

Brij Bhushan and Others

Vs

State of Jammu and Kashmir and Others

Writ Petition Nos. 37-39 of 1979

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

07.03.1986

JUDGMENT

BHAGWATI, C.J. -

1. The dispute in these writ petitions relates to the validity of three orders, one dated October 13, 1978 and the others dated October 21, 1978 by which the State of Jammu and Kashmir sanctioned supply of crude oleo resin at the rate of 9000 tonnes per annum to respondent 4, 4000 tonnes per annum to respondent 2 and 4000 tonnes per annum to respondent 3. All the three impugned orders provided for supply of oleo resin at the rate of Rs 260 per quintal exclusive of cost of tins, containers, sales tax etc. and under each of the three impugned orders, there was to be a moratorium on the rate for the first 5 years and thereafter the rate was liable to be increased or decreased according to the formula to be finalised between the Forest Department and respondent 2, 3 or 4 as the case may be. The validity of each of these three impugned orders has been challenged in the present writ petitions. The grounds on which the challenge is based are, however, without substance and that is why we dismissed these writ petitions by an earlier order made by us. The reasons for which we made the order dismissing the writ petitions are identical with the reasons given by us while disposing of Writ Petitions Nos. 481-82 of 1979 namely, *Kasturi Lal Lakshmi Reddy v. State of J & K* ((1980) 3 SCR 1338 : (1980) 4 SCC 1 : AIR 1980 SC 1992). But in order to appreciate the applicability of these reasons in the present writ petitions, it is necessary to briefly set out the circumstances in which the three impugned orders came to be passed by the State of Jammu and Kashmir.

2. There is a commodity called oleo resin which is a forest produce extracted from certain species of trees popularly known as chir trees. The process of extraction is called tapping. Oleo resin is produced in only three States in the country namely, Himachal Pradesh, Uttar Pradesh and Jammu and Kashmir. It is an important raw material for manufacture of resin, turpentine and their derivatives. The quantity of resin extracted from chir trees in Jammu and Kashmir was less than 6000 tonnes in 1972-73 and its large potential had not been exploited until that time, though the States of Himachal Pradesh and Uttar Pradesh had been producing oleo resin for quite some time. In or about 1972, realising the importance of oleo resin as basic raw material and with a view to developing industries based on oleo resin, the Central Government appointed a committee called Central Co-ordination Committee for Resin and Turpentine inter alia to look into the need for higher production of oleo resin with improved and modern methods with a view to improving quality and output, diversification of products by processing industries and export of sophisticated products. Pursuant to the recommendations made by this committee, the State of Jammu and Kashmir adopted vigorous measures for increasing the production of oleo resin and as a result of these measures, during the years 1974-75 to 1978-79 the production of oleo resin went up considerably as disclosed

by the following figures :

#1974-75 . . 17,800 tonnes 1975-76 . . 33,630 "1976-77 . . 36,214 "1977-78 . . 37,536  
"1978-79 . . 39,189 "##

During this period, however, the States of Uttar Pradesh and Himachal Pradesh closed down various areas for tapping in view of extensive damage caused to the chir trees by the private contractors with the result that the production of oleo resin from these two States came down by about 40%. The consequence was that from 1976-77 to 1978-79 the production of oleo resin in the State of Jammu and Kashmir accounted for more than 50% of the total production of oleo resin in the country.

3. Now, in the State of Jammu and Kashmir, the tapping operations were entrusted by the State Government to private contractors since 1973 and majority of these private contractor were members of Hoshiarpur Resin Manufacturers' Association. The contracts for tapping which were given to the private contractors were of three types and the net result of giving these contracts was that out of total production of oleo resin, about 50% of the quantity produced was taken away by the private contractors and only the balance of 50% remained with the State Government. The State Government had its own three units in the public sector for manufacture of resin and turpentine which needed oleo resin out of the quantities remaining with the State Government. Out of these three units, one at Sunderbani was closed while the other two units at Rajouri and Miran Saheb utilised 5000 tonnes and 2000 tonnes of oleo resin. The State Government was thus left with a surplus of about 11 to 12 thousand tonnes of oleo resin after meeting the needs of its own public sector units and the State Government was regularly auctioning this balance quantity of oleo resin remaining with it. The large bulk of the quantity of oleo resin auctioned by the State Government was being purchased by members of the Hoshiarpur Resin Manufacturers' Association and, according to the State Government what was happening was that these purchasers used to form syndicates with a view to forcing down the prices and cornering oleo resin at low prices and moreover these syndicates would not allow the entire quantity of oleo resin placed in the auction to be purchased with the result that large stocks of oleo resin remained undisposed of with the State Government from year to year resulting in deterioration in quality and ultimate sale at much lower prices. The average price at which oleo resin was sold by the State Government in auction in each of the six years preceding 1979 was as follows :

#Year Avg. rate per quintal 1972-73 . . Rs 250.00 1973-74 . . No auction held 1974-75 .  
. Rs 243.00 1975-76 . . Rs 204.00 1976-77 . . Rs 201.25 1977-78 . . Rs 262.46 ##

It will thus be seen that in 1978 when the three impugned orders were passed by the State Government the average rate at which oleo resin was sold in auction was Rs 262.46 and prior to that, the average rates were even lower.

4. When the State Government found that a large quantity of oleo resin produced within the State was going out of the State by way of about 50% of the total production being siphoned away by the tapping contractors and about 11 to 12 thousand tonnes by way of purchases at auction, the State Government decided to take steps to promote industries based on oleo resin available in the State so as to achieve as much value addition as possible to the raw material by industrial conversion within the State and generate more employment opportunities. The State Government also decided to embark upon a massive programme of industrialisation in the State. With this end in view, several meetings were held by the Chief Minister in Bombay, Calcutta and Delhi with a view to persuading

entrepreneurs in other States to invest in Jammu and Kashmir. But, even before these meetings were held, initiatives were taken for the purpose of setting up industries in the State and negotiations were started by the State Government with respondents 2, 3 and 4 for setting up industries based on oleo resin. The negotiations between the State Government and respondent 2 commenced some time in 1972 and so far as respondent 4 is concerned, the offer for setting up a factory for manufacturing resin and turpentine derivatives was put forward by respondent 4 on the basis of a tender notice issued by the State Government on June 2, 1974. Respondent 3 came forward with its offer to set up a factory for manufacturing resin and turpentine derivatives on reading the report of the speeches made by the Chief Minister at the meetings held by him in Bombay, Calcutta and Delhi. Each of respondents 2, 3 and 4 insisted in the course of the negotiations that he would be prepared to set up factories for manufacturing resin and turpentine derivatives with the latest machinery and most sophisticated technology only if a continuous supply of oleo resin was assured to them by the State Government. The State Government with a view to promoting industrial development in the State and ensuring proper utilisation of the raw material produced within the State by industrial conversion, passed the three impugned orders sanctioning supply of 4000 tonnes of oleo resin per annum to each of respondents 2 and 3 and 9000 tonnes of oleo resin to respondent 4. It may be noted that this assured supply of oleo resin was guaranteed to respondents 2, 3 and 4 not by way of sale simpliciter but only for the purpose of enabling them to run the factories which they decided to establish in the State for manufacturing resin and turpentine derivatives. Having regard to the average prices at which oleo resin had been sold in the auctions in the last five years preceding the dates of the impugned orders, the State Government agreed to supply the stipulated quantities of oleo resin at the rate of Rs 260 per quintal, exclusive of the cost of tins, containers and sales tax, etc., which came to about Rs 296 per quintal. Pursuant to the agreement arrived at between the State Government and respondents 2, 3 and 4, land, electricity and other facilities were made available to respondents 2, 3 and 4 by the State Government and respondents 2, 3 and 4 started setting up their respective factories on the land allocated to them. The petitioners thereupon filed the present writ petitions challenging the validity of the three impugned orders assuring supply of 4000, 4000 and 9000 tonnes of oleo resin to respondents 2, 3 and 4 respectively at the rate of Rs 260 per quintal exclusive of the cost of tins, containers, sales tax, etc.

5. The first ground of attack against the validity of the three impugned orders was that they created monopoly in favour of respondents 2, 3 and 4 and constituted unreasonable restriction on the right of the petitioners to carry on business of manufacture of resin and turpentine derivatives under Article 19(1)(g) of the Constitution. We do not think there is any substance in this ground and it must be rejected. It is difficult to see how it can at all be contended that any monopoly was created in favour of respondents 2, 3 and 4 by the State Government by making the three impugned orders. The annual production of oleo resin in the State was in the neighbourhood of about 36,000 tonnes and out of them only 17,000 tonnes per annum were given to respondents 2, 3 and 4 and about 7000 tonnes were reserved for the units in the public sector, leaving as much as 12,000 tonnes of oleo resin available for the other manufacturers. The petitioners and other manufacturers did, therefore, have about 12,000 tonnes of oleo resin available for them. In the circumstances, no monopoly in regard to oleo resin could possibly be said to have been created by the State Government in favour of respondents 2, 3 and 4. Moreover, it may be noted that what the State Government did under the three impugned orders was not sale simpliciter of oleo resin but assured supply of oleo resin was guaranteed to respondents 2 to 4 for the purpose of feeding the factories to be set up by them in the State. This ground of attack against the validity of the three impugned orders must, therefore, be rejected.

6. The other ground urged on behalf of the petitioners against the validity of the three impugned

orders was that they were arbitrary, mala fide and not in public interest inasmuch as a huge favour was conferred on respondents 2, 3 and 4 at the cost of the State. This ground is also without substance and cannot be sustained. There are two cogent reasons why this ground cannot be accepted. The first reason is that when the negotiations took place between the parties and the three impugned orders were issued by the State Government, the average price at which oleo resin had been sold in auction during the five preceding years was not more than Rs 260 per quintal and the State Government was, therefore, not unjustified in fixing the price of oleo resin to be supplied to respondents 2, 3 and 4 at Rs 260 per quintal exclusive of the cost of tins, containers, sales tax, etc. It is true that at about this time the market price of oleo resin started rising and subsequent to the making of the three impugned orders there was an abnormal rise in the market price, but that was obviously because by this time it had become known that the State Government had taken a policy decision not to allow the export of oleo resin from its territories but to give it only for industries set up within the State and scarcity price accordingly prevailed in the market. Secondly, there could be no question of the State Government trying to secure the highest price from respondents 2, 3 and 4 since the sale of oleo resin to them under the three impugned orders was not a sale simpliciter but it was a sale for the purpose of feeding the factories to be set up by them. We may usefully quote here what we said in our judgment in *Kasturi Lal Lakshmi Reddy v. State of J & K* ((1980) 3 SCR 1338 : (1980) 4 SCC 1 : AIR 1980 SC 1992) while dealing with a similar argument advanced in that case : (SCC p. 17, para 19)

This argument, plausible though it may seem, 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 respondent 2 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.

This ground must also, therefore, be rejected.

7. Then, it was contended on behalf of the petitioners that the State Government had acted arbitrarily in selecting respondents 2, 3 and 4 for setting up factories within the State for manufacture of resin and turpentine derivatives without affording any opportunity to the petitioners and others for obtaining such contract and this action of the State Government was not based on any rational or relevant principles and was, therefore violative of Article 14 of the Constitution. We must reject this ground also without the slightest hesitation. Respondents 2, 3 and 4 themselves took the initiative and made offers for setting up factories for manufacture of resin and turpentine derivatives provided they were assured definite supply of oleo resin every year and ultimately, as a result of negotiations which took place between them and the State Government, they were given licence for setting up their factories and assured supply of oleo resin was guaranteed to them for the

purpose of feeding their factories. There was nothing to prevent the petitioners and others from making similar offers in time. But, in any event, even if the petitioners and others had made offers, it was for the State Government to decide whether their offers should be accepted or not. It is true that no advertisements were issued by the State Government inviting tenders for setting up factories for manufacture of resin and turpentine derivatives or stating that assured supply of oleo resin would be guaranteed to any party who is prepared to put up a factory for manufacture of resin and turpentine derivatives within the State. But, that cannot have any invalidating effect on the decision of the State Government to allow respondents 2, 3 and 4 to set up factories and to guarantee assured supply of oleo resin to them for feeding their factories. We may point out that a similar argument was advanced on behalf of the petitioners in *Kasturi Lal Lakshmi Reddy v. State of J & K* ((1980) 3 SCR 1338 : (1980) 4 SCC 1 : AIR 1980 SC 1992), where a tapping contract was given to respondent 2 in that case and what we said in our judgment in that case applies with equal force to the situation in the present case : (SCC p. 20, para 22)

. . . 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 respondent 2. The predominant purpose of the transaction was to ensure setting up of a factory by respondent 2 as part of the process of industrialisation of the State and since respondent 2 wanted assurance of a definite supply of resin as a condition of putting up the factory, the State awarded the tapping contract to respondent 2 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 thinks fit and in a 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 developed 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 had acted bona fide, reasonably and in public interest.

Here in the present case, there is nothing at all to show that the State acted mala fide or out of improper or corrupt motive or in order to promote the private interest of someone at the cost of the State. We are clearly of the view that the three impugned orders do not suffer from any infirmity and they cannot be assailed as invalid.

8. These are reasons for which we dismissed the present writ petitions.

</html