

Supreme Court of India

Shiv Sagar Tiwari vs Union Of India And Others on 23 December, 1996

Equivalent citations: AIR 1997 SC 2725, 1997 (1) BLJR 110, 1996 (9) SCALE 680, (1997) 1 SCC 444, 1996 Supp 10 SCR 925

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Bench: K Singh, B Hansaria

ORDER Hansaria, J.

1. The administrative law has of late seen vast increase in discretionary powers. But then, the discretion conferred has to be exercised to advance the purpose to subserve which the power exists. Even the Minister, if he/she be the repository of discretionary power, cannot claim that either there is no discretion in the matter or unfettered discretion. This proposition was rejected emphatically by the House of Lords in landmark decision of *Padfield* 1968 AC 997. This apart, as pointed out in *United States v. Wunderlich* 342 US 98:

Law has reached its finest moments, when it has freed man from unlimited discretion of some ruler, some...official, some bureaucrat.... Absolute discretion is a ruthless master. It is more destructive of freedom than any of man's other invention.

1A. These high principles of administrative law have been placed at the forefront because, as would appear from what is being stated later, in the present case there was gross misuse of discretionary power relating to allotment of accommodation to government employees. As against the discretionary quota of 10 per cent, it shot up to 70 per cent; and on top of that 8,768 houses were allotted by stating that the same was being done on "Special Compassionate Ground". This naturally led to uproar and serious objection from those who were denied accommodation as per rules. After the present petition was entertained and the Court went into the matter in depth, it was found that what had taken place was a scam, and a big scam at that. In the present case, we do not propose to say anything regarding the allegation that the allotments were made for extraneous consideration, as investigation relating to that is under progress. What we propose to examine rather is how best we can take care of illegality which had described following out-of-turn allotments a galore.

2. May we also observe that life, livelihood and shelter are so mixed, mingled and fused that it is difficult to separate them. To take away life, it would be enough to take away livelihood; and to earn livelihood, which in urban areas is ordinarily at places away from one's own home and hearth, shelter would be necessary-be it a house or even a payment. This Court has dealt with cases of payment dwellers. The locus classicus in *Olga Tellis* and the latest rendering is in *Ahmedabad Municipal Corporation v. Nawab Khan Gulab Khan*. In the case at hand, we are however, not concerned with those who per force occupy pavements near the places of their work. The primary subject matter of the present petition is providing of residential accommodation in quarters built by the Government for its employees-highly or lowly paid. There are rules as to who would be entitled to which type of residence, which have been classified as Types I to IV, V(A), V(B), VI(A), VI(B), VII(A), VII(B) and VIII. The basis of entitlement is monthly emoluments of the employees. These are to be found in the Fundamental Rules (FR) which have been framed under the proviso to Article 309 of the Constitution; and Supplementary Rules (SR) made as permitted by FR 45. Having felt

that the operation of these Rules may cause undue hardship, FR 5-A was inserted with effect from 6th February, 1971 stating that where any Ministry or Department of Government is of opinion that the operation of any of these rules may cause undue hardship to any person, that Ministry or Department, as the case may be, may by order, for reasons to be recorded in writing, relax the requirement of that rule to such extent and subject to such condition as it may consider necessary for dealing with the case in a just and equitable manner. The proviso to the Rule states that no such order shall be made except with the concurrence of the Ministry of Finance. Being concerned with the allotment of Government quarter situate in Delhi, it may be pointed out that the same is further subject to Allotment of Government Residences (General Pool in Delhi) Rules, 1968 which had come into force on 15th May, 1968.

2A. Delhi being the capital of the country is the seat of the Central Government and, as is known, it employs a very large number of persons. As per the figures given in "Delhi at Glance : 1996", the number of Central Government employees in 1994-95 was around 2,15,000. As against this, the number of Government quarters in Delhi is about 65,000. The paucity of Government accommodation is thus apparent and speaks for itself when it is noted that the waiting period for Type III and IV quarters by July '96 (when the position was said to have eased) was about 20 and 15 years respectively. This is not all. If one were to take a private accommodation rent, as an employee would be compelled to do if Government accommodation would not be come available, the rent to be paid in city like Delhi would eat away a large chunk of the carry-home pay. This explains the mad rush to get a Government quarter allotted anyhow, by hook or by crook. The persons empowered and authorised to make allotments, being aware of the pressing need tend to misuse their powers. When the misuse is within tolerable limits, no uproar is heard, no media publication is seen. But when the magnitude of misuse assumes a menacing proportion, outburst of various types become noticeable and then a scam surfaces.

3. The writ petition represents the scenario of what has come to be known as Housing Scam. A practising advocate of this Court, Shri Shiv Sagar Tiwari, claiming himself as a vigilant citizen, thought it fit to file this petition under Article 32 of the Constitution, having read a news item published in Indian Express of 5.9.1994 under the caption "Chirag Tale Andhera" (Darkness under the lamp). That news was about a son dying as his father was forced to vacate a government quarter. According to the petitioner, the news item made it crystal clear that autism was prevalent in the Ministry of Urban Development, because of which money was said to prevail over the cause of needy employees. In the petition Shri Tiwari mentioned about various other anomalies relating to sub-letting and favouritism. He prayed that the respondents be directed not to allot quarters of Type V to VIII to anyone during the pendency of the petition and to order investigation about the corruption in allotment.

4. The petition came up for preliminary hearing before a Bench presided by one of us (Kuldip Singh J.) on 4.10.1994 when, after hearing Shri Tiwari in person, notice was ordered making it returnable within 8 weeks. The process which thus started more than two years back is seeing its winding up today. The journey has been long. We shall mention about some milestones only. The first is the imprint left by the order passed on 27.4.1995, which states about taking suo motu cognizance of the news item appearing in the Indian Express of 24th April, 1995 under the heading "CAG finds Govt

allotment of houses arbitrary". Notice was issued to the Urban Development Ministry (the Ministry for short) through its Secretary requiring filing of an affidavit within 6 weeks. The Court also took notice of the fact that number of government houses were under the occupation of unauthorised allottees. The Ministry was directed to file list of all those houses along with the names of the occupants, the period and the authority under which they were occupying the accommodation, the Director of Estates (the Director) did so.

5. He has since then filed other affidavits as well in compliance with various orders passed by the Court from time to time. Having known from one of such affidavits of the Director that there were out-of-turn allottees in abundance in Type III and above, this Court required the Director by its order dated 14.2.1996 to publish the names of those who may become liable to be evicted, so that they might, if so wished, file objections. This was confined to those who, as per prima facie view of the Court, may become so liable out of 8768 (8778?) allottees in the 'Special Compassionate Ground' category. The number of allottees who could become liable for eviction if those high up in waiting list i.e. likely to get allotment on in-turn basis within five years, was given as 4672 by the Director, after leaving out those regarding whom payment of special licence fee only was contemplated. The order of 19.7.1996 required giving of public notice to all these 4672 allottees to enable them to represent as to why their allotments should not be cancelled.

6. For better appreciation of the various representations which had been received from these allottees, who came to be categorised in eleven categories by the Director, and bearing in mind the submissions of the learned Counsel assisting the Court that categorisation made by the Director was not exhaustive and knowing of the complaints by many that they had not been categorised correctly, the Court decided on 31.7.1996 to constitute a three-member Committee headed by Shri D.P. Gupta (the then Solicitor General for India) to "further examine all the aspects of the matter and look into the complaints and suggestions received from any quarter" and place before this Court their final recommendations within four weeks. Shri M.S. Srinivasan, Joint Secretary in the Ministry of Urban Affairs and Employment and Shri K.T.S. Tulsi, learned additional Solicitor General, were requested to be the other members of the Committee. This three-member Committee submitted its report relating to Type IV and above on 26.9.1996, whereafter a need for giving hearing by the Court to those recommended to be evicted by the Committee having been felt, they were so noticed and were heard on 9.10.1996. The report relating to Type III was placed before the Court on 4.11.1996. The incumbents recommended to be evicted in this category were heard on 9.12.1996. Which was the date notified for their appearance in person or through counsel. By that date, submission of all concerned had also been heard on various facets involved in the case.

7. Before the points involved are noted and dealt with, it would be appropriate to mention about another milestone of the case which relates to issuance of notice on Shrimati Shiela Kaul, who was the Minister of Urban Development in the Central Government at the relevant time, as to why she should not be asked to pay such damages as this Court may deem just and proper for the illegal allotments made by her concerning 58 shops/stalls. This order is dated October 11, 1996. After cause was shown by Shrimati Kaul and after all concerned were heard, she was asked to pay a sum of Rs. 60 lacs (on all counts) as exemplary damages by order dated November 8, 1996. The final milestone is this date on which this judgment is being delivered.

8. Let us revert back to the main theme, which is relatable to the facets require to be examined in the case. The same are:

(1) who should face eviction?

(2) (a) How much licence fee should be charged from those out-of-turn allottees who would become liable to eviction on account of their illegal occupation of the quarter in question?

(b) What should be done in case of those Government employees who had occupied quarters on out-of-turn basis, but who are not required to be evicted by now? To put it differently, if they are not required to be evicted, how much licence fee they should be asked to pay?

(3) How should those who were denied allotment, despite the same having become due as per the Rules, be compensated?

(4) Should there be any out-of-turn allotment? If the answer be in affirmative, how should it be regulated and what should be its limit?

(5) Should private citizens (to with, journalists, freedom-fighters, artists and social workers) be accommodated in Government quarters? If so, on what terms.

(6) Should political parties and other organisations be given allotment of Government quarters? If so, which of them and on what terms?

(7) Should high holders of political office, like President, Vice-President and Prime Minister be accommodated in Government quarters after demitting of office by them? If so, on what terms?

(8) At what rate penalty has to be realised from those who were unauthorisedly occupying the Government quarters?

(9) Has the Government any power to waive charges which have become payable as per the Rules in vogue?

(10) What should be done regarding those Government employees who had sub-let their premises; and what should be done as regards the occupants of these premises?

(11) Whether apart from the general pool and tenure pool, if required to be retained, there should be other pools; and, if so, for whom and how the same should be regulated?

(12) How to prevent in future the scam of the type at hand?

We propose to deal with those questions seriatim.

Who should face eviction?

9. This is most important question to be decided in the case and it, therefore, merits to be taken as first. The two Gupta Committee reports (one relating to Types IV and above and the other concerning Type III) would be taken by us as the basic framework within which this issue would be decided. A perusal of the two Reports shows that the out-of-turn allottees have come to be pigeon-holed in eleven categories because of the special features relating to them. These categories are:

Category-I : Vacated list. Category-II : Error list. Category-III : Change from same type. Category-IV : Change to Higher type. Category-V : Medical cases within the existing policy. Category-VI : Medical cases outside the existing policy. Category-VII : Five Year category. Category-VIII : Infructuous cases. Category-IX : Out-of-turn and above entitlement. Category-X : Functional grounds. Category-XI : Eviction cases.

10. The Committee, has gone through the case of each of the out-of-turn allottees whose names are to be found along with other details in the two reports which are dated 26.9.1996 (supplemented on 10.10.1996) and 31.7.1996. Its unanimous recommendation relating to the placement of the allottees in the different categories as regards Types IV and above was initially as below:

Category of	No. of allottees	No. of allottees	Allottees included by the	included by the	Dte. of Estates
Committee	Category-I	236 347	Category-II	90 151	Category-III
	Category-IV	285 97	Category-V	29 28	Category-VI
	Category-VII	276 371	Category-VIII	386 518	Category-IX
	Category-X	159 87	Category-XI	218 65	----- Total
					2091 1761

11. The aforesaid recommendation came to be modified in the supplementary report dated 10.10.1996 as under:

Category of	No. of allottees	No. of allottees	allottees included by the	included by the	Committee in
its Committee	after report	dated taking into	26.9.1996.	account the	corrigendum
Category-I	347 347	Category-II	151 154	Category-III	5 5
Category-IV	97 82	Category-V	28 28	Category-VI	34 36
Category-VII	371 371	Category-VIII	518-1* 526	Category-IX	58 58
Category-X	87 89	Category-XI	65 64	----- Total	1761 1760
					----- *Double Entry.

12. The following is the Committee's view regarding Type III out-of-turn allottees:

Affidavit of	Committee's	Dte. of Estates	recommendations	Category-I	28 347	Category-II	223 578
Category-III	112 136	Category-IV	221 90	Category-V	28 95	Category-VI	407 179
Category-VII	170 636	Category-VIII	157 176	Category-IX	29 50	Category-X	100 156
Category-XI	898 599	2373	No. of	persons who	did not	represent	before the
director and/or	were not	categorised	in his	affidavit	538	-----	Total
							2911 2911

13. The Committee's recommendation is that apart from those who are in Category I, namely those who had already vacated whose number 347 and 217 respectively, those allottees placed only in Categories IV, IX and XI should be asked to vacate the Government quarters presently, under their

possession. These categories are : (1) who were earlier occupying a lower type of accommodation and were allotted the present higher type on out-of-turn basis (Category IV); (2) those to whom allotments were made not only on out-of-turn basis but higher type of a house above to their entitlement (Category-IX); and (3) those who have not been included in any other category (Category XI). If we were to go by the recommendation of the Committee, the number of these allottees would be 220 in so far as Types IV and above are concerned, and 739 for Type III. Here again, it deserves to be pointed out that the Committee has stated that these allottees may be ordered to be evicted "subject to the condition that if they are entitled to any lower type of accommodation on in-turn basis or if they were previously occupying any lower type of accommodation, the eviction will not take place for four weeks from the date on which the entitled in-turn accommodation or the lower type which was previously occupied is offered to the allottees". This is what finds place in para 6.1 of the report dated 26.9.1996.

14. The recommendations of the Committee have been severely criticised, not only by large number of allottees, who appeared in person, but by Shri Sibal, learned senior Advocate and Shri Ranjit Kumar, learned Advocate, as well, both of whom were requested to assist the Court. It would be appropriate to first deal with the written submissions of S/Shri Sibal and Ranjit Kumar. According to Shri Sibal the unauthorised occupants could be one of three classes : (1) those occupying a public premises without any entitlement; (2) those occupying a quarter higher than their entitlement; and (3) those who jumped the queue. The learned Counsel has put in writing as to how cases of those employees who came to be allotted quarters on death or retirement of the previous incumbents, on medical ground including physically handicapped and special compassionate ground, occupants of Departmental Pool on transfer, personal staff of Ministers, Judges of the Supreme Court, Speaker of Lok Sabha Chairman of Rajya Sabha should be dealt with. Shri Sibal has opined that because of the dearth in accommodation, persons belonging to so called special categories like journalists, freedom fighters, artists etc., who are not on the pay roll of the Government, should not be allowed government quarters. As to sub-letting Shri Sibal's views are that those Government servants who had sub-let the premises should be made liable to major penalties, apart from forfeiture of the allotment debarring them from future allotment and charging of penal rent at the market rent from the date of allotment.

15. Shri Ranjit Kumar has opened his written submission by referring to the brief background relating to out-of-turn allotment and has stated that these have been made on "Special Compassionate Ground" and has submitted that SR 317-B-25, which is on the subject of relaxation of rules stating that the Government may "for reason to be recorded in writing relax all or any of the provisions of the rules in the Division in the case of any officer or residence or class of officers or type of residences" has not provided any upper limit or ceiling as regards the number of cases for which rules may be relaxed. He has, however, referred to Office Memorandum No. 12029/(1)/90 POI.II dated 24.1.1990 of the Directorate of Estates which has stated that the maximum number of out-of-turn allotments shall be "one cut of five". It has been pointed out that actual percentage of ad hoc allotment over the years has exceeded this limit. The learned Counsel has observed that an important feature relating to the report of the Committee is that no IAS or IFS officer has been recommended to be evicted. He has thereafter commented in general (in his exhausted written submissions) on each of the categories. We shall refer to the same at appropriate stage. The

submission has also dealt with the quantum of licence fee to be charged.

16. It may be pointed out that the aforesaid statements really find place in the affidavit of 23.10.1996 filed on behalf of the Union of India through the Ministry of Urban Affairs and Employment. In this affidavit it has been further stated that despite attempts to keep the number of ad hoc allotments to 20 per cent, the efforts did not succeed and the result was that "even persons who would have normally got the allotment who were entitled for one below) types of residences after a very short period in the normal course, had also to approach the Minister for getting the allotment of such accommodation to them". In other words, the situation was that almost everybody had to approach the Minister for getting allotment of houses to him/her or else to choose the option of waiting of allotment of accommodation in-turn for indefinitely long periods of time." And this give rise to the SCAM.

17. The allottees who appeared in person had made four submissions in the main the first was relating to wrong categorisation by the Committee. The second was to allow to continue in the allotted quarters due to serious illness of one or the other near relative living with the allottee. The third contention was to include them in Category-X which would hereinafter refer to as "Functional Category". Finally, they pleaded for non-charging of any amount beyond the normal licence fee.

18. There was one general submission on behalf of out-of-turn allottees appertaining to Type III quarters. The same was to exclude all of them from the purview of our consideration. A strong plea for such exclusion was advanced by S/Shri G. Ramaswamy and Section Ray, learned senior Advocates, appearing for Central Government Employees (Allottees of Government residences) Welfare Association.

19. We propose to deal with the written submissions of Shri Ramaswamy first. It has been stated therein that the economic conditions of these allottees, whose basic pay is less than Rs. 2,800 per month (the majority drawing less than 2,500 per month) is not much better than the condition of Type I and II allottees whose cases are not being considered by us; and so, we should exclude Type-III allottees also. As to this submission, it may be pointed that Types I and II accommodation are meant for those drawing basic monthly salary of less than Rs. 950 and between Rs. 950 to 1500 respectively. Type III is for the next slab namely, drawing monthly salary between Rs. 1500 to 2,800. Then comes Type IV for those drawing salary between 2,800 to 3,600 and so on. It is thus clear that a line has to be drawn somewhere. If Type III allottees have to be left out as contended, Type IV allottees could also urge to exclude them as well. Similar argument can be advanced by others. Therefore, it was thought fit by us from the beginning that we would leave out of consideration the two lowest rank of employees. To extend the economic criterion argument for Type III allottees would require us to consider whether Type IV should also be left out. We do not think it necessary to retrace from the decision taken earlier, which was based on financial status of the employees.

20. Another argument advanced by Shri Ramaswamy is that when eviction would take place from types IV and above, most of those evicted will be eligible for some sort of lower type of government accommodation (including hostels), which facility will not be available to Type III allottees. We do

not think if this submission is factually correct because Type III allottees could get Type II, if they were entitled to get government accommodation, on these quarters failing vacant in normal course. It may be pointed out that Type II quarters have two-rooms (each being of 10' × 10'). Similar is the position in Type III, except that their location is better.

21. Shri Ramaswamy's final submission in this regard is that even if Type IV and above allottees are evicted without alternative accommodation, they will get in-turn allotment within a few years, which will be denied to Type III evictee where the waiting list is "impossibly long". This again is not quite so because insofar as Type III is concerned the waiting period by now is of 20 years, whereas for Type IV it is 15 years.

22. We now propose to record our views on the categorisation made by the Committee, bearing in mind the criticism also made in this regard, to which we have already adverted. We shall do so qua each category separately.

Category-I (Vacated list)

23. The number of this category of allottees which was given as 236 (for Type IV and above) and 2B (for Type III) by the Directorate of Estates has been mentioned as 347 and 817 respectively in the Committee's two Reports. It seems this might be due to the fact that the out-of-turn allottees got accommodation elsewhere on in-turn basis and so they moved out from their earlier quarters. Be that as it may, all that has to be done with regard to this category of allottees is to realise from them such amount as would become payable by them because of their having been in out-of-turn accommodation. The amount to be realised would be calculated on the basis of what we would be saying regarding this later.

24. It would be appropriate to note the commend made by the Ministry of Urban Affairs and Employment (the Ministry) in the affidavit referred above which is that the 347 cases mentioned in the first report of the Committee include a whole variety of cases from those of junior officers who never have got "in-turn" allotments for many years to those of from senior ones who had not the allotments in normal course within few weeks/months of their applications. The Ministry, therefore, feels that all the cases cannot be clubbed together and each of them needs to be considered individually. We have not felt inclined to accept this suggestion inasmuch as what we have ordered is to pay only extra licence fee qua these allottees which amount apparently would depend upon the period during which the incumbent has been occupation of out-of-turn allotment.

Category-II (Error list)

25. As the persons in this category are those to whom allotments had merely been made in accordance with the existing policy but whose names had been erroneously included in the list of out-turn allottees as submitted by the Directorate, it is apparent that nothing is required to be done as to them.

Category-III (Change from same type)

26. In this category are the allottees who were in occupation of a type of accommodation on out-of-turn basis, before the present allotment on in-turn basis in a different area/floor. So there is not much to be stated about this category.

Category-IV (Change to higher type)

27. These allottees came to occupy higher type of accommodation on out-of-turn basis, having been earlier occupying a lower type on in-turn basis. These allottees shall have to move to the type to which they are entitled. This apart, they would have to pay such amount of licence fee which would become chargeable from them by force of this judgment because of their having occupied higher type of accommodation though not entitled.

Category-V (Medical cases within the existing policy)

28. In this category the only infirmity had been that the proper procedure for allotment was not adopted, namely, examination of the case by the Special Accommodation Committee. This infirmity deserves to be ignored. Therefore, the only observation we propose to make is that if the Government servant had been allotted a higher type of accommodation than due to him, the same shall be dealt as ordered qua Category-IV. This is also the stand taken by the Ministry in its aforesaid affidavit.

Category-VI (Medical cases outside the existing policy)

29. We find no justification to accept this category, because this includes medical cases outside the existing policy. Nobody, not even a Minister, can be allowed to depart from the policy; and so, despite the fact that some of the persons belonging to this category might be suffering from "serious cases of life threatening diseases", as put by the Committee in its Report, we feel constrained to state that these incumbents have to be dealt with like those falling in Category-XI. We, however, give liberty to the Government to get their cases examined by a high-powered Medical Board to ascertain its views whether out-of-turn allotment to them was justified. This would be done within two months. Follow up action would be taken as per the views of the Board. In future, no allotment, even on medical ground, would be made de hors the policy.

Category-VII (Five-year category)

30. In his written submissions, Shri Ranjit Kumar has stated that "5-year Policy" which is the basis of including allottees in this category causes 'double jeopardy'. This has been explained by mentioning about two persons who came to Delhi in 1991, one of whom got out-of-turn allotment in 1992 and another in 1995. Shri Ranjit Kumar has contended that the first person may not get an in-turn allotment by 1997 and would, therefore, be required to vacate : whereas the second incumbent may be covered (because of easing of the position?) by the year 2000 on in-turn allotment basis and would, therefore, be permitted to continue till 2000 despite being an out-turn allottee. The result would be, stated Shri Ranjit Kumar, that a person who had been given out-of-turn allotment later and in that since being junior to the other, would continue to occupy the

quarter whereas the former senior will have to vacate. This submission is based on some hypothesis which may be correct or may not be. We would rather state that the employees included in this category by the Committee have to be those who by the date of the concerned report had in fact become entitled to allotment on in-turn basis, if that would not be so, their names would be taken out of this category and included in category-XI We cannot allow an out-turn allottee, say of 1995, to continue till 2000 on the supposition that he would in that year become entitled to in-turn allotment.

Category-VIII (Infructuous cases)

31. Shri Ranjit Kumar has submitted as to this category that these allottees mostly belong to IAS, IPS and IFS, who have come on deputation from States and adjusted in the Tenure Pool. The learned Counsel has submitted that this Pool be abolished, being discriminatory. We would deal with this submission while expressing our view on Point No. 11. to foretell our conclusion, there is a rational basis, according to us, for creation of a Tenure Pool. So, we would accept what has been stated by the Committee as regards this category. We would, however, state that the officers who are entitled to accommodation from Tenure Pool would not be allowed to draw from the General Pool.

32. We further state that we find no necessity to divide this category in two (8A and 8B) as requested in the Ministry's aforesaid affidavit, because the basis on which this classification is desired, namely becoming entitled on the date of application or thereafter, but on or before 30.6.1996, has not much significance for the case at hand.

Category-IX (Out-of-turn and above entitlement)

33. It is apparent that allottees of this category shall have not only to vacate but pay such amount towards licence fee because of getting allotment of a higher type as would be indicated later.

Category-X (Functional grounds)

34. This is the most controversial part of the Committee's recommendation. We have said so because as mentioned by Shri Ranjit Kumar in his written submissions, the persons who have been included in this category, inter alia, belong to CPWD and two persons of the Directorate of Estates. This has led to the criticism that the Committee had gone soft to the personnel of the Directorate. This apart, it has been submitted that there is no rational basis on which some selected type of persons have been included in this category. This would be apparent from what has been stated in para 6.4 of the first report of the Committee in which the persons to be included in this category have been specified. They are : (1) Doctors working Government Hospitals and Dispensaries but not those in administrative departments; (2) Police officers engaged in maintenance of law and order duties; (3) CPWD Officials up to the level of Executive Engineer in sensitive areas/postings; (4) Key officials dealing with allotment of government accommodation; and (5) officers of sensitive organisations like Customs, Central Excise and Directorate of Enforcement as well as All India Radio and Doordarshan. There is no gain saying that if deep thought is given some other category of persons could be said to be similarly situated. It is because of this that the view taken by the

Ministry itself in the aforesaid affidavit is different. According to that, the types of persons to be included in this category should be : (1) Ministers/Judges/Secretaries to Government of India and senior functionaries of equivalent/higher level in the Central Government; (2) medical and police personnel; (3) officials working in the personnel establishments of the Ministers of the Union Government/dignitaries of equivalent level under the Central Government. Judges of the Supreme Court/High Court, and those working in the Prime Minister's Office, Cabinet Secretariat and personnel establishments of the Secretaries to the Government of India; (4) CPWD officials up to the level of Executive Engineers working in Maintenance Divisions and Addl. DGs/Chief Engineers/Superintendent Engineers/Executive Engineers/Assistant Executive Engineers and other technical staff etc.; (5) officials working in the Doordarshan and All India Radio; and (6) Law Officers of the Government of India.

35. This is not all. Many of the allottees who had appeared in person before us had staked their claims to get included in this category. Those who so claimed are, among others, Under-Secretary to Taxation and Legislative Department; Deputy Director of Estates; Assistant Director to some Departments; Under-Secretary, Finance; Assistant Director, Investigation; Officer of RAW.

36. Having given our considered thought to this aspect of the case, we are of the opinion that endorsement of allotment to this category of persons by not treating them as out-of-turn allottees, despite their having so as per the extant Rule/policy, would constitute departure from the same, so, we do not accept this recommendation and would require eviction of persons included in this category as well.

Category-XI (Eviction cases)

37. We accept the Committee's recommendations relating to the category and state that the case of these persons all that is required to be decided by us is the quantum of licence fee they should be asked to pay for the period of their intervening "irregular period of occupation" as put by the Committee in its report. We shall indicate this quantum while dealing with Point No. 2.

38. The star question as to who should face eviction is, therefore, answered by stating that it would be all those whose names find place in Categories IV, VI, IX, X, XI and such of VII who had not become actually entitled to in-turn allotment by the date(s) the respective reports were submitted. Those IAS, IPS and IFS and other officers who are occupying General Pool quarters, despite being eligible for quarters in the Tenure Pool, would also to be evicted.

39. A new list would be drawn up in accordance with this judgment within one month from today and the persons having become liable as per this list for eviction would be served individual notices within 30 days thereafter requiring them to vacate the quarters within 90 days of the receipt of the notice.

Procedure for eviction:

40. It is required to be stated as to how eviction should take place. The need for expressing views on this aspect has arisen because in the first report of Gupta Committee some observations have been made in this regard in paras 6.1 to 6.3. In the written submission filed by Shri G. Ramaswamy it has been prayed on behalf of the aforesaid Association that recommendation in paras 6.2 and 6.3 may be directed to be complied with. We have considered this, and the recommendation made in para 6.1 reading as below:

6.1 Allottees in Categories-IV, IX and XI may be ordered to be evicted subject to the condition that if they are entitled to any lower type of accommodation on in-turn basis or if they were previously occupying any lower type of accommodation, the eviction will not take place for four weeks from the date on which the entitled in-turn accommodation or the lower type which was previously occupied is offered to the allottees entitled to an alternate accommodation will be offered the same, until the arrears on the basis of enhanced licence fee recommended herein are deposited within two months. In case the allottee does not deposit the dues within two months, the Directorate should take action for eviction against such persons and for the period beyond two months, the allottees should be liable to pay at the "damages rate".

has our approval. This would apply to those others also who have become liable for eviction by the force of this judgment. We state the same regarding the following recommendation in para 6.3:

6.3 The Committee recommends that in case any allottee in Categories-IV, IX and XI is due for retirement in the next one year from 27.9.1996, he may be exempted from eviction in view of the exceptional hardship that is likely to be faced by him and his family.

41. This would apply to others also as stated above. It is, however, made clear that they would have to pay enhanced licence fee for the period of their occupation as per this judgment.

42. It may be added that the aforesaid would apply to all those who would become liable to eviction because of this judgment of ours. As to what has been recommended in para 6.2 which is to the effect that the eligibility for in-turn allotment as on the date on which the eviction order would be passed, instead of the cutoff date of 1.10.1993, may be re-determined by the Estate Office, we have no objection; but this re-determination has to take place within six weeks from today.

43. Before closing our discussion on this facet of the case, something is merited to be said about the procedure adopted by us. The need for this exists because of the submission of Shri G. Ramaswamy that the allottees may be left to be dealt by the Estate Officer because in that case against the order of the Estate Officer, a right of appeal is available, and also because the Estate Officer is required to give an individual hearing before passing any adverse order.

44. The arbitrary exercise of power by the authorities in a big way had led almost to the collapse of the whole system of allotment. There was a crisis like situation and this Court had to deal with an extra-ordinary situation and a special procedure had to be devised to do justice to all concerned. Natural justice being a flexible principle and we being concerned with the issue of out-of-turn allotment in thousands, it was felt by us that a collective hearing would meet the requirement of

natural justice as the Committee had given individual hearing to those who appeared before it. This view was taken because the basic question to be determined was whether the allotment given to an employee was on out-of-turn basis or not. In case it were to be so, it is apparent that unless an exception is made, the allottee has no right to stay, no right to occupy the premises. The hearing given by us on two occasions brought eloquently to us that the out-of-turn allottees were notified and had appeared, had two principal contentions to advance-the same being the plea not to evict either on the ground of serious illness of one or the other close relatives, or to include them in the functional category. Nothing else could have really been pleaded not to evict them. These two aspects have been adequately borne in mind by us as would appear from the aforesaid discussion.

45. It is because of this that we did not think it necessary to relegate the allottees to the Estate Officer for the reasons advanced by Shri Ramaswamy. The last forum for redressal of grievance being this Court, and this case being required to be decided by this Court as it was seized with air Article 32 petition, the argument relating to availability of right of appeal against the order of Estate Officer is not such which would have required undoing of the labour undertaken for more than two years.

46. May it also be stated that it is well settled that requirements of natural justice can be moulded in such a way as to take care of two basic facets of this principle : (1) to make known the nature of accusation; and (2) to give opportunity to state the case, as accepted by this Court in *Hira Nath v. Rajendra Medical College*. In *Subhash Chandra's case*, it has been even held that no hearing is required to be given to the candidates before cancelling the examination where mass copying was indulged, if a case for the same was otherwise made out. Present is also a case of large scale out-of-turn allotments, and so, on principle no hearing at all might have been given. But we did not go to that extent and gave even personal hearing to many among those who chose to appear pursuant to the notice published in the newspaper, which alone was feasible. All the allottees liable to be adversely affected being in Delhi and being well educated. Newspaper publication was definitely sufficient to enable them to know what they must have been informed. Indeed, the concerned employees were knowing much aliunde also.

47. Natural justice is after all "no unruly horse, no lurking land mine", as characteristically stated by Krishna Iyer, J. in *Board of Mining Examination v. Ramjee*. Its unnatural expansion without reference to this realities can be "exasperating" as observed by the learned Judge. It is also worth while to remember, as stated in para 24 of *S.C. Kapoor v. Jag Mohan*, that where on admitted or indisputable facts only one conclusion is possible, the Court may not compel the observance of natural justice, as it would be futile to do so. The real point for determination for us has been whether the incumbent got the allotment as per his turn or he jumped the queue, on the face of rejection to depart from the existing policy requiring eviction of those also included in Categories VI and X. This we got examined well and have felt satisfied at the work undertaken by the Committee in this regard.

2(a). How much licence fee should be charged from those out-of-turn allottees who would become liable to eviction; on account of their illegal occupation of the quarters in question?

48. S/R 317-B-12 has visualised that after accommodation has been accepted, liability to pay licence fee commences from the date of occupation or the eighth day from the date of receipt of allotment whichever is earlier. As per S/R 317-B-22 where, after an allotment has been cancelled or is deemed to be cancelled under any provision of the rules, the concerned officer becomes liable to pay damages for house on occupation for residence etc. as determined by the Government from time to time, or twice the licence fee he was paying whichever is higher, S/R 317-B-11 deals with the period during which allotment subsists and the concessional period for further retention. Sub-rule (2) has mentioned the period for which residence can be retained on the happening of the events mentioned under Column I. and for the period mentioned in Column II, Sub-rule (3) has stated that where residence is retained under Sub-rule (2), the allotment shall be deemed to be cancelled on the expiry of admissible concessional period, unless immediately on the expiry thereof the officer resumes duty in an eligible office in Delhi.

49. It would be appropriate to refer in this connection to FR 45-A, Sub-rule (III) on the subject of calculation of standard licence fee. Sub-rule (V) has visualised that in special circumstances for reasons to be recorded, the Central Government may, inter alia, by special order waive or reduce the amount of licence fee to be recovered from an officer. Then FR 45-A(12) has dealt with charging of damages from unauthorised occupants and recovery of licence fee where general pool accommodation is allotted to ineligible person/organisation. Under FR 45-A(3) in case of allotment of higher accommodation at request, the incumbent can be charged three times the flat rate of licence fee, or under FR 45-A, whichever is higher.

50. A combined reading of the aforesaid provisions finding place in the Fundamental Rules and Supplementary Rules would permit charging of even damages, where allotment is made to an ineligible person. The rate of damages was earlier double the standard licence fee, as per the decision taken in 1970 : but from 1.9.1987 the rate is required to be calculated per sq. metre depending upon the type of accommodation. From 1.4.1991 this rate has to be Rs. 40 per sq. metre for Types I to IV and Rs. 45 for Types V and above.

51. An out-of-turn allottee is an ineligible person because he has not become eligible as per the rules governing the allotment. So, strictly speaking, an out-of-turn, allottee is required to pay damages; and as in these cases we are concerned with allotments made after 1.4.1991, the rate of damages could be either Rs. 40 or Rs. 45 per sq. metre, as the case may be. We are, however, desisting from doing so and would rather require treating the cases at hand as over-stay after cancellation of allotment. As already noted, in cases of over-stay, twice of licence fee becomes payable. We would like to make a distinction regarding the licence fee to be charged depending upon the type of quarter allotted. For Type III we would require this to be twice of the licence fee : for Type IV and above three times of the licence fee.

2(b). What should be done in case of those Government employees who had occupied quarters on out-of-turn basis, but who are not required to be evicted by now? To put it differently, if they are not required to be evicted, how much licence fee they should be asked to pay?

52. According to us, these allottees should also be treated for the purpose of charging of licence fee in the same way as those who would be required to be evicted by the force of this judgment, i.e., as per what has been stated under Point 2(a) above.,

3. How should those who were denied allotment, despite the same having due as per the Rules, be compensated?

53. There can be no denial that those Government employees did suffer great injustice who were denied allotments, despite the same having become due as per the rules, because of the out-of-turn allotments. The result was that this category of employees had to take such premises on rent for residential purpose which they could not afford. There can also be no denial that taking of private accommodation on rent in city like Delhi must have hit hard these Government employees. We are, therefore, of the firm view that these employees have to be suitably compensated. To enable this to be done, the additional licence fee (over and above the normal licence fee) which would be collected in terms of this judgment from the out-of-turn allottees, has to be used to compensate those employees who were illegally and wrongly denied their allotments which had become due. The entire additional licence fee shall be kept in a separate fund which would be used for the purpose of compensating those who were illegally and unjustly denied allotments. To streamline this work a scheme shall be framed by the Ministry within a period of three months and the illegally denied employees would be paid as per the scheme within three months thereafter.

4. Should there be any out-of-turn allotment? If the answer be in affirmative, how should it be regulated and what should be its limit?

54. The decision of the present Central Government on this aspect as finding place in the letter of the Cabinet Secretary dated July 18, 1996 bearing DO No. 1/44/1/96-CAV is that "where it is considered absolutely necessary" small number of out-of-turn allotments would be made, for which purpose also the Ministries/Departments would formulate clear rules and guidelines. During the course of hearing, on being desired to know as to why out-of-turn allotment is at all required, the submission advanced on behalf of the Union of India was that there are a few officers, who by virtue of the duties discharged, have to be accommodated in government quarters to facilitate smooth functioning of the Government. These persons are who are attached to Prime Minister's office and personnel of Cabinet Secretariat. It was also submitted that personal staff of the Chief Justice of India and Judges of the Supreme Court, so also of Union Ministers. Chief Election Commissioner and Election Commissioners are required to be similarly dealt with.

55. The aforesaid does make out a case to permit minimal out-of-turn allotment. But then there can be no denial that this has to be regulated and transparency has to be maintained in such allotments also. Indeed, the aforesaid letter of the Cabinet Secretary itself mentions about the framing of rules in this regard. We would, therefore, state that the concern Ministries/Departments would frame appropriate rules relating to out-of-turn allotment and duly notify the same. This would be done within three months from today. The allotments to be made shall have to be as per the rules as framed.

56. Coming to the question of limit of the out-of-turn allotment, we were informed by the Directorate that roughly 7,000 quarters, out of about 65,000 fall vacant every year. Though the submission on behalf of the Union of India was that 10 per cent of the quarters which become vacant every year should be allowed to be allotted on out-of-turn basis, according to us, 10 per cent would be on the higher side. There is almost consensus that 5 per cent would meet the ends of justice. This would be so for each type of house, that is, 5 per cent for those Type III quarters which fall vacant in a year, 5 per cent for Type IV quarters and so on.

57. The above apart, while making the out-of-turn allotment speaking order would be passed giving the reasons. List of allottees shall be notified and circulated to all the Government Departments. Further, a yearly statement of such allotments would be laid on the table of the each House of the Parliament.

5. Should private citizens (to wit, journalists, freedom-fighters, artists and social workers) be accommodated in Government quarters? If so, on what terms?

58. We have been apprised that presently 120 quarters have been earmarked for journalists; 55 are occupied by freedom-fighters : 45 by artists and 20 by social workers. Of these, all quarters except 30 meant for journalists are in occupation. So far as the freedom-fighters are concerned, as there would be virtually none left by now to claim allotment of the government quarters, those quarters occupied by them presently as and when would fall vacant would enure to the General Pool. If any freedom-fighter by an chance would come forward even now, it would be open to the concerned Ministry/Department to accommodate him in the 5 per cent out-of-turn allotment which we have permitted.

59. As to artists, in future the allotment to be made to them would be from the aforesaid 5 per cent discretionary quota. The quarters presently being occupied by the artists would, therefore, be placed under General Pool, as and when they would fall vacant on the possession by the present incumbent being handed over either because of his death or deciding not to live personally in Delhi or on the termination of the allotment period.

60. So far as social workers are concerned, we state that it would be permissible to allow occupation in future from the 5 per cent discretionary quota; and so the present houses under their occupation would take under the General Pool, as and when they would fall vacant for reasons similar to those mentioned in case of artists.

61. This leaves us for consideration the case of journalists. They are of two broad types : (1) working journalists as they are called; and (2) free lancers. Being concerned with journalists, it would be quite appropriate to refer first to the views of Press Council of India on the subject. It would be enough if we note two communications of the Council. The first is a letter dated 10.7.1996 addressed by its Secretary to Shri Tulsi. This communication was taken note of by this Court in its order passed on 19.7.1996. A need was felt by the Court requiring a fresh examination of the issue as various questions were involved, to wit, whether the journalists occupying government accommodation for a long period be permitted to continue indefinitely or some period is to be fixed; whether the existing

eligibility and criteria/conditions need modification; if so, in what manner. The Press Council made its views known accordingly through letter of its Secretary dated 6.8.1996 addressed to the Registrar General of this Court. This communication is styled "Guidelines on allotment of General Pool accommodation to the accredited press correspondents and news cameramen in print and electronic media". The perusal of the same shows that different aspects of the matter were examined and deep thought was bestowed to the subject, as the guidelines cover 10 printed pages of full size.

62. The Press Council is of the view that government accommodation from the Press Pool should be given only to the accredited journalists and news cameramen, which would cover journalists/news cameramen accredited by the Central Press Accreditation Committee. This will not include, among others the free lancer.

63. The free lancers' view point, as represented before us by their learned Counsel, was that it would not be fair and just to deny them a share in the Press Pool because they are as much a part of the media and discharge the same type of public duty which the accredited journalists do. It was also contended that many of the free lancers stationed in Delhi are economically not well off to enable them to take on rent private premises. It was submitted that the earning of the most of the free lancers would not be more than what is being paid to the accredited journalists.

64. There are also available to us, the comments of the Central Government. The learned Addl. Solicitor General has requested for Court's view which the Government would adopt. In our opinion, there does not seem any justification to depart from the views of the Press Council, which have been arrived at after great deliberation. We have also borne in mind in this context the basic idea of creating a Press Pool as made known by the Communication of the Press Council dated 16.9.1996. The same was to provide accommodation to journalists, who are compulsorily transferred from outstation to Delhi by their newspapers, to enable them to get a breathing time to find out accommodation for themselves. It is apparent that free lancers do not belong to that category as they come to Delhi on their own will.

65. Free lancers being those who work on contractual basis for different newspapers have to be treated differently. From other journalists who have virtually fixed income and have to budget their expenditure accordingly. It is known that there are free lancers whose monthly income is substantial. This apart, as some financial criterion would be required to be fixed even if a free lancer were allowed to draw on Press Pool, the same may break down because it would not be possible to know for certain the real income of a free lancer.

66. For these reasons, we have thought it fit to prefer the views of the Press Council. It would be convenient to highlight the views of the Press Council on the subject at hand as approved by us. The same are:

(1) The accommodation will be given by the government from the Press Pool only to the accredited journalists and news cameramen. Accredited journalists/news cameramen will mean journalists/news cameramen accredited by the Central Press Accreditation Committee. They will not include : (i) those accredited journalists/news cameramen whose total emoluments exclusive of

the conveyance allowance exceed Rs. 15,000 p.m.; (ii) accredited editors or editors-cum-correspondents; (iii) Freelance journalists; (iv) journalists engaged on contract basis; and (v) accredited correspondents who are not Indian Nationals and/or who do not represent the Indian Media.

(2) He/She does not own a house or flat, either as an owner or as a holder of power of attorney, in his/her own name or in the name of the family member or dependent in the National Capital Territory of Delhi or Noida, at the time of the allotment of accommodation from the pool.

Notes:

(i) The term 'family' in this context shall have the same meaning as defined in Government of India Supplementary Rule 2.

(ii) The transfer of ownership to spouse/sons/daughter and/or its sale to third party within a period of five years prior to the date of application/allotment, shall render the applicant ineligible for pool accommodation.

(3) The accommodation will be allotted by a Screening Committee (Composition of which is given in para 17) according to seniority and pay limit as mentioned below:

The accredited journalists will be divided into two categories namely; (i) those who are drawing income up to Rs. 7,000 p.m.; and (ii) those drawing income between Rs. 7,001 to Rs. 15,000 p.m. The monthly income would mean all emoluments excluding conveyance allowance.

Two separate Lists namely, 'List I' and 'List II, of the above categories (i) and (ii) of the journalists respectively would be prepared on the basis of the aforesaid income criteria and according to the seniority on the basis of the date of application for the accommodation.

(4) Depending upon the availability, the accommodation will first be given to those in List I according to the seniority. If after satisfying the needs of all the journalists in List I, more units of accommodation are available, they would be given according to seniority to the journalists in List II.

(5) The journalists in List I may occupy the accommodation so given for a maximum period of five years but no longer.

Those in List II may occupy the accommodation so given for a maximum period of three years but no longer.

The allottee shall not be eligible for allotment of accommodation from the pool more than once.

(6) The allottee shall pay to the Government every month the amount of HRA that the allottees receives from his/her employer in addition to the licence fee fixed under the Government of India Fundamental Rule Rule 45A. It shall be his/her responsibility to pay all the sums due as aforesaid to

the government by the 10th of every month. Failure to pay the dues as aforesaid shall make him/her liable to be evicted forthwith.

(7) Every allottee shall, by 31st March every year, intimate to the Directorate of Estates, Ministry of U.A. & E. the details of his emoluments including basic pay, all allowances including the H.R.A. and also particulars of his/her family member/dependent or self having acquired as a holder of power of attorney or otherwise, any accommodation in the National Capital Territory of Delhi as defined above.

(8) The allottee shall vacate the accommodation within 30 days of the expiry of the period of allotment.

The guidelines referred above also contain the views of the Press Council relating to (i) disqualification to remaining in occupation; (ii) procedure for allotment of accommodation; and (iii) saying provision, which shall also be borne in mind by the Government while making allotment from the Press Pool.

6. Should political parties and other organisations be given allotment of Government quarters? If so, which of them and on what terms?

67. The present allotment to the political parties is subject to the guidelines framed in 1985, and 34 quarters are presently in their occupation. It was made known to us on behalf of the Directorate that the present thinking is to allow occupation of government accommodation by those parties only which are recognised as national parties by the Election Commission. As to the number of units to be allotted to each political party, it seems that presently there is a great variance inasmuch as the Congress (I) has been allotted as many as 10 premises. We are of the opinion that the Directorate should abide regarding the number, by the advice to be given by the Speaker of Lok Sabha and Vice-Chairman of Rajya Sabha.

68. Coming to allotment of government quarters to "other organisations", we find no justification for the same in view of great necessity of accommodation prevailing even presently. It would, however, be open to the Ministry/Department to allot quarter(s) to such an organisation from the discretionary quota, if the rules to be framed in this regard would permit the same. The organisation which would not get such allotment within three months from today would be required to vacate the premises under its occupation within one year.

7. Should high holders of political office, like President, Vice-President and Prime Minister be accommodated in Government quarters after demitting of office by them? If so, on what terms?

69. Keeping in view the very high constitutional position occupied by the President, Vice-President and Prime Minister, we feel no difficulty in stating that they should be accommodated in government premises after demitting of office by them, so that problem of suitable residence does not trouble them in the evening of life. What should be the terms of the same is a matter to be decided by the Government.

8. At what rate penalty has to be realised from those who were unauthorisedly occupying the Government quarters?

70. The penalty which becomes payable by those who have either continued to occupy premises beyond the permitted period or have not vacated the premises despite cancellation of allotment, has to be as per the rules holding the field to which we have already referred. We may refer in this connection to Section 7 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 also, which deals with payment of rent or damages in respect of public premises. Its Sub-section (2) has provided that where any person is, or has at any time been in unauthorised occupation of any public premises, the Estate Officer may, having regard to such principle of assessment of damages as may be prescribed, assess the damages on account of the use of the occupation. Rule 8 of the Public Premises (Eviction of Unauthorised Occupants) Rules, 1971 has mentioned about the factors to be taken into consideration in assessing the damage.

71. The aforesaid being the position, the subject matter regarding the rate of penalty is governed by statute and we have nothing to add.

9. Has the Government any power to waive charges which have become payable as per the Rules in vogue?

72. This question has its importance because there are material on records to show that the Government has waived charges which have become payable as per the Rules in vogue. The amount waived being substantial in some cases it is required to be examined whether the Government has such a power; and, if so, is there any limit to the same? On this aspect, we have been addressed, inter alia by Shri Altaf Ahmad, Addl. Solicitor General and some other learned Counsel appearing for those in whose favour waiver has been ordered by the Government. These counsel amongst whom were Shri Kailash Vasdev Shri M.L. Jain relied on FR 45-A-V(b). The only other provision to which reference was made is FR 5-A.

73. Learned Additional Solicitor General took a different view as according to him the power of waiver qua those allottees who are not Government employees flows from Article 73 of the Constitution of India, which deals with the extent of the executive power of the Union. He submitted that power of waiver exercised with the aid by invoking Article 73 is not in conflict with the rules referred us to *Rai Saheb Ram Jawaya Kapoor v. State of Punjab* [1955] 2 SCR 225, in this regard.

74. We will first deal with the reliance on FR 45-A-V(b) which permit waiver or reduction of the amount of "licence fee" to be recovered from any officer. This apparently would not take within its fold "penalty/damages" liable which becomes liable under the rules because of unauthorised occupation. When the aforesaid rule speaks of "licence fee", it refers to that fee which become chargeable on allotment of a government quarter during the period of its valid occupation; and after deeming cancellation of the allotment what becomes payable is damages/penalty. FR 45/V(b) does not, therefore, permit waiver of penalty, according to us, despite strenuous submissions made by Shri Jain to the contrary.

74. FR 5-A, inter alia, requires concurrence of the Ministry of Finance for any order made with the aid of that rule. This apart, the power under that rule becomes available in cases of "undue hardship" and relaxation is permissible to such extent and subject to such conditions as the Ministry/Department may consider necessary for dealing with the case in just and equitable manner. The Government of India's order relating to that rule, of which mention has been made in Swamy's Compilation of FRSR (Part-I General Rules) 12th Edn. Reprint 1995 at page 3 has stated that this power is intended to be invoked only in "rare and exceptional cases". It is the admitted case that the Government did not resort to the provisions of FR 5A in any case at hand.

75. This requires us to consider the submission of the Addl. Solicitor General that the power of waiver is available under Article 73. On being questioned by the Court, Shri Ahmad had stated that this is a subjective power, which of course, must be exercised in just and fair manner. As assistance was sought to be derived from the decision in Rai Saheb Ram Javava's case, let us first see what the Constitution Bench had stated in that case, Mukherjee, CJ, speaking for the Bench, had opined that it might not be possible to frame an exhaustive definition of what executive function except that the same ordinarily connotes the residue of governmental functions that remain after legislative and judicial functions are taken away. The further observation of the learned Chief Justice was, and it is this which the learned Additional Solicitor General sought to rely, that the executive government can never go against the provisions of the Constitution or of any law. According to Shri Ahmad there being no statutory provision dealing with, or prohibiting waiver penalty qua non-government employees, it would be open to do so in exercise of the executive power recognised by Article 73.

76. It is also mentioned that this Court had earlier approved grant of waiver in some cases. As to this, we may say that that had been done without going into the question of power to waive, and so, the same cannot be used to submit that this Court has accepted the power of waiver.

77. We do not agree with the learned Addl. Solicitor General that granting of waiver would not conflict with any statutory provision, because, as already pointed out, there are rules which require payment of specified amount of licence fee or damages, which by implication rules out power to waive the same, unless specifically conferred.

78. As to recovery exercise presently being undertaken, we have expressed our dissatisfaction in the order passed on 29.11.1996 and would reiterate our concern at the slow pace at which this work is progressing. We require strenuous efforts in this regard as mentioned in that order. The progress made would be made known to this Court by the Director on affidavit to be filed in the second week of April, 1997.

10. What should be done regarding those Government employees who had sublet their premises; and what should be done as regards the occupants of these let premises?

79. Sub-letting has become very rampant. This would be apparent from the fact that on an inquiry being made in this regard after inspection of 40,928 quarters, subletting was suspected in 4,194. On action being taken and after considering representations made, allotment of 1,085 quarters were cancelled.

80. Sub-letting has been made a gross misconduct under Rule 15-A of the Central Civil Services (Conduct) Rules, 1965, as amended by notification dated August 16, 1996, which was published in the Government Gazette of August 19, 1996. By our order of 29.11.1996 we had desired drawing of disciplinary proceedings against the concerned employees, being of the view that subletting of government accommodation for pecuniary gain is a grave misconduct. Some further directions were also given in this behalf. The concerned authorities would see that those directions are complied with fully.

81. As SRs. 317-B-20 and 21 have exhaustively dealt with sub-letting and consequences thereof and as sub-letters become unauthorised occupants, all that we require is that the Director would do the needful in this regard most expeditiously; more particularly, urgent steps would be taken to evict the unauthorised occupants whosoever they may be.

11. Whether apart from the general pool and tenure pool, if required to be retained, there should be other pools; and, if so, for whom and how the same should be regulated?

82. Apart from the General Pool, at present there are a Tenure Pool and Press Pool. Though it has been the submission of Shri Ranjit Kumar that Tenure Pool should be abolished, we do not agree with the learned Counsel because the same is principally meant for those officers who come on deputation for a fixed period, because of which the incumbent is said to hold a tenure post. The deputationists who so come to Delhi mainly belong to All India Services and their problems being of different kind have to be taken care of in a different way. As this pool has been existence for long and exigency of service does require taking care of the State Cadre Officers who come to Delhi on deputation, no case really exists to order for abolition of Tenure Pool. Of course, the officers who are entitled to claim accommodation from the pool should not be allowed to seek allotment from the General Pool. If at present there is any such officer, Concerned Ministry/Department would see that after the same falls vacant on the deputation of the present occupant coming to end, that quarter would become available only to a person eligible to draw from the General Pool.

83. It seems to us that apart from these three pools, the quarters which are presently occupied by the Speaker of Lok Sabha, Vice-Chairman of Rajya Sabha, Judges of Supreme Court and High Court, Election Commissioners, Chairman, Law Commission of India, Chairman, Press Council of India and Chairpersons or Members of various other high statutory today manned by retired Supreme Court or High Court Judges should be earmarked for them and should become available subsequently to the concerned office holders only, and not to anybody else. The pooling of such accommodation may be necessary so far as the Judges of the Supreme Court and the High Court are concerned, in view of large number of quarters needed for them; and it would be appropriate if they are put incharge of the Registrar General of the Supreme Court or the Registrar of the High Court, as the case may be.

12. How to prevent in future the scam of the type at hand?

84. It seems no scam can be avoided howsoever rigid rules may be framed or guidelines laid down. Scams are creatures of moribund mind and low moral character. With various types of scams all

around, it is too much to expect that we can provide any formula by which any scam can be prevented. Even so, we do hope that what we have stated above regarding the rules to be framed for regulating allotment from discretionary quota would take care of foul play of the present type to a great extent. The construction of more government quarters is urgently called for to put a check on misuse of power in this regard, because after all it is dearth of accommodation and resultant long waiting period which makes employees move around the power corridor for out-of-turn allotments. The shortage speaks for itself, as, for about 2.15 lakhs Central Government employees, approximately 65,000 quarters only are available. The concerned authorities have, therefore, to seriously consider the need for building more accommodation. Let a high powered committee, which may include one or two representative of the Employees' Association to instill confidence and inculcate a feeling of participation, be formed for this purpose and let the committee report within six months. We do hope the Government would definitely act as per the recommendations of the committee. It is also a matter for consideration whether in the various residential colonies coming up in different parts of the city under the aegis of Delhi Development Authority and such other bodies, some percentage of houses, say between 5-10, should be reserved for government employees.

85. Another way to ease the pressure on government accommodation is to re-examine the question as to who among the house owners should be debarred from getting the same. We understand that at present those employees who have their own houses within the territory of the National Capital and Noida alone are debarred. A submission was advanced before us on behalf of the above named Association and some others that those who have houses in town like Gaziabad and Gurgaon must also be debarred because there are a number of persons who reside there and commute daily. This is a matter for the Government to consider and decide.

Conclusions

86. For the sake of convenience and comprehension we propose to sum up our general conclusions. These are:

- (1) All the persons whose names find place in the two reports of the Gupta Committee (as supplemented) under Categories IV, VI, IX, X, XI and such of VII who had not become actually entitled to in-turn allotment by the date (s) the two reports were submitted, would face eviction.
- (2) Those IAS, IPS, IFS and other officers who are occupying General Pool quarters, despite being eligible to the quarters in the Tenure Pool though not actually allotted, would also be evicted.
- (3) A new list would accordingly be drawn up within two months from today and the persons having become liable as per this list for eviction would be served individual notices within 30 days thereafter requiring them to vacate the quarters within 90 days of the notice.
- (4) The out-of-turn allottees who would become liable to eviction on account of their illegal occupation of the quarters would pay twice of the licence fee in so far as Type III quarters are concerned; and three times of the licence fee for Type IV and above.

(5) The Government employees who had occupied accommodation on out-of-turn basis but who are not to be evicted would be required to pay licence fee as stated above, for the period they were in out-of-turn occupation.

(6) Those Government employees who were denied allotments, despite having become eligible on in-turn basis, would receive compensation as indicated in para 48 of the judgment.

(7) The extent of discretionary quota would be 5 per cent in each type of houses which would fall vacant in one year. From this 5 per cent quota, allotment could also be made, if the guidelines to be framed as directed in para 52 would permit, to freedom fighters, eminent artists, social workers and any organisation or institution or other defined category of persons. The guidelines would be framed within three months from today.

(8) The guidelines would be duly notified and while making allotment reasons would be given. List of such allottees shall be notified and circulated to all the Government Departments. Further, a yearly statement of such allotments would be laid on the table of the each House of the Parliament.

(9) From the Press Pool, allotment would be made in terms of what has been stated in para 61 if the Government were to accept the same; and action for eviction, wherever required, would be taken by asking to vacate the premises latest by 31st March, 1998.

(10) Freedom fighters, artists and social workers would not be entitled to allotment from General Pool, but could be granted allotment from the discretionary quota, if guidelines would permit. The present occupants would be dealt with according to what has been stated quo them in paras 53, 54 and 55 respectively.

(11)(a) The political parties would be entitled to allotment as per the policy to be framed, regarding which mention has been made in para 61 of the judgment.

(b) After policy has been framed and the other steps have been taken as indicated in that para, those political parties who would be in occupation of greater number of units or would not be eligible as per the revised policy would be given reasonable time to vacate the accommodation under their occupation.

(12) Other organisation would not be entitled to allotment of quarters from General Pool, but could be so adjusted from discretionary quota if guidelines would permit. That organisation which would not get allotment from the discretionary quota shall have to vacate the premises under its occupation within reasonable time in terms of various interim orders passed concerning them from time to time.

(13) The President, Vice-President and Prime Minister of India would be accommodated in government premises after demitting of office by them as stated in para 64.

(14) The unauthorised occupants of government premises, who are liable to pay damages, would do so as per the relevant rules.

(15) The waiver orders as passed have no sanction of law, and while undertaking recovery the same shall be ignored and the recovery proceedings would abide the order passed on 29.11.1996.

(16)(a) Against those Government servants who have sub-let their premises departmental proceedings would be initiated as stated in the order of 29.11.1996.

(b) The sub-letees, being unauthorised occupants, would be evicted most expeditiously.

(17)(a) Apart from the General Pool, Tenure Pool and Press Pool, another Pools would be created as mentioned in para 78 of the judgment.

(b) Earmarked quarters would be made available to the holders of post mentioned in para 79.

(18) The Central Government would examine the question of undertaking construction work as indicated in para 80 of the judgment.

(19) The concerned authorities shall examine the question as to whether the persons owning houses in Gaziabad and Gurgaon should also be debarred from getting the government accommodation in Delhi.

Epilogue

87. We would first say that we are conscious that some percentage of those who were given/had obtained out-of-turn allotments would be required to be evicted pursuant to this judgment. We also know that the would-be-evictees include those who are Type III allottees and are in lower rung of the hierarchy. It has not been possible to exclude them altogether from the purview of our consideration for reasons given. We have made them available such benefit regarded reasonable by us.

88. When grave illegality of great magnitude is required to be cured, at times a sort of surgery becomes necessary, and then suffering cannot be avoided altogether. In our attempt to cause the minimum suffering, we softened the painful process by reducing the number of those who would have to be evicted from 3768 (8778?) to 4672 first and now to around 2000. Of them, some may get excluded if the Medical Board required to be set up so recommends.

89. So, we have taken care of the hardship aspect to the extent deemed permissible, keeping in view the call of law and equity. Let it be said that we have to keep well in mind the injustice which had been caused to those who had been denied allotment despite having become entitled to the same. There can be no denial that equity leans heavily in their favour. To state shortly, what we have finally ordered is what we must have, to be true to our conscience and to the cause this Court had undertaken to serve.

90. Before closing the proceedings, we put on record our great appreciation for the very laborious work undertaken by the members of the Gupta Committee. There is no doubt that but for the meticulous examination of each case by the Committee and consideration of objections filed before it, we would not have been able to deal with the problem of this magnitude to our satisfaction. Secondly, we express our gratitude for the very useful assistance rendered by S/Shri Ashok Desai, Kapil Sibal and Ranjit Kumar; so also by S/Shri KTS Tulsi and Altaf Ahmad, learned Addl. Solicitors General. But for this, we could not have waded through the sea, as the case ultimately came to be. Then, the knowledge ability and availability of the Director Shri Harcharan Jit Singh had proved very useful to us. It was this, which had led us to require this retention here. Needless to say, it is the initiative taken by Shri Shiv Sagar Tiwari which set the ball rolling. He deserves commendation for the same.

91. Finally, we hope that coming years would not see any scam or misuse of power in making allotments of government quarters. The trust which is reposed in this context on high public functionaries would be discharged, we are sure, only to advance the object of providing of suitable condition of work to Government employees so that the Government is run on even keel; and shelter, which is a very pressing necessity of any human being, would not come to be denied if the same if otherwise due to the incumbent. A satisfied bureaucracy is as much necessary, as good political leadership, to deliver goods. The Government of free India have many promises to keep after its tryst with destiny on the midnight of 14th August, 1947. We have no doubt that all the public functionaries would so act that the meeting with destiny really sees the dawn of an era of hope for all.

92. We say no more. Adieu.