

**Court No. - 32**

**Case :-** WRIT - C No. - 59990 of 2010

**Petitioner :-** Udham Singh Yadav

**Respondent :-** State Of U.P. Thru' Principal Secy., Industries & Anr.

**Counsel for Petitioner :-** H.N. Singh, Aklank Jain, Som Veer

**Counsel for Respondent :-** C.S.C., Ashok Bhatnagar, J.P. Pandey, M.C. Chaturvedi, Manish Goyal, R.P. Singh, Ramanand Gupta, Ramanand Yadav

**Hon. Rakesh Tiwari, J.**

**Hon. Shashi Kant, J.**

1. Heard Sri H.N. Singh, counsel for the petitioner, Sri Manish Goyal appearing for respondent no. 6 and Sri Som Narain Mishra, standing counsel appearing for State and perused the record.

2. An application for exemption from personal appearance has been moved today by Smt. Neera Sharma, Commissioner/Director, Industries, U.P., Kanpur-respondent no. 3. Since matter has finally been heard today, no order is required to be passed on the said application.

3. By this petition under Art. 226 of the Constitution, the petitioner alleges discrimination, arbitrariness and favouritism on the part of respondent-State authorities in the matter of allotment of a plot measuring 244 feet x 200 feet situated in Industrial Estate, district Firozabad and has prayed for quashing of the order dated 1.7.2010 passed by the Principal Secretary, Laghu Udyog Anubhag, U.P., Lucknow and order dated 3.7.2010 passed by General Manager, District Industries Centre, Firozabad, by which the aforesaid plot has been allotted in favour of respondent no. 6 as well as order dated 9.9.2010 by which his representation for allotment has been rejected.

4. Briefly stated case of the petitioner is that he moved an application on 11.9.1985 on prescribed proforma to the General Manager, District Industries Centre, for allotment of plot measuring 62500 sq. feet. According to the petitioner, though a number of plots were allotted to different persons from time to time but his application was not considered and was kept pending. Reminders to the authority concerned were also given by him in that regard, copies whereof have been appended with the writ petition. Raising his grievance as aforesaid, the petitioner thereafter again moved an application dated 28.3.2006 to the Commissioner/Director, Industries, U.P., Kanpur, stating that his

application is pending since the year 1985 but he has not been allotted the plot though recommendation was made by the District Industries Centre, Firozabad in his favour on 16.12.2005. It is averred in the petition that in the meantime respondent no. 6 moved an application directly to the Ministry of Small Scale, Industries, U.P., Lucknow on 20.3.2010 praying for allotment of open space plot area 244 x 200 sq. feet in the aforesaid industrial estate, whereupon a report was called by the Special Secretary from General Manager, District Industries Centre, Firozabad, who submitted his report through District Magistrate, Firozabad on 9.4.2010 recommending for grant of permission for allotment of the plot in favour of respondent no. 6. The petitioner in the meantime had filed a petition being Writ Petition no. 35371 of 2010 for the purpose, which was finally disposed of by the High Court on 17.6.2010 with a direction to respondent no. 2-Commissioner/Director, Industries, Kanpur to decide the petitioner's representation dated 17.4.2008 within a period of two months by a speaking and reasoned order. Thereafter, the Principal Secretary, Small Scale Industries, U.P., Lucknow vide his letter dated 1.7.2010 granted permission for allotment of the plot reserved for open space measuring 244 x 200 feet in favour of respondent no. 6. Accordingly, by the impugned order dated 3.7.2010 of General Manager, District Industries Centre, Firozabad the aforesaid plot was allotted to respondent no. 6. However, the petitioner's representation for allotment of the said plot was rejected by respondent no. 2-Director, vide order dated 9.9.2010.

5. Sri H.N. Singh, counsel for the petitioner contends that action of the respondents in allotting the plot reserved for open space in the industrial estate in favour of respondent no. 6 is most arbitrary and wholly discriminatory. According to him, the allotment of the plot for industrial purposes by any public body is to be made only after proper publication/advertisement in newspaper making offer to public at large and not secretly in favour of any person but in the present case allotment was made in favour of respondent no. 6 secretly without any publication in any news paper inviting offer from the public at large. He further submits that petitioner had already made application for allotment in the year 1985 in Industrial Estate but his application was kept pending and despite reminders and requests from time to time, no allotment was made. It is also submitted that on the petitioner's application to the Commissioner/Director, Industries, a report was called by the Director

from General Manager vide order dated 28.11.2005 and report was submitted by the General Manager on 16.12.2005 pointing out that the plot measuring 244 x 200 sq. feet earmarked for open space may be allotted in favour of the petitioner but inspite of such recommendation, allotment was not made in favour of the petitioner.

6. Counsel for the petitioner has vehemently argued that State Govt. while granting permission for converting the plot reserved for open space for allotment vide order dated 1.7.2010 in favour of respondent no. 6, has discriminated the petitioner as the same request of the petitioner was refused by the State Govt. and said decision was communicated by the Special Secretary through its letter dated 13.1.2006 to Sri Mohan Dev Shankhwar, M.L.A. and in such circumstances there is no justification on the part of the respondents in granting such permission in favour of respondent no. 6. It is urged by the counsel that in view of the fact that State Government has granted permission for allotment of open space plot, the order whereby similar permission was refused in case of petitioner is liable to be set aside and the order dated 1.7.2010 granting permission in favour of respondent no. 6, is also to be quashed.

7. It is next submitted by the counsel for petitioner that as per the principle of first come first serve, the permission for allotment of the plot reserved for open space was first to be granted in favour of the the petitioner whose application for allotment for the plot in question was pending since 1985. According to him, entire formality was completed in haste as respondent no. 6 has moved application dated 20.3.2010 directly to the Ministry of Industries and by the impugned order dated 3.7.2010 allotment was made in his favour within a period of less than four months.

8. Sri Some Narain Mishra, standing counsel as well as Sri Manish Goyal, counsel for respondent no. 6 have defended the allotment made in favour of respondent no. 6 to the best of the ability at their command. However, in the counter affidavit filed in this case by the General Manager, District Industries Centre, Firozabad, though it has been stated that after creation of district Firozabad, the petitioner neither submitted any application for allotment of industrial plot nor any such advertisement was made by the department in any newspaper. However, in the same counter affidavit in reply to paragraph no. 10 of the writ petition wherein the petitioner has asserted that on his application addressed to the Commissioner/Director, a

report was called by the Director from the General Manager, who vide his report dated 16.12.2005 recommended for allotment of plot in favour of the petitioner, the reply given in paragraph no. 10 of the counter affidavit is that contents of paragraph no. 10 of the writ petition need no comments.

9. It has further been stated in paragraph no. 14 of the aforesaid counter affidavit that on the application of respondent no. 6 for allotment of open industrial plot, the Special Secretary vide his letter dated 30.3.2010 has sought a report from the District Magistrate who happens to be the Chairman of the Udyog Bandhu and in pursuance of the same, the District Magistrate has made a recommendation in favour of respondent no. 6 and in view of the said recommendation, the Principal Secretary vide his order dated 1.7.2010 granted permission for allotment of plot in favour of respondent no. 6 which is perfectly just and legal and there is no illegality in it. It is further submitted that at present by means of G.O. dated 6.8.2013, the right to allot open space/industrial plot is vested with the Commissioner and Director, Industries, U.P., Kanpur wherein it is specifically provided that the said land will be allotted as per procedure laid down in the G.O. dated 30.4.1992 through authorised committee.

10. On behalf of respondent no. 6, it has been submitted that respondent no. 6 is running as many as five units in the town of Firozabad and with a view to further expansion of their works and to provide employment to a large number of people as well as to enhance revenue to the Govt., the respondent no. 6 made an application on 20.3.2010 to the State Govt. for allotment of a suitable space which he was able to identify in the industrial estate at Firozabad measuring 244 x 200 sq. feet and his application was accepted, duly processed by the State Govt. and thereafter allotment order was issued in his favour on 3.7.2010. It is further submitted that respondent no. 6 has invested huge amount for constructing industrial shed and boundary wall as well as has incurred expenses for electricity and other infrastructural facilities necessary for the working of his industry.

11. After hearing the submissions advanced on behalf of learned counsel for the parties and on perusal of record, we find that by his letter dated 13.1.2005 appended as annexure no. 10 to the writ petition, the Deputy Secretary, U.P. Shashan, had informed Sri Mohan Dev Shankhwar, M.L.A. that land sought to be allotted by the petitioner is an open land which is not included in the plots to be allotted and the same is reserved for raw

material siding and park. It was further stated in the said letter that since a dispute regarding allotment of the land is pending in Court, therefore, it is not possible to allot the said land in favour of any person. It is further apparent from the record that petitioner's application was earlier in time than the application moved on behalf of respondent no. 6 for the same land and that application dated 20.3.2010 of respondent no. 6 was directly submitted in the concerned Ministry, whereupon permission was granted by the State Government and as a consequence allotment was made in favour of respondent no. 6 of the open land, regarding which petitioner's request had been earlier rejected as is apparent from the letter dated 13.1.2006 of the Deputy Secretary appended as annexure no. 10 to the writ petition.

12. It is relevant to point out here that by order dated 17.6.2010 disposing of the petitioner's earlier petition, the respondents were directed by the High Court to decide petitioner's representation dated 17.4.2008 in regard to allotment of the same plot. By that time, recommendations dated 9.4.2010 and 13.4.2010 had already been made by the General Manager and District Magistrate, Firozabad respectively in favour of respondent no. 6 whose application for allotment dated 20.3.2010 was submitted directly in the concerned Ministry. Accepting the aforesaid recommendations, permission was granted in favour of respondent no. 6 at the Govt. level and accordingly allotment was made in favour of respondent no. 6 by the impugned orders dated 1.7.2010 and 3.7.2010 whereas representation of the petitioner was rejected by a subsequent order dated 9.9.2010.

13. This fact is also not disputed by the respondents rather it is admitted in paragraph no. 10 of the counter affidavit that the General Manager, vide his report dated 16.12.2005 recommended for allotment of plot in question in favour of the petitioner. From facts stated above, it is apparent that petitioner was pursuing for allotment of the plot in question years before than the respondent no. 6. The Government order referred to and relied upon by the standing counsel being of subsequent date, has no application in the matter. It appears that the policy of first come and first serve has also not been followed while making allotment of the plot in question in favour of respondent no. 6.

14. In **Akhil Bhartiya Upbhokta Congress Vs. State of M.P. and others** ( 2011 (5) SCC-29), the Apex Court has ruled that allotment of land, grant

of quotas, permits etc. must be founded on a sound, transparent, discernible policy and the policy should also be made known to public by publication in Official gazette and other recognised modes of publicity and exercise of discretion should be uninfluenced by favouritism or nepotism. It is further held in the aforesaid case that policy of allotting land on basis of application made by individuals dehors an invitation or advertisement by State, is liable to be treated as arbitrary, discriminatory and an act of favouritism violating soul of equality clause in Art. 14 of the Constitution.

15. From the materials available on record and in the light of ratio laid down by the Apex Court in the case of Ahikl Bhartiya Upbhokta Congress (supra), there is force in the submissions made by Sri H.N. Singh, learned counsel for the petitioner. Since there has been no compliance of the directions issued in Akhil Bhartiya Upbhokta Congress case in the matter of instant allotment, in our considered view, the allotment made in favour of respondent no. 6 cannot be sustained in the eyes of law in the facts and circumstances of the case.

16. In view of what has been stated above, while setting aside the orders impugned dated 1.7.2010, 3.7.2010 and 9.9.2010 appended as annexure no. 14,15 and 16-A respectively to the writ petition, we allow this petition with direction to the respondents to reconsider the matter for allotment of the plot in question in accordance with law keeping in view the ratio laid down in the case of Akhil Bhartiya Upbhokta Congress (supra), expeditiously within a period of two months from the date of presentation of a certified copy of this order. No order as to costs.

**Order Date :- 10.3.2016**

SNT/