

(1992) 03 CAL CK 0012
In the Calcutta High Court
Case No : Appeal No. 488 of 1991

Indian Iron and Steel Co. Ltd.	Vs	APPELLANT
Shri Satya Dev Singh and others		RESPONDENT

Date of Decision : 20-03-1992

Acts Referred:

Constitution of India, 1950 — Article 14, 19, 19(1), 19(6), 21
Essential Commodities Act, 1955 — Section 2, 3, 5

Citation : AIR 1992 Cal 287

Hon'ble Judges : N.P. Singh, C.J.;Altamas Kabir, J

Bench : Division Bench

Advocate : Sanjoy Bhattacharya and Mrs. Chandrima Bhattacharya, for the Appellant;Arun Prokas Chatterjee and Arabinda Chatterjee, for the Respondent

Judgement

Altamas Kabir, J.—This appeal at the instance of the Indian Iron & Steel Co. Ltd., a Public Sector Undertaking, raises a short but interesting question as to whether having regard to the provisions of Arts. 14 and 19(1)(g) of the Constitution of India, the appellant Company could regulate the distribution of "Breeze Coke" amongst a select group of users of the said commodity, to the exclusion of the writ petitioners respondents who claim to be licensed dealers thereof.

2. The case made out in the writ petition is that barring the writ petitioner No. 176, which is an Association, the other writ petitioners are licensed dealers and distributors of Breeze Coke and have been carrying on business of supplying Breeze Coke for domestic use for a long time, under the direction and control of the Director of Consumer Goods, Government of West Bengal. The writ petitioners respondents have claimed that the State Government had always included Breeze Coke, which is an essential commodity, within the ambit of the West Bengal Soft Coke Licensing Order, 1965, hereinafter referred to as the "Licensing Order", and had issued licences under the said Order for effective distribution of Breeze Coke among the general public. According to the writ petitioners respondents, upon their application to the Director of Consumer

Goods, West Bengal, and pursuant to his directions, the railway authorities allotted wagons in their favour for lifting the Breeze Coke supplied to them by the appellant Company on the sponsorship of the said Director of Consumer Goods.

3. It is also the case of the writ petitioners that from 1987 the supply of Breeze Coke to them by the appellant Company was gradually reduced, despite various representations made on their behalf by the Central Coordination Committee of Associations of Railway Plotees-cum-Soft Coke Licencees of Calcutta Railway Sidings, the writ petitioner No. 176, and letters addressed to the Chairman of the appellant Company by the Secretary, Department of Food and Supplies, government of West Bengal, Ultimately, by its letter dated 26th November, 1990, the appellant Company informed the writ petitioner No. 176 that in view of the change in the pattern of demand, a decision had been taken to supply Breeze Coke to industries, that is, actual users, on a priority basis, and to discontinue supply to depot-holders. The said letter is as follows:--

"THE INDIAN IRON & STEEL CO. LTD.

(A Subsidiary of Steel Authority of India Ltd.)

(SALES DEPARTMENT)

Registered Office:--

IISCO HOUSE, 58 Chowringhee Road, Calcutta --700071.

Hs/F/32-CK/5525 November 26, 1990.

The General Secretary, Central Co-ordination Committee

of

Associations of Railways Plotees-cum-Soft-Coke Licencees of Calcutta Railway Siding 28/3, Omdaraja Lane, Calcutta-700015.

Dear Sir,

Supply of Breeze Coke.

This has reference to your letter dated --30-10-1990 and the discussion your representatives had with the undersigned.

Contrary to the erstwhile pattern of 1992Cal./19 X G-19 demand when by and large except a few Small Industries in West Bengal and U.P. bulk requirements excavated from depot holders the position has undergone radical change in recent times.

Based on certain decisions to give priority to industries i.e., actual users and as per current policy we regret we are unable at the moment to offer to depot holders. We trust that in that context of the position explained in the foregoing you wil appreciate the position.

We have apprised Secretary, Commerce & Industries and Secretary, Food and Civil Supplies of the above background and have comprehensively explained as to why we are no longer in a position to accommodate depot holders.

Yours faithfully, For THE INDIAN IRON & STEEL CO. LIMITED

Sd/- A. N. Ganguly,

DY. GENERAL MANAGER (S).

4. Thereafter by a notice dated 22nd February, 1991, applications were invited by the appellant Company from all Mini Cement Plants/Industries/Actual users of Breeze Coke who were interested in lifting the said material from its Burnpur Works, subject to production of sponsorship from the appropriate Government Agencies/ Bodies mentioned in Annexure "A" to the said notice. Since the said notice reflects the change in policy of the appellant Company with regard to distribution of Breeze Coke, and has a material bearing on the decision in this appeal, the same is reproduced herein-below:--

"THE INDIAN IRON & STEEL COMPANY LIMITED

SALES DEPARTMENT

IISCO HOUSE, 58, Chowringhee Road, Calcutta-71.

22nd February, 1991.

NOTICE APPLICATIONEORRAKE/PIECE MEAL DESPATCH OF COKE BREEZE FROM BURNPUR WORKS FOR THE FINANCIAL YEAR 1991-92.

All Mini cement plants/industries/actual users of Coke Breeze who are interested in lifting the material from Burnpur works, IISCO Ltd., by Rake/Piecemeal wagons are hereby invited to submit applications in Annexure "C" subject to production of sponsorship from appropriate Govt. Agencies/Bodies in Annexure "A".

The last date for submitting such applications with the undersigned shall be 18-3-1991.

Further clarification/information regarding applications is furnished in "Annexure to Notice dated 21-2-91 for despatch of Coke Breeze by Rake/Piecemeal Wagons" and forms a part of this notice. This annexure is to be collected from the undersigned studied by the applicant before applications are formally submitted.

Sd/-PritamSaha "Sr. Sales Executive, Sales Deptt."

5. Aggrieved by the decision of the appellant Company to discontinue supply of Breeze Coke to depot -- holders, the writ petitioners respondents moved this Court under Article 226 of the Constitution contending that such decision was illegal, unjust and arbitrary and violated the provisions of Articles 14, 19(1)(g)

and 21 of the Constitution.

6. By his judgment dated 13th August, 1991, a learned single Judge of this Court has held that the aforesaid decision taken by the appellant Company was unjust and contrary to law. The learned judge has also held that by restricting supply of Breeze Coke to a specific section of the industry, the requirements of ordinary consumers would be totally ignored, and such a stand appeared to be totally unreasonable. The learned Judge, therefore, directed the appellant company not to give effect to the impugned circulars and to invite tenders from all concerned and not to restrict the sale of Breeze. Coke to a limited class.

7. Mr. Sanjoy Bhattacharya appearing for the appellant Company, submitted that the learned trial Judge had proceeded in the matter on the erroneous footing that Breeze Coke was not only used by certain industries, but was also meant for domestic consumption. It was submitted that Breeze Coke, which was a by product of Hard Coke used by Steel Plants, was actually used by Mini Cement Plants and by small-scale industries engaged in the manufacture of briquettes, which is used as fuel for domestic purposes. It was further submitted that Breeze Coke by itself was not used as fuel by domestic" consumers. Mr. Bhattacharya sought to impress upon the Court that the writ petitioners respondents" who were all depot-holders, were not actual users of Breeze Coke but traders and middlemen. Their function was to lift the material and to sell the same to the actual users who were engaged in the manufacture of briquettes. He submitted that it was significant that none of the actual users had moved this Court challenging the decision of the appellant Company to discontinue supply to the writ petitioner respondents.

8. It was urged that owing to the changed pattern of demand, the Board of Directors of the appellant Company, had taken a decision to eliminate traders and middlemen and to supply Breeze Coke directly to the actual users, in pursuance whereof the letter dated 26th November, 1990, and the notice dated 22nd February, 1991, had been issued.

9. At this juncture, it will be relevant to mention that as there was some variance between the contents of the letter dated 26th November, 1990, and the notice dated 22nd February, 1991, we had directed the appellant Company to file a supplementary affidavit disclosing the circumstances and the manner in which the aforesaid decision was taken, so that we could satisfy ourselves that the aforesaid decision had been taken lawfully and after due deliberation. Pursuant to our directions, such affidavit was filed by the appellant Company on 30th January, 1992.

10. With reference to the said supplementary affidavit, a submission was made that in a meeting of the Board of Directors of the appellant Company held on 16th July, 1990, the changed pattern of demand had been -considered in detail and a tentative decision was taken to restrict supply to only actual users/Public Sector Undertakings/Exports/ Supplies to Nepal and Bhutan and to Industrial

units sponsored by the Director of Industries of different State Governments. In the next meeting of the Board held on 30th August, 1990, a firm decision was taken to sell Breeze Coke only to government parties, Mini cement plants and those other actual users who may be sponsored by Government Agencies/ Directorates.

11. It was submitted that it was not unlawful for the State and its agencies to make an intelligible differentiation between two groups within the same class in certain circumstances. It was also submitted that it was not for the Court to substitute the commercial wisdom of the government with its own views, so long as the decisions taken answered the tests laid down by Article 14, and in this case, Article 19(1)(g) of the Constitution also.

12. It was next submitted that the writ petitioners and the actual users could not, however, be said to belong to the same class. While the actual users utilised Breeze Coke themselves, the writ petitioners respondents, who were traders, did not utilise the said commodity themselves, but supplied the same to the actual users. They, therefore, formed two different classes and it was within the competence of the appellant Company to discontinue supply to one class in the public interest.

13. With regard to Article 19(1)(g) of the Constitution, it was submitted, that the fundamental right guaranteed to a citizen thereunder to carry on any, trade or business, is not an unfettered right, but is subject to reasonable restrictions which the State may choose to impose in the interests of the general public. It was urged that, although, Breeze Coke was not a controlled item and was not covered by any Control Order framed u/s 3 of the Essential Commodities Act, 1955, the appellant Company, which is a Public Sector Undertaking of the Central Government, was nonetheless competent to regulate its distribution in the interest of the general public, because of scarcity of supply and change in the pattern of demand in recent years.

14. In support of the contention that the appellant Company was legally entitled to make a distinction even between two groups belonging to the same class, based on the principle of intelligible differentia, reference was made to certain well-known decisions of the Supreme Court; which I shall refer to later.

15. Mr. Bhattacharya concluded his submissions by reiterating that because of the change in the pattern of demand, resulting in the increase in demand over supply by actual users, the Board of Directors of the appellant Company took a decision to make Breeze Coke directly available to the actual users by eliminating middlemen, who, as depot" holders, were traders of the said commodity, and that even if "traders" and "actual users" were held to belong to the same class, the appellant Company was legally competent to take the aforesaid decision, and the order of the learned trial Judge was, therefore, liable to be set aside.

16. Appearing for the writ petitioners respondents, Mr. Arun Prokas Chatterjee, learned advocate, submitted that it was a well- established principle of law that

rights of citizens, whether fundamental or statutory in nature, could not be adversely affected by an act of State, in derogation of the principles enshrined in Articles 14 and 19(1)(g) of the Constitution, and the actions of the State must be amenable to the tests laid down therein.

17. It was submitted that the writ petitioners respondents were licensed dealers of Soft Coke, holding licences under the West Bengal Soft Coke Licensing Order, 1965. It was further submitted that, although, Breeze Coke was not a controlled item, it was still an essential commodity under the Essential Commodities Act, 1955, and as a substitute for Soft Coke, supply whereof was scarce, its distribution within the State of West Bengal was regulated by the State Government. It was also submitted that the allocation of Breeze Coke in West Bengal by the appellant Company and other similar concerns was done on the basis of sponsorship by three sponsoring agencies, namely, (1) Director of Industries (2) Director of Cottage and Small Scale Industries and (3) Director of Consumer Goods. The first two sponsors were responsible for allotment of the commodity to industries, including small-scale industries. The Director of Consumer Goods was responsible for allotment to depot holders with a view to meeting the domestic requirement, and till 1987, the depot holders were given the largest allotment of the said commodity.

18. In this connection, reference was made to the decision of the Board of Directors of the appellant Company arrived at on 21st September, 1990, annexed to the supplementary affidavit filed by the appellant Company pursuant to our directions. It was submitted that the said decision included the writ petitioners respondents within its scope, but the letter and notice subsequently issued by the appellant Company were contrary to the said decision. Our attention was also drawn to a letter written by the Secretary, Department of Food and Supplies, Government of West Bengal, to the Chairman and Managing Director of the appellant Company, on 1st August, 1990, being Annexure "M" to the writ petition, protesting against the reduction of supply of Breeze Coke to depot holders. It was submitted that in the said letter it had been pointed out that the reduction of supply of Breeze Coke to depot holders was good enough to create a fuel crisis in the State and would consequently put the interest of the domestic consumers of the State into total jeopardy. It was further submitted that while industries used Breeze Coke measuring between "6" to "10" millimetres, the remainder measuring between "0" to "5" millimetres was also utilised by the depot holders. There could, therefore, be no justification for discontinuance of supply of Breeze Coke of the latter specification to depot holders, as the same would in any event remain unutilised. It was submitted that the said aspect had also been dealt with in the aforesaid letter, and it amply supported the claim of the writ petitioners respondents.

19. Reference was then made to Section 2(a)(ii) of the Essential Commodities Act, 1955, wherein coal, including coke and other derivatives, were defined as essential commodities. It was submitted that as a derivative of coke, Coke

Breeze being an essential commodity, the State Government was entitled to regulate its distribution within the State in terms of Section 5 of the Act and the unilateral decision taken by the appellant Company to discontinue supply to the depot holders was arbitrary and was liable to be quashed.

20. It was submitted that even traders and middlemen had a useful role to play in the distribution of various commodities and any decision to eliminate such a class would have to satisfy the test of reasonableness embodied in Article 14 of the Constitution, in view of the provisions of Article 19(1)(g) of the Constitution. In this context, reference was made to various decisions of the Supreme Court. Reference was also made to Volume 16 of the Second edition of American Jurisprudence dealing with "Police Power" in America and the concept of remedying an evil, which Mr. Chatterjee sought to equate with "Public Policy" in India.

21. It was urged by him that if it was the intention of the appellant Company to reach the consumers directly, such object, even if held to be reasonable, could not be achieved by discontinuing supply of Breeze Coke to the depot holders who acted as conduits" for the said commodity to reach the consumers from the appellant Company and similar concerns. It was submitted that the decision taken by the appellant Company to discontinue supply; of Breeze Coke to the writ petitioners amounted to what the Supreme Court had described as a "blinkered perception of stark reality" in the case of Kerala Hotel and Restaurant Association and others Vs. State of Kerala and others, . It was submitted that the classification being made by the appellant company was anything but reasonable and was just senseless deprivation of a particular class which did not enure to anybody's benefit. No proper reason had been disclosed in the two notices impugned in the writ petition for discontinuance of supply of Breeze Coke to the writ petitioners respondents, and in the absence thereof, the learned trial Judge had rightly quashed the same with the further direction to the appellant Company to invite tenders for sale of the said commodity. * "

22. We have carefully considered the submissions made on behalf of the respective parties and the decisions cited before us. It is now well-settled that the State and its agencies and instrumentalities can make a reasonable classification within the same class, having regard to the provisions of clause (6) of Article 19 of the Constitution, without offending the provisions of Articles 14 and 19(1)(g) of the Constitution. The said question was touched upon in the celebrated judgment delivered in Ramana Dayaram Shetty Vs. International Airport Authority of India and Others,

23. The aforesaid proposition fell for a closer and more detailed examination by the Supreme Court in the case of Kasturi Lal Lakshmi Reddy, Represented by its Partner Shri Kasturi Lal, Jammu and Others Vs. State of Jammu and Kashmir and Another, , wherein .the validity of the grant of a tapping contract in respect of resin to a private party without recourse to a public auction, was under challenge. While reiterating that every activity of the Government has a public

element in it and must, therefore, be informed with reason and would be liable to be tested for its validity on the touchstone of reasonableness and public interest, the Supreme Court observed that there may be an infinite variety of considerations which may have to be taken into account by the Government in formulating its policies and it is on a total evaluation of various considerations which weighed with the Government in taking a particular action, that the Court would have to decide whether the action of the Government is reasonable and in public interest. Referring to its earlier decisions in the case of *Ramana Dayaram Shetty v. International Airport Authority of India* (supra) and in *E.P. Royappa Vs. State of Tamil Nadu and Another*, and also in *Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another*, , the Supreme Court further observed that though the State is entitled to refuse to enter into relationship with anyone, yet if it does so, it cannot arbitrarily choose any person it likes for entering into such relationship and discriminate between people similarly circumstanced, but it must act in conformity with some standard or principle which answers the test of reasonableness and any departure from such standard would be invalid unless it can be justified on some rational and non-discriminatory ground.

24. In the light, of the aforesaid observations, the Supreme Court went on to uphold the decision of the Government of Jammu and Kashmir to grant tapping rights in respect of resin in a particular forest area to a private party without inviting tenders from other parties, and negated the contention of the appellant that the same constituted unreasonable restriction on their right to carry on tapping contract business under Article 19(1)(g) of the Constitution. In the facts of the case, the Supreme Court held that the tapping contract granted to the private party could not be held to be arbitrary merely because no other party was invited to compete for obtaining the said contract, as it was not a tapping contract simpliciter, but was intended to provide resources and other facilities for setting up the resin industry in the State which was unquestionably in the interest of the State and Public.

25. The principles enunciated in the aforesaid case were reiterated by the Supreme Court in the case of *Haji T.M. Hassan Rawther Vs. Kerala Financial Corporation*, and *State of M.P. and Others Vs. Nandlal Jaiswal and Others*, . Expressing sentiments similar to those made in *Kasturi Lal's* case, the Supreme Court held that the actions of the State and Public Authorities should not be suggestive of discrimination, bias, favouritism or nepotism. Ordinarily public property owned by the State or by any instrumentality of the State should be sold by public auction, but there may be situations necessitating departure from the rule. Such instances must, however, be justified by compelling reasons and not by mere convenience.

26. In the present case, we are faced with a somewhat similar situation, where the appellant Company purportedly in, the public , interest, took a decision to eliminate middlemen and traders in making allotment of Breeze Coke to certain

industries and actual users of the commodity. As will be apparent from the resolution adopted by the Board of Directors of the appellant Company at its meeting held on 30th August, 1990, a decision was taken to sell Breeze Coke only to Government parties, Mini Cement Plants and those other actual users who may be sponsored by Government Agencies/Directorates. The text of the resolution is as follows:--

"Item No. 2.5 : Note on Distributing Guidelines of Coke Breeze.

The Board decided that coke breeze should be sold only to Government parties, Mini Cement Plants and those other actual users who may be sponsored by Government Agencies/ Directorates. The Management may write a letter to Secretary, Commerce & Industries Department,. Government of West Bengal indicating the disposable quantity of coke breeze for actual users to be sponsored by West Bengal Government and parties therefore and requesting for issue of sponspr-ship certificates in favour of actual users, indicating quantity allocation against each, to be lifted from Burnpur Works by then,"

27. In the case of Kerala Hotel and Restaurant Association and others Vs. State of Kerala and others, cited by Mr. Chatterjee, the Supreme Court while considering the validity of certain provisions of the Kerala Finance Act, f988, relating to levy of sales tax on cooked food, on the ground of discrimination, observed as follows:--

(Paras 23, 24, 29)

"It is settled that classification founded on intelligible differentia is permitted provided the classification made has a rational nexus with the object sought to be achieved. In other words, those grouped together must possess a common characteristic justifying their inclusion in the group, but distinguishing them from those excluded; and performance of this exercise must bear a rational nexus with the reason for the exercise."

28. Much the same thing has been said in the case of Shashikant Laxman Kale v. Union of India, reported in : [1990]185ITR104(SC) , wherein it was held that the principles of valid classification are that those grouped together in one class must possess a common characteristic which distinguishes them from those excluded from the group and such intelligible differentia must have a nexus with the object sought to be achieved.

29. In this behalf, 1 may also refer to another recent decision of the Supreme Court in the case of Shri Sachidanand Pandey and Another Vs. The State of West Bengal and Others, , where the allotment of government land to a private company or lease for construction of a hotel without holding a public auction was in question. Upholding the action of the Government of West Bengal, the Supreme Court observed as follows at page 1133 :--

"On a consideration of the relevant cases cited at the bar the following propositions may be taken as well established : State-owned or public-owned

property is not to be dealt with at the absolute discretion of the executive. Certain precepts and principles have to be observed. Public interest is the paramount consideration. One of the methods of securing the public interest, when it is considered necessary to dispose of a property, is to see the property by public auction or by inviting tenders. Though that is the ordinary rule, it is not an invariable rule,. There may be situations where there are compelling reasons necessitating departure from the rule but then the reasons for the departure must be rational and should not be suggestive of discrimination. Appearance of public justice is as important as doing justice. Nothing should be done which gives an appearance of bias, jobbery or nepotism."

30. In my view, the appellant company was entitled to take the aforesaid decision in the public interest, and having regard to the provisions of Article 19(6) of the Constitution. Such a decision was not meant to benefit any particular class or individual, but to regulate the distribution of Breeze Coke, which is an essential commodity, among the actual users of the said commodity, subject to sponsorship by the State Government. Owing to scarcity of supply of Soft Coke and the increased demand for Breeze Coke from the relatively higher priority consumers, such a decision is justified and cannot be said to be arbitrary so as to offend the provisions of Articles 14 and 19(1)(g) of the Constitution. The decision of the Appellant Company to discontinue supply to the depot holders (traders) is based on sound reasoning and is in the public interest consequent upon the increase in demand for Breeze Coke by the Public Sector Undertakings and industries and actual users which belong to a higher priority group than the depot holders. The Court has to apply the said tests in the context of the existing needs and exigencies to come to a decision regarding reasonableness of the classification. In my view, the restrictions imposed answer the tests laid down by Article 14 of the Constitution and does not transgress the limits imposed thereunder.

31. Moreover, the actual users of Breeze Coke and the-traders cannot be bracketed in the same class and I am unable to accept the submissions of Mr. Chatterjee on such score. While the traders undoubtedly have a right to engage in any trade or business, such right is subject to any reasonable restriction that may be imposed under Article 19(6) of the Constitution.

32. The decision of the Supreme Court referred to by Mr. Chatterjee in the case of Narendra Kumar and Others Vs. The Union of India (UOI) and Others, , as also the other decisions, are not of such help to the writ petitioners respondents. The sentiments expressed in the said decisions are in no way contrary to the views expressed in the decisions cited on behalf of the appellant Company and only a note of caution has been sounded as to the limit to which a restriction that seeks to prohibit the exercise of a fundamental right, can be pushed. When a restriction reaches the stage of prohibition, the Court has to take special care that the test of reasonableness is satisfied. The greater the restriction, the more the need for strict scrutiny by the Court taking into account the nature of the evil

that was being sought to be remedied. The Supreme Court observed that the Court would have to consider the relation of the harm caused to the individual citizens to the beneficial effect reasonably expected to result to the general public as a result of the restriction sought to be imposed.

33. In the writ petition the writ petitioners have made out a case that apart from certain industries, Breeze Coke is also used for domestic consumption and the writ petitioners are the channelising agents for such domestic consumption under licences granted to them under the 1965 Licensing Order. The learned trial Judge was obviously impressed by such contention and he proceeded on the basis that as a result of adoption of the new policy, the domestic consumers would suffer.

34. The resolution adopted by the appellant Company on 30th August, 1990, however, conveys a different impression, but the said resolution was not before the learned Trial Judge and it is only pursuant to our directions that the same has been brought on the records of the case. As the said resolution forms the very basis of the impugned notices, the same should have been disclosed by the appellant Company before the learned Trial Judge. It was, therefore, necessary for us in the facts and circumstances of the case, to give the said direction, as in the absence of such resolution it would have been difficult for us to examine the reasonableness or otherwise of the decision of the appellant Company in accordance with the tests laid down by Article 14 of the Constitution. Moreover, the said resolution has a direct bearing on the impugned letter and notice forming the subject-matter of the writ petition and establishes the nexus with the object sought to be achieved by such resolution.

35. Mr. Chatterjee's submissions that no reason or objective has been provided in the impugned resolution, is also unacceptable, as the said resolution appears to have been taken by the Board of Directors of the appellant Company on 30th August 1990, after detailed deliberations at an earlier meeting held on 16th July, 1990. In the meeting held on 16th July, 1990, the view expressed by the Secretary, Department of Food and Supplies, Government of West Bengal regarding shortfall in supplies to depot holders in West Bengal, was considered and it was recorded that a reply explaining the reason for shortfall of supply to depot holders had been given. From the records of the said meeting it appears that the role of depot holders as channelising agents for briquette manufacturers was also discussed. It is interesting to note that despite the letter written by the Secretary, Department of Food and Supplies, the State of West Bengal did not appear before us to contest the decision taken by the appellant company, giving rise to the presumption that after receiving the reply from the appellant Company, the State Government was satisfied that the said decision was reasonable.

36. However, I am constrained to hold that the letter and the notice impugned in the writ petition have not been issued in conformity with the aforesaid resolution dated 30th August, 1990. While the said resolution makes it clear that the Board had decided to sell Breeze Coke only to Government parties, Mini Cement Plants

and those actual users who may be sponsored by Government Agencies/ Directorates, in the letter dated 26th November, 1990, written on behalf of the ,appellant Company to the .General Secretary of the writ petitioner respondent No. 176, it was mentioned that decisions had been taken to give priority to "industries, i.e., Actual users". Again in the notice dated 22nd February, 1991, applications were invited from "all Mini Cement Plants/ Industries/ Actual, users of Breeze Coke", subjects, of course, to production of sponsorship from appropriate Government Agencies and Bodies.

37. Both in the impugned letter and notice, the expression "industries" has been included in general terms, although, the said expression does not find place in the resolution dated 30th August, 1990. On the other hand, the expression "Government parties" mentioned in the said resolution, has been completely omitted from the said letter and notice. Since the impugned letter and notice originate from the resolution itself, any deviation from the said resolution is liable to be struck down.

38. The end result is that, although, the appeal succeeds and we uphold the resolution adopted by the appellant company on 30th August, 1990, the impugned letter dated 26th November, 1990, and the impugned notice dated 22nd February, 1991, being Annexure "J" and "P" to the Writ petition, have to be quashed. The order of the learned Trial Judge dated 13th August, 1991, is set aside and the impugned letter and notice, referred to above, are hereby quashed. The respondents are directed to act strictly in terms of the aforesaid resolution dated 30th August, 1990, unless the same is subsequently altered or modified.

39. Before I part with this order, I would like to add that in the event Breeze Coke of , "0" to "5" millimeters grade is not utilised by those mentioned in the resolution of 30th August, 1990, as has been contended on behalf of the writ petitioners respondents, the concerned authorities may consider whether the same could be allotted to the writ petitioners respondents.

The appeal is thus disposed of.

There will be no order as to costs.

N.P. SINGH, C.J.

40. I agree.

41. Order accordingly.