
(2017) 07 AHC CK 0018
In the Allahabad High Court
Case No : 14891 of 2017

Mawana Sugars Ltd. Thru. Its Authorised Signatory Ms. Vani C APPELLANT
Vs
State of U.P. RESPONDENT

Date of Decision : 10-07-2017

Acts Referred:

Constitution of India, Article 14, Article 19(1)(g) -
Uttar Pradesh Sugar Cane (Regulation of Supply and Purchase) Act, 1953, Section 17

Citation : (2017) 07 AHC CK 0018

Hon'ble Judges : Narayan Shukla, Virendra Kumar

Bench : Division Bench

Advocate : Rajesh Tewari

Final Decision : Dismissed

Judgement

1. Heard Mr. P.K. Bhalla, learned counsel for the petitioner, and learned Mr. Devesh Pathak, learned Additional Chief Standing Counsel. 2. The petitioner has pleaded that Writ Petition No. 12046 (MB) of 2014 was instituted by the petitioner and in the said writ petition this Court observed that whether provisions of financial assistance for Rs. 6/per quintal with the condition to clear entire dues to the farmers for the season 2013-14 by 30.9.2014, which was later extended upto 20.11.2014 is arbitrary, unjustified and discriminatory. In this background the fact that the petitioner has paid the dues in June 2015 and the petitioner had preferred a representation before the Principal Secretary, Sugar Industries with the request for considering extension of scheme of financial assistance to facilitate immediate clearance of cane dues to the farmers to that extent with the assurance that the amount was received under the scheme shall be completely utilized in payment of cane dues. This Court had issued directions to opposite party no. 1 to decide the representation of the petitioner strictly in accordance with law and after taking into consideration the points raised in the representation and pass a reasoned and speaking order. 3. It is also pleaded that opposite party no. 1, while deciding the representation of the petitioner paid no

heed to the Constitution of India questions raised by the petitioner and observations made by this Court in judgment dated 3.2.2017 passed in the above mentioned writ petition. The impugned order dated 29.5.2017 has been assailed by the petitioner in this petition, by which representation of the petitioner has been rejected by opposite parties without giving opportunity of hearing as claimed by the petitioner and passed impugned order, which is blatantly arbitrary, illegal and has been passed in gross violation of principles of natural justice of "Audi Alteram Partem". 4. It is also mentioned in the grounds of writ petition that this fact was not considered by the opposite parties that the mill owners, whose financial conditions are sound and have paid dues to the farmers before the prescribed date, were given assistance and the farmers of those sugar mills have been benefited. Whereas the farmers of the sugar mill situated in the area of petitioner Sugar Mill, whose financial condition was not sound and not able to pay till the prescribed date, have been denied for grant of aid, which is unjustified discriminatory, illegal and causes great prejudice and injustice to the farmers and violative of Article 14 of the Constitution of India. It is also pointed out in the grounds of writ petition that in the year 2014-15, opposite parties granted subsidy/financial assistance of Rs. 8/per quintal with the condition to clear entire sugarcane prices towards the farmers for the season 2014-15. Another writ petition No. 7183 (MB) of 2015 was instituted by the petitioner challenging that order. Later on opposite parties granted the said benefit of financial assistance/subsidy of Rs. 8/per quintal towards sugarcane price to Sugar Mills and as such, the petitioner withdrew the said writ petition. 5. It is also pleaded that opposite parties in a blatantly arbitrary and illegal manner are depriving of from the said subsidy for crushing season 2013-14 in an illegal manner. It is mentioned that all sugar mills are in default of Section 17 of the U.P. Cane (Regulation of Supply and Purchase) Act, 1953 depriving certain weak Sugar Mills from grant of financial assistance of Rs. 6/per quintal by way of unreasonable condition imposed vide order dated 9.9.2014 and press note dated 21.10.2014 is blatantly arbitrary, illegal and hit by Article 14 of the Constitution. The opposite parties by imposing condition of clearing complete sugarcane price, dues by a particular date i.e. 30.9.2014, deprived farmers of a financially weak sugar mill from getting due benefit, is unjustified and discriminatory. There was no valid reason for putting any condition in granting concession when admittedly sugar mills were unable to clear cane dues for reasons known to the government and the subsidy in question has been sanctioned to clear such dues. On these grounds, following reliefs have been sought in this writ petition. "(i) Issue a writ of certiorari or a writ, order or direction in the nature of certiorari quashing impugned order dated 29.05.2017 passed by Opposite Party No. 1 as contained in Annexure No. 1 to the writ petition and also the order dated 09.09.2014 and press note dated 21.10.2014 to the extent of imposition of unreasonable condition of payment of subsidy of Rs. 6/per quintal to those sugar mills only who cleared entire cane dues by 30.09.2014 or 20.11.2014, as contained in Annexure No. 4 and 5 to the writ petition. (ii) Issue a writ or mandamus or a writ, order or direction in the nature of mandamus commanding the opposite

parties to pay subsidy of Rs. 6/per Quintal directly to the cane growers of the petitioner area through concerned Cane Cooperative Societies or petitioner Company ignoring the condition for payment of complete cane price dues by sugar mill upto 30.09.2014 or 20.11.2014." 6. Learned counsel for petitioner has relied upon order dated 3.2.2017 passed in Writ Petition No. 12046 (MB) of 2014 (Mawana Sugars Ltd. v. State of U.P. and others). 7. We have perused order dated 3.2.2017 passed by this Court, which reads as under: "15. Accordingly, we dispose of this petition with the direction to the Principal Secretary, Sugar Industries and Cane Development respondent no.1 to take an appropriate decision on the pending representation referred to above and also any fresh representation which the petitioner may make along with certified copy of this order or any other material which the petitioner may rely upon strictly in accordance to law and taking into consideration the points raised and pass a reasoned and speaking order within a period of six weeks from the date of submission of the same." 8. Learned counsel for petitioner has relied upon precedent in the case of Onkar Lal Bajaj and others v. Union of India and another reported in (2003) 2 SCC 673 has observed in paragraph no. 36, which reads as under: "36. The roll model for governance and decision taken thereof should manifest equity fair play and justice. The cardinal principle of governance in a civilized society based on rule of law not only has to base on transparency but must create an impression that the decision making was motivated on the consideration of probity. The Government has to rise above the nexus of vested interests and nepotism and eschew window dressing. The Act of governance has to withstand the test of judiciousness and impartiality and avoid arbitrary or capricious actions. Therefore, the principle of governance has to be tested on the touchstone of justice, equity and fair play and if the decision is not based on justice, equity and fair play and has taken into consideration other matters, though on the face of it, the decision may look legitimate but as a matter of fact, the reasons are not based on values but to achieve popular accolade, that decision cannot be allowed to operate." 9. Learned counsel for petitioner has also relied upon a precedent in the case of Poonam v. State of Uttar Pradesh and others reported in (2016) 2 SCC 779 wherein Hon"ble Supreme Court in paragraph nos. 20, 21 and 22 held as under: "20. And again: (Sadananda Halo case (2008) 4 SCC 619, p.648, para 63) Concept of natural justice has undergone a great deal of change in recent years. Rules of natural justice are not rules embodied always expressly in a statute or in rules framed thereunder. They may be implied from the nature of the duty to be performed under a statute. What particular rule of natural justice should be implied and what its context should be in a given case must depend to a great extent on the facts and circumstances of that case, the framework of the statute under which the enquiry is held. The old distinction between a judicial act and an administrative act has withered away. The adherence to principles of natural justice as recognised by all civilised States is of supreme importance...." (Canara Bank v. Debasis Das, (2003) 4 SCC 557) 21. We have referred to the aforesaid passages as they state the basic principle behind the doctrine of natural justice,

that is, no order should be passed behind the back of a person who is to be adversely affected by the order. The principle behind proviso to Order I Rule 9 that the Code of Civil Procedure enjoins it and the said principle is also applicable to the writs. An unsuccessful candidate challenging the selection as far as the service jurisprudence is concerned is bound to make the selected candidates parties. 22. In *J.S. Yadav v. State of U.P. and Anr.* (2011) 6 SCC 570 in Paragraph 31 it has been held thus: No order can be passed behind the back of a person adversely affecting him and such an order if passed, is liable to be ignored being not binding on such a party as the same has been passed in violation of the principles of natural justice. The principles enshrined in the proviso to Order 1, Rule 9 of the Code of Civil Procedure, 1908 provide that impleadment of a necessary party is mandatory and in case of nonjoinder of necessary party, the Petitioner Plaintiff may not be entitled for the relief sought by him. The litigant has to ensure that the necessary party is before the court, be it a Plaintiff or a Defendant, otherwise the proceedings will have to fail. In service jurisprudence if an unsuccessful candidate challenges the selection process, he is bound to implead at least some of the successful candidates in representative capacity. In case the services of a person are terminated and another person is appointed at his place, in order to get relief, the person appointed at his place is the necessary party for the reason that even if the Petitioner Plaintiff succeeds, it may not be possible for the Court to issue direction to accommodate the Petitioner without removing the person who filled up the post manned by the Petitioner Plaintiff. (Vide *Prabodh Verma v. State of U.P.*, *Ishwar Singh v. Kuldip Singh*, *Tridip Kumar Dingal v. State of W.B.*, *State of Assam v. Union of India* and *Public Service Commission v. Mamta Bisht*). More so, the public exchequer cannot be burdened with the liability to pay the salary of two persons against one sanctioned post." 10. We have perused impugned order dated 29.5.2017 (Annexure No. 1 to the writ petition) passed by Principal Secretary of Government of U.P., which has passed on representation dated 29.3.2017 made by the petitioner company. 11. The following additional facts were incorporated in the representation in continuation of earlier pending representation dated 4.11.2014 submitted by petitioner company, which read as under: 1. The intent and purpose for grant of "financial assistance" as originally propounded was to ameliorate the dire strait of the sugar industry which was reeling under unprecedented financial difficulties caused due to very high sugar cane purchase price and very low sugar selling prices which caused sugar mills not viable to commence crushing in the season 2013-14. 2. The financial assistance was in the nature of "subsidy" to lighten the burden of sugar mills in cane purchase and help them to commence the crushing. It is stressed that the intent and purpose of the financial assistance was never to incentivise the financial healthy sugar mills to make additional profit in the form of State Subsidy. 3. The financial assistance was meant for all sugar mills without exception as all of these mills were suffering from financial difficulties due to high cane price. There was no room or scope for any kind of discrimination on any account and this stands established from the fact that earlier part of the subsidy/assistance (Rs.11.03) was made available to all sugar

mills. 4. The Committee headed by the Agriculture Produce Commissioner submitted its report on the need and extent of additional financial assistance. Even though that report was not made public but it is understood that the Committee recommended that additional assistance of Rs.6 per quintal be paid to all sugar mills as such additional assistance was linked to the low sugar selling prices. 5. The attempt of the State Government to convert the assistance/subsidy scheme into "early payment incentive scheme" hits at the roof of the purpose and destroys the intent. The purpose of the subsidy/assistance on one hand was to help the farmers to receive their dues for the cane supplied and on the other hand to lighten the burden of the sugar mills which were in dire financial health. It bears emphasis that the ultimate purpose of the grant of financial assistance was to enable the concerned farmers to receive their payment and not unintended reward the sugar mills for early payments of farmer's dues. 6. It is most respectfully submitted that the financial assistance was part of a scheme extended to encourage all sugar mills to start crushing in the 2013-14 and not an "early payment scheme". By paying such subsidy to a class of sugar mills, which had the financial ability to pay even without such subsidy, does not in any way promote the cause of the farmers but it helps such sugar mills to get advantage of State subsidy while the other financially weak sugar mills which are most deserving candidates for such subsidy are denied their assistance. 7. Payments of additional subsidy/assistance to only those who have already paid in fact promote and reward those who did not pay the farmers notwithstanding the ability to pay whereas it punishes those who had genuine difficulty to pay within the stipulated period like MSL. 8. Nonpayment of subsidy/assistance to the sugar mills like that of MSL, which did not have ability to pay to the cane dues, actually discriminate between the farmers of financially weak sugar mills and those which are not which is contrary to the intent and purpose of the Scheme. 9. The fixation of date of 30.09.2014 for payment to the farmers and its subsequent extension was arbitrary and discriminatory. All sugar mills are under statutory and contractual obligation to pay the price of cane purchased from the farmers. State cannot discriminate between the financially strong and weak sugar mills as this will affect the ultimate beneficiaries which are the farmers. Such discrimination would be found of Articles 14 and 19(1) (g) of the Constitution of India. 10. There is absolutely no rational basis for denying the additional financial assistance to the Company as it is the most deserving case which needed financial assistance/subsidy from the State to be able to pay its farmers for the cane purchased from them during crushing season 2013-14. It is a matter of record that due to poor financial health of the Company resulting into its inability to pay persuaded the Hon'ble High Court to allow the Company to make such payment by selling produced in the subsequent crushing season. 11. The company had requested the State to pay the additional financial assistance directly to the farmers towards their outstanding dues. Company reiterates its request then made and would agree if the State has to provide the amount of additional financial assistance due to it for crushing season 2013-14 directly to the farmers account as there are still outstanding dues of the farmers for the

subsequent crushing seasons. 12. With great difficulty, the Company had paid dues of the farmers for the crushing season 2013-14 in June 2015. This, however, had a cascading effect on the ability of the Company to pay the farmer's dues for the subsequent crushing season 2014-15 and 2015-16. 13. It is a matter of record that after payment of farmer's dues for the crushing season 2014-15, the Company was constrained to sell one of its mills, namely, Titawi Sugar Complex (TSC) to be able to pay the dues of the farmers for the crushing season 2015-16. 14. Even after selling the undertaking of TSC, the Company has not been able to clear the dues of the Farmers. As on date, the Company is in arrears of farmer's payment to the tune of around Rs.345 crores for the crushing season 2016-17. 15. It is pertinent to point out that the plight of sugar industry in the country and more particularly in UP continued to be hugely deficient and required continuous support from the State. The State also recognised this need even for the crushing season 2014-15 and announced a similar "financial assistance/ subsidy scheme" for the crushing season 2014-15. This scheme was almost parmataria with the scheme for crushing season 2013-14, whereby it was agreed by the State to provide financial assistance @ Rs. 40 per quintal of cane crush for the crushing season 2014-15. This scheme, as propounded originally, was also conditional upon and linked to the cane payment up to a particular date. However, the State subsequently allowed that the financial assistance to be provided to all sugar mills operating in the State irrespective of the dates of cane payment. It is most respectfully submitted that the State already has a precedent before it and can therefore allow the additional financial assistance @ Rs/6 per quintal of cane crush for the crushing season 2013-14 to the Company. 12. The facts have also been mentioned in this representation dated 29.3.2017 as narrated in this writ petition. 13. It is further argued by learned counsel for petitioner that pursuant to an agreement reached by the State Government with the sugar mills association, it was agreed by the State Government to provide financial assistance in the nature of subsidy at Rs. 20/per quintal of sugarcane crushed, to private sugar mills operating in the State of U.P. during crushing season 2013-14. This was done to ameliorate the acute financial suffering of the sugar industry in the State caused due to large gap between the sugarcane purchase price and sugar selling price. Part of such financial assistance, amounting to Rs. 11.03 per quintal, was given to all the sugar mills operating in the State in the form of remission from payment of Purchase Tax, Entry Tax and Society Commission. For the balance Rs. 8.97 (Rs. 20 Rs 11.03) per quintal, the State decided to refer the matter to a high powered committee(the committee) constituted under the chairmanship of Agriculture Produce Commissioner for making suitable recommendations regarding the need and extent of further financial assistance to be provided to sugar mills. These recommendations made by the committee were not made public. 14. It is further argued that impugned order dated 9.9.2014 was issued by State Government accepting recommendations of the committee and linked the grant of further assistance as of Rs. 6/per quintal to early payment of the sugarcane dues by 30.9.2014, which was subsequently extended upto 20.11.2014. 15. We have perused impugned

government order dated 9.9.2014 issued by Principal Secretary, State of U.P. regarding department of Sugar Industries Section 3. This order was issued on the basis of recommendations made by high powered committee with the object to facilitate and give financial assistance to the sugar mills in the public and farmers interest for the payment of arrears of sugarcane supplied by the farmers in the crushing season 2013-14. According to clause 1 of afovementioned G.O., amount of Rs. 11.03 per quintal financial assistance was provided to all private sugar mills exempting Entry Tax, Purchase Tax and Society Commission. Whereas subsidy of amount of Rs. 6/per quintal additional financial assistance was provided, out of remaining amount of Rs. 8.97/, to only those private sugar mills, who would clear arrears of price of sugarcane of the farmers upto date 30.9.2014. It was directed that private sugar mills would bear remaining amount of Rs. 2.97 per quintal. This subsidy of amount of Rs. 6/per quintal was not provided to the sugar mills maintained by cooperative societies except Mohiuddinpur Sugar Mill and financial assistance by way of subsidy was also extended to this Sugar Mill for crushing season of the year 2013-14. 16. Learned counsel for the petitioner has not provided G.O. of the State Government by which deadline of 30.9.2014 was extended upto 20.11.2014. He has only provided press note dated 20.10.2014 (Annexure No. 5). On perusal of this press note, it is clear that representatives of private sugar mills, represented it on 20.10.2014 before the officers of the State Government and apprized the officers about their financial position. After considering the request made by the representatives of the private sugar mills, deadline was extended upto 20.11.2014. It also revealed that representatives of the private sugar mills also requested to provide additional financial assistance of amount of Rs. 3/per quintal by way of additional grant along with amount of Rs. 6/per quintal of the subsidy. The representatives had also requested to withdraw FIRs and recovery certificate issued against these sugar mills. The representatives of private sugar mills also assured officers of the State Government that private sugar mills would start maintenance work of sugar mills immediately for crushing season 2014-15 and sugar mills would run timely. 17. It is not pleaded by petitioner sugar company that on 20.10.2014 representatives of petitioner sugar mill company was not present in the meeting, which was held with officers of the Government. Therefore, financial condition of the petitioner sugar mill company was also considered in the meeting dated 20.10.2014, which is the main ground of the petitioner company, which should have been considered, while its representation dated 29.3.2017 was decided vide impugned order dated 29.5.2017. 18. On perusal of grounds of representation, it is admitted that arrears of sugarcane price relating to crushing season 2013-14 was paid by the petitioner company in the month of June, 2015 although with very difficulty. It is mentioned that for payment of arrears of crushing season of year 2014-15, the petitioner was compelled to sell out its Titavi Sugar Complex Unit, for payment of arrears of sugarcane price of the farmers. It is also admitted in representation by the petitioner company that outstanding arrears of sugarcane price amounting to Rs. 345 crore relating to the year 2016-17 has not been paid by the petitioner

company. 19. After perusal of contentions made by the petitioner company in its representations dated 29.3.2017, the Principal Secretary has considered and quoted these grounds in the impugned order dated 29.5.2017. It is pertinent to mention here that personal hearing of representative of Sugar Mill was not required at all. There was no violation of principles of natural justice as alleged by the petitioner. 20. The details of payment made by the petitioner company relating to crushing season of 2013-14 has also been mentioned in impugned order at page 3, which reads as under:

Sl. No.	Unit of Sugar Mill	Sugarcane Price	Sugarcane price paid
remaining	Percentage of payment	Date of last payment	
1. Titawi	25936.44	25936.44	0.00 100 8.6.2015
2. Mawana	29423.84	29423.84	0.00 100 10.6.2015
3. Naglamal	15477.04	15477.04	0.00 100 19.3.2015

(These details are mentioned in hindi in the impugned order.) 21. The Principal Secretary of the State Government has also considered G.O. dated 9.9.2014 and 28.10.2014 and report dated 5.5.2017 forwarded by Cane Commissioner regarding representations made by the petitioner company was also considered and it was observed that since the petitioner company had not paid/cleared sugarcane price upto deadline fixed by the Government upto 20.11.2014, facility of subsidy was not provided to petitioner company. It is pertinent to mention here that this deadline was fixed in meeting held with representatives of the private sugar mill including petitioner's company. Therefore, the petitioner company has also violated the decisions and assurance made in the meeting dated 20.10.2014. Therefore, there is no substance in the argument of learned counsel for the petitioner company that their stand was not considered by Principal Secretary, while he disposed of representation dated 29.3.2017. 22. The petitioner company was not eligible for facility given the State Government of U.P. by way of subsidy of amount of Rs. 6/, because the petitioner company did not clear the arrears of sugarcane price of the farmers upto date 20.11.2014, deadline fixed with the consent of the representatives of private sugar mills of the State of U.P. 23. Learned Standing Counsel has argued that State Government of U.P. has provided subsidy to the sugar mills under economic policy of the State to provide assistance to the private sugar mills and mills owned by cooperative societies to clear arrears of sugar cane price relating to crushing season of 2013-14, therefore, writ petition is not maintainable. 24. Hon"ble Supreme Court in the case of Balco Employees Union (Regd.) v. Union of India and Ors. AIR 2002 SC 350(3 Judges Bench) has observed regarding facts of this case in para 1 to 3 as follows 1. The validity of the decision of the Union of India to disinvest and transfer 51% shares of M/s Bharat Aluminium Company Limited (hereinafter referred to as "BALCO") is the primary issue in these cases. 2. BALCO was incorporated in 1965 as a Government of India Undertaking under the Companies Act, 1956. Prior to its disinvestments it had a paidup share capital

of Rs. 488.85 crores which was owned and controlled by the Government of India. The company is engaged in the manufacture of aluminium and had plants at Korba in the State of Chhattisgarh and Bidhanbag in the State of West Bengal. The Company has integrated aluminium manufacturing plant for the manufacture and sale of aluminium metal including wire rods and semifabricated products. 3. The Government of Madhya Pradesh vide its letter dated 18th March, 1968 wrote to BALCO stating that it proposed that land be granted to it on a 99 years lease subject to the terms and conditions contained therein. The letter envisaged giving on lease Government land on payment of premium of Rs. 200/per acre and, in addition thereto also to provide tenure land which was to be acquired and transferred on lease to BALCO on payment by it the actual cost of acquisition plus annual lease rent. Vide its letter dated 13th June, 1968 BALCO gave its assent to the proposal contained in the aforesaid letter of 18th March, 1968 for transfer of land to it. BALCO intimated by this letter that the total requirement of land would be about 1615 acres. Thereafter, in addition to the Government land which was transferred, the Government of Madhya Pradesh acquired land for BALCO under the provisions of the Land Acquisition Act, 1894 on payment of compensation. The District Collector, Bilaspur also granted permission under Section of the M.P. Land Revenue Code, 1959 for acquiring/transferring private land in favour of BALCO. As a result of the aforesaid, BALCO set up it's establishment on it's acquiring land from and with the help of the State Government. In para 46, 85, 91, 97 and 98 Hon''ble Supreme Court has observed as follows 46.... It is evident from the above that it 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. 85....Hon''ble Supreme Court in the case of Raunaq International Ltd. v. I.V.R. Construction Ltd. and Others AIR 1999 SC 393 has observed as follows "17. Normally before such a project is undertaken, a detailed consideration of the need, viability, financing and cost effectiveness of the proposed project and offers received takes place at various levels in the Government. If there is a good reason why the project should not be undertaken, then the time to object is at the time when the same is under consideration and before a final decision is taken to undertake the project. If breach of law in the execution of the project is apprehended, then it is at the stage when the viability of the project is being considered that the objection before the appropriate authorities including the court must be raised. Hon''ble Supreme Court would expect that if such objection or material is placed before the Government, the same would be considered before a final decision is taken. It is common experience that considerable time is spent by the authorities concerned before a final decision is taken regarding the execution of a public project. This is the appropriate time when all aspects and all objections should be considered. It is only when valid objections are taken into account or ignored that the court may intervene. Even so, the court should be moved at the earliest

possible opportunity. Belated petitions should not be entertained. 18. The same considerations must weight with the court when interim orders are passed in such petitions. The party at whose instance interim orders are obtained has to be made accountable for the consequences of the interim order. The interim order could delay the project, jettison finely worked financial arrangements and escalate costs. Hence the petitioner asking for interim orders in appropriate cases should be asked to provide security for any increase in cost as a result of such delay or any damages suffered by the opposite party in consequence of an interim order. Otherwise public detriment may outweigh public benefit in granting such interim orders. Stay order or injunction order, if issued, must be moulded to provide for restitution." 91.... In a democracy it is the prerogative of each elected Government to follow it's 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. 97. In the case of a policy decision on economic matters, the courts should be very circumspect in conducting any enquiry or investigation and must be most reluctant to impugn the judgment of the experts who may have arrived at a conclusion unless the Court is satisfied that there is illegality in the decision itself. 98. Lastly, no ex parte relief by way of injunction or stay especially with respect to public projects and schemes or economic policies or schemes should be granted. It is only when the Court is satisfied for good and valid reasons, that there will be irreparable and irretrievable damage can an injunction be issued after hearing all the parties. Even then the Petitioner should be put on appropriate terms such as providing an indemnity or an adequate undertaking to make good the loss or damage in the event the PIL filed is dismissed. Hon''ble Supreme Court in this precedent has considered other earlier decision regarding government policies and its judicial review and interference by the courts 1. This Court in *Rustom Cavasjee Cooper v. Union of India* (1970)3 SCR 530 at page 294 While considering the validity of the Banking Companies (Acquisition and Transfer of Undertakings) Ordinance 1969, observed as under: "It is again not for this Court to consider the relative merits of the different political theories or economic policies...This Court has the power to strike down a law on the ground of want of authority, but the Court will not sit in appeal over the policy of the Parliament in enacting a law..." Applying the analogy, just as the Court does not sit over the policy of the Parliament in enacting the law, similarly, it is not for this Court to examine whether the policy of this disinvestments is desirable or not. Dealing with the powers of the Court while considering the validity of the decision taken in the sale of certain plants and equipment of the Sindri Fertilizer Factory, which was owned by a Public Sector Undertaking, to the highest tenderer, 2. This Court in *Fertilizer Corporation Kamgar Union (Regd.), Sindri and Ors. v. Union of India and Ors.* (1981)I LLJ 193 SC at page 584, while upholding the decision to sell, observed as follows: ".. Hon''ble Supreme Court certainly agree that judicial interference with the administration cannot be meticulous in our Montesquieu

system of separation of powers. The Court cannot usurp or abdicate, and the parameters of judicial review must be clearly defined and never exceeded. If the Directorate of a Government company has acted fairly, even if it has faltered in its wisdom, the court cannot, as a superauditor, take the Board of Directors to task. This function is limited to testing whether the administrative action has been fair and free from the taint of unreasonableness and has substantially complied with the norms of procedure set for it by rules of public administration."

3. *State of M.P. and Ors. v. Nandlal Jaiswal and Ors.* (1987)1 SCR 1 the change of the policy decision taken by the State of Madhya Pradesh to grant licence for construction of distilleries for manufacture and supply of country liquor to existing contractors was challenged. Dealing with the power of the Court in considering the validity of policy decision relating to economic matters, it was observed at page 605 as follows: "But, while considering the applicability of Article 14 in such a case, Hon"ble Supreme Court must bear in mind that, having regard to the nature of the trade or business, the Court would be slow to interfere with the policy laid down by the State Government for grant of licences for manufacture and sale of liquor. The Court would, in view of the inherently pernicious nature of the commodity allow large measure of latitude to the State Government in determining its policy of regulating, manufacture and trade in liquor. Moreover, the grant of licences for manufacture and sale of liquor would essentially be a matter of economic policy where the Court would hesitate to intervene and strike down what the State Government has done, unless it appears to be plainly arbitrary, irrational or mala fide.

4. The Court then referred to an earlier decision in the case of *R.K. Garg v. Union of India and Ors.* (1982)133 ITR 239(SC) where there was an unsuccessful challenge to a law enacted by Parliament and held at page 413 as follows: "What has been said in respect of legislations is applicable even in respect of policies which have been adopted by Parliament. They cannot be tested in Court of Law. The courts cannot express their opinion as to whether at a particular juncture or under a particular situation prevailing in the country any such national policy should have been adopted or not. There may be views and views, opinions and opinions which may be shared and believed by citizens of the country including the representatives of the people in Parliament. But that has to be sorted out in Parliament which has to approve such policiesNo direction can be given or is expected from the courts unless while implementing such policies, there is violation or infringement of any of the constitutional or statutory provision. The new Telecom policy was placed before Parliament and it shall be deemed that Parliament has approved the same. This Court cannot review and examine as to whether the said policy should have been adopted. Of course, whether there is any legal or constitutional bar in adopting such policy can certainly be examined by the Court". Hon"ble Supreme Court had occasion to consider the scope of interference by the Court under Article 14 while dealing with laws relating to economic activities in *R.K. Garg v. Union of India*. AIR 1981 SC 2138 and pointed out in that case that laws relating to economic activities should be viewed with greater latitude than laws touching civil rights such as freedom of speech, religion, etc. Court observed that

the legislature should be allowed some play in the joints because it has to deal with complex problems which do not admit of solution through any doctrinaire or straitjacket formula and this is particularly true in case of legislation dealing with economic matters, where, having regard to the nature of the problems required to be dealt with, greater play in the joints has to be allowed to the legislature. Hon'ble court quoted with approval the following admonition given by Frankfurter, J. in *Morey v. Dond.* (1957) 354 US 457. In the utilities, tax and economic regulation cases, there are good reasons for judicial self-restraint if not judicial deference to legislative judgment. The legislature after all has the affirmative responsibility. The Courts have only the power to destroy, not to reconstruct. When these are added to the complexity of economic regulation, the uncertainty, the liability to error, the bewildering conflict of the experts, and the number of times the judges have been overruled by events self-limitation can be seen to be the path to judicial wisdom and institutional prestige and stability. What Hon'ble Supreme Court said in that case in regard to legislation relating to economic matters must apply equally in regard to executive action in the field of economic activities, though the executive decision may not be placed on as high a pedestal as legislative judgment insofar as judicial deference is concerned. Hon'ble Court must not forget that in complex economic matters every decision is necessarily empiric and it is based on experimentation or what one may call "trial and error method" and, therefore, its validity cannot be tested on any rigid "a priori" considerations or on the application of any straitjacket formula. The Court must while adjudging the constitutional validity of an executive decision relating to economic matters grant a certain measure of freedom or "play in the joints" to the executive. "The problem of government" as pointed out by the Supreme Court of the United States in *Metropolis Theater Co. v. State of Chicago*. are practical ones and may justify, if they do not require, rough accommodations, illogical, it may be, and unscientific. But even such criticism should not be hastily expressed. What is best is not discernible, the wisdom of any choice may be disputed or condemned. Mere errors of government are not subject to our judicial review. It is only its palpably arbitrary exercise which can be declared void. The Government, as was said in *Permian Basin Area Rate cases*, is entitled to make pragmatic adjustments which may be called for by particular circumstances. The Court cannot strike down a policy decision taken by the State Government merely because it feels that another policy decision would have been fairer or wiser or more scientific or logical. The court can interfere only if the policy decision is patently arbitrary, discriminatory or mala fide. It is against the background of these observations and keeping them in mind that Hon'ble Supreme Court must now proceed to deal with the contention of the petitioners based on Article 14 of the Constitution." 5. *G.B. Mahajan and Others v. Jalgaon Municipal Council and Ors.* AIR 1991 SC 1153 A policy decision of the Government whereby validity of contract entered into by Municipal Council with the private developer for construction of a commercial complex was impugned came up for consideration in and it was observed at page 104 as follows: "... The criticism of the project being "unconventional" does not add to or advance the

legal contention any further. The question is not whether it is unconventional by the standard of the extant practices, but whether there was something in the law rendering it impermissible. There is, no doubt, a degree of public accountability in all governmental enterprises. But, the present question is one of the extent and scope of judicial review over such matters. With the expansion of the State's presence in the field of trade and commerce and of the range of economic and commercial enterprises of government and its instrumentalities there is an increasing dimension to governmental concern for stimulating efficiency, keeping costs down, improved management methods, prevention of time and cost overruns in projects, balancing of costs against time scales, quality control, cost benefit ratios etc. In search of these values it might become necessary to adopt appropriate techniques of management of projects with concomitant economic expediences. These are essentially matters of economic policy which lack adjudicative disposition, unless they violate constitutional or legal limits on power or have demonstrable pejorative environmental implications or amount to clear abuse of power. This again is the judicial recognition of administrator's right to trial and error, as long as both trial and error are bona fide and within the limits of authority.." 6. Peerless General Finance and Investment Co. Limited and Anr. v. Reserve Bank of India 1991 Cri LJ 1391 in to the same effect are the observations of Hon"ble Supreme Court has observed at page 375 as follows: "31. The function of the Court is to see that lawful authority is not abused but not to appropriate to itself the task entrusted to that authority. It is well settled that a public body invested with statutory powers must take care not to exceed or abuse its power. It must keep within the limits of the authority committed to it. It must act in good faith and it must act reasonably. Courts are not to interfere with economic policy which is the function of experts. It is not the function of the courts to sit in judgment over matters of economic policy and it must necessarily be left to the expert bodies. In such matters even experts can seriously and doubtlessly differ. Courts cannot be expected to decide them without even the aid of experts". 7. Premium Granites and Anr v. State of T.N. and Ors. (1994) 1 SCR 579 while considering the Court's powers in interfering with the policy decision, it was observed at page 715 as under: "54. It is not the domain of the Court to embark upon uncharted ocean of public policy in an exercise to consider as to whether the particular public policy is wise or a better, public policy can be evolved. Such exercise must be left to the discretion of the executive and legislative authorities as the case may be..." 8. The validity of the decision of the Government to grant licence under the Telegraph Act 1885 to non-government companies for establishing, maintaining and working of telecommunication system of the country pursuant to Government policy of privatisation of Telecommunications was challenged in Delhi Science Forum and Ors. v. Union of India and Anr. AIR 1996 SC 1356 It had been contended that Telecommunications was a sensitive service which should always be within the exclusive domain and control of the Central Government and under no situation should be parted with by way of grant of licence to non-government companies and private bodies. While rejecting this contention, it observed at page 412 that:

"... The national policies in respect of economy, finance, communications, trade, telecommunications and others have to be decided by Parliament and the representatives of the people on the floor of the Parliament can challenge and question any such policy adopted by the ruling Government..." 9. In *M.P. Oil Extraction and Anr. v. State of M.P. and Ors.* (1997) 7 SCC 592, the Court While considering the validity of the industrial policy of the State of Madhya Pradesh relating to the agreements entered into for supply of sal seeds for extracting oil at page 610 held as follows: "41. After giving our careful consideration to the facts and circumstances of the case and to the submissions made by the learned counsel for the parties, it appears to us that the Industrial Policy of 1979 which was subsequently revised from time to time cannot be held to be arbitrary and based on no reason whatsoever but founded on mere ipse dixit of the State Government of M.P. The executive authority of the State must be held to be within its competence to frame a policy for the administration of the State. Unless the policy framed is absolutely capricious and, not being informed by any reason whatsoever, can be clearly held to be arbitrary and founded on mere ipse dixit of the executive functionaries thereby offending Article 14 of the Constitution or such policy offends other constitutional provisions or comes into conflict with any statutory provision, the Court cannot and should not overstep its limit and tinkers with the policy decision of the executive functionary of the State. This Court, in no uncertain terms, has sounded a note of caution by indicating that policy decision is in the domain of the executive authority of the State and the court should not embark on the uncharted ocean of public and should not question the efficacy or otherwise of such policy so long the same does not offend any provision of the statute or the Constitution of India. The supremacy of each of the three organs of the State i.e. legislature, executive and judiciary in their respective fields of operation needs to be emphasised. The power of judicial review of the executive and legislative action must be kept within the bounds of constitutional scheme so that there may not be any occasion to entrance misgivings about the role of judiciary in overstepping its limit by unwarranted judicial activism being very often talked of in these days. The democratic setup to which the polity is so deeply committed cannot function properly unless each of the three organs appreciate the need for mutual respect and supremacy in their respective field." 10. In *State of Punjab and Ors. v. Ram Lubhaya Bagga and Ors* AIR 1998 SC 1703 the validity of the change of Government policy in regard to the reimbursement of medical expenses to its serving and retired employees came up for consideration before Hon'ble Supreme Court. The court has observed that The earlier policy upholding the reimbursement for treatment in a private hospital had been upheld by this Court but the State of Punjab changed this policy whereby reimbursement of medical expenses incurred in a private hospital was only possible if such treatment was not available in any government hospital. Dealing with the validity of the new policy, the Court observed at page 129 as follows: "25. Now Hon'ble Supreme Court revert to the last submission, whether the new State policy is justified in not reimbursing an employee, his full medical expenses incurred on such treatment, if incurred in

any hospital in India not being a government hospital in Punjab. Question is whether the new policy which is restricted by the financial constraints of the State to the rates in AIIMS would be in violation of Article 21 of the Constitution of India. So far as questioning the validity of governmental policy is concerned in our view it is not normally within the domain of any court, to weight the pros and cons of the policy or to scrutinize it and test the degree of its beneficial or equitable disposition for the purpose of varying, modifying or annulling it, based on howsoever sound and good reasoning, except whether it is arbitrary or violative of any constitution, statutory or any other provision of law. When Government forms its policy, it is based on a number of circumstances on facts, law including constraints based on its resources. It is also based on expert opinion. It would be dangerous if court is asked to test the utility, beneficial effect of the policy or its appraisal based on facts set out on affidavits. The Court would dissuade itself from entering into this realm which belongs to the executive. It is within this matrix that it is to be seen whether the new policy violates Article 21 when it restricts reimbursement on account of its financial constraints." 11. The reluctance of the Court to judicially examine the matters of economic policy was again emphasised in *Bhavesh D. Parish and Ors. v. Union of India and Anr.* (2000) 5 SCC 471 and while examining the validity of Section 45S of the Reserve Bank of India Act 1934, it was held as follows: "26. The service rendered by certain informal sectors of the India economy could not be belittled. However, in the path of economic progress, if the information system was sought to be replaced by a more organised system, capable of better regulation and discipline, then this was an economic philosophy reflected by the legislation in question. Such a philosophy might have its merits and demerits. But these were matters of economic policy. They are best left to the wisdom of the legislature and in policy matters the accepted principle is that the courts should not interfere. Moreover in the context of the changed economic scenario the expertise of people dealing with the subject should not be lightly interfered with. The consequences of such interdiction can have largescale ramifications and can put the clock back for a number of years. The process of rational station of the infirmities in the economy can be put in serious jeopardy and, therefore, it is necessary that while dealing with economic legislations, this Court, while not jettisoning its jurisdiction to curb arbitrary action or unconstitutional legislation, should interfere only in those few cases where the view reflected in the legislation is not possible to be taken at all". 12. In *Narmada Bachao Andolan v. Union of India and Ors.*, there was a challenge to the validity of the establishment of a large dam. It was held by the majority at page 762 as follows: "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 policymaking process and the Courts are illequipped 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..." "232. While protecting the rights of the people from being violated in any manner utmost care has to be taken that the court does not (SIC) its jurisdiction. There is, in our constitutional framework a fairly clear demarcation of powers. The court has come down heavily whenever the executive has sought to impinge upon the court's jurisdiction. 233. At the same time, in exercise of its enormous power the court should not be called upon to or undertake governmental duties or functions. The courts cannot run the Government nor can the administration indulge in abuse or nonuse of power and get away with it. The essence of judicial review is a constitutional fundamental. The role of the higher judiciary under the Constitution casts on it a great obligation as the sentinel to defend the values of the Constitution and the rights of Indians. The courts must, therefore, act within their judicially permissible limitations to uphold the rule of law and harness their power in public interest. It is precisely for this reason that it has been consistently held by this Court that in matters of policy the court will not interfere. When there is a valid law requiring the Government to act in a particular manner the court ought not to, without striking down the law, give any direction which is not in accordance with law. In other words, the court itself is not above the law. 234. In respect of public projects and policies which are initiated by the Government the courts should not become an approval authority. Normally such decisions are taken by the Government after due care and consideration. In a democracy welfare of the people at large, and not merely of a small Section of the society, has to be the concern of a responsible Government. If a considered policy decision has been taken, which is not in conflict with any law or is not mala fide, it will not be in public interest to require the court to go into and investigate those areas which are the function of the executive. For any project which is approved after due deliberation the court should refrain from being asked to review the decision just because a petitioner in filing a PIL alleges that such a decision should not have been taken because an opposite view against the undertaking of the project, which view may have been considered by the Government, is possible. When two or more options or views are possible and after considering them the Government takes a policy decision it is then not the function of the court to go into the matter afresh and, in a way, sit in appeal over such a policy decision". 25. On the basis of above-mentioned exposition of law propounded by Hon'ble Supreme Court, case law relied upon by the petitioner is of no help for it. We have examined G.O. dated 9.9.2014 and press note dated 21.10.2014. These G.O. come under category of economic policy of the State Government of U.P. to assist and ensure timely payment of prices of sugarcane supplied by farmers in the year 2013-14, by providing financial assistance/subsidy to private sugar mills. This facility was provided by fixing deadline upto 20.11.2014, only to those private sugar mill, those would clear arrears. By framing this economic policy, timely functioning and running of sugar mills owned by private sugar mills as well as Sugar Mills owned by cooperative societies was also ensured during crushing season for 2014-15. 26. On perusal of impugned order, it revealed that petitioner company was persistent defaulter for making payment of sugar cane

price to farmers residents of its area of operation. In the present scenario, sugar mills are producing another products also from sugar cane i.e. ethanol, sheera, liquor at its distillery units, by selling waste of sugar cane. Some sugar mills are generating electricity and are saving electricity charges also. Therefore, these sugar mills are having other sources of income. Even then in its representation, petitioner company is only relying on income from production of sugar only, by stating that in the year 2013-14 purchase price of sugarcane was higher, than, sale price of sugar i.e. low price. 27. Unaudited statement/alleged balance sheet upto 30.9.2014 has been relied upon by learned counsel for the petitioner. Therefore, it could not be substantiated that in the year 2013-14 company was not having any other income from other products of sugarcane. 28. Delayed payment of arrears of sugarcane price was made to the farmers by the petitioner. The petitioner could clear arrears prior to expiry of dead line 20.11.2014 as consented by its representative in meeting dated 20.10.2014. It became defaulter and therefore, facility of subsidy was not provided to the petitioner company under above-mentioned economic policy of the State Government. Hence, petition devoid of merit and liable to be dismissed and is accordingly dismissed.