
(1987) 08 DEL CK 0063

In the Delhi High Court

Case No : Civil Writ Petition No. 841 of 1985

Ramesh B. Desai and others

APPELLANT

Vs

Union of India and etc.

RESPONDENT

Date of Decision : 04-08-1987

Acts Referred:

Citation : AIR 1988 Delhi 288

Hon'ble Judges : Sunanda Bhandare, J

Bench : Single Bench

Advocate : Kapil Sibal, with S.N. Sanjanwala, P. H. Parekh, Pinaki Misra and Ashok Gupta, for the Appellant; Aruneshwar Gupta (for Nos. 1 and 2), Anil B. Diwan and R.P. Bhatt with B.V. Desai and Ms. Madhvi Gupta (for No. 3) and Dr. L.M. Singhvi with Ashwin L. Shah, Dr. A.M. Singhvi and Ms. Radha Rangaswamy (for No. 4), for the Respondent

Final Decision : Dismissed

Judgement

Ms. Sunanda Bhandare, J.—M/s. Sayaji Mills Limited respondent no. 3 (hereinafter referred to as the company) registered under the Companies Act was incorporated in the year 1941. It is engaged in the manufacture of Starches and its derivatives, Liquid Glucose, Dextrose, Sorbitol and other by-products. Since its inception the company has been selling its products through a sole selling agent M/s. C. Doctor and Company, a private limited company in Starch business since 1914. On the amendment of the Companies Act, 1956 by the Amending Act of 1974 it is necessary to seek approval of the Central Government for appointment of sole selling agents. Respondent No. 3 applied and obtained approval of the Central Government to the appointment of M/s. C. Doctor and Company as its sole selling agents for the periods 1972-77, 1977-82 and 1982-87. M/s. C. Doctor and Company was a family concern of M/s. Sayaji Mills limited in as much as the directors of M/s. C. Doctor and Company were closely related to the Chairman of respondent No. 3 company. In January, 1982, a family arrangement was arrived at by way of a memorandum of understanding between two sons of the family of Shri V. L. Mefeta, who was the then Chairman-cum-

Managing Director of the company. Shri B. V. Mehta and his branch got the management of respondent No. 3 company and other assets and Shri S. V. Mehta and his branch got other companies of the family including M/s. C. Doctor and Company. M/s. C. Doctor and Company had two separate divisions namely; (1) Starch Division; and (2) Engineering Division. Since M/s. C. Doctor and Company had vested with Shri S. V. Mehta and his branch it was decided to separate the Starch Division and was agreed to be taken over by a new company namely M/s. L. G. and Doctor Associates Private Limited, respondent No 4 herein. By a separate agreement, the entire staff of Starch Division of M/s. C. Doctor and Company was to be taken over by M/s. L. G. and Doctor Associates Pvt. Ltd. Since the sole selling agency agreement with M/s. C. Doctor and Company for the period 1982-87 was approved by the Company Law Board in the year 1982 in view of the change in the constitution of M/s. C. Doctor and Company and incorporation of M/s. L. G. and Doctor Associates Pvt. Ltd., respondent No. 3 company proposed to appoint M/s. L. G. and Doctor Associates Private Limited, respondent No. 4 as its sole selling agents. Respondent No. 3 company at its Annual General Meeting on 29th Sept., 1983 obtained consent of the shareholders to that effect by " a special resolution. Respondent No. 3 company applied to the Central Government under S. 294-AA of the Companies Act, 1956 (hereinafter referred to as the Act) for grant of approval for appointment of respondent No. 4 as its sole selling agent w.e.f. 16th Oct, 1983. One Shri P. K. Vyas objected to the appointment of respondent No. 4 as sole selling agent of respondent No. 3 company before the Company Law Board. The Company Law Board after giving a hearing to the company, M/s. L. G. and Doctor Associates Pvt. Ltd. and Shri P. K. Vyas rejected the application for approval by its order dated 31st May, 1984. The relevant portion of the order reads thus :

(a) The Sole Selling Agency company has been incorporated very recently on 26-8-1982 and its entire share capital is held by Shri B. V. Mehta, his wife, son, daughter and HUF Shri B. V. Mehta is the Chairman of the Sole Selling Agency Company. The Sole Selling Agency Company has an authorised share capital of Rs. 5 lakhs and a paid up share capital of Rs. 4 lakhs. The entire share capital has been invested (Rs. 3,89,749) by it in the shares of the applicant company viz. Sayaji Mills Limited. The Sole Selling Agency Company has, thus, no financial resources for carrying on its business of the nature contemplated. The Sole Selling Agent also does not have substantial infrastructural facilities of their own, inasmuch as they are substantially using the facilities of premises, telephones, vehicles, etc. owned by the applicant company. Even the office furniture has been bought by this sole selling agency company from the applicant company - Sayaji Mills Limited as second hand old furniture for a nominal sum of Rs. 5,000/-. Being recently established, the Sole Selling Agency Company also does not have a proper staff organisation of its own; services of certain staff members of another company - M/s. C. Doctor and Company Pvt. Ltd. have, however since been obtained by them.

The proposed arrangement involves handling of a turnover of about Rs. 20 crores

of the applicant company. As per the projections made; the commission receivable by the Sole Selling Agent is expected to be of the order of Rs. 60 lakhs in the 1st year and Rs. 66 lakhs in the second year and after meeting the expenses, the Sole Selling Agent is expected to earn a profit of Rs. 6.24 lakhs in the first year and Rs. 7.17 lakhs in the second year (on a meagre paid up share capital of Rs. 4 lakhs, as aforesaid);

(b) The applicant company is an old established large size public limited company, in existence for the last over 40 years. About 33% of its share capital is held by the proposed Sole Selling Agent and its directors and their relatives. The proposed Sole Selling Agent, thus have quite substantial interest in the applicant company. Sh. B. V. Mehta who is the Chairman of the Sole Selling Agency Company, is also the Managing Director of the applicant company.

(c) 67% of the paid up share capital of the applicant company is held by the general public financial institution (48% by the general public and 19% by the financial institution). The manner in which the affairs of the company are managed, therefore, have a significant bearing on public interest.

On the basis of the above facts, the Board felt that the proposed Sole Selling Agency arrangement is not an arm's length dealing, having regard to the fact that the applicant company is managed by the same person (Shri B. V. Mehta) who is the Chairman of the Sole Selling Agency Company (which is a closely held family concern of the same person). It was also felt that the proposed Sole Selling Agency arrangement is a device to supplement the income of Shri B. V. Mehta (and his family members) through the media of the Sole Selling Agency Company, ostensibly with a view to circumvent the provisions of Ss. 198 and 309 of the Companies Act, 1956.

After careful consideration of the material on record and having regard to all the facts and circumstances of the case, the Board held that the proposed Sole Selling Agency arrangement is not conducive to the interest of the applicant company, apart from the fact that the proposed Sole Selling Agent does not seem to be in a position to undertake the marketing of the products of the applicant company. The proposal made by the applicant company was accordingly rejected."

Thereafter respondent No. 3 company made an application for review dated 13th August, 1984 on the ground that certain new facts had emerged. The Company Law Board however wrote back to respondent No. 3 company on 25th Aug., 1984 that if there were changes, the company was free to file a fresh application and, therefore, respondent, No. 3 company submitted a second application on 31st August, 1984 for fresh consideration of its application for approval of respondent No. 4 as its sole selling agent w.e.f. 13th Oct., 1983. The Company Law Board, thereafter, sought some further clarifications from the company and also wrote to the Registrar of Companies, Gujarat on 5th and 31st Oct., 1984 seeking clarification and comments. The Registrar of Companies, "Gujarat set its

comments vide letter dated 16th Nov., 1984. Thereafter, a personal. hearing was granted to the company and sole selling agent and also to Mr. P. K. Vyas. However, before a decision was taken on the second application but after the hearing was concluded on 29th Dec., 1984 petitioner No. 1 ! who had since resigned as manager of the company and holding approximately 375 shares filed his objections to the application On 23rd Jan., 1985 the Company Law Board by a non-speaking order accorded its approval to the appointment of respondent No. 4 as the sole selling agent of respondent No. 3. This order of the Company Law Board has been challenged by the petitioners in this writ petition under Arts. 226 and 227 of the Constitution of India.

2. The validity and legality of the impugned order will, to a large extent, depend on the nature of jurisdiction" exercised and the power conferred on the Central Government/Company Law Board while granting or rejecting approval to the appointment of a sole selling agent under S 294-AA(3) of the Act S. 294-AA which was inserted by the Companies Amendment Act, 1974 w.e.f. 1-2-1975 gives power to the Central Government to prohibit the appointment of sole selling agents in certain cases. The powers and functions of the Central Government under this section have been delegated to the Company Law Board as provided under S. 637 of the Act by a notification dated 24-6-1975. Before examining the rival contentions urged on behalf of the parties, it will be convenient to set out the relevant provisions of the Act. Sec. 294-AA(1), (2) and (3) read thus :--

"294-AA(1) Where the Central Government is of the opinion that the demand for goods of any category, to be specified by that Government, is substantially in excess of the production or supply of such goods and, that the services of sole selling agents will not be necessary to create a market for such goods, the Central Government may, by notification in the Official Gazette, declare that sole selling agents shall not be appointed by a company for the sale of such goods for such period as may be specified in the declaration.

(2) No company shall appoint any individual, firm or body corporate, who or which has a substantial interest in the company, as sole selling agent of that company unless such appointment has been previously approved by the Central Government.

(3) No company having a paid up share capital of rupees fifty lakhs or more shall appoint a sole selling agent except with the consent of the company accorded by a special resolution and the approval of the Central Government."

3. On a plain reading of this section, it is clear that whereas under sub-sec. (1) of S. 294 AA if the Central Government is of the opinion that the demand for goods of any category is substantially in excess of the production or supply of such goods and that the services of sole selling agents will not be necessary to create a market for such goods it can by notification in the Official Gazette prohibit appointment of sole selling agents for the sale of such goods for a period

specified in the declaration. Sub-sec. (2) of S. 294AA provides that no company can appoint any individual, firm or a body corporate as a sole selling agent who or which has a substantial interest in the company without obtaining previous approval of the Central Government. Sub-sec. (3) of S. 294AA deals with appointment of a sole selling agent by a company having a paid up share capital of Rs. 50 lacs or more. There are two conditions imposed in this sub-section for appointment of a sole selling agent; (i) consent of the company accorded by a special resolution; and (ii) approval of the Central Government

4. It is common case of the parties that in the present case since the paid up share capital of the company is more than Rs. 50 lacs both the conditions as envisaged in sub-sec (3) of S. 294AA would have to be fulfilled before appointment of a sole selling agent is made by the company.

5. Mr. Sibal, learned counsel for the petitioners contended that the power of the Central Government under sub-sec. (3) of S. 294 AA is quasi judicial in nature inasmuch as the act of approval requires the ascertainment of fact, investigation as to the veracity of the facts stated in the application filed by the company and also the application of mind to the relevant considerations resulting in a favourable conviction. The further submission which is a corollary of the previous one is that the power being in discharge of a quasi judicial function, the Company Law Board is duty bound to give reasons for its decision and since in the present case, the Company Law Board failed to give reasons for granting approval in the impugned order, the order is liable to be struck down on that ground alone. Considerable reliance was placed by the learned counsel on the judgment of the Supreme Court in Rampur Distillery and Chemical Co. Ltd. and Another Vs. Company Law Board and Another, . It was submitted that under sub-sec. (5) of S. 294AA a company seeking approval is required to furnish such particulars as may be prescribed. Though the section itself does not give the guidelines for approval, the Company Law Board has issued departmental guidelines to be followed for this purpose and the Company Law Board cannot grant the approval if the case does not fall within the guidelines. The decision of the Central Government affects not only the company and the proposed sole selling agent but also the shareholders and results in civil consequences and thus the power is quasi judicial in nature.

6. On the other hand, it was submitted by Mr. Diwan, learned counsel appearing on behalf of the company-respondent No. 3 that the function of the Company Law Board under this sub-section is purely administrative in nature inasmuch as there is no inter-party dispute to be resolved between the shareholders on the one hand and the company, and the sole selling agent on the other hand or the company on the one hand or the sole selling agent on the other hand. Though, the Company Law Board has issued ;circulars and guidelines from time to time, these guidelines do not have any statutory force and, therefore, the Central Government can deviate from these guidelines if it is found that the appointment of the sole selling agent is otherwise in the interest of the company. Strong

reliance was placed by the learned counsel on the judgment of the Bombay High Court in *Nanavati and Co. (Pvt.) Ltd v. R. C. Dutta*, (1975) 45 Com Cas 91 : (1974 Tax LR 1893) to support his contention that the function performed is purely administrative in nature.

7. In *Rampur Distillery and Chemical Co. Ltd. and Another Vs. Company Law Board and Another*, the Supreme Court was dealing with the power of the Company Law Board under S. 326, sub-sec. (2) of the Act which invested with the Central Government the power to decide whether it is against public interest to allow the company to have a managing agent; whether the person proposed is proper or fit to be appointed or reappointed as managing agent and whether the conditions of the managing agency agreement proposed are fair and reasonable and whether the proposed managing agent" has fulfilled the conditions which the Central: Government has required him to fulfil. The Supreme Court held that the power conferred; upon the Central Government by that section is restrictive of valuable rights of a company and of the proposed managing agent and severely restricts the liberty of contract. The; scheme of the section envisages investigation! and a decision on the matter set out theresia i The section specifically lays down conditions in which the Central Government may override the resolution of the general body of shareholders on the existence of the ground on which the satisfaction is to be founded. The satisfaction has to be on the basis of certain objective facts and, therefore, the power is quasi judicial in nature.

8. The Division Bench of the Bombay High Court in *Nanavati's case* (1974 Tax LR 1893) (*supra*) analysing the section which concerned the Court in that case held that the power of the Company Law Board under S. 294(5) was purely administrative in nature.

9. S. 294(5) of the Act confers power on the Central Government to require information regarding the terms and conditions of appointment of a sole selling agent to come to a conclusion whether or not such terms and conditions are prejudicial to the interest of the company. Cl. (b) of sub-sec. (5) empowers the Central Government j to appoint a person to investigate and report; on the terms and conditions of appointment of sole selling agent in case the company refuses or neglects to furnish the information asked for by the Central Government. Under Cl (c) of sub-sec (5) the Company Law Board is called upon to peruse the information furnished by the company in the form of a report by the person appointed by the Company Law Board and form its opinion whether the terms and conditions of appointment of the sole selling agent are prejudicial to the interests of the company. The Central government has the further power to pass an order and make such variations in the terms and conditions which would in its opinion make them no longer prejudicial to the interests of the company. Power is also given to the Central Government to regulate the terms and conditions. The Court while construing this section observed that a just disposal of the dispute is necessary since the provisions of Cl. (c) of S. 294(5) requires that the Central Government takes a decision on facts directly collected from the

company and in the light of such other circumstances as may be brought to the notice of the Board by the parties who are going to be affected by the decision which is to be taken, however there being neither express nor implied provision in the Act nor any attending circumstances which indicate the necessity to act judicially before the information contemplated is formed, the power under this section is administrative in its character and not quasi judicial.

10. In my view, it is not necessary for me for the reasons I shall indicate hereinafter, to embark upon the exercise of classifying the function of the Central Government/ Company Law Board under S. 294AA of the Act as quasi judicial or purely administrative. In my opinion, in the present case, principles of natural justice require that reasons be disclosed for the decision.

11. The classification of administrative action as purely administrative or quasi judicial poses a most difficult problem because different tests apply for different situations. However, it is now well-settled that an authority or a body which has been given power to determine questions affecting the rights of citizen must exercise such a power in a just and fair manner in conformity with the principles of natural justice. Initially in the case of *Province of Bombay Vs. Kusaldas S. Advani and Others*, wherein the Supreme Court held that there was nothing in the Bombay Land Requisition Ordinance 1947, which empowered the Provincial Government to requisition any property, if in its opinion it was necessary and expedient to do so for any public purpose which required the Government to act judicially. Following Advani's case (supra) the Supreme Court in a number of cases observed that an inference whether an authority acting under a statute has to act judicially will depend on the express provisions of the statute read along with the nature of the rights affected, the manner of disposal provided, the objective criteria, if any to be adopted, the effect of the decision on the person affected and other indicia afforded by the Statute. This judicial thinking changed following the landmark judgment of House of Lords in *Ridge v. Baldwin*, 1964 AC 40 wherein it was held that "an authority may be required to observe the principles of natural justice even though it is not exercising judicial functions." It was in the case of *State of Orissa Vs. Dr. (Miss) Binapani Dei and Others*, that the Supreme Court for the first time held that "where administrative authority took actions impinging on the rights of private parties they must act according to the rules of natural justice, however if consideration of policy is the sole finding factor the function is purely administrative in character and in respect of such functions, a writ of certiorari will not issue." This thinking was further fortified in *A.K. Kraipak and Others Vs. Union of India (UOI) and Others*, wherein Hegde, J. speaking for the court observed that arriving at a just decision was the aim of any decision making authority. The effect of this landmark judgment was the enlargement of the scope of the writ of certiorari. The Supreme Court observed as under :-

"The dividing line between an administrative power and a quasi-judicial power is quite thin and is being gradually obliterated. For determining whether a power is

an administrative power or a quasi-judicial power one has to look to the nature of the power conferred, the person or persons on whom it is conferred, the framework of the law conferring that power, the consequences ensuing from the exercise of that power and the manner in which that power is expected to be exercised. In a welfare State like ours it is inevitable that the organ of the State under our Constitution is regulated and controlled by the rule of law. In a welfare State like ours it is inevitable that the jurisdiction of the administrative bodies is increasing at a rapid rate. The concept of rule of law would lose its validity if the instrumentalities of the State are not charged with the duty of discharging their functions in a fair and just manner. The requirement of acting judicially in essence is nothing but a requirement to act justly and fairly and not arbitrarily or capriciously. The procedures which are considered inherent in the exercise of a judicial power are merely those which facilitate if not ensure a just and fair decision. In recent years the concept of quasi-judicial power has been undergoing a radical change. What was considered as an administrative power some years back is now being considered as a quasi-judicial power.

The aim of the rules of natural justice is to secure justice or to put it negatively, to prevent miscarriage of justice. These rules can operate only in areas not covered by any law validly made. In other words they do not supplant the law of the land but supplement it. The concept of natural justice has undergone a great deal of change in recent years. In the past it was thought that it included just two rules, namely (1) no one shall be a judge in his own cause (*Nemo debet esse judex propria causa*), and (2) no decision shall be given against a party without affording him a reasonable hearing (*audi alteram partem*). Very soon thereafter a third rule was envisaged and that is that quasi-judicial enquiries must be held in good faith, without bias and not arbitrarily or unreasonably. But in the course of years many more subsidiary rules came to be added to the rules of natural justice. Till very recently it was the opinion of the courts that unless the authority concerned was required by the law under which it functioned to act judicially there was no room for the application of the rules of natural justice. The validity of that limitation is not questioned? If the purpose of the rules of natural justice is to prevent miscarriage of justice one fails to see why those rules should be made inapplicable to administrative inquiries. Often times it is not easy to draw the line that demarcates administrative enquiries from quasi-judicial enquiries. Enquiries which were considered administrative at one time are now being considered as quasi-judicial in character. Arriving at a just decision is the aim of both quasi-judicial enquiries as well as administrative enquiries. An unjust decision in an administrative enquiry may have more far reaching effect than a decision in a quasi-judicial enquiry,"

This position was further emphasized by the Supreme Court in *Mrs. Maneka Gandhi Vs. Union of India (UOI)* and *Another*, wherein it was held that natural justice is a great humanising principle intended to invest law with fairness and to secure justice and over the years it has grown into a widely pervasive rule affecting large areas of administrative action. The proliferation of administrative

law promoted considerable fresh thinking on the subject. It is by now well recognised that "fair play in action" requires that in administrative proceedings also the doctrine of natural justice must be held to be applicable and thus no distinction can be made between an administrative and a quasi judicial proceedings for the purpose of applicability of the doctrine of natural justice. Bhagwati, J. expressing the majority view observed : -

"The inquiry must, therefore, always be : does fairness in action demand that an opportunity to be heard should be given to the persons effected?

Now, if this be the test of applicability of the doctrine of natural justice, there can be no distinction between a quasi-judicial function and an administrative function for this purpose. The aim of both administrative inquiry as well as quasi-judicial inquiry is to arrive at a just decision and if a rule of natural justice is calculated to secure justice, or to put it negatively, to prevent miscarriage of justice, it is difficult to see why it should be applicable to quasi judicial inquiry and not to administrative inquiry. It must logically apply to both. On what principle can distinction be made between one and the other? Can it be said that the requirement of "fair play in action" is any the less in an administrative inquiry than in a quasi-judicial one? Sometimes an unjust decision in an administrative inquiry may have far more serious consequences than a decision in a quasi-judicial inquiry and hence the rules of natural justice must apply equally in an administrative inquiry which entails civil consequences."

12. Now, natural justice demands that a person who is likely to be directly affected by an administrative action should be given adequate notice of the action proposed so that an adequate representation can be made, to effectively meet the points raised and the opportunity so given must be reasonable. Again, what is reasonable opportunity depends on the nature of the power so exercised and the extent of the right so affected. As observed by Lord Denning in Regina v. Secretary of State for the Home Department, 1981 QB 778 "Rules of natural justice or of fairness are not cut and dried They vary infinitely."

13. The Supreme Court in A.K. Roy and Others Vs. Union of India (UOI) and Others, has observed thus : -

"Two fundamental principles of natural justice are commonly recognised, namely, that an adjudicator should be disinterested and unbiased (*nemo iudex in causa sua*) and that the parties must be given adequate notice and opportunity to be heard (*audi alteram partem*). There is no fixed or certain standard of natural justice, substantive or procedural, and in two English cases the expression "natural justice" was described as one "sadly lacking in precision", (1914) 1 KB 160 at p. 199 and as "vacuous", Local Government Board v. Arlidge, (1915) AC 120,138. The principles of natural justice are, in fact, mostly evolved from case to case, according to the broad requirements of justice in the given case.

We do not suggest that the principles of natural justice, vague and variable as they may be, are not worthy of preservation. As observed by Lord Reid in Ridge

v. Baldwin, (1964) AC 40, 64-65, the view that "natural justice is so vague as to be practically meaningless" is tainted by "the perennial fallacy that because something cannot be cut and dried or nicely weighed" ;or measured therefore it does not exist" But the importance of the realisation that the rules of natural justice are not rigid norms of unchanging content, consists in the fact that the ambit of those rules must vary according to the context and they have to be tailored to suit the nature of the proceeding in relation to which the particular right is claimed as a component of natural justice."

14. Bhagwati, J. speaking for the court in *The Siemens Engineering and Manufacturing Co. of India Ltd. Vs. The Union of India (UOI) and Another*, observed that:

"The rule requiring reasons to be given in; support of an order is like the principle of audi alteram partem, a basic principle of natural justice which must inform every quasi judicial process."

The court, therefore, has to maintain a pragmatic balance looking at the object for which the Legislature has vested the power! in the authority. This can be done by; examining the statutory scheme in question! and the rights of the party affected by the exercise of such power. Since principles of natural justice have to be followed by; administrative authority while performing purely administrative functions as well and the rule requiring reasons to be given" in support of an order is like the principle of audi alteram partem, a basic principle of natural justice, in a given set of circumstances refusal to give reasons for a decision may amount to denial of natural justice. In fact, when administrative authorities exercise discretionary power it is helpful if they give reasons because these orders are also subject to judicial review.

15. As observed by the Supreme Court in *Union of India (UOI) Vs. Mohan Lal Capoor and Others*, "Reasons are the links between the materials on which certain conclusions are based and" the actual conclusions. They disclose how,/ the mind is applied to the subject matter for a decision whether it is purely administrative or quasi judicial They should reveal a rational nexus between the facts considered and conclusions reached Only in this way can" opinions or decisions recorded be shown to be manifestly just and reasonable."

16. Thus, irrespective of whether the power is purely administrative or quasi judicial if principles of natural justice so require, the authority must give reasons for its decision;

17. It is necessary at this stage to consider the statutory scheme in the light of the object for which the Parliament conferred this power on the Central govt. company Law Board The section permits interference with the 1 right of a company to enter into a contract with the object of protecting the interest of the company and preventing unnecessary expenditure. The section" requires" that a company having a paid up share capital of Rs. 50 lacs or more shall appoint a sole selling agent only after obtaining the consent of the company accorded by a

special resolution and further after obtaining the approval of the Central Government in that regard. Therefore, if the appointment of a sole selling agent is found to be prejudicial to the interests of the company, under this section the Central Government may refuse to grant approval for such an appointment even if the company has accorded its sanction by way of a special resolution. The section itself does not indicate the guidelines to be followed while dealing with such an application, however the Company Law Board has been following its own guidelines. These guidelines read as follows : -

"(a) where the involvement of the proposed appointee either through himself or through his family members in the selling agency is quite substantial, the Board does not approve the said appointment;

(b) where, however, the interest of the proposed appointee and/or his family members in the selling agency is nominal then the Board approves the appointment but with certain conditions to safeguard the interest of the company;

(c) where it is found that the appointment of the selling agency company as also the persons proposed as managing or whole-time director is essential for the efficient conduct of the business of the company, the Board, while fixing his managerial remuneration, takes into account the monetary benefits which the appointee concerned directly or indirectly will be getting from the selling agency. (Company Law Board's Annual Report 1968-69, para 95)

18. The Central Government has framed rules in exercise of the powers conferred by S. 294AA read with Cl. (a) of sub-sec. (1) of S. 642 of the Companies Act called the Companies (Appointment of Sole Selling Agents) Rules 1975. Under these Rules, every company seeking approval of, the Central Government for the appointment of sole selling agents or selling agents for the buying or purchasing of goods on behalf of the company under S. 294AA of the Act is required to apply as per the form prescribed. The application for approval of the Central Government to the appointment of sole selling agents by a company is to be made as prescribed in Form I. This form contains about 41 clauses and requires the company to give details of the sole selling agent proposed to be appointed and the necessity of appointing a sole selling agent for the sale of the products of the company. The Company Law Board makes a detailed inquiry into the genuineness of the agreement with the sole selling agency and also the necessity " of appointing a sole selling agent for the purposes of the sale of the products of the company.

19. It is the right of every party affected by a decision to know the reasons. In a case where a right of a company to enter into a contract and carry on business is affected, the company has a right to know why it is not allowed to enter into that particular business transaction or a contract and to show that the appointment of the sole selling agent would not entail unnecessary expenditure and is in the interest of the company. Though there are administrative guidelines issued. the section itself gives very wide discretion and if this power has to be reasonable,

the authority must be required to give reasons.

20. Now, the next question to be considered is whether the petitioners as shareholders of the company can complain of violation of natural justice and insist on knowing the reasons for grant of approval.

21. It was argued by Mr. Diwan on behalf of respondent No. 3 that the shareholders as a class are not a party and are not entitled to insist upon knowing the reasons. In fact, they have no legal right or standing and are not entitled to insist upon natural justice at all or even to contend that natural justice is not complied with and or reasons have not been given in the order passed by the Company Law Board. It was submitted that this contention flows from the language of S. 294 AA of the Act read with S. 640-B of the Act. Under S. 640-B company is required to inform its members by advertisement about its intention to make application to the Central Government under the specified sections of the Act. S. 294AA is not included in S. 640-B of the Act. As far as S. 294AA is concerned, there is a departure from the pattern of S. 640-B. It was submitted that all sections mentioned in S. 640-B even do not necessarily imply a ; quasi judicial power but in case of S. 294 AA, there is no doubt that the share holders are" not in a position of a party at all. The statute " is silent in spite of the fact that the Legislature is aware of a different. pattern between! Monopolies and Restrictive Trade Practices Act, 1969 (hereinafter referred to as M.R.T.P. Act) and the Companies Act. Reference was also made to S. 29 of the M.R.T.P. Act applicable to Ss. 21 to 23 of the M.R.T.P. Act and S. 640-B applicable to Ss. 259, 268, 269, 310, 311, 408, 409 etc. It was further argued that there is no lis or dispute between the share-holders and the applicant company or sole selling agents or the Company Law Board; because there is no legal right of the share-holders in the proceedings for approval. To support this argument, great emphasis was laid on the rights of the share-holders in a company. It was submitted that the legal rights of the share-holders are limited. They have a right to sell their shares, attend general meetings and vote thereat, give proxies, receive dividends and get a share in winding¹ up after all liabilities are discharged. The shareholders have no right to interfere with the management of the company even by a unanimous resolution. It was submitted that if the directors lose their confidence, the shareholders have a right to remove them according to law or not re-elect them.

22. On the other hand, Mr. Sibal, learned counsel appearing for the petitioners contended that the duty to give reasons did not depend on the shareholders' right to object and the existence of a "lis" inasmuch as the court in exercise of its power under Art. 226 of the Constitution of India interferes not only where reasons are not given but also where reasons are unsatisfactory and considering the objective of the enactment, since a shareholder has the locus standi to file a petition and challenge the order by way of a petition under Art. 226 of the Constitution of India, he has also a right to know the reason. Reliance was placed by the learned counsel on the judgment of the Gujarat High ; Court dated 19th

November 1981 in the case of Company Petition No. 49 of 1978 (Shri Narendra Gordhan Bhain Shodhan v. Shri: arbuda Mills Limited, Ahmadabad)in Support of this contention. It was submitted; that in this case it is held that in proceedings! for confirmation under Ss. 101 and 102" shareholders being interested parties must" be heard and have locus standi to object to the scheme of reduction of share capital though there is no statutory right given to the share-holders to object and the same logic applies to proceedings under S. 294AA of the Act and the share-holders can object to the approval though the statute is not explicit; in that behalf.

23. I find substantial force in the argument of Mr. Diwan that there is no lis or dispute between the petitioners and the Company Law Board or the company or the proposed sole selling agent in a case for approval u/s. 294AA of the Act. In my opinion, in granting approvals, the policy content of the Government is larger as compared to the position of the petitioners. This is clear from the fact that though guidelines are issued by the department dealing with the application, the statute itself does not give any guideline j nor does it provide for notice to the share-holders or the creditors inviting them to file their objections. As observed by the Supreme Court in Life Insurance Corporation of India Vs. Escorts Ltd. and Others, the rights of the share-holders are (i) to elect directors and thus to participate in the management through them; (ii) to vote; on resolution at meetings of the company; (iii) to enjoy the profits of the company in the shape of dividends; (iv) to apply to the court for relief in the case of oppression; (v) to, apply to the court for relief in the case of mismanagement; (vi) to apply to the court for winding up of the company; and (vii) to share in the surplus on winding up.

24. Palmer in his Company Law 21st Edition 1982 page 853 has observed that:

"The general clause in the articles vesting j the management of the company in the directors is of great practical importance; it means that the directors have full powers of management, and are only subject to control by the shareholders in manner laid down by statute and articles. It further means that the share-holders cannot, by ordinary resolution of the general meeting, exercise a power given to the directors by the articles or overrule the directors when exercising such a power.

The shareholders are, of course, at liberty by special resolution altering the articles to vest in the genera! meeting a power given to the directors, and then to exercise such power. Further, the shareholders have always the statutory power which gives them ultimate control over the management of removing a director at any time by ordinary resolution requiring special notice (Sec. 184), and, if the conditions of Sec 75 of the 1980 Act are satisfied, to petition for the alternative remedy."

Furthermore, S. 291 of the Act provides that except where express provision is made that the powers of a company in respect of any particular matter are to be

exercised by the company in general meeting, in all other cases, the Board of Directors are entitled to exercise all power. Thus the shareholders can express their view at the special meeting convened for passing the special resolution and if the majority of the share-holders do not approve the proposed appointment of a sole selling agent, the share-holders can reject the proposal made by the Board of Directors but once the general body approves the appointment and passes the special resolution even if a minority shareholder does not approve of the majority view, the grievance cannot be redressed in proceedings under S. 294AA of the Act. If the Legislature had intended that every shareholder must have opportunity to express his view before the Central Government in proceedings under Sec. 294AA of the Act it would have provided for it by making notice to the shareholders obligatory as it is done in the M.R.T.P. Act or for that matter in the present Act by incorporating a condition to that effect in the section itself or including Sec. 294AA in the list of sections mentioned in Sec 640B or otherwise.

25. The petitioners cannot gain support from the judgment of the Gujarat High Court in Narendra Gordhan Bhain Shodhan's case (supra) because the right of a share-holder to object to the scheme for reduction of share capital cannot be compared to the right of a share-holder to object to an application for approval u/s. 294-AA of the Act because in the former case the minority shareholder is directly affected. The power of the Central Government or the Company Law Board under .s. 294AA is also not similar to the power under S. 326 of the Act in as much as S. 326 of the Act requires positive satisfaction on the points specified by the section itself whereas S. 294AA does not specify any such criteria and the statute only requires an approval of the general body by way of a special resolution.

26. Thus, while deciding an application under S. 294AA of the Act the Central Government/Company Law Board does not adjudicate on any dispute between the company and shareholder nor does it determine any right of shareholders qua the company and/or the sole selling agent and, therefore, cannot be said to be exercising judicial function. Once the consent of the share-holders is given by way of a special resolution, though in order to effectively and properly consider an application, the Central govt. Company Law Board may seek information from various sources namely various authorities connected with the company or even the creditors and shareholders ,it does not confer any right on these parties.

27. The Supreme Court in Cosmosteels Private Ltd. and Others Vs. Jairam Das Gupta and Others, has held :-

"We may also point out that a right to notice by reason of any rule of natural justice, which a party may establish, must depend for its existence upon proof of an interest which is bound to be injured by not hearing the party claiming to be entitled to a notice and to be heard before an order is passed. If the duty to give notice and to hear a party is not mandatory, the actual order passed on a matter must be shown to have injuriously affected the interest of the party which was given no notice of the matter."

28. Since the decision of the Central Government in these proceedings does not directly affect the rights of the petitioners and no real prejudice is caused to them, they cannot complain of violation of natural justice. Thus, the order cannot be set aside merely because reasons are not given. In such a case, the court will strike down a decision of an administrative authority only if the same is mala fide or perverse.

29. The Supreme Court in S.P. Gupta Vs. President of India and Others, popularly known as Judges case has, if I may say so with respect very succinctly observed : -

"We would regard the first proposition as correctly setting out the nature and purpose of the judicial function, as it is essential to the maintenance of the rule of law that every organ of the State must act within the limits of its power and carry out the duty imposed upon it by the Constitution or the law. If the State or any public authority acts beyond the scope of its power and thereby causes a specific, legal injury to a person or to a determinate class or group of persons, it would be a case of private injury actionable in the manner discussed in the preceding paragraphs. So also if the duty is owed by the State or any public authority to a person or to a determinate class or group of persons, it would give rise to a corresponding right in such person or determinate class or group of persons and they would be entitled to maintain an action for judicial redress. But if no specific legal injury is caused to a person or to a determinate class or group of persons by the act or omission of the State or any public authority and the injury is caused only to public interest, the question arises as to who can maintain an action for vindicating the rule of law and setting aside the unlawful action or enforcing the performance of the public duty. If no one can maintain an action for redress of such public wrong or public injury, it would be disastrous for the rule of law, for it would be open to the State or a public authority to act with impunity beyond the scope of its power or in breach of a public duty owed by it. The courts cannot countenance such a situation where the observance of the law is left to the sweet will of the authority bound by it, without any redress if the law is contravened. The view has therefore been taken by the courts in many decisions that whenever there is a public wrong or public injury caused by an act or omission of the State or a public authority which is contrary to the constitution or the law, any member of the public acting bona fide and having sufficient interest can maintain an action for redressal of such public wrong or public injury. The strict rule of standing which insists that only a person who has suffered a specific legal injury can maintain an action for judicial redress is relaxed and a broad rule is evolved which gives standing to any member of the public who is not a mere busy-body or a meddlesome interloper but who has sufficient interest in the proceeding. There can be no doubt that the risk of legal action against the State or a public authority by any citizen will induce the State or such public authority to act with greater responsibility and care thereby improving the administration of justice.

30. In my view, share-holder of a company though cannot complain of a direct injury, cannot be called a mere busybody or a meddlesome interloper having no interest in the proceedings at all provided he is acting bona fide, and he can certainly challenge the decision in court by way of a petition under Art. 226 of the Constitution of India on the limited grounds mentioned above and if justice of the case requires the court will issue a writ.

31. Therefore even though the order does not disclose reasons, in spite of the objections raised by the petitioners, in order to find out if the decision is vitiated on any of the above grounds, I permitted the Company Law Board to place on record the minutes of the meeting held by the Company Law Board and the relevant documents.

32. It was argued by Mr. Diwan that M/s Sayaji Milk Ltd has been having a sole selling agency arrangement for its products (Starch, Glucose, Dextrose etc.) since its inception in 1941 and a family company M/s C. Doctor & Co. which was in Starch business since 1914 was appointed as the sole selling agent of respondent No. 3 company since then. It was submitted that in accordance with the Act as amended by the Companies (Amendment) Act 1974, the approval of the Central Govt. was required for appointment of sole selling agents. Accordingly, respondent No. 3 company applied for and obtained approval of the Central Government to the appointment of M/s C. Doctor & Co. as its sole selling agents right from 1974 for the period 1972-77, 1977-82 and 1982-87. The last of such approval granted w.e.f. October 1982 was valid up to September 1987. However, before that period expired in or about January 1982, a family arrangement arrived at by way of a memorandum of understanding between two brothers of the family of one Shri V. L. Mehta who was the then Chairman-cum-Managing Director of respondent No. 3 company. Of the two brothers, one Sh. B. V. Mehta and his branch got the management of respondent No. 3 company and other assets, whereas the branch of other brother Sh. S. V. Mehta got other companies of the family including M/s C. Doctor & Co. M/s C. Doctor & Co. had a Starch Division and an Engineering Division. Since the management of M/s C. Doctor & Co. vested with Shri S. V. Mehta and his branch, it was decided to separate the Starch Division of M/s C. Doctor & Co. and by a tripartite agreement it was provided that the entire staff of Starch Division of M/s C. Doctor & Co. would be taken over by the proposed new company viz. M/s L. G. & Doctor Associates Private Limited. However, while the application was still under consideration on account of family differences Sh. S. V. Mehta and Shri V. L. Mehta developed a hostile attitude towards Sh. B. V. Mehta, Sh. S. V. Mehta and his group have set up the three petitioners to raise obstacles in the smooth functioning of the company. In fact, petitioner No. 1 was the Administrative Manager before the family arrangement and resigned immediately after Sh. B. V. Mehta and Sh. V. L. Mehta resigned from the company. It was further submitted that the total paid up capital of the company is Rs, 1,13,58,700/- with Rs. 60.00,000 equity share capital. The petitioners are three Individual shareholders, out of 4800 equity shareholders, holding amongst themselves in

aggregate 376 shares of the face value of Rs, 37,600/- amounting to approximately 0.6% of the total paid up equity share capital, which shows that they do not represent the share-holders of the company to any material extent and have no status at all in the subject matter of the petition. Only two individual shareholders objected to the resolution namely; shri P. K. Vyas and Shri V. S. Joshi. None of the three petitioners objected to the resolution approving the appointment inasmuch as petitioner No. 1 sent proxy in favour of the resolution, petitioner No. 2 remained absent and petitioner No. 3 was present and voted in favour. Petitioner No. 3 in fact volunteered and gave a speech complementing the performance of the management. It was submitted that these three persons were put up by the rival group which is acting behind the scene and thus the conduct of the petitioners is not bona fide.

33. Though the fact that the petitioners did not object to the resolution and their sudden objection to the approval may raise some doubts about their bona fides, I do not consider it proper to throw out this petition on that ground alone. Having heard lengthy arguments, in my view, it is appropriate to look at the documents which were produced by the learned counsel appearing for the Company Law Board to ascertain whether the impugned decision is on the facts of the case justified.

34. It was contended by Mr. Sibal that the special resolution of the share-holders exhausted itself when the Company Law Board refused approval on 31st May 1984 and, therefore, when the company was advised to file a fresh application, it was necessary for the company to obtain fresh consent from the general body. It was argued that it was only fair and reasonable that the share-holders should have been informed of the changed circumstances and also of the order of the Company Law Board dated 31st May 1984 rejecting the previous application of the company.

35. I do not think this argument has any force. By special resolution dated 29th Sept. 1983, the share-holders of the company had accorded their consent to the appointment of M/s L. G. & Doctor Associates Pvt. Ltd, a body corporate and sole selling agent of the company for a period of five years from 16th Oct. 1983 to 15th Oct 1988. Any change in the share-holding pattern of M/s L.G. & Doctor Associates Pvt. Ltd. or in the constitution of its Board of Directors would not, in my view, affect the resolution granting consent to the appointment of sole selling agents. In any event, the change was not such which would affect the share-holders of the applicant company because the terms of appointment remained unchanged

36. It was next contended by Mr. Sibal that under the Act special resolution requires an explanatory statement disclosing all material facts to the share-holders. Therefore, S. 173(2) of the Act should be read into S. 294AA as well and the Company Law Board must satisfy itself before granting approval that material particulars have been disclosed to the share-holders while seeking their consent at the general body. It was submitted that the family arrangement which was the

basis for passing of the said resolution was not referred in the explanatory statement and the notice was, therefore, a tricky notice and the Company Law Board should have insisted upon a fresh resolution to be obtained after issuing a proper notice in that regard.

37. I find no merit in this contention as well. It is true that under S. 173 of the Act material particulars necessary for enabling the share-holders to take decision on the subject matter of the proposed resolutions are required to be mentioned. However, the Company Law Board when it decides a question of approval has only to prima facie satisfy itself whether the notice was according to law and confirm whether the consent has been accorded by the share-holders, but it is not necessary for the Company Law Board at that stage to decide whether the notice is a tricky notice. If a shareholder has to challenge the notice and the validity of the special resolution, he can do so by separate proceedings as provided under the Act. The Company Law Board while deciding the application for approval under S. 294AA cannot embark upon detail investigation and decide on the question of a tricky notice.

38. Mr. Sibal contended that the impugned order of the Company Law Board deserves to be set aside as it is, ex facie, contrary to the guidelines and based on extraneous considerations. He submitted that the main purpose of enactment of S. 294AA of the Act is to ensure that there is no siphoning of funds and though no guidelines are given in the section itself, the Central Government has issued guidelines by way of circulars in order to ensure that this object is achieved and unnecessary expenditure is avoided. It was submitted that once the Central Government has issued guidelines it is bound by the same and if it does not do so, some cogent reasons must be given for departing from these guidelines or otherwise the action shall be deemed to be arbitrary. It was submitted that the Company Law Board while rejecting the first application for approval had given reasons why it felt that the agreement between the sole selling agent and the company did not appear to be an arm's length transaction. One of the reasons why the Company Law Board came to that conclusion was because the entire share capital of the sole selling agency was held by Shri B. V. Mehta, his wife, son, daughter and their H.U.F. and Shri B. V. Mehta was also its Chairman. By way of change, though Shri B. V. Mehta had ceased to be the Chairman his married daughter still held considerable shares and thus the objection still held valid even after re-constitution of the sole selling agency company. Learned counsel advanced considerable arguments relying on Circular No. 61.6 of the Company Law Board that a married daughter is as much a member of the family. It was submitted that the other reason why the Company Law Board felt that it was not an arm's length transaction was that the sole selling agency company had invested its entire share capital in the applicant company and thus had no financial resources for carrying-on its business of the nature contemplated. Learned counsel submitted that the share capital of the sole selling agency company had been increased very nominally and this objection thus still survived. He further submitted that the other reason why the Company Law

Board felt that it was not an arm's transaction was that the sole selling agency company, did not have substantial infrastructure facility of its own Inasmuch as it did not have proper staff, furniture, telephone, office premises etc. of its own and it was using the company's facilities for its business. Learned counsel submitted that this objection still survives because the sole selling agency company had not made any new arrangement as yet and was still continuing with the same arrangement The argument of the respondent No. 3 company that the entire staff of M/s C. Doctor & Co. was taken over by M/s L.G. & Doctor Associates Pvt. Ltd was considered by the Company Law Board and rejected when it took the previous decision and there were no fresh circumstances brought to the notice of the Company Law Board which would persuade it to change its own original decision.

39. Now, it is true that there are no satisfactory guidelines but once the Central Government/Company Law Board issues its own guidelines it must substantially adhere to these guidelines when a decision on an application for approval is taken. But the very fact that the Legislature has not provided specific guidelines in S. 294AA which would limit the exercise of powers of the Central Government to grant or refuse approval shows that wide discretion is given to the Central Government in exercise of its powers in this regard. I find that after the first application was rejected by the Company Law Board, the constitution of M/s L.G. & Doctor Associates Pvt. Ltd. was considerably changed, for instance Shri B. V. Mehta who was formerly the chairman of the sole selling agency company, and his family members divested themselves of their holdings in the sole selling agency company and also ceased to be chairman and directors. The fact that one of the married daughter is a shareholder in the sole selling agency company does not in any way, in my view, makes the decision contrary to the guidelines. Circular No. 61.6 provides that where the involvement of the proposed appointee either through himself or his family members in the selling agency is quite substantial the Board will not approve the said appointment. If however the interest of the appointee and or the family members in the selling agency is nominal, the Board approves the appointment but with certain conditions to safeguard the interest of the company. There is also another circular issued by the Government of India bearing No. 61.4 at page 176 in the book on "Clarifications and Circulars on Company Law", the relevant portion of which reads thus : -

"It has also been decided that the companies should not except with the approval of the Central Government, be allowed to appoint as sole selling agents, any company or firm in which the sons or wives of the managing directors etc., had any interest. This principle was extended to the participation of the unmarried daughters of managing directors, etc., in the sole selling agencies."

This circular indicates that a married daughter is not considered as a member of the family. The other change brought about is that the sole selling agency company also, divested itself of its share-holding in the applicant company and

also increased its paid up capital from Rs. 4 lacs to Rs. 12 lacs. The sole selling agency company also increased its staff and took some further office premises etc. All these changes in the sole selling agency company were brought to the notice of the Company Law Board in the second application by the company. The company also emphasized that the entire Starch Division of M/s C. Doctor & Company which was its previous sole selling agent was taken over by M/s L. G. & Doctor Associates and the entire staff of M/s C. Doctor & Co. had gone to M/s L. G. & Doctor Associates Pvt. Ltd. because of the tripartite agreement.

40. With the help of Mr. Aruneshwar Gupta, learned counsel for the Company Law Board, the minutes of the meeting and other documents were perused. From the brief for consideration circulated to the members of the Company Law Board by the Secretary of the Company Law Board and the minutes of the meeting held by the Company Law Board on 15th Jan. 1985 I find that though the order does not contain any reason granting the approval, the question was discussed threadbare by the Company Law Board and after that the decision was taken. It also appears from these documents that the Company Law Board had considered the oral arguments advanced by Mr. P. K. Vyas, the written representation of petitioner No. 1 herein which incidentally contains all the objections taken in the writ petition, the facts stated in the application for approval and the submissions of the company and the sole selling agent and only thereafter the Company Law Board took the impugned decision.

41. Now, considering that the company has had the benefit of the services of a sole selling agent right from its inception and the entire staff and Starch Division of M/s C. Doctor & Company ie. its previous sole selling agent was taken over by M/s L.G. & Doctor Associates Private Limited and substantial changes were brought about by M/s L.G. & Doctor Associates to meet the objections raised by the Company Law Board, if the Company Law Board thought it fit to grant the approval, I do not think that it could be said to be an arbitrary or perverse decision. Furthermore, by that time, the Company Law Board had received clarification and report of the Registrar of Companies, Gujarat which strengthened the case of the applicant company.

42. Now, it is well-settled that the court while exercising jurisdiction under Art. 226 of the Constitution of India would be slow to interfere with an executive decision relating to economic matters and must allow certain freedom to the executive. Therefore, I do not think I need go into the question whether reimbursement for previous periods ought to have been permitted by the Company Law Board or not because it involves decision on disputed question of facts and though the Company Law Board has granted the reimbursement on grounds of equity it has done so after fully considering its financial impact on the applicant company as well as the sole selling agent. Thus, assuming there are some technical and minor defects in the order, in my opinion, the order cannot be set aside on that ground.

43. In the result, the petition is dismissed with costs.