



2023:DHC:8075



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: 26.09.2023
Pronounced on: 07.11.2023

+ W.P.(C) 3791/2018 & CM APPL. 14999/2018
YASHPAL SAWHNEY Petitioner
Through: Mr.Mritunjay Kumar Singh,
Adv.

versus

GOVERNMENT OF NATIONAL CAPITAL TERRITORY
OF DELHI & ORS. Respondents
Through: Ms.Hetu Arora Sethi, ASC for
GNCTD with R-1 and R-2
along with Mr.Ajay Kumar, Sr.
Asstt. Industries Deptt.
Ms.Anusuya Salwan, Adv. For
DSIIDC.

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA

J U D G M E N T

1. This petition has been filed by the petitioner challenging the order/Minutes of Meeting dated 14.12.2016 of the Land & Flat Allotment Committee of the respondent no.2 herein (in short, 'LFAC'), refusing to recommend the application of the petitioner herein for allotment of a plot of land in favour of the petitioner under the Relocation Scheme, 1996 (hereinafter referred to as the 'Relocation Scheme'), and the order dated 09.05.2018 passed by the Hon'ble Lieutenant Governor of Delhi (in short, 'LG') holding that



2023:DHC:8075



the petitioner cannot be considered for allotment of the alternate industrial plot under the Relocation Scheme as the petitioner has been unable to establish that his Unit-M/s Ambika Metals (India) was functional prior to 19.04.1996 at the given address.

2. The petitioner further prays for a *writ of mandamus* directing the respondents to allot an alternate industrial plot measuring 300 square meters @ Rs.4,200/- per square meter to the petitioner against his application no.14130 dated 26.12.1996 on the same terms and conditions and the rates prescribed under the Relocation Scheme.

BACKGROUND FACTS:

3. Briefly stated, it is the case of the petitioner that the petitioner had set up a Copper Wire/Copper Aluminium Wire drawing industrial unit under the name and style of M/s Alankar Tar Manufacturing, at the premises bearing No. 29/10, Gali No.17, Libaspur, Delhi-110042, in January, 1992. On 07.04.1995, the Petitioner changed the name of his proprietorship concern to M/s Ambika Metal (India). The petitioner states that the above premises is owned by Sh. Narender Kumar who already had a sanctioned power load of 37.3 KW. The petitioner further claims to have applied to the respondent no.2 for SSI registration of his industry, vide application no.22749 dated 13.03.1992, to which the respondent no.2 had raised certain objections vide letter dated 08.04.1992.

4. The petitioner further claims that he opened a Current Account with the Punjab National Bank, Vijay Nagar Branch, Delhi in the



2023:DHC:8075



name of his firm, on 21.04.1992. He had also taken a loan of Rs.85,000/- for purchase of machinery in the name of the said firm.

5. The petitioner claims that on 27.05.1994, he had applied for municipal licence in the name of the firm and had also deposited licence fee vide receipt no.580068, dated 27.05.1994. The petitioner also claims to have paid the electricity bills for the period from 06.04.1995 to 04.05.1995, 06.12.1995 to 05.01.1996, and 04.11.1996 to 05.12.1996.

6. The petitioner further claims that he took a Comprehensive Insurance Policy dated 13.06.1995 from the United India Insurance Company for his firm and machinery installed at the above-mentioned premises for the period from 13.06.1995 to 12.06.1996.

7. The petitioner claims that on 04.12.1995, his firm namely M/s Ambika Metal (India) was registered as a Small Scale Industry with the respondent no.2.

8. The petitioner further claims that in April 1996, he applied for the Sales Tax Registration of his firm with the Sales Tax Department. The firm was registered with the Sales Tax Department vide registration no. LC/71/187488/0596 for local as well as Central Sales Tax. On 28.01.1997, the petitioner was also granted the Central Excise Registration Certificate in the name of his firm at the above given address.

9. The petitioner claims that on 31.05.1996, he had filed Income Tax Returns for the Assessment Years 1995 - 96 and 1996 - 97 and was assessed to Income Tax for his firm M/s Ambika Metal (India) vide Assessment Order dated 24.12.1996.



2023:DHC:8075



10. The petitioner claims that he had to shut down his industrial unit in the year 1999-2000, pursuant to the orders passed by the Supreme Court in the case of ***M. C. Mehta v. Union of India***, since the industrial unit was situated in a non-conforming/residential area.

11. The petitioner claims that in the year 1996, the respondent nos.1 and 2 had formulated a policy for relocation of all the industrial units in Bawana Industrial Area, Bawana-I, for which the petitioner had applied vide application no.14130 on 26.12.1996 in lieu of the closure of his industrial unit. The petitioner also deposited the requisite money with the said application as stipulated by the respondent no.3 herein.

12. The petitioner claims that his application, even though it fulfilled the criteria for allotment of the Industrial plot, was not processed and the petitioner did not receive the allotment letter against his application. Aggrieved of the same, the petitioner had filed a Writ Petition, being W.P.(C) No. 17725 of 2005, titled '***Yashpal Sawhney v. Government of NCT of Delhi and Others***' before this Court. The said petition was disposed of vide order dated 06.01.2007, with a direction to the respondents to consider the case of the petitioner on the basis of the documents filed along with the said Writ Petition.

13. Pursuant to the above order, the petitioner again submitted his application alongwith the documents, however, the respondent no.2, vide order dated 21.02.2007, rejected the application of the petitioner for allotment of the industrial plot.

14. Aggrieved thereof, the petitioner filed another Writ Petition, being WP(C) No.5103/2007 titled '***Yashpal Sawhney v. Government of NCT of Delhi and Others***', which was disposed of vide order dated



2023:DHC:8075



07.01.2009, with liberty to the petitioner to file an appeal before the LG.

15. The petitioner preferred an appeal before the LG on 06.02.2009, however, the same was rejected vide order dated 11.08.2011, holding that the petitioner had not set up the industrial unit prior to the cut off date, that was 19.04.1996, and therefore, he was not entitled to the allotment of an industrial plot under the Relocation Scheme.

16. The petitioner challenged the above order by way of yet another Writ Petition, being WP(C) No.4540 of 2012 titled **Sh.Yashpal Sawhney v. Govt. of NCT of Delhi & Ors.** The same was disposed of by this Court vide its order dated 11.09.2012, observing as under:

“8.3 The impugned order of 11.08.2011, appears to simply replicate the conclusion of the department which is represented by respondent no. 3 – by its observation that the petitioner's application is rejected: since as per the note of the department the applicant had failed to prove the existence of the unit prior to the cut-off date, i.e., 19.04.1996. No reasons whatsoever are provided in the impugned order dated 11.8.2011, which was communicated to the petitioner on 24.8.2011. Therefore, the order deserves to be set aside on this short ground. One can only hazard a guess that, if the reasons were those which are found in the order of respondent no. 3 dated 21.2.2007, the same are flawed as the return for assessment year 1995-96 would clearly relate to the business of the company being carried out in 1994-95, which is a period well before the cut-off date, i.e., 1995-96.

8.4 There are several other evidences and vents, to which I have made a reference above, in respect of which there is no discussion whatsoever by respondent no. 2 in the order, which was communicated to the petitioner. I



had noticed in my order dated 31.07.2012 that in the profit and loss account ending on 31.03.1995 there was income by way of job work of Rs 2,75,730/-. Similarly, for the profit and loss account for the year ending 31.03.1996 the income from the "job work" is shown as Rs 3,10,255/-. The aforesaid two profit and loss accounts have amongst others, expenses shown qua wages, electricity, tools and dies, repairs etc. In so far as balance sheets as on 31.03.1995 and as on 31.03.1996 is concerned, the book value of the machinery is shown as 1,75,000/-. Prima facie, this itself would show that the petitioner's business was established prior to the cut-off date. However, respondent no. 2 has not taken into account any of this material. Nor has there been any attempt to make reference of those averments and documents, to which I have made a reference above. Therefore on this short ground, as indicated above, the impugned order deserves to be set aside.

8.5 The reference in the impugned order that sales tax registration was obtained after April, 1996 is flawed for several reasons; First, if the petitioner's income is from job work in the relevant year then surely it was not required to have prima facie sales tax registration at relevant point in time. Therefore, cursory rejection on this score was unwarranted. Second, the impugned order refers to failure to prove establishment of industrial unit prior to cut off date not commencement of sale and manufacture. These several indices of establishment of unit adverted to by petitioner, none of which has been examined. For example: the purchase machinery, taking up insurance, setting up of unit by acquiring spare, generation of income, deployment of labour etc.

8.6 On the issue of principle of breach of natural justice, there is some merit in the submission of the petitioner, that once further information was sought from the petitioner and in response to which comments sought of



the Department of Industries were called, it would have been appropriate that the petitioner was heard in support of his case, especially when he had been called upon to file a rejoinder. But then, I am not basing the conclusion arrived at in my order on this alone. As indicated above, what is a more compelling reason, in arriving at the conclusion which I have, is the non-consideration of the material on record. The impugned order / communication is bereft of any reasons. As is often said, reasons are a link between the material on record and the conclusion which a judicial or a quasi judicial authority arrive at. In the absence of reasons, the conclusion cannot stand.

9. Accordingly, I have no hesitation in coming to the conclusion that the impugned orders / communications have to be set aside. It is ordered accordingly. The respondent no. 2 shall hear the appeal of the petitioner once again based on the material on record. The appeal shall be disposed of as expeditiously as possible, preferably within a period of eight weeks from today, having regard to the fact that the petitioner has now been at it, for more than a decade and a half. The petitioner will be given a notice of hearing of the appeal. The respondent no. 2 shall pass a speaking order, which will be communicated to the petitioner no later than one week from the date of the passing of the order.

10. Needless to say, if the order passed by respondent no. 2 is adverse to the interest of the petitioner, he would have liberty to take recourse to an appropriate remedy as may be available to him in law."

17. The petitioner, in pursuance of the abovementioned order, submitted representations dated 26.09.2012, 05.10.2012, and 12.10.2012 with the respondent no.1.



18. The LG vide his order dated 03.03.2013, allowed the appeal and directed the Commissioner of Industries to favourably consider the petitioner's case for allotment of the alternative industrial plot under the Relocation Policy. The relevant observation/direction of the LG in the order dated 03.03.2013 is reproduced hereinbelow:

"After careful consideration of documents on record, the contentions of the applicant and the department during personal hearing, I have come to the conclusion that Sh. Yash Pal Sawhney had been carrying out manufacturing activities in his firm M/S Ambika Metal (India) before the cutoff date of 19.4.1996. Through various documents as mentioned by him, he has able to show that he had been taking all necessary steps to establish his unit and to undertake activities. Accordingly, the Commissioner of Industries is directed to favourably consider his case for allotment of alternative industrial plot under the relocation policy as per standard terms and conditions."

19. The respondent no.3 in its Minutes of Meeting of the Industrial Land Management Advisory Committee (in short, 'ILMAC') held on 02.07.2013, recommended the case of the petitioner for allotment of a plot. The relevant extract of the Minutes of the Meeting is reproduced hereinbelow:

"The Committee observed that since Hon'ble L.G. has already considered earlier grounds for rejection of this application and appeal at the time of passing speaking order with the conclusion that he was carrying out manufacturing activities before the cut-off date of 19.4.1996, it may not be appropriate for the Committee to go into these details at this belated stage. Accordingly, the Committee recommends for allotment of plot to M/s."



2023:DHC:8075



Ambika Metal (India) in accordance with the directions of Hon'ble L.G.”

20. In the 49th meeting of the LFAC of the respondent no. 2 held on 04.04.2014, the case of the petitioner was recommended for allotment of the industrial plot of 200 sq. meters under the Relocation Scheme, observing as under:

“The ILMAC/ Appeal Committee observed that since Hon'ble L.G. has already considered earlier grounds for rejection of his application and appeal at the time of passing said order with the conclusion that he was carrying out manufacturing activities before the cut-off of 19.04.1996, it may not be appropriate for the Committee to go into these details at this belated stage. Accordingly, the ILMAC/ Appeal Committee recommends for allotment of plot to M/s Ambika Metal (India) in accordance with the directions of Hon'ble L.G. As per application form, this applicant had applied for 300 sq. meter size plot and was occupying 300 sq. yards. As per policy/guidelines plot size is determined after applying a 30% cut for plot size between 201-300 sq. meter. Therefore, the applicant is eligible for allotment of industrial plot size of 200 sq. meter of plot. In the Land & Flat Allotment Committee meeting during deliberations, the location of the unit at Gali No.17, Libaspur, Khasra No.29/10 was also discussed. The Committee pointed out to error made in SI.no.4(a) of the check list showing its location within boundaries of the area notified for redevelopment. This needs to be corrected in view of location indicated in the map. Further, it was noted from the Map of Libaspur Industrial Area as provided by Sh.S.K.Singh, Dy. Commissioner (Policy) that though the location of the unit appears to be outside the boundaries of the notified area for re-development, however it needs to be



physically ascertained from the site through DSIHC.

In view of above, the Land & Flat Allotment Committee recommended the case of M/s Ambica Metal (India) for allotment of an industrial plot of 200 Sq. Mtr. under re-location scheme provided that the location of the unit at Gali No. 17, Libaspur, Khasra No. 29/10 upon physical verification is found outside the boundaries of the notified area for redevelopment, of Libaspur Industrial Area. DSIHC. be asked to give field verification report within 15 days."

21. From the reading of the above, it would be apparent that the only verification sought by the LFAC of the respondent no.2 was on whether the location of the Unit of the petitioner herein was outside the boundaries of the notified area for re-development of Libaspur Industrial Area. The eligibility of the petitioner on the touchstone of the existence of his Unit prior to the cut-off date of 19.04.1996 stood accepted by all the authorities.

22. As far as the location of the Unit of the petitioner is concerned, vide letter dated 16.04.2014, the office of the Commissioner of Industry directed the Chief Engineer-I of the respondent no.3 to make physical verification of the site/location of the plot where the petitioner's Unit was located. Upon such verification, it was found that the Unit of the petitioner was located outside the boundaries of the notified area of the Libaspur Industrial Area. A noting dated 26.04.2014 in this regard is placed by the petitioner with this Writ Petition as Annexure P-9.

23. The Office File of the Office of the Commissioner of Industries, Govt. of NCT of Delhi, that has been produced by the respondent



before this Court, shows that vide Office Note dated 16.07.2014, the Industries Department sought the decision of the Competent Authority for allotment of the alternate plot to the petitioner. However, the Additional Secretary to the LG, vide Note dated 03.09.2014 sought the following clarification/documents from the Department:-

- “(i) *The orders passed by the then Hon'ble Lt. Governor dated 3/3/2013 were conveyed to the Department vide this Secretariat's UO dated 5/3/2013. Department may clarify as to why the matter has been resubmitted after a such long gap/ delay of almost 1½years*
- (ii) *Department may also obtain copies of the documents referred to by the Hon'ble High Court in its order dated 11/9/2012 in CWP No.4540/2012, from the applicant and place them on record.”*

24. Accordingly, vide the letter dated 11.09.2014 sent by the Assistant Commissioner of Industries (Relocation), the petitioner was again asked to produce all the documents that had been referred by this Court in its order dated 11.09.2012 in W.P.(C) no. 4540/2012.

25. From the Office Note dated 18.09.2014, it appears that the petitioner produced certain documents in original, however, could not produce the originals of the Income Tax Returns for the Assessment Year 1995-96 and 1996-97. The case of the petitioner was again put up for a decision of the ILMAC, with the following observations:

“It may also be noted that in the judgement dated 11.9.2012 as well as L.G. order dated 3.3.2013 the matter was concluded solely discussing and relying upon the income tax returns for the assessment year 1995-96 and 1996-97 relating them to the income prior to cut off date i.e. 19.4.1996.



Whereas the applicant could not show originals of these returns to ACI (Relocation) on 15.09.2014. Earlier while taking decision, the ILMAC/Appeal Committee had preferred not to go into these details and had not seen original and simply recommended for allotment of plot based on the conclusion of the L.G. order dated 3.3.2013 as per recorded minutes of meeting of ILMAC dated 2.7.2013 at page C/258-259.

Considering the above deficiencies, CI may be requested that this case be referred back to ILMAC/Appeal Committee to look into and call the applicant to explain the discrepancies and to produce originals before it as directed by the L.G. office as per standard terms and conditions of relocation policy. Draft agenda for ILMAC/Appeal Committee is also added.”

26. ILMAC in its meeting dated 28.10.2014 observed that the LG has already directed favourable consideration of the case of the petitioner and now only the documents had to be sought from the petitioner. It was further observed that if a re-consideration is directed, it would be going back on a decision already taken about two years back. The relevant observations of the ILMAC are reproduced herein below:

“The Committee after going through the record available on file, facts of the case and hearing the applicant is of the view that since Hon'ble LG has already issued a Speaking order with the direction to consider the case favorably there in no role of ILMAC/Appeal Committee at this stage. This was already clarified by the ILMAC. In its meeting held on 02.0./2013. In-fact, on perusal of the file it is clear that office of LG has simply asked for obtaining copies of the documents referred to by the Hon'ble Delhi High Court in its order



dated 11.09.2012 in CWP No.4540/2012 from the applicant and placing them on record.

The ILMAC/Appeal Committee is unable to understand its role in getting the documents from the applicant and placing them on record. ILMAC/Appeal Committee is of the view that the applicant may be given required time to submit the documents and the matter may be placed again before Hon'ble LG. Further, placing the matter again before the Committee will reopen the case. However, if consideration of the case by ILMAC is required then specific directions may be issued for re-consideration of the whole case afresh on merit by the ILMAC/Appeal Committee. In that eventuality, it would be going back to square one at this belated stage, when the speaking order had already been passed by Hon'ble LG in compliance of the directions of Hon'ble Delhi High Court, about two years back."

27. In the meantime, the PGC also considered the grievance of the petitioner regarding the non-allotment of the alternate plot, and observed as under:

"The commission finds it quite strange and is shocked that even after clear cut orders of the Hon'ble High Court and Hon'ble L.G. of Delhi as well as approval for allotment of Industrial plot to the complainant by ILMAC and Land and Flat Allotment Committee of Industries department, the department is raising flimsy objections.

It has to be appreciated by the concerned D.C. that it was the commissioner Industries who had moved the proposal to Hon'ble LG who after hearing bother the parties, passed clear and speaking orders directing the Industries department to allot Industrial plot to the complaint. In the said orders it has been clearly mentioned that Sh. Yash Pal carrying out the industrial activities



prior to 19.4.1996. The complainant has already produced a letter written by Asstt. Director (CL) dt. 8.4.1992 of the Industries department in reply to his application for registration under SSI asking certain documents to consider his request for issuance of a certificate. This letter itself make it clear that the complainant was carrying out his business in the year 1992. The complainant also produced a circular issued by the Industries Deptt., GNCT of Delhi regarding criteria for eligibility for allotment of plot under re-allocation scheme. Vide para 15, it has been mentioned that the complainant may furnish any of the 14 documents to establish the existence of his unit prior to 19.4.1996. The last para of the said circular as mentioned "any correspondence/letter issued by a Government Department showing carrying out of industrial activity by the applicant unit is also acceptable for ascertaining date of establishment and eligibility of the applicant unit".

As per the said circular, the department can not insist regarding verification of Income Tax return etc. as any one of the documents mentioned in the circular is sufficient to show Industrial activity on or prior to the cut of date. The Industries department's letter has clearly established this fact."

28. PGC issued directions to the respondents to take immediate action regarding allotment of an industrial plot to the petitioner.

29. At this stage, while the Deputy Commissioner (Industries), vide Noting dated 11.08.2015, asked for submission of the file to the LG for allotment of the plot to the petitioner under the Relocation Scheme, the Secretary to Minister (PWD and Industries), vide Noting dated 18.08.2015 stated that the Minister has desired that the concerned Engineer of the DSIIDC must certify on the noting side, on



2023:DHC:8075



the basis of physical inspection and survey, that the location of the Unit of the petitioner was outside the boundary of the notified area for re-development of Libaspur Industrial Area.

30. From the above, it is apparent that the consideration of the petitioner's application was really going in circles. In spite of the decision of the LG finding the petitioner eligible for allotment of plot of land under the Relocation Scheme, firstly a fresh exercise was conducted to re-determine the eligibility of the petitioner, and then, in spite of there being a report that the Unit of the petitioner was located outside the boundary of the Libaspur Industrial Area, again a report on the same was asked for. It appears that reasons were being sought to be manufactured to somehow deny allotment of an alternate plot of the land to the petitioner.

31. Be that as it may, a joint inspection was again carried out on 03.09.2015, and the Chief Engineer reported as under:

"After inspection and verification from all the above mentioned local industry owners have confirmed to the DSIIDC officers that

1. Khasra No.29/10 pertains to notified area of re-development of Libaspur Industrial Area. However, as per the drawings received from C.I. office verified by Sh.G.P.Singh, SDM, Narela. The above area is outside notified area of redevelopment of Libaspur Industrial area.

2. At the time of inspection there is no such industry i.e. M/s Ambika Metal Industries India existing at the said Khasra No.29/10, Libaspur Industrial Cluster."



32. The above Note again shows that the Unit of the petitioner was located outside the notified area of re-development of Libaspur Industrial Area.

33. The Chief Secretary, Delhi, vide its Note dated 04.12.2015 however, found some non-existing contradiction in the report of the SDM and that of the Chief Commissioner, and directed the matter to be placed before the LFAC for examination.

34. By the subsequent Note dated 21.12.2015, the Chief Engineer-II clarified that there is no contradiction in the report and that the Unit of the petitioner is located outside the notified area and is therefore, eligible for allotment.

35. In spite of the above, the Chief Secretary vide his Note dated 29.04.2016, again directed as under:

“171. The submissions at Para-142 and 164 are contradictory. As per the inspection report conducted by DSIIDC on 03.9.15, as indicated in Para-142, Khasra No.29/10 pertains to notified area of redevelopment of Libaspur Industrial Area whereas the inspection report dated 26.04.14, as indicated in Para-164 states that site to be outside the boundary of notified area.

172. The Department is to examine and indicate in clear terms about the site whether it lies within the notified area or outside the notified area. Thereafter, the status be placed before the Land & Flat Allotment Committee, as per the minutes of the meeting dated 04.04.14 (P-57/C), as also approved by Hon'ble Minister (Industries) at Page-32/N.”



36. It was again clarified that the area where the petitioner's Unit was situated, though the Unit not found existing on the date of the inspection, was outside the notified area of re-development.

37. In compliance with the direction of the Chief Secretary, the file was, however, again put up to the LFAC, thereby starting a new process of evaluation of the petitioner.

38. It was now time for the LFAC to take a U-turn. By the impugned minutes of meeting dated 14.12.2016, it held that the petitioner was not covered under the Relocation Scheme for allotment of an alternate plot as there was "absence of clear Govt. proof in favour of the applicant prior to cut off date i.e. 19.04.1996 as laid down under policy is neither available nor it could be produced by the applicant at any point of time." In reaching the said conclusion, the Committee observed that the petitioner was to prove existence of its Unit prior to 19.04.2016 only through the specified documents, which it failed to do. On the documents submitted by the petitioner, the LFAC observed as under:

"The case was again placed before Land and Flat Allotment Committee for its consideration. The case was discussed in details in the Land & Flat allotment Committee on 14.12.2016 and followings were observed as well as decided:

1) The applicant has submitted Sale Tax Registration Certificate in his favour i.e. in the name of M/s Ambika Metals (India) at declared factory premises, 29/10, Gali No. 17, Libaspur, Delhi with liability and validity w.e.f. 27.05.1996. This is after cutoff date i.e. 19.04.1996, hence this cannot be considered as valid document under Relocation Scheme.



2) *The applicant has submitted Income Tax acknowledgement for the returned for the assessment year 1995-96 and the assessment order under Section 143(1) for the same period. Both are of 2075, Dr. Mukherjee Nagar, Delhi. Though, the Income Tax Return is in favour of Ambika Metals (India) but the address mentioned is different from declared factory address.*

3) *The Small scale Industries Provisional Registration Certificate No.55/55/Prov/SSI/DWS/O6/042/NL dated 04.12.1995 submitted by the applicant is not valid document to prove that unit was in manufacturing, as provisional registration used to be granted prior to Starting of manufacturing.*

4) *The electricity bill of K No.5031293497 is on the name of Sh.Harinder Kumar and the said bill of Dec. 1996 do not reflect any misuse or excess charge therefore it cannot be said that the electricity was shared by M/s Ambika Metals (India) to run the factory, Hence, this document is not sufficient to establish that unit was running prior to 19.04.1996.*

5) *A copy of passbook of Punjab National Bank of current A/c no.1780 submitted by the applicant is on the name of M/s Alankar Tar Manufacturing, therefore, this is also not on the name of applicant unit hence it cannot be considered as proof of establishment of unit prior to the cutoff date.*

6) *A copy of insurance by United India Insurance Company Ltd. with proposal of insurance w.e.f. 13 June 1995 submitted by the applicant is also in favour of M/s Alankar Tar Manufacturing which is other than the applicant unit.*

7) *The Income Tax Department was also requested to verify the assessment order submitted by the applicant and a reply has been received vide letter dated 05.03.2015 from Income Tax Department that the verification of assessment order in absence of*



2023:DHC:8075



original records in the (Income Tax Department) is not possible.”

39. Clearly, the above decision though refers to the earlier decision dated 03.03.2013 of the LG and the earlier recommendation dated 04.04.2014 of the LFAC itself, it does not give any reason for disagreeing with the same. It acts as if the case of the petitioner was being considered for the first time and in a fresh exercise. There is no reason given for a review of the earlier decision and how the same had ignored certain material document or was erroneous in law or on facts. LFAC did not even deem it fit to give an opportunity to the petitioner to explain the alleged discrepancies in the documents. The petitioner in the original petition filed before this Court claimed that, in fact, the above decision of the LFAC was never communicated to him, and it was only later that extracts thereof were received by him under the Right to Information Act, 2005, which were challenged by the petitioner in the present petition.

40. This petition was first listed before this Court on 18.04.2018, when considering the background of the Writ Petition, this Court observed as under:

“11. The aforementioned extract would clearly show that the Deputy Commissioner (Relocation), Mr. Vinod Kumar, has, in effect, reversed the orders of the LG. According to me, such an approach will debilitate the functional efficacy of the administration and, therefore, unless the Deputy Commissioner provides a good explanation there is no reason as to why relief ought not be given to the petitioner.”



41. In the meantime, the petitioner had also made representation to the LG. The LG, vide his impugned order dated 09.05.2018, dismissed his representation observing as under:

“261. Thereafter, the matter was examined at various levels. On 22.05.2017, Shri Yashpal Sawhney, proprietor M/s. Ambika Metals (India) appeared before me for personal hearing and also filed a representation dated 24.05.2017 alongwith documents. All the documents alongwith representation were referred to the Industries Department for examination as per Rules/Policy.

262. I have considered the entire matter and the documents on record and I agree with the recommendation dated 14.12.2016 of Land and Flat Allotment Committee and views of the Industries department that the documents submitted by Shri Yashpal Sawhney, proprietor, M/s. Ambika Metals (India) do not establish that the unit was functional prior to 19.04.1996 at the given address. In the absence of fulfilment of the standard terms and conditions of the policy for allotment of alternative industrial plots, the request of applicant cannot be agreed.”

SUBMISSIONS OF THE LEARNED COUNSEL FOR THE PETITIONER:

42. The learned counsel for the petitioner submits that since the LFAC and the LG had already taken a decision on 03.03.2013, finding that the petitioner was able to prove from his documents that he carried out manufacturing activities from the Unit before the cutoff date of 19.04.1996, the said decisions could not have been re-opened and reviewed on the same set of documents by the LFAC and the LG.



He submits that earlier an enquiry was undertaken with the Income Tax and the Sales Tax office to verify the information supplied by the petitioner. Once the same was concluded, then another enquiry was initiated to find out if the Unit of the petitioner was situated outside the notified area of Libaspur Industrial Area. While the report on the above enquiry came in favour of the petitioner, the question of his eligibility was again re-opened and the same smacks of *mala fide*.

SUBMISSIONS OF THE LEARNED COUNSELS FOR THE RESPONDENTS

43. On the other hand, the learned counsels for the respondents submit that under the Relocation Scheme, the petitioner has to satisfy his eligibility by production of the following documents, which were not provided by the petitioner in the present case.

(a)	<i>Municipal Corporation License (Renewed up to 31.03.1995)</i>	(b)	<i>Permanent S.S.I. Registration</i>
(c)	<i>Sales Tax Registration for Manufacturing</i>	(d)	<i>Excise Registration for Manufacturing</i>
(e)	<i>Registration under Factories Act</i>	(f)	<i>Drug License, if unit is Manufacturing item covered under Drug Act</i>
(g)	<i>Test Report from B.I.S., R.T.C. Q.M.S. Certificate issued by the O/o C.I. etc.</i>	(h)	<i>Manufacturers Certificate in case of Household Electrical Appliances.</i>
(i)	<i>B.I.S. Licence</i>	(j)	<i>Regn. With W.P.C. as Manufacturer Exporter</i>
(k)	<i>Copy of Challan issued by the DDA or MCD or DVB within last five years for running the industry</i>	(l)	<i>*Power Bill showing misuse charges for running an industry in non-conforming areas.</i>
(m)	<i>Income Tax Return of the industry. *</i>	(n)	<i>Receipt showing that unit has applied for permission of High Power Committee.</i>



2023:DHC:8075



(o)	Any correspondence / letter issued by the Govt. Departments showing carrying out of industrial activity by the applicant unit.		
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44. They submit that therefore, in the meeting held on 14.12.2016, the case of the petitioner for allotment of the land was not recommended. The decision was affirmed by the LG in his order dated 09.05.2018. They submit that therefore, no fault can be found in the impugned decisions.

ANALYSIS AND FINDINGS:

45. I have considered the submissions made.

46. As is evident from the above narration of facts, this Court in its order dated 11.09.2012 had *inter alia* observed that there are various documents that have been placed by the petitioner on record which would clearly establish the factum of his Unit being in existence prior to the cutoff date of 19.04.1996. With the above observations, the matter was remanded to the LG for considering the case of the petitioner afresh. The LG vide his order dated 03.03.2013, specifically observed that the petitioner had been carrying out manufacturing activity in his firm before the cutoff date. The LG directed the Commissioner of Industries to favourably consider petitioner's case for allotment of alternate-industrial plot. The LFAC also vide its Minutes of Meeting dated 04.04.2014, recommended the case of the petitioner for allotment of an alternate plot of land measuring 200 sq. meters. Thereafter, the enquiry was on the location



2023:DHC:8075



of the Unit of the petitioner and on whether the same was situated outside or within the boundary of the notified area of Libaspur Industrial Scheme. It was repeatedly reported that the same was situated outside. Considering this background, there was no occasion for the LFAC to re-visit the question of the eligibility of the petitioner on the issue of petitioner's Unit being operational prior to the cutoff date or not. The said issue had already been concluded in the favour of the petitioner by LFAC itself.

47. It appears that the respondents were adamant to deny the allotment of an alternate plot of land to the petitioner and were looking for excuses for the same. It was with this intent that the above issue was re-opened and re-determined by the LFAC in its meeting held on 14.12.2016, that too in the absence of the petitioner and without putting him to notice. The same was a violation of the principles of natural justice and even otherwise smacks of *mala fide*, if not in fact, in Law. It is not understood as to how on the same set of documents, the LFAC was first satisfied that the petitioner's Unit was working prior to the cutoff date and then had doubts over the same. There are no reasons given in the decision dated 14.12.2016 of the LFAC or in the decision dated 09.05.2018 of the LG on how their earlier decision was incorrect and needed a review.

48. The submission of the learned counsel for the respondents that the Scheme required a particular set of documents only to be produced and in the absence thereof, the petitioner was not eligible, cannot also be accepted. If the petitioner was able to satisfy the respondents of the existence and operation of its Unit prior to the cut off date through



other documents, and where such documents were earlier taken into cognizance for rendering a finding in favour of the petitioner, mere failure of the petitioner to submit the listed documents would be an adherence to a formality rather than to substance. The same would be totally arbitrary and a clear denial of justice. In fact, Clause (o) of the list of documents itself allows the petitioner to place reliance on “any correspondence/letter issued by the Government Departments showing carrying out of industrial activity by the applicant unit”.

49. Though the decision dated 14.12.2016 of the LFAC has been approved by the LG vide his order dated 09.05.2018, the same is, in fact, non-speaking. It merely states that the LG has considered the documents on record, however, gives no reason for why it differs from the opinion of the LG given on the earlier occasion and as recorded in the order dated 03.03.2013. It also does not show if the comments received by the LG from the Industries Department were ever put to the petitioner.

50. In view of the above, the impugned decision dated 09.05.2018 of the LG is also in violation of the principles of nature justice and is liable to be set aside.

DIRECTIONS:

51. In view of the above, the impugned Minutes of Meeting dated 14.12.2016 of the LFAC, and the decision dated 09.05.2018 of the LG, are set aside.

52. This leaves this Court to either remand the matter back to the LG for a fresh decision or to issue a Writ of Mandamus directing the allotment of the alternate plot of land to the petitioner. In the given



2023:DHC:8075



facts, I am of the opinion that as the eligibility of the petitioner to the allotment of an alternate plot of land admeasuring 200 sq. meters under the Relocation Scheme already stands satisfied vide order dated 03.03.2013 of the LG and the order dated 04.04.2014 of the LFAC, the petitioner is entitled to a Writ of Mandamus directing the respondents to allot an alternate plot of land admeasuring 200 sq. Meters to the petitioner in compliance with the direction/decision dated 04.04.2014 of the LFAC.

53. The issue would, however, remain of the price on which the alternate plot is to be allotted to the petitioner.

54. I find that there is no decision of the LG or the LFAC in this regard. Nor is there material for this Court to carry out such determination.

55. I, therefore, deem it appropriate to direct that the determination of the price on which the alternate land shall be allotted to the petitioner shall be made by the respondents within a period of eight weeks from the date of this judgment. In such determination, the respondents shall keep in view that the petitioner was not at fault for the delay in allotment and was, in fact, eligible for such allotment in terms of the decision dated 03.03.2013 of the LG. Therefore, it would not be just and equitable for the respondents to insist on payment of the current market rate from the petitioner. At the same time, allotment of alternate land at the price as was prevalent in 2013 may lead to grant of a bonanza to the petitioner. Therefore, the decision on the price to be charged to the petitioner shall have to balance the two competing considerations in order for it to be just, fair and reasonable.



2023:DHC:8075



Needless to say, in case the petitioner is aggrieved of the decision on the rate-price, it shall be open to the petitioner to challenge the same in accordance with law.

56. The petition is disposed of with the above directions. The pending application also stands disposed of.

NAVIN CHAWLA, J.

NOVEMBER 7, 2023/rv/RN/am