

(1984) 12 GUJ CK 0001
In the Gujarat High Court

Krishna Chemicals and Another

APPELLANT

Vs

State of Gujarat and Others

RESPONDENT

Date of Decision : 21-12-1984

Acts Referred:

Constitution of India, 1950 — Article 14, 19(1)(G), 19(1)(g)

Citation : (1985) 1 GLR 526

Hon'ble Judges : P.S. Poti, C.J;I.C. Bhatt, J

Bench : Division Bench

Judgement

P.S. Poti, C.J.—This is an appeal by the petitioners in the Special Civil Application against the judgment of the learned single Judge dismissing the application. The 1st appellant is a partnership firm of which the 2nd appellant is a partner. The firm is engaged in the business of manufacturing chemicals out of bark of different varieties of forest trees. Though they are so manufacturing various forest based chemicals they are not manufacturers of Katha which is said to be manufactured by use of Khairwood. They being manufacturers in the line they desire to diversify by commencing manufacture of Katha also. Though their unit is registered with She District Industries Centre as a unit for nepthalene intermediary and dyes intermediary and not for Katha they could at any time seek to manufacture Katha on their own as such registration is necessary only for the purpose of obtaining certain benefits. They did make an application to include manufacture of Katha also in the products turned out by them, but their application was filed by the District Industries Centre for failure to furnish certain particulars. Respondents 3, 4 and 5 are manufacturing only Katha out of Khairwood and the 6th respondent is also such a manufacturer, but operating in a different area. It is necessary that there should be regular supply of Khairwood for manufacture of Katha and that is available only from the forest area. Besides the forests in Gujarat these may be available in certain quantities from forests in Maharashtra also if there is any left available for supply after local use. The petitioners complain that they have been discriminated against in the matter of supply of such Khairwood to them for the proposed manufacture of Katha on the

ground that the supply of Khairwood now available in the forests in Gujarat would not be sufficient for feeding the industries set up by respondents 3 to 6. According to them they offered a very high price of Rs. 4,000/- per cubic metre of Khairwood that may be supplied to them and that the price at which it is sold to respondents 3 to 6 is in the region of Rs. 1,000/- per cubic metre, if not less. According to them therefore the State stands to lose heavily by supply to respondents 3 to 6 when the petitioners have offered to pay a higher price for the same goods and it will also be a violation of the right of the petitioners to run their industry if supply of such wood from the forests of Gujarat is denied to the 1st petitioner firm.

2. The case of respondents 3 to 5 is that they are running industries in the tribal belts of the southern districts of Gujarat and that this provides employment to the tribals, that they have established the industries concerned many years ago, that khairwood is a raw material which is absolutely necessary for running their industries, that, even as it is, regular supply to the extent required for full utilisation of their capacity is not being obtained by them from the Forest Department and therefore there is no case for sharing it with any newcomer. In other words, what is pointed out is that if any new industry is to share the Khairwood with them that would affect the running of that industry resulting not only in loss to them, but also in unemployment to persons employed in factories run by respondents 3 to 5 and that the tribals. It is therefore contended that the stand taken by respondents 1 and 2 of supplying whatever is available to respondents 3 to 5 is unobjectionable. The 6th respondent, on the other hand, has a case based upon; a contract entered into with the Government in the year 1981 under which the Government has assured him supply of Khairwood available from Sabarkantha and Banaskantha districts of the State and such supply itself would not be sufficient to satisfy the quantity agreed upon as liable to be provided to the 6th respondent. Respondents 1 and 2, the State of Gujarat as well as the Chief Conservator of Forests, Gujarat State, take the stand that with the available resources it may not be possible to provide a fresh industry with Khairwood and if such provision is made it will destroy the existing industries resulting in the further consequence of unemployment in tribal belts where employment is very scarce. The learned single Judge has evidently accepted these contentions and has found no case for the petitioners.

3. The main argument of the learned Counsel for the petitioners is that it will be discriminatory to say that persons like the petitioners who want to embark upon an industry of manufacture of Katha will not have a treatment similar to that enjoyed by respondents 3 to 5, It is their case that Khairwood being available not very easily there should be no question of patronising one or two industries in the State denying for that reason opportunity to other industries to start the same business. Besides violating the rule of equal opportunity to run the business assured under Article 14 of the Constitution it would, according to the counsel, be also violation of Article 19(1)(g) of the Constitution of India. There is a further case for the appellants that there has been considerable price

preference to respondents 3 to 6 in that supply is made to them at a price far below the market price of these goods. That will amount to favouritism on the part of the Government and naturally that should not be encouraged.

4. Both sides refer to the minutes of the meeting of Katha factories held in the Chamber of the Principal Chief Conservator of Forests, Gujarat State., Vadodara on 24.8.1983. Though they contended that this must be part of the record and they pointed out that this has been referred to in the judgment of the learned single Judge we do not notice this among the records, but in view of the fact that both sides agree that this has been referred to" before the learned single Judge and copy thereof has been made available to us we are referring to it here and directing that a copy of the minutes may form part of the records in the appeal by common agreement. That explains in detail the situation of supply of Khairwood to factories. Regarding the 6th respondent reference is made to the contract under which for 20 years commencing from November, 1981 there is an obligation to supply Khairwood and therefore there is no question of escape from that obligation. Though the 6th respondent is not satisfied with that arrangement we are not concerned with that in this petition. The case of respondents 3 to 5 stands on a different footing. The agreement with the said three parties expired in March, 1983 and it was open at that time either to supply them Khairwood in the future or not. Evidently that question was considered and factors which were in their favour for allotment were noticed by the Joint Secretary of the Agriculture and Forests Department and the Principal Chief Conservator of Forests. The fact that the factories of respondents 3 to 5 were situated in tribal belts evidently influenced the decision. The capacity of each one of the factories was such that even if the resources were fully exploited normally there would not be sufficient material to supply goods to respondents 3 to 5 to run to their maximum capacity. In the circumstances an arrangement was reached to distribute the available Khairwood between respondents 3 to 6 in the best possible manner, and that is what would operate and that operates to exclude the petitioner from getting Khairwood.

5. Though in the normal circumstances one should consider exclusion of any person from a privilege open to others as discriminatory and one should consider that if the same benefit that is extended to an applicant that would effectively affect his right to continue business there are special circumstances in this case which justify treating respondents 3 to 5 and 6 as a class distinct from the petitioner. That distinction is that they are persons who have been running this industry for a number of years. The very relevant factor is that the raw materials for the factories are in short supply. Had they not been in short supply none of these questions would have arisen. If they are in a short supply necessarily how best to utilise them has to be considered. The existing industries will become non-viable if substantial reduction is made in the quantity of raw material supplied. Even as it is not that they could work up to their full capacity. As between promoting a new industry and keeping alive the existing industries if preference is shown for keeping alive the existing industries though that may result ill non-

promotion of a new industry one could not say that this approach would be wrong. In fact the Government will have to take such decisions at times. There is more reason why in this case such a decision was justified. All the three factories of respondents 3 to 5 were operating in the tribal belts where the tribals get employment by reason of the factories. The petitioners factory is at Valsad. The petitioners would say that it is within two miles of Valsad, but it appears to be in Valsad itself. Valsad is the capital of the Valsad district. It is not as if they are running any industry in the tribal belt. It is the influence of these considerations that made the Government prefer respondents 3 to 5. It is said that, respondents 3 to 5 should get Khairwood to the extent available subject to their obligation under the contract to supply to the 6th respondent. The petitioners cannot be said to have been discriminated against. It cannot be said that their right to carry on business is affected by such distribution. In the circumstances we do not think that any interference by the court would be called for except in regard to one aspect which we should notice here. The minutes of the meeting of 24-8-1983 considered the price at which the goods should be sold to respondents 3 to 6. An agreement was not reached on this point. Naturally so. Respondents 3 to 6 would like to get the raw materials at the lowest price possible and they would therefore attempt to resist any increase in rates. That was considered at the meeting and it was agreed that "the Principal CCF would wait their reports and also collect further data about rates from the Khair producing States like Maharashtra, Madhya Pradesh, Rajasthan and U.P.". The Joint Secretary assured at the meeting that no sooner the proposals of, rates from the Katha factories were received the proceedings of the meeting would be processed further and the Government would be moved to take further action regarding entering into new agreements with the respective Katha factories. But we are told that despite this for the season 1983-"84 no new agreements were entered into and prices were not fixed and the Khairwood is said to have been sold at what is termed as "ad hoc prices".

6. This does not appear to be fair as there was time for the Government to fix up the price and they should have done so rather than collect ad hoc prices. While it is one thing to say that respondents 3 to 6 must get regular supply it is another to say that they should be favoured in the matter of price. It is not at the cost of revenue that they should be permitted to run their industries. The market price which is the reasonable price should be charged so that the revenue is not lost. That had necessarily to be determined before supply commenced. There was sufficient time for such determination before the supply for the year 1983-84. It is sufficient to make a direction in this case that before supplies for the current season commences the concerned officials of the Government shall see to it that proper price is fixed taking into account the market price of such goods. Agreements shall be entered into in accordance with such price. In other words, while we uphold the allotment of available Khairwood to the existing industries and that to three of them run in the tribal belts and one entitled to supply under an earlier contract for reasons indicated, the supply to them must be at

reasonable market value, determination of which and agreement on which should necessarily precede commencement of supply for the year.

7. There is a contention that supply of Khairwood only to three or four factories-would result in monopoly of these goods which should be discouraged. The question of monopoly does not arise when we are concerned with shortage of goods on the one hand and the need to keep alive existing factories on the Other with a view to see that existing industries will not die and further with a view to see that unemployment problem is riot created in the tribal belts where, as it is the employment potential is very limited.

8. Therefore there is no question of monopoly here and the argument must fail. Subject to these observations the appeal is dismissed.