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* IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Decision: 18th September, 2023

\+ W.P.(C) 12262/2023

NEERAJ KUMAR DUBEY ..... Petitioner

Through: Mr. Sanjeev Anand, Senior Advocate with Mr. Raghav Alok and Ms. Vasudha Trivedi, Advocates.

versus

UNION OF INDIA & ANR. ..... Respondents

Through: Mr. Chetan Sharma, ASG with Mr. Apoorv Kurup, CGSC with Mr. Amit Gupta, Mr. Ghansyam Jha and Mr. Vikramaditya, Advocates.

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

JUDGMENT

SANJEEV NARULA, J. (Oral):

1. The Petitioner, Mr. Neeraj Kumar Dubey, through this Public Interest Litigation, raises his concerns regarding the National Policy on Biofuels, 2018 [“NBP 2018”], promulgated by Respondent No. 2 – Ministry of Petroleum and Natural Gas, Government of India on 04th June, 2018, and subsequently amended on 15th June, 2022. This policy permits use of food grains – including damaged grains like wheat and broken rice – as feedstock for ethanol production. While the NBP 2018 aims to meet burgeoning energy needs and targets a 20% ethanol blend with petrol by the year 2025-26, the Petitioner argues that such a shift might precipitate unforeseen consequences for the masses, particularly a potential food grain shortage,

that could leave many citizens starving.

FACTS AND GROUNDS OF CHALLENGE PRESENTED BY PETITIONER

2. Respondent No. 2 notified the NBP 2018 on 04th June 2018, thereby paving the way for production of bioethanol from agriculture residues, biomass, food grains, starch containing material etc. Until the notification of NBP 2018, bioethanol was sanctioned to be produced from non-food sources, such as molasses, cellulose, and lignocellulose material, including the petrochemical route. However, with the ambition of achieving a 20% ethanol blend in petrol, the NBP 2018 now facilitates production of ethanol using food grains and further permits diversion of such grains from the Food Corporation of India ["FCI"] to distilleries.

3. In keeping with the goals of EBP 2018, through their decisions taken in meetings held on 20th April, 2020 and 09th November, 2020, the National Biofuel Coordination Committee ["NBCC"] has approved the diversion of surplus rice and maize held by the FCI, towards production of bioethanol. Later, in December, 2020, an interest subvention scheme aimed at boosting and expanding ethanol production capacity was floated to attract distilleries that utilize grains and other feedstocks like sorghum and sugar beet, in addition to the previously included molasses-based distilleries.

4. In June, 2021, the NITI Aayog released a report curated by an Expert Committee, outlining a "Roadmap for Ethanol Blending in India from 2020-25". This comprehensive report specifies that in order to meet the targeted ethanol production from food grains, India will need 165 lakh metric tonnes of food grains. Currently, only 40 lakh tonnes of damaged food grains and 20 lakh tonnes of maize in surplus, are available. The report further notes

that sufficient rice is in stock with the FCI and that the country is producing adequate food grains and sugar to cope with the ethanol demand. However, these projected calculations of the Expert Committee have been scrutinized and challenged in an article featured in the popular digital media platform – The Print.

5. The production costs of ethanol derived from sugarcane juice, damaged food grain and FCI's surplus rice stock is Rs.62.65, Rs.51.55 and Rs.56.87 per litre, respectively. In comparison, bioethanol produced through B-Molasses and C-Molasses is priced at Rs.57.61 and Rs.45.69 per litre.

6. In formulating the NBP 2018, the policy makers have overlooked a critical perspective: India, a nation grappling with chronic undernourishment, relies heavily on free ration provided to an approximate 80 crore of its populace under the National Food Security Act, 2013. Utilizing the grains, which could otherwise be distributed through the Public Distribution System, for ethanol production seems both insensitive and ethically questionable on the Government's side. The Global Hunger Index positions India at a concerning 107 out of 121 countries, trailing behind neighbouring nations like Bangladesh (at 84), Nepal (at 81), Pakistan (at 99), and Sri Lanka (at 64). India's child wasting rate, indicating low weight relative to height, stands at an alarming 19.3%, which is the highest globally. To provide perspective on the deteriorating situation over time, Petitioner refers to India's child wasting rates of 2000 and 2014, which were 17.15% and 15.1%, respectively. Additionally, child stunting (indicative of low height for age) and child mortality (death rate for children under 5) of India stand at 35.5% and 3.3%, respectively.

7. Between 2019 and 2021, 16.3% of India's population was chronically

undernourished, signifying that a staggering 224.3 million Indians (from a global total of 828 million) experience deficiency in dietary energy intake. It is worth noting that during 2018-2020, this figure was slightly lower at 14.6%. The data noted above underscores the worsening state of undernourishment in India.

8. Multiple newspaper articles and the report of National Health Survey, 2017, reveal disheartening statistics: approximately 19 crore Indians are forced to retire for the night with empty stomachs. More distressingly, an estimated 4,500 children under the age of 5, succumb daily to hunger and malnutrition. This translates to over 3 lakh child fatalities annually, attributed solely to hunger.

9. In endorsing the transformation of food into fuel, Government has neglected the inherent linkage between food prices and petroleum costs. As petroleum becomes costlier, biofuels gain profitability, allowing biofuel producers to bid higher for their raw materials. This will put those in hunger in direct rivalry with fuel demands.

10. Historically, the economics of food and energy have operated in separate domains. However, the advent of food-based ethanol distilleries has caused an unsettling convergence. If the grain's value as fuel surpasses its value as food, market forces will inevitably push it into the energy sector. Consequently, a spike in oil prices may induce a parallel rise in grain prices, amplifying hunger issues. The NBP 2018 which permits turning food into fuel is not merely a flawed policy, but also infringes upon the fundamental right to food, enshrined in Article 21 of the Constitution of India, 1950. This right entails access to nutritionally adequate food, ensuring it transcends mere rhetoric, and genuinely addresses the needs of those in distress.

11. Individuals mired in poverty often grapple with prolonged malnutrition. Even if their eventual demise may not be directly attributable to starvation, the undeniable reality is that chronic malnutrition and associated vulnerabilities render them susceptible to common ailments. This predicament is rendered even more poignant given the overflowing reserves of the FCI. The decision to channel these surplus grains for ethanol, rather than addressing the pressing malnutrition endemic, is deeply disconcerting.

12. The Directive Principle of State Policy delineated in Article 39(a) of the Constitution, mandates the State to ensure that all citizens have the right to sufficient means of livelihood. Simultaneously, Article 47 designates the elevation of nutritional standards and the overall well-being of the populace as a primary duty of the State. Thus, re-purposing food grains for ethanol production seems to be a departure from these constitutional obligations. It is imperative for the State to prioritize the eradication of hunger and malnutrition, which stands as a blatant affront to human dignity, rather than channelling essential grains for fuel production.

13. Prioritizing ethanol production from rice may inadvertently incentivize farmers to cultivate more rice. Given that rice cultivation is particularly water-intensive in India, this could exacerbate groundwater shortage – a resource essential to human survival.

14. Food grains also serve as a pivotal fodder source for livestock. While comprehensive data on livestock starvation remains elusive, anecdotal evidence and news reports have highlighted instances of cattle mortality due to starvation.

15. At its core, the principle of food security aims to ensure consistent and reliable access to essential food, fostering an active and healthy life for

all. This principle is built on the four pillars of availability, accessibility, utilization, and stability of food. Eradication of hunger and malnutrition must be of paramount importance for the Government. Hence, diversion of food sources towards fuel production must not be permitted.

ANALYSIS

16. Before we commence to express our views, we must observe that it is not within our judicial capacity to critique or appraise the objectives, scientific premise, or potential socio-economic impact of the NBP 2018. These matters are firmly within the policy-making prerogative of the Executive, which is accountable to the electorate, and operates within a framework that allows extensive expert consultation, public input, and administrative discretion. Therefore, our judgement should not be construed as an endorsement or repudiation of the policy's substantive merits. Our introspection has been confined strictly to the legal grounds presented, specifically whether the policy in question infringes upon any statutory provisions or contravenes fundamental rights or constitutional mandates.

Overview of the NBP, 2018:

17. Nonetheless, we have carefully perused the NBP 2018. It exemplifies a comprehensive approach to addressing country's energy and environmental needs. It marries economic considerations with environmental imperatives, underpinned by technological advancement. The policy establishes a clear Ethanol Blended Petrol Programme, with the objective of blending up to 20% ethanol with petrol across the country by the ethanol supply year 2025-26. To this effect, the Ministry of Petroleum

and Natural Gas, Government of India, has already mandated all oil companies to sell petrol with up to 20% of ethanol *w.e.f.* 01st April, 2023. The NBP 2018, as subsequently amended in 2022, entails a gradual planned increase of ethanol blending in future years. A 5% blending target for biodiesel by 2030 is also proposed. It gives a clear understanding of what qualifies as advanced biofuels, which are eco-friendly and have minimal impact on food crop land use. The amended NBP 2018 enlists the potential domestic raw materials for production of biofuels, which includes C and B heavy molasses, sugarcane juice, agriculture residues, damaged food grains or grains that are unfit for human consumption, surplus grains, industrial wastes, algae, cultivated sea weeds etc. This allows for a broad range of raw materials, encompassing newer sources like algal feedstock, that can be used to potentially boost domestic biofuel production. The NBP 2018 projects the country's alcohol/ ethanol production capacity to be 700 crores per annum.

18. Clause 6.2 of NBP 2018 also takes into consideration the possibility of feedstock imports if domestic production is insufficient. This provision ensures that targets are met even if domestic resources fall short. The mention of Special Economic Zones and Export Oriented Units in this context indicates an intention to promote biofuel production within these zones for export. While the primary focus of the policy seems to be on domestic needs, there are specific provisions under which exports can be allowed. This approach balances domestic demand with the potential for foreign exchange earnings. In addition, NBP 2018 endeavours to create second generation (2G) bio refineries, thus augmenting national technology and infrastructure. By availing the Task Force on Waste to Energy, set up by the NITI Aayog, the NBP 2018 also fosters production of other biofuels

such as bio-CNG, bio-hydrogen and the like. Pricing mechanism, distribution and marketing guidelines, fiscal incentives, increased expenditures, and measures for soliciting foreign direct investments, have also been set-out in NBP 2018. Further, the NBCC has also been established as a nodal institution for effective coordination, implementation, and monitoring of biofuel programmes. The NBP 2018 therefore, depicts the drive towards newer, more efficient, and environment-friendly technologies and processes, with collaborative efforts of the State and stakeholders.

The Legal Framework: Policy Matters and Judicial Review

19. We reiterate, perhaps at the risk of redundancy, that our jurisdiction does not extend to assessing the wisdom, efficacy, or suitability of legislative policies, including the impugned NBP 2018. This is based on the foundational principle of separation of powers that is deeply embedded in India's constitutional fabric. The Executive, Legislature, and Judiciary have demarcated domains, ensuring a system of checks and balances. The realm of policy formulation and decision-making predominantly falls within the ambit of the Executive. Courts have invariably exhibited restraint when called upon to adjudicate on policy matters. The reason is clear: policy decisions involve a complex matrix of socio-economic factors that are best judged by the elected representatives of the people, who are entrusted with this duty because of their unique position and access to comprehensive data. The courts, by design, are neither equipped with the tools, nor possess the expertise, to dissect the nuances of such decisions, especially when they are not patently arbitrary or discriminatory.

20. The landmark judgment in ***State of Madhya Pradesh v. Narmada***

Bachao Andolan and Anr.,[1] has crystallized the above principle. The Supreme Court has categorically observed that it is not within the domain of the courts to embark on an inquiry as to whether a particular public policy is wise or whether a better policy could be evolved. Such an exercise must be left to the domain of the Executive, given the complexities involved. Judicial review should not supplant the role of the Executive, but must confine itself to the legality of the decision, ensuring it conforms to statutory and constitutional principles.

Re: concerns raised by the Petitioner

21. Having set out the peripheries of judicial review of a policy decision, we now proceed to evaluate the challenge laid to NBP 2018 by the Petitioner. While the specifics of the Petitioner's concerns over the NBP 2018 vary, the central theme seems to be the potential negative implications of the policy on various sectors, resource allocation, and the overall public interest. Petitioner questions the broad-spectrum of feedstock for biofuel production and the aggressive push towards a higher blending percentage, envisaged in the NBP 2018. He has endeavoured to highlight the possible strains on certain resources and industries, arising from diversion of resources from their essential uses, as well as the potential socio-economic ramifications of such a policy shift. Petitioner's challenge is a multi-faceted one, that goes beyond mere policy implementation. There is an underlying misgiving about the economic viability of businesses that might find themselves competing for similar resources now earmarked for biofuel production. This is especially pertinent in respect of feedstock like industrial

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[1] (2011) 7 SCC 639.

waste, agricultural residues, and damaged food grains. Industries which previously relied on these as primary resources, may be put in a precarious situation. The Petitioner strongly emphasizes the potential strain on agriculture, contending that with the inclusion of such diverse feedstock for biofuel production there is a possibility that farmers might prioritize biofuel feedstock over essential food crops, given the economic incentives. This could, the Petitioner argues, lead to a reduction in food grain availability, driving up prices and potentially leading to food scarcity in certain regions. Lastly, while stressing the distressing condition of food security in India, the Petitioner objects to utilization of food grains for biofuel production. His apprehensions are rooted in the belief that access to nutritious food is the foremost obligation of the State, and by directing food stuff towards bioethanol production, the Government is drifting from their duty.

22. While the Petitioner raises valid concerns regarding the potential economic consequences for businesses, it is crucial to view the goals of NBP 2018 through a broader macroeconomic lens. It is essential to juxtapose the Petitioner's concerns against the holistic benefits of NBP 2018. The intention behind the policy is to create a more sustainable and self-reliant energy model for the country. By focusing on biofuels, the nation can reduce its dependency on fossil fuels, thereby stabilizing energy costs in the long run and insulating the economy from the volatile global oil market. Moreover, the potential competition for resources such as industrial waste or agricultural residues can spur innovation in sourcing and recycling methods, leading to a more efficient utilization of resources.

23. The worry that farmers might shift their focus to biofuel feedstock at the cost of essential food crops underestimates the checks and balances

built-in NBP 2018. The policy declares damaged food grains, such as broken rice, or grains that are otherwise unfit for human consumption as feedstock for producing bioethanol. As regards the surplus grains, the NBCC is accorded with the authority to declare food grains during their surplus phase, which can then be used for biofuel production. A clear intent to avail only excess grains, which might otherwise go to waste, is discernible. Furthermore, the policy's emphasis on non-food energy crops and feedstock generation on wastelands ensures that prime agricultural land remains dedicated to food production.

24. By diversifying the energy portfolio, the nation not only reduces its carbon footprint, but also stimulates growth in the agricultural and industrial sectors. The job creation potential in bio-refineries, feedstock cultivation, and related research and development sectors, can offset potential job losses in traditional sectors.

CONCLUSION

25. The role of the judiciary is to ensure that the powers conferred by law are exercised within their lawful boundaries, and are not abused. It is not this Court's remit to undertake tasks designated to specific authorities. The court's intervention in economic policies – a domain largely reserved for specialists – is not customary. Economic policies, by their nature, involve intricate complexities best understood and acted upon by expert bodies. It is recognized that even among experts, opinions can vary widely. The courts should abstain from making determinations in such intricate matters, especially in the absence of specialized insight. The resolution of such issues is best left to the wisdom of the relevant authorities, who possess the

requisite expertise, resources, and the constitutional mandate to address the myriad of challenges and considerations inherent in the development and execution of national policies.

26. Policies are often drafted keeping in view the larger public interest, balancing various competing interests. Unless a policy is manifestly arbitrary, discriminatory, or *mala fide*, the wisdom and advisability of governmental policies are outside the purview of judicial review. Upon a comprehensive examination of the Petitioner's contentions and the material presented, we do not find any illegality, arbitrariness, or irrationality in formulation of the NBP 2018. Given the in-built mechanism of the NBP 2018, aimed at balancing the country's competing needs, the Petitioner's anxiety over the possible ramifications on accessibility and availability of food as well as the industry, does not call for this Court's intervention. Such an evaluation would necessitate a foray into complex socio-economic issues, scientific considerations, and policy choices, that we are not equipped to adjudicate. It is important to recognize that a change in policy, even if perceived as causing hardship or being contrary to a group's interests, does not necessarily render it unconstitutional.

27. For the foregoing reasons, the petition is dismissed.

SANJEEV NARULA, J

SATISH CHANDRA SHARMA, CJ

SEPTEMBER 18, 2023/as