

SHIV SAGAR TIWARI  
v.  
UNION OF INDIA AND ORS.

A

NOVEMBER 8, 1996

[KULDIP SINGH AND B.L. HANSARIA, JJ.]

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*Administrative Law :*

*Public functionary-Exercise of power in arbitrary manner-Minister of Urban Affairs and Employment-Allotment of shops/stalls by-Allotments made violating the norms of the policy framed by the Minister herself and without inviting tenders from eligible public-Held, while allotting the shops/stalls, the Minister did not follow any policy or criteria-Allotments were made in an arbitrary and illegal manner-The action of the Minister was wholly arbitrary, malafide and unconstitutional-The Minister is liable to pay Rs. 60 lakhs as exemplary damages to the Government exchequer-Public Interest Litigation.*

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*Nilabati Behera (Smt.) alias Lalita Behera v. State of Orissa and Ors., [1993] 2 SCC 746 and Common Cause, A Regd. Society v. Union of India & Ors., Writ Petition (C) No. 26 of 1995 decided on November 4, 1996, relied on.*

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*Rookes v. Barnard & Ors., 1964 Appeal Cases 1129 and A.B. and Ors. v. South West Water Services Ltd., 1993 Queen's Bench 507, referred to.*

CIVIL ORIGINAL JURISDICTION : Writ Petition (C) No. 585 of 1994.

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(Under Article 32 of the Constitution of India.)

Shiv Sagar Tiwari, Petitioner in person, Kapil Sibal and Ranjit Kumar for the Petitioner.

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Altaf Ahmed, ASG, S.S. Ray Dr. Rajeev Dhawan, T.C. Sharma, Ms. Sushma Suri, V.K. Verma, Hemant Sharma, Ms. A. Subhashini, S.R. Hegde, Akshay Anand, Rama Kant, Rajiv K. Garg, N.D. Garg, R.S. Sodhi,

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- A Raj Kumar Gupta, H.P. Sharma, A.N. Baadiyar and Ms. Kamini Jaiswal for the Respondents.

The following Order of the Court was delivered :

- B One of the issues for consideration before this Court in this Public Interest Petition is the validity of the allotment of 52 shops/stalls made by Smt. Shiela Kaul, the then Minister for Housing and Urban Development, Government of India.

- C While monitoring this case, this Court has passed various interim orders from time to time. It would be useful to quote three such orders. The relevant part of the order dated April 17, 1996 is as under:

- D “The material placed before us *inter alia*, discloses that 41 shops/stalls allotted by Smt. Shiela Kaul on June 7, 1995 and 2 shops allotted on July 3, 1995 were in total contravention of the rules/policy approved by herself on December 26, 1994. These shops/stalls were situated in Lodhi Road Complex I & II, Hanuman Road Market, Baba Kharak Singh Marg Market, DIZ area Market, and Pleasure Garden near Lajpat Nagar Market. The material on the record further shows that the said 43 shops/stalls were allotted by Smt. Shiela Kaul without issuing any public notice/inviting applications from the eligible persons which was in violation of the policy formulated by her on December 26, 1994. The material also discloses that orders of allotment in respect of said 41 shops/stalls were passed by Smt. Shiela Kaul on June 7, 1995 (5 shops and 36 stalls). The material further discloses that all the six shops have been allotted by her to her own relations/employees/domestic servants of her family members and family friends. She has allotted two shops to her two grand-sons, one shop to the maid servant of her son, Shri Vikram Kaul, who is residing in Dubai. One shop to Handloom Manager of the firm, owned by her son-in-law and another shop to a close friend. One shop has been allotted to the nephew of her Minister of State, Shri P.K. Thungon. It is further on the record that while making allotments in respect of stalls she has allotted most of the stalls to the relations, friends of her personal staff and officials of Directorate of Estate. The details and the names of allottees and their relationship have also been placed on the record.

The relevant part of the order dated July 19, 1996 is as under :

- H. “Mr. N.N. Singh, Superintendent of Police, CBI, New Delhi has

placed on record interim report No. 3 dated June 17, 1996 and Interim Report No. 4 dated July 16, 1996. Interim Report No. 3 indicates that a separate preliminary enquiry was registered against Smt. Shiela Kaul and others in the matters of allotment of shops/stalls made by her on June 7, 1995 and July 3, 1995 in favour of her close relations/friends of her personal staff as well as those of the officials of Directorate of Estates. According to the report, the preliminary enquiry, *prima facie*, establishes that Smt. Shiela Kaul had abused her official position as the Minister for Urban Development and she had entered into a criminal conspiracy with some of the acquaintances and her personal staff, pursuant to which she in abuse of her official position made these allotments and caused wrongful loss to the Government by effecting allotments on economical licence fees basis without inviting any tender or by issuing public notice for inviting the response from the general public from the point of view of earning maximum revenue for the Government. A regular case under Section 120-B, 420, 468/471 IPC and Section 13(2) read with 13(1)(d) of the Prevention of Corruption Act, 1988, has been registered against Shiela Kaul and her additional Private Secretary Rajan S. Lala and others.”

The order dated September 6, 1996 to the extent relevant is as under:

“Pursuant to this Court’s order dated July 19, 1996, the Director of Estates has filed its report along with an affidavit regarding the shops and stalls allotted by Smt. Shiela Kaul. It is stated that from 1992 onwards 52 shops have been sanctioned by the then Minister for Urban Development (Smt. Shiela Kaul) out of which 7 shops were allotted by Smt. Shiela Kaul before she herself had approved the policy in 1994 for disposal of the shops on tender basis. It is further stated in the affidavit that 45 shops were allotted by Smt. Shiela Kaul after 1994 in violation of the policy framed by the Ministry.

The gist of the objections filed by the various allottees have been enclosed along with the affidavit. Before any action is taken, we consider it appropriate to give an opportunity of hearing to all these persons. We, therefore, direct the Director of Estates to issue individual notices to these 42 persons to be personally present in this Court or through their counsel to argue their point of view in respect of their objections on 27th September, 1996 at 2 PM. They shall show cause to this Court why their allotment be not cancelled and why they be not burdened with damages.”

This Court by the Judgment dated October 11, 1996 has come to the

A conclusion that the allotments of the said 52 shops/stalls made by Smt. Shiela Kaul were arbitrary, discriminatory, unconstitutional and as such were liable to be quashed. This Court quashed the said allotments on the following reasoning:

B “The CBI has since inquired into the matter in some detail and has by now submitted 4 Interim Reports. According to the CBI, orders of allotment in respect of the shops/stalls in question were passed by Smt. Shiela Kaul, the then Minister of Urban Development and “all the 6 shops have been allotted by her to her own relation/employees/domestic servants of her family members and family friends. She has allotted 2 shops to her 2 grandsons. One shop to the maidservant of her son, Sh. Vikram Kaul who is residing in Dubai, one shop to handloom manager of the firm owned by her son-in-law and another shop to a close friend. One shop has been allotted to the nephew of the Minister of State, Sh. P.K. Thungon. While making allotments in respect of stalls, she has allotted most of stalls to the relations/friends of her personal staff and officials of Dte. of Estates.”

C The CBI has also reported that Smt. Shiela Kaul had made ten different categories of persons as the basis for deciding allotments, but even this categorisation was not adhered to while making allotments. The further findings are: (1) “Many other Organisations/persons who had also applied for allotment of shops/stalls from time to time were not considered for allotment and no reasons, whatsoever, were assigned for non-allotment of shops/stalls to them” : and (2) -“At the time of discretionary allotments made by Smt. Shiela Kaul in 1992 and 1994 persons who were relations of her personal staff were considered and allotted shops.....”.

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Question is whether they were selected in accordance with law, which aspect as its importance because apparently a large number of other persons could as well fall within the categories in question and had applied also? From the report of the CBI it is clear that the allottees had been selected, not by following the tender system, as required by the policy of 1994, but because of their relationship with the Minister or her personal staff, or being employees or friends of such persons. If that be so, the allotments were wholly arbitrary and speak of misuse of power. All important question is what is required to be done to undo the wrong and how the wrong doer is to be dealt with within the parameters known to law.”

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Finally in para 18 of the judgment, this Court directed as under:

H “Secondly, Smt. Shiela Kaul, who was *prima facie* personally

responsible for the illegal allotments, has to be asked to show cause as to why damage should not be awarded against her for her alleged misuse of power. So, a notice be issued to her to show cause why she should not be asked to pay such sum as damages, for each of the illegal allotments made by her, as this Court would deem just and proper. The cause would be shown within three weeks of the receipt of this order.”

Pursuant to the above quoted directions, a show cause notice was issued to Smt. Shiela Kaul. She has filed affidavit in reply to the show cause notice.

Smt. Shiela Kaul was arrayed as respondent in the writ petition. This Court has been monitoring this case for a period of about 2 years. Various interim orders were passed from time to time. Despite ample opportunity available to her Smt. Shiela Kaul did not choose to file any counter-affidavit in this Court. Dr. Rajiv Dhawan, learned counsel appearing for Smt. Shiela Kaul has very fairly stated that her client cannot take her case higher than what has been stated in the affidavit filed on behalf of the Union of India. The learned counsel has relied upon paras 6 & 7 of the affidavit dated September 6, 1996 filed by Harcharanjeet Singh, Director of Estates, Ministry of Urban Affairs and Employment, on behalf of Union of India. The said paras are as under:

“6. That the Ministry of Works & Housing (renamed as Ministry of Urban Affairs & Employment) on 24th March, 1979 had issued the policy to be adopted for development and construction of shopping centers in various Government colonies in Delhi. A copy of the Office Memorandum issued in this regard is given as Annexure-R-V. The salient features of the policy are indicated as follows:

i) The shops under construction in convenient/local shopping centers in the sanctioned scheme would be sold by auction by the Land & Development Officer after fixing minimum reserve price in consultation with the Finance Division.

ii) In respect of the shopping centres which are to be constructed in various colonies the L&DO would auction the sites for various purposes on perpetual leasehold basis.

iii) Such shops that are constructed in multistorey buildings would be taken in the books of the Director of Estates would

A allot the same on licence fee basis.

iv) While the above was the general policy to be adopted in future (after 24th March, 1979) exceptions may be made if the circumstances so warranted.

B 7. The records of the Director of Estates indicate that after the  
 C issue of these instructions in March 1979, the Office of L & D  
 O has not been able to auction any shops in any of the shopping  
 centres in Government colonies, despite the efforts made by the  
 Office of L & D O in this regard since the reserve price fixed  
 by the L & D O was considered too high and no bidders came  
 forward for auction of shops. At present, the records of the  
 Directorate of estates where decisions have been taken by various  
 Ministers to allot the shops on licence fee basis are with the  
 Central Bureau of Investigation. In the absence of records which  
 were not easily accessible it has not been possible to indicate the  
 exact position in respect of each shop which has been given on  
 D licence fee basis after the policy as indicated above came into  
 force. However, on the basis of the individual files it is observed  
 that in January, 1986, 5 shops were given on licence fee basis  
 by the then Minister (Shri Abdul Gafoor). From 1987 to 1990,  
 18 shops were allotted on licence fee basis by the then Minister  
 (Smt. Mohsina Kidwai). Thereafter, from 1992 onwards 52  
 E shops have been sanctioned by the then Minister for Urban  
 Development (Smt. Shiela Kaul) out of which 7 shops were  
 allotted by Smt. Shiela Kaul before she herself had approved  
 the policy in 1994 for disposal of the shops on tender basis.

F 8. Break-up of the shops allotted by Smt. Shiela Kaul, the then  
 Minister during her tenure is as follows:

Shops allotted from 1992 to 1994	7
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(Before the policy of giving the shops on tender basis was approved).

G Shops allotted after 1994 policy was laid down.	45
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Shops not accepted by the allottees.	9
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H The contents, quoted above, only give the factual position pertaining  
 to the allotment of shops/stalls during the period from 1979 onwards. It is  
 further obvious that Smt. Shiela Kaul herself framed the policy in 1994

for disposal of the shops on tender basis but did not follow the same. At this stage it would be instructive to quote the explanation given by Smt. Shiela Kaul in her affidavit in reply to the show cause notice to the allegation that she allotted shops to her two grand children, friends, and relations: A

“In any case, the allegations are wrong in material particulars in that- B

In respect to the 2 shops to her grandsons, she was not aware at that time because the name in the list were Vivek Kumar & Ashish Kumar and the addresses were of Delhi of which she was not aware. The shop allotted to maid servant of her son Vikram Kaul, she was not aware of her name and addresses in the statement given to her. She comes from a weaker section of society and comes under Schedule Tribes.” C

We do not wish to comment except that we are at pains to read the above quoted stand taken by a person who has held high offices like Central Minister and Governor. D

This Court in *Common Cause A Regd. Society v. Union of India & Ors.* Writ Petition (C) No.26 of 1995 (*Capt. Satish Sharma's* case) decided on November 4, 1996 relied upon this Court's judgment in *Nilabati Behera (Smt.) Alias Lalita Behera v. State of Orissa and Ors.*, [1993] 2 SCC 746. This Court also referred to *Rookes v. Barnard & Ors.*, [1964] Appeal Cases 1129 and the Judgment of the Court of Appeal in *A.B. and Ors. v. South West Water Services Ltd.* [1993] Queen's Bench 507 and held as under: E

“We are of the view that the legal position that exemplary damages can be awarded in a case where the action of a public servant is oppressive, arbitrary or unconstitutional is unexceptionable.” F

Even in the judgment dated October 11, 1996 by which show cause notice was issued to Smt. Shiela Kaul, this Court referred to various judgments of different Courts from different countries in the world and has held that a public servant is liable to exemplary damages for his acts which are oppressive, arbitrary or unconstitutional. G

The question for consideration, however, is whether the action of Smt. Shiela Kaul, as discussed in detail in our judgment dated October 11, 1996 (relevant part quoted above) and also in various interim orders quoted H

- A above, makes her liable to pay exemplary damages. After giving our thoughtful consideration to the material on record and in particular the findings of this Court-quoted above-the answer has to be in the affirmative. Smt. Shiela Kaul's action was wholly arbitrary, *malafide* and unconstitutional. This Court has given clear finding in the judgment/orders quoted above to this effect. We, therefore, hold that Smt. Shiela
- B Kaul is liable to pay exemplary damages.

- We have heard Dr. Rajiv Dhawan, Mr. Kapil Sibal, Mr. Altaf Ahmad, learned Additional Solicitor General and Mr. Shiv Sagar Tiwari on the question of quantum. Dr. Dhawan has stated that Smt. Shiela Kaul has followed the same policy which was being followed by her predecessors
- C in office. Mr. Kapil Sibal has contended that exemplary damages should be awarded for public injury caused as a result of arbitrary exercise of power on the part of Smt. Shiela Kaul. He has, however, contended that so far as the allotments made by her are concerned, in the facts and circumstances of the case, exemplary damages are not called for. Mr. Sibal has based his contention on the assumption that if the allotments
- D were to be made to the persons belonging to the weaker sections of the society, then, there would not have much gain to the State Exchequer. There is nothing on the record to show that the allotments were to be made only to weaker sections or to any category of persons. In any case Smt. Shiela Kaul did not follow any policy or criteria. Allotments were
- E made by her in an arbitrary and illegal manner.

We may mention that this Court in the order dated November 4, 1996 concerning Capt. Satish Sharma awarded Rs. 50 lacs as damages for his actions which were arbitrary, *malafide* and unconstitutional.

- F After examining all the facts and circumstances of the case and giving our thoughtful consideration to this aspect, we direct Smt. Shiela Kaul to pay a sum of Rs. 60 lacs (on all counts) as exemplary damages to the Government Exchequer. Since the property with which Smt. Shiela Kaul was dealing was public property, the Government which is "by the people" has to be compensated. We further direct Smt. Shiela Kaul to deposit the
- G amount with the Secretary, Ministry of Finance, Government of India within nine months from today. The amount if not paid, shall be recoverable as arrears of land revenue.

- H Before parting with this order, we make it clear that the CBI, which is separately investigating the matter, shall not be influenced by any

observations made by this Court for reaching the conclusion as to whether any *prima facie* case for prosecution/trial is made out against Smt. Shiela Kaul. It shall have to be decided on the basis of the material collected and made available with the CBI as a result of the investigation. A

R.P.

Petition still pending.