State Of Himachal Pradesh & Ors.Etc vs Ganesh Wood Products & Ors.Etc on 11 September, 1995

Equivalent citations: 1996 AIR 149, 1995 SCC (6) 363, AIR 1996 SUPREME COURT 149, 1995 (6) SCC 363, 1995 AIR SCW 3847, (1996) 1 KER LT 22, (1995) 5 COMLJ 1, (1995) 6 JT 485 (SC), 1995 (6) JT 485

Author: B.P. Jeevan Reddy

Bench: B.P. Jeevan Reddy, M.K Mukherjee

```
           PETITIONER:
STATE OF HIMACHAL PRADESH & ORS.ETC.

        Vs.

RESPONDENT:
GANESH WOOD PRODUCTS & ORS.ETC.

DATE OF JUDGMENT11/09/1995

BENCH:
JEEVAN REDDY, B.P. (J)
BENCH:
JEEVAN REDDY, B.P. (J)
MUKHERJEE M.K. (J)

CITATION:
 1996 AIR  149            1995 SCC  (6) 363
 JT 1995 (6)   485        1995 SCALE  (5)303


ACT:



HEADNOTE:



JUDGMENT:
```

JUDGMENT B.P.JEEVAN REDDY.J. Leave granted. Heard counsel for the parties. These appeals arise from a judgment of the Himachal Pradesh High Court disposing of eight writ petitions together.

Katha is a necessary ingredient in pan and pan masalas. Katha is derived from the khair tree. The

central portion of the tree is used for this purpose. These trees are found in considerable number in the State of Himachal Pradesh. They are also found in other States but it appears that one after the other, various States have banned the cutting of khair trees, with the result that those intending to manufacture katha have been flocking to Himachal Pradesh over the last few years.

Till the year 1975, katha was being manufactured in the State of Himachal Pradesh only by 'bhattiwalas'. Since the manufacture of katha requires extremely cold conditions, it is stated, the manufacture of katha was being undertaken in bhatties only during the winter season. In the year 1975, however, a mechanised unit was established in the State by Shankar Trading Company for the manufacture of katha. The manufacture of katha can go on round the year in a mechanised unit. The mechanised unit consumes far larger quantities of khair wood than all the bhatties put together.

Himachal Pradesh is an industrially backward State. Like other States, it too has been evolving schemes for encouraging the industrialisation of the State. By a Notification dated May 13, 1974, the Governor of Himachal Pradesh established the Industrial Projects Approval and Review Authority (IPARA) comprising Chief Secretary to the Government, Secretaries to the Departments of Multipurpose Projects and Power, Public Works, Industries and Finance besides Chairman of the Himachal Pradesh State Electricity Board, Chief Conservator of Forests, Chief Engineer, P.W.D. and the Director of Industries. The terms of reference and the activities to be undertaken by the IPARA were specified as under :

> "(i) To act as the focal point for dissemination of information regarding programmes of Government assistance and incentives to entrepreneurs.
>
> (ii) To receive all application for setting up of factories in medium and large scale sector.
>
> (iii) To process the applications for establishment of new industries and select projects for Government approval.
>
> (iv) To arrange all necessary assistance required for the successful implementation of approved projects from various Govt. Departments and to act as the channel of correspondence and the coordinating agency between the entrepreneurs and various concerned Govt. Departments.
>
> (v) To review the progress of approved projects.
>
> (vi) To recommend necessary changes in the Government policy regarding Industrial Development in the light of experience gained.
>
> (vii) Such other matters as the Government may refer of delegate to the Authority from time to time."

(Emphasis added) On November 29, 1990 IPARA was abolished by the Government. It appears to have been revived later. By Notification dated September 3, 1993, the President of India (Himachal Pradesh was then under the President's rule) reconstituted IPARA with a more expansive membership. The terms of reference and the activities to be undertaken by the IPARA, however, remained the same as were contained in the Notification dated May 13, 1977. It is stated that during the period IPARA was not in existence, the Director of Industries, Himachal Pradesh was looking after that work. Applications received from entrepreneurs proposing establishment of industrial units in Himachal Pradesh were being processed in the first instance by IPARA - and during the period when IPARA was not in existence, by the Director of Industries.

Several units applied to IPARA/Director of Industries during the years 1992 and 1993 proposing to establish mechanised units for manufacturing katha. In all, fifteen units applied but we are concerned only with eight such units in these appeals. We shall, therefore, state the particulars with respect to these eight units only:

> As indicated in the Table, the applications made by these units were considered by the sub-committee of IPARA, which granted "approval" to all the applicants. Since the said "approval" was supposed to be provisional in nature, all the proposals were put up for fuller consideration before the full committee of IPARA. The full committee met on August 28, 1993 and decided to recommend units at S1.Nos.1 to 3 and 5 to 7 for government's approval. It rejected the proposals of others including the units at S1.Nos.4 and 8 in the Table on the ground that they failed to take any steps to set up the factories pursuant to sub- committee's approval. The matter was then placed before H.E. The Governor.
>
> Out of the said six units, only the first three units have been approved by the Governor. In the case of units at S1.Nos.5 to 7, the Governor has declined to approve. This decision was taken by the Governor of Himachal Pradesh on September 15, 1993. The proceedings of the meeting of IPARA held on August 28, 1993 and the order of H.E. The Governor have been placed before us. (Himachal Pradesh was under the President's rule then.) Just about the time the Governor (government) was taking his decision, Writ Petition No.1455 of 1993 came to be filed by Sri Yogendra Chandra, M.L.A. for issuance of an appropriate writ restraining the government from permitting the establishment of any katha units in the State on the ground that such establishment would lead to indiscriminate felling of khair trees which would have a deep and adverse effect upon the environment and ecology of the State. He submitted that the raw material available in the State (khair trees) for manufacturing katha is not sufficient to sustain the proposed industries, as many as fifteen in number, and hence no permission should be granted for new units. Soon afterwards, Shankar Trading Company, the existing mechanised unit, filed Writ Petition No.1475 of 1973 for an appropriate writ restraining the Government of Himachal Pradesh from granting permission for establishment of any new unit on the ground that the raw material available in the State is not adequate to sustain any new units. According to this petitioner, the entire raw material available is hardly sufficient to meet its own

requirement and the requirement of bhattiwalas. It relied upon an agreement entered into with the Government of Himachal Pradesh whereunder fifty percent of the raw material extracted in a year has to be sold to it.

Soon after the Governor's decision aforementioned was communicated to the concerned parties, three writ petitions came to be filed by the units at S1.Nos.5 to 7 in the aforementioned Table, viz., Writ Petition No.1576 of 1993 by Dev Bhoomi Industries, Writ Petition No. 1590 of 1993 by Ganesh Wood Products and Writ Petition No.145 of 1994 by Naman Wood Products. Two other Writ Petitions, No.1479 of 1994 and 611 of 1994 were filed by Indian Wood Products and Chander Katha Products. There was yet another writ petition (1489 of 1993) filed by one Ved Prakash espousing the cause of Bhattiwalas.

After hearing the parties and perusing the relevant records, the High Court dismissed Writ Petition Nos.1455 of 1993 and 1475 of 1993 filed by Sri Yogendra Chandra and Shankar Trading Company respectively. It allowed Writ Petition Nos.1576 of 1993, 1590 of 1993 and 145 of 1994 and quashed the orders of the Government refusing permission to these three persons to establish their units. So far as the writ petitions filed by Indian Wood Products and Chander Katha Industries (Writ Petition Nos. 1479 of 1993 and 611 of 1994) are concerned, they were allowed with a direction to the authorities of the State to reconsider their case in the light of the observations made in the judgment. S.L.P.(C) Nos.12754-58 of 1995 are preferred by the State of Himachal Pradesh, S.L.P.(C) No.11082 of 1995 is preferred by Yogendra Chandra and S.L.P.(C) Nos.11086-11089 of 1995 by Shankar Trading Company against the judgment of the High Court.

The learned Additional Solicitor General, Sri V.R. Reddy, submitted that the provisional registration or "approval", as it is called by IPARA, did not confer any right upon any of the units inasmuch as the said "approval" was subject to final approval by the government. The Governor has taken into consideration the availability of raw material in the State and arrived at the conclusion that it can sustain only three units viz., Doon Katha, Orient Herbs and Sagar Katha besides the existing one. Of these three units, Doon Katha is a very small unit; its consumption is almost as much as that of a bhatti. Thus, in truth, only two units have been permitted. It is true that the IPARA recommended the case of six units, viz., the three units aforesaid and Ganesh Wood Products, Naman Wood Products and Dev Bhoomi Industries but the Governor did not agree with the said recommendation and selected the first three units applying the principle 'first come, first served'. No valid objection can be taken to the orders of the government since they are conceived in public interest keeping in view the availability of the raw material. The learned Additional Solicitor General submitted that the High Court exceeded the well recognised constraints of writ jurisdiction in taking upon itself the determination of the availability of raw material and on that basis quashing the orders of the government.

Sri K. Madhava Reddy, learned counsel for Sri Yogendra Chandra submitted that the High Court was not justified in holding that the appellant Yogendra Chandra cannot be "accepted as a public

spirited citizen approaching this Court to protect the public interest", merely because he was not able to place before the Court reliable data in support of his allegation of illicit felling of trees in the past. Learned counsel contended that while rightly holding that there was no evidence of collusion between Yogendra Chandra and Shankar Trading Company, the Court erred in not entertaining his writ petition as a bonafide public interest litigation.

Sri P.P. Rao, learned counsel appearing for Shankar Trading Company submitted that the raw material available in the State is not sufficient to feed any new units and that this fact has been repeatedly brought to the notice of the government by the Chief Conservator of Forests, who must be deemed to be the person fully aware of the true situation regarding the availability of raw material. Learned counsel submitted that the permission granted to the respondent- units is in violation of the provisions of several statutes, both Central and State.

Sri Dushyant Dave, learned counsel appearing for Ganesh Wood Products (one of the respondents in these appeals) submitted that after the introduction of the New Industrial Policy (Liberalisation Policy) and the notifications issued in that behalf by the Government of India, a citizen of this country has an unquestioned and an absolute right to establish a small-scale industry at any time, at any place and of whatever capacity he may choose. He submitted that Katha industry is not governed by Industries Development (Regulation) Act, 1951, (I.D.R.Act) hence no licence or permission is necessary from the authorities under the said Act for establishing a katha factory, more so in the small scale sector. The government's duty is merely to register the units being set up. It is bound to register any and every application for establishing a small-scale industry and it has no power to cancel, revoke or disapprove such registration. Learned counsel submitted further that on the basis of approval granted by IPARA, the government granted registration to Ganesh Wood Products on June 21, 1993 and has communicated the same to it. Indeed, by a subsequent communication dated 18th August, 1993, the government restricted its capacity to 3600 metric tons (2400 cu. meters). Even the full IPARA meeting held on August 28, 1993 recommended the case of Ganesh Wood Products. The rejection by the Governor is based on no reasons and is, therefore, liable to be set aside as an arbitrary decision. Learned counsel relied upon certain material in support of his proposition that the particulars of raw material available in the State is more than sufficient to sustain not only the three units permitted by the Governor but also the three units recommended by the IPARA in its meeting held on August 28, 1993. He submitted that bonafides of Sri Yogendra Chandra are suspect and that he has been put up really by Shankar Trading Company. So far as Shankar Trading Company is concerned, the learned counsel submitted that it is seeking to merely ensure that all the raw material in the State is reserved for itself by excluding all other units. It is submitted that in the interest of growers of khair trees and in the interest of public and the State of Himachal Pradesh, new units must be allowed to come up.

Sri Gopal Subramaniam, learned counsel for Dev Bhoomi (another respondent in these appeals) urged four contentions:

> 1. that the order of the Governor made without notice to affected parties is in violation of principles of natural justice since no notice was given to them before refusing approval;.

2. that the High Court was justified in going into the merits of the case and quashing the orders of the Governor on merits in the particular facts and circumstances of the case;

3. that the State Government is not without power to regulate the supplies of raw material in case it think it necessary or expedient. There are enough enactments empowering it to do so;

4. The recommendations of IPARA made in its meeting held on August 28, 1993 were considered decisions arrived at after taking into consideration all aspects of the matter.

It applied a legitimate criteria in diseinguishing Ganesh Wood Products, Naman Wood Products and Dev Bhoomi Industries from others. IPARA was of the opinion that no new units should be permitted but those units that have already acted upon the approval granted by IPARA should be allowed to come up and function. The Governor's action is devoid of any reasons. The alleged protests of Chief Conservator of Forests contained in his letters are of no significance in view of the fact that though he was a member of IPARA, he never recorded his protest to any of the approvals granted to several units.

Learned counsel further pointed out that khair trees were included in the Schedule to the Himachal Pradesh Forest Produce (Regulation of Trade) Act, 1982 by Notification dated April 30, 1991 but that the same was deleted by another Notification issued on November 18, 1991. In this view of the matter, the learned counsel contended, the Governor's action is unsustainable in law.

Mrs.Roxana Swamy, learned counsel appearing for the Naman Wood Products (another respondent) supported the contentions of Sri Dave and Sri Gopal Subramaniam.

Sri Arun Jaitley, learned counsel appearing for Indian Wood Products and the learned counsel for Chandra Katha respectively (respondents) submitted that they too had acted upon the approval granted by IPARA and have invested substantial amounts in acquiring the land and setting up the units and if only they had been given an opportunity, they would have established their contention. They supported the submissions of Sri Gopal Subramaniam and Sri Dave.

Sri Dholakia and Sri M.S.Ganesh appearing for Sagar Katha (yet another respondent) disputed the several contentions raised by the learned counsel for the appellants and submitted that the Governor has rightly granted permission to Sagar Katha and that there are absolutely no grounds to interfere with the same at the instance of Yogendra Chandra or Shankar Trading Company. Sri Balakrishnan, learned counsel for Orient Herbs advanced submissions on the same lines.

LAW APPLICABLE:

Katha industry is not in the schedule to the Industries Development and Regulation Act. The provisions regulating the establishment of industries contained in the said

Act, therefore, have no application to this industry. There is no corresponding enactment made by the legislature of the State of Himachal Pradesh governing the establishment of industries similar to I.D.R. Act. At the same time, by virtue of Entry 24 of List-II of the Seventh Schedule to the Constitution, "industries"- subject, of course, to the provisions of Entries 7 and 52 of List-I - is a matter within the exclusive province of the States. In the absence of an enactment, the executive power of the State extends to the said subject matter [Rai Sahib Ram Jawaya Kapur And Ors. v. State of Punjab (1955 (2) S.C.R.225)]. The Himachal Pradesh Government has not only evolved a forest policy but has also framed certain guidelines with a view to encourage the industrialisation of the State. It has constituted IPARA, as far back as 1974, with the same purpose. The functions of the said authority have been the same throughout, viz., to act as the focal point for dissemination of information regarding programmes of government assistance and incentives to entrepreneurs generally. In particular, it is empowered "(ii) to receive all applications for setting up of factories in medium and large scale sector and (iii) to process the applications for establishment of new industries and select projects for government approval". Indubitably, clause (iii) takes in industries in small scale sector as well. The authority is further required "(iv) to arrange all necessary assistance required for the successful implementation of the approved projects from various government departments and to act as the channel of correspondence and as the coordinating agency between the entrepreneurs and various concerned government departments". In short, this authority is to act as the nodal agency. It is also expected to review the progress of approved projects and to recommend necessary changes in government policy regarding industrial development in the light of experience gained.

We may reiterate that IPARA is not established under any statutory provision and its acts and proceedings do not have any statutory sanction. The idea is to encourage new industries and to provide necessary assistance to them. The more relevant function of the authority from the point of view of the controversy herein is the power, or function, as it may be called, "to process the applications for establishment of new industries and select projects for government approval". This clause makes it clear that the function of the authority was not to grant approval for any new industry but only to process their applications and to select projects for government's consideration; it was for the government to approve them. It is equally relevant to note that the Notifications constituting or reconstituting the IPARA do not say anywhere that no industry can be established unless it applies to IPARA or unless its application is processed by IPARA, nor do they say that unless approved by the Government, no industry can be established in the State. This means that if there are any enactments or other statutory provisions governing the establishment of industries, they have to be complied with by the intending entrepreneurs. The IPARA or the Government of Himachal Pradesh propose neither add to those provisions nor do they purport to detract therefrom.

Evidently because it was in their interest, the fifteen units proposing to establish katha factories in Himachal Pradesh (including the units concerned in this batch of appeals) applied to IPARA - and during the period the IPARA was not in existence, to the Director of Industries - for approval of their projects. They knew full well that if their applications are approved by the government, they will have several advantages in the matter of acquiring land, obtaining power connection, obtaining water supplies and in various other matters relevant to successful establishment and running of the industry. Now, it cannot be denied that the power to approve includes the power to decline approval and the power to disapprove. And that is all that has happened now. The Government of Himachal Pradesh has chosen to approve only three units, viz., Doon Katha, Sagar Katha and Orient Herbs and it has refused to approve the rest including Ganesh Wood Products, Naman Wood Products and Dev Bhoomi Industries (Hari Krishan). So far as Indian Wood Products and Chander Katha Products are concerned, their cases were not even put up to the government because their cases were rejected even by the IPARA. When this is done, it is argued by learned counsel, Sri Dave, appearing for Ganesh Wood Products that the government has no power to decline the approval or to disapprove the provisional approval granted by IPARA. Learned counsel contended that the government can only register an unit but it cannot de- register it nor can it refuse to register it. We cannot agree. The notifications constituting IPARA, whether of 1974 or of 1993, do not speak of registering any unit. The argument of the learned counsel, therefore, means that any and every application for establishment of new industry must necessarily be approved by the government and that the government has no power to refuse to approve nor can it disapprove any provisional approval granted earlier. We are unable to understand or appreciate the logic behind this argument, more particularly, in view of the further contention of the learned counsel that since the I.D.R. Act does not govern the establishment of this industry and also because of the liberalisation policy introduced by the Central Government in 1991, no permission of any authority whatsoever is required for establishing the katha industry in small scale sector. If the contention of the learned counsel is that by virtue of the liberalisation policy or by virtue of the position of law obtaining as on today - as understood by him - a citizen of this country has an absolute and unbridled freedom to establish any small scale industry anywhere in the country, he is free to do so. The impugned order of the government does not say that he cannot. It does not prohibit him from establishing the industry. All that the government says, and means, is that if any one wants to come to it or to the authority established by it, viz., IPARA, for approval then he must submit to the regimen established by the government in that behalf and to its policies. While approving the projects, it is certainly open to the government to say that having regard to the availability of the raw material it shall not approve more than a particular number of units in a particular industry or of more than a particular capacity. It is entitled to say that the available raw material in the State should be exploited in an even and balanced manner keeping in mind the availability of the raw material in the years to come. It is entitled to make an estimate of the raw material available from the government sources as also from the private sources and say that

the raw material so available can feed only so many industries and no more.

We may make it clear that we do not approve or accept the contention urged by Sri Dave that as on today there is no law preventing any person from establishing any industry anywhere so long as it is not governed by the I.D.R. Act. That question does not arise in these writ petitions and appeals. All that we have stated is that if that is what any person thinks, it is for him to act according to his conviction and take the consequences, if any, of his action.

In short, the position is this: the impugned order of the Government of Himachal Pradesh (made by the Governor of Himachal Pradesh) on September 3, 1993 is not traceable to any statutory provision or statutory power. It is made in exercise of its executive power. While acting in its executive capacity, the government is entitled to lay down policies and preferences in the interest of State, its economy and keeping in view the National Forest Policy, Himachal Pradesh Forest Policy and the Central and State enactments relevant in that behalf. The only obligation of the State in such an event would be to extend a fair and equitable treatment to all persons coming before it. Having approached the IPARA and the government for approval, the respondents (persons intending to set up katha units) cannot

- when the approval is refused - turn round and say that the government has no power to refuse approval. They cannot be heard to say so. It is not as if - be it reiterated - the government has prohibited the said respondents from establishing their factories in the State. The approval and non-approval or disapproval, as it may be called, is administrative in nature. If anyone wishes to seek approval from the government, he has to abide by the government's policies and guidelines evolved or enunciated in that behalf.

Lest our observations hereinabove may be misunderstood, we may mention a few of the enactments - without trying to be exhaustive - governing the establishment of forest-based industries, whether small scale, medium scale or large scale. They are:

"Central Acts:

1. Wildlife Protection Act, 1972.

2. The Water (Prevention and Control of Pollution) Act, 1974 (amended in 1978 1988 and later).

3. The Forest (Conservation) Act, 1980 (as amended in 1988).

4. The Air (Prevention and Control of Pollution) Act, 1981 (as amended in 1988).

5. The Environment (Protection) Act, 1986.

6. The Industries Development and Regulation Act, 1951 (as amended from time to time) - to the extent it is applicable.

HIMACHAL PRADESH ENACTMENTS:

1. The H.P. Private Forests Act, 1954.

2. The H.P. Land Preservation Act, 1978 and the Rules made thereunder.

3. The Himachal Pradesh Forest Produce (Regulation of Trade) Act, 1982.

4. Various Municipal/Panchayat and Development Acts, wherever applicable."

While we do not think it necessary to refer to all of them, it would be sufficient to refer to certain provisions of the Environment (Protection) Act, 1986 and the rules made thereunder and to refer briefly to the scheme of the Himachal Pradesh enactments. The preamble to the Environment (Protection) Act reads:

"An Act to provide for the protection and improvement of environment and for matters connacted therewith.

Whereas decisions were taken at the United Nations Conference on the Human Environment held at Stockholm in June, 1972, in which India participated, to take appropriate steps for the protection and improvement of human environment;

And whereas it is considered necessary further to implement the decisions aforesaid in so far as they relate to the protection and improvement of environment and the prevention of hazards to human beings, other living creatures, plants and property."

Clause (a) of Section 2 defines the expression "environment" in a comprehensive manner to take in all factors affecting environment including preservation of forests. It reads:

"'Environment' includes water, air and land and the inter-relationship which exists among and between water, air and land, and human beings, other living creatures, plants, micro-organism and property."

Section 3 empowers the Central Government "to take all such measures as it deems necessary or expedient for the purpose of protecting and improving the quality of the environment and preventing, controlling and abating environmental pollution". Sub-section (2) of Section 3 elaborates the powers of the Central Government. It says:

"(2) In particular, and without prejudice to the generality of the provisions of sub-section (1), such measures may include measures with respect to all or any of the following matters, namely:-

(ii) Planning and execution of a nation-

wide programme for the prevention, control and abatement of environmental pollution;

(iii) laying down standards for the quality of environment in its various aspects;

(v) restriction of areas in which any industries, operations or processes or class of industries, operations or processes shall not be carried out or shall be carried out subject to certain safeguards;....."

Section 6 confers upon the Central Government the power to make rules in respect of all or any of the matters referred to in Section 3. Section 6(2) (e), in particular, empowers the Central Government to make rules providing for "(e) the prohibition and restrictions on the location of industries and the carrying on of processes and operations in different areas".

Rules have been framed under the Act. Rule 5 deals with "(P)rohibition and restriction on the location of industries and the carrying on processes and operations in different areas". Sub-rule (1) of Rule 5, insofar as it is relevant, may be quoted:

> "(1) The Central Government may take into consideration the following factors while prohibiting or restricting the location of industries are carrying on of processes and operations in different areas.....
>
> (iv) The topographic and climatic features of an area.
> (v) The biological diversity of the area which, in the opinion of the Central Government needs to be preserved.
>
> (vi) Environmentally compatible land use.
>
> (vii) Net adverse environmental impact likely to be caused by an industry, process or operation proposed to be prohibited or restricted."

These provisions establish and emphasise the power of the Central Government to regulate the location of industries which also includes the power to prohibit their establishment as well. Having regard to the objectives underlying the Act and the alarming diminution of forest cover in the country, the said provisions should be understood not so much as conferring powers on the Central Government but as creating an obligation upon it to exercise those powers for achieving the objectives underlying the Act. It is absolutely essential that the Central Government issues orders under and as contemplated by Rule 5, if not already issued.

The Himachal Pradesh Forest Produce (Regulation of Trade) Act, 1982 contains elaborate provisions regulating sale, purchase, transfer and trade of forest produce including the forest

produce from private lands. It is, of course, true that khair trees were first included in the Schedule to the Act in April 1991 and deleted in November 1991, but it can always be included in the schedule again, if the government thinks it necessary, as contemplated by Section 18 of the Act. The Act permits government monopoly in the matter of sale of forest produce covered by the Act.

The Himachal Pradesh Land Preservation Act, 1978 confers extensive powers to regulate, restrict, prohibit cutting of trees and their removal from notified areas. So does the Himachal Pradesh Private Forests Act, 1955 contain elaborate provisions empowering the State Government to prohibit the cutting and felling the trees in the specified private forests. The provisions of these Acts have a crucial bearing on the establishment and running of forest based industries.

THE SIGNIFICANCE OF FOREST WEALTH AND ITS IMPACT ON ENVIRONMENT AND ECOLOGY:

> It is well to remember that manufacture of katha requires cutting of khair trees. Only the central portion of the trunk of the tree is used for the manufacture of katha and the rest is of no use except perhaps as firewood. The more the number of industries, the more pressure there will be for cutting these trees. Himachal Pradesh is a hill State. The considerations of environment and ecology and preservation of forest wealth are absolutely relevant considerations which the government must keep in mind while devising its policies and programmes. A brief examination of the importance and the fundamental significance of forests in the matter of environment and ecology would be in order at this juncture.
>
> The report of the "World Commission on Environment and Development" constituted by the United Nations and chaired by the then Prime Minister of Norway, Gro Harlem Brundtland contains certain facts and warnings which are relevant to the present context. We may refer to a few of them:
>
> *---------- The excerpts are drawn from the book "Our Common Future: World Commission on Environment and Development" published by Oxford University Press in 1987. India was represented on this Commission by its representative Sri Nagendra Singh. The Report was sutmitted in the year, 1987.
>
> "There has been a growing realisation in national governments and multilateral institutions that it is impossible to separate economic development issues from environment issues; many forms of development erode the environmental resources upon which they must be based, and environmental degradation can undermine economic development. Poverty is a major cause and effect of global environmental problems. It is therefore futile to attempt to deal with environmental problems without a broader perspective that encompasses the factors underlying world poverty and international inequality..... ....many present development trends leave increasing numbers of people poor and vulnerable, while at the same time degrading

the environment. How can such development serve next century's world of twice as many people relying on the same environment?

....More than 90 per cent of the increase (in population) will occur in the poorest countries.....

Meanwhile, the industries most heavily reliant on environmental resources and most heavily polluting are growing most repidly in the developing world, where there is both more urgency for growth and less capacity to minimize damaging side effects.....Ecology and economy are becoming ever more interwoven - locally, regionally, nationally, and globally - into a seamless net of causes and effects.....

The other great institutional flaw in coping with environment/development challenges is governments' failure to make the bodies whose policy actions degrade the environment responsible for ensuring that their policies prevent that degradation."

In Chapter -12 entitled "Towards Common Action: Proposals for Institutional and Legal Change", the Commission states, inter alia, that: "developing countries face the challenges of desertification, deforestation, and pollution, and endure most of the poverty associated with environmental degradation.....The next few decades are crucial for the future of humanity. Pressures on the planet are now unprecedented and are accelerating at rates and scales new to human experience: a doubling of global population in a few decades, with most of the growth in cities; a five to ten fold increase in economic activity in less than half a century; and the resulting pressures for growth and changes in agricultural, energy, and industrial systems. Opportunities for more sustainable forms of growth and development are also growing. New technologies and potentially unlimited access to information offer great promise.....Environmental protection and sustainable development must be an integral part of the mandates of all agencies of governments, of international organizations, and of major private-sector institutions. These must be made responsible and accountable for ensuring that their policies, programmes, and budgets encourage and support activities that are economically and ecologically sustainable both in the short and longer terms."

Similar views were expressed at the United Nations Conference on the Human Environment held at Stockholm from June 5th to 16th, 1972. We do not, however, wish to burden this judgment with them. Suffice to refer to Article 51-A of our Constitution which makes it a duty of every citizen to protect and improve the natural environment including forests, lakes, rivers and wildlife and to have compassion for living creatures.

While the effects of unthinking and indiscriminate felling of forests needs no emphasis at the present juncture, we cannot but quote the following passages from

the book "Topsoil and Civilization" by Tom Dale and Vernon Gill Carter, both highly experienced ecologists:* "Man, whether civilised or savage, is a child of nature

- he is not the master of nature. He must conform his actions to certain natural laws if he is to maintain his dominance over his environment. When he tries to circumvent the laws of nature, he usually destroys the natural environment that sustains him. And when his environment deteriorates rapidly, his civilisation declines.....

The writers of history have seldom noted the importance of land use. They seem not to have recognised that the destinies of most of man's empires and civilisations were determined largely by the way the land was used. While recognising the influence of environment on history, they fail to note that man usually changed or despoiled his environment.

How did civilised man despoil this favourable environment? He did it mainly by depleting or destroying the natural

---

*Quoted in "Small is beautiful - A study of economics as if people mattered" by E.F.Schumacher. resources. He cut down or burned most of the usable timber from forested hillsides and valleys. He over-grazed and denuded the grasslands that fed his livestock. He killed most of the wildlife and much of the fish and other water life. He permitted erosion to rob his farm land of its productive topsoil. He allowed eroded soil to clog the streams and fill his reservoirs, irrigation canals, and harbours with silt. In many cases, he used and wasted most of the easily mined metals or other needed minerals. Then his civilisation declined amidst the despoilation of his own creation or he moved to new land.

There have been from ten to thirty different civilisations that have followed this road to ruin (the number depending on who classifies the civilisations)."

We may add that in the present-day world, there is hardly any space left for anyone to move from his place to another.

This digression was necessary to put in proper perspective the ooligation of the State and the significance of the concept of "sustainable development" and "inter-generational equity"* vis-a-vis the legal submissions made on the basis of principles of natural justice, estoppel and so on.

A FEW MORE RELEVANT FACTS:

When a person applied for approving his project for

---------- * Inter-generational equity means the concern for the generations to come. The present generation has no right to imperil the safety and well-being of the next generation or the generations to come thereafter.

establishment of a katha industry, the sub-committee of IPARA communicated its approval clearly envisaging that soon after receiving the said approval, the person concerned should take immediate and effective steps for setting up the industry. We are told that all these approvals were accorded in a prescribed proforma, one of which (addressed to Ganesh Wood Products) may be set out hereinbelow: "NO.IND DEV.F.(34) IPARA-463/93 GOVERNMENT OF HIMACHAL PRADESH 'DIRECTORATE OF INDUSTRIES' Dated: Shimla - 171002 The 21.6.1993 To M/s Ganesh Wood Products, 108-109/215, Katha Paren, Tilak Bazar, Delhi - 110006.

Subject: APPROVAL OF PROJECT BY IPARA. Dear Sir, We have the pleasure to inform you that your application dated 11/6/93 for the approval of your project has been cleared by IPARA Sub-Committee meeting held on 16/6/1993 for the setting up of new Industrial Undertaking at Sansarpur Terrace District Kangra in the State of Himachal Pradesh for the manufacture of following items:-

---------- S.NO. ITEM OF MANUFACTURE PROPOSED ANNUAL CAPACITY

---------- Acacia Catechu Extract 240 MT.

Bye Products (Cutch) 240 MT.

---------- This approval is subject to the following conditions:-

1. The letter of approval is valid for a period of 12 months from the date of issue. You shall take effective steps within this validity period for the implementation of the project, if an extension to the period of validity is found necessary you should apply preferably 3 months in advance with full justification for any extension of time sought alongwith a detailed statements of the steps taken for the implementation of the project.

2. Adequate steps shall be taken to the satisfaction of the Govt. to Prevent Air, Water and Soil Pollution. Such anti-pollution measures to be installed should conform to the effluent and emission standard prescribed by the H.P. State Pollution Control Board. The equipment for anti-pollution measures will form a part of your project report.

The design of the equipment will have to be got approved from the H.P. State Pollution Control Board. Further, adequate industrial safety measures as provided in the relevant Act should be made to the satisfaction of the State Government.

3. This letter of approval does not constitute an authorisation under Industrial Development & Regulation Act, 1951 or any other relevant acts of the Govt. of India. Wherever applicable such permission or clearances as may be required under the provisions of such Acts should be separately obtained by you before taking any effective steps for the implementation of the project.

4. Further this approval of project does not imply any commitment what-so- ever on the part of the Government to provide finance, raw materials, Land etc. or any other assistance. Request for such assistance would be considered separately on merits after you have made the necessary application to the concerned authorities. You are, therefore, advised to initiate the steps, for procurement of land, finance and other assistance as required for the project at your own.

5. You will have to make own arrangement for the procurement of water from the source to the factory site at your own cost. In case you sink a tube well for your unit, you will ensure that it does not upset the water table in that area significantly.

6. You are required to furnish quarterly progress report untill the commencement of production. This report will have to be furnished every quarter ending 31st March, 30th June, 30th Sept.

7. You will inform this office about the commencement of production.

8. You will notify the vacancies to all the employment exchanges in Himachal Pradesh. These vacancies shall be filled in as per notifications issued by the Department from time to time. You shall have to employ only bonafide residents of H.P. and also trained and technical persons from ITI's, RITI's, polytechnics and Engineering Colleges in the State in your industrial unit. You are further required to give quarterly return regarding employment of Himachal and non-Himachali to the General Manager, Distt. Industries Centre, of your district.

9. You will have to make inbuilt parking facilities within factory area or separately for parking of trucks and other vehicles and these will not be allowed to be parked on National Highway/State Highway/other public utility read.

10. This proposal has been approved without any commitment of availability of Khair Wood by the State Government.

11. You will have to raise green belt around the factory premises.

We are hopeful that you will now immediately initiate effective steps to implement this project. In case of any difficulty/assistance required, kindly fee free to get in touch with us. We assure you of our full co-operation.

(Emphasis added) Wishing you and your enterprise a success.

Yours faithfully, sd/-

(S.C. Negi) Member Secretary _____ _____ IPARA"

(Let it be noted that this letter is not from the Government of Himachal Pradesh but only from IPARA.) The terms of approval are clear enough and we do not think it necessary to set out their substance in our own words.

It appears that when IPARA approved as many as fifteen proposals for establishing katha factories in the State, the Forest Department of the State and the Ministry of Environment and Forest of the Government of India became alarmed. On September 23, 1992, the Government of India, Ministry of Environment and Forest addressed a letter to the Principal Chief Conservator of Forests, Government of Himachal Pradesh requesting him to furnish basic information relevant to the State of Himachal Pradesh in the proformas enclosed to the said letter which was necessary "to review the production and sale of khair wood/teak wood/resin in the country". A reminder was sent on April 29, 1993. The concern of the Government of India is evident from the letter dated October 6, 1993 addressed to the Forest Secretary, Government of Himachal Pradesh, which is worth reproducing:

"GOVERNMENT OF INDIA MINISTRY OF ENVIRONMENT AND FORESTS Paryavaran Bhawan, C.G.O. Complex, Lodi Road, New Delhi Pin 110 003.

No.3-13/93-94 Dated: 6th October, 1993 To The Forest Secretary, Government of Himachal Pradesh, Shimla.

Subject: Registration of New Katha units

- availability of khair wood.

Sir, I am directed to refer to this Ministry's letter No. 7-4/92-SU dated 18.9.92 (copy enclosed) regarding review of production and disposal of Khair Wood and to say that the information sought has not yet been received by this Ministry. However, it has come to the notice of this Ministry that the State Govt. have issued orders for registration of 15 new katha units for manufacturing of Katha from Khair Wood and is also contemplating to issue more licences for setting up of new units.

This is being done without due consideration to the principle of sustainable management of the forest and is not commensurate to the annual yield for Govt. and private forests. This is against our National Forest Policy of 1988, which clearly says that no forest based enterprise, except that at the village or cottage level be permitted in future unless it has been first cleared after a careful scrutiny with regard to assured

availability of raw material. (Emphasis supplied)

2. It is, therefore, requested that review of the earlier decision taken by the State Govt. in regard to the registration of 15 new units of Katha may be taken keeping in view the availability of Khair Wood in the State as per sustainable annual yield available from Government and private forest area. Action taken in this regard may kindly be sent immediately.

Yours faithfully sd/-

(Anoop Badhwa) Asstt. Inspector General of Forests."

Evidently, this letter was written by Government of India before it was apprised of the action taken by the Government of Himachal Pradesh impugned herein. It is legitimate to presume that similar views must also have been expressed earlier.

Apart from the concern expressed by the Government of India, Ministry of Environment and Forest, there was a spate of criticism in the media and other public fora (including protest by Chairman of four block samities) with respect to grant of approval to establish as many as fifteen mechanised units for manufacture of katha in Himachal Pradesh. All this made the Government of Himachal Pradesh and IPARA to sit up and take notice of the consequences of the action of the sub-committee of IPARA in approving fifteen units. A full meeting of IPARA was convened for August 28, 1993. Meanwhile, the capacity of each of these units was restricted to 3600 metric tonnes or 2400 cubic metres per annum and the "approvals" granted to some other units, who had not taken any steps pursuant to sub-committee's "approval" were cancelled. The full committee meeting of the IPARA held on August 28, 1993 took note of the concern expressed in the media and other public fora regarding the paril to the forest wealth of the State on account of indiscriminate approval of katha factories and tried to restrict the number as much as possible. But then it was faced with the problem that pursuant to the "approvals" granted by the sub-committee of IPARA, certain units had already taken steps for setting up of the factories. It was noted that of the fifteen units to which approval was so accorded, Doon Katha industries was promoted by a woman entrepreneur and was a very small industry analogous to a bhatti and further that installation of its factory was almost complete. It was, therefore, decided not to disturb the approval granted to it. It was also found that five other units, viz., Orient Herbs, Sagar Katha, Dev Bhoomi Industries, Naman Wood Products and Ganesh Wood Products are in the process of establishing their units. It noted that the capacity of these industries has already been restricted to 3600 metric tonnes. The IPARA was of the opinion that the approximate availability of khair wood in the State is 30,000 cubic metres and that it would be sufficient to feed the existing bhatties, existing mechanised factory (Shankar Trading Company) and the aforesaid six new units with their restricted capacity. It decided that the approvals of the other units should be cancelled because they had not taken any concrete steps to implement the projects approved. The IPARA also took note of the requirement of Shankar Trading Company (Mahesh Udyog) and the agreement it had with the Government of Himachal Pradesh and felt that its capacity and its requirement of raw material should be assessed and verified in a proper manner. The proposals and recommendations of the IPARA aforesaid were placed before H.E. the Governor

for approval. On September 15, 1993, H.E. the Governor made the following order:

> "In my opinion, the proposal at Para 5 and its sub para 1 on page 3 of the note descorve to be modified as under:-
>
> Para 5 - sub para 2 (3) Shri Hari Krishan Bajaj, Prop. M/s. Dev Bhumi Industries, Baddi District, Solan, (4) M/s. Naman Wood Products, Tahliwala, District Una and (5) M/s. Ganesh Wood Products, Sansarpur Terrace, Distt. Kangra, H.P., as approved by IPARA Sub- Committee should not be implemented. Only units at para 5 sub-para 2(1) Shri Anil Kumar Arya, Prop., M/s. Orient Herbs, Baddi, Distt. Solan (2) M/s.
>
> Sagar Katha Factory, Kala Amb, distt. Sirmour and one small proposal of Bhatti type being set up by Mrs. Sushma Chauhan, a woman entrepeneur at Paonta Sahib (para 5 sub para 1) are approved and be implemented.
>
> sd/-
>
> Governor 15.9.93"

The decision was communicated to the concerned persons

- leading to the filing of several writ petitions in the High Court.

AVAILABILITY OF KATHA IN THE STATE OF HIMACHAL PRADESH:

> Pursuant to the directions of the High Court on the question of availability of raw material for manufacturing katha, Sri R.K.Anand, Secretary (Forests) to the Government of Himachal Pradesh, filed, what he designated as "short affidavit in compliance to the order dated 31.12.1993 passed by the Hon'ble Court". It is instructive to extract certain portions of this affidavit in view of their crucial relevance:
>
> "(1) It is submitted that policy in regard to cutting of Khair trees is to obtain yield on sustained basis.** The National and State policies in regard to establishment of industries is as under:
>
> (i) National Forest Policy: Para 4.9 of the National Forest Policy states that `as far as possible', a forest based industry should raise the raw material needed for meeting its own requirement preferably by establishment of a direct relation between the factory and the individuals who can grow the raw material by supporting the individuals with inputs including credit, constant technical advice and finally harvesting and transport services."

(ii) State Forest Policy: Para No. 25 of the H.P. State Forest Policy states that "until detailed forest resources, wood production and consumption studies have been carried out to determine wood balances specially of broad leaved species, available at present and in future (projections over a period of twenty

---------- ** An echo of sustainble development emphasised by "The World Commission on Environment and Development.

years) for various industries, no commitment for supply of raw material should be held out to the wood based industries. The consequences of proposed moratorium of commercial fellings shall also have to be fully kept in view".

Regarding establishment of forest based industries particularly those based on khairwood, it is stated that so far there is only one mechanized katha unit apart from about 100 Bhatties. As per the decision of the Government while the mechanized unit is allotted 50% of the total khairwood available annually from Government forests and all the Bhatti units get 12 1/2%. Though the installed capacity of the said mechanized unit is 5000 M3 per year as assessed by the representatives of the Forest, Industry Deptts and Small Industries Service Institution - an organisation of Govt. of India situated at Solan, as per the suggestion of IPARA

- yet the management of the said mechanized unit i.e. Mahesh Udyog has represented to the Government that the installed capacity of the unit has not been properly assessed. Accordingly, their representation is being examined.....

(2) Working Plan of Khair trees: Khair trees are not found all over the State. These are confined to the lower belt of H.P. from Sirmaur district in the East to Chamba in the West. All the khair trees in Government Forests have not been enumerated. However, Working Plans have been prepared in respect of Forest Divisions which prescribe certain annual yield in terms of numbers of trees and volume and area. The yield is exactly known after carrying out markings and fellings. However, the average annual yield is 2838 cubic metres. It is average of 1990-91 to 1992-93.

Periodicity of Working Plans is 15 years. It is not, therefore, possible to furnish information for 30 years.

There is no working plan or enumeration of khair trees growing on private land. However, the annual yield of 21034 cubic metres of khair wood from private ownership is based on extraction of khair wood during the year 1990-91 and 1991-92. This makes a total annual availability of 23872 cubic metres (2838+21034) of khair wood both from Government and private ownership.....

5. Approval of the State Government:

> IPARA had initially cleared 14 projects and conveyed the clearance to the respective parties in anticipation of the Government approval. However, Government reviewed the decision of IPARA taken in its meeting held on 28-8- 1993 and decided that 6

> units out of 14 which were recommended by IPARA, only 3 units in order of precedence or receipt of applications be allowed to continue.
>
> Accordingly, IPARA withdrew the approval of all units except 3 as allowed by Government.

6. Policy regarding import/export of khair wood from outside the State of Himachal Pradesh: There is no ban on export of khair wood from the State in respect of khair wood obtained from private land. However, the export from the State of khair wood obtained from private land is regulated in terms of the Government's order contained in Annexure R-19. The khair wood extracted from Government Forest by H.P. State Forest Corporation Ltd. and disposed through open auction is required to be utilised within the State of Himachal Pradesh only.

There is no restriction on the import of khair wood from outside the State."

It is clear from the above affidavit that there has been no systematic or a proper survey of the availability of khair wood in the State. The availability of khair wood is determined on the basis of quantity extracted during the years 1990-91 to 1992-93 in the case of government forests and 1990-91 and 1991-92 in the case of private forests. It is obvious, and an indisputable proposition, that extraction in a given year or in certain given years is no index of availability. The estimate of availability on the basis of extraction in a given two or three years' period is bound to be faulty. Extraction in a given year or years may be more or less than the average annual availability.

THE MYOPIC APPROACH OF THE SUB-COMMITTEE OF THE IPARA IN APPROVING THE PROPOSALS FOR KATHA FACTORIES:

> During the years 1992 and 1993, the sub-committee of IPARA seems to have been proceeding on the assumption that so long as there is no commitment on the part of the Government to supply khair wood to the proposed factories, there is no harm in approving any and every proposal that comes before it. This cannot but be termed as a totally faulty and a myopic approach. It is also violative of the National Forest Policy and the State Forest Policy evolved by the Government of India and the Himachal Pradesh Government respectively - besides the fact that it is contrary to public interest involved in preserving forest wealth, maintenance of environment and ecology and considerations of sustainable growth and inter-generational equity. Afterall, the present generation has no right to deplete all the existing forests and leave nothing for the next and future generations. Not keeping the above considerations in mind, it is obvious, has vitiated the approvals granted by the sub-committee of IPARA - apart from the fact that it was not empowered to grant any such approval. The obligation of sustainable development requires that a proper assessment should be made of the forest wealth and the establishment of industries based on forest produce should not only be restricted accordingly but their working should also be monitored closely to ensure that the required balance is not disturbed. In this view of the matter, we must say that insofar as forest-based industries are

concerned, there is no absolute or unrestricted right to establish industries notwithstanding the policy of liberalisation announced by the Government of India. The policy of liberalisation has to be understood in the light of the National Forest Policy devised by the Government of India itself and in the light of the several enactments applicable in that behalf, some of which have been referred to hereinbefore. It is meaningless to prescribe merely that the government need not supply the raw material and that the units will have to get their khair trees/raw material from private lands/forests. No distinction can be made between government forests and private forests in the matter of forest wealth of the nation and in the matter of environment and ecology. It is just not possible or permissible. The National Forest Policy and the Himachal Pradesh Forest Policy do not make any such distinction. The perils of ignoring the above policies and considerations cannot be over-emphasised.

We must say that in the light of the above considerations, the High Court was not right in observing that Sri Yogendra Chandra cannot be accepted as a public spirited citizen approaching the court to protect public interest - more so, when it has recorded a simultaneous finding that there is no evidence of collusion between him and Shankar Trading Company (Mahesh Udyog). The credentials of Sri Yogendra Chandra appear to be impeccable. He is not only a member of the Himachal Pradesh Legislative Assembly but also the Convenor of the Indian National Trust for Art and Cultural Heritage. He is also the President of the Himalayan Wild Life and Environment Preservation Society. The said organisations may be big or small, may be well- established ones or recently started ones - that is immaterial. Once it is found that he was not acting at the instance of or at the behest of or for protecting the interests of Shankar Trading Company, there was no reason to hold that he was not acting bonafide in approaching the court to preserve the forest wealth of the State in the interest of environment and ecology. His inability to produce material in support of his allegation of illicit felling in the State does not tell upon his bonafides.

We may also mention, even at this stage, that so far as Shankar Trading Company is concerned, there is absolutely no doubt in our mind that it is not entitled to question the approvals granted to new units since there was no indication at any stage that the supplies which it was receiving in the previous years pursuant to the agreement with the government were going to be affected. Its attempt to stop the new industries from coming up in the State, while enjoying an almost monopoly status in the matter of khair wood supplies, is certainly a strong factor militating against its bonafides in approaching the court.

THE DOCTRINE OF PROMISSORY ESTOPPEL AND THE PUBLIC INTEREST:

The doctrine of promissory estoppel is by now well recognised in this country. Even so it should be noticed that it is an evolving doctrine, the contours of which are not yet fully and finally demarcated. It would be instructive to bear in mind what

Viscount Hailsham said in Woodhouse Ltd. v. Nigerian Produce Ltd. (1972 A.C. 741):

"I desire to add that the time may soon come when the whole sequence of cases based upon promissory estoppel since the war, beginning with Central London Property Trust Ltd. v. High Trees House Ltd. (1947 (1) K.B. 130) may need to be reviewed and reduced to a coherent body of doctrine by the courts. I do not mean to say that they are to be regarded with suspicion. But as is common with an expanding doctrine, they do raise problems of coherent exposition which have never been systematically explored."

Though the above view was expressed as far back as 1972, it is no less valid tody. The dissonance in the views expressed by this Court in some of its decisions on the subject emphasises such a need. The views expounded in M/s. Motilal Padampat Sugar Mills Company Limited v. State of Uttar Pradesh (1979 (2) S.C.C.409) was departed from in certain respects in Jit Ram Shiv Kumar v. State of Haryana (1981 (1) S.C.C.11), which was in turn criticised in Union of India v. Godfrey Philips India Limited (1985 (4) S.C.C.369). The divergence in approach adopted in Sri Bakul Oil Industries v. State of Gujarat (1981 (1) S.C.C.31) and Pournami Oil Mills v. State of Kerala (1986 Suppl.S.C.C.728) is another instance. The fact that the recent decision in Kasinka Trading and Ann. v. Union of India & Ors. (1995 (1) S.C.C.274) is being reconsidered by larger Bench is yet another affirmation of the need stressed by Lord Hailsham for enunciating "a coherent body of doctrine by the Courts". An aspect needing a clear exposition - and which is of immediate relevance herein - is what is the precise meaning of the words "the promisee.....alters his position", in the statement of the doctrine. The doctrine has been formulated in the following words in M/s. Motilal Padampat Sugar Mills Co. Ltd.:

"The law may, therefore, now be taken to be settled as a result of this decision, that where the Government makes a promise knowing or intending that it would be acted on by the promisee and, in fact, the promisee, acting in reliance on it, alters his position, the Govt. would be held bound by the promise and the promise would be enforceable against the Govt. at the instance of the promisee, notwithstanding that there is no consideration for the promise and the promise is not recorded in the form of a formal contract as required by Art.299 of the Constitution."

What does altering the position mean? Does it mean such a change in the position of the promisee (as a result of acting on the faith of representation of the promissor) that compensating him in money would not be just and equitable to him, i.e., a situation where the ends of justice and requirements of equity demand that the promissor should not be allowed to go back on his representation and must be held to it or does altering his position mean doing of some act, big or small, which the promisee does acting on the faith of the representation which he would not have done but for the representation? In other words, is it enough that the promisee has spent some money or has taken some step acting on the basis of representation, which can

be recompensed in money or otherwise? Is it not ultimately a matter of doing equity and justice between the parties - a case of holding the scales even between the parties and deciding whether in the interests of justice and equity the promissor can be allowed to resile from his promise and compensate the promisee appropriately or the promissor ought to be held to his promise and not allowed to go back since such a course is necessary in view of the change in position of promisee? Our view of the matter is probably evident from the way we have posed the above questions. To wit, the rule of promissory estoppel being an equitable doctrine, has to be moulded to suit the particular situation. It is not a hard and fast rule but an elastic one, the objective of which is to do justice between the parties and to extend an equitable treatment to them. If it is more just from the point of view of both promissor and promisee that the latter is compensated appropriately and allow the promissor to go back on his promise, that should be done; but if the Court is of the opinion that the interests of justice and equity demand that the promissor should not be allowed to resile from his representation in the facts and circumstances of that case, it will do so. This, in our respectful opinion, is the proper way of understanding the words "promisee altering his position". Altering his position should mean such alteration in the position of the promisee as it makes it appear to the Court that holding the promissor to his representation is necessary to do justice between the parties. The doctrine should not be reduced to a rule of thumb. Being an equitable doctrine it should be kept elastic enough in the hands of the Court to do complete justice between the parties. Now, can the doctrine of promissory estoppel be put on a higher pedestal than the written contract between the parties? Take a case where there is a contract between the parties containing the very same terms as are found in the "approval" granted by IPARA (sub-committee) and then the government resiles from the contract and terminates the contract. The promisee will then have to file a suit for specific performance of the contract in which case the court will decide, having regard to the facts and circumstances of the case and the provisions of the Specific Relief Act, whether the plaintiff should be granted specific performance of the contract or only a decree for damages for breach of contract. It must be remembered that the doctrine of promissory estoppel was evolved to protect a promisee who acts on the faith of a promise/representation made by promissor and alters his position even though there is no consideration for the promise and even though the promise is not recorded in the form of a formal contract. Surely, a representation made or undertaking given in a formal contract is as good as, if not better than, a mere representation. All that we wish to emphasise is that anything and everything done by the promisee on the faith of the representation does not necessarily amount to altering his position so as to preclude the promissor from resiling from his representation. If the equity demands that the promissor is allowed to resile and the promisee is compensated appropriately, that ought to be done. If, however, equity demands, in the light of the things done by the promisee on the faith of the representation, that the promissor should be precluded from resiling and that he should be held fast to his representation, that should be done. To repeat, it is a matter of holding the scales even between the parties - to do justice between them. This is the equity implicit in

the doctrine.

The matters before us have to be approached and decided keeping the above principles in mind. The Court should first ascertain what precisely has each the said five respondents (Ganesh Wood Products, Naman Wood Products, Dev Bhoomi Industries, Indian Wood Products and Chander Katha Industries) have done on the basis of and on the faith of the "approval" granted by the IPARA (sub-committee of IPARA) by the date of the communication of the decision of the government - and IPARA in the case of two last mentioned units. [The expression "communication" in this behalf should be understood as explained in State of Punjab v. Khemi Ram (A.I.R. 1970 S.C.214). After ascertaining the same, the Court shall have to decide whether it is a case - separately in case of each of the said respondents - where the government should or should not be allowed to go back on the said "approval" granted by the IPARA (sub-committee). It is obvious that this decision has to be taken after giving an opportunity to both the parties to adduce material in support of their respective stands. Inasmuch as the High Court has not approached and examined the case from the above standpoint, the matter has to go back. While deciding the appropriate course, it is evident that the Court shall also have to keep in mind the plea of government that IPARA or its sub-committee was not competent to accord approval and that the power lay only with the government, as also the plea of the respondents that in the circumstances they believed and acted in good faith that IPARA is but another name for, or a mouthpiece of, the government. It is equally evident that while deciding where the interests of justice and equity lie, the Court will also take into account, and balance, public interest and the interest of the respondents aforesaid. The Court shall also take into consideration the estimate of raw material (khair trees) and its expected availability - at present and in the years to come - to be made by the Himachal Pradesh government pursuant to the directions contained herein with the aid of an expert committee. The High Court may give six months' time to the government to arrive at such an estimate and to place it before the Court.

It may perhaps be appropriate to point out that what we have said above is consistent with the doctrine as stated in Motilal Padampat Sugar Mills and the subsequent decisions. In Motilal Padampat Sugar Mills, it has been held firstly that:

"But it is necessary to point out that since the doctrine of promissory estoppel is an equitable doctrine, it must yield when the equity so requires. If it can be shown by the Government that having regard to the facts as they have subsequently transpired, it would be inequitable to hold the Government to the promise made by it, the Court would not raise an equity in favour of the promisee and enforce the promise against the Government. The doctrine of promissory estoppel would be displaced in such a case because, on the facts, equity would not require that the Government should be held bound by the promise made by it. When the Government is able to show that in view of the facts which have transpired since the making of the promise, public

interest would be prejudiced if the government were required to carry out the promise, the Court would have to balance the public interest in the Government carrying out a promise made to a citizen which has induced the citizen to act upon it and alter his position and the public interest likely to suffer it the promise were required to be carried out by the Government and determine which way the equity lies."

and then it is observed:

"But even where ther is no such overriding public interest, it may still be competent to the Government to resile from the promise 'on giving reasonable notice, which need not be a formal notice, giving the promises a reasonable opportunity of resuming his position' provided of course it is possible for the promisee to restore the statuts quo ante. If, however, the promises could become final and irrevocable. Vide Ajayi v. Briscoe (1964) 3 All ER 556."

It is this aspect which has been elaborated by us keeping in mind the facts and circumstances of this case.

It is true that in case of the three units (Ganesh Wood Products, Naman Wood Products and Dev Bhoomi Industries), the full meeting of IPARA (held on August 28, 1993) opined that "it would not be appropriate to rescind the approval keeping in view the progress made in implementation of their projects.....", yet it is not clear what exactly had they done by the date of rejection of their proposal by the Government (23rd September, 1993). Even the High Court has not recorded any clear finding on this aspect. All that it said is : "It is apparent that the Units recommended by IPARA were earlier registered with the industries Department and have thereafter purchased lands, constructed factory buildings, and/either purchased or placed orders for machinery. In some cases even the raw-material has been purchased." There is no reference to any material in support of the said opinion nor is the case of each of the petitioners separately examined. Probably, the High Court was influenced by the opinion expressed by the IPARA (at the meeting held on August 28, 1993) referred to above. But it would be seen that it too is quite general and vague. Hence, the necessity for the remand to High Court.

OBLIGATION OF THE STATE OF HIMACHAL PRADESH TO MAKE A PROPER ESTIMATE OF THE AVAILABILITY OF THE RAW- MATERIAL/KHAIR WOOD IN THE STATE:

The facts stated above do establish the imperative necessity of a proper estimate of the availability of raw material, namely, khair wood in the State. We are told that any and every khair tree is not fit for cutting for obtaining katha. Only a tree with a particular girth (20 cm. at breast height) yields the optimum quantity of requisite material and is allowed to be cut. Trees with lesser girth are not allowed to be cut as

per the Technical Order No.670 dated 13th August, 1993 issued under the Himachal Pradesh Land Preservation Act, 1978 and the Rules made thereunder. This Order, it may be noted, is applicable to private lands/forests. The State Government should obtain a proper estimate of the khair wood in the State and also to make an estimate of its availability in each of the coming years with the assistance of an expert body to be appointed in consultation with the Ministry of Environment, Government of India. Such an estimate should cover both the Government and private lands/forests and must be arrived at keeping in view the National and State forest policies and the relevant statutory provisions. It is only then one can say, what is the quantity of khair wood available and how many industries it can feed - and upto what capacity. Further, it is on the basis of such estimate that the capacity of the katha factories, at any given point of time, may have to be restricted, if need be. Some of them may even have to be closed if warranted by public interest.

We must say that the estimate of availability of raw material arrived at by the High Court is based upon the quantity extracted over a period of two or three years. As pointed out hereinabove, the quantity extracted in a given year or given years can never be treated as a proper estimate of the availability of the raw material. Hence, the need for a proper and credible survey by an expert body. In this view of the matter, it is not necessary to deal with the criticism mounted by the learned counsel for respondents to the varying estimates of raw material put forward by the government at various stages of this litigation and to other alleged contradictions in its case from stage to stage. ********** The appeals are accordingly allowed, the judgment of the High Court is set aside and the matters remitted to High Court for a fresh disposal of the writ petitions in accordance with law and in the light of this judgment.

Pending the passing of final orders by High Court pursuant to these directions, none of the said five units - Ganesh Wood Products, Naman Wood Products, Dev Bhoomi Industries, Indian Wood Products and Chander Katha - shall take any further steps towards setting up the factory. The status quo as on today shall continue. The government and all concerned shall take steps to ensure observance of this direction.

The Government of Himachal Pradesh shall make a survey and assess the approximate availability of khair wood in the year 1996 and the ensuing years. This shall be done through an expert body to be appointed by the government. The government shall be entitled to rely upon the expert committee's report and its own assessment arrived on the basis of such report before the High Court for its consideration as provided in this judgment.

No new industry/unit for manufacture of katha shall be approved by the government pending a final decision by the government on the question of availability of raw material in the years to come.

No order as to costs in these appeals.