IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
(Appellate Side)

WPA 22753 of 2018

Reserved on: 17.05.2022
Pronounced on: 13.06.2022

Shri Adhir Ranjan Chowdhury

...Petitioner

-Vs-

The State of West Bengal

...Respondents

Present:-

Mr. Bikash Ranjan Bhattacharyya, Sr. Adv.
Mr. Pratip Kumar Chatterjee,
Mr. Chittapriya Ghosh, Advocates
... for the petitioner

Mr. J.P. Khaitan, Sr. Adv.
Mr. Amitesh Banerjee, Sr. Adv.
Ms. Ipsita Banerjee, Advocates
... for the State

Mr. P. Chidambaram, Sr. Adv.
Mr. Abhrajit Mitra, Sr. Adv.
Mr. Arindam Banerjee,
Mr. D. Mandal,
Mr. S. Nag,
Mr. B. Kumar,
Mr. D. Sen, Advocates
...for the respondent no. 10

Mr. Ratnaka Banerjee, Sr. Adv.
Mr. Sarvapriyo Mukherjee,
Mr. J. Mukherjee, Advocates
... for the respondent no. 13

Mr. Anirban Mitra, Advocate
... for the respondent nos. 14 & 15

**Coram: THE HON'BLE JUSTICE PRAKASH SHRIVASTAVA,
CHIEF JUSTICE**

**THE HON'BLE JUSTICE RAJARSHI BHARADWAJ,
JUDGE**

Prakash Shrivastava, CJ:

1. By this public interest petition, the petitioner who is stated to be an ex-MLA and a Member of Parliament has challenged the transfer of share of the respondent no. 5, Metro Dairy Limited (for short, 'MDL') to the respondent no. 10, Keventer Agro Limited. (for short, 'KAL)

2. The respondent no. 5, MDL was a limited company incorporated under the Companies Act, 1956 in pursuance to the joint venture agreement dated 31st of May, 1993 executed by the respondent no. 7, West Bengal Corporative Milk Products Limited, (for short, 'BEN', respondent no. 10 and the National Dairy Development Board, (for short, 'NDDB'). The share holding pattern of the MDL since inception was as follows:

a. State of West Bengal – 47 %;

b. National Dairy Development Board (NDDB) – 10 %;

c. Keventer Agro Limited (KAL) – 43 %;

3. Subsequently, NDDB had sold its 10 % shares to ICICI and the same were acquired by the respondent no. 10, KAL, on 21st of March, 2014. The plea of the petitioner in the writ petition is that by the newspaper reports in or about 22nd of August, 2017, the petitioner came to know that the respondent State was considering the proposal to disinvest the equity on MDL for which in May, 2017, e-auction open tender was floated and the respondent no. 10 had submitted a bid to buy out the shares. It is stated that the respondent no. 10 had offered Rs. 85.5 crores as against the base price of Rs. 85.43 crores and on 24th of August, 2017, the petitioner came to

know through the newspaper reports that West Bengal Cabinet had approved the proposal to disinvest the Government's equity in MDL. Thereafter, disinvestment was carried out and respondent no. 10 became the owner of 100 % shares in MDL. The allegation in the petition is that the shares have been sold to respondent no. 10 at a very low price without following any transparent process and without any justifiable reason. The prayer in the writ petition is to appoint a high powered committee headed by a sitting Judge of the High Court to investigate the transfer of shares, to declare the transfer of shares of MDL as illegal and recall the transaction and also to declare the e-auction process to be colourable exercise of power.

4. Submission of Shri Bikash Ranjan Bhattacharyya, learned Senior Counsel for the petitioner is that 47 % shares of MDL have been sold to the respondent no. 10 for Rs. 85.5 crores whereas subsequently, the respondent no. 10 had sold 15 % shares to Mandala Capital valued at Rs. 170 crores. Thus, when the respondent State sold its shares in MDL to respondent no. 10, the value attached to 1 % share was Rs. 1.8 crores but subsequently, when respondent no. 10 sold it 15 % shares to Mandala Capital, the value attached to 1 % share was Rs. 11.3 crores and going by this calculation, the value of 47 % shares of the State was Rs. 533 crores which has been sold at a very low price of Rs. 85.5 crores. He has further submitted that the opaque process of sale of shares has been adopted, no publication in well-known newspapers has been done and there was only one bidder whose bid has been accepted. It is further submitted that the entire auction is on the basis of the letter of the respondent no. 10 dated 9th of July, 2015 (annexure – R2) and that the condition of deposit of non-refundable amount of Rs. 10 lakhs in the NIT was a tailor-made condition to favour the respondent no. 10 and that MDL was not running in loses, therefore, there was no necessity

to sale its shares. It is further submitted that the writ petition, on the basis of the newspaper reports, can very well be entertained. In support of his submission, learned Counsel for the petitioner has placed reliance upon the judgment of the Hon'ble Supreme Court in the matter of **Aggarwal & Modi Enterprises (P) Ltd. Vs. New Delhi Municipal Council** reported in **(2007) 8 SCC 75**, in the matter of **Reliance Telecom Limited and Another vs. Union of India and Another** reported in **(2017) 4 SCC 269** and in the matter **of Uflex Limited vs. Government of Tamil Nadu and Others** reported in **(2022) 1 SCC 165**. He has also placed reliance upon the judgment of this Court in the matter of **Anindya Sundar Das vs. Union of India and Others** reported in **(2018) 2 CHN 164**.

5. Shri J.P. Khaitan, learned Senior Counsel appearing for the State has submitted that proper valuation of the share was done through an independent agency and a transparent process has been followed to sell the shares above the reserve price and that 15 % of its shares sold by respondent no. 10 to Mandala were not the shares of MDL. He has further raised an objection that the writ petition filed on the basis of the newspaper reports cannot be entertained and has also submitted that the decision to sale the shares of MDL is not a hasty decision but it was taken after due deliberations and the conditions of NIT were not tailor-made and twice advertisements were published in the newspaper as well as uploaded in the websites. He has also submitted that on account of the competition, the sales of MDL were decreasing which was one of the reasons for taking decision to disinvest and that there is no material to show that the price offered was not adequate. He has also submitted that the decision to disinvest is an economic policy decision wherein the scope of interference is limited.

6. Shri P. Chidambaram, learned Senior Counsel appearing for respondent no. 10 has also opposed the writ petition by submitting that the shares sold by the respondent no. 10 to foreign investor Mandala has no connection with the shares of MDL purchased by the respondent no. 10. He has further submitted that respondent no. 10 had sold its 15 % shares to Mandala Capital prior in point of time. He has further submitted that on 21st of April, 2014, ICICI had sold its 10 % shares in MDL to the respondent no. 10, therefore, the respondent no. 10 had become majority shareholder having 53 % shares in MDL and that because of the competition by Amul which had entered the marker, the business of MDL had suffered and there was decline in procurement and decline in sale which was one of the reasons to disinvest. He has further submitted that the condition of NIT was not tailor-made as the bidder was required to make non-refundable deposit of roughly .1 % of the bid amount. In support of his submissions, he has placed reliance upon the judgment of the Hon'ble Supreme Court in the matter of **Ghanshyam Upadhyay vs. State of Uttar Pradesh and Others** reported in **(2020) 16 SCC 811**, in the matter of **G.B. Mahajan and Others vs. Jalgaon Municipal Council and Others** reported in **(1991) 3 SCC 91**, in the matter of **Fertilizer Corporation Kamgar Union (Regd.), Sindri and Others vs. Union of India and Others** reported in **(1981) 1 SCC 568** and in the matter of **Balco Employees' Union (Regd.) vs. Union of India and Others** reported in **(2002) 2 SCC 333**.

7. Shri Ratnaka Banerjee, learned Senior Counsel appearing for the respondent no. 13, Mandala Swede SPV has submitted that it is not a necessary party in the petition and the allegation is misconceived.

8. We have heard the learned Counsel for the parties and perused the record. The first issue is in respect of maintainability of the petition on the

basis of the newspaper report. It is the settled law that the newspaper report, without any further material in support thereof, has no evidentiary value. The petition based upon unconfirmed newspaper report, without fortifying their authenticity, may not be entertained. Hon'ble Supreme Court in the matter of **Ghanshyam Upadhyay (supra)** has held that:

> "**6.** As noted, the entire basis for making the allegations as contained in the miscellaneous petition is an article relied on by the petitioner said to have been published in the newspaper. There is no other material on record to confirm the truth or otherwise of the statement made in the newspaper. In our view this Court will have to be very circumspect while accepting such contentions based only on certain newspaper reports. This Court in a series of decisions has repeatedly held that the newspaper item without any further proof is of no evidentiary value. The said principle laid down has thereafter been taken note in several public interest litigations to reject the allegations contained in the petition supported by newspaper report.
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> **7.** It would be appropriate to notice the decision in *Kushum Lata* v. *Union of India* wherein it is observed thus : (SCC p. 186, para 17)
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> > "*17.* … It is also noticed that the petitions are based on newspaper reports without any attempt to verify their authenticity. As observed by this Court in several cases, newspaper reports do not constitute evidence. A petition based on unconfirmed news reports, without verifying their authenticity should not normally be entertained. As noted above, such petitions do not provide any basis for verifying the correctness of statements made and information given in the petition."
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> **8.** This Court in *Rohit Pandey* v. *Union of India* while considering the petition purporting to be in public interest filed by a member of the legal fraternity had come down heavily on the petitioner, since the said petition was based only on two newspaper reports without further verification."

9. Similar issues had come up before the Division Bench of this Court in the matter of **Anindya Sundar Das (supra)** wherein a PIL was filed based on the newspaper report relating to outbreak of dengue in the State and the said fact was not denied by the State, therefore, this Court, after taking note of Section 81 of the Evidence Act, 1872 though found that

the newspaper report per se are inadmissible in an evidence but having regard to the conclusion that the writ petitioners had approached the Court to protect public interest without any extraneous consideration and that there was material that the dengue had become a serious social problem, this Court had rejected the objection about maintainability of the writ petition.

10. In the present case also, the allegation of sale of 47 % shares of MDL to the respondent no. 10 is not in dispute and there is an allegation about arbitrary manner of transfer of share and the PIL was entertained in the year 2018, thereafter, affidavits have been exchanged and the material has come on record in respect of the nature of transaction, therefore, we do not deem it proper to reject the petition on the technical ground of having being filed on the basis of the newspaper reports.

11. The next issue is about the scope of interference in such a decision of the State to sell its shares in MDL to the respondent no. 10. The decision in respect of disinvestment and transfer of 47 % of shares in MDL by the State is essentially a policy decision based upon economic and other considerations. Such a policy decision is not open to interference unless the same is unconstitutional, violative of statutory provision, totally arbitrary or suffers from the vice of malice. Courts may also interfere if any illegality is committed in the execution of such a policy decision. It does not lie within the domain of the Courts to consider the relative merits of different economic policies. It is settled that the process of disinvestment is a policy decision involving complex economic factors and it is not for the Court to examine whether the policy of a particular disinvestment was desirable or not. The Hon'ble Supreme Court in the matter of **Balco Employees' Union (supra)** has held that:-

"**46.** 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.

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 its own policy. Often a change in Government may result in the shift in focus or change in economic policies. Any such change may result in adversely affecting some vested interests. Unless any illegality is committed in the execution of the policy or the same is contrary to law or mala fide, a decision bringing about change cannot per se be interfered with by the court.

93. Wisdom and advisability of economic policies are ordinarily not amenable to judicial review unless it can be demonstrated that the policy is contrary to any statutory provision or the Constitution. In other words, it is not for the courts to consider relative merits of different economic policies and consider whether a wiser or better one can be evolved. For testing the correctness of a policy, the appropriate forum is Parliament and not the courts. Here the policy was tested and the motion defeated in the Lok Sabha on 1-3-2001.

94. 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 the State of Chhattisgarh 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.

95. 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. v. State of U.P.).

96. The ratio of the decision in Samatha case 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 Chhattisgarh to take a somersault and challenge the correctness of its own action. Furthermore, even with the change in management the land remains with BALCO to whom it had been validly given on lease.

97. 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 its constitutional or statutory duties. None of these contingencies arise in this present case.

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."

12. Hon'ble Supreme Court in the matter of **Fertilizer Corporation Kamgar Union (Regd.) (supra)**, considering the limited scope of judicial interference in policy decision has held that:-

"**35.** A pragmatic approach to social justice compels us to interpret constitutional provisions, including those like Articles 32 and 226, with a view to see that effective policing of the corridors of power is carried out by the court until other ombudsman arrangements — a problem with which Parliament has been wrestling for too long — emerges. I have dwelt at a little length on

> this policy aspect and the court process because the learned Attorney-General challenged the petitioner's locus standi either qua worker or qua citizen to question in court the wrongdoings of the public sector although he maintained that what had been done by the Corporation was both bona fide and correct. 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."

13. In the matter of **G.B. Mahajan (supra)**, the Hon'ble Supreme Court, considering the scope of interference in economic policy decision, has laid down that:

> "**22.** On a consideration of the matter, it appears to us that the argument that a project envisaging a self-financing scheme, by reason alone of the particular policy behind it, is beyond the powers of the local authority is somewhat too broadly stated to be acceptable. A project, otherwise legal, does not become any the less permissible by reason alone that the local authority, instead of executing the project itself, had entered into an agreement with a developer for its financing and execution. 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. We might recall the memorable words of what Justice Brandeis said:

> "The discoveries in physical science, the triumphs in invention, attest the value of the process of trial and error. In large measure, these advances have been due to experimentation …."
>
> "… There must be power in the States and the Nation to remould, through experimentation, our economic practices and institutions to meet changing social and economic needs …."
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> "To stay experimentation in things social and economic is a grave responsibility. Denial of the right to experiment may be fraught with serious consequences to the Nation. It is one of the happy incidents of the federal system that a single courageous State may, if its citizens choose, serve as a laboratory; and try novel social and economic experiments without risk to the rest of the country. This Court has the power to prevent an experiment …. But in the exercise of this high power, we must be ever on our guard, lest we erect our prejudices into legal principles."

23. In regard to courts and policy we might recall the following words of a learned author:

> "The courts are kept out of the lush field of administrative policy, except when policy is inconsistent with the express or implied provisions of a statute which creates the power to which the policy relates or when a decision made in purported exercise of a power is such that a repository of the power, acting reasonably and in good faith, could not have made it. In the latter case, 'something overwhelming' must appear before the court will intervene. That is, and ought to be, a difficult onus for an applicant to discharge. The courts are not very good at formulating or evaluating policy. Sometimes when the courts have intervened on policy grounds, the court's view of the range of policies open under the statute or of what is unreasonably policy has not won public acceptance. On the contrary, curial views of policy have been subjected to stringent criticism. In the world of politics, the court's opinions on policy are naturally less likely to reflect the popular view than the

> policies of a democratically elected government or of expert administrators ….”
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> “The considerations by reference to which the reasonableness of a policy may be determined are rarely judicially manageable ….”
>
> (emphasis supplied)”

14. Thus, this Court is required to examine the present case in the light of the limited scope of interference in the economic policy decision of the State relating to sale of 47 % shares of MDL.

15. In the present case, nothing has been pointed out to show that the decision of the State to sell 47 per cent shares of MDL runs counter to any statutory provision or is illegal in any manner. This Court need not go beyond the policy decision and find out the reason for such a policy decision if the decision is otherwise unquestionable. Even otherwise, it has been pointed out from the record that the MDL is a company dealing in diary business alone and sometime around 2004-05, Amul milk, owned by Gujarat Co-operative Milk Marketing Federation, had entered the West Bengal Milk Market as competitor to the MDL as a result of which, the annual procurement of milk as also annual sale of MDL were continuously declining. The comparative chart indicating the decline in the sales of MDL from 2013-14 to 2018 as against the increasing sale of Amul during this period has been pointed out to us. The respondent no. 5 had raised this issue. The respondent no. 10 was having majority shares of 53 % in MDL. It has been disclosed in the affidavit-in-opposition of the respondent no. 10 that by letter dated 9th of July, 2015, a request was made by the respondent no. 10 to the Animal Resources Department, Government of West Bengal for bringing in more capital into respondent no. 5, which the State did not agree. Learned Senior Counsel for the respondent no. 10 has also pointed out to this Court that in terms of Clause 4.3 of the Joint Venture Agreement

dated 31st of May, 1993, one of the partner could exit by transferring its shares to the other partner but the State was not willing to exit respondent no. 5 in terms of Clause 4.3, hence, a decision was taken to disinvest the shares of the State in respondent no. 5. The said decision was approved in the cabinet meeting. In the above background, the policy decision of the State to disinvest the shares of the respondent no. 5 cannot be faulted.

16. The next issue is if the State has sold 47 % shares of the respondent no. 5, MDL, to the respondent no. 10 in arbitrary manner or malafidely? The material on record indicates that the State had found that disinvestment of Government shares on the basis of book value to the other promoters in terms of clause 4.3 of the JVA would have fetched much less earning, hence, a decision was taken to opt for open market competitive bidding for sale of shares based on market value. M/s. Price Waterhouse & Co. LLP was engaged as Transaction Advisor (for short, 'TA') for valuation of the shares of the respondent no. 5 which had determined the book value of equity shares at Rs. 82 on the basis of the unaudited Balance Sheet of the Company as on 13th of September, 2015. The TA had assessed the enterprise value of the respondent no. 5 by adopting income approach as also market approach and had assessed the value of equity shares in the range of Rs. 270-293. The valuation report has been placed on record. Finance Department had approved the higher price range of Rs. 293 per equity share for the purpose and accordingly, reserve price was fixed at Rs. 293. Two attempts were made to sale the shares. In the first attempt, Notice Inviting Application (NIA) was published in daily edition of the Statesman and Bartaman on 4th of May, 2017 and the NIA was also uploaded in e-auction site maintained by Government of India through NIC. It was uploaded in http://eauction.go.in and in www.benmilk.com inviting

expression of interest in the disinvestment of entire shareholding held by the State in respondent no. 5. Only respondent no. 10 had submitted the bid, hence, the same was not accepted being the sole bidder and a decision was taken to make another attempt to attract bidders. In the second attempt, notice was uploaded in the NIC portal for e-auction on 28th of June, 2017 and NIA inviting Expression of Interest (EOI) was also published in the newspapers Statesman and Bartaman on 28th of June, 2017. The print-outs from the http://eauction.go.in and www.benmilk.com has been placed on record. In the second attempt also, the respondent no. 10 was the sole bidder who had quoted the bid price of Rs. 84,50,30,000/- as against the reserve price of Rs. 84,38,30,000/-. The bid submitted by the respondent no. 10 was higher than the reserve price, therefore, the respondent no. 1 had resolved to accept it. It is also pointed out that one of the reason why the other bidders did not come forward was that the respondent no. 10 was already having 53 % shares, therefore, even after purchasing 47 % shares, any other third party would have remained the minority share-holders. The above sequence of event clearly reveal that the process of sale of 47 % shares of MDL adopted by the State cannot be termed as opaque or non-transparent process.

17. The argument of learned Senior Counsel for the petitioner that the condition of making non-refundable deposit of Rs. 10 lakhs was tailor-made, cannot be accepted because the said condition was uniformly applicable to all the bidders. For the reserve price of Rs. 84,38,30,000/-, the condition of making a non-refundable deposit of about .1 %, to attract only bona fide bidders, cannot be said to be tailor-made or arbitrary.

18. The record reflects that on 31st of July, 2017, the electronic e-auction was held in which the bid of the respondent no. 10 was accepted.

The respondent no. 10 had forwarded a demand-draft of Rs. 8,45,03,000/- for the payment of 10 % of the final and approved bid amount by cover letter dated 1st of August, 2017. On 3rd of August, 2017, the respondent no. 10 was informed that it had been awarded the contract for the subject auction by the duly constituted Committee. The respondent no. 10 had received the letter dated 30th of August, 2017 from the respondent no. 7 confirming the bid price of Rs. 84,50,30,000/- as the accepted price and the respondent no. 10 had deposited the bid differential amount of Rs. 67,60,94,000/- by demand-draft vide covering letter dated 4th of September, 2017. On 8th of September, 2017, 47 % shares of the respondent no. 7 were transferred by the respondent no. 7 to the demat account of the respondent no. 10.

19. In respect of the allegation that the respondent no. 10 had purchased 47 % shares of MDL in Rs. 85.5 crores but he had sold the 15 % shares to Mandala Swede SPV in Rs. 170 crores, it has been pointed out by the learned Senior Counsel for the respondent no. 10 that the investment in the respondent no. 10 by the Mandala Swede SPV had no connection with the purchase of shares of the MDL by the respondent no. 10. He has pointed out that the respondent no. 10 had not sold the shares of MDL to the Mandala Swede SPV but what was sold to the Mandala Swede SPV was different. It has been disclosed in affidavit-in-opposition of the respondent no. 10 that the investment of the Mandala Swede SPV has been in the respondent no. 10 and not in the MDL and that Mandala Swede SPV has invested Rs. 10 crores in the respondent no. 10 in both Equity Shares and Compulsory Convertible Preference Shares (CCPS) which are convertible into equity shares within 20 years from the date of allotment. Therefore, the exact percentage of equity stock to which Mandala Swede SPV would be

entitled would be determined at the time of their exit depending on number of factors. It has also been disclosed that the respondent no. 10 has various business activities which are not confined to the milk dairy business of the respondent no. 5, MDL. Respondent no. 10 has diversified business having the largest franchise in Parle Agro Private Limited and is responsible for sourcing, manufacturing, distributing and sale of its products in the territories of West Bengal, Jharkhand, North-East. Respondent no. 10 has big manufacturing unit at Barasat with an installed capacity of nearly 7 lakh litres of fruit juice per day. It has capacities of banana riping at Barasat, Siliguri and Durgapur having an export business of Rs. 150 crores turnover of various value added agro products and is also engaged in manufacturing noodles for ITC Limited on job work basis and is also packing, selling various ready to cook frozen food items such as green peas, sweet corn, etc. In the aforesaid background, the comparison of value of shares of the respondent no. 5, MDL, with the shares of the respondent no. 10 is not justified.

20. In order to ascertain if the decision of disinvestment was taken at the appropriate level by following the due procedure, we had called for the file relating to the said decision and have perused it and we find that administrative decision was taken by following the due procedure.

21. Learned Counsel for the petitioner has placed reliance upon the judgments of the Hon'ble Supreme Court in the matter of **Aggarwal & Modi Enterprises (P) Ltd. (supra)** and **Reliance Telecom Limited and Another (supra)** in support of his submission that for fetching maximum price, auction should have been held. This Court has already found that the sale of shares took place by inviting open bids, therefore, the principles laid down in these judgments have not been flouted. He has also placed reliance

upon the judgment of the Hon'ble Supreme Court in the matter of **Uflex Limited (supra)** in support of the plea that the condition of tender should not be tailor-made but this Court has already reached to the conclusion that the condition of making non-refundable deposit of Rs. 10 lakhs was not tailor-made.

22. Hon'ble Supreme Court in the matter of **All India ITDC Workers' Union and Others vs. ITDC and Others** reported in **(2006) 10 SCC 66**, in similar circumstances while dismissing the writ petition questioning the disinvestment policy of ITDC hotels had held that:-

> "**33.** 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 as follows: (SCC pp. 372-73, paras 65-66)
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> > "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."

23. Present case also stands on the same footing.

24. Having regard to the above, we find that policy decision of the State to sell 47 % shares of respondent no. 5 MDL was neither illegal nor arbitrary and State had also not adopted non-transparent or opaque

procedure for sale of shares, hence no case for interference in the present writ petition is made out which is accordingly, dismissed.

(PRAKASH SHRIVASTAVA)
CHIEF JUSTICE

(RAJARSHI BHARADWAJ)
JUDGE

Kolkata
13.06.2022

PA(RB)

(A.F.R. / N.A.F.R.)