

**IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION**

WRIT PETITION (CIVIL) NO. 150 OF 1997

NOIDA Entrepreneurs Association	Petitioner
Versus	
NOIDA & Ors.	Respondents

J U D G M E N T

Dr. B.S. CHAUHAN, J.

1. The Legislature of Uttar Pradesh enacted the U.P. Industrial Area Development Act, 1976, (hereinafter referred to as 'Act 1976') for the purpose of proper planning and development of industrial and residential units and to acquire and develop the land for the same. The New Okhla Industrial Development Authority (hereinafter referred to as the 'Authority'), has been constituted under the said Act, 1976. The object of the Act had been that genuine and deserving entrepreneurs may be provided industrial and residential plots and other necessary amenities and facilities. Thus, in order to carry out the aforesaid object, a new township came into existence. All the activities in the Authority had to be regulated in strict adherence to all the statutory provisions contained in relevant Acts,

Rules and Regulations framed for this purpose. However, from the very inception of the township, there has always been a public hue and cry that officials responsible for managing the Authority are guilty of manipulation, nepotism and corruption. Wild and serious allegations of a very high magnitude had been leveled against some of the officials carrying out the responsibilities of implementing the Act and other statutory provisions.

2. The instant writ petition was originally filed seeking a large number of reliefs including the allotment of industrial and residential plots to the members of the petitioner-Association and a large number of officials who had acted as Chief Executive Officers (hereinafter referred to as 'CEO') of the Authority had been impleaded therein as respondents. However, considering the fact that relief for personal benefits of the members had been sought and alternative means for seeking the redressal of grievances in that respect were available, the petitioner made a request to the Court that its petition may be treated as a public interest litigation (in short 'PIL') for a limited purpose. This Court vide order dated 21.4.1997 treated the matter as PIL and issued show cause notice only to the extent of the following reliefs:

“(1) Issue writ of mandamus and/or any appropriate writ and direct the CBI to investigate into all the land allotments and conversion of lands made by the NOIDA during the past 10 years.

(2) Issue an appropriate writ and directions and frame guidelines for allotment of lands by the NOIDA.”

3. Dr. Rajeev Dhavan, learned senior counsel who had been appearing for the petitioner in the matter was requested by this Court vide order dated 29.8.1997 to act as Amicus Curiae.

The matter was heard several times by this Court and after scrutinising of a very large number of documents, the Court was of the opinion that the allegations made in the petition required investigation. Thus, vide order dated 15.12.1997, this Court issued notice to the State of U.P. to indicate its consent to an investigation being made by the Central Bureau of Investigation (hereinafter referred to as CBI), in view of the very serious nature of the allegations. The State of U.P. had also received similar complaints and thus, it constituted a Commission of Inquiry headed by Justice Murtaza Hussain, a former Judge of Allahabad High Court to enquire about the same. The Commission completed its task and submitted its report. The said report was also placed before this Court in the first week of January 1998. As the report indicated, prima facie view of the

Commission, that Mrs. Neera Yadav, IAS, respondent no.7 had committed serious irregularities and illegalities, a copy of the report of the Commission was also directed to be given to her and this Court vide order dated 6.1.1998 asked the State of U.P. as to whether this report had been accepted by the State Government and, if so, what was the likely follow up measure pursuant thereto. The State Government submitted a reply in response to the said show cause pointing out that the State Government proposed to initiate disciplinary proceedings against her.

4. In view of the material on record, this Court expressed tentative opinion that it would be more appropriate that the matter is investigated by the CBI and if such investigation discloses the commission of criminal offence(s), the persons found responsible should be prosecuted in a criminal court. However, considering the fact that allegations of a very high magnitude and gravity had been made against a large number of officials, this Court wanted the CBI to investigate first the cases against Mrs. Neera Yadav, IAS, respondent no.7, as is evident from the proceedings dated 20.1.1998, which reads as under:

“For the time being, we are directing the CBI to conduct an investigation in respect of the

irregularities in the matter of allotments and conversions of the plots.....

Shri G.L. Sanghi, the learned senior counsel appearing for respondent no.7 states that though the respondent no.7 does not admit that she has committed any irregularity in the matter of allotment or conversion of plots in NOIDA but according to respondent no.7 **there are other persons who might have committed such irregularity and she seeks leave to file an affidavit in this regard. She may file an affidavit giving particulars of such irregular allotments** and in the event of such affidavit being filed **further directions in that regard will be given.**” (Emphasis added)

This Court by the same order also issued certain directions with regard to irregular allotments and conversion of plots which had been found to have been made in the report of Justice Murtaza Hussain Commission.

5. In view of the above referred to order, Mrs. Neera Yadav, IAS, respondent no.7 filed her affidavit with regard to irregularities committed by other officers, namely, Shri P.K. Mishra, respondent no.5; Shri Bijendra Sahay, respondent no.8; Shri Ravi Mathur, respondent no.4; and one Shri S.C. Tripathi. The affidavit filed by Mrs. Neera Yadav, IAS, respondent no.7 was considered by this Court on 24.2.1998 and took note of the fact that in respect of the

same/similar allegations made against Shri Bijendra Sahay, respondent no.8, the State Government had already accepted his explanation. So far as the allegations made against Shri Ravi Mathur, IAS, and Shri P.K. Mishra, respondent nos. 4 and 5 respectively and one Shri S.C. Tripathi are concerned, the State Government vide order dated 18.7.1997 had referred the same to the Chairman of the Board of Revenue for inquiry and the same was pending.

6. In the meanwhile, Shri Mahinder Singh Yadav, husband of Mrs. Neera Yadav, IAS, respondent no.7 and one Shri Bali Ram, Ex. Member of Parliament also filed complaints against the aforesaid officials in 1996-1997, which were also referred to the Chairman, Board of Revenue for inquiry.

7. One Shri Naresh Pratap Singh also filed a complaint against some officers including Shri Ravi Mathur, IAS, respondent no.4 on 27.6.1997 before the Lok-Ayukta of U.P. However, the Lok-Ayukta vide letter dated 21.4.1998 to the State Government expressed his inability to conduct an enquiry against Shri Ravi Mathur, IAS, respondent no.4 and suggested that the matter be referred to the CBI.

8. This Court vide order dated 11.1.2005 constituted a Commission headed by Justice K.T. Thomas to examine a large number of issues, including as to why disciplinary proceedings had been dropped by the State of U.P. against several officials who had been impleaded as respondents in this case. The Commission submitted the report dated 24.12.2005, and after considering the same, this Court vide order dated 8.12.2008 closed the proceedings against Shri Bijendra Sahay, respondent no.8. One Shri S.C. Tripathi also stood exonerated in earlier proceedings.

In view of the order passed by this Court, the CBI conducted the enquiry against Mrs. Neera Yadav, IAS, respondent no.7 and filed a charge sheet against her. She was put on trial and proceeded with in accordance with law.

9. Thus, in view of the aforesaid factual matrix, this Court has to examine as to whether any action is warranted against Shri Ravi Mathur, IAS, respondent no.4 and if so, whether it is permissible to initiate the disciplinary proceedings against him as he reached the age of superannuation and has retired and the alleged misconduct had been committed by him in 1993-94, and as to whether the misconduct is of such a grave nature that it warrants the criminal prosecution and

if so, what should be the agency which may be entrusted with the investigation and prosecution.

10. Shri K.T.S. Tulsi, learned senior counsel appearing for respondent no.7 submitted that on similar allegations, this Court had directed CBI to initiate criminal proceedings against his client and criminal prosecution has been launched and ended in logical conclusion, thus, there could be no justification not to initiate the similar proceedings against Shri Ravi Mathur, IAS, respondent no.4. Not initiating the proceedings on the similar or more grave charges would amount to treating the said respondent no.7 with hostile discrimination. The disciplinary proceedings cannot be initiated against him in view of delay and laches as the statutory rules applicable do not permit such a course at such a belated stage. The criminal prosecution can easily be launched. The matter requires investigation as to whether the said respondent no.4 had committed an offence under the provisions of Prevention of Corruption Act, 1988 (hereinafter called the Act 1988).

11. Dr. Rajeev Dhavan, learned senior counsel/Amicus Curiae would submit that the gravity of allegations made against the said

respondent no.4 is of such a high magnitude that it warrants the same treatment as given to Mrs. Neera Yadav, IAS, respondent no.7. Dr. Dhavan has taken us through all the proceedings including the reports of the Chairman, Board of Revenue and K.T. Thomas Commission and submitted that it is a fit case directing the CBI to conduct enquiry against the respondent no.4. However, Dr. Rajeev Dhavan has raised serious objection in respect of intervention of the respondent no. 7 and opportunity of hearing accorded to Shri K.T.S. Tulsi, learned senior counsel on her behalf that in a case of this nature the respondent no.7 had no locus standi and right to raise any grievance whatsoever.

12. Shri Rakesh Dwivedi, learned senior counsel appearing for respondent no.4, has vehemently opposed the initiation of disciplinary proceedings or criminal prosecution on the ground that the Authority did not suffer any financial loss. There is nothing on record to show that the said respondent indulged in corruption, thus, the provisions of the Act 1988 were attracted. The said respondent had acted in good faith. The disciplinary proceedings cannot be initiated, being time barred. All the allegations had been made against the said respondent no.4 at the behest of respondent no.7, thus, suffers from mala fide and bias. The said respondent had paid the transfer charges only once to

the tune of Rs.1.80 lacs. The second conversion had subsequently been cancelled by the respondent no.7 herself. Due to pendency of this case, the said respondent could not get the physical possession of any of the plots. The change of user of the land in Sector 32 was made in good faith. More so, such a change was cancelled and the green area was restored by the respondent no.7 herself. The contract given by the respondent no.4 to certain contractors had been at the rate on which they had been working earlier. Thus, the Authority did not suffer any loss whatsoever.

13. Before we proceed with the case on merits, we would like to make it clear that Mrs. Neera Yadav, IAS, respondent no.7, had been given an opportunity by this Court vide order dated 20.1.1998 to file her affidavit disclosing the delinquency committed by other officers. In pursuance of the said order, she submitted her affidavit. Therefore, it is not possible for us at such a belated stage to deny her the right of hearing and ignore the submissions made by her counsel, Shri K.T.S. Tulsi. (vide: **V.S. Achuthanandan v. R. Balakrishna Pillai & Ors.**, (2011) 3 SCC 317).

14. We have considered the rival submissions made by learned counsel for the parties and perused the record.

15. The services of Shri Ravi Mathur, IAS, respondent no.4 stood governed by All India Services (Death-cum-Retirement Benefits) Rules, 1958. Rule 6(b), thereof, provides that in case the delinquent had already retired, the proceedings shall not be instituted against him without the sanction of the Central Government and shall be in respect of an event which took place not more than four years before the institution of such proceedings. Thus, it is evident that law does not permit holding disciplinary proceedings against Shri Ravi Mathur, IAS, respondent no.4 at this belated stage and this view stands fortified by the judgments of this Court in **B.J. Shelat v. State of Gujarat & Ors.**, AIR 1978 SC 1109; **State Bank of India v. A.N. Gupta & Ors.**, (1997) 8 SCC 60; **State of U.P. & Ors. v. Harihar Bholenath**, (2006) 13 SCC 460; **UCO Bank & Anr. v. Rajinder Lal Capoor**, AIR 2007 SC 2129; **Ramesh Chandra Sharma v. Punjab National Bank & Anr.**, (2007) 9 SCC 15; and **UCO Bank & Anr. v. Rajinder Lal Capoor**, AIR 2008 SC 1831.

16 So far as the initiation of criminal proceedings is concerned it is governed by the provisions of Code of Criminal Procedure, 1973 (hereinafter referred to as Cr.P.C.). Section 468 thereof puts an embargo on the court to take cognizance of an offence after expiry of

limitation provided therein. However, there is no limitation prescribed for an offence punishable with more than 3 years imprisonment. Section 469 declares as to when the period of limitation would start. Sections 470-471 provide for exclusion of period of limitation in certain cases. Section 473 enables the court to condone the delay provided the court is satisfied with the explanation furnished by the prosecution or where the interest of justice demands extension of the period of limitation.

This Court in **Japani Sahoo v. Chandra Sekhar Mohanty**, AIR 2007 SC 2762, dealt with the issue and observed as under:

“14. The general rule of criminal justice is that a crime never dies. The principle is reflected in the well-known maxim *nullum tempus aut locus occurrit regi* (lapse of time is no bar to Crown in proceeding against offenders)..... It is settled law that a criminal offence is considered as a wrong against the State and the Society even though it has been committed against an individual. Normally, in serious offences, prosecution is launched by the State and a Court of Law has no power to throw away prosecution solely on the ground of delay. Mere delay in approaching a Court of Law would not by itself afford a ground for dismissing the case though it may be a relevant circumstance in reaching a final verdict.”

17. The aforesaid judgment was followed by this Court in **Sajjan Kumar v. Central Bureau of Investigation**, (2010) 9 SCC 368.

18. Thus, it is evident that question of delay in launching criminal prosecution may be a circumstance to be taken into consideration in arriving at a final decision, but it cannot itself be a ground for dismissing the complaint. More so, the issue of limitation has to be examined in the light of the gravity of the charge.

19. Thus, we have to examine as to whether the said respondent could be tried for commission of an offence, if any, under the provisions of the Act, 1988.

Section 13 thereof, reads:

“Criminal misconduct by a public servant.- (1)
A public servant is said to commit the offence of criminal misconduct,-

(b)

(c) if he dishonestly or fraudulently misappropriates or otherwise converts for his own use any property entrusted to him or under his control as a public servant or allows any other person to do so; or

(d) if he, -

(i) by corrupt or illegal means, obtains for himself or for any other person any valuable thing or pecuniary advantage; or

(ii) **by abusing his position as a public servant, obtains for himself or for any**

other person any valuable thing or pecuniary advantage; or

- (iii) while holding office as a public servant, **obtains for any person any valuable thing or pecuniary advantage without any public interest.**” (Emphasis added)

20. Shri Ravi Mathur, IAS, respondent no.4 had been the CEO, NOIDA from July 1993 to 9.1.1994 and the CEO, Greater NOIDA from 10.1.1994 to 26.1.1995. Altogether, there had been 14 allegations against him which the Chairman, Board of Revenue had examined. The findings recorded by the Chairman, Board of Revenue were also placed before Justice K.T. Thomas Commission. However, at the time of arguments, Dr. Rajeev Dhavan, learned Amicus Curiae has submitted that there are three major allegations in respect of which this Court must direct the CBI enquiry. He has drawn our attention to the findings recorded by the Chairman, Board of Revenue on allegation nos. (iv), (ix) and (xiii) which are as under :

Allegation No. (iv) :-

Shri Ravi Mathur allotted contracts worth Rs.10 crores to different contractors on selection basis without inviting tenders.

Findings:

- (i) The award of the contract to M/s. Anil Kumar & Co., was approved by the CEO. The argument that the usual

process was not followed on account of urgency is not acceptable. (para 1.4.3.2)

(ii) The award of the contract to M/s. Techno Construction Co. was a pre-determined decision. No satisfactory explanation why this company only was selected. (para 1.4.3.3.)

(iii) The notes in the file for the award of the contract to M/s. Anil Kumar & Co. in Sector Gamma were tailor made and the urgency projected cannot be accepted. (para 1.4.3.4)

(iv) There was no urgency warranting the award of contract to Mr. J.K. Jain, which was approved by the CEO also. (para 1.4.3.5)

(v) The proposal to award work to M/s. Fair Deal Engineers was faulty and the urgency clause was not well defined. The note was approved by the CEO. (para 1.4.3.6)

(vi) The argument of urgency advanced is not acceptable in some cases (para 1.4.4). At least in one case there was not even a necessity to award the work. (para 1.4.4)

(vii) No cogent reasons were given in the note file for selecting a particular contractor. Some of the notes appear to be tailor made. The works were got done by the Manager/Senior Manager through hand picked contractors without inviting tenders and without following financial norms. (para 1.4.4.)

Allegation No. (ix):

Shri Ravi Mathur caused financial loss to NOIDA by not paying conversion charges with respect to the plot allotted to him. He initially asked for conversion from Sector 35 to Sector 27 but since he did not deposit the required amount the offer of conversion was withdrawn. Subsequently he applied for conversion from Sector 35 to Sector 44.

Findings:

The only conversion which took place was from Sector 35 to Sector 44 for which conversion charges were deposited. It is a matter under the exclusive competence of the Authority and its Chief Executive as to whether it was to be treated as two conversions or one conversion only. It appears that it was a subtle and fine way to help a fellow officer. In any event Smt. Neera Yadav had approved the second application on 26.10.1994. The file regarding the allotment and conversion of plot of Shri Ravi Mathur is not traceable in NOIDA but that is for the Authority to take appropriate action. (para 1.9.5)

Allegation No. (xiii):

A 13 hectare City Park situated near Sectors 24, 33 and 35 in NOIDA was destroyed and a new residential Sector 32 in violation of the Master Plan was carved out comprising of 200 plots.

Findings:

- (i) The procedure as prescribed in the 1991 Regulations was not followed while making the change of land use. (para 1.13.7)
- (ii) The decision of land use change was based on logic but the proposal should have been put up before the Board. The then Chief Architect Planner did not point out this legal requirement and failed in his primary duty in advising the ACEO and CCEO. (para 1.13.7)
- (iii) There was no urgency for the development work in this sector. The development work was started and awarded without following the tender procedure in flagrant violation of established procedure for which the then Chief Project Engineer and the then General Manager (F) are responsible. (para 1.13.7)
- (iv) The Board has taken its duties casually and there was no serious effort to check, analyse and advise. (para 1.13.7)

21. So far as these allegations are concerned, it is evident from the record that M/s Anil Kumar & Co. had been allotted originally the work on the basis of tender for Rs. 2.75 crores in Sector 'Gamma' in Greater NOIDA, in connection with the construction of water drains. However, they had been awarded additional work by Shri Ravi Mathur, IAS, respondent no. 4, worth Rs.3.75 crores on a "deviation basis". In fact, awarding such work cannot be termed as an 'addition' or 'additional work' because the work is worth Rs.1 crore more than the amount of original contract. In such a fact-situation, even if there had been no financial loss to the Greater NOIDA, indisputably, the additional work for such a huge amount had been awarded without following the procedure prescribed in law. More so, there is nothing on record to show as to whether the said contractor M/s Anil Kumar & Co. was eligible to carry out the contract worth Rs.6.50 crores. Awarding the contract under the garb of so-called extension, amounts to doing something indirectly which may not be permissible to do directly. Admittedly, such a course of action is not permissible in law.

22. It is a settled proposition of law that whatever is prohibited by law to be done, cannot legally be affected by an indirect and circuitous contrivance on the principle of "*quando aliquid prohibetur*,

prohibetur at omne per quod devenitur ad illud”, which means” “whenever a thing is prohibited, it is prohibited whether done directly or indirectly”. (See: **Swantraj & Ors. v. State of Maharashtra**, AIR 1974 SC 517; **Commissioner of Central Excise, Pondicherry v. ACER India Ltd.**, (2004) 8 SCC 173; and **Sant Lal Gupta & Ors. v. Modern Co-operative Group Housing Society Ltd. & Ors.**, JT (2010) 11 SC 273).

23. In **Jagir Singh v. Ranbir Singh & Anr.**, AIR 1979 SC 381, this Court has observed that an authority cannot be permitted to evade a law by “shift or contrivance.” While deciding the said case, the Court placed reliance on the judgment in **Fox v. Bishop of Chester**, (1824) 2 B &C 635, wherein it has been observed as under:–

“To carry out effectually the object of a statute, it must be construed as to defeat all attempts to do, or avoid doing in an indirect or circuitous manner that which it has prohibited or enjoined.”

24. The second work had been allotted to M/s Techno Construction Co. worth Rs.1.00 crore without inviting fresh tenders etc., on the ground that earlier a contract for execution of similar work i.e. construction of road had been awarded to it. In view of the fact that there was no urgency, such a contract should not have been awarded.

Undoubtedly, the respondent no.4 is guilty of proceeding in haste and that amounts to arbitrariness.

25. While dealing with the issue of haste, this Court in the case of **Bahadursinh Lakhubhai Gohil v. Jagdishbhai M. Kamalia & Ors.**, (2004) 2 SCC 65, referred to the case of **Dr. S.P. Kapoor v. State of Himachal Pradesh & Ors.**, AIR 1981 SC 2181 and held that:

“.....when a thing is done in a post-haste manner, mala fide would be presumed.”

26. In **Zenit Mataplast Private Limited v. State of Maharashtra & Ors.**, (2009) 10 SCC 388, this Court held :

“Anything done in undue haste can also be termed as arbitrary and cannot be condoned in law”.

27. Thus, in case an authority proceeds in undue haste, the Court may **draw an adverse inference** from such conduct. It further creates a doubt that if there was no sufficient reason of urgency, what was the occasion for the respondent no.4 to proceed in such haste and why fresh tenders had not been invited.

28. It is evident from the record that the respondent no.4 had originally been allotted plot no.118, Sector-35 measuring 360 sq.

meters which was converted to plot no.G-25, Sector-27 measuring 392 sq. meters. However, as the respondent no.4 did not deposit the required charges the said order of conversion stood withdrawn. By subsequent conversion, respondent no.4 got plot no.A-15 in Sector-44. Thus, two conversions had been made on different dates. However, he paid the transfer charges only once to the tune of Rs.1.80 lacs. It is alleged that by first conversion, the respondent no.4 not only got the plot in a better location, but also a plot of bigger size. Second allotment was further, as alleged, in a far better geographical position.

29. There is no provision under the Act 1976 or Regulation 1991 for conversion. It is rather governed by Office Order No.4070/NOIDA/DCEO/92 dated 3.7.1992. The relevant part thereof basically provides that conversion was permissible only in case of residential plots. Relevant part thereof reads as under:

“3. In case of residential plots, only cancelled and surrendered properties shall be offered for conversion.....

The details of availability of properties shall be available in the office of Dy. Chief Executive Officer.

xx xx xx

xx xx xx

6. All expenses pertaining to conversion such as conversion charges, locational benefit charges,

stamp duty, registration charges etc. shall be borne by the allottee.

XX XX XX

8. Conversion shall not be allowed more than once to any allottee.

XX XX XX

11. Chairman-cum-Chief Executive Officer may relax the above guidelines in exceptional circumstances.”

30. The aforesaid Office Order dated 3.7.1992 stood modified vide order dated 27.9.1993 (when the respondent no.4 was the CEO, NOIDA) to the effect that a large number of vacant plots were available in old developed sectors. The same may be included in the plots availability list.

31. That the list of available plots had been expanded during the period when the respondent no.4 was CEO, NOIDA and unallotted plots of various sectors including Sector 27 were also included in that list in which the respondent no.4 himself got the first conversion. It is a matter of investigation as to whether the Order dated 3.7.1992 was modified vide Order dated 27.9.1993 with ulterior purpose.

32. Section 12 of the Act 1976 makes the provisions of Chapter VII and Sections 30, 32, 40 to 47, 49, 50, 51, 53 and 58 of the U.P.

Urban Planning and Development Act 1973 (hereinafter referred to as the 'Act 1973') *mutatis mutandis* applicable to the Act 1976. Section 17 of the Act 1976 declares that the Act 1976 would have an overriding effect over the provisions of the Act 1973. Section 18 confers the power on the State Government to make rules by issuing a Notification for carrying out the purposes of the Act 1976. Section 19 of the Act 1976 provides for the framing of regulations by the NOIDA in respect of holding of meetings; defining the powers and duties of the CEO; and management of properties of the Authority etc. In view thereof, the New Okhla Industrial Development Area (Preparation and Finalisation of Plan) Regulations 1991 (hereinafter called as 'Regulations 1991') had been framed with the prior approval of the State Government as required under Section 19 of the Act 1976 and, therefore, have statutory force. By virtue of the provisions of sub-section 2(b) of Section 6 of the Act 1976, it is a statutory requirement that in the plan to be prepared by the NOIDA, it must necessarily provide as to for what particular purpose any area/site is to be used, namely, industrial, commercial or residential. The Authority is competent under sub-section 2(c) of Section 6, to regulate the construction etc. having regard to the nature for which the site has been earmarked. Section 8 of the Act 1976 restrains the use of any

site for the purpose other than for which it is earmarked in the Master Plan. Section 9 prohibits the use of any area or erection of any building in contravention of Regulations 1991. Section 14 of the Act 1976 clearly provides for cancellation of allotment and resumption/re-entry, where the allotment had been made in contravention of the rules and regulations. In case the Authority wants to change the user of the land, condition precedent remains to amend the Master Plan.

33. There is nothing on record to show that any amendment had ever been made either in the Master Plan or in the Regulations 1991 before the change of user of land, when a 13 hectare City Park situated near Sectors 24, 33 and 35 was abolished and a new residential Sector 32 was carved out comprising 200 plots. Even if the said change made by Shri Ravi Mathur, IAS, respondent no.4 stood nullified, subsequently by Smt. Neera Yadav, respondent no.7, it does not exonerate him from committing an illegality. It is a matter of investigation as to what was the motive for which such a change had been made by Shri Ravi Mathur, IAS, respondent no.4, unauthorisedly and illegally. Admittedly he was not competent to do so without seeking the amendments as mentioned hereinabove. —

34. The State or the public authority which holds the property for the public or which has been assigned the duty of grant of largesse etc., acts as a trustee and, therefore, has to act fairly and reasonably. Every holder of a public office by virtue of which he acts on behalf of the State or public body is ultimately accountable to the people in whom the sovereignty vests. As such, all powers so vested in him are meant to be exercised for public good and promoting the public interest. Every holder of a public office is a trustee. State actions required to be non-arbitrary and justified on the touchstone of Article 14 of the Constitution. Action of the State or its instrumentality must be in conformity with some principle which meets the test of reason and relevance. Functioning of a “democratic form of Government demands equality and absence of arbitrariness and discrimination”. The rule of law prohibits arbitrary action and commands the authority concerned to act in accordance with law. Every action of the State or its instrumentalities should neither be suggestive of discrimination, nor even apparently give an impression of bias, favouritism and nepotism. If a decision is taken without any principle or without any rule, it is unpredictable and such a decision is antithesis to the decision taken in accordance with the rule of law. The Public Trust Doctrine is a part of the law of the land. The doctrine has grown from

Article 21 of the Constitution. In essence, the action/order of the State or State instrumentality would stand vitiated if it lacks bona fides, as it would only be a case of colourable exercise of power. The Rule of Law is the foundation of a democratic society. (Vide: **M/s. Erusian Equipment & Chemicals Ltd. v. State of West Bengal & Anr.**, AIR 1975 SC 266; **Ramana Dayaram Shetty v. The International Airport Authority of India & Ors.**, AIR 1979 SC 1628; **Haji T.M. Hassan Rawther v. Kerala Financial Corporation**, AIR 1988 SC 157; **Kumari Shrilekha Vidyarthi etc. etc. v. State of U.P. & Ors.**, AIR 1991 SC 537; and **M.I. Builders Pvt. Ltd. v. Radhey Shyam Sahu & Ors.**, AIR 1999 SC 2468).

35. Power vested by the State in a Public Authority should be viewed as a trust coupled with duty to be exercised in larger public and social interest. Power is to be exercised strictly adhering to the statutory provisions and fact-situation of a case. “Public Authorities cannot play fast and loose with the powers vested in them”. A decision taken in arbitrary manner contradicts the principle of legitimate expectation. An Authority is under a legal obligation to exercise the power reasonably and in good faith to effectuate the purpose for which power stood conferred. In this context, “in good

faith” means “for legitimate reasons”. It must be exercised bona fide for the purpose and for none other. (Vide: **Commissioner of Police, Bombay v. Gordhandas Bhanji**, AIR 1952 SC 16; **Sirsi Municipality v. Ceceila Kom Francis Tellis**, AIR 1973 SC 855; **The State of Punjab & Anr. v. Gurdial Singh & Ors.**, AIR 1980 SC 319; **The Collector (Distt. Magistrate) Allahabad & Anr. v. Raja Ram Jaiswal**, AIR 1985 SC 1622; **Delhi Administration (Now NCT of Delhi) v. Manohar Lal**, (2002) 7 SCC 222; and **N.D. Jayal & Anr. v. Union of India & Ors.**, AIR 2004 SC 867).

36. In view of the above, we are of the considered opinion that these allegations being of a very serious nature and as alleged, the respondent no.4 had passed orders in colourable exercise of power favouring himself and certain contractors, require investigation. Thus, in view of the above, we direct the CBI to have preliminary enquiry and in case the allegations are found having some substance warranting further proceeding with criminal prosecution, may proceed in accordance with law.

It may be pertinent to mention that any observation made herein against respondent no.4 would be treated necessary to decide the present controversy. The CBI shall investigate the matter without

being influenced by any observation made in this judgment.

The writ petition stands disposed of accordingly.

Before parting with the case, we would like to express our gratitude and record appreciation to Dr. Rajeev Dhavan, learned senior counsel for rendering commendable assistance to the Court as Amicus Curiae.

.....J.
(G.S. SINGHVI)

.....J.
(Dr. B.S. CHAUHAN)

**New Delhi,
May 9, 2011**

REPORTABLE

IN THE SUPREME COURT OF INDIA

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J U D G M E N T

Dr. B.S. CHAUHAN, J.

In view of our judgment delivered today in Writ Petition (C) No. 150 of 1997 (**NOIDA Entrepreneurs Association v. NOIDA & Ors.**), no separate order is required in this writ petition which is accordingly disposed of.

.....J.
(G.S. SINGHVI)

.....J.
(Dr. B.S. CHAUHAN)

New Delhi,
May 9, 2011

