Onkar Lal Bajaj Etc. Etc vs Union Of India & Anr. Etc. Etc on 20 December, 2002

Author: H.K. Sema

Bench: H.K. Sema

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           CASE NO.:
Transfer Case (civil)  80 of 2002
Transfer Case (civil)  82 of 2002
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Transfer Case (civil)  90 of 2002
Transfer Case (civil)  91 of 2002
Transfer Case (civil)  417-423 of 2002

PETITIONER:
Onkar Lal Bajaj etc. etc.

RESPONDENT:
Union of India & Anr. etc. etc.

DATE OF JUDGMENT: 20/12/2002

BENCH:
Y.K. Sabharwal & H.K. Sema.

JUDGMENT:
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J U D G M E N T [With Contempt Petition (C) No.556/2002 IN TP (C) Nos.417- 423/2002] [With T.C. (C) Nos. 100-109 of 2002] Y.K. Sabharwal, J.

The marketing of petroleum products has been quite a lucrative business. The four public sector oil companies - Indian Oil Corporation Limited (IOC), Bharat Petroleum Corporation Limited (BPC), Hindustan Petroleum Corporation Limited (HPC) and IBP Company Limited (IBP) control the marketing of the said products. We are concerned with the marketing of petrol and diesel, Superior Kerosene Oil (SKO), Light Diesel Oil (LDO) and Liquefied Petroleum Gas (LPG). The challenge in these matters is to the validity of the order of the Government of India dated 9th August, 2002 whereby all allotments made with respect to retail outlets, LPG distributorships and SKO-LDO dealerships on the recommendations of the Dealer Selection Boards (DSBs) since 1st January, 2000 were decided to be cancelled.

In past also allotments of retail outlets for petroleum products were cancelled by this Court after coming to the conclusion that the allotments made were arbitrary, on account of political connections/motivation and extraneous considerations. The tainted allotments were also cancelled by various orders of High Court of Delhi. The allotments which were on merits and not tainted were not ordered to be cancelled. It is a matter of co-incidence that exactly seven years ago i.e. in August, 1995 on the front page of Indian Express a news item appeared regarding the grant of retail outlets for petrol pumps on account of political and other connections. Now, in August 2002, i.e., exactly seven years later again news item appeared on the front page of same newspaper about allotments to the near and dear ones of the political functionaries attributing the same on account of political considerations. In Common Cause, A Registered Society v. Union of India & Ors. [(1996) 6 SCC 530], this Court observed that for these allotments, a transparent and objective criteria/procedure has to be evolved based on reason, fair play and non- arbitrariness.

Always, many have been in race for getting these dealerships/distributorships. From September 1977, a uniform procedure for selection of persons for appointment as dealers/distributors applicable to all the public sector oil marketing companies was introduced by the Government. The dealers were earlier selected from amongst the applicants by a selection committee comprising senior officials of the oil companies. The applications were invited from interested persons by advertising the available dealerships in the newspapers. In the year 1983, the Central Government constituted two member Oil Selection Boards comprising of a retired High Court Judge as Chairman and a retired Civil Servant as a member. In the year 1990, one prominent member of public importance was also included in the said boards. In January 1993, the composition of the Oil Selection Board was a retired High Court Judge as Chairman and a representative of Scheduled Castes/Scheduled Tribes/Other Weaker sections and a prominent public figure as members. The name of the board was later changed to 'Dealer Selection Board'. The guidelines were updated and notified in October 2000 by Ministry of Petroleum and Natural Gas in* terms of Office Memorandum dated 9th October, 2000. According to these guidelines, the DSBs have the following composition :

> "i) A retired judge of a High Court/ retired District Judge/retired Additional District Judge/retired Officer who had held an Equivalent Judicial post - Chairman
>
> ii) An Officer of the concerned Oil Company not below the rank of Deputy General Manager or Chief Manager depending on Availability - Member
>
> iii) An officer of another Oil Company not below the rank of Deputy General manager or Chief Manager depending on availability - Member"

The guidelines provide detailed procedure for selecting candidates for appointment as dealers/distributors. A total of 59 DSBs were constituted in June-July 2000 and afterwards. These DSBs were entrusted the task of selections for the retail outlets, LPG distributorships and SKO-LDO dealerships. The guidelines also provide for reservations in each of the dealership/distributorship categories for the applicants belonging to Scheduled Castes/Scheduled Tribes, defence personnel, para military/Police/Government personnel, outstanding sports persons, freedom fighters and

physically handicapped. Each of these categories as also in the remaining 50% for open categories, 33% of the dealerships/distributorships were reserved for women. The dealerships/distributorships sites for marketing of petrol/diesel or LPG or SKO-LDO are of two types Company Owned and Dealer Operated (CODO) and Dealer Owned and Dealer Operated (DODO). Under the former category, the land, superstructure standing thereon and other facilities such as underground product tanks, dispensing units, other ancillary equipments etc. are owned by the oil companies and business operations are carried on by the dealer/distributor and under the latter category, the land is either owned or held on lease hold rights by the dealers/distributors. The superstructure, except the product tanks, dispensing units and other ancillary equipment in the case of petrol/diesel retail outlets and cylinders and regulators in the case of LPG, is owned by the dealers/distributors. In the case of dealership/distributorship allotted to the candidates belonging to Schedules Castes/Scheduled Tribes and widows over 40 years of age, the land and the superstructure thereon are owned by the oil companies, expenditure on which is made from a fund created and maintained by the oil companies known as the Corpus Fund. The guidelines dated 9th October, 2000 were issued, as stated therein, to provide transparent, uniform, fair and faster procedure for selection of suitable candidates as dealers/distributors. The educational qualifications for reserve categories, other than freedom fighters and outstanding sport persons, were matriculation or recognized equivalent. The educational qualifications were, however, not applicable for freedom fighters and outstanding sport persons. The guidelines also provide that the gross income of the candidate should not exceed Rs.2,00,000/- per annum in the previous financial year. The income for this purpose will include that of self, spouse and dependent children. If the candidate is dependent on parents, then their income was also to be taken into consideration for computing total income. A candidate having income of more than Rs.2,00,000/- per annum is disqualified under the guidelines. It seems that with a view to minimize the scope of interference and keep secret, as far as possible, a clause in the guidelines was incorporated stating that the nomination of the oil company officer as a member of DSB for a round of selection at a particular location will be made by the Executive Director or Director (Marketing) of the concerned oil company not earlier than 48 hours from the date of starting the interviews at a particular location. In respect of the tenure of Chairman, the guidelines provide that it will be for a period not exceeding two years, further, however, providing that the Chairman shall hold office during the pleasure of the Government and his services can be dispensed with even before the expiry of the tenure without giving any notice and without assigning any reason. Norms for evaluating the candidates to judge their inter se suitability for all categories have also been provided. One of the guidelines is that after completion of the interviews, board shall not adjourn till such time the merit panel is finalized. It is also provided that the DSB shall recommend to the oil companies a panel of maximum three names for a particular dealership/distributorship immediately after the interviews are over. The merit panel will be finalized, signed and handed over by the Chairman, DSB in a sealed envelope to the non-member secretary or the officer deputed by him who will forward the merit panel to the Regional Executive Director/General Manager of the concerned oil company within 24 hours. A time frame for selection of dealer/distributorship of 145 days from the date of advertisement has been set out in the guidelines providing that within 129 days from the notice of advertisement, the selection shall be made and remaining 16 days, as provided therein, for forwarding the panel to the oil company, submitting of field investigation report by the oil company and issue of LOI after completion of the field investigation report. A mechanism for grievance redressal system has also been provided for to

consider the complaints against selection of dealers/distributors. The guidelines laid down a detailed procedure. Despite the guidelines, according to the media report, certain allotments were on account of political patronage. In these matter, the guidelines can never be a foolproof and it depends on those who have to follow the same. The real question to be considered in these matters is whether on account of controversy regarding alleged tainted selections of certain applicants, can the entire selections of all applicants of all categories made by all selection boards from January 2000 be annulled.

The DSBs, under the aforesaid guidelines, till date of their dissolution, i.e., 9th May, 2002, against a total number of 7000 dealerships/distributorships, advertised 5641 locations out of which merit panels were published for 3760 locations. The letters of intent (LOI) were issued to 3546 successful applicants. The agreements were signed between oil companies and LOI holders in 2248 cases. These are operational outlets. The remaining LOI holders were in process of completing requisite formalities when the impugned order was issued. On 2nd August, 2002, Indian Express carried, on its front page, a story with certain names attributing political patronage in grant of dealership/distributorship. The newspapers also carried editorials. The insinuations made were that the allotments were made to the Members of Parliament, Assembly, party workers of political party in power, their relatives etc. The resignation of Minister for Petroleum and Natural Gas was sought by political parties in opposition. The questions were raised on the floor of the Parliament. The proceedings of the House were also stalled.

In view of the controversy, review was done by the Prime Minister on 5th August,, 2002 in which the Deputy Prime Minister, Minister for Petroleum and Natural Gas, Minister for Parliamentary Affairs participated amongst others. In view of the controversy regarding the allotments, the Prime Minister directed the Ministry of Petroleum and Natural Gas to initiate steps to cancel all allotments made with effect from January 2000 till date.

The press release issued by Press Information Bureau and sent to the oil marketing companies reads as under :

> "The Hon'ble Prime Minister today reviewed the allotment of Petrol Pump and LPG Gas and Kerosene Agencies by public sector Oil Companies.
>
> It was emphasized that all allotments had been made on the recommendations of Dealership Selection Boards which are headed by retired Judges. However, since a controversy has arisen with regard to these allotments, the Prime Minister has directed the Ministry of Petroleum & Natural Gas to initiate steps to cancel all allotments made with effect from January 2000 till date. All concerned petrol pumps and LPG and Kerosene agencies will be auctioned on the basis of Competitive Bidding. Modalities for the Re-allotment on competitive bidding shall be finalized by the concerned Ministry. However, the allotments made to the families of Kargil Martyrs shall remain unaffected by this."

The effect of the aforesaid decision was the cancellation of all the merit panels numbering 3760 that had been prepared by the DSBs after considering thousands, if not lacs, of applications and after interviewing thousands of applicants. All those selected by the DSBs, except 214, had been issued LOI. As earlier noticed, in 2248 cases agreements had been executed between oil companies and LOI holders. This means that 2248 dealerships/distributorships were already operational. A formal order was, however, issued by the Government of India, Ministry of Petroleum and Natural Gas on 9th August, 2002. That order reads as under :

> "The Government has recently reviewed the allotments made since January 2000 of Petrol Pumps, LPG distributorships and SKO LDO dealerships of Public Sector Oil Companies. The allotments were recommended by the Dealer Selection Boards as per Government's guidelines dated 9th October, 2000. However, a controversy has arisen with regard to the allotments. The issue was raised in the Parliament. The functioning of the DSBs and their recommendations were also discussed. In view of this Government reviewed the matter. Having considered the facts and circumstances as also to ensure fair play in action, the Government in the public interest have now decided that all allotments made with respect to retail outlets. LPG distributorships and SKO LDO dealerships on the recommendations of the Dealer Selection Boards since 1st January 2000 be cancelled. It has further been decided that all annulled petrol pumps, LPG distributorships and kerosene dealerships may be auctioned on the basis of competitive bidding.
>
> 2. You may, in view of the above, take necessary action in the matter to :
>
> (a) cancel all the petrol pumps LPG distributorships and kerosene dealerships made on the recommendations of DSBs since 1.1.2000 forthwith.
>
> (b) make alternate arrangements to that consumers are not put to any difficulties till the appointment of new dealers/distributors and
>
> (c) settle the above petrol pumps, LPG distributorships and kerosene dealerships on the basis of auction through competitive bidding modalities for which be worked out by the Government.
>
> 3. The above decision will not be applicable to the allottees under Operation Vijay scheme."

Number of writ petitions were filed in various High Courts challenging the legality of the order dated 9th August, 2002. A transfer petition was filed by the Union of India in this Court. Considering that the impugned order affects large number of dealers and distributors all over the country which led to filing of numerous writ petitions in different High Courts, this Court on 28th August, 2002 observed that the legal points in issue should be expeditiously decided by transfer of representative cases to this Court for adjudication. The Court, therefore, directed the transfer of certain writ petitions from the High Courts of Delhi, Rajasthan, Madhya Pradesh, Bombay and Gujarat to this Court. In respect of 2248 dealerships/distributorships, status quo as on 9th August,

2002 was directed to be maintained. It was directed that they shall continue to operate the dealerships/distributorships in accordance with the terms of contracts/agreements entered into between them and the oil companies concerned. In respect of 1298 cases where LOI had been issued but retail outlet/gas agencies had not been commissioned, this Court directed that the said LOI shall not be allotted or transferred to any person during the pendency of the petitions. In terms of orders dated 10th November, and 22nd November, 2002, certain other writ petitions filed in the High Courts wherein allottees were of the category whose cases had been highlighted in the newspaper were transferred as another category of representative cases. A large number (over 2300) intervention applications have been filed by different category of persons, i.e., (1) those with whom agreements have been entered into by the oil companies; (2) those to whom the LOIs have been issued by the oil companies but outlets have not been commissioned; and (3) those who are on select panel but LOIs have not been issued.

We have heard learned counsel for the petitioners and interveners in support of their challenge to the impugned order and learned Solicitor General in defence thereof.

The entire matter triggered of as a result of media exposure. As already noticed, the front page of Indian Express carried the lead story on 2nd August, 2002 attributing political patronage in grant of allotments on political considerations. The newspaper for 2nd August published a list of 61 allottees from Maharashtra with their names and the alleged political connections and the positions held by the allottees and their relatives. The newspaper of 3rd August, 2002 carried the names of 34 allottees from Punjab and Himachal Pradesh with their political positions and/or connections. The newspaper of 4th August carried similar news in respect of 21 allottees from the State of Haryana. The newspaper of 5th August, carried the similar particulars in respect of 44 allottees from the State of Uttar Pradesh. The first name published was that of one Aparna Misra alleging that her husband is a relative of the Prime Minister and the address given is the same as that of the Prime Minister's residence in Lucknow.

Thus, upto 5th August, the newspaper carried the names of 160 allottees from the States of Maharashtra, Punjab, Himachal Pradesh, Haryana and Uttar Pradesh attributing political patronage in their selection by the DSBs. The decision to cancel all allotments was also taken on 5th August, 2002, as earlier noticed. The effect of the decision was on 3760 persons whose merit panels had been published by the DSBs. The only reason for cancellation on 5th August was that a 'controversy' had been raised relating to the allotments. Although, the media exposure hinted of more such names but only 160 names had been published in Indian Express upto the date of the decision to cancel the allotments. It does not appear that the Government had with it on 5th August, the basic facts as to the total number of the persons that had been selected; total number of dealerships/distributorships which were operational; number of cases where LOI had been issued but agreements on completion of formalities had not yet been entered into; the different categories of the selected candidates and categories of those 160 allottees open or reserved and which of the reserved category. In short, it seems that the Government did not have with it the necessary data so as to consider the impact of en bloc cancellation directed on 5th August, 2002 on account of a 'controversy' raised pertaining to few cases. The 'controversy' that had been raised upto 5th August was in respect of less than 5% of the total numbers of merit panel published. Between 6th and 9th August, Indian Express carried the

particulars of alleged tainted allottees numbering 104. Between 10th August and 24th August, the particulars of 153 such allottees were published. The total number of the alleged tainted allottees that has been published in Indian Express is 417 which is little over 10% of the total selections made.

We are not suggesting, for the present, that allotments to allotments to all or any of the persons whose names have been published in the Indian Express have been made due to political connections or patronage but assuming it is so, would it justify the cancellation of allotments of all those on published merit panel in respect of whom, there is no such insinuation. Is the number of the alleged tainted allottees of such a magnitude that the fair play demanded cancellation of all en masse? Did anybody apply mind as to whether the insinuations of political connection/patronage were at least prima facie of any substance? Is such a drastic action, on the facts and circumstances of the case, not arbitrary, whimsical and, thus, unsustainable? The answer to these questions would help in determining the legality of the impugned order dated 9th August, 2002.

Mr. Kirit Rawal, learned Solicitor General, candidly admitted that none of individual cases was examined and gone into before decision was taken on 5th August, 2002/9th August, 2002.

Learned counsel representing the petitioners and also learned counsel representing interveners submit that the en masse cancellation of allotments is clearly an arbitrary exercise of executive power without any justification therefor. The impugned order is contended to be wholly arbitrary and unconstitutional being violative of Article 14 of the Constitution of India.

On the other hand, learned Solicitor General contends that, in fact, the course of action adopted by the Government, in the present case, is worthy of commendation and calls for no intradiction. The impugned decision, learned counsel submits, was taken with a view to ensure probity in public life as doubts over fairness of selection of certain candidates had been raised, the proceedings of the Parliament had been stalled on account of the controversy and, therefore, the Government, in order to uphold probity in governance, ensure fair play in action and in larger public interest, took a decision to cancel all allotments of retail outlets, SKO-LDO dealerships and LPG distributors made since January 2000 by the public sector oil companies on the basis of recommendations made by the DSBs except the cases of allotment made under the special scheme for allotment of retail outlet dealerships/LPG distributorships to the widows/next of kin of the defence personnel killed in action in "OP Vijay" (Kargil) under the recommendations received from Director General (Settlement), Ministry of Defence, Government of India and not through DSBs. Counsel contends that it was further decided that all annulled retail outlet dealerships, LPG distributorships and SKO-LDO dealerships would be auctioned on the basis of competitive bidding. Learned Solicitor General also contends that for the enforcement of contractual rights, the writ petition is not the appropriate remedy. Reference was made to the terms of the agreement entered into between the dealers/distributors and the oil companies after selection. The contention is that the agreements could be cancelled without assigning any reason and for redressal of the alleged illegality in cancellation of the agreements, the resort to the writ jurisdiction was not permissible and was ill-founded.

The petitions, it is contended, are nothing but a disguise suits under the Specific Relief Act despite the fact that contract would not be enforceable even under the said Act. Thus, it is contended, that the petitioners have no legal right that can be enforced under Article 226 of the Constitution of India.

There is no merit in the contentions of learned Solicitor General. It is evident from the facts that the cancellation of the agreements is not for violation of any term thereof. The cancellation is on account of a policy decision taken by the Government as noticed hereinbefore. The cancellation is not on account of any uniform reason applicable to all the selectees or those who have been issued LOIs or with whom agreements have been entered into except that in respect of few others and not this class of petitioners, media exposure was made. In the present case, on principle, there would be no difference in respect of those selectees who have been issued the LOIs but are awaiting the execution of the agreement on completion of formalities. The execution of agreement is not being denied on account of any ineligibility of any such LOI holders or any discrepancy having been found in what was required to be fulfilled by them. We are not concerned with any such individual case. Therefore, the cases of LOI holders are no different in comparison to those cases where agreements have been entered into. Similar is the position of those who are on published merit panels and were awaiting issue of LOIs by the oil companies when the impugned decision was taken. For the present controversy, they are all in same position except those who may come in the category of alleged tainted class which aspect we would deal later.

Article 14 guarantees to everyone equality before law. Unequals cannot be clubbed. The proposition is well settled and does not require reference to any precedent though many decisions were cited. Likewise, an arbitrary exercise of executive power deserves to be quashed is a proposition which again does not require support of any precedent. It is equally well settled that an order passed without application of mind deserves to be annulled being an arbitrary exercise of power. At the same time, we have no difficulty in accepting the proposition urged on behalf of the Government that if two views are possible and the Government takes one of it, it would not be amenable to judicial review on the ground that other view, according to the Court, is a better view. The decision in The Bihar School Examination Board v. Subhas Chandra Sinha & Ors. [(1970) 1 SCC 648] has been relied upon by learned Solicitor General in support of the contention that allotments could en masse be legally cancelled without individually examining each case and without affording an opportunity to all concerned to represent their cases. Paras 12 and 13 on which reliance has been placed read :

> "12. These figures speak for themselves.
>
> However, to satisfy ourselves we ordered that some answer books be brought for our inspection and many such were produced. A comparison of the answer books showed such a remarkable agreement in the answers that no doubt was left in our minds that the students had assistance from an outside source. Therefore, the conclusion that unfair means were adopted stands completely vindicated.

> 13. This is not a case of any particular individual who is being charged with adoption of unfair means but of the conduct of all the examinees or at least a vast majority of them at a particular centre. If it is not a question of charging any one individually with unfair means but to condemn the examination as ineffective for the purpose it was held. Must the Board give an opportunity to all the candidates to represent their cases? We think not. It was not necessary for the Board to give an opportunity to the candidates if the examinations as a whole were being cancelled. The Board had not charged any one with unfair means so that he could claim to defend himself. In these circumstances, it would be wrong to insist that the Board must hold a detailed inquiry into the matter and examine each individual case to satisfy itself which of the candidates had not adopted unfair means. The examination as a whole had to go."

The cited decision relates to cancellation of cheating by en masse copying by the students. The aforequoted observations were made after examining percentage of the marks obtained and compared with the average of successful candidates at other centers, as is evident from the facts noticed in para 11 which reads thus :

> "This brings us to the crux of the problem. The High Court interfered on the ground that natural justice and fair-play were not observed in this case. This was repeated to us by the respondents in the appeal. A mention of fair-play does not come very well from the respondents who were grossly guilty of breach of fair-play themselves at the examinations. Apart from the reports of the experts, the results speak for themselves. At the other centers the average of successful candidates was 50%. At this centre the examinations had the following percentage :
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> 1. Mother Indian Language .. 94%
>
> 2. English .. 70%
>
> 3. Social Studies .. 95%
>
> 4. Everyday Science .. 90%
>
> 5. Elementary Mathematics .. 100%
>
> 6. Economics and Civics .. 92%
>
> 7. Elementary Physiology & Hygiene .. 96%
>
> 8. Geography .. 99%
>
> 9. History .. 88%
>
> 10.Physics .. 70%

11.Chemistry .. 100%

12.Advance Mathematics .. 99%

13.Sanskrit .. 100%"

Noticing that all the candidates at the centre in question had obtained marks of more than 90%, the Court came to the conclusion that the student had assistance from an outside source. The Court had also examined the answer books. Thus, it was held that the examination was vitiated by practicing unfair means on a mass scale and, under these circumstances, it was observed that the Board could not be asked to hold a detailed enquiry into the matter to satisfy itself as to which of the candidate had not adopted unfair means and the examination had to go as a whole. The facts of the present case are altogether different. There was no examination of the allegations made in the media and also that the percentage of alleged tainted allotments was not such so as to come to the conclusion that there was en masse bungling by the 59 DSBs nor any such conclusion was reached by the respondents.

The other decision in the case of B. Ramanjini & Ors. v. State of A.P. & Ors. [2002) 5 SCC 533] cited by learned Solicitor General has also no relevance for the present controversy. That was a case where it was found that not only there was scope for mass copying and mass copying did take place, in addition to leakage of question papers which was brazenly published in a newspaper and the photocopies of the question papers were available for sale at a price of Rs.2000/- each and, under these circumstances, the Government decided to cancel the examination of the centre in question. This decision is of no assistence for the present controversy.

Mahabir Auto Stores & Ors. v. Indian Oil Corporation & Ors. [(1990) 3 SCC 752] was a case where the challenge of the appellant was to the action of the respondent, Indian Oil Corporation in discontinuing the supply of all kinds of lubricants to the appellant. One of the contention raised by the Indian Oil Corporation was that there was no written agreement with it and there was only an ad hoc arrangement which could not be enforced, particularly, in a writ jurisdiction. Rejecting the contention, this Court observed that the respondent's decision can be impeached on the ground that it is arbitrary or violative of Article 14 on any of the grounds available in public law field. It was further held that the action had to be fair and reasonable and that even in the field of public law, the relevant persons concerned or to be affected, should be taken into confidence. Whether and in what circumstances that confidence should be taken into consideration cannot be laid down on any strait-jacket basis. It depends on the nature of the right involved and nature of the power sought to be exercised in a particular situation. Kumari Shrilekha Vidyarthi & Ors. v. State of U.P. & Ors. [(1991) 1 SCC 212] was a case in which en masse cancellation of panel of Government Law Officers was questioned before this Court. While quashing the impugned order, this Court observed that the act of terminating their appointment in one stroke was without application of mind. It was further observed that it would be too much to assume that every Government counsel was required to be replaced in order to streamline the conduct of the Government cases and indeed, that is not even the case of the State which itself says that many of them were to be reappointed. It is not the case of the respondents that most or large number of selections in the present case were tainted. In the case in

hand, the only reason for the en masse cancellation was that a 'controversy' had been raised. There was no application of mind to any case. Admitted none of cases was examined. In Shrilekha Vidyarthi's case, this Court held that arbitrariness is writ large on the impugned circular. In the State action public interest has to be the prime guiding consideration. In Shrilekha Vidhartyi's case, it was held that the impugned State action was taken with only one object in view, i.e., to terminate all existing appointments irrespective of the subsistence or expiry of the tenure or suitability of the existing incumbents and that by one omnibus order, the appointments of all Government counsel in the State of Uttar Pradesh were terminated. It was also noticed that no common reason applicable to all of them justifying their termination in one stroke on a reasonable ground had been shown. The position is similar in the present case.

The expressions 'public interest' or 'probity in governance' cannot be put in a State jacket. 'Public interest' takes into its fold several factors. There cannot be any hard and fast rule to determine what is public interest. The circumstances in each case would determine whether Government action was taken is in public interest or was taken to uphold probity in governance.

The roll model for governance and decision taken thereof should manifest equity, fair play and justice. The cardinal principle of governance in a civilized society based on rule of law not only has to base on transparency but must create an impression that the decision making was motivated on the consideration of probity. The Government has to rise above the nexus of vested interests and nepotism and eschew window dressing. The act of governance has to withstand the test of judiciousness and impartiality and avoid arbitrary or capricious actions. Therefore, the principle of governance has to be tested on the touchstone of justice, equity and fair play and if the decision is not based on justice, equity and fair play and has taken into consideration other matters, though on the face of it, the decision may look legitimate but as a matter of fact, the reasons are not based on values but to achieve popular accolade, that decision cannot be allowed to operate. Now, before reverting to the contention of learned Solicitor General that the impugned order was issued in public interest so as to ensure fair play in action, the factual position of the DSBs may be noticed and a contention raised by Mr. Nariman on the basis of averments made in T.C. No.90/2002 be considered.

There were 59 DSBs throughout the country. In bigger States, the number of DSBs was more. In UP, there were nine such Boards, in Maharashtra they were four DSBs, five were the boards in Andhra Pradesh, Madhya Pradesh and Bihar. On 9th May, 2002, when the DSBs were discontinued, 18 DSBs were chaired by retired High Court Judges and remaining by retired District or Additional District Judges. In Transfer Case No.90 of 2002, Mr. Nariman, learned counsel for the petitioner, contends that the entire exercise of cancellation was a result of the name of the Prime Minister's relative being involved on account of which the Prime Minister by a single politically motivated stroke, ordered en masse cancellation. Reliance has been placed by learned counsel to the allegations made in para 2.3 which are as under :

> "piqued and angered by the expose of the misdeeds of the Petroleum Ministry in which the name of the Prime Minister's relative was involved and the opposition creating a raw in the Parliament and paralyzing the proceedings in the Parliament,

> the Prime Minister in a single politically motivated stroke ordered cancellation of as many as 3158 petrol pumps, LPG agencies and kerosene oil outlets allotted across the country since January 2000 and directed the third respondent that the cancelled petrol pumps, LPG agencies and kerosene oil outlets would all be auctioned on the basis of competitive bidding and directed the Petroleum Ministry to work out the modalities for reallotment. The decision to cancel the allotments was taken by the Prime Minister at a meeting attended by the Deputy Prime Minister L.K. Advani, Finance Minister Jaswant Singh, Petroleum Minister Ram Naik, Parliamentary Affairs Minister Pramod Mahajan and Information and Broadcasting Minister Sushma Swaraj. The Prime Minister refused to wilt under pressure from a Section of the party to brazen it out and had final say deciding on cancellation of all allotments despite Ram Naik keeping up his more than brave face that there was no wrong doing at all."

Our attention was also drawn by learned counsel to only reply to the averment which is to the following effect :-

> "With reference to para 2.3.1, 2.3.2, 2.3.3, 2.3.4 and 2.4 of the petition, it is submitted that the contents therein are the excerpts quoted from various newspapers and hence need no reply". The submission of Mr. Nariman is that the averments in para 2.3 are not excerpts from a newspaper but an assertion of the petitioner and the same having not been denied shall be deemed to be admitted. It may be that the averment in para 2.3 is not an excerpt from a newspaper and is an assertion, as contended by Mr. Nariman but such a general and vague assertion without any material in support thereof and which, in fact, is an inference from newspapers is hardly sufficient to attribute mala fides. The contention of Mr. Nariman, thus, cannot be accepted. Reverting now to the contention that the impugned action was in public interest, it may first to be noticed that when the decision was taken on 5th August, 2002, the only reason was that a controversy had been raised about certain allotments. We have earlier noticed that the guidelines provide for a mechanism to look into the complaint made against selections. Further, according to the respondents, in respect of 360 complaints made against the Chairmen/Members of the DSBs, inquiries were conducted by Director General, Anti Adulteration Cell and out of which 242 cases were recommended to be closed. This means no substance were found in 242 complaints out of 360; 39 cases were sub-judice; in 27 cancellation of selection had been recommended and 45 cases had been referred to the Ministry for its decision on various grounds by Director General and Oil Companies. In addition, in 7 cases, decision on cancellation of the selection of the first empanelled candidate had been taken by DSB/oil companies. The effect of the impugned action is the termination of agreements despite the recommendation of the closure of the complaints and only for the reason that a 'controversy' had been raised in relation to some allotments. Further, in some cases, the challenge to selection had failed in courts. The guidelines, as earlier noticed, provide for reservation for defence personnel, freedom fighters, outstanding sports persons, para military/Police/Government personnel, physically

handicapped persons and Scheduled Castes and Scheduled Tribes. There was no application of mind as to the effect on all these categories as a result of en masse cancellation. The contention of the learned Solicitor General that in order to uphold the probity in governance, ensure fair play in action and in larger public interest, the Government took a decision to cancel the allotments is clearly an afterthought besides untenable even otherwise. The mere reason that a 'controversy' has been raised by itself cannot clothe the Government with the power to pass such a drastic order which has a devastating effect on a large number of people. In governance, controversies are bound to arise. In a given situation, depending upon facts and figures, it may be legally permissible to resort to such en masse cancellation where executive finds that prima facie a large number of such selections were tainted and segregation of good and bad would be difficult and time consuming affair. That is, however, not the case. Here the controversy raised was in respect of 5 to 10%, as earlier indicated. In such a situation, en masse cancellation would be unjustified and arbitrary. It seems that the impugned order was a result of panic reaction of the Government. No facts and figures were gone into. Without application of mind to any of relevant consideration, a decision was taken to cancel all allotments.. The impugned action is clearly against fair play in action. It cannot be held to be reasonable. It is nothing but arbitrary.

Regarding the probity in governance, fair play in action and larger public interest, except contending that as a result of media exposure, the Government in public interest decided to cancel all allotments, nothing tangible was brought to our notice. On 5th August, 2002 only reason was that 'a controversy' had been raised. In order dated 9th August, 2002 the reasons given are that facts and circumstances considered and to ensure fair play in action and in public interest, it was passed. In counter affidavit, the aspect of probity in governance has been brought in. Be that as it may, the fact remains that admittedly, no case was examined, not even from a prima facie angle to find out whether there was any substance in the media exposure. None examined the impact that was likely to result because of en masse cancellation. Many had resigned their jobs. It was necessary because of such a stipulation in LOI. Many had taken huge loans. There were many Schedule Casts/Schedule Tribes, war widows and those whose near relation had died as a result of terrorist activities. The effect of none was considered. How could all those large number against whom there was not even insinuation could be clubbed with the handful of those who were said to have been allotted these dealerships/distributorships on account of political connection and patronage. The two were clearly unequals. The rotten apples cannot be equated with good apples. Under these circumstances, the plea of probity in governance or fair play in action motivating the impugned action cannot be accepted. The impugned order looked from any angle cannot stand the scrutiny of law.

The solution by resorting to cancellation of all was worse than the problem. Cure was worse than the disease. The equal treatment to unequals is nothing but inequality. To put both categories ? tainted and the rest ? at par is wholly unjustified, arbitrary,

unconstitutional being violative of Article 14 of the Constitution. It is apparent from the guidelines that the dealerships and distributorships were provided to be given to the allottees as a welfare measure. Even in respect of open category there is a limitation for the income of the applicant being not more than 2 lakhs per annum so as to be eligible for consideration by the DSBs. The DSBs are required to consider the applications within the parameters of the guidelines and select the best applicant. If the DSBs in some cases have selected someone not on merits but as a result of political connections/considerations and positions of the applicant, undoubtedly such allotments deserve to be quashed. In Common Cause case (supra), this Court on examination of the facts held that the allotment to the sons to the Ministers were only to oblige the Ministers. The allotments to the Members of the Oil Selection Boards and their/Chairmen's relations had been done to influence them and to have favours from them. It was observed that a minister who is the executive head of the department concerned, when distributing benefits and largesses In a welfare state in the form of allotment of plots, houses, petrol pumps, gas agencies, mineral leases, contracts, quotas and licences etc. has to deal with people's property in a fair and just manner. He holds all these as a trust on behalf of the people. He cannot commit breach of the trust reposed in him by the people. The aforesaid observations would apply with equal if not more force to DSBs if media exposure that the allotments were made either to the high political functionaries themselves or their near and dear ones is correct, the authorities would not only be justified in examining such cases but it would be their duty to do so. Instead of fulfilling that duty and obligation, the executive cannot unjustly resort to cancellation of all the allotments en masse by treating unequals as equals without even prima facie examining any cases exposed by the media. If hue and cry is made that certain allotments have been made to sitting Members of Parliament or their wives or Members of Legislature or their relations, the public, media and the opposition would be justified in raising eye-brows. It is a different matter that on independent examination nothing may be found in those cases. As noticed earlier, 417 names of alleged tainted allotments appeared in media between 2nd August and 24th August, 2002. As a representative category, 10 cases were transferred to this Court. The respondents have given to us particulars of 413 cases which appeared in Indian Express ? four being not traceable according to them. The allegations in Transferred Case Nos.100 to 109 are substantially these:

One of the transferred cases relates to allotment of SKO/LDO dealership at Lal Bangla, Kanpur in open category in favour of the son of Member of Parliament from ruling party. It is a case where letter of intent has been issued though agreement was not entered into before the cancellation and the outlet is not operational. According to the petitioner, he had made huge investments, purchased land and completed other formalities and was a graduate of 26 years of age and being son of a Member of Parliament was not a disqualification. It appears that the concerned DSB had interviewed 32 applicants. If being the son of Member of Parliament was not a disqualification, at the same time, it was also not a qualification. The probity in good governance requires the examination of such a matter by an independent person so

as to clear the doubts or 'controversy' so as to come to the conclusion whether the allotment was on merits or as a result of the political connections. The controversy cannot be resolved or put to rest by burying it under carpet by cancelling all allotments by treating unequals as equals. Another transferred case pertains to allotment of HPC retail outlet at Khandvi, District Solapur, Maharashtra in favour of the petitioner under the Scheduled Castes reserved category. The outlet is company owned dealer operated. 23 applicants were interviewed. The applicant is a wife of a Member of Parliament of a political party supporting party in power. The district wherein the outlet has been allotted to the petitioner falls within the parliamentary constituency of the husband of the petitioner. The petrol pump is said to be operational. According to the petitioner, she made huge investments and 16 persons have been employed by her. If the allotment in her favour is not on merits and is on account of the applicant being wife of a Member of Parliament, the aforesaid considerations pleaded by her would be wholly irrelevant. Surely an independent probe is necessary. Someone has to look into the matter. In one case, the allotment of IOC's retail outlet at Udaipur is in favour of a Member of Parliament of the main political party in opposition. The contention of the allottee, however, is that she, as a condition of LOI, resigned her job of Professor from an Educational Institution. No equity can be claimed on account of any step or action taken to fulfill the condition of LOI if the selection itself is illegal. One of the transferred cases concerns 8 allotments in Maharashtra State. The allegation in the newspaper was that brother of petitioner no.1 is District President of the Ruling Party and was Member of Parliament; husband of petitioner no.2 is a sitting MLA, petitioner no.3 is sister-in-law of a sitting MLA, father of petitioner no.4 is a sitting MLA, father of petitioner no.5 was a President of District Unit of the political party some years back, petitioner no.6 himself is a sitting MLA, petitioner no.7 and petitioner no.8 are political workers of the Ruling Party. All the 8 petitioners of course contend that the allotments in their favour were made on merits and not as a result of political patronage. The allegation in one of the transferred cases is that the allottee is son-in-law of a former Member of Parliament whereas in another transferred case, the allegation is that the allottee is a son of a former MLA. In these two cases, service report on the petitioners was awaited. Another transferred case relates to IOC's LPG distributorship. The allegation is that the allottee was the constituency secretary of the Ruling Party. LOI has been issued though the outlet is not operational. According to the petitioner since on merit no.2 was a press reporter his name has been included with mala fide intentions. Another transferred case relates to IOC retail outlet at Sawar, Ajmer where the allegation is about the allottee being son of a party functionary. In one of the transferred cases the allegation is that the father of the allottee is an Inspector General of Anti Corruption Cell in Rajasthan Police.

All the applicants claim that the selection by the DSBs in their favour was on merits and not on account of any political or other extraneous consideration. For the present, we are not expressing any opinion on the question whether the selection of the allottees by the DSBs in this category of alleged tainted allotments was a result of

the political or other extraneous consideration or the selection was on merits alone. As already mentioned, these aspects require an independent probe. The alleged tainted allotments are required to be scrutinized by an independent committee so as to determine the validity of impugned circular dated 9th August, 2002 as against such allotments. As already noticed, 417 names were exposed by the media out of which particulars of 413 have been provided. We deem it expedient to constitute a Committee to go into the question whether these allotments were made on merits or on some extraneous considerations.

In our view, the Government should not have exercised the power in a manner so as to enable it to escape the scrutiny of allotments exposed by the media. No arbitrary exercise of power should intervene to prevent the attainment of justice. Instead of passing the impugned order, in the context of the facts of the present case, the Government should have ordered an independent probe of alleged tainted allotments. The impugned order had the twin effect of (1) scuttling the probe and (2) depriving a large number of others of their livelihood that had been ensured for them after their due selections pursuant to a welfare policy of the Government as contained in the guidelines dated 9th October, 2000. The public in general has a right to know the circumstances under which their elected representatives got the outlets and/or dealerships/distributorships.

In view of the aforesaid:-

I. We appoint a Committee comprising of Mr. Justice S.C. Agrawal, a retired Judge of this Court and Mr. Justice P.K. Bahri, a retired judge of Delhi High Court, to examine the aforesaid 413 cases. We request the Committee to submit the report to this Court within a period of three months.

II. The Committee would device its own procedure for undertaking the examination of these cases. If considered necessary, the Committee may appoint any person to assist it.

III. We direct the Ministry of Petroleum and Natural Gas, Government of India and the four oil companies to render full, complete and meaningful assistance and cooperation to the Committee. The relevant records are directed to be produced before the Committee within five days.

IV. We direct the Ministry to appoint a nodal officer not below the rank of a Joint Secretary for effective working of the Committee. V. The Central Government, State Government/Union Territories and all others are directed to render such assistance to the Committee as may be directed by it.

VI. The oil companies are directed to provide as per Committee's directions, the requisite infrastructure, staff, transport and make necessary arrangements, whenever

so directed, for travel, stay, payments and other facilities etc. VII. In respect of any case if the Committee, on preliminary examination of the facts and records, forms an opinion that the allotment was made on merits and not as a result of political connections or patronage or other extraneous considerations, it would be open to the Committee not to proceed with probe in detail.

For the reasons aforesaid, the impugned order dated 9th August, 2002 is hereby quashed except in respect of cases referred to the Committee.

The cases referred to the Committee would be considered on receipt of the report. However, the interim order dated 28th August, 2002 would continue to apply to these referred cases till further orders. The said order is further extended to cases where select panel has been published but letters of intent have not been issued. Transferred Case Nos 80, 81 to 88, 90 and 91/2002, all intervention applications therein, I.A. Nos.246-2556 in Transfer Petition (C) Nos.417- 423/2002 and Contempt Petition (C) No.556/2002 in Transferred Petition (C) No.417-423/2002 are disposed of in terms of this decision.

A copy of the judgment shall be sent to the Registrar Generals of all the High Courts so that the writ petitions, if any, pending in the High Courts on similar questions can be disposed of in terms of this judgment. All matters except Transferred Case Nos.100 to 109 are disposed of. List Transferred Case Nos.100 to 109 of 2002 after receipt of the report.