

(1982) 03 KL CK 0023

In the High Court Of Kerala

Case No : O.P. No"s. 3304 and 3367 of 1980

Raja Industries and Another

APPELLANT

Vs

The General Manager, District Industries Centre, Ernakulam
and Another

RESPONDENT

Date of Decision : 19-03-1982

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : AIR 1982 Ker 337

Hon'ble Judges : K. Sukumaran, J

Bench : Single Bench

Advocate : M.A. Manhu and V.V. Narayanan, for the Appellant; Govt. Pleader, for the Respondent

Judgement

K. Sukumaran, J.—Time was when Kerala abounded in wood-wealth; Including softwood. The State had the second biggest timber market in the world, Kallai. These, however, appear now, as matters of distant glory, fading memory, and a boast about the past. Almost like that of the well known Malayalam literary character who used to say "My Great Grand-Pa had an elephant".

2. Scarcity in timber supply is now keenly felt. Wood-based industries starve for raw materials. Scarcity has generated problems of resource mobilisation and equitable distribution. Ad hoc adjustments were initially introduced, Lasting problems, however, require more enduring solutions. The solutions must be reasonable, rational and just. That is a constitutional requirement. Whether the solution evolved by the State in relation to softwood distribution -- the policy of distribution as evolved by the softwood Committee which met on 17-6-1980 -- stands the test of constitutionality judged by Article 14 and Article 19 of the Constitution, is the main question which arises for decision in the two writ petitions.

3. The factual details leading to the institution, of the writ petition by two frustrated industrialists whose race for raw materials turned out to be a wild

goose chase, may be set out in brief. First the facts in O. P. 3304 of 1980, filed by Messrs. Raja Industries, Perumbavoor, Established in the year 1960, the unit had been engaged in the manufacture of bobbin blocks and packing cases. While cedar was used for the former, and softwood species for the latter. The industry had been registered as a small scale unit. It was issued a certificate of registration in the year 1963 and a renewal in 1973. (This, I was told was done as a result of deep and detailed verification done in 1972 about all the units registered as Small Scale Industries, with a view to weed out the spurious or fictitious ones). It is claimed that the petitioner's unit is the second biggest in the State.

4. Initially raw materials were available in plenty. There was no scarcity for raw material in the open market. Due to a variety of reasons, such as the vanishing forests, and the heavy exactions on what little is left behind, scarcity for softwood was keenly felt as time passed on. Nationalisation of the forests by the Kerala Private Forests (Vesting and Assignment) Act, 1971, virtually made the State a monopoly owner of softwood. Things have come to such a stage that the industry is now entirely dependant upon the allocation of softwood made by the State for its subsistence.

5. A system of distribution appears to have been evolved from 1972 onwards. The petitioner himself had been so allowed softwood for manufacture of packing cases and bobbin blocks. This appears to be the admitted case. The details of the allotment from 1973-74 to 1980-81 are given in Ext. R2 with an initial allotment of 658 tonnes for 1973-74 and a virtual moiety thereof of 387 tonnes, in 1980-81. The felt scarcity of the raw material and the appointment of Softwood Committee for finding out a solution for equitable distribution have been referred to by the State in its counter-affidavit in the following terms:

"In the State of Kerala, scarcity of softwood immensely felt during the year 1975-76 and thereby the Government constituted particular committees to assess the machine capacity and the availability of softwood with the Forest Department and to suggest general norms in allotting softwood to industrial units."

The committee so constituted had its first meeting on 18-6-1976. The rising number of industrial units demanding wood and the stagnant position relating to the availability of the raw materials have been referred to in the deliberation of the committee. The minutes of the first meeting is Ext. R1 produced along with the second additional counter-affidavit. (There is another Ext. R1 produced by the State along with its first additional counter-affidavit). The Chief Conservator of Forests informed the committee about the steady increase in the industrial units, from 110 in 1970 to 247 in 1972 and 330 in 1975-76. The committee took note of the fact that the Government had ordered in 1972 that fresh units based on softwood industry should not be encouraged. It was noticed that despite such a Government order, several units obtained registration from the Industrial Department, putting forward the plea that they would find their own sources of

raw materials. Once the registration was so obtained, contrary to the declaration, such units too leaned on to the Department for its requirement of raw material. A necessity for restriction of further registration of small scale industrial units based on softwood appears to have been the consensus in the meeting. The minutes of the meeting on this question concluded with the following decision :

"As the suggestion was generally acceptable to the committee, it was decided not to give registration to new units based on softwood for a period of one year, even in Mini Industrial Estates."

(Emphasis supplied.)

6. As stated earlier the petitioner was being allotted, softwood from 1973 to 1974. Ext. P1 is a forest pass issued to the petitioner on 10-1-1978 which evidences an allotment of softwood. Ext. P2 dated 25-11-1978 is a certificate evidencing the utilisation of softwood by the petitioner from out of the quota received from the Government during 1977-78 for the purpose of manufacturing packing cases. An application Ext. P4 was made by the petitioner for allotment of softwood for the year 1978-79. This application was in the prescribed form and gave details including the products for which the unit had been registered, the working capacity, the number of workers, the quantum of actual consumption, the consumption of electricity, relative sale figures and assessment to sales tax, the allotment made, the species and quantities of wood applied for and details of clearance. This application did not meet with favourable response. The year rolled on. A new year set in. A fresh application for 1979-80 too was duly filed, and in the prescribed form. Ext. P5 is the copy of the application. That was on 26-4-1979. This too did not get a differential treatment. The petitioner thereupon started knocking at the doors of the departmental officers for getting the quota. Though the assessment committee determined the capacity of the petitioner's unit as 21-75 cubic metres of softwood per day, the total requirement for a year on that basis coming to 2000 cubic metres. What was recommended by the Government was only 800 cubic metres of softwood. It is the complaint of the petitioner that his request for allotment went unheeded, though the softwood committee met on various days including 20-9-1979 and 5-10-1979. On the latter date, a decision, Decision No. 4, was taken relating to the allotment of softwood. It is desirable that the extract of the resolution is given in full:

"Additions made to the existing registration after 18-6-1976 need not be normally considered for allotment. However, if any of such units was receiving quota allotment in any allotment period, their case can be considered for allotment subject to the conditions that such unit will get the registration suitably amended on or before 31-12-1979 and the fact of such registration is intimated to the Chief Conservator of Forests and the Director of Industries & Commerce."

The following are evident from the above resolution: (i) There had been additions to the registrations of units as they existed even after 18-6-1976, the date when the Standing Committee met and recommended declining of registration of new

units, (ii) The committee felt that such new units which had got registration even after the interdict in relation to such registration suggested by the committee were being allotted softwood, (iii) Such units should not be considered for allotment normally, (iv) An exception can be made to the above policy if those units were receiving allotment of quota in any allotment period, if the registration of such units is suitably amended on or before 31-12-1979. It appears that the Director of Industries and Commerce felt that Decision No. 4 referred to above, required further examination. He, therefore, wrote to the Chief Conservator of Forests and the President of the Small Industries' Association that "the action on Decision No. 4 need be taken after further discussion on the issue at the next Softwood Committee meeting".

7. The factual receipt of an allotment was apparently made the criterion for the continuance of allotment. An omission in the certificate of registration about the manufacturing items as disclosed in the certificate was not fatal. The defect could be cured. A time-limit up to 31-12-1979 was prescribed for curing that defect.

8. The petitioner took prompt steps to have the registration suitably amended. It was so amended on 10-1-1979. Going by the resolution of 5-10-1979 the petitioner was entitled to allotment. Yet, it did not get the allotment despite its application made on 24-4-1979 and evidenced by Ext. P-5. It is the complaint of the petitioner that on the assumption that the State would allot softwood, an assumption justified by the recommendation by the officers of the Industries Department as regards Ext. P-5 application, it procured orders and entered into contracts for supply of finished products. The petitioner felt that though persons similarly situated had been favoured with the quota, it was denied the same without any justifiable reason, and was invidiously discriminated. It sought ventilation of his grievances by approaching this Court. A writ petition -- O. P. No. 1503 of 1980 -- was filed for a writ of mandamus for the disposal of its applications Exts. P-4 and P-5. This Court readily granted that just prayer. Apparently having regard to the necessity for urgent action, this Court stipulated that the disposal of the applications must be expeditiously made, and fixed a period of three weeks from 16-5-1980 as the outer-limit for the issue of final orders. As quite often happens, no action was taken within the time. Extension of the time was sought by C. M. P. No. 788S/80. That was also granted. In the meanwhile, the petitioner's applications for quota, along with the applications of the other units were placed for the consideration of the Softwood Committee held on 7-6-1980. There appears to have been an earlier meeting of the Softwood Committee on 28-1-1980. This meeting reconsidered decision No. 4 of the meeting dated 5-10-1979. A gist of the policy decision of the committee is discernible from Ext. P.7 communication dated 23-6-1980 addressed by the Director of Industries and Commerce to the petitioner which purported to be the disposal of the petitioner's applications for allotment of softwood for 1979-80. Paragraph 2 of that letter reads :

"The Softwood Committee at its meeting held on 17-6-1980 decided to make

allotment of softwood to applicant units which were getting allotment prior to 18-6-1976 only". An elaboration of the stand of the Department was contained in a further communication dated 3-7-1980 (Ex. P-8) which appears to be a continuation of Ext. P-7 letter. This letter intimated the petitioner that its unit was originally registered for the manufacture of bobbin blocks and not for packing cases prior to 18-6-1976. It referred to the fact that the packing case was included in the S. S. I. Registration Certificate only on 10-1-1979. The further two paragraphs of that letter contained the full text of the policy decision and the reasoning behind the rejection of the petitioner's application for allotment. It is, therefore, desirable that those paragraphs are extracted in full :

"The Softwood Committee meeting held on 17-6-1980 decided that allotment of softwood can be made to applicant units which were getting allotment prior to 18-6-1976 and to allow suitable amendments in the S.S.I. registration certificate of such units to include the items for the manufacture of which they obtained softwood prior to 18-6-1976. Since your unit did not get any allotment of softwood for the manufacture of packing cases prior to 18-6-1976, you are not entitled to get allotment of softwood for packing case manufacture against your applications for the allotment period 1978-79 and 1979-80."

9. The petitioner, apparently made some searching enquiries relating to the allotment of softwood for other units. Such enquiries revealed that different yardsticks had been adopted by the officials of the Industries Department in relation to the other units but similarly situate. The petitioner did not rest content by making vague allegations about discriminatory acts. Specific and concrete instances have been given of such actions indicative of treating the petitioner with an evil eye and an unequal hand. It felt that relief could be obtained only from a Court of law. The result was the writ petition.

10. The grievances of the petitioner in O. P. No. 3367 of 1980 are similar. Messrs. Periyar Plywoods is registered as a small scale industries unit, the certificate of registration being Ext. P-I. The earlier registration number of the unit (E(SS)4739/72) is given therein. The products of manufacture mentioned and packing cases, building materials, timber sizes, flush doors and plywoods. The petitioner here also states that at the time of registering the unit there was no dearth of softwood in view of its availability in plenty in the open market and that the situation changed when the private forests became vested in the State and consequently the raw materials became a monopoly of the State Government. It avers that it had been receiving quota of softwood for the manufacture of plywoods, packing cases, tea-chest and tea-chest battens from 1972 onwards, that it had been allotted 400 cubic metres of softwood for manufacture of tea-chest battens by the 2nd respondent and that they had been utilised for that purpose as evidenced by utilisation certificate Exhibit P-2 dated 12-11-1979. It may be noted that the certificate is explicit that the softwood had been utilised for the purpose of manufacturing tea-chest battens. Allotment was prayed for the year 1978-79 also. The petitioner was, however, then told that allotment could

be so made only if the product "tea-chest batten" is also included in the certificate of registration. An application dated 23-3-1979 Ext. P-4 was made for such inclusion. The representation for allotment was reiterated by Ext. P-3 dated 8-1-1979. Application for quota in the prescribed form was presented under Ext. P-5. The petitioner pursued his attempts for allotment of the quota and for amendment of the registration certificate by Ext. P-6 representation dated 13-12-1979, In that representation, the policy decision of the sub-committee dt/- 5-10-1979 had been referred to. The petitioner's grievance was espoused by the Association too, as is evidenced by Ext. P-7 letter addressed by the Association to the General Manager, District Industries Centre, Cochin on 26-11-1979. By communication dated 15-3-1980 (Ext. P-8) the petitioner was informed that the technical committee which visited the petitioner's unit had assessed the machine capacity as 2130 cubic metres of wood. However, the communication pointed out that the allotment would be based on the general decision of the softwood committee. The petitioner's request for the inclusion of tea-chests in the certificate of registration was, however, turned down by Ext. P-9 dated 31-3-1980 on the ground that the Softwood Committee had not permitted the inclusion of new items. The petitioner repeated his application for the quota for the year 1980-81 also by Ext. P-10 application. A writ petition O. P. No. 1592 of 1980 was filed to quash the order of 31-3-1980 and for other reliefs. The writ petition was disposed of by directing the 2nd respondent to pass final orders on the representations Exts. P-6 and P-7, within three weeks from 20-5-1980. This not having been done within the stipulated time, a petition C. M. P. No. 7883 of 1980 was moved for extension of time for passing final orders; and this Court granted extension of time till 26-6-1980. The committee thereafter held the meeting on 17-6-1980 and by Ext. P-12 dated 20-6-1980 intimated the petitioner about its decision not to make any allotment to the petitioner. An elaboration of the respondents' stand was made under Ext. P-13 dated 3-7-1980. This was also on lines similar to the communication received by the other petitioner (in O. P. No. 3304 of 1980). The reason urged for the denial of allotment here too was the policy decision of 17-6-1980 whereunder only units which were getting allotment prior to 18-6-1978 would be allotted softwood and which permitted suitable amendment in the registration certificate only in respect of units which had obtained softwood prior to 18-6-1976. The petitioner's unit was found not to have been in receipt of any allotment of softwood for the manufacture of tea-chest battens prior to 18-6-1976 and consequently became disentitled to allotment of softwood for the manufacture of tea-chest battens. The hopes of the petitioner herein also for obtaining allotment on the basis of the representations before the Government became dashed and consequently it too approached this Court for reliefs. The legal contentions urged are similar to those of the petitioner in O. P. No. 3304 of 1980. In essence, the complaint relates to the constitutional invalidity of the policy decision taken on 17-6-1980, judged by the tests underlying Article 14 and Article 19 of the Constitution. The petitioner herein also has complaints about arbitrariness and discriminatory action and points out allotments made by the self-same department to persons similarly

situate like the petitioner while denying such allotment to the petitioner. Illustrations of such cases have been given.

11. The counter-affidavit of the State Government, naturally reiterates the same defence and puts forward the same contentions as have been urged in the connected writ petition O. P. No. 3304 of 1980. They are not reiterated to avoid repetition. The stand of the State as disclosed in the counter-affidavits will be indicated shortly after the reference to the legal principles.

12. As observed in the prefatory note of this judgment, scarcity conditions generate complaints among the consumers of the relevant materials. Distribution orders, or arbitrary action in the matter of distribution had been challenged by aggrieved persons. This Court upheld such a challenge based on the violation of Article 14 of the Constitution in the case of distribution of such a scarce commodity like paraffin wax. Isaac J. made a survey of the decisions on the point and observed.

"As Justice Matthews said in the well-known American case of *Yick Wo v. Hopkins* (1886-118 US 326). action and non-action of officers placed in such position may proceed from enmity or prejudice, from partizan zeal or animosity, from favouritism or other improper influences and motives which are easy of concealment and difficult to be detected and exposed, and consequently the injustice capable of being wrought under cover of such unrestricted power becomes apparent to every man, without the necessity of detailed investigation. Things have changed for the worse. Corruption in the administration of control orders is notorious; and it becomes unbearable, when the executive and administrative authorities are vested with arbitrary and naked power in the administration of such orders. Clause 5 of the Paraffin Controller Order might have also created the same situation," See *Mohan Industries v. Deputy Director of industries and Commerce*. 1972 KLT 766: AIR 1973 Ker 59. The decision was affirmed by the Division Bench in *Union of India v. Mrs. Santha Pai* ILR (1974) Ker 64.

13. It is perhaps unnecessary to refer to all decisions which discuss the validity of various distribution policies, in view of the crystallisation of the principles underlying them.

14. A decision rendered by the Madras High Court soon after the coming into force of the Constitution *A.C.S. Kandaswami Reddiar and Others Vs. The Textile Commissioner of the Government of India*, is relevant to the extent that even in that early period of our constitutional development, two eminent Judges of that Court (Rajamannar, C. J. and Venkatarama Aiyar J.) pointed out to the dangers of a statutory notification bringing into existence a "small body of monopolists". The Court observed :

"It has not been shown how the interests of the public are served by eliminating a large class of merchants and substituting in their place a close oligarchy of middle-men." The notification impugned there was declared to be

unconstitutional and void.

15. The Courts may not interfere in matters essentially in the region of policy, even when as a result of the operation of the policy a trader's right may be considerably affected. More so, when the policy is influenced by considerations relating to impact of internal and International trade, monetary policy, and even political policies of the country involving questions of friendship, neutrality or hostility with other countries, and the like, of which Government is ordinarily the better Judge. This is the essence of the decision in *Glass Chatons Importers and Users" Association Vs. Union of India (UOI)*,

16. We are not here concerned with such a policy, like import or export policy. But the significance is that even in that area, selection of one group of persons in preference to another group without a rational and seasonable basis can be struck down. This is clear from the following passage occurring in para 6 of that judgment:

"We wish to make it clear that while the decision that import of a particular commodity will be canalised may be difficult to challenge, the selection of the particular channel or agency decided upon in implementing the decision of canalisation may well be challenged on the ground that it infringes Article 14 of the Constitution or some other fundamental rights. No such question has however been raised in the present case."

An other facet of the same idea is expressed in para 8 of that judgment :

"It was next urged that the grant of licences to the third respondent, the State Trading Corporation of India while none has been granted to the second and the third petitioners has resulted in a denial of equal protection of laws guaranteed by Article 14 of the Constitution. If these petitioners had applied for licences under the Export Promotion Scheme and still the State Trading Corporation had been preferred it would perhaps have been necessary to consider whether the preference accorded to the Corporation was based on reasonable and rational grounds. It is clear however that though it was open to these petitioners to apply for licences under the Export Promotion Scheme they made no application for licence thereunder There is no scope therefore for the argument that they have been discriminated against."

17. The canalisation of export of manganese and iron ore which resulted in the exclusion of traders and mine owners who had not any export performance to their credit in earlier years, was upheld by the Supreme Court in its decision *Dava Gohil Vs. Joint Chief Controller of Imports and Exports*, . Be it noted that in that decision, the Supreme Court adverted to very many relevant factors as justifying the policy and that it took care to point out in para 17 of the decision as follows :

"The question whether the canalising has been properly done in the sense that the groups selected are no better than the groups eliminated poses a very

different problem and if that were made out a question of discrimination might conceivably arise. We should, however, hasten to point out that it is not the case of the appellant that the established shippers and the mineowners to whom quotas have been allotted in addition to the State Trading Corporation have been improperly included in the group of persons entitled to participate in the export trade, and that apart, there is a rational and very proper classification between those who have experience in the trade and the new-comers who do not possess that experience."

18. Monopoly of forest produce had given rise to similar complaints relating to arbitrary provisions perpetuating a gross discrimination against one set of citizens excluded from participation in the trade. The Supreme Court had no hesitation to strike down such a scheme, when on a scrutiny thereof it was found to be *ex facie* discriminatory. (Sec Rashbihari Panda etc. Vs. State of Orissa, . The following passage in that judgment gives the basic facts and the crux of the decision and the basis thereof (at p. 1087) :

"The Government then decided to invite offers for advance purchases of Kendu leaves but restricted the invitation to those individuals who had carried out the contracts in the previous year without default and to the satisfaction of the Government. By the new scheme instead of the Government making an offer, the existing contractors were given the exclusive right to make offers to purchase Kendu leaves. But insofar as the right to make tenders for the purchase of Kendu leaves was restricted to those persons who had obtained contracts in the previous year the scheme was open to the same objection. The right to make offers being open to a limited class of persons it effectively shut out all other persons carrying on trade in Kendu leaves and also new entrants into that business. It was *ex facie* discriminatory, and imposed unreasonable restrictions upon the right of persons other than existing contractors to carry on business. In our view, both the schemes evolved by the Government were violative of the fundamental right of the petitioners under Article 19(1)(g) and Article 14 because the schemes gave rise to a monopoly in the trade in Kendu leaves to certain traders, and singled out other traders for discriminatory treatment."

Equally apt and apposite is the later observation contained in para 18 of that judgment reading :

"Exclusion of all persons interested in the trade, who were not in the previous year licensees is *ex facie* arbitrary: it had no direct relation to the object of preventing exploitation of pluckers and growers of Kendu leaves, nor had it any just or reasonable relation to the securing of the full benefit from the trade, to the State."

19. Even when intelligible differentia underlies a classification, the existence of a rational nexus as an essential pre-requisite to make the classification constitutional has been given due emphasis in the decision of the Supreme Court in *Shri Rama Sugar Industries Ltd. Vs. State of Andhra Pradesh and Others*, The

voice of Justice K. K. Malhew (who spoke on behalf of Bhagwati, J. also), though one of dissent in respect of the ultimate conclusion in relation to the facts of that case, was marked with clarity and force. These are the words of wisdom on an aspect which quite often is lost sight of or is not given due emphasis after a finding relating to the existence of a classification :

"To sum up, the policy or rule adopted by the State Government to guide itself in the exercise of its discretion must have some relevance to the object of Section 21 (3) which is to provide incentive to the establishment of new industries and substantial expansion of existing industries with a view of increasing production of sugar. The classification made by the policy or rule must not be arbitrary but must have rational relation to the object of the exempting provision. That appears to be absent in the present case.

20. The Punjab and Haryana High Court had occasion to consider in depth and detail a complaint relating to the discriminatory treatment in the allotment of a scarce imported material -- shoddy wool -- in some- what similar circumstances (vide *Ram Lubhaya Kapur and Others Vs. The Union of India and Others*, I am in entire agreement with the approach and reasoning contained in that judgment on this issue. The following observations at page 302 of the reports are relevant in this context:

"In this view of the matter, we are of the opinion that the selection of the woollen shoddy handloom units on the basis of their establishment prior to Oct. 1959 is most arbitrary and extraneous to the purpose of importing raw material for the industry as a whole. Such an arbitrary classification of woollen shoddy handloom units on the basis of the date of their establishment violates Article 14 of the Constitution of India, particularly when no rational or intelligible differentia has been shown why the woollen shoddy handloom units established prior to October, 1959, were selected and all such units established thereafter were excluded. This is not a case in which import licence or export licence has to be granted but this is a case in which the imported raw material has to be distributed amongst the various units constituting the industry."

The Court raised a query and answered it as follows at page 306:

"Why should, therefore, some units of industry be given weightage by allocation of a large quota by starving other units engaged in the same manufacturing business? Let all the units compete equally and be allotted whatever raw material is imported according to their consumption in the year preceding the year of import."

21. The discussion on this topic can be wound up by referring to a very recent decision of the Supreme Court which dealt with and decided upon the distribution policy of another forest produce, namely, resin, in *Om Prakash Sud and Others Vs. State of Jammu & Kashmir and Others*, . The legal position was explained at pages 1004 and 1005 :

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

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

22. It is bearing in mind the principles gatherable from the above and other decisions that the contentions raised in this case have to be evaluated.

23. After clearing the ground relating to the relevant legal principles applicable in the adjudication of the constitutional validity of the policy, it is desirable to pinpoint the definite stand of the State Government on the policy. The first counter-affidavit, in para 7 thereof made only a bald, vague and general statement in the following words :

"The second respondent refused to recommend the allotment of softwood quota to the petitioner's industrial unit on the ground that the petitioner-firm was not registered prior to 18-6-1976 for the manufacture of packing cases. The decision of the second respondent is based on the norms suggested by the Softwood Committee and not arbitrarily."

24. There was no indication whatever as to what exactly were the norms suggested by the Softwood Committee. The relevance of the date 18-6-1976 and the requirement relating to registration of a unit in respect of a particular end-product, remained obscure. A further statement contained in para 8 was to the following effect:

"The policy in making allotment of softwood to the industrial units based is on the general norms suggested and approved by the Softwood Committee in their meetings and the availability of softwood with the Forest Department in order to give benefits to all registered units fairly and properly. The Softwood Committee have taken a decision that the Industrial Units which were registered for manufacturing packing cases prior to 18-6-1976 are alone eligible for allotment of softwood for manufacturing packing cases. The petitioner's firm is not eligible for allotment of softwood quota as per the decision of the Softwood Committee in its meeting held on 17-6-1980."

Here again there was no elucidation whatever about the significance of the date

18-6-1976. In the course of the arguments, elucidation on the significance and relevance of the date 18-6-1976 was sought for. The learned Government Pleader took time and filed an additional counter-affidavit on 19-11-1981. In para 7, the rationale of the policy was explained in the following terms:

"The decision of the Softwood Committee that allotment of softwood to an industrial unit made on two conditions; firstly such units must have registered for the specific end-product prior to 18-6-1976, secondly such units were getting softwood quota prior to 18-6-1976 for the manufacture of specific end-products, and suitably amend the Registration Certificate so as to include the specific end-products for the manufacture of which they obtained softwood quota before 18-6-1976."

25. As the requisite elucidation of the significance and relevance of the date 18-6-1976 was not available even at that stage, specific information was sought from the Government Pleader on this aspect. A further counter-affidavit, the second additional counter-affidavit in the case, was thereupon filed on 28-11-1981. It referred to the first meeting of the State Standing Raw Material Committee on 18-6-1976, the minutes of which Ext. R1 have been referred to earlier. It may be recalled that it was at that meeting that it was decided not to give registration to new units based on softwood for a period of one year. The counter-affidavit proceeds :

"So the date fixed as 18-6-1976 is not on arbitrary basis. But the Softwood Committee thought it better to fix the first meeting day of the Standing Raw Material Committee as the basic date which is to be considered in allotting softwood quota to Industrial Units either registered before this particular date or having allotted any quota of softwood with or without registration or with or without alteration of the registration certificate."

26. It is, therefore, apparent that the date 18-6-1976 is the date on which the Standing Raw Material Committee met to assess the situation relating to the availability of softwood and consider the question whether new units based on softwood should be given registration. In that sense it is not a date picked from the sky as it were. However, whether that date is reasonable and relevant as regards the distribution and allotment of softwood is a question which arises for decision. If the date is having some relevance to the distribution policy, no interference is called for. If, on the other hand, the requisite reasonableness and rational link with the object of the distribution policy are not available, the policy has to be declared unconstitutional.

27. Such rational nexus is needed not only as regards the date 18-6-1976 but also on the requirement of the particular end-product being mentioned in the registration certificate of the unit.

28. In assessing the rational nexus of the date 18-6-1976 with the policy, the factual situation as on 18-6-1976 and the background facts have to be borne in mind. It is also desirable in that context to refer to the salient provisions relating

to the registration of small scale industries as contained in G. O. M. Section 11/74/ID dated 17th Jan., 1974, a copy of which was made available on the last date of the hearing. The scheme thereunder is briefly discussed below.

29. That Government Order is only one by which the Memorandum of Instruction for the registration of Small Scale Industrial Units, which had been forwarded by the Director of Industries and Commerce had been approved by the Government. A brief reference may be made to the relevant clauses as contained in the Memorandum of Instructions. Clauses 1 and 2 describe the terms "Small Scale Industries" and "Ancillary Industries". The term "Industrial Unit" is discussed in Clause 3. Capital investment of a sum not exceeding Rs. 7.5 lakhs was the sine qua non for an industrial unit to be considered as a Small Scale Industry. "Capital investment" meant "investment in plant and machinery". The elaboration of the concepts of "capital investment" and "plant and machinery" are contained in Clauses 4 to 6. Clause 7 deals with the registering authority and Clauses 9 and 10 relate to the eligibility and disqualification for registration under the scheme. The cases in which a unit will not be entitled to registration are dealt with in Clause 13 read with Clauses 14 and 15. (There is an omission in giving the number 16 to the next clause, in the Government publication. There are many such printer's devils in the Gazette copy, perhaps not surprisingly, having regard to the fact that no serious view is taken of such callous, negligence and carelessness on the part of those in charge of publications of such important matters which affects to a considerable extent the rights of citizens). Clause 16 deals with the procedure in the matter of processing the applications. There is an obligation to intimate the party about the acceptance or rejection of the application and this is provided under Clause 17. Maintenance of a register in Taluk level office, the District Industries Officer and the Registering Authority is stipulated under Clause 18. Clause 20 clarifies that no fee is levied for the purpose of registration. The obligation on the part of the units registered under S. S. I. to maintain attendance register, work order register, general stores register, finished goods stock register, wages payment register and sales tax register, as provided in Appendices III, IV and V, is dealt with in Clause 21. In addition to the above registers, units in receipt of imported materials have to maintain additional registers as contemplated under the Import Policy and this is provided in Clause 22. The registers are to be shown to the inspecting officers of the Department. The circumstances in which a registration is liable to be cancelled are detailed in Clause 24. That clause stipulates that the registering authority is the authority competent to cancel the registration; and provides for the obligation to intimate the Director of Industries about such cancellation. The procedure for shifting the premises of the unit is dealt with in Clause 25. And the new registration in the area to which a unit is shifted in accordance with the instructions, is referred to in Clause 26. Issue of a copy of registration certificate when the original is lost is covered by Clause 27; and that of a temporary registration by Clause 29. Under Clause 28 the Director of Industries is constituted the appellate authority in the matter of registration or cancellation of

the registration of a unit. Some of the clauses therein are of special significance in this case and they are Clauses 8 and 19. Clause 8 provides that the small scale industries registration is a pre-requisite to avail of special assistances enumerated therein. One of such items is item 5 which deals with priority for the supply of scarce raw materials imported/indigenous. Clause 12 deals with units consuming scarce or imported raw materials. It reads as follows :

"Units consuming scarce or imported raw materials will be given registration only if the production programme of the Unit is approved by the competent authority."

Clause 19 is also very important in this connection. (Here again there appears to be a serious omission of a crucial "not" in the first sentence. It is not known whether the omission had been detected by any person and a suitable erratum effected in that behalf). That clause reads as follows:

"Registration of the unit ipso facts shall create * any contractual obligation on the part of department to render the assistances mentioned in para 8. It would only mean that efforts will be made by the department to render such assistance in vague * * and the availability of resources for extending such assistance."

(The places indicated in asterisks appear to be messing up in the typed version or in the press. In the place indicated "*" it appears the word "not" is omitted. And in the place indicated with "* *" it appears, the word "in-vague" has been wrongly printed in place of "in vogue").

30. Some important aspects which emerge from the guidelines relating to the registration of small scale industrial units are: (i) They contain no assurance relating to allotment of quota by the Government, (ii) The application forms do not require any elaboration of the goods actually produced in respect of which scarce raw materials are to be utilised. Only a brief list of products is contemplated in Clause II of Annexure I application form, (iii) The details called for under Clause 9 are in respect of raw materials required or assessed, (iv) If the production programme is approved, registration can be granted in respect of even units requiring scarce materials.

31. The averment that softwood was available in open, market in plenty during the early days of nineteen seventies is not disputed by the State Government. A small scale industrial unit was, therefore, not obliged to approach the State Government for allotment of softwood earmarked to any particular product of that unit. This is particularly so when the factum of that particular unit being engaged in the production of a particular item, bobbin blocks in the one case and tea-chest battens in the other, is not disputed by any authorities. The fact is demonstrated by the documents produced by the petitioners. If any unit found its raw material requirements without troubling the Government for that purpose, as for example, by making searching enquiries for the same from whatever sources available in the State or by tapping the sources in the neighbouring States, that circumstance by itself cannot be a ground for a perpetual denial of softwood to that industry or unit for the manufacture of an

item, which factually was being done prior to 18-6-1976.

32. The date 18-6-1976 would have had some relevance if it were stipulated that units which came into existence subsequent to that date would not be entitled to allotment, for it is understandable that such units did take a risk in getting themselves established despite a clear warning about the shortage of the raw material. That however is not the case here. However old or well-established a unit may be, and however early its registration may be, and irrespective of its having been engaged in the production of the end product from very early times, it is denied quota for the only reason that the certificate of registration does not contain an entry relating to that end-product. Arbitrariness is writ large on the face of such a policy.

33. Things would have been probably different if all the units had been duly and properly intimated clearly that those who require allotment of softwood quota from the Government were obliged to specify in their application for registration the products in respect of which they require such allotment of raw materials. Concededly no such general notification had been made or other intimation given to the various units. As is evident from an analysis of the general instructions relating to registration of small scale units (Ext. R-1), non-mention of the products in the certificates of registration did not have any significance as regards the allotment of quota for those products. It was possible that even when a unit was, as a matter of fact, engaged in the production of a particular item, that item might not be reflected in the certificate of registration. It was possible that at the time of applying for registration, a particular commodity was not scarce; or the particular unit might have had its own effective alternate arrangements to obtain the relevant raw materials at that time. Then again, allotment of softwood by the Government (made generally and without any earmarking as appears to have been the practice) would have been utilised for various purposes including the manufacture of some items, though not specified in the certificate of registration. This is precisely what had happened in the case of the petitioners. As stated earlier, the documents and certificates issued by the officials of the Industrial Department themselves clearly indicate that prior to 1976 the petitioners had been engaged in the production of bobbin blocks and tea-chest battens. Their units are equipped for, and capable of, having such products. The committee which made an exhaustive survey by an on the spot inspection of such units got itself satisfied about the existence of the units, and their capacity for the production of the various articles. The installed capacity of such units had been determined by the committee. In the above circumstances, a classification for the purpose of effecting allotment of softwood between the units whose certificates of registration prior to 18-6-1976 contained a particular end-product and those which did not contain it, will not have a rational nexus to the objective of a policy of equitable distribution of the commodity of softwood. At the risk of repetition, it is to be emphasised that it is not enough that some date is fixed for the inclusion of an item in the certificate of registration, to be the criterion for future allotments, almost on a permanent basis. As stated

earlier, that date must have some significance relevant for the purpose. The mere fact that the Standing Raw Material Committee first-met on 18-6-1976 does not give such a rational connection, for after all, the only decision which the committee took on 18-6-1976 is the one referred to and reflected in Ext. R-1. The minutes of the meeting have been already referred to earlier. The only decision of that meeting was "not to give registration to new units based on softwood for a period of one year even in mini industrial estates". The units of the petitioners were already in existence. This decision of 18-6-1976 of keeping in abeyance for a period of one year registration of new units based on softwood cannot, therefore be a reason for denying allotment of softwood, in respect of the manufacture of the products which such units were admittedly engaged in prior to 18-6-1976. In view of the absence of the sufficient nexus for the policy with the classification attempted, the policy as adopted by the meeting on 17-6-1980 will not satisfy the requirements of a non-discriminatory policy as envisaged under Article 14 of the Constitution. I, therefore, declare that the policy evolved at the meeting of the Softwood Committee on 17-6-1980 in relation to the allotment of softwood is illegal, discriminatory and ultra vires Article 14 of the Constitution to the extent it denies allotment of quota in relation to the products manufactured by the petitioners for the only reason that those products had not been included in the certificate of registration prior to 18-6-1976.

34. The facts and events narrated above may even make one doubt whether the policy decision of 17-6-1980 was not taken to spite the petitioners for having approached the High Court and obtained a direction for an early disposal of their long pending representations. I have, however, proceeded on the basis that the policy decision was bona fide taken. Even a policy bona fide evolved, is not immune from an attack on constitutional grounds, for, as observed by the Supreme Court in *Rashbihari Panda etc. Vs. State of Orissa*, at p. 1088 :

"In our judgment, the plea that the action of the Government was bona fide cannot be an effective answer to a claim made by a citizen that his fundamental rights were infringed by the action of the Government, nor can the claim of the petitioners be defeated on the plea that the Government in adopting the impugned scheme committed an error of judgment."

In the above circumstances, this Court has to perform its constitutional duty as indicated in *Kasturi Lal Lakshmi Reddy, Represented by its Partner Shri Kasturi Lal, Jammu and Others Vs. State of Jammu and Kashmir and Another*, at p. 2001 :

"The Court cannot lightly assume that the action taken by the Government is unreasonable or without public interest because, as we said above, there are a large number of policy considerations which must necessarily weigh with the Government in taking action and therefore the Court would not strike down governmental action as invalid on this ground, unless it is clearly satisfied that the action is unreasonable or not in public interest. But where it is so satisfied, it

would be the plainest duty of the Court under the Constitution to invalidate the governmental action. This is one of the most important functions of the Court and also one of the most essential for preservation of the rule of law. It is imperative in a democracy governed by the rule of law that governmental action must be kept within the limits of the law and if there is any transgression, the Court must be ready to condemn it."

35. In view of the declaration of the policy as ultra vires and unconstitutional it follows that the orders based on that policy, namely, Exts. P-7 and P-8 in O. P. No. 3304 of 1980 and Exts. P-9, P-12 and P-13 in O. P. No. 3367 of 1980 are also liable to be quashed. I do so.

36. The declaration of the policy as an illegal and unconstitutional one and even the consequential quashing of the impugned orders will not give effective relief to these industrial units which have been starving for the scarce raw material. The plight of the workers depending on the units for employment opportunities cannot also be lost sight of. These circumstances impel me to direct respondents 1 and 2 to consider the representations of the petitioners for allotment of quota and other reliefs in accordance with law within a period of six weeks from today peremptorily. They will be entitled to allotment of the quota for earlier years from the raw materials that may be available with the Forest Department in the current year or ensuing years, after making a proportionate deduction from the allotments to other units who had had the benefit of an excess allotment at the expense of the petitioners for the past two years.

37. The petitioners' complaint regarding arbitrary and discriminatory action in respect of other units, copious particulars of which have been given, appears to be prima facie justified. Take the instance of Mariya Giri Industries. It applied for permission for the installation of the factory only on 5-10-1977. The licence fee to run the industry and the permission required in that behalf was sought under Exts. P-10 and P-11 only on 5-10-1977. It is, however, strange that even as early as on 24-11-1975 it is claimed that this industrial unit which could not even be treated as an en ventre sa mere was regarded as registered on 24-11-1975. Stranger still, it is being allotted softwood quota by the State Government. The instructions issued in that behalf (Ext, R-1) clearly contemplate in the application form a reference to the factory licence and Panchayat licence before registration could be considered, let alone be granted. Clause 7 of the relevant rules makes this point explicit. The procedure for registration is given in Clause 5. The particulars contemplated in the form, Annexure I have to be given on a reading of Clause 15 read with Annexure I. It is, therefore, ordinarily inconceivable that a unit could be granted a registration certificate in the year 1975, even before a licence from the Panchayat and permission for the creation of the factory could be applied for only on 5-10-1977. Neither the learned Government Pleader nor the officers with whom he had discussion could give a satisfactory explanation. On the basis of the second sentence in Clause 11, it may be contended that in respect of new units/proposed units registration under the Factories Act and

licence of a local body need not be insisted upon. Such a contention may not bear closure scrutiny, for, this provision has to be read along with Clause 29. Clause 29 is specific that in respect of such new/proposed units the registration will be issued only on a temporary basis, even in cases where preliminary steps have been taken to set up the unit. Such steps had not been taken in the case of Mariya Giri Industries. The temporary registration itself is intended for availing of assistance (not allotment and the like) from the Department and other sources. The temporary registration is to ensure only for a short period. In respect of other matters "the procedure for the issue of registration will be the same as prescribed earlier". This in turn means that without registration under the Factories Act and the licence from the Panchayat, such a unit is not entitled to registration. To give allotment to such a unit which takes the preliminary steps for the installation of the factory only in late 1977 to permit it to enjoy a quota and at the same time deny it to units which have been working for decades, will certainly generate Gilbertian results. Patent arbitrariness involved in this process of distribution cannot go unnoticed.

38. Another instance of prima facie favoured treatment appears to be that of M/s. Chammanam Industries. Ext. R-4 indicates that its registration is on 29-9-1978, Ordinarily, such a registration was impermissible in the light of the decision taken on 18-6-1976 not to grant new registration. The apparent explanation seems to be that it was functioning earlier at Chalakudi. The certificates of registration of the earlier periods are not made available to ascertain what all items had been included in it prior to 18-6-1976. When a specific complaint had been made, it was obligatory on the part of the Department to have explained it with relevant materials, namely, registration certificate for the period prior to 18-6-1976 to evidence specific items manufactured and the raw materials in respect of which they sought allotment. This has not been done.

39. Yet another complaint relates to M/s. Bharat Saw Mills. Ext. R-5 is a communication addressed to M/s. Bharat Saw "Mills by the General Manager, District Industrial Centre, Ernakulam. It, in turn, refers to instructions from the Director of Industries and Commerce dated 3-7-1980. This communication was not made available to the Court. Was he acting in exercise of the power under Clause 28 ? Or was he issuing directions as to the Head of the Department? The circumstances under which the Director issued the instructions are not clear and no explanation has been given in that behalf. The explanation for allotment of quota to this factory appears to be on information from the Divisional Forest Officer, Chalikudi that the above concern had participated (in auction ?) "for the right of collection and removal of produce from top and butt-ends" held on 26-2-1976. This is not in conformity with the policy evolved on 17-6-1980, which even as per the stand taken in the counter-affidavit requires that a unit was getting softwood quota prior to 18-6-1976 for the manufacture of specific end-products. A mere participation in the auction for certain forest produce will not amount to an allotment of quota for a specific end product.

40. There have been complaints relating to Swaraj Plywood Works and Janseva Saw Mills, which, according to the petitioners were allotted quota in respect of the new units established by them in 1981. Why was Janseva Saw Mills shown an extra indulgence in the matter of entertaining the application for amendment of certificate despite its being admittedly late by 5 months, as clearly revealed from Ext, P-14 in O. P. No. 3367 of 1980? Were these units given a second bite at the cherry in a legal manner and in accordance with the policy?

41. It may not be fair to express any definite and final views on these matters, particularly when those parties are not impleaded in the petitions. This Court expected more cogent and detailed explanation from the Department, particularly when the petitioners have taken the care to support their allegation with documentary evidence. The attempt in that behalf in the counter-affidavits has been as inadequate as burning a one-farthing candle at Dover to light Calais. In these circumstances, it may be proper that this Court alerts the State Government for appropriate action in respect of these specific complaints which prima facie warrant close scrutiny and deeper probe, This Court has given such suggestions on earlier occasions. One such suggestion given by Raman Nayar, J., as his Lordship then was, brought to light extensive irregularities in respect of valuable assets of the temples in this State. (See *Madhavan Nair v. Commr. for H. R. and C. E.* 1963 1 KLT 480. It was only recently that this Court had occasion to hint at the possibility of corruption in the sanctified area of academic institutions. A meaningful and effective probe has prima facie revealed the alarming proportion of distressing corrupt practices which remained unnoticed and unchecked for a fairly long period.

42. Are the instances pointed out by the petitioners herein with copious - details, some of which have been referred to in general and in brief above, instances of "clean corruption" or "neat nepotism" ? Or are those actions justified on materials ? Or again are they only mistakes honestly committed ? These are matters which may perhaps merit a close scrutiny and deeper probe, should the Government think it necessary and expedient to do so. Prima facie there exists materials which warrant such a probe.

43. The writ petitions are disposed of in the manner indicated and with the observations as above. T direct the parties to bear their respective costs.