

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.10391 of 2008

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Pravin Kumar Sinha, son of late Ramanand Sinha, resident of M-2/14, Road No. 10E, Rajendra Nagar, P.S. Kadam Kuan, Patna, District- Patna

.... Petitioner/s

Versus

1. Patna Municipal Corporation , Maurya Lok, New Dak Bunglow Road, Patna through its Municipal Commissioner
2. Municipal Commissioner, Patna Municipal Corporation, Maurya Lok, New Dakbunglow Road, Patna
3. Additional Municipal Commissioner, Patna Municipal Corporation, Maurya Lok, New Dak Bunglow Road, Patna
4. Krishak Bharti Co-operative Ltd. , 401 Maurya Tower, Maurya Lok Complex, Dak Bunglow Road, Patna

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Subhash Chandra Bose Mr. Manik Ved Sen, Advocates
For the P.M.C.	:	Mr. Sanjay Prakash Verma, Advocate
For Resp. No.4	:	Mr. Pramod Kr. Singh, Advocate

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CORAM: HONOURABLE MR. JUSTICE RAMESH KUMAR DATTA

CAV JUDGMENT

Date 15-12-2016

Heard learned counsel for the petitioner and

learned counsels for the State, for the Patna Municipal Corporation
(PMC) and for the Krishak Bharti Co-operative Limited
(KRIBHCO).

The writ application has been filed for issuance

of a direction for quashing the letter dated 16.6.2007 issued by the

respondent-Patna Municipal Corporation by which the allotment of

Office Space No. 401 in Maurya Tower situated in Mauryalok

Commercial Complex by the Sub-Committee of Mauryalok in



anticipation of sanction of the Patna Regional Development Authority Board, (in short PRDA Board), has not been approved by the PRDA Board and accordingly the allotment has been cancelled.

The facts of the case as have come out from the pleadings of the parties and materials on the record is that on 14.7.2006, the PRDA issued a public notice inviting sealed offers from interested persons and institutions by 25.7.2006 for allotment of shops, café, Restaurant and office in Maurya Tower on 66 years lease basis. Pursuant to the same the petitioner applied for Office Space No. 401 located on the 4th floor. The petitioner was the sole applicant for the said Office Space No. 401 and he made offer of Rs.1551/- per sq.ft. as against the reserve price of Rs. 1500/- per sq.ft. . It is the stand of the petitioner that he was informed that formal allotment letter would be issued after Board's approval. When no such allotment letter was issued, the petitioner made enquiries through his representatives but neither the allotment letter nor definite reply was given. At that stage the petitioner sent letter dated 15/18.6.2007 to the Municipal Commissioner, Patna Municipal Corporation which had stepped into the shoes of PRDA under the new Bihar Municipal Act, 2007 with a request for expediting allotment of space No. 401 at Maurya Tower in his favour which was received in the office of the PMC on 18.6.2007.



A letter was thereafter received by the petitioner purportedly signed on 15.6.2007 and issued by memo no. 383 dated 16.6.2007 with the postal stamp appearing on the envelope dated 21.6.2007 by speed post by which the petitioner was informed that the Sub-Committee had earlier decided to allot Office Space No. 401 to the petitioner in anticipation of approval of the Board of Directors of PRDA which was not approved by the PRDA Board. Thereafter the petitioner received the impugned order dated 16.6.2007. According to the petitioner, the said letter has been sent by speed post bearing the stamp of 21.6.2007 of the post office. Apart from the factum of cancellation of allotment, it was further mentioned that a letter dated 7.8.2006 had also been issued to the petitioner directing him to deposit 25% of the total amount failing which the allotment would be cancelled but the same had not been deposited. It is the stand of the petitioner that no such letter dated 7.8.2006 was ever received by the petitioner nor ever communicated when the petitioner or his representative went to the office of the respondents and the same was accordingly replied by the petitioner.

It may be pointed out here that during the course of the proceedings the respondent-PMC had sought to show that the said letter dated 7.8.2006 had been received through hand delivery by the petitioner who had himself signed on the receipt but upon



denial of the petitioner of the said signature it was sent for opinion of the handwriting expert of the Forensic Science Laboratory, Patna and the signature shown on the delivery register was found to be not in the handwriting of the petitioner on comparison of the admitted signature of the petitioner available with the respondents themselves.

It appears from the materials on the record that in the meeting of the Sub-Committee for Mauryalok dated 29.7.2006, in anticipation of the sanction of PRDA Board, the decision was taken for allotting the aforesaid Office Space No. 401 in favour of the petitioner. However, when the matter was put up before the PRDA Board on 28.8.2006 in Agenda Note No. 10/2006 with regard to approval of the decision of the Sub-Committee for Mauryalok dated 29.7.2006, it was directed to make further review (samiksha) in the matter of allotment of shops and offices. Thereafter while the Samiksha was in process the PRDA was dissolved and accordingly, it was proposed before the Municipal Commissioner that since the PRDA has been dissolved, therefore, it was not possible to accord sanction/approval to the decision of the Mauryalok Sub-Committee and accordingly the proceedings of the meeting dated 29.7.2006 of the Mauryalok Sub-Committee may be set aside and the security amounts deposited with the offers may be



returned. According to the office notes dated 5.4.2007 the Municipal Commissioner thereafter directed discussion to be made about the entire matter which was done on 25.5.2007 and orally the Municipal Commissioner stated that since by the promulgation of the Municipal Ordinance, the PRDA has been dissolved from 1.2.2007, therefore, it was not possible to again constitute the Board of Directors of the PRDA and further since by the PRDA Resolution No. 56/2006 dated 28.8.2006 at Sl. No. 10 of the proceedings dated 29.7.2006 of the Mauryalok Sub-Committee had not been approved, therefore, the offer received pursuant to the advertisement dated 15.7.2006 should be cancelled and the offerers should be returned the security deposits.

In the meantime, it appears that KRIBHCO which is a Government of India undertaking, had shown its interest in the matter and expressed an interest for lease of the said office space by its letter dated 22.11.2006 and by letter dated 13.3.2007 of the Secretary of the PRDA (dissolved), it was informed that office space is available on 4th floor of Maurya Tower and they can come and inspect the same and get the brochure for Rs. 500/- which was done by KRIBHCO. Thereafter on 13.5.2007, the respondent No. 4, KRIBHCO applied for office space.

It appears that a letter dated 19.4.2007 was also



issued under the signature of the Deputy Secretary, Urban Development Department, Government of Bihar to the Municipal Commissioner stating about the interest of KRIBHCO for getting the office space at Maurya Tower and with a request to take action in the matter in accordance with law. Pursuant to the same a letter dated 22.6.2007 was issued by the Municipal Commissioner, PMC referring to the letter dated 19.4.2007 of the Urban Development Department and also the letter dated 4.4.2007 of the respondent No. 4 that Office Space No. 401 and Car Parking space of 200 Sq. ft. in the basement in the Maurya Tower has been allotted to the respondent no. 4 on the condition of payment of Rs. 2218/- per sq. ft. and basement car parking at Rs. 500/- per sq. ft. on 66 years lease basis for which the total premium would be Rs. 68,73,316/- and Rs. 1,00,000/- for basement car parking total Rs. 69,73,316/- on deposit of 25% of the amount within fifteen days and the balance within a period of four months in three equal instalments and the lease deed would also have to be registered at the cost of the respondent no.4. The respondent No. 4 deposited the entire price on 5.7.2007 and 31.7.2007 and came in possession and the registration of lease deed was also done on 16.8.2007. The office of the respondent No. 4 is running in the said premises since then.

From the aforesaid facts, learned counsel for the



petitioner submits that the letter dated 7.8.2006 of the PRDA was never served upon the petitioner but even the said letter did not mention that the allotment was subject to the approval of the PRDA Board and had such approval been necessary it ought to have been mentioned in the allotment letter. It is thus submitted that the stand of the respondents in this regard is not justified and they cannot be permitted to go back on the allotment made by them.

It is contended by learned counsel that the action of the respondent PRDA/PMC was unfair, mala fide and at the time when Samiksha was being done the interest of the KRIBHCO was already in contemplation. In this regard specific allegation has been made that the Municipal Commissioner who has taken the decision was earlier on deputation to KRIBHCO and thus he took personal interest in collusion with respondent no. 4 and got the Office Space No. 401 allotted to KRIBHCO.

It is urged by learned counsel for the petitioner that the aforesaid collusion and arbitrariness is evident from the manner in which the allotment has been made to respondent No. 4. It is submitted that allotment was being made by PRDA, including in the Maurylok complex, on the basis of invitation of sealed tenders and only in the case of respondent No. 4 the said procedure has been given a go-bye. In this regard learned counsel refers to



Section 104 of the Bihar Municipal Act also which provides that any immovable property belonging to Municipality may be disposed of with prior approval of the State Government or may be granted lease of or let out on hire by the Empowered Standing Committee of the Municipality. In the said circumstances, it is submitted that it was not open to the respondent-Municipal Corporation to have leased out the property to the respondent No.4-KRIBHCO when it was not an applicant pursuant to the tender notice at any point of time earlier and it was a private deal between the PMC and KRIBHCO.

It is further submitted by learned counsel that the action of the respondents for allotting the space to KRIBHCO is illegal.

It is also the stand of learned counsel that the respondents have acted in the matter after the receipt of the letter by the petitioner dated 18.6.2007.

It is the further stand of learned counsel for the petitioner that even the cancellation has been made on irrelevant, irrational and arbitrary ground that PRDA having been dissolved, the decision of the Mauryalok Sub-Committee cannot any more be approved. It is contended that the mala fide is also writ large in the facts of the case as the entire action of the respondents have been to



help KRIBHCO whose application was received even prior to the cancellation and further the allotment was made directly by the Municipal Commissioner in anticipation of the decision of the Empowered Committee. It is further submitted that Municipal Commissioner even misled the Empowered Committee for granting its approval in the matter.

In support of his aforesaid stand learned counsel for the petitioner relies upon a decision of the Supreme Court in the case of The Controller and Auditor General of India Vs. K.S. Jagannathan & anr.: AIR 1987 SC 537, in paras 19 and 20 of which it has been held as follows:-

“19. Even had the Division Bench issued a writ of mandamus giving the directions which it did, if circumstances of the case justified such directions, the High Court would have been entitled in law to do so for even the courts in England could have issued a writ of mandamus giving such directions. Almost a hundred and thirty years ago Martin, B., in Mayor of Rochester v. Regina, [1858] E.B. & E. 1024,1032,1034 said:

"But, were there no authority upon the subject, we should be prepared upon principle to affirm the judgment of the Court of Queen's Bench. That Court has power, by the prerogative writ of mandamus, to amend all errors which tend to the oppression of the subject or other



misgovernment, and ought to be used when the law has provided no specific remedy, and justice and good government require that there ought to be one for the execution of the common law or the provisions of a statute : Comyn's Digest, Mandamus (A). Instead of being astute to discover reasons for not applying this great Constitutional remedy for error and misgovernment, we think it our duty to be vigilant to apply it in every case to which, by any reasonable construction, it can be made applicable."

The principle enunciated in the above case was approved and followed in *The King v. The Revising Barrister for the Borough of Hanley*, [1912] 3 K.B. 518, 528-9, 531. In *Hochtief Gammon's Case* this Court pointed out (at page 675) that the powers of the Courts in relation to the orders of the Government or an officer of the Government who has been conferred any power under any statute, which apparently confer on them absolute discretionary powers, are not confined to cases where such power is exercised or refused to be exercised on irrelevant considerations or on erroneous ground or mala fide, and in such a case a party would be entitled to move the High Court for a writ of mandamus. In *Padfield and Others v. Minister of Agriculture, Fisheries and Food and Others*, [1968] A.C. 997 the House of Lords held that where Parliament had conferred a discretion on the Minister of Agriculture,



Fisheries and Food, to appoint a committee of investigation so that it could be used to promote the policy and objects of the Agricultural Marketing Act, 1958, which were to be determined by the construction of the Act which was a matter of law for the court and though there might be reasons which would justify the Minister in refusing to refer a complaint to a committee of investigation, the Minister's discretion was not unlimited and if it appeared that the effect of his refusal to appoint a committee of investigation was to frustrate the policy of the Act, the court was entitled to interfere by an order of mandamus. In Halsbury's Laws of England, Fourth Edition, Volume I, Paragraph 89, it is stated that the purpose of an order of mandamus "is to remedy defects of justice; and accordingly it will issue, to the end that justice may be done, in all cases where there is a specific legal right and no specific legal remedy for enforcing that right; and it may issue in cases where, although there is an alternative legal remedy, yet that mode of redress is less convenient, beneficial and effectual."

20. There is thus no doubt that the High Courts in India exercising their jurisdiction under Article 226 have the power to issue a writ of mandamus or a writ in the nature of mandamus or to pass orders and give necessary directions where the Government or a public authority has failed to exercise or has wrongly exercised the discretion conferred upon it by a statute or a rule or a policy decision of the Government or has



exercised such discretion mala fide or on irrelevant considerations or by ignoring the relevant considerations and materials or in such a manner as to frustrate the object of conferring such discretion or the policy for implementing which such discretion has been conferred. In all such cases and in any other fit and proper case a High Court can, in the exercise of its jurisdiction under Article 226, issue a writ of mandamus or a writ in the nature of mandamus or pass orders and give directions to compel the performance in a proper and lawful manner of the discretion conferred upon the Government or a public authority, and in a proper case, in order to prevent injustice resulting to the concerned parties, the Court may itself pass an order or give directions which the Government or the public authority should have passed or given had it properly and lawfully exercised its discretion.”

Learned counsel also relies upon a decision of the Supreme Court in the case of Jagdish Mandal Vs. State of Orissa and Ors.: (2007) 14 SCC 517, in para-22 of which it has been held as follows:-

“22. Judicial review of administrative action is intended to prevent arbitrariness, irrationality, unreasonableness, bias and malafides. Its purpose is to check whether choice or decision is made 'lawfully' and not to check whether choice or decision is 'sound'. When the power of judicial review is invoked in matters relating to



tenders or award of contracts, certain special features should be borne in mind. A contract is a commercial transaction. Evaluating tenders and awarding contracts are essentially commercial functions. Principles of equity and natural justice stay at a distance. If the decision relating to award of contract is bona fide and is in public interest, courts will not, in exercise of power of judicial review, interfere even if a procedural aberration or error in assessment or prejudice to a tenderer, is made out. The power of judicial review will not be permitted to be invoked to protect private interest at the cost of public interest, or to decide contractual disputes. The tenderer or contractor with a grievance can always seek damages in a civil court. Attempts by unsuccessful tenderers with imaginary grievances, wounded pride and business rivalry, to make mountains out of molehills of some technical/procedural violation or some prejudice to self, and persuade courts to interfere by exercising power of judicial review, should be resisted. Such interferences, either interim or final, may hold up public works for years, or delay relief and succour to thousands and millions and may increase the project cost manifold. Therefore, a court before interfering in tender or contractual matters in exercise of power of judicial review, should pose to itself the following questions :

- i) Whether the process adopted or decision made by the authority is mala fide or intended to favour someone.



OR

Whether the process adopted or decision made is so arbitrary and irrational that the court can say : 'the decision is such that no responsible authority acting reasonably and in accordance with relevant law could have reached.'

ii) Whether public interest is affected.

If the answers are in the negative, there should be no interference under Article 226. Cases involving black-listing or imposition of penal consequences on a tenderer/contractor or distribution of state largesse (allotment of sites/shops, grant of licences, dealerships and franchises) stand on a different footing as they may require a higher degree of fairness in action.”

On the other hand, learned counsel for the respondents submits that the respondents have not acted in an arbitrary or discriminatory manner. It is submitted that so far as the submission of learned counsel for the petitioner regarding there being mala fides in the action of the respondents is concerned, the same is not based upon any pleadings and it is not open to learned counsel for the petitioner to make any such allegation of mala fides without laying down proper materials in the pleadings and the only point raised in the writ application is regarding arbitrariness of action. It is submitted that the mere fact that the Municipal



Commissioner was earlier on deputation in the KRIBHCO, cannot be a ground for any mala fide in the matter as no personal interest of his is involved in the business of the organizations where he may have been sent to serve at different points in his career, that too when the organization in question is a Government of India Undertaking.

So far as the allegation of arbitrariness is concerned, it is submitted that all the decisions have been taken in accordance with law. It is urged by learned counsel that it is evident from the entire materials placed on the record before this Court that the decision of the Mauryalok Sub-Committee had not been approved by the Board of Directors of the PRDA at its meeting dated 28.8.2006 which had directed that review/Samiksha should be made of the matter. It cannot be said according to learned counsel that such a decision of a collective body like the Board of Directors to make a Samiksha was an arbitrary action. Thereafter since the matter went on for some time and ultimately in the month of April, 2007 the subordinates of the Municipal Commissioner had put up a proposal for cancellation of the earlier tender process on the ground that the Board of PRDA had not approved the decision/proposal of the Mauryalok Sub-Committee in its meeting dated 28.8.2006 and since no such Board could be reconstituted, hence the entire process



should be cancelled and the security deposit be returned.

In this regard it is submitted by learned counsel that the correctness or otherwise of a decision is not in question before a writ court when the said decision has been taken taking into account all aspects of the matter and it is not that only in the case of the petitioner the cancellation has been made, rather the entire process has been cancelled and has been followed by issuance of fresh advertisement with regard to the office space, etc, for which the subsequent advertisement has been brought on the record.

It is also submitted that the case of KRIBHCO was taken up because it is a Governmental organization and no personal or private interest was involved in the matter and the decision was taken in good faith to make allotment to KRIBHCO on the basis of the revised reserve price which was 50% higher than what had been offered by the petitioner. Thus, according to learned counsels for the respondents, it cannot be said that there has been any violation of public interest in the matter.

In this regard learned counsels submit that Section 104 of the Bihar Municipal Act, 2007 relied upon by learned counsel for the petitioner only provides that lease of immovable property of the Municipality may be made by the



Empowered Standing Committee and does not specifically provide for a process of sealed tender or public auction. It is submitted that while such sealed tender or bidding processes may be considered essential where the property is to be leased to a private party but the same considerations need not apply to Public Sector Undertakings like KRIBHCO and accordingly, if there was a recommendation of the State Government and the allotment was ultimately made by the Empowered Standing Committee such action, at the very least, cannot be called arbitrary.

Learned counsel for KRIBHCO further submits that the petitioner has acted in the present matter with gross delay and laches. It is submitted that on his own showing he become aware of the impugned order dated 22.6.2007 but immediately thereafter he took no steps in the matter and has ultimately approached this Court by filing the writ application on 30.6.2008. It is urged that such a gross delay of one year in a matter when 3rd party interest has arisen in favour of the respondent no. 4, which had made not only huge investment in purchasing the said property and getting it registered at its own cost but also in setting up of the office, is sufficient to estop the petitioner from seeking the allotment to be made in his favour. In support of the same learned counsel relies upon the celebrated decision of the Supreme Court in



the case of Ramana Dayaram Shetty Vs. The International Airport Authority of India & Ors: AIR 1979 SC 1628 wherein the Court, even after holding that the action of the respondents were clearly discriminatory and arbitrary but on the ground that the writ petitioners of that case had approached the Court after a delay of more than five months, had refused to grant the relief. In the relevant part of para-35 of the said judgment it has been stated as follows:-

“Moreover, the writ petition was filed by the appellant more than five months after the acceptance of the tender of the 4th respondents and during this period, the 4th respondents incurred considerable expenditure aggregating to about Rs. 1,25,000/- in making arrangements for putting up the restaurant and the snack bars and in fact set up the snack bars and started running the same. It would now be most inequitable to set aside the contract of the 4th respondents at the instance of the appellant. The position would have been different if the appellant had filed the writ petition immediately after the acceptance of the tender of the 4th respondents but the appellant allowed a period of over five months to elapse during which the 4th respondents altered their position. We are, therefore, of the view that this is not a fit case in which we should interfere and grant relief to the appellant in the exercise of our discretion under Article 226 of the Constitution.”



It is thus urged by learned counsel that the delay of 5 months by the writ petitioner in the International Airport Authority case (supra), which had led to investment and expenses incurred by the private respondents in that case, had been held to be fatal whereas in the present matter there is a much greater delay and much more expenses have been made by the respondent no. 4 which had been allotted the property in question immediately after the cancellation of the earlier allotment, and therefore does not justify any interference by this Court.

It is further submitted by learned counsel for the respondents that the present is not a case of pick and choose and further when after the cancellation of allotment which was made provisionally pursuant to the public notice dated 14.7.2006, even pursuant to the subsequent advertisement dated 31.12.2007 the petitioner did not show any interest with respect to as many as three similar office spaces which were advertised.

Another submission of learned counsel for the respondent no. 4 is that prayer has been made in writ petition for setting aside the cancellation letter dated 15/16.6.2007 but nowhere the petitioner has sought cancellation of the allotment made in favour of the respondent no. 4 and hence, such a relief cannot be granted to the petitioner.



I have considered the submissions of learned counsels for the parties. It is evident from a consideration of sequence of events that even though the petitioner had made an offer of the Office Space No. 401 in Maurya Tower which was a little higher than the reserve price but no right can flow from merely being the offerer unless the same was accepted by the respondents, which would evidently mean the competent authority of the respondent-PRDA at the relevant time. Although it has been submitted by learned counsel for the petitioner that the allotment letter dated 7.8.2006 did not mention any such condition of provisional allotment subject to the approval of the Board of Directors of PRDA and, therefore, the allotment was absolute, the same cannot be said to be a correct stand. Firstly, it is the categorical stand of the petitioner that the letter dated 7.8.2006 had never been communicated to the petitioner. It is thus not open to the petitioner to claim any right pursuant to the said letter dated 7.8.2006 which allegedly mentioned the condition of deposit of 25% of the bid amount. It is more important that it is the categorical statement of the petitioner in the writ petition itself that immediately after the opening of the seal offers on 25.7.2006, the petitioner's offer being found higher than the minimum reserve price, the PRDA was required to issue allotment letter in respect of



the space in favour of the petitioner but he was informed that formal letter of allotment would be issued after the Board's approval and this position continued for some time. Thus, from the very beginning it was made clear to the petitioner that the offer was not absolute and was subject to the approval of the Board of Directors of PRDA.

Further it is evident from the materials on the record that the matter was taken up before the Board of the PRDA only on 28.8.2006 and thus the earlier letter dated 7.8.2006 even if it did not mention the fact that the allotment was provisional, it was not a letter which could have conferred indefeasible right without the approval of the Board, which was the highest and competent body of the PRDA. Therefore, the same had not been issued with the approval of the Board of Directors of the PRDA, which, as a matter of fact, had not met at that time to consider the matter and had thereafter not approved the proceedings of the Mauryalok Sub-Committee in the matter and directed for reconsideration/review of the entire issue. Thereafter also before the matter could again be put up before the Board of the PRDA, the PRDA stood dissolved on 1.2.2007 with the coming into force of Bihar Municipal Ordinance, 2007 succeeded by the Act of 2007 and thus evidently there was no final decision by the competent authority on the offer made by the



petitioner.

So far as the subsequent action of the Municipal Corporation deciding to cancel the earlier process on the ground that the decision of the Mauryalok Sub-Committee had not been approved by the Board of PRDA and it was not possible to constitute a Board afresh, although it does not appear to be wholly appropriate or based upon a correct understanding of the legal position, but it is difficult to accept that it was mala fide for the reason that the proposal was mooted as early as on 5.4.2007 and the Municipal Commissioner had directed a discussion to be made and thereafter on 25.5.2007 it was finally decided to cancel the earlier process. The fact that the advertisement in question was related to as many as 20 premises and not merely the office space No. 401 of the petitioner, it cannot be held that the decision was arbitrary, irrational and mala fide. Thus, so far as the petitioner is concerned, it is not open to him to say that he has been deprived of the allotment of office space because of illegal and arbitrary decision of the respondents.

The allotment to respondent no. 4 however, stands on a different footing altogether. Even though it was an allotment of the office space for which the petitioner had made his offer, but first of all, this Court has already held that the



cancellation of the entire allotment process was not arbitrary and thus the petitioner himself may not have any right in the matter. Secondly, the writ petition has not been filed with any prayer for cancellation of allotment made in favour of the respondent no. 4 which is a different matter altogether.

This court although not approving the action of the respondent-Municipal Corporation, still is not of the view that the entire action was arbitrary to the extent that it has to be set aside. True it is that the allotment procedure required an application to be invited from all making their respective offers and applications received were to be considered thereafter. Even if it was proposed to keep certain space for Public Sector Organizations that could have been done as a policy decision but not specifically for a party which had approached. That has certainly not been done in the present matter. But stricto sensu since the allotment has been made to a Central Government Public Sector Undertaking on the reserve price which is 50% higher than what the petitioner had offered and further considering the fact that the matter has been approved by the Empowered Standing Committee of the PMC, which is the requirement of Section 104 of the Bihar Municipal Act, 2007, it cannot be said that the action suffers from gross illegality.



The decisions relied upon by learned counsel for the petitioner do not support his stand in the facts and circumstances of the case and even the criteria laid down in Jagdish Mandal's case (supra) as quoted above do not apply to the present matter and the petitioner certainly cannot claim any public interest in his favour for setting aside the order of cancellation.

Lastly, the case of the petitioner stands on worse footing than that in the case of Ramana Dayaram Shetty (supra). In the said case although the findings were made against the respondents and it was held that it was a fit case that the action of the respondent authority should be quashed but on account of delay of five months during which third party rights had come up and that third party had made certain investments, the Apex Court refused to grant relief to the petitioner therein. In the present matter the petitioner has admittedly approached this Court after a lapse of more than one year from the cancellation of provisional allotment and in the meantime the respondent No. 4 has not only come in possession after paying the premium amounts of Rs. 69/- lacs and also borne the registration cost of lease deed and must have incurred substantial expenditure in setting up the office space of a little less than 3000 sq. ft. In the said circumstances, even if this Court had found the cancellation of allotment to be unjustified, the



petitioner may not have been entitled to the relief claimed. Since I have already held that the cancellation was not arbitrary and illegal, therefore, I see no reason to grant any relief to the petitioner.

In the light of the aforesaid discussions, the writ application must fail and it is, accordingly, dismissed.

(Ramesh Kumar Datta, J)

S.Pandey/-

AFR/NAFR	AFR
CAV DATE	20.10.2016
Uploading Date	17.12.2016
Transmission Date	

