

(1994) 12 SHI CK 0039

In the High Court Of Himachal Pradesh

Case No : Civil Writ Petition No"s. 1455 and 1576 of 93

Yogendra Chandra and Others

APPELLANT

Vs

State of H.P. and Others
 Hari Krishan Vs State and Others

RESPONDENT

Date of Decision : 30-12-1994

Acts Referred:

Motor Vehicles Act, 1988 — Section 80

Citation : (1995) 2 ShimLC 100

Hon'ble Judges : Gulab C. Gupta, C.J;Kamlesh Sharma, J

Bench : Division Bench

Advocate : Chhabil Dass, in C.W.P. No. 1455 of 1993, Gobinda Mukhoty, in C.W.P. No. 1475 of 1993, R. Venkatramani, in C.W.P. No. 1475 of 1993, S.K. Bhattachariya, in C.W.P. No. 1475 of 1993, K.D. Sood, in C.W.P. No. 1475 of 1993, S.P. Mittal, in C.W.P. No. 1576 of 1993, R.N. Keshwani, in C.W.P. No. 1576 of 1993, A.K. Goel, in C.W.P. Nos. 1576, 1590 and 1679 of 1993, Nalin Talvvar, in C.W.P. No. 1679 of 1993, Mukul Rohtgi, in C.W.P. No. 1679 of 1993, Ajay Sharma, in C.W.P. Nos. 1489 of 1993 and 145 of 1994, Ajay Kumar, in C.W.P. No. 145 of 1994, B.N. Nayer, in C.W.P. No. 1590 of 1993, C.L. Sharma, in C.W.P. No. 1590 of 1993 and Subhash Sharma, in C.W.P. No. 611 of 1994, for the Appellant; Indar Singh, A.G. in C.W.P. No. 1679 of 1993, in C.W.P. Nos. 1455, 1475 and 1489 of 1993 and 611 of 1994, in C.W.P. No. 1576 of 1993 and for Respondents No. 1 to 4 in C.W.P. Nos. 1590 of 1993 and 145 of 1994, Lila Nand Sharma, in C.W.P. No. 1455 of 1993, D.C. Jishtu, in C.W.P. Nos. 1455 and 1489 of 1993 and for Respondent No. 4 in C.W.P. No. 1475 of 1993, R.K. Sharma, in C.W.P. No. 1475 of 1993 and for Respondent No. 6 in C.W.P. No. 1489 of 1993, S.D. Dholakia, in C.W.P. No. 1489 of 1993, in C.W.P. No. 1455 of 1993 and for Respondent No. 6 in C.W.P. No. 1475 of 1993, D.R. Gupta in C.W.P. No. 1489 of 1993, in C.W.P. No. 1455 of 1993 and for Respondent No. 6 in C.W.P. No. 1475 of 1993, S.S. Kanwar, in C.W.P. No. 1455 and 1489 of 1993, S.P. Mittal, in C.W.P. Nos. 1455 and 1489 of 1993 and for Respondent No. 7 in C.W.P. No. 1475 of 1993, R.N. Keshvani, for Respondent No. 8. in C.W.P. Nos. 1455 and 1489 of 1993, in C.W.P. No. 1475 of 1993, A.K. Goel, in C.W.P. No. 1455 of 1993, for Respondent No. 6, 7 and 9 in C.W.P. No. 1475 of 1993 and 9 in C.W.P. No. 1489 of 1993 and for Respondent No. 10 and 11 in C.W.P. No. 1455 of 1993, Ajay Sharma, counsel for Respondent No. 9 in C.W.P. No. 1455 of 1993, in C.W.P. No. 1475 of 1993, for Respondent No. 14 in C.W.P. No. 1576 of 1993 and for Respondent No. 12 in C.W.P. No. 1590 of 1993, B.N. Nayer, for Respondent No.

10 in C.W.P. No. 1455 of 1993 and for Respondent No. 9 in C.W.P. Nos. 1475 and 1489 of 1993, C.L. Sharma, for Respondent No. 10 in C.W.P. No. 1455 of 1993 and for Respondent No. 9 in C.W.P. Nos. 1475 and 1489 of 1993, Nalin Talwar, for Respondent No. 11 in C.W.P. No. 1455 of 1993, Mukul Rohtgi, for Respondent No. 11 in C.W.P. No. 1455 of 1993, H.M. Sharma, in C.W.P. No. 1576 of 1993, in C.W.P. Nos. 1590 of 1993 and 145 of 1994 and for Respondent No. 4 in C.W.P. No. 1489 of 1993, Govinda Mukhoty, in C.W.P. No. 1576 of 1993 and for Respondent No. 7 in C.W.P. No. 1590 of 1993, R. Venkatramani, in C.W.P. No. 1576 of 1993 and for Respondent No. 7 in C.W.P. No. 1590 of 1993, S.K. Bhattachariya, in C.W.P. No. 1576 of 1993 and for Respondent No. 7 in C.W.P. No. 1590 of 1993, K.D. Sood in C.W.P. No. 1679 of 1993, for Respondent No. 9, 10, 11, 12 and 13 in C.W.P. No. 1576 of 1993 and for Respondent No. 7 and 8 to 11 in C.W.P. No. 1590 of 1993 Chhabil Dass, for Respondent No. 15 in C.W.P. No. 1576 of 1993 and for Respondent No. 13 in C.W.P. No. 1590 of 1993 and P.A. Sharma, Sr. C.G.S.C., in C.W.P. No. 1576 of 1993 and for Respondent No. 6 in C.W.P. Nos. 1590 of 1993 and 145 of 1994, for the Respondent

Judgement

Gulab C. Gupta, C.J.—The Petitioner, Yogendra Chandra is a Member of the Himachal Pradesh Legislative Assembly and claims to have filed C.W.P. No. 1455 of 1993, in public interest. He also claims to be the Convenor of the Indian National Trust for Art and Cultural Heritage and President of Himalayan Wild Life and Environment Preservation Society and alleges that grant of permission by the Respondent State Government to Respondents Sagar Katha Factory, M/s Doon Katha Factory and Orient Herbs, for establishing their Katha manufacturing units is contrary to National Forest Policy and H.P. Forest Policy besides detrimental to environment protection. He, therefore, prays for a writ of certiorari for quashing the permission granted to the aforesaid Units with a further writ in the nature of mandamus to the Respondent State Government to properly manage khair wood forests in the State by framing a working plan in that behalf. Petitioner Shankar Trading Co. (C.W.P. No. 1475/93) is the only mechanised unit in the State of Himachal Pradesh producing katha since 8-2-1973 in the name of Mahesh Udyog. It is challenging the grant of permission to establish similar mechanised units to the aforesaid three Respondents on similar grounds. Petitioner Ved Prakash in C W.P. No. 1489/93 represents Bhattiwalas and feels similarly aggrieved by grant of permission to new units and has made similar submissions on their behalf. Petitioners in other writ petitions were registered as Industrial Units for producing katha in the State of Himachal Pradesh and claim to have invested large sums of money in purchase of land, machinery and construction and erection of their factories. The permission granted to them has been either refused or registration withdrawn either by the Respondent State Government or the Industrial Projects Approval Review Authority (IPARA for short). They, therefore, feel aggrieved by the aforesaid action and have preferred their separate writ petitions claiming necessary relief from this Court in exercise of its writ jurisdiction under Article 226 of the Constitution. Since these petitions deal with the same subject-matter, they were

ordered to be heard and disposed of together. That is, how these writ petitions are being decided by this judgment.

2. The submission of the learned Counsel for the Petitioners Yogendra Chandra, Ved Prakash and Shankar Trading Co. in the main, are that the forest coverage in the State of H.P. is fast depleting causing imminent danger to environment. For this reason, they submit that the Central Government has framed and promulgated the National Forests Policy which aims at increasing the forest coverage and thereby protect environment which is so precious to human life. Pursuance to the National Forest Policy, the State of Himachal Pradesh has also framed Himachal Pradesh Forest Policy. Both these policies, according to these Petitioners, discourage establishment of forest based industries. Since Katha manufacturing is forest based, establishment of industrial units for this purpose is likely to deplete kair wood forest and further reduce the forest coverage. This would, according to the Petitioners violate their fundamental rights under Article 21 of the Constitution. It is, therefore, submitted that grant of permission to the three Respondents to establish katha manufacturing Units is illegal and unconstitutional. It is particularly submitted that so many katha manufacturing units cannot be supported by the available khair wood in the State and, therefore, there is imminent possibility of illicit felling which will further reduce the forest coverage. Since reduction of forest-coverage would effect the right of these Petitioners to live in a pollution free atmosphere, the permission granted to the Respondents Units is said to be violative of Article 21 of the Constitution. These Petitioners further submit that the available khir wood in the State is not sufficient to support so many industrial Units and hence the Petitioner Shankar Trading Company is likely to be adversely effected. This would, therefore, be violative of their fundamental rights under Article 19(1)(g) of the Constitution. As regards the grant of permission by the Respondent State of Himachal Pradesh, it is submitted that applications in this behalf were required to be considered by IPARA and decision taken in its meeting which has not been done. The decision, according to these Petitioners, has been taken by a sub-committee of IPARA which was not lawfully constituted. More particular submission in this behalf is that IPARA itself is a body appointed by the President of India enjoying limited authority and jurisdiction. Such a body could not, in law, delegate its powers and functions to any one including a sub-committee of its own. The recommendation of the sub-committee is, therefore, said to be illegal. Then, the sub-committee did not hold the meeting but decided the matter by circulation. It is, therefore, submitted that there was no meeting of minds which is possible only when the meeting is summoned to deliberate and discuss the matter in issue. It is further submitted that the decision of the Respondent State to grant permission to three units does not take into consideration either the National Forest Policy or the H.P. Forest Policy and is otherwise arbitrary as it is not based on any reason. It is also submitted that in fact there is no order in favour of the three Respondents to establish their industrial units as required under Article 166 of the Constitution and hence they are not entitled to establish them.

3. The three industrial Units in whose favour the permission has been granted, have however, deny the alleged illegalities and submit that permission granted to them is in accordance with the National and State Forest Policies which promote export or value added products rather than raw material. They deny that there is any likelihood of illicit felling of khair trees or depletion of forests due to establishment of new Units. They further submit that availability of khair wood in the State is sufficient to sustain not only the three units but many more. They have particularly submitted that so far the State of Himachal Pradesh has been exporting khair wood and was not getting any substantial benefits out of it. The policy formulated in 1991 requires them to promote value added products and for that purpose, the Respondent State has permitted establishment of katha factories. After these factories go in production, the State would," instead of exporting khair wood, start exporting katha which will be more profitable. As regards submissions regarding invalidity of State action in granting permission, it is submitted that no law or statutory rules have been violated. The matter, according to these Respondents has been considered at various levels and has, therefore, received detailed consideration of the concerned authorities. The so called illegalities are also denied. These Respondents particularly assert that the so called public interest claimed by the Petitioner Yogendra Chandra is really the interest of Petitioner Shankar Trading Company and both of them are colluding against new units to protect the existing Unit-Mahesh Udhyog. The petition is nothing but an attempt to create a monopoly in favour of the said Company. It is also submitted that the Writ Petition by Shankar Trading Company is really a petition by a business competitor intended to prevent entry of Ors. in the field and is an instance of misuse of the process of this Court.

4. The Petitioner Ganesh Wood Product (C.W.P. No. 1590 of 1993) whose case was recommended by IPARA but not approved by the Respondent State Government submits that the action of the Respondent State authorities in this behalf is arbitrary and wholly unjustified. Since sufficient quantity of khair wood is available in the State, there is no factual justification for refusing permission. They deny that there is any threat to environment and submit that the provisions of H.P. Private Forest Act, 1955, H.P. Land Preservation Act, 1978, H.P. Forest Conservation Act, 1980, and H.P. Forest Produce Regulation of Trade Act, 1982, besides several other Central Acts are sufficient to preserve and protect environment and promote increase in forest coverage. They particularly submit that the unit was earlier registered in terms of the Industrial Policy of the State and they had invested a substantial sum in purchasing land and constructing building etc. They therefore, claim that the Respondent State is estopped on the principle of promissory estoppel, to take a U-turn in the matter and refuse permission. It is also submitted that the impugned refusal of the permission amounts to arbitrary and unjustified exercise of discretion and is violative of Article 14 of the Constitution. Referring to reason given for refusal in the reply of the Respondent State Government, i.e. policy of first come first serve, it is submitted that it is arbitrary and unjustified as simply because a unit has made

the application first, cannot, be a relevant factor at this stage where all units have, acting on the industrial policy and registration, invested substantial amounts to set up the unit. Principle of natural justice and the doctrine of the legitimate expectation are also summoned in this behalf. The opponents of these units, however, submit that neither the "promissory estoppel" nor "legitimate expectation" confer an enforceable right on these Petitioners and even otherwise in the absence of any order of the State Government in this behalf as required by Article 166 they cannot take the help of these legal principles/doctrine. They reiterate that a decision taken on the file of the State Government does not constitute a decision in law as long as an order under Article 166 of the Constitution is not issued.

5. Since the Petitioner Yogendra Chandra claims to be invoking this Court's jurisdiction in public interest and the owners of the new Units against whom the said petition is directed, submit that he is colluding with the Petitioner Shankar Trading Company with a view to preserve its monopoly in katha manufacturing, it deserves consideration whether any public interest is involved in the matter and whether such a petition can be entertained and decided We would, therefore, decide C.W.P. No. 1455 of 1993 first. In this connection it is necessary to notice that pursuance to the Scheme for grant of incentives to the industries in Himachal Pradesh, 1971, the Petitioner Shankar Trading Company were permitted to establish their katha manufacturing in the year 1972. The said unit went into production w.e.f. 8-2-1973. According to the agreement with this Unit and the Respondent State Government, they are not only entitled to incentives under 1971 Scheme but also purchase of khair wood from the Respondent State Government on concessional rates. The present arrangement admittedly is that they are entitled to buy 50% of the khair wood produced in Government Forests at 6% discount on the average selling price of the particular year. The Respondents allege that Shankar Trading Company has been able to so manage the auction of khair wood by the Respondent State authorities in lean season that they could buy it at less than 50% of the market price. On these facts, it is submitted that the purpose of the present petition is not to serve any public interest but to promote the monopoly of Shankar Trading Company. In the context of these submissions and counter submissions, it requires consideration whether it is really a public interest litigation.

6. Though this litigation originally sought to serve "public interest" and "social interest", it subsequently came to be called as litigation probono publico or for the benefit of the public. In Ramsharan Autyanuprasi and another Vs. Union of India and others, the Supreme Court emphasised that a litigation between individuals to settle their own scores cannot be public interest litigation. Public interest litigation, according to the Supreme Court, is an instrument for the administration of justice to be used in proper cases. It is only when Courts are apprised of gross violation of fundamental rights by a group or class action or when basic human rights are invaded or when there are complaints of such acts as shock the judicial conscience that the Courts should leave aside procedural

shackles and hear such petitions and extend its jurisdiction under all available provisions for remedying the hardships and miseries of the needy, the underdog and the neglected similarly, in Bangalore Medical Trust Vs. B.S. Muddappa and others, , the Supreme Court laid down that only public spirited citizens having faith in rule of law are the persons entitled to move the Court. There have been cases where a private interest prompted the Petitioner to move the Supreme Court and request probe into the grievance indicated involvement of a public interest. The Court in such cases owed a duty to the public that the truth and the validity of the allegations made be enquired into in public interest. Shivajirao Nilangekar Patil Vs. Dr Mahesh Madhav Gosavi and Others, In Chaitanya Kumar and Others Vs. State of Karnataka and Others, the Court noticed the possible misuse of public interest litigation and cautioned that it should not be used in making reckless and wild allegations against Ors. . The Court also accepted that it should refuse to act at the instance of pseudo-public spirited citizens. Advancement of public interest and avoidance of public mischief are, according to the Supreme Court, the paramount considerations and the Court should be concerned with the balancing of these interests. It is, therefore, clear to us that though this Court would promote "public interest" at the instance of public spirited citizens, it will also avoid public mischief at the instance of pseudo public spirited citizens.

7. Where does the truth lie? Whether the Petitioner Yogendra Chandra is a public spirited citizen or a pseudo public spirited citizen colluding with the Petitioner Shankar Trading Company and helping them to avoid competition from new Units? Though his concern for depleting forest wealth and increasing danger to environment is appreciated, it is not possible to accept that there is no Government in the State of Himachal Pradesh It is also not possible to accept that the statute like H.P. Forest Private Act, 1955, H P Land Preservation Act, 1978, H.P. Forest Conservation Act, 1980, H.P. Forest Product Regulation of Trade Act, 1982, besides several other laws like Environment Protection Act, are not being implemented in this State. The possibility of violations of the provisions of these statutes, by itself, is not enough to hold that no effort is being made to implement these laws. These laws, in our opinion, sufficiently protect forest wealth and thereby promote environment protection. May be that the forest coverage in this State has gone down inspite of these laws, but katha manufacturing unit cannot be held responsible for it. The apprehension of the two Petitioners, i.e. Sh Yogendra Chandra and Shankar Trading Co. that grant of permission to establish new Katha manufacturing Units will necessary result in depletion in forest coverage, must therefore, to be held to be unfounded and baseless Since nothing but khair wood is used in these industrial Units, it is neither just nor proper to blame new units for depletion of forest coverage in the State. As far as Khair forests are concerned, no reliable data has been made available to us to hold that it has diminished in the past in any manner. The policy that one who cuts one Khair tree should plant atleast three such trees leads us to hold that the apprehension that the availability of Khair wood would

go down, is also without any basis. That the Khair wood is not used for any other purpose being admitted, the possibility of its illicit felling for any other purpose is remote. Since Khair wood is precious and yields good income, private growers are bound to take steps to avoid its illicit felling by Ors. . Considering the expanse of forest department in the State, it is unreasonable to hold that they would permit illicit felling in Government Forest. Neither the Petitioner Yogendra Chandra nor Shankar Trading Company has placed any reliable data before us to hold that there has been any illicit felling of Khair tree in the past. The concern of these Petitioners for environment protection must, therefore, be held to be factually baseless. They cannot be for this reason treated to be acting pro bono publico. The Petitioner Yogendra Chandra, cannot therefore, be accepted as a public spirited citizen approaching this Court to protect the public interest. In spite of it, it must be clarified that there is no evidence of collusion between him and the Petitioner Shankar Trading Company and hence this Court would unhesitatingly reject the submission of the Respondents in that behalf. The C.W.P. No. 1455 of 1993 is, therefore, dismissed on this short ground.

8. C.W.P. No. 1489 of 1993, Ved Prakash v. State, is also a public interest litigation seeking regular supply of Khair wood to about 199 Bhattis in the State. It is clear from the reply of the Respondent-State that they have already committed to reserve 12-1/2% of the Khair wood available from the Government Forests for supply to Bhattiwalas. Further submission of the Respondent-State is that the allotted quantity of Khair wood is not being lifted by Bhattiwalas. Under the circumstances, there is no justification for any grievance in relation to Bhattiwalas. Apparently the case of Bhattiwalas has been inserted in this writ petition only to provide some legitimacy to it being a public interest litigation which in fact, it is not. As regards the claim of the Petitioners to environment pollution, the same is being considered in the writ petition filed by Shankar Trading Company and for that reason, it is not necessary to consider the same separately in this writ petition. This petition is, therefore, dismissed, but with no orders as to costs.

9. The claim by the Petitioner Shankar Trading Company to be acting in public interest deserves mention only to be rejected. Admittedly, this is the only Katha manufacturing industrial unit; all Ors. are hand operated Bhattis. It gets supply of Khair wood at concessional rates and is making substantial profits. There is no threat to them of any type except a healthy business competition from the proposed new units. They are assured supply of 50% of the available Khair wood from the Government forests under their contract, as the same is not under challenge. The new Units, on the contrary, have no such guarantee and are, therefore, in a disadvantageous position vis-a vis this Petitioner. In such a factual situation, the writ petition filed by them is nothing but their desperate attempt to maintain status quo which suits no one except them. The so called public interest claimed by them is, in the opinion of this Court, nothing but public mischief. The State is so far exporting its excess Khair wood and is getting the price thereof. If the said khair wood is converted into katha, it will not only provide employment

to local citizens but would also ensure better revenue for the State. Then it is well settled that the only road from poverty to plenty is through better production which is possible by planned industrialisations. The Petitioner is only aiming to stop this industrialisation. Apparently, therefore, the petition prompts public mischief rather than public interest and does not deserve to be encouraged for that reason.

10. While on the subject of "Public Interest" some decisions relied upon by the learned Counsel for the parties may also be noticed. In *Mithilesh Garg, Vs. Union of India and others etc. etc.*, the Supreme Court considering the fundamental right under Article 19(1)(g) of the Constitution in the context of liberalised provisions of Motor Vehicles Act, 1988, held that the right guaranteed under the aforesaid Article does not extend to shutting out healthy competition and such an extension of the fundamental right would not be in public interest. The Court, therefore, found no justification for any complaint on the ground of public interest. The Supreme Court while so observing recalled its earlier decision in *Jasbhai Motibhai Desai Vs. Roshan Kumar, Haji Bashir Ahmed and Others*, where the legal validity of a similar challenge by a proprietor of a cinema theatre to grant of no objection certificate to Ors. was considered and it was held that such a person is not entitled to claim any public interest in such a situation and hence he had no locus standi. The Court also recalled its decision in *The Nagar Rice and Flour Mills and Others Vs. N. Teekappa Gowda and Bros. and Others*, wherein it was held that a rice mill owner has no locus standi to challenge under Article 226 of the Constitution setting up of a new rice mill by Anr. . It is true that the concept of locus standi has undergone substantial change since then But the fact that the Supreme Court had to recall these decisions to support its view in *Mithilesh Garg's* case (supra) only indicates that the "law has not lost its vitality and still requires scrutiny of individual's claim to public interest and refusal of permission to such a person if he be under the garb of public interest seeking to serve his own personal interest. In this connection the decision in *Ranisaran v. Union of India* (supra) also deserves mention, where the Court on consideration of its decisions in *Bandhua Mukti Morcha Vs. Union of India (UOI) and Others*, and *Shri Sachidanand Pandey and Another Vs. The State of West Bengal and Others*, held that the Court's do not entertain public interest litigation in a cavilling spirit or in a confrontational mood or with a view to tilting at executive authority or seeking to usurp it, but its attempt is only to ensure observance of social and economic rescue programmes, legislative as well as executive, framed for the benefit of the have-nots and the handicapped and to protect them against violation of their basic human rights, which is also the constitutional obligation of the State. The Court regretfully noticed that today public spirited litigants rush to courts to file cases in profusion under this attractive name. They must, however, inspire confidence in Court and among the public and must be above suspicion. The Court, therefore, held that there is very much more than what meets the eye in the instant case. Since the court was of the opinion that the public interest litigation was being used as a means of settling the dispute between various

members of the family, it refused to entertain the petition.

11. No other case has been brought to our notice which may justify adjudication of an extraordinary grievance of the Petitioner like Shankar Trading Company under the cover of Public Interest Litigation. Indeed, the learned Counsel for the Petitioner realising the aforesaid difficulty, did not lay much stress on the public interest aspect of the petition but insisted that it was a petition for enforcement of Article 21 and Article 19(1)(g) of the Constitution. We will deal with this aspect of the matter subsequently in this judgment.

12. In spite of it, the important question requiring our consideration is whether there is enough khair wood available in the State and whether establishment of new units would not benefit any one in any manner. In June 1993 on World Environment Day, the Government of Himachal Pradesh, Forest Department published a brochure which (available at pp. 588 to 590 of the paper book in the writ petition of Yogendra Chandra) indicates that 58398 cubic metres of khair wood is available in the State. The Petitioner Shankar Trading Co. has, however, given this quantity as 30,000 cubic metres only (para-6 of the writ petition) This is also the estimate of the Principal Chief Conservator of Forests in his letter dated 24-7-1993, available at page 600 of the paper book in C.W.P. No. 1455 of 1993. Against the aforesaid estimates, affidavit of the State Government available at page 461-471 in C.W.P. No. 1455 of 1993 and the Secretary (Forest) dated 31-3-1993 available at page 647 in C.W.P. No. 1455 of 1993 places the availability of khair wood at 23871 and 23872 metric tonnes respectively. There is apparent and substantial variation between these figures. Even assuming that only 23870 cubic metres of khair wood is available, it may be considered whether the same would be sufficient to meet the requirements of all the units permitted to be established. In this connection, it deserves notice that each of these units have been directed to restrict its processing capacity at a level of 2400 cubic metres of khair wood per annum. Under the circumstances, the three units will require only 7200 cubic metres of khair wood per annum. The Petitioner Shankar Trading Co. has made available to us, during the course of hearing a chart indicating the khair wood allotted to them from time to time from which it is apparent that they purchased 1005.30 cubic metres in 1992-93 and 1170 cubic metre in 1993-94. Even if these figures are accepted as correct, it will leave sufficient khair wood for Bhattiwalas who according to the Respondent State have not been able to purchase even the allotted quantity during this period. It is therefore, clear to us that the submission that sufficient khair wood is not available to sustain three new units is factually incorrect. In this, connection it is also noteworthy that no assurance for supply of khair wood has been given to these units by the State Government and, therefore even if there be any short fall in its availability, they will have to make their own arrangement. It is not for this Court to judge their wisdom in rushing to this State to establish their units even when there is no guarantee of supply of raw material. They being businessmen would best know how to protect their interest. In this view of the matter, the submission based on so called non-availability of sufficient quantity of

khair wood has no merits and is rejected.

13. The learned Counsel for the Petitioner Shankar Trading Company also submitted that their right to healthy environment which is an integral part of Article 21 of the Constitution is being threatened by the establishment of these Units. In view of the decision aforesaid, the argument may not require any serious scrutiny. Suffice it to say that the Petitioner has failed to establish any direct relationship with their fundamental right under Article 21 of the Constitution and the establishment of the new Units for manufacturing katha. The Units are not even located at or near the place where they live or have their establishment. Their unit is at Mahesh Nagar, Dist. Una, while Sagar Katha Factory is to be established at Kala Amb, District Sirmour. Similarly, other units are also not to be established at Mahesh Nagar. Indeed of the 15 proposals receiving consideration of IPARA only two i.e. of Naman Wood Product and Chadda Enterprise were intended to be located in District Una. Under the circumstances, it is too much to submit that the environment in which these Petitioners are living would become polluted. If this was to be accepted, these Petitioners could as well submit that environment pollution in Delhi is also affecting their right under Article 21 of the Constitution. Apparently, the submission is only intended to provide legitimacy to an otherwise unjustified submission.

14. The submission of the Petitioner Shankar Trading Company based on their fundamental right under Article 19(1)(g) of the Constitution may also be examined. It has already been noticed that there is no threat either by the State authority or by the new Units to their right to continue katha manufacturing. Indeed, the Respondent State admits its obligation to supply 50% of the khair wood of the Government forests to them at concessional price. Clearly, therefore, no right of this Petitioner is threatened. It is, however, true that establishment of new Units will bring many more manufacturers of katha and thereby encourage competition in the trade. Such a competition has been held by the Supreme Court in *Mithilesh Garg's case* (supra) as in wider public interest. It may be recalled that existing motor transport operators, had, in the said case challenged the constitutionality of the provisions of Section 80, and like, in the Motor Vehicles Act, 1988, as they promote liberalisation for private sector operation in the Road Transport field. The Court noticed that the said challenge was an effort on the part of existing operators to stop new operators from coming in the field as competitors for which there was no justification. More operators, according to the Supreme Court, means a healthy competition and efficient transport system providing ample choice to the commuter public to board the vehicle of their choice and patronise the operator who is providing the best service. The policy to grant permits liberally was, therefore, held to be for the benefit and convenience of the public. Referring to Article 19(1)(g) and Article 19(6) of the Constitution, the Supreme Court held that it is only the State that can impose reasonable restrictions within the ambit of Article 19(6) of the Constitution. The Act provides liberal policy to grant permits to those who intend to enter the motor transport

business. Petitioners request was, therefore, nothing but request to the Supreme Court to do what the Parliament has undone. The Court, therefore, rejected the submission holding that, when the State has chosen not to impose any restriction under Article 19(6) of the Constitution in respect of motor transport business and has left the citizens to enjoy their right under Article 19(1)(g) there can be no cause for complaint by the Petitioner. This decision, in our opinion, sufficiently answers the Petitioner's claim, to its fundamental right under Article 19(g). If the Petitioner Shankar Trading Company has this fundamental right, there is no reason to doubt that newly permitted units have also a similar right and it will require more than the mere wish of a competitor in business to deny them this right. This is not to say that the Petitioner Shankar Trading Company being a Company and not a citizen cannot claim this fundamental right. In this connection, the decisions of the Supreme Court in the Tata Engineering and Locomotive Co. Ltd. Vs. State of Bihar and Others, deserves mention. We, however, need not deal in detail with this aspect of the matter, as we have reached the conclusion that even if the Petitioner is conceded the aforesaid fundamental right, there is no violation thereof in the context of the facts and circumstances of this case.

15. As regards challenge to mode and manner of decision taken by the Respondent State Government in relation to the units, this Court would refuse to examine the same in view of its finding that the motive and purpose of the same is to protect and preserve its own monopoly in trade which is not in public interest. In this view of the matter, we find no substance in the writ petition of Shankar Trading Company and dismiss the same with costs. One set of counsel's fee each in favour of the Respondent State Government and Respondent Sagar Katha Factory, quantified at Rs. 10,000 only.

16. The Petitioners in other five petitions which are also being decided by this judgment; can for the sake of convenience, be classified into two groups, viz., (i) those whose cases were recommended by IPARA but rejected by the Respondent State Government, and (ii) those whose registration under the Industrial Policy of the State, has been cancelled. The challenge by the first group of the Petitioners is that the decision of the Respondent State Government inspite of recommendation of IPARA, is arbitrary and hence violative of Article 14 of the Constitution. It is particularly submitted that impugned decision does not give any reason for refusing permission and is, therefore, against the basic "rule of law". Referring to the reasons stated in the reply affidavit, it is submitted that "first come first serve" cannot be a rational and valid approach in the matter particularly when these Petitioners, after their registration, have invested huge amounts in establishing their units. Submissions of the Respondent State in this connection is that their approach is functional and hence they have permitted only such units as may be able to survive with the existing available quantity of khair wood. Since availability of khair wood is not sufficient for all of them they have to permit only three units out of six recommended by the IPARA. Under such circumstances, the "first come first serve" basis is the only rational basis

They, therefore, claim that refusal of permission to establish these units is not only legal but also otherwise justified.

17. It is apparent that the Units recommended by IPARA were earlier registered with the Industries Department and have thereafter purchased lands, constructed factory buildings, and/either purchased or placed orders for machinery. In some cases even the raw material has been purchased. In such a factual situation, there should be, in our opinion, something more compelling to deny permission to these units. The order of the State Government does not give any reason. There is nothing in that order to indicate that the Respondent State Government had taken into consideration the availability of khair wood and has in that context refused permission. There is also nothing in that order to indicate that the Respondent State Government was acting under any particular clause of the National Forest Policy or the State Forest Policy. There is also nothing to indicate that environment protection was the reason for this extra-ordinary step. It is true that the permission to set up the Industry was not in the nature of licence under the Industries (Regulation and Development) Act, 1958. The permission was required only to enjoy certain incentives and benefits under the Industrial Policy of the Respondent-State. It is common ground that the State Industrial Policy has no statutory basis and hence breach of any particular part thereof is not enforceable through the Writ of this Court. But can the State act arbitrarily even administratively? It is too late, in our opinion, to claim immunity from scrutiny by this Court in such a case. Some decisions relied upon by the parties may, therefore, be looked into. The learned Counsel for the Petitioner Shankar Trading Company has strenuously relied upon the Supreme Court decision in *Kumari Shrilekha Vidyarthi and Others Vs. State of U.P. and Others*, to submit that grant of permission to the three new Units without reason was arbitrary. Learned Counsel for the Petitioners whose cases have been turned down by the Respondent State Government, have also relied upon this judgment to submit that refusal of permission without reason is arbitrary and violative of Article 14 of the Constitution. This was a case where the State of Uttar Pradesh had by a general order terminated appointments of all Government counsels in all the Districts and directed preparation of a fresh panel for making appointments in place of the existing incumbents. The Supreme Court considering the two basic questions in the aforesaid context, viz, whether the circular containing the decision of the Government was amenable to judicial review and if so, was it liable to be quashed being violative of Article 14 of the Constitution. As regards Judicial Review, the Supreme Court held that non-assigning reasons or non-communication thereof may be based on public policy but termination of an appointment without existence of any cogent reason in furtherance of the object for which the power is given would be arbitrary and, therefore, against public policy. The Court, therefore, held that such an action was amenable to judicial review. Considering arguments based on State's contract with the private party, the Court held that the State's act for public good and public interest and its public character is not changed merely because

statutory or contractual rights are also available to other party. State has to act justly, fairly and reasonably even in the contractual field. Such State action is, therefore, amenable to judicial review. Considering policy decision of the State in the context of Article 14 of the Constitution, the Court held that applicability of Article 14 to all executive actions of the State is well settled. Article 14, therefore, applies to matters of governmental policy and if the policy or any action of the Government, even in contractual matters, fails to satisfy the test of reasonableness, it would be unconstitutional. The basic requirement of Article 14, according to the Supreme Court, is fairness in action by the State. State cannot be permitted to act otherwise in any field of its activity irrespective of the nature of its function when it has the upper-most duty to be governed by the rule of law. Referring to exercise of discretion, the Court held that conferment of power together with the discretion which goes with it, to enable proper exercise of the power is coupled with the duty to shun arbitrariness in its exercise and to promote the object for which the power is conferred, which undoubtedly is public interest and not individual or private gain, whim or caprice of any individual. All persons entrusted with any such power have to bear in mind its necessary concomitant which alone justifies conferment of power under the rule of law. Judging the facts of the aforesaid case in the context of the aforesaid law, the Court held that the action of the State was arbitrary. No other case has been brought to our notice taking a contrary view of the matter. Earlier cases dealing with this subject having been considered in this case, it is not necessary to refer to them. Judged by the aforesaid test, decision of the Respondent State Government in refusing permission to three other units whose cases were recommended by IPARA must be held to be arbitrary. The Respondent State has given reasons in their reply affidavit to the writ petition and have submitted that availability of khair wood is the main consideration in the matter, and since the khair wood was not sufficient for all the units, the permission was rightly refused. In this connection, it is necessary to recall that though the installed capacity of the six units was much more than its permit utilisation thereof, the same was restricted to 2400 cubic metres of khair wood per annum. Under the circumstances 14400 cubic metres of khair wood would be the requirement of all the six new units. M/s. Shankar Trading Co. had purchased 100530 cubic metres in 1992-93 and 1170 cubic metres in 1993-94 and hence it is reasonable to assume that its requirement would be about 1100 cubic metres per year. The estimate of the Principal Chief Conservator of Forests contained in letter dated 24-7-1994, available at page 600 of the paper book of C.W.P. No. 1455 of 1993 is that about 30,000 cubic metres of khair wood is available in the State. Under the circumstances it is difficult to hold that non-availability of khair wood could be the justification to refuse permission to these units. In this connection, it is necessary to recall that the estimate of the Forest Department of the Respondent State as contained in their brochure published on World Environmental Day in June 1993 is 85000 cubic metres. Apparently, therefore, justification now furnished is nothing but a desperate attempt to cover an otherwise arbitrary action. Under these circumstances, C.W.P. No. 1590 of 1993, Ganesh Wood

Product v. State; C.W.P. No. 145 of 1994, Naman Wood Product v. State and C.W.P. No. 1576 of 1993, Mis. Deo Bhumi, Hari Krishan v. State, deserve to be allowed. Order refusing permission to them to establish their units is held to be arbitrary and hereby quashed. The Respondents State Government is directed to grant them necessary permission for the purpose.

18. As regards other petitions, where provisional registration was cancelled and the cancellation is claimed to be illegal on the ground that, the cancellation has civil consequences on the Petitioners, and hence impugned orders could not have been passed without following the principle of natural justice. It is apparent that, these Petitioners have, after their provisional registration, invested a substantial amount in purchasing lands, erecting buildings and establishing or ordering machinery for the purpose. The revocation of registration is, therefore, likely to cause them substantial financial loss. Could such an action be taken without giving them an opportunity to explain their case? In this connection, the recent decision of the Supreme Court in *Bhagwan Shukla v. Union of India* and Ors. AIR 1994 SC 248, deserves mention. It was a case where the pay fixed earlier was sought to be reviewed by an administrative order causing financial loss to the Petitioner. The Supreme Court held that the Appellant has obviously been visited with civil consequences without any opportunity to show cause against the same. The action was, therefore, held to be in flagrant violation of principles of natural justice and set aside. Natural justice, it is now well settled, is one of the requirements of Article of the Constitution. In *Delhi Transport Corporation Vs. D.T.C. Mazdoor Congress and Others*, it was held to be anti-thesis of arbitrariness. Under the circumstances, if the Respondent State authorities wanted, for any reason to cancel the registration of these Petitioners, they should have done so by giving them a show cause notice stating reasons. If the Petitioners had thereafter submitted any explanation to the same, the same should have been considered before revoking the registration. Admittedly this has not been done and hence the orders revoking their registration or withdrawing approval cannot be sustained. In this view of the matter, this Court does not consider it necessary to deal with submissions based on "doctrine of promissory estoppel" or "legitimate expectations".

19. In view of the discussion aforesaid, the order revoking registration and consequently denying the Petitioners the benefits of the incentive Scheme will have to be quashed. The matter, however, will go back to the Respondent State Government to reconsider the same in the light of the observations aforesaid and pursue it if they so wish in accordance with law.

20. As a result of the discussion aforesaid, C.W.P. No. 1455/93, *Yogindra Chandra v. State*; C.W.P. No. 1489/93, *Ved Parkash v. State*, are dismissed but without any orders as to costs. C.W.P. No. 1475/93 *Shankar Trading Co. v. State* is dismissed with costs. One set of counsel's fee each in favour of the Respondent State Government and Respondent Sagar Katha Factory, quantified at Rs. 10,000 only, C.W.P. No. 1590/93, *Ganesh Wood Product v. State*; C.W.P. No. 145/94,

Naman Wood Product v. State and C.W.P. No. 1576/93, Hari Krishan v. State are allowed and order refusing permission to them to establish there Units is quashed C.W.P. No. 1679, Indian Wood Product v. State and C.W.P. No. 611 of 1994, Chander Katha Product v. State are also allowed Orders revoking their registration or withdrawing approval of their project by IPARA are quashed but the Respondent State authorities are directed to re-consider their cases in the light of the observations in this judgment and in accordance with law.