

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
(Appellate Side)

WPA 579 of 2016

Pronounced on: 27/09/2021

Humanity, Salt Lake & Anr.

...Petitioners

-Vs-

State of West Bengal & Ors.

...Respondents

Present:-

M/s Anindya Lahiri and
Samrat Dey Paul, Advocates (Through VC)
...for the petitioners

M/s. Jishnu Chowdhury, Advocate (Present in Court)
Sandip Dasgupta, Chayan Gupta and Ayan De, Advocates
(Through VC)
...for the WBHIDCO

Mr. Amitava Mitra, Advocate (Through VC)
Ms. Sumita Shaw and
Ms. Sayani Bhattacharya, Advocates (Present in Court)
...for the Respondent Nos. 9 & 10

**Coram: THE HON'BLE JUSTICE RAJESH BINDAL,
CHIEF JUSTICE (ACTING)**

**THE HON'BLE JUSTICE ARIJIT BANERJEE,
JUDGE**

ORDER

Rajesh Bindal, CJ(A):

1. The present petition was filed in public interest to challenge allotment of plot bearing no. IID/2920/1, New Town by West Bengal Housing Infrastructure Development Corporation Ltd.

(for short, 'HIDCO') totally in violation of rules, regulations and policies provided for allotment of plots. Allotment was made to respondent Nos. 9 and 10 vide letter dated September 27, 2013. The writ petition was filed in the year 2016 and is pending since then. When the matter was taken up for hearing, at the very outset, the learned Counsel for respondent Nos. 9 and 10/ the allottees and the Counsel appearing for HIDCO submitted that the respondent Nos. 9 and 10 having surrendered the plot and the amount deposited by them having been refunded, nothing survives for adjudication in the present petition. The prayers made therein have been rendered infructuous.

2. To this serious objection was raised by learned Counsel for the petitioners stating that there is no respect for law in the State of West Bengal. In the earlier round of litigation illegal allotment of plot was made to Sourav Ganguly, the respondent No. 9, the matter went up to Hon'ble the Supreme Court. Vide judgment reported as **Humanity and Another vs. State of West Bengal and Others, (2011) 6 SCC 125** illegal allotment of a plot in similar fashion in favour of the respondent No. 9 way back in the year 2009, was set aside. Immediately after the quashing of the aforesaid allotment in his favour, a request was made by him vide letter dated July, 09, 2012 to the Chief Minister of West Bengal for allotment of a plot and the same was allotted to him violating all Rules and Regulations. Hence, the matter needs to be examined with certain adverse comment on working of the respondents where despite quashing of the allotment made in favour of the respondent No. 9 earlier, in totally illegal manner the same process was again followed for allotment of a plot to

him. In case this allotment was not challenged by the petitioners in this Court, the respondent No. 9 would have enjoyed bounty given by the State/ State Authority. He waited for a period of five years to surrender the allotment.

3. Considering the aforesaid arguments raised by learned Counsel for the petitioners, we find it appropriate to deal with the issues raised in the writ petition on merits even though the respondent Nos. 9 and 10 have surrendered the plot, as claimed.

4. Narrating the facts of the case, the learned Counsel for the petitioners submitted that in the earlier round of litigation for a plot allotted to Sourav Ganguly, respondent No. 9 in Sector V, Salt Lake City, Bidhannagar, Kolkata, lease deed was executed on April 01, 2009. As the allotment was in totally illegal and arbitrary manner, the same was challenged by the petitioner before this Court. The writ petition was dismissed. The matter was taken to Hon'ble the Supreme Court. The same was examined in detailed and vide judgment in **Humanity and another's case (supra)**, the allotment was set aside. There are specific observations against the conduct of respondent No. 9, where his stand was held to be not bona fide. The judgment was delivered by Hon'ble the Supreme Court on May 26, 2011. Immediately thereafter Sourav Ganguly, submitted a request to the Chief Minister of West Bengal vide letter dated July 09, 2012 for allotment of a plot of 2.5 acres in Kolkata for building a school of international standard for the children of West Bengal. As was the illegal procedure followed in the process of allotment of plot to the respondent No. 9 earlier, his request was placed in the State Cabinet meeting on February 05, 2013 and a decision was taken to allot a plot.

It was followed by a decision of the Board of Directors of HIDCO taken in its 71st Meeting held on February 09, 2013 to allot him a plot of 2 acres. Immediately a communication was sent to Sourav Ganguly on February 21, 2013 requesting him to inform as to whether he seeks allotment in his individual name or in favour of any trust. If yes, the name of the trust was to be informed. The process having been completed, vide letter dated September 27, 2013 offer of allotment was made to him for a plot measuring 2 acres in Action Area III of New Town, Kolkata for setting up a 10+2 school, on leasehold basis. Favouritism was writ large as even the lease premium payable by Sourav Ganguly was reduced from ₹10.98 crores to ₹5.27 crores. Subsequent thereto a lease deed was executed in favour of Sourav Ganguly by HIDCO on March 13, 2014. Immediately after the petitioners came to know about the illegal allotment of plot in his favour, the present writ petition was filed to challenge the same.

5. In the aforesaid factual background, the learned Counsel for the petitioners submitted that admittedly the allotment of plot in favour of Sourav Ganguly is for the purpose of construction of a school which is for commercial use. Tender notice for allotment of plots of different categories and sizes was issued by HIDCO on December 08, 2011. There is nothing on record that Sourav Ganguly applied for allotment of plot though there was one plot available for higher secondary school measuring 2 acres. As he had access to the corridors of power, he directly made a representation to the Chief Minister of West Bengal. As expected and was done earlier, immediate action was taken thereon by the State Cabinet, followed by the approval of the Board of Director of HIDCO. A plot was allotted

to him. If the land allotment policy framed by the State of West Bengal vide order dated December 26, 2012 is examined, the land meant for commercial use has to be invariably auctioned and the educational institutions fall in that category except the educational institutions to be set up by the public charitable trust with no profit motive and which are in existence at least for five years. Even for that, the allotment could be by inviting offers in a transparent manner. It is not the case of the allottee herein that he had five years experience or the trust was a public charitable trust incorporated with no profit motive.

6. It was further argued by the learned Counsel for the petitioner that the system being followed for allotment of land in the State of West Bengal is totally arbitrary. The same is not limited to the case in question. Rather in routine, the allotments were being made in illegal manner. This has become part of the system. There is a need to have uniform policy in the form of some rules.

7. In response, learned Counsel for the HIDCO, while not disputing the fact regarding filing of application by Sourav Ganguly, allotment of plot and execution of lease deed in his favour, submitted that in terms of clause (xiv) of the Land Allotment Policy, the government has power to allot the plots at its discretion while relaxing the criteria. In the case in hand, an institute for education and sports was proposed to be set up by Sourav Ganguly, a cricketer of international repute. Hence, decision was taken to allot the plot. He further submitted that after the Land Allotment Policy was notified on December 26, 2012, all allotments are being made by inviting tenders. As the allottee was facing difficulty in implementing the project, he

applied for refund of the amount deposited. The request was accepted and after deducting the ground rent, balance amount was refunded to him. In fact, once the allotment itself has been surrendered by the allottee, the prayer made in the writ petition has been rendered infructuous. The learned Counsel further confirmed that there are no other rules or regulations providing for allotment of land except the Policy dated December 26, 2012.

8. The learned Counsel appearing for the respondent Nos. 9 and 10/allottees submitted that the allotment was made with a specific condition that in the educational institution to be set up, 25% seats will be available at the discretion of the State for providing free education to the poor. After the lease deed was signed, the present litigation started. Though there was no interim order, to avoid taking risk, the project had not taken off. Having lost interest therein, the allotment of plot was surrendered back by filing application in August, 2020. The request was accepted and an agreement for cancellation of lease deed was executed on February 23, 2021. With the aforesaid developments taking place during the pendency of the writ petition, the prayer made therein has been rendered infructuous.

9. Heard the learned Counsel for the parties and perused the relevant referred record.

10. The relevant clauses of the only Land Allotment Policy dated December 26, 2012, which have been referred to at the time of hearing by the learned Counsel for the HIDCO, are extracted below:-

“(iv) Land meant for commercial use shall invariably be auctioned to the highest bidder for which adequate publicity should be given including through the internet. Commercial use will mean use for office, shops,

shopping malls, housing not meant for the EWS, LIG or the poor, cineplexes, theme parks, hospitals, educational institutions etc., and would include all other activities except those activities for which a different mode of disposal is prescribed.

Reserve Price should not be fixed by the Government before the bidders submit their financial bids, so that there is no chance of the bidders knowing the Reserve Price fixed by the Government. The Government, while fixing the Reserve Price, should not have knowledge of the price bids submitted so that the fixing of the Reserve Price is not influenced by such knowledge. The Advisors do not finalize Reserve Price, as a conflict of interest may arise with them trying to keep them a low Reserve Price. The bidders are provided full comfort that their bids, once submitted, can in no way be tampered with by any agency.

(v) For construction of housing for the poor, EWS and LIG through developers, it would be permissible not to go in for the auction route, keeping in view of the paramount public interest. Instead, development offers on pre-announced criteria can be invited through a two-stage bidding process. The policy for the allotment of the dwelling units after construction also should be rational, objective and transparent and stated clearly in the brochures/ advertisements.

(vi) For projects leading to industrial development, the highest price need not be the main criteria nor should auction be the only mode of allotment. The department or the entity shall prepare and publish a list of its land assets. It may also indicate the kind of industrial development it is seeking (big, medium, small, micro, non-polluting, knowledge based, etc.) along with the tentative price which may be determined on the basis of acquisition price, cost of capital, development charges and premium as applicable. This information should be freely available in the public domain for at least a month before offers are

received/ invited.

The offers should be evaluated on pre-specified and pre-announced criteria e.g. specified purpose, employment potential, likely tax- revenue, development of backward regions, economic development of disadvantaged communities, lower pollution levels, standard norms for land requirements for specific type of industries, and the past record of the investors. Evaluation should be done by a Transaction Advisor, to be selected from the empanelled list of Transaction Advisors drawn up by the Finance Department through a transparent and competitive process and notified vide No. FS-116(PPP Cell)/2012 dated 10.09.2012.

(vii) Project proposals for private educational institutions and medical facilities will be deemed to be commercial ventures, except where such projects are to be set up by public charitable trusts with no profit motives, and in existence for at least five years in the respective field, after inviting offers in a transparent manner. Trusts promoting such institutions have to be well-known for their services at the national or international level. The cases of allotment to charitable and reputed institutions fulfilling the above conditions should be referred to the Standing Committee of the Cabinet on Industry, Infrastructure and Employment for a final decision.

(viii) For the projects in the power generation sector, the auction route is not recommended given the possible impact on tariffs and questions of larger public interest. The department holding the land, in consultation with the Power & NES Department, would notify sites suitable for power generation projects, which will remain open and in the public domain for at least one month before offers are invited. Thereafter, the offers will be evaluated in consultation with Power & NES Department, based on clear-cut pre-announced

criteria beneficial to the economy and well-being of the state such as lower tariffs, redressal of the thermal-hydro imbalance, green power and renewable obligations and offered in terms of the existing policy and legal framework for such power generation projects.

(ix) All land allotment decisions should be taken by the Board(s) of the entities. In case land is owned departmentally, MIC's order will be inevitably required followed by a Cabinet decision. Under no circumstances should land allotment decision be taken without placing the matter to the full Board with adequate notice as may be required under the relevant statutes/ rules and without recording detailed minutes.

(x) Upon the completion of the formalities and selection of the allottee, a provisional Letter of Intent (LOI) should be issued. Each Department should frame its own LOI in consultation with the Law Department and strictly based on this policy with a specific time frame which shall in no case exceed three (3) years from the date of handing over the possession of the land.

(xi) The provisional LOI should also specify the statutory clearances/ licences/ permissions that the allottee would be required to obtain within a definite time frame. This will include clearances from the West Bengal Pollution Control Board & / or the Ministry of Environment & Forests, fuel linkages, water availability, clearance and licences from the West Bengal Electricity Regulatory Commission, the Medical / Dental / Nursing Council, the AICTE, the UGC, Municipality, Urban Planning etc., as may be required only for that specific purpose.

(xii) The provisional LoI should be so drafted, as to enable the allottee to seek financial closure as well as obtain the relevant statutory clearances, in a definite

time frame. In case the statutory clearances and or the financial closure are not forthcoming within the specified period, the provisional LoI shall be cancelled after following procedure laid down in the terms and conditions of the allotment.

(xiii) The allottee will have to commit that post-allotment, any changes in the ownership structure of the allottee, would be indicated upfront to the lessor. In case the lessor is of the opinion that such changes would be detrimental to public interest, such as higher power tariffs, reductions in the housing entitlements for the original target group (e.g. EWS/Poor/LIG), lower tax revenues, lower employment, etc., the lessor may cancel the allotment after following the usual formalities.

(xiv) In the event of special circumstances, the Government may, with the intention to protect and promote specific types of activities, or, to promote any emerging area of development activities, or, to reduce imbalances in any backward region, or, any strategic reason especially beneficial to the State, may with the approval of the State Cabinet, relax any or some of the above mentioned criteria. The sponsoring departments will be required to prepare Cabinet proposals indicating the full extent of relief with justification.”

(emphasis supplied)

11. Before we proceed to discuss the issues raised in the present petition, we find it appropriate to notice certain facts about the earlier litigation pertaining to allotment of plot to the private respondents; earlier also in a clandestine manner. The same were subject matter of litigation upto Hon’ble the Supreme Court of India in **Humanity and another’s** case (supra). As is evident from the aforesaid judgment, in pursuance of an advertisement issued by the Government of West Bengal on November 05, 2006 for allotment of a plot measuring about

50 cottahs for setting up of school, the respondent No. 9 was the successful allottee. Lease deed was executed on October 29, 2007. Even the possession of plot was given on February 14, 2008. As apparently some due process may have been followed, the aforesaid allotment was not challenged in Court. On January 19, 2009, a letter was written by the respondent No. 9 to Ashok Bhattacharya, the then Minister for Urban Development and Municipal Affairs, Government of West Bengal stating that after going through the norms of 'ICSE', allotment of a bigger plot was required for getting affiliation. A request was made for allotment of a bigger plot. He submitted that he would like to surrender the allotment of plot already made in his favour and at the same time apply for a plot of a bigger area so that he can take the school project forward. Within a month of the aforesaid communication, the Urban Development Department informed the allottee therein vide communication dated February 17, 2009 that another plot measuring 63.03 cottahs has been allotted to him.

12. The aforesaid allotment was challenged in this Court on various grounds including that there was no advertisement issued for allotment of the plot in favour of the allottee therein and allotment of a new plot was made even before the earlier was surrendered. Earlier when the allottee made an application for allotment of a plot and he was considered to be eligible, it was well known to him that he was not fulfilling the norms laid down for affiliation of the school with 'ICSE'. The working plan of the area was flouted, in the absence of a master plan for Salt Lake City for the purpose of allotment of a bigger plot in his favour. Hon'ble the Supreme Court while referring to various earlier judgments on the issue regarding grant of largesse by

the State namely allotment of land, held the allotment made in favour of the allottee therein, who is respondent No. 9 herein, to be illegal. The action of the government was held to be illegal and arbitrary as it failed to satisfy the test of reasonableness and public interest. The Hon'ble the Supreme Court also found that before allotting the plot of a different identity and larger in area, no advertisement was issued and the public was not permitted to participate. The stand taken by the State that the same should be considered in pursuance of the advertisement already issued as the State had right to change the location and size of the plot, was rejected.

13. Hon'ble the Supreme Court further held that in terms of the norms laid down by 'ICSE' for recognition/affiliation, the school should be run by a registered society/trust for educational purposes, which is not run for profit. The society therein, namely, Ganguly Education and Welfare Society, which is respondent No.10 in the present petition, was not found to be a public trust as five of the members of the society were found to be family members staying at one address and one was the close relation and the seventh was the chartered accountant. It was further observed that the allottee may be a well-known sportsman but did not claim any expertise as an educationist. His contribution to the sports for the country was appreciated but the claims of the parties after coming to the Court for any inter-se dispute, needs to be examined on merits.

14. A perusal of the Land Allotment Policy dated December 26, 2012 produced in Court shows that the object was to bring uniformity and reduce discretion. Transparency in decision making process while dealing with the public assets is another object. The policy is meant to

be applicable for allotment of land and other assets of the Government and all its parastatals. Clause (iv) of the policy provides that the land meant for commercial use shall invariably be auctioned after adequate publicity. Land for educational institutions will be considered as a commercial use. Clause (vii) of the policy provides that the project for private educational institutions are deemed to be commercial ventures except where these are set up by the public charitable trusts with no profit motive and in existence for at least last five years. In such cases also, the allotments have to be made in a transparent manner. In the provisional Letter of Intent (LOI) issued to the allottee it is specifically mentioned that all statutory clearances/permissions are to be obtained by the allottee within definite time frame.

15. Clause (xiv) of the policy on which reliance was placed by the learned Counsel for the respondents, provides that under special circumstances, the Government may with an intention to promote and protect specific types of activities or to promote any emerging area of development activities or to reduce imbalances in any backward region or for any strategic reason especially beneficial to the the State, may with the approval of the State Cabinet, relax any or some of the conditions laid down in the Land Allotment Policy. The sponsoring departments are required to prepare Cabinet note indicating the relief with justification.

16. In our opinion, the aforesaid clause (xiv) of the Land Allotment Policy does not come to the rescue of the respondents and will not save the illegal allotment made in favour of respondent Nos. 9 and 10, which was an arbitrary exercise of power on the face of it. None of the pre-conditions as laid down in the aforesaid clause to

enable the State Cabinet to relax any of the conditions of the policy are applicable in the case in hand. The procedure as provided therein has not been followed.

17. In the case in hand what is evident on record is that vide judgment dated December 26, 2011 the Hon'ble the Supreme Court in the case of the respondent Nos. 9 and 10 had set aside the allotment of plot earlier made, while adversely commenting on the conduct of the State and its instrumentalities in **Humanity and another's** case (supra). What has been placed on record is that the HIDCO issued a tender notice on December 08, 2011 for sale of plots of different categories. It included plot for educational institutions as well. There is nothing on record to suggest that the respondent No. 9 or 10 made any application for this purpose.

18. As is evident from the previous litigation, the respondent No. 9 had good access to the corridors of power, which is writ large from the facts of the case. He submitted a request to the Chief Minister of the State vide letter dated July 09, 2012 requesting for allotment of a plot of 2.5 acres for building a school. Nowhere in the communication it is said that the plot is being applied for to be allotted to any charitable institution. Rather from the contents of the letter it is evident that it was meant to be used for plain and simple commercial venture. The letter states that the applicant had rich experience of travelling worldwide while representing the country in cricket. He has seen various institutions around the world and wants to set up a world level educational institution where studies and sports will be together. Expertise from Oxford will be taken to enable him to create such infrastructure in the State, which will be of a special kind in the city.

As he could not find suitable place, request was made for allotment so that his long cherished dream could be fulfilled.

19. Immediate action was taken on his request. The matter was placed in the meeting of the State Cabinet held on February 05, 2013 and approved. It was followed by a meeting of the HIDCO held on February 09, 2013. Decision was taken to allot 2 acres of plot in favour of Sourav Ganguly. The subject was shown as allotment of land for setting up of a 10+2 school as per 'ICSE' norms. How the purpose for allotment was considered by HIDCO is not borne out from the record as Sourav Ganguly, in his request to the Chief Minister, did not mention about the opening of a 10+2 school as per 'ICSE' norms. As if Sourav Ganguly was in a position to dictate terms, HIDCO requested him to apprise the corporation as to whether he wants allotment of a plot in his own name or in the name of any trust. It shows that the bonafides were not examined before taking up the matter either by the State Cabinet or by the Board of Directors of HIDCO. They with closed eyes had decided to allot a plot as if it was not a State property but a private limited company which was permitted to deal with its property, as per its own wish without following due process of law.

20. It is important to note that before the matter was taken up by the State Cabinet to consider the request of respondent No. 9 for allotment of plot on February 05, 2013, the Land Allotment Policy had already been notified by the Government, which clearly provides that the land for commercial use shall always be disposed of by way of public auction. There is no good reason available on record in the present case as to why the aforesaid Land Allotment Policy was

violated in the case in hand. There is another communication on record from HIDCO dated September 27, 2013 to the respondent No. 9/Sourav Ganguly. It makes an interesting reading as if State property was to go for a charity and that too for a commercial venture. It shows that initially the plot was allotted at a lease premium of ₹10.98 crores. Thereafter some request was made by respondent No. 9 for reduction of the premium. The matter was reviewed by the Cabinet. In its meeting held on May 27, 2013, reduced rate concessional premium of ₹5.27 crores was approved. That means the premium was reduced by more than 50% for a commercial plot of 2 acres located in prime newly developed area. The letter further suggests that there was a request made by the respondent No. 9 for change of the location of plot as the plot allotted to him was not suitable for setting up of school. The matter was considered in the meeting of the State Cabinet on September 09, 2013. The location of the plot was also changed though the size remained the same. The lease premium was fixed at ₹5,90,30,720/-.

21. The aforesaid facts clearly established that the respondent No. 9 was in a position to dictate his terms, as if it was not a case where State was dealing with its property, where fair and transparent procedure was required to be followed. Rather it was a case in which the respondent No. 9 was able to play with the system. It was not for the first time that he was able to do it. This time also plot was allotted to him without any advertisement. If seen in the light of the facts available from the earlier litigation between the parties, whereby he was initially allotted a plot measuring 48 cottahs but on his request, another plot measuring 62 cottahs was allotted as the respondent No. 9

found that earlier allotment was not sufficient for him to set up the school. Both without issuing any advertisement. Such an action of the government or its instrumentalities does not inspire confidence of the people. They also try to use unfair means to take similar benefits knowing well that in case the law can be broken for one person, the same system can be followed for the others as well.

22. Even though plot was allotted to the respondent No. 9 and 10 on a changed location vide letter of offer dated September 27, 2013 and subsequent thereto even a lease deed was also executed on March 13, 2014 but the undisputed fact which remains on record is that no steps were taken by the respondent No. 9 and 10 to execute the project as if the idea was only to grab a plot at throwaway prices.

23. As per Clause A(iv) of the lease deed, it is provided that the lessee is to commence construction within 6 (six) months from the date of delivery of possession and complete the same and fully commission the proposed project within a period of 36 (thirty six) months. The time is stated to be essence of the contract. However, it further provides that time can be extended on payment of such fee as may be prescribed. In case of failure, the lease was to be cancelled. Despite non-execution of the project, which in fact was a non-starter till surrender of the plot by the respondent Nos. 9 and 10 in August, 2020, the HIDCO did not take any action against the respondent Nos. 9 and 10 for cancellation of lease as they had failed to comply with the terms thereof. There is nothing on record to suggest that any application was filed by him for extension of time for completion of the project. The benevolence of the State and the persons in power to respondent No. 9 and 10 was a continuing process. Actually his

application for surrender of plot was accepted. Though he had violated the terms of allotment, which could entail cancellation of the lease but as admitted by learned Counsel for the HIDCO and respondent No. 9 and 10, the lease premium was refunded to him after reducing a paltry sum of annual lease rental which was merely .25% of the lease premium per annum.

24. Issue regarding allotment of plots in totally illegal manner was subject matter of consideration before this Court time and again. In **Gunendra Chandra Dey Vs. The State of West Bengal and Others, (1996) 1 Cal LJ 541**, the issue was allotment of plots in the East Calcutta Area Development Project, discretionary allotment was made at whims and fancies of the Vice-Chairman of the Calcutta Metropolitan Development Authority. This Court commented upon the arbitrary exercise of power by the Vice-Chairman. As a discretion with the Government was not found to be unlimited, the relevant paragraphs thereof are extracted below:-

“11. The Vice-chairman therefore, has an unbridled freedom to allot any plot as the fancy might take him to such person without any form of accountability and at his personal whim. Such an arbitrary exercise of power by a Government Authority cannot be sustained at all.

12. “The lands under the control of the Government cannot be dealt with at the pleasure of the single individual or indeed as a Government of the whole. They are not in the position of a private giver.” The discretion of the Government is not unlimited in that the Government cannot give or withhold largess in its arbitrary discretion or at its sweet will. It is incumbent to the Government therefore, to frame rational, relevant and non-discriminatory standards or norms according to which it has to exercise its power or

discretion and without which the action of the Government is liable to be struck down. (1) *Ramana v. International Airports Authority of India*, (1979) 3 SCC 489 : AIR 1979 SC 1628; (2) *Narendra Kumar v. Union of India*, 1990 Supp SCC 440 : AIR 1989 SC 2138 : 1990 Supp SCC 440 : AIR 1989 SC 2138 para 64.

13. In the absence of any objective criteria, the exercise of discretion by the Vice-chairman, CMDA in picking and choosing allottees cannot be sustained.”

25. Similar issue was considered by this Court in **Tarak Singh and others Vs. Jyoti Basu and another**, AIR 1999 Cal 354, where arbitrary allotment of plots in Salt Lake City by the Minister-in-Charge at his own whims and fancies, was the subject matter of dispute. The plots in that case were also allotted without any advertisement. In this case as well, the then Chief Minister had thought that the public property was his own private property and he could allot the same to anyone at his whims and fancies. Relevant paragraphs from the judgment are extracted below:

“71. In view of this I am to state that this Court has not been able to find any reasons given by the Chief Minister in allotting plots in favour of the persons. I am not quashing the names of the said allottees or the plots already allotted to them since Mr. Ghosh appearing on behalf of the petitioner has conceded prayer (b) of the writ petition and furthermore since the said allottees have not been made a party the application must fail on that ground alone, although I do not have any hesitation to hold that such allotments are without any reasons and has not been done as a reasonable man ought to have exercised his discretion on the given facts.

72. In my opinion, the discretion should be exercised by the Chief Minister after giving reasons and the advertisement must be issued in the newspapers asking application from the persons who are coming within the same category for allotment of plots in exercise of his such discretion.” (emphasis supplied)

26. The aforesaid judgment of the learned Single Judge was the subject matter of consideration before Hon’ble the Supreme Court in **Tarak Singh and another Vs. Jyoti Basu and others, (2005) 1 SCC 201**. Allotment of plot in favour of a Judge of this Court by the then Chief Minister was quashed. As the learned Single Judge had not quashed the allotment, the allottee being not a party before the Court, an application was filed before the Hon’ble the Supreme Court to implead Justice B.P. Banerjee (Retd.) as party respondent. The same was allowed and with strong observations made against the allotments made by the Chief Minister from his discretionary quota, after hearing the learned Counsel for Justice B.P. Banerjee (Retd.), the Hon’ble the Supreme Court had set aside the allotment of plot in his favour.

“24. In the backdrop of the facts and circumstances, as recited above, we are of the view that the conduct of the learned Judge is beyond condonable limits. We are aware that the order, we propose to pass, no doubt is painful, but we have to perform a painful duty to instil public confidence in the judiciary. It is a case where a private interest is pitted against the public interest. It is now a well-settled principle of law that in such cases the latter must prevail over the former. Consequently, the order dated 24-7-1987 passed by the Chief Minister and the formal allotment order dated 16-10-1987 allotting Plot No. FD-429 measuring 4 cottahs in Salt Lake City in favour of Respondent 24 Justice B.P. Banerjee are hereby quashed

and cancelled. The plot shall stand vested with the Government.”

27. As if the judgments delivered by the Hon’ble the Supreme Court are not binding in the State of West Bengal, the process of discretionary allotments continued even thereafter. The subsequent allotments were the subject matter of consideration before the Hon’ble Supreme Court in **Joydeep Mukharjee Vs. State of West Bengal and others, (2011) 2 SCC 706**. It was a writ petition directly filed before the Hon’ble the Supreme Court. In the aforesaid judgment, the Hon’ble the Supreme Court had refused to reopen the issue regarding discretionary allotment of plots by the then Chief Minister which had already been settled by the judgments of either this Court or the Hon’ble the Supreme Court. However, an affidavit filed by the State was taken note of which stated that the State Government had taken a conscious decision not to make further allotments under the discretionary quota for the left out plots. Relevant paragraphs from there are extracted below:

“18. This affidavit further states as under:

“Subsequently, on 7-12-1999 four orders were issued with regard to allotment of residential plots, non-residential plots for educational institutions and for allotment of plots for cultural, institutional, industrial, commercial, etc. purposes at Salt Lake. All these notifications required advertisement in newspapers and invitation of application. *But what is significant is that no guidelines had in fact been framed for allotment of plots from the discretionary quota of the Chief Minister, as a result of which all the 14 plots belonging to the discretionary quota, which were in existence in February 1999, still continue to*

remain unallotted. As a result, these 14 plots will no more be treated as part of the discretionary quota.”

(emphasis supplied by us)

19. From the above specific averments made in the affidavit, it is clear that there are very few plots presently left for allotment under the discretionary quota. The State Government has taken a conscious decision not to make further allotments under the discretionary quota even qua those plots.

28. The issue regarding discretionary allotment of plots by the Government was considered by the Hon'ble the Supreme Court in **Akhil Bharatiya Upbhokta Congress Vs. State of Madhya Pradesh and others, (2011) 5 SCC 29**. The Court was called upon to consider allotment of a plot without issuing advertisement or adopting a procedure consistent with the doctrine of equality so as to enable other similar organizations/institutions to participate in the process of allotment. It was opined thereunder that the State and/or its agencies/instrumentalities cannot give largesse to any person according to the sweet will and whims of the political entities. Transparent method is to be followed in terms of a well defined policy. There cannot be any policy for allotment of any plot on an application made by an individual without issuing any advertisement. The State can allot plots to the institutions engaged in education or other activities except by way of auction. Once a piece of land is identified for the purpose, the exercise of allotment must be done in a manner consistent with the doctrine of equality. The same can be after issuing advertisement and allowing all eligible candidates to participate in the process. Finally, allotment of plot in favour of the

allottee therein was quashed. The relevant paragraphs thereof are extracted below:

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

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 de hors an 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 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.

68. The allotment of land by the State or its agencies/instrumentalities to a body/organisation/institution which carry the tag of caste, community or religion is not only contrary to the idea of secular democratic republic but is also fraught with grave danger of dividing the society on caste or communal lines. The allotment of land to such bodies/organisations/institutions on political considerations or by way of favouritism and/or nepotism or with a view to nurture the vote bank for future is constitutionally impermissible.”

29. As if the law laid down by the Hon’ble the Supreme Court or this Court in any judgment delivered is relevant only for the case in which the same was delivered, the process of applying the pick and choose policy and making allotments at the whims and fancies of the

persons in power continued in the State. It was with reference to allotment of plot to none else than the respondent No. 9 herein earlier, in totally arbitrary manner. The same was subject matter of consideration before this Court. The writ petition was dismissed. However, the Hon'ble the Supreme Court set aside the allotment, opining the same to be totally illegal. [Judgment in Akhil Bharatiya Upbhokta Congress' Case (supra) was relied upon.] Relevant paragraphs thereof are extracted below:

“45. 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.

46. In coming to the said conclusion, the Division Bench relied on two decisions of the Supreme Court rendered in *Sachidanand Pandey v. State of W.B.* [(1987) 2 SCC 295] and *Kasturi Lal* [(1980) 4 SCC 1] . This Court, however, finds that those two cases stand on completely different footing.

47. First of all, in the instant case, the Government initially issued an advertisement for the 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 the Calcutta High Court, in para 5 (p. 6) and para 21 (p. 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.

48. 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 the 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.

49. 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.

50. Neither in *Sachidanand Pandey* [(1987) 2 SCC 295] nor in *Kasturi Lal* [(1980) 4 SCC 1] any process of advertisement was ever initiated. In *Sachidanand Pandey* [(1987) 2 SCC 295] 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.

51. 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* [(1987) 2 SCC 295] .

52. In *Kasturi Lal* [(1980) 4 SCC 1] 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* [(1980) 4 SCC 1].

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 1-4-2009, pursuant to such allotment stands quashed. The allottee must, within two weeks from date, hand over the peaceful and vacant possession of Plot No. CA-222 measuring 63.04 kathas in Sector V, Salt Lake City (Bidhannagar), Kolkata to the department concerned 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.”

30. At the time of hearing it was pointed out by the learned counsel appeared for the respondent no 9 and 10 that allotment of plot in question had been surrendered but still we were called upon to deal with the issues on merits as well and the conduct of the State and WBHIDCO. It is a case in which the rules, regulations and the law laid down by Hon'ble the Supreme Court and this Court has been given complete go-bye at the whims and fancies of the persons in charge.

31. The country always stands by the sportspersons, especially who represent country in international events. It is also a fact that Sourav Ganguly has brought laurels for the country in cricket. But when it comes to law, our Constitutional Scheme is that all are equal and no one can claim to be exclusive, above the law and seek benefits from the State, especially when question arises for allotment of plots for commercial ventures. No one ever raises a finger when the Government showers awards and benefits to the sportspersons, when they win any tournament, but this system is not to continue in perpetuity. If Sourav Ganguly is interested in development of sports especially cricket, in which he has many achievements to his credit, there may be already many State sports establishments, he can associate himself with them and motivate budding cricketers.

32. Nothing was placed before the Court as regards any rules, regulations which permit the WBHIDCO to accept surrender of the plot and refund the amount deposited but still the procedure was followed.

There is need to have defined policy to guide on all issues so that there is no arbitrary exercise of power by applying pick and choose formula.

33. In view of our aforesaid discussions, we need not quash the allotment of plot as the same stands already surrendered, however, for the conduct of the State in generating litigation by arbitrary exercise of power which runs totally contrary to the law laid down by the Hon'ble the Supreme Court, we impose a cost of ₹50,000/- each on State and HIDCO. Token Cost of ₹10,000/- is also imposed on the respondent No. 9 and 10 for the reason that even they should have acted in accordance with law specially considering the earlier judgment whereby arbitrary allotment of plot in their favour was set aside by the Hon'ble the Supreme Court. The amount shall be deposited with the West Bengal State Legal Services Authority within four weeks from the date of receipt of the copy of the order. The State Government and HIDCO will be at liberty to recover the cost from the respective persons in their employment, who were responsible for the irregular allotment of the concerned plot of land in favour of the Respondent No. 9.

34. Before parting with the judgment, we may record that in case arbitrary of power still continues, the persons exercising such powers, may be held personally responsible.

35. Copy of the order to be sent to the Member Secretary of the West Bengal Legal Services Authority. In case amount of cost is not deposited, he shall be at liberty to point out the same to the Registrar General of this Court. The matter may be listed before this Court for direction on November 15, 2021. However, in case the cost is deposited, the file be consigned to the record room.

Arijit Banerjee, J.:-

36. I have had the privilege and advantage of reading the detailed and erudite judgment of the Hon'ble the Chief Justice (Acting). While agreeing with His Lordship in principle, I take the liberty of writing a very short concurring judgment to emphasise the point made by His Lordship.

37. I entirely and whole-heartedly agree with the conclusion reached by His Lordship that distribution of State largesse must be undertaken in a completely transparent manner and strictly adhering to the applicable rules and regulations, if any.

38. Public Property must be utilised in a manner that would reap maximum benefit for the society at large. If the State intends to allot land to private parties for the purpose of being used commercially, against payment of lease rent/licence fee to the Government, the same has to be done openly by a tender process, inviting offers from interested parties and accepting the highest offer subject to such offer being in accordance with the law of the land.

39. In the instant case, the plot of land that was allotted to the Respondent No. 9 was so done in a less than transparent manner. The procedure that was adopted would not inspire the confidence of the members of the public. The lease rent was also reduced by almost 50% for apparently no convincing reason.

40. However, since the concerned plot of land has been returned by the Respondent No. 9 to the State Government, the issue of quashing the transaction does not survive. But it is imperative that in all future cases of allotment of land by the State Government to private parties for commercial exploitation, due process of law be followed by the State Government or the concerned Statutory or

Public Authority. The State holds landed property in Trust and for the ultimate benefit of the citizens of the State in general and no one party can be permitted to reap special benefit from such property at the expense of the interest of the people at large. It is expected that the official respondents shall bear this salutary principle in mind while entering into any commercial transaction concerning the property of the State.

(RAJESH BINDAL)
CHIEF JUSTICE (ACTING)

(ARIJIT BANERJEE)
JUDGE

Kolkata
27/09/2021

PA(SG/RB/SS)