

SUPREME COURT OF INDIA

Common Cause A Regd. Society

Vs.

Union of India

Writ Petn. (C) No. 226 of 1995

(Kuldip Singh and Faizan Uddin JJ.)

04.11.1996

ORDER

1. The question before this Court in Common Cause v. Union of India and others, Writ Petition (C) No. 26/95 was whether the allotments of retail outlets for petroleum products (Petrol Pumps) were illegal and as such liable to be quashed. This Court by the judgment dated September 25, 1996 (reported in 1996 AIR SCW 3696) came to the conclusion that the allotments made by Captain Satish Sharma were arbitrary, discriminatory, mala fide, wholly illegal and as such were liable to be quashed. This Court reached the said findings on the following reasoning (paras 18, 21, 22 and 25 of AIR):

"All the 15 allotments - discussed above - have been made by the Minister in a stereotyped manner. The application have not been officially received by the Petroleum Ministry. There is no receipt - entry on any of the application. The applicants seem to have approached the Minister directly. None of the application 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 appellants 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".....

"All these allotments are wholly arbitrary, nepotistic and are motivated by extraneous considerations".....

"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.

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".....

"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".

2. One of the directions issued by this Court was as under (para 27 of AIR):

"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".

3. Pursuant to the above quoted direction, a show cause notice was issued to Capt. Satish Sharma.

He has filed affidavit in reply to the show cause notice.

4. We have heard Mr. Salve, learned Counsel appearing for Capt. Satish Sharma. There are two parts of the directions quoted above. This Court has called upon Capt. Satish Sharma to show cause 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.

5. The findings of this Court, quoted above and the conclusions reached in the Common Cause case (1996 AIR SCW 3696), leave no manner of doubt that an investigation by an independent authority is called for in this case. We, therefore, direct the Central Bureau of Investigation (CBI) to register a case against Capt. Satish Sharma in respect of the allegation dealt with and the findings reached by this Court in the Common Cause case. The CBI shall hold investigation and proceed in accordance with law. There shall be no limit on the power, scope and sphere of investigation by the CBI. We, however, make it clear that the CBI shall not be influenced by any observations made by this Court or the findings reached in Common Cause case, for reaching the conclusion as to whether any prima facie case for prosecution/trial is made out against Capt. Sharma. It shall have to be decided on the basis of the material collected and made available with the CBI as a result of the investigation. We direct the CBI to complete the investigation within three months of the receipt of this order. The CBI shall file interim report to indicate compliance of this order. This shall be done by January 20, 1997 and this matter shall be listed on January 22, 1997 before a Bench of which Mr. Justice Faizan Uddin is a member.

6. Mr. Harish Salve has addressed elaborate arguments on the question of damages. We place on record our appreciation for Mr. Harish Salve for assisting this Court in a very fair and independent manner.

7. According to Mr. Salve this is not a case where compensatory or exemplary damages should be imposed. According to him nominal damages would meet the ends of justice.

8. This Court has authoritatively laid down in Nilabati Behera (Smt.) alias Lalita Behara v. State of Orissa, (1993) 2 SCC 746 : (1993 AIR SCW 2366) that damages can be awarded by this Court in proceedings under Article 32 of the Constitution of India. Mr. Salve has taken us through the Privy Council judgment in Rookes v. Barnard, 1964 Appeal Cases 1129. Lord Devlin in his opinion has held that exemplary damages can be awarded for "oppressive, arbitrary and unconstitutional action by the servants of the Governments". Mr. Salve has also taken us through the judgment of the Court of Appeal in A. B. v. South West Water Services Ltd., 1993 Queen's Bench 507. Broome's case was elaborately discussed and relied upon in this judgment. It would be useful to quote the relevant part of the opinion by Stuart Smith LJ.

"The first category is "oppressive, arbitrary or unconstitutional action by the servants of the Government." It is common ground that this category of persons is not limited to the servants of Central Government, but includes servants of local government and the police.

9. In *Broome v. Cassell and Co. Ltd.*, (1972) AC 1027, 1077-1078, Lord Hailsham of St. Marylebone L.C. said :

"...I would be surprised if it included only servants of the Government in the strict sense of the word. It would, in any view, obviously apply to the police...and almost as certainly to local and other officials exercising improperly rights of search or arrest without warrant and it may be that in the future it will be held to include other abuses of power without warrant by persons purporting to exercise legal authority".

10. Lord Reid said, at pp. 1087-88 :

"With regard to the first I think that the context shows that the category was never intended to be limited to Crown servants. The contrast is between "the Government" and private individuals. Local government is as much government as national government, and the police and many other persons are exercising governmental functions. It was unnecessary in *Rookes v. Barnard* (1964 AC 1129) to define the exact limits of the category. I should certainly read it as extending to all those who by common law or statute are exercising functions of a governmental character."

11. Lord Wilberforce said at p. 1120 :

"There is not perhaps much difficulty about category 1 : it is well based on the cases and on a principle stated in 1703 - 'if public officers will infringe men's rights, they ought to pay greater damages than other men to deter and hinder others from the like offences : *Ashby v. White* (1703) 2 Ld Raym 938, 956, per Holt C.J. Excessive and insolvent use of power is certainly something against which citizens require as much protection today : a wide interpretation of 'government' which I understand your Lordships to endorse would correspond with Holt C.J.'s 'public officers' and would partly correspond with modern needs."

12. Lord Diplock said of the first category, at p. 1130:

"It would embrace all persons purporting to exercise powers of government, central or local, conferred upon them by statute or at common law by virtue of the official status or employment which they held."

13. In the said case Thomas Bingham M. R. further elaborated the concept in the following words:

"In the first category there had been what he variously described as an "arbitrary and outrageous use of executive power : (see p. 1223) and "oppressive, arbitrary or unconstitutional action by the servants of the government" see p. 1226, Minute textual analysis of these expressions is inappropriate. This was a judgment not a statute. But there can be no doubt what Lord Delvin was speaking about. It was gross misuse of power. Involving tortious conduct, by agents of government. According to the traditional classification of the law of tort, such misuse of power could give rise to any one of a number of causes of action, which Lord Dalvin was not ta pains to identify".

14. The Court of Appeal also relied upon the judgment of the House of Lords in Broome v. Cassell and Co. Ltd., 1972 AC 1027.

15. We are of the view that the legal position that exemplary damages can be awarded in a case where the action of a public servant is oppressive, arbitrary or unconstitutional, is unexceptionable. The question for consideration, however, is whether the action of Capt. Satish Sharma makes him liable to pay exemplary damages. In view of the findings of this Court in Common Cause case - quoted above - the answer has to be in the affirmative. Satish Sharma's actions were wholly arbitrary, mala fide and unconstitutional. This Court has given clear findings to this effect in the Common Cause case. We, therefore, hold that Capt. Satish Sharma is liable to pay exemplary damages.

16. We have heard Mr. H. N. Salve on the question of quantum. Mr. Salve has vehemently contended that Capt. Sharma was a part of the system which was operating before his joining as a Minister. According to him the types of wrongs were being committed even earlier on the assumption that the Minister's discretion was to be exercised on his subjective satisfaction. He has further contended that since the concept of absolute liability of public servants for misfeasance has been of recent origin in this country even while awarding exemplary damages leniency should be shown. There is some plausibility in the contentions raised by Mr. Salve. After examining all the facts and circumstances of this case and giving thoughtful consideration to this aspect, we direct Capt. Satish Sharma to pay a sum of Rs.50 lacs as exemplary damages to the Government Exchequer. Since the property with which Capt. Sharma was dealing was public property, the Government which is "by the people" has to be compensated. We further direct Capt. Sharma to deposit the amount with the Secretary, Ministry of Finance, Government of India within nine months from today. The amount if not paid, shall be recoverable as arrears of land revenue.

Order accordingly.