
(2011) 04 AHC CK 0071

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 21663 of 2011

Vikas Singh and Others

APPELLANT

Vs

State of Uttar Pradesh and Others

RESPONDENT

Date of Decision : 16-04-2011

Acts Referred:

Uttar Pradesh Industrial Area Development Act, 1976 — Section 6

Citation : (2011) 6 ADJ 233 : (2011) 2 UPLBEC 1626

Hon'ble Judges : Sanjay Misra, J; Amitava Lala, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Amitava Lala, J.—Out of four Petitioners, three are individuals and the other one is a company through one Dr. Harsh Mahajan claiming to be its Managing Director without any supporting affidavit of competency. The whole writ petition is not filed by any of the Petitioners but with, supporting affidavit of one Naunidh Singh Arora, aged about 25 years, son of Sri M.S. Arora, B-47, Sarvodaya Enclave, New Delhi-17 claiming himself to be pairokar of the Petitioners, however, without disclosing any connection between himself and the Petitioners. Cloud cannot be dispelled from the mind of the Court about the questionable identity of the deponent. Moreover/this Court has already held that even a power of attorney holder has no right to get an order in the nature of writ of certiorari or mandamus, in Vice Admiral, Rustam Khusro Shapoor Ji Gandhi and Ors. v. State of U.P. and Ors., 2010 (3) ADJ 319 (DB). The relevant part of such judgment is quoted hereunder

... In any event, a further question can arise before this Court whether a writ of Certiorari or Mandamus can be issued in favour of the Power of Attorney holder, on which there is a direct judgment of this Court being in Dr. Prabhu Nath Prasad Gupta Vs. State of U.P. and Others, which has held that the writ petition by Power of Attorney holder of the Petitioner seeking relief in the nature of writ of Certiorari for aggrieved person is not maintainable. The only exception is in

respect of writ of Habeas Corpus and writ of Quo warranto. We have also verified such ratio in the Division Bench judgment of this Court to which one of us (Amitava Lala, J.) was a Member in *Bharat Petroleum Corporation limited, Mumbai v. M/s Amar Auto and Ors.* 2008 (5) ADJ 584 (DB), wherein a distinguishing feature arose about maintainability of suit and writ petition by the Power of Attorney holder. It was held therein that as because a plaint or written statement in any suit or memorandum of appeal in any civil appeal are supported by verification, there is a chance to examine authenticity of the person claiming to be the Power of Attorney holder. But neither such mechanism is available to the writ Petitioners nor it is based on any verification for further scrutiny. It is based on personal affidavit. It has also been confirmed by further Division Bench presided by one of us (Amitava Lala, J.) in C.M.W.P. No. 44007 of 1998 alongwith other two matters (*Smt Gurmeet Kaur Kwatra v. Vice-Chairman, Varanasi Development Authority Varanasi and Ors.*) by extending the bar up to scope of writ of Mandamus and Prohibition alongwith writ of Certiorari.

Supporting affidavit of the pairkar speaks that the averments of all the paragraphs of the writ petition are true to his personal knowledge. But in paragraph-7 of the writ petition, where the allegations are made against the Chief Minister of the State and the Chairman of the Noida authority, it appears to be based on the informations of property dealer/s even without disclosing the identity of such person/ s. No such persons are even made party Respondents. Against this background, prima facie writ petition appears to be unsustainable in nature.

2. For the purpose of better understanding, paragraph-7 of the writ petition is quoted below:

7. That on 1.10.2010 the Petitioner No. 1 wrote letter to the Chairman, NOIDA Authority informing him the fact that the property dealers in NOIDA had informed the Petitioner No. 1 that allotment is being done only in such cases where bribe money to the tune of Rs. 5.50 crores per farm house of 10,000 sq. mtrs was paid to Ms. Mayawati. The Petitioner No. 1 when queried the property dealer as to how a bona fide eligible applicant could be debarred from allotment, was informed that the form has been made so elaborate and with so many Annexures and with so many counter signing of Chartered Accounts and Chartered Engineers and with project report etc. and further the allotment process envisaged screening of the application forms and an interview by a selection committee only for the purpose of granting discretion to the NOIDA authority to reject the application so that only such of those applications would be cleared who pay the bribe money. The Petitioner No. 1 also brought out in his letter the fact that the application form as advised by the property dealers has been made in such a manner that firstly, very few people could be able to fill up the form because of the technicalities involved in the same and secondly, alongwith the form there were so many documents to be annexed signed by the chartered accounts or by chartered engineers which also very few people would

be able to arrange and thirdly a project report for the farm house construction of the farm house, income tax returns and the balance sheets had also been asked thereby increasing the subjectivity of the plot allotment committee in selecting or rejecting an application. It was also pointed out in that letter that the farm house was being sold below the market price and hence there were ample scope for bribe to be asked in the allotment. The Petitioners accordingly vide his letter requested for criteria to be followed by the plot allotment committee in the matter of allotment of plot and as to what weightage was to be given for the interview in such allotments. These details were asked at the earliest to enable the Petitioners to properly fill up the forms. True copy of letter dated 1st October, 2010 is annexed herewith and marked as Annexure No. 1 to this writ petition.

3. Apart from that from the facts of the case it appears to us that the Petitioners are socially well established and/or financially affluent, who inclined to get allotment of plots of land for farm house in the open green space of Noida under the scheme known as "Open-Ended Scheme For Development of Farm House on Agricultural Land-2010". The Petitioners, being signatories therein, have agreed to fulfil the terms and conditions prescribed in the application for allotment of such plots. Bottom of such application comprises clause of declaration, which is as follows:

DECLARATION BY THE APPLICANT

I/We hereby declare that the information, submitted with application form, are true to the best of our knowledge. Nothing has been concealed and no part of it is false. I/We further declare that we have carefully read and understood the terms and conditions for allotment of farmhouse plot and do hereby abide by the same. Each page of the terms & conditions has been signed. I/We are aware, if allotment is obtained on the basis of false information, the NOIDA may cancel our allotment at any stage and forfeit all the deposits made by me/us.

However, the Petitioners want to get lands as per their choice upon payment of 10% extra premium.

4. So far as question of allotment as per the choice upon payment of 10% extra premium is concerned, learned Counsel appearing for the Noida authority has contended that there is no such scope under the scheme and/or the terms and conditions for allotment, therefore, the Petitioners cannot be permitted to do so. The reliefs as claimed in the writ petition are as follows:

i. Call for the record relating to the allotments being made by the Noida authority and further to direct the allotment of plots in favour of Petitioner No. 2 and Petitioner Nos. 3 and 4 as clearly their applications were complete and were eligible in all respects and the Noida authority had no justification to either keep their applications pending or to reject them while at the same time making allotments to other persons whose standing would be far inferior to the standing of the Petitioner No. 2 and Petitioner Nos. 3 and 4 in the matter of allotment of plots for development of the farm house.

ii. Call for the records of the Respondents and direct the Respondents to allot plots to Petitioner Nos. 1, 2 and Petitioner Nos. 3 and 4 as per their choice as the Petitioners have already undertaken to pay 10% extra premium for exercising the said choice.

iii. Or in the alternative direct that the allotments of farm house made in the last two years by the NOIDA authority be cancelled and all the plots be put on auction so that the Petitioners could participate in the same and bid for the plot of their own choice.

iv. To stay any further allotment of farm house or in the alternative reserve three farm houses contiguous to each other for the Petitioners.

v. Direct the Noida authority to place on record the deliberations of the Plot Allotment Committee, the criteria followed by them in the matter of allotment and as to how the persons allotted were better than the Petitioner No. 2 and Petitioner Nos. 3 and 4 so as to deny the Petitioners an allotment while at the same time make allotment to others.

vi. Any other writ, order or direction as this Hon''ble Court may deem fit and proper in the facts and circumstances of the case to meet the ends of justice.

vii. Award the cost of the petition to the Petitioners.

5. Learned Counsel appearing for the Noida authority has further contended before us that after participation in the proceedings for selection with regard to allotment of land, the Petitioners cannot turn around and say that they will not go by the terms and conditions mentioned in the application but they will go on the basis of their choice of land on payment of 10% extra premium when no such condition is available in the scheme. Function and power of the authority in respect of the transfer of land has been provided u/s 6 of the U.P. Industrial Area Development Act, 1976, which is quoted hereunder:

6. Functions of the Authority.--(1) The object of the Authority shall be to secure the planned development of the industrial development areas.

(2) Without prejudice to the generality of the objects of the Authority, the Authority shall perform the following functions--

(a) to acquire land in the industrial development area, by agreement or through proceedings under the Land Acquisition Act, 1894 for the purpose of this Act;

(b) to prepare a plan for the development of the industrial development area;

(c) to demarcate and develop sites for industrial, commercial and residential purpose according to the plan;

(d) to provide infra-structure for industrial, commercial and residential purposes;

(e) to provide amenities;

(f) to allocate and transfer either by way of sale or lease or otherwise plots of land for industrial, commercial or residential purposes;

(g) to regulate the erection of buildings and setting up of industries; and

(h) to lay down the purpose for which a particular site or plot of land shall be used, namely for industrial or commercial or residential purpose or any other specified purpose in such area.

6. There is no challenge as to the vires of such Act nor one can challenge the same after participating in the selection process on the basis of the terms and conditions mentioned in the development scheme, taking any fictitious plea.

7. It further appears that the writ petition is bad for misjoinder of necessary parties. The Petitioner No. 1 has already got allotment of land for farm house when the claims of the Petitioner Nos. 2, 3 and 4 are under consideration, as specifically contended by the learned Counsel appearing for the Noida authority. Therefore, the claims of the Petitioner No. 1 and the Petitioner Nos. 2, 3 and 4 are diagonally opposite. Petitioner No. 1 wants to get the alternative plot since, according to him, the allotment has been made to him at a far away place and high-tension line has been fixed over and above such land, when the other Petitioners are yet to get the allotment of land.

8. Against this background, learned Counsel appearing for the Noida authority has produced before this Court the map of the locale, from which we find that no high-tension line has been shown as proceeding over the land allotted to Petitioner No. 1. Copy of such map is directed to be kept with the record.

9. Therefore, when the writ petition is made at a stage when allotment has been made to one and allotment is under consideration with regard to others, such writ petition will be declared as infructuous for the Petitioner No. 1 and premature for the rest. There is limited scope of judicial scrutiny in the writ jurisdiction of this Court in respect of such type of disputes. Learned Counsel appearing for the Noida has relied upon paragraphs 9 and 12 of the judgment in Directorate of Education and Others Vs. Educomp Datamatics Ltd. and Others, wherein the Supreme Court held as under:

9. It is well settled now that the Courts can scrutinize the award of the contracts by the Government or its agencies in exercise of their powers of judicial review to prevent arbitrariness or favoritism. However, there are inherent limitations in the exercise of the power of judicial review in such matters. The point as to the extent of judicial review permissible in contractual matters while inviting bids by issuing tenders has been examined in depth by this Court in Tata Cellular Vs. Union of India, After examining the entire case-law the following principles have been deduced: (SCC pp.687-88, para 94)

94. The principles deducible from the above are:

(1) The modern trend points to judicial restraint in administrative action.

(2) The Court does not sit as a Court of appeal but merely reviews the manner in which the decision was made.

(3) The Court does not have the expertise to correct the administrative decision. If a review of the administrative decision is permitted it will be substituting its own decision, without the necessary expertise which itself may be fallible.

(4) The terms of the invitation to tender cannot be open to judicial scrutiny because the invitation to tender is in the realm of contract. Normally speaking, the decision to accept the tender or award the contract is reached by process of negotiations through several tiers. More often than not, such decisions are made qualitatively by experts.

(5) The Government must have freedom of contract. In other words, a fair play in the joints is a necessary concomitant for an administrative body functioning in an administrative sphere or quashes administrative sphere. However, the decision must not only be tested by the application of Waynesburg principle of reasonableness (including its other facts pointed out above) but must be free from arbitrariness not affected by bias or actuated by mala fides.

(6) Quashing decisions may impose heavy administrative burden on the administration and lead to increased and unbudgeted expenditure.

12..... The Courts cannot strike down the terms of the tender prescribed by the Government because it feels that some other terms in the tender would have been fair, wiser or logical. The Courts can interfere only if the policy decision is arbitrary, discriminatory or mala fide.

(emphasis supplied)

10. We also find that ratio of such judgment has been followed by a Division Bench of this Court in the judgment in Air Force Naval Housing Board, New Delhi and Ors. v. State of U.P. and Ors. 2009 (9) ADJ 603 (DB).

11. Learned Chief Standing Counsel has contended that the allegations as made against the Chief Minister of the State and the Chairman of the Noida authority are very wild without any foundation whatsoever, therefore, such type of comments not only be deprecated but exorbitant cost will be imposed.

12. In totality, we are of the view that the writ petition is misconceived in nature and cannot be admitted for any of the grounds discussed above. Therefore, on contest, we are of the firm view that the writ petition cannot be admitted. Hence, it is dismissed at the stage of admission, however, without imposing any cost.

13. With a caution, we are of the view that if the Petitioners are really serious about the charges, as levelled against some of the important authorities of the State without making them party Respondents herein, it is open for them to make specific complaint with materials before the appropriate agency for the purpose of enquiry or investigation.

Sanjay Misra, J.

I agree.