

(2010) 11 SHI CK 0279
In the High Court Of Himachal Pradesh
Case No : CWP (T) No. 2115 of 2008

Suman Sharma

APPELLANT

Vs

State of Himachal Pradesh and Others

RESPONDENT

Date of Decision : 29-11-2010

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 17
Constitution of India, 1950 — Article 14, 16, 226, 32
Contract Act, 1872 — Section 23

Citation : (2010) 11 SHI CK 0279

Hon'ble Judges : Rajiv Sharma, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Rajiv Sharma, J.—The material facts necessary for the adjudication of this petition are that the Petitioner passed her matriculation examination from Himachal Pradesh Board of School in the year 1986. She obtained Teachers's Certificate Higher from Karnatka Secondary Education Examination Board in the year 1988. Respondent-State decided to fill up the post of J.B.T. teachers in various districts. Petitioner's name was also sponsored by the employment exchange to the Himachal Pradesh Public Service Commission. She was issued call letter on 26.12.1989, pursuant to which, she appeared before the interview Board on 12th January, 1990. She was also offered appointment on 7th April, 1992. She was issued one month's notice on 1st March, 1993. She preferred an Original Application No. 481 of 1993 before the learned erstwhile Himachal Pradesh Administrative Tribunal on 1st March, 1993. She was granted interim relief on 22.03.1993. She was confirmed on 13.05.1999 w.e.f. 01.10.1998 and was subsequently promoted as Head Teacher on 20.07.2006. This Court passed orders on 30.12.2008, 21.04.2009, 08.05.2009 and 13.07.2009 to ascertain whether any decision has been taken by the Respondent-State with regard to the equivalence of the certificate obtained by the Petitioner from Karnatka Secondary Education Examination Board or not. The Court has passed the following order on

13.07.2009:

The stand of the State is that the degree/certificate which the Petitioner has obtained from Karnatka Secondary Education Examination Board is not recognized by the State of Himachal Pradesh. The State was directed to produce the copy of the decision on record. However, the State has failed to do so despite opportunities granted to it repeatedly. In these circumstances, let a responsible Officer, not below the rank of Additional Secretary (Education) remain present tomorrow to explain the same.

List on 14.07.2009.

2. Thereafter, the Court has passed the order on 14.07.2009. The operative portion of the same reads thus:

Accordingly, the State Government is directed to decide the issue objectively. Needless to add the decision shall be guided by the instructions issued by the Central Government in the year, 1952 (Annexure A-8), as well as instructions laid down in Handbook on Personnel Matters, 2nd Edition, Volume-1. The State shall also take into consideration that the diploma awarded in the present case is by the Board created by the Act of State of Karnatka. The decision shall be placed on record within a period of four weeks from today.

3. The Court was informed by the learned Deputy Advocate General that the State has taken a decision on 07.11.2009 not to recognize JBT Course from Karnatka Secondary Education Examination Board for the purpose of employment in Himachal Pradesh. Mr. Dilip Sharma, learned Counsel for the Petitioner sought four weeks time to seek instructions. Thereafter, he has moved an application bearing C.M.P. No. 958 of 2009 under Order 6 Rule 17 of the Code of Civil Procedure, seeking amendment of the petition to assail the decision dated 07.11.2009. The same was allowed by this Court on 22.12.2009 and the amended petition was permitted to be taken on record. The Principal Secretary (Education) was directed by this Court on 07.05.2010 to look into the matter in view of the judgment rendered by the Hon"ble Supreme Court in Dr. B.L. Asawa Vs. State of Rajasthan and Others, . Thereafter, the learned Deputy Advocate General has placed on record copy order dated 12.05.2010, whereby the matter was re-looked and fresh decision was taken.

4. According to Mr. Dilip Sharma, learned Counsel for the Petitioner, once the certificate has been issued by a duly constituted Karnatka Secondary Education Examination Board, the same is required to be treated as valid certificate for the purpose of employment. He also contended that neither the decision dated 07.11.2009 nor the decision taken on 12.05.2010 is in conformity with law. He also argued that the decisions taken on 07.11.2009 and 12.05.2010 shall apply prospectively and the appointment letter issued to the Petitioner is valid. In other words, his submission is that the decisions taken on 07.11.2009 and 12.05.2010 shall not apply retrospectively. He lastly contended that his client is working since 07.04.1992 in the Respondent Board and has been confirmed and further

promoted to the post of Head Teachers on 20.07.2006.

5. Mr. P.M. Negi, learned Deputy Advocate General has supported the decisions dated 07.11.2009 and 12.05.2010.

6. I have heard the learned Counsel for the parties and gone through the pleadings carefully.

7. Petitioner has been found suitable by the Himachal Pradesh Public Service Commission, which led to her appointment on 07.04.1992. Petitioner's appointment was on regular basis and despite that she had been issued one month's notice on 1st March, 1993. She initially worked as J.B.T. teacher and thereafter as Head Teacher on the basis of interim order passed by the learned Tribunal. Petitioner has obtained Teachers Certificate Higher from Karnatka Secondary Education Examination Board. The Karnatka Secondary Education Examination Board has been constituted under the Act.

8. It is apparent from the pleadings of the parties that the Respondent-State had taken a decision not to recognize the degrees/certificates/diplomas issued by Karnatka Secondary Examination Board on 07.11.2009. The Respondent-State was directed to have a re-look into the matter, however, the same decision was reiterated on 12.05.2010. The Respondent-State has not taken into consideration at all the syllabus prescribed by Karnatka Secondary Education Examination Board and other Institutions recognized by the State of Himachal Pradesh. So far as the decision dated 07.11.2009 is concerned, it was neither speaking nor detailed. The decision dated 07.11.2009 reads thus:

I am directed to refer to your letter No. EDN-C-F(1)-2/2009 dated 7th November, 2009 on the subject cited above and to say that the matter has been examined in the Department of Personnel based on the views/facts conveyed by you and it has been decided not to recognize JBT Course from Karnatka Secondary Education Examination Board for the purpose of employment in Himachal Pradesh.

9. Since the decision was neither speaking nor detailed, this Court had directed the Principal Secretary (Education) to have a re-look into the matter and thereafter, as noticed above, the order dated 12.05.2010 was issued.

10. Mr. Dilip Sharma, learned Counsel for the Petitioner, during the course of hearing, has drawn the attention of the Court to office memorandum dated 30th September, 1952 (Annexure P-8), which reads thus:

1. The undersigned is directed to say that it has been decided, in consultation with the Union Public Service Commission, that in the case of degrees/diplomas awarded by Universities in India which are incorporated by an Act in India, no formal orders recognizing such degrees/diplomas need be issued by Government. Such degrees/diplomas should be recognized automatically, for the purpose of employment under the Central Government

2. Similarly, no orders are required for the formal recognition of any certificate or diploma awarded by Boards of Secondary and Intermediate Education duly set up and recognized by the Central Government or the State Government.

3. If, however, there is any doubt whether a particular University is or is not incorporated by an Act of the Legislature, or the degree or diploma to which a specified degree or diploma should be regarded as equivalent, a reference should be made to the Ministry of Education for clarification. Doubts, if any, concerning Education Boards may be similarly clarified.

4. These orders have been issued in consultation with the Comptroller and Auditor General of India in their application to appointments under the Indian Audit and Accounts Department.

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11. In the decision taken on 12.05.2010, there is complete mis-reading of office memorandum dated 30th December, 1952. It is apparent from paragraph No. 2 of the office memorandum dated 30th September, 1952 that no orders are required for the formal recognition of any certificate or diploma awarded by Boards of Secondary and Intermediate Education duly set up and recognized by the Central Government or the State Government. It shows lack of application of mind by the decision making authority. The other ground assigned in paragraph No. 4 of the decision dated 12.05.2010 is that in Himachal Pradesh, the entrance test is prescribed for filling up the post of J.B.T.. However, fact of the matter is that in Karnatka, there is no separate examination for entrance. The certificate awarded by a duly set-up Board cannot be declared as invalid. What was required to be seen by the decision making authority, was whether the certificate issued by the Karnatka Board was duly established under the Act or not. It was necessary for the decision making authority to compare at least syllabus prescribed by the Karnatka Secondary Education Board vis-?-vis Board of Himachal Pradesh and other Boards recognized by the State of Himachal Pradesh for J.B.T. courses. The other ground assigned by the decision making authority is that the candidates who passes J.B.T. courses from State of Himachal Pradesh are well aware about the local language, culture, curriculum and syllabus. This is also not a cogent reason to deny the recognition to a particular course. As per the norms, only the preference is given by the State to the candidates knowing the local culture, language etc.. The Petitioner belongs to the State of Himachal Pradesh. She has passed her matriculation examination from the State of Himachal Pradesh and was well conversant with the local language and culture etc. of the State of Himachal Pradesh. It is true that it is for the State or the Institution concerned to grant equivalence etc. to degrees/diplomas/ certificates for the purpose of employment, however, it is equally true that the decision should not be arbitrary or unreasonable. In this case, the decision not to treat the certificate obtained by the Petitioner from Karnatka Secondary Education Board, is arbitrary, as discussed hereinabove. The certificate awarded to the Petitioner is by the Board duly set up under the State Act.

12. Their Lordships of the Hon^{ble} Supreme Court in Dr. B.L. Asawa Vs. State of Rajasthan and Others, have held that a Post-graduate Medical Degree granted by a University duly established by statute in India and which has also been recognized by the Indian Medical Council Act has ipso facto to be regarded, accepted and treated as valid throughout our country. Their Lordships have held as under:

11. The University of Bihar at Muzaffarpur is one duly established by statute and it is fully competent to conduct examinations and award degrees. The Degree of Doctor of Medicine (Forensic Medicine) M. D. (Forensic Medicine) of the University of Bihar is included in the Schedule to the Indian Medical Council Act, 1956 as a degree fully recognised by the Indian Medical Council which is the paramount professional body set up by statute with authority to recognise the medical qualifications granted by any University or Medical Institution in India. A Post-graduate Medical Degree granted by a University duly established by statute in this country and which has also been recognised by the Indian Medical Council by inclusion to the Schedule of the Medical Council Act has ipso facto to be regarded, accepted and treated as valid throughout our country. In the absence of any express provision to the contrary, such a degree does not require to be specifically recognised by other Universities in any State in India before it can be accepted as a valid qualification for the purpose of appointment to any post in such a state. The Division Bench of the High Court was, in our opinion, manifestly in error in thinking that since the post-graduate degree possessed by the Appellant was not one obtained from the University of Rajasthan, it could not be treated as a valid qualification for the purpose of recruitment in question in the absence of any specific order by the University of Rajasthan recognising the said degree or declaring it as an equivalent qualification. It is common ground before us that the University of Rajasthan does not conduct post-graduate examinations in the subject of Forensic Medicine and it does not award the degree of M. D. (Forensic Medicine). In order that there should be scope for declaration of "equivalence" of a qualification obtained from another body, there can be declaration of equivalence only as between a qualification obtained from a body different from the one awarded by the concerned University. When the University of Rajasthan does not conduct any examination for the award of the degree of M. D. (Forensic Medicine), there cannot be any question of declaration of "equivalence" in respect, of such a degree awarded by any University. Unfortunately, the State Public Service Commission as well as the Division Bench of the High Court failed to notice this crucial aspect. We may also point out that the declaration of "equivalence" referred to in S. 23A of the Rajasthan University Act as well as in Clause (vii) of Ordinance No. 65 of the Rajasthan University Ordinances can only be in respect of qualifications other than basic or Post-graduate degrees awarded by other statutory Indian Universities in the concerned subjects. In the case of a Post-graduate degree in the concerned subject awarded by a statutory Indian University, no recognition or declaration of equivalence by any other University is called for, This is all, the more so in the

case of a medical degree basic as well as Postgraduate that is awarded by a statutory Indian University and which has been specifically recognised by the Indian Medical Council.

13. In the instant case, besides the authoritative law laid down by their Lordships of the Hon'ble Supreme Court, the office memorandum has been issued by the State Government, as noticed above, on 30th September, 1952 (Annexure P-8), whereby no separate orders are required for the formal recognition of any certificate or diploma awarded by Boards of Secondary and Intermediate Education duly set up and recognized by the Central Government or the State Government. The notification dated 30th September, 1952 (Annexure P-8) has not been superseded/rescinded till date.

14. The matter is required to be considered from another angle. In case the duly awarded degrees/certificates/diplomas are not equated/treated as equivalent by a particular State, it would lead to balkanization. It would also be against the federal structure of the Constitution, which is the basic feature of the Constitution. The degrees/diplomas/certificates issued by a duly recognized Institutions set up by the Central Act or State Act are to be treated valid for the purpose of education/employment.

15. Mr. P.M. Negi, learned Deputy Advocate General has also drawn the attention of the Court to letter dated 16th January, 1985. A bare perusal of this letter suggests that no decision has ever been taken by the State to de-recognize or not to treat the degrees/diplomas/certificates awarded by the Karnatka Secondary Education Board as valid. The names of the Institutes, whose J.B.T. courses have been de-recognized by the State, have been specifically mentioned therein. The name of Karnatka Secondary Education Board has not been mentioned therein.

16. Petitioner has not concealed any material facts at the time when she had applied for the post in question. She had supplied all the documents, as required, pursuant to which she has been appointed on 7th April, 1992. She was appointed on regular basis and her services could not be terminated, only by issuing one month's notice on 1st March, 1993. When the notice was issued to the Petitioner on 1st March, 1993, no decision has been taken by the State either to recognize or not the certificates obtained by the Petitioner. The decision was taken by the Respondent-Board only on 07.11.2009 followed by decision dated 12.05.2010. The rights which had accrued to the Petitioner on the basis of the certificate obtained by her in 1988 cannot be destroyed by applying the two decisions retrospectively. Clause-7 of the appointment letter of the Petitioner is like "Henry-VIII Clause", as discussed by their Lordships of the Hon'ble Supreme Court in Central Inland Water Transport Corporation Limited and Another Vs. Brojo Nath Ganguly and Another, . Their Lordships have held as under:

76. Under which head would an unconscionable bargain fall? If it falls under the head of undue influence, it would be voidable but if it falls under the head of

being opposed to public policy, it would be void. No case of the type before us appears to have fallen for decision under the law of contracts before any court in India nor has any case on all fours of a Court in any other country been pointed out to us. The word "unconscionable" is defined in the Shorter Oxford English Dictionary, Third Edition, Volume II, page 2288, when used with reference to actions. etc. as "showing no regard for conscience; irreconcilable with what is right or reasonable". An unconscionable bargain would, therefore, be one which is irreconcilable with what is right or reasonable.

93. The normal rule of Common Law has been that a party who seeks to enforce an agreement which is opposed to public policy will be non-suited. The case of *A. Schroeder Music Publishing Co. Ltd. v. Macaulay* 1974 1 WLR 1308, however, establishes that where a contract is vitiated as being contrary to public policy, the party adversely affected by it can sue to have it declared void. The case may be different where the purpose of the contract is illegal or immoral. In *Kedar Nath Motani and Others Vs. Prahlad Rai and Others*, reversing the High Court and restoring the decree passed by the trial court declaring the Appellants' title to the lands in suit and directing the Respondents who were the Appellants' benamidars to restore possession, this Court, after discussing the English and Indian law on the subject, said (at page 873) (of SCR): (at Pp. 218-219 of AIR):

The correct position in law, in our opinion, is that what one has to see is whether the illegality goes so much to the root of the matter that the Plaintiff cannot bring his action without relying upon the illegal transaction into which he had entered. If the illegality be trivial or venial, as stated by Williston and the Plaintiff is not required to rest his case upon that illegality, then public policy demands that the Defendant should not be allowed to take advantage of the position. A strict view, of course, must be taken of the Plaintiff's conduct, and he should not be allowed to circumvent the illegality by resorting to some subterfuge or by misstating the facts. It however, the matter is clear and the illegality is not required to be pleaded or proved as part of the cause of action and the Plaintiff recanted before the illegal purpose was achieved, then, unless it be of such a gross nature as to outrage the conscience of the Court, the plea of the Defendant should not prevail.

The types of contracts to which the principle formulated by us above applies are not contracts which are tainted with illegality but are contracts which contain terms which are so unfair and unreasonable that they shock the conscience of the court. They are opposed to public policy and require to be adjudged void.

112. In the result, both these Appeals fail and are dismissed but the order passed by the Calcutta High Court is modified by substituting for the declaration given by it a declaration that Clause (i) of Rule 9 of the "Service, Discipline and Appeal Rules 1979" of the Central Inland Water Transport Corporation Limited is void u/s 23 of the Contract Act, 1872, as being opposed to public policy and is also ultra vires Article 14 of the Constitution to the extent that it confers upon the Corporation the right to terminate the employment of a permanent employee

by giving him three months notice in writing or by paying him the equivalent of three months basic pay and dearness allowance in lieu of such notice.

17. Respondents knew about the qualification obtained by the Petitioner when she submitted her application for consideration for the post of J.B.T. Petitioner had been working for the last 18 years as J.B.T. teacher and her services cannot be terminated on the basis of the decision dated 07.11.2009 and 12.05.2010, which according to the Court are not valid. Whether to recognize a particular degree/certificate/diploma will fall in the realm of policy decision. However, the policy decision has to be taken in conformity with Articles 14 and 16 of the Constitution of India. The decision is required to be taken after taking into consideration all the relevant material available on record.

18. Their Lordships of the Hon'ble Supreme Court in *Kumari Shrilekha Vidyarthi and Others Vs. State of U.P. and Others*, have held that Article 14 applies also to matters of governmental policy and if the policy or any action of the Government, even on contractual matters, fails to satisfy the test of reasonableness, it would be unconstitutional. Their Lordships have held as under:

It can no longer be doubted at this point of time that Article 14 of the Constitution of India applies also to matters of governmental policy and if the policy or any action of the Government, even in contractual matters, fails to satisfy the test of reasonableness, it would be unconstitutional. See *Ramana Dayaram Shetty Vs. International Airport Authority of India and Others*, and *Kasturi Lal Lakshmi Reddy, Represented by its Partner Shri Kasturi Lal, Jammu and Others Vs. State of Jammu and Kashmir and Another*, In *Col. A.S. Sangwan Vs. Union of India (UOI) and Others*, , while the discretion to change the policy in exercise of the executive power, when not trammled by the statute or rule, was held to be wide, it was emphasised as imperative and implicit in Article 14 of the Constitution that a change in policy must be made fairly and should not give the impression that it was so done arbitrarily or by any ulterior criteria. The wide sweep of Article 14 and the requirement of every State action qualifying for its validity on this touch-stone, irrespective of the field of activity of the State, has long been settled. Later decisions of this Court have reinforced the foundation of this tenet and it would be sufficient to refer only to two recent decisions of this Court for this purpose. In *Dwarkadas Marfatia and Sons Vs. Board of Trustees of the Port of Bombay*, the matter was re-examined in relation to an instrumentality of the State for applicability of Article 14 to all its actions. Referring to the earlier decisions of this Court and examining the argument for applicability of Article 14, even in contractual matters, *Sabyasachi Mukharji, J.* (as the learned Chief Justice then was) " speaking for himself and *Kania, J.*, reiterated that every action of the State or an instrumentality of the State must be informed by reason..... actions uninformed by reason may be questioned as arbitrary in proceedings under Article 226 or Article 32 of the Constitution. *Ranganathan, J.* did not express any opinion on this point but agreed with the conclusion of the other learned Judges on the facts of the case. It is obvious that the conclusion on the

facts of the case could not be reached by Ranganathan, J. without examining them and this could be done only on the basis that it was permissible to make the judicial review. Thus, Ranganathan, J. also applied that principle without saying so. In view of the wide-ranging and, in essence, all pervading sphere of State activity in discharge of its welfare functions, the question assumes considerable importance and cannot be shelved. The basic requirement of Article 14 is fairness in action by the State and we find it difficult to accept that the State can be permitted to act otherwise in any field of its activity, irrespective of the nature of its function, when it has the uppermost duty to be governed by the rule of law. Non arbitrariness, in substance, is only fair play in action. We have no doubt that this obvious requirement must be satisfied by every action of the State or its instrumentality in order to satisfy the test of validity.

19. Their Lordships of the Hon^{ble} Supreme Court in *Union of India and Others Vs. Dinesh Engineering Corporation and Another etc.*, have held that the Courts can scrutinize whether the policy in question is formulated keeping in mind all the relevant facts and whether the said policy can be held to be beyond the pale of discrimination or unreasonableness on the basis of the material on record. Their Lordships have held as under:

A perusal of the said letters shows that the Board adopted this policy keeping in mind the need to assure reliability and quality performance of the governors and its spare parts in the context of sophistication, complexity and high degree of precision associated with governors. It is in this background that in para (i) the letter states that the spares should be procured on proprietary basis from EDC. This policy proceeds on the hypothesis that there is no other supplier in the country who is competent enough to supply the spares required for the governors used by the Indian Railways without taking into consideration the fact that the writ Petitioner has been supplying these spare parts for the last over 17 years to various Divisions of the Indian Railways which fact has been established by the writ Petitioner from the material produced with both before the High Court and this Court and which fact has been accepted by the High Court. This clearly establishes the fact that the decision of the Board as found in the letter dated 23-10-1992 suffers from the vice of non-application of mind. On behalf of the Appellants, it has been very seriously contended before us that the decision vide letter dated 23-10-1992 being in the nature of a policy decision, it is not open to Courts to interfere since policies are normally formulated by experts on the subjects and the Courts not being in a position to step into the shoes of the experts, cannot interfere with such policy matters. There is no doubt that this Court has held in more than one case that where the decision of the authority is in regard to a policy matter, this Court will not ordinarily interfere since these policy matters are taken based on expert knowledge of the persons concerned and Courts are normally not equipped to question the correctness of a policy decision. But then this does not mean that the Courts have to abdicate their right to scrutinize whether the policy in question is formulated keeping in mind all the relevant facts and the said policy can be held to be beyond the pale of

discrimination or unreasonableness, bearing in mind the material on record. It is with this limited object if we scrutinise the policy reflected in the letter dated 23-10-1992, it is seen that the Railways took the decision to create a monopoly on proprietary basis on EDC on the ground that the spares required by it for replacement in the governors used by the Railways required a high degree of sophistication, complexity and precision, and in the background of the fact that there was no party other than EDC which could supply such spares. There can be no doubt that an equipment of the nature of a spare part of a governor which is used to control the speed in a diesel locomotive should be a quality product which can adhere to the strict scrutiny/standards of the Railways, but then the pertinent question is: has the Board taken into consideration the availability or non-availability of such characteristics in the spare parts supplied by the writ Petitioner or, for that matter, was the Board alive to the fact that like EDC the writ Petitioner was also supplying the spare parts as the replacement parts for the GE governors for the last over 17 years to the various Divisions of the Railways. A perusal of the letter dated 23-10-1992 does not show that the Board was either aware of the existence of the writ Petitioner or its capacity or otherwise to supply the spare parts required by the Railways for replacement in the governors used by it, an ignorance which is fatal to its policy decision. Any decision be it a simple administrative decision or a policy decision, if taken without considering the relevant facts, can only be termed as an arbitrary decision. If it is so then be it a policy decision or otherwise, it will be violative of the mandate of Article 14 of the Constitution.

20. Their Lordships of the Hon'ble Supreme Court in *Bannari Amman Sugars Ltd. Vs. Commercial Tax Officer and Others*, have held that opportunity of hearing to affected persons is not necessary if a policy decision is changed, however, the same should be made fairly, non-arbitrarily and should disclose a discernible principle which should satisfy the test of reasonableness. Their Lordships have held as under:

While the discretion to change the policy in exercise of the executive power, when not trammelled by any statute or rule is wide enough, what is imperative and implicit in terms of Article 14 is that a change in policy must be made fairly and should not give the impression that it was so done arbitrarily or by any ulterior criteria. The wide sweep of Article 14 and the requirement of every State action qualifying for its validity on this touchstone irrespective of the field of activity of the State is an accepted tenet. The basic requirement of Article 14 is fairness in action by the State, and non arbitrariness in essence and substance is the heartbeat of fair play. Actions are amenable, in the panorama of judicial review only to the extent that the State must act validly for discernible reasons, not whimsically for any ulterior purpose. The meaning" and true import and concept of arbitrariness is more easily visualised than precisely defined. A question whether the impugned action is arbitrary or not is to be ultimately answered on the facts and circumstances of a given case. A basic and obvious test to apply in such cases is to see whether there is any discernible principle

emerging from the impugned action and if so, does it really satisfy the test of reasonableness. Where a particular mode is prescribed for doing an act and there is no impediment in adopting the procedure, the deviation to act in different manner which does not disclose any discernible principle which is reasonable itself shall be labelled as arbitrary. Every State action must be informed by reason and it follows that an act uninformed by reason is per se arbitrary.

21. Their Lordships of the Hon^{ble} Supreme Court in *Ganesh Bank, Kurundwad Ltd. and Others Vs. The Union of India (UOI) and Others*, have succinctly explained the grounds of judicial review as under:

The scope of Judicial review in administrative matters has been the subject matter of consideration before this Court in several cases. There should be judicial restraint while making judicial review in administrative matters. Where irrelevant aspects have been eschewed from consideration and no relevant aspect has been ignored and the administrative decisions have nexus with the facts on record, there is no scope for interference. The duty of the court is (a) to confine itself to the question of legality; (b) to decide whether the decision making authority exceeded its powers (c) committed an error of law (d) committed breach of the rules of natural justice and (e) reached a decision which no reasonable Tribunal would have reached or (f) abused its powers. Administrative action is subject to control by judicial review in the following manner: (i) Illegality: This means the decision-maker must understand correctly the law that regulates his decision-making power and must give effect to it. (ii) Irrationality, namely, *Wednesbury* unreasonableness. (iii) Procedural impropriety. One of the points that falls for determination is the scope for judicial interference in matters of administrative decisions. Administrative action is stated to be referable to broad area of Governmental activities in which the repositories of power may exercise every class of statutory function of executive, quasi-legislative and quasi-judicial nature. It is trite law that exercise of power, whether legislative or administrative, will be set aside if there is manifest error in the exercise of such power or the exercise of the power is manifestly arbitrary. See *State of U.P. and Others Vs. Renuagar Power Co. and Others*. At one time, the traditional view in England was that the executive was not answerable where its action was attributable to the exercise of prerogative power. Professor De Smith in his classical work "*Judicial Review of Administrative Action*" 4th Edition at pages 285-287 states the legal position in his own terse language that the relevant principles formulated by the Courts may be broadly summarized as follows. The authority in which discretion is vested can be compelled to exercise that discretion, but not to exercise it in any particular manner. In general, discretion must be exercised only by the authority to which it is committed. That authority must genuinely address itself to the matter before it; it must not act under the dictates of another body or disable itself from exercising discretion in each individual case. In the purported exercise of its discretion, it must not do what it has been forbidden to do, nor must it do what it has not been authorized to do. It must act in good faith, must have regard to all relevant considerations

and must not be influenced by irrelevant considerations, must not seek to promote purposes alien to the letter or to the spirit of the legislation that gives it power to act, and must not act arbitrarily or capriciously. These several principles can conveniently be grouped in two main categories:

(i) failure to exercise a discretion, and (ii) excess or abuse of discretionary power. The two classes are not, however, mutually exclusive. Thus, discretion may be improperly fettered because irrelevant considerations have been taken into account, and where an authority hands over its discretion to another body it acts *ultra vires*. The present trend of judicial opinion is to restrict the doctrine of immunity from judicial review to those classes of cases which relate to deployment of troupes, entering into international treaties, etc. The distinctive features of some of these recent cases signify the willingness of the Courts to assert their power to scrutinize the factual basis upon which discretionary powers have been exercised. One can conveniently classify under three heads the grounds on which administrative action is subject to control by judicial review. The first ground is "illegality" the second "irrationality", and the third "procedural impropriety". These principles were highlighted by Lord Diplock in *Council of Civil Service Unions v. Minister for the Civil Service* 1984 (3) All.ER.935, (commonly known as *CCSU Case*). If the power has been exercised on a non consideration or non-application of mind to relevant factors, the exercise of power will be regarded as manifestly erroneous. If a power (whether legislative or administrative) is exercised on the basis of facts which do not exist and which are patently erroneous, such exercise of power will stand vitiated. See *Commissioner of Income Tax, Bombay and Others Vs. Mahindra and Mahindra Limited and Others*, The effect of several decisions on the question of jurisdiction has been summed up by Grahame Aldous and John Alder in their book "Applications for Judicial Review, Law and Practice" thus: "There is a general presumption against ousting the jurisdiction of the courts, so that statutory provisions which purport to exclude judicial review are construed restrictively. There are, however, certain areas of governmental activity, national security being the paradigm, which the courts regard themselves as incompetent to investigate, beyond an initial decision as to whether the government's claim is *bona fide*. In this kind of non-justiciable area judicial review is not entirely excluded, but very limited. It has also been said that powers conferred by the Royal Prerogative are inherently unreviewable but since the speeches of the House of Lords in *council of civil Service Unions v. Minister for the civil Service* this is doubtful. Lords Diplock, Scaman and. Roskili appeared to agree that there is no general distinction between powers, based upon whether their source is statutory or prerogative but that judicial review can be limited by the subject matter of a particular power, in that case national security. May prerogative powers are in fact concerned with sensitive, non-justiciable areas, for example, foreign affairs, but some are reviewable in principle, including the prerogatives relating to the civil service where national security is not involved. Another non_justiciable power is the Attorney General's prerogative to decide whether to

institute legal proceedings on behalf of the public interest." Also see *Padfield v. Minister of Agriculture Fisheries and Food* L. R. (1968) AC 997. The court will be slow to interfere in such matters relating to administrative functions unless decision is tainted by any vulnerability enumerated above; like illegality, irrationality and procedural impropriety. Whether action falls within any of the categories has to be established. Mere assertion in that regard would not be sufficient. The famous case commonly known as "The *Wednesbury*'s case" is treated as the landmark so far as laying down various basic principles relating to judicial review of administrative or statutory direction. Before summarizing the substance of the principles laid down therein we shall refer to the passage from the judgment of Lord Greene in *Associated Provincial Picture Houses Ltd. v. Wednesbury Corpn.* KB at p. 229 All ER 682. It reads as follows:

"It is true that discretion must be exercised reasonably. Now what does that mean? Lawyers familiar with the phraseology used in relation to exercise of statutory discretions often use the word "unreasonable" in a rather comprehensive sense. It has frequently been used and is frequently used as a general description of the things that must not be done. For instance, a person entrusted with a discretion must, so to speak, direct himself properly in law. He must call his own attention to the matters which he is bound to consider. He must exclude from his consideration matters which are irrelevant to what he has to consider. If he does not obey those rules, he may truly be said, and often is said, to be acting "unreasonably". Similarly, there may be something so absurd that no sensible person could even dream that it lay within the powers the authority. . . . In another, it is taking into consideration extraneous matters. It is unreasonable that it might almost be described as being done in bad faith; and in fact, all these things run into one another." Lord Greene also observed 230 All ER 683 "...it must be proved to be unreasonable in the sense that the court considers it to be a decision that no reasonable body can come to. It is not what the court considers unreasonable. The effect of the legislation is not to set up the court as an arbiter of the correctness of one view over another." (emphasis supplied) Therefore, to arrive at a decision on "reasonableness" the Court has to find out if the administrator has left out relevant factors or taken into account irrelevant factors. The decision of the administrator must have been within the four corners of the law, and not one which no sensible person could have reasonably arrived at, having regard to the above principles, and must have been a bona fide one. The decision could be one of many choices open to the authority but it was for that authority to decide upon the choice and not for the Court to substitute its view. The principles of judicial review of administrative action were further summarized in 1985 by Lord Diplock in *CCSU* case as illegality, procedural impropriety and irrationality. He said more grounds could in future become available, including the doctrine of proportionality which was a principle followed by certain other members of the European Economic Community. Lord Diplock observed in that case as follows: ". Judicial review has I think, developed to a stage today when, without reiterating any analysis of the steps by which the

development has come about, one can conveniently classify under three heads the grounds on which administrative action is subject to control by judicial review. The first ground I would call "illegality", the second "irrationality" and the third "proceduralimpropriety". That is not to say that further development on a case_by_case basis may not in course of time add further grounds. I have in mind particularly the possible adoption in the future of the principle of "proportionality" which is recognized in the administrative law of several of our fellow members of the European Economic Community." Lord Diplock explained "irrationality" as follows: "By "irrationality" I mean what can by now be succinctly referred to as Wednesbury unreasonableness". It applies to a decision which is to outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it." In other words, to characterize a decision of the administrator as "irrational" the Court has to hold, on material, that it is a decision "so outrageous" as to be in total defiance of logic or moral standards. Adoption of "proportionality" into administrative law was left for the future.

These principles have been noted in aforesaid terms in *Union of India and another Vs. G. Ganayutham (Dead) by LRs.*, In essence, the test is to see whether there is any infirmity in the decision making process and not in the decision itself. See *Indian Railway Construction Co. Ltd. Vs. Ajay Kumar*,

22. Their Lordships of the Hon"ble Supreme Court in *Directorate of Film Festivals and Others Vs. Gaurav Ashwin Jain and Others*, have held that Courts do not and cannot act as Appellate Authorities examining the correctness, suitability and appropriateness of a policy, nor are courts advisors to the executive on matters of policy which the executive is entitled to formulate. Their Lordships have succinctly explained that the scope of judicial review when examining a policy of the Government is to check whether it violates the fundamental rights of the citizens or is opposed to the provisions of the Constitution, or opposed to any statutory provision or manifestly arbitrary. Their Lordships have held as under:

The scope of judicial review of governmental policy is now well defined. Courts do not and cannot act as Appellate Authorities examining the correctness, suitability and appropriateness of a policy. Nor are courts Advisors to the executive on matters of policy which the executive is entitled to formulate. The scope of judicial review when examining a policy of the government is to check whether it violates the fundamental rights of the citizens or is opposed to the provisions of the Constitution, or opposed to any statutory provision or manifestly arbitrary. Courts cannot interfere with policy either on the ground that it is erroneous or on the ground that a better, fairer or wiser alternative is available. Legality of the policy, and not the wisdom or soundness of the policy, is the subject of judicial review [vide: *Asif Hameed and others Vs. State of Jammu and Kashmir and Others*, ; *M/s. Shri Sitaram Sugar Co. Ltd. and another Vs. Union of India and others*, ; *M/s. Khoday Distilleries Ltd. etc. Vs. State of Karnataka and others*, , *BALCO Employees Union (Regd.) Vs. Union of India and*

Others, , State of Orissa and Others Vs. Gopinath Dash and Others, and Akhil Bharat Gosewa Sangh Vs. State of A.P. and Others, .

23. Their Lordships of the Hon''ble Supreme Court in Delhi Development Authority, N.D. and Another Vs. Joint Action Committee, Allottee of SFS Flats and Others, have held that an executive order termed as a policy decision is not beyond the pale of judicial review. Their Lordships have further laid down four tests to which a policy decision is subject to judicial review. Their Lordships have held as under:

An executive order termed as a policy decision is not beyond the pale of judicial review. Whereas the superior courts may not interfere with the nitty gritty of the policy, or substitute one by the other but it will not be correct to contend that the court shall like its judicial hands off, when a plea is raised that the impugned decision is a policy decision. Interference therewith on the part of the superior court would not be without jurisdiction as it is subject to judicial review. Broadly, a policy decision is subject to judicial review on the following grounds: (a) if it is unconstitutional; (b) if it is dehors the provisions of the Act and the Regulations; (c) if the delegatee has acted beyond its power of delegation; (d) (d) if the executive policy is contrary to the statutory or a larger policy.

24. Their Lordships of the Hon''ble Supreme Court in State of U.P. and Others Vs. Chaudhari Ran Beer Singh and Another, have held that policy decision cannot be interfered unless the infringement of fundamental right is shown. Their Lordships have held as under:

Cabinet''s decision was taken nearly eight years back and appears to be operative. That being so there is no scope for directing reconsideration as was done in Ram Milan''s case, though learned Counsel for the Respondents prayed that such a direction should be given. As rightly contended by learned Counsel for the State, in matters of policy decisions, the scope of interference is extremely limited. The policy decision must be left to the Government as it alone can decide which policy should be adopted after considering all relevant aspects from different angles. In matter of policy decisions or exercise of discretion by the Government so long as the infringement of fundamental right is not shown. Courts will have no occasion to interfere and the Court will not and should not substitute its own judgment for the judgment of the executive in such matters. In assessing the propriety of a decision of the government the Court cannot interfere even if a second view is possible from that of the Government.

25. Accordingly, in view of the observations made hereinabove, the petition is allowed. Annexures P-1, dated 01.03.1993, P-12, dated 07.11.2009 and office order dated 12.05.2010 are quashed and set aside. No costs.