IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Civil Writ Petition No. 24860 of 2015 (O&M)
Date of Decision: 15.12.2015

Arun Jain ..Petitioner

versus

Haryana State Industrial & Infrastructure Development Corporation Ltd. and another

..Respondents

CORAM: HON'BLE MR. JUSTICE S.J.VAZIFDAR, ACTING CHIEF JUSTICE.
HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA.

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

Present : Mr. Amit Gupta, Advocate, for the petitioner.
Mr. Deepak Sabharwal, Advocate, for the respondents.

****

S.J.VAZIFDAR A.C.J. (Oral)

The petitioner has sought a writ of certiorari to quash a letter dated 16.06.2015 and an office order dated 28.05.2015 and also a writ of mandamus directing the respondents to implement a scheme of the year 2010.

2. In the year 2010, the respondents invited applications for allotment of industrial plots. The advertisement stated that the allotment would be at the rates applicable at the time of allotment as approved by the State Government. The advertisement, inter-alia, stated as follows:-

> "*The corporation reserves the right to add/amend/withdraw/modify any of the above terms and conditions at any stage without any notice. The decision of the Corporation in respect of all these will be final. All allotments shall be made in accordance with the industrial policy and the Estate Management Procedure of the corporation, as amended from time to time*".

3. The petitioner made an application for allotment of a 450 sq. meters plot. The respondents by a letter dated 14.09.2012 requested him to appear for an interview and to furnish certain documents and information which we will presume the petitioner did.

4. (A) By a letter dated 02.08.2013, the petitioner was informed by the respondents that in case the allotment process is delayed beyond one year from the date of closure of the scheme, an applicant who is not interested in the allotment of the industrial plot and is desirous of having his application money with process fee refunded, can opt for the same and that amount would be refunded with interest at 8% per annum and that if the applicant does not opt for the same and appears for the interview before the Allotment Committee for the allotment of a plot and remains unsuccessful the Corporation would refund only the application money with interest at 5.5% per annum from the date of expiry of one year from the date of closure of the scheme. The petitioner was accordingly directed to submit his option as per the format enclosed therewith. The letter reiterated that the allotment would be made as per the decision of the Allotment Committee, at the tentative rate as applicable at the time of issuance of the regular letter of allotment which at that time was ₹ 10,000/- per sq. meter.

(B) By a further letter dated 30.04.2014 the petitioner was informed that the respondents were in the process of short listing/finalizing the list of applicants for interview and that if the petitioner was interested in the allotment of an industrial plot he must send the balance application money at the then current rate of ₹ 10,000/- per month on or before 16.06.2014.

5. The petitioner opted to keep the allotment alive by depositing the amount as demanded. The impugned order dated 16.06.2015 was based on the impugned office order dated 28.05.2015. The impugned letter dated

16.06.2015 addressed to the petitioner stated that with a view to introducing transparency the State Government had reviewed the earlier policy and that it had been decided that the application money paid pursuant to the earlier policy would be refunded alongwith simple interest at 8% per annum from the date of closure of the scheme till 31.05.2015. A cheque towards refund was enclosed under cover of the letter.

6. This, therefore, brings us to a consideration of the office order dated 28.05.2015 which has been impugned in the petition. The office order mentions that the procedure and the policy for allotment of industrial plots had been revised.

7. The petitioner is eligible to apply under the new scheme. The petitioner's grievance, however, is against the eligibility criteria. Marks are given and weightage is allotted in respect of each of the 13 criteria mentioned in the office order dated 28.05.2015. The petitioner's grievance is against the allotment of 12 marks for experience of promoters, 8 marks for shifting from non-conforming area/rented premises, 10 marks for income tax payments by the promoters/applicants equal to ₹ 2 lacs per annum, 10 marks for past performance of existing operations of the applicants/group concerns and 10 marks for expansion by applicants/its promoters proposing to set up expansion project. The petitioner contends that this is unfair discrimination against him and persons similarly situated. He contends that there is no justification for giving greater weightage to persons already in the field which is what is done by the criteria.

8. This is a policy decision. It is in respect of the allotment of industrial plots. It is for the respondents to decide the criteria for allotment of industrial plots after taking into consideration various factors to ensure that the industrial policy is implemented effectively. The respondents cannot

be faulted for stipulating criteria which it may reasonably consider beneficial for the effective implementation of industries in the State. There is nothing to indicate that the weightage given for the said criteria is *mala-fide*, arbitrary or absurd. In that event it is for the policy makers to decide the policy. The Courts do not sit in judgment over such decisions.

9. The policy infact grants marks/weightage in certain respects which only the applicants such as the petitioner would be entitled to. For instance 5 marks are granted for first generation entrepreneurs such as the petitioner intending to set up business for the first time. 5 marks are also granted for starting up new technologies/projects with innovative ideas.

10. The petitioner has also challenged the policy as it stipulates a benchmark for selection of the applicants in respect of the estate falling in 'A', 'B' and 'C' categories at 45, 35 and 30 marks respectively. The categories have not been mentioned in the writ petition. The respondents have, however, tendered the Estate Management Procedure-2015 (EMP-2015) of the Haryana State Industrial & Infrastructure Development Corporation which mentions the categories as under:-

Sr. No.	**Category**	**Industrial Model Townships/ Estates/ Parks Developed by HSIIDC**	**Industrial Estates developed by the Industries Department, Haryana**
1.	'A'	'A' Gurgaon, IMT Manesar, IMT Sohna, I.E./IMT Faridabad, Industrial Estate/EPIP Kundli, Rai, Bahadurgarh, Murthal, Sonepat, Panipat and Panchkula including the Panchkula Technology Park.	IDC Gurgaon, IDC Panipat, IDC Bahadurgarh, IDC Hisar
2.	'B'	'B' Barhi, Bawal, Karnal, Rohtak and Samalkha	IDC Rohtak, IDC Karnal, Nelokheri, IDC Sonepat, IE Yamunanagar
3.	'C'	C' All Estates other than those mentioned above	IDC Narnaul, RIE Mahendergarh, IDC Palwal, RIE Kaithal, RIE Barwala, RIE Fatehabad, IDC Ambala, IDC Pinjore, Kohand.

11. There are no averments in the petition to challenge the rationale of the categories and the benchmark stipulated in respect of each of them. We, however, do not find anything irrationale or unjustified in the respondents stipulating a different benchmark for each of the categories. Category-A for instance pertains to the areas in the more developed industrial model townships/estates/parks developed by HSIIDC. The other categories pertain to areas which are not so developed. EMP-2015 in any event has not been challenged. The only contention is that different bench marks ought not to be stipulated. We are unable to agree. It is always open to the respondents to stipulate different benchmarks for different areas. Not all industrialists or entrepreneurs would be interested in setting up industries in every area. More established and successful industrial entrepreneurs may not be interested in setting up industries in remote areas. Lower benchmarks would, therefore, of necessity have to be stipulated for the less developed and more remote areas as otherwise it would be difficult to find investors/industrialists to set up their industries in such areas. Thus categorization on the basis of areas is not irrational or arbitrary.

12. Although we intend dismissing the writ petition we cannot part with this judgment without observing our dissatisfaction about the respondents inviting applications for allotment and not following up the same for a period of five years. This is detrimental even to the investors sentiment. It would discourage investors from investing in schemes fraught with such uncertainties and which block their capital.

Thus although we are dismissing the writ petition we would in the first instance direct the respondents to reconsider the rate of interest. The stipulated rate of interest at 8% per annum appears to be too low. We would have determined the same ourselves. However, in the first instance, this ought to be determined by the respondents themselves. We are confident that the respondents would grant a fair and reasonable rate considering the facts and circumstances leading to the closure of the earlier policy.

13. In the circumstances, the writ petition is dismissed. The amount shall be refunded, however, with interest from the date on which the same was paid/deposited with the respondents. The respondents shall reconsider the rate of interest. The additional amount, if any, shall be paid after the same is reconsidered. The amounts due under the policy, however, together with interest shall be paid latest by 29.02.2016.

(S.J.VAZIFDAR)
ACTING CHIEF JUSTICE

15.12. 2015 (TEJINDER SINGH DHINDSA)
'ravinder' JUDGE

To be referred to the Reporter or not	√ Yes	No