Supreme Court of India
M.P. Oil Extraction And Anr. Etc vs State Of Madhya Pradesh And Ors on 9 July, 1997
Bench: G.N. Ray, G.T. Nanavati

CASE NO.:
Appeal (civil) 4312 of 1997

PETITIONER:
M.P. OIL EXTRACTION AND ANR. ETC.

RESPONDENT:
STATE OF MADHYA PRADESH AND ORS.

DATE OF JUDGMENT: 09/07/1997

BENCH:
G.N. RAY & G.T. NANAVATI

JUDGMENT:

JUDGMENT 1997 Supp (1) SCR 671 With C.A. 4314 of 1997 The Judgment of the Court was delivered by G.N. RAY, J. Leave granted. Heard learned counsel for the parties.

All the three special leave petitions namely S.L.P. (Civil) No. 19729 of 1995, S.L.P. (Civil) No. 20137 of 1995 and S.L.P. (Civil) No. 19796 of 1995 are directed against common judgment dated 9.5.1995 passed by the Madhya Pradesh High Court respectively in Misc. Petitions No. 1371 of 1992, M.P. No. 1980 of 1992 and M.P. No. 2315 of 1992. All the said Misc. Petitions were filed before the Madhya Pradesh High Court under Article 226 of the Constitution challenging the legality and validity of agreements made by the State Government of Madhya Pradesh with M/s. Bastar Oil Mills and Industiries Ltd. and M/s. Sal Udyog (Pvt.) Ltd. for supply of sal seeds grown in the State of Madhya Pradesh on payment of determined royalty by alleging inter alia that the writ petitioners namely K.N. Oil Industries and M.P. Oil Extraction Ltd. have been subjected to hostile discrimination in the matter of grant of largesse so far as sal distribution of sal seeds is concerned by favourably treating the said Baster Oil Mills and Industries Ltd. and M/s. Sal Udyog (Pvt.) Ltd. thereby affecting the economic viability of the writ petitioners. It may be indicated here that before the said writ petitions were filed in the Madhya Pradesh High Court, a series of litigations were fought between the parties to these appeals both in the Madhya Pradesh High Court and in this Court. In 1981, the appellants M.P. Oil Extraction Limited and K.N. Oil Industries filed writ petitions numbered as M.P. No. 559 and 1404 of 1981, in the Madhya Pradesh High Court challenging the agreements between Bastar Oil Mills and Industries Ltd. and Sal Udyog (Pvt.) Ltd. and State government of Madhya Pradesh for distribution of specified amount of Sal seeds to the said concerns annually by alleging hostile discrimination against the said writ petitioners in the matter of distribution of sal seeds. Such writ petitions were dismissed by the Division Bench of the High Court by order dated 21.8.1981. The said decision has been reported in AIR 1982 M.P. 1. Against the said decision, both the writ petitoners filed special leave petitions before this Court in which leave was granted in C.A. No. 2994 and 2295 of 1982. In terms of the interim orders dated 5.5.1982 and 6.5.1983, the State of Madhya Pradesh had to supply 5000 M.T. of sal seeds in favour of each of the said appellants namely M.P. Oil Extraction Limited and K.N. Oil Industries in 1982 and 1983. M/s. Bastar Oil Mills and Sal Udyog

(Pvt.) Ltd. did not receive the contractual quality of sal seeds in the said years. It, however, appears that after obtaining the said interim orders on two occasions, both the appellants withdraw C.A. Nos. 2994 and 2995 of 1982 and the said appeals stood disposed of and the imugned judgment of the High Court became final. It may be stated here that under two separate agreements by the M.P. State Government, both the appellants namely M.P. Oil Extraction and K.N. Oil Industries got reservation of 13 to 17 sal seeds producing forest units in their favour. Such reservation of forests was challenged before the High Court in M.P. No. 261 and 266 of 1980 and by judgment dated 25.9.1980 the Division Bench of M.P. High Court allowed the writ petitions and set aside the said agreement for reservation of forests in favour of the appellants. During the year 1983, both the appellants again managed to get reservation and allotment of 7500 M.T. of sal seeds per annum under two separate but identical agreements dated 12.12.1983 from the State Government for a term of 12 years. Such agreements were challenged by M/s. General Foods Private Limited in M.P. No. 1364 of 1964 before the M.P. High Court. A Division Bench of the High Court by order dated 11.6.1985 quashed the said agreements executed in favour of both the appellants. It may be indicated here that before the said agreements were annulled by the High Court, the appellants got 7500 M.T. of Sal seeds per annum for the years 1984 and 1985 in terms of the said invalid agreements. The respondents Bastar Oil Mills and M/s. Sal Udyog (Pvt.) Ltd. had to receive much lesser quantity of sal seeds which were due to them in terms of the agreements made in their favour. Both the appellants moved special leave petitions before this Court assailing the said judgment dated 11.6.1985 of the High Court. Such leave petitions were disposed of by this Court by order dated 10.4.1986 reported in AIR (1986) SC 1927. By the said order, this Court upheld allotment and reservation of sal seeds in favour of Bastar Oil Mills and M/s. Sal Udyog (Pvt.) Ltd. and M/s. Allied Oil Industries (Pvt.) Ltd. and M/s. M.P. Glychem Industries being the four units selected by the State Government of Madhya Pradesh under the 1977 Industrial Policy. It appears that after all such futile attempts, the appellants did not give up their pursuits to get allotment of sal seeds from the Government. In 1986, both the appellants filed two separate but identical writ petitions being M.P. No. 645 and 644 of 1996 challenging the reservation and allotment of 10,000 M.T. of sal seeds in favour of M/s. M.P. Glychem Industries which was also selected under 1977 Industrial Policy. Such writ petitions were also dismissed by the High Court by order dated 6.5.1986. Thereafter, the writ petitions were again filed by both the appellants challenging the renewal of lease in favour of the respondents M/s. Bastar Oil Mills and M/s. Sal Udyog Pvt. Ltd. by treating such renewals as new leases and also challenging the determination of royalty to be paid for the sal seeds to be supplied to the respondents. Such writ petitions have also been dismissed by the Division Bench of Madhya Pradesh High Court and the present appeals are directed against the decision of the High Court passed in the said writ petitions.

Mr. Sanghi, the learned Senior counsel appearing for the appellants K.N. Oil Industries has submitted that the appellant had set up their first solvent extraction plant in 1966 using bran rice as raw material. The appellant made suitable modification in their plant for processing of sal seeds and also set up a new plant for extraction of sal seeds on the basis of an assurance of availability of sal seeds vide letter dated 24.1.1970 of the State Government to the effect:

"Since sal seeds are available in huge quantity in nearby area, spare capacity of your plant, if any, be utilised after modification in the existing plant."

The appeallants have been using sal seeds and rice bran as raw material, alternatively in their solvent extration plant from 1973 onwards. As the availability of sal seeds was seasonal and limited, no solvent plant could exclusively depend on sal seed for running its business. Mr. Sanghi has contended that the Industrial Policy laid down by the M.P. Government in 1977 envisaged supply of sal seeds to the new units as well as to the existing old units. Such position has been noticed by the High Court in its decision reported in AIR (1982) MP 1 at page 3. The said Industrial Policy also laid down that new units should be encouraged to set up their plants with concessions during the initial period for a period of 5 to 10 years. Such fact has also been noticed by the High Court in its decision reported in AIR (1982) MP 1 page 2. Mr. Sanghi has submitted that the said Industrial Policy was framed on the basis of expert committee's finding that the estimated annual sal seed potential is over 10 lacs M.T. The said Industrial Policy was modified in 1981 by making reservation for sal Udyog and Bastar Oil Mills as new units and the surplus to be sold in auction.

Mr. Sanghi has further contended that the agreements in favour of Baster Oil and Sal Udyog for supply of 10,000 M.T. of Sal Seeds were entered in the year 1979 on the premise of the expert committee's findings as already indicated. Both the agreements were to subsist for a period of 12 years. Mr. Sanghi has submitted that average yield per year as per the State Government's estimate is around 60,000 M.T. After meeting the commitments of the State Government, the available surplus was only in the region of 37,000 M.T. of sal seeds. Inspite of the fact that annual yield of sal seeds in the State of M.P. for the year 1990 and 1991 was 4768 M.T. and 190809 M.T. respectively, the State Government treated Bastar Oil Mills and Sal Udyog (Pvt.) Limited as most favoured industrial concerns and executed fresh agreements for a further period of 12 years with effect from 1991. The agreements contain provisions for further renewal. In the case of Baster Oil Mills the quantity was increased to 20,000 M.T. while in the case of Sal Udyog (Pvt.) Ltd. the quantity was fixed at 10,000 M.T.

Mr. Sanghi has contended that as a result of such fresh agreements with Bastar Oil Mills and Sal Udyog, the State Government is now committed to supply annually sal seeds grown in the State of M.P. in the following manner :

(i) Baster Oil Mills	-	20,000 M.T.
(ii) Sal Udyog	-	10,000 M.T.
(iii) Allied Oil Mills		10,000 M.T.
(iv) M.P. Glychem		10,000 M.T.
	Total	50,000 M.T.

Mr. Sanghi has contended that the State Government being fully aware of the availability of sal seeds in 1991 which was a meagre 19809 M.T. acted malafide in treating only few of the industrial units of the State in a very favoured manner by entering into fresh agreements for supply of 50,000 M.T. of sal seeds to the new units. Such action has amounted to deliberate hostile action in ensuring non availability of sal seeds for distribution, to other units operating in the State of Madhya Pradesh

including the appellants. Such hostile discrimination is clearly violative of Articles 14 and 19 of the Constitution of India.

Mr. Sanghi has further contended that there is no earthly reason to be completely oblivious of the needs of other industrial units operating in the State which also require sal seeds for their units. The need of old units was recognised by this Hon'ble Court when it directed the State Government to allot 5000 MT to both the appellants by interim order dated 6.5.1982. The appeals were disposed of by this Court on 10.4.1986 and the matters were remanded to M.P. High Court for determining the basis of distribution of sal seeds among the old units. On remand, the High Court by order dated 18.10.89 held that the surplus would be distributed among old units on the basis of their capacity. In order to perpetuate the hostile discrimination, the State Government entered into fresh agreements thereby ensuring that there would be no surplus to be distributed to old units like the appellants.

Mr. Sanghi has also contended that the State Government was fully aware of the need of sal seeds for the old units like the appellants. As a matter of fact, considering the hardship of the appellants in not getting 'regular supply of sal seeds from the Government, the State Government entered into agreements with the appellants in 1983 for supply of 7500 M.T. of sal seeds per year for 12 years. Unfortunately such agreements were cancelled by the High Court on a finding that there was no justification for any concessions to the old units. Mr. Sanghi has submitted that even in the Industrial Policy of 1977, the State Government recognised the need of sal seeds by the old units like the appellants and it was clearly stipulated in the Industrial Policy that sal seeds should be made available to both old and new units. Even in 1981 when the old policy of 1981 was revised it was indicated that after meeting the annual allotments of 10,000 M.T. of sal seeds to Bastar Oil Mills and Sal Udyog (Pvt.) Ltd., the surplus should be allotted to the old units. On the face of actual availability of sal seeds in the State, and after recognition of the need of sal seeds by old units and accepting such need in the industrial policy of 1981, fresh agreements in favour of Bastar Oil Mills and Sal Udyog (P) Ltd. in 1991 are wholly unjustified and mala fide and illegal being vitiated with arbitrariness and abuse of power by discriminatory action in the matter of distribution of sal seeds to other industrial units operating in the State.

Mr. Sanghi has further submitted that Bastar Oil Mills and Sal Udyog (P) Ltd. got preferential treatment ever since 1979 onwards for a period of 12 years by way of assured supply of sal seeds by the State Government on the footing that the said concerns were new units and deserved special protection by the State for some time. But after 12 years, both the said units can no longer be treated as new units for the purpose of receiving preferential treatment. Hence, at the present moment, all the units in the State must be treated at par and the agreements in 1991 in favour of the said units must be held as wholly unjustified and illegal and should be struck down.

Mr. Sanghi has contended that the agreements in 1979 with the said units for 12 years had a clause for renewal. In the new agreements of 1991 there is also clause for renewal. The result is that there has been assured supply of sal seeds in favour of the said units in perpetuity to the total exclusion of the other units. Mr. Sanghi has submitted that the State Goverment cannot be permitted to treat some units in the State more favourably than others in the absence of any strong and valid reason for such discriminatory treatment. Law is well settled that in the matter of distribution of largesse,

the State Government is bound to act fairly and reasonably and cannot resort to hostile discrimination against some units and treat some other units with undue favour when all the units must be treated as old units and therefore similarly circumstanced. Mr. Sanghi has also contended that even in the matter of royalty to be paid by the said respondents, there has been naked favouritism. The royalty to be paid by the said respondents for the sal seeds to be supplied by the State government under the impugned agreement is absolutely minimal and much less than the auction price for sal seeds. In view of such paltry royalty payable by the said respondents, the respondents are not only getting assured supply of sal seeds from the State Government but they are getting such supply almost at a throw away price. As a result, the appellants are facing unjust competition from the said favoured child of the State Government. Mr. Sanghi has, therefore, submitted that the appeals should be allowed and the impugned agreements in favour of the said respondents should be set aside. This Court should also direct the State Government of Madhya Pradesh to distribute sal seeds to all the existing units which require sal seeds for their units on the pro rata basis with reference to their productive capacity and actual annual requirement.

Mr. Kale, the learned senior counsel appearing for the appellant M.P. Oil Extraction Limited has supported Mr. Sanghi in his submissions. Mr. Kale, has contended that by the impugned agreements, the State Government has given largesse to the said respondents without inviting any tender and excluding the appellant from obtaining any allotment of sal seeds from the government even though the appellant badly requires sal seeds for its productive activity and it had set up extraction plant long back after examining economic viability with reference to availability of sal seeds in the State of Madhya Pradesh as assured by the State Government. Mr. Kale has submitted that the appellant has been using sal seeds ever since the extraction plant of the appellant was commissioned in 1974.

Mr. Kale has submitted that sal seeds is a seasonal natural forest produce grown in the Government forests in M.P. The production of sal seeds varies from year to year. According to the Government's calculation, the average yield of sal seeds for the last seven years from 1985 to 1991 is 36950 M.T.

If the average production of sal seeds from 1974 to 1990 i.e. a period of 18 years is taken into consideration, it works out to be 40600 M.T. Sal seeds as a forest produce was brought under the monopoly of the State Government with effect from May 5, 1975 udner M.P. Vanopaj (Vyapar Viniyaman) Adhiniyam,l969. After 1975, the plant of the appellant and other existing plants were totally dependent on the State Government of M.P. for supply for sal seeds as a raw material. Sal seeds used to be sold by auction or by invitation of tenders. The oil content of sal seeds was being used as a raw material for extraction of oil. The collection of sal seeds is made by tribals residing in forest area and collection season is from 3rd week of May upto onslaught of monsoon.

Mr. Kale has also submitted that the State Government of M.P. formulated a detailed policy in 1978 known as "Raw material policy for forest based industries". The basic object of industrial policy was to provide for assured supply of raw material to such industries as are employment oriented. The said policy envisaged asssured supply to the industrial units established within the State and to prevent its drain outside the State. The policy of 1978 was made for the maximum utilisation of the forest resources within the State and did not speak of industrialisation of any particular area

whether backward or otherwise.

Mr. Kale has further contended that the State Government invited applications for setting up extraction plants on the assurance for supply of 10000 M.Ts. of sal seeds annually for a period of 12 years. Pursuant to such invitation, the following two agreements were executed in 1979:

(i) Agreement in favour of M/s Bastar Oil Industries Ltd. whose plant is situated in Jagdalpur on 5.10.1979.

(ii) Agreement dated August 30, 1979 in favour of M/s Sal Udyog Pvt. Ltd. Its plant was situated in the Industrial Estate, Raipur.

The rate of royalty was fixed at Rs. 300 and the rate was fixed Rs. 312.50 per mt. respectively.

The State Government invited applications from entrepreneurs for establishing three extraction plants on the basis of similar assurance for supply of 10000 MTs. of sal seeds annually for a period of 12 years.

Mr. Kale has contended that the two agreements with the M/s. Sal Seeds Udyog Pvt. Ltd. and Bastar Oil Mills were challenged by contending that the two agreements had resulted in discrimination against the appellant because no sal seeds would be left for the existing plants including that of the appellant as the average annual yield of sal seeds was only 54000 M.T. Such Writ Petitions were, however, dismissed by the High Court inter alia on the finding that classification between the old plants (existing plants) and the new plants was justified. The contention of the appellant that no sal seeds would be left for allotment to the other existing plants was repelled on the ground that the estimated production of sal seeds in the State was to the tune of one lac M.T. according to the report of the committee on the Industrial Policy. The appellant filed special leave petition against the said decision of the High Court before this Court and obtained interim orders from this Court to get supply of 5000 M.Ts. of sal seeds in May, 1982 at the royalty rate of Rs. 630 per mt. During the pendency of the proceedings, the State Government of M.P. formulated another policy on May 9,1983. Under the said policy, the estimated surplus of 20000 M.T. of sal seeds was to be distributed among the existing plants in proportion of their consumption of sal seeds during the last five years. In accordance with the said policy, an agreement was entered between the State Government and the appellant in December, 1983 for supply of 7500 M.T. of sal seeds to the appellant at the royalty rate of Rs. 750 per M.T. for a period of 12 years. Such agreement was, however, challenged by M/s. General Foods Pvt. Ltd. of Indore on the ground of discrimination between the existing plants. The High Court quashed the said agreement. The High Court gave the direction for distribution of surplus quantity of sal seeds to the existing units in proportion to their capacity. The High Court also held that the rate of royalty of Rs. 750 per M.T. was a concessional rate. Such decision of the High Court was challenged by the appellant before this Court and the matter was remanded to the High Court and was finally disposed of by the High Court on October 18, 1989. The High Court directed for making equal distribution of sal seeds to the existing plants. It was noted by the High Court that the tremendous increase in demand of sal seeds coupled with short supply and non-availability in the open market due to the State monopoly, had resulted in heated rivalry among

the industrial units.

Mr. Kale has submitted that the market price of sal seeds has two components, namely, royalty and collection charges. In 1979, royalty rate was Rs. 300 per M.T. and such rate was concessional. In 1983, the rate of royalty was Rs. 750 per M.T. and in the agreement dated September 12, 1983 in favour of the appellant, the rate of royalty was fixed at Rs. 750 per M.T. In the agreement in favour of the appellant Allied Oil Industries in 1983, the rate of royalty was fixed by the State Government at Rs. 1030 for the block period of two years from November, 1987 and November, 1989. Such fixation, however, was set aside because the price was not fixed in accordance with the clause 7 of the agreement in favour of M/s. Allied Oil Industries by the High Court in Misc. Petition No. 1653 of 1988. The appellant had offered to purchase sal seeds in 1988 on August 27, 1988 at the total rate of Rs. 2250 per M.T. The rate of royalty works out to be Rs. 700 per M.T. For the year 1991 the appellant offered to purchase sal seeds at the royal rate of Rs. 1200 per M.T. The appellant also offered to purchase sal seeds at a royalty of Rs. 1225 per M.T. Mr. Kale has submitted that fixation of the rate of royalty in favour of M/s. Bastar Oil Industries at a ridiculously low rate of Rs. 400 for the period of two years and with a stipulation for increase at the rate of 5% thereafter is wholly arbitrary, unjustified and discriminatory. Such agreement is also against the interest of the revenue of the State. Mr. Kale has contended that by fixing such a low rate of royalty, the State Exchequer has incurred a loss of crores of rupees. Such fixation of rate of royalty itself is arbitrary as the rate of royalty will depend on the rate of demand and supply in the market of sal seeds. Mr. Kale has also submitted that the impugned agreement dated September 7, 1991 has resulted in a hostile discrimination against the existing plants. The State Government has raised the quantity of sal seeds from 10000 M.T. to 20000 M.T. in favour of Bastar Oil Mills and by similar agreement the State Government has agreed to supply sal seeds of 10000 M.T. to Sal Udyog. The said Sal Udyog is not situated in any backward area. It is situated in the industrial estate at Raipur and the unit of the appellant is also situated very close to that of Sal Udyog.

Mr. Kale has supported the contention made by Mr. Sanghi that after meeting the demands in favour of Baster Oil Industries, M/s. Allied Oil Industries, M/s. M.P. Glychem, no sal seeds would be left for being sold to the existing plants. Mr. Kale has submitted that therefore the impugned agreements have resulted in monopoly of getting sal seeds by the said respondents. Mr. Kale has contended that the executive action in 1991 in entering into fresh agreements after being fully aware of the supply position of sal seeds, in favour of the respondents with a further renewal clause, is patently unjust and has resulted in monopoly without any just cause and reasonable basis. Mr. Kale has contended that the appellant and other existing units in the State have a right to be considered fairly and reasonably for the distribution of sal seeds by the State Government in a reasonable and unbiased manner. He has, therefore, submitted that the impugned agreements should be cancelled by this Court and the State Government should be directed to distribute sal seeds to all the existing units on a pro rota basis.

Dr. A.M. Singhvi, learned senior counsel appearing for the respondent M/s. Sal Udyog Pvt. Ltd., has disputed the contentions of the appellants. Dr. Singhvi has contended that there is a fundamental difference between the two categories of industries operating in the State of Madhya Pradesh using sal seeds for production i.e. those which have a specific agreement with the State of Madhya Pradesh

entered into under the mandate of the specific policy inviting new entrepreneurs to the State and execution of special agreement with them after selection as opposed to the second category which consists of together units existing prior to the policy not selected by the government of Madhya Pradesh and having no privity of agreement or contract with the State of M.P. Such specific dual classification of users of sal seed for productive activity has been repeatedly recognised and judicially upheld as valid in a number of decisions rendered between the same parties. In support of this contention, Dr. Singhvi has drawn the attention of this Court to the decisions in M.P. Oil Extraction Pvt. Ltd. Raipur and Anr. v. State of M.P. and Ors., AIR (1982) M.P. 1; M/s. K.N. Oil Industries Etc. v. Secretary to Ministry of Forest, Bhopal and Ors., AIR (1986) SC 1927 para 4 and M/s. K.N. Oil Industries and Anr. Etc. v. State of M.P. and Ors. Etc., AIR (1986) SC 1929. The said judicial pronouncements categorically upheld the classification of users of sal seed into two categories. The Courts have also upheld the agreement in favour of the respondents as well as the reservation of specific quantity of sal seeds in favour of those units having agreements and the provision of concessional rate for such units during the first four years of agreement. Dr. Singhvi has also contended that since such agreements in question in the present case were also the subject matter of challenge in the earlier proceedings and fell for scrutiny and adjudication by the Courts in the earlier proceedings which ultimately upheld the entire contract including the renewal clauses, there is no occasion for the appellants to challenge the said contract and the renewal clauses collaterally. By the impugned decision, such challenge has been rightly rejected by the High Court.

Dr. Singhvi has also contended that all contentions regarding the impugned agreement and the clauses in the agreement have been upheld. Therefore repeated challenges to different clauses of the agreement are precluded. Dr. Singhvi has also submitted that even if it is assumed that particular argument regarding the validity of any clause of the agreement was not specifically raised or specifically considered, such a plea at a subsequent stage is precluded and barred by principles akin to res judicata and constructive res judicata. In support of such contention, reliance has been placed on the decisions of this Court in Smt. Somawanti & Ors. Etc. v. State of Punjab and Ors. Etc., AIR (1963) SC 151 para 22; State of U.P. v. Nawab Hussain, AIR (1977) SC 1680 para 8; Mohd. Ayub Khan v. Commissioner of Police, Madras & Ors., AIR (1965) SC 1623 and Narayan-rco v. State, AIR (1981) Bombay 271 para 13, 15 = (1973) SC 973 para 10.

Dr. Singhvi has also submitted that since the renewal clause was necessarily upheld being part of the agreement and the agreement was upheld in successive proceedings, the present case does not perse raise any issue of Article 14 relating to the validity of the renewal clause. Dr. Singhvi has submitted that at the highest, the case of the appellants cannot be said to be higher than a challenge under Article 14 or under common law principles of judicial review of administrative action, namely, to the actual discretionary act of renewal in September, 1991.

Dr. Singhvi has submitted that such challenge should be considered in the context of fundamental difference in the two categories of units consuming sal seed in their plants and the differences have already been recognised. Since the validity of the contract including the renewal clause itself is upheld as binding by judicial verdict, the actual exercise of power of renewal cannot be held to be arbitrary because such renewal clause was essentially necessary and inevitable to give effect to the protection for which agreement has been made. Dr. Singhvi has contended that unless significance

and material facts and circumstances demonstrating the violation of administrative discretion by recourse to irrelevant considerations or on perverse or unreasonable criteria are established by the appellants, such exercise of administrative discretion cannot be invalidated. Dr. Singhvi has submitted that the appellants have failed to demonstrate any such fact, even remotely, as vitiating the exercise of the actual power of renewal. Dr. Singhvi has submitted that principles of administrative discretion and judicial review have been clearly indicated in the decisions of this Court in Barium Chemicals Ltd. and Am. v. Company Law Board and Others, AIR (1967) SC 295; C.I.T. Bombay v. Mahindra and Mahindra, AIR (1984) SC 1182 para 11 and State of U.P. v. Renu Sagar, AIR (1988) SC 1737 para 83. Dr. Singhvi has also submitted that the renewal clause is divisible and severable into (i) the act of renewal itself and

(ii) the actual terms and conditions upon which the renewal is granted. The latter follows only upon the prior and threshold decision regarding the former.

Dr. Singhvi has contended that not only the agreements in favour of the four units including the respondents M/s. Sal Udyog Pvt. Ltd. and M/s. Bastar Oil Mills under the Industrial Policy of the State have been upheld in the earlier proceedings but equally the agreements dated November 16, 1983 and December 12, 1983 purported to be entered into by the State of M.P. with both the appellant namely K.N. Oil and M.P. Oil Extraction Ltd. respectively have been struck down and held to be constitutionally invalid. The decision of the Division Bench in M.P. No. 1364 of 1984 has been upheld by this Court in M/s K.N. Oil Industries and Anr. v. State of M.P. & Ors., AIR (1986) SC 1929. Dr. Singhvi has also submitted that it is sig-nificant to note that the agreement with the appellants since struck down contained an identical renewal clause and the appellants gladly accepted such renewal clause in the agreement in their favour though such agree-ments being illegal for different reasons were struck down by the court. Dr. Singhvi has further submitted that the renewal clause must give some kind of protectable right, interest or claim to the grantee, additional to the right available to a person without any renewal clause at all. The renewal clause has to be given some meaning, effect and scope and cannot be rendered superfluous, otiose or redundant.

Dr. Singhvi has also submitted that the existence of the renewal clause in the context of the classification of two categories of the industrial units as already explained must itself and necessarily lead to the exclusion of all the other forms of public dealing like tender, auction etc. As long as the classification and the reservation made in favour of units invited under the industrial policy along with the agreement with renewal clause are upheld, the act of renewal cannot be invalidated on the ground of absence of invitation of tender or holding auction. Dr. Singhvi has submitted that in the present case, the power of negotiation stood conferred and tender/auction stood automatically and necessarily excluded from the very date of the two contracts in 1979 which contained the renewal clause. Dr. Singhvi has further submitted that in any event, it is well established that tender/auction is not the only or sole method of distribution of State largesse. Even in the absence of specific contract or agreements, State largesse may be dealt with by negotiation and not through tender or auction. In support of the contention that in appropriate case, by negotia-tion, State largesse can be dispensed with, Dr. Singhvi has relied on the decisions of this Court in Kasturi Lal v. J.K., AIR (1980) SC 1992 para 19, 22; State of M.P. and Ors. v. Nandlal Jaiswal & Ors., [1986] 4 SCC 566 para 38; Sachidanand Pandey and Anr. v. State of West Bengal &

Ors., [1987] 2 SCC 295 para 34, 40; Brij Bhushan v. J.K., [1986] 2 SCC 354 para 7 and G.B. Mahajan v. Jalgaon, [1991] 3 SCC 91 para 26, 43.

Dr. Singhvi has submitted that any act or omission of the State of M.P. leading to non renewal of the agreements of the respondents would itself stand vitiated on grounds of illegal, arbitrary and unsustainable exercise of discretionary administrative power unless the State of M.P. is able to establish specific misconduct or any serious or material lapse or act or omission by the respondents disentitling the respondents from the benefit of renewal. Dr. Singhvi has further submitted that non renewal by the State of M.P. should fully justify and sustain an action by the respon-dents for mandamus to effectuate renewal of agreements. The "legitimate expectations" of the respondents as persons having agreement with specific renewal clauses which constitute both a representation and established past practice by the State of M.P. cannot be denied or thwarted unless overwhelming and specific higher public interest is shown to override those legitimate expectations. According to Dr. Singhvi, this doctrine of 'legitimate expectations' operates in the domain of public law, and is not merely a procedural right subsumed within the requirement of natural justice or elementary cannons of fair play. It constitutes a substantive, enforceable and protectible interest as a facet of Article 14 itself. The doctrine applies a fortiori and proprio vigore to cases of contract and renewals thereof. Dr. Singhvi has submitted that this doctrine has been specifically recognised, asserted and reiterated by this Court in the decision FCI v. Kamadhenu, JT (1992) Vol. 6 SC 259; Nav Jyoti Cooperative Society, JT (1992) 5 SC 621 and Union of India v. Hindustan Development Corporation JT (1993) Vol. 3 SC 15. Dr. Singhvi has submitted that as a matter of interpretation, the expression "may" under the renewal clause two of the agreement should necessarily be read as "shall". Dr. Singhvi has submitted that the renewal clause in the instant case, confers a contrac-tual/administrative power coupled with a duty upon the authority con-cerned whose exercise must necessarily be fair, reasonable and non arbitrary.

Dr. Singhvi has also submitted that the issue of low rate of royalty raised by the appellants is a red herring and should be rejected. Dr. Singhvi has submitted that none of the three revisions of royalty by the State of M.P. at Rs. 750 per M.T. for the 1983-85 block or Rs. 1030 M.T. for 1985-87 block or Rs. 1030 per M.T. for 1987-89 block have ever been upheld by any Court. These revisions of royalty had been challenged and the same were scrutinised, adjudicated and struck down by the Court which has directed re-determination of the rate of royalty as per the established weighted average formula. The arbitration as to rate of royalty in terms of the court's order has been held for determining the royalty on the principle of established weighted average formula and the royalty has been refixed at Rs. 300 per M.T. in place of Rs. 750, Rs. 300 per M.T. in place of Rs. 1030 and Rs. 294 in place of Rs. 1030 for the three blocks of 1983-85, 1985-87 and 1987-89 respectively.

Dr. Singhvi has contended that the appellants are making attempts to mislead this Court by suggesting and arguing as if the weighted average price formula is a magical formula which is different in nature or content from the market price. There is no substance in such contention. The weighted average formula is a known method and modality of arriving at and determining the market price itself. The weighted average formula is nothing except the taking of prices received for the sale of sal seeds at different occasions in different parts of M.P. for the preceding 12 months' period and averaging them on the basis of quantum of seeds sold at those occasions to arrive at the

true market price.

Dr. Singhvi has also contended that the use of word "price" for sal seeds produce would be highly misleading unless it is clarified to the court that the total price per M.T. of sal seeds comprises the following significant components:

(i) The collection charges payable which are notified by the State and which are intended to be paid to and realised by the poor tribals. Collection charges form an overwhelming and predominant component of the total price as is evident from the chart of collection charges, for example, when the royalty in 1991 was Rs. 386.25, collection charges were as high as Rs. 1675 to 1775.

(ii) Royalty which is the amount of money realised by the State, apart from collection charges. This has normally upon ap-plication of weighted average varied around Rs.300 per M.T. and is now fixed for 1993 season at Rs. 400 per M.T.

(iii) Other expenses and taxes like transportation etc. Dr. Singhvi has further submitted that this Court is not required to determine the true price of sal seeds in the present proceedings. This Court should not be converted either into an appellate forum or a price fixation agency by the appellants. Once the Court is broadly satisfied with the fixation of prices for 1993 season in the context of the royalty of Rs. 300 and Rs. 294 and Rs. 386 for the earlier years and finds that this is broadly reasonable, fair and based upon valid considerations, the Court would not interfere in the exercise of governmental discretion in matters relating to price fixation or any economic matters involving the application of a diverse mix of economic policy factors. Dr. Singhvi has submitted that the scope of judicial review of the Court in writ jurisdiction under Article 226 in matters of economic policy and price fixation is minimal and highly circumscribed. In support of such contention, Dr. Singhvi has relied on the decision of this Court in State of M.P. v. Vijay Bahadur Singh, [1982] 2 SCC 365, Kasturilal v. J.K., AIR (1990) SC 1992, India Cement v. Union of India, [1990] 4 SCC 356, Sitaram Sugar Company Ltd. and Anr. v. Union of India and others, [1990] 3 SCC 223.

Dr. Singhvi has also submitted that so far as M/s Sal Udyog Pvt. Ltd. is concerned, the State Government purported to terminate the original agreement dated 3.8.1979. A dispute was raised on the question of validity of such termination of the agreement and the matter was referred to arbitration initially before a retired Judge of this Court and later on to the District Judge. While the arbitration dispute was pending before the District Judge, Raipur, M/s Sal Udyog's term of original agreement expired. However, during the pendency of the said proceedings, the State Government of M.P. took up a policy decision that the agreement of all the four units selected under the 1979 Industrial Policy would be renewed on the same terms and conditions on which the original agreement dated 5.10.1979 had been directed to be renewed. After the said policy decision dated 13th August, 1991 negotiations were held between Sal Udyog and the State Government for the amicable settlement of the said old and long pending arbitration dispute with the consent of parties. The State Government referred all the matters in dispute arising out of the said termination to the Nationalised Forest Produce Inter Department Committee. The said high powered committee, after thoroughly examining the matter, found the action of termination illegal and recommended to the State Government to recall the termination order dated 17.11.1983 and to renew the agreement of

M/s Sal Udyog. The State Government accepting the recommendations of the said committee, renewed the original agreement of Sal Udyog for a fresh term of 12 years. The impugned agreement dated 30.4.1992 executed by the State Government in favour of M/s Sal Udyog is essentially not a new or fresh agreement. It is only a renewal of the original agreement.

Dr. Singhvi has, therefore, submitted that there is no substance in the contention sought to be raised by the appellants and the appeals should, therefore, be dismissed with exemplary costs.

Mr. Anil Diwan, learned Senior counsel appearing for other respon-dent, namely, M/s Bastar Oil Mills, has supported the submissions made by Dr. Singhvi. Mr. Diwan has also submitted that Bastar Oil Mills In-dustries has been established in a backward tribal area of M.P. at Jag-dalapur. The said industrial unit has opened the employment potentiality for the backward tribal people residing in the area. The State Government invited industrial units to be set up in such backward area and had assured supply of sal seeds for the plant to be operated in such backward area at concessional rate. It has been held by the High Court and by this Court in the earlier proceedings that the respondent, namely, the Bastar Oil Mills had been rightly treated on a separate footing on the basis of industrial policy of the government and there was nothing illegal in such industrial policy. Mr. Diwan has submitted that classification, on the basis of geographical considerations, does not offend Article 14 of the Constitution. For such contention, reliance has been made to the decisions of this Court in Budhan Chaudhary and Others v. State of Bihar, AIR 1955 SC 191 para 4, 5, 7, Video Electronics Pvt. Ltd. and Anr. v. State of Punjab, AIR 1990 SC 820 para 1, 36, 38, Goodwill Paint and Chemical Industry v. Union of India and Anr., [1992] Suppl. 1 SCC 16. Mr. Diwan has, therefore, sub-mitted that the appeal should be dismissed with cost.

The learned counsel appearing for the State of Madhya Pradesh has also disputed the contentions made by the learned counsel for the appellants and it has been submitted by the learned counsel for the State that the industrial policy was framed by the State Government after taking into consideration the relevant facts and there was no arbitrariness in such policy. Such policy was also taken into consideration by the High Court and by this Court and the same was not found to be unreasonable or arbitrary. It has also been contended by the learned counsel for the State that production of sal seeds varies from year to year. Initially it was expected that the production of sal seeds would be increased considerably so that the demands of the industrial units in their State would be easily met. But the estimated target, however, had not been achieved. The State Government even now reasonably expect that the production of sal seed will go up. The learned counsel has also submitted that even after meeting the commitments of the State Government for supply of sal seeds in terms of the agreements in force to the selected units, there will be some surplus of sal seeds for distribution to other units.

The learned counsel for the State has submitted that for the year 1996 total sal seeds available to the State is estimated to be 79359 M.T. A high level committee i.e. Inter Departmental Coordination Committee formulated policy for the distribution of sal seed. Such decision, however, has been finalised in a meeting presided over by the Chief Minister of the State. It has been decided in the said meeting that the surplus sal seeds after meeting the commitments t99990 the contracted industries for the current year as well as backlog of past years of 1992, will be disposed of in open

auction by inviting tenders from all the industries. The learned counsel for the State has submitted that even after meeting such obligation, some amount of sal seeds will be placed for auction and the appellants can participate in such auction. The learned counsel for the State has also submitted that the State Government expects that in coming years, the position may further improve and the old industries are expected to get larger quantity of sal seeds from the State Government by participating in the auction to be held for the surplus quantity. The learned counsel for the State has, therefore, submitted that there is no merit in these appeals and the same should be dismissed with costs.

After giving our careful consideration to the facts and circumstances of the case and to the submissions made by the learned counsel for the parties, it appears to us that the industrial policy of 1979 which was subsequently revised from time to time cannot be held arbitrary and based on no reason whatsoever but founded on mere ipsi dixit of the State Government of M.P. The executive authority of the State must be held to be within its competence to frame policy for the administration of the State. Unless the policy framed is absolutely capricious and, not being informed by any reason whatsoever, can be clearly held to be arbitrary and founded on mere ipsi dixit of the executive functionaries thereby offending Article 14 of the Constitution or such policy offends other constitutional provisions or comes in conflict with any statutory provision, the Court cannot and should not outstep its limit and tinker with the policy decision of the executive functionary of the State. This Court, in no uncertain term, has sounded a note of caution by indicating that policy decision is in the domain of the executive authority of the State and the Court should not embark on the unchartered ocean of public policy and should not question the efficacy or otherwise of such policy so long the same does not offend any provision of the statute or the Constitution of India. The supremacy of each of three organs of the State i.e. legislature, executive and judiciary in their respective field of operation needs to be emphasised. The power of judicial review of the executive and legislative action must be kept within the bounds of constitutional scheme so that there may not be any occasion to entertain misgivings about the role of judiciary in outstepping its limit by unwarranted judicial activism being very often talked of in these days. The democratic set up to which the polity is so deeply committed can not function properly unless each of the three organs appreciate the need for mutual respect and supremacy in their respective field.

In the instant case, the State Government of M.P. framed industrial policy in 1979 and thereafter revised the same from time to time according to felt need. There is no material on record from which it can be reasonably found that the same was not informed by any reason whatsoever. That apart, such policy has been taken into consideration by the High Court of M.P. and also by this Court in the earlier proceedings and the industrial policy has not been found to be arbitrary or capricious. On the contrary, the agreement made in favour of the appellants was struck down by the High Court by indicating that unlike other class of industrial units like the respondents Bastar Oil Mills and Sal Udyog Pvt. Ltd. which were entitled to special treatment under the industrial policy, the appellants were not entitled to any special treatment which was not given to other existing old industrial units in the State, similarly circumstanced.

It has been held by the High Court that the industrial units which were commissioned on the invitation of the State to undertake oil extraction operation on the assurance of supply of sal seeds

by the State, stand on a separate footing. Such decision of the High Court though challenged before this Court, has not been upset. The distinctive features between the industrial units set up at the instance of the State Government and old existing units are based on objective criteria. Therefore, the said two classes of industries are not similarly circumstanced. Article 14 prohibits discrimination amongst the equals but it should be appreciated that Article 14 has inbuilt flexibility and it also permits different treatment to unequals. It may also be noted here that Bastar Oil Mills is situated at Jagdalpur which is admittedly a backward and tribal area. The special treatment given to Bastar Oil Mill by assuring supply of 20,000 M.T. of sal seeds under the impugned agreement cannot be held to be per se illegal and arbitrary. Classification on the basis of geographical situation has a rational basis and has been recognised by this Court as indicated in the decisions referred to hereinbefore. It may also be noted that the agreement of M/s Sal Udyog was terminated by the State Government for which reference to arbitration was made in terms of the agreement between the parties. Initially, the dispute was referred to the arbitration of a retired Judge of this Court but since the same could not be completed within the time frame, the arbitration was later on referred to a District Judge. During the pendency of arbitration proceedings, the industrial policy of the State Government was reviewed by a high power committee formed by the State Government. Such committee considered the question of continuance of protection measures to the selected industries by assuring supply of sal seeds by the State Government. The case of M/s Sal Udyog was also considered by such high power committee and the committee recommended in favour of M/s Sal Udyog. Thereafter, the State Government renewed the agreement with the usual renewel clause. Such action of the State Government cannot be held to be illegal or arbitrary.

The renewal clause in the impugned agreements executed in favour of the respondents does not also appear to be unjust or improper. Whether protection by way of supply of sal seeds under the terms of agreement requires to be continued for a further period, is a matter for decision by the State Government and unless such decision is patently arbitrary, interference by the Court is not called for. In the facts of the case, the decision of the State Government to extend the protection for further period cannot be held to be per se irrational, arbitrary or capricious warranting judicial review of such policy decision. Therefore, the High Court has rightly rejected the appellant's contention about the invalidity of the renewal clause. The appellants failed in earlier attempts to challenge the validity of the agreement including the renewal clause. The subsequent challenge of the renewal clause, therefore, should not be entertained unless it can be clearly demonstrated that the fact situation has undergone such changes that the discretion in the matter of renewal of agreement should not be exercised by the State. It has been rightly contended by Dr. Singhvi that the respondents legitimately expect that the renewal clause should be given effect to in usual manner and according to past practice unless there is any special reason not to adhere to such practice. The doctrine of 'legitimate expectation' has been judicially recognised by this Court in a number of decisions. The doctrine of "legitimate expectation" operates in the domain of public law and in appropriate case, constitutes a substantive and enforceable right.

Although to ensure fair play and transparency in the State action, distribution of largesse by inviting open tenders or by public auction is desirable, it cannot be held that in no case distribution of such largesse by negotiation is permissible. In the instant case, as a policy decision protective measure by entering into agreements with selected industrial units for assured supply of sal seeds at

concessional rate has been taken by the government. The rate of royalty has also been fixed on some accepted principle of pricing formula as will be indicated hereafter. Hence, distribution or allotment of sal seed at the determined royalty to the respondents and other units covered by the agreements cannot be assailed. It is to be appreciated that in this case, distribution by public auction or by open tender may not achieve the purpose of the policy of protective measure by way of supply of sal seeds at concessional rate of royalty to the industrial units covered by the agreements on being selected on valid and objective considerations.

So far as the contention that royalty for the sal seed to be supplied to the respondents has been fixed unreasonably in order to ensure naked favouritism to the said respondents is concerned, the appellants have failed to demonstrate such naked favouritism. The fixation of rate of royalty on the basis of weighted average formula has a rational basis and is also a known method and modality for determining market price. It also appears to us that the price per M.T. of sal seed has different components of which collection charges is the principal factor. It may also be noted here that the revisions of royalty by the State Government at Rs. 750, Rs. 1030 and Rs. 1030 per M.T. respectively for 83-85, 85-87 and 87-89 blocks had been challenged and such revisions were struck down by the High Court of M.P. and the High Court directed redetermination of the rates of royalty as per the established weighted average formula. Arbitration was held for determining the appropriate royalty and the royalty thereafter was refixed at Rs. 300 per M.T. in place of Rs. 750, Rs. 300 per M.T. in place of Rs. 1030 and Rs. 294 per M.T. in place of Rs. 1030 for the said three blocks. In the aforesaid facts, it cannot be held that the fixation of royalty in the impugned agreements is without any basis and wholly arbitrary and designed only to ensure favouritism, as alleged. If there is an objective and rational foundation for the fixation of royalty, the Court will not interfere with the exercise of governmental decision by itself undertaking an exercise to find out as to whether better fixation was possible or not. It needs to be noted that in matters of economic rights and policy decision, the scope of judicial review is limited and circumscribed. It may also be indicated here that within the ambit of protective measure of assured supply of sal seeds, such supply at concessional price is also a relevant consideration. The State Government may not be dictated by the only consideration of more revenue.

The anxiety of the appellants to also get allotments of reasonable quantity of sal seeds from the State Government can be appreciated but the policy decision of the State Government and consequential State action in entering into agreements with the respondents cannot be struck down on the vice of irrationality and arbitrariness. It has been submitted by the learned counsel for the State that the State Government is not oblivious of such need and also not averse to old industrial units which also use sal seeds for their plants. We reasonably expect that the government will be alive to the need of sal seeds by the industrial units operating in the State of M.P. and in future when the policy will be reviewed by the State Government, it will take into consideration the felt need of proper distribution of sal seeds to different classes of industrial units with appropriate pragmatism.

We, therefore, find no reason to interfere with the impugned decision of the High Court. These appeals, therefore, fail and are dismissed. There will be, however, no order as to costs.