

SUPREME COURT OF INDIA

Humanity & Anr.

Vs.

State of West Bengal

C.A.No.4782 of 2011

(G.S.Singhvi and Asok Kumar Ganguly,JJ.,)

26.05.2011

JUDGMENT

Asok Kumar Ganguly,J.,

1. Leave granted in all the special leave petitions.
2. Several writ petitions were filed in public interest before the Calcutta High Court challenging the allotment of land given in favour of Mr. Sourav Ganguly (hereinafter referred to as allottee), by the State of West Bengal. The High Court, by its judgment dated 12.4.2010, upheld the allotment of plot of land being plot no. CA-222 by allotment letter dated 17.2.2009. It disposed of all the petitions by a direction that in order to retain leasehold rights and possession of the said plot in Sector-V, Salt Lake City (Bidhannagar), Kolkata, the allottee has to pay the State Government a sum of Rs.43,25,500/-, failing which the lease deed dated 1.4.2009 shall be treated as invalid and possession of the land shall be handed back to the State Government.
3. Challenging the said judgment of the Division Bench, three SLP's (11783/2011, 22503/2010 and 22305/2010) were filed before this Court and as the judgment is one, and the facts and questions are identical, the cases were heard together and are being decided by this judgment.
4. The material facts of the case are that on 5.11.2006, an advertisement was issued by the Government of West Bengal, Urban Development Department, earmarking a plot of land measuring about 50 kathas in Plot No. BF-158 in Sector-I, Salt Lake (Bidhannagar), Kolkata-700064, for the setting up of an integrated school from primary level to higher secondary level. It was stated in the advertisement that the school would basically be academic in nature, but with extra-curricular activities, which would form an integral part of the curriculum and it was stated that the intending Organization/Institution/Body/Registered Society/ Trust which were capable of running and managing such a school by their own resources, may apply to the Principal Secretary, Urban Development Department, Government of West Bengal, Nagarayan, DF-8, Sector-1, Bidhannagar, Kolkata- 700064 on

plain paper within 15 days from the publication of the advertisement giving details of the project. It was intimated that the aforesaid plot of land would be leased to the aforesaid applicants for 999 years on certain terms indicated in the advertisement.

5. One of the terms in the said advertisement, to which some reference shall be made later on, is as follows:

"The government, however, reserves the right to change the location of the land and revise the rate of salami at its full discretion. Such decision shall be final."

6. The allottee applied on 17.11.2006. In the said application, the allottee inter alia stated:

"There is ever increasing demand for such institutions, especially in the northern and eastern part of the metropolitan city of Kolkata. The object of the proposed educational institution would be academic excellence with a balanced blend of co-curricular activities and sports for the all round growth of the younger generation...In this context, I propose to keep a few seats reserved for such needy cum meritorious pupils."

7. In the project report submitted by the allottee, it was stated that the school would be owned by a Registered Society/Trust. A Committee consisting of several Government officials considered about 20 applications, filed pursuant to the aforesaid advertisement.

The Committee consisted of:

"a. Chief Secretary, Government of West Bengal b. Principal Secretary/ Secretary to Chief Minister c. Principal Secretary/ Secretary, Urban Development Department d. Principal Secretary/ Secretary, Information and Cultural Affairs Department e. Principal Secretary/ Secretary, Cottage and Small-Scale Industries Department f. Principal Secretary/ Secretary, Commerce and Industries Department g. Managing Director, West Bengal Industries Development Corporation"

8. Surprisingly nobody from the Education Department was in the Committee.

9. Thereafter, by resolution dated 10.1.2007, the aforesaid Committee selected the allottee and an allotment order dated 22.02.2007 in respect of plot no. BF-158 was issued by the Joint Secretary, Urban Department to the allottee. Thereupon, a lease deed was executed between the Government and the allottee on 29.10.2007 and possession of the said plot was given on 14.2.2008.

10. It may be noted that the aforesaid selection of the allottee in respect of plot No.BF-158 was not challenged and is not the subject matter of dispute in these proceedings.

11. Thereafter, on 19.1.2009, a letter was written to Sri Ashoka Bhattacharya, Minister for Urban Development and Municipal Affairs by the allottee by stating that after going through

the norms of `ICSE' he felt that allotment of a bigger plot was needed for getting affiliation and a prayer was made for allotment of another bigger plot.

12. Since the prayer made in this letter and its consideration by the Government is vitally important for the decision in this case, the letter is set out below:

"At present I am the owner of Plot No. 158, Block-BF in Salt Lake, Sector-I of 48 Kathas of land which was given to me for the purpose of building a school. But after going through the norms of ICSE to get an affiliation, we now need a plot of more than 60 kathas (1 acre). So I would like to surrender this allotted land to you and at the same time apply for a plot of a bigger area so that I can take the school project forward."

(Underlined by Court)

13. It may be noted that in this letter, the allottee stated that he `would like to surrender' the plot already allotted to him and would at the same time `apply for a plot of a bigger area'. This the allottee was seeking to do in order to comply with the norms of ICSE.

14. Within a month thereafter, by a communication dated 17.2.2009, issued from the Urban Development Department, the allottee was informed about allotment of another plot- No. CA-222 in Sector-I measuring 62 kathas (it is actually 63.04 kathas). This allotment of a different plot, which is of much bigger size, in a different area, was challenged before the High Court and before this Court on various grounds.

15. The first ground of challenge was that there was no advertisement for allotment of the subsequent plot being plot No. CA-222, which is much bigger than the initial plot and allotment of this different and bigger plot, without any advertisement by the Government, only on the prayer of the allottee is arbitrary, discriminatory and violative of Article 14 of the Constitution.

16. The second ground of challenge is that even though the impugned allotment was made on 17.2.2009 "subject to execution of registration of deed of surrender," the lease deed pursuant to such allotment was executed on 01.04.2009 and the same was presented for registration on 3.4.2009 and was registered on 6.4.2009. The possession of the plot was made over to the allottee on 30.4.2009. A draft deed of surrender was sent by the State Government to the allottee and was signed by the allottee on 5.3.2009 but the same was not presented for registration and the same was registered only after filing of the petition before the High Court. The complaint of the petitioner is that the plot was surrendered only after the writ petition was admitted by the High Court and direction for filing of affidavit was given.

17. The third ground of challenge was that when the allottee initially applied and was allotted the previous plot, the norms of ICSE affiliation were already notified and the allottee claiming to set up a school for ICSE affiliation must be aware of those norms.

18. The fourth ground was that the claim of the allottee for complying with the ICSE norm is just a specious plea, in fact the Trust which the allottee has set up for the school does not at all comply with the ICSE norms.

19. The fifth ground was that in allotting the subsequent plot, to the allottee, the authorities have flouted the working plan which is available for Salt Lake City in the absence of a master plan.

20. The learned counsel for the State, on the other hand, submitted before this Court that there was nothing illegal in the Government's accepting the subsequent offer of the allottee and in doing so the Government acted in terms of the original advertisement where it had reserved its right to alter the original location of the allotted plot. Learned counsel for the State submitted that the subsequent plot which has been allotted to the allottee cannot be called allotment of a new plot and no fresh advertisement for the same is necessary and relied on the impugned judgment in which High Court entered a similar finding. It was also submitted that the initial allotment made in favour of the allottee was examined by a high-powered Committee and after examining everything allotment was made and there is no illegality in the entire transaction.

21. Learned counsel for the allottee submitted that the bona fide of the allottee must be looked into and considered by this court and the project is for a public purpose of setting up a good school in the area which is very much in need of the same. No challenge has been made to the allotment of the subsequent plot in favour of the allottee by any educational institution or by those who applied for the first allotment. The challenge by the public interest litigants should not be entertained by this court when the setting up of the school itself was in public interest. It is further urged that the subsequent allotment does not require a fresh advertisement.

22. The other grounds of challenge pointed out by the appellants, according to the counsel of the allottee, are inconsequential and may not be considered by this court in view of the overwhelming public interest in the setting up of a school.

23. Considering the aforesaid rival submissions, this court is inclined to hold that the allotment of plot no. CA-222 in favour of the allottee cannot be sustained for the reasons discussed hereunder.

24. When the Government decided to allot a substantial plot for setting up of a school by private organizations and when on the basis of an advertisement to that effect various organizations responded, the action of the Government was one of granting largesse in as much as land of which the Government is owner and which was allotted is a very scarce and valuable property.

25. It has been repeatedly held by this court that in the matter of granting largesse, Government has to act fairly and without even any semblance of discrimination. Law on this subject has been very clearly laid down by this court in the case of *Ramana Dayaram Shetty*

*v. International Airport Authority of India and Others reported in*¹. A three- Judge Bench in the said decision has recognized that the Government, in a welfare State, is in a position of distributing largesse in a large measure and in doing so the Government cannot act at its pleasure. This court perusing the new jurisprudential theory of Professor Reich in his article on the "The New Property" (73 Yale Law Journal 733) accepted the following dictum contained therein:

"The government action be based on standards that are not arbitrary and unauthorized."

26. This court explained the purport of the aforesaid formulation by holding:

"The government cannot be permitted to say that it will give jobs or enter into contracts or issue quotas or licenses only in favour of those having grey hair or belonging to a particular political party or professing a particular religious faith. The government is still the government when it acts in the matter of granting largesse and it cannot act arbitrarily. It does not stand in the same position as a private individual."

(Para 11, page 505 of the report)

27. The aforesaid dictum in *Ramana* (supra) is still followed by this court as the correct exposition of law and has been subsequently followed in many other decisions. In *M/s Kasturi Lal Lakshmi Reddy v. State of Jammu and Kashmir & Another* reported in 1980 (4) SCC 1, another three-Judge Bench relied on the dictum in *Ramana* (supra) and held 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. (See para 14, p. 13 of the report)

28. The setting up of a private school may have some elements of public interest in it but Constitution Bench of this court has held in *T.M.A. Pai Foundation & Ors. v. State of Karnataka & Others* reported in 2002 (8) SCC 481, that the right of a citizen, which is not claiming minority rights to set up a private educational institution is part of its fundamental right to carry on an occupation under Article 19(1)(g). Such enterprise may not be a totally business enterprise but profit motive cannot be ruled out.

29. In view of the aforesaid legal principle, the question is whether the impugned order of the Government vide allotment letter dated 17.2.2009 allotting a plot of 63.04 kathas of land in a prime area in Salt Lake City is an allotment which is different than the previous allotment of 50 kathas which was made to the allottee in Plot No. BF-158.

30. The answer is obvious from the admitted facts of the case. Even the allottee in his letter dated 19.1.2009 praying for such allotment, made it clear that he was applying for a plot of bigger area after surrendering the previous

plot. The sequence suggested in the allottee's letter is that he would surrender the already allotted land and at the same time apply for a plot of bigger area. Therefore, the request of the allottee is to give another plot of land. Pursuant to such request of the allottee, another plot of land was allotted to him with exemplary speed by the Government, within a month, if we go by the normal pace in governmental transactions. The request was made by the allottee for a bigger plot of land on 19.1.2009 to Mr. Ashok Bhattacharya, Minister of Urban Development and Municipal Affairs and from the said department a communication was sent to the allottee on 17.2.2009, to the effect that after considering the request of the allottee, the Government was pleased to cancel its previous order of allotment and in lieu thereof was allotting a new plot of land being no. CA-222 measuring 62 kathas (which is actually 63.04 kathas).

31. Admittedly, no advertisement was issued and no offer was sought to be obtained from the members of the public in respect of the new allotment of a much bigger plot. In view of the principles laid down by this court, the impugned allotment is clearly in breach of the principles of Article 14 explained by this court in Ramana (supra), Kasturi Lal (supra) and other subsequent cases.

32. This court cannot persuade itself to hold that this allotment is in exercise of the right of the Government in the first advertisement dated 5.11.2006, where the Government reserved its right to change the location of the land. The second allotment is not only about a change in the location of the land, but the subsequent allotment is also of a much larger plot of land, brought about in terms of the request of the allottee for a bigger plot. The subsequent change was not brought about by the Government in its own discretion, assuming but not admitting that the Government could exercise its discretion in such a fashion but was in response to a written request of the allottee.

33. The Government was so anxious to oblige the allottee by giving bigger plot that too with no loss of time, the said allotment was made by the Government admittedly without verifying whether the allottee had surrendered the previous plot allotted to him. From the facts which have been disclosed here, it is clear that such surrender took place much later on 17.12.2009, when the allottee sent a forwarding letter the registered deed of surrender in respect of the previous plot no. BF-158. The letter of the allottee dated 16.12.2009 would show the following:

"Though I have executed the Deed of Surrender and made over the same to you but the formality of having the same registered could not be completed by me due to oversight which was mainly because of my busy schedule and constant travel. I understand that the said Deed cannot be registered now for lapse of time unless extended by the State.

I shall be highly grateful if you could kindly arrange to have the said period extended or allow me to register a fresh deed of surrender at the earliest."

34. It is, therefore, clear that the Government made allotment of the new plot to the allottee on terms which were even more generous than the ones suggested by the allottee in his letter dated 19.1.2009. Such action of the Government definitely smacks of arbitrariness and falls foul of Article 14.

35. This factual aspect of the matter discussed in detail under the second ground of challenge was not disputed before us by either the learned counsel for the Government or the learned counsel for the allottee.

36. On the third ground of challenge about compliance with ICSE norms, we find that the ICSE norms were in place as early as 28.4.2006 and those norms have been disclosed by the counter-affidavit filed by the allottee before this court in the SLP filed by C.A. Block Citizens' Association. Therefore, much before the application was made by the allottee on 17.11.2006, those norms were available on record. Even then he applied for a plot of 50 kathas of land in terms of the advertisement dated 5.11.2006 issued by the State Government.

37. On the fourth ground of challenge, we find that according to clause 2 of the ICSE norms, the school should be run by a Registered Society/Trust or a Company (under section 25(1)(a) of the Companies Act, 1986) for educational purposes. It must not be run for profit.

38. The constitution of the Society/Trust/Company running the school should be such that it does not vest control in a single individual or members of the same family.

39. But in the instant case, a Society which has been registered for running the proposed school under the name of 'Ganguly Education and Welfare Society' consists of the following members:

- a. Sourav Ganguly
- b. Dona Ganguly
- c. Snehasish Ganguly
- d. Chandidas Ganguly
- e. Nirupa Ganguly
- f. Arup Chatterjee
- g. Deepak Kumar Mitra

40. Of these names, the first 5 are all in the family and stay in the same address at 2-6, Biren Roy Road (E), Barisha, Kolkata. Mr. Arup Chatterjee is also a relation of the family staying in Brahma Samaj Road and only Mr. Deepak Kumar Mitra, the Chartered Accountant, is outside the family. Therefore, constitution of such a Trust to run the school is clearly against the ICSE norms.

41. It is thus clear that the allottee is selectively seeking compliance of the ICSE norms only in asking for a bigger plot. In so far as other norms are concerned, they are clearly flouted as seen in the constitution of the Trust set up to run the school. Hence, the argument on behalf of the appellant that the plea of the allottee to ask for a bigger plot in the name of complying with ICSE norms is not a bona fide plea is of some substance. The learned counsel for the allottee has not been able to meet the said argument as to how the ICSE norms are complied with if the school is to be run by such a Trust, which consists of members of the family and this court finds that there is a lot of substance in this argument of the appellants. This point was also urged before the High Court but unfortunately the High Court brushed aside this objection, if we may say so with respect, by a very strange logic by observing:

"We are not required to consider this aspect of the matter because it will be for the governing body of the ICSE to examine the application which may be made for recognition/affiliation of the school which is yet to be established and construction yet to be made. As and when any application will be made for such recognition/affiliation, the concerned authority/body will consider the application and it is not for this court to speculate at this stage as to what would be the composition of the organization/body/ society which will apply to Council for ICSE for recognition/affiliation of the integrated school."

42. 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 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, High Court refused to exercise a jurisdiction which is vested in it.

43. In connection with the fifth ground of challenge, a map was produced before us by the learned counsel for the appellant, which is a working map in the absence of a master plan for sector-I of Salt Lake area, dated 2.9.2004. In that map, the plot CA-222 is marked as one meant for a college yet the same has been given to the allottee for establishing an ICSE school. The learned counsel for the appellant submits that such allotment is clearly in violation of the aforesaid plan. The learned counsel for the State has not been able to refute the aforesaid contention of the appellant.

44. However, it has been repeatedly urged, both by the learned counsel for the State and also that of the allottee that both the State Government and the allottee had bona fide intentions of establishing a school. Therefore, the court in public interest should uphold allotment and allow the school to be set up and should refrain from interfering in public interest.

45. This court is unable to accept the aforesaid contention.

46. It is axiomatic that in order to achieve a bona fide end, the means must also justify the end. This court is of the opinion that bona fide ends cannot be achieved by questionable means, specially when the State is involved. This court has not been able to get any answer from the State why on a request by the allottee to the Hon'ble Minister for Urban Development, the Government granted the allotment with remarkable speed and without considering all aspects of the matter. This court does not find any legitimacy in the action of the Government, which has to act within the discipline of the constitutional law, explained by this Court in a catena of cases. We are sorry to hold that in making the impugned allotment in favour of the allottee, in the facts and circumstances of the case, the State has failed to discharge its constitutional role. Recently this Court relying on Ramana (supra), Kasturi Lal (supra) and various other judgments summed up the legal position in *Akhil Bharatiya Upbhokta Congress v. State of Madhya Pradesh and others reported in*² The relevant extracts from paragraph 31 (page 336 of the report) are excerpted below:-

"...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 recognized modes of publicity and such policy must be implemented/executed by adopting a non- discriminatory or 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."

47. The Division Bench of the High Court, with respect, fell into an error by holding that by allotting plot no. CA-222 without open advertisement and public offer the Government action is not illegal or arbitrary.

48. In coming to the said conclusion, the Division Bench relied on two decisions of the Supreme Court rendered in the cases of *Sachidanand Pandey & another v. State of West Bengal & others reported in*³ and Kasturi Lal (supra). This Court however finds that those two cases stand on completely different footing.

49. First of all, in the instant case, the Government initially issued advertisement for allotment of land for setting up of a school and to which the allottee responded. Thereafter, a Committee considered all the applications and decided to allot the land in favour of the allottee. The matter rested there. Then came the letter of the allottee dated 19.1.2009, which has been set out above. It is very surprising that the Division Bench of Calcutta High Court, in paragraph 5 (page 6) and paragraph 21 (page 18) of the impugned judgment, recorded a finding that the allottee was informed by ICSE that for obtaining affiliation for integrated educational institution, land should not be less than 60 kathas. This court fails to understand

the basis on which the Division Bench came to such a conclusion. The letter of the allottee dated 19.1.2009 does not even whisper that he was informed of any objection by ICSE. The letter proceeds on a totally different basis. The letter states that after going through the norms of ICSE, it was the allottee's own understanding that a plot of more than 60 kathas is necessary to take the school project forward. Therefore, the High Court's recording of fact, that the allottee was 'informed' by the ICSE of any objection, is not substantiated by any material on record. This is a grave error on the part of the High Court.

50. Apart from that, once the Government has initiated the process of advertisement, it cannot jettison the same and allot a new plot to the allottee without any advertisement. This action of the Government is certainly arbitrary and violates the principles of Article 14.

51. Neither in Sachidanand Pandey (supra) nor in Kasturi Lal (supra), any process of advertisement was ever initiated. In Sachidanand Pandey (supra), the main questions raised were issues of ecology and environment. In that case, the court dealt with the question of issuing public auction by explaining that there were direct negotiations with those who came forward to set up five star hotels, to promote the tourism industry in the State. Detailed considerations at different levels proceeded for a very long time before the Taj group of hotels, with sufficient experience in the hotel industry, was selected. In the instant case, the allottee may be a well-known sportsman but does not claim any expertise as an educationist. Here within a month of the application made by the allottee, the allotment was made in a hot haste and without disclosure by the State of any detailed consideration. Thus, the present case stand poles apart from the facts in Sachidanand Pandey (supra).

52. In Kasturi Lal (supra) also, the Government's policy was to set up industries in Jammu and Kashmir, which was not industrially developed and thus entrepreneurs, within the State, were offered encouraging terms for setting up industry. Therefore, in such a situation the State took a policy decision not to invite a tender or go in for advertisement for inviting industrialists from outside the State. It may be noted that at no stage, advertisement was thought of by the State in Kasturi Lal (supra).

53. In the instant case, the impugned allotment of a different and bigger plot by the government in favour of the allottee without any advertisement, when initially advertisement was resorted to, and then it was given up and everything was rushed through in hot haste, is unreasonable and arbitrary, and the High Court was wrong in upholding the same.

54. Before I conclude, I make it clear that I am aware that the allottee is a cricketer of great repute and has led this country to victory in many tournaments, both in India and abroad. I have watched him on the television on many occasions and was delighted to see his glorious cover drives and effortlessly lofted shots over the fence. But as a Judge, I have different duties to discharge. Here I must be objective and eschew my likes and dislikes and render justice to a cause which has come before the Court.

55. For the reasons aforesaid, the order of allotment of plot no. CA-222, Sector-V, Salt Lake (Bidhannagar), Kolkata made in favour of Mr. Sourav Ganguly, the allottee, is quashed. In

consequence thereof, the lease deed dated 1.4.09, pursuant to such allotment stands quashed. The allottee must, within two weeks from date, handover the peaceful and vacant possession of plot No. CA-222 measuring 63.04 Kathas in Sector-V, Salt Lake City (Bidhannagar), Kolkata to the concerned department of the State Government. Within two weeks thereafter the State Government must refund to the allottee, by a Cheque, the entire money paid by him for such allotment.

56. The appeals are allowed. The order of the High Court is set aside.

57. No order as to costs.

Judgment Referred.

¹(1979) 3 SCC 0489

²JT 2011 (4) SC 0311

³(1987) 2 SCC 0295