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

% *Date of Decision: 28th July,2020*

\+ W.P.(C) 4621/2020

SHAILENDRA KUMAR SINGH .....Petitioner
Through: Petitioner in person.

Versus

GOVERNMENT OF NCT OF DELHI
THROUGH: ITS CHIEF SECRETARY .....Respondent
Through: Mr.Sanjoy Ghose, ASC with Ms.Urvi Mohan, Adv.

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE PRATEEK JALAN

JUDGMENT

: D. N. Patel, Chief Justice *(Oral)*

Proceedings in the matter have been conducted through video conferencing.

C.M.No.16713/2020 *(exemptions)*

Exemptions allowed, subject to all just exceptions.

The application is disposed of.

W.P.(C) No.4621/2020

1. This petition, styled as a public interest litigation, has been preferred with the following prayers:-

> *"1. to issue an writ of mandamus to the respondent to remove all subsidies which are delivered at door step for people without any specific disability, liability, restriction, or condition, failing which such scheme will*

damage welfare state and such damage will be with irreparable loss and injury to society and nation.

2. *to issue an writ of mandamus to the respondent to not make such freebie policy which are delivered at door step for people without any specific disability, liability, restriction, or condition, failing which such scheme will damage welfare state and such damage will be with irreparable loss and injury to society and nation.*

3. *to issue such further order/s to respondents as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.**"***

2. In support of the petition, the petitioner submitted that the respondents are giving several subsidies at door steps of the people without any specific disability, liability, restrictions or conditions. According to the petitioner, this is contrary to the objective of establishing a welfare state. By way of example, it is submitted by the petitioner that electricity subsidy is being granted to all persons. In this regard, he referred to Annexure A-1 to the memo of this writ petition which is at Page No.27. The petitioner further submitted that similarly, water subsidy is also being given by the respondents to all. However, in this regard he has not relied upon any of the annexures or any policy of the respondents. The main contention of the petitioner is that there is no need to give all these subsidies to all the people at large, and the resources which are saved ought to be used for other beneficial purposes.

3. Having heard the petitioner, who appears in person and looking to the facts and circumstances of the case, it appears that providing water and electricity facilities at a concessional rate, are purely policy decisions taken

by the concerned Governments. This Court is not inclined to replace the State policy. The Courts cannot replace any policy even if it regards a different policy to be a better policy.

4. The Hon'ble the Supreme Court in the case of ***Villianur Iyarkkai Padukappu Maiyam v. Union of India*, (2009) 7 SCC 561** observed as under:-

> "168. **In a democracy, it is the prerogative of each elected Government to follow its own policy.** Often a change in Government may result in the shift in focus or change in economic policies. Any such change may result in adversely affecting some vested interests. Unless any illegality is committed in the execution of the policy or the same is contrary to law or mala fide, a decision bringing about change cannot *per se* be interfered with by the court.
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> 169. **It is neither within the domain of the courts nor the scope of judicial review to embark upon an enquiry as to whether a particular public policy is wise or whether better public policy can be evolved. Nor are the courts inclined to strike down a policy at the behest of a petitioner merely because it has been urged that a different policy would have been fairer or wiser or more scientific or more logical**. Wisdom and advisability of economic policy are ordinarily not amenable to judicial review. In matters relating to economic issues the Government has, while taking a decision, right to "trial and error" as long as both trial and error are bona fide and within the limits of the authority. For testing the correctness of a policy, the appropriate forum is Parliament and not the courts.
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> **170.** Normally, there is always a presumption that the governmental action is reasonable and in public interest and it is for the party challenging its validity to show that it is wanting in reasonableness or is not informed with public interest. This burden is a heavy one and it has to be discharged to the satisfaction of the court by proper and adequate material. **The court cannot lightly assume that the action taken by the Government is unreasonable or against public interest**

because there are large number of considerations, which necessarily weigh with the Government in taking an action."

(emphasis supplied)

5. In *Dr.Ashwani Kumar vs. Union of India & Anr.*, **2019 SCC Online 1144**, the Supreme Court held as under:-

> "13. The most significant impact of the doctrine of separation of powers is seen and felt in terms of the institutional independence of the judiciary from other organs of the State. Judiciary, in terms of personnel, the Judges, is independent. Judges unlike members of the legislature represent no one, strictly speaking not even the citizens. Judges are not accountable and answerable as the political executive is to the legislature and the elected representatives are to the electorate. This independence ensures that the judges perform the constitutional function of safeguarding the supremacy of the Constitution while exercising the power of judicial review in a fair and even-handed manner without pressure and favours. **As an interpreter, guardian and protector of the Constitution, the judiciary checks and curbs violation of the Constitution by the Government when they overstep their constitutional limits, violate the basic structure of the Constitution, infringe fundamental rights or act contrary to law. Power of judicial review has expanded taking within its ambit the concept of social and economic justice. Yet, while exercising this power of judicial review, the courts do not encroach upon the field marked by the Constitution for the legislature and the executive, as the courts examine legality and validity of the legislation or the governmental action, and not the wisdom behind the legislative measure or relative merits or demerits of the governmental action. Neither does the Constitution permit the courts to direct, advise or sermonise others in the spheres reserved for them by the Constitution, provided the legislature or the executive do not transgress their constitutional limits or statutory conditions. Referring to the phrase "all power is of an encroaching nature", which the judiciary checks while**

exercising the power of judicial review, it has been observed that the judiciary must be on guard against encroaching beyond its bounds since the only restraint upon it is the self-imposed discipline of self-restraint. Independence and adherence to constitutional accountability and limits while exercising the power of judicial review gives constitutional legitimacy to the court decisions. This is essence of the power and function of judicial review that strengthens and promotes the rule of law.

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29. Dipak Misra, CJ in ***Kalpana Mehta's*** case, under the heading *Power of judicial review* [3] had examined several judgments of this Court to reflect upon the impressive expanse of judicial power in the superior courts that requires and demands exercise of tremendous responsibility by the courts. Thus, while exercising the interpretative power, the courts can draw strength from the spirit and propelling elements underlying the Constitution to realise the constitutional values but must remain alive to the concept of judicial restraint which requires the judges to decide cases within defined limits of power. Thus, the courts would not accept submissions and pass orders purely on a matter of policy or formulate judicial legislation which is for the executive or elected representatives of the people to enact. Reference was made to some judgments of this Court in the following words:

> "43. In *S.C. Chandra* v. *State of Jharkhand*, it has been ruled that the judiciary should exercise restraint and ordinarily should not encroach into the legislative domain. In this regard, a reference to a three-Judge Bench decision in *Suresh Seth* v. *Indore Municipal Corpn.* is quite instructive. In the said case, a prayer was made before this Court to issue directions for appropriate amendment in the M.P. Municipal Corporation Act, 1956. Repelling the submission, the Court held that **it is purely a matter of policy which is for the elected**

> **representatives of the people to decide and no directions can be issued by the Court in this regard**. The Court further observed that this Court cannot issue directions to the legislature to make any particular kind of enactment. In this context, the Court held that under our constitutional scheme, Parliament and Legislative Assemblies exercise sovereign power to enact law and no outside power or authority can issue a direction to enact a particular kind of legislation. While so holding, the Court referred to the decision in *Supreme Court Employees' Welfare Assn.* v. *Union of India* wherein it was held that **no court can direct a legislature to enact a particular law and similarly when an executive authority exercises a legislative power by way of a subordinate legislation pursuant to the delegated authority of a legislature, such executive authority cannot be asked to enact a law which it has been empowered to do under the delegated authority.**""
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> *(emphasis supplied)*

6. It is evident from the aforesaid decisions also that a policy decision of the government cannot be interdicted by the writ court in the absence of a finding of unconstitutionality, illegality or mala fides. The petitioner has failed to make out any of these grounds, or to demonstrate any manifest arbitrariness on the part of the executive. We therefore see no reason to entertain this writ petition to alter the policy decision of the respondents. Water and electricity concessions are given by the respondents as per their policy decisions based upon application of facts and situations prevailing in the particular society. The policy decision is always based upon the priorities of the executive, elected by the people. We are not inclined to alter the policy decision of the Government unless any illegality or otherwise is pointed out in detail.

7. As stated above, the petitioner is unable to point out any illegality about the electricity and water concessions given by the respondents. The Government cannot run at the desire of a person like this petitioner. Bare assertions have no value in the eyes of law. Assertions are required to be supported by cogent materials and the alleged illegality has to be made out, otherwise, the Courts will be extremely slow in interfering with the policy decision. Hence, also we see no reason to interfere with this petition.

8. Accordingly, the petition is dismissed with costs of Rs.25,000/- to be paid by the petitioner to the Delhi State Legal Service Authority within four weeks from today. The aforesaid amount shall be utilized for the programme „Access to Justice".

9. A copy of this order be sent forthwith to the Member Secretary, Delhi State Legal Services Authority, Patiala House Courts, New Delhi.

CHIEF JUSTICE

PRATEEK JALAN, J

JULY 28, 2020
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