

(1987) 08 DEL CK 0027
In the Delhi High Court

Ramesh B Desai and others

APPELLANT

Vs

Union of India and others

RESPONDENT

Date of Decision : 04-08-1987

Acts Referred:

Citation : (1990) 69 CompCas 33

Hon'ble Judges : Sunanda Bhandare, J

Bench : Single Bench

Advocate : Kapil Sibal, for the Appellant; Dr. L.M. Singhvi, Anil B. Diwan, R.P. Bhatt and Aruneshwar Gupta, for the Respondent

Judgement

Ms. Sunanda Bhandare, J.—Sayaji Mills Ltd., respondent No. 3 (hereinafter referred to a "the company"), registered under the companies Act was incorporated in the year 1941. It is engaged in the manufacture of starches and its derivation, liquid glucose, dextrose, orbital and other by products. Since its inception, the company has been selling its products through a sole selling agent, C. Doctor and Company, a private limited company in starch business since 1941. On the amendment of the Companies Acts 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 the approval of the Central Government to the appointment of C. Doctor and Company as its sole selling agents for the periods 1972-77, 1977-82 and 1982-87. C. Doctor and company was a family concern of Sayaji Mills Ltd. inasmuch as the directors of 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. Mehta 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 C. Doctor and company. C. Doctor and Company had two separate divisions, namely ; (1) starch division and (2)

engineering division. Since C. Doctor and Company had vested with Shri S. V. Mehta and his branch, it was decided to separate the starch division which was agreed to be taken over by a new company, namely, L. G. and Doctor Associates P. Ltd., respondent No. 4 herein. By a separate agreement, the entire staff of the starch divisions of C. Doctor and Company was to be taken over by L. G. and Doctor Associates Pvt. Ltd. Since the sole selling agency agreement with 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 C. Doctor and Company and incorporation of L. G. and Doctor Associates Pvt. Ltd., respondent No.3 company proposed to appoint L. G. and Doctor Associates P. Ltd., respondent No. 4, as its sole selling agents. Respondent No.3 company, at its annual general meeting on September 29, 1983, obtained the consent of the shareholders to that effect by a special resolution. Respondent No. 3 company applied to the Central Government u/s 294AA of the Companies Act, 1956 (hereinafter referred to as "the Act"), for grant of approval for the appointment of respondent No. 4 as its sole selling agent with effect from October 16, 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, L. G. and Doctor Associates Pvt. Ltd., and Shri P.K. Vyas rejected the application for approval by its order dated May 31, 1984.

2. The relevant portion of the order reads thus :

(a) The sole selling agency company has been incorporated recently on August 26, 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 authorized share capital of Rs. 5 lakh and a paid-up share capital of Rs. 4 lakh. The entire share capital has been invested (Rs. 3,89,749) by it in shares of the applicant company, viz., Sayaji Mills Ltd. 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 infrastructure facilities of their own, inasmuch as they are substantial using the facilities of the 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 Ltd., as secondhand, 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 organization of its own; however, services of certain staff members of another company, C. Doctor and Company Pvt. Ltd. have since been obtained by them.

The proposed arrangement involves handling of a turnover of about Rs.20 crores of the application 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 first 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 meager paid up share capital of Rs. 4lakhs, 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 a substantial interest in the applicant company. Shri 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 of the applicant company is held by the general public and a 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 regards 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 media of the sole selling agency company, ostensibly with a view to circumvent the provisions of sections 198 and 309 of the Companies Acts 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 proposed made by the applicant company was accordingly rejected."

3. hereafter, respondent No. 3 company made an application for review dated August 13, 1984, on the ground that certain new facts had emerged. The Company Law Board, however, wrote back to respondent No. 3 company on August 25, 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 August 31, 1984, for fresh consideration of its application for approval of the appointment of respondent No. 4 as its sole selling agent with effect from October 13, 1983. The Company Law Board, thereafter sought some further clarifications from the company and also wrote to the Registrar of Companies, Gujrat, on 5th and 31st October, 1984, seeking clarification and comments. The Registrar of Companies, Gujrat sent his comments, vide letter dated November 16, 1984. Thereafter, a personal hearing was granted to the company and the 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 December 29, 1984, petitioner No. 1 who had since resigned as manager of the company and holding approximately 375 shares filed his objections of the application. On January 23, 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 articles 226 and 227 of the Constitution of India.

4. 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 u/s 294AA(3) of the Act, 1974, with effect from February 1, 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 u/s 637 of the Act by a notification dated June 24, 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. Section 294AS(1), (2) and (3) read thus :

"294AA.(1) Where the Central Government is of 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 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."

5. On a plain reading of this section, it is clear that whereas under subsection (1) of section 294AA, 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 a notification in the Official Gazette prohibit appointment of sole selling agents for the sale of such goods for a period specified in the notification. Sub-section (2) of 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 the previous approval of the Central Government. Sub-section (3) of section 294AA deals with

appointment of a sole selling agent by a company having a paid up share capital of Rs.50 lakhs 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.

6. It is the common case of the parties that in the present case, since the paid-up share capital of the company is more than Rs. 50 lakhs, both conditions as envisaged in sub-section (3) of section 29AA would have to be fulfilled before appointment of a sole selling agent is made by the company.

7. Mr. Sibal, learned counsel for the petitioners, contended that the power of the Central Government under sub-section (3) of section 294AA is quasi-judicial in nature inasmuch as the act of approval requires the ascertainment of facts, 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 favorable 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 learned counsel on the judgment of the Supreme Court in Rampur Distillery and Chemical Co. Ltd. v. Company Law Board [1970] 40 C C 916. It was submitted that under sub-section (5) of section 294AA a company seeking approval is required to furnish such particulars as may be prescribed. Though the section itself does not give any 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.

8. On the other hands 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, 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 learned counsel on the judgment of the Bombay High Court in Nanavati and Co. (Pvt.) Ltd. v. R. C. Dutt [1975] 45 C C 91 to support his contention that the function performed is purely administrative in nature.

9. In Rampur Distillery's case [1970] 40 C C 916, the Supreme Court was dealing with the power of the Company Law Board u/s 326, sub section (2), of

the Act which invested the Central Government with 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 as managing agent and whether the conditions of the managing agency agreement proposed are fair and reasonable and whether the proposed managing agent has fourfold the conditions which the Central Government has required him to fulfill. 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 therein. The section specifically lays down conditions in which the Central Government may override the resolution of the generally 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.

10. The Division Bench of the Bombay High Court in Nanavati's case [1975] 45 Comp Cas 91, analysing the section which concerned the court in that case held that the power of the Company Law Board u/s 294(5) was purely administrative in nature.

11. Section 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. Clause (b) of sub section (5) empowers the Central Government to appoint a person to investigate and report on the terms and conditions of appointment of sole selling in case in case the company refuses or neglects to furnish the information asked for by the Central Government. Under clause (c) of sub section (5), the company Law Board is called 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 interest 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 to longer prejudicial to the interest 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 disposal of the dispute is necessary since the provisions of clause (c) of section 294(5) require that the Central Government takes a decision on facts directly collected from the company and in the light of such other circumstances as may 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 an express nor an implied provision in in the Act nor any attending circumstances which indicate the necessity to act judicial before the opinion contemplated is formed, the power under this section is administrative in its character and note quasi-judicial.

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

13. The classification of administrative action as purely administrative quasi-judicial poses a most difficult problem, because different tests apply for different situations. However, it is now settled that an authority or a body which has been given the power to determine questions affecting the rights of a 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 judicial. Following Province of Bombay Vs. Kusaldas S. Advani and Others, , the Supreme Court in a number of cases observed that an inference whether an authority acting under a statue has to act judicial will depend on the express provisions of the statue 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 statue. This judicial thinking changed following the landmark judgment of the House of Lords in Ridge v. Balwin [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 authorities 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, a writ of certiorari will not issue." This 1970 SC 150, 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 land mark judgment was the enlargement of the scope of the writ of certiorari. The Supreme Court observed as under (at pages 154 and 156):

"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 judicial 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 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 iudex propriae causae*), 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 inquiries 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 between administrative inquiries and quasi-judicial inquiries 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 inquiries as well as administrative inquiries. An unjust decision in an administrative inquiry may have more far-reaching effect than a decision in a quasi-judicial inquiry."

14. 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 recognized 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 proceeding for the purpose of applicability of the doctrine of natural justice. *Bhagwati J.* expressing the majority view, observed (at page 626):

"The inquiry must, therefore, always be: does fairness in actions demand that an opportunity to be should be given to the person affected?"

Now, if this be the test 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 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 must apply equally in an administrative inquiry which entails civil consequences."

15. 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 a 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: Ex parte Santillo* [1981] QB 778, "Rules of natural justice or of fairness are not cut and dried. They vary infinitely."

16. The Supreme Court in *A.K. Roy and Others Vs. Union of India (UOI) and Others*, has observed thus (at page 749) :

"Two fundamental principles of natural justice are commonly recognized, namely, that an adjudicator should be disinterested and unbiased (name Judge in cause 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" as "one sadly lacking in precision", [1914] 1 KB 160 and as 'vacuous', *Local Government Board v. Arlidge* [1915] AC 120. The principles of natural to the board 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 Macmillan in *Ridge* [1964] AC 40, 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 realization 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."

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

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

18. 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 authorities while performing purely administrative functions as well and the rule requiring reasons to be given in support of an order is like the principles of audi alteram partem, a basic principles 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 reasons because these orders are also subject to judicial review.

19. 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 the conclusions reached. Only in this way can opinion or decisions recorded be shown to be manifestly just and reasonable."

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

21. It is necessary at this stage to consider the statutory scheme in the light of the object for which Parliament conferred this power on the Central Government/ Company Law Board. The section permits interference with the 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 Company having a paid up share capital of Rs. 50 lakhs 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 appoint 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."

22. The Central Government has framed rules in exercise of the powers conferred by section 29AA read with clause (a) of sub-section (1) of section 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 of sole selling agents or selling agent for the buying or purchasing of goods on behalf of the form company u/s 29AA of the Act is required to apply as permanent 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.

23. It is the rights of every part affected by a decision to know the reasons. In a case where the 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 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.

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

25. 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 section 294AA of the Act read with section 640B of the Act. u/s

640B, a company is required to inform its members by advertisement about its intention to make an application to the Central Government under the specified sections of the Act. Section 294AA is not included in section 640B of the Act. As far as sections 294AA is concerned, there is a departure from the pattern of section 640B. It was submitted that all sections mentioned in section 640B even do not necessarily imply a quasi-judicial power but in case of section 294AA, there is no doubt that the shareholders are not in the 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, and the Companies Act. Reference was also made to section 29 of the monopolies and Restrictive Trade Practices Act applicable to sections 21 to 23 of the Monopolies and Restrictive Trade Practices Act section 640B applicable to sections 259, 268, 269, 310, 311, 408, 409, etc. It was further argued that there is no lie or dispute between the shareholders and the applicant company or sole selling agents or the Company Law Board because there is no legal right of the shareholders in the proceedings for approval. To support this argument, great emphasis was laid on the rights of the shareholders in a company. It was submitted that the legal rights of the shareholders 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 winding up after all liabilities are discharged. The shareholders have no right to interfere with the management of the company even by a dence, the shareholders have a right to remove them according to law or not to re-elect them.

26. 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 "lie" inasmuch as the court in exercise of its power under article 226 of the Constitution of India interfere 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 article 226 of the Constitution of India, he has also a right to know the reason. Reliance was placed by learned counsel on the judgment of the Gujarat High Court dated November 19, 1981, in the case of Company Petition No. 49 of 1978 (Shri Narendra Gordhan Bhain Shodhan v Shri Arbudha Mills Limited, Ahmadabad) in support of this contention. It was submitted that on this case it was held that in proceedings for confirmation under sections 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 shareholders to object and the same logic applies to proceedings u/s 294AA of the Act and the shareholders can object to the approval though the statute is not explicit in that behalf.

27. I find substantial force in the argument of Mr. Diwan that there is no lie 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 nor does it provide for notice to the shareholders or the creditors inviting them to file their objections. As observed by the Supreme Court in *Life Insurance Corporation of India v. Escorts Ltd.* [1986] 59 C C 548, the rights of the shareholders 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 mis-management ; (vi) to apply to the court for winding up of the company ; and (vii) to share in the surplus on winding up.

28. Palmer in his *Company Law*, 21st edition 1982, page 853, has observed that :

"The general clause in the articles vesting 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 the manner laid down by statute and articles. It further means that the shareholders 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 general 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 (section 184), and, if the conditions of section 75 of the 1980 Act are satisfied, to petition for the alternative remedy."

29. Furthermore, section 291 of the Act provides that except where an 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 powers. 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 shareholders 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 u/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 u/s 294AA of the Act, it would have provided for it by making notice to the shareholders obligatory as it is done in the Monopolies and Restrictive Trade Practices Act or for that matter in the present Act by

incorporating a condition to that effect in the section itself or including section 294AA in the list of sections mentioned in section 640B or otherwise.

30. The petitioners cannot gain support from the judgment of the Gujarat High Court in Narendra Gordhan Bhain Shodhan's case, because the right of a shareholder to object to the scheme for reduction of share capital cannot for approval u/s 294AA 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 u/s 294AA is also not similar to the power u/s 326 of the Act inasmuch as section 326 of the Act requires positive satisfaction on the points specified by the section itself whereas section 294AA does not specify any such criteria and the statute only requires an approval of the general body by way of a special resolution.

31. Thus, while deciding an application u/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 any judicial function. Once the consent of the shareholders is given by way of a special resolution, though in order to effectively and properly consider an application, the Central Government/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.

32. The Supreme Court in *Cosmosteels P Ltd v. Jairam Das Gupta* [1978] 48 C C 312 has held :

"We may also point out that a right to notice by reasons of any rule of natural justice, which a party has to 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."

33. 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 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.

34. The Supreme Court in *S.P. Gupta Vs. President of India and Others*, , popularly known as the Judges" case has, if I may say so with respect very succinctly observed (at page 190) :

"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 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 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 public duty owed by it. The courts cannot countenance such a situation where the observance of the law is left uncontravened. 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 redress 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 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.

35. In my view, though a shareholder of a company cannot complain of a direct injury, he cannot be called a mere busy body 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 article 226 of the Constitution of India on the limited ground mentioned above and if justice of the case requires, the court will issue a writ.

36. 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 minute of the meeting held by the Company Law Board and the relevant documents.

37. It was argued by Mr. Diwan that Sayaji Mills 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 C. Doctor and 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 Government was required for appointment of sole selling agents. Accordingly, respondent No. 3 company applied for the obtained approval of the Central Government to the appointment of C. Doctor and 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 with effect from October, 1982, was valid up to September, 1987. However, before that period expired in or about January, 1982 (sic), a family arrangement was 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 Shri B V Mehta and his branch got the management of respondent No. 3 company and other assets, whereas the branch of the other brother Shri S V Mehta got other companies of the family including C. Doctor and Co. C. Doctor and Co. had a starch division and an engineering division. Since the management of C. Doctor and Co vested with Shri S V Mehta and his branch, it was decided to separate the starch division of C Doctor and Co. and by a tripartite agreement it was provided that the entire staff of the starch division of c Doctor and Co. would be taken over by the proposed new company, viz, L. G. and Doctor Associates P Ltd. However. while the application was still under consideration, on account of family differences, Shri S V Mehta and Shri V L Mehta developed a hostile attitude towards Shri B V Mehta Shri 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 SHri B V Mehta and Shri 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 4,800 equity shareholders, holding amongst themselves in the aggregate 376 shares of the face 37,600 amounting to approximately 0.6% of the total paid up equity share capital which shows that they do not represent the shareholders 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 petitioner objected to the resolution approving the the appointment inasmuch as petitioner No. 1 sent a proxy in favor of the resolution No.2 remained absent and petitioner No.3 was present and voted in favor. 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.

38. Though the fact that the petitioners did not object to the resolution and their sudden objection to the approval may raise some doubt 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 learned counsel appearing for the Company Law Board to ascertain whether the impugned decision is, on the facts, justified.

39. It was contended by Mr. Sibal that the special resolution of the shareholders exhausted itself when the Company Law Board refused approval on May 31, 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 shareholder should have been informed of the changed circumstances and also of the Company Law Board's May 31, 1984, rejection of the previous application of the company.

40. I do not think this argument has any force. By a special resolution dated September 29, 1983, the shareholders of the company had accorded their consent to the appointment of L G and Doctor Associate Pvt Ltd as a body corporate and sole selling agent of the company for a period of five years from October 16, 1983 to October 15, 1988. Any change in the shareholding pattern of L G and Doctor Associate 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 as would affect the shareholder of the applicant company because the terms of appointment remained unchanged.

41. It was next contended by Mr. Sibal that under the Act, special resolution requires an explanatory statement disclosing all material facts to the shareholders. Therefore, section 173(2) of the Act should be read into section 294AA as well and the Company Law Board must satisfy itself before granting approval that material particulars have been disclosed to the shareholders while seeking their consent. On the basis for passing of the said resolution was not referred to in 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.

42. 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 shareholders to take a decision on the matter are to be disclosed. 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 shareholders, but it is not necessary for the Company Law Board at that stage to decide whether the notice is a tricky 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 a detailed investigation and decide on the question of tricky notice.

43. 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 section 294AA of the Act is to ensure that 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 for 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 reason 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 HUF 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 reconstitution 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 inasmuch 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 survives. He further 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 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 respondent No. 3 and company that the entire staff of C Doctor and Co. was taken over by L G and 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.

44. 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 section 294AA which would limit the exercise of powers of the Central

Government to grant or refuse approval shows that a 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 L G and Doctor Associates Pvt Ltd. was considerably changes. 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 its chairman and directors. The fact that one of the married daughters is a shareholder in the sole selling agency company, does not in any way, in my view, make the decision contrary to 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 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."

45. This circular indicates that a married daughter is not considered a member of the family. The other change brought about is that the sole selling agency company also divested itself of its shareholding in the applicant company and also increased its paid-up capital from Rs. 4 lakhs to Rs. 12 lakhs. The sole selling agency company also increased its staff and took some further office premises, etc. All these changes in the sole selling the second application by the company. The company also emphasized that the entire starch division of C Doctor and Company, which was its previous sole selling agent, was taken over by L G and Doctor Associates and the entire staff C Doctor and Co. had gone to L G and Doctor Associates Pvt Ltd because of the tripartite agreement.

46. 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 to the Company Law Board and the minutes of the meeting held by the Company Law Board on January 15, 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.

47. Now, considering that the company has had the benefit of the services of a sole selling agent right from its inception and that the entire staff of starch division of C Doctor and Company, i.e., its previous sole selling agent was taken over by L G and Doctor Associates P Ltd. and substantial changes were brought about by L G and 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 the clarification and report of the Registrar of Companies, Gujarat, which strengthened the case of the applicant company.

48. Now, it is well-settled that the court, while exercising jurisdiction under article 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 questions of fact 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.

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