2021 INSC 523

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 5823-5824 OF 2021
[Arising out of SLP(C) Nos. 9924-9925 of 2019]

PUNJAB STATE POWER CORPORATION LIMITED AND ANOTHER ...APPELLANT(S)

VERSUS

EMTA COAL LIMITED ...RESPONDENT(S)

WITH

CIVIL APPEAL NOS. 5825-5826 OF 2021
[Arising out of SLP(C) Nos.14384-14385 of 2021]

DBL-VPR CONSORTIUM THROUGH AUTHORISED REPRESENTATIVE ...APPELLANT(S)

VERSUS

EMTA COAL LIMITED AND OTHERS ...RESPONDENT(S)

J U D G M E N T

B.R. GAVAI, J.

1. Leave granted.

2. A short question relating to interpretation of Section 11 of the Coal Mines (Special Provisions) Act, 2015 (hereinafter referred to as the "said Act") which is an outcome of the judgment of this Court in the case of ***Manohar Lal Sharma v. Principal Secretary and Others***[1] (hereinafter referred to as "***Manohar Lal Sharma-I")*** and an ancillary question pertaining to scope of judicial review of an administrative action of the State Authority arise for consideration in these appeals.

3. These appeals challenge the judgment and order passed by the Division Bench of the High Court of Punjab and Haryana dated 25th January 2019, thereby allowing the civil writ petitions being CWP Nos. 10055 and 16245 of 2018, filed by the respondent herein-EMTA Coal Limited (hereinafter referred to as "EMTA") and holding that the respondent herein will have the first right of refusal in the matter of lending of Mining Lease.

1**(2014) 9 SCC 516**

4. The facts in the present case are not in dispute, which are taken from appeals arising out of SLP(C) Nos. 9924-25 of 2019.

5. The Punjab State Electricity Board (hereinafter referred to as the "PSEB") which is now known as Punjab State Power Corporation Limited (hereinafter referred to as the "PSPCL"), was proposed to be allotted Captive Coal Mines by the Union of India. On 16th February 1999, PSEB issued a tender, thereby inviting bids for the purpose of development of Captive Coal Mines. In the said bid, opened on 9th February 2000, the respondent-EMTA emerged successful. Accordingly, an agreement was entered into between PSEB and EMTA on 5th May 2000, thereby creating a Joint Venture Company called Panem Coal Mines Limited (hereinafter referred to as "Panem"). The said agreement provided the rights for mining of coal from the Coal Mines, transporting and delivery of it, wholly and exclusively to PSEB. Since EMTA being a partnership firm could not have been a shareholder of the Joint Venture Company, a follow up Joint Venture Agreement was entered into on 21st March 2001 between PSEB, EMTA and the three

partners of EMTA, incorporating the same terms and conditions as were found in the earlier agreement dated 5th May 2000. The same was intimated to the Union of India by PSEB. Thereafter on 26th December 2001, Union of India allotted a Captive Coal Block being Pachhwara (Central Block) Coal Mine (hereinafter referred to as "Pachhwara Coal Block") in the State of Jharkhand to PSEB. On 22nd February 2002, Union of India notified the supply of coal from the Pachhwara Coal Block by the Joint Venture Company (Panem) to the power stations of PSEB on an exclusive basis as an end use under Section 3(3)(a)(iii) of the Coal Mines (Nationalization) Act, 1973, in the official gazette. On 25th November 2004, a Mining Lease was executed between the Government of Jharkhand and Panem for mining coal from the non-forest areas of Pachhwara Coal Block. Subsequently on 30th August 2006, a Coal Purchase Agreement was executed between Panem and PSEB, for the purpose of supply and delivery of the coal from Pachhwara Coal Block to the power stations of PSEB. On 6th January 2007, Mining Lease was issued by the Government of Jharkhand in favour of

Panem, for mining coal even from the forest areas of the Coal Block.

6. Till 2014, there was no problem. However, on 25th August 2014, this Court in the case of ***Manohar Lal Sharma-I,*** held that the entire allocation of Coal Blocks made between 1993 and 2011, except those which were made through competitive bidding, were invalid, unfair, arbitrary and violative of Article 14 of the Constitution of India. On 24th September 2014, vide further orders passed in the case of ***Manohar Lal Sharma v. Principal Secretary and Others***[2]***,*** this Court quashed all Coal Block allocations made by the Central Government between 1993 and 2011. This Court also accepted the submission of the learned Attorney General that the allottees of the Coal Blocks other than those covered by the judgment and the four Coal Blocks covered by the subsequent order, must pay an amount of Rs.295/- per metric ton of coal extracted as an additional levy. In pursuance of the judgment of this Court in the case of ***Manohar Lal Sharma-I,*** the Coal Mines (Special

2 **(2014) 9 SCC 614**

Provisions) Ordinance, 2014 ("First Ordinance") came to be promulgated on 21st October 2014. The Second Ordinance came to be promulgated on 26th December 2014. Vide further orders passed by this Court in February 2015 in contempt proceedings in the case of ***Manohar Lal Sharma-I,*** an additional levy at the rate of Rs.295/- per metric ton was directed to be paid by the prior allottees. Subsequently on 30th March 2015, the said Act was notified, repealing the Second Ordinance.

7. The Central Government vide Allotment Order dated 31st March 2015, again allocated Pachhwara Captive Coal Block in favour of PSPCL. As PSPCL was facing acute shortage of coal for paddy season, and closure of Coal Block had resulted in sudden loss of employment, it entered into a Transitory Agreement with EMTA on 30th June 2015. As per Clause 1.1.20 of the Transitory Agreement, the said contract was for a period of nine months or till Mine Developer-cum-Operator was appointed by PSPCL through competitive bidding. On 23rd July 2015, PSPCL informed Union of India about the Transitory

Agreement. On 31st August 2015, PSPCL published Notice inviting Global Tender (hereinafter referred to as the "NIT"), inviting bids for the appointment of Mine Developer-cum-Operator, for supply of coal.

8. EMTA filed a civil writ petition being CWP No. 26180 of 2015 before the High Court of Punjab and Haryana, thereby challenging the said NIT. On 10th February 2016, the High Court passed a direction restraining PSPCL from opening the financial bids till 29th February 2016. On 1st February 2018, CWP No. 26180 of 2015 was dismissed as withdrawn by the High Court on the basis of the statement made by PSPCL that it shall consider the representation-cum-claims made by EMTA and it shall take a decision thereon before finalizing the fresh tender process for allotment of Coal Mines at Pachhwara. Accordingly, a representation was made by EMTA on 20th February 2018, which came to be rejected by PSPCL on 6th April 2018. The same was challenged by EMTA by filing a civil writ petition being CWP No. 10055 of 2018 before the High Court of Punjab and Haryana.

9. It is to be noted that in the meantime, since the tender process was held up due to various writ petitions, PSPCL passed a Resolution on 30th June 2017, to drop the Global Tender dated 31st August 2015. During the pendency of CWP No. 10055 of 2018, on 30th April 2018, PSPCL issued a fresh Request For Proposal (RFP), to invite Global Bids for the selection of Mine Developer-cum-Operator for Pachhwara Coal Block through competitive reverse bidding process. The same was challenged by EMTA by filing another civil writ petition being CWP No. 16245 of 2018 before the High Court of Punjab and Haryana. PSPCL contested the same by filing a written statement. Pursuant to RFP dated 30th April 2018, the bids were opened on 10th August 2018. The lowest bid was submitted by DBL-VPR Consortium who is the appellant in appeal arising out of SLP(C) Nos. 14384-14385 of 2021. Letter of Award was issued in favour of the said DBL-VPR Consortium and a Coal Mining Agreement was signed on 11th September 2018. By the impugned judgment and order dated 25th

January 2019, the High Court allowed the civil writ petitions as aforesaid. Being aggrieved thereby, the present appeals.

10. Shri K.V. Viswanathan, learned Senior Counsel appearing on behalf of appellant-PSPCL submitted that the High Court has grossly erred in holding that EMTA had a first right of refusal. The learned Senior Counsel submitted that the prior allotment of the Coal Blocks between 1993 and 2011 was cancelled, since this Court had held in ***Manohar Lal Sharma-I,*** that the said allotments were arbitrary, illegal and violative of Article 14 of the Constitution. He submitted that Section 11 of the said Act clearly provides that it was the discretion of PSPCL to allow a successful allottee to continue or not to continue with the existing contracts, which were in existence prior to the fresh allotment in relation to coal mining operation. Shri Viswanathan submitted that only when the allottee decides to continue with the old contracts, the question of constitution of novation for residual term would arise. The learned Senior Counsel submitted that in view of sub-section (2) of Section 11 of the said Act, when an allottee decides not to continue with

the existing contracts entered into by the prior allottees with third parties, all such contracts shall cease to be enforceable against the successful bidder or allottee in relation to Schedule I coal mines and the remedy of such contracting parties shall be against the prior allottees. The learned Senior Counsel submitted that Section 16 of the said Act provides for compensation for land as well as for mining infrastructure.

11. The learned Senior Counsel further submitted that in pursuance of the directions issued by this Court for payment of Rs.295/- per metric ton, it was the liability of EMTA to make the said payment amounting to Rs.1400 crore. He submitted that however, EMTA had failed to make the said payment resulting in a huge loss to the public exchequer. The learned Senior Counsel further submitted that the findings of the High Court with regard to the legitimate expectation of EMTA, are totally unsustainable. The learned Senior Counsel submitted that the legitimate expectation would not be applicable against the Statute. He further submitted that PSPCL has taken a policy decision to appoint Mine Developer-cum-Operator by

competitive bidding process. He submitted that the policy is reasonable and as such, the legitimate expectation would not be applicable as against such a reasonable policy. The learned Senior Counsel relied on the judgment of this Court in the case of ***Kerala State Beverages (M and M) Corporation Limited v. P.P. Suresh and Others***[3]***.***

12. Shri Viswanathan further submitted that in view of Clause 12.4 of the Allotment Agreement, PSPCL was bound to appoint a Mine Developer-cum-Operator only through a competitive bidding process. He submitted that due to certain exigencies, PSPCL had entered into a transitory arrangement with EMTA for a limited period of nine months. However, the same was disapproved by Union of India and a Show-Cause Notice came to be issued to PSPCL. He therefore submitted that understanding the Clause 12.4 of the Allotment Agreement in correct perspective, PSPCL had decided to issue RFP, inviting Global Tenders for appointing Mine Developer-cum-Operator.

3**(2019) 9 SCC 710**

13. Dr. A.M. Singhvi, learned Senior Counsel appearing on behalf of appellant-DBL-VPR Consortium, also supports the submissions made by Shri Viswanathan. He submitted that DBL-VPR Consortium had participated in the Global Tender and is the lowest bidder. He submitted that the High Court has grossly erred in holding that EMTA had a right of first refusal after the bidding process was complete and DBL-VPR's offer was known to all. He therefore submitted that the impugned judgment and order passed by the High Court needs to be set aside.

14. Shri Mukul Rohatgi, learned Senior Counsel appearing on behalf of respondent-EMTA vehemently opposed the submissions made on behalf of PSPCL. The learned Senior Counsel submitted that EMTA has made huge investment by deploying specialized machinery for the purpose of mining, construction of roads to the Mining Blocks and other infrastructural developments. He submitted that since the contract was entered into for a period of 30 years, EMTA has a legitimate expectation to continue till completion of the said

period of 30 years. He therefore submitted that the High Court has rightly held that EMTA had a legitimate right of first refusal.

15. Shri Rohatgi submitted that the legislative intent behind Section 11(1) of the said Act is to permit an existing contractor to continue if his performance is found to be satisfactory, and nothing adverse against EMTA has been found. The learned Senior Counsel submitted that however, PSPCL, in an arbitrary and irrational manner, has denied the claim of EMTA. He submitted that only when the performance of the existing contractor is found to be unsatisfactory or there is something against him, the allottee would be entitled to take recourse to the competitive bidding.

16. Shri Rohatgi would further submit that a similar view has been taken by the Karnataka High Court in the case of ***KPCL v. EMTA Coal Limited and Others***[4]. He submitted that aggrieved by the judgment of the Karnataka High Court, KPCL had approached this Court. This Court appointed a Committee of

4**ILR 2016 Kar 4301**

Experts to determine the price and EMTA, who was also a Mine Developer in the said matter, was permitted to continue with the operations at the rates fixed by the Experts Committee. He further submitted that from the letter dated 9th June 2020, addressed by the Joint Secretary, Ministry of Coal, Government of India, it would be clear that it is also the stand of Union of India that Section 11 of the said Act prevails over Clause 12 of the Allotment Agreement. The learned Senior Counsel submitted that the contention on behalf of PSPCL that on account of Clause 12.4 of the Allotment Agreement, PSPCL was bound to appoint a Mine Developer-cum-Operator by competitive bidding, is unsustainable.

17. He further submitted that no prejudice is caused to PSPCL by the impugned judgment and order. He submitted that the price is now known and what has been done by the High Court is only granting a right of first refusal. If EMTA is desirous to continue, it will have to continue at the same rate and therefore, no financial loss would be caused to PSPCL.

18. Shri Rohatgi further submitted that in the earlier round of litigation, the High Court had recorded the statement of PSPCL that if a representation is made by EMTA, the same would be considered by PSPCL and a decision would be taken on merits. He however submitted that, a perusal of the order passed by PSPCL dated 6th April 2018, would show that the representation of EMTA has been decided in a perfunctory manner without giving any valid reasons.

19. For appreciating the rival submissions, it will be necessary to refer to Section 11 of the said Act:-

> "**11. Discharge or adoption of third party contracts with prior allottees**.—(1) Notwithstanding anything contained in any other law for the time being in force, a successful bidder or allottee, as the case may be, in respect of Schedule I coal mines, may elect, to adopt and continue such contracts which may be existing with any of the prior allottees in relation to coal mining operations and the same shall constitute a novation for the residual term or residual performance of such contract:
>
> Provided that in such an event, the successful bidder or allottee or the prior allottee shall notify the nominated authority to include the vesting of any contracts adopted by the successful bidder.

> (2) In the event that a successful bidder or allottee elects not to adopt or continue with existing contracts which had been entered into by the prior allottees with third parties, in that case all such contracts which have not been adopted or continued shall cease to be enforceable against the successful bidder or allottee in relation to the Schedule I coal mine and the remedy of such contracting parties shall be against the prior allottees."

20. It will not be out of place to mention that the said Act came to be enacted in pursuance of the decision of this Court in the case of ***Manohar Lal Sharma-I,*** wherein this Court held that the allotment of Coal Blocks between 1993 and 2011 was arbitrary, illegal and violative of Article 14 of the Constitution. A plain reading of Section 11 of the said Act would reveal that it begins with a non-obstante clause. It provides that a successful bidder or allottee, as the case may be, in respect of Schedule I coal mines, may elect, to adopt and continue such contracts which may be existing with any of the prior allottees in relation to coal mining operations and the same shall constitute a novation for the residual term or residual performance of such contract.

21. The words "may elect" would clearly show that the legislature has given complete discretion to a successful bidder or allottee to elect. The words "may elect" would also mean a discretion not to elect. Only in the event, a successful bidder or allottee decides to adopt and continue such contract, which may be existing with any of the prior allottees in relation to coal mining operations, the same shall constitute a novation for residual term or residual performance of such contract. In the event, the successful allottee does not elect to adopt or continue such contract, there is no question of novation for residual term or residual performance of such contract. Perusal of sub-section (2) of Section 11 of the said Act would also make it clear that, it provides that in the event a successful bidder or allottee elects not to adopt or continue with the existing contract which had been entered into by the prior allottees with third parties, all such contracts which have not been adopted or continued shall cease to be enforceable against the successful bidder or allottee in relation to Schedule I coal mines and the remedy of such contracting parties shall be against the prior allottees. It

could thus be seen that on a plain reading of sub-sections (1) and (2) of Section 11 of the said Act, it is clear that the successful allottee or bidder has complete freedom to decide as to whether he desires to continue or adopt any such existing contracts in relation to coal mining operation. Only in the event he elects to adopt or continue with existing contracts, it shall constitute novation for residual term or residual performance of such contracts. In the event the successful bidder or allottee elects not to adopt or continue with the existing contracts, all such contracts shall cease to be enforceable against the successful bidder or allottee in relation to Schedule I coal mines. The only remedy of such contracting parties shall be against the prior allottees.

22. The principle of giving a plain and literal meaning to the words in a Statute is well recognized for ages. Though there are a number of judgments, we may gainfully refer to the judgment of this Court delivered by Das, J. as early as 1955 in the case of ***Jugalkishore Saraf v. Raw Cotton Company Limited***[5]***:-***

5 **[1955] 1 SCR 1369**

> "The cardinal rule of construction of statutes is to read the statute literally, that is by giving to the words used by the legislature their ordinary, natural and grammatical meaning. If, however, such a reading leads to absurdity and the words are susceptible of another meaning the Court may adopt the same. But if no such alternative construction is possible, the Court must adopt the ordinary rule of literal interpretation."

Though there are various authorities on the said subject, we do not wish to burden the present judgment by reproducing those. In our considered view, if the words used in Section 11 of the said Act are construed in plain and literal term, they do not lead to an absurdity and as such, the rule of plain and literal interpretation will have to be followed. We find that in case the interpretation as sought to be placed by Shri Rohatgi is to be accepted, it will do complete violence to the language of Section 11 of the said Act. If it is held that under Section 11 of the said Act, a prior contractor is entitled to continue if his performance is found to be satisfactory and if there is nothing against him, then it will be providing something in Section 11 of the said Act which the Statute has not provided for. It will also lead to making the words "may elect, to adopt and continue"

redundant and otiose. It is a settled principle of law that when, upon a plain and literal interpretation of the words used in a Statute, the legislative intent could be gathered, it is not permissible to add words to the Statute. Equally, such an interpretation which would make some terms used in a Statute otiose or meaningless, has to be avoided. We therefore find that if an interpretation as sought to be placed by EMTA is to be accepted, the same would be wholly contrary to the principle of literal interpretation. There are number of authorities in support of the said proposition. However, we refrain from referring to them in view of the following observations made by this Court in a recent judgment in the case of ***Ajit Mohan and Others v. Legislative Assembly National Capital Territory of Delhi and Others***[6]***:-***

> "**239**. .....In our view if the proposition of law is not doubted by the Court, it does not need a precedent unless asked for. If a question is raised about a legal proposition, the judgment must be relatable to that proposition - and not multiple judgments....."

6 **2021 SCC OnLine SC 456**

As such, the contention in that regard is found to be without merit.

23. We find that the High Court has also clearly understood the said legal position with regard to language used in Section 11 of the said Act. When considering Section 62 of the Contract Act, 1872 read with Section 11 of the said Act, it has observed that the parties to a contract may willingly agree to substitute a new contract or to rescind it or alter it. Having observed this, the High Court has, however, erred in observing that EMTA had a legitimate expectation. The High Court has observed thus:-

> "It could not therefore, have been left in the lurch particularly when the same mine was re-allocated to the Corporation suggestive of continuity. Indeed, the respondents were very well within their rights to reject the arrangement while granting a consideration under Section 11 if the performance of the petitioner was unsatisfactory or if there was any other factor which the Corporation found relevant enough to discard the arrangement altogether."

24. We find that the reasoning adopted by the High Court is totally wrong. Merely because the Coal Mine Block was allotted

to PSPCL, the same could not give any vested right in favour of EMTA, particularly in view of the language used in Section 11 of the said Act. The reasoning given by the High Court that PSPCL was within its right to reject the arrangement if the performance of EMTA was unsatisfactory or if there was any other factor which the Corporation found relevant enough to discard the arrangement altogether, in our view, are totally erroneous.

25. Having observed in earlier para that in view of Section 11 of the said Act read with Section 62 of the Contract Act, 1872, the parties to a contract may willingly agree to substitute a new contract or to rescind it or alter it, the High Court has erred in forcing PSPCL to continue with the contract with EMTA, though it was not willing to do so.

26. The issue with regard to legitimate expectation has been recently considered by a bench of this Court to which one of us (L. Nageswara Rao, J.) was a member. After considering various authorities on the issue, in the case of ***Kerala State***

Beverages (M and M) Corporation Limtied (supra), it was observed thus:-

> **"20.** The decision-makers' freedom to change the policy in public interest cannot be fettered by applying the principle of substantive legitimate expectation. [*Findlay*, *In re*, 1985 AC 318 : (1984) 3 WLR 1159 : (1984) 3 All ER 801 (HL)] So long as the Government does not act in an arbitrary or in an unreasonable manner, the change in policy does not call for interference by judicial review on the ground of a legitimate expectation of an individual or a group of individuals being defeated."

27. Shri Viswanathan has relied on the judgment of the Calcutta High Court in the case of ***EMTA Coal Limited and Another v. West Bengal Power Development Corporation***[7]***.*** Per contra, Shri Rohatgi has relied on the judgment of the Karnataka High Court in ***KPCL v. EMTA Coal Limited (supra).*** We do not desire to go into the issue of correctness of either of the judgments inasmuch as we are independently considering the issue and examining the correctness of the judgment impugned before us.

28. Insofar as the reliance placed by Shri Rohatgi on the letter of Union of India dated 9th January 2020 is concerned, there

---

7 **(2016) 2 Cal LJ 424**

can be no doubt that between Section 11 of the said Act and Clause 12.4.1 of the Allotment Agreement, Section 11 of the said Act would prevail. The question is, whether, Section 11 of the said Act mandates the successful allottee to continue with the existing contract. The answer, obviously, is no. In any case, the claim of EMTA is not rejected by PSPCL solely on the ground of Clause 12.4.1 of the Allotment Agreement.

29. That leaves us with the last submission of Shri Rohatgi. It is his submission that as per the statement made by PSPCL before the High Court in first round of litigation, it was to consider the representation of EMTA in a reasonable and just manner. He however submitted that the order dated 6th April 2018, was passed by PSPCL in a totally arbitrary and irrational manner.

30. The order passed by PSPCL dated 6th April 2018, is an order passed by an authority of the State in exercise of its executive functions. The scope of judicial review of administrative action has been well crystalised by this Court in

the judgment of ***Tata Cellular v. Union of India***[8]***.*** The judgment in the case of ***Tata Cellular (supra),*** has been subsequently followed in a number of judgments of this Court. This Court in the case of ***Rashmi Metaliks Limited and Another v. Kolkata Metropolitan Development Authority and Others***[9]***,*** has observed that the decision which holds the field with regard to issue of judicial review of an administrative action, is the judgment in the case of ***Tata Cellular (supra),*** by a three-Judge Bench. The Court has held that the rule of precedent mandates that this exposition of law be followed and applied by coordinate or co-equal Benches and certainly by all smaller Benches and subordinate courts. This Court has further deprecated the practice of referring to catena of judgments following the said pronouncement of law. We therefore refrain from referring to the subsequent judgment, and reproduce the relevant observations in ***Tata Cellular (supra),*** which read thus:-

---

8**(1994) 6 SCC 651**
9 **(2013) 10 SCC 95**

"70. It cannot be denied that the principles of judicial review would apply to the exercise of contractual powers by Government bodies in order to prevent arbitrariness or favouritism. However, it must be clearly stated that there are inherent limitations in exercise of that power of judicial review. *Government is the guardian of the finances of the State. It is expected to protect the financial interest of the State*. The right to refuse the lowest or any other tender is always available to the Government. But, the principles laid down in Article 14 of the Constitution have to be kept in view while accepting or refusing a tender. There can be no question of infringement of Article 14 if the Government tries to get the best person or the best quotation. The right to choose cannot be considered to be an arbitrary power. Of course, if the said power is exercised for any collateral purpose the exercise of that power will be struck down.

71. Judicial quest in administrative matters has been to find the right balance between the administrative discretion to decide matters whether contractual or political in nature or issues of social policy; thus they are not essentially justiciable and the need to remedy any unfairness. Such an unfairness is set right by judicial review.

72. Lord Scarman in *Nottinghamshire County Council* v. *Secretary of State for the Environment* [1986 AC 240, 251 : (1986) 1 All ER 199] proclaimed:

> " 'Judicial review' is a great weapon in the hands of the judges; but the judges must observe the constitutional limits set by our parliamentary system upon the exercise of this beneficial power."

Commenting upon this Michael Supperstone and James Goudie in their work *Judicial Review* (1992 Edn.) at p. 16 say:

> "If anyone were prompted to dismiss this sage warning as a mere obiter dictum from the most radical member of the higher judiciary of recent times, and therefore to be treated as an idiosyncratic aberration, it has received the endorsement of the Law Lords generally. The words of Lord Scarman were echoed by Lord Bridge of Harwich, speaking on behalf of the Board when reversing an interventionist decision of the New Zealand Court of Appeal in *Butcher* v. *Petrocorp Exploration Ltd.* 18-3-1991."

73. Observance of judicial restraint is currently the mood in England. The judicial power of review is exercised to rein in any unbridled executive functioning. The restraint has two contemporary manifestations. One is the ambit of judicial intervention; the other covers the scope of the *court's ability* to quash an administrative decision on its merits. These restraints bear the hallmarks of judicial control over administrative action.

74. Judicial review is concerned with reviewing not the merits of the decision in support of which the application for judicial review is made, but the decision-making process itself.

75. In *Chief Constable of the North Wales Police* v. *Evans* [(1982) 3 All ER 141, 154] Lord Brightman said:

> "Judicial review, as the words imply, is not an appeal from a decision, but a review of the manner in which the decision was made.

***

> Judicial review is concerned, not with the decision, but with the decision-making process. Unless that restriction on the power of the court is observed, the court will in my view, under the guise of preventing the abuse of power, be itself guilty of usurping power."

In the same case Lord Hailsham commented on the purpose of the remedy by way of judicial review under RSC, Ord. 53 in the following terms:

> "This remedy, vastly increased in extent, and rendered, over a long period in recent years, of infinitely more convenient access than that provided by the old prerogative writs and actions for a declaration, is intended to protect the individual against the abuse of power by a wide range of authorities, judicial, quasi-judicial, and, as would originally have been thought when I first practised at the Bar, administrative. It is not intended to take away from those authorities the powers and discretions properly vested in them by law and to substitute the courts as the bodies making the decisions. It is intended to see that the relevant authorities use their powers in a proper manner (p. 1160)."

In *R.* v. *Panel on Take-overs and Mergers, ex p Datafin plc* [(1987) 1 All ER 564] , Sir John Donaldson, M.R. commented:

> "An application for judicial review is not an appeal."

In *Lonrho plc* v. *Secretary of State for Trade and Industry* [(1989) 2 All ER 609], Lord Keith said:

> "Judicial review is a protection and not a weapon."

It is thus different from an appeal. When hearing an appeal the Court is concerned with the merits of the decision under appeal. In *Amin, Re* [*Amin* v. *Entry*

Clearance Officer, (1983) 2 All ER 864] , Lord Fraser observed that:

> "Judicial review is concerned not with the merits of a decision but with the manner in which the decision was made.... Judicial review is entirely different from an ordinary appeal. It is made effective by the court quashing the administrative decision without substituting its own decision, and is to be contrasted with an appeal where the appellate tribunal substitutes its own decision on the merits for that of the administrative officer."

76. In *R.* v. *Panel on Take-overs and Mergers, ex p in Guinness plc* [(1990) 1 QB 146 : (1989) 1 All ER 509] , Lord Donaldson, M.R. referred to the judicial review jurisdiction as being supervisory or 'longstop' jurisdiction. Unless that restriction on the power of the court is observed, the court will, under the guise of preventing the abuse of power, be itself guilty of usurping power.

77. The duty of the court is to confine itself to the question of legality. Its concern should be:

1. Whether a decision-making authority exceeded its powers?
2. Committed an error of law,
3. committed a breach of the rules of natural justice,
4. reached a decision which no reasonable tribunal would have reached or,
5. abused its powers.

Therefore, it is not for the court to determine whether a particular policy or particular decision taken in the fulfilment of that policy is fair. It is only concerned with the manner in which those decisions have been taken. The extent of the duty to act fairly will vary from case to case. Shortly put, the grounds upon which an administrative action is

subject to control by judicial review can be classified as under:

(*i*) Illegality : This means the decision-maker must understand correctly the law that regulates his decision-making power and must give effect to it.

(*ii*) Irrationality, namely, Wednesbury unreasonableness.

(*iii*) Procedural impropriety.

The above are only the broad grounds but it does not rule out addition of further grounds in course of time. As a matter of fact, in *R.* v. *Secretary of State for the Home Department, ex Brind* [(1991) 1 AC 696], Lord Diplock refers specifically to one development, namely, the possible recognition of the principle of proportionality. In all these cases the test to be adopted is that the court should, "consider whether something has gone wrong of a nature and degree which requires its intervention".

78. What is this charming principle of Wednesbury unreasonableness? Is it a magical formula? In *R.* v. *Askew* [(1768) 4 Burr 2186 : 98 ER 139] , Lord Mansfield considered the question whether mandamus should be granted against the College of Physicians. He expressed the relevant principles in two eloquent sentences. They gained greater value two centuries later:

"It is true, that the judgment and discretion of determining upon this skill, ability, learning and sufficiency to exercise and practise this profession is trusted to the College of Physicians and this Court will not take it from them, nor interrupt them in the due and proper exercise of it. But their conduct in the exercise of this trust thus committed to them ought to be fair, candid and unprejudiced; not

arbitrary, capricious, or biased; much less, warped by resentment, or personal dislike."

79. To quote again, Michael Supperstone and James Goudie; in their work *Judicial Review* (1992 Edn.) it is observed at pp. 119 to 121 as under:

"The assertion of a claim to examine the reasonableness been done by a public authority inevitably led to differences of judicial opinion as to the circumstances in which the court should intervene. These differences of opinion were resolved in two landmark cases which confined the circumstances for intervention to narrow limits. In *Kruse* v. *Johnson* [(1898) 2 QB 91 : (1895-9) All ER Rep 105] a specially constituted divisional court had to consider the validity of a bye-law made by a local authority. In the leading judgment of Lord Russell of Killowen, C.J., the approach to be adopted by the court was set out. Such bye-laws ought to be 'benevolently' interpreted, and credit ought to be given to those who have to administer them that they would be reasonably administered. They could be held invalid if unreasonable : Where for instance bye-laws were found to be partial and unequal in their operation as between different classes, if they were manifestly unjust, if they disclosed bad faith, or if they involved such oppressive or gratuitous interference with the rights of citizens as could find no justification in the minds of reasonable men. Lord Russell emphasised that a bye-law is not unreasonable just because particular judges might think it went further than was prudent or necessary or convenient.

In 1947 the Court of Appeal confirmed a similar approach for the review of executive discretion generally in *Associated Provincial Picture Houses Ltd.* v. *Wednesbury Corpn* [(1948) 1 KB 223 : (1947) 2 All ER 680] . This case was concerned with a complaint by the owners of a cinema in Wednesbury that it was unreasonable of the local authority to licence performances on Sunday only subject to a condition that 'no children under the age of 15 years shall be admitted to any entertainment whether accompanied by an adult or not'. In an extempore judgment, Lord Greene, M.R. drew attention to the fact that the word 'unreasonable' had often been used in a sense which comprehended different grounds of review. (At p. 229, where it was said that the dismissal of a teacher for having red hair (cited by Warrington, L.J. in *Short* v. *Poole Corpn.* [(1926) 1 Ch 66, 91 : 1925 All ER Rep 74] , as an example of a 'frivolous and foolish reason') was, in another sense, taking into consideration extraneous matters, and might be so unreasonable that it could almost be described as being done in bad faith; see also *R.* v. *Tower Hamlets London Borough Council, ex p Chetnik Developments Ltd.* [1988 AC 858, 873 : (1988) 2 WLR 654 : (1988) 1 All ER 961] (Chapter 4, p. 73, supra). He summarised the principles as follows:

> 'The Court is entitled to investigate the action of the local authority with a view to seeing whether or not they have taken into account matters which they ought not to have taken into account, or, conversely, have refused to take into account or neglected to take into account matter which they ought to take into account. Once that question is answered in favour of the local authority, it may still be possible to say that, although the local

> authority had kept within the four corners of the matters which they ought to consider, they have nevertheless come to a conclusion so unreasonable that no reasonable authority could ever have come to it. In such a case, again, I think the court can interfere. The power of the court to interfere in each case is not as an appellate authority to override a decision of the local authority, but as a judicial authority which is concerned, and concerned only, to see whether the local authority has contravened the law by acting in excess of the power which Parliament has confided in them.'

This summary by Lord Greene has been applied in countless subsequent cases.

> "The modern statement of the principle is found in a passage in the speech of Lord Diplock in *Council of Civil Service Unions* v. *Minister for Civil Service* [(1985) 1 AC 374 : (1984) 3 All ER 935 : (1984) 3 WLR 1174] :
>
> 'By "irrationality" I mean what can now be succinctly referred to as "Wednesbury unreasonableness". (*Associated Provincial Picture Houses Ltd.* v. *Wednesbury Corpn.* [(1948) 1 KB 223 : (1947) 2 All ER 680]) It applies to a decision which is so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at.' "

80. At this stage, *The Supreme Court Practice*, 1993, Vol. 1, pp. 849-850, may be quoted:

> "4. *Wednesbury principle.*— A decision of a public authority will be liable to be quashed or otherwise dealt with by an appropriate order in judicial review proceedings where the court

concludes that the decision is such that no authority properly directing itself on the relevant law and acting reasonably could have reached it. (*Associated Provincial Picture Houses Ltd.* v. *Wednesbury Corpn.* [(1948) 1 KB 223 : (1947) 2 All ER 680] , per Lord Greene, M.R.)"

81. Two other facets of irrationality may be mentioned.

(1) It is open to the court to review the decision-maker's evaluation of the facts. The court will intervene where the facts taken as a whole could not logically warrant the conclusion of the decision-maker. If the weight of facts pointing to one course of action is overwhelming, then a decision the other way, cannot be upheld. Thus, in *Emma Hotels Ltd.* v. *Secretary of State for Environment* [(1980) 41 P & CR 255] , the Secretary of State referred to a number of factors which led him to the conclusion that a non-resident's bar in a hotel was operated in such a way that the bar was not an incident of the hotel use for planning purposes, but constituted a separate use. The Divisional Court analysed the factors which led the Secretary of State to that conclusion and, having done so, set it aside. Donaldson, L.J. said that he could not see on what basis the Secretary of State had reached his conclusion.

(2) A decision would be regarded as unreasonable if it is impartial and unequal in its operation as between different classes. On this basis in *R.* v. *Barnet London Borough Council, ex p Johnson* [(1989) 88 LGR 73] the condition imposed by a local authority prohibiting participation by those affiliated

> with political parties at events to be held in the authority's parks was struck down."

31. It could thus be seen that while exercising powers of judicial review, the Court is not concerned with the ultimate decision but the decision-making process. The limited areas in which the court can enquire are as to whether a decision-making authority has exceeded its powers, committed an error of law or committed breach of principle of natural justice. It can examine as to whether an authority has reached a decision which no reasonable Tribunal would have reached or has abused its powers. It is not for the court to determine whether a particular policy or a particular decision taken in the fulfilment of that policy is fair. The court will examine as to whether the decision of an authority is vitiated by illegality, irrationality or procedural impropriety. While examining the question of irrationality, the court will be guided by the principle of Wednesbury. While applying the Wednesbury principle, the court will examine as to whether the decision of an authority is

such that no authority properly directing itself on the relevant law and acting reasonably could have reached it.

32. Applying the aforesaid principle, it can clearly be seen that the decision of PSPCL dated 6th April 2018, cannot be questioned on the ground of illegality or procedural impropriety. The decision is taken in accordance with Section 11 of the said Act and after following the principle of Natural Justice. The limited area that would be available for attack is as to whether the decision is hit by the Wednesbury principle. Can it be said that the decision taken by the authority is such that no reasonable person would have taken it? No doubt, that the authority has also relied on Clause 12.4.1 of the Allotment Agreement, however, that is not the only ground on which the representation of EMTA is rejected. No doubt, that while considering EMTA's representation, PSPCL has referred to Clause 12.4.1 of the Allotment Agreement which requires the coal mines to be developed through contractors who were selected through a competitive bidding process, however, that is not the only ground on which the representation of EMTA is

rejected. It will be relevant to refer to the following observations in the order passed by PSPCL dated 6th April 2018:-

> "Moreover, there is no reason why competitive bidding process for the purposes of eliciting the best operator be not preferred. Needless to mention that as the composition with respect to capital/revenue investment is altogether different, hence the bidding parameters have entirely changed."

33. It could thus be seen that PSPCL has decided to go in for competitive bidding process for the purpose of eliciting the best operator. It has further noticed that the composition with respect to capital/revenue investment is altogether different. Hence, the bidding parameters have entirely changed. It has further referred to the decision of this Court wherein it has been held that the allotment should be through competitive bidding process. We ask a question to ourselves, as to whether the said reasoning can be said to be irrational or arbitrary. A policy decision to get the best operator at the best price, cannot be said to be a decision which no reasonable person would take in his affairs. In that view of the matter, the attack on the order/letter dated 6th April 2018, is without merit.

34. Insofar as the contention of Shri Rohatgi with regard to the huge investment being made by EMTA is concerned, the said Act itself provides remedy for seeking compensation apart from the other remedies that are available in law. In that view of the matter, we are not impressed with the arguments advanced in that behalf.

35. In the result, the impugned judgment and order passed by the High Court of Punjab and Haryana is unsustainable in law. The appeals are therefore allowed and the judgment and order passed by the High Court of Punjab and Haryana dated 25th January 2019, is quashed and set aside. Pending I.A (s), if any, shall stand disposed of accordingly.

.....J.
[L. NAGESWARA RAO]

.....J.
[B.R. GAVAI]

.....J.
[B.V. NAGARATHNA]

NEW DELHI;
SEPTEMBER 21, 2021.