**SUPREME COURT OF INDIA**

Dhampur Sugar (Kashipur) Ltd.

Vs.

State of Uttranchal

(C.K. Thakker and Altamas Kabir JJ.)

21.09.2007

**JUDGMENT**

**C.K. THAKKER, J.**

1. Leave granted.

2. The present appeal is filed by the appellant- original petitioner against the judgment and final order dated December 23, 2005 passed by the High Court of Uttranchal at Nainital in Writ Petition No. 564 of 2004 (M/B) by which the Division Bench of the High Court dismissed the petition filed by the writ-petitioner.

3. The appellant-writ-petitioner filed a petition in the High Court of Uttranchal at Nainital by invoking Article 226 of the Constitution against the respondents for an appropriate writ, direction or order quashing and setting aside relaxation in Clause (ka) of Notification dated November 15, 2003 issued by the Cane Development & Sugar Industries Development, Government of Uttranchal, also quashing an order issuing licence for Power Crusher dated February 17, 2004 issued in favour of respondent No. 4; as also quashing an order dated January 22, 2004 issued by Secretary (Ganna Cheeni), Government of Uttranchal. A Writ of Mandamus was also sought by the appellant directing respondent Nos. 1 to 3 to estimate the requirement of sugarcane of the appellant on the basis of 6250 Tonnes Crushing Capacity (TCC). A further prayer was made to quash and set aside the order dated September 25, 2004 passed by the Government of Uttranchal dismissing the appeal filed by the appellant herein.

FACTUAL MATRIX

4. To appreciate the controversy raised in the present appeal, few relevant facts may be noted. The appellant is a Company registered under the Companies Act, 1956. It owns a sugar factory at Kashipur in the State of Uttranchal. It was set up in the year 1936. The Company is engaged in the manufacture, sale and supply of sugar. It is the case of the appellant that M/s Indian Glycols Limited (IGL for short) submitted an application in the year 2003 for grant of licence for Power Driven Crusher for the manufacture of rab from sugarcane. The application was, however, rejected by the Sugarcane Commissioner. According to the appellant, the Sugarcane Commissioner took the said decision as per the Licencing Policy of the Government whereunder a new licence to Khandsari Unit could not be granted in the reserved area of the existing sugar mills. Since the application of IGL was in the reserved area of the appellant, it could not be granted. According to the appellant, however, the State Government vide its order dated November 15, 2003, modified its earlier sugar

policy and the Government was empowered to relax the limitation laid down in para (ka) of the Government Order in certain cases. Immediately after the amendment in the policy, IGL submitted fresh application on November 18, 2003 for grant of licence for rab manufacturing unit. IGL intended to manufacture rab from sugarcane juice. The said application was allowed by the Licencing Authority, i.e. Sugarcane Commissioner by an order dated February 17, 2004. According to the appellant, the proposed site of the new unit of respondent No. 4-IGL fell in the reserved area of sugar mill of the appellant. No such licence, therefore, could have been granted to IGL. The Sugarcane Commissioner as well as the State Government observed that the new unit would not adversely affect adequate and sufficient supplies of sugarcane to the sugar mills in the reserved area and hence, limitation in para (ka) could be relaxed. According to the appellant, the factual position was totally ignored by respondent Nos. 1 to 3 and the action was illegal, unlawful, arbitrary and mala fide since the respondents wanted to oblige IGL at the cost of interest of the appellant.

DECISION OF HIGH COURT

5. The High Court dismissed the petition inter alia holding that all the contentions raised by the appellant were ill-founded. According to the Court, sugarcane produced in the reserved area was available to the sugar factory. It was also observed by the Court that as per the bonding policy, adequate supply was ensured so far as the appellant factory was concerned and hence, it had no occasion to make any grievance against grant of licence in favour of Respondent No. 4 IGL. The Court observed that it was a matter of policy and when there was change of policy on the part of the Government in granting licence, it could not have been interfered with since the appellant failed to convince the Court that such policy was arbitrary, unreasonable or violative of statutory provisions. The Court also held that under the U.P. Sugarcane (Purchase Tax) Act, 1961, grant of licence was the rule and rejection an exception. As the relevant conditions of law had been observed and the application was made by respondent No. 4 for grant of licence, by allowing the application and granting licence, no illegality was committed by respondent-Authorities and such order could not be set aside. On the basis of the above findings, the High Court dismissed the writ petition filed by the appellant. The said order passed by the High Court is challenged by the appellant by filing the present appeal.

6. On March 24, 2006, notice was issued by this Court. The matter was thereafter adjourned from time to time. Affidavits and further affidavits were filed. On December 4, 2006, the matter was ordered to be placed for hearing. On May 3, 2007, we have heard the learned counsel for the parties.

CONTENTIONS OF PARTIES

7. The learned counsel for the appellant contended that the change in licencing policy effected by the Authorities was arbitrary, unreasonable and contrary to law. It was submitted that no licence could have been granted to respondent No. 4- IGL and the said action was mala fide and had been taken by the authorities in colourable exercise of power with a view to extend undeserving benefit to IGL. It was also submitted that the High Court was wholly in error in dismissing the petition filed by the appellant on the ground that the entire sugarcane produced in the reserved area of sugar factory of the appellant was available and no prejudice would be caused to it. It was the case of the appellant- Company from the beginning that in the area reserved for appellant-factory, no licence could have been granted to any other factory particularly when it had adversely affected supply of sugarcane to the appellant-factory. The High Court was not right in holding that the appellant did not make strong demand for more than 51 lakh tones and supply of requisite quantity was ensured.

Looking to the figures supplied by the appellant, it was clearly proved that establishment of new unit of respondent No. 4 would prejudicially affect the appellant and the Company would not be able to get adequate and sufficient sugarcane from sugarcane growers. It was urged that even if it is assumed for the sake of argument that policy could be changed and exemption could be granted by the authorities to any unit, such exemption and/or relaxation could not be allowed only with a view to favour a particular party and no such action could be sustained in law. On that ground also, the action is liable to be set aside. Moreover, under 1961 Act, the Authorities were obliged to consider as to whether relaxation of conditions were necessary and expedient in public interest. Since, there is no such satisfaction which is reflected in the order, there is total non- application of mind on the part of the authorities and the order is liable to be quashed. According to the learned counsel, the approach of the authorities was not correct in granting licence to respondent No. 4. The authorities considered availability of sugarcane in the whole State as against availability of sugarcane in the area. What was relevant was not availability of sugarcane in the State, but availability in the respective areas which was material. If the said fact is considered, it is clearly established that though the appellant was in need of much more quantity of sugarcane, it was not made available and the appellant had to close down certain units due to non-availability of sugarcane. Unfortunately, however, the said consideration was totally overlooked by the authorities and even the High Court did not consider that aspect in its proper perspective. On all these grounds, it was submitted that the appeal deserves to be allowed and all actions taken by the State Authorities are liable to be set aside by ordering cancellation of licence granted in favour of respondent No. 4 IGL.

8. The learned counsel for the respondents supported the order passed by the Authorities respondent Nos. 1 to 3 and the decision of the High Court. So far as the State Authorities are concerned, it was submitted that policy decisions were taken by the State from time to time as regards sugarcane policy. Earlier, as per the policy in existence, respondent Nos. 4 could not be granted licence since the object mentioned in the application was manufacture of rab and for manufacture of alcohol, and as per the policy, no licence could be granted for the said purpose. The application was, therefore, rejected. Thereafter the policy was changed and in accordance with the changed policy, respondent No. 4 applied for licence which was granted and there is no illegality therein. Allegations of mala fide and/or colourable exercise of power on the part of respondent Nos. 1 to 3 were emphatically denied by the respondents and it was submitted that all actions were taken by the Authorities after considering the relevant laws applicable to the case on hand and a decision was taken. It was also submitted that in the order issued in favour of respondent No. 4 IGL, it was expressly stated that the unit (respondent No. 4) will not purchase bonded cane. It was also stated that there would be no possibility of adverse effect of cane supply to the sugar mill of the appellant. On the contrary, one more option would be available to the farmers of cane supplied. It was thus in larger public interest, submitted the learned counsel, that such a decision was taken. The High Court was satisfied as to the legality of such action and rightly did not interfere with it in exercise of power of judicial review and no case has been made out to interfere with the said order. The appeal, therefore, deserves to be dismissed.

9. The learned counsel for respondent No. 4IGL supported the arguments advanced by the learned counsel for the State. He further submitted that if a licence has been granted to respondent No. 4, appellant had no ground to make grievance that no such licence could have been granted to IGL. So far as availability of sugarcane to appellant-Company is concerned, it is ensured. If it is so, no prejudice would be caused to the company. There is no violation of any provision of law on the basis of which appellant can object grant of licence in favour of respondent No. 4. IGL has not been given or allowed any specific area. On the contrary, it was expressly stated that respondent No. 4

has to cater its need without disturbing and/or curtailing sugarcane supply to the appellant-Company. Precisely because of that condition, respondent No. 4 was allowed to purchase sugarcane from other areas. It was also submitted that correct reading of relevant provisions of 1961 Act clearly indicate that normally licence should be granted unless a finding is recorded that it would not be in public interest to grant such licence. No such finding has been recorded and it could not be said that grant of licence to respondent No. 4, had adversely affected public interest. If by taking into consideration all the facts and circumstances in their entirety, the relevant provisions of law and change of policy, a licence is granted by the authorities in favour of respondent No. 4 without disturbing supply of sugarcane to the appellant, it cannot be said that the action taken by respondent-Authorities was illegal, unlawful or otherwise objectionable. The High Court was, therefore, fully justified in dismissing the petition and the said order requires no interference by this Court in exercise of discretionary and equitable jurisdiction under Article 136 of the Constitution.

STATUTORY SCHEME GOVERNING SUGAR AND SUGARCANE

10. Before we deal with contentions raised by the parties before us, it would be appropriate if we peruse relevant statutory provisions relating to sugar and sugarcane. Sugarcane is an essential commodity as defined in Section 2(b) of the Essential Commodities Act, 1955. In the leading decision Ch. Tika Ramji & Ors. etc. v. State of Uttar Pradesh & Ors., (1956) 1 SCR 393 : AIR 1956 SC 676, this Court held that the Essential Commodities Act included within the definition of essential commodity food-crops which would include sugarcane. Again, in A.K. Jain v. Union of India & Ors., (1970) 1 SCR 673 : AIR 1970 SC 267, following Tika Ramji, the Court held that Section 2 of the Essential Commodities Act provided that sugarcane would be an essential commodity within the meaning of the Act and hence cultivation and sale of sugarcane could be regulated by law.

11. The Industries (Development and Regulation) Act, 1951 declared certain industries as controlled industries. Section 2 of the said Act enacts that it is expedient in the public interest that the Union should take under its control, the industries specified in the First Schedule. The First Schedule, inter alia, included sugar industry as one of the controlled industries. In M/s Triveni Engineering Works Ltd. & Anr. v. Union of India & Ors., AIR 1996 All 420, the High Court of Allahabad held that the sugar industry is a controlled industry. The Government is exercising control on the sugarcane at all levels, namely; of production, distribution, pricing as also on the production and marketing of finished product of sugar. There are certain Central and State Legislations and Control Orders relating to sugar and sugarcane. The first one is the Sugarcane Act, 1934 (Act No. XV of 1934) which is a Central Act. It regulates the price of sugarcane intended for the use of sugar factories. It empowers the State Government to declare any area as controlled area and to fix a minimum price for purchase of sugarcane in that area. Section 3 of the Essential Commodities Act empowers the Central Government to issue order providing for regulating or prohibiting the production, supply and distribution of any essential commodity if it is of the opinion that it is necessary or expedient so to do for maintaining or increasing supply of any essential commodity or in securing equitable distribution and availability at fair price. In exercise of the said power, the Central Government framed the Sugarcane (Control) Order, 1966. Clause 2 thereof defines important terms such as factory, khandsari sugar, khandsari unit, crusher, power crusher, producer of khandsari sugar, reserved area, etc. Whereas Clause 3 enables the Central Government to fix minimum price of sugarcane payable by producer of sugar, Clause 4 provides for minimum price of sugarcane payable by producers of khandsari sugar. Clause 6 empowers the Central Government to regulate distribution and movement of sugarcane. The said clause is relevant and reads thus:

6. Power to regulate distribution and movement of sugarcane.(1) The Central Government may, by order notified in the official Gazette.

(a) reserve any area where sugarcane is grown (hereinafter in this clause referred to as reserved area) for a factory having regard to the crushing capacity of the factory, the availability of sugarcane in the reserved area and the need for production of sugar, with a view to enabling the factory to purchase the quantity of sugarcane required by it;

(b) determine the quantity of sugarcane which a factory will require for crushing during any year;

(c) fix, with respect to any specified sugarcane grower or sugarcane growers generally in a reserved area, the quantity or percentage of sugarcane grown by such grower or growers, as the case may be, which each such grower by himself, or, if he is a member of a co-operative society of sugarcane growers operating in the reserved area, through such society, shall supply to the factory concerned;

(d) direct a sugarcane grower or a sugarcane growers co-operative society, supplying sugarcane to a factory, and the factory concerned to enter into an agreement to supply or purchase, as the case may be, the quantity of sugarcane fixed under paragraph (c);

(e) direct that no gur (jaggery) or khandsari sugar or sugar shall be manufactured from sugarcane except under and in accordance with the conditions specified in the licence issued in this behalf;

(f) prohibit or restrict or otherwise regulate the export of sugarcane from any area (including a reserved area) except under and in accordance with a permit issued in this behalf.

(2) Every sugarcane grower, sugarcane growers co-operative society and factory, to whom or to which an order made under Paragraph (c) of sub-clause (1) applies, shall be bound to supply or purchase, as the case may be, that quantity of sugarcane covered by the agreement entered into under the paragraph and any willful failure on the part of the sugarcane grower, sugar-cane growers co- operative society or the factory to do so, shall constitute a breach of the provisions of this Order :

Provided that where the default committed by any sugarcane growers co- operative society is due to any failure on the part of any sugarcane grower, being a member of such society, such society shall not be bound to make supplies of sugarcane to the factory to the extent of such default.

12. Clause 7 of the Order deals with power of the Central Government to license power crushers, khandsari units and crushers and to regulate the purchase of sugarcane. It states that the Central Government may by order direct that in a reserved area (i) no sugarcane shall be purchased for crushing by a power crusher; (ii) no sugarcane or sugarcane juice shall be purchased for crushing or for manufacture of gur, shakkar, gul, jaggery, rab or khandsari sugar, as the case may be, by a crusher not belonging to a grower or a body of growers of sugarcane or by a khandsari unit in the area except under and in accordance with a permit issued by the Central Government in that behalf. Clauses 8, 9 and 9A empower the Central Government to issue directions to producers of khandsari sugar, power crushers, khandsari units, crushers and co-operative societies to call for information, to enter and search any premises where any accounts, books, registers or other documents, belonging to or under the control of a producer of sugar or his agent, or an owner of a crusher, a power crusher

or a khandsari unit or an agent of such an owner, are maintained or kept for safe custody. Clause 11 enables Central Government to delegate its powers to be exercised by any officer or authority of the Central Government or by State Government or any officer or authority of a State Government. The Central Government vide a notification dated July 16, 1966, delegated the powers under clauses 6, 7, 8 and 9 to the State Government. In exercise of the said power, the State of Uttar Pradesh issued U.P. Khandsari Sugar Manufacturers Licensing Order, 1967. The Preamble of the order states that the power to regulate the manufacture of khandsari sugar by open pan process including bels exercisable by Central Government has been delegated to the State Government under Sugarcane (Control) Order, 1966. It was also stated that the State Government was of the opinion that it was necessary and expedient for regulating manufacture of khandsari sugar by open pan process including bels, that in exercise of the delegated powers it was pleased to frame the Licensing Order, 1967. The Order defines relevant terms in Clause 2, such as, assigned area to mean an area assigned to a factory under Section 15 of the Uttar Pradesh Sugarcane (Regulation of Supply and Purchase) Act, 1953; manufacturer to mean a person who uses a power crusher, bel or centrifugal in the process of manufacture of khandsari sugar and includes a person who prepares rab for conversion into khandsari sugar; power crusher as crusher working with the aid of diesel, electrical or steam power and engaged or ordinarily engaged in crushing sugarcane and extracting juice therefrom for the manufacture of gur, shakkar, gul, jaggery, rab or khandsari sugar. Clause 3 provides for grant of licence. Clause 4 prescribes the period for which licences are to be issued. Clauses 6 and 7 lay down conditions for suspension or cancellation of licence and powers of the licensing authority respectively.

13. No manufacturer, without obtaining from the licensing authority a licence in the prescribed form, can undertake or carry on any process concerned with the manufacture of khandsari sugar by means of a power crusher, bel or centrifugal. Sub-clause (4) of Clause 3 is also relevant and the material part reads thus: (4) An application for the grant of a licence shall be disposed of by the Licensing Authority expeditiously and shall not be rejected except where the application has not been made on the prescribed form or is incomplete or is not accompanied by proof of the payment of the requisite fee or the Licensing Authority is of the opinion that it is necessary or expedient so to do in the public interest with a view to

(a) Regulating the Khandsari Sugar Manufacturing Industry in the best interest of the industry; or

(b) avoiding uneconomic concentration of khandsari units in any area; or

(c) ensuring in a reserved or assigned area adequate supplies of sugarcane to a factory.

Provided that . . ..

14. It is thus clear that an application for the grant of licence by the licensing authority cannot be rejected except where (i) such application has not been made in the prescribed form, or (ii) is incomplete, or (iii) is not accompanied with the payment of requisite fee, or (iv) the licensing authority is of the opinion that it is necessary or expedient so to do in the public interest. The Licensing Authority is also enjoined to take into consideration the directions of the State Government issued from time to time. The provision also keeps in view principles of natural justice and expressly states that no application for grant of licence can be rejected without giving the applicant reasonable opportunity of being heard. Sub-clause (5) of Clause 3 confers a right of appeal on the aggrieved applicant and makes the decision of the State Government on such appeal final.

15. A reference may also be made to a substantive Act, namely, the U.P. Sugarcane (Regulation of Supply and Purchase) Act, 1953. As stated in the Preamble, the Act has been enacted with a view to regulate the supply and purchase of sugarcane required for use in sugar factories and gur, rab or khandsari manufacturing units. Section 2 of the said Act, inter alia, defines assigned area, cane, crushing season, factory, gur, rab or khandsari sugar manufacturing unit, reserved area, etc. Whereas Chapter II of the Act relates to Administrative Machinery, Chapter III deals with Supply and Purchase of Cane. Section 12 in Chapter III requires the occupier of any factory to furnish in the manner prescribed, an estimate of the quantity of cane which will be required by the factory during such crushing seasons as may be specified in the order. The Cane Commissioner would examine every estimate and publish the same with such modifications as he may make. Section 13 requires the occupier of a factory to maintain in the prescribed form, a register of all such cane-growers and cane- growers co-operative Society or Societies and shall sell cane to that factory. The State Government has been granted power of survey under Section 14. Section 15 is an important provision which deals with declaration of reserved area and assigned area and may be quoted in extenso.

15. Declaration of reserved area and assigned area.(1) Without prejudice to any order made under Clause (d) of sub-section (2) of Section 16 of the Cane Commissioner may, after consulting the Factory and Cane-growers Co-operative Society in the manner to be prescribed:

(a) reserve any area (hereinafter called the reserved area); and

(b) assign any area (hereinafter called an assigned area), for the purpose of the supply of cane to a factory in accordance with the provisions of Section 16 during one or more crushing seasons as may be specified and may likewise at any time cancel such order or alter the boundaries of an area so reserved or assigned.

(2) Where an area has been declared as reserved area for a factory, the occupier of such factory shall, if so directed by the Cane Commissioner, purchase all the cane grown in that area, which is offered for sale to the factory.

(3) Where any area has been declared as assigned area for a factory, the occupier of such factory shall purchase such quantity of cane grown in that area and offered for sale to the factory as may be determined by the Cane Commissioner.

(4) An appeal shall lie to the State Government against the order of the Cane Commissioner passed under sub-section (1).

16. Section 16 regulates purchase and supply of cane in the reserved and assigned areas. It is equally important and may be reproduced:

16. Regulation of purchase and supply of cane in the reserved and assigned areas. (1) The State Government may, for maintaining supplies, by order, regulate

(a) the distribution, sale or purchase of any cane in any reserved or assigned area; and

(b) purchase of cane in any area other than a reserved or assigned area.

(2) Without prejudice to the generality of the foregoing powers such order may provide for

(a) the quantity of cane to be supplied by each Cane-grower or Cane-growers Co-operative Society in such area to the factory for which the area has so been reserved or assigned;

(b) the manner in which cane grown in the reserved area or the assigned area, shall be purchased by the factory for which the area has been so reserved or assigned and the circumstance in which the cane grown by a cane-grower shall not be purchased except through a Cane-growers Co-operative Society;

(c) the form and the terms and conditions of the agreement to be executed by the occupier or manager of the factory for which an area is reserved or assigned for the purchase of cane offered for sale;

(d) the circumstances under which permission may be granted

(i) for the purchase of cane grown in reserved or assigned area by a Gur, Rab or Khandsari Manufacturing Unit or any person or factory other than the factory for which area has been reserved or assigned, and

(ii) for the sale of cane grown in a reserved or assigned area to a Gur, Rab or Khandsari Manufacturing Unit or any person or factory, other than the factory for which the area is reserved or assigned;

(e) such incidental and consequential matters as may appear to be necessary or desirable for this purpose.

17. Section 28 authorizes the State Government to make rules.

18. There is still another statute, known as the U.P. Sugarcane (Purchase Tax) Act, 1961. Section 4 thereof provides for grant of licence for manufacturing gur or rab. Sub-section (1) of the said section states that no unit other than a unit comprising vertical crusher (urdhwa kolhu) or vertical power crusher (urdhwa shakti chalet kolhu) for manufacture of production of gur or rab by crushing sugarcane or a unit which has obtained a licence under the Uttar Pradesh Khandsari Sugar Manufacturers Licensing Order, 1967, shall, without obtaining a licence from the Sugar Commissioner, carry on or undertake any process connected with the manufacture or production of gur or rab. Sub-section (3) of the said section reads as under: (3) An application for grant or renewal of a licence shall be disposed of by the Sugar Commissioner expeditiously and shall not be rejected except where an application has not been made by the prescribed date, or in the prescribed form, or is incomplete in any respect or is not accompanied by proof of payment of the requisite fee including late fee, if any, or the Sugar Commissioner is of opinion that it is necessary or expedient so to do in public interest with a view

(i) in the case of an application for grant of a licence

(a) to regulating the manufacture of gur or rab by units; or

(b) to avoiding uneconomic concentration or units in any area; or

(c) to ensuring, in reserved areas, adequate supplies of sugarcane to a factory;

(ii) in the case of an application for renewal of a licence, to regulating the manufacture of gur or rab by units;

Provided that while disposing of the applications for grant or renewal of licence, the Sugar Commissioner may also take into consideration

(a) the conduct of the applicant in working the unit, if any, prior to the date of application including previous conviction, if any, for the contravention of the provisions of the Act, the rules made thereunder and the conditions of the licence;

(b) the default, if any, made by the applicant in payment of the dues under this Act; and

(c) the total continuous period for which the applicant held a licence under this Act prior to the date of application;

Provided further that no application for renewal of a licence shall be rejected unless the applicant has been given a reasonable opportunity of being heard;

Provided also that where an application for grant or renewal of a licence is not disposed by the commencement of the assessment year or

(i) in the case of an application for grant of a licence, within three months; and

(ii) in the case of an application for renewal of a licence, within two months, of the date on which the application is made, whichever is later, the licence shall be deemed to have been granted or renewed, as the case may be.

19. Section 5 provides for renewal of licence. Section 6 lays down conditions for suspension or cancellation of a licence. Sections 7 to 14 deal with the powers of Authorities under the Act.

CONSIDERATION OF MERITS

20. The High Court considered the scheme of substantive laws occupying the field and also subordinate legislation, dealing with the policy relating to supply of sugarcane to the factories and stated; The U.P. Sugarcane (Regulation of Supply and Purchase) Act, 1953 provides a mechanism for reasonable, necessary, sufficient and continuous supply of sugarcane to the sugar factories in the crushing season, keeping in mind the interest of the sugarcane growers, cane growers cooperative societies, sugar factories and also inter-se interest of the sugar factories. The supply of sugarcane to the sugar factories in the quantity which may be reasonably required by them for production in a particular season or seasons is to be regulated by the provisions of this Act. A duty has been cast upon the Sugarcane Commissioner under Sections 11, 12 & 15 of the U.P. Act 1953 to require the occupier of each factory to furnish in the manner and by the date specified in an order issued by the Sugarcane Commissioner, an estimate of the quantity of sugarcane which would be required by a factory during such crushing season or seasons as may be specified in the order. The Sugarcane

Commissioner, therefore, has to issue an order by which he would make the occupier of every factory to furnish the estimated quantity of sugarcane as per requirement of the sugar factory for a particular crushing season or seasons, which should be done in a manner and by the date specified by the Sugarcane Commissioner. The Sugarcane Commissioner is obliged to examine every such estimate and has the liberty to modify the same and with such modifications, if any, the publication of the estimate is done for the purpose of making it known to all sugar factories that the estimate prepared by them for the requisite quantity of sugarcane for a particular crushing season or seasons has been accepted by the Sugarcane Commissioner with or without modification. In case, any sugar factory is not satisfied with the estimate so modified or otherwise, it may file a revision before the prescribed authority. The State Government is the prescribed authority under Rule 23-A of U.P. Sugarcane (Regulation of Supply and Purchase) Rules, 1957. The sugar factory may file a revision within fourteen days from the date of order. After the publication of estimates, the survey etc. shall be made under section 18 of the U.P. Act 1953. The combined reading of sections 11, 12 and 15 would lead to a conclusion that at the time of declaration of reserved area and assigned area under Section 15, the estimate published under section 12 shall be the basis for consideration by the Sugarcane Commissioner for the purpose of quantifying the requirement of sugarcane for every factory.

21. The High Court also noted that there may be occasions when one sugar factory is not able to crush the entire sugarcane available in assigned or reserved area and at the same time another sugar factory is having the shortage of sugarcane in its reserved area during the crushing season. In such situations, the Sugarcane Commissioner can very well assign any specified area out of the reserved area of the latter factory to the former factory. The Court observed that reserved area of a sugar factory is not of permanent nature and no sugar factory can claim that the area reserved for a particular year would remain with it for all the time. The reserved area is allocated to a particular sugar factory for a crushing season which can be changed or modified by the Sugarcane Commissioner in the next crushing season. If exigencies of situation require, the Sugarcane Commissioner can change the area even during the same crushing season.

GRANT OF LICENCE TO RESPONDENT NO. 4

22. The learned counsel for the appellant contended that the action of respondent Nos. 1 to 3 in granting licence in favour of respondent No.4 was totally illegal, improper and unreasonable. It was urged that the said action was taken only with a view to show favour to respondent No.4 by changing the policy. The action was upheld by the High Court on the assumption that there is no shortage of sugarcane in the State and entire sugarcane produced in the area is available to the appellant. The assumption was neither factually correct nor legally well founded. The order passed by the High Court, therefore, deserves to be set aside.

23. The High Court, in our opinion, was right in considering the facts and circumstances in their entirety and in holding that the action of respondent Nos. 1 to 3 could not be said to be illegal or otherwise objectionable. It is, no doubt, true that earlier an application made by respondent No.4 came to be rejected but it was because of the policy then in force. Since the policy was thereafter changed, grant of licence in favour of respondent No.4 could not be objected by the appellant.

24. The High Court was also right in referring to several conditions imposed on respondent No.4 by respondent-authorities while granting licence. Our attention has been invited by the learned counsel for the respondents to orders dated February 16, 2004 and February 17, 2004. Over and above usual

conditions, certain additional conditions were also imposed. They were as under:

1. The cane price to be paid by the unit shall not be less than Minimum Statutory Price fixed by the Government of India.

2. The Cane purchase Tax and cane development commission on the basis of actual cane purchased shall be payable by the Unit.

3. The Unit shall purchase additional balance cane other than bonded cane from the reserved areas of Sugar Mills of the State. There will be no permission to purchase bonded cane.

4. The crushing capacity of the Unit shall be limited to 1250 TCD.

5. Prior to 2004-05 crushing season, the Unit shall take action to produce additional cane and do development as per undertaking given in the application. (emphasis supplied)

25. From the aforesaid conditions, it is abundantly clear that the authorities have protected interests of all parties. So far as the appellant is concerned, condition No.3 expressly states that the unit of respondent No.4 shall purchase additional balance cane other than bonded cane from the reserved area of the sugar mills of the State. It further stated that there shall be no permission to purchase bonded cane. Cane producers were also protected by imposing a condition on the respondent No. 4 that the cane price to be paid by the Unit shall not be less than Minimum Statutory Price fixed by the Government of India. Probably, taking into account the aforesaid situation and interest of all concerned, the crushing capacity of respondent No.4s Unit was made limited to 1250 CTT. The authorities also considered the overall industrial growth and in condition No.5 it was stated that prior to 2004-05 crushing season, the Unit shall take action to produce additional cane and do development as per undertaking given in the application.

26. In our opinion, the respondents are also right in submitting that sub-section (3) of Section 4 of 1961 Act as also sub-clause (4) of Clause 3 of the Licensing Order, 1967 require the Licensing Authority not to reject application for grant or renewal of licence unless the conditions laid down therein are satisfied. The respondents, therefore, rightly urged that grant of licence is rule and rejection exception. If keeping in view the provisions of law, the power has been exercised by the Licensing Authority by granting licence in favour of respondent No. 4, and confirmed by the State Government and the High Court did not consider the case to interfere with the exercise of power by Statutory Authorities, no grievance can be made by the appellant that the High Court Committed an error of law or of jurisdiction which deserves interference by this Court in exercise of power under Article 136 of the Constitution.

27. To us, the High Court is right in holding that whether or not the sugar factory of the appellant has been adversely affected is essentially a question of fact. Such question, therefore, in our considered opinion, can be raised by the appellant before the Authorities under the Act, and it cannot be decided in proceedings under Article 226 or Article 136 of the Constitution. The appellant can also in this connection rely on additional condition No. 3 imposed on respondent No. 4 that no permission could be granted to the unit of respondent No. 4 to purchase bonded cane.

ONE MORE OPTION TO SUGARCANE GROWERS

28. The learned counsel for the appellant also contended that the respondent authorities were wrong in observing that the farmers would have one more option of getting adequate price for their crop. According to the appellant, it was totally irrelevant and extraneous consideration and could not have been taken into account for granting relief in favour of respondent No.4. The High Court, by approving the said order, has also committed similar illegality as committed by the authorities and on that ground also, the impugned order deserves to be set aside.

29. We are unable to uphold the contention. As already indicated, the action of the respondent authorities was in consonance with law. Neither statutory provisions were violated nor policy guidelines were infringed. By adhering to provisions of substantive laws as also delegated legislation, if the Authorities had taken into consideration that the farmers would have one more option to get their crops sold at an appropriate price, it cannot successfully be contended that such consideration was irrelevant, extraneous or otherwise unreasonable. On the contrary, in our opinion, one of the considerations which must be kept in mind by the Authorities while exercising powers under various provisions of law would be as to whether exercise of such power would also protect interest of sugarcane growers. In the case on hand, that is precisely done by the respondent-authorities and we see no infirmity therein.

PUBLIC INTEREST

30. The learned counsel for the appellant, however, submitted that an application for grant of licence can also be rejected if the Sugar Commissioner is of the opinion that it is necessary or expedient so to do in public interest with a view(i) to regulating the manufacture of gur or rab by units; or (ii) to avoiding uneconomic concentration of units in any area; or (iii) to ensuring, in reserved areas, adequate supplies of sugarcane to a factory.

31. But as observed by the High Court, by Office Order, dated November 15, 2003, the policy was changed and the State Government was empowered to relax limitation in clause (a) of para 1 which prohibited granting of licence to new units in the reserved area or pocket village of sugar mill. It expressly states that in case any Sugar Mill decides not to run in a particular year or in the estimation of Cane and Sugar Commissioner, the proposed Unit can be run after meeting the requirement of Sugar Mill and the Owner of the unit assures to pay Statutory Minimum Price notified by the Government of India then on the recommendation of Cane & Sugar Commissioner, the State Government may consider relaxation in the aforesaid limitation.

32. It is not in dispute that the proposed site of the new unit of respondent No. 4 falls in the reserved area of the Sugar Mill of the appellant. But both the Sugar Commissioner as well as the Government were satisfied that the new Unit will not affect adequate supply of sugarcane to Appellants Sugar Mill and on such satisfaction, the power of relaxation under clause (a) was exercised. Moreover, a specific condition was imposed on the respondent No. 4 that it would not purchase bonded cane of the Sugar Mills of the State. The High Court, taking note of all these safeguards upheld the order of the authorities and we see no illegality therein.

33. It was also submitted by the learned counsel for the appellant that though the new policy empowers the Authorities to grant new licence within the radius of fifteen kilometers of existing sugar factory in relaxation of the general policy, the Authority is bound to consider the provisions of Section 4 of 1961 Act, and particularly, Clause (i) of sub-section (3) thereof. It was strenuously contended that neither the Sugarcane Commissioner considered the factors which were required to

be kept in mind nor the Government was mindful of those factors and on that ground also, the impugned order is liable to be quashed. It was further urged that adequacy of supply of sugarcane to the existing factory has to be considered with reference to the availability of sugarcane in the area reserved for such factory and not with reference to the availability of the sugarcane in the whole State.

34. We are not impressed by the argument of the learned counsel. As is clear from the order passed by the Sugarcane Commissioner and by the State Government, the Unit of respondent No. 4 is not given any specific reserved area earmarked for any specific sugar factory and it can purchase sugarcane from reserved/assigned area of any sugar factory in the State. But even otherwise, we are of the view that in view of additional condition No. 3 imposed on respondent No. 4, the appellant is not adversely affected by grant of licence in favour of respondent No. 4. The said condition, as noted earlier, allows the Unit to purchase other than bonded cane. If it is so, no prejudice can be said to have been caused to the appellant.

STATUTORY FINALITY

35. It may also be stated that the order passed by the Sugar Commissioner is subject to appeal before the State Government and the State Government has also confirmed the said order in exercise of appellate jurisdiction on September 25, 2004. The Appellate Authority, again considered the entire controversy and held that the action taken by Sugarcane Commissioner was not illegal or improper and did not call for any interference. The Appellate Authority also did not accede to the prayer of respondent No.4 to increase the capacity from 1250 to 1500 CTT.

36. As already adverted to earlier, the order passed by the State Government in appeal is final. Thus, statutory finality is attached to the order passed by the State Government. It cannot be gainsaid that such statutory finality does not oust the jurisdiction of a High Court under Article 226/227 of the Constitution nor of this Court under Article 32/136 of the Constitution. But it is well settled that while exercising extraordinary power, a High Court or this Court will be conscious and mindful of such provisions and will not substitute its decision for the decision taken by the Authority which is final under the relevant law. In our opinion, the learned counsel for the respondents are right in submitting that the Original Authority as well as Appellate Authority considered the facts and circumstances and exercised the power by granting licence to respondent No.4 and if the High Court did not think it proper to interfere with such order, it cannot be said that by doing so, the High Court has failed to exercise jurisdiction or exceeded its power in dismissing the petition.

PROVIDING SUGARCANE ONLY TO SUGAR MILLS

37. It was then argued that the statutory scheme governing sugar and sugarcane requires preference to be given to sugar mills and their requirements have to be satisfied before sugarcane is diverted to rab/khandsari units or power crushers. In this connection, strong reliance was placed on a decision of this Court in Shri Ganesh Sugar Works v. State of Haryana, (1987) 4 SCC 604. In that case, dealing with Haryana Khandsari Sugar Manufacturers Licensing Order, 1972 and scarcity of production of sugarcane, this Court held that refusal to grant or renew licences to khandsari units located within areas reserved for sugar mills having regard to bad seasonal conditions resulting in face of production could not be held illegal or improper. It was in general public interest.

38. The Court also made the following observations; We may mention that while the Commissioner

is now the Licensing Authority, the State Government is the appellate authority. It is a matter of common knowledge that the Sugarcane Control Order was made in the interests of growers of sugarcane primarily and also in the interests of the sugar factories, that is, factories engaged in the manufacture of sugar by the vacuum pan process and in the ultimate analysis in the interests of the consumers by making sugarcane available for sugar production. Apart from the fact that the sugar produced by the vacuum pan process is better suited for domestic consumption, it is undisputed that in the case of vacuum pan sugar factories, the recovery of sugar from cane ranges between 9.5% to 11.5% while the recovery in the case of Khandasari Units is hardly 5 to 6%. There can be no question that viewed from the viewpoint of production of sugar, it is advantageous to divert as much sugarcane as possible to sugarcane factories instead of Khandasari Units Even so Khandasari Units flourish, as is generally known because of the byproduct of molasses. As experience showed that Khandasari units are better able to tap the growers of sugarcane, it became necessary for the Government to reserve areas for sugar mills. Otherwise, sugar mills would have to remain idle for long periods unable to withstand the competition of khandasari units in reaching sugarcane growers. It was for that purpose, that is, with a view to prevent sugar factories from remaining idle by making available to them sufficient quantities of sugarcane that the idea of reserving areas for sugar factories was conceived. In the years when there is no dearth of sugarcane and it is available in plenty, there is no problem and khandasari units will be free to purchase as much as sugarcane as they want in reserved areas also if the units are located there. But problems arise when on account of bad seasonal conditions there is a fall in the production of sugarcane in some years. In such years, restrictions have to be imposed on the purchase of sugarcane by khandasari units in areas reserved for sugar factories and when the seasonal conditions are indeed very bad, it may even become necessary for the Government to altogether ban the purchase of sugarcane by khandasari units in areas reserved for sugar factories. This may be done by the refusal to grant or renew licences to khandasari units operating in reserved areas in those years. That is precisely what has happened in the present case. It is because of extremely bad seasonal conditions that the Cane Commissioner was forced to refuse to renew the licenses of the appellants on the ground of inadequate of sugarcane for sugar factories. According to the figures mentioned by Cane Commissioner, the production of sugarcane had fallen from 52.50 lakh tonnes in 1983-84 to 46.20 lakh tonnes in 1984-85 and 41.38 lakh tonnes in 1985-86. We also have it that in the previous crushing season one of the sugar factories, namely, the Panipat Co- operative Sugar Mills only crush 10.80 lakh quintals of sugarcane as against the allotted quantity of 25 lakh quintals due to lack of availability of sugarcane. In fact, on September 14 1984, the Government of India had already addressed a communication to the Secretaries to the Governments of all sugar producing States requiring them to take certain measures to avoid diversion of sugarcane from sugar mills. It was stated in the letter that in the year 1983-84, sugar production had declined sharply from 82.32 lakh tonnes to 59 lakh tonnes. Among the measures suggested was "not to grant fresh licences to khandasari units in the reserved areas of sugar factories and to the extent possible even to encourage by all possible means the existing khandasari units in the reserved areas to shift out". We do not, therefore, have any doubt that having regard to the fall in the production of sugarcane and the fall in the production of sugar, the banning of supply of sugarcane to khandasari units by the method of refusing to licence khandasari units operating in reserved areas was in the public interest.

39. The High Court, in our opinion, was right in observing that Ganesh Sugar Works was decided in the light of fact-situation before the Court. In our view, the learned counsel for the respondents are right in submitting that even in that case, this Court has indicated that the Government ought to take into consideration interest of sugarcane growers also. In the present case, the Sugarcane Commissioner has precisely performed that function when he observed that the sugarcane growers

had one more option available for realizing proper return. Apart from the fact that it cannot be said to be an irrelevant consideration, the Authorities are enjoined to keep in view this aspect as one of the considerations and we see no infirmity therein.

40. It is also pertinent to note that when licence was granted to respondent No. 4 by the Sugarcane Commissioner for one Power Crusher of a capacity of 1250 TCD, the appellant as also respondent No. 4 challenged that order. The grievance of the appellant was that no such licence could have been granted by the Sugarcane Commissioner in favour of respondent No. 4. The complaint made by respondent No. 4, on the other hand, was that the Licensing Authority ought to have granted licence for 1500 TCD as applied.

41. The State Government disposed of both the matters by upholding the order passed by the Sugarcane Commissioner observing that the action taken by the Licensing Authority could not be said to be illegal or improper. It also considered the fact that farmers in the area had to face problems as Kashipur Unit was declared as sick unit and it adversely affected cane area.

42. The Appellate Authority, therefore, stated; After deeply considering of records available in the file and arguments of Appellant and M/s DSM Sugar, I am in the opinion that the license granted to M/s IGL, Kashipur in village Sandkheda, District Udham Singh Nagar for one Power Driven Kolhu size 71x42cm, 15 Rollers hydraulic capacity 1250 TCD Open Pan Steam Boiling System for season 2003-04 under Cane Purchase Tax Act, 1961 and the Licensing Rules under the said Act by Cane and Sugar Commissioner, Uttranchal is in accordance with the Act and Rules and there is no need to amend the order dated 17/2/2004 passed by the Cane and Sugar Commissioner, Uttranchal in view of his estimation of cane availability.

43. The Authority also took into consideration the interest of the appellant herein and protected the Factory by making the following observations; As far as, the argument of M/s DSM Sugar that the estimation of cane availability by Cane and Sugar Commissioner, Uttranchal is wrong, it is duty of Cane and Sugar Commissioner to ensure availability of sugarcane to Sugar Mill as from its requirement under section 15 of UP Sugarcane (Regulation of Supply and Purchase) Act, 1953. The Cane and Sugar Commissioner, Uttranchal shall ensure that other conditions being same M/s DSM Sugar should get cane in proportion to its crushing capacity. The Cane Commissioner can reserve or divert cane from the area of one Sugar Mill to other Sugar Mill on the basis of cane availability.

44. We are of the view that in the light of the above considerations and findings, no interference with the order was called for and the High Court was right in confirming the orders passed by the Authorities.

45. Learned counsel for the appellant urged that Clause 3 of the Gur (Regulation of Use) Order, 1968 bars use of gur for any purpose other than as specified in sub- clauses (a) to (c). It was, therefore, submitted that the grant of licence by respondent Nos. 1 to 3 to respondent No. 4 for preparation of alcoholic liquor is in violation of the provision of law. The learned counsel for the respondent No. 4, however, submitted that the same clause (Clause 3) confers power on the Central Government or any officer authorized by it to permit the use of gur inter alia for the use in chemical industry or for any other industrial use.

46. The High Court considered the contention and observed that the application submitted by respondent No. 4 was limited to manufacture of rab and no use was indicated at all. From the

counter-affidavit filed in the High Court, no such indication was exhibited. But in any case, if there was violation of provision of law relating to use of rab for a purpose other than permitted by law, the remedy was not to challenge licence but to question the use of rab. An appropriate direction in such an eventuality can always be issued by the Authority.

POLICY MATTERS AND JUDICIAL REVIEW

47. The learned counsel for the appellant contended that though as per policy of the Government for the year 2002-03, licence could not have been granted and in fact it was not granted to respondent No. 4, the policy was changed by the Government to favour respondent No. 4 and licence was granted under the altered policy which was illegal and unlawful and malicious. Regarding mala fide exercise of power, we will consider at an appropriate stage, but let us consider the general principles relating to policy matters, right of Government to formulate, follow or change such policy as also the power of judicial review by writ-courts over such matters.

48. In our judgment, it is well-settled that public authorities must have liberty and freedom in framing policies. No doubt, the discretion is not absolute, unqualified, unfettered or uncanalised and judiciary has control over all executive actions. At the same time, however, it is well-established that courts are ill- equipped to deal with these matters. In complex social, economic and commercial mattes, decisions have to be taken by governmental authorities keeping in view several factors, and it is not possible for courts to consider competing claims and conflicting interests and to conclude which way the balance tilts. There are no objective, justiciable or manageable standards to judge the issues nor such questions can be decided on a priori considerations.

49. As observed by Justice Holmes in Metropolis Theatre Company v. State of Chicago, 57 L Ed 730, in such matters, the courts must grant certain measure of play in the joints to the executive.

50. In the leading case of Bennett Coleman v. Union of India, (1972) 2 SCC 788 : AIR 1973 SC 106, constitutional validity of the Import Policy for the newsprint adopted by the Government was challenged in this Court. The Court refused to adjudicate the policy matters unless it was shown to be arbitrary, capricious or mala fide. Speaking for the Court, Mathew, J. observed:

The argument of the petitioners that Government should have accorded greater priority to the import of newsprint to supply the need of all newspaper proprietors to the maximum extent is a matter relating to the policy of import and this Court cannot be propelled into the unchartered ocean of Governmental policy.

(emphasis supplied)

51. Similarly, in State of Maharashtra v. Lok Shiksha Sanstha, (1971) 2 SCC 410 : AIR 1973 SC 588, the applications made by the petitioners for opening new schools were rejected by the authorities. The said action was challenged by the petitioners by filing writ petitions in the High Court on various grounds. The High Court allowed the petitions and directed the authorities to grant permission to the petitioners to start schools.

52. Reversing the judgment, this Court observed that the High Court has thoroughly misunderstood the nature of the jurisdiction that was exercised by it. So long as there is no violation of any fundamental rights and if the principles of natural justice are not offended, it was not for the High

Court to lay down the policy that should be adopted by the educational authorities in the matter of granting permission for starting schools. The question of policy is essentially for the State and such policy will depend upon an overall assessment and summary of the requirements of residents of a particular locality and other categories of persons for whom it is essential to provide facilities for education. If the overall assessment is arrived at after a proper classification on a reasonable basis, it is not for the courts to interfere with the policy leading up to such assessment. (emphasis supplied)

53. In R.K. Garg v. Union of India, (1981) 4 SCC 675 : AIR 1981 SC 2138 : (1982) 1 SCR 947, constitutional validity of the Special Bearer Bonds (Immunities and Exemptions) Act, 1981 was challenged being arbitrary and having no reasonable nexus with the object sought to be achieved. Holding the Act intra vires and constitutional and describing it as a policy legislation, the majority stated:

The court must always remember that

legislation is directed to practical problems, that the economic mechanism is highly sensitive and complex, that many problems are singular and contingent, that laws are not abstract propositions and do not relate to abstract units and are not to be measured by abstract symmetry, that exact wisdom and nice adaption of remedy are not always possible and that judgment is largely a prophecy based on meager and uninterrupted experience. Every legislation particularly in economic matters is essentially empiric and it is based on experimentation or what one may call trial and error method and therefore it cannot provide for all possible situations or anticipate all possible abuses. There, may be crudities and inequities in complicated experimental economic legislation but on that account alone it cannot be struck down as invalid.

(emphasis supplied)

54. In Liberty Oil Mills v. Union of India, (1984) 3 SCC 465, dealing with the import and export policy followed by the Government, this Court observed: The import policy of any country, particularly a developing country, has necessarily to be tuned to its general economic policy founded upon its constitutional goals, the requirements of its internal and international trade, its agricultural and industrial development plans, its monetary and financial strategies and last but not the least the international political and diplomatic overtones depending on 'friendship, neutrality or hostility with other countries'. There must also be a considerable number of other factors which go into the making of an import policy. Expertise in public and political, national and international economy is necessary before one may engage in the making or in the criticism of an import policy. Obviously courts do not possess the expertise and are consequently incompetent to pass judgment on the appropriateness or the adequacy of a particular, import policy. (emphasis supplied)

55. Again, in State of M.P. v. Nandlal, (1986) 4 SCC 566 : AIR 1987 SC 25 : JT 1986 SC 701, a licence to run liquor shop granted in favour of A was challenged as arbitrary and unreasonable. This Court held that there was no fundamental right in a citizen to carry on trade or business in liquor. However, the State was bound to act in accordance with law and not according to its sweet will or in an arbitrary manner and it could not escape the riguor of Article 14. Therefore, the contention that Article 14 would have no application in a case where the licence to manufacture or sell liquor was to be granted by the State Government was negatived by this Court.

56. The Court, however, observed:

But, while considering the applicability of Article 14 in such a case, we must bear in mind that, having regard to the nature of the trade or business, the Court would be slow to interfere with the policy laid down by the State Government for grant of licences for manufacture and sale of liquor. The Court would, in view of the inherently pernicious nature of the commodity allow a large measure of latitude to the State Government in determining its policy of regulating, manufacture and trade in liquor. Moreover, the grant of licences for manufacture and sale of liquor would essentially be a matter of economic policy where the court would hesitate to intervene and strike down what the State Government has done, unless it appears to be plainly arbitrary, irrational or mala fide. (emphasis supplied)

57. Referring to the decision of the Supreme Court of the United States in Metropolis Theatre Company, the Court observed:

We must not forget that in complex economic matters every decision is necessarily empiric and it is based on experimentation or what one may call 'trial and error method' and, therefore, its validity cannot be tested on any rigid a priori' considerations or on the application of any straight-jacket formula. The court must while adjudging the constitutional validity of an executive decision relating to economic matters grant a certain measure of freedom or play in the 'joints' to the executive Mere errors of Government are not subject to our judicial review. It is only its palpably arbitrary exercises which can be declared void The Court cannot strike down a policy decision taken by the State Government merely because it feels that another policy decision would have been fairer or wiser or more scientific or logical. The Court can interfere only if the policy decision is patently arbitrary, discriminatory or mala fide. (emphasis supplied)

58. In Shri Sitaram Sugar Co. Ltd. v. Union of India, (1990) 3 SCC 223 : AIR 1990 SC 1277 : JT 1990 (1) SC 462, prices of levy sugar were fixed by the Government by grouping sugar factories on the basis of geographical location. The said action was challenged by certain sugar companies as arbitrary, unreasonable and ultra vires. Dismissing the petitions and holding it to be a policy decisions of the Central Government, this Court observed:

What is best for the sugar industry and in what manner the policy should be formulated and implemented, bearing in mind the fundamental object of the statute, viz., supply and equitable distribution of essential commodity at fair prices in the best interest of the general public, is a matter for decision exclusively within the province of the Central Government. Such matters do not ordinarily attract the power of judicial review. (emphasis supplied)

59. In Ugar Sugar Works Ltd. v. Delhi Administration, (2001) 3 SCC 635 : AIR 2001 SC 1447 : JT 2001 (4) SC 31, dealing with the executive policy regulating trade in liquor in Delhi, this Court stated that it was well settled that the courts, in exercise of power of judicial review do not ordinarily interfere with the policy decisions unless such policy could be faulted on the grounds of mala fide, unreasonableness, arbitrariness, unfairness, etc. But the mere fact that it would hurt business interests of a party would not justify invalidating the policy. In tax and economic regulation cases, there are good reasons for judicial restraint, if not judicial deference, to judgment of the executive. The Courts are not expected to express their opinion as to whether at a particular point of time or in a particular situation any such policy should have been adopted or not. It is best left to the discretion of the State. (emphasis supplied) [See also SIEL Ltd. v. Union of India & Ors., (1998) 7 SCC 26 : AIR 1998 SC 3076].

60. In BALCO Employees Union v. Union of India, (2002) 2 SCC 333 : AIR 2002 SC 350 : JT 2001 (10 SC 466, a decision of the Government of India of transferring its majority shares in favour of M/s Bharat Aluminium Company Ltd. was challenged by the employees as illegal, unlawful and ultra vires Articles 14 and 16 of the Constitution. Negativing the contention and upholding the decision of the Government, after referring to several cases on the point, this Court stated: 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. (emphasis supplied)

61. The State and its instrumentality has also power to change policy. The executive power is not limited to frame a particular policy. It has untrammeled power to change, rechange, adjust and readjust the policy taking into account the relevant and germane considerations. It is entirely in the discretion of the Government how a policy should be shaped. It should not, however, be arbitrary, capricious or unreasonable.

62. In Sangwan v. Union of India, 1980 Supp SCC 559 : AIR 1981 SC 1545, this Court observed that a policy once formulated is not good forever, it is perfectly within the competence of the Union of India to change it, re-change it, adjust it and readjust it according to the compulsions of circumstances and imperatives of national considerations.

63. In Union of India v. S.L. Dutta, (1991) 1 SCC 505 : AIR 1991 SC 363 : JT 1990 (4) SC 741, the old policy of promotion was changed and new policy was adopted. The High Court interfered with the decision taken by the authorities observing that the new promotion policy was not framed after an in-depth study and directed the Government to consider the case of the petitioner on the basis of the old policy.

64. Setting aside the said order and upholding the policy, this Court observed:

These are matters regarding which judges and the lawyers of courts can hardly be expected to have much knowledge by reason of their training and experience.

65. In our opinion, Chief Justice Chagla was right in making the following observations in State of Bombay v. Laxmidas Ranchhoddas, AIR 1952 Bom 468; We are not oblivious of the fact that in order that the modern State should function the Government must be armed with very large powers. But the High Court does not interfere with the exercise of those powers, The High Court only interferes when it finds that those powers are not exercised in accordance with the mandate of the Legislature. Therefore, far from interfering with the good governance of the State, the Court helps the good governance by constantly reminding Government and its officers that they should act within the four corners of the statute and not contravene any of the conditions laid down as a limitation upon, their undoubtedly wide powers.

Therefore, even from a practical point of view, even from the point of view of the good governance of the State, we think that the High Court should not be reluctant to issue its prerogative writ

whenever it finds that the sovereign Legislature has not been obeyed and powers have been assumed which the Legislature never conferred upon the executive.

(emphasis supplied)

MALA FIDE EXERCISE OF POWER

66. The appellant also contended that the impugned action of granting licence to respondent No. 4 by respondent Nos. 1 to 3 is mala fide. It was submitted that in spite of acute shortage of sugarcane in the State of Uttranchal, the policy was changed by the Government in order to grant benefit to respondent No. 4, not only at the cost of interest of the appellant but also by ignoring larger public interest and industrial growth and development. In this connection, the attention of the Court was also invited to a letter, dated August 04, 2003 written by the cane & Sugar Commissioner to the Secretary, Cane Development & Sugar Industry, Uttranchal wherein he had stated that there was no necessity to make any change in the Licensing Policy for 2003-04. The counsel submitted that surprisingly, within a short span of about two months, the same Commissioner agreed to change in policy by inserting a proviso to para ka with the sole objective to favour respondent No. 4. It was pursuant to modified policy that respondent No. 4 got the licence. Therefore, the action deserves to be set aside on the ground of mala fide exercise of power.

67. Now, it is well-settled and needs no authority for holding that every power must be exercised bona fide and in good faith. Before more than hundred years, Lord Lindley said in General Assembly of Free Church of Scotland v. Overtaum, 1904 AC 515 : 20 TLR 370; I take it to be clear that there is a condition implied in this as well as in other instruments which create power, namely, that the powers shall be used bona fide for the purpose for which they are conferred. In other words, every action of a public authority must be based on utmost good faith, genuine satisfaction and ought to be supported by reason and rationale. It is, therefore, not only the power but the duty of the Court to ensure that all authorities exercise their powers properly, lawfully and in good faith. If powers are exercised with oblique motive, bad faith or for extraneous or irrelevant considerations, there is no exercise of power known to law and the action cannot be termed as action in accordance with law.

68. But as already discussed earlier, a Court of Law is not expected to propel into the unchartered ocean of Government Policies. Once it is held that the Government has power to frame and reframe, change and rechange, adjust and readjust policy, the said action cannot be declared illegal, arbitrary or ultra vires the provisions of the Constitution only on the ground that the earlier policy had been given up, changed or not adhered to. It also cannot be attacked on the plea that the earlier policy was better and suited to the prevailing situation.

69. Allegations of mala fide are serious in nature and they essentially raise a question of fact. It is, therefore, necessary for the person making such allegations to supply full particulars in the petition. If sufficient averments and requisite materials are not on record, the court would not make fishing or roving inquiry. Mere assertion, vague averment or bald statement is not enough to hold the action to be mala fide. It must be demonstrated by facts. Moreover, the burden of proving mala fide is on the person levelling such allegations and the burden is very heavy [vide E.P. Royappa v. State of Tamil Nadu, (1974) 4 SCC 4 : (1974) 2 SCR 348]. The charge of mala fide is more easily made than made out. As stated by Krishna Iyer, J. in Gulam Mustafa v. State of Maharashtra, (1976) 1 SCC 800 : AIR 1977 SC 448], it is the last refuge of a losing litigant [see also Ajit Kumar v. Indian

Oil Corporation, (2005) 7 SCC 764]. In the case on hand, except alleging that the policy was altered by the Government, to extend the benefit to respondent No. 4, no material whatsoever has been placed on record by the appellant. We are, therefore, unable to uphold the contention of the learned counsel that the impugned action is mala fide or malicious.

70. The High Court, in our opinion, was right in observing that the change of policy was not limited to the case of respondent No. 4 but it was uniformly applied to one and all. To us, therefore, it cannot be contended that the High Court committed an error in arriving at the said conclusion which requires interference under Article 136 of the Constitution. We, therefore, see no substance in this argument as well.

71. Keeping in view statutory provisions, the policy decision taken by the respondent-authorities and interest of all parties including existing sugar factories, a decision has been taken by the respondent Nos. 1 to 3 granting licence in favour of respondent No.4. The said decision was confirmed by the State in exercise of appellate power and the High Court was not convinced that the decision was illegal, arbitrary or otherwise unreasonable. We are unable to persuade ourselves to hold that all the decisions suffer from any error of law or of jurisdiction and they should be set aside. We, therefore, express our inability to grant relief to the appellant.

72. For the foregoing reasons, we hold that the decisions taken by the respondent-authorities and confirmed by the High Court suffer from no illegality or infirmity. The appeal, therefore, deserves to be dismissed and is accordingly dismissed, however, without any order as to costs.