

M/S. DHAMPUR SUGAR MILLS LTD.

A

v.

STATE OF U.P. AND ORS.

SEPTEMBER 24, 2007

[C.K. THAKKER AND ALTAMAS KABIR, JJ.]

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*Uttar Pradesh Sheera Niyantaran Adhiniyam, 1964—ss. 3 & 22—Uttar Pradesh Sheera Niyantaran Niyamavali, 1974—r. 14—U.P. Molasses Advisory Committee Rules, 1965—rr. 3 and 11:*

C

*Directive issued by Respondents under the Adhiniyam to sugar mills to reserve 20% of the molasses produced by them for supply to distilleries manufacturing country liquor—Applicability of—Held, not applicable in case of sugar mills not having ‘balance stock’ of molasses i.e. molasses in excess of and not used for captive consumption -- Respondents having no right to compel such sugar mills to supply 20% molasses for purpose of manufacturing country liquor.*

D

*Provision in s. 3 of the Adhiniyam enjoining the State Government to constitute an Advisory Committee to advise on matters relating to control of storage, preservation, gradation, price, supply and disposal of molasses—Nature of—Held: Investment of power in the State Government is not merely enabling or discretionary—It is obligatory on the Government to constitute such a Committee to carry out the purpose and object of the Adhiniyam—Doctrines—Doctrine of power coupled with duty—Words and Phrases—“May” and “shall”—Meaning of.*

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*Constitution of India, 1950*

*Article 226—Alternative remedy—Policy decision taken by State—Respondents issuing directive under the Adhiniyam to sugar mills—Appellant-company having a sugar mill—It filed writ petition—Objection raised by Respondents on ground of availability of appeal under the Adhiniyam—Held: Rightly rejected by High Court—Once a policy decision has been taken by the Government, filing of appeal is*

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H

A *virtually an 'empty formality' or 'futile attempt'—Remedy of appeal could not be termed as 'alternative', or 'equally efficacious'—Uttar Pradesh Sheera Niyantaran Adhiniyam, 1964—s.9.*

B *Article 47—State to endeavour to bring about prohibition—Point already concluded by Supreme Court—No opinion expressed.*

**Respondents issued directive under the Uttar Pradesh Sheera Niyantaran Adhiniyam, 1964 (the Act) to sugar mills to reserve 20% of the molasses produced by them for supply to distilleries manufacturing country-made liquor. Appellant-company has a sugar mill as well as a distillery. It filed writ petition before the High Court contending that though it was producing molasses, the entire production was captively consumed in its own distillery and since even that was not sufficient it imported molasses from other States as also other Countries. Appellant company contended that since it did not have balance or extra stock of molasses for being supplied to distilleries for manufacturing country-made liquor, the Authorities could not compel it to supply molasses in terms of the said Government directive and hence such action was improper, illegal, arbitrary and unreasonable, inconsistent with the provisions of the Act and violative of Articles 14 and 19(1)(g) of the Constitution as also against public policy reflected in Article 47 of the Constitution. It was further contended that the State Government ought to have constituted an Advisory Committee under Section 3 of the Act before issuing such directive.**

**High Court though rejected the preliminary objection raised by the Respondents viz. availability of alternative remedy of appeal under Section 9 of the Act, however, held that Section 3 of the Act was only directory and if Advisory Committee was not constituted by the State, the powers under the Act could be exercised by the Controller appointed by the State. The Court further held that the reservation for 20% of molasses and directive issued to the Appellant to supply such stock for manufacturing country liquor was neither contrary to law nor against public policy and consequently dismissed the writ petition. Hence the present appeal.**

H **Partly allowing the appeal, the Court**

**HELD:** 1. As to alternative remedy available to the Appellant, a finding has been recorded by the High Court in favour of the writ-petitioner and the same has not been challenged by the State before this Court. Even otherwise, from the record, it is clear that the decision has been taken by the Government. Obviously in such cases, remedy of appeal cannot be terms as 'alternative', or 'equally efficacious'. Once a policy decision has been taken by the Government, filing of appeal is virtually from Caesar to Caesar's wife, an 'empty formality' or 'futile attempt'. The High Court was, therefore, right in overruling the preliminary objection raised by the respondents. [Para 16] [254-E-F]

2. As regards Article 47 of the Constitution, the stand of the State Government was that the point was finally concluded by a decision of this Court in *Khoday Distilleries Ltd. & Ors. v. State of Karnataka & Ors.*, in favour of the State. On the facts and in the circumstances of the case, it is not necessary to express any opinion one way or the other and this Court refrains from doing so.

[Para 7 and 21] [251-E; 256-C]

*Khoday Distilleries Ltd. & Ors. v. State of Karnataka & Ors.*, [1995] 1 SCC 574, referred to.

3.1. The High Court was, however, not right in holding that all sugar mills were bound to supply 20% molasses to the Authorities under clause (3) of the Government Order dated June 9, 2004 irrespective of stock possessed. Clause (3) applies only to excess stock of molasses, that is, molasses which is in excess of and not used for captive consumption by sugar factory and is thus balance stock. It is the assertion of the Appellant that the Company has no excess stock of molasses. Not only that, but it has to import molasses from other sources even for its own requirement for manufacturing industrial alcohol and such permission has been granted by the Central Government as well as by the State Government. If it is so, the case does not fall within the mischief of clause (3) and said clause cannot be pressed in service by the Authorities. [Para 20] [255-G, H; 256-A-B]

3.2. The directive issued by the respondents would not apply in case there is no balance stock of molasses with any sugar mill.

**A** The respondent-authorities have no right to compel such sugar mills to supply 20% molasses for the purpose of manufacturing country liquor. [Para 46] [265-D]

**B** 4.1. Reading the substantive provisions in the Act as also subordinate legislation by way of Rules, there is no doubt that the submission of the Appellant that an Advisory Committee ought to have been constituted by the State under Section 3 of the Act is well founded and must be upheld. High Court dealt with the submission of the Appellant but did not accept it observing that the Legislature had used the expression 'may' and not 'shall' in Section 3 of the Act.

**C** The Court ruled that the provision was merely directory and not mandatory. This Court is unable to subscribe to the above view.

[Para 28 and 29] [259-G, H; 260-A-B]

**D** 4.2. Mere use of word 'may' or 'shall' is not conclusive. The question whether a particular provision of a statute is directory or mandatory cannot be resolved by laying down any general rule of universal application. Such controversy has to be decided by ascertaining the intention of the Legislature and not by looking at the language in which the provision is clothed. And for finding out the legislative intent, the Court must examine the scheme of the Act, purpose and object underlying the provision, consequences likely to ensue or inconvenience likely to result if the provision is read one way or the other and many more considerations relevant to the issue.

[Para 29] [260-B-C]

**F** 4.3. Several statutes confer power on authorities and officers to be exercised by them at their discretion. The power is in permissive language, such as, 'it may be lawful', 'it may be permissible', 'it may be open to do', etc. In certain circumstances, however, such power is coupled with duty and must be exercised.

[Para 30] [260-D, E]

**G** 4.4. In the case on hand, considering the legislative scheme as also Rules and particularly Rules relating to constitution of Committee, namely, the U.P. Molasses Advisory Committee Rules, 1965, investment of power in the State Government is not merely enabling or discretionary. It is obligatory on the Government to

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constitute a Committee to carry out the purpose and object of the Act. The Committee has to perform an important role of advising the State Government on matters relating to the control of storage, preservation, gradation, price, supply and disposal of molasses. The constitution of the Committee, as envisaged by Rule 3 of the 1965 Rules clearly shows the representation of various groups and interests likely to be affected. Rule 11 requires the Chairman (Controller of Molasses) to give due consideration of the resolutions passed by the Committee and forward it to the State Government for orders together with a copy of the proceedings and his recommendations. It is not open to the State Government to ignore this salutary provision taking specious plea that the provision relating to constitution of Committee is enabling, directory or discretionary and State, therefore, is not obliged to constitute such Committee. In accordance with the provisions of 1964 Act, the Rules framed thereunder as also under 1965 Rules, it is the duty of the State Government to constitute Advisory Committee. Accordingly the State of Uttar Pradesh is directed to constitute Advisory Committee as expeditiously as possible. [Para 45] [264-F, H; 265-A, C]

*Judicial Review of Administrative Action*, 1995, pp. 300-01 by de Smith and *Administrative Law: 9th Edn*, p. 233 by Wade & Forsyth, referred to.

*Baker, Re*, (1890) 44 Ch D 262; *Julius v. Lord Bishop of Oxford* (1880) 5 AC 214; *Padfield v. Minister of Agriculture, Fisheries & Food*, [1968] AC 997 (1968) 1 All ER 694; *R.V. Metropolitan Police Commissioner* (1911) 2 QB 1131; *R.V. Newcastle-upon-Tyne Corporation*, (1889) 60 LLT 963; *Ganpat Ladha v. Shashikant*, [1978] 3 SCR 198; *Alcock v. Chief Revenue Authority* 50 IA 227 : AIR (1923) PC 138; *Commissioner of Police v. Gordhandas Bhanji*, (1952) SCR 135 and *Rattlam Municipality v. Vardichan*, [1981] 1 SCR 97, referred to.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4466 of 2007.

From the Judgment and Order dated 29.10.2004 of the High Court of Judicature at Allahabad in Civil Misc. Writ Petition No. 1369 of 2004.

Dushyant Dave, Rajesh Kumar and Bharat Singh for the Appellant.

A Dinesh Dwivedi, Raj Kumar Gupta, Rajeev Dubey and Kamlendra Mishra for the Respondents.

The Judgment of the Court was delivered by

**C.K. THAKKER, J.** 1. Leave granted.

B 2. The present appeal is directed against the judgment and final order passed by the Division Bench of the High Court of Judicature at Allahabad dated October 29, 2004 in Civil Miscellaneous Writ Petition No. 1369 of 2004. By the said order, the High Court dismissed the writ petition filed by the writ petitioner-appellant herein.

C 3. Facts in nutshell giving rise to the writ petition as well as present appeal may now be stated.

D 4. The appellant-M/s Dhampur Sugar Mills Ltd. ('Company' for short) is a Public Limited Company incorporated under the Companies Act, 1956 having its registered office at Dhampur (Bijnor). The appellant has sugar mill in the State of Uttar Pradesh and has also a distillery. The distillery manufactures ethyl alcohol, used for blending of petrol, manufacture of chemicals and rectified spirit for medicines. It is also having a similar business at Asmouli, District Moradabad, Mansurpur, District E Muzaffarnagar and Rozagaon, District Barabanki. The writ petitioner approached the High Court by invoking Article 226 of the Constitution against the respondents for issuance of appropriate writ, direction or order quashing certain Government Orders said to have been passed by the Authorities under the Uttar Pradesh Sheera Niyamtran Adhiniyam, 1964 F [Act XXIV of 1964] (hereinafter referred to as 'the Act') directing the writ-petitioner to supply 20% of the molasses produced by the sugar mills for manufacturing 'country made liquor' by distilleries for the financial years 2003-04 and 2004-05. The writ petitioner also challenged consequential action of issuance of show cause notices as to why it should not be G prosecuted for committing offences punishable under the Act since it has not complied with the orders issued by the Authorities and has not supplied 20% molasses for manufacturing country liquor. The main challenge of the writ petitioner was that though the Company was producing molasses, the entire production was required by the Company itself which was used H for captive consumption and even that was not sufficient. The Company

had, therefore, obtained permission from the Government for import of molasses from other States as also other Countries. Since the writ petitioner did not have balance or extra stock of molasses for being supplied to distilleries for manufacturing country-made liquor, the Authorities could not compel the writ petitioner to supply molasses as directed in various Government Orders and Letters. Such action was improper, illegal, arbitrary and unreasonable, inconsistent with the provisions of the Act as also violative of Articles 14 and 19(1)(g) of the Constitution. The action was also against public policy reflected in Article 47 of the Constitution. It was contended that since the above directives could not have been issued by the Authorities, issuance of show cause notices as to why the writ petitioner should not be prosecuted also were not legal and the prosecution should be quashed. It was also the case of the writ petitioner that the State Government ought to have constituted 'Advisory Committee' under Section 3 of the Act.

5. The stand of the Government before the High Court was that in accordance with the provisions of the Act and the Uttar Pradesh Sheera Niiyantran Niyamavali, 1974 (hereinafter referred to as 'the Rules'), it was open to the Authorities to ask the writ petitioner to supply 20% molasses for the purpose of manufacturing country liquor. As the said action was in consonance with law, the Company was bound to supply 20% molasses for the said purpose and the action could not be termed as illegal or unlawful.

6. It was also contended by the respondents that an alternative and equally efficacious remedy of filing an appeal under Section 9 of the Act was available to the Company and hence writ petition was not maintainable.

7. As to Article 47 of the Constitution, the case of the State Government was that the point was finally concluded by a decision of this Court in *Khoday Distilleries Ltd. & Ors. v. State of Karnataka & Ors.*, (1995) 1 SCC 574 : JT 1994 (6) SC 588 in favour of the State. Section 3 of the Act, according to the State, was merely an enabling provision and thus directory in nature and the writ petitioner could not compel the State to constitute 'Advisory Committee'.

8. The High Court, after hearing the parties, held that preliminary objection raised by the respondents was not well-founded. Considering

A the totality of facts and circumstances and the decisions taken by the respondents, the High Court held that approaching the Appellate Authority would be a 'futile attempt'. The High Court, considering various decisions of this Court on the point, held that it would not be justified in dismissing the petition on the ground of alternative remedy and the said objection  
B was not well-founded.

9. The Court ruled that apart from the fact that Article 47 of the Constitution could not be enforced by a Court of Law, the point no longer survived in the light of decision of the Apex Court in *Khoday Distilleries Ltd.* Section 3 of the Act, according to the High Court, was only directory  
C and if 'Advisory Committee' was not constituted by the State, the powers under the Act could be exercised by the Controller appointed by the State.

10. On merits, the Court held that the reservation for 20% of molasses and directive issued to the writ petitioner to supply such stock  
D for manufacturing country liquor was neither contrary to law nor against public policy. The order, therefore, could have been issued by the Authorities as it was open to the Authorities to ask for 20% molasses from the writ petitioner for manufacturing country liquor. The Company was bound to supply the stock and as it was not done, the Authorities were right in taking appropriate action in accordance with law.  
E Accordingly, the High Court dismissed the writ petition.

11. On May 2, 2005, notice was issued by this Court. The matter appeared on Board thereafter from time to time and ultimately on March 2, 2007, the Registry was directed to place the matter for final disposal  
F on a non-miscellaneous day. That is how the matter has been placed before us.

12. We have heard the learned counsel for the parties.

13. The learned counsel for the appellant contended that Section 3  
G of the Act enjoins the State Government to constitute an 'Advisory Committee' "to advise on matters relating to the control of storage, preservation, gradation, price, supply and disposal of molasses" under the Act. It was, therefore, incumbent on the State Government to constitute such Committee. There is no such Committee at present as envisaged  
H by the Act though such Committee was there in past. This is contrary to

law and against the legislative mandate. In absence of such Committee, A  
no directive can be issued by the Controller to supply molasses. All the  
directives are, therefore, without authority of law and are required to be  
set aside. It was also contended that such directives are against public  
policy reflected in the Directive Principles of State Policy enshrined in Part  
IV of the Constitution and in particular, Article 47 which requires the State B  
to endeavour to bring about prohibition of intoxicating drinks. The State  
Government wedded with implementation of principles enumerated in Part  
IV of the Constitution cannot issue an order that molasses should be  
reserved for manufacturing 'country liquor' and such a directive cannot  
be enforced. On that ground also, the impugned directives are liable to C  
be quashed. It was further urged that alternatively the impugned directive  
is explicitly clear and requires a sugar mill to reserve 20% of molasses  
from the balance stock i.e. over and above actual consumption by the  
industry for manufacturing country liquor. Since the writ petitioner did  
not have balance stock of molasses and the record clearly revealed that  
even for captive consumption, it had to import molasses from other States D  
in the country and from foreign countries for which necessary permission  
was granted by the Government, it could not be compelled to reserve  
20% molasses for manufacturing country liquor. It was submitted that  
even if the directive is held to be legal, lawful and in consonance with  
law, the writ petitioner could not be asked to supply 20% molasses for E  
manufacturing country liquor. The directive could not be applied to the  
writ petitioner and notices could not be issued to show cause as to why  
the Company should not be prosecuted. On that limited ground also,  
the writ petition ought to have been allowed and the High Court was wrong  
in dismissing it. F

14. The learned counsel for the respondents, on the other hand, G  
submitted that the constitutional validity of the Act has not been challenged  
by the writ-petitioner. Even otherwise, the validity has been upheld by  
this Court in *SIEL Ltd. & Ors. v. Union of India & Ors.*, [1998] 7 SCC  
26 : JT (1998) 6 SC 323. It was, therefore, open to the respondents to  
implement the provisions of the Act. Section 8 of the Act empowers the  
Authorities to issue necessary directions relating to sale and supply of  
molasses and in exercise of the said power, orders were issued by the  
Authorities and the High court was right in upholding them. Regarding  
Advisory Committee, it was submitted that it is in the discretion of the H

A State Government to constitute the Committee and if no such Committee is constituted, there is no violation of law. The High Court was right in holding that in absence of Advisory Committee, Controller could have exercised the power conferred on him by the State Government. As to public policy and provisions in Part IV of the Constitution, the counsel contended that the High Court was called upon to consider a limited question as to whether the action was illegal or unconstitutional and once it was held that it was in consonance with law, the Court was right in upholding it and in dismissing the petition. It was, therefore, submitted that the appeal deserves to be dismissed.

C 15. Having considered the rival contentions of the parties, in our opinion, the appeal deserves to be partly allowed. So far as the constitutional validity of the Act is concerned, it is rightly not challenged by the writ petitioner since the point is concluded by a decision of this Court in *SIEL Ltd.* decided in 1998. It was held by this Court that the Act was within the legislative competence of the State and the State Act was not inconsistent with the Industries (Development and Regulation) Act, 1951, i.e. Central Act. But even otherwise, the U.P. Act having received the assent of the President as required by Article 254(2) of the Constitution, would operate.

E 16. As to alternative remedy available to the writ petitioner, a finding has been recorded by the High Court in favour of the writ-petitioner and the same has not been challenged by the State before us. Even otherwise, from the record, it is clear that the decision has been taken by the Government. Obviously in such cases, remedy of appeal cannot be terms as 'alternative', or 'equally efficacious'. Once a policy decision has been taken by the Government, filing of appeal is virtually from 'Caesar to Caesar's wife', an 'empty formality' or 'futile attempt'. The High Court was, therefore, right in overruling the preliminary objection raised by the respondents.

G 17. On merits, the learned counsel for the appellant drew our attention to an order dated June 9, 2004 which was relied upon by the High Court for dismissing the writ petition. Clause (3) of the said order relates to supply of 20% molasses for manufacturing country liquor. The High Court in its order reproduced the said clause which is in Hindi and reads thus;

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“PRATYEK CHINI MILL KE SHEERE KE AWASHESHA A  
STAAK ME SE DESHI MADIRA KE LIYE 20 PRATISHAT  
SHEERE KA AARKSHAN EISI AASHWANI YO KE LIYE  
HOGAA JO USKAA UPYOG DESHI MADIRA UTPADAN ME  
KAREGI. AISI CHINI MILE JINKI SWAYAM KI BHI  
AASHWANIYA HAI, UKTANUSAR KIYE JA RAHE SHEERE B  
KE AARAKSHAN SE OOS SEEMA TAK BAHAR RAHEGI KI  
CHINI MILL SAH-AASHWANI DWARA SWAYAM KE  
VASTAVIK UPBHOG KE ATIRIKT JO SHEERA BACHATA  
HAI, OOS PER 20 PRATISHAT KA AARAKSHAN LAGOO  
HOGA”.

18. The English translation supplied by the appellant at Annexure P-3 reads thus;

“From the balance stock of molasses with each sugar mill, 20% of molasses shall be reserved for the distilleries manufacturing country liquor. The sugar mills having their own distilleries shall not be covered with this reservation to the extent that after the actual consumption of molasses in their captive distillery, 20% reservation shall be applicable on the balance stock”.

19. The learned counsel for the writ petitioner, in our opinion, is right E in contending that the said order applies only to balance stock (*Avshesh staak*). According to the High Court, 20% molasses must be reserved by each and every sugar mill for manufacturing country liquor notwithstanding whether there is balance stock or not. In other words, the High Court held that 20% molasses must be reserved by every sugar mill for the purpose of manufacturing country liquor. If such sugar mill is having facility of manufacturing country liquor, it should utilize the said stock for the said purpose, otherwise it should supply to the Authorities. F

20. In our opinion, however, clause (3) applies only to excess stock of molasses, that is, molasses which is in excess of and not used for captive consumption by sugar factory and is thus ‘balance stock’. It is the assertion of the writ petitioner that the Company has no excess stock of molasses. Not only that, but it has to import molasses from other sources even for its own requirement for manufacturing industrial alcohol G

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A and such permission has been granted by the Central Government as well  
as by the State Government. If it is so, the case does not fall within the  
mischief of clause (3) and said clause cannot be pressed in service by  
the Authorities. The High Court, in our opinion, was not right in holding  
that all sugar mills were bound to supply 20% molasses to the Authorities  
B under clause (3) of the Government Order dated June 9, 2004 irrespective  
of stock possessed. Only on that ground, the appeal deserves to be  
allowed.

21. So far as the submission of the learned counsel as to Article 47  
of the Constitution in Part IV comprising of 'Directive Principles of State  
C Policy' is concerned, in our opinion, on the facts and in the circumstances,  
it is not necessary to express any opinion one way or the other and we  
refrain from doing so.

22. Before the High Court as well as before us it was strenuously  
D urged by the writ petitioner that it was obligatory on the State Government  
to constitute Advisory Committee under Section 3 of the Act. Section 3  
reads thus:

3. *Constitution of Advisory Committee.*-(1) The State  
E Government may, by notification in the Gazette, constitute an  
Advisory Committee to advise on matters relating to the control  
of storage, preservation, gradation, price, supply and disposal of  
molasses.

(2) The Committee shall consist of such number of persons and  
F shall be constituted on such terms and conditions as may be  
prescribed.

23. Section 22 is a rule making power and enables the State  
Government to make rules to carry out the purposes of the Act. Sub-  
G section (2) enacts that in particular and without prejudice to the generality  
of the power, such rules may provide for-

(a) the composition of the Advisory Committee, the manner in  
which its members shall be chosen, the term of office of its  
members, the allowances, if any, payable to them, the manner  
in which the Advisory Committee shall tender its advice and  
H the procedure for the conduct of its business;

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(b) the procedure relating to the removal of members of the Advisory Committee; A

(c) ...

24. Rule 14 of 1974 Rules is also relevant and reads thus;

14. *Orders regarding sale or supply of molasses.*-A consolidated statement of the estimated availability of molasses will be drawn up and placed before the Advisory Committee, constituted under Section 3(1) of the Act, by the Controller who may make orders regarding the sale or supply of molasses in accordance with the provisions of Section 8 of the Act. B  
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25. In exercise of power under Clauses (a) and (b) of sub-section (2) of Section 22 read with Section 3 of the Act, the Governor of Uttar Pradesh framed rules known as the U.P. Molasses Advisory Committee Rules, 1965. Rule 3 provides for constitution of Committee and reads as under: D

3. *Constitution*-(1) The Advisory Committee to be constituted under Section 3 of the Act shall consist of:

- (i) the Controller who shall be *ex officio* Chairman. E
- (ii) the Assistant Excise Commissioner, In charge of Molasses at the Headquarters of the Excise Commissioner, Uttar Pradesh who shall be *ex officio* Secretary.
- (iii) The Director of Industries, Uttar Pradesh or his representative not below the rank of Deputy Director of Industries; F
- (iv) The Cane Commissioner, Uttar Pradesh, or his representative not below the rank of Deputy Cane Commissioner;
- (v) Three representatives of sugar factories in Uttar Pradesh to be nominated by the Indian Sugar Mills' Association (U.P. Branch); G
- (vi) Three representatives of distilleries in Uttar Pradesh to be nominated by the Uttar Pradesh Distillers' Association;
- (vii) One representative of the alcohol based industries in Uttar H

A Pradesh to be nominated by the Uttar Pradesh Alcohol Based Industries Development Association.

(viii) One representative of Moulding and Foundry Industry in Uttar Pradesh to be nominated by the Excise Commissioner, Uttar Pradesh; and

B (ix) Managing Director, the Uttar Pradesh Co-operative Sugar Factories Federation Ltd.

(2) If a representative is not nominated by the concerned Association under Clause (v), (vi) or (vii) of sub-rule (1) within the time specified in that behalf by the State Government, it shall be lawfully for the State Government to nominate the representative or representatives, as the case may be, under that clause.

D 26. While Rule 6 prescribes term of office of members and reconstitution of the Committee, Rule 7 deals with vacancy caused by death, resignation or removal of members. Rule 8 provides for quorum for meeting. Rules 9 and 10 prescribe time, place and agenda for the meeting of the Committee and preparation of minutes of resolutions passed and decisions taken. Rule 11 requires the Chairman of the Committee to forward such resolutions to the State Government.

E 27. It further appears that by a notification dated November 24, 1965, such Committee had been constituted. The Notification was also published in U.P. Government Gazette, Extraordinary and reads thus:

F *Notification No.5586-E/XIII-251-65, dated 24th November, 1965, published in U.P. Gazette, Extra., dated November 24, 1965.*

G In exercise of the powers under Section 3 of Uttar Pradesh Sheera Nyantran Adhiniyam, 1964 (Uttar Pradesh Act XXIV of 1964) read within Rules 3 and 5 of the Uttar Pradesh Molasses Advisory Committee Rules, 1965, the Governor of Uttar Pradesh is pleased to constitute an Advisory Committee to advise on matters relating to the control on storage, supply, gradation and prices of molasses with effect from the date of issue of this notification and further pleased to direct that the said Committee shall consist of the following persons:

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- (a) the Controller of Molasses, Uttar Pradesh-*Ex Officio* Chairman A
- (b) the Assistant Excise Commissioner (Molasses), Uttar Pradesh-*Ex Officio* Secretary.
- (i) The representatives of Sugar Factories- B
- Sri V.D. Jhunhunwala Kamapat Moti Lal Sugar Mills,  
Motinagar, district Faizabad.
- Sri B.C. Kohli, Ganga Sugar Corporation Ltd., Deoband,  
district Saharanpur. C
- Sri L.N. Wahi, Indian Sugar Mills Association, Uttar Pradesh  
Branch, Sri Niwas, I, Kabir Marg, Lucknow.
- (ii) Three representatives of Distilleries-
- Sri Bansi Dhar, Director, Managing Agents, Messrs Delhi D  
Cloth & General Mills Co. Ltd., Bara Hindu Rao, Post Box  
No.1039, Delhi.
- Sri D.S. Majithia Messrs, Saraya Distillery, Sardarnagar,  
Gorakhpur. E
- Sri V.R. Mohan, Dyer Meakin Brewery Ltd., Lucknow.
- (iii) One representative of Moulding and Foundry Industries-
- Sri Raman, Secretary, Agra Iron Founders Association, Agra.
- (iv) One representative of Tobacco Manufacturers Association, F  
Varanasi.
- (v) The Director of Industries, U.P. or his representative.
- (vi) Sri Ram Surat Prasad, M.L.A., Mohalla Mohaddipur, G  
Gorakhpur.

28. Reading the substantive provisions in the Act as also subordinate legislation by way of Rules, there is no doubt in our minds that the submission of the learned counsel for the writ petitioner that such a Committee ought to have been constituted by the State is well-founded H

A and must be upheld. The High Court dealt with the submission of the writ petitioner but did not accept it observing that the Legislature had used the expression 'may' and not 'shall' in Section 3 of the Act. The Court ruled that the provision was merely directory and not mandatory.

B 29. We are unable to subscribe to the above view. In our judgment, mere use of word 'may' or 'shall' is not conclusive. The question whether a particular provision of a statute is directory or mandatory cannot be resolved by laying down any general rule of universal application. Such controversy has to be decided by ascertaining the intention of the Legislature and not by looking at the language in which the provision is clothed. And for finding out the legislative intent, the Court must examine the scheme of the Act, purpose and object underlying the provision, consequences likely to ensue or inconvenience likely to result if the provision is read one way or the other and many more considerations relevant to the issue.

D 30. Several statutes confer power on authorities and officers to be exercised by them at their discretion. The power is in permissive language, such as, 'it may be lawful', 'it may be permissible', 'it may be open to do', etc. In certain circumstances, however, such power is 'coupled with duty' and must be exercised.

E 31. Before more than a century in *Baker, Re*, (1890) 44 Ch D 262, Cotton, L.J. stated;

F "I think that great misconception is caused by saying that in some cases 'may' means 'must'. It never can mean 'must', so long as the English language retains its meaning; but *it gives a power, and then it may be question in what cases, where a Judge has a power given by him by the word 'may', it becomes his duty to exercise it*".

G (emphasis supplied)

H 32. In leading case of *Julius v. Lord Bishop of Oxford*, (1880) 5 AC 214 : 49 LJ QB 580 : (1874-80) All ER Rep 43 (HL), the Bishop was empowered to issue commission of inquiry in case of alleged misconduct by a clergyman, either on an application by someone or *suo*

*motu*. The question was whether the Bishop had right to refuse A  
commission when an application was made. The House of Lords held  
that the Bishop had discretion to act pursuant to the complaint and no  
mandatory duty was imposed on him.

33. Earl Cairns, L.C., however, made the following remarkable and B  
oft-quoted observations:

“The words ‘it shall be lawful’ are not equivocal. They are plain  
and unambiguous. They are words merely making that legal and  
possible which there would otherwise be no right or authority to  
do. They confer a faculty or power and they do not of themselves C  
do more than confer a faculty or power. *But there may be  
something in the nature of the thing empowered to be done,  
something in the object for which it is to be done, something  
in the title of the person or persons for whose benefit the  
power is to be exercised, which may couple the power with a D  
duty, and make it the duty of the person in whom the power  
is reposed, to exercise that power when called upon to do so”.*

(emphasis supplied)

34. Explaining the doctrine of power coupled with duty, de Smith, E  
(‘Judicial Review of Administrative Action’, 1995; pp.300-01) states:

“Sometimes the question before a court is whether words which  
apparently confer a discretion are instead to be interpreted as  
imposing duty. Such words as ‘may’ and ‘it shall be lawful’ are  
*prima facie* to be construed as permissive, not imperative. F  
*Exceptionally, however, they may be construed as imposing a  
duty to act, and even a duty to act in one particular manner”.*

(emphasis supplied)

35. Wade also says (Wade & Forsyth; ‘Administrative Law : 9th G  
Edn.) : p.233) :

“The hallmark of discretionary power is permissive language using  
words such as ‘may’ or ‘it shall be lawful’, as opposed to  
obligatory language such as ‘shall’. But this simple distinction is not H

A always a sure guide, for there have been many decisions in which permissive language has been construed as obligatory. *This is not so much because one form of words is interpreted to mean its opposite, as because the power conferred is, in the circumstances, prescribed by the Act, coupled with a duty to exercise it in a proper case*".

B

(emphasis supplied)

36. In the leading case of *Padfield v. Minister of Agriculture, Fisheries & Food*, 1968 AC 997 : (1968) 1 All ER 694 : (1968) 2 WLR 924 (HL), the relevant Act provided for the reference of a complaint to a committee of investigation 'if the Minister so directs'. The Minister refused to act on a complaint. It was held that the Minister was required to act on a complaint in absence of good and relevant reasons to the contrary.

C

37. Likewise, it was held that the licensing authorities were bound to renew licences of cab drivers if the prescribed procedural requirements had been complied with [*R.V. Metropolitan Police Commissioner*, (1911) 2 QB 1131]. Similarly, local authorities were held bound to approve building plans if they were in conformity with bye-laws [*R.V. Newcastle-upon-Tyne Corporation*, (1889) 60 LT 963]. Again, the court was required to pass a decree for possession in favour of a landlord, if the relevant grounds existed [*Ganpat Ladha v. Shashikant*, (1978) 3 SCR 198 : (1978) 2 SCC 573].

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38. In *Alcock v. Chief Revenue Authority*, 50 IA 227 : AIR 1923 PC 138, the relevant statute provided that if in the course of any assessment a question arises as to the interpretation of the Act, the Chief Revenue Authority 'may' draw up a statement of the case and refer it to the High Court. Holding the provision to be mandatory and following *Julius*, Lord Phillimore observed:

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G

"When a capacity or power is given to a public authority, there may be circumstance which couple with the power of duty to exercise it".

H

39. In *Commissioner of Police v. Gordhandas Bhanji*, [1952] A SCR 135 : AIR (1952) SC 16, Rule 250 of the Rules for Licensing and Controlling Theatres and Other Places of Public Amusement in Bombay City, 1884 read as under:

“The Commissioner shall have power in his *absolute discretion* at any time to cancel or suspend any licence granted under these Rules....” B

40. It was contended that there was no specific legal duty compelling the Commissioner to exercise the discretion. Rule 250 merely vested a discretion in him but it did not require him to exercise the power. Relying upon the observations of Earl Cairns, L.C., the Court observed: C

“The discretion vested in the Commissioner of Police under Rule 250 has been conferred upon him for public reasons involving the convenience, safety, morality and the welfare of the public at large. *An enabling power of his kind conferred for public reasons and for the public benefit is, in our opinion, coupled with a duty to exercise it when the circumstances so demand. It is a duty which cannot be shirked or shelved nor can it be evaded...*” D  
(emphasis supplied)

41. In *Ratlam Municipality v. Vardichan*, (1981) 1 SCR 97 : E [1980] 4 SCC 162; some residents of Ratlam Municipality moved the Sub-Divisional Magistrate under Section 133 of the Code of Criminal Procedure, 1973 for abatement of nuisance by directing the municipality to construct drainpipes with flow of water to wash the filth and stop the stench. The Magistrate found the facts proved and issued necessary directions. The Sessions Court, in appeal, reversed the order. The High Court, in revision, restored the judgment of the Magistrate and the matter was carried to the Supreme Court. F

42. Krishna Iyer, J. pithily summarized the principle thus;

“The key question we have to answer is whether by affirmative G action a court lean compel a statutory body to carry out its duty to the community by constructing sanitation facilities at great cost and on a time-bound basis. At issue is the coming of age of that branch of public law bearing on community actions and the court’s H

A specific plans in response to public grievances”.

43. Holding the provision obligatory, the Court observed:

B “Judicial discretion when facts for its exercise are present, has a  
 mandatory import. Therefore, when the sub-Divisional Magistrate,  
 Ratlam, has, before him, information and evidence, which disclose  
 the existence of a public nuisance and, on the materials placed, he  
 considers that such unlawful obstruction or nuisance should be  
 removed from any public place which may be lawfully used by the  
 public, he shall act.... *This is a public duty implicit in the public  
 C power to be exercised on behalf of the public and pursuant to  
 a public proceeding*”.

(emphasis supplied)

D 44. We do not wish to refer to other cases on the point. We are,  
 however, in agreement with the observations of Earl Cairns, L.J. in *Julius*  
 referred to above wherein His Lordship stated;

E “(W)here a power is deposited with a public officer for the  
 purpose of being used for the benefit of persons who are  
 specifically pointed out, and with regard to whom a definition is  
 supplied by the Legislature of the conditions upon which they are  
 entitled to call for its exercise, *that power ought to be exercised,  
 and the Court will require it to be exercised*”.

(emphasis supplied)

F 45. In the case on hand, considering the legislative scheme as also  
 Rules and particularly Rules relating to constitution of Committee, namely,  
 the U.P. Molasses Advisory Committee Rules, 1965, in our opinion,  
 investment of power in the State Government is not merely enabling or  
 discretionary. It is obligatory on the Government to constitute a Committee  
 G to carry out the purpose and object of the Act. The Committee has to  
 perform an important role of advising the State Government “on matters  
 relating to the control of storage, preservation, gradation, price, supply  
 and disposal of molasses”. The constitution of the Committee, as envisaged  
 by Rule 3 of the 1965 Rules clearly shows the representation of various  
 H groups and interests likely to be affected. Rule 11 requires the Chairman

(Controller of Molasses) to “give due consideration of the resolutions passed by the Committee and forward it to the State Government for orders together with a copy of the proceedings and his recommendations”. In our considered opinion, it is not open to the State Government to ignore this salutary provision taking specious plea that the provision relating to constitution of Committee is enabling, directory or discretionary and State, therefore, is not obliged to constitute such Committee. In our judgment, the High Court was not right in upholding the argument of the respondents. We, therefore, hold that in accordance with the provisions of 1964 Act, the Rules framed thereunder as also under 1965 Rules, it is the duty of the State Government to constitute Advisory Committee. We accordingly direct the State of Uttar Pradesh to constitute Advisory Committee as expeditiously as possible.

46. For the foregoing reasons, in our opinion, the appeal deserves to be allowed and the order of the High Court deserves to be set aside. It is, accordingly held that the directive issued by the respondents would not apply in case there is no balance stock of molasses with any sugar mill. The respondent-authorities have no right to compel such sugar mills to supply 20% molasses for the purpose of manufacturing country liquor.

47. We may, however, make one thing clear. As seen above, the assertion of the appellant was that it has no balance stock and even for its own requirement, it has to import molasses. On the other hand, the allegation of the respondents is that excess and balance molasses was available with the appellant which it had sold in open market. The High Court, in the impugned order has not decided the question finally. Quoting certain paragraphs from the writ-petition, the High Court observed that there was no proper pleading and as such, the Court was not in a position to go into the question. It is, therefore, made clear that it is open to the respondents to take appropriate action in accordance with law on the basis of our decision and observations made in this judgment.

48. The appeal is allowed to the extent indicated above. On the facts and in the circumstances of the case, however, the parties will bear their own costs.

B.B.B.

Appeal partly allowed.

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