

(1989) 03 DEL CK 0077

In the Delhi High Court

Case No : Civil Writ Petition No. 2476 of 1988

Delhi Cloth Mill Ltd.

APPELLANT

Vs

Lt. Governor, Delhi and Others

RESPONDENT

Date of Decision : 01-03-1989

Acts Referred:

Citation : (1989) 58 FLR 859

Hon'ble Judges : Rabindranath Pyne, C.J;S.S. Chadha, J;Gian Chand Jain, J

Bench : Full Bench

Advocate : F.S. Nariman, Rajeev Sawhney, Sanjeev Anand, Kajal Chandra, M.K. Banerjee, R.K. Anand, Maehswar Dayal, S.P. Sharma, M.K. Ramamurthi and M.A. Krishnamurthy, for the Appellant;

Judgement

S.S. Chadha. J.

(1) This petition under Article 226 of the Constitution of India challenges the decision of the Lt. Governor, Delhi dated October 29, 1988. refusing the petitioners permission u/s 25-O of the Industrial Disputes Act 1947 to close its industrial undertaking Delhi Cloth Mills at Bara Hindu Rao, Delhi.

(2) The petitioners had earlier filed a petition, being C.W.P. 1281/85 ("D.C.M. Ltd. v. Union of India and Others") under Article 226 of the Constitution of India seeking a writ of certiorari to quash the decisions of the Lt. Governor, Delhi communicated in the letter dated April 16, 1985 rejecting the petitioners' application dated March 27, 1985 and refusing-the petitioners permission u/s 2-O of the Industrial Disputes Act, 1947 (for short called the Id Act) to close its industrial undertaking Deibi Cloth Mills at Bara Hindu Rao, Delhi (for short called the Mill) with effect from July, 1985. The further relief claimed was to declare that the provision of Section 25-O Id Act as inserted by Act 46 of 1982 are ultra virus Article 14 and 19(l)(g) of the Constitution of India.

(3) The stand of the petitioners of that petition was that the Mill is located in a non-conforming area and it can no longer continue the industrial activities at the

present site and in fact the heavy and large scale industries are not permitted to be located in the Union Territory of Delhi. Apart from it, the contention was that the industrial undertaking per se is economically unviable and unprofitable. The losses suffered by the industrial undertaking of the petitioners over the past years from 1978-79 to 1983-84 were detailed in para 36 of the amended writ petition. The reasons for the alleged recurring heavy losses being suffered by the Mill were detailed in para 37 of the amended writ petition. According to the petitioners, it is not possible to convert the present industrial undertaking into a modern plant at the present site for various reasons, inter alia that the industrial undertaking is located in a non-conforming area, that the buildings are very old and not designed for the installation of modern equipments and that the cost of renovation and modernization will not be substantially less than the cost of installing a new and modern unit projected at about Rs. 50 crores. It was submitted that in view of the recurring loss being suffered, the Mill being 428 located in non-conforming area and other factors the petitioners were compelled to take the decision to close down the industrial undertaking.

(4) A Full Bench of this Court comprising of S.S.Chadha, Gc Jain and Sunanda Bhandare, JJ. upheld the validity of the provisions of Section 25-O of the Id Act. That Full Bench recalled the provisions of the Delhi Development Authority Act, 1957 (for short called the Act) and the provisions of the Master Plan prepared in accordance with the procedure laid down by the Act by the Delhi Development Authority (for short called the Authority). The Master Plan as prepared by the Authority was approved by the Central Government u/s 9(2) of the Act. It was published in the Gazette of India on September 1, 1962 in compliance with the provisions of Section 11 of the Act and Regulation 2(1) of the Delhi Development Authority (Publication of Approval of Plan) Regulations, 1962. It was duly published by affixing copies thereof in the offices of the Authority, M.C.D., N.D.M.C. and Delhi Administration Secretariat. It was also published by advertisement in the local newspapers. The Master Plan thus came into operation from the date of first publication of notice of September 1, 1962 once a plan has come into force operation, it cannot be altered or modified except as provided in Section 11A of the Act. The user of land and buildings in contravention of the Plan is prohibited by Section 14 of the Act. Any person using any land or building contrary to the provisions of the Master Plan, after it came into operation, would contravene the provisions of Section 14 and would be liable to be penalised u/s 29 of the Act.

(5) The Full Bench also noticed the submission of the respondents that the Central Government, in exercise of its powers u/s 11A of the Act, proposed extensive modifications in the Master Plan and had called for suggestions/objections. The Authority has published a notification dated April 6, 1985 in the Gazette of India Extraordinary in compliance with the requirement of Section 11A(3) of the Act. It says that "the following extensive modifications which the Central Government proposes to make in the Master Plan for Delhi, keeping in view the perspective for Delhi 2001 and new dimensions in the Urban

Development are hereby published for public information. Any person having objection or suggestion with respect to the proposed modifications may send his objection/suggestion in writing to the Secretary, D.D.A...". Then the proposed modifications are detailed in notification We were again taken through the proposed modifications and we find there is no proposal at all for change of the land use of D.C.M. Site. On the contrary, there is reiteration of the land use of the D.C.M. site for flatted factories and residential area and the policies of the Master Plan that the heavy and large scale industries should not be located in the Union Territory of Delhi. At page 81 of the Gazette it is stated that industrial activity in Dua 81 shall be conducted at the following locations in the prescribed use zones as indicated in the land use plan : "(i) Light-Industry flatted Factories and Service Industry, Jhandewalan, Biria Mills Site on G.T. Road, near Shanker Market, D.C.M, Anand Parbat. Kirti Nagar Near Pusa Institute." At the same page it is stated that new industrial units shall be permitted in different use zone as per conditions prescribed in annexure III-Classification of Industries. For the existing units in different zones it is recommended, "(e) Industrial Units of the type given in Annexure Iii H are not permitted in in Union Territory of Delhi". Annexure H at pages 132-134 of the Gazette specifies the industries prohibited within Union Territory of Delhi. Under the Hazardous/Noxious Industrial Units is included under the sub-head textiles, finishing, bleaching and dying with the characteristic of "acid water waste". Under the sub-head Heavy and Large Scale Industries is included the Cotton Textiles (large scale). The proposed modifications thus expressly declare that the heavy and large scale industry of Cotton textiles such & of the petitioner is noxious/hazardous industry not permitted in the Union Territory of Delhi Regulations framed u/s 57 read with the proviso to Section 14 of the Act were notified on January 18,1986 and are called Delhi Development Authority (Zoning) Regulations 1986 (for short called Regulations). "Noxious Industry" has been defined in Regulation 2(K)- means such industry which may be dangerous to life, or injurious to health or property caused by fumes, effluent or smoke or by producing or storing inflammable material" Regulation 5 provides for a period of three years to shift noxious industries to a conforming area or to stop the non-conforming use on the expiry of the said period. The extensive modifications proposed in the Master Plan for Delhi with perspective 2COI do not contain any proposal for change of land use of DC.M. site. On the contrary, there is reiteration of the land use of the D.C.M. site for flatted factories and residential area and the policies of the Master Plan that the heavy and large scale industries should not be located in the Union Territory of Delhi. In C.W.P. 2687/87- "D.C.M. v. D.D.A", decided by that Full Bench of this Court, it was held that there is no proposal at all for the change of the land use of the D.C.M. site. Similar is the opinion expressed inC.W.P.1281/85- D.C.M v, U.O.I:", decided on July 22, 1988 by that Full Bench.

(6) During the course of hearing of the earlier writ petition, some suggestions were mooted for an out of Court settlement. A joint application which has set out the terms and conditions that had been discussed and settled between the

petitioners and all the unions except one relating to the compensation payable to the workmen on the closure of the Mill, had been filed. That Full Bench, in view of the subsequent events and the settlement arrived at, considered that it would be in the interest of justice, particularly for the management and the workmen who had agreed to the recording of the settlement, to direct the Lt. Governor to exercise the power of suo motu review of its order dated April 15, 1985 refusing to grant permission for the closure of the Mill. This review was directed to be undertaken considering the terms and conditions of the settlement set out in that application and in accordance with law. The Lt. Governor passed the order on May 5, 1988 and did not find it appropriate to accede to the request of the closure of the Mill.

(7) That Full Bench in the judgment dated July 22, 1988 quashed the impugned order dated April 15, 1985 communicating the decision of the Lt. Governor rejecting the petitioners' application dated March 27, 1985 and refusing the petitioners permission u/s 25-O of the Id Act to close its undertaking as well as the order in review dated May 5, 1985. That Full Bench directed the Lt. Governor to determine afresh the application of the petitioners for permission to close its undertaking within a period of 60 days in the light of the observations made in that judgment and in accordance with law.

(8) The Lt. Governor in the impugned order dated October 29, 1988 in the present petition has once again refused permission to the petitioners to close the Mill. It would be apposite to reproduce the main reasons advanced by the petitioners in support of their request for closure of the Mill as noticed in the impugned order :- 430 "(i) that the present use of the land for running of a large scale the land user stipulated under the Master Plan of Delhi. Further that in view of the provisions of the Regulations dated 181.1986 issued the Dda the present non-confirming use has got to stopped by (ii) that their textile mill is a heavy, large. scale and noxious the industry discharging toxic effluents and causing pollution and the consent required from the Central Boarder prevent of Water Pollution has been denied; and (iii) that the undertaking is suffering heavy and the plant the Master Plan of Delhi

(9) In additional to the above reasons the Lt Governor also noticed that in their representation the worker had demanded the closure of the July 28 1987. The plea advanced by the workmen was also noticed close and they are allowed to avail of. the benefits of he addition compensation agreed to be paid to them under this settlement, compensate

(10) The impugned order of the Lt. Governor does not deal with any of the reasons advanced by the petitioners for closure of the Mill in accordance with or in the light of the observations made by that Full Bench in the earlier writ petition. One of the compelling reasons urged in the earlier write petition by the petitioners to take the decision to close in the write on to close undertaking was that it is located in non.conforming are a as prescribed by be Authoring under the Master Plan for Delhi and under the Act it cannot longer continue the

industrial activities at the present site and in fact Heavy and Large scale industries are not permitted to be located in the Union Territory of Delhi. That Full Bench in the case reported "DCM had dealt with the India and Others" 1988 (1) DL 55 (Full Bench had dealt with the question in paras 59 to 63 of the report that the Administrator did not express that this reason given by the petitioner is not correct or genuine, that if the requirement of the law is that the industrial undertaking is to be closed in "the not too distant then surely one would expect that aspect would be dealt with and met by the order to be closed and that even in the order May 5, 1989 the Lt. Governor did not deal or meet this reason for closure, or how he balanced it with the public interest. The main thrust of the arguments of Shri F. S. Nariman, Sr. Advocate, the learned counsel for the petitioners is that in the impugned order, the Lt. Governor noticed the main reason advanced by the petitioners that the mandatory provisions of the Master Plan require the Mill to permanently stop its operation at the present site with effect from January 18, 1989, yet he did not meet it all and in our view, he is right.

(11) That Full Bench held that the petitioners are obliged to stop the heavy and large industry of cotton textile-finishing, bleaching dyeing unit is declared as hazardous/noxious industrial unit within a maximum "now prescribed under the Regulation of January 16, 1986. There is nothing to indicate in the impugned order that the Lt. Governor took into account these observations. In our view, there is a total non-application of mind to the relevant and germane consideration of the effect of the Master Plan read with the provisions of the Act and the statutory regulations which make it obligatory on the petitioners to stop the present non-conforming use definitely by January 18, 1989. In *Excel Wear and Others Vs. Union of India (UOI) and Others*, the attack to the invalidity of old Section 25-O of the Id Act was on the ground, inter alia, that Section 25-U does not require giving of reasons in the order. It was ruled there that "Section 25(2) does not require the giving of reasons" thus "whimsically and capriciously the authority can refuse permission to close down". In para 32 of the report, their Lordships came to the conclusion that it permits the authority to pass a cryptic, capricious, whimsical and one-sided order. The procedural safeguard of recording of reasons has now been incorporated in Section 25(2) of Id Act by Act 26 of 1982. The reasons are now required to be set out and should not only be intelligible which determine the right of the petitioners to close the Mill but should also deal with the substantial points that have been urged. Reasons are required to be recorded in writing in granting or refusing to grant permission for closure. We do not expect a reasoned judicial decision but the Lt. Governor must indicate how his mind worked and what was the basis to reject the ground to mandatory provisions of the Master Plan requiring the Mill to be permanently closed at the present site with effect from January 18, 1989. When an adjudicating authority is called upon to decide a question and is obliged to record his reasons in writing, but advances no reasons, the necessary inference is that he has no good reasons to advance. In *Padfield v. Minister of Agriculture & Fisheries* 1968 AC 997, it was held that "if he does not do so the Court may infer

that he has no good reasons". The impugned order is thus capricious and entitled to be struck down on this short ground.

(12) Shri Milon Banerjee, Solicitor General of India wanted this Full Bench to reopen the question that there is no compulsion for the petitioners to close down its Mill although this reason is not advanced by the Lt. Governor and cannot be supplemented in these proceedings. The submission is that the Master Plan only contemplates shifting of non-conforming industries to alternative locations and shifting in common parlance implies relocating. Our attention is invited to various provisions of the Master Plan to contend that the Master Plan of Delhi while dealing with the nonconforming use of industry has clearly provided that of shifting of such industry according to Plan and that is only possible if suitable land for the purpose is available. Reliance is placed on the draft Master Plan containing the proposed modifications in the Master Plan. In the draft modified Master Plan published in June 1987 the cotton textile is no longer a noxious industry and the Mill of the petitioner comes in the category of only a heavy and large scale industry. The submission is that by virtue of Regulation 7, the heavy and large industry has a period of six years for its closure and not three years. These submissions cannot stand close scrutiny. As noticed earlier, the proposed modifications in the Master Plan were published in the Gazette of India on April 6, 1985. Under the hazardous/noxious industry is included under the sub-head textiles, finishing, bleaching and dying with the characteristic of "acid water waste". The proposed modifications of 1985 are notified in the Official Gazette of India but no longer exists in the modified draft proposal of June, 1987. There are two reasons why we cannot accept the draft modified Master Plan. It is intended for limited circulation in the Authority and has not been published in the Official Gazette. The draft modified Master Plan would come into force only after it is approved by the Central Government u/s 9(2) of the Act and then published in the Gazette of India in compliance with the provisions of Section 11 of the Act and Regulation 2(1) of the said Regulations. The proposals if any, therefore, do not have the effect of modification of the existing Master Plan and the Regulations. Secondly, the proposal cannot have the effect of amending or altering the statutory "Delhi Development Authority (Zoning) Regulations, 1983, published in the Gazette on January 18, 1986. "Noxious Industry" as defined in Regulation 2(K.) and includes the industry which is injurious to health or property caused by fumes, effluent or smoke. Regulation 5 enjoins upon the persons to shift that industry within three years to any conforming area or stop non-conforming use on the expiry of the said period". The statutory regulations prevail over any proposed amendments in the draft Master Plan. Apart from it, the request of the petitioners for the allotment of alternative land in Delhi for the purposes of shifting the industrial undertaking was turned down by the Delhi Administration vide their letter dated July 15, 1983 on the ground that large and heavy industries are not permitted within the Union Territory of Delhi. . The counsel, therefore, cannot be heard to say that the Master Plan only contemplates shifting of non-conforming industries to alternative sites.

(13) Another reason advanced in support of their request for closure of the Mill is that the Mill is discharging toxic effluents and causing pollution. Material had been placed before the Lt. Governor, Delhi in the representation dated September 15, 1987 that the petitioners had received letters dated August 21/24, 1987 and September 1/9, 1987 from the Central Board of Prevention and Control of Pollution informing the petitioners that its consent to discharge/continue to discharge effluents is refused. The copies of the test reports filed indicated that the effluents from the Mill is highly toxic and would cause pollution as it also contains organic and inorganic elements injurious to the public at large, to the environment and to the plant and animal life including aquatic organisms. The petitioners are required to obtain a consent order from the Central Board of Prevention and Control of Water Pollution u/s 26 of the Water (Prevention and Control of Pollution) Act, 1974. This consent was earlier granted . to the petitioners vide Central Board's letter dated September 30, 1978 but subject to various conditions contained therein. One of the pre-conditions imposed by the Central Board is the installation of an effluent treatment plant and a separate "closed conduit system" to provide for collecting industrial process and cooling and domestic effluents. Further terminal manholes " are required to be provided at the end of each collection system for treatment work. It was the case of the petitioners that such conditions imposed by the Central Board could not be fully complied with on account of no availability of required space at the Mill for the setting up of a secondary treatment plant and also for laying of a new drainage. The Central Board had issued its consent order to the petitioners valid up to May 31, 1987 subject to various conditions stipulated therein including an obligation to set up the secondary treatment plant. The petitioners had advanced the reasons that they are unable to comply with the conditions that apart from the cost of the plant amounting to Rs. 25 lacs. it will require a minimum area of one acre for installation which is not available. The existing primary treatment plant cannot achieve the standard stipulated and can be achieved only on the installation of a complete separate "closed conduit system" for carrying the effluents and for installing a secondary treatment plant for the treatment of effluents but this is not possible on account of the non-availability of land. 433

(14) LT. Governor in the impugned order had noticed that the consent had been denied by the Central Pollution Control Board as the unit is discharging heavy toxic effluents. He is, Therefore, satisfied with the genuineness of this reason. The only comment is that the D.C.M. appears to be using this as a ground for closure rather than making serious efforts to find appropriate solutions in consultation with technical experts. No enquiry is made as to whether any solution is possible or feasible. He has entered into the realm of conjectures. The application of the petitioners for consent for discharge/ continuation of discharge is refused by the Central Board with the result that the penal provisions of the said Act are attracted. The continuous discharge of the toxic effluents is against the larger interest of the public. It exposes the general public as also the environment to the hazards of pollution. There is wisdom in the Master Plan that

the hazardous and Noxious industrial units are not permitted in Delhi. Noxious and hazardous industrial units are required to shift or close and depending upon the pollution and hazardous nature, the Administration is enjoined to force these industrial units to shifts within a maximum prescribed period of three years or stop the non-conforming use. The finding of the Lt. Governor that the petitioners appear to be using this as a ground for closure is in complete disregard of the material on the record and large public interest. His decision is also vitiated on this ground.

(15) The third main reason advanced by the petitioners is in regard to the heavy losses incurred. In the original application dated March 27, 1985 the petitioners had indicated that the Mills had been suffering substantial losses and details of losses suffered had been given therein. Since the filing of the earlier application, the substantial losses suffered by the Mills are detailed in the application dated August 31, 1988. The total loss suffered by the Mill since 1978-79 is given as over Rs. 4085 crores. In the earlier writ petition, the petitioners' case was that the industrial establishment of the petitioners at Bara Hindu Rao per se is economically unviable and profitable and is suffering heavy losses. That question is dealt with in paras 64 to 66 of the said reported case. It was expressed that it was a vital reason advanced for permission for closure that the undertaking is economically not viable and suffering heavy losses and it was queried whether the petitioners should be compelled to go on incurring losses year after year or for what justifiable reasons. The only reason given by the Lt. Governor in the impugned order is "that the losses cannot be said to be representative of an irretrievable situation". It is in complete disregard of the observations of the Court.

(16) u/s 25-O(2) where an application for closure has been made the appropriate Government, after making such enquiry, as it thinks fit has to pass the order. It was thus open to the Lt. Governor to make an enquiry into the question of the figures of the losses furnished by the petitioners. The Lt. Governor does not question the losses suffered by the petitioners and proceeds to express his opinion that the losses cannot be said to be representative of an irretrievable situation. It is Therefore, legitimate to draw the inference that the Lt. Governor accepted the figures furnished by the petitioners as to the losses incurred, this is also clear from the words used regard to losses suffered". In Excel Wear's case (supra) their Lordships posed several questions suggestive of answers, inter alia, Can they be compelled to go on incurring losses year after year 7 or As in the present case, so in many other situations, a situation may arise both on 434 point of view of law and order and the financial aspect that the employer finds it impossible to carry on the business any longer ?" The Lt. Governor may be right in his conjecture that it is not an irretrievable situation and the Mill can become an economical and financially viable unit. But it would depend upon several uncertain factors. There is no possibility for change or amendment in the mandatory provisions of the Master Plan that the Mill is to close and stop its non-conforming use by January, 1986. The Mill is discharging highly toxic and

poisonous effluents into the river and further consent of the Central Board may not be forthcoming. The old and obsolete , plan and machinery cannot be renovated except at a substantial cost which, according to the petitioners, would not be less than the cost of installing a new and modern unit estimated to cost Rs. 50 crores. Setting up of a modern textile plant at Delhi is rightly not thought of by the petitioners in view of the prohibition to set up a large and heavy industry in the Union Territory of Delhi. Therefore, the hope expressed by the Lt. Governor is wholly illusory.

(17) The supporting demand of the workers for the closure of the Mill has been negated on the ground that the benefits under the settlement to the workers are conditional on the redevelopment of the land at Bara Hindu Rao by the management and dependent on clearances and sanctions from various agencies in terms of their own laws, regulations and guidelines. The Lt. Governor is unduly swayed, in our view, by these considerations. The right to close a business is an integral part of the fundamental right to carry on business and is guaranteed under Article 19(1)(g) of the Constitution. Section 25-O has been enacted and puts restrictions and restraints on employees in closure of industrial undertaking. The Lt. Governor does not say that the petitioners have not brought out specific reasons or they are not genuine and adequate entitling them to secure the permission sought for. The Lt. Governor could only decline the permission after balancing it with public interest. Hypothetically, the purported public interest of security of labour could be considered. An overwhelming majority of over 98% of the workmen have opted for the closure of the Mill in the hope of the receipt of adequate compensation. The closure of any industrial undertaking is likely to have adverse impact on the long term interest of the working class and, Therefore, the legislature enacted the provisions of Section 25-O of the Id Act to consider the interest of the workers employed in a large industrial undertaking. The interest of the labour has not to be ignored and it is for this reason that the legislature had provided u/s 25-O(8) the compensation in the event of the closure of an industrial undertaking. Otherwise, in no case, the closure of an industrial undertaking , can be allowed as it would always have an impact on the working class.

(18) The earlier Full Bench had dealt with this question in paras 67 to 70 of the said reported case. It was observed that there are no doubt conditions contained in the settlement between the management and workmen for securing the requisite approval and sanctions from appropriate statutory authorities. The fact remains that the redevelopment of the site of the Mill is sought strictly in accordance with the provisions of the Master Plan. The proposed land use for flatted factories is admittedly within the purview of the land use prescribed under the Master Plan and has in no way been affected by the proposed modifications of the Master Plan. The Authority has already been directed in C.W.P. 2687/86- "D.C.M. v. D.D.A " to issue the no objection certificate to the petitioners and there is no stay from the Supreme Court. The Municipal Corporation of Delhi is enjoined to sanction the building plans if they are in accord with the building

byelaws or the land use prescribed Therefore under the Master Plan. There is also no reasonable basis that the clearance may not be forthcoming under the Slum Areas (Improvement and Clearance) Act, 1956. It had to be presumed that the authorities will act reasonably and in accordance with law.

(19) Mr M K. Ramamurthy, Senior Advocate, who is appearing for the Unions who are party to the settlement, has categorically urged that the workmen were never in favor of the closure of the Mill but because of the Government's adamant attitude in not amending the Master Plan to permit non-conforming user beyond January, 1989, that the workers are taking a calculated risk to join the prayer for closure on receipt of the compensation under the settlement. Under the settlement, the workers are to receive an amount virtually equivalent to their present wages that they would have received if they had continued in employment for a period of 72 months. This is a reasonable period during which the workmen may obtain alternative employment in the flatted factories which may come up at a future date and which are to be constructed at the present site will Within a period of six years. The statutory compensation u/s 25-O(8) of Id Act is to be paid in accordance with law. In the scheme of cement, the workmen have to be paid for a period of two years after closure an amount equal to interest at 11% which interest amount will be roughly equivalent the present carry home wages of the workmen. The interest of the labour, in our view, has been safeguarded by filing another settlement before this Full Bench during the hearing. The settlement between Petitioners and the 12 workmen's unions along with Annexure I, affidavit of Dr. Vinay Bharat Ram, in support and the affidavits of the office-bearers of the workmen's unions in support are taken on the record: The undertakings given by Dr. Vinay Bharat Ram on behalf of the petitioners and by the office- bearers of the 12 workmen's unions on behalf of the workmen are hereby recorded and accepted by the Court.

(20) The law is well-settled that if the action or decision is perverse or is such that no reasonable body of persons, properly informed, could come to or has been arrived at by the authority misdirecting itself by adopting a wrong approach ,or has been influenced by irrelevant or extraneous matters" the Court would be justified in interfering with the same (See "income tax Commssioner, Bombay v. Mahindra and Mahindra," AIR 1984 Sc 1182. In Smt. Shalini Soni and Others Vs. Union of India (UOI) and Others, it was held that whenever a decision-making function is entrusted to the subjective satisfaction of a statutory functionary, there is an implicit obligation to apply his mind to pertinent and proximate matters only eschewing the irrelevant and the remote. In our view. the Lt. Governor has not genuinely addressed himself to the pertinent question of the mandatory provisions of the Master Plan requiring the Mill to permanent stop insulations from the present site with effect from January, 1989. As to the nuisance of the discharging of toxic effluents and causing pollution by the Mill the Lt. Governor has adopted an entirely wrong approach. The consent had been denied by the statutory Central Pollution Control Board for discharging toxic effluents. The continued discharge of the toxic effluents is against the larger

interest of the public and this relevant factor has been completely lost sight of. The possibility of the Mill becoming a financially and economically viable unit is dependent on so many uncertainties. The interest of the labour has not been ignored by the management because of the golden band-shake in the settlement between the petitioners and 12 Unions of the workers. There is no completing public interest when the workmen are satisfied.

(21) We share the concern of the Delhi Administration as urged by the Solicitor General for safeguarding the interest of and the welfare of the workmen. He has relied upon "Gujarat Steel Tubes Ltd. v. Lts Mazdoor Sabha" AIR 1986 S.C. 1986, State of Kerala Vs. Kumari T.P. Roshana and Another, . He is right that the "law is not a breeding omnipresence in the sky but an operational art in the society" and the Court in the exercise of writ jurisdiction should do substantial justice between the parties. But the established facts do not tilt the balance of public interest in favor of the case set up by the Delhi Administration. On the contrary, it is a fit case for the grant of permission to close the industrial undertaking of the petitioners at Bara Hindu Rao, Delhi (the Mill). The High Court has power to issue a writ of mandamus to direct the public authority to exercise its discretion in a particular manner. In "Comptroller and Auditor-general of India, Gian Prakash, New Delhi and Another Vs. K.S. Jagannathan and Another, , it was held :- "There is thus no doubt that the High Courts in India exercising their jurisdiction under Article 226 have the power to issue a writ of mandamus or a writ in the nature of mandamus or to pass orders and give necessary directions where the government or a public authority has failed to exercise or has wrongly exercised the discretion conferred upon it by a statute or a rule or a policy decision of the government or has exercised such discretion mala fide or on irrelevant considerations or by ignoring the relevant considerations and materials or in such a manner as to frustrate the object of conferring such discretion or the policy for implementing which such discretion has been conferred. In all such cases and in any other fit and proper case a High Court can, in the exercise of its jurisdiction under Article 226, issue a writ of mandamus or a writ in the nature of mandamus or pass orders and give directions to compel the performance in a proper and lawful manner of the discretion conferred upon the government or a public authority, and in a proper case, in order to prevent injustice resulting to the concerned parties, the court may itself pass an order or give directions which the government or the public authority should have passed or given had it properly and lawfully exercised its discretion".

(22) In the result, the impugned orders of the Lt. Governor, Delhi dated October 29, 1988 are quashed. We direct the Lt. Governor, Delhi to grant permission prayed for forthwith, in any case not later than 7 days from today, to close the Mill. The petitioners shall be bound by the undertakings given to this Court in the scheme of settlement for payment of compensation to the workmen on the terms and conditions as set out in the written agreements filed in this Court. It will be open to the parties to approach this Court for directions. On the facts of this case, we leave the parties to bear their own costs.