

(2004) 03 AP CK 0070

In the Andhra Pradesh High Court

Case No : WA No's. 1039 of 2002 and 1594 of 2003 and Batch

Irrigation Development Employees Association and Others

APPELLANT

Vs

Government of A.P. and Others

RESPONDENT

Date of Decision : 16-03-2004

Acts Referred:

Companies Act, 1956 — Section 29(1), 291, 291(1), 36(1)
Constitution of India, 1950 — Article 14, 16(4), 162, 226

Citation : (2004) 2 ALD 599 : (2004) 3 ALT 17 : (2004) 2 LLJ 581 : (2004) 55 SCL 459

Hon'ble Judges : K.C. Bhanu, J;B. Sudershan Reddy, J

Bench : Division Bench

Advocate : Vedula Venkataramana, for the Appellant; Ramesh Ranganathan, A.A.G., for the Respondent

Final Decision : Dismissed

Judgement

B. Sudershan Reddy, J.—Since in all these writ appeals and writ petitions, the subject-matter and the questions that arise for consideration are inter-related, they may be disposed of by this common judgment.

WA No. 1039 of 2002

2. The unsuccessful writ petitioners are the appellants in this writ appeal preferred against the order passed in W.P. No. 24647 of 2001 dated 4-6-2002 holding that G.O. Ms. No. 50, Public Enterprises (II) Department, dated 15-11-2001, does not suffer from any illegality or legal infirmity.

3. The appellants herein filed the writ petition invoking the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India, with a prayer to issue a writ in the nature of mandamus declaring G.O. Ms. No. 50, Public Enterprises (II) Department, dated 15-11-2001, as illegal and void.

4. The appellants represent the employees working in various categories in the A.P. State Irrigation Development Corporation Limited (for short "the

Corporation"). The Corporation is one of the State Level Public Enterprises and it is a wholly owned A.P. Government Company, registered under the provisions of the Companies Act, 1956. The primary objects of the Corporation are to survey, investigate, construct, execute and carry-out schemes and works of all kinds for the exploitation of irrigation potential in the State and for maximum utilisation of available water resources, to create irrigation facilities to the upland areas through lift irrigation and ground water schemes. The paid up share capital of the Corporation was at Rs. 117.22 crores as on 31-3-2001. The company is being managed by its Board of Directors. That almost all the shares are held by the State Government except Rs. 95,00,000/- of share money held by the Government of India. The State Government is the only stakeholder in the company. Article 90 of the Articles of Association of the Company enables the Government to issue directions and instructions from time to time. Article 90 reads thus:

"Notwithstanding anything contained in any of these articles, the Government may from time to time issue such directives or instructions as they may think fit in regard to the finances and the conduct of the business and affairs of the Company and the Directors shall duly comply with and give effect to such Directives or instructions.

In particular the Government will have the following powers. To call any information, approve plans, Budgets, foreign collaborations, new business and activity, new projects over and above the limits specified by the Government. Further the following powers/acts are vested only in the Government to approve the staffing pattern, rules for recruitment, promotions, pay scales, allowances and all other payments."

5. The Government of Andhra Pradesh having decided to review the performance of State Level Public Enterprises and in order to initiate necessary corrective measures to improve their performance in the light of the changed policy perspectives constituted a Committee with Sri K. Subrahmanyam, IAS (Retired), as Chairman. The Committee examined the details of the working of State Level Public Enterprises including the working of the 3rd respondent Corporation and submitted its recommendations. The Government constituted a Cabinet Sub-Committee to examine in detail the recommendations of the Committee after duly obtaining the views of the administrative departments concerned. The Cabinet Sub-Committee having considered the issue made its own recommendations in respect of the 3rd respondent Corporation, The full details thereof are not required to be noticed.

6. The Corporation originally had 2541 employees. In the light of the recommendations of the Subrahmanyam Committee and in order to implement the recommendations of the Subrahmanyam Committee, a decision has been taken to downsize the cadre strength. The Corporation has implemented Voluntary Retirement Scheme (for short "VR Scheme") in three phases, the options for which were exercised by 1593 employees, leaving a balance of 948

employees working in the Corporation.

7. The Government once again reviewed the performance of the 3rd respondent Corporation in August, 1999. It was found that there is a need to study the staff strength with reference to the changed organisation structure consequent on implementation of VR Scheme. The Transaction and Financial Adviser, Implementation Secretariat of the Public Enterprises Department, conducted the study, submitted a report and recommended that the cadre strength of the 3rd respondent Corporation should be fixed as 404 employees. The matter was placed before the Cabinet Sub-Committee on Public Sector Undertakings and the Cabinet Sub-Committee in its meeting held on 22-9-2001, having considered the manpower study of the Corporation concurred with the recommendation that the cadre strength of the 3rd respondent corporation ought to be fixed as 404 employees. Based on the recommendations of the Cabinet Sub-Committee, the Government vide G.O. Ms. No. 50 dated 15-11-2001 determined and accordingly ordered the cadre strength of the Corporation as 404 employees as detailed in the annexure appended to the said G.O. The appellants challenged the same in the writ petition unsuccessfully.

8. Sri V. Venkataramana, learned Counsel, appearing on behalf of the appellants inter alia contended that the Government of Andhra Pradesh has no power or authority to issue the impugned G.O. downsizing the cadre strength to the level of 404 employees. The decision, if any, in this regard, if at all, could have been taken only by the Corporation. The Corporation being a juristic person is entitled to fix the cadre strength of the staff and staffing pattern. Being the employer, such decision to be taken is in the exclusive domain of the Corporation. Article 90 of the Memorandum of Articles of Association does not empower the Government to issue any such directions downsizing the cadre strength of the staff in the Corporation. The decision of the Government amounts to interference in the affairs of the Corporation. The learned Counsel alternatively contended that there is no valid and tangible material available on record in support of the decision taken by the Government. No relevant factors went into consideration and therefore, the decision making process is vitiated. The learned Counsel proceeded to contend that even if the decision of the Government is to be recorded, as a policy decision, the same is liable to be tested on the touchstone of the Article 14 of the Constitution of India. A decision based on irrelevant consideration is an arbitrary decision and liable to be struck down as violative of Article 14 of the Constitution of India.

9. Sri Ramesh Ranganathan, learned Additional Advocate-General, contended that reduction of cadre strength and consequent abolition of posts are matters of policy and the High Court in exercise of the power of judicial review cannot embark upon an enquiry as to whether the particular policy is wise or whether a public policy can be evolved, unless such policy decisions violate Articles 14 and 16 of the Constitution of India. The learned Additional Advocate-General contended that the reasons are clearly and specifically stated and are evident

from the impugned G.O. itself. That on account of the accumulative loss, there was no other option except to downsize the cadre strength of the staff. The power exercised by the Government under Article 90 of the Memorandum of Articles of Association, is as the shareholder of the Corporation and not in exercise of its executive power under Article 162 of the Constitution of India. Article 90 of the Memorandum of Articles of Association of the Corporation empowers the Government to approve the staffing pattern of the Corporation. In any event, the proposals for downsizing of the cadre strength emanated from the Corporation itself and the Corporation and members of the appellants' association were actively involved before the impugned G.O. was issued.

10. We have elaborately heard the learned Counsel appearing on behalf of the appellants as well as the learned Additional Advocate-General representing the State as well as the Corporation. We have given our earnest and anxious consideration to the rival submissions made during the course of hearing of this batch of appeals.

11. In order to consider the submissions, it is just and necessary to notice a few facts about which there is no dispute.

12. The impugned G.O. dated 15-11-2001 itself reveals that the Corporation has been incurring losses continuously over the years and that the accumulated loss as on 31-3-2001 stood at Rs. 27 crores, as on 31-3- 2002 it was Rs. 38 crores and as on 31-3- 2003 it was Rs. 42.62 crores.

13. The accumulated losses of the Corporation are on account of several factors and it would not be possible for this Court to make a detailed enquiry notwithstanding the several accusations made by the appellants against the respondent Corporation holding it exclusively responsible for the losses incurred by the Corporation. Each blamed the other.

14. There does not appear to be much dispute that the Corporation used to execute its schemes with the financial assistance provided by the Government of A. P. and institutional finance at a debt equity ratio of 1:3. The Government of Andhra Pradesh used to release the share capital every year and in addition thereto, the Corporation used to borrow loans from Nationalised Banks to meet its financial requirements. The NABARD refinanced the said loans borrowed by the Corporation from the commercial banks. The refinance facility by NABARD was stopped during 1988 and thereafter, the Corporation had to borrow loans directly from the commercial banks at RBI, specified interest rates. Due to high incidence of interest, the 3rd respondent stopped borrowing loans and started exclusively depending on the Government and District Agencies for funds to execute its schemes. The fact remains that the Corporation, now is, totally dependant on budgetary support from the Government for finance to execute the sanctioned schemes. The details of the budget releases based on the works allotted by the Government to the Corporation during the past three years are evident from the impugned G.O. itself.

15. There is also no dispute that the Corporation earlier used to execute and maintain lift irrigation schemes, bore-wells and tube-wells. After closure of the A.P. Wells scheme, funded by Netherlands, there has been a drastic reduction in execution and maintenance of bore-wells and tube-wells by the Corporation. In the meanwhile, the maintenance work of lift irrigations schemes was also handed-over to beneficiary committees viz., Associations of Ayacutdars. The Corporation, as of now, executes only lift irrigation schemes through different agencies and earns centage charges @ 15% on the works so executed.

16. In the light of background facts, we now proceed to consider the submissions made before us.

Whether the Government has no power or authority to issue the impugned G.O. ?

17. There cannot be any dispute that the Corporation, a Government company registered under the Companies Act, 1956, has its own legal entity, distinct and separate from the Government. The management of the affairs of the company and its day-to-day affairs vest with the Board of Management. The Board of Directors of the Corporation determined staffing pattern at their 43rd meeting held on 29-9-1990. The staffing pattern was under continuous review from time to time. The review was based upon the requirement of staff to be need based to undertake economically viable projects. The Corporation sought for the Government's approval, from time to time to float V.R. Scheme to discharge surplus manpower. The Corporation itself submitted proposals on 6-1-1991 to further downsize the cadre strength of the Corporation so as to make the organisation economically viable and also for its survival. At one stage, the Government has proposed the cadre strength of respondent Corporation at 281 employees and with the efforts of the management of the Corporation, it was subsequently increased to 404 employees. We have adverted to these facts in order to highlight that the Board of Directors of the Corporation are actively involved in the decision-making process and the proposals at every point of time emanated from the Board of the Corporation itself.

18. That even under Article 90 of the Memorandum of Articles of Association, the Government is entrusted with powers to approve the staffing pattern, rules for recruitment, promotions, pay scales, allowances and other payments etc. The Government is entitled to issue such directives or instructions as it may think in regard to finances and the conduct of the businesses and affairs of the company and all such directions issued are required to be complied with by the Board of Directors. The width and amplitude of the power of the Government under Article 90 of the Memorandum of Articles of Association is wide enough which includes the power to issue directions with regard to staffing pattern. The power to issue directions or instructions in regard to the affairs of the company is wide enough to include the power to issue directions to fix the cadre strength. The contention that under Article 90 of the Memorandum of Articles of Association, the Government is entitled only to approve the proposals regarding staffing pattern itself but cannot issue directions is totally untenable. The general powers of the

Board of Directors of a company u/s 29(1) of the Companies Act, 1956, are subject to the provisions of the Act.

19. Section 36(1) of the Companies Act provides that the memorandum and articles shall, when registered, bind the company and the members thereof to the same extent as if they respectively had been signed by the company and by each member, and contained covenants on its and his part to observe all the provisions of the memorandum and of the articles. A reading of Sections 36(1) and 291(1) of the Companies Act, makes it clear that the Board of Directors of a Company are also bound to act in accordance with the memorandum and articles. Therefore, the contention that Article 90 of the Articles of Association contravenes Section 291 of the Companies Act is totally untenable and unsustainable.

20. Be it as it may, the public law remedy available under Article 226 of the Constitution of India cannot be invoked to resolve the issues regarding the validity of the Articles of Association of a Company, or exercise of powers prescribed therein, since the Articles of Association, lacks the byelaws of a Co-operative Society and do not have the force of law. The doctrine of ultra vires has no application to test the validity of an action under the Memorandum and Articles of Association of a company. The Articles of Association merely govern the internal management, business or administration of a company. They may be binding between the persons affected by them but they do not have the force of statute. The Articles of Association of a company incorporated under the Companies Act have never been held to have the force of law. (See: Co-operative Central Bank Ltd. and Others Vs. Additional Industrial Tribunal and Others,).

21. The power exercised by the Government in the instant case is as the shareholder of the Corporation and not in exercise of its power under Article 162 of the Constitution of India. In that view of the matter, it would be impermissible to apply, the principles of Administrative Law in order to test the validity of the Governmental action in the instant case. Article 14 of the Constitution of India cannot be construed as a charter of judicial review of State actions and to call upon the State to account for its action in its manifold activities by stating reasons for such actions (See: Life Insurance Corporation of India Vs. Escorts Ltd. and Others,). The principles of Administrative law, such as against surrender of discretion and abdication of duty would apply in case of exercise of power conferred by a statute or rules made thereunder or instruments, which are statutory in their nature. The direction issued, if any, by the Government in its capacity as a shareholder that the cadre strength of the Corporation to be fixed at 404 employees and the compliance thereof by the Board of Directors cannot be set aside either by applying the Doctrine of ultra vires or rule against surrender of discretion and abdication of duty.

22. This debate need not detain us any further, since there is enough material available on record revealing that the proposals emanated from the Board of

Directors from time to time to downsize the cadre strength of the Corporation and the Government expressing its approval in exercise of its function under Article 90 of the Memorandum of Articles of Association. The continuous interaction between the Board of Directors of the Corporation and the Government is evident from the record. That apart, the Board of Directors of the Corporation in its 132nd Board meeting held on 3-12-2001 resolved to adopt the impugned G.O. The Board also resolved to address the Government and seek permission to float VR Scheme and also to request the Government to provide necessary advances before floating VR Scheme to call back all its employees on deputation and extraordinary leave.

23. This is a case where the decision and the reasons for the decision can only be gathered by looking at the entire course of events stretching over the period from the initiation of the proposal to reduce the staff as recommended for restructuring by Subrahmanyam Committee to the taking of the final decision impugned in the writ petition. The case on hand is the one where neither a statutory function nor a statutory provision is involved. The issue relating to restructuring and the decision, no doubt, bears public character but which can only be settled after protractive decision, clarification and consultation with all interested persons.

24. Therefore, we are not inclined to interfere with the impugned G.O. by applying the Doctrine of Ultra vires nor applying the rule against surrender or abdication of duty. The contention is accordingly rejected.

25. The decision in Rakesh Ranjan Verma and others Vs. State of Biha and others, , upon which reliance has been placed by the learned Counsel for the appellants in support of the contention that the Government could give direction only on policy matters and not on day-to-day matters of administration such as determination of cadre strength, in our considered opinion, is not applicable to the fact situation on hand. In Rakesh Ranjan's case (supra), the provisions of Section 78-A of the Electricity Supply Act fell for interpretation. Section 78-A provides that in discharge of its functions, the Electricity Board shall be guided by such directions on questions of policy as may be issued by the Government from time to time. Article 90 of the Articles of Association of the Corporation, which empowers the Government to approve the staffing pattern of the Corporation, is much wider in its scope and amplitude. We have already dealt with the same. Rakesh Ranjan's case (supra) has no application to the case on hand.

26. Similarly, the decision of this Court in Poddar Projects Ltd. (Multi Steels) Vs. The A.P.S.E. Board and Others, , has also no application to the instant case in which it was held that the directions issued by the State Government u/s 78-A of the Electricity Supply Act, are not intended to regulate the contractual relationship between the Electricity Board and the consumers of electric energy supplied by it. The State Government is empowered only to give directions on questions of policy in general and not in relation to any particular consumer.

Policy decision and abolition of posts:

27. It is required to appreciate that reduction of cadre strength had consequently resulted in abolition of posts. We have already noticed that downsizing of the cadre strength in the Corporation is a part of the restructuring process of State Level Public Enterprises in order to improve their performance, minimize public liability and thereby promote and advance public interest. There cannot be any difficulty to hold that the decision of the Government as well as the Corporation is in the nature of policy decision. The policy decision is traceable to the action plan of public enterprises reforms under the A.P. Economic Reforms Project.

28. The question that falls for consideration is whether the policy decision resulting in abolition of certain posts suffers from any constitutional vice ?

29. The respondent Corporation is an instrumentality of the State within the meaning of Article 12 of the Constitution of India. Its decisions are liable to be tested on the touchstone of Articles 14 and 16 of the Constitution of India i.e., the policy decision taken in violation of Part - III of the Constitution of India. This Court will be well within its limits to declare the policy as unconstitutional. But it is clearly well settled that this Court in exercise of the power of jurisdictional review cannot embark upon an enquiry as to whether a particular policy is vice or whether a better public policy can be evolved. The wisdom and advisability of policy decisions, which are not in violation of Part - III of the Constitution of India are not amenable to judicial review. In *BALCO Employees Union (Regd.) Vs. Union of India and Others*, , the Supreme Court observed:

"In a democracy, it is the prerogative of each elected Government to follow its own policy. Often a change in Government may result in the shift in focus or change in economic policies. Any such change may result in adversely affecting some vested interests. Unless any illegality is committed in the execution of the policy or the same is contrary to law or mala fide, a decision bringing about change cannot per se be interfered with by the Court."

30. The right of the State or of its instrumentality to change its policy decisions from time to time under the changing circumstances cannot be disputed and it is an integral part of democratic process. This Court in exercise of its jurisdiction under Article 226 of the Constitution of India, while considering the validity of the Governmental policy cannot weigh the pros and cons of the policy or to scrutinise it and test the degree of its beneficial or equitable disposition for the purpose of varying, modifying or annulling it, based on even sound reasoning. One of the inputs in formulating and reformulating the Governmental policies may be availability or lack of resources. Since the purse of the State is not under the control of the Court, it will not transgress into the field of policy decision. It would be unnecessary to burden this judgment with various authoritative pronouncements of the Supreme Court delineating the parameters of judicial review in evaluating the policy decisions of the Government. (See: *State of Punjab and Others Vs. Ram Lubhaya Bagga Etc. Etc.*, , *Narmada Bachao Andolan*

Vs. Union of India and Others, and Union of India and others Vs. Tejram Parashramji Bombhate and others,).

31. We have noticed the sequence of events ultimately that lead to the impugned decision of the Government as well as the Corporation. The impugned G.O. itself provides details of budgetary allocations on the works allotted to them, for the past 60 years. It was estimated, on the basis of previous six years figures that the Corporation would be able to obtain and execute the works worth only Rs. 65 crores and not beyond that. It was under those circumstances, the decision to downsize the cadre strength, for the breakeven point of execution of works of Rs. 65 crores at the level of 404 employees was fixed. It is to be noted that there has been a drastic reduction in execution and maintenance of tube-wells and bore-wells by the Corporation. That on account of high interest rates, the Corporation stopped borrowing loans and it is now totally depending on budgetary support from the Government for finance to execute the sanctioned schemes. That availability of large number of administrative works on hand is a matter of no consequence. Unless budgetary allocations are made and budgetary releases made therefrom and in the absence of budgetary release the sanctioned administration works cannot be executed for lack of funds. These factors that were taken into consideration by the respondents in formulating its policy decision to downsize the cadre strength cannot be characterised as arbitrary. The decision is neither arbitrary nor in violation of Part - III of the Constitution of India, notwithstanding our reservations about the policy, we cannot interfere with the same.

Principles of Natural Justice:

32. It is very well settled that reduction of cadre strength and consequent abolition of posts are matters of policy and principles of natural justice have no application at all in such matters of policy.

33. In *M. Ramanatha Pillai Vs. The State of Kerala and Another*, , the Supreme Court observed:

"The power to create or abolish a post is not related to the Doctrine of Pleasure. It is a matter of Government policy over sovereign Government has this power in the interest and necessity of internal administration. The creation or abolition of post is dictated by policy decision, exigencies of circumstances and administrative necessity. The creation, the continuance and the abolition of post are all decided by the Government in the interest of administration and general publicthe abolition of post may have the consequence of termination of service of a Government Servant. Such termination is not dismissal or removal within the meaning of Article 311 of the Constitution of India. The opportunity of showing cause against the proposed penalty of dismissal or removal does not therefore arise in the case of abolition of post. The abolition of post is not a personal penalty against the Government Servant."

34. In *Balco Employees' Union (supra)*, the Supreme Court observed:

"Even though the workers may have interest in the manner in which the Company is conducting its business, inasmuch as its policy decision may have an impact on the workers' rights, nevertheless it is an incidence of service for an employee to accept a decision of the employer which has been honestly taken and which is not contrary to law. Even a Government servant, having the protection of not only Articles 14 and 16 of the Constitution but also of Article 311, has no absolute right to remain in service. For example, apart from cases of disciplinary action, the services of Government servants can be terminated if posts are abolished, If such employee cannot make a grievance based on Part III of the Constitution or Article 311 then it cannot stand to reason that like the petitioners, non-Government employees working in a company which by reason of judicial pronouncement may be regarded as a State for the purpose of Part III of the Constitution, can claim a superior or a better right than a Government servant and impugn its change of status. In taking of a policy decision in economic matters at length, the principles of natural justice have no role to play. While it is expected of a responsible employer to take all aspects into consideration including welfare of the labour before taking any policy decision that, by itself, will not entitle the employees to demand a right of hearing or consultation prior to the taking of the decision." (Emphasis is of ours)

35. The principle is so well settled and bears no repetition,

36. Be that as it may, the decision of the Government as well as the Corporation was not taken unilaterally without any process of consultation. More than one authority is involved in the consultation process. The authorities have discussed various aspects with the Corporation and the service associations separately. The service associations representing the employees made written representations requesting not to further downsize the cadre strength. It is not, as if, any viable alternative proposals emanated from the associations and the same has not been taken into consideration before formulating the impugned policy decision. In the circumstances, we find no merit in the submission made by the learned Counsel that the policy decision is vitiated on account of non-compliance with the principles of natural justice.

Review of policy from time to time:

37. Sri S. Ramachander Rao, learned Senior Counsel invited our attention to the statements made in the earlier Governmental orders regarding the finality of VR Scheme and contended that having made such a statement as to the finality of VR Scheme, it was not open to the Government to review its earlier policy and once again downsize the sanctioned cadre strength further.

38. We find no merit in the submission. Such statements made in the G.Os. or before the Commissioner of Labour would not disentitle the Government and the Corporation from reviewing their earlier policy. The policy decisions are not static and they keep on evolving from time to time depending upon the exigencies of the situation. The reasons are clearly evident from the impugned G.O. itself as to

what are those circumstances that necessitated the Government to review its earlier policy and further downsize the sanctioned strength of the employees of the Corporation. We have already adverted to each one of those reasons stated and it is unnecessary to reiterate the same.

39. Reliance also has been placed on letters addressed by the Chairman of the Corporation to the Honourable Chief Minister in October, 2003, subsequent to the impugned judgment on 4-6-2002 and 25-6-2003 in support of the contention that on account of the availability of the work and administrative sanction, there is a need of increasing the cadre strength above 404 employees. We cannot place any reliance upon the letters stated to have been addressed by the Chairman of the Corporation to the Honourable Chief Minister.

40. It is evident from the averments made in the counter-affidavit that even after the impugned G.O. was issued, the actual budgetary allocations and budgetary releases for subsequent years show that the budgetary releases are far less than the breakeven point of Rs. 65 crores, and the Corporation is not able to earn sufficient centage charges to meet its establishment costs even at the downsize cadre strength of 404 employees.

41. After the impugned G.O. dated 15-11-2001 was issued, the actual budgetary allocations and budgetary releases for subsequent releases is as under:

S. No. Year Budget Releases/Allotted (Rs. in Crores)

1. 2001-02 51.08/70.82

2. 2002-03 23.25/3210

3. 2003-04 35.62/52.550

Upto end of Feb. 2004

42. For the aforesaid reasons, we do not find any merit in the contentions advanced by the learned Counsel.

43. We also do not find any merit in the contention that relevant factors have not been taken into consideration while formulating the policy to downsize the cadre strength. The averments made in the counter-affidavit filed by the State as well as the Corporation clearly reveal that relevant factors alone have been taken into consideration. The availability of work and the administrative sanction according to the learned Counsel for the appellants are two important factors that were never taken into consideration by the respondents in formulating their policy to downsize the cadre strength. It needs no repetition that availability of work and administrative sanction for those works is of no consequence unless budgetary allocations are made and budgetary releases made therefrom. The said sanctioned works cannot be executed for lack of funds. We cannot ignore the fact that the Corporation having stopped borrowing loans is now totally depending on budgetary support from the Government for finance to execute the sanctioned schemes.

Whether a writ of mandamus lies compelling the state to provide more funds by way of allocations ?

44. The appellants in effect seek the intervention of this Court to command the State Legislature to provide more funds by way of budgetary allocations releases. Under Article 203(2) of the Constitution of India, estimates are required to be submitted in the form of demands for grants, in the Legislative Assembly, which has the power to assent, or to refuse to assent to any such demand. That after grants under Article 203 of the Constitution of India, have been made by the Assembly, a Bill is required to be introduced in the Legislative Assembly under Article 204(1) of the Constitution of India, to provide for appropriation out of the Consolidated Fund of the State and on the said Bill being passed it becomes the "Appropriations Act". Article 204(3) of the Constitution of India prohibits withdrawal of money from the Consolidated Fund of the State except under appropriation made by law passed in accordance with the provisions of Article 204. Thus budgetary allocation, made under the Appropriation Act, is law made by the State Legislature and cannot be deviated from. The budgetary releases from out of the allocations made under the Appropriation Act are once again dependent on several factors, such as, actual receipt of estimated revenue, expenditure required to be incurred for certain unforeseen contingencies etc., These are also once again placed for approval of the Legislature and on being passed becomes law as "Appropriation Act-II." Thus, both the budgetary allocations and budgetary releases are in effect to the laws made by the State Legislature.

45. It is very well settled that this Court in exercise of the power under Article 226 of the Constitution of India, cannot issue a writ of mandamus to make law.

46. In *State of Himachal Pradesh and Another Vs. Umed Ram Sharma and Others*, , the Supreme Court held:

"..... that total sanction of bill for a project is within the domain of the legislature and the executive has no power to exceed the total sanction without the consent or assent of the legislature and the Court cannot impinge upon that field of legislature. The executive, however, on the appreciation of the priorities can determine the manner of priorities to be presented to the legislature. The Court cannot also, in our opinion, impinge upon the judgment of the executives as to the priorities. (Emphasis is of ours)".

47. Sri Nuty Ram Mohan Rao, learned Counsel for the appellants, contended that the issues that arise for consideration in this case are not to be looked from the angle of profit and loss incurred by the Corporation while discharging its functions conferred in public interest. Public interest is the paramount consideration and the activity of providing irrigation infrastructural facilities undertaken by the Corporation must be allowed to carry on for which purposes the State is bound to provide adequate resources. The contention was, if, those activities earlier undertaken by the Corporation are allowed to go on, there would

not be any need to downsize the cadre strength. We find it difficult to accept the submissions made by the learned Counsel for the appellant. It is true, the Corporation has been established to cater to certain functions of the State which are in larger public interest as providing irrigation infrastructural facilities is undoubtedly in larger public interest but it is subject to availability of financial resources and the priorities in which the legislature, in its wisdom, decides to allocate the funds. It is for the Government to decide as to how best it has to utilise the available resources at its command. We in exercise of our jurisdiction under Article 226 of the Constitution of India, cannot compel the State to alter its priorities and utilise the available resources either for a specified public purpose or vary or modify, the priorities chosen by the State. The argument is attractive but does not stand scrutiny.

48. For the aforesaid reasons we are not persuaded to interfere with the well considered judgment, of the learned Single Judge.

49. The downsizing of the cadre strength that had resulted in abolition of certain posts does not suffer from any constitutional infirmities. The decision is not violative of Articles 14 and 16 of the Constitution of India. We accordingly reject the contentions raised in this regard. G.O. Ms. No. 50 dated 15-11-2001 is accordingly upheld.

Writ Appeal No. 1594 of 2003 and Batch

50. In this batch of cases, the appellants challenge the action of the Corporation in identifying surplus employees and calling upon those identified surplus employees to exercise their option for V.R. Scheme. The circular dated 7-9-2002 and the notice dated 7-9-2002 issued by the Corporation are impugned on various grounds. Both the proceedings have been issued consequent upon the Government orders vide G.O. Ms. No. 50 dated 15-11-2001 fixing the cadre strength of the Corporation at 404 employees. Be it noted that the said G.O. having been adopted by the Corporation decided itself to implement the same. That after the Government accorded approval to float the V.R. Scheme to discharge the manpower, the entire matter has been placed once again before the Board on its 138th meeting held on 8th September, 2002 and the Board has decided to float cadre-based V.R. Scheme to surplus identified employees. The scheme is known as "APSIDC Employees Voluntary Retirement Scheme - 2002, Phase -V.d" for identified surplus employees. As is evident from the impugned circular dated 7-9-2002 the objective of the scheme is;

- (a) to improve the performance of the Corporation,
- (b) to achieve the optimum level of manpower in the Corporation with the desirable average age mix so as to cope up with the changing needs of the society and the organisation,
- (c) to provide for necessary adjustment in the manpower through redeployment so that over all levels of skills and productivity are improved,

(d) to compensate such manpower as may be rendered surplus in restructuring or other exercise taken up by the organisation.

51. The scheme came into force from 9-9-2002 and the applications received on or after the said date but on or before 30-9-2002 alone were to be considered for the financial package notified.

52. On the same day, the Corporation issued notice dated 7-9-2002 to all of those employees who have become surplus duly informing them that they were entitled to avail the V.R. Scheme opportunity as per the scheme notified from 9-9-2002 to 30-9-2002 with a cut-off date as 31-10-2002. They were put on further notice that in case one does not wish to avail the opportunity, the Corporation will be constrained to take necessary steps to discharge the surplus employees in accordance with the regulations in force. These proceedings were impugned in the writ petitions.

Gist of submissions:

53. The main contention advanced by the learned Counsel appearing on behalf of the appellants relates to the identification of the appellants as surplus staff.

54. Sri A. Suryanarayana Murthy, learned Counsel appearing on behalf of some of the appellants lead the batch and made elaborate submissions attacking the impugned decision of the Corporation. He contended that the procedure adopted for identification of the appellants as surplus is totally arbitrary and unreasonable as no discernable criteria has been adopted by the Corporation in this regard. The unilateral decision of the Corporation without any prior notice and hearing to the effected employees is liable to be set aside. The learned Counsel further contended that the identification of surplus staff must be based on the principle of "stepping down". If such principle is applied, the employee who ranks last in the cadre in which he is presently working, will become the senior most in the cadre to which he will be rolled down and thus the Corporation would be in a position to retain senior employees with rich experience. The learned Counsel further contended that there is no rationale behind the classification of the employees into surplus and non-surplus and therefore the classification is not a valid classification. The learned Counsel further submitted that the Corporation ought to have first invited such of those employees of the work charged establishment, who continued to work in the provincial establishment, as surplus.

55. Sri Nuty Ram Mohan Rao, learned Counsel submitted that the identification of the appellants as surplus is unscientific since it is not based on any material except the report of the one-man committee. He reiterated the submission made by Sri A. Swyanarayana Murthy that the Corporation ought to have applied the principle of "roll back" or "stepping down". Had the Corporation followed such rule, the appellants would not have been identified as surplus. The learned Counsel further contended that the Corporation should have applied the reservation roster in the reverse order for identification of surplus employees.

56. Sri S. Laxma Reddy, learned Counsel for the appellants contended that the right to life includes right to livelihood. The Corporation instead of identifying the appellants as surplus ought to have exploited alternative avenues for making the Corporation viable in order to retain the employees who are now found surplus. The action of the Corporation resulted in infringement of fundamental rights guaranteed under Article 21 of the Constitution of India.

57. Sri V.R.S. Anjaneyulu, learned Counsel, submitted that the method and manner in which the employees have to be identified has not been spelt out and there are no guidelines issued either by the Government or the Corporation for identifying the surplus staff. The whole exercise undertaken by the Corporation is arbitrary and unreasonable.

58. Sri J. Ramachandra Rao, learned Counsel for the appellants, attacked the identification of the appellants as surplus on the ground that the identification is unscientific. The identification of surplus staff should be in accordance with the procedure laid down u/s 21(g) of the Industrial Disputes Act, 1947.

59. The other Counsel more or less adopted the submissions.

60. Sri Ramesh Ranganathan, learned Additional Advocate-General, appearing on behalf of the respondents submitted that the writ petitions as filed by the appellants are premature and liable to be dismissed. According to the learned Additional Advocate-General, it is open for the identified surplus employees either to accept the VR Scheme or reject it. The classification of employees in two categories, viz., those to be retained in service and those identified as surplus and offered VR Scheme is a reasonable classification and does not violate Article 14 of the Constitution of India. The Classification is not patently arbitrary as there is a definite object sought to be achieved by making such classification.

61. Before we proceed to examine the rival submissions, it is just and necessary to note that the respondent Corporation is an instrumentality of the State Government and hence, is a State within the meaning of Article 12 of the Constitution of India for the purposes of Part - III of the Constitution and that all its actions are liable to be tested on the touchstone of Articles 14 and 16 of the Constitution of India. It is well settled that Article 14 of the Constitution of India strikes at arbitrariness in executive/administrative action because any action that is arbitrary must necessarily involve the negation of equality. At the same time, we are required to bear in mind that even if the Corporation is an instrumentality of the State as comprehended in Article 12 of the Constitution, yet the employees of the Corporation are not governed by Part - XIV of the Constitution. The Supreme Court, took the view that there is no good reason why, if Government is bound to observe the equality clauses of the Constitution in the matter of employment and in its dealings with the employees, the Corporations set up or owned by the Government should not be equally bound and why, instead, such Corporations could become citadels of patronage and arbitrary action. The independence and integrity of those employed in the public sector

should be secured as much as independence and integrity of civil servants. The Supreme Court found that the distinction sought to be drawn between protection of Part - XIV of the Constitution and Part - III has no significance. (See: Managing Director, Uttar Pradesh Warehousing Corporation and Another Vs. Vijay Narayan Vajpayee, , and A.L. Karla v. The Project and Equipment Corporation of India Limited 1984 (2) SLR 446.)

Identification of surplus employees - Whether it suffers from any arbitrariness ?

62. Annexure to G.O. Ms. No. 50 dated 15-11-2001 gives the details of employees in different cadres/categories constituting sanctioned strength of 404 employees of the Corporation. Other than those cadres/categories, the remaining cadres/categories have been abolished in their entirety. Therefore the surplus employees were required to be identified only from amongst the different cadres/categories constituting the sanctioned strength of 404 employees. The Corporation as is evident from the averments made in the counter-affidavit identified surplus employees by applying the general principle of "last come first go in each category" uniformly. The downsizing the cadre strength of Corporation was taken up as a matter of policy of the Government, to ensure the survival of the Corporation, uniform methodology was adopted in declaring surplus staff duly taking their date of entry into the cadre.

63. u/s 25-G of the Industrial Disputes Act, 1947, in case of retrenchment the employer is required to ordinarily retrench the workman who was the last person to be employed in that category. It is true that Section 25-G of the Industrial Disputes Act, 1947, applies only to workman but the principle "last come first go in each category" is a recognised reasonable procedure. The application of such procedure in identifying the surplus employees cannot be said to be either irrational or in violation of Articles 14 and 16 of the Constitution of India. It is explained that the emanated objective sought to be achieved under VR Scheme, notified in the Corporation's circular dated 7-9-2002 is to achieve the optimum level of manpower in the Corporation with a desirable average age mix so as to cope with the changing needs of the society and the organisation. It is under those circumstances, the Corporation considered it appropriate to apply the principle of "last come first go in each category" to achieve the objective of having a desirable age mix to cope with the changing needs. There was a possibility to apply the procedure of "step down" canvassed by the appellants for identifying surplus employees, based on their total length of service in the Corporation. Even such a procedure could have been a reasonable procedure and may have satisfied the test under Articles 14 and 16 of the Constitution of India. But unless this Court comes to the conclusion that the principle of "last come first go in each category" applied by the Corporation is arbitrary and in violation of Articles 14 and 16 of the Constitution of India, no directions can be issued directing the Corporation to adopt the procedure of "stepping down" in substitution of the adopted procedure. When there are two reasonable modes for identification of the surplus employees is available, the Corporation is entitled to

choose one such reasonable mode and in such a situation this Court in exercise of its jurisdiction under Article 226 of the Constitution of India, cannot compel the Corporation to adopt the other mode which in its view may equally be reasonable and efficacious.

"Stepping down" Procedure:

64. In the affidavit filed in support of the writ petitions, it is asserted that "it is the fundamental principle governing the service as and when reduction of posts and persons are being reverted or retrenched, the seniority in the substantive post has to be taken into account for retention." In the counter-affidavit, the challenge is met by the State explaining that the Corporation identified surplus employees in each category and served notices to individual employees in the order of reverse seniority. That after promotion to higher categories after fulfilling the service conditions prescribed for such promotions and having served in the promoted category for a considerable length of time, the petitioners cannot claim and seek reversion to the post from which they were promoted several years ago. The lien on the feeder post comes to an end as soon as they were promoted to the higher category and on completion of probation in the promotion category. It is further stated in the counter-affidavit that the contention of the petitioners that the total length of service has to be taken into consideration while identifying the staff, is to be accepted the very object and policy of issuing G.O. Ms. No. 50 dated 15-11-2001 would be defeated, as persons working in lower categories alone would be liable to be declared surplus by retaining the staff in higher categories which may not be workable.

65. The learned Counsel for the appellants placed reliance on the judgments of the Supreme Court in *Suraj Prakash Bhandari Vs. Union of India (UOI)*, and *State of Haryana v. Shri Des Raj Sangar and Anr. 1976 (1) SLR 191*, in support of the contention that the step down procedure is necessarily to be followed by the Corporation in all cases of reduction in sanctioned strength and consequent abolition of posts. In our considered opinion, *Suraj Prakash Bhandari's* case (*supra*) is not an authority for the proposition that in every case of abolition of post consequent upon reduction of sanctioned strength, employees working in a higher category should be reverted to a lower category and retained by giving emoluments, which they were earlier drawing in the lower category. The Supreme Court having found that an employee therein was singled out for adverse treatment, held that if the action of the organisation, in promoting the said employee and declaring him as surplus was to be accepted, then it would arm the employer with a new weapon to promote an employee after creating a new post, abolish it after some time and relieve him from duties on the plea of surplusage. But we are required to notice that the Corporation in the instant case did not single out any employee for any adverse treatment as such. It is not the case of the appellants that the action of the Corporation in identifying the surplus employees is a colourable exercise of power. Neither any post was created nor promotions affected with a view to declare such promoted employees as

surplusage. On the other hand, the Corporation identified nearly 450 employees as surplus by uniformly applying the principle of "last come first go in each category" except in case employees belonging to Scheduled Castes and Scheduled Tribes category.

66. The observations of the Courts are not be read as Euclid's theorems" nor as provisions of the statute. These observations must be read in the context in which they appear. The judgments of Courts are not to be construed as statutes. "(See: Haryana Financial Corporation and Another Vs. Jagdamba Oil Mills and Another, and Ashwani Kumar Singh Vs. U.P. Public Service Commission and Others,).

67. In Des Raj's case (supra) the Supreme Court observed that whether a post should be retained or abolished is essentially a matter for the Government to decide. As long as such decision of the Government is taken in good faith, the same cannot be set aside by the Court. It is not open to the Court to go behind the wisdom of the decisions and substitute its own opinion for that of the Government on the point as to whether a post should or should not be abolished. In the said case, however, the Supreme Court on interpreting the Punjab Civil Services rules held that "Abolition of the post of Panchayati Raj Election Officer, his services should not have been terminated, the said rules provided that in the absence of written request by the employee concerned, the lien on the post permanently held by him cannot be terminated. On the abolition of the higher post and in the absence of a written request of an employee to terminate his lien on the lower permanent post, the lien automatically gets revived and the employee was entitled to be reverted to the lower post." No similar rule as in the Punjab Civil Services Rules exist in the Corporation and as such the decision in Des Raj's case (supra) also does not have any application. We need to remind ourselves the well-known principle of law that a decision is only an authority for what it actually decides but what is of a decision in its ratio and not observation found therein nor what logically follows from the various observations made in it. It is not a profitable task to extract a sentence here and there and built upon it. (See: The State of Orissa Vs. Sudhansu Sekhar Misra and Others,).

68. For the aforesaid reasons we do not find any infirmity in the procedure followed for identification of surplus staff. The methodology adopted and the procedure devised in that regard is neither arbitrary nor unreasonable and therefore not hit by Articles 14 and 16 of the Constitution. "Last come and first go" is one of the well-known reasonable rule adopted in cases of retrenchment of employees consequent upon abolition of posts.

Employees promoted from work charged establishment category:

69. The learned Counsel for the appellants contended that the procedure adopted by the Corporation in retaining the employees not born in the cadre and identifying those who are born in the cadre of surplus is wholly arbitrary and offends the equality clause enshrined in Article 14 of the Constitution of India.

The appellants were originally appointed in the Corporation as a Typist. That in terms of Staff Regulations Chapter - DC Item - 10 of the Corporation they were converted as Junior Assistants vide proceedings of the Corporation dated 10-12-1990. The provisional seniority list of Assistants as on 1-11-2001 was communicated to all the concerned vide the Corporation proceedings dated 6-12-2001 and 14-12-2001 requiring the employees to submit their objections, if any, within 20 days from the date of the order. It is evident from the record that the employees from the work charged establishments, who were promoted as Junior Assistants, prior to conversion of the appellants, from the posts of Typist to the posts of Junior Assistant, were placed higher in the provisional seniority list, as also in the provisional seniority lists for the previous years. There is no dispute that the regulations of the Corporation provides for promotion of employees, in the work charged establishment, to the category of Junior Assistants. The promotions were effected by the Corporation much prior to conversion of the appellants from the category of Typists to the category of Junior Assistants. Those promotions remained unchallenged.

70. However, the contention was that the Government had not approved the proposals for regularisation and conversion of employees in the work charged establishment to the provincialised category and in such view of the matter those erstwhile employees of the work charged establishment ought to have been identified as surplus and not the appellants. In these proceedings, we cannot go into the question relating to the inter se seniority between the erstwhile employees of the work charged establishment and the appellants. The proceedings relied on by the appellants are of the years of 1991 and 1992, more than a decade ago. In these proceedings, the appellants cannot be permitted to canvass the correctness of those proceedings in a collateral manner and contend that they ought to be treated as seniors and retained in service by duly declaring the erstwhile employees of the work charged establishment as surplusage. The erstwhile employees of the work charged establishment who were promoted much prior to conversion of the appellants from the category of Typists and from the category of Junior Assistants are not impleaded as respondents in these proceedings.

71. We find no merit in the contention and the same is accordingly rejected.

Violation of Principles of Natural Justice:

72. The learned Counsel for the appellants submitted that the appellants were neither put on notice nor they were given any opportunity of being heard prior to their being identified as surplus by the Corporation and as such the entire exercise of identification is vitiated for the reason of non-compliance with the principles of natural justice.

73. So far the employees, in the workmen category, who have been identified as surplus and have not taken VR Scheme are concerned they can only be retrenched in accordance with Section 25N of the Industrial Disputes Act, 1947.

The prior permission of the appropriate Government or the specified authority as the case may be is a mandatory requirement inasmuch as and in the absence of such permission no workmen employed in industrial establishment who has been in continuous service for not less than one year under an employer shall be retrenched. The application for permission is required to be made by the employer in the prescribed manner stating clearly the reasons for the intended retrenchment and a copy of such application shall also be served simultaneously on the workmen concerned in the prescribed manner, The Government or the specified authority after giving a reasonable opportunity of being heard to the employer and the workmen and the persons interested in such retrenchment may by order for reasons recorded in writing grant or refuse to grant such permission as prayed for by the employer. The rights of the employees in the workmen category are so well protected and failure on the part of the Corporation in giving them an opportunity of being heard at this stage is of no consequence since they are not being retrenched straight away by the Corporation at this stage.

74. The plea that the entire exercise of identification is vitiated for non-compliance with the principles of natural justice is only available to the identified surplus employees in the non-workmen category, who have not taken VR Scheme.

75. The learned Counsel for the appellants in support of their submission placed reliance upon the decisions of the Supreme Court reported in *A.K. Kraipak and Others Vs. Union of India (UOI) and Others*, , *Central Inland Water Transport Corporation Limited and Another Vs. Brojo Nath Ganguly and Another*, , and *Delhi Transport Corporation Vs. D.T.C. Mazdoor Congress and Others*, .

76. In *A.K. Kraipak's* case (supra), the Supreme Court observed, "the aim of the rules of natural justice is to secure justice or to put it communicatively to prevent miscarriage of justice. These rules can operate only in areas not covered by any law validly made. They do not supplant the law of the land but supplement it. "The rules of natural justice are not embodied rules. What particular rule of a natural justice should apply to a given case must depend to a great extent on the facts and circumstances of that case, the framework of the law under which the enquiry is held and the Constitution of the Tribunal or body of persons appointed for that purpose. Whenever a complaint is made before a Court that some principle of natural justice had been contravened the Court has to decide whether the observance of that rule was necessary for a just decision on the facts of that case."

77. In *Central Inland Water Transport Corporation Limited's* case (supra) the Supreme Court struck down Clause (i) of Rule 9 of the Rules of the Corporation as void u/s 23 of the Contract Act as being opposed to public policy and is also ultra vires Article 14 of the Constitution of India that to the extent that it confers upon the Corporation, the right to terminate the employment of a permanent employee by giving him three months' notice in writing or by paying him the

equivalent of three months" basic pay and Dearness allowances in lieu of such notice in that, besides being arbitrary and unreasonable, it wholly ignores audi alteram partem rule. Rule 9(i) of the Rules of the Corporation was characterised as "the Henry VIII Clause". It conferred absolute and arbitrary power upon the corporation. The Court held that Rule 9(i) is not covered by any situation, which would justify the total exclusion of the audi alteram partem rule.

78. In Delhi Transport Corporation's case (supra); Regulation 9(b) of the Delhi Road Transport Authority (Conditions of Appointment and Service) Regulation, 1952, which conferred arbitrary uncanalised, unbridled, unrestricted power to terminate the services of a permanent employee without recording any reasons for the same and without adhering to the principles of natural justice and equality before the law was declared void. The Supreme Court took the view that conferment of power with wide discretion without any guidelines, without any just, fair or reasonable procedure is constitutionally anathema to Articles 14, 16(1), 19(1)(g) and 21 of the Constitution of India.

79. We fail to see what relevance those decisions have to the case before us. No such regulation, which empowered identification of the surplusage, is in question before us.

80. The question that falls for consideration is whether the observance of rule of audi alteram partem was necessary for a just decision, on the facts of the case ?

81. We have noted the sequence of events right from the stage of G.O. Ms. No. 50 dated 15-11-2001, ordering the cadre strength of the Corporation for 404 employees as detailed in the annexure thereto. We have also noted that the Corporation adopted uniform procedure of "last come first go in each category" and found the same to be a reasonable procedure. In such view of the matter nothing further remains to be decided by the Corporation at this stage. No real prejudice, therefore said to have been caused to the appellants, on account of the failure on the part of the Corporation in giving them an opportunity of being heard before identifying them as surplus. It is, by now, well settled that in all cases of violation of the principles of natural justice, the Court in exercises of its jurisdiction under Article 226 of the Constitution of India, need not necessarily interfere and set at naught the action taken unless the decision taken had resulted in any prejudice.

82. The test is whether the observance of the rule of audi alteram partem was necessary for a just decision ?

83. It is true that all decisions against an individual, which involve adverse civil consequences must be in accordance with the principles of natural justice but whether any particular principle of natural justice would be applicable to a particular situation has to be judged in the light of the facts and circumstances of each particular case. "The rules of natural justice are flexible and cannot be put on in rigid formula." In order to sustain a complaint of violation of principles of natural justice, it has to be pleaded and established that prejudice has been

caused to the party concerned.

84. In *M.C. Mehta Vs. Union of India (UOI) and Others*, , the Supreme Court observed that "if on the admitted or indisputable factual position, only one conclusion is possible and permissible, the Court need not issue a writ merely because there has been a violation of the principles of natural justice."

85. In *Aligarh Muslim University and Others Vs. Mansoor Ali Khan*, , the Supreme Court reiterated its earlier view that the principle that in addition to breach of natural justice, prejudice also must be proved. "That not mere violation of natural justice but de facto prejudice (other than non-issue of notice) had to be proved.

86. In *The State of Karnataka and Another Vs. Mangalore University Non-Teaching Employees Association and Others*, , the Supreme Court having found that in a case where the payment already made is sought to be recovered, thereby visiting the employees with adverse monetary consequences, the affected employees should have been put on notice and their objections called for, but refused to interfere in the matter on the ground that in all cases of violation of principles of natural justice, the Court need not necessarily interfere and set at naught the action taken.

87. It is held that:

"But, it is by now well settled that in all cases of violation of the principles of natural justice, the Court exercising jurisdiction under Article 226 of the Constitution need not necessarily interfere and set at naught the action taken. The genesis of the action contemplated, the reasons thereof and the reasonable possibility of prejudice are some of the factors which weigh with the Court in considering the effect of violation of the principles of natural justice. When undisputably the action taken is within the parameters of the rules governing the payment of HRA and CCA and moreover the university authorities themselves espoused the cause of employees while corresponding with the Government, it is difficult to visualize any real prejudice to the respondents on account of not affording the opportunity to make representation."

88. On the facts and in the circumstances, we find that no useful purpose could have been served by putting the appellants on notice before the actual identification of the surplusage. No real prejudice has been caused to the appellants on account of not affording the opportunity to make representation. The Corporation uniformly applied the rule of "last come first go in each category" in the process of identification of the surplusage. In the circumstances, it is not possible to interfere with the decision of the Corporation on the ground of infraction of rule of audi alteram partem.

Subsidiary contentions:

89. Now we shall proceed to examine some subsidiary contentions urged by each one of the Counsel.

Residual employees of A.P. State Construction Corporation:

90. The residual employees of the A.P. State Construction Corporation Limited, were absorbed into the services of the Corporation pursuant to G.O. Ms. No. 87 dated 26-3-1993 which itself has been issued pursuant to the directions of the Supreme Court in G. Govinda Rajulu Vs. Andhra Pradesh State Construction Corporation Limited and Another, , wherein the Supreme Court had directed that the employees of the A.P. State Construction Corporation whose services were sought to be terminated on account of the closure of the Corporation shall be continued in service on the same terms and conditions either in the Government Department or in the Government Corporations. They were accordingly absorbed the Corporation and pursuant thereto they became its employees, having accepted the service conditions, rules and regulations as applicable to the regular employees of the Corporation. Their absorption itself was subject to certain terms and conditions in G.O. Ms. No. 87 dated 26-3-1993. According to which they were required to take the last rank in the category in which they were working.

91. In our considered opinion, the claim of the residual employees of A.P. State Corporation cannot be put on higher pedestal than that of the regular employees of the respondent Corporation. They are among the employees identified as surplus on application of the principles of "last come first go in each category". They were required to take the last rank in the category when they were absorbed into Corporation under G.O. Ms. No. 87 dated 26-3-1993. We find no merit in their submission.

92. In Management of Dandakaranya Project, Koreput Vs. Workmen through Rehabilitation Employees Union and other, , the Supreme Court while referring to G. Govinda Rajula 's case (supra) observed that "the said case neither there has been any discussion on any question of law nor any circumstances have been indicated under which the direction was given. This being the position the aforesaid decision cannot be of universal application in all cases where there has been a closure of the project which resulted in termination of the employees." The judgment of the Supreme Court in G. Govinda Rajulu's case (supra), in no manner helps the contention urged on their behalf.

Women employees and those appointed on compassionate grounds:

93. The appellants contended that since they are women, they are entitled for quota of 33.1/3% and applying roster backwards, they should be retained in the service to the extent of their quota. Suffice it to notice that none of those women (appellants) were appointed in the Corporation under any quota. As such the question of application roster backwards for women categories does not arise. Similarly an employee appointed on compassionate grounds is not entitled to claim any preferential claim vis-a-vis the other employees. Their claim cannot be over and above the regular employees. We find no merit in their claims.

The claim of employees belonging to Backward Classes and categorisation of

Scheduled Castes:

94. The appellants belong to other Backward Classes (OBC) category claim that they are entitled for similar protection as given to Scheduled Castes and Scheduled Tribes employees and that the roster backwards should be applied in their case also. It is required to notice that the Corporation even in case of Scheduled Castes and Scheduled Tribes employees did not apply the roster backwards but the learned Single Judge issued such directions directing the respondent Corporation to consider the cases of Scheduled Castes and Scheduled Tribes employees by applying the roster backwards while identifying surplus Scheduled Castes and Scheduled Tribes employees. The learned Single Judge found that the Corporation as well as the Government failed to apply their mind and did not take into consideration the provisions of Constitution of India conferring special protection to the Scheduled Castes and Scheduled Tribes. The Constitution mandates the State to accord favour treatment to them. Having regard to the special constitutional protection provided by Articles 15, 16(4)(a) of the Constitution of India to the employees belonging to the Scheduled Castes and Scheduled Tribes, the learned Single Judge directed the Corporation to re-examine the matter and consider the feasibility of applying the reservation roster backwards in respect of the employees belonging to the Scheduled Castes and Scheduled Tribes in identification of surplus employees to whom VR Scheme is to be offered. The learned Single Judge hold such policy would receive the constitutional approval of providing adequate representation to the Scheduled Castes and Scheduled Tribes in the service of the Corporation. We are in complete agreement with the view taken by the learned Single Judge.

95. It is very well settled and needs no reinstatement that the Scheduled Castes are the most backward of the Backward Classes, it is for that reason, the learned Single Judge thought it fit to issue directions in the manner referred to herein above. The OBC employees cannot therefore equate themselves with employees belonging to the Scheduled Castes and Scheduled Tribes. Their claim is based upon Article 16(4) of the Constitution of India which is enabling provision as held by the Supreme Court in *Ajit Singh and Others Vs. The State of Punjab and Others*, , and *Raees Ahmad Vs. State of U.P. and Others*, . In the circumstances, no mandamus can be issued directing the Corporation to apply roster backwards even in case of employees belonging the Backward Classes. Employees belonging to Backward classes cannot, as a matter of right, claim that they should also be given the benefit of application of roster backwards, similar to that of Scheduled Castes and Scheduled Tribes.

96. Similarly, the contention that the A.P. Scheduled Castes (Rationalisation of Reservation) Act, 2000, be applied and by so applying roster it should be ensured that Scheduled Caste employees in their respective categories are retained in service is untenable and unsustainable. It is needless to observe that the appellants/petitioners was appointed much prior to the said Act coming into force and were not given the benefits of categorisation at the time of their

appointment and promotion since the said Act came into force only with effect from 9-12-1999. We find no merit in the contention.

Employees in the work charged establishment:

97. Pursuant to G.O. Ms. No. 50 dated 15-11-2001 the work charged establishment has been abolished in its entirety. The reduction of sanctioned strength under G.O, Ms. No. 50 dated 15-11-2001, once found to be valid, the claim of the Appellants/employees in the work charged establishment cannot be considered. No relief can be granted to them.

Employees sent on deputation;

98. The contention that since the appellants/petitioners were working in other organisations, they should be promoted to work in the place at which they are presently working and should not be counted as employees of the respondent Corporation while admitting its sanctioned strength of 404 employees is totally untenable and unsustainable. The submission is totally misconceived. It is needless to observe that the employees hold a lien on their post in the parent department and are liable to be repatriated at any time such of those employees who are on deputation, continue to hold the lien on their post in the parent department. The Corporation while determining the sanctioned strength had rightly taken the number of employees on deputation into account, as those on deputation have no vested right to continue on deputation forever.

Abolition of Intermediate Post and Abolition of Single Post of Computer Operator:

99. That as a policy measure in the process of restructuring, the Corporation abolished intermediate post in the cadre of Deputy Manager and Hydrologists/Geophysists. The complaint is that while the cadres of Managers and Assistant Managers are being retained, the intermediate post of Deputy Manager has been abolished. Similarly, while the cadres of Senior Hydrologists and Senior Geophysists and Assistant Hydrologists and Assistant Geophysists has been retained, the intermediate post of Hydrologists/Geophysists has been abolished. In the counter-affidavit it is explained that there was duplication in the work discharge by the Deputy Managers/Hydrologists/Geophysists. The Corporation was of the opinion that these intermediary posts could be abolished and the work assigned earlier to the employees in those categories could easily be distributed among the employees in the higher and lower cadres. There is a rational basis for taking such a view in the matters. The decision cannot be said to be an arbitrary one. We find no merit in the claim.

100. Likewise the single post of Computer Operator has been abolished since it has become redundant for the reason that most of the employees in the Corporation have been trained on computers. The policy decision behind the abolition of the single post of computer is self-evident. We cannot interfere with such policy decision, which is supported by valid reasons.

The claim of Employees declared Surplus Consequent upon abolition of Roster

Backwards in the case of Scheduled Castes and Scheduled Tribes:

101. That placing reliance upon G.O. Ms. No. 121 dated 31-10-1991, the petitioners contend that instead of applying roster backwards, the identified surplus Scheduled Castes and Scheduled Tribes employees ought to have been retained in service by creating the required supernumerary posts. We have noticed that the Corporation applied roster backwards in case of Scheduled Castes and Scheduled Tribes employees on the directions of this Court. The Corporation itself did not apply the roster backwards on its own.

102. Be it as it may, G.O.No. 121 dated 31-10-1991, admittedly is applicable to Government Departments only and does not have universal application. The Corporation did not adopt the said G.O. and therefore it has no application to the employees of the Corporation.

103. That apart the very scheme and policy of reduction in sanctioned strength and consequent abolition of posts is to ensure self-sustenance, and survival of the Corporation. The creation of supernumerary posts would be counter productive as employees to that extent of supernumerary posts created would exceed the sanctioned strength of 404 employees which would in turn be in violation of G.O. Ms. No. 50 dated 15-11-2001. Hence, we find no merit in the claim.

Absorption in Government Departments:

104. The Corporation as a legal entity distinct and separate from the Government and the employees of the Corporation are not Government employees. They are not entitled to seek absorption in Government Departments. No such directions can be issued by this Court in exercise of its judicial review jurisdiction.

Physically Handicapped:

105. The persons with the Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, has been enacted to give effect to the proclamation on the full participation and equality of the people with disabilities in the Asian and Pacific region. The Economic and Social Commission for Asia and Pacific convened a meeting to launch the Asian and Pacific Decade of the disabled persons 1993-2002 at Beijing on 1st to 5th December, 1992. The meeting adopted the proclamation on the full participation and equality of people with disabilities in the Asian and Pacific Region. India is a signatory to the said proclamation. The Parliament having considered it necessary to implement the aforesaid proclamation enacted the Act.

106. Section 33 of the Act, mandates that every Government shall appoint in every establishment such percentage of vacancies not less than three per cent for persons or class of persons with disability of which one per cent each shall be reserved for persons suffering from -

(i) blindness or low vision;

(ii) hearing impairment;

(iii) locomotor disability or cerebral palsy; in the posts identified for each disability

107. The claim of these employees is that some of them were appointed under physically handicapped quota, certain other contend that they acquired physical disabilities while in service. The Act itself has been enacted in order to ensure the full participation and equality of people with disabilities. The Act is special in its nature. The rights of the persons with the disabilities are required to be protected. The persons with the disabilities constitute themselves into a separate Class. In our considered opinion, the Corporation is required to consider whether it is required to deviate from application of rule of "last come first go in each category" and apply the roster backwards in the case of physically disabled employees and apply the "same in similar manner as in the case of Scheduled Castes and Scheduled Tribes employees. We accordingly consider it appropriate to direct the respondent Corporation to examine the feasibility of applying the roster backwards in the case of physically disabled employees and take an appropriate decision as expeditiously as possible.

Validity of Staff Regulation 21:

108. The Regulation 21 of the Andhra Pradesh State Irrigation Development Corporation Limited Staff Regulations enables the Corporation to terminate the services of employees by giving three months notice. The constitutional validity of the regulation is challenged. The Regulation according to the petitioners is arbitrary, illegal and in violation of Section 23 of the Indian Contract Act. Reliance has been placed on the judgments of the Supreme Court in Central Inland Water Transport Corporation (supra) and Delhi Transport Corporation cases (supra).

109. That so far the Corporation did not invoke Regulation 21 of the Regulations and terminated the services of any of its employees. The termination of services of identified surplus employees is not discharge simplicitor, but is a consequence of abolition of posts. At any rate, it is unnecessary to go into the said question, as it does not arise for consideration in this batch of cases. It is very well settled that this Court under Article 226 of the Constitution of India, would not adjudicate academic issues. The question raised is left open for the present. We are not inclined at this stage to go into the said question relating to the constitutional validity of Regulation 21 of the Regulations.

110. In the result, all the writ appeals and writ petitions are accordingly dismissed except with regard to the claim of the physically disabled employees whose cases are required to be reconsidered in the light of the directions aforementioned. No order as to costs.