

**209 IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

LPA No. 722 of 2015 (O&M)

Date of decision: 12.02.2020

The Estate Office, Union Territory, Chandigarh

...Petitioner

Versus

Permanent Lok Adalat (Public Utility Services), U.T. and another

...Respondents

**Coram: Hon'ble Mr. Justice Rakesh Kumar Jain
Hon'ble Mr. Justice Ashok Kumar Verma**

Present: Mr. Sanjiv Ghai, Advocate
for the appellant.

Mr. G.S.Bhatia, Advocate
for respondent No.2

Rakesh Kumar Jain, J. (Oral)

This appeal is against the order dated 26.08.2014 passed in a Review Application No.342 of 2014 filed in Civil Writ Petition No. 6726 of 2008, by the learned Single Judge, by which the writ petition filed by the appellant was dismissed.

In brief, the Chandigarh Administration published in the Chandigarh Administration Gazette (Extra) dated 17th February, 1999 a scheme called as "Allotment of Sites on Lease-hold Basis for Auto Spare Parts Dealers and Auto Repair Mechanics in Chandigarh Scheme 1999" (hereinafter referred to as 'the Scheme'). This Scheme has superseded the earlier Scheme known as the "Allotment of Sites on Lease-hold Basis for Auto Spare Parts Dealers and Auto Repair Mechanics in Chandigarh Scheme 1996" because Para 4 of the said Scheme was found violative of Article 14 of the Constitution of India by this Court while allowing the Civil Writ Petition No.14083 of 1993 decided on

10.12.1996.

The purpose of floating the Scheme was to regularize the business of sale of Auto Spare Parts and Auto Repair work, being carried out in the premises/sites/streets not meant for such use, causing unhealthy environment, traffic hazards and public nuisance in the city, by way of allotment of place of work to such Auto Spare Part Dealers and Auto Repair Mechanics.

Clause 4 of the Scheme deals with the eligibility for the allotment and Clause 5 with the procedure for allotment. Clause 4 and 5 are reproduced as under;-

“4. Person eligible for the allotment. - Unless otherwise provided, a person who was enlisted in the survey conducted in the month of June, 1997, shall be eligible for allotment of sites subject to the following conditions, namely

(i) Provided that a person, who is already running business of Auto Repairs / Spare Parts in a site/shop meant for such a purpose, shall not be eligible for allotment;

(ii) That the applicant does not have any commercial site/shop in his name or in the name of his spouse or dependent children either in the Union, Territory, Chandigarh, Mohali or Panchkula:

Provided that if a person who owned a commercial site/shop in Chandigarh or Mohali or Panchkula and has subsequently disposed of the same after the 30th June, 1997 shall not be eligible for the allotment of site under the scheme.

(iii) A person dealing in Auto Spare Parts should be registered in the Union Territory, Chandigarh, under the Punjab General Sales Tax Act, 1948, as applicable in the Union Territory, Chandigarh and/or the Central Sales Tax, 1956, as on the 31st May, 1997.

5. Procedure for allotment. - (i) Application forms so received, accompanied by affidavit in pursuance of the order dated 10th December, 1996 of Hon'ble High Court in Civil Writ Petition No. 14083 of 1993 by conducting fresh survey shall only be entertained.

(ii) The applicant will be considered for allotment if his name exists in the survey conducted on 23rd June, 1997 to 30th June, 1997 and has applied along with affidavit, claim forms photo supplied for the purpose before the cut off date i.e. 30th June, 1997. All the applications received will be scrutinized by the Screening Committee.

(iii) The eligible persons will be considered for allotment of 431 sites under construction in Sectors 38 and 48 through draw of lots.

The unsuccessful applicants will be considered for limited auction of sites identified near petrol pumps and in various sectors earmarked by the Chief Architect.

(iv) A separate draw of lots shall be held for allotment of sites to the Auto Spare Parts Dealers, to the Scooter Repair Mechanics and to other repair mechanics.

(v) When 10% of the premium has been so tendered on demand, the Estate Officer shall, subject to such direction as may be issued by the Chief Administrator in this regard, issue a letter of intent to the applicant successful in the draw of lots, by a registered post intimating the number, sector, approximate area, premium and the ground rent of the site proposed to be allotted to the applicant.

The Estate Officer shall also simultaneously forward a list of each

such category of successful applicant to the Chandigarh Housing Board for construction of the respective categories of superstructure on the allotted sites on behalf of the lessees. The precise, dimensions of the sites and superstructure shall be fixed by the Chandigarh Administration.

[(vi) The applicant shall, unless he refuses to accept the offer within 30 days from the date of issue of the letter of intent, deposit within that period and in the prescribed mode of payment further 15% of the premium of land. In addition to payment of 25% premium under the Scheme, remaining 75% premium may be paid in 120 equated monthly installments alongwith interest at the rate prescribed in sub-rule (2) of Rule 12 of the Chandigarh Lease- hold of Sites and Building Rules, 1973, as amended from time to time. The rate of interest as specified on the date of allotment shall be applicable:

Provided that balance of 75% may also be made in three annual equated instalments alongwith interest at the rate prescribed in sub-rule (2) of Rule 12 of the Chandigarh Lease-hold of Sites and Building Rules, 1973, as amended from time to time. The rate of interest as specified on the date of allotment shall be applicable:

Provided further that payment may also be made in lump sum within thirty days from the date of allotment without any interest.]

[(vi) (a) The applicant shall, unless he refuses to accept the offer within 30 days from the date of issue of the letter of intent, deposit within that period and in the prescribed mode of payment, 25% of the cost of construction of the superstructure. In addition to payment of 25% cost of construction under the scheme,

remaining 75% of the cost of construction may be made in 120 equated monthly instalments alongwith interest at the rate prescribed in sub-rule (2) of Rule 12 of the Chandigarh Leasehold of Sites and Building Rules, 1973, as amended from time to time. The rate of interest as specified on the date of allotment shall be applicable:

Provided that balance payment of 75% may also be made in three annual equated instalments alongwith interest at the rate prescribed in sub-rule (2) of Rule 12 of the Chandigarh Leasehold of Sites and Building Rules, 1973, as amended from time to time. The rate of interest as specified the date of allotment shall be applicable:

Provided further that payment may also be made in lump sum within thirty days from the date of allotment without any interest.]

(vii) If the applicant refuses to accept the offer within the said period of 30 days, he will be entitled to refund of the amount paid by him.

(viii) If the applicant fails to communicate refusal to accept the allotment within 30 days and also fails to deposit 15 percent of the premium under sub clause (vii), the Estate Officer may forfeit the whole or part of the earnest money.

(ix) In both the cases as in sub-clause (vii) and (viii) above, a person, once he fails or refuses to accept the offer of a site he shall not be eligible to apply again under this scheme.”

It is alleged that respondent No. 2 was running a tyre puncture shop inside a Petrol pump (National Service Centre, Sector-17 Chandigarh)

and was not found eligible during the cut-off period of survey i.e. 23rd June, 1997 to 30th June, 1997. He admittedly shifted his place of work to a site near KC Cinema, Sector-17, Chandigarh in the year 2001. Respondent No.2, in response to this Scheme, made an application on 22.02.2001 and deposited ₹35,654 and another sum of ₹3,110/- on 31.01.2001. He was considered eligible to take part in the auction which was held on 29.09.2001 and was issued a pass on deposit of ₹12,000/- . He participated in the auction and was successful for the allotment of Booth No.51 in Sector 52, Chandigarh against the total cost of ₹4, 41,000/-. He deposited ₹62,500/- on 22.10.2001 to make up 25% of the total cost. However, the possession of the said booth was not delivered to respondent No.2 and his request for the allotment of possession was ultimately rejected on 13.08.2004. Aggrieved against the said decision, respondent No.2 filed an application under Section 22 (C) (1) of the Legal Services Authority Act, 1987 before the Permanent Lok Adalat (Public Utility Service) U.T., Chandigarh. During the pendency of this application before the Permanent Lok Adalat, the Civil Writ Petition No.13794 of 2001 was also pending in this Court, purported to have been filed by the Auto Mechanic Federation, Chandigarh, who were claiming the allotment of sites to the persons who were working inside the petrol pumps. However, before the said writ petition could have been decided, the Permanent Lok Adalat decided the application filed under Section 22 (C) by its order dated 23.07.2013 in favour of respondent No.2, relying upon the report of Screening Committee which was held on 06.08.2001.

Aggrieved against the decision of 23.05.2006, the petitioner filed a Civil Writ Petition No. 6726 of 2008 titled as “the Estate Office, U.T., Chandigarh Vs. Permanent Lok Adalat and another” which was allowed by the learned Single Judge on 14.11.2013, in view of the decision of the Civil Writ

Petition No.13794 of 2001 decided on 23.07.2013, in which it was held that the persons who were working inside the petrol pump were not entitled.

Respondent No.2 then challenged the order passed by learned Single Judge dated 14.11.2013 by filing an LPA No.828 of 2014, which was withdrawn by him with liberty to file a Review Application. Pursuant thereto, respondent No.2 filed a Review Application No. 342 of 2014 which was allowed vide order dated 26.08.2014. The learned Single Judge allowed the Review Application and dismissed the Civil Writ Petition only on the ground that in the fresh survey conducted in the year 2001, the respondent No.2 was found working outside the petrol pump and was thus not covered by the decision rendered in CWP No. 13794 of 2001. Aggrieved against the said decision, the present appeal has been filed.

Learned counsel for the appellant has submitted that the learned Single judge, while allowing the Review Application and dismissing the Writ petition, committed error in the appreciation of facts while considering the eligibility of respondent No.2 in the year 2001 on the basis of an alleged survey which though was only a spot inspection. He has referred to Clause 4 (1)(a) of the scheme to contend that a person, who is already running business of Auto Repairs/Spare Parts in a site/shop meant for such purpose shall not be eligible and also Clause 5 (ii) of the said Scheme to contend that the application of such person was to be considered for allotment if his name exists in the survey conducted on 23rd June, 1997 to 30th June, 1997. He has submitted that there is no provision in the entire scheme of any other survey after the survey of June 1997 as stated hereinabove and the report of the Screening Committee could not have been considered as a survey as the petitioner had already been found, during the survey in the year 1997, ineligible as he was found working inside a petrol pump.

On the contrary, counsel for respondent No.2 has argued that he has been found eligible and a pass was issued to him on payment of Rs.12,000/-, therefore, he had participated in the auction and was declared successful to be allotted booth No. 51 in Sector- 52, Chandigarh and had he not been eligible because of the survey of 2001 then he would not have been allowed to participate in the auction which has taken place after the survey of 2001.

Counsel for respondent No.2, however, has not disputed the fact recorded in the order of the Permanent Lok Adalat in which it is mentioned that in the survey conducted in the month of June, 1997, his name figured as working inside the petrol pump i.e. the appropriate place for the said purpose.

From the perusal of the facts and circumstances, the issue thus arises for consideration as to whether the eligibility of respondent No.2 has to be considered in terms of Clause 4 of the Scheme or on the basis of report of the Screening committee dated 06.08.2001?

Since the purpose for floating the scheme was for regularizing the sale of auto spare parts and auto repair work, which was being conducted from the premises/sites/streets not meant for such use as it was causing unhealthy environment, traffic hazards and public nuisance in the city. The persons, who were already working and doing business of auto spare parts and auto repair work within the premises of a petrol pump were excluded as they were not found working in an unhealthy environment, causing traffic hazards and public nuisance and it is also held by the Division Bench of this Court in the case of Auto Mechanic Federation, (Registration No.430) Chandigarh and others Vs. Union Territory Chandigarh Administration and others in Civil Writ Petition No.13794 of 2001 decided on 23.07.2013. On the basis of the said judgment dated 23.07.2013, learned Single Judge had initially allowed the writ petition

as he was of the view that at that time respondent No.2 was found working within the premises of a petrol pump, therefore, he was not eligible but later on, in the Review Application, he was told that there was some fresh survey dated 06.08.2001 during which he was found working under a tree near K.C. Theatre and was not found working within the premises of the petrol pump and was thus held eligible for participating in the auction proceedings.

In our considered opinion, this view expressed by the learned Single Judge in the Review Application is totally incorrect because of the reason that the report of the Screening Committee dated 06.08.2001 is not the survey in view of Clause 4 and Clause 5 of the Scheme wherein it is provided that for the purpose of participating in the auction, the persons should have been found eligible in the survey conducted during the period of 23rd June, 1997 to 13th June, 1997 and should not have been working inside the petrol pump. This was also the report of the Screening committee which is reproduced for the sake of convenience and read as under:-

“ The Committee is of the opinion that those who are working inside the petrol pump for minor repairs like tyre puncture etc. they should be treated to be working for the petrol pumps and hence cannot be allotted a shop/booth and thus does not deserve to be considered for allotment of booths.”

The said view of the Committee was in consonance with the spirit of the scheme and since respondent No.2 was found ineligible during the survey conducted in terms of the Scheme, he could not have been given a mileage on the basis of the said report of 06.08.2001 for the purpose of participating in the said auction. The appeal is thus allowed.

However, respondent No. 2 who has been delivered the possession of the site in question shall vacate the site within a period of two

months from the date of receipt of certified copy of this order on payment of the amount which had already been deposited by him towards 25% by the appellant. We are not awarding any interest to respondent No.2 because he had been using the site from the last 12 years.

[RAKESH KUMAR JAIN]
JUDGE

[ASHOK KUMAR VERMA]
JUDGE

12.02.2020
hemlata

Whether speaking / reasoned	:	Yes/No
Whether reportable	:	Yes/No