

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 6260-61 OF 2021

Modified Voluntary Retirement Scheme of 2002
of Azam Jahi Mill Workers Association

...Appellant(s)

Versus

National Textile Corporation Limited & Ors.

...Respondent(s)

J U D G M E N T

M.R. SHAH, J.

1. Feeling aggrieved and dissatisfied with the impugned final judgment and order dated 19.02.2020 passed by the High Court for the State of Telangana, at Hyderabad in Writ Appeal Nos.427 of 2016 and 431 of 2016 by which the Division Bench of the High Court has allowed the said Appeals preferred by the respondent Nos.1 and 2 herein – National Textile

Corporation Limited (hereinafter referred to as “NTC”) and the Kakatiya Urban Development Authority, Warangal (hereinafter referred to as “KUDA”) and has quashed and set aside the judgment and order passed by the learned Single Judge in Writ Petition No.26642 of 2007, the original writ petitioner – Modified Voluntary Retirement Scheme of 2002 of Azam Jahi Mill Workers Association (hereinafter referred to as “Workers Association”) has preferred the present Appeals.

2. The facts leading to the present Appeals in nut-shell are as under:
 - 2.1 That, all the members of the original writ petitioner – Workers Association were working in Azam Jahi Mills owned and run by the NTC. All the workers worked in the said Mill for more than 20 years. The said Mill was closed in the year 2002. That, about 452 employees worked in the Mill for more than 20 years. It appears that during the period of service, all the workers / employees working in the Mill were allotted Employees’ Quarters constructed and owned by the Mill. That, all the employees including the members of the Workers Association and other employees of the Mill took voluntary retirement pursuant to a Modified Voluntary Scheme of 2002.

At this stage it is to be noted that a large number of employees voluntarily retired on one day i.e. 31.08.2002. That, all the employees including the members of the Workers Association were asked vide Notification dated 17.07.1986 to vacate the quarters which were in the respective occupations of the respective members / employees. In the said notice it was stated that the quarters in which the employees were staying were in dilapidated condition and became unfit for human habitation. Approximately 318 employees including the members of the Workers Association were forcefully evicted from the quarters. Thereafter, the management of the Mill demolished all the quarters vacated / evicted by 318 employees. However, some of the employees who were about 134 in number, continued to stay in their respective quarters despite service of the notice dated 17.07.1986 asking them to vacate the quarters. In the meantime, the Mill submitted an application dated 30.05.2002 for closure of the Mill. On the said application, proceedings were initiated by the Ministry of Labour in which the management and representatives of the Union participated. During the hearing, a request was also made on behalf of the representatives of the Union to allot quarters to the concerned workmen at reasonable rates. On

the aforesaid, it was submitted on behalf of the management that the issue / request to allot the quarters is under consideration by the management. Vide Notification dated 11.09.2002, the Government of India, Ministry of Labour granted permission to close the Mill. That, thereafter, the NTC sold away the machinery and infrastructure of the Mill and allotted Acres 117.20 Gunthas out of 215 Acres to KUDA on 01.03.2007. A portion of the land owned by the Mill was sold to Housing Board, KUDA and other institutions.

- 2.2 That, after allotment, 11 Acres of the land owned by the NTC / Mill remained. It appears that thereafter KUDA submitted proposal to the State to allot house sites of 200 Sq. Yards each to 134 employees of the Mill, who continued to stay in their respective quarters despite service of notice dated 17.07.1986 demanding them to vacate the quarters. The State Government vide G.O. No.463 dated 27.06.2007, accepted the proposal of the KUDA to allot 200 Sq. Yards developed plot free of cost to each of 134 ex-employees of the erstwhile Mill, as a rehabilitation and welfare measure. That, thereafter, 318 retired workers who also took voluntary retirement along with other 134 workers made representation/s to allot to them

also 200 Sq. Yards plot as allotted to other 134 workers out of the remaining land admeasuring Acres 10.24 Gunthas. The Revenue Divisional Officer, Warangal directed the Tehsildar, Warangal to inquire about the land to an extent of Acres 10.24 Gunthas situated at Laxmipura and Khila, Warangal. VRO of Laxmipura, Warangal submitted the report to the Tehsildar submitting that the land to extent of Acres 5 situated at Laxmipura village and the land to an extent of Acres 5.24 Gunthas situated at village Khila, Warangal total admeasuring Acres 10.24 Gunthas is in vacant possession and therefore, the said land is able to allocate house plots to members of Workers Association, who have been 318 employees, have not been allotted the house plots. Thereafter, nothing further was done to allot 200 Sq. Yards of developed plots each free of cost to the remaining 318 ex-employees / workers of the Mill who also took voluntary retirement along with other 134 workers who were allotted 200 Sq. Yards of developed plots each free of cost and therefore, the Workers Association filed the Writ Petition before the High Court being Writ Petition No.26642 of 2007. That, by a detailed and reasoned judgment and order the learned Single Judge allowed the said writ petition and directed the respondents to allot house sites of

200 Sq. Yards each to all the eligible 318 members of the Workers Association by observing that they are at par with other 134 ex-employees of the Mill, who were already allotted house sits of an extent of 200 Sq. Yards each as per the G.O. No.463 dated 26.07.2007.

- 2.3 Feeling aggrieved and dissatisfied with the judgment and order passed by the learned Single Judge, both, the NTC as well as the KUDA filed Writ Appeals before the Division Bench and by the impugned common judgment and order the Division Bench of the High Court has allowed the said Writ Appeals and has quashed and set aside the judgment and order passed by the learned Single Judge.

Hence, the present Appeals.

3. Ms. Nitya Ramakrishnan, learned Senior Advocate has appeared on behalf of the appellant, Mr. V. Giri, learned Senior Advocate has appeared on behalf of the KUDA and Ms. Aishwarya Bhati, learned ASG has appeared on behalf of the NTC and the Union of India.
4. Ms. Ramakrishnan, learned Senior Advocate appearing on behalf of the appellant – Workers Association has vehemently

submitted that in the facts and circumstances of the case, the Division Bench of the High Court has committed a grave error in quashing and setting aside the well-reasoned judgment and order passed by the learned Single Judge and consequently dismissing the writ petition filed by the Workers Association.

4.1 It is vehemently submitted by Ms. Ramakrishnan, learned Senior Advocate that the High Court has not properly appreciated and considered the fact that KUDA as well as the NTC are State instrumentalities under Article 12 of the Constitution amenable to Article 226 of the Constitution of India and therefore, all of them must conduct themselves as behooves a welfare state. It is submitted that the learned Single Judge of the High Court rightly observed and held that not allotting 200 Sq. Yards plots to the remaining 318 workmen would be discriminatory and violative of Article 14 of the Constitution of India. It is submitted that as rightly observed by the learned Single Judge the remaining 318 workmen were at par with other 134 workmen who were allotted 200 Sq. Yards plot free of cost. It is submitted that as such there is no differentia between 134 workmen who also took voluntary retirement and the remaining 318 workmen who also took the

voluntary retirement along with other 134 workmen who were allotted 200 Sq. Yards plots free of cost.

4.2 It is submitted that in fact 318 workmen were compelled and/or forced to vacate the quarters pursuant to the notice dated 17.07.1986. It is submitted that however despite the notice dated 17.07.1986, 134 workmen / employees did not vacate the quarters. It is submitted that assuming that 318 remaining workmen vacated the quarters out of their own volition pursuant to the notice dated 17.07.1986, merely because other 134 workmen, who did not vacate the quarters despite the service of notice dated 17.07.1986, cannot be said to be at a higher pedestal than the law abiding workmen who vacated the quarters pursuant to the notice dated 17.07.1986. It is submitted that therefore as such the equals are treated unequally and therefore, the learned Single Judge rightly directed the original respondents – respondents herein to allot 200 Sq. Yards plots to remaining 318 workmen also.

4.3 It is further submitted that if 318 workmen would not have vacated the quarters, in that case, they would have also been allotted 200 Sq. Yards plots at par with 134 workmen who were allotted 200 Sq. Yards plots free of cost.

- 4.4** It is submitted that as rightly observed by the learned Single Judge, there was no difference at all between 318 remaining workmen and 134 workmen who were allotted 200 Sq. Yards plots.
- 4.5** It is submitted that as such not allotting 200 Sq. Yards plots to remaining 318 workmen would tantamount to punishing them for complying with the eviction notice while rewarding 134 workmen for defying it which is manifestly unjust.
- 4.6** It is further submitted that as such the purpose of allotment of the plots was for rehabilitation and welfare of the workmen. It is submitted that in fact right from very beginning even when the proceedings were before the Ministry of Labour, while considering the request of the Mill for closure, there was already a demand on behalf of the workers to allot them quarters at concessional rates. It is submitted that thereafter even the Deputy Chairman of the KUDA made a request to allot 200 Sq. Yards plots to 134 workmen on the ground of rehabilitation and welfare of the workmen. It is submitted that for the first time before the High Court and that too in the affidavit in reply, the KUDA came out with a case that to avoid litigation with encroachers a decision was taken to allot 200

Sq. Yards plots to those 134 workmen who continued to be in occupation and possession of the quarters. It is submitted that when the proposal was made by the KUDA for allotment of 200 Sq. Yards plots to 134 workmen, that was not the ground pleaded.

4.7 It is submitted that even otherwise to allot the plots free of cost to avoid litigation with encroachers had no rationale nexus with the purpose and such a difference is absolutely irrelevant more particularly when as per the initial case of KUDA the plots were allotted for welfare and rehabilitation.

4.8 It is submitted that other 318 workmen not only lost their livelihood but also a place of abode and therefore, in fact they were much more in need of welfare and rehabilitation measures.

4.9 It is submitted that mandamus can be issued to the respondents who are State instrumentalities to provide developed plots of land to 318 ex-workmen on parity with 134 ex-workmen, to enforce their constitutional right against discrimination and obligation of the State and its instrumentalities to be fair and non-discriminatory in

distribution of State largesse. Reliance is placed on the decisions of this Court in the case of **Ramana Dayaram Shetty vs. International Airport Authority of India**, (1979) 3 SCC 489 (**Paras 11 and 12**) and in the case of **D.S. Nakara vs. Union of India**, (1983) 1 SCC 305 (**Paras 36 and 42**).

4.10 It is submitted that even 134 workers were allotted the plots without having any legal right and without having any legal relationship or privity of contract with the KUDA and the State. It is submitted that therefore the benefit which was granted to other 134 workers cannot be denied to remaining 318 workmen on the ground that there is / was no legal relationship or privity of contract with KUDA and the State Government. It is submitted that as such the right to equality guaranteed under Article 14 of the Constitution of India is a right available to the remaining 318 workers which as such is enforceable.

Making the above submissions, it is prayed to allow the present Appeals.

5. The present Appeals are vehemently opposed by Mr. V. Giri, learned Senior Advocate appearing on behalf of the KUDA.

5.1 It is vehemently submitted on behalf of the KUDA that as such

as rightly observed by the Division Bench, a writ of mandamus could not have been issued directly to allot land to the Workers Association / members of the Workers Association in view of the fact that the land in question is a private land and not a government land.

5.2 It is vehemently submitted by Mr. Giri, learned Senior Advocate appearing on behalf of the KUDA that KUDA is an independent organization and KUDA purchased the land belonging to the NTC / Mill on payment of full sale consideration and as it was found that 134 employees continued to occupy the quarters and therefore, it was not possible for the KUDA to develop the land allotted / purchased and therefore, to avoid any litigation it was decided to allot 200 Sq. Yards of plot free of cost out of 135.33 Acres of land allotted to the KUDA. It is submitted that so far as the remaining other 318 ex-employees are concerned, they had already vacated the quarters and therefore, they were not in possession of the quarters and therefore, their cases cannot be compared with those who continued to be in occupation and possession of the quarters. It is submitted that therefore the remaining 318 ex-employees cannot be said to be at par

with those 134 workmen who were allotted 200 Sq. Yards of plots free of cost being in occupation and possession of the quarters and without removing them and/or without settling the dispute with them it was not possible for the KUDA to develop the land acquired / allotted to the KUDA. It is submitted that therefore the Division Bench of the High Court has rightly set aside the judgment and order passed by the learned Single Judge and has rightly dismissed the writ petitions.

5.3 It is further submitted by Mr. Giri, learned Counsel appearing on behalf of the KUDA that as such there was no privity of contract and/or any relationship with/between the KUDA / State and the ex-employees / workmen of the Mill. It is submitted that therefore the KUDA was not obliged to allot the plots to ex-workmen free of cost. It is submitted that therefore as such there was no vested right in favour of the ex-workmen / employees of the Mill to get 200 Sq. Yards plots free of cost from KUDA.

5.4 It is submitted that as 134 ex-workmen / employees were found to be in possession and occupation of the quarters and therefore, it was found that without evicting them and/or removing them and/or without resolving the dispute with them

it would not be possible for the KUDA to develop the land acquired and therefore, it was under the said compulsion that a conscious decision was taken to allot 200 Sq. Yards of plots free of cost to those 134 ex-employees who continued to be in occupation and possession of the quarters. It is submitted that therefore in absence of any vested right in favour of 318 ex-employees, no writ of mandamus could have been issued by the learned Single Judge and therefore, the Division Bench has rightly interfered with the order passed by the learned Single Judge.

- 5.5 It is further submitted by Mr. V. Giri, learned Senior Advocate that if any relief the remaining 318 ex-employees are entitled to, the same can be only from the NTC and the Mill and/or out of the remaining land admeasuring 11 Acres owned by the NTC. It is submitted that however there shall not be any liability of the KUDA to allot any plot free of cost to the ex-employees from the land allotted to / purchased by the KUDA.
- 5.6 Mr. V. Giri, learned Senior Advocate appearing on behalf of the respondent Nos.2 and 3 has vehemently submitted that as such the writ petition preferred by the appellant – Workers Association before the High Court itself was not maintainable.

It is submitted that in the writ petition it was prayed for issuance of writ of mandamus directing the respondents to allot the land to an extent of 200 Sq. Yards to each member of the Workers Association. It is submitted that it is trite law that a writ of mandamus is maintainable only if the person aggrieved has a legal right and legal duty by the party against whom the mandamus is sought. Reliance is placed on decisions of this Court in the cases of **Director of Settlements, A.P. & Ors vs M.R. Apparao & Anr**, (2002) 4 SCC 638; **Lalaram and Others vs. Jaipur Development Authority and Another**, (2016) 11 SCC 31 and **Municipal Corporation of Greater Mumbai and Others vs. Rafiqunnisa M. Khalifa (Deceased) Through his Legal Heir Mohd. Muqueen Qureshi and Anr.**, (2019) 5 SCC 119.

5.7 It is further submitted that the appellant Association has claimed the right on the basis of G.O. No.463 dated 27.06.2007. It is submitted that under the said Government Order the State of Andhra Pradesh granted approval to KUDA to allot 200 Sq. Yards of land to 134 ex-employees of the 4th respondent. It is submitted that the land where the 4th respondent was situated was taken over by the Central

Government under the Sick Textile Undertakings (Nationalization) Act, 1974. That, thereafter, the Estate Sale Committee constituted by the Central Government sold different extent of the land to the Andhra Pradesh Housing Board, KUDA and others. It is submitted that KUDA is incorporated under a statute with the object to develop infrastructure in the area. It is submitted that it was found by KUDA that there were 134 persons remaining in unauthorized occupation of a part of the land purchased by them. It is submitted that as such there was no contractual relationship between KUDA and said 134 persons. There was no other relationship between the two as provided for by any law. It is submitted that at no point of time was any legal obligation imposed on KUDA to allot any land to 134 persons. That, their only right was that they were erstwhile employees of the 4th respondent Mills and that they had voluntarily retired from the services of the Mills in the year 2002. It is submitted that the appellant Workers Association also does not have any case that there was any legal obligation attached to the land purchased by KUDA from which any person either 134 persons who continued to remain in unauthorized occupation of the land or 318 members of the Workers Association could

enforce any legal right against the said land. It is submitted that no covenant or obligation ran with the land at any point of time. It is submitted that in fact as per the Sick Textile Undertakings (Nationalization) Act, 1974, the vesting of the land in the Central Government is free from any trust / obligation / mortgage / charge / lien and all other encumbrances affecting it. It is submitted that therefore the two vital conditions requisite for a constitutional Court to issue a writ of mandamus viz. a legal right with the person who approaches the Court and a legal duty / obligation imposed on the person against whom the relief is sought, are both absent in the instant case.

- 5.8 It is further submitted that even the intelligible differentia can be explained by way of an affidavit before this Court. It is submitted that the Constitution Bench of this Court in the case of **Shri Ram Krishna Dalmia vs Shri Justice S. R. Tendolkar & Others**, 1959 SCR 279 rejected the contention that affidavits cannot be looked into and differentia should be forthcoming from the Notification only. It is submitted that the G.O. No.463 shows that there was urgency for development. It is submitted that KUDA would have had to undertake the

litigation process which was contrary to its commercial interest and would defeat the purpose for which the land was bought i.e. development for the city of Warangal and surrounding areas. It is submitted that therefore the allotment in favour of 134 persons – erstwhile employees was moreover in the nature of settlement, so that the work of development could be undertaken at a quick pace.

- 5.9 It is further submitted that KUDA is an authority created under the Telangana Urban Areas (Development) Act, 1975 to carry out the development activities *inter alia* in Warangal District in the State of Telangana. It is submitted that as such the members of the Workers Association have no relation with the 2nd respondent, let alone that of employer – employee. It is submitted that therefore as there exists no obligation on the 2nd respondent (KUDA) to allot plots of 200 Sq. Yards each to the employees of the 4th respondent herein.

It is submitted that even being the statutory authority, the assets of the 2nd respondent can be used only for the fulfillment of the object laid down in that behalf by the statute in question. It is submitted that allotment of sizable portion of land to 318 erstwhile employees of the Mills is not a prescribed

objective. It is submitted that justification of G.O. No.463 in question was only with the development of the land undertaken by the 2nd respondent after its purchase was seriously hampered by the continuous unauthorized occupation by the erstwhile 134 ex-employees of the Mills. It is submitted that the said G.O. No.463 obviously does not involve the recognition of any legal right of the said 134 persons.

5.10 It is further submitted by Mr. V. Giri, learned Senior Advocate that it is true that the allotment of 200 Sq. Yards of plot in the year 2007 in favour of 134 persons took place only because the said 134 persons refused to vacate the quarters and had remained in unauthorized occupation. It is submitted that however the allotment was not in recognition of any unauthorized occupation and was not definitely in discharge of any legal obligation on the part of KUDA. It is submitted that it was simply on ground of expediting the process of development of the land which was the reason why KUDA had to get unencumbered and absolute unhampered possession of the remaining extent of land at the earliest.

5.11 It is submitted that assuming that the allotment under the G.O.

No.463 was wrong and was a mistake, the same cannot be offered a basis for legally enforceable claim at the instance of the appellant Association. It is submitted that as held by this Court in the case of the **State of Odisha vs. Anup Kumar Senapati**, (2019) 19 SCC 626, two wrongs do not make a right and there is no concept of negative equality contained in Article 14 of the Constitution.

Making the above submissions, it is prayed to dismiss the present Appeals

6. The present Appeals are also opposed by Ms. Aishwarya Bhati, learned ASG appearing on behalf of the NTC as well as the Union of India. It is submitted by Ms. Bhati that as such in the process of implementation of Revival Scheme approved by BIFR, the entire land admeasuring Acres 201.02 Cents belonging to the Mill was put to sale by the Asset Sale Committee constituted by the Government of India and on 23.01.2004, the sale was approved. It is submitted that accordingly land admeasuring Acres 65.69 Cents was sold to Andhra Pradesh Housing Board and Acres 135.33 Cents to KUDA. It is submitted that thereafter the Committee was dissolved vide BIFR Order dated 20.08.2014. It is submitted

that as per Section 3 of the Sick Textile Undertakings (Nationalization) Act, 1974, the right, title and interest of Azam Jahi Mills shall stand transferred to and shall vest absolutely in the Central Government. It is submitted that the NTC and the Mills thereafter are only the custodian of the Azam Jahi Mills and its properties on behalf of the Central Government who is the absolute owner.

- 6.1 It is further submitted by Ms. Bhati that out of the total Acres 135.33 Cents sold to KUDA, only Acres 117.20 Cents was available for registration as Acres 14.88 Cents was under encroachment. It is submitted that as such as on date, around 5 Acres of land only is in the possession of the Mill as a custodian on behalf of the Central Government who is the absolute owner of the said properties. It is submitted that as such as per the OM No.8(18)/2020-E-II(A) dated 28.03.2011 of the Department of Expenditure, Ministry of Finance (Government of India), a specific approval of the Union Cabinet is required by all the Ministries with regard to transfer or alienation of land held by the Government or Government controlled statutory authorities.
- 6.2 It is submitted that after the sale was concluded between the

NTC and KUDA, the Vice Chairman of KUDA requested the Government of Andhra Pradesh for permission / sanction for allotment of 200 Sq. Yards of developed plots to 134 ex-workers of the Mills who had encroached the subject land and were not vacating the said land. It is submitted that based on the request of Vice Chairman, KUDA, Government permitted KUDA to allot 200 Sq. Yards to each of the 134 erstwhile workers of the Mills. It is submitted that as such 200 Sq. Yards of the plots were neither allotted by the NTC / Mill / Central Government nor they were party to the arrangement between 134 erstwhile employees of the KUDA. It is submitted that therefore the appellant cannot seek allotment of land from the NTC / Mills / Central Government.

- 6.3 It is further submitted by Ms. Bhati, learned ASG that in fact all the ex-employees of the Mill accepted the voluntary retirement under the Modified Voluntary Retirement Scheme of 2002 and they were paid all the benefits accrued under the Modified Voluntary Retirement Scheme of 2002 in the year 2002 itself. It is submitted that therefore on and after the ex-employees of the Mills took voluntary retirement and after the Mill came to be closed after obtaining appropriate closure order from the

Ministry, thereafter there is no relationship continued between the employees / ex-employees and the NTC / Central Government / Mills. It is submitted that therefore the appellants are not entitled to any relief against the Central Government / NTC / Mills.

6.4 It is further submitted that the allotment of plots free of cost was never the part of Modified Voluntary Retirement Scheme of 2002. It is submitted that all the erstwhile employees who opted for voluntary retirement under the Modified Voluntary Retirement Scheme of 2002 were completely aware of the benefits that would be offered by way of golden handshake, which did not include allotment of plots free of cost.

6.5 It is further submitted that as 200 Sq. Yards plots came to be allotted to 134 ex-employees to avoid the cost of litigation, there is no question of violation of Article 14 of the Constitution of India as alleged. It is submitted that in any case the Central Government / NTC / Mills had nothing to do with the decision taken by the KUDA. It is submitted that therefore the Division Bench of the High Court has rightly allowed the appeal preferred by the NTC and has rightly quashed and set aside the judgment and order passed by the learned Single Judge

and has rightly consequentially dismissed the writ petition.

7. Heard learned Counsel appearing for the respective parties at length.

7.1 The appellant Workers Association for and on behalf of 318 ex-employees of the respondent No.4 – Mills approached the High Court by way of a writ petition under Article 226 of the Constitution of India and prayed to allot them 200 Sq. Yards of plots free of cost at par with other 134 employees of the erstwhile respondent No.4 Mills.

It was the specific case on behalf of 318 ex-employees of the erstwhile respondent No.4 that they are similarly situated with 134 ex-employees of erstwhile respondent No.4 inasmuch as both the classes (one class consisting of 318 employees and another class consisting of 134 employees) are similarly situated; the employees belonging to both the classes were the employees of the erstwhile respondent No.4 Mills; that all of them took the voluntary retirement under the Modified Voluntary Retirement Scheme of 2002 together; all were similarly situated in granting the benefit of the modified voluntary scheme; all were allotted the quarters and were

residing in the quarters. It was the case on behalf of the employees that the only difference was that as law abiding persons, they vacated the quarters after they were served with the notice dated 17.07.1986 to vacate the quarters and that those 134 ex-employees who as such were similarly situated did not vacate the quarters despite the notice dated 17.07.1986 and they remained in unauthorized occupation. It was also the case on behalf of 318 ex-employees that as per the G.O. No.463, all those 134 ex-employees were allotted 200 Sq. Yards of plots free of cost to avoid undue hardship to the ex-employees and as a welfare measure. The learned Single Judge allowed the writ petition and directed the respondents to treat all those 318 ex-employees at par with 134 ex-employees who were allotted 200 Sq. Yards of plots free of cost and to allot them accordingly by observing that not allotting similar 200 Sq. Yards of plots free of cost to remaining employees – 318 ex-employees is discriminatory and violative of Article 14 of the Constitution. The Division Bench of the High Court quashed and set aside the judgment and order passed by the learned Single Judge. Hence, the present Appeals.

8. Having heard learned Counsel appearing for the respective parties, the short question which is posed for consideration of this Court is, whether the remaining 318 ex-employees of the respondent No.4 Mills (erstwhile) can claim the parity and equality vis-a-vis other similarly situated 134 ex-employees of the respondent No.4 Mills (erstwhile) and can claim 200 Sq. Yards of plots free of cost? The incidental questions which are posed for consideration of this Court as argued and suggested by the learned Counsel for the respective parties would be as follows:

(1) Whether the writ petition preferred by the appellant Association before the High Court under Article 226 of the Constitution of India for the relief sought was maintainable?

(2) Whether was there any legal right available to the appellant Association for the relief sought in the writ petition i.e. for allotment of 200 Sq. Yards plots of land?

(3) Does Article 14 of the Constitution have any application in the present case?

(4) Whether to determine the intelligible differentia the affidavit filed on behalf of the concerned respondents can be

looked into and/or relied upon?

(5) Whether any relief can be claimed against KUDA and/or against the NTC / respondent No.4 Mills?

9. We have heard learned Counsel appearing for the respective parties at length on the aforesaid issues.

At the outset it is required to be noted that 318 ex-employees of the erstwhile respondent No.4 Mills prayed for equality and claimed the reliefs at par with other similarly situated 134 ex-employees of the erstwhile respondent No.4 Mills who were allotted 200 Sq. Yards of plots free of cost.

9.1 It is to be noted and it cannot be disputed that even at one point of time as admitted by the learned Counsel appearing on behalf of KUDA that 318 ex-employees who were not allotted 200 Sq. Yards of plots are as such similarly situated to those 134 ex-employees of the erstwhile respondent No.4 Mills who were allotted 200 Sq. Yards of plot free of cost pursuant to the approval vide G.O. No.463 dated 27.06.2007. All of them as such were working with the respondent No.4. All of them were ex-employees of the erstwhile respondent No.4 Mills. All of them were residing in the quarters allotted by the Mills. All of

them took voluntary retirement under the Modified Voluntary Scheme in the year 2002. All of them got the benefits under the Modified Voluntary Retirement Scheme of 2002 and all of them were relieved on and from 31.08.2002. However, 318 ex-employees vacated their quarters from time to time pursuant to the notice dated 17.07.1986. Thus, they abided the notice dated 17.07.1986. However, despite the notice dated 17.07.1986 and even after they were relieved on and from 31.08.2002, 134 ex-employees continued to retain the quarters and they were in unauthorized occupation of the quarters. Therefore, the only difference between 134 ex-employees and 318 ex-employees was that 318 ex-employees were law abiding persons who vacated the quarters pursuant to the notice dated 17.07.1986 and 134 ex-employees remained in unauthorized occupation of the quarters.

At this stage it is required to be noted that at the time when the proceedings for closure of respondent No.4 Mill was held before the Ministry of Labour, a request was made to allot the quarters to the concerned workmen at reasonable rates and in the order granting approval for closure, it was submitted on behalf of the Mills that the request to allot the quarters is under consideration by the management. That, after the

closure permission, proceedings were initiated by KUDA to acquire the land of respondent No.4 Mills to an extent of 135.33 Acres. However, it appears that the Vice Chairman of KUDA vide letter / communication dated 28.12.2006 submitted their proposal to permit KUDA to allot 200 Sq. Yards of plots free of cost to 134 ex-employees of erstwhile respondent No.4 Mills. In the letter it was specifically mentioned that to avoid undue hardship to the ex-employees and as a welfare measure a proposal was made by the Vice Chairman of KUDA to permit KUDA to allot 200 Sq. Yards of developed plots free of cost to 134 employees of the erstwhile respondent No.4 Mills. Vide G.O. No.463 dated 27.06.2007, the State Government accepted the said proposal and granted the permission to allot 200 Sq. Yards of developed plots free of cost to each of 134 employees of erstwhile respondent No.4 Mills. Nothing further was mentioned either in the communication / letter dated 28.12.2006 nor in the G.O. No.463 dated 27.06.2007 that to avoid any litigation and/or litigation cost as now stated in the affidavit in reply it was proposed to allot 200 Sq. Yards of plots to 134 ex-employees. However, thereafter when a request was made on behalf of the remaining 318 ex-employees, who as such were similarly

situated to those 134 ex-employees, also to allot to them 200 Sq. Yards of house plots, their request came to be turned down. From the aforesaid facts and circumstances and the observations made hereinabove, it is found that 318 ex-employees were not allotted the 200 Sq. Yards of plots and 134 ex-employees who were allotted 200 Sq. Yards of plots free of cost who as such were similarly situated and as such there is no difference between them at all. On the contrary, 318 ex-employees can be said to be law abiding ex-employees who vacated the quarters after 1986 but before 2002 pursuant to the notice dated 17.07.1986. It is not in dispute that 134 ex-employees who were allotted 200 Sq. Yards of plots free of cost were in unauthorized occupation of the quarters and they did not vacate the quarters despite the notice dated 17.07.1986 and even after 31.08.2002 when they accepted the voluntary retirement and relieved. Therefore, to allot the plots to those employees who were found to be in unauthorized occupation would tantamount to giving a premium to their illegality and remaining in occupation and possession of the quarters illegally and unauthorizedly. As observed hereinabove, as both the classes of employees are found to be similarly situated except the difference as

observed hereinabove, 318 ex-employees who as such were similarly situated with those 134 ex-employees when claimed the equality and parity, as such the learned Single Judge rightly issued the writ of mandamus and directed the respondents to treat all of them at par and allotted 200 Sq. Yards of plots to remaining 318 ex-employees also as per the G.O. No.463.

- 9.2 The submission on behalf of the respondents more particularly learned Counsel appearing for respondent Nos.2 and 3 that the appellant Association – 318 ex-employees have no legal right and that respondent Nos.2 and 3 have no legal duty has no substance and cannot be accepted. Right to equality guaranteed under Article 14 of the Constitution of India is vested right in favour of the person who claims equality and parity and the same is enforceable against State / State instrumentalities in exercise of powers under Article 226 of the Constitution of India. We find no justification at all in treating 318 ex-employees different from those 134 ex-employees who were allotted 200 Sq. Yards of plots free of cost. We find that as such the equals are treated unequally and therefore, when the equals are treated unequally, there is a violation of Article

14 of the Constitution and therefore, the appellants were entitled to the relief sought even in exercise of powers under Article 226 of the Constitution of India.

9.3 The concept of equality before the law and equal protection of the laws emerges from the fundamental right expressed in Article 14 of the Constitution. Equality is a definite concept.

The concept of equality has an inherent limitation arising from the very nature of the constitutional guarantee. Those who are similarly circumstanced are entitled to an equal treatment. Equality is amongst equals. Classification is therefore to be founded on substantial differences which distinguish persons grouped together from those left out of the groups and such differential attributes must bear in just and rational relation to the object sought to be achieved.

In a given case Article 14 of the Constitution may permit a valid classification. However, a classification to be followed must necessarily satisfy two tests. Firstly, the distinguishing rationale has to be based on a just objective and secondly, the choice of differentiating one set of persons from another must have a reasonable nexus to the objects sought to be achieved. In the present case allotment of 200 Sq.Yards free of cost to

134 employees was to avoid undue hardship to the ex-employees and as a welfare measure. As observed hereinabove those 318 ex-employees who are denied the benefit of allotment of 200 Sq.Yards of plots free of cost are similarly placed persons with that of 134 employees who are allotted 200 Sq.Yards plots free of cost. There is no rationale justification in providing differential treatment to one class of ex-employees similarly placed with another class of ex-employees who are allotted the plots.

9.4 Now, so far as the case on behalf of KUDA now before this Court in the form of counter affidavit that to avoid any litigation and litigation cost and to get vacant possession of the remaining land, it was proposed and decided to allot 200 Sq. Yards of plots free of cost to 134 ex-employees who were found to be in occupation and possession of the quarters and therefore, there was a valid reason to allot 200 Sq. Yards of plots to 134 ex-employees and the reliance placed on the decision in the case of Shri Ram Krishna Dalmia (Supra) that to determine the intelligible differentia an affidavit produced before this Court can be considered and/or referred to is concerned, the aforesaid seems to be attractive but has no substance in the facts and circumstances of the case. It is to

be noted that in the proposal made by the Vice Chairman, KUDA to the State Government in the year 2007 to permit them to allot 200 Sq. Yards of plots free of cost to 134 ex-employees, there was no reference at all that to avoid any litigation and/or litigation cost it was proposed to allot 200 Sq. Yards of plots free of cost. As observed hereinabove and even when the G.O. No.463 dated 27.06.2007 is seen, it is found in the letter dated 28.12.2006 that “to avoid undue hardship to the ex-employees and as a welfare measure”. Even in paragraph 4 of the G.O. No.463 dated 27.06.2007, the State Government has specifically observed that after careful consideration of the matter, “as a rehabilitation and a welfare measure”, Government has agreed to the proposal of the Vice Chairman, KUDA and permit them to allot 200 Sq. Yards of developed plots free of cost to each 134 ex-employees of the erstwhile respondent No.4 Mills. Therefore, the allotment of 200 Sq. Yards of plots free of cost to 134 ex-employees was as a rehabilitation and welfare measure of ex-employees of the erstwhile respondent No.4 Mills. Even before the learned Single Judge also, it was not the case pleaded before the High Court that those 134 persons were allotted 200 Sq. Yards of plots free of cost to avoid any litigation and/or litigation cost

which is now pleaded for the first time before this Court. The case on behalf of the respondent Nos.2 and 3 has been dealt with by the learned Single Judge in paragraph 5 which reads as under:

“5. The averments in the counter affidavit of the 3rd respondent to the extent relevant, in brief, are as follows:

The President of the petitioner association in his personal capacity along with four others had filed a court case before the District Legal Services Authority, Warangal and it is posted to 03.03.2008 for hearing. Hence, the writ petition is not maintainable. The members of the petitioner association had voluntarily retired from the services of the mill under modified VRS 2002. Their accounts were settled by the NTC long time back. Hence, the request for allotment of house sites to the members of the petitioner association on par with (134) other employees does not arise for consideration. In fact, the 3rd respondent KUDA had taken over possession of (134) quarters covered in an area of Ac.117.00 guntas of land. The allotment of plots to the (134) workers, who were staying in the quarters, was considered as a measure of rehabilitation and welfare by the Government as well as KUDA. There is no illegality or irregularity in the matter. KUDA had submitted proposals to the Government for allotment of plots to (134) workers only, as they were still continuing to stay in the quarters at the time of taking over physical possession of the land by KUDA from NTC. The Government had issued orders for allotment of plots to those (134) employees who were by then staying in the quarters. This respondent cannot allot plots to the members of the petitioner association as per the Government Orders referred to in the writ petition. This respondent received representation dated 15.09.2007. However, it is not considered as the case of the members of the petitioner association does not stand on the same footing as that of the (134) former employees, who had continued to stay in the existing quarters, and as the allotment of sites was made to them as per the Government orders. The members of the petitioner association who had voluntarily retired under a modified voluntary scheme had vacated the quarters and had left the place already. At the time of taking over possession by the KUDA, (134) ex-workers only were staying in the quarters. The proposal for allotment of house plots of 200 square yards each was agreed upon by the respondents 2 and 3. Such similar benefit cannot be extended to the retired employees other

than (134) ex-workers as per the principle of the decision taken in this regard by this respondent and the Government. This respondent has purchased the land from the NTC and had specifically agreed for allotment of house sites to those ex-employees only who were still staying in the quarters by that time. This respondent and the Government did not agree for allotment of sites to the members of the petitioner association. This respondent had taken up sites and services scheme and had incurred a lot of expenditure on infrastructure facilities like provision of roads, water supply, drainage, electricity, parks development etc. and disposing the plots in public open auction. In view of the financial position of the third respondent, it is not possible to allot plots to any other retired employees, under any circumstances. The members of the petitioner association vacated the quarters long time back and are residing elsewhere and they were not staying in the mill quarters at the time of the proposal of the scheme for purchase of land by this respondent from the 1st respondent and therefore, the members of the petitioner association are not eligible for allotment of any house sites on par with the other (134) workers. The project was taken up on "as is where is" and "as is what is" basis. The members of the petitioner association have no right to demand plots and this respondent has no liability to allot plots to the members of the petitioner association as per the project deal. The members of the petitioner association cannot re-enter the picture and seek allotment of house sites. As per the Government Order, the Project has to be finalized to raise funds for City infrastructure development and therefore, this respondent was obliged to raise funds through the sale proceeds by selling plots. Even if any of the land is available, it is for the development of KUDA and city and not reserved for allotment to the petitioners on free of cost on par with (134) members. There is no scope for sparing the land of this respondent to the members of the petitioner association. Hence, the writ petition may be dismissed."

9.5 From the above and even from the grounds of appeal before the Division Bench, respondents tried to justify their action by submitting that case of 318 ex-employees is not comparable with those of 134 ex-employees as 318 ex-employees vacated the quarters and they were not in possession and that only

134 ex-employees remained in possession of the quarters. For the first time before this Court, in the counter affidavit, it is now the case on behalf of the respondent KUDA and others that to avoid any litigation and/or litigation cost, it was proposed to allot 200 Sq. Yards of plots free of cost. The respondents therefore cannot be permitted to improve their case which was not even their case earlier viz. at the time when they made a proposal to permit them to allot 200 Sq. Yards of plots free of cost to 134 ex-employees and even it was not the case so stated in the G.O. No.463 dated 27.06.2007 and even it was not the case before the High Court. Therefore, the respondents more particularly respondent Nos.2 and 3 cannot be permitted to improve their case by filing the affidavit before this Court for the first time. Therefore, the decision of this Court in the case of Shri Ram Krishna Dalmia (Supra), which has been relied upon by the learned Counsel appearing for the respondent Nos.2 and 3, shall not be applicable to the facts of the case on hand. Even otherwise on going through the entire decision of this Court in the case of Shri Ram Krishna Dalmia (Supra), we are of the opinion that the said decision shall not be of any assistance to the respondent Nos.2 and 3. It was the case with respect to the classification and the Union

Government tried to justify the basis of classification by way of affidavit and it was the case on behalf of the writ petitioners that the basis of classification must appear on the face of the notification itself and reference cannot be made to any extraneous matter and to that it is observed and held that there can be no objection to the matters brought to the notice of the Court by way of affidavit being taken into consideration alongwith the matters specified in the notification in order to ascertain whether there was any valid basis for treating the appellants and/or their companies as a class by themselves. We fail to appreciate as to how the said decision shall be applicable to the facts of the case on hand.

- 9.6 Now, so far as the submission on behalf of the respondent Nos.2 and 3 relying upon the decision of this Court in the case of Anup Kumar Senapati (Supra) that there is no concept of negative equality under Article 14 of the Constitution and the submission that merely because there was any mistake on the part of the respondents in allotting 200 Sq. Yards of land to the said 138 persons and therefore, the appellants cannot claim the parity is concerned, again the same has no substance. At the outset it is required to be noted that it was/is never the

case on behalf of the respondents that those 134 persons were allotted the plots by mistake and/or there was any wrong committed in allotting 200 Sq. Yards of plot to the said 134 persons. Therefore, there is no question of applicability of any negative equality. Therefore, the aforesaid decision shall not be applicable to the facts of the case on hand.

- 9.7 Now, so far as the submission on behalf of the respondents that they do not have any sufficient land at present to allot 200 Sq. Yards of plots to remaining 318 ex-employees and that all those 318 ex-employees vacated the quarters voluntarily and they settled in their houses is concerned, at the outset it is required to be noted that merely because for whatever reason and even as a law abiding person they vacated the quarters, they cannot be put to disadvantageous situation being a law abiding persons. Even it cannot be presumed that all those 318 ex-employees who vacated the quarters and stayed elsewhere were settled. It cannot be presumed like that without any factual data. There may be many ex-employees who were compelled to vacate the quarters and who might not have settled or might be staying in a one room house. In any case, to allot 200 Sq. Yards of plots to 134 ex-employees to

avoid undue hardship to the ex-employees and as a welfare measure and as a rehabilitation to only 134 case ex-employees and not other ex-employees similarly situated, would be discriminatory and violative of Article 14 of the Constitution. As observed hereinabove, on the contrary, to allot the plots to 134 employees on the ground that they were in unauthorized occupation and therefore, to avoid the litigation / litigation cost would be giving a premium to those who continued to be in illegal unauthorized occupation and to punish those ex-employees who were found to be law abiding and vacated the quarters pursuant to the notice dated 17.07.1986. Even the justification to differentiate the case between two classes of ex-employees is not germane. If remaining 318 ex-employees would not have vacated the quarters and would have remained in unauthorized occupation, even as per the case on behalf of the respondents is accepted, then those who remained in unauthorized occupation subsequently might have been allotted to 200 Sq. Yards of plots free of cost like 134 ex-employees who were found to be in unauthorized occupation. Therefore, as such there is no justification at all to deny allotment of 200 Sq. Yards of plots free of cost to each of 318 ex-employees, which

were allotted to other 134 ex-employees who otherwise were similarly situated. It will be open for the respondent Nos.2 and 3 to approach the respondent No.1 and/or the State Government for allotment of additional land and/or to allot the plots from the remaining land of the respondent No.4 Mills which might be vacant and available with the Central Government / NTC as the case may be.

10. In view of the above and for the reasons stated above, both these Appeals succeed. Impugned judgment and order dated 19.02.2020 passed by the High Court for the State of Telangana, at Hyderabad in Writ Appeal Nos.427 of 2016 and 431 of 2016 are hereby quashed and set aside and the judgment and order passed by the learned Single Judge in Writ Petition No.26642 of 2007 is hereby restored and the respondents more particularly respondent Nos.2 and 3 are hereby directed to treat and consider the remaining 318 ex-employees of the erstwhile respondent No.4 – Azam Jahi Mills at par with other 134 ex-employees who were allotted 200 Sq. Yards of plots free of cost as per the Government Order No.463 dated 27.06.2007. However, it is observed that it will be open for KUDA to approach the State Government and/or

the respondent Nos.1 and 4 / the Central Government to allot additional plot / land, may be out of the remaining land available with the Central Government / National Textile Corporation Limited of the erstwhile respondent No.4 Mills and the same may be considered in larger public interest. The aforesaid exercise of allotment of plots to remaining 318 ex-employees – members of the appellant – Workers Association shall be completed within a period of six months from today. Both the present Appeals are allowed accordingly. In the facts and circumstances of the case, there shall be no order as to costs.

.....J.
[M.R. SHAH]

NEW DELHI;
OCTOBER 26, 2021.

.....J.
[A.S. BOPANNA]