SUPREME COURT OF INDIA

Chairman and M. D., B. P. L. Ltd.

Vs.

S. P. Gururaja

C.A.Nos.2166 with 2167 of 1998

(V. N. Khare, Ashok Bhan and S. B. Sinha, JJ.)

13.10.2003

JUDGEMENT

S. B. SINHA, J.:-

1. How economic development of a State can be halted by a Public Interest Litigation has received the attention of this Court in some of its decisions. The case at hand adds to the said list.

BACKDROP FACTS:

2. The Karnataka Industrial Area Development Board (hereinafter referred to as 'the Board') is a statutory authority constituted under Karnataka Industrial Areas Development Act, 1966. It acquired a vast tract of land inter alia for the purpose of allotment thereof to entrepreneurs who intended to set up industries in the State of Karnataka. The State of Karnataka with a view to accelerate economic development of the State adopted a policy decision of dealing with the applications

received from the entrepreneurs through one window system. With a view to achieve the said objective a High Level Committee was constituted. B. P. L. Limited (hereinafter referred to as 'the Company') with a view to set up industries applied for allotment of 500 acres of land for its three projects. The said application was considered by the High Level Committee wherein a decision was taken to allot 175 acres of land in favour of the Company at Rs. 92/- per sq. m. The Company was held to be entitled to various other incentives for the aforementioned purposes. Such allotment was made by issuing an order dated 7-4-1995 out of the land acquired by it i.e. 296.26 acres in terms of notification dated 2/4th September, 1991 issued under Section 28(1) of the Karnataka Industrial Areas Development Act, 1966.

PUBLIC INTEREST LITIGATION:

3. The respondents filed a public interest litigation questioning the said allotment inter alia on the ground that the statutory purposes for which the Board can acquire the land had been breached by reason thereof. The respondents Nos. 1 to 3 describing themselves to be the social workers in the writ petition raised the following contentions :

(a) That the Board can acquire the land only for the purposes (three in number as stated in the Act).

(b) That the land to other Entrepreneurs is sold at the rate of Rs. 8,80,000/- per acre whereas it is sold to BPL at Rs. 3,72,324/- per acre.

(c) That the allotment being contrary to Regulations is arbitrary and unreasonable.

(d) That the allotment is made without inviting applications and without notifying the availability of land to general public.

(e) That the exercise of power is mala fide and suffers from legal malice.

The contentions of the Board, on the other hand, were :

a) That the respondents have no locus standi to maintain the writ petition as legal rights of the general public have not been infringed.

b) No notice under O. 1, R. 8 of C. P. C. having been published, the writ petition was not maintainable.

c) That the Government of Karnataka in exercise of its executive powers under Article 162 of the Constitution of India has established a single window agency to accord, with significant authenticity, sanction/clearance/approval to the establishment of new Industries of expansion of existing units, which include sanction of infrastructural facilities like land, power, water, finance etc. Wherever an Industrial Project involves an investment beyond fifty crores, the decision to accord sanction/approval/clearance shall be taken by High Level Committee.

d) That the High Level Committee constituted under the said Government orders in its meeting held on 10-10-1994 and 24-1-1995 recommended that :

(i) 220 Acres of land be made available immediately to BPL group at Dobospet Industrial Area for implementing colour picture tube and batteries project.

(ii) Additional land acquisition be initiated by the Karnataka Industrial area Development Board on the basis of justification of total land requirement of 500 acres to be furnished by the group.

In its 28th meeting held on 29-3-1995, the Committee took notice of the requirements of the BPL India Ltd. and after thorough discussion resolved that Karnataka Industrial Area Development Board (KIADB for short) shall hand over 175 acres of land at Dobospet Industrial Area to the BPL India Ltd.

e) That thereafter the Government of Karnataka by its order dated 16-5-1995 cleared the three projects of the BPL India Ltd. which involved a total investment of Rs. 663.56 crores. The Government of Karnataka decided to allot 220 acres of land at Dobospet Industrial Area.

f) That an extent of 278.42 acres of private land near Dobospet was acquired by the State Government under Section 28(4) of KIADB Act, 1966 for the purpose of development by this Respondent. The final declaration is published in Karnataka Gazette dated 12-11-1992. A layout was planned in consultation with the Director, Town Planning to form 28 plots of varying extent from 1 acre to 210 acres. Plot Nos. 1 and 2 measuring 30 acres and 210 acres are reserved in favour of BPL India Ltd. In the remaining 74 acres small plots are formed to accommodate non-polluting

Industries. An extent of 28.80 acres will be occupied by roads, civic amenities etc.

g) That this respondent while developing an industrial area undertakes development work like formation of WBM Roads, with block topping, drains with dick also culverts, stream water drains, drains supply through borewell, street lighting, avenue trees and drawing of high tension and low tension power line. The cost incurred has to be borne by allottees. However, the land that is allotted to BPL India Ltd. has not been entirely developed and only peripheral infrastructural facilities would be provided."

4. The Company also filed a counter affidavit alleging that the said allotment was made pursuant to the Board' resolution adopted by the Single Window Agency. The anticipated investment of the Company was Rs. 600 crores. The composition of the Committee was as follows :

1. Additional Chief Seretary to Government of Karnataka Chairman

2. Secretary to Government, Commerce and Industries Department Member

3. Commissioner and Secretary to Government, Housing and Urban Development Department Member

4. Secretary to Government, Science and Technology and Eology and Environment Member

5. Director of Industries and Commerce Member

6. Chairman and Managing Director, Karnataka State Industrial Investment and Development Corporation Limited Member

7. Managing Director, Karnataka State Finance Corporation Member

8. Chairman, Karnataka Electricity Board Member

9. Chairman, Karnataka State Pollution Control Board Member

10. Chief Inspector of Factories and Boilers Member

11. Excise Commissioner Member

12. Managing Director, Karnataka Urban Water Supply and Drainage Board Member @page-SC4539

13. Managing Director, KEONICS Member

14. Executive Member, Karnataka Industrial Areas Development Board Member Secretary

15. General Manager (P and D), Karnataka State Industrial Investment and Development Corporation Limited Member Secretary

16. Joint Director (Industrial Development), Industries and Commerce Department Member Secretary

5. The application filed by the Company went through various processes and several meetings of the different committees were held. The High Level Committee also considered the matter in a number of meetings, pursuant whereto and in furtherance whereof the aforementioned decision was taken whereafter the Company deposited 99% of the cost of the allotted land amounting to Rs. 6,45,05,133/- with a view to obtain possession. It was further contended that only possession of 149 acres and 5.5 guntas out of 175 acres had been delivered. A lease-cum-sale agreement in terms of the extant regulations was executed on 2-6-1995.

6. Various suits thereafter were filed by certain interested parties as a result whereof the Company could not start its constructional activities.

7. Ultimately, a lease-cum-sale agreement was executed on 17-4-1996 which came into force with effect from 29-5-1995. The lease was for a period of 11 years and the yearly rent payable therefor was Rs. 55,479/- and maintenance charges at Rs. 74,568/-. It was stipulated that on expiry of the said period of 11 years the property would be sold to the lessee at the price fixed by the lessor.

8. Clause 11(b) of the said Agreement to lease reads as follows :

"As soon as it may be convenient the LESSOR will fix the price of demised premises at which it will be sold to the LESSEE and communicate it to the LESSEE and the decision of the Lessor in this regard will be final and binding on the LESSEE. The LESSEE shall pay the balance of the value of the property, if any, after adjusting the premium and the total amount of rent paid by the LESSEE and earnest money deposit within one month from the date of receipt of communication signed by the LESSOR or any other officer authorised in this behalf by the LESSOR. On the other hand, if any sum is determined as payable by the LESSOR to the LESSEE after the adjustment as aforesaid, such sum shall be refunded to the LESSEE before the date of execution of the sale deed."

9. The appellants also contended before the High Court that the writ petitioners-respondents had been set up by the persons whose lands had been acquired. They were members of political parties also.

DIRECTIONS BY THE HIGH COURT:

10. The High Court called for the entire records. Upon consideration of the rival pleadings as also the records of the case, the writ petition filed by the respondents herein was allowed directing :

"(a) Quash the allotment of land made by this petitioner in favour of BPL India Ltd. Only insofar as excess land than the land actually utilised so far by the BPL India, at any rate not exceeding 30 acres.

(b) This petitioner is directed to recover possession of remaining land forthwith.

(c) After recovering possession, this petitioner is directed to form industrial plots and allot the same to prospective industrialist after notifying and inviting applications.

(d) In respect of land that is left with the BPL India Ltd., this Petitioner shall work out the cost of such land at the rate of Rs. 8 lakhs per acre and after adjusting the amount already paid by BPL India, shall refund the balance amount to BPL India together with interest at the rate of 6% per annum from the date of receipt of the amount.

(e) In order to ascertain the actual utilization of land by BPL India so far the Assistant Director of Land Record was directed to conduct survey of the land which is actually utilized by the BPL India Ltd. in the presence of Petitioner and the Respondents, prepare a sketch thereof and earmark the boundaries so that the Board can recover possession of rest of the land from the BPL India Ltd.

(f) The cost of Rs. 10,000/- was awarded to writ petitioners to be paid by this Petitioner."

STATUTES OPERATING IN THE FIELD:

11. It is not in dispute that the matter relating to allotment of industrial land is governed by Karnataka Industrial Areas Development Act, 1966 (hereinafter referred to as 'the Act'). The appellant-Board has been constituted thereunder. In terms of the said Act, the State Government is empowered to acquire land and to handover the same to the Board for development and allotment to eligible industries. The relevant provisions of the said Act are as under :

"17. Directions by State Government :

The State Government may issue to the Board such directions of a general nature as it may think necessary or expedient for the purpose of carrying out the purposes of this Act, and the Board shall be bound to follow and act upon such directions.

41. Power to make Regulations :

(1) The Board may, with the previous approval of the State Government, by notification make regulations consistent with this Act and the rules made hereunder, to carry out the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such regulations may provide for :-

(a) . . . . . .

(b) the terms and conditions under which the Board may dispose of land."

12. Pursuant to and in furtherance of the power conferred upon the State, regulations were framed known as 'Regulations governing the disposal of land by the Karnataka Industrial Area Development Board'. Regulations 7 and 13 of the said Regulations which are relevant for the purpose of this case are as under :

"7. Inviting applications :

The Board shall notify the availability of land, the manner of disposal, the last date for submission of applications and such other particulars as the Board may consider necessary in each case by giving wide publicity through newspapers having circulation in and outside Karnataka State and invite applications from industries or persons intending to start industries.

13. Allotment of Plots in Special cases :

Notwithstanding anything contained in these Regulations the Board in consultation with the State Government may allot any plot or area other than those in respect of which applications are called for under Regulations 7 to any individual or company for the establishment of an industry or for the provision for any amenity required in the Industrial Area."

SUBMISSIONS:

13. Mr. Mukul Rohtagi, the learned Addl. Solicitor General and Mr. D. A. Dave, the learned senior counsel, appearing for the appellants would submit that the High Court committed a manifest error in passing the impugned judgment insofar as it entered into the question of validity or otherwise of the policy decision adopted by the State. The learned counsel would submit that the requirements of the Company for setting up its industrial units can be judged by the experts wherefor High Level

Committee was constituted and, thus, the High Court could not sit in appeal thereover. It was urged that the High Court further committed a manifest error by arriving at the conclusion that the State had shown undue haste in the matter of grant of allotment and that too at a price of Rs. 3,72,324/- per acre although it received the consideration of Rs. 8,00,000/- per acre from another entrepreneur.

14. The learned counsel would further urge that the High Court has failed to consider that the writ petitioners had no locus standi to file the writ application as they had been set up by those whose lands had been acquired. It was pointed out that whereas the lands were allotted on 7-4-1995, the writ petition having been filed on 11-11-1996 suffered from gross delay and laches and in that view of the matter too the High Court should have refused to exercise its jurisdiction in favour of the appellants particularly in view of the fact that the Company in the meantime have changed their position by investing about Rs. 80/- crores.

15. Mr. T. L. V. Iyer, the learned senior counsel appearing on behalf of the respondents, on the other hand, would submit that the purported allotment was made in favour of the Company by the Board without making any enquiry as regard the area of the land it actually needed nor there had been any application of mind in relation thereto. The property having been acquired under a statute is a public property, contends Mr. Iyer, and being trustees thereof, the Board was required to take extreme care and caution in relation thereto. It was contended that the High Court had rightly found that for all intent and purport such vast tract of land had been sold to the Company although apparently allotted for a period of 11 years and thereafter the Company would be entitled to obtain sale deed in relation to the demised land. At the relevant time, Mr. Iyer argued, neither any project report had been submitted by the Company nor any material was placed to show that the Company required such vast tract of land.

SCOPE OF THE PUBLIC INTEREST LITIGATION

16. The Company intended to set up more than one unit. For the purpose of achieving the objective of economic development of the State, the State is entitled to deal with the applications of the entrepreneurs in an appropriate manner. For the said purpose a High Level Committee was constituted. The said Committee held its meeting on 10-10-1994 wherein not only the members referred to hereinbefore but also various other officers were present. Presumably, prior thereto the applications filed by the Company were scrutinized by the competent authorities. After detailed discussions, the High Level Committee resolved :

(a) to permit the unit to change the location from Malur Indl. Area to Dobespet Industrial Area;

(b) to allot a total of 500 acres of land for the three projects viz., Colour Picture Tube, Colour

Televisions and Battery in Dobespet Industrial Area, Nelamangala tq., in lieu of the earlier allotment of 100 acres of land at Malur Indl. Area for the Colour TV sets project, subject to the promoters indicating the individual land requirement for Colour Picture Tube Project, Colour TV Project and the battery project duly justifying the requirement with necessary plans, block diagrams, etc.

As regard incentives, it was resolved :

"(3) INCENTIVES : The HLC resolved to offer the following incentives:

100% exemption of sales tax (KST, CST and Turnover Tax) on sale of finished goods for a period of 8 years or deferment for a period of 10 years from the date of commencement of commercial production subject to a limit of 100% of the value of the fixed assets. The present level of ST revenue from the company from TV manufacturing is to be maintained.

(ii) Exemption from payment of Purchase Tax (ST on purchase by the Co.) on capital goods/equipment worth more than Rs. 1.00 crore (Rupees one crore) in each individual case during the construction phase of the project."

17. Similar considerations were made in respect of Colour Television Picture Tube Project of the Company and Manufacture of Batteries. The matter relating to allotment of land is a statutory function on the part of the Board. In terms of the provisions of the Act, consultations with the State Government is required if Regulation 13 of the Regulations in place of Regulation 7 is to be taken recourse to. Does it mean that consultations must be held in a particular manner, i.e., by exchange of correspondences and in no other? Answer to the said questions must be rendered in negative. The High Level Committee was chaired by the Minister who in terms of the Rules of Executive Business framed under Art. 166 of the Constitution of India was entitled to represent the State. Once a consultation takes place by mutual discussions and a consensus is arrived at between different authorities performing different functions under the statutes, the purpose for which consultation was to be made would stand satisfied. Under the Act or the Regulations framed thereunder, no procedure for holding such consultations had been laid down. In that situation it was open to the competent authorities to evolve their own procedure. Such a procedure of taking a decision upon deliberations does not fall foul of Art. 14 of the Constitution of India. No malice of fact has been alleged in the instant case. The High Court has proceeded to pronounce its judgment inter alia on the ground that the price of the land should have been fixed at Rs. 8,00,000/- per acre. In support of the said decision, the High Court has relied upon a grant at the aforementioned rate. However, it was pointed out by the Board :

"It is submitted that the land allotted to respondent No. 4 was not fully developed by this petitioner except some infrastructural facilities which have been counted while calculating the price of the land. The land allotted to individual entrepreneurs is fully developed with all infrastructural

facilities. There cannot be any equality between unequals. The cost of the land is arrived at by this petitioner taking into consideration the cost of acquisition, cost of partial development, service and establishment charges."

18. This aspect of the matter did not receive due attention of the High Court despite its merit.

19. It is a well-settled principle of law that different considerations arise for the purpose of fixation of price in respect of price of land i.e. for a small area vis-a-vis a large area. The allotment price was Rs. 3,72,324/- per acre which, having regard to the policy decision of the State as also the facts and circumstances of the case cannot be said to be wholly arbitrary warranting interference by the Court. There cannot be any doubt whatsoever that normally allotment of such industrial plots should be done in terms of Regulation 7 aforementioned. But the same by itself did not preclude the authorities of the Board and the State having regard to the fact situation obtaining herein to take recourse to Regulation 13. Once the Court finds that the power exercised by the statutory authorities can be traced to a provision of statute, unless and until violation of mandatory provisions thereof are found out and/or it is held that a decision is taken for unauthorized or illegal purpose, the Court will not ordinarily interfere either with the policy decision or any decision taken by the executive authorities pursuant to or in furtherance thereof.

20. Malice in common law or acceptance means ill will against a person, but in legal sense means a wrongful act done intentionally without just cause or excuse.

CASE LAWS OPERATING IN THE FIELD:

21. In G. B. Mahajan and others v. Jalgaon Municipal Council and others (1991) 3 SCC 91, this Court stated : AIR 1991 SC 1153 (Para 20)

"46. While it is true that principles of judicial review apply to the exercise by a Government body of its contractual powers, the inherent limitations on the scope of the inquiry are themselves a part of those principles. For instance, in a matter even as between the parties, there must be shown a public law element to the contractual decision before judicial review is invoked. In the present case the material placed before the Court falls far short of what the law requires to justify interference."

22. In Tata Cellular v. Union of India [(1994)6 SCC 651] the Court laid down the following principles in the matter of judicial review : AIR 1996 SC 11 : 1994 AIR SCW 3344 (Para 113)

"94. The principles deducible from the above are :

(1) The modern trend points to judicial restraint in administrative action.

(2) The Court does not sit as a court of appeal but merely reviews the manner in which the decision was made.

(3) The Court does not have the expertise to correct the administrative decision. If a review of the administrative decision is permitted it will be substituting its own decision, without the necessary expertise which itself may be fallible.

(4) The terms of the invitation to tender cannot be open to judicial scrutiny, because the invitation to tender is in the realm of contract. Normally speaking, the decision to accept the tender or award the contract is reached by process of negotiations through several tiers. More often than not, such decisions are made qualitatively by experts.

(5) The Government must have freedom of contract. In other words, a fair play in the joints is a necessary concomitant for an administrative body functioning in an administrative sphere or quasi administrative sphere. However, the decision must not only be tested by the application of Wednesbury principle of reasonableness (including its other facts pointed out above) but must be free from arbitrariness not affected by bias or actuated by mala fides.

(6) Quashing decisions may impose heavy administrative burden on the administration and lead to increased and unbudgeted expenditure."

23. In M. P. Oil Extraction and another v. State of M.P. and others [(1997)7 SCC 592], this Court observed : AIR 1998 SC 145 : 1997 AIR SCW 4104

"44. The renewal clause in the impugned agreements executed in favour of the respondents does not also appear to be unjust or improper. Whether protection by way of supply of sal seeds under the terms of agreement requires to be continued for a further period, is a matter for decision by the State Government and unless such decision is patently arbitrary, interference by the Court is not called for. In the facts of the case, the decision of the State Government to extend the protection for further

period cannot be held to be per se irrational, arbitrary or capricious warranting judicial review of such policy decision. Therefore, the High Court has rightly rejected the appellant' contention about the invalidity of the renewal clause. The appellants failed in earlier attempts to challenge the validity of the agreement including the renewal clause. The subsequent challenge of the renewal clause, therefore, should not be entertained unless it can be clearly demonstrated that the fact situation has undergone such changes that the discretion in the matter of renewal of agreement should not be exercised by the State. It has been rightly contended by Dr. Singhvi that the respondents legitimately expect that the renewal clause should be given effect to in usual manner and according to past practice unless there is any special reason not to adhere to such practice. The doctrine of "legitimate expectation" has been judicially recognised by this Court in a number of decisions. The doctrine of "legitimate expectation" operates in the domain of public law and in an appropriate case, constitutes a substantive and enforceable right."

It was further pointed out:

"45. Although to ensure fair play and transparency in State action, distribution of largesse by inviting open tenders or by public auction is desirable, it cannot be held that in no case distribution of such largesse by negotiation is permissible. In the instant case, as a policy decision protective measure by entering into agreements with selected industrial units for assured supply of sal seeds at concessional rate has been taken by the Government. The rate of royalty has also been fixed on some accepted principle of pricing formula as will be indicated hereafter. Hence, distribution or allotment of sal seeds at the determined royalty to the respondents and other units covered by the agreements cannot be assailed. It is to be appreciated that in this case, distribution by public auction or by open tender may not achieve the purpose of the policy of protective measure by way of supply of sal seeds at concessional rate of royalty to the industrial units covered by the agreements on being selected on valid and objective considerations."

24. In Netai Bag and others v. State of W. B. and others [(2000) 8 SCC 262], Sethi J. speaking for the Bench observed: AIR 2000 SC 3313 : 2000 AIR SCW 3590 (Paras 19, 23 and 21)

"Though the State cannot escape its liability to show its actions to be fair, reasonable and in accordance with law, yet wherever challenge is thrown to any of such action, initial; burden of showing the prima facie existence of violation of the mandate of the Constitution lies upon the person approaching the court. We have found in this case, that the appellants have miserably failed to place on record or to point out to any alleged constitutional vice or illegality. Neither the High Court nor this Court would have ventured to make a roving inquiry particularly in a writ petition filed at the instance of the erstwhile owners of the land, whose main object appeared to get the land back by any means as, admittedly, with the passage of time and development of the area, the value of the land had appreciated manifold. It may be noticed that in the year 1961 the erstwhile owners were paid about Rs.5.5 lakhs and the State Government assessed the market value of the property which was paid by Respondent 5 at Rs.71,59,820. The appellants have themselves stated that the

value of the land roundabout the time, when it was leased to Respondent 5 was about Rs.11 crores. There cannot be any dispute with the proposition that generally when any State land is intended to be transferred or the State largesse decided to be conferred, resort should be had to public auction or transfer by way of inviting tenderes from the people. That would be a sure method of guaranteeing compliance with the mandate of Article 14 of the Constitution. Non-floating of tenders or not holding of public auction would not in all cases be deemed to be the result of the exercise of the executive power in an arbitrary manner. Making an exception to the general rule could be justified by the State executive, if challenged in appropriate proceedings. The constitutional courts cannot be expected to presume the alleged irregularities, illegalities or unconstitu-tionality nor the courts can substitute their opinion for the bona fide opinion of the State executive. The Courts are not concerned with the ultimate decision but only with the fairness of the decision-making process.

In the backdrop of the legal position noticed herein, it has to be seen, in the instant case, as to whether the action of Respondent 1 was illegal, arbitrary or mala fide. To justify their action of entering into an agreement of lease by negotiation, even in the absence of pleadings on behalf of the appellants, the State has submitted that the entire transaction of granting the lease to Respondent 5 for an integrated food processing unit with an abattoir in a semi-rural area, which was a low-lying land, despite their best efforts, the State Government were unable to set up any project. The lease was given to Respondent 5 upon consideration of all the facts and circumstances with the object of setting up an industry in the State of West Bengal which was likely to generate employment to more than 300 persons and earn foreign exchange worth more than Rs.50 crores. The negotiations were resorted to ensure the disposal of the slaughterhouse at Durgapur which was proved to have been running in losses. The respondent -State had failed to get any buyer for Durgapur Project despite newspaper advertisements. In view of the peculiar facts and circumstances of the case we are not persuaded to hold that the action of the respondent-State in executing the lease deed with Respondent 5 was unreasonable, illegal, arbitrary or actuated by extraneous considerations. In this regard it is worth noticing that none except the erstwhile owners and the propounders of vegetarianism have made any grievance to the effect that the market value of the property, as charged from Respondent 5, was either allegedly for a song or at a throwaway price."

25. In Raunaq International Ltd. v. I.V.R. Construction Ltd. and others [(1999)1 SCC 492] it was held : AIR 1999 SC 393 : 1999 AIR SCW 53 : Para 11

"11. when a writ petition is filed in the High Court challenging the award of a contract by a public authority or the State, the Court must be satisfied that there is some element of public interest involved in entertaining such a petition. if, for example, the dispute is purely between two tenderers, the court must be very careful to see if there is any element of public interest involved in the litigation. A mere difference in the prices offered by the two tenderers may or may not be decisive in deciding whether any public interest is involved in intervening in such a commercial transaction. It is important to bear in mind that by Court intervention, the proposed project may be considerably delayed thus escalating the cost far more than any saying which the court would ultimately effect in public money by deciding the dispute in favour of one tenderer or the other tenderer. Therefore, unless the court is satisfied that there is a substantial amount of public interest, or the transaction is entered into mala fide, the Court should not intervene under Article 226 in disputes between two rival tenderers.

12. When a petition is filed as a public interest litigation challenging the award of a contract by the State or any public body to a particular tenderer, the Court must satisfy itself that the party which has brought the litigation is litigating bona fide for public good. The public interest litigation should not be merely a cloak for attaining private ends of a third party or of the party bringing the petition. The Court can examine the previous record of public service rendered by the organisation bringing public interest litigation. Even when a public interest litigation is entertained, the Court must be careful to weigh conflicting public interests before intervening. Intervention by the Court may ultimately result in delay in the execution of the project. The obvious consequence of such delay is price escalation. If any retendering is prescribed, cost of the project can escalate substantially. What is more important is that ultimately the public would have to pay a much higher price in the form of delay in the commissioning of the project and the consequent delay in the contemplated public service becoming available to the public. If it is a power project which is thus delayed, the public may lose substantially because of shortage in electricity supply and the consequent obstruction industrial development. If the project is for the construction of a road or an irrigation canal, the delay in transportation facility becoming available or the delay in water supply for agriculture being available, can be a substantial setback to the country' economic development. Where the decision has been taken bona fide and a choice has been exercised on legitimate considerations and not arbitrarily, there is no reason why the Court should entertain a petition under Article 226.

13. Hence before entertaining a writ petition and passing any interim orders in such petitions, the Court must carefully weigh conflicting public interest. Only when it comes to a conclusion that there is an overwhelming public interest in entertaining the petition, the Court should intervene.

14. Where there is an allegation of mala fide or an allegation that the contract has been entered into for collateral purposes and the Court is satisfied on the material before it that the allegation needs further examination, the court would be entitled to entertain the petition. But even here, the court must weigh the consequences in balance before granting interim orders."

26. In Narmada Bachao Andolan v. Union of India and others [(2000)10 SCC 664] this Court opined : AIR 2000 SC 3751 : 2000 AIR SCW 4809 Para 77

"47. The project in principle, was cleared more than 25 years ago when the foundation stone was laid by late Pandit Jawahar Lal Nehru. Thereafter, there was an agreement of the four Chief Ministers in 1974, namely, the Chief Ministers of Madhya Pradesh, Gujarat, Maharashtra and Rajasthan for the project to be undertaken. Then dispute arose with regard to the height of the dam which was settled with the award of the tribunal being given in 1978. For a number of years, thereafter final clearance was still not given. In the meantime some environmental studies were conducted. The final clearance was not given because of the environmental concern which is quite evident. Even though complete data with regard to the environment was not available, the Government did in 1987 finally give environmental clearance. It is thereafter that the construction

of the dam was undertaken and hundreds of crores have been invested before the petitioner chose to file a writ petition in 1994 challenging the decision to construct the dam and the clearance as was given. In our opinion, the petitioner which had been agitating against the dam since 1986 is guilty of laches in not approaching the Court at an earlier point of time."

27. In Balco Employees' Union (Regd.) v. Union of India and others [2002)2 SCC 333] , it was held : AIR 2002 SC 350 : 2001 AIR SCW 5135 : 2002 CLC 171 Para 76, 77, 78 and 79

"Public interest litigation, or PIL as it is more commonly known, entered the Indian judicial process in 1970. It will not be incorrect to say that it is primarily the Judges who have innovated this type of litigation as there was a dire need for it. At that stage, it was intended to vindicate public interest where fundamental and other rights of the people who were poor, ignorant or in socially or economically disadvantageous position and were unable to seek legal redress were required to be espoused. PIL was not meant to be adversarial in nature and was to be a cooperative and collaborative effort of the parties and the Court so as to secure justice for the poor and the weaker sections of the community who were not in a position to protect their own interests. Public interest litigation was intended to mean nothing more than what words themselves said viz. "litigation in the interest of the public".

While PIL initially was invoked mostly in cases connected with the relief to the people and the weaker sections of the society and in areas where there was violation of human rights under Article 21, but with the passage of time, petitions have been entertained in other spheres. Prof. S. B. Sathe has summarised the extent of the jurisdiction which has now been exercised in the following words :

"PIL may, therefore, be described as satisfying one or more of the following parameters. These are not exclusive but merely descriptive :

- Where the concerns underlying a petition are not individualist but are shared widely by a large number of people (bonded labour, under trial prisoners, prison inamates).

- Where the affected persons belong to the disadvantaged sections of society (women, children, bonded labour; unorgainised labour etc.).

- Where judicial law making is necessary to avoid exploitation (inter-country adoption, the education of the children of the prostitutes).

- Where judicial intervention is necessary for the protection of the sanctity of democratic institutions (independence of the judiciary, existence of grievances redressal forums).

- Where administrative decisions related to development are harmful to the environment and jeopardize people' right to natural resources such as air or water."

There is, in recent years, a feeling which is not without any foundation that public interest litigation is now tending to become publicity interest litigation or private interest litigation and has a tendency to be counterproductive.

PIL is not a pill or a panacea for all wrongs. It was essentially meant to protect basic human rights of the weak and the disadvantaged and was a procedure which was innovated where a public - spirited person files a petition in effect on behalf of such persons who on account of poverty, helplessness or economic and social disabilities could not approach the court for relief. There, have been, in recent times, increasingly instances of abuse of PIL. Therefore, there is a need to re-emphasize the parameters within which PIL can be resorted to by a petitioner and entertained by the Court. This aspect has come up for consideration before this Court and all we need to do is to recapitulate and re-emphasize the same."

28. The extent of the Court' jurisdiction to entertain a public interest litigation has been pointed out by this court in Guruvayur Devaswom Managing Committee and Anr. v. C. K. Rajan and Others [2003 (6) SCALE 401]. After referring to a large number of decisions, this Court held :

"It is trite, where a segment of public is not interested in the cause, public interest litigation would not ordinarily be entertained.

Existence of certain gray areas may not be ruled out but such a case was required to be made out before the High Court which has not been done in the instant case. For any Court of law including this Court, it is difficult to draw a strict line of demarcation as to which matters and to what extent a public interest litigation should be entertained but, as noticed hereinbefore, the decisions of this Court render broad guidelines. This Court and the High Court should, unless there exists strong reasons to deviate or depart therefrom, not undertake an unnecessary journey through the public interest litigation path.

The High Court should not have proceeded simply to supplant, ignore or by-pass the statute. The High Court has not shown any strong and cogent reasons for an Administrator to continue in an

office even after expiry of his tenure. It appears from the orders dated 7th February, 1993 that the High Court without cogent and sufficient reason allowed Administrator to continue in office although his term was over and he was posted elsewhere. He also could not have been conferred powers wider than S. 17 of the Act. The High Court took over the power of appointment of the Commissioner bypassing the procedure set out in the Act by calling upon the Government to furnish the names of 5 IAS Officers to the Court so that it could exercise the power of appointment of the Commissioner.

The Court should be circumspect in entertaining such public interest litigation for another reason. There may be dispute amongst the devotees as to what practices should be followed by the temple authorities. There may be dispute as regard the rites and rituals to be performed in the temple or omission thereof. Any decision in favour of one sector of the people may heart the sentiments of the other. The courts normally, thus, at the first instance would not enter into such disputed arena, particularly, when by reason thereof the fundamental right of a group of devotees under Articles 25 and 26 may be infringed. Like any other wing of the State, the courts also while passing an order should ensure that the fundamental rights of a group of citizens under Articles 25 and 26 are not infringed. Such care and caution on the part of the High Court would be a welcome step. Where access to justice poses a fundamental problem facing the third world today, its importance in India has increased. Laws are designed to improve the socio-economic conditions of the poor but making the law is not enough, it must be implemented. The core issues which have been highlighted by the learned counsels by the party must be considered from that angle. Administration of temple by entertaining complaints does not lead to a happy state of affairs. Roving enquiry is not contemplated. Principles of natural justice and fair play ought to be followed even in the pro bono public proceedings. The Courts undoubtedly would be parens patriae in relation to idols, but when the statute governs the field and the State takes over the management, ordinarily the courts would not step in.

It was further held :

"Mr. Subba Rao referred to N. M. Thomas (supra) for the proposition that Court is also a 'tate' within the meaning of Article 12 but that would not mean that in a given case the court shall assume the role of the Executive Government of the State. Statutory functions are assigned to the State by the Legislature and not by the Court. The Courts while exercising its jurisdiction ordinarily must remind itself about the doctrine of separation of powers which, however, although does not mean that the Court shall not setp-in in any circumstance whatsoever but the Court while exercising its power must also remind itself about the rule of self-restraint. The Courts, as indicated hereinbefore, ordinarily is reluctant to assume the functions of the statutory functionaries. It allows them to perform their duties at the first instance.

The Court steps in by Mandamus when the State fails to perform its duty. It shall also step in when the discretion is exercised but the same has not been done legally and validly. It steps in by way of a judicial review over the orders passed. Existence of alternative remedy albeit is no bar to exercise jurisdiction under Article 226 of the Constitution of India but ordinarily it will not do so unless it is

found that an order has been passed wholly without jurisdiction or contradictory to the constitutional or statutory provisions or where an order has been passed without complying with the principles of natural justice. (See Whirlpool Corporation v. Registrar of Trade Marks, Mumbai and others (1998)8 SCC 1) AIR 1999 SC 22 : 1998 AIR SCW 3345

Exercise of self restraint, thus, should be adhered to, subject of course to, just exceptions."

29. Dawn Oliver in constitutional Reform in the UK under the heading 'The Courts and Theories of Democracy, Citizenship, and Good Governance' at page 105 states :

"However, this concept of democracy as rights-based with limited governmental power, and in particular of the role of the Courts in a democracy, carries high risks for the judges - and for the public. Courts may interfere inadvisedly in public administration. The case of Bromley London Borough Council v. Greater London Council ([1983] 1 AC 768, HL) is a classic example. The House of Lords quashed the GLC cheap fares policy as being based on a misreading of the statutory provisions, but were accused of themselves misunderstanding transport policy in so doing. The courts are not experts in policy and public administration - hence Jowell' point that the Courts should not step beyond their institutional capacity (Jowell, 2000). Acceptance of this approach is reflected in the judgments of Laws LJ in International Transport Roth GmbH v. Secretary of State for the Home Department ([2002] EWCA Civ 158, [2002] 3 WLR 344) and of Lord Nimmo Smith in Adams v. Lord Advocate (Court of session, Times, 8 August, 2002) in which a distinction was drawn between areas where the subject matter lies within the expertise of the courts (for instance, criminal justice, including sentencing and detention of individuals) and those which were more appropriate for decision by democratically elected and accountable bodies. If the Courts step outside the area of their institutional competence, Goverment may react by getting parliament to legislate to oust the jurisdiction of the courts altogether. Such a step would undermine the rule of law. Government and public opinion may come to question the legitimacy of the Judges exercising judicial review against Ministers and thus undermine the authority of the Courts and the rule of law."

CONCLUSIONS:

30. Salient principles of law as noticed hereinbefore, were not considered by the High Court in passing the impugned judgment.

31. In the facts and circumstances, we do not find that the Board and the State had committed any illegality which could have been as subject matter of judicial review. The High Court in our opinion committed a manifest error insofar as it failed to take into consideration that the delay in this case

had defeated equity. The allotment was made in the year 1995. The writ application was filed after one year. By that time the Company had not only took possession of the land but also made sufficient investment. Delay of this nature shall have been considered by the High Court to be of vital importance.

32. Furthermore, the High Court ought to have taken into consideration the factum of resistance in the matter from those persons whose lands have been acquired. Only because the lands are vested in the State upon acquisition thereof, the same by itself would not mean that the persons whose lands were acquired were not interested in getting the allotment. The locus standi of the respondent ought to have been taken into consideration having regard to the specific pleas raised in this behalf by the appellants herein.

33. Undue haste also is a matter which by itself would not have been a ground for exercise of power of judicial review unless it is held to be mala fide. What is necessary in such matters is not the time taken for allotment but the manner in which the action had been taken. The Court, it is trite, is not concerned with the merit of the decision but the decision making process. In absence of any finding that any legal malice was committed, the impugned allotment of land could not have been interfered with. What was only necessary to be seen was as to whether there had been a fair play in action.

34. The question as to whether any undue haste has been shown in taking an administrative decision is essentially a question of fact. The State had devolved a policy of Single Window System with a view to get rid of red-tapism generally prevailing in the bureaucracy. A decision which has been taken after due deliberations and upon due application of mind cannot be held to be suffering from malice in law on the ground that there had been undue haste on the part of the State and the Board. (See Bangalore Medical Trust v. B. S. Muddappa and others (1991)4 SCC 54 and Pfizer Ltd. v. Mazdoor Congress and others (1996) 5 SCC 609) . AIR 1991 SC 1902 : 1991 AIR SCW 2082, AIR 1996 SC 2618 : 1996 AIR SCW 3260 : 1996 Lab IC 2259

35. For the aforementioned reasons, we are of the opinion that the impugned judgment cannot be sustained which is set aside accordingly. These appeals are allowed. No costs.

Appeals allowed.