
(2019) 12 UK CK 0057
In the Uttarakhand High Court
Case No : Writ Petition (PIL) No. 213 Of 2019

Neeraj Tiwari

APPELLANT

Vs

Union Of India And Others

RESPONDENT

Date of Decision : 11-12-2019

Acts Referred:

Constitution Of India, 1950 — Article 14, 226

Citation : (2019) 12 UK CK 0057

Hon'ble Judges : Ramesh Ranganathan, CJ;Alok Kumar Verma, J

Bench : Division Bench

Advocate : C.K. Sharma, V.K. Kapruwan, C.S. Rawat

Final Decision : Dismissed

Judgement

Ramesh Ranganathan, CJ

1. Heard Mr. C.K. Sharma, learned counsel for the petitioner, Mr. V.K. Kapruwan, learned Standing Counsel for the Union of India and Mr. C.S.

Rawat, learned Additional Chief Standing Counsel for the State of Uttarakhand and, with their consent, the Writ Petition is disposed of at the stage of admission.

2. The petitioner has invoked the jurisdiction of this Court, in larger public interest, seeking a mandamus directing respondents 3 and 4 to refrain from their plan of strategic dis-investment in the IMPCL at Mohan, and not to proceed with the dis-investment process, with respect to IMPCL, Mohan, District Almora, of a unit manufacturing high quality AYUSH Medicines; a writ of mandamus directing respondents 3 and 4 to consider the representations and letters sent to them with respect to dis-investment in IMPCL, and to provide a public hearing to all the stake-holders, especially

the farmers of nearby areas whose entire livelihood is dependent on the functioning of the IMPCL Unit at Mohan.

3. The petitioner, a practicing Advocate at Haldwani, complains that the subject industrial unit is a profit generating unit; more than 500 farmers eke

out their livelihood by supplying material to this industrial unit for manufacture of Ayurvedic and Unani medicines; if the move of the Government of

India to dis-invest its holding (which is 98 per cent of the share capital) is permitted, it would then result in the said industrial unit being run by private

players; as a consequence, there will be a multifold increase in the price of Ayurvedic and Unani medicines which would be against the larger public

interest of ensuring that medicines, at reasonable prices, are provided to the public at large; both the Government of Uttarakhand, and the Ministry of

Ayush, Government of India, have expressed their reservations regarding this move for dis-investment; and despite the views expressed, both by the

Government of Uttarakhand and by the Ministry of Ayush, Government of India, the Ministry of Finance, Government of India is seeking to push

through the dis-investment process which would affect the public at large, and would contravene larger public interest.

4. The policy decision of the Government of India, to pursue the process of dis-investment, appears to be based on the premise that the Government

lacks expertise in running such industrial units, and public funds can be better utilized to meet other necessary financial requirements, instead of

operating industrial units throughout the country.

5. While we may not be understood to have held that this view of the Government of India is justified, we cannot lose sight of the fact that the scope

for interference in judicial review proceedings, under Article 226 of the Constitution of India, is extremely limited. In *BALCO Employees Union*

(Regd.) v. Union of India: (2002) 2 SCC 333, the Supreme Court observed :

It is evident from the above that it is neither within the domain of the courts nor the scope of the judicial review to embark

upon an enquiry as to whether a particular public policy is wise or whether better public policy can be evolved. Nor are our courts

inclined to strike down a policy at the behest of a petitioner merely because it has been urged that a different policy would have been

fairer or wiser or more scientific or more logical.

Process of disinvestment is a policy decision involving complex economic factors. The courts have consistently refrained from

interfering with economic decisions as it has been recognised that economic expediencies lack adjudicative disposition and unless the

economic decision, based on economic expediencies, is demonstrated to be so violative of constitutional or legal limits on power or so

abhorrent to reason, that the courts would decline to interfere. In matters relating to economic issues, the Government has, while

taking a decision, right to "trial and error" as long as both trial and error are bona fide and within limits of authority. There is no case

made out by the petitioner that the decision to disinvest in BALCO is in any way capricious, arbitrary, illegal or uninformed. In a democracy, it is the

prerogative of each elected Government to follow its own policy. Often a change in Government may result in the shift in focus or change in economic

policies. Any such change may result in adversely affecting some vested interests. Unless any illegality is committed in the execution of the policy or

the same is contrary to law or mala fide, a decision bringing about change cannot per se be interfered with by the court.

Wisdom and advisability of economic policies are ordinarily not amenable to judicial review unless it can be demonstrated that the

policy is contrary to any statutory provision or the Constitution. In other words, it is not for the courts to consider relative merits of

different economic policies and consider whether a wiser or better one can be evolved. For testing the correctness of a policy, the

appropriate forum is Parliament and not the courts.

(emphasis supplied)

6. The Executive is entitled to some elbow room in its joints in taking decisions on such matters of policy, including the right of trial and error. Policy

decisions taken by the Government, save constitutional infirmities, are, ordinarily, not amenable to judicial review in proceedings under Article 226 of

the Constitution of India. Further, Courts lack expertise in matters of disinvestment and would, therefore, defer to the wisdom of experts in the field.

Except to claim that the decision, if any taken by the Government of India, would violate Article 14 of the Constitution of India, the petitioner has not

been able to show how the dis-investment policy decision of the Government of

India is so manifestly arbitrary as to violate Article 14 of the Constitution of India.

7. In so far as the petitioner's contention that both the Government of Uttarakhand and the Ministry of Ayush have also opposed such a move for dis-investment, and that the subject company is a profit making unit, unlike other public sector undertakings which are running at a loss and are required to be supported by funds from the public ex-chequer, suffice it to observe that these are all matters for the Union of India to examine, and take a considered decision thereupon.

8. While we see no reason to entertain this Writ Petition, allegedly filed in public interest, for these are all matters in which this Court lacks expertise, and would ordinarily defer to the wisdom of the experts in the field, suffice it to observe that we have no reason to doubt that, before a final decision is taken regarding dis-investment of its share capital in the subject unit, the Government of India would take into consideration the reservations expressed both by the Government of Uttarakhand and the Ministry of Ayush before taking a final decision as to whether or not it should off-load its share capital in the subject industrial unit.

9. Subject to the aforesaid observations, the Writ Petition fails and is, accordingly, dismissed. No costs.