
(1983) 03 DEL CK 0010

In the Delhi High Court

Case No : L.P.A. 122 and 159 of 1981

Sanjiv Parkash and Others

APPELLANT

Vs

N.D.M.C. and Others

RESPONDENT

Date of Decision : 18-03-1983

Acts Referred:

Citation : AIR 1983 Delhi 478 : (1984) ILR Delhi 511

Hon'ble Judges : Rajinder Sachar, J; R.N. Aggarwal, J

Bench : Division Bench

Advocate : G.L. Sanghi, M.K. Dua and B.J. Nayar, for the Appellant; P.R. Mridul and S.M. Suri, for the Respondent

Judgement

Sachar, J.—These appeals relate to the matter or allotment to the prestigious underground shopping complex known as Palika Bazar which was built in Connaught Place by the respondent Committee in the year 1976. This, shopping Centre was designed to accommodate 308 shops of various sizes located at different levels. The whole complex is a centrally air-conditioned one. The Committee by its resolution of 29-11-1977 had approved a policy matter to allot 98 shops to the shopkeepers of Panchkuin Road because that space was required for widening of the said Road. The Government had also taken a policy decision that the following categories of shopkeepers who had been carrying another business elsewhere will be accommodated first. These categories were-- Panchkuin Road--98, Janpath Stalls-71, Tibetan Stalls-24 and Connaught Circus (Yusuf zai Market)-117- The Government also decided as per communication of 27-4-1978 that out of these above shopkeepers who wished to leave their present shops and desired to obtain shops in underground shopping centre may be allowed to come. But others who did not wish may not be forced to come ; the remaining shops be let out on tender.

2. On 27-5-1978 the Delhi Administration directed the Committee to allot 98 stall holders of Panchkuin Road Shops in this complex on the conditions which had already been settled. As all the stalls reserved for Tibetans were not taken by

them the result was that there was large number at stalls still available, that is why a policy decision was taken by the Committee to call for tenders for allotment of 177 shops divided into 4 zones and further classified in 7 groups for proper identification as detailed below:--

- (a) General Shops;
- (b) Shops with 12" front space;
- (c) Shops with water connection;
- (d) Shops with water connection and 12" front space;
- (e) Shops with additional height;
- (f) Shops with loft; and
- (d) Shops with water connection and 12" front space;

The Committee issued licenses to certain stall holders of Panchkuin Road in view of their surrendering the shops and utilised the land under their stalls" at Panchkuin Road for public convenience. The license fee was fixed by the Committee.. It is common case that it was much lower than that for which tenders were offered by the appellant and ultimately accepted by the Committee. The Committee had also evolved a scheme of trade zoning restriction by which only some trades were permitted in each zone. It is also common case that this trade zoning restriction was not made applicable to the shopkeepers of Panchkuin Road. In due course the tenders for 177 shops were issued.

3. Separate tenders were to be submitted for a shop in each group. The preference for allotment of a particular shop in a group was to be given to the highest tenderer in descending order; only tenders above reserve price being considered. In the terms and conditions of the tender Clause 10 mentioned that only such trades as mentioned in the trade zoning plan shall be permitted to be run in the shop. The details of the trade zoning plans were appended Along with the documents. The appendix A shows that the area was divided into zones 1A, 1B and zone 2, 3, and 4. The licensee was to pay the license fee in advance by 10th of each calendar month. Non-payment of license fee will constitute a breach of the terms of the license. Similarly if the licensee fails to perform or observe any of the terms and condition to be observed the licensor may without prejudice to general right of resolution of license re-enter the premises in question. Appellant in LPA 122/1981 had given a tender at Rs. 60.28 per sq. ft. The license fee of which works out to Rs. 9367.31 per month. The respondents had given tender for a shop with 12 feet frontage and had indicated the trade to be run by him as Boutique. In due course he was allotted shop No. 3 in Zone 3, as per allotment letter dated 28-10-1978 issued by the Committee. The trade permissible in the shop was Boutique. It appears that the appellant had given the tender that the approximate rent was about Rs. 60 per square feet and monthly comes to Rs. 9367.67. The appellant went into possession of the shop in the end

of November 1978. About 4 months later in March, 1979 various licensees like the appellants took up the matter with the Committee purporting to make a grievance that there had been no demarcation of the 12 feet front space for the use of individual shopkeepers and that the same may be done. Their claim being that this 12 feet front space was to be given to the individual shopkeepers and this must be made over to them. In January 1979 the appellant also wrote to the Committee saying that because of the changed condition and circumstances they may be given permission to run an Ice Cream Bar. Apparently no permission was given and show cause notice was issued on 18-5-1980 by the Estate Officer saying that as he was running a trade it was against the terms and conditions of the license and action will be taken for cancellation of the allotment. Apparently this was a common phenomenon with regard to large number of the allottees and that is why most of them filed the writ petitions challenging the action of the Committee. As already mentioned allotments had been made to former Panchkuin Road shopkeepers at a fixed license fee. It was a much lesser premium than the amount tendered by the appellant and others. Also Panchkuin Road people were not required to adhere to the trade zoning restriction for a particular zone; that is to say that they could carry on any trade which was permitted in any of the zones, in the market. Gradually it appears that barring writ petitioners in CW 156590 and 684/1980 the other writ petitioners changed the nature of business to other permitted in their license deed. The new business which has been started by them is no doubt permissible in the various zones of Palika Bazar but is not permissible in the particular zone where the writ petitioners had their shops. Thus the appellants who are licensees in zone 3 for boutique are now carrying on the sale of ice cream and cold drinks which is not permissible within zone 3, though it is possibly permitted in some other zone. That is why the appellants and others were served with notices by the Committee for showing causes as to why the license should not be cancelled, which brought the petitioners to this court.

4. The learned Judge by his impugned judgment found that the 98 Panchkuin Road allottees as well as 58 allottees of minimarket were permitted to carry on trade unrestricted by the zoning system. According to the learned Judge the restrictions of the zone as in the original license deed have collapsed and are not workable, Accordingly he has held that in that view the Committee cannot insist on the allottees adhering to the zoning system any longer, because having given up the scheme of zoning while making allotment to Panchkuin Road stall holders and mini market as well it would be irrational to insist that the other allottees should be asked to continue to adhere to the zoning system. The learned Judge did not think that the mere fact that the writ petitioners had themselves tendered for a particular zone knowing fully well the restrictions of the zone matters any difference and has held that the Committee cannot insist on that the appellant and other tenderers should be compelled to comply with the trade zoning restriction. The learned Judge did not consider that it was practicable to issue a mandamus directing the Committee to insist on the allottees to conform

to the zoning system in view of the fact that over about 130 allottees of Panchkuin Road and mini market were not under such restriction and also because in the intervening period many other allottees have, also changed their trades not permitted in a particular zone. As a result the learned Judge, Therefore, quashed the show cause notices on the ground that as the zoning restriction did not apply to Panchkuin Road and mini market stall holders the decision not to permit the petitioners to deviate from the zoning system is arbitrary. The learned Judge however, rejected the claim of the appellant that he was entitled to the exclusive entitlement of 12 feet front space before his shop and not having been so given was as a consequence entitled to the reduction of license fee. The appellant is aggrieved against this part of the judgment and has filed LPA 122/1981. NDMC is aggrieved against the quashing of show cause notices and has filed LPA 159/1981. The learned single Judge also found that the petitioners in the writ petitions 156, 590 and 684/1980 had not violated the trading restriction. He, Therefore, has taken the view that as the conditions of the trade zone which had been imposed by the Committee is no longer valid but as the petitioners in the writ petitions have been carrying on the same permitted trade, it was proper that the matter be examined whether they have suffered any loss because of the collapse of trade zoning restriction. He, Therefore, issued a mandamus directing the Committee to refix the license fee with regard to these writ petitioners with effect from the date of the filing of the writ petitions which should be fair having regard to the changed circumstances and after giving a reasonable opportunity to the allottees to be heard. The appeal by the NDMC is also directed against this part of the direction.

5. Another set of appeals is filed by those allottees who have switched over to other trades not permitted in the zone, and without the permission of the Committee. They claim that similar exercise in refixing of the license fee should be done in their case just as it has been directed to be done in the case of writ petitioners in CW 156, 590 and 684 of 1980.

6. We shall now deal with various points raised in all these appeals.

RE: 12 FEET FRONT SPACE:--

Whether the appellants are entitled to exclusive use and demarcation of this area ?

The argument that the appellant has been deprived of the exclusive use of 12 feet and, Therefore, entitled to reduction in license fee has no merits and was rightly rejected by the learned single Judge. In tender documents the expression used in "shops with 12 feet front space" "shops with water connection and 12 feet front space" "shops with lofts and 12 feet front space". A bare reading will show that 12 feet front space indicates only the frontage before the shop. It is not meant to demarcate the area for the exclusive user of these shopkeepers. Tender was given at Rs. 60.28 per sq. ft. The allotment letter dated 28-10-1978 worked out the monthly license fee at Rs. 9367.61. This is arrived at on the basis

of area of each shop which was calculated admittedly by not including the 12 feet front space. To accept the argument of Mr. Sanghi, the learned counsel for the appellant would amount to holding that the appellant had been given gratis and as a gift an area of 12 feet without rental. In our view reference of 12 feet frontal space is only to emphasise the openness of space with necessarily more facilities for customers being available for these shops. The plan of the shops shows that 12 feet frontal space is mentioned only where the gap between the two opposing shops is 24 feet or so. For those opposing shops where the distance between them is 12 feet or so this qualification of 12 feet front space was not indicated--it is only the shops in between whom there is a gap of 24 feet, that this description is given. To accept the argument would mean the separate use of 12 feet by each shop leaving no place at all for customers to move--hardly a situation acceptable in logic or practical working. The appellants' effort by raising this argument is to appropriate extra space of 12 feet without paying any license fee. 12 feet frontal space is for common use of every customer--it is not the private preserve of the shopkeepers. The tenders clearly called upon the offers to be made on per square feet basis of the chargeable areas. There is not even a suggestion that while giving offers, this area of 12 feet front space was ever included while giving a tender. It is apparent that there could be no question of exclusive user and appropriation of 12 feet by the appellant. For this area no license fee was offered and none accepted, obviously because no one imagined, that the mention of 12 feet frontal space was anything but the common passage being available for customers. The argument of separate demarcation of 12 feet to each allottee is plainly untenable, not only on the ground of this not being contemplated in the tender but also on the ground of impracticability. It is concealed that in the tender 12 feet front space is mentioned with regard to the shops not only in zone 3, but also with respect to the shops in zone 1, is and mezzanine floor. Mr. Singhi, for the appellant admits that excepting in zone 3, total frontal space before all the shops situate is about 12 feet or so. He also admits that if the 12 feet frontal space is to be allowed to be separately appropriated by individual shopkeepers there could be no place for moving in Zone 1A and 1B for customers and also in mezzanine for 75 per cent of the shops same situation will arise. The result of accepting this argument would be to leave no space for the customers at all. This illustration would itself show the complete unreality of the argument that 12 feet frontal space was meant to be separately and exclusively appropriated by the tenderers. It is no doubt true that there is 24 feet space in between two shops in zone 3. The argument of Mr. Sanghi that if 12 feet frontal space is allowed to be appropriated by allottees of zone 3 other 12 feet can be utilized by customers, is unacceptable. The opposite side shops can then legitimately complain as to why half of the passage should be blocked by the opposite shop of allottees. That apart if the intention in the tender was to permit the separate appropriation of 12 feet where frontal space of 12 feet was mentioned in the tender form then logically it must apply to all the tenderers whether in zone 3 or 1A, 1B or the mezzanine floor. As mentioned already it is impossible to allow 12 feet to be separately demarcated in mezzanine, in zone

1A or 1B because no place will be left for the customers. This illustration would clearly show that it was never the intention that 12 feet frontal space was to be separately appropriated or demarcated for individual shopkeepers. All that was meant to be indicated was that there would be 12 feet frontal space for the moving of customers which undoubtedly is available before all these shops. The appellant had sought to invoke Section 173 of the Punjab Municipal Act. This provision empowers the Committee to grant permission to place in front of any building any movable encroachment upon the ground level of any public street and may charge such fee for such permission. In our view the reference to this provision is inapposite. It is no body's case that any fee was separately indicated or being paid for the use of 12 feet front space as a matter of fact the tender notice only required for giving offers of per square feet for shop in a particular group of shops. This offer being for a shop it is only the possession of the shop that could be asked for by the allottee. Frontage of 12 feet can not be exclusively claimed by the appellant as belonging to him. This plea is not warranted by the license deed or any other material. It is no body's case that this frontal space for 12 feet is not existing in front of these shops which were mentioned in the tender form. The claim rather is that this area of 12 feet should be given for the exclusive use of the appellant, but this grievance is without any basis, as held by the learned single Judge and for these and other reasons mentioned by him, we would affirm this part of his judgment and reject the appellant's contention.

7. Is there any discrimination or arbitrariness in Committee insisting that the appellant and other allottees conform to the trade zoning restriction as, mentioned in their respective license deeds, while not insisting on this with regard to Panchkuin Road allottees even though their license deeds do not place any such restriction on their carrying of any trade, so long as it is one of those mentioned in Appendix A given along with the tender. Now Clause (10) of the conditions of tender accepted by the appellant limits the trade to be carried on in the shop to the one mentioned in trade zoning plan. No such restriction is applicable to Panchkuin Road stall holders, of course they also cannot carry on any trade if it is not included as one of the permitted trades in Appendix A. But the difference is there. Thus if the appellant who was allotted a shop in Zone 3 can only carry on the trades permitted in zone 3, the Panchkuin Road shop allottee in Zone 3 can carry on trade permitted in any of the zones from Zone 1, 1A, 2, 3, and 4. It is this apparent differential treatment that is emphasised by the appellant as constituting discrimination and arbitrariness and his further claim that if Panchkuin Road allottees are to be continued to be allowed the facility, the premium contracted by the appellant must be correspondingly reduced. How valid is this assertion ?

8. In judging whether the case of the Panchkuin Road and the mini market allottees can be compared to be the same as those of the licensees who had tendered for it, it is important to bear in mind the history of this shopping complex. The shopping complex was taken in hand in 1976 and was completed. The Government had also taken a decision with regard to the allotment of the

shops as per letter dated 27-4-1978. The policy was that out of all the categories of shopkeeper namely--(1) Panchkuin Road--98; (2) Janpath stall holders--71; (3) Tibetan Stalls-- 24; (4). Connaught Circus stall holders 177, those who wish to leave their present shops and desire to have their shops in Connaught Place under-ground Shopping Centre will be allowed to come. Those who did not wish to come will not be forced to come and the remaining shops will be let out on the tender. It was in pursuance of this that the Delhi Administration directed the Municipal Committee that the shops to these persons may be allotted subject to the condition which had already been communicated to the Committee as per Government letter dated 27-5-1978. The remaining shops were to be put on tender as indicated by the Ministry's reply in the Parliament. Thus in the very first instance a distinction was made between Panchkuin Road shopkeepers whom the Committee wished to shift from their existing position, to this shopping complex. There is no doubt that the license fee fixed for the Panchkuin Road people is lower than for which tenders have been received. There is also no doubt that in the license issued to the Panchkuin people though allotments have been made in the various trading zones the shopkeepers are not prohibited from carrying on any trade so long as it is one of the permitted trade? mentioned in the various zones. Thus though the tenderers are restricted to the trades permitted in a particular zone in which allotment has been made i.e. to say that a person allotted in zone 3 can only carry on the trade which is permitted in the said zone whereas a Panchkuin shopkeeper who has been allotted shop in zone 3 can carry on any trade which is permissibly in any of the zones from zone 1 to zone 4. That these two classes namely--Panchkuin Road traders and the appellants who are the tenderers are two different classes was recognised by the learned Judge. That is why he found no possible objection to the shops being allotted to Panchkuin Road stall holders at a concessional rate. He has also held that at the time when tenders were invited the question of discrimination did not arise and, Therefore, the objection that the license fee was less than for what the tenderers offered is not open to objection. He however, has held that once the allotments have been made to Panchkuin Road and mini-stall holders discrimination arose because they were not put under the restriction of the trade zoning and that is why he went on to hold that even the appellants who had voluntarily tendered and obtained a license with trading restrictions cannot also be compelled to observe the trade zoning restrictions. It is this aspect of the matter which is seriously challenged by the counsel for the Committee. Mr. Mridul and Mr. Suri, Mr. Thakur the learned counsel appearing for one of the respondents however, had even challenged the finding of the learned Judge that there was justification to have been charged lesser license fee from the Panchkuin Road stall holders. His contention being that the shops being in the same shopping complex and also there being no compulsion on the Panchkuin Road stall holders to shift any justification to allot them at a lesser fee must suffer from that vice of discrimination No doubt there was no compulsion on the Panchkuin Stall holders to necessarily shift but this is only one aspect of the matter. That the need of the Committee for the land underneath the Panchkuin

Stall holders was insistent cannot be doubted. That they wanted the Panchkuin stall holders to shift is also not in dispute. The mere fact that it decided that they would not be coerced to shift only meant that Committee would not resort to the coercive process. But in view of the fact that the need of land was there the Committee had to devise some methods by way of concessions and other facilities. Had the Committee resorted to the legal method of compulsorily acquiring the land or eviction proceedings it would evidently have resulted in long period of waiting. Though Mr. Thakur, counsel for one of the writ petitioners did seek to urge that there was no reason why if the object was only to take the possession of that land alternative remedy of filing suits could not have been resorted to we do not think that that was a practicable or viable alternative. Faced with a situation where the urgency of public interest to build public conveniences and in the interest of traffic requirement immediate possession of land underneath the shops of Panchkuin Road was required a proper classification could, be made in favor of these persons in the matter of allotment in the Palika Bazar Complex. The license fee obviously had also to be correlated so as to persuade them to voluntarily shift. The reason, being that if they were to be asked to pay the market license fee very few people could have applied to do so and may not then be inclined to shift, thus frustrating the whole scheme. It should also not be forgotten that the stall holders at Panchkuin Road had been carrying on their trade for over 3 decades. As the Committee required the land obviously some sort of mutually acceptable arrangement had to be made. These persons were mostly refugees who had over course of years been able to settle and stabilise themselves. To again uproot them without providing an alternative accommodation would have been a disaster. But even providing alternative accommodation but not giving them proper concessional license fee would have been an empty gesture at rehabilitation because most of them could not have afforded to pay the market license fee. As it is even in the matter of fixation of license fee the Committee has not really fixed any such grossly low license fee. The license fee that was fixed was Rs. 960 to Rs. 2990 as against 12.50 to Rs. 150 per month which was being paid by them while at the Panchkuin Road. As for the mini market they have been allotted to the 53 stall holders which were shifted from Connaught Place Verandah and demolished Theatre Communication Building. (It is relevant to mention that the Palika Bazar is on the land on which the Theatre Communication Building was existing). Obviously for such small persons it would have been a hardship to be equated with the tenderers. Moreover a justification for not insisting on the trade zoning restriction is stated to be that all these persons had to be fitted in one block but as the said block spread over in 2, 3 different zones it was not possible to insist that all of them should comply with the trade zoning restriction because many of them were carrying on business at Panchkuin Road which it was not permitted in a particular zone in which they had been allotted shop at the Palika Bazar Complex. Here was a human problem which the Committee had to face and it necessarily required some amount of flexibility and relaxation from the rigour of restriction. We had also during the hearing asked a statement to be filed regarding the Panchkuin

Stall Holders indicating the different trades which they were carrying on from other than that permitted in the zone. A full statement of these allottees had been filed. From the summary which was attached along-with it and which was accepted as correct by the counsel for the appellants it appears that of 77 Panchkuin Road Stall holders who have been given shops in the Palika Bazar the position is as under :--

Zone Total No. of Shops as per Trade zone No. of Shops Zone under which P.K. Road allottees are carrying trade in Palika Bazar, Total No. of Shops Allotted to Public through tender

1A 1B

2

3

4

Nil Nil

32

17

28

4 2

27

23

18

3 These are lying locked & no trade is being run.

77 shops have so far been allotted to P.K. Road Stall Holders and the left over 21 shops have been allotted on tender basis for running the trades permitted under the trade zoning restrictions.

Reference to above will show that the total number of shopkeepers who are permitted to carry on a particular trade in the Market does not vary much on actual practice. Thus it will appear that 32 Panchkuin shopkeepers could carry on in the market, trade permitted in zone 2, while a lesser number (i.e. 27) are in fact carrying, on such trade. Similarly in zone 4 of 28 Panchkuin allottees 18 out of them are carrying on the business which is permitted in zone 4. It is true that, all these are spread out in different zones. Thus it is possible that in trade zone No. 2 out of 32 Panchkuin Shopkeepers many may not be carrying on the trade permitted in the said zone, but it also cannot be ignored that taking Palika market as a unit the number of persons who are carrying on one of the trade permitted in zone 2 does not exceed the number of Panchkuin allottees of zone

No. 2. Thus a tenderer in zone 2 though he may technically be able to complain that the business other than permitted is being carried in zone No. 2 yet cannot complain that in the market as a whole the total number of people are carrying on the trade permitted in zone exceeds the Panchkuin allottees. It is true that in respect of trade permitted in zone 3 the number carrying it in fact exceeds the Panchkuin allottees, (i.e. 23 against 17) but it is only marginally in excess in the market as a unit. But this spread over has the other side too. Thus of trade permitted if all the 32 Panchkuin Road Shopkeepers were to carry on the zone 2 trade, tenderers in zone 2 would have to face greater competition. In zone 4 less shopkeepers are carrying on the said trades than the allottees (i.e. 18 against 28), no doubt there may be greater number of Panchkuin traders carrying on the trades permitted than allottees, but then zones 2 and 4 have to face less than the number of Panchkuin allottees. So a somewhat greater competition for zone 3 tenderers is compensated by less competition in zones 2 and 4. On a broad view even this limited argument of stiffer competition does not have much of plausibility. Moreover it must be realised that there are about 45 trades that can be done in various zones. In zone 3 and zone 4, there are 12 and 18 permitted trades. So even there a little more doing the various trades in zone 3, it is spread over various trades and the question of how each trade is distributed amongst many shopkeepers will even out. That apart, this argument suffers from the infirmity of trying to equate the Panchkuin Road shopkeepers with the tenderers because the two are distinct and separate categories. These two classes i.e. the Panchkuin Road shopkeepers and the allottees who tendered for the shops are two distinct categories having nothing in common with each other. Their claim to be treated on the same par as the Panchkuin Road People is really a claim to treat unequals as equals. There was a rational difference between these two categories. Panchkuin Road people being the existing allottees whose land was required by the Committee and the writ petitioners who were like all other citizens entitled to tender for the shops which were thrown open to public. What the appellants are saying is that they should now be treated alike and on the same terms as have been given to Panchkuin people. But distinct categories cannot so ask for the same consideration. If any such consideration was to be given to them then other persons whose tender was lost and have therefore, not been given any allotment or who may not have even tendered knowing fully well that the tender would be at a price which was higher than their means would have a legitimate grievance and could claim that if the Committee was to give allotment of all these shops at the same license fee as given to the Panchkuin Road people they would also be keen to have the allotment and would have applied for it. The only justification for the appellants to have obtained the license in their favor was that they competed with the rest of persons and as their bid was highest they were successful in getting the allotment. Having done so they cannot make a complete turn around and say that they should be now given the same facilities of low license fee and other privileges of relaxation of trade zone restriction as given to the shopkeepers of Panchkuin Road. The insistence of the appellants that either the Panchkuin Road people should also be

compelled to observe the trade zoning restriction or in the alternative the tenderers should also be allowed relaxation of the trade zoning restriction is totally meritless. Now the terms of license in case of Panchkuin Road shops provide for no such trading restrictions. The appellants when they gave tenders knew fully well that they were to comply with the trading restrictions. They chose to so give tender subject to these terms. A contract thus ensued between the Committee and the appellant and it is only in terms of this that the license fee and other terms are being asked to be complied with. What the appellants are in fact seeking, though invoking the high sounding principles of non-discrimination is really to get out of their commitment undertaken by them and as included in the terms of their contract with the Committee. It has been mentioned, by the Committee in its counter affidavit that out of 177 shops for which tenders were invited only 41 shops were allotted prior to 22-11-1978 i.e. the date on which Panchkuin Road stall holders were rehabilitated in Palika Bazar. The other shops were allotted subsequently sometime in 1979-80 and 1981. This is emphasised to point out that the tenderers knew that the Panchkuin Road stall holders who had been allotted shops in various zones were under no trade zoning restriction. With the full knowledge of this, they tendered for the same at a license fee took advantage of the clause for giving preferential allotment to the highest tenderer. Thus persons gave tenders knowing fully well that they would have a preference if their tender was the highest. In the case of the Panchkuin people there was no preference; allotment was made by a draw of lots. This is just to emphasise the completely different nature of transaction and situation between the Panchkuin Road stall holders and the tenderers, like the appellants. The claim of the appellants is rather a peculiar and ununderstandable one. They wish to hold on to the contract with the Committee and yet not observe the terms on which the license was granted to them. Either the appellants have a right flowing from their license deed in which case they must carry out the terms of the license or if according to them the contract no longer services them then in that case they can claim no right to continue to enjoy the benefit of the license. Thus they cannot have it both ways i.e. keep on to the shops which were obtained on certain terms but insist on unilateral variation of it. Whatever little, if any justification for such an approach, it could only have been founded on the ground of discrimination or arbitrariness, of which we find no material. The tenders were invited for all 177 shops. All tenderers were treated alike and bound by same terms. The mere fact that half of them have now switched over to unpermitted trades in a particular zone is not the fault of the Committee. The learned Judge no doubt took this fact into consideration for holding that the trade zoning restriction cannot any longer be insisted upon. But with respect we do not think that that is a correct way of looking at the matter. It would be amazing that tenderers who themselves are responsible for having violated the terms of the license should put that as an argument to plead that the trade zoning restrictions have collapsed and, Therefore they should be relieved from the terms voluntarily agreed to with the Committee. It is trite saying that no one takes advantage of his own default. There is no suggestion of any discrimination or any favoritism within this class of

177 tenderers. To enlarge the scope by including Panchkuin Road stall holders is to compare unequals. The Panchkuin Road people were given the allotments by different process from that of the appellants. This is because what the Committee had done was to set apart a certain number of shopkeepers for the Panchkuin people. It is only within that circle if any discrimination is made that a complaint can be made. Having made the allotment to Panchkuin traders a scheme was evolved for tender of 177 shops, which is one class. The appellants all being to this class. If any discrimination inter se between these 177 tenderers was established, grievance could rightly be made. But no such complaint is made. Again and again same facilities are sought as given to Panchkuin traders. Seeking of these concessions cannot be justified on any ground of equity. Because if any concession or special consideration is now to be given to these tenderers the whole questions of a validity of these allotments may be in jeopardy on the complaint of a member of the public that be known that similar terms like Panchkuin traders would be available to all, he and many others would also have given tenders. If competitive terms of tender are now to be relaxed, as claimed by some appellant, a favor not permissible would be shown to these tenderers, apart from the fact that appellants want restrictions to stay. As a matter of fact the appellants claim to invoke the protection of Article 14 is misconceived. It is well settled that "the constitutional command to the State to afford equal protection of its laws sets a goal not attainable by the invention and application of a precise formula. Therefore, classification need not be constituted by an exact or scientific exclusion or inclusion of persons or things. The courts should not insist on delusive exactness or apply doctrinaire tests for determining the validity of classification in any given case. Classification is justified if it is not palpably arbitrary." "The principle underlying the guarantee of Article 14 is not that the same rules of law should be applicable to all persons within the Indian territory or that the same remedies should be made available to them irrespective of differences of circumstances. It only means that all persons similarly circumstanced shall be treated alike both in privilege conferred and liabilities imposed. Equal laws would have to be applied to all in the same situation, and there should be no discrimination between one person and another if as regards the subject-matter of the legislation their position is substantially the same."

"In order to pass the test, two conditions must be fulfilled, namely : (1) that the classification must be founded on an intelligible differentia which distinguishes those that, are grouped together from others, and (2) that that differentia must have a rational relation to the object sought to be achieved by the Act". Vide *In Re: The Special Courts Bill, 1978*, ; *In re Special Courts Bill, 1978*. Applying these tests it is clear that the Panchkuin Road Stall holders and the tenderers are two distinct categories. The requirement to obtain land of the Panchkuin Stall holders and to rehabilitate them was a consideration which was totally foreign so far as the 177 shops were concerned which were put on tender separately. The terms and conditions for 177 shops were published and were known to each of

the tenderers when he gave the tender to make now a grievance that because of the Panchkuin traders not observing trade zoning restriction they are suffering losses is really to ask for a relief on the alleged breach of terms of the license deed and not on the ground of any infraction of constitutional rights of the appellant, for it is well settled that "after the State or its agents have entered into the field of ordinary contract, the relations are no longer governed by the constitutional provisions but by the legally valid contract which determines rights and obligations of the parties inter se. No question arises of violation of Article 14 of any other constitutional provision when the State or its agents, purporting to act within this field, perform any act, In this sphere, they can only claim rights conferred upon them by contract and are bound by the terms of the contract". Vide *Radhakrishna Agarwal v. State of Bihar* AIR 1977 SC 1497 (2).

9. Much was sought to be made by Mr. Thakur, appearing for one of the respondents and Mr. Sanghi, appearing for the appellants to urge that the consideration for the high tender was because of the trade zoning restriction. It was argued that had it been known that the trade zoning restriction was not to apply to the Panchkuin Road shopkeepers the bid would not have gone that high. We cannot agree. As we have already said most of the tenderers gave tenders after the Panchkuin Road shopkeepers had been allotted the shops in November, 1978. There is nothing on record to show that any representation was held out to the appellants that trade zoning restriction was also to be applied to the Panchkuin Shopkeepers. Even in the tender notice and in the memorandum of information attached with the tender notice it was only these 177 shops identified in 7 groups which were offered for tender. In the plan as well as in the memorandum of information a number of shops (for Panchkuin people) were shown as reserved and not open for tender. It is impossible to accept that the tenderers who must be presumed to possess normal shrewd business sense did not know that the reserved shops were for Panchkuin people and the terms on which they had been allotted to them. Some of the writ petitioners obtained allotments in 1980 and 1981 when Panchkuin Road, shopkeepers had been carrying on business for over 2 years. In face of these uncontroverted facts this argument wears thin, and does no credit to the business acumen of the tenders which we are loath to accept. It was sought to be urged that tenders drew a higher rate solely because of trade zoning restriction. We feel that such an assertion is a pure and simple conjecture. The tenders were given on various considerations.. The nature of trade, the location of shop, the individual position and requirement of each tenderer and so many other imponderables must obviously have entered into the decision-making by each individual. That reservation of some permitted trades in a particular zone did not figure as an overwhelming content in the amount of tender that was offered will become evident from the statement of the actual tenders given. As an illustration let us see zone 3. There were about 54 shops in the zone 3 with 12 permitted trades. The clients of Mr. Sanghi (appellants in L.P.A. 122 (1981), Mr. Thakur (respondent in L.P.A. 122 & 159/1981) and Mr. L.R. Gupta (respondents in L.P.A.

154/1981) are the allottees in this zone. Shop No. 3 (Mr. Sanghi's client) gave a bid of 60.28 per sq. ft. This was a shop with a loft and 12 feet frontal space. Mr. Gupta's client is an allottee of shop No. 17. This shop also had a 12 feet frontal space, the bid was given at Rs. 30 per sq. ft. Another allottee of shop No. 19, who also had similar 12 feet frontal space gave tender of 42.0 per sq. ft, and for another shop No. 17 tender was accepted as low as Rs. 30 per sq. ft. In mezzanine, shop at M. 14 a tender of Rs. 27 was even accepted. What consistent pattern can one draw when the tender rate in the same zone has varied from Rs. 30 to Rs. 66 per sq. ft. excepting to accept that it is impossible to draw one consistent pattern. Certainly trade zoning restriction played almost no part in the calculation, otherwise why this gap between Rs. 30 and 65 per sq. ft. tender rate. That is why this whole exercise of the appellant to convince us that trade zoning restriction was the overwhelming consideration does not impress us. In a market usually trade zoning works out itself as a practical measure. As Palika Bazar was a new market it was so provided to start with. As it is trade zones were not restricted to one trade. Permitted trades in each zone varied from 12 to 14 trades. Choice obviously is not unnecessarily restricted.

10. That the tenders have not fantastically over bid against the reserved price would be clear if a reference is made to the position in zone 4 which has 69 shops. Out of these 41 were reserved for the Panchkuin Road Complex. They have been given these shops at a reserved rate which is from 11 to 12.30. As against this the other shops at open tender fetched only a rate between the range of Rs. 16 to 21 per sq. ft. but many of them fetched within the range of Rs. 16 to 18 per sq. ft. This belies the claim of the tenderers to have paid grossly excessive amount even as compared to Panchkuin Road people. We are not suggesting that the tendered rate should necessarily have been higher. We have no doubt that the tenderers took into consideration the various aspects of the matter--the potentiality of the business, their own financial liquidity and their expectations and then gave the rate. In a free market economy of private entrepreneurship all those factors mix inextricably with individual decision of each proprietor, and to try to give it any rational cohesive pattern is to go against the very basic teaching of Samuelsonian Economics, which is the leading economic theory of free enterprise.

11. The tenderers having successfully bid for it and the same having been accepted by the Committee a binding agreement came into existence. How far the expectations of tenderers been realised is not for us to examine. Even if unfortunately the projections made by the tenderers have not been realised it would be no defense for them to seek to avoid the terms of the license deed unless those were modified to their liking, for as said in *Har Shankar and Others Vs. The Dy. Excise and Taxation Commr. and Others*, "commercial considerations may have revealed an error of judgment in the initial assessment of profitability of the adventure but that is a normal incident of all trading transactions. Those who contract with open eyes must accept the burdens of the contract Along with its benefits"...

* * * * "Reciprocal rights and obligations arising out of contract do not depend for their enforceability upon whether a contracting party finds it prudent to abide by the terms of the contract. By such a test no contract could ever have a binding force".

12. We may in this connection mention that an objection had also been taken by the counsel for the Committee Mr. Mridul that in fact what was being sought to be effectuated by means of this writ petition was in fact a claim based on contract and the remedy by way of writ petition was incompetent. This argument has certainly a great deal of plausibility. The counsel for the appellants has, however, sought to meet it relying on D.F.O. South Kheri v. Ram Senehi AIR 1975 SC 205 (4). But that case has no applicability. In that case the Forest Officer passed an order cancelling the allotment made in favor of the lessee for the balance of the year and preventing him from removing the produce from the forest. The objection was taken that the petition under Article 226 was not maintainable because the dispute arose out of the terms of the contract and as the Divisional Forest Officer was acting in pursuance of it, Article 226 was not available. This argument, however, was negated on the ground that the grievance of the writ petitioner was that cancellation had been done without giving him a hearing and not following the principles of natural justice. It was in these circumstances that it was held that though the source of the right may have been initially in a contract what was in fact being claimed by the writ petitioners was that no cancellation should have taken place without giving him a hearing and this action being in violation of the principles of natural justice, remedy by Article 226 was available.

13. The present case is totally different. There is no arbitrary action being taken. No cancellation of the appellant's license has taken place. There is no statutory breach committed by the Committee for which relief is being sought. On the contrary the appellants are seeking a variation of the terms on which they originally entered into agreement with the Committee. This is pure and simple a case of grievances arising out of a contract. "In such cases where a party seeks to enforce a contractual right the same cannot be enforced by a writ petition." See Divisional Forest Officer Vs. Bishwanath Tea Co. Ltd., . It is well to remember that "to make out a case of denial of the equal protection of the laws under Article 14 of the Constitution, a plea of differential treatment is by itself not sufficient. An applicant pleading that equal protection of the laws has been denied to him must make out that not only he had been treated differently from others but he has been so treated from persons similarly circumstanced without any reasonable basis, and such differential treatment is unjustifiably made." Vide State of Madhya Pradesh Vs. Bhopal Sugar Industries Ltd., .

14. We were also referred by the counsel for the appellant to Kasturi Lal Lakshmi Reddy, Represented by its Partner Shri Kasturi Lal, Jammu and Others Vs. State of Jammu and Kashmir and Another, for the proposition that the Government even in dealing with the public whether by way of giving the jobs or entering into

contracts or granting other forms of largess, cannot act arbitrarily at its sweet will. But we cannot see its relevancy. All 177 shops were thrown open to the highest tenderers, Same terms and conditions apply to all of them. The claim to be equated with Panchkuin Road stall holders or mini market has no constitutional support--it is a claim for commercial benefit against the terms of their licenses. If the appellants were permitted to have the terms modified as they want there may well be a public interest litigation on behalf of the persons who did not tender because they could not compete in the open market, but may as well have if terms were to be less rigorous. Would they then not claim that all these shops should be put into the common pool for the purpose of fresh allotment. We are. Therefore, unable to accept the finding of the learned single Judge that there was any discrimination against the appellant by insisting that the trade zoning restriction which was part of the terms of the tender must be complied with by them. Though the objection as to the maintainability of the writ petition under Article 226 was well founded we have chosen to go into the merits of it for the reason that as the learned single Judge had allowed the, writ petition it would have been a futile exercise to throw the writ petition out on this ground which would in any case have kept the matter alive for another round of litigation. That is why we have gone into the merits but have found no infraction of Article 14. We are not much impressed with the fact (which impressed the learned single Judge) that almost half the tenderers have already shifted over to trades other than permitted. The tenderers who are responsible themselves for violating the trade zoning restriction cannot use their default as a justification to plead for variation of the agreed conditions. This approach is both against equity and rule of law. No one can take advantage of his own fault. We also find that this grievance of hardship and business going to ruins (apart from being; extraneous to the controversy) is in point of fact an unreal grievance. In this conviction it may be that because deeds were in the first instance for a period of 5 years, though subject to renewal. For most of the appellants the period is expiring this year. We had, Therefore, enquired from the appellants that if they feel that the continuance of the license deeds on the terms on which they had originally agreed was a totally unworkable proposition, as alleged by them, an opportunity was now available to them not to ask for renewal after the present period expires shortly. Without exception all the counsels appearing for the tenderers refused to opt for this course which obviously shows that the tenderers notwithstanding the alleged grievance being made of their being no possibility of carrying on business profitably because of the trade zone restrictions are still unwilling to give up the shops which according to them is unworkable business proposition. We do not consider it necessary to go into the various reasons and circumstances and the individual reaction of each tenderer to such a course. All that we need notice is that the alleged grievance of the trade zone restrictions having reduced the business of tenderers to a ruinous proposition does not appear to be such which even given a chance would persuade those, tenderers not to ask for renewals as and when the circumstances arise. Even the alleged grievance of the present license fee being paid by the tenderers and which they

had offered being excessive because of the no trade zone restrictions being applicable to the traders of Panchkuin road does not on a little scrutiny show any substance. This is because during the hearing the bench inquired from the writ petitioners that if their case was that "had they known that Panchkuin Road stall holders and mini market were not under trade zoning restriction, the amount of tender would have been very much lower the said claim could be tested by requiring the Committee to call for fresh tenders for those very shops on open basis indicating very clearly that those shops would be subject to trade zoning restrictions but that Panchkuin Road and mini market will not be subject to such restrictions and to fix the license fee according to the tenders received. We had also indicated that in such a case the Committee could be persuaded to even given the first option to the existing tenderers but only at an amount of highest tender which would be now received. But none of the tenderers would offer to accept such a suggestion, reason being because they know that the value and the potential of these shops would much more amount than offered by the tenderers/appellants. This would show that the so called spectre of ruin facing the tenderers because of the continuance of trade zoning restrictions is more a oratical flourish than a reality. inspire of this we had enquired from the counsel for the Committee whether considering the over all circumstances it was inclined to relax the trade zoning restrictions for all or whether it considers the continuation of trade zoning restrictions to be essential. The counsel for the Committee told us that to allow the break down of the trade zoning restriction for tenderers will change the complete complexion of the market and will also create problems in the actual day to day running. We are told that many of the trades require extra water and electricity connection which it would not be possible to provide if more shops switch over to unpermitted trades in various/zones. We were also told that the broad nature of the lay out and utility of the shopping centre may also greatly suffer if such major change was permitted. This objection of wholesale removal of the trade zoning restrictions was also opposed by about half the tenderers who were represented by Mr. Bishamber Lal, Advocate. Even Mr. Thakur and Mr. Sanghi, counsels for some of the tenderers opposed doing away with the trade zoning restrictions. Of course they sought to qualify it by saying that the trade zoning restrictions be applicable to Panchkuin Road stall holders. We have already given reasons why in our opinion this claim is unfounded. But what needs to be emphasised is that at least half of 177 tenderers want the trade zoning restrictions to be continued because according to them it will greatly affect their trade and also be against one of terms which was the subject of tenders when it was given. We find no justification as to how the trade zoning restrictions and the license fee having been voluntarily accepted by the tenderers can be unilaterally dispensed with by them. There is no legal or valid excuse as to why the tenderers should not carry out their part of the bargain of carrying on only permitted trade, and to pay the license fee on which they had accepted the license. The learned single Judge with respect has not noticed that at least half of the persons were in favor of the trade zoning restrictions to be continued. It, Therefore, cannot be said that there was total

collapse of the trade zoning restrictions. So far as the Committee is concerned it has taken a consistent stand by issuing show cause notices to the persons who had allegedly violated the terms of the license. The Committee, Therefore, cannot be faulted for having encouraged any of 177 tenderers to switch over to a trade other than the one permitted.

15. We, Therefore, do not find that any case of discrimination was made out by the writ petitioners. We may mention that in the course of judgment we have given reasons to show that no case of discrimination is made out qua Panchkuin Road stall holders because they being a separate category could be treated differently. During the hearing mention was made of mini market. This mini market was built in a space left over in the corner of the market. These are small spaces which were thus used and given over to some of the verandah dwellers and from theatre communication. The space available with them is disproportionately different from that of regular shops for which tenders had been called. The reasons which have prevailed with us for rejecting the tenderer's claim of the discrimination vis-a-vis Panchkuin Road stall holders applies equally if not with a greater force to a grievance vis-a-vis Mini Market and must also be similarly rejected.

16. As mentioned before the Committee had issued show cause notices against the tenderers to take action against them for having violated the trade zoning system. As the learned Judge had quashed these notices obviously the persons had continued carrying on the trade they like, because of our decision they would necessarily have to now shift over to the permitted trade. We feel that time should be given to them to make the necessary adjustments because a sudden break with the present existing situation may not be practicable. We would, Therefore, allow a period of 3 months for all those shopkeepers who have changed over to unpermitted trades so as to enable them to comply with the trade zoning restriction as per their license deeds. In that view of the matter we also feel that the show cause notices which were issued are not technically existing having been quashed by the learned single Judge, need not be automatically revived immediately. The result will be that the tenderers will of course have no right to carry on a trade which is not permitted in the zone but have been permitted three months time to make the necessary adjustment. Of course if after that period they violate any trade zoning restriction the Committee will be perfectly competent to initiate proceedings against them for the alleged breach of the license deed.

17. The learned Judge had in cases of certain writ petitioners who had chosen to continue with the trade directed find issued a mandamus that there should be relaxation of the license fee in terms of the changed circumstances. In view of the fact that we are now holding that every one of the tenderers now must comply with the license terms no question of refixation of license fee would arise. The appeals of the Committee qua them will be allowed, and the direction that there should be refixation would obviously stand vacated.

18. This conclusion would also dispose of the contention of Mr. B. Lal who represented other persons who though not writ petitioners but had also continued to carry on the permitted trade. As there is to be no refixation of license fee in C.W. 156/1980 & Others the grievance of Mr. Bishemberlal as to why the same relief was not given to his clients is no longer sustainable.

19. Mr. Rao's clients are those who had switched over the other trades. He had also sought that if the refixation was, to be done in the case of C.W. 156/1980 his clients should also have been given this benefit. Having rejected the plea in C.W. 156/1980 this grievance automatically fails. But even if we had allowed and agreed with the learned single Judge in the relief given in the case of G.W. 156/1980 the same would not have been permissible in the case of those who had on their own changed and switched over to unpermitted trades. This is because if at all any benefit was to be given for refixation it could only be to those licensees who had continued to comply with the trade zoning restriction. The clients of Mr. Rao who had chosen to exercise their option, changed over the trade must be deemed to have taken a decision that the change over of the trade was to their benefit and having done so they cannot put forth a claim that the license fee should be correspondingly reduced. Those persons who have changed their trade would thus have consciously taken the decision of having violated the trade zone restrictions and switched over to the trade because they, thought it would best, serve their purpose, can hardly plead any justification that they have suffered any loss because of the high license fee or because of the trade zoning restrictions. They are themselves defaulters and cannot plead their own default as a plea for getting benefit. In any case because of our decision their claim has to be rejected. We may also note one argument which Mr. Thakur raised with regard to the direction that the learned single Judge had given to the Committee in the matter of refixation of the license fee in case of writ petitioners in C.W. 156/1980 and others. Though in view of the fact that we have held that there is no merit in the writ petitions and the same have to be dismissed this direction by the learned single Judge naturally no longer survives but as an argument was raised by Mr. Thakur we feel that we may as well deal with it.

20. Mr. G.D. Thakur, the learned counsel for the appellant contended that the learned Judge had not given any specific directions and wanted to persuade us to particularise and specify the directions and contours within which the Committee when deciding the matter of refuting the fee should function. The contention was without merit, because it is apparent that as the refixation has to be done by the Committee they will necessarily take into account the various parameters and circumstances. We cannot for obviously patent reasons lay down what considerations should be taken into account and how much weight should be given to it, it will depend upon the facts of each case. The canvas left by the learned single judge is wide enough for any contention to be taken by the appellants and we, Therefore, cannot really understand the grievance. Pressed further Mr. Thakur came out with the suggestion that what he really wanted to urge was that though apparently the tender was invited for allotment on license

basis and notwithstanding that in the whole of the petition it is specifically accepted that the shop was taken on license on payment of license fee a direction should be given that the Committee should while redetermining the license fee treat the petitioners as lessees. The suggestion was obviously and to be fair, to Mr. Thakur, he did not in any manner disclaim it that as the Rent Act was applicable the amount that should be fixed should be on the same basis of the shops being rented out and being subject to Delhi Rent Control Act. This argument has to be rejected for more than one reason. No case was pleaded that though the petitioners had taken the premises on license in fact it was a lease and that they were in the position of a tenant. "Had such a plea been taken the petitioners might have been at the very threshold had their petitions dismissed with the direction to approach the Civil Court if they wanted to establish this contentions and disputed fact. This plea that the petitioners were not licensees but were lessees was never put forth before the learned single Judge and this new point could not be allowed to be argued, more so as it deals with the disputed question of fact. Mr. Thakur however, maintained that there were no disputed facts because according to him he was relying upon the license deed itself and according to him courts have laid down that notwithstanding the form of the deed if in fact the deed amounts to a lease it can be taken to be a lease deed notwithstanding that it is stated to be a license deed. We do not think that the matter is that simple as that because the intention of the parties whether it was a lease or a license can obviously not be gone into only by looking at the surrounding circumstances. That apart there is one major and vital hurdle in the way of the writ petitioners if they are wanting to urge this ground. This is that when the Committee invited tender for the allotment of shops on license basis it treated every citizen equally in as much as any person could give the tender and the preference of the allotments was to go to the highest tenderers in descending order. Thus there was no discrimination or favoritism shown. Any person who chose to apply would stand on the same footing and would be entitled to the allotment depending upon his tender. But if the petitioner's contention is to be accepted that this was not a licensee and in fact it is a lease and hence the only amount which is chargeable can be fixed under Delhi Rent Control Act, the whole concept and the situation changes. It will thus amount to saying that the Committee has given to these allottees shops on lease at rental which is fixed by the Delhi Rent Control Act. This would create totally different picture and context. In that case the question may well be asked that had the Committee indicated that it was planning to give on lease these shops then many more people who may not have bid in the open tender would have applied for being given shops as lessees on rental basis because the amount of rent would be very much less than that tendered in open bid by various applicants. In such a situation many of the less affluent sections of the community would have been forthcoming to be allotted shops as lessees and at controlled rent, but did not do so because of open tender which laid down clearly that preference will be given to highest tenderer. In that case this court sitting in equity jurisdiction under Article 226 would naturally be faced with the situation that as a result of the

decision of this court the tenderers would have to be treated as lessees while the Committee had by a public notice indicated that it was giving the shops on tender to the highest bidder. If this was to be the position then the question may well arise as to how allotment in favor of these tenderers could be validly upheld. This court obviously cannot allow the decision to stand which would result in giving the benefit to those people who had given tenders but were seeking to become lessees while large number of persons who did not compete because of their poor financial position would have to be left out. In that case a serious question would have arisen whether this court should not have exercised its power to quash the said allotment and direct that if leases to be given the Committee must do a fresh exercise and make fresh allotment. That is why after some arguments Mr. Thakur did not proceed with this line of argument. We feel that this was rightly done by him because if we were persuaded that these license deeds should be treated as lease deeds we would have had no option but to hold that the Committee had acted arbitrarily in selecting certain people and not giving a public notice that it was intending to give on lease all these shops and in that case there would have been no option left to the court but to quash the allotment made in favor of the tenderers and to give a direction to the Committee to ask for fresh application if it was wanting to give allotments of the shops on lease. But that situation of course does not arise because of our decision on merits.

22. As a result of the above we would set aside the order of the learned single Judge and allow the appeals of the Committee being L.P.A. 159/1981 and others, and dismiss the writ petitions. For the reasons given in the judgment above L.P.A. 122/1981 will stand dismissed.

23. With reference to Civil Writ Petitions No. 1702/1980 etc. we may note that it was emphasised by the counsel for the Committee in the writ petitions that the allotment was made sometime in 1980-81 and the question that these tenderers did not know that there was no trade zoning restrictions on Panchkuin Road stall holders is obviously incorrect statement because by that time Panchkuin Road stall holders had been carrying on their business for about 2/3 years. We may also note that during the hearing it was sought to be pointed out that the Committee was even now permitting the trade other than those permitted and was making allotment accordingly. Reference was made to the allotments of Shops No. 2 and 18. This has been denied in the affidavit dated 22-2-1983 filed by Mr. Raj Kumar Gupta, Estate Officer of the Committee, in which it is stated that from copies of the license deed executed between the parties on 21-7-1981 and 28-7-1981 allottees have been permitted to carry on trade in zone 3. Copies of the license deed which have been filed also show that the permission has to be given to carry on trade permitted in zone 3; the shops also being situated in the same zone. This part of the complaint must, Therefore, be rejected. Thus writ petition No. 1702/80, 1783/1981 and 1728/1981 will stand dismissed for the reasons given in the judgment.

24. As a result of the above, appeals of the Committee being L.P.A. 159/1981 and Others are allowed and L.P.A. 122/1981 and Civil Writ petitions of the tenderers are dismissed with the directions as given above. In the circumstances there would be no order as to costs throughout.