

(2008) 08 PAT CK 0117
In the Patna High Court
Case No : LPA No. 167 of 2005

The State of Bihar and Others

APPELLANT

Vs

CD. and CM. Union, Chanpatia and Another

RESPONDENT

Date of Decision : 25-08-2008

Acts Referred:

Citation : (2008) 08 PAT CK 0117

Judgement

S.K. Katriar, J.—The State of Bihar and its functionaries have preferred this appeal under Clause 10 of the Letter Patent of the High Court of Judicature at Patna, and are aggrieved by the judgment dated 20.1.2005, passed by a learned Single Judge of this Court in C.W.J.C. No. 9170 of 2002 Reported in 2005 (1) PLJR 532, whereby the writ petition preferred by the Respondents herein has been allowed and the impugned notification No. S.O. No. 104, dated 10.8.2002, published in the Bihar Gazette Extraordinary issue dated 10.8.2002, has been quashed, and the Appellants herein have been directed to issue a fresh notification allotting appropriate share of the commission to the registered Cane Cooperative Society.

2. A brief statement of facts essential for the disposal of this appeal may be indicated. We shall commence with a brief survey of the law governing the issues before us. It is covered by the provisions of Bihar Sugarcane (Regulation of Supply and Purchase) Act, 1981, as amended by the Bihar Sugarcane (Regulation of Supply and Purchase) (Amendment) Act, 1993 (Bihar Act 11 of 1994), read with Bihar" Sugarcane (Regulation and Supply and Purchase) Rules, 1978 (hereinafter referred to as the Rules) . Section 2 of the Amending Act provides the definitions. Sub-section (d) defines cane grower. Sub-section (g) defines Cooperative Society and reads as follows:

(g) "co-operative society" means a society registered under the Bihar & Orissa Co-operative Societies Act, 1935 (B. & O. Act VI of 1935) one of the objects of which is to sell cane grown by its members and includes a union of such societies, registered under that Act, namely, a Co-operative Development and

Cane Marketing Union or a Vyapar Mandal Co-operative Society;

3. Section 48 of the Act obliges the Sugar Factory to make payment of compensation on purchase of cane. Section 48 of the unamended Act has been amended by Section 191 of Bihar Act 11 of 1994, and may be noticed to the extent relevant in the present context. Section 2 of the same reads as follows:

2. Amendment of Section 2 of Bihar Act 37 of 1982-In Section 2 of the Bihar Sugarcane (Regulation of Supply and Purchase) Act, 1981 (Bihar Act 37, 1982) (hereinafter referred to as the said Act) -

(i) for Clause (d) the following shall be substituted; namely-

" (d) "Cane grower"s" means a person who grows cane either by himself or by members of his family or by hired labour."

(ii) For Clause (g) the following shall be substituted; namely-

" (a) "Cane growers Co-operative Society" means society registered under the Bihar Co-operative Societies Act, 1935 (Bihar Act 6 of 1935) one of the objects of which is to develop cane grown by the members."

(iii) After Clause (g) the following new clause shall be inserted ; namely-

" (g-1) "Cane growers Co-operative Union" means any affiliated body of cane growers" Co-operative Society registered under the Bihar Co-operative Societies Act, 1935 (Bihar Act 6 of 1935) .

Section 8 of Amending Act amends Section 32 of the unamended Act and reads as follows:

& Amendment of Section 32 of Bihar Act 37 of 1982. In Section 32 of the said Act-

(i) In Sub-section (1) the words "or if he is a member of a Co-operative Society of the reserved area, through such society", shall be deleted;

(ii) In Sub-section (2) -

(a) after the words "Every Sugarcane grower" the comma and words, "Co-operative Society" shall be deleted, (b) the proviso shall be deleted;

(iii) In Sub-section (1) in the final line after the word "cane grower" the words "of a Co-operative Society" and in the fourth line after the words "Cane grower" the words "or by the member of Co-operative Society or Societies" shall be deleted;

(iv) The proviso (i), (iii) and (iv) of Sub-section (4) shall be deleted and proviso (ii) shall be first proviso;

(v) In Sub-section (7) -

(a) after the words "Cane grower" the words "or a Co-operative Society" shall be

deleted;

(b) In the proviso in the first line after the words "cane grower" the words "or Co-operative Society" shall be deleted.

(vi) The proviso to Sub-section (8) shall be deleted.

4. It is thus evident on a plain reading of the Amended Act that the State Government has now greater discretion to apportion the commission received from the occupier of the factory, between the Society and the Council.

5. After the amendment, the State Government took the view that the Cooperative Societies have not proved themselves in respect of the welfare of the cane growers and, therefore, decided not to apportion any amount of commission within the meaning of Section 48 of the Act to the Co-operative Societies leading to C.W.J.C. No. 4014 of 2002 reported in Subhash Singh and Others Vs. State of Bihar and Others, The writ petition was allowed by a learned Single Judge of this Court by judgment dated 8.5.2002 reported in Subhash Singh and Others Vs. State of Bihar and Others, and the State Government and its functionaries were directed to issue fresh notification apportioning the amount of commission received from various sugar factories, between the co-operative society and the Council for better production of sugarcane. Co-operative society is defined in Section 2 (g) which has been amended by Bihar Act 11 of 1994, and indicated hereinabove. The Zonal Development Council is established in terms of Section 7 of the Act and its constitution and composition is indicated therein.

5.1. The judgment dated 8.5.2002 concludes with the direction to the State Government to issue necessary notification determining the share of Zonal Development Council and the Co-operative Society within a period of four weeks from the date of the order.

6. In compliance of the order dated 8.5.2002, the State Government issued the impugned notification which reads as follows:-

The 9th August 2002

S.O. 104, dated the 10th August, 2002.-In the light of the order passed by the Honourable High Court on 8th May, 2002 in C.W.J.C. No. 4014/2002, in exercise of powers conferred by Sub-section (1) of Section 48 of the Bihar Sugarcane (Regulation of Supply and Purchase) Act, 1981 (as amended Bihar Act, 11, 1994) and in supersession of Notification issued under this department memo No. 21, dated the 22nd January, 1981 and Memo No. 2655, dated the 19th December, 2001 (and S.O. No. 38, dated the 8th March, 2002), the Governor of Bihar is pleased to determine the amount of commission at the rate of two percent to the cane price per quintal actually paid to the suppliers of Sugarcane, payable by the occupier of the factory on the purchase of the Sugarcane by such occupier or on his behalf and is pleased to give orders to pay in the prescribed manner.

Further in exercise of the powers conferred by Sub-section (2) of the aforesaid

Section 48, the Governor of Bihar is further pleased to determine the whole amount as a share to Zonal Development Council and Nil to Cane growers Co-operative Societies under Sub-section (1), which will be recovered in the prescribed manner.

As at present existing Cane growers Co-operative Societies do not perform any development work and supply of cane is also not done by them therefore no amount of the commission will be paid to the Cane growers Co-operative Societies and whole amount shall be given to the Zonal Development Council".

By order of the Governor of Bihar (Sd) /ILLEGIBLE, Secretary to Governor.

It is thus evident on a plain reading of the notification that no part of the commission in terms of Section 48 of the Act has been assigned to the Co-operative Societies, and the entire corpus has been assigned to the Council to enable it to achieve the objects and the purpose for which it has been created.

7. The Respondents herein challenged the same by preferring C.W.J.C. No. 9170 of 2002 Reported in Rabbi Rajak and Others Vs. The State of Bihar, which has been allowed by the impugned order and the impugned notification has been quashed. The order states that it is evident from a plain reading of scheme of the Act that the corpus of commission has to be judiciously apportioned between the Cooperative Societies and the Council, and assigning the whole of it to the Council is not in consonance with the spirit of the provisions of law. The writ petition has been allowed with the direction to the State Government to issue a fresh notification in accordance with law and the observations made in the judgment. Hence this appeal at the instance of the State of Bihar.

8. Learned Counsel for the Appellants submits that the learned Single Judge has erred in stating in his judgment that the impugned order does not assign reasons. He submits that the reasons assigned in the impugned notification is really based on the report of the Bihar Industries Commission. The Government of Bihar has constituted the Commission by an executive order on 15.7.2000, comprising of a large number of representatives of the Industries, the State Government, and academicians to examine the diverse issues with respect to the industries in the State and make appropriate recommendations. He next submits that the writ Petitioner is not a Co-operative Society within the meaning of the amended definition of "Cane growers Co-operative Society," because of its non-performance. He submits in the same vein that the writ Petitioner has not brought on record any material to show as to what would be the impact of the impugned order.

9. Learned Counsel for the Respondents has supported the impugned order. He submits that the order dated 8.5.2002 of this Court has been followed in a series of cases. He places reliance on the doctrine of proportionality. He next submits that the impugned notification is a gross abuse of discretion and is fit to be set aside. He relies on the judgment of the Supreme Court Cases in Management of Coimbatore District Central Co-operative Bank Vs. Secretary, Coimbatore District

Central Co-operative Bank Employees Association and Another, He lastly submits that the letters dated 3.1.1994 and 10.5.2001, issued by the Cane Commissioner to the Cane Inspector, and relied upon by the learned Single Judge, in substance assigning greater functions to Cooperative Societies which completely destroys the Government contention that these cooperative societies have become non-functional.

10. We have perused the materials on record and considered the submissions of the learned Counsel for the parties. It is evident from the legal position emerging after the amendment that the discretion is entirely with the State Government to determine the amount to be apportioned to the Co-operative Society and the Council. By the impugned notification, the State Government has not apportioned any portion of the corpus to the Co-operative Societies, and the whole of it has been as-signed to the Council. On a narrow construction of the legal position emerging after the amendment, it may perhaps be possible to take the view that it is entirely a matter of discretion with the State Government to apportion it in the manner it likes, so as to allot the whole of the corpus to the Council. The question which arises for consideration is whether the discretion is absolute, or is subject to reasonable restrictions and the power of judicial review. The Legislature has now assigned wider discretion to the State Government to act in the matter and, therefore, on the basis of a narrow construction of the provisions of law, it is possible to take the view taken by the impugned notification. We are in this connection reminded of the classic judgment of the Court of Appeal in England in *Associated Provincial Picture Houses Ltd. v. Wednesbury Corporation* (1947) 2 AII.E.R. 680. Public exhibition of films in England is governed by the Sunday Entertainments Act, 1932, read with the Cinematography Act, 1909. The licence for exhibition of public film is issued under the Cinematograph Act. The Corporation, the licensing authority, issued an order whereby it was notified, that "no child under the age of 15 years shall be admitted to any entertainment, whether accompanied by an adult or not". This was challenged before the Court and ultimately reached the Court of Appeal. The Court observed that the effect of the Act in granting this discretionary power to the local authority must be closely kept in mind. The Court must always remember that the Act does not deal with a judicial act, but with an executive act. Speaking for the Court, Lord Greene observed as follows:

When an executive discretion is entrusted by Parliament to a local authority, what purports to be an exercise of that discretion can only be challenged in the courts in a very limited class of cases. It must always be re-membered that the court is not a court of appeal. The law recognizes certain principles on which the discretion must be exercised, but within the four corners of those principles the discretion is an absolute one and cannot be questioned in any court of law.

What, then, are those principles? They are perfectly well understood. The exercise of such discretion must be a real exercise of the discretion. If, in the statute conferring the discretion, there is to be found, expressly or by

implication, matters to which the authority exercising the discretion ought to have regard, then, in exercising that discretion, they must have regard to those matters. Conversely, if the nature of the subject-matter and the general interpretation of the Act make it clear that certain matters would not be germane to the matter in question, they must disregard those matters. Expressions have been used in cases where the powers of local authorities came to be considered relating to the sort of thing that may give rise to interference by the court. Bad faith, dishonesty- those, of course, stand by themselves-unreasonableness, attention given to extraneous circumstances,-disregard of public policy, and things like that have all been referred to as being matters which are relevant for consideration. In the present case we have heard a great deal about the meaning of the word "unreasonable". It is true the discretion must be exercised reasonably. What does that mean? Lawyers familiar with the phraseology commonly used in relation to the exercise of statutory discretions often use the word "unreasonable" in a rather comprehensive sense. It is frequently used as a general description of the things that must not be done. For instance, a person entrusted with discretion must 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 the matter that 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, you may have something so absurd that no sensible person could ever dream that it lay within the powers of the authority. Warrington,, L.J., I think it was, gave the example of the red-haired teacher, dismissed because she had red hair. That is unreasonable in one sense. In another sense it is taking into consideration extraneous matters. It is so unreasonable that it might almost be described as being done in bad faith. In fact, all these things largely fall under one head.

11. It is thus obvious that exercise of executive discretion can be interfered with in exercise of the powers of judicial review in exceptional circumstances. For example, exercise of power is completely beyond, or inconsistent with the aims and objects of the legislation which confer the discretionary power, or has taken into account irrelevant considerations, or has failed to take into account relevant considerations. The Court of Appeal has given an example which does not speak of a mere difference of opinion on the same issue, but so wide-off the mark that a red-haired teacher was dismissed because she had red hair. The principle of law enunciated by the distinguished Master of the Rolls has come to be known in legal literature as *Wednesbury Reasonableness*.

12. Testing the terms of the impugned notification on the yardstick of *Wednesbury Reasonableness* will lead us to the conclusion that exercise of discretionary power in the instant case does not fall within the parameters laid down in the judgment and is, therefore, immune from judicial review. The judgment of the Court of Appeal held the field for a long time, and has been quoted with the approval by our own Supreme Court times without number. This, however, does not conclude matters.

13. The celebrated decision of the House of Lords in *Council of Civil Service Union v. Minister for Civil Service* 1985 AC 374 : (1984) 3 WLR 1174 : (1984) 3 All. E.R. 935 (HL), has broken fresh grounds, has added a new dimension to *Wednesbury Reasonableness*, has held that the scope of judicial review has been widened, and can be undertaken on grounds of illegality, irrationality and procedural impropriety also. The doctrine of proportionality has since emerged as an additional ground for judicial review and adumbrated in the judgment of the House of Lords. The relevant portion of the same is reproduced herein below:

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 "procedural impropriety". 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"?

14. The narrow scope of interference in exercise of judicial review enunciated in *Wednesbury* (supra), which held the field for nearly forty years, has been considerably widened by the House of Lords and has been christened as the doctrine of proportionality. The same has been approved by our own judicial system. The Supreme Court had the occasion to apply the principle of law in the case of *Coimbatore District Central Cooperative Bank v. Coimbatore District Central Cooperative Bank Employees Association and Anr.* The relevant portions of the judgment in the present context are reproduced herein below:

17. So far as the doctrine of proportionality is concerned, there is no gainsaying that the said doctrine has not only arrived in our legal system but has come to say. With the rapid growth of administrative law and the need and necessity to control possible abuse of discretionary powers by various administrative authorities, certain principles have been evolved by courts. If an action taken by any authority is contrary to law, improper, irrational or otherwise unreasonable, a court of law can interfere with such action by exercising power of judicial review. One of such modes of exercising power, known to law is the "doctrine of proportionality".

18. "Proportionality" is a principle where the court is concerned with the process, method or manner in which the decision-maker has ordered his priorities, reached a conclusion or arrived at a decision. The very essence of decision-making consists in the attribution of relative importance to the factors and considerations in the case. The doctrine of proportionality thus steps in focus true nature of exercise- the elaboration of a rule of permissible priorities.

19. De Smith states that "proportionality" involves "balancing test" and "necessity test". Whereas the former (balancing test) permits scrutiny of excessive onerous penalties or infringement of rights or interests and a manifest

imbalance of relevant considerations, the latter (necessity test) requires infringement of human rights to the least restrictive alternative.

20. In Halsbury's Laws of England (4th Edn.), Reissue, Vol. 1 (1), pp. 144-45 para 78, it is stated:

The court will quash exercise of discretionary powers in which there is no reasonable relationship between the objective which is sought to be achieved and the means used to that end, or where punishments imposed by administrative bodies or inferior courts are wholly out of proportion to the relevant misconduct. The principle of proportionality is well established in European law, and will be applied by English courts where European law is enforceable in the domestic courts. The principle of proportionality is still at a stage of development in English law; lack of proportionality is not usually treated as a separate ground for review in English law, but is regarded as one indication of manifest unreasonableness.

21. The doctrine has its genesis in the field of administrative law. The Government and its departments, in administering the affairs of the country, are expected to honour their statements of policy or intention and treat the citizens with full personal consideration without abuse of discretion. There can be no "pick and choose", selective applicability of the Government norms or unfairness, arbitrariness or unreasonableness. It is not permissible to use a "sledgehammer to crack a nut". As has been said many a time; "where paring knife suffices, battle axe is precluded".

23. CCSU has been reiterated by English courts in several subsequent cases. We do not think it necessary to refer to all those cases.

29. From the above decisions, it is clear that our legal system also has accepted the doctrine of proportionality. The question, however, is whether in the facts and circumstances of the present case, the High Court was justified in invoking and applying the doctrine of proportionality. In our judgment, the answer must be in the negative. Normally, when disciplinary proceedings have been initiated and finding of fact has been recorded in such inquiry, it cannot be interfered with unless such finding is based on "no evidence" or is perverse, or is such that no reasonable man in the circumstances of the case would have reached such finding. In the present case, four charges had been levelled against the workmen. An inquiry was instituted and findings recorded that all the four charges were proved.

(Emphasis added)

15. As has been observed by the House of Lords, an executive discretion can now also be tested on grounds of illegality, irrationality, procedural impropriety, doctrine of proportionality, etc. we have to examine whether or not exercise of discretion in the instant case is covered by any one or more than one of the grounds which have now been recognized by the Supreme Court also. We are

mindful of the position that the impugned notification is based on the report of a Committee which has no statutory status, and was constituted by the State Government by executive order to examine the then industrial policy, and to evolve a new industrial policy for the State of Bihar. The Committee had the occasion to examine the role of Co-operative Societies of cane growers and has observed as follows:

Co-operative societies: The co-operative societies, conceived to serve the cane growers, have axed the direct link between the factories and the cane growers on one hand, and have failed in their purpose on the other, by indulging in local politics, favouritism, neglect of small cane growers and misuse of fund. Although factories have performing all related functions of the societies incurring substantial expenditure, man-power and efforts, they are required to pay the commission to the societies, with hardly any justification.

16. There is no material on record to show that the Industrial Committee had taken into account various other factors relevant in the present context. The first and the foremost aspect of the matter is that the Cane Grower Co-operative Societies is a recognized identity under the relevant provisions of the Act and the Rule as much as the Council. Views of the expert body seems to have been taken into account by the State Government while issuing the notification and is summarized therein. However, in substance, the Co-operative Society of Cane Growers is, to put the case of the State Government at the highest, non-functional. But the Committee seems to be oblivious of the performance of the Council. The Committee as well as the State Government seem to have an exaggerated notion about the efficiency and efficacy of the Council. The position may have been different if the Industrial Commission, and for that matter the State Government, had examined and taken into account the Council's performance also. There seems to be a presumption of efficiency in its favour. No such material to establish the efficiency of the council has been brought to our notice by any one of the parties. We assume the Legislature has in its wisdom advisedly has created two bodies in the Act and the Rules to administer the corpus of commission for full development of cane-growing areas by two parallel bodies. It will, therefore, be inappropriate to completely denude one-of the two bodies of its functions by adopting such an attitude of gross favoritism towards the other.

17. Part-IX of the Constitution of India provides for Panchayat Raj, and ordains to establish grass-root democracy in the country. In furtherance of the provisions of the Constitution, the Bihar Legislature has enacted the Bihar Panchayat Raj Act, 2006, to establish grass-root democracy in Bihar. The impugned notification is an attempt to nullify or dilute the grass-root democracy envisaged by the Constitution of India.

18. In consonance with the spirit of Part-IX of the Constitution of India, the State Government has brought on the statute book The Bihar Cooperative Society (Amending Act 2008), whereby three-tier system of cooperative societies for

promotion of agriculture in Bihar has been formulated. The Bihar Legislature attaches such importance to the same that it has brought on the statute book, the Bihar State Election Authority Act, 2008 (Act 14 of 2008), to conduct elections to the Cooperative Societies created by the Amending Act of 2008. These two enactments fell for the consideration of a Division Bench of this Court to which one of us (S.K. Katriaf, J.) was a party, in the case of Ramzan Ansari and Others Vs. The State of Bihar and Others, wherein the scope and ambit of the Act and the effort being made to promote Cooperative Societies of agriculturists has been noticed. We are, therefore, of the view that the impugned notification has taken a myopic view of the entire matter, has completely failed to assess the performance of the Council, and reduces the Co-operative Society created by the statute to a position of non-entity. It is an arbitrary exercise of discretion and has to be set aside.

19. The materials on record create an impression in our minds that the State Government has been acting without following the laws governing the issue, and has been acting in an arbitrary manner which cannot be permitted in a polity governed by the rule of law. Article 14 of the Constitution strikes at the root of arbitrary action. The two are indeed sworn enemies. Mr. Justice William O. Douglas of the U.S. Supreme Court has observed as follows in the decision of the U.S. Supreme Court in the case of United States v. Wunderlick 342 US 98, 96 L ed 113, 72 S Ct 154

Law has reached its finest moments when it has freed man from the unlimited discretion of some ruler, some civil or military official, some bureau-, crat. Where discretion is absolute, man has always suffered. At times it has been his property that has been invaded; at times, his privacy; at times, his liberty of movement; at times, his freedom of thought; at times, his life. Absolute discretion is a ruthless master. It is more destructive of freedom than any of man's other inventions.

The same has been followed by the Indian Courts repeatedly. The Supreme Court quoted the same with approval in Delhi Transport Corporation Vs. D.T.C. Mazdoor Congress and Others, at page 767. The relevant portion of paragraph 331 of the judgment is reproduced herein below:-

331 ?If an individual action is taken as per the procedure on its own facts its legality may be tested. But it would be no justification to confer power with wide discretion on any authority without any procedure which would not meet the test of justness, fairness and reasonableness envisaged under Articles 14 and 21 of the Constitution. Said this Court in S.G. Jaisinghani Vs. Union of India (UOI) and Others,

In this context it is important to emphasise that the absence of arbitrary power is the first essential of the rule of law upon which our whole constitutional system is based. In a system governed by rule of law, discretion, when conferred upon executive authorities, must be confined within defined limits. The rule of law

from this point of view means that decisions should be made by the application of known principles and rules and, in general, such decisions should be predictable and the citizen should know where he is. If a decision is taken without any principle or without any rule it is unpredictable and such a decision is the antithesis of a decision taken in accordance with the rule of law. (See Dicey: Law of the Constitution, 10th edn.. Introduction cx.) "Law has reached its finest moments", . stated Douglas, J. in *United States v. Wunderlick* 342 US 98: 96 L Ed 113 (1951) "when it has freed man from the unlimited discretion of some ruler Where discretion is absolute, man has always suffered." It is in this sense that the rule of law may be said to be the sworn enemy of caprice. Discretion, as Lord Mansfield stated it in classic terms in the case of *John Wilkes* (1770) 4 Burr 2528, 2539 "means sound discretion guided by law. It must be governed by rule, not by humour: it must not be arbitrary, vague and fanciful".

The Supreme Court once again quoted the observations of Mr. Justice Douglas in *Shiv Sagar Tiwari Vs. Union of India and others*, The relevant portion is reproduced herein below for the facility of quick reference:-

The administrative law has of late seen vast increase in discretionary powers. But then, the discretion conferred has to be exercised to advance the purpose to sub serve which the power exists. Even the Minister, if he/she be the repository of discretionary power, cannot claim that either there is no discretion in the matter or unfettered discretion. This proposition was rejected emphatically by the House of Lords in the landmark decision of *Padfield v. Minister of Agriculture, Fisheries and Food* 1968 AC 997 : (1968) 1 All.E.R. 694: (1968) 2 WLR. This apart, as pointed out in *United States v. Wunderlick* 342 US 98 : 96 L Ed 113 (1951) :

Law has reached its finest moments when it has freed man from the unlimited discretion of some ruler, some.... Official, some bureaucrat.... Absolute discretion is a ruthless master. It is more destructive of freedom than any of man's other inventions.

20. In view of the foregoing discussion, it is quite clear to us that apportionment of commission to the Council to the complete exclusion of the co-operative society seems to us to be hit by the doctrine of proportionality, and is also arbitrary within the meaning of Article 14 of the Constitution. The Supreme Court has held in *Maneka Gandhi's* case and has been followed by the Supreme Court in its various judgments that arbitrariness and Article 14 are sworn enemies. Therefore, it is not open to the State Government to ignore the existence of Cooperative Society of cane growers.

21. In the result, we agree with the impugned judgment, though we rest our decision on different grounds. The impugned notification dated 10.8.2002, is hereby set aside. The State Government is directed to issue a fresh notification in accordance with law and the observations made hereinabove. In the circumstances of the case, there shall be no order as to costs.

B.P. Verma, J.

22. I agree.