
(1994) 12 AP CK 0017

In the Andhra Pradesh High Court

Case No : Writ Petition No. 15176 of 1994

Coastal Papers Limited

APPELLANT

Vs

Government of India and Others

RESPONDENT

Date of Decision : 28-12-1994

Acts Referred:

Constitution of India, 1950 — Article 14, 19(1), 226
Industries (Development and Regulation) Act, 1951 — Section 11, 12, 14
Industries (Development and Regulation) Rules, 1966 — Rule 12

Citation : (1995) 1 ALT 381

Hon'ble Judges : N.Y. Hanumanthappa, J

Bench : Single Bench

Advocate : Y.N. Lohita, for the Appellant; K. Ramulu for Respondents 1 to 5, G.P. for Respondents 6 to 7 and E. Manohar, for the Respondent

Final Decision : Dismissed

Judgement

N.Y. Hanumanthappa, J.—This Writ Petition is filed by one of the rival traders challenging the Letter of Intent No. LI-120 (1994) dated 7-3-1994 issued by the first respondent in favour of 8th respondent to install a Sugar Unit at Veeraghattarn in Srikakulam District of Andhra Pradesh, and requesting to direct respondents 6 and 7 not to allot any zone or area of operation of cane development potential to the 8th respondent, in Srikakulam District and to cancel any allotment of zone of operation, if already made to him.

2. A few facts which are necessary to dispose of this Writ petition are as follows:- Srikakulam district, according to the petitioner, is one of the backward districts in Andhra Pradesh. As existing sugar units in the district not sufficient and adequate to cater to the needs, he submitted an application on 9-7-1990 requesting the Union of India, Ministry of Industry to grant him a Letter of Intent to install a Sugar unit with an installed capacity of 2,500 TCD at Sankili, Regidi Amadalavalasa Mandal near Palakonda, Srikakulam district. In his application he mentioned that seeking Sugar Licence is part of the proposed integrated

industrial complex. The petitioner is a reputed paper manufacturer at M.R. Palem near Kadium, East Godavari District in Andhra Pradesh and has employed many technocrats and engineers who acquired good knowledge and experience in the paper industry. Since the Srikakulam is a backward district, he thought of starting an integrated complex comprising of Sugar, paper and industrial alcohol units utilising bagasse as raw material for paper making and molasses for industrial alcohol. He is possessed of men and material in sufficient quantity. He is also in touch with foreign countries to supply good machinery to expand the industry. Along with him other four persons, including the 8th respondent, on different dates, submitted their applications seeking grant of licence to install a Sugar factory in Srikakulam district. The particulars of others who submitted their applications for similar licence are extracted hereunder:

Sl.No. Name & address IL Regn. Recommendation to of the applicant No. & Date Govt. of India by A.P. Govt.

1. Mr. M.S. Rama Rao 838(90)IL 698/MI/90-2 VBC Sugars Dt. 25-5-90 Dt. 30-6-90 2. MR. C.V.Rao 1135(90)IL (D736/MI/90-2 Managing Director dt. 24-7-90 dt. 20-9-90 Coastal Papers (2)736/MI/90-3 Limited,Rajahmundry dt. 2-8-91 533104 3. M/s. East India 1846(90)IL 27/SI/91-2 Commercial dt. 26-10-90 dt. 20-7-90 Company Ltd., 24, Community Centre, New Delhi 4. Mr. G. Mallikarjuna 688 (91) II 662/SI/91-1 Rao Sri Vasa vi Jute & dt. 15-3-91 dt. 20-7-91 Twine Mills Pvt. Ltd., Rajam, Srikakulam Dist. 5. Mr. D. Srinivasa 1162 (91)IL 1639/SI/91-2 Rao 7-79/A,Rao dt. 6-11-91 dt. 15-4-92 7-79/A,Dharamkaran Road Ameerpet,Hyderabad At the time of submitting their applications, already there was a Sugar unit in Co-operative sector existing, known as the Amadalavalasa Co-operative Sugar Factory.

3. The grant of Letter of Intent and Licence are governed by the provisions of Industries (Development and Regulation) Act, 1951 (hereinafter called "the Act of 1951"), A.P. Sugarcane (Regulation of Supply and Purchase) Act, 1961 (hereinafter called "the Act of 1961"). Registration and Licencing of Undertaking Rules, 1952 (hereinafter called "the Rules") and Sugarcane Control Order, 1966 (hereinafter called "the control order"), including guidelines issued by the Ministry of Industries, Government of India.

4. Some of the important guidelines, which relate to grant of Letter of Intent and Licence are 1, 3, 5, 8 and 8(b), which are extracted hereunder:

Guideline No. 1 New Sugar Factories will continue to be licenced for a minimum economic capacity of 2500 tonnes of cane crushed per day (TCD) Guideline No. 3 The basic criteria for grant of licences for new sugar units would be their viability mainly from the point of view of cane availability and potential for development of sugarcane. Guideline No. 5 In case more than one application is received from any zone of operation, priority will be given to the application received earlier Guideline No. 8 While granting licences for new Sugar factories, Industrial Licences in respect of down stream units for the use of Molasses i.e.,

Industrial Alcohol will be given readily Guideline No. 8(b) Applications for Licences will be initially screened by the Screening Committee of the Ministry of Food and while considering such applications the comments of the State Government concerned would also be obtained. The procedure to process the applications and to grant Letter of Intent is as follows: Any application has to be processed through the concerned State Government which in turn will send it to the Screening Committee of the Food Ministry. Then it will be forwarded to the Licencing Committee constituted by the Ministry of Industry. The provisions which govern the processing and finalisation of applications seeking Letter of Intent are Sections 11, 12 and 14 of the Act of 1951 and Rule 12 of 1961 Rules. Applications which were submitted were placed before the Screening Committee. Before taking a decision by the Screening Committee, on the consent of the petitioner, the place where he wanted to install Sugar mill, namely, Sankili, was changed to Korasavada, situated on the Northern Bank of Vamsadhara river. On 27-12-1993 the Screening Committee screened all the applications, seeking Letter of Intent relating to Srikakulam district and recommended the Petitioner's application only, as there was scope to start only one Sugar unit in the district, in addition to the existing Amadalavalasa Co-operative Sugar Factory. Finally on 2-3-94 Ministry of Industry granted to the petitioner L.O.I, bearing No. LI-107 (1994) to set up a new sugar unit of 2,500 TCD capacity at Korasavada of Pathapatnam Mandal of Srikakulam District, instead of its original location at Sankili. Section 11 of the 1951 Act envisages that except a licence issued by the Government of India. No person or authority other than the Government can start a Sugar Unit. By virtue of Section 14 of the said Act, the Central Government may authorise other authorities to investigate in respect of applications received for starting sugar unit and submit such investigation report. For making investigation, concerned authorities shall follow such procedure as prescribed. Finalisation of petitioner's application for issuing Letter of Intent was pursuant to the provisions of Sections 11 and 14 of the Act, 1951 and 1961 respectively, which was based on the assessment of availability of cane in the district and cane development etc. Ignoring the recommendations of the Screening Committee, without following the mandatory provisions of the Acts of 1951 and 1961 including guidelines and press-note as to the feasibility to start a new sugar unit in Srikakulam district, but making as a basis the information furnished by the officers of the second respondent, the first respondent passed an order dt. 7-3-94 issuing Letter of Intent No. LI-120 (1994) to the 8th respondent to start a sugar unit in the name and style of Sri Vasavi Jute and Twine Mills Pvt. Ltd., at Veeraghattam of Srikakulam district, with a crushing capacity of 2,500 TCD. Issuance of L.O.I to the 8th respondent who is a new entrant, is contrary to the report that was submitted while recommending the case of one Sri D. Srini vasarao wherein it was mentioned that there is possibility for setting up of only one Sugar unit in the district for all the applicants together. Granting of L.O.I. in favour of 8th respondent is contrary to the earlier information and recommendations dt. 20-7-1991 made by the State Government and furnished to the 2nd respondent to the effect that since the area of operation

of all the four applicants is same and there is possibility to start one Sugar unit only in the Srikakulam District, the L.O.I, may be issued in favour of any one of the applicants. While granting L.O.I to 8th respondent, the first respondent failed to take into consideration the effect of guideline No. 3 and Press Note No. 16(1991 series) dated 8-11-1991 wherein it is stated the basic criteria for grant of licence for a new Sugar Unit would be its viability mainly from the point of view of cane availability and potential for development of Sugar-cane. According to the petitioner, to start a sugar factory, with a crushing capacity of 2,500 TCD, it needs 4.25 lakh tonnes of cane per annum involving an investment of approximately Rs. 45 crores. For the two new sugar units, for which letters of intent have been given the additional requirement of cane would be 8.50 lakh tonnes. In case of Srikakulam District, by granting L.O.I to the 8th respondent, it has become necessary to supply sugar cane to three units i.e., one started by the Amadalavalasa Co-operative Sugar Factory, second one started by the Petitioner and the third one by the 8th respondent which are of similar capacity, namely, 2,500 TCD each. In total, all the three units require 12.75 lakh tonnes of sugar-cane. In addition to this an additional two lakh tonnes of cane is required or utilised for jaggery making. Thus the entire district requires in an year 14.75 lakh tonnes of sugar-cane, whereas the availability of sugar-cane in the district is far, far below, as the district is not fully irrigated. Subsequent to granting of L.O.I, to 8th respondent, the commissioner of Sugar and Cane-Commissioner, Government of A.P., passed orders allotting zones for supply of sugar-cane. In case of 8th respondent, he allotted taluqs of Rapur, Venkatagiri and Udayagiri in Nellore district, which are thousand kilometres away from Veeraghattam of Srikakulam District. The application of the 8th respondent was rejected by the Screening Committee, in its meeting dt. 27-12-93, which meeting was also attended by the 7th respondent. But with a view to favour 8th respondent, the Food Ministry, yielding to the influence of some men at Ministerial level, took up his application and recommended his case. Following the same, the first respondent granted L.O.I mechanically, without examining, whether granting of L.O.I. is fair when the Screening Committee had already rejected the application of 8th respondent; whether the feasibility and viability considerations and other mandatory requirements are complied with, or not; when the Screening Committee had rejected the application of 8th respondent, was it not incorrect for the 7th respondent to write a D.O. letter on 17-1-1994 recommending the case of the 8th respondent; whether right in ignoring the potentiality, availability of infrastructural facilities and other requirements to start another unit in Srikakulam district. It is averred that reviewing of 8th respondent's application both for granting of LOI and for allotment of zones, not in accordance with law. Issuing of LOI apart from being contrary to the provisions of Acts, Rules and Guidelines, the same has been based on this representation of facts, Granting L.O.I to 8th respondent is mala fide, arbitrary and discriminatory in nature and gross mis-use of powers conferred on concerned authorities.

5. Apart from narrating these facts in the Writ petition, during the course of

arguments, it was contended that the first respondent ignoring the earlier recommendations as to the feasibility of starting a new sugar unit, took a decision to issue L.O.I, to 8th respondent placing reliance on interested, incorrect material and wrong information as to availability of sugar cane etc., furnished by the authorities. Letter of Principal Secretary to Government of A.P., dt. 17-1-1994 recommending the case of the 8th respondent to reconsider his request for granting L.O.O. was nothing but an act of mala fides and showing undue preference. At no time any of the authorities or the committee had mentioned that there was scope to start two units in Srikakulam district apart from the existing Amadalavalasa Co-operative Sugar Factory. Whereas the recommendation was in respect of only one unit at Korasavada; as such granting of L.O.I, to 8th respondent is quite incorrect. By issuing L.O.I, to 8th respondent, in a surreptitious way, authorities indirectly wanted to prevent the petitioner in carrying of his business in Sugar complex, pursuant to L.O.I, that was issued to him earlier, which in turn resulted in infringement of his fundamental right to carry on trade and business in Sugar and allied industries. If the authorities were certain and definite about availability of sugar cane and the potentiality, they should have recommended the case of 8th respondent simultaneously when they had recommended the case of the petitioner. But they did not do so, for the reason that they were certain that there was scope for only one unit, apart from the existing Amadalavalasa Co-operative Sugar factory. To favour the 8th respondent records were built up within 8 days and LOI was granted on 7-3-94. Recommendations made and LOI granted, were made with utmost secret and in haste, without observing other formalities. Thus granting of LOI to 8th respondent is nothing but a fraud played by the authorities. It was also submitted that though respondents 1 to 5 and 8 have filed their counter, respondents 6 and 7 who were responsible for processing of 8th respondent's application subsequent to the rejection of the same by the Screening Committee, have not chosen to file counter. This indicates that the averments made against 6 and 7 be held as established.

6. For the contentions raised by the respondents that the writ petition is not maintainable, as this Court has no territorial jurisdiction and the petitioner has no locus standi to challenge the L.O.I. granted in favour of the 8th respondent, as he is not an aggrieved person and moreover there are laches on the part of the petitioner in approaching this Court and lastly, that when the petitioner has filed a Review Petition before the competent authority seeking to review the L.O.I, granted and zone allotted, he cannot maintain this Writ Petition, the petitioner, in his reply affidavit, answered that, since he obtained L.O.I. to start a sugar unit at Srikakulam district and the L.O.I, granted to 8th respondent affects his business he has every right to challenge the L.O.I, granted to the 8th respondent. Thus, this writ petition filed before this Court is maintainable.

7. Regarding Locus standi, it is explained by the petitioner that as the petitioner is affected by the L.O.I, granted to the 8th respondent, he has locus standi to challenge the same. Regarding laches it is explained by the petitioner that as

soon as he came to know the illegal grant of LOI to 8th respondent, he filed a Review Petition before the competent authority, subsequently he approached this Court. Meredelay of a few weeks or months cannot be said that the petitioner has chosen to approach this Court after a considerable delay. Regarding maintainability of the writ petition, it is explained that Review is not an efficacious remedy. To support his contention that everything was not fair with the authorities concerned in granting LOI to the 8th respondent, but it is resultant of fraud played by the concerned authorities in selecting 8th respondent, as such the same be declared as void and illegal, the petitioner placed reliance on a decision of Supreme Court rendered in *Krishan Yadav and another Vs. State of Haryana and others*, .

8. By concluding arguments it was submitted by the petitioner's counsel that the entire procedure followed by the authorities in granting of L.O.I, to the 8th respondent is an act conceived in fraud and delivered in deceit. As such the relief sought be granted.

9. As an answer to the averments made by the petitioner and arguments advanced by its counsel, respondents took the court through averments made by them in the counter-affidavit. Respondents 1 to 5 and 8 have filed separate counter affidavits, whereas respondents 6 and 7 have not filed any counter. However allegations made by the petitioner has been answered by respondents 6 and 7 in their objection statement filed opposing granting any interim order to the petitioner.

10. Though separate counters have been filed, the stand taken by all the respondents is almost identical. It is averred and argued by the respondents that the writ petition is not maintainable as the petitioner has not shown how he is aggrieved by the LOI granted to the 8th respondent, who is a rival trader. In the absence of any statutory right conferred, he cannot challenge the LOI granted to 8th respondent. Since LOI is granted in Delhi, cause of action, if any, arose in Delhi and not in A.P. to maintain this writ petition. Though the petitioner was aware of the dates of granting L.O.I. and zonal allotment, he remained silent for months and then approached this Court, as such the petition suffers from laches. When the petitioner choose to challenge the L.O.I, by filing a Review Petition before competent authority and also against zonal allotment, he has to exhaust the said remedy.

11 .It was contended by the respondents that at no point of time there was an assurance to the petitioner that licence to install sugar unit be given to him exclusively, as he was intending to install sugar, paper and industrial alcohol units in Srikakulam district and not to others. There was no statutory bar to grant L.O.I, to more than one unit. Earlier recommendations of Screening Committee in respect of four applicants were in respect of possibility to start a sugar unit on the North side of river Vamsadhara. Ultimate authority to take a decision regarding grant of L.O.I, was the first respondent and not other authorities, including the Screening Committee, whose duty was only to send

recommendations. The first respondent after satisfying with the recommendations made by various authorities like State Governments, Screening Committee and Ministries of Food, Industry etc., formed an opinion that there is scope to start one sugar unit on the Southern side of Vamsadhara river at Veeraghattam. The Screening Committee did not prefer the application of the 8th respondent in its meeting on 27-12-1993, as it had to consider the feasibility of starting one sugar unit on the Northern side of river Vamsadhara. Feasibility of starting one more sugar unit on the Southern side of river Vamsadhara along with the Amadalavalasa Co-operative Sugar Factory was not under consideration before the Screening Committee at that time. Since the application of the 8th respondent was to start a sugar unit at Veeraghattam situated on the Southern side of river Vamsadhara, realising the mistake committed, the Principal Secretary to the Government of A.P. sent a letter dt. 17-1-1994 mentioning the possibility of availability of cane in sufficient quantity and recommended the case of the 8th respondent to grant L.O.I. to start a sugar unit at Veeraghattam. Granting L.O.I. to 8th respondent, does not affect the business of the petitioner, as neither the area allotted overlaps, nor the supply of sugar-cane to the petitioner will be diminished. L.O.I. has been given to the 8th respondent, taking into consideration the feasibility report submitted by the second respondent. At no time the respondents compelled the petitioner to choose a site, to start the unit. On the other hand, as against Sankili, the petitioner voluntarily choose Korasavada, which was considered and given to him. Apart from sufficiency in availability of sugar-cane, still there is scope to improve the development of area of cane cultivation. There was no necessity for the respondents i.e., either the State Government or the other authorities, to inform the petitioner the circumstances which led them to grant L.O.I. to the 8th respondent as legally none of the authorities were bound to inform the petitioner. The first respondent was an independent and final authority, not bound by the dictates of other authorities. Hence, it was open for the 1st respondent to take its decision by taking into consideration the information which was proper and ignoring other aspects. While granting L.O.I. to the 8th respondent, the first respondent did not violate any of the provisions of any Acts, Rules or Guidelines. The petitioner's right was only to seek consideration of his application and not to oppose other applicants. If the petitioner wanted that he alone shall be in the field of sugar units in the Srikakulam district, he should have objected other applications.

12. The respondents stated that granting of L.O.I. or licence is purely a discretion of the Government. The petitioner's contention that earlier there was recommendation for only one unit, is now answered that it was not in respect of entire district, but only in respect of Northern side (left bank) of river Vamsadhara. Except one Sri D. Srinivasa Rao, others had not sought L.O.I. or licence to establish sugar unit on the South or river Vamsadhara. Before granting L.O.I. to 8th respondent, the Government took into consideration, the recommendations of the Principal Secretary to the Government of A.P., and the

report of the Cane-Inspector, existence of availability of sufficient quantity of sugar-cane. Regarding distribution of sugar-cane zones to the parties, the order of the cane Commissioner is not a final one, but subject to the finalization by the authority before whom the application of the petitioner is pending. Petitioner is not a resident of Srikakulam district; whereas the 8th respondent is a resident of Srikakulam district. From the information furnished by the petitioner alone, it is clear that apart from the L.O.I, granted to 8th respondent, still there is scope to grant L.O.I, to three more units.

13. Though made much ado about the recommendations made by the Screening Committee, the petitioner failed to notice that the Screening Committee is not a creature of statute, so that its recommendations or decision are bound to be considered. On the other hand, it is only an advisory one. To grant LOI and to start a sugar unit, various factors to be considered, including supply of sugar-cane and its proper expansion and cultivation, availability of requisite quantity of land and water resources etc. In the instant case, authorities took into consideration the actual existence of land, cane cultivation in the district, availability of water resources for future development through various channels like rain-fed, river and bore-wells and satisfied that as on the date of granting L.O.I to the 8th respondent, there was possibility of raising 18 lakh tonnes per annum of sugar cane as against the exaggerated figure of 14.75 lakh tonnes per annum. The petitioner himself sought to start a unit at Korasavada, as such he is estopped from contending that no LOI should have been given to others to start another unit on the Southern side of river Vamsadhara.

14. The respondents further contended that the petitioner's intention is to have monopoly in the sugar trade and his request is actuated by rival interests. In the absence of establishing any vested right, by mere grant of LOI to a rival trader, the petitioner cannot be equated to the position of an aggrieved person. By grant of LOI to 8th respondent, the aggrieved person, if any, is the Amadala valasa Co-operative Sugar Factory, and not the petitioner. By granting LOI to 8th respondent, the legal rights, if any, of the petitioner are not infringed. So also in no way public interest has suffered.

15. From the date of petitioner submitting his application and subsequent to that, so many factors developed including possibility of bringing more land under cultivation etc., as such authorities felt that no harm would be caused if LOI is granted to the 8th respondent to start another unit on the Southern side of river Vamsadhara. At no time the petitioner had sought location on Southern side of river Vamsadhara. Throughout his request was either at Sankili or Korasavada. Grant of LOI is not a final one, as the work of installation of factory will be commenced only after obtaining a licence. Thus the petitioner's rights, if any, are not crystallised as on today and his grievance is purely baseless and premature.

16. Regarding zonal allotment is concerned, the grievance of the petitioner is unfounded. Though the petitioner was present and participated in the meeting

for zonal allotment, he did not object for it. Moreover, the decision taken by the cane Commissioner is not a final one and it is subject to finalisation by Government. Even now, if the petitioner feels the zone allotment is arbitrary and his grievance is a genuine one, he is at liberty to approach the authorities to set light the wrong. When three years" time is granted to both the parties to start the production of sugar, to make grievance at the early stage is unwarranted and all his grievances are imaginary and premature in nature. The authorities neither misused powers conferred on them nor the LOI granted to 8th respondent arbitrary or discriminatory. On the other hand, LOI granted keeping in mind the powers that were conferred on them and the need to encourage the private sector as earlier policy of the Government to grant permissions only to co-operatives to start sugar units withdrawn. Thus contending, the respondents" counsel requested to dismiss the petition.

17. In support of their contentions, that there cannot be any challenge in respect of licences granted to a rival trader, the respondents placed reliance on the following authorities.

The Nagar Rice and Flour Mills and Others Vs. N. Teekappa Gowda and Bros. and Others, .

Jasbhai Motibhai Desai Vs. Roshan Kumar, Haji Bashir Ahmed and Others,

Mithilesh Garg, Vs. Union of India and others etc. etc.,

The Simbhaoli Sugar Mills Ltd. and Another Vs. Union of India and Others,

18. From the narration of facts and arguments advanced, the points which arise for consideration are as follows:-

1. Whether the Writ Petition is maintainable in view of not availing of alternative remedy?
2. Is it open for a rival trader to contend that his fundamental right guaranteed under Article 19(1)(g) of Constitution of India is infringed by virtue of granting a similar licence to a competitor?
3. Before granting LOI to 8th respondent, whether the first respondent was expected to hear the petitioner?
4. To what extent Courts can interfere in the policy matters laid down by Governments to prevent monopoly and how? And whether the State or authorities are not empowered to impose restrictions?
5. While granting LOI to 8th respondent, whether authorities committed any mala fides or acted in bias?
6. While granting LOI to 8th respondent, whether the authorities violated any of the provisions of Acts, Rules or Guidelines and discriminated against the petitioner and in favour of 8th respondent?

7. Was there any promise on the part of the respondents/State that no licence or LOI be given to others except the petitioner to start a sugar unit in Srikakulam district to attract the principle of promissory estoppel?

POINT NO. I: MAINTAINABILITY OF WRIT PETITION WHEN OTHER REMEDIES AVAILABLE.

19. It was sought to be made out by the respondents that the writ petition is not maintainable and the same deserves to be dismissed in limini, for the reasons, that firstly, it has no territorial jurisdiction as orders emanated in Delhi and not in Andhra Pradesh; to maintain a writ petition the person who approaches the Court must be an aggrieved person and he must have locus standi; the relief sought is quite premature, as the rights, if any, conferred on the petitioner will be crystallised only when the licence is granted; when one likes to avail of the extraordinary remedy under Article 226 of Constitution of India, one must be very diligent and shall approach the Court under Article 226 of Constitution of India within a reasonable time and not leisurely, and lastly, whenever an alternative remedy is already availed of or when it is available, the same has to be exhausted.

20. These contentions have been answered by the petitioner, both in his reply statement filed to the counter of the 8th respondent and also in the course of arguments. From the narration of facts, it cannot be said that this Court has no territorial jurisdiction to entertain the writ petition. The rights of the parties will be crystallized when the licence is granted. Granting of LOI is an aid to grant licence. Regarding locus standi, it is made clear by the Courts that at times even the public who has some interest in the matter involved, can approach the Court. There is no hard and fast rule that when a person has to approach the Court under Article 226 of Constitution of India, but all that the Courts normally expect is that a person shall approach the Court within reasonable time. In the instant case, approach of the Court by the petitioner is within six months. Regarding availing of alternative remedy, mere filing of Review Petition challenging the LOI before the Government cannot be said efficacious remedy. Even though alternative remedy is available, if it is shown that order in question is contrary to provisions of law or a statute and has resulted in depriving a person's fundamental right or against principles of natural justice, one can seek relief under Article 226 of Constitution of India. Theory of exhaustion is not a rule of law, but purely one of convenience and discretion and dependant upon several factors. This position has been made clear by the Supreme Court of India in the following decisions.

21. In *V. Vellaswamy Vs. Inspector General of Police, Tamil Nadu, Madras and Another*, while dealing with the scope of alternative remedy of review, it is held:-

As the article now stands, it would be a serious question whether a right to review a proceeding by itself would provide such alternative, efficacious remedy to disentitle a petitioner to move the High Court under Article 226. We think it

would be rather harsh.

22. In *Ram and Shyam Company Vs. State of Haryana and Others*, while dealing with the effect of submitting a representation to the Chief Minister, aggrieved by an order passed by the authorities, the Supreme Court held as follows:-

Ordinarily it is true that the Court has imposed a restraint in its own wisdom on its exercise of jurisdiction under Article 226 where the party invoking the jurisdiction has an effective/ adequate alternative remedy. More often, it has been expressly stated that the rule which requires the exhaustion of alternative remedies is a rule of convenience and discretion rather than rule of law. At any rate it does not oust the jurisdiction of the Court. Where the order complained against is alleged to be illegal or invalid as being contrary to law, a petition at the instance of person adversely affected by it, would lie to the High Court under Article 226 and such a petition cannot be rejected on the ground that an appeal lies to the higher officer or the State Government. An appeal in all cases cannot be said to provide in all situations an alternative effective remedy keeping aside the nice distinction between jurisdiction and merits. Where power to grant lease for winning minor minerals was exercised formally by the authority set up under the Rules but effectively and for all purposes by the Chief Minister of the State an appeal to State Govt. would be ineffective and a Writ in such a case would be maintainable.

23. In view of the above legal position, coupled with the explanation given by the petitioner, it is incorrect to say that the writ petition is not maintainable. Hence point No. 1 is answered as writ petition maintainable.

POINT NO. 2 IS THERE INFRINGEMENT OF FUNDAMENTAL RIGHT GUARANTEED UNDER ARTICLE 19(1)(g) OF THE CONSTITUTION, WHERE A LICENCE IS GRANTED TO A RIVAL TRADER.

24. How far a rival trader is affected and his fundamental right guaranteed under the Constitution is deprived, when similar permission or licence is granted to another person, had come up for consideration before the Supreme Court and other Courts on various occasions and the Judicial pronouncements in all those cases are to the effect that granting permission or licence to a rival trader does not amount to breach of any of the fundamental rights, including the one conferred under Article 19(1)(g) of constitution of India.

25. In *Harman Singh and Others Vs. Regional Transport Authority, Calcutta and Others*, while dealing with scope of Article 19(1)(g), the Supreme Court held:

Article 19(1)(g) does not guarantee a monopoly to a particular individual or association to carry on any occupation and if other persons are also allowed the right to carry on the same occupation and an element of competition is introduced in the business, that does not, in the absence of any bad faith on the part of the authorities, amount to a violation of the fundamental right guaranteed under Article 19(1)(g) of the Constitution.

26. While dealing with similar situation, namely, change of location of rice-mill, considering the scope of Section 8(3) (c) of Mysore Rice Milling Industry (Regulation) Act, 1958 and Article 19(1)(g) of Constitution of India, the Supreme Court in *N.R. & F. Mills v. N.T.G. & Bros.* (2 supra), held as follows:-

Where the owners of an existing rice mill shifted its existing location and obtained the necessary permission for change of location from the Director of Food & Civil Supplies, even if it be assumed that the previous sanction has to be obtained from the authorities before the machinery is moved from its existing site, the competitor in the business (owner of another rice mill) can have no grievance against the grant of permission permitting the installation on a new site. The right to carry on business being a fundamental right under Article 19(1) (g) of the Constitution, its exercise is subject only to the restrictions imposed by law in the interests of the general public under Article 19(1)(g).

Section 8(3)(c) providing for previous permission of Central Government to change location of Rice mill is merely regulatory; if it is not complied with, the owners may probably be exposed to a penalty, but a competitor in the business cannot seek to prevent the owners from exercising their right to carry on business, because of the default.

Similar view has been taken by the Supreme Court in *J.M. Desai v. Roshan Kumar* (3 supra) while dealing with Rule 6 of Bombay Cinema Rules, 1954 and Article 226, wherein the Court held as follows:-

The Act and the Rules do not confer any substantive justiciable right on a rival in cinema trade, apart from the option, in common with the rest of the public, to lodge an objection in response to the notice published under Rule 4. Thus the proprietor of Cinema Theatre holding a licence for exhibiting Cinematograph films have no legal right under the statutory provisions or under the general law which can be said to have been subjected to or threatened with injury as a result of the grant of No Objection Certificate to the rival trader.

27. In *Mohd. Ibrahim Khan and Others Vs. State of Madhya Pradesh and Others*, while interpreting the scope of Sections 3 and 5 of M.P. Cinemas (Regulation) Act, 1952, the Supreme Court took a view that when objection for granting of any licence not taken in the beginning, the same cannot be considered at a later stage.

28. In *Mithilesh Garg v. Union of India* (4 supra) while considering the scope of Sections 80 and 88 of Motor Vehicles Act of 1988 and explaining the necessity to enlarge healthy competition and curb corruption, the Supreme Court held as follows:-

There is no threat of any kind whatsoever under the new Act from any authority to the enjoyment of the right of the existing operators under Article 19(1)(g) to carry on the occupation of transport operators. More operators mean healthy competition and efficient transport system. Overcrowded buses, passengers

standing in the aisle, persons clinging to the bus-doors and even sitting on the roof-top are some of the common sights in this Country. More often one finds a bus which has noisy engine, old up helotry, uncomfortable seats and continuous emission of black-smoke from the exhaust pipe. It is, therefore, necessary that there should be plenty of operators on every route to provide ample choice to the Commuter-public to board the vehicle of their choice and patronise the operator who is providing the best service. Even otherwise the liberal policy is likely to help in the elimination of corruption and favoritisms in the process of granting permits. Restricted Licensing under the hands of few persons thereby giving rise to a kind of monopoly, adversely affecting the public interest. It cannot be said that too many operators on a route are likely to affect adversely the interest of weaker section of the profession. The transport business is bound to be ironed out ultimately by the rationale of demand and supply. Cost of a vehicle being as it is the business requires huge investment. The intending operators are likely to be conscious of the economics underlying the profession. Only such number of vehicles would finally remain in operation on a particular route as are economically viable. In any case the transport system in a state is meant for the benefit and convenience of the public. The policy to grant permits liberally under the Act is directed towards the said goal.

29. From the above, it is clear that a rival trader cannot challenge the permit or licence issued to a competitor in the field. There is no vested right of monopoly in the business of starting of Sugar units. Unhealthy competition and tendency towards monopoly and corruption deserve to be discouraged. Contentions that by granting licence to an other, his right to carry on the business is affected, or would result in losses to him etc., will be of no avail. To maintain that licence or permission granted to others has resulted in causing some loss, which would not have been caused if licence or permission not granted has to be established. Apart from this one has to show the subsisting justiciable right and his locus-standi. Challenge, if any, only when permission is granted by authorities ignoring the statutory requirements or by an authority who does not have competency, and not otherwise.

30. Dealing with such a situation, the Madras High Court, while interpreting the scope of certain provisions of T.N. Cinema (Regulation) Rules, 1957, held in *L Sundararajan v. State*, AIR 1992 Mad. 68 that a rival in cinema trade is not an aggrieved person by the grant of certificate and he has no locus standi to challenge order granting certificate.

31. Under almost identical circumstances, the Delhi High Court in *Simbhaoli Sugar Mills Ltd., v. Union of India* (5 supra), laid down that letter of intent granted for establishment of new sugar factory, when it is not contrary to Act, Rules or Guidelines issued by the Central Government for grant of Licences, cannot be challenged, that too by a rival applicant, who has no locus standi. While granting L.O.I. no restrictions imposed. The Court further observed that hearing factories /factory /owner association before issuance of guidelines is not

mandatory. According to the Court, issuance of guidelines is policy matter of Government.

32. Hence, Point No. 2 is answered negatively.

POINT NO. 3: WHETHER HEARING IS NECESSARY BEFORE GRANTING LOI TO A RIVAL TRADER?

33. In *Swadeshi Cotton Mills Vs. Union of India (UOI)*, the Supreme Court discussed how far hearing is necessary where another unit is coming up on the basis of permission or licence granted by the Government.

34. From the above discussion, it is clear that the request of the petitioner is only to monopolise in sugar trade in Srikakulam district. When respondent No. 8 and others submitted their applications he never chose to object their applications. On the other hand he participated in the Screening Committee meetings and other meetings. It is not his case that permission to start a sugar unit is his exclusive right and others have no right to seek and start a similar unit. None of the provisions of the Acts, Rules or guidelines envisage a rival trader shall be heard before granting LOI. Further LOI was granted to the petitioner when 8th respondent's request was taken up for consideration. As such there was no obligation to hear the petitioner.

35. In view of the above discussion, this point is answered in negative.

POINT NO. 4: INTEGRATED OF COURTS IN POLICY MATTERS OF

GOVERNMENT AND POWER TO IMPOSE REASONABLE RESTRICTIONS:

36. Dealing with scope of Article 32 and 226 of Constitution of India and interference of Courts in Policy matters and other schemes launched by the State, which are executive in nature, it has been held by the Supreme Court that interference of Courts in such matters neither safe nor legally warranted.

37. In *B.C. & Co. v. Union of India*, AIR 1973 SC 107 the Supreme Court took a view that the Courts cannot adjudicate on Government Policy measures unless the policy is alleged to be mala fide.

38. In *Col. A.S. Sangwan Vs. Union of India (UOI) and Others*, the Supreme Court took a view that Courts' interference in policy matters warranted only if it is shown that change in any policy is unfair and unjust, and not otherwise.

39. In *A.L. Kalra Vs. Project and Equipment Corporation of India Ltd.*, the Supreme Court held that when it is established that the action of the State is quite arbitrary and in violation of any of the fundamental rights guaranteed under Constitution, the Policy so laid down can be interfered with, and not otherwise.

40. In *State of M.P. and Others Vs. Nandlal Jaiswal and Others*, , the Supreme Court took the view that interference in policy decision is warranted only when it is shown that the same is guided by corrupt or collateral considerations and mala

fide intentions, and not otherwise. Decision rendered by the first respondent in the present case, on the basis of material produced almost identical to the one rendered in the case of Nandalal¹⁵ and while dealing with the circumstances, which led to take a final decision, the Court held as follows:-

It is significant that the policy decision was not arrived at by a single individual in the secrecy of his chamber but it was by the entire Cabinet and it was based on the recommendations made by the Cabinet Sub-Committee which was composed of four Ministers assisted by Officers from different departments belonging to the highest scholars of the civil service. It may also be noted that the Cabinet Sub-Committee considered the matter from different angles, obtained relevant information, sent a committee of officers of spot inspection, took stock of the valuation and the likely investment, reviewed the problem and worked out the solution and made its recommendations to the Cabinet. The entire proceedings of the Cabinet Sub-Committee were before the Cabinet including the reasons for which recommendations were made it was after considering these recommendations that the Cabinet reached the policy decision. The entire proceedings show that there was no suddenness of decision, no impulsive caprice or arbitrariness in reaching the decision. The Policy decision was plainly and avowedly an informed and institutionalised decision and the manner in which it was reached is clearly indicative that it was neither mala fide nor guided by any corrupt or collateral considerations.

41. In *Asif Hameed and others Vs. State of Jammu and Kashmir and Others*, while explaining the scope of judicial review under Article 32 and 226 of Constitution, including the power to strike down the state action as unconstitutional or illegal, the Supreme Court explained that the judicial review does not include the power to take policy decision in administrative matters. At best it can make suggestions.

42. Particularly in the sphere of economic policy like price fixation or starting of industries etc., Courts' undisturbed view is that Courts' interference therein is unwarranted.

43. In *M/s. Shri Sitaram Sugar Co. Ltd. and another Vs. Union of India and others*, the Supreme Court held that:-

Judicial review is not concerned with matters of economic policy. The Court does not substitute its judgment for that of the legislature or its agents as to matters within the province of either. The Court does not supplant the "feel of the expert" by its own views. When the legislature acts within the sphere of its authority and delegates power to an agent, it may empower the agent to make findings of fact which are conclusive provided that such findings satisfy the test of reasonableness. In all such cases, judicial enquiry is confined to the question whether the findings of fact was reasonably based on evidence and whether such findings are consistent with the laws of the land. Price fixation is not within the province of the Courts. Judicial function in respect of such matters is exhausted

when there is found to be a rationale basis for the conclusions reached by the concerned authority.

44. In *Union of India and others Vs. S.L. Dutta and another*, the Supreme Court held as follows:-

The Court should rarely interfere where the question of validity of a particular policy is in question and all the more so where considerable material in the fixing of policy are of a highly technical and scientific nature.

45. In *Peerless General Finance and Investment Co. Limited and Another Vs. Reserve Bank of India*, the Supreme Court has clarified the above position by laying down the following principles:-

The function of the Court is to see that lawful authority is not abused but not to attain itself the task entrusted to that authority. It is well settled that a public body invested with statutory powers must take care not to exceed or abuse its power. It must keep within the limits of the authority committed to it. It must act in good faith and it must act reasonably. Courts are not to interfere with economic policy which is the function of experts. It is not the function of the Courts to sit in judgment over matters of economic policy and it must necessarily be left to the expert bodies. In such matters even experts can seriously and doubtlessly differ. Courts cannot be expected to decide them without even the aid of experts.

46. In the instant case what the petitioner canvassed was that the Government not justified in granting permission to set up one more sugar unit apart from the two units already existing, namely, one Amadalavalasa Co-operative Sugar Factory and another in favour of the petitioner. At no time respondent No. 1 compelled the petitioner to seek for a licence to start sugar industry in Srikakulam district. At his request LOI was granted to the petitioner. Feasibility or otherwise of starting one more unit and viability of cane supply, probability of getting more land included in irrigation etc., are all factors to be decided by the State or the authorities. When earlier restrictions of granting LOI only to Co-operatives dispensed with, and starting of sugar industry is thrown open for private sector, which indirectly encourages competition and curbs monopoly, it is not proper for the court to interfere in such policy measure. However, if it is found granting of a Licence tends to create any monopoly, encourages unhealthy competition or leads to corruption, under such circumstances the authorities can impose reasonable restrictions. Hence Point No. 4 is answered accordingly.

POINT NO. 5: WHILE GRANTING L.O.I. TO RESPONDENT NO. 8 WHETHER AUTHORITIES ACTED WITH ANY MALA FIDE OR SHOWED BIAS?

47. It was argued that granting of L.O.I, to the 8th respondent is nothing but resultant of fraud played by the authorities of the state, and the officers of Central Government, respondent No. 1 granted L.O.I, to 8th respondent with undue haste and that is not only arbitrary, but resultant of mala fides as the idea

of the Government was to show undue favouritism or preference to the respondent, ignoring Rules, Regulations and Guidelines. To establish this, an attempt was made that how some of the authorities built up records in so haste by writing D.O. Letters from one officer to another and placing the same before the first respondent to take a decision. The entire file was built up in ten days from 4-3-1994 to 14-3-1994. The stand taken by the respondents in counter affidavits runs contrary to their stand taken in other two Writ Petitions, namely, Writ Petition No. 2581 of 1994 and Writ Petition No. 5257 of 1994. When it is shown that a particular action is tainted with mala fides the court can interfere with and render justice.

48. Though it is easy to allege mala fides, but the same has to be established by placing convincing material. Allegations of mala fides shall be based on correct information and it shall be proved like any other allegation without giving any room for suspicion or doubt. There cannot be any attempt to build a structure of mala fides on mere surmises and conjectures. It shall not be a product of imagination.

49. In K. Nagaraj and Others Vs. State of Andhra Pradesh and Another, while dealing with mala fides and burden of proof, the Supreme Court took the view that the burden to establish mala fides is a heavy burden to discharge. Vague and casual allegations suggesting that a certain act was done with an ulterior motive cannot be accepted without proper pleadings and adequate proof, which are conspicuously absent in writ petitions.

50 in E.P. Royappa Vs. State of Tamil Nadu and Another, while dealing with allegations of mala fides and burden of proof, the Supreme Court took the view that the burden of establishing mala fides is very heavy on the person who alleges it. The allegations of mala fides are often more easily made than proved, and the very seriousness of such allegations demands proof of a high order of credibility.

51. Except alleging that while granting L.O.I. to the 8th respondent, the authorities acted with mala fides and were biased as against the petitioner, the same not established by producing acceptable material to arrive at a conclusion that the said grant resultant of bias, mala fides, or play of fraud or this representation by the concerned authorities. Hence, point No. 5 is answered in the negative.

POINT NO. 6: WHETHER GRANTING OF LOI TO 8TH RESPONDENT IS IN VIOLATION OF ACT, RULES OR GUIDE-LINES OR ARBITRARY OR DISCRIMINATORY IN NATURE?

52. Throughout it was argued that granting LOI to 8th respondent is in clear violation of Sections 11, 12 and 14 of 1951 Act and Rule 12 of 1966 Rules and guidelines; but answer given in the counter is to the effect that no such non-compliance of the statutory requirements. On the other hand all the requirements were strictly followed.

53. The information furnished before the authorities was that there is a scope to start three more sugar units in Srikakulam district. After taking into consideration, various factors including applicability of relevant sections of the Acts, Rules and guide-lines including their financial capacity etc., L.O.Is. were granted to both the parties. No favouritism or discrimination shown in granting L.O.I. This has been explained in the counter and convinced by submitting arguments.

54. Whenever there is discrimination, definitely this Court can interfere in such arbitrary or discriminatory action as held by the Supreme Court in H.C. Narayanappa and Others Vs. The State of Mysore and Others, that allegation of bias on the part of Government has to be supported by reliable evidence.

55. In Probhudas Morarjee Rajkotia and Others Vs. Union of India (UOI) and Others, while dealing with the question of denial of equal protection of laws, the scope of Article 14 of Constitution of India, etc., the court took the following view:

To make out a case of denial of the equal protection of the laws under Article 14 of the Constitution, a plea of differential treatment is by itself not sufficient. An applicant pleading that Article 14 has been violated must make out that not only he had been treated differently from others but he has been so treated from persons similarly circumstanced without any reasonable basis, and such differential treatment is unjustifiably made.

56. In Andhra Industrial Works Vs. Chief Controller of Imports and Others, the Court took the view that in the absence of pleadings of hostile discrimination, Article 14 cannot be attracted.

57. In the case on hand, from the material placed it is clear that the authorities took into consideration effect of provisions of the Act, Rules, Guidelines and other relevant factors and found that granting of L.O.I. to 8th respondent to start a, sugar unit on the Southern side (Right bank) river Vamsadhara at Veeraghattam a permissible one. When such decision has been reached on proper scrutiny and consideration of relevant material and satisfied with the need to have one more sugar unit in Srikakulam District and when the authorities acted faithfully and guided by policy decisions and economic dictates, it is unjust and improper for the Court to interfere with such satisfaction or the decision. For these reasons given, the point No. 6 is answered in the negative.

POINT NO. 7: WAS THERE ANY PROMISE BY THE GOVERNMENT THAT L.O.I. WILL BE ISSUED ONLY TO THE PETITIONER AND NOT TO OTHERS? FURTHER DOCTRINE OF PROMISSORY ESTOPPEL AND LEGITIMATE EXPECTATION APPLY TO THE PRESENT CASE.

58. If the averments in the Writ petition and the reply filed by the petitioner properly understood, the petitioner tried to impress upon the Court that in view of earlier recommendation made by the Screening Committee, the Government of India had indirectly promised the petitioner that no L.O.I, will be given to

others except to him. Having made such a promise, respondents estopped from giving one more L.O.I. to 8th respondent that too in a very hasty manner under suspicious circumstances. According to the petitioner, if the respondent No. 1 did not promise him that except to him L.O.I, will not be given to others, he would not have ventured to obtain L.O.I, to start a sugar complex. Believing the promise of the respondents and legitimately expecting that there will be no more L.O.I to others including 8th respondent, he invested huge amounts to start sugar unit. But granting L.O.I, to 8th respondent has affected petitioner's fundamental right to carry on his business etc.

59. How far the doctrines of promissory estoppel and legitimate expectations applicable to the case on hand, one has to bear in mind the principles laid down by the Supreme Court in *Union of India v. Anglo Afghan Agencies*, AIR 1968 SC 718 wherein it is held that persons acting on the representations made by the Government, in the absence of execution of a formal contract etc., under Article 299 of Constitution of India, can claim, for fulfilling such a promise and the Court can direct the Government to carry on such promise.

60. Except pleading denial of legitimate expectation, the petitioner has not laid down a solid foundation. Petitioner's attempt to develop his theory of legitimate expectation on the basis of screening committee's earlier order rejecting 8th respondent's application and subsequently recommending the same not sufficient to attract the principles of legitimate expectation. When policy is to restrict monopoly and prevent corruption, plea of the petitioner cannot be accepted. More so, in view of the guidelines given by the Supreme Court in the following decisions.

61. In *Union of India and others Vs. Hindustan Development Corpn. and others*, wherein it is held:

Legitimate expectation gives the applicant sufficient locus standi for judicial review and the doctrine of legitimate expectation is to be confined mostly to right of a fair hearing before a decision which results in negating a promise or withdrawing an undertaking is taken. The doctrine does not give scope to claim relief straightway from the administrative authorities as no crystallised right as such is involved. The protection of such legitimate expectation does not require the fulfilment of the expectation where an overriding public interest requires otherwise. In other words where a person's legitimate expectation is not fulfilled by taking a particular decision then decision maker should justify the denial of such expectation by showing some overriding public interest. Therefore even if substantive protection of such expectation is contemplated that does not grant an absolute right to a particular person. It simply ensures the circumstances in which that expectation may be denied or restricted. A case of legitimate expectation would arise when a body by representation or by past practice aroused expectation which it would be within its powers to fulfil. The protection is limited to that extent and a judicial review can be within those limits. But a person who bases his claim on the doctrine of legitimate expectation, in the first

instance, must satisfy that there is a foundation and thus has locus standi to make such a claim. In considering the same several factors which give rise to such legitimate expectation must be present. The decision taken by the authority must be found to be arbitrary, unreasonable and not taken in public interest. If it is a question of policy, even by way of change of old policy, the Courts cannot interfere with a decision. In a given case whether there are such facts and circumstances giving rise to a legitimate expectation, it would primarily be a question of fact. If these tests are satisfied and if the Court is satisfied that a case of legitimate expectation is made out then the next question would be whether failure to give an opportunity of hearing before the decision affecting such legitimate expectation is taken has resulted in failure of justice and whether on that ground the decision should be quashed. If that be so, then what should be relief is again a matter which depends on several factors. The Courts' jurisdiction to interfere is very much limited and much less in granting any relief in a claim based purely on the ground of "legitimate expectation".

Legitimate expectation may come in various forms and owe their existence to different kind of circumstances and it is not possible to give an exhaustive list in the context of vast and fast expansion of the governmental activities. By and large they arise in cases of promotions which are in normal course expected, though not guaranteed by way of a statutory right, in cases of contracts, distribution of largess by the Government and in somewhat similar situations. For instances in cases of discretionary grant of licences, permits or the like, carries with it a reasonable expectation, though not a legal right to renewal or non-revocation, but to summarily disappoint that expectation may be seen as unfair without the expectant person being heard. But there again the Court has to see whether it was done as a policy or in the public interest either by way of CO. rule or by way of a legislation. If that be so, a decision denying a legitimate expectation based on such grounds does not qualify for interference unless in a given case, the decision or action taken amounts to an abuse of power. Therefore, the limitation is extremely confined and if the according of natural justice does not condition the exercise of the power, the concept of legitimate expectation can have no role to play and the Court must not usurp the discretion of the public authority which is empowered to take the decisions under law and the Court is expected to apply an objective standard which leaves to the deciding authority the full range of choice which the legislature is presumed to have intended. Even in a case where the decision is left entirely to the discretion of the deciding authority without any such legal bounds and if the decision is taken fairly and objectively, the Court will not interfere on the ground of procedural fairness to a person whose interest based on legitimate expectation might be affected. If a denial of legitimate expectation in a given case amounts to denial of right guaranteed or is arbitrary, discriminatory, unfair or biased, gross abuse of power or violation of principles of natural justice, the same can be questioned on the well-known grounds attracting Article 14 but a claim based on mere legitimate expectation without anything more cannot be ipso facto give a right to

invoke these principles. It can be one of the grounds to consider but the Court must lift the veil and see whether the decision is violative of these principles warranting interference. It depends very much on the facts and the recognised general principles of administrative law applicable to such facts and the concept of legitimate expectation which is the latest recruit to a long list of concepts fashioned by the Courts for the review of administrative action, must be restricted to the general legal limitations applicable and binding the manner of the future exercise of administrative power in a particular case. It follows that the concept of legitimate expectation is "not the key which unlocks the treasury of natural justice and it ought not to unlock the gates which shuts the Court out of review on the merits, "particularly when the element of speculation and uncertainty is inherent in that very concept. The Courts should restrain themselves and restrict such claims duly to the legal limitations.

In *Madras City Wine Merchants' Association and Another Vs. State of T.N. and Another*, the Supreme Court following the above decision observed that when legitimate expectation may arise:-

- (a) if there is an express promise given by a public authority,
- (b) because of the existence of a regular practise which the claimant can reasonably expect to continue;
- (c) such an expectation must be reasonable.

However, if there is a change in policy or the public interest, the position is altered by a rule of legislation, no question of legitimate expectation would arise.

In *Assistant Excise Commissioner and Others Vs. Issac Peter and Others*, the Supreme Court while dealing with the nature of promissory estoppel and how far assurances of the authorities bind them, held that mere promise or assurance held out by Minister or authorities concerned contrary to statutory provisions would not confer any enforceable right on the person acting upon the same. Hence doctrine of promissory estoppel not invocable.

Hence Point No. 7 is answered in negative.

62. If the circumstances explained by both the parties are understood properly, it is difficult to accept the petitioner's contention that procedure followed relating to grant of L.O.I, to 8th respondent was "conceived in fraud and delivered in deceit.

63. Regarding zonal allotment, petitioners' complaint was that the areas have been allotted in a most arbitrary manner without considering the need of the petitioner. Whereas from the information furnished, it is clear that zonal allotment has been made by the Cane Commissioner whose decision is not a final one and the same is subject to an appeal before the Government. At present if any person aggrieved by the zonal allotment it is only the Amadalavalasa Cooperative Sugar Factory, and not the petitioner. Question of availability of

adequate supply of cane or otherwise will arise only when units start functioning. After all the units all in formative stage and it will take a few more years to install and start production. If actually there is any overlapping of zone or inadequacy of cane supply either to the petitioner or to other, the aggrieved can complain to the authority concerned who in turn look into such grievance. To make such a grievance at this stage is quite premature and without any basis.

64. From the above discussion the irresistible conclusion is be that while granting LOI to 8th respondent either statutory right or fundamental right of the petitioner is not violated or infringed. It has been granted by the authorities after satisfying with the existance of need, relevant requirements and considerations. The relevant rules and other regulations including guidelines considered before granting LOI. When the recommendations of the Screening Committee not binding on the first respondent, no motives be attributed to the first respondent or the 2nd respondent in granting L.O.I. to the 8th respondent, as the final authority to grant L.O.I, vests with the first respondent.

65. The grievance of the petitioner imaginary and his desire is to have monopoly in the trade of sugar industry in Srikakulam district, which is neither permissible nor in confirmity with the policy decision taken by the Central Government. In view of the Liberalisation of economic policy in the country, such monopoly cannot be encouraged. On the other hand the policy is to encourage competitors, so that there will be no scope for corruption and there will be proper distribution and price fixation.

66. There is no arbitrariness or discrimination in granting L.O.I. to 8th respondent. Fraud, bias, this representation, undue favouritism, misuse of power etc., though alleged, but not proved by placing convincing material. Petitioner not affected in any way as L.O.I. granted to him not under challenge by the respondents.

67. Petitioner's contention that his application was being prior one to that of 8th respondent, his request to install sugar unit at Veeraghttam or other places on the Southern side of river Vamsadhara should have been considered, in stead of Korasavada has no force and unacceptable for two reasons, firstly, if theory of preferring prior application accepted the proper person for consideration should have been Sri D. Srinivasa Rao, whose application was prior to the application of petitioner and it is stated that Sri D. Srinivasarao also filed a Writ petition challenging the LOI granted to the petitioner, which is pending. Secondly, change of location was not at the instance of respondents 1 and 2, but it was voluntary and with the consent of the petitioner to shift his choice from Sankili to Korasavada, situated on the Northern side of river Vamsadhara.

68. The petitioner failed to make out a case of mala fides, bias, arbitrariness or discrimination in granting L.O.I, to the 8th respondent. Also not established that order under challenge is contrary to any of the provisions of the Acts, Rules and guidelines or result of abuse of power. Fraud and this representation though

pleaded not proved. Petitioner's efforts that order under challenge is the outcome of suppressio vary and suggestio false, have no basis. Mere existence of rival trade interest devoid of affecting any statutory or substantive justiciable right or infringement of fundamental right guaranteed under the Constitution, not sufficient to entertain this writ petition.

69. Regarding allotment of Sugar Cane Zones, as and when required, the petitioner is at liberty to approach the authorities concerned for proper allotment of Zones. In such an event the authorities to consider the request in accordance with law.

70. Since no prima facie case has been made out, this writ petition rejected at the admission stage.