

affidavit, has also averred that the purpose behind incorporating such stringent clause as a pre-qualifying condition of the tender is the distressing environmental condition in the NCR region. This indicates that the raison d'être of imposition of a stringent condition, that is, allowing only the existing pellet manufacturers having their plant location in NCR region or within 100 km from the truck gate of the power station to participate in the tender process is to reduce stubble burning by farmers which is the persistent and root cause for air pollution in the NCR region.

(Emphasis Added)

27. Ergo, the restrictive condition in the tender cannot be considered to be arbitrary and discriminatory. It is within the wisdom and discretion of the employer to determine the conditions/clauses that are best suited for the work to be performed in the public interest.

28. In the present case, respondent no.3 floated a tender dated July 10, 2024 for supply of biomass pellets at Harduaganj Thermal Power Station. Clause 3(i) of the tender imposes restrictions on participants to keep a tight rein on persistent obnoxious air condition in the NCR region. This clause is also at consensus with the revised Model Contract dated January 6, 2023 issued by the Ministry of Power, Government of India. It is the prerogative of the respondents to frame the terms and conditions of the tender in accordance with policy decisions. We, therefore, do not find any substance in the arguments raised on behalf of the petitioner.

29. The power of judicial review will not be permitted to be invoked to protect private interest at the cost of public interest. It is a well settled principle that judicial review in contractual matters is limited, particularly

when the decision of the tendering authority is bona fide and taken in the public interest.

30. This Court, being the guardian of fundamental rights is duty-bound to interfere only in cases when there is arbitrariness, irrationality, mala fide and biasness and not otherwise.

31. The essence of the law laid down in a catena of judgments referred to above emphasizes the need for judicial restraint and caution, and that only overwhelming public interest can justify judicial intervention in contractual matters involving the State instrumentalities. The court must acknowledge that the authority floating the tender is the best judge of its requirements and, therefore, the court's interference should be minimal.

32. The Court found no evidence of *mala fide* intent or partisanship aimed at excluding manufacturers outside the NCR region. Rather, the conditions were structured to advance the public interest by ensuring the effective and secure implementation of the Government's policy, which is crucial for public safety and welfare.

33. The writ petition is, accordingly, dismissed.

(2025) 4 ILRA 707
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 22.04.2025

BEFORE
THE HON'BLE IRSHAD ALI, J.

Writ C No. 1002939 of 2001

Vinay Kumar **...Petitioner**
Versus
Collector/ D.M., Balrampur. & Ors.
...Respondents

Counsel for the Petitioner:

Sri Umesh Kumar Srivastava, Sri Mohd. Aslam Khan, Sri Shishir Chandra

Counsel for the Respondents:

C.S.C., Sri R.N. Gupta

Civil Law – Constitution of India, 1950 –

Article 226 - Writ Petition – challenging the cancellation of allotment of land in year 2001 – order of allotment was passed in year 1986 - for construction of a residential house, by village LMC and further duly approved by SDM – thereafter, possession was delivered to the petitioner – petitioner spending Rs. 2,50,000/- over the construction of house – cancellation of allotment proceeding initiated – allotment was cancelled – writ petition - plea taken that the impugned order was passed without issuing any show-cause notice or opportunity of hearing – writ petition – at admission stage, court stayed the impugned order with direction to the authorities to initiate appropriate proceedings in accordance with law by affording due opportunity to the petitioner – court finds that, in pursuance to the interim order, the respondents did not initiate any such proceeding of passing fresh order – therefore, impugned order suffers from apparent illegality and is liable to be set aside – held, impugned order suffers from apparent illegality and is violative of principle of natural justice – Accordingly, the writ petition allowed – impugned order set-aside by giving liberty to the respondents to pass fresh order after giving opportunity of hearing to the petitioner in accordance with law. (Para no. 7, 9, 10, 11)

Writ Petition Allowed. (E-11)**List of referred Cases:** - No case referred

(Delivered by Hon'ble Irshad Ali, J.)

1. Heard Sri Mohd. Arif Khan, learned Senior Advocate assisted by Sri Mohd. Aslam Khan, learned counsel for the petitioner and Sri Rajiv Srivastava, learned Additional Chief Standing Counsel for the State-respondent.

2. Vide order of allotment dated 18.6.1986, an area of 0.03 decimal of other abadi site comprised in plot No.828-Ga M., situated in village Pandri, Pargana, Tehsil and District Balrampur was allotted to the petitioner by the Land Management Committee of the aforesaid village after following the prescribed procedure for construction of a residential house, which was duly approved by the Sub-Divisional Magistrate, Balrampur. The petitioner was delivered possession, over which he raised the construction of his residential house by spending Rs.2,50,000/-.

3. By means of the impugned order dated 15.6.2001, the allotment of land made in favour of the petitioner was cancelled without impleading him as a party in the case and without giving him any show-cause notice or opportunity of hearing.

4. Assailing the order impugned dated 15.6.2001, passed by the respondent No.1 contained as Annexure-1 to the writ petition, submission of petitioner's counsel is that the impugned order has been passed without notice and opportunity of hearing to the petitioner. Specific recital in this regard has been made in paragraph-2 of the writ petition.

5. In the counter affidavit filed by the respondent No.1 there is no denial in regard to the recital made in paragraph-2 of the writ petition by the petitioner.

6. While entertaining the writ petition, this Court passed an order on 29.10.2001, operative portion is being quoted below :-

"In view of the fact that the petitioner was not afforded any opportunity

prior to the passing of the impugned order of cancellation of allotment, the operation of the impugned order dated 15.6.2001 shall remain stayed till further orders of the court. However, it will be open to the concerned authority to initiate appropriate proceedings and pass orders after affording due opportunity to the petitioner in accordance with law. In the meantime, the residential house of the petitioner shall not be demolished."

7. While granting the interim order, it was noticed that no opportunity of hearing was afforded to the petitioner, while passing the impugned order of cancellation of allotment and the operation of the order was stayed till further orders and it was left open to the concerned authority to initiate appropriate proceeding and pass order after affording opportunity of hearing to the petitioner in accordance with law. It was also ordered that in the meantime, the residential house of the petitioner shall not be demolished.

8. In pursuance to the order of this Court, the respondents did not initiate proceeding of passing fresh order, after affording opportunity of hearing to the petitioner.

9. In view of the admission of non-grant of opportunity of hearing to the petitioner, the impugned order suffers from apparent illegality and is liable to be set aside. The interim order granted on 29.10.2001 also gave liberty to the respondents to pass a fresh order, after affording an opportunity of hearing to the petitioner, but the same has not been done.

10. In view of the admitted position in the matter that no notice nor opportunity of hearing was granted to the petitioner, the

impugned order suffers from apparent illegality and is violative of principles of natural justice.

11. Accordingly, the impugned order dated 15.6.2001 (Annexure-1 to the writ petition) is hereby set aside by giving liberty to the respondents to pass fresh order, after giving opportunity of hearing to the petitioner in accordance with law.

12. With the aforesaid observation and direction, the writ petition succeeds and is **allowed**.

(2025) 4 ILRA 709
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 28.04.2025

BEFORE

THE HON'BLE PANKAJ BHATIA, J.

Matr Under Article 227 No. 1281 of 2024

Hari Shankar Kushwaha ...Petitioner
Versus
A.D.J. E.C. Act. Lko. & Anr. ...Respondents

Counsel for the Petitioner:
 Adnan Ahmad

Counsel for the Respondents:
 Anurag Shukla

**Civil Law-Constitution of India, 1950-
 Article 227 - The Code of Civil Procedure,
 1908-Order 21 - Rule 97, 98 & 101-**
 Application under Order 21 Rule 97 CPC is available only to a stranger, who claims to be in possession of the properties in his rights which are independent and is a third person claiming right, title or interest in the property to seek restoration of the decretal property in contradiction to the powers under Order 21 Rule 35 which prescribes for removal of any person who is bound by the decree--- In the present case that the respondent tenant, having failed to establish any of his defenses taken in reply to