

(2007) 10 DEL CK 0099

In the Delhi High Court

Case No : Writ Petition No. 2182 of 1994

Rakesh Agarwal

APPELLANT

Vs

Union of India (UOI) and Another

RESPONDENT

Date of Decision : 10-10-2007

Acts Referred:

Constitution of India, 1950 — Article 14

National Dairy Development Board Act, 1987 — Section 28, 29, 47

Citation : (2007) 10 DEL CK 0099

Hon'ble Judges : Dr. M.K. Sharma, C.J.; Sanjiv Khanna, J

Bench : Division Bench

Advocate : Prashant Bhushan and Sumeet Sharma, for the Appellant; R.P. Bhatt O.P. Agarwal and Yogendra Kumar, for the Respondent

Judgement

Sanjiv Khanna, J.—This writ petition is filed for direction to the Government to conduct a thorough audit and investigation by the Comptroller and Auditor General into the Market Intervention Operations (hereinafter referred to as MIO for short) undertaken by National Dairy Development Board at the behest and on the mandate by the Government of India. It is alleged that National Dairy Development Board had deliberately flouted the terms and conditions of MIO as stipulated in the letter dated 6th April, 1989 thereby causing loss to the National exchequer. Reference is made to the report of Mr. P.V. Desai which has mentioned that the Union of India had suffered loss of Rs. 71.53 crores as on 31st March, 1992 due to violation of MIO by National Dairy Development Board. This figure includes loss of Rs. 10.79 crores on account of excess interest paid to the banks, Rs. 14.36 crores loss on reduced value of the inventory, Rs. 37.64 crores towards trading loss and Rs. 8.74 crores for excess price charged by STC for importing Palmolein. During the course of arguments, our attention was also drawn to the findings and observations in the report of Mr. P.V. Desai, which has been placed on record.

2. Learned Counsel for the respondent no.2-National Dairy Development Board,

on the other hand, has referred to the National Dairy Development Board Act, 1987 (hereinafter referred to as the Act, for short) and stated that the Board is a corporate body. Reliance was placed upon Sections 28, 29 and 47 of the said Act. Our attention is also drawn to the reasons why the MIO was introduced by the Government of India and the facts and figures show that the entire operation was successful and had achieved the desired result.

3. In the late 1980's, India was not self-reliant in oil seeds. Oil seeds/edible oil was being imported on payment made in foreign exchange, which was scarce. Indian consumers suffered because they had to pay higher prices due to scarcity and as prices were volatile. In India, the consumer price was four times higher than the price of edible oils available abroad.

4. A Technology Mission on Oilseeds (TMO for short) was set up in May, 1986, pursuant to the decision taken by the Ministry of Agriculture. Till then, edible oil sector was totally unorganized and the prices were highly speculative and fluctuating. Trade was controlled by a group of persons, who have been described by the respondents as "Telia Rajas" (oil barons). The then scarce foreign exchange was being utilized for importing oilseed/edible oil, which was having an adverse impact on the Indian economy.

5. On 30th May, 1988, Government of India constituted a high powered Committee called "Empowered Committee on Oil Seeds Policy" (ECOP) to implement integrated policy on oilseeds production, import, distribution and pricing for accelerating self-reliance. MIO scheme was formulated by ECOP.

6. On 6th April, 1989, National Dairy Development Board was appointed as the agency to implement MIO scheme under the integrated policy on oil seeds. The terms and conditions for MIO were approved by ECOP. The objectives of the MIO were:

(i) to establish wholesale prices of edible oils within the specified lower and upper limits of the price band to be specified by the Empowered Committee from time to time;

(ii) to channelise imported oil, other than that to be released by Department of Civil Supplies through the PDS, into the market (including vanaspati industry) in such a manner as to achieve objective (i);

(iii) to buy, stock and sell oilseeds and oils in order to achieve objective (i);

(iv) to build up stocks during years of surplus production so as to tide over the need for heavy imports during years of lean production; and

(v) to put the edible oil and oilseeds market on a healthy and stable basis minimizing speculation and hoarding.

7. National Dairy Development Board was given full functional autonomy to achieve the above objectives. A Market Intervention Fund (MIF) of Rs. 30 crores was to be built up by National Dairy Development Board to meet possible losses

in MIO. MIF was to be funded by the price difference of Rs. 2000/- per tonne, between the market price that was higher and the purchase price of imported edible oil to be made available to National Dairy Development Board by the State Trading Corporation. Any surplus beyond the said amount of Rs. 30 crores would accrue to the Government and any losses suffered by National Dairy Development Board would be charged to the MIF. Losses beyond Rs. 30/- crores were to be reimbursed by the Government to National Dairy Development Board. The terms and conditions further provided that separate accounts for the operations would be maintained and submitted half yearly. For procurement of oil seeds/edible oil, National Dairy Development Board was permitted to nominate self-reliant units who were permitted to draw on National Dairy Development Board Credit limits at the risk of National Dairy Development Board. The operation, was to be monitored by a Special Action Committee of Secretaries on prices.

8. The principal objective behind the MIO was to ensure remunerative returns to the farmers, while at the same time maintain reasonable and stable prices for the benefit of the consumers. The objective was somewhat contradictory as higher prices would have encouraged farmers to shift to growing oilseeds but would have dissatisfied consumers. The objective was sought to be achieved by increasing oil seeds production and making India self-reliant and in the meanwhile, oilseed/edible oil was to be imported to meet the demand, ensuring that the domestic market and consumers do not suffer on account of artificial scarcity and manipulation in prices. One of the main purpose was to regulate the trade and prevent manipulation, hoarding and speculation in oil seeds and edible oil trade.

9. The edifice of the case built up in the writ petition and in the arguments before us is the report given by a Committee headed by Mr. P.V. Desai. ECOP in its meeting held on 12th February, 1993 had appointed this Committee consisting of Mr. P.V. Desai, Chairman, Mr. M.P. Gupta, Member, Mr. K.R. Rao, Member and Mr. Srinivasa Madhur, Member. Mr. P.V. Desai and Mr. M.P. Gupta gave a joint report. As per their report, MIO had not proved to be an effective instrument of market intervention in the wholesale market of oil seeds and edible oil. This report also states that non-fixation of the price bands had left MIO rudderless and they recommended that the scheme should be foreclosed. However, if the Government considered that it was desirable to continue with the scheme, commercial considerations should be incorporated and introduced into the scheme and certain modifications were required specially to prescribe the extent of Government obligation towards recouping of trading losses. On the question of reimbursement of losses suffered by National Dairy Development Board, Mr. P.V. Desai and Mr. M.P. Gupta recommended that losses due to fall in inventory value as on 31st March, 1992 to the extent of Rs. 14.36 crores should be reimbursed. It did not recommend the case for compensation and recouping losses suffered by National Dairy Development Board to the extent of Rs. 10.79 crores on account of interest burden. On the question of reimbursement of Rs. 8.74 crores,

due on account of STC charging more than Rs. 15,000/- per tonne on imported "Palmolein", and Rs. 14.92 Crores, on account of expenses relating to retail market operation, it was stated that the said amounts could be considered for reimbursement. The claim for reimbursement of trading losses of Rs.37.64 crores due to "subsidised retail price" of "Dhara" was also adversely commented upon. The two Members were of the view that the said losses had not arisen due to the MIO and National Dairy Development Board should have taken care to recoup the entire costs while fixing retail prices. The Government however, could consider post facto reimbursement to National Dairy Development Board as a subsidy including the quantum, as the said two Members felt that the losses had arisen because of subsidized operations of National Dairy Development Board.

10. Mr. K.R. Rao, in his dissenting report has opined to the contrary. He felt that the two other members in their report had made errors in their analysis by treating MIO as a commercial operation, and working of the National Dairy Development Board had not been appreciated. Sufficient quantity of imported oil was not made available to National Dairy Development Board as was envisaged, this had contributed to the losses. Mr. K.R. Rao has held that National Dairy Development Board was justified in direct entry into retail operations, which was done with the knowledge of the Department of Agriculture and ECOP. This Member of Committee felt that MIO had been a success. Farmers were getting reasonable price and consumers too were assured of supply of edible oil at reasonable prices. It was also highlighted that import of oil seed production had gone down, exports had increased and fluctuations in prices of edible oil were effectively controlled.

11. The fourth Member of the Committee Mr. Srinivasa Madhur, it appears had never attended the proceedings. However, he examined the report given by Mr. P.V. Desai and differed with the views expressed by him and by Mr. M.P. Gupta. He felt that MIO had been a reasonable success in ensuring stabilization of the oil sector and keeping the prices within a range. The edible oil imports had come down drastically and had there been better availability of imported oil, MIO results would have been better. He specifically noted that the report of Mr. P.V. Desai had referred to lower and upper limits of the price bands, on the basis of derived prices based on NAFED formula, and whether the average purchase and selling price of oil by National Dairy Development Board were within the said price band, but while doing so, Mr. P.V. Desai did not take into consideration or examine the actual market prices of edible oil and seeds. This, it was felt was not justified and the MIO had to be viewed as means or an instrument of maintaining open market prices within the broad range. He referred to the minutes of ECOP meeting relating to the retail marketing and observed that retail marketing by National Dairy Development Board was done with full knowledge of ECOP, understanding its implications and impact.

12. After the respective reports were received, ECOP considered the same in its 27th meeting held on 26th April, 1993. After detailed discussion and thought, it

was decided that Rs. 14.36 crores due to fall in inventory value should be reimbursed as National Dairy Development Board was justified in making purchases at the market price and holding was necessary. Regarding loss of Rs.10.79 crores on account of interest paid by National Dairy Development Board, ECOP referred to Clause 4(j) of the terms and conditions of MIO and observed that it was agreed that the credit would be available to National Dairy Development Board at 15% per annum. Similarly, loss of Rs. 14.92 crores on account of retail marketing was directed to be reimbursed as ECOP was authorized to lay down guidelines for MIO and had from time to time endorsed retail operations. In respect of loss of Rs. 8.74 crores on account of supply of edible oil by STC at the rates above Rs. 15,000/- per tonne, ECOP noticed that MIO envisaged supply of imported oil by STC to National Dairy Development Board, at a price, Rs. 2000/- per tonne, below the minimum price band but price bands were not fixed for the OY 1991-92 and onward. However, for the year OY 1990- 91, it was specifically agreed and approved that imported oil should have been supplied by STC at Rs. 15,000/-/MT as no price band had been fixed. ECOP also noticed that supply of imported edible oil was essential to enable the National Dairy Development Board to generate surplus funds for MIO. Thus it recommended that Rs. 8.74 crores should be reimbursed. ECOP also recommended reimbursement of Rs. 22.72 crores towards trading losses incurred by National Dairy Development Board on MIO. ECOP held that the objective of MIO was to regulate the price, exert moderating influence, ensure remunerative prices to the farmers and reasonable purchase price for the consumers. ECOP felt that the inventory levels were required to be built up and carried over long periods and these costs could not have been fully recovered through sales. Cost of inventory built up and carrying cost had to be paid as it was in conformity with the overall role of National Dairy Development Board envisaged and contribution made in stabilizing the oil prices through MIO. The Committee noticed that some of the commitments that were initially given to National Dairy Development Board could not be fulfilled by the Government itself and, Therefore, certain deviations in the scheme were approved and permitted. ECOP was always in picture and had knowledge about the retail market losses likely to be suffered. However, as there was variation in the original scheme, reimbursement, it was observed, would require Cabinet approval.

13. In addition to these reports, we also have a report of a Committee headed by Mr. Sharad Joshi, a Standing Advisory Committee. This committee examined the so called deficiencies and shortcomings of MIO. The Committee questioned 6 Oil Seeds Growers Co-operative Societies and 1,50,000 edible oil seeds growers. The Committee did not rule out that some of the farmers might have been under the influence of National Dairy Development Board but observed that most of them had expressed very strongly about the advantages they had received in terms of oilseed prices under MIO. It was also noted that the allegation that purchases were done in open market was not supported by facts and figures of operations by growers co-operative. The Committee felt that MIO had a difficult

start because of non-availability and failure to import edible oil for sale by National Dairy Development Board. The impact on oil prices of the market operations was noticed, but concern was expressed that in the future the National Dairy Development Board could come under influence of local politicians. After examining the data, it was found that the price spread in groundnut oil had narrowed down to 25% to the great advantage and benefit of the middle class consumers. In the final valuation, it was concluded, that National Dairy Development Board had done considerable work in developing infrastructure storage of oilseeds and oil transportation and certain recommendations were made.

14. It is clear from the facts stated above that the question of loss suffered in MIO was thoroughly examined and evaluated by the Government of India. Committees were appointed and they have submitted their reports giving reasons and basis. Union of India after examining the respective stand and reasoning has partly reimbursed to National Dairy Development Board the losses suffered in MIO. To some extent the Union of India was also conscious of the fact that the MIO would result in losses. That is why a fund of Rs. 30 crores was established initially with another clause for sale of imported edible oil to National Dairy Development Board at Rs. 2,000/-/MT less than the market price to offset losses. The objective of MIO was to purchase oilseed from the farmers to ensure remunerative prices and thus encourage farmers to grow oilseeds. In contrast, the other objective of MIO was to bring down the edible oil prices for the consumers. Both the objectives, considering their inherent nature could result in losses to National Dairy Development Board. Similarly, to be a catalyst, an effective intervener in the market operations, National Dairy Development Board was required to build up buffer stock. It is obvious that fluctuation in the prices of oilseed and edible oil could and would cause losses to National Dairy Development Board and that there would be increase in carrying costs. It is an admitted fact that there was fall in market price during 1991-92. Union of India itself has clarified that MIO was not a commercial operation but was a part of the Government's overall food security policy for the benefit of consumers, general public as well as oilseeds sector. Union of India having considered various aspects had examined losses suffered by National Dairy Development Board and had directed reimbursement.

15. Public Interest Litigation is an effective tool and has been effectively utilised to enforce public duties and correct arbitrary actions and inactions on the part of the authorities. It instills Rule of Law, protects rights of citizens and ensures compliance of Law by the authorities. It's benefits and advantages are well established. However, even while dealing with Public Interest Litigations, courts are conscious that they should not impinge and expand the scope to deal with the policy matters relating to economics and finance. Courts do not examine relative merits and demerits of political or economic theories or economic policies of the Government. Courts also do not examine whether a particular policy is desirable, until and unless violation of fundamental rights or statutory rights is

alleged and proved. Administrative actions are tested by the Courts by applying well known parameters of judicial review that they should be fair and that it should be free from the taint of arbitrariness and that there should be substantial compliance with norms and procedure.

16. In economic or financial matters, authorities have always been given a large measure of latitude while applying Article 14 as these are complex problems, which require pragmatic approach. Every Government has right to implement its policies and doctrines, unless they violate fundamental rights or statutory rights etc. Though most economists and tax experts have highlighted benefits of consistency and continuity but experimentation, trial and error in economic and financial matters is an accepted position. Neither a court is to interfere with errors or mistakes, unless a sound case for "judicial review" is made out nor can a Court strike down a policy because some other decision appears to the Court to be better or more logical. This is left to Executive discretion, whose actions as per the Constitution are subject to Legislative scrutiny and control. These aspects were examined and considered by the Supreme Court in *BALCO Employees Union (Regd.) Vs. Union of India and Others*, After referring to several other earlier judgments, the Supreme Court has held that unless a policy framed is absolutely capricious and not formed by reason or logic, completely arbitrary and founded on mere ipse dixit of the Executive functionaries, violates Article 14 or other Constitutional provisions or is in conflict with any statutory provision, Courts will not interfere and tinker with the policy decision. The question of efficacy or otherwise of policy normally cannot be made subject matter and Courts should not themselves go into matters relating to political or economic philosophy. Similar observations have been made by the Supreme Court in *Federation of Railway Officers Association and Others Vs. Union of India (UOI)*, wherein it was held that when matters require technical expertise, courts will not interfere unless the decisions are inconsistent with the Constitution or statute or otherwise arbitrary or completely irrational. Thus, whether or not there should have been a MIO and what should have been the guiding factors, to what extent National Dairy Development Board should have been permitted to intervene, whether retail operations were required and whether retail operations were required to be subsidised are all economic policy matters relating to the field of finance and politics. What was desirable and what should have been done and was required to be done, had to be decided by the Executive, whose actions were subject matter of questioning, scrutiny and control by the Parliament. While keeping these parameters in mind, we have to examine the averments and allegations made in the writ petition. The scrutiny and examination done by us, is not of a sleuth, using a magnifying lens finding minor faults and errors. Secondly, hindsight makes us wiser. We gain from experience.

17. We have gone through various records including the report of Mr. P.V. Desai and others. We may agree or disagree with some of the findings given in one report or the other, but that by itself will not be a good ground to accept the prayers made in the writ petition. We are satisfied that the Government had a

clear and bona fide objective and purpose when it constituted TMO and had allowed MIO operations. The Government was also conscious of the fact that operations required some flexibility and freedom to the operating agency. Some amount of flexibility was inherent in the scheme itself as commercial and financial angles were involved and attempt was being made to regulate an un-organized market which was highly volatile and speculative, by intervention in the market. Modification or alteration in policy is also a right of the policy makers. ECOP in its wisdom and keeping in view the market situation, did not fix price band for oilseeds after first two years. Reasons for the same have been given. The said reasons have been accepted by two Members of P.V. Desai Committee and also by Mr. Sharad Joshi. Thereafter, ECOP examined the whole controversy in detail including losses suffered by NDDB and whether these losses should be accepted and reimbursed by the Government. Matter was also examined by the Union Cabinet. Similarly, the question whether NDDB should have engaged in retail trading directly has been considered and examined. ECOP has endorsed the retail marketing as it was felt that this was essential and required for MIO operations. Earlier terms and conditions of MIO was also fixed by ECOP. ECOP, Therefore, had right to modify and change the terms and conditions of the MIO. We do not think that the reasons and justifications given and accepted by the Union of India can be regarded as arbitrary, capricious or completely irrational, which require judicial intervention in a Public Interest Litigation.

18. Whether MIO should have been introduced, whether National Dairy Development Board should have been asked to act, what should have been the terms and conditions of MIO, whether ECOP should have fixed the price band for the year 1991-92 onwards etc. are all policy matters for Union of India to examine and consider. It is apparent from the facts stated above that these aspects were considered and examined and different views expressed by various Committees were scrutinized before final decision for partially reimbursing losses to National Dairy Development Board was taken. These are all economic policy matters.

19. ECOP was made fully aware of the retail marketing operation undertaken by National Dairy Development Board. The said operation undertaken by National Dairy Development Board has been justified on the ground that it had a direct impact on the retail consumer price and thus prevented speculative trade and resultant exploitation of the consumers. It is a stand of the Union of India that retail marketing was required and necessary steps were done with the knowledge and approval of ECOP and had governmental approval. This was justified on the ground that in view of non-supply of imported oil, the indigenous oil procured by National Dairy Development Board was not sufficient for market intervention. In these circumstances, it was decided to allow National Dairy Development Board to do direct retail marketing. This also prevented mis-use of MIO, adulteration and siphoning/black-marketing, as had happened in the case of oils sold through PDS.

20. Learned Counsel for the appellant laid considerable emphasis on the failure of the ECOP to stipulate lower and upper limits of the price band, and it was submitted that this was contrary to the terms and conditions of the MIO. Respondent No. 2 and other respondents have admitted that price bands were fixed by ECOP for first two years and not thereafter. It was stated that this was deliberately done by ECOP. This was contrary to the original terms and conditions of the MIO but the terms and conditions of the MIO could be modified and amended. Blame for not fixing price band is on ECOP and National Dairy Development Board cannot be blamed for the same. Moreover, we find that Clause 2(i) of the terms and conditions of MIO required fixing of price bands for lower and upper limits in respect of edible oils and not in respect of oil seeds. Thus failure to fix the price band for edible oil would have permitted and allowed National Dairy Development Board or its agents to purchase edible oil from the market at any price, without any lower or upper limit being specified. It gave more freedom to the National Dairy Development Board and its agents. It may be noted that in the financial year 1991-92, there was fall in the market price of edible oil, specially in respect of groundnut oil. However, ECOP did keep and monitor the performance of National Dairy Development Board and the MIO. It was a conscious decision, as it was felt that in view of the changed market condition, this was not required. It may be relevant to state here that Mr. P.V. Desai in his report has pointed out that there was fall in market price of edible oil in 1991-92. The reasons why the ECOP in its 17th meeting held on 24th April, 1991 decided to do away with the price band as stated were

- A. Short fall in domestic production which was likely to continue.
- B. Non-availability or limited availability of imported edible oil due to foreign exchange crises.
- C. Overall demand supply position was not known.
- D. Many of the parameters of MIO were altered or modified.

21. The reasons for not fixing price bands has been examined and considered in-depth by the Department of Agriculture.

22. There is also ample data and figures which show that efforts of the government were successful in the long term. Edible oil prices became much lower and at the same time oil seeds production increased meaning thereby that the farmers were getting the remunerative prices and the consumers were being supplied oil at reasonable prices. Oil seed production in India increased substantially from 10.8 million tonnes in 1985-86 to 21.8 million tonnes in the year 1993-94, marking an increase of 201%. Import of edible oil came out from peak of Rs. 1309 crores in the financial year 1984-85 to Rs. 52 crores in 1993-94. The value of exports in this sector increased from Rs. 257 crores in 1985-86 to Rs. 2300 crores in 1993-94 marking an astonishing rise of 906%. Further, the intra seasonal market fluctuation in prices came down by about half. The oil seeds sector became a foreign exchange earner for the country instead of

one which required foreign exchange for import. The petitioner claims that this was because of substantial increase in production of non traditional oilseeds like soyabean and sunflower. Whatever be the reason, the policy adopted and implemented had the desired results and this Court cannot as a technical financial expert determine and decide as to why the policy was successful and what were the contributing factors. The petitioner cannot claim any right to act a super-analyst and object to the considered decision of the Union of India, unless a case for dereliction of constitutional or statutory provisions, arbitrariness or irrationality on the part of the Union of India is made out.

23. Learned Counsel for the petitioner had specifically drawn our attention to the tables mentioned in the report prepared by Mr. P.V. Desai. The table mentions "derived" oil price as per the support price of oil seeds and derived oil price from "the price" of oil seeds fixed as per NAFED formula. It may be noted that the support price is fixed by the Government but the same is not the market price and is not the remunerative price that would encourage the farmers to grow oil seeds. The price fixed as per NAFED formula is less than the average market price of oil seeds and falls somewhere in between the market price and the support price. If we compare the average price paid by National Dairy Development Board for oil, with the raw oil price derived/calculated as per NAFED formula of oilseeds in the report of Mr. P.V. Desai, we find that in 1989-90, the average purchase price paid by National Dairy Development Board for groundnut was Rs. 21608/-, which is less than the derived raw oil price calculated on the basis of NAFED oil seeds formula of Rs. 24694/-. The same was the situation in the year 1990-91, with the difference between the two being Rs.32238/- and Rs. 36753/-. However, in the year 1991-92, the average price paid for groundnut oil was Rs. 36,116, which was higher than the derived market price using NAFED formula for oil seeds of Rs. 35,764/-.

24. With regard to Mustard oil for all the three years, the average price paid by National Dairy Development Board was much lower than derived raw oil price calculated using NAFED formula of oil seeds. Moreover, it was for the government to decide whether or not to subsidise sale price of edible oil. Lower oil price was for the benefit of the consumer.

25. There is one statement in the report given by Mr. P.V.Desai to the effect that large quantity of edible oils were purchased when the prices were lower and small quantity of oil was sold when the prices were higher. There is nothing to substantiate the statement made. No facts and figures with reference to date of purchase/sale, quantity purchased/sold and the price have been stated.

26. Another contention raised by the petitioner may be noted. It was pointed out that there was no audit and examination of accounts of the Co-operative Societies who had acted as agents for procurement of oil seeds and then offered edible oil to National Dairy Development Board. It was submitted that this resulted in huge profits by the Co-operative societies and no verification or scrutiny of the accounts of the said co-operative societies was done. National

Dairy Development Board however, has explained that direct marketing for the purchase of oilseeds and oils would have resulted in spurt of prices and, Therefore, consciously it was decided to associate Co-operative Societies as agents to purchase oil seeds. Credit was given to the Co-operative Societies for procurement of oilseeds with first option to National Dairy Development Board to purchase edible oil from the cooperative societies at the price quoted by the said societies. On the National Dairy Development Board refusing the first purchase option, the Co-operative Societies were required to sell the edible oil in the open market at a rate not less than that offered to the National Dairy Development Board and return the sale proceeds to National Dairy Development Board. In such cases, the amount advanced to the Co-operative Society for procurement of oilseed was to be returned along with interest. The accounts were accordingly settled. The said procedure has not been specifically referred to and criticized by Mr. P.V. Desai in his report.

27. However, the petitioner has pointed out that the accounts of the co-operative societies were not available and were not scrutinised by any Committee and, Therefore, the purchase price of oilseeds has not passed through any examination and verification. No scrutiny has been done. It would have been better if such scrutiny had been undertaken. Purchase of oil seeds by National Dairy Development Board through it's agencies was a part of the MIO scheme and personal benefit to a private party at the cost of the public exchequer is a cause of concern. Defalcation of public funds is a valid ground for courts to interfere. It is apparent that ECOP was monitoring the prices of oilseeds and edible oils and, Therefore, examining the whole process of purchase and sale.

The method adopted by NDDDB-the first purchase option clause to purchase edible oil or refund of upfront amount paid with interest by the cooperative societies with other stipulations were all a part of the self regulatory mechanism that prevented misuse, as the price paid for oil seed is reflected in the purchase price of edible oil. It is the also case of National Dairy Development Board that the co-operative societies suffered huge losses during this period and many of them have closed down. This Court cannot give any firm or affirmative opinion one way or the other. However, keeping in view the contentions raised as well as the stand of National Dairy Development Board and the Government of India, we do not think any useful purpose at this point of time will be served by asking CAG or any other agency to have a deeper probe into the matter. Another reason is that MIO is no longer in operation and after nearly 15 years, to dig out books of accounts, vouchers and figures and find out whether there was any manipulation in purchase of oil seeds and pin point the persons involved will be an exercise in futility.

28. Keeping all these aspects in mind, we do not see any purpose in issuing any directions in the writ petition. The writ petition is accordingly disposed of. However, we clarify that we have not been examining the legal issue and question whether Comptroller and Auditor General can be directed to audit

accounts of National Dairy Development Board. In the facts and circumstances of the case, there will be no order as to costs.