

**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**

S.B. Civil Writ Petition No. 8082/2018

M/s.Mangalam Arts

----Petitioner

Versus

1. State of Rajasthan, through Additional Chief Secretary, Industries Department, Govt. of Rajasthan. Govt. Secretariat, Jaipur (Raj.)
2. Managing Director, Rajasthan State Industrial Development & Investment Corporation (RIICO) Udyog Bhawan, Tilak Marg, Jaipur.
3. Sr.Regional Manager, Rajasthan State Industrial Development & Investment Corporation (RIICO), EPIP, Sitapura, Jaipur.

----Respondents

For Petitioner(s) : Mr.Rajendra Prasad, Sr.Advocate assisted by Mr.Ashish Sharma, Advocate.

For Respondent(s) : Major R.P.Singh, Additional Advocate General assisted by Mr.Jaivardhan Singh Shekhawat, Advocate.

HON'BLE MR. JUSTICE ASHOK KUMAR GAUR

ORDER

REPORTABLE

20/04/2022

The instant petition has been filed by the petitioner-firm seeking following prayer:-

“(i) Call for the entire record pertaining to passing of the impugned communication dated 07.07.2017 and after examining the same be declared the impugned communication dated 07.07.2017 be null and void and be quashed and set aside.

(ii) By further appropriate writ, order or direction, the official respondents be directed to immediately accept the

entire amount including the balance amount and thereupon issue letter of allotment in favour of the petitioner forthwith.

(iii) By further appropriate writ, order or direction, the official respondents be restrained from putting the Plot No.A/128 & A/129 to auction as well as to take any coercive steps to allot the plot No.A/128 & A/129 in favour of anyone else during the pendency of the writ petition or thereafter.

(iv) By an appropriate writ, order or direction, if any order prejudicial/detrimental to the interest of petitioner is passed during the pendency of the writ petition, the same may kindly be taken on record and be quashed and set aside by this Hon'ble Court."

2. The brief facts, as pleaded in the writ petition, are that the petitioner is a partnership firm, engaged in the activity of manufacturing and exporting handicrafts, wooden furniture and other items, having its manufacturing units at different locations such as Jaipur, Udaipur, Mirzapur (UP), Agra (UP) & Delhi, etc.

3. The petitioner-firm in order to establish its new industrial unit in the new Industrial Area namely Prahaladpura situated at proposed Ring Road on the Southern side of Jaipur City applied for allotment of plot in pursuance of the public notice dated 13.12.2015 issued by the respondent-Corporation for different sizes. The petitioner-firm had applied for one plot of size of 10,000 Sq.Mtrs. against plot No.A/127 to A/130, as described in the writ petition.

4. The petitioner-firm was found successful in the procedure of draw of lottery for allotment of plot No.A/127 and as such the petitioner-firm was allotted the said plot vide allotment letter dated 18.02.2016 and accordingly, the petitioner-firm deposited the required amount and lease agreement was also executed in favour of the petitioner-firm.

5. The petitioner-firm has pleaded that since it was planning to launch new industrial unit in the new Industrial Area, the petitioner-firm is said to have contacted the respondent-Corporation for allotment of adjacent industrial plots on "first come first serve" basis, as per the policy of the respondent-Corporation.

6. The petitioner-firm has pleaded that a notice dated 20.05.2017 was issued in the Rajasthan Patrika (Hindi) dated 21.05.2017 and Hindustan Times (English) dated 21.05.2017 whereby three plots of 10,000 Sq.Mtrs. were offered for sale at the rate of Rs.6,000/- per Sq.Mtrs. on "first come first serve" basis and the application was to be submitted online and in case of offline option, the UTR number of payment through RTGS/NEFT was to be submitted within 48 hours.

7. The petitioner-firm has pleaded that it applied for allotment of plots bearing No.A/128 & A/129 on "first come first serve" basis along with requisite documents and made the payment in bank account of the respondent-Corporation vide UTR number, as mentioned in the communication dated 22.05.2017 sent to the respondent-Corporation.

8. The petitioner-firm has pleaded that as per the priority maintained by the respondent-Corporation only two applicants namely Shri Krishna Sudershan Urja Private Limited and the petitioner-firm applied for industrial plot No.A/129 and the petitioner-firm had applied first with project cost of Rs.2146 Lakhs

and similarly for the industrial plot No.A/128 only two persons had applied for allotment including the petitioner-firm and the application of the petitioner-firm was first as it was given application No.127 and the second applicant was having application No.128.

9. The petitioner-firm has pleaded that for all purposes, priority of the petitioner-firm was first and all the formalities including payment of requisite amount and furnishing of all desired documents was made by the petitioner-firm, as per the terms and conditions.

10. The petitioner-firm had made a request to the authorities for allotment of plots at the earliest in order to expand their business but no response was received from the respondent-Corporation in spite of the letter written by the petitioner-firm on 31.05.2017.

11. The petitioner-firm has pleaded that vide impugned order dated 07.07.2017 the respondent-Corporation has sent back the cheques to the petitioner-firm intimating that money deposited by it is being returned as the allotment process had been cancelled at the Headquarters level.

12. The petitioner-firm, on receipt of the communication dated 07.07.2017, is said to have submitted representation on 12.07.2017 informing the respondent-Corporation that neither any reason was assigned for cancellation of allotment process nor any opportunity was afforded before issuing the order of cancellation.

However, the petitioner-firm, under protest, is said to have accepted the refund amount by reserving its rights.

13. The petitioner-firm has pleaded that it obtained notesheet under Right to Information Act and there it came to know that on the basis of certain complaints made by the officials of Sitapura Industrial Association, the matter was taken on hype and the decision was taken arbitrarily to cancel the allotment in favour of the petitioner-firm.

14. The respondent-Corporation has filed reply to the writ petition and pleaded that though the notice was issued on 20.05.2017 to allot the plots on "first come first serve" basis, however, due to lack of clarity in the advertisement in Hindi and English advertisement, published in all the daily newspapers and the system of depositing of money, had made the issue complicated and decision was taken to cancel the allotment process and to initiate the process afresh.

15. The respondent-Corporation has pleaded that later on advertisement was issued on 29.04.2018 in all the daily newspapers and anybody who was desirous for allotment of plots, could apply in pursuance of the said advertisement and the reserve price was enhanced from Rs.6,000/- per Sq.Mtrs. to Rs.8,000/- per Sq.Mtrs.

16. The respondent-Corporation has pleaded that after cancellation of bid of the petitioner-firm, the entire amount was refunded to the petitioner-firm and the petitioner-firm had also

encashed the amount. However, no letter of allotment was issued in favour of the petitioner-firm at the relevant point of time and as such, the petitioner-firm does not have any right or *locus standi* to challenge the decision or action of the respondent-Corporation.

17. The respondent-Corporation has pleaded that vide letter dated 15.02.2018, approval was accorded to allot remaining vacant land/plots situated at Prahaldpura by way of e-auction by dispensing with the existing provisions for allotment of remaining plots/lands on "first come first serve" basis.

18. The respondent-Corporation has further pleaded in the reply that in absence of issuance of any allotment letter, only by way of depositing the amount by the petitioner-firm, no right is conferred in its favour and the petitioner-firm is always free to participate in the fresh auction proceedings.

19. The petitioner-firm filed rejoinder to the reply and has reiterated the submissions made in the main writ petition.

20. Learned Senior Advocate Mr.Rajendra Prasad appearing for the petitioner-firm has made following submissions:-

20A. The decision of the respondent-Corporation to cancel the allotment in favour of the petitioner-firm for allotment of Plot Nos.A/128 & A/129 is arbitrary and the same has not been done by the respondent-Corporation for valid reasons.

20B. The reasons assigned for cancellation of entire process are non-existent inasmuch as the reasons so assigned of lack

of clarity in the advertisement and procedure for making payment, were not the actual reasons but the decision was taken on account of some unwritten complaints by certain Industrialists of a particular area.

20C. The power of cancellation of bid is not unfettered and cannot be exercised for any oblique purpose.

20D. The petitioner-firm since participated in pursuance of the advertisement issued by the respondent-Corporation and the petitioner-firm was the successful bidder on the basis of first come first serve, had legitimate expectation from the respondent-Corporation to allot the plots in its favour.

20E. The various notesheets, as obtained under Right to Information Act clearly show that the competent authority while cancelling the bid was swayed by irrelevant considerations and no finding has been recorded that cancellation of bid was made in the public interest or to augment more revenue/public money.

20F. The respondent-Corporation while taking decisions in contractual matters has to conform to Article 14 of the Constitution of India showing non-arbitrariness and fair play in action.

21. Learned Senior Advocate appearing of the petitioner-firm, in support of his submissions, has placed reliance on the following judgments:-

(A) **Food Corporation of India Vs. M/s.Kamdhenu Cattle Feed Industries** reported in **(1993) 1 SCC 71**.

(B) **State of Punjab Vs. Bandeep Singh & Ors.** reported in **(2016) 1 SCC 724**.

(C) **State of Punjab & Ors. Vs. Mehar Din** reported in **AIR 2022 SC 1413**.

22. Per contra, learned Senior Advocate Major R.P.Singh, Additional Advocate General has made following submissions:-

22A. The decision of the respondent-Corporation to cancel the auction proceedings on "first come first serve" basis was not found in the interest of Corporation and the same procedure was not in consonance with the policy of the Corporation to allot the plots in such a manner.

22B. The RIICO Disposal of Land Rules, 1979 (hereinafter referred to as "the RIICO Rules") though provides under Rule 5 that certain plots/land in the industrial area, may be disposed of by public auction or by entertaining individual applications, however, the respondent-Corporation, as per Rule 27 of the RIICO Rules, reserves right of not allotting the plot and can revoke any proposal to dispose of such plot in such manner, as deemed fit by the Corporation.

22C. The notesheets, so relied upon by the petitioner-firm, do not create any right in its favour as the inter-departmental communications/notesheets are not final decisions of the authority/RIICO and even if any remarks have been given by different officers at different points of

time, the same would not result into creating any right in favour of the petitioner-firm to get allotment of plots.

22D. The method of "first come first serve" has not been followed by the respondent-Corporation and accordingly the letter dated 15.02.2018 was issued and the Office Order (03/2021) dated 22.01.2021 has also been issued and the procedure of normal allotment of industrial plots through online system on "first come first serve" basis, has been discontinued.

22E. The decision of the respondent-Corporation to put the plots in public auction has been taken in the interest of the Corporation by getting the best offer from different persons who are interested in the allotment of plots.

22F. The alleged necessity of the petitioner-firm, to have the adjacent plots to the plot already allotted to it, cannot be taken as a preferential right of the petitioner-firm to get the allotment in its favour by the method of "first come first serve". The petitioner-firm, if has any interest to have allotment of plots adjacent to its industrial unit, is always free to participate in the public auction and whosoever will be the highest bidder, would be allotted the plots by the respondent-RIICO provided one fulfills the terms & conditions.

23. Learned Senior Advocate appearing of the respondent-Corporation, in support of his submissions, has placed reliance on the following judgments:-

(A) Order dated 15.12.2021 passed at the Principal Seat of this Court at Jodhpur in the case of **R.K.Industries Vs. Chief Sec.Ministry of Industries & Ors. [S.B.Civil Writ Petition No.12448/2017]**.

(B) Judgment dated 29.03.2022 passed by the Apex Court in the case of **Municipal Committee, Barwala, District Hisar Haryana through its Secretary/President Vs. Jai Narayan & Co. & Anr. [Civil Appeal No.2222 of 2022]**.

(C) Judgment dated 26.10.2018 passed by the Division Bench of this Court in the case of **RIICO Vs. M/s.Genus Innovation Ltd. & Anr. [D.B.Special Appeal Writ No.1555/2008]**.

(D) **Centre for Public Interest Litigation & Ors. Vs. UOI & Ors.** reported in **(2012) 3 SCC 1**.

24. I have heard learned Senior Counsel for the parties and with their assistance perused the material available on record.

25. The primary question to be decided in the present writ petition is as whether the authorities have acted arbitrarily in taking the decision of cancelling the allotment process which was based on the method of "first come first serve".

26. This Court on careful scanning of the pleadings on record finds that initial process of allotment of plots was under taken by the respondent-RIICO by issuing an advertisement on 13.12.2015 where by a public notice was issued, wherein draw of lottery was

the basis for allotment of plots and there were different sizes of plots available to be allotted to different applicants.

27. This Court finds that the petitioner-firm was found successful in the draw of lottery for allotment of Plot No.A/127 and accordingly it was allotted the said plot and requisite formalities were completed. The subsequent issuance of advertisement in daily newspaper for allotment of plots on "first come first serve" basis was not a normal course which was adopted by the respondent-Corporation.

28. This Court finds that the RIICO Rules though provides under Rule 5 that RIICO can dispose of the plots in the industrial area either by public auction or by entertaining the individual applications, however, the allotment of plots without having element of public auction by large number of applications has not been approved time and again by the Apex Court.

29. This Court finds that in the case of **Centre for Public Interest Litigation & Ors. Vs. UOI & Ors.** reported in **(2012) 3 SCC 1** the Apex Court has laid down that for disposing of the public properties, the State should adopt the method of public auction as it has more transparency and brings more revenue to the authority. The sale of plots by inviting individual applications or on the basis of first come first serve leave room, where authorities may use their discretion by not keeping in mind the best interest of the Corporation. The relevant portion of the judgment is reproduced hereunder:-

"93. We may also mention that even though in its recommendations dated 28.8.2007, TRAI had not specifically recommended that entry fee be fixed at 2001 rates, but paragraph 2.73 and other related paragraphs of its recommendations state that it has decided not to recommend the standard option for pricing of spectrum in 2G bands keeping in view the level playing field for the new entrants. It is impossible to approve the decision taken by the DoT to act upon those recommendations. We also consider it necessary to observe that in today's dynamism and unprecedented growth of telecom sector, the entry fee determined in 2001 ought to have been treated by the TRAI as wholly unrealistic for grant of licence along with start up spectrum. In our view, the recommendations made by TRAI in this regard were contrary to the decision of the Council of Ministers that the DoT shall discuss the issue of spectrum pricing with the Ministry of Finance along with the issue of incentive for efficient use of spectrum as well as disincentive for sub-optimal usages. Being an expert body, it was incumbent upon the TRAI to make suitable recommendations even for the 2G bands especially in light of the deficiencies of the present system which it had itself pointed out. We do not find merit in the reasoning of TRAI that the consideration of maintaining a level playing field prevented a realistic reassessment of the entry fee.

Questions 3 and 4

94. There is a fundamental flaw in the first-come-first-served policy inasmuch as it involves an element of pure chance or accident. In matters involving award of contracts or grant of licence or permission to use public property, the invocation of first-come-first-served policy has inherently dangerous implications. Any person who has access to the power corridor at the highest or the lowest level may be able to obtain information from the Government files or the files of the agency/instrumentality of the State that a particular public property or asset is likely to be disposed of or a contract is likely to be awarded or a licence or permission is likely to be given, he would immediately make an application and would become entitled to stand first in the queue at the cost of all others who may have a better claim.

95. This Court has repeatedly held that wherever a contract is to be awarded or a licence is to be given, the public authority must adopt a transparent and fair method for making selections so that all eligible persons get a fair opportunity of competition. To put it differently, the State and its agencies/instrumentalities must always adopt a rational method for disposal of public property and no attempt should be made to scuttle the claim of worthy applicants. When it comes to alienation of scarce natural resources like spectrum etc., it is the burden of the State to ensure that a non-discriminatory method is adopted for

distribution and alienation, which would necessarily result in protection of national/public interest.”

30. This Court finds that various notesheets, on which reliance is placed by the petitioner-firm to build its case by terming the action of the respondent-Corporation as arbitrary, suffice it to say by this Court that the various notesheets/internal departmental communications, cannot be treated as decision of the State/RIICO. The expression of opinion by an Officer or a particular individual is a noting simplicitor but the said noting cannot be treated as a decision of the competent authority.

31. The submission of counsel for the petitioner that at one point of time the authorities had taken a decision to allot plots on the basis of “first come first serve” as the industrial area was not fully developed and many people were not interested in taking plots in the said industrial area, suffice it to say by this Court that the said expressions by certain officials, will not ultimately result into creating any right in favour of the petitioner-firm.

32. The Apex Court in the case of **State of Punjab & Ors. Vs. Mehar Din** (supra) has dealt with the right of the highest bidder in the auction proceedings and has found that until the decision is totally arbitrary or unreasonable, the High Court should not sit like a court of appeal and it is the competent authority who floats the tender, who is the best judge of its requirement. The portion of the judgment, relevant for the present purpose, is quoted hereunder:-

“26. This being a settled law that the highest bidder has no vested right to have the auction concluded in his favour and

in the given circumstances under the limited scope of judicial review under Article 226 of the Constitution, the High Court was not supposed to interfere in the opinion of the executive who were dealing on the subject, unless the decision is totally arbitrary or unreasonable, and it was not open for the High Court to sit like a Court of Appeal over the decision of the competent authority and particularly in the matters where the authority competent of floating the tender is the best judge of its requirement, therefore, the interference otherwise has to be very minimal.”

33. The Apex Court in the case of **Municipal Committee, Barwala, District Hisar Haryana through its Secretary/President Vs. Jai Narayan & Co. & Anr.** (supra) has again reiterated the principle that there is no vested right of the highest bidder, who participates in the public auction, to have the auction proceedings concluded in his favour.

34. The submission of counsel for the petitioner-firm that reasons assigned for cancelling the allotment were non-existent as there was neither any ambiguity in the advertisement nor any irregularity in depositing the money, this Court finds that the initial consideration with the authorities might have been the so-called irregularities, however, if the competent authority had taken the decision that “first come first serve” method of awarding plots was not required to be continued and public auction was better method, no arbitrariness can be attached to the said decision.

35. The submission of counsel for the petitioner-firm that the Apex Court in the case of **Food Corporation of India Vs. M/s.Kamdhenu Cattle Feed Industries** (supra) has considered the legitimate expectation and scope of Article 14 of the Constitution of India and as such, this Court is called upon to declare the action of the respondent-Corporation as arbitrary, this

Court finds that the Apex Court has held that reasonable or legitimate expectation may not be itself a distinct enforceable right but failure to consider and give due weightage to it may render the decision arbitrary and whether the expectation of the claimant is reasonable or legitimate in the context is a question of fact in each case and whenever the question arises, it is to be determined not according to the claimant's perception but in larger public interest, wherein other more important considerations may outweigh what would otherwise have been the legitimate expectation of the claimant. A bonafide decision of the public authority reached in such manner would satisfy the requirement of non-arbitrariness and withstand judicial scrutiny.

36. This Court, considering the facts of the present case and in view of the decision taken by the respondent-Corporation in the year 2018 and again in the year 2021, finds that allotment of industrial plots on "first come first serve" basis is not approved in the interest of the respondent-Corporation and as such, the decision cannot be termed arbitrary.

37. Reliance is placed by counsel for the petitioner-firm on the judgment of the Apex Court in the case of **State of Punjab Vs. Bandeep Singh & Ors.** (supra). The Apex Court, in background of facts of that case, found that since the writ petitioners had deposited the earnest money and deposited more than 25% of the sale consideration and also tendered the entire remainder, as such, the writ petitioners were permitted to pay the prevailing circle rate. According to this Court, the said judgment is of little assistance to the counsel for the petitioner-firm.

38. This Court finds that merely by depositing amount unilaterally by the petitioner-firm, in absence of any allotment letter, would not create any right to claim allotment in its favour.

39. This Court finds that the Division Bench of this Court in the case of RIICO Vs. M/s.Genus Innovation Limited & Another [D.B.Special Appeal Writ No.1555/2008] had also considered the scope of Rule 5 and Rule 27 of the RIICO Rules. The extract of the judgment, relevant for the present purpose, is reproduced hereunder:-

“In these facts, when indisputably the respondent-writ petitioners did not submit their applications on prescribed proforma and the decision has been taken by the RIICO to put the industrial plots in question to auction, the correctness of such decision has to be tested on the touchstone of Rule 5 read with Rule 27. Notwithstanding the fact that the respondents while returning the applications of the respondent-writ petitioners and the appellant did not cite the reason of their applications not being on the prescribed proforma, Rules 5 inter alia provides that the Corporation shall have the right to reserve certain plots/land in the industrial area that it may dispose of by public auction or by entertaining individual applications. The terms and conditions governing plot auction shall generally be as laid down by the Corporation as it may deem fit from time to time. Rule 27 provides that if in the opinion of the Corporation, any plot or area is required to be reserved or withdrawn from allotment, the Corporation may do so at any time or revoke any proposal to dispose of such a plot or area in such manner as decided by the Corporation. These two provisions confer power on the RIICO to withdraw the plot in question from the ordinary mode of allotment i.e. on first in and first out basis and to put the said plot to public auction. Rule 27 empowers the RIICO to do so at any time or revoke any proposal to dispose of such a plot or area in such manner as may be decided by the Corporation. Even if after it has given a proposal for allotment, it can refund such proposal of course subject to the decision being based on just and reasonable consideration.

In our considered view, the learned Single Judge was not justified in directing allotment of land on the price of Rs.135 per sq. mtrs. as per the rate fixed by the development

authority. Therefore, the decision of the RIICO in putting three industrial plots to auction, rather than straight away allotting the same to the respondent-writ petitioners, cannot be said to be in any manner illegal or incompetent.”

40. This Court accordingly finds that the respondent-Corporation has not acted arbitrarily or illegally in any manner while issuing the order dated 07.07.2017 cancelling the allotment process.

41. Accordingly, the writ petition is dismissed and the interim order passed by this Court dated 16.04.2018 stands vacated. No costs.

(ASHOK KUMAR GAUR),J

Solanki DS, PS



सत्यमेव जयते