
Before G.S. Singhvi, S.S. Nijjar & Kiran Anand Lall, JJ

DR. AMAR SINGH & OTHERS,—*Petitioners*

versus

STATE OF PUNJAB & OTHERS,—*Respondents*

C.W.P. No. 7401 of 1996

25th July, 2002

Constitution of India, 1950—Arts. 14 & 226—Punjab Town Improvement (Utilization of Land & Allotment of Plots) Rules, 1983 (as amended)—Rls. 4, 8, 10 & 12—Policy decision dated 31st January, 1989 of the State of Punjab—Public Interest Litigation—Challenge to discretionary quota allotment of plots in urban estates of Punjab—Government has power to make reservation for various categories—Such power should be in consonance with the provisions of the Constitutions—No absolute power vests in the Govt. for making either reservations or allotments—Govt. laying down criteria for allotment of plots out of discretionary quota—Criteria for making reservation in favour of Freedom Fighters, Political Sufferers, Defence & B.S.F. Personnel etc., Persons appointed to public service by the State Govt. and persons belonging to SC/BC classes held to be valid & constitutional—No justification for making reservation u/s 4(i) for members of Parliament and Legislative Assembly and u/s 4(vii) for NRIs—No criteria laid down for selecting an NRI for allotment of the plot—No discernible reason assigned for making reservation for NRIs—Such reservations have no nexus with the object sought to be achieved—Discretion of the Govt. under Proviso 3 of Rl. 4 to allot 5% quota to persons keeping in view their socio-economic condition is wholly unguided & unlimited—Cl. (iv) of the policy decision of the State gives unbridled discretion to the competent authority to allot plots—Proviso 3 of Rl. 4 and Cl. (iv) of the policy decision held to be violative of Art. 14 being vague & arbitrary—All discretionary quota allotments made to Members of Parliament and Members of the Punjab Legislative Assembly, Non-Resident Indians and under the discretionary quota w.e.f. 31st January, 1989 declared illegal & void and quashed subject to limitations and directions.

Held, that no absolute discretion can vest in the Government for making either reservations or allotments. The rules or the guidelines cannot lay down arbitrary standards for exercise of the discretion.

The rules or the guidelines have to be well-defined, reasonable and must have a nexus with the object sought to be achieved. The reservation provided under Rule 4 of the Rules and the policy decision dated 31st January, 1989 would have to satisfy the criteria of reasonableness as required by Article 14 of the Constitution of India. Reservation made in favour of Freedom Fighters, Political sufferers, Defence Personnel, Border Security Force Personnel etc., persons appointed to Public Service by the State Government and persons belonging to Scheduled Castes and Backward Classes under Rule 4(ii), (iii), (iv), (v) and (vi) of the Rules is held to be valid and constitutional.

(Para 14)

Further held, that it would not be possible to uphold the reservation provided in Rule 4(i), (vii) and proviso 3 to Rule 4. No justification is given for carving out a reservation for Members of Parliament representing the State of Punjab and the Members of the Punjab Legislative Assembly. 8% of the plots of all size i.e. 250, 300, 400 and 500 square yards are reserved for this category. This reservation has absolutely no nexus with the object sought to be achieved by the Improvement Trust Act. It is simply largesse bestowed on an individual after winning a parliamentary or State Assembly seat. This kind of reservation is abhorrent to the concept of equality enshrined under various provisions of the Constitution of India. 4% of the plots of 500 square yards only have been reserved for Non-Resident Indians. The term "Non-Resident Indians" is totally vague. No discernible reason has been assigned as to why a reservation has to be made for Non-Resident Indians. No criteria has been laid down for selecting the Non-resident Indians candidate for allotment of the plot. Some of the richest people living in this country, are officially "non-Resident Indians". Conversely the term "Non-Resident Indians" would also include some of the richest Indians living abroad. Allotment of these plots under the nomenclature of the "Non-Resident Indians" is wide open to abuse and profiteering. The list attached by PUDA shows that large number of persons have been allotted plots in various Urban Estates in Punjab, although they are clearly stated to be residents of Chandigarh, New Delhi or other large cities in Punjab. It clearly goes to show that the allotment of the plots have not been made on the basis of any discernible criteria.

(Para 18)

Further held, that 5% of the plots have been reserved to be allotted by the Trust with approval of the Government to such category or class of persons and in the manner as the Govt. may from time to time keeping in view the socio-economic condition of such persons, satisfy. The aforesaid discretion is wholly unguided. It is unlimited. It leaves the Government to take the decision keeping in view the socio-economic condition of the persons specified. The only criteria which has been placed on the record is the policy contained in the Notification dated 31st January, 1989. If the discretion is to be limited only to categories No. 1, 2 & 3, the reservation would have to be held to be valid. But the power granted to the Govt. under Cl.(iv) is wholly arbitrary and is capable of abuse. We, therefore, hold that the discretionary quota of 5% as contained under Proviso No. 3 to Rule 4 is vague and arbitrary and, therefore, violative of Article 14 of the Constitution of India. We also held that the power contained in Clause (iv) gives the competent authority unbridled discretion and, is therefore, violative of Article 14 of the Constitution of India. We, therefore, hold that the allotment of residential plots made under the aforesaid provisions i.e. to members of Parliament and Members of the Punjab Legislative Assembly; Non-Resident Indians and under the discretionary quota w.e.f. 31st January, 1989 are illegal and void. The allotments are hereby quashed.

(Para 19)

G.S. Sandhawalia, Advocate, for the petitioners

A.G. Masih, DAG, Punjab for respondent No. 1.

M.L. Sarin, Sr. Advocate with Ms. Sweena Pannu, Advocate,
for respondents.

JUDGMENT

S.S. Nijjar, J.

(1) In December 1988, respondent No. 2 issued an advertisement inviting applications for allotment of residential plots measuring 400, 250, 150 and 100 Square Yards in Shri Guru Teg Bahadur Nagar Development Scheme (Water Works Road), at Khanna, District Ludhiana. The number of plots were not advertised. In the advertisement, it was stated that the allotment would be through draw

of lots. The allotment will be made strictly according to Punjab Town Improvement (Utilisation of Land and Allotment of Plots) Rules, 1983 as amended up-to-date (hereinafter referred to as "the Rules"). It was also provided that reservation in the categories of Schedule Castes, Backward Classes and other categories would be as per government instructions. Pursuant to the aforesaid advertisement, petitioners No. 1 to 4 applied for a 400 square yards plot and deposited Rs. 8000 with the Improvement Trust Khanna (hereinafter referred to as "the Trust"). Petitioner No. 5 applied for a 250 square yards plot and deposited Rs. 5000 with the Trust. Although the number of vacant plots/sites were not mentioned in the advertisement, on enquiry it revealed to the petitioners that there were 17 plots of 400 square yards and 33 plots of 250 square yards. Even though all formalities were completed, the Trust did not hold draw of lots. Instead the plots were being allotted out of the discretionary quota and for extraneous considerations. The plots being situated in Khanna on the Grand Trunk Road are of substantial value. Reservations have been made under Rule 4 of the aforesaid Rules extending to 40 per cent of the total number of plots. In addition, 10 per cent of the plots are reserved for the discretionary quota of the plots. According to the petitioners, the Trust has allotted plots in excess to the percentage fixed and no plots have been left for allotment to the general public. They further complained that even if 50% of the plots are to be reserved under Rule 4, still 8 plots of 400 square yards and 16 plots of 200 square yards had to be allotted by draw of lots. In September, 1995, it came to the notice of petitioner No. 4 that respondents were holding auction on 29th September, 1995 of 10 sites for shop-cum-flats without holding the draw of lots. Petitioner No. 4 challenged the aforesaid action of the respondents in a Civil Suit and sought permanent injunction against the Trust restraining it from holding the auction on 29th September, 1995. Respondent No. 2 appeared in Court and stated that no auction was being conducted on 29th September, 1995. The suit was got dismissed as withdrawn on the very same date. Thereafter, instead of holding the draw of lots, the Trust had refunded the earnest money to the petitioners after a period of more than 7 1/2 years. This refund was not accepted by the petitioners.

(2) The petitioners have challenged the aforesaid action of the Trust on the ground that the respondents have not been able to hold draw of lots as the plots have been allotted to their favourites under

the discretionary quota i.e. the persons who are politically connected and other persons for extraneous considerations. The action is also said to be illegal as it is against the statutory rules. Allotments have been made in violation of Rule 10 (3) of the Rules which provides that if any person has already been allotted a plot in any Urban Estate of Punjab shall not be eligible for allotments of such residential plots. Further it is submitted that the percentage of reservation up to 50% of the total number of the plots is bad in law. Rule 4 of the Rules is likely to be struck down on the ground that there is no proper opportunity to the general public to take part in the selling of public property.

(3) The State of Punjab, respondent no. 1 has justified its action and stated that reservations of plots to certain deserving categories Society viz. Members of Legislative Assembly, Members of Parliament, Freedom Fighters, Political Sufferers, Defence Personnel, War Widows, Government Employees, Members of Scheduled Castes and Backward Classes etc. have been provided in lieu of their service to the Society and socio-economic condition. The reservations, so provided do not in any manner affect the rights of general public for whom sufficient numbers of plots are reserved which are allotted through draw of lots, after inviting applications. The Rules are thus said to be balanced and transparent and are so framed so as to cater to the persons of all sections of Society.

(4) In paragraph 25 of the writ petition, it is stated that in CWP No. 5851 of 1996 (**Anil Sabharwal versus The State of Haryana & others (1)**), the Court had issued notice of motion for 22nd May, 1996. By order of this Court dated 22nd May, 1996, the writ petition was treated as Public Interest Litigation for the whole of State of Punjab regarding the allotment of commercial and residential plots under the discretionary quota. It was directed to be listed along with CWP No. 5851 of 1996 before a larger Bench. The aforesaid writ petition was filed by Anil Sabharwal challenging the discretionary quota for allotment of residential plots in the policy decision of the Chief Minister of Haryana in the order dated 31st October, 1989. The aforesaid writ petition came up for hearing before a Full Bench of this Court consisting of Hon'ble Mr. Justice G.S. Singhvi, Hon'ble Mr. Justice H.S. Bedi and Hon'ble Mr. Justice S.S. Sudhalkar. By

judgment dated 21st March, 1997, it was held that the discretion conferred on the Chief Minister is not immune from judicial review. It was also held that absolute power could not vest in the Chief Minister to make allotment of plots according to his discretion. The use of discretion would not be immune from judicial scrutiny on the touchstone of Article 14 and other provisions of the Constitution of India. The Full Bench has upheld the Government's power to reserve plots in favour of eminent professionals, outstanding sports persons, musician etc. as a group provided the reservation is within the parameters, scheme and objects of the Act. The Full Bench also held that the policy decision taken by the HUDA to reserve plots in favour of government servants, Scheduled Castes, Backward Classes, Freedom Fighters falls in this category. It was also held that the plots reserved for professionals etc. can be allotted only after issuing advertisement of the policy framed by the Government/HUDA. It was further held that allotments to this category will have to be made keeping in view the principle laid down by the Supreme Court in the case of **New India Public School versus HUDA, (2)**. In addition, 5% of the plots were reserved for the discretionary quota of the Chief Minister,—*vide* reservation policy for residential plots dated 21st November, 1990. These plots had been reserved for distinguished and needy people in all walks of life'. It had been argued that this provided a valid criteria. This argument was rejected by the Full Bench. It was also argued that even in the discretionary quota more than 5 per cent of the plots have been allotted to the very influential persons, namely, MPs/their wards, MLAs/their wards, Judicial Officers/Judges of the High Court/their wards, I.A.S. Officers/their wards, IPS Officers/their wards, HCS Officers/their Wards, Chairman/Members of Public Service Commission/their wards, Members of the S.S.S.D./their wards, Officers/Officials of HUDA/their wards and Defence Personnel/their wards. The Full Bench, after elaborate consideration of the entire matter, observed as follows :—

“53. The HUDA also furnished the lists of some persons who had applied 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 kanal 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 allotment 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 22nd April, 1996 :—

(i)	Ambala	:	77
(ii)	Bahadurgarh	:	10
(iii)	Faridiabad	:	226
(iv)	Gurgaon	:	427
(v)	Hissar	:	226
(vi)	Kaithal	:	27
(vii)	Karnal	:	133
(viii)	Kurukshetra	:	49
(ix)	Panipat	:	21
(x)	Panchkula	:	212
(xi)	Rewari	:	16
(xii)	Rohtak	:	10
(xiii)	Sirsa	:	3
(xiv)	Sonepat	:	44

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56. 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 prime urban estate show 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 Chief Minister. These allotments have left an indelible 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 State like Rajasthan, Tamil Nadu, Nagaland, Gujarat etc. Most of the 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 estate 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.

- (57) 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 member 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 aboard have been benefited 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 best edifice 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 place including Delhi and Chandigarh lends credibility to the plea of the petitioner that such allotments will be used for acquisition of wealth.
- (58) Another disturbing aspect of these allotments is that the members of the Judiciary and agencies like Public Service Commissions and Subordinate Service Selection Board, who are expected to remain aloof from the allurements of acquisition of property have unfortunately fallen prey to the charm of the land. Use of discretionary quota for allotment 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.”

(5) The writ petition was allowed with the following conclusion and directions :-

“62. 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 conferment of such powers upon the Chief Minister;
- (2) that the criteria devised by the Chief Minister,--*vide* note dated 21st November, 1989 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 and the *bona fide* purchasers who have already raised construction or who have started construction of the houses and buildings as per the plans sanctioned by 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 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 also be allowed to retain the plots only if their family does not own a house in State of Haryana/Chandigarh. The condition against alienation to the third party shall also apply in their cases.

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- (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 has 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 and Kashmir and elsewhere in the country and the civilians who have been affected by the terrorists activities in the States of Punjab and Jammu and Kashmir and elsewhere in the country shall be reviewed by a Committee.
- (iv) The persons falling in 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 State 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 newspapers having 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 persons. If the HUDA fails to return the amount within two months of the making of the application then it shall pay interest @ 15 per cent per annum.
- (7) The cases of those covered by the exception clause mentioned above shall be referred to the committee alongwith 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.

The writ petition is allowed in the manner indicated above.”

(6) A large number of Special Leave Petitions were filed in the Supreme Court against the aforesaid judgment. The SLPs were dismissed by the Supreme Court. The main judgment was given in the case of **Harsh Dhingra versus State of Haryana (3)**. In this judgment, it has been held that the judgment of the High Court shall have prospective effect.

(7) When this matter came up for hearing before the Full Bench, it was submitted that this writ petition shall have to be decided independently as one of the issues raised in this writ petition, namely, challenge to the vires of Rule 4 of the Punjab Town Improvement (Utilisation of Land and Allotment of Plots) Rules, 1983 (hereinafter referred to as "the Rules") would still merit detailed consideration by the Court. With that background, we have heard the learned counsel for the parties at length and have perused the paper book.

(8) As in the Haryana matter, in this case also a large number of applications have been filed by individuals who have been allotted plots for being impleaded as parties. They have all been impleaded. As in the Haryana case, some applications have been filed for permission to transfer the plots under the discretionary quota. There are also applications for filing objections.

(9) After hearing the learned counsel for the parties, we are of the view that the matter is squarely covered by the judgment of this Court rendered in the case of Anil Sabharwal (*supra*).

(10) The allotment of the plots by the Improvement Trust in the State of Punjab is to be made in the manner prescribed under Rules 4, 8 and 12 of the aforesaid Rules. Rule 4 provides for reservations of residential plots in favour of various categories of persons. Rule 4 reads as under :-

"4. *Reservation of residential plots and multi-storeyed houses* :- (1) Subject to the provisions of rule 10, residential plots and multi-storeyed houses shall be reserved for allotment to the following categories of persons to the extent specified against each :-

Category of persons	Extent of reservations
(i) Members of the Parliament representing the State of Punjab and the Members of the Punjab Legislative Assembly.	Eight per cent of plots of 250, 300, 400 and 500 square yards only.
(ii) Freedom fighters and political sufferers having domicile in the State of Punjab and	Two per cent

who have been awarded Tamra Patras by the Punjab Government and in the case of death of such persons their widows and in the absence of widows their children.

(iii) Defence personnel Border Security Force Personnel, Member of the Central Reserve Police Force, Ex-Servicemen and War Widows having domicile in the State of Punjab. Eight per cent.

(iv) Persons appointed to Public Services by the State Government who are holding posts in connection with the affairs of the State of Punjab and in case of their death while in service their widows. Eight per cent.

(v) Persons belonging to the Scheduled Castes and Backward Classes. Eight per cent.

(vi) Employees of the concerned Trust and in case of their death while in service, their widows. Two per cent.

(vii) Non-Resident Indians. Four percent of plots of 500 squar yards size only;

Provided that ten per cent of the residential plots and multi-storeyed houses shall be reserved for persons whose applications for allotment of residential plots and multi-storeyed houses are pending for a period of more than five years ending with the date of commencement of these rules;

Provided further that the unutilised plots reserved for different categories of persons under sub-rule (1) for want of eligible persons shall be open for allotment to the perosns other than the reserve categories of persons;

Provided that 5 percent of the residential plots and multi-storeyed houses shall be allotted by the Trust with the approval of the Government to such category or class

of persons and in the manner as the Government may from time to time keeping in view the socio-economic conditions of such persons specify .”

(11) Rule 8 reads as follows :-

“8. Mode of Sale.-(1) Unless otherwise provided under these rules every Trust shall allot residential plots and multi-storeyed houses by draw of lots and shall sell the commercial plots by auction :

[Provided that the Non-Residential Indians shall be allotted residential plots;-

- (i) if the number of application is less or equal to the number of plots available for allotment to such category of persons, on the basis of ‘First come First served; and
- (ii) if the number of application is more than the number of plots available for allotment to such category of persons, by draw of lots]:

Provided further that the local displaced persons shall be allotted residential plots in accordance with the criteria specified in sub-rule (2) of rule 4.

(2) The land for the institutional purposes shall be allotted by the Trust on the recommendation of a Committee consisting of the following for *bona fide* use of the institutions :-

- (1) The Chairman or the Administrator of the Trust, as the case may be;
- (2) The Deputy Commissioner or his representative in the case of a Trust at the district headquarters and Sub-Divisional Officer (Civil) in the case of Trust at Sub-Division level; and
- (3) The Regional Deputy Director, Local Government.”

(12) Rule 12 reads as under :-

“12. Manner of draw of lots :-A draw of lots in respect of the applications received or pending under rule 11 shall be held by the Trust on a date to be fixed and

notified by it for this purpose. Separate draw shall be held in respect of the applications pending with the trust for more than five years ending with the commencement of these rules and in respect of fresh applications received in lieu of such pending applications.”

(13) As in Haryana the State of Punjab has also taken a policy decision which has been given due publication in Notification No. 5/537/3CII-88/1604, dated 31st January, 1989 laying down criteria for allotment of plots out of discretionary quota. The relevant part of the policy is as under :-

- “(i) those persons or their dependents who have suffered at the hands of terrorists or rioters;
- (ii) those persons who have distinguished themselves in different fields, e.g., Sports, Arts, Science, Education, Social Service etc. and have been recognised by the Government through State/National Awards.
- (iii) Army, Police, Para-military personnel who have received gallantry or bravery awards from the State Government or the Government of India and those civilians who have rendered meritorious service and have been recognised as such by the State Government/ Government of India.
- (iv) any other deserving cases at the discretion of the competent authority.”

(14) A perusal of Rules 8 and 12 of the Rules clearly shows that residential plots and multi-storeyed houses are to be sold either by draw of lots or by auction. An exception to this general rule is made under Rule 4 of the Rules which provides for reservation of residential plots in favour of various categories of persons. As noticed earlier, the Full Bench has upheld the power of the Government to make reservations for various defined categories, and groups of persons. At the same time, it has been held that the discretion conferred upon the Chief Minister has to be in consonance with the various provisions of the Constitution of India. In other words, no absolute discretion can vest in the Government for making either reservations or allotments.

The rules or the guidelines cannot lay down arbitrary standards for exercise of the discretion. The rules or the guidelines have to be well-defined, reasonable and must have a nexus with the object sought to be achieved. The reservation provided under Rule 4 of the Rules and the policy decision dated 31st January, 1989 would have to satisfy the criteria of reasonableness as required by Article 14 of the Constitution of India. In Anil Subharwal's case (*supra*), this Court had already upheld the reservation made in the State of Haryana in favour of Freedom Fighters, Political sufferers, Defence Personnel, Border Security Force Personnel etc., persons appointed to Public Service by the State Government and persons belonging to Scheduled Castes and Backward Classes. Therefore, it is not necessary to examine the constitutionality of the reservation provided in Rule 4(ii), (iii), (iv), (v) and (vi) of the Rules. Reservation made in the aforesaid provision is held to be valid and constitutional. In Anil Subharwal's case (*supra*), this Court took note of the land-mark decision in the case of **Padfield versus Minister of Agriculture, Fishery and Food (4)** where the House of Lords rejected the theory of absolute discretion. This Court also noticed the land-mark judgment of the Supreme Court in the case of **S. G. Jainsinghani versus Union of India (5)**. The observations of Ramaswami, J. which have already been noticed in Anil Subharwal's case (*supra*) may however, be noticed again for the purposes of this case which are as under :-

“41. *** *** *** ***

“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

(4) (1968) A.C. 997

(5) AIR 1967 S.C. 1427

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 versus Underlick** (1951-342 US 989 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, Lord Mansfield stated it in classic terms in the case of John Wilkes (1970-98 ER 327), means sound discretion guided by law. It must be governed by rule, no humour, it must not be arbitrary, vague and fanciful."

(15) After considering the whole gamut of case law, the Full Bench in Anil Sabharwal's case (*supra*) observed as follows :-

"44. Before bringing a close to this aspect of the matter, we may refer to a recent verdict of the Supreme Court in **New Delhi Public School and others, etc., versus HUDA and others etc., JT 1996(7) S.C. 103**. 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 versus HUDA., (1996-2) 113 P.L.R. 17**, 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 in public auction, allotment or otherwise. When public authority discharges its public 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 grab 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 on valid guidelines to exercise their discretionary powers, otherwise, the salutary 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.”

45. We, therefore, reject the argument of the learned counsel for the respondent that 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)*.”

(16) The reservations as contained in Rule 4 of the Rules have been justified by respondent no. 1 in the written statement as follows :-

“Para 16 : The contents of this para are wrong and denied. The Punjab Town Improvement (Utilisation of Land and Allotment of Plots) Rules 1983 have been framed under Section 73 of the Punjab Town Improvement Act, 1922. In Rule 4 of the Rules *ibid*, as reproduced in para 9 of the writ petition, reservation of plots to certain deserving category of Society viz. Members of Legislative Assembly, Members of Parliament, Freedom Fighters, Political sufferers, Defence Personnel, War Widows, Government Employees, Members of Scheduled Castes and Backward Classes etc. has been provided in lieu of their services to the society socio-economic conditions. The reservation, so provided, do not in any manner affect the rights of general public for whom sufficient number of plots are reserved which are allotted through draw of lots, after inviting applications. The rules are thus balanced and transparent and are so framed so as to cater to the persons of all sections of society.”

(17) The aforesaid reasoning is akin to the reasoning which is given by the State of Haryana in Anil Subharwal's case (*supra*). It was rejected by this Court holding as under :—

“49. The narrow issue which is now required to be considered is whether the criteria, namely, ‘distinguished and needy people in all walks of life’ can be treated as valid criteria. Whether 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% 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 sufferers, 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 sufferers, 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 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 in **E.P. Royappa versus State of Tamil Nadu, AIR 1974 SC 555; Meneka Gandhi versus Union of India AIR 1978 SC 597** and a host of other

decisions some of which have been relied upon by the Division Bench in **Seven Seas Educational Society and others versus Huda and others (supra) and in Hari Ram Singla versus State of Haryana, 1994 P.L.J. 230**. The arbitrariness 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 of allotment of plots under criteria of 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 persons. Even in the application filed in majority of over 8000 cases of allotments (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 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 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 or two kanals. Therefore, we have 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."

(18) In the present case, written statements have been filed on behalf of the Improvement Trusts pursuant to the orders passed by this Court on 30th May, 1996. The details of allotment of residential plots out of the discretionary quota of the Government have also been given. Reasons for making the allotment in individual cases is not discernible either from written statement filed by the respondents or from material placed on record. In view of the law laid down by this Court in Anil Subharwal's case (supra), it would not be possible to uphold the reservation provided in Rule 4 (i), (vii) and proviso 3 to the aforesaid rule. No justification is given for carving out a reservation for Members of Parliament representing the State of Punjab and the Members of the Punjab Legislative Assembly. 8% of the plots of all size i.e. 250, 300, 400 and 500 square yards are reserved for this category. This reservation has absolutely no nexus with the object sought to be achieved by the Improvement Trust Act. It is simply largesse bestowed on an individual after winning a parliamentary or State Assembly seat. This kind of reservation is abhorrent to the concept of equality enshrined under various provisions of the Constitution of India. 4% of the plots of 500 square yards only have been reserved for Non-Resident Indians. The term "Non-Resident Indians" is totally vague. No discernible reason has been assigned as to why a reservation has to be made for Non-Resident Indians. No criteria has been laid down for selecting the Non-resident Indians candidate for allotment of the plot. Some of the richest people living in this country, are officially "Non-Resident Indians". Conversely the term "Non-Resident Indians" would also include some of the richest indians living abroad. Allotment of these plots under the nomenclature of the "Non-Resident Indians" is wide open to abuse and profiteering. It has been noticed by this Court in Anil Sabharwal's case (supra) that taking advantage of the vague and arbitrary criteria i.e. distinguished and needy a vast majority of applicants had secured big or small plots for themselves. None had distinguished themselves in any walk of life; nor were they needy. Similar is the situation in the allotment of plots in Punjab. The lists attached with various written statements show that a large number of persons have been allotted plots in Urban Estates which are far away from their residential area. The list attached by PUDA shows that large number of persons have been allotted plots in various Urban Estates in Punjab, although they are clearly stated to be residents of Chandigarh, New Delhi or other large cities in Punjab. It clearly goes to show that the allotment of the plots have not been made on the basis of any discernible criteria.

19. 5% of the plots have been reserved to be allotted by the Trust with approval of the Government to such category or class of persons and in the manner as the Government may from time to time keeping in view the socio-economic condition of such persons, satisfy. The aforesaid discretion is wholly unguided. It is unlimited. It leaves the Government to take the decision keeping in view the socio-economic condition of the persons specified. The only criteria which has been placed on the record is the policy contained in the Notification No. 5/537/3CII-88/1604 dated 31st January, 1989. If the discretion is to be limited only to categories No. 1, 2 and 3, the reservation would have to be held to be valid. Clause (i) of this policy seeks to ameliorate the suffering of the dependents of persons who may have suffered at the hands of Terrorists or rioters. It appears that this category was created to give some protection to the sufferers whose family had suffered during the period of militancy in Punjab and to the families of those persons who suffered in the riots in 1984. Reservation similar to those contained in categories No. 2 and 3 made by State of Haryana have already been upheld by this Court in Anil Subharwal's case (supra). Therefore, the same would also have to be held to be valid. But the power granted to the Government under Clause (iv) is wholly arbitrary and is capable of abuse. We, therefore, hold that the discretionary quota of 5% as contained under proviso No. 3 to rule 4 is vague and arbitrary, and therefore, violative of Article 14 of the Constitution of India. We also hold that the power contained in Clause (iv) of the Notification No. 5/537/3CII-88/1604 dated 31st January, 1989 gives the competent authority unbridled discretion and is, therefore, violative of Article 14 of the Constitution of India. We, therefore, hold that the allotment of residential plots made under the aforesaid provisions i.e. to Members of Parliament and Members of the Punjab Legislative Assembly; Non-Resident Indians and under the discretionary quota with effect from 31st January, 1989 are illegal and void. The allotments are hereby quashed. This shall be subject to the following :—

- (i) The allotments made under Rule 4(i), (vii) and Proviso 3 of the Rules shall remain and the bona fide purchasers who have already raised construction of the houses and buildings as per the plans sanctioned by the concerned Improvement Trust/PUDA before the date of the publication of the Notice of this petition dated 6th June, 1996. However, the concerned Improvement

Trust/PUDA shall issue general instructions restraining alienation of the constructed houses/building to third parties by the allottees/transferees for a period of next five years.

- (ii) 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 has 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 and Kashmir and elsewhere in the country and the civilians who have been affected by the terrorists activities in the States of Punjab and Jammu and Kashmir and elsewhere in the country shall be reviewed by a committee.
- (iii) The persons falling in 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.
- (iv) Within one month from today the Government of Punjab should appoint a committee headed by a retired Judge of the High Court preferably from a State other than the State 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 concerned Improvement Trust/PUDA shall regularise those allotments for which recommendations are made by the committee.
- (v) If the Improvement Trust/PUDA finds that any of the allottees has submitted false information to the PUDA, then allotment in favour of such person shall necessarily be cancelled and the Government shall take appropriate action for prosecution of such applicant.

- (vi) The Government of Punjab 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.
- (vii) The Government/concerned Improvement Trust/PUDA shall immediately cause publication of the notice in the two newspapers having wide circulation in the States of Punjab and Haryana and two newspapers having 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 persons. If the Improvement Trust/PUDA fails to return the amount within two months of the making of the application then it shall pay interest @ 15 per cent per annum.
- (viii) The cases of those covered by the exception clause mentioned above shall be referred to the Committee alongwith the entire record and the final decision be taken on the recommendation of the Committee.
- (ix) The plots which shall become available due to the quashing of the allotments made by the concerned Improvement Trust/PUDA shall be disposed of by it as per the existing policy.
- (x) The Government shall ensure full compliance of these directions by its own officials of the PUDA.

20. The writ petition is allowed in the manner indicated above.

R.N.R.