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**(1996) 02 P&H CK 0113**

**In the Punjab And Haryana At Chandigarh**

**Case No : Amended Civil Writ Petition No. 8446 of 1995**

M/s. Bharat Wools, Ludhiana

APPELLANT

Vs

State of Punjab and others

RESPONDENT

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**Date of Decision : 02-02-1996**

**Acts Referred:**

Companies Act, 1956 — Section 100, 101, 102, 103, 104  
Constitution of India, 1950 — Article 12, 14, 167, 226  
Evidence Act, 1872 — Section 115

**Citation : AIR 1996 P&H 215 : (1997) 1 ILR (P&H) 121 : (1996) 113 PLR 230**

**Hon'ble Judges : G.S. Singhvi, J**

**Bench : Single Bench**

**Advocate : D.S. Brar, S.S. Brar and Sumeet Mahajan, for the Appellant; Mrs. Charu Tuli, A.A.G. and B.S. Sobti, for the Respondent**

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## **Judgement**

1. These three petitions are interrelated and in each of these writ petitions a prayer has been made for allotment of plots in phase-VI, Focal Point, Chandari Kalan, Ludhiana. In the year 1992, the Government of Punjab announced new Industrial Policy for speedy growth in the State. In order to implement that policy, the Government issued notification No. SI/ Allotment Policy/ 12095-E dated 24-11-1992 for simplification of procedures, revamping the single window clearance and provision of better infrastructure facilities etc. The Government also decided to meet with the demand of the-entrepreneurs for development and, therefore, a fresh comprehensive policy for allotment of plots in the areas already developed and in the new areas had been evolved. Paragraphs 1, 3, 5 and 6 of this policy, which have important bearing on the issues raised in these writ petitions requoted below:--

"1. The allotment policy would be applicable to all the areas developed/to be developed for industrial purpose in the form of focal points, growth center, Industrial Areas, Industrial estates developed by any agency of the State. Govt.

3. Procedure for inviting applications.

3.1 Applications except for allotment under "off-the-shelf" scheme and discretionary allotment by the Chief Minister, will be invited by the Director of Industries, Punjab, through advertisements in the press.

3.2 The applications would be received directly by the respective departments/agencies which developed the Industries, Focal Points, Industrial areas and growth centres etc.

3.3 These Departments/agencies would do the entire secretarial work such as scrutiny of applications, placing proposals before the sub-group committees, issuance of allotment letters etc.

## 5. Scrutiny of applications.

5.1 A sub-group will scrutinize the applications on behalf of the allotment committees.

5.2. The Sub-group will consist of the following officers;

(i) Industrial Adviser/cum-Addl. Director of Industries.

(ii) Representative of M.D., PSIDC.

(iii) Representative of MD, PPC.

(iv) Concerned Joint Director/ Deputy Director from the Directorate of Industries.

(v) Nominee of the Department agency responsible for the development of industrial areas/focal points Convener.

The sub-group may co-opt any other person considered necessary.

5.3 The sub-group will examine the applications keeping in view the following:--

(a) Viability of the project.

(b) Impact of environment.

(c) Technology involved.

(d) Export: obligation undertaken.

(e) Value addition.

(f) Scope and employment.

(g) Import substitution.

(h) Qualification, experience resourcefulness and general suitability.

5.4 The sub-group will make its recommendations to the Allotment Committee having regard to the requirement of land and eligibility of applicant,

## 6. Allotment Committee

6.1 Allotment of plots except under "off-the-shell" category and discretionary

category by C.M. shall be made by an Allotment Committee consisting of the following officers :

(i) Director, Industries, Punjab, Chairman.

(ii) MD, PSIDC

(iii) MD, PSIDC

(iv) MD. PFC

(v) Industrial Adviser-cum-Addl. Director, Industries

(vi) Nominee of the Department/Agency responsible for the development of Industrial area/Industrial focal point etc.

...Member Secretary.

6.2 The decision of the Allotment Committee on applications for allotment of plots shall be final and no appeal shall lie against it.

6.3 The Allotment Committee would meet as and when required but at least once in two months.

6.4 It would devise its own procedures for conducting its business."

2. For allotment of plots in Hosiery/ Knitwear and Allied Industries Complex, Focal Point, Phase-VI, Dhandari Kalan, Ludhiana, for general category industries, the Punjab State Hosiery and Knitwear Development Corporation Ltd. (respondent No. 3 and hereinafter called the Corporation), issued advertisement and got it published in the daily newspapers. Two plots measuring 5000 sq. yards, one plot measuring 2300 sq. yards and four plots measuring 1000 sq. yards were shown to be available for the purpose of allotment. At the three petitioners and four other parties submitted their applications for allotment of the plots and deposited earnest money as required by the policy laid down by the Government of Punjab. On 23-6-1994, the Managing Director of the Corporation issued letters to the petitioners-- M/s. Bharat Wools and M/s. Hindustan Tex Industries, whereby they were conveyed about the proposal of the Corporation to allot plot nos. HAA-69 and HAA-70 respectively on 99 years leasehold basis for setting up of a unit of textiles manufacturing. The tentative price of the plot was shown to be Rs. 17,50,000/-. Both the petitioners were called upon to deposit Rs. 5.25 lacs being 30% price of the plot in addition to the amount of Rs. 3,50,000/- which the two petitioners had deposited as earnest money. Both the petitioners deposited Rs. 5.25 lacs as required by letter dated 23-6-1994. The petitioners did not get possession of the plots which were proposed to be allotted by the Corporation and, therefore, they made representations to the various authorities of the Government and the Corporation. Representations were also made by the President, Ludhiana Textile Board of which the petitioners M/s. Bharat Wools and M/s. Hindustan Tex Industries are members.

3. It appears from the record that after the issue of letter dated 23-6-1994 the

representative of M/s. Goyal Impex & Industries Limited made representation to the Managing Director of the Corporation-cum-Director, Industries, Punjab and to the Ministers, Punjab, alleging violation of the policy laid down by the Government of Punjab for allotment of industrial plots. On that application, the State Minister for Industries, Punjab called upon the Director, Industries, to place the entire record before him and at the same time, directed that the three companies be informed to appear before him for a meeting. Initially this meeting was to be held on 7-7-1994 but ultimately it was held on 8-7-1994. Thereafter, the Minister of State for Industries passed an order dt. 12-7-1994 and directed that the allotment made by the Director, Industries, without taking merit into consideration be set aside and- the Committee be directed to allot the plots within ten days. The Allotment Committee was also directed to dispose of the applications for allotment of plots keeping in view the various points indicated in the policy circulated on 24-11-1992. It further appears from the record that at one stage, the then Chief Minister of Punjab directed the allotment of plots to M/s. Bharat Wools and M/s. Hindustan Tex Industries but no order for allotment of plots was passed in favour of the petitioners. Instead, the General Manager, District Industries Centre, Ludhiana, was, directed to submit a report regarding the entitlement of the petitioners M/s. Bharat Wools and M/s. Hindustan Tex Industries. The General Manager submitted his report vide Memo No. GOK/LDH/111-A dated 26-9-1994. Thereafter, the matter remained under correspondence at different levels. Ultimately, it was considered in the meeting of the Allotment Committee held on 5-5-1995. The Committee decided that offer made to the petitioners M/s. Bharat Wools and M/s. Hindustan Tex Industries for allotment of the plots of 5000 sq. yards be withdrawn. In pursuance of this decision of the Allotment Committee, the Managing Director of the Corporation issued letter dated 8-6-1995 withdrawing the offers made to the two petitioners for allotment of plots. At the same time, the earnest money and 30% amount of the total tentative price of the plots deposited by the petitioners, were also returned by the Corporation.

4. Petitioners M/s. Bharat Wools and M/s. Hindustan Tex Industries have challenged the cancellation of the offer made to them on the following grounds:

(a) the decision taken by the Minister of State to set aside the offer of allotment made by the Managing Director of the Corporation is without jurisdiction;

(b) no notice or opportunity of hearing was given to the petitioners M/s. Bharat Wools and M/s. Hindustan Tex Industries before the Minister took the decision to set aside the offer of allotment;

(c) no material was available before the Minister or before the Allotment Committee on the basis of which a decision could be taken for withdrawal/cancellation of the offer made to the two petitioners;

(d) the impugned orders are contrary to the principles of natural justice as they do not contain any reasons;

(e) the mere fact that one or two partners are common in the new units cannot furnish a ground for withdrawal/cancellation of the offer of allotment;

(f) once the concluded contract had come into existence between the parties, it was not open to the respondent-Government or the Corporation to withdraw/cancel the allotment;

(g) the General Manager was not competent to prepare or submit a report adversely affecting the rights of the petitioners;

(h) that the decision taken in the meeting of the Allotment Committee held on 5-5-1995 is malacious and has been taken by the Allotment Committee under the pressure exerted by the State Minister; and

(i) the minutes of the Allotment Committee have been tampered with and, therefore, no reliance can be placed on the decision of the Allotment Committee.

5. Learned Counsel for the petitioners M/s. Bharat Wools and M/s. Hindustan Tex Industries placed reliance on the decision in *The State of Punjab and Others Vs. Bakhtawar Singh and Others*, ; *Capt. J. S. Gosal v. The Estate Officer, Urgan Estates, Punjab* (1994) 3 PLR 214 and in *C.W.P. No. 2677 of 1990 (Sanjeev Verma v. State of Haryana)* decided on (sic).

6. Petitioner M/s. Goyal Impex & Industries Ltd. has supported the orders passed by the Managing Director of the Corporation on 8-6-1995 on the ground that the offer of allotment made to M/s. Bharat Wools and M/s. Hindustan Tex Industries was in patent violation of the policy contained in notification dated 24-11-1992 and that the action taken by the Minister of State for Industries was fully justified in view of the patent breach of the conditions on the basis of which the Allotment Committee could take a decision for allotment. M/s. Goyal Impex and Industries has also pleaded that full opportunity of hearing was given to M/s. Bharat Wools and M/s. Hindustan Tex Industries before the Minister passed order dated 12-7-1994 and, therefore, the plea of violation of principles of natural justice is factually incorrect. It has further been pleaded by M/s. Goyal Impex and Industries Ltd. that failure of respondents 1 and 3 to take action for allotment of plots on the basis of the applications invited by the Corporation is without any reason or rhyme and is wholly unjustified. It has been averred that after the petitioner had been called upon to submit application and part with a huge amount the authorities cannot sit over the applications submitted by the petitioners and others and refrain from making allotment. Learned Counsel appearing for M/s. Goyal Impex and Industries Ltd. argued that after having made the petitioner to part with a substantial amount of money, the respondents cannot withhold the allotment of plots on merits.

7. In reply filed by it to all the writ petitions, the Corporation has objected to the maintainability of the writ petitions and has justified the order passed by the Minister of State for Industries as well as the decision taken by the Allotment Committee on 5-5-1995 to withdraw/cancel the offer of allotment made to M/s.

Bharat Wools and M/s. Hindustan Tex Industries. It has been stated by the Corporation that the applications received in pursuance to advertisement dated 19-4-1994 were scrutinised on 20-5-1994 and without any further evaluation of the comparative merits of the applicants, the Director of Industries, Punjab, who also happens to be the Chairman of the Allotment Committee passed an order for giving offer of allotment of plots to petitioner M/s. Bharat Wools and M/s. Hindustan Tex Industries Ltd. This was done on 14-6-1994 and on 26-7-1994 the matter was referred to the Allotment Committee for ex-post-facto sanction. In the meantime, the Minister of State called for the entire record and after giving opportunity of hearing to the petitioners, the Minister of State passed order dated 12-7-1994 setting aside the offer of allotment to M/s. Bharat Wools and M/s. Hindustan Tex Industries Ltd. Thereafter, the General Manager, District Industries Centre, Ludhiana, was directed to submit his report on the applications filed by M/s. Bharat Wools and M/s. Hindustan Tex Industries Ltd. and the Allotment Committee took a decision to withdraw/cancel offer of allotment after considering the report of the General Manager. Counsel appearing for the Corporation argued that the petitioner have not challenged the decision taken by the Minister on 12-7-1994 on the ground of lack of authority and, therefore, these petitioners cannot be allowed now to raise this plea at the stage of arguments. Another argument of the Learned Counsel is that no right has come to vest in the petitioner M/s. Bharat Wools and M/s. Hindustan Tex Industries and, therefore, they cannot complain of violation of principles of natural justice.

8. On the issue of maintainability of the writ petitions, Learned Counsel for the Corporation placed reliance on the decisions of the Supreme Court in *Chander Mohan Khanna Vs. The National Council of Educational Research and Training and other* [OVERRULED], and *Housing Board of Haryana Vs. Haryana Housing Board Employees Union and others*, as also two decisions of this Court in *Pritam Singh Gill Vs. State of Punjab and Others*, and in *Gurpreet Singh Sidhu and Others Vs. Punjab University, Chandigarh and Others*, and argued that the respondent-Corporation does not fall within the ambit of expression "other authorities" enshrined in Article 12 of the Constitution of India and, therefore, no writ can be maintained against it to the ground of alleged violation of the provisions of Article 14 of the Constitution of India. Learned Counsel argued that even if 100 per cent shares of the Corporation are held by the Government, it cannot be treated as an instrumentality or agency of the Government so as to be treated as "State" under the Article 12 of the Constitution of India.

9. Learned Counsel for the petitioners placed reliance on the decisions of the Supreme Court in *Mahabir Auto Stores and others Vs. Indian Oil Corporation and others*, ; *LIC of India and Another Vs. Consumer Education and Research center and Others*, and the *Consumer Education and Research center and others Vs. Union of India and others*, and argued that the respondent-Corporation is an instrumentality of the State and, therefore, the writ petitions are maintainable against it.

10. The vexed question whether a particular statutory body, a company, a society, an organisation or an institution falls within the ambit of expression "other authorities" has been debated in and outside the Courts and although the Courts have consistently made attempts to formulate broad indicia on the satisfaction of which such body could be treated as an agency/instrumentality of the State but diversity of the factual matrix of different cases has led to apparently conflicting judgments of the Apex Court as well as various High Courts. Since the attempts to formulate a straight-jacket formula have failed in each case the Court has to examine the broad features relating to composition of the body institution/ organisation/ company/ society, its functions, sources of funds and the amount of autonomy in its working in order to determine whether it can be treated as a "State" for the purposes of Article 12 and Part III of the Constitution of India.

11. In C.W.P. No. 7014 of 1994 (Mewa Singh v. Union of India) decided on 17-10-1995, a Division Bench of this Court referred to the decisions of the Apex Court in Rajasthan State Electricity Board, Jaipur Vs. Mohan Lal and Others, ; Sukhdev Singh, Oil and Natural Gas Commission, Life Insurance Corporation, Industrial Finance Corporation Employees Associations Vs. Bhagat Ram, Association of Clause II. Officers, Shyam Lal, Industrial Finance Corporation, ; Ramana Dayaram Shetty Vs. International Airport Authority of India and Others, ; Managing Director, Uttar Pradesh Warehousing Corporation and Another Vs. Vijay Narayan Vajpayee, ; Ajay Hasia and Others Vs. Khalid Mujib Sehravardi and Others, ; B.S. Minhas Vs. Indian Statistical Institute and Others, ; P.K. Ramachandra Iyer and Others Vs. Union of India (UOI) and Others, ; A.L. Kalra Vs. Project and Equipment Corporation of India Ltd., ; Central Inland Water Transport Corporation Limited and Another Vs. Brojo Nath Ganguly and Another, ; Star Enterprises and Others Vs. City and Industrial Development Corporation of Maharashtra Ltd. and Others, ; Lamba Industries v. Union of India, (1992) 2 SCC 407 ;Delhi Transport Corporation v. D.T.C. Mazdoor Congress AIR 1991 SC 101; M/s. Hyderabad Commercials Vs. India Bank and others, ; U. P. Financial Corporation v. Gem. Cap. (India) Pvt. Ltd. AIR 1993 SC 1435 ; Bharat Petroleum Corpn. Ltd. Ex-Employees Association and others Vs. Chairman and Managing Director, Bharat Petroleum Corpn. Ltd., Bombay and others, ; Mahesh Chandra Vs. Regional Manager, U.P. Financial Corporation and others, ; Dr. S.M. Ilyas and Others Vs. Indian Council of Agricultural Research and Others, ; Tekraj Vasandi alias K.L. Basandhi Vs. Union of India (UOI) and Others, ; Chander Mohan Khanna Vs. The National Council of Educational Research and Training and other[OVERRULED], ; Unni Krishnan, J.P. and others Vs. State of Andhra Pradesh and others etc. etc., ; and L.I.C. of India v. Consumer Education and Research Centre held that the Haryana" State Council for Child Welfare which is a society registered under the Societies Registration Act and which has been created for implementing the social obligation of the State incorporated in Part IV of the Constitution of India and which is funded by the Government up to the extent of 90 per cent and which functions under the

control of the Government and its functionaries falls within the scope of the expression "other authorities" under Article 12 of the Constitution of India.

12. The judgments of this Court in *Pritam Singh v. State* turned on their own facts and in the face of the long strides which the Judge made law has made during the last more than one decade, the issue as to whether a particular body falls within the purview of Article 12 or, no", cannot be decided on the basis of old no, ns. When even private aided and un aided educational institutions have been brought within the reach of the power of judicial review vesting in the Supreme Court and the High Courts, it is difficult to countenance as to how a body which has been created by the Government and which functions under the deep and pervasive control of the Government does not fall within the definition of other authorities."

13-14. The respondent-Corporation is a company incorporated under the Companies Act, 1956. It would be profitable to refer to the Memorandum of Association of the Corporation. Part III of the Memorandum of Association refers to the objects for which the Company came to be established, a few of them are reproduced below:--

1. To develop, promote and encourage Hosiery and Knit-wear industry with or without foreign collaboration, assistance or aid and to purchase, sell, import, export or to otherwise deal in all types of hosiery and knitwear products including furnishing fabrics and garments in India or elsewhere in the world;
2. To introduce new designs and procure latest technology with the aid of State agency or Government of India or from abroad and pass it on to local hosiery and knit-wear industry;
3. To educate, train, experiment, explore and otherwise advance scientific knowledge about hosiery, knit-wear and things of allied nature for the promotion, development and encouragement of various artisans engaged in the hosiery and knit-wear industry;
4. To develop, promote, encourage and explore the business of cotton and wool and for that purpose to own, turn, and manage farms to breed sheep, cattle and other animals and also to carry on the business as sheep-breeders;
5. To undertake the payment of all rent and the performance of all covenants, conditions and agreements, contained in, and reserved by any lease that may be granted or assigned to, or be otherwise acquired by the Company and to purchase the reversion or reversions or otherwise acquire the freehold or all or any part of the leasehold lands and buildings for the time being the property in the possession of the Company;
6. To develop and turn to account any land acquired by the Company or in which it is interested, and in particular by laying out and preparing the same for building purpose, constructing, altering, pulling down, decorating, maintaining, furnishing, fitting up and improving buildings and by planting, paving, draining,

farming, cultivating, letting building on leave or building agreement and by advancing money to and entering into contracts and arrangements of all kinds with builders, tenants and others; in connection with the business of the Company.

The share capital of the Company was initially indicated to be Rs. 2.50 crores divided into 25,000 Equity shares of Rs. 1000/- each and it is not in dispute that the entire share capital of the Company is held by the Government of Punjab. In para. 2(iii) of the Articles of Association, the Governor and the Government have been defined to mean the Governor and Government of Punjab. The Governor and the Government Punjab have deep and pervasive control over the functions of the Corporation as would appear from Paras 8, 19 to 27, 29, 31, 46, 52, 53, 61 and 76. Para 8 of the Articles of Association provides that the shares shall be under the control of the Board of Directors, who may allot or otherwise dispose of them on such terms and conditions as it considers fit, subject to such directions as the Governor may issue from time to time. As per para 19, the right of the members to transfer their shares shall be restricted to a person approved by the Governor. The Board of Directors can increase the share capital subject to the approval of the Governor. The right of the company to issue new shares is subject to the direction which may be issued by the Governor. Similarly, reduction in the shares can be done by the Corporation as per para 23 subject to the provisions of Sections 100 to 104 of the Companies Act and subject to such conditions as may be issued by the Governor. Sub-division and consolidation of the shares is also permissible under para. 24 subject to the approval of the Governor. Rights and privileges attached to the shares can be modified with the approval of the Governor. The Company has power to borrow or secure payment of sums of money as may be sanctioned by the Governor in terms of para. 26. The Board of Directors is authorised to secure repayment of money subject to the approval of the Governor. The Company is also authorised to issue debentures/debenture-stock, bonds or other securities at a discount, premium or otherwise subject to the approval of the Governor. In terms of para. 31, the Governor is empowered to call an extraordinary general meeting of the Board of Directors. Para. 45 empowers the Government to determine the number of Directors of the Corporation. Under para. 46, the power to make payment of salary etc. to the Directors vests with the Government. The only proviso to this para is that two ex-officio Directors are to be appointed from the Industries Department. The power to appoint Chairman/ Vice-Chairman/ Managing Director/ Whole-time Directors vests with the Governor. The power to remove a Director from the office also vests with the Governor. The Governor is also empowered to fill in a vacancy in the office of the Director caused by removal, resignation, death or otherwise. By virtue of para. 47(iii), the power of the Board to create posts carrying salary exceeding Rs. 1500/- is subject to the approval of the Government and pay scales of the staff of the Corporation (except technical) are identical to the pay scales admissible to the Punjab Government Staff. Para. 47(ix) empowers the Corporation to give Commission the profits of any particular

business transaction or as share in the general profits of the Corporation subject to the approval of the Government. In terms of para. 47(xiii) the Corporation can establish, maintain, support and subscribe to any charitable, public or useful object or any institution, society or club or fund for the benefit of the Corporation or its employees but where the sum involved is more than Rs. 25,000/- prior approval of the Government is necessary. In terms of para. 48, the Governor has been given full powers to issue such directions or instructions as may be considered necessary in regard to the conduct of business affairs of the Corporation and such directions or instructions are to be implemented by the Corporation. Para. 53 of the Articles of Association makes it obligatory for the Chairman to reserve for the decision of the Government or approval of the Board or any Committee which, in the opinion of the Chairman, is of such importance as is necessary for approval of the Governor. Declaration of dividend by the Corporation is to be made subject to such directions as may be issued from time to time by the Governor (para. 61). Para. 76 empowers the Central Government to appoint Auditor or Auditors of the Corporation and this power is to be exercised by the Central Government on the advice of the Comptroller and Auditor General of India.

15. From the afore-mentioned survey of the provisions of Memorandum of Association and Articles of Association, it is more than evident that in order to give boost and encourage the hosiery and knit-wear industry in the State and thereby provide and bring a source of employment to the unemployed youth of the region and at the same time, earn revenue in foreign currency, the State Government has delegated its functions to the Corporation. What could have been done by Industries Department is being done by the Government through the medium of the Corporation. The fact that after acquiring the land for industrial development the Government places it at the disposal of the Corporation for the purpose of allotment etc. goes to show that the Corporation acts nothing but as an agency of the Government. Holding of entire share capital by the Government and its deep and pervasive control, direct and indirect, in all the activities of the Corporation buttresses the finding that the respondent Corporation is an agency/instrumentality of the State.

16. The two judgments of this Court relied upon by Shri Sobti do not help the case set up by the respondent-Corporation. Those two judgments will have to be read as confined to the facts of those cases and they can be treated as laying down law contrary to the law declared by the Supreme Court. Similarly, the two judgments of the Supreme Court do not in any manner help the cause of the respondents. Rather the judgment in Haryana. Housing Board's case AIR 1995 SCW 4291) (supra) goes against the point canvassed by Shri Sobti.

17. On the basis of the above discussion, it is held that the Corporation is an agency/ instrumentality of the State and is amenable to writ jurisdiction.

18. Now, I shall deal with the various points raised by Shri Brar, learned counsel for petitioners-- M/s. Bharat Wools and M/s. Hindustan Tex Industries in support

of their challenge to the order dated 8-6-1995.

19. In the first place, I shall deal with the argument of the learned counsel for the petitioners with regard to the jurisdiction of the Minister of State for Industries to set aside the offer of allotment made to the two petitioners. Learned counsel argued that in view of the policy formulated by the Government for allotment of plots, the Minister of State was not authorised to interfere with the decision taken by the Allotment Committee. In my opinion, this argument is wholly misconceived. The policy contained in the notification dated 24-11-1992 is not statutory in character. That circular reflects an administrative decision taken by the Government to achieve the objective of the industrial growth of the State. At the best, it can be termed as an executive decision of the Government and it is a well settled proposition of law that where the Government delegates its executive function to any particular officer or authority, it is not denuded of the plenary power to carry on that executive function. The power of the Government to interfere in such matters always subsists. Therefore, merely because the Government has chosen to issue guidelines for allotment of plots through agency of the Allotment Committee, it cannot be said that the Government has deprived itself of the authority to interfere in such matters where the decision taken by the delegatee is found to be arbitrary, unreasonable, unjustified or contrary to the constitutional provisions or public interest. The Minister of the State for Industries is the incharge of the Department of Industries and as per the Rules of Business, he has every right to supervise the function of his department and to take corrective measures where the officials who are his subordinate commit any irregularities. It cannot, therefore, be said that the Minister exceeded his authority in issuing direction on 12-7-1994 to set aside the offer of allotment made to the two petitioners.

20. The argument of the learned counsel regarding violation of the principles of natural justice is based on a factually incorrect premise. From the record which has been produced before the Court by the learned Assistant Advocate General as well as the learned counsel for the Corporation it is clearly revealed that after receipt of the representative made by M/s. Goyal Impex and Industries, the Minister of State for Industries issued a direction on 8-6-1994 to the Director of Industries to place the entire record before him. After examining the record, the Minister issued direction for a notice being served upon M/s. Bharat Wools and M/s. Hindustan Tex Industries as well as M/s. Goyal Impex and Industries. All the petitioners appeared before the Minister. He then considered their submissions and came to the conclusion that the Chairman of the Allotment Committee was not authorised to make allotment of the plots at his own level and that he ignored the merits while making allotment of plots. He, therefore, directed that the decision of the Director of Industries be set aside and the Allotment Committee be directed to take decision with regard to the allotment of the plots within ten days. He also directed that the Allotment Committee shall keep in view the various points enumerated in the policy framed by the Government. In view of the fact that the decision was taken by the Minister after giving notice to all

the parties, the plea of the petitioners regarding violation of the principles of natural justice cannot but be termed as wholly untenable.

21. The argument of Shri Brar that neither the Minister nor the Allotment Committee was possessed with any material on the basis of which they could decide to cancel the offer of allotment and, therefore, their decision should be declared arbitrary, is also without substance. It has been clearly established from the record produced before the Court that the Director of Industries-cum-Chairman, Allotment Committee, had issued directions for sending of offer of allotment to the petitioners M/s, Bharat Wools and M/s. Hindustan Tex Industries without scrutiny of the applications by the Sub-Group and without recommendation of the Allotment Committee. It must, therefore, be held that the very action of the Chairman, Allotment Committee-cum-Director of Industries, ordering for offer of allotment of plots to the two petitioners suffered from patent arbitrariness and, therefore, setting aside of that decision by the Minister and the subsequent action taken by the Allotment Committee to withdraw the offer of allotment cannot be termed as arbitrary or unreasonable nor can it be said that the two authorities acted without application of mind.

22. No doubt, the letters dated 8-6-1995 do not contain detailed reasons so as to be categorised as a speaking order but such administrative decisions which pertain to the realm of contract or quasi contract, the absence of reasons cannot ordinarily be made the sole ground for nullifying the same. The allegation of violation of principles of natural justice in these types of cases have to be examined in the light of the nature of right which may have come to vest in a party, the nature of transaction and the operating reason for the decision. All these factors will have to be considered for deciding whether the absence of reasons in the order vitiated the final decision. In the present case, no concluded contract had come in existence between the parties. What was done by the Director, Industries-cum-Chairman, Allotment Committee-cum-Managing Director of the Corporation, was nothing more than to send a communication to the petitioners proposing allotment of plots measuring 5000 sq. yards each. The petitioners did comply with the conditions enumerated in letter dated 23-6-1994, but, no letter of allotment was issued to either of the petitioners. Therefore, no right came to vest in the petitioners M/s. Bharat Wools and M/s. Hindustan Tex Industries. No lease agreement was executed in their favour and the petitioners were not called upon to deposit the total price of the plots. Possession of the plots had also not been transferred to the petitioners. Therefore, it can at the best be said in favour of the petitioners that they were made to part with some money in the expectation of allotment of plots. Such an expectation cannot be equated with a concluded contract or a vested right so as to entitle the petitioners to complain of violation of principles of natural justice on the ground that the letters dated 8-6-1995 do not contain reasons. Moreover, from the facts which have come on record it is clearly proved that the Director, Industries, Punjab-cum-Chairman, Allotment Committee, cum-Managing Director of the Corporation had shown favour to the two petitioners in complete disregard of the

guidelines issued by the Government. The officer concerned thought that he was law unto himself and he can assume the functions of the Sub-Group as well as the Allotment Committee. If the Minister of State for Industries had not intervened, the two petitioners would have reaped the benefit of a virtual fraud played by the Director of Industries on the Constitution as well as the public interest. Even the learned Assistant Advocate-General as well as the counsel appearing for the Corporation could not advance any reason as to why the Director of Industries had directed to issue the letter of offer of allotment even without any report of the Sub-Group which was required to look into various factors indicated in para. 5.3 of the notification dated 24-11-1992. I, therefore, hold that the impugned letters dated 8-6-1995 cancelling the offer of allotment of plots to the two petitioners are not vitiated on account of violation of principles of natural justice or arbitrariness.

23. The contention of Shri Brar that the General Manager, District Industries Centre, Ludhiana, was not competent to submit a report and there has been interpolation in the minutes of the meeting of the Allotment Committee held on 5-5-1995 does not have any substance. So far as the report of the General Manager is concerned, it can at the best be treated as a fact finding report. That report merely furnished the motive for the ultimate decision taken by the Allotment Committee. The original minutes of the meeting of Allotment Committee have been produced before me and after going through the same, I find that writings have been made by the Director, Industries-cum-Chairman of the Allotment Committee himself and by none else. The petitioners have not alleged any mala fides against the officer concerned and even if there were such allegations it would have been difficult for the Court to accept the same. The same very officer had at one time, gone out of the way to help the petitioners-M/s. Bharat Wools and M/s. Hindustan Tex Industries. It cannot, therefore, be said that in the written note of the meeting of the Allotment Committee there is any interpolation made by the Director, Industries, Punjab, with oblique motive.

24. Before leaving this part of the judgment, I deem it absolutely necessary to observe that these cases are typical examples of usurpation of power vesting in a body of persons by one individual and abuse thereof. As per the guidelines issued by the Government vide notification dated 24-11-1992, the allotment was to be made by the Allotment Committee on the basis of report of the Sub-Group which, in turn, is bound to consider the various factors specified in para. 5.3 of the guidelines before making any recommendation. Compliance of various steps provided in the guidelines ensures fairness in the process of allotment and eliminates possibility of arbitrariness by one individual. However, what has happened in reality that one individual, namely, the Director, Industries, Punjab-cum-Chairman, Allotment Committee, took over the function of the Sub-Group as well as the Allotment Committee. He converted himself into sole repository of power and made offers of allotment whimsically and arbitrarily. He epitomised the powers of all and misused it to favour M/s. Bharat Wools and M/s. Hindustan Tex Industries. His action is nothing but reiteration of the famous doctrine often

used for exercise of political power, namely, that the "power tends to corrupt and absolute power tends to corrupt absolutely". The Director of Industries acted as if he was law unto himself and as if Article 14 of the Constitution of India did not exist.

Now, I shall deal with the argument of Shri Mahajan that the Allotment Committee has no right to withhold consideration of the application submitted by the petitioner-M/s. Goyal Impex and Industries. Learned counsel submitted that once an advertisement has been issued for inviting applications for allotment of plots and the petitioner has been made to part with a substantial money it is not permissible for the Allotment Committee to withhold consideration of its application and thereby deny allotment of plot to the petitioner. Elaborating his argument, Shri Mahajan submitted that the applicants who had applied in pursuance to the advertisement issued in the year 1994 constituted a group which became entitled to be considered for allotment of plots to the exclusion of other and, therefore, a mandamus should be issued to the respondent-Government and the Corporation to consider applications submitted by the petitioners and six others to the exclusion of anybody else. Learned counsel submitted that as per the decision taken by the State Minister for Industries, it was the duty of the Allotment Committee to have processed the applications keeping in view the guidelines laid down by the Government and then taken a decision for allotment of plots, but, the Allotment Committee has kept silent after taking a decision on 5-5-1995 to cancel/ withdraw the offer made to the petitioners-M/s. Bharat Wools and M/s. Hindustan Tex Industries. Shri Sobti appearing for the Corporation submitted that no further action could be taken for allotment of plots in view of the interim order passed by this Court and any such action can be taken by the Corporation only after the decision of the writ petitions.

25. I have given my thoughtful consideration to the rival contentions. This Court did grant stay against allotment of plots and due to that no action could be taken by the Allotment Committee for allotment of plots to any one. However, I do not find any merit in the contention of Shri Mahajan that the Allotment Committee or the Corporation or for that reason the Government should be bound down to restrict the zone of consideration to limit to the parties who had applied in the year 1994. A period of more than one year and six months has elapsed since the issue of advertisement inviting applications for allotment of plots. The prices of the land have increased substantially. Therefore, it would be wholly unreasonable to exclude new competitors from the zone of consideration and force the respondents to allot the plots only from amongst those who had applied in the year 1994 and that too on the prices enumerated in the advertisement dated 8-6-1994. In such contractual matters, what is more important is the element of public interest and the public interest warrants that the Government and the Corporation get maximum price and the most competent entrepreneur is given opportunity to set up/expand industry. Therefore, there is no reason for compelling the respondents to make allotment of plots only from amongst the

seven applicants who had applied in the year 1994.

26. There is another reason why such direction does not deserve to be given. One of the factors which is required to be examined by Sub-Group and Allotment Committee relates to impact of environment. Learned counsel for the parties are in agreement that the city of Ludhiana and nearby areas where the allotment of plots is to be made in one of the most polluted cities in the country. The rate of environmental pollution in Ludhiana is highest in the State of Punjab. It would, therefore, be in larger public interest that the "Government is directed to take suitable measures for protecting environment from different kinds of pollution before it permits setting up of new industries or allowing expansion of existing industries. The provisions contained in the Water (Prevention and Control of Pollution) Act, 1974; the Air (Prevention and Control of Pollution) Act, 1981 and the Environment (Protection) Act, 1986 if followed in their letter and spirit will go a long way to save the environment. It would, therefore, be proper to direct the Government to first examine the requirements of the provisions contained in the aforesaid Acts and incorporate appropriate provisions in the notification dated 24-11-1992 before allotment of plots is made.

27. Before concluding, I shall deal with another argument of Shri Mahajan that petitioner M/s. Goyal Impex and Industries has a legitimate expectation of getting a plot and by the impugned action it shall stand deprived of that right. In my opinion, the petitioner's case which is based on doctrine of "legitimate expectation" cannot be upheld.

28. In Food Corporation of India Vs. M/s. Kamdhenu Cattle Feed Industries, , the ambit and scope of the doctrine of "legitimate expectation has been considered by the Supreme Court. That was a case in which the Food Corporation of India had invited tenders for stocks of foodgrains in accordance with the terms and conditions contained in the tender notice. The bid given by the respondent was the highest. The Corporation did not accept the highest bid. At the stage of negotiations, an offer of higher amount was made to the Corporation. The respondent challenged the refusal of the Corporation to accept the highest bid on the ground that once the Corporation had invited tenders it could not thereafter dispose of the damaged foodgrains by subsequent negotiations. The High Court accepted the contention of the respondent. While reversing the decision of the High Court, their Lordships of the Supreme Court rejected the claim of the respondent founded on the "legitimate expectation" and observed as under (at p. 1604 of AIR):--

"Whenever the question arises, it is to be determined not according to the claimant's perception but in larger public interest wherein other more important considerations may outweigh what would otherwise have been the legitimate expectation of the claimant."

29. Similarly, in Union of India and others Vs. Hindustan Development Corpn. and others, , the Supreme Court considered the ambit and scope of the doctrine

of "legitimate expectation" and held as under (at pp. 1019 to 1021 of AIR):--

"Legitimate expectation gives the applicant sufficient locus standi for judicial review. The doctrine of "legitimate expectation is to be confined mostly to right of a fair hearing before a decision which results in negating a promise or withdrawing an undertaking is taken. The doctrine does not give scope to claim relief straightway from the administrative authorities as no crystallised right as such is involved. The protection of such legitimate expectation does not require the fulfilment of the expectation where an overriding public interest requires otherwise. In other words where a person's legitimate expectation is not fulfilled by taking a particular decision then decision-maker should justify the denial of such expectation by showing some overriding public interest. Therefore, even if substantive protection of such expectation is contemplated that does not grant an absolute right to a particular person. It simply ensures the circumstances in which that expectation may be denied or restricted. ....

A case of legitimate expectation would arise when a body by representation or by past practice aroused expectation which it would be within its powers to fulfil. The protection is limited to that extent and a judicial review can be within those limits. A person who bases his claim on the doctrine of legitimate expectation, in the first instance, must satisfy that there is a foundation and thus he has locus standi to make such a claim.....

If a denial of legitimate expectation in a given case amounts to denial of right guaranteed or is arbitrary, discriminatory, unfair or biased, gross abuse of power or violation of principles of natural justice, the same can be questioned on the well-known grounds attracting Article "14 but a claim based on mere legitimate expectation without anything more cannot ipso facto give a right to invoke these principles. ....

It follows that the concept of legitimate expectation is "not the key which unlocks the treasury of natural justice and it ought not to unlock the gates which shuts the Court out of review on the merits", particularly when the element of speculation and uncertainty is inherent in that very concept. The Courts should restrain themselves and restrict such claims only to the legal limitations."

30. The ancillary argument of Shri Mahajan regarding the doctrine of "promissory estoppel" also deserve to be disposed of shortly. What Shri Mahajan wanted the Court to hold that a promise was made by the Government to consider the application of the petitioner to the exclusion of others and, therefore, that promise should be enforced against the Government in view of the fact that the petitioner had deposited a substantial money by way of earnest money. This contention deserves to be rejected on the short ground that the Government did not hold out any promise to the petitioner that it would necessarily allot a plot of land to it. By inviting applications, the Government simply invited the individuals to come in a queue for competition. No right much less a vested right came to exist in favour of the petitioner on the basis of simple making of an application.

The promissory estoppel cannot in such circumstances be applied with justification to debar the Government to take a decision in the larger public interest.

31. In *Kasinka Trading v. Union of India* their Lordships of the-Supreme Court have reviewed the case law on the issue of "promissory estoppel" and have held as under:--

"To put it simply, the doctrine represents a principle evolved by equity to avoid injustice. The basis of the doctrine is that where any party has by his word or conduct made to the other party an unequivocal promise or representation by word or conduct, which is intended to create legal relations or effect a legal relationship to arise in the future, knowing as well as intending that the representation, assurance of the promise would be acted upon by the other party to whom it has been made and has in fact been so acted upon by the other party, the promise, assurance or representation should be binding on the party making it and that party should not be permitted to go back upon it, if it would be inequitable to allow him to do so, having regard to the dealings, which have taken place or are intended to take place between parties.

.....In our opinion, the doctrine of pro-misory estoppel cannot be invoked in the abstract and the Courts are bound to consider all aspects including the results sought to be achieved and the public good at large, because while considering the applicability of the doctrine, the Courts have to do equity and the fundamental principles of equity must for ever be present to the mind of the Court, while considering the applicability of the doctrine. The doctrine must yield when the equity so demands if it can be shown having regard to the facts and circumstances of the case that it would be inequitable to hold the Government or the public authority to its promise, assurance or representation."

It is, thus, held that the petitioner M/s. Goyal Impex and Industries is not entitled to any relief.

32. For the reasons stated above, the writ petitions are dismissed subject to the following directions:--

(i) The respondent-State of Punjab is directed to incorporate appropriate provisions in the notification dated 24-11-1992 for compliance of the provisions of Water (Prevention and Control of Pollution) Act, 1974; The Air (Prevention and Control of Pollution) Act, 1981 and the Environment (Protection) Act, 1986, by the new industries which are set up in the State. The Government should make a provision requiring new industries to comply with the provisions of the aforesaid three acts as a condition precedent to the allotment of plots. This should be done by the Government within a period of three months of receipt of a copy of this order.

(ii) Thereafter fresh applications should be invited for allotment of the disputed plots and allotment be made strictly according to the recommendations made by

the Sub-Group and the Allotment Committee.

(iii) The Government should issue specific instructions directing that the Chairman of the Allotment Committee or for that reason any other member of the Allotment Committee shall not make any allotment/offer of allotment of plots to any applicant without the recommendations of the Sub-Group.

Parties are left to bear their own costs.

33. Order accordingly.