

(2005) 08 AHC CK 0155

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 36685 of 2004

Monnet Sugar Limited

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 24-08-2005

Acts Referred:

Companies Act, 1956 — Section 391
Constitution of India, 1950 — Article 136, 14, 141, 143, 19
Industries (Development and Regulation) Act, 1951 — Section 10, 11, 11A, 11B(1), 11B(2)
Industries (Development and Regulation) Amendment Act, 1956 — Section 29(2A), 29(2B), 29(2C), 29(2D), 29(2E)

Citation : AIR 2006 All 200

Hon'ble Judges : Sanjay Misra, J; Amitava Lala, J

Bench : Division Bench

Advocate : S.P. Gupta, Yashwant Varma and Suruchi Agarwal, for the Appellant; K.P. Pathak, Addl. Solicitor General of India and Awadhesh Narain Shukla, A.S.C. for Respondent Nos. 1 and 2 (and also on behalf of Attorney General of India), Sudhir Agrawal, A.A.G. for Respondent Nos. 3, 4 and 5 and Siddhartha Shanker Ray and V.B. Upadhyaya and V.K. Upadhyaya, for the Respondent

Final Decision : Disposed Of

Judgement

Amitava Lala, J.—Writ petitioner filed this petition basically challenging a press note dated 31st August, 1998 and the notification being numbered SO 808 (E) dated 11th September, 1998, which are as follows:

PRESS NOTE

"Subject: De-licensing of Sugar Industry.

The Government has further viewed the list of industries under compulsory licensing, and has decided to delete sugar industry from the list of industries requiring compulsory licensing under provisions of the Industrial (Development and Regulation) Act, 1951. However, in order to avoid unhealthy competition

among sugar factories to procure sugarcane, a minimum of 15 KM would continue to be observed between an existing sugar mill and a new mill by exercise of power under Sugarcane (Control) Order, 1966.

2. The entrepreneurs who wish to avail themselves of the de-licensing of sugar industry would be required to file an Industrial Entrepreneurs Memoranda (IEM) with the Secretariat of Industrial Assistance in the Ministry of Industry as laid down for all de-licensing industries in terms of the Press Note dated 2nd August, 1991, as amended from time to time.

3. Entrepreneurs who have been issued Letter(s) of Intent (LOI) for manufacture of sugar need not file an initial IEM. In such cases, the LOI holder shall only file part B of the LOI at the time of commencement of commercial production against the LOI issued by them. It is, however, open to entrepreneurs to file an initial IEM (in lieu of the LOI/Industrial Licence held by them) if they so desire, whenever any variation from the conditions and parameters stipulated in the LOI/Industrial Licence is contemplated."

NOTIFICATION

"(266) Ministry of Industry (Department of Industrial Policy and Promotion) Notification No. S.O. 808(E) dated September 11, 1998 published in the Gazette of India, Extra, Part II, Section 3(ii) dated 14th September 1998, p 2, No. 599 (F.No. 10(13)/96.I.P.).

In exercise of the powers conferred by Sub-section (1) of Section 29B of the Industries (Development and Regulations) Act, 1951 (65 of 1951), the Central Government hereby makes the following further amendment in the notification of the Government of India in the Ministry of Industry (Department of Industrial Development Number S.O. 477 (E), dated the 25th July, 1991, namely:-

In Schedule II to the said notification, item 4, relating the Sugar and the entries thereunder shall be omitted."

2. According to Mr. S.P. Gupta, learned Senior Counsel appearing for the petitioner, de-licensing of the sugar industry by the Union of India, respondent No. 1 herein, without amending the Industries Development and Regulation Act (hereinafter called "the said Act") is wrongful. This is an executive attempt to deregulate the sugar industry by invoking power of exemption under the said Act without parliamentary sanction. It is contrary to Industrial Policy and has far reaching effect on the State Legislation specially with special reference to the State of Uttar Pradesh. Section 29B of the said Act gives power to the Government to make certain specific exemption which cannot be generalised. By such device the Government has usurped the power of specified industry. Section 29B of the said Act gives power only in respect of the development of the scheduled industry. That does not necessarily mean that the Government should loose the control upon the industry. Development of the industry is to be made by the Central Government in consultation of the concerned State. Both the

Central and the State Governments had communicated several other regulations and framed Rules etc. to regulate the supply and to ensure equitable distribution of sugar and related raw material such as sugarcane. The procurement of sugarcane, the sale and price of sugar, the price of the end products of the factory, including molasses, the export etc. of sugar are all controlled by several Acts in all States with specific reference to the State of Uttar Pradesh. Even if the control through licensing under the IDR Act has sought to be eliminated, the control on the several areas of sugar production, procurement of raw-materials sale of the waste products as also the marketing through exports and within the country continue to be regulated through the several Central and State Acts. A list of such Acts is quoted hereunder:-

"a. The UP. Sugarcane (Regulation of Supply & Purchase) Act, 1953 (Act No. 24 of 1953) was an act to regular supply and purchase of sugarcane for use in sugar factory.

b. The Sugar Control Order, 1966 deals with supply and equitable distribution of sugar. Prices of levy sugar are determined by Central Government for Public Distribution System.

c. The U.P. Sugarcane Purchase Tax Act, 1961 relates to the tax on the purchase of sugar by factories and sugar manufacturing units.

d. The Sugar Cess Act, 1982 of Government of India providing imposition of tax on sugar for the development of sugar industry and for matters connected therewith.

e. Even the end product of the sugarcane is controlled under the U.P. Sheera Niyantaran Adhiniyam, 1962 which is an Act providing in public for the control and storage, gradation and price of molasses produced by sugar factories in Uttar Pradesh regulation of supply and distribution thereof.

f. There is an Act in the State of Uttar Pradesh for providing the welfare of the labour employed in the sugar industry and for their development of including housing maintenance and dispensary service in sugar factories etc., namely, the U.P. Sugar and Power Alcohol Industries Labour Welfare and Development Fund Act, 1950.

g. The export of sugar has been controlled by the Central Government.

h. The Essential Commodities Act, 1955 controls the production, supply and distribution of sugar as an essential commodity."

3. Therefore, delicensing policy of sugar industry is arbitrary and does not stand informed by any rationale. While carving liberty to be referred through the various policy notifications issued by the Central Government from time to time, the said guidelines ensured consultation with State Government about setting up new unit. The earlier notification dated 25th July, 1991 was completely changed by the 1998 amendment by de-licensing the sugar industry.

4. In these circumstances, we thought it fit to go into the notification dated above to understand the scope and ambit of the same. It appears from the notification u/s 29B(1) of the Act that Central Government has given certain exemptions from the operation of the provisions of Sections 10 11 11A and 13 of the said Act. Particulars are given herein below:

"I. Small scale and ancillary industrial undertakings covered by the Notification No. S.O. 232(E) dated the 2nd April, 1991 subject to the condition that the article (s) of manufacture is--

(i) not included in Schedule I or Schedule II to this notification.

or

(ii) included in Schedule III to this notification.

II. Industrial undertakings, not covered by this Ministry's notification No. S.O. 232(E) dated 2nd April, 1991, subject to the provisions contained in A and B below :

A. (i) The article(s) of manufacture shall not be an article (s) included in Schedule I, Schedule II, or Schedule III to this notification; and

(ii) ...

(a) ...

(b) ...

B. Section 11A of the said Act subject to the condition that the new article shall not be an article included in Schedule I, Schedule II or Schedule III to this notification and shall not involve any additional investment in plant and machinery.

III. ...

IV. ...

V. ...

5. Schedule I is the list of Industries to be reserved for the public sector. Schedule II is the list of industries, in respect of which industrial licensing is compulsory. Item No. 4 therein is Sugar. Schedule III is list of items reserved for exclusive manufacture in small scale sector. We are only concerned with Schedule II item 4 of the notification. We are also keen to know the scope of Sub-section (1) of the Section 29B of the Act, under which the notification deemed to have been issued but before that we record the submissions of the respective respondents.

6. According to Mr. K.P. Pathak, learned Additional Solicitor General appearing for the Union of India and learned Attorney General of India that the Industrial Policy Resolution, 1991 was duly announced by them owing to the policy of

liberalisation. The purpose of this policy is liberalisation, transparency and market guided growth of the industries. In the said Industrial Policy Resolution the measures of liberalisation and the licensing policy was also announced with main objective to liberalise the licensing norms for several industries. The Standing Committee on Food, Civil Supplies and Public Distributions (1995-96) published its comprehensive report on sugar, thereby discussing the issues and factors relating to licensing and/ or de-licensing of the same. The Standing Committee emphasized on liberalisation of de-licensing of the sugar industries so as to ensure competition. The said committee opined that the rigorous licensing formality causes delay resulting into shortage of sugar. The present petitioner had taken advantage of the current policy by substantial expansion of the unit by filing Industrial Entrepreneurs Memorandum (hereinafter in short called as "IEM") with the Ministry of Industry and thereby debarred from challenging the notification. The Union of India, in order to serve and effect the policy of liberalisation in the larger public interest and in the interest of the sugar industry in particular, invoked the power conferred upon it u/s 29B of the Act. It is pertinent to state that de-licensing of any industry means to exempt it from operations of the provisions of Sections 10 11 11A and 13 of the Act. It does not, in any manner, mean that for de-licensing, the said schedule industry is required to be omitted from the First Schedule of the Act. The Parliament, in its wisdom, conferred power upon the Central Government u/s 29B of the Act, therefore, petitioner's contention that the amendment has to be effected by the Parliamentary power of the House, is erroneous and baseless. Unless the policy framed is absolutely capricious and nonsupported by any reason held to be arbitrary. This is not such a case. Unless law is amended, Sugar can not be deleted from the First Schedule of the Act. Licence for setting up a new factory is compulsory. In further, he said that by another committee, known as Mahajan Committee, a report was filed recommending for continuance of licensing policy for sugar and for keeping minimum distance of 25 Kms. in between two factories. The Union of India felt that any change in the guidelines like evaluation of capability of the applicants for setting up units and their inter se ranking could lead to the entire process being opposed/questioned, as being subjective. The Government felt that de-licensing of sugar industry" would alone unlock the potential of this important industry while evaluation criteria by financial institution would ensure the viability of the individual units. So far as allocation of sugarcane area is concerned, the same would be required and continued to be done at the level of the State Government. The Central Government is not supposed to accept each and every recommendation/suggestion of the Committees as it is not legally bound. By citing H.S.S.K. Niyami and others Vs. Union of India and another, he wanted to say that zoning of sugar industry for fixation of sugar price is a part and parcel of the Essential Commodities Act. Central Government has to formulate and implement its policy by means of statutory instructions and executive orders. This is a matter within the province of the Central Government, which does not ordinarily attract the power of judicial review. By a further citation being P.T.R. Exports (Madras) Pvt. Ltd. and others

Vs. Union of India and others, he said that the Government or legislature has power to evolve its new fiscal policy in public interest which includes its power to withdraw the old policy. The Court would not bind the Government to its previous policy by invoking the doctrine of legitimate expectation of the applicant for licence unless the change in policy is vitiated by mala fides or abuse of power, which the applicant must plead and prove to the satisfaction of the Court. Doctrine of promissory estoppel is equally inapplicable in the circumstances. He further cited State of Punjab and Others Vs. Ram Lubhaya Bagga Etc. Etc., to reiterate that changing policy of the State from time to time under the changing circumstances can not be questioned. It is not normally within the domain of any Court to weigh the pros and cons of any 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 where it is arbitrary or violative of any constitutional, statutory or any other provisions of law. When Government forms its policy, it is based on a number of circumstances on facts, law including constraints based on its resources. Learned Advocate General also relied upon such judgments. Other citations are common in nature, therefore, it has been taken into account in dealing with the submissions of other contesting parties.

7. It is well known that a Government is bound by the policy and reflection of such policy is to be made available in the law as a matter of reflection of the peoples' mind being tested by the legislative houses. But our question is where is the policy that the Government by law is entitled to delicense the sugar industry in the name of development not being in public interest? If there is no answer, citations have no face value so far as the cause of action is concerned. Therefore, we should not confine ourselves within the terminology of "public policy" unless and until our tests are fulfilled.

8. The role of the Cane Commissioner and the State of Uttar Pradesh in this dispute is very limited as contended by Mr. Sudhir Agarwal, learned Additional Advocate General appearing for them. However, their contention is that the Bonding Policy issued for the years 2003-04, 2004-05 and 2005-06 contemplates the minimum draw of 55 to 60%, as against which the drawl percentage of the petitioner is only 48%. In the crushing year 2003-04 total production of cane, was 103.36 lacs qts. when purchase by the factory of the petitioner is 49.11 lacs qts. There is no scarcity of sugarcane. The requirement of the said mill is 80 lacs qts., which can be easily met with the drawl percentage i.e. 60% contemplated under the Bonding Policy. The cane requirement will be completely met. There is no shortage of sugarcane in the area. As because the petitioner is non-remunerative towards the farmers, they are diverting sugar cane to other units. In further, the petitioner did not involve itself in the development activities contemplated and required for a Sugar Industry like development of roads, pesticides and insecticides etc. for augmenting sugarcane production and for facilitate transport of sugarcane. The respondent No. 6 in its effort to establish a sugar industry by filing IEM has not contravened till date any of the statutory

provisions or of the guidelines of the Central Government. Even the distance norms of 15 Kms. as per Press Note has been followed. The petitioner has taken advantage of de-licensing by increasing crushing capacity merely by filing IEM Establishment of new enterprise will abolish monopoly.

9. Mr. Siddhartha Shankar Ray, learned Senior Counsel appearing for the respondent No. 6, contended that the petitioner being one of the sugar manufacturing company has carried out substantial expansion in sugar mill during the period of 1999 under the aforesaid de-licensing policy announced by Press Note of the year 1998 and notifications of the year 1991 and 1998 simply by filing IEM. Therefore, the petitioner accepted the policy and acted thereupon and also taken fullest advantage of the de-licensing policy. Prior to issuance of Press Note the petitioner could not have carried out substantial expansion in the sugar mill without obtaining a licence therefor. It had expanded capacity of production from 3125 TCD to 5000 TCD. The respondent No. 6 is validly held to be Limited Company listed at the stock exchanges and belongs to Bajaj Group. The company has its existing units in District Kheri, Uttar Pradesh, it is setting up a sugar factory at Thanna Bhavan, District Muzaffarnagar (Uttar Pradesh) with the aggregate investment of about 150 crores with a capacity of 7000 tonnes crush per day. The respondent No. 6 company has filed requisite IEM. It has worked timelessly to complete the production as soon as possible in the interest of the farmers as well as the national economy. This respondent company has already spent about Rs. 12 crores on the project on purchase of land, plant and machinery and other miscellaneous expenditure. It has already set up 7000 TCD brown field expansion in the two projects, as indicated above, within 10 months. It is the fastest project to be completed in the sugar industries of India. The petitioner has acted upon and had taken full advantage of the notification and Press Note by making substantial expansion in its sugar mill simply filing IEM. This is a desperate attempt of the petitioner to have a complete monopoly. The attempt is malicious only to harass the respondent No. 6. There is huge surplus of sugarcane and if the factory of the respondent No. 6 company is set up, it would contribute to the farmers' economy, facilitate development of the area, provide large employment directly and indirectly and contribute to the national exchequer as well. Section 29B of the Act provides wide powers to the Central Government to issue exemption and lay down guidelines for over all industrial development of the country.

10. It appears that Section 29B was re-numbered as Sub Section (1) of that Section and Sub Sections (2) & (3) were inserted by Act 71 of 1956 with effect from 01st March, 1957. Sub Sections (2-A) to (2-H) were inserted with effect from 12th January, 1984. Sub-section (1) speaks about power of exemption of any industrial undertaking in special cases.

11. Admittedly before amendment of the Act power of exemption in special cases was there u/s 28 of the Act. Such provision is quoted hereunder:

"The Central Government may, if satisfied that it is in the public interest so to do,

exempt any scheduled industry or any industrial undertaking for such period as it may specify, from the operation of all or any of the provisions of this Act or any rules made thereunder."

12. The Industries (Development And Regulation) Act came into force in the year 1951 and time to time amended upto 1986. New section i.e. Section 29B of the Act is quoted hereunder:-

"Power to exempt in special cases.- (1) If the Central Government is of opinion, having regard to the smallness of the number of workers employed or to the amount invested in any industrial undertaking or to the desirability of encouraging small undertakings generally or to the stage of development of any scheduled industry, that it would not be in public interest to apply all or any of the provisions of the Act thereto, it may, by notification in the Official Gazette, exempt, subject to such conditions as it may think fit to impose, any industrial undertaking or class of industrial undertakings or any scheduled industry or class of scheduled industries as it may specify in the notification from the operation of all or any of the provisions of this Act or any rule or order made thereunder.

(2) Where any notification under Sub-section (1) granting any exemption is cancelled, no owner of any industrial undertaking to which the provisions of Section 10, Section 11, Section 11A or Clause (d) of Sub-section (1) of Section 13, would have applied, if the notification under Sub-section (1) had not been issued, shall carry on the business of the undertaking after the expiry of such period as may be specified in the notification cancelling the exemption except under and in accordance with a licence issued in this behalf by the Central Government and, in the case of a State Government, except under and in accordance with the previous permission of the Central Government.

(2-A) In particular, and without prejudice to the generality of the provisions of Sub-section (1), the Central Government may, if it is satisfied, after considering the recommendations made to it by the Advisory Committee constituted under Sub-section (2-B), that it is necessary so to do for the development and expansion of ancillary, or small scale, industrial undertakings, by notified order, direct that any article or class of articles specified in the First Schedule shall, on and from such date as may be specified in the notified order (hereafter in this section referred to as the "date of reservation"), be reserved for exclusive production by the ancillary, or small scale, industrial undertakings (hereafter in this section referred to as "reserved article").

(2-B) The Central Government shall, with a view to determining the nature of any article or class or articles that may be served for production by the ancillary, or small scale, industrial undertakings, constitute an Advisory Committee consisting of such persons as have, in the opinion of that Government, the necessary expertise to give advice on the matter.

(2-C) The Advisory Committee shall, after considering the following matters, communicate its recommendations to the Central Government, namely:-

- (a) the nature of any article or class of articles which may be produced economically by the ancillary, or small scale, industrial undertakings;
- (b) the level of employment likely to be generated by the production of such article or class of articles by the ancillary, or small scale, industrial undertakings;
- (c) the possibility of encouraging and diffusing entrepreneurship in industry;
- (d) the prevention of concentration of economic power to the common detriment; and
- (e) such other matters as the Advisory Committee may think fit.

(2-D) The production of any reserved article or class of reserved articles by any industrial undertaking (not being an ancillary, or small scale, industrial undertaking) which, on the date of reservation, is engaged in, or has taken effective steps for, the production of any reserved article or class of reserved articles, shall, after the commencement of the Industries (Development and Regulation) Amendment Act, 1984, or, as the case may be, the date of reservation, whichever is later, be subject to such conditions as the Central Government may, by notified order, specify.

(2-E) While specifying any condition under Sub-section (2-D), the Central Government may take into consideration the level of production of any reserved article or class of reserved articles achieved, immediately before the date of reservation, by the industrial undertaking referred to in Sub-section (2-D), and such other factors as may be relevant.

(2-F) Every person or authority, not being the Central Government, who, or which, is registered u/s 10 or to whom, or to which, a licence has been issued or permission has been granted u/s 11 for the production of any article or class of articles which has, or have, been subsequently reserved for the ancillary, or small scale, industrial undertakings, shall produce, such registration certificate, licence or permission, as the case may be, within such period as the Central Government may, by notified order, specify in this behalf, and the Central Government may enter therein all or any of the conditions specified by it under Sub-section (2-D), including the productive capacity of the industrial undertakings and other prescribed particulars.

(2-G) The owner of every industrial undertaking (not being an ancillary, or small scale, industrial undertaking) which, immediately before the commencement of the Industries (Development and Regulation) Amendment Act, 1984, or the date of reservation, whichever is later,-

- (a) was engaged in the production of any article or class of articles, which has, or have, been reserved for the ancillary, or small scale, industrial undertakings, or
- (b) had before such commencement or before the date of such reservation, as the case may be, taken effective steps for commencing the production of such reserved article or class of reserved articles, without being registered u/s 10 or in

respect of which a licence or permission has not been issued u/s 11, shall refrain from the production of such reserved article or class of reserved articles, on and from the date of expiry of three months from such commencement or from the date of such reservation, whichever is later.

(2-H) Every notified order made under Sub-section (2-A) shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days, which may be comprised in one session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the notified order or both houses agree that the notified order should not be made, the notified order shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that notified order.

(3) The provisions of this Act shall apply, so far as may be, in relation to the issue of a licence or permission to any industrial undertaking referred to in Sub-section (2) as they apply in relation to the issue of a licence or permission to a new industrial undertaking."

13. The underlined portion is the plinth of the respondents' arguments. According to them Sugar Industry as a whole can be delicensed by virtue of such sub-section of the section. No doubt certain relaxations are made available for some of the enterprises under the Sub-section 1 of Section 29B of the Act. But what are those enterprises? It is clarified under the notification dated 25th July, 1991. From the plain reading it appears that in the case of exigency and that too for the small scale and ancillary industrial undertakings covered by the earlier notification dated 02nd April, 1991 such relaxation can be applicable. How can that become opening of flood gate towards the big industrial houses in establishing new undertaking without licence, is unknown to this Court. The law is to be read as a whole but not in piecemeal. The First Schedule formed under Sections 2 and 3(i) of the Act gives list of scheduled industry. Sugar is item No. 25 in the list under First Schedule. Section 3(i) being definition clause says "scheduled industry" means any of the industries specified in the First Schedule. Section 2 of the Act gives declaration as to expediency of control by the Union. It says "It is hereby declared that it is expedient in the public interest that Union should take under its control the industries specified in the First Schedule." Such section is the verbatim reproduction of Entry 52 of the List I-Union List under Seventh Schedule of the Constitution of India. It says industries, the control of which by the Union is declared by Parliament by law to be expedients the public interest. Entry 24 of the List II- State List of the Constitution of India speaks about industries subject to the provisions entries 7 and 52 of List I. Therefore, control of the industries was taken by the Union from the States in the public interest and implemented u/s 2 of the Act in respect of the industries specified in the First Schedule.

14. Chapter III of the Act deals with regulation of scheduled industries. Section

11 under such chapter speaks about licensing of new industrial undertakings. Such Section is as follows:

"(1) No person or authority other than the Central Government, shall, after the commencement of this Act, establish any new industrial undertaking, except under and in accordance with a licence issued in that behalf by the Central Government:

Provided that a Government other than the Central Government may, with the previous permission of the Central Government, establish a new industrial undertaking.

(2) A licence or permission under Sub-section (1) may contain such conditions including, in particular, conditions as to the location of the undertaking and the minimum standards in respect of size to be provided therein as the Central Government may deem fit to impose in accordance with the rules, if any, made u/s 30."

15. Section 30 of the Act gives rule making power. Relevant portions are quoted hereunder:

"30. Power to make rules.- (1)...

(2) ...

(a) ...

(b) ...

(c) ...

(d) ...

(e) ...

(f) ...

(g) ...

(h) ...

(i) the procedure for the grant or issue of licences and permissions u/s 11, Section 11A, Section 13 or Section 29B, the time within which such licences or permissions shall be granted or issued including, in particular, the publication of notices calling for applications and the holding of such public inquiry in relation thereto as may be necessary in the circumstances;

(j) the fees to be levied in respect of licences and permissions issued under this Act;

(k) the matters which may be taken into account in the granting or issuing of licences and permissions, including in particular, the previous consultation by the Central Government with the Advisory Council or any Development Council or

- both in regard to the grant or issue of any such licences or permissions;
- (l) the procedure to be followed in making any investigation under this Act;
- (m) the conditions which may be included in any licences and permissions;
- (n) the conditions on which licences and permissions may be varied or amended u/s 12;
- (o) the maintenance of books, accounts and records relating to an industrial undertaking; (p) the submission of special or periodical returns relating to an industrial undertaking by persons having the control of, or employed in connection with, such undertaking, and the forms in which, and the authorities to which such returns and reports shall be submitted;
- (pp) any matter which is to be or may be prescribed for giving effect to the provisions of chapter III-AA or Chapter III-AC;
- (q) any other matter which is to be or may be prescribed under this Act;
- (3) Any rule made under this section may provide that a contravention thereof shall be punishable u/s 24.
- (4) Every rule made under this section shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule."

16. The entire chapter deals with (a) registration of existing industrial undertakings; (b) revocation of registration in certain cases; (c) licence for producing or manufacturing new articles; (d) revocation and amendment of licences in certain cases; (e) further provision for licensing of industrial undertakings in special cases; (f) procedure for the grant of licence or permission; (g) power to cause investigation to be made into scheduled industries or industrial undertakings; (h) power to investigate into the affairs of a company in liquidation; (i) powers of Central Government on completion of investigation; (j) power of person or body of the persons appointed to call for assistance in any investigation, apart from licensing a new industrial undertakings as said before. Therefore, the entire chapter regulates the control over the scheduled industries and grant of licence to new industrial undertakings is integral part of such regulatory mandates. Hence grant of licence can not be detachable from the word "control".

17. Now the question before us is what is said to be not in the public interest?

Section 29B(1) of the Act was introduced with effect from 01st March, 1957. From then there was no dispute upto 1998. Nobody thought that without having appropriate licence a large scale sugar industry can be established in the name of development of any scheduled industry when not be in public interest. On 12th January, 1984 the original Act was amended substantially. Separate definitions of "ancillary industrial undertaking" and "small scale industrial undertaking" were given. u/s 3(aa) of the Act definition of "ancillary industrial undertaking" is given as follows:

" "ancillary industrial undertaking" means an industrial undertaking which, in accordance with the proviso to Sub-section (1) of Section 11B and the requirements specified under that sub-section, is entitled to be regarded as an ancillary industrial undertaking for the purpose of this Act;"

"Small scale industrial undertaking" is defined u/s 3(j), which is as follows:

"small scale industrial undertaking" means an industrial undertaking which, in accordance with the requirements specified under Sub-section (1) of Section 11B, is entitled to be regarded as a small scale industrial undertaking for the purposes of this Act;"

18. Section 11B was inserted under Chapter III i.e. Regulation of Scheduled Industries as discussed before under self same amendment dated 12th January, 1984. Section 11B is as follows:

"11-B. Power of Central Government to specify the requirements which shall be complied with by small scale industrial undertakings.-- (1) The Central Government may, with a view to ascertaining which ancillary and small scale industrial undertakings need supportive measures, exemptions or other favourable treatment under this Act to enable them to maintain their viability and strength so as to be effective in--

(a) promoting in a harmonious manner the industrial economy of the country and easing the problem of unemployment, and

(b) securing that the ownership and control of the material resources of the community are so distributed as best to subserve the common good, specify, having regard to the factors mentioned in Sub-section (2), by notified order, the requirements which shall be complied with by an industrial undertaking to enable it to be regarded, for the purposes of this Act, as an ancillary, or a small scale, industrial undertaking and different requirements may be so specified for different purposes or with respect to industrial undertakings engaged in the manufacture or production of different articles:

Provided that no industrial undertaking shall be regarded as an ancillary industrial undertaking unless it is, or is proposed to be, engaged in-

(i) the manufacture of parts, components, sub-assemblies, toolings or intermediates; or

(ii) rendering of services, or supplying or rendering, not more than fifty per cent of its production or its total services, as the case may be, to other units for production of other articles.

(2) The factors referred to in Sub-section (1) are the following, namely:--

(a) the investment by the industrial undertaking in--

(i) plant and machinery, or

(ii) land, buildings, plant and machinery;

(b) the nature of ownership of the industrial undertaking;

(c) the smallness of the number of workers employed in the industrial undertaking;

(d) the nature, cost and quality of the product of the industrial undertaking;

(e) foreign exchange, if any, required for the import of any plant or machinery by the industrial undertaking; and

(f) such other relevant factors as may be prescribed.

(3) A copy of every notified order proposed to be made under Sub-section (1) shall be laid in draft before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in disapproving the issue of the proposed notified order or both Houses agree in making any modification in the proposed notified order, the notified order shall not be made, or, as the case may be, shall be made only in such modified form as may be agreed upon by both the Houses.

(4) Notwithstanding anything contained in Sub-section (1), an industrial undertaking which, according to the law for the time being in force, fell, immediately before the commencement of the Industries (Development and Regulation) Amendment Act, 1984, under the definition of an ancillary, or small scale, industrial undertaking, shall, after such commencement, continue to be regarded as an ancillary, or small scale, industrial undertaking for the purpose of this Act until the definition aforesaid is altered or superseded by any notified order made under Sub-section (1)."

19. Ironically Section 29B was also amended on the very same day by introducing Sub-sections (2-A) to (2-H) therein. Section (2-A) deals with development and expansion of ancillary, or small scale, industrial undertakings without prejudice to the generality of the provisions of Sub-section (1). Sub-section (2-H) speaks about parliamentary discussion like Sub-section (3) of the Section 11B of the Act as above. Therefore, there is no way out of parliamentary discussion either in the cases of scheduled or ancillary or small scale industry.

20. On 25th July, 1991 a notification was issued making separate rooms for the public sector undertakings, compulsorily licensable undertakings and list of items reserved for exclusive manufacture in small scale sector in Schedule I, Schedule II and Schedule III of the same. Such notification never made any whisper about relaxation regarding industries under Schedule I, Schedule II and Schedule III. It gives certain relaxations to the small scale and ancillary undertakings u/s 29B(1) of the Act. If the harmonious construction is made in between the four conditions u/s 29B(1) i.e. (a) smallness of number of workers; (b) amount invested; (c) desirability of encouraging small undertakings generally; (d) stage of development of any scheduled industry read with the part of newly introduced Sub-section (2-A) to the extent without prejudice to the generality of the provisions of Sub-section (1) and also the notification dated 25th July, 1991, it will be seen that for the protection of small undertakings existable prior and after the amendment, a minimum power has been given to the executives for exemption of such undertakings for their survival by treating not in the public interest so that such undertakings can get respite in the exigency yet draft of such notified order shall be laid down before each house of Parliament. It is far from imagination that a large scale industry having admitted amount of investment of 150 crores, now or future, can be allowed to start its business without licence. No such policy is available as yet. If Central Government itself says that they are not bound by the committee reports then the subject matter of liberalisation therein is mere speeches. Delicensing, if any, is the end effect of such liberalisation subject to parliamentary discussion, adoption and implementation by law. Moreover grant of licence is the basic structure of the Act. It is extremely difficult to accept different interpretation on a doubtful part.

21. In 1993 (3) SCC 621 (B.K. Industries and Ors. v. Union of India and Ors.) we find that the Finance Minister's speech in respect of Cess was not declared as law by the Supreme Court. The Supreme Court held that the principle of decision in His Holiness Kesavananda Bharati Sripadagalvaru Vs. State of Kerala, is that the power of amendment conferred by Article 368 of the Constitution cannot extend to scrapping of the Constitution or to altering the basic structure of the Constitution. Applying the principle of the decision, it was held that the power of exemption cannot be utilized for, nor can it extend to, the scrapping of the very Act itself as held by the Supreme Court. The Supreme Court refused to accept the contention of exemption when found that it is extremely doubtful whether the power of exemption conferred by Rule 8 under the Act has been given or not.

22. In the instant case, the law says that licence is compulsory. The policy of the Government, 1991 speaks that licence is compulsory. Notification of the Government says licence is compulsory. Section 28 of the previous Act giving relaxation had been repealed long back. Therefore, where is the scope of different interpretation within the four corners of the word "development" u/s 29B(1) of the Act, is unknown to this Court. When law is clear and explicit, there is no scope of giving different interpretation.

23. Factually two reports i.e. Standing Committee on Food, Civil Supplies, and Public Distribution (1995-1996) report and Mahajan Committee's report (Mr. Ray raised a technical objection about sustainability of such report due to dismissal of, several writ petitions in a bunch by the Supreme Court, one of which is source of such report) were filed with the Government. At least first report was placed on the table of the respective houses of the Parliament on 27th February, 1996 and 28th February, 1996 for the purpose of due consideration but what happened, to such report is yet unknown. The government may not be bound by the Committee report/s but when admittedly reports were directed to be placed to them, they can not ignore it. It is for the parliament to accept, reject or amend the report.

24. Standing Committee on Food, Civil Supplies and Public Distribution (1995-1996) had recommended that the industry be delicensed but suggested to avoid over crowd to ensure acceptability of sugar cane to all sugar units, registration of mill with Central Government prior to setting up new units, should be made compulsory. Law prescribes that u/s 10 of the Act registration is required in respect of existing industrial undertakings. There is no scope of registration in respect of new industrial undertakings under the law. If the committee report is accepted then Section 11 of the Act has to be amended first and the provision of registration will also be made applicable in the case of new industrial undertakings. Executives have no power to do so as per their sweet will before amendment of law. From the annexure C.A.-2 of the Union of India itself we find a copy of judgment and order of the Supreme Court. By the order dated 07th November, 1997 the Supreme Court held under SLP (C) 17789/97 in respect of letter of intent of some other company that when in Clause (iv) of the Press Note provides that licence of new sugar factories will be issued subject to the condition that the distance between the proposed new sugar factory and an existing/ already licensed sugar factory should not be less than 15 Kms., such condition has to be complied with before setting up a new factory. What is the logic behind such citation? Is it the argument of Union of India that as because Supreme Court was pleased to direct to maintain 15 Kms. distance as a condition for setting up new industry, no licence is required beyond such distance? We are sorry to say that we can not accept the same as plausible explanation rather absurd. Supreme Court never intended to say so. On the other hand, a natural corollary is that at least upto the date of the judgment on 07th November, 1997 and soon thereafter irrespective of Committee report, the Central Government proceeded in accordance with law by granting of license to set up new sugar factory. Therefore, what prompted the Government of India, Ministry of Industry, to issue a Press Note and notification delicensing the sugar industry in 1998 omitting from compulsorily licensable items under the law, is unknown to this Court.

25. We are not for a moment against any liberalisation policy. We can take judicial notice about hazardous condition of so called "Licence Raj". But such liberalisation should be made within the four corners of law or by way of

amendment of law. Executive action by issuing a Press Note and by issuing a notification is not the proper functioning of the executives. Learned Additional Solicitor General Government of India contended that the executive action has been implemented on the basis of policy decision of the Government but we do not find any policy decision of the Government from 1991 which referred about delicensing. On the other hand, if notification of 1991 can be treated as outcome of policy, the sugar industry is compulsorily licensable industry.

26. The respondents have various grievances against the petitioner on the merit as well as on the preliminary issues. According to them, the petitioner has taken the fullest advantage of IEM. The petitioner has no locus standi to ask any question to the Union of India or the State as regards setting up a new enterprise. This writ petition is delayed writ petition to frustrate the legitimate claim of the respondent No. 6. Before calling Mr. Gupta to give answers to the queries as regards preliminary points, we have to say that main stream of the argument of the parties was in respect of the merit incidentally in respect of the preliminary objections. For an example the learned Additional Solicitor General called upon the Court to intervene in the macro level of the dispute instead of micro level of the dispute between the petitioner and respondent No. 6. Therefore, if we go with his submission, the same will be treated as entertaining a dispute as regards merit. Possibly he wanted to say delicensing being policy matter of the Government should not be interfered with. We have already dealt with such topic and will be dealt with later on. In further the conflict is whether the delicensing policy, if any, is in the public interest or not in the public interest? If it is in the public interest then Section 29B(1) of the Act has no application. Hence, the writ petition can not be nipped in the bud only on the said preliminary objections. In any event it is duty of the Court to eliminate such points before going into the merit and without prejudice to the earlier observations of this Court on the merit.

27. Mr. Gupta contended that the respondent No. 6 has no right to question the locus standi of the petitioner on the principle of *damnum sine injuria*. According to him, such principle has no application where the challenge is thrown about statutory provision, under which the respondent No. 6 is trying to establish a factory. The petitioner is entitled to challenge the validity of the notification. If the answer to the question is affirmative, the petitioner would clearly have locus standi to maintain the petition. The respondent asserts that the issue in the writ petition is a policy decision of the Government of India. According to respondent No. 6, such policy is applicable to the industry as a whole, therefore, the petitioner, being a party to such industry, has locus standi to maintain the petition. The concept of locus standi has radically changed. It is applicable towards the peculiarity of each case. He placed two judgments reported in *M.S. Jayaraj Vs. Commissioner of Excise, Kerala and Others*, and 2005 (3) SCC 683 (*Sai Chalchitra v. Commissioner, Meerut Mandal and Ors.*). In the first judgment the Supreme Court held that there are three categories of persons, who are invoking the writ jurisdiction of the Court; (1) a person aggrieved; (2) strangers;

and (3) a busybody and a meddlesome interloper. Since it is not a case of stranger and busybody, we are not making comments hereunder. But whether the petitioner is the person aggrieved or not, is definitely a question hereunder. In the said judgment the Supreme Court held that in the light of expanded concept of the locus standi and also on the fact that an authority passed an order in violation of law, it is not desirable that the matter will be nipped solely on the ground of locus standi. It is a question of jurisdiction of an authority and if the writ petition is dismissed only on the ground of locus standi keeping the Press Note and notification,, remain alive and operative on such sole ground, it will be an improper application of mind. Under such circumstances, it is desirable that the Court should proceed on the merit of the matter. In the second judgment the question of raising of grievance by rival traders arose in the facts and circumstances of such case. From the judgment it transpired that mere challenge by a rival trader may not have locus standi, but where the question of law is involved, a person of same trade can raise a grievance in respect of grant of licence. In the instant case also it can not be clearly held by us that there is no legal ground existable and the petitioner made the writ petition only out of business jealous. The Supreme Court clearly held that a person in the same trade has a right to seek cancellation of the licence granted to other persons of the same trade being in violation of the Act and Rules. As per the ratio of Jasbhai Motibhai Desai Vs. Roshan Kumar, Haji Bashir Ahmed and Others, expression "aggrieved person" denotes an elastic, and to an extent, an elusive concept. So as a general rule, infringement of some legal right or prejudice to some legal interest inhering in the petitioner is necessary to give him a locus standi in the matter. Therefore, the concept of right of rival traders as available in The Nagar Rice and Flour Mills and Others Vs. N. Teekappa Gowda and Bros. and Others, is substantially changed.

28. So far as question of delay and taking advantage of IEM is concerned, those are interconnected with each other. According to us, law of limitation has no application in the writ jurisdiction. But the Court can adjudge reasonability of causing delay and if explanation of delay is unfounded, writ petition can be thrown, out only on such ground. Admittedly cause of action is bundle of facts. Cause of dispute is the species of cause of action. Therefore, the cause of dispute will be the guiding factor. Good, bad, indifferent, here the cause of dispute is that the respondent No. 6 wanted to set up a new sugar factory in 2004 taking advantage of a notification of 1998 depriving the right of the petitioner, who is running its business with licence. Therefore, the cause of dispute arose in 2004 but not in 1998 when IEM was filed by the petitioner. If today by virtue of the order of the Court the entire exercise of power of the Government is turned down as illegal and without jurisdiction then it is no matter whether the same was introduced in the year 1998 or in the year 2004 entire lock, stock and barrel will go. One can say that by filing IEM the petitioner has acted upon the Press Note issued in 1998, therefore, he is debarred from challenging the setting up new factory by respondent No. 6 in 2004. At this juncture we have to understand

once again the scope of IEM. In the said Press Note IEM is made for new set up and also existing set up. Principles of setting up a new factory and expansion of existing factory under license or letter of intent are different. It is further different that one is setting up a new factory merely by filing IEM without licence. Hence, principally one can not be debarred in challenging the other to make new set up without licence as per 1998 notification. One has expanded its unit backed by the law and the other is trying to establish its unit without being backed by the law. Decision of Central Government is final in respect of substantial expansion of an industrial undertaking u/s 23 of the Act itself irrespective of filing of IEM. Therefore, filing of IEM is superfluous. Incidentally we have seen copies of IEM. It is nothing but a format for giving particulars of a set up for keeping track records. It has got nothing to say about delicensing. For filing so and challenging the Press Note and notification as a whole one can not be said to be hit by principles of approbate and reprobate. There is no estoppel against the statute. The question herein is whether the new set up can be established only by filing IEM without licence or not. It is a question of law amenable under writ jurisdiction. Hence, the ratio of R.N. Gosain Vs. Yashpal Dhir, is academic in the present case and can not help the cause of respondent No. 6.

29. Necessity of filing IEM by the petitioner as per the submissions of Mr. Gupta is recorded hereunder. He said that on 19th March, 1993 one M/s Kastoori Sugar Mills Ltd. applied for licence. On 07th March, 1994 a Letter of Intent was granted in favour of such company. On 05th January, 1995 an order was passed by Delhi High Court for amalgamation of M/s Kastoori Sugar Mills Ltd. into M/s Monnet Industries Ltd., (formerly known as M/s. Monnet Ferro Alloys Ltd.). On 09th August, 1996 licence was granted in favour of M/s. Monnet Industries Ltd. for a capacity of 2500 TCD. On 22nd August, 1996 an application was made by such company for its expansion. On 06th February, 1997 Letter of Intent was granted in favour of such company for expansion of capacity by another 2500 TCD with the condition that the Letter of Intent will be valid for a period of three years from the date of issuance. On 28th August, 1999 IEM was filed to record expanded capacity as a procedural formality pursuant to the Letter of Intent already granted and referred to above. On 10th October, 2002 a scheme of demerger was sanctioned by the High Court of Chhattisgarh, in terms of which the sugar division of M/s. Monnet Industries Ltd. stood vested in M/s. Monnet Sugar Ltd., the petitioner herein. On 07th October, 2003 IEM was filed by the petitioner as the licence stood in the name of M/s. Monnet Industries Ltd. As a matter of abundant caution an IEM was filed by the petitioner so that the sugar division which stood vested in it pursuant to the sanctioned scheme u/s 391 of the Companies Act and recording of necessary formality. Therefore, the IEM was with regard to the existing sugar unit and was not for any sugar unit being set up. The petitioner never took or derived advantage under the liberalized policy of the Central government. The unit was established prior to the impugned notification and the capacity was extended upto 5000 TCD as per the Letter of Intent granted on 06th February, 1997 within prescribed period prior to the issuance of

the notifications under challenge. All the aforesaid procedures were completed pursuant to grant of an industrial licence and Letters of Intent after scrutiny by the Central Government under the provisions of Act. Therefore, there is no occasion to say that the petitioner is stopped from challenging the validity of the Press Note or notification.

30. The other technical ground was raised by Mr. Ray, appearing for the respondent No. 6, when the full length hearing was going on. He has shown a non-speaking order of the Supreme Court dated 02nd May, 2005 in a writ petition filed by one M/s. Economic Education and Research Forum, where SLP was dismissed. Mr. Ray contended that such writ petition was similar in nature excepting challenge of the vires of the notification. To that Mr. Gupta contended; firstly, such application was in the name of the registered society under the provisions of the Societies Registration Act, 1960, who had no authority to make writ petition under Article 32 of the Constitution. It cannot challenge the violation of the right conferred on the citizens under Article 19 of the Constitution of India. In further the Society was registered i.e. on 06th January, 2005 after filing of the writ petition. Petitioner affirmed the present writ petition on 13th September, 2004. Amendment application was made by the petitioner on 03rd November, 2004. At such material point of time there was no existence of the Society. Moreover the order dated 02nd May, 2005 is totally non-speaking order, which has no binding effect upon the High Court in terms of Article 141 of the Constitution of India. Let us see relevant paragraphs being paragraph Nos. 16, 17 and 18 of the judgment of the Supreme Court being reported in Kunhayammed and Others Vs. State of Kerala and Another, as quoted hereunder:-

"16. In Indian Oil Corporation Ltd. Vs. State of Bihar and others, there was a labour dispute adjudicated upon by an award made by the Labour Court. The employer moved the Supreme Court by filing a SLP against the award which was dismissed by a non-speaking order in the following terms:

"The SLP is dismissed "

17. Thereafter the employer approached the High Court by preferring a petition under Article 226 of the Constitution seeking quashing of the award of the Labour Court seeking quashing of the award of the Labour Court. On behalf of the employee the principal contention raised was that in view of the order of the Supreme Court dismissing the SLP preferred against the award of the Labour Court it was not legally open to the employer to approach the High Court under Article 226 of the Constitution challenging the very same award. The plea prevailed with the High Court forming an opinion that the doctrine of election was applicable and the employer having chosen the remedy of approaching a superior court and having failed therein he could not thereafter resort to the alternative remedy of approaching the High Court. This decision of the High Court was put in issue before the Supreme Court. This Court held that the view taken by the High Court was not right and that the High Court should have gone, into the merits of

the writ petition. Referring to two earlier decisions of this Court, it was further held : (SCC pp. 148-50, paras 6 & 8)

"The effect of a non-speaking order of a SLP without anything more indicating the grounds or reasons of its dismissal must, by necessary implication, be taken to be that this Court had decided only that it was not a fit case where special leave should be granted. This conclusion may have been reached by this Court due to several reasons. When the order passed by this Court was not a speaking one, it is not correct to assume that this Court had necessarily decided implicitly all the questions in relation to the merits of the award, which was under challenge before this Court in the special leave petition. A writ proceeding is a wholly different and distinct proceeding. Questions which can be said to have been decided by this Court expressly, implicitly or even constructively while dismissing the SLP cannot, of course, reopened in a subsequent writ proceeding before the High Court. But neither on the principle of *res judicata* nor on any principle of public policy analogous thereto, would the order of this identical issues in a separate proceeding namely, the writ proceeding before the High Court merely on the basis of an uncertain assumption that the issues must have been decided by this Court at least by implication. It is not correct or safe to extend the principle of *res judicata* or constructive *res judicata* to such an extent so as to found it on mere guesswork.

* * * It is not the policy of this Court to entertain special leave petitions and grant leave under Article 136 of the Constitution save in those cases where some substantial question of law of general or public importance is involved or there, is manifest injustice resulting from the impugned order or judgment. The dismissal of a SLP in limine by a non-speaking order does not therefore justify any inference that by necessary implication the contentions raised in the SLP on the merits of the case have been rejected by this Court. It may also be observed that having regard to the very heavy backlog of work in this Court and the necessity to restrict the intake of fresh cases by strictly following the criteria aforementioned, it has very often been the practice of this Court to grant special leave in cases where the party cannot claim effective relief by approaching the High Court concerned under Article 226 of the Constitution. In such cases also the special leave petitioners are quite often dismissed only by passing a non-speaking order especially in view of the rulings already given by this Court in the two decisions aforementioned, that such dismissal of the SLP will not preclude the party from moving the High Court for seeking relief under Article 226 of the Constitution. In such cases it would work extreme hardship and injustice if the High Court were to close its doors to the petitioner and refuse him relief under Article 226 of the Constitution on the sole ground of dismissal of the special leave petition."

18. In our opinion what has been stated by this Court applies also to a case where a SLP having been dismissed by a non-speaking order, the applicant approaches the High Court by moving a petition for review. May be that the Supreme Court was not inclined to exercise its discretionary jurisdiction under

Article 136 probably because it felt that it was open to the applicant to move the High Court itself. As nothing has been said specifically in the order dismissing the SLP one is left merely guessing. We do not think it would be just to deprive the aggrieved person of the statutory right of seeking relief in review jurisdiction of the High Court if a case for relief in that jurisdiction could be made out merely because a SLP under Article 136 of the Constitution had already stood rejected by the Supreme Court by a non-speaking order."

31. According to us, the answer of the Supreme Court is clear and explicit in this regard. The only difference is that when question of res judicata arose therein question of res subjudice arose herein. But principle is the same.

32. By citing *The Chancellor and Another Vs. Dr Bijayananda Kar and Others*, the respondent no. 6 wanted to say that one should approach the Court with clean hands. Possibly for the grounds aforesaid the respondent No. 6 wanted to say so. We have discussed categorically. In further one can be said to be aggrieved when his own interest under Article 19 of the Constitution is hit by the action of the executives not in accordance with law. In any event, factum of dismissal of writ petition in the Supreme Court and a try to take advantage of such situation can not give a clean image of the respondent No. 6 before this High Court. Unclean defence goes in favour of the proposer but not in favour of the opposer.

33. Coming back to the question of merit, first of all let us discuss about the question of public interest. Lot of discussions were made as regards *Ishwari Khetan Sugar Mills (P) Ltd. and Others Vs. State of Uttar Pradesh and Others*, Let us know the important part about the legislative control from such judgment. The relevant part of the judgment is quoted hereunder:-

"Ipso facto, Parliament would not have power to legislate in respect of industry as a legislative head. Now, Entry 52, List I on its own language does not provide a field of legislative activity for the Union Parliament unless and until a declaration is made by Parliament by law to assume control over specified industries. The embargo on the power of Parliament to legislate in respect of industry which is in List II would be lifted once a declaration is made by Parliament by law as envisaged by Entry 52, List I. In the absence of a declaration as envisaged by Entry 52, List I, it is incontrovertible that Parliament has no power to legislate on the topic of industry. Entry 52, List I on its own language does not contemplate a bald declaration for assuming control over specified industries, but the declaration has to be by law to assume control of specified industries in public interest. The legislation enacted pursuant to the power to legislate acquired by declaration must be for assuming control over the industry and the declaration has to be made by law enacted, of which declaration would be an integral part. Legislation for assuming control containing the declaration will spell out the limit of control so assumed by the declaration. Therefore, the degree and extent of control that would be acquired by Parliament pursuant to the declaration would necessarily depend upon the legislation enacted spelling out the degree of control assumed. A mere declaration

unaccompanied by law is incompatible with Entry 52, List I. A declaration for assuming control of specified industries coupled with law assuming control is a prerequisite for taking legislative action under Entry 52, List I."

34. Following the above principle the Parliament kept control over the Industries by its parliamentary law i.e. Industries (Development and Regulations) Act 1951. There is no doubt in saying that issuance or non-issuance of license to an industry is integral part of the control.

35. From the Words and Phrases legally defined, second edition, under the general editorship of John B. Saunders of Lincoln's Inn, Barrister a definition of Public Interest is given, which is as follows:-

"It is fallacious to say that a condition [attached to a justices' licence] is not in the public interest, or may not be in the public interest, if it is the case that a great many of those persons who constitute the public are not directly affected by it; and it is equally fallacious to say that a condition cannot be in the public interest if a great many members of the public neither know nor care anything about it." *R. v. Sussex Confirming Authority, Ex p. Tamplin & Sons' Brewery (Brighton), Ltd.* (1937) 4 All E.R. 106, D.C., per Du Parcq, J., at p. 112"

36. Black's Law Dictionary by Henry Campbell Black, Sixth Edition has also a meaning of public interest as follows:-

"Something in which the public, the community at large, has some pecuniary interest, or some interest by which their legal rights or liabilities are affected. It does not mean anything so narrow as mere curiosity, or as the interests of the particular localities, which may be affected by the matters in question. Interest shared by citizens generally in affairs of local, state or national government. *Russell v. Wheeler*, 165 Colo.296, 439 P.2d 43, 46."

37. According to us, the argument as advanced by the respondents that u/s 29B(1) of the Act grant of licence can be withdrawn by the executive action in the name of the development of the scheduled industry not in the public interest and the argument that as a matter of policy of the Government for the public interest licence is to be withdrawn, are self-contradictory arguments. The Act has two parts. One part is for the public interest and another is not for the public interest. The major part of the Act is made for the public interest. Such part includes licencing of new industrial undertakings. Licencing is a part of regulation of the scheduled industry. Therefore, licencing policy of the Government can not be said not to be in the public interest. Delicensing policy largely affects the interest of people. Somebody may speak about Swadeshi or somebody may say for socialism or somebody may say for globalisation, but the thought of majority people has to be reflected in the House by the majority voice. Then and then alone the policy can be accepted as a law by its amendment. Therefore, without ascertaining the pros and cons on that line mere issuance of notification by the pen of the executive is an action without jurisdiction and as such illegal.

38. Mr. Gupta cited the judgment reported in U.P. Co-operative Cane Unions Federations Vs. West U.P. Sugar Mills Association and Others etc. etc., The relevant part of the judgment is as follows:-

"18. A sugar factory normally runs in shifts for the whole day during the crushing season and it needs a continuous supply of freshly harvested sugarcane according to its daily crushing capacity which should be spread over the entire crushing season of about six months. The U.P. Sugarcane (Regulation of Supply and Purchase) Act, 1953, the U.P. Sugarcane (Regulation of Supply and Purchase) Rules, 1954 and the U.P. Sugarcane Supply and Purchase Order, 1954, have been made to achieve the object. Any shortfall in supply of sugarcane to sugar factory will seriously affect its production resulting in huge losses. Therefore, the first and foremost requirement for the profitable running of the sugar factory is that it should get adequate quantity of sugarcane every day throughout the crushing season and for ensuring this, a system of reserving or assigning an area in favour of sugar factory has been evolved u/s 15 of the Act. The reservation of an area ensures the supply of the entire sugarcane grown therein to the factory in whose favour it has been reserved. Similarly the assignment of an area ensures the supply of such quantity of sugarcane to the factory in whose favour it has been assigned as may be determined by the Cane Commissioner. Another advantage to the sugar factory is that sugarcane from its reserved or assigned area can not be sold to any other factory in the vicinity even if it offers a higher price to a grower. This arrangement does not allow the market forces to operate and thereby completely avoids competition amongst the sugar factories which could lead to escalation in prices. It is common knowledge that every sugar factory is keen to have the maximum area reserved or assigned for it so that it may get adequate raw material. Sugarcane requires a particular type, of soil and climatic condition and can not be grown everywhere. The sugar factories are established in the sugar producing belt in close proximity with each other and very often there are competing claims for reservation or assignment of an area in their favour. It is for this reason that an appeal is provided u/s 15(4) of the Act against an order made u/s 15(1) of the Act by the Cane Commissioner reserving or assigning an area in favour of sugar factory. Once an area is reserved in favour of a factory, the cane-grower In the said area or the cane-growers" cooperative society operating therein gets tied to that factory and has to compulsorily enter into an agreement in prescribed proforma (Form B or Form C) given in the appendix to the 1954 Order. In view of Clause 5 of the said Order cane grown in the reserved or assigned area can not be purchased by anyone without the previous issue of requisition slips and identification cards to the growers by the occupier of the factory and in the case of members of the cane-growers" cooperative society by such society. Since the requisition slips are non-transferable and they are issued by the sugar factory according to its requirement of sugar cane, it thereby completely controls the purchase of sugarcane from a reserved or assigned area. The terms of the agreement in Form B and Form C are also quite stringent as in the event of failure to supply at

least eighty-five per cent of the agreed quantity of sugarcane, the cane-grower or the cane-growers' cooperative society has to pay compensation. Even in the event of a breakdown in the factory or its inability to purchase due to calamities or circumstances beyond human control, the cane-grower or the cane-growers' cooperative society is not at liberty to make any other arrangement for disposal of cane except after giving a week's notice to the factory and obtaining prior permission of the Cane Commissioner. Here too no compensation is payable by the factory to the cane-grower or the cane-growers' cooperative society for the loss which may be suffered on this account.

19. The provisions referred to above have been made for the benefit of the sugar factory so that it is assured of and gets a continuous supply of freshly harvested sugarcane in quantity according to its crushing capacity and for the whole duration of the crushing season. No doubt, the cane-grower also gets some advantage in the sense that purchase of his yield is assured but at the same time many limitations and restrictions are imposed upon him. In view of the aforesaid statutory provisions, the position of a cane-grower become entirely different from that of a farmer producing any other kind of agricultural crop where there are absolutely no restrictions upon him. He is at absolute liberty to harvest his crop at his convenience without being dictated by a third party, to sell it to anyone whomsoever he likes and whenever he wants. It is in this scenario, which is not the creation of the cane-grower but. of the statutory provisions operating in the field, that we have to examine the question whether the State has any authority or power to fix the price of the sugarcane supplied to a producer of sugar (sugar factory).

20. The preamble of the UP. Sugarcane(Regulation of Supply and Purchase) Act, 1953 is an Act to regulate the supply and purchase of sugarcane for use in sugar factories, gur-, rab- or khandsari sugar-manufacturing units. The various provisions of the Act show in unmistakable terms that it regulates the supply and purchase of sugarcane required for use in sugar factories. "Regulate" means to control or to adjust by rule or to subject to governing principles. It is a word of broad impact having wide meaning comprehending all facets not only specifically enumerated in the Act, but also embraces within its fold the powers incidental to the regulation envisaged in good faith and its meaning has to be ascertained in the context in which it has been used and the purpose of the statute."

39. Although it seems that Mr. Gupta wanted to bring to notice of this Court about several practical difficulties in installing a new undertaking, but we are attracted by the later part of such cited judgment, whereunder the word regulate was explained by the Supreme Court.

40. Plinth of Mr. Ray's argument is mainly on three limbs apart from his technical objections. Firstly, Section 29B of the Act is conditional legislation but not delegated legislation, as such, argument as advanced by Mr. Gupta cannot be accepted. Incidentally Mr. Gupta's argument is that Section 29B suffers from vice of excessive delegation of legislative powers and thus is ultra vires. Secondly, by

virtue of delicensing the Union of India does not loose its control but the nature, content, character, amplitude, rigour and extent of the control has to be altered time to time in the necessity of the public interest. Thirdly, the policy decision of a government cannot be interfered with unless fully illegal, arbitrary, unreasonable or mala fide.

41. The ratio AIR 1951 SC 332 (In re Article 143, Constitution of India and Delhi Laws Act (1912) etc.) is to be discussed at first. A Full Bench of the Supreme Court considered the matter in a presidential reference under Article 143 of the Constitution of India. Broadly speaking the question of delegated legislation had come up for consideration in two different cases. One of these cases comprises what is known as "cases of conditional legislation" where according to consistently accepted view the element of delegation at present relates not to any legislative function at all, but. to the determining of contingency but even upon the happening of the legislative provisions are made to operate. The other clauses comprises cases of delegation proper where admittedly some portion of the legislative power has been conferred by the legislative action. Upon what is described as subordinate agent or authority in a conditional legislation the law is full and complete when it leaves legislative chamber, but the operation of the law made dependant upon fulfilment of a condition and what is delegated to an outside body is the authority to determine by exercise of its own judgment whether or not the condition has been fulfilled. Thus, conditional legislation has alone to be treated in judicial pronouncement delegated at all. It comes under a separate category if in a particular case all the elements of conditional legislation exists, the question does not arise in leaving the basic task of determining condition to outside authority, a legislature acted beyond the scope of its power.

42. Delegated legislation using the expression in the popular sense has, become a present-day necessity, and it is both inevitable and indispensable in this principle. The legislature has now made so many laws that it has no time to devote to all the legislative details, and some times the subject on which it has to legislate is of such technical nature that all it can do is to state the broad principles and leaves the details to be worked out by those who are more familiar with the subject. Again, when complex scheme of reform are to be the subject matter of the legislation, it is difficult to bring out a self-contained and complete Act straight way, since it is not possible to foresee all the contingency envisage all the local requirement for which provision is to be made. Thus, some degree of flexibility become necessary so as to permit constant adaptation to unknown future conditions without the necessity of having to amend the law again and again. But while emphasizing that delegation is in these days inevitable, one should not omit to refer to the dangers attendant upon the injudicious exercise of the power of delegation by the legislature. The dangers involved in defining the delegated power so loosely that the area it is intended to cover cannot be clearly ascertained and is giving wide delegated powers to Executive authorities and at the same time depriving a citizen of protection by the Courts against harsh and unreasonable exercise of powers.

43. The legislature cannot part with the essential legislative function which consists in declaring its policy and making it a binding Rule of conduct. A surrender of the essential function would amount to abdication of legislative powers in the eve of law. The policy may be particularized in as few or as many words as the legislature thinks proper and as it is enough if an intelligent guidance will be given to the subordinate authority. The Court can interfere if no policy is discernible at all or the delegation is of such indefinite character as to amount to abdication, but as the discretion vests in the legislation in determining whether there is necessity of delegation or not, the exercise of such discretion is not to be disturbed by the Court except in clear cases of abuse. These are the fundamental principles and in respect to the powers of legislature the constitutional position in India approximates more to the American than to the English pattern. There is a basic difference between the Indian and the British Parliament in this respect. There is no constitutional limitation to restrain the British Parliament from assigning its powers where it will, but the Indian Parliament quo legislative body fettered by a written Constitution and it does not possess sovereign powers of the British Parliament. The limits of the powers of delegation in India would therefore, have to be ascertained as a matter of construction from the provisions of the Constitution itself and the right of delegation may be implied in exercise of legislative power only to the extent that it is necessary to make the exercise of power effective and complete. The concept of legislative power which had hitherto been accepted in India continued to hold good but this limitation was placed upon it by the Constitution, namely, that wherever the Constitution empowers the Parliament to do a particular thing as opposed to legislating generally on a particular topic, there can be no delegation, Parliament must itself act.

44. From the aforesaid analysis one thing is clear that no Executive enjoys unfettered power of legislature either by condition or by delegation. The difference is that in case of delegated legislation, legislature keeps its own control where in conditional legislation, legislator leaves the power with the Executive in respect of portion of such law which has been directed to be done by the Executives but essential legislative function cannot be usurped by the Executives in the name of the conditional legislation because the same will be abdication of legislative powers.

45. In a Full Bench judgment of the Supreme Court reported in *Rajnarin Singh Vs. The Chairman, Patna Administration Committee, Patna and Another*, it was held that an executive authority can be authorised to modify either existing or future laws but not in any essential features. Exactly what constitute an essential feature can not be enunciated in general term. But this much is clear that it can not be included into the change of policy. Our endeavour is not to interfere with the policy decision in respect of delicensing the sugar industry, but our endeavour is to say that an executive can not take policy decision out of its own without amendment of law. According to us, licence is an essential part of control. Being so, before delicensing, the executives will have no other

alternative but to place the matter for legislative discussion as to whether the essential part of control will be unguided or not. In *I.T.C. Bhadrachalam Paperboards and Another Vs. Mandal Revenue Officer, A.P. and Others*, Supreme Court has given example of conditional legislation. But before that gave the meaning of the conditional legislation. The power to the executive to bring an Act into force as also power conferred upon the Government to exempt persons or properties from the operation of the enactment are both instances of conditional legislation and can not be described as delegated legislation. Very often legislature makes a law but leaves it to the executive to prescribe a date with effect from which date the Act shall come into force. The power conferred on the Government u/s 11 of the Act is a species of conditional legislation. Such section is quoted hereunder.

"11. Power to exempt.- (1) The Government may, by order, published in the Andhra Pradesh Gazette, setting out the grounds therein, exempt either permanently or for a specified period, any class of non-agricultural lands from the levy of assessment under this Act, subject to such restrictions and conditions as the Government may consider necessary to impose.

(2) Every order made under Sub-section (1) shall, immediately after it is made be laid on the table of the Legislative Assembly if it is in session, and if it is not in session in the session immediately following, for a total period of fourteen days which may be comprised in one session or in two successive sessions and if, before the expiration of the session in which it is so laid or the session immediately following, the Assembly agrees in making any modification in the order or in the annulment of the order, the order shall thereafter have effect only in such modified form, or shall stand annulled, as the case may be, so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that order."

46. Though the Sub-section (1) of the above section considered to be conditional legislation yet by Sub-section (2) control of the legislature was not usurped. This is exactly we wanted to say. Our answer clearly indicates two meanings. The first meaning is that the condition is to be grounded in a conditional legislation expressly. Second meaning is that such grounded condition can not overcome the legislative competence. In *AIR 1998 SC 344 (State of Tamil Nadu v. K. Sabanayagam and Anr.)* a vivid description of conditional legislation vis a vis difference between conditional and legislation are given, important parts are quoted hereunder:

"In the case of conditional legislation, the legislation is complete in itself but its operation is made to depend on fulfilment of certain conditions and what is delegated to an outside authority, is the power to determine according to its own judgment whether or not those conditions are fulfilled. In case of delegated legislation proper, some portion of the legislative power of the Legislature is delegated to the outside authority in that, the Legislature, though competent to perform both the essential and ancillary legislative functions, performs only the

former and parts with the latter, i.e., the ancillary function of laying down details in favour of another for executing the policy of the statute enacted. The distinction between the two exists in this that whereas conditional legislation contains no element of delegation of legislative power and is, therefore, not open to attack on the ground of excessive delegation, delegated legislation does confer some, legislative power on some outside authority and is therefore open to attack on the ground of excessive delegation."

47. In *Lachmi Narain and Others Vs. Union of India (UOI) and Others*, it is held so far as delegated legislation is concerned, although no impediment is there in respect of the control by the legislative authority which is part of the common argument of both the parties but by the words delegation either in delegated legislation or conditional legislation must be specific in nature. In our opinion no useful purpose will be served to pursue this line of argument because the purpose propounded makes no difference, in principle. In either case, the person to whom the power is entrusted can do nothing beyond the limit which circumscribe the power. He has to act as per the words of Lord Selbourne-"within the general scope of the affirmative words which give the power" and without violating any "express conditions or restrictions by which that power is limited". There is no magic in a name. Whether you call it the power of "conditional legislation" as Privy Council called it in the case reported in 5 IA 178: ILR Cal 172 (*Queen v. Burha*), or "ancillary legislation" as the Federal Court termed it in 1947 FCR 116: AIR 1947 FC 32 : ILR Pat 442 (*Choitram v. C.I.T., Bihar*) or subsidiary legislation" as Kania, C.J. styled it, or whether you camouflage it under the veiling name of "administrative or quasi-legislative power -- as Professor Cushman and other authorities have done it- necessary for bringing into operation and effect an enactment, the fact remains that it has a content, howsoever shall and restricted, of the law-making power itself. There is ample opportunity in support of the proposition that the power to extend and carrying operation and enactment with necessary modifications and adaptations is in truth and reality in the nature of power of a delegated legislation. In *Re Delhi Laws Act* In *Re: The Delhi Laws Act, 1912, the Ajmer-Merwara (Extension of Laws) Act, 1947 and the Part C States (Laws) Act, 1950*, S.R. Das, J. said that on strict analysis it was nothing "but a delegation of a fractional legislative power". Anglin, J. in *Gray's* case reported in 57 SCR 150 (Canada) regarded this what is called "conditional legislation" as "a very common instance of limited delegation". More or less to the same effect is the view taken by Evatt, J. of Australia in *Dignam's* case reported in (1931) 46 CLR 73 Prof. Kenedy (vide his treatise "Constitution of Canada", 2nd Edn., p.463) is also of opinion that " "conditional legislation" is a form of delegation". We get from *Avinder Singh and Others Vs. State of Punjab and Others*, that the law -making is not a turnkey project, ready-made in all detail and once this situation is grasped the dynamics of delegation easily follows. Thus, we reach the second constitutional rule that the essentials of legislative functions shall not be delegated but the inessentials, however numerous and significant they be, may well be made over to appropriate

agencies. Of course, every delegate is subject to the authority and control of the principal and exercise of delegated power can always be directed, corrected or cancelled by the principal. While what constitutes an essential feature cannot be delineated in detail it certainly cannot include a change of policy. The legislature is the master of legislative policy and if the delegate is free to switch policy it may be usurpation of legislative power itself.

48. So far as ratio of *Jalan Trading Co. (Private Ltd.) Vs. Mill Mazdoor Union*, is concerned, we have come to know that u/s 36 of the Payment of Bonus Act the appropriate Government is invested with power to exempt, an establishment or a class of establishment from the operation of the Act, provided the Government is of the opinion that having regard to the financial position and other relevant circumstances of the establishment, it would not be in the public interest to apply all or any of the provisions of the Act. Government held that it is not in the public interest to apply all or any of the provisions of the Act to an establishment or class of establishments, and that opinion is founded on a consideration of financial position and other relevant circumstances. Parliament has clearly laid down principles and has given adequate guidance to the appropriate Government in implementing the provisions of Section 36 therein. The power so conferred does not amount to delegation of legislative authority. Section 36 amounts to conditional legislation and is not void. Whether in a given case, power has been properly exercised by the appropriate Government would have to be considered when the occasion arises. Therefore, the meaningful interpretation is what has been given u/s 29B(1) of the Act that is strictly not in the public interest and even if it is a conditional legislation, the Government should be restricted only on that part but not to others. It is clearly understood that sometimes the Parliament is giving certain power to the Government under law by treating the same not in the public interest when found smallness of state of affairs to be handled by such executive authority without awaiting for the Parliamentary discussion. Licence or delience can not be part and parcel of such small power not in the public interest given under the present law by the Parliament to the Government. Therefore, such ratio can not be made applicable in the present case. The licence or delience of an industry is a matter of essential legislative function. In (1996) 3 SCC 634 (*I.T.C. Bhadrachalam Paperboards and Anr. v. Mandal Revenue Officer, A.P. And Ors.*) (*supra*) question of exemption under the Act being conditional legislation once again arose, but there the Court held the levy created by the statute can not be lifted, suspended or withdrawn only by a statute or in the manner prescribed by the statute creating the levy. Dispensing with the levy or payment of tax is a serious matter. It is done only with a view to promote a countervailing public interest. When such a power is conferred by legislature upon another authority, that authority has to, and can, exercise that power only in strict compliance with the requirements of the provisions conferring that power. *Tata Iron and Steel Co. Ltd. Vs. The Workmen and Others*, says that the delegation of legislative power is however, permissible only when the legislative policy and principle is adequately laid down and the delegate is

only empowered to carry out the subsidiary policy within the guide lines laid down by the Legislature. If we go through Agricultural Market Committee Vs. Shalimar Chemical Works Ltd., , we shall get that the essential legislative function consists of the determination of the legislative policy. The Legislature can not abdicate essential legislative function in favour of another. Power to make subsidiary legislation may be entrusted by the Legislature to another body of its choice but the Legislature should, before delegating, enunciate either expressly or by implication, the policy and the principles for the guidance of the delegates.

49. Mr. Ray's argument regarding judicial review challenging policy decision is unsustainable in nature. Here the policy has not been challenged but action of the executives contrary to the existing policy has been challenged. Till date there is no policy of the Government to delicense the Sugar Industry. It is an absurd thinking that delicensing of the Sugar Industry can be treated not in the public interest. It is true to say, as under M/s. Ugar Sugar Works Ltd. Vs. Delhi Administration and Others, that judicial review, do not ordinarily interfere with the policy decisions of the executives unless the policy can be faulted on the grounds of mala fide, unreasonableness, arbitrariness or unfairness etc. Indeed arbitrariness, irrationality, perversity and malafide will render the policy unconstitutional. If the policy can not be faulted on any of these grounds, the mere fact that it would hurt business interests of a party, does not justify invalidating the policy. Can it be said this action is free from vice?

50. According to Mr. Ray himself that the distance between two sugar mills was about 40 K.M. as per Press Note dated 2nd January, 1987. It was reduced to 25 K.M. by a Press Note dated 11th May, 1989. It was further reduced to 15 K.M. by a Press Note dated 23rd July, 1990 and Press Note dated 8th November, 1991, In further on 10th January, 1997 it also remained 15 K.M. Even in the Press Note dated 31st August, 1998 the distance of 15 K.M. was maintained. Therefore, it can be inferred that the distance had been reached to a minimum level of 15 Km. in 1991 and remained till the time of Press Note in 1998. Hence, if in 1991 no occasion arose to withdraw the licence policy for having distance of 15 Kms. between two industries what prompted the executive to withdraw the licence in 1998? The respondent no. 6 could have applied for licence. Section 29B was similar in the year 1991 and also in the year 1998. Therefore, either no reason is reflected in the press note and notification or such unfounded reason is reflected. In both the cases the press note and notification are found without backed by any reason. It is sheer abuse of power. Reasons, if any, as available in the committee report placed before the houses of the Parliament. The Government thought it fit to constitute a committee to place the entire scenario before the Parliament for the purpose of change of law for the interest of the public, if any. In other words delicensing in the process of liberalisation is a matter of public interest. In such circumstances, executives can not take any decision superseding the power of legislation. Element of adopting back door process can not be ruled out. The ratio of in The Simbhaoli Sugar Mills Ltd. and Another Vs.

Union of India and Others, can not be applicable in the present case inasmuch as the case relates to installation of the industry within the radial distance of 15 K.M. after having letter of intent. Such letter of intent is as good as license to be granted by the Licensing Authority. In the present case the respondent No. 8 wanted to say that no licence is required for establishing a new Sugar Industry provided a distance of 15 K.M. is maintained from the existing Sugar Industry. In 1986 (1) All. ER 199 (Nottinghamshire County Council v. Secretary of State for the Environment and Anr.) House of Lords of England made the following observations about abuse of the power of the executives. The relevant portion of such judgment with exceptions as underlined being essential are given below:

"But I cannot accept that it is constitutionally appropriate, save in very exceptional circumstances, for the courts to intervene on the ground of "unreasonableness" to quash guidance framed by the Secretary of State and by necessary implication approved by the House of Commons, the guidance being concerned with the limits of public expenditure by local authorities and the incidence of the tax burden as between taxpayers and ratepayers. Unless and until a statute provides otherwise, or it is established that the Secretary of State has abused his power, these are matters of political judgment for him and for the House of Commons. They are not for the judges or your Lordship's House in its judicial capacity.

For myself, I refuse in this case to examine the detail of the guidance or its consequences. My reasons are these. Such an examination by a court would be justified only if a prima facie case were to be shown for holding that the Secretary of State had acted in bad faith, or for an improper motive, or that the consequences of his guidance were so absurd that he must have taken leave of his senses."

51. So far as (1949) 338 US 604 (Secretary of Agriculture v. Central Rolo Refining Company) is concerned, we do not find any applicability of the ratio in the present case. The ratio of the judgment of the Supreme Court of the United States is that all the details for the control of a commodity like sugar could not, of course, be legislatively predetermined. Administrative power is an essential part of such regulatory scheme. We have no quarrel with such proposition. But whether, in the name of control the executive has power to delicense the sugar industry overriding the legislative competence or not, is the basic question. When the Policy is made for public interest, the executive can not bypass the same in the name of development not in the public interest. This judgment does not give any support to such contention.

52. Citation of (1990) 3 All. ER 589 (Hammersmith and Fulham London Borough Council v. Secretary of State for the Environment and Ors.) is only multiplication of the ratio of the judgment as cited in (1986) 1 All. ER 199, (supra). It is well settled principle of law that unless an executive abuses, the power given to him under the law but worked in good faith, scope of judicial review is limited. However, there is no straight jacket formula in coming to a conclusion but on the

face value of each and every case. In the present case, according to us the executive has exceeded its jurisdiction and acted de hors the law. Therefore, the supportive judgment will not help the cause of the respondents.

53. In AIR 1998 SC 145 (M.P. Oil Extraction and Anr. v. State of Madhya Pradesh and Ors.) the basic question arose before the Supreme Court that when the industrial units commissioned on the invitation of the State to undertake oil extraction operation on the assurance of supply of sal seeds by the State, it has violated the principles of Article 14 of the Constitution in treating the other industrial units distinctively. The Supreme Court held both were based on objective criteria. Two classes of industries are not similarly circumstanced. As Article 14 prohibits discrimination but it appreciates inbuilt flexibility and permits different treatment to unequals, therefore, the policy decision therein of the Government was accepted. In the instant case, both are private enterprises. Both are interested about similar business. But one has allowed to start business after having licence and another is allowed to start the business without licence. Therefore, it is not a treatment to unequals but equals. Here also proviso to Section 11 of the Act allows the Government to start business with the previous permission of the Central Government. Possibly BALCO Employees Union (Regd.) Vs. Union of India and Others, is cited to establish . that the policy of the Government should not be interfered with. According to us, it is so elementary that there is no necessity to multiply the cases to establish such cause. However, since the respondent No. 6 is very keen to cite the judgment, we have to say that the ratio of any judgment should be understood as a whole not in a piecemeal manner to suit the purpose. The ratio of the judgment is that in a democracy, it is the prerogative of each elected Government to follow its own policy. For testing the correctness of the policy, the appropriate forum is Parliament and not the Courts. In that case the policy was tested and the motion was defeated in the Lok Sabha on 01st March, 2001. But in the present case the report was submitted to the Lok Sabha and Rajya Sabha, but before testing the proposal regarding regulatory and/or controlling policy, the executives by their suo-moto action changed the law to accommodate private party or parties. The law in question hereunder never said that the executive has such power. We do not find any new point in two Division Bench judgments of this High Court reported in 2004 All. L. J. 2552 (Paramount Bio-Tech Industries Ltd. and Anr. v. Union of India and Ors.) and 2004 All. L.J. 1177 Duncans Industries Ltd. and Anr. v. Union of India). It is correct to say that fiscal and economic regulatory measures should not be interfered with, but it is .necessary to see where is the departure or violation. It would not be proper to say that judicial restraint means close the eyes and do not consider the national interest. Element of illegality arises from there. We have to see what is the basic structure of law. If law says that there is no necessity of granting any licence and executives are following the same by way of notification, there can not be any question of interference by the Court. But when law is prohibiting delicensing and the executives are delicensing with their own interpretation in the name of development of the industry not in

the public interest then obviously the Court can not be the silent spectator. If today the Court shuts its eyes then not only the basic structure of law but declaration by the Constitution under Entry 52 of the List I i.e. Union List will be given a go-bye. The whole endeavour of the respondent No. 6 with the support of other respondents is to drive this Court only towards the distance of 15 Kms. between two industrial units, but that can not be the sole ground for delicensing. Had it been so, long back when the distance of 15 Kms. was fixed in 1991 delicensing policy would have been introduced giving necessary amendment of the law. The same was not done. On the contrary in 1991 notification was issued making sugar industry as compulsorily licensable industry. Therefore, necessity of delicensing came in the mind of the Government by the passage of time since when the waves of liberalisation started coming. The Government was considering the same and possibly for this reason reports from the Advisory Committees were sought for. But after placement before the Lok Sabha and Rajya Sabha what prompted them not to place before the respective Houses of the Parliament, but issue a Press Note and Notification directly omitting the sugar industry from the list of compulsorily licensable industry, is fishy state of affairs. Therefore, the elements of illegality, unfair play, adopting back-door process, arbitrariness, malafides and abuse of power can not be ruled out.

54. In *Bennett Coleman and Co. and Others Vs. Union of India (UOI) and Others*, a Five Judges Bench of the Supreme Court held that the impeached policy is a continuation of the old policy. Even during the proclamation of emergency under Article 358 of the Constitution of India when rights of the people under Article 19 is suspended, it would not authorise the taking of detrimental executive action during the emergency affecting the fundamental rights without any legislative authority or in purported exercise of power conferred by pre-emergency law, which was invalid when enacted. In AIR 1996 SC 1358 (*Delhi Science Forum and Ors. v. Union of India and Anr.*) the question of grant of licence to establish, maintain or work a telegraph arose. In considering such issue the Court held that grant of licence is a matter of policy, which has been adopted by the Parliament, thus, can not be interfered by the Court. The relevant part of such judgment is quoted hereunder:

"What has been said in respect of legislations is applicable even in respect of policies which have been adopted by the 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 the Parliament. But that has to be sorted out in the Parliament which has to approve such policies. Privatisation is a fundamental concept underlying the questions about the power to make economic decisions. What should be the role of the State in the economic development of the nation? How the resources of the country shall be used? How the goals fixed shall be attained? What are to be the safeguards to

prevent the abuse of the economic power? What is the mechanism of accountability to ensure that the decision regarding privatisation is in public interest? All these questions have to be answered by a vigilant Parliament, Courts have their limitations-because these issues rest with the policy makers for the nation. No 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 the Parliament and it shall be deemed that Parliament has approved the same. This Court cannot review and examine as to whether 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."

55. Therefore, it is crystal clear that licence could or could not be granted to establish an industry, is a policy matter for the public interest and the Parliament alone can take a decision with regard to the same. Executives can not usurp such power without prescription of law. In *Dai-Ichi Karkaria Ltd. Vs. Union of India and Others*, the Supreme Court held that in cases where power vested upon the Government is to be exercised in public interest, the Court may require the Government to exercise that power in a reasonable way in accordance with the spirit of the Constitution. In such case the Supreme Court did not take into account the factum that notification, which was, issued under the Act, is required to be laid before the Parliament or not. The Supreme Court held it will not make any substantial difference as regards jurisdiction of the Court to pronounce on its validity and thereby the notifications, which granted certain exemptions were quashed. From the ratio of *Mithilesh Garg, Vs. Union of India and others etc.* etc., we get a discussion about liberalisation policy. The Court held that the liberal policy is likely to help in the elimination of corruption and favouritism in the process of granting permits of, transport on a route. Restricted licencing under the hands of few persons thereby giving rise to a kind of monopoly, adversely affecting the public interest. It can not be said that too many operators on a route are likely to affect adversely the interest of the weaker section of the profession. Only such number of vehicle would finally remain in operation in a particular route as are economically viable. The policy to grant permits liberally under the Act is directed towards the said goal. Such ratio of the judgment can not be able to help the cause of the respondents. In such case liberalisation in granting licences was inbuilt under the law. The executives were granting licence in restrictive manner which was criticized by the Supreme Court. In the instant case, the executives are allowing to carry out business without licence although the same can not be done in accordance with law.

56. Last out not the least by citing judgments reported in *D.L.F. Housing Construction (P) Ltd. Vs. Delhi Municipal Corpn. and Others*, and *Arya Vyasa Sabha and Others Vs. The Commissioner of Hindu Charitable and Religious Institutions and Endowments, Hyderabad and Others*, the respondent No. 6 wanted to satisfy the Court on the point that disputed question of facts can not be interfered with by the Court under writ jurisdiction. We have no dispute with

such proposition. But the fact remains legality or validity of issuance of Press Note and notification by the authority can certainly be the matter of judicial review under writ jurisdiction and by no means the same can be construed as disputed question of facts. It is well settled principle of law that jurisdiction of the High Court under Article 226 of the Constitution is unfettered. But by its own wisdom the High Court is making self restriction. But by no means when jurisdiction of question of fundamental rights, natural justice, jurisdiction of the authority and vires of the Act are challenged, can be regarded as a disputed question of fact even upon a conservative outlook. Each and every fact is disputed. Unless dispute as regards fact exists one can not invoke the jurisdiction of the Court of law. We have to see the level of factual dispute. Since the writ court has no fact finding machinery and alternative remedy is available, in most of the cases High Court discourages the litigants from invoking the jurisdiction. The guiding principle would be that whether fact is prevailing the law or law is prevailing the fact. If law is prevailing the fact, as herein, there is no matter whether any dispute as regards fact is available or not, but the writ court will be guided with the question of law. Precisely in this case we do not find any disputed question of fact, which is so material that the Court will ignore the vital question of delicensing on the basis of the press note and notification and conclude only on such fact. Therefore, such explanation is totally unacceptable.

57. Hence let us summarise the points available from the aforesaid discussion:

- a) Grant of licence to a new industrial undertaking is integral part of the Industries (Development and Regulation) Act, 1951;
- b) Power of delicensing, if any, is an exclusive policy matter and within the domain of essential legislative competence, which can not be delegated;
- c) No condition is attached to the law nor any power of delegation has been given by the Parliament by law to the executives to delicense the industry;
- d) Taking advantage of policy decision, if any, and delicensing in the public interest and also taking advantage of the condition attached to Section 29B(1) of the Act to delicense in the garb of development not being in public interest is totally self-contradictory reasoning and thereby unacceptable by the Court of law;
- e) No condition is attached to Section 29B(1) of the Act permitting the executives to delicense the scheduled industry in the name of development not being in the public interest;
- f) Effort of making differentiation between conditional legislation and delegated legislation is futile attempt and academic on the issue;
- g) Whenever the law is clear and unambiguous in respect of grant of licence in setting up a new industrial enterprises, there is no scope of making different interpretation of the doubtful part of the condition of Section 29B(1) of the Act;
- h) Scope and ambit of Section 29B(1) of the Act is far more clear from the

deletion of previous Section 28 of the Act and amendment of various parts of the Act on 12th January, 1984 and notification of 1991 in connection thereof;

i) The word "development" of the schedule industry not being in the public interest by no means can be equated with the cause of establishing a new industry;

j) Talking of "liberalisation" is mere speeches unless law is amended making delicensing of sugar industry as a part of such liberalisation;

k) Filing of IEM by an existing industrial undertaking is a superfluous act since the law itself permits the Government to allow substantial expansion of such undertaking u/s 23 of the Act;

l) The Court is unaware of any policy of delicensing from 1991 till this date, but if the report of the committee claimed to be a policy decision by the Government then the same has to be placed before the Parliament for its acceptance or rejection or amendment, which is yet to be arrived;

m) When industries, the control of which by the Union is declared by Parliament by law to be expedient in the public interest and the same is adopted u/s 2 of the existing law herein following the principles of *Ishwari Khetan* (Supra) and when no such declaration by Parliament by law is made to delicense the industry, the executives can not act de hors the law exceeding and superseding their jurisdictions;

n) Regulation of the industry is made specifically under Chapter-III of the Act and grant of licence to the new enterprises is essential part of such regulation;

o) Distance of 15 Kms. between existing sugar industry and new sugar industry was available in the notification from before 1991, therefore, for such ground alone delicensing the sugar industry in 1998 is unsustainable and as a result whereof such press note and notification can be said to be backed by no reason;

p) Concept of "aggrieved person" has been substantially changed by the, passage of time particularly when law supports;

q) Technicalities can not stand in the way when necessary legal question dominates the arena of dispute.

58. In these circumstances, this Court has no other alternative but to allow the writ petition. The Press Note being, numbered 12 dated 31st August, 1998 (Annexure No. 2 to the writ petition) and Notification being numbered SO 808 (E) dated 11th September, 1998 (Annexure No. 3 to the writ petition) can not be given effect or further effect without sanction of law and, as such, both are hereby quashed. As a consequential effect the respondent no. 6 is debarred from establishing sugar industry without obtaining any licence u/s 11 of the Industries (Development and Regulation) Act, 1951. Permission, if any, granted by the respondent No. 5 to the respondent No. 6 for purchasing and/or acquiring the land under the Uttar Pradesh Zamindari Abolition and Land Reforms Act for the

purpose of establishing a new sugar industry without licence is hereby cancelled. The respondent No. 4 is restrained from allocating reserved/assigned area in favour of the respondent No. 6 from the current reserved area of the petitioner.

59. The writ petition is, thus, disposed of.

60. However, no order is passed as to costs.

61. I agree.