**SUPREME COURT OF INDIA**

Asha Sharma

Vs.

Chadigarh Administration & Ors.

C.A.No.7524 of 2011

(B.S.Chauhan and Swatanter Kumar,JJ.,)

30.08.2011

**JUDGMENT**

**Swatanter Kumar,J.,**

SLP(Civil)No.15714 of 2011

1. Leave granted.

2. The present appeal is directed against the judgment dated 16th May, 2011 of the High Court of Punjab and Haryana at Chandigarh whereby the Division Bench stayed the operation of the directions issued by the learned Single Judge in the order dated 10th March, 2011 and referred the matter to a larger Bench keeping in view the nature of the dispute and its significance.

3. This Court had issued directions on the same subject matter and approved the draft rules which were placed before it vide judgment dated 7th May, 1996 in Civil Appeal No. 8890 of 1996. Keeping in view the importance of the issues raised and the likelihood of such issues arising repeatedly before the High Court, this Court had issued notice vide order dated 3rd June, 2011, declined to pass any interim order and directed that the matter be listed for final hearing at that stage itself. Resultantly, this matter was finally heard by this Court.

4. Before we dwell upon the legal issues arising in the present appeal, it will be necessary for us to refer to the basic facts giving rise to the same. The appellant is an officer belonging to the Indian Administrative Services and had been allocated to the Haryana Cadre. She was allotted House No. 55, Sector 5, Chandigarh vide order dated 11th October, 1996, when her husband was posted on deputation to the Government of India. She retired from service on 28th February, 2007. As per the Government Residences (Chandigarh Administration General Pool) Allotment Rules, 1996 which has been amended from time to time, (hereinafter referred to as `the Allotment Rules'), she was entitled to retain the Government accommodation previously allotted to her while she was in service for a period of four months with further possible extension upto six months, in terms of Rule 13 of the Allotment

Rules. This extension could be granted only in exceptional cases. In other words, she ought to have vacated the residential premises allotted to her by 31st December, 2008.

5. On 31st December, 2007, the appellant was appointed as the State Information Commissioner with effect from 3rd January, 2008. As per her terms of appointment, she was entitled to Government accommodation and salary/ allowances of the same type and amount as were given to the Chief Secretary to the Government of Haryana. She had applied to the authorities concerned requesting for allotment of the same accommodation, i.e., House No.55, Sector 5, Chandigarh to her, but her request had not been accepted. Proceedings for eviction began against her before the Estate Officer. The Estate Officer vide his order dated 9th April, 2008 declared the appellant an unauthorised occupant and passed an order of eviction on 16th April, 2008. Aggrieved by the said order, the appellant preferred an appeal before the Additional District Judge, Chandigarh which, however, came to be dismissed vide order dated 22nd October, 2008. This order of the Appellate Authority was challenged by the appellant through a writ petition in the High Court of Punjab and Haryana being Writ Petition No. 20252 of 2008. In this writ petition, the contention raised by the appellant was that she, in the capacity of an officer of the Administrative Service and later, on becoming the State Information Commissioner, was entitled to retain the accommodation previously allotted to her. It was contended that she was being evicted from the premises illegally, without authorization and in an illegal manner. The learned Single Judge of that Court vide order dated 10th March, 2011, passed certain general directions in relation to the procedure for allotment of Government houses, their retention and various other aspects relating thereto. The learned Single Judge modified the order dated 1st December, 2008 passed by the Division Bench when the writ came up for hearing before the Single Judge qua the appellant and directed that as soon as any alternate accommodation is allotted to her, as per her entitlement under the Rules, she shall, within two weeks of such allotment, vacate the house presently under her occupation. Further, he directed the concerned authorities to sympathetically consider the case of the appellant for waiving of any penal rent imposed upon her and that no such penal rent would be payable till the Administrator of U.T. Chandigarh makes his decision in this regard. However, besides granting these reliefs to the appellant, the Court also passed the following directions :

> "Having heard Dr. Dhemka IAS in person and learned Senior Standing counsel for UT. Administration and keeping in view the fact that a number of Government houses kept un-allotted under the orders of this Court serve no one's purpose and rather their condition is deteriorating for want of proper up-keep and maintenance, the interim order dated 14.12.2009 is modified and the Chandigarh Administration is permitted to allot the vacant houses to the eligible applicants, subject to the following conditions/ directions:
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> (i) No allotment shall be made in exercise of the discretionary powers of the Administrator, UT., or Chief Ministers of Punjab and Haryana.

(ii) No house shall be allotted `out of turn' without prior permission of this Court.

(iii) No house shall be `earmarked' for any particular office/officer till the earlier `earmarked' house which were subsequently `de-earmarked' and allowed to be retained by the officers, who were not entitled to such allotment as their seniors in terms of pay, rank or status were still awaiting allotment of that Type or above houses, are got vacated except in the case of the SSP, Chandigarh in relation to whom one time concession has been granted vide order dated 07.03.2011.

(iv) A list of the `prospective allottees' shall be prepared and displayed on the websites of the Chandigarh Administration two weeks in advance inviting objections, if any, from the aggrieved officers/officials who might assert their preferential claim. It is only after considering/deciding their objections that the allotment letters shall be issued.

(v) The list of the prospective allottees shall be placed before this Court also on the adjourned date and any aggrieved officer/official shall be entitled to submit objections thereto;

(vi) A public notice of the information at Sr. Nos.

(iv) and (v) above shall be got published by the Chandigarh Administration at least in two daily newspapers;

(vii) No further `addition' of the houses shall be made to the discretionary quota of the Chief Ministers of Punjab and Haryana nor the possession of the vacant houses exceeding the said quota, as it exists today, shall be given to the allottees.

(viii) An order of precedence amongst the functionaries of Constitutional, Statutory and Executive Authorities shall be prepared and placed before the Court on the adjourned date."

6. Aggrieved by the directions issued by the learned Single Judge, as afore-noticed, Chandigarh Administration preferred an appeal before the Division Bench of that Court being LPA No. 752 of 2011 which resulted in the order dated 16th May, 2011, whereby the Court stayed the directions of the learned Single Judge and directed the matter to be heard by a larger Bench. The basic contention raised before the Division Bench was that since the prevalent Allotment Rules had been framed with the approval of this Court as per its order dated 7th May, 1996, no directions contrary thereto could be issued by the learned Single Judge. A somewhat similar argument is also raised before us in the present appeal.

7. It is an undisputed position, which also appears from

the record, that a Full Bench of the High Court of Punjab and Haryana, in Writ Petition No. 16863 of 1994 entitled Court on its own motion v. Advisor to the Administration, U.T. Chandigarh & Ors. had noticed the arbitrariness in the practice of allotment of houses in the Union Territory of Chandigarh (hereinafter referred to as `U.T., Chandigarh'). It was noticed in that judgment that the allotments were being made contrary to the earlier Allotment Rules. The Bench struck down Rule 7 of the earlier Allotment Rules, that had been in force at the relevant time, as arbitrary, quashed certain allotments made in favour of the officers and issued certain directions vide its judgment dated 1st June, 1995. The Chandigarh Administration had preferred an appeal before this Court against this judgment which, as already noticed, was registered as C.A. No. 8890 of 1996 and finally disposed of vide order dated 7th May, 1996. A three Judge Bench of this Court had set aside the order of the High Court and approved the draft rules which were placed before it. This Court in its judgment also directed certain amendments to be carried out to the draft rules particularly Rules 2(k), 4 and provisos to Rules 13 and 19. In furtherance to this, the Chandigarh Administration issued a notification dated 28th June, 1996 duly publishing the Allotment Rules of 1996 with which we are concerned in this case. This Court had granted liberty to the Chandigarh Administration to carry out amendments to the Allotment Rules, if necessary. These Allotment Rules were thereafter amended from time to time, but the Allotment Rules of 1996 still substantially remain in force till date.

8. The allotment of government accommodation is governed by the statutory regime and the Allotment Rules are concerned with various facets of this concept. The Allotment Rules of 1996 cover concepts such as allotment, vacation, cancellation and preferential allotments of government accommodations. Despite the fact that the Allotment Rules are in force their proper implementation still remains an elusive endeavour. The grievance of the officers/officials has still persisted with regard to the manner in which the discretion under the Rules were being exercised. In other words, the element of discretion vested under these rules has caused serious dissatisfaction with the implementation of these Allotment Rules.

9. Arbitrariness in State action can be demonstrated by existence of different circumstances. Whenever both the decision making process and the decision taken are based on irrelevant facts, while ignoring relevant considerations, such an action can normally be termed as `arbitrary'. Where the process of decision making is followed but proper reasoning is not recorded for arriving at a conclusion, the action may still fall in the category of arbitrariness. Of course, sufficiency or otherwise of the reasoning may not be a valid ground for consideration within the scope of judicial review. Rationality, reasonableness, objectivity and application of mind are some of the pre-requisites of proper decision making. The concept of transparency in the decision making process of the State has also become an essential part of our Administrative law.

10. The Government is entitled to make pragmatic adjustments and policy decisions, which may be necessary or called for under the prevalent peculiar circumstances. The Court may not strike down a policy decision taken by the Government merely because it feels that another decision would have been more fair or wise, scientific or logical. The principle of reasonableness and non-arbitrariness in governmental action is the core of our constitutional

scheme and structure. Its interpretation will always depend upon the facts and circumstances of a given case. Reference in this regard can also be made to *Netai Bag v. State of West Bengal*[1]

11. Action by the State, whether administrative or executive, has to be fair and in consonance with the statutory provisions and rules. Even if no rules are in force to govern executive action still such action, especially if it could potentially affect the rights of the parties, should be just, fair and transparent. Arbitrariness in State action, even where the rules vest discretion in an authority, has to be impermissible. The exercise of discretion, in line with principles of fairness and good governance, is an implied obligation upon the authorities, when vested with the powers to pass orders of determinative nature. The standard of fairness is also dependant upon certainty in State action, that is, the class of persons, subject to regulation by the Allotment Rules, must be able to reasonably anticipate the order for the action that the State is likely to take in a given situation. Arbitrariness and discrimination have inbuilt elements of uncertainty as the decisions of the State would then differ from person to person and from situation to situation, even if the determinative factors of the situations in question were identical. This uncertainty must be avoided. The Allotment Rules have been framed with the approval of this Court and thereafter have been amended by the State Government with the intention to give some clarity and certainty to the implementation of the Allotment Rules, rather than subjecting it to further challenge on the ground of arbitrariness or discrimination. A Government servant has a reasonable expectation of being dealt with justly and fairly in receiving rights that are granted to him/her under the Allotment Rules. Allotment of Government accommodation is one of the statutory benefits which a Government servant is entitled to under the Allotment Rules and, therefore, fair implementation of these Rules is a sine qua non to fair exercise of authority and betterment of the employee-employer relationship between the Government servant and the Government.

12. The public law principles controlling the administrative actions of the public authorities are well settled. Right from the case of *Ramana Dayaram Shetty v. International Airport Authority of India*[2] this Court cautioned that conditions of work cannot be arbitrarily altered and held that even the power of relaxation has to be exercised within the limited scope available, failing which, it would tantamount to denial of opportunity to employees.

13. Another settled principle of law, applicable to the present case, is the scope of judicial review of such actions, which is usually quite limited. The Court has the power, depending on the facts and circumstances of a given case, to issue appropriate directions in exercise of jurisdiction under Article 226 of the Constitution of India (by the High Court) and under Article 32 read with Article 141 of the Constitution of India (by this Court).

14. In the case of *E.S.P. Rajaram and Ors. v. Union of India and Ors*[3]. this Court explained that the source of power of this Court to issue directions and pass the orders, as was explained in paragraph 18 of the case titled *Union of India & Ors. vs. M. Bhaskar & Ors*[4]. could be traced to Article 142 of the Constitution of India. This provision vests power in this Court to pass such decree or make such orders as would be necessary for doing complete

justice in the context of any case or matter pending before it. This provision contains no limitation which provides the causes or circumstances in which such power may be exercised. The exercise of power is left completely to the discretion of the highest Court of the country and its order or decree is thereafter binding on all Courts or Tribunals throughout the territory of India. However, in the case of *Guruvayoor Devaswom Managing Committee vs. C.K. Rajan*[5] this Court, while specifying the scope and ambit of the Public Interest Litigation, clearly distinguished between the powers of the High Court under Article 226 of the Constitution and the powers of this Court under Article 142 of the Constitution and observed `[T]he Court would ordinarily not step out of the known areas of judicial review. The High Courts although may pass an order for doing complete justice to the parties, it does not have a power akin to Article 142 of the Constitution of India'. Usefully, reference can also be made to the judgment of this Court in the case of *Reliance Airport Developers (P) Ltd. v. Airport Authority of India and Ors*[6]. where while considering the scope for judicial interference in matters of administrative decisions, this Court held that it is trite law that exercise of power, whether legislative or administrative, will be set aside if there is manifest error in the exercise of such power or if the exercise of power is manifestly arbitrary. Courts would exercise such power sparingly and would hardly interfere in a manner which may tantamount to enacting a law. They must primarily serve to bridge any gaps or to provide for peculiar unforeseen situations that may emerge from the facts and circumstances of a given case. These directions would be in force only till such time as the competent legislature enacts laws on the same issue. The high courts could exercise this power, again, with great caution and circumspection. Needless to say, when the High Court issues directions, the same ought not to be in conflict with laws remaining in force and with the directions issued by this Court. In the case of *Chandigarh Administration v. Manpreet Singh*[7] while dealing with a matter of admission to engineering colleges and reservation of seats etc., this Court held as under:

> "11. Counsel for Chandigarh Administration and the college (petitioners in SLP Nos. 16066 and 16065 of 1991) contended that the High Court has exceeded its jurisdiction in granting the impugned directions. He submitted that High Court, while exercising the writ jurisdiction conferred upon by Article 226 of the Constitution of India, does not sit as an appellate authority over the rule-making authority nor can it rewrite the rules. If the rule or any portion of it was found to be bad, the High Court could have struck it down and directed the rule-making authority to re-frame the rule and make admissions on that basis but the High Court could not have either switched the categories or directed that Shaurya Chakra should be treated as equivalent to Vir Chakra. By its directions, the High Court has completely upset the course of admissions under this reserved quota and has gravely affected the chances of candidates falling in category 4 by downgrading them as category 5 without even hearing them. These are good reasons for the categorisation done by the Administration which was adopted by the college.
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> 21. While this is not the place to delve into or detail the self-constraints to be observed by the courts while exercising the jurisdiction under Article 226, one of them, which is relevant herein, is beyond dispute viz., while acting under Article 226,

the High Court does not sit and/or act as an appellate authority over the orders/actions of the subordinate authorities/tribunals. Its jurisdiction is supervisory in nature. One of the main objectives of this jurisdiction is to keep the government and several other authorities and tribunals within the bounds of their respective jurisdiction. The High Court must ensure that while performing this function it does not overstep the well recognised bounds of its own jurisdiction."

15. It is a settled canon of Constitutional Jurisprudence that this Court in the process of interpreting the law can remove any lacunae and fill up the gaps by laying down the directions with reference to the dispute before it; but normally it cannot declare a new law to be of general application in the same manner as the Legislature may do. This principle was stated by a Seven-Judge Bench of this Court in the case of *P. Ramachandra Rao v. State of Karnataka*[8]

16. On a proper analysis of the principles stated by this Court in a catena of judgments including the judgment afore- referred, it is clear that the courts can issue directions with regard to the dispute in a particular case, but should be very reluctant to issue directions which are legislative in nature. Be that as it may, because of the new dimensions which constitutional law has come to include, it becomes imperative for the courts in some cases, to pass directions to ensure that statutory or executive authorities do not act arbitrarily, discriminatorily or contrary to the settled laws. It was in light of these principles that this Court, vide its judgment dated 7th May, 1996 set aside the Full Bench Judgment of the High Court of Punjab and Haryana, brought into force some appropriate rules and sought to ensure that the competent authority acted in accordance with law and that it avoided total arbitrariness in allocation of government houses to its officers and employees. Once those rules have come into force and were amended from time to time as per the leave granted by this Court, in our considered view, it was not proper exercise of judicial discretion and jurisdiction to pass directions, which were in direct conflict with the Allotment Rules which were approved by in conflict this Court or with the directions which were issued by this Court on earlier occasions. Shortly, we shall proceed to discuss the scope and effect of the directions issued by the learned Single Judge of the High Court, their correctness and impact upon the existing rules and the lacuna, if any, which still exists in day- to-day implementation of the Allotment Rules.

17. On the analysis of the above principles, it emerges that the Court would exercise its jurisdiction to issue appropriate writ, order or directions with reference to the facts and circumstances of a given case. Normally, the courts would not step in to pass directions, which could, at times, be construed as a form of legislation. Articles 32 and 226 of the Constitution confer on this Court and the High Court the power to issue directions, orders or writs for achieving the objectives of those Articles. The courts, in the past, have issued directions for various purposes. In public interest, the courts may pass directions and even appoint committees for inducing the Government to carry out the constitutional mandate. The courts have been taking due care while exercising such jurisdiction so that they do not overstep the circumscribed judicial limits.

18. In light of the above legal framework, we would now revert to examine the legal questions raised before us. There are primarily three issues which require the consideration of this Court :

> "The interpretation and enforcement of the Allotment Rules
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> 1. framed by Notification dated 28th June, 1996 and the amendments made to it from time to time; The relevancy of the directions issued by this Court vide its
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> 2. judgment dated 8th December, 1995 ; and
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> 3. The conflict between the directions of this Court and the Rules framed thereafter and the directions issued by the learned Single Judge of the High Court of Punjab and Haryana."

19. We would further be required to examine whether the Allotment Rules, as amended from time to time, are in conflict with the earlier judgment of this Court or whether they suffer from any basic legal infirmity or are ex facie arbitrary and, if so, what directions could be passed to remedy such elements of arbitrariness, particularly, in view of the directions issued by the learned Single Judge of the High Court. We may notice that during the course of arguments before us, it was also pointed out that because the action of the authorities in allotting two houses of the same category, one at Chandigarh and the other outside Chandigarh (both within the State of Punjab and/or Haryana) which is not permissible, great hardship and discrimination has been caused to the employees placed in the same category. Secondly, it was also argued that taking advantage of the time factor involved in the decision making by the Committee, the officers allotted to higher category accommodation continue to retain both houses i.e. one of a lower category and other of a higher category for an unnecessarily long period, thus, causing prejudice to the interests of others. For example, it is alleged that in the case of the appellant, she is retaining the higher category house and continues to hold such accommodation even now, when she is actually entitled to an accommodation of lower category. However, according to the appellant, as State Information Commissioner also, she is entitled to the same accommodation and perks that the Chief Secretary of the State is entitled to. It is argued on behalf of the appellant that there is no transparency in the functioning of the Allotment Committee. According to the respondents, she will not be entitled to retain an earmarked accommodation.

20. It is also contended on behalf of different parties that arbitrariness in allotment of houses still persists. There is no need for adding houses to the Chief Minister's pool and increasing the discretionary quota. It is the claim of the appellant that the imposition of damages/charges on her is arbitrary and she is entitled to retain the same accommodation. First and foremost, we have to consider the nature of the changes in the Allotment Rules as approved by this Court, whether such changes are disadvantageous to the government servants and whether they increase the arbitrariness in the implementation of the Allotment

Rules. We have already noticed that the rules in force at the relevant time were the subject matter of controversy before the Full Bench of the High Court of Punjab and Haryana and had given rise to filing of a Special Leave Petition (converted into C.A. No. 8890 of 1996). It was in this petition that the draft rules had been filed, approved with certain amendments, as directed by this Court and thereafter published vide Notification dated 28th June, 1996, to finally result in the Allotment Rules. These rules were also subjected to different amendments from time to time and major amendments were carried out in the years 1997, 1998, 2004, 2007 and 2009. Besides these, certain guidelines were also framed which became part of the Allotment Rules. These amendments related to changes in the definition clauses as well as the substantive rules. For example, Rule 7, which is related to the earmarking of houses was amended on 7th May, 1998; Rule 8, concerning the Controlling Authority was amended vide Notification dated 2nd June, 1997; Rule 11, which related to Out-of-Turn Allotment, was amended vide Notifications in 1997 and again vide Notification dated 4th August, 2004; Rules 13 and 14 relating to the period for which allotment subsists and concessional period for further retention and fixation of licence fee were amended by different amendments including those dated 17th December, 2009 and 11th October, 2007 respectively. These amendments have to be examined in light of the fact that this Court granted leave vide its judgment dated 7th May, 1996 to the Chandigarh Administration to amend the rules, as and when it considered such amendment necessary. The leave granted by this Court obviously means that the amendment should be necessity based and not be intended to introduce the element of arbitrariness or discrimination in the rules and resultantly in the allotment of the houses to the government officers/ officials.

21. Having stated the aforementioned principles, we will now proceed to discuss the scope and desirability of the directions issued by the learned Single Judge of the High Court of Punjab and Haryana. The learned Single Judge, while dealing with the case of the present appellant, issued certain general directions with regard to Out-of-Turn Allotment, the addition and earmarking of houses, allotment of discretionary quota and the Chief Minister's quota, instances of allotment of two houses to one officer, the display of lists of prospective allottees on the website and the drawing up of an order of precedence amongst the Constitutional, Statutory and Executive functionaries. The Court issued prohibitory orders as well. All these directions had been stayed by the Division Bench of that Court in an appeal preferred by the Chandigarh Administration.

22. As already noticed, fairness in State action is the essence of proper governance. Where the authorities exercise their powers under the rules, they are expected to exercise the discretion vested in them fairly and with the intention to attain a balance between exercise of discretionary power and the larger public interest sought to be achieved by such discretion. Arbitrariness or irresponsible exercise of the power vested in the authorities, has been a matter of great concern before the courts. The Full Bench of High Court of Punjab and Haryana had declared Rule 7 of the Allotment Rules of 1972 as unconstitutional and being without any proper guidelines because the possibility of exercising unguided power resulted in arbitrariness on various occasions. Though that judgment had been set aside by this Court, surely it was still expected that the draft rules, as approved by this Court, would be acted upon fairly and without arbitrariness. However, the matters have not ended with the

implementation of the new rules and, therefore, litigation in respect of these rules has been a continuous affair. The matter, which can be said to be of some public importance is not a question of the interpretation of the Allotment Rules as such, but is one of the manner of exercise of power with reference to the Allotment Rules.

23. Rule 7 of the Allotment Rules, which deals with the creation of pools of residences, provides for earmarking of houses for specified officers from different branches of the State Administration and those houses which have not been so earmarked for any particular class of Government employees would be allotted to the general pool of the Chandigarh Administration. This Rule and its sub-Rules read together do not suffer from the vice of arbitrariness, as earmarking of houses is a known concept in relation to allotment of houses. The learned Single Judge of the High Court of Punjab and Haryana has given a clarificatory direction that when earmarked houses are occupied by an officer, who is at that time not entitled to that house, another house would not be earmarked for any particular officer, until the occupied house is vacated. One exception is carved out in favour of SSP, Chandigarh in terms of order dated 7th March, 2011. We do not think that this clarificatory direction is violative of any rule or is otherwise impermissible. These directions attempt to ensure that there should not be more than one earmarked house for the same post as per the need. This clarification or explanatory direction would also ensure timely vacation of the earmarked houses by the officers concerned, upon their transfer, promotion or posting to a post where they are not entitled to an earmarked accommodation. Thus, we see no reason to interfere with imposition of such a condition which is in conformity with the spirit of the aforesaid Rule. We, thus direct that no new house for any category/post should be earmarked unless the house already earmarked for such category/post has been vacated and placed in the general pool of the Chandigarh Administration for allotment in accordance with the Allotment Rules.

24. The next direction to which certain objections were raised by the parties appearing before this Court is with regard to Out-of-Turn Allotment and allotment of houses in exercise of the discretionary powers of the Administrator, U.T., Chandigarh and the Chief Minister of Punjab and Haryana respectively. At the outset, it may be noticed that there is no specific rule controlling the discretionary allotment by the Administrator, U.T., Chandigarh and the Chief Minister of State of Punjab and Haryana respectively. However, Rule 8 identifies the Controlling Authority which is the Administrator, U.T. Chandigarh, who would be the co-ordinating and controlling authority in respect of the houses belonging to Chandigarh Administration. He has been given the power to add or withdraw houses from any pool for the purposes of allotment to any class or category of eligible government employees and may also change the classification of houses on the recommendation of the House Allotment Committee. Rule 11 deals with Out-of-Turn Allotments, i.e. the House Allotment Committee may allot a house on Out-of-Turn basis to the cases specified under clauses (a) to (g) of that Rule. The House Allotment Committee in its Meeting dated 27th March, 2003 has further approved certain guidelines for the Out-of- Turn Allotments.

25. Rule 11 is a very comprehensive rule which deals with the specific situations where Out-of-Turn Allotment is permissible. The Allotment Rules and these guidelines are intended to

control the exercise of discretion by the authorities concerned in granting out-of-turn allotments. There is some vagueness in Rule 11(1)(e), i.e. Out-of-Turn Allotments to a government employee due to the `functional requirements' of the post. This expression is neither explained nor have any guidelines been issued in this regard. The criteria provided in Guideline (2) for allotments made in public interest under Rule 11(1)(f) is quite similar to the criteria for determining functional requirements. Both these heads refer to the nature of official duties and functions to be performed by the officer concerned. Thus, the category of `functional requirement' allotment is nothing but a category created to allow more and more allotments under this head. In light of these rules, the absolute restriction on Out-of-Turn Allotments imposed by the learned Single Judge may not be just and fair and will be opposed to the statutory provisions of the Allotment Rules. Therefore, we are unable to sustain such a restriction. However, we would further clarify that the powers vested in the concerned authority under Rules 8 and 11 of the Allotment Rules will only be exercised: (a) upon recommendation of the House Allotment Committee; (b) such recommendation should be supported by reasons with the requirements of the job and the data in support thereof; and (c) no allotments would be made under the provisions of Rule 11(1)(e). The maximum restriction of 10 per cent of all allotments being Out-of-Turn Allotments, as contemplated under Rule 11(2) of the Allotment Rules, shall be operative to entire Rule 11 as well as to Rule 8 of the Allotment Rules. In no event shall Out-of-Turn Allotment exceed 10 per cent of all houses allotted in a year. This is primarily to control the exercise of discretionary power as well as to ensure that the persons entitled to residential accommodation in the general pool are not made to wait unduly for an indefinite period.

26. Allotments under different categories and with the restrictions as stated in the Allotment Rules and the guidelines shall continue to be in force and should not be amended or altered except in exceptional circumstances by the appropriate body. This alone can add some certainty to the application of these provisions and to the expectations of the government employees, who have a legitimate expectation of allotment of government accommodation as part of their perks.

27. We also direct that the purpose of Rule 8 of the Allotment Rules is not to allow discretionary allotment but is to provide overall powers of coordination and control to the Administrator, U.T., Chandigarh. When the words `for the purposes of allotment to any class or category of eligible government servant' appearing in Rule 8 are examined, these have to necessarily be construed to mean the allotment made in terms of the Allotment Rules. Adding or withdrawing houses to the general pool is a power vested in the authority under Rule 8, but allotments still are to be made in accordance with the substantive rules enabling the authorities to make regular allotments.

28. Neither the judgment of this Court passed in Civil Appeal No. 8890 of 1996 nor the Allotment Rules duly notified by the Government, require publishing of list of prospective allottees on website and inviting objections to the same. Rule 9 of the Alltoment Rules requires the authorities to invite applications for allotment of accommodation and also provides the manner in which the allotment of houses is to be made including showing the seniority of the applicants category- wise. There is no provision requiring invitation of

objections. Once there is no rule, in our considered view, it will not serve any fruitful purpose to invite objections to each allotment apart from unnecessarily delaying allotments and rendering the working of the Rules more complex and difficult. Further, Rule 9(5) of the Allotment Rules is a complete safeguard in regard to proper maintenance of the seniority list of the applicants. Thus, we set aside the directions issued by the learned Single Judge in that behalf. However, we direct that the final list of allotments made by the House Allotment Committee should be placed on the website of the Government, as all interested persons would be entitled to know whether they have been allotted the accommodation or not.

29. Now, we will deal with the other two arguments that were raised before us. One argument was in regard to the allotment of two houses to a single officer and/or to his family, one in Chandigarh and one in some other part of the same State; and the second was regarding the period of retention of the allotted house after the employee is retired, promoted, transferred or is sent on deputation etc. These are matters of serious concern. There is no rule that has been brought to our notice or is available on the records providing that an officer who is posted outside Chandigarh/Panchkula/Mohali and whose spouse is not entitled to any Government accommodation of any category can be provided with two houses, one at the District/Division level to which he/she is transferred and another at Chandigarh and its adjourning areas. In absence of any such specific rule, we consider it appropriate to direct that the State shall not allot two different houses to one government servant. In terms of Rule 11(1)(b) of the Allotment Rules, such allotment can be made in some circumstances but we are constrained to observe that every effort should be made to ensure that such situations arise only in exceptional circumstances. We are informed that even under the rules of transfer of the Government servant, a married couple, both of whom are government servants are normally posted at the same place. Be that as it may, it will be in the interest of all concerned that Rule 11(1)(b) is invoked sparingly and only by the authorities concerned, upon the recommendation of the House Allotment Committee.

30. The issue with regard to the retention of government accommodation is controlled by Rule 13 of the Allotment Rules. The table under clause 2 of the said Rule provides different periods of retention in different situations. Rule 13, sub-rule 5 further carves out an exception, allowing the period of retention to be extended beyond the period stated in the table under Rule 13(2) of the Allotment Rules on payment of higher licence fee. We see no reason why a government servant should be permitted to retain the accommodation beyond 4 to 6 months, which period is permissible under the substantive rules. A government servant knows in advance the period within which he has to vacate the accommodation allotted to him as part of his employment and so he has to surrender the house in question within the scheduled time.

31. What exceptional cases are contemplated under Rule 13(5) of the Allotment Rules is nowhere indicated. No guidelines are provided and it is only for the authorities concerned to decide whether the case falls in that category or not. We are unable to see any compelling circumstances for permitting discretion to the authorities under Rule 13(5) of the Allotment Rules. Rules 13(1) and 13(2) are comprehensive, specific and provide more than reasonable time for a government servant to vacate the accommodation allotted to him/her. The Court

cannot lose sight of the fact that a large number of employees under different categories, are awaiting their allotments and are being deprived of this benefit for long periods because of excessive invocation of such discretionary powers. The provision is unguided and arbitrary and cannot stand the scrutiny of law. More so, the licence fee indicated is obviously minimal in comparison to the market rent for the said premises. It is a matter which a Court can safely take judicial notice of.

32. Compelled by these circumstances, we find Rule 13(5) not sustainable and the authorities are directed not to take recourse to the said provision under any circumstance. No case of retention of government accommodation beyond the periods specified in the table to Rule 13(2) of the Allotment Rules shall be entertained by any authority under the Allotment Rules.

33. We have issued the above directions being conscious of the fact that the Allotment Rules are in place and that the authorities are acting fairly and judiciously. The directions that we have issued are primarily explanatory and are intended to narrow the scope of discretion exercisable by the concerned authorities. It is a settled canon of Administrative Jurisprudence that wider the power conferred, more onerous is the responsibility to ensure that such power is not exercised in excess of what is required or relevant for the case and the decision.

34. We expect the authorities to be consistent in their decisions and bring certainty to the Allotment Rules. This can only be done by making fair, judicious and reasoned decisions on the one hand and refraining from amending the Allotment Rules except in exceptional and extraordinary circumstances on the other. The Doctrine of Certainty can appropriately be applied to legislative powers as it is applicable to judicial pronouncements. We must not be understood to say that the power of the Legislature to amend rules is restricted by judicial pronouncements, but we want to impress upon the Legislature that the rules of the present kind should not be amended so frequently that no established practice or settled impression may be formed in the minds of the employees. Where the employer has limited resources, there the employee has a legitimate expectation of being dealt with fairly in relation to allotment to such government accommodation. Consequently, reverting to the case of the appellant, she is admittedly occupying an earmarked house. An order of eviction and damages has been passed against her and she has taken recourse to an appropriate remedy or against which she has already taken an appropriate remedy. The matter in that behalf is still pending final hearing before the learned Single Judge. The parties are left to raise all their contentions before the learned Single Judge, who shall decide the matter in accordance with law. However, with regard to the interim order passed by the High Court, we direct the State to allot to her an alternative accommodation under the category which she is entitled to, in pursuance of her appointment as State Information Commissioner, within fifteen days from today and she shall be liable to vacate the accommodation presently in her occupation within two weeks thereafter. We make it clear that in the event the Government is unable to allot her an alternative accommodation of her category for the reason of non-availability of such accommodation, she should be provided with appropriate accommodation, including private accommodation of her status, within the same period.

35. The appeal, for the reasons afore-recorded and with the directions afore-given, is disposed of while leaving the parties to bear their own costs.

[1]*(2000) 8 SCC 0262*
[2]*(1979) 3 SCC 0489*
[3]*(2001) 1 SCR 0203*
[4]*(1996) 4 SCC 0416*
[5]*(2003) 7 SCC 0546*
[6]*(2006) 10 SCC 0001*
[7]*(1992) 1 SCC 0380*
[8]*(2002) 4 SCC 0578*