

*

HIGH COURT OF DELHI AT NEW DELHI

Judgment Reserved on : 11th February, 2011

%

Judgment Pronounced on: 18th February, 2011

+

WP(C) No.4821/2010

SHRI NAND KISHORE GARG & ANR. Petitioners

Through: Mr.Laliet Kumar with Mr.Deepak Vohra,
Advocates

Mr.Jayant Bhushan, Sr. Advocate with
Ms.Pyoli, Advocate for the Intervenor.

Versus

GOVERNMENT OF NCT OF DELHI & ORS.Respondents

Through: Mr.Goolam E. Vahanvati, Attorney
General along with Mr.Atul Nanda,
Advocate for Union of India.

Mr.Dushyant Dave, Sr. Advocate with
Mr.N.Waziri and Ms.Neha Kapoor,
Advocates for the Respondent No.1.

Mr.Parag P. Tripathi, ASG with Mr.H.S.
Chandhoke and Mr.Kunal Bahri,
Ms.Purnima Sapra, Advocates for the
Respondent No.2.

Mr.V.P. Singh with Mr.Aashish Gupta,
Advocates for the Respondent No.3.

Mr.Sudhir Nandrajog, Sr. Advocate with
Mr.Amit Kumar and Mr.Anupam Varma,
Advocates for the Respondent No.4.

Dr.A.M.Singhvi, Sr.Advocate with
Mr.V.P. Singh, Mr.Anuj Berry and
Mr.Jaiveer Shergil, Advocates for the
Respondent No.5.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE MANMOHAN

1. Whether reporters of the local papers be allowed to see the judgment? Yes
2. To be referred to the Reporter or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

DIPAK MISRA, CJ

In this public interest litigation the petitioner describing himself as *pro bono publico* has prayed for issue of a writ of mandamus commanding the respondent No.2, Delhi Electricity Regulatory Commission (for short 'the Commission'), to issue the tariff approved by it on 28/29.4.2010 and pass such other order / orders as may be deemed fit in the facts and circumstances of the case.

2. At the very outset, we may state with profit that various assertions and asseverations have been made with regard to the issues relating to finalization of the tariff by the Commission under the provisions of The Electricity Act, 2003 (for brevity 'the 2003 Act'), the illegality committed by the Government of National Capital Territory of Delhi in asking the Commission not to issue the tariff and further how the consumers have been affected by non-issuance of the tariff order. But after impleadment of certain respondents, namely, BSES Yamuna Power Ltd., BSES Rajdhani Power Ltd. and North Delhi Power Ltd. the question, apart from other issues, that fundamentally cropped up whether the State Government could have passed the order in the manner it has done in exercise of power under Section 108 of the 2003 Act.

3. In this regard, we think it apposite to reproduce the relevant submissions advanced on 9.9.2010:

“The submission of Mr. Laliet Kumar, learned counsel for petitioner, is that the State Government could not

have intervened after the tariff was determined by the Commission as the same is not permissible under any of the provisions of the statute. The learned counsel for the petitioner further submitted that the tariff fixation does not come within the ambit and sweep of a policy decision and further after a decision has been taken by the Commission, the State Government has no authority to issue any direction or intervene in the matter.

Quite apart from that, it has been submitted by Mr. Laliet Kumar that the letter dated 4th May, 2010 issued by the State Government does not meet the requisite criteria of a policy decision, though the same has been couched in a different language. To bolster the said aspect, the learned counsel for the petitioner has commended us to the provisions contained in Sections 61, 62, 64 and 92 of the Electricity Act, 2003 (for brevity “the Act”).

Mr. Harish N. Salve, learned senior counsel appearing for NDPL, and Mr. Neeraj Kishan Kaul, learned senior counsel appearing for BSES Rajdhani Power Ltd., contended that the State Government has the power to issue directions as is evincible from Section 108 of the Act. Section 108 reads as under:-

“108. Directions by State Government:---(1) In the discharge of its functions, the State Commission shall be guided by such directions in matters of policy involving public interest as the State Government may give to it in writing.

(2) If any question arises as to whether any such direction relates to a matter of policy involving public interest, the decision of the State Government thereon shall be final.”

The learned senior counsel have also drawn inspiration from Section 86(4) of the Act which reads as under:-

“86. Functions of State Commission:

XXXX XXXX XXXX XXXX

(4) In discharge of its functions, the State Commission shall be guided by the National

Electricity Policy, National Electricity Plan and Tariff Policy published under section 3.”

It is submitted by Mr. Salve that if both the provisions are read in a purposeful and harmonious manner, it would convey that the State Government has the authority to issue such directions which fall in the realm of policy decision involving public interest and fixation of tariff or determination of tariff in accordance with National Electricity Policy, National Electricity Plan and Tariff Policy as published under Section 3 of the Act do come within the concept of policy.

The learned senior counsel would further submit that the ‘public interest’ cannot be narrowly construed in the conceptual canvas of the Act inasmuch as in a democratic body polity, the State Government has a role to see that there is electricity supply regard being had to the industrial growth as well as protection of the consumers.

Mr. Najmi Waziri, learned standing counsel for GNCT of Delhi, would contend that if the communication of the State Government is read in an apposite manner, it is clear as crystal that the State Government was seeking clarification from the Commission and pending clarification had directed not to issue the tariff order.”

4. Thereafter, this Court by order dated 27.10.2010 sought the assistance of the learned Attorney General to address the Court on the first issue. It is appropriate to note that learned Attorney General only addressed this Court with regard to the first issue and the matter was adjourned for adjudication on other issues.

5. When the matter was listed on the adjourned dates arguments were heard on other issues but finally it was felt while hearing the matter on 11.2.2011 that the first issue should be decided and thereafter the other

issues should be taken up. We may note with profit learned counsel for the parties very fairly acceded to the same.

6. At this juncture, it is obligatory on our part to mention that Mr.Dushyant Dave, learned senior counsel along with Mr.N. Waziri, learned standing counsel appearing for the GNCTD submitted that the State Government has taken a decision to withdraw the communication sent to the Commission. Had the same been stated at the very initial stage the matter would have been absolutely different. As a colossal grievance was made and arguments were canvassed at length and we had sought the assistance of the learned Attorney General who addressed us at length, we have thought it seemly to delve into the said issue and answer the same. We may also note with profit that we had indicated it to Mr.Dave and Mr.Waziri and, therefore, learned counsel for the GNCTD while reiterating the stand of withdrawal of the communication also addressed the Court on merits on the said score.

7. Mr. Goolam E. Vahanvati, learned Attorney General being assisted by Mr.Atul Nanda, submitted that the nature of communication that has been made does not come within the ambit and sweep of Section 108 of the 2003 Act. It is urged by him that if Section 108 of the 2003 Act is appropriately and appositely interpreted it would clearly convey that the State Government has no jurisdiction to pass such an order as that would tantamount to interference in the statutory functioning of the Commission. It is contended by him the words used under Section 108 of the 2003 Act

are that “the State Commission shall be guided by such directions in matters of policy involving public interest” and, therefore, the State Government can only issue guidelines which would relate to a larger public interest in the field of social structuralism or any kind of benefit to a class but by no stretch of imagination can issue a command to the Commission not to issue a tariff order. It is his further submission that policy and public interest are inseparably connected and the policy must reflect such larger public interest by which the Commission shall be guided. It is urged by him that Section 86 of the Act sets the guidance / guidelines for functioning of the Commission and the said provision does not confer any power on the State Government to interdict. Learned Attorney General further propounded that the Section 108 of the 2003 Act is almost similar to Section 78A of the Electricity (Supply) Act, 1948 (for short ‘the 1948 Act’) and the interpretation placed on the said provision in many an authority would have application for understanding the contour and sweep of the present provision. To buttress the said submission, he has taken us through the scheme of the Act and commended to the authorities in *Indian Metal & Ferro Alloys Ltd. v. State of Orissa & Ors.*, (1987) 3 SCC 189, *M/s.Real Food Products Ltd. and others v. Andhra Pradesh State Electricity Board and others*, (1995) 3 SCC 295, *Ester Industries Ltd. v. U.P. State Electricity Board & Ors.*, (1996) 11 SCC 199, *Pawan Alloys and Casting Pvt. Ltd. v. U.P. State Electricity Board & Ors.*, (1997) 7 SCC 251 and *Chittoor Zilla Vyavasay Adarula Sangham v. A.P. State Electricity Board & Ors.*, (2001) 1 SCC 396. He has also drawn inspiration from a passage

in *Laker Airways Ltd. v. Department of Trade*, (1979) 2 WLR 234 especially wherein Lord Denning M.R. has adverted to the concept of guidance and directions.

8. Mr.Dave, learned senior counsel along with Mr.Waziri, learned standing counsel for the GNCTD submitted that Section 108(1) has been broadly couched and, therefore, the authorities under Section 78A would not be applicable and deserve to be distinguished. Learned senior counsel has submitted that Section 108 of the 2003 Act uses the words “involving public interest” and, hence, it has a dynamic concept which has to be understood regard being had to the purpose / action / interest which would subserve the interest of the public at large at the relevant time. What would constitute public interest would depend on the facts and circumstances of the case obtaining at the time when it is determined and the same has to be left to the executive. It is urged that if sub-section (2) of 108 of 2003 Act is purposively understood it would be clear as day that the Parliament has wisely left the decision of defining and determining public interest to the State Government and whether a direction relates to a matter of policy involving public interest is in the domain of the State Government and the said decision is final. Learned senior counsel has commended us to the decisions in *Kusumam Hotels v. Kerala SEB*, (2008) 13 SCC 213, *A.P. State Electricity Board Vidyut Soudha & Ors. v. Gowthami Solvent Oils & Anr.*, AIR 1991 A.P. 141, *Management of Fertilizer Corp. of India v. The Workmen*, (1969) 2 SCR 706, *Food Corporation of India and Ors. v.*

Bhanu Lodh and Ors. (2005) 3 SCC 618, G.D. Zalani and another etc. v. Union of India and others, 1995 Supp (2) SCC 512, Pure Helium India Pvt. Ltd. v. Oil and Natural Gas Commission, (2003) 8 SCC 593, M/s.Real Food Products Ltd. (supra), Hotel Venus International v. State of Andhra Pradesh and others, AIR 1998 AP 78 and Hindustan Zinc Ltd. v. APSEB, 1991 (3) SCC 299 and also placed reliance on certain paragraphs of the decisions which have been placed reliance upon by the learned Attorney General.

9. Mr.Dave, learned senior counsel has also drawn inspiration from the statements of objects and reasons of 2003 Act. It is also contended by him that the basic purpose of the GNCTD while issuing the communication in question was to ensure that in the public interest, the National Tariff Policy should be duly adhered to by the DERC in fixing power tariff. It was the intention of the State that DERC should be guided by the National Tariff Policy.

10. The question that emerges for consideration is whether the communication dated 4.5.2010 could have been made in exercise of power vested in the State Government under Section 108 of the 2003 Act. Section 108 of the 2003 Act reads as under:

“108. Directions by State Government:---(1) In the discharge of its functions, the State Commission shall be guided by such directions in matters of policy involving public interest as the State Government may give to it in writing.

(2) If any question arises as to whether any such direction relates to a matter of policy involving public interest, the decision of the State Government thereon shall be final.”

11. Section 78A of the 1948 Act reads thus:

78A. Directions by the State Government - (1) in the discharge of its functions, the Board shall be guided by such directions on questions of policy as may be given to it by the State Government.

(2) If any dispute arises between the Board and the State Government as to whether a question is or is not a question of policy, it shall be referred to the Authority whose decision thereon shall be final.”

12. In *Indian Metal & Ferro Alloys Ltd.* (supra), while interpreting Section 22-B of the Electricity Act, 1910, the Apex Court has held thus:

“It appears to us to be clear on a reading of Section 22-B of the Act that what is contemplated by it is that the State Government should only lay down policy guidelines to be adopted by the Board for regulating supply, jurisdiction (*sic* distribution), consumption or use of energy. The implementation of the policy after working out the details is a matter to be carried out by the Board. It is therefore somewhat strange that the State Government has taken upon itself the task of allocating the quantum of power that may be consumed by the different industrial units mentioned in the Annexures to the Government Orders passed in respect of the years 1984-85, 1985-86 and 1986-87 under Section 22-B of the Act. However, the High Court is in our opinion right in holding that under the aforesaid section, the Government may for the purposes of securing equitable distribution of energy regulate its consumption or use and decide as a matter of policy whether the benefit of clubbing should be allowed to the consumers of energy....”

13. In *Chittoor Zilla Vyavasay Adarula Sangham* (supra), the Apex Court came to hold as follows:

“22. It is necessary first to examine the periphery of the statutory fields within which the Board and the State Government have to function. Admittedly both are statutory functionaries under the Central Act. They have to perform their obligations within the limits they have been entrusted with. Section 78-A empowers the State Government to issue directions to the Board on the question of policy, on the other hand the Board has to perform its statutory obligations under the said Act and with reference to the fixation of tariff it has to act in terms of what is contained in Sections 49 and 50. But this field of policy direction is not unlimited. There cannot be any policy direction which pushes the Board to perform its obligations beyond the limits of the said two sections. Any policy direction, which in its due performance keeps the Board within its permissible statutory limitations would be binding on the Board. So, both the State and the Board have to maintain their cordiality and coordination in terms of the statutory sanctions. If any policy direction pushes the Board in its compliance beyond statutory limitations, it cannot be a direction within the meaning of Section 78-A. It is significant that the opening words of Section 78-A are, “in the discharge of its functions, the Board shall be guided by such directions”. So, the direction of the State is for the guidance to the Board, in the discharge of its functions. Thus this direction has also limitation to give such direction which will subserve in performing its statutory obligation. We would be returning later to test, if direction to charge tariff at the rate of Rs.50 per HP per annum would have been followed by the Board, whether it would have travelled beyond Section 59.

xxx

xxx

25. Now, we proceed to examine what this Court held in the *Real Food Products Ltd.*¹ This Court examined the nature and effect of the direction given by the State Government under Section 78-A. It was examined in the context of charging a flat rate per H.P. for agricultural pumpsets. It holds the view expressed

by the State on a question of policy to be followed by the Board in the context of Board's function under Sections 49 and 59 and other provisions of the Act. This Court held that the flat rate per HP for the agricultural pumpset was found acceptable by the Board. What does acceptable to the Board means? It only means it to be within the parameters of Sections 49 and 59 of the Act. In other words, the Board has not to travel outside its obligations under Section 59. This decision records:

“However, in indicating the specific rate in a given case the action of the State Government may be in excess of the power of giving a direction on the question of policy, which the Board, if its conclusion be different, may not be obliged to be bound by... If the view expressed by the State Government in its direction exceeds the area of policy, the Board may not be bound by it unless it takes the same view on merits itself.

*** *** *** *** *** ***

At any rate, there is no material in the present case to indicate that the flat rate indicated by the State Government for the agricultural pumpsets was so unreasonable that it could not have been considered appropriate by the Board.”

Thus it is clear that the Board would not be bound to follow every policy direction. According to the Board, if tariff was charged at the rate of Rs. 50 per HP per annum, as per the direction in question, loss to the Board would have been to the extent of Rs. 1,553 crores for the year 1996-97. This would have gone contrary to the obligation cast on the Board under Section 59. Section 59 mandates the Board to leave such surplus not less than 3% of the revenue, after meeting all its expenses referred to therein. Thus Board has not to supply electricity at such rate to be in deficit, leaving no hope for its extensions for the benefit of persons living in an uncovered area. It is for this and other reason statute mandates Board to maintain this surplus in every year. If it has to perform this statutory obligation, how can it do so, if it follows any such direction which takes it away from it. It is true the Government can (sic has)

to cater to the popular demand in order to earn its legitimate favour, give any such policy direction, but it should have to be within permissible limit.”

[Emphasis supplied]

14. In *Real Food Products Ltd. & Ors.* (supra), a three-Judge Bench of the Apex Court has observed thus:

“8. The only surviving question is with regard to the nature and effect of the direction given by the State Government under Section 78-A of the Act. The question has to be examined in the context of the facts of the present case which is confined to the charging of a flat rate per H.P. for agricultural pump-sets. The nature of the function of the board in fixing the tariffs and the manner of its exercise has been considered at length in the earlier decisions of this Court and it does not require any further elaboration in the present case. Section 78-A uses the expression "the Board shall be guided by such directions on questions of policy as may be given to it by the State Government". It does appear that the view expressed by the State Government on a question of policy is in the nature of a direction to be followed by the Board in the area of the policy to which it relates. In the context of the function of the Board of fixing the tariffs in accordance with Section 49 read with Section 59 and other provisions of the Act, the Board is to be guided by any such direction of the State Government. Where the direction of the State Government, as in the present case, was to fix a concessional tariff for agricultural pump-sets at a flat rate per H.P., it does relate to a question of policy which the Board must follow. However, in indicating the specific rate in a given case, the action of the State Government may be in excess of the power of giving a direction on the question of policy, which the Board, if its conclusion be different, may not be obliged to be bound by. But where the Board considers even the rate suggested by the State Government and finds it to be acceptable in the discharge of its function of fixing the tariffs, the ultimate decision of the Board would not be vitiated merely because it has accepted the opinion of the State Government even about the specific rate. In such a case the Board accepts the suggested rate

because that appears to be appropriate on its own view. If the view expressed by the State Government in its direction exceeds the area of policy, the Board may not be bound by it unless it takes the same view on merits itself.”

[Underlining is ours]

15. In *Pawan Alloys and Casting Pvt. Ltd.* (supra), their Lordships of the Apex Court have observed thus:

“For the purpose of the present discussion we may proceed on the basis that while fixing general tariffs and making them subject to schemes of rebate, the Board exercises delegated legislative function flowing from the Statute. However once incentive rebate is granted in the general rate of tariffs on directions by State under Section 78A, the said incentive rebate offered by the Board would remain in the realm of exercise of statutory power-cum-duty. In the exercise of the same power the Board in its discretion can grant rebate in appropriate cases within the fore corners of Sections 49 and 78A of the Act. Of course this exercise will be subject to legally permissible limits and subject to the said concessional rates being found reasonable on the touchstone of Article 14 of the Constitution of India. It is, therefore, not possible to countenance the submission of Shri Dave that there cannot be any promissory estoppel against the Board when it exercises its powers under Section 49(1) of the Act whatever may be the settings for exercise of this power and even if it is exercised as a part of a scheme of incentive package: required to be offered to new industries as enjoined on the Board as per statutorily binding directions issued by the State to the Board under Section 78A of the Act.”

[Underlining is ours]

16. In this context, we may fruitfully refer to the decision in *Ester Industries Ltd.* (supra), wherein their Lordships of the Apex Court have held thus:

“4. Section 78A(1) of the Act postulates that in the discharge of its functions, the Board shall be guided by such directions on questions of policy as may be given to it by the State Government. In other words, the Electricity Board has a statutory function to discharge in determination of the rates of tariff and terms and conditions subject to which the electrical energy be supplied to the consumers and enforcement thereof. This being a legislative policy, while exercising the power under Section 78A policy directions issued by the Government may also be taken into consideration by the Electricity Board which has a statutory duty to perform. But so long as the policy direction issued by the Government is consistent with the provisions of the Act and the tariff policy laid down by the Board, it may be open to the Board to either accept it or may not accept the directions as such. It is for the State Government to consider whether the Board has laid down the policy or whether the direction issued by the State Government has not been properly implemented.”

[Emphasis added]

17. In *Hindustan Zinc Ltd. Etc. Etc.* (supra), a three-Judge Bench of the Apex Court while interpreting the provisions under the Electricity (Supply) Act, 1948 has opined thus:

“16. ... The question, therefore, reduces itself to this: Whether the failure of the Board to place the matter before and seek the advice of the Consultative Council on this question renders the revision of tariffs made by it invalid? The common premise for the purpose of this case that revision of tariffs by the Board is a question of policy may indicate that it would be open to the Consultative Council to advise the Board also on the question of revision of tariffs, and if such advice is given, then the Board must consider the same before taking the final decision. That, however, does not necessarily mean that where no such advice was taken from the Consultative Council or was rendered on account of the absence of any meeting of the Consultative Council during the relevant period, it would necessarily render invalid the revision of tariffs made by the Board.”

18. In *Kusumam Hotels Pvt. Ltd.* (supra), the Apex Court interpreted Section 78-A(1) and (2) and held as under:

“37. The State of Kerala in this case did not grant any concession by itself. The Central Government took a larger policy of treating tourism as an industry. A wide range of concessions were to be granted by way of one-time measure; some of them, however, had a recurring effect. So far as grant of benefits which were to be recurring in nature is concerned, the State exercises its statutory power in the case of grant of exemption from payment of building tax wherefor it amended the statute. It issued directions which were binding upon the Board having regard to the provisions contained in Section 78-A of the 1948 Act. The Board was bound thereby. The Board, having regard to its financial constraints, could have brought its financial stringency to the notice of the State. It did so. But the State could not have taken a unilateral decision to take away the accrued or vested right. The Board's order dated 11.10.1999 in law could not have been given effect to. The Board itself kept the said notification in abeyance by reason of the order dated 8.11.1999.”

19. In this regard, we may fruitfully reproduce a passage from *Laker Airways Limited* (supra). It is as follows:

“The word “direction” in section 4 is in stark contrast with the word “guidance” in section 3. It is used again in section 24(2) and (6)(b) and section 28(2). It denotes an order or command which must be obeyed, even though it may be contrary to the general objectives and provisions of the statute. But the word “guidance” in section 3 does not denote an order or command. It cannot be used so as to reverse or contradict the general objectives or provisions of the statute.....”

20. Regard being had to the aforesaid pronouncement of law in the field, the justifiability and the legal substantiality of the communication made by

the State has to be tested. As is demonstrable the State is entitled to change or alter economic policies and the said decision has to be in public interest. In the case at hand, the nature of directions issued by the State Government has a different contour. To appreciate the controversy in proper perspective it is necessitous to reproduce the communication sent by the State Government to the Commission:

“The Secretary,
Delhi Electricity Regulatory Commission,
Viniyamak Bhawan,
Shivalik, Malviya Nagar,
New Delhi - 10 017

Sir,

Through separate representations to the Government, the three distribution companies, BRPL, NDPL and BYPL have raised the issue of severe cash flow constraints affecting their ability to purchase power in 2010-11. A copy of this representation is enclosed. They have broadly drawn the attention of the Government on the following issues:

1. Ability to supply power contingent on Cost Reflective Tariff.
2. Precarious Financial Position on Discoms.
3. Accumulation of revenue gaps beyond sustainable levels.
4. Continuation of the practice of assuming higher surplus for tariff fixation.
5. Power purchase cost/quantum.
6. Continuous recourse to addition debt to finance operations, and
7. Critical need to additional financing.

The issues raised by the Discoms are very serious and needs to be examined thoroughly so that the sustainable model of tariff setting as prescribed under section 61 and 62 of the Electricity Act is not jeopardized. Further, the National Tariff Policy at clause No. 5.3(h)-4 has prescribed that uncontrollable costs should be recovered speedily to ensure that the future consumers are

not burdened with the past costs. It is felt that non-true-up of the account of the year 2009-2010 where quantum of uncontrollable costs were very high, would mean that future consumers would be burdened with the interest cost of the year 2009- 2010 which goes against the above quoted clause of National Tariff Policy.

As the issues raised by the Distribution Companies as well as the issue of burdening future consumers with past liabilities are issues which are very serious in nature, the Government in exercise of its power under section 86(2)(iv) directs the DERC to give statutory advise and clarification to the Government on the issue raised by the Distribution companies in the enclosed representations as well as on the issues covered under clause 5.3(h)-4 of the National Tariff Policy. The Government further directs under section 108 of the Electricity Act, 2003 that the Delhi Electricity Regulatory Commission will not issue the tariff order till the statutory advice given by the Commission as asked for, is thoroughly examined by the Government and the Government gives a go ahead for passing of tariff orders.”

[emphasis supplied]

21. On a close scrutiny of the aforesaid directions, it is clear as noon day that there has been an order of prohibition to the Commission not to pass the tariff order. Mr. Dave, learned senior counsel for the respondent would contend that it was issued keeping in view the public interest. The same is not discernible. It is neither evident nor demonstrable. It was an unwarranted interdiction. It is understandable that the State Government could have suggested some kind of a matter relating to policy having nexus with public interest, but unfortunately that is not so. By the impugned communication contained in Annexure P-7, the State Government could not have prevented the Commission from exercising its statutory powers. In any event, under Section 108, the State Government could have only

issued policy direction, not pre-emptory directions, like it did. As submitted by the learned Attorney General for the Union of India, the interpretations placed by the Apex Court on Section 78-A in the decisions which we have quoted in extenso would clearly convey that the State Government as well as the Board functions in different fields within the statutory limits. Any encroachment is not permissible. The case at hand projects that no iota of policy, any way, is discernible and the concept of public interest appears to be a subterfuge, in fact, totally divorced from the arena of public interest. Quite apart from that the communication is in the form of injunction, which we are absolutely indubitable, the State Government cannot issue. This interdiction is decidedly beyond the scope of language employed in Section 108 of the 2003 Act and, in fact, contrary to the legislative intent. Thus, we are disposed to think that the submissions canvassed by learned Attorney General deserve acceptance and, accordingly, we hold that the communication of the present nature made by the State Government is absolutely unjustified, unwarranted and untenable and, accordingly, the same stands quashed.

22. We will be failing in our duty if we do not mention that Mr. Salve, learned senior counsel though had initially supported the order passed by the State, yet later on conceded to the proponement canvassed by the learned Attorney General for the Union of India.

23. In view of our aforesaid analysis, the instruction given by the State vide Annexure-P7 is quashed.

24. The writ petition be listed on 23rd February, 2011 for hearing on other issues before regular DB-1.

CHIEF JUSTICE

MANMOHAN, J.

FEBRUARY 18, 2011

Dk/pk