

# COMMON CAUSE

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## RENT CONTROL DILEMMA

Rent Control Measures, relating to premises in cities and towns, have become a source of acute exasperations to the owners of premises. These measures, introduced more than half century ago in the war years, for protecting the interests of tenants, have become a major problem for proper development of urban areas. Tenants holding old tenancies have developed vested interests and politicians, amidst their proclamations of protecting the interests of weaker sections, have continued to procrastinate in taking appropriate decision on this important matter.

Non-enforcement of Delhi Rent Act is a very unfortunate manifestation of this procrastination of politicians. This non-enforcement has nullified all efforts that were being made over the past many years for making requisite improvements in Rent Control laws of urban areas in the country.

Emergence of Delhi Rent Act in its present shape has come about on the basis of events narrated below :

- \* Everybody is eligible to take membership of COMMON CAUSE. No form is required. Merely send your name and complete address, preferably written in CAPITAL LETTERS. Send it to the address: COMMON CAUSE, A-31, WEST END, NEW DELHI-110021. Membership fee for individuals is Rs.100 for one year; Rs.500 for life membership for individuals; Rs.200 for annual membership of organisations and associations.
- \* We receive numerous letters. Replies are invariably sent. On the average our receipt is about 500 letters a month. Kindly, therefore, write only when you must; letters received in local language present us difficulties in deciphering.
- \* Donations to COMMON CAUSE are eligible for exemption available under Sec 80-G of the Income Tax Act. Your donations, and those of your friends, will be most welcome indeed.

i) The National Housing Policy adopted by the Parliament in 1992 has inter alia laid emphasis on "the need of suitable amendments to Rent Control Laws by State Governments on the basis of Model Rent Control Law. One of the major concerns expressed in the National Housing Policy is to remove legal impediments to the growth of housing in general and rental housing in particular. The National Housing Policy has been formulated for implementation by the Central Government and State Governments.

- ii) A Model Rent Control Bill was formulated by the Government of India with the approval of the representatives of the State Governments. The model Bill was circulated to all States and Union Territories and was laid on the Table of the Parliament.

■ RENT CONTROL DILEMMA ■ CASE OF ALLOTMENT OF PETROL PUMPS

■ DESU ORDER RE : DOMESTIC ELECTRICITY LOAD ■ STRIKE BY FLIGHT ENGINEERS OF AIR INDIA

■ ANNUAL REPORT

- iii) The Parliament passed the Constitution (71st Amendment Act) 1994 for enabling the State Governments to set up State level Tribunals for speedy disposal of rent cases by excluding the jurisdiction of all courts except the Supreme Court. This forms an important provision of the proposed new legislation.
- iv) On the basis of Model Rent Control Bill the Delhi Rent Bill was prepared for the Union Territory of Delhi, proposing to repeal and replace the Delhi Rent Control Act, 1958. This Bill was referred to the Standing Parliamentary Committee on Urban and Rural Development. The Committee took account of the fact that Delhi Rent Control Act 1958, which is presently in operation, had been amended in 1960, 1963, 1976, 1984 and 1988. It also noted that the Objectives and Reasons of proposed Delhi Rent Bill stated that enactment of this measure will minimise distortions in rental housing market and encourage the supply of rental housing both from existing stock and new housing stock. The Committee expressed that the proposed Bill was comprehensive and elaborate; it suggested certain amendments after hearing representatives of various interests.
- v) Thereafter the Delhi Rent Act was unanimously passed by both Houses of Parliament. It has since received the assent of President and has become Law. This Act will come into force on notification by the Government of India in accordance with its provisions. The Government of India has not yet notified the Act for its enforcement.
- vi) The Act seeks to provide, inter alia, the following as stated in its Objects and Reasons:
- Balance between the interests of landlords and tenants, and eviction of tenants in specified circumstances.
  - Limit the inheritability of tenancies;
  - Re-define the concept of rent payable and provide for its enforcement, determination and enforcement;

After the Delhi Rent Bill was passed by the Parliament a section of shopkeepers and traders of Delhi started agitating against the provisions relating in particular to inheritability of tenancy and redetermination of rent of commercial premises taken on rent many years ago. Initially this objection focussed on the demand that President should not give his assent to the Bill passed by the Parliament. The President, however, has given his assent to the Bill and thereby it has become Law.

There have been practically no protests against provisions of this Act from any section of houseowners or from tenants of residential premises. The section of traders and shopkeepers who have raised the agitation against this measure comprises mainly of those who have been tenants of commercial premises in old commercial complexes of Delhi; shopkeepers and traders of newer markets are generally not opposing any provisions of the Act.

Arising from the agitation an initiative was taken by the politicians of Delhi to form an all-party Committee which in its report has inter-alia expressed that certain new provisions incorporated in the Act require closer scrutiny by elected Representatives of the people in the Legislative Assembly of Delhi, and accordingly has expressed that some way should be found for taking into confidence elected Representatives of the people in the Legislative Assembly of Delhi before enactment of the Legislation.

It is singularly unfortunate that this agitation has been launched against provisions of this Act which in essence aims at creating conditions which would expand availability of rental housing, particularly for those weaker sections of the people whose rent paying capacity is limited and to establish balance between the interests of landlords and tenants. The fact remains that, as will be evident from what has been stated in the foregoing, that before enactment of this measure views of all concerned have been taken; Model Rent Bill was formulated with the approval of representatives of States; Delhi Rent Bill was prepared on the basis of Model Rent Bill; Delhi Rent Bill was deliberated upon by the Parliament Committee of Urban and Rural Development which heard the various interests; the Bill was thereafter examined in the Houses of Parliament and passed unanimously. Raising of agitation against any provisions of this enactment, which has been passed after such detailed considerations, is very unfortunate. This agitation has been voiced by a section of traders and shopkeepers whose number is a small fraction of the total number of over one million owners of premises in Delhi. Notification of enforcement of this enactment has been held up by the politicians on account of this agitation.

SUPREME COURT JUDGMENT  
**CASE OF ALLOTMENT OF PETROL PUMPS**

**P**etrol Pumps allotment case of COMMON CAUSE decided recently by Supreme Court attracted lot of attention in the media, particularly because it eventually resulted in the imposition of heavy penalty on the former Petroleum Minister as payment of compensation to Government for illegal and unconstitutional use of powers.

The original judgement was given on 25.5.96. Thereafter, the matter was further considered, arising from a notice issued to the Minister why criminal proceedings should not be instituted against him for breach of trust or other offence under the law. He was also asked why he should not, in addition, be made liable to pay damages for his malafide action in allotting petrol pumps in the exercise of his discretionary powers. This matter was heard and an order was issued on 4.11.96.

The judgement of 25.5.96 and the subsequent order of 4.11.96 are of obvious importance. The judgement is a long document of 53 pages. We reproduce hereunder extracts from judgement, excluding from it the details relating to individual petrol pumps. The order of 4.11.96 is also reproduced.

**Extracts from the Judgement dated 25.5.96.**

The allotments of retail outlets for petroleum products (the petrol pumps), by Capt. Satish Sharma, Minister of State for Petroleum & Natural Gas, exercising the powers of the Central Government, have been challenged in this public interest petition under Article 32 of the Constitution of India. The petition as originally filed was directed against corruption in various fields of public life. Mr. H.D. Shourie - Director "Common Cause" - appearing in person, invited this Court's attention to a news item dated August 11, 1995, on the front page of "Indian Express" under the caption "In Satish Sharma's Reign, Petrol and Patronage Flow Together". The solicitor general who was present in Court, took notice of the news item and stated that he would have the matter examined in the Ministry concerned and file an affidavit giving Ministry's response to the news item. The news item, inter alia, stated as under:-

"Not only the relatives of most of the officials working for Caption Satish Sharma but even his own driver and the driver of his additional Private Secretary have been allotted a petrol pump and a gas agency respectively.

The wives of two clerks and a stenographer in the Ministry have similarly been allotted petrol pumps. Some of these allotments have been made from the discretionary quota with the Petroleum Ministry while others have been made through an ostensibly objective selection process undertaken by the Oil Selection Boards (OSBs)..... A Mr. Poda Rajshekar, a relative of Mr. G. Gurusharan, Private Secretary to Captain Sharma has been allotted a petrol pump at Banjara Hills, Hyderabad out of the Minister's discretionary quota taking pity on the "financial circumstances that the family finds itself in."

Ms Madhuri Safaya, a relation of the Additional Private Secretary to the Minister, Mr. V.N. Safaya has been allotted a petrol pump "on compassionate grounds" from the discretionary quota.

Another relation of Mr. Safaya, Mrs. Monica Malla, has also been a beneficiary of a petrol pump, courtesy Captain Sharma.

Mrs. Daya Rani, wife of Mr. Hari Ram Verma, personal assistant to the Additional PS to the Minister, Mr. V.N. Safaya, was allotted a petrol pump out of the discretionary quota ..... Mrs. Vijaya Nair, wife of Mr. D.V. Pillai, another additional Private Secretary to Captain Sharma has been allotted a petrol pump on the grounds that the "applicant is a young unemployed (woman) with the responsibility of looking after a large family" - hardly a unique classification in this country of 900 million. .... The Chairman of the OSB for Uttar Pradesh is Justice S.H. Abidi (Retd.) who lives at 50, Dariyabad, Allahabad. It so happens that Syed Shaukat Hasan Abidi, his son, living at 50/1, Dariyabad, Allahabad put in a request and was allotted a petrol pump on "compassionate grounds" at Patehpur (80 km Mile Stone) in Uttar Pradesh.

A former MLA, Mr. Shiv Balak Passi, from Rae Bareilly is a member of the OSB for Madhya Pradesh and his job is to allot petrol pumps to others. He too had put in a request for the discretionary allotment of a petrol pump. Lo and behold, on "compassionate grounds" he was immediately allotted a petrol pump on the Rae Bareilly-Lucknow Road in UP.

Mr. Krishna Swaroop, a Congress party worker and resident of 18/7, Punjabi Bagh Extension, New Delhi-26 is a member of the OSB for Delhi and Chandigarh. His son, Mr. Pradeep Kumar, was favoured with a petrol pump by the Minister on the grounds that "the applicant is a young man from Scheduled Caste Community with no source of regular income. The case deserves sympathetic consideration. Therefore, a retail Outlet for MS-HSD in the Union Territory of Delhi is allotted to Shri Pradeep Kumar, r/o 18/7, Punjabi Bagh Extension, New Delhi-110026."

Mr. Ghulam Ahmed Mir is also a member of the OSB for Delhi and Chandigarh. An application was made by him for the allotment of a petrol pump. And the Minister passed the order on "compassionate grounds" from his discretionary quota.

Similarly the following OSB members, either themselves or their next to kin, have been allotted petrol pumps : Mr. K.L. Sharma (Member OSB, West Bengal), Mr. R.S. Nautiyal (Member OSB, Punjab), and Mr. Harbanslal Gupta (member OSB, Haryana). Two relations of Mrs. Satya Bahen (Member OSB, Haryana) were allotted a gas agency in Etah and a petrol pump at Itmadpur near Tundla, respectively.

The son of a former Home Minister who is currently a Cabinet Minister; the son of a present Minister of State from the North-East; the brother-in-law of a former Janata Dal office-bearer and now a Congressman from Eastern UP; the son of a Dalit leader who was with the late H.N. Bahuguna at one time and is now in the Congress; the son of a former Congress Councillor of the Municipal Corporation of Delhi; the wife of an ex-Congress MP from the UP hills; the wife of a prominent Dalit leader in the Opposition and several political hacks from Amethi are among the hundreds who have been gifted petrol pumps or gas agencies during the tenure of Captain Satish Sharma as the Petroleum Minister."

[Details relating to the allotment of each individual petrol pump follows at this place. These details have been omitted in this reproduction in order to shorten it.]

All the 15 allotments - discussed above - have been made by the Minister in a stereotyped manner. The applications have not been officially received by the Petroleum Ministry. There is no receipt - entry on any of the applications. The applicants seem to have approached the Minister directly. None of the applications have been dealt with in any of the branches of the Ministry. There is nothing on the record to indicate that the Minister kept any criteria in view while making the allotments. How the applicants came to know about the availability of the petrol pumps is not known. No advertisement was made to invite the applications. There is nothing on the record to show that any other method of inviting applications was adopted. There is no indication in the allotment-orders or anywhere in the record to show that the Minister kept any guidelines in view while making these allotments. The allotments have been made in a cloistered manner. The petrol pumps - public property - have been doled out in a wholly arbitrary manner. This Court in Ramana Dayaram Shetty v.s International Airport authority of India and others. (1979) 3 SCC 489, held as under:

"It must, therefore, be taken to be the law that where the Government is dealing with the public, whether by way of giving jobs or entering into contracts or issuing quotas or licences or granting other forms of largesse, the Government cannot act arbitrarily at its sweet will and, like a private individual, deal with any person it pleases, but its action must be in conformity with standard or norms which is not arbitrary, irrational or irrelevant. The power or discretion of the Government in the matter of grant of largesse including award of jobs, contracts, quotas, licences, etc. must be confined and structured by rational, relevant and non-discriminatory standard or norm and if the Government departs from such standard or norm in any particular case or cases, the action of the Government would be liable to be struck down.

The allotments have been made by the Minister either members of the Oil Selection Boards or their relations. Shaukat Hasan Abidi is the son of Justice S.H. Abidi (Retd.), who was the Chairman of the Oil Selection Board, Uttar Pradesh. Similarly, Arun Kumar Gupta is the son of Justice Harbans Lal Gupta (Retd.) who was the Chairman of Oil Selection Board, Haryana. Pradeep Kumar is the son of Krishna Swaroop, who was Member of Oil Selection Board for Delhi and Chandigarh. Neena Nautiyal is the wife of R.S. Nautiyal, who was member of Oil Selection Board, Punjab. Dharmesh Kumar was the recommendee of Satya Bhain, Ex. Member of Parliament and Member of the Oil Selection Board for Haryana. Shiv Balak Passi and Ghulam Ahmad Mir were themselves members of the Oil Selection Boards. It is obvious that Capt. Satish Sharma was personally interested in making allotments of petrol pumps in favour of all these 15 persons. He made allotments in favour of relations of his personal staff under the influence of the staff on wholly extraneous considerations. The allotments to the sons of Ministers were only to oblige the Ministers. The allotments to the members of the Oil Selection Boards and their/ chairman's relations have been done to influence them and to have favours from them. All these either on the ground of poverty or unemployment. Assuming that the allottees belong to either of these two categories then how the Ministers has selected them out of millions of poor and unemployed in this country. As mentioned above no criteria were fixed, no guidelines were kept in view, none knew how many petrol pumps were available for allotment, applications were not invited and the allotments of petrol pumps were made in an arbitrary and discriminatory manner.

We may examine these allotments from another angle which has very serious repercussions. Six of the allottees are related to various officials working with the Minister. Leela Devi is the mother of Minister's driver. Poda Rajasekhar is a relation of G. Gurucharan, Private Secretary to the Minister. Madhuri Safaya and Monika Malla are related to B.N. Safaya, Addl. Private Secretary to the Minister. Daya Rani is the wife of H.R. Verma, Personal Assistant to B.N. Safaya and Vijaya Nair is the wife of D.V. Pillai, Addl. Private Secretary. Two of the allottees are related to the politicians. Sarbjot Singh is the son of Buta Singh who was Home Minister and at the relevant time was Cabinet Minister heading the Civil Supplies portfolio. Benjamin K. Hollahan is the son of Shri K. Hollahan, Minister in the State of Nagaland. Remaining seven allottees are allotments are wholly arbitrary, nepotistic and are motivated by extraneous considerations.

The Government today - in a welfare State - provides large number of benefits to the citizens. It distributes wealth in the form of allotment of plots, houses, petrol pumps, gas agencies, mineral leases, contracts, quotas and licences etc. Government distributes largesse in various forms. A Minister who is the executive head of the department concerned distributes these benefits and largesse. He is elected by the people and is elevated to a position where he holds a trust on behalf of the people. He has to deal with the peoples' property in a fair and just manner. He cannot commit breach of the trust reposed in him by the people. We have no hesitation in holding that Capt. Satish Sharma in his capacity as a Minister for Petroleum and Natural Gas deliberately acted in a wholly arbitrary and unjust manner. We have no doubt in our mind that Capt. Satish Sharma knew that the allottees were relations of his personal staff, sons of Ministers, sons/relations of Chairman and members of the Oil Selection Boards and the members of the Oil Selection Boards themselves. The allotments made by him were wholly mala fide and as such cannot be sustained.

We are further of the view that Capt. Satish Sharma acted in a wholly biased manner in as much as he unfairly regarded with favour the cases of 15 allottees before him. The relevant circumstances available from record and discussed by us leave no manner of doubt in our mind that Capt. Satish Sharma deliberately acted in a biased manner to favour these allottees and as such the allotment orders are wholly vitiated and are liable to be set aside.

The orders of the Minister reproduced above read: "the applicant has no regular income to support herself and her family", "the applicant is an educated lady and belongs to scheduled tribe community", "the applicant is unemployed and has no regular source of income", "the applicant is an uneducated, unemployed scheduled tribe youth without regular source of livelihood", "the applicant is a housewife whose family is facing difficult financial circumstances" etc. etc. There would be literally million of people in the country having these circumstances or worse. There is no justification whatsoever to pick up these persons except that they happen to have own the favour of the Minister on mala fide considerations. None of these cases fall within the categories placed before this Court in writ petition (civil) No.886/93 titled Centre for public interest litigation vs. Union of India & Anrs. decided on march 31, 1995 but even if we assume for argument sake that these cases fall in some of those or similar guidelines the exercise of discretion was wholly arbitrary. Such a discretionary power which is capable of being exercised arbitrarily is not permitted by article 14 of the Constitution of India. While Article 14 permits a reasonable classification having a rational nexus to the objective sought to be achieved, it does not permit the power to

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

This Court in The Centre for Public Interest Litigation case (supra) has endorsed the guidelines submitted by the Attorney General for allotment of petrol pumps, gas agencies etc. The Court in that case did not have before it the actual manner of exercise of discretion by the Minister in the allotment of pumps/agencies. The allotment orders which are now before the court clearly indicate that leaving the authorities to enjoy absolute discretion even within the guidelines would inevitably lead to gross violation of the constitutional norms when the persons for allotment are picked up arbitrarily and discriminatorily.

This Court as back as in 1979 in Ramana Shetty's case (supra) held "it must, therefore, be taken to be the law....." that even in the matter of grant of largesse including award of jobs, contracts, quotas and licences, the Government must act in fair and just manner and any arbitrary distribution of wealth would violative the law of the land. Mr. Satish Sharma has acted in utter violation of the law laid-down by this Court and has also infringed Article 14 of the Constitution of India. As already stated a minister in the Central Government is in a position of a trustee in respect of the public property under his charge and discretion. The petrol pumps/gas agencies are a kind of wealth which the Government must distribute in a bona fide manner and in conformity with law. Capt. Satish sharma has betrayed the trust reposed in him by the people under the Constitution. It is high time that the public servants should be held personally responsible for their mala fide acts in the discharge of their functions as public servants. This Court in Lucknow Development Authority versus M.K. Gupta (1994) 1 Supreme Court Cases 243, approved "Misfeasance in public offices" as a part of the Law of Tort. Public servants may be liable in damages for malicious, deliberate or injurious wrong-doing. According to Wade "There is, thus, a tort which has been called misfeasance in public office and which includes malicious abuse of power, deliberate maladministration, and perhaps also other unlawful acts causing injury". With the change in socio-economic outlook, the public servants are being entrusted with more and more discretionary powers even in the field of distribution of Government wealth in various forms. We take it to be perfectly clear, that if a public servant abuses his office either by an act of omission or commission, and the consequence of that is injury to an individual or loss of public property, an action may be maintained against such public servant. No public servant can say "you may set-aside an order on the ground of mala fide but you cannot hold me personally liable". No public servant can arrogate to himself the power to act in a manner which is arbitrary. For the reasons indicated above, we conclude that the orders passed by Capt. Satish Sharma, the then Minister of State for Petroleum and Natural Gas, Government of India, allotting petrol pumps to Sarbjot Singh, Benjamin K. Hollohon, Syed Hasan Shaukat Abidi, Shiv Balak Passi, Pradeep Kumar, Ghulam Ahmad Mir, Neena Nautiyal, Arun Kumar Gupta, Dharmesh Kumar, Leela Devi, Poda Rajasekhar, Madhuri Safaya, Monika Malla, Daya Rani and Vijaya Nair are arbitrary, discriminatory, mala fide, wholly illegal and as such are liable to be quashed.

We, therefore, hold and direct as under:

1. The orders - reproduced in earlier part of this judgment - allotting petrol pumps to the above mentioned fifteen persons are hereby quashed.
2. The allocation, allotment of the petrol pumps/retail outlet dealerships by the Government of India, Indian Oil Corporation Ltd. or any other corporation in the names of the above said fifteen persons shall stand cancelled with immediate effect.
3. Most of these 15 persons have not as yet commissioned the petrol pumps. Those who have commissioned the petrol

pumps and are running the same shall stop operating the petrol pumps and running the said business with effect from October 31, 1996. The Government of India/Oil Corporation (concerned) shall take over the petrol pump premises from these persons within ten days thereafter. The Oil Corporation shall have the market-value of the site and the construction thereon, determined in a fair and just manner before October 31, 1996.

4. Each of the commissioned petrol pumps, taken over by the Government/Oil Corporation (concerned) and the built-up area along with the site (whether lease-hold or owned by the original allottee) shall be disposed of by way of public auction. The original allottees may also participate in the auction. The petrol pump shall be allotted to the highest bidder. The said allottee shall run the petrol pump on the original terms and conditions. He shall have all the rights in respect of the site and the construction thereon as the original allottee had on the date of auction. Out of the auction money the value of the site and the construction as determined by the Oil Corporation shall be paid to the original allottee and the remaining money shall go to the government coffer. On receipt of the said amount the original allottee shall cease to have any right or interest in the site and the construction thereon. If the successful bidder is the original allottee, he shall pay the difference between the auction money and the value of the site and construction as determined by the Oil Corporation.
5. Capt. Satish Sharma shall show-cause within two weeks why a direction be not issued to the appropriate police authority to register a case and initiate prosecution against him for criminal breach of trust or any other offence under law. He shall further show-cause within the said period why he should not, in addition, be made liable to pay damages for his mala fide action in allotting petrol pumps to the above mentioned fifteen persons.

We place on record our appreciation for Mr. H.D. Shourie, who, very ably, assisted us in this matter. He shall be entitled to costs which we quantify as rupees fifty thousand. The cost shall be paid by Capt. Satish Sharma personally.

Before parting with this judgment, we may mention about Civil Writ Petitions Numbers 4003/95 and 4430/95 which are pending before the Delhi High Court. In the said petitions, allotment of petrol pumps/gas agencies to various other persons during the period 1992-93, 1993-94, 1994-95 and 1995-96 have been challenged. Transfer petition No.127/96 has been filed in this Court seeking transfer of those writ petitions from Delhi High Court to this Court. We have issued notice in the transfer petition and have stayed further proceedings before the High Court in the writ petitions. Various affidavits have been filed on behalf of the Ministry of Petroleum & Natural Gas. Mr. Devi Dayal, Joint Secretary of the Ministry, in his affidavit dated March 26, 1995, has stated that in 1995-96 petroleum products agencies were allotted to 99 persons under the discretionary powers of the Government. It is further stated that orders on file have been made allotting petrol pumps/agencies to 61 more persons. An affidavit filed by Mr. Srinivasan, Advocate supporting the transfer petition gives a long list of persons who are related to the then Prime Minister/Ministers and other VIPs and who have been allotted petrol pumps and gas agencies. Mr. Devi Dayal, Joint Secretary in the Ministry of Petroleum has filed another affidavit dated April 18, 1996 in reply to the affidavit of Mr. Srinivasan. Para 6 of the affidavit is as under:-

“As regards the list of allottees mentioned in paras 3 to 6 and the alleged relationship with the Prime Minister, other Ministers, V.I.Ps., M.Ps/M.L.As, etc., it is to submit that enquiries have been made through the Oil Companies from the allottees, who have replied through affidavits. The comments of the Ministry, on the basis of above equity and records, are contained in annexure - I to this affidavit.”

Annexure I with the affidavit shows that gas agencies were allotted to six relations of then Prime Minister, an agency to a son of the OSD in Prime Minister's office, LPG dealership to daughter-in-law of the OSD to the then Minister of Petroleum, a petrol pump to the real brother of Chadraswamy (Nemi Chand Jain), LPG distributorship to brother of Shri Bhagwan Shri Satya Sai Baba, LPG dealership to Manju Devi, wife of private secretary to additional private secretary of Capt. Satish Sharma, a petrol pump to wife of V.K. Aggarwal, additional private secretary, Ministry of Law, RO dealership to Rakesh Saluja, son of R.L. Saluja, who was employed in the Ministry of Petroleum till June, 1993, RO dealership to Prathiba Singh related to Shri Kalapnath Rai, RO dealership in January, 1995 to Kanti Lal Bhuriya, who at that time was Minister for Tribal Welfare in the Madhya Pradesh Government, a gas agency to the son-in-law of Mr. G.Ganga Reddy, Member of Parliament and various others.

Since the two writ petitions, mentioned above, are pending before the High Court wherein the allotments made to all the persons mentioned above and others, have been challenged, it is not necessary for us to transfer the writ petitions to this Court. We vacate the stay order granted by this Court and dispose of the transfer petition. We direct the Registry of this Court to send all the affidavits filed by the parties in the transfer petition along with annexures to the High Court. We have no doubt that the High Court shall examine the issues involved in the writ petitions and shall also go into the validity of the allotment of petrol pumps/gas agencies to various persons, after hearing them, in accordance with law. We request the High Court to expedite the hearing of the petitions.

..... J.  
(Kuldip Singh)

..... J.  
(Faizan Uddin)

(Supreme Court Judges)

**ORDER OF 4.11.96**

IN THE SUPREME COURT OF INDIA  
CIVIL ORIGINAL JURISDICTION  
WRIT PETITION (C) NO.26 OF 1995.

Common Cause A Regd. Society ... Petitioner

Vs.

Union of India and Ors. ... Respondents  
With T.P. (C) Nos. 126/96 and 127/96

**ORDER**

The question before this Court in Common Cause Vs. Union of India and Ors. Writ Petition (C) No.26/95 was whether the allotments of retail outlets for petroleum products (Petrol Pumps) were illegal and as such liable to be quashed. This court by the judgment dated September 25, 1996 came to the conclusion that the allotments made by Capt. Satish Sharma were arbitrary, discriminatory, mala fide, wholly illegal and as such were liable to be quashed. This Court reached the said findings on the following reasoning:

“All the 15 allotments - discussed above - have been made by the Minister in a stereotyped manner. The applications have not been officially received by the Petroleum Ministry. There is no receipt - entry on any of the applications. The applicants seem to have approached dealt with in any of the branches of the Ministry. None of the applications have been dealt with in any of the branches of the Ministry. There is nothing on the record to indicate that the Minister kept any criteria in view while making the allotments. The petrol pumps is not known about the availability of the petrol pumps is not known. No advertisement was made to invite the applications. There is nothing on the record to show that any other method of inviting applications was adopted. There is no indication in the allotment-orders or any where in the record to show that the Ministry kept any guidelines in view while making these allotments. The allotments have been made in a cloistered manner. The petrol pumps - public property - have been doled out in a wholly arbitrary manner.”.....

“All these allotments are wholly arbitrary, nepotistic and are motivated by extraneous considerations.”.....

“We have no hesitation in holding that Capt. Satish Sharma in his capacity as a Minister for Petroleum and Natural



Gas deliberately acted in a wholly arbitrary and unjust manner. We have no doubt in our mind that Capt. Satish Sharma knew that the allottees were relations of his personal staff, sons of Ministers, sons/relations of Chairmen and members of the Oil Selection Boards and the members of the Oil Selection Boards themselves. The allotments made by him were wholly mala fide and as such cannot be sustained. We are further of the view that Capt. Satish Sharma acted in a wholly biased manner in as much as the unfairly regarded with favour the cases of 15 allottees before him. The relevant circumstances available from record and discussed by us leave no manner of doubt in our mind that Capt. Satish Sharma deliberately acted in a biased manner to favour these allottees and as such the allotment orders are wholly vitiated and are liable to be set aside.”.....

“Mr. Satish Sharma has acted in utter violation of the law laws down by this Court and has also infarcted Article 14 of the Constitution of India. As already stated a minister in the Central Government is in a position of a trustee in respect of the public property under his charge and discretion. The petrol pumps/gas agencies are a kind of wealth which the Government must distribute in a bona fide manner and in conformity with law. Capt. Satish Sharma has betrayed the trust reposed in him by the people under the Constitution.”

One of the directions issued by this Court was as under:

“5. Capt. Satish sharma shall show-cause within two weeks why a direction be not issued to the appropriate police authority to register a case and initiate prosecution against him for criminal breach of trust or any other offence under law. He shall further show-cause within the said period why he should not, in addition, be made liable to pay damages for his mala fide action in allotting petrol pumps to the above mentioned fifteen persons.”

Pursuant to the above quoted direction, a show cause notice was issued to Capt. Satish Sharma. He has filed affidavit in reply to the show cause notice.

We have heard Mr. Salve, learned counsel appearing for Capt. Satish Sharma. There are two parts of the directions quoted above. This Court has called upon Capt. Satish Sharma to show cause why a direction be not issued to the appropriate police authority to register a case and initiate prosecution against him for criminal breach of trust or any other offence under law.

The findings of this Court, quoted above, and the conclusions reached in the Common Cause case, leave no manner of doubt that an investigation by an independent authority is called for in this case. We, therefore, direct the Central Bureau of Investigation (CBI) to register a case against Capt. Satish Sharma in respect of the allegation dealt with and the findings reached by this Court in the Common Cause case. The CBI shall hold investigation and proceed in accordance with law. There shall be no limit on the power, scope and sphere of investigation by the CBI. We, however, make it clear that the CBI shall not be influenced by any observations made by this Court or the findings reached in Common Cause case, for reaching the conclusion as to whether any prima face case for prosecution/trial is made out against Capt. Sharma. 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. We direct the CBI to complete the investigation within three months of the receipt of this order. The CBI shall file interim report to indicate the compliance of this order. This shall be done by January 20, 1997 and this matter shall be listed on January 22, 1997 before a Bench of which Mr. Justice Faizan Uddin is a member.

Mr. Harish Salve has addressed elaborate arguments on the question of damages. We place on record our appreciation for Mr. Harish Salve for assisting this Court in a very fair and independent manner.

According to Mr.. Salve this is not a case where compensatory or exemplary damages should be imposed. According to him nominal damages would meet the ends of justice.

This Court has authoritatively laid down in Nilabati Behera (Smt.) Alias Lalita Behera Vs. State of Orissa and Ors. 1993 (2) SCC 746 that damages can be awarded by this Court in proceedings under Article 32 of the Constitution of India. Mr. Salve has taken us through the Privy Council judgment in Rookes Vs. Barnard and Ors. 1964 Appeal Cases 1129. Lord Devlin in

his opinion has held that exemplary damages can be awarded for "Oppressive, arbitrary and unconstitutional action by the servants of the Government". Mr. Salve has also taken us through the judgment of the Court of Appeal in A.B. and Ors. Vs. South West Water Services Ltd. 1993 Queen's Bench 507. Broome's case was elaborately discussed and relied upon in this judgment. It would be useful to quote the relevant part of the opinion by Stuart-Smith L.J.

"The first category is oppressive, arbitrary or unconstitutional action by the servants of the Government." It is common ground that this category of persons is not limited to the servants of central government, but includes servants of local government and the police.

In Broome v. Cassell & Co. Ltd. (1972) A.C. 1027, 1077-1078, Lord Hailsham of St. Marylebone L.C. said:

".... I would be surprised if it included only servants of the Government in the strict sense of the word. It would, in my view, obviously apply to the police .... and almost as certainly to local and other officials warrant, and it may be that in the future it will be held to include other abuses of power without warrant by persons purporting to exercise legal authority."

Lord Reid said, at pp. 1087-88:

"With regard to the first I think that the context shows that the category was never intended to be limited to Crown servants. The contrast is between "the Government" and private individuals. Local government is as much government as national government, and the police and many other persons are exercising governmental functions. It was unnecessary in Rookes v. Brand to define the exact limits of the category. I should certainly read it as extending to all those who by common law or statute are exercising functions of a governmental character."

Lord Wilberforce said at p.1120:

"There is not perhaps must 1 difficulty about category 1: it is well based on the cases and on a principle stated in 1703 - 'if public officers will infringe men's rights, they ought to pay greater damages than other men to deter and hinder others from the like offences:' Ashby v. White (1703) 2 Id. Raym. 938, 956, per Holt C.J. Excessive and insolent use of power is certainly something against which citizens require as much protection today: a wide interpretation of 'government' which I understand your Lordships to endorse would correspond with Holt C.J.'s 'public officers' and would partly correspond with modern needs."

Lord Diplock said of the first category, at p. 1130:

"It would embrace all persons purporting to exercise powers of government, central or local, conferred upon them by statute or at common law by virtue of the official status or employment which they held."

In the said case Thomas Bingham M.R. further elaborated the concept in the following words:

"In the first category there had been what he variously described as an "arbitrary and outrageous use of executive power:" (see p. 1223) and "oppressive, arbitrary or unconstitutional action by the servants of the government." see p. 1226. Minute textual analysis of these expressions is inappropriate. This was a judgment, not a statute. But there can be no doubt what Lord Devlin was speaking about. It was gross misuse of power, involving tortious conduct, by agents of government. According to the traditional classification of the law of tort, such causes of action, which Lord Devlin was not at pains to identify."

The Court of Appeal also relied upon the judgment of the House of Lords in Broome Vs. Cassell & Co. Ltd. 1972 Appeal Cases 1027.

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. The question for consideration, however, is whether the action

of Capt. Satish Sharma makes him liable to pay exemplary damages. In view of the findings of this Court in Common Cause Case - quoted above - the answer - has to be in the affirmative. Satish Sharma's actions were wholly arbitrary, mala fide and unconstitutional. This Court has given clear findings to this effect in the Common Cause case. We, therefore, hold that Capt. Satish Sharma is liable to pay exemplary damages.

We have heard Mr. HN Salve on the question of quantum. Mr. Salve has vehemently contended that Capt. Sharma was a part of the system which was operating before his joining as a Minister. According to him the types of wrongs were being committed even earlier on the assumption that the Minister's discretion was to be exercised on his subjective satisfaction. He has further contended that since the concept of absolute liability of public servants for misfeasance has been of recent origin in this country even while awarding exemplary damages leniency should be shown. There is no plausibility in the contentions raised by Mr. Salve. After examining all the facts and circumstances of this case and giving thoughtful consideration to this aspect, we direct Capt. Satish Sharma to pay a sum of Rs. 50 lac as exemplary damages to the Government Exchequer. Since the property with which Capt. Satish Sharma was dealing was public property, the Government which is "by the people" has to be compensated. We further direct Capt. Sharma to deposit the 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.

..... J.  
(KULDIP SINGH)

..... J.  
(FAIZAN UDDIN)

NEW DELHI  
NOVEMBER 4, 1996.

The Queen was travelling in a rural area of England when she saw a man, his wife and a flock of children.

Impressed, the Queen asked, "Are all of these your children?"

"Yes, Your Highness," answered the man.

"How many children do you have?" asked the English sovereign.

"Sixteen" was the reply.

"Sixteen children," repeated Her Highness. "We should give you a (k) nighthood."

"He has one," piped up the wife, "but he won't wear it."



One English lord, a member of the British Parliament, was suspicious that another lord was having a love affair with his wife. But the English are very well-mannered.

He asked the lord, "Did you sleep with my wife last night, Sir?"

And his friend replied, "Not a wink!"



The difference between a politician and an English lady....

When a politician says yes, he means maybe. When he says maybe, he means no. If he says no, he's no politician. When an English lady says no, she means maybe.

When she says maybe, she means yes. If she says yes, she's no lady.



A child sent a letter to the post office, addressed to God. A postal employee, not knowing what to do with it, gave it to the local Rotary club. It read: "Dear God, my name is Ramesh. I am six years old. My father is dead and my mother is having a hard time raising me and my sister. Would you please send us Rs.5,000."

A couple of weeks later, a second letter from Ramesh was turned over to them. The body thanked God but ended with the request: "Next time will you please deliver the money directly to our home. If you send it through the Rotary club, they deduct Rs.2,000."

## DESU ORDER RE: DOMESTIC ELECTRICITY LOAD CHALLENGED IN DELHI HIGH COURT

**D**elhi electric Supply Undertaking issued an advertisement on 2nd September '96 directing all domestic consumers of electricity in Delhi to submit details of electricity load in their premises, indicating that they would have to apply for additional load calculated on the basis of all switches, plugs and sockets etc. installed in the premises. There are 13 lakhs domestic consumers of electricity in Delhi. COMMON CAUSE felt that this was an undesirable imposition and that only a fraction of the switches, plugs and sockets are, at any particular time and during various seasons, used in relation to the electricity power consumed in lighting of electric bulbs and use of items such as fridgidaire, heaters, geysers, fans etc.

The matter was immediately taken up with the Lt. Governor, Delhi. He also recognised that there was considerable confusion in the requirements embodied in the advertisement put across in newspapers by DESU. He directed DESU to clarify the position through further advertisement. No action was taken by DESU till the end of September. Then an advertisement was placed in the newspapers which did not help to clarify the position and in fact complicated it further.

COMMON CAUSE took initiative of filing a writ petition in the High Court. The matter has since been taken up by the High Court. Arising from the presentation of this writ petition a general direction has been issued to DESU by the High Court that till further decision action should not be taken against any person who does not submit statement required by DESU in the advertisement. The case will come up for further hearings.

As the matter is of wide importance to the Urban residents, we have considered it desirable to reproduce the writ petition.

Lt. Governor of Delhi, Municipal Corporation of Delhi and DESU have been made Respondents in the writ petition. Main body of the writ petition is reproduced hereunder.

### TEXT OF THE PETITION

A petition under article 226 of the constitution of India for a writ, order or direction of or in the nature of certiorari and/or mandamus and/or any other appropriate writ, notice dated 02-09-1996 and the policy therein contained as issued by the respondents purporting to reassess load requirement of domestic consumers and requiring the so-called voluntary load declaration from such consumers.

The Humble Petition of the Petitioner abovenamed

#### MOST RESPECTFULLY SHEWETH :

That the Petitioner is a Society Registered under the Societies Registration Act, 1890 and engaged in taking-up public causes for amelioration of public grievances. The Petitioner has taken several public problems to court by way of public interest petitions before this Hon'ble court and before the Supreme court of India to plead and represent the cause of the common man.

That Respondent No.1 is the Lt Governor of Delhi who is overall incharge of the administration of Delhi and of the functioning of the Respondents Nos. 2 and 3. Respondent No.2 is the Municipal Corporation of Delhi constituted under the Delhi Municipal Corporation Act, 1957 and Respondent No.3 is the Delhi Electric Supply Undertaking constituted under the same Act which has a monopoly on the supply of electricity to residents of Delhi. Respondent No. 3 is an undertaking of Respondent No.2 and works under the overall supervision and control of Respondent No.2. The Respondents are "State" within the meaning of Article 12 of the Constitution of India.

That on or around 02-09-1996 Respondent No.3 issued a Public Notice in various leading newspapers circulating in Delhi

announcing what is ostensibly a "One Time Opportunity for Voluntary Load Declaration for Domestic Consumers". By way of the said Notice Respondent No.3 purported to embark upon an exercise for enhancement/regularisation of load being used by domestic consumers of electricity. For this purpose Respondent No.3 required all domestic consumers in Delhi to compute the "connected load" in their premises by adding the individual wattages of various equipment existing in their houses, such as lights, fans, geysers, coolers, televisions, fridges, air-conditioners etc., including spare plug points installed in a house. On the basis of such computation each domestic consumer in Delhi is required to furnish a declaration of the total load, which according to Respondent No.3 would reflect the actual load being utilized in every household. As per the said Notice, after making a voluntary load declaration as hereinabove described, each domestic consumer is required to pay additional charges per Kilo Watt (KW) of load over-and-above the sanctioned load. Furthermore, as per the said Notice, each domestic consumer is required to pay "Development Cost", "Fixed Service Line Charges" and "Inspection / Installation checking Charges" to Respondent No.3. A copy of the said Notice is attached.

That as per the said Notice, all this was required to be done by or before 30-09-1996 and thereafter Respondent No.3 intended to carry-out intensive surveys and in case the actual load is found in excess of the declared/sanctioned load, the supply of a domestic consumer is liable to be disconnected, ostensibly under the provisions of Delhi electricity Control 1959 and under the Conditions of Supply.

That the declared objective of this entire exercise is to strengthen the systems of Respondent No.3 for meeting the actual load requirement of consumers and helping to improve the electricity system.

The relevant portions of said Notice are extracted hereinbelow :

"Check up your connected load with TABLE-I which has perhaps increased many times since you got it sanctioned causing breakdown of DESU system and interruption of your supply. If so you may approach any of the branches of the three banks as indicated in TABLE-II by 30th Sept. '96 and take action of enhancement/regularisation of load actually being used by you. On making payment in cash or by Bank Draft through Deposit Slip (ANNEXURE - I).

After depositing the necessary charges with any of the authorised banks the consumer/user shall submit the required documents as indicated in TABLE No. IV alongwith one copy of the receipt of deposit slip to the concerned AE (PSI/XEN (D)).

Intensive surveys shall be carried out after the above stipulated period and in case the load is found in excess of the declared/sanctioned load, the supply will be disconnected under the provisions of DECO 1959 and conditions of Supply.

Your co-operation is solicited for strengthening DESU systems for meeting your actual load requirement. \*

**Table - I GUIDELINES FOR CONSUMERS TO COMPUTE CONNECTED LOAD**

Light/Fan Point	60 W each	Light Plug	60 W each
Power Plug	500 W each	Fridge	25 W each
Geyser	2000 W each	A/C 1.5T	2500 W each
Room Cooler	250 W each	Water/Booster Pump	250 W each
T.V.	100 W each	Heat Convector	1000 W each

11. One their of the space light/power socket points shall be treated as connected load at 60/500 W each respectively.

**Table - III SERVICE LINE CHARGES/INSPECTION FEES**

Sl.	Range of service Line	Fixed Service Line O/H (Rs.)	Charges U/G (Rs.)	Inspection Fees (Rs.)
1.	Load upto 5 Kw	2995/-	2245/-	35/-
2.	Above 5 Kw upto 10 Kw	3005/-	2305/-	50/-
3.	Above 10 Kw upto 15 Kw	2660/-	3005/-	100/-
4.	Above 15 Kw upto 37 Kw		3795/-	100/-
5.	Above 37 Kw upto 56 Kw		5440/-	100/-
6.	Above 56 Kw upto 100 Kw		8065/-	100/-

That furthermore as per Entry No.7 in the Deposit Slip published alongwith the said Notice the domestic consumer is required to pay the following additional charges for the so-called additional load declared by him :

- “7. Addl. charges payable by consumer
- i) Consumption deposit @ Rs. 150 KW on S.No. 6 above (A.c code 48.100) Rs.....
  - ii) Development cost @ Rs.600/- per KW S.No. 6 above (A/c code 55.120) Rs.....
  - iii) Inspection/Installation checking charges (as per TABLE II) (A/c Code 61.913). Rs.....
- TOTAL CHARGES PAYABLE/PAID Rs.....

That the Petitioner states and submits that electricity load in respect of a premises is sanctioned on the basis of an application made by the person constructing or occupying the premises who makes an assessment of his load requirements. If the load applied for is considered by Respondent No.3 to appropriate, the applicant is charged a pre-determined sum of money, the load is sanctioned and thereafter Respondent No.3 instals electricity meters appropriate to handle the sanctioned load which meters continue to be the property of Respondent No.3. The consumer pays rent for the meters so installed apart from the charges for electricity/current consumed from time-to-time.

That it is a scientific fact that if an installed meter of a certain load rating, say 3 KW, is imposed with a higher load than its rating, the meter will burn-out. In such a case the consumer has to have a new meter installed which only Respondent No.3 can do. Therefore, in practice it is not possible for a consumer to draw a total load in excess of the load rating of the electricity meter installed by Respondent No.3.

That furthermore, it is a matter of common sense and practice that regardless of the number of electrical gadgets or equipment that may be owned by a resident or even installed in a premises, it is impossible that all such gadgets or equipment would ever be used simultaneously and all-together. In fact there are electrical gadgets such as air-conditioners and geysers which are used only seasonally and are never used together in one season. A geyser is used in winters whereas an air conditioner is used in summers. It is also a matter of common knowledge that if a typical room in a household has 10 electrical sockets / plug points, several of these are spare or are never used at all. The plugs and switches etc. are usually installed in a premises on the basis of determination made by architects who have certain criteria for deciding the electricity load requirement of a household. Out of the total number of switches, sockets and plugs installed in a premises, only a fraction are normally used whereas other exists only for exigencies or special occasions.

That however by virtue of the said Notice issued by Respondent No.3 each domestic consumer is expected to count the number of plugs, sockets, switches, light points, fan points, power plugs, sockets, switches, light points, fan points, power plugs, fridges, geysers, air conditioners, T.V.s, water booster pumps, that have been “installed” in his premises and multiply such number with the load factor prescribed therefore by Respondent No.3. This, according to Respondent No.3 will constitute the “Declared Connected Load”. The difference between such “Declared Connected Load” and the “Existing Sanctioned Load” would constitute the “Additional Load” upon which additional charges shall have to be paid by a consumer.

That furthermore in terms of the said Notice, the domestic consumer was expected to comply with the terms thereof by 30-09-1996, failing which it was threatened that if, upon intensive surveys proposed to be carried out by Respondent No.3, the

load was found in excess of the declared/sanctioned load, the electricity supply of the domestic consumer would be liable to be disconnected.

That in response to the said Notice issued by Respondent No.3 in the newspapers, the Petitioner Society received numerous, frantic calls and letters from domestic consumers who feel aggrieved and even amazed at the directions issued by Respondent No.3 and which are intended to be implemented and enforce upon pain of dire consequences.

That there are nearly 19 lac consumers of electricity in Delhi of which about 13 lac are domestic consumers. In terms of the said Notice published by Respondent No.3, each one of the 13 lac domestic consumers is expected to submit the form prescribed in the said Notice, to complete all formalities laid-out therein and make payment as demanded by Respondent No.2. The payments contemplated will run into several crores.

That considering the wide spread effect that the said advertisement is bound to have and considering that fact that it will be the small domestic consumers who will be adversely effected by the scheme proposed to be enforced by Respondent No.2, the Petitioner Society wrote letter dated 04-09-1996 to Respondent No.1 pointing out the absurdity, ill-logic and even impossibility of implementation of the scheme contained in the said Notice, and requesting Respondent No.1 to examine the matter urgently and to direct Respondent No.3 to immediately withdraw the said Notice, in view especially of the fact that implementation thereof would inevitably result in very serious agitation and multiplications of the problems and would open a flood-gate of corruption by the officers of the Respondent No.3 and cause untold harassment to domestic consumers. A copy of letter dated 04-09-1996 written by the Petitioner Society is attached.

That in response to letter dated -4-09-1996, the Petitioner society received a reply from dated -7-09-1996 from Respondent No.1 wherein Respondent No.1 expressed that there was scope for confusion being caused by the said notice and that he was directing Respondent No.3 to examine the matter and issue a clarification. A copy of letter dated 07-09-1996 received from Respondent No.1 is attached. The Petitioner wrote another letter dated 17-09-1996 to Respondent No.1 in which the problem encountered in relation to the said Notice dated 02-09-1996 was reiterated. A copy of letter dated 17-09-1996 is attached.

That until 29-09-1996, that is just before expiry of the deadline set by the said Notice, no positive action ensued inspite of the direction given by Respondent No.1 in regard to the said Notice and the domestic consumers waited with bated breath to face the consequences of illegal and highly arbitrary exercise of power by Respondent No.3. On 29-09-1996 an "Important Clarification" was published by Respondent No.3 inter alia in the Times of India of that date. A copy of the said Clarificatory Notice dated 29-09-1996 is attached.

That the salient features of the said Clarification Notice are as follows:

- (i) the date for accepting the declarations from domestic consumers has been extended from 30-09-1996 to 31-09-1996.
- (ii) domestic consumers having total connected load (existing plus additional) of upto 8 KW per flat (DDA/CGHS)/plot/building will not be liable to pay any development cost.
- (iii) if the total connected load (existing plus additional) remains within the same slab of load, as defined in the said Notice and reproduced in the said Clarificatory Notice, then the domestic consumer will not be liable to pay any additional service line charges and inspection fee.
- (iv) it has been further stated that the guidelines to compute the connected load as indicated in the earlier notice including counting of one-third of spare light/plug points had been merely suggested to help the individual consumer to have a fair assessment of the total load requirement.
- (v) and by way almost of an apology it also stated that no surveys/inspections whatsoever are intended to be carried out by Respondent No.3 on this account.

That it is pertinent to note that no clarification has been given in the said Clarificatory Notice as to whether or not the Respondents intend to carry-out the threat of disconnection held out in the earlier said Notice, with or without inspection, for non-filing of the declaration.

That it is stated and submitted that the said Clarificatory Notice is only an illusory exercise by the Respondents to cover-up a scheme and policy that smacks of arbitrariness and high-handedness. It is clear from the said Clarificatory Notice that Respondents have every intention of implementing and enforcing substantially the entire scheme contained in the said Notice and therefore the grievance of the common consumer remains unremedied.

That the Petitioner seeks to impugn Notice dated 02-09-1996 as amended by the Clarificatory Notice dated 20-09-1996 issued by Respondent No.3 inter-alia on the following :

### GROUNDS

- A) Because by way of the said Notices Respondent No.3 is purporting to enforce a scheme for voluntary load declaration which it claims will improve the electricity system, whereas infact the scheme will have no bearing on the problem it purports to solve as is hereinafter detailed.
- B) Because the scheme contained in the said Notice proceeds on the assumption that all electricity points, such as plugs, switches etc., whether or not they are connected to an electrical gadget, are constantly and simultaneously used in every household in the city, an assumption which is completely devoid of logic and common sense and is factually totally incorrect.
- C) Because the scheme contained in the said Notice proceeds on the fallacious assumption that all electrical gadgets and equipment in a household are operated simultaneously, in all seasons and throughout the year. The scheme contained in the said Notices fails to take note of the fact that in every household there are heavier load consuming equipment, which by their very nature, cannot be operated simultaneously in every season. Air-conditioners and geysers are typical examples of equipment that are never used simultaneously in any given season. However, under the scheme contained in the said Notices Respondent No.3 proceeds to calculate the load utilization of the domestic consumer on the basis that all equipment installed in household are utilized simultaneously.
- D) Because the scheme contained in the said Notice proceeds on the assumption that if there are 10 plug points in a typical room in a house, at least one-third of such plug points would be utilized and would thereby be drawing load from the electrical system and should therefore be counted towards the total load "utilised" by a household. As a matter of practice and common sense, it is well known that in each premises there is always a number of plugs, sockets and switches which are never, or hardly ever used. In the said Clarificatory Notice this aspect has been further confused by stating that the one-third factor was intended merely as a guideline to "help the individual consumer to have a fair assessment of the total load requirement".
- E) Because in the said Notices Respondent No.3 fails to appreciate that plugs and switches in a household are installed on the basis of determination of required load as advised by architects or electrical contractors at the time of construction and it is never intended or assumed that all plugs and switches will be used at the same time.
- F) Because in the scheme contained in the said Notices Respondent No.3 fails to appreciate that if a household has a sanctioned load of, say 3 KW, an electric meter of requisite load capacity is installed in the premises by Respondent No.3 and in the event that the household utilizes a total load in excess of 3 KW at any given point in time, the meter so installed is bound to burn-out, making it impossible for a household in practice to exceed the total sanctioned load at any time. Therefore, to say that inspite of the fact that the electricity meter installed in a premises is infact, the total load utilization of the household may exceed the sanctioned load, is opposed to scientific fact that and untenable.
- G) Because the scheme sought to be implemented by Respondent No.3 expects each one of the 13 lakhs domestic consumers in Delhi to file the voluntary load declaration form within a period of less than two months from the date of first advertisement, which is practically impossible and would lead to unmanageable paperwork in the offices of the Respondents and would inevitably lead to all sorts of harassment and open-up avenues of corruption.
- H) Because the scheme sought to be implemented by way of the said Notices has no nexus to the problem that Respondent No.3 is attempting to solve thereby, namely the problem of excess load utilization. It is stated and submitted that excess load utilization commonly result from theft of electricity, i.e. by reason of people utilizing electricity without being consumers on the record of Respondent No.3 and such persons will not fall within the "dragnet" of the scheme that Respondent No.3 is proposing to implement by this Notice.
- I) Because implementation of the scheme contained in the said Notices will open a floodgates of corruption, whereby Inspectors and other officials of Respondent No.3 will get opportunities to harass domestic consumers with ulterior motives.
- J) Because the only purpose of Respondent No.3 in seeking to implement the scheme in the said Notices is to unjustly



- enrich itself by getting domestic consumers to deposit large sums of money under the garb of a voluntary load declaration scheme.
- K) Because implementation of the scheme contained in the said Notices has caused very serious agitation in the minds of the common public, each member of whom will be affected, since Respondent No.3 has monopoly over the supply of electricity in and around the city of Delhi.
  - L) Because the Respondents ought not to be permitted to unilaterally introduce and implement a scheme with vast and wide ramifications upon the general public without detailed examination of its implications by representatives of the people and by experts specifically deputed for the purpose.
  - M) Because even taking into account the amendments and clarifications offered by way of the said Clarificatory Notice, the Respondents still intend to impose Consumption Deposit charges upon all domestic consumers across-the-board whereby large sums of money will be recovered from consumers for an assumed additional load, which has no basis in fact and in law.
  - N) Because the amendments and clarifications issued by way of the said Clarificatory Notice are illusory and an eyewash and do not ameliorate the grievances of the common consumers.
  - O) Because the scheme contained in the said Notices bears no nexus to the problem that the Respondents are purporting to solve, is arbitrary, illegal and deserves to be quashed.
  - P) Because the scheme contained in the said Notice is even otherwise, onerous, will inevitably cause serious hardship to domestic consumers, without achieving any results as intended and is thereby liable to be quashed.

That the above grounds are being taken without prejudice to one another and the Petitioner craves leave to add to or amend the above grounds. That the present petition is being preferred bona fide, in the interests of justice and in public interest. That no other writ petition or proceeding has been initiated by the Petitioner in any other High Court or in the supreme Court of India on aspects that are subject matter of the present petition. That the Petitioner has no alternative equally efficacious remedy in law for the cause of action being agitated herein.

### PRAYER

In the above premises, it is prayed that this Hon'ble Court be pleased.

- (a) to issue a writ of or in the nature of certiorari and/or any other appropriate writ, order or direction, quashing Notices dated 02-09-1996 issued by Respondent No.3 intending to implement the so called voluntary load declaration scheme, copies of which are attached;
- (b) to issue a writ of or in the nature of mandamus and/or any other appropriate writ, order or direction, directing the Respondents to withdraw and/or stop implementation of the scheme of voluntary load declaration that the Respondents are seeking to implement and enforce vide a Notices dated 02-09-1996 and 29-09-1996, copies of which are attached;
- (c) to issue a writ of or in the nature of mandamus and/or any other appropriate writ, order or direction, directing Respondent No.3 not to disconnect the electricity supply to any domestic consumer of Delhi consequent upon non-compliance with the requirements mentioned in Notices;
- (d) to pass such other and further orders as this Hon'ble Court may deem necessary and proper on the facts and in the circumstances of the case.

For Which Act of Kindness, the Petitioner Shall As In Duty Bound, Ever Pray.

Petitioner

Through

H D Shourie  
Director, COMMON CAUSE  
(In-person)

COMMON CAUSE PETITION  
**STRIKE BY FLIGHT ENGINEERS OF AIR INDIA**

Flight Engineering of Air India had resorted to strike which disabled Air India from functioning for a period of six weeks during early 1993, resulting in the cancellation of about 200 flights. COMMON CAUSE filed a petition before the National Commission established under the Consumer Protection Act. This petition has recently been decided finally. The judgement given by the National Commission is of obvious importance. We reproduce hereunder the judgement.

**ORDER**

Per Balakrishna Eradi, J.

This complaint petition has been filed by the well-known Consumer Organisation "Common Cause" seeking redressal of the grievance of air passengers who were put to great amount of inconvenience and hardship on account of disruption of a large number of flights of Air India caused by reason of a sudden strike resorted to by Members of the Indian Flight Engineers Association (Respondent No.3) in February, 1993. It is averred in the petition that for a period of about six weeks from February 27, 1993, nearly 200 flights normally operated by Air India (Respondent No.2) had to be cancelled due to the strike by this Flight Engineers who are members of the India Flight Engineers' Association (Respondent No.3) and as a result thereof many persons who had booked their journeys by Air India flights were put to great hardship and loss and the image of the Airline which is the National Flag Carrier of this country had severely suffered within the country as well as abroad. In addition, huge loss had been caused by reason of strike to Air India which is a public sector enterprise and such loss is ultimately a loss to the general public.

The case of the complainant is that the second respondent viz. Air India as well as the members of the Indian Flight Engineers Association (Respondent No.3) which is a trade union owe a duty to the passengers who had booked their flights in Air India and hence who are consumers to see that the service which had been hired by them on payment of very high charges by way of air fare was duly performed without any deficiency and both Air India as well as the third respondent union are answerable to the consumers for the inconvenience and loss caused to them by reason of the strike which necessitated cancellation of innumerable flights. The complainant has estimated the loss as suffered by roughly about 30,000 passengers whose flights were cancelled on account of the strike at the minimum figure of Rs.30 crores. Since the purpose of the instant petition is to establish the accountability of both Air India and the members of Indian Flight Engineers' Association to the consumer travelling public in the matter of due performance of the contract of carriage without any disruption by reason of sudden strikes etc. the petitioner has prayed for the award of only nominal compensation of Rs.10 lakhs to be paid by Air India - respondent No.2 and Rs.5 lakhs by respondent No.3 (Indian Flight Engineers Association) with a request that both the aforesaid payments may be directed to be made to the Consumer Welfare Fund established by the Union of India. There is a further prayer in the petition that the respondents should be directed to take appropriate steps to ensure that in future strikes of this nature do not come about so as to cause serious problems and losses to the passengers who have booked their flights by Airlines.

The second respondent - Air India in its written statement has pleaded *inter alia* that its flight schedules were disrupted from February 27, 1993 for about six weeks solely on account of the fact that the members of respondent No.3 Association resorted to an illegal strike and they did not resume work in spite of the fact that the Government of India, Ministry of Labour had by its order dated April 6, 1993 declared the strike to be illegal and prohibited its continuance in public interest with immediate effect. It is, therefore, contended by respondent No.2 that the inconvenience caused to the passengers by reason of the disruption of flights was not on account of any negligence or deficiency on the part of the Airline and hence no claim for compensation can be made against it. Elaborating on the circumstances under which the strike was suddenly launched by the Indian Flight Engineers Association - respondent No.2 has stated that no notice as contemplated by Section 22 of the Industrial Disputes Act, 1947 had been given by respondent No.3 Association before its members went on strike. It is further stated that the strike which was ostensibly launched on the ground that certain demands made by the association had not been satisfactorily responded to the Management of the Air India was launched at a time when a reference concerning those very demands was pending before the National Industrial Tribunal for adjudication and conciliation proceedings were also pending

before the Regional Labour Commissioner (Bombay Central) on some of the demands.

Reference has been made in the written statement of Air India to the decision of this Commission in *Consumer Unity and Trust Society, Calcutta vs., Chairman and Managing Director, Bank of Baroda - 1991 (I) C.P.R. 263*. Reliance has been placed on the observations contained therein to the effect that any disruption of service caused by an illegal strike resorted to by the employees of the opposite party - Bank will fall within the well known exception of "force majeure" and it cannot therefore form the basis for the award of any compensation under the Consumer Protection Act since the failure to perform the service is not attributable to any negligence on the part of Bank.

The Indian Flight Engineer's Association (Respondent No.3) has raised a preliminary objection that the members of the association or their association are not under any direct or indirect contractual obligation in law to provide any service to the passengers making use of Air India flights and hence the complaint filed against the association under the Consumer Protection Act is wholly misconceived. It is further contended in the statement of objection filed by respondent No.3 that the issue that led to the agitation by Flight Engineers' with effect from February 27, 1993 pertained to a labour dispute between Air India and the Indian Flight Engineer's Association and no consumer complaint can legally arise out of any such agitation launched by a Trade Union. Another plea raised by the Association is that the present proceedings in so far as they are against the third respondent are barred by Section 18 of the Trade Unions Act, 1926. It is further averred that workmen are within their rights to raise demands on the Management and to take such actions as are necessary including strikes as part of the process of collective bargaining. On this basis the Respondent No.3 has contended that no consumer complaint can be entertained or adjudicated upon in such a way as to interfere with the said right of the workmen to agitate peacefully for pressing the demands made by them on the employer.

In its counter affidavit Respondent No. 3 has elaborately set out its version of the events which led to the agitation by Flight Engineers' starting from February 27, 1993 and the Association has attempted to place the entire blame on the management for "pushing the members of the Respondent No.3" to resort to the extreme step of going on a sudden strike. It is unnecessary for the purposes of this case to set out those averments in extenso.

Shri H.D. Shourie, Director, Common Cause appeared and argued the case of the side of the complainant, Shri Lalit Bhasin, Advocate appearing on behalf of Air India and Shri K. R. Pankajan, General Secretary of the Indian Flight Engineers' Association appeared in person and presented the case on behalf of Respondent No.3.

At the very outset we have to consider the objections raised by Respondent No.3 that the Indian Flight Engineers' Association has no contractual obligation in law towards the passengers making use of the Air India flights for their journeys to different destinations. In our opinion, the said plea put forward by the Association is totally misconceived and clearly untenable in law. The members of the Flight Engineers' Association form an integral part of the Air India Organisation and their salaries are paid out of the funds collected and realised by way of air fare charges collected by Air India from the passengers. For the proper performance of the contract of carriage and sale operation of flights in accordance with the announced schedules, every department of the Airline has equal responsibility to discharge its duties and functions efficiently without any negligence or deficiency. It is the collective responsibility of all the departments such as the traffic staff, commercial staff and engineering staff on the ground, the cockpit crew comprising of the pilots and the flight engineers and the cabin crew consisting of the personnel who are incharge of attending to the needs, safety and comfort of the passengers, each having its own definite role to discharge. In case of default and deficiency in the proper performance of the duties by anyone of these functionaries, the person or persons concerned will be clearly answerable in law to the passengers who are put to inconvenience and loss by reason of such default or negligence. The contract of carriage entered into with Air India is a contract with whole organisation comprising of these different limbs and it is not open to anyone of these constituent units to contend that it has no responsibility of contractual obligation towards the passengers who have booked and paid for their travel by the flights of Airlines. In the event of deficiency in service and consequent loss being suffered by passengers, action under the Consumer Protection Act can be instituted not only against the corporate personality of Air India but also against the erring staff member or group of members or its component department responsible for the deficiency in service.

In *Indian Medical Association versus V.P. Shantha and Ors.* In Civil Appeal No.688 of 1993 dated November 13, 1995 - [III (1995) CPJ 1(SC)], the Supreme Court had to consider inter alia the question whether doctors who are working in

(Government or Private Hospitals) and are paid as salary are liable to be proceeded against under the provisions of the Consumer Protection Act in the event of any deficiency in service being made out in the matter of providing proper treatment to a patient. In its judgement, the Supreme Court has stated that Government Hospitals/Nursing Homes and Private Hospitals/Nursing Homes broadly fall in three categories:-

- (i) where services are rendered free of charge to everybody availing the said services.
- (ii) where charges are required to be paid by everybody availing the services and
- (iii) where charges are required to be paid by persons availing services but certain categories of persons who cannot afford to pay are rendered service free of charges.

The hospitals falling in category (i) being outside the purview of the Consumer Protection Act the Court held that the doctors employed in those hospitals will not also come within the scope of the Act. The Court thereafter proceeded to discuss the question whether the individual doctors who are employed for salary in hospitals belong to categories (ii) and (iii) would fall within the purview of the Act. Dealing with the said question, the Supreme Court observed:

Advertising to the individual doctors employed and serving in the hospitals, we are of the view that such doctors working in the hospitals/nursing homes/dispensaries/whether Government or private-belonging to categories (ii) and (iii) above would be covered by the definition of "service" under the Act and as such amenable to the provisions of the Act along with the management of the hospital, etc. jointly and severally."

In our opinion these observations conclusively lay down that persons employed on salary in an organisation which is rendering service for consideration are equally amenable to the provisions of the Act along with the Management of the said organisation even though there may not be any direct privity of contract as between the persons hiring or availing of the service and the concerned employees. Hence we have no hesitation to hold that in the event of deficiency in service and consequent loss being suffered by passengers travelling by an Airline, action under the Consumer Protection Act can be instituted not only against the Air-Line but also against the erring member or group of members of its component staff responsible for the deficiency in service.

Coming to the facts of the present case, it is not in disputes that there was a serious disruption of many of the flights of Air India for a period about six weeks from 27th February, 1993 on account of a sudden strike resorted to by the members of the Indian Flight Engineers' Association. It cannot admit of any doubt that great amount of inconvenience, hardship and loss must have been caused to large number of passengers who had booked their journeys to different destinations by Air India flights scheduled to operate during the aforesaid period of disruption of services. The complainant is, therefore, right in its submission that the affected passengers have a legitimate grievance in respect of the said matter.

It is true that Respondent No.3 is a Trade Union and under law it is entitled to make demands on the employer and to take all legitimate steps for pressing those demands by the process of collective bargaining. The employees also have under Industrial Law a right to report to strike by adopting peaceful means after duly conforming to the procedure laid down by the concerned statutes regarding the giving of requisite mandatory notice etc. There is no right in any Trade Union to report to an illegal strike in contravention of the mandatory prerequisite laid down by law governing Industrial and Labour relation. The very purpose of making the service of a notice of stipulated duration mandatory is to avoid sudden disruption of the industrial activity which may result in grave and irreparable hardship, inconvenience and loss to the members of the public.

In the present case, there are clear and categorical averments in the counter filed by Air India that the strike in question had been resorted to by the Flight Engineers' Association without due prior notice and that the strike had been declared by the Government of India, Ministry of Labour to be an illegal and its continuance had been prohibited by an order dated April 6, 1993. These averments have not been specifically controverted in the statement filed by the Flight Engineers' Association (Respondent No.3). On the materials now available on record, it will be right to assume that the strike had been suddenly launched by the third respondent association at a time when adjudication proceedings were pending before the National Industrial Tribunal, Bombay and some conciliation proceedings were also pending before the Regional Labour Commissioner (Bombay Central).

Coming to the claim for compensation made against Air India, we have already found that the disruption of flights during the period of about six weeks from February 27, 1993 was caused solely on account of an illegal strike launched by the Indian Flight Engineers' Association. In *Consumer Unity and Trust Society, Calcutta versus Chairman and Managing Director, Bank of Baroda - 1991 (1) C.P.R. 263* this Commission had occasion to consider whether the failure of a Bank to conduct banking operations from its Branches during the period of an illegal strike resorted to by its employees would constitute deficiency in service so far as to render the Bank liable to pay compensation under the Act to its account holders. It was held that since the suspension of Banking operations was the direct consequence of an illegal strike involving unlawful obstruction by the striking workmen of ingress into and egress from the Bank's Offices by the Officers and willing members of staff, it cannot be said that the inconvenience, loss or injury which was undoubtedly caused to large numbers of constituents of the Bank was a result of negligence on the part of the respondent Bank and that on the other hand it was a clear case falling within the well known exception of 'force majeure'.

In the light of the said principle enunciated in the above ruling, we have no hesitation to hold that no negligence has been made out against Air India and hence there are no valid grounds for the award of any compensation as against the Airline. However, we consider it necessary to make it clear that we are not to be understood as laying down any principle of general application that in no case of strike by its employees can an Airline be made liable for payment of compensation. If, in any given case, it is shown that the strike was not illegal and had been occasioned by any negligence on the part of the Airlines in the performance of its administrative function of good governance and maintenance of proper employer-employee relations, different consideration may probably apply.

As already noticed, an objection has been taken by the Indian Flight Engineers' Association in its Counter-Statement that the present proceedings instituted against it under the Consumer Protection Act are barred under Section 18 of the Trade Unions Act, 1926. We do not see any merit in this contention, First, Section 18 operates only to a bar to the institution of a suit or other legal proceedings in any Civil Court against any registered Trade Union in respect of any Act done in contemplation or furtherance of a trade dispute etc. The Fora constituted under the Consumer Protection Act are not Civil Courts and proceedings instituted before the Fora are not civil suits or other legal proceedings institute in Civil Courts. That this is the correct legal position has been laid down by this Commission in *N.K. Modi versus M/s Fair Air Engineers Pvt. Ltd. & Another - [1(1993) CPJ 5 (NC)]*. Hence we hold that the provisions of Section 18 of the Trade Unions Act do not operate as a bar to the filing of a complaint against a Trade Union under the provisions of the Consumer Protection Act.

Further, the bar imposed by Section 18 is in respect of only certain types of claims made against a Trade Union in respect of any act done by it "in contemplation or furtherance of a trade dispute to which a member of the Trade Union is a party on the ground only that such act induces some other persons to break a contract of employment or that it is in interference with the trade, business or employment of some other person or with the right of some other person to dispose of his capital or of his labour as he wills". The complaint filed in the present case does not fall within any of the categories described in Section 18 and hence it is totally unaffected by the bar imposed by the said Section.

Inasmuch as we have found that the strike launched by the Indian Flight Engineers' Association was illegal and it could not therefore, be regarded as a legitimate Trade Union activity it has to follow that the third respondent and its members were responsible for causing disruption of flights resulting in great inconvenience, hardship and loss to the passengers who had booked their journeys by Air India flights during the period of disruption caused by the strike. It is to be noted in this connection that none of the affected passengers in before this Commission as a complainant. Further it was stated before us by Mr. H.D. Shourie with his usual fairness that his real purpose in filing the present petition is only to get a categorical pronouncement from this Commission affirming accountability of the employees of the Airlines for the hardship and loss caused to the passengers by reason of disruption of flights by launching an illegal strike. Now that the legal position has been discussed and explained by us and the obligation of the employees of Air India as well as their associations towards the passengers has been well defined by this order, the interests of justice would be adequately met in the present case if we record our disapproval of the attitude of total lack of concern on the part of the third respondent Association and its members about the great amount of inconvenience and hardships caused to the passengers and also to the reputation of the National Airline of this country. In addition, we also think it necessary to administer a strong word of caution that in case similar instances of disruption of services by illegal strikes or agitations come to the notice of this Commission, in future, on the part of the employees of any organisation rendering service to the public for consideration or any Association or Union of such employees, we will be

dealing with the matter in a very strict manner and will have no hesitation to award proper compensation to the consumer who are thereby affected and aggrieved. If however, the disruption in service is the consequence of a strike or agitation legally launched in conformity with the provisions of the law governing Industrial and Labour relations the employees or their unions, no proceedings under the Consumer Protection Act can be instituted against the employees or their Associations/Unions.

We do hope and trust that henceforth the rights of consumers will be duly borne in mind by the Management as well as by the Trade Unions representing the workers and that every effort will be made to ensure that as far as possible no avoidable inconvenience is caused to the consumers by causing disruption or cessation of the service expected to be provided to them. Even in the event of a lawful strike being launched after due notice, there is a duty on the part of the Management as well as the Trade Unions to take necessary steps sufficiently in advance to put the consumer public on notice that there is a likelihood of a disruption in the service to be rendered to the public by the particular organisation on account of the impending strike so that the members of the public may make their alternative arrangements, if they wish so to do. In this context, we consider it necessary to issue a direction to Air India on terms similar to what was issued by this Commission to the Indian Banks Association in the case of Consumer Unity and Trust Society, Calcutta versus Chairman and Managing Director, Bank of Baroda (supra) that henceforth whenever a strike notice is served by any section of employees or their Trade Union on Air India (this would apply equally to all Airlines similarly situated) and the strike appears to be imminent, the Airlines shall insert a publication in all the leading newspapers of the country informing the public about the possibility of there being a strike so that the consumers may not be taken by surprise by the strike but may be enabled to make such alternative arrangements as are possible so as to mitigate the hardship that is otherwise bound to be caused to them.

This complaint petition is disposed of with the above observations and directions.

The parties will bear their respective costs.

(V. Balakrishna Eradi)  
President

(B.S. Yadav)  
Member

(S.S. Chadha)  
Member

(R. Thamarajakshi)  
Member

(S.P. Bagla)  
Member

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Deserve to be a giver -  
through charity of the receiver.



*You often say*

"I would give but only to the deserving"

The trees in your orchard say not so.

Nor flocks in your pasture They give that they may live, for  
withhold is to perish.



You are giving and in your giving is your life.



All Members of Common Cause

## NOTICE OF ANNUAL GENERAL MEETING

The Annual General Meeting of COMMON CAUSE Society will be held in the Constitution Club, Rafi Marg, New Delhi, on Sunday, 9th February 1996 at 11 a.m. Members are invited to the meeting.

Agenda will be as follows:

- i) Consideration of Annual Report and adoption of the Annual Accounts alongwith the Auditors Report for the year 1995-96.
- ii) Appointment of Auditors for the year 1996-97.
- iii) Activities and Programmes.
- iv) Elections.

It may kindly be noted that in accordance with Rule 15 or the Rules & Regulations of the Society if within half an hour of the beginning the quorum is not present, the meeting shall stand adjourned for the same day and will be held after another half an hour, and members present in the adjourned meeting shall form the quorum of the meeting.

H.D. SHOURIE  
DIRECTOR, COMMON CAUSE

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## AUDITORS REPORT

We have audited the attached Balance Sheet of COMMON CAUSE as at 31st March 1996 and the annexed Income & Expenditure Account of the Society for the year ended on that date which are in agreement with the books of account maintained by the Society.

In our opinion and to the best of our information and according to the explanation given to us, the said accounts give a true and fair view:

- (i) in case of the Balance Sheet of the state of affairs of the Society as at 31st March 1996 and
- (ii) in case of the Income & Expenditure Account of the excess of expenditure over income for the year ended on that date.

For RAO & RAVINDRANATH

Chartered Accountants  
Sd/-  
A.V. RAVINDRANATH  
PARTNER

Place : New Delhi  
Date : 22 October, 1996.

## ANNUAL REPORT FOR 1995-96

The year of Report showed continuing expansion of services of the Organisation. The programme continued to be satisfactorily pursued. The public causes taken up during the year include some outstanding decisions of the Supreme Court, Delhi High Court and the National Commission established under the Consumer Protection Act.

Activities and programmes of the Organisation have attracted wide public notice through newspapers and the media of TV and Radio. Membership has continued to expand. Large number of members have converted their annual membership to life membership. Response for renewal for annual membership also continues to be satisfactory.

Numerous problems continued to be addressed to the Organisation by individuals practically from all parts of the country. We have repeatedly emphasised that the Organisation can take up only common and collective problems of the people which have wide repercussions. Average number of letters received by the Organisation continued to be 20-30 per day. Replies are invariably sent.

### PROGRAMMES AND ACTIVITIES

The Organisation has continued taking up matters with the executive authorities wherever possible for solving problems of the people. Where the executive was not found responsive to the grievances, resort was eventually taken to the Courts. Decisions given by the Supreme Court, Delhi High Court and the National Consumer Disputes Redressal Commission have benefited hundreds of thousands of people.

Brief account of the important writ petitions submitted to the Supreme Court and Delhi High Court and complaints submitted to the National Commission for Consumer Disputes Redressal appears in the paragraphs that follow.

### CRIMINAL CASES PENDING IN THE COURTS OF INDIA

The important writ petition on this subject which was submitted to the Supreme Court five years ago has now been decided. Based on the suggestions which have been incorporated in the writ petition, the Supreme Court has issued very important directions in regard to the disposal of old pending cases. It is estimated that total number of criminal cases pending in the Courts of India had reached the figure of one crore. Various other cases including civil matters aggregate to additional two crore cases. In respect of the criminal cases the detailed direction of the Supreme Court are reported to have already effected disposal of some hundreds of thousands of cases in all District and Tehsil and Headquarters in the country.

### LAWYERS' STRIKES

A direction given by Supreme Court on our writ petition relating to Lawyers strike have by and large brought about considerable improvement of the situation. A matter arising from Bar Association of Calcutta had got referred to the Supreme Court for initiation of contempt proceedings against the President and the Secretary of the Bar Association who were alleged to have prevented some lawyers from going into the Courts and were thus defying the strike which had been called by the Bar Association. The Supreme Court initiated contempt proceedings. Eventually, the President and Secretary of the Calcutta Bar Association tendered apology and the contempt proceedings were dropped. The Attorney General of India has collected information from various parts of the country about strikes which are resorted to by the Bar Associations. Arising from this compilation of information further proceedings are proposed to be initiated in the Supreme Court for eliminating the chances of such strikes.

### ALLOTMENT OF PETROL PUMPS

Arising from the writ petition which had been submitted to the Supreme Court by COMMON CAUSE on the subject of establishment of Lok Pal Institution, and instances of corruption which had been high-lighted during the course of hearing of the petition, an important judgement has been given by the Supreme Court in relation particularly to 15 petrol pumps allotted by the Capt. Satish Sharma, former petroleum Minister, from his discretionary quota. After detailed examination the Court has held that these allotments were illegal and un-constitutional. The former petroleum Minister was directed to pay Rs.50,000/- to the Director of COMMON CAUSE towards costs. This amount was received and has been credited to the account of the Organisation. In addition, a penalty of Rs 50 lakhs has been imposed on the former Petroleum Minister for malafide and unconstitutional exercise of powers in the allotment of these petrol pumps.

### PENSIONS OF MEMBERS OF PARLIAMENT

The writ petition submitted long ago to the Supreme court challenging the provision whereby pensions are being given to the



members of Parliament is still pending. The two Member Bench of the Court had referred it to the Constitution Bench because it involves interpretation of the Constitution. It has not hitherto been possible for the Constitution Bench to be constituted for hearing this case.

### **POSTAL STRIKE**

The recent all-India strike for one week by the Posts and Telegraphs employees features in another writ petition which has been filed before the Supreme Court. In this writ petition our prayers are that the government of India should be directed to explain why the strike could not be anticipated in view of the fact that it related to the extension of certain benefits to the Railway employees, and to determine what action is proposed to be taken for the defaults which brought the country to a communication paralysis for one week. The petition has yet to come up for hearing.

### **DIFFICULTIES ENCOUNTERED BY INCOME TAX RAIDING AUTHORITIES**

The Income-tax officers have been seriously complaining that when they go to conduct any raids on residential premises or commercial establishments they often encounter very serious obstacles and even manhandling by the people of the localities. They have been demanding that they should be given the help of some Central Organisations of Police when they go for any raid because the local police often proves unhelpful. This matter forms the subject of the writ petition which has been submitted to the Supreme Court. It has yet to come up for hearing.

### **UNAUTHORISED COLONIES**

The writ petition regarding unauthorised colonies is yet pending in the Delhi High Court. A number of hearings have taken place. It has been brought to the notice of the Court that as many as 1076 new unauthorised colonies are sought to be got regularised by Delhi Government and that they still have not been able to establish which of these colonies conform to the criteria prescribed in this regard by the Government of India to set-up a High Level Committee consisting of all concerned Departments and some related public spirited citizens for examining the entire matter and to submit a report to the High Court.

### **RENT CONTROL LAW**

Delhi Rent Act, based on the model Rent Control Law prepared by the Government of India and approved in a meeting of Chief Ministers of all the States, was passed by the Parliament about 1 1/2 years ago. It has long ago been signed by the President of India. Unfortunately, resulting from an agitation launched by certain representatives of shops in the older markets, the notification for enforcement of the Act has not yet been effected. This is causing a serious problems for houseowners of Delhi which number almost about one million. On the initiative of COMMON CAUSE a meeting of representatives of all the houseowners Organisations of Delhi was held wherein decision was taken to send ten thousand telegrams to the Prime Minister. A very large number of telegrams have already been sent.

### **OTHER CASES**

Some cases are yet pending before the National Consumer Disputes Redressal Commission. These include the strike which was observed by the Banks all over the country and also the depredations caused by the buses on the roads of Delhi. Decision was recently given by the National Commission on another case of COMMON CAUSE in which the one-week strike by the Flight Engineers of Air India was taken up. This decision highlights the fact that where illegal strike is resorted to by the employees action should be initiated against them.

### **COMMON CAUSE HOUSE**

The plot of 800 sq. yds allotted by DDA to COMMON CAUSE in Vasant Kunj area is now being constructed upon with the generous help from Eicher Foundation. It is expected that during the year 1997 the building will be ready for use. An agreement has been entered into between COMMON CAUSE and Shanker Lal Memorial Foundation of Eicher Tractors in relation to the provision of funds for constructing of building and the use of accommodation which will be constructed.

### **MISCELLANEOUS**

Taking into account the generous provision of funds by Eicher Foundation for constructing of the COMMON CAUSE building it was decided to amend its Rules and Regulations, as authorised under the Constitution. The amended Rules and Regulations have come to effect from 21.9.96. A Board of Trustees has been set up for enabling it to deal with all matters relating to the building which is expected to be completed in the coming months.

Balance Sheet, as certified by our Auditors, relating to the year of report is attached herewith.

COMMON CAUSE  
(REGISTERED UNDER THE SOCIETIES REGISTRATION ACT 1860)

INCOME AND EXPENDITURE ACCOUNT  
FOR THE YEAR ENDED 31ST MARCH, 1996

EXPENDITURE	AMOUNT Rs.	INCOME	AMOUNT Rs.
Printing & Stationery	131,275	Subscription	167,000
Books & Periodicals	1,899	Annual Membership	11,075
Staff Salary	88,857	Associate Membership	5,100
Conveyance Expenses	31,009	Interest Received	
Legal Expenses	73,419	- Savings Bank	3,568
Postage & Telegrams	28,760	- Fixed deposit with SAIL	16,450
Subscription Expenses	1,000	Interest Accrued	
Telephone Expenses	7,075	- Fixed Deposit with SAIL	113,673
Water & Electricity Expenses	12,341	- Fixed Deposit with Bank	1,536
Repairs & Maintenance	9,477		115,209
Miscellaneous Expenses	865	Amount transfered from	
Professional Charges	500	Foreign Contribution Account	143,780
Cartage	45		
Meetings & Seminar	1,775		
Bank Charges	2,060		
Depreciation	4,276		
Excess of Income over Expenditure	67,531		
	<u>462,182</u>		<u>462,182</u>

AS PER OUR REPORT OF EVEN DATE

for RAO & RAVINDRANATH  
CHARTERED ACCOUNTANTS

GOVIND NARAIN  
PRESIDENT

H.D. SHOURIE  
DIRECTOR

A.V. RAVINDRANATH  
PARTNER

BRIG. R.I. LUTHRA  
SECRETARY

MAJ. GEN. U.C. DUBEY  
TREASURER

Place : New Delhi  
Date : 22.10.96

**COMMON CAUSE**  
**(REGISTERED UNDER THE SOCIETIES REGISTRATION ACT 1860)**

**BALANCE SHEET AS AT 31ST MARCH 1996**

LIABILITIES	Rs.	ASSETS	Rs.
<b>CAPITAL FUND ACCOUNT</b>		Cash in Hand	3,000
Life Membership		Balance with Scheduled Bank	
<b>Subscription</b>		- S.B. A/c No. 8564	79,164
Opening Balance	526,098	- S.B. A/c No. 18382	21,384
Add:		Stamps in Hand	2,006
Subscriptions received during the year	29,271	Land deposit with DDA	
	555,369	Opening Balance	1,288,527
<b>Corpus Fund</b>		Add: Deposited during the year	29,401
Opening Balance	1,95,8611	<b>Fixed Deposits</b>	
Add : Donations received the year	213,746	with SAIL	867,000
	2,172,357	With Indian Bank	25,00
<b>Foreign Contribution Fund</b>		<b>Interest Accrued</b>	
Opening Balance	6,223	On Fixed Deposits with SAIL	164,351
Add : Donation received	160,000	On Fixed Deposits with Indian Bank	1,536
Interest on Foreign		Fixed Assets (As per Annexure A)	36,664
Cont. Account	1,691	<b>Deficit Account</b>	
	167,914	Opening Balance	341,785
Less : Transferred to Income & Expenditure Account	143,780	Less : Surplus as per Income & Expenditure Account	67,531
Expenses Payable	40,427		274,254
	2,792,287		2,792,287

AS PER OUR REPORT OF EVEN DATE

for RAO & RAVINDRANATH  
CHARTERED ACCOUNTANTS

GOVIND NARAIN  
PRESIDENT

H.D. SHOURIE  
DIRECTOR

A.V. RAVINDRANATH  
PARTNER

BRIG. R.I. LUTHRA  
SECRETARY

MAJ. GEN. U.C. DUBEY  
TREASURER

Place : New Delhi

Date : 22.10.96

Schedule - 'A'  
**DEPRECIATION CHART FOR THE YEAR ENDED 31ST MARCH 1996**

PARTICULARS	RATE	W.D.V.	ADDITION	TOTAL	DEPRECIATION	W.D.V.
		AS ON 1-4-95				AS ON 31-3-96
	Rs.	Rs.	Rs.	Rs.	Rs.	
A. Furniture	10%	11,867	3,752	15,619	1,562	14,057
B. Shed	10%	21,695	-	21,695	2,170	19,525
C. Cooler	15%	1,031	1,300	2,331	350	1,981
D. Office Equipment	15%	1,295	-	1,295	194	1,101
		35,888	5,052	40,940	4,276	36,664

## OUR ACTIVITIES AND PROGRAMMES

COMMON CAUSE as a public interest organisation has reached out extensively in ever-widening spheres for taking up causes of the people for securing redressal.

Its activities have given benefits to very large number of people, in fact to innumerable persons, spread all over the country. Almost three million pensioners have benefited from the three important decisions the organisation secured from the Supreme Court, in relation to extension of liberalisation of pension, restoration of commutation of pension, and extension of the scheme of family pension. The case relating to Delhi Municipal Corporation Property Tax, decided at its instance by the Supreme Court, helped to straighten out problems of the levy and assessment of this tax. Various manifestations of this matter have continued to be pursued by the organisation of securing proper restructuring and rationalisation of the tax. Various issues relating to Rent Control laws and their distortions have continued to be taken up for being sorted out. We have maintained close relationship with various associations of homeowners, tenants, ratepayers, welfare organisation etc.

### OUR GRATEFUL THANKS

*We have the privilege of receiving assistance from the well known Friedrich-Naumann-Stiftung of the Federal Republic of Germany, the Foundation which is supporting various projects and activities connected inter alia with consumer awareness, entrepreneurship development, economic and civic education, environment protection, legal services, income generation and rural development. The Foundation is named after the known socio-liberal statesman Friedrich Naumann and works towards his ideals and the vision of Liberal society. In India the Foundation operates from USO House, 6, Special Institutional Area, New Delhi-110067. We are also grateful to Kumari L.A. Meera Memorial Trust, Kerala, for providing us financial assistance for our activities.*

A large number of public causes of importance have been taken up from the platform of COMMON CAUSE for redressal. Quite a few writ petitions have been filed in the Supreme Court. These include, for instance, disruption of the work of courts by lawyers' strikes, problem of accumulated backlog of cases in courts all over the country, malfunctioning of blood banks and the requirement of appropriate collection and testing of blood for transfusion purposes, challenging the pensions being given to Members of Parliament, inadequacies in the implementation of Consumer Protection Act, and failure of the government machinery in fulfilling the constitutional requirements of spreading free and compulsory education for the children in the country. Likewise, a number of issues of public importance have been taken to the Delhi High Court. These include the problems of conversion of leasehold properties to freehold, non-implementation of Apartments Ownership Act, problems connected with building bye-laws and unauthorised constructions which have widely proliferated, and such like. A Writ Petition filed against Delhi Electricity Supply Undertaking resulted in a beneficial verdict relating to bills based on defective meters. From time to time matters have been taken up for straightening out problems related to income tax, wealth tax, gift tax, capital gains tax, for avoidance of aberrations, discriminations and harassments.

Increasingly the organisation has also been taking up various problems of the consumers, with a view primarily to give them the feel that they too can fight their battles in relation to the products and services provided to them. A major achievement of the organisation has been to secure amendment by the Government of the relevant rules prescribing the mode of price printing on packages with the result that now the price, inclusive of all local taxes, is being printed on packages, all over the country. Matters relating to various areas of inefficiency of the public sector functioning, as of electricity supply, telephone services, airlines, etc., have been taken up for redressal of the grievances of consumers. Cases were filed by the organisation for setting right the inadequacies of quality control in manufacture of sensitive items such as intravenous fluids, and removal of distortions in strict observance of the orders for supply and sale of iodized salt.

Recent noteworthy activities of the organisation include the securing of orders of the Supreme Court leading to establishment of Consumer "Courts" in all districts of the country, issue of notices to Government of India and Election Commission by Supreme Court on writ petition regarding non-maintenance and non-audit of accounts of political parties and non-establishment of Lokpal institution as well as strengthening of anti-corruption machinery at the centre and in the States.

Membership of the organisation is open to all. Membership fees are Rs 100 for annual membership for individuals, Rs 500 for life membership and Rs 200 for annual membership of organisations and associations. Quarterly Periodical COMMON CAUSE goes free to all members; it has no separate subscription. Donations to COMMON CAUSE are eligible for exemption available under Section 80G of Income Tax Act. Everybody can take membership of the organization. No form is required. Send your name and address, written in capital letters, along with cheque/DD, drawn in favour of COMMON CAUSE.

H.D. SHOURIE, Director