

Reserved on : 05.01.2024
Pronounced on : 08.01.2024



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 08TH DAY OF JANUARY, 2024

BEFORE

THE HON'BLE MR. JUSTICE M. NAGAPRASANNA

WRIT PETITION No.287 OF 2024 (GM – RES)

BETWEEN:

ALL INDIA HDPE/PP WOVEN FABRIC
MANUFACTURERS' ASSOCIATION
AN ASSOCIATION REGISTERED
UNDER SOCIETIES ACT
KPL COMPOUND, 7TH MILE,
BANNERGHATTA ROAD,
BENGALURU – 560 076
BY ITS SECRETARY GENERAL
SHRI NARESH BHANDIA.

... PETITIONER

(BY SRI N.RAGHAVENDRA RAO, ADVOCATE)

AND:

1 . THE SECRETARY
GOVERNMENT OF INDIA
COMPETITION COMMISSION OF INDIA
9TH FLOOR, OFFICE BLOCK-1
KIDWAI NAGAR (EAST)
NEW DELHI – 110 023.

2 . THE SECRETARY
GOVERNMENT OF INDIA
MINISTRY OF MICRO, SMALL AND
MEDIUM ENTERPRISES
UDYOG BHAWAN,
RAFIQ MARG
NEW DELHI – 110 011.

3 . THE SECRETARY
GOVERNMENT OF INDIA
DEPARTMENT OF CHEMICALS AND
PETRO CHEMICALS
236A, A-WING, 2ND FLOOR,
SHASTRI BHAWAN,
NEW DELHI – 110 001.

... RESPONDENTS

(BY SRI H.SHANTHI BHUSHAN, DSGI A/W
SMT.SADHANA DESAI, CGC)

THIS WRIT PETITION IS FILED UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE IMPUGNED ORDER NO.S.O.1625(E) DTD. 15.04.2021 IN THE GAZETTE OF INDIA, EXTRAORDINARY, (PART-II-SEC.3(ii)), VIDE ANNEX-C AND QUALITY CONTROL ORDER BEARING NO. S.O. 4235(E), NEW DELHI DTD. 26.09.2023, IN THE GAZETTE OF INDIA, EXTRAORDINARY, (PART-II-SEC.3(ii)), AS AT ANNEX-G TO THE WRIT PETITION, BOTH PASSED BY THE R-3 AND GRANT SUCH OTHER RELIEFS AS THIS HONB'LE COURT DEEMS FIT IN THE FACTS AND CIRCUMSTANCES OF THE CASE, INCLUDING THE COSTS.

THIS WRIT PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 05.01.2024, COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT MADE THE FOLLOWING:-

ORDER

The petitioner is before this Court calling in question a Notification dated 15-04-2021 issued by Government of India which imposes quality control on import of plastic into the shores of the nation to become effective from 05-01-2024.

2. *Shorn* of unnecessary details, facts in brief, are as follows:-

The petitioner is said to be an Association of Manufacturers and suppliers of high density polyethylene, low density polyethylene and other allied products. It is the case of the petitioner/Association that high density polyethylene is a plastic polymer which is commonly used by variety of consumers including industrial units. It is more resistant to cracking and less likely to suffer from stress induced failure. The low density polyethylene is widely used in packaging like foils, trays and plastic bags for both food and non-food purposes. The petitioner and its members were importing raw material required for manufacture and supply of high density polyethylene and low density polyethylene products and after such

import were supplying finished goods all over the country not restricted to domestic consumption but were also exporting and claims to be contributing to the economy of the country. It is the averment that the industries coming under the Association are feeding over 25 lakh families as they have employed that many persons in their respective industries.

3. The third respondent/Department of Chemicals and Petro Chemicals of the Union of India issues a quality control order on 15-04-2021 seeking to impose certain restrictions on low density polyethylene, linear low density polyethylene and high density polyethylene. The quality control was that the aforesaid polyethylenes should confirm to the corresponding Indian standard and shall bear the standard mark under a licence from the Bureau of Indian Standards ('BIS' for short) as per Schedule I and Schedule-II of the Bureau of Indian Standards (Conformity Assessment) Regulations, 2018. The petitioner claims that imposition of such a clause on the supply of raw material will restrict free movement and sale of the said raw materials and would create a monopoly in the hands of a few in the industry. It is,

therefore, the Association submitted certain representations to respondents 2 and 3 to have a look at the conditions imposed in the quality control order insofar as it necessitates the quality to pass through the BIS with the seal of BIS. That is not acceded to. On 26-09-2023 the 3rd respondent issues another notification directing that the earlier notification which imposed quality standard would be coming into effect on 05-01-2024. It is, therefore, the petitioner claiming to be aggrieved by the imposition of conditions for import of plastic is before this Court in the subject petition.

4. Heard Sri N.Raghavendra Rao, learned counsel appearing for the petitioner and Sri H. Shanthi Bhushan, learned Deputy Solicitor General of India appearing for the respondents.

5. The learned counsel appearing for the petitioner would vehemently contend that the notification is aimed at one single purpose, to help Reliance Industries, as according to the petitioner Reliance Industries has a monopoly in the manufacture of linear and a particular ingredient 'granule' that is necessary for production

of plastic. It is his contention that there is no other player in the market and all the plastic manufacturers have to line up to Reliance Industries only. The learned counsel would further contend that there is no nexus with the production of plastic, for imposition of the aforesaid conditions, he would contend such conditions are imposed on raw material. But, such conditions ought to have been imposed on a finished product and not on raw material. It is his submission that if on finished product quality control is imposed, it would be in tune with law and not the raw material imported as is done in the case at hand. He would take this Court through a communication from the Under Secretary in the Department of Commerce to the 3rd respondent directing that the Government itself is in doubt about its implementation and, therefore, it should not be given effect to by an order of the Court. He would seek quashment of the notification, which brings in such quality standards.

6. On the other hand, the learned Deputy Solicitor General of India Sri H. Shanthi Bhushan, appearing along with Smt. Sadana Desai, has on war footing secured complete instructions and would

contend that members of the petitioner/Association are not wanting to bring in quality into the country. If any interference is shown, it would lead to cheap raw material being imported, as was done earlier, which would lead to several hazardous issues including environmental. What the Government of India has done is to bring in certain quality measures by way of a policy decision. He would submit that this Court would not interfere with a policy decision particularly, economic policy or a policy to regulate quality, in exercise of its jurisdiction under Article 226 of the Constitution of India. He would, in reply to the allegation that there is only one player in the market, contend that it is a false submission that there is one player in the market. He would seek to place on record that there are about 50 players in the market including the ones that are outside the country and insofar as granules are concerned there are 12 players in the market and not only the Reliance Industries. He would, therefore, seek dismissal of the petition.

7. I have given my anxious consideration to the submissions made by the respective learned counsel and have perused the material on record.

8. The afore-narrated facts, though not in dispute, would require little elaboration. The status of the petitioner is not in dispute, that it is an Association of manufacturers and suppliers of high density polyethylene, low density polyethylene and linear low density polyethylene products. These products are used to make plastic material and they are commonly known as plastic polymer in various consumer and industrial products. They are two types – a low density polyethylene which has low resistance to cracking and would suffer from stress induced failure and the other being a high density polyethylene which is more resistant to cracking and less likely to suffer stress induced failure which is used in variety of packaging material, containers, pipes of good strength. High density polyethylene is also resistant to fatigue and has also low coefficient of friction. Therefore, the entire issue is with regard to raw material in the name of high density polyethylene; linear low density polyethylene or low density polyethylene being used in the plastic industry.

9. The plastic which is commonly used in packaging was imported as a mode of packaging in 1940. It was then polymerized

from ethylene which was different from what it is today. Then emerged a low density polyethylene with low cost to make many flexible packaging applications. Low density polyethylene became popular as it was flexible, odorless, transparent with 100% recyclable thermoplastic polymer. This became a part of human life as it was being packaged in grocery shops and all other walks of day-to-day human life. The members of the petitioner, is a procurer of raw material both within and outside the shores of the nation having supply chain of manufacture and distribution. The Government of India, faced with several problems shrouded with usage of plastic, thought it fit to impose certain conditions concerning its quality.

10. Bureau of Indian Standards Act, 2016 was promulgated to provide for establishment of a National Standards Body for the harmonious development of the activities of standardization, conformity assessment and quality assurance of goods, articles, processes, systems and services and matters connected therewith or incidental thereto. Therefore, in exercise of powers conferred under the Bureau of Indian Standards Act, 2016, Government

issued a notification on 15-04-2021 bringing in Polyethylene Material for Moulding and Extrusion (Quality Control) Order, 2021. The notification reads as follows:

"ORDER

New Delhi, the 15th April, 2021

S.O. 1625(E). — In exercise of the powers conferred by section 16 of the Bureau of Indian Standards Act, 2016 (11 of 2016), (hereinafter referred to as the said Act), the Central Government, being of the opinion that it is necessary or expedient so to do in the public interest after consultation with the Bureau of Indian Standards, hereby makes the following order, namely:-

1. Short title, commencement and application. – (1) This order may be called the Polyethylene Material for Moulding and Extrusion (Quality Control) Order, 2021.

(2) It shall come into force on the expiry of one hundred and eighty days from the date of its publication in the Official Gazette.

(3) It shall apply to goods or articles specified in column (1) of the Table below, but shall not apply to such goods or articles meant for export.

2. Conformity to standards and compulsory use of Standard Mark. - Goods or articles specified in column (1) of the Table below shall conform to the corresponding Indian Standard given in column (2) of the said Table and shall bear the Standard Mark under a licence from the Bureau of Indian Standards as per Scheme-I of Schedule-II of the Bureau of Indian Standards (Conformity Assessment) Regulations, 2018.

3. Certification and enforcement authority. - The Bureau of Indian Standards shall be the certifying and enforcing authority in respect of the goods or articles specified in column (1) of the Table.

4. **Penalty for contravention.** - Any person who contravenes the provisions of this order shall be punishable under the provisions of the said Act.

TABLE

Goods or article	Indian Standard	Title for Indian Standard
Polyethylene Material for moulding and extrusion (i) Low Density Polyethylene (LDPE) (ii) Linear Low-Density Polyethylene (LLDPE) (iii) High Density Polyethylene (HDPE)	IS 7328:2020	Specification of Polyethylene Material for Moulding and Extrusion

[F.No.PC-II 46016/6/2020-Tech.CPC-Pt I]

(Emphasis supplied)

This again was superseded in the year 2022. The conformity to standards and compulsory use of standard mark from Bureau of Indian Standards was brought in. The said notification reads as follows:

"ORDER

New Delhi, the 5th April, 2022

S.O. 1647(E).—In exercise of the powers conferred by section 16 of the Bureau of Indian Standards Act, 2016 (11 of 2016), (hereinafter referred to as the said Act), and in supersession of the Polyethylene Material for Moulding and Extrusion (Quality Control) Order, 2021, the Central Government, after consulting the Bureau of Indian Standards, is of the opinion that it is necessary or expedient so to do in the public interest, hereby makes the following Order, namely:-

1. Short title, commencement and application. – (1) This order may be called the Polyethylene Material for Moulding and Extrusion (Quality Control) Order, 2022.

(2) It shall come into force on the 3rd October, 2022.

(3) It shall apply to goods or article specified in column (1) of the Table below and shall not apply to such goods or article meant for export.

2. Conformity to standards and compulsory use of Standard Mark. - Goods or article specified in column (1) of the Table below shall conform to the corresponding Indian Standard given in column (2) of the said Table and shall bear the Standard Mark under a licence from the Bureau of Indian Standards as per Scheme-I of Schedule-II of the Bureau of Indian Standards (Conformity Assessment) Regulations, 2018.

3. Certification and enforcement authority. – In respect of the goods or article specified in column (1) of the said Table, the Bureau of Indian Standards shall be the certifying and enforcing authority.

4. Penalty for contravention. - Any person who contravenes the provisions of this Order shall be punishable under the provisions of the said Act.

TABLE

Goods or article	Indian Standard	Title for Indian Standard
(1)	(2)	(3)
Polyethylene Material for moulding and extrusion (i) Low Density Polyethylene (LDPE) (ii) Linear Low-Density Polyethylene (LLDPE) (iii) High Density Polyethylene (HDPE)	IS 7328:2020	Specification of Polyethylene Material for Moulding and Extrusion

[F.No.PC-II 46016/6/2020-Tech.CPC-Pt I]

(Emphasis supplied)

Several notifications come to be issued depicting the date on which every notification earlier issued would come into force. What is germane is a notification that is issued on 26-09-2023 and it reads as follows:

"NOTIFICATION

New Delhi, the 26th September, 2023

S.O. 4233(E).—*In exercise of the powers conferred by section 16 and sub-section (3) of section 25 of the Bureau of Indian Standards Act, 2016 (11 of 2016), the Central Government, after consulting the Bureau of Indian standards is of the opinion that it is necessary so to do in the public interest, hereby makes the following order further to amend the Polyethylene Material for Moulding and Extrusion (Quality Control) Order 2022, namely:—*

1. Short title and commencement.- (1) This Order may be called the Polyethylene Material for Moulding and Extrusion (Quality Control) Order 2023.

(2) It shall come into force on the date of its publication in the Official Gazette.

2. In the Polyethylene Material for Moulding and extrusion (Quality Control) Order, 2022 in paragraph 1, sub-paragraph (2), the following subparagraph shall be substituted, namely: —

"(2) It shall come into force on the 05th day of January, 2024."

[F. No. PC-II 46016/6/2020-Tech.CPC Pt-I]"

(Emphasis supplied)

The aforesaid notification directs that the quality control orders issued from time to time, with particular reference to 2022 order

would come into effect from 05-01-2024. The coming into effect on 05-01-2024 has driven the petitioner to this Court in the subject petition. The submission that there is no nexus, with the production sought to be achieved by imposing quality standard on a raw material, is noted only to be rejected as, to say the least, **is preposterous**. If quality is not in the raw material, it is understandable as to how it can be found in a finished product. If raw material lacks quality it is trite that the finished product would be sub-standard. Therefore, the said submission is *sans* countenance, as it is fundamentally flawed.

11. The learned counsel for the petitioner places heavy reliance upon a communication dated 14-03-2023. It reads as follows:

"Dated: 14th March, 2023.

Sub: DOCOM/E/2023/0000465 dated 25-02-2023 filed by Shri Naresh Bhandla, Karnataka received in EP (CAP) Division on 27-02-2023.

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The undersigned is directed to refer to the subject mentioned above and to forward herewith grievance petition filed by Shri Naresh Bhandla, All India HDPE/PP Woven fabric Manufacturers Association referring to Notification No.CG-DL-E-16042021-226663 dated 15th April 2021 Imposing BIS Standards & Markings on the imported Polyethylene Materials for Moulding and Extrusion.

2. The members of Association are MSME manufacturers of different kind of HDPE/PP Woven Fabrics & Sacks used as packing material by industries all over India and exported across the world. It has been mentioned by the complainant that all the Indian Manufacturers of HDPE/PP/LDPE/LLDPE Granules keep the local selling prices much above the ruling International prices of the same items. With every change in price, all the manufacturers revise the prices in tandem. Further, it has been stated that all the domestic Petrochemical Producers have formed an Informal Cartel to keep the prices far above the international rates and are now trying to curb import of more competitively priced materials from other countries by creating hurdles that discourage sale of these products to Indian customers. Imposition of the BIS Licensing and Marking is another step in this direction.

3. All India HDPE/PP Woven Fabric Manufacturers Association has requested that if the domestic industry can get raw material at internationally competitive prices, the domestic industry can become efficient in the international arena and start exporting Indian products worldwide.

4. Plastic Export Promotion Council, an EPC mandated with export promotion of plastic products is of the view that BIS standard on import of polymers like PVC, PP, ABS, HDPE, LDPE, LLDPE, PC, etc. will have serious ramifications. Domestic Processing industry will become non-competitive as India is not yet self-reliant in polymers and imports of polymers is inevitable. Such type of imposition of Non-Tariff Barrier (NTB) will increase the price of polymers for Indian importers making domestic plastic processors non-competitive. It will make it difficult for MSME polymer processors to compete with imports of cheap finished articles of plastics which will not be governed under any Quality Control order and since they will be substantially cheaper in prices and will garner a large market share of India. Further, to produce finished goods, several additives are added with polymers. So imposition of mandatory BIS on polymers cannot ensure a good quality finished product at hands of the consumer. Plexconcil is also of the opinion that mandatory imposition of BIS on import of Polymers should not be imposed.

5. DCPC being the nodal department is requested to examine the said grievance and take appropriate action t their end for disposal of the said grievance."

(Emphasis added)

The learned counsel for the petitioner taking que from the afore-quoted communication seeks to project that it is the opinion of the Government of India that implementation of the project should not be done and therefore, this Court should interfere based on the said communication. The submission is unacceptable, as it is not word-perfect. A perusal at the communication would indicate that it is not the opinion of Government of India, but a narration of two factors, one the grievances projected by the petitioner/Association or its members and the opinion of the Plastics Export Promotion Council. The aforesaid can by no means be construed to be the opinion of the Government of India. Therefore, heavy reliance placed upon the said communication turns so light that it flies off and would not render any assistance to the contention of the petitioner.

12. The other submission is that the notification leads to monopolization in the hands of dominant manufacturer in polymer – the Reliance group. Though this Court would not consider the said submission unless there is adequate evidence of such cartelization, which is not placed before the Court by the petitioner, the learned Deputy Solicitor General of India has placed a chart of 50 manufacturers in the same industry, which includes manufacturers in India and abroad and 12 manufacturers of raw material. Reliance, is not the only but, five among the 12. The chart of manufacturers reads as follows:

<i>"SI No</i>	<i>Name & Address</i>	<i>District</i>
1.	<i>Brahmaputra Cracker and Polymere Limited</i>	<i>Dibrugarh</i>
2	<i>Bihani Manufacturing Co. (P) Ltd.</i>	<i>Alwar</i>
3.	<i>Hyundai Engineering Plastics India Pvt.Ltd.</i>	<i>Tirupati</i>
4	<i>Indian Oil Corporation Limited</i>	<i>Panipat</i>
5.	<i>Haldia Petrochemicals Limited</i>	<i>Purba Medinpur</i>
6	<i>Reliance Industries Limited</i>	<i>Raigarh</i>
7.	<i>Reliance Industries Limited</i>	<i>Jamnagar</i>
8.	<i>Reliance Industries Limited</i>	<i>Bharuch</i>
9.	<i>Reliance Industries Limited</i>	<i>Surat</i>
10	<i>ONGC Petro additions Ltd.</i>	<i>Bharuch</i>
11	<i>GAIL (India) Limited</i>	<i>Auraiya</i>
12	<i>Reliance Industries Limited</i>	<i>Vadodara"</i>

Therefore, the contention that it would lead to cartelization or monopoly by one industry is *farther from truth*.

13. The Notification impugned, seeks to achieve a seal of Bureau of Indian Standard ('BIS seal') in every raw material that is brought in, to the manufacture of a final product. The Bureau of Indian Standards, as observed hereinabove, is a national standards body which permits the development, standardization and quality certification of goods and the certification will be through BIS standard mark. If this is sought to be achieved by the Union of India, through the Notification as a policy decision, this Court exercising its jurisdiction under Article 226 of the Constitution of India would be **loathe** to interfere with such a policy decision of Government, particularly of economic and quality standards. This Court does to sit over the decision of Government of India, to assess the quality and direct that such steps should not be taken.

14. It is trite law that policies which are in the realm of regulatory, economic and quality when questioned before the Court seeking judicial review, the Court exercising its jurisdiction under

Article 226 of the Constitution would not interfere by sitting in the arm chair of experts, as the authority statutory or otherwise is entitled to choose the course of action, that it thinks fit or necessary and expedient in public interest. The Courts have always exercised judicial restraint and circumspection over the wisdom of policies of the Government or statutory authorities, save in certain circumstances, where the policy is palpably or demonstrably in flying foul of the tenets of Article 14 of the Constitution of India. This is the only parameter that would permit the constitutional Courts to tinker with any policy, more particularly a policy of the kind that is impugned in the case at hand.

15. Reference being made to the judgment of Frankfurter J. of the U.S. Supreme Court in the case of **TROP v. DULLES**¹, becomes apposite. The learned Judge, in his dissenting opinion, has observed as follows:

"57.All power is, in Madison's phrase, "of an encroaching nature". Judicial Power is not immune against this human weakness. It also must be on guard against encroaching beyond its proper bounds, and not

¹ **356 US 86 (1958)**

the less so since the only restraint upon it is self-restraint.....

58. Rigorous observance of the difference between limits of power and wide exercise of power - between questions of authority and questions of prudence - requires the most alert appreciation of this decisive but subtle relationship of two concepts that too easily coalesce. No less does it require a disciplined will to adhere to the difference. ***It is not easy to stand aloof and allow want of wisdom to prevail to disregard one's own strongly held view of what is wise in the conduct of affairs. But it is not the business of this Court to pronounce policy. It must observe a fastidious regard for limitations on its own power, and this precludes the Court's giving effect to its own notions of what is wise or politic. That self-restraint is of the essence in the observance of the judicial oath, for the Constitution has not authorized the judges to sit in judgment on the wisdom of what Congress and the executive Branch do".***

(Emphasis supplied)

In yet another view Lord Justice Lawton in ***LAKER AIRWAYS v.***

DEPARTMENT OF TRADE² has held as follows:

*"In the United Kingdom aviation policy is determined by ministers within the legal framework set out by Parliament. Judges have nothing to do with either policy-making or the carrying out of policy. Their function is to decide whether a minister has acted within the powers given to him by statute or the common law. If he is declared by a Court, after due process of law, to have acted outside his powers, he must stop doing what he has done until such time as parliament gives him the powers he wants. ***In a case such as this I regard myself, as a referee. I can blow my judicial whistle when the ball goes out of play; but when the game restarts I must neither take part in it nor tell the players how to play".****

(Emphasis supplied)

² (1977)2 ALL ER 182

16. The afore-quoted judgments are relied on in plethora of cases by the Apex Court when faced with identical circumstances of judicial review of a policy, be it administrative, economic or pricing. A three Judge Bench of the Apex Court in the case of **RAJEEV SURI v. DELHI DEVELOPMENT AUTHORITY**³ has held as follows:

"188. *We may usefully borrow the dictum of Frankfurter, J. in Morey v. Doud [Morey v. Doud, 1957 SCC OnLine US SC 105: 1 L Ed 2d 1485: 354 US 457 (1957)], noted with approval by this Court in R.K. Garg [R.K. Garg v. Union of India, (1981) 4 SCC 675, para 8: 1982 SCC (Tax) 30] (at SCC p. 691, para 8):*

"that the Courts have only the power to destroy, not to reconstruct. When these are added to the complexity of economic regulation, the uncertainty, the liability to error, the bewildering conflict of the experts, and the number of times the Judges have been overruled by events — self-limitation can be seen to be the path to judicial wisdom and institutional prestige and stability."

In Premium Granites [Premium Granites v. State of T.N., (1994) 2 SCC 691, para 54], even this Court restated that it is not the domain of the Courts to embark upon uncharted ocean of public policy in an exercise to consider as to whether a particular public policy is wise or a better public policy can be evolved. Such exercise must be left to the discretion of the executive and legislative authorities, as the case may be. The Court may interfere only when the case involves infringement of fundamental rights guaranteed by the Constitution or any other statutory right.

³ (2022) 11 SCC 1

189. *A priori, the prescription of procedure to be deployed by the administration in taking their decisions in the ordinary course of their business is not for the Court to decide. More particularly, in cases where decisions are taken in tune with a duly enacted statutory scheme, it is not open to a court of law to disregard the same on the specious reasoning that the governing statutory scheme is deficient for the nature of or significance of the project. Even if a Court finds it debatable, that can be no ground for the Court to quash an action taken strictly in accord with the prescribed procedure.*

... ..

202. A policy decision goes through multiple stages and factors in diverse indicators including socio-economic and political justice, before its final culmination. As per the nature of the project, the Government executes the project by taking certain steps – legislative, administrative, etc. and it is this which comes under the radar of the Court. The increasing transparency in Government functioning by means of traditional and modern media is reducing the gap between citizens and Government and Government actions are met with a higher level of scrutiny on a real-time basis.

203. *In a democracy, the electors repose their faith in the elected Government which is accountable to the legislature and expect it to adopt the best possible course of action in public interest. Thus, an elected Government is the repository of public faith in matters of development. Some section of the public/citizens may have another view point if not complete disagreement with the course of action perceived by the elected Government, but then, the dispensation of judicial review cannot be resorted to by the aggrieved/dissenting section for vindication of their point of view until and unless it is demonstrated that the proposed action is in breach of procedure established by law or in a given case, colourable exercise of powers of the Government. Therefore, it is important for the Courts to remain alive to all the attending circumstances and not interfere merely because another option as in the perception of the aggrieved/dissenting section of public would have been a better option.*

204. *As noted earlier, the Courts do not sit in appeal over the decisions of the Government to do merit review of the subjective decision as such. In Natural Resources Allocation [Natural Resources Allocation, In re, Special Reference No. 1 of 2012, (2012) 10 SCC 1, paras 149 and 184] , this Court noted that Government decisions concerning public resources have an "intricate economic value" attached with them and to elevate the standard of review on the basis of a subjective understanding of the subject-matter being extraordinary would be de hors the review jurisdiction.*

205. *In Narmada Bachao Andolan v. Union of India [Narmada Bachao Andolan v. Union of India, (2000) 10 SCC 664] , this Court observed that : (SCC p. 762, para 229)*

"229. It is now well settled that the courts, in the exercise of their jurisdiction, will not transgress into the field of policy decision. Whether to have an infrastructural project or not and what is the type of project to be undertaken and how it has to be executed, are part of policy-making process and the courts are ill-equipped to adjudicate on a policy decision so undertaken. The court, no doubt, has a duty to see that in the undertaking of a decision, no law is violated and people's fundamental rights are not transgressed upon except to the extent permissible under the Constitution. Even then any challenge to such a policy decision must be before the execution of the project is undertaken. Any delay in the execution of the project means overrun in costs and the decision to undertake a project, if challenged after its execution has commenced, should be thrown out at the very threshold on the ground of laches if the petitioner had the knowledge of such a decision and could have approached the court at that time. Just because a petition is termed as a PIL does not mean that ordinary principles applicable to litigation will not apply. Laches is one of them."

(emphasis supplied)

206. *The Government may examine advantages or disadvantages of a policy at its own end, it may or may*

not achieve the desired objective. The Government is entitled to commit errors or achieve successes in policy matters as long as constitutional principles are not violated in the process. It is not the Court's concern to enquire into the priorities of an elected Government. Judicial review is never meant to venture into the mind of the Government and thereby examine validity of a decision.

207. *In Shimnit Utsch India [Shimnit Utsch India (P) Ltd. v. W.B. Transport Infrastructure Development Corpn. Ltd., (2010) 6 SCC 303], this Court, in para 52, observed thus: (SCC p. 325)*

"52. ... The courts have repeatedly held that the government policy can be changed with changing circumstances and only on the ground of change, such policy will not be vitiated. The Government has a discretion to adopt a different policy or alter or change its policy calculated to serve public interest and make it more effective. Choice in the balancing of the pros and cons relevant to the change in policy lies with the authority. But like any discretion exercisable by the Government or public authority, change in policy must be in conformity with Wednesbury [Associated Provincial Picture Houses Ltd. v. Wednesbury Corpn., (1948) 1 KB 223; (1947) 2 All ER 680 (CA)] reasonableness and free from arbitrariness, irrationality, bias and malice."

(emphasis supplied)

208. *In State of M.P. v. Narmada Bachao Andolan [State of M.P. v. Narmada Bachao Andolan, (2011) 7 SCC 639, paras 36: (2011) 3 SCC (Civ) 875], the Court was dealing with an issue of rehabilitation of persons displaced due to the construction of the dam. It went on to observe that judicial interference in a policy matter is circumscribed, in the following words : (SCC pp. 670-71, paras 36-37)*

"36. The Court cannot strike down a policy decision taken by the Government merely because it feels that another decision would have been fairer or more scientific or logical or wiser. The

wisdom and advisability of the policies are ordinarily not amenable to judicial review unless the policies are contrary to statutory or constitutional provisions or arbitrary or irrational or an abuse of power. (See *Ram Singh Vijay Pal Singh v. State of U.P.* [*Ram Singh Vijay Pal Singh v. State of U.P.*, (2007) 6 SCC 44], *Villianur Iyarkkai Padukappu Maiyam v. Union of India* [*Villianur Iyarkkai Padukappu Maiyam v. Union of India*, (2009) 7 SCC 561] and *State of Kerala v. Peoples Union for Civil Liberties* [*State of Kerala v. Peoples Union for Civil Liberties*, (2009) 8 SCC 46] .)

37. Thus, it emerges to be a settled legal proposition that the Government has the power and competence to change the policy on the basis of ground realities. A public policy cannot be challenged through PIL where the State Government is competent to frame the policy and there is no need for anyone to raise any grievance even if the policy is changed. The public policy can only be challenged where it offends some constitutional or statutory provisions."

(emphasis supplied)

209. In *TISCO* [*TISCO Ltd. v. Union of India*, (1996) 9 SCC 709, para 68] , in para 68, the Court noted that whenever the issues brought before the Court are intertwined with those involving determination of policy and a plethora of technical issues, the Courts are very wary and must exercise restraint and not trespass into policy-making. Similarly, in *Narmada Bachao Andolan v. Union of India* [*Narmada Bachao Andolan v. Union of India*, (2000) 10 SCC 664, paras 226 to 235] , in para 228, the Court noted that a project may be executed departmentally or by an outside agency as per the choice of the Government, whilst ensuring that it is done according to some procedure or set manner. Further, the Court should be loath to assume that the authorities will not function properly and that the Court should have no role to play.

210. Later in 2007, the Court restated the position in *Directorate of Film Festivals* [*Directorate of Film*

Festivals v. Gaurav Ashwin Jain, (2007) 4 SCC 737, para 16] , as follows : (SCC p. 746, para 16)

*"16. The scope of judicial review of governmental policy is now well defined. Courts do not and cannot act as appellate authorities examining the correctness, suitability and appropriateness of a policy, nor are courts advisors to the executive on matters of policy which the executive is entitled to formulate. The scope of judicial review when examining a policy of the Government is to check whether it violates the fundamental rights of the citizens or is opposed to the provisions of the Constitution, or opposed to any statutory provision or manifestly arbitrary. **Courts cannot interfere with policy either on the ground that it is erroneous or on the ground that a better, fairer or wiser alternative is available. Legality of the policy, and not the wisdom or soundness of the policy, is the subject of judicial review** [vide *Asif Hameed v. State of J&K* [*Asif Hameed v. State of J&K, 1989 Supp (2) SCC 364: 1 SCEC 358*], *Shri Sitaram Sugar Co. Ltd. v. Union of India* [*Shri Sitaram Sugar Co. Ltd. v. Union of India, (1990) 3 SCC 223*], *Khoday Distilleries Ltd. v. State of Karnataka* [*Khoday Distilleries Ltd. v. State of Karnataka, (1996) 10 SCC 304*], *BALCO Employees' Union v. Union of India* [*BALCO Employees' Union v. Union of India, (2002) 2 SCC 333*], *State of Orissa v. Gopinath Dash* [*State of Orissa v. Gopinath Dash, (2005) 13 SCC 495: 2006 SCC (L&S) 1225*] and *Akhil Bharat Goseva Sangh (3) v. State of A.P.* [*Akhil Bharat Goseva Sangh (3) v. State of A.P., (2006) 4 SCC 162*]].*

(emphasis supplied)"

(Emphasis supplied)

In terms of what is laid down in the afore-quoted judgments, what would unmistakably emerge is, for a Judge in terms of his

inputs, cannot assume the role of a supreme adviser to the administration on policies governing innumerable activities of the State, particularly in today's context of over-expanding horizons which come into the ken of such policy making.

17. In the light of what is held hereinabove and the reason for which quality standard is insisted at the stage of raw material, it becomes unmistakably clear that this Court in exercise of its jurisdiction under Article 226 of the Constitution of India would not tinker with a Notification which wants to bring in quality usage, by necessitating a seal of the BIS at the stage raw material itself. The submission made to the contrary by the learned counsel for the petitioner is *de hors* merit. Even the communication by the Plastics Export Promotion Council, to the 3rd respondent would not be of any avail, as it is not the opinion of the Government, as the Plastics Export Promotion Council is not the wing of the Government. It is at best created to promote plastic export, in the nation.

18. Therefore, if the quality emerges right from the word go, till the finished product, under the 'Make in India programme' it is

only then that the country would be able to compete with others. A step towards that will not be interfered with by this Court except, that if the step towards that, depicts palpable and demonstrable arbitrariness, which is neither pleaded nor present. Except contending cartelization and nexus, there is no other submission made. These submissions are held to be untenable. Quality control in plastic manufacturing always refers to process of monitoring and inspecting various stages of manufacturing process to ensure that the final plastic products meet certain standards of quality. Therefore, every raw material now that is sought to be brought under BIS is only to make it a quality final plastic product, for it would not become hazardous to the environment and be of use to the general public and meet health and safety standards including food conduct regulations, as they are widely used in every walk of human life. If the product under the programme "Make in India" is sought to be exported under the tag "Made in India" quality insistence from the threshold would ensure that the final product would meet all the necessary global standards.

19. For the aforesaid reasons, finding no merit in the petition,
the petition stands rejected.

**Sd/-
JUDGE**

bkp
CT:MJ