

REPORTABLE**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION****CIVIL APPEAL NO. 5565 OF 2009****INDIAN OIL CORPORATION LTD. & ORS. ...APPELLANTS****VERSUS****SHASHI PRABHA SHUKLA & ANR. ...RESPONDENTS****J U D G M E N T****AMITAVA ROY, J.**

1. The Indian Oil Corporation Limited (hereafter to be referred to as the "IOC/Corporation") and its functionaries, in this appeal seek to overturn the judgment and order dated 04.10.2004 rendered by the High Court of Judicature at Allahabad in Civil Misc. Petition No. 34886 of 1998, thereby directing the Corporation to convert the dealership of a petrol pump initially allotted in favour of the respondent No.1 (hereafter to be referred to as the "respondent") under the discretionary quota of the Departmental Minister

concerned to one under its (appellant) circular No.67-2/2K4 dated 12.02.2004 and restraining it as well from interfering with the possession of the respondent of the installation premises. As the sequence of events would unfold, the attendant facts do project a distressing state of affairs in the matter of distribution of State largesse, seemingly motivated by irrelevant considerations, deliberate defaults and casual disregard to binding judicial adjudications of a Constitutional Court.

- 2.** We have heard Mr. Annam D.N. Rao, learned counsel for the appellants and Mr. Tripurari Ray, learned counsel for the respondent No. 1 . Though served, but none has filed vakalatnama on behalf of respondent No. 2.
- 3.** First the skeletal facts, to facilitate the desired grip of the issues to be addressed. The respondent herein, claiming to be an unemployed graduate but actively involved in activities pertaining to rural development and welfare of women, but without any regular source

of livelihood, applied to the then Minister of Petroleum, Government of India, New Delhi for being sanctioned a petrol pump under his Special Discretionary Quota on the National Highway, Phutahia Chauraha, Tehsil and District Basti, U.P. The application was considered for allotment of a retail outlet dealership on compassionate ground and was forwarded for necessary follow-up action to the Direction (Marketing), Indian Oil Corporation, Bombay on 08.08.1985. In deference to the said communication, the Corporation issued a Letter Of Intent (LOI) on 04.10.1995 for a retail outlet dealership in motor spirit and high speed diesel oil on the National Highway at Phutahia Chauraha, District Basti under "A" category. Thereafter a lease deed was executed on 16.09.1996 between the respondent and the appellant/Corporation for a period of 30 years at a monthly rent of Rs.1650/- payable to the former by the latter w.e.f. 01.03.1996 and was made renewable at the option of the parties. It was inter alia agreed

that the appellant/Corporation would develop the retail outlet and provide the same to the respondent with certain facilities, such as, a suitable plot of land duly developed as an outlet with office building, storage, tank and pump, air facility etc.

- 4.** The pleaded stand of the respondent in this regard however is that though the dealership was declared to be under “A” category, for which as per the norms, the appellant/Corporation was required to provide the infrastructure including land, in her case on its persuasion and insistences, she had to purchase the necessary land and make further investments to make it fit for the installation by expending more than Rs.14 lakhs, against which she was to receive a nominal monthly lease rent of Rs.1650/-. She also expressed her grievances with regard to the allotments of the supplies made to her from time to time, resulting in heavy financial loss to her in business.
- 5.** Be that as it may, this grant of dealership to the respondent came to be impeached along with other

grants in a public interest litigation being Writ Petition(C) No.4003 of 1995 before the High Court of Delhi by the Center for Public Interest Litigation, in all questioning allotment of 179 retail outlets (petrol pumps), 155 LPG distributorship and 45 SKO/LDO dealerships from January 1993 till 1996 by the Departmental Minister under his discretionary quota and upon complete adjudication of the issues with the participation of the parties involved, the proceeding was disposed of by the judgment and order dated 29.08.1997. It was held in a sense, on a scrutiny of the files/records produced before the Court that those reflected unexplained surge of favouritism in the matter of distribution of the aforementioned public contracts/distributorships/ dealerships. Vis-a-vis the award in favour of the respondent, it was held thus:

“A retail on National Highway Phutahia Chauraha, Teh. & Distt. Basti, UP, has been allotted to Smt. Shashi Prabha Shukla on her undated application on the ground that the applicant is unemployed graduate with keen interest in activities relating to rural development and welfare of women and has no

regular source of livelihood. From the application it appears that the applicant is resident of district Sultanpur, UP. The allotment in her favour has also been made in a casual manner as is the case in respect of allotments in other cases noticed above. We were told by the learned counsel for the applicant that the applicant is president of Youth Congress. Be that as it may, we feel that the allotment in favour of this applicant is no better than other allotments noticed by us. This petrol pump is also non operational.”

- 6.** On the basis of the findings recorded, which were held as well to be violative of the relevant guidelines of this Court on this issue and found to be prompted by extraneous considerations, the assailed allotments were directed to be cancelled and the following was ordered:

“(1) Those who have commissioned the Petrol Pumps/LPG/SKO, Distributorship and are running the same shall stop operating the Petrol Pumps etc. as the case may be, with effect from 1st December 1997. The Government of India/concerned Oil Corporation shall take over the Petrol Pump premises or distributorship premises from these persons on 1st December 1997. The concerned Oil Corporation shall have the market value of the land (if it belongs to the allottee) and/or the construction thereon determined in a fair and just manner forthwith.

(2) The right to run the Petrol Pumps and/or Distributorship taken over by the Government/Oil Corporation concerned shall be disposed of by way of public auction to be held, if feasible, before 1st December 1997, so that as far as possible, the public may not suffer or the suffering is for minimal period. The original allottee may also participate in the auction. The Petrol Pump Distributorship shall be allotted to the highest bidder who shall run it on original terms and conditions. He shall have all the rights in respect of the land and construction thereon as the original allottee had on the date of auction, subject, however, to payments as determined by the Government/Oil Corporation/concerned authority being made by the highest bidder. Out of the auction money the value of the land and construction, if payable to the original allottee and as determined by the Oil Corporation shall be paid to the original allottee and the remaining amount remitted to Prime Minister's Relief Fund. If the successful bidder is the original allottee he shall pay the difference between the auction money and the value of the land and construction as determined by the Oil Corporation.

(3) In case any of the allottee whose allotment has been ordered to be cancelled and who was running business from land owned by him and he. is unwilling to sell part with the land on which the Petrol Pump/Distributorship is being run, he shall intimate this fact to Secretary, Ministry of Petroleum within two weeks. In such a case the right to open Petrol Pump/Distributorship, as the case may be within the close proximity of the existing

location, as may be determined by the Oil Corporation concerned, depending upon the facts and circumstances of each case and the need of the public, shall alone be auctioned with a stipulation that the highest bidder would arrange for the land/superstructure for running the Petrol Pump/Distributorship. In such an eventually, all connections hitherto with the distributor whose allotment has been cancelled shall be transferred to the establishment of the highest bidder.

(4) The Ministry of Petroleum is directed to file compliance report by 15th December, 1997.”

- 7.** The above quote would yield the following salient features of the peremptory directives:
- a) The concerned petrol pumps/LPG/SKO Distributors would stop operation on and from 01.12.1997.
 - b) The Government of India/all concerned Corporations would take over the petrol pump premises or distributorship premises on 01.12.1997.
 - c) The concerned Oil Corporation would have the market value of the land, if it belongs to the allottee and/or the construction thereon determined in a fair and just manner forthwith.
 - d) The right to run the petrol pumps and/or

distributorships taken over by the Government/all Corporations concerned shall be disposed of by public auction to be held, if feasible, before 01.12.1997 so that as far as possible, the public may not suffer or the suffering is for a minimum period.

- e) The original allottee be permitted to participate in the auction.
- f) Out of the auction money, the value of the land and construction, if payable to the original allottee and as determined by the all Corporations shall be paid to the original allottee and the remaining amount would be remitted to the Prime Minister's Relief Fund.
- g) If the successful bidder is the original allottee, he shall pay the difference between the auction money and the value of the land and constructions as determined by the Corporation.
- h) In case, any allottee whose allotment has been ordered to be cancelled and who had been running business from the land owned by him is unwilling to sell/part with the land on which the petrol

pump/distributorship is being run, he would intimate this fact to the Secretary, Ministry of Petroleum within two weeks. In such a case, the right to open petrol pump/distributorship, as the case may be, within the close proximity of the existing location, as may be determined by the Oil Corporation concerned, depending upon the facts and circumstances of each case and the need of the public shall alone be auctioned with a stipulation that the highest bidder would arrange for the land/super structure for running the petrol pump/distributorship.

- i) All connections hitherto with a distributor, whose allotment had been cancelled, would be transferred to the establishment of the highest bidder.
- j) The Ministry of Petroleum was required to file compliance report by 15.12.1997.

8. The Corporation accordingly on 13.10.1997, issued a notice to the respondent intimating her that the dealership agreement between the parties at the close of the business hours on 30.11.1997 would be treated

as terminated and that she would not be entitled to operate the outlet on and from 01.12.1997. It was also conveyed that w.e.f. 01.12.1997, neither she nor her agents/employees and/or representatives would be entitled to enter the retail outlet premises. It was clarified that all these would be without prejudice to any other claim the Corporation might have against her under the terms of the dealership agreement and in law.

- 9.** Meanwhile, the respondent had on 23.09.1997 intimated the Ministry of Petroleum, Government of India, New Delhi that she was not interested to sell or part with the land on which the petrol pump distributorship was underway. She also filed SLP (C) No. 19872 of 1997 before this Court challenging the judgment and order dated 29.08.1997, which was disposed of on 20.10.1997 leaving her at liberty, as prayed for, to seek a review before the High Court. Incidentally, the review petition filed by her was dismissed on 07.11.1997, whereupon she

unsuccessfully assailed the same in a fresh special leave petition before this Court, which too was dismissed on 28.11.1997. Thus, the judgment and order dated 29.08.1997 of the Delhi High Court attained finality and eventually the retail outlet was closed and the facilities were taken over by the Corporation w.e.f 01.12.1997.

10. The respondent No.1 however in response to the notice dated 13.10.1997, did call upon the Corporation to return the land in the same condition as it had been given to it within 15 days, stating further that failing which, it would be required to pay rent @ Rs. 50,000/- per month for use and occupation of the premises and also damages from 23.02.1996.

11. The Corporation thereafter issued an advertisement dated 05.10.1998 to auction the outlet hitherto allotted to the respondent. Certain excerpts of the said advertisement being of decisive significance are extracted hereinbelow:

“Pursuant to the direction of the Hon’ble High

Court, Delhi by its order dated 29th August, 1997 as clarified/modified by its further order dated 11.09.1998 in Writ Petition No.4003 of 1995 between Centre for Public interest litigation and Union of India, Government Approved Auctioneers, will auction the right to get appointed as dealer of a company controlled outlet of M/s. Indian Oil Corporation Ltd. Situated at the place mentioned in the schedule hereunder on the terms and condition Ltd.

x	x	x	x	x	x	x	x
x	x	x	x	x	x	x	x

6. Terms and conditions covering the terms on which the property is being auctioned and the conduct of the auction may be obtained upon payment of Rs.500/- (Rs.Five Hundred only) by demand draft or pay order drawn in favour of M/s. Indian Oil Corporation Ltd., (M.D.) payable at Allahabad from the Divisional office of Indian Oil Corporation Ltd. at 5th floor, Indira Bhawan, Civil Lines, Allahabad – 211001 (U.P.) on any working day between 10.30 a.m. and 4.00 p.m. The detailed terms and conditions of auction are displayed on the notice Board of the above Divisional office.

SCHEDULE

Last date for submission of applications to participate in the bid 22nd October, 1998.

Date of displaying list of eligible bidders: 28th October, 1998

Date of auction/time of auction will be display on the notice board at our Divisional Office, Indian Oil Corporation Ltd. (M.D.), 5th Floor

Indira Bhawan Civil Lines, Allahabad – 211001
(U.P.)

Venue of Property: NH Phutahia Chauraha,
Place: Basti (U.P.)”

12. As the advertisement would reveal, it did contain a categorical reference of the judgment and order dated 29.08.1997 of the Delhi High Court, pursuant to which the same had been made to auction the right of a dealer of the company controlled outlet, situated at the place mentioned at NH Phutahia Chauraha, Place: Basti (U.P.). Subsequent thereto, by a corrigendum dated 13.10.1998, the word “property” appearing in Clause 6 was in essence substituted by the word “dealership”, as would be evident from the extract of the said corrigendum:

“In item 6 of the said notice for auction for retail outlet of M/s. Indian Oil Corporation Ltd. situated at NH Phutahia Chauraha, Basti (U.P.) may be read as follows:

The word PROPERTY shall also be substituted by the word DEALERSHIP. It is further clarified that in case of company controlled retail outlets only license to operate the dealership will be substituted with the word

DEALERSHIP in the terms and conditions and its Annexures being sold from our office at Allahabad.

Other terms and conditions shall be applicable as per earlier advertisement.”

13. Mentionably, no other record has been laid before this Court to further elaborate on the terms and conditions of the proposed auction.

14. To reiterate, the High Court of Delhi in its rendition dated 29.08.1997, vis-à-vis the cases where the allottee, whose allotment had been cancelled, was unwilling to sell/part with a land on which the petrol pump/distributorship was being operated, had directed the Corporation to auction the right to open petrol pump/distributorship within the close proximity of the existing location, as may be determined by it, depending upon the facts and circumstances of each case and the need of the public with the stipulation that the highest bidder would arrange for the land/super structure for running the petrol

pump/distributorship. To put it differently, in the eventuality where the allottee was not willing to sell/part with the land on which the petrol pump/distributorship was operational, the Corporation was obligated in law to ensure the following steps in re-auctioning the right to open petrol pump/distributorship:

- (i) Determine a location in the close proximity of the existing location depending upon the facts and circumstances of each case and the need of the public.
- (ii) Such location, as determined on the above factors, alone to be auctioned with the stipulation that the highest bidder would arrange for the land/super structures for running the petrol pump/distributorship.

15. The unambiguous precept in the above premise, as contained in the judgment and order dated 29.08.1997 thus did cast a duty on the Corporation as a condition precedent for the re-auction, to determine

a location within the close proximity of the existing location, contingent on the facts and circumstances of each case and the need of the public. In clear terms therefore the Corporation was required to undertake this conscious exercise, it being clear that the location for the re-auction has to be essentially different from, though in proximity of the existing location.

16. The advertisement dated 05.10.1998 along with the corrigendum however do not disclose the exact location for which the re-auction was notified, the venue of the site being “NH Bhutahia Chauraha, Place: Basti (U.P.)” and wholly identical to the one of the existing location of the respondent. No attempt has been made to draw our attention to any initiative taken by the Corporation in compliance of the directives contained in the judgment and order dated 29.08.1997 of the Delhi High Court to identify the location as required for the fresh auction.

17. The respondent however launched her assailment against the advertisement dated 05.10.1998 and the

corrigendum dated 13.10.1998, this time before the High Court of Judicature at Allahabad pleading the same to be violative of the directions contained in the judgment and order dated 29.08.1997 and also in violation of her fundamental rights under Articles 14, 19(1)(g) of the Constitution of India. The High Court of Judicature at Allahabad in the first instance by its order dated 29.10.1998 stayed the operation of the auction notices and subsequent thereto, by its order dated 17.12.1998 directed the Corporation to permit the respondent to run the dealership of petroleum in the petrol pump of Phutahia Chauraha, District Basti until the auction was held and finalized. Eventually, by the impugned judgment and order, noticing that the proposed auction had not taken place and that consequently the respondent had been permitted to run the retail outlet since 1998, directed the Corporation, in view of its new policy dated 12.02.2004, to award fresh dealership to the respondent thereunder and further restrained it from

interfering with her possession of the petrol pump premises in question.

18. As the impugned judgment would demonstrate, the High Court, while traversing the relevant facts, took note of the pleaded stand of the Corporation before it that the lease executed by the respondent vis-à-vis the land in question did subsist, cancellation of the dealership notwithstanding, and therefore she was not entitled for the possession thereof and that it had the right to induct some other dealer through the proposed auction to operate the agency from the land of the respondent. The High Court, while readily dismissing this plea of the Corporation on the touchstone of Article 300A of the Constitution of India held that as the dealership was cancelled by the intervention of the Delhi High Court, it was not open for the Corporation to assert that the lease deed executed by her in its favour did subsist thereafter in the eye of law. Having propounded thus, the High Court observed that because of the non-removal of the

fixtures, machineries and apparatus etc. from the land by the Corporation and because of its unlawful stand precipitating the litigation before it, the respondent was sought to be denied the benefit of the use of land in question for which she was permitted, by the interim order dated 17.12.1998, to continue with the dealership till the auction was held and finalized. Taking note of the fact that no auction had taken place and that the respondent had been permitted to run the retail outlet since 1998, the High Court provided that fresh dealership be awarded to her under the new Policy dated 12.02.2004 of the Corporation, which contemplated such allotments to land owners and their nominees from within the family, directly as well as through advertisement for locations outside government approved marketing plans. The High Court did also record that the entitlement of the respondent was also cognizable in view of the fact that she had been running the present retail outlet without any complaint for a long period. To reiterate, the High

Court thus directed the Corporation to award fresh dealership under the said policy by converting the earlier dealership thereunder within one month and also further restrained it from interfering with the respondent's possession over the petrol pump premises in question. This determination is the subject matter of scrutiny in the present appeal.

19. Mr. Rao has insistently argued that the dealership of the respondent having been cancelled by the ruling dated 29.08.1997 of the Delhi High Court which had attained finality, no direction for fresh dealership to her under any circumstances could have been made and thus the same being patently erroneous, the impugned judgment and order is liable to be set aside. According to the learned counsel, the advertisement dated 05.10.1998 and the corrigendum dated 13.10.1998, if cumulatively read, are in meticulous compliance of the directions to that effect as contained in the judgment and order dated 29.08.1997 and thus the Corporation ought to have

been permitted to undertake the process to its logical end. The learned counsel for the Corporation when confronted with the omissions in the advertisement and absence of materials on record to authenticate that the exercise required to be undertaken by the Corporation for identifying a location in the proximity of the existing location was pursued, had no convincing explanation therefor.

20. Controverting the above, the learned counsel for the respondent emphatically urged that in the attendant facts and circumstances, though the judgment and order dated 29.08.1997 of the Delhi High Court had attained finality, the operative direction to the Corporation to convert the existing dealership into a new dealership under the policy dated 12.02.2004 is unassailable and therefore no interference in this appeal is called for. While imputing that, the Corporation though required in cases of dealership under category 'A', to provide the whole infrastructure including the land, in the case of the

respondent, she was asked to make the arrangement therefor on her own investments, the learned counsel maintained that the advertisement dated 05.10.1998, even if read with the corrigendum dated 13.10.1998 was apparently not in compliance of the directions of the Delhi High Court and, therefore could not have been given effect to. According to him, the auction had thus been rightly stayed by the Allahabad High Court whereafter the respondent was permitted to operate the dealership and eventually taking note of the prevalent policy dated 12.02.2004, the Corporation had been rightly directed to convert her existing dealership to a fresh dealership thereunder. It was urged as well that the plea of the appellant/Corporation that cancellation of the dealership notwithstanding, the lease did subsist and that it was entitled in law to hold a fresh auction for the land of the respondent, was wholly untenable and violative of the mandate of Article 300A, as held by the Allahabad High Court.

21. The recorded facts and the rival assertions have received our due consideration. The genesis of the instant appraisal is indeed traceable to the allotment of the retail outlet dealership to the respondent on compassionate ground by the Departmental Minister for Petroleum from his Special Discretionary Quota. As hereinbefore stated, on the recommendation of the said authority, the Corporation awarded the dealership. This award along with identically placed allotments, on judicial scrutiny, were directed to be cancelled in the public interest litigation initiated by the Center for Public Interest Litigation before the High Court of Delhi which, by its judgment and order dated 29.08.1997, on the ground that those were vitiated not by mere aberrations or arbitrariness, but by uncontrolled display of favouritism. The rendition by the High Court of Delhi in the facts and circumstances of the cases before it, was assuredly to secure administrative probity, transparency, objectivity and fairness in the matter of distribution of State largesse

and public contracts. This decision, to reiterate, has become final and binding on the parties. As noted hereinabove, the Corporation in flagrant defiance and disregard to the judicial mandate of a Constitutional Court did not only issue the advertisement dated 05.10.1998 with the corrigendum on 13.10.1998 without either determining or specifying the exact location for the site of dealership in the proximity of the earlier site of the respondent, instead did take up an incomprehensible plea that the cancellation of the dealership notwithstanding, the lease of the land of the respondent with it did subsist and that it was entitled in law to induct the new dealer through the auction process initiated, to the same location. The underlying objective in issuing the direction to determine and specify a location in the proximity of the existing site was with the avowed purpose of avoiding confrontation and possible litigation and also to ensure smooth and uninhibited supply of petrol and HSD from the new outlet at the fresh venue.

22. In the facts of the present case, we subscribe to the view of the High Court of Allahabad that with the termination of the dealership, the lease between the parties also stood extinguished and therefore, the respondent being the owner of the land and she having expressed her disinclination to sell or part with it, the Corporation by no means could have contemplated to award the new dealership to a third party on her land. On this clear premise, the failure of the Corporation to act in terms of the directions containing in the judgment and order of the Delhi High Court and in contending that the land of the respondent was available for commissioning the new dealership is patently wrong besides being contumaciously irreverent and abusively non-compliant thereof. The approach and attitude of the Corporation in making the advertisement dated 05.10.1998 with the corrigendum dated 13.10.1998 and in taking the apparently untenable stand that notwithstanding the cancellation of the dealership of

the respondent, her land was available for the new process, is thus visibly militative of the rule of law besides being destructive of the salutary objective with which the High Court of Delhi had directed cancellation of the dealership/distributorship of the respondent along with others, being vitiated by the vice of nepotism and favouritism. This we say, as having regard to the progression of events, we are left with the impression, in view of the persistent omissions and commissions of the Corporation, that it is not unlikely that all these might have been strategised to eventually benefit the respondent in the long run. The pleaded stand of the Corporation that despite the cancellation of the dealership of the respondent, her land was still available, flies in the face of the determination to the contrary as recorded in the judgment and order dated 29.08.1997 and only reflects the pre-determined mind of its functionaries for reasons unknown, though inferable. It is really incomprehensible as to how in spite of such explicit

and clear observations and directions of the High Court of Delhi in its judgment and order dated 29.08.1997, either such a stand could have been taken or the fresh auction process could have been initiated without undertaking the initiatives required for specifying/identifying the new location. To reiterate, no material has been placed before us to demonstrate to the contrary. This is more so, as in the advertisement dated 05.10.1998, there is a reference of the judgment and order dated 29.08.1997 of the Delhi High Court. A bare perusal of this document would show the venue to be “NH Phutahia Chauraha place: Basti (UP)”, the same as of the dealership of the respondent.

- 23.** It is no longer *res integra* that a public authority, be a person or an administrative body is entrusted with the role to perform for the benefit of the public and not for private profit and when a prima facie case of misuse of power is made out, it is open to a court to draw the inference that unauthorized purposes have

been pursued, if the competent authority fails to adduce any ground supporting the validity of its conduct.

24. The following extract from the Halsbury's Laws of England, Fourth Edition, Vol.1(1) Administrative Law provide the foundation of these observations:

“A public authority may be described as a person or **administrative body entrusted** with functions to perform for the benefit of the public and not for private profit. Not every such person or body is expressly defined as public authority or body, and the meaning of a public authority or body may vary according to the statutory context.”

25. In re, the duties, responsibilities and obligations of a public authority in a system based on rule of law, unfettered discretion or power is an anathema as every public authority is a trustee of public faith and is under a duty to hold public property in trust for the benefit of the laity and not for any individual in particular. The following excerpts from the **Foulkes**

Administrative Law, 7th Edition at page 174

provide the elaborate insight:

“A true trust exists when one person, the trustee, is under a duty to hold the trust property vested in him for the benefit of other persons, the beneficiaries. The term ‘trust’ is, however, used in a much wider sense. We may speak of government being ‘entrusted’ with power, of Parliament as the trustee which the nation has authorized to act on its behalf.

The purpose of the use of the concept in such contexts is of course to emphasize that the powers and duties of such bodies should be exercised not for the advancement of their own interest, but that of the others, to underline their obligation to others.

- 26.** The distinction between the power of a public authority and a private person has since been succinctly brought about in the following quote from the celebrated work ***“Administrative Law”, Tenth Edition by H.W.R. Wade and C.F. Forsyth:***

“The common theme of all the authorities so far mentioned is that the notion of absolute or unfettered discretion is rejected. Statutory power conferred for public purposes is conferred as it were upon trust not absolutely – that is to say, it can validly be used only in the right and proper way which parliament when conferring it is presumed to have

intended. In a system based on rule of law, unfettered governmental discretion is contradictory in terms

The powers of public authorities are therefore essentially different from those of private persons. A man making his will may, subject to any rights of his dependants, dispose of his property just as he may wish. He may act out of malice or a spirit of revenge, but in law this does not affect his exercise of his power. In the same way a private person has an absolute power to allow whom he likes to use his land, to release a debtor, or, where the law permits, to evict a tenant, regardless of his motives. This is unfettered discretion. But a public authority may do none of these things unless it acts reasonably and in good faith and upon lawful and relevant grounds of public interest.”

27. In ***Akhil Bhartiya Upbhokta Congress*** *vs.*

State of M.P.¹, this Court was seised as well with the nature of the norms to be adhered to for allotment of land, grant of quotas, permits, licenses etc. by way of distribution thereof as State largesse. The following observations provide the guiding comprehension:

65. What needs to be emphasised is that the State and/or its agencies/instrumentalities cannot give largesse to any person according to the sweet will and whims of the political entities and/or officers of the State. Every

¹ (2011) 5 SCC 29

action/decision of the State and/or its agencies/instrumentalities to give largesse or confer benefit must be founded on a sound, transparent, discernible and well-defined policy, which shall be made known to the public by publication in the Official Gazette and other recognised modes of publicity and such policy must be implemented/executed by adopting a non-discriminatory and non-arbitrary method irrespective of the class or category of persons proposed to be benefited by the policy. The distribution of largesse like allotment of land, grant of quota, permit licence, etc. by the State and its agencies/instrumentalities should always be done in a fair and equitable manner and the element of favouritism or nepotism shall not influence the exercise of discretion, if any, conferred upon the particular functionary or officer of the State.

66. We may add that there cannot be any policy, much less, a rational policy of allotting land on the basis of applications made by individuals, bodies, organisations or institutions dehors an invitation or advertisement by the State or its agency/instrumentality. By entertaining applications made by individuals, organisations or institutions for allotment of land or for grant of any other type of largesse the State cannot exclude other eligible persons from lodging competing claim. Any allotment of land or grant of other form of largesse by the State or its agencies/instrumentalities by treating the exercise as a private venture is liable to be treated as arbitrary, discriminatory and an act of favouritism and/or nepotism violating the soul of the equality clause

embodied in Article 14 of the Constitution.

28. In his work *Administrative Law (6th Edn.)* **Prof. H.W.R. Wade** highlighted the distinction between powers of public authorities and those of private persons in the following words:

“The common theme of all the authorities so far mentioned is that the notion of absolute or unfettered discretion is rejected. Statutory power conferred for public purposes is conferred as it were upon trust, no absolutely—that is to say, it can validly be used only in the right and proper way which Parliament when conferring it is presumed to have intended. Although the Crown's lawyers have argued in numerous cases that unrestricted permissive language confers unfettered discretion, the truth is that, in a system based on the rule of law, unfettered governmental discretion is a contradiction in terms.”

29. While rejecting the theory of absolute discretion, Lord Reid observed in *Padfield v. Minister of Agriculture, Fisheries and Food*²:

“... Parliament must have conferred the discretion with the intention that it should be used to promote the policy and objects of the Act; the policy and objects of the Act must be

² [1968] AC 997

determined by construing the Act as a whole and construction is always a matter of law for the court. In a matter of this kind it is not possible to draw a hard and fast line, but if the Minister, by reason of his having misconstrued the Act or for any other reason, so uses his discretion as to thwart or run counter to the policy and objects of the Act, then our law would be very defective if persons aggrieved were not entitled to the protection of the court.”

- 30.** The role of the Government as provider of services and benefits to the people was noticed in ***Ramana Dayaram Shetty v. International Airport Authority of India***³ in the following words:

“11. Today the Government in a welfare State, is the regulator and dispenser of special services and provider of a large number of benefits, including jobs, contracts, licences, quotas, mineral rights, etc. The Government pours forth wealth, money, benefits, services, contracts, quotas and licences. The valuables dispensed by Government take many forms, but they all share one characteristic. They are steadily taking the place of traditional forms of wealth. These valuables which derive from relationships to Government are of many kinds. They comprise social security benefits, cash grants for political sufferers and the whole scheme of State and local welfare. Then again, thousands of people are employed in the State

³

(1979) 3 SCC 489

and the Central Governments and local authorities. Licences are required before one can engage in many kinds of businesses or work. The power of giving licences means power to withhold them and this gives control to the Government or to the agents of Government on the lives of many people. Many individuals and many more businesses enjoy largesse in the form of government contracts. These contracts often resemble subsidies. It is virtually impossible to lose money on them and many enterprises are set up primarily to do business with the Government. The Government owns and controls hundreds of acres of public land valuable for mining and other purposes. These resources are available for utilisation by private corporations and individuals by way of lease or licence. All these mean growth in the Government largesse and with the increasing magnitude and range of governmental functions as we move closer to a welfare State, more and more of our wealth consists of these new forms. Some of these forms of wealth may be in the nature of legal rights but the large majority of them are in the nature of privileges.”

31. In the same vein, in *Natural Resources Allocation, In Re*⁴, this Court summed up the long line of judicial enunciations on this theme thus:

“**107.** From a scrutiny of the trend of decisions it is clearly perceivable that the action of the State, whether it relates to distribution of largesse, grant of contracts or allotment of land, is to be

⁴ Special Reference No.1 of 2012

tested on the touchstone of Article 14 of the Constitution. A law may not be struck down for being arbitrary without the pointing out of a constitutional infirmity as McDowell case has said. Therefore, a State action has to be tested for constitutional infirmities qua Article 14 of the Constitution. The action has to be fair, reasonable, non-discriminatory, transparent, non-capricious, unbiased, without favouritism or nepotism, in pursuit of promotion of healthy competition and equitable treatment. It should conform to the norms which are rational, informed with reasons and guided by public interest, etc. All these principles are inherent in the fundamental conception of Article 14. This is the mandate of Article 14 of the Constitution of India.”

32. This Court in ***Center for Public Interest Litigation and others Vs. Union of India and others***⁵, while examining the challenge to the allocation of 2G Telecom Services, reflected on the considerations that should inform the process thereof and observed thus:

95. This Court has repeatedly held that wherever a contract is to be awarded or a licence is to be given, the public authority must adopt a transparent and fair method for making selections so that all eligible persons get a fair opportunity of competition. To put it differently,

⁵ (2012) 3 SCC 2

the State and its agencies/instrumentalities must always adopt a rational method for disposal of public property and no attempt should be made to scuttle the claim of worthy applicants. When it comes to alienation of scarce natural resources like spectrum, etc. it is the burden of the State to ensure that a non-discriminatory method is adopted for distribution and alienation, which would necessarily result in protection of national/public interest.

- 33.** Jurisprudentially thus, as could be gleaned from the above legal enunciations, a public authority in its dealings has to be fair, objective, non-arbitrary, transparent and non-discriminatory. The discretion vested in such an authority, which is a concomitant of its power is coupled with duty and can never be unregulated or unbridled. Any decision or action contrary to these functional precepts would be at the pain of invalidation thereof. The State and its instrumentalities, be it a public authority, either as an individual or a collective has to essentially abide by this inalienable and non-negotiable prescriptions and cannot act in breach of the trust reposed by the polity and on extraneous considerations. In exercise of

uncontrolled discretion and power, it cannot resort to any act to fritter, squander and emasculate any public property, be it by way of State largesse or contracts etc. Such outrages would clearly be unconstitutional and extinctive of the rule of law which forms the bedrock of the constitutional order.

34. Adverting to the facts of the case, to recapitulate, the dealership of the respondent had been cancelled being vitiated by favouritism due to exercise of fanciful discretion of the Departmental Minister, which was neither approved nor condoned. Nevertheless, the Corporation visibly did not act in terms of the judgment and order of the High Court of Delhi in initiating the fresh process for auction. This led to the challenge to the faulty advertisement dated 05.10.1998 and the corrigendum dated 13.10.1998, the operation whereof to start with was stayed and thereafter the respondent was permitted to continue with the dealership and eventually she was directed to be awarded a fresh dealership by converting the

existing dealership under its policy dated 12.02.2004. The dealership of the respondent having been cancelled w.e.f. 01.12.1997, though the operation of the auction notice and the corrigendum thereto had been stayed and she had been allowed to run the outlet, we fail to comprehend as to how all these could be construed to signify that her dealership did subsist from the date of the impugned judgment and order. There was thus no scope for conversion of the existing dealership to a new dealership as ordered. In addition thereto, we are of the unhesitant opinion that the direction to award the new dealership under the prevalent policy dated 12.02.2004, having regard to the backdrop of adjudication undertaken by the Delhi High Court would amount to perpetuation of the undue benefit, earlier bestowed on her by a method held to be illegal, dubious, arbitrary and transgressive of public interest. In other words, the award of new dealership to the respondent in the prevailing facts and circumstances, in our estimate, would amount to

allowing the respondent to enjoy the premium of the illegality and arbitrariness resorted to in granting her the earlier dealership and reward her as a beneficiary of unlawful administrative patronage. In our view, the award of new dealership to the respondent would wholly undermine the purpose of cancelling her earlier dealership and annihilate the very objective of securing transparency, fairness and non-arbitrariness in the matter of distribution of public contract. In taking the steps for initiating a fresh process of auction, to state the least, the defaults and de-relictions of the Corporation and its functionaries are writ large and deserve to be strongly deprecated. The omissions and commissions do have the potential of suggesting pre-determined perceptions and motivations in aid of the respondent, resulting in such disagreeable culmination in her favour. The time lag, according to us, per se cannot purge the vitiation of the award of dealership originally granted to the respondent, to entitle her to the relief granted by the

impugned judgment and order, by way of a boon for the inexplicable faults and remiss in duty of the functionaries of the Corporation. In supervening public interest and to uphold the rule of law as well as imperative of administrative fairness, transparency and objectivity, we are thus not inclined to sustain the impugned judgment and order. It is, therefore set aside so far as it holds that the respondent is entitled to a new dealership at her location under the Policy dated 12.02.2014. We hereby reiterate that the dealership of the respondent at her present location stands cancelled w.e.f. 01.12.1997. The Corporation would now take immediate steps to this effect as permissible in law without fail. The Corporation would also initiate a fresh process for award of new distributorship/dealership in the area and at a location to be determined by it, if it considers it necessary in public interest strictly in conformity with law and the constitutionally recognized norms of transparency, objectivity and fairness.

35. In the singular facts and circumstances, we are greatly anguished and appalled by the manner in which the Corporation and its functionaries have acted in the face of the judgment and order dated 29.08.1997 of the Delhi High Court. We have no hesitation to record that we are left with the impression that the failures on their part may not be wholly bona fide. In this view of the matter, we direct the Corporation to cause an in-house inquiry to be made to fix the liability of the errant officials on the issue and decide appropriate action(s) against them in accordance with law within a period of two months herefrom. The Corporation after completing this exercise would submit a report before this Court for further orders, if necessary. We make it clear that any breach or non-compliance of this direction would be per se construed to be a contempt of this Court with penal consequences as contemplated in law. The appeal is allowed. No costs.

.....**J.**
[N.V. RAMANA]

.....**J.**
[AMITAVA ROY]

NEW DELHI;
DECEMBER 15, 2017.