

(1981) 09 BOM CK 0077

In the Bombay High Court

Case No : Writ Petition No. 1165 of 1981

Padmakar Balkrishna Samant and Others

APPELLANT

Vs

The State of Maharashtra and Others

RESPONDENT

Date of Decision : 23-09-1981

Acts Referred:

Constitution of India, 1950 — Article 14, 226

Citation : AIR 1981 Bom 422

Hon'ble Judges : S.C. Pratap, J

Bench : Single Bench

Advocate : Ashok H. Desai, N.H. Seervai and D.N. Nanavati, for the Appellant; A.S. Bobade, General, S.P. Kanuga, Govt. Pleader, S.M. Shah, K.H. Bhabha, C.J. Sawant and L.K. Chatterjee, for the Respondent

Judgement

1. Questions of considerable public importance are raised in this public interest action initiated under Article 226 of the Constitution by three citizens, one of whom is a former member of the country's sovereign legislative body, the Parliament, the other two being former members of the Maharashtra State Legislature.

2. These questions have vital significance to the rule of law and the rights and obligations of the Executive enjoined to administer and govern according to the laws of the land and the Constitution of the country.

3. Though there are three respondents to this petition viz., (1) the State of Maharashtra, (2) the Chief Minister of Maharashtra and (3) the Union of India, this petition is directed mainly against the first two respondents, there being no dispute that respondent No. 3, Union of India, is a formal party.

4. Case is that the petitioner received numerous complaints from various citizens that cement -- an essential commodity -- was not at all available from rationing offices either for building or for repair work; that bona fide claims in that behalf were completely side-tracked: that persons who secured recommendations of

the Chief Minister or other Ministers, M. L. As. and Officers were getting cement in large quantities in breach of the normal procedure; that the petitioners themselves who had applied for only five bags of cement each had also not got the same.

5. Submission is that the present system of distribution of cement in the State of Maharashtra was in complete violation of the procedure established by law, viz., the Maharashtra Cement (Licensing and Control) Order, 1973 read with Government Resolution dated 12th September, 1978 set out in extenso in the petition, the very preamble to this resolution being:

"In view of the frequent complaint regarding the non-availability and black marketing of cement, the Government has been considering the question of re-organisation of the system of distribution of cement in the State with a view to ensuring equitable distribution of cement at fixed prices. After examining the matter in details, the Government is pleased to direct that the system of distribution of cement in the State from the 1st October, 1978 should be as indicated in this Government Resolution."

6. Averment then is that though it was by notice in Mantralaya notified that no applications for cement, would be received by Mantralaya as cement was not being distributed or allotted by the 1st or the 2nd respondent the several allotment orders annexed to the petition show that cement was in fact allotted directly from Mantralaya, thus rendering false the notice supra.

7. Averments thereafter are:

(a) The Chief Minister has been allotting large quantities of cement in an arbitrary, capricious, unreasonable and unjust manner to big builders/contractors/industrialists by collecting large sums of money for certain Trusts created by him and of which he is a Trustee.

(b) The Chief Minister falsely stated that he headed the said Trusts in his official capacity as Chief Minister of the State.

(c) The Chief Minister stated on the floor of the Legislative Assembly that to collect large funds for purposes as those of the said Trusts from persons getting the benefit of State services in one form or another was proper and to extract money by using the leverage of official position in Government for the benefit of specific parties is just, fair and proper.

(d) In May 1981, it was reported that Rizvi Builders of Bombay received 700 tonnes of cement from Chief Minister directly from Mantralaya. In the same month, Mr. Yusuf Patel received 350 tonnes of cement through Chief Minister directly from Mantralaya. Bombay Builders paid on 24th April, 1981 Rs. three lakhs and received cement on 24th June, 1981 and 1st July, 1981. Hiranandani Builders paid on 7th April, 1981 and 2nd June, 1981 rupees one lakh fifty thousand and received cement on 24th June, 1981 and 1st July, 1981. Makers Development Services Pvt. Ltd. paid on 1st July, 1981 rupees two lakhs and

received cement on 24th June. 1981.

8. Reference is also made to the disclosure by Shri Madhu Devlekar, a selling member of the State Legislature inter alia to the effect that--

(a) In "D" Zone (Bandra to Dahisar) 1,128 applications for cement for building and several thousands applications for cement for repairs were pending for want of cement.

(b) Out of 900 new applications in 1981, not one received any cement.

(c) Even out of the actually allocated quota, hardly 50% was received.

(d) The position in Zones "A", "C" and "E" was equally precarious.

(e) On the other hand, the Deputy Secretary, Food and Civil Supplies Department, allotted cement to a number of persons by number of orders directly from Mantralaya.

(f) By charging Rs. 40/- or more per bag of cement, the Chief Minister has in the process collected as donation to his various Trusts funds dose to rupees two crores.

Then follows the statement that though these disclosures were made public in July, 1981, neither the State Government nor the Chief Minister have contradicted or denied the same.

9. Further averments follow such as the action of the Chief Minister constitutes vast abuse of power and as if he were a private individual and in a manner which benefits a private party, in this case himself; the said action was ultra vires Article 14 of the Constitution; and the same was also mala fide and consequently illegal and void. Submission is:

" the method of allocation, distribution and allotment of cement being used by the 1st and 2nd respondents is directly responsible for the aggravation of the acute shortage of cement as well as for the existence of a flourishing blackmarket in cement. Grave prejudice is being caused to the petitioners and to the citizens of the State of Maharashtra as well as to the State itself since large scale projects such as the building of dams, canals, etc. are at a standstill due to lack of cement. It is imperative that the arbitrary, capricious, oppressive and illegal manner in which cement is being allocated, distributed and allotted by the respondents, especially by respondent No. 2 (the Chief Minister) should be stopped forthwith."

Appropriate writs, directions and orders are then prayed for.

10. The learned Advocate General appearing for the State vehemently and with his usual professional thoroughness opposed the admission of this petition and strenuously urged its dismissal in limine.

11. Contention first urged was that the allotment orders in question all related to

what was termed as ad hoc quota of cement allotted to the State Government by the Government of India. To the said quota, the State Government Resolution of September, 1978 had no application. It was, therefore, perfectly open to the State Government to allot and distribute the same in its own discretion unfettered by the scheme, system and method laid down in the said resolution. In support, reliance was placed on the following statements made in the affidavit in reply of Mr. Umesh Bhalchandra Tipnis, Deputy Secretary, Food and Civil Supplies Department, Government of Maharashtra:--

"(a) I say that the cement so received as a result of ad hoc allotment by the Government of India has rarely been governed by the distribution system as envisaged in the Government Resolution dated 12th September, 1978." (Para 8).

(b) "I say that whenever a quantity of cement becomes available as a result of ad hoc allotment by the Government of India, Government distributes the same to various parties who are in need of cement after considering the urgency of their requirement, their capacity and willingness to take delivery of the cement from outside the State of Maharashtra. The cement is distributed in its discretion by the Government after taking into consideration the above-mentioned factors." (Paragraph 10).

(c) "With regard to the further allegations of the petitioners based upon the same interview regarding allotment of 6,150 tonnes of cement to seven parties, I have to state that the said allotments are out of the quota of cement received by the State of Maharashtra from the Government of India on ad hoc basis. I say that it appears that about 140 users were allotted about 20,000 tonnes out of ad hoc allotments." (Para 13)

(d) "I say that the ad hoc allotments of cement are made by the Government of India in favour of the State of Maharashtra from time to time. I say that such cement is allotted by the Government in its own discretion to the consumers after taking into consideration the various factors hereinbefore mentioned." (Paragraph 15)

12. The said contention, supported as it was, by the extracted statements supra made on affidavit received, however, a severe blow when, in the course of hearing, the petitioners' learned counsel Mr. A. H. Desai produced in Court copy of the State Government (Food and Civil Supplies Department) Circular dated 2nd March, 1981 as also the State Government (same department) Circular dated 31st March, 1981. The genuineness of these two circulars was not in dispute. The circular of 2nd March, 1981 "reiterates" the "necessary guidelines" in the Government Resolution of September, 1978. The circular of 31st March, 1981 specifically states with reference to:

" allotment of cement to consumers directly by Government from ad hoc quota released by Government of India" (vide the very heading of the said circular) that --

- (a) no application for cement should be entertained directly by Government;
- (b) all applications for cement should be considered by the Local Regional Level/ City Level/ Tahsil Level Cement Distribution Committee in accordance with the guidelines issued by Government, vide its Circular dated 2nd March, 1981;
- (c) any application that would be received directly by Government in future will be referred to the concerned Collector/Controller of Rationing, Bombay, for suitable action; and
- (d) applications which have been received earlier by Government and still pending will also be sent back to the respective Collectors and Controller of Rationing, Bombay, for further necessary action.

13. The production of these two circulars in Court-appears to have come as a surprise also to the learned Advocate General who himself may not have been earlier aware thereof. After their production in Court, he made a statement to the effect that in the absence of direction to the contrary by the Central Government, the State Government Resolution of September, 1978 would apply also to ad hoc quotas after the State Government Circular of 31st March, 1981.

14. One is constrained to note the Deputy Secretary filing a solemn affidavit suppressing from this Court the said two Government circulars so very material and directly relevant to this petition and via such suppression attempting to mislead the Court. If the petitioners could produce these in Court, it is incredible that a Deputy Secretary attached to the very concerned Department of Food and Civil Supplies could be blissfully ignorant thereof. Indeed, one of these circulars (2nd March, 1981) is issued under the signature of this very Deputy Secretary. The said affidavit is an illustrious example of suppressio veri and suggestio falsi. It appears prima facie to be a deliberate attempt to deflect and defeat the course of justice and subvert the judicial and constitutional process. Such acts prejudice the due course of judicial proceedings. It is, indeed, a serious matter. As it is, discovery of truth is not always an easy Task. Such affidavits make it all the more difficult. Notice will have to go to the said Deputy Secretary to show cause why action should not be taken against him.

15. In further support of his contention that this petition should be summarily rejected, the learned Advocate General placed reliance upon a ruling in E.P. Royappa Vs. State of Tamil Nadu and Another, vide observations at page 586:

" We must not also overlook that the burden of establishing mala fides is very heavy on the person who alleges it. The allegations of mala fides are often more easily made than proved, and the very seriousness of such allegations demands proof of a high order of credibility."

These observations are binding on this Court. But what was the context in which and the stage at which these were made ? There, the charge of mala fides was by the former Chief Secretary against the Chief Minister and that also, to a substantial extent, was a matter of word against word. Again in that case, there

was already on record the affidavit of the Chief Minister himself. Indeed, even the Governor had filed affidavit. Still further, in that case, the Court was taken through

"..... a mass of documents, papers and official notings"

and ultimately on merits, the charge was found to be not established.

16. Now, what is the position here? There is no affidavit of the Chief Minister and even just the only five files briefly perused *ex facie* support the petitioners. Further and significantly enough, from at least one of these live files important document such as the very application for cement was according to the earlier statement of the State Government itself, originally missing. It was, however, produced yesterday evening. Moreover, the other files and the connected record have yet to be gone into, the instant being only a preliminary stage. Also significant is the fact that none of the several allotment orders in question is in dispute: There is no challenge thereto at all. The proper time to conclude whether the charge is established or not, in the light of the onus which in terms of the aforesaid ruling lies on the petitioners, would be the final hearing stage, not this preliminary admission stage. Suffice to note at this stage, certain pertinent observations in that very case;

(a) "But we cannot help mentioning that there are certain disturbing features which cause us anxiety."

(b) "The instances referred to by the petitioners, if true, constituted gross acts of mala administration."

17. The ruling next relied upon by the learned Advocate General was in *Tara Chand Khatri Vs. Municipal Corporation of Delhi and Others*, wherein at page 577 (Para 27) the following observations appear:--

"This brings us to the last contention raised by Mr. Ramamurthi that the writ petition should not have been dismissed by the High Court in limine in view of the fact that it contained allegations of mala fides against the respondents. We are unable to accept this contention. It has been held time and again by this Court that the High Court would be justified in refusing to carry on investigation into the allegations of mala fides if necessary particulars of the charge making out a *prima facie* case are not given in the writ petition. Keeping in view the well established rule that the burden of establishing mala fides lies very heavily on the person who alleges it and considering all the allegations made by the appellant in regard thereto, we do not think that they could be considered as sufficient to establish *malus animus*."

Now and in the light of this ruling, what is the position here? Firstly, if necessary particulars making out a *prima facie* case are not given, the High Court would be justified in rejecting the petition in limine. In the present petition, a number of particulars are given and what is more, these are, indeed, cogent particulars from State records. The same are also supported by cogent materials such as the

allotment orders, the Government Resolution and the Government circulars. Secondly, question would still be whether the allegations and particulars are sufficient to establish malus animus. On that question, as of today, there is no affidavit of respondent No. 2 and the affidavit of respondent No. 1 is highly unsatisfactory, vitiated as it is by suppression of material documents. A prima facie case is thus made out. The proper stage to decide whether that case is finally established would, however, and as earlier indicated, be the final hearing stage, not this preliminary stage when only a prima facie case is required to be made out.

18. In the context of the learned Advocate General's contentions, Mr. A. H. Desai, learned counsel for the petitioners, invited reference to the ruling in the State of Punjab Vs. Ramjilal and Others, wherein at page 1231 the Supreme Court observes thus:

"Counsel for the State of Punjab contended that the plea that the action of State was not bona fide cannot be said to be established, unless the party alleging that case names the officer or officers guilty of conduct which justifies an inference that the official act was done for a collateral purpose, and since no such attempt was made and the High Court did not find that any named officer or officers was or were responsible for that official act the plea that it was not bona fide must fail. We do not think that the law casts any such burden upon the party challenging the validity of the action taken by the State Government, The State Government has undoubtedly to act through its officers. What matters were considered, what matters were placed before the final authority, and who acted on behalf of the State Government in issuing the order in the name of the Governor, are all within the knowledge of the State Government, and it would be placing an intolerable burden in proof of a just claim to require a party alleging mala fides of State action to aver in his petition and to prove by positive evidence that a particular officer was responsible for misusing the authority of the State by taking action for a collateral purpose."

19. The Chief Minister is represented by the learned counsel Mr. K. H. Bhabha. Though opportunity was given, no affidavit is filed, submission being that it is not necessary at this stage. Nothing wrong in that behalf. But then the consequence flowing from the averments and allegations in this petition on affidavit will have to follow. One would have thought that in a matter such as this affidavit at this very stage could have considerably assisted the Court in evaluating the prima facie worth of these averments and allegations. In its absence, result is that, as at present, there is no challenge thereto, not even a bare denial thereof.

20. Reference at this stage may usefully be made to the observations of the Supreme Court in C.S. Rowjee and Others Vs. Andhra Pradesh State Road Transport Corporation,

"The next question is as regards the inference to be drawn from these facts which in the absence of their denial have to be taken as true. It is here that we

have felt the greatest uneasiness, because if the facts which serve as the foundation for the plea of mala fides are made out, the only question would be whether the inference of mala fides on the part of the Chief Minister would be a reasonable one to draw. It is at this point that we are faced with the necessity of having to proceed without there being any effective answer to the propriety of drawing the inference which the applicants desire. There has been no denial by the Chief Minister nor an affidavit by any person who claims or can claim to know personalty about the truth about these allegations. The Secretary to the Home Department --one Mr. S. A. Iyengar has filed a counter-affidavit in which the allegations we have set out earlier have been formally denied. He says:

"I have been expressly instructed and authorised by the Hon^{ble} the Chief Minister to state that the allegations suggesting personal animus and giving mandate are false and mischievous and have been deliberately made to create an atmosphere of sympathy." The learned Advocate General did not suggest that the Court could act upon this second-hand denial by the Chief Minister, as the statement by Sri. S. A. Iyengar is merely hearsay. We are, therefore, constrained to hold that the allegations that the Chief Minister was motivated by bias and persona? ill-will against the appellants, stand un rebutted."

21. Faced with this fairly well-settled position *supra* but even so Mr. K. H. Bhabha, Teamed counsel opposing, on behalf of respondent No. 2, admission of this petition did Ms best under the circumstances by urging a couple of technical objections viz., (a) press reports and interviews of Mr. Madhu Devlekar, sitting member of the State Legislature, should not be accepted and (b) even the statements of the Chief Minister in the Legislature should not be accepted. In support of the first objection, he relied upon certain observations in *Samant N. Balkrishna and Another Vs. V. George Fernandez and Others*, and in support of the second objection, he relied upon AIR 1935 34 (Privy Council)

22. However, none of these applies here. In *Balkrishna's* case, an election petition under the Representation of the People Act filed in the High Court was, after trial, dismissed on the ground that the charge of corruption was not proved. Appeal against this dismissal was preferred to the Supreme Court. And it was in the context of such an election dispute where the charge had to be proved beyond doubt that the observations here relied upon (vide page 1220 of the ruling) were made viz.:

"A news item without any further proof of what had actually happened through witnesses is of no value. It is at best a secondhand secondary evidence. It is well known that reporters collect information and pass it on the editor who edits the news item and then publishes it. In this process the truth might get perverted or garbled. Such news items cannot be said to prove themselves although they may be taken into account with other evidence if the other evidence is forcible."

Even if one were to invoke these observations, one finds that in the present petition not mere news item but actually Government resolution, Government

circulars and several undisputed allotment orders issued directly from Mantralaya are relied upon. If so, under the very aforesaid observations, even the news item can be taken into account with other evidence if the other evidence is forcible, this other forcible evidence here being the aforesaid cogent materials from Government records. The observations supra would thus seem to support more the petitioners than respondent No. 2.

23. As regards the Privy Council ruling, observations relied upon are;

"Further, as regards the reports of debates, it is clear, in their Lordships' opinion, that they can only be evidence of what was stated by the speakers in the Legislative Assembly, and are not evidence of any facts contained in the speeches."

Now, it may, at the outset, be stated that Mr. C. I. Sawant, learned Additional Government Pleader, has from the Secretariat of the State Legislature got verified whether the Chief Minister had in fact made in the Assembly the statement, copy whereof was furnished in Court by Mr. Desai for the petitioners and which is briefly referred to in para 15 of the petition. After such verification, this Court was informed that the said statement was in fact made in the session at Bombay and that the copy furnished was correct. What remains then ? Only whether the facts in that statement are correct? Here again, the affidavit of respondent No. 2 at this stage would have helped. In its absence, it would not be proper to disbelieve the facts in his own statement.

24. Mr. K. H. Bhabha also relied upon the ruling in *Kasturi Lal Lakshmi Reddy, Represented by its Partner Shri Kasturi Lal, Jammu and Others Vs. State of Jammu and Kashmir and Another*, . This ruling is a classic in the field of administrative and constitutional law of this country. But one fails to see how it supports respondent No. 2. On the contrary, and as can presently be seen, several observations therein extensively support the legal and constitutional position canvassed before this Court by Mr. A. H. Desai, learned counsel for the petitioners. And since the case is cited, it is best to refer to some observations therefrom. Thus, first at page 1999 :

"..... the Government is not free to act as it likes in granting largess such as awarding a contract or selling or leasing out its property. Whatever be its activity, the Government is still the Government and is subject to restraints inherent in its position in a democratic society. The constitutional power conferred on the Government cannot be exercised by it arbitrarily or capriciously or in an unprincipled manner; it has to be exercised for the public good. Every activity of the Government has a public element in it and it must, therefore, be informed with reason and guided by public interest. Every action taken by the Government must be in public interest",

And then at page 2001 :

"It is imperative in a democracy governed by the rule of law that governmental

action must be kept within the limits of the law and if there is any transgression, the Court must be ready to condemn it. It is a matter of historical experience that there is a tendency in every Government to assume more and more powers and since it is not an uncommon phenomenon in some countries that the legislative check is getting diluted, it is left to the Court as the only other reviewing authority under the Constitution to be increasingly vigilant to ensure observance with the rule of law and in this task, the Court must not flinch or faller. It may be pointed out that this ground of invalidity, namely, that the Governmental action is unreasonable or lacking in the quality of public interest, is different from that of mala fides though it may, in a given case, furnish evidence of mala fides."

And finally at page 2006:

"If the terms and conditions of the contract or the surrounding circumstances show that the State has acted mala fide or out of improper or corrupt motive or in order to promote the private interests of some one at the cost of the State, the Court will undoubtedly interfere and strike down State action as arbitrary, unreasonable or contrary to public interest."

This brings to a close the submissions of the final sides.

25. Coming now to the files, it may be initially stated that (a) the allotment orders annexed to the petition relate to as many as about 145 parties, (b) who have all been allotted cement directly from Mantralaya, (c) after, despite and in contravention of the categorical circulars of the State Government and (d) with all the allotted orders (except that of 18-4-1981) falling within a period of hardly about one week 24th June, 1981 to 2nd July, 1981. Though, under these allotment orders, there have been numerous allottees, I called for inspection of files of only five allottees, three of whom were specifically referred to in para 16 of the petition and two more. And this inspection was only in the limited context of the averments in the petition and no more.

26. Without descending into details, the emerging position from this limited inspection is (without naming the parties) as follows, numbers given to the files being only for the sake of convenience:

File No. 1

(a) Letter dated 2nd June, 1981 by the party to the Chief Minister for allotment of 1,000/- tonnes of cement,

(b) Endorsement on the said letter; "out of Bombay Quota pl." Sd/-

(Initials of the Chief Minister). 12.6.

(c) Letter by party that the Chief Minister was kind enough to allot 1,000 metric tonnes of cement.

File No. 2:

(a) 23rd June, 1981, letter by party to L. S. Lulla, Officer on Special Duty, Chief Minister's Secretariat, to the effect, inter alia, that the party urgently requires cement from Chief Minister's quota.

(b) 24th June, 1981. Endorsement:

"100 tones from Kesoram".

Sd/- Lulla

24-6-1981.

File No. 3 :

(a) 24th June, 1981. Letter by party to Chief Minister for allotment of cement at the earliest.

(b) 24th June, 1981. Endorsement.

"C. M. has agreed that 50 tonnes be allotted from Kesoram".

Sd/- Lulla.

24-6-1981.

File No. 4:

(a) 22nd June 1981. Endorsement on application : "Discussed with C. M. today. No action called for unless specific instructions are received". Initials xxxx

(b) 22nd June, 1981. Letter by party to Chief Minister.

(c) 23rd June, 1981. "Chief Minister has agreed that 400 tonnes be allotted from Kesoram".

Sd/- Lulla.

23-6-81.

File No. 5 :

(a) 19th March, 1981. Letter to Chief Minister that the total quota of cement may be sanctioned at once.

(b) 2nd April, 1981. Endorsement.

"He may be allotted in suitable, reasonable instalments".

Sd/- xxxx

(Initials of Chief Minister).

2.4.

27. It will thus be seen that in spite of the fact [hat the two State Government

Circulars together bring in even the ad hoc quota within the terms of the Government Resolution of September, 1978, applications for cement even thereafter were made directly to the Chief Minister at Mantralaya. The same were not forwarded to the respective officers as per the said circulars but were, in contravention thereof, positively entertained directly at Mantralaya and were also granted directly at Mantralaya. It is also significant that these so-called applications in which orders are passed are not in any regular form but by way of mere letters on the respective letter heads of the parties. And these letters appear to have been removed from some other file or files not before the Court. Still further, there is no indication that before passing orders, all the papers concerning the respective parties in question were actually placed before the Chief Minister for reference purposes. On the contrary, circumstances indicate inference otherwise. Moreover, the very fact that in some cases orders were passed the same day or the very next day of the presentation of the letters when the respective requests for cement were otherwise pending for a long time prior thereto leaves a lurking doubt on the question of quid pro quo.

28. In these circumstances, calling for inspection the other numerous files relating to the direct allottees from Mantralaya may, perhaps, if the position is similar, open up a Pandora's box. It is, however, needless at least at this stage to enter into the said inquiry. Suffice to note that all the allotment orders involved in this petition are issued after March, 1981, i.e. after the above two Government circulars and, therefore, fall in the same category contravening the terms and conditions of the Government Resolution of Sep., 1978 and the Government Circulars of March, 1981.

29. Remarkable and illuminating indeed are also certain facts emerging from the statements attached to the Deputy Secretary's affidavit itself. For instance, for the period 1st July, 1980 onwards, whereas the quantity allotted to all the Districts of Maharashtra and Bombay City was 46,350 metric tonnes, the quantity allotted to builders alone was 73,270 metric tonnes. Even Government and semi-Government departments got less than the builders (see Exh. 6). For the same period, whereas the allotment to the districts and Bombay City was 46,350 metric tonnes, the total quantity allotted "Directly by the State Government" (and, therefore, presumably directly from Mantralaya) was 2,16,650 metric tonnes. Again, for the same period and as per the same Exh. 6 itself, the quantity regarding the distribution of which the break up (i. e. the particulars) is not available is more than ten thousand metric tonnes. Still further and by and large, copies of the Central Government allotments (Exh. 5) do not indicate any particular ear making of any cement for any specific purpose or party. On the contrary, the State Government itself is asked to send names of the allottees and parties. In fact, the statement in Rajya Sabha as recently as on 3rd Sep., 1981 by Shri Charanjit Chantia, the Minister of State in the Ministry of Industry, in reply to Starred Question No. 262 specifically states :

"States are given bulk allocation every quarter on the basis of past consumption

and overall availability of cement. They are free to sub-allocate the bulk allotment of cement at their disposal among the various sectors except in the case of priority sectors of Irrigation & Power and Small Scale Industries for which allocation of cement is pre-reserved. No guidelines have been issued in regard to allotment of cement by the State Government to the building contractors."

30. Now if, in the context of the legal and constitutional position, such be the record of allotments and the state of the files and if such amazing and serious be the sheer sweep of the petitioners' averments and allegations on affidavit and if there is not even a bare denial thereof by one respondent and a highly unsatisfactory, nay, a misleading affidavit by the other respondent, which is the more appropriate view to take at this stage? The answer is obvious. In this light then proceeding further, if there is also no denial of receipt of donations and if those donating have in fact got the essential commodity in question, sequitur of nexus between the two viz., cement and donation or rather, cement after donation, becomes a reasonable squalor to draw at this stage. The same, if ultimately established, is fraught with great risk to the rule of law and the sinews of democracy which together constitute the *raison d'être* of a free and independent people.

31. In all such circumstances to nevertheless reject this petition in limine as strongly urged on behalf of the contesting respondents would result in grave miscarriage of justice and failure of the constitutional and judicial process. Such a situation is anathema to the basic concept of rule of law. The cause of truth and justice may not be so lightly sacrificed. Public confidence in a welfare State -- an element of importance to democracy -- would be gravely undermined. Hope becoming restless may turn into despair. And even earnest efforts to establish and maintain the highest conduct in public life may receive a set-back and become difficult to achieve. Citizens have a right to a clean administration. If the ultimate guarantee of justice is the personality of the Judge, it is equally axiomatic that the ultimate guarantee of clean administration is the personality and stature of those in charge thereof. Irrespective of who initially comes to the Court, questions raised in this petition ultimately transcend persons and parties and concern principles vital in and to public life. To even so dismiss the petition summarily can as well shake the faith of the community at large in due process of law and administration of justice. In the best of traditions, therefore, a petition such as this would have to be set down to a final hearing. That it may ultimately succeed or fail is besides the point when, as at this stage, it has pre-eminently succeeded in making out a strong *prima facie* case. Hence order.

32. Petition admitted.