SUPREME COURT OF INDIA

Narendra Kishan Maheshwari

Vs.

Union of India

Transfer Case Nos. 161-65 of 1988

(S. Ranganathan and Sabyasachi Mukharji JJ)

03.05.1989

JUDGMENT

SABYASACHI MUKHARJI. J.-

1. In these transferred writ petitions and one suit, we are concerned with the powers, functions and the role of the Controller of Capital Issues. By an order dated September 9, 1988 this Court had directed that the four writ petitions and one civil suit i. e., W. P. No. 1791 of 1988 pending before the Delhi High Court, W. P. No. 2708 of 1988 pending before the Jaipur Bench of the Rajasthan High Court, W. P. No. 12176 of 1988 pending before the Karnataka High Court, W. P. No. 4388 of 1988 pending before the High Court of Bombay and Civil Suit No. 1172 of 1988 pending before the Civil Judge, Junior Division Bench, Baroda, Gujarat, be transferred to this Court for disposal. It would be appropriate to deal with the facts of one of these, i. e., W. P. No. 1791 of 1988, which was filed in the Delhi High Court in T. C. No. 161 of 1988. The other writ petitions and the suit raise more or less identical problems and issues on more or less same facts.

2. The petitioner in that writ petition is one Narendra Kumar Maheshwari and the respondents are the Union of India, the Controller of Capital Issues, and Reliance Petrochemicals Ltd. (RPL). The case of the petitioner is that he is an individual who is a public spirited person and is an existing shareholder of the company known as Reliance Industries Ltd. (RIL), which was the promotor of Reliance Petrochemicals Limited, being respondent 3. The petitioner held at all relevant times 144 shares of RIL and 100 debentures of different categories. Respondent 3, being RPL, was a newly set up public limited company for the purpose of carrying on the business of manufacture of petrochemicals. These writ petitions were filed in different courts challenging the consent of the Controller of Capital Issues granted for the issue of shares (Rs. 50 crores) and debentures (Rs. 516 crores) by the RPL. It was contended in the petition that respondents 1 and 2, being the Union of India and the Controller of Capital Issues, ough

3. On the basis of the said consent, it was stated that respondent 3 had issued prospectus and at the relevant time had intended to open the issue from August 22, 1988, of about 3 crores debentures of the face value of Rs. 200 each which was the largest convertible debentures issue in India. It was alleged that the respondents had adopted very sharp methods to collect money from the public and ultimately to defraud them. It was stated that under the terms of the prospectus, each debenture of the face value of Rs. 200 would be fully convertible : respondent 3 would issue one share of Rs. 10 at par on the date of allotment. There would, thus, be an equity capital of about Rs. 30 crores in all on allotment. Further, it was stated that the company would convert Rs. 40 of each convertible

debentures into share after 3 years and the balance of Rs. 150 into share at any time between five and seven years. It was mentioned by the company that it would convert at the second stage of conversion at such premium to be al

4. It is further the case of the petitioner that the operations of RIL (Promotor) subsequent to the raising of past issues made by it were subjected to severe criticisms both in the press and in the public. It was pointed out that though the issue proposed was of shares of Rs. 50 crores and debentures of Rs. 516 crores, the company was allowed to retain over-subscription to the tune of 15 per cent amounting to Rs. 77.40 crores. It was alleged that respondent 3 was a new company and it should not be allowed 15 per cent retention; and if it wanted to raise Rs. 600 crores, it should have come out with an issue of that amount. It was further alleged that respondent 2, without considering the propriety of the situation, allowed respondent 3 to make issue of the capital for the interest of a few people. Hence, the sanction of the issue of convertible debentures of respondent 3 calls for judicial review. It was also alleged that the sanction was approved at exorbitant terms : 5 per cent of the face value (equal to

The consent order was hit by arbitrary and capricious exercise of jurisdiction by respondent 1. It was further alleged that respondent 3's promoters i. e. RIL had been obtaining from respondents 1/2 such Consent Orders on the ground that it was in a position to raise such huge moneys from the public for the purpose of implementation of its projects without recourse to the Financial Institutions. According to the petitioner, for the first time, in the corporate history of India, RIL (Promotor) was allowed to raise Rs. 100 crores by way of issuance of 'F' Series debentures. On account of the campaigning through brokers for attractive returns, the public was misled and RIL wooed the public and collected Rs. 406 crores. RIL had not made any allotment on a proper basis but made allotments on some basis of 'Private Placement'. It was further alleged that the management of RIL through its associate companies obtained huge borrowals from nationalised banks; and several bank employees got into trouble due to advancin

5. It was alleged that the act of respondents 1/2 was vitiated as in issuing the consent order respondent 2 was influenced by extraneous considerations not germane to the public interest. The Capital Market in India has undergone turbulent changes in the recent years. Small investors such as employees, workers and small business community were coming forward, according to the petitioner, for the purpose of investment in corporate sector. It was further stated that the small investors had no means of verifying the correctness or otherwise of the statements and the soundness/financial viability of any company. It was further alleged that respondents 1/2 had acted wrongly and illegally in allowing respondent 3 to raise share capital on premium for financing new projects. It was contended in the petition of the petitioner that the consent order was a fraud.

6. In those circumstances it was prayed that the court should exercise its jurisdiction under Article 226 and set aside the consent order which was for the public issue on August 22, 1988.

7. The facts and the circumstances leading to this consent order have been stated in the affidavit on behalf of respondent 3 to the writ application. After disputing the locus of the petitioner, who challenged the consent order for making the public issue of 12.5 per cent Secured Convertible Debentures by respondent 3, respondent 3 stated that the petition suffers from laches and delays. On behalf of respondent 3 it was asserted that the public issues made by respondent 3 had been promoted by RIL. the RIL and RPL are interconnected and represented companies in the large industrial house known as 'Reliance Group'. According to respondent 3, they represented India's fastest growing private sector companies and comprised the world's second largest investor family

of over 30 lakhs investors. It was further asserted that respondent 3 would have India's largest private sector petrochemical complex for the manufacture of critically scarce raw materials. It was stated that respondent 3 would manufacture versatile ra

8. The terms of the issue of debentures of the face value of Rs. 200 being fully converted into equity shares were the following :

> (i) A sum of Rs. 10 being 5 per cent of the face value of each debenture by way of first conversion immediately into one equity share at per on allotment;
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> (ii) A sum of Rs. 40 being the 20 per cent of the face value of each debenture by way of second conversion after three years but before four years from the date of allotment at a premium to be fixed by the controller of Capital Issues;
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> (iii) The balance of Rs. 150 representing 75 per cent of the face value of each debenture as third conversion after five years but not later than seven years from the date of allotment at a premium to be fixed by the Controller of Capital Issues.

9. The premium, it was stated on behalf of respondent 3, that would be charged at the time off conversion into equity shares would be as fixed and decided by the prescribed statutory authority, namely, the Controller of Capita; Issues, and respondent 3 and its Board of Directors would not have any say in the matter or be entitled to fix the same on their own. It was further stated that, subject to the necessary approvals being obtained in that behalf, the shareholders and the convertible debenture holders of respondent 3, promotor company, would be entitled to participate in all the future issues of respondent 3. The fully convertible debentures of respondent 3 would thus be a growth instrument with different rights, viz., earning a fixed rate of interest from the first day till it was converted into equity and thereafter entitled to dividend that might be declared after conversion into equity. It is to that extent different from a purely equity share on which investor would earn dividend only when profits a

10. The products which were intended to be manufactured by respondent 3 were many, namely, (a) High Density Polyethylene (HDPE) and Poly Vinyl Chloride (PVC) which are raw material behind plastic revolution; (b) Mono Ethylene Glycol (MEG) is a critical polyester raw material; HDPE and PVC being vital thermoplastics play an important role in the core sector and used for manufacture of everything from films to pipes, auto parts to cable coatings, and containers to furnishings. It is not necessary for the issue involved in these applications to set out in detail the very many particulars given by respondent 3 in support of the contention that a petrochemical complex proposed to be set up by the new company - respondent 3 - would be beneficial socially and economically for the country as well as for the investors.

11. The advantages of convertible debentures proposed to be issued at that time by respondent 3 were also highlighted. It is stated that debentures are treated as equity. Respondent 3's borrowing capacity remains unutilised and this would help it in implementing the future projects expeditioulsy. The first phase of the project is financed by the proposed issue of debentures and not by large capital borrowings from the public financial institutions (except to the extent of foreign currency loans of Rs. 85 crores from them). The interest which would, therefore, have been payable to the financial institutions will be paid to the debenture holders ensuring them a return and simultaneously the convertible clause which would have been applicable to terms loans obtained from the financial institutions would bee available to the investors thereby ensuring them growth in

equity value. It was further stated that since the preferential allotment of 50 per cent of the total issue was made to RIL shareholders, the shareh

12. It was further stated that RIL, who are the promotors of the project, have one of the best track records for setting up of the projects such as Polyester Staple Fibre (PSF), Polyester Filament Yarn (PFY), Linear Alkyl Benzene (LAB) and purified Terphthalic acid (PTA) plants at Patalganga in record time. Business records of Reliance's 'Vimal' and Recorn were also emphasised. It is, however, not necessary for the purpose of the issue involved in these applications either to dilate upon these or to consider the correctness or otherwise of these assertions. Reliance's plant at Patalganga complex in the State, as Maharashtra and its beneficial effects to the community and the State, as asserted on behalf of respondent 3, are also not relevant. It was stated that Reliance is privy to the technology of the world leaders, such as Du Pont of USA and Imperial Chemical Industries of UK. Mr Pageria, learned counsel appearing for one of the petitioners, Radhey Shyam Goyal tried to impress upon us that among the world

13. The industrial licences have been applied for and it was stated that pending the formation and incorporation of RPL on January 4, 1988 under the companies Act. 1956, RIL had undertaken and performed various acts and needs, particulars whereof have been mentioned in the statement of facts. In the statement of facts filed on behalf of respondent 3, a list of consents and approvals obtained by respondent 3, has also been indicated.

14. It was further stated that pursuant to the order of this court, dated august 19, 1988 the public issue was made under the prospectus dated July 27, 1988 which opened on August 22, 1988 and closed on August 31, 1988. There had been an overwhelming response to the issue from all categories of investors including non-residents, RIL shareholders/employees and the issue was heavily over-subscribed. On behalf of the RPL, it was stated that the time frame of 10 weeks commencing from September 1, 1988 and ending on November 10, 1988 had to be strictly adhered to. The provisions of Section 73 and other applicable provisions of the Companies Act, 1956, the provisions of the Securities (Contract and regulation) act, 1965 and the listing requirements of the stock exchanges were also complied with.

15. It was stated on behalf of respondent 3 that for the purpose of finalising the means of finance of HDPE, PVC and MEG projects, RIL as the promotors of respondent 3 had engaged the services of the Merchant Banking Division of ICICI which is a public financial institution and one of the foremost consultants in the field. During the discussion which were initiated in the second half of 1987 with ICICI, the idea of implementing these projects through a new independent company instead of RIL had taken shape duly taking into account the financial aspects, management aspects, issues related to management and operation control of setting up the projects within the existing company vis-a-vis the setting up of the projects in the new company, namely respondent 3 company, was taken up. Respondent 3 company and ICICI also considered various alternative means of financing project keeping in view the following criteria :

> (a) That the project should be financially beneficial to the company. (b) That it should be financially attractive to the investor. (c) that it should be operationally easy for the company and the investor. (d) That it should meet the institutional/stock exchange/Ministry of Finance norms and guidelines as regards financing of projects. (e) That is should be sustainable and attractive enough in terms of the profitability/servicing capability of the project. (f) That it should reduce the dependence of the company institutional finance. (g) That it should encourage the

capital market activity in India.

16. The various alternative means of issue of security such as equity share and/or convertible cumulative preference shares (CCP) and/or partially convertible debentures and/or non-convertible debentures and/or equity linked debentures and/or fully convertible debentures were all examined by the management and ICICI at length from various aspects including the aforesaid aspect, it was asserted on behalf of respondent 3.

17. It was reiterated that the Controller of Capital Issues had applied his mind and considered all relevant, pertinent and proximate matters and the Controller bona fide bestowed painstaking consideration by examining the entire gamut of means of finance, the volume of finance needed and type of securities, marketability of securities, conditions of the capital market and other relevant considerations as are normally and properly to be evaluated by him as an expert authority. A specialised expect statutory authority or agency under a valid and legal enactment has been set up for the purpose of examining on what basis securities such as share and/or convertible debenture should be issued and the merits of his conclusions are not open to judicial review.

18. It has to be borne in mine that the write petitioners were only potential investors in the shares and debentures proposed to be issued at the time when a large part of the averments had been made. It was open to them, if they felt that the scheme was not attractive not be subscribe to the issues. It was, however, not possible for them, contend the respondents, to prohibit the issue or prevent the taking of other steps in pursuance thereof. Respondents 3 and 4 have set out various reasons why an interim injunction should be granted. These are unnecessary to be dealt which now when the matter is being finally disposed of.

19. Two other affidavits are necessary to be referred to. One is the rejoinder affidavit on behalf of the petitioner in Writ Petition No. 1791 of 1988 before the Delhi High Court, and the other is on behalf of the government. So far as the petition of Narendra Kumar Maheshwari is concerned, it is necessary to note that he has stated that the capital market had undergone changes in raising issues and the investors had no means of verifying the correctness and soundness of the financial viability of the scheme. It was stated that the Central Government did not take the responsibility for financial soundness of the scheme. It was asserted that a new share of a new company could not be raised at a premium but the government had improperly permitted the issue of shares of new company at premium in the instant of shares of a new company at premium in the instant case. It was stated that the consent order of the Controller of Capital Issues stated that premium would be payable on the shares to be allotted on conver

20. It was reiterated that the RPL had been promoted by RIL whose shares had fluctuated in the share market so widely for which no explanation came forth from the company. These fluctuation in the share market were, according to the petitioner, on account of purchases/sales made by certain interested quarters close to the management. On many occasions the sales of the share of RIL in the stock market was banned in some stock exchanges due to fall in prices which, according to the deponent, was a clear indication of cooperation and support from the authorities.

21. It was further alleged that there was discrimination in respect of time period of conversion of loan/investment into equity between the shareholders of RIL and the investing public. Immediately on allotment the conversation of percentage of investment of the rights holders is 53.49 per cent whereas that of the investing public is only 5 per cent. At the end of 3 years from the debenture allotment date, percentage debenture conversion of investment of the rights holders is 46.51 per cent

and that of the investing public is nil. Hence, after the end of 3 years time the percentage of conversion in investment of rights holders is 100 per cent whereas that of the investment of rights holders at the end of 3 years in figures in approx. Rs. 107.50 crores and the investing public is only Rs. 29.67 crores. Between 3 and 4 years of debenture allotment the percentage public is 20 per cent. Between 5 and 7 years of the debenture allotment date the percentage of conversion of investment of the rights holders was nil

22. In a democratic set up in the country, it was asserted on behalf of the petitioners, the sanction of the issue amounted to concentration of wealth in one hand which brought danger to the national economy and was against the Directive Principles of State Policy enshrined in the Constitution. It was submitted that the validity of the consent order had to be decided on the merits of the case in the background of the aforesaid. The petitioner had every right to question the validity of the consent order, it was stated.

23. One consolidated reply to all these writ petitions on behalf of the Union of India through the Secretariat, Ministry of Finance, Department of Economic Affairs and Controller of Capital Issues was filed by means of an affidavit affirmed by Mr Prabhat Chandra Rastogi who, at the relevant time, was the Under-Secretary in the Ministry of Finance, and Deputy Controller of Capital Issues in the office of controller of Capital Issues. He has mentioned that the consent of the Controller of Capital Issues was granted on July 4, 1988 and the same was amended to a certain extent on July 19 and 26, 1988. He has explained in his affidavit the background of the circumstances leading to the consent order.

24. In relation to the 3 projects, namely, (i) for manufacture of 1,00,000 tonnes per annum Poly Vinyl Choaride (PVC); (ii) 60,000 tonnes per annum of MEG (Mono Ethylene Glycol); and (iii) 50,000 tonnes per annum of HDPE (High Density Polyethylene), RPL submitted an application for issue of capital on or about May 4, 1988 in the prescribed form. RPL proposed raising of capital by various instruments, like, equity shares, cumulative convertible preference shares (CCP), party convertible debenture intended to be issued to the public, to the shareholders of RIL, debenture holders and deposit holders of RIL. The original proposal for approval related to the following instruments :

> #Instrument Amountin Rs(Crores)EquityReliance Industries Ltd. 47.00Shareholders, debenture holders and deposit holders of 4.00Reliance Industries Ltd.Public 6.00Cumulative Convertible Preference Shares (CCPS)Non-resident Indians/Foreign Collaborators/ 81.00Indian Resident PublicConvertible DebenturesShareholders, debentureholders and deposit holders of 214.00Reliance Industries Ltd.Public 241.00##

The Instrument of convertible cumulative preference shares was proposed to be converted at a price to be fixed by respondent 2 at premium not exceeding Rs. 40 per share between the third and fifth year from the date of allotment. The debentures proposed were to be of the face value of Rs. 500 each and the conversion was to be of Rs. 200 into 10 shares as follows :

> #6 per cent of the face value (Rs. 30) would be compulsorily converted into equity at per at 1 year from allotment.16 per cent of the face value (Rs. 80) would be compulsorily converted at 2 years from allotment into equity at a premium to be decided at the time of conversion but not greater than Rs. 20 per share.18 per cent of the face value (Rs. 90) would be compulsorily converted into equity at 3 years from

allotment at a premium decided at the time of conversion but not greater than Rs. 30 per share.60 per cent of the face value (Rs. 300) would be redeemed between 8th and 10th years from allotment by draw of lots.##

25. It appears that the Industrial Credit and Investment Corporation of India Ltd. (for short ICICI), was the lead financial institution and lead manager for the issue of capital of RPL, and its merchant banking department, having the necessary expertise, was interacting between respondent 2, namely, the Controller of Capital Issues and RPL. Discussions were held with ICICI to evaluate whether the company could proceed with the proposal by respondent 3 (RPL) by removing the instrument of cumulative preference shares as also the non-convertible portion of the debentures. This would have been necessitated by the sluggishness in the capital market, the market reactions to noncovertible preference shares and the discount at which such instruments were traded after they came into existence, the complexity of cumulative convertible preference shares and the general reaction anticipated from the public for investment. It was stated that it was necessary to encourage investment and draw out saving from the home savi

(i) 5 per cent of the face value of the debentures at par on allotment;

(ii) 20 per cent of the face value (inclusive of premium) at a premium as may be decided in consultation with the Controller of Capital Issues at he end off the fourth year from the date of allotment;

(iii) the residual portion (inclusive of premium) at a premium as may be decided in consultation with the Controller of Capital Issues at the end of the seventh year from the date of allotment.

26. In view of the revised project cost it was felt that the promotor's contribution of Rs. 50 crores was less and RIL as promotors were told, as asserted in the affidavit, to increase the promotor's contribution to 15 per cent of the total project cost of Rs. 700 crores. RIL in view of this requirement, agreed to bring in Rs. 107.50 crores as its contribution to RPL, out of which a sum of Rs. 50 crores was directed to be kept as interest free unsecured loan at the time of allotment which would be converted into equity ar par at the expire of 36 months from the date of allotment of convertible debenturs.

27. As a practice, it is asserted, respondent 2 being the CCI, observed that debenture holder/fixed deposit holders of RIL were not eligible for preferential reservation in the capital issue of RPL, and thus RPL was not permitted to issue capital to these categories on preferential basis and only the shareholders of RIL were permitted preferential entitlement in accordance with the practice.

28. By a press release dated September 15, 1984 respondent 2 had issued certain non-statutory guidelines for approval of issue of secured convertible and non-convertible debentures. These guidelines had been subsequently amended by press release dated March 8, 1985. Guidelines were also issued by press release on August 19, 1985 for issue of convertible cumulative preference shares. There are guidelines issued by press release dated August 1, 1985 for employees stock option scheme. In accordance with the guidelines of September 15, 1984, as amended on March 8, 1985, the consent for capital issue for secured fully convertible debentures was issued as the projects originally to be established in RIL were permitted by the Department of Company Affairs to be transferred to RPL. The application for industrial licences and endorsements thereof from RLL to RPL had already been filed including, inter alia, the endorsement of the letter of intent for the

MEG project. The scheme of finance for setting up of 3 projects

29. The proposal contemplated was within the debt-equity norms and radio in accordance with para 4 of the non-statutory guidelines as the debt in the proposal aggregated to Rs. 471 crores. This is because debentures are considered as debt only when they are unredeemed beyond the period of 5 years as per Explanation to Section 5 (ii) of the Capital Issues (Exemption) Order, 1969. In the present case, 25 per cent of the face value of the debenture would stand redeemed by the third and fourth years and before the fifth year, and it would therefore not be considered as debt for evaluating debt-equity ratio as per the guidelines. Similarly, the promotor's contribution of Rs. 100 crores plus 25 per cent converted debentures at the end of 5 years would bee categorised as equity representing share capital and free reserves converted from the total investment of Rs. 516 crores proposed by RPL. It was assumed to aggregate to Rs. 229 crores and debt-equity ratio thus came to 2.05 : 1 - which approximates the ratio of 2

30 It was further asserted that these guidelines being non-statutory and not rigid, a relaxation in the norm of debt-equity ratio of 2 : 1 is considered favourably for capital intensive projects like petrochemical which require large investments as would appear from the Note annexed to the guideline. The guidelines postulate that these debentures should be secured. The proposal itself contemplated that the security would be in such form and manner as required by the trustees for the debenture holders for convertible debentures. It was asserted that it was not a requirement of the guidelines that the debenture issue be compulsorily underwritten. The gude lines them selves contemplated that respondent could satisfy himself that the issue need not be underwritten. An application to this effect had been made by RPL and was granted by respondent 2 after carefully examining this issue. The guidelines contemplated simultaneous listing of shares and debentures. In the present case, upon allotment, there was simultan

31. However, it was further stated that, in view of the size of the issues there was a modification dated July 19, 1988 of the consent order which restricted and put a non-transferability condition on the preferential entitlement of the shareholders of RPL. It was limited to the corporate shareholders of RIL and relaxed for individual shareholders of RIL. The restrictive condition on their right to sell, transfer and hypothecate their shareholding was thought necessary in order to ensure that they do not disinvest soon after the issue and thus dilute their stake in the company.

32. On behalf of the Controller it was asserted that the guideline should not be construed in a manner which would fetter, constrict or inhibit statutory discretion vested in respondent 2 for taking decisions in the interest of the capital market and for national purpose of furthering the growth of industrialisation and investment in priority sectors so as to encourage employment and demand in the national economy. The objectives of the control, according to the deponent, contemplated under the Capital Issues (Control) Act was to prevent wasteful investments and to promote sound methods of corporate finance. It was asserted that the administrative guidelines were only enabling in nature and could not and ought not to be construed as preventing the statutory authority from adopting or modifying varying norms in operational area of implementing the purposes of the Act especially when there were no fetters under the statue.

33. The Controller of Capital Issues had issued, it was stated, guidelines as a result of the wartime needs and controls, since the year 1947 and flow from the experience gained under the Defence of India Rules, 1939. Hence, according to the deponent, these controls have been progressively reduced and the Capital Issues (Exemption) Order, 1969 was brought into force so as to reduce the rigors of the Act. In the absence of any control for capital issues for securities, according to the

deponent, there would be no fetter or restriction to the part of the company to borrow or raise capital from he market. It is to check raising of wasteful capital and to avoid investment being made in non-productive, non-priority sectors and non-commensurate with the needs that the Act in question was brought into force. This is being implemented with the aid of competent bodies. It is further stated that the stipulation for fixation of premium at the time of conversion is not a new practice and had been applied in the year 119

34. All these petitions challenge only the grant of sanction by the Controller of Capital Issues, though different aspects have been highlighted in the different petitions and we have heard different learned counsel. We have, therefore, to examine what is the scope of the powers and functions of the Controller of Capital Issues while discharging his statutory functions in according sanction to capital issues. It is further necessary to examine if that role has in any way, changed or altered due to the present economic and social conditions prevailing in the country? It has also to be considered whether the guidelines or the provisions of law under which the Controller has functioned or has purported to function in this case, were proper or there had been deviations from these guidelines. If so, were such deviations, possible or permissible? It is further necessary to examine whether the Controller has acted bona fide in law. These are the broad questions which have to be viewed in respect of the challenge to

35. Counsel for the petitioners contended that the RPL's application had been entertained even without the company fulfilling the requirements of a proper application and furnishing the necessary consents and approvals, processed with undue expedition within a very short time and sanctioned without any application of mind to the crucial terms of the issue which were detrimental to public interest. This contention, when analysed, turns on a number of aspects which can be dealt with separately :

> (a) It is submitted that the application was made on May 4, 1988 and sanctioned on July 4, 1988 - within hardly a period of two months; this reflects under haste and favouritism, particularly if one has regard to the magnitude of the public issue proposed to be made and the various financial and other intricacies involved. We are unable to accept this contention. In the first place, and plication of this type is intended to be disposed of with great expedition. In particular, in a project of the type proposed to be launched by the petitioner, passage of time may prejudicial affect the applicant and it is not only desirable but also necessary that the application should be disposed of within as short a time as possible. It is, therefore, difficult to say that the period of two months taken in granting consent in the present case is so short that an inference of haste must follow. Secondly, on behalf of the Union of India a list of various applications received and disposed of by the office of the CCI between

36. (b) Secondly, it has been submitted that the RPL was a company which was incorporated only on January 11, 1988. RIL had issued a 'G' series of debentures as recently 1986 for the same projects. In granting pletely overlooked the fact that in respect of the same projects the RIL had been permitted to raise debentures on earlier occasions. We do not think that the petitioner are correct in saying that the Controller of Capital Issues has overlooked or was not aware of the debenture issues by the RIL or the purposes for which these debenture issues had been sanctioned. The application for consent makes it clear that the petitioner company is a new company promoted by RIL and that RIL was promoting this company to manufacture HDPE, PVC and MEG at Hazira. The application refers to the fact that the total cost of the project was expected to be Rs. 650 crores and that this cost had been approved earlier in 1985. Considering that RPL had come into existence

only on January 11, 1988, this was clear indication tha

37. (c) Thirdly, it is submitted that having regard to the requirements of the pro forma prescribed under the rules, the application for consent could not have at all been considered by the CCI until the RPL produced the industrial licence in its favour, the collaboration agreements, the approvals of the financial institutions and the approvals under the MRTP Act. It is submitted that the application of the petitioner was cleared hurriedly without insisting upon these clearances and this was done specially to oblige the company. We must first of all pint out that the pro forma relied on indicates a general procedure and should not be understood as a rigid requirement. It is, of course, the duty of the CCI to be satisfied that before the debentures are actually issued the applicant company has al the necessary licences, consents, orders, approvals, etc. in is favour. We are satisfied that in the present case there is no reason to doubt that he had been so satisfied if one remembers that those projects had bee

38. We shall first refer to the steps taken by the RIL in this regard.

39. On October 10, 1983 as RIL proposed to engage in manufacture of MEG, it filed an application of grant of an industrial licence under the Industries (Development and Regulation) Act, 1951. On August 16, 1984 RIL received a Letter of Intent No. 653 (84) Regn. No. 1323 (83) - IL/SCS issued by the Government of India for the manufacture of 40,000 TPA of MEG. Thereafter, from time to time on the applications made by the RIL, the Government of India by various letters extended the validity of the period ending up to June 30, 1989. The last of such extensions was made by a letter dated September 2, 1988. On May 11, 1988 pursuant to an application made, the Government of India permitted expansion of capacity for manufacture of MEG from 40,000 TPA to 60,000 TPA. From January 12, 1988 to July 22, 1988 to July 22, 1988 to 22, 1988 applications were made by RIL for change of company from RIL to RPL for the MEG project. It appears that on August 11, 1988 approval/sanction was granted by the Government of India for ch

40. It appears that on October 9, 1984 pursuant to an application made by RIL for foreign collaboration with M/s Union Carbide Corporation, USA, the Government of India by its order of that date accorded approval to the terms of the foreign collaboration for a period of six months for this project. It further appears that on March 14, 1986 pursuant to an application made by RIL, the government accorded approval for foreign collaboration with M/s Scientific Design Company. It may, however, be mentioned that there was a letter dated April 30, 1986 whereby approval was granted by the Reserve Bank of India in respect of foreign collaboration agreement with M/s Scientific Design Co. USA.

41. The next aspect of the matter which has to be borne inn mind in view of the contentions urged was regarding the licences. It appears that there was an application on March 25, 1987, for licence. On August 9, 1988 the Industrial Licence dated March 25, 1984 granted to RIL for manufacture of PVC was endorsed to RIL. This is important because one of the contentions that Shri Pagaria during the course of his long submissions made was that there was no valid licence.

42. It also appears that so far as the MRTP Act is concerned, an application was made by RIL on or about October 12, 1984 under Section 22 (3) (a) for manufacture of PVC. Several other steps were taken and on June 29, 1988 there was an order of the Government of India under Section 22 (3) (d) of the Act, according approval to the proposal for modified scheme of finance.

43. There was a further proposal for modification and further orders. Last of such orders was dated

October 11, 1988. Similarly regarding the foreign collaboration, there were approval letters and the last one was dated August 12, 1988 for endorsement of foreign collaboration approval in favour of RPL. So far as HDPE is concerned, it appears that there was a valid licence; and it may be mentioned that on August 24, 1985 pursuant to an application made by RIL under Section 22 (3) (a) off the MRTP Act, the Government granted approval for the establishment of a new undertaking for manufacture of HDPE.

44. Regarding foreign collaboration, an application was made by RIL in 1984 for approval of foreign collaboration with M/s Du Pont Inc. Canada, for manufacture of HDPE. Such approval was given and the validity was extended and the foreign collaboration approval was endorsed in favour of RPL on October 12, 1988. Similar other consents were there. Mention may be made of letters dated April 28, March 11, December 6, 1986, January 2, 1987, July 15, July 25 and 26, August 19, 1988 which appear at various pages of volume IV of the papers. Finally, capital goods clearance was endorsed in favour of RPL for the PVC project on August 12, 1988. Capital goods clearance was also endorsed in favour of RPL for HDPE project on August 23, 1988. Thus, it will be seen that all the basic groundwork had already been done by the RIL.

45. It is in above perspective that one has too examine the events that have happened. The question tat has to be considered is whether the CCI could take it for granted that these approvals, consents, etc. would stand automatically transferred to the RPL. On June 16, 1987 by a press note issued by the Department of Industrial Development in the Ministry of Industry, the Government of India declared that where a transfer company is a fully owned subsidiary of the company holding the Letter of Intent or licence, the change of the company is a fully owned subsidiary of the company implementing the project would be approved. It is in the light of this that the Board of RIL on December 30, 1987 passed a resolution to incorporate a 100 per cent subsidiary company whose main objects were, inter alia, too implement the licences/Letters of Intent received by RIL and the objects of undertaking, processing, converting, manufacturing, formulating, using, buying, dealing, acquiring, storing, packaging, selling, transpor

46. The press note earlier referred to makes it clear that the transfers from one company to an allied company were considered unexceptionable except where trafficking in licences is intended. In this situation the change of name from RIL to RPL, of the licences, letters of intent and other approvals was only a mater of course and much importance cannot be attached to the fact that CCI did not insist upon these endorsements being obtained even before the letter of consent is granted. In any event the letter of consent is very clear. Clause (h) of the conditions attached to the consent letter make it clear that the consent should not be construed as exempting the company from the operation of the provisions of the Monopolies and Restrictive Trade Practices Act, 1969, as amended. Clause (e) makes it clear that it is a condition of this consent that the company will be subject to any measures of control, licensing, or acquisition that may be brought into operation either by the Central or any State Government o

47. (d) It is next submitted that under para 3 of the guidelines issued by the government, the amount of issue of debentures for project financing and other objects will be considered on the basis of the approvals of the scheme of finance by the financial institutions/banks/government under the provisions of the MRTP Act, etc. The criticism in this respect is that since no approvals of the scheme of finance by the financial institutions/banks/government under the provisions to the MRTP Act etc. had been produced before the Controller of Capital Issues he could no have been satisfied that the count of issue of debentures was necessary and adequate on the basis of such approvals. This argument proceeds on a misconception of the government set up for dealing with these matters.

The learned Additional Solicitor General points out that the Controller of Capital Issues does not function in isolation, sitting at his desk and awaiting the various types of clearances and consents that are necessary to be obtained fro

48. (e) The assumptions behind the petitioners' arguments that the terms of the issue as proposed by the RPL were approved in toto by the CCI without examination is also unfounded. The record before us indicates that there were frequent discussions leading to alterations in the original proposals from time to time as well as changes in the conditions of consent both before and even after the letter of consent dated July 4, 1988. Some aspects of these have been referred to elsewhere and some are referred to below and these will show that consent was not granted as a matter of course. The allegation that consent was accorded without any application of mind as, on the materials before us, clearly untenable.

49. It is stated in the affidavit that in March/April 1988 discussions centered around the concept of cumulative convertible preference shares (CCP) which was mooted as an instrument for the means of finance. The instrument offered would have been equity shares too the extent of Rs. 57 crores, cumulative convertible preference shares to the extent of Rs. 81 crores and convertible debentures to the extent of Rs. 478 crores with four conversions. In this connection, reference may be made to Annexure 1 at page 39 of the reply affidavit filed in these proceedings by RPL. Thereafter, on May 4, 1988 RPL made an application to the Controller of Capital Issues seeking permission to make an issue of capital on certain conditions. Specific details thereof are not necessary to be set out here. It also made a proposal for issue of 81 lakhs 10 per cent cumulative convertible preference shares of Rs. 100 each for cash at par through prospectus to non-resident Indians/resident Indian public - Rs. 81 crores. It is stated th

50. It was further stated that in accordance with guidelines issued by the Government of India, the company had intended to retain excess subscription amount to the extent of 15 per cent of Rs. 566 crores, i. e., a right to retain an additional amount of Rs. 85 crores. The idea was that the company would in the event of over-subscription request the CCI for allotment of such additional amount of Rs. 85 crores. It was further proposed to issue a part of the cumulative convertible preference shares to NRIs an and part to the foreign collaborators.

51. Terms of the proposed convertible debentures were -

> (a) Convertible debentures up to 12.5 per cent (interest) taxable : Each convertible debenture of Rs. 500 would be converted into 10 equity shares of Rs. 10 each as per scheme envisaged. The residual portion of each convertible debenture would be redeemable at the end of tenth year from the date of allotment with an option to the company to repay these amounts in one or more instalments by drawing lots at any time after the end of fifth year from the date of allotment.
>
> (b) Cumulative Convertible Preference Shares 10 per cent (dividend) taxable. Each CCP would be fully converted into equity share of Rs. 10 each at such a premium not exceeding Rs. 40 per share as might bee approved by the CCI at any time between the third and/or fifth year from the date of allotment to be decided by draw of lots, if necessary.

52. Then there are other condition regarding securities, underwriting, allotment of equity shares to RIL shareholders. In May 1988, several NRIs also evinced interest in equity participation in RPL. It

was stated that though the CCP shares appeared to be most appropriate instrument, the computation of reserved/preferential entitlement resulted in very low entitlement to the existing shareholders of RIL. It was then contemplated to increase the preferential entitlement of RIL investors on partially convertible debentures and the ratio of convertible debentures was altered so as to give equal share between RIL investors and the members of public. A three stage conversion was contemplated. Thereafter, in June 1988, a revised proposal to the CCI was made by RPL. It is not necessary to set out in detail the said revised proposal. After several discussions, on or about June 1, 1988, between the company, RPL, the Merchant Bankers, ICICI and the office of CCI, it was asserted on behalf of respondent 3 that serious r

53. It may be necessary at this stage to refer to the order dated July 4, 1988, which is as follows :

> "With reference to your letter No. BOK/DKG/505 (C) dated June 8, 1988, I am directed to say that the Central Government in exercise of the powers conferred by the Capital Issues (Control) Act, 19477, do hereby give their consent to an issue by M/s Reliance Petrochemicals Ltd., a company incorporated in the State of Maharashtra, of capital of the value of Rs. 650.90 crores (inclusive of retainable excess subscription to the Rs. 84.90 crores).
>
> (A) 5,75,00,000 equity shares of Rs. 10 each for cash at par to M/s Reliance Industries Ltd. (inclusive of retainable excess subscription to the extent of Rs. 7.50 crores).
>
> (B) 2,96,70,000 12.5 per cent secured, redeemable, convertible debentures of Rs. 200 each for cash at par to public by a prospectus (inclusive of retainable excess subscription of Rs. 77.40 crores).
>
> 2. Out of (B) above, reservations for preferential allotment will be made as follows :
>
> (i) Shareholders of M/s Reliance Industries Ltd. 50 per cent.
>
> (ii) Employees (including Indian Working Directors) / workers of the company and of M/s RIL. 5 per cent.
>
> Unsubscribed portion, if any,, of the reservations will be added to the public offer.
>
> The convertible debentures will carry interest 12.5 per cent per annum (taxable). The debentures will be fully and compulsorily convertible in the following manner :
>
> (a) 5 per cent of the face value at par on allotment of the debentures.
>
> (b) 20 per cent of the face value at a premium if any, as may be decided by this office after three years but before four years from the date of allotment of debentures.
>
> (c) The balance at such a premium if any, as may be decided by this office after 5 years but before the end of 7 years from the date of allotment.
>
> 3. The consent given as aforesaid is qualified by the conditions mentioned in the Annexure and the company shall comply with the terms of the conditions so imposed.

> 4. I am to make it quite clear that the grant of consent to the issue of capital represents no commitment of any kind on the part of the Central Government to render assistance in the matters of priorities or licences for supplies of raw materials, machinery, steel, etc., of transport facilities or any other governmental assistance, including the provision for foreign exchange.
>
> 5. This order also conveys the approval of the Central Government under proviso to Rule 19 (2) (b) of the Securities Contracts (Regulation) Rules, 1957 subject to the condition that the allotment to the employees shall not exceed 200 shares per individual.
>
> 6. This letter is issued in the name and under the authority of the President of India."

54. There was annexure to the said order. In that annexure, certain conditions were laid down and condition (a) stipulated that in any prospectus or other document referred to in Section 4 of the Capital Issues (Control) Act, 1947, relating to this issue, the statement required by that section must be worded as follows :

> "Consent of the Central Government has been obtained to this issue by an order of which a complete copy is open to public inspection at the head office of the company. It must be distinctly understood that in giving this consent the Central Government do not take any responsibility for the financial soundness of any scheme or for the correctness of any of the statements made or opinions expressed with regard to them".

55. It further imposed the condition (b) that the consent would lapse on the expiry of twelve months from the date of consent. Order also stipulated that the consent should not be construed as exempting the company from the operation of the provisions of the Monopolies and Restrictive Trade Practices Act, 1969, as amended. The consent also indicated that the company would be subject to any measures of control, licensing, or acquisition that might be brought into operation either by the Central or any State Government or any authority therein. It also enjoined the company to ensure that the prospectus for the issue of securities consented to should be printed subject to certain conditions. It also enjoined, inter alia, that the convertible debentures should be allotted to the employees of the company and of M/s RIL and the shareholders of M/s RIL. On conversion the equity shares so converted should not be transferred/sold/hypothecated for a minimum period of three years from the date of allotment of convertib

> "(v) The equity shares to be allotted to the promotors of the company shall not be sold/hypothecated/transferred for at least three years from the date of allotment.
>
> (w) It is a condition of this consent order that the proceeds from the issue of debentures should be invested in fixed duration deposits/instruments with the cooperative/nationalised banks, UTI, Financial institutions, public sector undertakings (other than public sector bonds) and be used strictly for the requirements of the projects mentioned in the application and not for any other purpose.
>
> (x) M/s Reliance Industries Limited will bring in additional amount of Rs. 50 crores as interest free unsecured loans, at the time of allotment of the above convertible

debentures as additional promotors contribution which will be converted into equity at par on the expiry of 36 months from the date of allotment of convertible debentures.

(y) (i) The company shall scrupulously adhere to the time limit of 10 weeks from the date of closure of the subscription list for allotment of all securities and despatch of allotment letters/certificates and refund orders.

(ii) The company shall, at the time of filing its application for listing to the regional stock exchange, furnish an undertaking for compliance of the above condition, along with a scheme incorporating the necessary details of the arrangements for such compliance. This undertaking shall be signed by the Chief Executive or a person authorised by the Board of the company.

(iii) The company shall file, with the Executive Director or Secretary of the regional stock exchange, within five working days of the expiry of the stipulated period as above, a statement signed by the Chief Executive or a person authorised by the Board, certifying that the allotment letters/securities and the refund orders have been despatched within the prescribed time limit as per the condition above. A copy of the statement shall be endorsed to the office of the CCI quoting this consent order and date.

(iv) Non-compliance of conditions above shall be punishable by the stock exchange, in addition to the action that may be taken by other competent authorities."

56. The other conditions mentioned therein are not very relevant. These only enjoin certain procedural safeguards. The said consent order was amended on July 19, 1988 which clarified that the intention for imposing condition (w) as set out above, was not to block all the funds raised but should be invested in terms of the conditions laid down aforesaid. The amendment enjoined that the approval of the Central Government should be subject to the condition that allotment to the employees should not exceed 50 debentures per individual. It was further added that the company should obtain prior approval. It was further added that the company should obtain prior approval of the Reserve Bank of India, Exchange Control Department, for the allotment of debentures to the non-residents as required under the Foreign Exchange Regulation Act, 1973. There was a further amendment of the consent order on July 26, 1988 which added condition (s) to the following effect :

"(s) The convertible debentures to be allotted to the employees of M/s RPL and M/s RIL and the corporate shareholder of M/s RIL (other than individual shareholders of M/s RIL) shall not be sold/transferred/hypothecated till the end of 3 years from the date of allotment of debentures. On conversion the equity shares so converted shall not be transferred/sold/hypothecated for a minimum period of 3 years from the date of allotment of convertible debentures". It was stated that between January 4, 1988 to July 24, 1988, news about formation of RPL and to set up the projects at Hazira, Gujarat and the consent granted by CCI for convetibel debentures for RPL - all these were widely reported in various newspapers and magazines including national dailies such as Times of India, Indian Express, Financial Express, Gujarat Samachar, Hindustan Times, Bombay Samachar, Business Standard and other magazines and news items. Thereafter, till mid-August, 1988, there were detailed advertisements bout the company and nearly 1600

57. In this context, on behalf of the respondents, Mr. Baig drew our attention to certain dates indicating that the writ petitioners were aware of this and it was stated that on July 20, 1988, Mr. Radheyshyam Goyal, the writ petitioner in Rajasthan High Court, wrote a letter to the Editor of the Financial Express that the premia for the issue of shares upon the second and third conversion had not been fixed and the terms and conditions were vague. Shri Goyal also made certain other allegations. Though, of course, no complaint was ever made to RIL or RPL on this aspect, on August 16, 1988, one Mr. J. P. Sharma filed a complaint of Unfair Trade practice under the MRTP Act before the MRTP Commission seeking injunction against the issue opening on August 22, 1988 and alleging the same breaches as claimed by the petitioners in the transfer cases.

58. On being moved, this Court, on August 19, 1988, passed an order in Transfer Petitions No. 192-193 staying the three pending writ petitions in the three High Courts, namely, Bangalore, Delhi and Jaipur and further stayed the proceedings in the suit being Civil Suit No. 1172 of 1988 filed in Baroda. It was directed that the issue of debentures would proceed without hindrance notwithstanding any proceedings instituted or orders passed and that any order or direction or injunction already passed or which might be passed would remain suspended till further orders of this Court. It was mentioned that on August 29, 1988, the complaint filed by Shri Sharma before the MRTP Commission was dismissed. On August 31, 1988, one Shri Arvind Kumar Sanganeria issued notice through his advocate advising that a writ petition was being preferred in the Bombay High Court. On September 1, 1988, this Court granted an ex parte stay of the proceedings in Writ Petition No. 4388 of 1988 pending before the Bombay High Court. As ment

59. Shri Ganesh made submissions in Transfer Case No. 164 of 1988. Shri Haksar made his submissions in T. C. No. 161 of 1988. Shri Pagaria argued T. C. No. 162 of 1988. Shri Udai Holla who was the counsel for the petitioner in Karnataka matters, appeared in T. C. No. 163 of 1988 and made his submissions. We heard Mr. G. Ramaswamy, Additional Solicitor General. Shri Soli J. Sorabjee, Shri Baig and Shri Salve argued on behalf of respondents 1 ad 2 and Shri F. S. Nariman for respondent 3 in T. C. No. 162 of 1988.

60. Inasmuch as the charge is the non-evaluation by the CCI in enforcing and applying the principles of guidelines properly, it would be appropriate at this stage to refer to the said guidelines. It appears that from time to time, in exercise of the powers conferred by Section 12 of the Capital Issues (Control) Act, 1947, the Central Government had issued rules and guidelines. On or about April 17, 1982, guidelines were issued by the Government of India under the said Act for the "Issue on Debentures by Public Limited Companies". It is not necessary to set out in detail these guidelines, but it may be necessary to refer to clauses (4) and (6) of the said guidelines. Clause (4) reads as follows :

> "4. Debt-equity.-The debt-equity ratio shall not normally exceed 2 : 1. For this purpose :
>
> "Debt" will mean all terms loans, debentures and bonds with an initial maturity period of five years or more, including interest accrued thereon. It also includes all deferred payment liabilities but it does not include short-term bank borrowings and advances, unsecured deposits or loans from the public, shareholders and employees, and unsecured loans or deposits from others. It should also include the proposed debenture issue.
>
> "Equity" will mean paid-up share capital including preference capital and free

reserves.

Notes : (1) The computation under guidelines 3 and 4 mentioned above will be based on the latest available audited balance sheet of the company.

(2) A relaxation in the norm of debt-equity ratio of 2 : 1 will be considered favourably for capital intensive projects such as fertilizers, petro-chemicals, cement, paper, shipping, etc."

Clause (6) of the said guidelines deals with the period of redemption and is as follows :

"6. Period of Redemption.-Debentures shall not normally be redeemable before the expiry of the period of seven years except in the following cases :

(i) A company will have the option of redeeming the debentures from the 5th to the 9th year from the date of issue in such a way that the average period of redemption continues to be seven years. While exercising such an option the small investors having debentures of the face value not exceeding Rs. 5000 will have to be paid in one instalment only.

(ii) In case of non-convertible debentures or non-convertible portion of convertible debentures a company may have the option of getting the debentures converted into equity fully with the approval of and at such price as may be determined by the Controller of Capital Issues. The debenture holders will, however, be free not to exercise this right".

Clause (8) provides for the denomination of debentures. Clause (9) enjoins the listing of debentures on the stock exchanges. Clause (10) stipulates that only secured debentures would be permitted for issue to the public. Clause (11) enjoins the underwriting of the debentures and clause (12) also provides for listing of the shares of the company proposing debenture issue. Clause (13) permits linked issue on shares and debentures. There were certain amendments to these guidelines which would be noted at the relevant time.

61. While considering the question of the application or non-application of mind or infringement of guidelines, it is necessary to bear in mind the role of the CCI in this respect. The CCI functions under the Capital Issues (Control) Act, 1947. This is an Act to provide for control over the issues of capital. Section 2 (e) of the said Act defines "securities" and states that the "securities" means any of the following instruments issued or to be issued, or crated or to be created, by or for the benefit of a company, namely :

(i) shares, stocks and bonds;

(ii) debentures;

(iii) mortgage deeds, etc.; and

(iv) instruments acknowledging loan or indebtedness.

62. Section 3 (1) of the said Act enjoins that no company incorporated in the States shall, except with the consent of the Central Government, make an issue of capital outside the States. The other

sub-sections of Section 3 deal with the modalities of such consent.

63. It may be mentioned that the Statement of Objects and Reasons of the Act states that the object of this measure is to keep in existence.... the control over capital issues which was imposed by Rule 94-A of the Defence of India Rules in May 1943 and continued in force after the expiry of the Defence of India Act by Ordinance 20 of 1946. The statement further states that although there has been an appreciable change in the general conditions which constituted the principal reason for the introduction of the control during wartime, it was thought in the light of balanced investment of the country's resources in industry, agriculture and the social services. (See Gazette of India, 1947, Part V, p. 264).

64. In this connection, Shri G. Ramaswamy, learned Additional Solicitor General for the Union of India drew our attention to the Debates of the Lok Sabha and the Rajya Sabha in February-March 1956 when the question of continuance of the control of the capital issues came up for consideration. The Minister of Finance, Shri C. D. Deshmukh stated that the control of capital issues was __first introduced in May 1943 under the Defence of India Rules. It was continued after the termination of the war by an Ordinance, thereafter in 1947 by an Act for a term of three years and it was again sucessively extended in 1950 and 1952. The Act as it stooexpired on March 31, 1956. The main purpose which the Minister explained was to prevent the diversion of investible resources to non-essential projects, the control had also been used for many other purposes and the most important of these purposes which might be called ancillary purposes were the regulation of the issue of bonus shares, regulation of capital reorganisation

65. We have referred to the debates only to highlight that the purpose of the Bill was to secure a balanced investment of the country's resources in the industry and not to ensure so much the soundness of the investment or give any guarantee to the investors. The section of the Act in question in express terms does not enjoin the CCI to discharge such obligations nor does the background of the Act so encompass.

66. There was considerable discussion before us as to the scope of the powers and responsibilities of the CCI while granting his consent to an issue of shares and debentures proposed by a company. As stated above, the learned Additional Solicitor General submitted that the restrictions on issue of capital were introduced as part of the control measure found necessary during the period of the second world war and that, after the war ended, the control was continued as it was thought 'in the light of experience gained that control is still necessary to secure a balanced investment of the country's resources in industry, agriculture and the social services". (vide the Statement of Objects and Reasons of the Act in 1947) He urged, relying also upon the speech of the concerned Minister at the time of moving the amendment bill of 1956 in Parliament (which placed the measure on a permanent footing) that all that the CCI is concerned with is to ensure that the investible resources of the country are properly utilise

67. We are unable to agree fully with this somewhat narrow aspect of the CCI's role. In the very speech in parliament to which the learned Additional Solicitor General referred, the Minister also stated :

> "Apart from this main object of the Bill which is thus to prevent the diversion of investible resources of non-essential projects, the control has also been used for many other purposes. The more important of these purposes which may be called ancillary purposes are the regulation of issue of bonus shares, regulation of capital

> reorganisation plans of companies including mergers and amalgamations which involved the issue or re-issue of capital, the regulation of the capital structures of companies with a view to discouraging undesirable practices, namely, issue of shares with disproportionate voting rights and encouraging the adoption of sound methods and techniques in company flotation, regulation of the terms and conditions of additional issues of capital etc."

68. That apart, whatever may have been the position at the time the Act was passed, the present duties of the CCI have to be construed in the context of the current situation in the country, particularly, when there is no clear-cut delineation of their scope in the enactment. This line of thought is also reinforced by the expanding scope of the guidelines issued under the Act from time to time and the increasing range of financial instruments that enter the market. Looking to all this, we think that the CCI has also a role to play in ensuring that public interest does not suffer as a consequence of the consent granted by him. But, as we have explained later, the responsibilities of the CCI in this direction should not be widened beyond the range of expeditious implementation of the scheme of the Act and should, at least for the present, be restricted and limited to ensuring that the issue to which he is granting consent is not, patently and to his knowledge, so manifestly impracticable or financially risky a

69. Shri Ganesh submitted that the CCI is duty bound to act in accordance with the guidelines which lay down the principles regulating the sanction of capital issues. This is especially so because the guidelines had been published. IT was submitted that the investing public is, therefore, entitled to proceed on the basis that the CCI would act in conformity with the guidelines and would enforce them while sanctioning a particular capital issue. IT was submitted that it is not permissible to deviate from the guidelines. In this connection, reliance was placed by him as well as by Shri Haksar, appearing for the petitioner in T. C. No. 161 of 1988, upon the observations of this Court in Ramana Dayaram Shetty v. International Airport Authority of India where this Court observed that it must be taken to be the law that where the government is dealing with the public, whether by way of giving jobs or entering into contracts or issuing quotas or licence or granting other forms of largesse, the government could not

70. We are unable, however, to accept the criticism that there has bene deviations from the guidelines which are substantial. We have referred to the guidelines. We do not find that there has been any requirement of such guidelines which cloud be considered to be mandatory which have not been complied with. We have considered this carefully and found that there have been no deviations from paras 3, 5, 12, 13 and 14 of the guidelines. Nor has there been, as pointed out by the respondents, any infraction of guidelines 2 and 4. The fact that debentures of the face value of Rs. 200 have been approved as against the normal face value of Rs. 100 envisaged under para 8 or that the requirements of the service of underwriters have been dispensed with in exercise of the discretion conferred by para 11 do not constitute arbitrary, substantial or unjustified deviations from those guidelines. There has been sufficient compliance with the guidelines on the quantum of issue, debt-equity ratio, interest rate and the period

71. It was submitted by Shri Ganesh that there was an obligation vast on the CCI to ensure that the guideline regarding security for the debentures was fulfilled. Shri Ganesh took us through the documents filed before the CCI including, in particular, the draft prospectus which, according to him, clearly showed that there was in reality no security for the debentures. We are unable to accept this contention.

72. Perhaps the most important of the arguments addressed on behalf of the petitioners was that the scrutiny by the CCI of the prospectus was so cursory that the most glaring travesty of truth contained therein has passed unnoticed by him. Shri Ganesh points out that the guidelines were clear that a company can issue only secured debentures and draws attention to the fact that the company proclaimed the issue to be of "fully secured convertible debentures". Yet, the prospectus, on its very face, disclosed that the debentures were unsecured. Shri Ganesh urges that, if only the CCI had perused carefully the figures and statements made in the prospectus he could never have accepted, at face value, the assertion of RPL that the debentures were "secured" ones within the meaning of the guidelines or accorded his consent to the issue. This argument is in three parts and may be dealt with accordingly :

> (i) The first criticism of the petitioners is that, in certain brochures and pamphlets issued by RPL, the debentures are described as "fully secured convertible debentures" which they are not. The company admitted that there was such a description but explained that this was due to an oversight; the words "fully secured convertible debentures" were printed in some brochures instead of the words " secured fully convertible debentures" without meaning or intending any change. It is submitted that the company's representation was that the debentures were "secured fully convertible" ones. This is also what had been set out in the application for consent. Though the company does claim that the debentures were also fully secured, it is submitted that the emphasis in the issue was that the debentures were fully convertible and secured. We think this explanation is plausible and do not think that any importance or significance need be attached to the different description in some places, particularly, in view of our
>
> 73. (ii) The second contention is that the security offered, on the face of it, falls far short of the face value of he debentures. Shri Ganesh analysed before us some statements indicating the inadequacy of the security. It was submitted by him that as per page 6 of the prospectus issuing the debentures, after implementation of the projects only the following assets would be available with the company :
>
> #Rs. in CroresLand and site development 11Buildings 26Plant and Machinery 305----------Total 342----------##

The assets of Rs. 51.25 crores, mentioned in the balance sheet as at May 31, 1988 as per the auditor's report, are also included in the above because the above figures are of the total assets which would come in existence after implementation of the project. This, according to Shri Ganesh, clearly showed the inadequacy of the security.

74. On behalf of RPL, it is submitted that there is no justification to exclude, from the figures of assets shown on Page 6 of the prospectus, items such as technical know-how fees, expatriation fees and engineering fees amounting to Rs. 79 crores and preliminary and pre-operative expenses amounting to Rs. 138 crores as these are capitalised in the accounts and result in accretion to the value of the company's capital assets. The calculation also ignores miscellaneous fixed assets of the value of Rs. 70 crores shown on the page. IF these are added, the value of the investment in assets would work out to Rs. 629 crores which far exceeds the value of the debentures after the first conversion which comes to Rs. 563.73 crores. This figure of Rs. 629 crores takes into account only the investment in assets made out of the borrowed funds and not the future profits and assets acquired therefrom. But, even taking this as the basis, it is clear that, with the escalation in the value

of the fixed assets with the passag

75. (iii) The third loophole, according to the petitioners, is the insecurity created by the terms of clauses 5 and 6 of the prospectus dealing with 'security' and 'borrowings'. Shri Ganesh submits that clauses 5 and 6 severely qualify the rights of the debenture holders under the present issue in several respects :

> (a) There is, in their favour, only a residual charge on all or any of the assets of the company at Hazira and other places which shall "rank expressly subject to subservient and subordinate" to all existing and future mortgages, charges and securities as may be hereafter created by the company in any manner whatsoever;
>
> (b) The company need not obtain the consent or concurrence of the debenture holders for creating any such mortgages etc. which will have priority over the present debenture issue or for disposing of any of the assets of the company;
>
> (c) Not only is the residential complex of the company excluded from the purview of the security, it is also open to the company and the trustees of the debenture holders to agree to the exclusion of any of the assets of the company from the purview of the security;
>
> (d) The current assets or the bankers' goods such as stocks, inventories, book debts, receivables, work in progress, finished and semi-finished goods, etc. stand excluded from the security.
>
> (e) Clause 6 again emphasises that the company shall be at liberty to raise any further loans and secure the same in priority to the present security and/or on such terms as to security, ranking or otherwise as may be mutually acceptable to the company and the trustees of the debenture holders without being required to obtain any further sanction from the debenture holders.

If these clauses are closely perused, Shri Ganesh urges, it will be seen (a) that he charge in favour of the debenture holders has a very poor priority as it can rank subservient to any securities that may be created by the company in future in respect of further borrowings, (b) that the company and debenture trustees, by mutual agreement, can take any of the assets of the company outside the purview of the present security, and (c) that the company can create such future securities as have a priority over the present issue or exclude assets from the purview of the security without the consent or concurrence of the present debenture holders.

76. We think, as has been urged on behalf of the company, that these arguments proceed on a misapprehension of the true nature and scope of clauses 5 and 6 above as well as of the nature and legal effect of a floating charge - what has bene described in this prospectus as a 'residual charge' - that is created at the time of issue of such debentures. In the first place, these clauses are only enabling in nature so as to permit the company, despite the mortgage in favour of debenture holders, to carry on its business normally. It will be appreciated that the company's normal business activities would necessarily involve, inter alia, alienation of some of the assets of the company from time to time (such as, for example, the sale of the goods manufactured by the company) as well as the procurement and discharge of loans and accommodation facilities from banks, financial institutions and others (such as, for example, entering into agreements for hire purchase of plant and machinery

and making payments of instalm

> "If the company sells the mortgaged premises or any part thereof not in the ordinary course of business except a sale, transfer or disposition allowed under the terms of these presents to be made with the consent of the Trustees." [Sub-clause (f)]
>
> "If the company (except as hereinafter expressly provided) creates or attempts or purports to create any charge or mortgage of the mortgaged premises or any part or parts thereof prejudicial to the interests of the debenture holders." [Sub-clause (i)]
>
> "If, in the opinion of the Trustees, the security of the debenture holders is in jeopardy." [Sub-clause (k)]

Thus if at any time the company proposes to create such higher ranking charges, the trustees for debenture holders can stultify the same by taking immediate action. Fourthly, the impression sought to be created by the petitioners that the company may go on creating encumbrances left and right, to the detriment and prejudice of the present debenture holders overlooks several restraints imposed on the company in this respect under the Companies Act, the CCI Act, the MRTP Act and involving the consent of public financial institutions, commercial banks, the term lenders, the shareholders, the MRTP Commission, the Central Government and the CCI before the creation of such securities. Lastly the contention of the petitioners completely overlooks the basic principles underlying the commercial law concept of debentures secured by a floating charge as evolved in British Jurisprudence over the past two hundred years. Clauses like clauses 5 and 6 are usually inserted in debenture issues and the company has drawn our at

77. The further argument of Shri Ganesh is that the company law in its application as well as the prospectus, carefully skirted round the issue by merely stating that security will be provided to the satisfaction of the trustees and that this is not very helpful as the debenture holders come into the picture only after the funds have been raised. This argument is untenable. We have already pointed out, there was sufficient security as was warranted by the issue. This was an issue of 12.5 per cent fully secured convertible debentures of Rs. 200 each. We have examined the share capital, the present issue and the scheme of conversion. In the premises, it is not possible to accept the submission of Shri Ganesh that the controller satisfied himself (as stated by him in his affidavit) with the bare statement of the applicant company (RPL) that security would be created as per the requirements of the debenture trustees. There was this statement that the debenture trustees were well known financial institutions and MEG, PVC and HDPE projects undertaken by floating RPL, a wholly owned subsidiary. In the result, even if we look at the projects not as new ones but only as those of the RIL to be implemented by RPL, the additional finances were needed for the extension, expansion and diversification of the projects originally envisaged. This is one of the objects for which a debenture issue is permissible under the guidelines.

78. Shri Ganesh then submitted that guideline 3 for the Issue of Debentures by Public Limited Companies laid down that the CCI would consider an application for capital issue only after the approval of the financial institutions, banks and government are received. The statutory application form prescribed by the Capital Issues (Application for Consent) Rules, 1966 requires, according to Shri Ganesh, that the consent and clearances of the various authorities and institutions should be annexed to the application. Shri Ganesh submitted that in the present case, many of the relevant applications had not even been filed by RIL and RPL as on July 4, 1988 when the CCI passed the consent order. It was submitted by Shri Ganesh, also by Shri Haksar and especially by Shri Pagaria,

that RPL's application had been processed in unseemly haste and without due and proper application of mind. IT is true that things moved speedily in this case.

79. This has caused us certain amount of anxiety. Speed is good; haste is bad, and it is always desirable to bear in mind that one should hasten slowly. However, whether in a particular case, there was haste or speed depends upon the objective situation or on overall appraisement of the situation. Here, as discussed earlier, the material shows that the details of the proposals have been examined and discussed an that an examination of the merits has not been a casualty due to the speed with which the application was processed; and especially in view of the fact that no injury has bene caused to the investors and no substantial loss to their securities have bene occasioned, we are of the opinion that much cannot be made of this criticism. Learned Additional Solicitor General placed before us other instances where applications had been sanctioned within shorter times.

80. Shri Ganesh tried to urge RIL had declared itself as a promotor of RPL and the prospectus stated that no benefit was being provided to RIL as promotor. But, the entire amount spent by RIL was being reimbursed to it by RPL. In these circumstances, RIL could not be treated differently from the general public in the matter of allotments of the shares of RPL. However, the scheme of allotment was such that gross discrimination resulted against the general investing public and in favour of RIL. The long-term implications, it was urged by Shri Ganesh, of the said discrimination were highly anomalous and unjust for the investing public who had subscribed to the debentures of RPL. However, there had been no application of mind by the CCI, according to Shri Ganesh to the matter of quantification of the extent of benefits conferred on RIL and consideration of whether the same are justified or not. The CCI, however, had merely mentioned in his affidavit that RIL was a promotor and had given an interest free advance

81. The discrimination alleged is on two grounds. The first is that RIL is entitled straightway to the allotment of shares of he face value of Rs. 57.50 crores whereas only 5 per cent of the investment by the debenture holders can be converted into shares at par simultaneously with the issue. The second is that a loan of Rs. 50 crores advanced by RIL to RPL will be converted into shares at par at the end of 3 years whereas the debenture holders will have to pay a premium even for converting 20 per cent of their debentures into shares by that time. These allegations do not bear scrutiny. SO far as the first ground is concerned, there is not justification for a comparison between these two categories of investors. RIL is the promotor company which has conceived the projects got them sanctioned, invested huge amounts of time and money and transferred the projects for implementation to RPL. It is, therefore, in a class by itself and there is nothing wrong if it is allotted certain shares in the company, quite in

82. These considerations apart, we would like to observe that we are unable to appreciate how any question of discrimination is at all relevant in the present context. It is a company -not the State or a State instrumentality - that is issuing the shares and debentures. It is entirely for the company to issue the shares and debentures on such terms as they may consider practicable from their point of view. There is no reason why they should not so structure the issue that it confers certain greater advantages and benefits on the existing shareholders or promotors than on the new subscribers to the debentures. We do not think that it is permissible for the CCI to withhold consent only for this reason or to stipulate that consent can be given only if the shareholders and promotors as well as prospective debenture holders are all treated alike. The subscribers to the debentures are only lenders to the company who have an option to convert their debt into equity on certain terms. It is perfectly open to the subs

83. Shri Pagaria, who appeared in T. C. No. 162 of 1988 in the matter of Radheyshyam Goyal v. Union of India where the petitioner as a Chartered Accountant, prefaced his submission by submitting that ours is a sovereign, socialist, secular, democratic republic governed by the Constitution of India. Shri Pagaria drew our attention to Article 19 (1) (g) of the Constitution. He submitted that the Capital Issues (Control) act, 1947 is a pre-constitutional law and the Act was enacted as being expedient to provide for control of issue of capital. Under Article 14 read with Article 38, it was obligatory to ensure that there was no disproportionate wealth. He drew our attention of MRTP Act and other Acts and also to a large number of decisions to highlight that the directive principles should be imported for ensuring that the CCI performs his functions for the welfare of the community and to bring about an egalitarian society. That was his first submission and he further submitted that the petitioner was really in a

84. One may perhaps concede that, with the vast expansion in recent years of the corporate sector and its constant tendency to have recourse to public funds for securing finances for its projects (either by way of share capital or borrowed capital), the scope of the responsibilities of the CCI can no longer be as limited as before. It may no longer be restricted merely to the task of preventing an imbalance of investment in various sectors or the diversion of investment to non-essential projects. The petitioners may perhaps have a point in suggesting that the CCI should be burdened with a duty also to safeguard the interests of the public who are invited to participate in such financing on large scale and at least to satisfy himself that the project for which funds are needed is not in the nature of a "South-sea bubble" and that the volume, terms and conditions of the issue proposed by the company are not such as to constitute a fraud on the public. But we think that the time is not yet ripe for placing on t

85. While we do appreciate that in the changed atmosphere, the corporate sector, when seeking to attract public moneys while raising difficult in enjoin that the CCI while considering the question of consent/sanction of the capital issues can fulfill any rule beyond the policies prescribed under which, as noticed before, it was enjoined to function. There are other various Acts like the Income Tax Act, Companies Act, MRTP Act to subserve other social objectives which are conducive or ancillary to the directive principles. Nelson is reported to have said before the battle of Waterloo, that England expected every man to do his duty. IT is well to remember that every authority in a vast developmental society must perform his role keeping in view the part he is expected to play in the background of the whole perspective and should not encroach upon others taking the onus himself to do everything. That would lead to chaos and confusion.

86. Shri Pagaria drew our attention to Section 237 of the Companies Act, 1956. IF there was any violation of some of the rights of the parties, they are at liberty to proceed in accordance with law. IT was contended that it was an admitted position that RPL is a newly established company though initially financed by RIL. No ceiling had been put on the allotment of the shares to the business associates of Directors whereas at Item 5 page 2 of the consent order dated July 4, 1988, the limit of the shares for the employees of the RPL had been reduced from 200 to only 50, thereby, according to Shri Pagaria, depriving the employees having large shareholding in the company which discriminated them vis-a-vis the business associates, for whom no such ceiling had been kept.

87. We find the factual position to be this. The application for consent to the issue had not specifically earmarked any portion of the issue to the employees of RPL and RIL. In the course of the discussion with the CCI, it was suggested that 12,90,000 debentures should be offered by way of preferential allotment to the employees of the RIL and RPL. Para 5 of the consent order by the CCI conveyed the approval by the Central Government under proviso to Rule 19 (2) (6) of the Securities

Contracts (Regulation) Rules, 1957 "subject to the condition that the allotment to the employees shall not exceed 200 shares per individual". The company by its letter of July 7 pointed out that "shares" in the above para was a mistake for "debentures" and also suggested that a maximum of 200 debentures - which on first conversion would become 200 shares - be allotted to each of the employees of RPL as well as RIL. The CCI, however, modified para 5 by his letter of July 19, 1988 to say that allotment to the employees shall not

88. It was submitted that the consent order suffered from arbitrariness, mala fides, unprecedented hurry and with extraneous considerations. We are unable to see any such discrimination. It was submitted that the consent order had been passed without satisfying that the prerequisite condition of the various clearances and no objection certificates and li__cences under MRTP Act, FERA and Petroleum Act and the Essential Commodities Act, Securities Contracts (Regulation) Act, Companies Act, and other allied laws had been fulfilled. The CCI has given consent for 12.5 per cent secured redeemable convertible debentures of Rs. 200 each for cash at par to the plic. This nomenclature had not been change, but in the prospectus, fully convertible debentures have bene show. According to Shri Pagaria, the most important is the concentration of wealth in the hands of Ambani family and this aspect has not been considered in granting the consent, which according to him, resulted in violation of Article 39 (b) and (c) of the was submitted that the consent could not be given in favour of any applicant or company, who had not valid industrial licence nor it possessed the letter of intent under the provisions of Industries (Development and Regulation) Act, 1951. It was submitted that the CCI did not give judicial consideration to the application as in this connection reliance was placed on the decision of the Gujarat High Court in Navjivan Mills Co. Ltd. Kalol, In re Kohinoor Mills Co. Ltd., Bombay. Some passages of Halsbury's Laws of England, 4th edn., Vol. 8, were referred to. IT was submitted that the Directors who had received money without disclosing full facts were bound to refund the same and were constructive trustees of the company. This proposition, in our opinion, is irrelevant in the present context. Shri Pagaria sough to urge that RIL management had passed an ultra vires resolution in transferring the industrial licence and letter of intent to RPL and for that act, the office bearers were personally liable and he refer

89. Shri Pagaria then submitted that the grant of consent was without lawful authority and on extraneous considerations. He referred to certain decisions in support of that board proposition. If the basis of his submission was correct, undoubtedly, the consent was bad but we do not find any merit in the submission. The next submission by Shri Pagaria granted by this Court on August 19, 1988 without entering into the merits of the case and it was submitted that RPL did not possess any expired. This position is not factually correct as noted before. It was submitted that there had been violation of several laws. No particular violation had been indicated. Furthermore, it was submitted that the 1956, Capital Issues (Control) Act, 1947 MRTP Act, 1969, FERA, 1973 have to be read in conjunction and as such the corporate sector should government. The factual position being as indicated before, it is not possible to entertain these bald submissions. The next submission by Shri Pagaria was that the issue had been mad

90. On behalf of the CCI, it was submitted that the contention that the CCI had not followed his own guidelines relating to the sanction of the issue is misconceived. It was further submitted that the security for the debentures had been properly there. It was submitted that the following facts would establish that there had been no breach of duty or obligation cast on the CCI either under the Act or under the guidelines or under the Capital Issues (Application for Consent) Rules. The relevant guidelines for consideration of this question are as follows :

(a) Guidelines for Issue of Debentures by Public Limited Companies - Press Release

1984.

4. Debt-Equity Ratio : The debt-equity ratio shall not normally exceed 2 : 1. For this purpose 'debt' will mean all term loans, debentures and bonds with an initial maturity period of five years or more including interest accrued thereon.. It also includes all deferred payment liabilities but it does not include short terms bank borrowings and advances, unsecured deposit or loans for the public, shareholders and employees, and unsecured loans or deposits from others.'Equity' would mean paid up share capital including preference capital and free reserves.

Guideline No. 11 is also instructive. The press release also was referred to. The trustees to the debentures holders were enjoined to supervise the implementation of the conditions regarding creation of the security of the debentures.

91. It was, therefore, submitted that the trustees of the debentures issue who were to supervise the implementation of the conditions regarding the creation of security were vested with the requisite powers for protecting interest of debentures holders. Before the formulating the guidelines for protection of the interest of the debentures holders considerable deliberations took place between the concerned department in the Ministry and between the public financial institution, investments, Department of Banking and CCI and Reserve Bank of India as a large quantum of debentures were coming to the period of maturity in 1989 onwards and redemption and a need was felt to protect the interest of debentures holders. so that the no defaults endanger their interests. Consequently, the question of the debentures reserve and the security creation was examined by financial institutions and the scheme with debentures trustees was formulated with sufficient degree of the precision and urgency. The debenture trustees are conversion. It was further submitted that the computation of premium depends on several factors, such as the net worth of the company, the performance of the company, the profit earning capacity value of the company, etc. Since RPL was in the petrochemical sector, which had ordinarily the gestation period, at the time of grant of the consent, it was not possible for the CCI to forecast or estimate the rate of conversion on the second and the third stage and advisedly the CCI reserved to itself the right to determine this premium on factual data available at the time of conversion. Therefore, this cannot be said to be bad. The convertible debentures would receive interest @ 12.5 per cent on the sum of Rs. 190 (37.5 per cent interest would accrue on this amount). It was, therefore, not necessary for the CCI to quantify the extent of benefits and advantages before grant of consent and had to enter into computation for evaluating this. Naturally, the RIL as a promoter, stood on a different footing and there were

92. It was asserted that today RIL is the third largest industrial house in India. It was stated that the present portfolio of RIL spreads over 2.5 million shareholders/debenture holders/deposit holders. Till date, it has made 7 debenture issues besides making 3 equity share capital issues (rights) and 2 bonus shares issue. All the debentures issues were at a premium and over-subscribed. E series partly convertible debentures of Rs. 80 crores were issued in 1984-85. F series non-convertible debentures of Rs. 270 crores were issued in 1985-86. G series fully convertible debentures for Rs. 500 crores were issued in 1986-87. According to the respondent, the investment in RIL, during this period has proved to be consistently and remarkably profitable to investors. The RIL commenced business in the year 1966 for the manufacture of synthetic cloth made from synthetic yarn and fibre. Their factory was commenced and installed in the vicinity of Ahmedabad at Naroda. In order to manufacture synthetic fabrics, the comp

93. RIL's third stage of backward-integration involved asserted, the manufacture of Mono Ethylene

Glycol (MEG) used in manufacture of polyester staple fibre and polyester staple yarn. It decided to diversify into the manufacture of critically scarce plastic materials like High Density Polyethylene (HDPE), Poly Vinyl Chloride (PVC) and Mono Ethylene Glycol (MEG) a polyester raw material used in the manufacture of polyester fibre, etc. The company had also applied for Gas Cracker Project, which is said to have been cleared recently, whereby (natural) gas oil would be cracked to produce ethylene and other petrochemicals. Thus right from the naptha stage to the yarn fibre and fabric stage, the company has attempted the complete range of products necessary for the manufacture of fabrics from the raw material namely, natural gas.

94. Hazira has been selected with special reference to the availability of natural gas oil from South Sea Basin and it is country's first ethylene handing port and has economics of transportation and terminal facility at Hazira. It is not necessary to set out however how the company developed in different stages. The application for consent was filed on May 4, 1988 as mentioned hereinbefore. The licence and letter of intent were endorsed in favour of the RIL and the scheme for finance in favour of the RPL.

95. Both Shri Baig and Shri Salve, appearing for respondents 3 and 4, gave us the factual background of the business of the RPL. It is not necessary to set out these in greater detail than what has been mentioned hereinbefore. It is further submitted by both that the CCI had examined the nature and quantum of security in cases of the debentures. It was submitted that the submission of Shri Ganesh that the security was inadequate was wrong. It was submitted that clauses (5) and (6) of the prospects read together indicate how the power has been exercised. These clauses visualise the creation of a residual or floating charge on all or any of the movable or immovable assets and properties of RPL at Hazira and/or at any other location. These further postulate future charge, superior in priority, might be created by RPL. Future charges might be created without the consent or concurrence of the debenture holders. Nor was their consent required for purposes of dealing with the assets and properties of the company. I

(a) Residential complex at Hazira or at any other location.

(b) Current assets or banker, is good.

(c) Any other property that might be specifically excluded by agreement with the trustees.

96. Future charges might be created on such terms regarding ranking. etc. as might be agreed to by the trustees. It was submitted that whereas clause (5) essentially visualised creation of a floating charge in favour of debenture-holders, without any restrictions or limitation, clause (6) incorporated a limitation and safeguard that controls the normal characteristics of floating charge.

97. It has to be borne in mind that convertible debentures is a new type of instrument introduced in this case and these appear to have caught the imagination of the investors. It has been asserted before us that subsequent to RPL issue, others have also gone for this type of project. Our attention was drawn to Rule 2 (b) (x) of the Companies (Acceptance of Deposits) Rule, 1975 which provided clearly that a convertible debenture was not to be included in the definition of debenture. It was further asserted that the security visualised in clauses (5) and (6) of the prospectus and was regarded as valid and adequate. Nothing contrary to this was indicated before us.

98. Our attention was drawn to Section 2 (12) of the Companies Act under which a debenture need

not be secured at all. In that light the guidelines should be interpreted. Therefore, it was submitted, guideline 10, reasonably interpreted, means that such security should be provided as is customarily adopted in corporate practice in the matter of issuing debentures. It has to be borne in mind that the debentures issued in present case are compulsorily convertible. Therefore, no repayment of principal is really involved. The question of security becomes relevant for the purpose off payment of interest on these debentures and repayment of principal only in the unlikely event of winding up. the debentures need not necessarily be secured. Guidelines did not provide for quantum and nature of the security. A debenture has been defined to mean essentially as an acknowledgment of debt, with a commitment to repay the principal with interest (Palmer's Company Law, p. 672, 24th edn.). Reference, in this connection, may b

99. Shri Ganesh made a submission that under Clause (5) of the prospectus, the company could deal with its assets and properties without the permission of debenture holders or debenture trustees and that it could create future charges which would rank superior in priority. The concept of floating charge was in vented by the Victorian lawyers only because of its special advantages inasmuch as it leaves a company free to deal with its assets in the ordinary course of business and does not enquiry the permission of debenture holders or debenture trustees for dealing with them or creating further charge. It has been pointed out that the business of a corporation would be paralysed if it could not deal with its assets and crete future charges, ranking superior in priority, and if it would have to obtain the permission of the debenture holders for doing so. (See the discussion in Palmer's Company Law, pp. 709 and 682. See also the observation in Re Florence Land & Public Works Co. and Re Colonial Trust Corporation

100. In the present case, there is no case to suggest or believe that ICICI (which is one of the most important national government financial institution) will not act effectively and promptly to ensure that the security in favour of the debenture holders is not rendered illusory. Even guideline dated January 14, 1987, has cast the responsibility of supervising creating, monitoring and implementation of security in favour debenture trustees. The company cannot normally create a general charge ranking in priority to or pari passu with a prior floating chart unless the prior floating charge itself permits such a course. In this section, reference may be made to the observations in the Encyclopedia of Forms and Precedents, 4th edn. Vol. 6 para 27 at pp. 1102-1003.

101. It, therefore, follows that : (i) A debenture is usually secured by floating charge only.

(ii) A company which creates floating charge has a right to create future security which may rank superior in ranking.

(iii) However, this right of the company may be restricted by agreement.

(iv) Where no restriction is provided, any future specific charge will rank superior to the earlier floating charge (Section 123 of the Companies Act).

(v) Again, where no specific provision is made in the earlier floating charge with respect to the ranking of future floating charge then any future floating charge will be inferior to the earlier floating charge. In this connection, reference may be made to Section 48 of the Transfer of Property Act. The risk of floating charges can be controlled by creating legal mortgage in favour of debenture trustees as has been explained in "All About Debenture " by Sen and Chandrashekhar (pp. 66-67).

102. In the present case, a legal mortgage has been created by RPL in favour of the trustees in respect of its immovable and movable assets, except bad debts, in respect of which financial institutions will hold a first charge on account of foreign loan. In the present case, RPL does not have any existing loans. Therefore, the charge in favour of the debenture holders is presently the first charge. No future borrowing is contemplated at this stage except the foreign currency loan to the amount of Rs. 84 crores. Therefore, the submission that the security is illusory cannot be accepted and the CCI is right that the apprehension is based on factually unsound and unfounded grounds. Even if the value of the foreign currency which has been sanctioned in p [principle by the three financial institutions, is taken into account, the assets coverage goes down at each stage and does not make any critical difference to the value of the security of the debenture holders under the Trust Deed. The purposes of borrowings, n

103. Having regard to the factors which the investors should have taken into consideration, we are of the are compulsorily convertible. Therefore, no repayment of opinion that all relevant factors were borne in mind by the CCI. There is no substance also in the ground of discrimination. It is reiterated that Article 14 of the Constitution does not forbid reasonable classification. RIL is a promoter company. It had conceived the projects, got them sanctioned and invested hug amounts of time and money in the process. It was open to RIL to undertake these projects on its own and not to make any public issue at all. The ground that there was non-application of mind because the CCI did not take into consideration the issue of G series is also without substance. Under guideline 2 (a) of the Guidelines of 1984, capital could be raise only for setting up of new project. MEG, it by RIL under G series. It was further submitted that the Controller did not ask RPL to get the bankers prior clearance certificate under gui

104. Shri Ganesh as well as Shri Pagaria tried to submit that in order to protect the investors, a function, which they submitted, the CCI, in changed circumstances, should determine whether the project is profitable. Where a project has been appraised by an institution like ICICI, the Controller can safely assume that it is profitable and he need not engage in separate independent exercise of his own in this regard. The scope and nature of the Controller can safely assume that it is profitable and he need not engage in separate independent exercise of his own in this regard. The scope and nature of the Controllers powers and jurisdiction have to be determined in the light of the specific provisions of the CCI Act, its history, the debts, to which we have referred, the capital structure of the national economy and its overall direction, in higher priorities, are decided by the government and the Planning Commission by formulating Five Year Plans. However, the capital structure and the direction of a particul

105. As a matter of fact, there was no allegation that the CCI acted mala fide or on extraneous considerations. The CCI applied its mind to the facts of this case and the factors in general. There was no undue haste. A statement was produced indicating that the application for grant of consent had been disposed after some time, but within the time frame in which such ap [plications are normally disposed of.

106. It may, however, be stated that being not statutory in character, these guidelines are not enforceable. See the observations of this Court in G. J. Fernandez v. State of Mysore (Also see R. Abullah Rowther v. State Transport Appellate Tribunal; Dy. Astt. Iron & Steel Controller v. L. Manekchand, Proprietor; Andhra Industrial Works v. CCI; K. M. Shanmugam v. S. R. V. S. Pvt., Ltd.) A policy is not law. A statement of policy is not a prescription of binding criterion. In this connection, reference may be made to the observations of Sagnata Investments Ltd. v. Norwich Corpn. Also the observations in British Oxygen Co. v. Board off Trade. See also Foulkes

Administrative law, 6th edn. at pp. 181-184. In R. V. Secretary off State, ex parte khan the court held that a circular or selfmade rule can become enforceable on the application of persons if it was shown that it had created legitimate expectation in their minds that the authority would abide by such a policy/guideline. however, the doctrine of legitimate

107. We would also like to refer to one more aspect of the enforceability to the guidelines by persons in the position of the petitioners in these cases. Guidelines are issued by governments and statutory authorities in various types of situations. Where such guidelines are intended to clarify or implement the conditions and requirements precedent to the exercise of certain rights conferred in favour of citizens or persons and a deviation therefrom directly affects the rights so vested the persons whose rights are affected have a clear right to approach the court for relied. Sometimes guidelines control the choice of persons competing with one another for the grant of benefits, largesses or favours and, if the guidelines are deported from without rhyme or reason, an arbitrary discrimination may result which may call for judicial review. In some other instances (as in the Ramana Shetty case), the guidelines may prescribe certain standards or norms for the grant of certain benefits and a relaxation of, or depa

108. But in the instant case, in the view we have taken, it is not necessary to base our decision on this aspect. We find that the CCI has, in fact, acted in substantial compliance with the principles of these guidelines. he has acted objectively and bona fide. he has not acted in undue haste. no substantial prejudice or injury to the petitioner have been demonstrated. In the aforesaid view of the matter, we are, therefore, unable to interfere. In this connection, furthermore, a common sense view has to be adopted - See the observations in Council of Civil Service. Public interest in this case does not require that we should interfere. In this case, there is no illegality tin the decision of the Controller of Capital Issues. He has not exercised a power which he does not posses. There is also no irrationality. He has not acted in any manner that no reasonable authority would have acted in the decision. There is no procedural impropriety in his decision. He has not failed in his duty to act fairly insofar as

109. In the aforesaid view of the matter, we are of the opinion that there was no substance in the writ petitions and also in the civil suits covered by these transfer applications.

110. The main question, as mentioned hereinbefore, canvassed in these transfer petitions is whether the CCI has acted in the manner he should act in the present atmosphere of socio-economic development in view of our constitutional commitments. The purpose of the Act must be found from the language used. The scheme and the language used, strictly speaking, do not indicate any positive role for the CCI in discharging his functions in respect of grant of sanction. But it has to be borne in mind that he is a part of a State instrumentalities committed to the endeavours of the constitutional aspiration to secure justice, inter alia, social and economic, and also under Article 39 (b) and (c) of the Constitution to ensure that the ownership and control of the material resources of the community are so distributed as to best subserve the common good and that the operation of the economic system does not result in concentration of wealth and means of production to the common detriment. Yet, every instrumentality and

111. In that light it is true that as was contended by learned counsel appearing on behalf of the petitioner that in the changed socioeconomic conditions of the country one who is charged to ensure capital investment has to perform the social role in capital formation and to protect the interest of the capital market, and to oversee the growth of industrialisation and investment in such a manner as to ensure employment and demand in the national economy to prevent wasteful investment and to

promote sound methods of corporate finance. The guidelines are only a guide and nothing more. The application of mind by the CCI before sanction must be in the perspective for which he is enjoined by the Act. He must endeavour to secure a balanced investment of the country's resources in industry, agriculture and social services. The Controller should perform the role of social control and fulfill the social purpose in conjunction with other authorities and functionaries. It is necessary for him in discharge of his functi

112. The present petitions have perhaps brought to the fore for the first time a public interest aspect of the issue of shares and debentures. In the past decades, investors in shares and equities constituted a very limited section of the public and consisted of two extreme types - either persons who could shrewdly appraise the merits of each issue and take a considered decision or persons who just wanted to invest and get a return for their moneys but were indifferent to the terms and conditions of such investment. The position has changed in recent years. There has been a vast increase in the number of members of the public who have surplus money to invest; the size of the issues has assumed macro-proportions; and the types of instruments are also becoming more and more sophisticated. Entrepreneurs, with legal and expert assistance at their command, could easily trap unwary investors and the development of a public interest lobby that can scrutinise merits and demerits may not be entirely undesirable. It i d comments from the public should be called for, that there should be a public hearing before the CCI before grant of consent and that the CCI should pass a reasoned order granting or withholding consent. That would also delay the whole process of approvals which should be as expeditious as possible. But we have no hesitation in saying that some procedure has to be evolved to ensure that the CCI gets the benefit of the comments, suggestions and objections from the public before arriving at his decision whether to grant consent or not and, if so, on what terms and conditions. Perhaps, evolution of certain rules in this respect could be examined at this juncture of industrial growth in our country. But having regard to the facts and the circumstances of the case in view of the various facts mentioned hereinbefore, we are of the opinion that there was no undue haste. There was proper application of mind that the sanction was for a new project. Sufficient security for the debentures as was enjoined to be ensured

113. Before we conclude, we must note that good deal of argument was adduced that these applications in different High Courts in civil suits were not genuine and properly motivated, but were mala fide. Even though these might not have been to feed fat an innocent object, it was apparent that it was to feed fat a grudge in respect of a competitive project by a competitor. Anyway, in the view we have taken, it is not necessary to decide the bona fides or mala fides of the applicants. Shri Nariman, when he moved the application initially, had suggested that we should lay down certain norms as to how the courts in different parts of the country should grant injunction or entertain applications affecting an all-India issue or having ramifications all over the country. Except that before the courts grant any injunction, they should have regard to the principles of comity of courts in a federal structure and have regard to self-restraint and circumspection, we do not at this stage lay down any more definite norms.

114. On September 9, 1988, when we transferred these matters, we directed respondent 3 to deposit a sum of Rs. 1 lakh to be held if the petitioners were made to spend unduly. Having considered the facts and circumstances of the case, we do not think that we would be justified in ordering disbursement of this sum to the petitioners whose cases have been transferred or the plaintiffs whose cases have been transferred. The sum should, therefore, be refunded to respondent 3.

115. All the writ petitions and the suit fail, and are dismissed. In the facts and the circumstances of the case, there will be no order as to costs.

FOOD CORPORATION OF INDIA, APPELLANT v. M/S. VESHNO RICE MILLERS, RESPONDENT.

Civil Appeal No. 1946 of 1989, decided on March 3, 1989.

ORDER

1. Special leave granted.

2. In view of the fact that the fact of this appeal are more or less identical to the appeal arising out of SLP (C) No. 3392 of 1985, this appeal is also dismissed. No order as to costs.