
(1988) 07 MP CK 0020

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 1645 of 1986

Chhatisgarh Hydrade Lime Industries, Bilaspur

APPELLANT

Vs

Special Area Development Authority, Bilaspur and Others

RESPONDENT

Date of Decision : 22-07-1988

Acts Referred:

Constitution of India, 1950 — Article 14, 226

Evidence Act, 1872 — Section 115

Madhya Pradesh Nagar Tatha Gram Nivesh Adhiniyam, 1973 — Section 64

Citation : AIR 1989 MP 82 : (1989) JLJ 401 : (1989) MPLJ 63

Hon'ble Judges : Y.B. Suryavanshi, J;C.P. Sen, J

Bench : Division Bench

Advocate : S. Sanyal and Ravindra Shrivastava, for the Appellant; Y.S. Dharmadhikari and O.P. Namdeo, Government Advocate, for the Respondent

Judgement

C.P. Sen, J.

The petitioner, a registered partnership firm, is seeking quashing of cancellation of the No Objection Certificate issued earlier by the respondent 2 and also seeking issue of No Objection Certificate by the respondents 1 and 2 to it for manufacture of Hydrated lime in its factory in the industrial area of Korba and to prohibit the respondent 1 from interfering with the manufacture of Hydrated lime.

Korba in Katghora tahsil of district Bilaspur has developed into an industrial township, initially having a population of 30,000 or so in the year 1963-64. About 700 acres of forest land was transferred to the Industries Department for establishment of various other industries in addition to the industries which already existed in the year 1974-75. In the year 1976 the State Government constituted Special Area Development Authority, Korba (SADA), respondent 1 u/s 64 of M. P. Nagar Tatha Gram Nivesli Adhiniyam, 1973, and it was empowered to perform the functions of Municipality under M. P. Municipalities Act, 1961. Under the enactment of 1973, any person intending to carry out any development on any land situated within the area to which the Act applied, shall make an

application in writing to the Town and Country Planning Authority and without such permission no construction can be made. Against refusal of permission, an appeal lies u/s 31. By subsequent notification dt. 15-7-1977 the respondent 1 was empowered to perform the functions of the Corporation under the M. P. Municipal Corporation Act Section 293 of the Act prohibits erection or re-erection of buildings without the permission of the authority. Permission can be refused u/s 295 on grounds mentioned under Sections 296 and 297. Section 299 empowers the Authority to modify any sanctioned plan before its completion. u/s 302 the Authority can stop further construction of building unlawfully commenced Appeal lies against rejection of the permission u/s 403. Already there was Coal Industry in the area which is now being owned and run by South Eastern Coalfields Ltd, a subsidiary of Coal India Ltd. Similarly, Bharat Aluminium Company has started manufacturing Aluminium ingots. There is also a big thermal project which has come up. These are all Government of India Undertakings. There is also power station of M. P. Electricity Board and other ancillary industries in Korba. Korba now has a population of about two lacs and is still growing into a big industrial area of the State. On 4-6-1984 a notification was issued u/s 19(1) of the Air (Prevention and Control of Pollution) Act, 1981, declaring SADA, Korba, as pollution control area with the result that no appliance, other than approved appliance shall be used in the premises situated in that area Therefore, u/s 21 no person shall, without the previous consent of the State Pollution Board operate any industrial plant for purposes of any industry specified in the Schedule in Korba u/s 22 no person shall allow emission of air pollutants in excess of the standards laid down by the State Board An appeal lies u/s 31 against the order of the Pollution Board.

The petitioner applied for and was granted provisional certificate to start a " factory for manufacture of Hydrated and burnt lime by the District Industries Centre, respondent 3, on 29-3-1985. The petitioner was allotted plots Nos. 48 and 49 in the industrial area of Korba for that purpose on 26-4-1985 on furnishing bank guarantee of Rs. 5,000/- on a rent of Rs. 275.50/- per annum and on payment of premium of Rs. 36,7317-A formal lease deed was executed in respect of the aforesaid two plots for manufacture of Hydrated and burnt lime on 1-7-1985 and the petitioner got a sanction for loan of rupees seven lacs from M. P. Financial Corporation on 5-10-1985 and amount of rupees 3.5 lacs was released for erection of the factory. The petitioner was given possession of the plots on 5-10-1985. On 8-11-1985 the petitioner applied for No Objection Certificate from SADA Korba, Town and Country Planning Authority, Korba, and State Pollution Board. SADA informed the petitioner on 15-11-1985 that because of the air pollution, it cannot be permitted to start Hydrated lime factory at Korba. The Deputy Director, Town and Country Planning, gave No Objection Certificate on 25-1-1986 subject to the petitioner getting a No Objection Certificate from the State Pollution Board. However, this certificate was cancelled on 7-2-1986 by the authority since the proposed lime factory is adjacent to the Government College and 100 bedded hospital and starting of manufacture of

hydrated lime would pollute the air and it would not be in public interest to grant such permission. On 6-2-1986 SADA restrained the petitioner from carrying on further construction of its factory. The State Pollution Board on 22-2-1986 refused to grant permission for starting Hydrated lime factory at Korba as the site is not proper and suitable with respect to environmental conditions and the forthcoming development proposed in the area. The petitioner, therefore, filed the present petition seeking the aforesaid reliefs. On 25-6-1986 the petition was admitted and the petitioner was permitted to continue its building activity but was directed not to put up a factory and use it as a kiln till the disposal of the petition. Return was filed by the respondent 1 on 23-7-86. The petitioner applied for modification of the ad interim order to start its factory since the District Industries Centre respondent 3, had given a completion certificate on 27-9-1986. The petitioner also applied for amendment of the petition. The amendment was allowed on 27-3-1987 and there was consequential amendment made in the return of the respondent 1. The respondent 1 gave another notice on 10-2-1988 to the petitioner to demolish the construction already made. However, the State Pollution Board has granted No Objection Certificate to the petitioner for starting Hydrated lime factory at Korba on 26-11-1987 for a period of one year only. This Court has not granted permission to the petitioner to start the factory pending decision of the petition. Additional documents were filed by the respondent 1 on 15-2-88 and an application was also moved for dismissal of the petition for non-joinder of necessary parties viz. State Pollution Board By order dt. 10-3-1988 operation of the notice to the extent of demolition of the construction already made was stayed. The respondents 2 to 4 filed their return on 20-6-1988.

The petitioner's case is that the District Industries Centre, Bilaspur, having given its sanction and granted lease of plots Nos. 48 and 49 for manufacturing Hydrated lime, the other authorities i.e. respondents 1 and 2, SADA Korba and Town and Country Planning Authority, Korba, could not have refused No Objection Certificate. The plots allotted to the petitioner are in the industrial area of Korba and there are already various industries round about this area including Hydrated lime factory of one Vijay Lime Industries located opposite to the plots of the petitioner which has been granted No Objection Certificate by all the respondents. There is one Weston Carbon Industry which is manufacturing carbon rods and battery emanating mono carbon-dioxide, adjacent to the petitioner's plots and there is also one Hindustan Foundry doing iron castings nearby. The petitioner's proposed factory is at a distance of 1000 to 1250 meters from the Government College and Hospital and the action of the respondents is tainted with prejudice and partiality against the petitioner. The petitioner has made substantial investment and has already spent rupees 5.50 lacs for construction of its factory and lime kiln on the assurances given by the respondent 3 and the action of the respondents is hit by principles of promissory, statutory and equitable estoppel. The respondents cannot go back on their permission granted to erect Hydrated lime factory at Korba. Even assuming that

from the petitioner's factory there is a danger of air pollution but this being an industrial area the petitioner can be directed to make devices for preventing air pollution as a condition for starting the factory. By way of amendment, the petitioner suggested that Chief Engineer and Chairman of the SADA was previously the colleague of chairman of State Pollution Board at Bilaspur and they are on friendly terms. Both in conspiracy and with ulterior motive have singled out the petitioner for blatant discriminatory treatment by refusing No Objection Certificate, although they have granted No Objection Certificate to Vijay Lime Industries and Weston Carbon Products, and Vijay Lime Industries is operating since 1983. Feelers were sent to the petitioner to pay Rs. 20,000/- to each of these two gentlemen for getting the No Objection Certificate from the authorities concerned Since then the State Pollution Board has granted No Objection Certificate and, therefore, the respondents have now no jurisdiction or authority to refuse No Objection Certificate to the petitioner to start Hydrated lime factory. The respondents having not preferred any appeal against the order of the State Pollution Board, the same has become final and cannot be challenged by the respondents.

The respondent 1 in its return submitted that SADA Korba has been constituted for planning and development of Korba area, to make better provision for preparation of development plans, to provide municipal services and administering the area for its proper development. There was no Municipality or Municipal Corporation earlier, it was merely a Gram Panchayat. All building activity in the Korba area is controlled by the SADA and without its permission no construction can be commenced. The petitioner was informed as early as on 15-11-1985 that it cannot be granted any permission for starting the factory because of air pollution that may be caused. Permission was also refused to the petitioner by the Town and Country Planning Authority, Korba. The petitioner has commenced construction without obtaining prior sanction of the authority and so it is authorised to stop the unlawful construction. It is the only authority which controls building activity in the area. The residential area of Korba town has to be extended as the population has increased, initially the industrial area was at a distance of about 5 kms. from Korba town but the town is now extended towards the industrial area. There is a 100 bedded Government hospital and College within 600 meters of the petitioner's proposed factory. For manufacturing hydrated lime, lime stones have to be burnt with coal, thereby polluting the air. About pollution of Korba area, the matter was referred to National Environmental Engineering Research Institute, Nagpur, at the instance of the State Government which submitted its report that only non-polluting type of industries can be permitted to be opened in the area. The Chairman of SADA has been writing letters to the State Pollution Board not to grant No Objection Certificate to the petitioner because of pollution and the Board by its letter dt. 31-12-1985 assured the Chairman that no such permission will be granted and the matter is being examined. The Additional Collector by his letter of January 1986 also wrote to the authorities that no such permission should be given for construction of lime kiln.

The petitioner may have been allotted land by the District Industries Centre and advanced loan by M. P. Financial Corporation but that does not entitle the petitioner to construct lime kiln for manufacturing hydrated lime as it will result in air pollution. Air pollution will be a hazard and danger to the health of inhabitants of Korba As back as on 13-1-1981 the Commissioner had informed the District Industries Centre not to start any industry causing pollution and the land be not allotted to any industry which may cause pollution. There were complaints from students' community also to stop further air pollution at Korba. For this purpose, a meeting was convened on 18-4-1981 by the Commissioner attended by several authorities and a decision was taken not to start any industry causing pollution. The Chief Minister had constituted a high power committee to go into the question of air pollution at Korba and the committee had recommended on 5-2-1986 not to start any industry that may cause pollution. It is surprising how the State Pollution Board has subsequently granted No Objection Certificate when there being no change in the circumstances. The petitioner had made wild allegations against the Chairman of SADA and the State Pollution Board without joining them as parties. The allegations are false and motivated. There is nothing to show that the factory of Weston Carbon Products and Hindustan Foundry are any way causing pollution. Vijay Lime Industry commenced production of hydrated lime before the area was declared air pollution control area. Besides, the SADA has asked the said Industry to shift its factory at some other place and its licence has not been renewed. Permission has also been refused for starting its second unit by the SADA and also by the State Pollution Board In view of the recent enactment of Environment (Protection) Act, 1986, and the rules framed thereunder the Central Government is a necessary party to this petition as it is now the final authority and can prohibit and restrict location of industries causing pollution. The petitioner could have also obtained No Objection Certificate under Water (Prevention and Control of Pollution) Act, 1974.

The State in its return has also opposed the petition saying the process of burning lime is bound to pollute air. The Dy. Director, Town and Country Planning, refused permission to erect the factory on 7-2-1986 and similarly the Pollution Board also refused No Objection Certificate on 22-2-1986. The petitioner ought to have challenged those orders in appeal and the matter now cannot be agitated in a writ petition. Vijay Lime Industry was granted No Objection Certificate prior to the notification dt. 4-6-1984 declaring the area as pollution control area. The notification was issued to curb and contain the area from pollution. The authorities decided in a joint meeting held on 16-1-1986 not to issue No Objection Certificate to the petitioner for starting hydrated lime factory as the same would cause air and water pollution. Subsequent order of the State Pollution Board dt. 25-11-87 is not binding on the State and the Board has not taken into account the totality of the circumstances which might be created if the permission is granted. It is surprising that the Board which had consistently been refusing to grant No Objection Certificate, all of a sudden took a topsy-turvy

decision and granted the alleged No Objection Certificate. The respondents are all statutory authorities and they are not bound by the decision of the Pollution Board. Merely because Vijay Lime Industry has been granted No Objection Certificate for manufacturing hydrated lime earlier, it is not necessary that No Objection Certificate should be granted to the petitioner and others to cause further pollution and this is bound to affect the public health adversely.

The points for consideration are : (i) Whether the District Industries Centre having granted permission and permanent lease of plots Nos. 48 and 49 in industrial area, Korba, to manufacture hydrated and burnt lime and the petitioner having acted thereon and spent a sum of over 5.5. lacs and constructed the factory and the kiln, the other respondents are estopped under the principle of promissory estoppel from refusing No Objection Certificate to the petitioner particularly when the State Pollution Board has granted No Objection Certificate (ii) Whether SADA, Korba, mala fide with ulterior motive of receiving illegal gratification is putting obstacles in commissioning of the factory by the petitioner, and (iii) Whether there is blatant discrimination by the respondents and violation of Article 14 of the Constitution in refusing No Objection Certificate to the petitioner when such certificates have been granted to Vijay Lime Industries and it is manufacturing hydrated lime opposite to the plots of the petitioner.

It is not in dispute that the petitioner was granted provisional registration to manufacture hydrated and burnt lime in the industrial area, Korba, on 23-3-1985 and thereafter a permanent lease for 99 years of plots Nos. 48 and 49 was executed on 1-7-1985 in favour of the petitioner to manufacture lime on a rent of Rs. 273.50 p. per annum, premium of Rs. 36,731/- and on furnishing security of Rs. 5000/-. The lease was executed in the name of the Governor and it stipulated that the lessee would within one-year of taking possession commence production. The petitioner accordingly applied for and loan of rupees seven lacs was sanctioned for erecting the factory by M. P. Finance Corporation on 5-10-1985. It is said, so far amount of Rupees 3.8 lacs has been granted and the petitioner has spent over rupees 5.5. lacs and the factory is ready for commission since 27-9-1987. During pendency of the petition, on 25-11-1987 the State Pollution Board has granted the No Objection Certificate to the petitioner for manufacture of hydrated lime at Korba and it is said now there is no impediment in starting the factory. In the absence of No Objection Certificates from the SADA and the Town and Country Planning Authority, the factory cannot be started and the petitioner is overburdened with payment of large recurring sums as interest to the Corporation and other creditors. The Supreme Court in *Motilal Padampat Sugar Mills Co. Ltd. Vs. State of Uttar Pradesh and Others*, held that the doctrine of promissory estoppel has also been applied against the Government and the defence based on executive necessity has been categorically negated. Where 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 Government would be held bound by the promise and the promise would be enforceable against the Government 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 under Article 299 of the Constitution..... The Government cannot claim to be exempt from the liability to carry out the promise on some indefinite and undisclosed ground of necessity or expediency, nor can the Government claim to be the sole judge of its liability and repudiate it on an ex parte appraisal of the circumstances..... It is only if the Court is satisfied, on proper and adequate material placed by the Government, that overriding public interest requires that the Government should not be held bound by the promise but should be free to act unfettered by it, that the Court would refuse to enforce the promise against the Government..... The doctrine of promissory estoppel cannot be invoked for preventing the Government from acting in discharge of its duty under the law. The doctrine of promissory estoppel cannot be applied in teeth of an obligation or liability imposed by law." Again the Supreme Court in Gujarat State Financial Corporation Vs. Lotus Hotels Pvt. Ltd., held :

"Thus the principle of promissory estoppel would certainly estop the Corporation from backing out of its obligation arising from a solemn promise made by it to the respondent. The respondent acting upon the solemn promise made by the appellant incurred huge expenditure and if the appellant is not held to its promise, the respondent would be put in a very disadvantageous position and therefore also the principle of promissory estoppel can be invoked in this case."

Now there is greater awareness and concern about environmental pollution. The United Nations and other international bodies are showing concern to this peril. So far as our towns and cities are concerned there is terrible insanitation, no proper sewage, dirt and dust all round, no potable water, absence of basic civic amenities and growth of slums all round, apart from the industrial and automobile pollution of air and water by its effluents. The Parliament first enacted Water (Prevention & Control of Pollution) Act, 1974, for prevention and control of water pollution. Then Parliament enacted Air (Prevention and Control of Pollution) Act, 1981, to provide for prevention, control and abatement of air pollution in pursuance to decisions taken at the United Nations for taking steps for preservation of the quality of air and control of air pollution. Section 19 of the Act empowers the State Government after consultation with the State Pollution Board to declare any area of the State as air pollution control area. Consequently, u/s 21, there is restriction in establishment of any industry specified in the schedule in the air pollution control area. Korba has been declared as air pollution control area on 4-6-1984, showing thereby that it is already polluted up to saturation limits. Undoubtedly, lime kilns pollute air with carbon dioxide and fine dust of lime (Calcium oxide) affecting environment. The Commissioner, Bilaspur Division, on 13-1-1981 asked the District Industries Centre not to establish any industry at Korba which may cause pollution in Korba. There was also a decision taken on 18-4-1981 in a conference attended by different agencies and headed by Divisional Commissioner that no new industry causing pollution be permitted at Korba. Similar decision was taken on 5-2-1986

in a committee headed by the Commissioner and constituted by the Chief Minister of the State, not to permit any new industry at Korba that may cause pollution. Now the Parliament has enacted the Environment (Protection) Act, 1986, to provide for protection and improvement of environment and Central Government is empowered to take measures to protect and improve environment SADA is a statutory body constituted u/s 64 of M.P. Nagar Tatha Gram Nivesh Adhiniyam, 1973, for proper planning and development of the area and to render municipal services. It has been empowered with the powers of Municipal Corporation under the Municipal Corporation Act, 1956. The building activity in the area is entirely controlled by the SADA, no contraction, addition and alteration can be made without the sanction of the SADA and it can stop any unauthorised construction, This Court in Central Coal Fields Ltd. v. State, AIR 1986 Madh Pra 33 has held that when some constructions of building residential houses were made without prior sanction of SADA, it can give notice for demolition of the constructions so made. Besides, no construction can be made in any area covered under M.P. Nagar Tatha Gram Nivesh Adhiniyam, 1973, without the permission of the Town & Country Planning Department. The petitioner on the basis of the permission granted by the District Industries Centre erected the hydrated lime factory and kiln in hot haste, perhaps because it was required to commission the factory within one year of taking possession of the plots, in spite of rejection of permission by the SADA and Town & Country Planning Authority.

The petitioner was given provisional registration for manufacturing hydrated and burnt lime at Korba on 22-4-1985. Plots Nos. 48 & 49 were allotted for this purpose with the condition that it has to produce consent of M.P. State Prevention & Control of Water Pollution Board within 3 months. It appears that the District Industries Centre was not aware that consent of State Air Pollution control area (sic). Under the lease deed executed, the petitioner was required to commission the factory within one year of taking possession of the plots on 4-10-1985. The petitioner had applied for No Objection Certificate from the SADA and the Town & Country Planning Authority. The SADA clearly informed the petitioner on 15-11-1985 that the petitioner cannot be permitted to start the factory at Korba as lime kiln will cause air pollution. The Town & Country Planning Authority initially granted No Objection Certificate and approved the plan on 25-1-1986 but immediately thereafter on 7-2-1986 informed the petitioner that no permission can be granted as lime kiln will cause pollution and there is 100 bedded hospital and school nearby. The Chairman of the SADA also cautioned the State Pollution Board not to grant No Objection Certificate for starting of the hydrated lime factory by letters dated 15-11-1985 and 26-12-1985. The Chairman of the State Pollution Board informed the SADA that the matter is being enquired into by senior scientists and no permission will be granted for starting lime kiln near the Government hospital and college. Accordingly, the State Pollution Board refused permission on 22-2-1986 as the site is not suited for lime kiln. It does not appear that the petitioner got any

sanction for construction of lime kiln from SADA as required u/s 292 of the Municipal Corporation Act, on the other hand No Objection Certificates were refused by the SADA and Town & Country Planning Authority, therefore, it was open to the SADA to give notice to the petitioner for demolition of the unauthorised construction. The State Pollution Board, subject to the order of the appellate authority, may be the final authority under Air (Prevention & Control of Pollution) Act, 1981, but SADA being another statutory authority has its own powers and duties under the Corporation Act u/s 246, no factory can be established without its permission and it can also regulate dangerous and offensive trades u/s 248. In fact, the State Government in its return has clearly stated that final sanction order for construction of lime kiln can only be granted by the SADA which is the final authority. The Supreme Court in *Rural Litigation and Entitlement Kendra, Dehradun and Others Vs. State of U.P. and Others*, held that there is imbalance to ecology and hazard to healthy environment due to working of lime stone quarries and, therefore, ordered them to be closed down. The Supreme Court in *M.C. Mehta and another (II) Vs. Union of India and others*, has held that for manufacture and sale of hazardous product, measures should be taken for reducing hazard to workmen and community living in the neighbourhood.

The SADA and the Town & Country Planning Authority were not parties to the grant of lease of the plots for manufacturing hydrated and burnt lime in the industrial area of Korba and the petitioner had not acted on their promises in erecting lime kiln at a cost of rupees 5.5 lacs or so. There can be no promissory estoppel against them because the petitioner has taken loan and constructed the lime kiln at his own risk and at the most at the instance of the District Industries Centre, which being a subordinate agency of the State could not have granted permission for starting a hydrated lime factory against the direction of the Divisional Commissioner dt. 13-1-1981 and the decision taken at the conference of different agencies on 18-4-1981 not to establish any Industry causing pollution. Therefore, the registration for manufacture of lime kiln at Korba itself was irregular. Under the circumstances, no writ can lie against statutory bodies for preventing them from doing their statutory functions and duties. Refusal of No Objection Certificate is in public interest and when there is a clash between personal and public interest, the latter must prevail. It is also surprising that when circumstances remained the same in 1986 & 1987, then how the State Pollution Board took a topsy-turvy turn on 25-11-1987 and granted no objection certificate to the petitioner though the 100 bedded hospital and Government College are still there. The State of M.P. has disclaimed the decision of the Board and challenged its decision as by-passing the circumstances prevailing at Korba. We fail to understand how No Objection Certificate could be granted after and solemn assurance by the Board's Chairman to the SADA that no lime kiln will be permitted near the hospital and the college. The Board could not be ignorant of the fact that SADA has been declared air pollution control area on 8-6-1984 and no industry causing pollution can be established. The SADA has protested about

issue of No Objection Certificate to the Board. Overriding public interest requires that even the District Industries Centre should not be bound by its promise and should be free to act unfettered by it. The decision of the Supreme Court in Gujarat State Financial Corporation Vs. Lotus Hotels Pvt. Ltd., is clearly distinguishable as no public interest was involved in refusing the loan for construction of the hotel, for which there were no impediments.

We have now to consider the allegation of mala fide against the Chairmen of the SADA and the State Pollution Board. After the return of the SADA was filed, the petitioner amended the petition and alleged by adding paras 8 (a) to 8 (f) that in the first week of April 1986, it received feelers that if each of the two Chairmen was paid Rs. 20,000/-, No Objection Certificates would be issued by the two authorities. It was also said that the two Chairmen were friends as both worked together at Bilaspur previously. This feeler was received from one Chandel of Chandel Enterprises by a partner of the petitioner firm Jagdish Agarwal. The amendment application is not duly verified by any partner of the petitioner nor there is any affidavit in support. Photostat copy of affidavit of Jagdish Agarwal was filed after 2 months, so no credence can be given to the allegations. Moreover, the two Chairmen have not been made parties to rebut the allegations. However, the SADA by way of consequential amendment has denied the allegations against its Chairman as false and mischievous and it is supported by the affidavit of the Chairman himself. It is not explained as to why these allegations, if true, were not incorporated in the petition which was filed on 26-5-1986. If the two Chairmen wanted illegal gratification, the demand would have been made before refusing to issue No Objection Certificate on 15-11-1985 and 22-2-1986 respectively and not after refusing the No Objection Certificates. The Chairman of the SADA had written letters to Chairman of the State Pollution Board on 15-11-1985 and 26-12-1985 not to issue No Objection Certificate to the petitioner for starting hydrated lime factory and the Chairman of the Board had assured the SADA on 31-12-1985 that No Objection Certificate will not be issued. In view of the facts, how they would have demanded money ! The Supreme Court in E.P. Royappa Vs. State of Tamil Nadu and Another, held:-

"The burden of establishing mala fides is very heavy on the person who alleges it. The allegations of mala fides are often more easily made than proved, and the very seriousness of such allegations, demands proof of a higher order of credibility."

The Supreme Court in Express Newspapers Pvt. Ltd. and Others Vs. Union of India (UOI) and Others, held :-

"Vague allegations of mala fide are not enough to dislodge the burden resting on the person who makes the same though what is required in this connection is not a proof to the hilt. The abuse of authority must appear to be reasonably probable."

The Supreme Court in Kasturi Lal Lakshmi Reddy, Represented by its Partner Shri

Kasturi Lal, Jammu and Others Vs. State of Jammu and Kashmir and Another, has held that Government action must satisfy reasonableness and public interest. Action of the State Government in granting tapping contract by negotiation was not arbitrary or irrational. The application for amendment of the petition was filed by the counsel for the petitioner on 12-3-1987 without the signature or affidavit of any partner of the petitioner. Queerly, one photostat copy of a cryptic affidavit of Jagdish Agarwal dt 10-4-1987 was filed on 8-5-1987 saying "para 8(a) to (c) of the petition is being supported in toto by this affidavit". This is not a proper affidavit and there is no supporting affidavit of Chandel. The petitioner has also produced photostat copy of a cutting from Nav Bharat daily dt. 31-7-1987 that the house of the (Chairman of ? SADA was raided by the Economic Wing of the Special Police Establishment, Bhopal. on 27-7-1987 and valuables worth rupees three lacs were seized. This will only show that there was such a raid and some value(sic)es were seized as being disproportionate to his means but this news-item cannot prove the demand of illegal gratification by the Chairman from the petitioner.

It has now to be considered is to whether the petitioner has been discriminated against by refusing it permission to manufacture hydrated lime when another concern Vijay Lime Industries just across the road, has been granted permission and has been manufacturing hydrated lime. From the documents produced, it appears that Vijay Lime Industries started manufacturing hydrated lime opposite the plots of the petitioner since 1983 or so unauthorisedly. This is also the petitioner's case that Vijay Lime Industries is illegally functioning since 1983, which is also clear from the letter of the SADA dt 11-4-1985, showing that on payment of composition fee of Rs. 500/- by Vijay Lime Industries, the SADA has no objection for working of the lime kiln. The Pollution Board granted No Objection Certificate to it only on 11-2-87 i.e. 9 months before the Board granted such a certificate to the petitioner. This is not denied by the respondents but according to them Vijay Lime Industries has been told and it has agreed to shift its factory on getting alternative site. Its licence has not been renewed. Permission has been refused to it to start its second unit on 31-5-1988. In any case, the existing unit of Vijay Lime Industries commenced production since 1983 before Korba was declared air pollution control area and no No Objection Certificate was required from the pollution Board for manufacturing hydrated lime. The respondents have also stated that steps are being taken to close Vijay Lime Industries. We hope and expect that Vijay Lime Industries will be closed down soon and shifted elsewhere. Simply because one industry which is causing pollution is already in the industrial area, that does not make out a case for allowing the petitioner to further pollute the area. No permission was taken by Vijay Lime Industries for manufacturing hydrated lime. The petitioner was asked by the SADA to stop further construction on 3-2-1986 but the petitioner rushed to this Court and obtained stay on 26-5-1986 and thereafter completed the construction hurriedly on 27-9-1986 instead of waiting for a decision. By preventing the petitioner from further polluting the area, public interest is being

served in preference to individual interest and, as such, there is no question of any discrimination. The petitioner has farther alleged that M/s. Weston Carbon Products by manufacturing battery and carbon rods is polluting the air with Mono Carbon Dioxide but this is refuted by the respondents by saying that it is non-polluting industry so also Hindusthan Foundry doing iron castings. There is no scientific data placed except bare assertions that these two industries are causing pollution. In any case, these industries were established much prior to the declaration of Korba as air pollution control area. The Supreme Court in *Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another*, has held :--

"The principle of reasonableness, which legally as well as philosophically, is an essential element of equality or non-arbitrariness pervades Article 14 like a brooding omnipresence and the procedure contemplated by Article 21 must answer the test of reasonableness in order to be in conformity with Article 14. It must be right and just and fair" and not arbitrary, fanciful or oppressive; otherwise, it would be no procedure at all and the requirement of Article 21 would not be satisfied."

The Supreme Court in *Rural Litigation and Entitlement Kendra, Dehradun and Others Vs. State of U.P. and Others*, observed that the consequences of the order closing down lime stone quarries permanently would be that the lessees would be thrown out of business in which they have invested large sums of money and expended considerable time and effort. This would undoubtedly cause hardship to them but it is a price that has to be paid for protecting and safeguarding the right of the people to live in healthy environment with minimal disturbance of ecological balance and without avoidable hazard and undue affectation of air, water and environment. However, in order to mitigate their hardship, the State of U.P. and Govt. of India were directed to give them priority in grant of leases in other areas. Here also the petitioner has unwisely rushed through and completed the lime kiln at considerable cost without waiting for clearance by the different authorities and in spite of the notice given by the SADA not to proceed with the construction. So we direct the respondents to permit the petitioner to convert its hydrated lime industry into some other non-polluting industry; if that is not possible, then to allot the petitioner some other alternative site for shifting the lime kiln there without delay.

The petition is accordingly disposed of. There shall be no order as to costs. The outstanding security amount be refunded to the petitioner.