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Case :- WRIT - C No. - 54063 of 2017

Petitioner :- Ahsan Karim Khan
Respondent :- State Of U. P. And Others

Counsel for Petitioner :- Udit Chandra
Counsel for Respondent :- C.S.C., Dhananjay Awasthi

Hon'ble Pradeep Kumar Singh Baghel,J.
Hon'ble Rohit Ranjan Agarwal,J.

(Delivered by Hon. Pradeep Kumar Singh Baghel,J.)

The writ jurisdiction of this Court under Article 226 of the Constitution is invoked against the order dated 26/28.08.2017 passed by respondent no.4, whereby the petitioner's allotment of the plot for commercial purpose has been cancelled and the amount deposited by him has been returned.

A brief reference to the factual aspects would suffice.

The Gorakhpur Industrial Development Authority, Gorakhpur[1], the respondent no.2, issued an advertisement on 22.07.2014 inviting applications for allotment of 26 vacant industrial plots of different sizes in Industrial Area, Gorakhpur. Pursuant to the said advertisement the petitioner made an application on 19.08.2014 for allotment of an industrial plot of an area of 9000 square meters in Sector-13 or in any other sector.

The respondent no.2 vide a communication letter dated 30.08.2014 informed the petitioner that for allotment of the said plots an Allotment Committee has been constituted and he was asked to appear before the Allotment Committee for his interview. The interview was held on 28.01.2015. The petitioner was issued an allotment letter dated 31.03.2015, whereby he was allotted Plot No. F-5 in Industrial Sector-15. The area of the plot is 6733 square meter.

On 01.01.2016 the petitioner was called upon to deposit a sum of

1 GIDA

Rs.19,02,570/-. The said amount was deposited by the petitioner on 15.01.2016. By a notice dated 03.02.2016 the petitioner was asked to deposit maintenance fee as well as lease rent.

It is stated in the petition that in the meantime after the allotments were made, complaints were made to various authorities in respect of the irregularity in the allotment of the plots including the Commissioner of the Division, who set up an enquiry on 02.11.2015. The enquiry report was placed before the GIDA and which resolved to stay the allotment proceedings and to cancel all the allotments. It also appears from the materials on record that serious complaints regarding the irregularity committed by the Chief Executive Officer[2] and the Manager (Property) of the GIDA were made. Pursuant to the said complaint a preliminary enquiry was made and it was forwarded to the State Government and on the basis of the report dated 28.12.2015 the State Government passed an order dated 19.02.2016 to initiate disciplinary proceedings against the erring officials.

In compliance of the order of the State Government the two delinquent officers, namely, Gyan Prakash Tripathi and Anil Kumar Singh preferred a writ petition, being Service Bench No. 5769 of 2016, Gyan Prakash Tripathi and another v. State of U.P. and others, in this Court at Lucknow Bench to challenge the disciplinary proceedings amongst other grounds that enquiry officers are junior to the petitioners therein. The order passed by the Court on 16.03.2017 reads as under:

> *"The petitioner has assailed the order dated 19 February 2016 passed by the State Government, whereby the State Government has taken a decision to issue a charge sheet against the petitioner on the basis of inquiry report submitted by two members of fact finding enquiry committee.*
>
> *Learned Counsel for the petitioner has submitted that the said committee was constituted with the two officers who had been juniors to the petitioner that too on the basis of complaint made by the District General*

2 CEO

Secretary, Samajwadi Party, Gorakhpur. It has been submitted that the said complaint has not been made by any public representative rather it is based on the political party politics which may not be the basis for an inquiry.

The petitioner has also brought on record the said inquiry report. Since the inquiry report has reported some irregularities in allotment of plots, therefore, we, suo motu permit the respondents to inquire the matter by some senior officers independently and the report submitted by those officer would only be the basis for further action.

With the aforesaid liberty the order impugned dated 19 February 2016 is hereby quashed.

The writ petition stands disposed of."

Similar complaints were made to the Lokayukta, U.P., Lucknow in respect of the same allotment. The Lokayukta appointed Commissioner, Consolidation Department, U.P., Lucknow as enquiry officer on 29.04.2016, and on 27.05.2016 the General Manager (Finance), GIDA was nominated as Nodal Officer to assist the enquiry officer in the enquiry. While the said enquiry was pending, the GIDA, the respondent no.2 in its 47th Board Meeting held on 18.06.2016 considered the report dated 28.12.2015 and took a decision to cancel all the allotments made by the GIDA in pursuance of the advertisement dated 22.07.2014.

It is averred in the petition that on 26.09.2016 the enquiry officer appointed by the Lokayukta submitted a report to the State Government. In the said enquiry report it was recorded that the respondent no. 2 has advertised only 26 plots but it has allotted 83 plots. The report further recorded that no fresh advertisement was issued nor fresh applications were invited for the allotment of more than 26 plots. It is mentioned in the report that for the allotment of extra 57 plots advertisement should have been issued. A copy of the enquiry report is on the record.

The Board of the respondent no.2 in its meeting dated 18.06.2016 resolved to cancel all the 26 allotments for the reason that in the advertisement the applications were invited for allotment of only 26 plots

but 83 industrial plots were allotted. Thus, the financial interest of respondent no.2 was unsecured.

Consequently, the petitioner's allotment was cancelled vide order dated 28.08.2017 and the amount deposited by the petitioner has been returned. It is stated that the Lokayukta has not taken any decision on the basis of the report dated 29.06.2016.

An amendment application has been filed whereby the petitioner has brought on record the copy of the allotment letter and the proposed lay out plan.

A counter affidavit has been filed on behalf of respondent nos. 2 to 4. The stand taken by the respondent no.2 is that an advertisement dated 22.07.2014 was issued for the allotment of 26 industrial plots in Sector 13 and 15. The complaints were made in respect of various illegalities in the allotment. The Commissioner, Gorakhpur Division set up an enquiry vide order dated 02.11.2015. The enquiry report pointed out several serious illegalities in the allotment process. The said report and this matter were considered by the Board of GIDA in its 46th meeting held on 11.02.2016. It was resolved, “all further activities regarding allotment of the above mentioned plot should be stopped and status quo should be maintained and the allotment of plots be cancelled.”. The said report was sent to the State Government, which recommended initiation of the disciplinary proceedings against two officers, i.e., CEO and Manager (Property) of the GIDA.

In the meantime, the Lokayukta on the basis of some complaints asked the State to get an enquiry conducted from some State Officers. Thereafter the Commissioner, Consolidation, U.P., Lucknow has been appointed as enquiry officer. He was earlier CEO of the GIDA in the past. The report of the enquiry officer was sent to the State Government which vide order dated 25.04.2017 directed the GIDA Board to consider and take decision whether the existing allotment should be cancelled and

re-allotment will be done or not. The GIDA Board in its 50th Board Meeting held on 07.06.2017 considered the letter of the State Government dated 25.04.2017 and it was decided to cancel allotment of all the 83 plots on the ground of various anomalies which were pointed out in the two separate enquiry reports. It is stated that the petitioner was allotted a plot but the allotment never progressed beyond the stage of allotment letter. The lease-deed was never executed in favour of the petitioner, hence, the petitioner cannot claim a right on the basis of allotment of the plot. It is stated that 83 plots have been cancelled due to illegality committed in the allotment, which is in contravention of the rules, which is apparent from the minutes of the 46th Board Meeting held on 24.02.2016 and 47th meeting held on 18.06.2016 (Annexure-CA-1 to the counter affidavit). The same minutes have also been annexed by the petitioner as Annexure-11 to the writ petition.

A rejoinder affidavit has been filed wherein the averments made in the writ petition are reiterated.

Learned counsel for the petitioner submits that there is violation of principle of natural justice. The petitioner was allotted plot on 31.03.2015 and the petitioner has deposited the reservation fees but the respondent no.2 did not execute the lease deed and on the basis of exparte report and without issuing any show cause notice the allotment was cancelled. It is further submitted that the reports submitted by the enquiry officers were merely preliminary reports and the State Government and the respondent no.2 have illegally taken a cognizance of preliminary reports submitted by the enquiry officers. It is further submitted that the reports are also self- contradictory and are based on conjecture and assumption. Next it is submitted that the enquiry reports are exparte and without affording any opportunity of hearing. The learned counsel further submits that the advertisement uses the word “almost” to allot only 26 plots. It is submitted that the small mistake does not make the entire process nugatory.

Learned counsel for the petitioner next submitted that Section 7 of the Uttar Pradesh Industrial Area Development Act, 1976[3] gives the power of allotment to the CEO. It is submitted that only financial consideration is not the criteria for the development authority. The object is not to earn money but to set up the industries. Lastly, it was urged that the State largess can be granted without advertisement unless it is found that it was arbitrary, irrational and discriminatory. He has placed reliance on the judgment of the Karnataka High Court in the case of **Lalbi v. Modinamma @ Modinbee and others**[4], and the judgments of the Supreme Court in **Popcorn Entertainment and another v. City Industrial Development Corpn. and another**[5]**; Sunil Pannalal Banthia and others v. City & Industrial Development Corporation of Maharashtra Ltd. and another**[6]**; State Bank of India and others v. D.C. Aggarwal and another**[7]**; Commissioner of Income Tax, Madras v. K.R. Sadayappan**[8]**.**

Sri Dhananjay Awasthi, learned counsel for the respondents, has submitted that GIDA advertised only 26 plots, in which the petitioner was given allotment letters, but subsequently due to irregularities in the allotment it was cancelled and money was refunded vide cancellation order dated 26/28.08.2017. A fresh advertisement was made which was cancelled and again it has been advertised on 02.03.2019 and the last date for the submission of application was 07.04.2019. He submitted that irregularities were pointed out in an enquiry conducted at the behest of the Lokayukta and acting on the enquiry report the State directed for cancellation of the allotment. He has drawn our attention to the enquiry report, which is annexure-1 to the counter affidavit, wherein several irregularities have been found in the said enquiry. It was further submitted that mere issuance of allotment letter does not create any indefeasible

3 Act, 1976
4 (Karnataka) (DB) (Circuit Bench at Gulbarga) : Law Finder Doc Id # 771754 : 2012 ILR (Karnataka) 4403 : 2012 (74) R.C.R. (Civil) 283
5 (2007) 9 SCC 593
6 (2007) 10 SCC 674
7 AIR 1993 SC 1197
8 (1990) 4 SCC 1

right in such contractual matters especially when deposited money has also been returned. Lastly, it was urged that two separate enquiries were conducted: one at the instruction of the Lokayukta and the preliminary enquiry report submitted by the Chief Development Officer, and on the basis of those enquiries the GIDA Board resolved to cancel the allotment and return the deposited money.

Lastly, it was urged that no document has been executed in pursuance of the allotment order and possession has also not been given.

We have heard and considered the submissions advanced by learned counsel for the parties and perused the material on the record.

The questions, therefore, that fall for consideration are as to whether by issuance of allotment letter and deposit of money by the petitioner the contract was concluded; and, (ii) whether for the breach of the contract the petitioner can seek the relief under Article 226 of the Constitution of India.

On the first issue, learned counsel for the petitioner has submitted that if an allotment letter has been issued, it amounts acceptance of the offer of the petitioner and the contract has concluded. Per contra, the contention of learned counsel for the respondents is that pursuant to the allotment order the petitioner was not handed over the possession nor any lease-deed has been executed in his favour, hence it cannot be said that the contract has been concluded or there is a concluded contract.

Before proceeding further we deem it appropriate to refer some decisions of the Supreme Court on the first issue i.e. whether it was concluded contract.

In **Uttar Pradesh Avas Evam Vikas Parishad and others v. Om Prakash Sharma**[9] somewhat similar situation arose. The Uttar Pradesh Avas Evam Vikas Parishad, which is a statutory authority, auctioned some shops and a plot by a public auction. The appellant before

9 (2013) 5 SCC 182

the Supreme Court i.e. the Uttar Pradesh Avas Evam Vikas Parishad accepted the highest bid of the respondent, who deposited 20% of the bid amount plus the earnest money. The bid was rejected by the Housing Commissioner of the Board and the amount was refunded to the respondent/plaintiff. The respondent filed a suit under Section 34 of the Specific Relief Act, 1963 seeking declaratory relief that the auction in his favour was final and binding on the Avas Evam Vikas Parishad. The trial Court decreed the suit. In appeal the judgment and decree of the trial Court was set aside. The High Court in the second appeal again decreed the suit. The review was also dismissed by it. Before the Supreme Court the issues, amongst other, raised were that "(a) What are the rights of the plaintiff/bidder participating in the auction process in relation to the plot in question? (b) Whether there is any vested right upon the plaintiff/ bidder until the bid is accepted by the competent authority in relation to the property in question? Merely because the plaintiff is the highest bidder by depositing 20% of the bid amount without there being approval of the same by the competent authority and it amounts to a concluded contract in relation to the plot in question? (c) Whether the plaintiff could have maintained the suit in absence of a concluded contract?"

The Supreme Court answered the points (a) and (b) in affirmative and held that "so long as an order regarding final acceptance of the bid had not been passed by the Chairman of the Housing Board, the highest bidder acquire no vested right to have the auction concluded in his favour and the auction proceedings could always be cancelled.". The Court held that in absence of acceptance of the bid offer by the plaintiff to the competent authority of the defendant there is no concluded contract. The Court further held that under Section 4 of the Contract Act the proposal can be said to be completed when the same is accepted by the competent authority. Relevant part of the judgment reads as under:

> *"**39.** Further, the communication under Section 4 of the Contract Act speaks of when the communication will complete. It says:*

> *"**4. Communication when complete.**—The communication of a proposal is complete when it comes to the knowledge of the person to whom it is made.*
>
> *The communication of an acceptance is complete—*
>
> *as against the proposer, when it is put in a course of transmission to him so as to be out of the power of the acceptor;*
>
> *as against the acceptor, when it comes to the knowledge of the proposer."*

The proposal is said to have been completed when the same is accepted by the competent authority, which has not been done in the instant case. Neither the Housing Commissioner nor the Assistant Housing Commissioner accepted the proposal in writing; therefore, there is no communication of acceptance of the offer of the plaintiff. In this regard, this Court in Haridwar Singh v. Begum Sumbrui[10] has held that the communication of acceptance of the highest bid is necessary for concluding the contract."

Applying the aforesaid principle in the present case, we find that there is considerable merit in the contention urged by learned counsel for the petitioner that there was a concluded contract between the parties. Indisputably, the respondent has issued an allotment letter on 31.03.2015 and the petitioner has deposited a sum of Rs.19,02,570/- on 15.01.2016 in pursuance of the demand made by the respondents. Thereafter a letter was sent to the petitioner on 03.02.2016 raising demand for the lease rent etc.. These facts have not been denied in the counter affidavit. Hence, it can be safely held that after acceptance of the bid of the petitioner and allotting him Plot No. F-5 in Sector-15, the contract was concluded irrespective of the fact that the possession was not given to the petitioner and formal lease deed has not been executed.

We can not persuade ourselves to subscribe the view that the petitioner has no legal right or vested right to challenge the decision of the second respondent cancelling the entire auction and to invite fresh

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10 (1973) 3 SCC 889 : AIR 1972 SC 1242

applications in respect of all the 83 plots.

In respect of Question No. (II) we may in this regard gainfully refer to the decisions of the Supreme Court which are apposite in the facts of the present case.

In **Kisan Sahkari Chini Mills Limited and others v. Vardan Linkers and others**[11] the respondent therein pursuant to a tender notice issued by the Sugar Mill, which produces the molasses, offered for the purchase of molasses. In the State of Uttaranchal, there were six State controlled sugar mills. The sale of molasses is controlled by the Molasses Sale Committee, which was constituted by the State Government. The respondent therein was permitted to lift certain amount of molasses from five sugar mills. In the meantime the State Government received several complaints, hence the competent authority stayed the operation of the order passed by the Assistant Cane Commissioner for lifting molasses. The respondent therein challenged the said action by way of a writ petition for a direction for continuance of supply of the entire quantity for which the permission was granted to him. The High Court directed the State Government to consider the grievance of the respondent. The State Government rejected the representation of the respondent therein on the ground that there was no valid contract for the supply of molasses and the order/letter issued by the Assistant Cane Commissioner was without any authority and consequently, the State Government cancelled the same. Similar issues, as raised in the present writ petition, were raised before the Court which read as under:

> "(i) Whether the High Court was right in concluding/ assuming that there was a valid contract?
>
> (ii) Whether the High Court was justified in quashing the cancellation order dated 24-4-2004 passed by the Secretary, (Sugar)?"

While answering the issue regarding the jurisdiction of the Court under Article 226 of the Constitution of India the Court held that even in

11 (2008) 12 SCC 500

case the High Court finds that there is valid contract but if the cancellation of contract is not arbitrary or unreasonable, the Court can still refuse to interfere in the matter leaving the aggrieved party to take recourse to the remedy available under the law. The Court held thus:

> *"**23**. ...The issue whether there was a concluded contract and breach thereof becomes secondary. In exercising writ jurisdiction, if the High Court found that the exercise of power in passing an order of cancellation was not arbitrary and unreasonable, it should normally desist from giving any finding on disputed or complicated questions of fact as to whether there was a contract, and relegate the petitioner to the remedy of a civil suit. Even in cases where the High Court finds that there is a valid contract, if the impugned administrative action by which the contract is cancelled, is not unreasonable or arbitrary, it should still refuse to interfere with the same, leaving the aggrieved party to work out his remedies in a civil court. In other words, when there is a contractual dispute with a public law element, and a party chooses the public law remedy by way of a writ petition instead of a private law remedy of a suit, he will not get a full-fledged adjudication of his contractual rights, but only a judicial review of the administrative action. The question whether there was a contract and whether there was a breach may, however, be examined incidentally while considering the reasonableness of the administrative action. But where the question whether there was a contract, is seriously disputed, the High Court cannot assume that there was a valid contract and on that basis, examine the validity of the administrative action."*

Reference may also be made to **Divisional Forest Officer v. Bishwanath Tea Co. Ltd.**[12]. In this case the Supreme Court has considered the issue with regard to maintainability of the writ petition where a complaint is made against a statutory authority after the breach of contract. The Court has held that ordinarily the suit would be congnizable by a civil court and the High Court in its extraordinary jurisdiction would

12 (1981) 3 SCC 238

not entertain a petition and a relief flowing from a contract has to be claimed in a civil suit. The Court observed thus:

> *"**9**. Ordinarily, where a breach of contract is complained of, a party complaining of such breach may sue for specific performance of the contract, if contract is capable of being specifically performed, or the party may sue for damages. Such a suit would ordinarily be cognizable by the civil court. The High Court in its extraordinary jurisdiction would not entertain a petition either for specific performance of contract or for recovering damages. A right to relief flowing from a contract has to be claimed in a civil court where a suit for specific performance of contract or for damages could be filed. This is so well settled that no authority is needed. However, we may refer to a recent decision bearing on the subject. In Har Shankar v. The Deputy Excise & Taxation Commissioner*[13]*, the petitioners offered their bids in the auctions held for granting licences for the sale of liquor. Subsequently, the petitioners moved to invalidate the auctions challenging the power of the Financial Commissioner to grant liquor licences. Rejecting this contention, Chandrachud J., (as he then was), speaking for the Constitution Bench at page 263 observed as under: (SCC p.746, para 16)*
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> > *Those who contract with open eyes must accept the burdens of the contract along with its benefits. The powers of the Financial Commissioner to grant liquor licences by auction and to collect licence fees through the medium of auctions cannot by writ petitions be questioned by those who, had their venture succeeded, would have relied upon those very powers to found a legal claim. 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.*
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> *Again at page 265 there is a pertinent observation which may be extracted: (SCC p. 747, para 21)*

13 (1975) 1 SCC 737 : (1975) 3 SCR 254: AIR 1975 SC 1121

> *Analysing the situation here, a concluded contract must be held to have come into existence between the parties. The appellants have displayed ingenuity in their search for invalidating circumstances but a writ petition is not an appropriate remedy for impeaching contractual obligations.*
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> *This apart, it also appears that in a later decision, the Assam High Court itself took an exactly opposite view in almost identical circumstances. In Woodcrafts Assam v. Chief Conservator of Forests*[14] *a writ petition was filed challenging the revision of rates of royalty for two different periods. Rejecting this petition as not maintainable, a Division Bench of the High Court held that the complaint of the petitioner is that there is violation of his rights under the contract and that such violation of contractual obligation cannot be remedied by a writ petition. That exactly is the position in the case before us. Therefore, the High Court was in error in entertaining the writ petition and it should have been dismissed at the threshold."*

In **M/s Dwarkadas Marfatia and Sons v. Board of Trustees of the Port of Bombay**[15] the Supreme Court has held that the superior courts while exercising their jurisdiction in the administrative decisions are concerned with decision making process. The writ Courts should not interfere unless the decision is totally arbitrary, malafide and perverse.

Recently, the Supreme Court in **JSW Infrastructure Limited and another v. Kakinada Seaports Limited and others**[16], in a slightly different context, has reiterated the principles laid down in **Tata Cellular v. Union of India**[17]. Paragraph-8 of the judgment reads as under:

> "**8.** We may also add that the law is well settled that superior courts while exercising their power of judicial review must act with restraint while dealing

14 AIR 1971 Ass 92 : LR 1970 Ass 183
15 (1989) 3 SCC 293
16 (2017) 4 SCC 170
17 (1994) 6 SCC 651

> with contractual matters. A three-Judge Bench of this Court in *Tata Cellular v. Union of India*[18] held that:
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> (i) there should be judicial restraint in review of administrative action;
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> (ii) the court should not act like court of appeal; it cannot review the decision but can only review the decision-making process;
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> (iii) the court does not usually have the necessary expertise to correct such technical decisions;
>
> (iv) the employer must have play in the joints i.e. necessary freedom to take administrative decisions within certain boundaries."

The principles underlying in these decisions are that if a public element is involved then even in the case of concluded contract, the High Court under Article 226 of the Constitution can entertain a writ petition if it is established that the Government or its instrumentality, which is a State within the meaning of Article 12 of the Constitution, has acted unfairly, unreasonably or arbitrarily. The Court can also in its jurisdiction under the judicial review examine whether the transparency was maintained by the authorities while disposing the public largess. If the Court finds that the action of the authorities was unreasonable and unfair then the Court can strike down such decision under Article 14 of the Constitution in spite of the fact that the action between the parties was in the realm of the contract.

Learned counsel for the petitioner has vehemently urged that cancellation of plot of the petitioner has been made without furnishing any opportunity to the petitioner, hence on this ground alone the decision of respondent no. 4 is arbitrary and illegal.

It is a trite law that principles of natural justice cannot be put in a straitjacket formula. In the recent time, the principles of natural justice have undergone a sea-change. The Court has now shifted from its earlier concept that non-observance of the principles of natural justice itself causes prejudice, hence the order becomes arbitrary. The recent shift in

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18 (1994) 6 SCC 651

the judgments of the Supreme Court in the case of **State Bank of Patiala and others v. S.K. Sharma**[19]and **Aligarh Muslim University and others v. Mansoor Ali Khan**[20] lays down "useless formality theory". In such cases the Supreme Court has held that the Court will not insist for compliance of the principles of natural justice.

In **A.M. Allison and another v. B.L. Sen and others**[21] the Supreme Court has ruled that "while exercising the jurisdiction under Article 226 of the Constitution, the High Court has the power to refuse the writs if it was satisfied that there has been no violation of justice". The said judgment has been quoted with approval by the Supreme Court in the case of **Ravi S. Naik v. Union of India and others**[22]**.**

In **Kumari Shrilekha Vidyarthi and others v. State of U.P. and others**[23] the Supreme Court has held as under:

> *"**48.** … Non-arbitrariness, being a necessary concomitant of the rule of law, it is imperative that all actions of every public functionary, in whatever sphere, must be guided by reason and not humour, whim, caprice or personal predilections of the persons entrusted with the task on behalf of the State and exercise of all power must be for public good instead of being an abuse of the power."*

In **Mohinder Singh Gill and another v. The Chief Election Commissioner, New Delhi and others**[24] the Supreme Court, speaking through Hon'ble Mr. Justice Krishna Iyer, has observed as under:

> *"For fairness itself is a flexible: pragmatic and relative concept, not a rigid, ritualistic or sophisticated abstraction. It is not a bull in a china shop nor a bee in one's bonnet. Its essence is a good conscience in a given situation: nothing more- but nothing less."*

Applying the principle propounded in the above-mentioned cases,

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19 (1996) 3 SCC 364
20 (2000) 7 SCC 529
21 AIR 1957 SC 227
22 1994 Supp (2) SCC 641
23 (1991) 1 SCC 212
24 (1978) 1 SCC 405 : AIR 1978 SC 851

in the present case we find that two enquiries were made by the senior officers and in both the separate enquiries serious irregularities were found. We do not find that there was any arbitrary action on the part of the development authority in cancelling the allotment, giving the opportunity, in the facts of the present case, would be a formality.

Learned counsel for the petitioner has placed reliance on the judgment of the Supreme Court in **Sunil Pannalal Banthia (supra)**. We find that the said case is distinguishable on the ground that in the said case the Court has found that a discrimination has been done and the irregularity, which was found in the enquiry, on the basis of which the cancellation of the allotment was made, was not found to be applicable in the case of the petitioners therein. In that context, the Supreme Court held that in such a case the allotment could not have been cancelled merely because certain recommendations have been made by a Committee. In the said case, the allottee had commenced the construction work and proceeded upto the first floor and it also completed construction of underground water tank. In the present case, the possession has not been handed over to the petitioner nor any lease deed has been executed. The said case has no application in the facts of the present case.

In **Popcorn Entertainment (supra)** the allotment order for a commercial plot was issued by the City Industrial Development Corporation (for short, the 'CIDCO'). Earlier the CIDCO had issued an advertisement for the plots but no response was received by it. Thereafter on the application of the appellant therein, Popcorn Entertainment, an allotment letter was issued asking to pay the price of the plot which was deposited by it. Later the allotment order was cancelled. When the appellant therein challenged the cancellation order, its writ petition was dismissed by the High Court on the ground of alternative remedy. The Supreme Court set aside the order of the High Court and remitted the matter back to the High Court to decide the matter on merit. This case also is not of much help in the present case.

We have carefully perused the judgment of **Commissioner of Income Tax, Madras (supra)** and found that this case has no application in the facts of the present case. In **D.C. Aggarwal (supra)** the case was in respect of observance of the natural justice in the disciplinary proceeding. We have already referred the law on the violation of the natural justice in the earlier part of the judgment. In our view, this case also does not help the petitioner.

As regards the maintainability of the writ petition, it is a trite law that if the action of the State is found to be arbitrary and illegal, the writ petition is maintainable and in the judicial review the Court can examine the facts whether there was any arbitrary or unreasonable stand of the respondents. It is a well settled law that the parameters of the judicial review are very limited and when the Court finds that the action is malafide or unreasonable, only in that situation the Court interferes in the matter. In the present case, no element of malafide has been made against the GIDA. We have carefully perused the enquiry report dated 28th December, 2015 submitted by the Chief Development Officer, Gorakhpur and the Additional Commissioner (Administration), Gorakhpur. They have found serious irregularities in the allotment of the plot. The relevant part of the enquiry report is extracted below:

> "... जैसा कि ऊपर उल्लेख किया जा चुका है कि गीडा द्वारा 26 भूखंडों के आवंटन हेतु नोटिस/टेण्डर विज्ञापन अखबार में प्रकाशित कराया गया था और उसके विपरीत 83 भूखंडों का आवंटन किया गया। 26 भूखंडों के कराए गए आवंटन के विरूद्ध 242 आवेदन पत्र आए। निश्चित रूप से आवेदनकर्ताओं ने आवेदन करते समय 26 भूखंडों पर ही ध्यान केंद्रित किया होगा और उसी के अनुसार अपने–अपने आवेदन पत्र गीडा को प्रेषित किए गए होंगे। उनको यह पता नहीं रहा होगा कि 26 भूखंडों का प्रकाशन कराया जा रहा है और आवंटन 83 भूखंडों को कर दिया जाएगा। निश्चित रूप से यदि 83 भूखंडों का विज्ञापन कराया गया होता तो आवेदनकर्ताओं की संख्या अधिक होती और ऐसे आवेदनकर्ता जो 26 भूखंडों के विरूद्ध आवेदन के इच्छुक नहीं थे, वे 83 भूखंडों के विरूद्ध अपना आवेदन निश्चित रूप गीडा को भेजते और यह संख्या 242 के विपरीत निश्चित रूप से अधिक होती

> और इस प्रकार गीडा द्वारा भूखंड आवंटन की कार्यवाही अधिक पारदर्शी होती और अधिक से अधिक संख्या में इच्छुक आवेदनकर्ता इसमें भाग लेते, परंतु गीडा द्वारा ऐसा नहीं किया गया। गीडा की इस कार्यवाही में पारदर्शिता परिलक्षित नहीं होती है और की गई कार्यवाही दूषित है। ऐसा लगता है गीडा ने जानबूझकर ऐसा किया है और लोगों को भ्रम व अंधेरे में रखा, जिससे इच्छुक आवेदनकर्ता आवेदन करने से वंचित रह गए। उपरोक्तानुसार उक्त शिकायत गंभीर प्रकृति की है और गीडा के अधिकारियों द्वारा की गई कार्यवाही नियमानुसार नहीं है। इस प्रकार शिकायत बिंदु संख्या–1 सही है।"

In addition to above, the Lokayukta, U.P. has also issued a direction to the State Government to enquire into the allegations of irregularity and corruption. Pursuant to the said communication of the Lokayukta the State Government had appointed the Commissioner, Consolidation, U.P., Lucknow to look into the matter. The Commissioner, Consolidation, has submitted a report dated 26th September, 2016 before the authority in respect of the same illegalities. The relevant part of the report reads as under:

> "निष्कर्षः– उपरोक्त विस्तृत परीक्षण के पश्चात यह निष्कर्ष प्राप्त हो रहे हैं कि प्रकरण में 83 औद्योगिक भूखंडों का आवंटन किया गया। जबकि 26 भूखंडों के आवंटन के संबंध में ही विज्ञापन दैनिक समाचार पत्रों में कराया गया। भूखंडों के आवंटन में पूर्ण पारदर्शिता हेतु शेष 57 भूखंडों के आवंटन के सम्बन्ध में विज्ञापन संबंधी कार्य किया जाना श्रेयस्कर होता तथा गीडा के आर्थिक हित भी सुरक्षित रहते।"

From a perusal of both the enquiry reports it is evident that several serious lapses were committed by the then officials. On the basis of the enquiry report submitted by two members of the fact- finding enquiry the State Government vide its order dated 19.02.2016 initiated the disciplinary proceedings against two officers, namely, Sri Gyan Prakash Tripathi, the then CEO, and Sri A.K. Singh, Manager (Property) of the GIDA, who were placed under suspension. The aforesaid two officers preferred a writ petition, being Service Bench No. 5769 of 2016, Gyan Prakash Tripathi and another v. State of U.P. and others, challenging the decision of the State Government on the ground that the officers who have submitted the preliminary report were junior to them. The High

Court vide order dated 16.03.2016 disposed of the said writ petition and permitted the respondents to enquire the matter by some senior officers independently and the report submitted by those officer would only be the basis for further action, and the High Court set aside the order of the State Government.

From the material on the record we find that although this Court in its order dated 16.03.2016 (supra) has permitted the respondents to get fresh enquiry conducted by some senior officers but, for the reasons best known to the State Government and the GIDA, the matter was treated to be closed in pursuance of the directions of the High Court and no further enquiry was conducted though the High Court has not expressed any opinion on the merit and permitted the respondents "to enquire the matter by some senior officers independently".

Admittedly, only 26 plots were advertised by the respondent no. 2. However, total 83 plots have been allotted. The justification put forward by the petitioner that since there were 219 applicants and there were only 26 plots allotted, therefore, the authorities deemed it appropriate to allot remaining 57 vacant plots without advertisement. We find it difficult to accept the said explanation. If 26 plots were advertised, remaining plots which were not advertised should not have been allotted to other persons. Moreover, from a perusal of the enquiry reports we are of the opinion that the action of the respondents to cancel the entire advertisement was not arbitrary, unreasonable and unfair. Thus, under Article 226 of the Constitution we do not find any justifiable ground to interfere in the matter. As held by the Supreme Court, in the case of breach of contract it is open to the petitioner to work out other remedy available under the law. From the impugned order it is also evident that 8 persons have already deposited the entire amount and they have raised some construction. In the case of those 8 applicants, the GIDA has sought legal opinion and it was resolved that further decision shall be taken subsequently. We find that the cases of those 8 persons are different than the petitioner, who had

admittedly not been given possession of the plot. Thus, there is no question of raising any construction over Plot No. F-5, Sector-15.

In view of the above, we do not find any ground to interfere in our extraordinary jurisdiction under Article 226 of the Constitution. Accordingly, the writ petition is dismissed.

We also direct the State Government to continue further action against two officials namely Sri Gyan Prakash Tripathi, the then CEO, and Sri A.K. Singh, Manager (Property) of the GIDA, against whom the disciplinary proceedings were initiated. The disciplinary proceedings must be brought to its logical end. Even if the said officers are retired, action be taken against them in terms of the relevant service rules/law.

Office is directed to send a copy of this order to the Chief Secretary, Government of Uttar Pradesh, Lucknow for appropriate orders.

Order Date :- 05th September, 2019
MAA/SKT/-