. Gupta, IAS, (respondent No. 38), who is also coincidentally posted as Chief Administrator, Haryana Urban Development Authority, Hisar and was a member of the Allotment Committee. The petitioners have reasons to believe that allotment of plots in favour of Bhim Sain, respondent No. 8 and Umed Singh, respondent No. 26, have been made at the instance of Ram Kishan ''Fouji'' (respondent No. 35) who is a Member Legislative Assembly from Bawani Khera constituency and allotment in favour of Ajay Aggarwal, respondent No. 12 is at the instance of Mange Ram Gupta, Minister of Transport and Education, State of Haryana. The petitioners have reasons to believe that various other allotments have been made for considerations other than merit and to persons who are enjoying the confidence of people in power. Resultantly, a scam of allotment of industrial plots is rampantly prevalent in the State of Haryana, which needs to be enquired into as the distribution of plots raises everything except confidence. It is difficultnayimpossible to believe that the allotment in favour of people who are strikingly close to people in power, were on account of their suitability and eligibility for industrial plots on the strength of their merit."

14 The grouse of the petitioners is that a number of allotments made in favour of the relatives of politicians or bureaucrats are not coincidental, but on the facts, it stands proved that the allotment was arbitrary and was not a result of any just criteria adopted. The petitioners state that rules of fairness and transparency have not been followed by the allotment committee.

15 The officials of HUDA have been impleaded as respondents Nos. 2 to 4. They have filed ajoint reply, in which it has been submitted that HUDA has framed Estate Management Procedure (EMP2005) under the industrial policy 2005 pronounced by the State Government. The Committee duly constituted under the Estate Management Procedure 2005 considered the applications of all those persons who applied and made recommendations in favour of only those applicants, who were able to satisfy the Committee, regarding their financial resources, technical knowledge qua the project and genuineness of their claim. It was submitted that Mrs. Kamla Bhardwaj respondent No. 5, along with her other three partners, was allotted plot purely on merit and the Committee formulated a view that the applicant Mrs. Kamla Bhardwaj was fully capable to implement the

project successfully and within the proposed time period. The allotment of 1 acre plot made to Naresh Aggarwal respondent No. 6 was sought to be justified on the ground that M/s. Parshotak Dass Naresh Kumar Pvt. Ltd. is a sister concern of Chinar Multi Fab. India Limited and the Committee had unanimously decided to make allotment of 1 acre plot to Naresh Aggarwal by clubbing two plots of 1/2 acre size each. In their written statement filed, regarding the allotment made to Dalsher Singh and Satyender Singh, it has been stated as under :

"3. (iii) That the applicant Dalsher Singh is a graduate and as per the information supplied is having 10 years of experiences in the field while associating with his family. However, the allotment has been made in favour of Dalsher Singh and after consideration of all the parameters laid in the Estate Management Procedure2005.

(iv) That the applicant Satyender Singh has been allotted a plot. It has been found by the committee that the applicant has enough basic technical knowledge, which was an essential feature for the successful implementation of the project. He was able to give suitable replies to the each and every query of the committee members to their satisfaction. The applicant has also enclosed copy of the Jamabandi for the year 200001, which shows property in his name in village Gagarwas. He has also enclosed copy of a sale deed of a plot at Bhiwani and therefore, stated that he can raise requisite resources. It is reiterated that the experiences of the applicant is one of the preferential criteria but is not the only one. The purpose Industrial Policy 2005, is not only to facilitate the on going business activities but is also meant to encourage young and enterprising persons to come ahead and to take part in the development of nation."

16 Similarly, in respect of other successful applicants, mentioned by the petitioners, the official respondents have taken a definite stand that the allotment of plots were made to the allottees on the ground that the Committee, after holding interview, was satisfied qua their claim and had recommended the allotment.

17 Naresh Aggarwal respondent No. 6, Rajiv Garg respondent No. 16, Hem Lata respondent No. 18, Satyender Singh respondent No. 20, Suresh Tanwar respondentNo. 23, Sombir Singh respondent No. 33 and Ram Bhajan Aggarwal respondent No. 34. by filing separate written statements, have categorically stated that the allotment made was on merit and the allegations of mala fide have been falsely levelled.

18 Ashok Kumar Aggarwal respondent No. 8 pleaded that he has got vast experience to set up an industry and he has been allotted plot, as the interview committee had approved the project report submitted by him.

19 Bhim Singh Garg respondent No. 9 has also claimed that his claim for allotment of the plot was solely based on merit and no help was extended by Ram Kishan ''Fouji'' respondent No. 35, a sitting member of State Legislative Assembly.

20 Ghansham Dass Gupta respondent No. 10 submitted that the al lotment of plot was made after stringent procedure was followed and no favour was extended to him by any person.

21 Ajmer Singh respondent No. 11 has submitted that baseless and false allegations have been leveled. He was the deserving candidate for the allotment.

22 Ajay Aggarwal respondent No. 12, in his counteraffidavit, denied that he was helped by Mange Ram Gupta, Minister for Transport and Education respondent No. 43.

23 Kailash Kumar Sharma respondent No. 15 disputed the locusslandi of the petitioners to the writ petition No. 2677 of 2008 to the the writ petition in public interest. It was further submitted that he had a 30 years long experience in running industry and had invested his youth, capital as well as much hardwork in establishing and commissioning Steelfabrication Unit in the name of M/s Kaushik Industries, situated at Bamunimaidan, Industrial Area, Gauhati (Assam) and due to law and order problem created by extremist outfits such as ULFA, he was compelled to close his Fabrication Unit. Thereafter, he came to his native place at Bhiwani and applied for allotment of the plot. It has been further averred that he had spent Rs. 8.00 lakh for the development work at the site of plot. He had paid the fee to the consultant also. It has been urged by him that the allotment was made in the most fair manner. This respondent has pleaded that he has got his firm registered with District Industrial Center, Bhiwani under the title of M/s. Sharma Flour Mill and he has also obtained VAT number for his firm, M/s. Sharma Flour Mill.

24 Sanjay Kakkar respondent No. 19 submitted that he is an entrepreneur manufacturing Polypropylene Multifilament Yarn and Tape since 2001 and therefore, his experience impressed the Committee to make allotment of the plot.

25 Shivani Lachhiramka respondent No. 22 also denied theallegations leveled in the writ petition.

26 Bansi Lal respondent No. 24 submitted that on the basis of his individual merit and capabilities, allotment of plot was made, after his project report was evaluated and that he is in the process of setting up a manufacturing unit of Pressure Cookers in the name of M/s. Vishal Aluminum Manufacturing Co. at Noida.

Shilpa Gupta respondent No. 30 submitted that she has got requisite experience in designing soft toys and therefore, she succeeded to allotment of the plot.

Dharambir respondent No. 32 and SandeepTanwar respondent No. 36 denied that they were instrumental in allotment of plots to any allottee and that the petitioners have exploited their position.

Ram Kishan ''Fouji'' respondent No. 35, who is a Member of Legislative Assembly, has denied that the allotment made to respondent No. 9 was due to any influence exercised by him.

M.R. Gupta, Education and Transport Minister respondent No. 43 has filed his affidavit to state that he has no concern with the allottee Ajay Aggarwal and the Ministries headed by him are not engaged in the allotment of industrial plots. He denied that he exercised any influence for allotment of industrial plot to Ajay Aggarwal.

We have heard counsel for the parties.

27 A perusal of the record reveals that no comparative merit of the applicants was drawn. No exercise to compare the successful allottees and unsuccessful applicants was undertaken. The relevant factors, i.e., experience, availability of capital, qualification, managerial capability and professional skill etc. were not considered to determine inlersu merit. The committee had interviewed the applicants and on a separate sheet, had given reasons for making the allotment of plot. The reasons given are general in nature, vague and nonspecific. The reasons spelt out are such that they can stick to any applicant, to whom the committee wanted to make allotment. To illustrate. one or two examples can be made part of this judgment:

Kamla Bhardwaj, M/s. Lifeline Health Care, Bhardwaj Hospital. Rohtak Gate. Bhiwani, Manufact uring of Intraveno us Trans fusion Solutions 750.00 lacs Ms. Kamla Bhardwaj applicant herself attended the interview. The application has been made in the name of M/s. Lifeline Health Care, a partnership concern which consists of four partners having 25% share each. Two of the partners are Doctors i.e. professionals & remaining two partners are highly qualified as. one is having Fharma Degree and the other is having Diploma in Mechanical Engineering. They are desirous to set up a manufacturingunit of Intravenous Transfusion Solutions. The total investment in the project shall be 750.00 lac. The following shall be financial pattern : From Banks/Financial Institutions 500.00 lac Own sources/ unsecured loans 250.00 lac She is qualified and well experienced practicing doctor. She stated that, before making the application, she had visited USA for study of the project and after collecting all the data relating to project has decided to set up this project. The product shall be of international standards. She assured that she shall implement the project successfully within a period of three years. She has already made arrangements of technical know how, marketing and speeilically of finances. The committee has gone through the details given in the project profile. She was also thoroughly questioned by all the committee members about minute details of the project and she was very prompt to reply to each and every query of the committee members. She through the discussions and evidences was able to convince the committee about financial worth too. Moreover, along with application she had submitted the Income Tax Returns along with Balance Sheet & Profit & Loss Accounts for the financial years 20062007, 20052006 and 20042005, showing her financial strength as well as her entrepreneurship. After going through the details given in the project profile and interaction/discussions with the person attending the interview, the Committee has assessed this applicant'' fully capable to implement the project successfully and within a reasonable time period. The Committee was of the unanimous opinion that the applicants for this plot were highly qualified Dr. Kamla Bhardwaj being MBBS, MD. in Gynae, the other partner, Shri Ankit Bhardwaj being MBBS, Sh. Shashi Shekhar is having degree in Pharma and Sh. Nand Lal Sharma is having diploma in Mechanical Engineering. Moreover, the. proposed project is perfectly in consonance with their qualifications and hence, the Committee was of the unanimous view that in the interest of industrialization of area and generation of adequate employment avenues, such type of genuine women led entrepreneurship should be encouraged. The Committee after discussions at length decided "to recommend the allotment".

Dalsher Singh Behind PWD B&R Workshop, Vidya Nagar, Meham Road. Bhiwani. To set up a P.P Plant 91,50 lacs Shri. Dalsher Singh, who is a graduate himself appeared. The applicant is a sole proprietorship concern. He is desirous to set up a manufacturing unit of P.P. Tape, Cloth. Niwar etc. The total investment in the project shall be 91.50 lacs The following shall be financial pattern : 1. Prom Banks/1 inancial : 68.62 lacs Institutions 2. Own sources/unsecured loans : 22,88 lacs The applicant has claimed that he has gained 10 years experience in the line. He has further explained to the Committee that he belongs to the industrialist family, who are already in the same line for more than one decade. While associating them, he has acquired full expertise in the field of technical knowhow source of raw material, machinery, its costing, demand etc. He was well aware of the covered area requirement for this project. It has been claimed by him that he has already arrange oral commitment from Bank, his family members and relatives. For the project. ground coverage shall be equal to 10000 sq. ft. He shall be gainfully utilizing the permissible covered area up to optimum level on first and second floor of the proposed building. The Committee has gone through the details given in the project profile and as further explained by the person, attending the interview. After going through the details given in the project profile and interaction/discussions with the person attending the interview, the Committee has observed that the applicant/entrepreneur seems to be young,, promising and genuine entrepreneur. Although he did not carry with him documentary evidence,, but he was able to convince and satisfy the Committee members about the genuineness of the claim. He was able to explain and elaborates each and every minute detail of the proposed project when questioned by the Committee members. The applicant has offered 12 months to complete the project and starting of commercial production. The Committee was also convinced about his explanation regarding gainfully utilizing the 100% permissible covered area in due course. The Committee is satisfied with the genuineness of the project and commitment of the entrepreneur. Hence,, "Recommended for allotment.".

28 The reasons given qua Dalsher Singh that the applicant entrepreneur seems to be young, promising and genuine entrepreneur, and that although, he did not carry with him any documentary evidence, but was able to convince and satisfy

the committee members about the genuineness of the claim, were too subjective and lacked objectivity. Similarly in ease of Kamla Bhardwaj, to say that after going through the details given in the project profile and interaction/discussions with the person attending the interview, the Committee has assessed this applicant fully capable to implement the project successfully and within a reasonable time period'' is a reason which can be bestowed upon any person, to whom the committee desires to allot the plot. Case of other successful allottees is no different. In case of another successful allottee, Ajay Aggarwal, the committee observed as under :

"Although he did not carry with him documentary evidences but he presented his claim of being financially capable to implement the project successfully in such a way that all the committee members with unanimous view, decided to accept the explanation as true & correct. The applicant has offered 12 months to start commercial production. The committee was fully satisfied with the genuineness of the project and commitment of the entrepreneur."

29 The petitioners had also impleaded the persons, against whom allegations of mala fide were levelled. We are not inclined to examine the allegations of mala fide and their denial. We are of the view that the committee ought to have evolved criteria for allotting marks under the different subheads, e.g. qualification, experience, financial strength, product, capability and skill. The allotment of marks could be on various counts. They cannot be put in water tight jackets, but the example has been given only to elaborate our view. It is admitted stand of the official respondents that no comparative table or meritlist was drawn in ease of all the applicants, who were interviewed.

30 The issue which has arisen before us is that whether the exception which has been made to the general rule can be justified by the State. Before proceeding to answer this question, it would be imperative to make reference to the case of New India Public School v. HUDA, 1997(1) RCR(Civil) 97: (1996)5 SCC 510 wherein also the allotment made by HUDA were questioned. It was urged on behalf of the Haryana Urban Development Authority that allotment by auction is not the only criteria provided in Section 15 of the Haryana Urban Development Authority Act, 1977. The Haryana''Urban. Development (Disposal of Land and Buildings) Regulations, 1978 do indicate the provision for allotment by modes other than public auction. Proviso to regulation 5(3) itself gives power for allotment to groups or individuals or persons practicing any profession or carrying on any occupation, trade or business or for any such categories of persons or government department or institution or charitable institutions or other organisations for public welfare as may be decided by the authority from time to time. This argument was rejected by observing as under:

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

31 It has been strenuously urged by the learned counsel for the petitioner that the present case is covered by the ratio of Delhi Assam Roadways Corporation Ltd. v. Haryana Urban Development Authority, 2008(3) RCR(Civil) 389 (P&H) wherein allotments made by the Haryana Urban Development Authority were set aside in view of the law laid down in New India Public School by observing as under :

"30. It was in fact conceded that no predetermined criteria was published before the application could be placed before the Selection Committee. It is further clear that respondent No. 1 HUDA was partyrespondent in the case of New India Public School (Supra) before this Court as well as before the Hon''ble Supreme court. It is, therefore, fully aware about the law laid down by their Lordships of Hon''ble the Supreme Court. It was incumbent and obligatory on its part to either publish the predetermined criteria of allotment as per the provisions of Section 15 of the Act read with Regulations 3, 4 and 5 of the Regulations if the allotment was to be made by any other method, than public auction. Otherwise, the safe method in the larger public interest and in the interest of HUDA respondent No, 1 would be to resort to public auction as has been held by Hon''ble the Supreme Court.

31. We do not wish to make detail reference to numerous observations made by their Lordships of Hon''ble the Supreme Court in the cases of Ramana Shetty v. International Airport Authority of India, AIR 1979 SC 1628; Mohd. Rashid Ahmed v. State of U.P., AIR 1979 SC 592; Tata Cellular v. Union of India, JT 1994(4) SC 532: Kumari Shri Lekha Vidharthi v. State of U.P., 1991(1) SCT 575 : AIR 1991 SC 537 and M/s. Kasturi Lal Lakshmi Reddy v. State of J&K, 1980(4) SCC 1. It is suffice to conclude that wherever the authorities are entrusted with the duty of selling public property or granting its lease, then normal method is auction or call for tenders so that all the intending purchasers should have equal opportunity of submitting their bids and tenders. The authority entrusted with such duty or the Government, as the case may be, is required to act fairly in arriving at the best available arrangement in the circumstances. In that regard reference may be made to the judgment of Hon''ble the Supreme Court in G.D. Zalani v. Union of

India, JT 1995(2) SC 420. Therefore, by no stretch of imagination, HUDArespondent No. 1 can justify the failure either to resort to public auction or proceed for allotment on the basis of a pre determined published criterion if the allotment was to be made by any other method especially when in the case of New India Public School it was a party before Hon''ble the Supreme Court. Therefore all these allotments are liable to be set aside.

32. We are further of the view that the so called selection committee failed to advert to the comparative merits of the applicants and it has not been pointed out as to why the allottee was selected from amongst those applicants who have been left out. It was in these circumstances that the Division Bench judgment of this Court in Munish Manufacturing Corporation, Ludhiana (Supra) has held that every activity of the Government has a public clement in it and it must, therefore, be informed with reason and guided by public interest. If the Government awards a contract or leases out or otherwise deals with public property or grants any other largess, it would be liable to be tested for its validity on the touchstone of reasonableness and public interest and if it fails to satisfy either test, it would be unconstitutional and invalid."

32 Hon''ble Apex Court, in Dr. Krushan Chandra Sahu v. State of Orissa, 1995(4) SCT 560 : 1996 AIR (SC) 352, held that the selection committee does not have the inherent jurisdiction to lay down the norms of selection, nor such powers can be assumed by necessary implication. Therefore, where the candidates were selected on the basis of character rolls, it was held that the procedure adopted by the selection board was wholly arbitrary.

33 In the present case, the procedure for allotment was stated to be due assessment of the application/project report, individual merit and financial capability of the entrepreneur. The project reports submitted by the applicants have not been evaluated. No criteria was adopted to find out as to which project report, submitted by the applicants, was better than the other. Similarly, there is no interse determination of financial capability. Some of the successful entrepreneurs had no documents to support their cases. Loans from banks and financial institutions were not tied up. No appraisal of the project reports was done by the financial institutions. Qua one of the eligible candidates, i.e. Umed Singh Mapinia, the Committee had to say as under :

"The committee has gone through the details given in the project profile and as further explained by the person, attending the interview. After going through the details given in the project profile and interaction/discussions with the person attending the interview, the Committee has observed that the applicant/ entrepreneur although first generation entrepreneur but seems to be young and promising entrepreneur. He has acquired adequate experience in the marketing of Readymade garments and well conversant with the various processes of the industry. The covered area is in consonance with the size of plot applied for which is as per HUDA Policy. He has also submitted the sources of plant and machinery from where we will collect the same. He has knowledge about the machinery and sources of raw material and has wide range of the market potential. He has elaborated his own source of income before the committee which seeks to be genuine. Although the applicant did not bring supporting documents but during cross checking and enquiry, the applicant was able to convince all the committee members."

34 The above example, when tested on the touchstone of the following observations made by Hon''ble Apex Court in M/s. Kasturi Lal Lakshmi Redely, etc. v. The State of J & K and another, 1980AIR (SC) 1992, leaves us to only inference that the plots were allotted, as State largesse. The Hon''ble Supreme Court, in the above said judgment, observed as under :

"15. The second limitation on the discretion of the Government in grant of largess is in regard to the persons to whom such largesse may be granted. It is now well settled as a result of the decision of this Court in Raman a D. Shetty v. International Airport Authority of India, (AIR 1979 SC 1628) (supra) that the Government is not free, like an ordinary individual, in selecting the recipients for its largesse 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."

35 To emphasize, reliance can again be placed upon Ramana Dayaram Shetty v. International Airport Authority of India and others, 1979(3) SCC 489, the Hon''ble Apex Court emphasized that "State action must not be arbitrary but must be based on some rational and relevant principle which is non discriminatory : it must not be guided by any extraneous or irrelevant considerations. because that would be denial of equality. The principle of reasonableness and rationality which is legally as well as philosophically an essential element of equality or nonarbitrariness is projected by Article 14 and it must characterise every State action, whether it be under authority of law or in exercise of executive power without making of law. The State cannot, therefore, act arbitrarily in entering into relationship, contractual or otherwise with a third party, but its action must conform to some standard or norm which is rational and nondiscriminatory. This principle was recognised and applied by a Bench of this Court presided over by Ray,C.J., in Erusian Equipment and Chemicals Ltd. v: State of West Bengal where the learned Chief Justice pointed out that ''the State can carry on executive function by making a law or without making a law. The exercise of such powers and functions in trade by the State is subject to Part III of the Constitution. Article 14 speaks of equality before the law and equal protection of the laws. Equality of opportunity should apply to matters of public

contracts. The State has the right to trade. The State has there the duty to observe equality. An ordinary individual can choose not to deal with any person. The Government cannot choose to exclude persons by discrimination."

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

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

