

CASE NO.:
Transfer Case (civil) 100 of 2002

PETITIONER:
MUKUND SWARUP MISHRA

RESPONDENT:
UNION OF INDIA & ORS

DATE OF JUDGMENT: 12/01/2007

BENCH:
CJI Y.K. SABHARWAL, C.K. THAKKER & R.V. RAVEENDRAN

JUDGMENT:
J U D G M E N T
WITH

TRANSFERRED CASE Nos. 101, 102, 103, 104, 105,
106, 107, 108 of 2002, S.L.P.(C) Nos. 1394 of 2003,
11556, 11568, 16261 of 2002 and T.C. No. 57 of 2006

C.K. Thakker, J.

Interim applications have been filed by the applicants who are aggrieved by the Report made by a Committee appointed by this Court while dealing with and deciding transferred cases in Onkar Lal Bajaj & Others v. Union of India & Another, (2003) 2 SCC 673.

It may be stated that a news item appeared in Indian Express dated August 2, 2002 alleging political patronage in allotment of retail outlets of petroleum products, LPG distributorship and SKO-LDO dealership. Between August 2 and August 5, 2002, certain names were published by the said newspaper and it was stated that without following guidelines, dealers/distributors were appointed on the basis of political patronage/linkage. A question was also raised in Parliament. Consequent upon criticism by the Press and Parliament, cases were reviewed on August 5, 2002 by the then Prime Minister. The Deputy Prime Minister, Minister of Petroleum & Natural Gas and Minister of Parliamentary Affairs also participated in the review process. In view of the controversy in allotment, the Prime Minister directed the Ministry of Petroleum & Natural Gas to cancel all allotments made with effect from January, 2000 till date. Press release was issued by the Press Information Bureau and a formal order was issued by the Government of India, Ministry of Petroleum & Natural Gas on August 9, 2002 cancelling all allotments.

The said order was challenged by aggrieved allottees by instituting writ petitions in several High Courts. Transfer petitions were filed in this Court and this Court, in Onkar Lal Bajaj disposed of all the petitions by setting aside the order dated August 9, 2002 passed by the Central Government and by appointing a Committee comprising of Hon'ble Mr. Justice S.C. Agrawal, a retired Judge of this Court and Hon'ble Mr. Justice P.K. Bahri, a retired Judge of the High Court of Delhi, to examine 413 cases of allotment. This Court requested the Committee to submit its report within a period of three months. The said decision dated December 20, 2002 is reported in (2003) 2 SCC 673. The

directions which were issued by this Court were as under:

I. We appoint a Committee comprising of Mr. Justice S.C. Agrawal, a retired Judge of this Court and Mr. Justice P.K. Bahri, a retired judge of Delhi High Court, to examine the aforesaid 413 cases. We request the Committee to submit the report to this Court within a period of three months.

II. The Committee would device its own procedure for undertaking the examination of these cases. If considered necessary, the Committee may appoint any person to assist it.

III. We direct the Ministry of Petroleum and Natural Gas, Government of India and the four oil companies to render full, complete and meaningful assistance and cooperation to the Committee. The relevant records are directed to be produced before the Committee within five days.

IV. We direct the Ministry to appoint a nodal officer not below the rank of a Joint Secretary for effective working of the Committee.

V. The Central Government, State Government/Union Territories and all others are directed to render such assistance to the Committee as may be directed by it.

VI. The oil companies are directed to provide as per Committee's directions, the requisite infrastructure, staff, transport and make necessary arrangements, whenever so directed, for travel, stay, payments and other facilities etc.

VII. In respect of any case if the Committee, on preliminary examination of the facts and records, forms an opinion that the allotment was made on merits and not as a result of political connections or patronage or other extraneous considerations, it would be open to the Committee not to proceed with probe in detail.

During the pendency of the matters before the Committee, this Court continued interim order granted earlier. Pursuant to the directions of this Court, the Committee commenced its proceedings by examining the relevant records relating to allotment. Notices were issued, replies were sought in the form of affidavits, letters or other applications/representations. The Committee also afforded an opportunity of making oral submissions to the allottees. Oral hearing was also afforded to other applicants on the panel whose applications were rejected or who were not granted

allotment. In several cases, allottees or other applicants were represented by their counsel to whom opportunity of hearing was extended. Hearings were held at Delhi and at other places mentioned in the report. The Committee, thereafter, considered the relevant materials keeping in view the salient features of the guidelines laid down by the Government of India and submitted its detailed report.

The Committee considered the background of the case, eligibility criteria, educational qualifications, income of the applicants and other relevant considerations in the light of guidelines for allotment.

Referring to the observations in Onkar Lal Bajaj by this Court, the Committee observed that it was required to consider whether the alleged tainted allotments were made on merits or as a matter of political connection or patronage or on any other 'extraneous considerations'. On behalf of the allottees, it had been urged that mere fact that a person was politically connected should not disentitle him/her from allotment if he/she is otherwise found meritorious by the DSB and the political connection of a person should not stand in the way of his/her application being considered on merits.

The Committee, in our opinion, rightly stated;

"The correctness of this proposition cannot be disputed. Merely because a person has a political connection should not operate as a handicap in his/her being considered for allotment on his/her own merits. But if from other surrounding circumstances, it is apparent that the political connection of an applicant has weighed in the matter of consideration of the application by the DSB and an allotment has been made in his favour, then such an allotment would be open to challenge on the ground that it is not made on merits but on extraneous considerations".

The Committee again correctly observed that an inference that the political connections of an applicant have influenced the selection and that such selection is based on extraneous considerations could be drawn under the following circumstances;

(i) The applicant was selected even though he did not fulfill the requisite conditions for eligibility as prescribed in the Guidelines.

(ii) The requirements of the Guidelines were not adhered to in the process of selection.

(iii) In the matter of award of marks for the purpose of evaluation of the merits of an allottee vis-à-vis other applicants, the Chairman or any member of the DSB has displayed an attitude of upgrading the allottee and downgrading other more or equally meritorious applicants.

The Committee was also of the view that an allottee who had given a wrong information or had concealed a material fact in his/her application or any document filed therewith, could not be permitted to avail the allotment in his/her favour. The Committee then stated that as regards evaluation of the merits under the guidelines by DSB, the marks were to be awarded by the

Chairman and Members of the DSB under the following norms:

- (a) Personality, Business ability and Salesmanship
- (b) Capability to arrange finances
- (c) Educational qualifications and general level of intelligence.
- (d) Capability to provide infrastructure and facilities (land, godown, showroom etc.)
- (e) General assessment.

The Committee noticed that total number of marks that had been earmarked for each Member of the DSB was 100. The total number of marks earmarked for Chairman was also 100 initially but subsequently they were increased to 200. Thus, the maximum marks earmarked for the Chairman of DSB were equal to the maximum marks earmarked for the other two members of the DSB. The Committee, hence, observed; "In the matter of evaluation of merit, the marks awarded by the Chairman could, therefore, prove to be decisive in the selection process". The Committee further stated that 'it was also found by the Committee, in many cases, even though the other two members of the DSB had awarded more marks to the applicant/applicants placed at Nos. 2 and/or 3 in the merit panel, the applicant at No.1 was selected for allotment on the basis of very higher number of marks awarded by the Chairman of DSB. The situation became further aggravated when the DSB was composed of the Chairman and one member only because then, out of total number of 300 marks, the Chairman had 200 marks and the other member had only 100 marks. Even though the member had rated applicant/applicants at Nos. 2 and/or 3 on the merit panel better than the applicant at No.1, the applicant at No.1 was selected on the basis of higher number of marks awarded by the Chairman. This shows that the Chairman of the DSB, if so inclined, could play a crucial role in the selection of the candidate for allotment. The evaluation and award of marks by the Chairman of the DSB, was, therefore, of considerable significance.

The Committee also regretfully noted that in a large number of cases, allegations have been made regarding political linkage and bias of the Chairman and in some cases, allegations of even corruption had been made against the Chairman. Since the Committee did not have any machinery to verify the veracity of those allegations, it had rested the conclusions on the evaluation and award of marks by the Chairman and Members of the DSB.

In the matter of evaluation of the merits of the candidates, the Committee was of the view that an inference about the marking being arbitrary could be drawn in the following situations;

- (i) There is a wide variation in the marks awarded by the Chairman and the marks awarded by the other member/members of the DSB to the three applicants who have been placed on the merit panel.
- (ii) Unusually high marks have been awarded by the Chairman/Members of the DSB to an applicant as compared to other applicants on the merit panel.
- (iii) Higher number of marks have been awarded to a

particular applicant under norms (a), (c), (c) or (d) even though as per the objective factors relating such norms, another applicant has shown better merit and suitability.

The Committee scrutinized 409 cases of alleged tainted allotments in the States of Himachal Pradesh, Haryana, Rajasthan, Uttar Pradesh, Bihar, Jharkhand, Orissa, Madhya Pradesh, Chattisgarh, Gujarat, Maharashtra, Andhra Pradesh, Tamil Nadu and Karnataka. Out of 409 cases examined, the Committee was of the view that in 297 allotments, the selection could not be said to have been made on merits. The allottees either did not fulfill the eligibility requirements or had incurred disqualification on account of suppression/concealment of material information relating to their eligibility for consideration or other extraneous considerations weighed with the Board in granting such allotments. In other words, almost 73 per cent of tainted allotments examined by the Committee were found to be improper. The Committee, therefore, opined the need for evolving transparent and objective criteria/procedure.

Being aggrieved by the findings of the Committee holding certain allotments being not made on merits and therefore were not sustainable, the applicants have approached this Court by filing interim applications. We have heard the learned counsel for the applicants as also Mr. Gopal Subramaniam, learned amicus curiae. On behalf of the applicants, it was contended that the Committee went beyond the directions issued by this Court and in observing that the allotment was not done in accordance with the guidelines and hence, could not be held to be legal or proper. It was submitted that so far as the directions of this Court are concerned, they related to allotment due to political patronage/linkage/connection. The Committee appointed by this Court, therefore, had limited power to consider whether the allotment was made due to political linkage or patronage and was tainted and nothing more. It was also submitted that the main consideration before this Court was press reports in Indian Express which was the basis and foundation of inquiring into the matters and keeping in view the allegations in those reports, the orders were passed by this Court. It was also submitted that the direction of this Court to consider 'other extraneous matters' must be construed ejusdem generis i.e. political influence or of the like nature. The Committee illegally and unauthorisedly exceeded its jurisdiction by considering several other factors, such as, whether the applicants were eligible, whether the guidelines were followed in the grant of allotment and whether extraneous considerations weighed with the Board in giving marks to applicants. Since it was not within the power of the Committee, the findings recorded, conclusions arrived at and observations made by the Committee deserve interference by this Court by setting aside the direction to cancel allotments made in favour of applicants/allottees. It was also submitted that no adequate opportunity had been afforded by the Committee inasmuch as in almost all notices issued to the allottees, the allegation was that the allotment had been made due to political patronage/linkage and it was only at the time of hearing that certain other defects or

matters came up for consideration by the Committee and impugned orders were made observing that either the allottees were not eligible, or the marks given to them were arbitrary, or there was suppression of fact on the part of applicants. Virtually, thus, the Committee acted as an 'appellate forum' over the decision of the Board which was not within the power or jurisdiction of the Committee, nor such authority was conferred or such power was given by this Court while disposing Onkar Lal Bajaj and on that ground also, the orders are vulnerable. The counsel also submitted that to say or to hold that a decision was taken by the Board on extraneous consideration is to cast aspersion on the members of the Committee and the Chairman of the Board who is a retired Judge of a High Court. It would also be against the principles of natural justice and fair play, since no opportunity to those members and Chairman had been afforded and they were neither before the Committee nor before this Court. According to the applicants, there may be an error of judgment on the part of the Board but such error is bona fide and would not vitiate the action nor it can be construed as violation of guidelines issued for making selection.

It was also urged that the doctrine of equitable/promissory estoppel would get attracted in all these cases. After the applicants were selected, letters of intent (LoI) were issued, agreements were entered into and huge amount had been spent by the allottees. If, at this stage, allotment is cancelled, serious prejudice will be caused to them and they would suffer without there being any fault on their part. Since there is no grievance so far as the Board is concerned and it was on the basis of decision in Onkar Lal Bajaj that such an action is taken, even if this Court accepts the report of the Committee, it may not cancel the allotments already made by declaring correct legal position.

It was further submitted that in some cases, the land has been given by the 'prospective' allottees to the Oil Companies since the allotment was to be made to owners/occupiers of such land. Keeping in view the fact that allotment has been made or likely to be made to the applicants, they have made available land at a concessional rental value. Such agreement is for a substantial period. Had the applicants/land owners/occupiers, been not selected and allotted the distributorship, they would not have entered into lease agreements and/or claimed substantial amount of rent or return. If at this stage allotment is cancelled they would be seriously affected for years to come. This equitable aspect may also be taken into account while deciding these applications and before passing final orders.

The learned amicus curiae, on the other hand, submitted that a herculean task has been performed by the Committee. Keeping in view the directions issued by this Court in Onkar Lal Bajaj and considering individual cases in their proper perspective, the Committee submitted a report by dealing with each and every case. The report runs into few thousand pages. The Committee has also observed, as seen in the earlier part of the judgment that no allotment has been cancelled merely on the ground of political linkage/patronage but while considering the legality or otherwise of the allotment, political linkage/patronage was kept in mind as one of the factors. It was submitted that even after recording a

finding that there was a political linkage/patronage, the Committee has considered as to whether such political linkage/patronage has weighed with the authorities at the cost of merits or undue favour in allotment was made ignoring public interest. Only in those cases where merits have suffered or allotment has been made on extraneous considerations that the Committee held the allotment as contrary to law. It is also clear from the fact that out of 409 cases, the Committee had approved on merits more than 100 cases and in respect of 297 allotments, it found that they were not in accordance with the guidelines and therefore could not be approved. The counsel also submitted that the directions in Onkar Lal Bajaj were explicitly clear and the Committee was asked to consider claims of all the applicants whether the allotment in their favour was on merits or on account of any political or 'other consideration'. It, therefore, could not be said that the direction to the Committee was to consider a political linkage/patronage only. The Committee was bound to consider all the cases as per the direction of the Court which has been done and no fault can be found against the report of the Committee and the applications deserve to be dismissed. So far as the preliminary objection is concerned, we find no substance therein. Reading Onkar Lal Bajaj in its entirety and the directions issued by this Court, it cannot be said that the Court was considering allotment only on the basis of political linkage/patronage. It is clear that the proceedings had been initiated because of news reports appeared in Indian Express and this Court was called upon to consider the action taken by the Central Government of cancellation of all allotments. It was, therefore, obligatory on the part of the aggrieved parties to satisfy the Court that the action taken by the Government was not in consonance with law. This Court, keeping in view the circumstances in their entirety, set aside the order as being violative of principles of natural justice and fair play and directed the Committee to consider certain cases as to whether allotment had been on the basis of political patronage/linkage or other extraneous considerations weighed with the Board in making orders of allotment. In fact, in Onkar Lal Bajaj, the Court noted the submission of the allottees that selection by DSBs in their favour was on merits and not on account of any political or other extraneous consideration. The Court then said; "For the present, we are not expressing any opinion on the question whether the selection of the allottees by DSBs in this category of alleged tainted allotments was a result of political or other extraneous consideration or the selection was on merits alone. As already mentioned, these aspects require an independent probe".

The phrase 'other consideration', in our opinion, therefore, cannot be read ejusdem generis with political linkage/connection/patronage. The expression 'other consideration' would take within its sweep all considerations other than merit of the case. Ultimately, the direction of this Court was not a statute nor it can be considered as an enactment.

In the light of the above, a Committee was appointed and directions were issued. The Committee

considered the question on merits. It, therefore, could not be said that the Court was to consider only political linkage/patronage and the Committee had exceeded its powers and/or jurisdiction in taking into account other extraneous matters. In fact, the direction of this Court was to consider extraneous considerations, if any, in allotment and if so, to pass an appropriate order and to report on those aspects. We are, therefore, not inclined to uphold the preliminary objection of the learned counsel for the petitioners.

We are also not impressed by the argument of the petitioners that the doctrine of promissory or equitable estoppel would apply. May be that the petitioners have spent some amount. But once the allotment itself was found to be vitiated, obviously they cannot claim any benefit as allotment was contrary to law. Moreover, such allotment has been made in remote past and even though an order of cancellation had been passed by the Central Government as early as in August, 2002, the allottees have been protected by interim order passed by this Court. Even after the decision in Onkar Lal Bajaj, interim order was continued. In the circumstances, for more than four years interim order is in favour of allottees even though the allotment is found to be illegal or contrary to law. In our opinion, therefore, it is not open to the allottees whose allotments have been found to be vitiated to plead equity.

In our opinion, the learned amicus curiae is right that the Committee had considered in detail individual cases and submitted the report. This Court, therefore, would consider a complaint of an allottee who can successfully put forward his complaint and may satisfy this Court that in the facts and circumstances of the case, the finding of the Committee that the allotment was not on merits was not correct. But only in those individual cases, the Court would consider and may grant relief to such applicants. It, however, cannot be said that the report of the Committee was without power, authority or jurisdiction or was uncalled for and liable to be ignored.

Having considered the basic issues, it is now time to consider individual cases.

STATE OF HIMACHAL PRADESH

So far as Himachal Pradesh is concerned, sixteen cases were referred to the Committee and the Committee considered all the cases and found that in respect of five cases, the allotment was on merits while in eleven cases it was not on merits and was held to be vitiated. Four applicants, namely, Mahesh Kumar, Deshraj, Ms. Anita Kumari Sandal and Smt. Lakshmi Devi have approached this Court. We have gone through the report of the Committee and found that the Committee was right in its conclusions. We, therefore, hold that the cancellation of allotment in eleven cases cannot be said to be illegal or unlawful. All interim applications, therefore, deserve to be dismissed and are, accordingly, dismissed.

STATE OF JHARKHAND

In State of Jharkhand, twelve cases were referred to the Committee. Three were found to be on merit and remaining nine were not on merit. Five applicants have approached this Court. In the case of Rohit Priyadarshi Oraon and Smt. Poonam Singh, the Committee observed that both were ineligible and hence could not be allotted

retail outlet. As to Smt. Mamta Kumari, the Committee observed that though she was only a housewife, a retail outlet had been allotted to her who is a daughter of one Nand Kishore Yadav, BJP Bihar Unit President. It was also observed that another allotment has been made to her brother. According to the Committee, the allotment was not on merits. It cannot be said that the above findings deserve interference. For Smt. Sushila Hansdak, wife of Congress MP, no one appeared. The Report of the Committee is accepted in regard to the said four allottees.

The case of Janendra Kumar Rai appears to be a border line case and in the facts and circumstances, in our opinion, allotment could not have been cancelled. Application of Janendra Kumar Rai is, therefore, allowed and recommendation for cancellation of allotment in his case is not accepted.

STATE OF CHATTISGARH

So far as Chattisgarh is concerned, we are having two applications. Five cases were referred to the Committee. Two were found to be on merits. Allotment in favour of 3 allottees was found to be arbitrary by the Committee. Having gone through the reasons of the Committee, it cannot be said that the order deserves interference by this Court. One application is by a non-allottee. It is not considered by us since we are of the view that it is not of the function of this Court to consider the cases of other applicants for the grant/allotment of outlet. The Report of the Committee is accepted.

STATE OF GUJARAT

In regard to Gujarat, eighteen cases were referred to the Committee. Seven were found to be on merit. Nine were not found to be on merit. Two were not considered. There are six applications. In the cases of Rathod Bhanu Mayabhai, Manek Jayadeep Karanbhai, Madhubhai Thakore and Bhartiben Nardevbahi Patel, we find that the Committee has rightly held that allotment could not have been made for the reasons recorded in the report. We have gone through the reasons which weighed with the Committee and find no illegality therein.

So far as Siddharaj Bharatsingh Rana and Manish Kantibhai Solani are concerned, no political connection was found and they are border line cases. In view of the said fact, in our opinion, it would be appropriate if allotment in their favour is not disturbed. We, therefore, allow these applications and set aside the cancellation.

Regarding Hirasinh R. Baria, it was not case of cancellation as he was not an allottee. It was also stated that a petition is pending and the matter is sub-judice in the High Court of Gujarat. We, therefore, reject the application reserving liberty to pursue the matter before the High Court.

STATE OF TAMILNADU

In the State of Tamil Nadu, eleven cases were referred to the Committee. Two were found to be on merit. Nine were found to be not on merit. Out of them, six have filed applications before us. The Committee dealt with cases of G.Raviraj, S. Guna Sekaran, K. Sanmugham, Arul R, A.P. Mahesh and Tamilkumaran and after considering the relevant guidelines held that allotment was vitiated as they were not in consonance

with the guidelines. Having examined the Report, we accept the same in respect of all allottees. Consequently, all six applications are rejected.

STATE OF RAJASTHAN

In respect of State of Rajasthan, the Committee considered forty-seven cases and found that ten were in order and remaining thirty-seven allotments were not in consonance with law. Out of them, thirty-three have filed applications. We have been taken to the reasoning recorded by the Committee. So far as Smt. Krishna Kanwar, Kundan Sharma, Prem Ratan and Rameshwar Khandelwar are concerned, it appears that they are in the nature of border line cases and we, therefore, hold that in respect of those four applicants, allotment may continue. The applications by those four are allowed and the cancellation is set aside. Regarding other cases, accepting the reasons recorded in the report by the Committee, we find that no illegality had been committed in cancellation. All those applications are, therefore, rejected.

PUNJAB

In respect of State of Punjab, the Committee considered thirty-seven cases referred to it. It found that seven allotments were on merit and twenty-nine allotments were not in consonance with the guidelines. Out of them, twenty-six have filed applications. We have been taken through the reasoning recorded by the Committee. So far as cases of Shri Surinder Singh, Chander Kant Bhatia, Gurpreet Singh, Smt. Kanta Rani Smt. Suman Lata, Ms. Ruby Sekhri, Mr. Manmohan Singh, Mr. Rajesh Madan and Mr. Tejinder Singh are concerned, they appear to be border line cases. In our view, it may not be appropriate to cancel the allotment in favour of these nine persons. Their applications are allowed. Rest of the cases do not call for interference and the applications are rejected. There are six applications by non-allottees. They are also rejected as we are not concerned with non-allottees.

State of Haryana

In regard to State of Haryana, the Committee considered twenty-one cases referred. It found no irregularity in allotment in seven cases. It disapproved allotments in fourteen cases. Out of them, twelve have filed applications. We find no infirmity in the conclusions arrived at or reasons recorded by the Committee and no interference is called for. The other applications are rejected.

All interim applications with regard to above-mentioned States are disposed of, including applications for impleadment. Interim orders in favour of those applicants whose allotments have been cancelled would continue for three months and stand vacated thereafter.

So far as remaining cases are concerned, they stand adjourned. Registry is directed to place the matters before Hon'ble the Chief Justice of India for listing of these matters before appropriate bench.

Before parting with the matter, we would like to place on record our appreciation for Mr. Gopal Subramaniam, amicus curiae for onerous work undertaken by him and in placing before the Court necessary facts and circumstances so as to enable us to decide individual cases.