

(2006) 03 DEL CK 0154

In the Delhi High Court

Case No : CM 2730 of 2006 in Writ Petition (C) 1957 and 1958 of 2006

Margra Industries Ltd. and Another

APPELLANT

Vs

Union of India (UOI) and Another

RESPONDENT

Date of Decision : 03-03-2006

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 226, 311

Citation : (2006) 03 DEL CK 0154

Hon'ble Judges : Vikramajit Sen, J

Bench : Single Bench

Advocate : Sandeep Sethi, Ashok H. Desai and Neeraj Kishan Kaul, Ajay Jha and Rahul Dhawan, for the Appellant; Manoj Ohri and Gopal Subramaniam, ASG and A.D.N. Rao and Shweta Verma, for the Respondent

Final Decision : Dismissed

Judgement

Vikramajit Sen, J.—Normally, the Courts are loathe in interfering with Policies Policies devised by the Government unless it is wholly reasonable in the Wednesbury sense and/or it violates the equality principles set down in Article 14 of the Constitution or any fundamental rights. In BALCO Employees Union (Regd.) Vs. Union of India and Others, it has been held that --

45. In Narmada Bachao Andolan v. Union of India there was a challenge to the validity of the establishment of a large dam. It was held by the majority at p. 762 as follows: (SCC para 229)

229. It is now well settled that the courts, in the exercise of their jurisdiction, will not transgress into the field of policy decision. Whether to have an infrastructural project or not and what is the type of project to be undertaken and how it has to be executed, are part of policy-making process and the courts are ill-equipped to adjudicate on a policy decision so undertaken. The court, no doubt, has a duty to see that in the undertaking of a decision, no law is violated and people's fundamental rights are not transgressed upon except to the extent permissible

under the Constitution?

46. It is evident from the above that is neither within the domain of the courts nor the scope of the judicial review to embark upon an enquiry as to whether a particular public policy is wise or whether better public policy can be evolved. Nor are our courts inclined to strike down a policy at the behest of a petitioner merely because it has been urged that a different policy would have been fairer or wiser or more scientific or more logical.

47. Process of disinvestments is a policy decision involving complex economic factors. The courts have consistently refrained from interfering with economic decisions as it has been recognised that economic expediencies lack adjudicative disposition and unless the economic decision, based on economic expediencies, is demonstrated to be so vocative of constitutional or legal limits on power or so abhorrent to reason, that the courts would decline to interfere. In matters relating to economic issues, the Government has, while taking a decision, right to ?trial and error? as long as both trial and error are bona fide and within limits of authority. There is no case made out by the petitioner that the decision to disinvest in BALCO is in any way capricious, arbitrary, illegal or uninformed. Even though the workers may have interest in the manner in which the Company is conducting its business, inasmuch as its policy decision may have an impact on the workers' rights, nevertheless it is an incidence of service for an employee to accept a decision of the employer which has been honestly taken and which is not contrary to law. Even a government servant, having the protection of not only Articles 14 and 16 of the constitution but also of Article 311, has no absolute right to remain in service. For example, apart from cases of disciplinary action, the services of government servants can be terminated if posts are abolished. If such employee cannot make a grievance based on Part III of the Constitution or Article 311 then it can not stand to reason that like the petitioners, non-government employees working in a company which by reason of judicial pronouncement may be regarded as a State for the purpose of Part III of the Constitution can claim a superior or a better right than a government servant and impugn its change of status. In taking of a policy decision in economic matters at length, the principles of natural justice have no role to play. While it is expected of a responsible employer to take all aspects into consideration including welfare of the labour before taking any policy decision that, by itself, will not entitle the employees to demand a right of hearing or consultation prior to the taking of the decision.

....

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

93. Wisdom and advisability of economic policies are ordinarily not amenable to judicial review unless it can be demonstrated that the policy is contrary to any statutory provision or the Constitution. In other words, it is not for the courts to consider relative merits of different economic policies and consider whether a wiser or better one can be evolved. For testing the correctness of a policy, the appropriate forum is Parliament and not the courts. Here the policy was tested and the motion defeated in the Lok Sabha on 1-3-2001.

2. In *State of Orissa v. Gopinath Dash*, JT 2005 (10) 484 it has been opined that --

8. The policy decision must be left to the Government as it alone can adopt which policy should be adopted after considering all the points from different angles. In matter of policy decision or exercise of discretion by the Government so long as the infringement of fundamental right is not shown courts will have no occasion to interfere and the court will not and should not substitute its own judgment for the judgment of the executive in such matters. In assessing the propriety of a decision of the Government the court cannot interfere even if a second view is possible from that of the Government.

3. In the present case, the Policy specifies that in order to be eligible to import rough marble, the prospective allottee must have set up a manufacturing/processing unit and further should have imported rough marble in the SIL(Specific Import license) List. The Petitioner does not fall in either of these categories. On the contrary, it has been disclosed that the Petitioner has defaulted on Export Obligations in the previous years. He has been placed in a Denied Entity List as a consequence of which he would not be entitled to apply under the new policy. In the course of arguments, it has been contended that previously the Petitioner used to purchase marble from EOUs. Mr. Gopal Subramaniam, learned Additional Solicitor General, clarifies that this was not permissible under the earlier policy, inter alia, for the reason that all licenses were subject to actual user conditions. In these circumstances, if the Petitioner had been acquiring in an irregular manner, it cannot expect to perpetuate this practice through Court intervention.

4. Prima facie it appears that the Petitioner may have no subsisting personal interest in the impugned policy. Moreover, its illegality is yet to be determined. It would, Therefore, not be proper to pass interim Orders which would virtually put a halt to the trade.

5. A perusal of the prayers in the interim Application will disclose that a stay of the impugned Policy Circulars has been prayed for. At the threshold unless overwhelming reasons are apparent, it would be improper to grant this relief. There is a ceiling of the import beyond 1,30,000 metric tonnes in which Petitioner seeks interim Orders restraining the issuance of licenses in excess of 10 per cent, which figure is wholly arbitrary.

6. I have serious reservations in entertaining a Writ Petition under Article 226 of

the Constitution which has been filed by a person who himself is a defaulter.

7. No grounds for interim Orders has been made out.

8. The application is dismissed.

9. dusty.