

Om Prakash Sud Etc. Etc vs State Of J & K & Ors. Etc. Etc on 16 February, 1981

Equivalent citations: 1981 AIR 1001, 1981 SCR (2) 841, AIR 1981 SUPREME COURT 1001, 1981 (2) SCC 270

Author: Baharul Islam

Bench: Baharul Islam, R.S. Pathak, O. Chinnappa Reddy

PETITIONER:

OM PRAKASH SUD ETC. ETC.

Vs.

RESPONDENT:

STATE OF J & K & ORS. ETC. ETC.

DATE OF JUDGMENT 16/02/1981

BENCH:

ISLAM, BAHARUL (J)

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PATHAK, R.S.

REDDY, O. CHINNAPPA (J)

CITATION:

1981 AIR 1001

1981 SCR (2) 841

1981 SCC (2) 270

1981 SCALE (1) 314

ACT:

Constitution of India 1950, Article 14-Allotment of resin-Industrial policy decision of State-Object of-Balanced economic and regional development of State-Selection of quota seekers-Article 14 whether violated.

HEADNOTE:

The petitioners in their writ petitions to this Court alleged that they were carrying on small scale industries for the manufacture of resin and turpentine oil and that they applied to the Government for allotment of resin for their industries but the Government referring to their policy decision of March 20, 1978 refused to make any allotment, and that they purchased raw material from the open market and managed to run their industries. They

further alleged that while they were refused allotment of supply of raw-materials, the State, respondent No. 1 made allotments to respondent nos. 4 to 16 although most of them were not even formally registered at the time of making the impugned orders of allotment and that they were consequently adversely discriminated against, while respondent nos. 4 to 16 were favoured and as such the impugned orders of allotment were liable to be struck down " violative of Article 14 of the Constitution of India.

The State, respondent No. 1 contested the writ petition, denied the material allegations of the petitioners and alleged that the allocations were made in conformity with the State Industrial Policy decision of securing the balanced economic and regional development of the State that there was a preponderance of industries in the Jammu Region, and that the industries of the petitioners as well as respondent nos. 4 to 16 were also functioning in that region. Allotments of resin were made districtwise, 110 applications were received and considered and allotment was made to respondents nos. 4 to 16.

On the question whether the orders of the 1st respondent allotting quotas of resin to respondent nos. 4 to 16 were arbitrary and violative of Article 14 of The Constitution.

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HELD : 1(i) Respondent No. 1 has not explained as to how and on what basis if any, the allotments were made by the impugned orders in favour of the new allottees respondent nos. 1 to 16 whose industries were located in the Jammu region. [847 C]

(ii) Although the State Government has taken reliance on the State Industrial Policy decision, it does not appear to have followed it in practice, except in the cases of five respondents. No reasonable basis had been adopted in making the allotments in favour of the new allottees and denying the allotments to the petitioners. [849I3-F]

842

2. The rule of equality does not mean mathematical equality. It permits of practical inequalities. What is needed is that the selection of quota seekers as in the instant case should have a rational relation to the object sought to be achieved in the industrial policy decision of the State. If the selection or differentiation is arbitrary and lacks a rational basis it offends Article 14. [849 D]

3. "Equality before the Law" or "equal protection of the laws" within the meaning of Article 14 of the Constitution of India means absence of any arbitrary discrimination by the law or in their administration. No undue favour to one or hostile discrimination to another should be shown. A classification is reasonable when it is not an arbitrary selection but rests on differences pertinent to the subject in respect of which the classification is made. The classification permissible must

be based on some real and substantial distinction, a just and reasonable relation to the objects sought to be attained and cannot be made arbitrary and without any substantial basis. [848 H-849 A]

State of West Bengal v. Anwar Ali, [19521 SCR 284 referred to.

JUDGMENT:

ORIGINAL JURISDICTION: Writ Petition Nos. 3464-65, 5908 & 3231 of 1980.

(Under Article 32 of the Constitution) S. N. Kacker, K. N. Bhatt and Surendara Raju for the Petitioners in W. P. Nos 3464-65/80 and 5908/80.

Soli J. Sorabjee, E. C. Agarwala, R. Satish and V. K. Pandita for the Petitioner in WP 3231,/80.

L. N. Sinha, Att. Genl. and Altaf Ahmed for R. 1. in WPs 3464 65/80.

Y. S. Chitale and Vineet Kumar for R. 14 in WP 3231/80 and for R. 2 in WPs 3464-65/80.

R. P. Bhatt and N. R. Chaudhary for R. 4 in WP 3464/80. P. R. Mridul and Naunit Lal for R. 7 in WP 3231/80 and for R. 2 in WP 3464-65/80.

Anil Dev Singh and Ashok Grover for R. 15 in WP 3231/80 and R. 3 in WPs 3464-65/80.

S. K. Bhattacharya and Suresh Sethi for R R. 6 and 12 in WP 3464 65/80.

Satish Vij for R. 15 in WP 3464-3465/80.

S. Balakrishnan and S. K. Bhattacharya for R. 16 in WP No. 3231/80.

The Judgment of the Court was delivered by BAHARUL ISLAM, J.-BY these writ petitions under Article 32 of the Constitution the petitioners have challenged the orders of the first respondent (the State of Jammu and Kashmir) allotting quotas of resin to respondents. According to the petitioners these orders denying similar treatment to them are arbitrary and violative of Article 14 of the Constitution of India.

2. The material facts in the four petitions are similar. The industries of which the petitioners are partners are admittedly small scale industries for the manufacture of resin and turpentine oil. The industries of the petitioners' in Writ Petitions Nos. 3465 of 1980 and 3231 of 1980 were provisionally registered but revalidated for short periods. The industry of the petitioner in Writ Petition No. 3464 of 1980 was provisionally registered, revalidation was applied for but was not granted. The industry of the petitioner in Writ Petition No. 5908 of 1980 was formally registered. It appears that the petitioners were applying to the Government for allotment of resin as well as raw

material for their industries but the Government referring to their policy decision of March 20, 1978 refused to make any allotment of Oleo resin to them. The petitioners in Writ Petition Nos. 3464 and 5908 of 1980 have alleged that they purchased raw-material from the open market and somehow managed their industries to run for a certain period.

3. Resin is admittedly a forest product extracted from "Chir trees". It has been alleged that only three States of India, namely, Himachal Pradesh, Uttar Pradesh and Jammu and Kashmir have Chir forests. The petitioners have alleged that the State of Himachal Pradesh and Uttar Pradesh stopped selling resin for the last several years in view of establishment of factories in public and joint sectors and that the State of Jammu and Kashmir was selling resin by public auction. Sometime after October 1978 the State of Jammu and Kashmir, it has been further alleged, virtually created monopoly in favour of three existing industrial units and committed to supply them about 17,000 M. T. of resin for long time to come. There is a Public sector unit in Jammu which consumes about 3,000 tons of resin per year. Several small scale industries, according to petitioners, were assured supply of resin even as late as 1979 notwithstanding the Government's aforesaid industrial policy. In such a situation, being unable to procure raw- materials for their industries, the petitioners approached the relevant authorities including the Deputy Minister of Industry and the Chief Minister of Jammu and Kashmir for allotment of raw-materials but to no avail. (For the sake of convenience we shall hereinafter refer only to the respondents and Annexures in W. P. No. 3231 of 1980). The petitioners further allege that while they were refused allotment of supply of raw-materials, respondent No. 1 made allotments to respondents No. 4 to 16 (hereinafter called "allottee respondents") although most of them were not even formally registered at the time of making the impugned orders of allotment.

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

4. The impugned orders have been annexed as Annexures N to Z-1. The letter of allotment (Annexure 'X') in favour of M/s. Sud Pine Industries (respondent No. 27) is in the following terms:-

"Sub: Supply of resin to M/s. Sud Pine Industries Kunwani for their factory at Talab Jammu. Government Order No. 175 DIC/1980 dated 30-5-1980. In partial modification of Government order No. 2. DIC of 1979 dated 20-1-1979 sanction is accorded to the supply of crude (oleo) resin 700 tonnes per annum by the Forest Deptt. to M/s. Sud Pine Industries for their factory at Kunjwani Talab Jammu on the terms and conditions specified in the above said order. The supply of resin shall be subject to its being reviewed by the Government with due regards to its availability from year to year.

By order of the Govt. of J & K. Sd/-

(Sheikh Ghulam Rasool) Secretary to Government."

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

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

1. The Forest Department will supply Crude (oleo) resin @ 700 TPA to the firm from the date the Unit is formally registered subject to its being reviewed with due regard to its availability from year to year;

2. The resin will be supplied @ Rs. 320/- per quintal, unless otherwise reviewed on year to year basis.

3. The cost of empty tin will be charged @ Rs.

5/- per tin in addition to the above rate;

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

Sd/- Sheikh Ghulam Rasool Secretary to Government."

(emphasis added)

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

6. The State of Jammu and Kashmir (Respondent No. 1) have filed a counter affidavit. They have not denied the material allegations of the petitioners but they say that the allocations have been made in order to implement the industrial policy of the State Government as enunciated in a "Report of the Development Review Committee, Jammu and Kashmir" a committee headed by Shri L. K. Jha, the Governor of the State. Respondent No. 1 has quoted from the report the 'Goals' of the industrial policy which read:

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

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

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

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

Respondent No. 1 has given the district wise break-up of the applications received from different regions. It is as follows:

Jammu	-	63
Udaypur	-	10
Rajouri	-	1
Poonch	-	1
Doda	-	1
Kathua	-	9
Anantnag	-	2
Srinagar	-	11
Outsiders	-	12

GRAND TOTAL		110
Applications		-----

They have also shown the allotments of resin districtwise. The industries of the respondents No. 4 to 16 are also small scale industries. The break-up of the small scale industries as given in Annexure R.II (in W.P. No. 3464) shows that Jammu has the largest number of units namely, 10, Second comes Srinagar with 4, then come Udampur with 3, Kathua (in Jammu Division), Anantnag and Baramulla (in Kashmir Division), with one each. Rajouri in Jammu Division has none. It appears that the industries of the present applicants are also in the Jammu region and those of respondents No. 4 to 16 also appear to have been located in the Jammu region. In their affidavit at para 3 respondent No. 1 has stated that all the applications for allocation of resin were considered from time to time at various levels by the State Government and it was decided on May 30, 1980 as follows:

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

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

The State Government have submitted that they made no promise of supply of raw-material in favour of any of the petitioners. The petitioners have submitted, in our opinion, correctly, that as

there were already 10 units functioning in small scale sector in the Jammu region and inasmuch as the allottee respondents' industries were also located in the Jammu region, allocations in their favour would be inconsistent with the Government's industrial policy.

7. In the instant case, respondent No. 1 as well as the other parties has taken reliance on their industrial policy statement as stated above. We have already quoted the relevant portions of the State Industrial policy statement. The Government have stated that they have considered all the 110 applications including those of the petitioners coming from industrialists of different parts of the country. They have stated, and their statement is corroborated by the documents, that there is preponderance of industries in the Jammu region and industries of the petitioners as well as respondents No. 4 to 16 were also functioning in the same region. Respondent No. 1 has not explained as to how and on what basis, if any, the allotments were made by the impugned orders in favour of the new allottees whose industries were located in the Jammu region.

Pawan Kumar Sharma, the petitioner in W.P. No. 3231 of 1980 states that his industry was provisionally registered under the Provisional Registration Certificate dated 29-1-1976. It was further extended for further short periods. He says that as there was assurance from the authorities that raw-materials will be allotted to him after he completed the installation of requisite machinery.

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

Petitioner, Ravindra Dutt of M/s. Dinesh Resin and Turpentines in W.P. No. 3465 of 1980 alleges that his industry was provisionally registered on 25-10-1975 which was extended upto April, 1979. Letter of 31st May, 1979 shows that his industry was later on formally registered as a small unit. This factory was producing resin and turpentine out of the resin which he purchased from open auction. He was approaching the Government from time to time to get requisite quantity of raw-materials but failed to get it.

Petitioner, Shamlal Kapoor, Director of Jammu Resin Enterprises Private Limited, alleges that his industry was formally registered with the Government of J & K. He alleges that his industry was functioning for a long time and trying to get necessary quota of raw-materials from respondent No.

1. He was approaching the Government to get requisite quota. Sud Pine Industries, was provisionally registered on 10-3-1978 and formally registered on 10-10-1978. It appears from Annexure N, in respect of respondent M/s Kashmir R & T Works (respondent No. 17), Annexure O in respect of M/s. Sun Shine R & T Industries (respondent No. 18), Annexure P in respect of M/s. Woolan Paints and Chemicals Scopore (respondent No.

19) Annexure Q in respect of M/s. Pine Wood Products Company (respondent No. 20), Annexure R in respect of M/s. Haji Mast Ali Slaria (respondent No. 21), Annexure S in respect of M/s. Phyto

Chemicals (respondent No. n 22), Annexure T in respect of M/s. New Himalayan Paints and Chemicals (respondent No. 23), Annexure U in respect of M/s. S. K. Chemical (respondent No. 24), Annexure V in respect of M/s. Rajindra R & T (respondent No. 25) and Annexure W in respect of M/s. Bharat Paints and Chemicals (respondent No. 26) that the allotments were made in their favour "from the date the unit is formally registered" which shows that industries were not even registered at the time of the impugned orders of this allotment. Respondent M/s. Rajindra R & T Industries, Udhampur, appears to stand on a different footing. He appears to have fulfilled all the conditions required for allocation of resin in accordance with the policy of the State of J & K. The industry is an experienced one and the factory started production of resin and turpentine at Hoshiarpur since 1948. It is a firm registered under the Indian Partnership Act and has long experience in the business including resin and turpentine since 1948. The industry set up a factory in 1970 in the rural industrial estate near Udhampur which is a backward area. The industry was provisionally registered in 1970 and formal registration was granted on 29-2-1974. It applied for adequate quantities of raw-materials and was allotted only 200 tons although it had been sanctioned 1500 per ton per annum since 1975.

Respondent M/s. Sud Pine Industries, M/s. Kashmir R & T Works, Bakshi Resin & Turpentine and M/s. K. C. Soni Bakshi also appear to be on different footings. It appears from Annexures 'X' and 'Y' that the first two industries have already been formally registered. They are existing units having already started production. So far as respondent M/s Bakshi Resin and Turpentine is concerned, it had already set up factory and started production. It was provisionally registered as early as 1976 and the unit is located in a backward area. So far as respondent K. C. Soni Resin & Turpentine is concerned, it was formally registered on 19-4-

79. This unit is located in a remote backward area of the State.

8. "Equality before the Law" or "equal protection of the laws" within the meaning of Article 14 of the Constitution of India means absence of any arbitrary discrimination by the law or in their administration. No undue favour to one or hostile discrimination to another should be shown. A classification is reasonable when it is not an arbitrary selection but rests on differences pertinent to the subject in respect of which the classification is made. The classification permissible must be based on some real and substantial distinction, a just and reasonable relation to the objects sought to be attained and cannot be made arbitrarily and without any substantial basis.. (See State of West Bengal v. Anwar Ali. The classification must not be arbitrary but be rational, that is to say, it must not only be based on some qualities or characteristics which are to be found in all the persons grouped together and not in others who are left out. Those qualities or characteristics must have a reasonable relation to the object of the law. In order to pass the test, two conditions must be fulfilled, namely, (1) that the classification must be founded on an intelligible differentia which distinguishes those that are grouped together from others, and (2) that differentia must have a rational relation to the object sought to be achieved by the Act. The differentia which is the basis of the classification and the object of the Act are distinct things and what is necessary is that there must be a nexus between them.

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

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

10. Respondent No. 1 shall pay costs of Rs. 100.00 to each of the petitioners.

N.V.K.

Petition partly allowed.