

* IN THE HIGH COURT OF DELHI AT NEW DELHI
+ WP(C)1643/2008 & CM 3177/2008
ZODIAC.COM SOLUTIONS PVT. LTD. Petitioner
Through: Mr. Puneet Bali with
Mr. Vibhav Jain, Advs.

versus

\$ UNION OF INDIA Respondent
^ Through: Ms. Madhu Tewatia with
Ms. Sidhi Arora, Advs.

Date of Hearing : December 17, 2008

% Date of Decision : December 19, 2008

CORAM:

* HON'BLE MR. JUSTICE VIKRAMAJIT SEN
HON'BLE MR. JUSTICE S.L. BHAYANA
1. Whether reporters of local papers may be allowed to see the Judgment? Yes
2. To be referred to the Reporter or not? Yes
3. Whether the Judgment should be reported in the Digest? Yes

VIKRAMAJIT SEN, J.

1. This Petition challenges the vires of Notification No.SO 883(E) dated 12.6.2006 inserting Clause (xa) in the existing Clause 4 of the Motor Vehicles (New High Security Registration Plates) Order, 2001 (2001 Order for short). It is contended that the inserted provision contravenes Article 14 and 19(1)(g) of the Constitution of India as also Section 109(3) of the Motor Vehicles Act, 1988 ('MV Act' for short) and also runs counter to the 2001Order. Clause (xa) of Order 4 is reproduced below *in*

toto, although we are concerned only with sub-clause (d) thereof:

(xa) The State Government or Union Territory Administration shall ensure that any person who has been, --

(a) convicted of a cognizable offence by any court of law with imprisonment for a term exceeding one year; or

(b) imposed a penalty of rupees one crore or more for violation of the provisions of the Foreign Exchange Regulation Act, 1973 (46 of 1973) (since repealed) or the Foreign Exchange Management Act, 1999 (42 of 1999); or

(c) detained under the National Security Act, 1980 (65 of 1980) or the Narcotic Drugs and Psychotropic Substances Act, 1985 (61 of 1985); or

(d) adjudged guilty by the Stock Exchange Board of India or any other such Financial Regulatory Boards or Tribunals or Agencies; or

(e) found to be associated in any manner with an organized crime syndicate or its associate or with any Association declared unlawful under the Unlawful Activities (Prevention) Act, 1967 (37 of 1967) or any other law for the time being in force; or

(f) found to be connected with activities prejudicial to the National Security, is not considered for selection as manufacturer or vendor for supply of High Security Registration Plates.

2. Reliance has been placed by learned counsel for the Respondent on ***Association of Registration Plates -vs- Union of India***, (2005) 1 SCC 679, where the questions for determination were substantially different to what we have been called upon to decide. In the earlier litigation the grievance was that the Notices Inviting Tenders (NITs) have the effect of eliminating the participation of Indian businesses because (a) the pre-qualifications required international experience; (b) previous experience in number-plate manufacture was essential; (c) indigenous manufacturers capable of complying with the requirements of Rule 50 of the Central Motor Vehicles Rules, 1989 ('1989 Rules' for short) were ineligible thus allegedly violating their Fundamental Rights under Article 19(1)(g) of the Constitution of India; (d) granting the contract to one party for the relatively long period of fifteen years would inevitably create a monopoly, and was thus against public interest; and (e) that since a number-plate of a vehicle was not an integral part of the latter's manufacture, the former was beyond the purview of the MV Act, the 1989 Rules as well as 2001 Order. It was these arguments that came to be rejected by their Lordships. The ratio of this precedent is that manufacturers of registration plates can be subjected to certain standards by a statutory order, duly published, in exercise of the coextensive executive

and legislative powers of the Central Government. The precise and specific challenge before us is that the stipulation rendering ineligible those parties on whom penalties have been imposed under the sundry specified statutes, falls foul of the law, *inter alia*, because of the vice of unreasonable exercise of rule-making powers.

3. The delegation of powers to the Central Government to frame Rules can be traced to Section 109 of the MV Act and, in particular, to sub-section (3) thereof. For ease of reference this provision is reproduced below:-

109. General provision regarding construction and maintenance of vehicles.—

(1) Every motor vehicle shall be so constructed and so maintained as to be at all times under the effective control of the person driving the vehicle.

(2) Every motor vehicle shall be so constructed as to have right hand steering control unless it is equipped with a mechanical or electrical signalling device of a prescribed nature.

(3) If the Central Government is of the opinion that it is necessary or expedient so to do in public interest, it may by order published in the Official Gazette, notify that any article or process used by a manufacturer shall conform to such standard as may be specified in that order.

4. It had been argued in the alternative by Ms. Tewatia, learned counsel for the Union of India, that Section 64 of the

MV Act in any case enables the Central Government to make Rules to provide for all the sixteen situations and contingencies mentioned in that provision. Ms. Madhu Tewatia has drawn our attention to *P. Balakotaiah -vs- Union of India*, AIR 1985 SC 232, wherein it has been enunciated by their Lordships that “no exception could be taken to the proposition that when an authority passes an order which is within its competence, it cannot fail merely because it purports to be made under a wrong provision if it can be shown to be within its powers under any other rule, and that the validity of an order should be judged on a consideration of its substance and not its form.” This reliance is intended to buttress the argument that even though reference had been made by the Respondent to Section 109(3) of the MV Act, failure to mention Section 64 of the same statute should not be fatal. We need not dwell on this argument since it is our considered opinion that Section 64 has no application in the circumstances of the present case. Section 109(3) stipulates that the Central Government “may by order published in the Official Gazette notify that any article or process used by a manufacturer shall conform to such standard as may be specified in that order.” This is in stark contrast to the next following provision, Section 110, which speaks of the Central Government “making rules regulating the construction,

equipment and maintenance of motor vehicles” It is this Section and not Section 64 which is relevant for the present purposes. The format and contents of the MV Act have been analysed in succeeding paragraphs.

5. Mr. Bali, learned counsel for the Petitioner, has sought support for this proposition from several judgments of the Supreme Court of India, including *Kerala Samsthana Chethu Thozhilali Union -vs- State of Kerala*, (2006) 4 SCC 327, ***Bombay Dyeing & Mfg. Co. Ltd.(3) -vs- Bombay Environmental Action Group***, (2006) 3 SCC 434, *Ashok Lanka -vs- Rishi Dixit*, (2005) 5 SCC 598, *Sarbananda Sonowal (II) -vs- Union of India*, (2007) 1 SCC 174 and *Life Insurance Corporation of India -vs- Retired LIC Officers Association*, (2008) 3 SCC 321, all of which have been authored by his Lordship, S.B. Sinha, J. speaking for the respective Benches. The following paragraph from ***Bombay Dyeing*** requires reproduction since it succinctly and perspicuously sets out the law on the subject:-

104. A policy decision, as is well known, should not be lightly interfered with but it is difficult to accept the submissions made on behalf of the learned counsel appearing on behalf of the appellants that the courts cannot exercise their power of judicial review at all. By reason of any legislation, whether enacted by the legislature or by way of subordinate legislation, the State gives effect to its legislative policy. Such

legislation, however, must not be ultra vires the Constitution. A subordinate legislation apart from being intra vires the Constitution should not also be ultra vires the parent Act under which it has been made. A subordinate legislation, it is trite, must be reasonable and in consonance with the legislative policy as also give effect to the purport and object of the Act and in good faith.

6. The Constitution Bench had earlier enunciated the law in this regard in *Lohia Machines Ltd. -vs- Union of India*, (1985) 2 SCC 197. One of the grounds on which Section 80-J of the Income Tax Act, 1961, as it stood amended by Finance Act of 1980, was that if this provision was construed as leaving it to the Central Board of Revenue to prescribe what items shall be included in or excluded from the computation of the term “capital employed”, it would be vulnerable to attack on the ground of excessive delegation of legislative power and would consequently be void. Their Lordships observed that Parliament had adequately articulated its policy of giving relief to an assessee who has started a new industrial undertaking and it would be expedient to leave it to the Central Board of Revenue to determine what should be the amount of capital employed and what other factors should be taken into account for the purpose of quantum of relief liable under the Section, from year to year. The then prevailing precedents were duly discussed.

7. In *Delhi Science Forum -vs- Union of India*, AIR 1996 SC 1356 : (1996) 2 SCC 405 : JT 1996 (2) SC 295 it has been held that the policies adopted by Parliament cannot be tested in a Court of law.

8. The MV Act comprises several Chapters which are essentially pandects dealing with distinct subjects or fields, each of which bestow and delegate rule-making powers on the Central Government and/or State Governments. In these circumstances, if a particular Chapter is relied upon by a party the ambit of delegated powers must be located from within that very Chapter which partake the peculiarity of pandects. Section 64 of the MV Act is placed in Chapter IV thereof regulating the 'Registration of Vehicles'. However, Section 109 is to be found in Chapter VII relating to 'Construction, Equipment and Maintenance of Motor Vehicles' and it is Sections 110 and 111 which reserve and delegate rule-making powers to the Central and State Government respectively. A perusal of Section 110 adumbrates the absence of rule-making powers on the subject with which we are concerned; whereas Section 111(e) empowers the State Government to make rules covering the said subject. Obviously it is for this reason that Ms. Tewatia has endeavoured to garner support from Section 50 and consequently Section 64. We are not convinced that the

rationale behind the introduction of high security number-plates has any bearing on 'Transfer of Ownership' of motor vehicles. Moreover, if the Rules, 1989 are relevant, it would lead to the position that the decision in ***Association of Registration Plates*** would be rendered irrelevant.

9. It is our opinion that the assailed provision, that is, 4 (xa) (d) of 2001 Order does not partake the character of subordinate or delegated legislation bringing either Section 110 or 111 into play. As its Preamble declares, the 2001 Order is "in exercise of the powers conferred by the sub-section(3) of Section 109 of the Motor Vehicles Act, 1988." This Section does not envisage the existence of Rules or Regulations nor does the 2001 Order purport to be subordinate legislation either in the form of Rules or of Regulations. There is no doubt considerable commonality between Rules and Orders, as has been explained in *Mysore University -vs- Gopal*, AIR 1965 SC 1932. It is also trite that Orders, whether administrative or legislative in character, must not travel beyond the frontiers of the statute which enables or enjoins its creation. In the case in hand, however, Rule 109 adequately empowers the Central Government to notify that any article or process used by a manufacturer must conform to specified standards.

10. In any event, this argument formulated on behalf of the Petitioner is not well-founded for the reason that the question whether number-plates are an inalienable part of the manufacture of motor vehicle is no longer *res integra*. It stands conclusively decided by the ***Association of Registration Plates***. The argument raised on behalf of the Petitioner was that a number-plate could not be construed as a part of the process or article of the manufacture of motor vehicle; that it comes into play only after the vehicle, as it has been manufactured, is sold. That argument was resoundingly rejected. Therefore, the number-plates, as postulated in the 2001 Order, must be held to be an integral part of manufacture of the vehicle.

11. Learned counsel for the Petitioner has contended that whilst conditions, specifications, quality stipulations etc. can be prescribed, there is no justification for imposing further criteria on the party or manufacturer concerned. We are not convinced that the several criteria, including ineligibility in respect of parties who have suffered imposition of penalties, unnecessarily visit the person and not the product. Assuming that there is an uncompromisable need for maintaining security in manufacturing number-plates, it becomes an imperative to stringently regulate the person as it is for the product. It would be worthless to have a pilfer-proof number-plate if illegal ones

are available in the underground market. The entire project is jeopardised and rendered ineffectual.

12. The conundrum which remains to be considered is whether the 2001 Order suffers from the vice of perverse unreasonableness or whether it violates the equality principle. Judicial Review on the first aspect of what now falls under the realm of Wednesbury unreasonableness is permissible in a very narrow field as has been explained in *Tata Cellular –vs- Union of India*, AIR 1996 SC 11 in these words:-

“The duty of the court is to confine itself to the question of legality. Its concern should be:

1. Whether a decision/making authority exceeded its powers?
2. Committed an error of law.
3. committed a breach of the rules of natural justice,
4. reached a decision which no reasonable tribunal would have reached or,
5. abused its powers.

Therefore, it is not for the court to determine whether a particular policy or particular decision taken in the fulfillment of that policy is fair. It is only concerned with the manner in which those decisions have been taken. The extent of the duty to act fairly will vary from case to case. Shortly put, the grounds upon which an administrative action is subject to control by judicial review can be classified as under:

(i) Illegality : This means the decision-maker must understand correctly the law that regulates his decision-making power and must give effect to it.

(ii) Irrationality, namely, Wednesbury unreasonableness.

(iii) Procedural impropriety.

The above are only the broad grounds but it does not rule out addition of further grounds in course of time. As a matter of fact, in *R. vs. Secretary of State for the Home Department, ex Brind*, Lord Diplock refers specifically to one development, namely, the possible recognition of the principle of proportionality. In all these cases the test to be adopted is that the court should, “consider whether something has gone wrong of a nature and degree which requires its intervention”.

Wednesbury reasonableness derives its origin in *Associated Provincial Picture Homes Limited vs. Wednesbury Corporation*, **(1947) 2 All E.R. 680** and has been explained to require that the “person entrusted with discretion must, so to speak, direct himself properly in law. He must call his attention to matters which he is bound to consider. He must exclude from his consideration matters which are irrelevant to what he has to consider. If he does not obey those rules he may truly be said to be acting unreasonably. Similarly, there may be something so absurd that no sensible person could ever dream that it lay within the powers of the authority”.

13. The scope of Judicial Review in the context of policy matters has also been explained by the Apex Court in *Balco Employees' Union (Regd.) -vs- Union of India*, (2002) 2 SCC 333 it has been held that --

45. In *Narmada Bachao Andolan v. Union of India* there was a challenge to the validity of the establishment of a large dam. It was held by the majority at p. 762 as follows : (SCC para 229)

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

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

47. Process of disinvestment is a policy decision involving complex economic factors. The courts have consistently refrained from interfering with economic decisions as it has been recognised that economic expediencies lack adjudicative disposition and unless the economic decision, based on economic expediencies, is demonstrated to be so violative of constitutional or legal limits on power or so abhorrent to reason, that the courts would decline to interfere. In matters relating to economic issues, the Government has, while taking a decision, right to "trial and error" as long as both trial and error are bona fide and within limits of authority. There is no case made out by the petitioner that the decision to disinvest in BALCO is in any way capricious, arbitrary, illegal or uninformed. Even though the workers may have interest in the manner in which the Company is conducting its business, inasmuch as its policy decision may have an impact on the workers' rights, nevertheless it is an incidence of service for an employee to accept a decision of the employer which has been honestly taken and which is not contrary to law. Even a government servant, having the protection of not only Articles 14 and 16 of the constitution but also of Article 311, has no absolute right to remain in service. For example, apart from cases of disciplinary action, the services of government servants can be terminated if posts are abolished. If such employee cannot make a grievance based on Part III of the Constitution or Article 311 then it can not stand to reason that like the petitioners, non-government employees working in a company which by

reason of judicial pronouncement may be regarded as a State for the purpose of Part III of the Constitution can claim a superior or a better right than a government servant and impugn its change of status. In taking of a policy decision in economic matters at length, the principles of natural justice have no role to play. While it is expected of a responsible employer to take all aspects into consideration including welfare of the labour before taking any policy decision that, by itself, will not entitle the employees to demand a right of hearing or consultation prior to the taking of the decision.

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92. In a democracy, it is the prerogative of each elected Government to follow its own policy. Often a change in Government may result in the shift in focus or change in economic policies. Any such change may result in adversely affecting some vested interests. Unless any illegality is committed in the execution of the policy or the same is contrary to law or mala fide, a decision bringing about change cannot per se be interfered with by the court.

93. Wisdom and advisability of economic policies are ordinarily not amenable to judicial review unless it can be demonstrated that the policy is contrary to any statutory provision or the Constitution. In other words, it is not for the courts to consider relative merits of different economic policies and consider whether a wiser or better one can be evolved. For testing the correctness of a policy, the appropriate forum is Parliament and not the courts. Here the policy was

tested and the motion defeated in the Lok Sabha on 1-3-2001.

14. The policy decision of the Central Government to introduce high security number-plates for motor vehicles has to be exercised within the parameters drawn by the Supreme Court. When so done, we see no flaws in the policy as its implementation will indubitably achieve the purposes envisaged in Section 109(3) of the MV Act. We are not traversing into virgin territory as all these questions were considered threadbare and answered in favour of the Government in ***Association of Registration Plates***.

15. Therefore, the final question is whether the condition disabling the Petitioner from participating in the Tender by virtue of the fact that a penalty of Rupees one crore was imposed by Securities and Exchange Board of India (SEBI) is unconstitutional. Learned counsel for the Petitioner argues that this condition has been prescribed only with the intention of rendering the Petitioner ineligible from the subject tender process. In *S.P. Mittal -vs- Union of India*, AIR 1983 SC 1 one of the arguments raised was that the impugned statutes dealt only with a single institution viz. Auroville and, therefore, there was a violation of the equality mandates. Their Lordships summarily rejected the argument on the premise that "it has not been

pointed out which were the other institutions where similar situations were prevailing. Besides, there is a uniqueness with this institution inasmuch as the Government is also involved. Even a single institution may be taken as a class". The following passage from *Ram Krishna Dalmia -vs- Justice S.R. Tendolkar*, AIR 1958 SC 538 immediately comes to mind in this context:

11. The principal ground urged in support of the contention as to the invalidity of the Act and/or the notification is founded on Art. 14 of the Constitution. In *Budhan Choudhry v. The State of Bihar*, 1955-1 SCR 1045 : AIR 1955 SC 191 a Constitution Bench of seven Judges of this Court at pages 1048-49 (of SCR) : (at p.193 of AIR) explained the true meaning and scope of Art. 14 as follows :

"The provisions of Article 14 of the Constitution have come up for discussion before this court in a number of cases, namely, *Chiranjit Lal Choudhuri v. The Union of India*, 1950 SCR 869 : AIR 1951 SC 41, *State of Bombay v. F. N. Balsara*, 1951 SCR 682 : AIR 1951 SC 318, *State of West Bengal v. Anwar Ali Sarkar*, 1952 SCR 284 : AIR 1952 SC 75, *Kathi Raning Rawat v. State of Saurashtra*, 1952 SCR 435 : AIR 1952 SC 123, *Lachmandas Kewalaram v. State of Bombay*, 1952 SCR 710: AIR 1952 SC 235, *Qasim Razvi v. State of Hyderabad*, 1953 SCR 589 : AIR 1953 SC 156 and *Habeeb Mohamad v. State of Hyderabad*, 1953 SCR 661 : AIR 1953 SC 287. It is, therefore, not necessary to enter upon any lengthy discussion as to the meaning, scope and effect of the

article in question. It is now well established that while Art. 14 forbids class legislation, it does not forbid reasonable classification for the purposes of legislation. In order, however, to pass the test of permissible classification two conditions must be fulfilled, namely, (i) that the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group and, (ii) that differentia must have a rational relation to the object sought to be achieved by the statute in question. The classification may be founded on different bases, namely, geographical, or according to objects or occupations or the like. What is necessary is that there must be a nexus between the basis of classification and the object of the Act under consideration. It is also well established by the decisions of this Court that Art. 14 condemns discrimination not only by a substantive law but also by a law of procedure."

The principle enunciated above has been consistently adopted and applied in subsequent cases. The decisions of this Court further establish –

- (a) that a law may be constitutional even though it relates to a single individual if, on account of some special circumstances or reasons applicable to him and not applicable to others, that single individual may be treated as a class by himself;
- (b) that there is always a presumption in favour of the constitutionality of an enactment and the burden is upon him who attacks it to show that there has

been a clear transgression of the constitutional principles;

(c) that it must be presumed that the legislature understands and correctly appreciates the need of its own people, that its laws are directed to problems made manifest by experience and that its discriminations are based on adequate grounds;

(d) that the legislature is free to recognise degrees of harm and may confine its restrictions to those cases where the need is deemed to be the clearest;

(e) that in order to sustain the presumption of constitutionality the court may take into consideration matters of common knowledge, matters of common report, the history of the times and may assume every state of facts which can be conceived existing at the time of legislation; and

(f) that while good faith and knowledge of the existing conditions on the part of a legislature are to be presumed, if there is nothing on the face of the law or the surrounding circumstances brought to the notice of the court on which the classification may reasonably be regarded as based, the presumption of constitutionality cannot be carried to the extent of always holding that there must be some undisclosed and unknown reasons for subjecting certain individuals or corporations to hostile or discriminating legislation.

The above principles will have to be constantly borne in mind by the court when it is called upon to adjudge the constitutionality of any particular law attacked as

discriminatory and violative of the equal protection of the laws.

12. A close perusal of the decisions of this Court in which the above principles have been enunciated and applied by this Court will also show that a statute which may come up for consideration on a question of its validity under Art. 14 of the Constitution, may be placed in one or other of the following five classes :-

(i) A statute may itself indicate the persons or things to whom its provisions are intended to apply and the basis of the classification of such persons or things may appear on the face of the statute or may be gathered from the surrounding circumstances known to or brought to the notice of the court. In determining the validity or otherwise of such a statute the court has to examine whether such classification is or can be reasonably regarded as based upon some differentia which distinguishes such persons or things grouped together from those left out of the group and whether such differentia has a reasonable relation to the object sought to be achieved by the statute, no matter whether the provisions of the statute are intended to apply only to a particular person or thing or only to a certain class of persons or things. Where the court finds that the classification satisfies the tests, the court will uphold the validity of the law, as it did in *Chiranjitlal Chowdhri v. Union of India*, 1950 SCR 869 : AIR 1951 SC 41, *State of Bombay v. F.N. Balsara*, 1951 SCR 682 : AIR 1951 SC 318, *Kedar Nath Bajoria v. State of West Bengal*, 1954 SCR 30 :

AIR 1953 SC 404, V.M. Syed Mohammad & Company v. State of Andhra, 1954 SCR 1117 : AIR 1954 SC 314 and Budhan Choudhry v. State of Bihar, 1955-1 SCR 1045 : AIR 1955 SC 191.

(ii) A statute may direct its provisions against one individual person or thing or to several individual person or things but no reasonable basis of classification may appear on the face of it or be deducible from the surrounding circumstances, or matters of common knowledge. In such a case the court will strike down the law as an instance of naked discrimination, as it did in Ameerunnissa Begum v. Mahboob Begum, 1953 SCR 404 : AIR 1953 SC 91, Ramprasad Narain Sahi v. State of Bihar, 1953 SCR 1129 :AIR 1953 SC 215.

(iii) A statute may not make any classification of the persons or things for the purpose of applying its provisions but may leave it to the discretion of the Government to select and classify persons or things to whom its provisions are to apply. In determining the question of the validity or otherwise of such a statute the court will not strike down the law out of hand only because no classification appears on its face or because a discretion is given to the Government to make the selection or classification but will go on to examine and ascertain if the statute has laid down any principle or policy for the guidance of the exercise of discretion by the Government in the matter of the selection or classification. After such scrutiny the court will strike down the statute if it does not lay down any

principle or policy for guiding the exercise of discretion by the Government in the matter of selection or classification, on the ground that the statute provides for the delegation of arbitrary and uncontrolled power to the Government so as to enable it to discriminate between persons or things similarly situate and that, therefore, the discrimination is inherent in the statute itself. In such a case the court will strike down both the law as well as the executive action taken under such law, as it did in *State of West Bengal v. Anwar Ali Sarkar*, 1952 SCR 284), *Dwarka Prasad Laxmi Narain v. The State of Uttar Pradesh*, 1954 SCR 803 :AIR 1954 SC 224 and *Dhirendra Kumar Mandal v. Superintendent and Remembrancer of Legal Affairs*, 1951 -1 SCR 224 : AIR 1954 SC 424.

(iv) A statute may not make a classification of the persons or things for the purpose of applying its provisions and may leave it to the discretion of the Government to select and classify the persons or things to whom its provisions are to apply but may at the same time lay down a policy or principle for the guidance of the exercise of discretion by the Government in the matter of such selection or classification, the court will uphold the law as constitutional, as it did in *Kathi Raning Rawat v. The State of Saurashtra*, 1952 SCR 435.

(v) A statute may not make a classification of the persons or things to whom their provisions are intended to apply and leave it to the discretion of the Government to select or classify the person or

things for applying those provisions according to the policy or the principle laid down by the statute itself for guidance of the exercise of discretion by the Government in the matter of such selection or classification. If the Government in making the selection or classification does not proceed on or follow such policy or principle, it has been held by this Court, e.g., in *Kathi Raning Rawat v. The State of Saurashtra*, 1952 SCR 435, that in such a case the executive action but not the statute should be condemned as unconstitutional.

16. The impugned 2001 Order spells out in great detail the myriad and multitude of situations which would disqualify a prospective tenderer from consideration; one of which is being penalised on being adjudged guilty by SEBI. We, therefore, find no substance in the argument put forward by learned counsel for the Petitioner that the Petitioner has been singled out for discriminatory treatment by the Order. We can easily discern the *intelligible differentia* that has been brought into play by the impugned Order namely that a party which has been adjudged as having violated the law may not be suitable for carrying out high security measures. Where there is logic in this assumption is a question quite apart from the differentiation itself.

17. Nevertheless, it may be possible for the Court to strike down the Order if it finds that the *intelligible differentia* has no

nexus to the objects sought to be achieved. It is palpably clear from the very name of the Order, further fortified by its provisions, that its object, in the public interest, is to notify certain standards in respect of the new system of high security registration plates for motor vehicles, which can be comprehensively implemented only if persons of proven doubtful character are excluded from participating in the project. If the newly devised number-plates are easily available in the market, the very purpose of their introduction would be defeated. For this reason, there cannot, in principle, be any objection to stipulations which seek to segregate persons of integrity from those of proven ethical waywardness or dishonesty. It is certainly arguable that the imposition of a fine, even as large as Rupees one crore, is not indicative of a propensity or proclivity for breaking the law or of not assiduously upholding the law. In other words, for mere technical violation of a legal provision in regard to which a monetary penalty has been provided any additional jeopardy, or further disqualification or disadvantage, would be legally unsustainable. Such a transgression of the law, it can be argued, is not indicative of turpitude that should invite ouster from commercial dealings. The Petitioner was penalised under Section 15A of the SEBI Act, 1992 for failing to furnish the following information/documents : -(a) Name and addresses

of each of the promoters of the company, (b) Detailed shareholding pattern along with the number and percentage of shares held by each shareholder and (c) Copy of Memorandum and Articles of Association of the company. In fact, there was no response from the Company to the summons issued by SEBI, which had a bearing on the investigation into price manipulation in the scrip of certain companies and the complicity of the Petitioner in those dealings. Learned counsel for the Petitioner has vehemently argued that several highly regarded and reputed multinational corporations have been penalised in a manner likewise to the Petitioner. It seems to us that the appropriate question to ask is whether any such multinational companies remain eligible to participate in the tender process whilst the Petitioner has been disqualified. This data has not been made available to us by learned counsel for the Petitioner and we must, therefore, assume against the Petitioner.

18. It has also been submitted that an Appeal has been preferred by the Petitioner against the imposition of the penalty upon it under the SEBI Act. In this regard, it is illogical to ignore the fact that after due adjudication the Petitioner has been found liable, if not guilty of transgressing the law. That liability has not been stayed by the Appellate Forum. The Petitioner has not complained that the decision of the Appellate

Forum has been unduly delayed. In cases where the verdict in appellate proceedings has been procrastinated to the detriment of any party, it is always open to the aggrieved party to approach the High Court so that appropriate alleviatory directions can be given. We say this because it is our opinion that a decision given after due adjudication cannot be nullified merely by the filing of an appeal. Therefore, the Respondents are within their rights in the present case to act upon the decision of SEBI. So far as the nexus to the objects sought to be achieved is concerned, we are not persuaded to view the SEBI proceedings penalising mere technical infractions. SEBI was inquiring into the manipulations into the scrip of certain companies and the Petitioner was put to notice because of its being *privy* to these manipulations. If such a party is permitted to participate in the implementation of a high security scheme, it is quite possible that those objectives would be severely undermined. The imposition of a penalty upon the Petitioner can reasonably support the opinion that the Petitioner is an unsuitable, if not unreliable, party to contract with for the performance of an enterprise such as the manufacturing of high security number-plates. Courts would be ill-advised to meddle with State policy in suchlike circumstances.

19. From a perusal of the Petition as well as its Annexures, it transpires that the Petitioner had not even submitted a Tender, palpably presuming that it would not be considered. Learned counsel for the Respondents has also not objected to the *locus standi* of the Petitioner. Possibly, for this reason learned counsel for the Petitioner has not submitted that there has been any violation of *audi alteram partem* rule.

20. In light of the above analysis the Petition does not have merit and is dismissed. There shall be no order as to costs.

(VIKRAMAJIT SEN)
JUDGE

December 19, 2008
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(S.L. BHAYANA)
JUDGE