

Om Prakash Sud and Others

Vs

State of J & K and Others

Shri Shamlal Kapoor

Vs

State of J & K and Others

Pawan Kumar Sharma

Vs

State of J & K and Others

Writ Petitions Nos. 3464-65, 5904 and 3231 of 1980

(R.S. Pathak, O. Chinnappa Reddy, Baharul Islam JJ)

16.02.1981

JUDGMENT

ISLAM, J. -

1. By these writ petitions under Article 32 of the Constitution the petitioners have challenged the orders of the first respondent [the State of Jammu & Kashmir] allotting quotas of resin to respondents. According to the petitioners these orders denying similar treatment to them are arbitrary and violative of Article 14 of the constitution of India.
2. The material facts in the four petitions are similar. The industries of which the petitioners are partners are admittedly small-scale industries for the manufacture of resin and turpentine oil. The industries of the petitioners in Writ Petitions 3465 of 1980 and 3231 of 1980 were provisionally registered but revalidated for short periods. The industry of the petitioner in Writ Petition 3464 of 1980 was provisionally registered, revalidation was applied for but was not granted. The industry of the petition 5904 of 1980 was formally registered. It appears that the petitioners were applying to the Government for allotment of resin as well as raw material for their industries but the Government referring to their policy decision of March 20, 1978 refused to make any allotment of Oleo-resin to them. The petitioners in Writ Petitions 3464 and 5904 of 1980 have alleged that they purchased raw material from the open market and somehow managed their industries to run for a certain period.
3. Resin is admittedly a forest product extracted from "Chir trees". It has been alleged that only three States of India, namely, Himachal Pradesh, Uttar Pradesh and Jammu & Kashmir have Chir Forests. The petitioners have alleged that the State of Himachal Pradesh and Uttar Pradesh stopped selling resin for the last several years in view of establishment of factories in public and joint sectors and that the State of Jammu & Kashmir was selling resin by public auction. Sometime after October

1978 the State of Jammu & Kashmir, it has been further alleged, virtually created monopoly in favour of three existing industrial units and committed to supply them about 17,000 M. T. of resin for long time to come. There is a public sector unit in Jammu which consumes about 3,000 tons of resin per year. Several small-scale industries, according to petitioners, were assured supply of resin even as late as 1979 notwithstanding the government's aforesaid industrial policy. In such a situation, being unable to procure raw materials for their industries, the petitioners approached the relevant authorities including the Deputy Minister of Industry and the Chief Minister of Jammu & Kashmir for allotment of raw materials but to no avail. [for the sake of convenience we shall hereinafter refer only to the respondents and Annexures in Writ Petition 3231 of 1980. The petitioners further allege that while they were refused allotment of supply of raw materials, respondent 1 made allotments to respondents 4 to 16 [hereinafter called "allottee-respondents"] although most of them were not even formally registered at the time of making the impugned order of allotment.

4. The petitioners contend that in the circumstances they were adversely discriminated against while respondents 4 to 16 were favored and as such the impugned order are liable to be struck down as violative of Article 14 of the Constitution of India.

5. The impugned orders have been annexed as Annexures 'N' to 'Z-1'. The letter of allotment [Annexures 'X'] in favour of M/s. Sud Pine Industries [respondent 27] is in the following terms :

Sub : Supply of resin to M/s. Sud Pine Industries Kunjwani for their factory at Talab Jammu Government Order No. 175 DIC/1980 dated May 30, 1980##

In partial modification of Government Order No. 28-DIC of 1979 dated January 20, 1979 sanction is accorded to the supply of crude [oleo] resin 700 tonnes per annum by the Forest Deptt. to M/s. Sud Pine Industries for their factory at Kunjwani Talab Jammu on the terms and conditions specified in the above said order. The supply of resin shall be subject to its being reviewed by the government with due regard to its availability from years to years.

By order of the Government of J & K. Sd/- [Sheikh Ghulam Rasool] Secretary to Government.##

The orders as per Annexures 'L' to 'W' in favour of respondents 17 to 26 are identical in material parts. It will be sufficient if the material portion of Annexure 'N' is quoted. It turns thus :

Sanction is accorded to the supply of crude [oleo] resin by the Forest Department to M/s. Kashmir R & T Works, Srinagar, for their factory at Srinagar, subject to the terms and conditions of the agreement to be entered into between the Forest Department and they part and on the following specific conditions :

1. The Forest Department will supply crude [oleo] resin 700 TPA to the firm from the date the Unit is formally registered subject to its being reviewed with due regard to its availability from year to year;
2. The resin will be supplied [a] Rs. 320 per quintal, unless otherwise reviewed on year to year basis;
3. The cost of empty tin in will be charged [a] Rs. 5 per tin in addition to the above rate;

4. By order of the Government at Jammu & Kashmir.

Sd/- [Sheikh Ghulam Rasool] Secretary to Government.##

6. It is obvious that the industries of these respondents were not formally registered at the time of the impugned orders of allotment.

7. The State of Jammu & Kashmir (respondent 1) have have filed a counter. They have not denied the material allegations of the petitioners but they say that the applications have been made in order to implement the industrial policy of the State Government as enunciated in a "Report of the Development Review committee Jammu & Kashmir" a committee headed by Shri L. K. Jha, the Governor of the State. Respondent 1 has quoted from the report the 'Goals ' of the industrial policy which read :

The balanced economic development of the State will obviously, be one of the foremost concerns of the government. They would like to emphasise maximum self-sufficiency and self-reliance consistently with the need to promote the requisite and desirable degree of interdependence with other parts of the country. The objective will be to secure the most prudent and beneficial utilization of the natural resources and skills peculiar to this State;, to achieve the maximum possible rate of regional development as well as balance between the rural areas and the urban, to maximum State per capita income, and to generate the maximum employment potential.

Many areas of the State are as cut off, isolated and poor as they were at the dawn of independence. We have to improve the living standards in these specially backward areas for whom, in terms of the quickest mode of transportation, Srinagar is more distant than the State is from Kerala.

Many sections of the community similarly, like Scheduled Castes, Gujara and Bakarwalas and other backward classes need to be assisted in their speedy uplift.

Ladakh needs a visible acceleration of the tempo of its developments so that our people in this far-flung and difficult frontier area can realise the full fruits of development in the shortest possible time.

8. Respondent 1 has given the districtwise break up of the applications received from different regions. It is as follows :

#Jammu - 63Udhampur - 10Rajouri - 1Poonch - 1Doda - 1Kathua - 9Anantnag - 2Srinagar - 11Outsiders - 12 ----- Grand Total 110 Applications##

9. They have also shown the allotments of resin districtwise. The industries of respondents 4 to 16 are also small-scale industries. The break up of the small-scale industries as given in Annexure R. II (in Writ Petition 3464) shows that Jammu has the larger number of units namely, 10, second comes Srinagar with 4, then comes Udhampur with 3, Kathua (in Jammu division), Anantnag and Baramulla (in Kashmir division) with one each. Rajouri in Jammu Division has none. It appears that the industries of the present applicants are also in the Jammu region and those of respondents 4 to 16 also appear to have been located in the Jammu region. In their affidavit at para 3 respondent 1 has stated that all the applications for allocation of resin were considered from time to time at various levels by the State Government and it was decided on May 30, 1980 as follows :

(a) The allotment of resin to existing unit should be rationalised;

(b) Applications received from various districts be considered for allotment of resin.

10. The State Government have submitted that they made no promise of supply of raw material in favour of any of the petitioners. The petitioners have submitted, in our opinion, correctly, that as there was already 10 units functioning in small-scale sector in the Jammu region and inasmuch as the allottee-respondents' industries were also located in the Jammu region, allocations in their favour would be inconsistent with the government industrial policy.

11. In the instant case, respondent 1 as well as the other parties has taken reliance on their industrial policy statement as stated above. WE have already quoted the relevant portions of the State Industrial Policy statement. The government have stated that they have considered all the 110 applications including those of the petitioners coming from industrialists of different parts of the country. They have stated, and their statement is corroborated by the documents, that there is preponderance of industries in the Jammu region and industries of the petitioners as well as respondent 4 to 16 were also functioning in the same region. Respondent 1 has not explained as to how and on what basis, if any, the allotments were made by the impugned orders in favour of the new allottees whose industries were located in the Jammu region.

12. Pawan Kumar Sharma, the petitioner in Writ Petition 3231 of 1980 states that his industry was provisionally registered under the Provisional Registration Certificate dated January 29, 1976. It was further extended for further short periods. He says that there was assurance from the authorities that raw materials will be allotted to him after he completed the installation of requisite machinery.

13. The J. K. Rosin and Turpentine Industries of petitioner, Om Prakash Sud, was provisionally registered in the years 1975. He was also approaching the Government from time to time to get allotment of the raw materials but got no favorable reaction from the government. He states that he had already established his factory and got it insured for a sum of Rs. 6.80 lakhs. He obtained raw material from the open market and was running his industry.

14. Petitioner, Ravindra Dutt of M/s. Dinesh Rosin and Turpentine in Writ petition 3465 of 1980 alleges that his industry was provisionally registered on October 25, 1975 which was extended up to April 1979. letter of May 31, 1979 shows that his industry was later on formally registered as a small unit. This factory was producing resin and turpentine out of the resin which he purchased from open auction. He was approaching the government from time to time to get requisite quantity of raw materials but failed to get it.

15. Petitioner, Shamlal Kapoor, Director of Jammu Rosin Enterprises Private Limited, alleges that his industry was formally registered with the government of J & K. He alleges that his industry was functioning for a long time and trying to get necessary quota of raw materials from respondent 1. He was approaching the government to get requisite quota. Sud pine Industries was provisionally registered on March 10, 1978 and formally registered on October 10, 1978, It appears from Annexure 'N', in respect of respondent M/s. Kashmir R & T Works (respondent 17), Annexure 'O' of respect of M/s. Sun shine R & T Industries (Respondent 18), Annexure 'P' in respect of M/s. Woolan Paints and Chemicals Scopore (respondent 19), Annexure 'Q' in respect of M/s. Pine Wood Products Company (respondent 20), Annexure 'R' in respect of m/s. Haji Mast Ali Slaria (respondent 21), Annexure 'S' in respect of M. s, Photo Chemicals Scopore (respondent 22), Annexure 'T' in respect of M/s. New Himalayan paints and Chemicals (respondent 23), Annexure 'U' in respect of M/s.

Ravindra R & T (respondent 250 and Annexure 'W' in respect of M/s. Bharati Paints and Chemical (respondents 26) that the allotments were made in their favour "from the date the unit is formally registered" which shows that industries were not even registered at the time of the impugned orders of this allotment. Respondent M/s. Rajindra R & T Industries, Udampur, appears to stand on a different footing. He appears to have fulfilled all the conditions required for allocation of resin in accordance with the policy of the state of J & K. The industry is an experienced one and the factory started production of resin and turpentine at Hoshiarpur since 1948. It is a firm registered under the Indian partnership Act and has long experience in the business including resin and turpentine since 1948. The industry set up a factory in 1970 in the rural industrial estate near Udampur which is a backward area. The industry was provisionally registered in 1970 and formal registration was granted on February 29, 1974. It applied for adequate quantities of raw materials and was allotted only 200 tons although it had been sanctioned 1500 per tons per annum since 1975.

16. Respondent m/s. Sud pine Industries, M/s. Kashmir R & T Work, Bakshi Rosin & Turpentine and M/s. K. C. Soni Bakshi also appear to be on different footings. It appears from Annexures 'X' and 'Y' that the first two industries have already been formally registered. They are existing units having already started production. So far as respondent M/s. Bakshi rosin 7 turpentine is concerned, it had already set up factory and started production. It was provisionally registered as early as 1976 and the unit is located in a backward area. So far as respondent K. C. Soni Rosin & Turpentine is concerned, it was formally registered on April 19, 1979. This unit is located in a remote backward area of the State.

17. "Equality before the law" of "equal protection of the laws" within the meaning of Article 14 of the Constitution of India means absence of any arbitrary discrimination by the law or in their administration. No undue favour to one or hostile discrimination to another should be shown. A classification pertinent to the subject in respect of which the classification must not be arbitrary but be rational, that is to say, it must not only be based on some qualities or characteristics which are to be found in all the persons characteristics must have a reasonable relation to the objects of the law. In order to pass the test, two conditions must be fulfilled, namely, (1) that the classification must be founded on an intelligible differential which distinguishes those that are grouped together from others, and (2) that that differentia must have a rational relation to the object sought to be achieved by the Act. The differentia which is the basis of the classification and the object of the Act are distinct things and what is necessary is that there must be a nexus between them.

18. We are not unaware that the rule of equality does not mean mathematical equality and that it permits of practical inequalities. But what is needed is that the selection of quota-seekers as in the case in hand should have a rational relation to the object sought to be achieved in the industrial policy decision of the State. If the selection or differentiation is arbitrary and lacks a rational basis it offends Article 14.

19. In the instant case, although the State Government has taken reliance on the State Industrial Policy decision referred to above, they do not appear to have followed it in practice, except in the cases of the five respondents referred to above. In fact no reasonable basis has been adopted in making the allotments in favour of the new allottees and denying allotments to the petitioners. In the circumstances the petitions are partly allowed, the impugned orders of allotments except in favour of respondents, M/s. Rajindra Rosin and Turpentine Industries, M/s. Sud Pine Industries, M/s. Kashmir R & T works, M/s. Bakshi Rosin & turpentine and allowed. The rules are made absolute except as against these five respondents. Respondent 1, the State of Jammu & Kashmir, is directed to make the other allotments of the raw materials to the applicants in the light of the observations

made above.

20. Respondent 1 shall pay costs of Rs. 100.00 to each of the petitioners.

</html