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HIGH COURT OF CHHATTISGARH, BILASPUR

W.P. No. 415 of 2002

(Judgment delivered on 29.11.2019)

Ajay Chouhan, S/o. Late Vipad @ Deepeshwar Chouhan, Aged About 36 Years, R/o. Shastri Nagar, Camp-1, Bhilai, District Durg, Chhattisgarh

---- Petitioner

Versus

1. The State of Chhattisgarh, Through the Secretary, Department of Urban Administration & Development, Mantralaya, D.K.S.Bhawan, Raipur, Chhattisgarh.
2. The Municipal Corporation, Through its Commissioner, Bhilai, District Durg, Chhattisgarh.

---- Respondents

For Petitioner	:	Mr. Ashish Shrivastava with Mr. Animesh Verma, Advocates
For Respondent No.1	:	Mr. Alok Bakshi, Addl. A.G.
For Respondent No.2	:	Mr. Manoj Paranjpe, Advocate

Hon'ble Shri Justice Goutam Bhaduri

CAV ORDER

1. Challenge in this petition is the order dated 21.01.2002 passed by the Special Secretary, Urban Administration & Development Department, Government of Chhattisgarh.

2. The brief facts which *inter alia* involved in this case is that on 05.08.1999, the Commissioner, Municipal Corporation Bhilai, published an advertisement inviting tender from the general public for grant of lease for four plots for a period of 30 years. The said tender notice was further modified on 10.08.1999 with respect to the numbering of plot about the dimension. Subsequently, on 05.10.1999 another the tender was invited with respect to the other two plots for grant of lease for a period of 30 years.

The petitioner submitted his tender for grant of six plots pursuant to the said two tender notice and deposited an earnest amount of Rs.62,500/- & 3,00,000/-. The petitioner further contended that the petitioner was granted tender and preliminary permission with regard to four plots as per initial tender notice dated 05.08.1999 (modified on 10.08.1999). Likewise in respect to the second tender notice dated 05.10.1999 of two plots, the preliminary permission was granted on 10.02.2000.

3. Pursuant to the preliminary allotment for the period of 30 years for four plots Rs.1,63,592/- was deposited; whereas in respect of two plots Rs.4,09,862/- was deposited with the respondent Municipal Corporation. The respondent No.2 Municipal Corporation granted a lease of the plots for the period of 30 years, which have been collectively filed as Annexure P-7; whereas in respect of two separate plots, the lease was granted on 03.03.2000 by Annexure P-8. Subsequently, in respect of four plots, the competent authority was pleased to accord physical possession in the month of October, 1999 and in respect of two plots, the competent authority was pleased to accord physical possession in the month of March, 2000. Subsequently, the building permission too was granted by the respondent Municipal Corporation by Annexure P-11.

4. Since two plots admeasuring 462 square meters and 96 square meters respectfully were valued more than Rs.1,00,000/-, therefore, as a mandatory requirement, the respondent Municipal Corporation sought approval from the State, which was accorded by letter dated 05.02.2000 (Annexure P-12). Whereas in respect of two other plots, the Municipal Corporation by a letter dated 02.11.1999 sent the proposal to the State Government to accord sanction, which was considered by the Government by letter dated 05.02.2000. However, issue erupted in the month of August, 2000 when the Commissioner, Municipal Corporation wrote a letter to the

State highlighting irregularity and illegalities committed in awarding the tender/ lease to the petitioner. The D.O. letter was on receipt of the complaint from one Sanjay Agrawal who was a competitor to the petitioner. On the basis of the D.O. letter written by the respondent Commissioner, Municipal Corporation, the State Government in purported exercise under Section 421 (4) of the Municipal Corporation Act, 1956 vide order dated 25.09.2000 canceled the lease deed of the petitioner. Feeling aggrieved by the order dated 25.09.2000, the petitioner filed a writ petition before the High Court which was numbered as W.P. No.5976/2000. The High Court on 19.03.2001 by Annexure P-19 passed an order and allowed the writ petition of the petitioner and remanded back the matter to the State Government for examining afresh after giving the proper opportunity of hearing to the petitioner.

5. Thereafter, on 04.07.2001, a fresh show cause notice Annexure P-20 was issued to the petitioner. In the said show cause notice, the petitioner contends that the only ground mentioned in the cancellation was with respect to the lower rate and such grant of lease has caused loss to the Municipal Corporation. The petitioner submitted his reply to the aforesaid show cause notice stating all the facts and circumstances of the case. The petitioner also contends that in the nearby area of the purchase land though the Bus Stand was proposed but it was not made functional; consequently, the land adjoining area were never included. The respondent Municipal Corporation also submitted their reply. The petitioner sought for necessary documents and called from the petitioner. It is contended that despite the fact that the documents were asked for, it was not supplied though few of the documents were supplied but all the documents were not supplied. Eventually, the order dated 21.01.2002 was passed whereby the lease granted to the petitioner was canceled. It is contended that the State exceeded its authority and the show cause notice though was issued on one

ground, however, cancellation of the lease was more than one ground.

6. Learned counsel for the petitioner would submit that the Municipal Corporation Bhilai came into existence in 1998. Initially the lands were of BSP and the petitioner had on the second round of show cause asked for different documents in 2-3 occasions on which the Corporation relied on, however, the said documents were not supplied; thereby there has been a breach of natural justice and proper opportunity was not given. It is further contended that in the similarly like nature of the allotment, the quotation given by the petitioner was much higher which was prevailing on the site. The reference was made to the document to evaluate the price and the price was quoted in the per square meter, which was much higher from the prevailing rate. Referring to the letter dated 05.02.2000 (Annexure P-12), it is stated that considering the higher rate, the State Government has rightly accorded the sanction under the Madhya Pradesh Nagar Palik Nigam. It is further contended that the show cause notice was only confined to one ground that the grant of lease was by a lower rate but in order more than 2-3 grounds have been taken for cancellation and in the D.O. letter of the Commissioner, Municipal Corporation, the complaint was only with respect to the lower price but while deciding the show cause notice different consideration was taken into account. He referred to *(2011) 1 SCC 109 {Commissioner of Central Excise Chandigarh v. Shital International}, (2005) 7 SCC 159 {SACI Allied Products Ltd. U.P. v. Commissioner of Central Excise, Meerut}, (1997) 10 SCC 379 {Reckitt & Colman of India Ltd. v. Collector of Central Excise}, (2006) 2 MPLJ 196 {Vijay Jaiswal v. State of M.P.}* and would submit that proper opportunity of hearing to rebut the case was not given to the petitioner. It is stated that had it been known to the petitioner that consideration for cancellation would be on the other ground that could have been met with. During the argument, certain documents were placed on record and would submit that the Anti Corruption Bureau,

Economic Wing, also enquired into the matter and after enquiry no adverse finding was recorded. Meaning thereby, the price of the lease of the land was correct. It is submitted that therefore the order of the State Government whereby the lease was canceled be quashed.

7. Per contra, learned counsel for the respondent Municipal Corporation would submit that the allotment was canceled in exercise of power under Section 421 (4) of the Municipal Corporation Act. Supporting the order of cancellation, it would submit under Section 417(2) of the Act, 1956, the State can always reverse an order, call for the record when there is a disposition of the property. Referring to Section 80 of the Act and would submit when the value of the property was more than Rs.1,00,000/- previous sanction for disposal of the property as per the Madhya Pradesh Municipal Corporation (Transfer of Immovable Property) Rules, 1994 would be required. The reference was further made to various Rules of 1994 and it is stated that the statutory compliance has not been taken and the letter of the Commissioner would indicate that on the earlier occasion, higher bidding was made in respect of the same plot in the year 1996 and the average price was quoted as 9486.10 for 1 meter; whereas in the year 2000 the bidding price was 1297 per square meter, so a significance less price was quoted in the bidding and accepted. It is further stated that on the earlier occasion while permission was accorded, the documents were not supplied to the State, therefore, the State Government has passed the order on suppression of fact. Referring to the earlier round of litigation, it is further contended that in the earlier litigation, all the points were highlighted, thereafter, when the subsequent enquiry was made, the petitioner was well aware of the fact on what ground the enquiry was proceeded, therefore, no prejudice was caused. Referring to (2009) 1 SCC 333 would submit merely non supply of certain documents, if no prejudice is caused, nothing can be attributed and it is stated that it is a disputed question of fact as to the price

of the land; therefore, the order passed after subsequently enquiry and show cause is well merited.

8. The State Government would submit that when the auction notice was circulated in three newspaper i.e. Amrti Sandesh, Samved Shikhar & Daily Mail, those were not widely circulated newspaper, so virtually the persons were not made known of the fact about the bidding. With respect to the plotting, it is contended that before the plots were layout were changed, no permission was sought for from the State and no proper procedure were followed; therefore, the order is well merited which do not call for any interference.

9. Heard learned counsel appearing for the parties at length and perused the documents.

10. Subsequent to the grant of lease in the year 1999, the lease of four plots were granted on 22.09.1999 by Annexure P-7; thereafter, another lease deed was executed for remaining two plots on 03.03.2000, which is filed as Annexure P-8. Thereafter, in the month of October, 1999 possession was given in respect of four plots by Annexure P-9 and subsequently on 14.03.2000 the other two plots one of 462 square meters and another of 96 square meters were granted. Since the plot admeasuring 462 square meters and 96 square meters were of value of 1305 per square meter and 1321 per square meter, as per sub-section 5 of Section 80 of the Municipal Corporation Act, the permission was sought for from the Government and the same was accorded by an order dated 05.02.2000 (Annexure P-12) by the State as per the Madhya Pradesh Municipal Corporation (Transfer of Immovable Property) Rules, 1994. The dispute started on 14.08.2000, when the Commissioner, Municipal Corporation, wrote a letter to the State highlighting some irregularities and illegalities on the ground that the lease of plots were granted at a very lower price that the average price of plots

were less than Rs.8189 square meter, thereby, total value of plots should have been Rs.77,97,492. Therefore, objection was made that having granted the same at Rs.10,76,142 in total a loss of Rs.67,21,350/- was caused to the Municipal Corporation. Therefore, requested to cancel the permission of lease and sought for fresh tender process. Thereafter, by an order dated 25.09.2000 (Annexure P-14) in exercise of power under Section 421(4) of the Municipal Corporation Act, 1956 the State canceled the lease deed granted in favour of the petitioner. Such cancellation was the subject of challenge before the High Court wherein a detailed reply was also filed by the respondents and it was stated that ignoring the previous bid for plots in the year 1996, the approval of the State Government was obtained by concealment of the material facts. The reply also contained the fact that the tender notice were published in daily newspaper Amrti Sandesh, Samved Sikhar & Roshan-e-Hind Mail having very poor circular in the area and Roshan-e-Hind Mail was published from Bhopal, which was not having any circulation at Durg, Bhilai & Raipur. The comparative chart was given and eventually it was contended that since great loss of Rs.67,21,350/- was caused to the Corporation because of the fraud and conspiracy between the petitioner and the then Commissioner, therefore, the said lease would not be binding.

11. The cancellation order initially passed having challenged before this Court in W.P. No.5976/2000. This Court by an order dated 19.03.2001 passed the following orders, which is quoted herein below :

> “The main grievance of the writ petitioner is that during the currency of the permanent lease granted in favour of the writ petitioner, the same came to be cancelled at the instance of respondent no.2 without issuing any notice to the writ petitioner and infact without affording to the petitioner any opportunity being heard and in violation of the principles of natural

justice.

After hearing counsel representing the parties and on perusal of the impugned order it appears that no opportunity was afforded to the writ petitioner before the impugned order of cancellation was issued on 25th September, 2000 (Annexure A/14). If that be so the impugned order cannot be sustained in as much as the same was passed in violation of the principles of natural justice.

In the result the aforesaid impugned order is set-aside and the matter is remanded to the State Government to re-examine the matter in accordance with law. Disposed of Certified copy today."

12. It is after the order of the High Court again the proceeding commenced by issuance of show cause. The show cause notice dated 04.07.2001 is filed as Annexure P-20. Predominantly, in the show cause notice, it was primarily stated by the Municipal Corporation that in 1996 these lands were subject of auction and very high bidding price were quoted and subsequent grant were made at a very low price causing loss to the Corporation. The extract of the said show cause is reproduced herein below, as it would be necessary to appreciate the facts.

"क्रमांक 2073/372/2001/नि. प्र. रायपुर दिनांक 4.7.2001

प्रति,

श्री अजय चौहान
आ. स्व. विपत दीपेश्वर चौहान
शास्त्री नगर कैम्प–1, भिलाई
जिला – दुर्ग

विषय – नगर पालिक निगम, भिलाई द्वारा बस स्थानक सुपेला भिलाई में व्यवसायिक प्रयोजन हेतु लीज पर श्री अजय चौहान को स्वीकृत भूखण्ड को निरस्त करने विषय।

आपको नगर पालिक निगम भिलाई द्वारा नगर पालिक निगम भिलाई कार्यालय से बस स्थानक सुपेला व्यवसायिक क्षेत्र में कुल 6 भूखण्ड कुल रकबा 922 वर्ग मीटर जिसमें भूखण्ड क्रमांक–एक से चार तक का आकार 11 x 6 = 66 वर्ग मीटर, भूखण्ड क्रमांक–5 का आकार 16 x 6 मी = 96 वर्गमीटर एवं भूखण्ड क्रमांक–6 बोर 11 x 42 मी = 462 वर्गमीटर सम्मिलित है। 30 वर्षीय लीज पर प्रदान किया गया है।

वर्ष 1996 में नगर पालिक निगम, भिलाई द्वारा इसी भूमि पर बनाये गये भूखण्डों की नीलामी की गई थी, जिसमें निम्नानुसार उच्चतम बोली प्राप्त हुई :–

क्रमांक	भूखण्ड क्रमांक	आकार	उच्चतम बोली
1.	भूखण्ड क्रं. –3	3 x 6 = 18 वर्ग मीटर	रू.8888.88 प्रति वर्ग मी.
2.	भूखण्ड क्रं. –4	3 x 6 = 18 वर्ग मीटर	रू.9333.33 प्रति वर्ग मी.
3.	भूखण्ड क्रं. –7	3 x 6 = 18 वर्ग मीटर	रू.9666.66 प्रति वर्ग मी.
4.	भूखण्ड क्रं. –11	3 x 6 = 18 वर्ग मीटर	रू.10055.00 प्रति वर्ग मी.

उपर्युक्त बोली के मान के औसतन दर 9476.15 रूपये प्रति वर्गमीटर होता है। जो कि निष्पादित लीज भूमि क्षेत्रफल 822 वर्ग मीटर की उपर्युक्त औसत दर से मूल्य 7789354. 2 रू. होता है, जो कि नगर पालिक निगम, भिलाई को प्राप्ति योग्य थी किन्तु आपके द्वारा यदि रूपये 1076142.5 में इन भूखण्डो का लीज प्राप्त किया गया। इस प्रकार आपको उपर्युक्त 6 भूखण्ड लीज में प्रदत्त करने से नगर पालिक निगम, भिलाई को रू. 6713212.25 रू. नगर पालिक निधि की क्षति हुई। आपके द्वारा नगर पालिक निगम, भिलाई के प्राधिकारी/अधिकारी से दुरभिसंधि करते हुए अधिक मूल्य के भूखण्ड को अत्यन्त कम मूल्य पर लीज निष्पादन करवाया गया व नगर पालिक निगम को अधिक क्षति पहुंचाई गई। अतः कारण बताये कि क्यों नहीं, मध्यप्रदेश नगर पलिक अधिनियम 1956 की धारा 421 के अधीन प्राप्त शक्तियों का प्रयोग करते हुए नगर पालिक निगम भिलाई द्वारा पारित प्रस्ताव क्रमांक 23 व 24 दिनांक 23.10.97 को निरस्त किया जाये, और आयुक्त नगर पालिक निगम भिलाई द्वारा आपके नाम पर निष्पादित 6 भूखण्डों का पट्टा (लीज डीड) को निरस्त किया जाये।

इस संबंध में आप अपना पक्ष दिनांक 30 जुलाई 2001 को छत्तीसगढ़ शासन, मंत्रालय डी. के. एस. भवन, रायपुर के कक्ष क्रमांक 236 में समय 11.00 बजे रख सकते है। अनुपस्थित रहने अथवा पक्ष प्रस्तुत न करने पर यह माना जायेगा कि इस संबंध में आपको कुछ नहीं कहना है और राज्य शासन द्वारा अग्रिम कार्यवाही की जायेगी। ”

13. After the hearing, in such show cause the State Government has passed the order on 21.01.2002, which is filed as Annexure P-26 and canceled the lease on various grounds. The petitioner contended that though the show cause notice was only on the fact that the value of the plots were not adequate but while the order was passed, it contained different grounds. Therefore, no opportunity to meet out the grounds were given to the petitioner. At this juncture, when the show cause notice as against the cancellation order are examined, it shows that primary objection of the Corporation was on the ground the adequate price of the plots were not reached thereby transfer it by way of lease at lower price was bad. This fact

cannot be ignored that the nucleus of the issue is of the adequacy of the price of the plot. When the price of the plots were the center issue, in order to arrive as to how the price of the plots were low, the finding in the order for cancellation of lease were ancillary issue. The cancellation order though contained more reasons such as non publication/ circulation in paper of repute, lay out having not been passed by State, the offset price was not fixed but all leads to one conclusion of finding that at a very less price the lease were granted. The effective review and reconsideration of antecedents would be a necessary ingredient. It was an idea of reform to correct the wrong. The order though have given a muffled expression to justify the finding, it cannot be ignored that serving certain issue requires multi-prolonged approach and cannot be reviewed through narrow lens. Therefore, the finding on the other issue would be only an off shoot. The issue can be appreciated in the other angle. In contrary, if the price of plots were adequate, there would have been no necessity to go into for any reasoning.

14. Reliance is placed by the petitioner in *(2005) 7 SCC 159 {SACI Allied Products Ltd. U.P. v. Collector of Central Excise, Meerut} and (2011) 1 SCC 109 {Commissioner of Central Excise Chandigarh v. Shital International}.* The ratio of those cases would not be available to the petitioner. The ratio of the case would be that unless the foundation of the case is led in the show cause notice, it would not be permissible to build up a new case during the trial or judgment. As has been discussed above, since the second show cause notice was primarily founded on the low price of lease, therefore, the finding of the show cause notice which is under challenge are ancillary pathways to come to a definite finding. Therefore, instead the ratio of ***(2009) 1 SCC 333 {State of Tamil Nadu & Another v. Abdullah Kadher Batcha & Another}*** would be applicable wherein the Supreme Court has laid down that the Court has a duty to see whether the non-supply of any document is

in any way prejudicial to the case of the person or not. As the entire foundation was based on the less price bid; consequently to arrive at such finding, discussion as has been averred in the order was necessary. In absence of such discussion, the finding of receipt of less price would have been projected like an arbitrary finding.

15. When the order dated 21.01.2002 is examined, it shows that while the petitioner was heard, the Commissioner Municipal Corporation reiterated to their letter of show cause as their stand as has been averred above, the show cause primarily contained the fact about receipt of low price. Thereafter, the order would show the petitioner appeared on the date of hearing and placed his written argument and elaborate discussion was made from para 7 of the said order onwards. The reading of the order would show that primary issue was that the petitioner was given six plots on extremely low price whereas the market price was much higher; thereby, the Municipal Corporation has sustained loss. The order elaborately deals with the fact that Rule 4 of the Madhya Pradesh Municipal Corporation (Transfer of Immovable Property) Rules, 1994 was not followed in its proper spirit. The Rule 4 of the Rules, 1994 reads as under :

> "4. When a transfer is to be effected by a public auction or by inviting offers in sealed covers, the information regarding the time, date, place and conditions of auction or the date for receipt of the offers shall be widely made known to the public not less than 15 days prior to such auction or such date by publishing the same in one or more local daily newspaper and in such manner as may be prescribed by the Corporation."

16. The finding is recorded that the publication which was made in Amrti Sandesh, Samved Sikhar & Roshan-e-Hind Mail were not having much circulation, therefore, the public at large were not made known. Attacking

this finding, the petitioner has submitted that in earlier occasion also, the similar publication in the papers were made; therefore, publication were made in usual course of business by Corporation as was done in past. This argument too would be of no help to petitioner. Since the show cause notice and order purports there had been a financial loss to the Corporation more than 67 Lacs as such any part conduct of Corporation would not make the action legal and there cannot be any negative equality. There is no evidence before this Court to hold as to what was the circulation of the paper in which the publication inviting tender were made. The State authorities while deciding the case have came to a finding that the papers wherein the publication were made were not having the wide circulation; thereby, the adequate competitive price were not received as public at large were not made known. This finding of fact which is arrived by the competent authority of the State cannot be shelved on mere proposition of the petitioner in absence of any available facts & figures.

17. The Supreme Court in case of ***State of Haryana v. Jage Ram***, reported in ***(1983) 4 SCC 556 / AIR 1983 SC 1207***, has laid down that when a rule requires 'publicity' to be given to an auction-sale, what is necessarily implied is that due steps must be taken to give sufficiently advance intimation of the intended sale and its material terms to the members of the public or, at least, to that section of the public which normally engages in the kind of business which is the subject matter of the auction-sale. Likewise, in case of ***Sachidanand Pandey v. State of W.B.*** reported in ***(1987) 2 SCC 295/ AIR 1987 SC 1109***, the Supreme Court has held that the State-owned or public-owned property is not to be dealt with at the absolute discretion of the executive. Certain precepts and principles have to be observed. Public interest is the paramount consideration. One of the methods of securing the public interest, when it is considered necessary to dispose of a property, is to sell the property by public auction or by inviting tenders. It also held that

there may be situations where there are compelling reasons necessitating departure from the rule but then the reasons for the departure must be rational and should not be suggestive of discrimination. Appearance of public justice is as important as doing justice. It held that nothing should be done which gives an appearance of bias, jobbery or nepotism.

18. In the case in hand, the State came to a finding of suggestive discrimination for the reason that the publication was not made in the widely circulated paper. There is nothing before this Court to hold that the publication which was made on paper were widely circulated and even one of the publication was made at Bhopal; whereas the subject property is situated at District Durg. When such finding is arrived at by the authority, to overcome such finding, sufficient material should have been placed before this Court apart from the fact that in earlier occasion too similar publication was made in the paper by Corporation.

19. The Supreme Court in case of ***Padma v. Hiralal Motilal Desarda & Others*** reported in ***2002 (7) SCC 564*** has laid down that in case of sale by public auction by tender wide publicity should be done to attract a large number of bidders. In the instant issue in hand only two bidders participated. Therefore, the publication was not done in widely circulated papers were inferred by State. This Court in given facts do not find any illegality in the same and there is nothing on record to hold it otherwise. Another finding has been held that there was undue haste as when the auction was done, the lay out of the plots were changed without any sanction done by the State. These finding of fact also remained unrebuttable and only fortifies the fact of low price fetched in auction.

20. In case of ***Centre for Public Interest Litigation v. Union of India*** reported in ***(2012) 3 SCC 1***, it was held that the State is empowered to distribute natural resources. However, as they constitute public property/national

asset, while distributing natural resources the State is bound to act in consonance with the principles of equality and public trust and ensure that no action is taken which may be detrimental to public interest. Further in case of ***Jamshed Hormusji Wadia v. Port of Mumbai*** case reported in ***(2004) 3 SCC 214***, the Court held that the State's actions and the actions of its agencies/ instrumentalities must be for the public good, achieving the objects for which they exist and should not be arbitrary or capricious. In the field of contracts, the State and its instrumentalities should design their activities in a manner which would ensure competition and non-discrimination. They can augment their resources but the object should be to serve the public cause and to do public good by resorting to fair and reasonable methods.

21. The authority in this case has observed that undue haste was shown in allotment of plots and adequate people did not participated in bidding in as much as and the price of the plots as was auctioned earlier as compared to the year 1996 were very low and meager price was received. To rebut such finding, the petitioner could not bring in any fact to hold the sway in their favour. The building permission, which is filed by the petitioner would show the lands were factually for commercial purpose for construction, consequently had a nexus to the price to draw a presumption. Therefore, I do not find any illegality in such finding in facts of this case.

22. The Supreme Court in case of ***City Industrial Development Corporation v. Platinum Entertainment & Others*** reported in ***(2015) 1 SCC 558*** has laid down the following principles, which reads as under :

> “49. State and its agencies and instrumentalities cannot give largesse to any person at sweet will and whims of the political entities or officers of the State. However, decisions and action of the State must be founded on a sound, transparent and well-defined

> policy which shall be made known to the public. The disposal of the government land by adopting a discriminatory and arbitrary method shall always be avoided and it should be done in a fair and equitable manner as the allotment on favouritism or nepotism influences the exercises of discretion. Even assuming that if the rule or regulation prescribes the mode of allotment by entertaining individual application or by tenders or competitive bidding, the rule of law requires publicity to be given before such allotment is made. CIDCO authorities should not adopt a pick and choose method while allotting government land."

23. Further, in the like nature of case in ***Humanity & Another v. State of West Bengal & Others*** reported in ***(2011) 6 SCC 125***, the Court has observed that while reiterating the view taken in ***Kasturi Lal Lakshmi Reddy v. State of J & K, (1980) 4 SCC 1/ AIR 1980 SC 1992,*** has held that whenever any governmental action fails to satisfy the test of reasonableness and public interest, it is liable to be struck down as invalid. This Court held that a necessary corollary of this proposition is that the Government cannot act in a manner which would benefit a private party. Such an action will be contrary to public interest and the same finding has been arrived at by the State authorities in this case in hand. In the case, the Court further held at para 40 as under :

> "40. This Court is of the view that a challenge to the legality of an order of allotment of land by the Government must be decided by the Court on the basis of the material available when the High Court is examining the challenge. The High Court cannot refuse to examine the challenge on the basis of what may happen in future. By doing so, the High Court refused to exercise a jurisdiction which is vested in it."

24. The Supreme Court relying on *Ramana Dayaram Shetty v. International Airport Authority of India {(1979) 3 SCC 489}, Kasturi Lal {(1980) 4 SCC 1}* and various other judgments summed up the legal position in *Akhil Bhartiya Upbhokta Congress v. State of M.P*. *{(2011) 5 SCC 29}*. The relevant extracts from JT para 31 (p. 336 of the Report) are excerpted below: *(Akhil Bhartiya case, SCC p. 60, para 65)*

> *"65. …..*Every action/decision of the State and/or its agencies/ instrumentalities to give largesse or confer benefit must be founded on a sound, transparent, discernible and well-defined policy, which shall be made known to the public by publication in the Official Gazette and other recognised modes of publicity and such policy must be implemented/executed by adopting a non-discriminatory and non-arbitrary method irrespective of the class or category of persons proposed to be benefited by the policy. The distribution of largesse like allotment of land, grant of quota, permit licence, etc. by the State and its agencies/instrumentalities should always be done in a fair and equitable manner and the element of favouritism or nepotism shall not influence the exercise of discretion, if any, conferred upon the particular functionary or officer of the State."

25. Therefore, by applying the aforesaid test, in the instant case, on the basis of the material available before this Court prima facie the finding of the State that in the year 1996 much higher price was quoted by the different bidders, however, subsequently, it was not materialized appears to be logical. Earlier few of the bidders though made a statement but under what circumstances they withdrew from the bidding process and subsequently made statement in favour of the petitioner also puts the bonafide of the petitioner into doubt.

26. In order to achieve a bonafide end, the means must also justify the end. As has been held by the Supreme Court, the bonafide ends cannot be

achieved by questionable means, specially when the State or its instrumentalities were involved. In this case, the State has seriously withdrawn from the allotment by giving finding, therefore, I do not find any illegality in the action of the Government and appears on the basis of the documents had acted within the discipline of constitutional law canceling the allotment.

27. In view of the foregoing discussions, I am of the opinion that no interference is called for in respect of the order of cancellation of the allotment in favour of the petitioner by the State by order dated 21.01.2002. Consequently, the petition fails and is hereby dismissed.

28. The amount has been paid by the petitioner, therefore, the entire amount after calculation be directed to be returned to him, which shall carry interest at the rate of 6% simple interest per annum.

Sd/-
Goutam Bhaduri
Judge

Ashok