

SUPREME COURT OF INDIA

All India ITDC Workers Union and Others

Vs

ITDC and Others

Transfer Case (Civil) 73 of 2002; Transfer Case (Civil) No. 76/2002

(Dr. Ar. Lakshmanan and A. K. Mathur, JJ)

31.10.2006

JUDGMENT

DR. AR. LAKSHMANAN, J.

The employees of Hotel Agra Ashok filed a writ petition being No. 41650 of 2001 in the Allahabad High Court questioning the action of the first respondent - India Tourism Development Corporation (hereinafter called 'the ITDC'), New Delhi to sell Hotel Agra Ashok out rightly to a private party as arbitrary and illegal. According to them, Hotel Agra Ashok is one of the biggest hotels at Agra and is a five star hotel having 58 centrally air-conditioned luxurious room and other facilities. It is also their case that non-implementation of voluntary retirement scheme in respect of the employees of the Hotel Agra Ashok is totally discriminatory, arbitrary, unjust and without any rhyme or reason. It is further submitted that because the Government of India introduced a disinvestment plan with the object to sell the hotel to a private party which is liable to affect the employees very seriously including their service conditions.

The Government of India issued a press communiqi in the month of January, 2001 proposing to sell Hotel Agra Ashok for a sum of Rs.2.36 crores which is wholly inadequate and amounts to a totally distress sale. The Government has devised a scheme of creating an artificial company i.e. Hotel Yamuna View Private Limited 4th respondent herein and the said company has been incorporated only for the purpose of selling the said hotel after the hotel is transferred to it. The employees have come to understand through press reports that the hotel is being sold out to one M/s

Mohan Singh respondent No.5 and his bid was accepted by the Central Government in pursuance to the advertisement. It is further submitted that the entire Hotel Agra Ashok is being sold out only merely for a sum of Rs.3.90 crores whereas the valuation by the Agra Cantonment Board in the year 1999 of its land and buildings alone is more than Rs.5.58 crores. According to the employees, its market price at present cannot be less than Rs.20 crores. It is the contention of the employees that because of the change of ownership of the Hotel, the service conditions of the employees should not be changed by the private person and that the existing service conditions as originally agreed between the various employees of the Hotel and the new purchaser must be maintained. The prayer in the writ petition reads thus:

"(a) a writ, order or direction in the nature of mandamus restraining the respondents from unilaterally changing the terms and conditions of all class III & IV employees of the Hotel in view of the proposed sale of Hotel Agra Ashok, Agra, to respondent no.5;

(b) A writ, order or direction in the nature of mandamus directing the parties concerned to maintain status-quo in respect of the service conditions of the petitioners and also in respect of the proposed sale and transfer of Hotel Agra Ashok to respondent no.5;

(c) a writ, order or direction in the nature of mandamus commanding the respondents to enforce and implement and to apply Voluntary Retirement Scheme which has been made applicable only in respect of the employees of Ashok Travels and Tours and not in respect of the employees of Hotel Agra Ashok, Agra;

(d) Any other writ, order or direction as this Hon'ble court may deem fit and proper in the circumstances of the case, and

(e) Award cost of the petition to be paid to the petitioners."

The above writ petition was transferred to this Court and is connected with other transferred cases.

The petitioners have also filed I.A. No. 49 of 2004 in transfer case No. 73 of 2002 and made a prayer to direct the respondents to apply Voluntary Retirement Scheme (VRS) in pursuance of the directions of the Government of India vide letter No. I-JS(T)/2002 dated 12.02.2002 and as prayed for by them in the writ petition. It is stated in the said IA that the employees of Hotel Ashok Agra are similarly situated and serving under similar conditions under which employees of different ITDC Hotels are circumstanced and serve the ITDC. It is further submitted that in the case of Hotel Manali Ashok, the VRS is made applicable during the pendency of the above matters and that the employees do not challenge the policy of disinvestment as such. However, their service rights are to be protected since there is no difference in service conditions between the employees of Hotel Manali Ashok and Hotel Agra Ashok, both are similar and equal and the discrimination between the two sets of employees is violative of Article 14 of the Constitution of India and, therefore, both are to be treated similarly.

T.C. No. 76 of 2002 (Arising out of T.P.(C) No. 948 of 2001) Civil Writ Petition No. 7195 of 2001 was filed by one K.K.Gautham and 7 Ors. in the High Court of Delhi against ITDC, New Delhi and Hotel Yamuna View Pvt. Ltd. through its Director Mr. Arvind Mehta, New Delhi.

In the above writ petition, the petitioners sought to challenge the proposed action of respondent No.1 of transferring out the services of the petitioners, who are officers of respondent No.1 to respondent No.3, a newly incorporated company. It is stated that the petitioners are presently posted in Hotel Agra Ashok in pursuance of their policy of disinvestment and ITDC have proposed to sell the said Hotel to a private bidder. The grievance of the petitioners is that the officers of the ITDC form an All India Common Cadre in different disciplines and that All India seniority lists are maintained and career progress takes place on the basis of All India Seniority and that the officers are governed by common service conditions, pay-scales and rules. The petitioners questioned the proposed transfer to a new employer as illegal and arbitrary. The prayer in the above writ petition reads as follows:

"(i) That this Hon'ble Court may pass a Writ of Certiorari or any other appropriate writ, order or direction quashing the scheme of transfer of services of the petitioners from respondent No.1 to respondent No.3.

(ii) That this Hon'ble Court may pass a Writ of Certiorari or any other appropriate writ, order or direction quashing the clause 3.3 (d) and 3.5 and such other clauses of the Scheme of Arrangement prepared by respondent No.1 (Annexure-p-3)

(iii) Award the cost of writ petition to the petitioners: and

(iv) Pass such other or further orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case."

The above writ petition was also transferred to this Court.

A counter affidavit was filed by the ITDC, respondent No.1 through its Company Secretary. According to them, disinvestment was a policy decision of the Government of India and that this Court has held that the said policy decisions should be least interfered in judicial review and that the Government employees have no absolute right under Article 14, 21 and 311 of the Constitution of India and that the Government can abolish the post itself. It is further submitted that in the present case, the petitioners are not Government employees and are merely employees of a public sector undertaking and that the entire process of disinvestment of the Hotel was carried out by the Government of India, Department of Disinvestment and that in terms of the settlement, the wages of the employees including the petitioners had been restructured and revised and were operative and that the respondent is not curtailing them and the rights of the petitioners are not affected in any manner. It is further submitted that the contention of employees that the scheme of VRS in respect

of the employees of Ashok Travels & Tours (a Unit of ITDC) be made applicable to the employees of the disinvested Unit Hotel Agra Ashok is absolutely untenable because after the disinvestment, it is for the buyer to float the scheme of VRS in terms of the transferred documents.

In view of the above, it is submitted that the apprehension of the petitioners is baseless and liable to be rejected.

The Union of India filed its affidavit in reply through its Under Secretary and submitted that successive governments, both at the Centre and the States have been following the economic policy of disinvestment in Public Sector Enterprises due to various reasons and in August, 1996, the Central Government set up a Public Sector Disinvestment Commission to make recommendations on the identified Central Public Sector Undertakings which may be disinvested. It was further submitted that ITDC is a Government Company as defined under Section 617 of the Companies Act, set up in 1966 and at the relevant time the Government of India was holding about 89.97% shares in ITDC, which was running 33 hotels in all and that ITDC was running heavy losses and its occupancy rates were far below the market average despite the fact that its room rents were lower than other five star hotels. The Disinvestment Commission in its report recommended that ITDC falls in the non-core category and hence disinvestment can go up to 74% or more. The recommendation was accepted by the Government at the level of Cabinet Committee on Disinvestment and a decision was taken by Inter-Ministerial Group and at the level of the Cabinet Committee on Disinvestment to divest each property individually rather than altogether or in groups. Respondent Nos. 4 & 5 filed a separate counter affidavit in reply. According to them, the Government of India had taken a decision for disinvestment of the properties owned by respondent No.1 as majority of properties doing hotel business were running huge losses to the tune of crores of rupees and unnecessarily increasing the liabilities of the Corporation. It was submitted that there is no change in service conditions of the employees as per the terms of share purchase agreement. That after the creation of the new Company - Hotel Yamuna View Private Limited, all the employees working with Hotel Agra Ashok were shifted to the new company which was also a subsidiary company of respondent No.1. Class III and IV employees of the Hotel approached the High Court and agitated their transfer from ITDC to Hotel Yamuna View Private Limited by way of a Writ Petition No. 41650 of 2001. The High Court, by way of an interim order, maintained the status quo regarding service conditions of Class III and IV employees of the hotel and pursuant to the agreement the Management of the Hotel Agra Ashok was transferred to respondent Nos. 4 and 5 on 07.02.2002 and started abiding by each terms mentioned in the agreement. Accordingly, the service conditions of the employees working with Hotel Agra Ashok were maintained as before. Some of the other employees of Hotel Agra Ashok filed civil Writ Petition No. 7195 of 2001 before the High Court of Delhi and that the Government of India as per the report of the Disinvestment Commission accepted the same and transferred the hotel to the respondents and that the decision of the Government of India to sell its share in ITDC was a policy decision within the ambit of law on the Constitution of India. With regard to the VRS scheme, it was submitted that for the employees of Ashok Travels and Tours, VRS Scheme was introduced by circular dated 02.03.2001 but there was no policy for VRS regarding Hotel Agra Ashok. Also under clause 8 of the said circular regarding introduction of VRS, it is clearly stated that the schemes does not confer any right whatsoever on any employee to have his request for voluntary retirement accepted.

Two rejoinders were filed on behalf of the workers' union to the reply filed by respondent Nos. 3, 4

and 5. We heard Mr. M.L. Bhat, learned senior counsel assisted by Ms. Purnima Bhat, learned counsel in T.C. No. 73 of 2002 and Mr. Jayant Nath, learned senior counsel assisted by Mr. Suresh Tripathy, learned counsel in T.C. No. 76 of 2002 for the respective petitioners and Mr. Rakesh Dwivedi, learned senior counsel, Mr. Ashok Bhan and Mr. Gaurav Agarwal and Mr. Praveen Jain, learned counsel for the respective respondents.

We have carefully perused the averments made in the affidavit and the reply filed by the respective respondents and the rejoinder by the petitioners. Our attention was also drawn to the scheme of arrangement (de-merger) between ITDC Ltd. and Hotel Yamuna View Private Limited, report of the Disinvestment Commission and other relevant records and annexures filed in both the writ petitions. Mr. M.L. Bhat, learned senior counsel reiterated the submissions in the Court and Mr. Jayant Nath, learned senior counsel reiterated the contentions raised in the writ petition at the time of hearing. After inviting our attention to the prayer in the respective writ petition, they also invited our attention to the order passed on 13.12.2001 by the High Court directing maintenance of status quo regarding service conditions of Class III and IV employees of Hotel Agra Ashok. The said interim order was extended up to the next date of hearing. Our attention was also drawn to the share purchase agreement clause 9.4 in Article 9 which reads thus:

9.4 The Purchaser will cause the Company to continue to employ all the regular employees of the Unit which have been transferred to the Company on the terms and conditions that shall not be inferior to the terms and conditions as applicable to the regular employees on the date of transfer of the Unit including with respect to the voluntary retirement scheme applicable to the Company as per the guidelines of the Department of Public Enterprises, if any, and terms set out in agreements entered into by ITDC in relation to such regular employees with staff/workers unions/associations. The Purchaser further covenants that it shall cause the Company to ensure that:

(i) The services of the regular employees will not be interrupted.

(ii) the terms and conditions of service applicable to the regular employees will not in any way be less favourable than those applicable to them immediately on the date hereof.

(iii) It shall not retrench any of its regular employees for a period of one year from the Closing Date other than any dismissal or termination of regular employees from their employment in accordance with the applicable staff regulations and standing order of the Company or applicable law.

(iv) In the event of retrenchment of regular employees, the Company shall pay the regular employees such compensation as is required under applicable labour laws on the basis that the service of the regular employees have been continuous and uninterrupted. Provided further, that no retrenchment of an Employee would be undertaken unless the affected Employee is given benefits which are higher of (a) the voluntary retirement scheme applicable to the Company as per the guidelines of the Department of Public Enterprises as of the date hereof and (b) the benefits/compensation required to be statutorily given to an employee under applicable law.

(v) The Company will only undertake dismissal or termination of the services of the employees on account of disciplinary action in accordance with the applicable staff regulations.

(vi) in respect of contract employees the terms and conditions of the relevant contracts shall be fully observed by the Company and the Purchaser shall keep Government and ITDC indemnified against damages, losses or claims resulting on account of the Company failing to observe any of the terms and conditions of such contracts."

Our attention was also drawn to the order dated 01.02.2002 and, in particular, last para of page 3 of the said order referring to the status quo order passed by the High Court regarding service conditions of Class III and IV employees of the Hotel. Our attention was also invited to clause 3.3(d) and 3.5. Learned senior counsel submitted that the employees consent is necessary before transfer and cited *Jawaharlal Nehru University vs. Dr. K.S. Jawatkar and Others*, . In this case, the Jawaharlal Nehru University, under Section 5(2) of the Jawaharlal Nehru University Act, 1966, established a Centre of Post-graduate studies at Imphal and appointed the respondent as Assistant Professor on a regular basis and also confirmed him w.e.f. 29.08.1979. In 1981, the University decided to transfer the Centre to the Manipur University. Under Section 1(4) of the Manipur University Act, 1980, the Governor of Manipur made an order which provided for transfer of the members of the faculties of the Centre to the Manipur University. The question was whether the transfer of the Centre resulted in transfer of the respondent's service to the Manipur University. Answering in negative and rejecting the Jawaharlal Nehru University's appeal, this Court held:

"The respondent continues to be an employee of the appellant University. The contract of service entered into by the respondent was a contract with the appellant University and no law can convert that contract into a contract between the respondent and the Manipur University without simultaneously making it either expressly or by necessary implication, subject to the respondent's consent. The provision in Manipur University Act for the transfer of the services of the staff working at the said Centre must be construed as enabling such transfer with the consent of the employee concerned. Since the transfer of the Centre could not result in automatic transfer of the respondent's service, he continues in the employment of the appellant University."

The above judgment is distinguishable on facts and on law. The *Jawaharlal Nehru University case* (supra) would indicate that, in that case there was a purported transfer of the employee from Jawaharlal Nehru University to the Manipur University without his consent. Admittedly the JNU did not exercise any control over Manipur University. In the instant case, the transfer was from ITDC Ltd. to respondent No.3 Company, the share-holding pattern of the two companies were exactly the same. Therefore, it did not make any difference to the employees, especially, when the scheme of de-merger itself provide that the employee will continue in service of the respondent No.3 with full benefits including continuity in service. The provisions of the Companies Act, 1956 were not involved in the JNU's case. Further the two Universities were totally unconnected entities hence the ratio of that judgment, in our opinion, is not applicable to the facts in hand. Even in the judgment of this Court, in *JNU* in para 8 it has been observed that at worst this would not impinge upon the validity of the de-merger scheme. The effect of that would be that the employee would be deemed to have retrenched and would be entitled to compensation as such in accordance with law.

In the instant case, the employees never claimed that they may be considered as retrenched. Even if it is the claim of the petitioners that they have been retrenched, the writ petition is not the appropriate proceedings and the petitioners were required to institute appropriate proceedings as per the industrial/labour laws.

Mr. M.L.Bhat, learned senior counsel also cited *Nokes vs. Doncaster Amalgamated Collieries Ltd.* 1940 Indlaw HL 20 House of Lords for the proposition that a free citizen in exercise of his freedom is entitled to choose the employer whom he promises to serve, so that the right to his services cannot be transferred from one employer to another without his consent. The Court was considering the whole question, however, as to whether Section 154 of the Companies Act, 1929 provides a statutory exception to that principle. The Lord Chancellor came to the conclusion that the contracts of personal service are not automatically transferred by an order made under Section 154. The House of Lords stated as under:

"When the Court makes an order under Section 154 of the Companies Act, 1929, transferring all the property and liabilities of the transferor company to the transferee company, a contract previously existing between an individual and the transferor company does not automatically become a contract between the individual and the transferee company.

The fundamental principle of common law that a free citizen is entitled to choose his employer, so that the right to his services cannot be transferred from one employer to another without his consent, is not abrogated by the order which could be made under the section. To effect such an alteration would require explicit clear words. The right to the service of an employee is not the property of the transferor company."

Mr. Jayant Nath, learned senior counsel appearing for the petitioner in T.C. No. 76 of 2002 invited our attention to the prayer in the writ petition and the salient features of the scheme of arrangement and the order passed by the Department of Company Affairs dated 01.02.2002 allowing the scheme under Section 391 of the Act.

Mr. Rakesh Dwivedi, learned senior counsel in his reply submitted that there will not be any difficulty to continue to employ all the regular employees of the Union which have been transferred to the Company on the terms and conditions and the terms set out in the agreement entered into by ITDC in relation to such regular employees with staff/workers unions/associations. He further proceeded to submit that, if there is breach of the obligation under the scheme, the employees can always approach the appropriate forum for redressal. He also invited our attention to the reply filed by the respective respondents objecting to the prayer asked for in the writ petition.

We have given our thoughtful consideration to the rival submissions made by the respective counsel appearing for the respective parties. In our opinion, the present writ petitions filed by the employees merits to be dismissed. Since disinvestment was a policy decision of the Government of India. This Court also has held that the said policy decision should be least interfered in judicial review and that the Government employees have no absolute right under Article 14, 21 and 311 of the Constitution

of India and that the Government can abolish the post itself. In the present case, the petitioners are not government servants and are merely employees of a public sector undertaking. This apart, the service conditions of the petitioners are being protected under the new management on the disinvestment of the Hotel and the fact that other hotels are also in an advanced stage of disinvestment in pursuance of the policy decision taken by the Government of India for disinvestment of the hotel units. We see no reason to interfere with the aforesaid decision. In case ultimately the petitioners are aggrieved by any aspect of terms of reference and formalization of agreement and completion of disinvestment it is always open to the petitioners to approach the courts for redressal of their grievances.

We have already extracted Clause 9.4 of the share purchase agreement dated 07.02.2002 in paragraphs supra. In our view, the decision of the Government of India to divest the property was a policy decision which was not in any manner contrary to the law of the land. Similar policy decision of the Government of India to disinvest 51% of this share holding in Bharat Aluminium Company Limited referred to as Balco was challenged before this Court and this Court has dealt with the scope of the judicial review in such economic policy decisions. This Court rejected the contention that the sale of the shares of the Government of India in Balco was legal and the employees of Balco have ceased to be employees of a government company. However, it is stated that the service conditions of the employees were not affected by the transfer of the shares.

We have also carefully perused the scheme. It is evident from the scheme itself that all the employees were to be retained as stipulated in the transfer documents on the same terms and conditions of service for 1 year and they were entitled for payment of gratuity and provident fund as per the then existing scheme. The terms and conditions of service applicable to the employees was not in any way be less favourable than those applicable to them immediately on the date thereof. The relevant provisions of the transfer documents relating to disinvestment of Hotel Agra Ashok are being reproduced herein below: Clause 3.2 (d) of the Scheme of Arrangement reads as follows: "with effect from the appointed date, all employees of the Transferor engaged in the Transferred Undertaking shall become the employees of the Transferee on the terms and conditions on which they are engaged as on the Appointed Date by the Transferor without any interruption of services as a result of this Scheme. The Transferee agrees that the services of all such employees with the Transferred Undertaking upto the Appointed Date shall be taken into account for purposes of all retirement benefits to which they may be eligible in the Transferor on the Appointed Date."

In view of the above, we are of the opinion that the apprehension of the employees is baseless and is liable to be rejected. It is also pertinent to notice that ITDC has not participated in the disinvestment process as the same was carried out by the Ministry of Disinvestment, Government of India. The safeguards regarding the service conditions of the employees have been duly provided in the transfer document i.e. de-merger scheme and share purchase agreement. This Court also in *Balco Employees' Union (Regd.) vs. Union of India and Others*, 66 held that the employees of the company registered under the Indian Companies Act do not have any vested right to continue to enjoy the status of the employee of an instrumentality of the State.

In the instant case, with the intention to promote the scheme of disinvestment, the Government issued an advertisement to outright sale of 6 hotels and long term lease for 2 hotels. The property of

respondent No.1 was demerged in the name of the new company with the approval of the Company Law Board. We have perused the order approving the scheme of arrangement as annexed and marked as Annexure-C(a)/2. All the employees after the creation of the new company were shifted to the new company which was also a subsidiary company of ITDC. Respondent No.1 invited tenders for sale of the Hotel. The offer made by Respondent Nos. 4 and 5 was accepted by respondent No.1 as successful bidder and accordingly, the shares of Hotel Yamuna View Private Limited were transferred under share purchase agreement dated 07.02.2002. It is pertinent to notice that at the time of inviting bid, no such liabilities of VRS to the employees were shown against Hotel Agra Ashok. All the liabilities were mentioned in the balance sheet of the company including property tax and water tax to be deposited with the Cantonment Board. Respondent Nos. 4 and 5 got the shares of Hotel Yamuna Private Limited transferred in their favour while share transfer agreement dated 07.02.2002 wherein certain conditions were put in by respondent No.1 keeping in mind the order of the High Court for maintaining the status quo of the class III and IV employees. Pursuant to the agreement, the Management of the Hotel was transferred to respondent No.4.

The employees have also challenged the non- implementation of VRS in respect of the employees of Hotel Agra Ashok. In our view, the petitioners/employees cannot claim parity in respect of other employees working under ITDC in different properties who have been granted benefits under VRS as the scheme was never made applicable to the employees working with the present property. No disclosure of any such introduction of VRS was given by ITDC at the time of sale, neither was any amount to be deposited by the purchaser. We are, therefore, of the opinion that respondent Nos. 4 and 5 is under no obligation to float the VRS scheme because in para 9(4), the VRS has to be given only when company retrenches its regular employees. But here the company is ready to continue with its employees with the same terms and conditions mentioned in the share purchase agreement. The employees are unwilling to continue on the same terms and, therefore, they cannot compel the management to introduce VRS scheme. When the share purchase agreement was executed with respondent No.5, then there was no scheme introduced for grant of VRS because prior to the sale the petitioners were employees of ITDC and not of Hotel Yamuna View Limited. They have already objected their transfer to Hotel Yamuna Private Limited. The petitioners are demanding VRS from ITDC because as per the orders dated 13.12.2001 and 05.03.2002 of the Allahabad High Court, the employees of Hotel Agra Ashok cannot be transferred to the new company Hotel Yamuna Private Limited. With intention to escape the liability of contempt, the ITDC specifically asked the buyer to maintain the service conditions of the employees on the same terms by entering into a share purchase agreement, however, no condition in this agreement was mentioned for offering VRS. In other words, a VRS scheme for employees of Ashok Travels & Tours was introduced by circular dated 02.03.2001 but there was no policy for VRS regarding Hotel Agra Ashok. Also under Clause 8 of the said circular regarding introduction of VRS, it is clearly stated that the scheme does not confer any right whatsoever on any employee to have their request for voluntary retirement accepted. The respondent has also no such obligation under para 94 (IV).

This Court in a recent judgment in the case of Board of Trustees, Visakhapatnam Port Trust & Others vs. T.S.N. Raju and Another, 2006 (9) Scale 55 (Dr. AR. Lakshmanan and Tarun Chatterjee, JJ) while considering the scheme of voluntary retirement applicable to Port Trusts considered the scope of entitlement to avail the benefit of the scheme. This Court held that the Chairman of the Port Trust has absolute right either to accept or not to accept the applications filed by the employees for retirement and the request of employees seeking voluntary retirement was not to take effect until and unless it was accepted in writing by the Port Trust Authorities. This Court held in para 35 as

under:-

"In our opinion, the request of the employees seeking voluntary retirement was not to take effect until and unless it was accepted in writing by the Port Trust Authorities. The Port Trust Authorities had the absolute discretion whether to accept or reject the request of the employee seeking voluntary retirement under the scheme. There is no assurance that such an application would be accepted without any consideration. The process of acceptance of an offer made by an employee was in the discretion of the Port Trust. We, therefore, have no hesitation in coming to the conclusion that the VRS was not a proposal or an offer but merely an invitation to treat and the applications filed by the employees constituted an offer."

As already noticed, the Government of India constituted the Disinvestment Commission and accepted the recommendation of the said Commission. A decision was taken by Inter-Ministerial Group and at the level of the Cabinet Committee on Disinvestment to divest each property individually rather than altogether or in groups. It is also beneficial for us to refer to the judgment of *Balco Employees' Union (Regd.) vs. Union of India and Others (supra)* by which this Court has dealt with the scope of the judicial review in such economic policy decisions. This Court held as follows:- 34. Applying the analogy, just as the Court does not sit over the policy of the Parliament in enacting the law, similarly, it is not for this Court to examine whether the policy of this disinvestment is desirable or not

47. Process of disinvestment is a policy decision involving complex economic factors. The Courts have consistently refrained from interfering with economic decisions as it has been recognised that economic expediencies lack adjudicative disposition and unless the economic decision, based on economic expediencies, is demonstrated to be so violative of constitutional or legal limits on power or so abhorrent to reason, that the Courts would decline to interfere. In matters relating to economic issues, the Government has, while taking a decision, right to "trial and error" as long as both trial and error are bona fide and within limits of authority..

92. In a democracy it is the prerogative of each elected Government to follow its own policy. Often a change in Government may result in the shift in focus or change in economic policies. Any such change may result in adversely affecting some vested interests. Unless any illegality is committed in the execution of the policy or the same is contrary to law or mala fide, a decision bringing about change cannot per se be interfered with by the Court. 93. Wisdom and advisability of economic policies are ordinarily not amenable to judicial review unless it can be demonstrated that the policy is contrary to any statutory provision or the Constitution. In other words, it is not for the Courts to consider relative merits of different economic policies and consider whether a wiser or better one can be evolved. For testing the correctness of a policy, the appropriate forum is Parliament and not the Courts 98. In the case of a policy decision on economic matters, the courts should be very circumspect in conducting any enquiry or investigation and must be most reluctant to impugn the judgment of the experts who may have arrived at a conclusion unless the Court is satisfied that there is illegality in the decision itself."

In the instant case, the Government has acted on advice of experts before taking a decision to

disinvest its shares in ITDC Limited. Even thereafter, through a fair and transparent process as detailed in the reply affidavit of the Union of India, the Government has ensured that it has got the best price for its shares. It is also pertinent to notice that the Government has not received any other higher offer. The contention of the learned senior counsel for the writ petitioners that the price is less has not been supported by any documentary evidence. In similar situation, this Court has observed in Balco Employees' Union case (supra) as follows:-

"65. It is not for this Court to consider whether the price which was fixed by the Evaluation Committee at Rs.551.5 crores was correct or not. What has to be seen in exercise of judicial review of administrative action is to examine whether proper procedure has been followed and whether the reserve price which was fixed is arbitrarily low and on the face of it, unacceptable.

66. When proper procedure has been followed, as in this case, and an offer is made of a price more than the reserve price then there is no basis for this Court to conclude that the decision of the Government to accept the offer of Sterlite is in any way vitiated."

The very same contention raised by the employees in the instant case was raised by the employees of Balco when the Government of India disinvested its majority shares in Balco. This Court rejected the contention that the sale of the shares of the Government of India in Balco was legal as the employees of Balco have ceased to be employees of a Government Company. It was, inter alia, observed as follows:-

"47. Even though the workers may have interest in the manner in which the Company is conducting its business, inasmuch as its policy decision may have an impact on the workers rights, nevertheless it is an incidence of service for an employee to accept a decision of the employer which has been honestly taken and which is not contrary to law. Even a government servant, having the protection of not only Articles 14 and 16 of the Constitution but also of Article 311, has no absolute right to remain in service. For example, apart from cases of disciplinary action, the services of government servants can be terminated if posts are abolished. If such employee cannot make a grievance based on part III of the Constitution or Article 311 then it cannot stand to reason that like the petitioners, non-government employees working in a company which by reason of judicial pronouncement may be regarded as a State for the purpose of part III of the Constitution, can claim a superior or a better right than a government servant and impugn its change of status..

48. .. If the abolition of a post pursuant to a policy decision does not attract the provisions of Article 311 of the Constitution as held in State of Haryana v. Des Raj Sangar and Anr. on the same parity of reasoning, the policy of disinvestment cannot be faulted if as a result thereof the employees lose their rights or protection under Articles 14 and 16 of the Constitution. In other words, the existence of rights of protection under Articles 14 and 16 of the Constitution cannot possibly have the effect of vetoing the Government's right to disinvest. Nor can the employees claim a right of continuous consultation at different stages of the disinvestment process. If the disinvestment process is gone through without contravening any law, then the normal consequences as a result of disinvestment must follow. 49. The Government could have run the industry departmentally or in any other form. When it chooses to run an industry by forming a company and it becomes its shareholder then under

the provisions of the Companies Act as a shareholder, it would have a right to transfer its shares. When persons seek and get employment with such a company registered under the Companies Act, it must be presumed that they accept the right of the directors and the shareholders to conduct the affairs of the company in accordance with law and at the same time they can exercise the right to sell their shares."

"We may also usefully refer to the decision of the Madras High Court in the case of (Southern Structural Staff Union vs. Southern Structural Ltd.) 1994 Indlaw MAD 332 (Mad) wherein the Madras High Court held as follows:-

"The employees have no vested right in the employer company continuing to be a government company or 'other authority' for the purpose of Article 12 of the Constitution of India. The status so conferred on the employees does not prevent the Government from disinvesting; nor does it make the consent of the employees a necessary precondition for disinvestment."

In the case of Balco, as well as in the present case, the Government of India has ensured that the interest of the workmen are fully protected. As in the case of Balco, the shareholder agreement between Government of India and the purchaser has been reproduced in the reply affidavit filed on behalf of the Union of India in transfer case No. 73 of 2002. We may also place on record the submission made by learned senior counsel Mr. Rakesh Dwivedi that the Government of India cannot have any objection to a direction to the Hotel Yamuna View Private Limited to float a VRS scheme keeping in view its obligation under para 9.4(iv) of the share purchase agreement in terms of the office memo dated 05.05.2000.

A perusal of paragraphs 23, 24, 54, 55 and 56 of the judgment of this Court in Balco would indicate that the above protection of the workers' interest in similar circumstances has been held by this Court to be adequate and lawful. This Court in para 55 have observed as follows:-

"55. We are satisfied that the workers' interests are adequately protected in the process of disinvestment. Apart from the aforesaid undertaking given in the Court, the existing laws adequately protect workers' interest and no decision affecting a huge body of workers can be taken without the prior consent of the State Government. Furthermore, the service conditions are governed by the certified orders of the Company and any change in the conditions thereto can only be made in accordance with law."

Further as per the Demerger Scheme, all the liabilities relating to the transferred undertaking upto the date of transfer were taken over and were to be discharged by the transferee. Thus, the transferee is liable to pay all the liabilities and dues (including gratuity) to the employees on the same terms and conditions of service which were applicable to the employees in the hotel, including the benefits related to the tenure of service in the hotel upto the date of transfer. As far as the provident fund of the employees is concerned, the PF accounts of the employees of the hotel in ITDC PF Trust were transferred by the trust to the new accounts of the concerned employees in the Regional Provident Fund Commissioner after the completion of formalities under the provisions of Employees

Provident Fund and Miscellaneous Provisions Act, 1952. The demerger of the hotel union from ITDC was a considered decision taken by the Cabinet Committee on Disinvestment and had the approval of the Department of Company Affairs in terms of the Companies Act, 1956. The reasons for creating a separate company has been given in the reply affidavit and the contents of the same are reiterated in reply.

By order made by the Department of Company Affairs on 04.10.2001, ITDC was directed to convene a meeting of the creditors of Hotel Agra Ashok for the purpose of considering and if thought fit approving with or without modifications, the scheme and the said order also appointed Mr. S.B.Mathur D- 11 (Retd.) Department of Company Affairs as Chairman for the meeting who was also to report the result of the meeting to the Department of Company Affairs on the conclusion of the creditors meeting. A meeting was held on 30.10.2001 and the Chairman of the said meeting had directly reported the result of the meeting to the Department of Company Affairs. It may also be noticed that a fresh petition was filed with the Department of Company Affairs on 26.12.2001 under Section 391 and 394 of the Companies Act for approval to new scheme of agreement between ITDC and Hotel Yamuna View Private Limited and their respective shareholders for Hotel Agra Ashok. The company was also directed vide order dated 01.01.2002 to give public notice regarding the scheme of arrangement and hearing through advertisement in a leading English and vernacular daily newspaper. The notice was duly published in Indian Express on 04.01.2002 and Amar Ujala, Agra Edition Hindi on 05.01.2002 after protecting the interest of the creditors and hearing the parties the Department of Company Affairs gave approval of the scheme of agreement on 01.02.2002. The demerger was complete on 01.02.2002. It is only thereafter that the shares of Government of India in Hotel Yamuna View Private Limited was sold to Respondent No.5 on 07.02.2002 by the share purchase agreement.

It is also brought to our notice at the time of hearing that all the 8 petitioners who have challenged the policy decision of the Government of India have resigned their job and joined some other service. The statement was not disputed or denied by learned senior counsel for the petitioners. For the foregoing reasons, we hold that there is absolutely no merit or substance in the contentions raised by learned senior counsel for the petitioners. The writ petitions are, therefore, liable to be dismissed and the policy decision taken by the Government of India to transfer the Hotel Agra Ashok to M/s Mohan Singh and Yamuna View Private Limited cannot be assailed at the instance of the employees. The writ petitions are accordingly dismissed; however, there will be no order as to costs. In view of the disposal of the writ petitions, the transfer cases are also disposed off accordingly.