

(1992) 09 P&H CK 0067

In the Punjab And Haryana At Chandigarh

Case No : C.W.P. No"s. 1303 1304, 340, 965 of 1989 and 11593, 11599 of 1988

Seven Seas Education Society

APPELLANT

Vs

The Haryana Urban Development Authority and others

RESPONDENT

Date of Decision : 11-09-1992

Acts Referred:

Constitution of India, 1950 — Article 14, 226

Citation : AIR 1993 P&H 71 : (1993) 105 PLR 735

Hon'ble Judges : N.K. Sodhi, J

Bench : Single Bench

Advocate : S.C. Sibal, for the Appellant; S.C. Mohunta, R.S. Mittal A.Mohunta, R.K. Sharma, Arun Jain, Rajiv Atma Ram, Puneet Kausal, Ms. Nirmal Jit Kaur and C.L. Sharma, for the Respondent

Judgement

1. These are six writ petitions Nos. 1303, 1304, 340, 965 of 1989 and 11593, 11599 of 1988 filed under Art. 226 of the Constitution challenging the allotment of school sites to the private respondents in different Sectors in the Urban Estate of Panchkula. Since learned counsel for the parties are agreed that common questions of law and fact are involved in them, they are being disposed of by one judgment. For the sake of convenience, relevant facts have been broadly taken from civil writ petition No. 1303 of 1989.

2. By an advertisement issued in early 1988, the Haryana Urban Development Authority, Panchkula, (for short, HUDA) invited applications for the allotment of sites for High/Primary/Nursery schools in different Setofs at Panchkula. Applications were required to reach the office of HUDA by March 30, 1988. The applicants/institutions were required to submit their applications on the prescribed pro forma along with earnest money of Rs. 2500/- in the shape of a bank draft. Pro forma required to be filled in by each applicant was given in the advertisement itself and it reads as under :--

"1. Name of institution.

2. Constitution whether trust or registered society, its aims and objects, the names and particulars of members of the Governing Body, last audit Report, Financial position and detail of similar institutions already set up at other places etc.

3. Requirement of Land.

4. Purpose for which the land is required.

5. Financial position of the institution (with bank reference).

6. Any other relevant information which the institution may like to give.

7. Requirement of electricity and water supply.

8. Bank draft of Rs. 2500/- in the name of Estate Officer, HUDA, Panchkula.

9. Land utilisation plan.

10. Recommendation of concerned D.C.

Advertisement provided that preference would be given in the following order :--

1. Haryana Education Department.

2. Central Schools Organisation/Education Department of Govt. of India.

3. Prominent National level/ Regional level institutions.

4. Existing schools with good reputation.

5. Others.

The petitioners in all these petitions came in the category of "existing schools" as they were all institutions which were already running schools either in Chandigarh or in Panchkula. The petitioner in civil writ petition No. 1303 of 1989 who claims to be a society registered under the Registration of Societies Act, 1860 is running a High School in a residential accommodation in Sector 15, Panchkula. The Haryana Government has recognised the school of the petitioner and it is claimed that the school has in its employment 12 teachers to impart education to about 300 students. It is further claimed that the school is imparting sound and liberal education to the students which helps them in all round development of their personality. The course of study and syllabi are as approved by the Haryana Education Department. It is also claimed that despite the difficulties it has been facing in regard to lack of accommodation, the school has been maintaining good standard of education. The petitioner along with many others applied for the allotment of a site for a High/Primary school. Some others were applicants for only primary schools while some of the applicants applied for Nursery schools. The petitioners herein were unsuccessful in getting a site for a school and their earnest money was consequently returned. The private respondents, on the other hand, were selected and a letter of allotment was issued to each of them. Some of the letters of allotment have been appended as

An-nexures with the writ petitions and it is these allotments which have been impugned in the present petitions.

3. On a notice issued to the respondents they have filed their separate written statements. HUDA in its reply stated that since the petitioner had not been recommended by the concerned Deputy Commissioner as per clause 10 of the advertisement, its application for the allotment of a site had to be declined. It has also been averred that HUDA had not recognised the school of the petitioner and the mere fact that the school had been recognised by the State Government did not give any right to the petitioner for the allotment of a site. Allotments made to the private respondents were sought to be justified by submitting that the school sites were allotted on merits after considering all the relevant aspects. On a specific query put to the learned counsel for the HUDA as to what were the considerations which weighed with the authorities in allotting the school sites to the private respondents and declining the same to the petitioners, no satisfactory explanation could be furnished and I permitted HUDA to file an affidavit by way of additional reply to explain therein the matters which were taken into consideration while considering the allotment of sites to the various applicants. An additional reply dated August 21, 1991 has been filed on behalf of HUDA.

4. It was strenuously urged on behalf of the petitioners that HUDA in allotting the school sites acted arbitrarily and did not follow any uniform policy or guidelines and, therefore, its action is violative of Art. 14 and the allotments made in favour of the private respondents were liable to be quashed. HUDA, on the other hand, while defending allotment relied on the additional reply filed on its behalf in which, according, to it, detailed reasons have been given for the allotments. It is submitted that when the matter regarding allotment was taken up for consideration, a selection committee was constituted which interviewed all the applicants. This committee was headed by the Additional Deputy Commissioner Ambala and the District Education officer, Ambala, the Senior Town Planner, Panchkula, Estate Officer and the Administrator, Panchkula were its members. It is further stated that the committee while considering the applications took into account the reputation of the institution, its creditability, quality of education and the financial position of the institution before making its recommendations. There were in all 22 sites which were advertised, 10 out of which were reserved for the Government and 12 sites were available for the private entrepreneurs. The recommendations of the selection committee have also been attached as Annexure R1 with the additional reply.

5. After hearing counsel for the parties at length and having gone through their pleadings, I found that the selection committee had given some reasons for selecting the private respondents for the allotment of school sites, but no reason whatsoever was forthcoming for rejecting the claim of the petitioners and other applicants. I directed the Chief Administrator, HUDA to be present in Court along with original record. He appeared on 11-9-1992 with the record and very fairly conceded that there was nothing on the record to show as to what weighed with

the selection committee in rejecting the applications filed by the petitioners and other applicants.

6. It is by now too well settled that every State action in order to survive must not be susceptible to the vice of arbitrariness which is the crux of Art. 14 of the Constitution and basic to the rule of law by which we are governed. Arbitrariness is the very negation of the rule of law. Satisfaction of this basic test in every State action is sine qua non to its validity and in this respect State cannot claim comparison with a private individual even in the field of making allotments for school sites. The meaning and true import of arbitrariness is more easily visualised than precisely stated or defined. The question, whether the impugned action is arbitrary or not, is ultimately to be answered on the facts and, circumstances of a given case. An obvious test to apply is to see whether there is any discernible principle emerging from the impugned action and if so, is it reasonable? Where the State action does not disclose any discernible principle or the adoption of any uniform yardstick in examining the claims of different applicants, the action itself attracts the vice of arbitrariness. This is so because every State action must be informed by reason and it follows that an act uninformed by reason is arbitrary. The rule of law contemplates the governance by law and not by humour, whims or caprices of the men to whom the governance is entrusted for the time being. The equality clause enshrined in Art. 14 of the Constitution requires that State action must be based on valid relevant principles applicable alike to all similarly situated and it must not be guided by any extraneous or irrelevant considerations as that would be denial of equality.

7. Keeping in view the facts of the present case, I am satisfied that the whole matter regarding the allotment of school sites was considered by HUDA and its selection committee in a most arbitrary manner without adopting any uniform yardstick in weighing the merits and demerits of the applicants. A site has been allotted to Ajay Memorial Educational Society, Panchkula and the reason given in support of the allotment is that it was already running a school in Panchkula with a strength of 150 students and had a bank balance amounting to Rs. 81000/- According to the selection committee, this institution enjoyed a good reputation in terms of educational standards and the Deputy Commissioner had recommended the allotment. One of the petitioners is also running a school in Panchkula with about 300 students which stands recognised by the State Government and even though it has a larger bank balance, it has not been allotted a site and an amusing reason given in the written statement is that the application had not been recommended by the Deputy Commissioner. As to what were the factors which weighed with the Deputy Commissioner in recommending or refusing to recommend an application are not known. The case of the petitioner for allotment was recommended by the Sub Divisional Magistrate, Kalka as the Deputy Commissioner was not available and the last date for the submission of applications was expiring when the application was filed. If these were the only factors which weighed with the selection committee (as admitted in the additional reply) where is then the justification for not treating the petitioner

similarly and allotting a site to it. Again, one Lt. Col. Y. P. Mahindru has been allotted a site who was in the Army Education Service when the allotment was made and had two more years of service to go before his retirement. He did not run any school or institution and his application had not been recommended by the Deputy Commissioner and yet a school site was allotted to him, the startling reason being that he would construct the building during the two years of his service and start running a school soon after his retirement. There could not be anything more arbitrary and perverse than this. It is not necessary to refer to the reasons given in support of the allotment made in favour of all the private respondents as, in my opinion, the whole action of HUDA does not disclose any discernible principle which could be said to have been followed in the matter of allotting the sites. Before this action of HUDA could be upheld, it was necessary for it to disclose some principle or uniform yardstick which it had applied in the matter of selecting candidates for school sites on the basis of which it could be said that allottees fitted into that yardstick whereas unsuccessful applicants did not. As already stated earlier, no such principle was adopted whereas inconsistencies and arbitrariness are writ large. In these circumstances, I have no hesitation in holding that a policy of "pick and choose" was adopted and those who were the favorites were allotted the sites without the claims of other applicants including the petitioners having been considered. The whole action is, therefore, illegal, arbitrary and capricious.

8. The question that now arises is as to what relief are the petitioners entitled. Having found that the allotment in favour of the private respondents was most arbitrary and capricious, I would have normally quashed the same with a direction to the authorities to reconsider the applicants after adopting an objective and uniform criteria but I refrain from following this course in view of the intervening facts and circumstances. After the allotments were made in favour of the private respondents, they were required to construct the school buildings within a period of two years therefrom. These respondents have filed affidavits stating that they have not only completed the construction of the school buildings after raising huge loans from banks and other financial institutions but their schools have also started running. It has not been disputed that the school buildings have been constructed and hundreds of children have been given admission in those schools. Teaching and non-teaching staff has also been recruited. In the circumstances, if I cancel the allotments made in favour of the private respondents, the school buildings will have to be demolished and even if I was to go to the extent of issuing such a direction, the interest of tiny-tots and other students who are now getting education in the schools cannot be lost sight of. The students and the teachers cannot be made to suffer for no fault of theirs. In the result, the allotments, though illegal and arbitrary, are not being quashed in public interest.

9. I may now advert to another submission made on behalf of some of the petitioners. It was stated that some of them are already running schools in residential houses at Panchkula and HUDA has issued notices to them to vacate

those premises. Learned counsel appearing for HUDA states that sympathetic and reasonable approach would be adopted in the matter though ultimately they will have to ask the schools to vacate the residential premises, as it is not permissible under the Bye-laws to run schools in private houses. Counsel for the petitioners state that the petitioners undertake to vacate the premises within a reasonable period after HUDA has considered their claims for allotment of school sites.

10. I may mention that the Chief Administrator, HUDA stated before me that some new Sectors in the Urban Estate of Panchkula are being developed and new sites for schools are being carved out. He further stated that within the next two months, HUDA would be inviting applications for the allotment of those sites. In this view of the matter, I give the following directions :--

1. HUDA will frame and adopt objective and uniform guidelines for the purpose of making selection of applicants for the allotment of school sites.

2. The claims of the petitioners herein, if they apply, will be considered for the allotment of school sites by HUDA on priority basis, meaning thereby that other things being equal, the petitioners will be preferred in the matter of allotment.

3. Those of the petitioners who are already running their schools in residential houses at Panchkula will not be evicted therefrom till their applications for allotment have been finally decided. In case an allotment is made in their favour, they will be given reasonable time to construct the school building. The petitioners, however, undertake that in the event of their applications for allotment being rejected, they will vacate the existing premises within six months from the intimation received by them in this regard.

11. Consequently, the writ petitions are disposed of in the aforementioned terms. In the peculiar circumstances as referred to above, it is, in my opinion, a fit case where respondents 1 and 2 should pay the costs of the petitioners which I assess at Rs. 1000/- in each case.

12. Order accordingly.