

(1997) 08 DEL CK 0058

In the Delhi High Court

Case No : Civil Writ Appeal No. 4003 of 1995

Centre for Public Interest Litigation

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 29-08-1997

Acts Referred:

Constitution of India, 1950 — Article 14
Income Tax Act, 1961 — Section 143(1)

Citation : (1997) 5 AD 405 : (1997) 3 CLT 425 : (1997) 68 DLT 650 : (1997) 1 ILR Delhi 309 : (1997) RLR 585

Hon'ble Judges : Y.K. Sabharwal, J;D.K. Jain, J

Bench : Division Bench

Advocate : P. Bhushan, Jayant Bhushan, S. Srinivasan, A.M. Singhvi, A.K. Vali, Arun Bhardwaj, Urmila Narang, Sanjeev Sindwani, Santosh Paul, N.N. Agarwal, D.C. Gupta, S.P. Pandey, Surat Birla, Bina Gupta, G.V. Chandrasekhar, R.K. Singh, A.Y. Chitale, Santosh Kumar, T.N. Dhar, Jagdev Singh, S. Rao, Yunus Malik, Anjani, R.C. Verma, Nadh Hussain, Sunita Hazarika, P. Niroop, G.N. Reddy, Gopal Singh, B.B. Aggarwal, Lokesh Kaushal, N.N. Gupta, Arvind Minocha, Ashim Vachar, Narender Man, K.C. Kalra, Animesh Sharma, H.R. Khan, P.K. Sharma, Gopal Jain, N.N. Ojha, Samriti Mishra, Manish Goyal, Rakesh Tikku, Valmiki Mehta, P.K. Yadav, R.K. Gupta, Vipul Maheshwari, Harish Kidwai, Suresh Singh, J.M. Rao, P.H. Parekh, Varun Goswami, Sanjeev Sachde, Vikash Singh, G. Umapathy, G.S. Nayar, Rattan Lal, Rajiv Shakhchandhar, B.S. Banati, S.A. Khan, Amit Jaitley, Vipin Sanghi, Naveen Chawla, H.S. Phoolka, Israel Ali, M.N. Tikku, Sanjay Bansal, J.S. Attri, R.K. Chadha, S.C. Chawla, M.L. Chug, Kiran Jain, E.C. Vidyasagar, Nitiya Ram, A.K. Gupta and K.K. Laoria, for the Appellant;

Judgement

Y.K. Sabharwal, J.

(1) From January 1993 till 1996. 179 retail outlets (Petrol Pumps), 155 Lpg distributorships and 45 SKO/ Ldo dealerships under discretionary quota were allotted by the Minister. In Delhi Petrol Pumps allotted by Oil Selection Board during this period were 64 in number and the Petrol Pumps allottee under discretionary quota were 65 in number. In Bombay. 4 Petrol Pumps were allotted

by Board and 3 under discretionary quota by the Minister. 05HCD/97-2

(2) The examination of files clearly shows that these are not cases of aberrations here or aberration there but are cases which show pattern of favouritism.

(3) In these cases where the allotments of petrol pumps etc. made by the Minister under his discretionary quota have been called in question, it is necessary to lay down as to what is the concept of "discretion". "Discretion" implies good faith in discharging public duties. The exercise of "discretion" has to be based on relevant considerations. When it is exercised by taking into extraneous considerations, such action has to be quashed. The concept of absolute, untrammelled or unfettered "discretion" is wholly inappropriate to a public authority. When given power to exercise "discretion" it has to be used for public good. The concept of unfettered "discretion" is appropriate only when dealing with a private property and not when dealing with public property. "Discretion" does not empower a person to do what he likes. He has to act reasonably. When it is found that no right thinking or conscientious person would have exercised the "discretion" in the manner it was exercised, the action will have to be quashed. The power is to use the "discretion" and not abuse it. The authority granted "discretion" has to exercise power in a fiduciary capacity. If the court finds that there were illegitimate motives in exercised of the "discretion", the action would not be sustained. While going into individual cases, we have kept in view that it is not for this Court to usurp the "discretion" of public authority. If the decision to make discretionary allotment is within the confines of reasonableness, this Court will not go into the merits, even if two views are possible. But at the same time, arbitrary exercise of "discretion" cannot be legitimated by this Court. The Court may overlook certain aberrations and allow considerable freedom of "discretion" on being satisfied that the public authority was acting bonafide but at the same time when it is found that by exercising discretionary powers allotments were given only as benevolence to those who do not deserve it. and the grant of such benevolence was for illegitimate motive, the Court is duty bound to set right the wrong .

(4) In light of aforesaid principles, we would first notice the grievance as brought out before this Court by the petitioner a Society named "Centre for Public Interest Litigation" in which many senior advocates are said to be founder members. We would also briefly notice the circumstances under which individual cases of allotments came up for consideration before us.

(5) The grievance set out in the petition is that allotments or retail outlets of Petrol Pumps, Distributorships of Lpg Gas and kerosene made by Respondent No. 3 Satish Sharma under the discretionary quota of the Minister during his tenure as the Minister of State for Petroleum and Natural Gas were arbitrary and malafide. It has been claimed that these allotments are an instrument of personal profit, patronage and plunder to the State Exchequer which would have received crores of rupees if the same were auctioned. Such allotments, it has been alleged, have been made for benefiting favoured persons at the expense of

State Exchequer and all-such allotments are illegal and violative of Article 14 of the Constitution. The validity of allotments made by Oil Selection Boards have also been questioned on similar grounds in C.W. 4430/95.

(6) On 2nd November, 1995 this court directed the respondents to produce complete list of allotments made under the discretionary outlets, Lpg Distributorship and Kerosene Oil Distributorship from the date of the tenure of the Minister. Satish Sharma took over as Minister for Petroleum on 13th January, 1993.

(7) The Supreme Court by orders dated 6th December 1995 stayed the proceedings of the present petition and connected writ petition with the result that the writ petition was adjourned sine die. In respect of this petition, the Supreme Court in its judgment dated 25th September, 1996, inter alia, directed that :-

"WE have no doubt that the High Court shall, examine the issue involved in the writ petitions and shall also go into the validity of the allotments of Petrol Pumps/ Gas agencies to various persons after hearing them in accordance with law. We request the High Court to expedite the hearing of the petitions."

(8) The Supreme Court by orders dated 31st March, 1995 passed in a case reported in 1995 Supl. (3) S.C.C. 382 laid down guidelines governing allotments to be made under the discretionary quota and the procedure to be followed while considering applications for grant of Petrol Pumps and Agencies under the discretionary quota of the Minister.

(9) When this matter was considered- by this court on 11th December, 1996 it was contended on behalf of the Central Government as also the Minister that in view of aforesaid decision of Supreme Court all allotments made prior to 31st March, 1995 stood impliedly regularised and, Therefore, the validity of the allotments made during the said period may not be gone into by this court. This court, however, observed that the affidavit of Devi Dayal, Joint Secretary in the Ministry Petroleum and Natural Gas filed in the Supreme Court does not show that either Supreme Court was informed about the details of the allotments or that the Supreme Court examined the individual allotments. It was also held by this court that the Supreme Court decision does not indicate that the Apex Court had placed its seal of approval on the allotments made prior to 31st March, 1995. It may be noticed that all except one allotment cancelled by Supreme Court in terms of its judgment dated 25th September, 1996 were made prior to 31st March,

(10) In our order dated 11th December, 1996 we have noticed that in order to resolve the validity of allotments it would be necessary to examine the number of files, in which the decisions for allotments were made. We have further noticed that before considering the issue of notice to the allottees of Petrol Pumps etc., it would be appropriate to find out, prima facie, on examination of files, whether there is any discrepancy in such allotment. Thus, we directed the Government to

produce the relevant files in this court. We constituted a Committee of three Advocates to examine those files and submit their report. A proforma was also prepared after discussion with the counsel for the parties to be filled by Committee on examination of each file. The Committee comprised of the following advocates:- Neeraj Krishan Kaul. 2. Sanjeev Khanna. 3. Sandeep Sethi.

(11) D. K. Prasad, now Deputy Registrar of this Court was appointed an officer and the files were directed to remain under his control and custody. After examination of files the Committee has filed its reports with individual proformas in each case. We place on record our deep appreciation for the time spent and efforts put in by the learned members of the Committee and also by Prasad.

(12) On consideration of the reports and also the proforma and also the original files in some cases, we directed issue of notice to various persons as detailed in our order dated 27th February, 1997 and 20th March 1997. The total number of allottees whose cases may have to be considered by this court are about 400. The allottees covered under the orders dated 27th February, 1997 and 20th March, 1997 are about 100.

(13) We have heard learned counsel appearing for the Notices as also learned counsel for the petitioner and respondents. We have also perused the record. The Ministry, in terms of our directions dated 11th December 1996 has produced the files pertaining to discretionary allotments of the Minister for the period from 1st April, 1992 till 1996. We have been informed that discretionary quota has since been abolished from 1996. For the sake of convenient examination, the period during which allotments under discretionary quota were made can be divided into three categories as under:- (A) From 1st April, 1992 up to 18th January, 1993 (Mr. Satish Sharma, State Minister for Petroleum took charge with effect from 18th January, 1993). (B) From 18th January, 1993 up to 31st March, 1995 (On 31st March, 1995, the Supreme Court laid guidelines concerning the discretionary quota allotments and the procedure to be followed). (C) From 1st April, 1995 till end. Category "A"

(14) Satish Sharma took over as Petroleum Minister on 18th January, 1993. Earlier to that period, we have been informed. B. Shankranand was the Petroleum Minister. B. Shankranand is not a party to the writ petition. The allegations of malafides made in the writ petition are only against Satish Sharma. No notice has been issued to Shankranand. Shankranand, we were informed, was Petroleum Minister even prior to 1st April 1992. Shankranand has had no opportunity to place before this court his view point. There can be no doubt that the power of writ jurisdiction of this court is very wide. When in a Public Interest Litigation like the present one, prima facie, arbitrariness in discretionary quota allotments comes to the notice of this court, the scope of the writ petition can be enlarged and allotments made prior to 18th January, 1993 can also be examined by issue of notice to Shankranand. We do not, however, consider it expedient to issue notice to Shankranand atleast for the time being to examine the validity of discretionary allotments made by him. In case at a later stage this court decides

to issue notice to Shankranand, it will also have to be considered whether the examination by this court should be confined only for the period from 1st April 1992 till Shankranand remained Petroleum Minister or even for the earlier period when he was the Petroleum Minister. The challenge in the petition is to the allotments made during the tenure of Satish Sharma as Petroleum Minister. The part of the period during which Satish Sharma was the Petroleum Minister was during the year 1992-93 since he took over as Minister for Petroleum and Natural Gas in the Government of India on 18th January, 1993. Although on formation of prima facie view on examination of files notice have been issued to some persons to whom allotments were made during the tenure of Shankranand as Minister but the cases of these persons cannot be appropriately considered at this stage without notice to him, The question whether notice should be issued to Mr Shankranand or not would be considered by us at later stage when we take up other cases of similar allotments. The cases of allottees of Petrol Pumps etc. under the discretionary quota during the tenure of Shankranand are adjourned for the time being. The cases falling in this category are these :-- Sl. No. of Noticee as per S. No. Name order dated 27-2-1997. 1.Kishore Dhingra 2.Prem Guliani 3.Jhansi Rani Urs 4 Nagapathamma 5.D. N. Tiwari 6.Bhahaspati Singh 7.Mrutyanjaya Naraia 8.Lokesh Kaushal 9.Shantinath Dundappn Chavan 10.Anil Kumar Sonkar Shahstri 11.Diwakar Krishna Shastri 12. Nand Kishore Chaudhry 13.H. M. Abdul Hammed 14. L. N. Niranjana 15.Santa Ranjeet Deshmukh 16.Rajesh S. Gupta 17.Ramchandra Kamble 18.Raj Rani Sen 19.Rajwant Singh 20.B. Sudhakar babu 21.Manjula Chinpai CATEGORY-B

(15) As already noticed the decision of the Supreme Court dated 31st March, 1995 has not affixed its seal of approval on the allotments made prior to 31st March, 1995. Thus we are unable to accept the contention that this Court, is precluded from examining the validity of the allotments made prior to 31st March, 1995. The Supreme Court did not go into the individual cases of allotment to determine whether the individual allotment was valid or not. Further all except one allotment cancelled the Supreme Court on 26th September, 1995 relates to the period with which we are concerned. We, Therefore, reject the contention that the validity of the allotments for the period prior to 31st March 1995 cannot be gone into by this Court.

(16) In support of the allotment it was further contended that guidelines concerning such allotments were laid by the Supreme Court for the first time on 31st March, 1995 and earlier there being no specific guidelines on this aspect, the allotments made in favor of any person which the Minister considers fit, just and proper in his discretion, cannot be called in question. What discretion means has already been dealt within the opening part of this decision and the said concept of discretion would apply even in absence of written guidelines. The discretion does not mean whim and fancy of the person who has been given power to exercise the discretion. If the court comes to the conclusion that that exercise of such discretion was arbitrary, mala fide or based on irrational, extraneous or irrelevant consideration, it is not only the power but is also the

duty of the court to quash the exercise of such discretion,

(17) What is given away by way of exercise of discretionary power is not the personal property of an individual. It is the property of the people of this country. The personal property can be given away at one's whim and fancy. That cannot be the standard while parting with the property of the others, namely the Nation. We may note that most of these petrol pumps particularly in big cities like Delhi, Bombay, Bangalore, Calcutta and Madras are worth huge amounts if put to auction. If a person has to acquire a petrol pump in a city like Delhi he would have to spend lakhs of rupees. We are not suggesting that ignoring these financial aspects or loss of revenue which may result on grant of discretionary allotment, the government cannot make allotment for the benefit of certain persons or class of persons to carry out its welfare objects. Such allotments, however, have to be made on rational basis and on consideration of relevant factors whether there exists or not any written guidelines if there are no written guidelines governing such discretionary allotments, the yardstick has to be reasonableness and fairness of action. If the procedure is not laid down it only means a reasonable and just procedure from the view point of a reasonable avornac man. This has to be the standard while considering the exercise of discretionary power of the Government in the matter of grant of allotments concerning the public property. Non-adherence to these principles has necessarily to result in quashing of impugned action. We are unable to accept the plea urged by some counsel-equating these allotments with that of favor for a bed in a Government hospital or a Railway ticket or a domestic gas connection or alike.

(18) We have gone through the individual files with the assistance of learned counsel of the individual Notices and learned counsel for the petitioner. In most of the cases there is no material on file to Justify exercise of power to make the allotment under the discretionary quota. These files show that a substantial number of allotments were made either on account of political patronage or some other extraneous considerations. It is also unfortunate that perusal of the files show that a large number of persons to whom allotments were made under the discretionary quota belong to an affluent class of society and not to the class which may deserve compassion resulting in exercise of discretion in their favour. Whether this large number of persons got allotment on account of their affluence or on account of their close proximity with the powers that be, it may be difficult to say definitely, one way or the other but that makes no difference since both affluence and/or proximity, are irrelevant and extraneous considerations for exercise of discretion.

(19) We may also note that perusal of almost all the files shows that the decision to grant allotment under discretionary quota was made in a stereotype manner; there was no verification of the statements made in the applications by the allottees; hardly any application contains details of annual income or bio data ; hardly anybody has filed an affidavit in support of the claim made in the

application seeking grant of discretionary quota allotment; many applications seem to have been typed out or written by the same person ; in most of the cases applications do not bear any date: a large number of allottees belong to one Parliamentary Constituency and are active member and supporters of the Party in power at the relevant time. A large number of applications contain vague and flimsy grounds. In almost all cases there is no indication showing how the application reached the Minister/Ministry. Now. we will briefly notice herein under the individual cases. Dr. Umesh Sharma, Dr. Umesh Sharma has been granted SKO/LDO dealership. The reason for exercise of discretion in favor of Dr. Sharma is that local population is finding difficult to get the requirement of Sko for the purposes of cooking on account of shortage of Sko dealership in the area. Apart from the fact that no verification whatsoever in respect of the claim made by the applicant was conducted, there is not even a whisper about the financial status of the applicant. Assuming there was a need in the area for grant of dealership to augment the supply of kerosene oil, what reason prevailed for grant of such dealership to Dr. Sharma is not at all clear from the file. The father of Dr. Sharma was an Ex- Mla belonging to the same party as the Minister besides that he has recommendation from Nirmala Despande, President of Akhil Bhartiya Rachnatamak Samaj. His first application was for Lpg ami the second for kerosene oil and petrol pump. There is no justification on record for grant of dealership to him under discretionary quota. Syedul HASSAN.- One SKO-LDO dealership in District Rae Bareli, Up, was allotted to Syedul Hassan under discretionary quota, I he ground being that he is educated youth belonging to a minority community with a large family and no regular source of income. The applicant states that he has been serving Congress Party for last 16 years. He is the President of District Youth Congress, Rae Bareli. In his bio-data the main thrust is on the positions he held in the Congress Party. None of the facts about the size of his family and income were verified. The applicant does not even state what is his income. The only reason for exercise of discretion in his favor seems to be his political affiliation. The public property cannot be distributed in this manner to workers of any political party. Prabhakara SHETTY.-LPG distributorship has been allotted to N. Prabhakara Shetty at Bangalore on the recommendation of the Chief Minister of Karnataka on the ground that applicant has no source of income anil finds himself and family in difficult financial circumstances. Here again, no verification whatsoever was done about the income of the applicant. From the application submitted by the applicant the main thrust seems to be that he is a Congress Party worker since 1970 and has served the Party in" several capacities and resides in the constituency of the Chief Minister of Karnataka. The applicant also states that he has the capacity to invest the required sum. Even the applicant does not state that he has no regular source of income. From the affidavit now filed before us it seems that the applicant was a working partner in a Hotel anil Bar at Bangalore though stated to be small and stated to have been shut down because of the proximity of the said business premises to a Hospital. Though the applicant does not state that he has no regular source of income we are unable to understand as to how the Minister so stated. It is thus evident that

there is total non application of mind and allotment under discretionary quota has been granted on extraneous considerations. Tej PAL.-The Lpg distributorship at Hodal By-Pass (Haryana) has been allotted to Tej Pal on the ground that he is a small businessman and has difficulty in making both ends meet. What is the extent of this small businessman we do not know ? No verification was done. He neither stated anything about use income not about the nature of his business He does not say that he finds it difficult to make both the ends meet. On the contrary he says that he has a piece of land located near G.T. Road which is suitable for operating distributorship; has godown facilities and is in a position to invest necessary amount. Besides this, he claims to be a loyal worker of the Party and promises to extend support on generosity being shown to him by grant of distributorship. He ,of course, has recommendation of a Member of Parliament. The original site allotted is also changed on the recommendation of the same Member of Parliament. G. VENKATARAJAM.-LPG distributorship at Karim Nagar District, Andhra Pradesh, is allotted to G. Venkatarajam, on the ground that there is no one to support him in his old age and he is facing extreme hardship in his twilight years to survive. The application was first made to then Prime Minister seeking Lpg dealership under discretionary quota for the grandson with whom it was stated that the applicant was living. The allotment was first ordered to be made in favor of G. Venkatarajam. He sought for change on the ground that he will not be able to manage the distributorship due to advanced stage and physical condition. The name of his grandson was added. None of the facts were verified by anyone. There is hardly any justifiable ground for exercise of discretion in his favour. We may also note that the letter of the applicant dated 21st October, 1994 wherein request was made for the addition of the name of his grandson states that it has the consent of Hon'ble the Prime Minister. It seems that the allotment was made for extraneous considerations. D. Srikant & S. RUKMANI- Lpg distributorship at Vijayawada, Andhra Pradesh was allotted to D. Srikant and Smt. S. Rukmani on the stated ground of mitigating the problems being faced by the population of the area and to provide a source of livelihood to the applicants. In the first joint application given by the applicants there is no whisper about the income of the applicants. In the second application sent by Srinath the only vague claim made is that he is an educated unemployed youth from Andhra Pradesh and has not been able to get any suitable employment. Like other cases here too there is no verification. The bio data of this person shows that his educational qualifications are M. S. (Environmental Engineering) and has total income of Rs. 30,00 per annum and is a resident of Begumpet, Hyderabad. Srikant is son of former speaker of Andhra Pradesh Legislative Assembly. The letter of the father addressed to the Minister shows that Srikant left for Usa for higher studies and, Therefore, he will not be able to look into the work of distributorship. On request of his father his name was substituted with the name of one Ms. K. Vijayalakshmi. These facts speak for themselves and show the basis on which the discretion was exercised. We are unable to sustain the allotment. Usha AGGARWAL.-Smt. Usha Aggarwal W/o Sh. V. K. Aggarwal has been granted Lpg distributorship at Mathura, Up, on the ground of her being

an educated unemployed lady who has been actively involved in social work for the upliftment of rural women. The note of the Minister further states that the difficult family circumstances and lack of a regular source of income has led to a situation where the family is finding it difficult to make ends meet. The case deserves sympathetic consideration. No verification whatsoever was done before decision to allot the distributorship was taken. In a letter sent after the decision had been taken to allot the distributorship, the applicant states her total income as Rs. 40,000 per annum approximately based on net cash receipts for 1993-94. The letter dated 28th December, 1994 sent by the Government to her requests her to indicate the gross salary (without any deductions) of her husband and other income. In reply, she inter-alia states "In reply I may state that I am not dependent on the income of my husband but use my own income for social activities and maintenance. However, my husband is working as Additional Secretary in the Government of India and his gross salary is same as drawn by any other officer of his rank in the Government. It may further be added that the above facts were fully disclosed to the Hon'ble Minister of Petroleum and Natural Gas at the time of discretionary allotment of Lpg distributorship at Mathura" There is no indication on the file about the disclosure of these facts. For the reasons known best to the applicant in none of the applications she has mentioned her residential address. The address mentioned is 23, Dwarkapuri, Mathura, UP. That again is the address given in the affidavit filed in this court as late as April 1997. Counsel was unable to explain whose address was that ? In a copy of an order of Income Tax Department u/s 143(1)(a) of the Income Tax Act, 1961 pertaining to the year 1996-97 showing the loss of Rs. 1,41,618 the address given is 52, Rajinder Nagar, Brig Gas Company, New Delhi. Whose address was that, has also not explained ? There is hardly any justification for exercise of discretion in her favour. It seems that the discretion was exercised in her favor on account of the applicant being wife of Additional Secretary in the Ministry of Law. Presently, her husband is Secretary in this Ministry. The more we think about these types of allotment the more anguish we feel-both for those giving favours and those in the Government seeking favours. Such conduct is unbecoming of Government Servants holding senior, important and sensitive positions. What example such officers would set for their subordinates ? We say no more. Allotment cannot be sustained. E. ASWATHANARAYANA.-E. Aswatnanarayana has been allotted Lpg distributorship at Bangalore on the ground of the applicant being an educated unemployed youth from scheduled caste family and had been unable to obtain suitable job resulting in his family being in dire straits but the applicant is still actively involved in social welfare activities. Like other cases, here too, no verification was done. Like other cases, here too, it is not clear as to how undated application reached the Minister. There is no diary number. The applicant's bio data shows that he is a member and President of various organisations including member of Karnataka Pradesh Congress (I) and Film Censor Board, Kamataka, Telephone Advisory Committee, Bangalore, Ex-General Secretary and Joint Secretary, KPYCC(I). It further shows various services rendered by the applicant

to the Congress (I) Party during various elections. In absence of any verification and the facts and circumstances of the allotment it seems apparent that the main reason for allotment is loyalty of the applicant to the political party which was same as that of the Minister. The applicant claims that he holds Post Graduate Degree of M. A. but he is unemployed . According to the applicant his total income from the business of Lpg distributorship is Rs. 20,000 to Rs. 25,000 per month out of which Rs. 14,000 to Rs. 15,000 goes on establishment expenses leaving for him a meagre sum of Rs. 10,000 per month. We are unable to accept the contention of learned counsel of this applicant that a political party when it comes to power it can exercise discretion in favor of its workers. Discretionary allotments of the nature in question can be made by authorities concerned on the relevant considerations such as hardship being suffered by the applicant on account of applicant belonging to Scheduled Caste etc. and not being in a position to earn livelihood despite best efforts and not only on the ground of the applicant being a party worker. We are also unable to accept the contention urged before us that different standards . are to be applied while considering the allotment which may have been made to the personal staff of the Minister and the same stand- ard cannot be applied while considering the allotments made in favor of a Party worker. We do not see much difference in the two situations. If a personal staff member of the Minister is given allotment under the discretionary quota mainly on" the ground of the applicant being a member of the staff of the Minster ,the court would be duty " bound to quash such allotment. The same would be the position when allotment is made manly on the ground of one being an active party worker. We are unable to sustain this allotment. A. V. Sathya MOHAN".-An Lpg distributorship at Warangal Di"strict. Andhra Pradesh has been allotted in favor of A. V. Sathya Mohan .the ground have that the applicant is a" engineering graduate why ^has not been able to obtain suitable employment and is finding difficult to support his large family. It has been an undated application- The applicant says that he passed his B.E. Examination in 1984 and has been struggling to get employment without success and that he was the only earning member of the family consisting of two unmarried sisters and three younger brothers he had claimed in his application that his earning from the present job in a private company was not sufficient to maintain and support the family. No verification was done. It does not appear as to how the application reached the Minister. There is no endorsement on the application. In fact that is the position in most of the cases. The undated application is addressed to the Prime Minister. There is nothing on the record as to what was the income of the applicant from his employment in private company. The applicant claims that in June, July, 1994 he came to Delhi to seek Darshan with the then Prime Minister. The indication is that in that meeting he handed over the. application to the Prime Minister. Had it been so there would be some note on the application or a forwarding letter sending the application to the concerned Ministry. There is nothing of the kind on the file. The applicant is claimed to have made investment of nearly more than Rs. 8 lakhs for the purposes of business including the expense of nearly Rs. 3 lakhs for the purchase

of computer etc. We find it difficult to sustain the allotment merely on account of the sums alleged to have been spent by the applicant. R. V. JANAKIRAMAIH.--An Lpg distributorship at Puttaparthi, Andhra Pradesh, has been allotted in favor of R. V. Janakiramaih in order to meet the increasing demand of the population and provide a source of livelihood to the applicant. The application does not state that the economic condition of the applicant is such that it required being augmented by providing a source of livelihood to the applicant. The statement regarding shortage of gas made in the application has been accepted as gospel truth. No verification was conducted. Assuming a distributorship in the area had to be granted what was the special reason for granting it to the applicant has not been explained. We find no ground on which we can justify the exercise of discretion in this case. The plea now taken that the applicant has spent about Rs. 15 lakhs including land cost for building the show room and godown for the Gas cylinders, in our view, is not relevant for the purposes of deciding whether there is any ground or material to grant to the applicant distributorship under the discretionary quota. Priya DAS.-Kumari Priya Das, resident of 42-43, Western Court, New Delhi, has been granted an Lpg distributorship in Delhi, the ground being that the applicant being a highly educated lady without any regular employment and she being dependent on her old widowed mother. From the record it appears that the main reason of exercise of discretion in this case was that the mother of the applicant was a former Member of Parliament. Further, it appears that she is the wife of an Advocate though it is claimed that he being new to the profession income was not sufficient. There is no verification, We may note that the distributorship is not yet operational The applicant is a graduate in Arts with Degree in Hotel Management and Diploma in Fashion Technology from National Institute of Fashion Technology (NIFT). Further, it appears that the brother of the applicant was already holding a retail outlet distributorship at Delhi though she had filed an affidavit that none of her close relations was holding any dealership/distributorship of any Oil company in any petroleum products. It seems that the Government was contemplating taking action on account of the misrepresentation made by the applicant. Rashmi CHAUDHARY- A retail outlet for MS-HSD at Outer Ring Road near Savitri Cinema, New Delhi, has been allotted to Smt. Rashmi Chaudhary on the ground that the applicant belongs to a nationalist family and has been actively participating in social welfare campaigns for upliftment of weaver sections, child welfare etc. and has no regular source of income. The application dated 21st September 1993 has been made to the Minister. The note of the Ps to the Minister seeking orders of the Minister also dated 21st September 1993 and the decision to allot the retail outlet has been taken by the Minister on the same day i.e. 21st September, 1993. The application does not state that the applicant has no regular source of income. We cannot say where from it has come in the note of the Minister. We may further note that on undated application of the applicant the site was changed to Prashant Vihar, Outer Ring Road, New Delhi. The only qualification, if at all it can be called a qualification for grant of the favours, which one can decipher from the bio data of the applicant, is that she has a political background on account of her family and

has been helping the Congress Party in elections. We cannot put our seal of approval on this type of allotment in favor of those who may have helped the political party in power. Such allotment have to be annuled. Deovrat MISHRA- The Company operated retail outlet for MS-HSD at Delhi has been allotted in favor of Deovrat Mishra on the ground that he is an unemployed graduate actively involved in social work for upliftment of downtrodden and has no regular source of income. Admittedly, this type of outlet i.e. company operated has much more potential than other outlets for sale of petroleum products. The application dated 19th September 1993 given by this applicant to the Minister states that he is an unemployed graduate of Delhi University and is involved in various social work in the upliftment of Society's downtrodden and being a young man without any permanent job would like to settle down independently and make sufficient earning. V. P. Singh, learned senior counsel who appeared for this applicant admitted that the father of the applicant Sh S. P. Mishra is a Member of Rajya Sabha belonging to the party in power at the relevant time. Like in other cases in this case too no verification was done. there is nothing on the record of the ministry as to when the applicant graduated and what was his age. these facts have also not been disclosed in the affidavit filed in this court. Learned counsel could not state the year when the applicant graduated and as to what was his age. After the order was passed by the Minister it came on record that there were only two Coco outlets available at Delhi and" both were running in profit as a model retail outlet to impart training for customer service. They were being run by the Oil Companies themselves as model retail outlets and the officers were not in favor of the same being allotted in favor of a private party and ultimately a decision was taken to allot to the applicant a Coco retail outlet at Bomb-ay. The suggestion of some of the officers that the allottee may be asked to furnish his complete bio data indicating father's name, permanent address, State of domicile, present occupation etc., it appears was not heeded to. There is nothing on the record that any such particulars were filed. It is a clear case of bestowing favours at the cost of Exchequer. We are unable to accept the contention of learned counsel for the applicant that when on examination court finds that no norms were followed" the allottees should not be uprooted but directions may be issued for further allotments so that the wrong is not repeated. There are no equities in favor of those who seek favor and are granted it at the cost of national property, without any Justification .SALAMATULLAH.-There is nothing on record whatsoever to justify allotment of retail outlet at Delhi in favor of Salamatullah who has been allotted the retail outlet on the ground of being educated unemployed belonging to a minority community who actively participated in the fight against communal and divisive forces and has not been able to find regular employment. The applicant as per record is resident of A-3, Hazrat Nizamuddin (West), New Delhi. No verification was done on receipt of the undated application from him. The affidavit filed in this court by the applicant shows that he has been a Member of the Haj Committee from 1988 till date was Executive Director, Punjab National Bank from 1984 to 1988 and 1989 till date; Member of Central Government Counsel (Ministry of Welfare) Government of

India from 1986 till date; Representative, Government of India delegation to Saudi Arabia as Deputy Leader; Ex-Member Telecommunication Advisory Committee for Up from 1978 to 1980 and 1982 to 1990 and Member of various such Committees 24 in number enlisted by him. We can take judicial notice of the fact that the retail outlets like the one allotted to the applicant at Delhi are worth lakhs if not crores. Haroon YUSUF.-The allotment made of Petrol Pump at Delhi in favor of Haroon Yusuf on the ground of the applicant being a social worker is no better than the one made in favor of Salamatullah and various others noticed hereinbefore. This allotment has also to meet the same fate. Rajwant SINGH.-A retail outlet was allotted to Rajwant Singh at Chandigarh Industrial Area on the ground of the applicant having no regular income and finding it difficult to make both ends meet. there is nothing on the record to show that the applicant has no regular income or that he finds it difficult to make his both ends meet. Even the applicant does not say that the allotment in his favor has also to meet the same fate as others. Girish Kumar RAI.- Girish Kumar Rai has been allotted a Petrol Pump at suitable location between Mhow and Mohammadabad since the District Magistrate reported that there was a need for setting up of a retail outlet in that area and had forwarded the application of the applicant. We will assume that there was such a need for a Petrol Pump. That does not, however, mean that it should be allotted to the applicant simply on the ground that the applicant owns land in that area. This is no ground to exercise discretion in favor of the applicant. The allotment made in favor of the applicant cannot be sustained. Imran RAZA.-A retail outlet at Delhi has been allotted to Imran Raza on the ground of applicant being educated unemployed youth from a respectable family of Jammu & Kashmir which had family business in Jammu & Kashmir for several generations but on account of constant death threats from militants he and his family members were forced to leave the Valley and migrated to Delhi as refugees. None of the facts mentioned in the undated application were got verified" and all that was stated was accepted as gospel truth. Further, the claim made in the application about the applicant having family business at Jammu & Kashmir and having to shift at Delhi was not only vague inasmuch as no particulars whatsoever were given but it has to be borne in mind that there would be various persons falling in same category as the applicant. None bothered to ask or to enquire about the assets and financial status of the applicant. If these facts had been found out the Minister may have realised that there are many more deserving cases of those who have migrated from Jammu & Kashmir. From the biodata of the applicant it appears that in the year 1994 he was hardly about 22 years of age and had graduated in that year itself. The affidavit now filed in reply to the show cause notice is also as vague as was the original undated application. According to newspaper reports on the file of the Ministry, Hindustan Petroleum Corporation went out of way to help the applicant to get the land from International Airport Authority. The petroleum company was asked to furnish comments on the said news item appearing in Indian Express dated 9th April 1996. The first letter was written to the petroleum company on 2nd May 1996 and second on 21st August 1996 by way of reminder.

There is nothing, however on the record to show that any comments/information was furnished by the petroleum company. We may also note that the petroleum company informed the applicant that he has been appointed as their dealer vide the letter of Hpcl dated 1st February 1996. We find it difficult to uphold file allotment in favor of this applicant which is clearly based on extraneous considerations and is malafide. Bal Chandra SREEDHAR- Bal Chandra Sreedhar has been allotted retail outlet at Delhi on ground of being educated unemployed youth whose attempts at self employment have not been successful and he is facing financial hardship and has no regular source of livelihood" to support the family. Here again the application is undated. The claim, made in the application is vague. No verification was done. From the bio data filed by the applicant which was sought after decision had been taken by the Minister it appears that the applicant was a Science graduate from Delhi University and was running advertising agency which he stated had been closed. The bio data is also as vague as the original application. From the record it appears that the father of the allottee was a manufacturer of electric goods and the elder brother Raj Gopal was manufacturing transformers. These facts came to light on our queries during the course of hearing. It seems that the applicant belongs to an affluent class. We may also note that in the application the applicant had claimed that though he had achieved a fair degree of success and job satisfaction in the field of media management, the financial returns have not been commensurate to enable him to support the family. We may also note that epic now no site has been allotted to the applicant and the Petrol Pump is not operational. The allotment in his favor cannot be sustained. Bupesh MADAN- The father of Bupesh Madan resident of Jor Bagh, a posh colony of New Delhi was General Manager of Hindustan Petroleum and" was posted at Delhi till about last year and a half .Earlier he was Senior Manager in the said company. The son has been allotted a retail outlet at Delhi on the ground of an unemployed youth from a respectable family whose attempts at self employment have been fruitless. The, biodata furnished by the applicant after the decision had been taken by the Minister shows that the applicant was distributor for Wipro and, the area of operation was entire South Delhi HCD/97-4 The exercise of discretion in favor of Madan or Sreedhar or at her many affluent allottees clearly smack favouritism and malafides though it may difficult to say positively whether the affluence or some other factor resulted in such applicants getting a Petrol Pump allotment in their favor under the discretionary quota of the Minister. V. Gopala RAO- A retail outlet at Hyderabad has been allotted to V. Gopala Rao on the ground that the applicant is a freedom fighter whose ancestral properties in their village were confiscated by the Nizam Government and he had to settle at Hyderabad and that he has no income other than the pension given by the Government. His undated application was sent to the Minister Along with a letter of recommendation of V. Rajeshwara Rao, Member of Parliament. Like other cases in this case too, no verification was done. From the bio data filed after the decision had been taken to make the allotment in his favor it appears that the allottee was 70 years of age and had an income of Rs. 20,000 p.a. There is nothing on the record regarding the family of the

applicant. Later, on request of the applicant as contained in his letter dated 13th February 1995 that he has been able to procure suitable land near the border of the State of Hyderabad and Ranga district at Hyderabad-Bombay National Highway No. 9, which request too had the support of Mr. V. Rajeshwara Rao, the allocation was changed as desired again without any verification about the need of having a retail outlet at the changed location. We find no justification to uphold the allotment in favor of Rac which is arbitrary and hit by Article 14 of the Constitution. Amit K. YADAV.-A retail outlet at Jaunpur Shahganj Main Road, District Jaunpur, Up, has been allotted to Amit Kumar Yadav on the ground of the applicant being an unemployed graduate from family whose elders have been active in public life and the public spiritedness has rendered the family without any regular source of income. The applicant was asked to -furnish the bio data when it was vaguely suggested by one of the officers. The reason seems to be that a Member of Parliament was pressing for expediting the matter. From the material now placed, on record it appears that when the application was made and decision taken to make the allotment under discretionary quota the applicant was hardly 16 years old. It further appears that at the time when it was decided to make the allotment his father was a Member of Parliament. In fact, the Member of Parliament who was pressing for the matter being expedited was none other than the father of the applicant. Like other cases in this case too no verification was done though admittedly the applicant was not a graduate when decision was taken to make the allotment. The note of the Minister as also that of his Private Secretary states that he is an "unemployed graduate" the applicant seems to have passed the High School only in the year 1992. It is a case of total non-application of mind and another case of clear favouritism and we have no hesitation in directing cancellation of this allotment. Vinod K. UPADHYAY/M. P. MISHRA.-- Vinod Kumar Upadhyay and Mahendra Pratap Mishra have been allotted a retail outlet in partnership at Sultanpur, Up, on the ground that the applicants are educated unemployed with large families with keen interest in social work and have no regular source of income. Vinod Kumar Upadhyay is stated to be Block Pramukh of Congress Party. There is hardly any justification on record to make the allotment. We may note that Mahendra Pratap Mishra seems to be an M.Sc. The age given in his bio data is 22 years. It appears that when Vinod Kumar Upadhyay applied his age was 19 years, his date of birth being 21st March 1975. The allotment cannot be sustained. Ram Harsh SINGH--A retail outlet at Amethi, Sultanpur District, U.P., has been allotted to Rani Harsh Singh. The ground of allotment is almost similar to the one noticed for making allotment in favor of Vinod Kumar Upadhyay and Mahendra Pratap Singh. Similar type of note was made on the same day. The application and the bio data of this applicant and the proceedings thereon also seems to be similar. It further appears that the application was written by the same person. Counsel for this applicant admitted that his client is now a Congress (I) MLA. That by itself may not be objectionable but the manner in which the allotment was made speaks for itself. Ram Sewak DHOBIA.-Ram Sewak Dhobi, an ex-MLA has been allotted a retail outlet at Musafir Khana, District Sultanpur, Up, on the ground of the

applicant being an old man who has fought for cause of down trodden from the Harijan family and is facing extreme hardship to maintain himself and family. The decision to make the allotment under discretionary quota seems to have been made earlier than even the date of application. Hardly any verification was done. The site was changed on the application. of the applicant which again has been done, it appears, without any verification. This application again seems to be stereotype as the two proceeding applications. The allotment cannot be sustained. Matlub KHAN.- A retail outlet Inhauna-Hydergarh, Distt. Rae Bareilly, Up, has been allotted to Matlab Khan on the ground that the applicant is an educated unemployed belonging to a minority community with no source of income to support large family. The only ground stated by applicant in the application is that his entire family members are soldiers of Congress Party and on allotment being made out of quota for unemployed persons the entire family will remain grateful to the Minister for all times. There is hardly any justification on the file to make the allotment which seems to have been made for extraneous reason of political affinity. Rajinder K. YADAV- Rajinder Kumar Yadav has been allotted a retail outlet at National Highway Lucknow-Varanasi Road, Up, on the same ground as the previous allottee. No. valid ground for exercise of discretion in favor of the applicant is available on record. The discretion seems to have been exercised in his favor for the extraneous political reasons. The applicant is son of ex-MLA who, we were told, is now the elected member of Up Congress Committee. T. S. ANITHA--Smt. T.S. Anitha has been allotted a retail outlet at Bangalore city on the ground that the applicant is an engineering graduate (Computers) and has not been able to get a suitable job. The particulars given in the application are utterly vague. It does not state when she obtained degree in computer Engineering and what efforts were made to get employment. It was stated in the application that the applicant has got all necessary infrastructure and facilities to establish the Petrol Pump in the Bangalore city. This reason is entirely irrelevant, in any case there may be many more who may have such infrastructure and facilities. No verification was done. The discretion seems to have been exercised in her favor because of the applicant's close relationship with Shri H. D. Deve Gowda. The note dated 23rd December, 1994 was put up to the Minister by his Private Secretary and it was thereafter the decision was taken that the case deserves sympathetic consideration. It is not disputed that when the decision was taken to make the allotment in her favor Gowda, her father-in-law, was the Chief Minister of Karnataka. To our mind it is a clear case of favouritism on account of extraneous consideration. The allotment of this nature smacks outright malafides. In the reply dated 7th May, 1997 filed before us the allottee states that despite efforts she could not get an employment. Conveniently the date of graduation and the particulars of the efforts and when such efforts were made have not been mentioned in the reply. Further, in this and many such cases we find one similarity, namely, the absence of age. Even in the affidavit filed before us during hearing we were informed that she was about 25 years of age when application was made.. We also find it difficult to accept the submission that there is no impropriety in the letter of

recommendation given by Deve Gowda in favor of the daughter-in-law since he would have given I such a letter for any other unemployed graduate as well. This submission is only stated to be rejected. This allotment shows the extent to which one can go to promote self cause. The further contention that she had taken a loan of Rs. 35 lakhs from the bank for establishing the petrol pump is again wholly irrelevant for the purposes of considering whether the exercise of discretion was on just and valid grounds or was based on extraneous grounds. We have no hesitation in directing the cancellation of the allotment.

Kiran Singh And Vinay KUMAR.- The validity of the allotment of a retail outlet made in favor of Ms. Kiran Singh and Vinay Kumar need not be gone into since Ms. Kiran Singh has written a letter withdrawing from the dealership and neither any reply has been received from Vinay Kumar nor anyone appeared in response to the show cause notice. From the communication sent by Ms. Kiran Singh, it appears, that the petrol pump is not operational. This allotment is, Therefore, directed to be cancelled.

Prem Kumari DEVI- A retail outlet at Sitapur-Lucknow Road, UP, has been allotted to Smt. Prem Kumari Devi on the ground that the applicant is the wife of a social worker with a large family and is unable to support the family within her husband's meagre income. This allotment is also no better than the various other allotment noticed hereinafter which seems to have been made for political considerations without verifying the facts. It appears that the main ground of exercise of discretion was that her husband was a party functionary being Block Pramukh of the Congress Party.

P. R. DESHPANDE.- A retail outlet has been sanctioned in favor of Prasad Raghunath Deshpande at Buthrametti on Belgaum Kolhapur Road, Kamataka, on the ground that the applicant is a young educated unemployed person who has worked for several social campaigns and is genuinely interested in being self employed and serving the people of his area. The allotment, was made on the undated application of the applicant who, inter alia, states that his father has been an important political and social worker who had worked for the upliftment of the poor and underprivileged. No verification was conducted though the application says that the applicant is an educated unemployed person. There is nothing on record retarding either the educational qualifications or the efforts made by the applicant to obtain employment or even about the age of the applicant. Despite our query counsel for the applicant could not tell us as to particulars of the father of his vocation in life and source of income. We find no ground on record to exercise discretion in favor of this applicant.

O. P. SINGH. S. B. Singh And Rana NASREEN- An Lpg distributorship at Ram Ganj, District Sultanpur, UP. has been allotted in partnership to Om Prakash Singh and Sham Bahadur Sinab on the ground that the applicants are educated unemployed and social workers and have not been able to get any suitable employment and are without any regular source of income. The record does not show any valid ground to exercise discretion in favor of the applicant. No verification was done. We may note that various allotment orders asking have been given for retail outlets and Lpg distributorship in Sultanpuri and Raj Bareilly district on almost identical applications without any verification in the month of December. 1994. Another such allotment is of Lpg distributorship at

Sultanpur in favor of Smt. Rana Nasreen also on the ground that she is an educated unemployed law social worker who has been trying to earn livelihood through a medical shop and the returns from the venture are inadequate to sustain the business as also the family. Her husband seems to be a Block Pramukh of Bhadiya, Sultanpur, since 1983 and also general Secretary of District Congress Committee and the applicant and her husband are stated to have joined the Congress influenced by Panchayat Raj policies of Sh. Rajiv Gandhi as they claim in their bio data. It seems that the main reason for exerting discretion in favor of the applicant is the political background and functioning of the husband and wife. In our view, the allotment is clearly on account of extraneous considerations. Shanti Devi OJHA.-Smt. Shanti Devi Ojha, resident of 13. Teen Murti Lane, New Delhi, has been allottee an Lpg distributorship at Partap Garh, Up, on the ground of the applicant being a lady with three children whose husband is a Journalist and social worker without regular employment. From her affidavit it appears that she is living in the Servant Quarters of 13, Teen Murti Lane, New Delhi. Her husband is an employee of All India Congress Committee and she also belongs to the constituency of the Minister which seems to be the main reason for exercise of distribution in her favour. Brijendra KUMAR- An SKO-LDO dealership at District Sultanpur, Up, has been .allotted again in December. 1994 in favor of Brijendra Kumar on the ground is in other cases of the applicant being unemployed graduate from a family active in welfare activities of the in welfare activities of the area. The allotment is no better than the others already noticed above. Lila DEVI. The allotment in favor of Notice No. 50 Smt. Lila Devi has already been cancelled. The case of Makhanlal Shankai-lal Gaund has since been adjourned since die in view of the pendency of an earlier writ petition in another High Court. The cases of Prof. Rita Verma, T.N. Dhar, Interact Society for Spastic and Handicap and Gopal Prasad Sharma, Notices No. 9. Ii, 40 and 43 respectively are adjourned for the time being to be taken lip later with cases of other allottees to whom notices have still to issue.

(20) Except these 4, all other allotments for the allottees covered for the period under consideration arc hereby canceled. Category "C" Allotments made from 1st April 1995 onwards

(21) As already noticed the Supreme court has laid down guidelines for allotments to be made made under the discretionary quota and the procedure to be followed while considering those applications. The adherence to the procedure laid down by the Supreme Court would avoid to a great extent arbitrariness keeping in the matter of such discretionary allotments. The Supreme Court has observed that to ensure the exercise of discretion in making such allotments in conformity with the rule of law by excluding the likelihood or arbitrariness and minimise the area of discretion by regulating its exercise in accordance with the settled norms and guidelines the norms were being indicated which would govern all future allotments. The cases of allotments from 1st April, 1995 will also have to be considered in the light of the Supreme Court decision.

(22) Regarding the procedure to be followed for discretionary allotments, the Supreme Court has observed:- (i) Candidates will submit a proper application giving their complete bio data indicating the name of spouse /father. occupation. permanent address, annual income for the preceding year in respect of self, spouse and parents from all sources etc., enclosing documentary evidence wherever necessary in support of their request and an affidavit verifying the given facts, where allotments are sought on partnership basis, each partner will furnish the above information individually. (ii) Applications will be processed by the office in the light of the eligibility criteria and submitted through established channel for the orders of the Minister. The Hon"ble Minister must personally decide each case, and the other should be a speaking order. An unsuccessful applicant in the same category if he applies for it. shall be supplied a copy of that order. (iii) Necessary verification regarding caste, multiple norms, income, etc. in respect of successful candidates will be done before issuing the Letter of Intent to the allottee. (iv) If the information furnished by a candidate is subsequently found to be wrong/forged, allotment made on this basis will be cancelled."

(23) In almost all the cases which we would presently notice there has been compliance only by complete breach of what the Supreme Court stated. B. S. KADAM.--An Lpg distributorship at Goa has been allotted in a favor of Bhushan S.Kadam on the ground of the applicant being an educated unemployed youth without any regular source of income causing extreme hardship to the family. Again, it is an undated application. The file does not show how it reached the Minister. No verification seems to have been done. None examines it in the Ministry. The particulars as required in the Guideline No. 1 above were not furnished. There is hardly any processing before the matter was put up to the Minister. There is vital discrepancy in the bio data furnished along with the application and the bio data that was furnished after the decision had been taken by the Minister to make the discretionary allotment in favor of the applicant. The discrepancy is in the annual income. In the undated application on which the decision had been taken to make the allotment the annual income was stated to be Rs. 30,000 whereas in the bio data sent after allotment the annual income is shown as Rs. 10,400. instead of asking the applicant to clarify the discrepancy the later income was accepted as correct on the ground that the later income had been declared on oath. Further, it does not appear that on receipt of bio data pursuant to allotment the matter was put up again to the Minister. In our view, the decision of the Supreme Court cannot be interpreted to mean that the file, would be put up before the Minister for exercise of discretion without any verification or examination by the Ministry. It would be putting the cart before the horse by first taking a decision to make allotment under discretionary quota and to find out later the particulars required to be given by the applicant as per the guidelines laid down by the Supreme Court. Geeta KANOLIA.-Smt. Geeta Kanodia has been allotted an Lpg distributorship at Ahmedabad on the ground that the applicant is a scheduled caste lady with large family and has no regular source of livelihood. The application has the recommendation of Maheshkumar

Kanodia, a Member of Parliament who is the brother of Geeta Kanodia's husband. Here too, there was no examination or processing by the Ministry before the matter was put up to the Minister. The bio-data later asked and filed by her shows her age to be 22 years. In the affidavit filed by the applicant it is stated that her annual income from all sources is less than R.S. 50,000. In the bio data the annual income is shown as Rs. 27,000 p. a.s. Here too, all this is done after the decision had been taken. The matter is never put up to the Minister again. The note of the Minister says that no regular source of livelihood whereas the income given by the applicant is as noticed in her application and affidavit, It is unfortunate that even after Supreme Court decision there has not been substantial difference in the matter of examination either by the Ministry or by the Minister except that a half hearted attempt was made to show as if Supreme Court guidelines have been followed. In substance ,however, the approach remained a lost the same as was before apex court laid down guidelines. K.ANEESA.-An Lpg distributorship at Kerala has been allotted to Mrs. K Aneest on the ground that she is unemployed muslim lady who has not been able to obtain employment for last 10years. It has the recommendation of a Member of Parliament .It may be clarified that parse we are not dealing anything against the applicants on account of such recommendations. It may, however ,be noticed that as per the Minister she has not been able to obtain suitable employment for last 10 years though her age when the application was made as per the affidavit filed by her was only 24 years. Her income as per the bio-data is Rs. 36,000 P.m. Tulsi DEVI--Smt. Tulsi Devi has been granted an Lpg distributorship at Andhra Pradesh on the ground of the applicant being a freedom fighter facing, extreme hardship in her old age and unable to support the family. Regarding the processing of the application by the Ministry and verification, what is stated above is applicable here too. She is member of Telephone Advisory Committee, Hyderabad ,Zonal Railway Users Consultation Committee, Programme Advisory Committee, Ddk Hyderabad, central Board of Film Certificate on, Hyderabad and Mineral Advisory Council, New delhi. There is also discrepancy as to income as given in bio data Along with the application and the one furnished later. When asked we were not told as to what is the vocation of her husband G. Papa Rao. The allotment has been done in a routine manner. K. Rajvanshi DEVI:--An Lpg distributorship at Andhra Pradesh has been allotted to Smt. K. Raj vanshi Devi on the ground that the applicant is an unemployed graduate before to scheduled caste community and is working for upliftment of poor and has no source of livelihood .Her bio data shows that she is an MBBS. Her husband Dr. Ravi-Malik was a Member of parliament belonging to Congress Party. At the time of allotment he was also an MBBS. doctor. Regarding the rest what We have stated above is equally applicable in her Case too. At this juncture can only express our anguish for the manner in which discretion was exercised in such like cases. The argument that allottee has spent lakhs of rupees. Rs. 8 lakhs in this case. for setting up the distributorship and, Therefore the same be not cancelled is misconceived. There are no equities in favor of the applicant. Satwinder KUMAR.-A retail outlet -at Delhi" has been allotted to Satwinder

Kumar on the ground that the applicant is an educated youth without any proper employment .It series that there was no verification whatsoever before the allotment Was made. The applicant, it appears from the material on record, was employed as a 3105 HCD/97-5. Supervision with a Petrol pump on consolidated salary of Rs. 1600 per month as per photostat copy of the salary certificate on record. His lather was a senior officer working with the Delhi Government. From the address on record it is evident that the applicant was living with his father in the Government premises. His father retired as Labour Commissioner. After the decision had been taken by the Minister to make allotment, the file was sent to the Ministry and in spite of the reference of the Supreme Court's directions in the note to the effect that the applicant is required to submit a proper application giving bio data indicating the name of the spouse/father, occupation, permanent address, annual income for preceding year in respect of self, spouse and parents from all sources, etc. enclosing documentary evidence wherever necessary and an affidavit verifying the given facts, it seems to have been glossed over by a note of a senior officer simply Suiting that presumably this is a case of extreme hardship deserving sympathetic consideration on compassionate grounds, Please issue". This shows the manner in which the guidelines laid by the Supreme Court were followed. Who does not know the premium these Petrol Pumps carried in the year 1995 in city like Delhi? It appears that the Petrol Pump is not yet operational. The allotment deserves to be cancelled. Praveen AZAD.--A retail outlet has been allotted to Parveen Azad at Lucknow-Kanpur Road, Lucknow, U.P., on the ground that the applicant is an educated unemployed with three children and is unable to sustain herself and family. The brother of the applicant, now it is admitted, has Lpg agency at Awata, District. Bariely, U.P. The applicant, however, claims now that she was married in 1972 and is living since then at Lucknow with her husband separately and independently and has no financial support from father's family. Again the application on which allotment was made is undated. No verification was done. The file was also not processed by the Ministry in terms of the guidelines of the Supreme Court. We may also note that the applicant after the decision had been taken had filed 4 affidavits and it was only in the 4th affidavit it was stated that the brother was holding Lpg distributorship. It was not disputed before us that another brother of the applicant was candidate of Congress Party fur Lok Sabha from State of U.P Like almost a11 other cases here too the Minister approved allotment before filing of any proper affidavit and verification. On being pointed out by the officers in their notes, that the case is not covered under the seven categories laid down by the Supreme -Court, the notes were brushed aside staling that it is presumed that the allotment has been made on account of the applicant being physically handicapped and educated unemployed lady and Therefore, the sanction letter should be issued .The first note of the Ministry does not mention that discretion is. being exercised in her favor on account of alleged physical disability. It seems that a deliberate attempt was made to circumvent the Supreme Court

(24) Direction with a view to make allotment in favor of this applicant. he

allotment deserves to be cancelled. M. K. TIWARI.-A. retail outlet at Bangla Bazar, Ashiana Colony, U.P., has been allotted in favor of Mr, Mukesh Kumar Tiwari on the ground that the applicant is an educated unemployed youth who has been unsuccessful in his efforts to obtain gainful employment and the family is facing difficult financial circumstances. The site was later on charged to Lucknow district on request of the applicant. The original decision was taken on an undated application of the applicant who it appears belongs to Sultanpur. The age of the applicant when the application was made was 22 years. His income as per the bio data later submitted was Rs. 35,000 p.a. His father is an advocate and member of Oil Selection Board, U.P. He was also an ex-MLA from the constituency which fell within the Parliamentary constituency of the Minister. Further it appears that when allotment was ordered by the Minister the sanction for allotment could not be issued because quota available for the year 1994-95 for discretionary allotment had exhausted and for the quota in relation to discretionary allotments for the year from 1st April, 1995 the Supreme Court had laid down the guidelines. By telegraphic instruction dated 26th July, 1995 the applicant was asked to furnish bio data etc. since he had not furnished the same pursuant to the letter of the Ministry dated 12th July, 1995. Ms. Indrani BAI- Ms.indrani Bai has been allotted a retail outlet at Gt Road, Allahabad on the ground of the applicant being an old lady with 50% permanent disability and without any regular source of income. The age of the applicant as per the handicap certificate enclosed to the application is 78 years. It is not clear whether the alleged disability was on account of the old age or otherwise and since when the disability had occurred. The annual income for the preceding year of the applicant is stated to be Rs. 36.000 from agricultural land. On being asked counsel could not inform the court about the extent of the land. It was also not explained to use as to with whom the applicant was living at Eligin Road. Allahabad. It appears that she is the wife of Sh. S. P. Tiwari. There is a slip in the file of the Ministry which is on the letterhead of Congress leader Promod Tiwari mentioning Indram C/o Promod Tiwari. It was not explained nor her relationship with Promod Tiwari was explained. We have no doubt that if the Ministry had followed the Supreme Court guidelines these questions would not have remained unanswered. The allotment cannot be sustained. Acharya, Ganpat RAI.-Acharva Ganpat Rai has been allotted retail outlet at Delhi on the ground of the applicant being an old man and a priest by profession and has no regular source of livelihood and is unable to sustain the family. The applicant inter alia, states that his father has been close associate of Nehru family and was regarded as "Purohit" and in the same way the applicant has been associated with late Smt. Indira Gandhi, Late Sh. Sanjay Gandhi, Late Sh Rajiv Gandhi, Mrs. Sonia Gandhi and they have been getting religious blessings from him on the family functions. The applicant further says that he has become old and does not have any means to earn and feed the facility members. The Minister was required to examine the matter in the light of the guidelines issued by the Supreme Court. Nothing of the kind was done. It seems that without any verification about the income, etc. of the applicant it was decided to allot petrol pump to him. The reasons are not far

to seek. The applicant's age at the time of the application was 75 years. Regarding income it is stated that because of old age and ill health his monthly income remains from Rs. 1,000 to Rs. 1,500 approximately by "Purohitai". The petrol pump is still not operational. Rupesh GUPTA.--The petrol pump ordered to be allotted to Rupesh Gupta at Ludhiana, Punjab, is also not operational. Rupesh Gupta is a young Chartered Accountant and there is hardly any justification on record to exercise discretion in his favor on the stated ground of unemployed graduate. The record does not even contain the nature of the business of the father of the applicant. The allotment cannot be sustained. Likewise, the allotment of petrol pump at Delhi made in favor of Swarna Rani in partnership with Romi Sahni, which again is non-operational until this stage, cannot be sustained. The applicants, it appears, own a house; in Panchsheel and the petrol pump has been ordered, to be, allotted under discretionary quota on the ground of the applicant being an old lady, who has been deserted by her sons and is living with her daughter. N. K. SINGH.-A petrol pump in district Sultanpur, U.P., has been allotted in routine without any examination in favor of Nagender Kumar Singh. It appears that his father, is a renewed eye specialist and has a Nursing Home with the additional qualifications of being a Member of Uttar Pradesh Congress (I) Committee at the relevant time. The allotment in his favor was made on the ground that the applicant is unemployed graduate and has not been able to obtain gainful employment, without any verification of facts and without even finding out as to when he graduated, what efforts were made to obtain employment and what was the age of the applicant, Kant Lal BMURTA- A retail outlet at District Jhabua, Madhya Pradesh has been allotted to Sh. Kanti Lal Bhuria on the ground that the allotment made in favor of his wife by the oil Selection Board had been cancelled and the applicant had made investment and has been deriving of the regular source of income. How can this be a ground for exercise of discretion? The only other thing we need not in the allotment of this nature is that applicant was a Cabinet Minister in MP government at the time of exercise of discretion in his favour. The discretion has been exercised in favor of the applicant for extraneous considerations. Akshay Pratap Singh And Smt. Taranum - An Lpg distributorship has been allotted to a 25 year old youth in District Rai Bareilly, U.P., on the ground of the applicant being a youth belonging to a poor family and stating that his financial condition prevented him from completing education as a consequence of which he has not been able to get gainful employment. The applicant is a resident of Sultanpur. He has claimed before us in the affidavit that he worked most actively during Bhopal Gas tragedy. It appears that the applicant was probably a young boy of 12 years of age at the time of the said tragedy. No verification or processing was done and the allotment was ordered in routine despite Supreme Court guidelines. The same has to be the fate of Lpg distributorship at Lucknow allotted to Smt. Taranum on the ground that the applicant is a young lady who had to divorce her husband due to the unbearable harassment by her in-laws. The allotment seems to have been made in routine. C.H.MANU.-The main reason for grant of petrol pump at Bangalore in favor of C. H. Manu is that his father was a Member of Parliament besides being

an advocate. Shanti Devi Sonkar, Devi Sonkar has been allotted a retail outlet at Rewa Road, Dist. Mirzapur, UP. It was not disputed that she belongs to the family of Raj Nath Sonkar Shastri a Member of Parliament. Counsel, however, could not explain what exactly washer relationship with Raj Nath Sonkar Shastri. It was not disputed that her son Anil had also been allotted a retail outlet. According to the applicant she is sister of Raj Nath Sonkar Shastri whose wife has been allotted Lpg license and son and daughter retail outlet. The allotment in favor of Anil was not denied by the counsel for the applicant though allotment made in favor of wife and daughter was denied. Be that as it may, this allotment is no better than the other allotments considered above. We may note that the petrol pump is not yet operational. Saroj RANI.-The main Qualification for allotment of retail outlet in favor of Smt.Saroj Rani at Balrampur-Tulsipur Road, UP. is that she is the wife of a Member of Parliament. In the present proceedings and also at the time of exercise of discretion in her favor she disclosed her annual income as Rs. 88,000. Atul MEHROTRA.--Atul Mehrotra who has been allotted a retail outlet at District Ghaziabad, U.P. is stated to be in private service at the. annual income of Rs. 36,000. His counsel could not give either the designation of the applicant or the name of the company in which he may be working. The ground given is that the applicant is grand-son of Parashuram Mehrotra who was in the forefront of freedom struggle. According to the applicant his father was a made union leader. It was not disputed that he was living in a government accommodation but counsel could not explain that on what account the government accommodation had been allotted to him. The petrol pump is, however, non operational. Deepak Sikka And Kiran SA.LUJA.-The Joint allotment of retail outlet at Delhi has made in favor of Deepak Sikka and Smt. Kiran Saluja on the ground that the applicant is a patient of chronic Schizophrenia for past two decades and is dependent on his aged father for survival. We find, no valid justification on record for exercise of discretion. The petrol pump is non-operational. The husband of Mrs. Kiran Saluja is stated to be a social worker. Mrs. Kiran Saluja is the sister of Deepak Sikka. There is nothing to show as to the nature of profession or business of husband of Mrs. Kiran Saluja. The sister is living at Faridabad and brother with his father at Delhi. A. K. JJNDAL.-The case of allotment of retail outlet in favor of Anup Kumar Jindal at Panchkula, Haryana, is on the ground of the applicant being an unemployed youth who has been threatened by terrorists for supporting the nationalist cause and has no regular source of livelihood, is no better. None cared to find out the veracity of his claim of annual income allegedly being Rs. 40,000 and the source thereof. It seems that the allottees were handpicked for reasons best known to the Minister. The petrol pump is nonoperational .Amarjeet KAUR.-The main reason for exercise of discretion in favor of Smt. Amarjeet Kaur for retail outlet at Ludhiana-Chandigarh Highway seems to be that her husband is a Member of Parliament. Otherwise there is hardly any justification for allotment. M. VINAY.-M. Vinal has been allotted a retail outlet at Hyderabad on the ground of the applicant being educated unemployed without any source of income and belonging to scheduled caste. It is an undated application. It gives no particulars. Even age of the

applicant is not given. Counsel could not give age even when asked. He also could not give the educational Qualifications or as to what was the vocation of the father of the applicant. Jatinder Kaur & SATYA. DEVI- Like the allotment made in favor of Smt. Amarjeet Kaur, the main reason for making allotment of retail outlet at Chandigarh in favor of Smt. Jatinder Kaur seems to be the factum of her husband being a Member of Parliament belonging to same political party as the Minister without anything else of substance being on record. The same is the position of allotment in favor of Smt. Satya Devi at Mandi-Shimla Road. District Solan, Himachal Pradesh, who again is the wife of a Member of Parliament belonging to the same political party as the Minister. Madan MOHAN-A retail cutlet at Delhi has been allotted to Madan Mohan R/o Jangpura, Bhogal, New Delhi. The petrol pump is non-operational. The main reason seems to be the factum" of father being an officer in Ministry of Law at the relevant time. The nothings made in the file speak for themselves. Manohar LAL.-The allotment of retail outlet at Delhi in favor of Manohar Lal again demonstration the casual approach by the Minister seven after the Supreme Court guidelines for the reasons not difficult to decipher. The applicant claims to have retired from the Government undertaking long time back. Earlier he had transport business in which he claims to have suffered losses. The petrol pump is nonoperational .Kushminder KAUR--A retail outlet at Chandigarh has been allotted in favor of Smt. Kushminder Kaur. She is resident of a house in Sector 4. Chandigarh. It is Join-noil knowledge that the said Sector has; huge houses. She was a partner of Prakash Cinema at Amritsar which is stated to have been burnt. That may be so, but it is evident that the applicant is a wealthy lady and there is hardly any justification for exercise of discretion. As is evident from the guidelines laid down by the Supreme Court the discretionary quota is required to be exercised in favor of those who are less privileged and may not have enough financial resources. The petrol pump is non-operational. R.K.S.SENGAR.-A retail outlet at Delhi has been allotted in favor of Shri R. K. S. Sengar. who it seems, owns a house at Safdarjung Development Area in which he lives. There is hardly any material on record to justify the allotment. Nothing more is required to be stated in this nature of allotment. Here too, the petrol pump is non-operational. Shashi PRABHASHUKLA.--A retail outlet on National Highway Phutahia Chauraha, Teh. & Distt. Basti, Up, has been allotted to Smt. Shashi Prabha Shukla on her undated application on the ground that the applicant is unemployed graduate with keen interest in activities relating to rural development and welfare of women and has no regular source of livelihood. From the application it appears that the applicant is resident of District Sultanpur. UP. The allotment in her favor has also been made in a casual manner as is the case a respect of allotments in other cases noticed above. We were told by the learned counsel for the applicant that the applicant is President of Youth Congress. Be that as it may, we feel that the allot:icnt in favor of this applicant is no better than other allotments noticed by us. Tins petrol pump is also non-operational. P. C. GANDHI.-An Lpg distributorship at Hydrabad, Andhra Pradesh, has been allotted to P. C. Gandhi on the ground that the applicant is an aged social worker with large family and no

regular source of livelihood. In his undated application the applicant states that he is employed in a private company and earning very limited income. Before allotment neither processing of the application was done by the Ministry nor the vague claim of the applicant was got verified. Incidentally, the applicant, as admitted by his counsel, is elder brother of Nemi Chand Jain @ Chandraswamy. There is also discrepancies in the annual income in the two bio-datas on record. The record does not show any justification for exercise of discretion in favor of the applicant.

Devender MISHRA.- Another Lpg distributorship at Barauni, district Begusarai, Bihar, has been allotted to Devender Mishra in partnership with his brothers Gangesh Mishra and Manoj Kumar Mishra on the ground that the applicant is an unemployed youth belonging to family of agriculturalists. This allotment on the alleged ground of extreme hardship is no better than others. We may also note that almost all allotments made after the Supreme Court guidelines dated 31st March, 1995, were made under category (vii) relating to cases of extreme hardship in most casual manner, without proper application of mind and we have no difficulty in presuming that extraneous considerations weighed in grant of discretion by the Minister in favor of each of these applicants whose allotments have been directed to be cancelled on examination of their files.

P.C. SONI.-An Lpg distributorship at Delhi has been allotted to J. C. Soni R/o. Babar Palace, Bengali Market, New Delhi, on the ground that the applicant is an old man who met with a serious accident as a result of which his movement is restricted. Like many other cases here too the application is undated. The applicant had stated in the application that he retired from government service after having completed 38 years of blemish less service and had the rare privilege of working with Pt. Jawaharlal Nehru, Sh. Lal Bahadur Shastri, Smt. Indira Gandhi and Sh. Rajiv Gandhi in their personal sections. Regarding restricted movement the applicant has stated that he met with a road accident about 7 months ago resulting in fracture of his left leg and now he was just in a position to walk with the help of crutches which impairs his normal movements and it has become difficult for him to carry on his daily routine. In the application no income is mentioned. In the bio-data filed later the income is stated to be Rs. 40,000.p.a. This allotment is also no better than others.

B.MADHAVARAO&R.VENKATESHWARRAO.-An LPG distributorship at Hyderabad has been allotted on an undated application of B. Madhva Rao on the ground that he is an agriculturist who has been forced to abandon his agricultural land due to threat posed by Naxalites and had to move to Hanarnkonda and is facing extreme B hardship in supporting his family. The ground in the note of the Minister has been picked up from the application of Rao. No verification seems to have been done about the facts alleged either before exercise of discretion or even after that. It is also not possible say as to when the applicant allegedly moved to Hanarnkonda here is also discrepancy in the annual income given in two bio-datas on record. On similar grounds Lpg distributorship at Jagipet Town Medak Dist. Andhra Pradesh, was slotted to R. Venkaleshwar Rao. Both the allotments have to meet the same fate as other such allotments erected to be cancelled by us.

D. P. BAJPAI.-A Sko dealership at Barabanki district, U.P has

been allotted to Devi Prasad Bajpai in partnership with Ajay Bajpai on the ground that the applicants are unemployed youth without any source of livelihood. The allotment in their favor again has been made in routine without any verification. That the two applicants we are told, are uncle and nephew aged 55 and 25 years respectively. The ground given in the note is that "applicants are unemployed youths. -

(25) All the allotments noticed hereinbefore decision in respect of which was taken after the Supreme Court laid down guidelines dated 31st March, 1995 are directed to be cancelled, the same being violative of the Supreme Court guidelines and also based on extraneous considerations.

(26) The cases of Mrs. Kaushal Sood, Brijeshwar Singh Vadvinder Singh Pirzada, Hem Raj, N. Venkataramanappa, Ms. Sarada Ajarananda, Mrs. Mukul Chowdhary and Chander Kant Sharma are adjourned for the time being, to be taken up later, with the cases of other allottees to whom notices have still to issue.

(27) Learned counsel appearing for some of the allottees strenuously contended that the allotments made in favor of their clients be not directed to be cancelled since they have made huge investments and they would thus suffer irreparable loss and injury in case the allotments are cancelled at this stage. We are unable to accept this contention. Those who seek favor and are granted favor cannot be heard to say that on grant of favor they have changed their position by making huge investments. Such allottees have to run the risk of cancellation when the allotments are questioned on the ground of arbitrariness or favouritism. We find no equities in 3105 HCD/97--6. in their favour. They should feel satisfied from what they have earned in the meanwhile. Regarding the investments made by the allottees on land and superstructure etc. as far as possible, we have kept in view this aspect while issuing directions as was directed by the Supreme Court while cancelling 15 similar allotments. In the directions we have incorporated that the value of these investments as determined by the Oil Corporations shall be paid to such allottees. Regarding structures on land which may have been allotted by State or Oil Company or any other authority, the user of the said land has to be transferred in the name of the highest bidder and the allottee whose allotment has been cancelled paid his cost of the construction, if incurred, as determined by the Corporation.

(28) We now issue the following directions.-(1) Those who have commissioned the Petrol Pumps/LPG/SKO, Distributorship and are running the same shall stop operating the Petrol Pumps etc. as the case may be, with effect from 1st December 1997. The Government of India /concerned Oil Corporation shall take over the Petrol Pump premises or distributorship premises from these persons on 1st December 1997. The concerned Oil Corporation shall have the market value of the land (if it belongs to the allottee) and/or the construction thereon determined in a fair and just manner forthwith. (2) The right to run the Petrol Pumps and/or Distributorship taken over by the Government/Oil Corporation concerned shall be disposed of by way of public auction to be held, if feasible,

before 1st December 1997, so that as far as possible, the public may not suffer or the suffering is for minimal period. The original allottee may also participate in the auction. The Petrol Pump Distributorship shall be allotted to the highest bidder who shall run it on original terms and conditions. He shall have all the rights in respect of the land and construction thereon as the original allottee had on the date of auction, subject, however, to payments as determined by the Government/Oil Corporation/concerned authority being made by the highest bidder. Out of the auction money the value of the land and construction, if payable to the original allottee and as determined by the Oil Corporation shall be paid to the original allottee and the remaining amount remitted to Prime Minister's Relief Fund. If the successful bidder is the original allottee he shall pay the difference between the auction money and the value of the land and construction as determined by the Oil Corporation. (3) In case any of the allottee whose allotment has been ordered to be cancelled and who was running business from land owned by him and he. is unwilling to sell part with the land on which the Petrol Pump/Distributorship is being run, he shall intimate this fact to Secretary, Ministry of Petroleum within two weeks. In such a case the right to open Petrol Pump/Distributorship, as the case may be within the close proximity of the existing location, as may be determined by the Oil Corporation concerned, depending upon the facts and circumstances of each case and the need of the public, shall alone be auctioned with a stipulation that the highest bidder would arrange for the land/superstructure for running the Petrol Pump/Distributorship. In such an eventually, all connections hitherto with the distributor whose allotment has been cancelled shall be transferred to the establishment of the highest bidder. (4) The Ministry of Petroleum is directed to file compliance report by 15th December, 1997.

(29) The amount obtained from public auction and remitted to Prime Minister's Relief Fund shall be utilised for social welfare schemes including making payment to Flood victims or for any other similar purpose.

(30) To consider compliance report list this matter on 18th December 1997.