

2026 LiveLaw (SC) 171

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

SANJAY KUMAR; J., K. VINOD CHANDRAN; J.

Special Leave Petition (C) No.16057 of 2025; February 17, 2026

Dinesh Kumar *versus* The State of Haryana and Ors.

Constitution of India – Article 12 and Article 226 – Maintainability of Writ Petition against a Society – Fiduciary Duty of Government Officers in Governing Bodies – The Supreme Court upheld the High Court's finding that a writ petition under Article 226 is maintainable against a Society (HEWO) comprising government employees, especially when issues of lack of transparency, unfairness, and unreasonableness in the allotment of housing facilities are raised - Noted that ex-officio members of a Governing Body, who are responsible government officers, must act in a fiduciary capacity for the common good, ensuring fairness, transparency, and accountability while eschewing favoritism, bias, and arbitrariness [Para 5].

Service Law – Allotment of Housing – Eligibility Criteria – Nepotism and Self-Aggrandizement – Supreme Court set aside the allotment of super deluxe flats to a Governing Body member (Respondent No. 3) and his subordinate (Respondent No. 4) – i. Ineligibility of Respondent No. 3: The allotment was deemed a "blatant display of self-aggrandizement" as the respondent did not satisfy the mandatory six-month deputation period at the time of application and had not submitted a timely application or earnest money deposit (Para 13, 14); ii. Ineligibility of Respondent No. 4: The Court found that Respondent No. 4 did not fall within the stipulated pay-band level (Level 10 to 20) and that the Governing Body's decision to "regularize" the allotment by carving out an exception was an arbitrary exercise of power. [Paras 15, 16]

Doctrine of Estoppel – Participation in Selection Process – The Supreme Court rejected the High Court's view that the appellant was estopped from challenging the allotment simply because he participated in the draw of lots. The Court held that participation does not bar a challenge when the process is marred by bias and arbitrary exercise of power - Supreme Court imposed costs of ₹1 lakh on the Society (HEWO), ₹50,000 on Respondent No. 3, and ₹25,000 on Respondent No. 4. It directed a fresh draw of lots among the four eligible applicants who were available at the earlier point of time – Appeal allowed. [Paras 15 - 18]

For Petitioner(s): Mr. Pradeep Dahiya, Adv. Ms. Mahima Benipuri, Adv. Mr. Rakshit, Adv. Mr. Sunny Kadiyan, AOR.

For Respondent(s): For R-1 & R-5 Mr. Alok Sangwan, Sr. A.A.G. Mr. Samar Vijay Singh, AOR Mr. Sumit Kumar Sharma, Adv. Mr. Rajat Sangwan, Adv. Mr. Aman Dev Sharma, Adv. Ms. Sabarni Som, Adv. Mr. Gaj Singh, Adv. Mr. Harsh Mehla, Adv. Ms. Divya Sharma, Adv. For R-2 Mr. Shadan Farasat, Sr. Adv. Mr. Bharat Gupta, AOR Ms. Sansriti Trivedi, Adv. Ms. Sarah Sunny, Adv. Ms. Suvarna Swain, Adv. For R-3 Mr. Shirish K. Deshpande, AOR Ms. Rucha Pravin Mandlik, Adv. Mr. Raghav Arora, Adv. Mr. Viraj Parakh, Adv. Mr. Adv Deepak Jindal, Adv. 1 For R-4 M/s. Deshpandes And Mandliks, AOR

J U D G M E N T

K. VINOD CHANDRAN, J.

Leave granted.

2. Nepotism and self-aggrandizement are anathema to a democratic system, more so when it happens within a society comprising members of the government service, enabling

housing facilities to its members by transparent allotment. The second respondent HUDA, Urban Estate and Town and Country Planning Employees Welfare Organization (for short, 'HEWO') is one such society registered under the Societies Registration Act, 1860. The enactment provides for establishment of societies for the promotion of literature, science, fine arts, diffusion of useful knowledge, diffusion of political education and for charitable purposes, as the preamble proclaims. Obviously, HEWO is constituted for a charitable purpose, especially on the principle that charity begins at home, to benefit its own members by allotment of housing facilities. In the present case, we are concerned with the allotment of two super deluxe flats in the apartment complex built by HEWO.

3. The appellant herein admitted to the membership of HEWO, is eligible by way of his 14 years of deputation in the Haryana Urban Development Authority (for short, 'HUDA') which is alternatively referred to in the vernacular as Haryana Shehri Vikas Pradhikaran (for short, 'HSVP'). One of the flats available was conceded to a governing body member, the third respondent based on a decision taken by HEWO in the year 2020 and in the picking of lots conducted for the one remaining flat, the fourth respondent turned out to be successful. The appellant challenged the allotment of the super deluxe flats to the third and fourth respondents, alleging them to be ineligible and accusing HEWO of favoritism, to both its governing body member, the third respondent and his subordinate, the fourth respondent.

4. The respondents, HEWO and the beneficiaries resisted the writ petition first on the ground of Article 226 not being capable of invocation, the society being a private entity, not subject to governmental control, thus taking it out of the definition of State under Article 12 of the Constitution. The allotments were asserted to be in accordance with the rules and regulations governing the society and the exception carved out was urged to be unexceptionable for reason of it being a common place practice as decided by the Governing Body in the past. The third respondent was a governing body member so enabled preference by the earlier decision, and the fourth respondent satisfied the basic pay requirement, which alone was the consideration as per the decision of the Governing Body. The appellant had participated and lost and hence, could not challenge the allotment was the defense.

5. The Division Bench of the Punjab and Haryana High Court after setting out the facts and the respective contentions found invocation of Article 226 to be proper. Especially when lack of transparency and violation of fairness and reasonableness was raised, considering the fact that the land stands allotted by the Government and the privilege conferred upon the members of the society to seek allotment of housing facilities. Though no argument was raised by the respondents on this count, for completeness it has to be observed that we perfectly agree with the said findings of the High Court. Noticing additionally that the members were all government employees, specifically the persons who were in the employment of the HUDA or who were on deputation having a minimum service of six months in the department, to whom preferential allotment was made of flats constructed by HEWO was allotted. The Governing Body of the Society also comprises *ex officio* members, holding responsible positions in the department and the government. Though, *ex officio*, while sitting in the Governing Body by virtue of their offices, they cannot individually or collectively digress from the essential duties entrusted upon them. As responsible officers of the Government, the Governing Body members in that capacity too, should act in a fiduciary capacity for the common good, ensuring fairness, transparency and accountability, while eschewing favouritism, bias and arbitrariness. That having been said, with respect to the allegation raised by the appellant, we are constrained to observe

that the Division Bench rather cursorily held that since the allotment made earlier to a governing body member was surrendered, the same was allotted to respondent No.3 and that Respondent No.4 was granted allotment on the draw of lots, in which the appellant also participated, he becomes estopped from challenging the same.

6. Mr. Pradeep Dahiya, learned counsel appearing for the appellant took strong exception to the cursory dismissal of the petition, especially without looking at the facts projected which clearly proved an arbitrary exercise of power and there was bias writ large in the allotments to respondent Nos.3 and 4.

7. Mr. Shadan Farasat, learned Senior Counsel appearing for respondent No.2, sought to uphold the allotments and the impugned judgment, as did Mr. Alok Sangwan, learned Sr. A.A.G. for the State of Haryana and Mr. Shirish K. Deshpande learned counsel appearing for the respondent Nos.3 and 4.

8. We first look at the rules and regulations of the society produced as a miscellaneous document on behalf of respondent No.3, on 03.02.2026. The aims and objectives clearly indicate formulation of social welfare schemes to help, serving and retired employees of HUDA, subsidiaries of HUDA and personnel of HEWO, which functions are to be carried out as a non-profit organization. The *ex officio* members of the Governing Body, as we noticed earlier are the persons holding responsible positions in HUDA, government officers from various levels, on deputation. The membership of the HEWO is open to serving and retired employees of HUDA, spouses of deceased HUDA employees, employees of the subsidiaries of HUDA, personnel of HEWO and employees deputed to HUDA who have a minimum six months service on deputation.

9. Now, we will look at the specific allotment made which was proposed at the governing body meeting on 21.01.2021 produced as Annexure P-5. Among others, two super deluxe flats were made available by reason of cancellation of memberships. It was decided that applications be invited against the cancelled memberships as per the decision of the governing body meeting dated 16.10.2020 and 22.10.2020, the applicable portions of which are extracted in a tabular form. It speaks of new membership being granted through draw of lots to the eligible persons having minimum six months of service to his or her credit and any membership available on cancellation or surrender, being capable of allotment on preference to a governing body member. Immediately we should notice that such preferential allotment cannot be made, even if it be made to a governing body member, who does not satisfy the eligibility criteria of membership, which would then be violative of the bye-laws of the Society.

10. By Annexure P-6 dated 13.04.2021, the decision of the Governing Body was notified providing for applications on the prescribed format with earnest money deposit, to be submitted by 17.05.2021, also specifying that no further extension would be granted. The stipulation of eligibility was, as in the bye laws and insofar as the super deluxe flats, the basic pay limit was fixed at Rs.56,000/- and coming within level 10 to 20 of the pay band. A subsequent notice was issued, extending the last date up to 18.06.2021 as decided on 12.05.2021 by Annexure P-7, due to the pandemic situation.

11. Before the completion of time stipulated on 25.05.2021, the meeting of the governing body members, with one Mr. K. Makrand Pandurang presiding, allotted one of the super deluxe flats to the said presiding member. The balance flat was decided to be floated amongst the eligible employees of HUDA. Admittedly, the appellant applied under the advertisement and was eligible on all counts, satisfying both the deputation period, the basic pay requirements as also being in level 11 of the pay band.

12. The third respondent took charge as the Chief Controller of Finance, HUDA on 12.08.2021 and Mr. K. Makrand Pandurang sought cancellation of his membership and allotment, by a letter dated 08.09.2021, Annexure P-12.

13. Normally, this should also then have been conceded to the draw of lots. By Annexure P-13, the third respondent on 13.09.2021 sought for allotment of the cancelled flat, which was accepted and resolved, in the meeting of the governing body of HEWO on 19.09.2021, produced as Annexure P-14. Hence, as on the date of the application of the governing body member, the last date for application and earnest money deposit, was over. But the allotment was proceeded with and the HEWO allotted the super deluxe flat to the third respondent by a letter dated 17.09.2021 produced by Respondent No.2 through its application dated 28.01.2016, as Annexure A-1. Annexure A1 is a communication addressed by the 3rd respondent; in his official capacity, to himself; in the individual capacity, making it a complete farce. The said letter calls upon the 3rd respondent to remit the application fee, membership fee, earnest money, the land cost and the first to tenth instalments; collectively demanded since obviously no application was made within time. Hence, as on the date of allotment, there was not even the membership fees deposited by the 3rd respondent, leave alone the submission of an application along with earnest money deposit, before the last date.

14. We observe at the risk of repetition that on the last date of application the third respondent was not even an employee of HUDA or a governing body member of HEWO. The third respondent took charge as per Annexure P-11 on 12.08.2021 in HUDA, by virtue of which he became a governing body member of HEWO. There could have been no preferential allotment given to the governing body member who was not even satisfying the six months deputation period in the service of HUDA. We find absolutely no reason to uphold the allotment made to the third respondent which is a clear act of favouritism and blatant display of self-aggrandizement.

15. The fourth respondent admittedly had 18 years' service as is seen from the application made, for membership of that respondent, produced along with Annexure 4 series by respondent No.2 along with its application dated 03.02.2026. However, as admitted by the second respondent, the 4th respondent though satisfying the basic pay requirement, was not between the pay band level stipulated, an exception having been carved out by the decision of the Governing Body on 25.07.2023, produced as Annexure P-18. The specific complaint made by the appellant herein was referred to and it was held that since only four out of the seven applicants satisfied the pay-band-level requirement, the allotment in the draw held on 02.05.2023 be treated as regularised.

16. We fail to understand how the draw of lots would be stultified or frustrated by reason only of only four members being available, especially since the allotment by draw of lots was for one single super deluxe flat, the other having been conceded to the governing body member, which we have interfered with as of now. There is no stipulation either in the decision of the governing body or in the rules and regulations that there should be a specific number of applicants for a determinate number of flats. The ineligibility of applicant No.4 is stark and obvious, and we also have doubts with respect to the application made, being on time, as is revealed from Series No.8 in Annexure P-4. On the application of the fourth respondent, there is no date or place indicated, nor is there any date or details of the demand draft, evidencing payment of earnest money indicated therein. The fourth respondent is obviously working as an Accountant with the office of the Chief Controller of Finance, HUDA, Panchkula as indicated in the application, which office is held by the third respondent. The third respondent's entry to HUDA and as a consequence to HEWO thus,

not only facilitated preferential allotment to himself but also to his subordinate. We find no reason to uphold the allotment to the fourth respondent also.

17. Considering the gross abuse of powers and authority carried out in the above case, we are inclined to set aside the judgment of the Division Bench of the High Court and allow the appeal imposing costs of Rs.1 lakh on the second respondent with further costs of Rs.50,000/- on the third respondent and costs of Rs.25,000/- on the fourth respondent. The second respondent shall pay Rs.50,000/- to the appellant as litigation expenses and the balance shall be deposited with the Legal Services Committee of the Supreme Court, with whom the third and fourth respondents also shall deposit the costs imposed on them, within a period of two months from today. We make it clear that the costs imposed on the second respondent would be capable of recovery from the governing body members, except the 3rd respondent on whom we have separately imposed costs, which the second respondent would be entitled to proceed with after issuing notice to the members of the Governing Body, who took the decision for allotment.

18. We further make it clear that the entire amounts deposited by the third and fourth respondents shall be refunded to them within a period of one month without any interest and they shall vacate the premises within one month of the refund. The second respondent shall carry out a fresh draw of lots with respect to the two super deluxe flats from the four eligible applicants available at the earlier point of time, after obtaining their consent. If there is only one person left, then one of the super deluxe flats shall be allotted to the appellant and he shall be given time of six months from the date of allotment to make the deposit. It is also made clear that if the other applicants are not desirous of allotment, then the second respondent would be entitled to make a re-allotment of the flat left over based on the existing eligibility as of now.

19. The appeal stands allowed in the aforestated terms.

20. Pending applications, if any, shall also stand disposed of.

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