

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

PETITIONER:
BALCO EMPLOYEES UNION (REGD.)

Vs.

RESPONDENT:
UNION OF INDIA & ORS.

DATE OF JUDGMENT: 10/12/2001

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

JUDGMENT:

W I T H

T.C. (C) Nos. 9 and 10 of 2001
and
W.P. (C) No. 194 of 2001.

J U D G M E N T

KIRPAL, J.

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

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

The Government of Madhya Pradesh vide its letter dated 18th March, 1968 wrote to BALCO stating that it proposed that land be granted to it on a 99 years lease subject to the terms and conditions contained therein. The letter envisaged giving on lease Government land on payment of premium of Rs. 200/- per acre and, in addition thereto also to provide tenure land which was to be acquired and transferred on lease to BALCO on payment by it the actual cost of acquisition plus annual lease rent. Vide its letter dated 13th June, 1968 BALCO gave its assent to the proposal contained in the aforesaid letter of 18th March, 1968 for transfer of land to it. BALCO intimated by this letter that the total requirement of land would be about 1616 acres. Thereafter, in addition to the Government land which was transferred, the Government of Madhya Pradesh acquired land for

BALCO under the provisions of the Land Acquisition Act, 1894 on payment of compensation. The District Collector, Bilaspur also granted permission under Section 165(6) of the M.P. Land Revenue Code, 1959 for acquiring/transferring private land in favour of BALCO. As a result of the aforesaid, BALCO set up it's establishment on it's acquiring land from and with the help of the State Government.

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

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

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

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

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

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

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

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

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

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

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

X. To assist the Government to create public awareness of the

Government's disinvestment policies and programmes with a view to developing a commitment by the people.

XI. To give wide publicity to the disinvestment proposals so as to ensure larger public participation in the shareholding of the enterprises; and

XII. To advise the Government on possible capital restructuring of enterprises by marginal investments, if required, so as to ensure enhanced realisation through disinvestment.

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

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

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

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

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

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

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

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

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

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

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

iv. It was also decided that the Core Group of Secretaries would be headed by the Cabinet Secretary and its permanent members would be Finance Secretary, Revenue Secretary, Expenditure Secretary, Secretary Department of Public

Enterprises, Secretary Planning Commission and Chief Economic Advisor, Ministry of Finance, and

v. to implement the decisions, an Inter-Ministerial Group headed by the Secretary/Joint Secretary of the Administrative Ministry and consisting of Joint Secretaries of Department of Economic Affairs, Department of Public Enterprises, alongwith the Chairman and Managing Director of the Companies as Members and Director (Finance) of the company as the Convenor. In case of BALCO, the IMG consisted of Secretary level Officers and was headed by Secretary (Mines).

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

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

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

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

India Ltd. was accepted and approved by the Cabinet Committee on Disinvestment on 9th March, 1999. The Cabinet Committee on Disinvestment also approved the proposal of strategic sale of 51% equity in respect of BALCO.

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

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

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

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

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

- i. Sterlite Industries (India) Ltd.
- ii. Hindlaco Industries Ltd.
- iii. Tranex Holding Inc.
- iv. Indian Minerals Corporation Plc.
- v. VAW Aluminium AG, Germany
- vi. ALCOA, USA
- vii. Sibirsky, Russia
- viii. MALCO"

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

The IMG considered the drafts of the Shareholders' Agreement

and the Share Purchase Agreement and had discussions with three prospective bidders and ultimately the said drafts were finalised on 11th January, 2001.

For the purpose of carrying out the asset valuation of BALCO, the Global Advisor short listed four parties from the list of Registered Government Valuers approved by the Income-Tax Department. On 18th January, 2001, BALCO invited quotations from the four Registered Valuers, so short listed, and the quotation of Shri P.V. Rao was accepted. Shri P.V. Rao was a registered valuer of immovable property and his team mates were Government Registered Valuers authorised to value plant and machinery. They were assisted in the work of valuation by officers of the Indian Bureau of Mines for assessing the value of existing mines. Pending the receipt of the valuation report from Shri P.V. Rao, the Global Advisor on 8th February, 2001 requested the three bidders to submit their financial bids along with other necessary documents by 15th February, 2001, which was later extended by one day. On 14th February, 2001 Shri P.V. Rao submitted his asset valuation report to M/s Jardine Fleming.

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

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

(i)	Discounted Cash Flow	-	Rs. 651.2 994.7 crores
(ii)	Comparables	-	Rs. 587 909 crores
(iii)	Balance Sheet	-	Rs. 597.2 681.9 crores

Thus, the range of valuation by all these methods came between Rs. 587 and Rs. 995 crores for 100% of the equity. Ipso facto, for 51% of the equity, the range of valuation came out as Rs. 300 to Rs. 507 crores. The Evaluation Committee then deliberated on the various methodologies and concluded, as per the affidavit of the Union of India, that the most appropriate methodology for valuing the shares of a running business of BALCO would be the Discounted Cash Flow method. It decided to add a control premium of 25% on the base value of equity (although the Advisor had viewed that the premium should range between 10-15%) and then add the value of non-core assets to arrive at a valuation of Rs. 1008.6 crores for the company as a whole, 51% of which amounts to Rs. 514.4 crores which was fixed as the Reserve Price. According to the respondents, the Evaluation Committee felt that Asset Valuation Report appeared to have over-valued the fixed assets of the company at Rs. 1072.2 crores. The Committee further observed that the fixed asset valuation method was only a good indicator of the value that could be realised if the business was to be liquidated, rather than for valuing the business as a going concern. Furthermore, the asset valuation method did not take into account the liabilities and contingent liability that go with the business.

When the financial bids were opened, it was found that the bid of Sterlite Industries was the highest at Rs. 551.5 crores, the bid of Hindalco was Rs. 275 crores while ALCOA had opted out. The report of the Evaluation Committee for acceptance of the bid which was higher than the reserve price was considered by the IMG which

recommended the acceptance of the bid of Sterlite Industries to the core group of Secretaries. This core group in turn made its recommendation to the Cabinet Committee on Disinvestment which on 21st February, 2001 approved/accepted the bid of Sterlite Industries at Rs. 551.5 crores. The Government's decision was communicated to Sterlite Industries on that date. The announcement of the decision to accept the bid of Sterlite Industries led to the initiation of legal proceedings challenging the said decision. On 23rd February, 2001, Dr. B.L. Wadhwa filed Civil Writ Petition No. 1262 of 2001 in the Delhi High Court. This was followed by Writ Petition No. 1280 of 2001 filed by the employees of BALCO on 24th February, 2001 also in the High Court of Delhi. On that very date, i.e., on 24th February, 2001 another employee of BALCO, namely, Mr. Samund Singh Kanwar filed Civil Writ Petition No. 241 of 2001 in the High Court of Chhattisgarh.

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

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

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

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

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

- (a) it has been duly incorporated or created and is validly subsisting and in good standing under the laws of the jurisdiction indicated in the preamble to this Agreement;
- (b) it has the corporate power and authority to enter into and perform its obligations under this Agreement;
- (c) this Agreement has been duly authorised, executed and delivered by it and constitutes a valid and binding obligation enforceable against it in accordance with its terms;

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

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

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

(g) Notwithstanding anything to the contrary in this Agreement, but subject to sub-clause (e) above, in the event of any reduction of the strength of the Company's employees the SP shall ensure that the Company offers its employees, an option to voluntarily retire on terms that are not, in any manner, less favourable than the voluntary retirement scheme offered by the Company which is referred to in Schedule 7.4 of the Share Purchase Agreement; and

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

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

On behalf of the BALCO Employees' Union, Shri Dipankar P. Gupta, learned senior counsel submitted that the workmen have been adversely affected by the decision of the Government of India to disinvest 51% of the shares in BALCO in favour of a private party. He contended that before disinvestment, the entire paid-up capital of BALCO was owned and controlled by the Government of India and

it's administrative control co-vested in the Ministry of Mines. BALCO was, therefore, a State within the meaning of Article 12 of the Constitution. Reliance for this was placed on *Ajay Hasia and Others vs. Khalid Mujib Sehravardi and Others*, (1981) 1 SCC 722; *Central Inland Water Transport Corporation Limited and Another Vs. Brojo Nath Ganguly and Another*, (1986) 3 SCC 156. He also contended that by reason of disinvestment the workmen have lost their rights and protection under Articles 14 and 16 of the Constitution. This is an adverse civil consequence and, therefore, they had a right to be heard before and during the process of disinvestment. The type of consultation with the workmen which was necessary, according to Shri Dipankar P. Gupta, was whether BALCO should go through the process of disinvestment; who should be the strategic partner; and how should the bid of the strategic partner be evaluated. Referring to the averment of the Union of India to the effect that interest of the employees has been protected, Shri Dipankar P. Gupta, submitted that in fact there was no effective protection of the workmen's interest in the process of disinvestment. He further submitted that the workmen have reason to believe that apart from the sale of 51% of the shares in favour of Sterlite Industries the Agreement postulates that balance 49% will also be sold to them with the result that when normally in such cases 5% of the shares are disinvested in favour of the employees the same would not happen in the present case. Reliance was placed on the decision of *National Textile Workers' Union and Others vs. P.R. Ramakrishnan and Others*, (1983) 1 SCC 228 and it was also contended that even though there may be no loss of jobs in the present case but the taking away of the right or protection of Articles 14 and 16 is the civil consequence and, therefore, the workmen have a right to be heard. It was submitted that such rights and benefits are both procedural as well as substantive. Procedural benefits and rights includes the right to approach High Court under Article 226 of the Constitution and this Court under Article 32 of the Constitution in the event of violation of any of their rights. This is a major advantage since it is a relatively swift method of redressal of grievances which would not be available to employees of private organisations. Instances were given of the substantive rights which flow from Articles 14 and 16 like, right to equality, equal pay for equal work, right to pension including the principle that there can be no discrimination in the matter of granting or withholding of pension vide *Bharat Petroleum (Erstwhile Burmah Shell) Management Staff Pensioners vs. Bharat Petroleum Corporation Ltd. and Others*, (1988) 3 SCC page 32), right to inquiry and reasons before dismissal etc.

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

Reiterating these contentions Shri Ravindra Shrivastava, learned Advocate General, State of Chhattisgarh submitted that the State does not challenge the policy of disinvestment per se on principle as a measure of socio-economic reform and for industrial well being in the

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

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

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

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

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

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

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

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

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

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

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

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

"But, while considering the applicability of Article 14 in such a case, we must bear in mind that, having regard to the nature of the trade or business, the Court would be slow to interfere with the policy laid down by the State Government for grant of licences for manufacture and sale of liquor. The Court would,

in view of the inherently pernicious nature of the commodity allow large measure of latitude to the State Government in determining its policy of regulating, manufacture and trade in liquor. Moreover, the grant of licences for manufacture and sale of liquor would essentially be a matter of economic policy where the Court would hesitate to intervene and strike down what the State Government has done, unless it appears to be plainly arbitrary, irrational or mala fide. We had occasion to consider the scope of interference by the Court under Article 14 while dealing with laws relating to economic activities in *R.K. Garg v. Union of India*. We pointed out in that case that laws relating to economic activities should be viewed with greater latitude than laws touching civil rights such as freedom of speech, religion, etc. We observed that the legislature should be allowed some play in the joints because it has to deal with complex problems which do not admit of solution through any doctrinaire or strait-jacket formula and this is particularly true in case of legislation dealing with economic matters, where, having regard to the nature of the problems required to be dealt with, greater play in the joints has to be allowed to the legislature. We quoted with approval the following admonition given by Frankfurter, J. in *Morey v. Dond*.

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

What we said in that case in regard to legislation relating to economic matters must apply equally in regard to executive action in the field of economic activities, though the executive decision may not be placed on as high a pedestal as legislative judgement insofar as judicial deference is concerned. We must not forget that in complex economic matters every decision is necessarily empiric and it is based on experimentation or what one may call 'trial' and error method' and, therefore, its validity cannot be tested on any rigid 'a priori' considerations or on the application of any strait-jacket formula. The Court must while adjudging the constitutional validity of an executive decision relating to economic matters grant a certain measure of freedom or 'play in the joints' to the executive. "The problem of government" as pointed out by the Supreme Court of the United States in *Metropolis Theatre Co. v. State of Chicago*.

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

The Government, as was said in *Permian Basin Area Rate* cases, is entitled to make pragmatic adjustments which may be called for by particular circumstances. The Court cannot strike down a policy decision taken by the State Government

merely because it feels that another policy decision would have been fairer or wiser or more scientific or logical. The Court can interfere only if the policy decision is patently arbitrary, discriminatory or mala fide. It is against the background of these observations and keeping them in mind that we must now proceed to deal with the contention of the petitioners based on Article 14 of the Constitution."

A policy decision of the Government whereby validity of contract entered into by Municipal Council with the private developer for construction of a commercial complex was impugned came up for consideration in G.B. Mahajan and Others vs. Jalgaon Municipal Council and Others, (1991) 3 SCC 91 and it was observed at page 104 as follows :-

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

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

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

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

"54. It is not the domain of the Court to embark upon uncharted ocean of public policy in an exercise to consider as to whether the particular public policy is wise or a better, public

policy can be evolved. Such exercise must be left to the discretion of the executive and legislative authorities as the case may be.."

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

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

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

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

"41. After giving our careful consideration to the facts and circumstances of the case and to the submissions made by the learned counsel for the parties, it appears to us that the Industrial Policy of 1979 which was subsequently revised from time to time cannot be held to be arbitrary and based on no reason whatsoever but founded on mere ipse dixit of the State Government of M.P.

The executive authority of the State must be held to be within its competence to frame a policy for the administration of the State. Unless the policy framed is absolutely capricious and, not being informed by any reason whatsoever, can be clearly held to be arbitrary and founded on mere ipse dixit of the executive functionaries thereby offending Article 14 of the Constitution or such policy offends other constitutional provisions or comes into conflict with any statutory provision, the Court cannot and should not outstep its limit and tinker with the policy decision of the executive functionary of the State. This Court, in no uncertain terms, has sounded a note of caution by indicating that policy decision is in the domain of the executive authority of the State and the Court should not embark on the uncharted ocean of public policy and should not question the efficacy or otherwise of such policy so long the same does not offend any provision of the stature or the Constitution of India. The supremacy of each of the three organs of the State i.e. legislature, executive and judiciary in their respective fields of operation needs to be emphasised. The power of judicial review of the executive and legislative action must be kept within the bounds of constitutional scheme so that there may not be any occasion to entertain misgivings about the role of judiciary in outstepping its limit by unwarranted judicial activism being very often talked of in these days. The democratic set-up to which the polity is so deeply committed cannot function properly unless each of the three organs appreciate the need for mutual respect and supremacy in their respective fields." (emphasis added)

The validity of the change of Government policy in regard to the reimbursement of medical expenses to its serving and retired employees came up for consideration before this Court in State of Punjab and Others vs. Ram Lubhaya Bagga and Others (1998) 4 SCC 117. The earlier policy upholding the reimbursement for treatment in a private hospital had been upheld by this Court but the State of Punjab changed this policy whereby reimbursement of medical expenses incurred in a private hospital was only possible if such treatment was not available in any government hospital. Dealing with the validity of the new policy, the Court observed at page 129 as follows :-

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

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

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

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

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

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

Process of disinvestment is a policy decision involving complex economic factors. The Courts have consistently refrained from interfering with economic decisions as it has been recognised that economic expediencies lack adjudicative disposition and unless the economic decision, based on economic expediencies, is demonstrated to be so violative of constitutional or legal limits on power or so abhorrent to reason, that the Courts would decline to interfere. In matters relating to economic issues, the Government has, while taking a decision, right to "trial and error" as long as both trial and error are bona fide and within limits of authority. There is no case made out by the petitioner that the decision to disinvest in BALCO is in any way capricious, arbitrary, illegal or uninformed. Even though the workers may have interest in the manner in which the Company is conducting its business, inasmuch as its policy decision may have an impact on

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

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

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

A similar question came up for consideration before Madras High Court. In *Southern Structurals Limited*, the State of Tamil Nadu had acquired over 99% of shares and the company had become a government company. It had incurred losses over the years and the government then decided to disinvest from the company. This decision was challenged by the Company's employees by filing a Writ Petition in the Madras High Court. It was contended on their behalf that in the event of disinvestment being effected, the employees of the State Government would lose valuable rights including the protection of Articles 14 and 16 of the Constitution and a right to approach the Court under Articles 32 and 226. Repelling this contention in *Southern Structurals Staff Union vs. Management of Southern Structurals Ltd. and Another*, [1994] 81 Comp. Cases at page 389, the High Court held as follows :-

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

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

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

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

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

The aforesaid observations, in our opinion, enunciates the legal position correctly. The policies of the Government ought not to remain static. With the change in economic climate, the wisdom and the manner for the Government to run commercial ventures may require reconsideration. What may have been in the public interest at a point of time may no longer be so. The Government has taken a

policy decision that it is in public interest to disinvest in BALCO. An elaborate process has been undergone and majority shares sold. It cannot be said that public funds have been frittered away. In this process, the change in the character of the company cannot be validly impugned. While it was a policy decision to start BALCO as a company owned by the Government, it is as a change of policy that disinvestment has now taken place. If the initial decision could not be validly challenged on the same parity of reasoning, the decision to disinvest also cannot be impugned without showing that it is against any law or mala fide.

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

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

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

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

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

Petition disposed off accordingly".

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

We find that in the shareholders agreement between the Union of India and the strategic partner, it is provided that there would be no retrenchment of any worker in the first year after the closing date and thereafter restructuring of the labour force, if any, would be implemented in a manner recommended by the Board of Directors of

the company. The shareholders Agreement further mandates that in the event reduction in the strength of its employees is required, then it is to be ensured that the company offers its employees an option to voluntarily retire on terms that are not in any manner less favourable than the Voluntary Retirement Scheme offered by the company on the date of the arrangement. Apart from the conditions stipulated in the shareholders agreement, Shri Sundaram, learned senior counsel on behalf of the company has stated in the Court that it will not retrench any worker(s) who are in the employment of BALCO on the date of takeover of the management by the strategic partner, other than any dismissal or termination of the worker(s) of the company from their employment in accordance with the applicable staff regulations and standing orders of the company or other applicable laws. We record the said statement.

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

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

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

Clause 7.2 (e) It shall not retrench any part of the labour force of the Company for a period of one (1) year from the Closing Date other than any dismissal or termination of employees of the Company from their employment in accordance with the applicable staff regulations and standing orders of the Company or applicable Law; and

Clause 7.2 (f) Subject to the sub-clause (e) any restructuring of the labour force of the company shall be implemented in the manner recommended by the Board and in accordance with all applicable laws. The SP in the event of any reduction of the strength of its employees shall, ensure that the Company offers its employees an option to voluntarily retire on terms that are not, in any manner, less favourable than the voluntary retirement scheme offered by the company on the date of this agreement;"

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

of Industrial Disputes Act will automatically apply to BALCO.

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

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

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

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

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

The trade unions desire that all listed demands should be accepted and put in the form of a written agreement between the government and the representatives of recognised unions before finalising any agreement with the prospective buyers. In fact, the

Government and BALCO are two different legal entities. The Government is disinvesting its 51% equity in the BALCO. Under law, no enforceable agreement may be entered between the Government and the workmen of BALCO as any such agreement will not have force of law. In order that an agreement has the force of law, it should be a written agreement between employer and workmen. The Government is not the employer of the workmen employed in BALCO. As such, any such agreement is neither desirable nor necessary and not enforceable".

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

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

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

decides, as a matter of policy, to disinvest shares in a Public Sector Undertaking. While it may be fair and sensible to consult the workers in a situation of change of management, there is, however, in law no such obligation to consult in the process of sale of majority shares in a company. The decision in National Textiles Workers Union case can, therefore, be of no assistance to the petitioner.

In this connection, we approve the following observations of the Karnataka High Court in Prof. Babu Mathew and Others vs. Union of India and Others, [1997] 90 Company Cases 455 where the Court while dealing with disinvestment upto 49% of the government's holding in a public sector company observed at page 478 as follows:

"Any economic reform, including disinvestment in PSEs is intended to shake the system for public good. The intention of disinvestment is to make PSEs more efficient and competitive and perform better. The concept of the public sector and what should be the role of the public sector in the development of the country, are matters of policy closely linked to economic reforms. While it is true that any policy of the Government should be in public interest, it is not shown how prior consultation with employees of a PSE before disinvestment is a facet of such public interest."

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

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

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

till the start of the present litigation.

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

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

arbitrary.

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

Assets including shares can be sold in a number of ways, i.e., they can be sold by public auction, tenders or sealed offers or by negotiations. The exercise which was undertaken to appoint valuers and to get a value of this controlling interest of 51% of the shares was presumably to arrive at the reserve price. What the assets will fetch, is ultimately reflected in the offer which is received. Despite global advertisement, initially only eight companies submitted their expression of interest. The IMG, consisting of high officials rejected the bids of two of the eight parties and ultimately only three viz., Alcoa/USA, HINDALCO, Sterlite conducted due diligence on BALCO between September and October, 2000. After carrying out the necessary inspection (due diligence), it is only two out of three applicants who gave their bid. Alcoa having dropped out, the bid of Sterlite industry was more and double of the bid of HINDALCO. The bidders at the time of furnishing their bids did not know what will be the reserve price which had to be fixed. It is only after the receipt of the bids that the reserve price was made known. The perception in the market, therefore, clearly was that 51% shares of BALCO along with its management was not worth more than Rs. 550.5 crores. The only other bidder who had expressed interest was HINDALCO whose bid was only Rs. 275 crores. Under the circumstances, when the Government had decided to disinvest in BALCO by accepting a bid far in excess of the reserve price which was fixed by the Evaluation Committee, the said decision cannot, under any circumstances, be faulted. Whether the reserve price should have been 514.4 crores or more appears to be immaterial when the best price which has been offered for the sale of 51% stake in BALCO after global advertisement was only Rs. 551.5 crores. There is no suggestion that there was any other company or institution which had or could offer more than the said sum. When proper procedure has been followed, as in this case, and an offer is made of a price more than the reserve price then there is no basis for this Court to conclude that the decision of the Government to accept the offer of Sterlite is in any way vitiated.

It was contended by the learned Advocate General that the whole process lacked transparency. We are not able to appreciate this contention. The disinvestment of BALCO commenced with the recommendation by the Disinvestment Committee in its second Report suggesting that the Government may disinvest BALCO. It is by global advertisement that the global Adviser and the strategic partner was chosen. At every stage, the matter was looked into by the IMG and ultimately by the Cabinet Committee on Disinvestment. The system which was evolved was completely transparent. It was made known. Transparency does not mean the conducting of the Government

business while sitting on the cross roads in public. Transparency would require that the manner in which decision is taken is made known. Persons who are to decide are not arbitrarily selected or appointed. Here we have the selection of the global adviser and the strategic partner through the process of issuance of global advertisement. It is the global Adviser who selected the valuer who was already on the list of valuers maintained by the Government. Whatever material was received was examined by high Power Committee known as the IMG and the ultimate decision was taken by the Cabinet Committee on Disinvestment. To say that there has been lack of transparency, under these circumstances, is uncharitable and without any basis.

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

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

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

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

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

Andhra Pradesh Regulation.

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

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

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

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

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

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

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

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

In the instant case, either the land was acquired and then given on lease by the State Government to BALCO or permission was given by the District Collector for transfer of private land in favour of BALCO. This was clearly permissible under the provisions of Section 165(6) as it then stood and it is too late in the day, 25 years after the last permission was granted, to hold that because of this disinvestment, it must be presumed that there is a transfer of land to the non-tribal in the year 2001 even though the land continues to remain with BALCO to whom it was originally transferred. The giving of land to BALCO on lease was in compliance with the provisions of Section 165(6) of the Revenue Code. Moreover, change of management or in the shareholding does not imply that there has

now been any transfer of land from one company to another. If the original grant of lease of land and permission to transfer in favour of BALCO between the years 1968 and 1972 was valid, then, it cannot now be contended that there has been another transfer of land with the Government having been reduced its stake to 49%. Even if BALCO had been a non-public sector undertaking the transfer of land to it was not in violation of the M.P. Land Revenue Code. The decision of this Court in Samatha's case (Supra) is inapplicable in the present case as the statutory provision here does not contain any absolute prohibition of the type contained in Section 3(1) of the Andhra Pradesh Regulation, which was the basis of the decision in Samatha's case.

Transferred Case No. 9 of 2001.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Emphasis

added

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

After referring to the decision in Subhash Kumar vs. State of Bihar and Others, (1991) 1 SCC 598 and other cases on the point, in Janata Dal vs. H.S. Chowdhary and Others, (1992) 4 SCC 305, it was observed at page 348 as follows :-
"109. It is thus clear that only a person acting bona fide and having sufficient interest in the proceeding of PIL will alone have a locus standi and can approach the court to wipe out the tears of the poor and needy, suffering from violation of their fundamental rights, but not a person for personal gain or private profit or political motive or any oblique consideration. Similarly, a vexatious petition under the colour of PIL brought before the court for vindicating any personal grievances, deserves rejection at the threshold".

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

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

litigants and resultantly they lose faith in the administration of our judicial system."

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

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

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

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

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

233. At the same time, in exercise of its enormous power the court should not be called upon to or undertake governmental duties or functions. The courts cannot run the Government nor can the administration indulge in abuse or non-use of power and get away with it. The essence of judicial review is a constitutional fundamental. The role of the higher judiciary under the Constitution casts on it a great obligation as the sentinel to defend the values of the Constitution and the rights of Indians. The courts must, therefore, act within their judicially permissible limitations to uphold the rule of law and harness their power in public interest. It is precisely for this reason that it has been

consistently held by this Court that in matters of policy the court will not interfere. When there is a valid law requiring the Government to act in a particular manner the court ought not to, without striking down the law, give any direction which is not in accordance with law. In other words, the court itself is not above the law.

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

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

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

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

Writ Petition (Civil) No. 194 of 2001

This writ petition has been filed under Article 32 of the Constitution by BALCO challenging various show cause notices issued to them by authorities in the State of Chhattisgarh. In our opinion, it will not be appropriate for this Court to entertain the challenge to the said show cause notices in this petition. The petitioners have adequate remedy open to it under the Acts under which the notices had been issued and, in appropriate case, can approach the High Court under Article 226 of the Constitution. This writ petition is thus not entertained as alternative remedy is available to the petitioner.

Conclusion:

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

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

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

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

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

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

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

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

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

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

.....J.
[B.N. Kirpal]

...J.
[Shivaraj V. Patil]

.J.
[P. Venkatarama Reddi]

December 10, 2001.