
(2001) 10 MP CK 0007

In the Madhya Pradesh High Court

Case No : Writ Petition No. 517 of 2001 (J)

Hanuman Minor Oils Ltd.

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 29-10-2001

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Madhya Pradesh Re-organisation Act, 2000 — Section 50, 85

Citation : (2002) 1 MPJR 491

Hon'ble Judges : Dipak Misra, J

Bench : Single Bench

Advocate : Rajendra Tiwari, with Mr. Dushyant Dave and Mr. Vijay Hansaria and Mr. S.C. Sharma, for the Appellant; Ravi Shankar Jha, Dy. Advocate General for respondent 1 to 4, S.L. Saxena, with Mr. Rohit Arya, for the Respondent

Final Decision : Dismissed

Judgement

Dipak Misra, J.

Invoking the extraordinary jurisdiction of this Court under Articles 226 and 227 of the Constitution of India the petitioner has prayed for issue of a writ of certiorari for quashment of the order dated 3.1.2001, Annexure P-14, to the extent it directs referring of the matter relating to imposition of supervisory charges against the petitioner to the State of Chhattisgarh as being illegal, arbitrary, unjustified and further to command the State of Madhya Pradesh to take a decision in respect of entire areas (which now have been declared as a part of State of Chhattisgarh) which were within the territory of the State of Madhya Pradesh prior to 1.11.2000 and further declare that the State of Chhattisgarh has no jurisdiction or authority in law to decide the rate of supervisory charges in respect of contracts entered into between the petitioner and the State of M.P. and which had come to an end before the State of Chhattisgarh came into existence. Quite apart from above there is also a prayer to issue a direction to the State of Madhya Pradesh to pass appropriate order

reducing the supervisory charges from rupees 5/- per quintal to rupee 1/- per metric ton per day in respect of the areas in question and to pass such other order/direction as may be deemed just and appropriate in the facts and circumstances of the case.

The facts as have been undraped are that the petitioner, Hanuman Minor Oils Limited, is a company registered under the Companies Act, 1956 having its registered office at 904, Dalamal Tower, 211 Nariman Point, Mumbai, and it manufactures Sal-seed oil and for that purpose purchases sal seed from the State of Madhya Pradesh. Sal-seed is a forest produce in the State of Madhya Pradesh and is also available in the adjacent States of Bihar and Orissa. The Sal seed found in the State of M.P. has a special value and contains special features and the petitioner had been purchasing the same through the respondent No. 3, M.P. State Laghu Vanopaj, Federation (in short "the Federation") which is a forest cooperative society established by the State of M.P. in order to sale Sal seeds on behalf of the State.

According to the writ petitioner the sal seed purchased from the governmental agencies is processed into Sal seed oil. This oil is put into two kinds of use depending upon the quality of seeds and processing. The utilisation of the Sal oil can be divided into two compartments :

(i) High quality of Sal seed oil is exported to Japan and other countries in Europe for manufacturing of chocolates, and

(ii) Inferior quality of Sal seed oil which is normally used in making soap in India.

The petitioner company is the biggest buyer of the sal seed in the State of M.P. It purchases 70% of Sal seed produced in the State of Madhya Pradesh and in the State of Chhattisgarh. The sale of Sal seed by the State is through the Federation and for the same, tender process is adopted every year. It has been put forth that the respondent No. 3, Federation on 7.2.2000 issued a tender notice for the year 2000 for purchase of sal seed and the petitioner applied in respect of the said tender. The rates offered by the petitioner were highest and its tender was accepted. Another tender notice was floated on 30th March, 2000 and the the petitioner again submitted its tender and the second tender was also accepted. The tender was floated by the Federation. In respect of two tenders bids were finalised and the agreements were executed. The petitioner being the highest bidder in respect of aforesaid two tenders executed agreements to lift the sal seeds. The quantity which was required to be lifted was 1,26,500.00 quintals as per the first tender and 33,200.00 quintal as per the second tender.

After the execution of the agreements the petitioner was given the work order to lift the Sal seed. It has been put forth that in respect of other areas tender notices were issued and the tenderers though their bids were higher than the petitioner did not lift the sal seed and the aforesaid quantity in respect of other tenderers weighing about 28,000 quintals was also given to the petitioner and it was given work order on 4-4-2000 to lift the aforesaid quantity.

It is pleaded in the petition that as per the terms and conditions of the tender, a penal clause for delayed lifting of the sal seed was also incorporated and according to the said clause, Rs. 5.00 per quintal per day as supervision charges was to be levied. The matter relating to the waiver of supervision charges for the delay in lifting the Sal seed was pending with the State Government while the petitioner was lifting the sal seed. Besides this, there was also a penal clause for payment of interest on delayed payment by the contractor. As far as penal clause of payment of interest is concerned the petitioner has already paid the interest and there is no dispute in that regard. It is put forth that the petitioner company's tenders for lifting of 1,25,600.00 and 33,200.00 quintals of Sal seed was accepted and, therefore, it had no other option but to accept the lifting of the additional quantity of the Sal seeds under protest. It did so under protest because of additional quantity of 28,000 quintals the delay in lifting the Sal seed occurred. The petitioner kept on representing for reducing the supervisory charges as the same was arbitrary and exorbitant. A copy of the representation dated 17.7.2000 has been brought on record as Annexure P-6. It was also pointed out by the petitioner in the representation that earlier the rate of supervisory charges was only 05 paise per quintal per day and, therefore, enhancement by the State Government from five paise to rupees 5.00 per quintal per day is excessive. It has been put forth that as far as the supervision is concerned not a single penny is spent by the State Government for security of the sal seed and therefore, the question of spending of money by the State Government does not arise.

The further case of the petitioner is that the agreements in question were valid only upto 31-10-2000 and as per the terms and conditions of the agreements the petitioner company was supposed to lift the Sal seed after the payment is made within a period of 72 hours and in case the Sal seed was lifted after 72 hours, supervision charges at the rate of rupees 5.00 per quintal per day was liable to be paid. The sal seed was to be lifted from more than 1000 points situated in jungle and it is not the case that the sal seed was to be lifted from a particular godown collected by the Federation. The petitioner company lifted the Sal seed from remote areas and also paid entire cost of Sal seeds with the penal interest as per the terms and conditions of the agreements. Regarding payment of supervisory charges, an undertaking was obtained from the petitioner company in which it was agreed that the petitioner company would be paying supervisory charges as per final decision taken by the State Government. The petitioner company lifted the entire sal seed before 31.10.2000. However, it kept on representing to the State Government against the arbitrary increase in the rate of supervisory charges. Consequently, a High Power Intra-departmental Committee was constituted by the State Government to look into the matter and the Committee through its Secretary requested vide letter dated 2-8-2000 to the State Government to take a decision in the matter immediately pointing out difficulties faced by the petitioner company. Similar request was also made by the Federation through which the Sal seed was sold to the petitioner. As nothing

was coming forward from the respondents the petitioner company once again requested the State Government to take an early decision. As the matter related to the waiver of supervisory charges the Federation submitted a precis to the Council of Ministers informing the difficulties faced by the petitioner and other Sal seed purchasers. The matter was eventually referred to the Council of Ministers and opinion of the Law Department as well as Finance Department was obtained and it was finally resolved by the State Government to levy only a sum of rupee 1.00/per metric ton per day as supervisory charges on the petitioner company.

According to the petitioner, when the matter stood thus the MP. State Reorganisation Act, 2000 (hereinafter referred to as the Act") came into force with effect from 1.11.2000 and the new State of Chhattisgarh was constituted consisting of sixteen districts. It is put forth that the petitioner company had lifted the portion of Sal seed from certain districts of Madhya Pradesh which now form a part of the State of Chhattisgarh. The State Government while reducing the amount from rupees 5.00 per quintal to rupee 1.00 per metric ton per day towards supervisory charges has also resolved that in respect of those districts which now form a part of State of Chhattisgarh the matter relating to imposition of supervisory charges should be referred to State of Chhattisgarh. The copy of the said order dated 3-1 -2001 has been brought on record as Annexure P-14.

It is urged in the petition that the contracts in question were executed between the petitioner and State of Madhya Pradesh and they were to expire on 31-10-2000 by which date the new State of Chhattisgarh had not taken birth. The areas forming the part of Chhattisgarh with effect from 1.11.2000 were areas of the State of Madhya Pradesh and the contracts were over a day before coming into existence of the State of Chhattisgarh and, therefore, by no stretch of imagination there was any relationship between the petitioner with the State of Chhattisgarh in respect of the contracts in question. It is further averred that the petitioner company was given assurance by the State of Madhya Pradesh in respect of waiver/reduction of supervisory charges and by virtue of this assurance, the agreements were executed by the petitioner company and the materials were lifted by it. The State of Chhattisgarh has no say in the matter as the contracts between the petitioner company and the State of M.P. had already come to an end on 31-10-2000. It is further put forth that the State-of Chhattisgarh has per se no jurisdiction under the Act and, therefore, the act of State of Madhya Pradesh as far as it has referred the matter to the State of Chhattisgarh on the subject in question is absolutely arbitrary, illegal and totally unconscionable. It is set forth that it is the State of Madhya Pradesh alone which is jurisdictionally competent to decide about the matter and not the State of Chhattisgarh. With these averments reliefs have been sought for as have been indicated hereinabove.

A return has been filed on behalf of the respondents 1 and 2 contending, inter alia, that the petitioner purchased Sal seed by participating in the tender process

conducted by the respondent No. 3. The petitioner's tender for 10 sal seed units were accepted in the tenders dated 22-3-2000 (including two units transferred from other purchaser) and five units were accepted in the tender opened on 20th April, 2000. The petitioner after entering into agreements for purchase of sal seed for 15 units for the period ending on 31-10-2000 commenced procurement of Sal seed for the 15 units. It has been put forth that as there was a bumper crop and collection of sal seed in the said sal seed season and it was difficult on the part of the petitioner to lift the sal seed within the time stipulated in the agreements and, therefore, he filed representation before the competent authority in the month of July i.e. on 17-7-2000. The matter was taken up by the Inter-Departmental Committee on 1-8-2000. The said committee decided to refer the matter to the Cabinet for the appropriate decision. In the mean time the petitioner was permitted to lift the sal seed on his submitting an undertaking that he would abide by the decision of the Government regarding additional amount due as per the agreements. In the meantime the State of Chhattisgarh came into existence and out of 15 sal seed units, 14 fell within the area of State of Chhattisgarh and only one, namely, unit No. 5 North Shahdol, remained in the State of Madhya Pradesh. The representation and the issue as raised by the petitioner came up for decision and the Cabinet on 22-12-2000 decided that as far as the unit which fell within the State of M.P. is concerned the supervision charges were to be reduced from rupees five per quintal per day to rupee one per ton per day and as far as remaining 14 units which fell within the area of State of Chhattisgarh the Government of Chhattisgarh was only to take the decision thereon. The decision taken was communicated to the Secretary Forest Department of Chhattisgarh State as or Annexure R-1 dated 19-01-2001. It is further put forth that after bifurcation of the State of M.P. it is only the State of Chhattisgarh which is competent to decide the issue and take a decision in respect of the areas that have been included in its territory and the State of Madhya Pradesh has no authority to take any decision in respect of rights and liabilities which have accrued within the newly formed State from the appointed date. A reference has been made to the Sections 50 and 85 of the Act. It has also been put forth that the State of Madhya Pradesh had never given any assurance to the petitioner that it will reduce the supervisory charges. Various other averments have been made that the decision taken by the State of Madhya Pradesh is neither arbitrary nor illegal but in consonance with the provisions of the Act. It is also pleaded that all the activities and obligations required by the agreements could not be completed within the time stipulated in the agreements and hence, the liabilities under the agreements would logically extend beyond the prescribed period and accordingly the State of Madhya Pradesh by order dated 3-1-2001 (deaf) with the same as per law.

A return has been filed by the respondent No. 3 adopting the return of the respondents 1 and 2.

A return has been filed by the respondent No. 4 while reiterating the stand of the State of Madhya Pradesh, it has been further stated that decision taken by the

State of Madhya Pradesh is justified in view of the provision of the Act in question. It has also been stated in the return that a writ petition forming the subject matter of M.P. No. 194/2001 has been filed in public interest before the High Court of Chhattisgarh in connection with decision to reduce the penal charges and is pending adjudication, by the State of Chhattisgarh.

A rejoinder affidavit has been filed by the petitioner highlighting that the respondent No. 3 is a State owned Apex Cooperative body and had been registered under the provisions of the M.P. Cooperative Societies Act, 1960 long before the coming into force of the M.P. Reorganisation Act, 2000 and entire management of the various activities of the respondent No. 3 is used to be looked after by the officers of the Forest Department of the erstwhile State of Madhya Pradesh and even after bifurcation of the State the respondent No. 3 is continuing to function as the Apex Cooperative agency. It is further put forth that the territorial jurisdiction of respondent No. 3 extends even to the areas now comprised within the State of Chhattisgarh in view of the express provisions contained in Section 61 of the Act. It has also been put forth that till the date of filing of the writ petition neither agreement had been entered into between the respondent No. 1 and the State of Chhattisgarh nor any direction has been issued by the Central Government with regard to the respondent No. 3 in terms of Section 61 of the Act. It is the case of the petitioner that during the year 2000 - 2001, the former unbifurcated State of Madhya Pradesh had in exercise of its powers u/s 4 of the Madhya Pradesh Vanopaj (Vyapar Viniyaman) Adhiniyam, 1969 [hereinafter referred to as the Adhiniyam] had appointed the respondent No. 3 as the agent for the collection, sale and disposal of the entire quantity of sal seeds collected and produced in different forest units located in different districts comprised in the territorial limits of the unbifurcated State of Madhya Pradesh. It has been further put forth that in the Adhiniyam there is definition of "agent" and "Sal seed collection period" and in view of that there remains no trace of doubt that the agreement executed by the petitioner company were valid upto 31.10.2000. A copy of one such sample agreement has been brought on record as Annexure P-15. It has also been put forth that the standard printed format of the purchase agreement was one sided and an adhesive document containing all erroneous, illegal and arbitrary terms and conditions. The petitioner company was left with no other choice but to sign the agreement as it was at the receiving. However, it had subsequently protested against the exorbitant rates of supervisory charges and submitted various representations to the State of M.P. from time to time and the State Government had assured the petitioner company to reduce the same at. It has also been put forth that the respondent No. 3 is still continuing to be an agent of the State of Madhya Pradesh in respect of species of various produces which were produced in the unbifurcated State upto 31.10.2000 in the forest areas and which have remained unsold till date. It has been further put forth that the respondent No. 3 is still functioning under the direct control and supervision of the State of Madhya Pradesh in relation to sal seeds and other forest produces and hence, it is unfair on the part of the State of

M.P. to refer the matter to the State of Chhattisgarh in respect of the areas which are now forming the part of Chhattisgarh. It has been set forth that the respondent 1 to 3 have failed to appreciate that all the 15 identical contracts were entered into between the petitioner and respondent No. 3 as the agent on behalf of the State of M.P. prior to the appointed date and, therefore, the State of Madhya Pradesh is competent to take the decision in regard to clauses 4.2 and 4.3 as they were identical in all the agreements executed by the petitioner company. It has been further stated that the penal clause has been included by the State of Government of Madhya Pradesh and it is the State of Madhya Pradesh which has rightly reduced the rate and therefore, the State of M.P. has jurisdiction to deal with the agreements executed by the company and there is no cogent reason for referring the matter to the State of Chhattisgarh. Reference has been made to certain decisions of this Court where order of exemption was passed by this Court taking note of certain fact situation. It has also been put forth that imposition of supervisory charges does not exist in the State of Bihar and Orissa though there is production of Sal seed. Various other facts have also been stated which need not be narrated here as they are not relevant for deciding the issue in question.

An application in reply to the rejoinder affidavit filed by the petitioner has been filed by the respondent No. 1. In the said application it has been pleaded that the agreements which have been entered into in pursuance of the tender notice published for sale of sal seed have been done on behalf of the Governor of the State of M.P. and in this regard all General Managers of Minor Forest Produce (Trading and Development) Federation who are also territorial conservator of forest working in the Forest Department in the State of M.P. and the Managing Director of the M.P. State Minor Forest Produce Trading and Development Cooperative Federation who is also Chief Conservator of Forests have been empowered under article 299(1) of the Constitution of India to enter into agreements on behalf of the Governor. The said notification has been brought on record as Annexure R-2. It has also been highlighted that after the bifurcation of the State the right to recover dues of areas falling within the newly created State of Chhattisgarh have been transferred to the corresponding body formed in the State of Chhattisgarh. This is in accordance with the provisions of the Section 61 of the Act and M.P. Societies Punargathan and Nirman Adhiniyam, 2000. The approved reorganisation scheme and relevant portion of distribution of assets and liabilities have been brought on record as Annexure R-3.

An application for intervention has been filed by the intervener Alakh Ram Netam pleading, inter alia, that he is the General Secretary of Chhattisgarh Aadivasi Vikas Parishad and has preferred a writ petition No. 194/2001 before the High Court of Chhattisgarh at Bilaspur seeking a writ of mandamus commanding the State of Chhattisgarh for realisation of supervisory and penalty charges from the petitioner in terms of clause 4.2.3 of the agreements entered into between the State Government and the petitioner for the purpose of supply of sal seed, a forest produce. It has been pleaded in the said application that the amount due

to be recovered from the petitioner as per the Government Policy and provisions of the Panchayat Upbandh Adhiniyam, 1996 sal seed of Chhattisgarh region belong to the Tribal population and they have the first right over the sal seed. It has also been put forth that the State of Madhya Pradesh has rightly referred the matter to the Chhattisgarh to take a decision for imposition of penalty and supervision charges and there is no error in such order. A reference has been made to the order dated 16-3-2001 passed in W.P. No. 194/2001 directing the State of Chhattisgarh to take a decision with reference to the matter in question. The order passed by the High Court of Chhattisgarh has been brought on record as Annexure-A-1. The State of Chhattisgarh has already taken a decision on 9-4-2001 imposing supervision rate at 5/- per quintal with interest accrued thereon in terms of the provisions of clause 4.2.3 of the agreements for the sal seed. It has been put forth that the said action has been assailed in writ petition No. 818/ 2001. The Division Bench of Chhattisgarh High Court has passed an order on 1-8-2001 granting partial stay of recovery of demanded amount.

I have heard Mr. Dushyant Dave, and Mr. Rajendra Tiwari, learned senior counsel alongwith Mr. Vijay Hansaria and Mr. Satish Sharma for the petitioner and Mr. R.S. Jha, learned counsel for the respondents Nos. 1 to 4.1 have also heard Mr. S.L. Saxena, learned senior counsel alongwith Mr. Rohit Arya for the interveners. It is apposite to state here that no formal order was passed allowing the application for intervention but Mr. S.L. Saxena was heard for the interveners.

The submission of Mr. Dushyant Dave can be compartmentalised as under:

(a) Under the Adhiniyam the Government of Madhya Pradesh had appointed the respondent No. 3 as an agent u/s 4 of the said Adhiniyam, and if the said provision is read conjointly with rule 3 of the M.P. Upaj (Vyapar Viniyam) Niyam, 1969 (hereinafter referred to as Rules) the agreement between the State of Madhya Pradesh and the respondent No. 3 could only be in Form B appended to the said Rules which clearly stipulates that the Agreement has to be executed between the Governor of Madhya Pradesh acting through the competent authorities or the agent. The learned senior counsel has referred to section 5, 11 and 12 of the Act. He has also referred to M.P. Van Upaj Ke Kararo Ka Punrikshan Adhiniyam wherein an amendment was inserted in 1996 abolishing the existing contracts and validity of this amendment has been upheld by the Division Bench of this Court. Subsequently, the State Government cancelled the existing contracts between the State and some of the private parties. As a result of this the State Government has appointed and authorised the respondent No. 3 to act as an agent and the said respondent, in turn, adopted the procedure of sale of sal seeds through tender process. The learned senior counsel has also submitted that the agreements have been entered between the respondent No. 3 and the successful bidders and, therefore, by no stretch of imagination it can be said that the contract in question, having been executed between the respondent No. 3 and petitioner would be treated as contracts executed by the State of Madhya Pradesh much less in the manner as required by Article 299 of the Constitution.

Developing the aforesaid submission it has been contended by him that as the contracts in question are not executed under Article 299 of the Constitution of India the concept of Section 50 of the Act is not attracted and the stand of the both the states founded upon that section has to collapse like a pack of cards. It is the submission of Mr. Dave that the statutory contract must be expressed to have been made by the Governor of the State as required by article 299 of the Constitution of India. The learned senior counsel has placed reliance on the decisions rendered in the cases of *The State of Bihar Vs. Karam Chand Thapar and Brothers Ltd.*, , *Seth Bikhraj Jaipuria Vs. Union of India (UOI)*, and *Jetha Bai and Sons, Jew Town, Cochin and Others Vs. Sunderdas Rathenai and Others*,

(b) Section 37 of the Act occurs in Part VI of the Act and deals with apportionment of the assets and liabilities but there is substantial difference between Section 37 and Section 50. It is urged by him that the contracts in question have been entered into by the respondent No. 3, a statutory body, on its own account and for its own purposes and they have been entered in terms of section 12 of Adhiniyam which provides for disposal of the specified for set produce and, therefore, the contracts in question can be regarded as contract entered into in pursuance of Article 299 of the Constitution. Pyramiding the same learned senior counsel has submitted that the claim of the respondent No. 3, if any would not amount to assets or liabilities of the State of Madhya Pradesh before the appointed date as a statutory body is different from the Government of Madhya Pradesh although it is a State for limited purpose under Article 12 of the Constitution and, therefore, Section 50 of the Act would not apply to the contract entered into by the Federation. It is also put forth by him that the State of M.P. had power u/s 12 of the Adhiniyam to direct manner of disposal of specified forest produce, and therefore, Section 50 of the Reoganistion Act, 2000 would not be applicable.

(c) The contracts in question had met their end on 31-10-2000 and nothing remains to be done in pursuance thereto. In view of this obtaining factual matrix it is the State of Madhya Pradesh alone which has the authority to decide anything arising out of contracts in question. In this regard he has commended me to the decision rendered in the cases of *State of Kerala Vs. Sami Iyer*, AIR 1966 SC 1415, *Sher Singh Vs. Financial Commissioner*, AIR 1987 SC 1307 and *Electricity Employment Union Vs. Union of India and Others*,

(d) Even assuming section 50 were to apply, neither clause (a) nor clause (b) of sub-section (1) of Section 50 of the Act can give jurisdiction to the State of Chhattisgarh to take any decision in respect of the contracts in question inasmuch as the ingredients provided therein are not satisfied. Learned senior counsel has submitted that assuming clause (b) is applied then the purpose being not exclusive, the State of Madhya Pradesh alone can have jurisdiction. It is also canvassed by him that the exclusive purposes could only be said to be supervision charges which may have been incurred by erstwhile State of Madhya Pradesh and it will have exclusive jurisdiction to deal with the matter.

(e) Section 50 creates a deeming fiction in relation to contracts made by the erstwhile State so as to divide the assets and liabilities between the successor States, namely, Madhya Pradesh State of Chhattisgarh. The learned counsel canvassed that while interpreting a provision creating a legal fiction, the Court is to ascertain for what purposes the fiction is created and after ascertaining the said facts and consequences which are incidental corollaries, it should give effect to the said fiction. The learned counsel has also submitted that while so construing the fiction is not to be extended beyond the purpose for which it was created nor beyond the language of the Section by which it is created. In this regard he has placed reliance on the decisions rendered in the cases of Commissioner of Income Tax, Delhi Vs. S. Teja Singh, , The Bengal Immunity Company Limited Vs. The State of Bihar and Others, , Commissioner of Income Tax, Bombay City II Vs. Shakuntala and two Ors. etc., and Mancheri P. Ahmed V. Kuthiravattam Estate Receiver, AIR 1997 SC 208. Developing the submission it is contended by him that the interpretation given by the State of Madhya Pradesh to Section 50 of the Act is totally unwarranted as a legal fiction created u/s 50 is not dependent on the subject matters of contract but on the purpose of the contract and if the stand of both the States is accepted it would amount to extending the legal fiction which is not permissible in law. To substantiate his submission he has referred to sub-section (1) of Section 41 and section 38 to draw the distinction. The learned counsel has canvassed that under the Act there are two categories of liabilities one which falls within the ambit of section 37, 38 and 41 and other u/s 50 and, therefore, they have to be construed by different parameters.

(f) Under the terms of the clause 4.2.3 read with 4.2.1 supervision charges are required to be levied and collected if incurred by the State on account of classification, bagging, transport and godown charges when the purchasers fails to lift the sal seeds even after expiry of the period. Thus, submission of the learned senior counsel is that supervisory charges are neither towards price of sal seeds nor amount to tax or fee and they can only be recovered if incurred. It is his further proponent that as the State of Chhattisgarh had neither incurred the charges the element of quid pro quo is absent and even if Section 50 applies, on the ground of propriety it is the State of Madhya Pradesh which has to take a decision in respect of all fifteen contracts and not to leave it to the State of Chhattisgarh to take a decision.

Mr. R.S. Jha, Learned counsel for respondents Nos. 1 to 4, resisting the aforesaid contentions of the learned counsel for the petitioner has urged :

(i) The contracts executed by the competent authority on behalf of the Federation are on the basis of the authorisation issued in his favour vide Annexure-R-2 and, therefore, the said contracts are contracts entered into under Article 299 of the Constitution.

(ii) The language employed u/s 37, 38 and 50 of the Act may be differently couched but in the case at hand Section 50 does apply in full force because of

the nature of things which are governed by the said provision.

(iii) After physical bifurcation of the territories by operation of law, it is the State of Chhattisgarh alone which has power to decide the consequences or fall out of the contracts and the decisions relied upon by the learned counsel for the petitioner are of no avail and distinguishable on facts.

(iv) The plea that the contracts are not exclusively relatable to the State of Chhattisgarh is unacceptable inasmuch as it was not a singular contract but 15 contracts covering different units and it is the territorial aspect that would govern the issue of jurisdiction and not the aspect of collection of supervisory charges.

(v) The question of extending the fiction does not arise in the case at hand as the purpose and purport as discernible from language employed u/s 50 is quite clear unequivocal and ambiguous.

(vi) The concept of propriety has no room in the present litigation as the entire controversy is related to arena and spectrum of jurisdiction.

To appreciate the rival submissions raised at the Bar it is essential to refer to certain provisions of the Adhiniyam. The said enactment was brought into existence for regulating in the public interest the trade of certain forest produce by creation of State monopoly in such trade. Section 4 of the said Adhiniyam deals with appointment of agents. Section 12 deals with disposal of specified forest produce. As said provision has been pressed into service by Mr. Dava, learned senior counsel, it is reproduced below :

12. Disposal of specified forest produce specified forest produce purchased by the State Government or by its officer or agent under this Act shall be sold or otherwise disposed of in such manner as the State Government may direct.

Learned senior counsel has also referred to Rule 3 (8) (i) of the Madhya Pradesh Van Upaj Other Than Timber (Vyapar Viniyaman) Niyam, 1969 (hereinafter referred to as the 1969 Rules"). It reads as under:

3 (8) (i) On appointment, as an agent, the person of Gram Panchayat, or Co-operative Society including Madhya Pradesh State Tribal co-operative Development Corporation, so appointed shall execute an agreement in Form B within fifteen days of the issue of the order of appointment, failing which the appointment shall be liable to be cancelled and on such cancellation :

(a) the advance security deposit shall be forfeited : and

(b) the agent shall be liable to pay the loss, if any, incurred by the State Government as a result of cancellation of the appointment. The loss will be a sum to be calculated as under:

A. Loss to Government.

B. The difference of the quantity of the specified forest produce notified for the unit and the total quantity which is collected and delivered.

R. Rate per unit of quantity at which Government sells specified forest produce minus all expenses per unit of quantity incurred by the Government till delivery of the specified forest produce to the., purchaser.

A-BxR i.e. the loss will be equal to an amount which results by the multiplication of the quantity which is collected and delivered short of the quantity notified for the unit and a figure which is the difference between the rate of sale per unit of quantity and all expenses per unit of quantity incurred by the Government till it is delivered to the purchaser.

C. The aforesaid loss shall be recoverable as arrears of land revenue.

It is put forth by Mr. Dave, learned senior counsel, that as per the said Rule an agreement in Form B has to be signed and the said Form stipulates that the agreement is to be executed between the Governor of Madhya Pradesh acting through the competent authority and the agent. Submission of learned counsel is that in view of the said provision the respondent No. 3 acts as an agent of the State Government but the agreements in question cannot be treated as agreements between the Governor of Madhya Pradesh with the petitioner much less in the manner as required by Article 299 of the Constitution. The learned senior counsel developing his argument submitted that an agreement under Article 299 of the Constitution must satisfy three conditions, namely, it should be shown to have been entered into by the Governor; (ii) it must be executed ; and (iii) the execution should be done by such persons and in such manner as the Governor may direct or authorise.

In this context, I may refer to the decision rendered in the case of Karam Chand Thapar (supra) wherein a Constitution Bench of the Apex Court was dealing with the requirements prescribed u/s 175(3) of the Government of India Act, 1935 which was the constitutional provision in force at the relevant date. After referring to Section 175(3) of the aforesaid Act their Lordships held asunder:

(2).... It must be expressed to be made by the Governor; it must be executed ; and the execution should be by such persons and in such manner as the Governor might direct or authorise ...

In the case of Bhikraj Jaipuria (supra) another Constitution Bench followed the decision of Karam Chand Thapar (supra) and came to hold that a contract between the Dominion of India and private individual if is not in the form as required u/s 175(3) of the Government of India Act, 1935, it cannot be enforced, and therefore, Dominion India cannot be sued by private individual for compensation of breach of contract. In this context, paragraphs 18 and 19 are worth reproducing :

18 It is clear that the Parliament intended in enacting the provision contained in s. 175 (3) that the State not be saddled with liability for unauthorised contracts and with that object provided that the contracts must show on their face that they are made on behalf of the State, i.e. by the Head of the State and executed

on his behalf and in the manner prescribed by the person authorised. The provision, it appears, is enacted in the public interest, and invests public servants with authority to bind the State by contractual obligations incurred for the purposes of the State.

It is in the interest of the public that the question whether a binding contract has been made between the State and a private individual should not be left open to dispute and litigation ; and that is why the legislature appears to have made a provision that the contract must be in writing and must on its face show that it is executed for and on behalf of the head of the State and in the manner prescribed. The whole aim and object of the legislature in conferring powers upon the head of the State would be defeated if in the case of a contract which is in form ambiguous, disputed are permitted to be raised whether the contract was intended to be made for and on behalf of the State or on behalf of the person making the contract. This consideration by itself would be sufficient to imply a prohibition against a contract being effectively made otherwise than in the manner prescribed. It is true that in some cases, hardship may result to a person not conversant with the law who enters into a contract in a form other than the one prescribed by law. It also happens that the Government contracts are sometimes made in disregard of the forms prescribed; but that would not in our judgment be a ground for holding that departure from a provision which is mandatory and at the same time salutary may be permitted.

In the case of *Om Prakash Baldeo* (supra) the Court was dealing with the fact situation where the Executive Engineer had signed the contract but nowhere in the contract it was offered and accepted or expressed to be made in the name of Governor. In that backdrop their Lordships came to hold that provision of Article 299 (1) of the Constitution have not been enacted for the sake of mere form but they have been enacted for safeguarding the Government against unauthorised contracts. The said provisions were embodied in Section 175(3) of the Government of India Act and are engrafted under Article 299(1) of the Constitution on the ground of public policy and on the ground of protection of general public and the formalities as required by the said provision cannot be waived or dispensed with. The learned senior counsel for the petitioner has laid immense emphasis on the aspect that the agreements executed by the Federation cannot be regarded as agreement executed on behalf of the Government of Madhya Pradesh and hence, they would not come within the meaning of "contract" as enshrined u/s 50 of the Act.

Mr. R.S. Jha, learned counsel appearing for respondents Non. 1 to 4 has placed reliance on the fact that the Sal seeds are the specified forest produce and the State has absolute monopoly in the trade of sal seeds to the exclusion of all others. It is put forth by him that though Section 12 deals with the manner of disposal of the specified produce, the State Government without undertaking the said exercise and invoking provision as contained in the Act or the Rules, appointed the respondent No. 3, Federation, to trade on its behalf in specified

forest produce. The learned counsel has submitted that the appointment of Federation was assailed before this Court on the ground of creation of sub-monopoly but the said action of the State was upheld in the decision rendered in the case of Hari Om Vs. State of M.P. and Another, . The Division Bench held as under:

The Sahakari Sangh is nothing but an instrumentality of the State. It can be said to be another of its agency through which the State acts. Its Chairman is the Minister of Forest and its Directors are forest officers. It is manned by Government officers. It is financed by public finance corporations on a guarantee given by the State. The Sangh has to follow the policy laid down by the Government. The Sangh only gets 2% profit as its remuneration. The main benefit for working through the Sangh goes to the State exchequer and to growers and the labourers who get suitable price for their labour and produce. Thus by appointing the Sangh as its agent while retaining its control over it and restricting its remuneration to 2% of profit, the main benefit is to be derived by State and not by the Sangh. Hence, it is not illegal.

(Quoted from the placitum)

The learned counsel for the Federation has placed immense emphasis on Annexure-R-2 to highlight that the Governor has authorised the Managing Director of the respondent No. 3 at the District level and the Managing Director at the State level to execute the agreements on behalf of the State/Governor of the Madhya Pradesh under Article 299 of the Constitution. Annexure-R-2 is a circular dated 16.11.89 issued under Article 299(1) of the Constitution of India whereby the State of Madhya Pradesh has authorised the Managing Directors and certain other authorities to call for the tender and enter into agreements on behalf of the Governor of Madhya Pradesh and also in his name. Mr. Jha has commended me to the decision rendered in the case of Union of India (UOI) Vs. A.L. Rallia Ram, wherein in paragraph 11 it has been held as under: %

11. Section 175(3) does not in terms require that a formal document executed on behalf of the Dominion of India, and the other contracting party, alone is effective. In absence of any direction by the Governor-General u/s 175(3) of the Government of India Act prescribing the manner, valid contract may result from correspondence if the requisite conditions are fulfilled. The contracts for sale of "War disposal" goods were not directed by the Governor-General to be made by a formal document executed on behalf of the Governor-General as well as by the purchasing party. It is true that Section 175(3) uses the expression "executed" but that does not by itself contemplate execution of a formal contract by the contracting parties. A tender for purchase of goods in pursuance of an invitation issued by or on behalf of the Governor-General of India and acceptance in writing which is expressed to be made in the name of Governor-General and is executed on his behalf by a person authorised in that behalf would conform to the requirements of Section 175(3).

After so holding their Lordships discussed the fact situation and in paragraph 12 came to hold as under:

12.... The correspondence between the parties ultimately resulting in the acceptance note, in our judgment, amounts to a contract expressed to be made by the Government and therefore by the Governor-General, because it was the Governor-General who had invited the tender through the Director of Purchases, and it was the Governor-General who through the Chief Director of Purchases accepted the tender of the respondent subject to the conditions prescribed therein. The authority of the Chief Director of Purchases to contract for sale of "War disposal" goods and sign the contract is not denied. The Chief Director of Purchases has subscribed his signature in his official designation and he has not stated in the description that the contract was executed on behalf of the Governor-General, but on a fair reading of the contents of the letter, in the light of the obligations undertaken thereunder, it would be reasonable to hold that the contract was executed on behalf of the Governor-General. No rules made by the Governor-General, have been placed before the Court showing that in execution a contract for the sale of "War-disposal" goods, the officer authorised in that behalf must described himself as signing on behalf of the Governor-General of India.

In the case of Davecos Garments Factory and Another Vs. State of Rajasthan, a two Judge Bench of the Apex Court came to hold that in absence of words "on behalf of the Governor" appearing below the signature of Inspector-General who had been authorised by the Governor to enter into the contract cannot be held that the agreement did not fully comply with the requirement of Article 299(1) of the Constitution.

In the case of Beharilal and another Vs. Bhuri Devi (Smt.) and others, 1997 (2) SCC 279 in paragraph 7 their Lordships ruled thus :

7. Under these circumstances, the question arises : Whether the failure to execute the patta in conformity with Article 299(1) of the Constitution renders the grant thereof to the appellant void ? It is seen that when the Rules are made for grant of patta, the necessary implication is that the grant must, of necessity be, in conformity with Article 299(1) of the Constitution as modulated or modified, as per the Rules made by the Government. In view of the finding recorded earlier that admittedly Tehsildar and Chairman of the Committee was authorised to grant patta, the Tehsildar did grant patta and deliver possession in terms thereof after receipt of the consideration and the Tehsildar put the appellant in possession of the plots. Thereby, he became the absolute owner of the property. It is seen that in a quick succession after the cancellation of patta on 4-10-1956, Ram Gopal made two successive applications on 7-10-1956, on the same day the patta was granted to him and possession was delivered on 8-10-1956. But the same was, admittedly, stayed by the Collector in his proceedings on the even date. In D.G.F. Factory case, the Inspector General of Police, Rajasthan had executed an agreement on 22-3-1960 with the appellant

therein. The said agreement was not in conformity with Article 299(1) of the Constitution. The Inspector General had duly been authorised to execute the agreement on behalf of the State. But he did not express that he had executed it on behalf of the Governor but he signed in his capacity as Inspector General of Police, Rajasthan. On those facts, this Court had held that the Inspector General, having duly executed the contract, though it was not expressed to be on behalf of the Governor and though it was not in full compliance with the requirement of Article 299(12), It was in substance an agreement executed by the Rajpramukh. In *Union of India v. A.L. Rallia Ram* the tenders were accepted by the Chief Director of Purchases on behalf of the Government. The question arose whether it was in compliance with Section 175(3) of the Government of India Act, 1935 which is analogous to Article 299(1). He has signed in his official designation, though he did not state that he had executed it on behalf of the Governor General. The court read into it and found that in the light of the applications undertaken, it would be reasonable to hold that the contract was executed on behalf on the Governor General. Thus, it would be clear that when the Rules, duly approved by the Rajpramukh, authorised Mandi Committee represented by the Chairman and the Tehsildar to allot the plots of land to the traders and did, in fact, in accordance with that Rules allot the same after receipt of the consideration and subsequent thereto, the Tehsildar, having authorised to deliver possession and did, in fact, deliver the possession, the execution of the grant of the patta Was in conformity with the Rules and in substance on behalf of the Governor. Thus, the grant of the patta to the respondent was stillborn. Under these circumstances, the trial court as well as the learned single judge rightly held that the cancellation of patta of the appellant is bad in law and the grant of patta to the respondent was not valid.

The present factual matrix has to be tested on the anvil of aforesaid legal position. There is no scintilla of doubt that the Managing Director has been authorised to call for tender and enter into an agreement on behalf of the Governor of Madhya Pradesh. When such a document is in vogue the question of insisting upon an agreement in form B is inconsequential. A general authority having been conferred on the Managing Directors the agreement would be deemed to be executed by on behalf of the Governor. In fact, as has been noticed above, in some of the cases the Apex court has approved the same. Mr. Dushyant Dave, learned senior counsel for the petitioner, has emphatically propounded that as the agreement has not been executed indicating the name of the Governor it does not become an agreement under Article 299(1) of the Constitution of India, and thereby, is not an agreement executed by the State of Madhya Pradesh. The aforesaid submission, in my considered opinion, is sans substance in view of the language employed in Annexure-R-2 and the agreements being executed by the authorised authority who has been so authorised as per Annexure-R-2. Thus, repelling the submission of Mr. Dave I conclude and hold that the agreements in question have been executed by the State of Madhya Pradesh.

The next submission which requires consideration is whether Section 50 of the Act would come into play in the obtaining factual matrix. Mr. Dave, learned senior counsel has submitted that in view of Section 12 of the Adhiniyam, 1969, Section 50 of the Act cannot be attracted. In this context, I may refer to Section 50 of the Act which reads as under:

50. Contracts : (i) Where, before the appointed day, the existing State of Madhya Pradesh has made any contract in the exercise of its executive power for any purposes of the State, that contract shall be deemed to have been made in exercise of the executive power -

(a) if the purposes of the contract are, on and from the appointed day, exclusive purposes of either of the successor States of Madhya Pradesh and Chhattisgarh, then, of that State; or

(b) in any other case, of the State of Madhya Pradesh,

all rights and liabilities which have accrued, or may accrue under any such contract shall, to the extent to which they would have been rights or liabilities of the existing State of Madhya Pradesh, be rights or liabilities of the State of Chhattisgarh or the State of Madhya Pradesh, as the case may be :

Provided that in any such case as is referred to in clause (b), the initial allocation of rights and liabilities made by this sub-section shall be subject to such financial adjustment as may be agreed upon between the successor States of Madhya Pradesh and Chhattisgarh or in default of such agreement, as the Central Government may, by order, direct.

(2) For the purposes of this section, there shall be deemed to be included in the liabilities which have accrued or may accrue under any contract -

(a) any liability to satisfy an order or award made by any court or other tribunal in proceedings relating to the contract; and

(b) any liability in respect of expenses incurred in or in connection with any such proceedings.

(3) This section shall have effect subject to the other provisions of this Part relating to the apportionment of liabilities in respect of loans, guarantees and other financial obligations; and bank balances and securities shall, notwithstanding that they partake of the nature of contractual rights, be dealt with under those provisions.

The submission of Mr. Dave is that the contracts in question were not executed by the State of Madhya Pradesh in exercise of its executive power for any purposes of the State. It is put forth by him that the contracts were not made by the State of Madhya Pradesh, much less in exercise of its executive power. The learned counsel has canvassed that all the contracts were executed by respondent No. 3, a statutory body, on its own account and for its own purposes and hence, the contracts cannot be regarded to be covered under the concept of

Section 50 of the Act. The learned senior counsel has contended that the aforesaid provision occurs in Part VI of the Act which deals with apportionment of assets and liabilities, and hence the assets and liabilities of a statutory body cannot be treated as the assets and liabilities of the State. Mr. Jha, Learned counsel, on the contrary, has highlighted that the aforesaid provision creates a deeming fiction and as the agreements in question have been executed by the competent authority of the Federation who had been authorised by the State, should be deemed to be the contract made by the State of Madhya Pradesh in exercise of its executive power. I have already held that the contracts in question do meet the requirements of Article 299 of the Constitution and, therefore, it would be covered by the term "contract" as used u/s 50 of the Act. In view of my foregoing conclusion I am of the considered opinion that the contracts in question were made by the State of M.P. in exercise of executive powers for the purposes of the State and it cannot be said that they were made by the statutory body and had nothing to do with the State of Madhya Pradesh. Thus, I conclude and hold that the contracts being executed by the State of Madhya Pradesh would be governed by Section 50 of the Act.

It is next submitted by Mr. Dave, learned senior counsel, that the contracts were not executed for exclusive purposes of any State and hence, clause (b) of the aforesaid provision would be applicable and the State of Madhya Pradesh alone would have the jurisdiction. In this regard, Mr. Jha, learned counsel for the respondents Nos. 1 to 4 has contended that the petitioner had entered into 15 separate agreements/contracts for purchase of sal seeds for 15 separated units and had executed 15 separate agreements. It is his further submission that contract in respect of each and every unit was a separate individual contract. Keeping the aforesaid rival submissions in view it is noticeable that subsequent to Reorganisation of the State of Madhya Pradesh and the territorial division between the two successor States as and from the appointed date i.e. 31.10.2000 the areas as enumerated in section 3 of the Act become areas of the State of Chhattisgarh and the remaining areas remained as a part of the State of Madhya Pradesh. It is not disputed at the Bar that out of 15 agreements entered into by the petitioner only one contract relates to Unit No. 5 North Shahdol which remained in the State of Madhya Pradesh whereas all other agreements relating to rest of 14 Units fell within the Stats of Chhattisgarh as and from the appointed date and hence, they would become the agreements to have been exclusively entered into for the purposes of that State and the State of Madhya Pradesh would be denuded of power to do anything with the said agreements. Keeping in view the scheme of the Act and the importance of the division of territory and the situation of the units it cannot be said that even if clause (b) of Section 50 (1) of the Act applies then also the State of Madhya Pradesh alone would have jurisdiction. In this context another fact of argument as put forth by Mr. Dave is that dispute relates to the recovery of supervision charges. These charges by virtue of clause (f) of clause 4.2.3, read with clause 4.2.1 and sub clauses (c) and (d) of clause 4.2.3 of the contract can only be actual expenses incurred for

completed work of classification, bagging, transportation and godowning of sal seeds prior to their delivery to the purchaser. Learned counsel has also referred to the tender notice which required charges to be made on actual basis. Relying on the said clauses he has canvassed that as the controversy relates to the supervision charges which might have been incurred by the erstwhile State of Madhya Pradesh, the said State has the exclusive jurisdiction to decide the lis in question. In this context, Mr. Jha has urged that 14 Units for which agreements/contracts had been entered into by the petitioner on and from the appointed date became a part of the State of Chhattisgarh and the Sal trees and Sal seeds which were collected from these units have fallen into the share of State of Chhattisgarh and, therefore, the collection charges and bounds from the profits would go to the persons residing in the said area of State of Chhattisgarh, and therefore, the contract would be deemed to be executed by the State of Chhattisgarh as per the deeming provision contained in Section 50 (1) of the Act.

That apart, it has been canvassed by Mr. Jha that the levy of supervision charges is an integral part of the agreement entered into by the petitioner of each unit. The quantum of supervision charges has to be determined contract wise and unit wise. The right or liability which may accrue in respect of the contracts pertaining to 14 units has to be borne by the State of Chhattisgarh to the total exclusion of State of Madhya Pradesh and, therefore, the State of Madhya Pradesh has no jurisdiction to decide the matter relating to supervision charges in respect of other 14 contract. As has been stated earlier learned senior counsel for the petitioner has proposed that the supervision charges had been incurred by the State of Madhya Pradesh and hence, it has the jurisdiction to exonerate the same. The aforesaid submission appears to be attractive on a first flush but it melts into insignificance on a deeper probe. The State of Madhya Pradesh, after division of the territory, cannot be said to have entered into the contracts in question with the petitioner. The assets and liabilities flowing from the contracts have to be determined by the State of Chhattisgarh. As the State of Madhya Pradesh is exonerated from the liability if any, pertaining to the said contracts, the assets accrued by the stipulation of the contract, the State of Madhya Pradesh cannot meddle with the same usurping its power/authority. The argument that the State of Madhya Pradesh had incurred the supervision charges will not be governing factor to confer jurisdiction on the State of Madhya Pradesh after the appointed date. Any decision that would affect the rights and liabilities already accrued or which may accrue in respect of rest of the 14 agreements has to be taken by the State of Chhattisgarh.

The next plank of argument of Mr. Dave is that section 50 of the Act is not applicable inasmuch as the contracts in question had already been executed before the appointed date and hence, the State of Madhya Pradesh has the jurisdiction to decide the controversy in question. The senior counsel has submitted that as nothing remains to be done in pursuance of the agreement in question the power remains vested with the State of Madhya Pradesh to take any action under any of the clauses of the agreement or to exonerate the petitioner

from any the liabilities under the contracts and, therefore, the State of Madhya Pradesh has grossly erred in law by transferring the responsibilities to the State of Chhattisgarh. The learned counsel has drawn sustenance from the decisions rendered in the case of N. Sami Iyer (supra), Sher Singh (supra) and Electricity Employment Union (supra).

In the case of N. Sami Iyer (supra) the Apex Court was dealing with the case of an assessee, a dealer in tobacco, who had objected to the assessment on the ground that the goods were the subject-matter of purchase which had been assessed at the point of purchase in the hands of assessee. The demand related to the year 1957-58. In that case the assessee was residing in Malabar. In that area, Madras General Sales Tax Act was applicable. It was contended by the assessee that the Tobacco was taxable at the purchase point under the Madras General Sales Tax Act and the turnover which had suffered taxation at that point was under the Madras General Sales Tax Act. The Travancore-Cochin General Sales Tax (Amendment) Act, 1957 came into force in October, 1957 and it extended to whole of State of Kerala including the Malabar district. Under the aforesaid Act and the notification issued thereunder the taxable point in respect of tobacco was the point of first purchase under the Madras Act become the taxable point at the first sale in the State of Kerala. The Supreme Court had accepted the contention that the turnover in respect of which the tax had been paid at the purchases point was not liable to tax. The Apex Court considering the two fold submissions of learned Advocate General for the State of Kerala came to hold in paragraphs 9 and 10 as under:

(9) The learned Advocate-General, who appeared on behalf of the appellant, has raised two points before us: first, that in this case there was no right, much less a vested right, not to be taxed except under the Madras General Sales Tax Act; the rights if at all was to take advantage of the provisions of the repealed Act, namely, the proviso to S. 3 (5) of the Madras Act. Secondly, he says that even if there was such a right, Act 12 of 1957 manifests a contrary and different intention within the meaning of S. 4 (c) of the General Clauses Act, 1125, and the disputed turnover is liable to taxation under Act 12 of 1957. We may mention that S. 4(c) of the General Clauses Act, 1125, corresponds to S. 6(c) of the Indian General Clauses Act. It appears to us that by virtue of S.4 (c) the dealer continued to be liable to taxation under the Madras General Sales Tax Act in respect of the disputed turnover at the purchase point. For example, if for some reason he had not been assessed before Act 12 of 1957 came into force, he would have been assessed under the Madras Act at the purchase point because a liability within the meaning of S. 4 (c) would have been incurred by him. To this liability would be attached a right; the right being that he would be liable to be taxed in respect of any sale of goods which had been the subject-matter of a purchase and taxation under the Madras Act. In other words, he was liable to be assessed under the Madras Act in respect of the purchase of goods but he had also a right not to be taxed again in respect of any sale of the same goods effected by him. Therefore, we repel the first argument of the learned Advocate-

General.

(10) The next question that arises is whether Act 12 of 1957 manifests a different intention. As observed by this Court in *State of Punjab Vs. Mohar Singh*, "when the repeal is followed by fresh legislation on the same subject we would undoubtedly have to look to the provisions of the new Act, but only for the purpose of determining whether they indicate a different intention. The line of enquiry would be not whether the new Act expressly keeps alive old rights and liabilities but whether it manifests an intention to destroy them". We cannot discern any intention in Act 12 of 1957 to destroy the rights and liabilities acquired or incurred under the Madras General Sales Tax Act. The second schedule reproduced above shows that the intention was to preserve old rights such as registration and licences issued under the old Act. In our opinion, if the Legislature had the intention to override the right attached to the liability under S.(5) of the Madras General Sales Tax Act, it would have used more clear and precise words.

On a perusal of the ratio of the aforesaid decision, in my considered opinion, the same does not render any assistance to the petitioner. The factual matrix in that case was quite different, and their Lordships of the Supreme Court were dealing with the liability under the Act which was attached to the right. That apart, their Lordships came to hold that the Act 12 of 1957 did not destroy the rights and liabilities acquired or incurred under the Madras General Sales Tax Act, in absence of use of very clear and precise words. In the case at hand, the factual matrix depicts a different picture altogether. Here there is no question of any consideration of any repealed statute or liabilities or assets incurred thereunder. It is a question of division of assets and liabilities under the Act and it is with regard to the factum of territorial Jurisdiction.

In the case *Sher Singh* (supra) a judgment of full Bench of Haryana High Court was assailed before the Apex Court. The question referred to full Bench was as under:

Whether after the re-organisation of the State of Punjab the land owners owing land in both the States of Punjab and Haryana can claim to retain the permissible area in each State separately after 1st November, 1966. If so, whether an order declaring the area to be surplus passed prior to the date above-said, but which order has not been implemented and the surplus land so declared has not in fact been utilised would continue to have effect after said date ?

The Full Bench held that the order declaring the area to be surplus passed before 1st November, 1966 would continue to have effect after that date even if that order had not been implemented and the persons in the newly created State not, in law, entitled for a separate allotment under the Act. It is noteworthy to State here that the full Bench was dealing with the Punjab Re-organisation Act, 1966 whereby the Punjab was divided under the said Act to the present State of Punjab, State of Haryana, Union Territory of Chandigarh and Union Territory of

Himachal Pradesh. The Apex court considering the provisions of statute affirming the opinion expressed by the Full Bench in paragraph 11 held as under:

11. A combined reading of these two clauses makes it clear that any order made or anything done or any liability incurred or a right accrued before the 1st November, 1966 would not be affected by the coming into force of the order. These two clauses show unambiguously that the respective State Governments would be entitled to give effect to orders passed before 1st November, 1966, declaring the surplus area by utilising them for the re-settlement of the tenants, despite the re-organisation of the State of Punjab. The orders passed will be respected by both the States. The fact that the land belonging to a particular owner, under fortuitous circumstances, fall in the two newly formed States, will not in any way affect the operation of the orders which had become final prior to 1st November, 1966. To accept the appellant's contention would create anomalies. Persons against whom proceedings under the Act were taken and became final prior to 1st November, 1966, would be entitled to claim lands in both the States while those petitions are pending on the date the States Reorganisation Act came into force would be in a disadvantageous position. This is not the object of the Act. Nor the scheme behind it. The States re-organisation was a historical accident. The land owners cannot take advantage of this accident to the detriment of ejected tenants or tenants in need of re-settlement. For the above reasons, we hold that the High Court was justified in answering the question referred to it against the appellant.

In the case of Electricity Employment Union (supra) their Lordships were again dealing with the provision of Punjab Reorganisation Act, 1966. In the said case, as the facts exposit, the Punjab State Electricity Board continued to function in the area in which it was functioning before the organisation of State of Punjab. Subsequently, a new State Electricity Board was constituted by the successor State of Punjab and the members of the appellant-Union and other appellants were the employees of the erstwhile Board. The claim put forth by the Union was that on the date the successor State of Punjab was formed they were working within the geographical limits of the Union Territory of Chandigarh and their services were deemed to have been allotted to the said Union Territory by operation of the provisions of the Act. The Apex Court took note of the fact that there was no separate Board under the Electricity Supply Act, 1948. Their Lordships considered the provisions of the Act dealing with the appointment of assets and liabilities of the erstwhile State of Punjab. Section 67 of the Act deals with provisions as to certain corporations and Section 82 deals with the provisions relating to other services. After referring to various provisions the Apex Court approved the decision rendered in the case of Mohd. Yakub Vs. Union of India, AIR 1971 Del 45 wherein the Full Bench of the Delhi High Court speaking through the Chief Justice Khanna (as his Lordship then was) held as under:

Keeping the above connotation of the word "liability" in view, we have no doubt

in our mind that the employment of the employees of the Electricity Board did constitute the liability of the Electricity Board. The services of the employees of the Electricity Board like Respondents 4 to 6 having not been terminated by the Board they had a right to be retained in the employment of the Board and this fact created a corresponding liability of the Board to keep them in employment. This liability, in terms of sub-section (3) to Section 67 of the Punjab Reorganisation Act, had to be apportioned between the successor States as has been done in the present case.

The aforesaid view of the full Bench was given the stamp of approval by the Apex Court. Eventually, the Apex Court taking note of the submission of the learned counsel for the appellants held in paragraphs 25 and 26 as under:

25. According to Mr. Rao, learned Senior Counsel, in view of Section 83 of the Act the appellants were deemed to have been absorbed under the administration of the Union Territory of Chandigarh as they were working within the geographical area of the said Union Territory on the date of reorganisation of the erstwhile State of Punjab. This section provides that every person who immediately before the appointed day was holding or discharging duties of any post or office in connection with the affairs of the erstwhile State of Punjab in any area which on the appointed day became the area of any successor State, would continue to hold the same post or office in the successor State would be deemed to have been duly appointed to the post or office. The object of this section was to allow the holder of any post or office in the erstwhile State of Punjab to continue to discharge the function of the said post or office on the date of successor States were formed, otherwise for every such post or office it would have been necessary for the successor States to pass orders reappointing the holder of the post or office to continue to discharge his function.

Keeping in view the purpose for which Section 83 was enacted, we hold that members of the erstwhile Punjab Electricity Board could not claim deemed absorption under this section merely because on the date the successor States were formed, they were working within the geographical limits of the Union Territory of Chandigarh.

I have referred to the aforesaid decisions in extenso because Mr. Dave, learned senior counsel for the petitioner, has drawn immense inspiration from the aforesaid two decisions. As far as case of Sher Singh (*supra*) is concerned the same is distinguishable inasmuch as a decision in question had already taken before the appointed date and, therefore, the question of anything to be reopened did not arise. In the case at hand, the decision was not taken by the State of Madhya Pradesh before the appointed date i.e. 1.11.2000 but was, in fact, taken on 3.1.2001. Hence, I am of the considered opinion, the said decision does not render any assistance to the learned counsel for the petitioner.

In the case of Electricity Employment Union (*supra*) the factual scenario is totally different as that related to bifurcation of services from the appointed date. Union

Territory of Chandigarh did not constitute a separate Board under the Electricity Supply Act, 1948 and the function of the Board were continued to be carried out by the Department of Administration. Their lordships took note of Section 67 of the Punjab Reorganisation Act, 1966 which deals with provisions as to certain corporations and approved the ratio laid down in the case of Mohd. Yakub (*supra*) and expressed the view as has been quoted above. The decision of the Supreme Court deals with a different arena altogether and cannot be made applicable to the obtaining factual matrix.

The learned senior counsel for the petitioner has contended that the contracts were executed before 31.10.2000, and therefore, nothing remains to be done after that date and the State of Chhattisgarh came into existence with effect from 1.11.2001. The learned senior counsel has made distinction between the executed and executory contracts. On a fair reading of Section 50 the difference between the two concepts is not applicable inasmuch as Section 50 has been couched in clear, unequivocal and unambiguous language. All rights and liabilities which have accrued or may accrue under such contracts shall to the extent to which they would have been the rights and liabilities of the existing State of Madhya Pradesh would become the rights and liabilities of the State of Chhattisgarh or State of Madhya Pradesh as the case may be. In the case at hand 14 contracts relate to those areas which have fallen into the share of State of Chhattisgarh and they have become a part and parcel of territory of Chhattisgarh. The work under the contract might have been completed before 31.10.2000 but the adjudication with regard to the controversy in question did survive after the said date and this adjudicatory process or decision making process did not remain with the State of Madhya Pradesh. I may hasten to add that the matter would have been different if the State of Madhya Pradesh had taken the decision before 31.10.2000 but it did take the decision much thereafter.

In view of my preceding analysis I am of the considered opinion that the proposition made by Mr. Dave that the State of Madhya Pradesh has jurisdiction to decide the dispute arising out of the contracts holds no water and I unhesitatingly hold so as the State of Madhya Pradesh had not taken any decision prior to the appointed date but took the decision at a later date.

The next limb of argument of Mr. Dave is that Section 50 of the Act creates a deeming fiction in relation to contracts made by the erstwhile State of Madhya Pradesh so as to divide them between the successor States, namely, Madhya Pradesh and Chhattisgarh. It is urged by him that it is the duty of the Court while interpreting a provision creating a legal fiction to ascertain for what purposes the fiction was created and after ascertaining the same the Court is to assume all those facts and consequences which are incidental or inevitable corollaries to give effect to the fiction. Learned counsel has further argued that the fiction is not to be extended beyond the purpose for which it was created. In this context, the learned counsel has referred to the decisions rendered in the case of Bengal Immunity Co. Ltd. (*supra*), S. Teja Singh (*supra*), Shakuntla (*supra*), Mancheri P.

Ahmed (supra). Relying on the ratio laid down in the said cases Mr. Dave has propounded that Section 50 is not dependent on the subject-matter of contracts but on the purposes of contract and if fiction is extended beyond permissible limit that would amount to re-writing the section itself. The learned counsel has made an effort to draw the distinction between Sections 38 and 41 of the Act on the one hand and Section 50 on the other.

To appreciate the said submission raised at the Bar it is apposite to reproduce Sections 37, 38 and 41 of the Act -

37. Application of Part -(1) The provisions of this Part shall apply in relation to the apportionment of the assets and liabilities of the State of Madhya Pradesh immediately before the appointed day.

(2) The successor State shall be entitled to receive benefits arising out of the decisions taken by the predecessor State and the successor States shall be liable to bear the financial liabilities arising out of the decision taken by the existing State of Madhya Pradesh.

(3) The apportionment of assets and liabilities would be subject to such financial adjustment as may be necessary to secure just, reasonable and equitable apportionment of the assets and liabilities amongst the successor States.

(4) Any dispute regarding the amount of financial assets and liabilities shall be settled through mutual agreement, failing which by order by the Central Government on the advice of the Controller and Auditor-General of India.

Lands and goods -(1) Subject to the other provisions of this Part, all land and all stores, articles and other goods belonging to the existing State of Madhya Pradesh shall -

(a) if within the transferred territory, pass to the State of Chhattisgarh; or

(b) in any other case, remain the property of the State of Madhya Pradesh:

Provided that any land, stores, articles or other goods may be distributed otherwise than in accordance with the situation of such land, stores, articles or goods by mutual agreement between the successor States, failing which the Central Government may, on the request of any of the Governments of the successor States and after consulting both the Governments of the successor States, issue directions for the just and equitable distribution of such land, stores, articles or goods between the successor States and the land, stores, articles or goods shall accordingly pass to the successor States :

Provided further that in case of distribution, of any land, stores, articles and goods or class of goods under this sub-section located outside the existing State of Madhya Pradesh, such distribution shall be made through mutual agreement arrived at between the Governments of the successor States for that purpose, failing which the Central Government may, on request by any of the Governments of the successor States, after consulting both the Governments of

the successor States, issue such direction as it may deem fit for the distribution of such land, stores, articles and goods or class of goods, as the case may be, under this sub-section.

(2) Stores held for specific purposes, such as use or utilisation in particular institutions, workshops or undertakings or on particular works under construction, shall pass to the successor States in whose territories such institutions, workshops, undertakings or works are located.

(3) Stores relating to the Secretariat and offices of Heads of Departments having jurisdiction over the whole of the existing State of Madhya Pradesh shall be divided between the successor State in accordance with the mutual agreement arrived at between the Government of the successor States for that purpose, failing which the Central Government may, on request by any of the Government of the successor States, after consulting both the Government of the successor States, issue such direction as it may deem fit for the distribution of such stores or any part of such stores, as the case may be.

(4) Any other unissued stores of any class in the existing State of Madhya Pradesh shall be divided between the successor States in proportion to the total stores of that class purchases in the period of three years prior to the appointed day, for the territories of the (sic) of Madhya Pradesh included respectively in each of the (sic) States;

(sic) where such proportion cannot be ascertained in (sic) class or stores or where the value of any class of (sic) not exceed rupees ten thousand, that class of (sic) divided between the successor States according to the population" ratio.

In this section, the expression "land" includes immovable property (sic) land and any rights in or over such property, and the (sic) "goods" does not include coins, bank notes and (sic).

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(sic) loans and advances - (1) The right of the (sic) Madhya Pradesh to recover any loans or advances (sic) the appointed day to any local body, society, agriculturist or other person in an area within the State shall belong to the successor State in which that area is included on that day.

(2) The right of the existing State of Madhya Pradesh to recover any loans or advances made before the appointed day to any person or institution outside that State shall belong to the State of Madhya Pradesh:

Provides that any sum recovered in respect of any such loan or advance Shall be divided between the States of Madhya Pradesh (sic) according to the population ratio.

If these provisions tire appreciated in proper perspective, they are in a different (sic) a together. The compartment is quite different. Section 50 refers to (sic). The matter would have been different if there would (sic) Contract, but in the

case at hand there are 15 independent contracts in respect of 15 units. Hence, in my considered opinion, Section 50 operates in a different sphere altogether and there is no question of extended beyond the permissible limit. The scheme of the Act in question in my (sic) opinion, creates two separate compartments altogether (sic) the fiction as submitted by Mr. Dave does not arise. In fact, the said submission is sans relevance and has to be repelled, and according to do.

Another fact (sic) which requires to be stated is that Section 61 of the Act (sic) functioning of organisation, registered society or trust incorporated (sic) State Government. The said provision reads as under-

(sic) of organisation, registered society or trust (sic) on behest of State Government - (1) Notwithstanding anything contained in the forgoing provisions of this Part or any other law for the time in force, any organisation registered society or trust, incorporated at the behest of the State Government, shall, on and from the appointed day, and until otherwise provided for in any law for the time being, in force, or in any agreement between the (sic) direction issued by the Central Government in (sic) with the successor States, continue to function in the area in which it was functioning immediately before that (sic) the Central Government may, after consulting (sic) of the successor States, issue directions in (sic).

(2) Any directions issued under sub-section (1) may include directions regarding the -

(i) reconstitution of the Board of (sic) of the organisation, society or trust by whatever name it may be called; or (ii) appointment of the Chief Executive by whatever name it may be called; or

(iii) regulations or bye laws, by (sic) stay be called; or

(iv) assessment and apportionment (sic) if any, provided by the existing State (sic) meeting fixed charges.

It has been brought on record that as per (sic) of the Act the Cooperative Societies have been bifurcated and (sic) their areas of operation between the State of (sic) and the State of Chhattisgarh. The areas of respondent no. 3, (sic) bifurcated on the basis of territorial areas and the (sic) Societies have been divided and the said aspect (sic) which has been brought on record by way of (sic). In view of the dues which are collectable by the Federation in respect of the (sic) which have gone to the State of Chhattisgarh, the State of Madhya Pradesh would have no jurisdiction to decide the matter in relation to the (sic).

I will be failing in my duties if I do not refer to (sic) raised by Mr. Dushyant Dave. The learned counsel has addressed the Court on the question of nature of supervision charges. It is submitted by him that is based on actuals. It is also put forth by him that the factum of supervision charges having been incurred is crucial. It is also urged by (sic) that the State of Chhattisgarh having come into existence on 1.11.2000 neither it can be said to have incurred those charges nor

it can claim the same; tars the petitioner inasmuch as the element of quid pro quo is absent. The aforesaid submission of Mr. Dave, in my considered opinion, is with regard to the merits of the action or the decision as have been stated earlier. The State of Madhya Pradesh has not taken a decision in respect of 14 contracts but referred the same to be decided by the State of Chhattisgarh. I have already come to hold that the State of Madhya Pradesh has no jurisdiction to decide the factum of supervision charges pertaining to the said contracts which are relatable to the areas that have fallen into the share of State of Chhattisgarh. Hence, I do not think it appropriate to address myself with regard to the merits of the case.

In view of my preceding analysis, the irresistible conclusion is that the State of Chhattisgarh has the jurisdiction to decide the controversy with regard to the supervision charges in respect of the contracts pertaining to the areas which are presently situate in the State of Chhattisgarh and the State of Madhya Pradesh has no jurisdiction to decide the same and accordingly, the order contained in Annexure-P-14 passed by the State of Madhya Pradesh, being impregnable, has to be treated as impeccable, and accordingly, given the stamp of approval of this Court.

Resultantly, the writ petition, being sans merit, stands dismissed without any order as to costs.