
(1999) 02 CAL CK 0036
In the Calcutta High Court
Case No : Writ Petition No. 17306 (W) of 1997

Tarak Singh and Others	Vs	APPELLANT
Jyoti Basu and Another		RESPONDENT

Date of Decision : 05-02-1999

Acts Referred:

Constitution of India, 1950 — Article 226
West Bengal Government Township (Extension of Civic Amenities) Act, 1975 — Section 4

Citation : AIR 1999 Cal 354 : 2 CWN 440

Hon'ble Judges : Pinaki Chandra Ghose, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Pinaki Chandra Ghose, J.—The writ petitioners have filed this application inter alia praying for :--

(a) A declaration that the action of the respondent No. 1 is oppressive, arbitrary, unconstitutional and unexceptionable for which exemplary damages should be imposed upon him;

(b) A writ in the nature of Mandamus commanding the respondents and each of them" to cancel, recall, rescind and/or withdraw the allotment of plots in Salt Lake City made by and on behalf of the Hon"ble Chief Minister of West Bengal, the respondent No. 1 herein;

(c) A writ in the nature of certiorari calling upon the respondents to produce before this Hon"ble Court all records relating to allotment of plots in Salt Lake city by and on behalf of the Hon"ble Minister so mat conscionable justice may be done by quashing the same and also for other ancillary reliefs.

2. During the hearing of this application the respondents were directed by this Court to produce the records in respect of such allotment in favour of the person/ persons allotted by the Hon"ble Chief Minister from his quota. Accordingly, the

respondents produced inter alia the following records :--

(A) Cabinet Memo dated 10th August, 1977;

(B) Cabinet Decision dated 13th August, 1977 approving the 1977 Cabinet Memo.

(C) Cabinet Memo approved by the Cabinet in its meeting held on 5th November, 1979;

(D) Cabinet Memo dated August 5, 1981 regarding Special Allotment of plots in Salt Lake City;

(E) Decision of Cabinet held on 12th August, 1981 and notification one 1663 AR dated 7th August, 1981 issued by order of the Governor, allocating the business of the Government previously allotted to Shri Jyoti Basu, the Hon'ble Chief Minister to Shri Krishna Pada Ghosh, Minister-in-charge, Department of Labour;

(F) The reports published in the newspaper and the newspaper reports published on 12th June, 1987 indicating discretionary quota of respondent No. 1, being the Chief Minister for Special allotment in Salt Lake City and further the report published in the Statesman, Telegraph and Anandabazar Patrika and further more a list containing names and particulars of allotments made by the respondent No. 1 after 12th June, 1987.

3. The writ application has been filed by the petitioner challenging the distribution of plots of land in Salt Lake City by the Chief Minister of West Bengal from his own quota and discretion.

4. The grievance of the petitioner as has been stated in the petition and in the Supplementary affidavit are as follows :--

The petitioner No. 1 is a Councillor of the Calcutta Municipal Corporation and the petitioner No. 2 is a social activist and the resident of Salt Lake City. This petition has been filed by way of Public Interest Litigation from the ground of the public injury caused by the acts of respondent No. 1 and his agents and the petitioners have locus standi to file this instant writ petition.

5. According to the petitioner, in or about 1959-60 the then Chief Minister late Dr. B. C. Roy took a decision for establishing a new township in a planned manner for low income and middle income groups on the Eastern Side of Calcutta, which is known as "Salt Lake City". This scheme is currently known as "Salt Lake City Extension Scheme". According to the petitioner there were about 12840 plots in Sector-I, II and III in the Salt Lake City. The said plots of the said Sectors are mainly for residential purposes and the plots in Sector IV and V are mainly for commercial purposes.

6. According to the petitioner in the year 1970, the demand of plots in Salt Lake City was not so high, but still at that point of time the Government used to invite applications from the intending buyers by an open declarations and/or advertisements. Thereafter, from time to time, the demand for plots in Salt Lake

City was gone up and since 1978 during the regime of this present Government large number of plots were distributed. According to the petitioner such distribution was not done through open declarations and/or public advertisements in the newspapers. The further allegation was that no criteria was fixed, no guideline was kept in view for such distribution. Furthermore, application was not invited and the allotment of the said plots in the Salt Lake City were made in clandestine cloistered manner.

7. The petitioner for the first time came to learn that from a newspaper report published on August 19, 1997 in the Ananda Bazar Patrika and on August 13, 1997 in the daily Bengali newspaper Aajkaal that the Hon''ble Chief Minister did not have any discretionary quota in respect of any plot in Salt Lake City and such distribution has been done pursuant to and in terms of an order dated June 11, 1981 passed by the Hon''ble High Court. As it appears such statement was made by Shri Asok Bhattacharjee, Minister-in-charge, Urban Development Department, the respondent No. 2 herein. The reports of the said newspapers were also annexed to the petition. Thereafter, the petitioners on enquiry came to know that in C.O. 7553(W)/1986 (Bidhannagar Welfare Association v. State of West Bengal) His Lordship B. P. Banerjee, J. was pleased to, pass such order on 11th June, 1987.

8. There was no advertisement for general public to know as to how many plots were available for allotment or the eligibility to get a plot of land in Salt Lake City. Thus the public properties have been doled out arbitrarily.

9. The petitioner also called upon the respondent No. 4 to produce the entire records relating to allotment of plots of land in Salt Lake City as per the Hon''ble Chief Minister's discretion before the High Court at the time of hearing of this application.

10. The further allegation has been made in connection with the allotment made by the Hon''ble Chief Minister in favour of his brother-in-law Shri Subimal Bose alias Bimal Bose while he was a patient of cancer. The allegation has been made that such allotment have been done from the discretionary quota of the Hon''ble Chief Minister and subsequently the said brother-in-law of the Hon''ble Chief Minister bequeathed a will in favour of the grand-daughter of the Hon''ble Chief Minister in respect of the said plot. The said plot No. is block FD, No. 452-B. Such informations were received by the petitioner from a report published in the daily Bengali newspaper known as Bartaman published on May 30, 1997, a copy of the said newspaper is also annexed to the said petition.

11. According to the petitioner, the Government cannot distribute largesse in various forms only to favour a particular person/persons by way of forming the benefits of largesses. According to the petitioner, the Hon''ble Chief Minister while dealing with the people's property he must deal with the same in a fair and just manner and he cannot commit breach of trust conferred upon him by the people.

12. Mr. Ghosh appearing on behalf of the petitioners drew my attention to the

West Bengal Government Township (Extension of Civic Amenities) Act, 1975 and submitted to provide for an extension of civic amenities to Government Township in West Bengal. Such act was came into force. Further he drew my attention to Section 4(1) of the said Act and submitted that for every Government Township there shall be an Administrator who shall be responsible for carrying out the purpose of the said Act. He submitted that Section 4 of the said (amendment) Act, 1976 provides as follows :--

"Section 4. (1) Any person desiring to obtain a settlement through lease of any land situated within a Government Township may submit an application to the Administrator in such form and in such manner as may be prescribed.

(2) On receipt of such application the Administrator shall, after making such enquiry as he considers necessary, either grant or refuse to grant the same :

Provided that the Administrator shall, while refusing to grant an application, record the reasons for doing so.

(3) Any person who is aggrieved by an order of Administrator under Sub-section (2) may, within such period as may be prescribed, prefer an appeal to the State Government and the State Government shall pass such order upon such appeal as it considers necessary.

(4) No further appeal shall lie against the order passed by the State Government under Sub-section (3)."

13. According to Mr. Ghosh, till 1977 and also thereafter any person desiring to obtain a plot in Salt Lake City used to make an application to the Administrator and the Administrator used to allot plot to the allottees in accordance with the said Section of the said Act. Thereafter, in the year 1980/81 a Committee was formed comprising of the Chief Minister, the then Urban Development Minister Mr. Prasant Sur, Mr. Subhas Chakraborty, the local M.L.A. and the Secretary of the Urban Development Department and the said committee started recommending the names of the persons for allotment of the said plots at the Salt Lake City and the persons used to get the allotment on such recommendation of the said Committee.

14. Mr. Ghosh drew my attention to the Minutes of the meeting by the Cabinet on 5th August, 1981 and submitted that in the said meeting the Cabinet has taken up the Agenda as a "Mention case" in respect of Special Allotment of plots at Salt Lake City. As it appears from the records to which my attention was drawn by Mr. Ghosh, that already plots were distributed and it was stated that "Special Allotment have been or will be made to certain categories of persons". It also appears from the said Memo of the said cabinet dated 5th August, 1981 (which is appearing at page 16 of the affidavit filed by Asok Kr. Chatterjee on behalf of the respondents Nos. 1 to 5 affirmed on 24th February, 1998) that after distribution of plots as Special Allotment, post-facto approval was sought by the Department in the cabinet meeting and he further submitted from the said "Mention case"

that the system of quota of the Minister-in-charge and the Hon"ble Chief Minister was introduced even before the cabinet was informed of the same in the form of "Mention case".

15. He further submitted that the affidavit filed on behalf of the respondents shows that 2185 plots in Sector I and II were distributed as Special Allotment by the Hon"ble Chief Minister and the concerned Minister-in-charge. In 1984 an association of the Salt Lake moved a writ petition before this Court being C.O. 15381 W/1984 challenging the deviation of the Master Plan and during the course of hearing it transpires to the Government that it is only the Administrator as in accordance with the said Act, could allot a plot of land in the Salt Lake and the committee which was formed, was illegal and the distribution by the said committee was also illegal. In view of that realising such legality the said Act was again amended. Such amendment came into force on and from 20th July, 1985. Such amendment was also challenged in a writ petition being No. 7553 W/1986 by the Bidhannagar Welfare Association. The said writ application was moved on 20th June, 1986 and an order was passed by his Lordship B. P. Banerjee, J. (as his Lordship then was) which is annexed to the supplementary affidavit to the writ petition being Annexure H1. From time to time orders were passed on the said application. Ultimately, on June 11, 1987 the entire order was varied to the extent "that the said order will not prevent the Chief Minister to make allotment of plots in Salt Lake City area from his own quota according to his own discretion". Such variation was made by his Lordship B. P. Banerjee, J. Mr. Ghosh further submitted that the said application was made "partly heard" by his Lordship B. P. Banerjee, J. and the said application is still pending and the same could not be placed before any other Bench since the matter was kept part heard until he retired. The said matter is still pending and the interim order passed thereon is still subsisting.

16. Mr. Ghosh appearing on behalf of the petitioner relied upon a judgment reported in Common Cause, A Registered Society Vs. Union of India (UOI) and Others, in support of his contention and he submitted that the discretionary power exercised arbitrary is not permitted by Article 14 of the Constitution of India. He further drew my attention to paragraphs 24 and 25 of the said judgment and submitted that while Article 14 permits reasonable clarification having a rationale nexus, to the objective sought to be achieved, it does not prepare the power to pick and choose out of several persons falling in the same group. A transparent and objective criteria and procedure has to be evolved so that choice amongst the members belonging to the same class or category is based on reason, fair play and not on arbitrariness. He further submitted that the names of the allottees, the orders and the reasons for allotment should be available for public knowledge and scrutiny. He further submitted that any procedure laid down by the Government must be transparent, just, fair and non-arbitrary. He further submitted that in the instant case, the Hon"ble Chief Minister and the Minister-in-charge have enjoyed the absolute discretion without any guidelines and as such the allotment itself shows the gross violation of

norms and further the persons have been allotted arbitrarily discriminatorily. He further submitted that the Supreme Court has held Captain Satish Sharma's power in allotting the petrol pumps to the relative of his Secretaries and Additional Secretaries and to the relative of his close friend and associates in an arbitrary manner. In the instant case, the Hon"ble Chief Minister has allotted the plot to his brother-in-law, to the relatives of the Minister and to others. According to Mr. Ghosh, Indrani Sur, daughter-in-law of Mr. Prasanta Sur, Debjani Ghosh, wife of the confidential Assistant of the Hon"ble Chief Minister and Anjan Banerjee, husband of the Biographer of the Chief Minister Mrs. Suravi Banerjee and many others without giving any reasons whatsoever. He further submitted in the matter before the Supreme Court, that captain Satish Sharma has put forward some reasons for allotting petrol pumps from his discretionary quota, but in the case of Salt Lake no reason has been forwarded by the Chief Minister. He has" allotted the plots from his discretionary quota. He further submitted that in the case of Captain Satish Sharma, it was an undisputed fact that the persons who had got the petrol pump were unemployed, another ground was of poverty and as such in the instant case the, Chief Minister who distributed plots of land giving no reason whatsoever. He further submitted and drew my attention to the Supplementary Affidavit filed by his clients and placed a list of allottees and submitted that on the basis of their closeness to the Chief Minister and the Chief Minister has merely passed an order in favour of them without any given reasons for such allotments. According to Mr. Ghosh, therefore, such discretion has been used arbitrarily and in violation of Article 14 and the Chief Minister has thus committed breach of public trust.

17. In support of his contention he relied upon the judgment reported in S.G. Jaisinghani Vs. Union of India (UOI) and Others, of the said judgment reads as follows :--

"Paragraph 14

In this context it is important to emphasize that the absence of arbitrary power is the first essential of the rule of law upon which our whole constitutional system is based. In a system governed by rule of law, discretion, when conferred upon executive authorities, must be confined within clearly defined limits. The rule of law from this point of view means that decisions should be made by the applications of known principles and rules and, in general, such decisions should be predictable and a citizen should know where he is. If a decision is taken without any principle or without any rule it is unpredictable and such a decision is the antithesis of a decision taken in accordance with the rule of law. (See Dicey-"Law of the Constitution"-Tenth Edition. Introduction ex). "Law has reached its finest moments", stated Douglas, J. in United States v. Wunderlich (1951) 342 US 98, "when it has freed man from the unlimited discretion of some ruler.....where discretion is absolute, man has always suffered". It is in this sense that rule of law may be said to be the sworn enemy of caprice. Discretion, as Lord Mansfield stated it in classic terms in the case of John Wilkes

(1770) 4 Burr 2539 "means sound discretion guided by law. It must be governed by rule, not by humour; it must not be arbitrary, vague and fanciful".

18. He also relied upon a judgment reported in *Surendra Kumar Vs. State of Bihar and Others*, and submitted that the Supreme Court has followed the judgment delivered by the Supreme Court in the case of *Suman Gupta and Others Vs. State of Jammu & Kashmir and Others*, , where the question was arose that a certain number of seats in the Medical Colleges of one State were reserved for candidates from other States to be nominated by the Governments of the other States. Was an absolute power vested in the State Governments in choice of candidates for nomination or was it incumbent on the State Governments to adopt definite criteria and follow pre-defined norms. In deciding such points the Supreme Court has held in *Suman Gupta and Others Vs. State of Jammu & Kashmir and Others*, as follows :--

"After considering the matter carefully, we confess, we are unable to subscribe to the view that the selection of candidates for that purpose must remain the unlimited discretion and the uncontrolled choice of the State Government... To contend that the choice of a candidate selected on the basis of his ability to project the culture and ethos of his home. State must necessarily be left to the unfettered discretion of executive authority is to deny a fundamental principle of our constitutional life..... Viewed in this context, the claim of the State Government in these cases that the nature of the objective and the means adopted to serve it entitle it legitimately to vest in itself an absolute power in choosing candidates for nomination cannot be allowed to prevail. It is incumbent on the State Government to adopt a criteria or restrict its power by reference to norms which, while designed to achieve its objective, nevertheless confine the flow of that power within constitutional limits. We are not convinced that an adequate system of standards cannot be devised for that purpose. Tested on the touchstone of our constitutional values, the claim of the State Government to the content of the power assumed by it must, in our opinion, be declared invalid.....

Until a policy is so formulated and adopted and concrete criteria are embodied in the procedure to be selected, we direct that nomination be made by following the procedure of selecting candidates strictly on the basis of merit, the candidates nominated being those, in order of merit, immediately next below the candidates selected for admission to the Medical College of the home State.

The pronouncement of this Court has apparently not yet been heard in the distant corridors of the Bihar Secretariat. Neither the counter-affidavit filed by Mr. Das nor that by P. K. Khare gives the least indication..... by the Chief Minister is quashed."

19. He further submitted that in the instant case such discretion also is nothing but an abuse of power by the State Government. In support of his contention he also relied upon a case reported in *Sant Raj and Another Vs. O.P. Singla and Another*,

20. Mr. Ghosh appearing on behalf of the petitioner relied upon the case reported in Heirs and Lrs. Of deceased Somabhai Kanjibhai Baria Vs. Patel Parshottamdas Jamdas (D) and Another, .

21. Mr. Ghosh also relied upon the judgments reported in (1997) 116 AP LR 7 (Anil Sabharwal v. State of Haryana) (1996) 1 Cal LJ 541 (Gunendra Ch. Dey v. State of West Bengal).

22. Mr. Ghosh appearing on behalf, of the petitioner further relied upon a judgment reported in V. Punnen Thomas Vs. State of Kerala, and submitted that the Government should not be free as an individual in selecting recipient for its largesse.

23. He further relied upon another judgment reported in Ramana Dayaram Shetty Vs. International Airport Authority of India and Others, and submitted that the Government is not like a private individual which can pick and choose the person with whom it will deal with its trading with the public. It must maintain equality and absence of arbitrariness and discrimination in its transaction.

24. He also relied upon a judgment reported in Kasturi Lal Lakshmi Reddy, Represented by its Partner Shri Kasturi Lal, Jammu and Others Vs. State of Jammu and Kashmir and Another, where the Supreme Court has held that the State cannot act as it pleases in the matter of giving largesses and the constitutional power cannot be exercised arbitrarily or capriciously or in an unprincipled manner and it has to be exercised for the public good and not for the benefit of a particular group or a section of the people.

25. Mr. Ghosh also relied upon a judgment reported in A.L. Kalra Vs. Project and Equipment Corporation of India Ltd., in support of his contention.

26. He also relied upon a judgment reported in the case of Gunendra Ch. Dey v. State of West Bengal (1996 (1) Cal LJ 541) (supra) and submitted that the Hon"ble Court came to the finding that there was absence of object criteria in the matter of exercising the discretion. In view of that the Vice-Chairman being the concerned authority had been invested with unbridled freedom to make allotment without any form of accountability and his Lordship R. Pal, J. was pleased to set aside the allotments and allowed" the writ petition.

27. In course of hearing and the submissions made by Mr. Ghosh, Mr. Ghosh submitted that he does not press the prayer for (b) relating to cancellation of allotments in view of that the allotments which has been made in favour of the person/persons have not been made the party in the instant writ application. If such order is being passed by this Court their rights may be affected. In view of that, he did not press the said prayer, but prayed a leave to apply before the appropriate forum for appropriate order.

28. Learned Advocate-General appearing on behalf of the respondents submitted that the Hon"ble Chief Minister has allotted the plots pursuant to and in terms of

the order, passed by this Court on 11th June, 1987. Prior to that date, the allotments were made mainly by the Hon"ble Minister of the Urban Development Department.

29. He submitted that the writ petitioner No. 1 is a Congress Party Worker and a sitting Councilor of the Calcutta Municipal Corporation. The writ petitioner No. 2 is a Ward Committee Member of the Bidhannagar Municipality, and therefore, this writ application is a motivated proceedings filed for reasons of political expediency and publicity.

30. According to him, out of 13,339 plots, Sector I comprising of 5974 plots. The present State Government merely completed the formality in allotment in compliance with the decision taken in Sector I by the earlier Government prior to 1977.

31. The plots available for allotment by the State Government after coming into power in 1977 were only limited to plots in Sector II and Sector HI of the Salt Lake City. There were 4529 plots mainly for residential and measured between 2 and 6 cottahs, in Sector II out of which 1097 plots were decided by the Cabinet on 13th August, 1977 and 12th August, 1981 to be allotted by way of a Special allotment and the remainder by way of public allotment. The number of plots in Sector III available for distribution by the State Government was 2836 and measured between 2 and 6 cottahs. Out of these 60% was decided to be allotted by lottery and 40% was to be specially allotted under the Cabinet decision taken in 1981. There were two categories in the said plots-(i) 2523 plots ranged between 2 and 4 cottahs and (ii) 313 plots ranged between 5 and 6 cottahs. In respect of the said category plots, 75% was decided by lottery and 25% by Special Allotment under the Cabinet Decision in 198,1.

32. Learned Advocate General appearing on behalf of the respondents submitted that the number of plots available in Sector II for distribution by Special allotment was 1097 and that in Sector III was 1009 + 79 i.e. 1088. Therefore, the total number of plots in Sector II and III available for distribution by Special Allotment was 1097 + 1088 i.e. 2185. According to him, after the order was passed on 11th June, 1987 by his Lordship B. P. Banerjee, J. (as his Lordships then was), a total number of about 290 plots remained to be distributed. Since the date of passing of the said order the respondent No. 1 has exercised his discretion in respect of allotment of 276 out of 290 which was available, at that point of time. He further submitted that the total plots allotted by respondent No. 1 after 11-6-1987 constitute 2.06% of the total 13,339 plots, 3.74% of the total 7356 plots (total number of plots in Sector II and III) and 12.6% of the total discretionary quota in Sector IT and III i.e. 2185 plots.

33. He further drew my attention to the Cabinet Memo of the meeting dated 13th August, 1977 and submitted that the value of the said plots were only revised and which was approved by the said Cabinet.

34. Learned Advocate-General also drew my attention to the Cabinet Memo and

submitted that the criteria has been fixed by the cabinet meeting. He also relied upon the memo of the cabinet meeting held on 12th August, 1981 and submitted that to ensure that the Salt Lake becomes a Cosmopolitan Township, such criteria was prepared. Plots were distributed. Plots were distributed as a special case to persons of all walks of life namely, Judges, Doctors, Lawyers, Chartered Accountants, Sportsman Musicians, Artists, Engineers, Defence Personnel and Indian Nationals who were presently abroad and want to come back and settle in India.

35. He further submitted that the categories of persons to whom Special Allotment have been or will be made are :--

1. Government servants and officers most of whom will retire in course of next few years.
2. Political sufferers and social workers.
3. Journalists".
4. Judges, Lawyers, Sportsman, Musicians, Doctors, Chartered Accountants, Persons of the Minority Community.
5. Persons affected by disturbances in Assam, Tripura and Meghalaya.
6. Persons whose land have been acquired for development projects undertaken by CIT, CMDA, Salt Lake Project Metro-Rail etc.
7. Physically handicapped persons.
8. Defence personnel.
9. Indian Nationals who are presently staying abroad but want to settle in India....."

36. He further contended that the allotment of land of Salt Lake was being made mainly by the Minister-in-Charge until 1987 when the order dated 11th June, 1987 was passed by his Lordship B. P. Banerjee, J. in C.O. 7553 W/1987 (Bidhannagar(Salt Lake) Welfare Association v. State of West Bengal) providing that such allotments are from his discretionary quota. According to the Advocate General such power of the respondent No. 1 for such allotments were duly published on 12th June, 1987 in 3 widely circulated leading newspapers i .e. The Telegraph (English). The Statesman (English) and the Ananda Bazar Patrika (Bengali).

37. He also drew my attention to the said reports of the said newspapers. In this circumstances, he submitted that there were sufficient criteria and guidelines for making allotment of plots with the eligibility criteria were two fold one relating to holding of property and the other relating to income, vide Cabinet Memo of 1981. The Cabinet intended the allotment to be broad-based, irrespective of caste and creed and to be cosmopolitan in nature, involving people from all walks of life. As also already stated a total of 276 plots were allotted by the respondent No. 1 in

exercise of his discretion in terms of the order dated 11-6-1987 over 11 years till now and the said number of plots by the present Government so allotted constituted a miniscule 2.06% of the total number of plots of land,

38. He further submitted that after the Government headed by the respondent No. 1 came to power in 1977 and submitted that records show that the State Government had been holding a lottery whenever the number of application exceeded the number of plots available at the relevant time.

39. He further submitted that the lottery was held in 1978 for 2 to 3 cottahas of plots and also a lottery was held in June, 1980. He further submitted that another lottery was held in Netaji Indoor Stadium, Calcutta in the year 1989. The public advertisement in the newspaper and the publication of results in the newspapers clearly showed that there was nothing cloistered or secretive about the manner of the said allotments in the facts and circumstances of this case. He further submitted that there were no irregularity with regard to the allotments made before 11th June, 1987. He submitted that allotments prior to June, 1987 cannot be gone into at the hearing of the present writ petition as prior to that date Hon"ble Chief Minister did not have any special or discretionary quota.

40. Learned Advocate-General submitted that this writ application is not maintainable as public interest litigation. He further submitted that this writ petition has been filed with ulterior motive and for political expediency and cheap publicity. He further submitted that the Hon"ble Supreme Court has deprecated in express language "political motivation" or "oblique consideration" as a disintitling factor for launching public interest litigation. In support of his contention he relied upon a judgment reported in S.P. Gupta Vs. President of India and Others, He also relied upon a judgment reported in AIR 1983 NOC 55 (Bhim Singh v. p. D. Thakur). He also relied upon the case reported in Krishna Kant Jaiswal Vs. Vice Chancellor, Banaras Hindu University and Others,

41. He further submitted that the writ petitioners have filed this writ application only for the political gain of the writ petitioners and as such this writ application should be dismissed. He also submitted that the writ petitioners are not above the suspicions and as such this application should be dismissed. In support of this contention he relied upon case reported in Shri Sachidanand Pandey and Another Vs. The State of West Bengal and Others,

42. Learned Advocate-General submitted that the allotments have been made by the State Government. After considering the criteria which is mentioned in the Cabinet Minutes of the Cabinet meetings held on 13th August, 1977, 5th November, 1979 and 12th August, 1981 which shows that the criteria and the guidelines were fixed and as such the allotments have been made in accordance with such guidelines.

43. Learned Advocate-General appearing on behalf of the respondents admitted that the said guidelines and the criteria was kept in view by the State Chief Minister and the Chief Minister has allotted plots pursuant to and in terms of this

order passed by his Lordship B. P. Banerjee, J. on 11th June, 1987. He further submitted that such allotments were given by the Hon"ble Chief Minister without abusing the guidelines framed by the Cabinet. He further submitted that the allegations of allotment made by the respondents clandestinely or in a cloistered manner also has not any material to prove the same. In fact, there was a report published in the newspaper in respect of the order dated 11th June, 1987 and pursuant to the said order the allotments have been made. Further he submitted that the allotments made in arbitrary manner by the Hon"ble Chief Minister cannot be challenged inasmuch as the Hon"ble Chief Minister had been expressly empowered by his Lordship B. P. Banerjee, J. in its order dated 11th June, 1987 to allot land in accordance with his own discretionary quota.

44. Learned Advocate-General thereafter, drew my attention to the definition of "discretion" and relied upon the meaning of the said discretion from several dictionaries and submitted that the dictionary meaning of the word "discretion" therefore, clearly means the judgment of the persons who has been invested with the authority to take the decision. He further submitted that exercise of such discretion by the Chief Minister cannot be questioned in Court and in this connection respondents shall rely on the ratio of the judgment reported in Pushkar Mukherjee and Others Vs. The State of West Bengal, . In that case the reasonableness of the detaining authority was held not capable of being questioned in the Court of law. Likewise, it is submitted that discretion exercised by the Chief Minister in making allotments of Salt Lake Land cannot be questioned before the Hon"ble Court.

45. He further submitted that the respondent No. 1 being the Hon"ble Chief Minister herein, was empowered to make discretionary allotment considering the principle "higher the authority lesser the chance of arbitrariness". Learned Advocate-General also relied upon a judgment reported in 1993 (4) SCC (sic) (Advocates-on-Record Association v. Union of India) in support of his contention. He also relied upon the decisions reported in Matajog Dobey Vs. H.C. Bhari, (Matajog Dubey v. H. C. Bhari), Ram Krishna Dalmia Vs. Shri Justice S.R. Tendolkar and Others, and Accountant General and Another Vs. S. Doraiswamy and Others, and submitted that the views of the Apex Court expressed in Matajog Dubey"s case is still given in law:

46. As it appears from the said decision reported in Matajog Dobey Vs. H.C. Bhari, where the Apex Court held as follows :--

"It has to be borne in mind that a discretionary power is not necessarily a discriminatory power and that abuse of power is not to be easily assumed where the discretion is vested in the Government and not in a minor official....."

47. He further relied upon the judgments reported in Centre for Public Interest Litigation v. Union of India in 1995 Su (3) SCC 382 and submitted that the Supreme Court has accepted the guidelines forwarded by the Attorney-General in the said matter and on a closed scrutiny of the norms it is clear that the element

of personal evaluation has been allowed to remain. He further submitted that the Supreme Court did not wish to eliminate exercise of discretion by the appropriate authority but was merely content to minimise the area of discretion. He further submitted that the writ petitioners have relied upon the ratio laid down in common cause, a Common Cause, A Registered Society Vs. Union of India (UOI) and Others, in support of the writ petition. He further submitted Supreme Court while considering the allotments set aside the allotments in the context that there was no guidelines and submitted that the rejection of allotment proceeded on the basis that there was nothing to indicate that the Minister kept any criteria in view and it was not known how the applicants came to know about availability of the petrol pumps. Their Lordships held that the allotments have been made in a cloistered manner. According to the learned Advocate-General the said case is distinguishable on the facts of this case, inasmuch as unlike in Satish Sharma's case, here, firstly the availability of plots in Salt Lake was known to the members of the public by reason of publication of news items in several national newspapers on 12th June, 1987. There is no material in the case to show that the concerned authority being the Chief Minister knew about 276 allottees and/or their identity in the manner Satish Sharma did from before the making of the allotments and in the result while the charge of mala fide clung to the allotments made by Satish Sharma, such charge is not easily made out after the allotments are viewed as a whole. According to the learned Advocate General the instant case is totally different from the said matter.

48. Mr. Advocate-General appearing on behalf of the respondents submitted that since the judgments delivered by the Hon'ble Supreme Court in Centre for Public Interest Litigation v. Union of India, 1995 Supp (3) SCC 382 and in Common Cause, A Registered Society Vs. Union of India (UOI) and Others, were passed by the co-equal Benches of the Hon'ble Supreme Court and he submitted that this Hon'ble Court is not bound to follow the ratio in Satish Sharma's case.

49. He further submitted that the said Anil Sabharwal v. State of Haryana (1997 (116) Pun LR 7) (supra) is not applicable in the facts and circumstances of this inasmuch as it is the discretion stemming from Section 4B of the West Bengal Townships (Extension of Civic Amenities) Act, 1975 or stemming from Cabinet Decisions or stemming from judicial pronouncement of the order passed by his Lordship B. P. Banerjee, J. on 11th June, 1987. The same is not applicable in the instant matter. He further submitted that in this case the allotments have been broad based and made to many non-entities, not influential persons and certainly there is no allegation that one person had been allotted more than one plot and there is no question of profiteering as transfers had been prohibited since the respondent No. 1 became the Chief Minister.

50. He further submitted that one of the essential distinguishable facts between the two cases is while the allottees could transfer land in Haryana for profiteering, there is an embargo on such inter vivos transfer in respect of allotments made by the Hon'ble Chief Minister after 11th June, 1987. In the

facts of this case excepting transfer with the approval of the authority to close relations or members within the family. In view of that, the said Full Bench decision is totally inapplicable as submitted by the Advocate-General. He also submitted that the case cited by the writ petitioner being S.G. Jaisinghani Vs. Union of India (UOI) and Others, .

51. Learned Advocate-General appearing on behalf of the respondents submitted that the cases cited by the writ petitioners, being S.G. Jaisinghani Vs. Union of India (UOI) and Others, , V. Punnen Thomas Vs. State of Kerala, , Ramana Dayaram Shetty Vs. International Airport Authority of India and Others, , Kasturi Lal Lakshmi Reddy, Represented by its Partner Shri Kasturi Lal, Jammu and Others Vs. State of Jammu and Kashmir and Another, , A.L. Kalra Vs. Project and Equipment Corporation of India Ltd., , Surendra Kumar Vs. State of Bihar and Others, , Sant Raj and Another Vs. O.P. Singla and Another, , Gunendra Ch. Dey v. State of West Bengal (1996 (1) Cal LJ 541) is not applicable and distinguishable from the instant case.

52. He further submitted that the petitioner did not challenge the guidelines evolving in successive cabinet meetings and therefore, S.G. Jaisinghani Vs. Union of India (UOI) and Others, is distinguishable from this instant case. He further submitted that A. Punne V. Punnen Thomas Vs. State of Kerala, is not applicable to the facts and circumstances of this case. He also submitted that the Ramana Dayaram Shetty Vs. International Airport Authority of India and Others, is also not applicable inasmuch as the Chief Minister acting in terms of the order of the Hon'ble High Court, the legislative section and also in accordance with the settled norms approved in the cabinet meeting and as such the said case has no application in the instant case. He further submitted that Kasturi Lal Lakshmi Reddy, Represented by its Partner Shri Kasturi Lal, Jammu and Others Vs. State of Jammu and Kashmir and Another, is not applicable in the facts and circumstances of this case inasmuch as the writ petitioner have failed to discharge the heaving burden on them since petitioners have failed to show that there were no guidelines. He further submitted that the case of A.L. Kalra Vs. Project and Equipment Corporation of India Ltd., is not applicable in the facts and circumstances of this case.

53. He further stated that Surendra Kumar Vs. State of Bihar and Others, is not applicable on the facts and circumstances of this case. He also submitted that Gunendra Ch. Dey's case (1996 (1) Cal LJ 541) is clearly distinguishable in the facts and circumstances of this case, while in the East Calcutta Township's case there was no guidelines, but in the instant case a set of clear guidelines had been evolved income-wise, property-wise and category-wise through a series of cabinet decisions and further none other than the Chief Minister had been substituted in the present state of joint authority for exercising his discretion unlike the facts in the case of East Calcutta township. Furthermore, the rights of the writ petitioner was infringed in that matter here the writ petitioners are rank outsiders and mala fide political motivated persons as such the same is

distinguishable from this case.

54. Learned Advocate-General further relied upon a judgment reported in Indian Oil Corporation Ltd. Vs. Municipal Corporation and Another, and he relied upon the said judgment and submitted that this Court cannot question the discretion exercised by the Hon"ble Chief Minister in view of the order passed in another Bench inasmuch as later co-equal bench could not overrule it and cannot sit on appeal of the order which is still subsisting. He further submitted that this case may be referred before the larger Bench for reconsideration. Learned Advocate-General submitted that this application should be dismissed.

55. In reply Mr. Ghosh appearing on behalf of the petitioners submitted that no advertisement was ever issued by the State Government subsequent to the order dated June 11, 1987 save and except the report which was published on the basis of the order passed by Court on 11th June, 1987. He further submitted that although the Advocate-General has submitted that apart from these plots many of the plots were distributed by advertisements, no document has been placed before the Court to show that any plot has been distributed by open advertisement, in spite of the opportunities given on several occasions by the Hon"ble Court. He further submitted that all the plots have been distributed without advertisements. The Special Allotments by the Chief Minister and the concerned Minister-in-charge were totally distributed at the personal whims of the Chief Minister and the concerned Minister-in-charge and it was only those persons who had personal access with the Chief Minister and the concerned Minister-in-Charge got those plots.

56. He further submitted that it is quite clear that the Chief Minister was enjoined a quota with regard to distribution of plots of land in Salt Lake for quite a long time and the order of the Hon" ble Justice B. P. Banerjee dated June 11, 1987 merely reiterated and recognised the existence of the quota of the Chief Minister which was distributed as per the total discretion of the Chief Minister. The Chief Minister has all along exercised his unfettered discretion to pick and choose the allottees in an arbitrary and discretionary manner. The Urban Development Department did not have any information and data whatsoever regarding availability of plots whether ear- marked as residential in the original Government approved master plan or carved out plots earmarked for civic amenities and facilities. From the affidavit of the respondents and the documents which have been disclosed and admitted by the respondents it is quite clear that while allotting such plots the Chief Minister did not give or accord any reason for making such allotment to a particular allottee. Excepting one application of Sri Anjan Kr. Banerjee dated 22nd July, 1996 and December 23, 1996 for allotment of a plot the respondents have not come out or disclosed any application for allotment of plot from the personal quota of the Chief Minister to have been made to the Chief Minister before and after the order dated June 11, 1987 passed by his Lordship B. P. Banerjee, J. (as his Lordship then was).

57. He further submitted that from the facts of this case as it appears that there

was no advertisement, no reasons to show that the plots were allotted fairly and just manner.

58. Mr. Ghosh further submitted that the petitioners have locus standi to file this application cannot be accepted inasmuch as merely because a litigant has a political background that does not disentitle him to file a public interest litigation if it is found that the allegations made by him are based on the facts and are true. He further submitted that the Supreme Court has held that the public interest litigation should not be used in political interest and vendata. The petitioners cannot have any political rivalry with Mr. Jyoti Basu, the Chief Minister of West Bengal. He further submitted that the instances of PIL filed by and against the politician against politician are numerous. He further relied upon the judgment reported in Dinesh Trivedi, M.P. and Others Vs. Union of India (UOI) and Others, He further relied upon a case reported in Kazi Lhendup Dorji Vs. Central Bureau of Investigation and Others, and he also relied upon the judgment reported in Simranjit Singh Mann Vs. Union of India and another, and State of West Bengal, etc. Vs. Ashutosh Lahiri and others, and submitted that in all these cases the writ petitioners had political alliance but even then the petition has been accepted. He also cited another judgment reported in State of Bihar and another Vs. Ranchi Zila Samta Party and another, and submitted that the public interest litigation was entertained by the Patna High Court and such entertainment was upheld by the Supreme Court. He further relied upon a judgment reported in Union of India and others Vs. Sushil Kumar Modi and others, in entertaining a writ petition filed by Sushil Kr. Modi, a BJP MLA against Sri Laloo PrasadYadav, the then Chief Minister of Bihar in Fodder Scam and submitted that the writ petitioners have locus standi to file this petition.

59. He also submitted that since the order passed by a co-equal Bench this Hon"ble Court cannot go into question of discretion cannot be accepted since the order was an interim order and not a final order.

60. After considering the facts and circumstances of this case, the following questions have been raised in this writ application :--

- (a) Whether the writ petitioner has any locus standi to move this application?
- (b) Whether the discretion has been exercised by the Hon"ble Chief Minister arbitrarily and in unjust manner?
- (c) Whether this Court has jurisdiction to pass any order?

61. After considering the facts and circumstances of this case as it appears to me that Public Interest Litigation is a litigation where any person can come before a Court for judicial redress in respect of a public wrong or a public injury has been caused by a public servant.

62. I have also considered the case cited by both the sides and I have found that on several occasions Public Interest Litigation has been filed by the politician, against the politician and which was also entertained by the Hon"ble Apex Court

of this country. In the case of State of West Bengal, etc. Vs. Ashutosh Lahiri and others, a point was raised before this High Court that the petition was not maintainable on the ground that the said petitioner has no locus standi to file the writ petition before the Calcutta High Court. But as it appears that the Supreme Court was ultimately held that the petitioner has locus standi to file the said writ application. It further appears from State of Bihar and another Vs. Ranchi Zila Samta Party and another, where the Public Interest Litigation was entertained by the Patna High Court and the Hon'ble Supreme Court was pleased to uphold such judgment of the Patna High Court. It further appears that in the case of Union of India and others Vs. Sushil Kumar Modi and others, the Supreme Court has upheld the decision of the case of the Patna High Court filed by the Sushil Kr. Modi, a BJP MLA against Sri Laloo Prasad Yadav, the then Chief Minister of Bihar. I have also considered the judgment reported in S.P. Gupta Vs. President of India and Others, where the Supreme Court has held that:--Paragraph 18

"..... But if no specific legal injury is caused to a person or to a determinate class or group of persons by the act or omission of the State or any public authority and the injury is caused only to public interest, the question arises as to who can maintain an action for vindicating the rule of law and setting aside the unlawful action or enforcing the performance of the public duty. If no one can maintain an action for redress of such public wrong or public injury, it would be disastrous for the rule law, for it would be open to the State or a public authority to act with impunity beyond the scope of its power or breach of a public duty owed by it. The Courts cannot countenance such a situation where the observance of the law is left to the sweet will of the authority bound by it, without any redress if the law is contravened. The view has therefore been taken by the Courts in my decisions that whenever there is a public wrong or public injury caused by an act or omission of the State or a public authority which is contrary to the Constitution or the law, any member of the public acting bonafide and having sufficient interest can maintain an action for redressal of such public wrong or public injury."

Paragraph 19

"..... Now if breach of such public duty were allowed to go unredressed because there is no one who has received a specific legal injury or who was entitled to participate in the proceedings pertaining to the decision relating to such public duty, the failure to perform such public duty would go unchecked and it would promote disrespect for the rule of law. It would also open the door for corruption and inefficiency because there would be no check on exercise of public power except what may be provided by the political machinery, which at best would be able to exercise only a limited control and at worst, might become a participant in misuse or abuse of power. It would also make the new social collective rights and interests created for the benefit of the deprived section of the community meaningless and ineffectual."

Paragraph 22

"We would, therefore, hold that any member of the public having sufficient interest can maintain an action for judicial redress for public injury arising from breach of public duty or from violation of some provision of the Constitution or the law and seek enforcement of such public duty and observance of such constitutional or legal provision."

63. In view of such judgments I do not have any hesitation to hold that the writ petitioners have a right to file this application and the petitioners have locus standi to move before this Court.

64. Now I deal with this question whether the Chief Minister has allotted the plots of land at Salt Lake City without following any norms in arbitrary manner or in unjust manner as the question has been raised before me.

65. I have given chances to the Learned Advocate General to disclose all the documents to show that the discretion has been exercised by the Chief Minister reasonably and with reasons. During the course of the hearing affidavits have been filed on behalf of the respondents annexing documents thereto. The respondents filed a list of the persons whom the plots have been allotted on Special Quota, but as it appears that the said list only containing the names and addresses does not give any reasons by the Hon"ble Chief Minister to show that the discretion has been exercised with reasons in favour of the said persons. On the contrary, the petitioners disclosed a document and it appears from the said document that the plots have been allotted to the same of the persons from the said quota by the Chief Minister without stating any reason in allotting such plots in their favour. By not disclosing any documents in respect of such allotments without any reasons the inference can be drawn by this Court that the plots have been allotted without any reasons. It further appears from the records although chances have been given to respondents to produce the advertisements, but again without any advertisement, only the reports published in the newspaper after the order was passed by His Lordship B. P. Banerjee, J. on 11th June, 1987 it has been submitted that the plots can be allotted by the Chief Minister from his quota.

66. Learned Advocate General has relied upon the meaning of the dictionaries of the word "discretion". He has also relied upon the judgments to show that the discretion has been exercised reasonably by the Chief Minister. But I am afraid that on the contrary without placing any document to show that such discretion has been exercised by the Chief Minister in favour of the person/persons without any reasons whatsoever.

67. As it appears that learned Advocate General has relied upon guidelines framed by the Cabinet on the dates stated hereinabove and submitted that the discretion has been exercised by the Hon"ble Chief Minister in a just manner. I have considered the case on the facts and circumstances of this case on this point and I am bound to accept the contention which has been put forwarded by Mr. Ghosh appearing on behalf of the writ petitioner that the allotment which has

been made by the Chief Minister without giving any reasons is nothing but he fails to prove that the discretion has been exercised in just manner. I have also considered the case reported in S.G. Jaisinghani Vs. Union of India (UOI) and Others, and I have to state the same as the Hon"ble Supreme Court has held in the said judgment which reads as follows :--

Paragraph 14

"In this context it is important to emphasize that the absence of arbitrary power is the first essential of the rule of law upon which our whole constitutional system is based. In a system governed by rule of law, discretion, when conferred upon executive authorities, must be confined within clearly defined limits. The rule of law from this point of view means that decisions should be made by the applications of known principles and rules and, in general, such decision should be predictable and a citizen should know where he is. If a decision is taken without any principle or without any rule it is unpredictable and such a decision is the antithesis of a decision taken in accordance with the rule of law. (See Dicey -- "Law of the Constitution" --Tenth Edition, Introduction). "Law has reached its finest moments," stated Douglas J. in United States v. Wunderlich (1951) 342 US 98", "when it has freed man from the unlimited discretion of some ruler. Where discretion is absolute, man has always suffered." It is in this sense that rule of law may be said to be the sworn enemy of caprice. Discretion, as Lord Mansfield stated it in classic terms in the case of John Wilkes (1770) 4 Burr 2528 at p. 2539 "means sound discretion guided by law. It must be governed by rule, not by humour; it must not be arbitrary, vague and fanciful."

68. I have considered the case reported in Surendra Kumar Vs. State of Bihar and Others, The Supreme Court has held while dealing with the discretionary quota of the Chief Minister of Bihar with regard to admission to Medical College observed as follows :--

"Even after thirty four years of the Constitution proclaiming" equality before the law and equality before the law and equality of opportunity, the Chief Ministers of some States continue to regard admission to Professional Colleges and appointments to Government posts as their little private empires. So recently as on September 19, 1983 this Court had to disabuse this impression in Suman Gupta and Others Vs. State of Jammu & Kashmir and Others, . The question in that case arose this way : A certain number of seats in the medical colleges of one State were reserved for candidate from other States to be nominated by the Governments of the other States. Was an absolute power vested in the State Governments to adopt definitive criteria and follow pre-de-fined norms Pathak, J. speaking for himself, Chandrachud, C. J. and Sabyasachi Mukherjee, J. said :--

"After considering the matter carefully, we confess, we are unable to subscribe to the view that the selection of candidates for that purpose must remain in the unlimited discretion and the uncontrolled choice of the State Government... to contend that the choice of the candidate selected on

the basis of his ability to project the culture and ethos of his home. State must necessarily be left to the unfettered discretion of executive authority is to deny a fundamental principle of our constitutional life. Viewed in this context, the claim of the State Government in these cases that the nature of the objective and the means adopted to serve it entitle it legitimately to vest in itself an absolute power in choosing candidates for nomination cannot be allowed to prevail. It is incumbent on the State Government to adopt a criteria or restrict its power by reference to norms which, while designed to achieve its objective, nevertheless confine the flow of that power within constitutional limits. We are not convinced that an adequate system of standards cannot be devised for that purpose. Tested on the touchstone of our constitutional values, the claim of the State Government to the content of the power assumed by it must, in our opinion, be declared invalid..... Until a policy is so formulated and adopted and concrete criteria are embodied in the procedure to be selected, we direct that nomination" be made by following the procedure of selecting candidates strictly on the basis of merit, the candidates nominated being those, in order of merit, immediately next below the candidates selected for admission to the Medical College of the home State.

The pronouncement of this Court has apparently not yet been heard in the distant corridors of the Bihar Secretariat..... Neither the counter affidavit filed by M. Das nor that by P. K. Khare gives the least indication ... by the Chief Minister is quashed."

69. The Hon''ble Supreme Court after holding the same quashed the list of the names recommended by the Hon''ble Chief Minister.

70. The Supreme Court has also in subsequent judgment reported in Sant Raj and Another Vs. O.P. Singla and Another, has followed views which has been observed in the case of S.G. Jaisinghani Vs. Union of India (UOI) and Others,

71. In view of this I am to state that this Court has not been able to find any reasons given by the Chief Minister in allotting plots in favour of the persons. I am not quashing the names of the said allottees or the plots already allotted to them since Mr. Ghosh appearing on behalf of the petitioner has conceded prayer (b) of the writ petition and furthermore since the said allottees have not been made a party the application must fail on that ground alone, although I do not have any hesitation to hold that such allotments are without any reasons and has not been done as a reasonable man ought to have exercised his discretion on the given facts.

72. In my opinion, the discretion should be exercised by the Chief Minister after giving reasons and the advertisement must be issued in the newspapers asking application from the persons who are coming within the same category for allotment of plots in exercise of his such discretion. It is also submitted by Learned Advocate General that whether this Court can pass any order when ;m interim order has been passed by a co-equal Bench is the only question to be

decided at this stage and in my opinion, an interlocutory order cannot stand in the way to decide any matter which is pending before this Court and further a decision can be treated as a precedent if it is decided the question of law. The interim order cannot be relied upon as a precedent and I hold that this Court has jurisdiction to decide this question as put forward before this Court in this application but then since the allottees have not been made parties in this application and they must get a chance to place their facts before the Court, without granting such chance any order if passed by this Court will be a violation of natural justice.

73. Therefore, in my opinion this application fails for non-joinder of parties.

74. It further appears that the interim order passed on June 11, 1987 is still subsisting and I cannot vacate the said order in this application since that is a separate proceeding but I can only direct the Hon'ble Chief Minister to take necessary steps in allotting land at Salt Lake City in accordance with the judgment reported in Common Cause, A Registered Society Vs. Union of India (UOI) and Others, and following the observations made by the Hon'ble Supreme Court which are reproduced hereunder (Para 23 of AIR) .-

"..... While Article 14 permits a reasonable classification having a rational nexus to the objective sought to be achieved, it does not permit the answer to pick and choose arbitrarily out of several persons tailing in the same category. A transparent and objective criteria/procedure has to be evolved so that the choice among the members belonging to the same class or category is based on reason, fair play and non-arbitrariness. It is essential to lay down as a matter of policy as to how preferences would be assigned between two persons falling in the same category. If there are two eminent sportsmen in distress and only one petrol pump is available, there should be clear, transparent and objective criteria/procedure to indicate who out of the two is to be preferred. Lack of transparency in the system promotes nepotism and arbitrariness it is absolutely essential that the entire system should be transparent right from the stage of calling for the applications up to the stage of passing the orders of allotment. The names of the allottees, the orders and the reasons for allotment should be available for public knowledge and scrutiny. Mr. Shanti Bhushan has suggested that the petrol pumps, agencies etc. may be allotted by public auction-categorywise amongst the eligible and objectively selected applicants. We do not wish to impose any procedure on the Government. It is a matter of policy for the Government to lay down. We, however, direct that any procedure laid down by the Government must be transparent, just, fair and non-arbitrary."

75. It further appears to me that the prayers made in this petition are inter-dependent while Mr. Ghosh has conceded to the prayer (b) in my opinion prayer (a) cannot be entertained separately and such the same is refused at this stage. Furthermore, the order dated 11th June, 1987 is still subsisting.

For the reasons stated hereinabove, no order can be passed on this application.