

MADHYA PRADESH HIGH COURT

M.P. Oil Extraction Pvt. Ltd.

Vs.

State

Misc. Petns. Nos.559, 525, 592 and 650 of 1981

(G.P. Singh, C.J. and Faizanuddin, J.)

21.08.1981

JUDGMENT

G.P. Singh, C.J.

1. This order shall also dispose of Misc. Petitions Nos.525, 592 and 650 all of 1981.
2. The petitioners in all these petitions are owners of solvent extraction plants. The solvent extraction plants of the petitioner in Misc. Petitions Nos.525, 559 and 650 are located at Raipur and of the petitioner in Misc. Petition No.592 at Bilaspur. The petitioners use sal seed as raw material for extraction of sal oil. The petitioners also use rice-bran, oil cakes and ground nut for extraction of other oils. The industrial units of the petitioners were set up long back. The dispute in these petitions relates to orders of reservation of sal seed made by the State Government.
3. Sal forests in the State are divided into 190 units. By order dated 21st April, 1981, 66 units were reserved for the Madhya Pradesh State Co-operative Marketing Federation Limited, for short marketing Federation which is an APEX Co-operative Society. By another order dated 6th Feb., 1981, 27 units were reserved in favor of M/s. Sal Udyog Pvt. Ltd., for short, Sal Udyog who have established a new industrial plant for extraction of sal oil and with whom the Government entered into an agreement on 30th Aug., 1979 for supply of sal seed for a period of twelve years. The remaining 94 units were disposed of by inviting tenders in accordance with the policy decision of the Government taken on 13th April, 1981. The yearly produce of sal seed from all the units for the year 1981 was estimated at 54,000 tonnes. The State Government also entered into an agreement for supply of sal seed for periods of twelve years with M/s. Bastar Oil Products Pvt. Ltd., for short, Bastar Oil Products on 5th Oct., 1979, The

agreement is of the same nature as with Sal Udyog. Bastar Oil Products have not yet gone in production. There was, therefore, no reservation made in their favor for the year 1981.

4. Bastar Oil Products and Marketing Federation have been Joined as parties only in Misc. Petitions Nos.559 and 650 of 1981. Sal Udyog are parties in all the four petitions. All the petitioners pray for quashing of the reservation made in favor of Sal Udyog. The petitioners in Misc. Petitions Nos.650 and 559 of 1981 also pray for quashing of reservations made in favor of Bastar Oil Products and Marketing Federation. The petitioners pray that the area reserved in favor of all these parties be disposed of by auction or by inviting tenders. In the alternative, the petitioners pray that similar reservation should be made in their favor. In Misc. Petition No.650 of 1981, there is also an alternative prayer for directing execution of a formal deed of agreement for supply of 8000 tones of Sal seed for four years on the basis of a concluded contract. There is a further prayer in Misc. Petition No.650 of 1981 for quashing of notification dated 22nd April, 1981 by which the Government has invited applications for establishment of new solvent extraction plants in the districts of Surguja, Raigarh and Bilaspur with the assurance of supply of 10,000 tonnes of Sal seed per year.

5. Sal seed is a forest produce as defined in Section 2(d) of the M.P. Van Upaj (Vyapar Viniyaman) Adhiniyam, 1969. The State Government has monopoly for collection and purchase of Sal seed. Forest produce purchased by or belonging to the Government is sold or disposed of in such manner as the Government may direct (see Section 13). Manufacturers, traders and consumers of forest produce are required to be registered under Section 11. Retail business in any forest produce cannot be carried on except under a license granted under Section 13.

6. The relevant information relating to industrial policy for forest-based industries in Madhya Pradesh is available from the report of a Committee appointed by the Government which was published in May, 1977. Sal forests in the State are mostly located in Bastar, Mandla, Balaghat, Raipur, Raigarh, Bilaspur, Surguja, Sidhi and Shahlol districts which form the eastern half of Madhya Pradesh. The production of Sal seed in the year 1974-75 was 37245 tonnes. The estimated annual Sal potential is over 10 lac tonnes. The reason for the low production is said to be inaccessibility of the areas where Sal forests exist. It is also said that with the growth of industries based

on Sal seed, the annual production for the year 1981 is estimated to be 54,000 tonnes which also shows that there is likelihood of increase of production with the growth of industries. This is further clear from the fact that 27 units reserved in favor of Sal Udyog for the year 1981 which were estimated to yield 6710 tonnes of Sal seed, actually yielded 18,000 tones. The report indicates that 10 industrial units with annual capacity of 38,000 tones of oil and 2,28,000 tones of defiled meal could be further established in the State. The report recommends that concessions during the initial selling period of industry known as "gestation period" could be of immense help and these could be made available for a period of 5 to 10 years depending upon the type of industry and scale of investment, the aim being to provide some support to the new industrial units during the first few years so that they attain full productive capacity without facing undue financial hardship. The report notices that the production of Sad leed which is a minor forest produce and which has come into prominence recently is much less than its potential and that stepping up its production warrants special concessions to attract new industrial units such as offer of fixed prices initially for a period of at least five years which may be revised from time to time. The State Government on 6th Jan., 1977 took a policy decision regarding the industries based on Sal seed that an assurance could be given to the new units as well as to the existing units for supply of Sal seed. This policy decision continued till 13th April, 1981 when the Government took another policy decision for the year 1981 that except for reservation made for Sal Udyog and Marketing Federation, the rest of the produce be sold in the normal course by the Forest Department. The policy decision, in other words, was that no reservation in respect of any one excepting the aforesaid two parties be made for the year 1981.

7. Before proceeding further it may be stated that in the year 1980, thirteen units were reserved for M.P. Oil Extraction Pvt. Ltd., the petitioner in Misc. Petition No.559 of 1981 and seventeen units for K.N. Oil Industries, the petitioner in Misc. Petition No.650 of 1981. There was also reservation in favor of Marketing Federation. These reservations were challenged under Article 226 of the Constitution in Misc. Petn. No.261 of 1980 and Misc. Petn. No.266 of 1980. The petitioner in Misc. Petn. No.261 of 1980 was M/s. Seth Oil Mills Ltd. now petitioner in M.P. No.525 of 1981. The aforesaid two petitions of 1980 were disposed of by a Division Bench of this Court on 22nd Sept., 1980. It was held that Marketing Federation being a Co-operative Society stood as a class and the reservation made in its favor was valid. It was, however, held that the reservations made in favor of M.P. Oil Extraction and K.N. Oil Industries

were discriminatory as similarly situated industrial units were not given the benefit of reservation. But the Court dismissed the petition because there was no Sal seed left with the Government for being given to the petitioners who made a grievance of discrimination. It will be seen that in these petitions apart from the case of Marketing Federation the dispute was between the old industrial units with whom the Government had no contract for supplying Sal seed at any particular rate. The industrial policy laid down by the Government in 1977 envisaged supply of Sal seed to the old units also. This industrial policy changed in 1981 and, therefore, no reservation was made in favor of the old units. It cannot be disputed that the Government can modify any industrial policy and evolve a new policy. It was, therefore, open to the Government to take a policy decision in 1981 that no reservation would be made in favor of any party excepting Sal Udyog and Marketing Federation provided this policy was not discriminatory.

8. The petitioners, main grievance to these petitions is in respect of reservation made in favor of Sal Udyog. The reservation of 27 units in favor of this party was made in pursuance of contract entered into with it on 30th Oct., 1977. Although there is a similar contract entered into between the State Government and Bastar Oil Products but as this party has not yet gone in production, there was no reservation made in its favor.

9. We have already noticed that the Government decided upon a policy to grant concessions and supply of raw materials to new forest-based industries. We have also noticed that the Committee reported scope for establishment of ten new industrial units based on Sal seed. The Government policy was well known and a number of parties including K.N. Oil Industries and M.P. Oil Extraction, the petitioners in Misc. Petns. Nos.559 and 650, applied for opening new units and for entering into contract on a long term basis for purchase of Sal seed. After consideration of all the applications the Government accepted the applications of Sal Udyog and Bastar Oil Products and entered into contracts with them for a long term supply of Sal seed. In this background there was no question of any discrimination in favor of any party at the stage of entering into the contracts for it was open to all to apply for establishing new plants and for obtaining Sal seed on a long term basis. The contract entered into with Sal Udyog is for a period of twelve years. The Government has undertaken in this contract to supply 10,000 tonnes of Sal seed per year. The price payable for the first four years is Rs. 325/- per tonne plus collection charges. This price is revisable after

four years by the Government. There is a similar contract with Bastar Oil Products. The petitioners before us do not come in the same class as Sal Udyog and Bastar Oil products. The petitioners had their plants established long back. They cannot be described as new units nor do they claim to be so. Sal Udyog are the owners of a new unit which went into production in 1980. Bastar Oil products have still to go into production. As already noticed, the report of the Expert Committee appointed by the Government recommended grant of special concessions to new units for the first few years so that they attained full productive capacity without incurring undue financial hardship. The Committee had also reported that such concessions to new units would step up production of Sal seed which is much less as compared to its potential. It will be noticed that the price fixed under the contract is only for four years because it is subject to revision by the Government after that period. The price so fixed was nearly the same which prevailed at the time when the contract was entered into. It is, no doubt, much lower than the current market price of Sal seed but still as the beneficiaries are new units, concessions to them under the contracts can be justified on the basis of recommendations made by the Committee. Moreover, the concessional price is to last only for the first four years as thereafter the Government can fix a higher price having regard to increase in market price of Sal seed and other circumstances. The petitioners' contention that similar reservations should be made in their favor for 1981 cannot be accepted for the reason that the petitioners do not belong to the same class as Sal Udyog and Bastar Oil Products. The classification of old and new units is based upon a real differentia which has reasonable relation with the object of encouraging new units so that they may attain, full productive capacity without undue financial hardship which will also help in increasing the production of Sal seed. It was open to the petitioners to apply for purchase of 94 units which were disposed of by inviting tenders. We are informed that some of the petitioners did apply for purchasing some units and some of their tenders have been accepted. Be that as it may, as the classification of old units and new units is a reasonable classification, the reservation made in favor of the new units without making any similar reservation in favor of old units cannot be struck down as discriminatory.

10. Learned counsel for the petitioners placed reliance on the case of *Om Prakash v. State of J. and K.*,¹ In that case allotment of resin by the State of Jammu and Kashmir was to be made to the various industrial units in conformity with an industrial policy which required that the units should be registered. In actual practice, however, quota was granted to some unregistered units and denied to some units which were

registered. This was held to be discriminatory. On facts this case has no application here. The reservation made in favor of new units and denial of similar reservation, to old units was consistent with the industrial policy adopted for the year 1981 and there was no question of any discrimination.

11. The learned counsel for the petitioners also placed reliance on the case of *Kasturi Lal v. State of J. and K.*,² That case lays down 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. It is also laid down that the Government 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. This decision, however, makes it clear that 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. In that case, the Supreme Court upheld the grant of a contract by private negotiations with a party for setting up a resin factory on the ground that the advantage to the State was that a new factory would come up within its territory offering more job opportunity to the people of the State and would secure extraction of resin from the inaccessible area on the best possible terms. Now in the instant case, we have already noticed that it was open to the petitioners to apply for permission to establish new plants on the same or similar terms of contract on which Sal Udyog and Bastar Oil Products were given contracts and some petitioners did apply but on merits their applications were not accepted and there is no grievance made in the petitions on that score. As recommended by the Committee, it was beneficial for the State to encourage establishment of new industrial units based on Sal seed as they would increase the production which is much less than its potential. This policy as earlier noticed is quite reasonable and in public interest. We have already mentioned that 27 units that were reserved for Sal Udyog were estimated to yield only 6,710 tones but have actually yielded 18,000 tones which shows that the areas which were not exploited in the past because of inaccessibility are now being exploited and the production is increasing with the establishment of new units. *Kasturi Lal's* case in our opinion, is not at all helpful to the petitioners.

12. The learned counsel also relied upon the decision of this Court in *Kuldeep Mehra v. State of M.P.*,³ which related to the reservations made in the year 1980. We have already noticed this decision. In the year 1980 no reservation whatsoever was made in respect of any new industrial unit as no new unit had gone in production by that time. Reservations were made in respect of two old units which are now petitioners in Misc. Petns. Nos.559 and 650 of 1981 and the party who is now petitioner in Misc. Petn. No.525 of 1981 and another party had made a grievance about discrimination. The contest in Kuldeep Mehra's case was between owners of old units who had been denied reservations and others who got it. It was in this contest that the Court held that denial of reservation to members of the same class was discriminatory. As pointed out earlier, in the instant case there is no reservation whatsoever made in favor of old units. Apart from the reservation made in favor of Marketing Federation to which we will revert later, the reservation in 1981 is only in favor of a new unit which does not fall in the same class as the petitioners. Kuldeep Mehra's case is, therefore, not applicable.

13. Learned counsel for the petitioners submitted that the reservation in favor of Sal Udyog was made on 6th Feb., 1981 whereas the new policy that no reservation should be made in favor of the old industrial units was taken on 3rd April, 1981 and, therefore, the order of reservation in favor of Sal Udyog is discriminatory. There is no merit whatsoever, in this contention. The Sal seed season starts from the middle of May and continues up to the end of June. The decision of reservation in favor of Sal Udyog was earlier made because there was an existing contract in their favor. There was an existing obligation to supply Sal seed to Sal Udyog in terms of the contract. A general policy decision in respect of others could be taken at any time before start of the season. This policy decision was taken on 13th April, 1981. The reservation made in favor of Sal Udyog is consistent with this policy.

14. These are the common points urged in all these petitions. There were no other contentions raised in M.P. No.525 of 1981 and in M.P. No.592 of 1981.

15. We will now proceed to take up the special points urged in the remaining two petitions, viz.. Misc. Petitions Nos.559 and 650 both of 1981. It was contended by the learned counsel in these petitions that the reservation made in favor of Marketing Federation was also invalid. The Federation is an Apex Co-operative Society

consisting of co-operative societies of lower level as its members. The Federation has a small plant but most of the Sal seed purchased by it from the Government is resold under a licence granted under Section 13 of the Van Upaj (Vyapar Viniyaman) Adhiniyam, Co-operative societies stand as a class. Benefits and concessions granted to them ultimately benefit persons of small means and promote social justice in accordance with the directive principles. The petitioners cannot claim to come in the same class as a co-operative society. The position may be different if a complete monopoly were to be created in favor of a co-operative society. In the present case, there was no such monopoly as 94 units which were kept in general pool were disposed of by inviting tenders. The challenge to similar reservation made in the year 1980 in favor of Marketing Federation was negated on these grounds by this Court in *Gopal Brothers v. State of M.P.*,⁴ Similar reservations of Tendu Patta made in favor of co-operative societies were upheld in *M/s. Kirodimal Agarwal v. State of M.P.*,⁵ Further, preferential treatment granted to co-operative societies in the matter of grant of licences for fair price shops was upheld by us in *M.P. Ration Vikreta Sangh v. State of M.P.*,⁶ We must, therefore, reject the challenge to the reservation made in favor of Marketing Federation.

16. It was then contended by the learned counsel for the petitioners that there was a concluded contract in their favor for supply of Sal seed at a concessional price for a period of four years and the petitioners should be granted relief on that basis. It appears that in view of the policy decision, taken in 1977 that an assurance could be given to the existing units also for supply of raw materials, these petitioners made applications for supply of Sal seed on long term basis. It appears that on 25th Jan., 1981, the Under Secretary to the Government asked these petitioners to come to Bhopal on 8th Feb. for executing agreements for supply of Sal seed for four years. There is some controversy on the point as to why the formal agreement was not executed. It appears to us that these petitioners at that stage were presumably willing to execute the agreements but the matter was put off as the Government was undergoing a change. That was the period when the new Government had come at the Centre and President's rule was enforced in the State on 18th March, 1980, The new elected Government took over some time in June, 1980. It is, however, not necessary to decide whether it was the petitioners' fault or the Government's that the formal agreement could not be executed. It is clear that in the year 1980 thirteen units were allotted to petitioners in Misc. Petn. No.559 of 1981 and 17 units to petitioners in Misc. Petn. No.650 of 1981 for one year and the petitioners executed the agreements

for purchase of these units for one year. This happened some time in April, 1980 and it appears that the petitioners thereafter abandoned the idea of entering into agreements for a period of four years. It is true that it is alleged by the petitioners in Misc. Petn, No.556 of 1981 that even after April, 1980 they had been writing letters for execution of formal agreement for supply of Sal seed for four years but this fact is denied by the Government. The petitioners have not produced copies of these letters. In our opinion, both the petitioners abandoned the idea of entering into four yearly agreements with the Government for purchase of Sal seed after they got the reservation in April, 1980 for that year of certain units. Even otherwise, no relief can be granted on the basis of any contract in a writ petition under Article 226 of the Constitution. Firstly, these contracts are not in the form as required under Article 299. The Under Secretary who sent to the petitioners draft agreement and asked them to come to Bhopal on 8th Feb., 1980 for signing the agreements was not authorised to sign any agreement on behalf of the State. The offer made by him and the acceptance by the petitioners could not, therefore, result in a formal contract as required by Article 299. Moreover, even assuming that Article 299 was complied with, the petitioners' remedy would be to sue for specific performance or for damages, for it is well settled that contractual rights cannot be enforced under Article 226 (See: *Divisional Forest Officer v. Bishwanath Tea Co. Ltd.*,)⁷

17. It was further contended by the learned counsel for the petitioners that there was no sufficient raw material, i.e. Sal seed, available for the existing industrial units and that the Government's decision for inviting applications for three more Units by notification dated 22nd April, 1981 was wholly unreasonable. It was also submitted in the same contract that the policy of assisting the two new units of Sal Udyog and Bastar Oil Products is also irrational on the same basis. The argument proceeds upon the assumption that the production of Sal seed estimated at 54,000 tonnes for 1981 would remain static. We have already referred to the report of the Committee on the industrial policy showing that the estimated potential of Sal seed is 10,00,000 tones. The low production is mainly for the reason that the areas inaccessible are not now being exploited. With the growth of new units these areas are bound to be exploited which will result in higher production. As stated by us earlier, this is clearly demonstrated from the fact that 27 units reserved for Sal Udyog which were estimated to produce only 6,710 tones actually yielded 18,000 tones. The contention of the learned counsel must, therefore, be rejected.

18. Before parting with the case, we must make it clear that there were some allegations of mala fides made in the rejoinder filed in Misc. Petns. Nos.559 and 650 both of 1981 but they were given up at the time of argument and it was for this reason that the respondents were not called upon to reply to those allegations.

19. All the petitions fail and are dismissed but without any order as to costs. Security deposits be refunded to the petitioners.

Petitions dismissed.

Cases Referred.

1 AIR 1981 SC 1001

2. AIR 1980 SC 1992

3. Misc. Petn. No.261 of 1980, decided on 22-9-1980

4. Misc. Petn. No.266 of 1980, decided on 22-9-1980

5. Misc. Petn. No.109 of 1981, decided on 19-3-1980

6. Misc. Petn. No.723 of 1980, decided on 13-4-1981, (reported in AIR 1981 Mad Pra 203)

7. AIR 1981 SC 1368