

THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 03.07.2008

+ **WP(C) No.8070-71/2005**

EAST INDIA HOTELS LIMITED & ANOTHER ...Petitioners

- versus -

UNION OF INDIA & ANOTHER

...Respondents

Advocates who appeared in this case:

For the Petitioners : Mr Dushyant Dave, Sr Advocate with Mr Arun Bhardwaj,
Sr Advocate and Mr Ravi Sikri

For the Respondents : Mr P.P. Malhotra, ASG with Mr Gaurav Duggal

CORAM:-

HON'BLE MR JUSTICE BADAR DURREZ AHMED

1. Whether the Reporters of local papers may be allowed Yes
to see the judgment ?
2. To be referred to the Reporter or not ? Yes
3. Whether the judgment should be reported in Digest ? Yes

BADAR DURREZ AHMED, J

1. This writ petition is directed against the cancellation order / letter dated 11.04.2005 issued by the Deputy Land & Development Officer on behalf of the Government of India whereby the allotment of 2.762 acres of land situate between Oberoi Hotel and the Blind Relief Association on Lal Bahadur Shastri Marg for construction of a hotel by virtue of the allotment letter No.L-III/8/13(16)/82-187 dated 27.06.1995 was cancelled and withdrawn. The petitioners also seek a writ of mandamus directing the respondents to execute the licence in favour of the petitioner No.1 in respect of the said plot of land in terms of the allotment letter dated 27.06.1995 and to issue necessary clearances and grant a No Objection Certificate in favour of the petitioner No.1 for construction of a budget hotel on the said land.

2. On 18.06.1983, the Government of India conveyed the sanction of the President of India for the allotment of the said land to Delhi Tourism & Transportation Development Corporation (DTTDC) for the setting up of a budget hotel for catering to the requirement of tourists belonging to the middle and low income groups, on certain terms and conditions. Conditions 7 and 8 are relevant and they read as under:-

“7. The allotment is made initially on licence basis and the DTTDC should enter into a Memorandum of Agreement with the Government for completion of construction within the stipulated period of 24 calendar months from the date of entering upon the land or authorising to enter upon the land and according to the standard prescribed by the Ministry of Tourism. After satisfactory completion of construction, approval of tariff by the Deptt. of Tourism and satisfactory fulfillment of other conditions of the Memorandum of Agreement the lease hold rights will be granted. There should be a provision both in the Memorandum of Agreement and the lease deed to be entered into subsequently for revocation of licence / cancellation of lease in case tariff change is more than what has been approved by the Deptt. of Tourism.

8. The DTTDC shall not sub lease the land in favour of any other party. They can, however, make such arrangements for constructing land running the hotel as will not involve sub-leasing of the plot.”

3. On 24.02.1992, an advertisement was taken out in the Times of India by the Department of Tourism, Government of India. The said advertisement was as under:-

“DEPARTMENT OF TOURISM
GOVERNMENT OF INDIA

INVEST IN NEW HOTEL AT NEW DELHI

Offers are invited from hotel chains for setting up and running of a new hotel at a prime site

measuring approximately 11.320 sq. mts. in New Delhi.
The hotel chain making offer should have:

- a minimum of 1,000 rooms and 7 years' experience in hoteliering with a paid up share capital of Rs. 5 Crores or equivalent and the total turnover from hotel operations should be a minimum of Rs.10 crores or equivalent.

- experience in running of 3 star category hotels or equivalent and the operations of such hotels should be at least at two different locations in India or abroad;

- a sound financial background and capacity to provide a bank guarantee of Rs. One crore or equivalent in the event of acceptance of the offer.

The offer should be accompanied by details of concept, design size, specifications and other details of the project and the facilities proposed to be developed, means of financing and schedule for completion.

For further details and offer papers contact:

Shri Tarlochan Singh
Managing Director
Delhi Tourism & Transportation
Development Corporation
18-A, DDA Shopping-cum-Office Complex
Defence Colony, New Delhi-110024.
Tel (011) 690784, 4624354, Fax (011) 3313637
Last Date for receipt of offer in the prescribed form:
31st March, 1992.”

As indicated in the advertisement, the last date for receipt of offers in the prescribed form was 31.03.1992. The petitioner No.1 submitted its offer on 23.03.1992. It is pertinent to note that the advertisement invited offers from hotel chains and that it was a global offer.

4. On 08.05.1992, the Delhi Tourism and Transport Development Corporation Limited (DTTDC) informed the petitioner No.1 that its offer

dated 23.03.1992 for building and running a three star hotel on licence basis for a period of 33 years on the said plot of land had been accepted subject to certain conditions mentioned in the said letter. Thereafter, on 24.07.1992, a licence agreement was entered into by and between DTTDC and the petitioner No.1, which was to be the “licencee” which expression also included its successors and assigns and an equity joint venture company promoted by the licensee, namely, Oberoi Palaces and Resorts International Limited which was referred to as the “sub-licensee”. The recitals, *inter alia*, indicated that the “licencee” was desirous of being granted a licence for using the said plot of land for facilitating and securing the construction, setting up, commissioning and management of a three star hotel to be operated under the brand name of “NOVOTEL” and of the requisite international standards. By virtue of clause 1 of the agreement, DTTDC agreed to grant to the petitioner No.1 a licence in respect of the said plot of land for a period of 33 years for facilitating the construction, commissioning and running of a three star hotel by the said sub-licensee and for no other purpose whatsoever. The annual licence fee was to be a percentage of the gross turnover or an annual minimum guarantee whichever was higher as shown in the table given in Schedule II to the said agreement. The total of the fixed annual rentals was to be Rs 720.50 crores for the entire duration of the licence period. It could be more if the gross turnover was higher.

5. On 28.07.1992, possession of the said plot of land was handed over to the petitioner No.1 by DTTDC. However, on 01.02.1993, the Government of India, through the Land and Development Officer, sent a

letter to the Managing Director, DTTDC cancelling the allotment of the said plot of land which was earlier made by virtue of the said letter dated 18.06.1983. It was, *inter alia*, stated in the cancellation letter dated 01.02.1993 that the land was allotted to DTTDC at highly concessional rates without recovery of premium for setting up a budget hotel charging low tariff. It was further alleged that the budget hotel had not been constructed and commissioned and that it had come to the notice that DTTDC had entered into an agreement with East India Hotels Limited (the petitioner No.1) to run the hotel which was against the terms and conditions of the allotment offered on 18.06.1983.

6. The petitioner No.1 represented to the Government of India against the said decision to cancel the allotment. The Government of India, by a letter dated 04.06.1993, through the Deputy Land and Development Officer, communicated to the petitioner No.1 that the allotment of land had been made to DTTDC and that the petitioner No.1 had no *locus standi* and as such its representation could not be entertained. However, the decision to cancel the allotment was reviewed by the Government of India. This is apparent from the communication sent by the Under Secretary, Ministry of Urban Affairs and Employment, Government of India to the Land and Development Officer, New Delhi on 07.06.1995. The said communication indicates that several options were given to DTTDC to resolve the matter of restoring the allotment of land in its favour. But, since no response was received from DTTDC, it was decided that no further offer would be made to it. It was, however, stated in the said letter that the matter had been

reviewed by the Government and sanction of the President was obtained for the utilisation of the land by the petitioner No.1 as per the terms and conditions enumerated in the licence agreement dated 24.07.1992 which shall be suitably modified / endorsed and executed for compliance by the petitioner No.1 with the Land & Development Officer on usual terms and conditions including those mentioned in the said letter. The result of this communication was that the allotment in favour of the DTTDC stood cancelled and the Government of India stepped into the shoes of DTTDC insofar as the relationship with the petitioner No.1 was concerned. The effect was that, with modifications as indicated in the said letter, the original licence in favour of the petitioner No.1 was restored with the Government of India taking the place of DTTDC. It was also noted in the said communication that the same issued with the concurrence of the Finance Division vide their D.O. 757-F dated 06.06.1995.

7. Thereafter, on 27.06.1995, the Government of India, through the Land & Development Officer, sent a letter to the petitioner No.1 conveying the sanction of the President for the construction and commissioning of the hotel by the East India Hotels Limited / Centurion Hotels Limited on the said plot of land subject to compliance of the terms and conditions as enumerated in the licence agreement dated 24.07.1992 on the usual terms and conditions and including those referred to in the said letter of 27.06.1995. The background for the issuance of the said letter, as indicated therein, is of material significance and the same reads as under:-

“The above cited plot was allotted to the DTTDC which in turn in pursuance of the licence agreement dated

24.7.92 evolved arrangement for commissioning of the hotel through East India Hotels Ltd. / Centurion Hotels Ltd. on agreed licence fee as mentioned in Annexure-II to the licence agreement. As this arrangement was not in consonance with the terms and conditions on which allotment of land was made to DTTDC, the entire position was reviewed by the Govt. and various options made available to the DTTDC to regularise the aforesaid arrangement. However, on their failure to do so, it has been decided to honour the licence agreement already executed between the DTTDC and the hotelier.”

The letter itself indicates that the petitioner had paid an amount of Rs 1,72,60,275/- to DTTDC in pursuance of the licence agreement as also a further amount of Rs 1,63,14,140/- and the only amount due as on that date was a sum of Rs 31/-, which was also paid.

8. However, the Government did nothing thereafter. The petitioners were constrained to file a writ petition No.3016/2000 in this court seeking a mandamus against the respondents to act pursuant to the allotment letter dated 27.06.1995. The said writ petition was admitted and by way of interim relief the respondents were restrained from dispossessing the petitioners from the said plot of land. By an order dated 24.01.2005, this Court directed the respondents to take a decision within six weeks according to the rights and contentions of the parties. The decision was taken and was communicated by the impugned letter dated 11.04.2005. The said letter was issued by the Deputy Land & Development Officer, Ministry of Urban Development, Government of India and the same reads as under:-

“Government of India
Ministry of Urban Development
Land & Development Office
Nirman Bhawan: New Delhi

No.L-III/8/13(16)/82/148

Dated: 11.4.2005

To,

The Managing Director,
East India Hotels Ltd.,
7, Sham Nath Marg,
Delhi-110054.

Sub: Cancellation of allotment of 2.762 acres of land
between the Oberoi & Blind Relief Association on
Lal Bahadur Shastri Marg for construction of Hotel.

Sir,

I am directed to refer to this office letter No.L-III/8/13(16)/82 dated 27.6.95 relating to allotment of land for construction of hotel and to say that a plot of land measuring 2.762 acres was allotted to Delhi Tourism & Transport Development Corporation (DTTDC) in May, 1993 for setting up a Budget Hotel. Instead of constructing the hotel in July, 1994, DTTDC gave possession of the land to East India Hotels and Oberoi Palaces and Resorts International on licence basis for a period of 33 years without obtaining prior permission from the Ministry of Urban Development and in violation of the terms of allotment. DTTDC had no right to grant such licence for this land to any other agency including the East India Hotels Ltd.

2. In view of the violation of the allotment conditions by the DTTDC, the allotment of the land in their favour was cancelled by the Government. However, after cancellation of the allotment the same plot was allotted in favour of the same agency i.e., East India Hotels on 7.6.1995 under similar terms and conditions. The matter was further reviewed and it was noted that the allotment made to East India Hotels in June, 1995 was based on improprieties as it was made without following proper procedure and without resorting to a transparent and open procedure like competitive bidding or auction. It has been viewed that the interest of the Union of India has not been protected in the manner in which it was allotted to East India Hotels.

3. In view of the above, the matter has been considered by the Competent authority and it has been decided to cancel the allotment letter No.L-III/8/13(16)/82 dated 27.6.1995. Accordingly, the allotment order is hereby cancelled and withdrawn.

4. However, the possession of the land will be taken over from you only after obtaining the permission from the Hon'ble Court in the matter CWP No.3016/2000 with CM No.4613/2000 after the Hon'ble High Court vacates its interim order dated 26.5.2000 passed in CM No.4613/2000.

5. The amount deposited by you with the Land & Development Office on account of allotment of land will be refunded to you separately.

6. The subject land will be put to sale by public auction on its cancellation and subject to orders of the Hon'ble High Court of Delhi in WP No.3016/2000. You shall be free to participate in the sale of the aforesaid land through public auction.

Yours faithfully,

--sd--

(Jamna Dass)

Dy. Land & Development Officer”

9. Being aggrieved by the said cancellation letter dated 11.04.2005, the present writ petition has been filed by the petitioners. It is relevant to note that WP(C) 3016/2000 was withdrawn on 10.05.2005 with liberty to continue with the present writ petition.

10. On the basis of these facts, it has been contended by Mr Dushyant Dave, the learned senior counsel, who appeared on behalf of the petitioner, that the impugned cancellation letter dated 11.04.2005 is wholly arbitrary and without any basis. He also submitted that there was a concluded contract between the petitioner No.1 and the Government of India which is evidenced by the allotment letters dated 07.06.1995 and 27.06.1995. He submitted that the Government of India cannot resile from the same. Apart from this, the Government of India cannot also resile on

account of the principles of promissory estoppel and legitimate expectation.

He referred to the following three decisions:-

- i) **Gujarat State Financial Corporation v. Lotus Hotels Pvt. Ltd: 1983 (3) SCC 379** (Paras 12 and 13);
- ii) **Kollipara Sriramulu v. T. Aswathanarayana and Ors.: AIR 1968 SC 1028 = 1968 (3) SCR 387** (page 393);
- iii) **ABL International Ltd. and Anr. v. Export Credit Guarantee Corporation of India Ltd. and Ors.: 2004 (3) SCC 553** (para 27).

11. Mr P.P. Malhotra, the learned Additional Solicitor General who appeared on behalf of the respondents, submitted that the allotment on 18.06.1983 to DTTDC was for setting up a budget hotel and, as indicated in the allotment letter, it was for no other purpose whatsoever. DTTDC was not permitted to lease out the same. He submitted that as per condition No.5 of the allotment letter, DTTDC was itself to run / start a hotel. Condition No.7 stipulated that the construction ought to be completed within 24 months and then, only, the question of lease would arise. He submitted that there was no lease in favour of the DTTDC at any stage. For a period of 10 years after the allotment, DTTDC did nothing. He submitted that condition 8 of the allotment letter also stipulated that DTTDC shall not sub-let the land though it could make arrangements for constructing and running the hotel. He submitted that the allotment in favour of DTTDC was only a licence, as indicated in condition No.14. Mr Malhotra then submitted that the advertisement of 24.02.1992 was not issued by the Government but by DTTDC. He submitted that the very invitation to invest in a new hotel was contrary to condition No.5 contained in the allotment letter of 18.06.1983.

Because, under that condition, specific permission of the Government of India was required. He also submitted that the advertisement nowhere mentioned that the hotel was to be a budget hotel. According to him, the DTTDC had no right to issue any such advertisement. With regard to the acceptance of the offer by DTTDC on 08.05.1992, he submitted that DTTDC did not even have a lease in its favour and yet it went ahead and purported to grant a licence in favour of the petitioner No.1 for setting up a three star hotel and that too for a period of 33 years. With regard to the licence agreement between the petitioner and DTTDC and Oberoi Palaces & Resorts International Ltd which was executed on 24.07.1992, he submitted that it was DTTDC which was a licensee of the Government of India but it went and described itself as a licensor. The petitioner No.1 was described as a “licensee” and the Oberoi Palaces & Resorts Ltd was described as the “sub-licensee”. He then referred to the recitals which indicated that the licence was for use of the said plot by NOVOTEL. Referring to various clauses of the said agreement, he submitted that the same could not be entered into by DTTDC and was in complete violation of the allotment made by the Government of India in favour of DTTDC. He submitted that possession of the entire plot was handed over to the petitioner No.1 and DTTDC reserved only 250 sq. ft. area in the proposed building for itself.

12. Mr Malhotra also submitted that as per the Transaction of Business Rules, 1961 of the Government of India, grant of land / lease / licence required the concurrence of the Finance Ministry. He submitted that no concurrence of the Finance Ministry was given to such a transaction. He

submitted that the property in question could not have been handed over to the petitioner No.1 in the manner it was.

13. Mr Malhotra referred to the letter dated 01.02.1993 whereby the allotment in favour of DTTDC was cancelled. Mr Malhotra also referred to the allotment letters of 07.06.1995 and 27.06.1995 issued by the Government of India, Ministry of Urban Affairs, Land & Development Office. He then referred to the letter dated 01.07.1996 which was issued by the Government of India, Ministry of Urban Affairs and Employment to the Land & Development Officer informing the latter that it may go ahead with the execution of the licence agreement with the petitioner No.1 after suitably modifying the earlier licence agreement executed between DTTDC and the petitioner No.1. Mr Malhotra submitted that between 07.06.1995 and 27.06.1995, no approval from the Finance Ministry was obtained. Therefore, the allotment letter of 27.06.1995 was without any authority. He further submitted that the go-ahead given in the letter dated 01.07.1996 had also not been cleared by the Finance Ministry. In this context, he submitted that the Finance Ministry, not having cleared the allotment, “the whims” of the Ministry of Urban Affairs and Employment would have to bow down to public interest. He submitted that individual interest must yield to public interest and that prime land must get good money and must not be permitted to be allotted at low rates.

14. It was also contended by Mr Malhotra that the challenge in the present petition is to the letter dated 11.04.2005 whereby the allotment of

2.762 acres of land made to the petitioner No.1 on 27.06.1995 was cancelled. He submitted that the letter dated 11.04.2005 itself indicates that the reason for cancellation was that there were improprieties. The allotment was made without following the proper procedure and without resorting to a transparent and open procedure. He further submitted that the letter dated 07.06.1995 indicated that there would be a licence agreement executed in favour of the petitioner No.1 after suitably modifying the earlier licence agreement dated 24.07.1992. Since no such licence agreement was executed, the petitioner No.1 had no right.

15. Mr Malhotra then referred to the contents of the counter-affidavit filed on behalf of the respondents. He submitted that the piece of land was allotted to the petitioner No.1 on 17.02.1981 and as the petitioner No.1 had to fulfill the conditions of the letter of allotment relating to the completion of the hotel in time for the Asian Games, this allotment was cancelled in consultation with the Ministry of Law and the Ministry of Finance. It is further stated in the counter-affidavit that on the issue of utilisation of the land, Ministry of Finance had advised that this plot should be disposed to a private party for a hotel etc., only after an open auction to ensure a free and fair transaction. In the alternative, it was suggested by the Ministry of Finance that this plot could be used by the Government directly. It is in this background that, based on a request from DTTDC, this plot was offered for allotment to them (DTTDC) for construction of a budget hotel, on specified terms and conditions in consultation with the Ministry of Finance. Reading the counter-affidavit further, Mr Malhotra submitted that the land was

allotted at highly concessional rates which required an annual payment @ 6 ½% of the notional premium calculated on the residential rates of Rs 2,000/- per sq. mtr. and thus no premium was charged and only the licence fee at the aforesaid concessional rates was levied. The allotment was subject to the terms and conditions contained in the letter of allotment dated 18.06.1983. The relevant conditions have already been indicated above.

16. It is further stated in the counter-affidavit that during the period 1984-1992, the DTTDC did not set up the budget hotel as per the terms of the allotment and it also failed to pay the licence fee. On the contrary, in 1992, DTTDC, without obtaining any permission from the Government of India and in total violation of the conditions of the allotment, invited tenders from private parties for setting up a 3-5 Star Hotel on this plot of land. It was stated that this was in violation of the terms and conditions of the allotment which provided for the setting up of a budget hotel by DTTDC only. It was further stated that the Government of India requested DTTDC to immediately stop these activities in violation of the allotment terms as well as to pay the arrears of licence fee. It was submitted by Mr Malhotra, on the basis of statements made in the counter-affidavit, that there was no justification for DTTDC to pass on the benefits / advantages of highly concessional licence fee to a third party. It was also submitted that DTTDC was not permitted to sub-lease the land. Consequently, the allotment and agreement with the petitioner No.1 was found to be in gross violation of the conditions of the allotment letter and the allotment in favour of DTTDC was cancelled by the said letter dated 01.02.1993.

17. It was further contended that the DTTDC represented against the cancellation. As per the standard instructions of the Government, before taking any final decision in favour of a private party, in such a matter, the case ought to have been shown to the Ministry of Finance. It is stated in the counter-affidavit that during an earlier consultation with the Ministry of Finance, the said Ministry had given its opinion that the plot of land should be disposed of by open auction to ensure a free and fair transaction. It was further submitted that these procedures were not adhered to while issuing the letter of allotment to the petitioner on 27.06.1995. The earlier licence agreement between the petitioner No.1 and DTTDC were adopted and the fee payable by the petitioner No.1 to the L&DO were kept the same. It was reiterated that despite the allotment letter of 27.06.1995, no licence deed was drawn up nor was a formal contract entered into between the Government of India and the petitioner No.1.

18. Referring to the counter-affidavit, Mr Malhotra submitted that in the course of the review of the case, the Secretary (Urban Development) felt that the transaction would result in heavy financial losses, apart from the larger issue that the Government would enter into such a commercial deal with a private party, without following the route of competitive bidding and without consulting the Ministry of Law on the terms and conditions of such a contract. It was submitted that in the course of re-examination of the allotment, the case was referred to the Prime Minister's Office, which, in turn, advised that the opinion of the Attorney General be sought. The

opinion of the Attorney General was received on 21.05.2000. But, before a final decision could be taken by the Government of India on the basis of the advice of the Attorney General, the petitioner had already filed the earlier writ petition where an order was passed restraining the Government of India from dispossessing the petitioner No.1 from the said plot. As indicated above, the High Court, in the said writ petition, had directed the Government to take a final decision in the matter within six weeks. The Government of India reviewed the matter in the light of the opinion of the Attorney General and had decided to cancel the allotment letter in favour of the petitioner No.1. Consequently, the impugned cancellation letter dated 11.04.2005 was issued. In sum and substance, the submission on behalf of the Government of India was that the allotment of land in favour of the petitioner No.1 in 1995 was *ab initio* irregular in the sense that the offer was made only to a single party in a manner which was not transparent and without undergoing the method of competitive bidding. It was also submitted that the requisite approvals / consultations with the Ministry of Finance and the Ministry of Law were not obtained before the allotment was made on 27.06.1995. Consequently, it was submitted that the public exchequer was going to suffer a heavy loss and the same would be against public interest. It was, therefore, submitted that the Government of India, by applying wisdom and keeping in mind the larger public interest, had cancelled the allotment. It was, therefore, contended that the said cancellation ought not to be interfered with.

19. Mr Malhotra placed reliance on the following decisions of the Supreme Court in support of his submissions with regard to legitimate expectations and promissory estoppel:-

- 1) ***Bannari Amman Sugars Limited v. Commercial Tax Officer and Others***: 2005 (1) SCC 625;
- 2) ***Hira Tikkoo v. Union Territory, Chandigarh & Others***: 2004 (6) SCC 765;
- 3) ***Sharma Transport Rep. by D.P. Sharma v. Government of Andhra Pradesh and Others***: 2002 (2) SCC 188.

The first decision in the case of ***Bannari Amman Sugars*** (*supra*) was relied upon for the proposition that an expectation could only be termed as legitimate if it was founded on or sanctioned by law. With reference to the decision in ***Hira Tikkoo*** (*supra*), Mr Malhotra submitted that public interest overrides private interest and the promise to which a public authority can be compelled to keep must be one which is in public interest and not contrary to it. The decision in ***Sharma Transport*** (*supra*) was referred to for the proposition that promissory estoppel must yield to equity if larger public interest so requires. It was, therefore, submitted by Mr Malhotra that the principles of promissory estoppel and legitimate expectation cannot be invoked for the asking. It must have the sanction of law and must be in the larger public interest. He submitted that the public interest in the present case lay in the cancellation of the allotment and, therefore, the impugned cancellation ought not to be set aside.

20. In rejoinder, Mr Dave submitted that the allotment of land to DTTDC on 18.06.1983, it is true, did not provide for the granting of any

sub-lease, but Condition No.8 clearly enabled DTTDC to make such arrangements for constructing and running the hotel as would not involve sub-leasing of the plot. In this context, he submitted that the advertisement issued on 24.02.1992 invited offers from hotel chains for setting up and running of a new hotel. According to Mr Dave, this did not run counter to the said Condition No.8. The licence agreement of 24.07.1992, by its name and by its contents, indicated that it was not a lease or a sub-lease and was merely a licence. There was no conferment of any right or interest in the land. This was also made clear by clauses 17 and 18 of the said licence agreement which read as under:-

“17. The Licensee / Sub-Licensee shall not further underlet, sublet, encumber, assign, alienate or otherwise transfer their rights and interest or part with possession of the land and the building thereon or any part thereof or share therein to any person, directly or indirectly without the previous written consent of the Licensor except as provided in clause 24 & 25 (twenty four & twenty five) of this agreement.

18. The Licensee has been granted a licence only to enter upon the piece of land to be made available by the Licensor for the purpose of facilitating setting up of a 3 (Three) Star Hotel as specified hereinabove and granting of such a Licence shall in no case confer, create any right or interest or demise in the said land in favour of the Licensee or the Sub-licensee nor shall this Licence imply an exclusion of the possession title, legal or otherwise or interest of the Licensor in the land licenced for the purpose of facilitating and securing the construction of hotel and that this Licence is understood by the parties in all respects to be in conformity with the rights and powers of the party of the first part in the matter of the grant of this Licence.

21. He submitted that the licence agreement of 24.07.1992 was entered into between DTTDC and the petitioner No.1 after global offers were invited, bids were submitted by various parties and the petitioner

No.1's bid was accepted after following a transparent process. Therefore, he submitted, it cannot be contended that the petitioner No.1 was granted the licence without following a proper procedure.

22. Mr Dave then referred to the counter-affidavit by the Government in the earlier writ petition CW 3016/2000 and in particular to paragraph 3 thereof where it is indicated that the Government had decided to allot the land to the petitioner after the allotment in favour of DTTDC had been cancelled. Mr Dave then referred to the letter of 07.06.1995 with regard to the allotment of land to the petitioner No.1. He referred to paragraph 3 of the said letter which categorically stated that:-

“Sanction of the President is conveyed to the utilisation of land by the East India Hotels Ltd., as per the terms and conditions enumerated in the licence agreement dated 24.7.92 which shall be suitably modified / endorsed and executed for compliance by the hotelier with the Land and Development Officer on usual terms and conditions which shall, *inter alia*, include the following:-”

He also drew the attention of this court to the last sentence contained in the said letter dated 07.06.1995 which reads as under:-

“This issues with the concurrence of Finance Division vide their D.O. No.757-F dated 6.6.1995.”

This letter of 07.06.1995 was followed by the said letter of 27.06.1995 which once again indicated that the sanction of the President had been taken. The exact words used were as under:-

“2. Accordingly, I am directed to convey the sanction of the President to the construction and commissioning of the hotel by the East India Hotels Ltd./Centurion Hotels Ltd. on the aforesaid plot of land subject to compliance of the terms and conditions as enumerated in the licence agreement dated 24.07.92 (copy

enclosed) on usual terms and conditions which shall inter-alia, include the following:- ...”

Therefore, it was contended by Mr Dave that it cannot be said that the allotment in favour of the petitioner No.1 was without sanction and without authority of law.

23. Mr Dave then requested this court to go through the Government files which were produced before this court. He wanted this court to examine the same inasmuch as his contention was that it was incorrect on the part of the respondents to state that the Finance Minister had not given his approval to the allotment made to the petitioner No.1. On examining the said files, I find that there is a note prepared on 17.07.1995 by Mr B.R. Dhiman (OSD) which indicates that a factual note for the perusal of the Prime Minister's Office had been sent and a reaction from the Prime Minister's Office was awaited. This is followed by another note of the same officer on 14.08.1985 saying that it is apparent that the Prime Minister had seen the comments of the Ministry of Urban Development and had desired that the Finance Minister may look into the entire matter. The note further indicates that a separate note had been addressed to the Private Secretary to the Finance Minister and that the reference from the Finance Minister was awaited. A further note of 25.08.1995 indicates that the reference was received from the Ministry of Finance and a note alongwith a D.O. letter had been sent for perusal of the Finance Minister on 24.08.1995. There is then a note of 06.03.1996 of the Joint Secretary and Financial Adviser (Girish Bhandari), *inter alia*, to the effect that the L&DO had allotted the

land directly to the petitioner No.1 for building and operating a Three Star hotel and that the petitioner No.1 had already paid a sum of Rs.3.35 crores as licence fee for the period upto 31.03.1996 which included an amount of Rs.1.63 crores paid to the L&DO upon the allotment of land to the hotel. It was further noted that the hotel had not been able to submit the building plan for sanction to the NDMC since the lease / licence agreement had not yet been signed. Significantly, it was indicated that when this position was brought to the notice of the Prime Minister's Office, they had advised that the matter may be placed before the Finance Minister. The issues connected with the above case had been apparently examined threadbare in the notes at pages 216 to 226 of the notes. The note concludes by stating that the restoration of land to DTTDC would not be in order. It was also observed that since the hotelier (the petitioner No.1) cannot go ahead with submission of building plans to the NDMC without the lease / licence agreement, it was requested that the matter be placed before the Finance Minister and his orders be obtained as intimated by the Prime Minister's Office. This is followed by a note dated 06.06.1996 by the Joint Director (PF. II), Ministry of Finance, Department of Expenditure, Plan Finance II Divn. The said note clearly conveyed that the matter had been examined in the Department of Expenditure and the Department agreed with the views of the Ministry of Urban Affairs and Employment that the allotment of land to the DTTDC had been cancelled as they had violated the terms and conditions of the lease agreement. The note also indicated that it had the approval of the Finance Minister. Finally, this is followed by the note dated 11.06.1996 of the same Mr B.R. Dhiman of the Ministry of Urban Development wherein it

is noted that the request made by the petitioner No.1 that in view of the cancellation of the allotment to DTTDC and in view of the request made by the petitioner No.1 that they are made to incur heavy losses financially due to non-execution of the licence deed, the L&DO may be informed to go ahead with the execution of the licence agreement as proposed earlier. It was noted that it must be ensured that the hotelier (the petitioner No.1) clears up-to-date dues on account of licence fee in pursuance of the provisions of the licence agreement earlier executed between the DTTDC and the hotelier vis-a-vis terms and conditions of the allotment letter.

24. It was contended by Mr Dave that consequent upon the aforesaid notings, the letter dated 01.07.1996 (Annexure P-9) was issued by the Ministry of Urban Affairs and Employment to the Land & Development Officer informing the latter that he may go ahead with the execution of the licence agreement after suitably modifying the licence agreement earlier executed between the DTTDC and the East India Hotels. In this background, Mr Dave submitted that the petitioner No.1 had been made the allotment on the basis of a global process. Offers were invited. The petitioner's bid was accepted and a concluded contract had resulted after a transparent procedure had been adopted. Throughout this process of inviting global offers and examining the bids which had been submitted, the Government of India never told DTTDC that it had no authority to do so. Surprisingly, on 01.02.1993 the Government of India decided to cancel the allotment to DTTDC on the ground that they had no authority to enter into a transaction with the petitioner No.1. He submitted that while cancelling the

allotment in favour of DTTDC, the Government of India decided to allot the land to the petitioner directly on the same terms. This decision was taken in 1993 and the Government of India communicated this decision on 07.06.1995. The L&DO's offer was made on 27.06.1995 and on 29.06.1995, the petitioner accepted the same. In view of these circumstances, Mr Dave submitted that the entire argument that DTTDC had no authority to enter into the transaction stood nullified as the Government directly allotted the same to the petitioner No.1 on the same terms and conditions.

25. It was then contended by Mr Dave that the next phase beginning from 17.07.1995 till 11.06.1996 was a crucial phase when the Government of India deliberated upon the issue and after due consideration and deliberations where the file moved from the Ministry of Urban Affairs to the Prime Minister's Office and to the Finance Minister, it was ultimately decided that the L&DO should go ahead with the execution of the licence agreement forthwith as indicated by the letter dated 01.07.1996. In this background, Mr Dave submitted that the Government of India ratified the decision in favour of the petitioner No.1 on three occasions, in 1993, in 1995 and finally in 1996. After having deliberated upon the issue and having decided to allot the land to the petitioner No.1, Mr Dave submitted, the impugned cancellation letter of 11.04.2005 was clearly arbitrary, unreasonable and was liable to be set aside. He placed further reliance on the following decisions:-

- 1) ***Sunil Pannalal Bantia and Ors. V. City and Industrial Development Corpn. of Maharashtra Ltd. and Anr.:*** AIR 2007 SC 1529;
- 2) ***Collector of Bombay v. Municipal Corporation of The City of Bombay and Ors.:*** 1951 SC 469;
- 3) ***Bejgam Veeranna Venkata Narasimloo and Ors. v. State of A.P. and Ors.:*** 1998 (1) SCC 563;
- 4) ***State of Karnataka and Anr. v. All India Manufacturers Organization and Ors.:*** 2006 (4) SCC 683.

In the light of these decisions, he submitted that irregularities in the action / non-action by the Government cannot be seen to defeat valuable rights of citizens. He also submitted that a change of Government did not permit change of decisions. In this background, he submitted that the cancellation order was liable to be set aside.

26. It is apparent that elaborate arguments have been addressed on both sides. Detailed facts have also been adverted to both by Mr Dave and by Mr Malhotra. However, in my view, the resolution of this case lies within a narrow field. The land in question had been allotted by the Government of India to DTTDC on 18.06.1983 for the setting up of a budget hotel catering to the requirement of tourists belonging to the middle and lower income groups. The allotment was made on a licence basis. Armed with this licence, through the advertisement dated 24.02.1992, global tenders were sought from hotel chains for setting up and running of a new hotel. The petitioner No.1, who had submitted its offer on 23.03.1992, was informed by DTTDC through its letter dated 08.05.1992 that its offer for building and running a three star hotel on licence basis for a period of 33

years on the said plot had been accepted. Thereafter, on 24.07.1992, a licence agreement was entered into between DTTDC and the petitioner No.1. The possession of the plot of land was also handed over on 28.07.1992 by DTTDC to the petitioner No.1.

27. However, the Government of India, through the Land & Development Officer, cancelled the licence / allotment of the said plot in favour of DTTDC. The reasons for cancellation indicated in the letter dated 01.02.1993 were that the Government had allotted the land to DTTDC at highly concessional rates without recovery of any premium with the object of setting up of a budget hotel for the purpose of charging low tariffs. Instead of fulfilling that objective, DTTDC did not construct or commission any such budget hotel and, in turn, entered into an agreement with the petitioner No.1 to run the hotel, which, according to the Government of India, was against the terms and conditions of the allotment / licence of 18.06.1983 in favour of DTTDC.

28. Because the cancellation of the licence in favour of DTTDC entailed the cancellation of the licence granted by DTTDC to the petitioner No.1, the latter represented to the Government of India against the said decision to cancel. As noted above, after various stages, a letter dated 04.06.1993 was issued by the Government of India, through the Deputy Land & Development Officer indicating that although the cancellation of the allotment in favour of the DTTDC could not be interfered with, the Government had decided to allot the land to the petitioner No.1 as per the

terms and conditions enumerated in the earlier licence agreement of 24.07.1992 with suitable modifications. Consequent upon such decision, the letter dated 27.06.1995 was issued by the Government of India in favour of the petitioner No.1 for the construction and commissioning of the hotel by the petitioner No.1 on the said plot subject to compliance of the terms and conditions as enumerated in the licence agreement dated 24.07.1992. It is also an admitted position that pursuant to the licence agreement dated 24.07.1992 and the allotment letter dated 27.06.1995, the petitioner No.1 has already paid a sum of Rs 3.35 crores to the respondents. Upon further review, the Government of India has issued the impugned cancellation letter dated 11.04.2005 cancelling the allotment of 27.06.1995.

29. It is apparent that once the licence / allotment dated 18.06.1983 in favour of DTTDC stood cancelled, the licence agreement between DTTDC and the petitioner No.1 dated 24.07.1992 would also dissipate. The contention of the petitioner No.1 has been that it had obtained the allotment of the said land on the basis of a global tender and, therefore, such an allotment cannot be faulted. Unfortunately, the global tender was in respect of the transaction evidenced by the licence agreement of 24.07.1992 which was based on the licence / allotment made by the Government of India on 18.06.1983 in favour of DTTDC. Once that licence / allotment stood cancelled, as noted above, the steps taken by DTTDC and the ultimate licence agreement entered into between it and the petitioner No.1 on 24.07.1992 also stood washed away. If the petitioner No.1 incurred any loss or damage on account of this, it was and is open to it to recover the same

through due process of law from the parties who caused this loss. But, it is not open to the petitioner No.1 to claim any right of allotment on the basis of the global tender and the licence agreement of 24.07.1992 once the parent licence / allotment dated 18.06.1983 stood cancelled.

30. Insofar as the allotment of 27.06.1995 is concerned, it is to be noted that the Government allotted the said plot of land to the petitioner No.1 assuming the petitioner No.1 to be an allottee of the same on the basis of earlier global tender and earlier licence agreement dated 24.07.1992: A course which was not open to the Government, once the parent licence / allotment dated 18.06.1983 had been cancelled on the very ground that DTTDC could not have invited global tenders and entered into the licence agreement with a private party. In such a situation, it was open to the Government to have directly invited global tenders and allotted the land for the purposes of constructing and running a budget hotel thereon to the successful bidder. Had that course of action been taken and had the petitioner No.1 succeeded in the second tender and had the allotment letter in favour of the petitioner No.1 followed such a procedure, then the case of the petitioner No.1 would be well-established. Unfortunately, for the petitioner No.1, that is not what was done. The second allotment of 27.06.1995 was made without involving any competitive bidding process. It must be reiterated that the earlier competitive bidding process by way of global tender was invited by DTTDC on the basis of the licence / allotment of 18.06.1983. That licence / allotment dated 18.06.1983 had been cancelled and one of the reasons for such cancellation was the factum of

DTTDC indulging in such a tender process and entering into the licence agreement with the petitioner No.1 on 24.07.1992. That global tender had no relevance once the original licence / allotment in favour of DTTDC stood cancelled.

31. The petitioners have placed their case on the basis of promissory estoppel, legitimate expectations and arbitrary conduct on the part of the respondents. As pointed out earlier in the arguments of Mr Malhotra, an expectation can only be termed legitimate if it is founded on or sanctioned by law. The principle of promissory estoppel also yields to the larger public interest and must also be founded on or otherwise sanctioned by law. The global tender process upon which the petitioner relies in seeking to legitimise its expectation of the present allotment, had been buried when the licence / allotment dated 18.06.1983 in favour of DTTDC stood cancelled. The allotment of 27.06.1995 would have to be regarded as a fresh allotment. When public lands are allotted, the normal course that is followed is to employ the principle of competitive bidding. This was not done. If there was any arbitrary action on the part of the Government, it was in issuing the letter of allotment dated 27.06.1995 and, if the Government now seeks to cancel such allotment and correct itself, no fault can be found with it. The impugned cancellation letter dated 11.04.2005, therefore, does not call for any interference.

32. It has been judicially noticed that when Governments enter into the field of business, the boundaries of public law and private law are

somewhat blurred. In this case, I find that while the petitioners do not have a remedy in public law, they may have a remedy under private law. Because, the petitioner may ask – After all, what wrong have we committed? They may say “We responded to a global tender thinking it to be an invitation from the Government. Our bid was accepted, we paid the money as required under the tender conditions. We entered into the licence agreement. We also agreed to additional terms and conditions when the second allotment was made on 27.06.1995 and paid an additional sum totaling approximately Rs 3.35 crores”. Whether the petitioner would be entitled to be compensated for all that has happened to them is a question which cannot be gone into in this writ petition but, is certainly one which falls within the realm of private law for which the petitioners would be at liberty to take recourse to the ordinary civil courts. Insofar as this petition is concerned, the impugned cancellation letter dated 11.04.2005 stands. However, the petitioner would be entitled to the refund of the entire sum of approximately Rs 3.35 crores alongwith interest thereon @ 18% per annum from the respective dates of payment till the date of refund. This is without prejudice to the petitioners’ right to take recourse of civil remedies, such as damages, if permissible under law.

With these observations and directions, the writ petition is dismissed. No order as to costs.

BADAR DURREZ AHMED
(JUDGE)

July 03, 2008

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