SUPREME COURT OF INDIA

Bajaj Hindustan Ltd.

Vs.

Sir Shadi Lal Enterprises Ltd.

C.A.No.5856 of 2005

(Markandey Katju and Gyan Sudha Misra JJ.)

29.11.2010

JUDGMENT

1. As prayed by learned counsel Mr. Parijat Sinha this petition is dismissed as withdrawn.

Civil Appeal No.5856 of 2005

2. These petitions have been filed against the judgment and order dated 1.2.2006 in Civil Misc. Writ Petition No.31199 of 2005 of the High Court of Judicature at Allahabad

3. By that decision the High Court has quashed the Press Note Number 12 dated 31.8.1998 and Notification SO 808(E) dated 11.9.1998, issued by the Central Government, by which the Sugar Industry was de-licensed under Section 29B of the Industries (Development and Regulation) Act, 1951 (hereinafter referred to as `the Act'.)

4. As a consequence, the High Court has debarred the respondent number 6 from establishing a sugar industry without obtaining a licence under Section 11 of the Act.

5. The High Court has also cancelled the permission, if any, granted to the respondent number 5 to 6 for purchasing and/or acquiring land for the purposed of establishing new sugar industries without licence.

6. It is submitted by learned counsel for the appellant that the effect of the impugned judgment and order quashing of the Notification dated 11.9.1998 and the Press Note dated 31.8.1998 is that the sugar industry in India has virtually been thrown back into the era of `License Raj', nullifying the efforts of the Government of India to open up the economy to prospective investors. Also, all the sugar industries established throughout India after 11.9.1998 (as per the available data they are 100 in number) have become illegal. Industrial development, particularly in the sugar producing States, may well come to a grinding halt. An investment of about Rs.4000 crores in the sugar industry in U.P. alone has been jeopardized. The petitioner herein alone has invested about Rs.600 crores in the sugar

industry in the State of U.P. after the said Notification and Press note were issued. Further, the petitioner has committed an investment of an amount of Rs.700 crores in the sugar industry in U.P. It is submitted that lacs of farmers throughout India and particularly in the State of U.P. will suffer as they would be forced to sell their cane at lesser price to the existing sugar mills and those who are not even able to crush their assigned quantity of sugarcane and make timely payment of cane to the farmers, besides rendering thousands of workers directly employed in sugar factories jobless. Also, lacs of families indirectly attached with industries ancillary to the sugar industry will be severely affected as a result.

7. The petitioner acting bonafide and after complying with all the requirements stipulated in the Press Note/Notification, is setting up seven Sugar Factories at various places in U.P. with an aggregate investment of nearly Rs.1300 crores with a capacity of 7000 tonnes crushed per day (TCD) each. The petitioner has already completed and commenced production in one factory at Kinouni, Meerut, which the petitioner had set up in a record seven months period on 5.11.2004 and further three factories are already completed and ready to commence production in September, 2005 including the one which is under challenge in the writ petition in which the impugned judgment has been passed. Further, the petitioner is expecting to complete the commissioning of production in another three factories as fast as possible. The three factories are ready to operate before the on set of the forthcoming crushing season in September, 2005 to enable the farmers to take full economic advantage thereof. The remaining three factories shall commence production in 2006. The petitioner has already spent about Rs.600 crores on the purchase of land, plant and machinery and other miscellaneous expenditure. Further, the construction of buildings of the other three sugar factories and integrated distillery for production of Ethanol etc. is in full swing on which a further sum of Rs.700 crores is committed to be invested for which the petitioner had also made GDR issue of US$ 110 million and committed in the international market. It is submitted that all the projects of the petitioner would be affected by the impugned judgment.

8. It is submitted that in the State of U.P., the sugar industry is one of the most important industries, with sugarcane being the chief cash crop. Thousands of people have been provided employment in this industry alone. Nearly half of India's sugarcane area is situated in U.P. alone, which constitutes roughly 42% of the total sugarcane production in the country. However, despite adequate availability of sugarcane area, U.P. still lags behind Maharashtra in the production of sugar. Even though the demand of sugar in the country has increased manifold but the sugar industry in U.P. has remained stagnant over a long period of time due to various reasons including sickness of uneconomic and unviable units mainly in the Government and the cooperative sector. Due to low sugarcane crushing capacity, the farmers were forced to sell their cane to less remunerative uses. The petitioner's sugar projects have brought a new hope to the farmers at large.

9. Sugar, is item number 25 of the first Schedule of the Industries (Development and Regulation) Act, 1951. Hence, no one could set up a sugar industry without a licence as per Section 11 of the Act.

10. The Industries (Development and Regulation) Act was passed in 1951. The statements of objects and reasons of the Act states as follows:

> "The object of this Bill is to provide the Central Government with the means of implementing their industrial policy which was announced in their Resolution No.1(3)-44(13) 48, dated 6th April, 1948 and approved by the Central Legislature. The Bill brings under Central control the development and regulation of a number of important industries, the activities of which affect the country as a whole and the development of which must be governed by economic factors of all-India import. The planning of future development on sound and balanced lines is sought to be secured by the licensing of all new undertakings by the Central Government. The Bill confers on Government power to make rules for the registration of existing undertakings, for regulating the production and development of the industries in the Schedule and for consultation with Provincial Governments on these matters....."

11. Section 2 of the Act states as follows:

> "2. Declaration as to expediency of control by the Union - It is hereby declared that it is expedient in the public interest that the Union should take under its control the industries specified in the First Schedule."

12. Section 3(i) of the Act states as follows:

> "(i) "scheduled industry" means any of the industries specified in the First Schedule."

13. Sugar is mentioned in item no.25 of the First Schedule to the Act.

14. The historical background is that up to about 1930 there were practically no sugar industries in India and we had to import all our sugar from foreign countries like West Indies, Jawa, etc. Hence around 1930 the British Government invited some businessmen and requested them to set up sugar industries in India so that we can produce our own sugar. These businessmen told the British Government that they were willing to set up such industries provided they were assured of regular supply of sugarcane. It may be mentioned that sugarcane is the main raw material for manufacture of sugar. If an adequate supply of sugarcane was not available to the sugar mills the mills would have to close down entailing heavy losses to the proprietors. The Government accepted this request and framed laws for ensuring a regular supply of sugarcane to any sugar mill established in India and made various regulations for the sugar industry.

15. The 1951 Act placed the sugar industry in the First Schedule to the Act, which meant that no sugar industry could be set up without a licence from the Central Government.

16. Since independence the situation has totally changed in India. Now India has a heavy industrial base and also has several sugar mills. Hence the earlier regulatory laws relating to

the sugar industry, including the requirement of a licence, have evidently served their purpose and are no longer required and may in fact be obstructing the growth of industry in our country now. Hence the policy of liberalization began in the early 1990s and it appears that it was in pursuance of the liberalization policy that the impugned Press Note and Notification were issued.

17. A perusal of the background in which de-licensing of sugar industry was done shows that it was a well considered step which was done having regard to the stage of development of the industry. This background is: a) On 24th July 1991, the Government of India announced its liberalized "Industrial Policy 1991". b) On 25th July, 1991, the first notification i.e. Notification No.477(E) came to be issued by virtue of which 20 out of the 38 Scheduled industries were taken out of the purview of Section 10, 11, 11A & 13 of the Act. The structure of this notification was that it appended three negative lists (Schedule I, II and III) and the scheduled industries not specified in these three lists were obviously within the scope of the exemption.

> "These lists were changed from time to time during the period 1991-2010 and as things stand at present only a handful of industries now remain in these negative lists.
>
> c) As far as the sugar industry is concerned, a Parliamentary Committee was appointed which recommended de-licensing of the sugar industry as early as in 1996. Later, pursuant to certain directions of the Allahabad High Court yet another Committee was appointed (the Mahajan Committee), which also supported reform of the licensing system. In August 1998, considering the recommendations of these two reports the Government of India issued Press Note 12 dated 31.8.1998 de-licensing the sugar industry, subject to the condition that there would be a minimum of 15 km distance between two sugar mills.
>
> The Press Note was then followed by the formal notification on 11.9.1998, issued under Section 29B(1) of the Act."

18. The Press Note and Notification read as follows:- "PRESS NOTE

> "Subject : De-licensing of Sugar industry.
>
> 1. The Government has further viewed the list of industries under compulsory licensing and has decided to delete sugar industry from the list of industries requiring compulsory licensing under provisions of the Industries (Development and Regulation) Act, 1951. However, in order to avoid unhealthy competition among sugar factories to procure sugarcane, a minimum of 15 KM would continue to be observed between an existing sugar mill and a new mill by exercise of power under Sugarcane (Control) Order, 1966.

2. The entrepreneurs who wish to avail themselves of the de-licensing of sugar industry would be required to file an Industrial Entrepreneurs Memoranda (IEM) with the Secretariat of Industrial Assistance in the Ministry of Industry as laid down for all de-licensing Industries in terms of the Press Note dated 2nd August, 1991, as amended from time to time.

3. Entrepreneurs who have been issued letter(s) of intent (LOI) for manufacture of sugar need not file an initial IEM. In such cases, the LOI holder shall only file part B of the LOI at the time of commencement of commercial production against the LOI issued by them. It is, however, open to entrepreneurs to file an initial IEM (in lieu of the LOI/Industrial Licence held by them) if they so desire, whenever any variation from the conditions and parameters stipulated in the LOI/Industrial Licence is contemplated."

"NOTIFICATION

(266) Ministry of Industry (Department of Industrial Policy and Promotion) Notification No.S.O.808(E) dated September 11, 1998 published in the Gazette of India, Extra, Part II, Section 3 (ii) dated 14th September, 1998 p.2, no.599 (F.No.10(13)/96 I.P.).

In exercise of the powers conferred by sub-section (1) as Section 29-B of the Industries (Development and Regulations) Act, 1951 (65 of 1951), the Central Government hereby makes the following further amendment in the notification of the Government of India in the Ministry of Industry (Department of Industrial Development Number S.O.477(E) dated the 25th July, 1991, namely :-

In Schedule II to the said notification, item 4, relating to Sugar and the entries thereunder shall be omitted."

19. Section 29B(1) of the Act states :

"29-B. Power to exempt in special cases : (1) If the Central Government is of opinion, having regard to the smallness of the number of workers employed or to the amount invested in any industrial undertaking or to the desirability of encouraging small undertakings generally or to the stage of development of any scheduled industry, that it would not be in public interest to apply all or any of the provisions of this Act thereto, it may by notification in the Official Gazette, exempt, subject to such conditions as it may think fit to impose, any Industrial undertaking or class of industrial undertakings or any scheduled industry or class of scheduled industries as it may specify in the notification from the operation of all or any of the provisions of this Act or any rule or order made thereunder,"

20. It may be mentioned that after the impugned judgment of the High Court dated 1.2.2006, several developments have taken place relating to the sugar industry which have a substantial effect on the issues involved in these appeals. These are as follows:

> "(i) The High Court of Delhi in a case reported as *Ojas Industries P. Ltd. vs. Union of India & Ors*[1] upheld the validity of the Press Note dated 31.08.98 being a policy of the Government of India under Article 73 of the COI. Therefore Delhi High court upheld the validity of the Press Note dated 31.08.98 which was quashed by the Allahabad HC on 24.08.05. (ii) Thereafter the Government of India in exercise of its power under Section 3 of the Essential Commodities Act, 1955 amended the Sugarcane (Control) Order, 1966 by inserting Clauses 6A to 6E vide the Sugarcane (Control) Amendment Order, 2006, inter alia, laying down the "effective steps" which the applicant is required to take such as purchase of required land in the name of the mill, payment of advance and opening of LOC with suppliers, commencement certificate of civil work and construction of building, sanction of requisite term loans from the banks or financial institutions and any other steps prescribed by the Central Government in this regard.
>
> (iii) This Court by its judgment dated 02.04.07 in *Ojas Industries P. Ltd. vs. Oudh Sugar Mills Ltd Ors*[2] considered the Press Note dated 31.08.98, the amendment of Sugarcane Control Order, 2006 and the liberalization policy of the Government of India in sugar industry. This Court after analyzing the provisions of the Press Notes in respect of prescribing minimum distance between two sugar mills, and the new Sugarcane Control Order, 2006 held that the defect pointed out by the Delhi High Court in paragraph 63 of its judgment has been removed by the Government of India by bringing in the amendment in 2006. This Court held that this amendment is clarificatory in nature and retrospective in operation and shall apply to all cases pending in various courts."

21. In view of the judgment of this Court in Ojas Industries (supra) upholding the validity of the Press Note prescribing distance norms and subsequent amendments in 2006 in Sugarcane Control Order 1966 and making it retrospective, the issues involved in the present case have been substantially decided. The challenge of the writ petitioner in the High Court was based on the setting up of a sugar mill in its vicinity (though beyond 15 kms away) because of the policy of de-licensing prescribed under Notification dated 11.09.98 issued in exercise of powers under Section 29(B) (1) of the *IDR Act, 1951*. This Court has upheld the distance norms i.e. a minimum distance of 15 kms between two mills retrospectively. The main thrust of the petitioner's challenge to the de-licensing policy thus disappears.

22. It is settled law that in the areas of economics and commerce, there is far greater latitude available to the executive than in other matters. The Court cannot sit in judgment over the wisdom of the policy of the legislature or the executive.

23. Thus in *Balco Employees' Union (Regd.) vs. Union of India and Ors.*[3] it was observed (vide paragraph 92 and 93):

> "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."....

24. In the same decision in paragraph 39 it was observed:

> "39. In *Premium Granites vs. State of T.N.*[4], while considering the Court's powers in interfering with the policy decision, it was observed at page 715 as under: (SCC para 54)
>
> "54. It is not the domain of the Court to embark upon the unchartered ocean of public policy in an exercise to consider as to whether a particular public policy is wise or a better public policy can be evolved. Such exercise must be left to the discretion of the executive and legislative authorities as the case may be."

25. In paragraph 42 of the aforesaid decision this Court quoted from its earlier decision in *M.P. Oil Extraction vs. State of M.P.*[5] as follows:

> "....The executive authority of the State must be held to be within its competence to frame a policy for the administration of the State. Unless the policy framed is absolutely capricious and, not being informed by any reason whatsoever, can be clearly held to be arbitrary and founded on mere ipse dixit of the executive functionaries thereby offending Article 14 of the Constitution or such policy offends other constitutional provisions or comes into conflict with any statutory provision, the Court cannot and should not outstep its limit and tinker with the policy decision of the executive function of the State. This Court, in no uncertain terms, has sounded a note of caution by indicating that policy decision is in the domain of the executive authority of the State and the Court should not embark on the unchartered ocean of public policy and should not question the efficacy or otherwise of such policy so long the same does not offend any provision of the statute or the Constitution of India. The supremacy of each of the three organs of the State i.e. legislature, executive and judiciary in their respective fields of operation needs to be emphasized. The power of

judicial review of the executive and legislative action must be kept within the bounds of constitutional scheme so that there may not be any occasion to entertain misgivings about the role of the judiciary in outstepping its limit by unwarranted judicial activism being very often talked of in these days. The democratic set-up to which the polity is so deeply committed cannot function properly unless each of the three organs appreciate the need for mutual respect and supremacy in their respective fields." (emphasis added)

26. The same view has been taken by this court in *Ugar Sugar Works Ltd. vs. Delhi Administration and Ors.*[6] *(vide para 18), Bhavesh D. Parish and Ors. vs. Union of India and Anr.*[7] *(vide para 23 and 24), Netai Bag and Ors. vs. State of West Bengal and Ors.*[8] *(vide para 20), etc*..

27. In *P.T.R. Exports (Madras) Pvt. Ltd. vs. Union of India and Ors.*[9] (vide para 3 and 5) this Court held that the power to frame a policy by executive or legislative decision included the power to withdraw the same.

28. In the present case the de-licensing has been done under Section 29B of the Act and we see no illegality in the same.

29. In our opinion the High Court has placed an erroneous interpretation on the language of Section 29B. Section 29B provides that having regard to any of the four specified factors, if the Central Government is of the opinion that it would not be in public interest to apply "all or any" of the provisions of this Act to a scheduled industry, it may by notification in the official gazette exempt (conditionally or otherwise) any industrial undertaking or any class of industrial undertakings, or any scheduled industry or class of scheduled industries. The four specified factors on the basis of which the power may be exercised are as follows:

"a) the smallness of the number of workers employed or b) the amount invested in any industrial undertaking or c) the desirability of encouraging small undertakings generally or d) the stage of development of any scheduled industry."

30. A plain reading of Section 29B shows that having regard to the stage of development of any schedule industry if the Central Government is of the opinion that there should be an exemption from some or all of the provisions of the Act, it can issue an appropriate notification for this purpose. Sub- section 2 of the Section 29B also confers upon the Central Government an express power of cancellation of such exemption. In our opinion sufficient guidelines have been provided by the legislature for the Government in this connection. The power conferred under Section 29B is in our opinion not tainted by the vice of excessive delegation because the essential legislative policy is specified in the preamble to the IDR Act and is writ large throughout the provisions of the Act. The grounds on which exemption from licensing can be granted - one of them being the stage of development of the industry - are also specified in Section 29B. The legislative policy having been clearly stated, in our opinion there is no excessive delegation. See in this connection *P.J. Irani vs. State of*

Madras[10]*, Sitaram Bishambar Dayal vs. State of U.P.*[11] *(vide para 5 and 7), Mahe Beach Trading Co. and Ors. vs. Union Territory of Pondicherry and Ors.*[12] *(vide para 13), State of Tamil Nadu vs. K. Sabhanayagam*[13] *(vide para 14, 19, 20 and 21), Consumer Action Group vs. State of Tamil Nadu*[14] (vide para 5-18, 41 reviews case law on delegated legislation right from F. N. Balsara) and *Kishan Prakash Sharma and Ors. vs. Union of India and Ors.*[15] (vide para 18-20).

31. The legislative history of Section 29B clearly establishes the legislative intention to confer a wide power of exemption upon the Central Government.

> "a) Section 28, as was originally enacted, conferred upon the Central Government, in general terms, the power to exempt any scheduled industry or any industrial undertaking from the operation of all or any provisions of this Act. There was no further provision of any parliamentary control (by way of placing the exemption notifications before parliament for its approval or otherwise) contemplated in the said original Section.
>
> b) Amendments were made to the IDR in 1953 when Section 29B was inserted in substitution of Section 28. The amended provision contemplated the grant of exemption on the four factors indicated hereinbefore. However, no power of reservation for the Small Scale Sector was contemplated in these provisions. In 1956 further amendments were made by way of insertion of Sub-section 2, which confers the power of cancellation of exemptions. c) The Central Government sought to make reservation of certain industries for the Small Scale Sector. The Bombay High Court in *Shree Vindhya Paper Mills Case*[16] held that Section 29B confers power to exempt, but not to reserve. Hence it was held that such reservation was ultra-vires Section 29B. To overcome the effect of this judgment Section 29B was amended again in 1984 by inserting the provisions of Sub-section 2(A) to 2(H) including a validating provision for validating all reservations made on or from 19th February, 1970. In the amended provision, Section 2(H) contemplated laying before each House of Parliament, the notified orders made under Sub-section 2(A). It is significant that no similar requirement was contemplated even then, in relation to notified orders issued under Sub-Section (1) granting exemption."

32. The High Court has in the impugned judgment held that the de- licensing could only be done by the legislature and not by the executive. We do not agree. It is well settled that the executive power of Union of India is co-extensive with the legislative power vide Article 73(1) of the Constitution. Hence in our opinion it was not necessary to amend the Act to de-license the sugar industry. The notification under Section 29B was sufficient for this purpose.

33. In the impugned judgment the High Court has observed:

> "Licensing is a part of regulation of the scheduled industry. Therefore licensing policy of the Government cannot be said not to be in the public interest. De- licensing

policy largely affects the interest of the people. Somebody may say for socialism or somebody may say for globalization, but the thought of majority people has to be reflected in the House by the majority vote. Then and then alone the policy can be accepted as a law by its amendment. Therefore, without ascertaining the pros and cons on that line mere issuance of notification by the pen of the executive is an action without jurisdiction and as such illegal."

34. With respect we cannot agree with this observation. There is nothing in the 1951 Act which required a notification under Section 29B(1) to be approved by Parliament. Also, whether it is in the public interest to issue such a notification is ordinarily for the Government to decide, and the Court should exercise judicial restraint in this connection. Whether there should be licensing of an industry or not is for the executive authorities to decide.

35. The High Court has further observed :

"The necessity of de-licensing came in the mind of the Government by the passage of time since when the waves of liberalization started coming. The Government was considering the same and possibly for this reason reports from the Advisory Committees were sought for. But after placement before the Lok Sabha and Rajya Sabha what prompted them not to place before the Parliament, but issue a Press Note and Notification directly omitting the sugar industry from the list of compulsorily licensable industry is fishy state of affairs. Therefore, the elements of illegality, unfair play, adopting back door process, arbitrariness, malafides, and abuse of power cannot be ruled out."

36. With respect to the above observation we may say that the High Court has probably overlooked that the Lok Sabha and Rajya Sabha together constitute Parliament in India. Also, as already stated above, the 1951 Act does not require a notification under Section 29B(1) to be approved by Parliament. Hence there was nothing fishy about the impugned notification. To say that elements of illegality, unfair play etc. cannot be ruled out is really acting on conjectures and surmises, not on evidence.

37. The High Court has held that exemption from licensing can be granted under Section 29B to small industries but not to large industries. With respect we cannot agree. A perusal of Section 29B(1), which has been quoted above, shows that a notification under the said provision can be issued in respect to four categories. Smallness of the industry, is only one of such categories. The fourth category viz. `the stage of development of any scheduled industry' is very wide, and thus gives wide power to the Central Government to de-license even large industries.

38. In his dissenting judgment in *New State Ice Co. vs. Liebmann*[17] Mr. Justice Brandeis, the celebrated Judge of the U.S. Supreme Court, observed that the Government must be left free to engage in social experiments. Progress in the social sciences, even as in the physical

sciences, depends on "a process of trial and error" and Courts must not interfere with necessary experiments. In the same decision Justice Brandeis also observed:

> "To stay experimentation in things social and economic is a grave responsibility. Denial of the right to experiment may be fraught with serious consequences to the Nation." (See also `The Legacy of Holmes and Brandeis' by Samuel Konefsky)."

39. In the Constitution bench decision of the Supreme Court in *Shri Sitaram Sugar Co. Ltd. vs. Union of India*[18] it was 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."

40. It was held in the above decision as well as in India Cement Ltd. vs. Union of India AIR 1991 SC 724 that even if some persons are at a disadvantage and suffered losses on account of formulation and implementation of the Government policy that is not by itself sufficient ground for interference by the Court.

41. In *Secretary of Agriculture vs. Central Roig Refining Co.*[19], Mr. Justice Frankfurter of the U.S. Supreme Court observed :

> "Congress was confronted with the formulation of policy peculiarly within its wide swath of discretion. It would be a singular intrusion of the judiciary into the legislative process to extrapolate, restrictions upon the formulation of such an economic policy from those deeply rooted notions of justice which the Due Process Clause expresses....."

42. We should not be understood to have meant that the judiciary should never interfere with administrative decisions. However, such interference should be only within narrow limits e.g. when there is clear violation of the statute or a constitutional provision, or there is arbitrariness in the Wednesbury sense. It is the administrators and legislators who are entitled to frame policies and take such administrative decisions as they think necessary in the public interest. The Court should not ordinarily interfere with policy decisions, unless clearly illegal.

43. Economic and fiscal regulatory measures are a field where Judges should encroach upon very warily as Judges are not experts in these matters. The impugned policy parameters were fixed by experts in the Central Government, and it is not ordinarily open to this Court to sit in appeal over the decisions of these experts. We have not been shown any violation of law in the impugned notification or Press Note.

44. The power to lay policy by executive decisions or by legislation includes power to withdraw the same unless it is by mala fide exercise of power, or the decision or action taken is in abuse of power. The doctrine of legitimate expectation plays no role when the appropriate authority is empowered to take a decision by an executive policy or under law. The court leaves the authority to decide its full range of choice within the executive or legislative power. In matters of economic policy, it is settled law that the court gives a large leeway to the executive and the legislature. Granting licences for import or export is an executive or legislative policy. The Government would take diverse factors for formulating the policy in the overall larger interest of the economy of the country. When the Government is satisfied that change in the policy was necessary in the public interest it would be entitled to revise the policy and lay down a new policy.

45. In *Prag Ice & Oil Mills vs. Union of India*[20] the Supreme Court observed:

> "We do not think that it is the function of the Court to sit in judgment over such matters of economic policy as must necessarily be left to the government of the day to decide. Many of them are matters of prediction of ultimate results on which even experts can seriously err and doubtlessly differ. Courts can certainly not be expected to decide them without even the aid of experts."

46. In *Shri Sitaram Sugar Co. Ltd. vs. Union of India*[21] the Supreme Court observed:

> "Judicial review is not concerned with matters of economic policy. The Court does not substitute its judgment for that of the legislature or its agents as to matters within the province of either. The Court does not supplant the view of experts by its own views." It must be remembered that certain matters are by their nature such as best be left to experts in the field. This Court does not have the technical and administrative expertise in this respect."

47. In the words of Chief Justice Neely:

> "I have very few illusions about my own limitations as a Judge. I am not an accountant, electrical engineer, financer, banker, stockbroker or system management analyst. It is the height of folly to expect Judges intelligently to review 5000 page record addressing the intricacies of a public utility operation. It is not the function of a Judge to act as a super board, or with the zeal of a pedantic school master substituting its judgment for that of the administrator."

48. In our opinion there should be judicial restraint in fiscal and economic regulatory measures. The State should not be hampered by the Court in such measures unless they are clearly illegal or unconstitutional. All administrative decisions in the economic and social spheres are essentially ad hoc and experimental. Since economic matters are extremely complicated this inevitably entails special treatment for distinct social phenomena. The State

must therefore be left with wide latitude in devising ways and means of imposing fiscal regulatory measures, and the Court should not, unless compelled by the statute or by the Constitution, encroach into this field.

49. In our opinion, it will make no difference whether the policy has been framed by the legislature or the executive and in either case there should be judicial restraint. The Court can invalidate an executive policy only when it is clearly violative of some provisions of the Statute or Constitution or is shockingly arbitrary but not otherwise.

50. As held by this Court in *Divisional Manager, Aravali Golf Club & Anr. vs. Chander Hass & Anr.*[22], the Court must maintain judicial restraint and not ordinarily encroach in the domain of executive or legislature.

51. In our opinion the impugned Press Note and Notification were validly issued under Section 29B of the Act. Hence the impugned judgment cannot be sustained and it is hereby set aside.

52. The appeal is allowed. No costs.

Civil Appeal Nos. 5857/2005 & 5858/2005

53. In view of our order passed in Civil Appeal No.5856 of 2005, these appeals stand disposed of. No costs.

[1]2006 (86) DRJ 593 [2](2007) 4 SCC 723 [3]2002(2) SCC 333 [4]1994(2) SCC 691
[5]1997(7) SCC 592 [6](2001) 3 SCC 635 [7](2000) 5 SCC 471 [8](2000) 8 SCC 262
[9]1996(5) SCC 268 [10](1962) 2 SCR 169at pages 179-180 [11](1972) 4 SCC 485 [12](1996) 3 SCC 741
[13](1998) 1 SCC 318 [14](2000) 7 SCC 425 [15](2001) 5 SCC 212 [16]AIR (1983) Bom 270
[17]285 U.S. 262 (1932) [18]AIR 1990 SC 1277 [19](1949) 338 US 604 (617): 94 Law Ed. 381 to 392
[20]AIR 1978 SC 1296 [21]JT (2008) 3 SC 221 [22](1990) 3 SCC 223