found by the appellate authority to have been passed on the correct facts of the case. The petitioner, therefore, in no way shall be deemed to have been suspended to function as a Sarpanch without he having been heard by the authority. The order is well in accordance with law and does not suffer from any impropriety or illegality. Hence the writ petition is dismissed.

R.N.R.

Before G. S. Singhvi, H. S. Bedi & S. S. Sudhalkar, JJ.

ANIL SABBARWAL,—*Petitioner.*

versus

THE STATE OF HARYANA & OTHERS,—*Respondents.*

CWP 5851 of 96.

March 21, 1997.

Constitution of India, 1950—Art. 226—Public Interest Litigation—Petitioner challenging discretionary quota allotment of plots in urban estates of Haryana—Locus standi.

Held, that the petitioner who has espoused the cause of the public by bringing it to the notice of the Court that powerful and influential persons of the society have grabbed the public property on the basis of allotment made under the discretionary quota and if the prime land allotted to them in an arbitrary manner is made available to the public at large, then the public exchequer will be greatly benefitted and all eligible persons will be able to participate in the process of disposal of the public property by way of auction or by way of allotment. The petitioner has been able to demonstrate that those who are able to pull strings of political power can reap benefits in disregard to the constitutional ethics. We, therefore, do not find any merit in the objection raised by the learned counsel for the respondents/objectors that the writ petition should be dismissed on the ground of lack of *locus standi.*

(Para 34)

Constitution of India, 1950—Art. 226—Haryana Urban Development Authority Act, 1977—Ss. 15(3) and 30(1)—Chief Minister's 5 per cent discretionary quota for allotment of plots in Haryana—C.M. not vested with absolute discretion to make allotments according to his choice—Government's powers to give directions to HUDA not unlimited or unfettered and the same can be given only for efficient

administration under the Act—Such allotments are amenable to judicial review.

Held, that the Government has the power to give directions to the HUDA for carrying out the provisions of the Act. We also agree with it that the Government can make reservation of plots while making development of the urban estates but we are unable to subscribe to the view of the Division Bench in *S. R. Dass* v. *State of Haryana,* 1988 (1) *P.L.R.* 430 that the powers vesting in the Government under Section 15 read with Section 30 of the Act are unlimited. The Division Bench did not give due regard to the opening words of Section 15(1) and last part of Section 30(1) of the Act. A perusal of these provisions makes it clear that the Government can give dirtctions to the HUDA only for the efficient administration of the Act and the Government's powers to give directions to the HUDA are not unfettered. We cannot accept the proposition that the Government can give directions inconsistent with the provisions of the Act. Rather, such directions must not only be consistent with the provisions of the Act but the same must conform to the constitional limitations. We, therefore, disapprove the view taken by the Division Bench that the powers vested in the State Government under the Act are unlimited.

(Para 41)

Further held, that the Chief Minister is not vested with an absolute discretion to allot a particular percentage of plots according to his choice. The policy of reserving the plots in favour of a class or a group of persons may in a given case be justified with reference to the purposes of the Act. Allotment of plot to one individual under the directions of the Government may also be justified in a given case but the plea that absolute discretion can vest in one individual is wholly incompatible with the scheme of the HUDA Act and the Constitution. Likewise, the argument that the discretion conferred upon the Chief Minister is immune from the judicial review has to be negatived because it is an anti-thesis to the principle of 'rule of law' which forms the core of the Indian Constitution. This argument is also unacceptable because in our country the representatives of the people act as trustees of faith reposed in them by the public at the time of elections. Therefore, such discretion is not immune from judicial scruting on the touch-stone of Article 14 and other provisions of the Constitution. The Government's powers under Section 30(1) of the Act to give directions to the HUDA to reserve plots may be used in favour of eminent professionals, outstanding sports persons, muscicians etc. as a group, provided such reservation is within the parameters, scheme and objects of the Act. However, the plots reserved for professionals etc. can be allotted only after issuing advertisement of the policy framed by the Government/HUDA and allotments will have to be made keeping in view the principles laid down by the Supreme Court in *New India Public School and others* v. *HUDA and others,* JT 1996 (7) S.C. 103.

(Paras 42 & 52)

Further held, that once we have found that under the Act, absolute and unbridled discretion cannot be conferred upon the respondents, the Court will be failing in its duty to restore the property to the public because it is the public who is the real owner of the property vesting in the State.

(Para 69)

Further held, that it would not be fair to upset those allotments which have acquired the colour of legality in the light of the judgment rendered in S. R. Dass's case.

(Para 70)

Further held, that use of discretionary quota for allotments of plots to the members of the judiciary and the agencies like Public Service Commission and the Subordinate Servics Selection Board is likely to cause serious damage to the credibility of these institutions.

(Para 65)

Constitution of India, 1950—*Arts.* 14 & 226—*Criteria for allotment of plots—'Distinguished and needy people'—Absence of guidelines for determining question as to who is distinguished and needy—Conferment of unbridled and unguided power to allot is violative of right to equality under Art. 14—All discretionary quota allotments made on or after 31st October, 1989 declared illegal and quashed retrospectively subject to limitations and directions.*

Held, that the question whether a person is distinguished and needy for the purpose of allotment of a plot has been left to be detedmined at the whims of the Chief Minister. Complete absence of any guidelines for determination of the question as to who are distinguished and needy, it is left to the sweet-will of the Chief Minister to allot a plot by treating him to be a distinguished and needy person. The criteria does not say that the applicant/prospective allotee must have distinguished himself/herself by serving the national cause or the cause of the state or he/she should have achieved distinction in the field of science, arts, sports, music, journalism, literature or the like at international, national or state level. There is no indication as to how the Chief Minister would determine whether a person is needy or not. No criteria of income has been laid down. No such guideline has been framed for exercise of power to allot plots under the discretionary quota. No rule or regulation has been framed and no yardstick has been laid down by following which the Chief Minister can determine that a person is distinguished and needy. All is left to the unfettered discretion of the Chief Minister. Conferment of such unbridled and unguided power is clearly against the wider interpretation accorded to the doctrine of equality embodied in Article 14 of the Constitution.

(Para 56)

Further held, that in none of the orders passed by the Chief Minister for allotment of plots under the discretionary quota, there is any reference to the criteria of distinquished and needy persons. This is clearly indicative of the vaguness of the criteria of 'distinguished and needy people'. Taking advantage of the vague and arbitrary criteria, a vast majority of applicants who have not distinguished themselves in any walk of life have been conferred with the largesses in the form of big or small plots. In some of the cases, two or more than two plots have been allotted to the members of one family. Some of the beneficiaries of allotment under the discretionary quota own palatial houses in the cities like Delhi and Chandigarh. They have been allotted big plots of one to two kanals. Therefore, we have no hesitation to hold that the criteria incorporated in Annexure R-II is vague and arbitrary. If conferred unlimited, unguided and unbridled discretion upon the Chief Minister to allot plots without even considering whether a person is really distinguished and needy or not.

(Para 56)

Constitution of India, 1950—Art. 226—'And' cannot be read as 'or' in the criteria for allotment 'distinguished and needy'—'And' is conjunctive 'or' is disjunctive—Interpretation.

Held, that if we were to read the word 'or' in place of the word 'and' the criteria incorporated in the note dated 21st November, 1990 will be reduced to a farce. There may be tens of thousands of people who may have done nothing exceptional in any walk of life but they may still be in the need of plots. If all these persons were to be allotted plots on the basis of their need, perhaps the Chief Minister may be forced to allot the entire land in all the urban estates. Else he will have to pick and choose the persons of his liking for conferment of largesses. The exercise of power in this manner would be a complete fraud on the Constitution. The word 'or' is normally disjunctive and the word 'and' is normally conjunctive. For the purpose of interpretation, these words can be interchanged if the literal reading of the words produces unintelligible or absurd results. However, such a course cannot readily be adopted.

(Paras 54 & 55)

Constitution of India, 1950—Art. 226—Doctrine of prospective over-ruling cannot be invoked by the High Court—Only Supreme Court has such jurisdiction.

Held that, the doctrine of prospective over-ruling can be invoked only by the Apex Court. We, therefore, do not find any ground to hold that the allotments made by the respondent No. 3 under the discretionary quota should remain undisturbed.

(Para 67)

Further held, that :—

(1) the provisions of Section 15 and Section 30 of the Act do not confer unbridled and unguided powers upon the Chief

Minister to allot residential plots according to his discretion and the same cannot be used for sustaining the conferment of such powers upon the Chief Minister ;

(2) the criteria devised by the Chief Minister,—*vide* note dated 21st November, 1990 for allotment of plots i.e. 'distinguished and needy people' is vague and arbitrary and is, therefore, violative of article 14 of the Constitution ;

(3) the allotments of residential plots made under the discretionary quota of the Chief Minister on or after 31st October, 1989 are declared illegal and are quashed. This shall be subject to the following :—

(i) the allotments made under the discretionary quota shall remain unaffected in cases of those allottees and their *bona fide* purchasers who have already raised construction or who have started construction of the houses and buildings as per the plans sanctioned by the HUDA before the date of the publication of the notice of this petition i.e. 6th June, 1996. However, the HUDA shall issue general instructions restraining the alienation of the constructed houses/buildings to third parties by such allottees/transferees for a period of next five years.

(ii) the persons to whom plots measuring 2 to 6 marlas have been allotted shall be allowed to retain the plots only if their family does not own a house in the State of Haryana/Chandigarh. The condition against alienation to the third party shall also apply in their cases.

(iii) the cases of the allottees who were/are members of the armed forces/para military forces who have made sacrifice for the cause of nation or who have distinguished themselves during the course of service as well as the members of the police forces who fought against terrorism in the states of Punjab and Jammu & Kashmir and elsewhere in the country and the civilians who have been affected by the terrorists' activities in the States of Punjab and Jammu & Kashmir and elsewhere in the country shall be reviewed by a committee.

(iv) the persons falling the category of defence personnel/police officers/officials as well as the civilians whose cases are to be reviewed by the committee to be constituted by the Government shall be allowed to retain only one plot per family on the recommendations of the committee. However. they shall not be entitled to alienate the plots to third parties for five years.

(v) Within one month from today the Government of Haryana should appoint a committee headed by a retired Judge of the High Court preferably from a State other than the States of Punjab, Haryana and Delhi to examine the cases of allotment made to the members of armed forces/para military forces who made sacrifice for the cause of the nation or who have randered distinguished service. The cases of the police officers/officials who have fought against terrorism and the civilians who have suffered due to terrorism shall be examined by that committee. The Government and the HUDA shall regularise those allotments for which recommendations are made by the committee.

(vi) If the committee/HUDA finds that any of the allottees has submitted false information to the HUDA, then allotment in favour of such person shall necessarily be cancelled and the Government shall take appropriate action for prosecution of such applicant.

(5) The Government of Haryana may frame policy for allotment of plots to specified class of persons and notify such policy. Allotment under such policy should be made by inviting applications through public notice from all those who belong to a particular class.

(6) The Government/the HUDA shall immediately cause publication of the notice in the two newspapers having,—*vide* circulation in the States of Punjab and Haryana and two newspapers have circulation in the entire country indicating therein that due to quashing of the allotment made under the discretionary quota the allottees have become entitled to the refund of money deposited by them The amount shall be refunded to the allottee within two months of the making of application by such person. If the HUDA fails to return the amount within two months of the making of the application then it shall pay interest at the rate of 15 per cent per annum.

(7) The cases of those covered by the exception clauses mentioned above shall be referred to the committee along with the entire record and the final decision be taken on the recommendation of the committee.

(8) The plots which shall become available due to the quashing of the allotments made by the HUDA shall be disposed of by it as per the existing policy.

(9) The Government shall ensure full compliance of these directions by its own officers and the officials of the HUDA

(Para 78)

Per H. S. Bedi, J.

Held, that I broadly concur with the views that Brother Singhvi, J. has expressed inasmuch that the policy for the allotment of plots under the discretionary quota is not only vague but also that it has been misutilized for extraneous considerations and accordingly needs to be quashed. I agree with Singhvi, J. that allottees of small plots, however deserve to be spared. The primary factor that impels me to this view is that this very policy had been challenged in this Court in S. R. Dass's case and found to be valid by a Division Bench.

Further held, that equally it would be impossible to argue that a person who had been allotted a 2, 4 or 6 marla of plot would have secured allotment with a profit motive. As a matter of fact, the policy of allotment to distinguished and needy persons can hardly be applied to this category of allottees (as without meaning to sound in any way pompous or disrespectful to them) none of them would qualify as being both distinguished and needy which is a ***sine qua*** non for allotment and, as such, in their cases an equitable rather than a legalistic approach has to be adopted. The principles therefore applied in determining the validity of allotment of petrol pumps, gas agencies, out of turn Government accommodation and the like which have been adequately dealt with by Singhvi, J. cannot be applied to the present case where the plots have been purchased by the allottees after paying good money in terms of the policy which had already been upheld in S. R. Das's case. It is well known that the discretionary relief envisaged under Article 226 of the Constitution of India can be moulded to meet a particular situation. I am. therefore, of the opinion that while it is necessary to make an expose of what has been happening over the last several years, yet the allotments made with respect to 2 to 6 marlas plots should not be quashed.

(Para 80)

Further held, that there is, however, another aspect of the matter on which there is a divergence of opinion with my learned Brother. While quashing the allotments, it has been held that an exception needs to be carved out in favour of defence and police personnel on the ground that they were discharging a hazardous national duty and that in their case a retired Judge of the High Court or a retired Chief Secretary should be appointed to determine their status as distinguished and needy persons. I have absolutely no hesitation in accepting this proposal but am of the opinion that a separate case of allottees should not be created and the committee envisaged should go into be genuineness of all allotments of plots of 7 marlas and above that had been made. It cannot be denied that various other Sections of our society be the judicial officers, politicians, school teachers or doctors and so many others are also doing their duty towards the nation and their cases may be quite as genuine as those of defence personnel and may well fit the criteria for allotment.

Further the committee (to make it more broad-based) should consist of three members—a retired Chief Justice and a Retired Judge of a High Court and a retired Senior Civil Servant not less than the rank of a Chief Secretary.

(Para 81)

Further held, that we have seen that some of the allottees have attempted to camouflage their identities by giving incorrect or inaccurate descriptions in their applications so as to avoid detection and to secure double or even multiple allotments. An option should be held out to such persons that in case they voluntarily surrender all, but one plot, within a period of two months from today, their cases for the allotment of one plot would be considered by the committee aforementioned, and in case they do not do so, and an inquiry reveals that it is a case of double or multiple allotment, contrary to the policy and made on the basis of false affidavits, they would not only disentitle themselves for being considered for allotment but would also be made liable for criminal prosecution on that account.

(Para 82)

Further held, that the judgment also says (and I quote) "one or two sitting Judges of this Court also got allotted plots under the discretionary quota either in his own name or in the name of his family members", but stops short of naming them. To my mind and with great respect this omission makes the Bench and the judgment open to serious criticism. Introspection is a difficult and often an embarrassing exercise but a task that must nevertheless be carried out. While revealing the names of others, I see no justifiable reason as to why sitting Judges of this Court i.e. Hon'ble Justice M. S. Liberhan, Hon'ble Mr. Justice N. C. Jain and Hon'ble Mr. Justice M. L. Koul, who either themselves or through their families are not brought on record as having been amongst the beneficiaries.

(Para 84)

Further held, that the record also reveals that a very large number of Judicial Officers who have secured allotments had applied for allotment directly to the Chief Minister and some of the applications contain language which borders on servility. This practice needs to be seriously discouraged as it could have the effect of compromising the position and independence of the Judges. I am, therefore, of the opinion that in future if any Subordinate Judicial Officer has to apply for the grant of a plot under the discretionary quota, the said application should be routed through the High Court and in case the applicant is a sitting Judge of the High Court, through the Chief Justice. It should also be clearly understood by all that any application made in any other manner, would be ruled out of consideration.

(Para 85)

G. S. Singhvi, J.

(1) Fifty years ago, the Constituent Assembly was entrusted with the task of framing the Constitution for independent India. Eminent people from different walks of life, who met under the Chairmanship of Dr. B. R. Ambedkar, debated for over two years, examined and analysed the Constitutions of almost all the countries of the world and prepared the document which is known as "the Constitution of India". The Constituent Assembly adopted the Constitution on 26th day of November, 1949 and the India which became free from the imperial rule on 15th day of August, 1947 was declared to be a Republic on 26th January, 1950 with the enforcement of the Constitution. The Preamble to the Constitution pronounces :—

> "We, the people of India, having solemnly resolved to constitute India into a Sovereign Socialist Secular Democratic Republic and to secure to all its citizens : JUSTICE, social, economic and political ; LIBERTY of thought, expression, belief, faith and worship ;
>
> EQUALITY of status and of opportunity ; and to promote among them all FRATERNITY assuring the dignity of the individual and the unity and integrity of the Nation."

The word "Socialist" was introduced in the Constitution by the Constitution (Forty-Second Amendment) Act,1976. Though each of XXII Parts of the Constitution has its own significance, the common man is by and large concerned with Parts III, IV and IV-A, the last having been added by the Forty-second Amendment Act, 1976. Part-III of the Constitution contains various provisions relating to the fundamental rights of the citizens and the individuals. It also contains several prohibitive injunctions. The provisions of Part-IV contain directive principles of State policy which are fundamental for the governance of the country. The State has been obligated to enact laws for improving the lot of the weaker sections of the society and the rural population. Part IV-A enumerates the fundamental duties of every citizen of India. In the words of K. K. Mathew, J. *Keshavananda Bharti* v. *State of Kerala* (1). :—

> ".....The object of the people in establishing the Constitution was to promote justice, social and economic liberty and equality. The modus operandi to achieve these objective

(1) A.I.R. 1973 S.C. 1461.

is set out in Parts III and IV of the Constitution............ .
As I look at the provisions of Parts III and IV, I feel no doubt, that the basic object of conferring freedoms on individuals is the ultimate achievement of the ideals set out in Part IV...............

May I say that the directive principles of State Policy should not be permitted to become 'a mere rope of stand'. If the State fails to create conditions in which the fundamental freedoms can be enjoyed by all, the freedom of the few will be at the mercy of the many and then all freedoms will vanish."

The addition of Part IV-A emphasizes the need of the day, namely. that every citizen must do his duty towards the nation as well as the fellow citizens because unless every one does his duty, the ideals of justice and equality can never be achieved. Article 51-A enjoins upon every citizen to abide by the Constitution and respect its ideals and institutions, the National Flag and the National Anthem ; to cherish and follow the noble ideals which inspired our national struggle for freedom ; to uphold and protect the sovereignty, unity and integrity of India ; ....to value and preserve the rich heritage of our composite culture : ....to strive towards excellence in all spheres of individual and collective activity so that the natoin constantly rises to higher levels of endeavour and achievement. What has been incorporated in the form of Part IV-A was implicit in the Peamble, Part III and Part IV of the Constitution because fundamental rights of the citizens could become meaningful only if the State and other citizens would do their duty to bring about real equality between the people belonging to different segments of the Indian society.

(2) The framers of the Constitution and the representatives of the people who were responsible for introducing Part IV-A enacted the above provisions with a fond hope that every citizen will honestly play his role in building of a domogenous society in which every Indian will be able to live with dignity without having to bother about the basics, like food, clothing, shelter, education, medical aid and the nation will constantly march forward and will take its place of pride in the comity of nations. However, what has happened during the last few decades is sufficient to shatter those hopes. The gap between 'haves' and 'haves not' of the society which existed even in pre-independent India has widened to such an extent that bridging it appears to be an impossibility. A new creed of people (haves) has

come into existence. Those belonging to this category have developed a new value system which is totally incompatible with the values and ideals chtrished by the Indian society for centuries together. They have grabbed power, political and apolitical and have successfully used the public institutions to subserve their ends. The system of quotas, licences, permits etc. has been used and misused by them for increasing their material wealth. Their actions have created an atmosphere of diffidence in all walks of life. The common man has started feeling that this new creed of people who believe in grabbing whatever comes in its way is unstoppable and the law will also become its servant because quite a few people belonging to this class are creaters and administrators of law. However, it appears that every thing is not lost. The third organ of the State whose primary duty has been to interpret the Constitution and the provisions of law and to adjudicate the disputes between the individual(s) and the State and between individuals *inter se* or groups of individuals has been forced by the people and the circumstances to take steps to uphold the majesty of law and the authority of the Constitution. The new form of litigation popularly described as 'public interest litigation' or what some call as 'social action litigation' which took its birth in 1981-82 now forms an integral part of the system of dispensation of justice. Though there have been stray cases of abuse of the concept of public interest litigation/social action litigation, but by and large this new mechanism has been used by the Courts to the advantage of the poor and downtrodden and to a large extent to save public property and public interest. In the field of environment, direction given by the Courts have gone a long way to save the destruction of ecology. Recent orders passed by the Supreme Court virtually banning child labour in hazarduous industries. removal of encroachments from public lands, directing the stoppage of mining operations in the forest areas. may ultimately prove greatly beneficial to the future generations. Another area in which the Courts have intervened to protect the public property and safeguard public interest/national interest is the arbitrary use of the discretion by public authorities. In *Secretary, J.D.A.* v. *Daulat Mal Jain* (1-A). the Apex Court had the occasion to examine allotment of lands to the respondents by the Minister and the committee headed by the Minister. Some of the observations made in that decision are

(1-A) J.T. 1996 (8) S.C. 387.

quite relevant in the context of the present case. Therefore, they are quoted below :—

> "......The Minister holds public office though he gets constitutional status and performs functions under constitution, law or executive policy. The acts done and duties performed are public acts or duties as holder of the public office. Therefore, he owes certain accountability for the acts done or duties performed. In a democratic society governed by rule of law, power is conferred on the holder of the public office or the concerned authority by the Constitution by virtue of appointment. The holder of the office, therefore, gets opportunity to abuse or misuse of the office. The politician who holders public office must perform public duties with the sense of purpose, and a sense of direction, under rules or sence of priorities. The purpose must be genuine in a free democratic society governed by the rule of law to further socio-economic democracy. The executive Government should frame its policies to maintain the social order, stability, progress and morality. All actions of the Government are performed through incorruptibility. He should not only possess these qualifications but should also appear to possess the same."

(3) In *Common Cause : A Registered Society* v. *Union of India and others* (2), the Apex Court entertained a petition filed in public interest questioning the allotment of Petrol Pumps/retail outlets by the then Minister for Petroleum and Natural Gases exercising the powers of the Central Government and quashed the allotment made in favour of fifteen persons. While doing so, the Apex Court observed :—

> "......The Government today—in welfare State—provides large number of benefits to the citizens. It distributes wealth in the form of allotment of plots, houses, petrol pumps, gas agencies, mineral leases, contracts, quotas and licences etc. Government distributes largesses in various forms. *A Minister who is the executive head of the department concerned distributes these benefits and largesses. He is elected by the people and is elevated to a position where he holds a trust on behalf of the people. He has to deal with the people's property in a fair and just manner......*"

(4) We have prefaced the consideration of this writ petition involving a challenge to the allotment of plots in various urban

(2) J.T. 1996 (8) S.C. 613.

estates of Haryana under the discretionary quota of the Government with the above discussion because whereas the petitioner has levelled serious allegations of misuse of power by the respondent No. 3 and land grabbing by influential persons including the Members of Parliament, Members of Legislative Assembly, other political figures, members of judiciary, members of Public Services Commission/ Subordinate Services Selection Board, members of All India Services, members of Haryana Civil Services, officers and employees of the Haryana Urban Development Authority (for short, 'the HUDA') and other influential persons, the respondents have questioned his *locus standi* to file the writ petition.

(5) In the writ petition as it was originally instituted, the petitioner Anil Sabharwal impleaded the State of Haryana ; the HUDA ; Shri Bhajan Lal, the then Chief Minister, Haryana-cum-Chairman, the HUDA and the Secretary-cum-Estate Officer (Discretionary Quota), HUDA as parties. He prayed for issuance of a writ to quash the discretionary quota of allotment of residential plots and also for quashing of all the allotments made by the respondents under the discretionary quota and the reservation made in favour of the avocation traders and the Haryana Government employees contained in the reservation policy. When the writ petition came up before the Bench headed by R. P. Sethi, J. (as he then was), the Court passed the following order :—

> "CM No. 8111 of 1996 is allowed, exempting the petitioner from filing certified copies of annexures, attached with the petition.
>
> Refers to 1995 (2) R.S.J. 553.
>
> This writ petition is treated as a petition in Public Interest.
>
> Reference is made to the averments made in paras 6 and 13 of the writ petition and it is stated at the Bar that a number of plots have been allotted to the politicians, bureaucrates, judicial officers and other influential persons/authorities under the garb of discretionary quota. It is alleged that the respondents have quoted all norms in the distribution of public largess.
>
> Notice of motion for May 22, 1996.
>
> Respondents are directed to intimate this Court before the next date the names and addresses of persons, to whom the plots from the discretionary quota have been allotted during the last ten years in the State of Haryana.

Respondents are further directed to intimate to such persons about the filing of this petition and the next date fixed, which shall be deemed to be notice to all such persons and they shall be at liberty to file objections, if they so desire.

The advertisement about this petition shall also be published in some newspaper, having wide circulation, at the expenses of the petitioner.

All such allottees of plots out of the discretionary quota in the State of Haryana are restrained from alienating or transferring the said plots to any person, in any manner whatsoever, without the prior permission of this Court, till further orders."

(6) On 22nd May, 1996, the Court noted that the directions given on April 23, 1996 have not been complied with by the respondents and observed that in view of the allegations made in the writ petition the matter needs adjudication by a larger bench. This is how the matter was placed before this bench. On 30th May, 1996, the Court felt that it would be necessary to give opportunity of hearing to all those persons who may be affected by the decision of the Court. Therefore, a direction was given to the HUDA to get the notices published in three newspapers intimating the factum of pendency of the writ petition involving challenge to the allotment of plots under discretionary quota and also intimating that such persons may file reply/affidavit before the Court. In response to that order, notices were got published by the HUDA in various newspapers. Thereafter, about 210 objection petitions have been filed by the individuals either in person or through their counsel.

(7) In order to examine the contentious issues which arise out of the pleadings of the parties and which are required to be adjudicated by the Court, it is necessary to trace out the history of evolution of discretionary quota, amendments made in the procedure for allotment of plots under discretionary quota and some of the allegations made in the writ petition.

(8) (i) *Evolution of discretionary quota/litigation.*

Before the establishment and constitution of the HUDA under the Haryana Urban Development Authority Act, 1977 (hereinafter referred to as 'the Act'), plots in the Urban Estates Department were allotted by various Estate Officers in accordance with the directions given by the State Government. At the initial stage, allotment used

to be made on 'first come first serve basis' or by draw of lots. In the year 1971-72. the Government decided to reserve certain percentage of plot for allotment at its discretion. As and when land for new sector used to be released, five per cent of total plots of different categories were reserved for allotment by the Government at its own discretion. Some plots were also reserved for allotment to the Government servants. The plots which used to become available due to surrender or resumption on account of violation of the conditions of allotment were also allotted by the Government at its discretion. Out of additional plots subsequently carved out in the same sector, reservation for allotment under discretion quota of the Government was again resorted to. This policy was initially applied while making allotments in the urban estates of Faridabad and Panchkula. Lattr on, it was extended to all the districts/urban estates of Haryana. After the establishment of the HUDA, the issue regarding reservation of the plots for allotment by the Government was considered in its meeting held on 15th February, 1978 under the Chairmanship of the Minister for Town and Country Planning, Haryana. The proposal for continuing the allotment of plots as per the discretion of the Government was approved,—*vide* item No. F-VI(ii). A large number of plots were allotted by the successive governments headed by Shri Bansi Lal, Shri Devi Lal and Shri Bhajan Lal.

(9) However, in the year 1987, the Government headed by Shri Devi Lal decided to cancel the allotment of discretionary quota plots of various categories made from 1st June, 1986 to 20th June, 1987. In compliance of the directions of the Government, the Chief Administrator of the HUDA issued memo No. ADA(R)-87/20509—14, dated 29th June, 1987 and cancelled all the allotments of the plots under the discretionary quota during the aforementioned period. This order affected 2972 allottees. About one thousand of them filed writ petitions challenging the order dated 29th June, 1987. In *S. R. Dass* v. *State of Haryana* (3), a Division Bench of this Court quashed the order dated 29th June, 1987 primarily on the ground of violation of the principles of natural justice. At the same time, the Division Bench upheld some of the allotments and gave directions to deal with the other allotments. The State of Haryana and others filed Special Leave Petition No. 10062 of 1988 which was disposed of by the Apex Court on 12th September, 1989. Their Lordships categorically held that they were not expressing any opinion on the

(3) 1988 (1) P.L.R. 430.

correctness or otherwise of the decision of the High Court and the decision of the Special Leave Petition was confined to the facts of the case of S. R. Dass. One Shri M. L. Tayal also filed Special Leave Petition against the order dated 20th January. 1988 passed by the Division Bench in *S. R. Dass's case* (supra). In that Special Leave Petition No. 5580 of 1988, the Apex Court issued notice on the question whether the guidelines laid down by the High Court for allotment of plots under the discretionary quota would affect the allotment already made or would operate prospectively. Shri S. S. Dewan, a retired Chief Justice of this Court also filed C.W.P. No. 5096 of 1988 questioning the authority of the High Court to issue guidelines in respect of the discretionary quota. That petition was admitted by the Division Bench and referred to a larger Bench. However, before that petition could be heard, the Government headed by Shri Devi Lal withdrew its earlier decision to cancel the allotments made between 1st June, 1986 and 20th June, 1987.

(10) After the Government withdrew its earlier order cancelling the allotment of plots, the issue relating to the discretionary quota was reviewed in the 46th meeting the HUDA held on 25th June. 1990 under the Chairmanship of the then Chief Minister Shri Banarsi Dass Gupta. The HUDA approved the proposal of allotment of 5 per cent of the newly carved out plots of all sizes in any sector/urban estate under the discretionary quota. All resumed/surrendered plots, all plots cancelled due to non-payment of 15 per cent price and all unsold plots left out of the lottery were also placed under the discretionary quota.

(11) In June, 1990. a proposal was mooted to constitute a committee for laying down guidelines for allotment of plots under discretionary quota. On 22nd June, 1990. the then Chief Secretary expressed the view that opinion of the Legal Rememberancer may be obtained whether it was necessary to frame guidelines for making such allotments. However, on 25th June, 1990 the Secretary to the Chief Minister conveyed the latter's desire that practice of allotting 5 per cent residential plots at his discretion may be revived. After approval of the proposal by the HUDA. the Secretary to the Chief Minister prepared a note suggesting that immediately after circulation of the proceedings of the meeting of HUDA held on 25th June. 1990, the power of allotment of discretionary quota would vest with the Chief Minister. He also expressed that there was no necessity to frame any policy or guidelines for this purpose and the only thing which was to be kept in view was that the person seeking allotment may not be having a residential plot or house in whole of the State

of Haryana in his own name or in the name of any of his family members (wife/husband/dependent children). Thereafter, the Chief Minister approved the following note for allotment of plots :—

> "These plots would be allotted by the Chief Minister in his discretion to distinguished and needy people in all walks of life subject to the condition that they do not own or hold, either in their own name or in the name of one from amongst their family members including wife and dependent children, any other house or plot in the urban estate concerned. In case of urban estate, Panchkula the allottees from the discretionary quota allotment should not be holding any house or plot as aforesaid in Chandigarh or adjoining urban estate of Mohali in Punjab State.
>
> The allottees should not have been allotted residential plot under the discretionary quota earlier in any urban estate in the name of any one from amongst their family members including wife and dependent children."

(12) The above mentioned decision taken by the Chief Minister was recorded on the file by the Principal Secretary, to the Chief Minister on 21st November, 1990. This note was forwarded to the Chief Secretary. It was thereafter forwarded to the HUDA. At the same time, the Government/the HUDA prepared draft of the affidavit which was required to be filled by the allottees and the draft of the letter of intimation which was required to be sent by the HUDA to the allottees.

(13) The decision recorded by the Principal Secretary to the Chief Minister was approved by the HUDA headed by Shri Om Parkash Chautala and Co-operative and Town Planning Minister— Shri Dhirpal Singh.

(14) In June, 1991, Shri Bhajan Lal again became the Chief Minister. In October, 1991 the following order came to be recorded at the behest of the respondent No. 3 :—

> "I have seen this case. After the decision of the Hon'ble High Court, action be taken as per previous practice on the basis of the decision of the Authority taken in its meeting held on 25th June, 1990 and accordingly, affidavit may be called for. In addition to this, as I have given directions, transfer

for three years be banned and carving of plots, public parks and green belts also be banned."

In compliance of these directions, the Chief Administrator, the HUDA issued memo No. ADA(R)-91/22819 dated 29th October, 1991 (Annexure R2) and imposed ban on the transfer of the plots allotted under discretionary quota for a period of three years from the date of the issue of formal allotment letter by the Estate Officer. This ban was also made applicable to the plots which had been allotted prior to the issuance of the instructions.

(15) (ii) *Reservation of plots under various categories.*

In its 34th meeting held on 14th August, 1987, the HUDA evolved a policy of reservation of plots for various categories of persons. The extract of the proposal placed before the HUDA was in the following terms :-

"Policy regarding---Reservation of residential plots for various categories.

....

Haryana Urban Development Authority is following a policy of reservation of residential plots for various category of person as under :—

1. Government servants	...	5 per cent in all sizes of plots
2. Defence Personnel	...	20 per cent in all sizes.
3. SC	...	20 per cent in E.W.S. 15 per cent in 4 & 6 M.
4. B.C.		5 per cent in E.W.S. 3 per cent in 4 & 6 M.
5. War Widows/Disabled soldiers	...	5 per cent in E.W.S. 3 per cent in 4 & 6 M.
6. Handicapped	...	1 per cent in E.W.S. 1 per cent in 4 & 6 M.
7. Freedom Fighters	...	2 per cent in E.W.S. 2 per cent in 4 & 6 M.

(16) In the low cost housing scheme, reservation of 15 per cent, 10 per cent, 5 per cent and 10 per cent exist for S.C., B.C., Nomadic tribes and freedom fighters respectively.

(17) In addition to the above reservations for specific categories, 5 per cent of the total number of plots used to be allotted under the so called discretionary quota. This was in accordance with the decision taken by the Authority in its sixth meeting held on 15th February, 1978. In this meeting it was decided to continue the priorities existing since 1972 i.e. before the formation of the Authority, according to which a certain percentage of plots were being reserved for allotment exclusively by Government at their discretion. The normal practice was to reserve 5 per cent of the total number of plots in each category in the new sector for allotment by Government at their discretion. The practice of discretionary quota in the erstwhile Urban Estate Department follows from a decision on the file by the then Chief Ministers on 14th July, 1971. According to which 15 per cent plots in Sector 21, Faridabad were reserved for members of Haryana Assembly and Members of Parliament and another 5 per cent plots were reserved for discretionary allotment by the State Government to certain categories of persons such as "Political suffers, eminent artists, writers, Journalists and other deserving cases". These Discretionary quota plots were allotted under the orders of the Minister/Chief Minister. All the surrendered/ resumed/un-allotted/freshly carved out plots in old sectors were later added to the discretionary quota in the Authority meeting held on 6th October, 1981 (Annexure)................."

However, the decision taken by the HUDA was in the following words :—

"Policy regarding—reservation of residential plots for various categories.

The proposal contained in the agenda was discussed in detail. It was decided to modify the reservation ratio of residential plots meant for Government. Servants and Defence personnel. The reservation for other categories was kept in tact. The existing reservation of 5 per cent in all sizes of plots for the employees of Haryana Government/ Boards/Corporations/Atonomous Bodies has been raised to 10 per cent. The reservation for the Defence Personnel will be 20 per cent in all sizes of plots at the notified places and 10 per cent at other places. It was further decided that the Defence Personnel/Ex-Servicemen of Haryana domicile only will be eligible for the reserved categories of plots.

The reservation of residential plots fixed for various categories will be available only at the time of first allotment. The surrendered/cancelled/un-allotted plots of reserved categories quota will go to the general category of plots.

The detailed criteria for fixing the priorities in the allotment of plots to various categories will be prepared and put up before the authority in its next meeting.

The proposal for selling out all the surrendered/resumed/un-allotted/cancelled and freshly carved out plots in all the existing sectors in open auction was approved. It was further decided that if the Chief Administrator, HUDA feels that in a particular selected/lucrative area, the auction of plots will fetch more price. Than the reserved price, he will be at liberty to adopt that course."

(18) At this stage, we may mention that what the respondents No. 2 and 4 have placed as Annexure R2 along with their reply is nothing but an agenda item and not the proposal as approved by the HUDA.

(iii) *The Case of the petitioner.*

(19) The petitioner says that he is an active social worker of Faridabad. He is a member of the Residents Welfare Association, Sector 28, Faridabad. He is also a member of the Sanatan Dharam Sabha, Faridabad. He has filed this petition in public interest questioning all the allotments of residential plots by the Chief Minister on the ground of violation of the provisions of the Constitution, misuse/abuse of power by the respondent No. 3 to favour certain individuals, violation of the provisions of the Act and the Haryana Urban Development Authority Regulations, 1978 (Regulations). The petitioner has alleged that the plots have been allotted for in excess of 5 per cent quota allegedly fixed in the resolution passed by the HUDA. He has also alleged that the respondent No. 3 allotted a large number of big plots to influential persons which include public representatives, members of judiciary, members of the All India Services and others who are out to grab the plots of land. In the additional affidavit dated 26th August, 1993 filed along with CM No. 16805 of 1996, the petitioner has stated that families of a number of persons having connection with the high-ups have secured more than one plot in one or more than one urban estates with the avowed object of profiteering. It has also been alleged that some of

the applicants filed false affidavits before the HUDA to secure allotment of plots under the discretionary quota. In the replication filed in the form of another affidavit dated 31st July, 1996, the petitioner has alleged that the respondents No. 2 and 4 have deliberately withheld the information relating to the plots allotted to several infuential persons and the guidelines issued by the Division Bench in *S. R. Dass's case* have been flouted. Another allegation made in the replication is that the successive Chief Ministers have allotted plots to their partymen and the legislators and the discretionary quota plots were allotted in the year 1993 to keep the Members of the Parliament within the fold of the Congress when its Government at the Centre was facing a 'no confidence motion'. It has also been alleged that the plots have been allotted in April, 1996 in violation of the Code of Conduct issued by the Election Commission of India The petitioner has asserted that these allotments had been made at a price which is far less than the market price and the allottees will be able to make huge profits out of such allotments. In Annexures A1, A2, A2-A and A3, the petitioner has given the particulars of the persons who have been allotted plots under the discretionary quota even though they/their family members already own plots in the urban Estates of Haryana ; the persons who furnished false affidavits to the effect that they or their family members do not own any plot allotted under the discretionary quota in other estates and the list of allottees who have got houses in Chandigarh and they have been allotted plots in Panchkula.

(iv) The case of the respondent No. 1.

(20) In its written statement filed by the State of Haryana through Shri S. C. Chaudhary, Special Secretary to Government, Town and Country Planning Department, the respondent No. 1 has challenged the *locus standi* of the petitioner to file the writ petition. It has also been alleged that the petitioner has made patently false statement regarding the allotment of plots under the discretionary quota. It has then given a brief history of the allotment of plots under the discretionary quota and has pleaded that the allotments made by the Chief Minister do not suffer from any legal error.

(v) The Case of respondents No. 2 and 4.

(21) In the written statement filed by them on 8th May, 1996, the respondents No. 2 and 4 have stated that the allotments of plots were made under the discretion of the then Chief Minister Shri Devi

Lal in the year 1977 but there was no policy at that time. In June, 1979, Shri Bhajan Lal became the Chief Minister. During his tenure, allotments under the discretionary quota continued from 1979 to 1986. Thereafter, he shifted to the Central Government and Shri Bansi Lal became the Chief Minister. During his regime also, the discretionary quota allotments continued. Thereafter, the respondents have given details of the developments which took place with the issuance of the order cancelling the allotments, filing of the writ petitions and the decision of the High Court. In para 7 of the reply, it has been stated that during last six months about 1745 plots out of total 4407 plots were allotted under the discretionary quota but most of them are the plots measuring 2 kanals to 14 marlas. Only 13 plots are of 2 kanals (1000 sq. yards) and 193 plots are of 1 kanal (500 sq. yards). The respondents have also stated that the allotments had been made strictly in accordance with the parameters of the eligibility criteria laid down for the purpose of allotment of plots under the discretionary quota. Statement Annexure R1 has been filed along with this reply to show the allotments of plots made between October and to-date in various urban estates of Haryana.

(22) In a detailed reply filed by them on 24th July, 1996, the respondents No. 2 and 4 have, while reiterating the assertions made by them in the short reply dated 8th May, 1996, further stated that all allotments had been made strictly in accordance with the guidelines framed and the procedure evolved,—*vide* Annexure R14 for making allotments of plots, inasmuch as each applicant was required to file an affidavit that he/she does not possess a plot in his/her own name, his/her spouse and dependent family members in that particular urban estate and has not been allotted a plot in any urban estate out of the discretionary quota. The respondents have stated that now the Government has decided to do away with the discretionary quota. In para 7 of this written statement, the respondents have stated that about 1842 plots have been allotted under the discretionary quota out of total 4407 allotments. In para 12, it has been stated that between June, 1991 and March 1996, only 4875 plots have been allotted under the discretionary quota out of a total allotments of 30889 made during the aforesaid period. In the last line of para 12, it has been stated that 1842 plots have been allotted under the discretionary quota whereas total floatation has been roughly 2662. The allegation of allotment of plots after the announcement of the elections in the State has been contested by the respondents No. 2 and 4 by making reference to Annexure R19. They have pleaded that after the announcement of the general elections on 19th March, 1996 and issuance of the Model Code of Conduct and general instructions

of the Election Commission, the Secretary of the HUDA had opined that issuance of the allotment letters would not be in order. On this note of the Secretary (dated 20th March, 1996), the Chief Administrator opined that in the cases where the discretion has already been exercised by the Chief Minister before the announcement of the elections, issue of allotment letters was only an administrative act and should not be treated as violation of the Model Code of Conduct. The Chief Town and Country Planner recorded a note that a decision was taken in the meeting of the Chief Secretary, Special Principal Secretary to the Chief Minister and the Chief Administrator, HUDA that advice of the Legal Rememberancer, Haryana may be taken. On his part the Legal Rememberancer opined that the views expressed by the Chief Administrator were correct. This opinion was expressed by the Legal Rememberancer on 21st March, 1996.

(vi) Reply of the respondent No. 3.

(23) In his separate reply by way of affidavit, Shri Bhajan Lal has denied the allegations levelled against him. He has referred to the policy allegedly framed after the judgment of the High Court and has pleaded that he brought about further changes in the policy by making it more stringent and restricting the use of discretion by passing certain directions which include calling for affidavits from the beneficiaries. At the same time, he has imposed a ban on the carving out of plots from public parks and green belts. A ban has also been imposed on the transfer of plot allotted under the discretionary quota for a period of three years. The respondent No. 3 has further pleaded that he does not have a free hand to make allotment out of discretionary quota and the policy of allotment is fair and reasonable. Shri Bhajan Lal has also stated that he has exercised the power of allotment under the discretionary quota in public interest and within the guidelines framed for that purpose. He has also stated that a Member of Parliament is a person of eminence and he is not ineligible for allotment of a plot under the discretionary quota.

(vii) The Case of the objectors.

(24) As already mentioned above, over 210 objection petitions have been filed by the individuals who were allotted plots/who have taken by way of transfer from the original allottees. Broadly speaking these objections are :—

(a) They have been allotted plots under the orders of the Chief Minister in view of the fact that they and their

family members do not own any land in any of the urban estates of Haryana.

(b) They are *bona fide* purchasers.

(c) They have raised constructions over the plots after securing sanction of their plans from the HUDA.

(d) They are Government servants and got plots under the discretionary quota at the verge of their retirement.

(e) They are retired Army personnel and have served the nation in different capacities and could not settle at any place on account of nature of their job.

(f) The petitioner has no *locus standi* to file the writ petition challenging the allotments made under the discretionary quota.

(25) Learned counsel for the respondents and the objectors challenged the *locus standi* of the petitioner on the ground that he has no interest in the dispute relating to the allotment of plots under the discretionary quota and he has filed this petition with an oblique motive to harass those people who could somehow or other get plots under the discretionary quota and who would have otherwise remained without shelter even after long period of service. Learned counsel relied on the decision of a Division Bench in *Anti Corruption and Social Welfare Organisation* v. *State of Punjab and another* (4).

(26) Learned counsel for the petitioner contested the objection raised by the respondents to the maintainability of the writ petition and argued that the petitioner has invoked writ jurisdiction of the High Court with a view to vindicate the rights of the public at large and being a citizen of India and a resident of State of Haryana he has a right to ensure the protection of the public property against its misuse by the Chief Minister in the garb of exercise of discretionary power. Learned counsel argued that the petitioner has highlighted the large scale land grabbing by influential persons who belong to the category of 'haves' and who have been able to use their position to secure undue benefit in the form of the allotments of big plots. Learned counsel argued that the manner in which the Members of Parliament, Members of the Legislative Assemblies, Members of the Subordinate and Superior Judiciary as well as the Judges of the

(4) 1996 (1) P.L.R. 553.

High Court, Members of the Public Service Commissions and the Members of the All India Services approached the Chief Minister for allotment of prime lands in various sectors of the urban estates of Gurgaon, Faridabad, Panchkula and the manner in which the Chief Minister directed allotments of plots show complete breach of public faith by the Chief Minister as well as the applicants and it is the duty of the Court to protect public property against the misuse and abuse by high governmental functionaries.

(27) We have thoughtfully considered this issue and in our opinion, the petitioner cannot be non-suited on the ground of lack of standing.

(28) The issue relating to *locus standi* has received the attention of the Court from time to time. The old rule of standing was that only that person can move the Court who is aggrieved by the action of the State or its agencies. However, this rule has gradually given way to the new mechanism evolved by the Courts for reviewing the actions of the public authorities which affect the public generally rather than the particular individuals. In *S. P. Gupta* v. *Union of India and others* (5), a seven Judges Bench of the Supreme Court reviewed the legal position on the issue of 'standing' of the petitioner in public interest litigation. Bhagwati. J., speaking for the majority of the Court, held :—

> "..............The traditional rule in regard to *locus standi* is that judicial redress is available only to a person who has suffered a legal injury by reason of violation of his legal right or legally protected interest by the impugned action of the State or a public authority or any other person or who is likely to suffer a legal injury by reason of threatened violation of his legal right or legally protected interest by any such action. The basis of entitlement to judicial redress is personal injury to property, body, mind or reputation arising from violation, actual or threatended, of the legal right or legally protected interest of the person seeking such redress. This is a rule of ancient vintage and it arose during an era when private law dominated the legal scene and public law had not yet been born. Under this rule, the Court was

(5) A.I.R. 1982 S.C. 149.

concerned with the question whether the applicant was a person aggrieved. According to this rule, it was only a person who suffered a specific legal injury by reason of actual or threatened violation of his legal right or legally protected interest who could bring an action for a regular writ petition to be filed by the public spirited individual espousing their cause and seeking relief for them. The Supreme Court will readily respond even to a letter addressed by such individual acting *pro bono publico*......... Another point which requires emphasis is that cases may arise where there is undoubtedly public injury by the act or omission of the State or Public authority but such act or omission also causes a specific legal injury to an individual or to a specific class or group of individuals. In such cases, a member of the public having sufficient interest can certainly maintain an action challenging the legality of such act or omission............"

(29) In *Janta Dal* v. *H. S. Chaowdhary* (6), their Lordships gave meaning to the expression 'public interest litigation' with the following words :—

"........The expression 'litigation' means a legal action including all proceedings therein, initiated in a court of Law with the purpose of enforcing a right or seeking a remedy. Therefore, lexically the expression 'PIL' means a legal action initiated in a Court of Law for the enforcement of public interest or general interest which the public or a class of the community have pecuniary interest or some interest by which their legal rights or liabilities are affected. There is a host of decision explaining expression 'PIL' in its wider connotation in the present day context in modern society a few of which we will refer to in the appropriate part of this judgment."

(30) In *Chaintanya Kumar* v. *State of Karnataka and others* (7), the Apex Court approved the entertaining of a writ petition at the instance of a third party involving a challenge to the grant of contract to bottle arrack and observed :—

"........It is true that in a public interest litigation, those professing to be public spirited citizens cannot be encouraged

(6) A.I.R. 1993 S.C. 893.
(7) A.I.R. 1986 S.C. 825.

to indulge in wild and reckless allegations besmirching the character of others but, at the same time, the, Court cannot close its eyes and persuade itself to uphold publicity michievous executive actions which have been so exposed. When arbitrariness and perversion are writ large and brought out clearly, the Court cannot shirk its duty and refuse its writ. Advancement of the public interest and avoidance of the public mischief are the paramount considerations. As always, the Court is concerned with the balancing of interests. Where in a public interest litigation for setting acide grant of contract to bottle arrack, it was established that the executive action was arbitrary the High Court did not have option but to set aside the contract in spite of the fact that the allegation of bias against the Chief Minister was found to be false."

(31) Without burdening this judgment with many other precedents. we deem it appropriate to refer to two recent decisions of this Court in which two Division Benches headed by R. P. Sethi, J. culled out the principles for entertaining public interest litigation. In *Lawyers' Initiative Through Shri R. S. Bains, Advocate and another* v. *State of Punjab and others* (8), and *Ishwar Singh* v. *State of Haryana and others* (9), the following principles have been laid down :—

"The question of *locus standi* would not be material and the Court would allow litigation in public interest if it is found :—

(i) That the impugned action is violative of any of the rights enshrined in part III of the Constitution of India and relief is sought for its enforcement.

(ii) That the action complained of is palpably illegal of *mala fide* and affects the group of persons who are not in a position to protect their own interest on account of poverty, incapacity or ignorance.

(iii) That the person or a group of persons were approaching the Court in public interest for redressal of public

(8) 1995 (2) I.L.R. (P&H) 279.

(9) 1995 (3) P.L.R. 613.

injury arising from the breach of public duty or from violation of some provision of the Constitutional Law.

(iv) That such person or group of persons is not a busy body of meddlesome *inter loper* and have not approach with *mala fide* intention of vindicating their personal vengeance or grievance.

(v) That the process of Public Interest Litigation was not being abused by politicians other busy bodies for political or unrelated objectives. Every default on the part of the State or Public Authority being not justiciable in public in such litigation.

(vi) That the litigation initiated in public interest was such that if not remedied or prevented would weaken the faith of the common man in the institution of the judiciary and the democratic set up of the country.

(vii) That the State action was being tried to be covered under the carpet and intended to be thrown out on technicalities.

(viii) Public interest litigation may be initiated either upon a petition filed or on the basis of a letter or other information received but upon satisfaction that the information laid before the Court was of such a nature which required examination.

(ix) That the person approaching the Court has come with clean hands, clear heart and clean objectives.

(x) That before taking any action in public interest the Court must be satisfied that its forum was not being misused by any unscruplous litigant, politicians, busy body or persons or groups with *mala fide* objective of either for vindication of their personal grievance or by resorting to black mailing or considerations extraneous to public interest."

(32) It may be mentioned that in the first case challenge was to the nomination of the private respondents to various Engineering Colleges in the State of Punjab on the ground that the criteria for nomination laid down by the State Government was illegal, arbitrary and violative of Article 14 of the Constitution. While rejecting the

challenge to the *locus standi* of the petitioners, this Court held that the petitioners cannot be treated as busy-body or meddle-some interloper and went on to observe that the points raised by the petitioners are of great public importance and the action of the respondents is required to be tested on the touchstone of the judgment delivered by this Court with regard to the right of the Government to make nominations under the unconstitutional and illegal policy/instructions/guidelines and, therefore, the petitioners could not be non-suited on the ground that they did not have standing to challenge the nominations made by the State Government.

(33) In the second case, the petitioner had sought closure of stone-crushing business in village Naurangpur District Gurgaon in the light of the directions given by the Supreme Court in *M. C. Mehta* v. *Union of India and others* (10). The respondents questioned the *locus* of the petitioner to move the Court. While rejecting the objection, the Court held that the action complained of is of public interest affecting health and life of the citizens living in the area where stone-crushers are located and as the official respondents had failed to perform the duties cast upon them under the statute, the rules framed thereunder and the directions of the Supreme Court, the petition was maintainable.

(34) We respectfully agree with the two Division Bench judgments referred to hereinabove. The decision in *Anti Corruption and Social Welfare Organisation* v. *State of Punjab* (supra) does not day down a proposition which runs counter to the proposition of law laid down in two other Division Bench judgments. In that case, the Court found that the petition was filed with an oblique motive and the petitioner wanted to satisfy his personal grudge against the persons to whom the contract was awarded. In the present case, the respondents have neither alleged *mala fides* against the petitioner nor have they pleaded that he has tried to settle personal scores or has tried to take personal advantage by filing this petition. The facts which have been brought on record in the form of pleadings and the facts which have been revealed from the record produced by the HUDA show that by filing this petition the petitioner has espoused the cause of the public by bringing it to the notice of the Court that powerful and influential persons of the society have grabbed the public property on the basis of the allotment made

(10) 1992 (3) S.C.C. 356.

under the discretionary quota and if the prime land allotted to them in an arbitrary manner is made available to the public at large, then the public exchequer will be greatly benefitted and all eligible persons will be able to participate in the process of disposal of the public property by way of auction or by way of allotment. Moreover, the petitioner has been able to demonstrate that those who are able to pull strings of political power can reap benefits in disregard to the constitutional ethics. We, therefore, do not find any merit in the objection raised by the learned counsel for the respondents/ objectors that the writ petition should be dismissed on the ground of lack of *locus standi*.

(35) Decks are now clear for examining the challenge made to the so-called policy formulated for allotment of plots under the discretionary quota and the allotments made pursuant to that policy. The first and the formost point raised on behalf of the petitioner is that the respondents did not have the authority to carve out the discretionary quota while allotting plots placed at the disposal of the HUDA. Learned counsel for the petitioner and Shri I. K. Mehta, learned Senior Counsel appearing for the interveners argued that the property acquired for public purposes cannot be misused for the benefit of few individuals in the garb of allotment under discretionery quota. Another fact of this ground of challenge is that the so called guidelines framed for alloment of plots under the discre tionary quota are vague and arbitrary and are violative of the Article 14 of the Constitution because the same give unbridled and unguided discretion to the Chief Minister to allot plot to any individual according to his whim and fancy. Shri H. S. Hooda, learned Advocate General, Haryana, Shri M. L. Sarin and Shri H. L. Sibal argued that Section 15 of the Act empowers the Government to issue directions to the HUDA for disposal of the land and, therefore, no exception can be taken to the reservation of the plots under the discretionary quota of the Chief Minister to the extent of 5 per cent of the total floatation made for different sectors. Learned counsel argued that the discretion conferred upon a high functionary like the Chief Minister should not be castigated as unconstitutional because he is expected to use this discretion in a fair and *bona fide* manner and in public interest. Learned counsel heavily relied on the observations made by the Division Bench in *S. R. Dass's case* (supra) and submitted that the rejection of the Special Leave Petition filed in the Supreme Court against the judgment of the Division Bench should be treated as conclusive of the validity of the discretionary power of the Chief Minister to allot residential plots. They argued that the element of public interest must be read as

implicit in the conferment of the discretion upon the Chief Minister and, therefore, prescription of 5 per cent quota should not be declared as unconstitutional. Shri Hooda laid emphasis on the fact that the price being charged from the allottees under the discretionary quota is not lower than the price chargeable from other allottees of the sector and, therefore, the exercise of the power by the Chief Minister should not *per se* be treated as abhorrent. Shri Sarin argued that the criteria indicated in the note recorded by the Chief Minister on 21st November, 1990 operates as a complete safeguard against the misuse of power by the Chief Minister and the restriction imposed,—*vide* Annexure R12 against the transfer of ownership before the expiry of three years coupled with the restriction imposed upon the allotment of plot under discretionary quota to a person who or whose family member has been allotted a plot under that quota, rules out any possibility of abuse of power of allotment under the discretionary quota and the criteria cannot be termed as unguided or unregulated or arbitrary. Shri Sarin argued that the policy framed by the Government for allotment under the discretionary quota is *bona fide* and once it has been upheld by the Supreme Court there is no justification to declare that policy to be unconstitutional. On the other hand, Shri H. L. Sibal argued that the policy of allotment of plots under the discretionary quota flows from the decision taken on 14th July, 1971 by the then Chief Minister according to which plots under the discretionary quota could be allotted to certain categories of persons, such as political suffers, eminent artists, writers, journalists and other deserving persons. Shri Sibal further argued that this policy decision was approved by the HUDA in its meeting held on 14th August, 1987 along with some other reservations of plots in favour of Government servants, Scheduled Castes etc. and this policy is a complete answer to the charge of arbitrariness. Shri Sibal also relied on Annexure R-14 which contains produre for allotment of plots under the discretionary quota in the urban estates of Haryana and argued that the restrictions imposed while allotting plots under the discretionary quota and a complete ban imposed against the transfer of plot operate as a salutory check against the misuse of plots allotted under the discretionary quota. Shri Sibal further argued that every citizen is entitled to the basic necessities of life, like food, clothing and shelter and the State is under an obligation to provide land to all the residents of the State and, therefore, the allotments of plots under the discretionary quota does not suffer from the vice of unconstitutionality. This contention of Shri Sibal has been supported by some of the learned counsel appearing for the objectors. They

argued that the Court should take judicial notice of the fact that social values have undergone drastic changes during past few decades and recognise the tendency among younger generation to live separately from the parents. They pleaded that if the children require separate housing after marriage there is ample justification for providing land to such young people under discretionary quota notwithstanding the fact that their family already owns house in Haryana/Chandigarh. Another argument of Shri Sarin and Shri Sibal is that the word 'and' occurring in the expression 'distinguished and needy people' used in the note of the Chief Minister should be read as 'or' and the allotment of plots to distinguished or needy people cannot be termed as unjustified.

(36) We have thoughtfully considered the rival submissions. The Legislature of Haryana enacted the Act to provide for the establishment of an Urban Development Authority for undertaking urban development in the State and for matters ancillary thereto. In the statement of objects and reasons placed before the Legislature along with the Bill through which the Act was introduced by the Government, it has been mentioned that the work of land acquisition and development of urban areas at various places throughout Haryana is being done by the Urban Estates Department. While the planning of the urban areas is done by the Town and Country Planning Department, the land is acquired by the Urban Estates Department and the involvement of several agencies in the development of urban estates give rise to problems of co-ordination. This has slowed down the growth of urban estates and the plot holders as well as the public are dissatisfied. In order to overcome these difficulties and to achieve the expeditious development of the estate, it was felt necessary to set up an Urban Development Authority. Section 2 of the Act defines various terms and expressions. Section 3 provides for establishment and constitution of the HUDA. Section 13 specifies the objects and functions of the HUDA. Section 15 contains the provisions relating to disposal of land. Section 30 speaks of control by the Government. Section 53 empowers the Government to make rules for carrying out the purposes of the Act. Section 54 empowers the HUDA to frame regulations. In exercise of its powers under Section 54 of the Act, the respondent No. 2 has framed Regulations of 1978. Regulation 3 of these regulations relates to the mode of disposal whereas regulation 4 speaks of fixation of tentative price/premium. Regulation 5 provides for procedure in case of sale or lease of land or building by allotment. For the purposes of this decision, it will be useful to reproduce Sections

13, 15, 30(1) of the Act and Regulation 3 of the Regulations of 1978. The same read as under :—

"S. 13 Objections and functions of Authority :—The objects of the Authority shall be to promote and secure the development of all or any of the areas comprised in an urban area and for that purpose the Authority shall have the power to acquire by way of purchase, transfer, exchange or gift, hold, manage, plan, develop and mortgage or otherwise dispose of land and other property, to carry on by itself or through any agency on its behalf, building, engineering, mining and other operations, to execute works in connection with supply of water, disposal of sewerage, control of pollution and any other services and amenities and generally to do anything, with the prior approval, or on direction of the State Government, for carrying out the purposes of this Act.

xx xx xx xx

S. 15 Disposal of land :—(1) Subject to any directions given by the State Government under this Act and to the provisions of sub-section (5), the Authority may dispose of :—

(a) any land acquired by it or transferred to it by the State Government without undertaking or carrying out any development thereon ; or

(b) any such land after undertaking or carrying out such development as it thinks fit,

to such persons, in such manner and subject to such terms and conditions, as it considers expedient for securing development.

(2) Nothing in this Act shall be construed as enabling the Authority to dispose of land by way of gift but subject to this condition, reference in this Act to the disposal of land shall be construed as reference to the disposal thereof in any manner, whether by way of sale, exchange or lease or by the creation of any easement, right or privilege or otherwise.

(3) Subject to the provisions herein before contained, the Authority may, sell, lease or otherwise transfer whether by auction, allotment or otherwise any land or building belonging to it on such terms and conditions as it may, by regulations, provide.

(4) The consideration money for any transfer under sub-section (1) shall be paid to the Authority in such manner as may be provided by regulation.

(5) Notwithstanding anything contained in any other law, for the time being in force, any land or building or both, as the case may be, shall continued to belong to the Authority until the entire consideration money together with interest and other amount, if any, due to the Authority, on account of the sale of such land or building or both is paid.

(6) Until the conditions provided in the regulations are fulfilled, the transferee shall not transfer his rights in the land or building except with the previous permission of the Authority, which may be granted on such terms and conditions as the Authority may deem fit.

xx xx xx xx

30. Control by State Government :—(1) The authority shall carry out such directions as may be issued to it, from time to time, by the State Government for the efficient administration of this Act.

xx xx xx xx

Regulation 3.—Mode of disposal :—Subject to any direction issued by the State Government under the Act and to the provisions of sub-section (5) of Section 15 of the Act :—

(a) the Authority may dispose of any land belonging to it in developed or an undeveloped form ;

(b) any land or building of the Authority may be disposed of by Authority by way of sale or lease or exchange or by the creation of any easement right or privilege or otherwise ;

(c) the Authority may dispose of its land or building by way of sale or lease either by allotment or by auction, which may be by open bid or by inviting tenders.

xx xx xx xx."

(37) A conjoint reading these provisions shows that the HUDA is required to promote and secure the development of all or any of the areas comprised in an urban area. In order to achieve this objective, the HUDA is empowered to acquire, develop and dispose of land and other property. Section 15 empowers the HUDA to dispose of land with or without undertaking or carrying out any development to such persons, in such manner or under such terms and conditions as it appears expedient in securing development. However, the disposal of land by the HUDA is subject to the direction given by the State Government under the provisions of the Act. Section 15(2) imposes a restriction on the HUDA to dispose of the land by way of gift. Under Sub-section (3) of Section 15, the HUDA is empowered to sell, lease or otherwise transfer any land or building belonging to it by auction or allotment or otherwise on such terms and conditions as it may, by regulations, provide. Sub-Section (6) imposes restriction on the transfer of rights by the transferee in the land or building except with the permission of the HUDA. Section 30 imposes a duty on the HUDA to carry out directions which may be issued by the Government for efficient administration of the Act. Regulation 3 which speaks of mode of disposal of the land or building is in tune with Section 15 of the Act.

(38) Before proceeding further, we may refer to the decision of the Division Bench in *S. R. Dass's case* (supra) on which much emphasis has been placed by Shri Sarin, learned counsel appearing for the respondents No. 2 and 4. In its judgment, the Division Bench made reference to the provisions of Sections 3, 15, 30, 52, 53 and 54 of the Act and also to Sale of Sites Rules which were framed earlier and then observed :—

"The State Government has been conferred power under Section 53 to frame rules for carrying out purposes of the Act. No rule for sales of sites have been framed under the above said section. However, the sale of sites Rules had been framed earlier, which are still applicable to the sale of plots under the Act. Rule 3 *inter alia* provides that for the purpose of proper planning and development

of an urban estate, sites may be reserved for group of individuals or for persons practising any profession or carrying on any occupation, trade or business................. (para 16).

xx xx xx xx

It is evident from a perusal of the aforesaid Sections, Rule and Regulation that the State Government has powers to give any directions including those for reservation of plots to HUDA for the purpose of development of an Urban Estate and the latter is bound to carrying out the directions issued by the State Government to it from time to time. If HUDA neglects or fails to perform any of its duties the State Government or any person appointed by it may perform such duties. Thus, the powers vested in the State Government are unlimited. If in pursuance of such powers, it has reserved a small percentage of plots for allotment in its discretion, the reservation cannot be held to be bad, as the reservation of discretionary quota is reasonably incidental to the powers conferred by the Legislature on the State Government. It is observed in de Smith's Judicial Review of Administrative Action, Fourth Edition, at page 95 as follows :—

'The House of Lords has laid down the principle that 'whatever may fairly be regarded as incidental to, or consequent upon, those things which the Legislature has authorised ought not (unless expressly prohibited) to he held, by Judicial consrtuction, to be *ultra vires*'. This principle has been applicable to the statutory powers of all public bodies, and a high proportion of the reported cases involving the vires of administrative action have been concerned with the question whether a transaction is to be regarded as reasonably incidental to the exercise of statutory powers expressly conferred.'

The words 'unless expressly prohibited' in the above citation go a long way to show that unless the Government is prohibited by Legislature to do an incidental act, it can do the same in its executive powers..............(Para 18)."

(39) Against the decision of the Division Bench in S. R. Dass's case (supra), a petition for Special Leave to Appeal was filed before

the Apex Court. Their Lordships disposed of that petition by passing the following order :—

"In view of the peculiar facts of this allotment Shri S. R. Dass who is a Headmaster and has built a house, and it is represented that he has no other building or house, in the aforesaid view of the matter we do not interfere with the order of the High Court in this case. *We, however, express no opinion on the correctness or otherwise on the decision of the High Court. This decision is confined only to the facts of this case, so far as Shri S. R. Dass is concerned.* This judgment which is under appeal in this case, the cases of other persons have also been disposed of or dealt with by the High Court. We are making this order in view of the peculiar facts of the case of this respondent only. Therefore, the petitioners whose allotments are the subject matter of that judgment, if they are so advised, may prefer appeal will be considered on merits and also on the question of limitation. This special leave petition is disposed of as aforesaid. There will be no order on the intervention application."

(40) From a bare perusal of the order of the Supreme Court, it becomes crystal clear that the Apex Court did not examine the correctness of the judgment in *S. R. Dass's case* on merits. Therefore, the argument of the learned counsel for the respondents and the objectors that the judgment in *S. R. Dass's case* should be treated as *res judicata* against any challenge to the allotment of the plots under the discretionary quota deserves to be rejected as misconceived.

(41) After having given our most anxious thought to the judgment of the Division Bench in *S. R. Dass's case,* we agree with it that the Government has the power to give directions to the HUDA for carrying out the provisions of the Act. We also agree with it that the Government can make reservation of plots while making development of the urban estates but we are unable to subscribe to the view of the Division Bench that the powers vesting in the Government under Section 15 read with Section 30 of the Act are unlimited. In our opinion, the Devision Bench has erred in recording that conclusion. Apparently it did not give due regard to the opening words of Section 15(1) and last part of Section 30(1) of the

Act. A perusal of these provisions makes it clear that the Government can give directions to the HUDA only for the efficient administration of the Act and the Government's powers to give directions to the HUDA are not unfettered. We cannot accept the proposition that the Government can give directions inconsistent with the provisions of the Act. Rather, such directions must not only be consistent with the provisions of the Act but the same must conform to the constitutional limitations. We, therefore, disapprove the view taken by the Division Bench that the powers vested in the State Government under the Act are unlimited.

(42) We also do not find any force in the submission of the learned counsel for the respondents No. 2, 3 and 4 that under Section 15(1) or Section 30(1) of the Act, the Chief Minister is vested with an absolute discretion to allot a particular percentage of plots according to his choice. The policy of reserving the plots in favour of a class or a group of persons may in a given case be justified with reference to the purposes of the Act. Allotment of plot to one individual under the directions of the Government may also be justified in a given case but the plea that absolute discretion can vest in one individual is wholly incompatible with the scheme of the Act and the Constitution. Likewise, the argument that the discretion conferred upon the Chief Minister is immune from the judicial review has to be negatived because it is an anti-thesis to the principle of 'rule of law' which forms the core of the Indian Constitution. This argument is also unacceptable because in our country the representatives of the people act as trustees of faith reposed in them by the public at the time of elections.

(43) At this stage, we may take notice of a classic statement regarding the concept of 'State' made in "The Modern State" by Mac Iver. The learned author observed :—

> "To some people state is essentially a class structure, 'an organization of one class dominating over the other classes'; others regard it as an organisation that transcends all classes and stands for the whole community. They regard it as a power-system. Some view it entirely as a legal structure, either in the old Austinian sense which made it a relationship of governors and governed, or, in the language of modern jurisprudence as a community 'organized for action under legal rules'. Some regard it as no more than a mutual insurance society, others as the very texture of all our life. Some class the state as a great

'corporation' and others consider it as indistinguishable from society itself."

(44) The concept of the 'State' as it was known before the commencement of the Constitution and as it was understood for about two decades after the commencement of the Constitution has undergone drastic changes in recent years. Today the State cannot be conceived of simple as a coercive machinery wielding the thunderholt of authority. Today the Government is a regulator and dispenser of special services and provides to the large public benefits including jobs, contracts, licences, quotas, mineral rights etc. The Government owns and controls hundreds and thousands of acres of land valuable for mining and for other purposes. There is a tremendous growth in the distribution of Government largesses with the increasing magnitude and range of governmental functions. The law has also recognised changing character of the governmental functions and need to protect individual interest as well as public interest. The discretion of the Government has been held to be not unlimited. The Government cannot give or withhold largesses in its arbitrary discretion or according to its sweet will. The Government cannot be permitted to say that it will give jobs or enter into contracts or issue permits or licences only in favour of certain individuals. In this regard, it will be profitable to refer to some of the observations made by Mathew, J. (as then he was) in *B. Punanan Thomas* v. *State of Kerala* (11). He said :—

"The Government is not and should not be as free as an individual in selecting recepients for its largesses. Whatever its activities, the Government is still the Government and will be subject to the restraints inherent in its position in a democratic society. A democratic Government cannot lay down arbitrary and caparicious standards for the choice of persons with whom alone it will deal."

The traditional view that the executive is not answerable where its executive function is attributable to prerogative power has long been discarded. Prof. H.W.R. Wade in his work 'Administrative Law' 6th Edition, distinguished between powers of public authorities and those of private persons in the following words :—

"......The Common theme of all the authorities so far mentioned is that the notion of absolute or unfettered discretion is

(11) A.I.R. 1969 Kerala 81 (Full Bench).

rejected. Statutory power conferred for public purposes is conferred it were upon trust, no absolutely that is to say, it can validity be used only in the right and proper way which Parliament when conferring it is presumed to have intended. Although the Crown's lawyers have argued in numerous cases that unrestricted permissive language confers unfettered discretion, the truth is that, in a system based on the rule of law, unfettered governmental discretion is a contradiction in terms."

Prof. Wade went on to say :—

"*.........The whole conception of unfettered discretion is inappropriate to a public authority, which possesses powers solely in order that it may use them for the public good.*

There is nothing paradoxical in the imposition of such legal limits. It would indeed be paradoxical if they were not imposed. Nor is this principle an oddity of British or American law, it is equally prominent in French law. Nor is it a special restriction which fetters only local authorities. it applies no less to ministers of the Crown. *Nor is it confined to the sphere of administration; it operates wherever discretion is given for some public purpose,* for example, where a judge has a discretion to order jury trial. It is only where powers are given for the personal benefit of the person empowered that the discretion absolute. Plainly this can have no application in public law.

For the same reasons there should in principle be no such thing as unreviewable administrative discretion, which should be just as much acontradiction in terms as unfettered discretion. The question which has to be asked is what is the scope of judicial review, and in a few special cases the scope for the review of discretionary decisions may be minimal. It remains axiomatic that all discretion is capable of abuse, and that legal limits to every power are to be found somewhere." (Underlining is ours).

(45) In *Padfield* v. *Minister of Agriculture, Fishery and food* (12). a landmark decision has been delivered in the area of administrative

(12) 1968 A.C. 997.

law. The Minister had refused to appoint a committee to investigate the complaint made by the members of the Milk Marketing Board that majority of the Board had fixed milk prices in a way that was unduly unfavourable to the complainants. The Minister's decision was founded on the reason that it would be politically embarassing for him if he decided not to implement the committee's decision. While rejecting the theory of absolute discretion, Lord Ried observed :—

> "Parliament must have conferred the discretion with the intention that it should be used to promote the policy and objects of the Act; the policy and objects of the Act must be determined by construing the Act as a whole and construction is always a matter of law for the court. In a matter of this kind it is not possible to draw a hard and fast line, but if the Minister, by reason of his having misconstrued the Act or for any other reason, so uses his discretion as to thwart or run counter to the policy and objects of the Act, then our law would be very defective if persons aggrieved were not entitled to the protection of the court."

(46) While considering the above quoted observations of the House of Lords in *Breen* v. *Amalgamated Engineering Union,* (1971) 2 QB 175, Lord Denning M.R. observed :—

> "The discretion of a statutory body is never unfettered. It is a discretion which is to be exercised according to law. That means at least this : the statutory body must be guided by relevant considerations and not by irrelevant. If its decision is influenced by extraneous considerations which it ought not to have taken into account, then the decision cannot stand. No matter that the statutory body may have acted in good faith; nevertheless the decision will be set aside. That is established by *Padfield* v. *Minister of Agriculture*, Fisheries and Food which is a landmark in modern administrative law."

(47) In *Laker Airways Ltd.* v. *Department of Trade* (13), Lord Denning discussed Prerogative of the Minister to give directions to

(13) 1977 Q.B. 643.

Civil Aviation Authorities overruling the specific provisions in the statute in the time of war and said :—

"Seeing that prerogative is a discretion power to be exercised for the public good, it follows that its exercise can be examined by the Courts just as in other discretionary power which is vested in the executive."

(48) The theory of unfettered discretion was rejected being incompatible with the doctrine of equality in *S. G. Jaisinghani* v. *Union of India* (14), wherein Ramasawami, J. observed :—

'In this context it is important to emphasize that the absence of arbitrary power is the first essential of the rule of law upon which our whole constitutional system is based. In a system governed by rule of law, discretion. when conferred upon executive authorities, must be confined within clearly defined limits. The rule of law from this point of view means that decisions should be made by the application of known principles and rules and, in general, such decisions should be predictable and the citizen should know where he is. If a decision is taken without any principle or without any rule it is unpredictable and such a decision is the antithesis of a decision taken in accordance with the rule of law. (See Dicey—"Law of the Constitution"—Tenth Edn., Introduction ex.). 'Law has reached its finest moments', stated Douglas, J. in *United States* v. *Wunderlick* (1951-342 US 98 : 96 Law Ed. 113), "when it has freed man from the unlimited discretion of some ruler......... ..Where discretion is absolute, man has always suffered'. It is in this sense that the rule of law may be said to be the sworn enemy of caprice. Discretion, as Lord Mansfield stated it in classic terms in the case of John Wilkes (1970—98 E.R. 327), 'means sound discretion guided by law. It must be governed by rule, not humour; it must not be arbitrary, vague and fanciful."

(49) Rejection of the argument of 'absolute discretion' and immunity from judicial review is clearly discernible from the following observations made by the Apex Court in the landmark decision in *Shrilekha Vidyarthi* v. *State of U.P.* (15) :—

"........We have no doubt that the Constitution does not envisage or permit unfairness or unreasonableness in State

(14) A.I.R. 1967 S.C. 1427.

(15) A.I.R. 1991 S.C. 537.

actions in any sphere of its activity contrary to the professed ideals in the Preamble. In our opinion, it would be alien to the Constitutional Scheme to accept the argument of exclusion of Art. 14 in contractual matters. The scope and permissible grounds of judicial review in such matters and the relief which may be available are different matters but that does not justify the view of its total exclusion. This is more so when the modern trend is also to examine the unreasonableness of a term in such contracts where the bargaining power is unequal so that these are not negotiated contracts but standard form contracts between unequals.

xx xx xx xx

Even assuming that it is necessary to import the concept of presence of some public element in a State action to attract Art. 14 and permit judicial review, we have no hestitation in saying that the ultimate impact of all actions of the State or a public body being undoubtedly on public interest, the requisite public element for this purpose is present also in contractual matters. We, therefore, find it difficult and unrealistic to exclude the State actions in contractual matters, after the contract has been made, from the purview of judicial review to test its validity on the anvil of Art. 14...It can no longer be doubted at this point of time that Art. 14 of the Constitution of India applies also to matters of governmental policy and if the policy or any action of the Government, even in contractual matters, fails to satisfy the test of reasonableness, it would be unconstitutional. (See *Ramana Dayaram Shetty* v. *The International Airport Authority of India* (1979) 3 SCR 1014 : (AIR 1979 SC 1628) and *Kasturi Lal Lakshmi Reddy* v. *State of Jammu and Kashmir* (1980) 3 SCR 1338 : (AIR 1980 SC 1992). In *Col. A. S. Sangwan* v. *Union of India* 1980 (Supp.) SCC 559 : (AIR 1981 SC 1545), while the discretion to change the policy in exercise of the executive power, when not trammelled by the statute or rule, was held to be wide, it was emphasised as imperative and implicit in Art. 14 of the Constitution that a change in policy must be made

fairly and should not give the impression that it was so done arbitrarily or by any ulterior criteria. The wide sweep of Art. 14 and the requirement of every State action qualifying for its validity on this touch-stone, irrespective of the field of activity of the State, has long been settled. Later decisions of this Court have reinforced the foundation of this tenet and it would be sufficient to refer only to two recent decisions of this Court for this purpose.'

(50) Similarly, in *L.I.C. of India and another* v. *Consumer Education and Research Centre and others* (16), the Supreme Court negatived the claim of immunity of the State action from judicial review in the context of Articles 14 and 21 of the Constitution and observed :—

"........Every action of the public authority or the person acting in public interest or its acts give rise to public element, should be guided by public interest. It is the exercise of the public power or action hedged with public element becomes open to challenge. If it is shown that the exercise of the power is arbitrary, unjust and unfair it should be no answer for the State, its instrumentality, public authority or person whose acts have the insignia of public element to say that their actions are in the field of private law and they are free to prescribe any conditions or limitations in their actions as private citizens, similicitor, do in the field of private law. Its actions must be based on some rational and relevant principles. It must not be guided by irrational or irrelevant considerations.... ....

This Court has rejected the contention of an instrumentality or the State that its action is in the private law field and would be immune from satisfying the tests laid under Article 14. The dichotomy between public law and private law rights and remedies, though may not be obliterated by any straight jacket formula, it would depend upon the factual matrix. The adjudication of the dispute arising out of a contract would, therefore depend upon facts and circumstances in a given case. The distinction between

(16) J.T. 1995 (4) S.C, 366.

public law remedy and private law field cannot be demarcated with precision. Each case will be examined on its facts and circumstances to find out the nature of the activity, scope and nature of the controversy. The distinction between public law and private law remedy has now become too thin and practicably obliterated....................

In the sphere of contractual relations the State, its instrumentality public authorities or those whose acts bear insignia of public element, action to public duty or obligation are enjoined to act in a manner i.e. fair, just and equitable, after taking objectively all the relevant options into consideration and in a manner that is reasonable, relevant and germane to effectuate the purpose for public good and in general public interest and it must not take any irrelevant or irrational factors into consideration or arbitrary in its decision. Duty to act fairly is part of fair procedure envisaged under Articles 14, 21. Every activity of the public authority or those under public duty or obligation must be informed by reason and guided by the public interest."

(51) Before bringing a close o this aspect of the matter, we may refer to a recent verdict of the Supreme Court in *New India Public School and others* v. *HUDA and others* (17). This decision has been rendered by the Apex Court on an appeal against the judgment of this Court in *Seven Seas Educational Society and others* v. *HUDA and others*, wherein a Division Bench of this Court quashed the allotments made by the HUDA. While upholding the decision of the Division Bench, their Lordships made reference to Section 15 of the Act and Regulations 3, 4 and 5 of the Regulations and observed :—

".........A reading thereof, in particular Section 15(3) read with Regulation 3(c) does indicate that there are several modes of disposal of the property acquired by HUDA for public purpose. One of the modes of transfer of property as indicated in sub-section (3) of Section 15 read with sub-regulation (c) of Regulation 5 is public auction, allotment or otherwise. *When public authority discharges its public*

(17) J.T. 1996 (7) S.C. 103.

> *duty the word "otherwise" would be construed to be consistent with the public purpose and clear and unequivocal guidelines or rules are necessary and not at the whim and fancy of the public authorities or under their garb or cloak for any extraneous consideration.* It would depend **upon** the nature of the scheme and object of public purpose sought to be achieved. In all cases relevant criterion should be pre-determined by specific rules or regulations and published for the public. *Therefore, the public authorities are required to make necessary specific regulations are valid guidelines to exercise their discretionary powers, otherwise, the salutory procedure would be by public auction.* The Division Bench, therefore, has rightly pointed out that in the absence of such statutory regulations exercise of discretionary power to allot sites to private institutions or persons was not correct in law."

(52) We, therefore, reject the argument of the learned counsel for the respondents that the absolute power could vest in the Chief Minister to make allotment of plots according to his discretion and choice and such discretion is immune from judicial scrutiny on the touch-stone of Article 14 and other provisions of the Constitution. Nevertheless, we may reiterate that the Government's powers under Section 30(1) of the Act to give directions to the HUDA to reserve plots may be used in favour of eminent professionals, outstanding sports persons, musicians etc. as a group, provided such reservation is within the parameters, scheme and objects of the Act. In fact, the policy decision taken by the HUDA to reserve plots in favour of the Government servants, Scheduled Castes, Backward Classes, Freedom Fighters falls in this category. At the same time, it is necessary to observe that the plots reserved for professionals etc can be allotted only after issuing advertisement of the policy framed by the Government/HUDA and allotments will have to be made keeping in view the principles laid down by the Supreme Court in *New India Public School's case* (supra).

Re : Whether the criteria laid sown by the Chief Minister is vague, arbitrary and is, therefore, unconstitutional.

(53) Having rejected the theory that absolute discretion vests in the Chief Minister to make allotments of plots, we shall now examine whether the criteria laid down for exercising the power to allot plots under the discretionary quota is unconstitutional.

This issue is being examined by us on the assumption that the decision of the respondents to place at least 5 per cent plots at the discretion of the Government is constitutionally permissible. The learned counsel for the respondents and the objectors vehemently argued that the word 'and' appearing between the words 'distinguished' and 'needy' in the expression 'distinguished and needy people' should be interpreted as 'or'. Shri Sibal also argued that the note dated 21st November, 1990 of the then Chief Minister cannot be termed as the criteria which is really spelt out from Annexure R14 read with Annexure R2. This submission of Shri Sibal cannot be accepted because the State of Haryana as well as the HUDA have come out with a categorical stand that after the decision of this Court in *S. R. Dass's case* (supra), the Government withdrew the cancellation letter dated 29th June, 1987. Thereafter, the issue was examined at various levels and the Chief Minister decided that the plots be allotted to distinguished and needy people in all walks of life subject to their fulfilment of certain conditions. According to the HUDA the decision taken by the Chief Minister was affirmed by it. Even in the reply filed by the respondent No. 3, it has not been pleaded that the note recorded on 21st November, 1990 does not contain the criteria for allotment of plots. That apart, a look at Annexure R2 shows that it was merely a proposal prepared by the office of the HUDA for consideration in its meeting. The final resolution passed by the HUDA in its meeting held on 14th August, 1987 has been reproduced above. A perusal thereof shows that the agenda item placed in the meeting was not approved in he form it was presented.

(54) The argument of the learned counsel for the respondents and the objectors that the word 'and' appearing between the words 'distinguished' and 'needy' should be read as 'or' is based on the premise that distinguished person may not be a needy person and one who has distinguished himself in the field of arts, science, music, sports, literature at the state, national or international level may consider it below his dignity to apply to the Chief Minister for allotment of a plot. Similarly, a person who may be needy but may not have distinguished himself/herself in any walk of life but may approach the Chief Minister for allotment of a plot under the discretionary quota. This argument appears to be quite attractive but on a close scrutiny we find no substance in it. No doubt, a distinguished person may not like to seek material benefits, like a plot of land he/she may not approach the Chief Minister for this purpose

but making of an application for allotment of a plot is not *sine qua* non. If at all the the Government decides to honour a person who has earned laurels at the state, national or international level and wants to settle in the State of Haryana can always direct the HUDA to allot a plot wihout requiring a formal application. However, if we were to read the word 'or' in place of the word 'and' the criteria incorporated in the note dated 21st November, 1990 will be reduced to a farce. There may be tens of thousands of people who may have done nothing exceptional in any walk of life but they may still be in the need of plots. If all these persons were to be allotted plots on the basis of their need, perhaps the Chief Minister may be forced to allot the entire land in all the urban estates. Else he will have to pick and choose the persons of his liking for confernment of largesses. The exercise of power in this manner would be a complete fraud on the Constitution.

(55) There is another reason why it is not possible to accept the argument of the learned counsel that the word 'and' used in the expression 'distinguished and needy people' be read as 'or'. The word 'or' is normally disjunctive and the word 'and' is normally conjunctive. For the purpose of interpretation, these words can be inter-changed if the literal reading of the words produces unintelligible or absurd results. However, such a course cannot readily be adopted. In *Mersey Docks and Harbour Board* v. *Henderson Bros.* (18), Lord Halsbury said :—

> "......The reading of 'or' as 'and' is not to be resorted to, unless some other part of the same statute or the clear intention of it requires that to be done."

In *Green* v. *Premier Glynrhonwy Slate Co.* (19), Scrutton, L.J. stated :—

> "You do sometimes read 'or' as 'and' in a statute. But, you do not do it unless you are obliged because 'or' does not generally mean 'and' and 'and' does not generally mean 'or'."

(56) The narrow issue which is now required to be considered is whether the criteria, namely, 'distinguished and needy people in

(18) (1888) 13 A.C. 595 (H.L.).
(19) (1928) 1 K.B. 561.

all walks of life' can be treated as valid criteria. Neither the word 'distinguished' nor the word 'needy' has been defined in the Act or the rules or the regulations framed under it nor are they spelt out from the documents placed on the record of the case. In the agenda note (Annexure R2), reference has been made to some decision dated 14th July, 1971 taken by the then Chief Minister recorded on the file. According to that decision, 15 per cent plots in Sector 21, Faridabad were reserved for Members of the Haryana Assembly and Members of Parliament and for allotment to certain categories of persons such as, political suffers, writers, journalists and other deserving persons. However, there is nothing on the record of this petition to show that the HUDA took a policy decision to allot plots to political suffers, eminent writers, journalists etc. It can, thus, be said that the question whether a person is distinguished and needy for the purpose of allotment of a plot has been left to be determined at the whims of the Chief Minister. Complete absence of any guidelines for determination of the question as to who are distinguished and needy, it is left to the sweet-will of the Chief Minister to allot a plot by treating him to be a distinguished and needy person. The criteria does not say that the applicant/prospective allottee must have distinguished himself/herself by serving the national cause or the cause of the state or he/she should have achieved distinction in the field of science, arts, sports, music, journalism, literature or the like at international, national or state level. There is no indication as to how the Chief Minister would determine whether a person is needy or not. No criteria of income has been laid down. While making recruitment to the public services against the quota reserved for sports persons the candidate is required to possess a certificate of a particular grade showing his achievement at the international/national/state or district level in the field of sports. Similarly for appointment on compassionate ground the criteria of family income has been evolved. No such guideline has been framed for exercise or power to allot plots under the discretionary quota. No rule or regulation has been framed and no yardstick has been laid down by following which the Chief Minister can determine that a person is distinguished and needy. All is left to the unfettered discretion of the Chief Minister. Conferment of such unbridled and unguided power is clearly against the wider interpretation accorded to the doctrine of equiality embodied in Article 14 of the Constitution in *E. P. Royappa* v. *State of Tamil Nadu* (20), *Maneka Gandhi* v. *Union of India* (20-A),

(20) A.I.R. 1974 S.C. 555.
(20-A) A.I.R. 1978 S.C. 578.

and a host of other Division Bench in *Seven Seas Educational Society and others* v. *HUDA and others* (supra) and in *Hari Ram Singla* v. *State of Haryana* (21). The arbitratiness of the criteria is amply demonstrated from the facts of this case. As will be seen hereinafter, in none of the orders passed by the Chief Minister for allotment of plots under the discretionary quota, there is any reference to the criteria distinguished and needy persons. In none of the orders passed by the Principal Secretary/Special Principal Secretary/ Deputy Principal Secretary/Private Secretary/Personal Assistant to the Chief Minister in the name of the latter there is a mention that plot under the discretionary quota is being allotted to the applicant by treating him to be a distinguished and needy person. Even in the applications filed in majority of ooer 8000 cases of allotment (between 1991 to March, 1996), the applicants have not stated that they are distinguished and needy persons. Rather the applications have been filed with the simple prayer that the plot be allotted to the applicant under the discretionary quota of the Chief Minister and on such application, the order has been recorded by the officer/ official concerned directing the HUDA to allot a particular plot to the applicant. This is clearly indicative of the vagueness of the criteria of 'distinguished and needy people'. Taking advantage of the vague and arbitrary criteria, a vast majority of applicants who have not distinguished themselves in any walk of life have been conferred with the largesses in the form of big or small plots. In come of the cases, two or more than two plots have been allotted to the members of one family. Some of the beneficiaries of allotment under the discretionary quota own palatial houses in the cities like Delhi and Chandigarh. They have been allotted big plots of one to two kanals. Therefore, we have no hesitation to hold that the criteria incorporated in Annexure R11 is vague and arbitrary. It conferred unlimited, unguided and unbridled discretion upon the Chief Minister to allot plots without even considering whether a person is really distinguished and needy or not.

Re. : *Violation of the limit of 5 per cent.*

(57) On the issue of allotments of plots in excess of 5 per cent quota reserved at the discretion of the Chief Minister, Shri Sarin, learned counsel appearing for the HUDA argued that although the allotments made in recent years may appear to exceed 5 per cent limit but if the total backlog of the unallotted plots under the discretionary quota is taken into consideration, the respondents cannot be

(21) 1994 P.L.J. 230.

charged with the allegation of having exceeded the limit of 5 per cent. Having given our thoughful consideration to the argument of Shri Sarin, we are unable to agree with him that the Chief Minister has not allotted plots beyond 5 per cent. In this regard, we may refer to the reply filed on behalf the respondents No. 2 and 4 on 24th July, 1996. In para 3(c) of the preliminary submissions, the respondents have stated that the policy of allotment under the discretionary quota was initially made applicable to the plots in Faridabad and Panchkula and later on it was extended to the entire State of Haryana. The respondents have also stated that the plots allotted out of the discretionary quota came from the following four sources :—

(i) 5 per cent of the newly carved out plots ;

(ii) all resumed or surrendered plots ;

(iii) all cancelled plots which became available as a result of non-payment of initial amount ; and

(iv) all unallotted plots.

It is, thus, evident that in addition to 5 per cent of the newly carved out plots, a large number of surrendered/cancelled and unallotted plots are placed at the disposal of the Chief Minister to be allotted as per his discretion. In para 7 of the reply dated 24th July, 1996. the respondents No. 2 and 4 have stated that out of total allotments of 4407 made in the previous six months, 1842 plots were allotted under the discretionary quota. In para 12 of the same reply, the figures of total floatation has been given as 2662. If we were to go by simple mathematics as per the averments made in para 7 of the reply, the Chief Minister allotted over 40 per cent of the total plots under the discretionary quota during six months. If we were to go by the averments made in para 12, the total allotment under the discretionary quota is more than 60 per cent. Thus, we find merit in the argument of Shri Sethi that the allotments of plots under the discretionary quota have been made far in excess of 5 per cent of the total plots fixed as per the policy decision and such excess allotments are wholly unjustified. The respondent No. 2, in our view, clearly disregarded the policy decision taken by the Chief Minister himself as well as the resolution passed by the HUDA and in the absence of

any explanation for this patent violation of the policy the action of the respondent No. 3 cannot but be characterised as arbitrary and unconstitutional.

(58) We shall now deal with the argument of Shri Sethi that the respondents innovated a mechanism so as to enable the allotments of more than one plot to the same family. Learned counsel vehemently argued that the so-called restriction incorporated in Annexure R11 and Annexure R14 against the allotment of more than one plot to the same family is farcical. A look at the decision taken by the Chief Minister shows that the allotment cannot be made under the discretionary quota if the applicant had any house or plot in his own name, or in the name of his family members including the wife and the dependent children in the same urban estate with regard to the urban estate of Panchkula, an additional restriction was incorporated, namely that the applicant should not hold any house or plot in Chandigarh or Mohali and further that the applicant should not have been allotted a residential plot under the discretionary quota in any urban estate in the name of any one from amongst his family members including wife and children. This left ample scope for allotment to the members of the same family in more than one urban estates. As many as twenty examples have been cited before us by the learned counsel to demonstrate that a single family hsa been allotted more than one plot under the discretionary quota. He has referred to the plots allotted to persons who are having houses in Chandigarh, Mohali and Panchkula. This shows that the plots were allotted under the discretionary quota without having any regard to the criteria and far in excess of the discretionary quota.

Re. : Allotment of plots to influential persons/their wards.

(59) The argument of the learned counsel that many influential people have been able to procure big plots in the urban estates of Faridabad, Gurgaon and Panchkula where the prices of plots are three to four times higher than the prices at which the plots have been allotted may now be examined. In response to the direction given by the Court, the counsel appearing for the HUDA produced before us compilation of various allotments made during last ten years (from 1st April, 1986 to 24th March, 1996) by different Chief Ministers. He also produced mini lists showing the allotments of plots to influential persons. Learned counsel also produced the applications submitted by various individuals for allotment of plots (10 marlas to 2 kanals). Some of the facts which are borne out from

the lists furnished by the learned counsel for the respondents No. 2 and 4 are given below in the tabular form :—

S.No.	Category of persons	No. of plots	Name of urban estate	Period of allotment	Size of plots	Remarks
1	Members of Parliament/ their wards	54	Faridabad (6) Gurgaon (38) Panchkula (6) Remaining in other urban estates.	Varies from 1991 to 1996 except in two cases. Eight of them have been allotted in the year 1996.	6 marlas to 2 kanals	Of there, majority belongs to States other than State of Haryana.
2	Member of Legislative Assemblies/ their wards.	151	Majority of them in the urban estates of Faridabad, Gurgaon and Panchkula.	1991 to 1996	8 marlas to 2 kanals	Some of the Legislators belong to Rajasthan, Bihar, Punjab, Gujarat, Nagaland.
3	Judicial Officers/ Judges of the the High Court/their wards.	55	Majority of them in Faridabad Gurgaon and Panchkula.	1991 to 1996.	10 marlas to 2 kanals	—
4	I.A.S. Officers/ their wards.	120	Majority of them in Faridabad, Gurgaon and Panchkula.	1991 to 1996.	10 marlas to 2 kanals	—
5	IPS Officers/ their wards.	47	Faridabad (8) Gurgaon (22) Panchkula (10) Rest in other urban estates.	1991 to 1996.	8 marlas to 2 kanals	—
6	HCS Officers/ their wards.	19	Majority of them in Gurgaon Faridabad and Panchkula.	1991 to 1996	6 marlas to 1 kanal.	—

S.No.	Category of persons	No. of plots	Name of urban estate	Period of allotment	Size of plots	Remarks
7	Chairman/ Members of Public Service Commissions/ their wards.	10	Faridabad (1) Gurgaon (6) Panchkula (1) Karnal (2)	1991 to 1996.	14 marlas to 2 kanals.	—
8	Members of the S.S.S.B./ their wards.	16	Faridabad (2) Gurgaon (4) Hissar (4) Panchkula (2) Rest in other urban estates.	1991 to 1996.	10 marlas to 2 kanals	—
9	Officers/ officials of Huda/their wards.	114	Majority of them in Gurgaon, Faridabad, Panchkula and Karnal.	1991 to 1996	2 marlas to 1 kanals	Employees at lower leavel have got plots of 2 to 4 marlas but those who get important position procured plots of 10 marlas to 1 kanal.
10	Defence personnel/ their wards.	80	Faridabad (13) Gurgaon (47) Panchkula (16) Rest in other urban estates.	1991 to 1996	14 marlas to 2 kanals	

(60) The HUDA also furnished the lists of some persons who had applied for allotment but in whose favour final letters of allotment have not been issued. These lists include eight Members of Parliament/their wards ; twenty Members of Legislative Assembly/their wards, twelve judicial officers/their wards, twenty seven members of Indian Administrative Service/their wards, eleven Indian Police Service officers/their wards, six H.C.S. Officers/their wards, three members of the Subordinate Services Selection Board/their wards, fourteen officers/officials of the HUDA/their wards and twenty seven defence personnel. These lists also show that as many as six Non-Resident Indians who are living in Japan, United States of America, Sweden applied for allotment of plots measuring 14 marlas

to 1 kanals and they were allotted plots between the years 1993 and 1996. Another ten Non-Resident Indians who had applied for allotment of plots in Gurgaon have not been given plots. The lists of allotments of plots measuring 10 marlas and above show that following number of plots have been allotted in different urban estates between 1st January, 1991 and 23rd April, 1996 :

(i) Ambala	...	77
(ii) Bahadurgarh	...	10
(iii) Faridabad	...	226
(iv) Gurgaon	...	427
(v) Hissar	...	226
(vi) Kaithal	...	127
(vii) Karnal	...	133
(viii) Kurukshetra	...	49
(ix) Panipat	...	21
(x) Panchkula	...	313
(xi) Rewari	...	16
(xii) Rohtak	...	10
(xiii) Sirsa	...	3
(xiv) Sonepat	...	44

(61) We may mention that the learned counsel for the petitioner made serious complaints that the HUDA has not furnished complete information and the names of large number of persons who have been benefitted by the allotment of plots under the discretionary quota have been left out. Learned counsel appearing for the HUDA submitted that the officials of the HUDA have made *bona fide* efforts to prepare the lists and the mistake, if any, must have been inintentional. In our opinion, it is not possible to record a firm conclusion that the information furnished by the HUDA is false or incomplete.

(62) We have carefully scrutinised the large number of applications submitted by the public representatives, holders of important civil posts, members of judiciary etc. and their wards/representatives. We have also perused some of the applications submitted by the persons seeking allotment of plots measuring one kanal to two kanals.

It is not necessary to increase the volume of this order unnecessarily by reproducing the applications and the orders passed thereon but at the same time, we consider it appropriate to highlight some revealing facts which have emerged from the scrutiny of these applications. These are :—

(i) In almost all the applications, the applicants have simply expressed their desire for allotment of plots of particular size in a particular urban estate from the discretionary quota. Some of the applicants have expressed their desire to settle near Delhi/Chandigarh after demitting public office or retirement from service by saying that their relations are residing near Delhi. In a few cases the applicants have said they are victims of terrorism.

(ii) None of the applications was scrutinised with reference to the criteria of 'distinguished and needy'. The respondent No. 3 and officers working under him did not record that the applicant has distinguished in a particular walk of life and he/she is needy. In all the cases, the Principal Secretary/Special Principal Secretary/Deputy Principal Secretary/Private Secretary/Personal Assistant to the Chief Minister recorded the order like the following one :— *"C.M. has desired that plot No..............in Sector.............. (name of urban estate), if available and allotable under the C.M.'s D.O. may be allotted to the applicant."*

(iii) In all the cases the officers of the HUDA simply took affidavit of the applicant and the premium amount before the issue of formal allotment letter. On their part, the officials of the HUDA also did not make any enquiry about the entitlement of such persons to be allotted a plot. In none of the cases, the HUDA officials tried to find out whether the applicant or his family member has been allotted a plot under the discretionary quota in any other urban estate or the allottee or the applicant or his family member has got a house in the concerned urban estate or Chandigarh or Mohali.

(iv) Many Members of the Parliament and Members of Legislative Assemblies who got elected from the States other than Haryana, namely, Bihar, Rajasthan, Tamil Nadu, Andhra Pradesh, Nagaland, Gujarat, Punjab, Ministers in the Central Cabinet and important Public figures/their

wards have been allotted plots in the urban estates of Faridabad, Gurgaon and Panchkula under the discretionary quota. A large number of the members of All India Services of the States other than Haryana have been allotted plots under the discretionary quota. Some of them are Shri Jagdeep Dhankar, Ex.M.P. (Rajasthan) ; Shri Mani Shankar Aiyer (Tamil Nadu) ; Shri Virendra Kataria (Punjab) ; Mrs. Omen Meyong (Arunanchal Pradesh) ; Shri N. K. Selvi ; Shri Arvind Netam ; Shri P. A. Sangma ; Shri S. S. Kairon ; Shri G. Venkataswami ; Shri P. Vasundhra ; Shri Vishwajeet P. Singh ; Shri Buta Singh ; Smt. Vimla Sharma and Shri Ashutosh Dayal Sharma ; Shri S. C. Jamir (Chief Minister-Nagaland) ; Shri Goind Singh (M.L.A.-Rajasthan) ; Shri Arun Sharma (Shimla) ; Miss Jyoti, M.L.A. (Patna) ; Shri S. S. Barnala (former Chief Minister, Punjab) ; Shri Sunil Arora (I.A.S. Officer from Rajasthan) ; Ms. Leena Nair (I.A.S. Officer from Tamil Nadu) ; Shri G. L. Bhagat (Chairman, Kandla Port Trust) ; Shri V. K. Jain (Joint Secretary, Central Government) ; Shri S. K. Bhatnagar (Defence Secretary, Government of India) ; Shri Tejinder Khanna (I.A.S. Officer, Punjab Cadre) ; Shri V. K. Duggal (I.A.S. Officer, U.T. Cadre) , Shri P. K. Ahooja ; Nifis Ibrahim ; Nilmadhan Mohanty ; D. S. Bagga ; Miss Nita Chaudhary (U.P.) ; Dr. M. Zafar Alam (Chairman, Western Railway Recruitment Board) ; Shri Abil Kumar (Rajasthan) ; Shri Ashok Bhatnagar (Chairman, Railway Board) ; Shri J. S. Bhuria (Bihar) ; Shri K, Shamsher Singh (H. P. Cadre) ; Shri R. R. Bhardwaj (Punjab) and Shri K. S. Sidhu (Maharasthra).

(v) Two daughters of Shri Inderjit, M.P.. namely, Ms. Saibina and Ms. Sonia applied on 18th September, 1993 to the respondent No. 3 for allotment of plots. On both these applications, the respondent No. 3 passed identical orders on 31st October, 1993 and 10th November, 1993 directing allotment of plots No. 1359 and 1170 in Sector 10-A, Gurgaon.

(vi) The judicial officers like Shri Ram Singh Chaudhary, Shri B. Diwakar, Shri Sanjiv Jindal, Shri A. D. Gaur. and Ms. Ritu Garg who have rendered service for a few years applied and got plots allotted in their names. The wife and son of Shri V. K. Kaushal, a retired District and

Sessions Judge of Haryana got two plots whereas it has been given out to us that Shri Kaushal owns a house in Panchkula. Late Justice S. D. Bajaj applied for allotment of a plot on 19th December, 1990 to the then Chief Minister Shri Hukam Singh. On his application, the Chief Minister directed the allotment of plot No. 1608 measuring one kanal in Sector 15(II), Gurgaon. This was as per the desire of Shri Bajaj. Smt. Urmilla Bajaj wife of late Shri S. D. Bajaj made an application dated nil for allotment of plot in urban estate, Panipat under the discretionary quota and the Special Principal Secretary to the Chief Minister passed order dated December 6, 1994 for allotment of plot No. 1258(9) in Sector 13/17, Panipat. Similarly Smt. Promilla Dewan wife of Shri S. S. Dewan. a retired Chief Justice, applied for allotment of plot of one kanal in January, 1992 and direction for allotment of plot was given on 10th January, 1992 in urban estate, Karnal. Ms. Sabina Dewan daughter of Shri S. S. Dewan (retired Chief Justice) also applied for allotment of plot on 2nd January, 1992 and the Chief Minister directed allotment of a plot of one kanal to her in Sector 7, Karnal. It is also relevant to mention that Shri S. S. Dewan is living in house No. 642, Sector 11-B, Chandigarh. Shri Justice Harbans Singh Rai applied for allotment of a plot on 11th January, 1991 in Gurgaon and got a plot measuring one kanal in Sector 15(II). He too has a house in Chandigarh (H. No. 162, Sector 9-A). Smt. Sheela Mital and Shri Nipun Mital, wife and son of Shri G. C. Mittal (retired Chief Justice) have been allotted plots of one kanal each in urban estates of Panchkula and Gurgaon. Both are residents of Chandigarh in House No. 7, Sector 9. One or two sitting Judges of this Court also got allotted plots under the discretionary quota either in their own name or in the names of their family members.

(vii) Some eminent lawyers including Shri H. L. Sibal, Shri Kapil Sibal and Shri V. K. Jain, etc. also got plots under the discretionary quota.

(viii) In a good number of cases plots have been allotted to more than one member of the same family. Some of them are Ms. Renu Bishnoi, and Ms. Nitu Bishnoi daughters and Shri Sandeep Bishnoi, son of Shri Dura Ram ; Shri Ashutosh Mohunta and Smt. Bansi Devi, son and wife

of Shri S. C. Mohunta ; Shri B. S. Ojha and his son Sandeep Ojha ; Shri Bhupinder Kumar and Shri Tarun Chaudhary sons of Shri Lila Kishore ; Anil Bali and Sunita Bali son and daughter of Shri Chhaban Lal ; Sanjiv Didi and Rajiv Didi sons of Shri Y. N. Didi ; Smt. Harmohinder Kaur Sandhu and her son Moideep S. Sandhu : Shri K. Sehgal and his son Pankaj Sehgal ; Varuna Bhandari and Vivek Bhandari daughter and son of Shri K. P. Bhandari ; Shri M. C. Gupta and his son Anurag Gupta ; Vipin Kumar and Vinay Kumar sons of Shri Hari Singh Nalwa ; Ajmat Khan (two plots) ; Shri Ram Bilas Sharma (two plots) ; Shri Mohammed Illyas (two plots) ; Shri Subhash Batra and his wife Kalpana Batra ; Shri Krishan Kumar Kaushal and Vinod Kumar Kaushal ; Satish Kumar and Ashok Kumar sons of Mohinder Pal ; Suraj Lal and Duri Lal sons of Sohan Lal : Viney Chaudhary and Usha Chaudhary, son and wife of Shri A. C. Chaudhary : Sheela Mital and Nipun Mital, wife and son of Shri G. C. Mital :: Smt. Promilla Dewan and Ms. Sabina Dewan wife and daughter of Shri S. S. Dewan and Smt. Urmilla Bajaj and late Shri S. D Bajaj.

(ix) The File containing the applications of Chairman/ Members of the Public Service Commissions/Subordinate Services Selection Board ; I.A.S./I.P.S./H.C.S. officers and the officers/officials of the HUDA/their wards show that in each case a stereo-type order was passed by the officers/ officials attached with the Chief Minister.

(x) What is revealing in one of the cases is that Shri S. J. S. Chhatwal, a member of the Union Public Service Commission submitted an application on 29th June, 1995 for allotment of a plot for his son at Faridabad giving out that he already owns a house in Sector 21 Faridabad. On that application, the Special Principal Secretary to the Chief Minister passed order on 29th September, 1995 for allotment of a plot in the name of the son of Shri Chhatwal in Sector 46, Faridabad.

(xi) A very large number of employees serving in the offices of the former Prime Ministers and at their residences

employees of Haryana Bhawan, New Delhi and Haryana Niwas, Chandigarh have been allotted plots measuring 2 to 6 marlas.

(xii) Hundreds of allottees belong to the home district of respondent No. 3. They have been allotted plots measuring 6 marlas to 2 kanals.

(xiii) One of allotment which was highlighted by the learned counsel for the petitioner during the course of arguments relates to Shri Surinder Singh Kairon, Ex. M.P. son of Shri Partap Singh Kairon (Former Chief Minister, Punjab). He owns a Patiala House in Chandigarh and has got huge property like cinema halls and farm houses in the State of Punjab. He applied for allotment of a plot on the ground that his property was destroyed during the riots of 1984. Under the direction of the respondent No. 3. allotment was made to him under the discretionary quota without examination of his claim as a distinguished and needy person.

(xiv) Famous film actress Ms. Madhuri Dixit was allotted a plot during her visit to Chandigarh in the year 1996. In her application. Ms. Dixit simply expressed her desire that she wanted to settle at Panchkula and the respondent No. 3 readily obliged her by allotting a plot of one kanal. Similarly, another film actress Ms. Priti Sapru applied for and was allotted a plot in urban estate Panchkula. In their applications, both these actresses have given their addresses of Bombay.

(63) The abovementioned facts show that the allotment of plots measuring 10 marlas to 2 kanals have been made in favour of the important public figures, civil servants and members of the judiciary including the Judges of the High Court. In some cases allotments have been made to the members of the families and relatives of these important functionaries. Allotment of big plots in prima urban estates shows that the respondent No. 3 doled out favours to those who were occupying high public positions and were able to influence him. The casual manner in which the orders were passed at the behest of the respondent No. 3 shows that the public property acquired by the HUDA from agriculturists and others was treated as a private property of Hon'ble the Chief Minister. These allotments have left an undeliable imprint on the mind of the public that

those who are powerful and rich can use the State apparatus to their advantage and for their personal gains. The feeling that a large number of such allotments have been secured to make profits in future cannot be treated as wholly unfounded. Some of the allottees are living in palatial houses in Chandigarh, Delhi and other places. The others are living in the States like Rajasthan, Tamil Nadu, Nagaland, Gujarat etc. Most of them have not built houses even after expiry of 4 to 5 years of allotment of plots. The prices of the plots have registered sharp increase in the urban estates of Faridabad. Gurgaon and Panchkula. The vicinity of these urban estates to the cities like Delhi and Chandigarh is a major factor which contributed to the multi-fold increase in the prices of land at these places. A plot which may have been allotted under the discretionary quota in the year 1991 at a price of Rs. one lac and which could have been bought in the market at the rate of Rs. two lacs in the year 1991, will now fetch a price of Rs. ten lacs or above. We have, therefore, no hesitation to conclude that the discretionary quota has been used by the respondent No. 3 to favour few individuals at the cost of the public interest. Indeed, if over 8000 plots had not been allotted under the discretionary quota during the last ten years the same would have been made available to the people who really needed them.

(64) The respondent No. 3 may perhaps claim the credit of being fair and equitable in the distribution of the public property by saying that he has obliged people from north to south and east to west of the country. He may also say that members belonging to all the three organs of the State, namely, the Legislature, the Executive and the Judiciary have been treated by him with equanimity because the beneficiaries of allotments under the discretionary quota include Members of Parliament ; Members of Legislative Assemblies ; top echelon of the Executive like the Chief Secretaries and lowest in the rung i.e. peon etc. and the members of the Judiciary. Even men in uniform and those living abroad have been benefitted by such allotments. However, we do not find any basis to accept such a perverted interpretation of doctrine of equality embodied in Article 14 which is one of the basic modifice of the Constitution. The action of the respondent No. 3 may have been in tune with the rustic simplicity of bygone days, but it is wholly incompatible with the democratic set-up of this country. Rather the allotment of plots to those who personally or whose family already own houses at other places including Delhi and Chandigarh lends credibility to the plea of the petitioner that such allotments will be used for acquisition of wealth.

(65) Another disturbing aspect of these allotments is that the members of the Judiciary and agencies like Public Service Commissions and Subordinate Services Selection Board, who are expected to remain aloof from the allurments of acquisition of property have unfortunately fallen prey to the charm of the land. Use of discretionary quota for allotments of plots to the members of the Judiciary and the agencies like Public Service Commissions and the Subordinate Services Selection Board is likely to cause serious damage to the credibility of these institutions.

Other submission of the counsel appearing for the respondents and the objectors.

(66) Shri H. L. Sibal, learned counsel for the respondent No. 3 made serious efforts to persuade us to uphold the allotments made to the elected representatives, members of the Judiciary and bureaucrats by relying on the decision of the Supreme Court in *Ashok Kumar* v. *Maruti Udyog Limited* (22). We have carefully perused that decision but, in our opinion, the same cannot be treated as laying down any principle of law. The order of the Supreme Court shows that after considering the submissions of the parties, their Lordships merely approved the guidelines framed for allotment of Maruti Vehicles out of the manufacturer's quota of 5 per cent. That decision cannot be treated as an authority for the proposition that a public authority who acts as trustee of the Public property can distribute largesses and favours to few highly placed persons according to his choice and sweet-will. We may say that what is binding on the High Court is the declaration of law by the Apex Court and, therefore, the order passed in Ashok Kumar's case cannot be relied upon for upholding wholly arbitrary and whimsical actions of the public authorities which shake the very foundation of the democratic institution and which are against the basic constitutional ethics.

(2) Quashing of allotments should be prospective.

(67) Shri M. L. Sarin argued that if at all the Court comes to the conclusion that the discretionary quota is contrary to the provisions of the Act or the Constitution, then the allotments made by the respondent No. 3 should not be disturbed and the principles to be laid down by us should be made applicable prospectively. He relied on the observations made by the Division Bench in S. R. Dass's case (supra) : the Managing Director, ECIL, Hyderabad v. B. Karunakar, JT 1993 (1) SC1 and the Court on its own Motion v. Advisor to the

(22) A.I.R. 1986 S.C. 1923.

Administrator, U.T., Chandigarh (23). In our opinion, this argument of Shri Sarin cannot be accepted because the doctrine of prospective overruling can be invoked only by the Apex Court. This doctrine was for the first time was invoked by the Apex Court in *Golak Nath* v. *State of Punjab* (24). That was a case in which constitutional validity of some of the amendments made by the Constitution (17th Amendent) Act, 1964 were challenged before the Apex Court. While supporting the validity of the constitutional amendments, learned Attorney General invoked the doctrine of prospective overruling which is well accepted in America. Their Lordships held that this doctrine can be invoked only in matters arising under our Constitution and it can be applied only by the Apex Court (para 15 of the judgment). In Karunakar's case (supra), a Constitutional Bench of the Supreme Court interpreted the provisions of Article 311 of the Constitution as they stand after their amendment by the Constitution (42nd Amendment) Act, 1976. Their Lordships noticed two apparently contradictory judgments and upheld the view expressed in *Union of India* v. *Mohammed Ramzan Khan* (25). However, the Constitution Bench further held that the law laid down in Mohammed Ramzan Khan's case should be applied prospectively because the application of that law to the orders which had already become final would create innumerable complications and great prejudice will be caused to the administration. The Apex Court observed that larger public interest demands that orders of punishment passed prior to the decision in Mohammed Ramzan Khan's case without furnishing copies of the reports of the enquiry officer should not be disturbed. In Court on its own Motion v. Advisor to *the Administrator U.T. Chandigarh* (Supra), a Full Bench of this Court examined the validity of the Government Residences (Chandigarh Administration Pool) Allotment Rules, 1972 and struck down rule 7 thereof. The Court also quashed the allotment made to one Shri A. R. Talwar. The Court further directed that the Government accommodations sub let by the allottees should be recovered. In our opinion. neither Karunakar's case nor the decision in Court on its own Motion *v.* Advisor to the Administrator......... can be read as laying down a proposition that the Court should not interfere with the action of the public authorities which are patently against the Constitution and public interest. In fact, in Karunakar's case direction for prospective application of law declared in Mohammed

(23) 1995 (2) P.L.R. 451.
(24) A.I.R. 1967 S.C. 1643.
(25) J.T. 1994 (4) S.C. 456.

Ramzan Khan's case was given keeping in view larger public interest. In the second case decided by the Full Bench, there is no direction for applying the principles only in future. Only in respect of some issues, the Court observed that those who were in possession of the houses in term of rule 12 should not be disturbed on the basis of the finding recorded by it. That case has no parallel to the present case in which we have found want on abuse of the power vesting in the high public authority. We, therefore, do not find any ground to hold that the allotments made by the respondent No. 3 under the discretionary quota should remain undisturbed.

(3) Allotments made three years prior to the notice should not be disturbed.

(68) Shri Sarin and the learned counsel appearing for the objectors argued that those allotments which have been made three years prior to the issuance of the notice by he Court should not be disturbed and the period of limitation prescribed under Article 113 of the Limitation Act should be applied in the instant case. Shri Sarin placed reliance on the following decisions in support of his argument :—

(i) *State of Punjab* v. *Gurdev Singh* (26), and

(ii) *State of Kerela* v. *M. K. N. M. Manikoth Naduvil (dead)* and others (27).

(69) This argument of Shri Sarin and other learned counsel has no substance. In *State of Kerala* v. *M. K. N. M. Manikoth* (supra), the Apex Court was dealing with acquisition made under the Kerala Land Reforms Act. The High Court of Kerala quashed the proceedings. While reversing the order of the High Court, their Lordships interpreted the word ('void' and held that even a void order or decision rendered between the parties cannot be said to be non-existent in all cases and in all situations. In *State of Punjab* v. *Gurdev Singh* (supra), their Lordships declared that a suit for declaration that the dismissal is wrongly covered under Article 113 of the Limitation Act and if an employee does not challenge the order of dismissal within the period of limitation, the civil Court cannot interfere with the order in a suit filed for collateral purposes. The principles laid down

(26) A.I.R. 1991 S.C. 2219.
(27) J.T. 1995 (8) S.C. 533.

in these two cases have no bearing on the issue raised in this petition which, as already mentioned above, relates to misuse of powers by the representatives of the people. who are required to act as trustees of the public faith and public interest. Once we have found that under the Act, absolute and unbridled discretion cannot be conferred upon the respondents, the Court will be failing in its duty to restore the property because it is the public who is the real owner of the property vesting in the State.

(4) allotment made up to the date the order dated 29th June, 1987 was issued.

(70) Learned counsel for the respondents and the objectors argued that the allotments which have already been upheld or which must be treated to have been upheld by the Court in *S. R. Dass's case* (supra) should not be disturbed. We find sufficient merit in this contention. In our opinion, it would not be fair to upset those allotments which have acquired the colour of legality in the light of the judgment rendered in *S. R. Dass's case.*

(5) *Bona fide* purchases who have constructed houses and other buildings/original allottees who have constructed buildings after permission from the HUDA.

(71) Shri Aggarwal and other learned counsel appearing for the objectors strenuously argued that even if the allotments made by the respondent No. 3 and other Chief Ministers are found to be illegal, the Court should not divest the allottees of their properties in cases where the constructions have been raised after seeking permission from the authorities of the HUDA and after sanction of the plans. We find substantial force in the arguments of the learned counsel. Those who have invested their money in raising constructions after approval of the building plans from the HUDA can appropriately be treated as a class different than those who have so far not raised constructions. A large number of allottees/*bona fide* purchasers may have invested their life-long earnings in constructing the houses etc. It would, therefore, be just and equitable not to disturb their possession on the ground that the allotment made in their favour is contrary to the provisions of the Act and the Constitution. We are also of the opinion that those who have purchased properties from the original allottees with the sanction of the HUDA and have raised construction fall in this category. Those whose building plans have been sanctioned and who had started construction from the date of issuance of notice by this Court shall also be

entitled to retain their possession. However, we deem it proper to direct the HUDA to impose a condition that such allottees/, transferrees' shall not alienate the properties to third parties for a period of next five years.

(5) Members of Armed Forces

(72) A number of objectors are members of the defence forces, para military forces. Learned counsel appearing on their behalf vehemently pleaded that allotments made to them should not be distrubed because they have served the nation during war and otherwise. It is not possible to put all defence personnel in the category of persons who have made supreme sacrifice for the nation or who have rendered distinguished service in the armed forces but we do not find that some of the objectors distinguished themselves in the Defence and rendered services to the nation when the same were need the most. Such allottees form a class unto themselves. It would, therefore, be in the interest of justice to direct the respondents No. 1, 2 and 4 to get examined the allotments made to defence personnel through a committee and the allotments made to those who have distinguished themselves in the service of the nation may not be disturbed.

(6) Police personnel who have fought against the terrorism

(73) It has been brought to our notice that a number of police personnel had gallantly fought against the terrorism in the States of Punjab and Jammu & Kashmir and elsewhere in the country. They/ their family may for the reasons of security may not want to live in the State in which they fought against terrorists. They too constitute a class unto themselves. It would, therefore. be proper to direct that their cases shall also be examined afresh by the committee to be constituted by the Government and allotments made to those who have distinguished themselves in the service of the nation may not be disturbed.

(7) Civilians who have suffered due to terrorism

(74) Another class of persons who deserve this treatment are those civilians who may have suffered due to terrorists' activities in the State of Punjab and Jammu & Kashmir or elsewhere. They may have got plot in Haryana for settlement out side their parent state. The respondents No. 1, 2 and 4 shall refer the allotments made to the civilians who may have suffered due to terrorists' activities in different parts of the country to the committee and genuine claims of the families of such persons for being allowed to retain one plot may be accepted.

(8) Allottees of plots measuring 2 to 6 marlas

(75) A number of allotments have been made under the discretionary quota of plots measuring 2 to 6 marlas. It cannot be said that such allottees have secured the allotments of plots with the motive of profiteering. Therefore, it would be equitable not to quash the allotments of those who have got 2 to 6 marlas plots under the discretionary quota.

(76)However, we make it clear that in the category of defence personnel, members of police forces, civilians who have suffered due to terrorism and the allottees of 2 to 6 marlas plots shall be allowed to retain such plots only if their family including the spouse. sons and daughters do not own any house in the State of Haryana/Chandigarh and under no circumstances one family shall be allowed to retain more than one plot.

(77) Before parting with the case, we deem it proper to observe that the Court had issued notice to all those who were allotted plots under the discertionary quota of the Chief Minister during the last 10 years and above for affording an opportunity of hearing to all such persons. However, we are of the opinion that those who were allotted plots prior to the issuance of the order dated 29th June, 1987 and withdrawal of the cancellation letter,—*vide* circular dated 31st October, 1989 do not deserve to be disturbed by quashing of allotments because most of such allotments have been upheld by the Division Bench in *S. R. Dass's case* (supra). We have confined our order to those who have been allotted plots under the discretionary quota of the Chief Minister after October 31, 1989 onwards.

(78) On the basis of the above discussion, we hold :—

(1) That the provisions of Section 15 and Section 30 of the Act do not confer unbridled and unguided powers upon the Chief Minister to allot residential plots according to his discretion and the same cannot be used for sustaining the conferment of such powers upon the Chief Minister ;

(2) that the criteria devised by the Chief Minister,—*vide* note dated 21st November, 1990 for allotment of plots i.e. 'distinguished and needy people' is vague and arbitrary and is, therefore, violative of Article 14 of the Constitution ;

(3) that the allotments of residential plots made under the discretionary quota of the Chief Minister on or after 31st

October, 1989 are declared illegal and are quashed. This shall be subject to the following :—

(i) The allotments made under the discretionary quota shall remain unaffected in cases of those allottees and their *bona fide* purchasers who have already raised consti- *bona fide* purchasers who have already raised construction or who have started construction of the houses and buildings as per the plans sanctioned by the HUDA before the date of the publication of the notice of this petition i.e. 6th June, 1996. However, the HUDA shall issue general instructions restraining the alienation of the constructed houses/ buildings to third parties by such allottees/transferees for a period of next five years.

(ii) The persons to whom plots measuring 2 to 6 marlas have been allotted shall be allowed to retain the plots only if their family does not own a house in the State of Haryana /Chandigarh. The condition against alienation to the third party shall also apply in their cases.

(iii) The cases of the allottees who were/are members of the armed forces/para military forces who have made sacrifice for he cause of nation or who have distinguish- themselves during the course of service as well as the members of the police forces who fought against terrorism in the states of Punjab and Jammu and Kashmir and elsewhere in the country and the civilians who have affected by the terrorists' activities in the States of Punjab and Jammu & Kashmir and elsewhere in the country shall be reviewed by a committee.

(iv) The persons falling the category of defence personnel/ police officers/officials as well as the civilians whose cases are to be reviewed by the committee to be constituted by the Government shall be allowed to retain only one plot per family on the recommendations of the committee. However, they shall not been titled to alienate the plots to third parties for five years.

(v) Within one month from today the Government of Haryana should appoint a committee headed by a retired Judge of the High Court preferably from a State other than the States of Punjab, Haryana and Delhi to examine

the cases of allotment made to the members of armed forces/para military forces who made sacrifice for the cause of the nation or who have rendered distinguished service. The cases of the police officers/officials who have fought against terrorism and the civilians who have suffered due to terrorism shall also be examined by that committee. The Government and the HUDA shall regularise those allotments for which recommendations are made by the committee.

(vi) If the committee/HUDA finds that any of the allottees has submitted false information to the HUDA. then allotment in favour of such person shall necessarily be cancelled and the Government shall take appropriate action for prosecution of such applicant.

(5) The Government of Haryana may frame policy for allotment of plots to specified class of persons and notify such policy. Allotment under such policy should be made by inviting applications through public notice from all those who belong to a particular class.

(6) The Government/the HUDA shall immediately cause publication of the notice in the two newspapers having wide circulation in the States of Punjab and Haryana and two newsppers have circulation in the entire country indicating therein that due to quashing of the allotment made under the discretionary quota the allottees have become entitled to the refund of money deposited by them. The amount shall be refunded to the allottee within two months of the making of applications by such persons. If the HUDA fails to return the amount within two months of the making of the application then it shall pay interest at the rate of 15 per cent per annum.

(7) The cases of those covered by the exception clauses mentioned above shall be referred to the committee along with the entire record and the final decision be taken on the recommendation of the committee.

(8) The plots which shall become available due to the quashing of the allotments made by the HUDA shall be disposed of by it as per the existing policy.

(9) The Government shall ensure full compliance of these directions by its own officers and the officials of the HUDA.

(79) The writ petition is allowed in the manner indicated above.

(Sd.) . . .,
G. S. SINGHVI,
Judge

I agree with certain reservations that have been penned down seperately.

(Sd.) . . .,
H. S. BEDI,
Judge

I agree with Mr. G. S. Singhvi, J.

(Sd.) . . .,

The 21st March, 1997

S. S. SUDHALKAR,
Judge

H. S. Bedi, J.

(80) After having gone through the judgment of Brother Singhvi, J. I broadly concur with the views that he has expressed inasmuch that the policy for the allotment of plots under the discretionary quota is not only vague but also that it has been mis-utilized for extraneous considerations and accordingly needs to be quashed. For the reasons set out below, I agree with Singhvi, J. that allottees of small plots, however deserve to be spared. The primary factor that impels me to this view is that this very policy had been challenged in this Court in *S. R. Dass's case* and found to be valid by a Division Bench. In other words, the fresh challenge to virtually an identical policy and to the present allotments had been made after the policy had earlier been approved by this Court. It is also significant that a total of 4,875 plots of various sizes (detailed below) and as given in Annexure R-19 were allotted under the discretionry quota between 1st June, 1991 to 19th March, 1996 in the 20 Urban Estates :

2 Kanal	=	96
1 Kanal	=	654
14 Marlas	=	761
10 Marlas	=	893
8 Marlas	=	263
8 Marlas	=	25
6 Marlas	=	958
4 Marlas	=	625
3 Marlas	=	155
2 Marlas	=	446
Total	=	4875 plots

It will, therefore, be seen that out of the total number of plots, 2184 plots were of six marlas or below and, therefore, allotted to the poorest amongst our people, whereas the remainder were of 7 marlas and above. It is equally significant that the largest number of allotments have been made in Gurgaon (1281) followed by Faridabad (1083) and Panchkula (754) and it is the admitted position that there were not many takers in the other Urban Estates with the possible exceptions of Kurukshetra, Karnal and Hisar wherein 247, 388 and 393 plots respectively, were allotted. The conclusion that is to be drawn from these facts is that the rush for plots was primarily in Panchkula, Faridabad and Gurgaon as a result of the proximity of Panchkula to Chandigarh and Faridabad and Gurgaon to Delhi. It is, therefore, evident that profiteering could perhaps be a motive for seeking allotments in these three Urban Estates, but no such inference can be drawn with respect to the others. Equally it would be impossible to argue that a person who had been allotted a 2, 4 or 6 marla of plot would have secured allotment with a profit motive As a matter of fact, the policy of allotment to distinguished and needy persons can hardly be applied to this category of allottees (as without meaning to sound in any way pompous or disrespectful to them) none of them would qualify as being both distinguished and needy which is a sine qua non for allotment and, as such, in their cases an equitable rather than a legalistic approach has to be adopted. The principles therefore applied in determining the validity of allotment of petrol pumps, gas agencies, out of turn government accommodation and the like which have been adequately dealt with by Singhvi, J. cannot be applied to the present case where the plots have been purchased by the allottees after paying good money in terms of the policy which had already been upheld in *S. S. Das's case*. It is well-known that the discretionary relief envisaged under Article 226 of the Constitution of India can be moulded to meet a particular situation. I am, therefore, of the opinion that while it is necessary to make an expose of what has been happening over the last several years. yet the allotments made with respect to 2 to 6 marlas plots should not be quashed.

(81) There is however, another aspect of the matter on which there is a divergence of opinion with my learned Brother. While quashing the allotments, it has been held that an exception needs to be carved out in favour of defence and police personnel on the ground that they were discharging a hazardous nationol duty and that in their case a retired Judge of the High Court or a retired Chief

Secretary should be appointed to determine their status as distinguished and needy persons. I have absolutely no hesitation in accepting this proposal but am of the opinion that a seperate class of allottees should not be created and the Committee envisaged should go into the genuineness of all allotments of plots of 7 marlas and above that had been made. It cannot be denied that various other Sections of our society be they judicial officers, politicians, school teachers or doctors and so many others are also doing their duty towards the nation and their cases may be quite as genuine as those of defence personnel and may well fit the criteria for allotment. Further the committee (to make it more broadbased) should consist of three members-a retired Chief Justice and a Retd. Judge of a High Court and a retired Senior Civil Servant not less than the rank of a Chief Secretary.

(82) It has also come on record that some individuals have got two or more allotments in their names or in the names of their family members on the basis of false affidavits and contrary to the policy on the subject. We have also seen that some of the allottees have attempted to camouflage their identities by giving incorrect or inaccurate descriptions in their applications so as to avoid detection and to secure double or even multiple allotments. An option should be held out to such persons that in case they voluntarily surrender all, but one plot, within a period of two months from today, their cases for the allotment of one plot would be considered by the Committee aforementioned, and in case they do not do so, and an inquiry reveals that it is a case of double or multiple allotment, contrary to the policy and made on the basis of false affidavits, they would not only disentitle themselves for being considered for allotment but would also be made liable for criminal prosecution on that account.

(83) There are one or two additional aspects that need to be taken care off. One of the reasons why the Chief Minister was in a position to make these allotments and to get away with them was the secrecy and the cloistered manner in which they were made. All allotments which are made henceforth from the discretionary quota, should therefore be advertised in the newspapers for general information and public scrutiny.

(84) Singhvi. J. in the course of his judgment has given a list of allottees. It consists of many who matter or have mattered in the governance of this country. The list is, however, not exhaustive but only illustrative and includes senior politicians belonging to various States, Civil Service Officers, defence personnel, retired Judges of this High Court, Senior Advocates and serving members of the

Subordinate Judiciary. In fact, individuals from all walks of life appear to have benefitted under a policy that had undoubtedly withstood scrutiny in *S. R. Das case.* The judgment also says (and I quote) "one or two sitting Judges of this Court also got allotted plots under the discretionary quota either in his own name or in the name of his family members", but stops short of naming them. To my mind and with great respect this omission makes the Bench and the judgment open to serious criticism. Introspection is a difficult and often an embarrassing exercise but a task that must nevertheless be carried out. While revealing the names of others, I see no justifiable reason as to why sitting Judges of this Court, i.e. Hon'ble Mr. Justice M. S. Liberhan, Hon'ble Mr. Justice N. C. Jain and Hon'ble Mr. Justice M. L. Koul who either themselves or through their families are not brought on record as having been amongst the beneficiaries.

(85) The record also reveals that a very large number of Judicial Officers who have secured allotments had applied for allotment directly to the Chief Minister and some of the applications contain language which borders on servility. This practice needs to be seriously discouraged as it could have the effect of compromising the position and independence of the Judges. I am, therefore, of the opinion that in future if any Subordinate Judicial Officers has to apply for the grant of a plot under the discretionary quota, the said application should be routed through the High Court and in case the applicant is a sitting Judge of the High Court, through the Chief Justice. It should also be clearly understood by all that any application made in any other manner, would be ruled out of consideration.

(86) With these reservations, I concur with the views expressed by Singhvi, J.

R.N.R.

17140 HC—Govt. Press, U.T. Chd.