REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO(S). 6471 OF 2021
(Arising out of SLP (Civil) No(s).30780 OF 2015)

ANANT RAJ LTD.
(FORMERLY M/S. ANANT RAJ
INDUSTRIES LTD.) ... APPELLANT(S)

VERSUS

STATE OF HARYANA & ORS. ... RESPONDENT(S)

WITH

CIVIL APPEAL NO(S). 6472 OF 2021
(Arising out of SLP(Civil) No(s).32798 OF 2015)

CIVIL APPEAL NO(S). 6473 OF 2021
(Arising out of SLP(Civil) No(s). 11082 OF 2016)

J U D G M E N T

Rastogi, J.

1. Leave granted.

2. The question that arises for consideration in this batch of appeals is whether the methodology adopted by the Respondent

State of Haryana for grant of licence of its own land on the principle of First Come First Serve basis for development of a group housing colony under the Final Development Plan of Gurgaon-Manesar Urban Complex for 2025 can be said to be just, proper and legally tenable in law.

3. The High Court under the impugned judgment dated 26th August, 2015 taking note of the Scheme of Haryana Development and Regulation of Urban Areas Act, 1975 (hereinafter referred to as the "1975 Act") read with Haryana Development and Regulation of Urban Areas Rules, 1976 (hereinafter referred to as the "1976 Rules") held that the policy adopted by the State authorities for the grant of licence on the principle of First Come First Serve basis cannot be held to be fair, reasonable and transparent method and it led to an unholy race amongst the applicants in achieving their goal of obtaining grant of licence held it against public policy and in sequel thereof cancelled the grant of licence to the impleaded respondents 4 to 7 (Appellant herein) with a direction to the State Government to consider the grant of licence after framing a transparent and fair policy to grant privilege of licence.

4. The appellants before this Court are the impleaded respondents whose grant of licence has been cancelled by the High Court under the impugned judgment. At the same time, since the original petitioners were also deprived from grant of licence, they too are in appeal before this Court assailing the self-same impugned judgment in the connected appeal.

5. The impleaded Respondent Nos.7 to 9 are the original petitioners at whose instance writ petition came to be filed before the High Court of Punjab and Haryana at Chandigarh under Article 226/227 of the Constitution against the rejection of their claim for grant of licence by an order dated 20th September, 2013 and while questioning the rejection of their claim for grant of licence, it was also prayed that enquiry be held into the functioning of the Department of Town and Country Planning, Haryana and the tailor-made mechanism which was adopted for grant of licence to the privileged builders/developers at the cost of the owners of the land and appropriate action may be taken against the mal-functioning of the Department and further prayed for grant of licence in High Potential Zone on their land situated in Sector 63A, Gurgaon for the project of group housing in terms of Section 3 of the 1975 Act.

6. The facts in brief culled out and relevant for the purpose are that earlier the Final Development Plan was published on 5th February, 2007 under Section 5 of the Punjab Scheduled Roads and Controlled Areas Restriction of Unregulated Development Act, 1963 (hereinafter referred to as the "1963 Act". That the Respondent no.2 issued a public notice dated 1st October, 2010 published on 4th October, 2010 stating, inter alia, that the prospective Draft Development Plan (DDP) of Gurgaon-Manesar Urban Complex (GNUC) 2025 is published for inviting objections and suggestions. At the same time, interested persons may apply on the basis of Draft Development Plan 2025 after its publication in the Official Gazette with a further rider that the applicant may apply at his/her own risk knowing the afore-stated position and any application received on the basis of Draft Development Plan for 2025 before its publication in the Official Gazette will be rejected.

7. It may be relevant to note that neither in the public notice inviting application for grant of licence nor under the Scheme of the 1975 Act and the 1976 Rules thereunder, it is nowhere mentioned that the licence shall be granted on the basis of the alleged policy adopted by the Government of First Come First Serve basis, but it

appears that all the stakeholders and interested parties are having access and a knowledge about the principle of First Come First Serve basis, start rushing to the office of the Respondent authorities for submitting their applications.

8. Respondent nos.7 to 9 (original writ petitioners) submitted application under Section 3 of the 1975 Act for grant of licence to set up a group housing colony on its land admeasuring 13.618 acres in Sector 60, Gurgaon on 10th September, 2010, much before the public notice dated 1st October, 2010 being published in the Official Gazette on 4th October, 2010, and in furtherance an application was submitted on 6th October, 2010 to the second respondent for treating their original application dated 10th September, 2010 in reference to Sector 63A.

9. The present appellants also submitted their application seeking licence under Section 3 of the 1975 Act for setting up a group housing colony on its self-owned land in Sector 63A, Gurgaon on 4th October, 2010. It appears that at the time of publication of public notice dated 4th October, 2010, the subject land of the Respondent nos.7 to 9 (writ petitioners) became part of Sector 63A, which obviously came to be rejected by the authority by

an order dated 9th November, 2010 on the premise that application was submitted for development of land in Sector 60 and was submitted prior to the publication of DDP dated 4th October, 2010 with liberty to apply for licence in Sector 63A.

10. The order of rejection dated 9th November, 2010 came to be challenged by Respondent nos.7 to 9 in Writ Petition (Civil) Nos.18838 of 2010 and 21236 of 2010 which came to be disposed of by the High Court by order dated 9th August, 2011 with a direction to decide the application of Respondent nos.7 to 9 afresh irrespective of sector in which their land fell in accordance with law. To their misfortune, in compliance to the order of the High Court, their application again came to be rejected by a reasoned order passed by the second respondent dated 16th September, 2011.

11. Prior thereto, Respondent nos.1 and 2 notified/published the Final Development Plan 2025 on 24th May. 2011 and in furtherance thereof, Respondent no.1 came out with the clarificatory instructions dated 5th July, 2012 indicating that henceforth areas falling in high potential zone (GNUC) to which we are concerned, the date of Final Development Plan shall be the effective date for acceptance and consideration of licence applications.

12. The public notice dated 1st October, 2010 which came to be published on 4th October, 2010 and the instructions issued by the Respondent no.2 in exercise of its powers under Section 9A of the 1975 Act dated 5th July, 2012 laying down the policy parameters for allotment of licence on its own land are reproduced hereunder:

"PUBLIC NOTICE

It is informed to the General Public that amendment in 'Final Development Plan' Gurgaon Manesar Urban Complex published vide Haryana Government Gazette (Extra Ordinary) Notification No.CCP9NCR/FDP(G) 2007/359, dated 05.02.2007 is being carried out for which the state level Committee meeting was held 27.09.2010. It has been observed that applications are being received in the Department for granting Change of Land Use permission and licence applications on the basis of such proposed amendment. The draft Development Plan of said Gurgaon-Manesar Urban Complex for perspective year 2025 will be published as per Section 5(4) of the Punjab Schedule Roads and Controlled Areas Restriction of Unregulated Development Act, 1963 for inviting the objections and suggestions. Though a person can apply on the basis of the Draft Development Plan-2025 after publication in the Official Gazette, it does not confer any right in favour of the applicant with respect of grant of change of Land Use Permission and Licence which will not granted till the publications of Final Development Plan Gurgaon-Manesar Urban Complex-2025 under Section 5(7) of the ibid act in the Official Gazette. It is informed that the General Public that the applicant may apply at his/her own risk fully knowing the above stated position. Any application received on the basis of proposed proposals in Draft Development Plan, Gurgaon-Manesar Urban Complex-2025 before its publication in Official Gazette will be rejected.

Sd/-
(T.C. Gupta, IAS)
Director, Town & Country Planning
Haryana Chandigarh
Email : tcphry@gmail.com

Dated : 01.10.2010"

"Memo No.PF-25/7/18/2005-2TCP; Date : 5th of July 2012

SUBJECT: INSTRUCTIONS REGARDING RECEIPT & VALIDITY OF APPLICATIONS FOR GRANT OF LICENSE.

.....

Accordingly, in accordance with the powers conferred under Section 9-A of the Haryana Development and Regulation of Urban Area Act, 1975, the Governor of Haryana is pleased to pronounce the following policy parameters in this regard:

(i) In the towns/urban areas falling in Hyper & High Potential Zone, the date of publication of Final Development Plan shall be effective date for acceptance and consideration of licence applications.
(ii) In towns/urban areas falling in Medium & Low Potential Zones, the date of publication of Draft Development Plan shall be the effective date for acceptance and consideration of licence applications provided

(a) No further change is envisaged in any subsequent Development Plan of that area for which 'in-principle' approval of the Government has been obtained;
(b) There is no recommendation of DPC/SLC to effect amendments in the Development Plan proposals already in vogue of the applied area.
(iii) In case of any Development Plan falling in more than one Potential Zone, the policy prescribed for the higher category zone shall be considered to be applicable.
(iv) On account of availability of information regarding Development Plan proposals in the public domain, demand drafts of scrutiny fee and license fee of any date prior to publication of Draft/Final Development Plan, as the case may be, shall also be accepted provided the same is valid for at least one month from the date of submission of the application. However, the effective date for acceptance and consideration of licence applications shall continue to remain as prescribed under Sr No.(i) and (ii) above.
(v) Any application submitted prior to the prescribed effective date shall be considered as premature and shall be returned for re-submission after publication of the respective Development Plan.

These instructions shall come into force with immediate effect."

13. M/s Anant Raj Ltd. (Appellant in Civil Appeal arising out of SLP(C) No.30780 of 2015) was granted licence No.54 of 2013 dated 6th July, 2013 for setting up of a group housing colony on its land

admeasuring 26.065 acres in Sector 63A, Gurgaon and M/s Mahamaya Exports Pvt. Ltd. (Appellant in Civil Appeal arising out of SLP(C) No.32798 of 2015) was granted licence bearing no.77 of 2014 dated 6th August, 2014 for setting up a group housing colony on an area of 14.025 acres in Sector 63A, Gurgaon. At the same time, so far as Respondent nos.7 to 9 are concerned, their application for grant of licence being earlier rejected by the second respondent by order dated 16th September, 2011, the appeal preferred at their instance came to be dismissed by an order dated 20th September, 2013.

14. The impugned decision rejecting application for grant of licence of Respondent nos.7 to 9 by the second respondent became the subject matter of challenge by filing a writ petition before the High Court of Punjab and Haryana at Chandigarh under Article 226 and 227 of the Constitution. It is not disputed that Respondent nos.7 to 9 did not challenge the grant of liecence to the appellants by an order dated 6th July, 2013 and 6th August, 2014 in unequivocal terms but the fact is that they were impleaded as party respondent in the writ petition and a prayer was made that the procedure which was being adopted by the State authorities for grant of

licence on the principle of First Come First Serve basis is unsustainable in law, not in public interest and such arbitrary action of the respondent authorities requires to be interfered with by the Court.

15. The present Appellants filed their counter affidavit before the High Court and contested the matter knowing fully well the consequence/outcome of the pending litigation and during the course of proceedings by an order dated 13th August, 2015, two questions were framed by the High Court for its consideration as under:

> "1. How the licence for development of a colony can be granted on publication of draft development plans published in terms of Punjab Scheduled Roads and Controlled Areas Restriction of Unregulated Development Act, 1963?
>
> 2. As to how the policy for grant of licence on first come First Serve basis is fair and reasonable, in view of the Hon'ble Supreme Court judgment titled as Centre for Public Interest Litigation and others v. Union of India and others, 2012 (3) SCC page 1?"

16. In pursuance to the order of the High Court dated 13th August, 2015, additional affidavit dated 19th August, 2015 was filed by the second respondent relying upon the practice followed after 5th July, 2012, of which reference has been made earlier. It was, inter alia, stated that as per the practice followed after 5th July, 2012, applications have been considered for grant of licence in a high and

hyper potential zones only on the basis of the Final Development Plan published under Section 5 of the 1963 Act and there was no prescribed policy before 5th July, 2012 pertaining to considering licence applications on the basis of Draft/Final Development Plan, though neither the 1963 Act or 1975 Act made any restrictions for grant of licence based on Draft Development Plan.

17. It was further stated that in the town or urban areas falling in high and hyper potential zones, the date of publication of the Final Development Plan shall be the effective date for acceptance and consideration of licence applications and so far as the second question raised by the High Court is concerned, it was nowhere indicated how the policy of grant of licence on First Come First Serve basis has been introduced. However, a justification was tendered that it is fair and reasonable and it will be appropriate to quote the extract of justification tendered by the Respondent in reference to its policy for grant of licence on First Come First Serve basis as under:

> "5. That regarding second observation as to how the policy for grant of licence on first come first serve basis is fair and reasonable in view of the Hon'ble Supreme Court Judgment titled as Centre for Public Interest Litigation and Others Vs. Union of India and Others. It is clarified that the said policy of first come first serve has been adopted as a 'Principle of Natural Justice'. It is further added that since no natural resource in the ownership of Government is being offered

> through a licence under Act No.8 of 1975, the Hon'ble Supreme Court judgment in Centre for Public Interest Litigation and others Vs Union of India and others does not appear to be applicable in such licence cases. The applications for grant of licence are accordingly considered on merits of the case and as per provisions laid down in the Act of 1975 and Rules made thereunder. However, the Government is seized of the matter and devising an alternate transparent system for the purpose is under active consideration.
> In view of the submissions made in forgoing paras, it is respectfully prayed that the above said petition may kindly be dismissed being without any merit."

18. The High Court after examining the Scheme of the 1975 Act and 1976 Rules and taking note of the rival submissions made by the parties under its judgment impugned held that grant of licence on First Come First Serve basis is not a fair, reasonable and transparent method and in consequence thereof, cancelled the liecence granted to the Appellants, who were Respondent nos.4 to 7 before the High Court and directed the State Government to consider the grant of licences after framing a transparent and fair policy to grant privilege of licences thereafter in accordance with law.

19. It is informed to this Court that in supersession of earlier policy of 2006, the State Government has come out with its self-contained policy dated 10th November, 2017 for grant of licence and change of land use, permissions under Section 9 of the 1975 Act and Rules thereof and under Section 11 of the 1963 Act to consider all

pending and future applications in terms of its policy of 2017 in a fair and transparent manner, taking note of the judgment impugned of the High Court dated 26th August, 2015.

20. Mr. Ranjit Kumar, learned senior counsel for the Appellants, submits that their application for grant of licence was duly considered by the authority and the same being in order, fulfilling the guidelines and instructions dated 5th July, 2012 issued by the State Government in terms of its policy of 2006, licence was granted to the appellant and it was not the subject matter of challenge before the High Court in the writ petition preferred at the instance of Respondent nos.7 to 9. In the absence thereof, the finding recorded by the High Court in setting aside their grant of licence is not sustainable.

21. Learned senior counsel further submits that the policy for grant of licence on First Come First Serve basis was a long standing practice followed by the respondent authorities and the licence was to be granted to the incumbent of its own land in terms of the parameters which have been laid down under the policy and submits that the judgment on which the High Court has placed reliance to non-suit the claim of the Appellants in **Centre for**

Public Litigation & Ors. v. Union of India & Ors. (2012) 3 SCC 1 has no application.

22. Learned senior counsel further submits that there was no prescribed policy before 5th July, 2012 regarding consideration of licence applications on the basis of Draft/Final Plan. Though there is no restriction in the 1975 Act for grant of licence based on Draft Plan, and submits that although the policy-instructions dated 5th July, 2012 sought to bring a change, but as per the practice of the State authorities, Government was accepting applications on the basis of Draft Plans throughout and in the instant case the Appellants and other contenders submitted their applications on 4th October, 2010 when the Draft Development Plan was published, however, the Final Development Plan was published on 24th May, 2011, still the licences were granted to the Appellants on 6th July, 2013/6th August, 2014, much after publication of the Final Development Plan and submits that there was no error in the process which was adopted by the Respondents and their applications being in conformity with the policy which was widely circulated by the State authorities, cancellation of their grant of

licence by the High Court under the impugned judgment in the facts and circumstances is unsustainable in law.

23. Learned senior counsel further submits that the judgment in **Centre for Public Litigation** (supra) of this Court relied upon by the High Court has no application in the facts of the instant case for the reason that the case relied upon was related to a case where spectrum was recognised as a natural resource owned by the State and it was held by this Court that distribution of natural resource has to be in a fair and transparent manner and it is possible that policy of First Come First Serve basis may likely to be misused in case of alienation of public property. But in the instance case, it is a land of the owners/Appellants which they seek to develop. The grant of licence is not akin to distribution of natural resources of the State and further submitsthat in the given circumstances the interference which has been made by the High Court in cancellation of their grant of licence deserves to be set aside.

24. Per contra, counsel for M/s Mahamaya Exports Pvt. Ltd. supports the submissions made by Mr. Ranjit Kumar, Senior Advocate.

25. Mr. Anil Grover, learned Senior Additional Advocate General appearing for the State submits that the process was initiated for grant of licence on the principle of First Come First Serve basis. Learned Sr. A.A.G. further submits that after the public notice dated 1st October, 2010 came to be published on 4th October, 2010, process was initiated for grant of licence on the principle of First Come First Serve basis and this is the practice which was being followed for quite a long time and since the application of Respondent nos.7 to 9 (original writ petitioners) was rejected for valid reasons and the Division Bench has not interfered in the order of rejection passed by the authority and further submits that after passing of the judgment impugned in the instant proceedings, the Government in supersession of its earlier policy of 2006 has introduced the self-contained policy of 2017 and he has instructions to inform that all pending applications or fresh applications are to be considered in terms of the policy of 2017.

26. Learned counsel further submits that so far as allotment of licence in Sector 63-A Gurgaon is concerned, which is the subject matter of challenge in the instant proceedings, although the policy of 2017 has now come into force, but in the peculiar facts and

circumstances, the allotment was made within the cap of 20% in Sector 63-A for development of group housing society, as indicated in the public notice dated 4th October, 2010, and if this Court considers appropriate, the application of Respondent nos.7 to 9 can be considered under the same policy in vogue to give quietus to the litigation.

27. Learned counsel appearing for the Respondent nos.7 to 9 submits that after the impugned judgment passed by the High Court, the State Government has accepted the verdict of the Court and has come out with its policy of 2017, which has been duly notified and all pending/fresh applications will be considered for grant of licence in terms of the existing policy of 2017 and further submits that at least his application for grant of licence may be considered as a special case under the old policy of 2006 in the interest of justice.

28. Learned counsel for Respondent nos.7 to 9 further submits that their application for grant of licence has been arbitrarily rejected by the State authorities and the factual matrix has not been appreciated by the High Court and their application at least may be

revisited in terms of the policy in vogue for the grant of licence earlier rejected by the State authority.

29. We have heard the learned counsel for the parties and with their assistance have perused the materials available on record.

30. The undisputed facts which have emerged from the record are that neither in the public notice dated 1st October, 2010 which came to be published on 4th October, 2010, nor in the Final Development Plan dated 24th May, 2011, nor in policy instructions which came to be circulated by the Respondents at a later stage on 5th July, 2012, regarding receipt and validity of the applications for grant of licence, of which a detailed reference has been made, nowhere prescribes that the method of allotment of licence shall be made on First Come First Serve basis and from where this practice had been borrowed/adopted by the Respondent/State authorities is alien to the Scheme of the 1975 Act or the 1976 Rules framed thereunder, nor any material in support thereof has been placed on record.

31. Even at the time of conclusion of submissions, we posed this question to the counsel for the State of Haryana as to from where this principle of First Come First Serve basis for allotment of

licence has been borrowed and what is the basis/foundation to hold it as a practice in inviting applications from the prospective applicants on the principle of First Come First Serve basis, but nothing has been placed on record despite opportunity being afforded to substantiate and to support it further, we find that the policy of the State Government for grant of licence and change of land use cases dated 19th December, 2006 which was made effective retrospectively from 7th February, 2005, is also completely silent and there is no material on record that after the policy of 2006 came to be introduced, at any given point of time in the interregnum the process was ever initiated by the Respondent nos.1 and 2 for grant of licence and change of land use before the publication of public notice dated 4th October, 2010.

32. This Court can validly proceed on the basis that some impression has been thrown to examine the applications submitted by the interested parties/applicants pursuant to a public notice dated 4th October, 2010 for grant of licence and change of land use on the principle of First Come First Serve basis, but it is neither codified nor on record from where this practice has been developed and adopted by the Respondents in examining the applications for grant of licence. The entire Scheme placed on

record is completely silent on the subject issue which came to be examined by the High Court under the impugned judgment.

33. When we call the term "established practice", it always refers to a regular, consistent, predictable and certain conduct, process or activity of the decision-making authority and being the State functionary, its character is supposed to be based on the requirement of higher degree of fairness in administrative action to be tested on the anvil of Article 14 of the Constitution.

34. The very foundation on which the process was initiated, inviting applications pursuant to the public notice dated 4th October, 2010, on the principle of First Come First Serve basis is completely silent/missing from records and how that becomes an established practice in entertaining applications for grant of allotment of licence under the policy of the State Government dated 19th December, 2006, pursuant to which the public notice came to be published on 4th October, 2010 with a clarification being made of the policy of the Government dated 5th July, 2012 is alien to the records and it was never made known to the public as to the mechanism the Government intended to adopt for grant of licence to the prospective applicants.

35. Although this factor cannot be ruled out that those who are interested parties, they were aware of this so-called alleged practice of First Come First Serve adopted in the office of the State Respondent and that was the reason for which even before the public notice dated 1st October, 2010 came to be published on 4th October, 2010, people start running for submitting their applications as if they are participating in the mad race, without being known to the people at large about the policy according to which the applications are invited for grant of licence to the prospective applicants which is a sine qua non for good governance.

36. That apart, there is a fundamental flaw in the policy of the State of First Come First Serve basis as it involves an element of pure chance or accident and it indeed has inherent in-built implications and this factor cannot be ruled out as we have gone through the record, any person who has an access to the power corridors will be made available with an information from the Government records and before there could be a public notice accessible to the people at large, the interested person may submit his application, as happened in the instant case, and become entitled to stand first included in queue to have a better claim, at

the same time it is the solemn duty of the State to ensure that a non-discriminatory method is adopted, whether it is for distribution or allotment of licence on his own land, or alienation of property and it is imperative and of paramount consideration that every action of the State should always be in public interest.

37. In the matter of grant of licence even on its own land to set up a group housing society, the policy of allotment must be fair and transparent and as there is a cap of 20% for group housing society in the sector area and if the demand exceeds more than available density of 20% area reserved for group housing in the sector alike Sector 63A, Gurgaon under the Final Development Plans as published in the instant case, the method of selection has to be such so that all the eligible applicants get a fair opportunity of competition and it is the bounden duty of the State and its instrumentalities of their action to be conformed with Article 14 of the Constitution of which non-arbitrariness is a significant facet. A public authority possesses powers only to use them for public good. This imposes a solemn duty on the State to act impartially and to adopt a procedure of allotment of licence which is fair play in action.

38. We find no difficulty in holding that in the first instance there is no such consistent practice as alleged of First Come First Serve basis for allotment of licence available under the entire Scheme placed on record and secondly, from where this principle has been borrowed is alien to the statute and also the policy pursuant to which the process was initiated for allotment of licences to the prospective applicants.

39. Curiously, we find that before this Court counter affidavits came to be filed by the Respondent State though its Chief Town Planner, Department of Town and Country Planning, Haryana, Chandigarh coming out with the justification and the procedure which has been followed based on the principle of First Come First Serve basis while granting licence to the Appellants stating inter alia that if there are more than one application of the same day and time, what will be the mechanism to be followed has also been referred to, but from where it has been originated and about its factual foundation has not been placed on record, despite the directions of this Court at the time of conclusion of submissions made. The extract of the explanation tendered is reproduced hereunder :-

"A. That in reply to sub para (A), it is submitted that though land applied for licence for setting up of a Group Housing Colony by the present petitioner and respondent no.1 to 3 was different, but as per the Final Development Plan of GMUC-2025 AD published vide notification dated 24.05.2011, the same was falling within the same sector i.e. Sector 63A, Gurugram. The licence was granted to the present petitioner on the basis of 'first come First Serve' basis. However, licence application of respondent no.1 to 3 was rejected by respondent no.5 vide order dated 16.09.2011 mainly on the ground that some land applied for licence was not partitioned and that the land has not been mutated in favour of the applicant. Another ground for rejection was that the same was falling beyond the limits of the Development Plan of Gurugram Manesar Urban Complex-2021 AD.

B. That in reply to sub para (B), it is submitted that the interim order dated 21.12.2013 passed by the Hon'ble High Court was only to the extent that the area measuring 13.61875 acres for which respondent no.1 to 3 had applied for grant of licence for setting up of a Group Housing Colony will be reserved till the final conclusion of the legal proceedings. However, the licence of private respondents in CWP No.21942 of 2013 was cancelled by the Hon'ble High Court vide impugned order by observing that the doctrine of 'first come First Serve' basis was not fair and transparent.

H. That in reply to the averments made in sub para (H), it is submitted that in the policy dated 19.12.2006, it was specifically mentioned that the area under Group Housing should not exceed 20% of the sector area. Though, it is not specifically stated in the said policy that the applications would be considered on 'first come First Serve', but the applications were considered on the basis of policy of 'first come First Serve' basis. The seniority of the applicants for grant of licence for Group Housing Colony/Commercial Colony etc. (where there is cap for grant of licence) was fixed from the date of receipt of application. If the date of receipt was the same, then from the receipt number of the same date. Hence, it cannot be said that the time and date when the application for grant of licence was filed was not relevant. However, if the applicant whose application for grant of licence was received earlier, but was not eligible for grant of licence, the application received after the date of the receipt of the earlier application was considered for grant of licence. Hence, the averments made by the petitioner in this sub para cannot be accepted as such."

40. In our considered view, the principle of First Come First Serve basis which has been adopted by the State Respondents in the

facts of the instant case is neither held to be rational nor in public interest and is in violation of Article 14 of the Constitution of India.

41. The submission made by counsel for the Appellant that their grant of licence was not the subject matter of challenge in the writ petition before the High Court is of no substance for the reason that firstly they were impleaded as party respondents and the subject issue under consideration was much known to them as to whether the so-called alleged practice of First Come First Serve basis which has been adopted by the State authorities for grant of licence, how far it was rational and is in conformity with the Scheme of the statute and secondly, the High Court after framing substantive question under its order dated 13th August, 2015 afforded opportunity of hearing to the Appellants who have filed their counter-affidavits and thereafter has arrived to a conclusion that the principle of First Come First Serve basis adopted in grant of licences is not a valid consideration, the only consequence available was to cancel such licence which have been granted based on the so-called alleged practice which is unsustainable in law and in our considered view no error was committed in passing the order of cancellation of grant of licence to the Appellants under the judgment impugned.

42. A further submission made by counsel for the Appellant that it is a consistent practice which was followed throughout and almost 248 licences had been granted under the policy in vogue at that time, in our considered view does not hold good for the reason that those who are not party to the proceedings before the High Court obviously no adverse action could have been taken against them pursuant to the view expressed by the High Court in the impugned judgment, at the same time the principle may apply to the present Appellants who are indeed parties to the proceedings and have contested their claim and have been non-suited after a fair opportunity of hearing being afforded, may not be in a position to defend their grant of licence on the principle of First Come First Serve basis which has been held to be unfair and in violation of Article 14 of the Constitution.

43. With regard to the further submission made by the counsel for Respondent nos.7 to 9 about rejection of their application for grant of licence, suffice it to say that once this Court has upheld the view expressed by the High Court regarding the procedure of allotment of licence based on the principle of First Come First Serve basis, as held against the Public Policy, at least Respondent

nos.7 to 9 would not be in a position to plead for consideration of their applications for grant of licence under the impugned policy.

44. We make it clear that once the policy of 2017 has been introduced by the State Respondents, it is open to consider all pending applications and the application of the present Appellants for grant of licence under the policy of 2017 in accordance with law.

45. Consequently, we find no substance in the appeals which are accordingly dismissed.

46. All pending applications, if any, stand disposed of.

.....J.
(Ajay Rastogi)

.....J.
(Abhay S. Oka)

New Delhi
October 27, 2021.