CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

ORIGINAL APPLICATION NO.170/00583/2019

DATED THIS THE 24TH DAY OF JANUARY, 2020

**HON'BLE DR.K.B.SURESH, MEMBER (J)**

**HON'BLE SHRI C V SANKAR, MEMBER (A)**

Dr. Bheemaraya D
S/o Hanumanthappa Devaramani
Aged about 34 years,
Working as IMO-Gr I,
ESIC Hospital,
Rajajinagar, Bangalore
No. 156/A, 1st Main, 2nd Cross,
Manjunath Nagar, Bangalore 10 .....Applicant

(By Advocate Ms. Akkamahadevi Hiremath)

Vs.

1. Union of India,
Ministry of Labour & Employment,
Government of India, Nirmal Bhavan,
New Delhi 110 011,
Represented by its Secretary

2. Employees State Insurance Corporation,
Hqrs. Office, Panchadeep Bhavan,
C.I.G. Marg, New Delhi 110 002,
Represented by its Director General

3. Employees State Insurance Corporation,
Hqrs. Office, Panchadeep Bhavan,
C.I.G. Marg, New Delhi 110 002,
Represented by its Deputy Director (Medical Administration)

4. Employees State Insurance Corporation,
Hqrs. Office, Panchadeep Bhavan,
C.I.G. Marg, New Delhi 110 002,
Represented by its Assistant Director (Medical Administration)

5. The Employees State Insurance Corporation Model Hospital
& PGIMSR, Rajajinagar,
Bangalore 560 010
Represented by its Dean …..Respondents

(By Shri Vishnu Bhat, Counsel for the Respondents)

ORDER

DR. K.B. SURESH, MEMBER (J):

***The principle "cessante ratione cessat ipsa lex" seems to be relevant here.***

2. To quote the Hon'ble Apex Court in **State of Punjab Vs. Devans Modern Breweries Ltd**, reported in (2004) 11 SCC Page 26 "***it is not easy to It is not easy to detect when such situations occur, for as long as the traditional theory prevails that judges never make law, but only declare it, two situations need to be carefully distinguished. One is where a case is rejected as being no longer law on the ground that it is now thought never to have represented the law; the other is where a case, which is acknowledged to have been the law at the time, has ceased to have that character owing to altered circumstances. (See Dias Jurisprudence, 5th Edition, page 146-147)***

***It is the latter situation which is often of relevance. With changes that are bound to occur in an evolving society, the judiciary must also keep abreast of these changes in order that the law is considered to be good law. This is extremely pertinent especially in the current era of globalization when the entire philosophy of society, on the economic front, is undergoing vast changes.”***

**3. The primary situation to be considered in this respect is that the emergence and genesis of the medical colleges under the ESI horizon. The ESI was never or ever thought requisite to commence medical education. It is an organization primarily concerned with insured people and therefore medical welfare. Medical education, on the other hand, is a different cup of tea. However, they now admit that a wrong policy decision might have been taken by them to commence medical education namely at Bangalore and Gulbarga in Karnataka and in the West Bengal. Luckily, this new emergence stopped there and did not go further. Since the requisition for teaching in medicine and treatment in medicine are different, it was found difficult to harmonize both as the parameters required were different, quality of staff required to pertain to each of the requirement was different and they say that they have now requested the concerned state government to take over these**

**institutions as medical education has been recognized all over as a requisite extension of public interest by the governments concerned. Therefore, this issue has to be seen in the light of the emerging scenario of the ESI Corporation having decided, if possible, to reduce its burden of medical education and hand it over to the Karnataka government.**

4. By common agreement, OA No. 196/2019 was agreed to be the leading case as all other matters are similar or almost similar in nature and the relief claimed for. Everything has a basis on the rationalization order and the rationalization circular which is issued by the respondents.

5. To elucidate further, applicant was appointed on 06.07.2009 as an Insurance Medical Officer. On 22.07.2016 she was confirmed as an IMO with effect from 06.07.2011. In the meanwhile, she had completed her PG course after obtaining permission through an adjudicatory process.

6. The applicants came to know that a rationalization circular bearing No. A-12/25/6/2012-Med.VI (Policy) (Part-II)-Col.1 dated 21.01.2019 had been issued by the 3$^{rd}$ respondent and sent to Respondent No. 5. They would say that this policy is based on fallacious grounds as it sought to reduce the strength of the doctors working in the 5$^{th}$ respondent hospital and the rationalization order dated 22.02.2019 by declaring them surplus was challenged. The applicants would say that the irrationality of this order and policy is clear from the fact that notwithstanding an increase in

the growth of insured persons being attached to the Respondent No. 5 hospital from 4 lakhs and their dependant families in 2009 to 11 lakhs and their dependant families in 2018, the actual doctors strength is sought to be reduced from 263 to 198 as against the required norms of ESI which pegged it at 358.

7. The respondents challenges the factual correctness of these figures and would say that the details of their requirements both under ESI norms and under the MCI norms had been given by them in the table attached and these have been taken care of adequately as the daily arrival of patients are roughly about 2,000 per day which are handled by a number of doctors as a doctor is expected to examine 60 patients in a day.

8. At this point, the learned counsel for the applicants submits that they are not actually on the rationalization principles but the difference between the rationalization order issued earlier and the rationalization circular which came thereafter. They would say that there is a significant difference in the number of figures shown as apparently the ESI Corporation has canvassed the view of the MCI in their guidelines and directions and fixed the pattern accordingly but according to the applicants, since the ESIC has their own norms, the new norms prescribed by the MCI may not be applicable per se. They would say that teaching is a different function which may not be applicable to insurance

hospital. They point out that the purpose of declaring all these doctors as surplus might be to increase the number of referrals to other private hospitals to benefit them. The respondents submits that in some cases referral had to be resorted to as such facilities may not be available in the Rajajinagar hospital. They would say that some among the applicants themselves had referred such persons to external care depending on their condition when it is found that the facility for treatment of such persons did not exist in their institution. They would say that, other than that, no other patient is referred to any other hospital.

9. The applicant would say that the respondents have not followed the Annexure-A6 circular whereby senior residents who were to be employed were to be treated in addition to the GDMOs/IMOs, such as the applicants, once they join service. The applicants most vehemently submit that the respondents have illogically and illegally treated two Post Graduate students as being equivalent to one IMO ignoring the fact that students have no responsibility, no legal status vis-à-vis the insured persons and artificially increase the professional medical staff actually available in the hospital. They would say that Post Graduates are learners and are students only and are not authorized to give medical services to the insured persons as the same falls under the purview of insurance. They would say that this would totally dilute the quality of services to the IPs. They would also say that IMOs were recruited on the

basis of their knowledge of Kannada and were to be utilized for Karnataka, besides the factum of a language barrier in case they are transferred outside Karnataka for a medical profession which needs proper diagnosis. They would also say that they had taken Post Graduate seats from Karnataka government quota and should therefore serve the state. The respondents in answer would say that in fact by an interim order of the Hon'ble High Court of Karnataka applicants were able to secure forwarding of their applications and, once their applications were forwarded, the Corporation had no other go other than to agree to give them permission to pursue Post Graduate studies. **But then the respondents say that some of the applicants have chosen that they may be designated as Assistant Professors and above and be held eligible for NFSG and other benefits but they would say that one feature of such posting benefits are that they become liable for an all-India transferability as local posting is available only upto the level of CMOs.** It appears that the whole problem arose because a change was made in the ESI regulations to promote medical education as well. This was clearly not the mandate of insurance for insured people and therefore the requirements of an insurance hospital and the requirements of a teaching hospital are different. In order to harmonize these two features, the ESI Corporation had to take certain steps which were mandated by the circumstance at that point of time.

Therefore it seems that conflicting orders were issued by the Corporation.

10. But in spite of all these, it appears, on a consideration of crux of the problem, that **what the applicants fear is that since they are being now given the additional benefits which come along with all-India transferability, there is a possibility that the institution may transfer them to other places.** It is correct that very voluminous documentation is brought in by both the parties but the fact remains that this is **basically a challenge against transfer or possible transfer.**

11. Therefore, what about the allegation of the applicants that inadequate number of doctors will be available to service the patients. The applicant claims that 11 lakhs insured people in an year depends on the said hospital. The respondents have challenged the factual correctness of these. But they would say that a per day inflow of 2,000 patients is accepted in the hospital. That translate to 7,30,000. So, if both figures are taken and a mean arrived at also the ESI would say that by rationalization both these teaching and outpatient departments were being harmonized. The methodology of harmonizing they have adopted is to utilize the services of the PG students also as their curriculum indicates that their classroom concern is very less whereas the

component of physical presence in the hospital is much much more. Therefore we have examined this matter with the help of CGHS doctors who also affirm that PG students are routinely engaged in all the hospitals and they are also paid the same wages as a normal doctor. **Thus it appears that the stand of the ESI that some sort of a utilization of PG students in the hospital is regular and may not be open to challenge.** The ground taken by the applicants that the PG students cannot be equated with Insurance Medical Officer seems to be incorrect as a PG student is also an MBBS graduate and therefore could be seen as equivalent to any other Insurance Medical Officer. Therefore, the adjustment of two Post Graduate students into one slot of Insurance Medical Officer may not be held to be that improper, is the view of the respondent corporation.

12. There cannot be any doubt that the policy factum of any governmental authority is to be viewed as correct unless acute malafides are brought out. The respondents have stated that they are in discussion with the State Government concerned to take over the medical college as they now find that they have ventured into an unwelcome territory, it is not part of their function to have a medical college at all, therefore, they are reluctant to accept more people into their fold with additional responsibility which it entails. It seems to be a rational and logical approach. So, it cannot be said that a lack of vision has marred the

rationalization policy and the circular. **It is to be noted in this concern that it is the general public interest that matters in assessment of policy and its analysis.** The benefit to an employee in that institution which is there to provide benefit to the employees who are insured persons must always be in favour of the insured persons than the employees. The right of the employees in this connection is only for their reasonable perquisites like wages and other circumstances which are normally resident in it. **If the employees have to decide on the policy of the institution then they substitute the management which may not be called for under the relevant statutes as well as the policy of the Constitution of India.**

13. In **State of Madhya Pradesh and Another vs. S.S. Kaurav and Others**, **1995 (1) S.C. Services Law Judgements 350**, Hon'ble Supreme Court held:

> *"The court or Tribunals are not appellate forums to decide on transfer of officers on administrative grounds. The wheels of administration should be allowed to run smoothly and the courts or Tribunals are not expected to interdict the working of the administration system by transferring the officers to proper places. It is for the administration to take appropriate decision and such decision shall stand unless they are vitiated either by malafides or by extraneous consideration without factual background. foundation."*

14. Hon'ble Apex Court in the case of **National Hydroelectric Power Corporation Ltd. vs. Shri Bhagwanand Shiv Prakash**, **2001 (2) S.C Services Law Judgements 396**, held :

> *"No Government servant or employee of Public Undertaking has any right to be posted forever at any one particular place. Transfer of an employee appointed against a transferrable post is not only an incident of an order of transfer unless such an order is shown to be an outcome of malafide exercise of power or stated to be in violation of statutory provisions prohibiting any such transfer. In fact High Court was not right in quashing the transfer order on the ground that it is against the seniority rules."*

15. In the case of **Rajendra Singh and Others vs. State of Uttar Pradesh and Others**, **(2010) 1 SCC (L&S) 503**, Hon'ble Apex Court relying on the earlier judgement in **Shilpi Bose vs. State of Bihar**, 1991 Supp (2) SCC 659, held:

> *" In our opinion, the courts should not interfere with a transfer order which is made in public interest and for administrative reasons unless the transfer orders are made in violation of any mandatory statutory rule or on the ground of mala fide. A government servant holding a transferable post has no vested right to remain posted at one place or the other, he is liable to be transferred from one place to the other. Transfer orders issued by the competent authority do not violate any of his legal rights. Even if a transfer order is passed in violation of executive instructions or orders, the courts ordinarily should not interfere with the order instead affected party should approach the higher authorities in the department. If the courts continue to interfere with day-to- day transfer orders issued by the government and its subordinate authorities, there will be complete chaos in the administration which would not be conducive to public interest. The High Court overlooked these aspects in interfering with the transfer orders."*

16. In Shri **N.K. Singh vs. Union of India**, (1994) 6 SCC 98, the Hon’ble Apex Court stated that :

> *“6. …. The scope of judicial review in matters of transfer of a government servant to an equivalent post without any adverse consequence on the service or career prospects is very limited being confined only to the grounds of malafides and violation of any specific provision…”*

17. In **Government of Andhra Pradesh vs. G. Venkata Ratnam**, (2008) 2 SCC (L&S) 900, Hon’ble Apex Court held:

> *“The Hon'ble High Court was guided by its own notion of what would be in the Department's overall interest, and where respondent would be more suited. This was not accepted by the Hon'ble Supreme Court. It held that respondents could not be allowed to choose his own place of posting. The Hon'ble Supreme Court allowing the appeal held that "the High Court judgment is wholly untenable and rather unusual and strange. The judgment was apparently delivered in anger which might have been caused by the Government Pleader or the Director (the second respondent before the High Court). The Court not only lost judicial poise and restraint but also arrived at completely unfounded conclusions. The High court seems to have been completely taken in by ipse dixit of the respondent and his tall claims about his own ability, and virtually allowed him to choose his own place of posting. It is surprising that High Court castigated the respondent's transfer as lacking bona fides on flimsy and fanciful pleas. The High Court's finding is unfounded and untenable. The legal position regarding interference by court in the matter of transfer is too well established. The respondent's transfer neither suffers from violation of any statutory rules nor can it be described as mala fide”.*

18. Therefore, two factors emerge for consideration. It has now been settled that the policy of governance must have pre-eminence unless it is found to be malafide, illegal or arbitrary. The ESI Corporation would say that the pre-absorption scenario was applicable only up to the rank of

Chief Medical Officer, beyond that and apart from that, if a person aspires for and is eligible and receives a benefit, then he or she is liable for all-India transfer as the additional qualification required and acquired by the applicants have been the result of the funding advanced by the respondents. This, according to us, seems to be correct. Therefore, we hold as follows:

1) All those persons who have received special benefits in terms of career advancement must therefore hold themselves to be eligible and required to be transferred on an all-India basis.
2) All those persons who are just CMOs or below will be considered by the respondents as eligible for continued employment at their places where they were absorbed or within the state as the case may be, but the all-India transfer liability will not rest on their shoulders until they are granted such prospects.

19. Therefore we hold that the rationalization order and the circular and the succeeding consequences, even though slightly at variance with each other, had been explained by the respondents as having been issued in the interest of institution as a harmony had to be achieved between the MCI norms and the ESI norms and the higher value had been adopted in each case. But when an accumulation is made among all medical professional, it has provided for a better benefit to the insured persons.

20. We also hold that the ground put up by the applicants that this rationalization policy is meant for benefitting the private hospitals around are not acceptable as they are devoid of any specificity particularly in view of the fact that most of the applicants themselves were absent during a large swathe of their service as they were undergoing Post Graduate education and the contention of the respondents which stands un-rebutted that only those patients who could not be treated within the capability of the institution alone were referred at the cost of the institute. It is also stipulated that many among the applicants also have recommended such referrals.

21. We also hold that there seems to be nothing illegal or arbitrary either in the rationalization order or in the circular but we see it as some sort of a last ditch attempt to reconcile the two values of a teaching institution and a treating institution together particularly in the light of the decision they had taken to let go of this institution into the hands of the Karnataka government.

22. The Hon'ble Apex Court had considered the rights of the employees to question the management policies of their employer in **All India ITDC Workers Union & Others Vs. ITDC & Others** in Transfer Case (Civil) 73 of 2002 dated 31.10.2006 which we quote:

> *"Supreme Court of India*
>
> *CASE NO.: Transfer Case (civil) 73 of 2002*

*PETITIONER: All India ITDC Workers Union & Ors.*

*RESPONDENT: ITDC & Ors.*

*DATE OF JUDGMENT: 31/10/2006*

*BENCH: Dr. AR. Lakshmanan & A.K. Mathur*

*JUDGMENT:*

*Dr. AR. Lakshmanan, J.*

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

*The Government of India issued a press communiqui in the month of January, 2001 proposing to sell Hotel Agra Ashok for a sum of Rs.2.36 crores which is wholly inadequate and amounts to a totally distress sale. The Government has devised a scheme of creating an artificial company i.e. Hotel Yamuna View Private Limited 4th respondent herein and the said company has been incorporated only for the purpose of selling the said hotel after the hotel is transferred to it. The employees have come to understand through press reports that the hotel is being sold out to one M/s Mohan Singh respondent No.5 and his bid was accepted by the Central Government in pursuance to the advertisement. It is further submitted that the entire Hotel Agra Ashok is being sold out only merely for a sum of Rs.3.90 crores whereas the valuation by the Agra Cantonment Board in the year 1999 of its land and buildings alone is more than Rs.5.58 crores. According to the employees, its market price at present cannot be less than Rs.20 crores. It is the contention of the employees that because of the change of ownership of the Hotel, the service conditions of the employees should not be changed by the private person and that the existing service conditions as originally agreed between the various employees of the Hotel and the new* *purchaser must be maintained. The prayer in the writ petition reads thus:*

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

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

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

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

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

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

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

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

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

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

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

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

*The above writ petition was also transferred to this Court.*

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

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

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

*Two rejoinders were filed on behalf of the workers' union to the reply filed by respondent Nos. 3, 4 and 5. We heard Mr. M.L. Bhat, learned senior counsel assisted by Ms. Purnima Bhat, learned counsel in T.C. No. 73 of 2002 and Mr. Jayant Nath, learned senior counsel assisted by Mr. Suresh Tripathy, learned counsel in T.C. No. 76 of 2002 for the respective petitioners and Mr. Rakesh Dwivedi, learned senior counsel, Mr. Ashok Bhan and Mr. Gaurav Agarwal and Mr. Praveen Jain, learned counsel for the respective respondents.*

*We have carefully perused the averments made in the affidavit and the reply filed by the respective respondents and the rejoinder by the petitioners. Our attention was also drawn to the scheme of arrangement (de-merger) between ITDC Ltd. and Hotel Yamuna View Private Limited, report of the Disinvestment Commission and other relevant records and annexures filed in both the writ petitions. Mr. M.L. Bhat, learned senior counsel reiterated the submissions in the Court and Mr. Jayant Nath, learned senior counsel reiterated the contentions raised in the writ petition at the time of hearing. After inviting our attention to the prayer in the respective writ petition, they also invited our attention to the order passed on 13.12.2001 by the High Court directing maintenance of status quo regarding service conditions of Class III and IV employees of Hotel Agra Ashok. The said interim order was extended up to the next date of hearing. Our attention was also drawn to the share purchase agreement clause 9.4 in Article 9 which reads thus: 9.4 The Purchaser will cause the Company to continue to employ all the regular employees of the Unit which have been transferred to the Company on the terms and conditions that shall not be inferior to the terms and conditions as applicable to the regular employees on the date of transfer of the Unit including with respect to the voluntary retirement scheme applicable to the Company as per the guidelines of the Department of Public Enterprises, if any, and terms set out in agreements entered into by ITDC in relation to such regular employees with staff/workers unions/associations. The Purchaser further covenants that it shall cause the Company to ensure that:*

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

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

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

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

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

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

*Our attention was also drawn to the order dated 01.02.2002 and, in particular, last para of page 3 of the said order referring to the status quo order passed by the High Court regarding service conditions of Class III and IV employees of the Hotel. Our attention was also invited to clause 3.3(d) and 3.5.*

*Learned senior counsel submitted that the employees consent is necessary before transfer and cited Jawaharlal Nehru University vs. Dr. K.S. Jawatkar and Others, 1989 Supp (1) SCC 679. In this case, the Jawaharlal Nehru University, under Section 5(2) of the Jawaharlal Nehru University Act, 1966, established a Centre of Post-graduate studies at Imphal and appointed the respondent as Assistant Professor on a regular basis and also confirmed him w.e.f. 29.08.1979. In 1981, the University decided to transfer the Centre to the Manipur University. Under Section 1(4) of the Manipur University Act, 1980, the Governor of Manipur made an order which provided for transfer of the members of the faculties of the Centre to the Manipur University. The question was* *whether the transfer of the Centre resulted in transfer of the respondent's service to the Manipur University. Answering in negative and rejecting the Jawaharlal Nehru University's appeal, this Court held:*

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

*The above judgment is distinguishable on facts and on law. The Jawaharlal Nehru University case (supra) would indicate that, in that case there was a purported transfer of the employee from Jawaharlal Nehru University to the Manipur University without his consent. Admittedly the JNU did not exercise any control over Manipur University. In the instant case, the transfer was from ITDC Ltd. to respondent No.3 Company, the share-holding pattern of the two companies were exactly the same. Therefore, it did not make any difference to the employees, especially, when the scheme of de-merger itself provide that the employee will continue in service of the respondent No.3 with full benefits including continuity in service. The provisions of the Companies Act, 1956 were not involved in the JNU's case. Further the two Universities were totally unconnected entities hence the ratio of that judgment, in our opinion, is not applicable to the facts in hand. Even in the judgment of this Court, in JNU in para 8 it has been observed that at worst this would not impinge upon the validity of the de-merger scheme. The effect of that would be that the employee would be deemed to have retrenched and would be entitled to compensation as such in accordance with law. In the instant case, the employees never claimed that they may be considered as retrenched. Even if it is the claim of the petitioners that they have been retrenched, the writ petition is not the appropriate proceedings and the petitioners were required to institute appropriate proceedings as per the industrial/labour laws.*

*Mr. M.L.Bhat, learned senior counsel also cited Nokes vs. Doncaster Amalgamated Collieries Ltd. (1941) 11 Company Cases 83 House of Lords for the proposition that a free citizen in exercise of his freedom is entitled to chose the employer whom he promises to serve, so that the right to his services cannot be transferred from one employer to another without his consent. The Court was considering the whole question, however, as to whether Section 154 of the Companies Act, 1929 provides a statutory exception to that principle. The Lord Chancellor* *came to the conclusion that the contracts of personal service are not automatically transferred by an order made under Section 154. The House of Lords stated as under:*

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

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

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

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

*We have given our thoughtful consideration to the rival submissions made by the respective counsel appearing for the respective parties. In our opinion, the present writ petitions filed by the employees merits to be dismissed. Since disinvestment was a policy decision of the Government of India. This Court also has held that the said policy decision should be least interfered in judicial review and that the Government employees have no absolute right under Article 14, 21 and 311 of the Constitution of India and that the Government can abolish the post itself. In the present case, the petitioners are not government servants and are merely employees of a public sector undertaking. This apart, the service conditions of the petitioners are being protected under the new management on the disinvestment of the*

*Hotel and the fact that other hotels are also in an advanced stage of disinvestment in pursuance of the policy decision taken by the Government of India for disinvestment of the hotel units. We see no reason to interfere with the aforesaid decision. In case ultimately the petitioners are aggrieved by any aspect of terms of reference and formalization of agreement and completion of disinvestment it is always open to the petitioners to approach the courts for redressal of their grievances. We have already extracted Clause 9.4 of the share purchase agreement dated 07.02.2002 in paragraphs supra. In our view, the decision of the Government of India to divest the property was a policy decision which was not in any manner contrary to the law of the land. Similar policy decision of the Government of India to disinvest 51% of this share holding in Bharat Aluminium Company Limited referred to as Balco was challenged before this Court and this Court has dealt with the scope of the judicial review in such economic policy decisions. This Court rejected the contention that the sale of the shares of the Government of India in Balco was legal and the employees of Balco have ceased to be employees of a government company. However, it is stated that the service conditions of the employees were not affected by the transfer of the shares.*

*We have also carefully perused the scheme. It is evident from the scheme itself that all the employees were to be retained as stipulated in the transfer documents on the same terms and conditions of service for 1 year and they were entitled for payment of gratuity and provident fund as per the then existing scheme. The terms and conditions of service applicable to the employees was not in any way be less favourable than those applicable to them immediately on the date thereof. The relevant provisions of the transfer documents relating to disinvestment of Hotel Agra Ashok are being reproduced herein below:*

*Clause 3.2 (d) of the Scheme of Arrangement reads as follows:*

*"with effect from the appointed date, all employees of the Transferor engaged in the Transferred Undertaking shall become the employees of the Transferee on the terms and conditions on which they are engaged as on the Appointed Date by the Transferor without any interruption of services as a result of this Scheme. The Transferee agrees that the services of all such employees with the Transferred Undertaking upto the Appointed Date shall be taken into account for purposes of all retirement benefits to which they may be eligible in the Transferor on the Appointed Date."*

*In view of the above, we are of the opinion that the apprehension of the employees is baseless and is liable to be rejected.*

*It is also pertinent to notice that ITDC has not participated in the disinvestment process as the same was carried out by the Ministry of*

*Disinvestment, Government of India. The safeguards regarding the service conditions of the employees have been duly provided in the transfer document i.e. de-merger scheme and share purchase agreement. This Court also in Balco Employees' Union (Regd.) vs. Union of India and Others, (2002) 2 SCC 333 held that the employees of the company registered under the Indian Companies Act do not have any vested right to continue to enjoy the status of the employee of an instrumentality of the State. In the instant case, with the intention to promote the scheme of disinvestment, the Government issued an advertisement to outright sale of 6 hotels and long term lease for 2 hotels. The property of respondent No.1 was demerged in the name of the new company with the approval of the Company Law Board. We have perused the order approving the scheme of arrangement as annexed and marked as Annexure-C(a)/2. All the employees after the creation of the new company were shifted to the new company which was also a subsidiary company of ITDC. Respondent No.1 invited tenders for sale of the Hotel. The offer made by Respondent Nos. 4 and 5 was accepted by respondent No.1 as successful bidder and accordingly, the shares of Hotel Yamuna View Private Limited were transferred under share purchase agreement dated 07.02.2002. It is pertinent to notice that at the time of inviting bid, no such liabilities of VRS to the employees were shown against Hotel Agra Ashok. All the liabilities were mentioned in the balance sheet of the company including property tax and water tax to be deposited with the Cantonment Board. Respondent Nos. 4 and 5 got the shares of Hotel Yamuna Private Limited transferred in their favour while share transfer agreement dated 07.02.2002 wherein certain conditions were put in by respondent No.1 keeping in mind the order of the High Court for maintaining the status quo of the class III and IV employees. Pursuant to the agreement, the Management of the Hotel was transferred to respondent No.4.*

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

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

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

*As already noticed, the Government of India constituted the Disinvestment Commission and accepted the recommendation of the said Commission. A decision was taken by Inter-Ministerial Group and at the level of the Cabinet Committee on Disinvestment to divest each property individually rather than altogether or in groups. It is also beneficial for us to refer to the judgment of Balco Employees' Union*

*(Regd.) vs. Union of India and Others (supra) by which this Court has dealt with the scope of the judicial review in such economic policy decisions. This Court held as follows:-*

*34. Applying the analogy, just as the Court does not sit over the policy of the Parliament in enacting the law, similarly, it is not for this Court to examine whether the policy of this disinvestment is desirable or not*

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

*92. In a democracy it is the prerogative of each elected Government to follow it's 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 polices and consider whether a wiser or better one can be evolved. For testing the correctness of a policy, the appropriate forum is Parliament and not the Courts*

*98. In the case of a policy decision on economic matters, the courts should be very circumspect in conducting any enquiry or investigation and must be most reluctant to impugn the judgment of the experts who may have arrived at a conclusion unless the Court is satisfied that there is illegality in the decision itself."*

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

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

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

*The very same contention raised by the employees in the instant case was raised by the employees of Balco when the Government of India disinvested its majority shares in Balco. This Court rejected the contention that the sale of the shares of the Government of India in Balco was legal as the employees of Balco have ceased to be employees of a Government Company. It was, inter alia, observed as follows:- "47. Even though the workers may have interest in the manner in which the Company is conducting its business, inasmuch as its policy decision may have an impact on the workers rights, nevertheless it is an incidence of service for an employee to accept a decision of the employer which has been honestly taken and which is not contrary to law. Even a government servant, having the protection of not only Articles 14 and 16 of the Constitution but also of Article 311, has no absolute right to remain in service. For example, apart from cases of disciplinary action, the services of government servants can be terminated if posts are abolished. If such employee cannot make a grievance based on part III of the Constitution or Article 311 then it cannot stand to reason that like the petitioners, non-government employees working in a company which by reason of judicial pronouncement may be regarded as a State for the purpose of part III of the Constitution, can claim a superior or a better right than a government servant and impugn it's change of status..*

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

*49. The Government could have run the industry departmentally or in any other form. When it chooses to run an industry by forming a company and it becomes its shareholder then under the provisions of the Companies Act as a shareholder, it would have a right to transfer its shares. When persons seek and get employment with such a company registered under the Companies Act, it must be presumed that they accept the right of the directors and the shareholders to conduct the affairs of the company in accordance with law and at the same time they can exercise the right to sell their shares."*

*We may also usefully refer to the decision of the Madras High Court in the case of (Southern Structurals Staff Union vs. Southern Structurals Ltd.) (1994) 81 Comp. Cases 389 (Mad) wherein the Madras High Court held as follows:- "The employees have no vested right in the employer company continuing to be a government company or 'other authority' for the purpose of Article 12 of the Constitution of India. The status so conferred on the employees does not prevent the Government from disinvesting; nor does it make the consent of the employees a necessary precondition for disinvestment."*

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

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

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

*change in the conditions thereto can only be made in accordance with law."*

*Further as per the Demerger Scheme, all the liabilities relating to the transferred undertaking upto the date of transfer were taken over and were to be discharged by the transferee. Thus, the transferee is liable to pay all the liabilities and dues (including gratuity) to the employees on the same terms and conditions of service which were applicable to the employees in the hotel, including the benefits related to the tenure of service in the hotel upto the date of transfer. As far as the provident fund of the employees is concerned, the PF accounts of the employees of the hotel in ITDC PF Trust were transferred by the trust to the new accounts of the concerned employees in the Regional Provident Fund Commissioner after the completion of formalities under the provisions of Employees Provident Fund and Miscellaneous Provisions Act,1952. The demerger of the hotel union from ITDC was a considered decision taken by the Cabinet Committee on Disinvestment and had the approval of the Department of Company Affairs in terms of the Companies Act, 1956. The reasons for creating a separate companies has been given in the reply affidavit and the contents of the same are reiterated in reply.*

*By order made by the Department of Company Affairs on 04.10.2001, ITDC was directed to convene a meeting of the creditors of Hotel Agra Ashok for the purpose of considering and if thought fit approving with or without modifications, the scheme and the said order also appointed Mr. S.B.Mathur D- 11 (Retd.) Department of Company Affairs as Chairman for the meeting who was also to report the result of the meeting to the Department of Company Affairs on the conclusion of the creditors meeting. A meeting was held on 30.10.2001 and the Chairman of the said meeting had directly reported the result of the meeting to the Department of Company Affairs. It may also be noticed that a fresh petition was filed with the Department of Company Affairs on 26.12.2001 under Section 391 and 394 of the Companies Act for approval to new scheme of agreement between ITDC and Hotel Yamuna View Private Limited and their respective shareholders for Hotel Agra Ashok. The company was also directed vide order dated 01.01.2002 to give public notice regarding the scheme of arrangement and hearing through advertisement in a leading English and vernacular daily newspaper. The notice was duly published in Indian Express on 04.01.2002 and Amar Ujala, Agra Edition Hindi on 05.01.2002 after protecting the interest of the creditors and hearing the parties the Department of Company Affairs gave approval of the scheme of agreement on 01.02.2002. The demerger was complete on 01.02.2002. It is only thereafter that the shares of Government of India in Hotel Yamuna View Private Limited was sold to Respondent No.5 on 07.02.2002 by the share purchase agreement. It is also brought to our notice at the time of hearing that all the 8 petitioners who have challenged the policy decision of the Government of India have resigned their job and joined some other* *service. The statement was not disputed or denied by learned senior counsel for the petitioners. For the foregoing reasons, we hold that there is absolutely no merit or substance in the contentions raised by learned senior counsel for the petitioners. The writ petitions are, therefore, liable to be dismissed and the policy decision taken by the Government of India to transfer the Hotel Agra Ashok to M/s Mohan Singh and Yamuna View Private Limited cannot be assailed at the instance of the employees. The writ petitions are accordingly dismissed, however, there will be no order as to costs. In view of the disposal of the writ petitions, the transfer cases are also disposed off accordingly.*

23. After explaining the matrix, the Court expressed a view that the policy decision taken by the Government cannot be assailed at the instance of its employees. The rationalization policy and its execution order is the result of a policy enactment of the government or the concerned governance authority. Unless malafides are alleged and proven, there cannot be any interdiction as no illegality is attributed to the rationalization order, at least it is correct that a wrong policy decision was taken by the ESI in starting the medical college. They have explained that they are doing amends to it by discussing with the Karnataka government regarding takeover of the institution. That being so and since the higher value in harmonizing the value under ESI Act and the value under MCI Act is adopted and particularly as the Post Graduate students are given the full wages of an ordinary doctor, there cannot be anything wrong in the action of the respondents.

24. The Hon'ble Apex Court had considered **Balco Employees Union (Regd.) Vs. Union of India & Others** in Transfer Case (Civil) 8 of 2001

by another Bench of the Hon'ble Apex Court on 10.12.2001 which we quote:

***“Supreme Court of India***

*CASE NO.: Transfer Case (civil) 8 of 2001*

*PETITIONER: BALCO EMPLOYEES UNION (REGD.)*

*Vs.*

*RESPONDENT: UNION OF INDIA & ORS.*

*DATE OF JUDGMENT: 10/12/2001*

*BENCH:*
*B.N. Kirpal, Shivaraj V. Patil & P. Venkatarama Reddi.*

*JUDGMENT:*

*KIRPAL, J.*

*The validity of the decision of the Union of India to disinvest and transfer 51% shares of M/s Bharat Aluminium Company Limited (hereinafter referred to as 'BALCO') is the primary issue in these cases.*

*BALCO was incorporated in 1965 as a Government of India Undertaking under the Companies Act, 1956. Prior to its disinvestment it had a paid-up share capital of Rs. 488.85 crores which was owned and controlled by the Government of India. The company is engaged in the manufacture of aluminium and had plants at Korba in the State of Chhattisgarh and Bidhanbag in the State of West Bengal. The Company has integrated aluminium manufacturing plant for the manufacture and sale of aluminium metal including wire rods and semi-fabricated products.*

*The Government of Madhya Pradesh vide its letter dated 18th March, 1968 wrote to BALCO stating that it proposed that land be granted to it on a 99 years lease subject to the terms and conditions contained therein. The letter envisaged giving on lease Government land on payment of premium of Rs. 200/- per acre and, in addition thereto also to provide tenure land which was to be acquired and transferred on lease to BALCO on payment by it the actual cost of acquisition plus annual lease rent. Vide its letter dated 13th June, 1968 BALCO gave its assent to the proposal contained in the aforesaid letter of 18th March, 1968 for transfer of land to it. BALCO intimated by this letter that the total requirement of land would be about 1616 acres. Thereafter, in* *addition to the Government land which was transferred, the Government of Madhya Pradesh acquired land for BALCO under the provisions of the Land Acquisition Act, 1894 on payment of compensation. The District Collector, Bilaspur also granted permission under Section 165(6) of the M.P. Land Revenue Code, 1959 for acquiring/transferring private land in favour of BALCO. As a result of the aforesaid, BALCO set up it's establishment on it's acquiring land from and with the help of the State Government.*

*Since 1990-91 successive Central Government had been planning to disinvest some of the Public Sector Undertakings. In pursuance to the policy of disinvestment by a Resolution dated 23rd August, 1996 the Ministry of Industry (Department of Public Enterprises) Government of India constituted a Public Sector DisInvestment Commission initially for a period of three years. The Resolution stated that this Commission was established in pursuance of the Common Minimum Programme of the United Front Government at the Centre. The Commission was an independent, non-statutory advisory body and was headed by Shri G.V. Ramakrishna who was to be its Full-time Chairman. The Commission had four part-time Members. Paras 3, 4 and 5 of the said Resolution are as follows:-*

*"3. The broad terms of reference of the Commission are as follows:-*

*I. To draw a comprehensive overall long term disinvestment programme within 5-10 years for the PSUs referred to it by the Core Group.*

*II. To determine the extent of disinvestment (total/partial indicating percentage) in each of the PSU.*

*III. To prioritise the PSUs referred to it by the Core Group in terms of the overall disinvestment programme.*

*IV. To recommend the preferred mode(s) of disinvestment (domestic capital markets/international capital markets/auction/private sale to identified investors/any other) for each of the identified PSUs. Also to suggest an appropriate mix of the various alternatives taking into account the market conditions.*

*V. To recommend a mix between primary and secondary disinvestments taking into account Government's objective, the relevant PSUs funding requirement and the market conditions.*

*VI. To supervise the overall sale process and take decisions on instrument, pricing, timing, etc. as appropriate.*

*VII. To select the financial advisers for the specified PSUs to facilitate the disinvestment process.*

*VIII. To ensure that appropriate measures are taken during the disinvestment process to protect the interests of the affected employees including encouraging employees' participation in the sale process.*

*IX. To monitor the progress of disinvestment process and take necessary measures and report periodically to the Government on such progress.*

*X. To assist the Government to create public awareness of the Government's disinvestment policies and programmes with a view to developing a commitment by the people.*

*XI. To give wide publicity to the disinvestment proposals so as to ensure larger public participation in the shareholding of the enterprises; and XII. To advise the Government on possible capital restructuring of enterprises by marginal investments, if required, so as to ensure enhanced realisation through disinvestment.*

*4. The Disinvestment Commission will be advisory body and the Government will take a final decision on the companies to be disinvested and mode of disinvestment on the basis of advice given by the Disinvestment Commission. The PSUs would implement the decision of the Government under the overall supervision of the Disinvestment Commission.*

*5. The Commission while advising the Government on the above matters will also take into consideration the interests of stakeholders, workers, consumers and others having a stake in the relevant public sector undertakings."*

*It may here be noted that by a Resolution dated 12th January, 1998 the earlier Resolution of 23rd August, 1996 was partly modified with deletion of paras 3, 4 and 5 and by substitution of the same by the following:*

*"3(i) The Disinvestment Commission shall be an advisory body and its role and function would be to advise the Government on Disinvestment in those public sector units that are referred to it by the Government.*

*3(ii) The Commission shall also advise the Government on any other matter relating to disinvestment as may be specifically referred to it by the Government, and also carry out any other activities relating to disinvestment as may be assigned to it by the Government.*

*3(iii) In making its recommendations, the Commission will also take into consideration the interests of workers, employees and others stake holders, in the public sector unit(s).*

*3(iv) The final decision on the recommendations of the Disinvestment Commission will vest with the Government."*

*According to the Union of India, it laid down the broad procedures to be followed for processing the recommendations of the Disinvestment Commission. It was, inter alia, decided that:*

*i. the Ministry of Finance (now Department of Dis- investment) would process the recommendations of the Dis- Investment Commission, by inviting comments from the concerned administrative machinery;*

*ii. submit the recommendation to the Core Group of Secretaries for Dis-investment for consideration;*

*iii. The recommendations of the Core Group of Secretaries would then be taken to the Cabinet for decision;*

*iv. It was also decided that the Core Group of Secretaries would be headed by the Cabinet Secretary and its permanent members would be Finance Secretary, Revenue Secretary, Expenditure Secretary, Secretary Department of Public Enterprises, Secretary Planning Commission and Chief Economic Advisor, Ministry of Finance, and v. to implement the decisions, an Inter-Ministerial Group headed by the Secretary/Joint Secretary of the Administrative Ministry and consisting of Joint Secretaries of Department of Economic Affairs, Department of Public Enterprises, alongwith the Chairman and Managing Director of the Companies as Members and Director (Finance) of the company as the Convenor. In case of BALCO, the IMG consisted of Secretary level Officers and was headed by Secretary (Mines).*

*On 10th December, 1999 the Department of Disinvestment was set up and the responsibilities which were earlier assigned to the Ministry of Finance have now been transferred to this Department.*

*The Disinvestment Commission in its 2nd Report submitted in April, 1997 advised the Government of India that BALCO needed to be privatised. The recommendation which it made was that the Government may immediately disinvest its holding in the Company by offering a significant share of 40% of the equity to a strategic partner. The Report further advised that there should be an agreement with the selected strategic partner specifying that the Government would within two years make a public offer in the domestic market for further sale of shares to institutions, small investors and employees thereby bringing down its holding to 26%. The Commission also recommended that there should be an on-going review of the situation and the Government may disinvest its balance equity of 26% in full in favour of investors in the domestic market at the appropriate time. The Commission had recommended the appointment of a Financial Advisor to undertake a proper valuation of the company and to conduct the sale process. The Commission had categorised BALCO as a non-core group industry.*

*The Chairman of the Disinvestment Commission wrote a letter dated 12th June, 1998 to the Secretary, Ministry of Mines, Government of India drawing the Government's attention to the recommendations of the Commission for sale of 40% of equity in BALCO and to bringing down of the Government holding to 26% within two years. This letter then referred to the 5th Report of the Commission wherein it had reviewed the question of strategic sale and had suggested that the Government may keep its shareholding below the level of investment being offered by the strategic buyer and its divesting some portion of equity to other entities. This letter noted that in these circumstances, it may be difficult to get in a multilateral financial institution to act fast in taking up shares of BALCO. The Chairman of the Commission then recommended that "in keeping with the spirit of the recommendations of the 5th Report, you may now kindly consider offering 51% or more to the strategic buyer along with transfer of management. This sale will enable a smooth transaction with the participation of more bidders and better price for the shares. This will also be in keeping with the current policy as announced by the FM in his recent budget speech".*

*The Cabinet Committee on Economic Affairs had, in the meantime, in September 1997 granted approval for appointment of a technical and financial advisor, selected through a competitive process, for managing the strategic sale and restructuring of BALCO. Global advertisement was then issued inviting from interested parties Expression of Interest for selection as a Global Advisor. The advertisement was published in four financial papers in India and also in 'The Economist', a renowned financial magazine published abroad. Eight Merchant Banks showed their interest in appointment of the Global Advisor. The lowest bid of M/s Jardine Fleming Securities India Ltd. was accepted and approved by the Cabinet Committee on Disinvestment on 9th March, 1999. The Cabinet Committee on Disinvestment also approved the proposal of strategic sale of 51% equity in respect of BALCO.*

*The decision of the Government to the aforesaid strategic sale was challenged by the BALCO Employees' Union by filing Writ Petition No. 2249 of 1999 in the High Court of Delhi. This petition was disposed of by the High Court vide its order dated 3rd August, 1999.*

*On 3rd March, 2000, the Union Cabinet approved the Ministry of Mines' proposal to reduce the share capital of BALCO from Rs. 488.8 crores to Rs. 244.4 crores. This resulted in cash flow of Rs. 244.4 crores to the Union Government in the Financial Year 1999- 2000.*

*A formal Agreement between Jardine Fleming, the Global Advisor and the Government of India was executed on 14th June, 2000. The scope of work of the Global Advisor, inter alia, included the development, updating and review of a list of potential buyers of the stake; preparing necessary documents; assisting the Government of India in sale* *negotiations with potential buyers and to advise on the sale price; to coordinate and monitor the progress of the transaction until its completion.*

*Thereafter, on 16th June, 2000 the Global Advisor, on behalf of the Government of India, issued an advertisement calling for "Expression of Interest" in leading journals and newspapers such as the Economist, London, the Mining Journal, London, the Economic Times, India, Business Standard, India and the Financial Express, India. The invitation was to Companies and Joint Ventures which may be interested in acquiring 51% shares of the Government of India in BALCO. The last date for submitting the expression of interest was 30th June, 2000 and the interested companies were required to submit their expression of interest together with their Audited Annual Reports and a profile describing their business and operations.*

*Eight companies submitted their Expression of Interest. These companies were as follows:*

*"i. Sterlite Industries (India) Ltd.*

*ii. Hindlaco Industries Ltd.*

*iii. Tranex Holding Inc. iv. Indian Minerals Corporation Plc.*

*v. VAW Aluminium AG, Germany vi. ALCOA, USA vii. Sibirsky, Russia viii. MALCO"*

*M/s Jardine Fleming, Global Advisor made an analysis of the various bids on the basis of the financial and technical capability, familiarity with India and overall credibility. Thereupon two companies, namely, Indian Minerals Corporation Plc. And Tranex Holding Inc. were rejected. The Inter-Ministerial Group (hereinafter referred to as IMG) set up by the Union of India, accepted the expression of interest of six out of eight parties and it also decided that the bids of Sterlite and MALCO be treated as one. Thus there remained five prospective bidders but two, namely, VAW Aluminium AG, Germany and Sibirsky, Russia dropped out and the remaining three, namely, ALCOA, USA, Hindalco and Sterlite conducted due diligence (inspection) on BALCO between September to December, 2000.*

*The IMG considered the drafts of the Shareholders' Agreement and the Share Purchase Agreement and had discussions with three prospective bidders and ultimately the said drafts were finalised on 11th January, 2001.*

*For the purpose of carrying out the asset valuation of BALCO, the Global Advisor short listed four parties from the list of Registered Government Valuers approved by the Income-Tax Department. On 18th*

*January, 2001, BALCO invited quotations from the four Registered Valuers, so short listed, and the quotation of Shri P.V. Rao was accepted. Shri P.V. Rao was a registered valuer of immovable property and his team mates were Government Registered Valuers authorised to value plant and machinery. They were assisted in the work of valuation by officers of the Indian Bureau of Mines for assessing the value of existing mines. Pending the receipt of the valuation report from Shri P.V. Rao, the Global Advisor on 8th February, 2001 requested the three bidders to submit their financial bids along with other necessary documents by 15th February, 2001, which was later extended by one day. On 14th February, 2001 Shri P.V. Rao submitted his asset valuation report to M/s Jardine Fleming.*

*On 15th February, 2001, an Evaluation Committee headed by the Additional Secretary (Mines) was constituted. This Committee was required to fix the reserve price of 51% equity of BALCO which was to be sold to the strategic party. The three contenders, namely, Alcoa, Hindalco and Sterlite Industries Ltd. submitted their sealed bids to the Secretary (Mines) and Secretary (Disinvestment) on 16th February, 2001. It is thereafter, that M/s Jardine Fleming presented its valuation report together with the asset valuation done by Shri P.V. Rao to the Evaluation Committee to work out the reserve price.*

*The range of valuation of BALCO that emerged on various methodologies was as follows:-*

*(i) Discounted Cash Flow - Rs. 651.2 994.7 crores*

*(ii) Comparables - Rs. 587 909 crores*

*(iii) Balance Sheet - Rs. 597.2 681.9 crores Thus, the range of valuation by all these methods came between Rs. 587 and Rs. 995 crores for 100% of the equity. Ipso facto, for 51% of the equity, the range of valuation came out as Rs. 300 to Rs. 507 crores. The Evaluation Committee then deliberated on the various methodologies and concluded, as per the affidavit of the Union of India, that the most appropriate methodology for valuing the shares of a running business of BALCO would be the Discounted Cash Flow method. It decided to add a control premium of 25% on the base value of equity (although the Advisor had viewed that the premium should range between 10-15%) and then add the value of non-core assets to arrive at a valuation of Rs. 1008.6 crores for the company as a whole, 51% of which amounts to Rs. 514.4 crores which was fixed as the Reserve Price. According to the respondents, the Evaluation Committee felt that Asset Valuation Report appeared to have over-valued the fixed assets of the company at Rs. 1072.2 crores. The Committee further observed that the fixed asset valuation method was only a good indicator of the value that could be realised if the business was to be liquidated, rather than for valuing the*

*business as a going concern. Furthermore, the asset valuation method did not take into account the liabilities and contingent liability that go with the business.*

*When the financial bids were opened, it was found that the bid of Sterlite Industries was the highest at Rs. 551.5 crores, the bid of Hindalco was Rs. 275 crores while ALCOA had opted out. The report of the Evaluation Committee for acceptance of the bid which was higher than the reserve price was considered by the IMG which recommended the acceptance of the bid of Sterlite Industries to the core group of Secretaries. This core group in turn made its recommendation to the Cabinet Committee on Disinvestment which on 21st February, 2001 approved/accepted the bid of Sterlite Industries at Rs. 551.5 crores. The Government's decision was communicated to Sterlite Industries on that date. The announcement of the decision to accept the bid of Sterlite Industries led to the initiation of legal proceedings challenging the said decision. On 23rd February, 2001, Dr. B.L. Wadhera filed Civil Writ Petition No. 1262 of 2001 in the Delhi High Court. This was followed by Writ Petition No. 1280 of 2001 filed by the employees of BALCO on 24th February, 2001 also in the High Court of Delhi. On that very date, i.e., on 24th February, 2001 another employee of BALCO, namely, Mr. Samund Singh Kanwar filed Civil Writ Petition No. 241 of 2001 in the High Court of Chhattisgarh.*

*While the aforesaid writ petitions were pending there was a Calling Attention Motion on Disinvestment with regard to BALCO in the Rajya Sabha. Discussions on the said motion took place in the Rajya Sabha on 27th February, 2001 and the matter was discussed in the Lok Sabha on 1st March, 2001. The motion "that this House disapproves the proposed disinvestment of Bharat Aluminium Company Ltd." was defeated in the Lok Sabha by 239 votes to 119 votes. Soon thereafter on 2nd March, 2001, Shareholders Agreement and Share Purchase Agreement between the Government of India and Sterlite Industries Limited were signed. Pursuant to the execution of sale, 51% of the equity was transferred to Sterlite Industries Limited and a cheque for Rs. 551.5 crores was received. It is not necessary to refer to the terms of the agreement in any great detail except to notice a few clauses which pertain to safeguarding the interest of the employees of the company. Clauses H and J of the preamble reads as follows:*

*"H. Subject to Clause 7.2, the Parties envision that all employees of the Company on the date hereof shall continue in the employment of the Company.*

*J. The SP recognises that the Government in relation to its employment policies follows certain principles for the benefit of the members of the Scheduled Caste/Scheduled Tribes, physically handicapped persons and other socially disadvantaged categories of the society. The SP shall* *use its best efforts to cause the Company to provide adequate job opportunities for such persons. Further, in the event of any reduction in the strength of the employees of the Company, the SP shall use its best efforts to ensure that the physically handicapped persons are retrenched at the end."*

*Clause 7.2 which contains the Representations, Warranties and Covenants of M/s Sterlite Industries is as follows:*

*"The SP represents and warrants to and covenants with each of the Government and the Company that:*

*(a) it has been duly incorporated or created and is validly subsisting and in good standing under the laws of the jurisdiction indicated in the preamble to this Agreement;*

*(b) it has the corporate power and authority to enter into and perform its obligations under this Agreement;*

*(c) this Agreement has been duly authorised, executed and delivered by it and constitutes a valid and binding obligation enforceable against it in accordance with its terms;*

*(d) it is not a party to, bound or affected by or subject to any indenture, mortgage, lease agreement, instrument, charter or by- law provision, statute, regulation, judgment, decree or law which would be violated, contravened, breached by or under which default would occur or under which any payment or repayment would be accelerated as a result of the execution and delivery of this Agreement or the consummation of any of the transactions provided for in this Agreement.*

*(e) Notwithstanding anything to the contrary in this Agreement, it shall not retrench any part of the labour force of the Company for a period of one (1) year from the Closing Date other than any dismissal or termination of employees of the Company from their employment in accordance with the applicable staff regulations and standing orders of the Company or applicable Law; and*

*(f) Notwithstanding anything to the contrary in this Agreement, but subject to sub-clause (e) above, any restructuring of the labour force of the Company shall be implemented in the manner recommended by the Board and in accordance with all applicable laws.*

*(g) Notwithstanding anything to the contrary in this Agreement, but subject to sub-clause (e) above, in the event of any reduction of the strength of the Company's employees the SP shall ensure that the Company offers its employees, an option to voluntarily retire on terms that are not, in any manner, less favourable than the voluntary*

*retirement scheme offered by the Company which is referred to in Schedule 7.4 of the Share Purchase Agreement; and*

*(h) It shall vote all the voting equity shares of the Company, directly or indirectly, held by it to ensure that all provisions of this Agreement, to the extent required, are incorporated in the Company's articles of association."*

*With the filing of the writ petitions in the High Court of Delhi and in the High Court of Chhattisgarh, an application for transfer of the petitions was filed by the Union of India in this Court. After the notices were issued, the company received various notices from the authorities in Chhattisgarh for alleged breach of various provisions of the M.P. Land Revenue Code and the Mining Concession Rules. Some of the notices were not only addressed to the company but also to individuals alleging violation of the provisions of the code and the rules as also encroachment having taken place on Government land by BALCO. This led to the filing of the Writ Petition No. 194 by BALCO in this Court, inter alia, challenging the validity of the said notices. During the pendency of the writ petition, the workers of the company went on strike on 3rd March, 2001. Some interim orders were passed in the transfer petition and subsequently on 9th May, 2001 the strike was called off. By Order dated 9th April, 2001, the writ petitions which were pending in the High Court of Delhi and Chhattisgarh were transferred to this Court being Transfer Case No. 8 of 2001 which pertains to the writ petition filed by BALCO Employees' Union; Transfer Case No. 9 of 2001 pertains to the writ petition filed by Dr. B.L. Wadhera in the Delhi High Court and Transfer Case No. 10 of 2001 is the writ petition filed by Mr. Samund Singh Kanwar in the High Court of Chhattisgarh.*

*On behalf of the BALCO Employees' Union, Shri Dipankar P. Gupta, learned senior counsel submitted that the workmen have been adversely affected by the decision of the Government of India to disinvest 51% of the shares in BALCO in favour of a private party. He contended that before disinvestment, the entire paid-up capital of BALCO was owned and controlled by the Government of India and it's administrative control co-vested in the Ministry of Mines. BALCO was, therefore, a State within the meaning of Article 12 of the Constitution. Reliance for this was placed on Ajay Hasia and Others vs. Khalid Mujib Sehravardi and Others, (1981) 1 SCC 722; Central Inland Water Transport Corporation Limited and Another Vs. Brojo Nath Ganguly and Another, (1986) 3 SCC 156. He also contended that by reason of disinvestment the workmen have lost their rights and protection under Articles 14 and 16 of the Constitution. This is an adverse civil consequence and, therefore, they had a right to be heard before and during the process of disinvestment. The type of consultation with the workmen which was necessary, according to Shri Dipankar P. Gupta, was whether BALCO should go through the process of disinvestment;*

*who should be the strategic partner; and how should the bid of the strategic partner be evaluated. Referring to the averment of the Union of India to the effect that interest of the employees has been protected, Shri Dipankar P. Gupta, submitted that in fact there was no effective protection of the workmen's interest in the process of disinvestment. He further submitted that the workmen have reason to believe that apart from the sale of 51% of the shares in favour of Sterlite Industries the Agreement postulates that balance 49% will also be sold to them with the result that when normally in such cases 5% of the shares are disinvested in favour of the employees the same would not happen in the present case. Reliance was placed on the decision of National Textile Workers' Union and Others vs. P.R. Ramakrishnan and Others, (1983) 1 SCC 228 and it was also contended that even though there may be no loss of jobs in the present case but the taking away of the right or protection of Articles 14 and 16 is the civil consequence and, therefore, the workmen have a right to be heard. It was submitted that such rights and benefits are both procedural as well as substantive. Procedural benefits and rights includes the right to approach High Court under Article 226 of the Constitution and this Court under Article 32 of the Constitution in the event of violation of any of their rights. This is a major advantage since it is a relatively swift method of redressal of grievances which would not be available to employees of private organisations. Instances were given of the substantive rights which flow from Articles 14 and 16 like, right to equality, equal pay for equal work, right to pension including the principle that there can be no discrimination in the matter of granting or withholding of pension vide Bharat Petroleum (Erstwhile Burmah Shell) Management Staff Pensioners vs. Bharat Petroleum Corporation Ltd. and Others, (1988) 3 SCC page 32), right to inquiry and reasons before dismissal etc.*

*The aforesaid contentions of Shri Gupta were supported by Shri G.L. Sanghi and Shri Ranjit Kumar, senior counsel, appearing for some of the Unions who were intervenors in the writ petition filed by BALCO Employees' Union. He submitted that the workers should have been heard at different stages during the process of disinvestment, the manner in which views may be invited and evaluated by the Government; the method of evaluation; the factors to be taken into consideration and the choice of the strategic partner; the terms and conditions under which the strategic partner will take over the employment of the workers and the terms and conditions of the Share Holders Agreement are the stages in which the workers should have been heard and consulted. It was submitted that the decision of the Delhi High Court of 3rd August, 1999 does not come in the way of these contentions being raised inasmuch as the petition at that time was regarded as premature and the order which was passed actually preserves the workers' rights to raise the contention in future.*

*Reiterating these contentions Shri Ravindra Shrivastava, learned Advocate General, State of Chhattisgarh submitted that the State does not challenge the policy of disinvestment per se on principle as a measure of socio-economic reform and for industrial well being in the country. He, however, contended that the implementation of the policy of disinvestment, in the present case, has failed to evolve a comprehensive package of socio-economic and political reform and to structure the decision making process so as to achieve in a just, fair and reasonable manner, the ultimate goal of the policy and that the interest of the workers in the industrial sector cannot be undermined and, therefore, any decision which was likely to affect the interest of the workers and employees as a class as a whole cannot and ought not to be taken to the exclusion of such class, lest it may be counter productive. He contended that the Disinvestment Commission had recommended that some percentage of equity share may be offered to the workers to solicit their participation in the enterprise and which would go a long way in proving the disinvestment plan meaningful and successful. In this regard, it was not shown from any material or record that the Government of India had at any stage addressed itself to this vital aspect of the disinvestment process or had taken into consideration the likely repercussions on the interest, right and status of the employees and workers. This non-consideration indicates that there has been an arbitrariness in not taking into consideration relevant facts in the decision making process. It is further contended that the impugned decision defeats the provisions of the M.P. Land Revenue Code and goes against the fundamental basis on which the land was acquired and allotted to the company.*

*Implicit in the submissions on behalf of the employees is the challenge to the decision to disinvest majority of the shares of BALCO in favour of Sterlite Industries Limited. The first question, therefore, which would arise for consideration, is whether such a decision is amenable to judicial review and if so within what parameters and to what extent.*

*On behalf of the Union of India, the Attorney General submitted that since 1990-91 successive Governments have gone in for disinvestment. Disinvestment had become imperative both in the case of Centre and the States primarily for three reasons. Firstly, despite every effort the rate of returns of governmental enterprises had been woefully low, excluding the sectors in which government have a monopoly and for which they can, therefore, charge any price. The rate of return on central enterprises came to minus 4% while the cost at which the government borrows money is at the rate of 10 to 11%. In the States out of 946 State level enterprises, about 241 were not working at all; about 551 were making losses and 100 were reported not to be submitting their accounts at all. Secondly, neither the Centre nor the States have resources to sustain enterprises that are not able to stand on their own in the new environment of intense competition. Thirdly, despite repeated* *efforts it was not possible to change the work culture of governmental enterprises. As a result, even the strongest among them have been sinking into increasing difficulties as the environment is more and more competitive and technological change has become faster.*

*In support, the Solicitor General submitted that the challenge to the decision to disinvest on the ground that it impairs public interest, or that it was without any need to disinvest, or that it was inconsistent with the decision of the Disinvestment Commission was untenable.*

*It was submitted by the learned Attorney General that the wisdom and advisability of economic policies of Government are not amenable to judicial review. It is not for Courts to consider the relative merits of different economic policies. Court is not the Forum for resolving the conflicting clauses regarding the wisdom or advisability of policy. It will be appropriate to consider some relevant decisions of this Court in relation to judicial review of policy decisions.*

*While considering the validity of the Banking Companies (Acquisition and Transfer of Undertakings) Ordinance 1969, this Court in Rustom Cavasjee Cooper vs. Union of India, (1970) 1 SCC 248 at page 294 observed as under :-*

*"It is again not for this Court to consider the relative merits of the different political theories or economic policies. This Court has the power to strike down a law on the ground of want of authority, but the Court will not sit in appeal over the policy of the Parliament in enacting a law..."*

*Applying the analogy, just as the Court does not sit over the policy of the Parliament in enacting the law, similarly, it is not for this Court to examine whether the policy of this disinvestment is desirable or not. Dealing with the powers of the Court while considering the validity of the decision taken in the sale of certain plants and equipment of the Sindri Fertilizer Factory, which was owned by a Public Sector Undertaking, to the highest tenderer, this Court in Fertilizer Corporation Kamgar Union (Regd.), Sindri and Others vs. Union of India and Others, (1981) 1 SCC 568 at page 584, while upholding the decision to sell, observed as follows :-*

*".We certainly agree that judicial interference with the administration cannot be meticulous in our Montesquien system of separation of powers. The Court cannot usurp or abdicate, and the parameters of judicial review must be clearly defined and never exceeded. If the Directorate of a Government company has acted fairly, even if it has faltered in its wisdom, the court cannot, as a super-auditor, take the Board of Directors to task. This function is limited to testing whether the administrative action has been fair and free from the taint of*

*unreasonableness and has substantially complied with the norms of procedure set for it by rules of public administration."*

*With regard to the question of the locus standi of the workmen, who feared large-scale retrenchment, to challenge the validity of action taken by the Company, it was observed at page 589 as follows :-*

*"If a citizen is no more than a wayfarer or officious intervener without any interest or concern beyond what belongs to any one of the 660 million people of this country, the door of the court will not be ajar for him. But, if he belongs to an organisation which has special interest in the subject matter, if he has some concern deeper than that of a busybody, he cannot be told off at the gates, although whether the issue raised by him is justiciable may still remain to be considered. I, therefore, take the view that the present petition would clearly have been permissible under Article 226".*

*In State of M.P. and Others vs. Nandlal Jaiswal and Others, (1986) 4 SCC 566 the change of the policy decision taken by the State of Madhya Pradesh to grant licence for construction of distilleries for manufacture and supply of country liquor to existing contractors was challenged. Dealing with the power of the Court in considering the validity of policy decision relating to economic matters, it was observed at page 605 as follows :-*

*"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 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. We had occasion to consider the scope of interference by the Court under Article 14 while dealing with laws relating to economic activities in R.K. Garg v. Union of India. We pointed out in that case that laws relating to economic activities should be viewed with greater latitude than laws touching civil rights such as freedom of speech, religion, etc. We observed that the legislature should be allowed some play in the joints because it has to deal with complex problems which do not admit of solution through any doctrinaire or strait-jacket formula and this is particularly true in case of legislation dealing with economic matters, where, having regard to the nature of the problems required to be dealt with, greater play in the joints has to be allowed to the legislature. We*

*quoted with approval the following admonition given by Frankfurter, J. in Morey v. Dond.*

*In the utilities, tax and economic regulation cases, there are good reasons for judicial self-restraint if not judicial deference to legislative judgement. The legislature after all has the affirmative responsibility. The Courts have only the power to destroy, not to reconstruct. When these are added to the complexity of economic regulation, the uncertainty, the liability to error, the bewildering conflict of the experts, and the number of times the judges have been overruled by events self-limitation can be seen to be the path to judicial wisdom and institutional prestige and stability.*

*What we said in that case in regard to legislation relating to economic matters must apply equally in regard to executive action in the field of economic activities, though the executive decision may not be placed on as high a pedestal as legislative judgement insofar as judicial deference is concerned. 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 strait-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. "The problem of government" as pointed out by the Supreme Court of the United States in Metropolis Theatre Co. v. State of Chicago.*

*are practical ones and may justify, if they do not require, rough accommodations, illogical, it may be, and unscientific. But even such criticism should not be hastily expressed. What is best is not discernible, the wisdom of any choice may be disputed or condemned. Mere errors of government are not subject to our judicial review. It is only its palpably arbitrary exercises which can be declared void.*

*The Government, as was said in Permian Basin Area Rate cases, is entitled to make pragmatic adjustments which may be called for by particular circumstances. 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. It is against the background of these observations and keeping them in mind that we must now proceed to deal with the contention of the petitioners based on Article 14 of the Constitution."*

*A policy decision of the Government whereby validity of contract entered into by Municipal Council with the private developer for construction of a commercial complex was impugned came up for consideration in G.B.*

*Mahajan and Others vs. Jalgaon Municipal Council and Others, (1991) 3 SCC 91 and it was observed at page 104 as follows :-*

*"The criticism of the project being 'unconventional' does not add to or advance the legal contention any further. The question is not whether it is unconventional by the standard of the extant practices, but whether there was something in the law rendering it impermissible. There is, no doubt, a degree of public accountability in all governmental enterprises. But, the present question is one of the extent and scope of judicial review over such matters. With the expansion of the State's presence in the field of trade and commerce and of the range of economic and commercial enterprises of government and its instrumentalities there is an increasing dimension to governmental concern for stimulating efficiency, keeping costs down, improved management methods, prevention of time and cost overruns in projects, balancing of costs against time scales, quality control, cost-benefit ratios etc. In search of these values it might become necessary to adopt appropriate techniques of management of projects with concomitant economic expediencies. These are essentially matters of economic policy which lack adjudicative disposition, unless they violate constitutional or legal limits on power or have demonstrable pejorative environmental implications or amount to clear abuse of power. This again is the judicial recognition of administrator's right to trial and error, as long as both trial and error are bona fide and within the limits of authority.."*

*To the same effect are the observations of this Court in Peerless General Finance and Investment Co. Limited and Another vs. Reserve Bank of India, (1992) 2 SCC 343 in which Kasliwal, J. observed at page 375 as follows :-*

*"31. The function of the Court is to see that lawful authority is not abused but not to appropriate to itself the task entrusted to that authority. It is well settled that a public body invested with statutory powers must take care not to exceed or abuse its power. It must keep within the limits of the authority committed to it. It must act in good faith and it must act reasonably. Courts are not to interfere with economic policy which is the function of experts. It is not the function of the courts to sit in judgement over matters of economic policy and it must necessarily be left to the expert bodies. In such matters even experts can seriously and doubtlessly differ. Courts cannot be expected to decide them without even the aid of experts".*

*In Premium Granites and Another vs. State of T.N. and Others, (1994) 2 SCC 691 while considering the Court's powers in interfering with the policy decision, it was observed at page 715 as under :-*

*"54. It is not the domain of the Court to embark upon unchartered ocean of public policy in an exercise to consider as to whether the 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.."*

*The validity of the decision of the Government to grant licence under the Telegraph Act 1885 to non-government companies for establishing, maintaining and working of telecommunication system of the country pursuant to Government policy of privatisation of Telecommunications was challenged in Delhi Science Forum and Others vs. Union of India and Another, (1996) 2 SCC 405. It had been contended that Telecommunications was a sensitive service which should always be within the exclusive domain and control of the Central Government and under no situation should be parted with by way of grant of licence to non-government companies and private bodies. While rejecting this contention, it observed at page 412 that : ".. The national policies in respect of economy, finance, communications, trade, telecommunications and others have to be decided by Parliament and the representatives of the people on the floor of the Parliament can challenge and question any such policy adopted by the ruling Government."*

*The Court then referred to an earlier decision in the case of R.K. Garg vs. Union of India and Others, (1981) 4 SCC 675 where there was an unsuccessful challenge to a law enacted by Parliament and held at page 413 as follows :-*

*"What has been said in respect of legislations is applicable even in respect of policies which have been adopted by Parliament. They cannot be tested in Court of Law. The courts cannot express their opinion as to whether at a particular juncture or under a particular situation prevailing in the country any such national policy should have been adopted or not. There may be views and views, opinions and opinions which may be shared and believed by citizens of the country including the representatives of the people in Parliament. But that has to be sorted out in Parliament which has to approve such policies. Privatisation is a fundamental concept underlying the questions about the power to make economic decisions. What should be the role of the State in the economic development of the nation? How the resources of the country shall be used? How the goals fixed shall be attained? What are to be the safeguards to prevent the abuse of the economic power? What is the mechanism of accountability to ensure that the decision regarding privatisation is in public interest? All these questions have to be answered by a vigilant Parliament. Courts have their limitations because these issues rest with the policy-makers for the nation. No direction can be given or is expected from the courts unless while implementing such policies, there is violation or infringement of any of the constitutional or statutory provision. The new Telecom policy was placed before Parliament and it shall be deemed that Parliament has*

*approved the same. This Court cannot review and examine as to whether the said policy should have been adopted. Of course, whether there is any legal or constitutional bar in adopting such policy can certainly be examined by the Court".*

*While considering the validity of the industrial policy of the State of Madhya Pradesh relating to the agreements entered into for supply of sal seeds for extracting oil in M.P. Oil Extraction and Another vs. State of M.P. and Others, (1997) 7 SCC 592, the Court at page 610 held as follows :-*

*"41. After giving our careful consideration to the facts and circumstances of the case and to the submissions made by the learned counsel for the parties, it appears to us that the Industrial Policy of 1979 which was subsequently revised from time to time cannot be held to be arbitrary and based on no reason whatsoever but founded on mere ipse dixit of the State Government of M.P. 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 functionary 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 stature 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 emphasised. 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 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) The validity of the change of Government policy in regard to the reimbursement of medical expenses to its serving and retired employees came up for consideration before this Court in State of Punjab and Others vs. Ram Lubhaya Bagga and Others (1998) 4 SCC 117. The earlier policy upholding the reimbursement for treatment in a private hospital had been upheld by this Court but the State of*

*Punjab changed this policy whereby reimbursement of medical expenses incurred in a private hospital was only possible if such treatment was not available in any government hospital. Dealing with the validity of the new policy, the Court observed at page 129 as follows :-*

*"25. Now we revert to the last submission, whether the new State policy is justified in not reimbursing an employee, his full medical expenses incurred on such treatment, if incurred in any hospital in India not being a government hospital in Punjab. Question is whether the new policy which is restricted by the financial constraints of the State to the rates in AIIMS would be in violation of Article 21 of the Constitution of India. So far as questioning the validity of governmental policy is concerned in our view it is not normally within the domain of any court, to weigh the pros and cons of the policy or to scrutinize it and test the degree of its beneficial or equitable disposition for the purpose of varying, modifying or annulling it, based on howsoever sound and good reasoning, except where it is arbitrary or violative of any constitutional, statutory or any other provision of law. When Government forms its policy, it is based on a number of circumstances on facts, law including constraints based on its resources. It is also based on expert opinion. It would be dangerous if court is asked to test the utility, beneficial effect of the policy or its appraisal based on facts set out on affidavits. The Court would dissuade itself from entering into this realm which belongs to the executive. It is within this matrix that it is to be seen whether the new policy violates Article 21 when it restricts reimbursement on account of its financial constraints."*

*The reluctance of the Court to judicially examine the matters of economic policy was again emphasised in Bhavesh D. Parish and Others vs. Union of India and Another, (2000) 5 SCC 471 and while examining the validity of Section 45-S of the Reserve Bank of India Act 1934, it was held as follows :-*

*"26. The services rendered by certain informal sectors of the Indian economy could not be belittled. However, in the path of economic progress, if the informal system was sought to be replaced by a more organised system, capable of better regulation and discipline, then this was an economic philosophy reflected by the legislation in question. Such a philosophy might have its merits and demerits. But these were matters of economic policy. They are best left to the wisdom of the legislature and in policy matters the accepted principle is that the courts should not interfere. Moreover in the context of the changed economic scenario the expertise of people dealing with the subject should not be lightly interfered with. The consequences of such interdiction can have large-scale ramifications and can put the clock back for a number of years. The process of rationalisation of the infirmities in the economy can be put in serious jeopardy and, therefore, it is necessary that while dealing with economic legislations, this Court, while not jettisoning its*

*jurisdiction to curb arbitrary action or unconstitutional legislation, should interfere only in those few cases where the view reflected in the legislation is not possible to be taken at all".*

*In Narmada Bachao Andolan vs. Union of India and Others, (2000) 10 SSC 664, there was a challenge to the validity of the establishment of a large dam. It was held by the majority at page 762 as follows :-*

*"229. It is now well settled that the Courts, in the exercise of their jurisdiction, will not transgress into the field of policy decision. Whether to have an infrastructural project or not and what is the type of project to be undertaken and how it has to be executed, are part of policy-making process and the Courts are ill-equipped to adjudicate on a policy decision so undertaken. The Court, no doubt, has a duty to see that in the undertaking of a decision, no law is violated and people's fundamental rights are not transgressed upon except to the extent permissible under the Constitution."*

*It is evident from the above that it is neither within the domain of the Courts nor the scope of the judicial review to embark upon an enquiry as to whether a particular public policy is wise or whether better public policy can be evolved. Nor are our Courts inclined to strike down a policy at the behest of a petitioner merely because it has been urged that a different policy would have been fairer or wiser or more scientific or more logical.*

*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. There is no case made out by the petitioner that the decision to disinvest in BALCO is in any way capricious, arbitrary, illegal or uninformed. Even though the workers may have interest in the manner in which the Company is conducting its business, inasmuch as its policy decision may have an impact on the workers' rights, nevertheless it is an incidence of service for an employee to accept a decision of the employer which has been honestly taken and which is not contrary to law. Even a government servant, having the protection of not only Articles 14 and 16 of the Constitution but also of Article 311, has no absolute right to remain in service. For example, apart from cases of disciplinary action, the services of government servants can be terminated if posts are abolished. If such employee cannot make a grievance based on part III of the Constitution* *or Article 311 then it cannot stand to reason that like the petitioners, non-government employees working in a company which by reason of judicial pronouncement may be regarded as a State for the purpose of part III of the Constitution, can claim a superior or a better right than a government servant and impugn it's change of status. In taking of a policy decision in economic matters at length, the principles of natural justice have no role to play. While it is expected of a responsible employer to take all aspects into consideration including welfare of the labour before taking any policy decision that, by itself, will not entitle the employees to demand a right of hearing or consultation prior to the taking of the decision.*

*Merely because the workmen may have protection of Articles 14 and 16 of the Constitution, by regarding BALCO as a State, it does not mean that the erstwhile sole shareholder viz., Government had to give the workers prior notice of hearing before deciding to disinvest. There is no principle of natural justice which requires prior notice and hearing to persons who are generally affected as a class by an economic policy decision of the Government. If the abolition of a post pursuant to a policy decision does not attract the provisions of Article 311 of the Constitution as held in State of Haryana vs. Shri Des Raj Sangar and Another, (1976) 2 SSC 844, on the same parity of reasoning, the policy of disinvestment cannot be faulted if as a result thereof the employees lose their rights or protection under Articles 14 and 16 of the Constitution. In other words, the existence of rights of protection under Articles 14 and 16 of the Constitution cannot possibly have the effect of vetoing the Government's right to disinvest. Nor can the employees claim a right of continuous consultation at different stages of the disinvestment process. If the disinvestment process is gone through without contravening any law, then the normal consequences as a result of disinvestment must follow.*

*The Government could have run the industry departmentally or in any other form. When it chooses to run an industry by forming a company and it becomes its shareholder then under the provisions of the Companies Act as a shareholder, it would have a right to transfer its shares. When persons seek and get employment with such a company registered under the Companies Act, it must be presumed that they accept the right of the directors and the shareholders to conduct the affairs of the company in accordance with law and at the same time they can exercise the right to sell their shares.*

*A similar question came up for consideration before Madras High Court. In Southern Structurals Limited, the State of Tamil Nadu had acquired over 99% of shares and the company had become a government company. It had incurred losses over the years and the government then decided to disinvest from the company. This decision was challenged by the Company's employees by filing a Writ Petition in the*

*Madras High Court. It was contended on their behalf that in the event of disinvestment being effected, the employees of the State Government would lose valuable rights including the protection of Articles 14 and 16 of the Constitution and a right to approach the Court under Articles 32 and 226. Repelling this contention in Southern Structurals Staff Union vs. Management of Southern Structurals Ltd. and Another, [1994] 81 Comp. Cases at page 389, the High Court held as follows :-*

*"The submission that in order to enable the employees to invoke Article 14 or Article 16 and to approach the High Court or the Supreme Court directly by invoking Article 226 or Article 32, the Government is bound to retain its ownership of the bulk of the shares in this company forever is devoid of any force.*

*The protection of Article 14 is available to all and is not confined to employees of the State. The limitations placed by Article 16 on the State with regard to employment under the State is not intended to compel the State to provide employment under it to all who seek such employment or retain all persons presently in its service in order to enable such persons to claim the benefit of Article 16.*

*Employment under the State is not a precondition for approaching the High Court or the Supreme Court. All industrial workers have a right to approach the Labour Court or Industrial Tribunals for adjudication of their rights subject to the limitations contained in the Industrial Disputes Act. Like all citizens industrial workers also have the right to approach civil courts for redressal of their wrongs. The decisions rendered by the civil, labour and industrial courts or tribunals are open to challenge before the High Court and the Supreme Court in appropriate proceedings. Actions of the Government or other authorities performing any public duty are amenable to correction in proceedings under article 226. By reason of the disinvestment, employees do not lose their right to seek redressal through courts for any wrongs done to them.*

*The employees have no vested right in the employer company continuing to be a government company or "other authority" for the purpose of article 12 of the Constitution of India. Apart from the fact that the very status claimed by the employees in this case is a fortuitous occurrence with the employees having commenced work under a private employer and while on the verge of losing employment, being rescued by the State taking over the company, the employees cannot claim any right to decide as to who should own the shares of the company. The State which invested of its own volition, can equally well disinvest. So long as the State holds the controlling interest or the whole of the shareholding, employees may claim the status of employees of a government company or "other authority" under article 12 of the Constitution. The status so conferred on the employees does not* *prevent the Government from disinvesting; nor does it make the consent of the employees a necessary precondition for disinvestment.*

*Public interest is the paramount consideration, and if in the public interest the Government thought it fit to take over a sick company to preserve the productive unit and the jobs of those employed therein, the government can, in the public interest, with a view to reducing the continuing drain on its limited resources, or with a view to raising funds for its priority welfare or developmental projects, or even as a measure of mobilising the funds needed for running the government, disinvest from the public sector companies. Article 12 of the Constitution does not place any embargo on an instrumentality of the State or "other authority" from changing its character".*

*The aforesaid observations, in our opinion, enunciates the legal position correctly. The policies of the Government ought not to remain static. With the change in economic climate, the wisdom and the manner for the Government to run commercial ventures may require reconsideration. What may have been in the public interest at a point of time may no longer be so. The Government has taken a policy decision that it is in public interest to disinvest in BALCO. An elaborate process has been undergone and majority shares sold. It cannot be said that public funds have been frittered away. In this process, the change in the character of the company cannot be validly impugned. While it was a policy decision to start BALCO as a company owned by the Government, it is as a change of policy that disinvestment has now taken place. If the initial decision could not be validly challenged on the same parity of reasoning, the decision to disinvest also cannot be impugned without showing that it is against any law or mala fide.*

*Even though, the employees have no right to be heard before the decision to disinvest takes place nevertheless it is the case of the Respondent that the workers had been fully informed about the process of disinvestment through an ongoing dialogue. In this connection, it is pertinent to note that the BALCO Employees Union had filed Writ Petition No. 2249 of 1999 against the Union of India before the Delhi High Court in relation to proposed disinvestment wherein the following order was passed on 3rd August, 1999 :-*

*"It is stated by Dr. Singhvi, learned counsel, on instructions from Mr. Madan Lal, President of the Petitioner that challenge to the policy of disinvestment in Respondent No. 5 company is not pressed. It is further stated that whenever the final decision is to be taken by the Respondents affecting the interests of the workers, the same be intimated with two weeks' advance notice to the Petitioners by the Respondents.*

*As far as the protection of the interests of the workers is concerned, the relief being premature cannot be entertained and the petition to this extent would be liable to be rejected.*

*Mr. Rawal, learned Additional Solicitor General states that if any decision relating to the interests of the employees/ workers is taken by the Respondents, two weeks' prior notice of the same will be given to the Petitioners.*

*In view of the above, the petition is disposed of with liberty to the Petitioners to approach the Court in the event of any decision adverse to the interest of the employees/ workers being taken.*

*Petition disposed off accordingly".*

*According to the company, after the aforesaid order of 3rd August, 1999 was passed, the entire rationale and process of disinvestment was explained to the workers through BALCO Samachar News letter. A meeting was held in May, 2000 by the then Chairman and Managing Director with the Union leaders where the Joint Secretary of the Ministry of Mines, who was also Director of the company, was also present. In addition thereto, the workers' unions had been making various representations to the Government which were considered by it before finalising of various documents. That there was a dialogue between the Government and representatives of the workers which is evident from the copy of minutes of the meetings held on February 14, 2001 between the union leaders and officers of the companies and the Government. The minutes of the meeting with leaders of six trade unions, who had taken part in the discussion, disclose that, in principle, the Trade Unions were not against disinvestment but their interest should be sufficiently safeguarded.*

*We find that in the shareholders agreement between the Union of India and the strategic partner, it is provided that there would be no retrenchment of any worker in the first year after the closing date and thereafter restructuring of the labour force, if any, would be implemented in a manner recommended by the Board of Directors of the company. The shareholders Agreement further mandates that in the event reduction in the strength of its employees is required, then it is to be ensured that the company offers its employees an option to voluntarily retire on terms that are not in any manner less favourable than the Voluntary Retirement Scheme offered by the company on the date of the arrangement. Apart from the conditions stipulated in the shareholders agreement, Shri Sundaram, learned senior counsel on behalf of the company has stated in the Court that it will not retrench any worker(s) who are in the employment of BALCO on the date of takeover of the management by the strategic partner, other than any dismissal or termination of the worker(s) of the company from their employment in* *accordance with the applicable staff regulations and standing orders of the company or other applicable laws. We record the said statement.*

*We are satisfied that the workers' interests are adequately protected in the process of disinvestment. Apart from the aforesaid undertaking given in the Court, the existing laws adequately protect workers' interest and no decision affecting a huge body of workers can be taken without the prior consent of the State Government. Further more, the service conditions are governed by the certified orders of the company and any change in the conditions thereto can only be made in accordance with law. The demands made by the employees of BALCO were considered by the IMG in its meeting held on 25th January, 2001 and the issues emanating therefrom were placed by the Department of Disinvestment before the Cabinet Committee on Disinvestment which held its meeting on 1st February, 2001. A note containing the comments of the Ministry of Mines which was endorsed by the IMG of the Cabinet Committee on Disinvestment was forwarded by the Minister of Mines, Government of India to Shri Tara Chand Viyogi, President, M.P. Rashtriya Mazdoor Congress. The said note, apart from setting out reasons for disinvestment of BALCO, also refers how the interest of the employees of BALCO has been protected in the process of disinvestment. This note states:-*

*"Regarding employees, adequate provisions have been made in Share Holders' Agreement (SHA) as follows :-*

*"Recital H Subject to Clause 7.2, the Parties envision that all employees of the Company on the date hereof shall continue in the employment of the Company.*

*Clause 7.2 (e) It shall not retrench any part of the labour force of the Company for a period of one (1) year from the Closing Date other than any dismissal or termination of employees of the Company from their employment in accordance with the applicable staff regulations and standing orders of the Company or applicable Law; and Clause 7.2 (f) Subject to the sub-clause (e) any restructuring of the labour force of the company shall be implemented in the manner recommended by the Board and in accordance with all applicable laws. The SP in the event of any reduction of the strength of its employees shall, ensure that the Company offers its employees an option to voluntarily retire on terms that are not, in any manner, less favourable than the voluntary retirement scheme offered by the company on the date of this agreement;"*

*It may be mentioned that as per the provisions contained in the Industrial Disputes Act, BALCO will remain an industrial establishment even after the disinvestment and all the provisions of Industrial Disputes Act will automatically apply to BALCO.*

*In an organised sector, the issues of job security, wage structure, perks, welfare facilities, etc., of the workmen are governed by bipartite/tripartite agreements. These agreements are in the nature of "settlement" under the Industrial Disputes Act. Even after the disinvestment, the BALCO management will be required to enter into bipartite/tripartite agreements with the workmen through unions, and, the terms and conditions in the agreement would be always governed by the practices and procedures applicable under collective bargaining. It is a fact that any agreement between two or more parties is based on the principles of mutual consent. Hence, the consent of the management to better service conditions, etc., would certainly depend on the achievement of the productivity and production targets by the workers from time to time.*

*Regarding providing social security to the BALCO employees at par with government employees, it is to be noted that as a matter of principle, no industrial establishment has any right to be compared with a government establishment. Hence the issue of guaranteeing the social security of the BALCO employees at par with the employees of the Government establishments may not be possible any time before or after the disinvestment.*

*So far as employees' stock options and a lock-in period for the investor are concerned, there is a provision in the documents pertaining to the proposed strategic sale, for giving upto 5 per cent of the equity to employees, and for a lock-in period of three years.*

*Regarding guaranteeing that there will be no closure of any establishment of the company for a minimum period of 10 years, it is to be noted that the "Closure" of any undertaking of an Industrial Establishment of the kind of BALCO is governed by Section 25(O) of Chapter V-B of the Industrial Disputes Act, by virtue of which BALCO management before or after disinvestment is not free to close down any part of the BALCO at their sweet will. The closure is governed by the law of the land and under the existing provisions of Industrial Disputes Act, "genuineness and adequacy of the reasons stated by the employer" and "the interests of the general public and all other relevant factors" has to be examined by the appropriate government, and, for doing so the government give a reasonable opportunity of hearing to the employer and workmen and the persons interested in such closure. It means that unless and until the appropriate Government grants permission, the BALCO management will not be competent to close down any undertaking of the company even after disinvestment. So there are protections available under the Act against arbitrary closure of any undertaking of the BALCO after disinvestment.*

*The unions desire that the prospective buyer should disclose its plans for investment/modernisation of BALCO after disinvestment. As a matter of fact, at the time of submitting financial bids the prospective buyers are* *expected to submit the business plan as well. But perhaps in such commercial ventures, given the changing market conditions, the business plan submitted by prospective buyers may not be enforceable under law.*

*The trade unions desire that all listed demands should be accepted and put in the form of a written agreement between the government and the representatives of recognised unions before finalising any agreement with the prospective buyers. In fact, the Government and BALCO are two different legal entities. The Government is disinvesting its 51% equity in the BALCO. Under law, no enforceable agreement may be entered between the Government and the workmen of BALCO as any such agreement will not have force of law. In order that an agreement has the force of law, it should be a written agreement between employer and workmen. The Government is not the employer of the workmen employed in BALCO. As such, any such agreement is neither desirable nor necessary and not enforceable".*

*From the aforesaid recital of facts, it is clear that safeguarding the interests of the workers was one of the concerns of the Government. Representations had been received from the Trade Union leaders and effort was made to try and ensure that the process of disinvestment did not adversely affect the workers.*

*Even though the employees of the company may have an interest in seeing as to how the company is managed, it will not be possible to accept the contentions that in the process of disinvestment, the principles of natural justice would be applicable and that the workers, or for that matter any other party having an interest therein, would have a right of being heard. As a matter of good governance and administration whenever such policy decisions are taken, it is desirable that there should be wide range of consultations including considering any representations which may have been filed, but there is no provision in law which would require a hearing to be granted before taking a policy decision. In exercise of executive powers, policy decisions have to be taken from time to time. It will be impossible and impracticable to give a formal hearing to those who may be affected whenever a policy decision is taken. One of the objects of giving a hearing in application of the principles of natural justice is to see that an illegal action or decision does not take place. Any wrong order may adversely affect a person and it is essentially for this reason that a reasonable opportunity may have to be granted before passing of an administrative order. In case of the policy decision, however, it is impracticable, and at times against the public interest, to do so, but this does not mean that a policy decision which is contrary to law cannot be challenged. Not giving the workmen an opportunity of being heard cannot per se be a ground of vitiating the decision. If the decision is otherwise illegal as being contrary to law or any constitutional provision, the persons affected like the workmen, can* *impugn the same, but not giving a pre-decisional hearing cannot be a ground for quashing the decision.*

*Our attention was invited to the decision in the* *<u>National Textile Workers' Union and Others vs. P.R. Ramakrishnan</u>* *(supra) where at page 245, Bhagwati, J. (as he then was) had observed that in deciding whether the Court should wind up a company or change its management, the Court must take into consideration not only the interests of the shareholders and creditors but also amongst other things, the interests of the workers. The workers must have an opportunity of being heard for projecting and safeguarding their interests before winding up Order is passed by the Court. It was contended that similarly before a policy decision is taken, and also in the execution thereof, as the interests of the workers is going to be affected, the petitioning workers herein have a right to be heard. There can be no doubt that in judicial proceedings where rights are likely to be affected, principles of natural justice would require the Court to give a hearing to the party against whom an adverse or unfavourable Order may be passed. It was in relation to the winding up proceedings which were pending before a Court that this Court in National Textiles Workers Union case held that they had a right to be heard. The position, in the present case, is different. No judicial or quasi-judicial functions are exercised by the Government when it decides, as a matter of policy, to disinvest shares in a Public Sector Undertaking. While it may be fair and sensible to consult the workers in a situation of change of management, there is, however, in law no such obligation to consult in the process of sale of majority shares in a company. The decision in National Textiles Workers Union case can, therefore, be of no assistance to the petitioner.*

*In this connection, we approve the following observations of the Karnataka High Court in* *<u>Prof. Babu Mathew and Others vs. Union of India and Others</u>**, [1997] 90 Company Cases 455 where the Court while dealing with disinvestment upto 49% of the government's holding in a public sector company observed at page 478 as follows: "Any economic reform, including disinvestment in PSEs is intended to shake the system for public good. The intention of disinvestment is to make PSEs more efficient and competitive and perform better. The concept of the public sector and what should be the role of the public sector in the development of the country, are matters of policy closely linked to economic reforms. While it is true that any policy of the Government should be in public interest, it is not shown how prior consultation with employees of a PSE before disinvestment is a facet of such public interest."*

*As a result of disinvestment of 51% of the shares of the company, the management and control, no doubt, has gone into private hands. Nevertheless, it cannot, in law, be said that the employer of the workmen has changed. The employees continue to be under the* *company and change of management does not in law amount to a change in employment.*

*Apart from the fact that it will not be open to a Court to consider whether there has been a gross failure to evolve a comprehensive package towards implementation of the policy on disinvestment, as was contended by the Advocate-General of Chhattisgarh, it is not possible to accept the said contention as being, in fact, correct. In the process of disinvestment, it is evident that the Central Government was aware of the interests of the workers and employees as a class. It was precisely for this reason that safeguards were inserted in the Share Holders Agreement. These terms, which have been referred to were incorporated in the agreement after the demands of the BALCO employees were considered by the IMG in its meeting on 25th January, 2001 and thereafter the same were considered by the Cabinet Committee on Disinvestment on 1st February, 2001.*

*As far as the grievance of alleged non-consultation of the State Government in the process of disinvestment of BALCO is concerned, that is a matter between the State Government and the Union of India and any grievance on that score cannot be raised by the State against the Government of India in these proceedings initiated by the workmen. However, it is not possible to believe that during the entire process of disinvestment of BALCO, the State Government was oblivious of what was happening. The facts enumerated herein above clearly show that wide publicity was given at various stages in connection with disinvestment. Firstly, it was after due publicity that a global Adviser was appointed and thereafter advertisement was issued in an effort to select the strategic partner. The whole process of disinvestment of BALCO took place over a period of about two years. The issue was even debated by members in the Lok Sabha. There was nothing to prevent the State of Chattisgarh at any stage prior to the selection of the strategic partner, either to forward its views or a representation or even to make an offer of buying the 51% of the shares which were being sold. Once Share Holders' Agreement has been signed, the offer of the State of Chattisgarh to buy 51% equity shares in the company for a higher value of Rs. 551.41 crores would be of no consequence. This offer did not see the light of the day till the start of the present litigation.*

*It has been contended on behalf of the State of Chattisgarh as well as by Shri Ranjit Kumar that the process of disinvestment was a flagrant violation/deviation of the recommendations of the expert body of the Disinvestment Commission. It was submitted that the Disinvestment Commission had recommended disinvestment of only 40% of the Government's equity to the strategic partner through a transparent and competitive global bidding process but the Counter Affidavit of the Union of India disclosed that it had taken a decision to off-load its equity holding of 51% instead of 40% on the basis of the letter of the Chairman* *of the Commission dated 12th June, 1998. The contention of the learned Counsel was that the said letter of the Chairman could not be a substitute for the recommendations of the expert body of the Commission and the Government of India should not have acted solely on the basis of the letter. It was submitted that there was, thus, gross departure from the recommendations made by the Commission and the same was without any valid reason or consideration of overwhelming public interest which has resulted in vitiating the decision making process.*

*The Disinvestment Commission was established by the Government's Resolution on 23rd August, 1996. The Commission was to have a full-time Chairman and four part-time Members. The Commission was to make recommendations and be responsible for the implementation of the policies of the Government of India with respect to disinvestment. The terms of reference and the functions of the Commission were provided for in paras 3, 4 and 5 of the said Resolution. However, by another Resolution dated 12th January, 1998, paras 3 to 5 were deleted. It was now specifically stated that the Disinvestment Commission shall be the advisory body and will carry out such activities relating to disinvestment as may be assigned to it by the Government. It was clearly stipulated therein that the final decision on the recommendations of the Commission will vest with the Government. In April, 1997, the Commission advised the Government that BALCO needed to be privatised and a significant share of 40% of the equity should be sold to a strategic partner. This was to be followed by the reduction of Government's share holding to 26%. The Disinvestment Commission had categorised BALCO as a non-core group industry. After the issue of global advertisement, M/s Jardine Fleming Securities (I) Limited was appointed as global Adviser on 15th January, 1998. It is on 12th June, 1998 that the Chairman, Disinvestment Commission advised that the Government may consider offering sale of 51% or more equity of BALCO to the strategic partner along with transfer of management. This, according to the Chairman, would fetch a better price of shares. In the light of these facts, it is not possible to accept the contention that the Union of India deviated from the advice which was given by the Disinvestment Commission. Firstly, the advice of this Disinvestment Commission was not binding on the Government of India. Further more, the terms of reference and the provisions contained in the Resolution dated 23rd August, 1996 which required the disinvestment under the supervision of the Commission and the Commission advising the Government on matters like consideration of the interests of the stake-holders, workers, consumers etc., were deleted by the subsequent Resolution of 12th January, 1998. The Commission became only an advisory or recommendatory body. It is the full-time Chairman of the Commission who wrote on 12th June, 1998 that the Government may consider strategic sale of 50% or more of the equity instead of the recommendation which was contained in the earlier Report of the*

*Commission for sale of only 40% of the equity. For the Government to accept this advise and to come to the conclusion that sale of 50% or more of the equity of BALCO along with transfer of management would secure for it a better price than the sale of only 40% cannot, under any circumstances, be regarded as unwarranted, illegal or arbitrary.*

*It is clear from the facts enumerated above that at each stage of disinvestment, public notices were issued in appointing the Global Adviser and then in selecting the strategic partner. The Global Adviser, after inviting quotations, selected a valuer, Shri P.V. Rao. Simultaneously, with the process of valuation, steps were taken for selecting the strategic partner by calling for expression of interest after advertisements in leading Journals and newspapers. Nevertheless contention is sought to be raised that the method of valuation was faulty, some assets were not taken into consideration and that Rs. 551.5 crores offered by M/s Sterlite did not represent the correct value of 51% shares of the company along with its controlling interest. It is not for this Court to consider whether the price which was fixed by the Evaluation Committee at Rs. 551.5 crores was correct or not. What has to be seen in exercise of judicial review of administrative action is to examine whether proper procedure has been followed and whether the reserve price which was fixed is arbitrarily low and on the face of it, unacceptable.*

*Assets including shares can be sold in a number of ways, i.e., they can be sold by public auction, tenders or sealed offers or by negotiations. The exercise which was undertaken to appoint valuers and to get a value of this controlling interest of 51% of the shares was presumably to arrive at the reserve price. What the assets will fetch, is ultimately reflected in the offer which is received. Despite global advertisement, initially only eight companies submitted their expression of interest. The IMG, consisting of high officials rejected the bids of two of the eight parties and ultimately only three viz., Alcoa/USA, HINDALCO, Sterlite conducted due diligence on BALCO between September and October, 2000. After carrying out the necessary inspection (due diligence), it is only two out of three applicants who gave their bid. Alcoa having dropped out, the bid of Sterlite industry was more and double of the bid of HINDALCO. The bidders at the time of furnishing their bids did not know what will be the reserve price which had to be fixed. It is only after the receipt of the bids that the reserve price was made known. The perception in the market, therefore, clearly was that 51% shares of BALCO along with its management was not worth more than Rs. 550.5 crores. The only other bidder who had expressed interest was HINDALCO whose bid was only Rs. 275 crores. Under the circumstances, when the Government had decided to disinvest in BALCO by accepting a bid far in excess of the reserve price which was fixed by the Evaluation Committee, the said decision cannot, under any circumstances, be faulted. Whether the reserve price should have been*

*514.4 crores or more appears to be immaterial when the best price which has been offered for the sale of 51% stake in BALCO after global advertisement was only Rs. 551.5 crores. There is no suggestion that there was any other company or institution which had or could offer more than the said sum. When proper procedure has been followed, as in this case, and an offer is made of a price more than the reserve price then there is no basis for this Court to conclude that the decision of the Government to accept the offer of Sterlite is in any way vitiated.*

*It was contended by the learned Advocate General that the whole process lacked transparency. We are not able to appreciate this contention. The disinvestment of BALCO commenced with the recommendation by the Disinvestment Committee in its second Report suggesting that the Government may disinvest BALCO. It is by global advertisement that the global Adviser and the strategic partner was chosen. At every stage, the matter was looked into by the IMG and ultimately by the Cabinet Committee on Disinvestment. The system which was evolved was completely transparent. It was made known. Transparency does not mean the conducting of the Government business while sitting on the cross roads in public. Transparency would require that the manner in which decision is taken is made known. Persons who are to decide are not arbitrarily selected or appointed. Here we have the selection of the global adviser and the strategic partner through the process of issuance of global advertisement. It is the global Adviser who selected the valuer who was already on the list of valuers maintained by the Government. Whatever material was received was examined by high Power Committee known as the IMG and the ultimate decision was taken by the Cabinet Committee on Disinvestment. To say that there has been lack of transparency, under these circumstances, is uncharitable and without any basis.*

*It was contended on behalf of the State of Chattisgarh that the land on which industry has been set up was originally tribal land. The said land could have been acquired and used by public sector undertaking but the tribal land could not be transferred to a non-tribal. Once majority shares in BALCO were transferred to a non-tribal company, the prohibition contained against the transfer of tribal land came into operation. Relying on the majority decision of this Court in <u>Samatha vs. State of A.P. and Others</u>, (1997) 8 SCC 191, it was contended that the transfer of land even by lease in favour of BALCO must be regarded as being invalid.*

*In Samatha's case, this Court had to consider the validity of the grant of mining lease of Government land in a scheduled area to the 'Non-Tribals'. The Court had to consider the effect and applicability of Section 3(1) of the A.P. Scheduled Areas Land Transfer Regulation, 1959 which reads as follows :-*

*"3. Transfer of immovable property by a member of a Scheduled Tribe (1) (a) Notwithstanding anything in any enactment, rule or law in force in the Agency tracts any transfer of immovable property situated in the Agency tracts by a person, whether or not such person is a member of a Scheduled Tribe, shall be absolutely null and void, unless such transfer is made in favour of a person, who is a member of a Scheduled Tribe or a society registered or deemed to be registered under the Andhra Pradesh Cooperative Societies Act, 1964 (Act 7 of 1964) which is composed solely of members of the Scheduled Tribes".*

*While interpreting the said Regulation framed by the Governor in exercise of powers under Article 244 read with para 5(2) of the Fifth Schedule of the Constitution, this Court held that the words "transfer of immovable property . by a person" in that clause included the transfer by way of grant of mining lease by the State Government. Section 3(1) was interpreted as prohibiting any such transfer in favour of a non-scheduled tribe and it was further declared that such transfer shall be absolutely null and void.*

*While we have strong reservations with regard to the correctness of the majority decision in Samatha's case, which has not only interpreted the provisions of aforesaid Section 3(1) of the A.P. Scheduled Areas Land Transfer Regulation, 1959 but has also interpreted the provisions of the Fifth Schedule of the Constitution, the said decision is not applicable in the present case because the law applicable in Madhya Pradesh is not similar or identical to the aforesaid Regulation of Andhra Pradesh. Article 145 (3) of the Constitution provides that any substantial question of law as to the interpretation of the provisions of the Constitution can only be decided by a Bench of five judges. In Samatha's case, it is a Bench of three Hon'ble judges who by majority of 2:1, interpreted the Fifth Schedule of the Constitution. However, what is important to note here is, as already observed herein above, that the provisions of the Madhya Pradesh Land Revenue Code, 1959 and Section 165, in particular, are not in pari materia with the aforesaid Section 3 of the Andhra Pradesh Regulation.*

*Section 165 of the M.P. Revenue Code, 1959 deals with transfer of rights of Bhumiswami. Prior to its amendment on 29th November, 1976, Sub-section 6 of Section 165 reads as follows :-*

*"Notwithstanding anything contained in sub-section (1), the right of a Bhumiswami belonging to a tribe which has been declared to be an aboriginal tribe by the State Government by a notification in that behalf for the whole or a part of the area to which this Code applies shall not be transferred to a person not belonging to such tribe without the permission of a Revenue Officer not below the rank of a Collector, given for reasons to be recorded in writing".*

*By Section 2 of the M.P. Act No. 61 of 1976 published in the Gazette on 29th November, 1976, the aforesaid sub-section (6) of Section 165 was repealed and was substituted by the following provision:-*

*"Notwithstanding anything contained in sub-section (1) the right of Bhumiswami belonging to a tribe which has been declared to be an aboriginal tribe by the State Government by a notification in that behalf for the whole or part of the area to which the Code applies shall*

*(i) in such areas as are predominately inhabited by aboriginal tribes and from such date as the State Government may, by notification specify, not be transferred nor it shall be transferable either by way of sale or otherwise or as a consequence of transaction of loan to a person not belonging to such tribe in the area specified in the notification;*

*(ii) in areas other than those specified in the notification under clause (i), not be transferred or be transferable either by way of sale or otherwise or as a consequence of transaction of loan to a person not belonging to such tribe without the permission of a Revenue Officer not below the rank of Collector, given for reasons to be recorded in writing".*

*Explanation For the purposes of this sub-section the expression "otherwise" shall not include lease.*

*Sub-section (6) of Section 165, before and after its amendment, does not contain any provision prohibiting the giving of tribal land by way of lease to non-tribals. Prior to its amendment, a land could be transferred to a non-tribal after getting permission of Revenue Officer not below the rank of Collector who is required to give his reasons for granting the permission. After amendment on 29th November, 1976 by virtue of provision of sub-section (6), lease of land is taken out of the purview of sub-section 6(1).*

*In the instant case, either the land was acquired and then given on lease by the State Government to BALCO or permission was given by the District Collector for transfer of private land in favour of BALCO. This was clearly permissible under the provisions of Section 165(6) as it then stood and it is too late in the day, 25 years after the last permission was granted, to hold that because of this disinvestment, it must be presumed that there is a transfer of land to the non-tribal in the year 2001 even though the land continues to remain with BALCO to whom it was originally transferred. The giving of land to BALCO on lease was in compliance with the provisions of Section 165(6) of the Revenue Code. Moreover, change of management or in the shareholding does not imply that there has now been any transfer of land from one company to another. If the original grant of lease of land and permission to transfer in favour of BALCO between the years 1968 and 1972 was valid, then, it cannot now be contended that there has been another transfer of land* *with the Government having been reduced it's stake to 49%. Even if BALCO had been a non-public sector undertaking the transfer of land to it was not in violation of the M.P. Land Revenue Code. The decision of this Court in Samatha's case (Supra) is inapplicable in the present case as the statutory provision here does not contain any absolute prohibition of the type contained in Section 3(1) of the Andhra Pradesh Regulation, which was the basis of the decision in Samatha's case.*

*Transferred Case No. 9 of 2001.*

*Shri B.L. Wadhera has, in recent years, become a persistent Public Interest Litigant who has to his credit fairly large number of Writ Petitions filed in the Delhi High Court. Not to miss an opportunity, soon after the bid of Sterlite was accepted on 21st February, 2001, promptly Wadhera filed Writ Petition in the Delhi High Court within two days i.e. on 23rd February, 2001 which is Transferred Case No. 9 of 2001 challenging the said decision. Wadhera is not an employee of the company, nor was he a prospective bidder. He contended that he had been closely connected with public sector undertakings and therefore, had the locus standi to file the Writ Petition challenging the said disinvestment by filing what he terms as a Public Interest Litigation.*

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

*While PIL initially was invoked mostly in cases connected with the relief to the people and the weaker sections of the society and in areas where there was violation of human rights under Article 21, but with the passage of time, petitions have been entertained in other spheres. Prof. S.B. Sathe has summarised the extent of the jurisdiction which has now been exercised in following words :- "PIL may, therefore, be described as satisfying one or more of the following parameters. These are not exclusive but merely descriptive:*

*? Where the concerns underlying a petition are not individualist but are shared widely by a large number of people (bonded labour, undertrial prisoners, prison inmates).*

*? Where the affected persons belong to the disadvantaged sections of society(women, children, bonded labour, unorganised labour etc.).*

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

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

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

*There is, in recent years, a feeling which is not without any foundation that Public Interest Litigation is now tending to become publicity interest litigation or private interest litigation and has a tendency to be counter-productive.*

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

*What Public Interest Litigation is meant to be has been explained at length in <u>S.P. Gupta vs. Union of India and Another</u>, 1981 (Supp) SCC 87. Public Interest Litigation in that case was filed relating to the appointment and transfer of judges and it is in this connection that the question arose with regard to the locus standi of the Petitioner to file the Writ Petition. While deciding this aspect, this Court examined as to what is the nature of the Public Interest Litigation and who can initiate the same. At page 215, Bhagwati J. observed as follows :-*

*"..It is for this reason that in public interest litigation litigation undertaken for the purpose of redressing public injury, enforcing public duty, protecting social, collective, 'diffused' rights and interests or vindicating public interest, any citizen who is acting bona fide and who has sufficient interest has to be accorded standing.."*

*The limitation within which the Court must act, and the caution against the abuse of the same is referred to by Bhagwati J. at page 219 as follows :-*

*"24. But we must be careful to see that the member of the public, who approaches the court in cases of this kind, is acting bona fide and not for personal gain or private profit or political motivation or other oblique consideration. The Court must not allow its process to be abused by politicians and others to delay legitimate administrative action or to gain a political objective. Andre Rabie has warned that "political pressure groups who could not achieve their aims through the administrative process" and we might add, through the political process, "may try to use the courts to further their aims". These are some of the dangers in public interest litigation which the court has to be careful to avoid. It is also necessary for the court to bear in mind that there is a vital distinction between locus standi and justiciability and it is not every default on the part of the State or a public authority that is justiciable. The court must take care to see that it does not overstep the limits of its judicial function and trespass into areas which are reserved to the Executive and the Legislature by the Constitution. It is a fascinating exercise for the court to deal with public interest litigation because it is a new jurisprudence which the court is evolving a jurisprudence which demands judicial statesmanship and high creative ability. The frontiers of public law are expanding far and wide and new concepts and doctrines which will change the complexion of the law and which were so far as embedded in the womb of the future, are beginning to be born.*

*25. Before we part with this general discussion in regard to locus standi, there is one point we would like to emphasise and it is, that cases may arise where there is undoubtedly public injury by the act or omission of the State or a public authority but such act or omission also causes a specific legal injury to an individual or to a specific class or group of individuals. In such cases, a member of the public having sufficient interest can certainly maintain an action challenging the legality of such act or omission, but if the person or specific class or group of persons who are primarily injured as a result of such act or omission, do not wish to claim any relief and accept such act or omission willingly and without protest, the member of the public who complains of a secondary public injury cannot maintain the action, for the effect of entertaining the action at the instance of such member of the public would be to foist a relief on the person or specific class or group of persons primarily injured, which they do not want."*

*Emphasis added <u>In Sachidanand Pandey and Another vs. State of West Bengal</u> and Others, (1987) 2 SCC 295, V. Khalid, J. observed as follows :- "61. It is only when courts are apprised of gross violation of fundamental rights by a group or a class action or when basic human rights are invaded or when there are compaints of such acts as shock* *the judicial conscience that the courts, especially this Court, should leave aside procedural shackles and hear such petitions and extend its jurisdiction under all available provisions for remedying the hardships and miseries of the needy, the underdog and the neglected. I will be second to none in extending help when such help is required. But this does not mean that the doors of this Court are always open for anyone to walk in. It is necessary to have some self-imposed restraint on public interest litigants".*

*After referring to the decision in Subhash Kumar vs. State of Bihar and Others, (1991) 1 SCC 598 and other cases on the point, in Janata Dal vs. H.S. Chowdhary and Others, (1992) 4 SCC 305, it was observed at page 348 as follows :-*

*"109. It is thus clear that only a person acting bona fide and having sufficient interest in the proceeding of PIL will alone have a locus standi and can approach the court to wipe out the tears of the poor and needy, suffering from violation of their fundamental rights, but not a person for personal gain or private profit or political motive or any oblique consideration. Similarly, a vexatious petition under the colour of PIL brought before the court for vindicating any personal grievances, deserves rejection at the threshold".*

*Referring to the litigants standing in queues waiting for the cases to be listed in Courts at page 349, Pandian, J. had observed as follows:-*

*"..the busybodies, meddlesome interlopers, wayfarers or officious interveners having absolutely no public interest except for personal gain or private profit either for themselves or as proxy of others or for any other extraneous motivation or for glare of publicity break the queue muffling their faces by wearing the mask of public interest litigation, and get into the courts by filing vexatious and frivolous petitions and thus criminally waste the valuable time of the courts and as a result of which the queue standing outside the doors of the Court never moves which piquant situation creates a frustration in the minds of the genuine litigants and resultantly they lose faith in the administration of our judicial system."*

*While dealing with a case where PIL had been filed in relation to an award of contract, the factors which the Courts have to consider have been dealt with in the following observations in Raunaq International Ltd. vs. I.V.R. Construction Ltd. and Others (1999) 1 SCC 492 at page 502.*

*"17. Normally before such a project is undertaken, a detailed consideration of the need, viability, financing and cost- effectiveness of the proposed project and offers received takes place at various levels in the Government. If there is a good reason why the project should not be*

*undertaken, then the time to object is at the time when the same is under consideration and before a final decision is taken to undertake the project. If breach of law in the execution of the project is apprehended, then it is at the stage when the viability of the project is being considered that the objection before the appropriate authorities including the court must be raised. We would expect that if such objection or material is placed before the Government, the same would be considered before a final decision is taken. It is common experience that considerable time is spent by the authorities concerned before a final decision is taken regarding the execution of a public project. This is the appropriate time when all aspects and all objections should be considered. It is only when valid objections are not taken into account or ignored that the court may intervene. Even so, the court should be moved at the earliest possible opportunity. Belated petitions should not be entertained.*

*18. The same considerations must weigh with the court when interim orders are passed in such petitions. The party at whose instance interim orders are obtained has to be made accountable for the consequences of the interim order. The interim order could delay the project, jettison finely worked financial arrangements and escalate costs. Hence the petitioner asking for interim orders in appropriate cases should be asked to provide security for any increase in cost as a result of such delay or any damages suffered by the opposite party in consequence of an interim order. Otherwise public detriment may outweigh public benefit in granting such interim orders. Stay order or injunction order, if issued, must be moulded to provide for restitution."*

*Lastly, we need only to refer to the following observations in the majority decision in Narmada Bachao Andolan case (supra) at page 763.*

*"232. While protecting the rights of the people from being violated in any manner utmost care has to be taken that the court does not transgress its jurisdiction. There is, in our constitutional framework a fairly clear demarcation of powers. The court has come down heavily whenever the executive has sought to impinge upon the court's jurisdiction.*

*233. At the same time, in exercise of its enormous power the court should not be called upon to or undertake governmental duties or functions. The courts cannot run the Government nor can the administration indulge in abuse or non-use of power and get away with it. The essence of judicial review is a constitutional fundamental. The role of the higher judiciary under the Constitution casts on it a great obligation as the sentinel to defend the values of the Constitution and the rights of Indians. The courts must, therefore, act within their judicially permissible limitations to uphold the rule of law and harness their power in public interest. It is precisely for this reason that it has been consistently held by this Court that in matters of policy the court will not interfere. When there is a valid law requiring the Government to act in a* *particular manner the court ought not to, without striking down the law, give any direction which is not in accordance with law. In other words, the court itself is not above the law.*

***234. In respect of public projects and policies which are initiated by the Government the courts should not become an approval authority. Normally such decisions are taken by the Government after due care and consideration. In a democracy welfare of the people at large, and not merely of a small section of the society, has to be the concern of a responsible Government. If a considered policy decision has been taken, which is not in conflict with any law or is not mala fide, it will not be in public interest to require the court to go into and investigate those areas which are the function of the executive. For any project which is approved after due deliberation the court should refrain from being asked to review the decision just because a petitioner in filing a PIL alleges that such a decision should not have been taken because an opposite view against the undertaking of the project, which view may have been considered by the Government, is possible. When two or more options or views are possible and after considering them the Government takes a policy decision it is then not the function of the court to go into the matter afresh and, in a way, sit in appeal over such a policy decision".***

*It will be seen that whenever the Court has interfered and given directions while entertaining PIL it has mainly been where there has been an element of violation of Article 21 or of human rights or where the litigation has been initiated for the benefit of the poor and the underprivileged who are unable to come to Court due to some disadvantage. In those cases also it is the legal rights which are secured by the Courts. We may, however, add that Public Interest Litigation was not meant to be a weapon to challenge the financial or economic decisions which are taken by the Government in exercise of their administrative power. No doubt a person personally aggrieved by any such decision, which he regards as illegal, can impugn the same in a Court of law, but, a Public Interest Litigation at the behest of a stranger ought not to be entertained. Such a litigation cannot per se be on behalf of the poor and the downtrodden, unless the Court is satisfied that there has been violation of Article 21 and the persons adversely affected are unable to approach the Court.*

*The decision to disinvest and the implementation thereof is purely an administrative decision relating to the economic policy of the State and challenge to the same at the instance of a busy-body cannot fall within the parameters of Public Interest Litigation.*

*On this ground alone, we decline to entertain the writ petition filed by Shri B.L. Wadhera.*

*Writ Petition (Civil) No. 194 of 2001 This writ petition has been filed under Article 32 of the Constitution by BALCO challenging various show causes notices issued to them by authorities in the State of Chhattisgarh. In our opinion, it will not be appropriate for this Court to entertain the challenge to the said show cause notices in this petition. The petitioners have adequate remedy open to it under the Acts under which the notices had been issued and, in appropriate case, can approach the High Court under Article 226 of the Constitution. This writ petition is thus not entertained as alternative remedy is available to the petitioner.*

*Conclusion:*

***In a democracy, it is the prerogative of each elected Government to follow it's 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.***

***Wisdom and advisability of economic policies are ordinarily not amenable to judicial review unless it can be demonstrated that the policy is contrary to any statutory provision or the Constitution. In other words, it is not for the Courts to consider relative merits of different economic policies and consider whether a wiser or better one can be evolved. For testing the correctness of a policy, the appropriate forum is the Parliament and not the Courts. Here the policy was tested and the Motion defeated in the Lok Sabha on 1st March, 2001.***

*Thus, apart from the fact that the policy of disinvestment cannot be questioned as such, the facts herein show that fair, just and equitable procedure has been followed in carrying out this disinvestment. The allegations of lack of transparency or that the decision was taken in a hurry or there has been an arbitrary exercise of power are without any basis. It is a matter of regret that on behalf of State of Chattisgarh such allegations against the Union of India have been made without any basis. We strongly deprecate such unfounded averments which have been made by an officer of the said State.*

*The offer of the highest bidder has been accepted. This was more than the reserve price which was arrived at by a method which is well recognised and, therefore, we have not examined the details in the matter of arriving at the valuation figure. Moreover, valuation is a question of fact and the Court will not interfere in matters of valuation unless the methodology adopted is arbitrary [see Duncans Industries Ltd. vs. State of U.P. and Others, (2000) 1 SCC 633].*

*The ratio of the decision in Samatha's case (supra) is inapplicable here as the legal provisions here are different. The land was validly given to BALCO a number of years ago and today it is not open to the State of Chattisgarh to take a summersault and challenge the correctness of it's own action. Furthermore even with the change in management the land remains with BALCO to whom it had been validly given on lease.*

*Judicial interference by way of PIL is available if there is injury to public because of dereliction of Constitutional or statutory obligations on the part of the government. Here it is not so and in the sphere of economic policy or reform the Court is not the appropriate forum. Every matter of public interest or curiosity cannot be the subject matter of PIL. Courts are not intended to and nor should they conduct the administration of the country. Courts will interfere only if there is a clear violation of Constitutional or statutory provisions or non-compliance by the State with it's Constitutional or statutory duties. None of these contingencies arise in this present case.*

***In the case of a policy decision on economic matters, the Courts should be very circumspect in conducting any enquiry or investigation and must be most reluctant to impugn the judgement of the experts who may have arrived at a conclusion unless the Court is satisfied that there is illegality in the decision itself.***

*Lastly, no ex-parte relief by way of injunction or stay especially with respect to public projects and schemes or economic policies or schemes should be granted. It is only when the Court is satisfied for good and valid reasons, that there will be irreparable and irretrievable damage can an injunction be issued after hearing all the parties. Even then the Petitioner should be put on appropriate terms such as providing an indemnity or an adequate undertaking to make good the loss or damage in the event the PIL filed is dismissed.*

*It is in public interest that there should be early disposal of cases. Public Interest Litigation should, therefore, be disposed of at the earliest as any delay will be contrary to public interest and thus become counter-productive.*

*For the aforesaid reasons stated in this judgment, we hold that the disinvestment by the Government in BALCO was not invalid. Transferred Case (Civil) Nos. 8, 9 and 10 of 2001 are dismissed. The parties will, however, bear their own costs."*

25. The crux of the decision of the Hon'ble Court we have placed in bold. Therefore, we do not think that we are at liberty to interfere in the

rationalization execution even though it may involve the transfer of employees who are beyond a certain level of career progression.

26. Therefore, we find that there is no merit in the contentions raised by the applicants. All the applicants who are beyond the level of CMO are liable to all-India transfer provided they have received the benefits stipulated under it and not still covered by the pre-absorption state and below the rank of CMO.

27. Therefore, the OAs are declared to be without merit and with this direction that these category of people alone should be protected from transfer, we hold that others can be transferred and there is no merit in all the other contentions raised by the applicants.

28. The OAs are therefore dismissed. No order as to costs.

(C V SANKAR)
MEMBER (A)

(DR.K.B.SURESH)
MEMBER (J)

/ksk/

**Annexures referred to by the applicant in OA No.170/00583/2019**

Annexure-A1: Copy of the rationalization circular dated 21.01.2019
Annexure-A2: Copy of the rationalization and posting order dated 22.02.2019
Annexure-A3: Copy of the appointment order of the applicant
Annexure-A4: Copy of the completion of probation of the applicant
Annexure-A5: Copy of the extract of the portion of the circular dated 14.08.2007
Annexure-A6: Copy of the circular dated 27.10.2008
Annexure-A7: Copy of the extract of the relevant portion of standards notes
Annexure-A8: Copy of the extract of relevant portion of revised norms and standards of staff for ESI hospital
Annexure-A9: Copy of the in-principle approval given to increase beds of the hospital
Annexure-A10: Copy of the recruitment advertisements notified for the sanctioned strength of the hospital in other states
Annexure-A11: Copy of the representation by the ESIC Model Hospital Association dated 31.01.2019
Annexure-A12: Copy of the representation submitted by the ESIC Model Hospital Association dated 20.02.2019
Annexure-A13: Copy of the representation dated 26.02.2019 to Respondent No.2

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