**SUPREME COURT OF INDIA**

V. Purushotham Rao

Vs.

Union of India

With Civil Appeal Nos. 3104-3105, 3089, 3090, 3117, 3097, 3102, 3086, 3106, 3085, 3094, 3099, 3103, 3092 & 3101 of 2000.

(G.B. Pattanaik and Ruma Pal JJ.)

(2001) INSC 0559

19.10.2001

**JUDGMENT**

**PATTANAIK, J.**

In this batch of appeals the judgment of Delhi High Court, canceling the allotment made by the concerned minister from out of his so- called discretionary quota on petroleum dealership as well as LPG dealership is under challenge. Prior to 1995, the Minister of Petroleum in exercise of his discretion had been allotting retail outlets for petroleum products, LPG dealership and SKO dealership, without having any prescribed norms. A Public Interest Litigation had been filed in this Court by Centre for Public Interest Litigation under Article 32 of the Constitution, praying that guidelines to regulate the exercise of discretion in the matter of such allotment, which results in exercise of the discretion arbitrarily be fixed. It may be stated that initially a prayer had also been made in that application to cancel the dealership in favour of respondent No. 4, but that prayer stood

deleted and an amended petition was filed as the said respondent did not accept the dealership in question. This Court after hearing the counsel for the petitioner, and the learned Attorney General, issued a set of guidelines for discretionary allotment of petroleum products agencies to ensure that the exercise of discretion in making such allotments are in conformity with the rule of law and by excluding the likelihood of arbitrariness and minimising the area of discretion. The said decision of this Court has since been reported in the case of Centre for Public Interest Litigation vs. Union of India and Ors., 1995 Supp.(3) S.C.C. 382. In para (4) of the aforesaid Judgment, the Court had directed as under:

We hereby direct that the above-quoted norms/guidelines etc. shall be followed by the Central Government in making all such discretionary allotments of retail outlets for petroleum products, LPG Dealership and SKO Dealership, hereafter.

The Common Cause had filed a petition under Article 32 on the basis of a news item which appeared in a national newspaper that the Minister of Petroleum was personally interested in making allotment of petrol pumps in favour of 15 persons, who were either the relations of his personal staff or sons of the Ministers, or sons/relations of the Chairman and Members of the Oil Selection Boards, praying for cancellation of allotments made inter alia on the ground that the allotments had been made by the concerned minister, mala fide and the decision is arbitrary and motivated by extraneous considerations. The Court ultimately cancelled the allotments made in favour of the 15 persons mentioned in the petition, on a conclusion that the allotments are arbitrary, discriminatory, mala fide and wholly illegal. The Court also issued certain other directions in relation to the allottees and called upon the concerned minister to show cause as to 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 and in addition, why he should not be liable to pay damages for his mala fide action in allotting petrol pumps to 15 persons mentioned therein. This judgment of the Court is reported in 1996(6) SCC 530. While the Common Cause case was pending in this Court, Civil Writ Petition Nos. 4003 and 4430 of 1995 had been filed in Delhi High Court by the Centre for Public Interest Litigation, as public interest litigation, which were pending in Delhi High Court. In those two petitions, allotment of petrol pumps/gas agencies to various persons during the period 1992-93, 1993-94, 1994-95 and 1995-96 had been challenged. A Transfer Petition had been filed in this Court, which was registered as Transfer Petition No. 127/96 and this Court had issued notice in the transfer petition and stayed further proceedings before the High Court. In an affidavit filed by the Ministry of Petroleum in the aforesaid transfer petition, the then Joint Secretary had stated that in 1995-96 under the discretionary power of the Government, allotment had been made to 99 persons and further orders had already been made in favour of 61 more persons, allotting petrol pumps/gas agencies. One Mr. Srinivasan, Advocate had filed an affidavit giving a long list of persons who are related to the then Prime Minister/Ministers and other V.I.Ps and who had been allotted petrol pumps and gas agencies. On behalf of petroleum ministry, an affidavit had been filed, stating that due inquiry had been made through the oil companies and after due inquiry, the concerned minister had made the allotment. This Court ultimately held that since the two writ petitions are pending before the High Court, wherein the allotment made to all these persons have been challenged, it would not be necessary for this Court to get the writ petitions transferred and decide the matter. The Court, therefore, vacated the stay order granted and directed the Registry of the Court to send all affidavits filed by the parties in the transfer petition along with

the annexures to the High Court. The Court observed:

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.

Pursuant to the directions contained in the judgment of this Court in Common Cause vs. Union of India, 1996(6) SCC 530, show cause notice having been issued to the then Minister Captain Satish Sharma, said Shri Sharma had filed an affidavit in reply to the show cause notice. The Court ultimately perused the show cause notice filed and after hearing the counsel appearing for the Minster, directed the CBI to hold an investigation, after registering a case against the concerned minister in respect of the allegations dealt with and findings made by the Court earlier in the Common Cause case. On the question of liability of the minister to pay exemplary or compensatory damages, the Court considered the matter and came to the conclusion that Captain Satish Sharma, the then minister would be liable to pay exemplary damages and quantified the same at Rs. 50 lacs. This Judgment of the Court has been reported in 1996(6) S.C.C. 593.

Pursuant to the directions of this Court in Common Cause case, 1996(6) S.C.C. 530, the Delhi High Court took up the writ petitions which had been filed as Public Interest Litigation by the Centre for Public Interest Litigation. On examination of the relevant files dealing with the allotment of retail outlets of petrol, LPG distributorship and SKO/LDO dealership under the discretionary quota made by the minister concerned, it was revealed that between January 1993 till 1996, 179 retail outlets (petrol pumps), 155 LPG distributorships and 45 SKO/DLO dealerships had been allotted by the concerned minister under the discretionary quota. In its order dated 29th of August, 1997, the Division Bench of Delhi High Court came to the conclusion that the examination of files clearly shows that these are not the cases of aberrations here or there but are cases which show a pattern of favouritism. From the judgment of Delhi High Court in C.W. 4003/95 dated 29.8.1997, it transpires that even before the Supreme Court stayed the proceedings by order dated 6th December, 1995 , the High Court had called upon the respondents by order dated 2nd November, 1995 to produce the list of allotments made under the discretionary quota of the petroleum minister for allotment of petrol retail outlets, LPG distributorship and Kerosene distributorship from the date of the tenure of the minister which was 18th of January, 1993. Before the Delhi High Court, it had been contended by the allottees as well as by the Government that the judgment dated 31st March, 1995 of the Supreme Court laying down the guidelines, since reported in 1995 Supp.(3) S.C.C. 382 would indicate that the Supreme Court had implidely regularised the allotments made prior to 31st March, 1995 and consequently the validity of the said allotments need not be gone into. The High Court however was not persuaded to agree with the submissions and in our view rightly, particularly, when in the Common Cause case [1996(6) SCC 530] this Court has positively directed the High Court to examine the issues involved and dispose of the two pending writ petitions in accordance with law. Since the allottees were required to be noticed before any decision is taken, the High Court by its order dated 11th December, 1996, constituted a Committee of three advocates and directed them to examine all the files and submit a report in a Proforma which had been prepared by the Court itself,

after discussion with the counsel appearing for the parties. The said Committee submitted its report, on the basis of which the Court issued notices to various persons by its order dated 27th of February, 1997 and 20th of March, 1997 and the Court was to deal with the cases of about 400 allottees. Pursuant to the notices issued, the allottees filed their respective show causes and then the Court heard the respective counsel for the allottees as well as examined the report of the Committee and scrutinized the same by perusing the original file and finally disposed of the cases of about 100 allottees by its judgment dated 29th of August, 1997. The Court on examination of the materials before it and on perusal of the original files, appears to have taken the view in several cases that the discretion had been exercised on sufficient materials and after inquiry and held those allotments to have been proper exercise of the discretion and accordingly discharged the notices of cancellation. But in those cases, where the Court found either there were no materials before the concerned minister in support of the applications filed to justify the exercise of power for allotment under the discretionary quota or such allotments had been made on account of political patronage or some other extraneous considerations, the Court cancelled the allotment made with certain directions therein. It would be appropriate at this stage to notice the observations of the High Court:

It is unfortunate that perusal of the files show that a large number of persons to whom allotments were made under the discretionary quota belong to an affluent class of society and not to the class which may deserve compassion, resulting in exercise of discretion in their favour. Whether this large number of persons got allotment on account of their affluence or on account of their close proximity with the powers that be, it may be difficult to say definitely, one way or the other but that makes no difference since both affluence and/or proximity, are irrelevant and extraneous considerations for exercise of discretion.

The Court also came to the further conclusion that there had been no verification of the statements made in the applications by the allottees and hardly any application contains details of annual income or bio-data and hardly any person had filed any affidavit in support of his claim, seeking grant of discretionary allotment and in several cases the applications even did not bear any data and a number of allottees belonged to one Parliamentary Constituency and were active members and supporters of the party in power at the relevant time. The Court having cancelled the allotments made in favour of the appellants, who are before us, the present appeals have been filed by grant of special leave.

After the disposal of first batch of cases by the High Court by its judgment dated 29.8.1997, the High Court issued notices to some other allottees and disposed of the second batch of cases by its order dated 11.10.99 and both these orders of Delhi High Court are under challenge, so far as it relates to the cancellation of allotments made under the discretionary quota.

Captain Satish Sharma, who was the concerned minister and against whom the Court had directed registration of a criminal case by the C.B.I., and also levied penalty of Rs. 50 lacs, filed a review petition against the aforesaid two directions of the Court, which was entertained and that review

petition was allowed by a three Judge Bench of this Court, since reported in 1999(6) S.C.C. 667. In the aforesaid case, this Court came to the conclusion that the factors relevant to the award of exemplary damages had not been taken by this Court and consequently the levy of penalty of Rs.50 lacs was not in accordance with law. The Court also held that no case could be said to have been made out against the concerned minister for directing registering a case under Section 409 and such a direction could not have been given under Article 32 or under Article 142 and further, such a direction would be contrary to the concept of right to life under Article 21. The Court, therefore, set aside the two directions earlier made in relation to registering a criminal case and levy of penalty against the minister. Certain observations had been made in the aforesaid three Judge Bench Judgment, which form the sheet anchor of one of the contentions of the appellants in the present batch of appeals and we will refer to those observations and deal with the same at appropriate stage. The aforesaid judgment of the Court has since been reported in 1999(6) SCC 667.

Between 1997 and 1999, against the order of cancellation of allotments made under discretionary quota, about 79 special leave petitions had been filed in this Court, which had been dismissed or dismissed as withdrawn. Notwithstanding the dismissal of the aforesaid special leave petitions, after the three Judge Bench Judgment of this Court dated 3rd August, 1999 since reported in 1999 (6) S.C.C. 667, special leave petitions having been filed, this batch of cases were listed before the Bench presided over by the very learned Judge, who was presiding over the Bench which reviewed the earlier judgment and absolved the concerned minister from the direction of levy of penalty as well as from the criminal prosecution. The Bench, therefore, having granted leave, the present appeals were placed for hearing. At this stage, it would be appropriate for us to notice that the review petitions filed by Captain Satish Sharma, the concerned Minister was in relation to the order dated 4.11.96 in the case of Common Cause vs. Union of India, 1996(6) S.C.C. 593 and was not in relation to the judgment dated 25.9.96 in the case of Common Cause vs. Union of India reported in 1996(6) S.C.C. 530. The three Judge Bench however committed an error in paragraph (7) by noticing that the review petition relates to both the judgments viz. the Judgment dated 25.9.96 and 4.11.1996. Mr. P.P. Rao, the learned counsel, appearing in four of these appeals viz. Civil Appeal Nos. 3085, 3094, 3099 and 3092, seriously contended that the judgment of this Court in the Centre for Public Interest Litigation vs. Union of India, 1995 Supp.(3) S.C.C. 382 in no uncertain terms, stipulates that the norms and guidelines should be followed by the Central Government in making discretionary allotment of retail outlets of petroleum products, LPG distributorship and SKO dealership, subsequent to the said judgment which necessarily and impliedly indicates that the Court has approved the earlier lapses in the matter of such allotment under discretionary quota and, therefore, it was not open to the High Court to re- examine all the cases and decide the legality of the allotments made under the discretionary quota. He further contended that in view of the observations of this Court in the three Judge Bench Judgment [1999(6) S.C.C. 667], in paragraph 115 of the said judgment, the plea of constructive res- judicata should have been applied by the High Court and the High Court committed error in rejecting the said contention.

According to Mr. Rao, on a plain reading of the judgment of this Court in Centre for Public Interest Litigation case [1995 Supp.(3) S.C.C. 382], the conclusion is irresistible that the Court in that case had given its stamp of judicial approval to the discretionary allotments had already been made by that date and it is for that reason, the Court had indicated that the guidelines therein would be followed hereafter. That being the position, not only that the principle of constructive res- judicata

would apply, but also it was not open for the High Court to re-open and examine the legality of the discretionary allotments made prior to 1995. According to Mr. Rao, during the period when the allotments had been made in favour of his clients, which is prior to the guidelines indicated by this Court in the Centre for Public Interest Litigation case, under the pre-existing practice and norms, the concerned minister having exercised the discretion, the High Court committed serious error in interfering with those discretionary orders of allotment. Mr. Rao further urged that the impugned judgment would indicate that there has been no due consideration of the show-cause filed by the allottees and the materials referred to in the show-cause have not been considered by the High Court and, therefore, it would be a fit case where matter should be remitted back to the High Court for re-consideration. According to Mr. Rao , the discretion having been exercised in favour of his clients, who happened to be political sufferers and a political sufferer having been recognised as a class/category by themselves in the case of D.N. Chanchala vs. State of Mysore and Ors. etc., 1971 Supp.S.C.R. 608 at 629, the High Court committed serious error of law in interfering with the allotments made in favour of his clients and as such the impugned orders cannot be sustained. Mr. Rao also urged that allotments having been made in individual cases of extreme hardship by the minister concerned and that being one of the norms which this Court formulated in its guidelines in the case of Centre for Public Interest Litigation and the appellants having invested huge money and this being the only source of livelihood since 1993, the same ought not to have been cancelled, particularly when no public interest will be served by such cancellation.

Mr. P.S. Narasimha, the learned counsel, appearing for the appellant in Civil Appeal No. 3100/2000, while supporting the arguments of Mr. Rao, further urged that all the necessary information was available with the High Court but the Court never considered those materials nor did the Court inquire into the correctness of those materials, as it would be apparent from the affidavit of the appellant, filed pursuant to the notice of show-cause and also the impugned order of the High Court dealing with the appellants case.

This being the position, Mr. Narsimhan urged that the order of cancellation should be set aside and the matter should be remitted back to the High Court for re-consideration.

Appearing for the appellants in Civil Appeal Nos. 3104-3105 of 2000, Mr. Narsimha, the learned counsel urged that in these two cases, the concerned authority having exercised the discretion in favour of a young educated unemployed youth belonging to a back-ward community and his family being under financial constraint, the conclusion of the High Court that it was a case of arbitrary allotment, is unsustainable in law.

Mr. V.A. Mohta, the learned senior counsel appearing for the appellant in Civil Appeal No. 3089/2000, urged that the allotment in favour of his client had been made under discretionary quota as the family of the applicant had been put to severe financial hardship on account of natural calamity on one hand and the Naxailite activities on the other hand. According to the learned counsel, this must be held to be a germane consideration which weighed with the concerned

authority for exercise of his discretionary power and, therefore, the High Court ought not to have cancelled the allotment made in favour of the appellant.

Mr. Dushyant A. Dave, the learned senior counsel appearing for the appellant in Civil Appeal No. 3090 of 2000 urged that the only ground on which the High Court has set aside the allotment made in favour of the appellant is that there had been no verification whatsoever regarding other members of his family and their sources of income before exercising discretion, and therefore, since the minister approved the allotment without any verification, the allotment is liable to be cancelled. According to Mr. Dave, the fact that the order of allotment itself indicated that the I.O.C.Ltd. would conduct requisite verification before issuance of Letter of Intent, it cannot be said that the order in question was without any inquiry. Mr. Dave urged that it is nobodys case that the I.O.C., on an inquiry came to the conclusion that the grant of distributorship in favour of the appellant on compassionate grounds was unjustified. That apart, the appellant himself had filed an affidavit before the High Court, indicating his family conditions and the fact that he had no resources and he had gathered the resources from friends, but the High Court unfortunately over-looked these materials and directed cancellation of the allotment made in favour of the appellant. The learned counsel also urged that the order of the High Court would indicate that in case of several other noticees, the High Court discharged the notice of cancellation without ascribing any reason and therefore, there was no reason why the High Court should have cancelled the allotment made in favour of the appellant. The learned counsel further urged that even if the High Court found that there had been no verification, then it would have been appropriate for the High Court to direct for a fresh verification, rather than canceling the distributorship and the approach of the High Court is wholly uncalled for.

According to the learned counsel, the appellants case being covered under the existing discretionary scheme, as was prevalent, and further even under the guidelines issued by this Court in the judgment reported in 1995 Supp.(3) S.C.C. 382, individual cases of extreme hardship which in the opinion of the Government are extremely compassionate and deserve sympathetic consideration being one of the criteria, there was absolutely no rhyme or reason on the part of the High Court to set aside the discretionary allotment made in favour of the appellant. He also reiterated the arguments advanced on behalf of Mr. Rao that the judgment of this Court in 1995 Supp.(3) S.C.C. 382 must be so construed, that allotments made under the discretionary quota prior to the date of the said judgment were not intended to be interfered with and as such, the High Court had no jurisdiction to examine the allotment made in favour of the appellant, which was in the year 1993.

Mr. Sushil Kumar Jain, the learned counsel, appearing for the appellant in Civil Appeal No. 3117 of 2000, contended in addition to what had been urged by Mr. P.P. Rao that the impugned judgment of the High Court is earlier to the three Judge Bench Judgment of this Court in 1999(6) S.C.C. 667 and the observations made in the three Judge Bench Judgment more particularly, in paragraph 115 thereof, unequivocally supports the contention of the appellant that the Court approved all allotments made prior to the Judgment in 1995 Supp.(3) S.C.C. 382 and therefore, the matter should be remitted back to the High Court for re- consideration in the light of the aforesaid three Judge Bench decision of this Court. Mr. Jain also appearing for the appellant in Civil Appeal No. 3114 of

2000 reiterated his submissions made in the earlier case and contended that there has been gross injustice by the High Court in canceling the allotment made and the equitable considerations require that this Court should interfere with the order of cancellation and in the alternative, the matter should be remitted back to the High Court for reconsideration after due inquiry.

In the written submission given by Mr. Bhachawat, learned senior counsel, in this case it was urged that prior to 31st March, 1995 there being no fixed guidelines for allotment under discretionary quota, the High Court was not justified in canceling the allotment which are not tainted by any favoritism or nepotism merely because there is no proof to support the allotment on compassionate ground, or that the application is undated, or there is no receipt entry on the application or even that there is no bio-data of the applicant.

According to Mr. Bhachawat even judicial notice can be taken of the fact that Ministers hold open Darbar in which they meet people, hear their grievances and also solve their problems on the spot, therefore, the possibility of applications for allotment from discretionary quota having been received during such Darbars cannot be denied. Mr. Bhachawat also urged in his written submission that the concerned Minister, who is the author of the alleged wrong allotment having been given a clean chit by the three Judge Bench of this Court, since reported in 1999 (6) SCC 667 and the main culprit thus being exonerated, it would not be fair deal to punish the allottees, particularly when they have made investments and are earning their livelihood by operating the allotments made in their favour. He also reiterated on the question of applicability of the principle res judicata by stating that if the parties were the same and the relief sought for is identical then Explanation 6 to Section 11 should apply.

Mr. M.C. Bhandari, the learned senior counsel, appearing for the appellant in Civil Appeal No. 3101 of 2000, seriously contended that the appellant does not belong to any of the three categories of persons mentioned in the judgment of this Court in 1996(6) S.C.C. 530 inasmuch as the High Court never found that the allotment in favour of the appellant had been made as he happened to be relation of any personal staff of the minister or that the allotment had been made on extraneous considerations nor the appellant can be said to be belonging to the category of sons of ministers or related to any member of the Oil Selection Board. That being so and no mala fide, favouritism or nepotism having been established, the allotment could not have been nullified by the High Court. According to Mr. Bhandari, the father of the appellant, Karibasavaraj, being a well known talented stage artist in the State of Karnataka, who through his performance, had been able to convey the messages of freedom fighters and religious tolerance, having faced with acute financial stringency and said Karibasavaraj having died, the responsibility to maintain a large family fell on the appellant, who though a graduate, had no job or employment. It is on this consideration, the then Chief Minister of Karnataka and the then Vice President of India had recommended the case of the appellant for being favourably considered for getting allotment under discretionary quota and ultimately the Minister, Petroleum had made the grant in favour of the appellant. The said allotment is neither arbitrary nor motivated nor vitiated by mala fides and as such the High Court was wholly in error in canceling the allotment without proper examination of the aforesaid materials. According to Mr. Bhandari, the finding of the High Court that the minister has exercised his discretion without

any verification, is on the face of it erroneous inasmuch as the order of allotment itself specified that the Letter of Intent could be issued only after requisite verification. In fact such verification can be effectively done only by the Oil Company at site and not by the Minister, sitting in Delhi and to hold that the minister must verify the contents of the application, would be unreasonable and impracticable. Mr. Bhandari further urged that the so-called questionnaire which was formulated was behind the back of the appellant and the records indicating that the appellant is related/connected to Mr. Veerapa Moily, the then Chief Minister of Karnataka is untrue. Mere recommendation by the Chief Minister would not constitute any relationship and the conclusion therefore, is without any materials.

According to the learned counsel, the procedure adopted by the High Court, so far as the appellant is concerned, tantamounts to denial of a fair hearing and justice to the appellant inasmuch as even before serving the notice on the appellant on 15.4.1999, the High Court itself heard the first batch of cases and delivered its judgment on 29.8.97, answering all the questions of law, including the question of constructive res judicata. Mr. Bhandari urged that in a public interest litigation like the one, the High Court was duty bound to issue notice under Order 1 Rule 8 CPC so that persons likely to be affected, could have appeared before the High Court and made their submissions before the High Court prior to its first order on 29.8.1997. Since the Court itself has come to a definite conclusion on several issues arising in the matter by its order dated 29.8.97, the issuance of notice to the appellant was a mere formality to comply with the principles of natural justice and the ultimate disposal of the appellants case by the High Court must be held to be a disposal by the learned Judges who had already made up their mind and this resulted in patent injustice. In support of this contention, the learned counsel placed reliance on the decision of this Court in 1989(3) S.C.C. Page 202 at 208- 210 (para 13). Mr. Bhandari also urged that even in the case of a public interest litigation, the basic principle of law to avoid multiplicity of proceedings should be implemented.

Necessarily, therefore, when the Centre for Public Interest Litigation filed a petition in this Court, which was disposed of by the Judgment since reported in 1995 Supp.(3) SCC 382 and that application also related to the allotment of retail dealership in petroleum, under discretionary quota and did not assail the allotments already made, then a second petition before the Delhi High Court was not entertainable.

He also reiterated the argument that explanation 4 to Section 11 CPC should apply to the case in hand and in support of the same he placed reliance on the judgment of this Court reported in AIR 1986 SC 391 at Page 397, para 20. The learned counsel with emphasis urged that it is no doubt true that discretion in public matters should be least but it cannot be totally denuded of, nor can any Court strike down the power exercised by an authority having discretion even in deserving cases. The exercise of discretion by an authority depends upon the independence and integrity of the individual exercising such discretion. Adjudged from any stand point, the allotment made in favour of the appellant in his case would not be a case of allotment on the ground of favouritism, nepotism and/or abuse of power and, therefore, the High Court committed serious error in canceling the allotment made. According to Mr. Bhandari, compassion or a case of extreme hardship has all along been recognised as a germane factor for exercise of a discretion. Even this has been recognised in

the guidelines issued by this Court in 1995 Supp (3) S.C.C. 382. The allotment made in favour of the appellant being covered by the guidelines (6) and (7) of the Judgment of this Court in 1995 Supp.(3) S.C.C. 382, it must be held that the discretion has been exercised in a fair, reasonable and legal manner and, therefore, the same ought not to have been interfered with by the High Court.

Mr. Bhandari lastly urged that such a discretionary allotment having existed for a long time, as has been noticed by the three Judge Bench decision of this Court in 1999(6) S.C.C. 667 and the appellant having been allowed to run the agency for about eight years and having invested about Rs. 30 lacs and the entire family being dependent on the income derived from the agency, this Court should set aside the order of cancellation made by the Delhi High Court and follow the judgment of this Court dated 28th of September, 2001 in Civil Appeal No. 6840/2001 and batch, relating to allotment of land from the discretionary quota in the State of Haryana.

Mr. Jaideep Gupta, the learned counsel, appearing for the appellant in Civil Appeal No. 3103 of 2000 contended that in his case, an eminent Member of Parliament, highly respected in the political sphere Smt. Gita Mukherjee, since deceased, had herself filed an affidavit before the Delhi High Court, explaining the circumstances that led her to recommend the case of the appellant and the High Court even did not bother to notice the said affidavit filed by Late Smt. Gita Mukherjee and came to the conclusion that the Minister before exercising the discretion, did not himself verify about the source of income of the applicant and his family members. According to Mr. Gupta, if a Member of Parliament recommends the case of a citizen belonging to his/her constituency and if the Minister acts upon such recommendations, it cannot be said that the Minister did not verify himself before exercising his discretion. Mr. Gupta also urged that even before entering into the dealership agreement, the appellant had been extensively interviewed by the Chief Regional Manager and the Legal Officer of the company regarding his income and on being fully satisfied with the same and the aforesaid state of affairs having been made by the appellant on oath, which was not denied by anyone concerned, on the un-controverted statement of the appellant, the High Court was not justified in canceling the allotment made on the ground as already stated. Mr. Gupta further urged that the agreement entered into between the appellant and the Oil Company itself contains power to terminate the dealership if it is found that the applicant had made any incorrect statement at the time of allotment of dealership. That being the position, it would be always open for the Oil company to annul the dealership if it is found that the appellant had furnished any incorrect information. In the premises, it would be more appropriate to direct the oil company to investigate into the matter, rather than to cancel the allotment made. According to Mr. Gupta, the principles to be followed in a case of cancellation of a grant should be different from the principles for determining the legality of a grant and, therefore, the High Court was wholly unjustified in canceling the allotment made on the sole ground that the concerned minister had not made any inquiry before exercising his discretion. The learned counsel also urged that the appellant has invested a huge amount of money and cancellation of the dealership at this point would cause untold hardship. To deprive of the appellant and his family of earning his livelihood at this length of time would not be in the interest of justice and, therefore, this Court should set aside the order of cancellation passed by the Delhi High Court.

Mr. Subba Rao, the learned counsel appearing for the appellant in Civil Appeal No. 3097 of 2000

urged that the appellant, a widow was a destitute, having no source of income and the allotment made in her favour cannot but be held to be an allotment on germane consideration and, therefore, the High Court was wholly in error in canceling the allotment solely on the ground that the minister accepted the statement made in the application as a gospel truth.

According to Mr. Subba Rao, it is nobodys contention nor has the High Court found as a fact that the statements made in the application for allotment are untrue and in such a case the discretion exercised ought not to have been interfered with on an hypothesis that the Minister committed an error in accepting the statement made in the application for allotment. In this case the source of livelihood from out of the agency is a source for the entire family. According to Mr. Rao, this source ought not to be closed down, which would make the entire family destitute. Mr. Subba Rao in support of his contention placed reliance on a judgment of this Court in the case of Ram and Shyam Company vs. State of Haryana and Ors. 1985 Supp.(1) S.C.R.541, whereunder this court noticed that there exists a clear distinction between the use and disposal of private property and social property. While the Court observed in the aforesaid case that disposal of public property partakes the character of a trust in that in its disposal their should be nothing dubious, but this is subject to one important limitation namely that the socialist property may be disposed at a price lower than the market price or even for a token price to achieve some defined constitutionally recognised public purpose, one such being to achieve that goals set out in Part IV of the Constitution. In this view of the matter, according to Mr. Subba Rao the discretion used by the concerned minister in favour of his client cannot be held to be illegal or invalid.

Mr. P. N. Misra, the learned senior counsel appearing for the appellant in Civil Appeal Nos. 3102/2000 and 3086/2000, strenuously urged that in the first appeal, the applicant had lost her husband in a road accident while she was of a young age of 32. She had two small school going children and to establish her in life for the maintenance of the young children it is her father-in-law who had made the application to allot her a retail outlet. The concerned Minister had approved the case of allotment in favour of the applicant. In the other case, on an application being made, an inquiry had been made from the ministry to furnish the bio-data which the applicant had furnished and on being satisfied with the materials furnished, the allotment had been made in favour of the applicant. According to Mr. Misra, these are two genuine cases and a case of pure compassion and as such the order of allotment ought not to have been interfered with. Be it be stated that the father-in-law, who had made the application for getting an allotment in favour of the applicant was none else than a Member of Parliament.

According to Mr. Misra, the allotment letter clearly having stipulated that the allotment would be subject to verification to be made by the concerned oil company and the company itself having made the necessary verification, the High Court was not justified in interfering with the allotment made.

According to Mr. Misra, the applicant was asked to furnish the bio-data, which the applicant did

comply with and therefore, the conclusion that there were no material before the minister was incorrect. According to Mr. Misra, it is no doubt true that the father-in-law of the applicant was an M.P. since 1991 but the application was made only in 1994, after the unfortunate death of his son which is indicative of the fact that the father-in-law never misused his position.

Mr. P. N. Misra also placed before us the counter affidavit filed on behalf of the Union Government in the Delhi High Court in some other allied matters and also the noting dated 5.5.93, which indicates as to how the application of the allottee is sent to the company concerned for verification of facts therein like income, residence, social status etc., and contends that the conclusion of the High Court that there had been no verification is unsustainable.

Mr. O.P. Sharma, the learned senior counsel, appearing for the appellant in Civil Appeal No. 3106/2000 reiterated the submissions made by all the counsel appearing before him and argued at considerable length by placing all the decisions afresh and urged that the three Judge Bench Judgment having over-ruled the earlier two Judge Bench decision, the High Court could not have set aside the allotment made, relying upon the judgment of this Court in the two Judge Bench decision. The learned counsel also urged that the three Judge Bench Judgment has categorically come to a finding that allotment has been made in accordance with the prescribed guidelines. That being the position, the High Court was not competent to over-ride the aforesaid conclusion of the three Judge Bench Judgment of this Court and arrive at a conclusion contrary to the same.

Mr. Sharma also urged that the plea of constructive res judicata should apply to the case in hand inasmuch as the aforesaid plea is applied as a matter of public policy to avoid multiplicity of litigation and not to allow re-opening of a matter already adjudicated upon. In this view of the matter, the High Court was not entitled to re-examine the matter after the judgment of this Court in 1995 Supp.(3) SCC 382.

In support of this contention, reliance had been placed on the decision of this Court in AIR 1997 SC 1680. Mr. Sharma also relied upon the recent judgment of this Court in Haryana Land Allotment case and contended that the theory of prospective over-ruling should apply to prospective cancellation of the grant made and that would subserve larger public interest and in this view of the matter this Court should set aside the order of cancellation made by the High Court. Relying upon the observations made in the reviewed judgment of three learned Judges of this Court, Mr. Sharma contended that this decision approves the fact that allotments made earlier to the guidelines issued by this Court in 1995 must not be interfered with and the said observation being binding on this Bench, this Bench should allow this appeal or refer the matter to a three Judge Bench. Mr. Sharma urged that right to life engrafted in Article 21 of the constitution also equally applies to the case in hand and as such the entire family will be ruined if the dealership is cancelled. He lastly urged that pursuant to the notice issued to the appellant, the appellant having filed an affidavit before the High Court, giving all material particulars, the High Court could not have set aside the allotment made in favour of the appellant without even consideration of those materials. The disposal made by the

High Court on such non-consideration of such germane materials must be held to be vitiated and therefore, the matter should be remitted back to the High Court. So far as the ground on which the High Court set aside the allotment made viz. the minister had not verified the particulars, Mr. Sharma urged that the minister is not required to make any check or verification and can make the allotment under the discretionary quota, relying upon the statements made by an applicant, since the so-called grant is subject to the verification to be made by the oil company. It is always open for the oil company on verification, not to grant the dealership notwithstanding the order of the minister inasmuch as order itself stipulates that the grant should be subject to the verification by the oil company. According to Mr. Sharma, the touch-stone for exercise of discretionary power being that it should not suffer from the virus of nepotism and favouritism and should be devoid of any personal interest and should not be for extraneous considerations and none of these grounds having been found by the High Court, the order of cancellation on the face of it is wholly unsustainable.

Mr. Sanjeev K. Kapoor, the learned counsel appearing for the Centre for Public Interest Litigation repels the submissions made by the counsel for the appellants.

According to the learned counsel, the contention that the judgment of this Court in the Centre for Public Interest Litigation[1995 Supp.(3) S.C.C 382] amounts to a tacit approval of the Court to the allotments made, any illegal exercise of discretionary power is nothing but a misreading of the judgment. He further urged that in public interest litigation, when there is no adversarial adjudication, the principles of constructive res judicata ought not to apply, as was held by this Court in the case of Rural Litigation and Entitlement Kentra vs. State of U.P. 1989 Supp.(1) S.C.C. 504. At any rate the earlier litigation filed at the behest of the Centre for Public Interest Litigation was only for laying down the guidelines for exercise of the discretionary power, as is apparent from the amended petition, the amended petition was considered and disposed of and as such there has been no adjudication by this Court with regard to the legality or illegality of the allotments made by the concerned minister from the discretionary quota. The learned counsel also vehemently submitted that in the Common Cause case, where subsequent to the judgment in Centre for Public Interest Litigation case, legality of allotments made in favour of 15 allottees from the discretionary quota was the subject matter for adjudication, this Court in no uncertain terms, cancelled the allotments made and in the very same judgment, directed the Delhi High Court where the writ petitions were pending to dispose of the matter in accordance with law. In fact the High Court proceeded to dispose of the matter pursuant to the aforesaid judgment/observations of this Court in the Common Cause case. In this view of the matter, the contention that the High Court should have applied the principle of constructive res judicata, is wholly misconceived. So far as the observations made by the three Judge Bench Judgment of this Court in the review petition arising out of Common Cause case judgment, Mr. Kapoor contends that the review petition merely related to the subsequent order, wherein this Court directed institution of a criminal case and levied exemplary damages to the tune of Rs.50 lacs on the concerned minister Capt. Satish Sharma.

In the aforesaid premise, any observations made by the said three Judge Bench in relation to the legality of the allotments made by the minister from discretionary quota, cannot be treated to be of any binding precedent. According to Mr. Kapoor, the High Court was examining the legality of the

exercise of discretion by the concerned minister on the materials available to find out whether it was in fact an exercise of discretion on germane materials or the discretion has been exercised arbitrarily and for extraneous considerations in which event the order emanated out of such discretion was required to be nullified. The High Court has applied its mind to each and individual case of allotment under the discretionary quota and wherever some materials were there, the High Court has discharged the notice of cancellation and it is only when there existed no materials for the minister concerned for exercise of his discretion and the minister passed the order of allotment without any inquiry into the assertions made in the application, the Court has set aside the same. According to Mr. Kapoor, the notoriety by which such discretionary allotment by a Minister has reached, it would be unwise to interfere with well reasoned order of the High Court, particularly when the High Court had the opportunity of examining the file from the Ministry, in relation to each and every case of allotment under the discretionary quota.

Mr. T.L.V. Iyer, the learned senior counsel, appearing for the Union of India, submitted that the Union Government has no role to play and it merely complied with the directions of the Court.

In view of the rival submissions at the Bar, the following questions arise for our consideration:

(a) Is the Judgment of this Court in the case of Centre for Public Interest Litigation [1995 Supp.(3) S.C.C. 382] susceptible of a construction that the Court indicated the guidelines for future guidance and had it given its stamp of judicial approval to the discretionary allotments already made by the date of the judgment? (b) Would the principle of constructive res judicata as provided under Section 11 explanation 4 of the Code of Civil Procedure or Order 2 Rule 2 CPC apply to a public interest litigation and if so, in the case in hand, can it be said that the writ petitions filed by the Centre for Public Interest Litigation in Delhi High Court from out of the judgment of which the present appeals have been preferred, are barred by the aforesaid principles on the ground that in the petition filed under Article 32 by the said Centre, no prayer for cancellation of illegal allotments had been made, though could have been made? and what is the impact of the observations made by the three Judge Bench in the review petition filed by Captain Satish Sharma, which stood disposed of by the judgment reported in 1999(6) S.C.C. 667? (c) Does the expression over ruled in the three Judge Bench Judgment, refer to over-ruling the judgment in the Common Cause case wholly or does it refer to only the subsequent order in the Common Cause case, directing registration of the criminal case and its investigation and levy of penalty/exemplary damages against Captain Sharma? (d) The judgment of the High Court being earlier to the three Judge Bench judgment of this Court in the review petition filed by Captain Satish Sharma since reported in 1999(6) SCC 530, is there any necessity for remitting these appeals to the High Court for reconsideration, in the light of the subsequent three Judge Bench judgment of this Court? (e) Are the appellants entitled to any equitable considerations on the ground that they have spent a substantial amount and have also operated the petrol outlets/gas agencies for about eight years? and (f) Can the impugned judgment of the High Court in any of these appeals be said to be vitiated on account of non- consideration of any germane materials? (g) Whether in a Public Interest Litigation, where large number of persons are going to be affected, the Court is bound to issue notice under Order I Rule 8 and does non-issuance of such notice vitiate the entire proceedings? (h) Whether the verification supposed to have

been made by the Oil Company pursuant to the order of allotment made by the Minister, can be held to be the proper verification for exercise of discretion by the Minister himself and in such event whether the order of cancellation by the High Court is valid? (i) Whether the principle decided in the judgment of this Court in Civil Appeal No. 6840 of 2001, in relation to such discretionary allotment of land in the State of Haryana, can be made applicable to the case in hand, so that the judgment would be made applicable prospectively and consequently, the orders of cancellation will have to be set aside? So far as the first question is concerned, the entire emphasis is on the directions given by the Court in paragraph (4) of the Judgment, which is quoted hereunder:

We hereby direct that the above-quoted norms/guidelines etc. shall be followed by the Central Government in making all such discretionary allotments of retail outlets for petroleum products, LPG Dealership and SKO Dealership, hereafter.

The appellants contention is that while the writ petition was filed in public interest, the exercise of discretion in allotment of retail outlets for petroleum products, LPG Dealership and SKO Dealership had been challenged and a prayer for laying down the guidelines to regulate the exercise of discretion had been made, the Court only laid down the guidelines and further observed that the norms and guidelines would be followed hereafter and necessarily, therefore, there has been a tacit approval to the earlier allotments made under the discretionary quota inasmuch as the Court never cancelled the allotments made nor had issued any direction in that respect. This contention in our considered opinion, cannot be sustained for two reasons. Firstly, the amended petition which the Centre for Public Interest Litigation has filed, merely prayed for laying down the guidelines to regulate exercise of discretion in the matter of such allotments.

Secondly, which is rather more important is that this judgment was delivered by the Court on 31st of March, 1995.

The Common Cause had filed another petition under Article 32, alleging arbitrary exercise of discretion in favour of 15 allottees and that petition was entertained by this Court and disposed of by Judgment dated 25th September, 1996 and the Court cancelled all such allotments on a finding that the Minister without keeping in view any guidelines, allotted in exercise of his discretion in a cluster manner and the public property have been doled out in wholly arbitrary and discriminatory manner. If the earlier Judgment is susceptible of the construction, as contended by the appellants, then it would not have been possible in the Common Cause case to examine the legality of such allotments which had been made in favour of 15 persons. Instead of construing the judgment in the Centre for Public Interest Litigation to the effect that it accords a tacit approval of the allotments made prior to the judgment in the Common Cause case, the Court relied upon the earlier judgment in 1995 Supp.(1) S.C.C. 382, and ultimately cancelled the orders of allotment, having found that the allotments were made arbitrarily and for extraneous considerations. In this view of the matter, it is difficult for us to sustain the contention of the learned counsel, appearing for the appellants. We, therefore, hold that the judgment of this Court in Centre for Public Interest Litigation, 1995

Supp.(3) S.C.C. 382, cannot be construed by any stretch of the imagination to be a tacit approval of the discretionary allotments made prior to that judgment. We, therefore, do not find any substance in this submission of the learned counsel for the appellants.

Coming to the second question, Explanation (IV) to Section 11 of the Civil Procedure Code postulates that any matter which might and ought to have been made ground of defence or attack in such former suit shall be deemed to have been a matter directly and substantially in issue in such suit. Order II Rule (2) of the Code of Civil Procedure provides that every suit shall include the whole of the claim which the plaintiff is entitled to make in respect of the cause of action and if he omits to sue in respect of, or intentionally relinquishes, any portion of his claim, then he shall not afterwards sue in respect of the portion, so omitted or relinquished. By virtue of explanation to Section 141 of the Code of Civil Procedure, since proceedings under Article 226 of the Constitution is excluded from the expression proceedings, therefore, the Civil Procedure Code is not required to be followed in a proceeding under Article 226 unless the High Court itself has made the provisions of Civil Procedure Code applicable to a proceeding under Article 226. Then again, the principles of Section 11 as well as Order II Rule 2, undoubtedly contemplate an adversarial system of litigation, where the Court adjudicates the rights of the parties and determines the issues arising in a given case. The Public Interest Litigation or a petition filed for public interest cannot be held to be an adversarial system of adjudication and the petitioner in such case, merely brings it to the notice of the Court, as to how and in what manner the public interest is being jeopardised by arbitrary and capricious action of the authorities. In the case of Rural Litigation and Entitlement Kendra vs. State of U.P. 1989 Supp.(1) S.C.C. 504, which is commonly known as the Doon Valley case, such a contention had been raised, as is apparent from paragraph (14) of the judgment viz. the decision of the Court dated 12th March, 1985 was final in certain aspects, including the release of A category mines outside the city limits of Mussoorie from the proceedings and in view of such finality it was not open to this Court in the same proceedings at a later stage to direct differently in regard to what had been decided earlier. The Court repelled the same by holding that the writ petitions are not inter- parties disputes and have been raised by way of public interest litigation and the controversy before the Court is as to whether for social safety and for creating a hazardless environment for the people to live in, mining in the area should be permitted or stopped. The Court hastened to add:

We may not be taken to have said that for public interest litigations, procedural laws do not apply.

At the same time it has to be remembered that every technicality in the procedural law is not available as a defence when a matter of grave public importance is for consideration before the Court. Even if it is said that there was a final order, in a dispute of this type it would be difficult to entertain the plea of res judicata.

Thus even in the self-same proceeding, the earlier order though final, was treated not to create a bar inasmuch as the controversy before the Court was of grave public interest.

The learned counsel appearing for the appellants drew our attention to the decision of this Court in the case of Forward Construction Co. and Ors. vs. Prabhat Mandal, AIR 1986 SC 391, whereunder the Court did record a conclusion that Section 11 of the Civil Procedure Code applied to Public Interest Litigation. In our considered opinion, therefore, the principle of constructive res judicata cannot be made applicable in each and every public interest litigation, irrespective of the nature of litigation itself and its impact on the society and the larger public interest which is being served. There cannot be any dispute that in competing rights between the public interest and individual interest, the public interest would over-ride. In the Centre for Public Interest Litigation case, which had been filed in this Court, the prayer that had been made was to lay down the guidelines for the discretion being exercised in the matter of allotment of Gas agencies, petroleum dealership and others. It is no doubt true that the applicant therein could have made a prayer for examining the legality of the allotments already made but as the applicant states in the writ petition filed in Delhi High Court that he had no knowledge about the persons to whom such allotments had been made and in fact the Delhi High Court itself on a petition being filed, called upon the respondents to submit the list of such allottees, whereafter notices could be issued to the allottees. That apart, when this Court entertained another public interest litigation, filed by the Common Cause in respect of 15 discretionary allotments made in favour of 15 persons, the Court did entertain the same and instead of treating the earlier decision to be a bar and applying the principle of constructive res judicata, the Court relied upon the same and cancelled the allotments made in favour of those 15 persons who had been arrayed as parties to the said petition filed under Article 32. That apart, the writ petitions in which the judgment of which are the subject matter of challenge in these appeals, had been filed in Delhi High Court and which were pending when the Common Cause case was taken up by this Court. This Court initially stayed the proceedings and issued notice in the Transfer Petitions but ultimately, vacated the stay order and instead of bringing the writ petitions to this Court on transfer, directed the Registry of the Court to send the petitions along with the annexures to the High Court and required the High Court to examine the issues involved in the writ petitions and go into the validity of the allotments of petrol pumps/Gas agencies to various persons. In view of the aforesaid positive direction in para 31 of the judgment of this Court in Common Cause case, 1996(6) S.C.C. 530, it is difficult for us to sustain the plea of bar of constructive res judicata, as urged by the counsel, appearing for the appellants. In this connection, the counsel also brought to our notice, observation made in the review petition judgment in the Common Cause Case 1999(6) S.C.C. 667 in paragraph 115, which is quoted herein below in extenso:

It is contended that since the allotments made by the petitioner till the filing of the writ petition in this Court, in spite of a challenge having been raised therein, were not set aside and only guidelines were settled for future exercise of discretionary quota, tacit stamp of judicial approval shall be deemed to have been placed on the allotments made by the petitioner and consequently those allotments could not have been reopened on the principle of constructive res judicata. Normally, we would have accepted this argument, but in this case we cannot go to that extent.

According to the learned counsel, the three Judge Bench accepted the contention of the applicability of principle of constructive res judicata and, therefore, this Bench being a two Judge Bench must be bound by the said observations or in the alternative, may refer the matter to a larger Bench. We are not in a position to accept either of these submissions. It may be stated at the outset that the three Judge Bench was concerned with the review petition that had been filed in relation to the order

dated 4.11.96 since reported in 1996(6) S.C.C. 593. The learned Judges committed an error in the beginning in thinking that the review petition filed by Capt. Satish Sharma was in relation to both the judgments viz. 1996(6) S.C.C. 530 as well as 1996(6) S.C.C. 593. In the review petition, the Court was concerned with the correctness of the directions contained in the order dated 4.11.96 to institute criminal prosecution against the concerned Minister and levy of penalty as exemplary damages to the tune of Rs. 50 lacs. It is in that context the Court made the aforesaid observations not noticing the fact that in 1996(6) S.C.C.530, the Court had earlier directed the High Court to dispose of the two writ petitions pending in the High Court and decide the legality of the order of discretionary allotment made by the concerned minister. It is indeed interesting to notice that in paragraph 125 of the judgment of the three Judge Bench, the Court itself had indicated that the conduct of the concerned minister in making allotments of petrol outlets was atrocious and reflects a wanton exercise of power by the Minister. But what the Court wanted to examine and ultimately held was that the said action fell short of misfeasance in public office which is a specific tort and the ingredients of that tort were not wholly met in the case, so that there was no occasion to award exemplary damages. It would be indeed a travesty of justice to accept the submission of the counsel for the appellants that the three Judge Bench expressed opinion that the principle of constructive res judicata would apply to the case in hand, so as to debar the High Court from entertaining the writ petitions and disposing them of on merits. As we have already noted, prior to the three Judge Bench Judgment of this Court , the self-same order of the Delhi High Court had been assailed in as many as 79 cases by approaching this Court by way of special leave petitions and all those petitions had been dismissed.

The extent to which corruption in the governing structure has corroded the very core of our democracy, the notoriety which the discretionary allotment of petroleum dealership and LPG gas agencies had acquired, the earlier petition under Article 32 entertained by this Court at the behest of the Common Cause, the cancellation of 15 of such allotments and finally, the express direction therein to the High Court to dispose of the pending writ petitions after examining the individual cases, it is difficult for us to accept the bar of principle of constructive res judicata on the ground that the earlier judgment in the case of Centre for Public Interest Litigation has accorded any tacit approval or the subsequent so-called observation made in the three Judge Bench decision of this Court in the review petition. We, therefore, unhesitatingly hold that the aforesaid contention is devoid of any substance.

The third contention was seriously argued by Mr. Sharma, the learned counsel appearing for the appellant in Civil Appeal No. 3106 of 2000. The learned counsel very much emphasised that Common Cause vs. Union of India 1996(6) S.C.C. 530, has been over-ruled and, therefore, nothing survived for Delhi High Court to examine the legality of the allotments made under discretionary quota.

This argument appears to have been made on the basis of the Head Note at page 671 of the reported judgment with reference to paragraph 123 of the judgment. But when we examine paragraph 123 of the judgment, we do not find anywhere that the three Judge Bench had in fact over-ruled the judgment in Common Cause case, 1996(6) S.C.C.530.

On the other hand, in paragraph 125 it affirms the earlier conclusion that the conduct of the Minister was wholly unjustified. Then again, the review petition itself, as already stated had been filed by Capt. Satish Sharma, the then Minister only in relation to the order and direction dated 4.11.96 since reported in 1996(6) S.C.C.593. In this view of the matter, we find no substance in the aforesaid contention raised by Mr. Sharma, appearing for the appellant in Civil Appeal No. 3106 of 2000. We have therefore no hesitation in rejecting the same.

So far as the fourth question is concerned, it is no doubt true that the three Judge Bench decision of this Court, reviewing the direction in the Common Cause Case, so far as order dated 4.11.96 is concerned, is subsequent to the disposal of the writ petition by the Delhi High Court, but we do not find any justification for requiring the Delhi High Court to re-consider the appeals in the light of the observations made by the three Judge Bench judgment of this Court inasmuch as in the said judgment this Court was merely concerned with the directions to register a criminal case and prosecute the concerned minister, if he is found to have committed any criminal offence and levy of exemplary damages to the tune of Rs. 50 lacs. Consequently, any observation made in that regard will have no bearing on the merits of the individual allotments, which were the subject matter of consideration in the two writ petitions before the Delhi High Court. We, therefore, do not find any substance in the aforesaid submission made on behalf of the appellants.

So far as the fifth question is concerned, it is no doubt true that the appellants have invested considerable amount in the business and have operated for about eight years but even on equitable considerations, we do not find any equity in favour of the appellants. The conduct of the Minister in making the discretionary allotments has been found to be atrocious, in the very three Judge Bench decision of this Court and in relation to similar allotments made by the said minister in favour of 15 persons, who were respondents in the Common Cause case. This Court came to hold that the allotments of the public property has been doled out in arbitrary and discriminatory manner and the appellants had been held to be beneficiaries of such arbitrary orders of allotments. The question of granting the allottees relief on an equitable consideration did not arise at all, for the same reasons in a case like this, a sympathetic consideration on the ground of equity would be a case of misplaced sympathy and we refrain from granting any relief on any equitable consideration. In our view, the appellants do not deserve any equitable consideration.

So far as the sixth question is concerned, we have examined the judgment of Delhi High Court in the case of each individual appellant. We have also considered the questionnaire that had been evolved and also the replies to the show-cause notices that had been filed by the allottees.

We have also considered the original applications that had been filed by these appellants and the orders of allotment made by the concerned minister, wherever they are available on record as well as the recommendations and circumstances leading to the exercise of discretion. The impugned judgment also indicates that in each and every case, the High Court had considered the original file,

dealing with the allotments in question and it cancelled only those allotments where there was not an iota of material in support of the claim made by the applicant, whereas it sustained several other cases of discretionary allotments made during that period, wherever materials were available in the original file.

It is difficult for us to come to a conclusion that the conclusion of the High Court in the cases in hand can be said to be vitiated on account of non-consideration of any germane materials. Factually, we do not have any basis to come to the aforesaid finding. On the other hand, we are satisfied that the High Court has applied its mind to each and every individual case of discretionary allotment and cancelled only those, which it came to hold to have been arbitrarily granted without any inquiry and only on being persuaded by certain recommendations of high dignitaries and without verification of any materials. We, therefore, see no infirmity with the ultimate conclusion of the High Court, canceling the allotments in favour of the appellants, so as to be interfered with by this Court.

So far as the seventh question is concerned, it is Mr. Bhandari, who argued with vehemence that non-issuance of notice under Order I Rule 8 CPC by the High Court before deciding the legal issues by its order dated 22.8.97, has vitiated the entire proceedings and consequently, the order of cancellation must be set aside by this Court. According to Mr. Bhandari, in a matter like the present one, unless the Court directs issuance of notice by publication in a newspaper, following the procedure under Order I Rule 8 CPC and all the affected persons get an opportunity to appear and made their submissions, before the Court formulates the legal position and answers them, the subsequent notice to different persons like the appellants is nothing but a compliance of paper formality and such procedure adopted has grossly prejudiced the appellants. We, however, are not persuaded to accept this submission. The provisions of Order I Rule 8 C.P.C. get attracted when there are numerous persons having the same interest, are sued or sue and the Court can permit such a suit to be defended by adopting the procedure under Order I Rule 8 CPC. In the case in hand, the writ petition that had been filed was in fact a petition in Public Interest, where the allegations were that the concerned authority had been involved in large-scale allotments of retail outlets in petrol, gas and kerosene, arbitrarily and for extraneous considerations without having any guidelines for such allotments and as such it tantamounted to disposal of public property in a manner which is shocking to conscience. By the time when the High Court went into those allegations in the two petitions filed, this Court had taken the view that such allotments had in fact been made arbitrarily and contrary to the public interest and this Court directed the High Court to dispose of the pending proceedings in accordance with law. The High Court, on receipt of the names of the allottees during a specified period from the Union Government, issued notice to each and every such allottee, who had been allotted out of the discretionary quota of the concerned Minister and granted opportunity to each of such allottee to inspect the relevant file dealing with the allotment in his/her favour and then heard the said allottee before passing the final order, either discharging notice of cancellation or canceling the allotment made. In this view of the matter, we hardly find any justification in the submission of Mr. Bhandari that the entire proceedings are vitiated as notice under Order I Rule 8 CPC had not been given. If the allottee like the appellant whose allotment has been cancelled by the impugned order, had the opportunity of examining the materials on the file of the Government, wherein his case of allotment has been dealt with and had the opportunity of filing his show-cause, pursuant to the notice of cancellation that had been issued and the allotment in his case having been cancelled on the ground that the concerned minister did not make any verification with regard to the

necessary criteria indicated in the application for discretionary allotment, we fail to understand how a contention could be raised that the whole procedure adopted is vitiated for non-compliance of the procedure under Order I Rule 8 CPC. The object of order 1 Rule 8 CPC is to give notice to persons likely to be affected by litigation, so that they may be heard. If the Court would have directed issuance of notice under Order I Rule 8 CPC without giving individual notice to the allottees to show-cause why the allotment will not be cancelled, then that perhaps would have been an infraction and violation of the principle of natural justice. But in this case, each and every allottee had been duly noticed, they have filed their replies to the notices, they have availed of the opportunity of examining the original file, wherein the case of discretionary allotment had been dealt with and it was only after hearing them that the orders of cancellation had been passed. We have, therefore, no hesitation in answering this question that there was no requirement of following the procedure under Order I Rule 8 nor can it be said that the entire exercise is vitiated.

So far as the eighth question is concerned, it was repeatedly argued before us by several counsel that the concerned minister was not required to verify and since the order of allotment stipulates that the Oil company would verify before granting the agency in question that itself is a good verification and consequently, the High Court was in error in canceling the allotment on the ground that there had been no proper verification. It is no doubt true that the Minister having exercised his discretion and allotting a particular agency in favour of the applicant, has required the Oil company to make necessary verification before entering into an agreement with the allottee, but that verification supposed to have been done by the oil company has nothing to do with the materials on which the subjective satisfaction of the Minister was arrived at for exercise of his discretion in favour of any individual for any justifiable reason. When a State property as distinct from a private property is being dealt with by a Minister then it is of paramount importance that such public property must be dealt with for public purpose and in the public interest. The disposal of a public property undoubtedly partakes the character of a trust and therefore, in the matter of such disposal, there should not be any suspicion of a lack of principle. The exercise of discretion must not be arbitrary or capricious or for any extraneous considerations. It is in that context when the Court was examining each and every individual case of discretionary allotment, the Court was trying to find out whether there existed some materials, on the basis of which the Minister could be said to have arrived at his subjective satisfaction for exercise of his discretion in favour of the applicant. It is the so-called satisfaction of the Minister for exercise of his discretionary power and making the grant that was being examined and scrutinized by the Court and only when the Court found that there had been absolutely no materials or that Minister had made the grant without making any inquiry or verification, that the Court had interfered with the allotments in question, obviously on a conclusion that such allotments had been arbitrarily made. The subsequent inquiry supposed to have been conducted by the Oil company cannot replace the pre-conditions for exercise of discretion by the Minister. If the initial order of allotment by exercise of discretion is vitiated on the ground of absence of any materials or verification by the concerned authority who has exercised the discretion, then the so-called subsequent inquiry by the Oil company which operates in different fields cannot make the so-called arbitrary order of the Minister a legal or just order. This being the position, we see no force in the submission made by the counsel appearing for the appellants on this score. The same accordingly stands rejected.

The next question which arises for consideration is whether the judgment of this Court in Civil

Appeal No. 6840 of 2001 and principles evolved therein can be applied to the case in hand, so as to protect the allotments already made under the discretionary quota. The aforesaid case no doubt was a case of allotment of land by the Chief Minister of a State in the State of Haryana. The High Court of Punjab and Haryana by its order dated 20th January, 1988 disposed of the case of S.R. Dass vs. State of Haryana, 1988 Punjab Law Journal page 123, under which it formulated certain principles on which the discretionary allotments could be made with certain conditions. The so-called discretionary allotments made by the Government and HUDA, pursuant to the earlier judgment of Punjab and Haryana High Court were sought to be assailed as being contrary to certain stricter principles, which were evolved in the case of Anil Sabharwal which stood disposed of on 5.12.97. This Court in the appeal in question held that the stricter scrutiny required to be made as per the guidelines evolved in Anil Sabharwals case, must be made applicable to the period subsequent to the judgment viz. 5.12.97 and allotments made between 1988 and 1997 in accordance with the principles and guidelines indicated in S.R. Dass case, were protected by applying the principle of prospective application, so far as the judgment in Anil Sabharwals case. We fail to understand how the aforesaid principle can apply to the case in hand where the allotments made prior to the judgment of this Court in Centre for Public Interest Litigation, 1995(3) Supp.(3) S.C.C. 382, are the subject matter of scrutiny and had been made indiscriminately, as there had been no guiding principle for making such allotments. Consequently, the principles evolved in Civil Appeal No. 6840 of 2001, will have no application at all to the present appeals. The said contention, therefore, must fail.

In view of our conclusions on the nine issues, as mentioned above, these appeals fail and are dismissed. There however will be no order as to costs.

While, we are dismissing the appeals, we are also aware of the fact that these appellants are operating the allotments made in their favour since 1993-94 and even after the judgment of the High Court, they are continuing by virtue of an interim order of this Court. In these circumstances, we direct that they shall be allowed to wind-up their respective businesses by 31st of December, 2001.