
(1980) 04 GUJ CK 0022

In the Gujarat High Court

Case No : Special Civil Application No. 3203 of 1979

Cibatul Ltd. and Others

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 09-04-1980

Acts Referred:

Companies Act, 1956 — Section 198, 198(1), 198(4), 2(13), 2(24)

Citation : (1980) 1 GLR 825

Hon'ble Judges : S.L. Talati, J;S.H. Sheth, J

Bench : Division Bench

Judgement

S.L. Talati, J.—Petitioner No. 1 - Cibatul Ltd. - is a company registered under the provisions of the Companies Act, 1956. Petitioner No. 2

is working as the managing director of petitioner No. 1. Petitioners Nos. 3, 4 and 5 are the shareholders of petitioner No. 1. Petitioner No. 2 is the

professional managing director. He after having passed and obtained M.Sc. degree in Organic Chemistry obtained Doctor's degree in Switzerland

in the year 1949. Thereafter in the 1950, he joined service and started his career with petitioner No. 3. Thereafter, in the year 1960 petitioner No.

1-Company started manufacturing business. Petitioner No. 2 thereafter in the year 1967 joined petitioner No. 1-company and became its

managing director for the first time. He was appointed for a period of five years. Again he was appointed in the year 1972 as the managing director

for a period of five years and he continued to serve petitioner No. 1 in that capacity up to 1977. Thereafter, petitioner No. 1-company decided to

reappoint petitioner No. 2 again for a period of five years and for that purpose the terms and conditions were settled and an application was

submitted to the Govt. of India for the purpose of obtaining sanction and that

petition was submitted on August 16, 1977.

2. Thereafter on January 28, 1978, the Govt. of India sanctioned and gave approval for a period of two years and the terms and conditions which

were set out by the company were revised. Under these circumstances the petitioners ultimately filed this special civil application. It may be stated

here that the terms conditions which were agreed showed that the appointment was to be made for a period of five years. The salary which was

fixed was Rs. 5,000 per month with annual increment up to Rs. 500 at the discretion of the board of directors payable from January of each

calendar year. It was also agreed to give commission up to one per cent. of the net profits of the company computed in the manner laid down in s.

309(5) of the Act subject, however to a maximum of 50% of the annual salary, the amount of commission payable to be determined by the board

of directors at its sole discretion within the above limit. Perquisites were also agreed between the parties and a special mention may be made to

gratuity, medical benefits and residential accommodation. Gratuity fixed was not exceeding three-fourth of a month's salary for each completed

year of service, as per the scheme of approved gratuity fund applicable to the officers of the company. Medical benefits for self and family included

reimbursement of expenses actually incurred, the total cost of which to the company shall not exceed three month's salary, for a period of every

three years of service. So far as residential accommodation is concerned it was agreed that the rent will be recovered at the rate fixed by the

company and the cost of the same to the company will not exceed 25% of the salary. The monetary value of this perquisite will be evaluated as per

r. 3 of the I.T. Rules, 1962. The other terms included company's contribution towards provident fund, pension, leave, free use of car, personal

accident insurance and leave travel facility. When the Govt. of India granted approval under ss. 198, 269 and 309(3) of the Companies Act, 1956,

what was done was that the reappointment of petitioner No. 2 was approved not for a period of five years, but for a period of two years. As

regards the salary though Rs. 5,000 per month were approved, increment of Rs. 500 per year was not approved and a substantial reduction was

made in commission and the commission approved was one per cent. of the net profits of the company computed in the manner laid down in s.

309(5) of the Act, subject, however, to a maximum of Rs. 10,000 per annum. This was a substantial reduction inasmuch as an amount of Rs.

20,000 at least would be payable less to petitioner No. 2 in view of the revised terms. In gratuity also a revision was made which stated as under :

Gratuity. - Not exceeding one half month's salary for each completed year of service subject to maximum of Rs. 30,000 or 20 months' salary whichever is less.

3. In regard to medical benefits also a change was made which was as under :

Reimbursement of expenses actually incurred for self, wife and dependent children, the total cost of which to the company shall not exceed one month's salary in any year.

4. Here, year was taken as a unit. Now, therefore, the company petitioner No. 1 and petitioner No. 2 both felt aggrieved and thereafter they

continued correspondence with the Govt. of India. We will refer to that correspondence whenever it becomes necessary to do so. Ultimately on

November 19, 1979, this petition came to be filed.

5. It was submitted in the petition that ss. 269 and 637AA of the Companies Act, 1956, impose unreasonable restrictions on the rights of the

shareholders of petitioner No. 1 and the rights of petitioner No. 2 to carry on business on terms offered and accepted and results in hostile and

discriminative treatment qua management personnel and public limited companies and their subsidiaries and are violative of the petitioners' rights

under arts. 14 and 19(1)(g) of the Constitution of India.

6. The other points which are argued by the learned advocate, Shri J. C. Bhatt appearing on behalf of the petitioners are as under :

(1) The guidelines issued by the Govt. of India are illegal and, therefore, any decision taken after following those guidelines would be required to be

struck down as illegal and bad in law.

(2) Refusal to approve the terms proposed is contrary to law, arbitrary and unreasonable.

(3) Functions exercised by the Govt. of India are of quasi judicial nature and, therefore, it is necessary that an opportunity is given to the petitioners

to present their case and that speaking order is passed, and

(4) The proposed terms according to the petitioners were well within the

guidelines of 1969.

7. Before we deal with these submissions, a preliminary objection of the learned advocate, Miss. Shah, is required to be stated and decided.

According to her as far back as on January 28, 1978, terms and conditions of the service of petitioner No. 2 were revised. The petitioners were

informed about this. Thereafter petitioner No. 1 adopted a resolution by which petitioner No. 2 came to be appointed for a period of two years on

the terms and conditions which were revised by the Govt. of India. That period expired and after expiry of that period after many months the

petition is filed, and it was further submitted that petitioner No. 1 company has submitted a new application for further appointment of petitioner

No. 2 as managing director for a further period and that application is pending before the Govt. of India. In this view of the matter according to the

learned advocate, Miss Shah, this petition suffers from delay and laches and further as the term of appointment is already over according to the

revised terms and a new application is pending it is futile according to the learned advocate, Miss. Shah, to present this petition or continue this

petition. Here it may be stated that after January 28, 1978, the date on which the terms and conditions were revised, further correspondence

between the parties continued. Petitioner No. 1 wrote a letter dated April 17, 1978. Thereafter there was a meeting between the officers of the

Govt. of India, the secretary of petitioner No. 1 and the advocate representing petitioners Nos. 1 and 2. That meeting took place on June 26th,

1978. Again the correspondence continued as there was a letter dated July 7, 1978, addressed by petitioner No. 1. As a result of this

correspondence and the meeting on July 27, 1978, two terms were modified. The terms modified were regarding medical benefits for self and

family and Rs. 10,000 were fixed for a period of two years of service in regard to reimbursement of expenses actually incurred towards medical

expenses for self, wife and dependent children. Again regarding residential accommodation, the words occurring in clause 1(c)(vii) which were

15% of the salary"" were replaced by words ""25% of the salary minus 10% of the salary"". The two terms were modified because of the

correspondence and the meeting which took place. Again on March 6, 1979, the advocate met on behalf of the petitioners the officer of the Govt.

of India and requested him to pass a speaking order. The speaking order was not passed. Ultimately on October 1, 1979, when petitioner No. 1 approached the Govt. of India by a letter it was mentioned in that letter that a fresh application was being submitted without prejudice to the contention that the earlier orders of approval were illegal in so far as they sought to modify the terms mutually agreed upon between the managing director on the one hand and the company on the other hand and were discriminatory in nature. It may here be mentioned that the procedure adopted all along is that the terms and conditions are first settled between the managing director and the company. They are adopted by the shareholders. The proposal is sent for sanction to the Govt. of India and ultimately when sanction is accorded that sanction is from the original date and, therefore, it is retrospective. Now, therefore, when the original proposal was for the appointment of managing director for a period of five years and that proposal was sent in the year 1977 and ultimately that proposal is sanctioned, the managing director shall be deemed to have been appointed from the date of the original proposal for a period of five years. Not having done so and having approved the proposal for a period of two years only the grievance or the cause to file the petition shall continue for a period of at least three years more. Having considered all these aspects and particularly the aspect that the term of appointment of two years was accepted without prejudice and that the correspondence continued which ultimately led the Govt. of India to revise at least two of the terms and when the Govt. of India ultimately chose not to pass a speaking order, it clearly appears to us that this is not a petition which could be thrown away on such a preliminary objection and clearly appears to us that the petition is not barred by delay and laches. In view of the circumstances mentioned above as a result the petition is required to be decided according to its merits.

8. Before we proceed to examine one by one the points on which submissions are made by the learned advocate, Shri J. C. Bhatt, it would be necessary to refer to some of the provisions contained in the Companies Act.

9. Section 2(24) defines "manager" as under :

(24) "Manager" means an individual who subject to the superintendence, control and direction of the Board of Directors, has the

management of the whole, or substantially the whole, of the affairs of a company, and includes a director or any other person occupying the

position of a manager, by whatever name called, and whether under a contract of service or not.

10. ""Director"" is defined by s. 2(13) as under :

(13) "Director" includes any person occupying the position of director, by whatever name called.

11. ""Managing Director"" is defined by s. 2(26) as under :

(26) "Managing Director" means a director who, by virtue of an agreement with the company or of a resolution passed by the company in general

meeting or by its Board of directors or by virtue of its memorandum or articles of association, is entrusted with substantial powers of management

which would not otherwise be exercisable by him, and includes a director occupying the position of a managing director, by whatever name

called.

12. The proviso is not important for the purpose of this judgment and, therefore, it is not referred.

13. Reference thereafter is required to be made to s. 198(1) which runs as under :

198. (1) The total managerial remuneration payable by a public company or a private company which is a subsidiary of a public company, to its

directors and its manager in respect of any financial year shall not exceed eleven per cent of the net profits of that company for that financial

year computed in the manner laid down in ss. 349, 350 and 351, except that the remuneration of the directors shall not be deducted from the gross

profits.

14. It is also necessary to set out s. 269(1) which runs as under :

269. Appointment or re-appointment of managing or whole time director to require Government approval in certain cases. - (1) In the case of a

public company or a private company which is a subsidiary of a public company, whether such public company or private company is an existing

company or not, the appointment of a person as a managing or whole time director shall not have any effect unless approved by the Central

Government.

15. Sub-sections (3) and (4) of s. 269 which are also required to be considered provide as under :

(3) The Central Government shall not accord its approval under sub-section (1) in any case, unless it is satisfied that -

(a) it is in the interests of the company to have a managing or whole time director.

(b) the proposed managing or whole time director of the Company is, in its opinion, a fit and proper person to be appointed as such and that the

appointment of such person as managing or whole time director is not against the public interest, and

(c) the terms and conditions of appointment of the proposed managing or whole-time director of the company are fair and reasonable.

(4) While according its approval under sub-section (1), the Central Government may, if it is of opinion that in the interests of the company it is

necessary so to do, accord approval to the appointment for a period lesser than the period for which the person is proposed to be appointed by

the company.

16. The other important sections, are ss. 309, 310, 387, 388, 637A and 637AA.

17. Section 309 provides for remuneration of directors, and sub-s. (1) of s. 309 provides as under :

(1) The remuneration payable to the directors of a company, including any managing or whole-time director, shall be determined, in accordance

with and subject to the provisions of s. 198 and this section, either by the articles of the company, or by a resolution or, if the articles so require, by

a special resolution, passed by the company in general meeting and the remuneration payable to any such director determined as aforesaid shall be

inclusive of the remuneration payable to such director for services rendered by him in any other capacity.

18. Sub-section (3) of s. 309 provides that a director who is either in the whole time employment of the company or a managing director may be

paid remuneration either by way of a monthly payment or at a specified percentage of the net profits of the company or partly by one way and

partly by the other, provided that except with the approval of the Central Government such remuneration shall not exceed five per cent. of the net

profits for one such director, and if there is more than one such director ten per

cent. for all of them together.

19. Section 310 reads as under :

310. Provision for increase in remuneration to require Government sanction. - In the case of a public company, or a private company which is a

subsidiary of a public company, any provision relating to the remuneration of any director including a managing or whole time director, or any

amendment thereof, which purports to increase or has the effect of increasing, whether directly or indirectly, the amount thereof, whether that

provision be contained in the company's memorandum or articles, or in an agreement entered into by it, or in any resolution passed by the

company in general meeting or by its Board of Directors, shall not have any effect unless approved by the Central Government; and the

amendment shall become void, if and in so far as it is disapproved by that Government.

Provided that the approval of the Central Government shall not be required where any such provision or any amendment thereof purports to

increase, or has the effect of increasing, the amount of such remuneration only by way of a fee for each meeting of the Board or committee thereof

attended by any such director and the amount of such fee after such increase does not exceed two hundred and fifty rupees.

20. Section 387 provides for remuneration of manager. Section 388 provides that the provisions of ss. 269, 310, 311 and 317 shall apply in

relation to the manager of a company as they apply in relation to managing director thereof, and those of s. 312 shall apply in relation to the

manager of a company, as they apply to a director thereof.

21. Section 637A is in regard to power of the Central Govt. or the Company Law Board to accord approval, etc., subject to conditions and to

the prescribed fees on applications. We are concerned here with s. 637A(1) which reads as under :

(1) Where the Central Government or Company Law Board is required or authorised by any provision of this Act, -

(a) to accord approval, sanction, consent, confirmation or recognition, to or in relation to any matter;

(b) to give any direction in relation to any matter; or

(c) to grant any exemption in relation to any matter

then, in the absence of anything to the contrary contained in such or any other provision of this Act, the Central Government or Company Law

Board may accord, give or grant such approval, sanction, consent, confirmation, recognition, direction or exemption subject to such conditions,

limitations or restrictions as it may think fit to impose and may, in the case of contravention or any such condition, limitation or restriction, rescind

or withdraw such approval, sanction, consent, confirmation, recognition, direction or exemption.

22. Section 637AA reads as under :

637AA. Power of Central Government to fix a limit with regard to remuneration. - Notwithstanding anything contained in section 198, section

309 or section 637A, the Central Government may, while according its approval u/s 269, to any appointment or to any remuneration u/s 309,

section 310, section 311 or section 387, fix the remuneration of the person so appointed or the remuneration, as the case may be, within the limits

specified in this Act, at such amount or percentage of profits of the company, as it may deem fit and while fixing the remuneration, the Central

Government shall have regard to

(a) the financial position of the company

(b) the remuneration or commission drawn by the individual concerned in any other capacity, including his capacity as a sole selling agent;

(c) the remuneration or commission drawn by him from any other company;

(d) professional qualifications and experience of the individual concerned;

(e) public policy relating to the removal of disparities in income.

23. Having set out the relevant provisions which are required to be considered for the purpose of deciding the submissions made on either side the

first question which is required to be considered is whether the guidelines issued by the Govt. of India are illegal or not. The guidelines were issued

on November 11, 1969. They are set out at annex. "G" on p. 50. It prescribes a ceiling of Rs. 90,000 per annum and it also prescribes a ceiling in

regard to commission on net profit which is fixed up to 1 per cent. of the net profits subject to a maximum ceiling of 50% of the approved salary,

i.e., an absolute ceiling of Rs. 45,000 per annum. It also provides that if a company proposes to pay remuneration in the form of commission on

net profits alone, this shall be subject to a maximum administrative limit of Rs. 1,35,000 per annum.

24. The second set of guidelines referred to as new guidelines at the time of arguments are produced at annex. "E" on p. 52. They were issued on

November 9, 1978. The ceiling of salary is reduced and brought down to Rs. 60,000 and the ceiling on commission is also reduced and is brought

down to Rs. 12,000 per annum. It may be stated here that it is not necessary to decide the effect of the new guidelines for the purpose of deciding

this matter inasmuch as the new guidelines came to be issued on November 9, 1978; that is after the date on which the Govt. of India approved

with revision the appointment or reappointment of petitioner No. 2 as managing director. The Govt. of India acted on the guidelines dated

November 11, 1969. It may be worthwhile to mention that the Govt. of India on June 23, 1977, constituted "Sachar Committee" and on October

13, 1977, constituted "Boothalingam Committee". The Govt. of India by appointing these committees undertook the study of wages, income and

prices. Both the committees submitted the reports. Boothalingam Committee submitted report on May 12, 1978 and Sachar Committee submitted

report on August 29, 1978. These facts are necessary to be stated because the Govt. of India by Act No. XLI of 1974 added s. 637AA which

were have reproduced above. In that section clause (e), stated that the Central Govt. shall have regard to the public policy relating to the removal

of disparities in income. Now, therefore, the Govt. of India had in mind the formation of a public policy and with that view two committees were

appointed and the reports were received. The question, therefore, was of some importance whether the Govt. of India had in fact formulated any

public policy relating to the removal of disparity in income. This question was answered by the Minister of State for finance in Parliament on April 6,

1979, when in the Lok Sabha unstarred question No. 6345 was asked, as under :

The recommendations of the Boothalingam study group including the recommendation regarding "minimum pension" are still under the

consideration of the group of Ministers and no decision has yet been taken. The Report has raised certain basic issues of policy and it is difficult to

say at this stage when it would be possible for the group of Ministers to finalise their recommendations.

25. It is, therefore, clear that the Govt. of India has not formulated any statutory public policy. Therefore, when the petition of petitioner No. 1 for

reappointment of petitioner No. 2 as managing director came before the Govt. of India, the Govt. of India was bound to decide that application in

accordance with the provisions contained in the Companies Act which we have set out above.

26. Reference may be made to Upper Upper Deab Sugar Mills Ltd Vs. The Company Law Board, . It was held that the condition imposed by the

Company Law Board fixing the ceiling on managerial remuneration far below the legislative ceiling fixed by ss. 98 and 309 was illegal as it was

contrary to those sections. It was also held on the facts, that the company had been given adequate opportunity of being heard before the Board

refused to enhance the remuneration of the managing directors above the ceiling of Rs. 50,000 fixed by statute for the year in which the company

had incurred a loss, and that the Board gave sufficient reasons for the refusal. After this judgment in the year 1971, the Govt. of India by Act No.

XLI of 1974 added s. 637AA in the Companies Act. This judgment was also carried in appeal to the Supreme Court. The Supreme Court

reversed the judgment wherein the Company Law Board was the appellant and the Upper Doab Sugar Mills Ltd., etc., were joined as

respondents. The case is reported in [1977] 47 Comp Cas 173 (SC) (Company Law Board v. Upper Doab Sugar Mills Ltd). The Supreme

Court clearly laid down as under (p. 179) :

Section 198 deals with the overall maximum managerial remuneration and managerial remuneration in the case of absence or inadequacy of

profits. The total managerial remuneration payable by a public company or a private company which is a subsidiary of a public company to its

managerial staff, according to sub-section (1) of that section, cannot exceed 11 per cent. of the net profits for a financial year. The total managerial

remuneration covers the remuneration not merely of the managing directors but also of other managerial personnel like Secretaries, treasurers and

managers. Sub-section (3) of the section provides that within the limits of the maximum remuneration, a company may pay a monthly remuneration

to its managing director in accordance with s. 309. Sub-section (1) of s. 309 prescribes the formalities which have to be complied with for fixing of

the remuneration of a managing or full-time director of a company. We are not concerned with sub-s. (2) of that section. Sub-s. (3), which constitutes the main plank of the case of the respondents, provides that a director who is either in the whole-time employment of the company or a managing director may be paid remuneration either by way of monthly payment or at a specified percentage of the net profit of the company or partly by one way or partly by the other. According to the proviso to that sub-section, except with the approval of the Central government, such remuneration of the whole-time director or managing director shall not exceed 5 per cent. of the net profits for one such director and, if there is more than one such director, 10 per cent. for all of them together. A perusal of s. 309 shows that it does not deal with the appointment of managing directors. It only pertains to the remuneration of managing or whole-time directors who have already been appointed. The effect of the proviso to sub-s. (3) of s. 309 is that if the tenure of a managing director who has already been appointed continues after the coming into force of the Act, the remuneration to be paid to such a managing director shall not, after the coming into force of the Act, exceed 5 per cent. of the net profits for one such director, and if there be more than one such director, 10 per cent. for all of them together.

27. It was also held as under (p. 180) :

Section 637A of the Act makes it clear, inter alia, that where the Central Government is required or authorised by any provision of the Act to accord approval in relation to any matter, then, in the absence of anything to the contrary contained in such or any other provision of the Act, the Central Government may accord such approval subject to such conditions, limitations or restrictions as it may think fit to impose. In view of the provisions of sections 269 and 637A of the Act, we find no infirmity in the condition imposed by the appellant-Board. The provisions of both sections 269 and 637A expressly deal with the question which arises directly in this case.

28. Now, therefore, the Govt. of India after having added s. 637AA in the Companies Act was also required to follow that section which was added in the year 1974. It may be made clear that by adding s. 637AA, s. 637A was not repealed. The effect of those sections was, therefore,

necessary to be considered. As a public policy was not formulated, it may be that it was difficult to follow s. 637AA(e). However, what was

necessary to be considered was : (a) the financial position of the company; (b) the remuneration or commission drawn by the individual concerned

in any other capacity, including his capacity as a sole selling agent; (c) the remuneration or commission drawn by him from any other company, and

(d) professional qualifications and experience of the individual concerned. In view of the provisions which we have set out above it is clear that if

any officer of the Govt. of India takes upon himself to decide the matter having regard to the guidelines of 1969 on his table he would be deciding

the matter not in accordance with law but in accordance with some administrative instructions which the Govt. of India has sent to him. It is,

therefore, necessary to show that the guidelines are in conformity with law. If it could be shown that they are in conformity with law then they are

useless because following the law would be following the guidelines. If the guidelines are not in conformity with the law they are illegal, bad and

void. It was necessary to consider first the total amount of managerial remuneration paid and thereafter decide as to whether the person was a fit

and proper person to be appointed as managing director and that the terms offered were fair and reasonable. It was also necessary to determine

as to whether the remuneration fixed was in conformity with the provisions at the time of deciding about the conditions it was also necessary to

consider the financial position of the company, remuneration or commission drawn by petitioner No. 2, his professional qualifications and several

other factors which are enumerated in the sections which we have referred to above. Here in this case merely prescribing an upper ceiling limit

without taking recourse to several factors mentioned in various sections which we have enumerated above, it is more clear that the guidelines are in

clear violation of law and, therefore, they are illegal, void and they cannot be taken into consideration at the time of fixing the remuneration of the

managing director.

29. Whereas ss. 198, 267, 637A and 637AA require the Central Govt. to take into account individual or special factors touching a company, the

impugned guidelines lay down generalisations which are sought to be made applicable to all such companies. An administrative generalisation

militates against the due consideration of individual or special factors touching a company which the statute requires to be done. Such an

administrative generalisation will, therefore, be ultra vires the statutory provision. Guidelines issued in 1969 are indisputably administrative

instructions of a general character because, as stated on the floor of Parliament, no statutory public policy, contemplated by s. 637AA(e) had yet

been formulated by the Central Govt. Administrative guidelines issued in 1969 firstly circumscribe or squeeze the area which the statutory

provisions delineate for the exercise of discretion and the statutory circumference for the exercise of such discretion is unduly narrowed down. This

is one vice which vitiates the guidelines. Second vice is discernible from the fact that generalised administrative instructions cut across, militate

against the cannot fit into the individual factors of each such company which are required to be considered before according or refusing to accord

an approval or according approval with variation in the terms and conditions of appointment. Any administrative policy which squeezes the broad

statutory provisions will be hit by the statutory provisions. Therefore, with the enactment of s. 637AA(e), policy is sought to be elevated from the

administrative nadir to the statutory height so as to save it from the vice of being hit by the relevant statutory provisions. Unfortunately, it has yet not

been formulated. In a situation of this kind, only the statutory protection, such as the one afforded by s. 637AA(e), can save the policy.

30. The learned advocate, Miss. V. P. Shah, on this point tried to suggest that inasmuch as the Govt. of India has not formulated a public policy as

contemplated by s. 637AA(e), it was not necessary to read that section because that section would not apply. An attempt was also made to show

that the word "may" is used in s. 637AA. It is sufficient to say that this section was enacted with a clear purpose after the ruling in Upper Doab

Sugar Mills Ltd. v. Company Law Board [1971] 41 Comp Cas 643 and there was a clear purpose which was sought to be achieved. Thereafter,

the Govt. of India did issue the new guidelines in the year 1978. We are not concerned in this case with those guidelines but we make it clear that

the Govt. of India was bound to consider s. 637AA, so also, the other provisions of the Act. In this view of the matter the first point raised by the

learned advocate, Shri J. C. Bhatt, succeeds and we hold that the guidelines issued on November 11, 1969, are illegal and they are required to be

struck down.

31. The second question which was argued was that the refusal to approve the terms is contrary to law, arbitrary and unreasonable. It is one thing to say that the proposal which was sent was required to be considered in accordance with law. Ultimately, after examination in accordance with law, one could as well accept it or modify it or reject it. Non-acceptance can never amount to saying that it is not in accordance with law if on scrutiny it is found that it is in accordance with law and, therefore, what can be stated is that the proposal sent is required to be examined in terms of the relevant provisions of the Companies Act. This court cannot examine the terms proposed in the light of the relevant sections as the objective facts which are necessary to be examined are not before us. It would be for the Govt. of India to examine the terms proposed in the light of the objective facts with reference to the provisions of law. Nothing beyond is contemplated.

32. That leads us to the examination of the third submission which is very important. The question which is required to be considered is whether the functions exercised by the Govt. of India are administrative or whether they are of a quasi-judicial nature. The learned advocate, Miss Shah, tried to point out that the functions which are exercised are administrative and it was tried to be urged that the guidelines only laid down the administrative policy. We cannot accept this argument. In the case, Rampur Distillery and Chemical Co. Ltd. and Another Vs. Company Law Board and Another, , it was decided in regard to s. 326 of the Companies Act that the Central Govt. has to Act judicially and its satisfaction has to be objective. Section 326 is in regard to the power of the Central Govt. to approve the appointment of the managing agent. Sub-section (2) of s.

326 reads as under :

(2) The Central Government shall not accord its approval under sub-section (1) in any case, unless it is satisfied -

(a) that it is not against the public interest to allow the company to have a managing agent;

(b) that the managing agent proposed is, in its opinion, a fit and proper person to be appointed or reappointed as such, and that the conditions of

the managing agency agreement proposed are fair and reasonable; and

(c) that the managing agent proposed has fulfilled any conditions which the Central Government requires him to fulfil.

33. In regard to the above section the Supreme Court observed as under (per Headnote in Rampur Distillery and Chemical Co. Ltd. and Another

Vs. Company Law Board and Another, :

Section 326 uses the present tense. The satisfaction required of the Central Government under sub-s. (2) must be with reference to the three

conditions existing in praesenti, but in adjudging whether a person is fit and proper to be appointed managing agent past actings and conduct

cannot be ignored. The Central Government has to consider his acts and activities past and present, the interest of the shareholders and the general

interests of the public in allowing the management to be continued by the directors of the company and other circumstances which have a bearing

on the question.

The Board will consider the criticism by the Commission appointed to enquire into the dealings of the group of companies managed by the

managing director of the company, the progress made by the company while under the management of the managing director and others, the

interests of the shareholders, the creditors and of the public generally, and also that a complaint was pending in a criminal court against the

managing director and others charging them with committing serious offences.

34. It was further observed (Ibid) :

Investment of power in the Central Government under s. 326 carries with it a duty to act judicially, i.e. to hold an enquiry in a manner consistent

with rules of natural justice, to consider all relevant matters, to ignore irrelevant matters, and to reach a conclusion without bias, without

predilection and without prejudice. The satisfaction contemplated by s. 326 must, therefore, be the result of an objective appraisal of the relevant

materials. The recital about satisfaction may be displaced by showing that the conditions did not exist, or that no reasonable body of persons

properly versed in law could have reached the decision that they did.

35. It was clearly observed that the power was a quasi-judicial power and not an administrative power. Now, if one looks to s. 269(3), practically

the same aspects are required to be considered and the aspects are, (i) whether it is in the interests of the company to have a managing or whole-

time director; (ii) whether the proposed managing or whole-time director of the company is, in its opinion, fit and proper to be appointed as such

and that the appointment of such person as managing or whole-time director is not against the public interest; and (iii) whether the terms and

conditions of appointment of the proposed managing or whole-time director of the company are fair and reasonable. Now, therefore, if any officer

of the Central Govt. has to perform a duty having regard to ss. 269, 637A and 637AA, it is clear that he has to take into account the objective

facts and has to determine those facts in a quasi-judicial manner. Here we may state that it is not necessary to consider the argument of the learned

advocate, Shri Bhatt, regarding the question which he posed that the proposed terms were well within the guidelines of 1969 inasmuch as we have

come to the conclusion that the guidelines are illegal.

36. Since the Central Govt. exercises a quasi-judicial function when it considers the application for approval of appointment on objective facts, no

administrative guidelines can be allowed to interfere with the exercise of that judicial or quasi-judicial discretion. Exercise of judicial or quasi-

judicial discretion is always unfettered and uninhibited and anything which interferes with it is void and must be struck down. Guidelines, issued in

1969 are administrative in character and interfere with the judicial discretion of the Central Govt. in considering each case on its merits. Therefore,

also, they are void and ultra vires and are liable to be struck down. The next question which is required to be considered is when the Central Govt.

has to act in a quasi-judicial manner. It appears and it is quite likely that when a proposal was sent all the relevant data must have been sent. That

relevant data is required to be sent in accordance with law. It also appears that some correspondence ensued and the secretary and the advocate

met the officer of the Govt. of India but that was done after the proposal was modified. The question whether a particular officer acted in a quasi-

judicial manner or not could be seen from the manner in which the order is passed. Here the learned advocate, Miss Shah, tried to show to us that

the reasons are stated in the reply affidavit which is filed and those reasons are in para. 15 of the affidavit. The reasons stated are that the

reappointment of petitioner No. 2 was made for two years with effect from October 1, 1977, when the old guidelines were in force. It is also

stated that the appointment of petitioner No. 2 as managing director of petitioner No. 1 for a period of five years from October 1, 1972, to

September 30, 1977, was approved on a remuneration of Rs. 3,500 per month plus 1% commission plus perquisites as per the guidelines then in

force. Relying on this paragraph it was tried to be submitted that the officer did take into consideration the past remuneration of the managing

director and having considered that the present remuneration and the period was fixed, and, perhaps, as new guidelines were to come into force,

the period was limited. To state this in an affidavit is one thing. No such thing is stated when the terms of re-appointment were revised. In fact the

advocate for the petitioner No. 2 approached the officer to pass a speaking order as he refused to do so. It is well settled that when any person, in

a quasi-judicial matter, passes an order without stating the reasoning by which he had come to that particular finding, the order itself is arbitrary on

the face of it. The person against whom the order is passed is entitled to know as of right as to under what circumstances and for what reasons his

prayer was being rejected. As soon as one tells him that his prayer is rejected and that he is not bound to give reasons, the order passed is an

order which is arbitrary and is required to be set aside. That order can never be sustained in a State where the citizens are governed by law. Even

a citizen who approaches any authority who has a power to act judicially and he acts in a quasi-judicial manner where he is bound to take

objective facts into consideration, the person against whom the order is passed is entitled to know that only the relevant factors were considered

objectively, that irrelevant factors never entered the field, that the mind was applied and that with a proper reasoning the order was passed. It is

quite likely that another person may take a different view, but that is entirely a different matter. If the court has no power of appeal over a quasi-

judicial officer, the court may not exercise that power but the court has certainly a power to examine as to whether the person had a power,

whether the person exercised that power judicially, whether the power that was exercised was not exercised arbitrarily and it was in a judicial

manner in the sense it was made known that all relevant factors were considered and irrelevant factors were never considered. This would be the

essence as to how a quasi-judicial officer is expected to behave and act. The order passed on the face of it should show that the order was passed

after taking into consideration all the relevant objective facts. This is only possible if the order is a speaking order. If on the face of it the order does not show any reason, the arbitrariness is writ large on it. In this case it is more than clear that the officer who revised the proposal in regard to the reappointment of petitioner No. 2 not only did not state any reasons but he refused to pass a speaking order when he was requested to do it. We are, therefore, satisfied that the order passed is required to be struck down.

37. A quasi-judicial or judicial authority is under an obligation to give reasons in support of its conclusions because it is the reasons which rule out

the element of arbitrariness in a decision. Secondly, s. 269 provides that the terms and conditions should be fair and reasonable. The Central Govt.

was under an obligation to show why the terms and conditions agreed upon between petitioner No. 1 and petitioner No. 2 were not fair and

reasonable. These two reasons impel us to hold that the Central Govt. is under an obligation to make a reasoned order. Inasmuch as it did not do

so, the impugned order is liable to be struck down. We may refer to the case, Orient Paper Mills Ltd. Vs. Union of India (UOI), . It was required

to be determined in that case whether M.G. Poster Paper was packing and wrapping paper chargeable under item 17(4) or printing paper

chargeable under item 17(3) of the First Schedule to the Central Excises and Salt Act, 1944 (1 of 1944). It was held that the power was a quasi-

judicial power. It was observed as under (p. 50) :

There is hardly any doubt that the power exercised by the appellate authority, i.e., the Collector, under s. 35 is also a quasi-judicial power. He is

designated as an appellate authority; before him there was a lis between the appellant which had paid the duty and the Revenue; and his order is

subject to revision by the Central Government. Therefore, it is obvious that the power exercised by him is a quasi-judicial power.

38. Another case to which we may refer is The Siemens Engineering and Manufacturing Co. of India Ltd. Vs. The Union of India (UOI) and

Another, . In that case it was observed (per headnote) :

It is now settled law that where an authority makes an order in exercise of a quasi-judicial function, it must record its reasons in support of the

order it makes. Every quasi-judicial order must be supported by reasons.

The rule requiring reasons to be given in support of an order is, like the principle

of audi alteram partem, a basic principle of natural justice which must inform every quasi-judicial process and this rule must be observed in its proper spirit and mere pretence of compliance with it would not satisfy the requirement of law.

39. The learned advocate, Miss Shah, made an attempt by which it was submitted before us that in s. 198(1) ""managing director"" is not mentioned and, therefore, s. 198(1) will not apply to a managing director. This argument, if accepted, would lead to absurd results. The reason is that 11% of

the net profit would then be available for other managerial persons apart from the managing director. Apart from the absurd results that would

follow, the argument is not at all sound. Managing director is a director. That is clear from the definition which we have quoted above. Further, in

the case of Company Law Board v. Upper Doab Sugar Mills Ltd. [1977] 47 Comp Cas 173 (SC), it is clearly stated that s. 198(1) would be

applicable to the managing director. Thus, this argument has absolutely no force.

40. In view of the findings which we have arrived at on the submissions made by the learned advocate, Shri. J. C. Bhatt, we did not call upon him

to argue in regard to his first submission that ss. 269 and 637AA of the Companies Act, 1956, were violative of the petitioners' right under arts.

14 and 19(1)(g) of the Constitution of India and in this petition we have not decided that question.

41. In view of the above findings it is declared that the guidelines dated November 11, 1969, are illegal as they contravene the provisions of the

Companies Act. The impugned order dated January 28, 1978, is quashed. The Govt. of India is hereby directed to decide the application of

reappointment of petitioner No. 2 in the light of what we have stated above in this judgment after giving him a proper opportunity of being heard

and they are also directed to pass a speaking order. Rule is made absolute with costs.