
(1999) 09 AP CK 0078
In the Andhra Pradesh High Court
Case No : WA No. 502 of 1999

A.P. Dalit Maha Sabha

APPELLANT

Vs

Government of A.P. and others

RESPONDENT

Date of Decision : 15-09-1999

Acts Referred:

Constitution of India, 1950 — Article 143, 226, 41
Income Tax Act, 1961 — Section 80

Citation : AIR 1999 AP 452 : (1999) 6 ALD 63 : (1999) 6 ALT 21

Hon'ble Judges : M.S. Liberhan, C.J.; A.S. Bhate, J

Bench : Division Bench

Advocate : Mr. J. Satya Prasad, for the Appellant; Advocate-General and Government Pleader, for Municipal Administration and Urban Development and Mr. C.R. Sridharan, for the Respondent

Judgement

M.S. Liberhan, CJ .

1. Hyderabad Urban Development Authority (for short "HUDA") took over 1000.23 acres of Poramboke and Kancha Sircari agricultural land of village Manikonda because of industrialisation and urbanisation around it. Indian School of Business Management (for short "ISB") was allotted 250 acres by Government for imparting training to the students in the field of business management and allied fields from all over the world.

2. In view of the proximity of its location to the Indian Institute of Information and Technology (for short "IIT") and other large number of educational institutions having come up like, Telecommunications Training Centre and Institute of Department of Telecommunications, Government of India, Environmental Protection, Training and Research Institute, Jawaharlal Nehru Institute of Banking (promoted by IDBI), the ambience of the area, establishment of National University in 200 acres of area etc., a Memorandum of Understanding was entered on 6-9-1998.

3. The appellant impugned the allotment as public interest, inter alia, contending that Government land cultivated by the landless farmers or the ryots, around the village are entitled to grant of pattas/ assignments of it being under their self cultivation to the extent of 5 acres as well as they being the members of the weaker sections of the society. It was averred that the Court while disposing of the writ petition of the various claimants of above nature directed the District Collector to consider the claim of the claimants in the writ petition. The Collector declined the claim of the claimants to be in continuous possession or their belonging to weaker sections of the society or having pattedar rights under 1950 Act or being ryots they being in possession of the land belonging to the Government for an uninterrupted possession and directed the eviction of encroachers occupying the land from time to time vide order dated 29-1-1997, which was impugned in Writ Petition No.28712 of 1998; which are still pending for consideration though no stay was granted. The appellants were not party to the petition. Further challenge to the allotment was that the Government had no authority in law to part away with its natural resources according to its whims and fancies, at a price lesser than the price prevailing in the market of rupees one lakh per acre while the allotment was made at rupees twenty five thousand per acre, thereby resulting in a loss of rupees 1.87 crores to the State; alienation not being consistent with the constitutionally permissible objective, the allotment was made without following proper procedure and was not for any decipherable public purpose, it being a gift of Government especially by the Chief Minister to private company incorporated, which would deprive the poor farmers of their livelihood and cultivation. It was further alleged that the people of Andhra Pradesh would not derive any benefit from the allotment. The decision is tainted by extraneous consideration and lack of transparency apart from it being unreasonable. The allotment was in violation of established practice or law or disposal of Government largess by inviting tenders or public auction. It was averred that there were neither any negotiations with any individual or organisation nor anybody else from the public was invited for the same.

4. The State claimed the allotment to be in public interest as the establishment of the school is for the benefit of the people of the State and the country. There would be direct investment of Rupees 350 crores in the State. The allotment is consisted with the public policy and the objective of the State policy for establishing a center of excellence and providing opportunity for education. Innumerable parameters were taken into consideration in making the decision for allotment in public interest, An elaborate process was undertaken before allotment. There was neither any extraneous consideration nor it suffered from lack of transparency. It was averred that State was under no obligation to adhere to usual procedure of auction or tender especially when the allotment was made or is sought to be made not for augmentation of the State revenue but in discharge of its Constitutional duties enjoined by the Directive Principles for spreading education by providing opportunity for one to develop according to one's capacity.

5. Respondent-Indian School of Business Management (for short "ISB") averred that it was constituted under the Companies Act, 1956 comprising of various Heads of Indian and Trans-continental Corporate Houses in furtherance of its academic activities to be guided by the International Advisory Council consisting of most revered names of international fame in the field of business, industry and academics, apart from it being affiliated with most-recognised leading first five business schools in the world for imparting knowledge in quality managerial skills relevant to Indian and Asian requirements. Establishment of an institution of excellence is a vital instrument of national and State interest in view of the fact that income or property of institution are not transferable in any manner, it cannot be characterised as *juris privali*. Administering the State and utilisation of the State's assets for public purpose is founded on the rational value judgments. The State had made rational valuation amongst variable and permissible policy choice in support of the establishment of the institution. Ensuring quality education is the predominantly permissible domain of the State activity in conformity with the Directive Principles of the Constitution. The decision of the State is not judicially justiciable and subject to judicial scrutiny on any of the well recognised axiomatic grounds as laid down by the Hon''ble Supreme Court from time to time.

6. The learned Counsel for the appellant in order to support his submissions relied on *In Re*, under Article 143, Constitution of India, *In the matter of: Under Article 143 of the Constitution of India*, , *Syed Abdul Mansur Habibullah Vs. The Speaker, West Bengal Legislative Assembly and Others*, and *Om Parkash Chautala Vs. State of Haryana and Others*, .

7. The learned Counsel for the appellant further relied on the law laid down by the Supreme Court in *Dwarka Nath Vs. Income Tax Officer, Special Circle D-ward, Kanpur and Another*, , *Aeltemesh Rein, Advocate, Supreme Court of India Vs. Union of India (UOI) and Others*, , *Asif Hameed and others Vs. State of Jammu and Kashmir and Others*, , *B.C. Chaturvedi Vs. Union of India and others*, , *Vishaka and others Vs. State of Rajasthan and Others*, , *Vineet Narain and Others Vs. Union of India (UOI) and Another*, and *Supreme Court Bar Association Vs. Union of India and Another*, , in order to support his submission that the Courts in exercise of its power of judicial review can give directions to initiate Legislation.

8. The Hon''ble Supreme Court while dealing with the question of powers and jurisdiction of a High Court Judge and the power and privilege and immunities of the State Legislature, in *Re*, Under Article 143 (*supra*), observed that Courts can examine the existence and extent of privilege as well as the reasons for issuance of warrants, though, cannot call upon to explain the genesis of the reasons for the said warrant; would be competent to examine the validity of the order passed by any authority including the Legislature, and that must necessarily involve the consequences. While accepting the supremacy of the Constitution as fundamental and it being protected by the authority of independent judicial body

to act as interpreter of the scheme and distribution of powers, Legislature's plenary power was accepted. There is no second opinion with the law laid down with respect to the power of judicial review of the executive, administrative or Legislative action.

9. In Syed Abdul's case (supra), the Calcutta High Court while examining the requirement of the Governor to deliver a speech and address the opening session as sine qua non and mandatory and is preliminary before a session can be held to be there, observed that irregularity could not be called into question. It was held that judiciary is to examine, it being vested with the power, the task of construing the provisions of the Constitution and safeguarding the fundamental rights of the citizens. Similarly the opinions and authority of the executive lie within the domain of the Legislative authority, authority of judicature in the country lies within the domain of adjudication.

10. Similarly, in Om Prakash Chantala's case (supra), it was observed that in the absence of any order of the Governor proroguing the House, session would be deemed to be in continuity, and the Court has jurisdiction to go into the proceedings inside the Legislature. It was also noticed that democratic form of Government is the basic structure, and the saying of the Abraham Lincoln defining democracy to the effect it is by the people, for the people, of the people, representing a political method by which every citizen has the opportunity to ensure what shall be good for community as a whole. Since the public as a whole cannot take part, the Legislative representatives put forth their views.

11. Syed Abdul's case (supra), lays down the principle of issuance of the writ of certiorari for which there cannot be any controversy.

12. So far as the laws laid down with respect to the suggestion and initiate Legislation as referred to in the iterinary ofthe judgments cited above, conspectus of the view or the trend of the view emerges is that it is not open for the Court to issue writ in the nature of mandamus to the Government to bring about a statute. At the same time this does not debar the Courts to issue a declaration in the nature of advice to the Government as to the time for bringing the statute or provision thereof in force. Executive was held responsible to the Parliament and on betrayal of faith can be censured. Emphasis has been laid that power is to exercise in a just and reasonable and fair way, which is the essence of the rule of law.

13. In the similar strain it was observed that the strength of democracy depends on the independent working of the legislative and executive powers which are the two assets of the will of the people while being conscious that judiciary has no power or purse or sword though it is a powerful weapon or centennial to restrain the unconstitutional exercise of power and the Court with the latest trend has been extending its power and has taken into its own fold the extending social and economic justice with self-imposed restraint and judicial discipline. It was further emphasised that the judiciary would not empower the judicial process to

take a policy decision in administrative matters, though suggestion can be made. Courts functions are accepted only, to the limited extent whether the authorities have acted within the power and function assigned under the Constitution. Courts are not the appellate authority in judicial review. Courts cannot advice the executive in matters of policy or sermonise for any matter that lies within the sphere of Legislative or executive function provided they do not transgress the Constitutional limits of the State power. Within the Constitutional limits Legislature is supreme. While recording a note of Madison's phrase it was observed that "all powers are of encroaching nature", so is judicial power not immune from it, and required to be guarded against encroaching beyond its proper bounds since the only restraint upon it is self-restraint.

14. All the observations with respect to the concept of law as analysed above were made in the factual context of the cases. Finally, in our considered view, what emerges is that judiciary in exercise of judicial power cannot invoke its power for issuance of directions to the Legislature to legislate with respect to any particular aspect.

15. The learned single Judge found, on appraisal of the record produced, arguments addressed, law appreciated, that the Government decision was not arbitrary and unreasonable. Non-realising of the prevailing market value in the facts and circumstances of the case is of no consequence. Respondents are not private body incorporated with the object of profit making, it is in public interest; use of the property allotted is for common good with achievement of specially permissible objective; the policy of the plan is not accounted with the Constitution and its provisions; policy decision of the Government is not unreasonable. Non-compliance of the rules of business are the purposeful violation and it would not render the decision unconstitutional or liable to be net aside. As in fact Cabinet took the decision earlier, consequently the orders of the Chief Minister are of no consequence. The decision of allotment at lesser market value is a policy decision; it is not tainted by any collateral considerations. Policy of liberalisation is within the purview of the State. So far the question of formulation of policy was left open, it being premature. It was further observed that either the proceedings are subject to judicial review, as the same not being unconstitutional or against any law or violation of executive instruction, or being for extraneous consideration nor relevant consideration was left out of consideration or was tainted with malice. It being a policy decision is not subject to judicial review, and Courts cannot substitute its own opinion with that of the executive in the facts and circumstances of the case.

16. Before dealing with the contention of the learned Counsel for the respondent, since we have heard the Counsel for the appellant at length it would be expedient to notice some of the relevant facts as emerged from the perusal of the record, arguments addressed, pleadings of the parties, findings of the learned single Judge as well as ordinary human course of conduct and accepted norms of running the Government administration and executive functions during

the era of the process of maturing democracy.

17. It was perceived to establish a premiere business management school for imparting training in the field of business and allied area to the students. With the said object in view, the respondent decided for establishing the school as an independent financially self-funding institution affiliated with internationally known University of Pennsylvania, Wharton School, J.R.K. Law Graduate School or Management at North-Western University for imparting training to students all over the world, with an investment of Rupees 350 crores to be generated by the management, independent of the State. This was perceived, keeping in view the policy of the Government to the effect:

"Due to economic liberalisation and increase of economic growth, the country has witnessed at unprecedented increase of economic activity involving national business interest and interaction with international business during the past decade. The region around Hyderabad has been dramatically transformed by this development. The Government of Andhra Pradesh prepared a Vision-2020 industrial development plan, which envisages it to become the foremost-industrialised state in the country by the year 2020. The mission is to double industrial output every five years. The center of excellence having identified, which would mutually enhance business potential and provide much needed quality, employment possibilities for the present in connection with the other planned projects around the twin cities. Indian School of Business Management will greatly contribute to the economic development of the region, by training managers who will compete in ever changing world. Therefore, with the said object, the Government has entered into Memorandum of Understanding with Indian School of Business Management to establish an institution. This action of the Government is in public interest, and cannot be assailed by a person who has no knowledge in the subject."

18. The State of Andhra Pradesh in conformity with the Constitutional obligation in order to enable opportunity to the citizen to develop to his capabilities and capacities in a democratic society irrespective of his economic means, and propagating and spreading education, in order to provide best education took one of the policy decision so as to provide Hyderabad as center of education. Vision 2020 was perceived. Hyderabad was sought to be turned into Cyberabad. With the national and international institutions, companies, industries with multi-national software companies where large-scale investment and generation of employment opportunity to the people of Andhra Pradesh are being invited and attracted for their establishment in the State of Andhra Pradesh to establish foremost internationalised State in the country. Professionally skilled managers are the sine qua non for economic development to provide competitive management in the ever changing world and the international competitiveness. Providing trained manager as a human infrastructure cannot be said to be impermissible Government policy.

19. In conformity with the policy of the nation of liberalisation in the best

economic interests of general public, institutions, geographical economic factors, State constituted its investment promotion board for taking decision regarding investment on promotion of industry, The Chief Secretary and other Secretaries and some Ministers were the members of the Committee. The focus of the Government was human resources development through creation of adequate infrastructure and manpower for education, which are the centers to human resource development innumerable institutions including medical, engineering, management, law, information and technology were planned and established for study of lakhs of students to be ready for recruitment in the developments coming around.

20. The management and the State perceived that Indian School of Business Management would greatly contribute to the economic development of the region by training managers who will compete in ever changing world. Therefore with the said object, the Government entered into Memorandum of Understanding with Indian School of Business Management to establish an institution in public interest.

21. It is discernible from the record that the establishment of the school was mooted in the year 1995 which fructified only in October, 1997 when all the top international business organisations provided forum, form and content of the school to be established by the persons having a reputation of accomplishment, contribution to business management and other skills, bearing on the performance of enterprise with the expectations over a period of time from the school, its capacity of the person to cater such expectation with level of monetary contribution on unattributable basis i.e., not entitling them to any privilege in the school including the naming of the building or block or advantage of admission in the school of their nomination with an object to provide best education in the field of human knowledge, in management relevant to competitiveness on the policies of nation serving vital national public purposes in public interest. Memorandum of Understanding was entered into with amongst the five top universities of the world i.e., Wharton School of Pennsylvania, Kellogg Graduate School of Management, Northwestern University for providing and ensuring committed collaboration, executive education programme, research programmes specially focus in the issues pertaining to Indian and Asian economics, further providing a faculty to Indian School of Business, nominations of faculty to international academic Council, visiting of scholars, exchange programmes and establishment of the research centers.

22, It is well established that Legislature and Executive is the policy making arm of the Government. Judiciary only has a role of declaratory of policy made by others. It cannot assume the role of determining the results of a particular thought or policy or philosophy. It is for the Legislature or Executive who are answerable to the people every five years to determine the policy. Constitution, as it is, is not meant to be freedom of or to protect only a particular segment of the society. It is meant for one and all. It is to supervise justice to all irrespective

of economic, social, regional, consideration of creed etc. It is to ensure freedom to an individual to develop, in a free atmosphere, his potentialities to his capacity. Freedom is not the concept of what one likes to do. It is a concept of compromise; freedom of one is to respect the freedom of other. Freedom of one cannot be sacrificed at the altar of the freedom of the other. Only exception is of reasonable restriction on the freedom, to enable each and every one to enjoy the same. As Darwin observed "what makes a society is a community of ideas, not political ideas alone, but also the ideas about the way its member should behave and govern their lives."

23. It is categorically discernible from the record that the Committee held its meeting on 12-8-1998 and took a decision to offer a special package to the management for establishment of Indian School of Business Management to attract their investment at Hyderabad on certain broad parameters, keeping in view the various offers made by other State Governments like Maharashtra Government, Gujarat Government, Tamilnadu Government etc., with whom they were negotiating. The investment board on 18-8-1998 approved the offer made by the management in terms of the recommendations of the State Investment Promotion Committee, inclusive of the offer of the land at a concessional rate of rupees twenty five thousand per acre. We may hasten to add that the offer of the allotment of the land is not a profit making offer or an offer for raising the revenue of the State. It is an offer of the allotment of land in public interest for development of an educational institution of excellence and for spreading education and inviting an investment of more than Rupees 350 crores which will add to the betterment of the economic conditions of the residents of the State at a small cost of Rupees 1.87 crores, the alleged loss of price in land value which, in our considered view, in view of the complexity of the commercial war and governance and administration becoming specialised field which require various skills in determining what is better in the long run, whether a small loss or a big gain. It is not for the Courts to substitute its view as that of the specialists. On approval of the offer, after taking a conscious decision in its wisdom for establishment of a business school of high standard and center of excellence to enhance the business potential, a Memo of Understanding was signed by the Government on 6-9-1998 to provide much needed quality employment, possibilities for residents, economic development of the region by training managers who would compete in the ever changing world with no loss to anyone or adversely affect the right to life of anyone. There can be no gainsaying that the State was conscious with respect to rational nexus on the object of Constitutional guarantee and object of education.

24. Reading of the Memo of Articles of Association provides that income derived shall be applied for the promotion of the object as set-forth in it with permanent encumbrance of the property not liable to be paid or transferred directly or indirectly by way of dividends, bonus or otherwise or by way of providing to any person at any time, be a member or otherwise claiming through any one or more of them. It is provided that in the eventuality of the disposition, the assets left

over after the satisfaction of its debt and liabilities would not be distributed amongst the members of the company, but be transferred to such other institution or institutions having object similar to the object of the company to be determined by the member of the company at or before the time of distribution or to some charitable object under the orders of the Court. The contribution is exempt u/s 80-G of the Income Tax Act, 1961. Members are required by their commitment to provide five crores on contribution basis without deriving any benefit like naming of building, right of admission of the nominee etc.

25. In *Mann v. People of Illinois*, 94 US 77, it was observed that when private property is affected with the public interest it ceased to be a *juris privati* only. In the same strain Lord Hale, Chief Justice, in his treatise *De Portibus Maris*, Larg LTr.78, in the law of property, recognised the above stated principle and accepted it as quite essential for the public interest in property.

26. It can be safely culled out as contended by the Counsel for the respondents by relying on the judgments of the Supreme Court in *Delhi Science Forum and others Vs. Union of India and another*, *G.B. Mahajan and others Vs. The Jalgaon Municipal Council and others*, and *Kasturi Lal Lakshmi Reddy, Represented by its Partner Shri Kasturi Lal, Jammu and Others Vs. State of Jammu and Kashmir and Another*, wherein it was held that conferring of benefits, social or economic, on a particular section or group, privatisation of national economy in the changed scenario of circumstances prevailing in the society is the public policy to be tested by representative of people on the Floor of the House irrespective of the consideration. Privatisation is a fundamental concept underlying the question about the power to make economic decisions. The Government have a policy decision to adopt any method or technique or management of its projects and deal with its estates, though, within the Constitutional and legal limits provided for and in public interest with expansion of the State. In age of competitiveness in the field of trade and commerce and range of economic and commercial enterprises with the object of stimulating efficiency, providing improved management methods, balancing of the cost of expediency of the project, considering economic expediencies are some of the considerations which go into forming of a policy. If we may hasten to add, the policy, which does not violate the Constitutional or legal limits, is always a trial and error method bona fide determined by the authorities. In *Kastwilal's case (supra)*, it was further held that granting of largess in public interest is an advancement of the Directive principle sought or implemented when the same is given with a view not to earn revenue but for the purpose of carrying out the welfare scheme for the benefit of a particular group or section of the people or deserving persons.

27, Justice Brandies observed that there must be power in the States and nation to remould through experimentation and economic practice in institutions to meet challenging social and economic needs, which is a grave responsibility. Denial of the right is fraught with serious consequences, while recognising a happy incident where a single credulous State tries a novel, social and economic

experiments without risk to the rest of the country. Wisdom of public policy is an irrelevant consideration. Government policies are based on number of circumstances of facts, law, including constraints based on its resources and expert opinion, Basic text to the test policy is the Wednusbury Principle of Fairness. Public policy is to be inferred from the substance and facts of the case and not from a matter, form or the name. Right to education as envisaged by Article 41 can in no terms be said to be not a public policy.

28. We are of the considered view that the decision of the State to provide a facility for a higher standard of education, competitive of international market, providing an individual to develop in the speciality of management of a higher standard and establishing of a centre of excellence in the State is in public policy.

29. We are also of the view that taking into consideration the property, including the plot, allotted to the company for an incidence of public interest is to be used by public and community at large which is an incidence of control by the public for the common good. The State property is being alienated not for the augmentation of the income of the State or for the benefit of any individual, but with a laudable object of attracting the investment of Rupees 350 crores and providing an opportunity for spreading the education of a high standard of international level and establishment of an institute of center of excellence and an opportunity for admission to one and all found to be deserving in conformity with the Directive Principles of the Constitution. This comprehension or act done cannot be termed to be distribution of the State largess to any chosen person or for enrichment of any one individual. There is no element of augmentation of the revenue enjoining an obligation on the State to secure the best market price in a market economy. The State is well within its right to dispose of its property even for a token price to achieve the defined constitutionally recognised public purpose or goal set up by Part-IV of the Constitution, which can be termed as a public policy.

30. There is no gain saying that even the public policy can be faltered in the eventuality of it being tailor-made or it suffers from any Constitutional infirmity or is violative of any statutory law or is against the Wednusbury Principle of Fairplay or is with an object to achieve the objective Constitutionally not permissible or it violates any of the Fundamental Rights or any other legal right.

31. We are of the considered view that the policy of the State for establishing a center of excellence - offering better facilities than the counter-part States at a huge investment of Rupees 350 crores by the company with no loss to the public in general, ralher if we may say, it being beneficial not only to the people of the State but of the country by providing education of international standard in collaboration with the renewed universities at the international level, providing exchange programme, exposure to the students in the international market, with indirect investment in millions of U.S. Dollars to cater the various multinational companies of human infrastructure for industrialisation in the State - is a step forward to achieve the object of the Directive Principles of the Constitution.

Constitution cannot be put in a pot with a lid on it for only a particular section of the society, though; the interest of the poorer class or economically weaker section has to be kept in forefront. Establishment of the institution as a center of excellence does not deprive the have nots of their right to get the education and to compete with one and all rather it is in the interest of them too part from gaining directly from the huge investment, gaining indirectly also as it generates the employment for unemployed persons. The policy by any stretch of arguments or reasoning cannot be termed to be arbitrary, unreasonable or suffering from any constitutional infirmity or violative of any provisions of law or runs contrary to any provision provided by the Constitutional object.

32. The object of establishing a center of higher education has not been pointed out to be in any manner illegal nor any arguments were addressed that the project in any way is illegal or suffers from any malice or is not desirable or is tailor-made for a particular company. It would not become unreasonable or unconstitutional merely because it is unconventional in practice.

33. Judicially, precedently the development of law striking down the various largess under the cover the law laid down by the Supreme Court in various judgments that the State cannot be permitted to grant largess for the enrichment of the individuals, companies or persons at the cost of the State properties, arbitrary or with sweet will, and in their whims and fancies. It was observed that while striking down the grant of such largess and sought to be judicially reviewed, various factors have to be taken into consideration viz., terms on which largess were granted, persons who may be recipients of such largess, Government activity, public element involved in it, reasonableness of it in public interest, advancement of the Directive Principles sought to be implemented, grant not being with a view to earn revenue but for the purpose of carrying the welfare schemes for the benefit of public or a particular group or the nation or the society or the section of the people deserving it, credibility of the persons serving the public interest to whom largess have been allotted, their personal interest, mala fide, malice, undue enrichment of the recipients, etc. Reasonableness of allotment or the policy has to be determined by well-accepted Constitutional norms as well as fair play, whether the policy framed was made on extraneous considerations or is made without taking into consideration the relevant consideration, whether it is arbitrary or suffers from the vice of malice. Similar are the considerations, which have to be taken into consideration while considering the allotment. All the above-referred considerations are to be tested on the principle that the actions of the Government are presumed to be reasonable unless proved otherwise. The Court in its judicial process cannot enter into examining the Government actions with assumed doubt and lacking of bona fides. It is well said by Mahatma Gandhi that it is easy to make allegations but difficult to prove. The principle of proving the infirmity in the Government action is on the person who avers the same, if not, beyond reasonable doubt, at least to an extent that ordinary prudent person can come to a conclusion that the action of the Government suffers from any of the constitutional, legal infirmities

or action is arbitrary, capricious. Merely an act being in one's perception may not be ethical while in the perception of the other ethical, would not confer on the Court the jurisdiction to set at naught the Government action.

34. The acid test laid down to judge the administrative action is whether appropriate consideration was borne in mind and irrelevancy is excluded. Nothing should appear to have been done under bias, jobbery or nepotism.

35. We are of the considered view that the policy of the State for establishment of Hyderabad as a Center of excellence and education by providing lands to innumerable institutions and Universities, like Law University, Information Technology University, Open University, etc., and other institutions which are referred to in the earlier part of the judgment, was well known to the entire country. It cannot be said that the State was working secretly or under any cover. In spite of the fact that the Government's intentions of establishing Hyderabad town as a Center of education were well known, no other person has come forward from any institution to establish a college of business management with such credential excellence, propensity to development, affiliation with renowned Universities, the center of excellence, financial resources to invest. Merely because the State has not floated tenders or given advertisement and waited the project to lapse or permitted other States to hijack the project from the State, by itself cannot be termed to be an act of impropriety or arbitrary, biased, discriminatory or with an intent to enrich a particular institution or any person and authority having acquired a personal gain for himself without there being any specific allegation. As it is well established that the allegation of mala fide are not to be only made, but it is envisaged that mala fides have to be averred with material particulars and required to be proved beyond reasonable doubt. If on the drop of a hat, motives are attributed to the administration, the administration is likely to be not only gagged but the Executive or the Legislature would not be able to discharge its functions in a free, independent and congenial atmosphere. There cannot be a mechanical process that the public property can only be leased out or disposed of by public auction or inviting tenders. Each case would depend on the facts and circumstances of the case; requirement of the public at large, urgency involved and some other administrative factors.

36. Referring to the observations of Justice Holmes, the Supreme Court in *R.K. Garg v. Union of India*, AIR 1981 SC 2138, observed:

"Another rule of equal importance is that laws relating to economic activities should be viewed with greater latitude than laws touching civil rights such as freedom of speech, religion, etc. It has been said by no less a person than Holmes, J., that the Legislature should be allowed some play in the joints, because it has to deal with complex problems which do not admit of solution through any doctrinaire or straight jacket formula and this is particularly true in case of Legislation dealing with matters, where, having regard to the nature of the problems required to be dealt with, greater play in the joints has to be allowed to the Legislature. The Court should feel more inclined to give judicial

deference to Legislative judgment in the field of economic regulation than in other areas where fundamental human rights are involved."

37. It was observed by Frankfurter, J., in *Morey v. Dond*, (1957) 354 US 457, that "the Courts have only the power to destroy, not to reconstruct. When these are added to the complexity of economic regulation, the uncertainty, the liability to error, the bewildering conflict of the experts, and the number of times the Judges have been overruled by events, self limitation can be seen to be the path to judicial wisdom and Constitutional prestige and stability."

38. We are of the considered view that the policy of privatisation, economic development, use of resources of the country, goals to be attained, measures to safeguard to prevent abuse of economic power, mechanism of accountability, the public interest are within the domain of the State role, though the role of the State is hatched by providing do's and do nots by the Constitution, rules and regulations, fair-play, etc. It was observed in *Delhi Science Forum's case* (supra) that before the decision of the authority questioning award of contracts vested in the statutory authority can be questioned on the ground: (1) decision has been taken in bad faith; (2) decision is based on irrational or irrelevant consideration; and (3) decision has been taken without following the prescribed procedure which is imperative in nature. The onus is not discharged only by raising a doubt in the mind of the Court, but by satisfying the Court that the authority or the body which had been vested with the power to take decision has adopted a procedure which does not satisfy the test of Article 14". We are satisfied that no such allegations, which satisfy us, much less raise a doubt in our mind, that the decision to allot the land at a concessional rate inviting capital investment of such a huge amount in the State providing a center of excellence for education in the State with the affiliation of world renowned universities, suffers from any vices or knots provided by the Constitution while dealing with State property or it violates Article 14 of the Constitution on any imaginable, much less reasonable basis, especially when neither any complaint of mala fide against the evaluation committee has been made, nor it has been shown that by such an act of the State any individual has been benefited or any individual has been obliged to. The venture is not a commercial venture, but a public interest venture. It cannot be tested on the anvils of the para meters of the commercial ventures.

39. We are fully supported by the observations made in *B. Krishna Bhat Vs. Union of India (UOI)*, , *M/s. Shri Sitaram Sugar Co. Ltd. and another Vs. Union of India and others*, , *State of Punjab and Others Vs. Ram Lubhaya Bagga Etc. Etc.*, , *Krishnan Kakkanth Vs. Government of Kerala and ohters*, and *Sterling Computers Limited and Others Vs. M and N Publications Limited and Others*, .

40. It further emerges from the law laid down by the said judgments: (1) that the formulation and implementation of any economic policy is the responsibility of the Executive. The merits of such policy are not susceptible to judicial review except on the ground of Constitutional infirmities; (2) Courts are not placed in a position to determine as to whether an alternative policy formulation would have

been better. The formulation and implementation of policy regarding utilisation of natural resources may depend upon variety of factors. Essentially it is a politico-economic judgment; (3) a large latitude has to be allowed to decide as to whether it is a reasonable decision and economic soundness of the development plan. The plan cannot be a subject matter of debate in a judicial review proceeding unless it is contrary to the Constitution; (4) in deciding the policies, the Executive is entitled to take legitimate and political and economic considerations into account, for the promotion of regional stability, good Government, commercial interest. The Executive is fully entitled while making the decisions keeping in view the principle that the machinery of the Government would not work if it was not allowed a little play in its joints.

41. We are of the considered view, after going through the record and the writ petition and hearing the Counsel for the parties and the arguments advanced, that the policy decision was arrived at after being processed at various higher level officers, like the Chief Secretary and not by individuals, as a result of long drawn correspondence finally resulting in Memorandum of Understanding, after consultation with various departments of the State at various levels with no secrecy attached and taking into consideration various other alternatives. The record further shows the gathering of information, spot inspection, inter-departmental communication on multifarious weak points, several queries, issues, which were furiously raised with complete openness of discussion and deliberations. There is nothing wrong in the establishment of School having come into being even at the initiative of the Chief Minister, who is the head of the Executive and Legislature. If we may hasten to add that it is this wing of the Constitution, which has to take initiative in the developmental plans. If an action, taken merely on the initiative of a particular personality has to be struck down, we are of the considered view that no developmental plan or scheme will ever be thought of, generated, implemented or taken up. The rule of business is provided for internal working. There is no violation of specific rules or business worth noticing have come to our notice. Even if there is one, there is no substantial injustice suffered by any one. It may be a processual irregularity, which cannot render the decision either unconstitutional or illegal.

42. Democracy cannot operate by taking continuous head counts on the broad range of daily Governmental activities. It is a complex sophisticated mechanism with its own complexities and perplexities. The Courts in judicial restraint would not and should not provide a surrogate political process for bona fide acts and steps taken by the authorities.

43. It is well established, rather axiomatic, that the Court does not act as appellate authority and cannot reappraise the terms of the Memorandum of Understanding, especially when the act of the State is neither vitiated nor tainted with any collateral consideration. We may say that the object of the Government focussing on human resources development through creation of adequate infrastructure and man power for education which are centers of

human resources development, where the students will get higher studies, is a sign of development of the State, rather calling for condemnation.

44. Today with the development of public interest by the public spirited litigants, no doubt inspiring confidence in the Courts and in the public, but Court cannot be oblivious of public interest litigation being an bridled horse. One can take judicial notice of the fact that public interest cases are filed without any rhyme or reason with an object of securing favourable administrative, executive orders or to achieve social popularity without there being any gross violation of fundamental right or basic human rights invaded or acts of complaints shocking the judicial conscience, leaving apart the procedural shackles and treating the public interest litigation pernicious for all the remedies available under the Constitution as a substitute is alarmingly increasing, acquiring disproportional and needs a self-imposed judicial restriction, especially when the grievance exposed does t not adversely affect the large number of citizens who on account of innumerable reasons, like poverty, etc., cannot approach the Court to ventilate their grievances. Before the public interest jurisdiction is invoked, the Court is ordinarily expected to be satisfied that there is some element of public interest, that the transaction impugned involves any mala fides, and that there is a need for balancing the consequences of the public good with the act of the State. The opinions of few, howsoever laudable, cannot be imposed upon the functions of the Executive or the Legislature, which are answerable to the people at large for every five years and had at their disposal the expertise, feed-back, need of the society, requirement of the developmental programmes, etc., though the opinions and views may differ from people to people. Experimentation for the developmental work undertaken by the State cannot be gagged under the garb of public interest litigation. Public interest litigation should not ordinarily be permitted as an adventurous freak in Court. The Courts should shun the temptation of the litigant to achieve political goals and satisfy the desire and the quest for politics to use it for politics of the purpose. We may hasten to add that the petitioner claiming to be the champion of public interest litigation is in fact the champion of adversarial litigation, which is already pending in the High Court, though there is nothing on record that either the petitioner's or the persons claiming to be in possession of the land in dispute relates to the same land which has been allotted to the respondent.

45. We are of the considered view that basically vibrant Constitutional provisions go into oblivion when the considerations of the compassion, ethicality, etc., are attempted to be introduced in an attempt to politicise the Courts and their culture. It demands more and more judicial restraint, unbridled interference under the clock of public interest is self-destruction of the institution, especially when the people fail to achieve results and make an attempt to achieve the same through Court under the phobia that every act done by the Legislature or the Executive is tainted and it is the Court alone in the public interest, microscopically, telescopically with fore-sight and far-sight can judge the complexity of the administrative, executive actions taken by the experts in their

respective fields. Every action bona fide and legitimately taken to the best of the judgment of the Executive who are accountable to the people and Legislatures if subjected to judicial review and scrutiny and diverting their time from developmental work to defend themselves without devoting energy towards development meeting their moral and Constitutional obligation to the people whom they represent and creating a stale-mate and stagnate society on the trifle means under the garb of public interest litigation and accountability to the judiciary for its acts. As already observed we are of the considered view that there is neither arbitrariness nor unreasonableness in the allotment of the land at a concessional rate to the respondent in conformity with the public policy.

46. We find no force in the challenge that the State Government had no authority in law to part away its natural resources at a price lesser than the prevailing market price, especially when it is in the public interest and the alleged interest of the persons sought to be protected, though as a finding of fact not found to be in possession, but at the most are the encroachers on the Government land. Mere poverty, even assumed to be there, does not confer a right on a citizen to take law in his own hands and encroach upon the State property, especially when the State cannot be present on every inch or corner of the property all the times. The allotment, as observed earlier, has been made after following a proper procedure for decipherable public purpose, which cannot be termed to be a gift by Government to a private company, for it is being private beneficiary. We find nothing on record, which can be termed as extraneous consideration or lack of transparency.

47. Mere allotment of the land without calling for tenders or public auction, the violation of established practice, by itself is not sufficient, especially when the allotment is not for augmenting the revenue of the State and is in advancement of its public obligation of spreading education, providing opportunity for its citizen to develop in a free democratic atmosphere his talents and capacities to the maximum. Mere allotment by negotiation would not render the decision as unconstitutional. Benefit of the State has been pointed out in the earlier part of the judgment.

48. We find no error in the findings of the learned single Judge that the decision of the Government is not arbitrary or unreasonable; non-realisation of the prevailing market value in the facts and circumstances of the case is of no consequence; the respondents, though a private incorporated body with no object of profit, is in public interest; use of the property is for common good with achievement of specially permissible objectives; not contrary to the provisions of the Constitution or any law or policy and nor it can be termed as unreasonable; there is no substantial violation of procedure rendering the decision unconstitutional or liable to be set aside, which needs interference in exercise of powers under Article 226 to do substantial justice; the decision is by way of policy and is not subject to judicial review, being not for extraneous consideration or not taking into consideration relevant considerations, especially

holding that the Court cannot substitute its own opinion with that of the Executive in the facts and circumstances of the case. As regards the question of stamp duty, it is still academic and no finding need be given, as the same has still not fructified. Thus, we affirm the findings of the learned single Judge and find no ground to interfere in the appeal.

49. For the reasons recorded above, the appeal is dismissed with no order as to costs.