**CASE ANALYSIS OF PANCHANAN SAHU V. UNION OF INDIA**

BY

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**PANCHANAN SAHU’S CASE AND CONSTITUTIONALITY OF THE COMMITTEE REPORT RECOMMENDATION**

**BACKGROUND OF THE CASE**

A recommendation was made by a committee constituted by order dated 12th July, 2006, passed in WP (C) no. 196 of 2007 of Supreme Court headed by Justice D.P Wadhwa (as the chairman of the instituted committee namely the Control Vigilance Committee on Public Distribution System). Pursuant to the said order of Hon’ble Supreme Court , the said committee submitted the report and recommendations to Hon’ble Supreme Court by order dated 10.11.2008, the report recommendations were made for smooth distribution of Public Distribution Committees commodities, which recommended for abolition of private storage agency and not to appoint Private Storage Agents in the State after expiry of their extended terms and to manage Private Distribution System through the operation by store staff , and it was proposed that departmental operation will be possible only when requisite manpower and equipment are provided to the corporation .

Opposite Party communicated the decision of government to the other Opposite party, who without executing the recommendations of Wadhwa Committee directed the collectors of the state to appoint contractors for handling and transportation of food grains in place of Private Storage Agents. Pursuant to which collector invited tender for appointment of contractors from reputed firms / companies /persons.

Petitioners challenged the legality of the advertisement published in Odia Newspaper “The Sambad “dated 14.12.2011 Annexure 4, inviting tender for assignation of contractor for transportation of stocks from designated rice Receiving Centre cum Departmental Storage Centre to retail Points even though they were discharging their duties to the best gratifications of the consumers and authorities, as the same would adversely affect the Distribution System, will hike the cost and also the rights of the Petitioners. Petitioners filed a prayer to quash Annexure 2 and allow them to continue by giving necessary leeway to their license, as issued under Annexure 1.

In the case **Pancahanan Sahu v. State of Odisha**, Supreme Court upheld the Government’s / Committees policy decision.

**FACTS IN ISSUES**

* A writ petition bearing WP © no. 5689 of 2012 by the petitioners to quash Annexure 2 and allow the petitioner to continue as Storage Agent by giving necessary extension to its license.
* In WP (C) no.1309 and 1310 of 2012, the petitioner has challenged the legality of the advertisement published in the daily Odia Newspaper, inviting tenders on the ground that the same would unfavorably affect the distribution System of essential commodities and the Right of petitioners.

**PETITIONERS ARGUMENT**

1. Mr. H S Mishra (Learned Counsel) submitted that the step taken by Opposite Party no. 3 and 4 to appoint contractors for handling and transport of food grains are illegal, mechanical and with non - application of mind, arbitrary decision and divergent to the recommendations of Justice Wadhwa Committee.
2. Challenged the legality of the advertisement published, inviting tender for engagement of contractor on the ground that the same would adversely affect Right of Petitioners.
3. Petitioners even squaring his duties smoothly found a tender call notice Opposite party no. 4 inviting appointments of contractors with an intention to halt him from the Storage Agent System.
4. Therefore, the entire decision is liable to be declared illegal.

**RESPONDENT’S ARGUMENTS**

1. There is no illegality in floating sealed tender from intending persons for appointment.
2. Corporation being fully owned by State Government is only acting as an agency to it for implementation of the Government’s decision.
3. The policy decision is of the State Government to progress smooth distribution of Public Distribution System commodities, and the same should not be interfered with by this court.
4. The requisite manpower and equipment are provided in this favor as procurement inspector are already posted with required equipment.
5. Hence, the Writ Petition being devoid of any merit is liable to be dismissed.

**FREE SPEECH**

In **Tamil Nadu Education Deptt., Ministerial and General Sub - ordinate Services Association v. State of Tamil Nadu[[1]](#footnote-2)** , the Hon’ble Supreme Court held as under:

“Once the principle is found to be rational, the fact that a few freak instances of hardship may arise on either side cannot be ground to abolish the order or the policy. Every cause freedom a martyr and however ill-fated we be to see the seniors of yesterday becoming the juniors of today, this is an area where, absent arbitrariness and irrationality, the Court has to adopt a hand-off policy.”

In **Sterling computers Ltd. v. M & N Publications Ltd.,[[2]](#footnote-3)** it was held:

“it is not possible for courts to question and adjudicate every verdict taken by an authority, because many of the Government undertakings which in due course have acquired the monopolist situation in matters of sale and purchase of products and with so many stakes in hand, they can come out with a plea that it is not always possible to act like quasi- judicial authority while awarding contracts. Under some special circumstances a will has to be agreed to the authorities who have to enter into contract giving them authority to assess the overall situation for purpose of taking a decision as to whom the contract shall be awarded and at what terms. If the decisions have been taken in bona fide way, although not strictly following the norms laid down by the Courts , such decisions are upheld on the principle laid down by Justice Holmes , that Courts while judging the constitutional validity of executive decisions must grant certain measure of freedom of play in the joints to the executive .On the basis of those judgements it cannot be advocated that the court has left to the option of the authorities concerned whether to invite or not according to their own decision and to award contracts flouting the procedure which are basis in nature , taking into account fact which are not only extraneous but unfavorable to the public interest .”

In **Ugar Sugar Works Ltd. v. Delhi Administration[[3]](#footnote-4)**, it has been held that in exercise of their power of judicial review, the Courts do not typically interfere with the policy decisions of the supervisory unless the policy can be censured on the ground of mala fide, unreasonableness, arbitrariness or unfairness etc. Indeed arbitrariness, irrationality, obstinacy and mala fide render the policy unconstitutional. However, if the policy cannot be heartened on any of these grounds, the mere fact that it may affect business reimbursements of a party does not justify overturning the policy.

Unless a policy result is capricious or arbitrary and not informed by any statute or the Constitution, it cannot be a question of judicial interference. However, if the policy cannot be affected on any of these grounds, the mere fact that it may affect business interest of a party does not justify overturning the policy, as stated in **Balco Employees’ Union (Regd.) v. Union of India[[4]](#footnote-5)**, and **Federation of Railway Officers Association v. Union of India.[[5]](#footnote-6)**

In **Krishnan Kakkanth v. Government of Kerala[[6]](#footnote-7),** the Hon’ble Supreme Court held as under: - “34. To ascertain unreasonableness and arbitrariness in the context of **Article 14 of the Constitution**, it is not necessary to enter upon any exercise for finding out the wisdom in the policy decision of the State Government. It is immaterial if an improved or more comprehensive policy decision should have been taken. It is equally irrelevant if it can be verified that the policy decision is unwise and is likely to defeat the purpose for which such decisions has been taken. Unless the policy decision is demonstrably whimsical or arbitrary and not informed by any reason whatsoever or it suffers from the vice of discrimination or impinge on any statute or provisions of the Constitution, the policy decision cannot be struck down. it should be borne in mind that expect for the constrained purpose of testing a public policy in the framework of illegality and unconstitutionality, Court should avoid “embarking on uncharted ocean of public policy.”

**CONSTITUTIONALITY OF THE RECOMMENDATION / REPORT**

**UNIVERSALISING PDS**

In a step towards the universalisation of PDS, the committee acclaims doing away with APL(above poverty line) list, meaning everyone should be authorized to PDS.
However, as immediate measures, the committee has asked the Centre to upsurge storage capacity, ensure timely supply of food grains, monitor fair price shops and set up complaint redressal system at the grassroots level. Recapping two Supreme Court orders, passed in linking to the right to food case, the report recommends termination of the licence of fair price shop merchants who are found involved in derelictions like selling the foodgrains in the black market, not providing foodgrains to BPL families at the government-prescribed rate, making false entries and not keeping the shop open during the postulated time period.

It also directs the Centre to include under Antyodaya Anna Yojana the aged, infirm, penniless men and women, as well as lactating mothers, widows and other single women with no surefire support, old persons above 60 with no assured support, disabled adults, primitive tribes and households which has no adult members to ensure food security.

**PUBLIC DISTRIBUTION SYSTEM**

The Public Distribution System (PDS) of the country has not yielded benefit to the extent planned due to corrupt implementing machinery. This was the statement of the Wadhwa Committee, which has recommended a swerve of measures to make the system robust and bring transparency to it. The committee, headed by former Supreme Court Judge, D.P. Wadhwa, was set up in 2006 following an order by the apex court, which was upon a petition by People's Union for Civil Liberties, a human rights organisation. The committee was abetted by N C Saxena, commissioner of the Supreme Court on right to food. Taking the committee’s report on board, a bench of apex court has questioned states to respond to the report.
Collusion between persons involved in the PDS supply chain, from fair price shop merchants, responsible for circulation of food grain at the ordinary level, to transporters, bureaucrats and politicians, is consequential in outflow of food grains, the report says.

The committee has recommended espousal of modern technology, for instance computerisation of PDS recipients, to bring transparency to the system. Besides, it says, private entities should not be permitted to activate fair price shops and that these be phased out. Their place should be taken over by state-level corporations, Panchayati raj institutions or listed self-help groups. This will help check pilferage in PDS.To monitor the system, the committee recommends establishment of a Civil Supply Corporation at the state level. As of now there are many adherence committees to monitor the distribution of food grains but they are virtually defunct. There is no check on the food grains supplied to the state by the Food Corporation of India or brought by fair price shop dealers for distribution to people below the poverty line (BPL).

The committee recommends a vibrant division of responsibility between the Centre and states. While the Centre should be responsible for procurement, storage, transportation and bulk apportionment of food grains under PDS, states should bear the operative responsibilities such as apportionments to fair price shops, identification of below poverty line families, dispensing of ration cards and supervision and one-to-one care of functioning of fair price shops.

**JUDICIAL REVIEW OF ADMINISTRATION ACTION (UNREASONABLENESS, IRRATIONALITY, etc.,)**

The famous **“Wednesbury Case”, Associated Provincial Picture Houses Ltd. v. Wednesbury Corpn[[7]](#footnote-8).**, is considered to be landmark in so far as the basic principles relating to judicial review of administrative or statutory direction are considered. It explained the meaning of the word **reasonableness**as:

 “It is true that discretion must be exercised reasonably a person delegated with a decision must, so to speak, direct himself properly in law. He must call his own attention to the matters, which he is bound to consider. He must eradicate from his consideration stuffs, which are inappropriate to what he has to consider. If he does not observe those rules, he may truly be said, and often is said, to be acting ‘**unreasonably’**. Similarly, there may be something so absurd that no sensible person could even vision that it lay within the powers of the authority... In another, it is taking into consideration superfluous matters. It is unreasonable that it might almost be described as being done in bad faith; and in fact, all these things run into one another.”

The principles of judicial review of administrative action were further summarised in **Council of Civil Service Unions v. Minister for the Civil Service[[8]](#footnote-9),** (commonly known as CCSU case) as illegality, procedural impropriety and **irrationality**. More grounds could in future become available, counting the doctrine of proportionality which was a principle followed by certain other members of the European Economic Community.

The Court explained ‘**irrationality’** as follows:

“By ‘**irrationality**’ I mean what can by now be succinctly referred to as ‘Wednesbury unreasonableness’. It applies to a decision which is so outrageous in its defiance of logic or of acknowledged moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it.”

In **Union of India v. G. Ganayutham[[9]](#footnote-10)**, the Supreme Court after referring to the aforesaid two cases namely Wednesbury case and CCSU case held as follows: —

“to test the validity of executive action or of administrative action taken in exercise of statutory supremacies, the Courts and tribunals in our country can only go into the matter, as a secondary swotting Court to find out if the executive or the administrator in their primary roles have inwards at a reasonable decision on the material before them in the light of Wednesbury and CCSU tests. The choice of the options accessible is for the authority; the court/tribunal cannot supernumerary its view as to what is reasonable.”

Judicial review lies against a decision-making course and not against the decision itself, as stated in the case of **Gohil Hanubhai v. State of Gujarat[[10]](#footnote-11)**.

**JUDICIAL REVIEW OF POLICY DECISIONS**

In **Monarch Infrastructure (P) Ltd. v. Commissioner, Ulhasnagar Municipal Corporation[[11]](#footnote-12)**, it was held by the Supreme Court: —

“Broadly stated, the Courts would not inhibit with the matter of administrative action or deviations made therein, unless the Government’s action is arbitrary or discriminatory or the policy espoused has no nexus with the object it seeks to achieve or is mala fide.” It is settled legal proposition that the policy decision taken by the State or its authorities/instrumentalities is beyond the purview of judicial review unless the same is found to be arbitrary, perverse or in contravention of the statutory provisions or encroach upon the rights of individuals guaranteed underneath the statute. The policy decision cannot be in contravention of the statutory provisions for the reason that if Legislature in its insight offers for a particular right/ guarantee/benefit etc., the authority taking a policy decision cannot nullify the same.

In **Tamil Nadu Education Deptt., Ministerial and General Sub-ordinate Services Association v. State of Tamil Nadu[[12]](#footnote-13)**, the Supreme Court held that the Court cannot strike down a circular/Government order or a policy simply because there is a dissimilarity or contradiction. Life is sometimes full of incongruities and even inconsistency is not at all timesavirtue. What is important is to know whether mala fides vitiate or irrationality and extraneous factors snarls. The Court held as under: —

“Once the principle is found to be rational, the fact that a few freak instances of hardship may ascend on either side cannot be a ground to overturn the order or the policy. Every cause claims a martyr and nevertheless unhappy we be to see the seniors of yesterday’s becoming the juniors of today, this is an area where, inattentive arbitrariness and irrationality, the Court has to adopt a hands-off policy.”

 In **State of Karnataka v. All India Manufacturers Organization[[13]](#footnote-14)**, the Supreme Court examined the scope of judicial review in case of alteration of policy with the change of the Government i.e., under what circumstances, the government should revoke the decision taken by the earlier Government. The Court held that policy decision taken by the State Government should not be rehabilitated with the modification of the government. The Court further held

 “It is stale law that when one of the contracting parties is “State” within the meaning of article 12 of the Constitution, it does not dismiss to enjoy the character of “State” and, therefore, it is subjected to all the obligations that “State” has under the Constitution. When the State’s acts of omission or commission are tainted with extreme arbitrariness and with mala fides, it is undoubtedly subject to interference by the Constitutional Courts in this country. We make it clear that while the State Government and its instrumentalities are entitled to exercise their contractual rights they must do so neutrally, reasonably and without mala fides; in the event that they do not do so, the Court will be permitted to interfere with the same.”

**ARTICLE 14**

In **Krishnan Kakkanth v. Government of Kerala[[14]](#footnote-15),** the Hon’ble Supreme Court held as under: -

“34. To ascertain unreasonableness and arbitrariness in the context of **Article 14 of the Constitution,** it is not necessary to enter upon any exercise for finding out the insight in the policy decision of the State Government. It is immaterial if a better or more wide-ranging policy decision should have been taken. It is equally immaterial if it can be demonstrated that the policy decision is unwise and is likely to conquest the purpose for which such decisions has been taken. Unless the policy decision is palpably capricious or arbitrary and not informed by any reason whatsoever or it suffers from the vice of discernment or invades any statute or provisions of the Constitution, the policy decision cannot be struck down. it should be borne in mind that assume for the limited purpose of testing a public policy in the context of illegality and unconstitutionality, Court should avoid “embarking on uncharted ocean of public policy.”

**COMMENTS ON THE RECOMMENDATION OF WADWA COMMITTEE**

The Supreme Court constituted the Wadhwa Committee by an order passed in a writ petition to curbpatterned maladies affecting the proper functioning of PDS and also to recommend the curative measures. Wadhwa Committee beheld into the matter related to the besieged Public Distribution System and found that there was large scale manipulationsubsequent from diversion and leakages of food grains destined for the poor populace of the country.

The Committee suggested that PDS operations be computerized and human intervention be reduced to the maximum extent possible so as to check the deviations and leakages which outbreak the system at present. The Commission also found that there is lot of pilferage at every level and no fool proof central monitoring system is there. Committee submitted its report on 21 August 2007, pertaining to Delhi, had suggested that PDS operations be computerized and human invasion be reduced to the extent possible, so as to check the exoduses and leakages which plague the system at present.

**The recommendations are as follows:**

* Computerization of PDS operations.
* Identify the meticulous quantity of poor families existing below poverty line to affect the revenue to the factual beneficiary so that they can get their due permit means at fixed price and quantity in a fixed period.
* Distribution on minimum rate.
* Food security to upsurge nourishment especially in malnutrition areas.
* There should be zero lenience approach to curb leakages and maladministration.
* System privations transparency and accountability. It also needs to administer strict monitory measures.

**JUDGEMENT IN A GLANCE**

1. Policy decision taken by Supreme Court is beyond the purview of Judicial review.
2. State Government took the verdict to operationalize the Departmental Storage Centers in place of Private Storage Agent for smooth supply of Public Distribution System stock
3. There is no point of unreasonableness, arbitrariness, unfairness to render the policy irrational or unconstitutional.
4. Such policy cannot be interfered with, merely because it anguishes the business and interest of some private parties like the petitioners.
5. The Writ petitions are bereaved of merit and accordingly dismissed.

**OVERVIEW OF THE JUDGEMENT**

The Hon’ble Supreme Court on the basis of report / recommendations of Justice Wadhwa Commission had ordered the Government to certify door step delivery of food grains to ration shops. Undisputedly, the State Government has engaged in the policy not to assign Private Storage Agent in the State and to operationalize the Departmental Storage centers in place of Private Storage Agent and to distribute Public Distribution System to retail point smoothly.

Since the policy is the decision of the State government to progress smooth distribution of Public Distribution System Commodities, the same prerequisite need not be inhibited with by the Court.

It is a settled legal proposition that policy decision taken by the State Government or its authorities / instrumentalities is beyond the purview of judicial review unless the same is found to be arbitrary, unreasonable or in contravention of the statutory provisions or it disturbs the rights of individual guaranteed under the Statue.

On the basis of the above contentions, Court did not find any liability in the said policy on the point of Unreasonableness, arbitrariness, unfairness to render the policy irrational or unconstitutional.

It was further contented by the Court that such policy cannot be interfered with by the Court merely for the reason that it affects the business and interest of some private parties like the Petitioners. The Petitioners license had been stretched from time to time till March, 2012 and was approved for a specific period. Thus, they do not have Right of Renewal after the said termination.

Court further parroted that there is no illegality in inviting tenders under Annexure 4 for the engagement of contractors or transport of stock under the Public Distribution System. Therefore, the period of license validity cannot be extended.

Keeping the same view in mind, the Writ Petition was declared to be devoid of merit and was accordingly dismissed with no Order as to Cost.

**REFERENCES**

*Tamil Nadu Education Deptt., Ministerial and General Sub - ordinate Services Association v. State of Tamil Nadu****,*** AIR 1980 SC 379.

*Sterling computers Ltd. v. M & N Publications Ltd*., AIR 1996 SC 51.

*Ugar Sugar Works Ltd. v. Delhi Administration,* (2001) 3 SCC 635.

*Balco Employees’ Union (Regd.) v. Union of India*, AIR 2002 SC 350.

*Federation of Railway Officers Association v. Union of India,* (2003) 4 SCC 289.

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*Associated Provincial Picture Houses Ltd. v. Wednesbury Corpn.,* (1947) 2 All ER 680.

*Council of Civil Service Unions v. Minister for the Civil Service,* (1984) 3 All ER 935.

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**BRIEF ABOUT AUTHOR**

Anshu R Shekhawat is pursuing B.COM.LLB from Banasthali Vidyapith, Tonk, Rajasthan. She has precise interest in Criminal law, Corporate Law and Constitutional Law. She has published some research papers and had participated in many workshops and conferences related to Corporate Law and many different legal matters. She is a social worker and contributed to the society a bit. Interning at ProBono will help her enhance her CV.

1. *Tamil Nadu Education Deptt., Ministerial and General Sub - ordinate Services Association v. State of Tamil Nadu****,***AIR 1980 SC 379. [↑](#footnote-ref-2)
2. *Sterling computers Ltd. v. M & N Publications Ltd*., AIR 1996 SC 51. [↑](#footnote-ref-3)
3. *Ugar Sugar Works Ltd. v. Delhi Administration,*(2001) 3 SCC 635. [↑](#footnote-ref-4)
4. *Balco Employees’ Union (Regd.) v. Union of India*, AIR 2002 SC 350. [↑](#footnote-ref-5)
5. *Federation of Railway Officers Association v. Union of India,*(2003) 4 SCC 289. [↑](#footnote-ref-6)
6. *Krishnan Kakkanth v. Government of Kerala*,AIR 1997 SC 128. [↑](#footnote-ref-7)
7. *Associated Provincial Picture Houses Ltd. v. Wednesbury Corpn.,*(1947) 2 All ER 680. [↑](#footnote-ref-8)
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9. *Union of India v. G. Ganayutham,* AIR 1997 SC 3387. [↑](#footnote-ref-10)
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12. *Tamil Nadu Education Deptt., Ministerial and General Sub-ordinate Services Association v. State of Tamil Nadu,*AIR 1980 SC 379. [↑](#footnote-ref-13)
13. *State of Karnataka v. All India Manufacturers Organisation*, AIR 2006 SC 1846. [↑](#footnote-ref-14)
14. *Krishnan Kakkanth v. Government of Kerala,*AIR 1997 SC 128. [↑](#footnote-ref-15)