

A.P. Dalit Mahasabha vs Govt. Of A.P. And Ors. on 4 March, 1999

Equivalent citations: 1999(2)ALD275, 1999(2)ALT137, AIR 1999 ANDHRA PRADESH 208, (1999) 2 ANDHLD 275 (1999) 2 ANDH LT 136, (1999) 2 ANDH LT 136

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Bench: B. Sudershan Reddy

ORDER

1. :

"I do not think that anyone can say what will be left of those (fundamental principles of enquiry and fair play which our Constitutions enshrine) : I do not know whether they will serve only a Counsels; but this much I think I do know that a society so riven that the spirit of moderation is gone, no Court can save; Ihat a society where that spirit flourishes, no Court need save; that in a society which evades its responsibility by thrusting upon the Courts the nurture of that spirit, that spirit in the end will perish."

.....Judge learned Hand.

2. There is a beautiful and tiny village called Manikonda, surrounded by hillocks, adjoining the Hyderabad metropolis, which remained unaffected by the modern civilisation till recently. It was once a Jagir village under the supervision of Jagirdar. The Jagirs were abolished long time ago after liberation of the State of Hyderabad from Nizam's Rule. As elsewhere in the country, the tiny villages which were hitherto peacefully adjoining the metropolis of Hyderabad are now effected by urbanisation, industrialisation leading to over exploitation of resources and depletion of traditional sources. Natives are displaced by resourceful and enterprising strangers. They have become helpless in their own land. Manikonda is one such village. Rapid expansion of the city, explosion of population perhaps led to destruction of culture and agriculture in this tiny village also.

3. The Government of Andhra Pradesh owns vast extents of lands in this village. The lands are classified, in the revenue records, as Poramboke and Kancha Sircari. The Government of Andhra Pradesh appears to have decided as early as in the year 1987 to hand over possession of an extent of 1007.23 acres of land to Hyderabad Urban Development Authority (HUDA) for development of land. It is out of this extent, an extent of 250 acres has been carved out and given to the Indian School of Business (for short 'ISB'), to set up a premier business management school for imparting training in the field of business and allied areas to the students from all over the World. It is this

giving away of the land by the Government of Andhra Pradesh, is challenged in this Court by an organisation in the perceived public interest. According to the Government of Andhra Pradesh, the location of ISB at Manikonda is guided by the overall ambience of the area. It is stated that within a radius of 1.5 KM from the proposed location of ISB at Manikonda, numerous educational institutions, research and training courses are already functioning, such as:

(a) Regional Telecom training centre and institution of department of telecommunication, Government of India;

(b) Environmental protection, training and Research Institute;

(c) Jawaharlal Nehru Institute of Developing of Banking (promoted by the IDBI);

(d) Indian Institute of Information Technology;

(e) Hyderabad Central University;

(f) Indian Immunologicals promoted by the National Dairy Development Board; and

(g) State Bank of India Rural Development Institute.

4. Possession of an extent of 200 acres of land had already been handed over for establishment of National Urdu University. That out of number of sites in and around Hyderabad, decision to locate the ISB at Manikonda village was taken mainly in view of the proximity of its location to the Indian Institute of Information Technology and also the fact that there are large number of educational institutions/research centres around the said area.

5. According to the petitioner, the lands belonging to the Government, including the land, which is now, made available to the ISB are being cultivated by several landless poor and small farmers who are staying in and around the said village. The ryots are entitled for grant of pattas/ assignment as the said lands are under the personal cultivation of landless poor and weaker sections of the society. Their demand for grant of pattas is stated to be under the consideration of the Government; while it is the case of the Government that there is no evidence of any personal cultivation of the land by any ryots as such. The entire land admeasuring 1,007.23 acres covered by Sy.No.210/1, 211 and 212 was handed over to HUDA by the Government on 19-12-1987 and 4-1-1998 after removing the encroachments found over small extents of lands here and there. The HUDA ever since taking over possession of land continues to be in uninterrupted possession of the land till date. It is from the said extent of land, an extent of 250 acres has been ear-marked and carved out to be given to ISB.

6. It may be necessary to notice that one Narayun Singh and forty nine others filed WP No.8553 of 1993 seeking a writ of mandamus directing the Government of Andhra Pradesh and the District Collector, Ranga Reddy District to grant pattas in the same survey number of Manikonda village on the basis of their possession for a long time and each one of them claim for assignment of five acres of land. The writ petition was disposed of leaving it open to the petitioners therein to file an

application before the District Collector, Ranga Reddy District, for grant of pattas. This Court refused to express any opinion as to whether the petitioners therein are the landless poor persons and whether they are entitled for grant of any pattas. It may also be noticed that WP Nos.435 of 1988; 17305 of 1988 and 10502 of 1988 filed by some other petitioners were also disposed of on 21-6-1995. In the said batch of cases, the claim of the petitioners is that Manikonda village is a Jagir village and the petitioners therein are in possession and occupation of different extents of lands in the same survey numbers of Manikonda village. It was their case that they are entitled to Pattedar rights as per the provisions of A.P. (Telangana Area) Land Revenue Act, after abolition of the Jagirs in the year 1950. The said writ petitions were disposed of directing the District Collector to consider the representation made by the petitioners therein on 9-4-1984 after holding an inquiry as to whether the petitioners are in possession of the lands in survey numbers claimed by them and whether they are entitled to any pattedar rights in the lands.

7. It is evident that there are two sets of claimants - one set claiming for grant of pattas/assignment on the basis of their personal cultivation and long standing possession of the Government land. They claim to be landless poor persons and small farmers. The second set claim for pattedar rights on the basis of their long standing possession of Jagir lands. Their claim is based under the provisions of Hyderabad Land Revenue Act and the Rules framed thereunder for grant of pattedar rights after abolition of Jagirs. In respect of the same lands, one set claims the land to be the Government land and the other as jagir land. The claim of course is with regard to different extents. In none of these writ petitions disposed of by this Court there is any finding as to either possession of the land or entitlement for grant of assignment or pattedari rights. This Court merely directed the concerned revenue officers to consider the representations of the claimants.

8. The Joint Collector, Ranga Reddy District, pursuant to the directions of this Court, made an elaborate enquiry and disposed of all the claims by an order dated 29-1-1997. He came to the conclusion that the lands in question are Government Lands and the Jagirdar himself had no right to grant any patta in respect of the Government Lands. The lands were vested with the Government even during the Jagirdar's tenure and accordingly held that there is no evidence whatsoever of any individual being in continuous possession and uninterrupted cultivation of any extent of land whatsoever. The Joint Collector observed that there were attempt on the part of some encroachers to occupy the land for the first time in 1980-81 onwards intermittently. The Joint Collector further held that the revenue record, at least, from 1984-85 onwards would not disclose the possession of any individuals and the cultivation of the lands in question.

9. Even in Jagir village there can be Government Land. Jagirdar would have no say whatsoever in respect of such Government Lands.

10. However, the order of the Joint Collector is stated to be under challenge in Writ Petition No.28712 of 1998 filed by the very same claimants at whose behest the order was passed by the Joint Collector. It would not be appropriate to make any pronouncement on the validity of the said order in this proceedings. The fact remains that no interim order whatsoever has been granted in favour of any of the petitioners therein preventing the Government in dealing with this land in question in any manner whatsoever.

11. It may also be noticed that none of these petitioners are parties to this writ petition. They have not chosen to implead themselves as parties to this writ petition. Material produced by the petitioner is not at all sufficient to hold or confirm the possession of any individual in any extent of land. There is no evidence on record to show that the land in question or part thereof to be under the personal cultivation of any individuals. The petitioner cannot improve the case of the individual claimants with regard to their claim for grant of pattas/ assignment.

12 At any rate, this Court is not concerned with the said issue. It is difficult to discern at this stage, in this proceeding, as to which of the claimants are in possession of what extent of land. There is nothing on record to show the possession of any individual or claimant, in respect of this land carved out of huge extent of Government land for giving to ISB. May be it is an insurmountable task for the petitioner to make out any case for and on behalf of all those claimants.

13. Those claimants are not disabled in approaching the authorities and the Courts of law, as it evident from the record. They have already filed various writ petitions, which were disposed of by this Court. They have appeared before the Joint Collector through their Counsel and asserted their rights. They are diligently and vigorously pursuing their cases. They are not deprived of any legal assistance in the matter. It is not as if, they are not in a position to speak for themselves requiring the services of any public interest litigant to fight on their behalf. They are not dumb and mute, They are not ignorant of the powers, proceedings and concerns of the Court. It is not a case of any denial of access to Justice system. To this extent, this writ petition cannot be characterised as a Public Interest Litigation.

14. However, it is required to notice that even according to the petitioner in this writ petition the entire land in question is a Government Land. There is a specific averment to such an extent in the affidavit filed in support of the writ petition.

15. But the matter would not end there, as the petitioner attacks the validity of the decision of the Government, in parting away with its land in favour of ISB on various other grounds. The memorandum of understanding dated 6-9-1998 itself is impugned in this writ petition.

16. Sri. 6. Tarakam, learned senior Counsel for the petitioner made the following submissions:

The Government has no authority in law to part away with its natural resources in accordance with its whims and fancies. The Government is under constitutional obligation not to sell its own property for a price lesser than the prevailing market value. It is duty bound to secure best price. It can alienate the property or its natural resources only to achieve a constitutionally permissible objective. The land in question could not be granted to Indian School of Business without following proper procedure. The memorandum of understanding signed by the Government does not reflect any public purpose whatsoever for which valuable land of the Government given to the ISB. It is a gift by the Government more particularly by the Chief Minister of the State to a private Company incorporated under the Indian Companies Act. The landless poor and small fanners would be deprived of their livelihood as the

land under their personal cultivation is sought to be given to a private Company for a private purpose. The decision would run counter to constitutional scheme and obligation of providing protection to weaker sections of the society. Memorandum of understanding is nothing but a total surrender of the State before a private Company. The State of Andhra Pradesh and its people do not derive any benefit whatsoever from the decision of the Government to give the land in question to the ISB at a throw away price. The decision is detrimental to public interest. The decision is tainted by extraneous considerations and lacks transparency. It is an arbitrary decision by the Government and totally an unreasonable one.

17. Learned Advocate General for the State of Andhra Pradesh argued that the decision does not suffer from any legal or constitutional infirmity. The action of the Government is in public interest. It is urged that establishment of ISB would confer innumerable benefits to the State of Andhra Pradesh and would result in direct investment of about Rs.3 50 crores. The concessions are granted in order to achieve the policy objectives of the Government of Andhra Pradesh of establishing centres of excellence in the State. Learned Advocate General would submit that the action of the Government is neither arbitrary nor violative of any provisions of the Constitution of India. The decision is absolutely transparent and scrutinised at different levels and only relevant parameters have gone into the decision making process.

18. Sri G. Raghuraj, learned senior Counsel appearing on behalf of ISB made the following submissions:

The ISB is incorporated under Section 25 of the Companies Act, 1956. The statutory environment operating on it consequent on such incorporation as well as the Company's Charter demonstrates that the income and property of the ISB or the profits therefrom are not liable to be transferred either by way of bonus or otherwise to the members of the Company. The ISB comprises of heads of Indian and Trans-continental Corporate houses and its operational and academic activities be guided by the International Advisory Council which has been formed comprising the most revered names on the international scene in the field of business, Industry and academics. The funds required for operationalisation of the ISB are being and will be generated by the Members of the Board of the ISB. The affiliation entered into with the world renowned business schools Kellogg and Wharton demonstrates an emphasis on imparting quality managerial skills relevant to the Indian/Asian requirements. It is an educational institution of excellence conceived and established as a vital instrument of the National Interest and therefore, in the interest of the State as well. The ISB cannot be characterised as a *Juris Privati*. It is further urged that the State in the instant case had chosen to employ its assets for a demonstrably public purpose founded on a rational value judgment and such decision is not susceptible to interdiction. It is submitted that the judicial review will not extend to interdict value judgment of the State when the State makes rational evaluation amongst available and permissible policy choice. Providing State support for the establishment of educational institutions structurally ensuring provisions of quality education is an

equally and eminently permissible area of State activity within its Constitutionally assigned role, in particular as a derivative of the Constitutional injunction contained in Part IV-A of the Constitution.

The power of Discretion of the Government in the matter of Grant of largesse.

19. The law on the subject is not res Integra. The principles and parameters are well established. The discretion of the Government has been held to be not unlimited and that the Government cannot give or withhold largesse in its arbitrary discretion or at its will. The Government is still the Government when it acts in the matter of granting largesse and it cannot act arbitrarily. It does not stand in the same position as a private individual. Whatever its activity, Government is still the Government and will be subject to restraint inherently in its position in a democratic society. Its action must be in conformity with standards or norms which is not arbitrary, irrational or irrelevant. The power or discretion of the Government in the matter of grant of largesse must be confined and tempered by rational, relevant and non-discriminatory standards or norms. Disposal of public property partakes the character of a trust in that in its disposal there should be nothing hanky panky and it must be done at the best price so that larger revenue coming into the coffers of the State administration would serve public purpose. The Government of the day hold the properties of the State as custodian and in trust. It is settled law that where the disposal of a property by the Government is for augmentation of the revenue and nothing else, the State is under an obligation to secure the best market price available in a market economy. See: *R.D. Shetty v. International Airport Authority of India and others*, *Kastori Lal Lakshmi Reddy etc. v. The State of Jammu and Kashmir and another*, *Ram and Shyam Company v. State of Haryana and others*, and *V. Punn Thomas v. State of Kerala*, (FB).

20. But it is equally well settled that even a Governmental property may be disposed of at a price lesser than the market price or even for a token price to achieve some defined constitutionally recognised public purpose, one such being to achieve the goals set up in Part IV of the Constitution or the property is not given with a view to earn revenue or the purpose of carrying out a welfare scheme or to achieve any constitutionally permissible objective. There may be infinite variety of considerations which may have to be taken into account by the State in formulating its policy.

21. The Supreme Court in *Sri Sachidanand Pandey and another v. State of West Bengal*, AIR 1987 SC 1109, after referring to all the decisions on the subject deduced the following proposition to be taken as well established :

".....State-owned or public-owned property is not to be dealt with at the absolute discretion of the executive. Certain precepts and principles have to be observed. Public interest is the paramount consideration. One of the methods of securing the public interest, when it is considered necessary to dispose of a property, is to sell the property by public auction or by inviting tenders. Though that is the ordinary rule, it is not an invariable rule. There may be situations where there are compelling reasons necessitating departure from the rule but then the reasons for the departure must be rational and should not be suggestive of discrimination. Appearance of public justice

is as important as doing justice. Nothing should be done which gives an appearance of bias, jobbery or nepotism."

22. Applying these tests, can it be said that the Government of Andhra Pradesh did not act with probity in straight away negotiating with ISB, whether the action of the State Government could be said to be an arbitrary one in giving the land at a rate much lesser than the market value? Admittedly, the land in question is a Government land. The Government of the day has no unlimited discretion in the matter of giving largesse or parting away with its lands in favour of private individuals or organisations. In the counter-affidavit it is admitted that the market value as per the Basic Value Register is Rs. 1 lakh per acre and admittedly, the Government granted concession and proposed to alienate the land to ISB at the rate of Rs.25,000/- per acre. It is thus clear that the Government has chosen to give concession to the second respondent at Rs.75,000/- per acre which works out to Rs. 1.87 crores. There is also no dispute whatsoever that the Government entered into the memorandum of understanding with the ISB without inviting any tender or holding public auction. Admittedly there were 110 negotiations with any other individual or organisation. But here is a case where the Government did not part away with its valuable property and disposed of the same for augmentation of its revenue. That is not the purpose for which the land is sought to be alienated in favour of ISB. Therefore, the State is not under obligation to make any attempt to obtain the best available price.

23. The land is given to the ISB for the purpose of setting up a premier business management school imparting training in the field of business and allied area to students from all over the World. It is perceived that the school would be an independent self-funding and financially secured institution. The records would disclose that the school has international affiliation with the Wharton School at the University of Pennsylvania and the J.L. Kellogg Graduate School of Management at Northwestern University. The decision has been taken by the State Investment Promotion Board (SIPB) constituted by the Government vide G.O. Ms. No.201 Industries and Commerce (IP) Department, dated 1-12-1995 with the Chief Minister as the Chairman, the Minister for Finance, the Minister for Revenue and the Minister for Energy as its members. The Chief Secretary to the Government is the Member/Convenor of the SIPB. The Board is entrusted with the task of taking decision regarding the investment and promotion of industries in Andhra Pradesh and for approval of the projects. The Government also appears to have constituted State Investment Promotion Committee (SIPC) vide G.O. Ms. No.202 I&C (IP) Dept., dated 1-12-1995 with the Chief Secretary to the Government as the Chairman and other Secretaries as its Members. The SIPC, as evident from the record, in its meeting held on 12th August, 1998 decided that it is worthy offering a special package to facilitate the ISB to establish its business school at Hyderabad. It is perceived by the SIPC that ISB would be a centre of excellence in management and shall be the top school of business in India. Considering the prestigious nature of the institute and the requirements indicated by the delegates of High Power Industrialists who had visited Hyderabad on 2-8-1998 thought it is worthy offering a special package to attract the investment at Hyderabad on certain broad parameters. Consequent upon the recommendations of the SIPC the Chairman and Managing Director of APIIC addressed a letter to the Coordinator, ISB vide letter dated 14-8-1998 informing them of the commitment of the Government of Andhra Pradesh to extend all possible help to facilitate establishment of ISB at Hyderabad. The details of special package offer were also made known to

the ISB to enable them to take the final decision regarding establishment of school at Hyderabad. The State Investment Promotion Board in its meeting held on 18-8-1998 approved the offer made by ISB as per the recommendations of the State Investment Promotion Council. IE appears that the ISB Coordinator requested for certain changes offered by the Government of Andhra Pradesh and after negotiations some modifications were incorporated which includes the price of land at Rs.25,000/- per acre. A draft memorandum of understanding for revised terms and conditions duly incorporated therein was proposed to be executed at a formal signing ceremony was placed for approval of the Chief Minister and the Chief Secretary. Approval was also sought for, to enable the Principal Secretary, MA & UD Department, to sign the Memorandum of understanding on behalf of the State Government. The approval was accordingly granted by the Chief Minister and Chief Secretary on 2-9-1998. That is how the memorandum of understanding came into existence and signed by the respective parties on 6-9-1998.

24. It is clear from the record that it is the State Government which is keen to bring the ISB to establish its School at Hyderabad as part of its commitment took initiative and negotiated with ISB and terms and conditions in the memorandum of understanding were accordingly settled. It is thus evident that it is not a case of simple alienation or sale of the Government land by the Government for augmentation of its resources, as is evident from the record, that it is not Hie consideration at all. The Government in its wisdom thought that the establishment of Business School with high standards is going to be a centre of excellence which would enhance the business potentials and provide much needed quality, employment possibilities for the residents and will greatly contribute to the economic development of the region, by training managers who will compete in the ever changing world. The Government's policy decision is reflected in the counter-affidavit in the following words :

"Due to economic liberalisation and the increase of economic growth, the country has witnessed an unprecedented increase of economic activity involving national business interest and interaction with international business during the past decade. The region around Hyderabad has been dramatically transformed by this development. The Government of Andhra Pradesh prepared a vision-2020 industrial development plan which envisages Andhra Pradesh to become the foremost industrialised State in the country by 2020. The mission is to double the industrial output every five years. Different centres of excellence have been identified which will enhance business potential and provide much needed quality, employment possibilities for the residents in connection with the other planned projects around the twin cities. Indian School of Business will greatly contribute to the economic development of the region, by training managers who will compete in the ever changing world. Therefore with the above objectives the Government of Andhra Pradesh have entered into Memorandum of Understanding with the Indian School of Business to establish its institutions at Hyderabad. This action of the Government is in public interest, and cannot be assailed by raising untenable grounds, especially by persons who have no knowledge in the subject matters and are merely a cloak for attaining private ends of third parties."

25. It is to be seen that in the present case no one has come forward alleging that it has been discriminated by the State Government. It is not as if any body of equal eminence is willing to establish business school of the perceived standard by paying the market value of the land. The very nature of establishment of business school of this nature is indicative of requirement of expertise and sound financial position. At any rate there is no one before this Court complaining of any violation of any right to participate or negotiate with the Government for establishing School of similar type.

26. Under those circumstances, I am of the considered opinion that the decision of the Government to provide land to 1SB for establishment of its Business School at the rate of Rs.25,000/- per acre admittedly for less than the market value cannot be said to be an arbitrary and unreasonable one. Failure to realise the true and prevailing market value is of no consequence. On this ground alone, the decision cannot be set aside.

27. Whether the decision is in the public interest and as to whether the decision subserves any public purpose is a different matter altogether which would be separately dealt with.

28. Whether the decision of the Government suffers from any constitutional infirmity? Sri B. Tarakam, learned senior Counsel strenuously contends that the establishment of Business School, whatever may be of its status and standard would not serve any public purpose. On the other hand the ryots would be deprived of their possession and enjoyment of the land virtually effecting their right to live. In my considered opinion, the question is required to be viewed slightly from a different angle as to whether the land could be made available at all at a such a low price to facilitate establishment of a Business School. Whether such decision subserve any public purpose, and meant to achieve any constitutionally permissible objectives? In this case there is no question of any evaluation of competing policy choices for the Government for giving its own land.

29. As observed, there is no material on record to arrive at any conclusion that any ryot or cultivator is likely to be dispossessed from the land in question. There is no evidence whatsoever to show that any individual is in possession of any specified extent of land which is now sought to be made available to 1SB. The question of deprivation or displacement of any individual does not arise.

30. It is evident from the record "that the ISB was incorporated under the provisions of Section 25 of the Companies Act, 1956 on 3.-10-1997. The idea of establishing the business school itself was mooted in the year 1995. The Chief Executive Officers and owners of all top Indian Industry and business organisations appears to have provided form and content to the school to be established and was decided to affiliate with the top Management schools in the world. It was decided to form an International Advisory Governing Board and the individual heads of industry and business addressed their counter-parts in the international business and industrial community seeking their consent to associate themselves with the governance of the school to be established. Commitments were also obtained for the contribution of a minimum of five crores of rupees by the members of the proposed Board. In selecting the persons to be on the Board of ISB, the criteria adopted were, as is revealed from the counter affidavit, the accomplishment in terms of reputation, contribution to business, management and other skills brought to bear on the performance of the enterprises with

which they are associated, the expectations over a period of time of the school and the capacity of these persons to cater to such expectations and the level of monetary contribution (Rs.5 crores minimum on an unattributed basis meaning that such contributions do not entitle them to any privileges in the school of business including the naming of any building or block or advantage in admissions in the school and their nominees in the like). It is stated in the counter-affidavit that the ISB is conceived and established in national interest with a view to provide the best education in the field of human knowledge most relevant to the contemporaneous policies of the nation. There is no private purpose involved. It is stated that the ISB serves vital and national public purpose and the establishment is in public interest.

31. It is also evident from the record that the ISB entered into a Memorandum of Understanding on 21-11-1997 with Kellogg Graduate School of Management, Northwestern University and the Wharton School of the University of Pennsylvania, which are among the top five management schools in the World. The Memorandum of Understanding ensures committed collaboration in the launching of ISB, providing an executive education programme for predominantly associating executives, research programme focussed on issues pertaining to India/Asian economies, positioning ISB and promoting it in affiliation with the Kellogg and Wharton ensuring commitment of Kellogg and Wharton to make available, the faculty to teach MBA, executive education courses with a view to associating with the ISB in staffing courses, ensuring the assistance of Kellogg and Wharton in recruiting faculty to ISB and to nominations of faculty into the International Academic Council of ISB, ensuring the assistance of Kellogg and Wharton in the development of curriculae, ensuring that Kellogg and Wharton support the academic programmes of ISB by way of visiting scholars enabling the student exchange programmes between ISB and Kellogg/Wharton, ensuring support of Kellogg and Wharton to the establishment of research centres on the campus, focussing on issues pertaining to Indian/Asian economies and the like.

32. The counter affidavit would further reveal that various State Governments came forward requesting the establishment of the School in their territory and offering a package of incentives for the said purpose. The management of ISB evolved criteria for identifying the most suitable location for the school. The criteria were evolved on a consideration of the plural parameters having a rational nexus with the objects sought to be achieved, namely, locating the school at a place which would be in harmony with the standards of education. After visiting various sites offered by the States of Maharashtra, Andhra Pradesh, Karnataka and Tamilnadu, ISB identified the site in Andhra Pradesh as most favourable location for the establishment of the school qua the criteria adopted. Consequent to such decision, the ISB agreed the offer of the State of Andhra Pradesh and entered into a MOU on 6-9-1998, constituting in principle the agreement between ISB and the Government of Andhra Pradesh for the location of ISB in Andhra Pradesh at Hyderabad. The second respondent in specific terms denies that ISB has no extraneous or vested interest in establishing the Business School under its aegis either in Andhra Pradesh or at Hyderabad.

33. It is evident from the record that the ISB proposed to establish itself as the premier management institution for developing the future leaders of Asia. It will offer post graduate programmes in management, executive education and doctoral research. It proclaims that it will provide a distinctive emphasis on management in transitional and rapidly evolving economics through an

integration of leading management approaches in an Asian context. The course will be taught by core permanent faculty, supplemented by visiting faculty leading international schools and industry.

34. The Memorandum of Articles of Association of the Company would show that the income and property of the Company, whatsoever derived, shall be applied solely for the promotion of objects as set forth in the "Memorandum." In the Memorandum it is promised that no portion of the income or property shall be paid or transferred, directly or indirectly, by way of dividend, bonus or otherwise by way of profit, to persons what any time are, or have been members of the Company or to any one or more of them or to any persons claiming through any one or more of them.

35. It further provides that if upon winding up or dissolution of the company, there remains, after the satisfaction of all its debts and liabilities, any property whatsoever, the same shall not be paid or distributed amongst members of the Company, but shall be given or transferred to such other institution or institutions having objects similar to the objects of the Company to be determined by the members of the Company at or before the time of dissolution, and if and so far effect cannot be given to the aforesaid provision, then the same charitable object or on default by order of the High Court that has or may acquire jurisdiction over the matter.

36. On 11-12-1997 the ISB obtained certificate under Section 8 UG of the Income Tax Act, 1961. The Members on the Board have committed each of themselves to make monetary contribution of Rs.5.00 crores on an attributed basis meaning that such contributions do not entitle them to any privileges in the School of Business including the naming of any building or block or advantage in admissions in the school and their nominees in the like. A mere look at the aims and objects as reflected in the Memorandum and Articles of Association and allied documents would reveal that the ISB cannot be treated as a purely private body incorporated for deriving any profits. The Company's incorporation itself is under Section 25 of the Companies Act and its registration with the Income Tax Department under Section 80 G of the Income Tax Act would make it clear that it is not a profit making body. May be it is incorporated under the Companies Act by private individuals. It is perceived to be a seat of learning on par with Kelloggs and Whartons. It is to be established as a vital institution in the national interest. Therefore, the ISB cannot be characterised as a *juris privati*. When private property is "affected with a public interest, it ceases to be *juris privati* only."

37. In *Mmm v. People of Illinois*, 94 US 77, it is observed:

"We find that when private property is affected with a public interest, it ceases to be *juris privati* only. This was said by Lord Chief Justice Hale more than two hundred years ago. In his treatise *DePortibus Maris*, Larg L.Tr. 78, and has been accepted without objection as an essential element in the law of property ever since. Property does become clothed with a public interest when used in a manner to make it of public consequence and affect the community at large. When therefore, one devotes his property to a use in which the public has an interest, he, in effect, grants to the public an interest in that use, and must submit to be controlled by the public for the common good, to the extent of the interest he has thus created."

38. In the circumstances, it cannot be said that the second respondent is a pure private body incorporated with the sole object of making profits. On the other hand it is an institution in which the public has interest and its use is meant for the common good.

39. In the perception of the Government of Andhra Pradesh, the year 2000 will be a turning point in the history of Hyderabad. Establishment of Indian School of Business at Hyderabad by the year 2000 will be crucial to transmute Hyderabad into Cyberabad. Establishment of ISB would confer innumerable benefits to the State of Andhra Pradesh. Establishment of ISB would result in a direct investment of 80 million US Dollars which is approximately Rs.350 crores. The institute would cater to the needs of various Multi-national Software Companies more particularly their requirements of international quality management consultancy services. The School is to be located at a distance of around 4 kms. from Hitec City and would cater to the needs of various multinational software companies therein more particularly their requirements of international quality management consultancy services. An integrated approach would give a further impetus to the growth of software industries in and around Hyderabad resulting a large scale investment and generation of further employment opportunities to the people of Andhra Pradesh. The Government of Andhra Pradesh prepared a vision 2020 industrial development plan which envisages Andhra Pradesh to become the foremost industrialised State in the country by 2020. It is stated that different centres of excellence have been identified which will enhance business potential and provide much needed quality, employment possibilities for the residents in connection with the other planned projects around the twin cities. The ISB will greatly contribute to the economic development of the region, by training managers who will compete in the ever changing world. Only with the above objectives, the Government of Andhra Pradesh have entered into MOU with the ISB to establish its institution at Hyderabad. It is claimed that the action of the Government is in public interest and for achieving Constitutionally permissible objectives. In, nut shell, it is with these objectives the Government took policy decision to make available the land and infrastructure to the ISB for establishment of its business school.

Parameters of Judicial Review in Evaluating the Policy Decisions of the Government.

40. It is too well settled that this Court by way of judicial review is not expected to act as a Court of appeal, while examining the decisions taken by the coordinated branches. The Court is not entitled to substitute its view for that of the authority concerned, to record a finding -whether such decisions could have been taken otherwise in the facts and circumstances of the case. "By way of judicial review the Court cannot examine the details of the terms of the contract which have been entered into by the public bodies or the State. The Courts have inherent limitations on the scope of any such inquiry." (See : Sterling Computers Case, 1993 (I) SCC 441).

41. In Delhi Science Forum v. Union of India, , the Apex Court while dealing with the New Telecom Policy took note of the economic growth and commercial changes in different parts of the world and the Government's policy of privatisation of Telecom which amounted to giving up the exclusive privilege leading from monopoly to duopoly policy observed that such policies cannot be evaluated in a Court of law. The Court held :

"What has been said in respect of the 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 question about the power to make economic divisions. 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.

All these questions have to be answered by the 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 of infringement of any of the constitutional or statutory provision. The new Telecom policy was placed before the 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."

42. In *R.K. Garg v. Union of India*, , declaring the law as to how the Courts have to view the laws relating to the economic activities, observed :

"Another rule of equal importance is that laws relating to economic activities should be viewed with greater latitude than laws touching civil rights such as freedom of speech, religion etc. It has been said by no less a person than Holmes, J., 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 straight-jacket formula and this is particularly true in case of Legislature 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. The Court should feel more inclined to give judicial deference to legislative judgment in the field of economic regulation than in other areas where fundamental human rights are involved."

43. In *B. Krishna But v. Union of India*, , while dealing with the questions as to whether the Court can direct the Union of India and State Governments to enforce the policy of total prohibition through out the country, determining the choice of priorities and formulating perspectives thereof as a matter of policy observed :

"Article 32 is not the machinery through which policy preferences or priorities are determined and this Court is not the forum where the conflicting claims of policies or priorities should be debated. (See the observations of this Court in *Rustom Cavasjee Cooper v. Union of India*,).

.....To make the State accept a particular policy, desirable and necessary as the policy might be is not the function of Article 32 of the Constitution. Article 32 of the Indian Constitution is not the nest for all the bees in the bonnet of 'public spirited persons.'

44. In *Shri Sitaram Sugar Company Ltd v. Union of India*, , the Apex Court considered the nature, extent and scope of judicial review of administrative actions formulating the economic policies regarding fixing the price of sugar observed that the Court in exercise of judicial review is not concerned with the correctness of the finding of fact on the basis of which the orders are made and held:

"Judicial review is not concerned with the matters of economic policy. The Court does not substitute its judgment for that of the Legislature or its agent as the matters within the province of either. The Court does not supplant the "feel of the expert" by its own views. When the Legislature acts within the sphere of its authority and delegates power to an agent, it may empower the agent to make findings of fact which are conclusive provided such findings satisfy the test of reasonableness. In all such cases judicial inquiry is confined to the question whether the findings of fact are reasonably based on evidence and whether such findings are consistent with the laws of the land,"

"It is a matter of policy and planning for the Central Government to decide whether it would be, on adoption of a system of partial control, in the best economic interest of the sugar industry and the general public that the sugar factories are grouped together with reference to geographical-cum-agro-economic factors for the purpose of determining the price of levy sugar. Sufficient power has been delegated to the Central Government to formulate and implement its policy decision by means of statutory instruments and executive orders. Whether the policy should be altered to divide the sugar industry into groups of units with similar cost characteristics with particular reference to recovery, duration, size and age of the units and capital cost per tonne of output, without regard to their location, as recommended by the BICP, is again a matter for the Central Government to decide. What is best for the sugar industry and in what manner the policy should be formulated, object of the statute, viz., supply and equitable distribution of essential commodity at fair prices in the best interest of the general public, is a matter for decision exclusively within the province of the Central Government. Such matters do not ordinarily attract the power of judicial review"

45, The Apex Court in *G.B. Mahajan v, Jalgaon Municipal Council*, , clearly laid down the parameters of judicial review and observed that the matters of economic policy which lack of

adjudicative disposition, unless they violate constitutional or legal limits of power, and held that:

"On a consideration of the matter, it appears to us that the argument that a project envisaging a self-financing scheme by reason alone of the particular policy behind it, is beyond the powers of the local authority is some what too broadly stated to be acceptable. A project, otherwise legal, does not become nonetheless permissible by reason alone that the local authority, instead of executing the project itself had entered into an agreement with a developer for its financing and execution. The criticism of the project being 'unconventional' does not add to or advance the legal contention any further. The question is not whether it is unconventional by the standard of the extent 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 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 cost 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 bonafide and within the limits of authority. We might recall the memorable words of what justice Brandels said : "The discoveries in physical science, the triumphs in invention, attest the value of the process of trial and error, in large measure, these advances have been due to experimentation."

"...There must be power in the State and the nation to remould, through experimentation, our economic practices and institutions to meet changing social and economic needs..."

"To stay experimentation in things social and economic is a grave responsibility. Denial of the right to experiment may be fraught with serious consequences to the Nation. It is one of the happy incidents of the federal system that a single courageous state may, if its citizens choose, serve as a laboratory; and try novel social and economic experiments without risk to the rest of the country. This Court has the power to prevent an experiment. But in the exercise of this high power, we must be ever on our guard, lest we erect our prejudices into legal principles."

46. In *Krishnan Kakkanth v. Government of Kerala*, , the constitutional validity of Circular dated 19-5-1995 issued by the Government of Kerala directing distribution of pumpsets under

Comprehensive Coconut Development programme and other similar schemes of the Agriculture Department and in order to streamline the implementation of the schemes specifying specific roles and responsibilities was challenged as arbitrary, unreasonable and violative of Article 14 of the Constitution of India. The Apex Court held:

"To ascertain unreasonableness and arbitrariness in the context of Article 14 of the Constitution, it is not necessary to enter upon any exercise for finding out the wisdom in the policy decision of the State Government. It is immaterial whether a better or more comprehensive policy decision could have been taken. It is equally immaterial if it can be demonstrated that the policy decision is unwise and is likely to defeat the purpose for which such decision has been taken. Unless the policy decision is demonstrably capricious or arbitrary and not informed by any reason whatsoever or it suffers from the vice of discrimination or infringes any statute or provisions of the Constitution, the policy decision cannot be struck down. It should be borne in mind that except for the limited purpose of testing a public policy in the context of illegality and unconstitutionally, Courts should avoid "embarking on uncharted ocean of public policy."

47. In *Slate of Punjab v. Ram Lubhaya Bagga*, , while dealing with the policy of the Punjab State Government in regard to the reimbursement of the medical expenses to its serving and retired employees, the Apex Court observed:

"...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. Insofar 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 in the 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.

48. On a consideration of the cases cited at the bar, the following principles may be taken as well established. The formulation and implementation of any economic policy is the responsibility of the executive. The merits of such policy are not susceptible to judicial review by this Court, except on the ground of constitutional infirmities. The Courts are not placed, wherein to determine as to whether an alternative policy formulation would have been better. The formulation and implementation policy regarding utilisation of natural resources may depend upon variety of factors. Essentially it is

a politico-economic Judgment.

49. In my considered opinion a large latitude would have to be allowed to the executive to decide for itself as to what would be the reasonable decision and the economic soundness of the proposed development plan undertaken by the State. It cannot be a subject matter of debate in a judicial review proceedings as long as such plan is not contra constitutional. The Courts will be reluctant and perhaps ill equipped to investigate into merits of such complex policy formulations. In deciding the policies the executive is entitled to take legitimate political and economic considerations into account. The executive is fully entitled while making such decision to take into account such consideration, such as promotion of regional stability, good Government, and its commercial interest. A particular decision taken by the executive may be right or wrong. The wisdom behind such decision cannot be judicially reviewed.

"We must remember that the machinery of the Government would not work if it were not allowed a little play in its joints" (See: *Bain Peanut Company v. Finson*, 1930 282 US 499)."

50. In the background of the law laid down I hold that it is not possible for this Court to interfere with the policy decision of the Government on the ground of any unreasonableness. It is not possible for this Court to substitute its own opinion for that of the executive.

51. In the instant case, it may significantly be noticed that the policy decision was not arrived at by a single individual in purported exercise of power with reference to any particular statute. The record would disclose that the issue has been processed at various levels. The matter first came before the SIPC on 12-8-1998 consisting of the Chief Secretary to Government as the Chairman, Principal Secretaries to Government, a Finance and Planning, I & CAD, Revenue Energy and 1 & C Departments as the Members. The Commissioner of Industries is the Convenor of SIPC. It was decided by the SIPC that suitable communication be issued to ISB and the matter should be placed before SIPB for ratification. The Chairman and the Managing Director of APIIC pursuant to the views of the SIPC addressed letter to the Coordinator of ISB vide letter dated 14-8-1998 informing them of the commitment of the Government of Andhra Pradesh to extend all possible help to facilitate establishment of ISB at Hyderabad. The SIPC consisting of the Chief Minister as the Chairman and the Ministers of Finance, Revenue and Energy approved the offer made to ISB as per the recommendations of SIPC. The correspondence went on between ISB and the Government. The record would disclose that the Memorandum of understanding with revised terms and conditions were approved by the Chief Secretary and the Chief Minister and only after such approval the Principal Secretary of Municipal Administration and Urban Development Department signed the Memorandum of understanding on behalf of the State Government as authorised signatory. The matter was once again brought to the notice of both the SIPC and SIPB about the signing of the Memorandum of understanding.

52. I have perused the entire record including note file made available by the Government for perusal. It is clear that the policy decision was formulated and processed at various levels and not arrived at by a single individual or in the secrecy of his chambers. The record would disclose detailed

correspondence with various other departments who are not members of either SIPC or SIPB. The State Electricity Board appears to have been consulted and so also Hyderabad Metropolitan Water Works and Sewerage Board. The views of the District Collector with regard to the availability of the land also appears to have been ascertained. The entire proceedings show that there was no suddenness of decision. Various alternatives appears to have been taken into consideration even with regard to the allotment of land. A perusal of the record would make it clear that the entire process commenced with (he letter of the ISB in June, 1998 and culminating in the policy decision dated 14-8-1998 offering the land in question for facilitating the establishment of ISB at Hyderabad, leading to signing of Memorandum of understanding on 6-9-1998. It was spread over a period of about nearly three months. The file also would disclose gathering of information, spot inspection of the site and inter-departmental communication. The record would disclose interaction of multifarious view points. Several queries and issues were fearlessly raised and they were dealt with. It appears that the entire matter was fully considered. The proceedings show that there is complete openness of discussion and deliberations. Under those circumstances, it cannot be said that there was any collateral consideration. It was an informed and institutionalised decision.

Role off he Chief Minister

53. However, Sri B. Tarakam, learned senior Counsel appearing on behalf of the petitioner would contend that the genesis of the issue relating to the establishment of the school by the Industrialists is shrowded in mistery. Learned senior Counsel would submit that the initiative came from the Chief Minister even before the matter went before the SIPC and SIPB, the Education Department and the Revenue Department were not taken into confidence. The decision taken by the Chief Minister alone was imposed upon all the concerned. The Rules of business framed under Article 166 of the Constitution of India are violated.

54. The Court cannot embark upon an enquiry to find out the origin of a policy formulation. There is nothing wrong if the initiative itself had come from the Chief Minister. No democracy operates by taking continuous head counts on the broad range of daily Governmental activities. Democracy is much more sophisticated and complex than the making of decision in meeting by a show of hands. In the instant case we need not go into complexities and pcrplexilies of the system, The Policy making power of representative institutions, born of the electoral process, is a functioning characterislic of the system. The Courts may have to think closely about their limitations. To blur the boundary between legal and political process could diminish laws problems solving capacity and tarnish its image. Law is distinctive. "It cannot and should not attempt to provide a surrogate political process". (See: Public law, 1997, page 245).

55. The decisions which are otherwise legal and constitutional cannot be set aside for the reason of non-compliance with the Rules of business.

56. In a cabinet form of Government the Chief Minister occupies an important constitutional position. He is appointed by the Governor and other Ministers are appointed by the Governor on the advice of the Chief Minister. The real executive power vests in the Council of Ministers. The Council of Ministers are collectively responsible to the Legislative Assembly of the Slate. In reality and

practice the individual Ministers hold office as long as they enjoy the confidence of the Chief Minister. The Chief Minister is the first among the equals and presides over the meetings of the Council of Ministers. There is no provision in the Constitution preventing the Chief Minister to take initiative in formulating the policy decisions of the Government, nor there is any such convention. The Constitutional schemes and conventions, on the other hand, would reveal the pivotal position of the Chief Minister in the matter of exercise of executive power of the State. There is nothing unconstitutional in Chief Minister taking the initiative for formulating the policy decisions of the Government.

57. Pursuant to the invitation of the Chief Minister of Jammu and Kashmir in the course of three speeches delivered by him, certain Industrialists made their offers for setting up factories and one such offer for setting up a modern factory for manufacturing of Resin, Turpentine Oil was accepted subject to certain terms and conditions by the Government of Jammu and Kashmir. It was challenged by way of a writ petition as arbitrary as no advertisements were issued inviting offers for setting up such factories. The Apex Court while dealing with the plea of arbitrariness in such a situation observed:

"It is true that no advertisements were issued by the State inviting tenders for award of tapping contract in respect of these blazes or stating that tapping contract would be given to any party who is prepared to put up a factory for manufacture of Resin, Turpentine oil and other derivatives within the State, but it must be remembered that it was 'not a tapping contract simpliciter which was being given by the State. The tapping contract was being given by way of allocation of raw material for feeding the factory to be set up by the 2nd respondent. The predominant purpose of the transaction was to ensure setting up of a factory by the 2nd respondents as part of the process of industrialisation of the State and since the 2nd respondents wanted assurance of a definite supply of resin as a condition of putting up the factory the State awarded the tapping contract to the 2nd respondent for the purpose. If the State was giving tapping contract simpliciter there can be no doubt that the State would have to auction or invite tenders for securing the highest price, subject of course, to any other relevant overriding considerations of public weal or interest, but in a case like this where the State is allocating resources such as water, power, raw materials etc., for the purpose of encouraging setting up of industries within the State, we do not think the State is bound to advertise and tell the people that it wants a particular industry to be set up within the State and invite those interested to come up with the proposals, for the purpose. The State may choose to do so, if it thinks fit and in a given situation, it may even turn out to be advantageous for the State to do so, but, if any, private party comes before the State and offers to set up an industry, the State would not be committing breach of any constitutional or legal obligation, if it negotiates with such party and agrees to provide resources and other facilities for the purpose of setting up the industry. The State is not obliged to tell such party: "Please wait I will first advertise, see whether any other offers are forthcoming and then after considering all offers, decide whether I should let you set up the industry." It would be most unrealistic to insist on such a procedure, particularly, in an area like

Jatnu and Kashmir which on account of historical, political and other reasons, is not yet industrially developed and where entrepreneurs have to be offered attractive terms in order to persuade them to set up an industry. The State must be free in such a case to negotiate with a private entrepreneur with a view to inducing him to set up an industry within the State and if the State enters into a contract with such entrepreneurs for providing resources and other facilities for setting up an industry, the contract cannot be assailed as invalid as long as the State has acted bona fide, reasonably and in public interest. If the terms and conditions of the contract or the surrounding circumstances show that the State has acted mala fide or out of improper or corrupt motive or in order to promote the private interests of some one at the cost of the State, the Court will undoubtedly interfere and strike down State action as arbitrary, unreasonable or contrary to public interest. But, so long as the State action is bona fide and reasonable, the Court will not interfere merely on the ground that no advertisement was given or publicity made or tenders invited. Here, the second respondents approached the State for the purpose of setting up a modern factory for manufacture of Resin, Turpentine Oil and other derivatives and asked for allocation of resin and the State with a view to offering an incentive to the second respondent to set up the factory made the impugned order awarding the tapping contract in respect of these trees to the second respondents as a part of a package deal. We have already pointed out and we need not repeat again. That the impugned order was reasonable and in the interest of the State and in the circumstances, we are clearly of the view that it cannot be assailed as invalid merely because no advertisements were issued inviting offers for setting up a factory and taking the tapping contract as an integral part of the transaction.

It may, however, be pointed out that though no advertisements were issued by the State the Chief Minister of Jammu and Kashmir had in the course of three speeches delivered by him—one in Bombay, the other in Calcutta and third in New Delhi invited the entrepreneurs to set up industries within the State with a view to bringing about rapid industrialisation and economic development of the State by utilising its "peculiar natural resources" and converting them into finished or semi finished products and promising "various forms of assistance and incentives" for the purpose. These speeches were widely advertised in the news papers and it was, therefore, known to entrepreneurs that the State would be willing to provide resources and other facilities to those who were interested in setting up industries within the State and, in fact, the State was anxious to attract entrepreneurs to start industries and it was in pursuance of this invitation that Prabhat Turpentine and Synthetics Private Limited, Dujodwala Resins and Turpentine Pvt. Ltd., and Pine Chemicals Ltd., and the second respondents made their respective offers for putting up factories within the State. It is, therefore, in any event, not correct to say that the petitioners had no opportunity of making an offer of setting up a factory and obtaining a tapping contract for the purpose." (See: *Kastwila Lakshmi Reddy v. State of Jammu and Kashmir*,)

58. At any rate, this issue does not require any further elaboration. As the final decision in the matter regarding alienation of the land in question is required to be taken by the Council of Ministers headed by the Chief Minister. It is nobody's case that the matter need not be placed before the Council. It is for the Council of Ministers to take appropriate decision in the matter. The Rules of Business framed under Clauses 2 and 3 of Article 166 of the Constitution of India enables the Chief Minister to pass orders or modify decisions already taken in respect of matters allocated to a Minister under the Rules. The orders so passed by the Chief Minister shall supercede a decision already taken by the Minister incharge of the subject. Even otherwise the rules of business under Article 166 of the Constitution of India are merely directive and they do not create any right in favour of the citizens, so as to enable them to enforce Article 226 of the Constitution of India.

About the Memorandum of Understanding

59. Learned senior Counsel appearing on behalf of the petitioner however, attacked the covenants in the Memorandum of understanding signed by the Government and ISB. As observed, this Court does not exercise any appellate jurisdiction to scrutinize each of the covenants and express any opinion thereof. May be the Government in its wisdom thought it fit to make available not only the land at lesser rate than the prevailing market value, but also infrastructure required for establishing the ISB. The issue is once again in the realm of policy.

60. Having regard to all the aforesaid reasons, facts and circumstances, I hold that the decision making process in proposing to give the land in question to the second respondent is not vitiated or tainted with any collateral considerations. The land is not being made available by the Government to enable the ISB to make any profit or gain. ISB is not a profit making body. The proposal itself does not suffer from any constitutional impropriety.

61. Now, it is for the Council of Ministers to consider the proposal to alienate the land and take an appropriate decision in the matter.

62. Learned senior Counsel, however, would urge that the Government could not have exempted the transaction from the payment of stamp duty and registration charges, as there is no provision for such exemption. But on that basis the decision, itself, cannot be set aside. It is for the respondents to comply with the legal formalities before execution of conveyance deed, if at all, the Council of Ministers approve the proposal to alienate the land in favour of ISB. The Council of Ministers may even change some of the terms and conditions in the MOLJ.

About the Educational Policy of ISB

63. Learned senior Counsel for the petitioner would urge that an unlimited discretion cannot be given to ISB to formulate its own policy regarding admission of students into the school. A blanket exemption cannot be given by the Government in this regard. The 'corporate gurus' cannot be immune from legal control, is the submission. This issue merits serious consideration. In my considered opinion, it is premature at this stage to go into the said question. The question may have to be considered by this Court as and when the School is established and formulates its admission

policy. The issue is left open.

About the Policy of Liberalisation

64. Learned senior Counsel for the petitioner in scathing criticism attacks the very policy of "economic liberalisation and globalisation." Establishment of Business School at Hyderabad, according to the learned senior Counsel is the result and off shoot of those policies. An attempt is made to highlight the impending danger. It would be very difficult for the Court to respond. May be, as urged by Sri G. Raghuram, learned senior Counsel that 'Constitution is not intended to embody a particular economic theory'; 'it is made for people of fundamentally differing views'. May be, mature institutions are under threat. The thinkers warns of the dangers of a world where international and regional organisations free business from the constraints imposed by national Governments and societies, without substituting any supranational equivalent. Professor Carol Harlow says "This is a demanding and often chilling environment with which constitutional law has signally failed so far to come to terms and where administrative law is not accustomed to operate. (See: Public Law, 1997, page 245).

65. But the question is as to whether the judicial review can be the answer? Bickel, Alexander M. Bickel, Professor Law, Yale University, observed that judicial review may, in a larger sense, have a tendency over time seriously to weaken the democratic process. It would be apposite to recall the words of James Bradley Thayer:

"The Legislatures, are growing accustomed to this distrust and more and more readily inclined to justify it, and to shed the considerations of constitutional restraints, - certainly as concerning the exact extent of these restrictions, turning that subject over to the Courts; and what is worse, they insensibly fall into a habit of assuming that whatever they could constitutionally do they may do as if honour and fair dealing and common honesty were not relevant to their inquiries. The people, all this while, become careless as to whom they send to the Legislature; too often they cheerfully vote for men whom they would not trust with an important private affair, and when these unfit persons are found to pass foolish and bad laws, and the Courts step in and disregard them, the people are glad that these few wiser gentlemen on the bench are so ready to protect them against their more immediate representatives..... It would be remembered that the exercise of it (the power of judicial review), even when unavoidable, is always attended with a serious evil, namely, that the correction of legislative mistakes comes from the outside, and the people thus lose the political experience, and the moral education and stimulus that comes from fighting the question out in the ordinary way, and correcting their own errors. The tendency of a common and easy resort to this great function, now lamentably too common, is to dwarf the political capacity of the people, and to deaden its sense of moral responsibility. It is deaden its sense of moral responsibility. It is no light thing to do that, (J.B. Thayer, John Marshall (Boston : Houghton Mifflin, 1901) pp. 57, 84.

66. Things seen to change in history when people break out of their accustomed ways of responding to domination, by acting as if the constraints on their improving their lives were not real and that they could change things.

67. What remains is to acknowledge the valuable assistance provided by the learned senior Counsel, Sri B. Tarakam and Sri G. Raghuranr, Sri V. Venkalaramanaiah, learned Advocate General and Sri N.V. Ramana, learned Additional Advocate Genera! and Sri Ramesh Ranganathan, learned Government Pleader appearing in the matter.

68. The writ petition fails and is accordingly dismissed. Consequently, the interim order stand dissolved. No order as to costs.