HIGH COURT OF GUJARAT

GUJARAT NARMADA VALLEY FERTILIZERS COMPANY LIMITED
Versus
STATE OF GUJARAT

Date of Decision: 12 May 1999

Citation: 1999 LawSuit(Guj) 266

Hon'ble Judges: Rajesh Balia

Eq. Citations: 2000 1 CLR 837, 2000 1 GLR 443, 1999 2 GLH 794, 2000 1 LLJ 948, 1999 3 GCD 2323

Case Type: Special Civil Application

Case No: 9411 of 1998

Subject: Constitution, Labour and Industrial

Acts Referred:
Constitution Of India Art 14
Contract Labour (Regulation And Abolition) Act, 1970 Sec 10(2), Sec 10

Final Decision: Petition allowed

Advocates: Nanavati Associates, Girish Patel Associate, A Y Kogje

Cases Cited in (+): 4

R. BALIA, J.

[1] The petitioner-Gujarat Narmada Valley Fertilizers Company Limited (GNFC, for short) challenges the Notification dated 29-8-1998 published in the Government Gazette of the State on 29-8-1998 issued under Sec. 10 of the Contract Labour (Regulation and Abolition) Act, 1970 (hereinafter called the Act) prohibiting engagement of security personnel through contractor.

[2] The respondent No. 2, the Union of workmen has been espousing since long the cause of workmen for abolishing the contract labour in various processes/operations carried on by the petitioner company at its establishments. In the first instance, the Union filed Special Civil Application No. 5478 of 1989 inter alia asking for abolition of contract labour system prevalent at the company and also for direction that the

workmen concerned be treated as the workmen of the company directly. The said petition came to be withdrawn on August 27, 1991 for enabling the petitioner (Union) to pursue alternative remedy for raising industrial dispute for the purpose of treating the contract labour employees as directly employed under the company on the ground that the contract labour agreements were sham and not real, and with liberty to file fresh petition for the grievance about abolition of contract labour in operations in which the same has not been abolished. The ad interim relief protecting the services of the workmen under the employer by contract labour which was granted during the pendency of the petition was continued for two weeks. During pendency of the said petition by notification dated 28-9-1990, issued under Sec. 10 of the Act, prohibiting engagement of contract labour in five system out of many process in respect of which such prohibition was demanded, was issued. The operations in which contract labour system were abolished were : (1) sweeping and cleaning removal of refuse and garbage in factory premises; (2) removal and disposal of garbage, small scrap, cut grass, debris, rocks etc. (3) canteen, through co-operative society may be explored; (4) cleaning of ammonia and urea plants; and (5) cleaning and miscellaneous job in urea plant. However, contract labour system in Watch and Ward, with which the present petition relates was not abolished. Application No. 6265 of 1991 was filed by the Union, challenging the decision of the Government of Gujarat not to abolish contract labour system in respect of security staff of GNFC. In reply thereto, the State Government stated the following reasons for not abolishing the contract system into the sphere of security :

> "7. It is pertinent to note that respondent No. 2 is a public limited company and respondent-Government is holding only 26% of the equity and this company is concerned with manufacturing fertilizer, which are of vital importance to the economy of the Nation. The respondent government has decided in policy that security of all joint-sector companies, government companies and units controlled by the Governments of where the Government is interested as share holders should be entrusted to a security force like Central Industrial Security force, which would be manned by thoroughly trained professional whose function would be to protect properties of such manufacturing units.
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> 8. It is submitted that needful is being done for the formation of such a force by the respondent-Government such a body force is likely to be formed in near future. It has been felt by the respondent-Government that such a force should be quite independent from the staff of the unit company, whose properties are to be protected.
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> 9. It is further submitted that in the event of labour unrest, members of such a force would be more effective and reliable rather than a person who is a member of

local labour Union, who might be swayed with his feelings for his brother workers, and while doing so, might permit damage or loss to such units and therefore, the employees of such units are not to be entrusted with the work of security.

[3] The Division Bench which heard the petition was of the view that there was no full and meaningful consultation with the advisory board before the Government took the decision not to abolish contract labour in the security operations, inter alia on the ground that the Government has taken into consideration other material over and above the report of the Advisory Board, then in existence, and the material which has gone into taking policy decision in not abolishing the contract labour in the companies belonging to public sector or joint sector was not placed before the advisory board and there was no dialogue with the advisory board on the basis of that material. Thus, finding lack of requisite consultation with the State Advisory Board which was considered to be a prerequisite before a decision under Sec. 10 could be taken, the petition was allowed and the Government was directed to re-examine and reconsider its decision not to abolish contract labour for the security operations in accordance with law. By disposing of the said petition, on 13/15-4-1994, the Court issued certain directions for the purpose of protecting the services of the Watch and Ward staff engaged with the GNFC on contract basis. In making the aforesaid direction, the Court has referred to the existing report of the advisory board dated 24-2-1986 which by majority had recommended abolition of contract labour in security operations as well.

[4] On 16-1-1996, the Government issued another Notification prohibiting employment of contract labour in security operations of the company. Company challenged the notification by filing Special Civil Application No. 1388 of 1996. The said petition came to be allowed by this Court on 1-8-1997. The Court was of the opinion that reversal of earlier decision not to abolish contract labour for security operations has been taken without application of mind by assuming that allowance of Special Civil Application No. 6265 of 1991 was to accept the recommendation of the advisory board without any further application of mind. The notification had been issued without making any further consultation with the advisory board after the decision of the Court in Special Civil Application No. 6295 of 1991. The Court was further of the view that the report of the advisory board which was submitted in 1986 has become sufficiently old and the advisory board should have been consulted afresh and either of the parties could have supplemented their grounds before advisory board had the Government sent the matter for consultation de novo and sought fresh report from the advisory board. Thus, for the very same reason for which Special Civil Application No. 6395 of 1991 had been allowed, the Special Civil Application No. 1388 of 1996 was also allowed for want of active application of mind afresh for taking diagonally opposite decision and no reason or justification was shown by the respondents in support of the impugned

notification either oral or in writing before the Court. The Court directed the Government to take decision afresh after due consultation with the advisory board. It was further directed that the advisory board may consider the entire material after hearing all the sides. The parties may supplement their grounds and may place any material before the advisory board which they think proper and thereafter on a fresh report by the advisory board the Government may take a decision afresh in accordance with law.

[5] Pursuant to this, the company as well as Union presented themselves before the newly constituted advisory board and participated in the proceedings before the advisory board. On 24-8-1998 the company demanded a copy of the report submitted by it to the Government which was declined. As a result, the company filed Special Civil Application No. 6914 of 1998 seeking mandamus to secure the report submitted by the advisory board, in order to enable it to make proper representation before the Government before it could take decision. On 29-8-1998, in the said writ petition, the State Government produced a copy of the Notification of even date prohibiting employment of contract labour in Watch and Ward operations by the company. Thus, Notification having been issued, the Special Civil Application No. 6914 of 1998 was dismissed as having become infructuous, and the present petition was filed on 10-11-1998 challenging the Notification dated 29-8-1998.

[6] On behalf of the petitioners three principal contentions have been raised. Firstly, there has been no effective and proper consultation with the State Advisory Board inasmuch as the purported report submitted by the Board is not a report of the Board but is a report submitted by only a committee constituted by the Board, therefore, on such report only a decision taken by the Government can at best be in consultation with committee but cannot be considered to be a decision taken in consultation with the advisory board. The second contention raised on behalf of the petitioners is that the petitioners have not been given effective hearing. The decision to abolish or not to abolish engagement of contract labour in any process of operation of the company is to be taken by the appropriate Government. As the decision is taken only in respect of one company whether the decision is to be considered as quasi-legislation, subordinate legislation or an administrative action, a hearing ought to have been afforded to the petitioner by the authority taking a decision, the hearing and participation before the advisory board does not fulfil the requirement of natural justice or of a fair procedure. Lastly, it has been urged that the decision to abolish engagement of contract labour in security department only in respect of the petitioners company, while in most of other companies of the like nature, engaging security staff through contractor in the same area, which was pointed before the advisory board has not been affected, has resulted in violation of petitioners fundamental rights under Art. 14. They being discriminated

without any reasonable ground, in the matter of issuing notification under Sec. 10, affecting their freedom to manage their affairs adversely. At any rate, even if the action be not treated as violative of Art. 14, it suffers from non-consideration of relevant factors which are required by the statute to be taken into consideration before issuing Notification under Sec. 10 prohibiting the engagement of contract labour in any process or operation of any establishment, with particular emphasis to the fact that clause (c) of sub-Sec. (2) of Sec. 10 specifically requires to take into consideration the practice prevalent in same or similar establishment in that connection. Neither the advisory board nor the State Government before issuing notification has taken into consideration these factors.

[7] It is the requirement of statute that under Sec. 10 an appropriate Government acts only after consultation with the advisory board. It is a condition precedent. The consultation with the Board is a pre-condition for prohibiting employment of contract labour in any process, operation or other work in any establishment. It can also be not doubted that essence of consultation is communication of a genuine invitation to give advice and a genuine consideration of that advice which in turn depends on sufficient information and time being given to the party concerned to enable it to tender useful advice.

[8] An order required to be made after consultation is open to attack on two grounds. Firstly, it can be challenged on the ground that in fact there has been no consultation. Secondly, it can be shown by the challenger that the consultation effected lacks the characteristics of an effective genuine consultation. The requirement of consultation is not an empty formality. I need not elaborate on this inasmuch in the chequered history of their case itself twice over the Court has pronounced upon the necessity of effective and meaningful consultation and finding it to be wanting has asked the State Government, the appropriate Government, in the present case, to reconsider the whole issue in consonance with that requirement. In the first instance, while considering the Special Civil Application No. 424 of 1984, which was decided on 4-5-1994, the Court found that the appropriate Government has not shared the information and material, that it had with it and on which ultimate decision depended. This lack of sharing relevant information with the advisory board which could have vital effect on genuine consultation, was held to vitiate the final decision of the appropriate Government. Once again the Court while deciding Special Civil Application No. 1388 of 1996 on 1-8-97, held the direction issued vide Notification dated 16-1-1996 under Sec. 10 prohibiting employment of contract labour by the petitioner in security department vitiated, because it was founded on stale material, the information gathered by Advisory Board some ten years before and without involving the concerned parties in the process of consultation. For that purpose directions were also issued.

[9] The first limb of the contention is to existence of pre-condition necessary for exercising authority under Sec. 10. There is no dispute, nor there can be that where a condition precedent is laid down for a statutory power being exercised by a subordinate authority, it must be fulfilled before such subordinate authority can exercise such delegated power. Where there is recital of fulfillment of such condition precedent the presumption about the regularity of the order including the fulfilment of condition precedent exist in its favour. The burden in such case lie on the person, who challenges the order, to show that the recital was not correct and that the conditions precedent were not in fact complied with by the authority. In the absence of such recital as to fulfilment of condition-precedent in the order, on its legality being challenged, the burden is on the authority to show that such conditions have been fulfilled. That can be shown by furnishing affidavit of person exactly the authority. See : Swadeshi Cotton Mills v. S. I. Tribunal, AIR 1961 SC 1881.

[10] In this connection as noticed above the first limb of petitioner's contention is that there has been no consultation with the State Advisory Board, by the appropriate Government, but only a committee of the Advisory Board has been consulted. The relevant part of the Notification reads :

> "And Whereas the Government of Gujarat has consulted State Advisory Contract Labour Board after receiving the order of Hon'ble Gujarat High Court, the State Advisory Contract Labour Board have provided adequate opportunities to the parties concerned to file their representatives in the matter of contract labour system prevalent in the Security Department of the G.N.F.C., Bharuch."

[11] The Notification in no unmistakable terms state that the Government of Gujarat has consulted State Advisory Contract Labour Board. The presumption stand in favour of such consultation by the appropriate Government. The petitioner has sought to dislodge this presumption by pointing out that the report purporting to be of Board bears signatures of only three persons viz., the Chairman, the Employer's Representative and the Worker's Representative but not all the members of the Board, which cannot be less than eleven including the Chairman and Labour Commissioner. It was also urged in this connection that the Board in exercise of its power under Sec. 5 of the Act of 1970 has constituted a committee and only that committee has made the report, under the signatures of the members of such committee. Hence the report on the basis of which the Government of Gujarat has acted cannot be said to be report of entire Board.

[12] Having bestowed my anxious consideration and perused the report, which was produced before the Court during the course of hearing and copy of which was also made available to learned Counsel for the petitioner as well as to learned Counsel

representing the workmen, I am unable to accept it. Firstly, it is not the requirement of law that the report of Board be signed by all the members of the Board, before it can be considered as the recommendation of the Board. There is no reason that a report which is signed by the Chairman above with or without signatures of other members who participated in the deliberation be not considered report of the Board. One has to make a distinction between minutes of meeting and its ratification by members and the decision that is formulated and communicated on the basis of such deliberation. While minutes of a meeting may require to be signed by all the participants in the minute book. The document that ultimately conveys the decisions taken by the members present and participating, usually only bears the signature of Chairman or the Secretary. Therefore, no inference can be drawn, as suggested by learned Counsel for the petitioner that report made by the Board under the signature of its Chairman and two of its members is not the report of the Board but of a sub-committee only and on that basis to further hold that the Board was not consulted by the Government.

[13] A perusal of the report of the Board dated 14-7-1998 reveal that in its meeting dated 9-3-1998 it has consulted a committee for collecting the data and information and facts. The report refers to argument advanced by the company as well as the Union before referring to committee report, and considered the arguments of both the representatives in the light of finding by the committee. It is not the case of the petitioner that hearing was not afforded to them by the Board but only by the Committee. The factum of hearing by the Board negatives the contention that final report is not by the Board but by a sub-committee only.

[14] It is worthy to notice from the report following excerpts :

> "We would like to draw attention towards the important decision with regards expression of the opinion of the members to the recommendations. It was unanimously decided in the meeting of 2-7-1998 that the practice of filling up of proforma may be discontinued and now instead of that the members of the Board as a whole would be agreed to the decision and recommendations given by the Committee and a consent to that regard may be also obtained from the members. So the committee member's opinion will be the opinion for the whole of the Board in connection with the recommendations".
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> "The members are unanimously agreed and member Mr. Arunbhai Jariwala (representing the employers) is also agreed so. Mr. Meghjibhai Maheshwari (representing the workers) agreed to this recommendation and so we would like to recommend as follows".

[15] Passage from the report. The above clearly shows that earlier practice of merely obtaining a 'yes' or 'no' from members of Board as answer to a proforma question the committee finding has been abandoned and the report was made subject-matter of hearing and consideration by the Board. The ultimate report submitted to the Government of Gujarat was the unanimous opinion of the members of the Board to which the members representing interest of employer and workers also agreed to. It is in consideration of this the report contains three signatures. I have no hesitation in concluding that the petitioner has failed to discharge his burden that the report submitted to State Government was not that of the Board but of the Committee only and that as a pre-condition the State Government has not consulted with the Board. The presumption arising from such recital in the notification as to factum of consultation with the Board is not rebutted in the present case.

[16] The second limb of the contention is that the appropriate Government has not taken into account while issuing the notification under Sec. 10 which it was required to take under the statute more particularly it has failed to consider, in spite of specifically being pointed out by the petitioner before the Board, that the security work is ordinarily done through contract labour in similar establishments, in the region and that for long the petitioner is engaging security staff through the security agencies for the better services of the security personnel from the other workmen. In its statements it pointed out in detail the need for engagement of security staff through the outside agencies which was practically on the lines which weighed with the State Government while issuing first notification not to include security department in notification under Sec. 10 of the Act.

[17] It was urged that notwithstanding raising this question before the Advisory Board neither the committee constituted by the Board nor the the ultimate report alludes to this aspect of the matter which is a prerequisite of consideration before notification as per clause (c) of sub-sec. (2) of Sec. 10. Even the notification which states about consideration of other relevant aspects required to be considered before issuance of notification does not make reference to this aspect of the matter. The contention has two points to make. Firstly, that the authority entrusted to discharge a function under the statute has acted without taking into consideration relevant factors which it was required to take into consideration before exercise of its authority, and therefore, the action would be ultra vires, the provisions of the Act, and secondly, it has the dimension of challenging the action being discriminatory in choosing the petitioner to be brought under prohibitive notification under Sec. 10 while other similarly situated units have not been subjected to the same rigor, which has resulted in hostile discrimination violating Art. 14 of the Constitution of India. For the present, the first aspect need be considered first.

[18] For the purpose of examination of this issue, it has been assumed that Notification is a piece of subordinate legislation. The principle is well settled that a subordinate legislation or delegate entrusting to exercise authority under the statue is under an obligation to act on relevant consideration leaving out extraneous consideration, before exercise of power. It is well known premise on the basis of which a subordinate legislation can be challenged if it has failed to take into account vital facts either expressly required to be taken into account under the statute under which it acts or so required by necessary implication.

[19] In Indian Express Newspapers (Bombay) Private Limited & Ors. v. Union of India, 1985 (1) SCC 641 the Court explained the principles on the grounds on which the subordinate legislation can be subjected to challenge. The Court said :

> "A piece of subordinate legislation does not carry the same degree of immunity which is enjoyed by a statute passed by a competent Legislature. Subordinate legislation may be questioned on any of the grounds on which plenary legislation is questioned. In addition, it may also be questioned on the ground that it does not conform to the statute under which it is made."

[20] The Court further said :

> "On the facts and circumstances of a case, a subordinate legislation may be struck down as arbitrary or contrary to statute, if it fails to take into account very vital facts which either expressly or by necessary implication are required to be taken into consideration by the statute or say, the Constitution."

[21] In Union of India & Anr. v. Cyanamide India Ltd. & Anr., AIR 1987 SC 1802 the Court was considering the validity of price fixation under the Essential Commodities Act. The act of price fixation was considered to be an act of subordinate legislation. The Court observed :

> "Price fixation is neither the function nor the forte of the Court. The Court is concerned neither with the policy nor with the rates. But the Court has jurisdiction to enquire into the question, in appropriate proceedings, whether relevant considerations have gone in and irrelevant considerations kept out of the determination of the price."

[22] The principle was emphasised in State of Uttar Pradesh & Ors. v. Renusagar Power Co. & Ors., AIR 1988 SC 1737 when the Court said :

> "If the exercise of power is in the nature of subordinate legislation the exercise must conform to the provisions of the statute. All the conditions of the statute must

be fulfilled."

[23] With the aforesaid premises, let us take a look as to the requirement of statute under which notification is issued. Sec. 10 of the Contract Labour (Regulation and Abolition) Act, 1970 reads as under :

10. Prohibition of employment of contract labour :

(1) Notwithstanding anything contained in this Act, the appropriate Government may, after consultation with the Central Board or, as the case may be, a State Board prohibit, by notification in the Official Gazette, employment of contract labour in any process, operation or other work in any establishment.

(2) Before issuing any notification under sub-sec.(1) in relation to an establishment, the appropriate Government shall have regard to the conditions of work and benefits provided for the contract labour in that establishment and other relevant factors, such as -

(a) whether the process, operation or other work is incidental to, or necessary for the industry, trade, business, manufacture or occupation that is carried on in the establishment,

(b) whether it is of perennial nature, that is to say, it is of sufficient duration having regard to the nature of industry, trade, business, manufacture or occupation carried on in that establishment.

(c) whether it is done, ordinarily through regular workmen in that establishment or an establishment similar thereto.

(d) whether it is sufficient to employ considerable number of whole-time workmen.

Explanation. - If a question arises whether any process or operation or other work is of perennial nature, the decision of the appropriate Government thereon shall be final."

[24] A perusal of the aforesaid provision reveals firstly that the appropriate government is required to have a consultation with the concerned Board before issuing notification under Sec. 10 prohibiting employment under contract system under the statute, that is, the matter of procedure, by which in the form of constitution of the Board requiring representation of different interests to be part of the constitution of the Board. The Act ensured a fair procedure of taking into consideration all the affected interests through an effective consultation with the Board constituting of various interest in the matter. Sub-Sec. (2) provides relevant consideration which must go in

decision-making process. The relevant factors required to be taken into account detailed in the statute are not exhaustive in the sense that the appropriate government is not precluded from taking into consideration other factors which may have relevant bearing on the question of deciding whether the employment of contract labour is to be abolished or continued to be regulated in a particular field of activity of any industry or in any industry but does lay down that the considerations enumerated under Clause (a) to (d) are the minimum which must be accounted for in the decision making process of the appropriate Government before the notification is issued. In this connection, reference to a few cases may be usefully made, which arose under the Act of 1970.

[25] In Vegoils Private Limited v. The Workmen, AIR 1972 SC 1942 the Court was considering the question in an appeal that has arisen against the award made by the Industrial Tribunal Maharashtra in which the demand No.l was abolition of contract system. The primary issue the Court considered was whether the Industrial Tribunal has jurisdiction to enquire into and direct abolition of contract system, in the wake of Act of 1970. Relevant for the present enquiry, the Court made following observations on reading of Sec. 10 :

> "The following points emerge from Sec. 10(1). The appropriate Government has power to prohibit the employment of contract labour in any process, operation or other work in any establishment; (2) Before issuing a notification prohibiting contract labour, the appropriate Government has to consult the Central or State Board, as the case may be, which we have already pointed out, comprises of the representatives of the workmen-contractor and the industry; (3) Before issuing any notification under sub-Sec. (1), prohibiting the employment of contract labour, the appropriate Government is bound to have regard not only to the conditions of work and benefits provided for the contract labour in a particular establishment, but also other relevant factors enumerated in clauses (a) to (d) of sub-Sec. (2); and (4) under the Explanation which really relates to Clause (b), the decision of the appropriate Government on the question whether any process, operation or other work is of perennial nature, shall be final".

[26] The Court in latter part of the order further reiterated : "Sub-Sec. (2) lays down the various matters which are considered to be relevant factors to be taken into account by the appropriate Government before a notification prohibiting contract labourers issued."

[27] In this connection, in the light of the specific contention raised by the petitioner the following observation of the Court are poignant :

"The appropriate Government when taking action under Sec. 10 will have an overall picture of the industries carrying on similar activities and decide whether contract labour is to be abolished in respect of any of the activities of that industry. Therefore, it is reasonable to conclude that the jurisdiction to decide about the abolition of contract labour or to put it differently to prohibit the employment of contract labour is now to be done in accordance with Sec. 10."

[28] The Constitution Bench in M/s. Gammon India Ltd. etc. etc. v. Union of India and Ors., AIR 1974 SC 960 was considering the validity of various provisions of the Act of 1970 and the rules framed thereunder. While taking into account that the underlying policy of the Act is to abolish the contract labour wherever possible and practical, and when it cannot be abolished altogether, the policy of the Act is that the working conditions of the contract labour should be so regulated as to ensure payment of wages and provision of essential amenities. Alluding to the provisions of Sec. 10, the Court observed :

"The Act in Sec. 10 empowers the Government to prohibit employment of contract labour in any establishment. The Government under that Section has to apply its mind to various factors before the Government prohibits by notification in the official Gazette, employment of contract labour in any process, operation or other work in any establishment. The words "other work in any establishment" in Sec. 10 of the Act are important. The work in the establishment will be apparent from Sec. 10(2) of the Act as incidental or necessary to the industry, trade, business, manufacture or occupation that is carried on in the establishment. The Government before notifying prohibition of contract labour for work which is carried on in the establishment will consider whether the work is of a perennial nature in that establishment or work is done ordinarily through regular workmen in that establishment."

[29] Thus, the Court, reiterated that taking into consideration the factors which have been enumerated in sub-Sec. (2) of Sec. 10, is a necessary prerequisite before issuing Notification under Sec. 10.

[30] Again in B.H.E.L. Workers' Association, Hardware & Ors. v. Union of India & Ors., AIR 1985 SC 409 the Court emphasised :

"It is clear that Parliament has not abolished contract labour as such but has provided for its abolition by the Central Government in appropriate cases under Sec. 10 of the Contract Labour (Regulation and Abolition) Act, 1970. It is not for the Court to enquire into the question and to decide whether the employment of contract labour in any process, operation or other work in any establishment should

be abolished or not. This is a matter for the decision of the Government after considering the matters required to be considered under Sec. 10 of the Act."

[31] In Catering Cleaners of Southern Railway v. Union of India & Anr., AIR 1987 SC 777, the enquiry into the question whether work is done ordinarily through regular workmen in that establishment or an establishment similar thereto or through contract labour is an essential ingredient of an enquiry. That must precede the notification. It was a case where the petitioners Catering Cleaners of Southern Railway had demanded abolition of employment through contract labour was considered to be in the establishment of Southern Railway which has been denied to them. While adhering to the principle enunciated earlier by the Court, that it is not for the Court to decide on abolition of contract labour and it is for the appropriate Government to take decision had observed as to the relevancy and importance of enquiry into the question of discharging the work of similar nature in other similar establishments or of the same establishments of the employer. The Court said alluding to the stand taken by the Railway Administration :

"We notice that the Railway Administration has not chosen to support its statements by any facts and figures but has contended itself by making vague and general statements. No attempt has been made to explain why what has been done in most of the other railways cannot be and should not be done in the Southern Railway too."

[32] The Court examined the case of the petitioners with reference to the requirement of phenomena referred to in Sec. 10(2) in order to examine whether the demand for contract labour abolition was justified. The Court thus examined the case before it :

"On the facts presented to us and on the report of the Parliamentary Committee of petitions it appears to be clear that the work of cleaning catering establishments and pantry cars is necessary and incidental to the industry or business of the Southern Railway and so requirement (a) of Sec. 10 (2) is satisfied, that it is of a perennial nature and so requirement (b) is satisfied, that the work is done through regular workmen in most Railways in the country and so requirement (c) is satisfied and that the work requires the employment of sufficient number of whole-time workmen and so requirement (d) is also satisfied".

[33] This case emphasise the relevance of consideration about the existence of practice about employment of workmen - on regular employment under it or through contract labour - in other similar establishment under clause (c) of Sec. 10(2).

[34] The aforesaid cases clearly indicate that apart from the fact that appropriate Government must act in consultation with Advisory Board constituted by the

Government must also act on relevant considerations which has been expressly spelt out in Sec. 10(2) of the Act, and failure to account for any of the considerations would leave this provision vulnerable to attack on the ground that it has failed to take into account vital facts expressly required to be taken into account by the statute under which the delegate resorts to subordinate legislation.

[35] In this connection, it will be apposite to refer to the statement appearing in the notification as to factors that have been taken into consideration by the appropriate Government :

> "Therefore, looking to the facts that the contract labour system in security department in GNFC, Bharuch is going on since last twenty years and having regard to the conditions of work and benefits provided to the contract labour in the establishment. The work is of perennial in nature and it can be done ordinarily through regular workmen and is sufficient to employ considerable number of full-time workmen in that establishment. In exercise of the powers conferred by sub-sec. (1) and (2) of Sec. 10 of Contract Labour (Regulation and Abolition) Act, 1970 and after making closed scrutiny of the records, Proceedings and report of State Contract Labour Advisory Board, the Government of Gujarat hereby prohibits employment of contract labour system prevailing in the Security Department (i.e. Watch and Ward department) of Gujarat Narmada Valley Fertilizers Company Limited, Bharuch with effect on and from the date of publication of this Notification in the Gujarat Government Gazette."

[36] From the perusal of Sec. 10 quoted above, the considerations required under Clause (a) to (d) of sub-Sec. (2) of Sec. 10 are (a) whether the process, operation or other work is incidental to, or necessary for the industry, trade, business, manufacture or occupation that is carried on in the establishment; (b) whether it is of perennial nature, that is to say, it is of sufficient duration having regard to the nature of industry, trade, business manufacture or occupation carried on in that establishment; (c) whether it is done ordinarily through regular workmen in that establishment or an establishment similar thereto; (d) whether it is sufficient to employ considerable number of full-time workmen. We find that the declaration as to considering the phenomena in clause (a), (b) and (d) find place in notification and is conspicuously silent about the fact whether the appropriate Government has considered whether the work of security department is done ordinarily through regular workmen in the establishment or in other establishments similar thereto.

[37] I have been taken through the report made by the Advisory Board which too is silent about this aspect whether in the security department in the similar establishments of the trade in the region the work is discharged by regularly employed

persons or through contract labour, after it found that the Watch and Ward work is being carried through contract labour for about twenty years.

[38] It may be noticed that where a notification is issued in case of a single establishment it becomes all the more relevant that this consideration goes into the consideration making of order to dispel the charges on the ground of discrimination. Consideration of the practice of employment of workmen in the concerned operation in the same or similar establishments through contract labour or regular employment unfolds in case in similar establishments work is discharged through regular employment the abolition of contract labour in concerned establishment would apparently justify its abolition and dispel the doubts about being singly picked up for giving differential treatment; in case the facts are otherwise, the consideration would show the grounds or reasons which may justify the making of notification in the case of that single establishment. I may make it clear that presently I am not examining the issue from the point whether abolition of contract labour in single establishment necessarily give rise to a question of hostile discrimination or not. It is only with a view to consider the necessity of considering the practice prevalent in the same establishment or in similar establishment in getting the work or operation in question to be discharged through contract labour or regular employment before the notification under Sec. 10 is issued.

[39] The petitioner has alleged in its petition that the impugned notification is also violative of Art. 14 of the Constitution inasmuch as the same is applicable only to the petitioner-company and not to similarly situated other establishments. The petitioner submits that a large number of industrial establishments and both in public sector and private sector, are having the system of security department run through the contractors. As a matter of fact, it has been even the policy of the Central Government and many State Governments that in the public sector undertakings, the security system should be run through contractors, especially because the plant security of the industrial undertakings is the first and primary necessity for the working of the industrial establishments and the impugned notification is issued in violation of Art. 14 of the Constitution and deserves to be quashed. No reply to this averments has been made in the reply-affidavit filed on behalf of the State. It was also pointed out by referring to the written statements made before the State Advisory Board that a pointed reference was made to the provisions of Sec. 10(2)(c) inviting attention to the practice of employing contract labour of engaging private security contractors to provide security services in the companies like IPCL, (Dahej), GACL (Dahej), Glaxo India Ltd. (Ankleshwar), Hoechst India Limited, (Ankleshwar), Asian Paints Ltd, (Ankleshwar) and also to industries located in Hajira belt of Surat like Reliance, L&T, ESSAR Steel etc. they all engage security personnel through private agencies. Details

were also furnished by annexing as Annexure VIII(B) to the written submissions before the Advisory Board. The report or these orders made by the State Government by the reply-affidavit submitted here does not disclose in any manner that notwithstanding inviting attention thereto in written submissions the same was considered at any level in the decision making process before issuing notification as to the practice of engagement of private security contractors to provide security services in similar industries situated in the region, names of which were disclosed, and if so, what necessitated to depart from the practice in the case of petitioner particularly in the light of stand taken by the State Government not in distant past for not extending the prohibition to the security operations of the establishment while issuing notification prohibiting engagement of contract labour in other departments emphasising the need of entrusting the security requirements to man by independent agency in the case of all joint sector companies and Government companies and units controlled by the Government, when the petitioner is undisputedly a joint sector company. Relevance of this consideration particularly in the field of security of industrial undertaking further cannot be undermined. In this consideration, constitution of Central Industrial Security Force under separate statute is another pointer to the necessity of keeping out the security service of industries ordinarily free from prohibiting orders and be kept under regulatory provisions. Total prohibition of employment of Contract Labour in any establishment may deprive it altogether of getting security under cover of CISF which it can otherwise take under its provisions. This silence in making reference to this aspect of the matter at all levels leads to irresistible conclusion that the appropriate Government has failed to take into account the vital facts about the practice prevalent in the establishment or other similar establishment as to discharge of work through regular employment or through contract labour which was required to be taken into account under Sec. 10(2)(c) of the Act and the notification is a piece of subordinate legislation fails on the touchstone of the said test.

[40] Another ground raised by the petitioners challenging the notification is that it has been issued in breach of principles of natural justice. It was urged that though the petitioners were given an opportunity of hearing before the Advisory Board in which they had participated also but as the ultimate decision making authority is the State Government hearing by the Advisory Board and decision by the State Government does not satisfy the test of a fair opportunity of hearing. It was urged that an opportunity of hearing is necessarily required to be given to the petitioner as notification acts adversely to the petitioners' interest and once that is established the hearing must be by the person who is entrusted to take decision and not by the consultative body.

[41] It has been urged on behalf of the respondents that notification abolishing contract labour in an establishment is legislative in character and unless specifically required by the statute under which such delegated legislation takes place, no hearing is required to be given to the petitioner or for that matter to any one. Reliance was placed on decision of this Court in South Gujarat Textile Processors' Association and Ors. v. State of Gujarat and Ors., 1994 (1) GLH 94 wherein exercise of power under Sec. 10 has been held to be by way of subordinate legislation and requirement of hearing has been held to be negated.

[42] After considering a catena of decisions the Court agreeing with the view expressed by the Madras High Court in Dalmiya Cement v. Government of India, 1991 (1) LLM 406 that the exercise of power contemplated under Sec. 10 partakes the character of legislative activity and more in the nature of delegated or conditional legislation then passing order in exercise of any quasi judicial or administrative power affecting individual rights of parties. Thus, the powers exercised under Sec. 10(1) were held to be quasi legislative. Thus, holding it was further held that no hearing before making legislation is contemplated under the Act and therefore hearing is not required, nor it could be challenged on the ground of non-compliance with the principles of natural justice it being result of in quasi legislative action.

[43] Even assuming that the action was quasi judicial, the Court found that all the interested parties involved in the industry, namely, the factory owners, contractors and employees were given sufficient opportunity to submit their say and viewpoints before the Advisory Board and the Advisory Board had taken those submissions and considerations into account. It can certainly be said that a fair treatment was given to all concerned and use of a particular nomenclature would not make any difference.

[44] The decision was followed by another Division Bench of this Court in Alembic Chemical Works Co. Ltd. & Anr. v. State of Gujarat & Anr., 1995 (1) GLR 143. The Court after referring to decision in South Gujarat Textile Processors Association, 1994 (1) GLH 94, reiterated.

> "While exercising powers under Sec. 10(2) of the Act, Government acts in its quasi legislative sphere. Thus, the action taken by the Government is quasi legislative in nature and not quasi judicial or administrative. Therefore, while discharging quasi legislative function, the Government is not required to afford an opportunity of being heard to the petitioner".

[45] It was strenuously contended by learned Counsel for the petitioner that the facts of the two cases are distinguishable and even if the action is taken to be quasi legislation or subordinate legislation, it being in respect of only one unit must be held

to be subject to principles of natural justice in view of decisions of the Supreme Court. It was pointed out that the case of South Gujarat Textile Processors' Association was a case of class legislation and not an individual legislation.

[46] It is true that decision in South Gujarat Textile Association case the notification was in respect of the class of industries situated in that area in Surat and Bulsar. whereas the present case is a case where notification is in respect of one industry only. However, the decision in Alembic Chemical Works, 1995 (1) GLR 143 was in respect of a notification issued in respect of one establishment only and no distinction on facts can be found in the present case.

[47] Having heard learned Counsel for the parties at length and considering the observations made by the Supreme Court in State of U. P. v. Renusagar case (supra) and latter decision of the Supreme Court in State of Tamil Nadu v. Sabanyagam, 1998 (1) SCC 318, there is a room for contention that whether in view of these pronouncements of Supreme Court the broad principle enunciated in the two decisions of the Court referred to above that in all circumstances, no hearing is necessary where the exercise of power is found to be legislative in character, needs reconsideration in the light of above decisions.

[48] The character of State action bears and requirement of hearing the affected party as a part of duty to act fairly depends on the object and subject of the action. Some indication to that principle we find in the pronouncement in Union of India v. Cyanamide India Limited, AIR 1987 SC 1802. It was a case relating to fixation of price generally under the Essential Commodities Act. The manufacturer had challenged the Government order under the said Act being violative of principles of natural justice, as it affected the manufacturers already. The Court observed :

> "It is true with the proliferation of delegated legislation, there is tendency
>
> for the line between legislation and administration to vanish into illusion.....
>
> The distinction between the two has usually been expressed as one between the general and particular : 'A legislative act is the creation and promulgation of a general rule of conduct without reference to particular cases; an administrative act is the making and issue of a specific direction or the application of a general rule to a particular case in accordance with the requirement of policy. Legislation is the process of formulating a general rule of conduct without reference to particular cases and usually operating in future; administration is the process of performing particular acts, of issuing particular orders, or of making decisions which apply general rules to particular cases."

[49] With these premise the Court further observed :

> "that a price fixation measure does not concern itself with the interests of
>
> an individual manufacturer or produce..... It is intended to operate in future.
>
> It is conceived in the interest of general consumer public. It is with reference to generality of application of price fixation order operating in future and its object being consumer protection, the fact that it incidentally affected the producer was held to be of no consequence in holding the act of price fixation of legislative in character not requiring a hearing. However, it was distincdy made out that where the action is directed against a particular or individual in giving effect to legislative policy already engrafted in statute, the activity partakes the character of administrative that may require adherence to requirement of fair procedure required of such action.

[50] With line between the legislative and administrative action getting thin, and more and more decision making being left to delegate the Court made out the distinction between the requirement of fair procedure to be adopted in cases governing class against case affecting individual again in Renusagar's case (supra).

[51] In Renusagar's case (supra), the Court was considering the nature of power exercisable by State of U.P. under Sec. 3 of the U.P. Electricity (Duty) Act 1952. The Court said referring to Cyanamide's case :

> "It appears to us that sub-Sec. (4) of Sec. 3 of the Act in the set-up is quasi legislative and quasi administrative insofar as it has power to fix different rates having regard to certain factors and insofar as it has power to grant exemption in some cases, in our opinion, is quasi legislative in character. Such a decision must be arrived at objectively and in consonance with the principles of natural justice. It is correct that with regard to the nature of the power is exercised with reference to any class, it would be in the nature of subordinate legislation but when the power is exercised with reference to individual, it would be administrative."

[52] In K. Sabanayagam's case (supra) which is later in time than the two Bench decisions of this Court, Majmudar, J speaking for the Apex Court said explaining in which form of legislation activity lay the delegated authority hearing will be required to be given :

> "In a case of purely ministerial function or in a case where no objective conditions are prescribed and the matter is left to the subjective satisfaction of
>
> the delegate ..... no such principles of fair play, consultation or natural justice

could be attracted.....There may also be situations where the persons affected

are identifiable class of persons or where public interests of State etc. preclude observance of such a procedure.

But there may be a third category of cases wherein the exercise of conditional legislation would depend upon satisfaction of the delegate on objective facts placed by one class of persons seeking benefit of such an exercise with a view to deprive the rival class of persons who otherwise might have already got statutory benefits under the Act and who are likely to lose existing benefits because of exercise of such a power by the delegate. In such type of cases, the satisfaction of the delegate has necessarily to be based on objective consideration of the relevant data for and against the exercise of such powers. This exercise is not left to his subjective satisfaction nor it is mere ministerial exercise."

[53] Section 36 of Payment of Bonus Act was held to be in third type of legislative action that required adherence to principles of natural justice.

[54] It has been seen the object of the Act of 1970 is not abolition of contract labour in all cases but only wherever and whenever possible. Also, it is apparent the exercise of authority in this regard is not on subjective satisfaction of the delegate authorised to exercise such power but depends on objective consideration of relevant factors stated in statute and in consultation with an advisory board which has to be constituted of all interest likely to be affected by exercise of such authority. It is also clear that power under Sec. 10 is exercisable in respect of a class of industrial undertaking or any individual undertaking or any process operation or work of any establishment. In the former case, it is directed against an undeterminate number, but all included in a class, but in latter case it affecting only a single establishment or unit.

[55] But in view of the conclusions to which I have reached about non-fulfilment of essential condition by the delegate, its failure to take into consideration the vital considerations which it was required to take into consideration under the relevant statute and the fact that in the present circumstances, I am satisfied that even if the principle of natural justice need to be adhered in the present case and the requirement is substantially complied. I leave the matter at that.

[56] It is to be noticed in this connection that as early as in 1972 in Vegoils Private Limited v. The Workmen, AIR 1972 SC 1942, the Supreme Court while examining the scheme of the Act noticed :

"The said Act specifically deals with die Central Government and the State Government constituting the Central Advisory Board and the State Advisory Board

respectively. Those Boards consist of representatives of the workmen, industry and of the contractor. Sec. 10 dealing with prohibiting employment of contract labour gives power to the appropriate Government to prohibit employment of contract labour in any process, operation or other work in any establishment. But before issuing a notification prohibiting the employment of contract labour, the appropriate Government is bound to consult the Central Board or the State Board, as the case may be. That means the representatives of the contractor, the workmen and of the industry will have a voice in expressing their views when the Board concerned is being consulted with regard to a proposal to prohibit contract labour. Sub-Sec. (2) lays down the various matters which are considered to be relevant factors to be taken into account by the appropriate Government before a notification prohibiting contract labour is issued."

[57] The aforesaid observation shows the fairness embedded in the procedure required to be gone into before decision-making including the consideration of affected interest. That was spelt out from the very nature of Constitution of Advisory Board. The Act postulates all required interests to form part of Advisory Board. Consultation with such Board is made precondition before appropriate Government decides to act under Sec. 10 of the Act. The consultation as discussed has to be effective and meaningful which include necessity of showing of all information between the authority seeking consultation and the Board giving advice. What is required under the statute is not individual hearing of all interest separately, but cumulative and collectively. Consideration of all interest which can speak through such Advisory Board. We are considering as an admitted premise that the 'act' in question is legislative character and not an administrative or quasi judicial. The principle of nature of hearing applicable to administrative or quasi judicial orders affecting a person cannot be imported while considering such requirement where it exists a legislative act in its fulfilment. It must depend on the scheme of the statutory provision under which such activity takes place. No fixed principles can be invoked and applied. In the absence of statutory provision, it will depend upon the facts, circumstances, and object with which such power is to be exercised. Where there are statutory provisions providing specifically or by necessary implication the procedure to be followed, the requirement of natural justice, wherever they are required to be followed, must conform to such frame-work. The very fact that a statutory Board was to be constituted representing the various interests, namely the employer, the contractor and the workmen and that constituted body was required to be consulted the nature of hearing contemplated under the Act was only voicing the concern by the respective interests, namely, workmen, the contractor and the employer was through advisory board through the process of consultation. The individual hearing by the State Government of the various interest except perhaps in the case of determining the issue of perennial nature of the work, if the same is raised

is ruled out. If there has been effective consultation in the sense that the concerned interests had an opportunity to participate in the process of consultation with the State Government through the Advisory Board, in my opinion, it satisfies the requirement to adherence to principles of natural justice in the context of the provisions of the Act of 1970. There is no dispute before me that each of the affected parties, namely, the contractor, the employer, and the workmen and the Union had been given notice and they have in fact appeared before the advisory board, participated in the proceedings and had been heard by the Board before making its final report after taking into consideration the final report to the Government as a part of consultation.

[58] There is yet another aspect of the issue in the present case. The present petitioner had challenged the earlier notification under Sec. 10 dated 16-1-1996 vide Special Civil Application No. 1388 of 1996. While quashing the said notification for want of due application of mind directed the State Government to decide the question of prohibiting the employment of contract labour in security department once again. In giving such direction the Court further directed :

> "The Advisory Board may consider the entire material after hearing all the sides. The parties may supplement their grounds and may place any material before the Advisory Board which they think proper and thereafter on a fresh report by the Advisory Board the Government may take a fresh decision in accordance with law."

[59] The hearing has been afforded to petitioner as contemplated under the order. Nothing more was asked or granted. As the fresh order has come in pursuance of directions given by the Court, and such directions as to hearing have been complied with, is yet another reason for holding that the impugned notification cannot be held to be suffering from vice of lack of opportunity of hearing.

[60] In the present case, even obligation to afford opportunity of hearing is assumed in favour of the petitioner, there is no such breach. The contention therefore is overruled. I may clarify giving an opportunity of hearing is one facet and non-consideration of a vital relevant factor which is required by the statute is quite another.

[61] The last contention as to the question of violation of Art. 14 by singling out the petitioner for the purpose of abolition of employment through contract labour in the security department while permitting the same system to continue in other similar industries in the region is concerned. It was pointed out by learned Counsel for the respondent that the impugned notification cannot be impugned on the ground of violation of Art. 14. It has been contended that in the very nature of statutory provisions wholesale prohibition or abolition of contract labour is not envisaged. It permits prohibition of employment through contract labour bit by bit and in the very

nature of things a start has to take place at some point. Therefore, mere fact that the petitioner has been chosen as a starting point cannot give rise to plea of hostile discrimination in the context of the object of legislation. It was pointed out that the primary object of the legislation is to abolish contract labour but the same being not possible at one go, the object has been diluted to abolish contract labour wherever possible and practicable and where it cannot be abolished all together the policy of the Act is that the working condition of the contract labour should be so regulated as to ensure payment of wages and provisions of essential amenities. That has been so declared by Supreme court in M/s. Gammon India Ltd. (supra).

[62] It was also urged by respondents that the abolition of contract labour could have been done by the primary legislature. Had it acted and included a single establishment for the purpose of abolition of contract labour which was to be abolished gradually it would not have been open to challenge on the ground of violation of Art. 14 for that reason alone. Reference in this connection was made to the decision of the Supreme Court in Lalit Narayan Mishra Institute of Economic Development and Social Change, Patna v. State of Bihar and Ors., AIR 1988 SC 1136.

[63] I am not prepared to accept such a broad proposition that in no circumstances, merely because the present legislation has laid down the policy of abolition of contract labour in piecemeal, no challenge legitimately can be raised against the notification issued under Sec. 10 on the anvil of Art. 14. Ordinarily, it is so, that where legislative policy is to attain an objective not at one stroke but by gradual process, and the action can be related to that object, it may be presumed that the action is valid. However, the principle underlying the decision in L. N. Mishra's case (supra) was that legislation has projected the object of statute to provide for taking over by the State Government all private educational institutions of State of Bihar. That is to say the object of acquiring each and every educational institute of State of Bihar, was the declared policy and in that there was no distinction, but at the same time it had been further decided to taking over of the private educational institutions at one stroke and legislature itself selected one institution initially for nationalisation. The Court found it to be not an act of discrimination when the facts justified the selection of particular institution. However, in the case of abolition of contract labour the object of statute itself is not to completely abolish the contract labour, nor the scope of Sec. 10 is that in all cases where certain conditions are specified the necessary consequence of fulfilment of such criterion would result in abolition of contract labour. The decision finally rests with the delegate on consideration of relevant material to abolish or not to abolish contract labour in a given case. One statutory requirement to be taken into consideration is to consider whether the process, operation or the work under consideration is done ordinarily through regular workmen or ordinarily done through contract labour the said

or other similar establishments. Thus, the statute itself has made it a fundamental requirement consideration about the prevalent practice as to the employment of workmen through contract labour or through regular employment in the establishment under consideration or in other similar establishments. Apparently, this serves two-fold objectives. Firstly, if in the very establishment or other establishment ordinarily th same work is done through regular employment the continuance of contract labour works as discrimination and it helps reaching the conclusion in its need to be abolished. In the reverse fact situation, it may require consideration by the appropriate Government in exercise of its authority whether to abolish or not to abolish contract labour in a given case, where there exists grounds to exercise power under Sec. 10 in respect of any establishment notwithstanding contrary practice prevalent in other establishments. It may also assist, in framing a policy to react all such establishments, in a phased manner, if that is thought to be more appropriate. This very enquiry leads to considerations germane for invoking ground of violation of Art. 14.

[64] It is for the challenger in each case to make grounds. It may be pointed out that in considering the question whether any provision is ultra vires the Constitution being violative of Art. 14, the starting point is assumption in favour of the validity of the action. The presumption does not go to the extent of holding that there must be some undisclosed reason for a discrimination when prima facie a case is made out that two persons similarly situated has been differently treated.

[65] The well settled principle in this connection stated is that burden showing that the classification rests upon the arbitrary and unreasonable rests upon the person who impinges the law. Presumption may be rebutted by showing that on the face of statute there is classification at all and no difference peculiar to any individual only or class, and yet the law hits only a particular individual or class. The petitioner may also prove by adducing evidence that the classification made by law was without any reasonable basis having nexus with object to be achieved and that the special treatment by the law has no feature to distinguish them from other so as to justify special treatment. Where the basis of classification is not apparent on the face of law, it may be established by the State not only by material evidence, or by bringing to the notice of facts of which Court can take judicial notice but also by making an affidavit stating the circumstances which led to the making of statute, instrument like notification. However, the presumption standing in favour of the State on primary burden cannot be carried to the extent of holding that there must be some undisclosed and unknown reason for speaking certain individuals or corporations to differential treatment than those who are similarly situated. Because that would make the protection clause only illusory.

[66] However, the present discussion must end here inasmuch as I have already reached a conclusion that the State has not applied its mind to the question about the fact whether the employment in the security department is ordinarily through regular employment in the establishment or in similar other establishments or through contract labour. Necessarily it leads to the conclusion that it has not also applied its mind to the question in case it reaches conclusion that the practice in other similar establishments in the region is employment through contract labour, but there is reason to prohibit only the petitioner from following the ordinary practice prevailing in the industry and to suffer the vigour of notification. Nor it appears to have applied its mind to the question that contract labour in security department has to be abolished in all similar industries but because of any practical difficulties it can only be done in a phased manner for which a start is being made. That is the conclusion to which I have reached because of non-speaking of such consideration in the notification and the report of Advisory Committee as well as not controversion in the reply-affidavit the averments made in this regard in the petition by the petitioner.

[67] To sum up the impugned notification under Sec. 10 of the Act 1970 has been issued without considering vital relevant factors, which appropriate Government was bound to take in consideration under express provision of the Statute and must fail on that ground. It cannot be held to suffer from want of offering opportunity of hearing in the facts and circumstances of the case. So also consideration of breach of Art. 14 while exercising power under Sec. 10 of the Act, is premature, so far as the present case is concerned. In my opinion, the examination of question from the point of view of violation of Art. 14 is premature at this stage.

[68] As a result, this petition succeeds. The impugned notification is quashed. The State Government is at liberty to decide the issue in accordance with law by taking into consideration all relevant facts which it is required to take into account under Sec. 10. Such decision may be taken within a period of three months from the date of service of writ.

There shall be no orders as to costs.

Petition allowed.