Harihar Polyfibres Vs. Karnataka Forest Development Corpn. Employees Union

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Court : Karnataka

Decided On : Mar-12-2003

Reported in : ILR2004KAR825; [2003]48SCL42(Kar)

Judge : S.R. Nayak and ;K. Ramanna, JJ.

Acts : Companies Act, 1956 - Sections 439; Constitution of India - Article 14; Forest Conversation Act

Appeal No. : Writ Appeal No. 6385 of 1999

Appellant : Harihar Polyfibres

Respondent : Karnataka Forest Development Corpn. Employees Union

Advocate for Def. : M. Kumar, ;M.L.N. Reddy, ;Udaya Holla and ;Nagarajulu Naidu, Advs.

Advocate for Pet/Ap. : S. Vijay Shankar, Adv.

Disposition : Writ petition dismissed

Judgement :

1. This appeal is directed against the order of the learned single Judge dated 2nd August, 1999, in Writ Petition No. 25799 of 1991. The above Writ Petition was filed

by the respondents 1 and 2, namely, Karnataka Forest Development Corporation Employees Union and Smt. N. Lalitha, General Secretary of the said Union. The first respondent is a registered Trade Union of all the employees serving in the Karnataka Forest Development Corporation Limited, the third respondent herein. The third respondent Corporation is a public limited company wholly owned by the Government of Karnataka. According to all the parties to the writ proceedings, the Karnataka Forest Development Corporation being a Statutory Authority is a 'State' within the meaning of Article 12 of the Constitution of India. Harihar Polyfibers, the appellant-company which is a unit of Grasim Industries Limited, Headquarter of which is situated in New Delhi, is engaged in the manufacturing of Rayon Grade Pulp and Pulp products at its factory situated in Kumarapatnam, Dharwar District, Karnataka State. Pulpwood is the main raw material for the manufacture of Rayon Pulp and other Pulp products. In or around the year 1969, Government of Karnataka, the fifth respondent herein, promised to supply pulpwood and other forest produce, if Grasim Industries Limited (erstwhile Gwalior Rayon Limited) was to set up a unit for manufacture of Rayon Grade Pulp in the State. In view of the above promise held out by the Government of Karnataka, Gwalior Rayon Limited agreed to set up the appellant unit for manufacture of Rayon Grade Pulp and Pulpwood Products. In that regard, an agreement dated 15-2-1971 was also entered into between the Government of Karnataka and the appellant whereunder the Government of Karnataka agreed to supply 1,50,000 tonnes of pulpwood to the appellant every year till the year 2001. Under subsequent agreements, Government of Karnataka agreed to supply 1,90,000 tonnes of pulpwood to the appellant every year. It is the case of the appellant-company that despite the commitment made by the Government of Karnataka, it was not in a position to fulfil its contractual obligation to supply pulpwood of the agreed quantity every year to the appellant-company. Under the circumstances, it is stated that the appellant and Government of Karnataka entered into negotiations to evolve alternative means of ensuring regular supply of pulpwood to the appellant. Pursuant to the negotiations, it was agreed that a joint sector company should be promoted by the Karnataka Forest Development Corporation Limited, third respondent herein and the appellant jointly with the principal object of raising, harvesting and disposing of plantations of eucalyptus, casuarina and fast growing pulp-wood species suitable

for dissolving pulp, economically and efficiently. Therefore the Government of Karnataka issued GO No. FFD 86 FPC 84 dated 13-7-1984, whereby the Government of Karnataka directed that a joint sector company, namely, Karnataka Pulpwood Limited, fourth respondent herein, be promoted by Karnataka Forest Development Corporation Limited, third respondent herein and the appellant. The Government of Karnataka also directed that the share-capital of the Company beheld in the ratio of 51%: 49% by the respondent No. 3 and the appellant respectively. In the said Government Order, Government of Karnataka also directed the release of 30,000 hectares of forest land on lease basis to respondent No. 4 for the purpose of raising and harvesting different species of pulpwood trees.

2. Pursuant to the GO dated 13-7-1984, a Promoters Agreement dated 14-11-1984 was executed between the appellant and respondent No. 3 for incorporation of respondent No. 4. Clause 3.1 of the said agreement provides that 87.5% of the produce of respondent No. 4 should first be offered to the appellant. Clause 3.2 provides that the offer of the produce as above shall relieve Government of Karnataka of its long term commitment for the supply of 1,50,000 tonnes of eucalyptus wood to the appellant every year. Accordingly, respondent No. 4 was incorporated on 14-2-1985. The appellant subscribed 61,250 shares of Rs. 100 each thus contributing Rs. 61,25,000 towards 49% of the share capital of respondent No. 4.

3. Pursuant to the GO dated 13-7-1984 and after incorporation of respondent No. 4, Government of Karnataka leased 9,590 hectares of land to respondent No. 4. When the matter stood thus, a public interest litigation in Writ Petition No. 35 of 1987 was filed in the Supreme Court under Article 32 of the Constitution against the action of the Government of Karnataka in leasing 9,590 hectares to respondent No. 4-Company on behalf of the affected villagers, alleging that the impugned action of the Government would violate the community rights of the villagers. The appellant was also impleaded as one of the respondents to the said writ petition. When that writ petition was pending in the Apex Court, the Forest Conservation Act, 1980 was amended with effect from 15-3-1989. The amendment provides that without the prior approval of the Government of India, no forest land can be assigned to private persons or any authority, Corporation of

Agency not owned/managed or controlled by the Government. Since respondent No. 4 was not wholly owned/managed or controlled by the Government directly the Government of Karnataka took a policy decision and issued GO No. AHFF 24 FPC 90 dated 24-10-1991 (hereinafter referred as the impugned order) directing that respondent No. 4 should be wound up, that all the assets and liabilities of respondent No. 4 and any guarantees issued by the Government of Karnataka to respondent No. 4 for raising funds/loans be transferred to respondent No. 3 and that respondent No. 3 should return the equity amount to the appellant together with interest at the rate to be negotiated between respondent No. 3 and the appellant. The Government of Karnataka also specifically directed that the steps must be taken for winding up respondent No. 4 following prescribed procedures under the Companies Act, 1956. In pursuance of the impugned order, the appellant and respondent No. 3 entered into an understanding dated 16-11-1991 whereby respondent No. 3 agreed to purchase the holding of the appellant in respondent No. 4 at the face value of the share and a loan of Rs. 3,60,000 extended by the appellant to respondent No. 4 together with interest at the rate of 12.5% up to 21-9-1990 and at 14% thereafter till refund. On 23-11-1991, the Board of Directors of Karnataka Forest Development Corporation at their 121st Board Meeting, ratified the understanding dated 16-11-1991 between the appellant and the respondent No. 3 for purchase of appellant's share in fourth respondent and requesting the Government of Karnataka to amend the impugned order dated 24-10-1991 so as to order the amalgamation of fourth respondent with third respondent rather than the winding up of forth respondent. The resolution passed by the Board of Directors of third respondent on 21-11-1991 reads as follows :

'RESOLVED THAT

1. The action taken by the Chairman and Managing Director, in signing the written understanding with M/s. Harihar Polyfibres on 16-11-1991 which is placed before the Meeting, be and the same is hereby ratified.

2. Permission be and the same is hereby accorded unanimously in terms of section 372 of the Companies Act, 1956, to purchase the entire shares held by M/s. H.P.F. in K.P.L. at a premium calculated in accordance with the written

understanding dated 16-11-1991, subject to approval of the same in General Meeting and the Government.

3. To repay the outstanding loan of Rs. 3.6 lakhs along with the agreed rate of interest (simple) to M/s. H.P.F. for and on behalf of K.P.L.

4. The Chairman and Managing Director was empowered to :--

(a) Utilise the Rubber Rehabilitation Reserve Fund amounting to Rs. 50.50 lakhs towards payment of purchase consideration subject to reimbursement within a reasonable period.

(b) Obtain temporary loan of Rs. 50.00 lakhs from Govt. of Karnataka to meet the obligation for payment to M/s. H.P.F.

(c) Gel a suitable Memorandum of Understanding drafted if legally found necessary and sign the same for and on behalf of the Board of Directors of K.F.D.C. Ltd., under the common seal of the Corporation affixed in the presence of any two Directors to nullify all obligations of promoters agreement executed between K.F.D.C. Ltd., and M/s. H.P.F. on 14-11-1984.

(d) Get the Govt. Order dated 24-10-1991 suitably amended.

(e) Communicate the relevant decision to the K.P.L. for being placed before the Board of Directors of K.P.L.

There being no other business, the Meeting ended with vote of thanks to the Chair at 13.30 Hours.

Sd/-

Chairman and Managing Director

No. KFDC/BM-122/91-92 Dated : 27-11-1991.'

4. When the matter stood thus, in the meanwhile, in February 1992, respondent Nos. 1 and 2 filed Writ Petition No. 25799 of 1991 in this Court assailing the validity of the impugned order passed by the Government on 24-10-1991. In the

said writ petition, the following reliefs were sought:

'Wherefore, the petitioners pray that this Hon'ble Court may be pleased to:

(i) issue a writ of prohibition, or any other writ, order or direction, prohibiting the first respondent herein from making any payment to M/s. Harihar Polyfibres or to M/s. Grasim Industries Ltd., towards value of shares of M/s. Harihar Polyfibres or towards capital contribution made by them in the second respondent company, M/s. Karnataka Pulpwood Ltd.

(ii) issue of writ of mandamus or any other writ, order or direction, directing the first respondent company to strictly follow the procedure prescribed under the relevant provisions of Companies Act, 1956 for the purpose of winding up of the Company, M/s. Karnataka Pulpwood Ltd., the second respondent herein and regarding repayment of equity capital to its shareholders.

(iii) directed the respondents to pay the cost of this petition and grant such other and further reliefs as just.

Interim Prayer

Pending disposal of this writ petition, the petitioners pray that this Hon'ble Court may be pleased to issue appropriate interim order restraining the respondent herein from making any payment to M/s. Harihar Polyfibers or M/s. Grasim Industries Limited, towards the value of shares of M/s. Karnataka Pulpwood Ltd. or towards capital contribution made by them in M/s. Karnataka Pulpwood Ltd., and grant such other and further reliefs as are just.'

5. A learned single Judge of this Court vide order dated 29-11-1991 restrained respondent No. 3 from making payment to the appellant in terms of the impugned order. It needs to be noticed that the appellant was not impleaded as one of the respondents to the writ petition. Therefore, the appellant made an application to implead itself as a respondent to the writ petition and that Interlocutory Application was dismissed by the learned single Judge. That led to the filing of Writ Appeal No. 859 of 1992. The Division Bench allowed the Writ Appeal of the appellant and directed impleadment of the appellant herein as respondent in W.P. No. 25799 of

1991. The Division Bench while disposing of that Appeal directed the third respondent to pay over to the appellant the amount of Rs. 61,25,000 representing the equity investment by the appellant in respondent No. 4. While directing so, the Division Bench clarified that the appellant would be liable to reimburse respondent No. 3 in the event the writ petition is allowed and that decision assumed finality.

6. In the meantime, pursuant to the issue of the impugned order, the Government of Karnataka filed an affidavit before the Supreme Court in Writ Petition No. 35 of 1987 stating that respondent No. 4 would be wound up and that the produce from the forest land leased to respondent No. 4 would be made available to the public by auction through respondent No. 3. In view of this stand of the Government of Karnataka, the necessity to review the validity of the Government Order dated 13-7-1984 would not arise before the Apex Court on merit. In the circumstances, the Supreme Court disposed of writ Petition No. 35 of 1987 vide its order dated 26-3-1992 in Dr. Kota Sivram Karanth v. State of Karnataka : JT1992(3)SC167 as having become infructuous. After this event, on 19-8-1992, the Board of Directors of respondent No. 3 at its 127th meeting, spelt out the modalities to be followed by the CMD of third respondent to purchase the appellants shareholding in respondent No. 4 and amalgamation of respondent No. 4 with the third respondent. Accordingly, on 9-9-1992 a sum of Rs. 61,25,000 was paid to the appellant. On 16-11-1993, Government of Karnataka issued GO No. APJ 24 FPC 90, directing amalgamation of respondent No. 4 with respondent No. 3, as per the request of the third respondent.

7. In the Writ Petition No. 25799 of 1991, there was no scope for the respondent Nos. 1 and 2 to assail the validity of the decision of the Government directing amalgamation of respondent No. 4 with respondent No. 3. Even after amalgamation was directed by the Government of Karnataka vide GO dated 16-11-1993, the validity of that GO is not assailed before this Court. Further, at the time of hearing, the learned Counsel for the parties told us that in pursuance of the Government Order dated 16-11-1993, no further action is taken and respondent No. 4 is not yet amalgamated with respondent No. 3. When the matter stood thus, learned single Judge of this Court heard the writ petition finally and disposed of the same by order dated 2-8-1999, impugned in this appeal. Learned single Judge has

allowed the writ petition and issued certain directions. The operated portion of the order reads as follows:

' 11. In view of above this petition, is allowed in part, as follows, moulding the relief suitably:

(a) The order dated 24-10-1991 (Annexurc-C) is read down as a prior approval for the proposed action as per paras (a) to (e) of the said order. The first respondent shall take a decision as to whether it wants to purchase 49 per cent shares held by the fourth respondent in the second respondent company and if so, at what rate, by treating Annexure-C dated 24-10-1991 as a mere approval and not a direction.

(b) The first respondent is at liberty to enter into negotiations with the fourth respondent in regard to purchase of shares or price therefor and reach appropriate settlement in that behalf.

(c) It is declared that the decision to wind up second respondent is to be taken by respondents 1 and 4 and not by the State Government. It is declared that while the State Government may give approval or consent to any action proposed by the first respondent, the State Government has no authority to direct winding up of a Joint Sector Company or purchase of shares by one share holder from the other.

(d) Having regard to the fact that a sum of Rs. 61.25 lakhs has already been paid by the first respondent to the fourth respondent, subject to final order of this Court in this petition, the following consequential directions are issued :

(i) the first and the fourth respondents, may negotiate and settle and question of sale of shares and price of shares within a period of four months.

(ii) if first respondent decides to purchase the shares, the payment made shall be adjusted towards the prices, the difference if any being paid/refunded as the case may be.

(iii) if first respondent decides not to purchase the shares, the fourth respondent shall refund the amount to the first respondent with interest at 9 per cent per annum.

(e) Nothing stated in this order shall be construed as coming in the way of respondents 1, 2 and 4 giving effect to Clauses (a) to (e) of the order dated 24-10-1991 in toto or with modifications, if they voluntarily agree to do so, in accordance with the provisions of the Companies Act, 1956.'

8. Hence this Writ Appeal by the Management of Harihar Polyfibres.

9. We have heard Sri S. Vijaya Shankar, learned senior Counsel for the appellant, Sri M. Kumar, learned Counsel for respondent No. 3, Sri M.L.N. Reddy, learned Counsel for respondent No. 4, Sri Udaya Holla, learned Counsel for respondent No. 1 and Sri Nagarajulu Naidu, Additional Government Advocate for respondent No. 5. Although, learned Judge has issued several directions while disposing of the writ petition, the grievance of the appellant before us is confined to the direction contained in sub-paragraph (d) of the operative portion of the order. This is obviously because of the subsequent decision of the Government of Karnataka to give up the winding up of the fourth respondent-company and insisted amalgamating the same with the third respondent-Corporation. Sri Vijaya Shankar contended that the dispute brought before the Court by respondent Nos. 1 and 2 would hardly be regarded as a subject-matter of a public interest litigation for by the impugned action, none of the rights of the Union or its members are affected or impaired. Sri Vijaya Shankar contended that the third respondent is a public Corporation established under the statute and fully owned by Government of Karnataka and, therefore, it could not be said that having regard to the extraordinary situation emerging out of the public interest litigation instituted in the Apex Court which came in the way of the Government of Karnataka to fulfil their contractual obligation to provide the leased forest lands for the purpose of the forth respondent, it could not be said that the Government of Karnataka acted beyond its legitimate powers in suggesting initially winding up of the Company though ultimately that idea was given up and amalgamation of the Company with the third respondent was ordered. Sri Vijaya Shankar also contended that the decision to wind up and to purchase the shares of the fourth respondent by the Management of the third respondent-Corporation are the decisions taken by the respondent Nos. 3 and 4 themselves and, therefore, it could not be said that the Government of Karnataka dictated the Management of the third respondent-Corporation to

purchase the entire share of the fourth respondent-Company and under such dictation, the third respondent-Corporation decided to purchase the same. Lastly, Sri Vijaya Shankar would highlight the scope of judicial review in a matter like this, where the decision of the Government of Karnataka and the decision of the Management of the third respondent-Corporation is a policy decision. Sri Vijaya Shankar contended that unless the Court finds it to be totally arbitrary and against the public interest, it would not step in and nullify the policy decision taken by the Government and the third respondent-Corporation.

10. Learned Counsel for the respondent Nos. 1 and 2, on the other hand, would support the judgment of the learned single Judge and would maintain that the impugned order of the Government cannot be traced to any authority granted by law and, therefore, the learned Judge was justified in quashing the same. The learned Counsel would also meekly submit that the action of the State Government to wind up the fourth respondent-Company was not a bond fide exercise of power and it was intended to help the appellant and that is why the Government directed the third respondent-Corporation to purchase entire shares of the fourth respondent-Company. Learned Standing Counsel for the third respondent-Corporation quite curiously would support the case of the respondent Nos. 1 and 2.

11. We have perused the order of the learned single Judge. What ultimately weighed with the learned single Judge to allow the writ petition and issue directions impugned in this Writ Appeal is the fact that the contractual provision enabling the Government of Karnataka to issue the impugned GO was not traced to any authority granted by law. That is why the learned single Judge in paragraphs 10 and 11 of the judgment has observed thus :

'10. The petitioners arc not challenging any independent business or policy decision of the first respondent. Nor do they want to interfere in matters which are within the exclusive province of the Board of Directors or shareholders of the first respondent. The limited question that is raised for consideration in this case is whether the State Government (third respondent) can pass an order directing winding up of the second respondent, a Joint Sector Company, and order return of

the equity amount invested by one of the two shareholders to the other shareholder ?

11. The respondents are not in a position to point out any statutory or contractual provision enabling the State Government to issue such a direction to the first respondent, in regard to winding up of the second respondent.'

In paragraph (11) of the judgment, the learned Judge has hastened to observe that if the first respondent and fourth respondent, themselves had reached a mutual agreement in regard to the winding up and/or sale of shares held by the fourth respondent, in accordance with the provisions of the Companies Act, no exception could be taken to such decision. We are in respectful agreement with the above view of the learned single Judge. It is needless to state that if the third respondent-corporation and the fourth respondent-company agree, they could very well take a decision to wind up the fourth respondent-company or to amalgamate the fourth respondent-company with the third respondent-Corporation. It is also true that if the management of the third respondent-Corporation and the fourth respondent-Company, without any independent application of mind and against their wish, but being dictated by the Government, were to take a decision either to wind up the fourth respondent-company or to amalgamate the same with the third respondent-Corporation, perhaps, such action should have been condemned as illegal. But the materials placed before the Court would go to show that the decision to wind up the fourth respondent-company and to purchase shares of the fourth respondent-company by the third respondent-corporation are voluntary acts of the third respondent-corporation. Sufficient and acceptable materials are placed before the Court to satisfactorily prove that the decision to wind up the fourth respondent-company and subsequently to amalgamate that company with the third respondent-corporation is the outcome of a serious deliberation in the Board of Directors of third respondent-corporation and resultant resolution.

12. It is on 27-9-1990 itself a resolution was passed by the Board of Directors of fourth respondent-company at their 26th Board meeting, unanimously resolving that the assets and liabilities of the fourth respondent be taken over by the third respondent-Corporation and to close the Company. The resolution reads as

follows :

'Extract of the minutes of the 26th Board of Directors Meeting of the Karnataka Pulp wood Ltd. Held on 27th September, 1990

Sub : Closure of Karnataka Pulpwood Ltd.

Taking into consideration of the resolution already moved by Sri S. Parameshwarappa the then Chairman-cum-Managing Director in the 20th Board Meeting held on 19-6-1980 suggesting to close the Karnataka Pulpwood Limited in view of the absence of guidelines from the Government, to the Government Directors in respect of continuance of planting activity and lack of financial support from the financial institutions and the promoters etc. Sri N.V. Ramachandra Chetty, Director suggested that it is better to close the Company in accordance with the procedure laid down under the provisions of the Companies Act, 1956 and the promoters may be intimated to initiate suitable action towards closure of the Company at the latest by 31-10-1990. He also suggested that pending completion of the closure proceedings the Karnataka Forest Development Corporation Ltd., being a major shareholders should take over the assets of the Company for further protection and maintenance.

Sri. N.S. Adakoli, Joint Managing Director, stated that before passing such resolution by the Company, the promoters who were the owners of the Company should meet and take suitable decision and advice the Company accordingly.

After deliberation it was felt that the Board can resolve and take up the matters to promoters.

The Board passed the following resolution :--

It was unanimously resolved that the Company be closed and the assets and liabilities created by the Company taken over by the Karnataka Forest Development Corporation Limited preferably before 31st October 1990. The Chairman and Managing Director was empowered to communicate the above decisions to the promoters.

Certified as true for Karnataka Pulpwood Limited

Sd/-

Chairman and Managing Director.'

13. When the above resolution of the Board of Directors of the fourth respondent-company was placed before the Board of Directors of the third respondent-Corporation at its 116th Board meeting held on 12-11-1990, the Board of Directors of the third respondent-Corporation, agreeing with the resolution of the Board of Directors of the fourth respondent-company, decided to takeover its assets and liabilities and to close down the fourth respondent-company, subject to certain terms and conditions. This decision was taken by the third respondent-Corporation in the capacity of a major promoter of the fourth respondent-Company. This was followed by a letter written by the third respondent-corporation to the Government of Karnataka dated 23/24-11-1990. In this letter, a request was made to the Government of Karnataka to permit the third respondent-Corporation to takeover the assets and liabilities of the fourth respondent-company. Therefore, the above resolutions passed by the Board of Directors of the fourth respondent-company and third respondent-corporation coupled with the correspondences between the management of the third respondent, forth respondent and the Government would clearly go to show that the initiative to close the industry came from fourth respondent-company initially and that was accepted by the third respondent-corporation. Therefore, it could not be said that the ultimate decision to wind up or subsequently amalgamate the fourth respondent-company is not the decision of the third respondent-corporation itself. Simply because in pursuance of the resolution passed by the respondent Nos. 3 and 4 and the requests made by them, the Government of Karnataka accorded its approval to wind up the Company, that fact itself would not vitiate the decision taken by the third and fourth respondents. Therefore, with great respect, we are not persuaded to fall in line with the opinion of the learned single Judge that the impugned Government Order is one without authority of law. Even assuming that the legal authority to issue the impugned order is not traceable to an authority granted by law, even then, only on the count and without examining the question whether the decision to wind up the

fourth respondent-Company was taken by the Board of Directors of that Company and the Management of the third respondent-Corporation, the learned single Judge ought not to have set at naught the decision.

14. This opens up the doors to the next question that still remains to be answered. The third respondent-corporation being a statutory authority, its action should be in accordance with the postulates of Article 14 of the Constitution of India: reasonableness, fairness in action and non-arbitrariness and if the Court were to find that the impugned action has violated any of the above postulates of Article 14, it would be justified in stepping in and interfering with such action. We have already referred to the events and the background facts led to the decision/proposal of the fourth respondent and accepted by the third respondent-corporation to wind up the company. Such a drastic decision was taken by the third and fourth respondents with the approval of the Government of Karnataka because of the public interest litigation instituted in the Apex Court calling in question the action of the Government in leasing 9,590 hectares of forest land for the purpose of fourth respondent industry and in view of the amendment to the Forest Conservation Act, 1980.

15. We have carefully read the pleadings of the writ petitioners. The grievance of the Trade union is primarily grounded on the apprehension that if the decision to wind up the fourth respondent-Company is allowed to stand, that would jeopardize the financial health of the third respondent-Corporation and the third respondent-corporation in course of time would render itself as a sick industry. Such apprehension was entertained by the Trade union thinking that if the management of the third respondent-Corporation were to purchase the shares of the fourth respondent to an extent of 49 per cent at an exorbitant rate, that would cut into financial resources of the third respondent-Corporation. The Trade Union in order to legitimise the apprehension as valid, produced the certificate dated 11-5-1994 issued by the firm of Chartered Accountants. The certificate reads as follows :

'This is to certify that the value of each Equity share of M/s. Karnataka Pulp wood Limited, Vanavikas, 18th Cross, Malleshwaram, Bangalore-560 003, is Rs. 44.09 only (Rs. Forty Four and Nine paise only). The face value of which is Rs. 100.

The above certification is based on the book values of the assets and liabilities, as per the Audited Balance Sheet as at 31-3-1993. The method and manner under which the above valuation is arrived at has been furnished in the enclosed Annexure which forms part of this certificate. This certificate shall be read with the said Annexure along with the notes furnished therein.'

16. However, dealing with the above certificate, the fourth respondent in its statement, of objection has stated thus :

'...Valuation certificate is only with regard to the share value. It has not taken into consideration the other aspects of the matter such as leasehold rights, liabilities etc., in terms of the solemn undertaking between the parties. It is submitted that the KPL was ordered to be wound up on the peculiar facts and circumstances of the case and it is not in the normal course of business. In these circumstances the valuation of the shares in terms of certificate Annexure E cannot be taken for the purpose of deciding the issue in the case on hand.'

17. It is trite that the decision of the third respondent as approved by the Government of Karnataka to accept the suggestion made by the Board of Directors of the fourth respondent-company to wind up the said Company initially and subsequently to amalgamate the company with the third respondent-corporation is undoubtedly a policy decision taken by the concerned bodies in a peculiar fact-situation then prevailing. It also needs to be emphasized that the decision taken by them falls within the domain of financial viability of continuing an enterprise/an industry taking into account all pros and cons of the action. The scope of judicial review of policy decisions is very much circumscribed and limited by a catena of decisions of the Supreme Court and High Courts. The limited scope of judicial review is to see whether the policy decision impugned before the Court violates any of the postulates of Article 14 of the Constitution. The decision taken by the Board of Directors to wind up the fourth respondent company was as a result of financial, technical, managerial considerations. On matters affecting policy and those requiring technical or financial expertise, the Court should show deference to such policy and to follow the decision taken by the appropriate expert body which is more qualified to address such issues unless the policy is

inconsistent with the constitution and laws. In other words, unless the policy decision impugned is unconstitutional or contrary to the statutory provision or arbitrary, irrational or an abuse of power, the Court will not interfere with the policy decisions. The Board of Directors of the third respondent-corporation, as noticed above, wholeheartedly, realizing their responsibility, had taken a policy decision to accede to the request of the Board of Directors of the fourth respondent-company to wind up the fourth respondent-company and to purchase the entire shares of the forth respondent-company. Having perused the deliberations of the Board of Directors, we are satisfied that the decision taken by the Board of Directors of the third respondent-Corporation could not be regarded as the one without application of mind nor the one at the dictation of the Government of Karnataka.

18. It is quite curious and startling that the management of the third respondent-corporation, for the first time, by filing a statement in the writ appeal has supported the claim of the Trade Union. This conduct of the management of the third respondent-corporation speaks volumes. The Corporation is governed by 'rule of law' and not by 'rule of men'. We would see the change in the stand of corporation from time to time without any reason or rhyme. The Corporation cannot be permitted to approbate and reprobate. It cannot be allowed to practise double standards. The Corporation having accepted the offer made by the fourth respondent-Company and having pursued the Government to agree to the said proposal, now cannot turn round and retract from its stand. An executive authority or the statutory authority like the third respondent-corporation must be rigorously held to the standards by which it professes its actions to be judged and it must scrupulously observe those standards on pain of invalidation of its action if taken in violation of them. Every activity of the third respondent-corporation could be tested for its validity on the touchstone of reasonableness, fairness in action and if it fails to satisfy the test, it would be unconstitutional and invalid. We are satisfied that the acceptance of the proposal of the fourth respondent-company to amalgamate or wind up would not result in any public injury; if it were to be so, perhaps, the Court would have stepped in and prevented the winding up of the fourth respondent-company or amalgamation of the same with the third respondent-corporation. We are fully satisfied that the policy decision taken by the Board of Directors of the third respondent-corporation in consultation with the

Government of Karnataka to purchase the entire equity shares of fourth respondent-company to an extent of 49 per cent cannot be regarded as the one prejudicial to the public interest or to the interest of the Trade Union and its members. We are at a loss to understand how the above managerial/administrative action based on a policy decision could be attacked by the Trade Union under Article 226 of the Constitution. No doubt, it is said, members of a Trade Union are partners in production in any industry and, therefore, they may have a grievance against any action of the management which has an effect of affecting their rights guaranteed under the law. The Trade Union has utterly failed to demonstrate any violation of any of their rights guaranteed under the law. The writ petition is based on an unfounded apprehension that the third respondent-Corporation would become sick industry if it were to purchase 49 per cent equity shares of the fourth respondent-Company. In the result, we allow the Writ Appeal and set aside the order of the learned Single Judge and dismiss the Writ Petition No. 25799 of 1991 with no order as to costs.

Order accordingly.