

\$~5

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

Date of Decision: 01.05.2020

+ W.P.(C) No.3027/2020 & CM APPL. 10544/2020

ANIL K AGGARWAL, ADVOCATE & ANR. Petitioners
Through: Petitioner No.1 in person.

versus

UNION OF INDIA & ORS. Respondents
Through: Mr. Gudipati G. Kashyap, Adv.
for NBCC.

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE C. HARI SHANKAR

J U D G M E N T

:D.N. PATEL, Chief Justice (Oral)

CM APPL.10544/2020 (exemption)

Allowed, subject to just exceptions.

W.P.(C) No.3027/2020

1. The prayer clause in this writ petition, purportedly filed in public interest, is self speaking, and reads thus:-

“In the above premises, amongst others, the petitioners are confident that the Hon’ble Court will be pleased to award the following prayer(s) of its duty-bound petitioners to:

A. Issue writ of or in the nature of mandamus and/or any other appropriate writs, orders or direction directing the respondents to strictly enforce the Covid-19 related statutory Orders and Guidelines both dated 15.04.2020 (Annexure P-2) in the letter and spirit and prevent misuse of relaxations by any person or Ministry, Government Department/Office and Central Public Enterprises/Government Companies and take all necessary steps to immediately close the offices and operations of the non-exempted Central Public Enterprises/Government Companies such as and including Steel Authority of India Limited, NBCC (India) Ltd., EIL Ltd., IRCON International Limited, Rites Limited, etc. dealing in non-essential goods and services; and keep the same closed during the entire lockdown period till 03.05.2020 or till such period extended by the NDMA/Respondent No.2; and

B. Issue writ of or in the nature of mandamus and/or any other appropriate writs, orders directing the respondent No.1 to trace out all Ministries, Departments/Offices and Central PSEs/companies, involved in non-essential goods and services and opened their offices and operations during lockdown period and initiate disciplinary action against the head of such Ministries/Departments and Chairman and/or MDs and Managing Director and members of Board of Directors of all such PSEs/government companies and to lodge FIR against the offending heads in terms of Section 58 of the Disaster Management Act, 2005 for committing offence punishable under Section 51 of the said Act and Section 188 of the Indian Penal Code, 1908; and

C. Pass such other writ, orders or directions as this Hon'ble Court deems fit in the circumstances of the case and in the interest of justice including the costs of this petition."

2. The petitioners are practising advocates. The writ petition was argued by Mr. Anil K. Aggarwal, the first petitioner, in person, via

video conferencing, in view of the urgent nature of the reliefs sought in the petition.

3. As is apparent from a reading of the afore-extracted prayer clause, the petitioners harbour the impression that, by allowing their offices to function, public sector enterprises engaged in “non-essential goods and services” – as the petitioner would seek to denote them – such as the Steel Authority of India Ltd (SAIL), National Buildings Construction Corporation (India) Ltd (NBCC), Engineers India Ltd (EIL), Indian Railways Construction International Ltd (IRCON) and the Rail India Technical and Economic Service (RITES), have breached Order dated 15th April, 2020, issued by the Ministry of Home Affairs (MHA). The writ petition, therefore, prays for a mandamus, to such Public Sector Undertakings/Public Enterprises to shut down their establishments, forthwith, and keep the establishments shut down during the currency of the lockdown, enforced by the Central Government and State Governments, as a measure to contain the spread of the COVID-19 virus, which has taken the form of a global pandemic. The writ petition also seeks initiation of criminal proceedings against the Heads of such Public Enterprises/Government Companies, for having breached the lockdown imposed by the Government.

4. We may note, at the outset, that the petitioners have not chosen to implead any Public Sector Undertaking / Public Enterprise/ Government Company, as a respondent, even while seeking a

direction to such establishments to shutdown, forthwith, and also seeking initiation of criminal proceedings against them. On the face of it, therefore, the present writ petition is bad for non-joinder of essential parties. We, however, do not desire to encourage multiplicity of litigation, which would be the inevitable fallout, were we to dismiss this writ petition on the ground of non-joinder; ergo, we have heard Mr. Aggarwal, at copious length, and proceed to dispose of the writ petition on merits.

5. All that the writ petition requires us to examine, obviously, is whether the Order, dated 15th April, 2020, and the Guidelines brought into effect thereby, stand infracted, by Public Sector Undertakings/Public Enterprises/Government Companies (to whom, for the sake of ease of reference, we would be adverting as “PSUs”), by allowing their offices to function during the period of lockdown.

6. The Order, dated 15th April, 2020, which has been issued in exercise of the powers conferred by Section 10(2)(i) of the Disaster Management Act, 2005 (hereinafter referred to as “the Disaster Management Act”) enumerates, exhaustively and comprehensively, various categories of establishments which would, and which would not, be permitted to function, during the period of lockdown, to remain in force till 3rd May, 2020 as of now. We need to concern ourselves only with S. No. 18 of the list of establishments annexed to the said Order, which reads thus:

“18. Offices of the Government of India, its Autonomous/Subordinate Offices will remain open, as mentioned below:

i. Defence, Central Armed Police Forces, Health and Family Welfare, Disaster Management and Early Warning Agencies (IMD, INCOIS, SASE and National Centre of Seismology, CWC). National Informatics Centre (NIC). Food Corporation of India (FCI). NCC, Nehru Yuva Kendras (NYKs) and Customs to function without any restriction.

ii. Other Ministries and Departments, *and offices under their control*, are to function with 100% attendance of Deputy Secretary and level above that. Remaining officers and staff to attend up to 33% as per requirement.”

(Emphasis supplied)

7. Practically on the heels of the said Order, an Office Memorandum (hereinafter referred to as “OM”) was issued, the same day, i.e. 15th April, 2020, by the Ministry of Housing and Urban Affairs (MHUA), referring to the afore extracted para 18 (ii) of the Order dated 15th April, 2020, and, in furtherance thereof, directing all officers, of and above the level of Deputy Secretary of the Ministry “to attend with effect from 20.4.2020”, and the remaining officers/staff to attend “up to 33% of the strength as per requirement.” The said OM was made applicable till 3rd May, 2020, i.e. till the expiry of the lockdown, as imposed by the Order dated 15th April, 2020 *supra*.

8. Closely following thereupon, on 16th April, 2020, the following OM was issued by the Department of Public Enterprises (DPE), Ministry of Heavy Industries and Public Enterprises:

“F. No. 10037/2014-GM-FTS-1867
Government of India
Ministry of Heavy Industries & Public Enterprises
Department of Public Enterprises

Block No 14, CGO Complex,
Lodi Road, New Delhi-110003

Dated: 16 April, 2020

OFFICE MEMORANDUM

Subject: Consolidated Revised Guidelines on the measures to be taken by Ministries/Departments of Government of India, State/duty Governments and State/duty authorities for containment of COVID-19 in the country. [As per Ministry of Home Affairs (MHA) Order No 40-3/2020-DM-I (A) dated 15th April, 2020 and 16.4.20 20]

The undersigned is directed to enclose a copy of MHA's Order No 40-3/2020-DM-I (A) dated 15.04.2020 and amendment dated 16.4.2020 along with the Consolidated Revised Guidelines with the request to instruct the CPSEs under the jurisdiction of the concerned Ministries/Departments for the compliance thereof.

(Pavanesh K. Sharma)
Deputy Secretary to the Government of India

To

All Secretaries of Ministries/Departments concerned
with CPSEs

CMDs of all CPSEs”

9. Immediately following thereupon, on the very next day, i.e. 17th April, 2020, SAIL and NBCC issued Office Orders, invoking the afore-extracted para 18 ii) of the Order dated 15th April, 2020 *supra*, issued by the MHA, and directing employees, in their respective

offices, above a particular level (equivalent to Deputy Secretary in the Government of India) to attend office, w.e.f. 20th April, 2020, till the expiry of the lockdown period. On the same day, i.e. 17th April, 2020, the Railway Board issued a Circular to the Chairman and Managing Directors/Managing Directors of various Corporations controlled by it, namely Braithwaite and Co Ltd, Kolkata, Container Corporation of India Ltd, Indian Railway Catering and Tourism Corporation, IRCON International Ltd, Konkan Railway Corporation Ltd, Mumbai Railway Vikas Corporation Ltd, Railtel Corporation of India Ltd, RITES Ltd, Rail Vikas Nigam Ltd, Dedicated Freight Corridor Corporation of India Ltd, Indian Railway Finance Corporation Ltd and Kolkata Metro Rail Corporation Ltd, to comply with the order dated 15th April, 2020 *supra*, of the MHA. It was further directed, in the said Circular, that, wherever offices were opened in exigency of service, social distancing was strictly required to be enforced and observed.

10. According to the petitioners, as vocalised by Mr. Aggarwal, the aforesaid Office Orders and Circular, issued by the SAIL, NBCC and the Railway Board, directly infringed the Order dated 15th April, 2020 *supra*, issued by the MHA, and breached the lockdown imposed thereby. Given the prevalent COVID-2019 pandemic, and the critical situation that has resulted as a consequence thereof, Mr. Aggarwal submits that such disobedience, by PSUs, of lockdown directives issued by the Central Government, which was inherently inimical to public health and to public interest, could not be tolerated for an instant. Ergo, the prayers in the writ petition, which already stand

distilled hereinabove.

11. Though the petitioners did not choose to implead any of the affected PSUs, NBCC was, nevertheless, represented, during the proceedings, by Mr. Gudipati G. Kashyap, who submits that the Circular, dated 17th April, 2020, of the NBCC, was a consequence of, and in compliance with, the OM, dated 16th April, 2020 *supra*, issued by the DPE, which mandated compliance, by PSUs, with the Order, dated 15th April, 2020 *supra*, issued by the MHA. He refutes the submission, of Mr. Aggarwal, that, in partly opening its offices, the NBCC had infringed Clause 18 ii) of the Guidelines dated 15th April, 2020. He submits that PSUs, such as the NBCC, were under the control of their nodal/parent Ministries – in the case of the NBCC, the Ministry of Housing and Urban Affairs – and, therefore, had to ensure 100% attendance of all officers, who were equivalent to the rank of Deputy Secretary, in the Central Government, and above. Complete shutdown of the office of his client, Mr. Gudipati G. Kashyap would submit, would, in fact, violate Clause 18 ii) of the Order dated 15th April, 2020.

12. Mr. Aggarwal strongly opposes the submission of Mr. Gudipati G. Kashyap and relies on *A. K. Bindal v. U.O.I.*¹, *National Textile Corporation Ltd v. Naresh Kumar Badri Kumar Jagad*² and *Mohd Hadi Raja v. State of Bihar*³, to submit that public sector undertakings, which operate with a motive to profit, and are purely

¹ (2003) 5 SCC 163

² (2011) 12 SCC 695

³ (1998) 5 SCC 91

W.P.(C) 3027/2020

commercial enterprises, could not be treated as “offices under the control of” the Government, so as to be entitled to the benefit of Clause 18 ii) of the Order dated 15th April, 2020. He also presses, into service, in this regard, the well-entrenched principle, governing interpretation of statutes, that words have to take colour from the company they keep and submits, therefore, that the expression “offices under the control”, as employed in Clause 18 ii) of the Order dated 15th April, 2020, has to take colour from the expression “Other Ministries and Departments”. The offices, which would be entitled to the benefit of the said clause, therefore, according to Mr. Aggarwal, had to be analogous to Ministries and Departments, and not in the nature of commercial public Sector undertakings and the like. He emphasises that the “control” exercised, by the Government, over such undertakings, was merely owing to the majority Governmental shareholding therein, and could not operate to characterise such undertakings as similar to Ministries and Departments of the government. Lastly, Mr. Aggarwal sought to place reliance on the earlier Order, dated 24th March, 2020, issued by the MHA, also under Section 6(2)(i) of the Disaster Management Act, which did not permit public Sector undertakings, such as the SAIL or NBCC, to operate during the period of lockdown.

13. We have heard learned counsel at length, and applied ourselves to the submissions advanced at the Bar.

14. While examining the contentions of Mr. Aggarwal, in this

regard, we deem it appropriate, at the very outset, to clarify one aspect of the controversy – which, in our view, must inform all cases in which interpretation of executive instructions, issued by the Government, in the wake of the COVID-19 pandemic, becomes necessary. It is essential to bear in mind the fact that the situation, in which these instructions have been issued – and continue to be issued, periodically – is, effectively, *sui generis*. Neither has India, nor has the rest of the world, seen, in the recorded past, a global pandemic, of the magnitude assumed by COVID-19. The continued spread of the infection, and mounting casualties, have necessitated emergent and immediate steps, by government authorities, based on a day-to-day assessment of the situation, and keeping in mind its improvement or deterioration. The measures, which the government authorities have, assiduously, put into place, to tackle the crisis, could not be treated as either foreseeable or predictable, in any manner. The flip side of the coin is, unfortunately, imminent economic regression, and, in national and public interest, the Government is also committed to ensuring that the economic edifice of the country does not fall to the ground. A fine, and nice, balance is, therefore, to be struck, by the executive, in safeguarding the concerns of health and economy, without compromising on either, to any extent. The clamping down, on the citizenry, of lockdown, and the simultaneous relaxation, of the rigour of the lockdown, in respect of certain offices and enterprises, is an effort at maintaining such a delicate balance. It is a matter of public knowledge that the decision, regarding the establishments, offices and enterprises, which ought to be extended some relaxation, from the

rigour of the lockdown, is a decision taken after days of deliberation, involving pan-India consultations at the highest levels of the Central government as well as the governments of the various States and Union Territories, aimed at safeguarding and promoting national interest, irrespective of considerations of caste, creed or political affiliations. A bare reading of the Guidelines governing the lockdown, as issued from time to time, make it apparent that the decision, regarding the precise extent to which lockdown should be imposed, is one with which interference, at the hands of the judiciary, must be reduced to a bare minimum.

15. The judiciary cannot, in exercising its powers in such cases, regard itself as a mere dispute-resolution mechanism, and has to keep, at all times at the forefront, considerations of overarching public interest. While, therefore, continuing to exercise judicial vigil over the acts of the executive, Courts have, in times such as these, necessarily to take care that, in doing so, they do not rock the boat, ending up doing more harm than good. The balance required to be maintained by the judiciary is, therefore, just as delicate, and fragile.

16. It becomes important to bear this aspect in mind, while examining the various judicial authorities, on which Mr. Aggarwal places reliance. Those authorities, as the discussion hereinafter would make it apparent, dealt with the concept of governmental control over public Sector enterprises, or other such establishments, in contexts, and situations, far removed from that in which the Order dated 15th

April, 2020, came to be issued. The extent to which these decisions should influence the mind of the Court, in understanding the scope and ambit of Clause 18 ii) of the Order dated 15th April, 2020 is, therefore, a matter of fundamental importance.

17. We also deem it appropriate to rely, in this regard, on the Office Memorandum dated 16th April, 2020, issued by the DPE, which stands extracted, in extenso, in para 8 *supra*. The very fact that the said Office Memorandum requested that PSUs be instructed to comply with the Order dated 15th April, 2020 *supra*, of the MHA, in our view, is a pointer, to some extent, to the fact that the said Order, dated 15th April, 2020 did not contemplate complete closure of all PSUs, as Mr. Aggarwal would seem to suggest.

18. Mr. Aggarwal would seek to submit that the expression “offices under their control”, as employed in clause 18 ii) of the 15th April, 2020 guidelines, has to be interpreted in the light of the law laid down in ***A. K. Bindal*¹**, ***National Textile Corporation Ltd*²** and ***Mohd Hadi Raja*³**, and that, so interpreted, PSUs could not be regarded as offices under the control of the Central or State government.

19. The Supreme Court, in ***A. K. Bindal*¹** was concerned with the issue of whether employees of Government companies had an enforceable right to demand that the burden of increased wages, resulting out of wage settlements entered into between such Government companies and their employees, was required to be borne

by the Central Government. This argument was premised on the control, exercised by the Central Government, over Government companies. It was in this background that the Supreme Court clarified thus:

“17.The government company is not identified with the Union but has been placed *under a special system of control* and conferred certain privileges by virtue of the provisions contained in Sections 619 and 620 of the Companies Act. Merely because the entire shareholding is owned by the Central Government will not make the incorporated company as Central Government. It is also equally well settled that the employees of the government company are not civil servants and so are not entitled to the protection afforded by Article 311 of the Constitution (Pyare Lal Sharma v. Managing Director). Since employees of government companies are not government servants, they have absolutely no legal right to claim that the government should pay their salary or that the additional expenditure incurred on account of revision of their pay scales should be met by the Government....”

(Emphasis supplied)

Even while, therefore, affirming that there was a “special system of control”, exercised by the Central Government over government companies, the Supreme Court clarified that this control was not sufficient to burden the Government with the liability to pay enhanced wages of the employees of Government companies.

20. In ***National Textile Corporation Ltd***², it was sought to be submitted, before the Supreme Court, that government Companies were agents of the Government, within the meaning of Section 182 of the Contract Act, 1872. This submission was rejected by the Supreme Court. While doing so, the Supreme Court acknowledged that a Government company may be called an “agency” or “instrumentality”

of the Central Government, in order for it to be treated as “State” within the meaning of Article 12 of the Constitution. This, however, it was held, did not render the Government company an “agent” of the Central Government, as defined under Section 182 of the Contract Act.

21. While these decisions, therefore, involved issues entirely foreign to the issue in controversy before us, they, if anything, confirmed the control, unquestionably exercised by the Government over Government companies, or PSUs, but go on to hold, nevertheless, that, merely by reason thereof, Government companies do not become agents of the Government, nor can the Government be rendered liable to defray, from the public exchequer, the additional expenditure, arising out of upward revision of wages of employees of such Government companies.

22. ***Mohd Hadi Raja***³ dealt with the issue of whether sanction, under Section 197 of the Code of Criminal Procedure, 1973, was required to prosecute a government servant who was on deputation which are public Sector undertaking. The controversy was, therefore, factually, even more distant, from the present case, than the two decisions cited earlier. Even so, the said judgement demolishes, effectively, in the following sentence, figuring in para 22 of the report, the very basis of the submission of Mr. Aggarwal:

“For the purpose of enforcing the fundamental rights, the public undertaking which, *on account of deep and pervasive*

control, can be held to be State within the meaning of Article 12 has been treated on a par with the Government department but in all its facets, public undertaking has not been equated with the department run directly by the Government.”

(Emphasis supplied)

The Supreme Court distinguishes, in this decision, therefore, PSUs, over which the Government has “deep and pervasive control”, with “departments run directly by the Government”. Clause 18 ii) merely refers to “offices under their control”, and not to offices “run directly by the Government”. The existence of Governmental control, over PSUs, cannot be gainsaid. Indeed, Mr. Aggarwal was candid in accepting that control, of a kind, did exist, but sought to emphasise the fact that such control was attributable only to the shareholding, of the Government, in such PSUs. To our mind, the reason for the existence of control, or the source to which such control owes its origin, is entirely irrelevant, while interpreting Clause 18 ii) of the guidelines dated 15th April, 2020. Governmental control, over their affairs, unquestionably exists and that, in our view, is enough, for PSUs to regard themselves as officers under the control of the Government.

23. We are of the view that the entire exercise, attended by the petitioners in the present case, though *bona fide*, is fundamentally misdirected. In seeking to draw sustenance from judicial pronouncements⁴, regarding the extent of control that exists, of the Government, over Government companies or PSUs, the petitioners have failed to bear, in mind, the fact that the issue to be addressed is

⁴ Refer *Ashwani Kumar Singh v. U. P. Public Service Commission*, (2003) 11 SCC 584 and *Bir Singh v. Mukesh Kumar*, (2019) 4 SCC 197, which ruled that pronouncements of Courts are not to be treated as analogous to Euclid's theorems, and are always rendered in the facts of the case before the Court.

not whether, etymologically speaking, PSUs may, or may not, be regarded as “offices under the control of” the Government, but, rather, whether any case may be said to exist, as would justify a mandamus, by this Court, to all PSUs, to shut down forthwith. We, therefore, have consciously chosen to avoid treading the path travelled by Mr. Aggarwal, and embarking on a dissertation regarding the legal, or jurisprudential contours of the expression “offices under their control”, as used in Clause 18 ii) of the Guidelines of 15th April, 2020. To our mind, any attempt at dissecting, lexicographically, the said expression, with a view to understanding the ambit of Clause 18 ii), would be thoroughly misconceived.

24. The fiscal – and, indeed, human – consequences, of any such decision, based on such an exercise, would be far-reaching, and cannot be wished away. The continued lockdown, though unavoidable, has, inevitably, resulted in a certain degree of upheaval, in the industrial and economic demographics of the country. It is obviously with a view to strike a balance between the necessity of minimal social interaction, on the one hand, and deleterious – and, if left unchecked, possibly catastrophic – fiscal and industrial consequences, on the other, that the executive administration has taken a decision, *vide* the Guidelines dated 15th April, 2020, to allow certain enterprises to function. We cannot ignore the fact that the PSUs, specifically named in the present petition, as well as other such industrial undertakings, are engaged in production of goods and services which impact, seriously and substantially, the lives of the

citizens. It is not for this Court to pronounce on the services which may be treated as “essential” and those which may be regarded as “non-essential”. Neither, in the exercise of the power of judicial review, vested in us, is it permissible for us to rewrite the Guidelines issued by the MHA by introducing, therein, any consideration of the “essential” or “non-essential” nature of services. Any such exercise, in a country as large as ours, with our population, must, in fact, be self-defeating. Conceptually speaking, in fact, *the goods produced, and services rendered, by public Sector undertakings are all, to one extent or the other, “essential”*.

25. The prayers in the writ petition are, to that extent, fundamentally misconceived. Issues such as extent to which the lockdown be relaxed, whether socialisation should be limited only to enterprises rendering “essential” goods or services, or should extend to all enterprises, and, in the former case, the categories of goods or services which may be regarded as “essential”, are all within the realm of executive discretion. It is not for us to pronounce thereupon. We do not formulate governmental policy. Judicial interference, with the exercise of executive discretion, in such cases, has necessarily to be circumspect, and may justifiably be said to be invited only where the decision, resulting from such exercise, suffers from absurdity, or manifest perversity. Courts cannot sit in appeal over the executive policy, in such matters; least of all in a situation of crisis, such as that with which the administration is grappling at present.

26. This Court would be loath to ascribe, to the Guidelines of 15th April, 2020 – specifically, Clause 18 ii) thereof – the interpretation which Mr. Aggarwal to place thereon, especially where any such exercise, on our part, would severely impact industrial and economic activity. We must, in such a situation, necessarily defer to the wisdom of the executive, at this juncture, and interference, therewith, would be justified only where the exercise of such wisdom is tainted, in law, for one reason or the other. The writ petition does not level any allegation of *malafides* against the executive – as, indeed, it cannot. We, in the circumstances, are unable to convince ourselves that any case exists, for this Court to issue a mandamus to all public Sector undertakings to shut down forthwith.

27. Notice, in this regard, may be taken of the recital, in the Order dated 15th April, 2020, to the effect that the allowing of “select additional activities” is intended “to mitigate the hardship to the public”. The same para goes on to state that such additional activities would be operationalised by States/Union Territories/District Administration, maintaining strict compliance with existing lockdown guidelines. All such States, Union Territories and District Administrations have also been directed, by the Order, to “ensure that all the regulatory arrangements with regard to social distancing in offices, *workplaces, factories and establishments* as also other sectoral requirements are in place”. Clearly, therefore, the Order, dated 15th April, 2020, consciously includes, within the scope of the relaxations allow thereby, operation of factories and establishments.

28. We cannot, therefore, subscribe to the extreme view, propounded by Mr. Aggarwal, that all public Sector undertakings, save and except those engaged in what the petitioners regarded as “essential” activities, should be shut down forthwith. The executive administration is, needless to say, alive to the functioning of all industrial undertakings, PSUs or otherwise, and we only hope and trust that compliance, with the Guidelines, regarding implementation of the lockdown, as well as relaxations allowed therefrom, would be ensured, at all points of time. Needless to say, if the executive administration fails to act, despite violation of any such Guidelines, the Court would, unquestionably, step in. We are not convinced that, in the present case, any such violation exists. Nor are we of the view that, in exercise of power of judicial review, the Guidelines, dated 15th April, 2020 supra, ought to be amended, or even clarified, by us, in the manner proposed in prayer A in the writ petition.

29. Mr. Aggarwal also sought to invoke, in his support, Article 14 of the Constitution of India. He submits that, if industrial activities are to be allowed relaxation from the rigour of the lockdown, such relaxation could not be limited to PSUs, but must extend to all industrial activities – and, indeed, all economic concerns and office spaces. We do not agree. Certain categories of industrial activities have been referred to, particularly, in the Guidelines of 15th April, 2020. Additionally, in view of the interpretation adopted by us hereinabove, Clause 18 ii) also allows officers under the control of the

Government – which would include public Sector undertakings and Government companies – to function. This, again, is a conscious executive decision, with which we are not inclined to interfere, to any extent. Article 14 of the Constitution of India has no role to play in such a case. It cannot be said that there is no intelligible differentia, between the categories of economic establishments and industries, excepted, by the Guidelines dated 15th April, 2020, from the rigour of the lockdown, and other establishments run by private individuals. Neither can this Court be a signatory to any declaration that every establishments should be permitted to operate, during the currency of the COVID-19 pandemic. It is entirely within the realm of the executive, seized with the crisis and the necessity of tiding over it in the best possible manner, to take a decision regarding the establishments which may be permitted to function, and to the extent thereof. Any expression of opinion, by the judiciary, with respect thereto, is fraught with serious and debilitating consequences. We, therefore, unhesitatingly reject the plea of discrimination, thus voiced by Mr. Aggarwal.

30. We do not, in these circumstances, deem it necessary to examine, in any great detail, the contention, of Mr. Aggarwal – founded, essentially, on the *noscitur a sociis* principle – that the expression “officers under the control”, as employed in Clause 18 ii) of the Guidelines of 15th April, 2020, has to be interpreted and analogously with the expression “Other Ministries and Departments”. Besides, it is well settled that resort, to the *noscitur a sociis* principle,

would be justified only where the intention of the legislature, in associating wider words with words of narrower significance, is doubtful.⁵ Clause 18 ii), of the Guidelines of 15th April, 2020, covers, on the one hand, “other Ministries and Departments” and, on the other, “officers under their control”. There is no ambiguity, whatsoever, in the clause. All offices, under the control of Ministries and Departments of the Government of India, are expressly covered by the said clause. The existence of control, by the Government of India, over public Sector undertakings, is a truism, which cannot brook denial. We cannot, therefore, hold that, in opening their offices, and calling, to work, employees above a level analogous to that of Deputy Secretary in the Government of India, PSUs infringed the 15th April, 2020 Guidelines.

31. We reiterate that, in our view, any hyper-legalistic interpretation of the various Clauses in the Guidelines issued by the Central Government to tide over the COVID-19 crisis, would be fundamentally misconceived. What is required, in these circumstances, is a purposive and realistic, rather than a legalistic, understanding of the Guidelines, and, thus viewed, we do not find that the writ petition makes out any case of infraction therewith.

32. The reliance, by Mr. Aggarwal, on the earlier Order, dated 24th March, 2020, issued by the MHA, and the Guidelines appended thereto, is also, in our view, of no substance. The changing response,

⁵ *State of Bombay v. Hospital Mazdoor Sabha*, AIR 1960 SC 610
W.P.(C) 3027/2020

of the country, to the COVID-19 pandemic, as necessitated periodical provisions of the Guidelines, issued by the government. In each case, such a provision has been preceded by exhaustive discussions and deliberations, at the highest levels. The Guidelines dated 24th March, 2020 having been superseded by the Guidelines dated 15th April, 2020, any reliance to the former Guidelines, or the terms thereof, would, in our view, be misconceived.

33. No case, therefore, exists, in our considered opinion, for grant of either of the prayers in the writ petition.

34. The writ petition is, accordingly, dismissed.

CHIEF JUSTICE

C. HARI SHANKAR, J

MAY 01, 2020
kks/anb