

(1994) 08 KL CK 0007

In the High Court Of Kerala

Case No : W.A. No. 1466 of 1993 and O.P. 13251/93

Renuka Jayapal and Another

APPELLANT

Vs

Kerala State Housing Board

RESPONDENT

Date of Decision : 25-08-1994

Acts Referred:

Kerala State Housing Board (Allotment of House or Site and Constitution of Committees) Regulations, 1976 — Regulation 12

Citation : (1994) 08 KL CK 0007

Hon'ble Judges : V.V. Kamat, J;M.M. Pareed Pillay, J

Bench : Division Bench

Advocate : P. Sukumaran Nair, Thottathil B. Radhakrishnan and N. Nandakumara Menon, for the Appellant; Rajan Joseph and George Poonthottam, for the Respondent

Judgement

V.V. Kamat, J.—The concept of the State has changed radically in recent years and it could no longer be looked upon as "a coercive machinery wielding the thunderbolt of authority." The State is expected to undertake and render services for the welfare of the people. The State is an abstract agency and acts through its instrumentalities and agencies of natural or juridical persons. The parameters of statutory and also executive powers fall in the spheres of constitutional as also administrative law and assume special and wide significance in modern welfare state which is committed to egalitarian values and is dedicated to the rule of law. As the regulator and dispenser of benefits and special services, the activities of the state and public authorities thereunder represent one important and special feature; the authority must be rigorously held tight to the standards by which it professes to be judged and any deviation would inevitably and necessarily render acts of the authorities invalid. To provide for the organised direction and planning in the preparation and execution of housing and improvement scheme, the Kerala State Housing Board Act 1971 was enacted. The Housing Board is a Body Corporate with perpetual succession and a common seal. The Board functions through its committees in accordance with the

provisions of Chapters V and VI of the Act and housing - improvements schemes are prepared and executed under Chapter VII of the Act. Section 55 of the Act provides for publication of a sanctioned scheme. Then it is to be executed and implemented for the requirement of the people. The provisions of the Act are implemented by rules and regulations made u/s 161 and 162 of the Act. For the purposes of the present proceedings, reference to power to make Regulations (Section 162) would be sufficient. For the purpose of giving effect to the provisions of the Act, regulations are made for the management, reservation in allotment, use and regulation of dwelling house and plots under any housing and improvement scheme, u/s 162(2)(h) of the Act. This requires approval and confirmation by the State Government [See Section 162 (3)].

2. The Kerala State Housing Board (Allotment of House or site and Constitution of Committees) Regulations 1976 (hereinafter referred to as the "Rules") are enacted under Notification dated 8.4.1976 for regulating the procedure for allotment of houses and sites under any schemes of the Board. The regulations are approved and confirmed by the State Government, u/s 162(3) of the Act. The regulations enact the basis of allotment in Regulation No. 12 in the following provision:

12. Basis of allotment of houses of sites:

In order to ensure that there is a fair and equitable distribution of houses or sites in any scheme among the different classes of citizens houses or sites may be reserved for any of the following groups in each general scheme, according to the percentages indicated below. The percentages will be observed in the allotments to be made among the eligible applicants and will be subject to the preferences mentioned in Regulation II. If in any general scheme, sufficient number of applicants belonging to any of the groups for which percentages have been prescribed in these regulations are not available, the houses or sites left over within the percentages specified may be transferred to the general pool and/or any suitable other pool and allotted among the applicants in that pool. The houses or sites not covered by any of the categories mentioned below will form the general pool. The allotment will be made by the committee by drawing lots from among the eligible applicants.

- a) For scheduled castes and scheduled tribes 20% of the houses or sites.
- b) Public servants (Central, State and Local Authorities)
 - i) In Trivandrum city and neighbourhood 30%
 - ii) In Cochin and Calicut cities and neighbourhood 20%
 - iii) The rest of the State 10%
- c) Ex-serviceman and servicing personnel and persons retired from public service 8%.
- d) Persons belonging to the learned professions who are either self employed or

are in private service (Doctors, Lawyers, Nurses, Teachers, Engineers etc.) - 8%

e) Persons employed in commercial firms, public and private sectors of industry, banks, etc.

i) In Trivandrum city and neighbourhood - 15%

ii) In Cochin and Calicut cities and neighbourhood - 20%

iii) In Quilon, Alwaye, Kottayam, Trichur, Cannanore, Municipalities and neighbourhood - 15%

iv) In other areas of the State - 10%

f) 5% of the total number of plots in Boards scheme areas shall be reserved as employees quota provides there is sufficient demand from the employees

g) To meet the problems of special cases which may not satisfy any of the above criterion, but will satisfy the conditions laid down under the various kinds of schemes, the Chairman may allot in his personal discretion not more than 10% of the houses sites in and schemes.

h) The allotment committee may also prepare a waiting list of eligible applicants for each category or in general, in relation to a particular scheme in a locality upto 50% of the total number of houses or sites that may be available on surrender or with drawals by allottees subsequently. The persons in the waiting list will be informed about this and in case they apply for the houses or sites in any other schemes they should mention this fact in the application for that scheme.

The Regulation statutorily answers guarantee of fair and equitable distribution of houses or sites and carefully provides for percentages to be observed.

We now proceed for acquaintances of factual matrix.

3. The two proceedings relate to a travail of two citizens of Trivandrum city - Renuka Jayapal and N. Viswanathan (Petitioners in O.P. No. 14015/92 - appellant in W.A. No. 1466 of 1993 and O.P. No. 13251 of 1993 respectively) from 1980 for one of the three irreducible of human wants - a permanent shelter.

4. The Board floated an approved and confirmed advance registration scheme for allotment of house plots/plots with buildings and flats, under Notification dated 19.2.80. (Ext. P1 - O.P. 14015/92). The necessary details for the purpose of decision of these proceedings are (1) Registration Clause 2, (2) Particulars of registration of list (t) & (g) and (3) Eligibility for Allotment Clause 4(c) and (4) Choice as per clause 6: and they are reproduced as follows:

1. Registration:

a) Any person interested in getting a house plot/plot with building/flat apartment in cities, towns and other urban centres listed in Annexure A may register his

name with the Kerala State Housing Board.

b) The registration fee will be as follows:-

i) House plots:

1) Plots of size of 50m² to 150m² Rs. 5/m²

2) Plots of size above 150m². But below 500m² 100m² (Registration can be made for areas of 50m², 100m², 150m² or multiplies of 50m² up to 500m².)

The registration fee for house plots need be only 80% of the specified amount in the case of major municipalities, and 60% in other municipal towns and urban centres).

ii) Plot with buildings:

In addition the registration fee fixed for land as in Clause IIb (i) above the following registration fee will also be levied for registration for plot with building.

1) Building having a plinth area upto 30m² Rs. 25m²

2) Building having plinth area of above 30m² but below 80m² Rs. 50m².

3) Building having plinth area of above 80m² below 150m² Rs. 100m²

(Registration can be made for areas of 30m², 40m², 50m² or for multiples of 10m² up to 150m²).

iii) Flats (Apartments)

1) Flats having a plinth area, upto 30m² Rs. 30m²

2) Flats having a plinth area of above 30m² but below 80m² Rs. 60m²

3) Flats having a plinth area of above 80m² but below 120m² Rs. 100m²

(Registration can be made for areas of 30m², 40m², 50m² or fir multiples of 10m² up to 120m²)

2.f) There will be separate registration lists, for fixing the priority for each city/ town or urban centres. But there will not be separate category wise registration list for house plots/plots with buildings/flats (partments)

g) The registration will be in the order of the receipt of the application for registration in the office. Application for registration not accompanied with the required registration fees will not be considered. If more than one application is received by the Regional Engineer on the same day for registration for allotment of house plot/plot with building/or flats (apartment in same city/town or urban centre, priority for registration will be fixed taking into consideration the date of the demand draft.

3.4(c) 75% of the house plots/plot with building/flat (apartment) will be allotted the registrants who have applied for allotment in the particular urban centre in

the order of priority of registration. Out of the balance 25%, 10% will be reserved for allotment among registrants belonging the scheduled caste/tribes, Defence and Ex-services personnel and 5% to the employees of the Housing Board in the order of registration among such categories. The remaining 10% will be reserved for allotment by the Chairman of the Kerala State Housing Board a per his discretion from among those who have registered their names prior to the date of announcement of the schemes.

4. Choice of House Plots/plot with Buildings/flats (apartments). Priority of registration will count for allotment of particular house plot/plot with building/flat (apartments). But the house plot/plot with building/flats (apartments) reserved under the Chairman's quota will be allotted according to the discretion of the chairman.

b) A date and time will be fixed by the Regional Engineer and intimated to the selected applicants for finalising the choice of house plots/plot with buildings/flats (apartments).

c) If an applicant is not satisfied with the house plots/plots with building/flats (apartments) available for his selection he will be free to withdraw his application. If the selected applicant fails to intimate his choice on the date fixed for the same it would be deemed that he has withdrawn his application under the particular scheme.

5. If the above provisions of the Act, Rules, Regulation Notification are considered cumulatively for the purpose of their application to the factual matrix, the following aspects float on the surface:

A) An organised direction and planning in the preparation and execution of the housing schemes has to be presumed in exercise.

B) A scheme requires prior approval and confirmation and its sanction requires prior publication in matters of all necessary details.

C) For the purpose of giving effect to the provisions of the Act to provide for the management, reservation in allotment, use and regulations and notifications can be legally issued.

D) As far as the advance registration scheme is concerned, the Notification dt. 19.2.80 (Ext. P1 - O.P. 14015/92) provides for registration, registration lists, eligibility for allotment and choice and in regard thereto particulars legally specified are:

i) Although separate registration regarding plots, plots with buildings and flats (Apartment) is provided; separate registration list for fixing priority only relates to each city/town or urban area and it is specified that no separate category wise list would be in existence.

ii) 75% would be allotted to the registrants in order of priority of registration. Out of 25% 10% to SC/ST categories; 5% to employees of the Board in order of

registration and 10% for Chairman's quota: and that to from amongst the registrants prior to the date of announcement of the scheme. Those who are not registered as above cannot get consideration under the Chairman's Quota. Any other category for reservation also gets ruled out of consideration.

iii) Priority of registration will only count for allotment ordinarily and even the chairman's quota cannot travel beyond the registrants.

E) Additionally, apart from the provisions of Notification, the provisions of Clause 12 of the Kerala State Housing (Allotment of House or site and Constitution of Committees) Regulations, 1976 make the provision crystal clear. It regulates as under.

(reproduced in para 3 above)

The regulations further reinforces that fair and equitable distribution of houses or sites in any scheme among the different classes of persons has to be ensured. The Conditions of the Regulations are obligatory for strict enforcement, and permit no deviation in regard thereto in any manner and also on any occasion.

F) These provisions clearly rule out any justification either by the State Government or by the Board to introduce afresh anyone out of the array or interpolate any new category of reservation prospectively for insertion to the legal detriment of the registrants.

6. Under the advance registration scheme floated by the Notification dated 19.2.1980 in the commercial-cum-residential complex - Pattom, known as Pattom Housing Scheme, Smt. Renuka Jaipal (Petitioner in O.P. 14015/92 and Appellant in W.A. No. 1466 of 1993) and Mr. N. Viswanthan (Petitioner in O.P. No. 13251 of 92) both applied on 2.5.80 with seniority 2137 and serial No. 161 respectively. Nothing moved further till 1991 (eleven years thereafter). Both the petitioners were, on completion of construction sometime in March 1991, informed in May 1991 to attend the meeting on May 20, 1991 for allotment. Before the said date, they were again informed of the adjournments twice, ultimately intimating indefinite postponement.

7. The commercial-cum-residential complex, Pattom, consists of two blocks, viz., Block "A", with 8 flats (apartments) and Block "B" with 12 flats (apartment). The undisputed position is that attached to Flat Nos. 2 and 3- Ground Floor (called BG2 and BG3) and Flat No. 2 first floor (called BF2) of Block "B" there are three semi-permanent car-parking structures.

8. On 22.7.92 in the meeting, when Smt. Renuka Jayapal expressed her choice for a flat in building BG-3 with semi-permanent car-parking structure, she was informed by the Regional Engineer (respondent No. 2) that Flat Nos. BG2 and BF-2 are reserved for allotment under the Chairman's quota whereas Flat No. BG3 for the working journalist. Smt. Renuka Jayapal learnt subsequently that only one could be kept aside for the Chairman's quota under the Rules and Regulations and there could be no reservation for the working journalists

retrospectively in the midst as it was not provided for at the inception of the scheme for advance registration. Flat No. 3 - and floor in BS-3 is allotted to her rejecting her claim to BG3.

9. Although Shr. N. Viswanathan's seniority number was 161, in total disregard of the regulation, and even though as on 30.5.1991, his seniority No. 5 having been fixed, he is not allotted any flat as there is reservation for allotment to a "working journalist". N. Viswanathan preferred O.P. No. 15009/92 and respondents 1 and 2 were directed to consider the position. The petitioner was informed (ext.P3 - O.P 13251/92) that he is not eligible for the following reasons:

1. You have registered your name by depositing a sum of Rs. 750/- only which is the minimum deposit required for registration of plot. But in the commercial cum residential complex, Pattom there was no plot for allotment. There were only flats for allotment.

2. The minimum registration fee required for a flat is Rs. 900/- as per norms. As the amount remitted by you falls short of this, your case cannot be considered with regard to the allotment of flats.

In this connection you may note that all registrants under advance registration scheme were invited for allotment of plot/plot with building/flat as a special case regardless of category of registration. Thus you were also invited for allotment of flat at Ulloor Housing Accommodation Scheme vide reference 3rd cited.

I may also point out that by the time your turn come up all flats in the commercial cum residential complex Pattom were allotted to registrants having higher priority than yours based on amount remitted. That was another reason for not inviting

you for allotment at Commercial cum Residential complex-Pattom.

Therefore, I am to inform you that strictly as per the regulation relating to registration you are eligible for the allotment of a plot alone and not for a flat. If you desire to keep your registration alive the fact may be intimated to this office, so that your case can be considered strictly for allotment of plot or for allotment of plot with building/flat as a special case of the schemes in Thiruvananthapuram city where plots/plots with building/flat are available for allotment.

10. Mr. N. Viswanathan, in his petition has precisely and specifically alleged, with apt relevance, as follows:

1. It may kindly be noted that the working journalist do not come under any special categories of allotment under the relevant provisions. Moreover, a separate Housing Scheme for constructing 50 flats has already been started in the N.C.C. Nagar Housing Colony at Thiruvananthapuram, exclusively for working Journalists.

2. As per notification dated 20.2.1985, the allotment regulations of 1980 has been amended. For Ex-service men, three percent of the total flats available can

be reserved for special allotment. In accordance with the said regulations, no flat at Pattom Housing Scheme can be allotted to an Ex-Service man since the total number of flats at Pattom is only 20, But now due to extraneous reasons, another flat No. AT.2) is kept reserved for an Ex-service man. This is absolutely illegal. Moreover, under the general quota one Mr. Lt. Col. N. Narayanan Pillai has been allotted Flat No: B.T.2)

3. The petitioner is entitled for the allotment of one flat in the Pattom Housing Scheme. In the interests of justice, it is only just and proper that one of the two flats viz. B.G. III or A.T.II Flats is allotted to the petitioner. It is also submitted that the petitioner ought to have been allotted with a flat in April, 1991 itself. But due to reasons best known to the respondents, the allotment was not made in favour of the petitioner. The respondents have failed to discharge their statutory duties in making the allotment, strictly in accordance with law. Allotments have been made in the Pattom Housing Scheme of the first respondent Board, according to the whims and fancies of the respondents.

Additionally in para 5 specific factual averments are to be found as follows:

It is respectfully submitted that several persons, who have not deposited Rs. 900/- under the 1980 Allotment Regulations have been allotted flats in Pattom Commercial-cum-residential complex.

Persons who have deposited Rs. 100/- towards registration fees subsequent to 1991 have been allowed to deposit the balance amount to make it Rs. 11,000/- and were allotted flats under the several scheme of the first respondent Board. The details are given below:-

1. Pattom Commercial-cum-residential complex, Thiruvananthapuram 3 Flats
2. Medical College Housing Scheme, Thiruvananthapuram-30.
3. Panampilly Nagar Housing Scheme, Ernakulam-5

The averment contained in Exhibit P3 that all the flats available in the Pattom Commercial-cum-residential complex has been already allotted is absolutely false. B.G.3 flat has not so far been allotted to anybody. The allotment can be made only in accordance with the priority of the basis of the registration.

Specific averments in Ground Nos. 3, 4, 5 and 7 which are reproduced, hereinafter would also make the position clear. They are as hereunder:

3. In Exhibit P3, it is stated that, since the registration fee paid by the petitioner is short of Rs. 900/- the petitioner cannot be considered for allotment of flat. The above statement is totally baseless and unfounded and has been made with the sole purpose of misleading this Honourable court of facts.

4. Persons who have paid Rs. 100/- as registration fee under the 1980 Regulations have also been allotted flats by permitting them to pay the balance amount as per the existing allotment regulations.

5. In 1983 new allotment regulations were framed by the Board, Persons who have, paid Rs. 100/- as registration fee under the 1983 Regulations were allotted flats by the first respondent in the various schemes.

7. It may kindly be noted that for the 20 flats in the Commercial-cum-residential complex, Pattom, there were no registrants who have paid Rs. 11,000/- under the 1980 regulations. In such as event those persons who have paid Rs. 11,000/- under the 1980 regulations should have been made, and if such persons were not available under the 1980 regulations, those persons who are already in the list of registrants of 1980, who could not deposit Rs. 11,000/- should have been preferred before considering the case of persons in the 1983 Regulations. It is pertinent to note that those persons who have deposited Rs. 100/- as Registration fee in the 1983 Regulations were given allotment in the commercial-cum-Residential Complex at Pattom.

11. Smt. Renuka Jayapal also placed specifically in her representations (Exts. P4 and P5 ? O.P. 14015/92) the following precise contentions:-

1. It has come to any notice that journalists are not entitled to any preferential quota in the Pattom CRC Scheme and also that Flat No. BG 3 is still remaining unallotted and lying vacant. As I was mis-informed about the true facts relating to Flat No. BG3, I was unable to exercise my rightful option for the flat No. BG3 on the date of the allotment meeting and had to settle for Flat No. BS3 instead I would now request you to allot me Flat No. BG3 together with the carshed/ garage attached thereto in place of Flat No. BS3. In this connection, I wish to point out that I had paid a registration fee of Rs. 20,000/- (Rupees twenty thousand only) entitling me to 200 sq.metres of constructed area and also giving me priority over those paying a lesser amount as registration fee.

2. At the allotment meeting held on 22nd July, 1992, I was informed by you that Flat No. BG2 and BF2 were duly allotted under the Chairman's quota and that Flat No. BG3 was allotted as journalists (quota and hence those three flats were not available for allotment. It has now come to my notice that journalists are not entitled to any preferential quota in the Pattom CRC Scheme and also that the Flat No. BG3 is still remaining unallotted and lying vacant.

12. With purpose we have referred to in details the statutory provisions, rules and regulations, with special reference to the notification, regarding commercial-cum-residential advance registration scheme of 1980. The assurance of fairness and equitable distribution floats on the surface of legal provisions. We have also to appreciate the slow-motion picture of planned development limping up in 1991 keeping the registrants waiting with anxious annoyance from 1980 upto 1991, when contrary to the legal position, not permitting reservation either under the Chairman's powers or even to the working journalist, without and also beyond, provision in the context The above details would make it amply clear that none can get in out of quene from amongst those who are not the original registrants. The position is crystal clear. In spite of this position when we see the approach of

the board through to the counters for the respondents Nos. 1 and 2 we are left with righteous indignation. This is especially so when specific and pointed averments of both the petitioners are met with a total silence and also with an attitude totally in contrast with the intention and spirit of clear legal provisions.

13. As regards, Shri. N. Viswanath is concerned, the contention that springs up on the basis of the original Application (annexed as Ext. R1(a)) is as follows.

Photostat copy of the application submitted by the petitioner is herewith produced and marked as Exhibit R1(a). His priority number was 161. A perusal of Ext. R1(a) will reveal that he was applied for a plot in Trivandrum City having an area of 150m². The registration fees stipulated as per clause 26 of the advance registration for house plots having an area of 150m² is Rs. 750/- for a flat under clause 2 III the minimum required amount is Rs. 900/- In Pattom Commercial-cum-Residential Complex, there are only flats available for allotment. Therefore the petitioner is riot entitled to be considered for allotment of flats on the basis of his registration.

It is to be stated that clear-cut averments of others having been permitted and the petitioner having been side-tracked behind his back are not even referred to much less replied. This, is reinforced from the following averments:

it is further submitted that the petitioner is not invited for the allotment of flats held on 22.2.1992 as he has not registered for flats in Thiruvananthapuram city and he has also not registered for allotment of flats. The question of inviting him for allotment meeting does not arise as he has no priority in the list of registrants for flats.

The counter avers BG-3 category flat is reserved for the Working Journalist as per decision taken by the Board, on 30.10.92. It is pertinent that specific averments that a separate building is reserved for the working journalist, precisely pleaded, and the decision of the Board to that effect is contrary to the legal provision much less to fairness, are completely ignored. Emphasis is still on the Chairman's quota though contrary to Regulation No. 12 referred to above. In this context of pleadings of surprise, this petitioner is justified in placing on record a reply to the counter to keep the record straight. All aspects are cleared in the said reply to the counter.

14. If the following quoted aspects from the reply are seen, the real picture of lack of fairness and equity would emerge. They are:

1. The allotted of flats started in 1991 itself. One BG II flat was allotted to Shri. P. Sugathan and BF III flat was allotted to one Aruna N. Nair in the year 1991 itself. Both the above persons have paid only Rs. 100/- towards registration fees.

2. The Government have no power u/s 156 of the Kerala State Housing Board Act to give directions to the Board contrary to law. The respondents may be directed to produce before this Hon''ble Court evidence to prove that the Government have given such a direction to the Board.

3. When the scheme is completed, first priority is given to those persons who have registered under the Advance Registration Scheme only after giving priority to those registrants allotment is made to those persons who have subsequently registered by paying Rs. 100/- If BG II flat is allotted to Renuka Jayapalan BS III flat will come vacant. I submit that Renuka Jayapalan has not applied for allotment of flat; she has applied only for allotment of plot with building.

4. I submit that in the residential-cum-commercial Housing Complex at Pattom, Trivandrum except those persons who have registered their names by paying Rs. 100/- no one else has applied for the allotment of flats. But several persons have been allotted flats even though they have applied for plot with building or plots.

5. One Smt. Viswambari (Registration No. 1115) has been allotted flat No. AT-4. She has not registered for allotment of flat. She has only paid an amount of Rs. 5,500/- as registration fees.

6. But contrary to the Rules, two employees of the Board have been allotted flats. On Shri. Vasudevan Namboothiri (Flat No. AS-I) and Shri. Thiyador Mechado (flat No. AS-IV) have been allotted flats in the Pattom Housing Scheme contrary to the Rules.

7. I submit that since my seniority number in the 1980 Advance Registration Scheme was 161, I am entitled for allotment of a flat in the Pattern Housing Scheme. But several persons who registered their names much subsequently by paying Rs. 100/- and Rs. 500/- have been allotted with flats totally ignoring my legitimate right for allotment and my seniority.

8. I submit that persons who registered in the year 1994 have been allotted with flats under the Chairman's quota in the Pattern Residential cum Housing Complex of the Board.

This petition and other averments in detail relating to lack of fairness would justify the said petitioner to put in the material for the first time in the counter as he was helpless otherwise to meet a surprise in the counter.

15. In this situation, Shri N. Viswanathan had to meet the counter when he was faced with his Application of 1980 applying for a House plot when others in similar situations were permitted to cross over. Normal rule of change and introduction of pleadings would have to be appreciated in the context of the litigation, it is not always that a party is legally prevented to raise inconsistent pleas. Apart from the fact that there is no change factually in regard to pleadings. It is open to the party to raise mutually inconsistent pleas. Then on facts of the present situation, when the situation is to answer surprise raised in the counter, in our judgment, there was no alternative to place the record straight for voicing discrimination.

16. As far as Smt. Renuka Jayapal is position, with reference to the counter is concerned, apart from the counter of respondent No. 1 and 2 (the Board), on the grant of impleading petition (C.M.P. No. 7892 of 1993) respondent No. 3 - Shri.

Prabhakaran - the working journalist also has filed a counter. The position as to the introduction of the working journalists and the Chairman's quota for reservation get crystalised, if the following aspects are referred to in the context. In the counter of the respondent Nos. 1 and 2 it is made clear that as per the Board's decision dated 30.1.1992 Flat Nos. BG-2 and BF-2 are allotted under Chairman's Quota. Flat No. BG-3 is reserved for the working journalist. The following averments of the counter would clearly reveal that the process of reservation for the working journalist was not even commenced. It is:

As per the decision taken by the Board on 30.1.1992 two flats were reserved for working journalists in Pattom and Ollur Housing accommodation schemes and flat No. BG-3 is reserved in Pattom Commercial-cum-residential complex. In pursuance of the decision of the Board dated 30.1.1992, the Secretary was authorised to take steps for amendment to the regulations reserving two percent of the flats or houses in a scheme but atleast the working journalists are entitled one house in a scheme as their quota. It is also pertinent to state here that the Government by letter dated 9.11.92 informed the Board to reserve a flat each in Pattom Commercial-complex and Ollur Housing Scheme of the Board for the allotment of eligible working journalists?

Even the letter dated 9.11.1992 (Ext. R1(a)) to the counter which records as follows:

Draft proposals for amending the Allotment Regulation to enable reservation to eligible working Journalists may be forwarded to Government for consideration along with consolidated proposals asked for in the Government, letter No. 6748/A3/90/Housing dated 1.8.1992.

Makes the position clear.

Added to this, the draft of the amendment to make reservation to the working journalist (2%) - 1993 - (Ext. R3(a) - to the counter of respondent No. 3) makes the position still worse for the respondents, if explanatory note there to is seen. This picture that is available from the material on record shows that apart from being fair and equitable, the attitude even in this Court is of clinging to it by its extension.

17. Therefore, on the basis of the legal position available and the factual matrix spread out as above, the following aspects get neatly established:

A) When the advance registration scheme relating to Commercial-cum-residential complex was floated by the Notification dt. 19.2.80, it was controlled by the provisions of the Act and Regulations of 1976 regarding allotment.

B) Reservation as regards the Chairman's quota, it could only relate to the registrants under the scheme and none could directly enter under the said quota.

C) Reservation to the working journalists could not be provided for as it was absent in the scheme and was not even legally introduced any time thereafter.

Only it was in contemplation in the form of a draft amendment.

D) At any source, the entitlement to reservation pertaining to any category has to relate to the original source-registrants. Any new introduction of a reservation category has to be prospectively operative and mid-way reservation on the basis of an entirely new category is impermissible. Similarly, the reservation on the basis of the Chairman's quota is also not permissible contrary to the provisions established above only one seat can be permitted.

18. The application of the above facets to the proceedings before us would lead us to conclude that Smt. Renuka Jayapal would be entitled to the flat BG-3 in Block B of the commercial-cum-residential complex at Pattom, Thiruvananthapuram. She has already been allotted flat No. BS-3 in the same complex. Shri. M. Viswanathan through his counsel before us as shown his willingness to accept the said flat, No. BS-3 towards his claim. Both Smt. Renuka Jayapal and Shri. N. Viswanathan have agreed and they undertake to make all payments under and as per the original scheme.

19. In our judgment, if all the above established materials and legal position had been placed systematically before the learned Judge, to reach the conclusion contrary, as has been done, would have been impossible. The petitions, it must be acknowledged, were argued and placed before us in meticulous details and able forensic skill leading to the success.

20. Before parting, some words are necessary towards the approach of the Public Authorities to the proceedings and to the Court dealing with them. The public authorities statutorily are enjoined with the people oriented attitude strictly under all facets of the rule of law. Under the enacted provisions of the Act, the Rules and the Regulations, the concerned authorities are under legal and official obligation to approach strictly under law. Powers of the State Government, the Chairman and also of the Reservation are also to be exercised under the law and are not at all synonymous with powers of distribution of private largess. Even the powers of the Chairman and of the categories of reservation are circumscribed by legal requirements. In these proceedings, these aspects revealed their manifestation by observance in breach. Even the attitude of the respondent Nos. 1 and 2 displayed through the counters showed total lack of dispassionate public orientation. During the course of hearing of these proceedings, we were at pains of anxious annoyance and righteous indignation that the advance scheme of 1980 should see twilight of completion 11 years thereafter in 1991 and even thereafter, it showed unhealthy race of outsiders trying to rush in and were sought to be allowed contrary to law. Even at the stage of hearing before us the submissions were made to leave the matter to the respondents 1 and 2 for further processing. We have considered all aspects and hold that both the petitioners deserve justice at our hands direct under the circumstances discussed hereinbefore. We even heard counsel on the question of costs against respondent Nos. 1 and 2. We, therefore, ultimately pass the following order:

Writ Appeal No. 1466 of 1993 stands allowed. Consequently O.P. No. 14015 of 1992 preferred by Renuka Jayapal stands allowed in terms of prayer (1) with a direction to the respondent Nos. 1 and 2 to allot flat No. BG 3 in Block B of the Commercial-cum-residential complex at Pattom, Thiruvananthapuram as prayed to the petitioner: Renuka Jayapal.

21. O.P. No. 13251 of 1993 is also allowed in terms of prayer (b) thereof, by a direction to the respondent Nos. 1 and 2 to allot flat B. S. 3 in the Commercial-cum-residential Complex, Pattom, Thiruvananthapuram to the petitioner N. Viswanathan.

22. Throughout the provisions of the Kerala State Housing Board Act 1971 together with the Kerala State Housing Board (Allotment of House or Site and Constitution of Committees) Regulations 1976, an assurance as regards distribution of house sites or flats to be fair and equitable has been the guiding factor. In spite of this position we are constrained to observe that the respondent Nos. 1 and 2 have approached this Court through their counters, completely in breach of the said magnanimous attitude. It is time that the public bodies have to be aware in their healthy approach in such disputes and any deviation therefrom, time has come, has to be recorded with regret.

23. At one time we even thought of awarding of some cost for this attitude. The learned counsel for the petitioner pointed out the rules regarding fees payable to Advocates to be found in Appendix 7 of the Civil Rules of Practice to the effect that this Court can award cost upto Rs. 1,000/-. We must record that we are left with a strong feeling that this is a matter where the Board should be penalised with cost. However we have deliberated and have found satisfaction with these observations as this would be more than sufficient in the context as a guideline for the future with regard to the attitude to be adopted in the proceedings in which the public bodies appear before the Court. Ultimately we record that we do not award any cost as such, emphasising that whatever we have observed should be considered more than penal under the circumstances.