

Bawa Satya
Paul Singh
v.
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and others
—————
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a notice it could not be seriously urged by the learned counsel for the Department that the imposition of the penalty was in accordance with law. Such an imposition clearly violated the principles of natural justice. Under these circumstances, the Department cannot recover this amount from the petitioner.

It may be mentioned that the learned counsel for the petitioner also tried to argue that there were errors of law apparent on the record, which vitiated all the proceedings taken by the Income-tax Authorities for the assessment and recovery of the tax from his client. Our attention, however, was not invited to any error of law which had materially affected the assessment and recovery proceedings against the petitioner so as to entitle him to get them quashed in writ proceedings

The result is that the petition partly succeeds and the order regarding the imposition of the penalty of Rs. 1,200 is set aside. The petition with regard to other matters, however, stands dismissed. The parties, in the circumstances of this case, however, are left to bear their own costs.

Mehar Singh, J. MEHAR SINGH, J.—I agree.
B.R.T.

CIVIL MISCELLANEOUS

Before Inder Dev Dua and Daya Krishan Mahajan, JJ.

M/S PARTAP ROSIN AND TURPENTINE FACTORY,—

Petitioners

versus

THE STATE OF PUNJAB AND ANOTHER,—*Respondents*

Civil Writ No. 1750 of 1963

1964
—————
December, 24th.

Constitution of India (1950)—Art. 19—Reasonable restrictions—Meaning and test of—Part IV—Directive Principles of State Policy—Whether enforceable—Ministers—Duties and functions of—How to be performed—Allegations made against Chief Minister in writ petition—State Government—Whether must file his affidavit to contradict them—Failure to file such affidavit—Effect of.

Held, that the words "reasonable restrictions" connote that the limitation imposed regarding the right should not be of an excessive nature beyond what is required in the interests of the public, and the word "reasonable" implies a choice of a course which reason dictates by striking a proper balance between the freedom guaranteed in Article 19(1) (g) of the Constitution and the social control permitted by clause (6) of Article 19. An action encroaching on the fundamental right secured by Article 19(1)(g) must be considered to be wanting in the quality of reasonableness if the encroachment is not confined within the recognised limits of permissible social control in the interests of general public. The test of reasonableness has to be applied to each individual case, for, it is not possible to lay down any abstract standard or general pattern of reasonableness applicable to all cases. The nature of the right alleged to have been unduly infringed, the purpose of the restriction imposed, the extent and urgency of the mischief which the restriction is intended to remedy, the prevailing conditions and the disproportion of the restriction imposed have all to enter into the judicial verdict.

Held that, in the present case the impugned order amounts to a virtual monopoly in favour of the respondent—Co-operative Society, for, practically the entire Government supply of resin is being made available to this Society. It is indisputably violative of the petitioners' right to get resin for their business which they have been doing for years and this violation on the facts and circumstances of the present case is clearly not in the interests of general public. The loss of several lacs of rupees per year to the State Exchequer will have to be made good or compensated by taxes on the general public because revenue in a social welfare State is its very life blood. The profits from the business would merely go to the pockets of the few individuals constituting the Co-operative Society. To achieve this end at the cost of the existing industry can by no rational standard be considered to be reasonable. It is also not irrelevant to bear in mind that official representatives on the board of the Society can hardly contribute either business experience or technical knowledge; similarly the other members have also not been shown to have any real experience in the line; they have, comparatively speaking, not much of their capital at stake, a factor which normally induces a human mind to exert to be economical. These, among other factors, persuade us to hold that the restriction in question is not all constitutionally reasonable and the impugned order is open to be struck down. The order has also been held to be *mala fide* and liable to be struck down on that ground too.

Held, that the ministers are, according to the Constitution, under oath to bear true faith and allegiance to the Constitution, and to faithfully and conscientiously discharge their duties and do right to all manner of people in accordance with the Constitution and the law without fear or favour, affection or ill-will. For a Chief Minister to act *mala fide* in order to favour some persons is to be false to his oath

and disloyal to the Constitution, and is thus an unmeritorious deviation from the right constitutional path, which is calculated to bring our democratic set-up into disrepute, for, our Welfare Democratic Republic, it may be remembered, is essentially and basically a moral State. Such conduct undoubtedly sets an unhealthy precedent for the entire administration and also lowers its author in the estimation of the citizens and the State services, in whom he is expected to inspire confidence and faith in his honesty, impartiality, sense of justice and efficiency. We are at present passing through a very critical stage in our democratic progress and *mala fide* acts like the present, instead of promoting the cause of national advancement may tend to make our welfare democracy under the Rule of Law lose its moral appeal and attraction to the common man as an effective instrument of social justice and as an impartial service agency, such acts are prone to encourage among people a feeling of frustration towards our system, thereby endangering our very existence as a legal democratic welfare State founded on principles of equality and fair play.

Held that, generally speaking, the task of a politician in a healthy democracy of our pattern is not to govern but to supervise Government to take decisions on questions of principle which are submitted to him and to maintain a close relation between public opinion and the process of administration. The Minister is concerned with policy, he is responsible for the efficiency of his ministry but he does not administer. Under his political control, the permanent officials run the machinery, and indeed the actual business of Government is the function of professional administrators and technical experts.

Held that, it is desirable to retain notes of interviews that the members of the public hold with the ministers when they relate to representations against the government decisions adversely affecting their business and fundamental rights because retention of such records reflects impartiality, objective approach and farsightedness of the administrator. Memory may fail, the particular administrator may quit that office, but the records of the interview would be there for reference to inform and guide him and his successors. A state governed by Rule of Law will, for this reason, be better administered, if such records are retained. And then, if the matter comes to Court, the cause of justice is better served by their production because for one thing, frivolous charges of *mala fides* can with confidence be repudiated.

Held that, the State is not an individual and it functions through human agency. If an allegation is made against a person purporting to act in the discharge of his official duties and the State is properly made a party, then such person is expected to make an affidavit controverting those allegations of which he has personal knowledge. His failure to do so cannot be brushed aside on the plea of his not being a party to the proceedings. If administration of justice is to be effective,

then this rule deserves to be observed. If no affidavit of that person is filed, the Court will be justified in drawing an inference in favour of the petitioner's allegations.

Case referred by the Hon'ble Mr. Justice P. C. Pandit to a larger Bench on 7th April, 1964, for decision owing to the importance of the question of law involved in the case. The case was finally decided by a Division Bench consisting of the Hon'ble Mr. Justice Inder Dev Dua and the Hon'ble Mr. Justice D. K. Mahajan, on 24th December, 1964.

Petition under Articles 226 and 227 of the Constitution of India, praying that a writ in the nature of Certiorari, or any other appropriate writ, order or direction be issued quashing the decision of the Punjab Government to transfer the entire stock of resin available in the Punjab State to Respondent No. 2.

R. L. ANAND, S. N. ANAND AND U. S. SAHNI, ADVOCATES, for the Petitioners.

M. R. SHARMA, R. L. SHARMA, H. L. SARIN AND MANISUBRAT JAIN, ADVOCATES, for the Respondents.

ORDER BY THE DIVISION BENCH

DUA, J.—This writ petition has been referred to a larger Bench by Pandit J., on the ground that the decision in this case is going to affect a large number of factories doing rosin business and also on the ground that the case raises certain questions of constitutional importance.

The petitioners Messrs Partap Rosin and Turpentine Factory of Hoshiarpur, according to the allegations in the writ petition, consist of displaced persons who had migrated from what is now known as Pakistan at the time of the partition of the country in 1947. Resin, according to the writ petition, is a natural product and is extracted from the forests of Hoshiarpur and Kangra Districts of this State, the annual production of which amounts to about 1,70,000 maunds. Out of this quantity, 90,000 maunds are extracted by the Forest Department of the Punjab Government from forests owned by the State and the balance of 80,000 maunds by independent contractors from the Jagirs situated in the two districts mentioned above. The resin produced in Jagirs virtually remains under the control of the Punjab Government because its disposal is controlled by permits granted by the Forest Department. After partition of the country, in order to

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find ways and means of getting maximum contribution to its finances from the annual output of resin and also with the object of thereby rehabilitating displaced persons, the Government of East Punjab summoned a conference of displaced persons from West Pakistan connected with this trade prior to the partition. This was attended by the petitioners and others where an assurance was held out that if they started factories for processing the stocks of resin, they would get full protection from the Government which would sell its entire stock of resin to them by a public auction so as to afford to all persons interested in this business equal opportunity to purchase the same. Acting on this assurance, the petitioners started, to begin with, in 1948 ten small-scale industries for processing resin in Hoshiarpur District. Thereafter, 32 more factories were set up by them employing about 2,000 workers. As a result thereof, the petitioners and others connected with this business invested nearly Rs. 1.75 crores in the processing of resin as the enterprise involves construction of numerous buildings and installation of latest plants worked under expert guidance, etc. Various factories were in consequence set up which are producing every year more than 9,000 tons of resin and more than 24 lacs litres of turpentine oil; the quality of these commodities, so proceeds the petition, compares favourably with international standards and it has often been exported outside India securing thereby foreign exchange for the country.

According to the writ petition, one Thakur Waryam Singh, who was originally a Communist leader joined the Congress party at the instance of Shri Partap Singh Kairon, ex-Chief Minister, Punjab, and immediately thereafter became the Chairman of the Shivalak Resin and General Mills Co-operative Society Gagret (hereinafter described as the Co-operative Society). Soon after this gentleman's appointment a rumour gained currency that the entire stock of resin amounting to 1.70 lac maunds would cease to be disposed of by public auction and would be transferred in bulk to the Co-operative Society to the exclusion of the petitioners and others, who had till then been participating in the various auctions and had been bidding for this commodity. Feeling alarmed by this news, the petitioners, in order to safeguard their right addressed a communication on 17th December, 1958 to the Punjab Government and also waited on the

Governor to place their grievances before him. The petitioners were, however, informed that the Forest Department had till then received no orders from the Punjab Government assigning the entire resin produce in the Forest Department to the Co-operative Society. The petitioners again submitted a representation to the Punjab Government after reading a news item in April, 1960, expressing their concern over the proposal of the Government to transfer the entire stocks of resin to the Co-operative Society. A notice was also served on the Punjab Government through a counsel enquiring if that news was correct and also protesting against the validity of the decision. The representation was not even acknowledged by the Punjab Government. It has now been learnt that the Government had in fact decided to the detriment of the petitioners and others engaged in the trade to transfer the entire stock of 1,70,000 maunds of resin to the Co-operative Society for political reasons. As a result of this decision, the entire industry set up by the petitioners at a very huge cost would virtually be throttled, thus encroaching on the exercise of constitutional rights of the petitioners. The entire resin, whether extracted from the forests belonging to Government or otherwise is, according to the petitioners' averments, under the complete control of the Punjab Government, for the forests are its property. The resin produced in various Jagirs also cannot be sold except under permits granted by the Government, thereby completely controlling its disposal. Government auctions forests attached to the various Jagirs and the successful bidders at these auctions are not permitted to dispose of the resin extracted from those forests except under permits granted by the State. The petitioners have been making representations to the Punjab Government, but no decision or action thereon has ever been communicated to the petitioners, though their receipt was acknowledged. The petitioners have also had a number of conferences with the Chief Minister, but in most of these conferences his attitude was evasive so that the petitioners may remain ignorant and meanwhile the Chief Minister may finalise his arrangement to transfer the right to use the material resources of the State to the Co-operative Society and thereby create a monopoly in favour of a single person to the detriment of the general trade and the petitioners. On 19th May, 1963, the Chief Minister ultimately informed the petitioners that the Punjab Government had reached a decision to transfer to

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the Co-operative Society the entire produce of resin from the forests and Jagirs at a fixed price of Rs. 31 per maund instead of Rs. 41 at which price the petitioners and others in this trade had been purchasing stocks of resin in the open market at public auctions conducted by the Punjab Government. As a result of this, not only would the petitioners be deprived of the business they had built up by hard labour and by investment of about Rs. 2 crores but the Public Exchequer would also be deprived of a sum of Rs. 15 lacs on account of difference in the price at which the Chief Minister has agreed to transfer the stocks to the Co-operative Society and the current sale price of this commodity. This, it is emphasised, has been done with the object of diverting the entire trade to the favourite channels of the ex-Chief Minister, Shri Partap Singh Kairon. The petitioners had also made a definite suggestion to the Chief Minister that if he was interested in the formation of a Co-operative Society; then the petitioners could form one or more such societies so as to fall in line with the Government policy, but this suggestion was turned down with the remark that he was not interested in the formation of Co-operative Societies, but was interested only in transferring the stocks to respondent No. 2 alone. This has been described to be an act of favouritism, and the *mala fides*, according to the averments, are borne out by the fact that this almost defunct society is being brought to life and sustained in existence purely because of the interest taken in its working by Shri Partap Singh Kairon. About Rs. 20,00,000 have, it is pleaded, been sanctioned to this Co-operative Society as loan on the security of movables consisting of machinery, plants and tools and other property which is yet to be purchased and another sum of Rs. 1.5 lacs has been given to the Co-operative Society from the funds of Punjab Post-War Services Reconstruction. The factory premises and land belonging to the society have already been pledged as security for the loan previously raised. On 17th May, 1963, the Co-operative Society addressed a communication to the Chief Minister, Chandigarh, informing him that it would be in a position to receive the stocks of raw resin from the Forest Department with effect from 1st October, 1963, and on receipt of this communication, the Punjab Government has written to the Forest Department to transfer all stocks of resin to this society with effect from 1st August, 1963. The decision of the Chief Minister to thus transfer the entire stock was to come

into operation on 1st August, 1963, but because this society was not in a position to furnish the requisite security and otherwise set up its plant, this time was extended to accommodate the society till 1st October, 1963. In addition to the loss to the Public Exchequer of Rs. 15 lacs a year as shown above, the Co-operative Society will also be exempted from the payment of large number of taxes such as Income-tax and purchase tax and this exemption may further result in loss to the Public Exchequer to the tune of several lacs of rupees a year. The conduct of the Punjab Government in this connection has been described to be not only a glaring violation of the directive principles of the Constitution prohibiting monopoly and concentration of wealth in a single person but also would be seriously detrimental to the petitioners' industry which will be completely crippled by this decision. The petitioners also understand that an agreement is going to be executed on 1st October, 1963, or thereabout whereafter the entire stock would go to the Co-operative Society and the petitioners would be left with no raw material produced in the forests of the State of Punjab to the use of which they have a constitutional right.

In the return, it has been pleaded that resin at present is extracted in the Punjab State from the forests situated in the districts of Hoshiarpur, Kangra, Simla, Ambala and Gurdaspur and the forests which are being tapped for resin are State-owned, Jagir forests and private forests. The total resin yield has been estimated to be about 2,00,000 maunds, though it varies within suitable limits every year depending on season and the period of tapping. The annual production of resin from departmentally managed forests is under 90,000 maunds, and the annual output of Jagir forests is definitely much below 80,000 maunds. There is no control on the disposal of resin out-turn from Jagir forests and the Forest Department does not exercise any control on the resin yield from private forests. It has been stated in the return that the records do not show of any conference having been held immediately after partition of the country when the petitioners were assured of resin supply by Government. A Resin Conference was convened in January, 1950, at Hoshiarpur, which was attended by the representatives of Government of India, Forest Department of the Punjab, U.P., Jammu and Kashmir, Pepsu and local industrialists. The conference had recommended that for the manufacture of quality products 70

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per cent of East Punjab resin should be earmarked for processing on modern scientific lines, and the remaining to foster the local industry at Hoshiarpur. It was on the basis of this directive that the Punjab Government had since been working on installing a modern factory to distil crude resin in the interest of general public. Ignorance has been expressed regarding the total amount invested by Resin and Turpentine Oil concerns on setting up factories at Hoshiarpur. In March, 1960, the Punjab Government, so proceeds the return, decided in principle to sell the entire resin from Government sources at fixed price of Rs. 31 per maund for a period of five years to start with effect from the year 1961 (inclusive) to the Co-operative Society. This decision, it is averred, has yet to be implemented. It may be pointed out that this return is dated 30th November, 1963 and is sworn by Shri Amarjit Singh, P.C.S., Under-Secretary, Punjab Government Forest Department. No agreement has, according to the return, been executed between the Government and the Co-operative Society and no supply of resin has been made. It is denied that the decision was taken on any political considerations and it is affirmed that it was done with the sole object of setting up an up-to-date modern factory on co-operative basis by forming a co-operative society of ex-servicemen, growers and ex-factory owners (both displaced and undisplaced). The records of the department, it is averred, do not show any communication of December, 1958, from the petitioners nor do they show whether or not the petitioners had waited on the Governor. Regarding the intimation that the Forest Department had not received any orders from the Punjab Government it has been sworn that the relevant record is not forthcoming. It has been repeated that decision for supplying resin produced from Government sources to the Co-operative Society was taken only in March, 1960. The insinuation that silence was maintained for rushing through this arrangement has been denied. Regarding the news item appearing in the Tribune on 16th April, 1960, the return merely states that the answering respondent is not in a position to say anything in this regard. About the other representations mentioned in the writ petition in paragraphs 10 and 11 again, it is sworn in the return that the relevant records are not forthcoming and, therefore, it is not possible to explain in detail the action taken thereon. It has, however, been asserted that these applications do not affect the Government decision to supply resin from

Government sources to the Co-operative Society. It has been denied that the entire resin stock produced from the forests of Punjab State is being transferred to the Co-operative Society for political reasons by diverting it from trade. The Government decision, it is emphasised, does not cover the forests owned by private persons and it is repeated that resin is to be supplied to a Co-operative Society legally constituted under the Co-operative Societies Act. This cannot deprive the petitioners to secure supply of resin from sources other than State forests which will continue to be available to the interested concerns. The return then continues to state that a Sub-Committee comprising members of the Governments of India, Punjab, erstwhile Pepsu and of Himachal Pradesh had been set up to devise ways and means of checking deterioration in the resin industry and to suggest steps for its improvement and for the establishment of a modern factory in the public sector. In 1955, this Sub-Committee recommended that the Resin and Turpentine Industry as then existing could neither produce quality goods nor improve the growth of chemical industry. In 1958, it was decided by the Punjab Government that an up-to-date modern factory should be established for the manufacture of rosin by a Co-operative Society of ex-servicemen, growers and existing factory owners and resin should be supplied at market rates to be determined by Government from time to time. The shares in the society were to be distributed as under:—

Ex-servicemen	..	51 per cent	
Growers	..	39 per cent	
Existing factory owners and if they fail to join then growers	..	10 per cent	(Displaced factory owners=5 per cent. Non- displaced factory owners=5 per cent)

Consequent upon this decision and in order to divert industries and trade through the co-operative enterprises Government sanctioned the sale of resin from the State forests to the Co-operative Society in March, 1960. It has been denied that the existing factories possess a high level of efficiency, popularity and production, the method adopted by them, according to the return, is crude and primitive. The method in vogue in Hoshiarpur factories involves a lot of waste and a modern factory based on the latest developments in the fields of distillation of raw resin as is being practised in foreign countries, will, so proceeds the return, definitely result in better quality of

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produce, less wastage and higher yield of rosin and turpentine oil. The resin extracted departmentally is, according to the averments, sold by the Government at public auctions, whereas that extracted otherwise is disposed of by the purchasers or contractors without any interference by the Forest Department, though they are required to get export permits from the Divisional Forest Officer concerned for transporting it. The resin blazes of Jagir forests is leased out to purchasers or contractors for resin extraction in public auctions. The removal of resin from these forests is regulated through permits according to the recovery of contract amount as per terms of sale agreements. A Co-operative Society, it is pleaded, does not represent any individual but consists of a number of members and in the case in hand, the Co-operative Society is composed of ex-servicemen, growers and small Co-operative Societies. Though ten per cent shares were reserved for factory owners, they did not care to buy them. Those shares are, however, still available if they agree with the object of co-operation in industrial enterprise. The rate of Rs. 31 per maund of resin has been agreed to by the Government for encouraging co-operative enterprise because this is the policy of the Government and then this Co-operative society is composed of shareholders hailing from backward areas, for whose uplift also, effort has to be made. This rate has been fixed for a period of five years and was based on the average price for the previous five years from 1955-56 to 1959-60. The average for this period worked out to Rs. 27.88 per maund. The Government has also been supplying raw materials from State sources at low rates to encourage industries. for example, Bhabbar grass and bamboos have been supplied to Messrs Shree Gopal Paper Mills, Bhabbar grass to Co-operative and Ban making Societies of Chachrauli and Kalsia and there has been lease of resin blazes to Messrs Bhagwan Finance Corporation. It has again been emphasised that representations of the petitioners have not been traced from the records. No answer has been given regarding the averments in the writ petition of conversation between the petitioners and the Chief Minister on the ground that the Chief Minister is not a party to the petition nor was he incharge of the Department. It is denied that the Co-operative Society is defunct. It is stated to have raised a capital of Rs. 3,33,855 and land worth Rs. 10,081.10 is stated to have been purchased. The buildings are under construction and more than one lac

of rupees have been invested in the buildings. The Society is also stated to be in possession of machinery worth about Rs. 1,69,005.52. The allegation of loan amounting to Rs. 20,00,000 having been sanctioned to the Society is denied. It has been asserted that at no stage were the resin factory owners of Hoshiarpur including the petitioners kept in dark about the developments taking place regarding the resin industry and they were fully aware of the decision of the Government of March, 1960. The petition is pleaded to be belated because the Co-operative Society, according to the State's return, has since placed the order for procuring machinery and undertaken construction of buildings to put up a modern factory. It has in the end been pleaded that the decision was taken by the Council of Ministers and not by the Chief Minister individually and the resin was not to be sold to any single individual but to a Co-operative Society.

In the rejoinder to the return, it has been pleaded that the State Government, if at all keen to see the industry being handled on modern factory basis, should have permitted the petitioners to form a Co-operative Society or a limited company and instal a factory who are ever ready and willing to do so if the State Government assures the normal aid it is giving to other industries in the State. It has also been pleaded that the petitioners would successfully instal the factory in less than half the period than respondent No. 2, who has with all the patronage from the Government not succeeded in installing a factory during the past three years. The Co-operative Society, it is repeated, is for all practical purposes only one individual, and as to the circumstances under which this Society was formed no information has been given in the return. The perusal of Annexure R-4, however, shows that such society was formed at the recommendations of the Chief Minister himself when he was presiding over a Sub-Committee which had no statutory or constitutional existence. The date of the meeting has deliberately not been disclosed because this information would have shown that the Society had already been in existence and it was merely with a view to succeed in his political manoeuvres that the ex-Chief Minister deliberately suggested a criteria which would fit in with the position of this Society. Otherwise the State Government would have invited the co-operation of the people fully experienced in the line and not to hand over the factory to inexperienced persons.

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Handing over 90 per cent shares to an inexperienced group and reserving only ten per cent for those, who had experience must have the effect of crushing the industry in which lacs of rupees have been invested. It has been expressly pleaded that merely because the Chief Minister is not Incharge of the Department is inconsequential because every decision over the subject matter of the present controversy had emanated from him or had been taken at his instance.

At the hearing before us, Shri M. R. Sharma, has, on behalf of the State raised a preliminary objection that the writ petition is belated and has further submitted that an alternative remedy by way of a regular suit is equally adequate and effective and we have been sought to be persuaded to decline to go into the merits of the petitioners' grievances. We are not impressed by this objection. The facts narrated clearly show that the petitioners have not been guilty of undue delay which would justify our refusal to go into the merits of the petition. The return has, we cannot help observing, not disclosed a very satisfactory state of affairs and we are inclined to think that the department concerned has been far from straightforward and fair in dealing with the petitioners' grievances. Even the petitioners' representations are, according to the return, not forthcoming on the record and except for the bare denial, there is no other convincing explanation, nor are the notes of their interviews with the then Chief Minister, which one would have expected to be preserved on a matter of public and private importance like the present, particularly in a democratic set up like ours. It is worth noting that it is not pleaded that the petitioners have not had any interview with the then Chief Minister or that they were not received by him.

In regard to the plea of alternative remedy, in our opinion, it would by no means be equally adequate and efficacious. The suit is likely to take a very long time to conclude even in the trial Court, and then appeals would certainly mean more delay. For redress of grievances like the present, such delay must tend to defeat the cause of justice. It is in this connection pertinent to point out that the State has not chosen to produce any affidavit by the then Chief Minister against whom

positive allegations of collateral considerations and *mala fides* have been made, and the officer affirming the return on behalf of the State has pleaded ignorance about the talk between the petitioners and the then Chief Minister, Shri Partap Singh Kairon, who, it is stated, is not a party to the petition. This plea in justification of the ignorance is not easy to appreciate for the then Chief Minister could have easily been shown the writ petition and required to explain his conduct in justification of the position the State chose to take up. With this attitude on the part of the State, which appears to us to be far from helpful to this Court in arriving at the truth and doing justice between the petitioners and the State, we are inclined clearly to think that a regular suit, in the trial of which much more time must elapse, can scarcely be considered an equally effective and speedy remedy. If on allegations like those made in this case, the State omits to produce affidavits from the representatives of the Government like the Chief Minister on the unconvincing and inelegant plea of his not being a party, then this Court would have to allow or order them to be impleaded and the disinclination, which is sometimes shown in not insisting on their being made parties, would perhaps have to be considered to be improper. Without saying anything more on this point on this occasion, we repel the preliminary objection.

On the merits, to begin with, it has been contended on behalf of the petitioners, that according to Article 39 of the Constitution it is the duty of the State to direct its policy towards securing that the ownership and control of the material resources of the community are so distributed as best to subserve the common object and that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment. It has been pointed out that the manner in which the State in the case in hand has deprived the petitioners and others engaged in doing resin business and in giving virtually the monopoly to the Co-operative Society is violative of the directive principles enshrined in this Article. We are not impressed by this contention for the simple reason that the Directive Principles of State Policy in Part IV of the Constitution are not enforceable by any Court and, therefore, on this ground alone the action of the State cannot be struck down as unconstitutional. Reference to *G. M. Reddy v. State of A.P.* (1), is

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unavailing to the petitioners because all that was held there is that a rate payer as such is interested in the conservation and proper application of municipal funds and, therefore, may have a *locus standi* to restrain a public body from acting in violation of statutory rules and misusing its powers, thereby causing detriment to public revenue. I must, however, make it clear that I do not mean to convey the idea that the Directive Principles have been included in our Constitution as mere idle words intended to serve purely as decorative phrases. On the other hand they are, in my opinion, an important and integral part of our Constitution designed to conform to and run as subsidiary to the fundamental rights enshrined in the Constitution. The Courts are not expected to ignore these principles of State Policy when interpreting statutory provisions because the Legislature must be presumed to bear in mind and be governed by these principles while enacting laws and not to violate or lose sight of them.

Adverting to the Indian Forest Act (No. XVI of 1927), the petitioners' learned counsel has drawn our attention to section 2(4), according to which "forest-produce" includes resin; and then by reference to section 76(c) submitted that the State Government has power to make rules for the preservation, reproduction and disposal of trees and timber or other forest-produce belonging to Government. The words "other forest-produce", it may be pointed out, were inserted in 1954 as applicable to the Punjab State by Punjab Act XX of 1954. This section falling in Chapter XII headed "Subsidiary Rules" confers additional power on the State Government to make rules and clause (d) empowers generally to make rules in order to carry out the provisions of the Act. In this context, it may be pointed out, that section 32 of the Act empowers the State Government to make rules to regulate various matters mentioned therein. The counsel has then drawn our attention to paragraph 17.10 at p. 453 of the Punjab Forest Manual, Volume II, according to which at the end of each year statement of sale of resin has to be prepared by the Divisional Forest Officers of the Forest Divisions in which resin is collected in a form given therein. In the form column No. 2 requires date of auction or month of auction to be given. It has been submitted that this statutory form shows the method of disposal of resin in accordance with the statutory scheme. Reference has also been made to paragraph 6.1 in Chapter VI headed

"Powers" at p. 118 of this very Volume and pointed reference has been made to item No. 2. There, it is mentioned that the power to sanction special grants of timber or other forest produce free or at favourable rates for special purposes of public utility has been delegated to all Divisional Forest Officers up to the value of Rs. 100 in each case and to Chief Conservator and Conservators of Forests up to the value of Rs. 1,000 in each case. This is subject to the principles laid down in Appendix VII of the Forest Department Code (7th Edition). At the end of the entry in column No. 2, reference is made to serial No. 14 of Rule 20.4. The learned counsel has submitted that this Rule 20.4 is not published anywhere, and, therefore, it would be for the respondents to disclose to this Court what this rule is. Reference has also been made to paragraph 17.37, according to which sale of all stocks of timber is to be made by auction by the Conservator of Forests or by the Divisional Forest Officer or other gazetted Forest Officer acting under the Conservator and to paragraph 17.39, which reminds the Divisional Officer that it is his first duty to sell quickly and advantageously the stock as it comes in and take great care to avoid unprofitable sales. The counsel has then made a reference to Annexure 'C' attached to the writ petition which discloses the conditions for the sale of resin/timber by auction. This Annexure has relevance to paragraph 13 of the writ petition where it is averred that the entire resin whether extracted from the forests belonging to Government or otherwise is under the complete control of the Punjab Government. The counsel has in this connection read to us paragraph 13 of the return where it is admitted that the resin extracted departmentally is sold by Government at public auctions, though it is added that resin extracted by purchasers/contractors from private/State forests not worked departmentally is disposed of by them without any interference on the part of the Forest Department. It is, however, also admitted that those purchasers/contractors are required to get export permits from the Divisional Forest Officer concerned for transporting it. It is pointed out that this is virtually a complete control by the Government and to say that a private party can carry on its trade or otherwise use resin thus extracted free from Government control is incorrect. The written statement filed on behalf of the Co-operative Society has also, in paragraph 13, adopted the same position as has been taken by the State in the return.

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The petitioners' learned counsel has next taken us through the Annexures attached to the return. Indeed, the learned counsel for the respondents has also placed his reliance on these Annexures. The petitioners' contention is that these Annexures by themselves make out a case of *mala fides* on the part of the ex-Chief Minister and the State Government; and the plea of the ex-Chief Minister being not a party to this writ petition and of non-production or non-tracing of the various representations made by the petitioners as also of ignorance about the conversation between the petitioners' representatives and the ex-Chief Minister is actuated by a desire to keep back from this Court full material so that truth may not be arrived at. According to the petitioners' learned counsel, it was the ex-Chief Minister, who was taking keen interest in the Co-operative Society for collateral reasons and personal or political motives. Annexure 'R.1' is a copy of the proceedings of the conference held at Hoshiarpur on 13th and 14th of January, 1950 in the District Board Hall and was attended by a number of officials and non-officials, including representatives from Punjab, Himachal Pradesh, Uttar Pradesh, Jammu and Kashmir State and the Central Government, the Inspector-General of Forests to the Government of India, being in the chair. It is unnecessary to refer in detail to these proceedings. Suffice it to say that Shri S. N. Kapur, Director of Industries, East Punjab pointed out that the cottage industry was not an appropriate term to be applied to the small-scale industry at Hoshiarpur and that in his opinion it was a crude method of distillation. The East Punjab State Forests, according to him, produced about 75,000 maunds of resin at that time which in a few years was expected to increase to about a lac of maunds. Resin from private sources, according to him, amounted to about 30,000 maunds, though Hoshiarpur distillers placed it at 75,000 maunds. Though recognising the necessity of reserving a certain portion of produce for the Hoshiarpur industry, he was not in favour of the entire production of resin to be diverted to that section alone. This part of the proceedings has been relied upon on behalf of the respondents but the petitioners' learned counsel has concentrated on Shri Kapur's opinion that income of the Forest Department should not be frittered away by giving monopoly to one concern only. According to him, there was room for both a factory and small stills. The respondents have pointed out that the ex-Chief Minister, Shri Partap Singh Kairon, was at that

stage nowhere in the picture and it was Shri Bajwa, the then Minister for Development, who attended the conference and that too only in the afternoon of 14th January, 1950. Annexure R. 2 contains the recommendations of the aforesaid conference and it has been stated at the very outset that the old Hoshiarpur resin industry based on rough and ready crude stills had shown commendable resilience and enterprise in financing its expansion to the extent of absorbing the entire industry of resin at this juncture. One of the recommendations is stated in these words:—

“That there is both room and need for fostering the local industry at Hoshiarpur as a sort of stand-by against future contingencies, for the manufacture of grades readily acceptable in trade for paints and polishes.”

This recommendation, it may be pointed out, was necessitated because the representatives of the Hoshiarpur industry desired the whole of resin for themselves. Thirty per cent of the East Punjab resin was recommended to be earmarked for this purpose and it was considered that necessary assurance should be given to the local manufacturers to enable them to plan their production. The counsel has then referred us to Annexure ‘R. IV’ attached to the return which is a memorandum from the Under-Secretary to Government, Punjab, Industries Department, to the Chief Conservator of Forests, dated 20th May, 1959. In this memorandum, it has been stated that the question regarding supply of resin at a reasonable rate to the newly established Co-operative Society has been engaging the attention of Government for some time past because the rate, according to this memorandum, should have relevancy to the general trend of market rates without being pushed up on account of unseemly competition by private buyers. For this purpose, a meeting was to be held in the Secretariat building on 28th May, 1959. This Annexure contains the proceedings of the meeting held on 28th November, 1957, under the Chairmanship of the ex-Chief Minister Shri Kairon where it is expressly mentioned that he (the ex-Chief Minister) favoured control of the entire resin by Government including supplies from private forests, if possible. Our attention has then been drawn to the impugned order of the Governor (Annexure R-III), dated 3rd February, 1960, whereby the Governor has been pleased to

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accord sanction to the sale of whole of the resin from Government supply to the Co-operative Society (respondent) at the fixed price of Rs. 30 per maund for a period of five years from 1961. The counsel has then referred us to the memorandum, dated 20th June, 1963 (Annexure R-V), from the Under-Secretary to Government, Punjab, Forest Department, Chandigarh, to the Chief Conservator of Forests, Punjab, in which it is stated that it had been decided in the meeting held on 15th June, 1963 in the room of the then Chief Minister that three tons of resin would be supplied to the Shiwalik Co-operative Mills on cash payment with effect from 1st August, 1963, and that no security would be deposited by these mills. The revised agreement was, according to this memorandum, required to be sent within two days of the receipt of the letter. The counsel has emphasised on the urgency shown in this memorandum which, according to him, quite clearly discloses the extraordinary interest of the then Chief Minister. Stress has then been laid on Annexure 'B' to the writ petition which is a representation, dated 4th May, 1960, by the Hoshiarpur Rosin Manufacturers Association to Shri Partap Singh Kairon, the then Chief Minister, also seeking an interview, the covering letter of which clearly shows that previously also memorandums had been submitted by the memorialists and on this occasion, an interview was sought once again. In this representation, it was pointed out, *inter alia*, that the Co-operative Society consists of "novice inexperienced persons" and that proper approach had not been made to the existing industrialists for their inclusion. It was also brought out that the existing industrialists could not be expected to give up their entire investment in the form of plant and machinery and be at the mercy of the majority of inexperienced members. Among other suggestions, it was in the last resort requested that preferential treatment should not be given to the Co-operative Society in the allocation of resin at the cost of the existing industrialists and that the latter should not be deprived of their bread for no fault of theirs. After specifically referring to paragraphs 14 to 16 of the writ petition and the reply thereto in the return, the counsel has submitted that from the omission of Shri Kairon to make an affidavit and produce it in this Court, a strong inference must be drawn in favour of the correctness of the petitioners' averments. The counsel, who was only allowed inspection of the record with the learned counsel for the State in the Court, has, after cursorily looking at

the file, drawn our attention to a letter from Shri Partap Singh, I.F.S., Chief Conservator of Forests to the Under-Secretary to Government, Punjab, Agriculture Department, dated 23rd January, 1957, on the subject of the Shiwalik Co-operative Rosin and General Mills Ltd., in which he has commented that according to the opinion of the Forest Department, a modern factory is desirable and "would probably be run on itself and if that is not to be, then it would be for the Government to decide whether it should be a newly formed Co-operative Society or an association of the present Rosin Manufacturers". This agency, according to this letter, would not affect the industry or the prosperity of the people because the industry already exists and the only difference would be in the share-holders to whom the profits are to go. The counsel has next referred me to a copy of a letter dated 18th July, 1958, from the Co-operative Society to Shri U. N. Dhebar, President of the All-India Congress Committee, requesting him to take some disciplinary action against a certain gentleman by name Shri Hans Raj Akrot, who had been critical of the scheme to give preference to the Society. This letter is at p. 22 of file 'B' (Sub:—General Correspondence regarding Rosin and Turpentine Industry in the Punjab). At p. 36 of this file, there is a letter from the Society to the Director of Industries in which it is mentioned that the then Chief Minister had agreed to lay the foundation stone of the Mills at Gagret on 8th November, 1958, and it was requested that necessary inspection of the site should be immediately done so that other formalities in connection with the purchase of the land may be carried out before the middle of October, 1958. It is also requested that the "issue in question may kindly be settled forthwith so as to enable the Society to carry out requisite formalities connected with the arrival of the Chief Minister". It appears that the date of laying the foundation stone was postponed and we find telegrams and reminders to expedite the inspection because the then Chief Minister was to lay the foundation stone in the first week of November, 1958. At p. 111 of this file, there is a memorandum, dated 10th September, 1959, from Shri M. L. Batra, Registrar, Co-operative Societies, Punjab, to the Director of Industries on the subject of financing of industrial scheme out of the Post War Services Reconstruction Fund in which it is mentioned that the total financial requirements for investment in fixed assets and revolving capital relating to the rosin factory of the

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<p>M/s. Partap Rosin & Tur- pentine Factory v. The State of Punjab and another</p> <hr/> <p>Dua, J.</p>	<p>Shiwalik Society would be more than 18 lacs and the sources proposed for this purpose are stated to be:—</p> <p>(a) Share capital from the members ... Rs. 2.25 lacs. (b) Share capital from Post War Services Reconstruction Fund ... Rs. 1.50 lacs. (c) Loan from the Post War Services Reconstruction Fund ... Rs. 7.00 lacs. (d) Loan from banks ... Rs. 5.69 lacs. (e) Securities from customers ... Rs. 2.00 lacs.</p>
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The profit was calculated at the figure of about Rs. 62,600 in a year, but it was added that the economics of the factory had been worked out on the assumption that the factory would be supplied the requisite quantity of raw material by the Government at a rate not exceeding Rs. 25 per maund. It was expressly pointed out that before any action to place an order for machinery for the factory was taken, a firm decision should be taken by the Government. At p. 119 of this file, there is a letter, dated 15th September, 1959, from Shri Waryam Singh Thakur to the then Chief Minister (letter No. 485-SRM-59/683) and in paragraph 5, it is stated thus:—

“With your blessing and the encouragement which you have been so kindly giving to us, considerable progress in the organisation of the Society, collection of share capital, collection of building materials, purchase of site and above all building a highly conscious opinion of the public about the success of the Society has been done.

A little lower down it proceeds:—

“The main issue facing us at this stage is the fixation of the rate of oleo-resin. A very big portion of the cost of the finished products is represented by the cost of raw material. Roughly speaking, more than 88 per cent of the cost of production represents raw material. Clearly, therefore, the whole economics of the Mills will depend upon the rate at which the oleo-resin is supplied by the Government.”

Then the letter gives some figures of some of the factories obtaining oleo-resin from the Jammu & Kashmir State,

Himachal Pradesh Government and U.P. Government, in the years 1955 to 1958. A copy of this letter was also forwarded to the Director of Industries. Reference has next been made to the memorandum without date (at p. 141 of the file Part I, produced by the respondents) by Shri I. N. Ahuja, Secretary, Industries Department, showing that the ex-Finance Minister had expressly observed that some of the private factories were producing quality goods which competed favourably with the goods produced by the Himachal Pradesh and Uttar Pradesh Governments and that private enterprise should not be throttled by Government factory when the capacity of existing factories was more than the availability of raw material. At p. 162 of this file, in a memorandum No. G-49(W)/1496, dated 11th June, 1958, from the Chief Conservator of Forests to the Under-Secretary, Forests, it was suggested that the only satisfactory method of finding out the market rate of resin was to sell a part of resin (about ten thousand or fifteen thousand maunds) by auction in open market every year and the average rate, so discovered, should be the basis on which resin should be supplied to the Co-operative Society. This view was communicated to the Secretary, Industries, in July. Shri K. S. Narang, I.A.S., also expressed the view on 10th February, 1959, that the rate of resin to be supplied to the Society should have relevance to the general trend of market rates without, at the same time, being pushed up on account of unseemly competition by private buyers. At p. 186 is a memorandum, dated 7th September, 1959, from the Chief Conservator of Forests to the Private Secretary of the Deputy Minister, Forests, stating that the instance of supply of resin to Rajpura Factory owned by Bhagwan Dass and Co., cannot be quoted as a precedent as the method adopted for settling the deed in that case was "rather questionable as already known to Government". I may point out at this stage that the lease to the Rajpura Factory had been finalised on the eve of merger of the two States as is also clear from this file. In this memorandum, it was expressly mentioned that at the last auction of Government resin, the rate realised was Rs. 40.27 per maund and sale to the Society at Rs. 25 per maund, as desired by it, would mean a loss of Rs. 13.5 lacs per year which would be more than the amount required for the installation of the factory. Emphatic view was expressed against the Government incurring such heavy loss. This memorandum, it appears, was necessitated by a representation, dated 3rd September, 1959, from Thakar Waryam

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Singh, Chairman of the Co-operative Society to the then Chief Minister direct, on which the Chief Minister expressly desired "communication within one week". Further orders were apparently sought from the then Deputy Minister, Forests, and the then Chief Minister, and they decided to give concession to the Co-operative Society on the lines on which Bhagwan Dass and Co., had been given concessions by the Pepsu Government. The Chief Minister passed his order on 19th October, 1959, as is also clear from this file. In this connection we have also seen p. 36 of this file which shows a letter written by Shri Partap Singh, on 9th July, 1956, to the Chief Minister, Pepsu, requesting him not to give a long lease of resin forests for twenty years to Bhagwan Dass and Co., before the integration of the two States and to discuss the matter in case the Chief Minister of Pepsu had committed himself. Our attention has also been invited to pp. 156 and 243 of File 'B' (General Correspondence) which shows that Thakar Waryam Singh, was the Chairman of the Board of Directors of the Co-operative Society in October, 1959 and July, 1960. In the representation of the Society, dated 3rd October, the rate suggested by the Forest Department was objected to and it was asserted that most of the Directors of the Society were those who were also controlling the Parbhat Roadways Co-operative Transport Society. The respondent Co-operative Society in this representation, it may be pointed out, claimed the entire supply of resin. The view expressed by Shri J. N. Thadani, Secretary, Industries, in his fair and frank note, dated 7th March, 1960, has also been seen by us. This note was prepared in pursuance of the desire expressed by Shri Mohan Lal, Industries Minister, on 3rd March, 1960, at p. 181 of this file. Shri Thadani suggested that only 50 or 60 per cent of the total supply from Government should be allocated to the Society, the rest to be disposed of by public auction in open market. In this note, there is a reference to the fact that the Minister of Industries, Government of India, Shri Manubhai Shah, was also opposed to the starvation of existing industrial capacity for the utilisation of resin in order to provide for capacity to be created either in the public or in the Co-operative sector (pp. 195-196 of this file). The said Minister's opinion having been expressed in the presence of the representatives of the private sector Industry and of all the State Governments producing resin, Shri Thadani considered it his duty to report them for the information of the

Government. The Secretary, Agricultural Department, in his note, however, stated as follows:—

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“The Administration Department observed that as the Chief Minister had already taken a decision that resin should be supplied to the factory at the average rates of the last five years, the reasonability of the rates was a belated issue and that in the absence of any reliable data, it was not possible to make any sure assessment.”

This note does appear to reflect the powerful influence of the then Chief Minister's desire. Memorandum, dated 15th March, 1960, from the Hoshiarpur Manufacturers' Association to the Finance Minister is at pp. 217-18, but it does not seem to have been adverted to. At p. 36 of file No. 1, we also find the opinion of Shri Gurbanta Singh, dated 21st September, 1957 that the proposed factory should be entirely in the private sector to be run on co-operative basis and the existing owners should become members of the new Society as far as possible with whom the then Chief Minister had agreed as noted by his Private Secretary.

It is contended that on paper an impression was sought to be given that this venture was meant only to encourage co-operatives, but in actual effect and practice it was designed to create a sole monopoly in favour of those forming the respondent Co-operative Society at the cost of the State Exchequer and other citizens in the industry. The sole benefit was sought to be conferred on the respondent Co-operative Society to the illegal and unconstitutional detriment of the petitioners. We also find that the petitioners in April, 1960, represented their case to the Ministry of Commerce and Industry, Government of India, and the said Government urgently asked for the comments of the Punjab Government. On 17th July, 1960, a reminder was sent by the Ministry of Commerce and Industry. We have, however, not the advantage of knowing the comments of the Punjab Government from the files produced.

On behalf of the petitioners, reference has been made to a decision of the Supreme Court in *Manna Lal Jain v. State of Assam and others* (2) and particular reference has been made to paragraph 10 at p. 392 where creation of

(2) A.I.R. 1962 S.C. 386.

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monopoly in favour of a Co-operative Society to the exclusion of private dealers has been adversely commented upon. Our attention has also been drawn to a decision by my learned brother Mahajan, J., in *Lal Chand v. District Food and Supplies Controller*, Civil Writ No. 355 of 1964 decided on 28th August, 1964 when a monopoly in favour of a Co-operative Society was struck down. In this decision, an earlier decision by Grover, J., dated 18th December, 1963 in *Amrit Lal v. District Food and Supplies Officer*, Civil Writ No. 1427 of 1963 was relied upon. The decision in *Amrit Lal's* case is stated to have been upheld on Letters Patent Appeal. Both these decisions, it may be pointed out, were based on the ratio of the Supreme Court decision in the case of *Manna Lal Jain*.

The respondents' learned counsel, Shri Sharma, has mainly relied on the contention that the Forest belongs to the Government and that it is for the Government to utilise its product in any way they like and that the petitioners have no *locus standi* to object to it. It is however, conceded that the recommendations of January, 1950 were not acted upon at least till 1955. The counsel has also read out some parts of the proceedings of the conference of 1955 referred to in paragraph 12 of the return, but it is not shown, and there is no indication at all, as to what concrete steps were taken by the authorities for inviting the existing individuals to join the Co-operative Society. The respondents' counsel has also submitted that prices have been fixed on the basis of average rates during the last five years which are fair, and, in any event, it is stressed that this fixation of prices does not show any *mala fides* on the part of Shri Kairon, the then Chief Minister. In this connection, great emphasis has been laid by Shri Sharma on the submission that though the agreement was made for five years, as far back as 1961, nothing practical has been done so far, with the result that this Court should not allow its extraordinary jurisdiction to be

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the State Exchequer will have to be made good or compensated by taxes on the general public because revenue in a social welfare State is its very life blood. The profits from the business would merely go to the pockets of the few individuals constituting the Co-operative Society. To achieve this end at the cost of the existing industry can by no rational standard be considered to be reasonable. It is also not irrelevant to bear in mind that official representatives on the board of the Co-operative

machinery has not yet been imported. It is also submitted that in May, 1960, an advertisement was published in the *Milap* newspaper for inviting offers from the existing traders. *State of Punjab v. S. P. Kapur* (3), has been cited by the counsel, but this decision does not seem to me to advance his point.

After devoting our most serious attention to the arguments advanced and the facts as disclosed from the records, it appears to us that the impugned order does violate the petitioners' fundamental right and the restriction which the State claims to be reasonable clearly encroaches on the constitutional guarantee. The words "reasonable restriction" connote that the limitation imposed regarding the right should not be of an excessive nature beyond what is required in the interests of the public and the word "reasonable" implies a choice of a course which reason dictates by striking a proper balance between the freedom guaranteed in Article 19(1) (g) of the Constitution and the social control permitted by clause (6) of Article 19. An action encroaching on the fundamental right secured by Article 19(1)(g) must be considered to be wanting in the quality of reasonableness if the encroachment is not confined within the recognised limits of permissible social control in the interests of general public. The test of reasonableness has to be applied to each individual case, for, it is not possible to lay down **any abstract standard** or general pattern of reasonableness applicable to all cases. The nature of the right alleged to have been unduly infringed, the purpose of the restriction imposed, the extent and urgency of the mischief which the restriction is intended to remedy, the prevailing conditions and the disproportion of the restriction imposed have all to enter into the judicial verdict.

In the case in hand, the impugned order amounts to a virtual monopoly in favour of the respondent—Co-operative Society, for, practically the entire Government supply of resin is being made available to this Society. It is indisputably violative of the petitioners' right to get resin in their business which they have been doing for years and this violation on the facts and circumstances of the present case is clearly not in the interests of general public. The loss of several lacs of rupees per year to

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(3) A.I.R. 1963 S.C. 507.

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the State Exchequer will have to be made good or compensated by taxes on the general public because revenue in a social welfare State is its very life blood. The profits from the business would merely go to the pockets of the few individuals constituting the Co-operative Society. To achieve this end at the cost of the existing industry can by no rational standard be considered to be reasonable. It is also not irrelevant to bear in mind that official representatives on the board of the Society can hardly contribute either business experience or technical knowledge; similarly the other members have also not been shown to have any real experience in the line; they have comparatively speaking not much of their capital at stake, a factor which normally induces a human mind to exert to be economical. These, among other factors, persuade us to hold that the restriction in question is not at all constitutionally reasonable and the impugned order is open to be struck down.

We are also inclined to hold that the impugned order is tainted with *mala fides*. The representations of the petitioners do not seem to have been given due consideration by the then Chief Minister, nor does he seem to have given due weight to the departmental views, particularly those of the Chief Conservator of Forests and of Shri Thadani of the Industries Department, which views most prominently bring out the true interest of the general public and the State by pointing out the huge loss to the revenue merely or solely in order to benefit the Co-operative Society. We do not find any benefit for the general public from the impugned order and have not been persuaded to hold that this order could have rationally been considered by any reasonable person to be in the interest of the general public. It was quite clearly designed only to benefit the respondent Co-operative Society, indisputably at the cost of the petitioners, the existing resin industry and the public revenue. Monopoly, when it creates serious obstacles to, or virtually closes entry into, an industry or trade may be unsupportable, unless perhaps, when it avoids a bigger national injury. The impugned order is for the reasons stated vitiated and liable to be struck down as *mala fide*.

At this stage, I may advert to an important allied aspect. Ministers are, according to our Constitution, under

oath to bear true faith and allegiance to the Constitution and to faithfully and conscientiously discharge their duties and do right to all manner of people in accordance with the Constitution and the law without fear or favour, affection or ill-will. For a Chief Minister to act *mala fide* in order to favour some persons is to be false to his oath and disloyal to the Constitution, and is thus an unmeritorious deviation from the right constitutional path, which is calculated to bring our democratic set-up into disrepute, for, our Welfare Democratic Republic, it may be remembered, is essentially and basically a moral State. Such conduct undoubtedly sets an unhealthy precedent for the entire administration and also lowers its author in the estimation of the citizens and the State services in whom he is expected to inspire confidence and faith in his honesty, impartiality, sense of justice and efficiency. We are at present passing through a very critical stage in our democratic progress and *mala fide* acts like the present, instead of promoting the cause of national advancement may tend to make our welfare democracy under the Rule of Law lose its moral appeal and attraction to the common man as an effective instrument of social justice and as an impartial service agency. Such acts are prone to encourage among people a feeling of frustration towards our system, thereby endangering our very existence as a legal democratic welfare State founded on principles of equality and fair play.

I may in passing observe that generally speaking the task of a politician in a healthy democracy of our pattern, as I view it, is not to govern but to supervise Government; to take decisions on questions of principle which are submitted to him and to maintain a close relation between public opinion and the process of administration. The Minister is concerned with policy; he is responsible for the efficiency of his ministry, but he does not administer. Under his political control, the permanent officials run the machinery, and indeed the actual business of Government is the function of professional administrator and technical expert.

The records produced by the respondents before us contain most of the petitioners' written representations, which we regret to note, were suggested in the return to be untraceable. However, no notes of the interviews with

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the Chief Minister are traceable. They would certainly have assisted us better in adjudicating on this petition. In our set-up, it is desirable to retain notes of such interviews on matters like the present, because retention of such records reflects impartiality, objective approach and farsightedness of the administrator. Memory may fail, the particular administrator may quit that office, but the records of the interview would be there for reference to inform and guide him and his successors. A state governed by Rule of Law will for this reason be better administered if such records are retained. And then, if the matter comes to Court, the cause of justice is better served by their production because for one thing, frivolous charges of *mala fides* can with confidence be repudiated.

There is one other aspect to which also I must turn before closing. Allegations have been made in the writ petition against the then Chief Minister. He has not cared to file any affidavit. He alone could inform the Court about the details regarding his interviews and his *bona fides*. Official records are silent on this subject. Should this Court draw an inference against the respondents and in favour of the petitioners? The following observations from the judgment of the Supreme Court in *Partap Singh v. State of Punjab* (4), seem to suggest that the Court may:—

“In the present case there were serious allegations made against the Chief Minister and there were several matters of which he alone could have personal knowledge and, therefore, which he alone could deny, but what was, however, placed before the Court in answer to the charges made against the Chief Minister was an affidavit by the Secretary to Government in the Medical Department, who could only speak from official records and obviously not from personal knowledge about the several matters which were alleged against the Chief Minister. In these circumstances we do not think it would be proper to brush aside the allegations made by the appellant, particularly in respect of those matters where they are supported by some

(4) A.I.R. 1964 S.C. 72.

evidence of a documentary nature seeing that there is no contradiction by those persons who alone could have contradicted them. In making this observation, we have in mind the Chief Minister as well as Mrs. Kairon, against whom allegations have been made but who have not chosen to state on oath the true facts according to them."

M/s. Partap
Rosin & Tur-
pentine
Factory
v.
The State of
Punjab
and another

Dua, J.

In the case in hand also, the return is sworn by Shri Amarjit Singh, Under-Secretary to Government, Punjab, and the observations of the Supreme Court would perhaps be applicable.

As at present advised, therefore, this Court would not be unjustified in drawing an inference in favour of the petitioners' allegations. State, it may be remembered, is not an individual, it functions through human agency. If an allegation is made against a person purporting to act in the discharge of his official duties and the State is properly made a party, then such person is expected to make an affidavit controverting those allegations of which he has personal knowledge. His failure to do so cannot be brushed aside on the plea of his not being a party to the proceedings. If administration of justice is to be effective, then this rule deserves to be observed.

For the foregoing reasons, this petition succeeds and allowing the same with costs, we quash the impugned order.

D. K. MAHAJAN, J.—I agree.
B.R.T.

D.K. Mahajan, J.

APPELLATE CIVIL

Before Daya Krishan Mahajan, J.

VIDYA DHAR SHARMA,— *Appellant*

versus

THE PRESIDENT'S PRESS, CO-OPERATIVE, THRIFT AND
CREDIT SOCIETY LTD.,—*Respondent*

F.A.O. 90-D of 1963

Bombay Co-operative Societies Act (VII of 1925)—S. 54—Treasurer of Society embezzling amount entrusted to him and Society demanding it from him —Dispute between the Society and Treasurer—Whether can be referred to arbitration.

1965

January, 6th.

Held, that where certain moneys are entrusted by a co-operative society to its treasurer which the latter misappropriates and are claimed by the society from him, the claim of the society clearly falls