

THE HON'BLE THE CHIEF JUSTICE ALOK ARADHE
AND
THE HON'BLE SHRI JUSTICE ANIL KUMAR JUKANTI

WRIT PETITION No.28755 OF 2008

ORDER: *(per the Hon'ble Shri Justice Anil Kumar Jukanti)*

Mr. Gandra Mohan Rao, learned Senior Counsel representing Mr. G. Malla Reddy, learned counsel for the petitioner.

Mr. Pottigari Sridhar Reddy, learned Special Government Pleader attached to the office of the learned Advocate General for the State of Telangana for respondent Nos.1 to 3.

Mr. Vedula Srinivas, learned Senior Counsel representing Mr. S. Viplav Simha Reddy, learned counsel for respondent No.4.

2. This writ petition is filed praying to grant the following relief:

“... to issue appropriate writ, order or direction more particularly writ of Mandamus calling for the records pertaining to the issue of G.O.Ms.No.744 General Administration (I&PR) Department dated 26.12.2008 and G.O.Ms.No.355 General Administration (I & PR-II) dated 21.08.2001 passed by the 1st respondent as illegal, arbitrary, unreasonable, ultra vires the provisions of the A.P. (Telangana Are) State Lands and Land Revenue Rules, 1975 and Article 14 of the Constitution of India

and to set aside the same and to declare the consequential action taken pursuant to the above Government orders as illegal, non-est, null and void and to further direct investigation into allotment of the land to the 4th respondent and to fix the responsibility and to punish the guilty and to pass such other order or orders as this Hon'ble Court may deem fit and proper in the circumstances of the case.”

3. Brief facts:

According to petitioner, he is a Member of Legislative Assembly and has served as a Cabinet Minister during the years 2004-2006 and that he launched agitations of public importance. It is averred that the petitioner takes up the issues which cause loss to public exchequer and issues of gross abuse and misuse of power by officers and persons.

3.1. The State Government issued G.O.Ms.No.355, General Administration (I & PR) Department, dated 21.08.2001, directing A.P. State Film, T.V. & Theatre Development Corporation Limited, Hyderabad (hereinafter referred to as 'Corporation') to allot land admeasuring an extent of Acs.5.00 in Survey No.403 of Shaikpet Village, Golconda Taluk, Hyderabad District, at the rate of Rs.8,500/- per acre to the respondent No.4 for the purpose of

construction of office, godown for equipment, parking and service facilities for the generator vehicles. By letter dated 21.02.2002, further action in the matter was stopped by the Government. The subject land remained with Government, vide G.O.Ms.No.744, General Administration (I & PR-II) Department, dated 26.12.2008, earlier instructions issued on 21.02.2002 were withdrawn and respondent No.3 was directed to execute sale deed in favour of respondent No.4. The purpose of allotment in the said G.O., was changed, respondent No.4 was permitted to develop facilities for promotion of film and TV industry, such as dubbing theatres, editing rooms, graphics and animation studios and TV serials, preview theatres, satellite up-linking facilities, staying and resting facilities for film and TV industry employees, artists and technicians etc., and also to provide facilities for production companies coming from all over India and abroad and foreign collaboration productions connected to film, TV and animation software industry etc., in the allotted land. Writ petition is filed challenging G.O.Ms.No.744, dated 26.12.2008 and G.O.Ms. No.355, dated 21.08.2001, on various grounds.

4. Learned Senior Counsel appearing on behalf of the petitioner submitted that petitioner is a public spirited person and has obtained information under Right to Information Act, 2005 about allotments of lands to various film personalities. It is also submitted that terms and conditions of allotment are general in nature and that no project report has been called for. It is contended that the allotment is made at a throwaway price of Rs.8,500/- per acre, which is unconscionable and without obtaining approval from the Cabinet of the State Government. It is submitted that the G.Os., were issued by incorporating the request letter seeking allotment. It is submitted that allotment was neither made for any specified purpose nor the same is for any public purpose under the Andhra Pradesh (Telangana Area) Alienation of State Lands and Land Revenue Rules, 1975 (for short, 'the Rules, 1975'). It is further contended that the G.Os., are contrary to the Rules, 1975.

4.1. It is submitted that allotments are made without considering the market value, thereby causing financial loss to the public exchequer. It is submitted that allotment of subject land on the basis of an application made by the individual *de hors* an

advertisement by State or its instrumentality is arbitrary, discriminatory, violating the equality clause embodied in Article 14 of the Constitution of India. It is further submitted that the proposal for allotment was not placed before any screening committee. It is contended that there was neither any examination with regard to the expertise nor competency of the respondent No.4 in the field. In support of the aforesaid submissions, reliance has been placed on the decisions in **M/s. Kasturi Lal Laxmi Reddy vs. The State of Jammu and Kashmir and Another**¹, **Ram & Sham Company vs. State of Haryana** ², **Shri Sachidanand Pandey and Another vs. The State of West Bengal and Others**³, **New India Public School and Others vs. HUDA and Others**⁴, **M.I. Builders Pvt. Ltd. vs. Radhey Shyam Sahu and Others** ⁵, **Akhil Bhartiya Upbhokta Congress vs. State of Madhya Pradesh and Others**⁶, **Humanity and another vs. State of West Bengal and Others** ⁷, **City Industrial Development Corporation vs. Platinum Entertainment and**

¹ AIR 1980 SC 1992

² AIR 1985 SC 1147

³ AIR 1987 SC 1109

⁴ (1996) 5 SCC 510

⁵ (1999) 6 SCC 464

⁶ (2011) 5 SCC 29

⁷ (2011) 6 SCC 125

Others⁸, Institute of Law, Chandigarh and Others vs. Neeraj Sharma and Others⁹, Road Metal Industry vs. Secretary to Government of Andhra Pradesh, Revenue Department and Others¹⁰ and State of Orissa vs. Pratima Mohanty¹¹.

5. Learned Special Government Pleader appearing on behalf of respondent Nos.1 to 3 submitted that Government had taken a policy decision to promote and develop film industry in the State of Andhra Pradesh. Pursuant to the said policy, G.O.Ms.1015, dated 17.07.1982, was issued allotting Acs.50.00 of land in favour of Andhra Pradesh State Film Development Corporation (for short, 'APSFDC') for development of infrastructural facilities for film industry in Survey No.403, Shaikpet Village, Golkonda Taluq, on payment of Rs.8,500/- per acre. It is further submitted that by way of G.O. Ms.No.1511, dated 03.11.1983, the subject land was resumed. It is also submitted that Government allotted Acs.9.518 guntas in favour of Padmalaya Studios vide G.O.Ms.No.1512, dated 03.11.1983 and an extent of land admeasuring Acs.5.00 was allotted to Suresh Productions Private Limited vide G.O.

⁸ (2015) 1 SCC 558

⁹ (2015) 1 SCC 720

¹⁰ 2001 (6) ALD 166

¹¹ 2021 SCC On Line SC 1222

Ms.No.592, dated 31.03.1984. It is contended that a request was made by the Director of Information and Public Relations to retransfer land admeasuring Acs.35.482 guntas in favour of APSFDC and the same was retransferred vide G.O.Ms.No.226, dated 26.03.1991 to APSFDC. It is further contended that an extent of Acs.10.00 was also allotted to Children Film Society of India for construction of Children Film Complex out of Acs.35.482 guntas. It is also contended that an extent of Acs.5.00 was allotted in favour of the respondent No.4 out of the land allotted in favour of APSFDC.

5.1. It is urged that re-allotment made in favour of APSFDC and allotment in favour of institutions including respondent No.4 was challenged vide W.P.No.7583 of 2004 by way of a Public Interest Litigation (PIL) and the same was dismissed on the ground of delay and laches. It is also urged that W.P.No.6406 of 2004 was filed by another set of persons as a PIL and the writ petition was dismissed. It is contended that by way of a policy, Government, in the year 1982, undertook to allot land for specific purpose of development of film industry and the said policy is neither discriminatory nor unreasonable or arbitrary. It is further

contended that land at concessional rates was allotted for famous producers, film artists on similar basis for the same prices, but for reasons best known, land allotted to respondent No.4 is only under challenge.

5.2. It is submitted that the cause in the writ petition does not survive as the issue has attained finality by virtue of the order of the Supreme Court. It is pointed out that W.P.No.7367 of 2011 was filed challenging G.O.Ms.No.1015, dated 17.07.1982, G.O.Ms.No.1511, dated 03.11.1982, G.O.Ms.No.226, dated 26.03.1991, G.O.Ms.No.355, dated 21.08.2001, and G.O.Ms. No.744, dated 26.12.2008, as arbitrary and illegal. The said writ petition was dismissed by an order dated 06.04.2011. Against the said order, an SLP was preferred before the Supreme Court and the Supreme Court vide order dated 30.01.2012 held as follows:

“The Special Leave Petition is dismissed on delay as also on merits.”

5.3. It is argued that a Division Bench of this Court in W.P (PIL) No.14 of 2020, wherein allotment of land to an extent of Acs.5.00 to N. Shankar, Film Producer, came to be challenged, by a detailed order after considering various aspects has upheld the

allotment. Placing reliance on **Indian Medicines Pharmaceuticals Corporation Limited vs. Kerala Ayurvedic Cooperative Society Limited and Others**¹², it is contended that the policy of the Government is just, fair and reasonable and is in accordance with principles of Article 14 of Constitution of India. It is also contended that parcels of land were allotted to institutions and individuals to set up infrastructural facilities for the purpose of development of film industry on the same basis including the respondent No.4. Reliance is placed on recent judgment in W.P.PIL No.1 of 2023 by learned Special Government Pleader and it was contended that action of Government is fair and reasonable and is neither discriminatory nor arbitrary inviting the wrath of Article 14 of the Constitution of India. In support of his submissions, learned Special Government Pleader has placed reliance on the decisions of this Court in W.P.(PIL) No.14 of 2020 dated 07.07.2023, W.P.No.7367 of 2021, dated 06.04.2011, W.P.No.7583 of 2004, dated 22.04.2004, W.P.No.6406 of 2004, dated 06.07.2004, W.P.(PIL) No.1 of 2023, dated 24.08.2023 and

¹² 2023 SCC On Line SC 5

the judgment of the Supreme Court in SLP No.22362 of 2011, dated 13.01.2012.

6. It is contended by learned Senior Counsel appearing on behalf of the respondent No.4 that the said G.Os., were already challenged and operate as *res judicata*. It is further that in 1982, Telugu Film Industry was in the process of being established in the city of Hyderabad from city of Chennai. It is also contended that in the year 1982, the Government took a policy decision to promote the film industry and has allotted parcels of land to different persons/institutions well known in the field of industry at different points of time. It is argued that all the allotments were made for the same price of Rs.8,500/- per acre and as such there is no discrimination. It is also argued that the allotment was for a specific purpose and for a larger objective for the development of Telugu film industry.

6.1. It is pointed out that the allotments are in the nature of incentives predominately for film industry. It is further pointed out that no other persons/institutions have come forward for seeking allotment and the same is not in violation of Article 14 of the

Constitution of India. It is also pointed out that the respondent No.4 was owning around 80 buses with equipment like generators, cameras, lenses, sound recording systems. It is urged that from year 1950, there is no other organization like the respondent No.4 and that it is not an exaggeration that the respondent No.4 organization is known as backbone of Telugu Film Industry for supply of outdoor equipment.

6.2. It is submitted that petitioner served as a Minister for Legislative Affairs, Finance and Irrigation and during his tenure as a Minister, vide G.O.Ms.No.75, dated 21.06.2019, Acs.5.00 of land was allotted to N. Shankar (a Film Producer) and the same was under challenge by way of a W.P. (PIL) No.14 of 2020 and a Division Bench of this Court has upheld the allotment. It is submitted that petitioner's conduct of adopting double standards is evident from the fact that parcels of land of Ac.1.00 was allotted for a political party in each district vide G.O.Ms.No.167, dated 16.08.2018, and land was also allotted to a National Party. It is contended that the petitioner has no *locus standi* to question the allotment.

6.3. Learned Senior Counsel urged that the issues raised in this writ petition are directly and substantially identical in earlier rounds of litigation. It is further urged that Courts have to be extremely careful to see that behind the beautiful veil of public interest, vested interest and/or publicity seeking is not lurking. It is also urged that a body of persons or member of public who approaches the Court is *bona fide* and not for personal gain or private motive or political motivation or other oblique consideration. It is contended that in matters of policy government arrives at a decision basing on several aspects, and the Courts should be cautious and guarded to interfere with policy matters. It is further contended that Courts examine the validity of a public policy, when challenge is on the ground that such policy infringes fundamental rights guaranteed by the Constitution of India or any other statutory rights or detrimental in nature to the public at large. Learned Senior Counsel has placed reliance on the decisions of the Supreme Court in **Census Commissioner and others vs. R. Krishna Murthy** ¹³ , **Ashok Kumar Pandey**

¹³ (2015) 2 SCC 796

Petitioner vs. State of W.B. and others respondents¹⁴ and State of Karnataka and others vs. All India Manufacturers Organization and others¹⁵.

6.4. It is urged that the allotment was made in terms of the policy adopted by the State for development of infrastructural facilities for Film Industry with a larger objective and is neither violative of Article 14 of the Constitution of India nor is it an arbitrary exercise of power. Similarly situated persons were allotted for the same price and the allotment is not bad in law as canvassed and that the writ petition be dismissed.

7. In response to the submissions made by the learned Special Government Pleader and learned Senior Counsel for respondent No.4, learned Senior Counsel for the petitioner submitted that the respondent No.4 was asked to pay Rs.700-800 per square yard in the year 1991 and that the respondent No.4 did not agree for allotment. It is further submitted that decisions rendered in earlier writ petitions do not operate as *res judicata* as the parties were not same and were not public interest litigations and that

¹⁴ AIR 2004 SC 280

¹⁵ (2006) 4 SCC 683

the decisions rendered in the earlier matters were not on merits of the issue. It is also submitted that writ petition does not suffer from delay and laches as it is filed in the year 2008 and the impugned G.O. is issued in the year 2008. It is contended that certain parcels of land were allotted to Electricity Department, Water Works Department and for Institution of Good Governance at market value prevailing in the year 1991. It is submitted that the petitioner was aged 9 years, in the year 1982 and could not have challenged the policy. It is submitted that the allotment was bad in law and the impugned G.O. has to be set aside.

8. Heard learned counsels, perused the record and considered the rival submissions.

9. Admittedly the State Government had taken a policy decision with a view to develop film industry in the State, pursuant to the said policy decision, the State Government issued G.O.Ms.No.1015 Revenue, dated 17.07.1982, allotting 50 acres to APSFDC for Rs. 8,500/- per acre. It is not in dispute that the allotment was with an object of providing infrastructural facilities to the film industry to encourage setting up of film industry in

Hyderabad, which was operating from Chennai. Pursuant to the said policy various film personalities and institutions were allotted parcels of land of varying extents on requests/representations. The writ petitions were filed challenging the allotment of parcels of land before this Court and the Court declined to interfere and upheld the G.Os. issued. It is pertinent to extract the orders passed in various writ petitions wherein the allotment made vide G.Os. including G.O.Ms.No.355, dated 21.08.2001, was under challenge.

W.P. No. 7367 of 2011

DATED: 06.04.2011

Between: M.V. Narsimha Reddy ... Petitioner

And

1. Govt. of A.P. – Revenue Dept.
2. The Govt. of A.P. – GAD
3. The A.P. State Film T.V. & Theatre Development Corpn. Ltd.
4. The District Collector
- 5. M/s.Anand Cine Services** ... Respondents

O R D E R:- (Per Hon'ble Sri Justice V.Eswaraiah)

This writ petition is filed seeking a mandamus to declare the action of respondent Nos.1 to 4 in allotting about Ac.50.00 cents of land in S.No.403 situated in Shaikpet village and Mandal, Hyderabad in favour of the 5th respondent for development of Film Industry at a very low price of Rs.8,500/- per acre, vide G.O.Ms.No.1015, dated 17.7.1982, G.O.Ms.No.1511, dated

03.11.1982 and G.O.Ms. No.226, dated 26.03.1991 and consequential orders issued by the Government in G.O.Ms.No.355, General Administration Department dated 21.08.2001 and G.O.Ms.No.744, General Administration Department, dated 26.12.2008 allotting Ac.5.00 cents to the 5th respondent, as arbitrary and illegal and set aside G.O.Ms.Nos.355 and 744. The learned counsel for the 5th respondent has filed a counter stating that similar writ petitions in W.P. No.7583 of 2004 and W.P. No.6406 of 2004 challenging the very same allotment of land vide G.O.Ms.No.355, dated 21.08.2001, were dismissed by a Division Bench of this Court, by orders dated 22.04.2004 and 06.07.2004 respectively. In view of the specific averment made in the counter affidavit, we are not inclined to go into various other aspects of the matter with regard to allotment of the lands in question vide **G.O.Ms.No.355, dated 21.08.2001** and other consequential Government Orders. Once the impugned G.O.Ms.No.355, General Administration Department, dated 21.08.2001 which was already challenged, was set aside by a Division Bench of this Court, the same Government Order cannot be questioned again by way of filing the present writ petition. Hence, the writ petition is devoid of merits and the same is dismissed. No order as to costs.

The order of the Supreme Court challenging the order in WP No.7367 of 2011 is as follows:

SUPREME COURT OF INDIA
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil)...../2011
CC 22362/2011

(From the judgment and order dated 06/04/2011 in WP No.7367/2011 of The HIGH COURT OF ANDHRA PRADESH AT HYDERABAD)

M.V.NARASIMHA REDDY

...Petitioner(s)

VERSUS

GOVT.OF A.P.& ORS.

...Respondent(s)

With I.A.NO. 1 (Condonation of delay in filing SLP)

Date: 13/01/2012

This Petition was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE DALVEER BHANDARI
HON'BLE MR. JUSTICE DIPAK MISRA

For Petitioner(s) Mr. Sanjay Kumar Tyagi, Adv.
Mr. Mrinmay Bhattmewara, Adv.
Mr. L.D. Sharma, Adv.
Mr. M.D. Sharma, Adv.
For Respondent(s)

UPON hearing counsel the Court made the following

O R D E R

The Special Leave Petition is dismissed on delay as also on merits."

The order of a Division Bench passed in writ petition No.7583 of 2004 is as follows:

WRIT PETITION No.7583 of 2004

BETWEEN:

1. R. Rama Rao, S/o. R. Kondayya, R/o. 8-1-302/68, Vivekananda Nagar Sheipet Nala, Golconda, Hyderabad.
2. Taraya Lokesh, S/o. T. Narayana Rao, R/o. H.No. 8-2-293/82/306, Maganti Colony, Road No. 7, Film Nagar, Jubilee Hills, Hyderabad.

.... Petitioners

And

- 1.The Government of A.P. General Administration (I & PR) Department, Secretariat, Hyderabad.
- 2.The District Collector, Ranga Reddy District, Lakadikapul, Hyderabad. Padmalaya Studio, Sy.No. 403, Sheikpet Village, Hyderabad.
- 3.Ramanaidu Studios, Survey No. 403, Sheikpet Village, Ranga Reddy District.
- 4.Anand Cine Service, Represented by its Manager, Survey No. 403, Sheikpet Village, Hyderabad.**

.....Respondents

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue of Writ of Mandamus declaring the action of the respondents in issuing the G.O.Ms. NO. 226 dated 26-3-1991 allotting land for development of film industry and consequent allotment in Survey No. 403, Sheikpet Village and Mandal, Hyderabad to respondents and other as illegal unconstitutional violative of Principles of natural justice and consequently set Aside the G.O.Ms.No.226 dated 26-3-1991 and the subsequent allotments and allot the land to the petitioners and other landless persons and pass such other order or orders as this Hon'ble Court' may deem fit and proper in the circumstances of the case.

For the Petitioners: Mr.S.Prasad Babu, Advocate

For the Respondent No.1 and 2: G.P. for General Administration

For the Respondents 3 and 4: None appeared

For the Respondent No.5 : Mr. K. Ramakanth Reddy, Advocate

ORDER: (per the Hon'ble the Chief Justice Sri Devinder Gupta)

This petition is filed as public interest litigation by P. Ramulu and Taraya Lokesh, daily wagers, questioning G.O.Ms.No. 226, dated 26.3.1991 allotting the land to respondents 3 to 5.

Petitioners have alleged that they are out of those who will be entitled to allotment of land in Survey No. 403 and it was wrongly allotted to respondents 3 to 5.

The petition is not maintainable for reasons more than one. Firstly, the petitioners are themselves interested in the land in question. Secondly, there is delay and laches on the part of the petitioners in questioning G.O.Ms.No. 226, which was issued thirteen years ago. Accordingly, we do not find any substance in this writ petition or any ground to entertain it as public interest litigation. Writ petition shall stand dismissed.”

The order of a Division Bench passed in W.P.No.6406 of 2004 is as follows:

WRIT PETITION No. 6406 of 2004

Between:

1 Smt.Varikuppala Lakshamma W/o Varikuppala Ramulu & 9 Others

(All are residents of Vinayakanagar , Survey No.403, Jubilee Hills, Shaikpet Village and Mandal, R.R. Dist)

... Petitioners

And

1 The Secretary to Govt. of A.P. (Poll) General Administration Department (I & PR) Dept., Secretariat, Hyderabad.

2 The District Collector, Ranga Reddy Dist, Khairatabad, Hyderabad.

3 The Manager, M/s Anand Cine Services, C-19, Film Nagar, Jubilee Hills, Hyderabad.

...Respondents

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to pass an order or a direction or a writ more particularly one in the nature of Writ of Certiorari quashing the **G.O.Ms.No.355, dtd. 21st day of August, 2001** issued by the

Government of Andhra Pradesh, represented by the first respondent herein as it is violative to Constitution of India, principles of natural justice.

For the Petitioners : Mr.Y.Visweswara Rao, Advocate

For The Respondents 1 & 2: G.P. For Revenue

Counsel for Respondent No.3: Mr.K.Ramakanth Reddy, Advocate

The Court made the following : ORDER: (per the Hon'ble the Chief Justice Sri Devinder Gupta)

The petitioners (10) in number have chosen to file this writ petition purporting to be Public Interest Litigation. They are questioning the legality and validity of **G.O.Ms.No.355 dated 21st August 2001** issued by the State Government in respect of land in Survey No.403, Jubilee Hills, Shaikpet village and mandal. Assignment in favour of third respondent is challenged by the petitioners alleging that they are living in huts in the said survey number and there are nearly 40 to 50 other daily wage earners living in the huts. The area, according to them, is a hillock area around a tank called 'Durgam Chervu'. Petitioners allege that they have no other movable or immovable properties. They are solely dependent on their daily wages. They could not build any houses; therefore they have occupied the land. Thus, in this Public Interest petition, they are questioning the competence of the State Government to assign the land in favour of third respondent on number of grounds. They allege that the said land ought not to have been assigned to the third respondent. The rate charged to third respondent is too meager and that for the purpose for which it has been assigned to third respondent will have the effect of destroying the heritage, etc.

A similar writ petition No.7583 of 2004 filed by one P.Rama Rao and another daily wage earners challenging similar G.O.Ms.No.226 dated 26.3.1991 alleging that the land assigned to

Respondents 3 to 5 therein, was dismissed by us on the ground that such a petition would not be maintainable on behalf of those who have some interest in the property. In the instant case also, petitioners are persons interested in the land. They claim that they are squatting on the land and for that reason it should not be assigned to a third person. They cannot be heard to say that Government has realized less amount than what could have been realized from assigning the said land. They are also not claiming any right in the land. Simply their interest is that they should not be disturbed from the land, otherwise they have got no right.

Needless to mention here that the other writ petition No. 7583 of 2004 was also filed on the same ground.

We do not find any force in this writ petition. Accordingly we proceed to dismiss the same. Writ Petition is dismissed and the interim order is vacated.”

10. On a perusal of the orders passed by Division Benches of High Court in W.P.Nos.7583 and 6406 of 2004 filed in respect of allotment of land, M/s. Anand Cine Services was a party arrayed as respondent in both the writ petitions. It is observed that in writ petition No.6406 of 2004, G.O.Ms.No.355, dated 21.08.2001, was sought to be quashed. In W.P.No.7583 of 2004, two other respondents were arrayed. Both the writ petitions were dismissed on 22.04.2004 and 06.07.2004.

11. Twin principles constitute essential ingredients of the doctrine of *res judicata*, namely that finality should be attached to

binding decisions of the Courts and that individuals should not be vexed twice over the same kind of litigation (see **Shankara Cooperative Housing Society Limited vs. M.Prabhakar**¹⁶). The principles of constructive *res judicata* apply to the writ proceedings as well (see **Union of India vs. Major S.P. Sharma**¹⁷). It is equally well settled legal proposition that decision rendered in public interest litigation has a binding effect as long as litigants act *bona fide*, as the judgment in such a case, binds the public at large and bars any member of the public from raising any connected issue or an issue which has been raised and should have been raised on an earlier occasion by way of public interest (see **State of Karnataka vs. All India Manufacturers Organisation**¹⁸ and **Kantaru Rajeevaru vs. Indian Young Lawyers' Association**¹⁹).

12. The validity of G.O.Ms.No.355, dated 21.08.2001 has already been considered by a coordinate Bench and was even considered by the Supreme Court. Therefore, in the facts and circumstances of the case, decisions rendered in W.P.No.7367 of

¹⁶ (2011) 5 SCC 607

¹⁷ (2014) 6 SCC 351

¹⁸ (2006) 4 SCC 683

¹⁹ (2020) 2 SCC 1

2011 dated 06.04.2011, W.P.No.7583 of 2004, dated 22.04.2004, W.P.No.6406 of 2004, dated 06.07.2004, W.P.(PIL) No.1 of 2023, dated 24.08.2023 and the judgment of the Supreme Court in SLP No.22362 of 2011, dated 13.01.2012 operate as *res judicata* and therefore, the issue with regard to validity of the order of allotment cannot once again be agitated in this writ petition.

13. We are of the view that the policy adopted by the State Government for allotment is for the specific purpose of providing infrastructural facilities for the development of Telugu film industry which was operating from Chennai. Viewed in a broader perspective, the policy of the government was not only to develop the infrastructural facilities in the field of Telugu film industry, but was also to generate employment by providing livelihood for many artists, technicians, ward boys etc. (to name a few) directly and also employment in an indirect manner. It is not in dispute that parcels of land were allotted to film studios, film personalities including respondent No.4 for the said purpose.

14. The Supreme Court in **Indian Medicines Pharmaceuticals Corporation Limited** (supra) has held as under:

“**17.** This Court has consistently held that government contracts must be awarded by a transparent process. The process of inviting tenders ensures a level playing field for competing entities. While there may be situations which warrant a departure from the precept of inviting tenders or conducting public auctions, the departure must not be unreasonable or discriminatory (*Kasturi Lal Lakshmi Reddy v. State of Jammu and Kashmir*, (1980) 4 SCC 1); *Sachinand Pandey v. State of West Bengal*, (1980) 4 SCC 1; *Haji T.M.Hassam Rawther v. Kerala Financial Corporation*, (1988) 1 SCC 166). In *Centre for Public Interest Litigation v. Union of India* ((2012) 3 SCC 1)) the ‘first-cum-first serve’ policy was held to be arbitrary while alienating natural resources. However, the Court observed that though auction is a ‘preferred’ method of allocation, it cannot be construed to be a constitutional requirement.

18. In *Natural Resources Allocation, in re Special Reference No. 1 of 2012* ((2012) 10 SCC 1), a Presidential Reference was made in the backdrop of the decision in *Centre for Public Interest Litigation* (supra) where this Court had held that the method of first-cum-first serve used to allocate 2G radio spectrum was arbitrary and illegal. The reference was on whether the ‘only permissible method for disposal of all natural resources across all sectors and in all circumstances is by the conduct of auctions’. Justice Khehar in his concurring opinion in *Natural Resources Allocation* (supra) held that while there is no constitutional mandate in favour of auction under Article 14, deviation from the rule of allocation through auction must be tested on grounds of arbitrariness and fairness. In this context, it was observed as follows:

“148. In our opinion, auction despite being a more preferable method of alienation/allotment of natural resources, cannot be held to be a constitutional requirement or limitation for alienation of all natural resources and therefore, every method other than auction cannot be struck down as ultra vires the constitutional mandate.

149. Regard being had to the aforesaid precepts, we have opined that auction as a mode cannot be conferred the status of a constitutional principle. Alienation of natural resources is a policy decision, and the means adopted for the same are thus, executive prerogatives. However, when such a policy decision is not backed by a social or welfare purpose, and precious and scarce natural resources are alienated for commercial pursuits of profit maximising private entrepreneurs, adoption of means other than those that are competitive and maximise revenue may be arbitrary and face the wrath of Article 14 of the Constitution. Hence, rather than prescribing or proscribing a method, we believe, a judicial scrutiny of methods of disposal of natural resources should depend on the facts and circumstances of each case, in consonance with the principles which we have culled out above. Failing which, the Court, in exercise of power of judicial review, shall term the executive action as arbitrary, unfair, unreasonable and capricious due to its antimony with Article 14 of the Constitution.”

19. In *Vallianur Iyarkkai Padukappu Maiyam v. Union of India* ((2009) 7 SCC 561), a three-judge Bench of this Court held that the State is not bound to allot resources such as water, power, and raw materials through tender and is free to negotiate with a private entrepreneur. In that case, the Government of Pondicherry entered into an agreement for the

development of Pondicherry Port without issuing an advertisement or inviting tenders. This Court held that the action of the Government of Pondicherry was justified because on account of historical, political and other reasons, the Union Territory is not yet industrially developed and thus, entrepreneurs have to be offered attractive terms to persuade them to set up industries. The relevant observations are extracted below:

“171. In a case like this where the State is allocating resources such as water, power, raw materials, etc. for the purpose of encouraging development of the port, this Court does not think that the State is bound to advertise and tell the people that it wants development of the port in a particular manner and invite those interested to come up with proposals for the purpose. The State may choose to do so if it thinks fit and in a given situation it may turn out to be advantageous for the State to do so, but if any private party comes before the State and offers to develop the port, the State would not be committing breach of any constitutional obligation if it negotiates with such a party and agrees to provide resources and other facilities for the purpose of development of the port.

172. The State is not obliged to tell Respondent 11 “please wait I will first advertise, see whether any other offers are forthcoming and then after considering all offers, decide whether I should get the Port developed through you”. It would be most unrealistic to insist on such a procedure, particularly, in an area like Pondicherry, which on account of historical, political and other reasons, is not yet industrially developed and where entrepreneurs have to be offered attractive terms in order to persuade them to set up industries. The State must be free in such a case to negotiate with a private entrepreneur with a view to inducing him to develop the

Port and if the State enters into a contract with such an entrepreneur for providing resources and other facilities for developing the Port, the contract cannot be assailed as invalid because the State has acted bona fide, reasonably and in public interest.”

20. In *Nagar Nigam v. Al Farheem Meat Exporters (P) Ltd.* ((2006) 13 SCC 382), the respondent was granted a license for a year to run a slaughterhouse owned by the appellant-corporation. On the completion of the term of the license, the appellant issued an advertisement inviting applications for granting a fresh contract. The respondent challenged the advertisement. The Court observed that it is the requirement of the principle of non-arbitrariness postulated in Article 14 that contracts by the State, its corporations, instrumentalities, and agencies should as a general rule be granted through public tender. Noting that it is necessary to maintain transparency in the grant of public contracts, the Court ruled that the State must give contracts only by tender and not through private negotiations. This Court held that a contract can be granted by private negotiation only in exceptional circumstances having regard to the ‘nature of the trade or largesse or for some other good reason’. Some of the exceptional circumstances that were listed were : (a) award of contracts in the event of natural calamities and emergencies; (b) situations where the supplier has exclusive rights over goods and there is no reasonable alternative; and (c) there are no bidders or where the bid offered is too low. The Court has upheld the award of contracts without holding a public auction in situations where conducting a public auction is impossible given the surrounding circumstances. When the government deviates from the general rule of allotting a

contract without following a transparent process such as inviting tenders, it has to justify its actions on the touchstone of the principles postulated in Article 14:

13. This Court time and again has emphasised the need to maintain transparency in grant of public contracts. Ordinarily, maintenance of transparency as also compliance with Article 14 of the Constitution would *inter alia* be ensured by holding public auction upon issuance of advertisement in the well-known newspapers. That has not been done in this case. Although the Nagar Nigam had advertised the contract, the High Court has directed that it should be given for 10 years to a particular party (Respondent 1). This was clearly illegal.

14. It is well settled that ordinarily the State or its instrumentalities should not give contracts by private negotiation but by open public auction/tender after wide publicity. In this case the contract has not only been given by way of private negotiation, but the negotiation has been carried out by the High Court itself, which is impermissible.

15. We have no doubt that in rare and exceptional cases, having regard to the nature of the trade or largesse or for some other good reason, a contract may have to be granted by private negotiation, but normally that should not be done as it shakes the public confidence.

16. The law is well settled that contracts by the State, its corporations, instrumentalities and agencies must be normally granted through public auction/public tender by inviting tenders from eligible persons and the notification of the public auction or inviting tenders should be advertised in well-known dailies having wide circulation in the locality with all relevant details such as date, time and place of auction, subject-matter of auction, technical specifications, estimated cost, earnest money deposit, etc. The award of government contracts

through public auction/public tender is to ensure transparency in the public procurement, to maximise economy and efficiency in government procurement, to promote healthy competition among the tenderers, to provide for fair and equitable treatment of all tenderers, and to eliminate irregularities, interference and corrupt practices by the authorities concerned. This is required by Article 14 of the Constitution. However, in rare and exceptional cases, for instance during natural calamities and emergencies declared by the Government; where the procurement is possible from a single source only; where the supplier or contractor has exclusive rights in respect of the goods or services and no reasonable alternative or substitute exists; where the auction was held on several dates but there were no bidders or the bids offered were too low, etc., this normal rule may be departed from and such contracts may be awarded through “private negotiations”. (See *Ram and Shyam Co. v. State of Haryana* [(1985) 3 SCC 267 : AIR 1985 SC 1147].”

21. Inviting tenders and conducting public auctions are considered to be preferred methods of allocation for two reasons : *firstly* procurement can be made at the best price; *and secondly*, allocation is through a transparent process. However, if the purpose of allocation by the State is not revenue maximization, the State could award contracts through other methods, provided it is non-arbitrary and meets the requirements of Article 14.

22. The appellant-State contends that since in the present case, there is no involvement of ‘State largesse’ and no disposal of State property, it was not bound to grant the contract to IMPCL through tender. It is argued that in such a situation, the High Court on a perusal of the relevant material,

ought to have only scrutinised if there was an oblique motive involved in purchasing medicines from IMPCL. Government contracts involve expenditure out of the public exchequer. Since they involve payment out of the public exchequer, the moneys expended must not be spent arbitrarily. The State does not have absolute discretion while spending public money. All government actions including government contracts awarded by the State must be tested on the touchstone of Article 14.

23. The following principles emerge from the discussion above:

- (i) Government action must be just, fair and reasonable and in accordance with the principles of Article 14; and
- (ii) While government can deviate from the route of tenders or public auctions for the grant of contracts, the deviation must not be discriminatory or arbitrary. The deviation from the tender route has to be justified and such a justification must comply with the requirements of Article 14.”

15. Thus, the Government action has to be just, fair and reasonable and in accordance with the principles of Article 14 of the Constitution of India and while Government can deviate from the route of tenders or public auction for grant of contracts, the deviation must not be arbitrary or discriminatory. The deviation from normal mode of allotment of a land by public auction has to

be justified and such a decision must comply with the requirements of Article 14 of the Constitution of India. In the instant case, the Government had formulated a policy to provide incentive to the film industry in Hyderabad so that the film industry which was operating from Chennai could shift to Hyderabad city. The aforesaid policy was framed with an object to promote film industry in Hyderabad and also a source of employment. Under the aforesaid policy, for a specific purpose, the allotment of land has been made to respondent No.4. Thus, in our opinion, the deviation from the normal mode of allotment has been made for a fair and just reason, which complies with the requirements of the Article 14 of the Constitution. Therefore, the order of allotment cannot be said to be in breach of Article 14 of the Constitution of India.

16. It is trite law that the doctrine of delay and laches applies to the public interest litigation as well. The Supreme Court in **Bombay Dyeing and Manufacturing Company Limited vs.**

Bombay Environmental Action Group²⁰, in paragraph 341 has held as under:

“**341.** Delay and laches on the part of the writ petitioners indisputably have a role to play in the matter of grant of reliefs in a writ petition. This Court in a large number of decisions has categorically laid down that where by reason of delay and/or laches on the part of the writ petitioners the parties altered their positions and/or third-party interests have been created, public interest litigations may be summarily dismissed. Delay although may not be the sole ground for dismissing a public interest litigation in some cases and, thus, each case must be considered having regard to the facts and circumstances obtaining therein, the underlying equitable principles cannot be ignored. As regards applicability of the said principles, public interest litigations are no exceptions. We have heretofore noticed the scope and object of public interest litigation. Delay of such a nature in some cases is considered to be of vital importance. (See *Chairman & MD, BPL Ltd. v. S.P. Gururaja* [(2003) 8 SCC 567] .)”

17. The petitioner herein has challenged the G.O.Ms.No.355, dated 21.08.2001, after a lapse of seven years and no plausible explanation is forthcoming for the delay. Delay indeed is a ground for refusing to exercise discretionary jurisdiction under Article 226 of the Constitution of India. The underlying object of this principle is not to encourage agitation of stale claims and matters which

²⁰ (2006) 3 SCC 434

have already been disposed of or settled by Courts. On the ground of delay too, the writ petition is liable to be dismissed.

18. For the aforesaid reasons, we do not find any merit in the writ petition and the same fails and is hereby dismissed.

Miscellaneous applications pending, if any, shall stand closed. There shall be no order as to costs.

ALOK ARADHE, CJ

ANIL KUMAR JUKANTI, J

Date:29.04.2024
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