

Kamal Kishore Khurana

Vs

State of Jammu and Kashmir and Others

M/S. Dujodwala Resins and Terpenes Pvt. Ltd. and Another

Vs

State of Jammu and Kashmir and Others

CMPs Nos. 2993-94 and 3815-16 of 1989 and Writ Petitions Nos. 751, 769 and 794 of 1986, 12640 of 1989 and I.A. Nos. 1-3 of 1989, 1-6 of 1989

(Ranganath Misra, P.B. Sawant, K. Ramaswamy JJ)

10.01.1990

ORDER

1. Writ Petition No. 12640 of 1985 was filed before this Court by one Kamal Kishore Khurana relating to distribution of oleo resin gum by the State of Jammu & Kashmir. During the pendency of the said writ petition, State government brought in the Jammu & Kashmir Extraction of Resin Act (7 of 1986) by which State monopoly in the trade of collection, distribution and otherwise dealing with resin was created. Thereupon, three writ petitions being Nos. 751, 798 and 794 of 1986 were filed in the Court challenging the vires of the Act. Each of the three writ petitioners had obtained the right to collect oleo resin gum or processing the same for industrial purposes from the State. In *Vij Resins Pvt. Ltd. State of J&K* ((1989) 3 SCC 115), decided on May 12, 1989 this Court declared the provisions of Sections 3 and 4 of the Act to be ultra vires the Constitution and held that since those provisions contained the soul of the Act and without them the Act could not operate, the entire Act was ultra vires the Constitution.

2. In paragraph 27 (p. 127) of the judgment this Court directed :

"Connected proceedings had been taken for interim arrangement regarding provision of raw material to the petitioners and certain other parties. We do not propose to deal with those aspects in the judgment but liberty is given to parties to apply for such directions as they consider appropriate and such applications, when filed will be dealt with separately."

3. Messrs Pine Chemicals Limited appears to have no more interest in the litigations as the company has closed down its business. Messrs Prabhat Terpene & Synthetics Limited and another (hereafter to be referred to as 'Prabhat') and Messrs Dujodwala Resins & Terpenes Private Limited (hereafter to be referred to as 'Dujodwala') have made applications for consequential directions in terms of the position stated in paragraph 26 of the judgment.

4. Resin is the secretion extracted by tapping or otherwise from chir, chil and kail trees wildly growing in the large ranges of the forests of Jammu & Kashmir. It is an exudate and when subjected

to chemical treatment and distillation with the aid of steam 70 per cent rosin, 15 per cent turpentine and 15 per cent of waste material are yielded. Several downstream products are manufactured from the raw material. Apart from Vij and Dujodwala which had contract with the State, there is a State-owned industry known as J & K Industries Limited. These are medium scale industries. Besides them, there are 19 others operating within the State on small-scale basis. It is not disputed that before the monopoly Act these were allotted on annual basis certain quantities of resin for purposes of their respective business use.

5. This Court by a common order dated January 20, 1987, in the several writ petitions directed that 6500 metric tons of oleo resin gum should be reserved for distribution to the individual private parties before the court in the event of relief being available to them in their writ petitions and subsequently an order of release of a portion of that stock in favour of the different parties had been made. It is not disputed that out of this stock, one-fourth has been taken by the government company over and above almost the entire otherwise available collection. It is also not disputed that under orders of this Court, 1500 metric tons have been taken by the small-scale industries. Vij and Dujodwala have taken only a small quantity. The State took the stand that on account of long storage there had been shrinkage of the remaining stock. The matter was investigated and now it has been found that apart from the issues from time to time out of the reserve stock of 6500 metric tons, only 1489 metric tons are available.

6. These proceedings are connected with four years, namely, 1985-86, 1986-87, 1987-88 and 1988-89. Parties agree that in respect of the very first year, namely, 1985-86, no interlocutory order had been made by this Court, and, therefore, no further directions are necessary. Reservation was made pertaining to the yield of 1986-87 though Mr. Ramaswamy, appearing for the State claims that the quantity was in respect of the entire litigation and, therefore, must be taken to cover all the years. From the various orders made by this Court which the parties have relied upon and placed before us we find it difficult to accept Mr. Ramaswamy's submissions that the order of January 20, 1987, reserving 6500 metric tons of oleo resin gum related to the total period of litigation. This Court on September 25, 1987 had made the following order :

"The respondents undertake that in the event of the writ petitions being allowed, they will supply resin to the petitioners in accordance with the terms of the agreement within one month from delivery of the judgment in the petitions for the year 1987-88 and will not express inability to so supply."

7. On March 17, 1988, another order was made to the following effect :

"Earlier this Court has directed the State of Jammu & Kashmir to reserve oleo resin to the extent of 6500 metric tons out of the 1985-86 collection."

We do not think it necessary to refer to other interim orders but would proceed to conclude that there is no force in the stand of the State.

8. The government company has already taken 25 per cent of the reserve stock and the entire available quantity over and above 6500 metric tons. We see no justification to give anything more out of the leftover of 1489 metric tons to it.

9. It is not disputed that 19 small-scale industries have already received about 1500 metric tons out of the reserve stock. They have, however, pleaded that unless a little more is given they would find

it difficult to make their two ends meet. Keeping in view the peculiar situation and the manner in which the litigation has proceeded and the way the parties have conducted themselves, we think it just and proper that out of the existing stock 250 metric tons should be distributed among the 19 small-scale industries by the State keeping in view the manner of allotment made previously. The remaining 1239 metric tons shall be equally shared by Prabhat and Dujodwala.

10. Payment for the same by each of the parties shall be made at the prevailing rate for the year 1987, to be precise, at the rate which was prevailing prior to the escalation of 1988.

11. Within four weeks of deposit of the money, the State is directed to distribute the leftover stock out of 6500 metric tons being 1489 metric tons as reported in the manner indicated above.

12. The matter shall now be listed three weeks after for dealing with the claim relating to the subsequent years.

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