

Common Cause, A Registered Society

Vs

Union of India and Others

Writ Petition (C) No. 26 of 1995

(Kuldip Singh, Faizanuddin JJ)

25.09.1996

JUDGMENT

KULDIP SINGH, J. –

1. The allotments of retail outlets for petroleum products (the petrol pumps), by Capt. Satish Sharma, Minister of State for Petroleum and Natural Gas, exercising the powers of the Central Government, have been challenged in this public interest petition under Article 32 of the Constitution of India. The petition as originally filed was directed against corruption in various fields of public life. Mr H. D. Shourie - Director "Common Cause" - appearing in person, invited this Court's attention to a news item dated 11-8-1995, on the front page of Indian Express under the caption "In Satish Sharma's Reign, Petrol and Patronage Flow Together". The Solicitor General who was present in Court, took notice of the news item and stated that he would have the matter examined in the Ministry concerned and file an affidavit giving the Ministry's response to the news item. The news item, inter alia, stated as under :

"Not only the relatives of most of the officials working for Captain Satish Sharma but even his own driver and the driver of his Additional Private Secretary have been allotted a petrol pump and a gas agency respectively.

The wives of two clerks and a stenographer in the Ministry have similarly been allotted petrol pumps. Some of these allotments have been made from the discretionary quota with the Petroleum Minister while others have been made through an ostensibly objective selection process undertaken by the Oil Selection Boards (OSBs). ... A Mr Poda Rajshekar, a relative of Mr G. Gurusharan, Private Secretary to Captain Sharma has been allotted a petrol pump at Banjara Hills, Hyderabad out of the Minister's discretionary quota taking pity on the 'financial circumstances that the family finds itself in'.

Ms Madhuri Safaya, a relation of the Additional Private Secretary to the Minister, Mr V. N. Safaya has been allotted a petrol pump 'on compassionate grounds' from the discretionary quota.

Another relation of Mr Safaya, Mrs Monica Malla, has also been a beneficiary of a petrol pump, courtesy Captain Sharma.

Mrs Daya Rani, wife of Mr Hari Ram Verma, Personal Assistant to the Additional PS to the Minister, Mr V. N. Safaya, was allotted a petrol pump out of the discretionary

quota. ... Mrs Vijaya Nair, wife of Mr D. V. Pillai, another Additional Private Secretary to Captain Sharma has been allotted a petrol pump on the grounds that the 'applicant is a young unemployed (woman) with the responsibility, of looking after a large family' - hardly a unique classification in this country of 900 million ... The Chairman of the OSB for Uttar Pradesh is Justice S. H. Abidi (Retd.) who lives at 50, Dariyabad, Allahabad. It so happens that Syed Shaukat Hasan Abidi, his son, living at 50/1, Dariyabad, Allahabad put in a request and was allotted a petrol pump on 'compassionate grounds' at Fatehpur (80 km milestone) in Uttar Pradesh.

A former MLA, Mr Shiv Balak Passi, from Rae Bareli is a member of the OSB for Madhya Pradesh and his job is to allot petrol pumps to others. He too had put in a request for the discretionary allotment of a petrol pump. Lo and behold, on 'compassionate grounds' he was immediately allotted a petrol pump on the Rae Bareli-Lucknow Road in U.P.

Mr Krishna Swaroop, a Congress party worker and resident of 18/7, Punjabi Bagh Extension, New Delhi-26 is a member of the OSB for Delhi and Chandigarh. His son, Mr Pradeep Kumar, was favoured with a petrol pump by the Minister on the grounds that 'the applicant is a young man from Scheduled Caste community with no source of regular income. The case deserves sympathetic consideration. Therefore, a retail outlet for MS-HSD in the Union Territory of Delhi is allotted to Shri Pradeep Kumar, r/o 18/7, Punjabi Bagh Extension, New Delhi-110026'.

Mr Ghulam Ahmad Mir is also a member of the OSB for Delhi and Chandigarh. An application was made by him for the allotment of a petrol pump. And the Minister passed the order on 'compassionate grounds' from his discretionary quota.

Similarly the following OSB members, either themselves or their next of kin, have been allotted petrol pumps : Mr K. L. Sharma (Member OSB, West Bengal), Mr R. S. Nautiyal (Member OSB, Punjab) and Mr Harbanslal Gupta (Member OSB, Haryana). Two relations of Mrs Satya Bahen (Member OSB, Haryana) were allotted a gas agency in Etah and a petrol pump at Itmadpur near Tundla, respectively.

The son of a former Home Minister who is currently a Cabinet Minister; the son of a present Minister of State from the North-East; the brother-in-law of a former Janata Dal office-bearer and now a Congressman from Eastern U.P.; the son of a Dalit leader who was with the late H. N. Bahuguna at one time and is now in the Congress; the son of a former Congress Councillor of the Municipal Corporation of Delhi; the wife of an ex-Congress MP from the U.P. hills; the wife of a prominent Dalit leader in the opposition and several political hacks from Amethi are among the hundreds who have been gifted petrol pumps or gas agencies during the tenure of Captain Satish Sharma as the Petroleum Minister."

Mr Vijay L. Kelkar, Secretary in the Ministry of Petroleum and Natural Gas, Government of India, filed an affidavit dated 9-10-1995. The relevant part of the affidavit is as under :

"It may be relevant to point out here that under the approved guidelines, the Hon'ble Minister personally decides each case and the order is a speaking order. An unsuccessful applicant in the same category is entitled to have a copy of the order if a

request is made for it.

The specific instances referred to in the India Express newspaper dated 11-8-1995, appear to relate to allotments made prior to the order of this Hon'ble Court dated 31-3-1995. However, those allotments also were made on merits of each case as appearing from the applications which contained the circumstances under which the request was made. For the cases mentioned in the newspaper report, it is denied that the allotments were made on account of alleged relationship and/or any improper motive. The relationship of an applicant with any official of the Ministry has not been a relevant factor in considering discretionary allotment on compassionate grounds. Should this Hon'ble Court direct, the relevant files shall be produced for perusal for this Hon'ble Court."

This Court examined the affidavit of Mr Kelkar on 13-10-1995 and passed the following order :

"Mr Vijay L. Kelkar, Secretary in the Ministry of Petroleum and Natural Gas, Government of India has filed an affidavit pursuant to this Court's order dated 11-8-1995. Without commenting on the affidavit, we direct the Ministry of Petroleum and Natural Gas to file a further and better affidavit within two weeks with reference to the specific instances."

Pursuant to the above-quoted order Mr Kelkar filed affidavit dated 28-10-1995. The relevant part of the affidavit is as under :

"That the deponent, in compliance with the said order dated 13-10-1995, has ascertained the position regarding the allegations that allottees under the discretionary quota are related to various political leaders, officials and members of Oil Selection Boards (OSBs) or the members themselves. Such allottees can be grouped under three different categories and allegation regarding each one of them is answered and/or dealt with as follows :

A. Allottees said to be related to politicians

(i) With reference to the allegation that the son of a former Home Minister, who is currently a Cabinet Minister, has been allotted a petrol pump, It is correct that the allottee, Shri Sarbjot Singh is the son of the said Shri Buta Singh.

(ii) With reference to the allegation that the son of a present Minister of State from North-East, has been allotted a petrol pump. ... It is correct that the said allottee is the son of a Minister, namely, Shri K. Hullohan, in the State Government of Nagaland.

B. Allottees said to be related to the members of OSBs or the members themselves

(i) With reference to the allegation that Shri Syed Shaukat Hasan Abidi is the son of Justice S. H. Abidi (Retd.), who is the Chairman of the OSB for Uttar Pradesh, Discretionary allotment was made in favour of the applicant in January 1995. It is correct that the said allottee is the son of the said Chairman of OSB for U.P.

(ii) With reference to the allegation that Shri Shiv Balak Passi is a member of the OSB for Madhya Pradesh and he is himself an allottee from discretionary quota,

A discretionary allotment was sanctioned in his favour in December 1994. It is correct that Shri Passi is a member of the OSB for Madhya Pradesh.

(iii) With reference to the allegation that the allottee, Shri Pradeep Kumar, is the son of Shri Krishna Swaroop who is a member of OSB for Delhi and Chandigarh, It is correct that the allottee is the son of the said Shri Krishna Swaroop.

(iv) With reference to the allegation that the allottee, Shri Ghulam Ahmad Mir is a member of OSB for Delhi and Chandigarh, It is correct that Shri Mir is a member of the OSB, Delhi.

(v) With reference to the allegation that Shri R. S. Nautiyal, who is a member of OSB, Punjab, has been allotted a petrol pump either in his own name or in the name of his next of kin, it is stated that Smt Neena Nautiyal, made an application in August 1994, It is correct that Smt Neena Nautiyal is the wife of Shri R. S. Nautiyal, a member of OSB, Punjab.

(vi) With reference to the allegation that a petrol pump was allotted to Shri justice Harbanslal Gupta, a member of OSB, Haryana, in his own name or in the name of his next of kin, it is stated that one Shri Arun K. Gupta made an application in September 1993, It is correct that Shri Arun Kumar Gupta is the son of Shri Justice Harbanslal Gupta (Retd.) who is the Chairman of the OSB, Haryana.

(vii) With reference to the allegation that two relations of Smt Satya Bahen, a member of the OSB for Haryana, were allotted a gas agency and a petrol pump, it is stated that one Shri Dharmesh Kumar made an application in September 1994, Along with his application there was a recommendation for discretionary allotment from Smt Satya Bahen, ex-Member of Parliament It is stated that the relationship of Shri Dharmesh Kumar with Smt Satya Bahen is not known.

C. Allottees who are said to be related to various officials in the Ministry

(i) The allegation is that relatives of the drivers of the Minister and of the Additional Private Secretary to the Minister have been allotted petrol pump and gas agency. It has been found that one Smt Leela Devi, wife of late Shri Kishan Swaroop made an application that her husband was brutally murdered on 25-1-1994, she had no means of income to support her family and that she belonged to a Scheduled Caste. A retail outlet was allotted to Smt Leela Devi on compassionate grounds from the discretionary quota in May 1995. It has now been ascertained that Smt Leela Devi happens to be a relative of a driver of the Minister.

(ii) With reference to the allegation that Shri Poda Rajasekhar is a relative of Shri G. Gurucharan, Private Secretary to the Minister of State, it is stated that an application was made by Shri Rajasekhar in July 1993, A retail outlet dealership for MS-HSD at Secunderabad was sanctioned to Shri Rajasekhar on compassionate grounds. It has been ascertained that the said allottee is a relative of the said Shri Gurucharan.

(iii) With reference to the allegation that Ms Madhuri Safaya is a relative of Shri B. N. Safaya, Additional Private Secretary to the Minister, to whom a retail outlet has been allotted, It has been ascertained that she is related to the said Shri B. N.

Safaya.

(iv) With reference to the allegation that Ms Monica Malla is also related to Shri B. N. Safaya, ... a retail outlet was allotted to her in November 1994 out of discretionary quota. It has been ascertained that the said Ms Malla is related to the wife of Shri B. N. Safaya.

(v) With reference to the allegation that the allottee, Mrs Daya Rani, is the wife of Shri H. R. Verma, Personal Assistant to the Additional Private Secretary to the Minister, Shri B. N. Safaya, It is correct that the allottee is the wife of Shri H. R. Verma.

(vi) With reference to the allegation that Mrs Vijaya Nair, who has been sanctioned a retail outlet, is the wife of Shri D. V. Pillai, Additional Private Secretary to the Minister of State, It has been ascertained that Mrs Vijaya Nair is not the wife of Shri D. V. Pillai, but she is related to him."

This Court issued notice to all the 15 persons mentioned in the affidavit of Mr Kelkar. Thirteen, out of them filed affidavits justifying the allotments of petrol pumps made to them by Capt. Satish Sharma. This Court by the order dated 6-12-1995 directed that "the Minister may, if he so desires, file an affidavit in this regard". Capt. Satish Sharma has, however, not chosen to file any affidavit.

2. The relevant records have been produced before us.

3. Mr Sarbjot Singh in his application mentioned that he was a commerce graduate belonging to the Scheduled Caste community. He completed graduation in the year 1991. He was interested in sports (shooting) and won awards at the national level. Because of his preoccupation with the sports, he had average academic record and as a consequence could not get admission to any professional courses. He further stated that in spite of his best efforts he could not get any suitable employment for supporting himself and as such a petrol pump in Delhi be allotted to him. The file does not indicate how the application was entertained. There is no receipt/entry on the application. No official/officer has examined the application before the Minister's order. There is nothing to show that any guidelines were kept in view. The application, obviously, was given by hand to the Minister, who readily passed the allotment order. There is a separate sheet containing the order of the Minister which is as under :

Office of the Minister of State (P&NG) * * *##

Placed below is an application of Shri Sarbjot Singh for allotment of a retail outlet dealership for MS-HSD. The applicant has stated that he is a graduate without any suitable employment.

Submitted for kind orders.

#

sd/- (G. Gurucharan) PS to MOS (P&NG) 31/1

##

Minister

I have examined the application carefully. The applicant is an unemployed graduate and a sportsman who participated in national level competitions. The applicant has not been able to get any gainful employment and is unable to support himself. The case deserves sympathetic consideration. Therefore, a retail outlet for MS-HSD in the National Capital Territory of Delhi is allotted to Shri Sarbjot Singh r/o 16, Ashok Road, New Delhi.

Orders may be issued accordingly.

#

sd/- (Capt. Satish Sharma) Minister of State

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Thereafter, the matter was processed in the office and in one of the notes by an officer of the Ministry it was mentioned that the allottee "is the son of Shri Buta Singh, Minister of Civil Supplies". No one took notice of this fact and the allotment order was issued.

4. In all the cases discussed hereinafter the pattern of allotment and the method and procedure followed was the same as in Sarbjot Singh case.

5. Benjamin K. Hollohan stated in his application that he was an educated unemployed youth and also active party worker in the area. He belonged to Scheduled Tribe from Nagaland State. He requested in the application for allotment of petrol pump in Purana Bazar area of Dimapur town, Nagaland. The application was sent to Captain Satish Sharma by Mr K. Hollohan, Minister, Industry and Commerce, Nagaland (father of the applicant) along with a D.O. letter which reads as under :

"My dear Capt. Satish Sharma,

Kindly recall our discussions of date regarding allotment of one retail outlet petrol pump (petrol and diesel) in the Purana Bazar area of Dimapur town in Nagaland in favour of my son Benjamin K. Hollohan.

As you may be aware that Benjamin's application and my earlier note in this regard are available in your Ministry. However, I am again enclosing copy of Benjamin's application for your perusal.

It was indeed pleasure to note that you have very kindly agreed to allot one petrol pump in favour of my son Shri Benjamin after careful and due consideration as a very very special case. I shall be personally grateful if you could kindly use your good offices in issuing suitable instructions to the officials concerned in your Ministry so that the possible bureaucratic delays are averted and the permit is issued without much loss of time. Therefore, I request your personal intervention in the matter. I hope, you can very well appreciate my predicament in the matter and am sure, you will do the needful."

The allotment order by the Minister is reproduced hereunder :

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Office of the Minister of State (P&NG) * * *

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Placed below is an application of Shri Benjamin K. Hollohan for allotment of a retail outlet for MS-HSD. The applicant has stated that he is an unemployed youth belonging to Scheduled Tribe community. The applicant has also stated that he has no regular source of income.

Submitted for kind orders.

#

sd/- (G. Gurucharan) PS to MOS (P&NG) 10/10/94

##

Minister

I have examined the application carefully. The applicant is an educated unemployed Scheduled Tribe youth without regular source of livelihood. The case deserves sympathetic consideration. Therefore, a retail outlet for MS-HSD at Purana Bazar, Dimapur, Nagaland is allotted to Shri Benjamin K. Hollohan r/o Durgapathar, 2-1/2 Miles, Dimapur, Nagaland, Pin Code - 797 112.

Necessary orders may be issued accordingly.

#

sd/- (Capt. Satish Sharma) Minister of State

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Syed Hasan Shaukat Abidi stated in his application as under :

"Respectfully I beg to state that I was born at Allahabad, Uttar Pradesh on 20-12-1965. I have passed B.Sc. and completed my Master's in Business Administration (specialisation in marketing). In spite of my best efforts, I have not been able to get a suitable employment. I have no other source of income and am entirely dependent on my aged parents for survival. My inability to find employment and settle down is causing anxiety to my parents. Hence, I would most humbly request you Sir, to grant me a petrol pump at Fatehpur (80 km milestone) in Uttar Pradesh."

The Minister passed the following order :

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Office of the Minister of State (P&NG) * * *

##

Placed below is an application of Shri Syed Shaukat Abidi for allotment of a retail outlet for MS-HSD. The applicant has stated that he has completed his postgraduation in Business Administration

and has not been able to find any suitable employment. The applicant has also stated that he has no other source of income and is dependent on his parents for sustenance.

Submitted for kind orders.

#

sd/- (G. Gurucharan) PS to MOS (P&NG) 16/12

##

Minister

I have examined the application carefully. The applicant is a professional qualified man without any regular employment. The applicant has no other source of income and is entirely dependent on his parents for support and sustenance. The case deserves sympathetic consideration. Therefore, a retail outlet for MS-HSD at Fatehpur (80 km milestone) in Uttar Pradesh is allotted to Shri Syed Hasan Shaukat Abidi r/o 50/1, Dariyabad, Allahabad, Uttar Pradesh.

Orders may be issued accordingly.

#

sd/- (Capt. Satish Sharma) Minister of State

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It is obvious from Mr Kelkar's affidavit that Syed Hasan Shaukat Abidi is the son of Justice S. H. Abidi (Retd.) who was at that time Chairman of the Oil Selection Board for Uttar Pradesh.

6. Shiv Balak Passi applied for allotment of petrol pump in the following words :

"I wish to state the following about myself. I am a social worker who has devoted his entire life for the upliftment of downtrodden, underprivileged. I have been in the forefront in all activities involving eradication of social evils. But Sir, I am growing old and am not in a position to support myself. Therefore, Sir, with due respect I request you to grant me a petrol pump at Lucknow-Rae Bareli Road, Uttar Pradesh."

The Minister passed the following order :

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Office of the Minister of State (P&NG) * * *

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Placed below is an application of Shri Shiv Balak Passi for allotment of a retail outlet for MS-HSD. The applicant has stated that he is a social worker without any regular source of income.

Submitted for kind orders.

#

sd/- (G. Gurucharan) PS to MOS (P&NG) 21/12

##

Minister

I have examined the application carefully. The applicant is an educated unemployed who has no regular source of income due to his serious preoccupation for the upliftment of downtrodden. The case deserves sympathetic consideration. Therefore, a retail outlet for MS-HSDA at Rae Bareilly-Lucknow Road, U.P., is allotted to Shri Shiv Balak Passi, ex-MLA, District Rae Bareilly, Uttar Pradesh.

Orders may be issued accordingly.

#

sd/- (Capt. Satish Sharma) Minister of State

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Mr Kelkar's affidavit shows that Shiv Balak Passi himself is a member of the Oil Selection Board for Madhya Pradesh.

7. Pradeep Kumar, in his application stated that he was an unemployed young man from Scheduled Caste category with enterprise, initiative and determination and was very keen to make petrol pump dealership as his business. He indicated that he was appearing in B.A. (final). He further stated that his father has been an active Congress worker since 1952 and has held many important positions in the organisation as well as on the executive side. The following order was made by the Minister :

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Office of the Minister of State (P&NG) * * *

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Placed below is an application of Shri Pradeep Kumar for allotment of retail outlet for MS-HSD. The applicant has stated that he belongs to a Scheduled Caste community and also an unemployed undergraduate.

For kind orders.

#

sd/- (G. Gurucharan) PS to MOS (P&NG) 20-6-94

##

Minister

I have examined the application carefully. The applicant is a young man from Scheduled Caste community with no source of regular income. The case deserves sympathetic consideration. Therefore, a retail outlet for MS-HSD in the Union Territory of Delhi is allotted to Shri Pradeep Kumar, r/o 18/7, Punjabi Bagh Extension, New Delhi - 110 026.

Orders may be issued accordingly.

#

sd/- (Capt. Satish Sharma) Minister of State

##

While processing the order, noting on the file is as under :

"Reference notes on pre-page. MOS has sanctioned a retail outlet dealership at Delhi on compassionate grounds to Shri Pradeep Kumar who is belonging to SC category. He has stated in his application vide p-1/c that he is appearing in B.A. final year. He is son of Shri Krishna Swaroop, member of OSB, Delhi. The allowances and perks of the member of OSB exceed Rs. 5000 per month.

2. However, in view of the sanction by MOS, file is put up with a fair sanction letter for signature, if approved.

#

sd/- 27/6

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Allotment of a dealership to the son of a sitting member of the OSB will invite adverse criticism. It will also create an avoidable impression that Government is influencing the OSB in this manner.

#

sd/- 27-6-94"

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Mr Kelkar's affidavit shows that Shri Pradeep Kumar is the son of Shri Krishna Swaroop, who was at that time member of Oil Selection Board for Delhi and Chandigarh. Pradeep Kumar in his application did not mention this fact. The file indicates that despite the noting to the effect that the allotment would invite adverse criticism, the allotment orders were issued.

8. Mr Ghulam Ahmad Mir in his application addressed to the Minister, stated that due to the escalation of extremist violence in Kashmir Valley in the recent years, it has become difficult to lead a normal life in the valley and as such earning a livelihood has become very difficult. He further stated that the family was forced to sell some of the ancestral property. He added that despite being a graduate he could not get regular employment. He also stated in the application that he was an active social worker and had been promoting the nationalist cause in the valley due to which he and

his family have been facing constant threats from the militants and extremists in the valley. The Minister passed the following order on the application :

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Office of the Minister of State (P&NG) * * *

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Placed below is an application of Shri Ghulam Ahmad Mir for allotment of a retail outlet for MS-HSD. The applicant has stated that he is a graduate from Jammu and Kashmir, who has been forced to migrate from Kashmir as a result of militant threats to his life. The applicant has also stated that he has no regular source of income for maintaining his family.

Submitted for kind orders.

#

sd/- (G. Gurucharan) PS to MOS (P&NG) 23/9

##

Minister

I have examined the application carefully. The applicant is an unemployed graduate from Jammu and Kashmir trying to settle in Delhi. The applicant is an active social worker espousing the nationalist cause for which reason he and his family have become a target of militants in the valley. The applicant has not been able to obtain any suitable employment in Delhi and is finding it difficult to support his immediate family in Delhi and his parents in Jammu. The case deserves sympathetic consideration. Therefore an 'A' site retail outlet for MS-HSD in the Union Territory of Delhi is allotted to Shri Ghulam Ahmad Mir s/o Haji Gh. Hassan Mir r/o 71-D, Pocket 'K', Sheikh Sarai-II, New Delhi.

Orders may be issued accordingly.

#

sd/- (Capt. Satish Sharma) Minister of State

##

While processing the Minister's order the office put up the following note on the file :

"Ref. note above. Shri G. A. Mir has furnished his bio-data vide pp 3-4/C. In his bio-data he has stated that he is working as a member of Oil Selection Board and is getting Rs. 250 per sitting of the Board as Honorarium.

2. In view of the above, file is put up for orders whether we may issue sanction to Oil Company for award of RO dealership, to Shri G. A. Mir as per sanction letter placed below, if approved."

Despite the above-quoted note, the allotment order was issued. Mr Kelkar in his affidavit has stated that Shri Mir is a member of the Oil Selection Board for Delhi and Chandigarh.

9. Mrs Neena Nautiyal addressed a three lined application to the Minister. It is stated in the application that she is an educated lady and belongs to Scheduled Tribe community. Being unemployed, she wished to instal a retail outlet in the Union Territory, Delhi. The following order was passed by the Minister :

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Office of the Minister of State (P&NG) * * *

##

Placed below is an application of Smt. Neena Nautiyal for allotment of a retail outlet for MS-HSD. The applicant has stated that she is an educated unemployed lady from Scheduled Tribe community.

Submitted for kind orders.

#

sd/- (G. Gurucharan) PS to MOS (P&NG) 19/8

##

Minister

I have examined the application carefully. The applicant is an educated lady and belongs to Scheduled Tribe community. The applicant is unemployed and has no regular source of income. The case deserves sympathetic consideration. Therefore, a retail outlet for MS-HSD in the Union Territory of Delhi is allotted to Smt Neena Nautiyal r/o B-399, Gali No. 19, Bhajanpura, Delhi.

Orders may be issued accordingly.

#

sd/- (Capt. Satish Sharma) Minister of State

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10. While processing the Minister's order the office put up the following note :

"Ref. above. Smt Neena Nautiyal has furnished her bio-data vide pp 8-7/C wherein she has stated that her occupation is agriculture and her and her husband's income is Rs. 25,000 and Rs. 18,000 per annum respectively. In this connection it is stated that it happens from her bio-data that she is the wife of Shri Ravi Sharan Nautiyal who is a member of OSB-Punjab.

2. In view of the above, file is put up for orders whether we may issue sanction to Oil Company for

setting up a RO dealership in favour of Smt Neena Nautiyal."

The allotment letter dated 7-10-1994 was issued to Neena Nautiyal. It is admitted in the affidavit of Mr Kelkar that Neena Nautiyal is the wife of R. S. Nautiyal, Member, Oil Selection Board, Punjab.

11. Arun K. Gupta in his application stated that he passed B.Sc. in Production Engineering in the year 1970 and worked as Project Engineer in the Haryana State Cooperative Supply and Marketing Federation Ltd. at Chandigarh from 1976 to 1989 when he was forced to tender resignation on political considerations when the Haryana Government was headed by Shri Devi Lal. It is further stated that since then he was unemployed and as such the application for grant of petrol pump. The application was directly dealt with by the Minister and his Private Secretary in the following manner :

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Office of the Minister of State (P&NG) * * *

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Placed below is an application of Shri Arun K. Gupta for allotment of retail outlet. The applicant has stated that he is a professional who has not been able to find a regular employment and is finding it difficult to make ends meet.

Submitted for kind orders.

#

sd/- (G. Gurucharan) PS to MOS (P&NG) 22/X/93

##

Minister

I have examined the application carefully. The applicant is a graduate in Production Engineering and is without any regular employment. The case deserves sympathetic consideration. Therefore, a retail outlet for MS-HSD is allotted to Shri Arun K. Gupta, s/o Shri Harbans Lal r/o H. No. 68, Sector 8-A, Chandigarh at Sector-20 C, Chandigarh.

Orders may be issued accordingly.

#

sd/- (Capt. Satish Sharma) Minister of State 26/10

##

While processing the above order, Mr S. K. Singh, Under-Secretary in the Ministry wrote on the file as under :

"A retail outlet dealership has been allotted to Shri Arun Kumar Gupta s/o Shri Harbans Lal, at Chandigarh under discretionary powers of Government vide MOS's order at p-1/n and government sanction at p-2/c.

2. Since the allottee has not mentioned anything about his father and since a similar named person is working as Chairman of one of the Oil Selection Boards, IOC was asked to check the detail from the allottee. A report now received from IOC is placed at pp. 5-3/c for perusal. It may be seen therefrom that the father of the allottee Shri Harbans Lal is a Retd. Judge of the Punjab and Haryana High Court and practising Senior Advocate in the Supreme Court at New Delhi, and also functioning as the Chairman of the Oil Selection Board for Haryana.

3. It is humbly submitted that such allotments will invite adverse public criticism.

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sd/- (S. K. Singh) US (M. II)/6-12-93"

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Letter of intent was issued to Mr Arun K. Gupta on 9-12-1993. Mr Kelkar in his affidavit has stated that Arun K. Gupta is the son of Justice Harbans Lal Gupta (Retd.), who at that time was Chairman of the Oil Selection Board, Haryana.

12. Satya Bahen, ex-Member of Parliament and member of the Oil Selection Board for Haryana recommended the application of Dharmesh Kumar for allotment of petrol pump. It was stated in the recommendation that Dharmesh Kumar's father died few years back, they are poor and his mother is suffering from cancer. The Minister allotted the petrol pump by the following order :

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Office of the Minister of State (P&NG) * * *

##

Placed below is an application of Shri Dharmesh Kumar for allotment of a retail outlet for MS-HSD. The applicant has stated that he is an educated youth from Scheduled Tribe whose father had passed away while in government service. The applicant has also stated that his mother who had been trying to support her family is also afflicted with cancer which has put the family in difficult circumstances.

Submitted for kind orders.

#

sd/- (G. Gurucharan) PS to MOS (P&NG) 9/11

##

Minister

I have examined the application carefully. The applicant is an unemployed youth whose father's sudden demise had prevented him from completing his education. The applicant's mother who had been the sole breadwinner for the family is also afflicted with cancer which has put the family in straitened circumstances. The applicant has also not been able to obtain suitable employment. The case deserves sympathetic consideration. Therefore, a retail outlet for MS-HSD at Ferozabad-Shikohabad Road, near Makhanpur, Uttar Pradesh is allotted to Shri Dharmesh Kumar s/o late Shri Johari Lal (Amin) r/o H. No. 20, Katra Mohammed Mah, Gandhi Marg, Shikohabad, Firozabad, Uttar Pradesh.

Orders may be issued accordingly.

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sd/- (Capt. Satish Sharma) Minister of State 9/11

##

In his affidavit filed before this Court Dharmesh Kumar stated that he is "neither a family member nor dependent on Satya Bahen. The deponent is not closely related to Satya Bahen".

13. Leela Devi in her application stated that her husband expired on 25-1-1994. Two clerks of lawyers killed her husband in the premises of Patiala House. It is further stated that she is a housewife with no means of income to feed herself and her family since the death of her husband. The Minister allotted the petrol pump by the following order :

#

Office of the Minister of State (P&NG) * * *

##

Placed below is an application of Smt Leela Devi for allotment of a retail outlet for MS-HSD. The applicant has stated that her husband was murdered and ever since his death her family is left without any regular source of livelihood.

Submitted for kind orders.

#

sd/- (G. Gurucharan) PS to MOS (P&NG) 19-5-95

##

Minister

I have examined the application carefully. The applicant is a widow whose husband was murdered. The applicant has no regular income to support herself and her family. The case deserves

sympathetic consideration. Therefore, a retail outlet for MS-HSD at NOIDA, U.P. is allotted to Smt Leela Devi w/o late Shri Krishan Swaroop r/o H. No. B-412/A, Sector No. 19, NOIDA, U.P.

Orders may be issued accordingly.

#

sd/- (Capt. Satish Sharma) Minister of State

##

The material on the file shows that the late husband of Leela Devi was a dismissed employee of Post and Telegraph Department. He had six sons and a house on Kalibari Marg. Late husband of Leela Devi was living away from the family for 7-8 years prior to his death. Mr Kelkar in his affidavit has stated that Leela Devi is the relative of the driver of the Minister. The affidavit filed by Leela Devi and the documents attached with the affidavit read with Kelkar's affidavit clearly show that Leela Devi is the mother of Nand Kishore who was working as driver of Capt. Satish Sharma. Mr Kelkar in his affidavit has stated that "Smt Leela Devi happens to be a relative of the driver of the Minister". Least we can say is that Mr Kelkar should have known that Leela Devi was the Minister's driver's mother.

14. Poda Rajasekhar has, in his application, stated that he completed his B.Com. in 1980 and in spite of his best efforts he could not settle in regular employment. His father was serving as an Inspector of Customs and Central Excise. He expired in January 1981. His mother, who was a teacher, retired on 19-4-1993. He finds it difficult to cope with the present circumstances. The Minister allotted the petrol pump by the following order :

#

Office of the Minister of State (P&NG) * * *

##

Placed below is the application of Shri Poda Rajasekhar r/o 8-3-897/6 Nagarjuna Nagar, Hyderabad (A.P.). The applicant has stated that he is an educated unemployed person who has the responsibility of looking after his mother as well as a cousin, who is mentally retarded. He has stated that besides his best efforts, he has not been able to settle in any regular employment. He has prayed that a retail outlet dealership for MS-HSD may be allotted to him at Banjara Hills, Secunderabad (A.P.).

For kind orders.

#

sd/- (G. Gurucharan) PS to MOS (P&NG) 23/7/93

##

Minister

I have examined the application carefully. The applicant's case is genuine in view of the adverse

financial circumstances that the family finds itself in. It is a fit case for sympathetic consideration. Accordingly a retail outlet dealership for MS-HSD is allotted to Shri Poda Rajasekhar at Banjara Hills, Secunderabad (A.P.).

Orders may be issued immediately.

#

sd/- (Capt. Satish Sharma) MOS (P&NG)

##

Mr Kelkar in his affidavit has stated that "Poda Rajasekhar is a relative of Shri Gurucharan, Private Secretary to the Minister".

15. Madhuri Safaya has stated in her application that she is a native of Kashmir. She is a young lady and has been rendered homeless due to the increasing militancy in the valley. Due to sudden migration to Delhi she has not been able to complete her education. On these grounds she requested the Minister to allot her a petrol pump. The Minister readily obliged her by the following order :

#

Office of the Minister of State (P&NG) * * *

##

Placed below is an application of Ms Madhuri Safaya for allotment of retail outlet for MS-HSD. The applicant has stated that she belongs to Kashmir and her family has migrated to Kashmir. The applicant has also stated that she has not been able to get a suitable job and is without a regular source of livelihood.

Submitted for kind orders.

#

sd/- (G. Gurucharan) PS to MOS (P&NG) 12.10

##

Minister

I have examined the application carefully. The applicant is a young lady whose family has migrated from Kashmir and are dependent on their relatives for sustenance. The applicant has not been able to obtain a suitable job for herself and is without any regular source of income. The case deserves sympathetic consideration. Therefore, a retail outlet for MS-HSD in the National Capital Territory of Delhi is allotted to Ms Madhuri Safaya r/o B-6/1, Vasant Vihar, New Delhi.

Orders may be issued accordingly.

#

sd/- (Capt. Satish Sharma) Minister of State

##

Mr Kelkar has confirmed in his affidavit that Madhuri Safaya is related to B. N. Safaya, Additional Private Secretary to the Minister.

16. Monika Malla in her application stated that her family was forced to leave Kashmir due to the militant activities. Her family had to dispose of the property at a loss and all the savings had already been spent. She has to support her parents who are not keeping good health. On these grounds she requested the Minister for the allotment of petrol pump. The Minister passed the following order :

#

Office of the Minister of State (P&NG) * * *

##

Placed below is an application of Ms Monika Malla for allotment of a retail outlet for MS-HSD. The applicant has stated that she is a young lady from Kashmir whose family has been forced to migrate to Delhi due to growing militancy. The applicant has also stated that she has exhausted their family's savings and are finding it difficult to sustain themselves in Delhi.

Submitted for kind orders.

#

sd/- (G. Gurucharan) PS to MOS (P&NG) 12.10

##

Minister

I have examined the application carefully. The applicant is a young lady whose family had migrated to Delhi owing to militant activities of the extremists. The applicant's family has no source of livelihood and she has not been able to obtain any suitable employment. The case deserves sympathetic consideration. Therefore, a retail outlet for MS-HSD in the National Capital Territory of Delhi is allotted to Ms Monika Malla c/o Smt. Labroo r/o D-1/54, Vasant Vihar, New Delhi.

Orders may be issued accordingly.

#

sd/- (Capt. Satish Sharma) Minister of State

##

Mr Kelkar has stated in his affidavit that Monika Malla is related to the wife of B. N. Safaya, Additional Private Secretary to the Minister.

17. Daya Rani stated in her application that she is a housewife of a low-paid employee having four

school-going children. It was difficult to live with the meagre salary of her husband. She wanted to share the responsibility of her husband and as such requested the Minister to allot her a petrol pump. The Minister obliged her by passing the following order :

#

Office of the Minister of State (P&NG) * * *

##

Placed below is an application of Smt Daya Rani w/o Shri H. R. Verma for allotment of a retail outlet for MS-HSD. The applicant has stated that she has a family of four school-going children and is finding it difficult to make ends meet with the income being earned by her husband.

Submitted for kind orders.

#

sd/- (G. Gurucharan) PS to MOS (P&NG) 10-10-94

##

Minister

I have examined the application carefully. The applicant is a housewife whose family is facing difficult financial circumstances. The case deserves sympathetic consideration. Therefore, a retail outlet in the Union Territory of Delhi is allotted to Smt Daya Rani w/o Shri H. R. Verma r/o C-183, Albert Square, Ramakrishna Ashram Marg, Gole Market, New Delhi.

Orders may be issued accordingly.

#

sd/- (Capt. Satish Sharma) Minister of State

##

Shri S. K. Singh, Under-Secretary, while processing the Minister's order noted on the file as under :

"Smt. Daya Rani, the allottee is the wife of Shri Hari Ram Verma who is working in this Ministry as an Assistant and presently posted to Minister's Office. His annual income from pay and allowances during 1993-94 is reported as Rs. 52,925. However, the allottee has shown the annual income as Rs. 36,000 which is factually not correct. It seems that she has shown only the take-home pay after deductions. It is for consideration whether the sanction letter placed below as per orders of MOS recorded at p-1/n may be issued.

#

sd/- (S. K. Singh) US (M. II)/25-10-94"

##

Allotment order was issued to Daya Rani on 31-10-1994. Mr Kelkar has stated in his affidavit that Daya Rani is the wife of H. R. Verma, Personal Assistant to the Additional Private Secretary (B. N. Safaya) to the Minister.

18. Vijaya Nair has stated in her application that she is a young housewife with a large family to support. She has studied up to B.A. level. The meagre income of her husband could not sustain their liabilities. She requested the Minister to allot her a petrol pump which was done by the following order :

#

Office of the Minister of State (P&NG) * * *

##

Placed below is an application of Smt Vijaya Nair. The applicant is a young educated unemployed person with the responsibility of looking after a family which has a meagre income. The applicant has stated that despite best efforts she has been unable to obtain suitable job. She has, therefore requested that as a special case she may be allotted a retail outlet MS-HSD in the Union Territory of Delhi.

For kind orders.

#

sd/- (G. Gurucharan) PS to MOS (P&NG) 23-7-93

##

Minister

I have examined the application carefully. The applicant is an educated unemployed housewife whose family circumstances is one of considerable financial difficulty. The applicant has also prayed that she has the necessary drive and initiative to run a retail outlet. This is a fit case to be considered sympathetically. Accordingly, a retail outlet for MS-HSD is allotted to Smt Vijaya Nair, 2213, Lodi Road Complex, New Delhi - 110 003, in the Union Territory of Delhi as a special case.

Orders may be issued accordingly.

#

sd/- (Capt. Satish Sharma) Minister of State

##

Mr Kelkar has stated in his affidavit that Vijaya Nair is related to D. V. Pillai, Additional Private Secretary to Minister.

19. All the 15 allotments - discussed above - have been made by the Minister in a stereotyped manner. The applications have not been officially received by the Petroleum Ministry. There is no receipt-entry on any of the applications. The applicants seem to have approached the Minister directly. None of the applications have been dealt with in any of the branches of the Ministry. There is nothing on the record to indicate that the Minister kept any criteria in view while making the allotments. How the applicants came to know about the availability of the petrol pumps is not known. No advertisement was made to invite the applications. There is nothing on the record to show that any other method of inviting applications was adopted. There is no indication in the allotment orders or anywhere in the record to show that the Minister kept any guidelines in view while making these allotments. The allotments have been made in a cloistered manner. The petrol pumps - public property - have been doled out in a wholly arbitrary manner. This Court in *Ramana Dayaram Shetty v. International Airport Authority of India* [(1979) 3 SCC 489], held as under : (SCC p. 506, para 12)

"It must, therefore, be taken to be the law that where the Government is dealing with the public, whether by way of giving jobs or entering into contracts or issuing quotas or licences or granting other forms of largesse, the Government cannot act arbitrarily at its sweet will and, like a private individual, deal with any person it pleases, but its action must be in conformity with standard or norms which is not arbitrary, irrational or irrelevant. The power or discretion of the Government in the matter of grant of largesse including award of jobs, contracts, quotas, licences, etc. must be confined and structured by rational, relevant and non-discriminatory standard or norm and if the Government departs from such standard or norm in any particular case or cases, the action of the Government would be liable to be struck down"

20. The allotments have been made by the Minister either on the ground of poverty or unemployment. Assuming that the allottees belong to either of these two categories then how the Minister has selected them out of millions of poor and unemployed in this country. As mentioned above no criteria was fixed, no guidelines were kept in view, none knew how many petrol pumps were available for allotment, applications were not invited and the allotments of petrol pumps were made in an arbitrary and discriminatory manner.

21. We may examine these allotments from another angle which has very serious repercussions. Six of the allottees are related to various officials working with the Minister. Leela Devi is the mother of Minister's driver. Poda Rajasekhar is a relation of G. Gurucharan, Private Secretary to the Minister. Madhuri Safaya and Monika Malla are related to B. N. Safaya, Additional Private Secretary to the Minister. Daya Rani is the wife of H. R. Verma, Personal Assistant to B. N. Safaya and Vijaya Nair is the wife of D. V. Pillai, Additional Private Secretary. Two of the allottees are related to the politicians. Sarbjot Singh is the son of Buta Singh who was Home Minister and at the relevant time was Cabinet Minister heading the Civil Supplies portfolio. Benjamin K. Hollohan is the son of Shri K. Hollohan, Minister in the State of Nagaland. Remaining seven allottees are either members of the Oil Selection Boards or their relations. Shaukat Hasan Abidi is the son of Justice S. H. Abidi (Retd.), who was the Chairman of the Oil Selection Board, Uttar Pradesh. Similarly, Arun Kumar Gupta is the son of Justice Harbans Lal Gupta (Retd.) who was the Chairman of Oil Selection Board, Haryana. Pradeep Kumar is the son of Krishna Swaroop, who was member of Oil Selection Board for Delhi and Chandigarh. Neena Nautiyal is the wife of R. S. Nautiyal, who was member of Oil Selection Board, Punjab. Dharmesh Kumar was the recommendee of Satya Bahen, ex-Member of Parliament and member of the Oil Selection Board for Haryana. Shiv Balak Passi and Ghulam Ahmad Mir were themselves members of the Oil Selection Boards. It is obvious that Capt. Satish

Sharma was personally interested in making allotments of petrol pumps in favour of all these 15 persons. He made allotments in favour of relations of his personal staff under the influence of the staff on wholly extraneous considerations. The allotments to the sons of the Ministers were only to oblige the Ministers. The allotments to the members of the Oil Selection Boards and their/chairmen's relations have been done to influence them and to have favours from them. All these allotments are wholly arbitrary, nepotistic and are motivated by extraneous considerations.

22. The Government today - in a welfare State - provides large number of benefits to the citizens. It distributes wealth in the form of allotment of plots, houses, petrol pumps, gas agencies, mineral leases, contracts, quotas and licences etc. Government distributes largesses in various forms. A Minister who is the executive head of the department concerned distributes these benefits and largesses. He is elected by the people and is elevated to a position where he holds a trust on behalf of the people. He has to deal with the people's property in a fair and just manner. He cannot commit breach of the trust reposed in him by the people. We have no hesitation in holding that Capt. Satish Sharma in his capacity as a Minister for Petroleum and Natural Gas deliberately acted in a wholly arbitrary and unjust manner. We have no doubt in our mind that Capt. Satish Sharma knew that the allottees were relations of his personal staff, sons of Ministers, sons/relations of Chairmen and members of the Oil Selection Boards and the members of the Oil Selection Boards themselves. The allotments made by him were wholly mala fide and as such cannot be sustained.

23. We are further of the view that Capt. Satish Sharma acted in a wholly biased manner inasmuch as he unfairly regarded with favour the cases of 15 allottees before him. The relevant circumstances available from record and discussed by us leave no manner of doubt in our mind that Capt. Satish Sharma deliberately acted in a biased manner to favour these allottees and as such the allotment orders are wholly vitiated and are liable to be set aside.

24. The orders of the Minister reproduced above read : "the applicant has no regular income to support herself and her family", "the applicant is an educated lady and belongs to Scheduled Tribe community", "the applicant is unemployed and has no regular source of income", "the applicant is an uneducated, unemployed Scheduled Tribe youth without regular source of livelihood", "the applicant is a housewife whose family is facing difficult financial circumstances" etc. etc. There would be literally millions of people in the country having these circumstances or worse. There is no justification whatsoever to pick up these persons except that they happen to have won the favour of the Minister on mala fide considerations. None of these cases fall within the categories placed before this Court in Centre for Public Interest Litigation v. Union of India [1995 Supp (3) SCC 382] but even if we assume for argument sake that these cases fall in some of those or similar guidelines the exercise of discretion was wholly arbitrary. Such a discretionary power which is capable of being exercised arbitrarily is not permitted by Article 14 of the Constitution of India. While Article 14 permits a reasonable classification having a rational nexus to the objective sought to be achieved, it does not permit the power to pick and choose arbitrarily out of several persons falling in the same category. A transparent and objective criteria/procedure has to be evolved so that the choice among the members belonging to the same class or category is based on reason, fair play and non-arbitrariness. It is essential to lay down as a matter of policy as to how preferences would be assigned between two persons falling in the same category. If there are two eminent sportsmen in distress and only one petrol pump is available, there should be clear, transparent and objective criteria/procedure to indicate who out of the two is to be preferred. Lack of transparency in the system promotes nepotism and arbitrariness. It is absolutely essential that the entire system should be transparent right from the stage of calling for the applications up to the stage of passing the orders of allotment. The names of the allottees, the orders and the reasons for allotment should be

available for public knowledge and scrutiny. Mr Shanti Bhushan has suggested that the petrol pumps, agencies etc. may be allotted by public auction - categorywise amongst the eligible and objectively selected applicants. We do not wish to impose any procedure on the Government. It is a matter of policy for the Government to lay down. We, however, direct that any procedure laid down by the Government must be transparent, just, fair and non-arbitrary.

25. This Court in Centre for Public Interest Litigation case [1995 Supp (3) SCC 382] has endorsed the guidelines submitted by the Attorney General for allotment of petrol pumps, gas agencies etc. The Court in that case did not have before it the actual manner of exercise of discretion by the Minister in the allotment of pumps/agencies. The allotment orders which are now before the Court clearly indicate that leaving the authorities to enjoy absolute discretion even within the guidelines would inevitably lead to gross violation of the constitutional norms when the persons for allotment are picked up arbitrarily and discriminatorily.

26. This Court as back as in 1979 in Ramana Shetty case [(1979) 3 SCC 489] held "it must, therefore, be taken to be the law ..." that even in the matter of grant of largesses including award of jobs, contracts, quotas and licences, the Government must act in fair and just manner and any arbitrary distribution of wealth would violate the law of the land. Mr Satish Sharma has acted in utter violation of the law laid down by this Court and has also infringed Article 14 of the Constitution of India. As already stated a Minister in the Central Government is in a position of a trustee in respect of the public property under his charge and discretion. The petrol pumps/gas agencies are a kind of wealth which the Government must distribute in a bona fide manner and in conformity with law. Capt. Satish Sharma has betrayed the trust reposed in him by the people under the Constitution. It is high time that the public servants should be held personally responsible for their mala fide acts in the discharge of their functions as public servants. This Court in Lucknow Development Authority v. M. K. Gupta [(1994) 1 SCC 243], approved "Misfeasance in public offices" as a part of the Law of Tort. Public servants may be liable in damages for malicious, deliberate or injurious wrongdoing. According to Wade :

"There is, thus, a tort which has been called misfeasance in public office and which includes malicious abuse of power, deliberate maladministration, and perhaps also other unlawful acts causing injury."

With the change in socio-economic outlook, the public servants are being entrusted with more and more discretionary powers even in the field of distribution of government wealth in various forms. We take it to be perfectly clear, that if a public servant abuses his office either by an act of omission or commission, and the consequence of that is injury to an individual or loss of public property, an action may be maintained against such public servant. No public servant can say "you may set aside an order on the ground of mala fide but you cannot hold me personally liable". No public servant can arrogate to himself the power to act in a manner which is arbitrary.

27. For the reasons indicated above, we conclude that the orders passed by Capt. Satish Sharma, the then Minister of State for Petroleum and Natural Gas, Government of India, allotting petrol pumps to Sarbjot Singh, Benjamin K. Hollohan, Syed Hasan Shaukat Abidi, Shiv Balak Passi, Pradeep Kumar, Ghulam Ahmad Mir, Neena Nautiyal, Arun Kumar Gupta, Dharmesh Kumar, Leela Devi, Poda Rajasekhar, Madhuri Safaya, Monika Malla, Daya Rani and Vijaya Nair are arbitrary, discriminatory, mala fide, wholly illegal and as such are liable to be quashed.

28. We, therefore, hold and direct as under :

1. The orders - reproduced in earlier part of this judgment - allotting petrol pumps to the above-mentioned fifteen persons are hereby quashed.

2. The allocation, allotment of the petrol pumps/retail outlet dealerships by the Government of India, Indian Oil Corporation Ltd. or any other corporation in the names of the above-said fifteen persons shall stand cancelled with immediate effect.

3. Most of these 15 persons have not as yet commissioned the petrol pumps. Those who have commissioned the petrol pumps and are running the same shall stop operating the petrol pumps and running the said business with effect from 31-10-1996. The Government of India/Oil Corporation (concerned) shall take over the petrol pump premises from these persons within ten days thereafter. The Oil Corporation shall have the market value of the site and the construction thereon, determined in a fair and just manner before 31-10-1996.

4. Each of the commissioned petrol pumps, taken over by the Government/Oil Corporation (concerned) and the built-up area along with the site (whether leasehold or owned by the original allottee) shall be disposed of by way of public auction. The original allottees may also participate in the auction. The petrol pump shall be allotted to the highest bidder. The said allottee shall run the petrol pump on the original terms and conditions. He shall have all the rights in respect of the site and the construction thereon as the original allottee had on the date of auction. Out of the auction money the value of the site and the construction as determined by the Oil Corporation shall be paid to the original allottee and the remaining money shall go to the government coffer. On receipt of the said amount the original allottee shall cease to have any right or interest in the site and the construction thereon. If the successful bidder is the original allottee, he shall pay the difference between the auction money and the value of the site and construction as determined by the Oil Corporation.

5. Capt. Satish Sharma shall show cause within two weeks why a direction be not issued to the appropriate police authority to register a case and initiate prosecution against him for criminal breach of trust or any other offence under law. He shall further show cause within the said period why he should not, in addition, be made liable to pay damages for his mala fide action in allotting petrol pumps to the above-mentioned fifteen persons.

29. We place on record our appreciation for Mr. H. D. Shourie, who, very ably, assisted us in this matter. He shall be entitled to costs which we quantify as rupees fifty thousand. The cost shall be paid by Capt. Satish Sharma personally.

30. Before parting with this judgment, we may mention about Civil Writ Petitions Nos. 4003 and 4430 of 1995 which are pending before the Delhi High Court. In the said petitions, allotment of petrol pumps/gas agencies to various other persons during the period 1992-93, 1993-94, 1994-95 and 1995-96 have been challenged. Transfer Petition No. 127 of 1996 has been filed in this Court seeking transfer of those writ petitions from Delhi High Court to this Court. We have issued notice in the transfer petition and have stayed further proceedings before the High Court in the writ petitions. Various affidavits have been filed on behalf of the Ministry of Petroleum and Natural Gas. Mr Devi Dayal, joint Secretary of the Ministry, in his affidavit dated 26-3-1995, has stated that in 1995-96 petroleum products agencies were allotted to 99 persons under the discretionary powers of

the Government. It is further stated that orders on file have been made allotting petrol pumps/agencies to 61 more persons. An affidavit filed by Mr Srinivasan, Advocate supporting the transfer petition gives a long list of persons who are related to the then Prime Minister/Ministers and other VIPs and who have been allotted petrol pumps and gas agencies. Mr Devi Dayal, Joint Secretary in the Ministry of Petroleum has filed another affidavit dated 18-4-1996 in reply to the affidavit of Mr Srinivasan. Para 6 of the affidavit is as under :

"As regards the list of allottees mentioned in paras 3 to 6 and the alleged relationship with the Prime Minister, other Ministers, VIPs, MPs/MLAs, etc., it is to submit that enquiries have been made through the Oil Companies from the allottees, who have replied through affidavits. The comments of the Ministry, on the basis of above enquiry and records, are contained in Annexure I to this affidavit."

Annexure 1 with the affidavit shows that gas agencies were allotted to six relations of the then Prime Minister, an agency to a son of the OSD in Prime Minister's office, LPG dealership to daughter-in-law of the OSD to the then Minister of Petroleum, a petrol pump to the real brother of Chandraswamy (Nemi Chand Jain), LPG distributorship to brother of Shri Bhagwan Shri Satya Sai Baba, LPG dealership to Manju Devi, wife of Private Secretary to Additional Private Secretary of Capt. Satish Sharma, a petrol pump to wife of V. K. Aggarwal, Additional Private Secretary, Ministry of Law, RO dealership to Rakesh Saluja, son of R. L. Saluja, who was employed in the Ministry of Petroleum till June 1993, RO dealership to Prathiba Singh related to Shri Kalpnath Rai, RO dealership in January 1995 to Kanti Lal Bhuriya, who at that time was Minister for Tribal Welfare in the Madhya Pradesh Government, a gas agency to the son-in-law of Mr G. Ganga Reddy, Member of Parliament and various others.

31. Since the two writ petitions, mentioned above, are pending before the High Court wherein the allotments made to all the persons mentioned above and others, have been challenged, it is not necessary for us to transfer the writ petitions to this Court. We vacate the stay order granted by this Court and dispose of the transfer petition. We direct the Registry of this Court to send all the affidavits filed by the parties in the transfer petition along with annexures to the High Court. We have no doubt that the High Court shall examine the issues involved in the writ petitions and shall also go into the validity of the allotment of petrol pumps/gas agencies to various persons, after hearing them, in accordance with law. We request the High Court to expedite the hearing of the petitions.