RAMA SUGAR INDUSTRIES LTD.

v.

STATE OF ANDHRA PRADESH & ORS.

December 17, 1973

[A. N. RAY, C.J., H. R. KHANNA, K. K. MATHEW, A. ALAGIRISWAMI AND P. N. BHAGWATI, JJ.]

Andhra Pradesh Sugarcane (Regulation of Supply and Purchase) Act, 1951—Sec. 21(3)(b)—Government's discretion to grant exemption from payment of Purchase Tax.

Administrative discretion—Whether Government had fettered its discretion by laying down a policy of confining the benefit of exemption to Cooperative Sugar Factories.

Section 20(3)(b) of the Act lays down that the Government may, by notification, exempt from the payment of tax any factory which in the opinion of the Government, has substantially expanded to the extent of such expansion for a period not exceeding two years from the date of completion of the expansion. The Andhra Pradesh Government took a policy decision to grant exemption from payment of purchase tax to new and expanded sugar factories in the cooperative sector only due to present financial position of the Government. In pursuance of the said policy, the exemption was granted for one year from the payment of tax to the cooperative societies of growers of sugarcane. The benefit of the exemption was refused to the appellant and other joint stock companies running the sugar factories. On behalf of the appellant it was contended that the Government could not by laying down a policy to exempt only cooperative sugar factories fetter their hands from examining the merits of each individual case. It was also contended that the policy behind sec. 21(3) being to encourage new sugar factories or expanded factories the Government could not refuse to consider all except one class, that is, the cooperative sugar factories, for the purpose of granting exemption. It was further urged that new sugar factories and expanded sugar factories all fall into one class and there is nothing particular or special about cooperative sugar factories justifying their treatment as a special class deserving a special treatment. The State of Andhra Pradesh contended that it had full discretion to decide the policy in granting the exemption and that cooperative sugar factories consisting of cane growers is a distinct category justifying their treatment as a class separate from other sugar factories. On facts it was asserted by the State that the exemption was granted only to new cooperative sugar factories and that too only for one year. It was also asserted that the case of the appellants was individually considered and rejected on merits.

Dismissing the appeal and writ petitions, the majority of the Court,

HELD : *Per* A. N. Ray, C.J., H. R. Khanna and A. Alagiriswami, JJ (I) The purpose of the Act is to encourage new sugar factories and expanded sugar factories. But how that power is to be exercised will have to be decided by taking into consideration all the relevant factors relating to the sugar industry. It is well known that there is a difference in the sycrose content in the cane produced in different areas. At one period the industry may be in a very prosperous condition and might not need the exemption. It may also be that factories in a particular area are in need of this concession but not factories in another area. We are therefore of opinion that it would be open to the State Government to grant exemption to new factories only but not the expanded factories, to grant the exemption for one year instead of three years or two years as contemplated under the Section, to grant the exemption to factories in one area but not to factories in another area, to grant the exemption during a particular period but not during another period. [791 H-792 C]

(II) The cooperative sugar factories consisting of sugarcane growers fall under a distinct category different from other categories and the Government is justified in treating the cooperative sugar factories as a distinct class for the purposes of the protection and concessions, considering their contribution to the sizable sugar industry now built up in this country. [792 C-D]

(III) There is no reason to reject the statement on behalf of the State of Andhra Pradesh that they had considered the request of the appellant as well as of the petitioners on their merits and that the exemption had been granted only to new cooperative factories for the short period of one year only. [793C-D] A

R. v. *Port of London Authority*, (1919) 1 KB 176 at 184) *Padfield* v. *Min. of Agriculture etc.* (1968 1 All ER 694) *British Oxygen* v. *Minister of Technology* (1970 3 All ER 165) and *Observations in Halsbury's Laws of England* (4th edition, Vol. I, para 33 at p. 35) cited with approval.

Per minority (Mathew and Bhagwati, JJ.) : Picking out cooperative societies of sugarcane growers for favoured treatment to the exclusion of other new or substantially expanded industries is wholly unrelated to the object of the exempting provision and the policy or rule adopted by the State Government is legally not relevant to the exercise of the power of granting exemption. Considering the object of sub-section (b) of Sec. 21 (3), there is no distinction between a factory established by a cooperative society consisting of sugarcane growers or a company or a firm whose share holders and partners are sugarcane growers. The classification made by the policy or rule must not be arbitrary but must have a rational relation to the object of the exempting provision. The Government, by making the policy decision, had shut its ears to the merits of the individual applications. That the exemption is granted to few cooperative factories and for a short time are not relevant considerations. [802 C-E] B C

R. v. *Torquay Lisensing* (1951) 2 K.B. 784, *Observations of S. A. de Smith, in 15 Modern Law Review, 73,* and *observations of H.W.R. Wade in 'Administrative Law'* 3rd edition pages 66-67 cited with approval in addition to the references made by the majority decision.

D

CIVIL APPELLATE ORIGINAL JURISDICTION : Civil Appeal No. 1453 of 1969.

Appeal by special leave from the judgment and order dated the 29th November, 1968 of the Andhra Pradesh High Court at Hyderabad in Writ Appeal No. 345 of 1968 and

Writ Petitions Nos. 183, 249 & 240 *of* 1971 & 3, 105 & 134 *of* 1972. E

Under Article 32 of the Constitution for enforcement of Fundamental rights.

S. V. Gupte and *G. Narayana Rao*, for the appellant (in C.A. 1453/69). F

Niren De, Attorney General of India and *P. Parameshwara Rao*, for the respondent (In C.A. 1453/69).

Y. S. Chitale, K. P. Choudhry, K. Rajendra Choudhry and *Veena Devi Talwar*, for the petitioner (In W.P. 183/71).

K. Srinivasamurthy and *Naunit Lal*, for the petitioner (in W.Ps. 249. 250/71 and 3 and 105/72). G

A. Subba Rao, for the petitioner (in W.P. 134/72).

P. Ram Reddy and *P. Parameswara Rao*, for the respondents (in all W.Ps.)

The Judgment of A. N. Ray, C.J., H. R. Khanna and A. Alagiriswami, JJ. was delivered by Alagiriswami, J. K. K. Mathew, J. gave a dissenting Opinion on behalf of P. N. Bhagwati J. and himself. H

ALAGIRISWAMI, J. The appeal and the writ petitions raise the question of interpretation of section 21(3) of the Andhra Pradesh Sugar-

A cane (Regulation of Supply and Purchase) Act, 1961. The appellant and the petitioners are sugar factories in the State of Andhra Pradesh. They applied under the provisions of section 21(3) for exemption from the tax payable under sub-section (1) of that section on the ground that they, having substantially expanded, were entitled, to the extent of such expansion, to exemption from the payment B of tax. The Government of Andhra Pradesh having refused that request these writ petitions have been filed before this Court contending that the decision denying them exemption is contrary to section 21(3) which does not countenance any classification and that the classification adopted is based on no nexus to the object of the Act. The apepal is against the decision of the Andhra Pradesh High Court dismissing a writ petition filed for similar relief.

C Two contentions, one regarding promissory estoppel and another regarding the exemption given to Sarvaraya Sugars Ltd was not pressed before this Court. Though in the beginning it was urged that the grant of exemption under the section was obligatory, later the only contention raised was that the application of each of the factories should have been considered on its merits and the State should not D have fettered its discretion by laying down a policy of granting exemption only to co-operative sugar factories and that the policy had no nexus to the object of the Act.

Section 21 reads as follows :

"21. (1) The Government may, by notification, levy a tax at such rate not exceeding five rupees per metric tonne as may be prescribed on the purchase of cane required for E use, consumption or sale in a factory.

(2) The Government may, by notification, remit in whole or in part such tax in respect of cane used or intended to be used in a factory for any purpose specified in such notification.

F (3) The Government may, by notification, exempt from the payment of tax under this section—

(a) any new factory for a period not exceeding three years from the date on which it commences crushing of cane;

(b) any factory which, in the opinion of the Government, has substantially expanded, to the extent of such expan- G sion, for a period not exceeding two years from the date of completion of the expansion.

(4) The tax payable under sub-section (1) shall be levied and collected from the occupier of the factory in such manner and by such authority as may be prescribed.

H (5) Arrears of tax shall carry interest at the rate of nine per cent per annum.

(6) If the tax under this section together with the interest, if any, due thereon, is not paid by the occupier of

a factory within the prescribed time, it shall be recoverable from him as an arrear of land revenue." A

In its judgment in *Andhra Sugars Ltd.* v. *A.P. State* (1968 1 SCR 705) this Court upheld the constitutional validity of section 21(3) and made the following observations :

"It was next argued that the power under s. 21(3) to exempt new factories and factories which in the opinion of the Government have substantially expanded was discriminatory and violative of Art. 14. We are unable to accept this contention. The establishment of new factories and the expansion of the existing factories need encouragement and incentives. The exemption in favour of new and expanding factories is based on legitimate legislative policy. The question whether the exemption should be granted to any factory, and if so, for what period and the question whether any factory has substantially expanded and if so, the extent of such expansion have to be decided with reference to the facts of each individual case. Obviously, it is not possible for the State legislature to examine the merits of individual cases and the function was properly delegated to the State Government. The legislature was not obliged to prescribe a more rigid standard for the guidance of the Government. We hold that s. 21 does not violative Art. 14." B C D

Though, as we have stated, it was sought to be urged originally that under the provisions of this section it was obligatory on the part of the Government to grant exemption, it was later argued based on the above observations that the question whether the exemption should be granted to any factory and if so for what period and the question whether any factory has substantially expanded and if so the extent of such expansion, has to be decided with reference to the facts of each individual case. It was also further argued that the Government could not by laying down a policy to exempt only co-operative sugar factories fetter their hands from examining the merits of each individual case. Reliance was placed on the observations in S.A. de Smith's *Judicial Review of Administrative Action* (2nd Edn.) where at page 294 it is observed : E F

"A tribunal entrusted with a discretion must not, by the adoption of a general rule of policy, disable itself from exercising its discretion in individual cases. . . . G

. . . But the rule that it formulates must not be based on considerations extraneous to those contemplated by the enabling Act; otherwise it has exercised its discretion invalidly by taking irrelevant considerations into account. Again, a factor that may properly be taken into account in exercising a discretion may become an unlawful fetter upon discretion if it is elevated to the status of a general rule that results in the pursuit of consistency at the expense of the merits of individual cases. . . . *A fortiori,* the authority H

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> must not predetermine the issue, as by resolving to refuse all applications or all applications of a certain class or all applications except those of a certain class and then proceeding to refuse an application before it in pursuance of such a resolution..."

It was contended that the policy behind section 21(3) being to encourage new sugar factories or expanded sugar factories the Government could not refuse to consider all except one class i.e. the co-operative sugar factories for the purpose of granting exemption. It was further urged that new sugar factories and expanded sugar factories all fall into one class and there is nothing particular or special about co-operative sugar factories justifying their treatment as a special class deserving a special treatment. It was also urged that the only discretion which the Government had was in deciding whether a factory had substantially expanded or not and in no other respect.

On behalf of the State of Andhra Pradesh, however, it was stated that only new co-operative sugar factories have been granted exemption and that too only for one year as against the period of three years contemplated by the Act in the case of new factories and no expanded factory, even a co-operative sugar factory, has been granted any exemption. It was contended that the discretion has been given to the State to decide which factory or which class of factories should be granted at all and if so for what period, that the discretion is to be exercised by taking into consideration the state of the industry and the financial position of any sugar factory during any particular period or in any particular area, that it is open to the State to take into account all relevant considertaions and decide which class of factories should be granted exemption, and that the co-operative sugar factories consisting of cane growers is a distinct category justifying their treatment as a class separate from other sugar factories.

In view of the abandonment at a later stage of the contention that it was obligatory on the part of the Government to grant the exemption contemplated under section 21(3) to every new factory or expanded factory for the period mentioned in the section it is unnecessary to consider whether the word "may" found in that section should be interpreted to mean "shall" except to indicate that the policy behind the whole of section 21 does not indicate that it is obligatory on the part of the State to grant exemption. Quite clearly the discretion has been left to the State to decide whether any particular factory should be granted exemption or not. This is what this Court stated in its earlier decision. In deciding this question it is open to the Government to take into consideration the state of the industry at any particular period. At one period the industry may be in a very prosperous condition and might not need this concession. It may also be that factories in a particular area are in need of this concession but not factories in another area. How a power vested in an authority is to be exercised has got to be decided by taking into consideration the whole of the background of the Act and the purpose behind it. The purpose of the Act is, of course, to encourage new sugar factories

and expanded sugar factories. But how that power is to be exercised will have to be decided by taking into consideration all the relevant factors relating to the sugar industry. It is well known that there is a difference in the sucrose content in the cane produced in different areas. The quantity of sugarcane produced per acre varies from 60 tons per acre in Maharashtra to 40 tons in Tamilnadu and far less in Uttar Pradesh. These facts are available in any standard literature and official publications on the subject. The varying fortunes of the sugar industry at various periods are too wellknown to need emphasis. We are, therefore, of opinion that it would be open to the State Government to grant exemption to new factories only but not the expanded factories, to grant the exemption for one year instead of the three years or two years as contemplated under the section, to grant the exemption to factories in one area but not to factories in another area, to grant the exemption during a particular period but not during another period.

We are also of opinion that co-operative sugar factories consisting of sugarcane growers fall under a distinct category different from other categories. Sugarcane growers have been the object of particular consideration and care of the legislature. This country which was at one time a big importer of sugar has built up a sizeable sugar industry by a policy of protection given to the sugarcane growers and sugar industry. The figures we have given above have been one of the factors in fixing the price of sugarcane so that even a sugarcane grower in U. P. might get a reasonable return on his produce. We are of opinion, therefore, that the Government are justified in treating the sugar factories consisting of sugarcane growers as a distinct category. In this connection we should mention that the appellant in Civil Appeal No. 1453 of 1969 urged before this Court that out of its 1280 shares 1247 shares were held by canegrowers. But this was not urged in the petition before the High Court nor had the State an opportunity of meeting such a contention. It is therefore not possible for us at this stage to go into the question whether that appellant has been discriminated against.

The only question that arises is whether the Government would be justified in refusing to consider the question of exemption to all factories other than co-operative sugar factories. In its counter affidavit the State of Andhra Pradesh has stated that application of each one of the petitioners was considered on its merits and it was refused. On the other hand the petitioners referred to the letter (Annex.III) written by the Government of Andhra Pradesh to the appellant in Civil Appeal No. 1453 of 1969 which reads ;

> "I am to invite reference to your letter cited and to stated that the Government have given careful consideration to your request for exemption from payment of purchase tax to the extent of expansion for two crushing seasons in respect of Bobbili and Seethanagaram Units. The present policy of the Government is to grant exemption from payment of purchase tax to new and expanded sugar factories in the Co-operative Sector only. Besides Bobbili and Seethana-

A gram Sugar Factories, there are a few other sugar factories in the private sector which have also embarked on expansion programmes. Any concession given in one case will be a precedent for others and it cannot be denied to others who will naturally apply for a similar concession. The present financial position of the Government does not permit them B to be generous. In the cirmumstances, the Government very much regret that it is not possible for them to accede to your request."

and urged that the Government could not have exemined the request of each of the factories on their merits. But it is to be noticed that that letter itself shows that the Government have given careful consideration to the appellant's request. It also shows that the present C policy of the Government is not a policy for all times. We have, therefore, no reason not to accept the statement on behalf of the State of Andhra Pradesh that they have considered the request of the appellant as well as the petitioners on their merits. The fact that after such examination they have laid down a policy of exempting only sugarcane growers' factories cannot show that they have fettered D their discretion in any way. As we have already mentioned, even in the case of co-operative sugar factories the exemption is granted only to new factories and that too only for one year.

As regards the power of a statutory authority vested with a discretion, de Smith also points out :

E "but its statutory discretion may be wide enough to justify the adoption of a rule not to award any costs save in exceptional circumstances, as distinct from a rule never to award any costs at all.....although it is not obliged to consider every application before it with a fully open mind, it must at least kep its mind ajar."

F In *R.* v. *Port of London Authority* (1919 1 KB 176 at 184) Bankes L.J. stated the relevant principle in the following words :

"There are on the one hand cases where a tribunal in the honest exercise of its discretion has adopted a policy, and, without refusing to hear an applicant, intimates to him what its policy is, and that after hearing him it will in accordance with its policy decide against him, *unless there is* G *something exceptional in his case* .... if the policy has been adopted for reasons which the tribunal may legitimately entertain, no objection could be aken to such a course. On the other hand there are cases where a tribunal has passed a rule, or come to a determination, not to hear any application of a particular character by whomsoever made. There is a wide distinction to be drawn between these two classes.'

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The present cases come under the earlier part and not the latter. The case in *Rex* v. *London County Council* (1918 1 KB 68) is distinguishable on the facts of the case. The policy behind the Act

there under consideration was obviously to permit sale of any article or distribution of bills or like things and in deciding that no permission would be granted at all the London County Council was rightly held not to have properly exercised the discretion vested in it. In the decision in *Padfield* v. *Min. of Agriculture etc.* (1968 1 All ER 694) the refusal of the Minister to exercise the power vested in him was considered as frustrating the object of the statute which conferred the discretion and that is why a direction was issued to the Minister to consider the appellants' complaint according to law. We have already discussed the background and the purpose of the Act under consideration and are unable to hold that in refusing to grant exemption in these cases the State of Andhra Pradesh was acting so as to frustrate the purpose of the Act.

In a recent case, *British Oxygen* v. *Minister of Technology* (1970 3 All ER 165) the whole question has been discussed at length after referring to the decisions in *R.* v. *Port of London Authority* (1919 1 KB 176) and *Padfield* v. *Minister of Agriculture* (1968 1 All ER 694). The House of Lords was in that case considering the provisions of the Industrial Development Act 1966. The Act provided for the Board of Trade making to any person a grant towards approved capital expenditure incurred by that person in providing new machinery or plant for carrying on a qualifying industrial process in the course of the business. After stating that the Board was intended to have a discretion and after examining the provisions of the Act the House of Lords came to the conclusion that the Board was not bound to pay grants to all who are eligible nor did the provisions give any right to any person to get a grant. After quoting the passage from the decision in *R.* v. *Port of London Authority,* already referred to, Lord Reid went on to state :

> "But the circumstances in which discretions are exercised vary enormously and that passage cannot be applied literally in every case. The general rule is that anyone who has to exercise a statutory discretion must not 'shut (his) ears to the application (to quote from Bankes LJ). I do not think that there is any great difference between a policy and a rule. There may be cases where an officer or authority ought to listen to a substantial argument reasonably presented urging a change of policy. What the authority must not do is to refuse to listen at all. But a Ministry or large authority may have had to deal already with a multitude of similar applications and then they will almost certainly have evolved a policy so precise that it could well be called a rule. There can be no objection to that provided the authority is always willing to listen to anyone with something new to say—of course I do not mean to say that there need be an oral hearing. In the present case the Minister's officers have carefully considered all that the appellants have had to say and I have no doubt that they will continue to do so. The Minister might at any time change his mind and therefore I think that the appellants are entitled to have a decision whether these cylinders are eligible for grant."

A Viscount Dilhorne again after referring to the passage in *R.* v. *Port of London Authority,* said :

> "Bankes LJ clearly meant that in the latter case there is a refusal to exercise the discretion entrusted to the authority or tribunal but the distinction between a policy decision and a rule may not be easy to draw. In this case it was not
B challenged that it was within the power of the Board to adopt a policy not to make a grant in respect of such an item. That policy might equally well be described as a rule. It was both reasonable and right that the Board should make known to those interested the policy that it was going to follow. By doing so fruitless applications involving
C expense and expenditure of time might be avoided. The Board says that it has not refused to consider any application. It considered the appellants'. In these circumstances it is not necessary to decide in this case whether, if it had refused to consider an application on the ground that it related to an item costing less than £25, it would have acted wrongly.
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> I must confess that I feel some doubt whether the words used by Bankes LJ in the passage cited above are really applicable to a case of this kind. It seems somewhat pointless and a waste of time that the Board should have to consider applications which are bound as a result of its policy decision to fail. Representations could of course be made
E that the policy should be changed."

It is, therefore, clear that it is open to the Government to adopt a policy not to make a grant at all or to make a grant only to a certain class and not to a certain other class, though such a decision must be based on considerations relevant to the subject matter on
F hand. Such a consideration is found in this case. Halsbury (Vol. 1, 4th Edn., para 33 at page 35) puts the matter succinctly thus :

> "A public body endowed with a statutory discretion may legitimately adopt general rules or principles of policy to guide itself as to the manner of exercising its own discre-
G tion in individual cases, provided that such rules or principles are legally relevant to the exercise of its powers, consistent with the purpose of the enabling legislation and not arbitrary or capricious. Nevertheless, it must not disable itself from exercising a genuine discretion in a particular case directly involving individual interests, hence it must be prepared to consider making an exception to the general
H rule if the circumstances of the case warrant special treatment. These propositions, evolved mainly in the context of licensing and other regulatory powers, have been applied to other situations, for example, the award of discretionary

investment grants and the allocation of pupils to different classes of schools. The amplitude of a discretionary power may, however, be so wide that the competent authority may

be impliedly entitled to adopt a fixed rule never to exercise its discretion in favour of a particular class of person; and such a power may be expressly conferred by statute."

We are satisfied that in this case the State of Andhra Pradesh has properly exercised the discretion conferred on it by the statute.

The appeal and the writ petitions are dismissed with costs, one set.

MATHEW, J. The short question for consideration in these writ petitions and the Civil Appeal is whether the Government of Andhra Pradesh was right in dismissing the applications filed by the writ petitioners and the appellant claiming benefit of exemption from payment of the tax as provided in s. 21(3)(b) of the Andhra Pradesh Sugarcane (Regulation of Supply and Purchase) Act, 1951, hereinafter called the Act for the reason that the Government has taken a policy decision to confine the benefit of the exemption to sugar factories in the cooperative sector.

The material provisions of s. 21 of the Act are as follows :

"21(1) The Government may, by notification, levy a tax at such rate not exceeding five rupees per metric tonne as may be prescribed on the purchase of cane required for use, consumption or sale in a factory.

(2) The Government may, by notification, remit in whole or in part such tax in respect of cane used or intended to be used in a factory for any purpose specified in such notification.

(3) The Government may, by notification, exempt from the payment of tax under this section—

(a) any new factory for a period not exceeding three years from the date on which it commences crushing of cane:

(b) any factory which, in the opinion of the Government, has substantially expanded, to the extent of such expansion, for a period not exceeding two years from the date of completion of the expansion."

It was contended that looking at the scheme of s. 21 the word may' occurring in sub-section (3) thereof should be read as 'shall'

A as otherwise the sub-section will be unconstitutional in that it does not provide guideline for the exercise of the discretion to grant or refuse the exemption when all applicants fulfil the conditions specified in clause (b) of the sub-section. The argument was that since no guidelines are furnished by the legislature for choosing between two factories fulfilling the conditions specified in clause (b), the sub-section B must be read as mandatory, namely, that it imposes an obligation upon the Government, by notification, to exempt from payment of the tax all factories which, in the opinion of the Government, have substantially expanded, to the extent of such expansion, for a period not exceeding two years from the date of the completion of the expansion.

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We do not think that there is any merit in the contention. Clause (b) of sub-section (3) only says that if any factory "in the opinion of the Government, has substantially expanded", the Government may exempt it from the payment of tax to the extent of such expansion for a period not exceeding two years from the date of completion of the D expansion. So, if in the opinion of the Government, a factory has substantially expanded, it is open to the Government in its discretion to exempt that factory from payment of tax to the extent of such expansion and that for a period not exceeding two years from the date of the completion of the expansion. We are unable to read the section as imposing a mandatory obligation upon the Government to grant the exemption even if all the conditions specified in clause (b) of sub-E section (3) are satisfied. There is nothing in the context which compels us to read the word 'may' as 'shall' and it seems to us clear that the Government was intended to have a discretion. But how was the Government intended to operate or exercise the discretion? Does the Act as a whole or the provision in question in particular indicate any policy which the Government has to follow? The legislature has, no doubt, clearly laid down the conditions of eligibility for the exemp-F tion and it has clearly given to the Government a discretion so that the Government is not bound to grant the exemption to a factory which is eligible to the exemption. But the discretion must not so unreasonably be exercised as to show that there cannot have been any real or genuine exercise of it. The general rule is that anybody exercising a statutory discretion should not, in the words of Bankes L.J. in *R.* v. *P.L.A. ex.p. Kynoch Ltd.*(1) "shut his ears to the applica-G tion".

The question, therefore, is whether the Government shut its ears and fettered its discretion when it said that it will confine the benefit H of the exemption provided in clause (b) of sub-section (3) only to factories established in cooperative sector.

(1) [1919] 1 K.B. 176, at 184.

It was submitted that there is nothing in the provisions of sub-section (3)(b) to indicate that the Government could confine the benefit of the exemption only to new and expanded sugar factories in the cooperative sector fulfilling the conditions therein specified, and if the Government chose to fetter the exercise of its discretion by a self-imposed rule or policy by confining the benefit of the exemption only to new and expanded sugar factories established or owned by cooperative societies, no discretion was exercised by Government in disposing of the individual applications and that, at any rate, considerations foreign to the exercise of the discretion had entered into its exercise.

It is therefore to be seen whether the policy decision of the Government to limit the benefit of the exemption to sugar factories owned or established by cooperative societies of sugar cane growers is derivable from the sub-section or from any other provision of the Act or could be gleaned even from its preamble. The question to be asked and answered are : Has the policy decision any nexus with the object of the provision in question or is it based on considerations which are irrelevant to the purpose and object of the Act? Is there anything in the provisions of the Act from which it is possible to infer that the legislature could have contemplated that the benefit of the exemption provided by sub-section(3)(b) should be confined only to factories owned by cooperative societies consisting of sugar cane growers?

It appears to us that the object of s. 21(3)(b) is to give incentive to sugar factories which are new and which have expanded. It might be that the factories situate in one area may require greater consideration at one time then factories situate in other areas. We will assume that cooperative sugar factories consisting only of sugar cane growers stand on a different footing and form a class by themselves or for that matter a distinct category. But what follows? Can the Government evolve a policy confining the benefit of the exemption to that category alone and exclude others however deserving they might be from the point of view of the object of the provision for the legislative bounty?

The letter of the Government (Annexure III) reading as under leaves no doubt in our mind that the Government could not have considered the applications of the writ petitioners and the appellant on their merits :

"Annexure III

S. A. Guadar, I.A.S.
Special Secretary to Govt.

Hyderabad
Dated 6th Jan. 1968.

Food & Agriculture Department
D.O. letter No. 3960/Agri. III/67-1.

Dear Rajah Saheb,

Sub : Purchase tax on sugarcane—Exemption from payment of purchase tax to the extent of expansion—regarding.

Ref : Your letter No. 54/66-67 dt. 6-2-1967 addressed to the Director of Agriculture.

I am to invite reference to your letter cited and to state that the Government have given careful consideration to your request for exemption from payment of purchase tax to the extent of expansion for two crushing seasons in respect of Bobbili and Seetnanagaram Units. The present policy of the Government is to grant exemption from payment of purchase tax to new and expanded sugar factories in the Co-operative Sector only. Besides Bobbili and Seetnanagaram Sugar Factories, there are a few other sugar factories in the private sector which have also embarked on expansion programmes. Any concession given in one case will be a precedent for others and it cannot be denied to others who will naturally apply for a similar concession. The present financial position of the Government does not permit them to be generous. In the circumstances, the Government very much regret that it is not possible for them to accede to your request.

With regards,

Yours sincerely,
sd.
S. A. Quader

To : Rajah of Bobbili,
The Palace, Bobbili,
Srikakulam District."

We think that by the policy decision the Government had precluded itself from considering the applications of the petitioners and the appellant on their merits. In fact, the Government, by making the policy decision, had shut its ears to the merits of the individual applications. We see no merit in the contention of Andhra Pradesh Government that it considered the applications for exemption filed by the writ petitioners and the appellant on their merits as, by its policy decision, it had precluded itself from doing so. What are not very much concerned with the question that only a few of the co-operative societies have been granted the exemption or that the exemption to them has been limited to a period of one year. We are here really concerned with a principle and that is whether the Government was justified in evolving a policy of its own which has no relevance to the purpose of the provision in question or the object of the Act, as gatherable from the other provisions. We could have understood the Government making a policy decision to confine the benefit of the exemption to factories established by co-operative societies of sugar-cane growers, if that policy decision had any warrant in the directive principles of the Constitution as direc-

tive principles are fundamental in the governance of the country and are binding on all organs of the State. There is no provision in the Chapter on Directive Principles which would warrant the particular predilection now shown by Government to the factories established in the co-operative sector. Whence then did the Government draw its inspiration for the policy? We should not be understood as saying that sugar-cane factories established by co-operative societies of sugar-cane growers do not deserve encouragement or that they should not be granted exemption from payment of tax. All that we say is that the wholesale exclusion of other factories established, say, by a firm consisting of sugar-cane growers, or a company of which sugar-cane growers are the shareholders, is not warranted by anything in the provisions of s. 21(3). How could we assume in the light of the language of s. 21(3)(b) that the legislature intended that new factories owned by co-operative societies consisting of cane growers alone should be the object of the legislative bounty? What is the relevant distinction between a factory established by a co-operative society consisting of sugar-cane growers and a factory established by a sugar-cane grower or a firm consisting of sugar-cane growers for the purpose of the sub-section? The object of the sub-section, as we said, is to give incentive to new and expanded factories with the ultimate object of increasing the production of sugar. Whether a factory is established or owned by a co-operative society consisting of sugar-cane growers or by a company of which sugar-cane growers are the shareholders or established by an individual who is a sugar-cane grower or a firm consisting of sugar-cane growers would make no difference in this respect. They all stand on the same footing so far as their claim to the legislative bounty is concerned.

A B C D E

We do not also say that it is illegal for the Government to adopt a general line of policy and adhere to it. But the policy it adopts must comfort with and be reconcilable with the provisions of the Act and must have some relevance to its object.

Generally speaking, an authority entrusted with a discretion must not by adopting a rule or policy, disable itself from exercising its discretion in individual cases. There is no objection in its formulating a rule or policy. But the rule it frames or the policy it adopts must not be based on considerations extraneous to those contemplated or envisaged by the enabling Act. It "must not predetermine the issue, as by resolving to refuse all applications or all applications of a certain class or all applications except those of a certain class" (see S.A. de Smith, "Judicial Review of Administrative Action", 2nd ed., p. 295).

F G

In *R. V. Torquay Licensing, JJ., ex. p. Brockman*(1), Lord Goddard C.J. said :

> "The justices cannot make a rule to be applied in every case without hearing it. They may lay down for them-

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(1) [1951] 2 K. B. 784.

A selves a general rule but are bound to consider whether it is applicable to any particular case."

In other words, although they have a duty genuinely to exercise a discretion by considering each individual case on its merits, the due discharge of this duty is compatible with the adoption of a general policy in relation to a class of cases. But "one qualification B must be added : *the policy of the justices must be reconcilable with the policy of the Act from which they derive their powers : it must not be an irrelevant consideration that they are impliedly precluded from taking into account*" (see S. A. de Smith. Note : "Policy and Discretion in Licensing Functions(1)). It is this qualification which has got to be remembered when an authority frames a rule or adopts a general policy for the exercise of its discretion. This is further clear from C the passage from Halsbury's Laws of England quoted with approval in the majority judgment(2) :

> "A public body endowed with a statutory discretion may legimately adopt general rules or principles of policy to guide itself as to the manner of exercising its own discre- D tion in individual cases, provided that such rules or principles are legally relevant to the exercise of its powers, consistent with the purpose of the enabling legislation and not arbitrary or capricious. Nevertheless, it must not disable itself from exercising a genuine discretion in a particular case directly involving individual interests; hence it must be prepared to consider making an exception to the gene- E ral rule if the circumstances of the case warrant special treatment."

In *British Oxygen Co. Ltd.* v. *Ministry of Technology*(3) the question was whether the Industrial Development Act, 1966, which provided at the relevant time that the Board of Trade may make to F any person a grant towards approved capital expenditure incurred by that person in providing new machinery or plant for carrying on a qualifying industrial process in the course of business, authorised the Board of Trade to frame a policy decision to refuse subsidies in respect of any item costing less than £ 25. The House of Lords held that the Board may decline to make a grant towards bulk capital expenditure on the individual cylinders on the sole ground that G each cylinder cost less than £ 25, because the discretion conferred was unqualified and the Minister was accordingly not precluded from making such a rule or policy provided that he did not refuse to listen to an application for the exercise of his discretion. After referring to this decision, H. W. R. Wade has said(4) :

H (1) 15 Modern Law Review 73.

(2) Vol. 1, 4th ed., para 33 at p. 35.

(3) [1970] 3 All E.R. 165.

(4) See "Administrative Law". 3rd ed., pp. 66-67.

"But however firm its policy may be, nothing can absolve a public authority from the duty of forming its judgment on the facts of each case, if that is what the statute intended. A tribunal which has to exercise discretion must therefore be careful not to treat itself as bound by its own previous decisions. Unlike a court of law, it must not pursue consistency at the expense of the merits of individual cases' (see *Merchandise Transport Ltd.* v. B.T.C. (1962) 2 Q.B. 173)".

To sum up, the policy of rule adopted by the State Government to guide itself in the exercise of its discretion must have some relevance to the object of s. 21(3) which is to provide incentive to the establishment of new industries and substantial expansion of existing industries with a view to increasing production of sugar. The classification made by the policy or rule must not be arbitrary but must have rational relation to the object of the exempting provision. That appears to be absent in the present case. Here, from the point of view of the object of the exempting provision, co-operative societies of sugar-cane growers and other new or substantially expanded industries stand on the same footing and there can be no justification for specially favouring the former class of industries by confining the benefit of exemption to them and leaving out of the exemption the latter class of industries. Picking out co-operative societies of sugarcane growers for favoured treatment, to the exclusion of other new or substantially expanded industries, is wholly unrelated to the object of the exempting provision and the policy or rule adopted by the State Government is not legally relevant to the exercise of the power of granting exemption.

We would, therefore, quash Annexure III and issue a *mandamus* to the Government of Andhra Pradesh in each of those writ petitions and the Civil Appeal to consider the applications of the writ petitioners and the appellant on merits and pass the proper order in each case without taking into account the policy decision contained in Annexure III. We would allow the writ petitions and the Civil Appeal without any order as to costs.

ORDER

In accordance with the majority judgment of the Court, the Court dismissed the appeal and the Writ petitions with costs, one set.

S.B.W. *Appeal and Petitions dismissed.*