

(2003) 02 AP CK 0118

In the Andhra Pradesh High Court

Case No : Writ Petition No. 8766 of 2002 and Batch

M. Krishnama Naidu and Others

APPELLANT

Vs

State of A.P. and Others

RESPONDENT

Date of Decision : 25-02-2003

Acts Referred:

Andhra Pradesh Co-operative Societies Act, 1964 — Section 12A
Constitution of India, 1950 — Article 19(1), 300A, 31A

Citation : (2003) 5 ALD 516 : (2003) 4 ALT 177

Hon'ble Judges : N.V. Ramana, J;B. Sudershan Reddy, J

Bench : Division Bench

Advocate : R. Ravikumar, M.V. Durga Prasad, D.V. Bhadram, K.S. Murthy, M.N. Narasimha Reddy, M.R.K. Manik Prabhu, V. Sudhakar Reddy, P. Krishna Reddy, M. Prabhakar Rao and A Jayanthi, for the Appellant; C.S.N. Raju, V. Srinivas, D. Ramalingaswamy, D. Ramalingeswara Rao, M.V.S. Suresh Kumar, Government Pleader for Agriculture, Y. Venkatesh Reddy, P. Govind Reddy, Government Pleader, for Industries and Commerce and A.G., for the Respondent

Judgement

B. Sudershan Reddy, J.—The constitutional validity of Section 12-A of the A.P. Co-operative Societies Act, 1964 (for short "the Act") is the primary issue in these cases.

2. The petitioners are aggrieved by the action of respondents in proposing to transfer the assets of the Co-operative Sugar Factories in favour of private individuals on the ground that they have become sick and there is no possibility of rehabilitating the same.

3. In W.P. No. 11937 of 2002, the first petitioner is the Anakapalle Co-operative Sugar Limited itself, represented by its Chairman. In all other writ petitions, the petitioners are the members and shareholders in Co-operative Sugar Factories.

4. India is one of the largest producers of sugar and is in fierce competition with Brazil for the first position. The country shares about 13.25% of the world's sugar production and 41.11% of the sugar production in Asia. It contributes 2%

to the National Gross Domestic Product and employs over and above forty million cane-growers and 3.5 lakhs skilled and unskilled workers, being the second largest agro-based industry. It plays a dominant role in industrial economy of the country. (Source: Survey of Indian Agriculture, 2000 published by The Hindu)

5. In the State of Andhra Pradesh, till recently there have been thirty nine Sugar Factories out of which eighteen are owned by the Co-operative Societies and five factories are owned by the State Government itself and the rest by private organisations. The Government in order to encourage setting up of Sugar Factories in Co-operative sector in every district not only provided necessary encouragement but also joined as one of the shareholders in all Co-operative Sugar Factories in the State. The object sought to be achieved includes private encouragement to sugarcane growers and sugar production in large scale to give thrust for development in backward areas, employment generation and also to augment public revenue. The Co-operative Sugar Factories are owned by the Co-operative Societies and the Societies themselves are registered under the provisions of the Act.

6. There is no dispute that most of the Co-operative Sugar Factories in the State of Andhra Pradesh for whatever reason were under the control of the Persons-in-Charge Committees appointed by the competent authority from time to time to manage the affairs of the societies concerned. It is not necessary for the purpose of disposal of this batch of writ petitions to make any detailed enquiry into the reasons and circumstances that led to such a situation where there were no regular elections held for the purpose of electing the Managing Committee to manage the affairs of the societies.

7. The writ petitioners assert that the Government in order to gain control over the societies resorted to superseding the elected managements and conveniently installed the officers of their own choice and accordingly entrusted the management of the Co-operative Sugar Factories to them and the same has resulted in colossal loss on account of mismanagement by the said official Persons-in-Charge.

8. The respondents assert that most of the Co-operative Sugar Mills in the State are continuously incurring losses for a variety of reasons such as cyclical nature of industry, high cost of production, apart from wrong location and untimely expansion of some of the units. The said situation resulted in erosion of their net worth.

9. Sugar and sugar-cane are essential commodities within the meaning of the provisions of the Essential Commodities Act, 1955. The Central Government has issued several Control Orders regulating production, distribution, etc., of the sugar and sugar-cane. Under Clause (3) of the Sugar-cane (Control) Order, 1966, the Central Government is authorised to fix minimum price of the sugar-cane to be paid by the producers or their agents for the sugar-cane purchased by them. The price so fixed by the Central Government is called Statutory Minimum

Price (SMP).

10. The Government of Andhra Pradesh fixed State Advisory Price (SAP) in the perceived interest of the farmers and in order to sustain the sugar industry itself. Admittedly, the SAP fixed by the State Government is more than the SMP fixed by the Central Government in exercise of the power under Clause (3) of the Sugar-cane (Control) Order, 1966. The State Government claims to have fixed SAP as a measure of protection to the farmers so that they are not left vulnerable to the vagaries of the trade or to the mercy of the powerful sugar industry. It is the claim of the Government that it had fixed the minimum price of the sugar-cane to be paid by the purchasers, as an agreed price after due consultation with the Sugar Factories and their representative Associations as well as Cane-growers Association. The price so fixed by the State is an agreed price between the growers and purchasers. All the Sugar Factories including the Co-operative Sugar Factories paid SAP upto the year 1998, until a Division Bench of this Court in Govt. of A.P. and Another Vs. K.C.P. Sugar and Industries Corporation Ltd., Chennai and Others, declared that the State Government has no such power whatsoever to fix any SAP over and above the SMP fixed by the Central Government.

11. The petitioners contend that fixation of the SAP virtually compelling the Cooperative Sugar Factories to pay to the cane-growers over and above the SMP fixed by the Central Government, is the main reason for huge financial losses. They were made to pay higher price for cane under the directions of the Government contrary to law.

12. Be that as it may, the decision of the Division Bench referred hereinabove is stated to be the subject-matter of an appeal pending in the Supreme Court.

13. The Government of Andhra Pradesh as a policy measure appears to have decided to convert the loan given on account of Differential Cane Price (DCP) into equity. Necessary directions were accordingly issued to each of the Cooperative Sugar Factories converting the loan advanced by the Government towards DCP into equity. However, a serious dispute is raised as to the manner in which such directions were issued and we shall advert to the same while dealing with the respective contentions of the writ petitioners.

14. At this stage, it would be appropriate to notice that the State Government has appointed Sri K. Subramanyam, I.A.S. (Retd.) as Chairman of Restructuring Committee, State Level Co-operative Enterprises, in the year 1995 for restructuring public enterprises and the units under the Cooperative sector. The Committee submitted its final report identifying altogether 18 Cooperative Sugar Factories then existing into three categories i.e., A, B and C.

15. The Committee was of the view that Category "A" factories have good cane availability, excellent track record of capacity utilisation and sugar recovery without overdues to financial institutions. They have an excellent future and the Government can expect good returns on investment in these units and in case of

disinvestments as suggested, certain measures were suggested for category "A" units and it is not necessary to notice them in detail.

16. It is observed by the Committee that Category "B" factories have been functioning satisfactorily with average capacity utilisation and have good scope for future development. They have accumulated losses with substantial erosion of net worth with heavy overdues to financial institutions. These units can also come into Category "A" with better management. Category "C" factories were found to have in-built bottlenecks and locational disadvantages with heavy accumulated losses. The Committee found that it is impossible to revive the Cooperative Sugar Factories classified under Category "C".

17. The Government of Andhra Pradesh vide G.O.Ms.No. 22 dated 31-1-1997 accepted the report submitted by the Subramanyam Committee. Based on the recommendations of the High Level Committee and the Rules issued u/s 12-A of the Act, the Government ordered the following action:

"I. For the factories under Category "A":

(a) Transfer of Government shares to the existing shareholders on pro rata basis as per their shareholding in the factory at a price to be decided by Government after consulting an expert body. In case the existing shareholders are unwilling to purchase the Government shares, they may be transferred to any new member of the Society, who may be willing to purchase the Government shares at the price fixed.

(b) The General Body to resolve to bring the Co-operative Sugar Factory under the purview of the Andhra Pradesh Mutually Aided Co-operative Societies Act, 1995.

(c) Arrangement to be arrived between the Co-operative Sugar Factory and the Government regarding repayment of dues to Government by way of MOU.

(d) If the General Body agrees to the above three proposals then elections can be conducted by the Registrar under the provisions of the Andhra Pradesh Mutually Aided Co-operative Societies Act.

II. For the Factories under Category "B":

Factories under this category cannot be brought under the new Act since they have been guaranteed by Government. The Managements of the factories will have to take immediate steps to improve the financial performance of the factories and repay the bank dues within a period of six (6) months. These factories may consider for one-time settlement with the Financial Institutions.

If these factories do not show any improvement within the stipulated time of (6) six months they can be treated under category "C" and action be taken proposed for the category.

III. For the Factories under Category "C":

The Commissioner and Director of Sugar and Cane Commissioner in the capacity of functional Registrar of the Co-operative Sugar Factories is competent to take steps in respect of the three factories viz., Nandyal Cooperative Sugar Factory Ltd., A.S.M. Cooperative Sugar Factory Limited, Palakole, and Nagarjuna Co-operative Sugar Factory Limited, Gurazala, which fall under "C" category as laid down in the rules issued by the Agriculture and Co-operation Department vide their G.O. Ms. No. 30 Agriculture and Co-operation Department (Co-op.IV) Department dated 27-1-1997. The Cuddapah Co-operative Sugar Factory under the attachment of the High Court Receiver, Mumbai, for default of payment to IDBI. Hence, further action may be taken as per directions of the Court.

The Commissioner and Director of Sugar and Cane Commissioner is requested to take necessary action as order above to restore the Co-operative Sugar Factories, in the State"

18. The Government claims to have invested Rs. 146 crores in the share capital of eighteen Co-operative Sugar Factories in the State. The total outstanding dues to the financial institutions. State Government and Sugar Development Fund from the said Co-operative Sugar Factories are about Rs. 87 crores. The accumulated losses in fourteen sugar mills, which are in operation, are in the order of Rs. 198 crores. It is stated that the profitability and liquidity of the Cooperative Sugar Factories are unlikely to show any significant improvement in future with the existing trend in performance and heavy burden of financial expense. The Government, after in-depth study, decided to privatise them in the process of implementation of the Reforms Programme as part of Andhra Pradesh Economic Restructuring Project to achieve certain specific objectives.

19. During the first phase of Reforms Programme, four Co-operative sugar mills i.e. Sri Hanuman Co-operative Sugars Limited, A.M. Co-operative Sugars Limited, Nandyal Co-operative Sugars Limited and Nagarjuna Co-operative Sugars Limited have been privatised.

20. The Government accordingly approved in December, 2001 Phase II action plan on Public Enterprises Reforms Programme covering sixty-eight public enterprises including eight Co-operative Sugar Factories to be implemented over a period of four years from 2002 to 2006. The implementation of reforms in respect of eight sugar mills is slated for 2002.

21. It is the case of respondents that in respect of each of the Co-operative Sugar Factories, the Registrar has to independently examine the performance on the basis of available data and having been satisfied that the units have become sick Co-operative Societies within the meaning of Clause (c) of Rule 2 of A.P. Co-operative Sugar Factories and Co-operative Spinning Mills (Special Provision) Rules, 1977 (for short "the Rules") made u/s 12-A of the Act and having further found that there is no possibility of rehabilitating the same, decided to transfer the assets of the said Cooperative Sugar Factories after following the procedure set out in the scheme formulated u/s 12-A of the Act. Based on the said decision,

an advertisement has been issued in the newspaper for the sale of assets and business in accordance with the provision of Section 12-A of the Act.

22. We have elaborately heard learned Counsel Sarvasri M. V.Durga Prasad, D. V. Bhadram, D. Sudarshan Reddy, K.S.Murthy, K. Manik Prabhu, D. Ravi Kumar, M.N. Namsimha Reddy and P. Krishna Reddy, appearing on behalf of petitioners in this batch of writ petitions. We have also heard Sri T. Anantha Babu, learned Advocate-General appearing on behalf of respondents.

23. Before we proceed to discuss the merits and various contentions raised by the petitioners in respect of each of the Cooperative Sugar Factories, which are sought to be privatised, it will be convenient to first take up the issue relating to the Constitutional validity of Section 12-A of the Act.

Constitutional validity of Section 12-A of the Act:

24. Sri M.V. Durga Prasad and Sri D.V. Bhadram, learned Counsel appearing on behalf of some of the writ-petitioners made detailed submissions with regard to Constitutional validity of Section 12-A of the Act. Before we actually undertake to examine the submissions made by the learned Counsel for petitioners, it would be apposite to notice Section 12-A of the Act and the same reads as follows:

"Special provision in respect of spinning mills and Sugar Factories:

(1)(a) Notwithstanding anything contained in this Act or the Rules made thereunder or the bye-laws of the societies concerned or in any other law for the time being in force, where, in the opinion of the Registrar, a Co-operative Spinning Mill or a Co-operative Sugar Factory in which majority of the shares are held by the Government, is or has become sick and that there is no possibility to rehabilitate the same, the Registrar, shall, after consulting the Government and the financing bank, if any, to which such Spinning Mill or Sugar Factory is indebted, call upon the Committee concerned by notice in writing containing such particulars as may be prescribed and within such time as may be specified in the notice to transfer its assets or its assets and liabilities in whole or part to any other society or a company or a firm or a body whether incorporated or not on such terms and conditions as may be formulated in the manner prescribed, and on such transfer the society formed for such Spinning Mill or Sugar Factory under this Act shall stand dissolved;

(b) if, within the time specified in the notice referred to in Clause (a), the society fails to comply with the direction of the Registrar, he shall after giving an opportunity in the manner prescribed, to the general body, the committee of such society and the creditors thereof to make their representation, if any, by order notified in the Andhra Pradesh Gazette, take such action as he deems fit in the matter, including the issue of a direction to the society to transfer its assets or its assets and liabilities, in whole or part in the manner referred to in Clause (a).

(2) It shall be competent for the Government to make rules and to give such

directions as they deem fit to the Registrar, for purposes of this section."

25. In order to appreciate the background and circumstances under which Section 12-A of the Act has been inserted in the Act, it may be appropriate to notice the Statement of Objects and Reasons appended to the Bill:

"The Sugar Mills and Spinning Mills were set up in the Co-operative Sector with the idea of involving the farmers in organizing, financing and managing these Mills. The role of the Government was to help them with share capital, margin money, the required administrative guidance and managerial support. For a variety of reasons, some of these Co-operative Institutions have become non-viable and call for massive investment, not only for their revival but also for recurring overheads including salaries and wages. It was never the intention that Government should fund these organisations in case they become non-viable. On account of financial constraints faced by the State, Government is not in a position to fund the resources to meet these commitments. The mangaments have to, therefore, look for alternative avenues for improving the functioning and reviving of these Units so that the interests of the farmers and workers of these mills can be safeguarded.

The existing provisions of the Andhra Pradesh Co-operative Societies Act, 1964 do not permit the transfer of the assets of a Cooperative Institution to any non-co-operative institution. The Government have, therefore, decided to provide for the transfer of the assets and liabilities of such sick units to non-co-operative institutions by suitably amending the Andhra Pradesh Cooperative Societies Act, 1964."

26. It may be appropriate to make note of settled legal position that every Act carries with it the presumption of constitutional validity and unless the petitioners are able to discharge the said burden by placing adequate material, the Court should not strike down a legislative provision. The burden of establishing unconstitutionality of the provision heavily lies upon the persons challenging the same. The Court should try to sustain its validity to the extent possible. Striking down the enactment is only when it is not possible to sustain it. The unconstitutionality must be plainly and clearly established before the enactment is declared as void.

Contention based upon Article 31-A and Article 300-A:

27. It is mainly contended that Section 12-A of the Act is violative of Article 31-A proviso as well as Article 300-A of the Constitution of India. We are unable to appreciate this contention strenuously urged by the learned Counsel for petitioners. Section 12-A of the Act in no manner expropriates or confiscates the property of society as such. The Section merely enables the Registrar of the Co-operative Societies to call upon the Committee of a Co-operative Sugar Factory, in which majority of the shares are held by the Government and such Co-operative Sugar Factory has become sick, and there is no possibility of rehabilitating the same, to transfer its assets or its assets and liabilities in whole

or part, to any other society or a company or firm or a body whether incorporated or not on such terms as may be formulated in the manner prescribed and such transfer of assets results in dissolution of the Cooperative Sugar Factory or the Spinning Mill, as the case may be. It is a special provision in respect of Spinning Mills and Sugar Factories. It does not involve acquisition of any estate by the State nor does it involve taking over the management of any property by the State. In our considered opinion, Article 31-A has no application whatsoever since Section 12-A of the Act is not a law in respect of acquisition of any estate or of any right thereof or extension or modification of any such rights. It is merely one mode of dissolution of a sick Co-operative Society in which the Government has a majority of the shares. Even such dissolution of the Sugar Factory is for the reasons in-built in Section 12-A of the Act itself.

28. The learned Counsel for petitioners placed reliance upon the decision in *Government of Andhra Pradesh v. N. Rami Reddy*, 2001 (1) ALD 430 (DB) = AIR 2001 AP 226, in support of his submission that although Article 31 has been deleted from Part-III of the Constitution, in its place Article 300-A was inserted and in terms of Article 300-A, no person can be deprived of his right to property except in accordance with law. It is difficult to discern as to how the said judgment would render any assistance whatsoever in order to conclude that Section 12-A of the Act deprives or takes away the petitioners' property save by authority of law.

29. In *Jilubhai Nanbhai Khachar v. State of Gujarat*, 1995 Sup. (1) SCC 596 the Apex Court while considering the expression "property" used in Article 300-A observed:

"The word "property" used in Article 300-A must be understood in the context in which the sovereign power of eminent domain is exercised by the State and property expropriated.....Article 300-A get attracted to an acquisition or taking possession of private property, by necessary implication for public purpose, in accordance with law.....The deprivation of the property shall be only by authority of law, be it an Act of Parliament or of State Legislature, a rule or statutory order having force of law. It is inherent in every sovereign State by exercising its power of eminent domain to expropriate property without owner's consent...."

In other words, Article 300-A only limits the power of a State that no person shall be deprived of his property save by authority of law.

30. In the said decision, the Supreme Court cautioned that after Constitution 44th Amendment has come into force obliterating the right to property under Articles 19(1)(f) and 31, the same should not be brought back by judicial interpretation. After abandonment and curtailment of right to property, it does not retrieve its lost position nor gets restituted with renewed vigour claiming position under the grab of deprivation of the property.

31. The learned Counsel, however, made an attempt to rely upon several Articles

written by eminent authors and academicians in support of the submission that Article 300-A is an exact reproduction of repealed Article 31(1) and therefore the right to hold the property is not in any manner whatsoever affected even after the repeal of Article 31(1) by the 44th Amendment. Prof. P.K. Tripathi in "Right to Property after 44th Amendment - Better Protected than ever before", AIR 1980 (Journal) 49, has prominently argued that after introduction of Article 300-A, the right to property has become more fundamental than before because with the repeal of many exceptions to the right to property contained in the repealed Article 31, all laws relating to acquisition and requisition of property will have to satisfy the common law requirement of eminent domain of public purpose and adequate compensation.

32. It is unnecessary to go into these questions in this batch of writ petitions since we are of the considered opinion that Section 12-A of the Act in no manner whatsoever deprives the property of any of the petitioners. At any rate. Article 300-A says that no person shall be deprived of his property save by authority of law. The word "law" used in the Act by State Legislature means a rule or statutory order having the force of law. Deprivation of property shall be only by authority of law but not executive fiat or the order. Deprivation of property is by acquisition or requisition or taken possession of for the public purposes. Section 12-A does not provide for any acquisition, requisition or taking possession of any of the property, for any public purpose.

33. The next contention that "law" within the meaning of and in terms of Article 300-A providing that no person can be deprived of his liberty or property except in accordance with law and that law must be one that will stand the test of Article 13 of the Constitution, need not be gone into since we conclude that Section 12-A of the Act in no manner deprives the property of any of the petitioners.

34. However, learned Counsel repeatedly emphasised that the law depriving a person of his property should also satisfy Article 21 of the Constitution of India. In *State of Maharashtra and Another Vs. Basantibai Mohanlal Khetan and Others*, , this very argument has been rejected. The Supreme Court observed:

".....Article 21 essentially deals with personal liberty. It has little to do with right to own property as such. Here we are not concerned with the case where the deprivation of the property would lead to deprivation of life or livelihood..... to really open Article 21 of the Constitution for striking down the provisions of the Act amounts to clear misapplication of the great doctrine enshrined in Article 21 of the Constitution."

35. Thus, we hold that Section 12-A of the Act in no manner infringes Article 31-A of the Constitution of India nor is it violadve of Article 31-A of the Constitution of India.

Attack based on Article 19(1)(c) of Constitution of India:

36. For the sake of completion, we shall deal with the submissions made by the learned Counsel for petitioners contending that Section 12-A takes away and abridges the freedom of Association guaranteed under Article 19(1)(c) of the Constitution of India. We do not find any merit whatsoever in the submission. The Co-operative Societies in the State of Andhra Pradesh are created by Statute, and they are controlled by it. No person has any fundamental right to form any Co-operative Society under the Act. The Co-operative Societies are created and governed by the statute. Section 12-A of the Act provides for a mode of dissolution of the Co-operative Sugar Factories in the circumstances provided for under the said provision. The submission that Section 12-A makes serious in-roads into the right to the property and to form an Association is misconceived.

Attack based on Article 19(1)(g) of Constitution of India:

37. We do not find any merit whatsoever in the submission made by learned Counsel for petitioners that the impugned provision takes away the fundamental right guaranteed under Article 19(1)(g) of the Constitution of India. The submission does not merit any serious consideration.

Legislative competence:

38. We are also not impressed by the submission that Section 12-A of the Act suffers from lack of legislative competence. The legislation squarely falls within Entry 32 of List II, which provides for incorporation, regulation and winding up of companies other than those specified in List-I including the Co-operative Societies. The submission therefore is devoid of any merit.

Challenge based on Article 14 of Constitution of India:

39. The next question that falls for our consideration is whether Section 12-A of the Act is liable to be struck down as violative of Article 14 of the Constitution of India?

40. It is contended that Section 12-A makes an unreasonable classification between the Co-operative Sugar Factories and other Co-operative Societies in which the Government may hold majority of the shares and which may have also become sick and cannot be rehabilitated. The submission has no merit. Co-operative Sugar Factories themselves constitute into a separate class. Different classes of societies are recognised as such by the very provisions of the Act. Another submission is that all the sick Cooperative Societies irrespective of the fact as to whether the Government holds majority shares or not, are to be treated alike and as one class. No distinction can be made between Co-operative Societies in which the Government may hold majority of shares and societies in which the Government may not hold majority of shares. The submission is totally misconceived. There is no material available on record in support of the said contention. The Court cannot indulge in any guess work. No list of other Co-operative Societies wherein the Government has majority of the shares and they

have become sick, is made available for the perusal of the Court. The submission is speculative in its nature. The Court in order to decide as to whether the classification has no nexus to the object sought to be achieved, cannot make any roving enquiry and find out for itself as to whether there is any substance in the submissions so made.

41. Similar is the misconceived submission that Section 12-A makes discrimination between the sick Co-operative Sugar Factories and Co-operative Sugar Factories, which are not sick. The sick Cooperative Sugar Factories in which the Government holds majority of the shares are class by themselves.

42. In *Manna Lal and Another Vs. Collector of Jhalawar and Others*, , it was contended that the Registration Act 5 of 1952 which enables that the moneys due to the Government in respect of its trading activities to be recovered by way of public demand, offends Article 14 of the Constitution since the Act makes distinction between other bankers and the Government in respect of recoveries of moneys due. The Supreme Court observed;

"It seems to us the Government even as banker, can legitimately be in a separate class. The dues of the Government is of the entire people of the State. This being the position of law, giving special facility for the recovery of such dues, in any event, be said to offend Article 14 of the Constitution."

43. This is the complete answer to the submission of learned Counsel for petitioners so far as this aspect of the matter is concerned. We find substantial force in the submission made by the learned Advocate General that the Section 12-A makes a reasonable classification between the sick Sugar Factories in which the Government holds majority of the shares and other Cooperative Sugar Factories where the Government may not hold majority share or any shares whatsoever.

Whether Section 12-A confers unfettered and unguided powers upon Registrar?

44. It is contended that the impugned provision confers unfettered, untrammelled, and unguided power upon the Registrar to transfer the assets and to declare any Sugar Factory as sick resulting in far reaching consequences. There is no reasonable or discernible criteria evolved and prescribed before taking such drastic decision by the Registrar. No provision is made in the impugned Section or Rules made thereunder that the concerned Co-operative Societies and its members be given an opportunity of being heard. The provision is therefore arbitrary. The learned Advocate-General submits that the impugned provision does not suffer from any vice of arbitrariness. The provision as well as the Rules made thereunder envisage that before taking action under the said Section by the Registrar, certain requirements must be satisfied. Safeguards are in-built in the Section itself ensuring fair play in the decision making process. Learned Advocate General further submits that the likelihood or possibility of abuse of power would not render the provision itself unconstitutional. Arbitrary exercise of power may be liable to be set aside. Each case may have to be

examined on its own facts in order to decide as to whether the decision of the Registrar is vitiated for any reason whatsoever.

45. We have given our anxious consideration to the rival submissions. The impugned provision, in our considered opinion, does not confer any unguided or uncanalised power upon the Registrar to pass orders calling upon the Committee of a Co-operative Sugar Factory to transfer its assets or its assets and liability, in whole or part. The discretion conferred upon the Registrar is very well structured and circumscribed leaving no room enabling the Registrar to exercise the power in any arbitrary manner.

46. In order to enable the Registrar to transfer assets of any Co-operative Sugar Factory, he is required to form an opinion: (a) that the majority of the shares are held by the Government in the given Co-operative Sugar Factory; (b) it is or has become sick; and (c) there is no possibility to rehabilitate the same. Then, the Registrar is required to consult the Government and the financing bank, if any, to which the Co-operative Sugar Factory is indebted and give notice to the Managing Committee of the Sugar Factory requiring to show-cause as to why its assets should not be transferred to others in accordance with the scheme formulated by him.

47. The learned Counsel for petitioners, Sri M. V. Durga Prasad however relied upon the decisions in *Organo Chemical Industries v. Union of India* AIR 1979 SC 1803 in support of the submission that conferment of unguided and arbitrary powers upon any authority results in infringement of right to equality guaranteed under Article 14 of the Constitution of India. The judgment upon which reliance is placed, in our considered opinion, not only does not support the point urged by him, but the principle laid down therein runs counter to the submissions made by the learned Counsel for petitioners. The Supreme Court in the said decision, considered the Constitutional validity of Section 14-B of the Employees Provident Funds and Miscellaneous Provident Funds Act, 1952, which confers power upon the Provident Fund Commissioner or such other Officer as may be authorised by the Central Government by notification to recover damages from the employer making default in payment of any contribution to the Fund, which of course provided for a reasonable opportunity of being heard before levying and recovery of damages. It was urged that the Provident Fund Commissioner is vested with naked and unguided power to inflict any quantum of damages as he fancies and the blanket authority is instinct with discrimination, a vice to which the Article 14 is allergic.

48. The Supreme Court while rejecting the contention observed:

"Fair play in administration is a finer juristic facet, at once fundamental and inviolable and natural justice is an inalienable functional component of quasi-judicial acts. Here, it is indubitable that the imposition of damages on a party, after a statutory hearing, is a quasi-judicial direction. This Court has impressed the requirements of natural justice on such jurisdictions and one such

desideratum is spelling out reasons for the order made, in others words, a speaking order. The inscrutable face of a sphinx is ordinarily incongruous with a judicial or quasi-judicial performance. It is, in my view, an imperative of Section 14-B that the Commissioner shall give reasons for his order imposing damages on an employer. The constitutionality of the power, tested on the anvil of Articles 14 and 19 necessitates this prescription. Such a guarantee ensures rational action by the officer, because reasons imply relevant reasons, not capricious ink and the need for cogency rivets the officer's mind to the pertinent material on record. Moreover, once reasons are set down, the order readily exposes itself to the writ jurisdiction of the Court under Article 226 so that perversity, illiteracy, extraneous influence, mala fides and other blatant infirmities straight get caught and corrected. Thus, viewing the situation from the conspectus of requirements and remedies, statutory agencies may be inhibited and the scare of arbitrary behaviour allayed once reasons are required to be given."

49. The Court further cautioned that "the more bereft of explicit guidelines a statutory power is, the more searching must be the judicial invigilance to discover the hidden injustice and masked mala fides. Even so, let us examine the ground that, absent detailed guidelines, the law is void. What is not explicit may still be implicit. What is not articulated at length may be spun out from a single phrase. What is not transparent in particularised provisions may be immanent in the preamble, scheme, purpose of subject-matter of the Act. What is real is not only the gross but also the subtle, if I may strike a deeper note. Such a perspective dispels the submission that Section 14-B is bad as uncircumscribed and overboard."

50. It is, however, interesting to note the reasons assigned for upholding the constitutional validity of Section 14-B of the Act. The Supreme Court while adverting to the contention that Section 14-B confers uncontrolled powers upon the Regional Provident Fund Commissioner to impose such damages as he may think fit and therefore is violative of Article 14 of the Constitution of India, observed:

"The power of the Regional Provident Fund Commissioner to impose damages u/s 14-B is a quasi-judicial function. It must be exercised after notice to the defaulter and after giving him a reasonable opportunity of being heard. The discretion to award damages could be exercised within the limits fixed by the Statute. Having regard to the punitive nature of the power exercisable u/s 14-B and the consequences that ensue therefrom, an order u/s 14-B must be a "speaking order" containing the reasons in support of it. The guidelines are provided in the Act and its various provisions, particularly in the word "damages" the liability for which in Section 14-B arises on the "making of default". While fixing the amount of damages, the Regional Provident Fund Commissioner usually takes into consideration, as he has done here, various factors viz., the number of defaults, the period of delay, the frequency of defaults and the amounts involved The word "damages" in Section 14-B lays down sufficient

guidelines for him to levy damages."

51. We have already noticed the ingredients of Section 12-A of the Act and the factors that are required to be taken into consideration by the Registrar in the matter of formation of opinion that in a particular Sugar Factory the majority of the shares are held by the Government and it is or has become sick and there is no possibility to rehabilitate the same. We have also noticed that, the Registrar is required to consult the Government and financing bank before taking decision to transfer assets of a sick Co-operative Sugar Factory. The provision does not confer any power upon the Registrar to transfer assets and business of any Co-operative Sugar Factory according to his own choice and in any fanciful manner. Therefore, it is difficult to accept the plea that Section 12-A of the Act confers any unguided, uncanalised and arbitrary power upon the Registrar calling upon the Committee of the Sugar Factory to transfer its assets or its assets and liabilities in whole or part to any other society or a company or a firm or a body whether incorporated or not.

52. The learned Counsel, however, submits that Section 12-A is per se arbitrary and unreasonable in its nature and therefore violative of fundamental rights guaranteed by Article 14 of the Constitution of India, In State of Andhra Pradesh and others, etc. Vs. McDowell and Co. and others, etc., , the Supreme Court while considering the question as to whether any enactment or a provision thereof can be struck down by merely characterising the same as arbitrary one, observed:

"A law made by Parliament or the Legislature can be struck down by Courts on two grounds and two grounds alone viz., (1) lack of legislative competence and (2) violation of any of the fundamental rights guaranteed in Part-III of the Constitution or of any other constitutional provision. There is no third ground..... It is enough for us to say that by whatever name it is characterized, the ground of invalidation must fall within four corners of the two grounds mentioned above. In other words, say, if an enactment is challenged as violative of Article 14, it can be struck down only if it is found that it is violative of equality clause/equal protection clause enshrined therein. Similarly, if an enactment is challenged as violative of any of the fundamental rights guaranteed by Clauses (a) to (g) of Article 19(1), it can be struck down only if it is found not saved by any of the Clauses (2) to (6) of Article 19 and so on. No enactment can be struck down by just saying that it is arbitrary or unreasonable. Some or the other constitutional infirmity has to be found before invalidating any terms. An enactment can be struck down on the ground that the Court thinks it unjustified. Parliament and the Legislatures, composed as they are the representatives of the people, are supposed to know and be aware of the needs of the people and what is good and bad for them The Court cannot sit in judgment over their wisdom."

(emphasis is of ours)

53. The learned Counsel however would place reliance upon the judgment of j

the Supreme Court in *State of Maharashtra v. Kamal*, AIR 1985 SC 118, in support of his submission that a provision can be struck down as violative of Article 14 of the Constitution of India if such provision is held to be an arbitrary one. We are unable to find that any such principle has been laid down by the Supreme Court in the said decision. The constitutional validity of Sections 2(f), 3 and 4 of Maharashtra Vacant Lands (Prohibition of Unauthorised occupation and Summary Eviction) Act (66 of 1975) came up for consideration in the said decision. The said provisions were struck down by the Bombay High Court as being violative of Articles 14 and 19(1)(f) of the Constitution of India. On appeal preferred by State of Maharashtra, the Supreme Court while dismissing the appeals came to the same conclusion. The provisions were not struck down on the ground of arbitrariness. They were struck down on the ground that the competent authority has the freedom to pick and choose the lands on which there are unauthorised structures and declare some of them as vacant lands and leave other lands similarly situated untouched. The Act did not provide for any safeguard against arbitrary exercise of discretion conferred upon the competent authority to declare the land as vacant land. The Act did not prescribe any procedure the competent authority is required to adopt before declaring the land as vacant land. It is a clear case where the provisions were struck down on the ground of violation of equality clause guaranteed by Article 14 of the Constitution of India.

54. Therefore, we find it very difficult to accept the submission of the learned Counsel for petitioners that a provision in a statute can be struck down by merely characterising the same as an arbitrary one.

Procedure prescribed for initiating action u/s 12-A of the Act-whether unreasonable? Does it satisfy the requirements of Article 14 of Constitution of India?

55. Now we shall proceed to examine an important facet of the attack on the newly incorporated provision based on Article 14. It is contended that Section 12-A of the Act takes away valuable rights of the petitioners and of the Co-operative Sugar Factories without providing any opportunity of being heard whatsoever in the matter of formation of opinion by the Registrar that in a Co-operative Sugar Factory the majority of the shares are held by the Government and it is or has become sick, and there is no possibility to rehabilitate the same. It is submitted that a Co-operative Sugar Factory can be declared as a sick unit by the Registrar on his own accord without providing any opportunity whatsoever either to the members/ shareholders or the Committee of the Society. It results in drastic and far-reaching consequences. It is also submitted by the learned Counsel that a variety of factors and circumstances are required to be taken into consideration by the Registrar in forming his opinion and unless an opportunity of hearing is provided, all such relevant factors and circumstances may not be available to him in order to arrive at a proper and just conclusion.

56. The learned Advocate-General submits that an opportunity of hearing to the

affected parties is built-in in Section 12-A of the Act. It is submitted that only after making necessary enquiry and examining the working of the concerned factory, the Registrar may form an opinion that a particular unit is or has become sick.

57. There cannot be any dispute whatsoever that exercise of power and decision by the Registrar u/s 12-A of the Act results in serious consequences. The decision results in civil consequences so far as members/shareholders of the Co-operative Sugar Factories are concerned. The action results in dissolution of the Co-operative Society itself. The factory disappears into thin air. The final action results in transfer of assets and business in whole or part and vests in any other society or company or firm or body whether incorporated or not.

58. The question then falls for consideration is whether Section 12-A provides for any opportunity of being heard before the Registrar forms his opinion that in a particular Co-operative Sugar Factory the majority of the shares are held by the Government and it is or has become sick and there is no possibility to rehabilitate the same. The learned Advocate General asserts that Section 12-A itself provides for such an opportunity of being heard.

59. We propose to make a critical analysis of Section 12-A of the Act in order to find out as to whether it provides any opportunity of being heard at all and if so, at what stage, to any of the affected persons before the Registrar takes decision to transfer the assets and business of a Co-operative Sugar Factory resulting in dissolution of the Co-operative Society itself.

60. The question that falls for consideration is as to what is the "opinion" that is required to be formed by the Registrar before calling upon the Committee of the concerned society to transfer its assets?

61. In order to consider the said question, it becomes imperative to consider the meaning of expression "opinion" employed in Section 12-A of the Act. "Opinion" means something more than retailing of gossip or hearsay; it means judgment of belief; that is, belief resulting in what one thinks on a particular question. "Opinion" means expression of reasons why a certain decision (judgment) was reached in a case (See Black's Law Dictionary).

62. The first requirement before the Registrar calling upon the Committee concerned to transfer its assets is to arrive at a decision (a) that majority of the shares are held by the Government in that Society; (b) that such society is or has become sick; and (c) that there is no possibility to rehabilitate the same. Thereafter, he is required to consult the Government and the financing bank to which the Sugar Factory is indebted. Thereafter, he is required to prepare a scheme to give effect to the transfer of assets of the Co-operative Sugar Factory specifying the manner in which the assets of the society proposed to be transferred is to be dealt with and the terms and conditions of the transfer.

63. The impugned provision does not provide for any opportunity of being heard

to any of the affected parties before the Registrar forms his opinion and decides as to whether the majority of the shares are held by the Government at all in a particular Co-operative Sugar Factory and whether it is or has become sick and there is no possibility to rehabilitate the same. It also does not provide for any opportunity of being heard before any scheme is formulated providing the manner in which the assets of the society proposed to be transferred are to be dealt with.

64. In each of the writ petitions before us, there is a serious dispute raised by the petitioners, inter alia, contending that the Government does not hold majority of the shares in any of the Co-operative Societies. The respondents assert that the Government in fact holds the majority of the shares in each of the Co-operative Sugar Factories that is sought to be privatised. The very mode and method adopted by the Government for acquiring the majority of the shares itself is put in issue. In almost all the writ petitions it is contended that the amounts voluntarily pumped into the Cooperative Sugar Factory towards DCP cannot be treated as loan advanced and the so-called loan advanced itself cannot be permitted to be converted into equity. We have referred to these aspects of the matter only in order to highlight the nature of the controversy between the parties and not with a view to express any opinion of ours on such disputed and controversial facts. It is also contended before us that none of the Sugar Factories have become sick within the meaning of the provisions of Sick Industrial Companies (Special Provisions) Act, 1985 (for short "SICA").

65. Section 3(0) of the SICA defines "sick industrial company" as a company registered for not less than five years, which has at the end of any financial year accumulated losses equal to or exceeding its entire net worth. The expression "there is no possibility to rehabilitate the same" used in Section 12-A is also required to be understood in the context of provisions of SICA. It requires a detailed and elaborate enquiry in order to decide as to whether a company has become sick company within the meaning of the SICA. The question is whether such an enquiry can be made without providing any opportunity of being heard to the affected persons.

66. Even under the SICA, an elaborate enquiry has to be made into the working of an industrial company before determining whether such industrial company has become sick. An elaborate procedure is prescribed thereunder. It is not necessary to burden this judgment with the nature of enquiry and the details thereof as provided under the provisions of SICA. Suffice it to notice that at every stage, an enquiry is contemplated under the provisions of SICA ensuring compliance with the principles of natural justice.

67. A plain reading of Section 12-A of the Act would make it clear that it does not provide specifically for any notice requiring show-cause as to why a Cooperative Sugar Factory should not be declared as sick and there is no possibility or rehabilitate the same. The Registrar forms an opinion for himself that in a Cooperative Sugar Factory, the majority of the shares are held by the

Government and it is or has become sick and there is no possibility to rehabilitate the same. It is only thereafter he is required to consult the Government and the financial bank and call upon the Committee concerned by notice in writing requiring the said Committee to transfer its assets or assets and liabilities and on such transfer, the Society formed for such Co-operative Sugar Factory shall stand dissolved.

68. The Managing Committee of the Society concerned is to be issued notice in writing by the Registrar specifying the time and particulars of the assets or assets and liabilities, in whole or part, for transferring the same to any other society, company etc., within the prescribed time. Section 12(1)(b) provides that within the time specified in the notice referred in Clause (a), if the Society fails to comply with the directions of the Registrar, he shall after giving an opportunity in the manner prescribed to the general body, the Committee of such society and other creditors thereof to make a representation thereof, if any, by order notified in Government Gazette, take such action as deem fit in the case including a direction to the Society to transfer its assets in the manner referred to in Clause (a).

69. An analysis of Section 12(1)(a) and (b) reveals that a notice in writing is required to be issued to the Committee concerned to transfer its assets or assets and liabilities, as the case may be, after Registrar forming an opinion that majority of the shares are held by the Government in the concerned Co-operative Sugar Factory and it is or has become sick and there is no possibility to rehabilitate the same. If the concerned Committee fails to comply with the directions of the Registrar specified in the notice referred to in Clause (a), he shall issue such further directions to transfer its assets or assets and liabilities but only after providing an opportunity in the manner prescribed to the general body or the Committee of the society and the creditors thereof to make their representations. The Section does not provide for any opportunity whatsoever to either the members or the shareholders or the Managing Committee before the Registrar forming his opinion to transfer the assets and business of the Sugar Factory. An opportunity of making representations in the manner prescribed is provided for only for the purposes of enforcement of decision already taken in the matter by the Registrar and not before taking the actual decision.

70. What are the consequences in law if there is no specific provision in the Statue or Rules made thereunder providing for a notice and opportunity of hearing as against the proposed action which may adversely affect the rights of a person?

71. It is very well settled and needs no re-statement in our hands that the aim of the rules of natural justice is to secure justice. The rules operate in areas not covered by any law validly made. They do not supplant the law but supplement it.

72. In *Maneka Gandhi v. Union of India*, (1987) 1 SCC 248, Baig, Chief Justice observed:

"It is well established that even where there is no specific provision in a statute or rules made thereunder for showing cause against action proposed to be taken against an individual which affects the rights of that individual, the duty to give reasonable opportunity to be heard will be implied from the nature of the function to be performed by the authority which has the power to take punitive or damaging action."

73. An interesting issue had fallen for consideration in the celebrated case of *Olga Tellis and Others Vs. Bombay Municipal Corporation and Others*, . The Court was required to decide the constitutional validity of Section 314 of Bombay Municipal Corporation Act, 1888, which authorised the Commissioner of the Corporation to get the illegal constructions and structures removed or demolished without notice. The provision authorised the Commissioner to remove anything erected/deposited or hawked in contravention of Section 312 without notice. The provision is not silent as to whether any notice is required to be issued. On the other hand, it conferred power on the Commissioner to take action without notice. It was urged that the provisions of the Section were arbitrary and unreasonable as they did not provide notice before removal of encroachment, but on the contrary it expressly provided removal of illegal encroachments "without notice".

74. The Supreme Court no doubt held the provisions intra vires but only after reading principles of natural justice into the provisions.

75. Chandrachud, Chief Justice, speaking for the Constitution Bench observed:

"Procedure which is unjust or unfair in the circumstances of the case, attracts the vice of unreasonableness, thereby filling the law which prescribes that procedure and consequently, the action taken under it. Any action taken by a public authority which is invested with statutory powers has, therefore, to be tested by the application of two standards: The action must be within the scope of the authority conferred by law and secondly, it must be reasonable. If any action, within the scope of the authority conferred by law, is found to be unreasonable, it must mean that the procedure established by law under which that action is taken is itself unreasonable. The substance of the law cannot be divorced from the procedure which it prescribed for, how reasonable the law is, depends upon how fair is the procedure prescribed by it."

76. It is specifically held in the said case that reading Section 314 as containing command not to issue notice before removal of an encroachment will make the law invalid. It is observed:

"Considered in its proper perspective, Section 314 is in the nature of an enabling provision and not of a compulsive character. It enables the Commissioner, in appropriate cases, to dispense with previous notice to persons who are likely to be affected by the proposed action. It does not require, and cannot be read to mean, that in total disregard to the relevant circumstances pertaining to a given situation, the Commissioner must cause the removal of an encroachment without

issuing previous notice. The primary rule of construction is that the language of the law must receive its plain and natural meaning. What Section 314 provides is that the Commissioner may without notice, cause an encroachment to be removed. It does not command that the Commissioner shall, without notice, cause an encroachment to be removed. Putting it differently, Section 314 confers on the Commissioner the discretion to cause an encroachment to be removed with or without notice. The discretion has to be exercised in a reasonable manner so as to comply with the constitutional mandate that the procedure accompanying the performance of a public act must be fair and reasonable. We must lean in favour of this interpretation because it helps sustain the validity of the law. Reading Section 314 as containing a command not to issue notice before the removal of an encroachment will make the law invalid."

(Emphasis is of ours)

77. Now we shall consider the application of the said principles in order to consider the constitutional validity of Section 12-A of the Act. Does it prescribe any fair and reasonable procedure? Admittedly, Section 12-A does not provide for any notice and opportunity of being heard before the Registrar forming the opinion that in a particular Co-operative Sugar Factory the majority of the shares are held by the Government and it is or has become sick and there is no possibility to rehabilitate the same nor does it exclude specifically the applicability of the principles of natural justice. However, a notice is contemplated to be issued by the Registrar requiring the concerned Co-operative Sugar Factory to transfer its assets or its assets and liabilities in whole or part to any other society or company or firm or body etc., on such terms and conditions within a particular time frame and if the society fails to comply with such directions, he is required to give further opportunity to the General Body of the Committee of such society to make their representation, if any, and thereafter take such action as deem fit in the matter including the direction to the Society to transfer its assets in the prescribed manner. Thus, a notice and opportunity is contemplated at a stage where the Co-operative Sugar Factory fails to comply with the directions of the Registrar to transfer its assets and liabilities on such terms and conditions in the manner prescribed by the Registrar.

78. It is a peculiar situation where the Act does not provide for any notice and opportunity of being heard before the Registrar decides as to whether the majority of the shares at all are held by the Government in a particular Co-operative Society and whether it is or has become sick and whether there is no possibility to rehabilitate the said Co-operative Sugar Factory. The provision enables the Registrar to take substantial decision adversely affecting the rights of the society and its members without any notice and opportunity of being heard in the matter.

79. Reading Section 12-A of the Act as containing a command not to issue a notice before the Registrar forming an opinion in the matter will make Section 12-A invalid and inoperative.

80. The provision may have to be declared invalid unless the principles of natural justice are read into the same. It is settled law that the Court must lean in favour of an interpretation which helps sustain the validity of the law. However, learned Advocate General strenuously contended that the power conferred upon the Registrar occupying the high seat of power shall always be exercised in a responsible, fair and reasonable manner. Mere absence of a provision providing a notice and opportunity of being heard to the affected parties particularly when the power is conferred upon the highly placed officers is not fatal. We are not impressed by the submissions. We need only to recapitulate what Justice P.B. Sawant in *Delhi Transport Corporation Vs. D.T.C. Mazdoor Congress and Others*, , observed:

"There is need to minimize the scope of the arbitrary use of power in all walks of life. It is inadvisable to depend on the good sense of the individuals, however, high-placed they may be. It is all the more improper and undesirable to expose the precious rights like the rights of life, liberty and property to the vagaries of the individual whims and fancies. It is trite to say that individuals are not and do not become wise because they occupy high seats of power, and good sense, circumspection and fairness does not go with the posts, however, high they may be. There is only a complaisant presumption that those who occupy high posts have a high sense of responsibility. The presumption is neither legal nor rational. History does not support it and reality does not warrant it. In particular, in a society pledged to uphold the rule of law, it would be both unwise and impolitic to leave any aspect of its life to be governed by discretion when it can conveniently and easily be covered by the rule of law."

(emphasis is added)

81. In *Swadeshi Cotton Mills Vs. Union of India (UOI)*, , the Supreme Court while interpreting Section 18-AA of Industries (Development and Regulation) Act (65 of 1951), which conferred power to takeover industrial undertakings without investigation under certain circumstances and which admittedly did not provide any notice or opportunity of being heard before such takeover, held:

"In short, the general principle - as distinguished from an absolute rule of uniform application - seems to be that where a statute does not, in terms, exclude this rule of prior hearing but contemplates a post decisional hearing amounting to a full review of the original order on merits, then such a statute would be construed as excluding the audi alteram partem rule at the pre-decisional stage. Conversely, if the statute conferring the power is silent with regard to the giving of a pre-decisional hearing to the person affected and the administrative decision taken by the authority involves civil consequences of a grave nature and no full review or appeal on merits against that decision is provided, Courts will be extremely reluctant to construe such a statute as excluding the duty of affording even a minimal hearing shorn of all its formal trappings and dilatory features at the pre-decisional state, unless, viewed pragmatically, it would paralyse the administrative process or frustrate the need

for utmost promptitude. In short, this rule of fairplay "must not be jettisoned save in very , exceptional circumstances where compulsive necessity so demands". The Court must make every effort to salvage this cardinal rule to the maximum extent possible, with situational modifications. But, to recall the words of Bhagwati, J the core of it must, however, remain namely that the person affected must have reasonable opportunity of being heard and the hearing must be a genuine hearing and not an empty public relation exercise."

82. The Court accordingly held that it is not reasonably possible to construe Section 18-AA as universally excluding either expressly or inevitable intendment, the application of audi alteram partem rule at the pre-decisional stage regardless of the facts and circumstances of a particular case. The rule of prior hearing is held to be fundamental one and such prior hearing ensure fair play in action.

83. In K.I. Shephard and Others Vs. Union of India (UOI) and Others, , the Supreme Court approvingly referred to an observation of Netheim in Privy Council, Natural Justice and Certiorari:

"Formerly the presumption had been that there was no obligation to give a hearing unless the statute itself indicated such an obligation; now the presumption is that there is such an obligation unless the statute clearly excludes it, notwithstanding the vesting of a power, in subjective terms, in a minister responsible to Parliament."

84. Applying these principles, we reach the conclusion that Section 12-A does not exclude the prior application of audi alteram partem rule. The power conferred upon the Registrar thereunder is drastic in its nature and consequences resulting in dissolution are far-reaching and its effect on the rights and interests of the society and its members/ shareholders are grave and deprivatory in nature. In the circumstances, it cannot be accepted that the Section does not make any provision giving a full right of opportunity of being heard in the matter.

85. It would be contrary to every recognised principle of fair procedure and violative of the rule of audi alteram partem, which constitutes one of the basic principles of natural justice, to deny to the shareholders of the society the right to be heard before an order is made by the Registrar prejudicially affecting their rights.

86. It would indeed be strange that the shareholders who had contributed to the building of the Sugar Factory as a centre of economic power, should have no right to be heard when it is sought to demolish that very centre of economic power.

87. Any other interpretation of Section 12-A of the Act may make it vulnerable rendering itself to be an invalid piece of legislation.

88. In the result, we hold that the Registrar is required to issue notice to the management and provide an opportunity of being heard to the management and as well as the members or shareholders, as the case may be, before taking any

decision that the majority of the shares are held by the Government in a Sugar Factory and the same is or has become sick and that there is no possibility to rehabilitate the same. All the objections preferred with regard to each of the ingredients are required to be gone into before a decision is taken in the matter.

Whether the decision-making process is vitiated?

89. Now we undertake to examine the decision-making process and the manner of exercise of power u/s 12-A of the Act by the Registrar. A detailed counter-affidavit has been filed by the Registrar, who is also the Principal Secretary to Government, Public Enterprises Department and Chairman, Implementation Secretariat. He speaks on behalf of the Government also. In the counter-affidavit, the reasons as to how and in what circumstances, the Government came to the conclusion to privatise the Co-operative Sugar Factories in the State as part of Public Enterprise Reform Programme and as part of Economic Restructuring Project, are also stated. From the averments made in the counter-affidavit, it appears as if there is no distinction in law between the Government and the Registrar. An attempt is made by him eulogising the process of privatisation undertaken by the Government of Andhra Pradesh by implementing the Public Enterprise Reform Programme. According to the averments, the privatisation also seeks to achieve the objectives enshrined under Articles 39 and 43 of the Constitution of India. Much has been said on either side about the merits and demerits of privatisation and it is not necessary to express our opinion with regard to the same in this case.

90. Now we shall briefly advert to the facts in each case.

W.P. Nos. 11937 and 21512 of 2002:

91. We do not propose to minutely examine the various factual aspects highlighted in the affidavit filed in support of the writ petitions and the decisions taken by the elected Board in order to overcome all the accumulated losses and to go into the profits and to become a profit earning concern. But, we are constrained to notice in somewhat detail the averments made in the counter-affidavit filed by the Registrar, inter alia, contending that the Government, in April, 2002, have considered various reform options in respect of ASCL (Anakapalle Co-operative Sugar Limited) and finally decided on policy consideration that the society should be privatised. The shareholders at the General Body Meeting cannot veto the policy decision of the Government and limit the powers of the Registrar.

92. The averments clearly admit that the decision to privatise the Anakapalle Cooperative Sugars Limited is that of the Government. Whereas, it is the Registrar who is required to form an opinion that a Co-operative Sugar Factory in which majority of the shares are held by the Government is or has become sick and there is no possibility to rehabilitate the same and it is only after such opinion is formed by the Registrar, he shall consult the Government and the financial bank for proceeding further in the matter to transfer the assets or the

assets and liabilities of the Sugar Factory to any other society etc., on such terms and conditions resulting in dissolution of the Co-operative Sugar Factory.

93. There is no provision in the Act enabling the Government to decide the matter as to which of the Co-operative Sugar Factories in the State is required to be privatised. The Government may have decided as policy to privatise sick Cooperative Sugar Factories. That policy is crystallised in the form of Section 12-A of the Act. But, the duty is cast upon the Registrar in each case to examine the material available on record in order to decide as to whether a particular Co-operative Sugar Factory is or has become sick and that there is no possibility to rehabilitate the same. It is a clear case where the Registrar has surrendered his statutory duty to form such an opinion to the Government and obviously appears to have been guided by the decision of the Government to privatise the Cooperative Sugar Factories in the State. The Registrar may be subordinate to the Government but he is under statutory obligation to form an opinion and his opinion is to govern, he must form it himself on such reasons and grounds as seem good to him. The Registrar in law cannot abdicate to discharge his statutory function to any outside agency including the Government.

94. The "record" made available does not reflect the decision-making process. Majority of the documents are xerox copies of internal correspondence between one authority and another. It is unnecessary to make any further comment about the same.

95. Even that "record" discloses that it is the Government, which has taken the decision to privatise Co-operative Sugar Factories on the ground of their becoming sick. The second respondent herein played pivotal role in the decision-making process of the Government in his capacity as the Principal Secretary to the Government, Public Enterprises Department. He is all rolled into one.

96. However, in the bunch of papers, which are not in the form of any file that is usually maintained by the Government, we have come across an order dated 15-5-2002 passed by the Registrar u/s 12-A of the Act. The order does not contain any references. The "record" does not contain any material on the basis of which the requisite opinion is formed by the Registrar. It is signed by the Principal Secretary to Government, Public Enterprises Department and Registrar.

97. Section 12-A, in terms requires the satisfaction of the Registrar in regard to existence of the circumstances or conditions precedent as a necessary preliminary to the exercise of the power thereunder. The Registrar must form an opinion in regard to existence of the following three circumstances:

(a) That majority of the shares are held by the Government in a Co-operative Sugar Factory;

(b) such Co-operative Sugar Factory in which the majority of the shares are held by the Government is or has become sick; and

(c) that there is no possibility to rehabilitate the same.

98. It may be true that an element of subjectivity is involved in the formation of such an opinion, but, as was pointed out by the Supreme Court in *The Barium Chemicals Ltd. and Another Vs. The Company Law Board and Others*, , that the existence of the circumstances which constitute the opinion and the sine qua non for action are to be drawn, must be demonstrable and the existence of such circumstances, if questioned, must be proved at least prima facie. The Supreme Court in *Barium Chemicals*" (supra) while construing the expression "in the opinion of the Central Government" employed in Section 235 of the Companies Act, 1956 observed:

"..... the words "reason to believe" or "in the opinion of do not always lead to the construction that the process of entertaining "reason to believe" or "the opinion" is an altogether subjective process not lending itself even to a limited scrutiny by the Court that such "a reason to believe" or "opinion" was not formed on relevant facts or within the limits or as Lord Radcliff and Lord Reid called the restraints of the statute as an alternative safeguard to rule of natural justice where the function is administrative.

The object of Section 237 is to safeguard the interests of those dealing with a company by providing for an investigation where the management is so conducted as to jeopardize those interest or where a company is floated for a fraudulent or an unlawful object. Clause (a) does not create any difficulty as investigation is instituted either at the wishes of the company itself expressed through a special resolution or through an order of the Court where a judicial process intervenes. Clause (b), on the other hand, leaves directing an investigation to the subjective opinion of the Government or the Board. Since the Legislature enacted Section 637 (i) (a) it knew that Government would entrust to the Board its power u/s 237 (b). Could the Legislature have left without any restraints or limitations the entire power of ordering an investigation to the subjective decision of the Government or the Board? There is no doubt that the formation of opinion by the Central Government is a purely subjective process. There can also be no doubt that since the Legislature has provided for the opinion of the Government and not of the Court such an opinion is not subject to a challenge on the ground of propriety reasonableness or sufficiency. But the Authority is required to arrive at such an opinion from circumstances, suggesting what is set out in Sub-clauses (i), (ii) or (iii). If these circumstances were not to exist, can the Government still say that in its opinion they exist or can the Government say the same thing where the circumstances relevant to the clause do not exist? The Legislature no doubt has used the expression "circumstances suggesting". But that expression means that the circumstances need not be such as could conclusively establish an intent to defraud or a fraudulent or illegal purpose. The proof of such an intent or purpose is still to be adduced through an investigation. But the expression "circumstances suggesting" cannot support the construction that even the existence of circumstances is a matter of subjective opinion..... It is hard to contemplate that the Legislature could have left to the subjective process both the formation of opinion and also the existence of

circumstances on which it is to be founded. It is also not reasonable to say that the clause permitted the Authority to say that it has formed the opinion on circumstances which in its opinion exist and which in its opinion suggest an intent to defraud or a fraudulent or unlawful purpose. It is equally unreasonable to think that the Legislature could have abandoned even the small safeguard of requiring the opinion to be founded on existent circumstances which suggest the things for which an investigation can be ordered and left the opinion and even the existence of circumstances from which it is to be formed to a subjective process."

99. It is further observed that if it is shown that the circumstances do not exist or that they are such that it is impossible for anyone to form an opinion therefrom suggestive of the aforesaid things, the opinion is challengeable on the ground that there is non-application of mind or perversity or on the ground that it was formed on collateral ground and it was beyond the scope of statute.

100. The "record" made available for our perusal does not disclose any material upon which the Registrar could have formed an opinion within the meaning of Section 12-A of the Act resulting in drastic consequences of dissolution of the society itself formed for the Co-operative Sugar Factory.

101. On the other hand, there is any amount of evidence and material on "record" that the Government had taken decision to privatise Co-operative Sugar Factories in the State including Anakapalle Co-operative Sugar Factory. The Government's decision to privatise the Sugar Factories is sought to be implemented by the Registrar. There is no independent decision taken by him in the matter. The power conferred upon the Registrar u/s 12-A of the Act has been utilised only as a cloak. The Registrar has abdicated his statutory function and surrendered the same and acted under the dictation of the Government.

102. The order passed u/s 12-A of the Act by the Registrar is nothing but verbatim reproduction from the relevant section of the Statute. Such an order cannot reflect application of mind to the facts and circumstances of the case on hand. The Registrar acted mechanically without due care and caution as is required in law while exercising his discretion in the matter. The entire issue has been pre-determined based on the policy of the Government. The Registrar appears to have proceeded that the policy decision of the Government had precluded him from considering the merits of each case and as to the applicability of Section 12-A of the Act. The Registrar failed to consider the merits of the individual case.

103. The Government in exercise of its power under Sub-section (2) of Section 12-A of the Act cannot interfere in the matter of formation of opinion by the Registrar in individual cases. The competency of the Government is only to the extent of making rules and issuing directions general in nature for the purposes of effectively implementing the legislative policy enshrined in Section 12-A(1) of the Act. Such general directions cannot run counter to legislative scheme. Even

the Government cannot interfere with the discretion of the Registrar in individual cases. Section 12-A of the Act is to be read as a whole. Both the sub-sections are to be harmoniously.

104. The whole decision-making process, in our considered opinion, is vitiated.

105. It is rather surprising to note that even the tenders are invited proposing to sell the Co-operative Sugar Factories in the name of Chairman, Implementation Secretariat, Public Enterprises Department and not by the Registrar. The Rules require the Registrar to call for tenders/offers for giving wide publicity in order to decide the society, the company, body or firm whether incorporated or not to which the assets or assets and liabilities are to be transferred so as to get best possible offer and to protect the interests of the shareholders and the financing bank to which the society is indebted. A duty is cast upon the Registrar to ensure that the process of calling of tenders/offers is in conformity with the existing laws. That duty is delegated by the Registrar to the Chairman, Public Enterprises Department. It appears that at every stage distinction between the Government and the Registrar was ignored. All concerned have dealt with the matter as if the Co-operative Sugar Factories are owned by the Government and it was dealing with its own property.

106. The information memorandum and bid documents for the sale of assets and business of the Anakapalle Co-operative Sugars Limited have been prepared by the Implementation Secretariat, Government of Andhra Pradesh. It makes an interesting reading, further strengthening our view as to how the Registrar surrendered his discretion in the matter to the Government. In the introductory paragraph of the memorandum, it is stated:

"The implementation Secretariat (IS) of the Public Enterprises Department (FED) is privatising by way of sale of assets and business of AKP Sugars on behalf of the Registrar..... As part of on-going reforms programme, the Government of Andhra Pradesh has approved privatisation of Anakapalle Co-operative Sugars Limited."

107. Paragraph 1.2 under the heading "Cabinet Sub-Committee/Implementation Secretariat/Evaluation" reads:

"By authority of a Government Order, the Go AP privatisation programme is carried out by the Implementation Secretariat (IS) which reports to the Cabinet Sub-Committee (CSC) on Public Enterprises. The technical work of the IS is supported by Adam Smith International (ASI), international privatization advisers, financed through the UK Government's Department for International Development. Two committees of experts and officials evaluate the bids and report to the CSC for a decision on the outcome of the process."

108. According to the Information Memorandum and bid documents, the Commercial and Technical Evaluation Committee examines the technical and commercial part of each bid. At the second bid opening, the Financial and Price

Bid Evaluation Committee examines the Financial and Price part of eligible bids for responsiveness and compliance and the responsive bids will be evaluated and others eliminated. A report setting out the findings of the Commercial and Technical Evaluation Committee is prepared and considered by the Financial and Price Evaluation Committee following which a report is submitted to the Cabinet Sub-Committee on Public Enterprises. The Cabinet Sub-Committee decides if an acceptable bid has been received. If a bid is accepted, approval of the Board of the Society for the sale of AKP Sugar Mill is sought.

109. We have not come across any role as such assigned to the Registrar in this whole process of evaluation of the bids and its acceptance. The final decision is left to the Cabinet Sub-Committee. We have already noticed that according to the impugned provision and the Rules, it is the Registrar, who is required to call for tenders/offers after giving wide publicity in order to decide the Society etc., to which the assets are to be transferred so as to get the best possible offer and to protect the interests of the shareholders and the financial bank to which the society is indebted. It is also his duty to ensure that the process of calling for tenders/offers is in conformity with the existing laws. He is further duty-bound and under statutory obligation to identify the Co-operative Society, or company, or a firm, whether incorporated or not, for the purpose of transfer of assets of the sick Co-operative Sugar Factory.

110. It is no doubt true that it shall be within the competence of the Registrar as provided for under Rule 5 of the Rules to, constitute a Committee of persons having technical expertise and experience to assist and advice him for the purpose of (a) formulating the terms and conditions for the transfer of assets of the society; (b) assessing the value of the assets etc., of the societies; (c) discharging the liabilities, and (d) any other matter for which the Registrar thinks it necessary to receive technical assistance.

111. Neither the provision nor the Rules made thereunder authorise any other authority or authorities to intervene in the matter of evaluation of tenders and offers and in the matter of identification of societies or body, as the case may be, to which the assets of the sick Sugar Factory may be transferred.

112. The statutory provisions and Rules are violated with impunity. None of the respondents ever bothered to look into the provisions of the Statute and the Rules made thereunder. It looks as though they were not even aware of them. The "record" made available reveals that it is the Cabinet Sub-Committee, which has decided to re-advertise for sale of assets and business of some Sugar Factories including Anakapalle Co-operative Sugars Limited.

113. During the course of hearing, it is admitted that the information memorandum and the bid documents in respect of each of the Sugar Factories contain similar features.

114. Before we proceed to take up other writ petitions, we make it clear that the "records" concerning other cases were not made available for perusal of the

Court. The entire "record" is only in respect of Anakapalle Co-operative Sugar Limited, which is the subject-matter in W.P. No. 1 1937 of 2002. Incidentally, it contains copies of proceedings and the Cabinet Sub-Committee from which we have gathered some information about the acceptance or rejection of the offers received in respect of other Cooperative Sugar Factories.

W.P. Nos. 19210 and 8766 of 2002:

115. In these writ petitions, the petitioners are the members and shareholders of Chittoor Co-operative Sugar Factory Limited, Chittoor. They are aggrieved by the action of respondents in proposing to sell the assets of the said Co-operative Sugar Factory. Chittoor Co-operative Sugar Factory Limited was established on 22-8-1995. The object of the Society is to promote economic interests of the farmers in the Rayalaseema by encouraging development of agricultural industries. For that purpose, the Society after its establishment purchased an extent of Ac.85-19 cents of land and constructed the buildings and godowns for establishing the Sugar Factory. The society has raised a share capital of Rs. 1,86,000/- from 13,771 members who exclusively hail from the farmer community and they are the shareholders of the factory. The Government also contributed Rs. 30,00,000/- towards share capital and became shareholder in the Sugar Factory.

116. It is the case of petitioners that the Society was running in profits until the Government intervened in the matter by providing aid/loan to the society to the tune of Rs. 3 crores to be distributed towards SAP through the Commissioner and Director of Sugars and the Managing Director of the Co-operative Sugar Factory. It is submitted that the Government thereafter pressurised the Society to pay the additional amount in the name and style of final rate. This demand was made by the fourth respondent under the instructions of the Government causing heavy loss to the tune of Rs. 95 crores to the society. It is claimed that the amounts advanced by the Government cannot be termed as loan and the amount is not liable to be repaid by the Society to the Government and in fact, the Government has to repay the amounts paid by the Society to the cane growers in the form of State Advisory Price/ Final Rate fixed by the Government. The petitioners rely upon the judgment of this Court in Government of A.P. v. K.C.P. Sugars and Industries Corporation Ltd. (supra) and contend that the Government has no power whatsoever in imposing the State Advisory Price and compel the Co-operative Society Factory to pay such price to the growers.

117. In brief, it is the case of petitioners that the Society has cumulative loss of Rs. 97 crores only on account of payment of State Advisory Price, which ought not to have been paid by the Society but for the illegal directions of the Government.

118. The petitioners also challenge the action of the third respondent-Commissioner and Director of Sugars, directing the Managing Director of the Chittoor Cooperative Sugar Factory Limited to convert the alleged loan amount

granted earlier by the Government into equity and issuing share certificate in favour of the Government. The fourth respondent accordingly issued share certificate in favour of the Government and the entire amount of Rs. 1178.44 lakhs being the total outstanding has been converted into equity. According to the petitioners, the action on the part of the Managing Director, who is no other than the representative of the Government, is illegal. In the process, the Government became a majority shareholder.

119. It is also the case of petitioners that the Chittoor Co-operative Sugar Factory, which is having good potentiality, was placed under Category-A by the Government itself on the basis of the recommendation of the High-Power Committee vide G.O. Ms. No. 22, dated 31-3-1997. In respect of Category-A factories, it is provided in the said GO that arrangements are to be arrived at between the Co-operative Sugar Factories and the Government regarding the repayment of dues to the Government by way of memorandum of understanding. It is contended that without consulting the Co-operative Society and its members and without exploring the possibility of making arrangement for repayment of alleged by the Society, the Government in a designed fashion created a situation enabling the Registrar to invoke his power u/s 12-A of the Act.

120. In nutshell, it is the case of petitioners that the Society is not a sick industry, but for so-called loan advanced by the Government voluntarily as an aid to the society compelling it to pay the State Advisory Price. The petitioners also challenge the action of the Managing Director of the Chittoor Co-operative Sugar Factory in issuing the share certificate equivalent to the value of equity amount, as arbitrary and illegal.

121. In the affidavit filed in support of the writ petition, it is clearly stated that the Chittoor Co-operative Sugar Factory, cannot be treated as sick industry. It is asserted that the Society is successfully functioning even for the current year and therefore the question of rehabilitation does not arise. It is also asserted that as on date, the stock of sugar is worth more than Rs. 18 crores. The factory entered into an agreement with cane growers for supply of more than 80,000 MTs of sugarcane for the current year. The provisions of Section 12-A of the Act are not at all applicable in respect of Chittoor Co-operative Sugar Factory.

122. It is alleged in specific terms that an attempt has been made by the vested interests to find ways and means to sell its assets. It is stated that the District Collector sent a report that the worth of the factory is Rs. 36 crores. The second respondent has also valued the factory at Rs. 1,589 lakhs by undervaluing the assets of the factory. According to petitioners, the land cost itself is Rs. 6,870 lakhs. It is alleged that the Government "for obvious reasons is resorting to sell such a property at a nominal cost of Rs. 18 crores".

123. We have only referred to these averments made in the affidavit filed in support of the writ petitions in order to highlight the nature of the controversy and issues that may have to be taken into consideration before the Registrar

forming his opinion in the matter u/s 12-A of the Act to the effect that in Chittoor Co-operative Sugar Factory, the majority of the shares are held by the Government and it is or has become sick and that there is no possibility to rehabilitate the same.

124. It is not known whether any order as such has been passed by the Registrar as required u/s 12-A of the Act reflecting his opinion in the matter. Admittedly, no such order has been communicated to the Society, its members or shareholders. It is very interesting to notice that in the counter-affidavit, there is no denial that the value of the assets of the Chittoor Co-operative Sugar Factory Limited is sought to be sold for a paltry sum of Rs. 18 crores. However, we shall notice the contents of the counter-affidavit in this regard:

"The valuation of land attached to the Sugar Mill of CCSL has been assessed by the District Collector, Chittoor, while the other assets of CCSL viz., buildings and plant and machinery have been valued by Professional Valuer. The value of land (85-19 acres) is estimated by the Collector at Rs. 2,520 lakhs and the value of buildings and plant and machinery is assessed by the Professional Valuer at Rs. 528-32 lakhs. Thus, the total value of assets of CCSL comprising building and plant and machinery works out to Rs. 3,048.32 lakhs. In this context, I submit that the value of land attached to the Sugar Mill has been assessed for industrial purpose as a going concern and not for real estate purposes. Further, the bidders make their own due diligence investigations before submitting their bids and give their quotations based on such due diligence investigations. Under the bid documents, the Government reserves the right to reject all the bids if they are not upto the expected price level and order for re-advertisement of the assets for sale."

125. There is no specific denial of the allegations that the assets of the Co-operative Sugar Factory are being put up for sale for a paltry sum of Rs. 18 crores on extraneous considerations as against the valuation of the assets including that of the land valued by the Collector and Professional Valuer. There is also no assertion that a sum of Rs. 18 crores offered by the highest bidder is not acceptable to the respondents. There is no assertion that the competent authority had decided to reject the offer. On the other hand, the averments made in the counter-affidavit reveal as if the deponent holds a brief for the highest bidder. The details of the offers received pursuant to the sale notification are not stated in the counter-affidavit.

126. The averments made in the counter-affidavit, on the other hand, convey and reflect the anxiety on the part of the deponent to physically handover the plant to the preferred bidder. Who is that preferred bidder? In the counter-affidavit it is stated that "as per the terms of the proposal, the responsibility of undertaking necessary repairs and maintenance works during off-season rests on the preferred bidder. The sugar season commences by about November, 2002, Therefore, unless the plant is physically handed over to the preferred bidder immediately, he will not be able to complete repairs and maintenance works

before commencement of the season. Any delay in handing over of the plant to the preferred bidder would cause irreparable loss with possible late commence of crushing....."

127. The anxiety on the part of the Registrar to handover the building plant and machinery to a mysterious preferred bidder make us to believe that all is not that well with the decision making process in the instant case. The "record" however discloses that the Cabinet Sub-Committee deferred the decision to consider the so-called highest offer.

W.P. Nos. 17176, 12154 and 12242 of 2002:

128. In these writ petitions, the issue relates to sale of assets of Nizamabad Cooperative Sugar Factory Limited. Like in all other cases, in the instant case, there is serious dispute as to what exactly is the share amount held by the Government. According to petitioners, the share amount held by the Government is Rs. 50 lakhs as against the share capital of the factory of Rs. 210-74 lakh as on 31st March, 2002.

129. Sri K. Srinivasa Murthy, learned Counsel appearing for the petitioner in W.P. No. 12242 of 2002 placed reliance upon the counter-affidavit filed by the Managing Director of the respondent Sugar Factory in which it is, inter alia, stated that as at present the authorised share capital of the factory is Rs. 6 crores out of which the Government of Andhra Pradesh is holding shares worth Rs. 50 lakhs and the cane-growers hold shares to the extent of Rs. 1.6 crores, non-cane growers hold Rs. 29,800/- and other societies and institutions hold Rs. 66,200/-. It is also stated that it was decided in the year 1998 that the Society be brought under Mutually Aided Co-operative Societies Act and in that context, G.O. Ms. No. 257 dated 25-7-1998 was issued wherein it was agreed that the existing shares of Rs. 50 lakhs be transferred to the members of the society on pro rata basis to waive the Penal Cane Price Loan along with interest and penal interest due to the Government by the Society to the extent of Rs. 9.51 crores, to waive interest and penal interest of Rs. 4 lakhs towards purchase tax duties and that the society should clear purchase tax duties amounting to Rs. 89-26 lakhs over a period of five years in instalments.

130. It is also admitted that the Cane Commissioner has declared that this particular Sugar Factory is performing well in terms of cane crushing and sugar recovery. It is stated in categorical terms that the share holding of the Government is Rs. 50 lakhs as against the total paid up share capital of Rs. 2.11 crores which turns out to be less than 25% of the paid-up share capital. The General Body meeting held on 16-3-2002 resolved to oppose the privatisation of the factory to request the Government to drop such decision.

131. In the additional affidavit filed by the Managing Director, it is stated that the General Body in its meeting held on 30-9-2002 passed a resolution rejecting the decision of the Government to convert loan and interest of Rs. 990-54 lakhs into equity capital and further resolved to request the Government to waive the loan

and interest.

132. In the counter-affidavit filed by the Principal Secretary, Public Enterprises Department, it is explained that the majority of the shares in the share capital of Nizamabad Sugar Factory Limited are held by the Government. The correct face value of the share of the capital is Rs. 1,040-54 lakhs out of the total value of the share of Rs. 1,201-34 lakhs representing 86.61% of the total subscribed and paid-up share capital of Nizamabad Sugar Factory Limited.

133. It is not really necessary to go into the controversy and resolve the above issues in these writ petitions.

134. The averments made in the counter-affidavit disclose that bids were received for assets and business of Nizamabad and the highest offer is for Rs. 10 crores. These bids were placed before the Cabinet Sub-Committee on 20-8-2002 and it was decided that as the offers received were not upto the expected price level, the assets and business of the factory were again re-advertised. As against the second advertisement, two bids were received, but the highest bid was for Rs. 13.4 crores. The bids are never undervalued. Thus, so far no final decision has been taken in the matter.

135. It is also explained that the Resolution dated 30-9-1989 was passed by the then Person-in-charge of the society and the report was placed before the meeting of the General Body held on 24-3-1992 confirming the request of the society to convert the differential cane price loan granted by the Government into share capital of the society. It is on the basis of the said request and on the recommendations of the Director of Sugars, the Government converted the differential cane price loan of Rs. 291-98 lakhs and the interest/ penal interest accrued therein amounting to Rs.698-56 lakhs into share capital of the society vide G.O. Ms. No. 383, dated 10-12-1990.

136. These averments indicate the nature of the controversy as to whether the Government holds the majority of the shares in this particular Co-operative Sugar Factory. It is not known as to how the Registrar formed his opinion, if at all, and decided that the Government holds the majority of the shares in this particular Cooperative Sugar Factory. It is difficult to discern as to how such a serious disputed questions of fact could have been decided by the Registrar without giving any opportunity of being heard to the Society and its members/ shareholders.

W.P. Nos. 13152 and 12438 of 2002:

137. The petitioners, 191 in number in W.P. No. 13152 of 2002, are the members and shareholders of Sri Venkateswara Cooperative Sugar Factory Limited, Tirupathi. They are aggrieved by the action of respondents in proposing to consult the assets of the said Co-operative Sugar Factory in spite of objections from the General Body of the society to privatise the Sugar Factory.

138. The total members of the society are 11,126 and the authorised share

capital is Rs. 600 lakhs. According to petitioners, the share of the Government out of Rs. 600 lakhs is Rs. 198.50 lakhs and the share amount contributed by the members is 78.16 lakhs and the remaining shares belong to other societies. The society provides direct employment to 797 persons and is classified as Category "A" unit in Co-operative sector by the High-Power Committee appointed by the State Government. It is claimed that the Society is not indebted to any financial institution and bank. The only liability of the society is to the State Government, which is in account of accumulation of amounts towards the difference of cane price fixed by the State Government and the interest accrued thereon and purchase tax.

139. The General Body of the society unanimously passed resolution opposing the move of the respondents to privatise the Society in its General Body Meeting held on 10-5-2002 and accordingly informed its decision to the respondents.

140. There is no dispute that the factory started production in the year 1978. There were no elections to elect the members of the Managing Committee except for a short period during 1981 to 1984 and all through, the Society is under the management of the Officers of the State Government as Persons-in-Charge.

141. The General Body of the society passed unanimous resolution to convert itself into a Society under A.P. Mutually Aided Co-operative Society Act, which came into effect from 1-6-1995.

142. It is also claimed that the General Body of the society has resolved to purchase the shares of the Government and run the society for themselves. It is stated that even now the members/shareholders of the society are prepared to run the society for themselves and take over all its liabilities also.

143. The society is having Ac.162-00 of land in the industrial area near pilgrimage town and the value of it, according to petitioners, would be more than Rs. 60 crores. it is alleged that the respondents have shown the valuation of building, plant and machinery at Rs. 23 crores, which is far less than the actual value of all the assets and properties of the Sugar Factory. The assets of the Sugar Factory are intentionally undervalued so that the properties may be transferred in favour of the persons of their own choice.

144. According to the averments made in the counter-affidavit, the accumulated losses are estimated to at Rs. 1,491-75 lakhs and its net worth being (-) Rs. 359 lakhs as on 31-3-2001.

145. It is contended that resolutions passed in the General Body Meeting cannot veto the policy decision of the Government to privatise the sugar mill and "limit the statutory power of the Registrar u/s 12-A of the A.P. Co-operative Societies Act, 1964."

146. Even according to the averments made in the counter-affidavit, the value of Ac. 161-74 cents of land is estimated by the District Collector at Rs. 8.09 crores and the value of buildings and plant and machinery works out to Rs. 23.28

crores, It is conceded that pursuant to the advertisement issued on 20th June, 2002 for sale of assets and business of said Sugar Factory, six bids were received and the highest bid was from Krebs Biochemicals Limited, for Rs. 18.09 crores.

147. It is however not stated in the counter-affidavit, as usual, as to whether the respondents have accepted the highest bid of Krebs Biochemicals Limited. But, the "record" discloses that the Cabinet Sub-Committee approved the bid offer by Krebs Biochemicals Limited for Rs. 18-09 crores.

148. No records are produced in the instant case also, like in other cases, except in Anakapalle Co-operative Sugar Limited for perusal of this Court. It has become difficult for the Court to critically examine the counter-affidavits in the absence of production of records.

149. Be that as it may, the averments made in the affidavit and the counter-affidavit reveal the nature of controversy as to whether: (a) majority of the shares are held by the Government in this particular Cooperative Sugar Factory; (b) whether the factory is or has become sick; and (c) whether there is no possibility to rehabilitate the same.

150. It is also evident that assets are being sold to a private company under the approval of Cabinet Sub-Committee for a sum of Rs. 18-09 crores.

151. It is not clear from the averments made in the counter-affidavit as to how and in what manner the Registrar has decided to take action u/s 12-A of the Act for transfer of assets of Sri Venkateswara Co-operative Sugar Factory Limited. From the averments made in the counter-affidavit, it is clear that the Registrar is aware of the nature of dispute raised by the members/ shareholders of the society and the resolutions passed by the General Body of the society opposing the move to privatise the industry in question. From the averments made in the affidavit, it is clear that the members have asserted that even if the factory is sick or has become sick, it is possible to rehabilitate the same. There is nothing on record revealing that an objection made and the resolutions passed have been taken into consideration by the Registrar.

152. Like in other cases, the anxiety on the part of the Registrar to physically handover the building, plant, machinery and assets to the preferred bidder is self-evident from the averments made in the counter-affidavit. The averments made in the counter-affidavit are vague. Specific details are not forthcoming in order to enable this Court to judicially review the decision making process particularly in a case of this nature which undoubtedly has resulted in serious civil consequences to the Cooperative Societies as well as members/ shareholders of the society.

W.P. Nos. 14121 and 17546 of 2002:

153. These writ petitions relate to the privatisation of Amadalavalasa Co-operative Sugars Limited. The petitioners in W.P. No. 17546 of 2002 is a member/ shareholder and as well as an elected Director of Amadalavalasa Co-operative Sugars Limited. The petitioner in W.P. No. 14121 of 2002 is the

Secretary of Cane-Growers Association and as well as a member and shareholder and former Director of the Amadalavalasa Co-operative Sugars Limited. More or less, the same question arises for consideration in these writ petitions. Similar are the contentions advanced by the learned Counsel appearing on behalf of petitioners in these writ petitions as in other writ petitions referred hereinabove.

154. It is the case of petitioners that the value of the plant and machinery, land and other properties of Amadalavalasa Co-operative Sugar Limited, if properly assessed, would be about Rs. 50 crores in the open market and as per the valuation of the respondents, it is only Rs. 12 crores. It is submitted that the land value was shown at abnormally low price. The total value of Ac.75-00 of land is more than Rs. 4.5 crores.

155. It is also contended that the members of Amadalavalasa Co-operative Sugars Limited hold majority of the share capital and the Government is only a minority shareholder. The action of Government in converting the loan amount advanced towards differential cane price as equity share capital in order to become a major shareholder, is impermissible in law. The device adopted by the Government deliberately to convert its minority share holding into majority share holding is untenable. The actual amounts paid by the Government towards differential cane price and the interest therein cannot be shown as liability. In the counter-affidavit filed by the second respondent, it is stated that Amadalavalasa Co-operative Sugars Limited is continuously incurring losses for various reasons like inadequate cane, high overhead costs, inadequate working capital etc. The society has accumulated losses of Rs. 1,720-17 lakhs and its net worth is (-) Rs. 52-82 lakhs as on 31-3-2001.

156. It is, however; conceded that pursuant to the advertisement issued, only one bid was received with an effective offer of Rs. 4,77,96,459/- for the assets and business of Amadalavalasa Co-operative Sugars Limited and after evaluation of the bid, the same was placed before the Cabinet Sub-Committee on and the Committee decided that the assets and business of the Amadalavalasa should be re-advertised for sale as the offer received was not upto the expected price level. Accordingly, an advertisement was issued again on 23-8-2002 inviting bids for the assets and business of the said Amadalavalasa Cooperative Sugar Limited. This time, only one bid was received and the same is now under consideration. It is further stated that the total value of the assets comprising land, building, plant and machinery as assessed by the District Collector and the Professional Valuer works out to Rs. 12-09 crores only. It is also asserted that the Government owns majority of the shares in the said Cooperative Sugar Factory.

157. In the instant case also, no records are produced for the perusal of the Court. No decision reflecting formation of opinion of the Registrar u/s 12-A of the Act is made available for the perusal of the Court. It is not known as to on what basis or material, the Registrar has reached such conclusion and formed his opinion in the matter. There is no dispute whatsoever that no notice has been issued either to the Managing Committee or to the members/ shareholders of the

society before initiating proceedings u/s 12-A of the Act leading to formation of opinion by the Registrar as required u/s 12-A of the Act.

158. Like in all other cases, there is a serious dispute as to whether the Government holds majority of the share in the Cooperative Sugar Factory and as to whether it is sick or has become sick within the meaning of the provisions of SICA and whether there is no possibility to rehabilitate the same.

W.P. No. 18775 of 2002:

159. The petitioner in this writ petition is the shareholder in Kovur Co-operative Sugar Factory Limited, Nellore. He is a former Member of Legislative Assembly from Kovur Constituency and as at present, he is the Vice-President of District Rythu Sangam. Kovur Co-operative Sugar Factory was established in the year 1979. The factory is situated at a distance of only 2 kms from Nellore Town on the Nellore - Mumbai main road. It was started in the year 1978 with a crushing capacity of 1,250 TCD and it was later expanded to 1,600 TCD during the year 1995. Its capacity has been expanded in the year 2001 to 2,500 TCD by spending Rs. 15-74 crores.

160. In the report of evaluation of the factory by the Government Registered Valuers, it is observed:

"Though the existing capacity of the plant after the expansion during the year 2000-2001 is 2,500 TCD, it is reported that this plant has in-built capacity to crush upto 3000-3200 TCD. Also there is provision for co-generation power and with an additional investment of around Rs. 1 to 1.25 crores, co-generation plant can be commissioned with a capacity of 1.5 MW."

Such is the potentiality of the Sugar Factory even according to the report of the Government Registered Valuers.

161. Reliance is placed upon the audit report submitted before the General Body that the total share capital is Rs. 5,04,37,600/- and out of the same, the share of the agriculturists/shareholders is Rs. 2,69,10,600/-. In addition to the share capital of the shareholders in the form of shares, Rs. 1,33,44,254/- in the shape of non-refundable deposit is lying with the factory. In the circumstances, it is contended that the Government is not the majority shareholder.

162. With regard to valuation, it is submitted that even according to value estimated by the District Collector, the land cost would be Rs. 5-52 crores at the rate of Rs. 4,50,000/- per acre. The total extent of land is Ac. 125-87 cents. According to the certificate issued by the Sub-Registrar, Kovur, dated 4-10-2002, the market value of the land itself works out to Rs. 24,57,60,000/-.

163. In nutshell, it is the case of petitioners that the ingredients of Section 12-A of the Act are not satisfied since the Government does not hold majority of the shares. The Sugar Factory is not a sick unit within the meaning of the provisions of SICA. It has tremendous potential to grow and even the set back received in

recent times can be overcome by investing negligible amounts and the Society is capable of raising funds for itself.

164. It is contended that the assets of the factory are sought to be alienated to private individuals in utter disregard to the existing market value.

165. However, in the counter-affidavit, it is stated that the total shares held by the Government are worth Rs. 712-97 lakhs out of a total value of Rs. 1,157-69 lakhs, representing 61.57% of the total subscribed and paid up share capital. The factory has accumulated losses of Rs. 2,078-65 lakhs and its net worth is (-) Rs. 924 lakhs as on 31-3-2002. The total value of assets comprising land, plant and machinery and other equipment as assessed by the Professional Valuer according to the averments in the counter-affidavit is as under:

"Present Reinstatement Value: Rs. 49.93 crores

Present Fair Market Value: Rs. 26.89 crores"

166. It is, however, admitted that if the value of the land estimated at the rate of Rs. 4,50,000/- per acre is taken into account, the total value of the land itself comes to Rs. 52 crores. On this basis, the total estimated value of the assets of Kovur Co-operative Sugar Factory works out to Rs. 30.88 crores. The highest offer received for the assets and business of Kovur Co-operative Sugar Factory is Rs. 32,32,32,111/-. The bids have not been finalised.

167. It is clear from the averments made in the affidavit and counter-affidavit that there is a serious dispute with regard to valuation of assets of the factory. The land is stated to be situated within the Municipal limits of Nellore. Even according to the averments made in the counter-affidavit, the Collector is stated to have reported that the land value as at present is Rs. 400/- per square yard for wet land.

168. The averments made in the affidavit and the counter-affidavit reveal the nature of the dispute regarding proportion of the shares held by the shareholders and the Government. There is also a serious dispute whether the unit has become sick and whether there is no possibility to rehabilitate the same. The averments made in the counter-affidavit do not tally with audit report stated to have been placed before the General Body Meeting held on 29-9-1999 as regard the shares held by the Government in this particular Sugar Factory.

169. We have referred to the essence of the pleadings and the controversy between the parties in order to highlight the nature of dispute. The question that falls for consideration is whether in the circumstances, the Registrar could have formed his opinion based on the material available without providing any opportunity of being heard to the management and members/shareholders of the society whose assets are sought to be transferred to private individuals.

170. A decision of far-reaching consequence in the given facts and circumstances could not have been taken by the Registrar by himself based on whatever

material that is made available to him.

171. There is nothing on record revealing as to whether any order has been passed by the Registrar u/s 12-A of the Act reflecting his opinion and if so, the reasons therefor.

172. The distinction between the Government and the Registrar has been lost sight of in the instant case also. In the counter-affidavit, it is admitted at more than one place that the bids were placed before the Cabinet Sub-Committee and the Cabinet Sub-Committee in similar cases, issued directions in one or two matters to re-advertise proposing to sell the assets of the concerned Sugar Factory.

Certain features noticed from the "records":

173. Under the Rules, the Registrar is required to identify the Co-operative Society or company or firm or body whether incorporated or not, for the purpose of transfer of assets in whole or in part of the Sick Co-operative Sugar Factory. The identification of a suitable bidder is the responsibility of the Registrar. It is not known as to how the matter was placed before the Cabinet Sub-Committee for its approval of the bids received.

174. Likewise, the duty to call for tenders/offers after giving wide publicity in order to decide the society, company, firm or body whether incorporated or not, to which the assets are to be transferred so as to get the best possible offer and to protect the interests of the shareholders and the financial bank also lies with the Registrar. All the advertisements calling for the tenders/offers are issued in the name of the Chairman, Public Enterprises Department. These two instances are enough to conclude that none concerned with the decision making process, were aware of the legal provisions. All of them have acted in ignorance of the statutory provisions and the Rules framed thereunder. It is a total mess and chaos created by respondents, each one of them individually and collectively.

175. The compilation of papers made available for perusal of the Court reveal that it is the Cabinet Sub-Committee that has decided to privatise the Sugar Factories with which we are concerned for the present in this batch of writ petitions. Minutes of the meeting and the Standing Sub-Committee of Public Sector Units held on 17-6-2002 reveal as follows:

"Principal Secretary, PED, explained to CSC that at the meeting held on 1-4-2002, Cabinet Sub-Committee (CSC) decided that the following Co-operative Sugar Mills should be privatised:

(a) The Nannapaneni Co-operative Sugars Ltd., Jampani, Guntur District.

(b) The Chittoor Co-operative Sugars Ltd., Chittoor.

(c) The Amadalavalasa Co-operative Sugars Ltd., Amadalavalasa, Srikakulam District.

- (d) The Palair Co-operative Sugars Ltd., Palair, Khammam District.
- (e) Anakapalle Co-operative Sugars Ltd., Anakapalle, Visakhapatnam District.
- (f) The Nizamabad Co-operative Sugars Ltd., Nizamabad.
- (g) Sri Venkateswara Co-operative Sugars Ltd., Renigunta, Chittoor District.

176. These circumstances as evident from the papers made available by the respondents themselves unmistakably reveal that the Government had already taken a decision to privatise the Co-operative Sugar Factories in question and the second respondent herein in his capacity as the Registrar started implementing it in utter disregard and ignorance of the statutory power conferred upon him u/s 12-A of the Act.

177. The Principal Secretary to the Government, Public Enterprises Department, himself is the Registrar in case of Cooperative Sugar Factories. Rule 12(d) of the Rules defines "Registrar": "Registrar" means Director/Commissioner for Sugar and Cane Commissioner in case of Cooperative Sugar Factories.... and Special Chief Secretary or Principal Secretary or Secretary to Government, Public Enterprises Department in respect of Co-operative Sugar Factories..... under the administrative control of Public Enterprises." By appointing the Principal Secretary, Public Enterprises Department as Registrar, the whole scheme u/s 12-A of the Act read with the Rules is reduced to the level of mockery. We have already noticed the active role played by the Principal Secretary, Public Enterprises Department and Chairman, Implementation Secretariat, in assisting the Government to arrive at a decision to privatise the Sugar Factories in question. The same officer is made to exercise the power u/s 12-A of the Act as the Registrar. There is no scope or room for any independent and dispassionate exercise of power u/s 12-A of the Act by the same Principal Secretary, in his capacity as the Registrar in order to form an opinion as is required u/s 12-A of the Act. The Rule itself provides that even the Director/ Commissioner for Sugars and Cane Commissioner in case of Co-operative Sugar Factory to be the Registrar. It is only by subsequent amendment vide G.O. Ms. No. 7 Agriculture and Co-operation Department dated 6-1-2000, the Principal Secretary to Government, Public Enterprises Department, is also included as Registrar within the meaning of Rule 2(d) of the Rules.

178. Here are the proceedings purporting to emanate from the State Government itself. It is clear to us from a perusal of Section 12-A of the Act and the Scheme of the Rules that only person vested with the authority to decide that the majority of the shares are held by the Government in a particular Co-operative Sugar Factory and the same is or has become sick and there is no possibility to rehabilitate the same, is the Registrar. It is also clear that the powers to do so are exclusively vested in him and not in the State Government and can be exercised by him only at his discretion. No other person or authority can do it howsoever high they may be.

Conclusions:

179. In the result, we hold that the entire decision-making process to privatise the Co-operative Sugar Factories in question is vitiated. The decision is not taken by the Registrar as is required in law. He has merely acted as an agent of the Government in an impermissible manner. The decision is therefore ultra vires.

180. In the result, all the advertisements issued calling for tenders/offers for the sale of assets of the Co-operative Sugar Factories in question are set aside. The bids/offers if any, received pursuant to such advertisements are declared void.

181. The constitutional validity of Section 12-A of the Act is accordingly upheld. However, the rule of audi alteram partem has to be read into the said provision requiring the Registrar to issue notice and provide an opportunity of being heard to the Managing Committee before formation of his opinion u/s 12-A of the Act in respect of each of the Co-operative Sugar Factories. No decision can be taken to hold that in a particular Co-operative Sugar Factory (a) the majority of the shares are held by the Government; (b) it is or has become sick; and (c) there is no possibility to rehabilitate the same, unless a notice has been issued and an opportunity of being heard is provided to the Managing Committee.

182. The Members/Shareholders of the Co-operative Society are also entitled on their own accord to intervene and raise objections in this regard. All such objections may have to be considered in the same manner along with the objections preferred by the managements pursuant to the notice required to be issued by the Registrar as is held in this order.

183. In the absence of any such objections from the Managing Committee, the objections if any preferred by the individual members of the Managing Committee and as well as the members/ shareholders may have to be considered by the Registrar in accordance with law and in the light of observations made in this order. Wherever the management of a Cooperative Sugar Factory is entrusted to the official Person-in-Charge Committee, such Committee shall widely publish the notice issued by the Registrar for the information and benefit of the shareholders/members of the General Body of the society so as to enable them to prefer their objections if any in the matter.

184. They may have myriad suggestions to make, which they can do, if they are allowed to be heard.

185. In every case, the Registrar is required to pass a speaking order assigning reasons in support of the formation of his opinion.

186. We also hold that it is the Registrar, who is required to act independently and discharge the statutory power vested in him u/s 12-A of the Act in a fair and reasonable manner by duly taking relevant considerations into account in respect of each of the factories.

187. The writ petitions are accordingly partly allowed to the extent indicated

above. No order as to costs.

WP No. 8766 of 2002 and Batch

The learned Counsel for the petitioners, Sri M.V. Durga Prasad, made an oral application immediately after pronouncing the judgment for grant of certificate to prefer an appeal to the Supreme Court so far as the question concerning the constitutional validity of Section 12-A of the Andhra Pradesh Co-operative Societies Act, 1964 is concerned. We do not find any merit in the said oral application, since the case does not involve any substantial question of law as to the interpretation of the Constitution.

The oral application is accordingly rejected.