Ojas Industries P. Ltd. Vs Union of India (UOI) and Others

Court: Delhi High Court

Date of Decision: Dec. 22, 2005

Citation: (2006) 86 DRJ 593

Hon'ble Judges: Markandeya Katju, C.J; Madan B. Lokur, J

Bench: Division Bench

Advocate: Dushyant Dave, Arun Bhardwaj, P.K. Mittal, S.S.H. Rizvi and Sanjeev Kumar, for the Appellant; Rajiv Garg and A.D.N. Rao and Shanti Bhushan and Jayant Bhushan, Dhruv Aggarwal, Praveen Kumar and Prateek, for the Respondent

Final Decision: Dismissed

Judgement

Markandeya Katju, C.J.
LPA No. 2503/2005 arises out of an Interlocutory Order of the learned Single Judge of this Court dated

20.10.2005 in WP No. 7123/2005.

2. Since we felt that the matter is urgent we were of the opinion that instead of deciding LPA No. 2503/2005, which arises out of an interim order,

the Writ Petition No. 7123/2005 itself should be disposed off finally by a Division Bench. Hence on 05.12.2005 we passed the following order in

LPA No. 2503/2005.

This Writ Appeal has been filed against an interlocutory order of the learned Single Judge dated 22nd October, 2005. The Writ Petition is still

pending before the learned Single Judge.

We are of the opinion that instead of deciding the writ Appeal, the writ Petition itself should be disposed of by a Division Bench so that the matter

is decided one way or the other expeditiously.

The dispute is regarding the claim of the writ petitioner to set up a sugar mill. In our opinion, this is a matter which should not be prolonged, rather

it should be decided expeditiously one way or the other. Mr. Dushyant Dave, learned counsel for the Respondent submits that if a Division Bench

decides the writ petition, his client will be deprived of one right of appeal. In our opinion, there is no merit in this submission. It is always open to

the Chief Justice to direct that a case, which is normally heard by a Single Judge, be heard by a Division Bench. There is no absolute right in

anyone to have an appeal from a Single Judge of this Court to a Division Bench of the Court. The Chief Justice is the master of the roster and there

is always a right to approach the Supreme Court under Article 136 of the Constitution. We have to see the facts of each particular case and it is

not that in every case a litigant must have a right to be heard before a Single Judge and thus delay the proceedings, particularly in a case where the

interest of justice requires speedy decision by the High Court. We fail to understand what serious objection the learned counsel for the Respondent

can have to the expeditions disposal of the writ petition. If his logic is accepted then in cases where writ petitions are listed before a Division Bench

there is injustice to a party because he is deprived of the right of an appeal from a Single Judge to a Division bench. We are of the opinion that

there is no such absolute right and it is the prerogative of the Chief Justice to direct a case which is ordinarily cognizable by a Single Judge to be

listed before a Division Bench or vice versa, unless some statute provides otherwise.

In view of the above, list the writ petition and this LPA on 9th December, 2005, the date agreed by learned counsels before us. Parties may

exchange affidavits in the meantime.

It is made clear that the case will be heard and disposed of on that date. Registry to ensure that the writ record is sent to the Court on the next date

of hearing.

3.Heard learned counsel for the parties and perused the record.

4.Writ Petition No. 7123/05 was filed by M/s Ojas Industries Pvt. Ltd., which is a company registered under the Indian Companies Act, 1956.

The prayers in the Writ Petition were as follows:-

(i) Issue a writ, order or direction in the nature of certiorari calling for the record of the case and to quash the Acknowledgement of Industrial

Entrepreneurs Memorandum No. 1699/SIA/IMO/2004 dated 17.05.2004 issued to m/s Oudh Sugar Mills Ltd., the Respondent No. 7 for

establishment of new sugar undertaking at village Saidpur Khurd, Lakhimpur Kheri (UP).

(ii) issue a writ, order or direction in the nature of mandamus directing respondents No. 1 and 2 revoke/cancel the Acknowledgement No.

1699/SIA/IMO/2004 dated 17.05.2004 the IEM of M/s Oudh Sugar Mills Limited, Respondent No. 7 for establishment of new sugar

undertaking at village Saidpur Khurd, Distt. Lakhimpur Kheri (UP).

(iii) issue a writ, order or direction in the nature of mandamus directing the Commissioner, Lucknow Division, (UP) and District Magistrate,

Lakhimpur Kheri, respondents No. 5 and 6 (and any other concerned authority, as the case may be) not to grant permission/approval u/s 154 (2)

of the U.P. Z.A. and L.R. Act to respondent No. 7 for purchasing / acquiring land in and around village Saidpur Khurd, Distt. Lakhimpur Kheri

(UP) for establishment of new sugar undertaking and to restrain the respondent No. 7 from interfering with the affairs of the petitioner.

(iv) issue a writ, order or direction in the nature of mandamus directing respondent No. 4 Cane Commissioner, Uttar Pradesh, Lucknow not to

recognize the establishment or existence of any new sugar undertaking of M/s Oudh Sugar Mills Limited, respondent No. 7 for identifying the area

for sugarcane development or reservation of sugarcane area.

(v) issue any other suitable writ, order or direction which this Hon''ble court may deem fit and proper in the circumstances of the case; and

(vi) award cost of the writ petition to the petitioner.

5. It is alleged in paragraph 2 of the writ petition that with the intention of setting up a new sugar factory at village Basaigapur, District Lakhimpur

Kheri, (UP), the petitioner company identified the location for the same in the said village and also identified the land, which would be required to

be purchased by the petitioner company for establishment of the proposed new sugar factory.

6. In the year 1951 Parliament enacted the Industries (Development and Regulations) Act, 1951 (in short the 1951 Act). Section 2 of the 1951

Act stated that it is expedient in the public interest that the Union should take under its control the industries specified in the first schedule. Sugar is

an item mentioned in Item No. 24 in the First Schedule.

7. As per Section 11 of the 1951 Act, a license for establishment of any new industrial undertaking is mandatory, and it is also provided in sub-

section (2) thereof that such license or permission under sub-section (1) may contain such conditions including in particular, the condition as to the

location of undertaking, etc.

8. The expression Industrial Undertaking means any undertaking pertaining to a scheduled industry carried on in one or more factories by any

person or authority including government.

9. Hence in view of Section 11 no sugar mill will be setup except in accordance with a license issued by the Central Government, which could

contain such conditions as the Central Government prescribed.

10. Several Press Notes were issued by the Central Government from time to time, but in this case, we are concerned with the Press Note No.

12, dated 31.08.1998 and the Notification of the Central Government u/s 29(B) dated 11.09.1998 published in the Official Gazette dated

14.09.1998 deleting the sugar industry from the 2nd Schedule of the earlier Notification dated 25.09.1998.

11. The Press Note dated 31.08.1998 states:-

GOVERNMENT OF INDIA

MINISTRY OF INDUSTRY

Department of Industrial Policy and Promotion

Press Note No. 12 (1998 Series)

Subject:- De-licensing of Sugar Industry

1. The Government has further reviewed the list of industries retained under compulsory licensing and has decided to delete sugar industry from the

list of industries requiring compulsory licensing under the provisions of the Industries (Development and Regulation) Act, 1951. However, in order

to avoid unhealthy competition among sugar factories to procure sugarcane, a minimum distance of 15 KM would continue to be observed

between an existing sugar mill and a new mill by exercise of powers under the Sugarcane Control Order 1966.

2. The entrepreneurs who wish to avail themselves of the de-licensing of sugar industry would be required to file an Industrial Entrepreneur

Memoranda (IEM) with the Secretariat of Industrial Assistance in the Ministry of Industry as laid down for all de-licensed industries in terms of the

Press Note dated 2nd august 1991 as amended from time to time.

3. Entrepreneurs who have been issued Letter (s) of Intent (LOI) for manufacture of sugar need not file an initial IEM. In such cases, the LOI

holder shall only file part @B@ of the IEM at the time of commencement of commercial production against the LOI issued to them. It is however

open to entrepreneurs to file an initial IEM (in lieu of the LOI/Industrial License held by them) if they so desire, whenever any variation from the

conditions and parameters stipulated in the LOI/Industrial License is contemplated.

F. No. 10(13)/96-LP New Delhi. The 31st August 1998

The notification of the Central Government dated 11.09.1998 states:-

Ministry of Industry (Deptt. Of industrial Policy and Promotion), Noti. No. S.O.808(E), dated September 11, 1998 published in the Gazette of

India, Extra, Part II, Section 3(ii), dated 14th September, 1998, p2 No. 599 (F. No. 10 (13)/96.I.P.)

In exercise of the powers conferred by sub-section (1) of Section 29B of the Industries (Development and Regulations) Act, 1951 (65 of 1951),

the Central Government hereby makes the following further amendment in the notification of the Government of India in the Ministry of Industry

(Department of Industrial Development Number S.O.477 (E) dated the 25th July, 1991, namely:-

In Schedule II to the aid notification, Item 4, retain the Sugar and the entries there under shall be omitted.

12. A perusal of the above shows that the licensing of sugar industry has been done away with by the Central Government by granting exemption

u/s 29B of the 1951 Act. However, the Press Note dated 31.08.1998 states that in order to avoid unhealthy competition among sugar factories to

procure sugarcane, a minimum distance of 15 km is continued between an existing sugar mill and a new mill by exercise of power under the

Sugarcane Control Order 1966. The Press Note further states that the entrepreneurs who wish to avail themselves of the de-licensing of sugar

industry would be required to file an Industrial Entrepreneur Memorandum (IEM) with the Secretariat of Industrial Assistance in the Ministry of

Industry. Government of India, as laid down for all de-licensed industries in term of the Press Note dated 2nd August, 1991 as amended.

13. It is alleged in paragraph 13 of the Writ Petition that the Petitioner filed an IEM for establishment of a new sugar mill at village Basaigapur,

District Lakhimpur Kheri (UP), which was acknowledged by the Government of India vide Acknowledgement dated 13.05.2004, Annexure 5 to

the Writ Petition.

14. In paragraph 14 to 16 of the Writ Petition the petitioner alleged that it has applied for permission for purchase of more than 70 Acres of land

u/s 154(2) of the U.P. Zamidari Abolition and Land Regulation Act, for setting up a new sugar mill. It has purchased land and was intending to

start construction work soon. It has applied for NOC from the U.P. Pollution Control Board. It has placed order for the entire plant and

machinery, vide Annexure 6.

15. Thereafter, the petitioner came to know that subsequent to the acknowledgement of the IEM of the petitioner by the Government of India vide

Acknowledgement dated 13.05.2004, the Government of India had also issued an acknowledgement to respondent No. 7 M/s Oudh Sugar Mills

Limited on 17.05.2004 for establishment of a new sugar factory at village Saidpur, Khurd, Distt Lakhimpur Kheri (UP), vide Annexure 7. The

proposal of Oudh Sugar Mills Ltd. is to establish a new sugar unit at Saidpur, Khurd, Distt. Lakhimpur Kheri (UP), which is located at a distance

of only 7.2 km from village Basaigapur, Distt. Lakhimpur Kheri (UP), where the petitioner intends to setup his sugar unit. The petitioner has alleged

that the proposal of the respondent No. 7 to establish a new sugar factory at village Saidpur, Khurd, Distt. Lakhimpur Kheri (UP), which is only

7.2 km from village Basaigapur, Distt. Lakhimpur Kheri (UP), is in violation of the mandatory conditions and guidelines of the Government of

India. Hence it was prayed that the Court should issue a mandamus to respondent No. 1 to cancel the IEM granted to Respondent No. 7.

16. A counter affidavit has been filed by the Respondent No. 7 Oudh Sugar Mills Ltd. and we have perused the same. It is alleged therein that

once the sugar industry is de-licensed by the Notification of the Central Government dated 11.09.1998 there is no longer any embargo contained

in any law for setting up a sugar factory. It is submitted that no provision of law requires an entrepreneur or a company to take any permission for

any license before setting up a sugar factory. It is alleged that the petitioner has no authority to place any restriction on setting up of a new sugar

factory unless there is a statutory sanction for such action. The petitioner has relied on the judgment of the Supreme Court in State of MP v.

Thakur Bharat Singh AIR 1967 SC 1170; U.P. Co-operative Cane Unions Federations Vs. West U.P. Sugar Mills Association and Others etc.

etc., ; Naveen Jindal v. Union of India 1995 DLT 516, etc.

17. It is contended by the respondent No. 7 that once there is no law which requires a person to take permission before setting up a sugar factory,

the Central Government has no jurisdiction or authority to lay down conditions on setting up of sugar factory such as the 15 kms criterion

mentioned in the Press Note dated 31.08.1998. It is also contended that the 15 km restriction contained in the Press Note dated 31.08.1998 is

hence unenforceable in law since it is merely an executive instruction without any statutory sanction.

18. It is further submitted that even if the criteria stipulates the minimum distance of 15 kms, the same is applicable only between an existing sugar

mill and a new mill and not where two proposed mills are to be setup.

19. It is further contended by the respondent No. 7 that the petitioners sister concern M/s Bajaj Hindustan Ltd. has also submitted IEM for setting

up a new sugar unit at Titarpur, Tehsil and District Lakhimpur Kheri, UP and the same was acknowledged by the respondent No. 1 dated

17.01.2004 The date of making the application for acquisition of land both by petitioner and its sister concern M/s Bajaj Hindustan Ltd., is the

same. The proposed site on which the sister concern of the petitioner intends to set up a new sugar mill is 12.8 kms from the applicant site.

20. In paragraph 11-13 of the counter affidavit it is stated that the IEM is filed purely for statistical purpose. What is relevant is as to which party

has taken effective steps to implement the IEM first. It is only that party which has taken effective steps to implement the IEM first which will have

a right to set up sugar mill to the exclusion of others. It is further alleged that the petitioner itself has filed eight IEMs in different parts of the State of

UP, out of which five IEMs are in district of Lakhimpur Kheri where the petitioner proposes to set up a new sugar mill. Annexure R-7/4 is the

statement of IEM filed by the petitioner. It is further alleged that the sister concern of the petitioner M/s Bajaj Hindustan Ltd. has 36 IEMs pending

for execution vide R- 7/5. It is alleged that whole purpose of filing so many IEMs by the petitioner and its sister concern is to deprive the others

including the answering respondent from setting up a new sugar mill. At any event, the petitioners filing IEM only 4 days prior to the IEM filed by

the respondent is irrelevant. Respondent No. 7 relied on the decision of the Allahabad High Court being Writ Petition No. 38163/03 where it was

held that the primacy of IEM is not the relevant factor what is relevant is as to which party has taken effective steps to implement the IEM first. It is

alleged that the respondent No. 7 took the relevant steps before the petitioner in setting up a sugar factory in village Saidpur, Khurd, District

Lakhimpur Kheri, U.P. The details are given in the counter affidavit in support of the plea.

21. It is further stated by the respondent No. 7 that in most of the cases where the sister concern of the petitioner has filed IEM, no effective steps

for the setting up of a new sugar mill were taken. It is alleged that this shows that the only purpose of filing so many IEMs is to deprive the others

including the answering respondent from setting up a sugar mill, although it is not only capable of setting up a new sugar mill but has taken effective

steps much ahead of the petitioner.

22. Counter affidavit has also been filed on behalf of the respondent No. 1-3 and we have perused the same.

23. Mr. Dushyant Dave, learned counsel for the writ petitioner submitted that the entire object and purpose of laying down the mandatory distance

norm of 15 kms in the Press Note dated 31.08.1998 was to avoid unhealthy competition between two sugar mills in the procurement of

sugarcane. He submitted that the main raw- material for a sugar mill is sugar cane, and unless regular supply of sugarcane is available, no

entrepreneur would be willing to set up a sugar mill. He further submitted that since admittedly the IEM of petitioner had been acknowledged on

13.05.2004 whereas that of the respondent No. 7 was only on 17.05.2004, the latter IEM should have been rejected, as it was subsequent in time

and it would be in violation of the Press Note dated 31.08.1998. On the other hand Mr. Shanti Bhushan, learned counsel for respondent No. 7

submitted that there is no statutory sanction for the restriction of 15 kms for setting up sugar mill and it was only done by an executive order and

hence he submitted that the said condition was null and void being vocative of the petitioners right to business under Article 19(1)(g) of the

Constitution.

24. Mr. Shanti Bhushan further submitted that under the Press Note dated 31.08.1998 it was only where there is an existing sugar mill that the

restriction of 15 kms would apply. Admittedly the petitioner did not have an existing sugar mill on the date of the Press Note dated 31.08.1998 or

even on the date of filing IEM by it. Hence he submitted that the restriction of 15 kms does not apply. He submitted that M/s Bajaj Hindustan Ltd.

have filed 163 IEMs and M/s Ojas Industries Pvt. Ltd. had filed three IEMs. On the other hand, Mr. Dushyant Dave submitted that it was Oudh

Sugar Mills Ltd. which has filed a large number of IEMs to prevent others from setting up new sugar mills.

25. Mr. Dave submitted that to avoid unhealthy competition among the sugar factories, and to ensure disciplined procurement of sugarcane, the

central Government, in exercise of powers under Sugarcane (Control) Order 1966 issued the policy directive in the form of prescribing a minimum

distance among the sugar factories.

26. This policy is being followed continuously, constantly and indisputably for about two decades. Even on de-licensing of the sugar industry in

1998, a minimum distance criteria of 15 kms has continued. He submitted that M/s Ojas filed its IEM on 13.05.2004 for setting up sugar mill at

Basaigapur, Distt. Lakhimpur Kheri UP and proceeded to take substantial and effective steps towards setting up its sugar mill viz survey of the

area, project planning, purchase of land after taking permission from the Commissioner, placing orders for the entire plant and machinery, etc.

Later on Ojas came to know that respondent No. 7 Oudh Sugar Mills Ltd. has also filed its IEM on 17.05.2004 for setting up its sugar mill at

Saidpur Khurd, District Lakhimpur Kheri UP which is admittedly 7.2 kms from the proposed sugar mill of Ojas and is, Therefore, ex-facie

contrary to the mandate of Press Note 12 of 1998 dated 31.08.1998, which unequivocally placed a restriction of a minimum distance of 15 kms

between two sugar mills.

27. Mr. Dushyant Dave also submitted that the Press Note 12 of 1998 dated 31.08.1998 was issued under the Sugar Cane Control Order 1966,

which was issued under the Essential Commodities Act. He submitted that the court cannot interfere in a policy decision as held in series of

decisions of the Supreme Court. He submitted that the Central Government has followed a consistent policy of maintaining a minimum distance

between two sugar factories to avoid unhealthy competition in procurement of sugarcane. The same policy has been followed in the Press Note

dated 31.08.1998. The said Press Note is a policy decision and hence should not be interfered with by the Court.

28. He submitted that the expression existing sugar mill / factory used in the Press Note 12 dated 31.08.1998 should be interpreted purposively.

The purpose obviously was to avoid unhealthy competition between the sugar mills in close proximity with each other. He submitted that the

expression existing sugar factory should not be interpreted in its strict and literal sense, but purposively and harmoniously, considering the special

features of the sugar industry. For the sugar industry, sugarcane is the main raw material. He submitted that the UP Sugarcane (Regulation of

Supply and Procurement) Act 1953 read with the Sugarcane (Control) Order 1996 clearly spells out this intent and purpose. He submitted that

the expression existing sugar factory would mean not only a sugar factory already existing but also a proposed sugar factory. He also submitted

that the IEM is not merely for statistical purposes. The IEM gives a right for setting up a sugar mill, without which one cannot setup a sugar mill. He

submitted that filing of an IEM coupled with taking effective steps by the first applicant gives it primacy in the matter of setting up a sugar mill. He

submitted that the petitioner has complied with these requirements.

29. Mr. Dushyant Dave submitted that the court does not ordinarily interfere in administrative matters since administrative authorities are specialists

while court does have expertise in such matters. He has also relied on several decisions in support of this proposition, and we agree with this

submission. In economic matters the government must be left with wide latitude of regulation. Thus in P.T.R. Exports (Madras) Pvt. Ltd. and

others Vs. Union of India and others, the Supreme Court observed,

In matters of economic policy it is a settled law that the Court gives a large leeway to the executive and the legislature. The Government would

take diverse factors for formulating the policy in the overall larger interest of the economy of the country.

30. In M.I. Hussain v. N. Singh, LPA 1650/2005 decided by a Division Bench of this Court on 07.11.2005 several decisions of the Supreme

Court have been referred to which lay down that ordinarily the Court does not interfere with policy decisions.

31. Mr. Shanti Bhushan learned counsel for the respondent No. 7 submitted that it is an accepted proposition of law that before imposing any

condition which works to the prejudice of any person the government has to have statutory authority to support such action, and it cannot do so

merely by exercising its executive functions.

32. He relied on the decision of the Constitution Bench of the Supreme Court in State of Madhya Pradesh and Another Vs. Thakur Bharat Singh, ,

in which the Supreme Court distinguished its earlier decision in Rai Sahib Ram Jawaya Kapur and Others Vs. The State of Punjab, , in which it has

been held that it is open to the State to issue executive orders under Article 162 of the Constitution even if such executive order does not have any

statutory sanction. The Supreme Court observed in Rai Sahib Ram Jawaya Kapur and Ors. v. The State of Punjab (supra) that the executive

order in question was no doubt not supported by any statute but it did not operate to the prejudice of any citizen. The Supreme Court in State of

M.P. v. Thakur Bharat Singh (supra) held that the State or its officers in exercise of executive authority not supported by statute cannot infringe the

rights of a citizen merely because the legislature of the State has the power to legislate on the subject. Thus the decision in State of M.P. v. Thakur

Bharat Singh (supra) has distinguished the decision in Rai Sahib Ram Jawaya Kapur v. State of Punjab (supra).

33. In our opinion, the decision in State of M.P. v. Thakur Bharat Singh (supra) has no application to the facts of the present case, and instead the

decision in Rai Sahib Ram Jawaya Kapurs case applies. In the present case the Press Note dated 31.08.1998 does not operate to the prejudice

of Respondent No. 7 or anyone else. That Press Note while deleting sugar industry from the list of scheduled industries requiring compulsory

licensing provides that in order to avoid unhealthy competition among the sugar factories to procure sugarcane a minimum distance of 15 kms

would be observed between an existing sugar mill and a new sugar mill. Such a regulation, in our opinion, does not prejudice anyone.

34. A regulation may or may not act to the prejudice of anyone''s rights. If it does, then it must have statutory sanction, otherwise not. We have

Therefore, to see whether the Press Note dated 31.08.1998 is prejudicial to the rights of respondent No. 7.

35. We are not in agreement with Mr. Shanti Bhushan that the regulation of prescribing 15 kms distance between an existing sugar mill and a new

sugar mill operates to the prejudice of respondent No. 7 or anyone else for that matter. The respondent No. 7 or anyone else can establish a sugar

mill beyond 15 kms of an existing sugar mill. In our opinion this regulation is a rational regulation considering the fact that sugar cane is the main

raw-material for a sugar mill.

In our opinion, the Central Government is well within its executive powers under Article 73 of the Constitution to issue the said Press Note. The

present case comes within the principle laid down in Rai Sahib Ram Jawaya Kapur and Ors. v. The State of Punjab (supra) and not within the

principle laid down in M.P. v. Thakur Bharat Singh (Supra). The Press Note dated 31.08.1998 in our opinion does not operate to the prejudice of

Respondent No. 7 or anyone else. Respondent No. 7 and others are free to setup a sugar mill but the only regulation is that they should not set up

the mill within the 15 kms distance of an existing sugar mill. The submission of Mr. Shanti Bhushan on this point is Therefore, devoid of merit.

36. However, we are in agreement with Mr. Shanti Bhushan that the Press Note dated 31.08.1998 only makes a prohibition of setting up a new

mill within 15 kms of an existing sugar mill. In our opinion, the expression existing sugar mill means a sugar mill existing on the date of the Press

Note dated 31.08.1998 or existing latest on the date of filing of the IEM. The petitioner did not have an existing sugar mill on 31.08.1998 or on

the date when respondent No. 7 filed its IEM. Hence in our opinion the petitioner cannot derive benefit from the Press Note dated 31.08.1998.

37. If we accept the submission of Mr. Dushyant Dave, we will be adding the words to the said Press Note dated 31.08.1998 which would in that

case read:-

A minimum distance of 15 kms would continue to be observed between an existing sugar mill or proposed sugar mill for which an IEM has been

filed.

38. It is a well settled principle of interpretation that the court cannot add words to a statute. The same principle will also apply to the Press Note

dated 31.08.1998. It is not for this court to add words which do not exist in the press note.

39. It is a settled principle of interpretation that the Court should neither add nor delete words from a statute. Where the words of a statute are

absolutely clear and unambiguous, recourse cannot be resorted to the principles of interpretation, other than the literal rule, vide: Swedish Match

AB and Another Vs. Securities and Exchange Board, India and Another, . As held in Prakash Nath Khanna and Another Vs. Commissioner of

Income Tax and Another, , the language employed in a statute is the determinative factor of the legislative intent. The legislature is presumed to

have made no mistake. The presumption is that it intended to say what was said. Assuming there is a defect or an omission in the words used by

the legislature, the Court cannot correct or make up the deficiency, especially when a literal reading thereof produces an intelligible result, vide

Delhi Fin. Corpn. and Another Vs. Rajiv Anand and Others, . Where the legislative intent is clear from the language, the Court should give effect to

it, vide Government of A.P. and Another Vs. Road Rollers Owners Welfare Association and Others, .

40. In Jinia Keotin and Others Vs. Kumar Sitaram Manjhi and Others, , the Supreme Court observed:-

The Court cannot re-legislate on the subject under the guise of interpretation against the legislative will expressed in the enactment itself.

41. The rules of interpretation would come into play only if there is any doubt with regard to the express language used. Where the words are

unequivocal, there is no scope for importing any rule of interpretation vide: Pandian Chemicals Ltd. Vs. Commissioner of Income Tax, .

42. It is only where the provisions of a statute are ambiguous that the Court can depart from a literal or strict construction: vide Nasiruddin and

Others Vs. Sita Ram Agarwal, . Where the words of a statute are plain and unambiguous effect must be given to them: vide; Bhaiji Vs. Sub

Divisional Officer, Thandla and Others, .

43. In Hiralal Rattanlal Vs. State of U.P. and Another etc. etc., the Supreme Court observed:-

In construing a statutory provision the first and foremost rule of construction is the literary construction. All that the court has to see at the very

outset is what does the provision say. If the provision is unambiguous and if from the provision the legislative intent is clear, the court need no call

into aid the other rules of construction of statutes. The other rules of construction are called into aid only when the legislative intent is not clear.

44. The same view has been taken in Commissioner of Income Tax, Assam and Nagaland etc. Vs. Shri G. Hyatt, .

45.In Shiv Shakti Coop. Housing Society, Nagpur Vs. Swaraj Developers and Others, , the Supreme Court observed:-

It is a well settled principle in law that the Court cannot read anything into a statutory provision which is plain and unambiguous. A statute is an

edict of the legislature. The language employed in a statute is the determinative factor of legislative intent.

46. Where the language is clear, the intention of the legislature has to be gathered from the language used: vide Grasim Industries Ltd. Vs.

Collector of Customs, Bombay, and Union of India (UOI) and Another Vs. Hansoli Devi and Others,

47. The function of the Court is only to expound the law and not to legislate vide: District Mining Officer and Others Vs. Tata Iron and Steel Co.

and Another, . If we accept the interpretation canvassed by the learned counsel for the respondent we will really be legislating because in the guise

of interpretation we will be really amending the Press Note dated 31.08.1998..

48. In Gurudevdatta VKSSS Maryadit and Others Vs. State of Maharashtra and Others, , the Supreme Court observed:-

It is a cardinal principle of interpretation of statute that the words of a statute must be understood in their natural, ordinary or popular sense and

construed according to their grammatical meaning, unless such construction leads to some absurdity or unless there is something in the context or in

the object of the statute to suggest to the contrary. The golden urle is that the words of a statute must prima facie be given their ordinary meaning.

It is yet another rule of construction that when the words of the statute are clear, plain and unambiguous, then the courts are bound to give effect to

that meaning, irrespective of the consequences. It is said that the words themselves best declare the intention of the law-giver. The courts have

adhered to the principle that efforts should be made to give meaning to each and every word used by the legislature and it is not a sound principle

of construction to brush aside words in a statute as being inapposite surpluses, if they can have a proper application in circumstances conceivable

within the contemplation of the statute.

49. The same view has been taken by the Supreme Court in Harshad S. Mehta and Others Vs. The State of Maharashtra, (vide Paragraph 34)

and Patangrao Kadam Vs. Prithviraj Sayajirao Yadav Deshmukh and Others, .

50.The submission of Mr. Dushyant Dave is that a purposive interpretation should be adopted in this case. We are of opinion that a purposive

interpretation can be adopted only where it would not amount to changing any statute or adding words to it. The present case may be of casus

omissus. It is well settled that while interpreting a statute, the court cannot fill in the gaps or rectify defects.

51. Thus in Shrimati Hira Devi and Others Vs. District Board, Shahjahanpur, , the Supreme Court observed:-

No doubt it is the duty of the court to try and harmonise the various provisions of an Act passed by the Legislature. But it is certainly not the duty

of the Court to stretch the words used by the Legislature to fill in gaps or omissions in the provisions of an Act.

52. In Dadi Jagannadham Vs. Jammulu Ramulu and Others, , (paragraph 13), the Supreme Court observed:-

The settled principles of interpretation are that the court must proceed on the assumption that the legislature did not make a mistake and that it did

what it intended to do. The court must, as far as possible, adopt a construction which will carry out the obvious intention of the legislature.

Undoubtedly if there is a defect or an omission in the words used by the legislature, the court would not go to its aid to correct or make up the

deficiency. The court could not add words to a statute or read words into it which are not there, especially when the literal reading produces an

intelligible result. The court cannot aid the legislatures defective phrasing of an Act, or add and mend, and, by construction, make un deficiencies

which are there.

53. In Bharathidasan University and Another Vs. All India Council for Technical Education and Others, , the Supreme Court observed:-

When the legislative intent finds specific mention and expression in the provisions of the Act itself, the same cannot be whittled down or curtailed

and rendered nugatory by giving undue importance to the so-called object underlying the Act or the purpose of creation of a body to supervise the

implementation of the provisions of the Act, particularly when the AICTE Act does not contain any evidence of an intention to belittle and destroy

the authority or autonomy of other statutory bodies, having their own assigned roles to perform. Merely activated by some assumed objects or

desirabilities, the courts cannot adorn the mantle of the legislature. It is hard to ignore the legislative intent to give definite meaning to words

employed in the Act and adopt an interpretation which would tend to do violence to the express language as well as the plain meaning and patent

aim and object underlying the various other provisions of the Act. Even in endeavoring to maintain the object and spirit of the law to achieve the

goal fixed by the legislature, the courts must go by the guidance of the words used and not on certain preconceived notions of ideological structure

and scheme underlying the law.

54. In Baliram Waman Hirary v. Mr. Justice B. Lentin and Ors. AIR 1988 SCC 2267 , the Supreme Court observed:-

The Court cannot in the guise of interpreting the provision, supply any casus omissus.

55.In G. Narayanaswami Vs. G. Pannerselvam and Others, (vide paragraph 19) the Supreme Court observed:-

We think that the view contained in the judgment under appeal, necessarily results in writing some words into or adding them to the relevant

statutory provisions, to the effect that the candidates from graduates constituencies of Legislative Councils must also possess the qualification to

having graduated. This contravenes the rule of plain meaning or literal construction which must ordinarily prevail. A logical corollary of that rule is

that a statute may not be extended to meet a case for which provision has clearly and undoubtedly not been made (See Craies on Statute Law-6th

Edition p 70). An application of the rule necessarily involves that addition to or modification of words used in statutory provisions is not generally

permissible (see, .e.g. Sri Ram Ram Narain Medhi Vs. The State of Bombay, , British India General Insurance Co. Ltd. Vs. Captain Itbar Singh

and Others, , R.G. Jacob Vs. Union of India (UOI), .) Courts may depart absurdity (see e.g. State of Madhya Pradesh Vs. Azad Bharat Finance

Co. and Another, . In Shrimati Hira Devi and Others Vs. District Board, Shahjahanpur, this Court observed:-

No doubt it is the duty of the court to try and harmonise the various provisions of an Act passed by the Legislature. But it is certainly not the duty

of the Court to stretch the words used by the Legislature to fill in gaps or omissions in the provisions of an Act.

56. As observed by Lord Russel of Killowen even when there is a casus omissus, it is for others than the court to remedy the defect vide G.P.

Singh, Principles of Statutory Interpretation (8th Edition 2001 page 59).

57. In our opinion the literal rule of interpretation should apply in interpreting the Press Note dated 31.08.1998 since if we apply the principle of

first come first serve among those filing IEMs, then unscrupulous persons can indulge in gagging or stifling the competition by merely filing IEMs all

over the State, since to prevent setting up of a sugar factory all that would be required filing IEMs at a cost of only Rs. 1000/- each, even if that

person is not serious about setting up a sugar factory.

58. Apart from the above, we are of the opinion that in interpreting economic regulatory measures the literal rule must be applied since such

measures are made by experts usually after careful consideration of the relevant factors. If we adopt a liberal or purposive approach we may be

extending the scope of the regulation in the garb of interpretation, which is not proper as it may disturb the whole scheme. The Courts are not

experts in the economic field and should defer to the opinion of the experts, rather than apply their own notions as to what is proper and what is

improper. Economic regulatory measures often have implications and ramifications over the whole economy, and it is not proper for the Courts to

tinker with the same.

59. In our opinion, the literal rule of interpretation has to be applied since there is no ambiguity or vagueness in the Press Note dated 31.08.1998.

As to why the government limited the 15 km restriction to cases where there was an existing sugar mill is not for this Court to speculate. It may be

that in view of the recent developments in the economic field such as the policy of globalization and liberalization the government of India wanted to

do away with further regulations while giving some protection to existing mills, or it may be for some other reason. All that we can note is that the

Press Note dated 31.08.1998 lays down an economic policy in clear terms, and it is not for this Court to widen those terms or sit in Appeal over

the policy. It may be that a better policy may have been conceived by the government, but on that ground we cannot invalidate it, vide Visa Steel

Ltd. v. Union of India, WP (C) 20185/2005 decided by this Court on 08.12.2005.

60. In Maharashtra State Board of Secondary and Higher Secondary Education and Another Vs. Paritosh Bhupeshkumar Sheth and Others, , the

Supreme Court considered the scope of judicial review in a case of policy decision and held as under-:

The Court cannot sit in judgment over the wisdom of the policy evolved by the Legislature and the Sub-ordinate regulation making body. It may be

a wise policy, which will fully effectuate the purpose of the enactment or it may be lacking in effectiveness and hence calling for revision and

improvement. But any drawbacks in the policy incorporated in a rule or regulation will not render it ultravires and the Court cannot strike it down

on the ground that in its opinion, it is not a wise or prudent policy but is a even a foolish one, and that it will not really serve to effectuate the

purpose of the Act. The legislature and its delegate are the sole repositories of the power to decide what policy should be pursued in relation to

matters covered by the Act and there is not scope for any interference by the Courts unless the particular provision impugned before it can be said

to suffer from any legal infirmity in the sense of its being wholly beyond the scope of the regulation-making power or it being is consistent with any

of the provisions of the parent enactment or in violation of any of the limitation imposed by the Constitution.

61. A similar view has been reiterated in Delhi Science Forum and others Vs. Union of India and another, ; U.P. Kattha Factories Association Vs.

State of U.P. and others, ; and Rameshwar Prasad Vs. Managing Director U.P. Rajkiya Nirman Nigam Limited and Others, .

62. In Netai Bag and Others Vs. The State of West Bengal and Others, (Vide Paragraph 20), the Supreme Court observed:-

The Court cannot strike down a policy decision taken by the government merely because it feels that another decision would have been fairer or

wiser or more scientific or logical.

63. Of course, it is open to the Central Government to amend the Press Note dated 31.08.1998 and clearly provide that if an IEM is filed by one

party, then the subsequent IEM for setting up a sugar mill within 15 kms of the place where proposed sugar mill under the earlier IEM is proposed

to be set up, will not be entertained. However, since there is no such express provision in the Press Note dated 31.08.1998 we cannot by twisting

the language of the Press Note reach to that result. Admittedly, the petitioner does not have an existing sugar mill but it is only proposing to set up a

sugar mill. Hence it can get no advantage from the Press Note dated 31.08.1998.

64. In view of the above facts, Writ Petition No. 7123/2005. is dismissed.

65. Since the Writ Petition No. 7123/2005 has been dismissed by this judgment, the LPA No. 2503/2005 becomes infructuous and is hereby

dismissed.

66. Writ Petition No. 11748/05 was filed against the impugned order dated 30.06.2005, annexure P1 to the writ petition passed by the

Respondent No. 3, Chief Director Sugar, Directorate of Sugar, Ministry of Food and Civil Supplies, Public Distribution, Krishna Bhawan, New

Delhi, by which IEM of the petitioner was recommended to be cancelled. Since we have held in Writ Petition No. 7123/2005 that the Press Note

dated 31.08.1998 applies only when there is an existing sugar mill hence Writ petition No. 11748/2005 is allowed and the impugned order dated

30.06.2005 in that petition is quashed.

67. LPA No. 2504/2005 arises out of an interlocutory Order dated 22.10.2005 of the learned Single Judge in Writ Petition No. 12078/2005

which was filed by M/s Oudh Sugar Mills Ltd. The prayer made therein was to quash the IEM 2005 issued to Respondent No. 7, M/s Bajaj

Hindustan Ltd. for establishment of a new sugar undertaking at village Khambarkhera, Tehsil and Distt. Lakhimpur Kheri, U.P. The prayer in this

Writ Petition is that since the IEM of the petitioner had been acknowledged by Respondent No. 4 on 17.05.2004, the subsequent

acknowledgement of the IEM of M/s Bajaj Hindustan Ltd. dated 5.4.2005 be quashed. For the reasons given in Writ Petition No. 7123/2005 this

petition of M/s Oudh Sugar Mills Ltd. is dismissed and the LPA No. 2504/2005 arising out of this Writ Petition consequently becomes infructuous

and is hence dismissed.

68. LPA 2498/2005 is also consequently dismissed.