[2019] 12 S.C.R. 444

A THE BIHAR STATE HOUSING BOARD & ORS.

v.

RADHA BALLABH HEALTH CARE AND RESEARCH INSTITUTE (P) LTD.

B (Civil Appeal No. 7243 of 2019)

SEPTEMBER 13, 2019

[L. NAGESWARA RAO AND HEMANT GUPTA, JJ]

Public property: Allotment of plot – Advertisement of plot for
C *health center by appellant – Respondent even though being the sole applicant not allotted plot – Challenge to – In a writ petition, direction by the High Court to the appellant to consider respondent's application – Appellant allotted two plots without any advertisement, in lieu of the plot advertised earlier – Respondent paid the amount demanded by the appellant – Thereafter, writ petition by the*
D *respondent disputing the allotment price which was allowed by the Single Judge of the High Court – Said order upheld – On appeal, held: Response to an advertisement does not lead to any obligation on the appellant to allot any plot – Mere fact that the respondent had applied for allotment of a plot does not confer any legal or*
E *equitable right to seek allotment of any plot – Appellant was more than indulgent in allotting two plots without any advertisement – Public property could not be disposed of without any advertisement and without giving opportunity to eligible persons to apply and seek consideration of allotment of public property in a transparent and non-discriminatory manner – Thus, the allotment of two plots,*
F *on the basis of direction given by the High Court to consider the claim of the respondent, is against the public interest – However, the respondent has constructed hospital which is operational thus, the allotment cannot be cancelled – Action of the respondent to dispute the allotment price after accepting the price is neither fair*
G *nor reasonable and cannot be accepted – Appellant as a State is required to act fairly in fixation of price for allotment of a plot – Order of the High Court to direct the appellant to charge the price proportionate to the price advertised earlier has no legal basis and is set aside.*

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Allowing the appeal, the Court

HELD: 1.1 The respondent does not get any right of allotment of a plot merely because it has applied for allotment earlier. The response to an advertisement does not lead to any obligation on the appellant to allot any plot. Admittedly, there was no allotment in pursuance of the offer submitted by the respondent. Mere fact that the respondent had applied for allotment of a plot does not confer any legal or equitable right to seek allotment of any plot. The appellant was more than indulgent in allotting two plots of 24000 sq. feet without any advertisement advertising such plots merely on the basis of the fact that the respondent had applied for allotment at an earlier stage in respect of another plot. The public property could not be disposed of without any advertisement and without giving opportunity to eligible persons to apply and seek consideration of allotment of public property in a transparent and non-discriminatory manner. [Para 25, 26] [456-E-G]

1.2 The very allotment of two plots, on the basis of direction given by the High Court to consider the claim of the respondent, is against the public interest. However, the fact remains that after allotment, the respondent has constructed hospital which is operational therefore; it is too late in the day to cancel the allotment of the plot allotted to the respondent. [Para 27] [457-A-B]

1.3 The respondent has accepted the price on three occasions; firstly on March 21, 2014, then on April 2, 2014 whereby, the respondent remitted a sum of Rs.40 lakhs by two cheques as well. The respondent has accepted the payment schedule but subject to final measurements of plots. It is thereafter the letter of allotment was issued on December 11, 2014. Thirdly, the respondent remitted another sum of Rs.1,71,00,000/- vide three separate cheques in January, 2015 so as to complete 20% of the interim price of letter of allotment dated December 11, 2014. It is thereafter an agreement was executed on March 12, 2015 unequivocally and categorically accepting the offer of the appellant. It was not open to the respondent to dispute the price of allotment offered by the

appellant. The respondent is estopped to dispute the allotment price in these circumstances. [Para 28] [457-C-D]

1.4 The appellant as a State is required to act fairly in fixation of price for allotment of a plot. The order of the High Court to direct the appellant to charge the price proportionate to the price advertised earlier has no legal basis. It is a commercial decision taken by the appellant fixing the price of the plot. In the matter of fixation of price, the Board has a right to fix such price, more so, when such price was accepted by the respondent on three different occasions. The action of the respondent to dispute the allotment price after accepting the price is neither fair nor reasonable and cannot be accepted. [Para 30, 31] [457-C-D]

1.5 Keeping in view the cause of allotment of plot i.e. hospital, in exercise of jurisdiction under Article 142 of the Constitution, that the interest for the period from the date of filing of the writ petition before the High Court till the date of order of this Court shall not be charged from the respondent provided respondent pays the entire balance sale consideration in terms of the condition of allotment within the stipulated period. [Para 32] [459-A-B]

1.6 The order of the High Court is not sustainable in law, thus, the order is set aside. [Para 33] [459-C]

Akhil Bhartiya Upbhokta Congress v. State of Madhya Pradesh & Ors. **(2011) 5 SCC 29 : [2011] 5 SCR 77 ;** *Institute of Law, Chandigarh & Ors. v. Neeraj Sharma & Ors.* **(2015) 1 SCC 720 : [2014] 11 SCR 1096 ;** *Meerut Development Authority v. Association of Management Studies & Anr.* **(2009) 6 SCC 171 : [2009] 6 SCR 663 ;** *Uttar Pradesh Housing and Development Board v. Ramesh Chandra Agarwal* **(2019) 6 SCC 554 ;** *Style (Dress Land) v. Union Territory, Chandigarh & Anr.* **(1999) 7 SCC 89 : [1999] 1 Suppl. SCR 591 - referred to.**

Case Law Reference

[2011] 5 SCR 77	**referred to**	**Para 22**
[2014] 11 SCR 1096	**referred to**	**Para 23**
[2009] 6 SCR 663	**referred to**	**Para 24**
(2019) 6 SCC 554	**referred to**	**Para 29**
[1999] 1 Suppl. SCR 591	**referred to**	**Para 32**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 7243 of 2019.

From the Judgment and Order dated 21.11.2017 of the High Court of Judicature at Patna in L.P.A. No. 229 of 2017 in C.W.J.C. No, 17694 of 2015.

Ranjit Kumar, Sr. Adv., Shivam Singh, Jaideep Khanna, Gopal Singh, Advs. for the Appellants.

Neeraj Kishan Kaul, Sr. Adv., Amit Kumar Singh, Mrs. E. Enatoli Sema, Chanan Parwani, Gaurav Prakash, Advs. for the Respondent.

The Judgment of the Court was delivered by

HEMANT GUPTA, J. 1. Leave granted.

2. The challenge in the present appeal is to an order passed by the Division Bench of the High Court of Judicature at Patna on November 21, 2017, whereby, the Letters Patent Appeal against an order passed by the learned Single Bench on September 19, 2016 was dismissed.

3. The appellant published an advertisement on May 10, 2008 inviting applications for allotment of plot for health center in Lohia Nagar Housing Colony, Patna measuring 43000 sq. feet at the price of Rs.1,71,89,057/-. Rs.1,00,000/- was the earnest money. The respondent applied for such plot along with the amount of earnest money. It was mentioned in the advertisement that upon receipt of more than one application, allotment shall be made by draw of lots and that the Chairman-cum-Managing Director of the appellant has the power to cancel allotment without assigning any reason. The respondent herein was the sole applicant for seeking allotment of plot advertised for health center but no such plot was allotted to the respondent, may be for the reason that the respondent being the sole applicant.

A 4. The respondent filed writ petition before the High Court in the year 2009 challenging the action of the appellant in not accepting the application of the respondent for the reason that it had not submitted the documents of recognition from the State Government. In view of the stand taken, the High Court directed the appellant to take a decision on the application of the respondent within a period of one month. Subsequently, contempt petition was filed wherein; the Court was informed that the request of the respondent for allotment of plot was not accepted. The respondent was given liberty to challenge the decision of the appellant by way of a fresh writ petition.

C 5. The respondent again filed writ petition before the High Court contending that the respondent approached the Managing Director of the appellant, who agreed to the proposal of allotment of alternative plots for construction of hospital in lieu of original plot offered, though with much less area than the plot advertised earlier. The respondent submitted the technical and financial proposal also stating that the plot, D which was advertised, was of an area of 43000 sq. feet for a consideration of Rs. 1,71,89,057/-, thus, there should be proportionate reduction of price on account of lesser area being offered. The respondent sought allotment on the terms and conditions of the advertisement itself. The two plots offered as alternative to the earlier plot, were plot nos. G-5 E and G-6 measuring an area of 10,000 sq. feet and 14000 sq. feet respectively situated near Rajendra Nagar Over Bridge in Patna. However, the Board took a decision to allot the aforesaid plots on the basis of Swiss Challenge Method. The said decision was communicated to the respondent on December 14, 2011.

F 6. The said writ petition was decided on May 10, 2013 holding that the advertisement cannot be given a go by adopting a method of allotment other than what was described in the advertisement. As such, Swiss Challenge Method cannot be applied in the case of the respondent. However, change of plot was not interfered with in view of the fact that the respondent agreed for the offered plots. The appellant was directed G to consider issuing an allotment letter in favour of the respondent in terms of the advertisement but with respect to plot Nos. G-5 and G-6 in place of the original plot, as mentioned in the advertisement, on the same terms and conditions with proportionate cost reduction on account of the area of the plots having been reduced. The High Court passed the following order:

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"In view of the reasons and discussions made above, the decision of the board to allot the Plot Nos. G-5 and G-6 in favour of the petitioner vide office order no. 160 of 2009 as contained in Memo No. 10792 dated 09.12.2011 (Annexure-16) as also the Letter No. 10871 dated 14.12.2011 (Annexure-17) on the basis of Swiss Challenge Method is hereby quashed. The respondent – Board is directed to consider the letter dated 3rd of January, 2012, written by the petitioner to the respondent-Board and on considering the same, issue allotment letter in terms of the advertisement, as contained in Patna High Court CWJC No.9744 of 2012 (5) 10 Annexure – 1 with respect to the plot nos. G-5 and 6 in lieu of the original plot as mentioned in the advertisement on the same terms and conditions with proportionate cost on account of the area of the plots being reduced."

7. Such order was modified at the instance of the appellant on January 9, 2014 that in view of the condition in the advertisement that if the allotment letter is issued after May 31, 2008, the price of the allotted plot will be on the updated rates as on the date of allotment. The Court held as under:

"It is submitted that advertisement states that if the allotment letter is issued after 31st May, 2008 the price of the allotted plot would be on updated rate as on the date of allotment as per the terms of advertisement contained in Annexure-1 to the writ application. The order dated 10.05.2013 passed in CWJC No. 9947 of 2012 is clarified to the above extent. After such clarification it goes without saying that the Board upon considering the letter dated 3rd January 2012 written by the petitioner is to issue the allotment letter, and as such, the same be issued within a period of two months from today."

8. It is thereafter on February 14, 2014, the respondent was called upon to deposit up to date price of Rs.13,09,95,041/-. The said price was not deposited by the respondent, instead respondent replied vide letter dated February 19, 2014 that the said demand is contrary to the direction issued by the High Court and requested the Board to calculate the updated price as per the terms and conditions.

9. On March 13, 2014, the appellant revised price to Rs.10,58,91,736/- and raised demand for payment of such amount to be

A deposited by March 31, 2014. In response to such communication, the respondent on March 21, 2014 communicated its acceptance. The said communication reads as under:

> "With reference to your letter No. 1902 dated 13/3/2014 directing us to deposit Rs.10,58,91,736.00 for plot no. GC 5, GC 6, Kankarbagh Patna allotted to Radha Ballabh Health Care & Research Institute Pvt. Ltd.
>
> We need to inform you that the Board may measure the exact Area of the Land to be delivered before the Representatives of both sides and thereafter handover the vacant possession of the land erecting boundary wall, the cost of which shall be borne by us.
>
> The amount (money), directed to be deposited for the said plot is against the directions of the Hon'ble High Court Patna. We have raised this issue of price in our letter dt. 19/02/2014 however subject to our right and without prejudice, we are ready to take the land (Plt no. GC 5 & GC 6) Under protest.
>
> <u>We propose the following payment plan.</u>
>
> We will deposit a token advance of Rs. 40 lakhs at the outset. Once we get vacant possession of the land, with boundary wall erected (the cost of which will borne by us) we will deposit up to 20% of the total cost (subject to final measurement of the Land).
>
> The remaining amount will be paid in Four Quarterly Installments per annum in three years. Once again we would emphasize that if we do not get the vacant possession of the land within two (2) months of token advance deposit, the Housing Board shall be held responsible and will have to bearing bank interest levied on us by the bank/borrower.
>
> Kindly approve our proposal at the earliest and let us know your bank with account number, so that we can proceed with the payment process."

10. Again, the appellant sought the consent of the respondent on April 1, 2014 seeking advance payment of Rs.40,00,000/- and that the balance payment of Rs.8,47,93,330/- was payable in 12 quarterly installments in three years. The communication of the appellant reads as under:

"Reference:- Yours letter no.-zero dated 21.03.2014.

Sir,

Review is made of your letter regarding aforesaid subject. In course of review for the payment, following payment list is prepared.

(a) Total price on the date 31.03.2014 – Rs. Illegible.

(b) Advance payment – Rs.40,00,000/-

(c) Earlier deposited earnest amount-Rs.1,00,000/-

(d) 20 percent of total amount-Rs.2,11,98,400/-

(e) Deducted advance payment and earnest amount-Rs.41,00,000/-

(f) Rest preliminary amount to be deposited prior to deed of agreement – Rs.1,70,98,400/-

(g) Rest amount of the Price-Rs.8,47,93,330/-

(h) Amount of instalment payable in 12 quarterly instalments in three years-

(i) Normal with interest @14% Rs.87,74,750/-

(ii) By delay with interest @18% Rs.92,98,962/-

So if you are willing for the allotment in question, please give your consent on aforementioned schedule, otherwise it shall be deemed that you are not willing for the allotment."

11. The respondent communicated on April 2, 2014 accepting the payment schedule under protest subject to final measurements of the plot. Such communication reads as under:

"Ref: Housing Board's Letter No. 2445 Dated 01/04/2014

Dear Sir,

Received the Board's aforesaid Letter regarding the payment schedule for plot No. GC 5 & GC 6, Kankarbagh, Patna.

As stated earlier and in the light of our letter dt. 21/03/2014, we accept the payment schedule, under Protest subject to the final measurement of the plots.

A We are enclosing herewith two Banker's cheques of Rs.40,00,000/- (Rs. Forty Lacs),

1. Banker's Cheque no. 021879 for Rs.20,00,000/- (Rs.Twenty Lacs) and

2. Banker Cheque No. 021880 of Rs.20,00,000/- (Rs.Twenty B Lacs) Drawn at Patna dated 02/04/2014 as advance payment.

Please ensure the possession of Plot/Land, with boundary wall erected (at our cost) at its earliest."

12. It is thereafter, a formal letter of allotment was issued on C December 11, 2014 acknowledging that Rs.41 lakh stand deposited and that 20% of the interim price of the land amounting to Rs.2,11,98,400/- be paid within thirty days. Such amount was paid by the respondent. It is thereafter, an Agreement was executed on March 12, 2015 between the appellant and the respondent. Thus, a concluded contract came into existence with deposit of the amount demanded by the appellant and D paid by the respondent.

13. After accepting the allotment on the price as per the communication referred to above, the respondent filed a writ petition disputing the allotment price. The learned Single Bench allowed the writ petition on the basis that proportionate price of the plot advertised in E Lohia Nagar alone can be claimed by the appellant.

14. The High Court has sought the basis of fixation of price of the plot during the proceedings before it. The proportionate price claimed by the appellant was found to be arbitrary. The High Court, vide order dated September 19, 2016, issued the following directions:

F "In my considered view, only that procedure could have been followed for updation of price of allotment. Thus, it is held that the Board has acted in arbitrary manner in fixing the price of the plots concerned due to which the petitioner has been fastened with a liability to pay a price several times higher than which G could have been charged. It has also to be kept in mind that due to the delay caused by the Board, the allotment could not be finalized on the date fixed. Accordingly, this writ petition is allowed. The price fixed by the Board is quashed and set aside. The Board is directed to re-calculate the cost of the plots of the petitioner in accordance with the procedure adopted under Annexure H H

appended with the counter affidavit within a period of three months from the date of receipt/production of a copy of this order and return the excess amount, if any, having been paid by the petitioner in terms of the calculation done by the Board. If the same is not done within the aforesaid period of three months, the petitioner would be entitled for interest @14% per annum on the said amount to be calculated from the date of expiry of the aforesaid period of three months till Patna High Court CWJC No.17694 of 2015 dt.19-09-2016 20/20 the date of final payment."

15. In terms of the directions of the High Court, the appellant has paid back a sum of Rs.3,31,94,435.53.

16. It is the said order of the learned Single Judge, which was affirmed in the Letters Patent Appeal, on the ground that the Board could only claim up to date rate and not the market rate as claimed in the letter of allotment.

17. The respondent in the counter affidavit in the present appeal has referred to the decision taken by the appellant in its 193rd Meeting dated February 10, 2000 on the basis of which office order was issued on March 2, 2001 to fix reserve price for the purpose of auction of the Plots/Houses/Flats. The decision is as under:

"(i) The auction price of such Plots/Houses/Flats, having taken within one last preceding year.

(ii) The updated price of the Commercial rate fixed by the Board.

(iii) The rate prescribed by the Collector for the purpose of Registration.

In addition to this the Managing Director of the Bihar State Housing Board was authorized to have discretion keeping the place, time and circumstances."

18. It is also pointed out that on June 13, 2013, the market value was determined for calculation of premium for the Financial Year 2013-2014 and that on the basis of such calculation, the price of the plot allotted has been fixed.

19. Mr. Ranjit Kumar, learned senior counsel for the appellant, argued that the decision of the Appellant is based upon rational basis in terms of the decision of the Board taken earlier. It is argued that after

A accepting the offer of allotment and paying initial amount, the respondent is estopped to dispute the allotment price.

20. The argument of Mr. Neeraj Kishan Kaul, learned senior counsel appearing for the respondent, is that the advertisement inviting applications for allotment of plot contemplated charging of up to date B cost/price which is not the same as market price, therefore, the appellant cannot charge market price of the plot. It was argued that the decision of June 13, 2013 is in respect of sale of the plot by the allottee to third person so as to pay 50% of the market value to the appellant. Therefore, such decision has rightly not been accepted by the High Court. It is also argued that office order dated March 2, 2001 deals with fixation of reserve C price in the event of decision of the Board to auction the plot. Therefore, the High Court has rightly fixed price of the plot on the basis of calculations given by the appellant alone. Thus, the order of the High Court does not warrant any interference in an appeal under Article 136 of the Constitution of India.

D 21. We find that the entire approach of the High Court is erroneous and not sustainable. Plot Nos. G-5 and G-6 located in Rajinder Nagar Over Bridge were never advertised. The allotment of the alternative plots was made by the appellant in lieu of the plot advertised in Lohia Nagar, Kankarbagh, Patna measuring 43000 sq. feet. The location and E the size of the alternative plots are different.

22. Firstly, we need to examine as to whether, the appellant could allot plots without advertisement. This Court in a judgment in ***Akhil Bhartiya Upbhokta Congress*** v. ***State of Madhya Pradesh & Ors.***[1] deprecated the practice of allotment of plots *dehors* an invitation or F advertisement by the State or its instrumentalities. The Court held as under:

> "66. We may add that there cannot be any policy, much less, a rational policy of allotting land on the basis of applications made by individuals, bodies, organisations or institutions dehors an G invitation or advertisement by the State or its agency/ instrumentality. By entertaining applications made by individuals, organisations or institutions for allotment of land or for grant of any other type of largesse the State cannot exclude other eligible persons from lodging competing claim. Any allotment of land or

[1] (2011) 5 SCC 29

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grant of other form of largesse by the State or its agencies/ instrumentalities by treating the exercise as a private venture is liable to be treated as arbitrary, discriminatory and an act of favouritism and/or nepotism violating the soul of the equality clause embodied in Article 14 of the Constitution.

67. This, however, does not mean that the State can never allot land to the institutions/organisations engaged in educational, cultural, social or philanthropic activities or are rendering service to the society except by way of auction. Nevertheless, it is necessary to observe that once a piece of land is earmarked or identified for allotment to institutions/organisations engaged in any such activity, the actual exercise of allotment must be done in a manner consistent with the doctrine of equality. The competent authority should, as a matter of course, issue an advertisement incorporating therein the conditions of eligibility so as to enable all similarly situated eligible persons, institutions/organisations to participate in the process of allotment, whether by way of auction or otherwise. In a given case the Government may allot land at a fixed price but in that case also allotment must be preceded by a wholesome exercise consistent with Article 14 of the Constitution."

23. In another judgment in ***Institute of Law, Chandigarh & Ors.*** v. ***Neeraj Sharma & Ors.***[2], this Court upheld the order of the High Court setting aside allotment of land in favour of the appellant institute without giving any public notice and in the absence of a transparent policy and any objective criteria.

24. Further, in ***Meerut Development Authority*** v. ***Association of Management Studies & Anr.***[3], this Court held that a tender is an offer. It is an invitation to seek communication to convey acceptance. This Court held as under:

"26. A tender is an offer. It is something which invites and is communicated to notify acceptance. Broadly stated it must be unconditional; must be in the proper form, the person by whom tender is made must be able to and willing to perform his obligations. The terms of the invitation to tender cannot be open to judicial scrutiny because the invitation to tender is in the realm

[2] (2015) 1 SCC 720
[3] (2009) 6 SCC 171

A of contract. However, a limited judicial review may be available in cases where it is established that the terms of the invitation to tender were so tailor-made to suit the convenience of any particular person with a view to eliminate all others from participating in the bidding process.

B 27. The bidders participating in the tender process have no other right except the right to equality and fair treatment in the matter of evaluation of competitive bids offered by interested persons in response to notice inviting tenders in a transparent manner and free from hidden agenda. One cannot challenge the terms and conditions of the tender except on the abovestated ground, the C reason being the terms of the invitation to tender are in the realm of the contract. No bidder is entitled as a matter of right to insist the authority inviting tenders to enter into further negotiations unless the terms and conditions of notice so provided for such negotiations.

D 28. It is so well settled in law and needs no restatement at our hands that disposal of the public property by the State or its instrumentalities partakes the character of a trust. The methods to be adopted for disposal of public property must be fair and transparent providing an opportunity to all the interested persons to participate in the process."

E 25. Therefore, the respondent does not get any right of allotment of a plot merely because it has applied for allotment earlier. The response to an advertisement does not lead to any obligation on the appellant to allot any plot. Admittedly, there was no allotment in pursuance of the offer submitted by the respondent. Mere fact that the respondent had F applied for allotment of a plot does not confer any legal or equitable right to seek allotment of any plot.

26. The appellant was more than indulgent in allotting two plots of 24000 sq. feet without any advertisement advertising such plots merely on the basis of the fact that the respondent had applied for allotment at G an earlier stage in respect of another plot. The public property could not be disposed of without any advertisement and without giving opportunity to eligible persons to apply and seek consideration of allotment of public property in a transparent and non-discriminatory manner.

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27. Therefore, the very allotment of two plots, on the basis of direction given by the High Court to consider the claim of the respondent, is against the public interest. However, the fact remains that after allotment, the respondent has constructed hospital which is operational therefore; it is too late in the day to cancel the allotment of the plot allotted to the respondent.

28. The question raised before the High Court was whether the appellant is entitled to updated price or the market price. We find that such discussion by the High Court is totally irrelevant inasmuch as the respondent has accepted the price on three occasions; firstly on March 21, 2014, then on April 2, 2014 whereby, the respondent remitted a sum of Rs.40 lakhs by two cheques as well. The respondent has accepted the payment schedule but subject to final measurements of plots. It is thereafter the letter of allotment was issued on December 11, 2014. Thirdly, the respondent remitted another sum of Rs.1,71,00,000/- vide three separate cheques in January, 2015 so as to complete 20% of the interim price of letter of allotment dated December 11, 2014. It is thereafter an agreement was executed on March 12, 2015 unequivocally and categorically accepting the offer of the appellant. It was not open to the respondent to dispute the price of allotment offered by the appellant. The respondent is estopped to dispute the allotment price in these circumstances.

29. Recently, in a judgment of this Court in ***Uttar Pradesh Housing and Development Board*** v. ***Ramesh Chandra Agarwal***[4], the appeal was allowed against an order passed by the National Consumer Disputes Redressal Commission for allotment of a plot for the reason that the complainant has applied for allotment of a plot way back in 1982. It was held that there was no contractual entitlement for allotment of a flat at a specified price. The Court held as under:

> "13. The appellant is governed by the terms and conditions advertised in its Registration Booklet and by the 1979 Rules. Clause 5 of the Registration Booklet indicates that mere registration does not confer a right for allotment. Rule 15 makes a provision to the effect that the Board is not bound to allot a house or plot to every registered holder. Rule 30 indicates that after the Board advertises the availability of a scheme in the newspaper, every registered

[4] (2019) 6 SCC 554

A applicant is at liberty to submit a consent letter for participation in the draw of lots. Mere registration does not oblige the authority to include every registered applicant in the draw of lots. The applicant must show readiness and willingness to participate in a draw of lots in respect of a specified scheme. This is evident from Rule 30(2). A set of priorities is provided in Rule 30(5). In view of the B clear position in the brochure and the 1979 Rules, the respondent had no vested right to seek an allotment. As a registered applicant, the respondent was at liberty to seek to participate in the draw of lots by indicating his consent to the appellant. After paying an initial sum of Rs 500 in 1982 and a further sum of Rs 500 in 1985, C the respondent did not pursue any remedies until 1993 when he moved the District Forum. The order of the District Forum gave liberty to the respondent to seek allotment at the current market value under any of the schemes of the appellant. NCDRC was manifestly in error in issuing a direction to the appellant to make an allotment to the respondent for a total sum of Rs 2,50,000 in D any of the flats available in the Mandola Vihar Yojna, Ghaziabad. There is no rational basis or justification for the amount of Rs 2,50,000 which has been fixed by NCDRC. This direction proceeds purely on the basis of the ipse dixit of the forum. The appellant, as a public authority, could not have been compelled to enter into a E contract with the respondent. There was no contractual entitlement of the respondent to the allotment of a flat much less for an allotment at a specified price. In its effort to render justice, NCDRC has adopted a view which is contrary to the basic principles of contract governing the law on the subject."

F (emphasis supplied)

30. The appellant as a State is required to act fairly in fixation of price for allotment of a plot. The order of the High Court to direct the appellant to charge the price proportionate to the price advertised earlier has no legal basis. It is a commercial decision taken by the appellant G fixing the price of the plot. In the matter of fixation of price, the Board has a right to fix such price, more so, when such price was accepted by the respondent on three different occasions as mentioned above.

31. The action of the respondent to dispute the allotment price after accepting the price is neither fair nor reasonable and cannot be H accepted.

32. In terms of judgment of this Court in ***Style (Dress Land)*** v. ***Union Territory, Chandigarh & Anr.***[5], the appellant is entitled to the allotment price along with interest on the delayed payment even if there is stay by the Court. But, keeping in view the cause of allotment of plot i.e. hospital, we order, in exercise of our jurisdiction under Article 142 of the Constitution, that the interest for the period from the date of filing of the writ petition before the High Court till the date of order of this Court shall not be charged from the respondent provided respondent pays the entire balance sale consideration in terms of the condition of allotment within six months from today.

33. In view of the above, we find that the order of the High Court is not sustainable in law, thus, the order is set aside. The appeal is accordingly allowed.

Nidhi Jain Appeal allowed.

[5] (1999) 7 SCC 89