M/S. Kasturi Lal Lakshmi Reddy, Represented By Its Partner Shri Kasturi Lal, Ward No. 4, Palace Bar, Poonch, Jammu and Others

Vs

State of Jammu and Kashmir and Another

Writ Petitions Nos. 481-482 of 1979

(P. N. Bhagwati, V. D. Tulzapurkar, R. S. Pathak JJ)

09.05.1980

JUDGMENT

BHAGWATI, J. –

1. These two writ petitions under Article 32 of the Constitution raise questions of some importance in the field of constitutional law, but they are not abstract questions which can be divorced from the facts giving rise to them and in order to resolve them satisfactorily, it is necessary to state the facts in some detail. Though the petitioners in two writ petitions are different, the respondents are the same and the same order of the State of Jammu and Kashmir is challenged in both the writ petitions. Hence whatever we say in regard to the first writ petition, applies equally in regard to the second.

2. The dispute in these writ petitions relates to the validity of an Order dated April 27, 1979, passed by the Government of Jammu and Kashmir, allotting to the 2nd respondent 10 to 12 lacs blazes annually for extraction of resin from the inaccessible chir forests in Poonch, Reasi and Ramban Divisions of the State for a period of 10 years on the terms and conditions set out in the order. The validity of the order has been challenged on various grounds which we shall presently set out, but in order to understand and appreciate these grounds, it is necessary to state briefly the circumstances in which the order came to be passed by the Government of Jammu and Kashmir. There is a commodity called oleo-resin, which we shall hereafter refer shortly as resin, which is a forest produce extracted from certain species of trees popularly known as chir trees. The process of extraction is called "tapping" and it involves several steps. Chir trees are annually given one or two wounds which are technically called blazes and cups and lips are fixed at the bottom of each blaze for collection of resin. The actual collection of resin starts from April 1 and ends on October 31, every year. The maximum flow of resin from blazes is during the months of May and June and in the subsequent months of the working season, namely, July to October, the flow gradually decreases due to the rainy season followed by fall in temperature. The tapping of resin is a continuous process and the initial blazings have to be followed by freshenings given every week. If the blazes are not freshened regularly, the resin ducts get blocked and the blazes become dry and once a blaze becomes dry, the flow of resin stops completely. The resin that is collected in the cups is transferred to tin containers every weekend or earlier if required, and the tin containers are then transported to the transit depots for being carried to the destination. This process of tapping requires employment of skilled labour and involves a considerable amount of expenditure. The State of Jammu and Kashmir started tapping operations in respect of its chir trees since about 1973 by giving contracts to private parties for extraction and collection of resin. The contracts were of three types :

(1) One was contract on wage basis, commonly known as wage contract, which was

given by auctioning the blazes to the person who was prepared to undertake the work of extraction and collection of resin at the lowest rates of labour charges and in such contract, the entire resin extracted and collected by the contractor would belong to the State and the contractor would be entitled only to the wage or labour charges for extraction and collection of resin.

(2) The second type of contract was on the basis of royalty without load and under this contract, which was again given by auction stipulating for payment of royalty per blaze, the entire resin extracted and collected by the contractor would belong to him and would be free to sell or process it as he liked.

(3) The third type of contract given by the State was on the basis of royalty with load and under this contract, which was also given by auction, the royalty was payable per blaze and out of the resin extracted and collected by the contractor, a certain part would have to be surrendered to the State while the balance would remain with the contractor.

Every year the State auctioned the blazes in the different forests within its territory and about 40 per cent of the forests were given on royalty basis, some with load and some without load, while the balance of about 60 per cent were given on wage-contract basis.

3. The resin, which was thus obtained by the State by giving out blazes on contract whether on royalty-cum-load or on wage basis, was auctioned by the State from time to time and manufacturers having factories for manufacture of rosin, turpentine and other derivatives purchased it at the auctions. It is common ground that most of these purchasers were manufactures having their factories in Hoshiarpur District of Punjab and at the material time, they depended for their requirement of raw material solely on the resin available at the auctions held by the State since supply of resin had ceased to be available from Uttar Pradesh and Himachal Pradesh on account of the policy adopted by the Governments in these territories. The State, however, in furtherance of its policy to bring about rapid industrialisation, decided that from the year 1979-80 onwards, the resin extracted from its forests should not be allowed to be exported outside the territories of the State and should be utilised only by industries set up within the State. The State in fact entered into contracts with three manufacturers, namely, Prabhat, Turpentine and Synthetics Pvt. Ltd., Dujodwala Rosin and Turpentine Pvt. Ltd. and Pine Chemicals Ltd. under which these three manufacturers agreed to put up factories in the State for manufacture of rosin, turpentine and other derivatives and the State agreed to make available to them respectively an assured supply of 4000, 3500 and 8000 metric tonnes of resin per year. The validity of these contracts was challenged before us in Writ Petitions 37-38 of 1979, but these writ petitions were dismissed by us by an Order made on December 21, 1979. The State had also commitments to supply resin to its own concern, namely, J. & K. Industries Ltd., which was running a factory for manufacture of rosin and turpentine as also to various small scale units which were set up in the State. It appears that the total requirement of the State for the purpose of meeting these commitments was in the neighbourhood of 24,000 metric tonnes of resin. Now in view of the fact that quite a large number of forest were being given out by the State for tapping on royalty-contract basis, sometimes with load and sometimes even without load, the aggregate quantity of resin which was being collected by the State was very much short of the total requirement of 24,000 metric tonnes and it was, therefore, felt to be absolutely necessary for the State to increase its procurement of resin so as to be able to meet its commitments. With this end in view a meeting of the Chief Conservator of Forests and other forest officials was held on December 9, 1978 for the purpose of discussing ways and means for achieving a higher target of

production of resin. It was decided at this meeting that the increased target of production could be achieved only through replacement of royalty contracts by wage contracts wherever possible and hence in future blazes should be auctioned for tapping only on wage-contract basis.

4. Now there were certain forests in Reasi and Ramban Divisions of the State which were difficult of access on account of their distance from the roads and so were some forests in the Poonch Division near the line of actual control. So far as the forests in the Reasi Division were concerned, there were 6,08,115 blazes which were attempted to be given for tapping in the year 1976-77 on royalty-contract basis without load but out of them only 1,28,856 blazes were taken by one Prem Kumar Sood and that too on a royalty of only Rs. 2.55 per blaze, as against royalty of about Rs. 6 per blaze obtained by the State in other inaccessible areas by giving contract on royalty basis with load of 3 Kg. per blaze. Moreover, these 1,28,856 blazes were situate in the lower reaches of inaccessible forest and no contractors could be found for taking tapping contracts, even on the basis of royalty without load, for blazes in the higher regions of the inaccessible areas. The same 1,28,856 blazes were again put up for auction for the year 1977-78, but no bidders came forward to take a contract even on royalty without load basis. Then for the year 1978-79, out of these 1,28,856 blazes, 72,951 blazes were once again put up for auction and though these were situate in less inaccessible areas than the rest of the blazes, the response was most discouraging and no one came forward to make a bid for taking the contract even on royalty basis without load. The result was that practically no tapping was done from these 6,08,115 blazes in the forests of the Reasi Division up to 1979-80. There were also some new blazes marked in the forests of the Reasi Division for the year 1979-80 and out of them, 4,20,340 blazes were in areas which were inaccessible on account of their being at a distance of 8 to 40 kms. from the roadside. Even out of the old 6,08,115 blazes there were 3,10,674 blazes which were situate in the same category of inaccessible areas. So far as the forests in the Ramban Division are concerned, there were 1,24,400 blazes which were equally inaccessible "due to long lead up to coupe boundaries and transit depots" and the position in regard to 3,30,000 blazes which were under tapping in Poonch Division, was also similar to that of the inaccessible areas in Reasi and Ramban Divisions with the additional handicap of their being situate along the line of actual control. There were thus in all about 11,85,414 blazes in the Reasi, Ramban and Poonch Divisions which were inaccessible areas and having regard to the high cost of extraction and collection of resin as also the scarcity of trained labour in those areas, it was not possible to give out those blazes by auction on wage-contract basis. The past experience showed that even on the basis of royalty without load, contractors were not forthcoming for taking contracts in respect of blazes in the inaccessible areas of the Reasi Division and giving out of the aforesaid blazes in the Reasi, Ramban and Poonch Divisions on wage-contract basis was, therefore, almost an impossible proposition. The Chief Conservator of Forest and other forest officers accordingly decided at their meeting of December 9, 1978 that these blazes could not be tapped through wage-contract because "apart from the total non-availability of local labour in these areas, cost of production due to long lead up to coupe boundaries and transit depots would be prohibitive" and all such areas should, therefore, be excluded from tapping through wage contracts.

5. These decisions taken in the meeting of December 9, 1978 were confirmed at a subsequent meeting which took place between the Forest Minister, the Forest Secretary, the Chief Conservator of Forests and other forest officers on December 26, 1978. It was further decided in this meeting that "the departmental tapping through wage contracts should be confirmed to accessible chir forest" only and so far as 11,85,414 blazes in the inaccessible areas of the Reasi, Ramban and Poonch Divisions were concerned, the consensus was that "these blazes should be allotted to some private party as procurement of resin from them through wage contracts was not feasible, being difficult and costly" and "the financial status and experience in extraction of resin from forests and its

distillation in the factory should be decisive factors" in regard to such allotment. Now it is necessary to point out that prior to the date of this meeting, the 2nd respondents had addressed a letter dated April 15, 1978 to the Minister for Industries, offering to set up a factory for manufacture of rosin, turpentine oil and other derivatives in the State "with the latest know-how under the supervision of the State Government" and seeking allotment of 10,000 metric tonnes of resin annually for that purpose. The 2nd respondents pointed out in their letter that they possessed vast experience in processing of resin and reprocessing of resin and turpentine oil and manufacture of wide range of derivates, since they had 2 factories for manufacture of resin and turpentine oil, one in Hoshiarpur and the other in Delhi and moreover, they had also been working as resin extraction contractors since 1974 and were also bulk purchasers of resin at the auctions held by the State. It was also stated by the 2nd respondents that they had reliably learnt that Camphor and Allied Products Ltd. and Prabhat General Agencies were being considered by the State for allotment of resin to feed the units to be set up by them within the State and they expressed their willingness to take the allotment of resin for their proposed factory on the same terms and conditions. This offer of the 2nd respondents was forwarded to the Forest Minister, but despite the policy of the State to encourage setting up of rosin-based industrial units in the State, it was not found possible, having regard to the commitments already made by the State, to make any allotment of resin to the 2nd respondents. A proposal was, therefore, mooted by the forest officials that about 10 to 12 lacs blazes in inaccessible areas could be made available for tapping to the 2nd respondents on certain terms and conditions, so that out of the quantity tapped, a certain portion could be retained by the 2nd respondents for being utilised in the factory to be set up by them within the State and the balance could be surrendered to the government. The 2nd respondents were aggreeable to this proposal and in fact they put it forward as an alternative proposal for consideration by the State, but no decision was taken on it until the meeting of December 26, 1978. When, as a result of discussions at this meeting, the consensus was reached that 11,85,414 blazes in the inaccessible areas of Reasi, Ramban and Poonch Divisions should be allotted to some private party for ensuring supply of resin to be utilised in the factory to be set up by such party within the State, the proposal of the 2nd respondents was considered along with the applications of some others including the petitioners in the light of the factors agreed upon at the meeting and having regard to the vast experience of the 2nd respondents in extraction and processing of resin and in view of the fact that they were large purchasers of resin at the auctions held by the State, it was decided that the case of the 2nd respondents should be processed for submission to the government.

6. It appears that J. & K. Resin Contractors Association (hereinafter referred to as the 'Association') came to know sometime in October 1978 that the 2nd respondents had approached the State Government and there was a proposal to allot to them "certain resin coupes on royalty system of 10 years" on the basis that they would install a factory for manufacture of rosin and turpentine at Jammu with sizable investment. The Association thereupon addressed a letter to the Chief Minister in October 1978 complaining against giving of contract to an outside party by private negotiations and pleading that contract, whether on royalty basis or otherwise, should be given only by open auction. It is significant to note that no offer was made by the Association in this letter to set up a resin-based industrial unit in the State and the only plea was that tapping contract should not be given by private negotiations to a non-State party, but should be given only by open auction. Since the decision was taken at the meetings of December 9, 1978 and December 26, 1978 that blazes in the inaccessible areas of Reasi, Ramban and Poonch Divisions should not be given on wage-contract basis, they were excluded from the auctions held by the State and the Associations, therefore, addressed a letter dated January 22, 1979 to the Chief Conservator of Forests requesting him to include these blazes in the auctions. This was followed by another letter dated February 5, 1979

addressed by the Association to the Forest Minister where the request for inclusion of these blazes in the auctions was repeated by the Association. The Association also pleaded with the Forest Minister that instead of adopting the wage-contract method for giving out blazes for tapping contracts, "the system of royalty contract with increased load" should be continued in the forest divisions including Reasi, Ramban and Poonch. The same request was repeated by the Association in a letter dated March 8, 1979 addressed to the Chief Minister. There was obviously no reply to these communications since it had already been decided that tapping of blazes in the accessible chir forests should be done only through wage contracts and 11,85,414 blazes in the inaccessible areas of Reasi, Ramban and Poonch Divisions should be allotted to some private party, which was prepared to set up a factory for manufacture of rosin, turpentine and other derivatives in the State.

7. The 2nd respondents presumably, on coming to know that their alternative proposal for allotment of 10 to 12 lacs blazes in inaccessible areas was being processed by the government, addressed a letter dated February 22, 1979 to the Secretary to the Forest Department formulating the broad terms of the proposal and requesting the State Government to consider the proposal favourably and come to a decision immediately, since the tapping season was commencing from April 1, 1979. The Association by its letter dated March 18, 1979 addressed to the Chief Minister protested against the blazes in the Reasi, Ramban and Poonch Divisions being given to the 2nd respondents by negotiations on royalty basis for 10 years and urged that doing so would be contrary to the interest of the local contractors and local labour and "will also be a source of huge loss to the government exchepuer" since the price of resin was increasing day by day. Once again a plea was made by the Association that these blazes should be given out for tapping contract by public auction. The petitioners also complained to the Chief Minister by a letter addressed in March 1979 against giving of contract to the 2nd respondents who were an outside party and offered to take "all the untapped forests in the State on 2 to 3 years' lease on rotational basis" stating that they would pay 50 paise per blaze more than that offered under any other proposal and that out of the quantity tapped by them they would retain 3,000 metric tones which they would utilise for manufacturing rosin, turpentine oil and other derivatives in a new modern factory to be set up by them in some backward area of the State. The State did to accept this offer made by the petitioners and decided to go ahead with giving tapping contract in respect of these blazes to the 2nd respondents.

8. The State accordingly, passed an Order dated April 27, 1979 sanctioning allotment of 11.85 lacs blazes in the inaccessible areas of Reasi, Ramban and Poonch Divisions to the 2nd respondents for a period of 10 years on the terms and conditions set out in the order. The 2nd respondents were required by Clause II (iii) of the Order to surrender 25% of the annual resin collected by them, subject to a minimum of 1500 metric tonnes per annum, to the State for feeding the new resin distillation plant which J. & K. Industries Ltd. proposed to set up in Rajouri/Sunderbani and they could retain the balance of the extracted resin subject to a maximum of 35000 metric tonnes per annum. Clauses II (iv) and V of the Order provided that the 2nd respondents shall set up a resin distillation plant in the small scale sector for processing of up to 3500 metric tonnes of resin and the extracted resin which is allowed to remain with them under the order shall be utilised only in the plant to be set up by them and shall not be removed outside the State. Clause II(v) of the Order stipulated that the 2nd respondents shall :

> (a) be paid the same wages for part of the resin extracted and delivered to the department as would be sanctioned by the Forest Department from year to year for other departmental resin extraction contracts for the adjoining blocks in the respective locality;

(b) get proportionate rebate in royalty on the quantity thus surrendered (i.e. no royalty shall be charged for such quantity); and

(c) deliver such resin at the JKL factory at Rajouri/Sunderbani for which no transport charges will be allowed.

Clause III provided that the price of resin retained by the 2nd respondents shall be Rs. 350 per quintal and it shall be subject to review after three years and every year thereafter and so far as the royalty is concerned, Clause IV stated that it shall be worked out by a committee, the basis of calculation being the cost of resin extraction and collection in adjoining areas given out on wage-contracts from year to year and the sale price of resin as fixed at Rs. 350 per quintal, for a period of three years after which it shall be reviewed annually. This Order made by the State Government is challenged in the present petitions filed under Article 32 of the Constitution.

9. There were in the main three grounds on which the validity of the order was assailed on behalf of the petitioners. They were as follows :

(A) That the order is arbitrary, mala fide and not in public interest, inasmuch as a huge benefit has been conferred on the 2nd respondents at the cost of the State.

(B) The order creates monopoly in favour of the 2nd respondents who are a private party and constitutes unreasonable restriction on the right of the petitioners to carry on tapping contract business under Article 19(1)(g) of the Constitution.

(C) The State has acted arbitrarily in selecting the 2nd respondents for awarding tapping contract, without affording any opportunity to others to compete for obtaining such contract and this action of the State is not based on any rational or relevant principle and is, therefore, violative of Article 14 of the Constitution as also of the rule of administrative law which inhibits arbitrary action by the State.

We, shall examine these grounds in the order in which we have set them out, but, before we do so, we may preface what we have to say by making a few preliminary observations in regard to the law on the subject.

10. It was pointed out by this Court in Ramana Dayaram Shetty v. International Airport Authority of India ((1979) 3 SCC 489, 512) that with growth of the welfare State, new forms of property in the shape of government largess are developing, since the government is increasingly assuming the role of regulator and dispenser of social services and provider of a large number of benefits including jobs, contracts, licences, quotas, mineral rights etc. There is increasing expansion of the magnitude and range of government functions, as we move closer to the welfare State, and the result is that more and more of our wealth consists of these new forms of property. Some of these forms of wealth may be in the nature of legal right but the large majority of them are in the nature of privileges. The law has however not been slow to recognise the importance of this new kind of wealth and the need to protect individual interest in it and with that end in view, it has developed new forms of protection. Some interests in government largess, formerly regarded as privileges, have been recognised as rights, while others have been given legal protection not only by forging procedural safeguards but also by confining, structuring and checking government discretion in the matter of grant of such largess. The discretion of the government has been held to be unlimited in that the government cannot give largess in its arbitrary discretion or at its sweet will or on such

terms as it chooses in its absolute discretion. There are two limitations imposed by law which structure and control the discretion of the government in this behalf. The first is in regard to the terms on which largess may be granted and the other, in regard to the persons who may be recipients of such largess.

11. So far as the first limitation is concerned, it flows directly from the thesis that, unlike a private individual, the State cannot act as it pleases in the matter of giving largess. Though ordinarily a private individual would be guided by economic considerations of self-gain in any action taken by him, it is always open to him under the law to act contrary to his self-interest or to oblige another in entering into a contract or dealing with his property. But the government is not free to act as it likes in granting largess such as awarding a contract or selling or leasing out its property. Whatever be its activity, the government is still the government and is, subject to restraints inherent in its position in a democratic society. The constitutional power conferred on the government cannot be exercised by it arbitrarily or capriciously or in an unprincipled manner; it has to be exercised for the public good. Every activity of the government has a public element in it and it must therefore, be informed with reason and guided by public interest. Every action taken by the government must be in public interest; the government cannot act arbitrarily and without reason and if it does, its action would be liable to be invalidated. If the government awards a contract or leases out or otherwise deals with its property or grants any other largess, it would be liable to be tested for its validity on the touchstone of reasonableness and public interest and if it fails to satisfy either test, it would be unconstitutional and invalid.

12. Now what is the test of reasonableness which has to be applied in order to determine the validity of governmental action. It is undoubtedly true, as pointed out by Patanjali Sastri, J. in State of Madras v. V. G. Row ((1952 SCR 597 : AIR 1952 SC 126 : 1952 Cri LJ 966), that in forming his own conception of what is reasonable, in all the circumstances of a given case, it is inevitable that the social philosophy and the scale of values of the judge participating in the decision, would play and important part, but even so, the test of reasonableness is not a wholly subjective test and its contours are fairly indicated by the Constitution. The concept of reasonableness in fact pervades the entire constitutional scheme. The interaction of Articles 14, 19 and 21 analysed by this Court in Maneka Gandhi v. Union of India ((1978) 2 SCR 621 : (1978) 1 SCC 248), clearly demonstrates that the requirements of reasonableness runs like a golden thread through the entire fabric of fundamental rights and, as several decisions of this Court show, this concept of reasonableness finds its positive manifestation and expression in the lofty ideal of social and economic justice which inspires and animates the directive principles. It has been laid down by this Court in E. P. Royappa v. State of Tamil Nadu ((1974) 2 SCR 348 : (1974) 4 SCC 3) and Maneka Gandhi case ((1978) 2 SCR 621 : (1978) 1 SCC 248) that Article 14 strikes at arbitrariness in State action and since the principle of reasonableness and rationality, which is legally as well as philosophically an essential element of equality or non-arbitrariness, is projected by this Article, it must characterise every governmental action, whether it be under the authority of law or in exercise of executive power without making of law. So also the concept of reasonableness runs through the totality of Article 19 and requires that restrictions on the freedoms of the citizen, in order to be permissible, must at the best be reasonable. Similarly Article 21 in the full plenitude of its activist magnitude as discovered by Maneka Gandhi case ((1978) 2 SCR 621 : (1978) 1 SCC 248), insists that no one shall be deprived of his life or personal liberty except in accordance with procedure established by law and such procedure must be reasonable, fair and just. The directive principles concretise and give shape to the concept of reasonableness envisaged in Articles 14, 19 and 21 and other Articles enumerating the fundamental rights. By defining the national aims and the constitutional goals, they setforth the standards or norms of reasonableness which must guide and animate governmental action. Any

action taken by the government with a view to giving effect to anyone or more of the directive principles would ordinarily, subject to any constitutional or legal inhibitions or other overriding considerations, qualify for being regarded as reasonable, while an action which is inconsistent with or runs counter to a directive principle would prima facie incur the reproach of being unreasonable.

13. So also the concept of public interest must as far as possible receive its orientation from the directive principles. What according to the founding fathers constitutes the plainest requirement of public interest is set out in the directive principles and they embody par excellence the constitutional concept of public interest. If, therefore, any governmental action is calculated to implement or give effect to a directive principle, it would ordinarily, subject to any other overriding considerations, be informed with public interest.

14. Where any governmental action fails to satisfy the test of reasonableness and public interest discussed above and is found to be wanting in the quality of reasonableness or lacking in the element of public interest, it would be liable to be struck down as invalid. It must follow as a necessary corollary from this proposition that the government cannot act in a manner which would benefit a private party at the cost of the State; such an action would be both unreasonable and contrary to public interest. The government, therefore, cannot, for example, give a contract or sell or lease out its property for a consideration less than the highest that can be obtained for it, unless of course there are other considerations which render it reasonable and in public interest to do so. Such considerations may be that some directive principle is sought to be advanced or implemented or that the contract or the property is given not with a view to earning revenue but for the purpose of carrying out a welfare scheme for the benefit of a particular group or section of people deserving it or that the person who has offered a higher consideration is not otherwise fit to be given the contract or the property. We have referred to these considerations only illustratively, for there may be an infinite variety of considerations which may have to be taken into account by the government in formulating its policies and it is on a total evaluation of various considerations which have weighed with the government in taking a particular action, that the court would have to decide whether the action of the government is reasonable and in public interest. But one basic principle which must guide the court in arriving at its determination on this question is that 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 without public interest because, as we said above, there are a large number of policy considerations which must necessarily weigh with the government in taking action and therefore the court would not strike down governmental action as invalid on this ground, unless it is clearly satisfied that the action is unreasonable or not in public interest. But where it is so satisfied, it would be the plainest duty of the court under the Constitution to invalidate the governmental action. This is one of the most important functions of the court and also one of a the most essential for preservation of the rule of law. It is imperative in a democracy governed by the rule of law that governmental action must be kept within the limits of the law and if there is any transgression, the court must be ready to condemn it. It is a matter of historical experience that there is a tendency in every government to assume more and more powers and since it is not an uncommon phenomenon in some countries that the legislative check is getting diluted, it is left to the court as the only other reviewing authority under the Constitution to be increasingly vigilant to ensure observance with the rule of law and in this task, the court must not flinch or falter. It may be pointed out that this ground of invalidity, namely, that the governmental action is unreasonable or lacking in the quality of public interest, is different from that of mala fides though it may, in a given case, furnish evidence

of mala fides.

15. The second limitation on the discretion of the government in grant of largess is in regard to the persons to whom such largess may be granted. It is now well settled as a result of the decision of this Court in Ramana D. Shetty v. International Airport Authority of India ((1979) 3 SCC 489, 512), that the government is not free, like an ordinary individual, in selecting the recipients for its largess and it cannot choose to deal with any person it pleases in its absolute and unfettered discretion. The law is now well established that the government need not deal with anyone, but if it does so, it must do so fairly without discrimination and without unfair procedure. Where the government is dealing with the public whether by way of giving jobs or entering into contracts or granting other forms of largess, the government cannot act arbitrarily at its sweet will and, like a private individual, deal with any person it pleases, but its action must be in conformity with some standard or norm which is not arbitrary, irrational or irrelevant. The governmental action must no be arbitrary or capricious, but must be based on some principle which meets the test of reason and relevance. This rule was enunciated by the court as a rule of administrative law and it was also validated by the court as an emanation flowing directly from the doctrine of equality embodied in Article 14. The court referred to the activist magnitude of Article 14 as evolved in E. P. Royappa v. State of Tamil Nadu ((1974) 2 SCR 348 : (1974) 4 SCC 3) and Maneka Gandhi case ((1978) 2 SCR 621 : (1978) 1 SCC 248) and observed that it must follow.

as a necessary corollary from the principle of equality enshrined in Article 14 that though the State is entitled to refuse to enter into relationship with anyone, yet if it does so, it cannot arbitrarily choose any person it likes for entering into such relationship and discriminate between persons similarly circumstanced, but it must act in conformity with some standard or principle which meets that test of reasonableness and non-discrimination and any departure from such standard or principle would be invalid unless it can be supported or justified on some rational and non-discriminatory ground. (SCC p. 512, para 21)

This decision has reaffirmed the principle of reasonableness and non-arbitrariness in governmental action which lies at the core of our entire constitutional scheme and structure.

16. It is in the light of these two limitations on the discretion of the government in the matter of grant of largess that we must proceed to examine the grounds of attack urged on behalf of the petitioners.

Re Ground 'A'

17. The argument under this head of challenge was that the State had under the impugned Order granted tapping contract to the 2nd respondents on terms which were highly disadvantageous to the State and involved considerable loss of revenue to the government exchequer. The petitioners contended that the price of resin realised at the auction held in December 1978 was Rs. 484 per quintal; it was Rs. 520 per quintal at the auction held in January 1979 and it rose to Rs. 700 per quintal at the auction held in April 1979, but despite this phenomenally high price which could have been obtained in auction, the State chose to sell resin to the 2nd respondents at a low price of Rs. 350 per quintal for a period of 3 years under the impugned Order, conferring huge benefits on the 2nd respondents at the cost of the government exchequer. The impugned Order therefore, said the petitioners, was wholly arbitrary, unreasonable and contrary to public interest and was liable to be struck down as invalid. This argument plausible though it may seem at first blush, is in our opinion not well founded and a closer look at the facts will clearly show that it cannot be sustained.

18. We may first clear the ground by stating a few undisputed facts. The practice which was being followed by the State until the year 1979-80 was to give out blazes in the chir forests either on wage-contract basis or on royalty basis with or without load. The result was that about 50 per cent of the resin extracted used to be taken away by the contractors and the balance of 50 per cent remained with the State which the State partly made available to its own factories and small scale units in the State and partly sold by auction and out of the quantity auctioned, the bulk was purchased by manufacturers having factories in Hoshiarpur. It appears that from about 1975 onwards, the State embarked upon a policy of industrialisation and in furtherance of this policy, it decided some time in the later half of 1978, that from the year 1979-80, no resin should be allowed to be exported outside the State territories and that it should be made available for being utilised only in industries set up within the State. But this measure by itself was not enough, because so long as the contracts for extracting resin were given on royalty basis with or without load, a sizable quantity of resin extracted would go into the hands of the contractors and would not become available on the State for fulfilling its commitments. The State, therefore, decided as a matter of policy to replace royalty contracts by wage contracts wherever possible and to auction blazes for tapping only on wage-contract basis. But, as pointed out above, there were certain forests in Reasi, Ramban and Poonch Divisions which were difficult of access on account of their distance from the roads and some of the forests in Pooch Division were near the line of actual control and consequently it was found impracticable to give them for tapping on wage-contract basis. It was difficult to give them for tapping even on the basis of royalty without load and the maximum that could be obtained for a part of the blazes in the Reasi Division in the year 1976-77 was royalty of Rs. 2.55 per blaze without load. It was, therefore, decided by the State to exclude about 11,85,414 blazes in the Reasi, Ramban and Poonch Divisions from tapping though wage contract and they were kept out of the auctions held by the State. The Association undoubtedly made representations requesting the State to include these blazes in the auctions, but as is evident from the letters dated February 5, 1979 and March 8, 1979 addressed respectively to the Forest Minister and the Chief Minister, the emphasis of the Association was that "the system of working should be changed from wage contract to royalty contract" and that these blazes should be put to auction on royalty basis. The State obviously, in view of its policy, could not accede to this request made on behalf of the Association and since, having regard to past experience, it was felt that it would be futile to offer these blazes for tapping through wage contract, the State was not unjustified in not including them in the auctions. Now the second respondents offered to set up a factory for manufacture of rosin, turpentine oil and other derivatives in the State and requested to State to make allotment of resin annually for this purpose on the same terms and conditions on which allotment was proposed to be made to Camphor and Allied Products Ltd. and Prabhat General Agencies. The State, in view of its policy of Industrialization, was interested in the setting up of the factory by the second respondents, particularly since the second respondents had two factories for manufacture of rosin, turpentine oil and other derivatives and they possessed large experience in processing of resin and reprocessing of resin, turpentine oil and other derivatives. But, having regard to the commitments already made by it, it was possible for the State to make any definite allotment of resin to the second respondents. The State, however, had these blazes in the Reasi, Ramban and Poonch Divisions which it was finding impracticable to tap through wage contract and the State, therefore, decided to give them for tapping to the second respondents on certain terms and conditions, so that the second respondents could if they were prepared to tap these blazes in inaccessible areas, secure an assured supply of 3500 metric tonnes of resin for the purpose of the factory to be set up by them within the State. It was in these circumstances that the impugned Order dated April 27, 1979 came to be passed by the State.

19. It is clear from the backdrop of the facts and circumstances in which the impugned Order came to be made and the terms and conditions set out in the impugned Order that it was not a tapping contract simpliciter which was intended to be given to the second respondents. The second respondents wanted to be assured of regular supply of raw material in the shape of resin before they could decide to set up a factory within the State and it was for the purpose of ensuring supply of such raw material the impugned Order was made giving tapping contract to the second respondents. It was really by way of allocation of raw material for running the factory that the impugned Order was passed. The terms of the impugned Order show beyond doubt that the second respondents were under an obligation to set up a factory within the State and that 3500 metric tonnes of resin which was permitted to be retained by the second respondents out of the resin extracted by them was required to be utilised in the factory to be set up by them and it was provided that no part of the resin extracted should be allowed to be removed outside the State. The whole object of the impugned Order was to make available 3500 metric tonnes of resin to the second respondents for the purpose of running the factory to be set up by them. The advantage to the State was that a new factory for manufacture of rosin, turpentine oil and other derivatives would come up within its territories offering more job opportunities to the people of the State increasing their prosperity and augmenting the State revenues and in addition the State would be assured of a definite supply of at least 1500 metric tonnes of resin for itself without any financial involvement or risk and with this additional quantity of resin available to it, it would be able to set up another factory creating more employment opportunities and, in fact, as the counter-affidavit of Ghulam Rasul, Under-Secretary to the Government filed on behalf of the State shows the government lost no time in taking steps to set up a public sector resin distillation plant in a far-flung area of the State, namely, Sundarbani, in Rajouri District. Moreover, the State would be able to secure extraction of resin from these inaccessible areas on the best possible terms instead of allowing them to remain unexploited or given over at ridiculously low royalty. We cannot accept the contention of the petitioners that under impugned Order a huge benefit was conferred on the second respondents at the cost of the State. It is clear from the terms of the impugned Order that the second respondents would have to extract at least 5000 metric tonnes of resin from the blazes allotted to them in order to be entitled to retain 3500 metric tonnes. The counter-affidavit of Ghulam Rasul on behalf of the first respondent and Guran Devaya on behalf of the second respondents show that the estimated cost of extraction and collection of resin from these inaccessible areas would be at the least Rs. 175 per quintal, though according to Guran Devaya it would be in the neighbourhood of Rs. 200 per quintal, but even if we take the cost at the minimum figure of Rs. 175 per quintal, the total cost of extraction and collection would come to Rs. 87,50,000 and on this investment of Rs. 87,50,000 required to be made by the second respondents the amount of interest at the prevailing bank rate would work out to about Rs. 13,00,000. as against this expenditure of Rs. 87,50,000 plus Rs. 13,00,000 the second respondents would be entitled to claim from the State, in respect of 1500 metric tonnes of resin to be delivered to it only at the rate sanctioned by the Forest Department for the adjoining accessible forests which were being worked on wage-contract basis. It is stated in the counter-affidavits of Ghulam Rasul and Guran Devaya and this statement is not seriously challenged on behalf of the petitioners, that the cost of extraction and collection as sanctioned by the Forest Department for the adjoining accessible forests given on wage-contract basis in the year 1978-79 was Rs. 114 per quintal and the second respondents would, thus, be entitled to claim from the State no more than Rs. 114 per quintal in respect of 1500 metric tonnes to be delivered to it and apart from bearing the difference between the actual cost of extraction and collection and the amount received from the State at the rate of Rs. 114 per quintal in respect of 1500 metric tonnes, the second respondents would have to pay the price of the remaining 3500 metric tonnes to be retained by them at the rate of Rs. 350 per quintal. On this reckoning, the cost the 3500 metric tonnes to be retained by the second respondents would work out

at Rs. 474 per quintal. The result would be that under the impugned Order the State would get 1500 metric tonnes of resin at the rate of Rs. 114 per quintal while the second respondents would have to pay at the rate of Rs. 474 per quintal for the balance of 3500 metric tonnes retained by them. Obviously, a large benefit would accure to the State under the impugned Order. If the State were to get the blazes in these inaccessible areas tapped through wage contract, the minimum cost would be Rs. 175 per quintal, without taking into account the additional expenditure on account of interest, but under the impugned Order the State would get 1500 metric tonnes of resin at a greatly reduced rate of Rs. 114 per quintal without any risk or hazard. The State would also receive for 3500 metric tonnes of resin retained by the second respondents price or royalty at the rate of Rs. 474 per quintal which would be much higher than the rate of Rs. 260 per quintal at which the State was allotting resin to medium scale industrial units and the rate of Rs. 320 per quintal at which it was allotting resin to small scale units within the State. It is difficult to see how on these facts the impugned Order could be said to be disadvantageous to the State or in any way favouring the second respondents at the cost of the State. The argument of the petitioners was that at the auctions held in December 1978, January 1979 and April 1979, the price of resin realised was as much as Rs. 484, Rs. 520 and Rs. 700 per quintal respectively and when the market price was so high, it was improper and contrary to public interest on the part of the State to sell resin to the second respondents at the rate of Rs. 320 per quintal under the impugned Order. This argument, plausible though it may seems, is fallacious because it does not take into account the policy of the State not to allow export of resin outside its territories but to allot it only for use in factories set up within the State. It is obvious that, in view of this policy, no resin would be auctioned by the State and there would be no question of sale of resin in the open market and in this situation, it would be totally irrelevant to import the concept of market price with reference to which the adequacy of the price charged by the State to the 2nd respondents could be judged. If the State were simply selling resin, there can be no doubt that the State must endeavour to obtain the highest price subject, of course, to any other overriding considerations of public interest and in that event, its action in giving resin to a private individual at a lesser price would be arbitrary and contrary to public interest. But, where the State has, as a matter of policy, stopped selling resin to outsiders and decided to allot it only to industries set up within the State for the purpose of encouraging industrialisation, there can be no scope for complaint that the State is giving resin at a lesser price than that which could be obtained in the open market. The yardstick of price in the open market would be wholly inept, because in view of the State policy, there would be no question of any resin being sold in the open market, the object of the State in such a case is not to earn revenue from sale of resin, but to promote the setting up of industries within the State. Moreover, the prices realised at the auctions held in December 1978, January 1979 and April 1979 did not reflect the correct and genuine price of resin, because by the time these auctions came to be held, it had become known that the State had taken a policy decision to ban export of resin from its territories with effect from 1979-80 and the prices realised at the auctions were therefore scarcity prices. In fact, the auction held in April 1979 was the last auction in the State and since it was known that in future no resin would be available for sale by auction in the open market to outsiders, an unduly high price of Rs. 700 per quintal was offered by the factory owners having their factories outside the State, so that they would get as much resin for the purpose of feeding their industrial units for some time. The counter-affidavits show that, in fact, the average sale price of resin realised during the year 1978-79 was only Rs. 433 per quintal and as compared to this price, the 2nd respondents were required to pay price or royalty at a higher rate of Rs. 474 per quintal for 3500 metric tonnes of resin to be retained by them under the impugned Order. It is in the circumstances impossible to see how it can at all be said that any benefit was conferred on the second respondents at the cost of the State. The first head of challenge against the impugned Order must, therefore, be rejected.

Re Ground 'B'

20. It is difficult to appreciate how the impugned Order could be assaulted on the ground that it created monopoly in favour of the 2nd respondents or imposed unreasonable restriction on the right of the petitioners to carry on tapping business under Article 19(1)(g). The impugned Order did not hand over the tapping of the entire forest area in the State exclusively to the 2nd respondents so as to deny the opportunity of tapping any forest areas to the petitioners. What was done under the impugned Order was merely to allot 11,85,414 blazes in the inaccessible areas of Reasi, Ramban and Poonch Divisions to the 2nd respondents so that the 2nd respondents could have an assured supply of 3500 metric tonnes of resin for the purpose of feeding the factory to be set up by them in the State and a large number of blazes amounting to about 68 lacs in other forest areas of the State were left available for tapping by the petitioners and other forest contractors. No monopoly was created in favour of the second respondents; the petitioners and other forest contractors could bid for wage contract in respect of the other blazes which were more than five times in number than the blazes allotted to the second respondents. The petitioners in Writ Petition 481 of 1979, in fact, obtained a wage contract for extraction of resin from an easily accessible forest in Rajouri Division for the aggregate sum of Rs. 2,80,250 in the year 1979-80 and though it is true that the petitioners in Writ Petition 482 of 1979 did not obtain any wage contract for tapping in this year, it was not available for tapping, but because the petitioners did not get their registration renewed.

Re Ground 'C'

21. The third and last ground of challenge is also difficult to sustain. We fail to see how the action of the State in making the impugned Order in favour of the 2nd respondents could be said to be arbitrary or unreasonable. It is clear from the facts we have narrated above and we need not repeat those facts again, that the State was not unjustified in excluding 11,85,414 blazes situate in the inaccessible areas of Reasi, Ramban and Poonch Divisions from the auctions, since the past experience showed that even on the basis of royalty without load, it was difficult to attract bidders and the maximum that could be obtained, and that too only in one solitary year, was Rs. 2.55 per blaze without load, which was an absurdly low return and it was, therefore, felt quite justifiably, that it would be futile to include these blazes in the auctions for tapping on wage-contract basis. The State also could not award a contract simpliciter for tapping on the basis of royalty with or without load, because, as a matter of policy, with a view to encouraging industrialisation, the State did not want resin to go outside its territories but wanted it to be used only for the purpose of feeding industries set up within the State and even if a condition could legitimately be imposed on the contractor that he should sell the resin extracted and retained by him only to industries within the State, it would be difficult to ensure observance of such condition and moreover the object of the State to make resin available to the local industries at a reasonable price might be frustrated, because the contractor taking advance of scarcity in supply of resin, might, and in all probability would, try to extract a much higher price from the industries needing resin. It was thus found to be an impracticable proposition to tap these blazes either on wage-contract basis or on the basis of royalty with or without load.

22. Now the 2nd respondents had made an offer for putting up a modern plant for manufacture of rosin, turpentine oil and other derivatives within the State provided they were assured a definite supply of resin every year. But having regard to the commitments already made by it, it was not possible for the State to make any definite allocation of resin to the 2nd respondents and a proposal was therefore mooted that 11,85,414 blazes in inaccessible areas of Reasi, Ramban and Poonch Divisions could be allocated to the 2nd respondents for tapping on certain terms and conditions, so

that the 2nd respondents could tap these blazes and out of the resin extracted, obtain for themselves an assured supply for running the factory to be set up by them and make the balance quantity available to the State for its own purpose. The 2nd respondents were agreeable to this proposal and they accordingly put forward an alternative proposal on these lines for the consideration of the State and eventually, the impugned Order came to be made in favour of the 2nd respondents. We have already discussed the terms of the impugned Order and it is clear from what we have said that the impugned Order was unquestionable and without doubt, in the interest of the State and even with a microscopic examination we fail to see anything in it which could possibly incur the reproach of being condemned as arbitrary or irrational. It is true that no advertisements were issued by the State inviting tenders for award of tapping contract in respect of these blazes or stating that tapping contract would be given to any party who is prepared to put up a factory for manufacture of rosin, turpentine oil and other derivatives within the State, but it must be remembered that it was not a tapping contract simpliciter which was being given by the State. The tapping contract was being given by way of allocation of raw material for feeding the factory to be set up by the 2nd respondents. The predominant purpose of the transaction was to ensure setting up of a factory by the 2nd respondents as part of the process of industrialisation of the State and since the 2nd respondents wanted assurance of a definite supply of resin as a condition of putting up the factory, the State awarded the tapping contract to the 2nd respondents for that purpose. If the State were giving tapping contract simpliciter there can be no doubt that the State would have to auction or invite tenders for securing the highest price, subject, of course, to any other relevant overriding considerations of public weal or interest, but in a case like this where the State is allocating resources such as water, power, raw materials etc. for the purpose of encouraging setting up of industries within the State, we do not think the State is bound to advertise and tell the people that it wants a particular industry to be set up within the State and invite those interested to come up with proposals for the purpose. The State may choose to do so, if it think fit and in given situation, it may even turn out to be advantageous for the State to do so, but if any private party comes before the State and offers to set up an industry, the State would not be committing breach of any constitutional or legal obligation if it negotiates with such party and agrees to provide resources and other facilities for the purpose of setting up the industry. The State is not obliged to tell such party : "Please wait I will first advertise, see whether any other offers are forthcoming and then after considering all offers, decide whether I should let you set up the industry." It would be most unrealistic to insist on such a procedure, particularly in an area like Jammu and Kashmir which on account of historical, political and other reasons, is not yet industrially development and where entrepreneurs have to be offered attractive terms in order to persuade them to set up an industry. The State must be free in such a case to negotiate with a private entrepreneur with a view to inducing him to set up an industry within the State and if the State enters into a contract with such entrepreneur for providing resources and other facilities for setting up an industry, the contract cannot be assailed as invalid so long as the State has acted bona fide, reasonably and in public interest. If the terms and conditions of the contract or the surrounding circumstances show that the State has acted mala fide or out of improper or corrupt motive or in order to promote the private interests of someone at the cost of the State, the court will undoubtedly interfere and strike down State action as arbitrary, unreasonable or contrary to public interest. But so long as the State action is bona fide and reasonable, the court will not interfere merely on the ground that no advertisement was given or publicity made or tenders invited. Here, the 2nd respondents approached the State for the purpose of setting up a modern factory for manufacture of rosin, turpentine oil and other derivatives and asked for allocation of resin and the State, with a view to offering an incentive to the 2nd respondents to set up the factory, made the impugned Order awarding the tapping contract in respect of these blazes to the 2nd respondents as a part of a package deal. We have already pointed

out and we need not repeat again, that the impugned Order was reasonable and in the interest of the State and in the circumstances, we are clearly of the view that it cannot be assailed as invalid merely because no advertisements were issued inviting offers for setting up a factory and taking the tapping contract as an integral part of the transaction.

23. It may, however, be pointed out that though no advertisements were issued by the State, the Chief Minister of Jammu and Kashmir had in the course of three speeches delivered by him - one in Bombay, the other in Calcutta and the third in New Delhi invited entrepreneurs to set up industries within the State with a view to bringing about rapid industrialisation and economic development of the state by utilising its "peculiar natural resources" and converting them into finished or semi-finished products and promising "various forms of assistance and incentives" for the purpose. These speeches were widely advertised in the newspapers and it was, therefore, known to entrepreneurs that the State would be willing to provide resources and other facilities to those who were interested in setting up industries within the State and, in fact, the State was anxious to attract entrepreneurs to start industries and it was in pursuance of this invitation that Prabhat Turpentine and Synthetics Private Limited, Dujodwala Rosins and Turpentine Pvt. Ltd. and Pine Chemicals Limited and the second respondents made their respective offers for putting up factories within the State. It is, therefore, in any event, not correct to say that the petitioners had not opportunity of making an offer of setting up a factory and obtaining a tapping contract for the purpose.

24. It is also necessary to point out that the claims of the petitioners in Writ Petition 481 of 1979 and some others were considered by the Forest Minister and other forest officials at the meeting held on December 26, 1978 and applying the criterion of "financial status and its distillation in the factory" - which criterion cannot be said to be irrational or irrelevant - the application of the 2nd respondents was unanimously accepted. This decision cannot be said to be mala fide or prompted by improper or corrupt motive. There is, in fact, no evidence before us to show or even as much as to suggest that any favour was conferred on the 2nd respondents at the cost of the State or that the 2nd respondents were preferred to some others without any basis or justification. The petitioners in Writ Petition 481 of 1979 had very little experience of extraction of resin, since they had taken tapping contract for the first time only in 1978-79 and so far as processing of resin is concerned, they had no experience at all, as they did not have any factory for processing of resin nor had they at any time in the past, participated in any auction of resin. The petitioners in Writ Petition 481 of 1979 were principally grocery and provision merchants and though they had taken some tapping contracts in the past, they had no experience at all in processing of resin since they did not own any factory. The 2nd respondents, on the other hand, had large experience in extraction of resin from inaccessible forests of Poonch Division and they also possessed considerable experience in distillation and processing of resin since they had two factories, one in Hoshiarpur and the other in Delhi. The State had in fact given two contracts to the 2nd respondents in the year 1974-75 to install factories for manufacture of rosin and turpentine oil in the public sector and these contracts have been carried out by the 2nd respondents to the entire satisfaction of the State. Therefore, so far as the relative merits of the petitioners on one hand and the 2nd respondents on the other were concerned, the 2nd respondents were definitely superior and it cannot be said that the State acted unreasonably or contrary to public interest in preferring the 2nd respondents and permitting them to put up a factory within the State and awarding them tapping contract in respect of these blazes for the purpose of the factory. It may be pointed out that the petitioners in Writ Petition 482 of 1979 had not even got their registration renewed for the year 1979-80 and hence no tapping contract could possibly be given to them. We must, accordingly, reject the third ground of challenge urged on behalf of the petitioners.

25. We are, therefore, of the view that there is no substance in any of the contentions raised on

behalf of the petitioners and it was for this reason that by an Order dated February 15, 1980, we dismissed both these writ petitions with no order as to costs.

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