



Neutral Citation Number: 2023:DHC:5495-DB

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Judgment reserved on: 21.07.2023

% **Judgment delivered on: 03.08.2023**

+ **W.P.(C) 8056/2022 and C.M. Nos. 24455/2022, 24456/2022 & 13262/2023**

**BHARATIYA PRATIRAKSHA
MAZDOOR SANGH**

..... Petitioner

Through: Mr. Adarsh Kumar Tiwari & Mr. Vinit Pathak, Advocates.

versus

**UNION OF INDIA MINISTRY OF DEFENCE
THROUGH ITS SECRETARY
DEPARTMENT OF DEFENCE PRODUCTION
& ANR.**

..... Respondents

Through: Mr. Ajay Dignpaul, CGSC with Mr. Kamal R. Dignpaul, Ms. Swati Kwatra and Mr. Pushpesh Dignpaul, Advocates for respondent/ UOI.

**CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE SANJEEV NARULA**

J U D G M E N T

SATISH CHANDRA SHARMA, C.J.

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1. The present writ petition has been filed as a Public Interest Litigation (PIL) by *Bharatiya Pratiraksha Mazdoor Sangh* (BPMS) which is a federation of registered trade unions working in defence installations of Ministry of Defence, including Ordnance Factory Board and is an industrial unit of *Bharatiya Mazdoor Sangh* (BMS). It has been stated that BPMS is the largest trade union in the country and the petitioner federation is duly recognised by the Ministry of Defence, Government of India.
2. It has been further stated that the Petitioner Federation was constituted in 1966 as a federation of trade unions of civilian employees working in different directorates of Ministry of Defence. The petitioner trade union is aggrieved by a Gazette notification no. CG-DL-E-01102021-230101 dated 01.10.2021 by which a policy decision has been taken by the Government of India for conversion of Ordnance Factory Board (OFB) into seven Major Corporations. The petitioner in the writ petition has stated that the conversion of OFB into seven Major Corporations was recommended in the year 2000 by T.K.A. Nair Committee and the Committee recommended conversion of the OFB into the Ordnance Factory Corporation Limited.
3. The petitioner Federation has further stated that at the relevant point of time they met the then Defence Minister and they have been assured that no conversion of OFB into the Ordnance Factory Corporation Ltd. will take place. The petitioners have stated that the matter was pending with the Government of India and various Defence Ministers have given assurance to the petitioner Federation that there is no such proposal to corporatize the Ordnance Factories.

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4. The petitioners' grievance is that in the year 2020, the Government of India constituted an Empowered Group of Ministers (EGoM) under the chairmanship of *Raksha Mantri* to oversee and guide the entire process, whereby the OFB could be converted into one or more than one, 100% government owned corporate entities.

5. It has been further stated that on 16.05.2020, during the Corona Virus Pandemic, the Government of India announced its plan to corporatize the Ordnance Factories and the Finance Minister under the "*Aatma Nirbhar Bharat Abhiyan*" made such an announcement.

6. It has been further stated that on 17.05.2020, the Joint Action Council (JAC) of the recognized Federations of Defence Civilian Employees submitted a protest letter to *Raksha Mantri* and large number of meetings took place between JAC and the Government representatives.

7. It has been further stated that the JAC on 31.03.2021, lodged a complaint before the Chief Labour Commissioner (CLC) against the Department of Defence Productions (DDP) stating that the conciliation proceedings /settlement reached between the parties on 09.10.2020 in respect of strike notice dated 04.08.2020 have been violated. The petitioners' contention is that finally, a notification was issued on 01.10.2021, whereby seven Major Corporations have been established in place of OFB regarding corporatisation. The petitioner has raised the following grounds in the writ petition:

"A. It is respectfully submitted that the impugned notification has been passed without taking into consideration the views of the workers who are one of the main stakeholders/sufferers in the process of corporatization.



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B. It is respectfully submitted that the impugned notification is the result of abuse of power of government and suffers from manifest “arbitrariness” and therefore is violative of Article 14 of the Constitution of India.

C. It is respectfully submitted that the impugned notification is not based on any sound reasoning especially in view of the fact that recommendations regarding corporatization of all previous committees were discarded by the Governments of the day.

D. It is respectfully submitted that the impugned notification has been issued by illegally silencing the legitimate voice/ concerns of the workmen of OFB.

E. Any other ground with the kind permission of the Court at the time of argument.”

8. Learned counsel for the petitioner has vehemently argued before this Court that the action of Government of India is violative of Article 14 of the Constitution of India. It is violating the constitutional rights guaranteed to Government servants and their voice is being silenced. The petitioner – in the aforesaid backdrop, has prayed for the following reliefs:

“a). Quash and set aside the impugned Gazette notification no. CG- DL-E-01102021-230101 dated 01.10.2021 for being manifestly arbitrary ; and/or in alternative;

b) restrain the respondents from taking any further steps for implementation of impugned notification for being violative of the rights of workmen; and/or

c) to pass any other appropriate order(s) or direction(s) in favour of the Petitioners which this Hon’ble Court may deem just and proper in the facts and circumstances of the case, in the interest of justice”

9. A detailed and exhaustive reply has been filed by Union of India and it has been stated that the OFB Headquarters, Kolkata was a subordinate office of DDP, and under the OFB, there are 41 Ordnance Factories, 9

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Training Institutes, 3 Regional Marketing Centres, 4 Regional Controllerates of Safety, 25 Hospitals and 24 Schools.

10. It has been further stated that the turnover of the OFB was hovering around approx. Rs. 14,700 Crores during the previous few years but it came down to around Rs. 10,600 Crores in 2019-20 and the main customers of the OFB were Armed Forces and Paramilitary Forces.

11. It has been further stated in the reply that concerns were raised by the Armed Forces, over the last few decades, *inter alia*, relating to high costs of OFB products, inconsistent quality, and delays in supply. It has been further stated that as a Government Department, OFB could not retain profits, and therefore, had no incentive to make profits. It had largely remained as a production centre with Transfer of Technology (ToT) from foreign Original Equipment Manufacturers (OEMs).

12. It has been further stated that 75 to 80% of the production by OFB units was based on imported technology and large number of OFB Factories under the OFB were underutilized.

13. It has been further stated that several Committees were set up in the past to improve the performance of OFB and in respect of corporatisation by different Governments such as T K A Nair Committee (2000), Kelkar Committee (2004), Raman Puri Committee (2015) and Shekatkar Committee (2016) and all the Committees in turn have recommended for conversion of Ordnance Factories from a Government Department into a public sector company as a measure to improve self-reliance in our defence preparedness.

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14. The respondents have further stated that in order to enhance functional autonomy, efficiency and unleash new growth potential and innovation in Ordnance Factories, a proposal was submitted for approval of the Cabinet Committee on Security (CCS) to convert Ordnance Factory Board, a subordinate office of Ministry of Defence into one or more than one 100% Government owned corporate entities, registered under the Companies Act, 2013, which was approved by the CCS in its meeting dated 29.07.2020. The CCS also accorded approval to constitute an Empowered Group of Ministers (EGoM) to oversee and guide the entire process including transition support and redeployment plan of employees while safeguarding their wages and retirement benefits and the same was constituted.

15. The composition of the EGoM is as under:

“Minister of Defence - Chairperson.

Minister of Home Affairs.

Minister of Finance.

Minister of Law and Justice.

Minister of Labour and Employment.

Minister of State in the Ministry of Personnel, Public Grievance and Pensions.”

The Terms of Reference of the EGoM were as under:

“(i). Conversion of Ordnance Factory Board into a single Defence Public Sector Undertaking (DPSU) or as multiple DPSUs.

(ii). Transfer of non-production entitles like Training Institutes, or Controllerates of Safety to the proposed entity/entities.



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- (iii). *Matters related to various categories of employees (Group A, B and C) including protection of their salary and pension of existing employees, number of employees to be transferred to the proposed entity/ entities; terms of their transfer/ absorption; responsibility of pension liability of pre-2004 employees, etc.*
- (iv). *Grandfathering of orders already being executed by OFB and for which facilities have been created in OFB to ensure continuity in supply of strategic arms and ammunitions.*
- (v). *Financial support that may be provided to the entity/ entities to make them economically viable and self reliant for purposes like working capital, modernization of equipment, settlement of employees' dues etc.*
- (vi). *Treatment for land assets of OFB.*
- (vii). *Future of Indian Ordnance Factories Health Service.*
- (viii). *Any other related matter, as required.”*

16. The reply further reveals that the CCS in its meeting held on 29.07.2020 has accorded approval to convert OFB – a subordinate office of Ministry of Defence, into Government owned corporate entities. The Government of India has issued an Office Memorandum dated 21.06.2021 and the same is reproduced as under:

“

No. 1(5)/2021/0F/DP(Plg-V)

Government of India

Ministry of Defence

Department of Defence Production

New Delhi, 21st June, 2021

Office Memorandum

Subject: Cabinet approval to convert the production units of Ordnance Factory Board into 07 Defence Public Sector Undertakings (DPSUs) with 41units.



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The Cabinet Committee on Security (CCS) in its meeting held on 29.07.2020 had approved to convert Ordnance Factory Board (OFB), a subordinate office of Ministry of Defence into one or more than one 100% Government owned corporate entities, registered under the Companies Act, 2013.

2. It is informed that the Cabinet in its meeting held on 16.06.2021 has now inter-alia approved to convert the production units of OFB into 07 DPSUs with 41 units, as mentioned at Annexure-I.

3. Separate OMs on the related matters would be issued subsequently.

Sd/-

(Sandeep Jain)

Director (P&C)

Tel. No. 011-23011420”

17. Pursuant to issuance of the aforesaid Office Memorandum, another Office Memorandum was issued on 24.09.2021 in respect of dissolution of OFB and transfer of assets & liabilities of OFB to Public Sector Undertakings and Directorate of Ordnance. The Office Memorandum dated 24.09.2021 issued by the Government of India in respect of the aforesaid is reproduced as under:

“

No. 1 (5)/2021/OF/DP(Plg-V)/01

Government of India

Ministry of Defence

Department of Defence Production

New Delhi, 24th September, 2021

Office Memorandum

Subject: - Dissolution of Ordnance Factory Board and transfer of assets and liabilities of Ordnance Factory Board to



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new Defence Public Sector Undertakings and Directorate of Ordnance (Coordination & Services)

In pursuance of the decision of the Union Cabinet on 16th June, 2021, the Government of India has decided to corporatise the functions of the 41 production units (Ordnance Factories) of the Ordnance Factory Board ("OFB"), functioning under the Department of Defence Production, Ministry of Defence (DDP"). Accordingly, the undersigned is directed to state that the Government of India has decided to transfer, with effect from 1st October, 2021 ("Appointed Date), the management, control, operations and maintenance of these 41 units to 7 Government companies (wholly owned by the Government of India), namely (i) Munitions India Limited, (ii) Armoured Vehicles Nigam Limited, (iii) Advanced Weapons and Equipment India Limited, (iv) Troop Comforts Limited, (v) Yantra India Limited, (vi) India Optel Limited, and (vii) Gliders India Limited (collectively "New DPSUs") in respect of (a) production activities, viz production of arms, ammunitions, weapons, vehicles, defence equipment and non-defence equipment; and (b) identified non-production activities, as set out in Annexure A. The Government of India has also decided to transfer, with effect from the Appointed Date, the management, control, operations and maintenance of certain identified non-production units of OFB and identified surplus land at 16 production units of OFB to the Directorate of Ordnance (Coordination & Services) ("Directorate") under the DDP, as set out in Annexure B. The New DPSUs have been incorporated as Government companies (wholly owned by the Government of India) with limited liability by shares under the Companies Act 2013 with registered office and corporate offices as set out in Annexure A.

2. Accordingly, on and with effect from the Appointed Date, OFB, which has been set up vide Ministry of Defence letter no. 1(82)/78/D(Fy.I) dated 09.01.1979, shall cease to exist as a body.

3. The Government of India has decided to transfer all assets and liabilities of OFB to the New DPSUs and the



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Directorate as per the structure set out in Annexures A and B, with effect from the Appointed Date. The transfer of assets and liabilities to the New DPSUs and the Directorate will be subject to the following terms and conditions: -

- (i) The New DPSUs and the Directorate will carry out the duties and responsibilities regarding the objectives / businesses as set out in Annexures A and B, in accordance with rules and such other directions as may be given by the Government of India from time to time.*
- (ii) The assets and liabilities of OFB functioning under the DDP will stand transferred to the New DPSUs and the Directorate as per the structure set out in Annexures A and B of this memorandum, with effect from the Appointed Date. The details of the assets and liabilities will be worked out as per records availability with the units and the DDP as on the Appointed Date after records and accounts are finalised upto this period. It is clarified for the avoidance of doubt that the assets will stand transferred to the New DPSUs and the Directorate as per the structure set out in Annexures A and B of this memorandum, notwithstanding such assets as of date being reflected in the assets registers of different production units.*
- (iii) A separate OM would be issued regarding sharing of such assets/facilities which are traditionally being used commonly by two or more production/non-production units ("Common assets").*
- (iv) The assets and liabilities in respect of the business currently being carried out on account of the Government shall stand transferred to the New DPSUs on the Net Asset Value thereof. The Net Asset Value of the assets comprising the business being transferred to the respective New DPSUs has been provisionally assessed as INR 79,271 Crores as on 31.03.2021 (Annexure C). The said sum will be treated as the provisional value of the business being transferred to and taken over by the New DPSUs subject to finalisation of*



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the transfer value within 3 months of the Appointed Date in consultation with the DDP.

- (v) *The capital structure of the New DPSUs with effect from the Appointed Date shall be as set out in Annexure D.*
 - (vi) *The New DPSUs and the Directorate as the successor shall be responsible for all assets and liabilities and for satisfactory execution of all agreement, contracts and/or obligations in force which pertains to the respective businesses and responsibilities being transferred to them (as set out in Annexures A and B).*
 - (vii) *The New DPSUs and the Directorate shall be solely responsible for honouring and performing all respective contracts / agreement and shall be liable for any defaults, delays or non-performance. The New DPSUs shall keep for all times the Government indemnified from all claims, in connection with their respective businesses (as set out in Annexure A).*
4. *DDP shall be the sole arbiter for resolving any issues regarding implementation of the aforesaid corporatisation exercise and related matters.*
5. *These orders will come into effect from 1st October, 2021 (Appointed Date).*
6. *A Compliance Report regarding implementation of the aforesaid decisions/directives would be submitted to DDP by the new DPSUs and the Directorate by 31.12.2021 .*

Sd/-

(Sandeep Jain)

Director (P&C)

Tel. No. 011-23011420”

18. Finally, Ministry of Defence, Department of Defence Production in light of the Memorandum of Understanding dated 29.09.2021 passed a resolution dated 01.10.2021 which is impugned in the present writ petition



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by which corporatization of 49 Ordnance Factories, Training Institutes, Regional Marketing Centres, etc. has taken place. The Gazette notification dated 01.10.2021 in respect of corporatization of the OFB is reproduced as under:

“

MINISTRY OF DEFENCE
(Department of Defence Production)

RESOLUTION

New Delhi, the 1st October, 2021

No.7(E)– By virtue of the Memorandum of Understanding dated 29th September, 2021 entered into between the President of India (acting through Shri Puneet Agarwal, Joint Secretary to Government of India, Department of Defence Production (DDP), Ministry of Defence) and Munitions India Limited, Armoured Vehicles Nigam Limited, Advanced Weapons and Equipment India Limited, Troop Comforts Limited, Yantra India Limited, India Optel Limited and Gliders India Limited (the seven companies collectively referred to as “New DPSUs”), the activities in the production of arms, ammunitions, weapons, vehicles, defence equipment and non-defence equipment (which were earlier undertaken by the 41 units of Ordnance Factory Board (“OFB”) under Department of Defence Production, Ministry of Defence) have been transferred to the New DPSUs with effect from 1st October, 2021 (“Appointed Date”), as per the structure set out in Annexure A. Further, the management, control, operations and maintenance of certain identified non-production units of OFB and identified surplus land at 16 production units of OFB have been transferred to the Directorate of Ordnance (Coordination & Services) (“Directorate”) under the DDP with effect from 1st October, 2021, as set out in Annexure B.

2. On and with effect from the Appointed Date, OFB, which has been set up vide Ministry of Defence letter no.



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1(82)/78/D(Fy.I) dated 09.01.1979, shall cease to exist as a body.

3. All the assets and liabilities of OFB stand transferred to the New DPSUs and the Directorate, as per the structure set out in Annexures A and B.

4. All the existing contracts, agreements, deeds, purchase orders and Memorandum of Understandings entered into by OFB or any of its production and non-production units with various suppliers, contractors, vendors, companies, Organisations and individuals in respect of supply of plant and machinery, raw materials, purchase of land and building, Transfer of Technology and supply of services or any other arrangement, subsisting on the date of transfer of business and/or required for operations of the New DPSUs and Directorate (as per the structure set out in Annexures A and B) and with subscribers of all types of services to be provided by the New DPSUs and Directorate, will also stand transferred to the New DPSUs and the Directorate (as per the structure set out in Annexures A and B) with effect from the Appointed Date.

5. The New DPSUs and the Directorate will be solely responsible for honouring these contracts, agreements, deeds, purchase orders and Memorandum of Understandings for their due performance and in case of disputes to sue and be sued as the successor/assignee under the contracts, agreements, deeds, purchase orders and Memorandum of Understandings and shall be liable for any defaults, delays, or non-performance.

6. With effect from the Appointed Date, any reference, in any correspondence, bills, notices, and other documents to the OFB, having been issued prior to the Appointed Date shall, wherever the context so permits and allows, be read as reference to the New DPSUs and the Directorate, as per the structure set out in Annexures A and B.

7. With effect from the Appointed Date, in any bill, notice, or other document issued by the New DPSUs and the Directorate, bearing any reference to the OFB, shall, wherever the context so permits and allows, be read as reference to the



New DPSUs and the Directorate, as per the structure set out in Annexures A and B.

8. *With effect from the Appointed Date, all cheques, drafts or other instruments under which payment is to be made in favour of the Government of India in respect of monies owed to the OFB, wherever the context so permits and allows, be drawn in favour of the New DPSUs and the Directorate, as per the structure set out in Annexures A and B.”*

19. The contention of the respondents is that the policy decision of the Government of India has been arrived at in order to enhance functional autonomy, efficiency and to increase production in the interest of the nation and the interest of the employees has been safeguarded by protecting their wages and retiral benefits. The respondents have further stated that in respect of a policy decision which is in national interest, the question of interference by this Court in exercise of its writ jurisdiction under Article 226 of the Constitution of India does not arise. The respondents have prayed for dismissal of the writ petition.

20. Heard learned counsel for the parties at length, and with the consent of the parties, the matter is being disposed of at the motion hearing stage itself.

21. The facts of the case reveal that the conversion of the Ordnance Factories from a Government department into a public sector company has been recommended by a number of committees that have been established by different governments in the past, including the T K A Nair Committee (2010), Kelkar Committee (2004), Raman Puri Committee (2015) and Shekatkar Committee (2016). The recommendation has been made as a measure to improve self- reliance in our defence preparedness.

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22. To enhance functional autonomy and innovation in Ordnance Factories, a proposal was submitted for approval of the Cabinet Committee on Security (CCS) to convert OFB – a subordinate office of Ministry of Defence, into one or more than one 100% Government owned corporate entities, registered under the Companies Act, 2013, which was approved by the CCS in its meeting dated 29.07.2020. The CCS accorded approval to constitute an EGoM to oversee and guide the entire process including transition support and redeployment plan of employees while safeguarding their wages and retirement benefits.

23. On 04.08.2020 a joint strike notice was received from the three recognized Federation of Defence Civilian Employees (AIDEF, INDWF & BPMS) that they proposed to call an indefinite strike w.e.f. 12.10.2020 by the Defence Civilian Employees of the Ordnance Factories and DGQA units functioning inside the Ordnance Factories because of the following demands:

- (i) to withdraw the proposed move of the Government to convert the departmentally run Ordnance Factories into a Corporation/PSU;
- (ii) to Set up an Expert Committee for studying the requirement/methodology for improving the productivity, accountability of the top management, integration of various functions, independent R&D, power for entering into ToT etc., of OFB in the Government setup itself;
- (iii) to not proceed further for converting the OFB into a Public Sector entity which will adversely affect the existing benefits/rights which the employees of Ordnance Factories and the future entrants

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are eligible as Central Government Employees/ Defence Civilian Employees.

24. On 15.09.2020 and 09.10.2020 joint discussions were held by the Office of the Chief Labour Commissioner (Central) with the three Federations and the Department/OFB. On 09.10.2020 during the conciliation meeting, two major decision were taken:

(a) meeting with Secretary, Defence Production and EGoM can be arranged so the Unions can put forward their issues and grievances pertaining to the disputes before them; and

(b) It was agreed by both the parties that in respect of strike demands dated 04.08.2020, during the pendency of ongoing conciliation proceedings, the Employer will abide by the provisions of section 33(1) of Industrial Disputes Act, 1947 and Unions will not proceed on proposed strike from 12.10.2020.

25. On 29.10.2020 three Federations held interactions with Secretary, Defence Productions (DP). The Federation reiterated their demands of setting up of a new committee to recommend how the OFB would work in the setup. In response, it was stated that there was no justification for setting up another committee as OFB reforms had been considered by several expert committees in the past. However, after repeated assertion of Federations, it was decided that they may give specific suggestions and action plan. Accordingly, the Federations vide their joint letter dated 20.11.2020 forwarded a proposal for re-structuring of OFB within the present set up.

26. On 05.01.2021, again deliberations with the Federations were held under the Chairmanship of Secretary (DP) to understand the relevance and

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feasibility of the Federations proposal in the context of improvement in the autonomy, and efficiency in ordnance supplies by OFB. The proposal was not found feasible. The Federations again submitted another proposal on 12.02.2021 which was mostly reiteration of their earlier proposal and there were no suggestions. This new proposal was about non-negotiable demands, mainly that their service conditions may not be adversely altered. This proposal was also not found feasible and relevant. On 02.03.2021 the EGoM was apprised about both proposals of Federations.

27. The CLC convened a conciliation meeting on 11.06.2021 wherein the Federation alleged that DDP has continued to work towards the Corporatisation which is in violation of section 33(1) of ID Act. No meeting was arranged with EGoM. Representative of DDP reiterated that at no point of time, DDP violated section 33(1) of ID Act as they have not altered any service conditions of employees which will adversely affect the employees. EGoM was also apprised of their demands and same were considered sympathetically by them. During the next date of conciliation meeting on 15.06.2021, CLC concluded that enough efforts were made to bring the parties to an amicable settlement in the interest of industrial peace and harmony. However, no settlement could be arrived and therefore, the conciliation proceedings were declared by CLC as failed. The Secretary also held interaction with other employee association of OFB on 19.11.2020. Another round of interaction with these Associations was held on 23.12.2020 to deliberate upon the suggestion by them.

28. The Cabinet in its meeting on 16.06.2021 and subsequently the EGoM in its meeting held on 17.09.2021 has approved some measures. This decision allowed companies autonomy as well as helps improve

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accountability and efficiency in the functioning of the 41 factories under the new companies. This restructuring is also aimed at transforming the Ordnance Factories into productive and profitable assets, deepen specialisation in product range, enhance competitiveness. Thus, the reason for corporatisation is rational and logical. While taking decision to convert OFB into 7 corporate entities, the government has ensured that the service conditions of the existing employees of OFB are protected as central government employees. Government is committed to safeguard the interest of the employees of OFB. It has been decided that all the employees of OFB (Group A, B &C) belonging to the production units would be transferred to the corporate entities on deemed deputation initially for a period of two years without altering their service conditions as central government employees. The pension liabilities of the retirees and existing employees will continue to be borne by the Government. The Hon'ble Raksha Mantri held interactions with the Federations of OFB employees on 16.07.2021 and appealed to them to continue interactions with the Department. Accordingly, the Federations had interaction with Secretary (DP) on 27.08.2021 however, it did not bring out any new point for discussion. Seven new companies have been incorporated.

29. Despite numerous efforts by the Government to explain the benefits of corporatisation to the Federations and Associations and ensuring that their interests would be safeguarded and their service conditions would be protected, they are still adamant and still sticking to their stand and are protesting against corporatisation of OFB. Even attempts of Conciliation failed. All along, OFB has been working as a Government Department, all their expenditure were being met from the Consolidated Fund of India, with

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no real relation to the input and the outcomes. With corporatisation, the restructured units of OFB will be free from govt. control/rules/regulations and attain much needed autonomy in their operations and thus get an opportunity to improve their performance & become more competitive in the export market as well.

30. In spite of the Government's assurance to take care of the conditions of service of the employees of the Ordnance Factory Board, the recognised federation reiterated their intention to go on indefinite strike from 26.07.2023. Since it is essential that an uninterrupted supply of ordnance items to armed forces be maintained for the defence preparedness of the country and ordnance factories continue to function without any disruptions, in view of prevailing situation on the northern front of the country, and it was felt necessary that the Government should have power to meet the emergency created by such attempts and ensure the maintenance of essential defence service in all establishments connected with defence, in public interest or interest of the sovereignty and integrity of India or security of any State or decency or morality.

31. The Cabinet approved "The Essential Defence Services Ordinance, 2021" on 23.06.2021 which was promulgated on 30.06.2021 by President of India under clause (1) of Article 123 of the Constitution of India. The Ordinance provided the Central Government power to prohibit strike in essential defence services, dismiss employees participating in illegal strikes, power to penalize any person for illegal strikes, instigation and giving financial aid to the illegal strikes and conferring power to arrest without warrant. Essential Defence Service bill was passed and Hon'ble President gave assent to the bill on 11.08.2021. Essential Defence Services Act

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(EDSA) has a sunset clause of one year and the provisions of the Act are applicable only when the same are invoked by the Government for the particular installation. EDSA only prohibits instigating, supporting and participating in Strike in Essential Defence Services. All the provisions of conciliation and adjudication, freedom to form unions/association and all other Industrial Relation mechanism as enshrined under various statutes will continue. Right to strike is not fundamental to our Constitution. The intention on prohibition on instigating, supporting and participating in Strike in Essential Defence Services, is to prevent interruptions in production and supply of ordnance items in Essential Defence Services so as to ensure defence preparedness and security of State. The facts remain that the EDSA has come to an end by efflux of time.

32. The reply of the Union of India establishes that while taking the decision to convert OFB into 7 corporate entities, the Government has ensured that the service conditions of the existing employees of OFB are protected as Central Government employees and a statement on affidavit has been made that the Government is committed to safeguard the interest of employees of OFB. The Government of India has decided that all employees of OFB (Group A, B & C) belonging to production units would be transferred to the corporate entities on deemed deputation initially for a period of two years without altering their service conditions as Central Government employees. It has also been stated on affidavit that the pension liabilities of the retirees and the existing employees will continue to be borne by the Government. Meaning thereby, it has been stated on affidavit that the service condition of the employees will not be changed. They will be entitled to the same benefit which they were drawing prior to conversion

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of OFB into corporate entities registered under the Companies Act, 2013 and 100% owned by the Government.

33. The policy decision of the Government of India is certainly aimed to enhance functional autonomy, efficiency and unleash new growth potential and innovation in Ordnance Factories. The re-structuring is also aimed at transforming the Ordnance Factories into productive and profitable assets, deepen specialisation in product range, enhance competitiveness, improving quality and cost efficiency. It is a policy decision of the Government of India in national interest. It is well-settled proposition of law that the Courts cannot bind the Government to its policy decisions taken in public interest and in national interest.

34. The scope of interference by a Court in policy matters have been crystallized by the Apex Court in a number of cases. The Apex Court in *Bajaj Hindustan Limited v. Sir Shadi Lal Enterprises Limited*, (2011) 1 SCC 640, has observed as under:

“21. It is settled law that in the areas of economics and commerce, there is far greater latitude available to the executive than in other matters. The Court cannot sit in judgment over the wisdom of the policy of the legislature or the executive. Thus in Balco Employees' Union (Regd.) v. Union of India [(2002) 2 SCC 333] it was observed : (SCC pp. 381-82, paras 92-93)

“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



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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.”

In the same decision in SCC para 39 it was observed: (Balco Employees' case [(2002) 2 SCC 333], SCC pp. 358-59)

“39. In Premium Granites v. State of T.N. [(1994) 2 SCC 691] while considering the court's powers in interfering with the policy decision, it was observed at p. 715 as under: (SCC para 54)

‘54. It is not the domain of the court to embark upon unchartered ocean of public policy in an exercise to consider as to whether a particular public policy is wise or a better public policy can be evolved. Such exercise must be left to the discretion of the executive and legislative authorities as the case may be.’”

22. In SCC para 41 of the aforesaid decision in Balco employees' case [(2002) 2 SCC 333] this Court quoted from its earlier decision in M.P. Oil Extraction v. State of M.P. [(1997) 7 SCC 592] as follows : (SCC p. 611, para 41)

“41. ... The executive authority of the State must be held to be within its competence to frame a policy for the administration of the State. Unless the policy framed is absolutely capricious and, not



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being informed by any reason whatsoever, can be clearly held to be arbitrary and founded on mere ipse dixit of the executive functionaries thereby offending Article 14 of the Constitution or such policy offends other constitutional provisions or comes into conflict with any statutory provision, the court cannot and should not outstep its limit and tinker with the policy decision of the executive functionary of the State. This Court, in no uncertain terms, has sounded a note of caution by indicating that policy decision is in the domain of the executive authority of the State and the court should not embark on the unchartered ocean of public policy and should not question the efficacy or otherwise of such policy so long the same does not offend any provision of the statute or the Constitution of India. The supremacy of each of the three organs of the State i.e. legislature, executive and judiciary in their respective fields of operation needs to be emphasised. The power of judicial review of the executive and legislative action must be kept within the bounds of constitutional scheme so that there may not be any occasion to entertain misgivings about the role of judiciary in outstepping its limit by unwarranted judicial activism being very often talked of in these days. The democratic set-up to which the polity is so deeply committed cannot function properly unless each of the three organs appreciate the need for mutual respect and supremacy in their respective fields.”

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37. It was held in the above decision as well as in India Cement Ltd. v. Union of India [(1990) 4 SCC 356 : AIR 1991 SC 724] that even if some persons are at a disadvantage and suffered losses on account of formulation and implementation of the



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government policy that is not by itself sufficient ground for interference by the Court.

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40. Economic and fiscal regulatory measures are a field where Judges should encroach upon very warily as Judges are not experts in these matters. The impugned policy parameters were fixed by experts in the Central Government, and it is not ordinarily open to this Court to sit in appeal over the decisions of these experts. We have not been shown any violation of law in the impugned notification or press note.

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45. In our opinion there should be judicial restraint in fiscal and economic regulatory measures. The State should not be hampered by the Court in such measures unless they are clearly illegal or unconstitutional. All administrative decisions in the economic and social spheres are essentially ad hoc and experimental. Since economic matters are extremely complicated this inevitably entails special treatment for distinct social phenomena. The State must therefore be left with wide latitude in devising ways and means of imposing fiscal regulatory measures, and the Court should not, unless compelled by the statute or by the Constitution, encroach into this field.

46. In our opinion, it will make no difference whether the policy has been framed by the legislature or the executive and in either case there should be judicial restraint. The Court can invalidate an executive policy only when it is clearly violative of some provisions of the statute or Constitution or is shockingly arbitrary but not otherwise.”

35. The Apex Court in *Distribution of Essential Supplies and Services During Pandemic, In Re*, (2021) 7 SCC 772, observed that:

“15. It is trite to state that separation of powers is a part of the basic structure of the Constitution. Policy-making continues to be in the sole domain of the executive. The judiciary does not



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possess the authority or competence to assume the role of the executive, which is democratically accountable for its actions and has access to the resources which are instrumental to policy formulation. However, this separation of powers does not result in courts lacking jurisdiction in conducting a judicial review of these policies. Our Constitution does not envisage courts to be silent spectators when constitutional rights of citizens are infringed by executive policies. Judicial review and soliciting constitutional justification for policies formulated by the executive is an essential function, which the courts are entrusted to perform.

16. We had clarified in our order dated 30-4-20214, that in the context of the public health emergency with which the country is currently grappling, this Court appreciates the dynamic nature of the measures. Across the globe, the executive has been given a wider margin in enacting measures which ordinarily may have violated the liberty of individuals, but are now incumbent to curb the Pandemic. Historically, the judiciary has also recognised that constitutional scrutiny is transformed during such public health emergencies, where the executive functions in rapid consultation with scientists and other experts...”

36. In the considered opinion of this Court, in light of the aforesaid law laid down by the Apex Court in catena of judgments, it can be safely gathered that policy making power continues to be in the sole domain of the executive. The policy framed by Government of India is in national interest keeping in view the defence requirements, and therefore, the question of interference by this Court does not arise. The policy decision in the present case, by no stretch of imagination, is violative of Article 21 nor any other constitutional provision.

37. In the present case, corporatization of the OFB, in no way, is violating or infringing the constitutional rights guaranteed to the citizens and the

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policy decision has been taken in larger public interest and in the interest of the nation to strengthen the defence production in the country ensuring quality products and a regular supply of arms & ammunitions to the Armed Forces.

38. This Court does not find any reason to interfere with the policy decision of the Government of India especially in light of the fact that the interest of the employees has already been protected. Therefore, no case for interference is made out in the present case. The petition is, accordingly, dismissed.

(SATISH CHANDRA SHARMA)
CHIEF JUSTICE

(SANJEEV NARULA)
JUDGE

AUGUST 03, 2023