Government to hold election under the provisions of law and he can only be removed from the office only on the recommendations of the Chief Election Commissioner by the President of India. The President of India has to act on the aid and advice of the Council of Ministers of the Central Government as provided under Article 74 of the Constitution of India. Therefore, the Election Commissioner can be removed only by the Central Government. Therefore Section 197 Cr. P.C. comes into play. When the Magistrate cannot take cognizance of the offence under Section 190 of the Code of Criminal Procedure because of the bar provided in Section 197 Cr. P.C., I cannot direct the Magistrate to take cognizance of the offence against Mr. J.M. Lyngdoh , the Election Commissioner.

(20) In this view of the matter, I cannot give any direction to prosecute Mr. J.M. Lyngdoh, the Election Commissioner, though I am satisfied that the action of Mr. J.M. Lyngdoh is not warranted under law and it is also in violation of the electoral right of the Hon'ble Chief Minister of the State, who is an elected representative of the people of the State of Haryana.

(21) In view of my foregoing discussion, I have no other option except to dismiss the petition with liberty to Mr. Kanti Parkash Bhalla, who made representation to this Court or any other aggrieved person to launch the prosecution in accordance with law in a competent Court.

(22) With the above observations, the petition is disposed of.

R.N.R.

Before G.S. Singhvi & Nirmal Singh, JJ

BHORUKA POWER CORPORATION LTD.,—*Petitioner*

versus

THE STATE OF HARYANA AND OTHERS,—*Respondents*

CWP No. 14615 of 1999

3rd July, 2000

Constitution of India, 1950—Arts. 14, 15, 16 & 226—Doctrine of equality—Haryana Govt. formulating policy for setting up power plants by private sector—Haryana State Energy Development Agency (HAREDA) inviting proposals only for private sector participation for setting up Mini Hydro Plants—Petitioner & respondent No. 3 submitting proposals for Dadupur site—Respondent No. 3 not entitled to submit proposal in terms of the advertisement—High Powered

Committee (HPU) recommending allocation of site to the petitioner—HAREDA issuing letter of intent to the petitioner after the recommendations of the HPU approved by the State Govt.—Govt. reviewing its decision & ordering cancellation of allocation of site without any notice or opportunity of hearing to the petitioner—Decision of the Govt. in allocating the Dadupur site to respondent No. 3 violative of Art. 14 of the Consitution and principles of natural justice and liable to be quashed—Writ allowed declaring the decision of the Govt. in cancelling the allocation of the site made in favour of the petitioner as illegal.

Held, that the doctrine of equality enshrined in Articles 14, 15 and 16 of the Constitution has various dimensions. Article 14 declares that the State shall not deny to any person equality before law or the equal protection of laws within the territory of India. Article 15 prohibits discrimination on the ground of religion, race, caste, sex or place of birth and Article 16 provides for equality of opportunity in matters of public employment. Broadly speaking equal protection means the right to equal treatment in similar circumstances, both in the privileges conferred and in the liabilities imposed.

(Para 15)

Further held, that the zone of eligibility for participation in the allocation of the sites stood determined by the plain language of the advertisement issued by HAREDA which was confined to private sector and, therefore, respondent No. 3 was not entitled to submit proposal for allocation of Dadupur site. If the Govt. wanted public sector participation in the process of award of contract, then it should have directed HAREDA to withdraw the advertisement or at least amend the same so as to enable the companies like respondent No. 3 to submit proposal. Admittedly, that was not done and yet the Govt., while reversing its earlier decision to approve the recommendations of HPC, directed the allocation of Dadupur site to respondent No. 3 resulting in treating unequals equally and consequential violation of the doctrine of equality enshrined in Article 14 of the Constitution.

(Para 17)

Further held, that the decision taken by the Government to cancel the allocation made in favour of the petitioner is liable to be nullified on the ground of violation of the principles of natural justice. Before ordering cancellation of allocation of site, the State Government was under an obligation to give notice and opportunity of hearing to the petitioner who could have shown that respondent No. 3 was not eligible to participate in the allocation of Dadupur site and that the decision

taken by HPC was correct. However, on account of the Government's failure to comply with the basics of natural justice, it could not avail that opportunity. Thus, there is no escape from the conclusion that the impugned decision is violative of the rule of *audi alteram partem* and it is liable to be quashed on that ground.

(Para 23)

Rajiv Atma Ram, Advocate,—*for the Petitioner.*

Jaswant Singh, Deputy Advocate General, Haryana for respondents No. 1 and 2.

Amarjit Singh, counsel for respondent No. 3.

N. S. Boparai, counsel for respondent No. 4.

JUDGMENT

G.S. Singhvi, J.

(1) Whether allocation made in favour of the petitioner by the Haryana State Energy Development Agency (HAREDA) for development of Small Hydro Power Projects on canal drops of Dadupur Western Yamuna Canal (Lower) on Build. Operate and own basis could be cancelled without giving opportunity of hearing and whether the said site could be allocated to Haryana Power Generation Company Ltd. (respondent No. 3) even though it was not entitled to submit proposal in terms of the advertisement issued by HAREDA are the questions which arise for determination in this petition filed under Article 226 of the Constitution of India.

The background

(2) For the pupose of seeking financial assistance from the World Bank to support its efforts to reform and develop the power sector, the Government of Haryana took the following steps :—

(i) In the year 1997, the State Government introduced the Haryana State Electricity Reform Bill which was passed by the Legislature on 22nd July, 1997 leading to the bifurcation of the Haryana State Electricity Board into four Corporations, two of which were to exclusively deal with the generation and transmission of electricity.

(ii) In May, 1997, HAREDA was set up as an autonomous body to implement Non-conventional Energy Projects under the

Haryana State Department of Non-conventional Energy Sources.

(iii) On 12th November, 1997, the Government issued detailed policy statement relating to various aspects of Power Sector Restructuring and Development Program. Paragraphs 10 to 14 of the said policy statement read as under :—

"The New Structure of the Power Sector :

10. The power sector will be restructured to encourage functional specialisation, decentralisation, autonomy and accountability in decision-making; to facilitate private sector participation; to promote competition in generation and distribution; and to ensure an effective, efficient and independent regulation of the sector. The new power companies will operate within an incentive framework which promotes efficiency and makes the companies and their staff accountable for the quality of the service provided to the consumers.

12. The functions presently being performed by the vertically integrated HSEB will be segregated into separate generation, transmission and distribution companies. The existing generating stations of HSEB will be grouped under a separate power generation company (GENCO). Transmission of power will be entrusted to a separate transmission company (TRANSCO). Power distribution will be assigned to a number of independent power distribution companies. A State Electricity Regulatory Commission will be created to regulate the operation of the power utilities with the primary objective of ensuring the long term viability of the sector for the benefit of consumers.

Power Generation :

13. The existing Panipat and Faridabad Thermal Power Stations, and the Western Yamuna Canal Hydro-Electric Project (including Stage-II which is under construction) will be transferred to a new generation company called 'Haryana Power Generation Company Ltd.' (HPGCL). This Company will start its operations as a State owned Company. At a later stage, the State Government may invite private sector participation in this Company. This Company will operate on commercial principles. The Company will sell power to the transmission company for

further sale to the distribution companies. This company has already been registered under the Indian Companies Act.

14. The Government of Haryana has decided not to make any major new investment in power generation. In future, new power generation projects in Haryana will be developed either by Independent Power Producers (IPPs), selected through International Competitive Bidding (ICB), by Central Generating Corporations or by Joint Venture Companies with private parties, other States or Central undertakings as equity partners. All generating companies will operate in a competitive environment without discrimination based on ownership structure."

(iv) In supersession of notification No. 2/1/94-1 MIP, dated 31st July, 1996, the government issued notification dated 8th January, 1998 outlining the fiscal and financial incentives for generation of power through Non-conventional Energy Sources (Solar, Wind, Mini-Small Hydro, Biomass Co-generation, Waste Recycling) in Haryana.

(v) *Vide* notification No. DNES/98/Policy/4394, dated 3rd November, 1998, the Governor of Haryana constituted a High-Powered Committee (HPC) consisting of the Chief Secretary, Haryana as Chairman; Secretary, Finance Department; Secretary, Local Bodies Department; Secretary, Power Department; Secretary, Irrigation Department as Members and Secretary, Non-conventional Energy Sources Department as member Convener to consider the report of Technical Appraisal Committee (TAC), shortlist and prioritise the investment proposals received in the area of micro/small hydro, biomass and waste to energy and thereafter to recommend the allocation of sites for preparation of detail project report by the private investors. That Committee was also declared to be a Standing Committee for making suggestions/ recommendations on all aspects relating to implementation of policy of private sector participation in NES projects. It was also authorised to make sugestions regarding appraisal criteria, changes in NES policy or changes in government guidelines of allied departments directly involved in implementation of the project.

(vi) The procedure approved by the government for setting up power plants by private sector in three identified areas envisaged the following steps :—

"(a) HAREDA shall invite proposals from private national/ international investors through press advertisement.

(b) HAREDA has constituted a Technical Appraisal Committee (TAC) for appraising the proposals/bids in terms of technical and financial capabilities, scrutinising the techno-economic feasibility. The TAC is authorised to seek any additional information from the bidders to supplement the proposals.

(c) A High Powered Committee has been constituted under the chairmanship of Chief Secretary, Govt. of Haryana to consider the report of Technical Appraisal Committee, shortlist and prioritise the investment proposals and recommend allocation of sites for preparation of Detailed Project Reports (DPR) by the private investors.

(d) The recommendations of the High Powered Committee on the allotments of sites are then forwarded to the Council of Ministers for its approval.

(e) Once the proposal has been approved by the cabinet, HAREDA will enter into an MOU with the private investors for preparation of DPR for its approval by HAREDA and for setting up the project."

The facts of the case :

(3) In pursuance of the abovementioned policy formulated by the State Government, HAREDA invited proposals for private sector participation for setting up Mini Hydro Plants on Canal Drops of Haryana at 10 sites including Dadupur Western Yamuna Canal (Lower) (Yamuna Nagar), Baliyala Fall Tohana (BMB & BML) (Pondage based) RD 538640 (Tohana) and Gogripur Fall (WJC) Karnal (including pondage). The relevant extract of the advertisement (Annexure P. 3) is reproduced below :—

"HARYANA STATE ENERGY DEVELOPMENT AGENCY

H A R E D A

Invites *proposals for private sector participation (Private Developers/Promoters/Consortium both Domestic/Foreign)* on

Build, Operate & Own Basis (BOO) for setting up Mini Hydro Plants on Canal Drops of Haryana.

Prospective sites are :

Sr. No.	Name of sites	Head in Metre	Discharge cumecs	Estimated potential in KW
1.	Dadupur Western Yamuna Canal (Lower) (Yamuna Nagar)	3.5	140.00	400
xx		xx		xx
4.	Baliyala Fall Tohana (BMB & BML) (Pondage based) RD 538640 (Tohana)	3.60	60.00	1700
xx		xx		xx
6.	Gogripur Fall (WJC) Karnal (including pondage).	2.2	55.00	1000
xx		xx		xx"

(4) For Dadupur site, five proposals including those submitted by the petitioner, respondent No. 3, and M/s Soffimat, France (respondent No. 4) were received. For Baliyala Fall, three proposals including those submitted by the petitioner and respondent No. 4 and for Gogripur site, two proposals submitted by the petitioner and respondent No. 4 were received. These proposals were evaluated by TAC set up by the government under the Chairmanship of the Chief Engineer (MM) Haryana Vidyut Prasaran Nigam Ltd. The report of TAC was considered in the meeting of HPC held on 18th January, 1999. The HPC observed that there was a discrepancy in the TAC recommendations, inasmuch as, the company which did not have past experience in the area of small hydro projects has been placed at Sr. No. 1 in the order of ranking, whereas other companies having relevant experience of executing small hydro projects have been placed lower in the ranking. On this premises, TAC was asked to re-evaluate the proposals and submit fresh recommendations. The second report prepared by TAC after re-considering its earlier evaluation did not contain any change in over-all ranking. After considering the same in its meeting held on 17th February, 1999, the HPC observed that :—

(i) the report was highly confusing and misleading;

(ii) the evaluation parameters and weightage given to these parameters while evaluating the current proposals are different from those adopted by TAC while evaluating similar type of proposals received in response to the first advertisement;

(iii) the change in the criteria was without its approval.

(5) In view of the above, HPC decided to constitute a High Level Technical Committee to suggest uniform criteria for evaluation of the parameters and the TAC was asked to appraise the proposals in the light of the new criteria. The High Level Technical Committee suggested new criteria which was approved by HPC on 1st April, 1999. Thereafter, TAC made fresh evaluation and submitted its report to the HPC. For Dadupur site, it placed respondent No. 3, the petitioner and respondent No. 4 at Sr. Nos. 1, 2 and 3 respectively. For Baliyala Fall as well as Gogripur sites, the petitioner and respondent No. 4 were placed at No. 1 and 2.

(6) The HPC which met on 5th April, 1999 under the Chairmanship of the Chief Secretary considered the report of the TAC and took the following decisions in respect of Dadupur, Baliyala Fall and Gogripur sites :

"The committee discussed the recommendations of the Technical Appraisal Committee for micro/small hydro projects and after detailed discussions following decisions were taken :

1. DADUPUR (SITE NO. 1) Approx. potential 4 MW

For this site, the TAC ranking of various responsive proposals was as under :

	Points
1. M/s HPGCL	69
2. M/s Bhoruka Power Corpn.	54
3. M/s Soffimat, France	52
4. M/s Manglam Energy Corpn.	36
5. M/s Valley Power Corpn.	23

It was observed by the committee that the Government of Haryana have issued a Detailed Policy Statement on 12th November, 1997 whereby it was decided that in future

new power generation projects in Haryana will be developed either by Independent Power Producers or by Joint Venture Companies with private parties. The relevant extract of the policy statement issued on 12th November, 1997 reads as under

"The Government of Haryana has decided not to make any major new investment in power generation. In future, new power generation porjects in Haryana will be developed either by Independent Power Producers (IPPs), selected through International Competitive Bidding (ICB)."

Keeping in view the above policy decision of the State, the committee is of the view that it will not be appropriate to consider HPGCL for executing the above project. This site may be given to the company which is placed at Sr. No. 2 in order of ranking i.e. (Bhoruka Power Corporation).

2. *BALIYALA (SITE NO. 4) Approx. potential 1.70 MW & GOGRIPUR (SITE NO. 6) Approx. potential 1 MW* For these sites, the TAC ranking of various responsive project proposals were as under :

BALIYALA

	Points
1. M/s Bhoruka Power Corpn.	54
2. M/s Soffimat, France	42
3. M/s Innovative Power Tech.	20

GOGRIPUR

1. M/s Bhoruka Power Corpn.	54
2. M/s Soffimat, France	52

Though, M/s Bhoruka Power Corporation are placed at Sr. No. 1 in order of ranking for Baliyala and Gogripur sites,

but keeing in view the fact that this company has already been recommended for allocation of Dadupur site besides the three sites where were allotted to it under Phase-1, the committee decided that Baliyala and Gogripur sites may be offered to the company placed at Sr. No. 2 in order of ranking i.e. M/s Soffimat, France as further allocation of more sites to a single company may delay the execution of these projects."

(7) The matter was then placed before the Council of Ministers in the meeting held on 16th April, 1999 which approved the recommendations of the HPC. Thereafter, the Director, HAREDA issued letter of intent Annexure P. 6 dated 30th April, 1999 in favour of the petitioner in respect of Dadupur site and on receipt thereof, the petitioner deposited Rs. 8 lacs as processing fee at the rate of Rs. 200 per KW (non-refundable). Thereafter, a tripartite Memorandum of Understanding (MOU) was signed on 7th June, 1999 between HAREDA, the State Government and the petitioner for setting up of the project on Build, Operate and Own basis subject to the conditions stipulated therein.

(8) In terms of Clause 15 of the MOU, the petitioner could submit Detailed Project Report (DPR) within 4 months but it did so within 1½ months of the signing of MOU. The DPR was examined by the authorities of HAREDA in the light of Clause 16 of the MOU and an office note was prepared on 30th July, 1999 suggesting the following steps:

(a) Copies of DPR be sent to the Haryana Irrigation Department, HVPN and Ministry of Non-conventional Energy Sources Department (MNES), Government of India for their opinion/ comments with regards to civil works and safety of canals and various electro-mechanical equipments :

(b) the comments, if any, of Irrigation Department, HVPNL and MNES be forwarded to the petitioner for incorporation in the final DPR within one month and Financial Commissioner and Secretary to Govt. Haryana, Non-conventional Energy Sources Department-cum-Chairman, HAREDA for consideration and approval. Therefore, the same be put up before the Minister-in-charge (NES), Govt. of Haryana for consideration and approval and after approval of the Minister-in-charge, the site be allocated to the petitioner.

(9) However, when the Director, HAREDA prepared the final note for consideration by the Chairman of HAREDA, he recorded that Chief Minister had made certain observations about this project on the floor of the Assembly and, therefore, it will be appropriate to submit the file to him. The Chairman, HAREDA approved the note of the Director. Therefore, the file was placed before the Chief Minister, who constituted a Cabinet Sub-Committee consisting of the Finance Minister, Industries Minister and State Minister of Public Health to re-examine the case. Two of the three members of the Cabinet Sub-Committee met on 9th September, 1999 and on a reconsideration of the matter, they opined that the TAC had correctly evaluated the proposals on the basis of the criteria formulated by the High Level Technical Committee. They further opined that the name of respondent No. 3 which was placed at No. 1 in the order of ranking should not have been ignored by the HPC on the premise that the government had committed to the World Bank not to make any major new investment in power generation because the project of 4 MW could be easily executed by the said respondent. The Committee also opined that the project should not have been included in the advertisement issued by HAREDA and it could be taken up departmentally by respondent No. 3. The Committee concluded that the decision taken by HPC in respect of three sites of Dadupur, Baliyala and Gogripur was arbitrary and, therefore, all the allocations may be cancelled. The report of the Cabinet Sub-Committee was accepted by the Council of Ministers. Thereafter, the Director, HAREDA issued memo Annexure P. 12 dated 30.9.1999 for cancellation of the allocation of Dadupur site made in favour of the petitioner and allocation thereof to respondent No. 3.

(10) The petitioner has prayed for quashing of the impugned communication on the ground that it is based on extraneous consideration and is *mala fide* and also on the ground that it is vitiated due to violation of the principles of natural justice and the doctrine of equality enshrined in Articles 14 and 15 of the Constitution. It has also invoked the doctrine of promissery estoppel for invalidation of the decision taken by the government.

(11) In their written statement, respondents No. 1 and 2 have averred that the decision has been taken by the State Government after a comprehensive re-examination of the entire matter and the allocation made in favour of respondent No. 3 is in public interest. Along with the written statement, a copy of the recommendations made by the Cabinet Sub-Committee has been placed on record to support their plea that the decision taken by the government to cancel the

allocation made in favour of the petitioner is not based on extraneous considertion. They have laid considerable emphasis on the fact that the policy decision taken by the government not to make any major new investment in power generation could not have been relied upon by HAREDA for inviting proposals for private sector participation for setting up a small project of 4MW capacity which could have been easily executed by the public sector company, like respondent No. 3.

(12) In its reply, respondent No. 3 has also laid emphasis on the fact that Dadupur Hydro Project is not a major project for power generation and it does not require major investment.

(13) Respondent No. 4 M/s Soffimat, France has filed separate written statement to justify the allocation of Baliyala Fall and Gogripur sites to it. However, we do not consider it necessary to make a detailed reference to the averments in that reply because during the course of arguments, learned counsel for the parties gave out that the allocation made in its favour have also been cancelled in view of the recommendations made by the Cabinet Sub-Committee.

(14) Having noticed the respective pleadings, we shall advert to the question as to whether the government's decision to cancel the allocation of Dadupur site made in the petitioner's favour deserves to be nullified on the grounds set out in the petition. The determination of this question is directly linked with our decision on the legality of allocation of site to respondent No. 3 and if it is held that the second part of the government's decision is vitiated due to arbitrariness or violation of the doctine of equality, then the cancellation of allocation of site made in favour of the petitioner will have to be declared illegal.

(15) The doctrine of equality enshrined in Articles 14, 15 and 16 of the Constitution has various dimensions. Article 14 declares that the State shall not deny to any person equality before law or the equal protection of laws within the territory of India. Article 15 prohibits discrimination on the ground of religion, race, caste, sex or place of birth and Article 16 provides for equality of opportunity in matters of public employment. Broadly speaking, equal protection means the right to equal treatment in similar circumstances, both in the privileges conferred and in the liabilities imposed *Shrikishan* v. *State of Rajasthan* (1). This guarantee also extends in the matter of granting privileges i.e. granting licence for entering into any business, inviting tenders for entering into a contract relating to government business,

(1) 1955 (2) S.C.R. 531.

or issuing quotas, giving jobs etc. *Ramana Dayaram Shetty* v. *The International Airport Authority of India* (2), and *Kumari Shrilekha Vidyarathi* v. *State of U.P.* (3). The Courts have also held that there should be not discrimination between one person and another if as regards the subject-matter of the legislation or the executive action their position is the same. In other words, the State action must not be arbitrary but must be based on some valid principle. Another facet of the equality clause recognised by the Courts is that unequals must not be treated equal except when the State action is intended to remedy the existing inequalities in the society and some benefit is sought to be conferred to the socially and economically disadvantaged persons.

(16) In the light of the above, it is to be seen whether consideration of the proposal submitted by respondent No. 3 and the allocation of Dadupur site to it is violative of the doctrine of equality. "Admittedly, the advertisement issued by HAREDA was for inviting proposals for private sector participation. Therefore, respondent No. 3, which is a public sector company, was not entitled to submit proposal. However, the fact of the matter is that the said respondent submitted proposal for the site in question and TAC considered it on merits totally unmindful of the advertisement. While examining the report of TAC, HPC observed that respondent No. 3 did not fall in the zone of consideration and, therefore, it recommended allocation of site to the petitioner. The Council of Ministers approved the recommendations of HPC leading to the issuance of letter of Intent to the petitioner. However, immediately after political changes in the State, the Director, HAREDA created ground for re-consideration of the decision by recording a note that the file may be put up before the Chief Minister because he had made certain observations with regard to allocation of Dadupur site. The Chief Minister constituted Cabinet Sub-Committee which, as already mentioned above, recommended allocation of site to respondent No. 3 by cancelling the one made in favour of the petitioner." A bare reading of the minutes of the proceedings of Cabinet Sub-Committee (Annexure R.1/1) shows that while reviewing the decision taken by the previous government, it had completely over-looked the most vital factor, namely, that HAREDA had issued advertisement inviting proposals only for private sector participation for setting up Mini Hydro Projects on Canal Drop sites in Haryana and respondent No. 3 was not entitled to submit proposal in pursuance thereof. The observation made by the Cabinet Sub-Committee in paragraph 21 of Annexure R.1/1 that "the project

(2) A.I.R. 1979 S.C. 1628
(3) A.I.R. 1991 S.C. 537

should not have been even included in the advertisement issued for inviting applications from independent power producers for setting up small hydro plants because the same could have been taken up departmentally by HPGCL" shows that the members of the Sub-Committee were conscious of the ineligibility of respondent No. 3 to compete for allocation of the sites advertised by HAREDA. Notwithstanding this, the Sub-Committee made recommendations adverse to the petitioner leading to the issuance of memo Annexure P.12.

(17) In our opinion, the zone of eligibility for participation in the allocation of the sites stood determined by the plain language of the advertisement issued by HAREDA which was confined to private sector and, therefore, respondent No. 3 was not entitled to submit proposal for allocation of Dadupur site. If the government wanted public sector participation in the process of award of contract, then it should have directed HAREDA to withdraw the advertisement or atleast amend the same so as to enable the companies like respondent No. 3 to submit proposal. Admittedly, that was not done and yet the government, while reversing its earlier decision to approve the recommendations of HPC, directed the allocation of Dadupur site to respondent No. 3 resulting in treating unequals equally and consequential violation of the doctrine of equality enshrined in Article 14 of the Constitution.

(18) The learned Deputy Advocate General and counsel representing respondent No. 3 submitted that the revised decision of the government is in public interest and, therefore, notwithstanding the fact that in terms of the advertisement the said respondent was not eligible to apply for allocation of the site, the impugned decision may not be invalidated. We have given serious thought to the submission but have not felt persuaded to agree with the learned counsel. It is a settled proposition of law that after having laid down the standard for judging its conduct, a public authority cannot deviate from the said standard. In *Vitarelli* v. *Seaton* (4) Mr. Justice Frankfurter observed as under :

> "An executive agency must be rigorously held to the standards by which it professes its action to be judged ... Accordingly, if dismissal from employment is based on a defined procedure, even though generous beyond the requirements that bind such agency, that procedure must be scrupulously observed... This judicially evolved rule of administrative law is now firmly established and, if I may add, rightly so. He that takes the procedural sword shall perish with the sword."

(4) (1959) 359 U.S. 535

(19) The above quoted proposition has been approved by the Supreme Court in *Amarjit Singh* v. *State of Punjab (5) Sukhdev* v. *Bhagatram* (6) and *Ramana Dayaram* v. *International Airport Authority of India (supra).* The facts of *Ramana's case* show that the International Airport Authority of India had invited tenders for putting up and running a second class restaurant and two snack bars at the International Airport at Bombay. The eligibility conditions stipulated in the tender notice required that the tenderer should be registered second class hoteliers having atleast 5 years experience for putting up and running a second class restaurant and two snack bars at the Airport for a period of 3 years. The person to whom the contract was awarded did not fulfil the condition of experience. The appellant challenged the allocation made in favour of the private respondent on the ground that consideration of ineligible person was violative of the doctrine of equality. While, dealing with this issue, their Lordships of the Supreme Court observed as under :

> "It is, therefore, obvious that both having regard to the constitutional mandate of Article 14 as also the judicially evolved rule of administrative law, the 1st respondent was not entitled to act arbitrarily in accepting the tender of the 4th respondent, but was bound to conform to the standard or norm laid down in paragraph 1 of the notice inviting tenders which required that only a person running a registered IInd Class hotel or restaurant and having atleast 5 year's experience as such should be eligible to tender. It was not the contention of the appellant that this standard or norm prescribed by the Ist respondent was discriminatory having no just or reasonable relation to the object of inviting tenders, namely, to award the contract to a sufficiently experienced person who would be able to run efficiently a IInd class restaurant at the airport. *Admittedly, the standard or norm was reasonable and non-discriminatory and once such a standard or norm for running a IInd class restaurant should be awarded was laid down, the 1st respondent was not entitled to depart from it and to award the contract to the 4th respondents who did not satisfy the condition of eligibility prescribed by the standard or norm.* If there was not acceptable tender from a person who satisfied the condition of eligibility, the 1st respondent could have rejected the tenders

(5) A.I.R. 1975 S.C. 984
(6) A.I.R. 1975 S.C. 1331

and invited fresh tenders on the basis of a less stringent standard or norm, but it could not depart from the standard or norm prescribed by it and arbitrarily accept the tender of the 4th respondents. *When the 1st respondent entertained the tender of the 4th respondents even though they did not have 5 years experience of running a IInd class restaurant or hotel, it denied equality of opportunity to others similarly situate in the matter of tendering for the contract. There might have been many other persons, in fact the appellant himself claimed to be one such person, who did not have 5 years experience of running a IInd class restaurant, but who were otherwise competent to run such a restaurant and they might also have competed with the 4th respondents for obtaining the contract, but they were precluded from doing so by the condition of eligibility requiring five years experience. The action of the 1st respondent in accepting the tender of the 4th respondents, even though they did not satisfy the prescribed condition of eligibility, was clearly discriminatory, since it excluded other persons similarly situate from tendering for the contract and it was also arbitrary and without reason.* The acceptance of the tender of the 4th respondent was, in the circumstances invalid as being violative of the equality clause of the Constitution as also of the rule of administrative law inhibiting arbitrary action."

(20) By applying the ratio of the decision of Ramana's case *(supra)* to the facts of this case, we hold that the allocation of Dadupur site to Respondent No. 3 for setting up Mini Hydro Plant is violative of the equality clause of the Constitution.

(21) We are further of the view that public interest may have been better served if the government had, before approving the advertisement for inviting proposals for private sector participation, examined the issue more comprehensively and allowed public sector participation in the process of award of contract, but after having invited proposals only from private sector and approved the recommendations made by HPC for allocation of the site to the petitioner, it could not have arbitrarily reviewed the decision in the name of public interest.

(22) The petitioner's plea that the entire exercise undertaken by the State Government after the submission of DPR by the petitioner was directed towards nullification of the decision taken by the previous regime appears quite plausible. The proximity of time between the

change of political scenario in the State and the change of the petitioner's fortune do give an impression that allocation made in its favour was cancelled for reasons other than public interest as is sought to be made by the official respondents. The HPC had made recommendations for allocation of the site in favour of the petitioner in February, 1999 and on 16th April, 1999 the State Government had taken a conscious decision to approve the same. For the next 4½ months, no such event had taken place which could justify review of the previous decision. Rather, during this period the Director, HAREDA issued letter of intent in favour of the petitioner who deposited the prescribed fee at the rate of 200 per MW (total Rs. 8 lacs), signed tripartite MOU and submitted DPR within next 1½ months. However, without any tangible reason, the government decided to review the decision taken on 16th April, 1999 and ultimately cancelled the allocation in the name of public interest.

(23) We are further of the view that the decision taken by the government to cancel the allocation made in favour of the petitioner is liable to be nullified on the ground of violation of the principles of natural justice. It is true that the letter of intent issued by HAREDA did not create a vested right in favour of the petitioner to be awarded contract which depended upon the acceptance of DPR but in view of the fact that after the issuance of letter of intent the petitioner had taken various steps for award of contract and had spent considerable amount and the official respondents did not find anything wrong with the DPR did create a legitimate expectation that in the absence of any adverse factor, the contract would be awarded to it. Therefore, before ordering cancellation of allocation of site, the State Government was under an obligation to give notice and opportunity of hearing to the petitioner who could have shown that Respondent No. 3 was not eligible to participate in the allocation of Dadupur site and that the decision taken by HPC was correct. However, on account of the government's failure to comply with the basics of natural justice, it could not avail that opportunity. Thus, there is no escape from the conclusion that the impugned decision is violative of the rule of audi *alteram partem* and it is liable to be quashed on that ground.

(24) In view of the above conclusions, we do not consider it necessary to deal with the other issues raised by the petitioner.

(25) Before concluding, we may mention that during the course of arguments, we had enquired from the counsel for Respondent No. 3 as to what steps his client has taken to set up the plant. In reply, he

stated that no tangible progress has been made in that direction and up to this date, only a sum of rupees two to three lacs has been spent in the construction of boundary wall at the site.

(26) In the result, the writ petition is allowed. The decision taken by the government to cancel the allocation of Dadupur site made in favour of the petitioner is declared illegal and memo Annexure P. 12 is quashed.

R.N.R.

24790 HC—Govt. Press, U.T., Chd.