

from the year 1901 and 1902 onwards along with the mutation of the land from time to time after the death of the *Mahant* and the *Muafi* file it is abundantly proved that the institution was a Sikh Gurdwara and in any case when Mahant Jawahar Dass made the statement (copy Ex. R. 18) in the year 1902, the institution became a Sikh Gurdwara since then. The entries continued to be in the name of Guru Granth Sahib and the *Muafi* was also given on that account. These entries were never challenged by the subsequent *Mahants* and, therefore, from this documentary evidence it has been rightly held by the Tribunal that the institution in dispute was a Sikh Gurdwara. He referred to an unreported judgment of the Supreme Court in (*Banta Singh v. Gurdwara Sahib Dashmi Padshai and others*) (4), in order to contend that entries in the revenue records were sufficient to prove that the institution was a Sikh Gurdwara.

(11) After hearing the learned counsel for the parties on issue No. 2 and going through the relevant evidence, particularly Ex. R. 14 wherein final order of the Commissioner has been reproduced which is to the effect that the *Muafi* continued to Dera Lung in the name of the Custodian for the time being. I agree with the findings of B. S. Yadav, J., wherein it has been held that the S.G.P.C. had failed to prove any of the ingredients given in section 16(2) (iii) of the Act, and, therefore, it is held that the institution in question is not a Sikh Gurdwara.

(12) Consequently, this appeal is accepted, the order of the Tribunal is set aside and the petition filed under section 8 of the Act is allowed. There will, however, be no order as to costs.

R.N.R.

Before Sukhdev Singh Kang and S. D. Bajaj, JJ.

PUNJAB DRUGS MANUFACTURERS ASSOCIATION,—
Petitioner.

versus

STATE OF PUNJAB AND OTHERS,—*Respondents.*

Civil Writ Petition No. 6144 of 1987.

June 3, 1988.

Constitution of India, 1950—Arts. 14 and 19(1)(g)—Supply of drugs and medicines to Government—Orders excluding contract

(4) Civil Appeal No. 446 of 1962, decided on November 9, 1964

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with private manufacturers—Open tender system abolished—Monopoly created by executive instructions in favour of public sector undertakings for supply of medicines—Creation of such monopoly—Whether violative of Arts. 14 and 19(1)(g).

Held, that while dealing with individuals in transactions of sale and purchase of goods, the State cannot arbitrarily deny any individual opportunity to trade with it and an individual is entitled to a fair and equal treatment with others. In the matter of making public contracts, the State has to provide equality of opportunity and it cannot arbitrarily choose to exclude persons and discriminate against them. Indeed, the State can enter into contracts with any person it chooses and nobody has a fundamental right to insist that the Government must enter into a contract with it. Yet, citizens have a right to claim equal treatment with others to offer tenders and quotations for the purchase or sale of goods. The action of the State in creating a monopoly in favour of public sector undertakings for the supply of drugs and medicines amounts to discrimination and denial of the guarantee of equal protection of law.

(Para 10).

Held, that the State can create monopoly in the public interest in relation to any trade, business or industry even to the exclusion of citizens, by making law. The expression 'law' as understood in Article 19(6) (ii) of the Constitution is a statute enacted by a competent legislature or statutory rules framed thereunder. The expression 'law' herein does not encompass mere administrative or executive orders/instructions. The State Legislature has not passed any act authorising the State Government to restrict the purchase of drugs from approved sources only. The policy decisions and consequent impugned orders have been made in exercise of the executive powers of the State. Therefore, it has to be held that a monopoly could not have been created in favour of public sector undertakings merely on the strength of executive instructions.

(Para 14).

Held, that the object of creating a monopoly in favour of public sector undertakings may be laudable. The authorities may be impelled by the desire that middlemen may not prosper at the cost of the tax-payers. However, in a society ruled by Rule of law, even measures for achieving laudable objects have to conform to the constitutional mandates and other laws of the land. Such objects can be achieved only by making valid laws and not by issuing only executive instructions. Therefore, it has to be held that the action of the State in creating a monopoly was wholly arbitrary and discriminatory. The policy decisions of the Government and the impugned orders are violative of Articles 14 and 19(1) (g) of the Constitution.

(Para 15)

Petition under Articles 226/227 of the Constitution of India praying that this Hon'ble Court may be pleased to send for the records of the case and after a perusal of the same :—

- (a) issue a writ of Certiorari, quashing the impugned instructions of the Punjab Government dated 5th August, 1985 (Annexure P/2) and the impugned order dated 11th March, 1987 (Annexure P/6) placing the contract for the supply of the medicines to without inviting tenders;
- (b) issue a writ of Mandamus, directing the respondents to invite tenders for the supply of medicines in the open market;
- (c) issue a writ of Mandamus, directing the Respondent No. 3 to finalise the tenders opened on 6th May, 1987 and to appoint an auditor to enquire into the purchases made from M/s Japson and other approved sources;
- (d) issue any other writ, order or direction, this Hon'ble Court deems fit in the facts and circumstances of the case;
- (e) dispense with the filing of certified copies of the annexures P/1 to P/6 attached with the writ petition at this stage;
- (f) dispense with the issuance of advance notices on the Respondents at this stage;
- (g) allow the writ petition with costs.

It is further prayed that during the pendency of the writ petition, purchases made from approved sources be stayed.

M. L. Sarin, Senior Advocate, Jaishri Thakur, Advocate and Deepak Agnihotri, Advocate with him, for the Petitioner.

G. S. Bains, D.A.G., Punjab, for Respondents Nos. 1 to 3.

Harbhagwan Singh, Senior Advocate, (M. S. Khaira, J. S. Bhatti, and Arun Walia, Advocates with him), for Respondent No. 9.

Mr. Somesh Ohja, Advocate, for Respondent Nos. 4 to 8.

JUDGMENT

Sukhdev Singh Kang, J.—

At issue in this writ petition under Articles 226 and 227 of the Constitution of India is the legality and validity of the policy decisions of the Punjab Government dated October 29, 1984 and February 12, 1987 and the consequential orders dated August 5, 1985 and

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March 2, 1987, issued by the Director, Health and Family Welfare, Punjab (Respondent No. 2) to the Civil Surgeons/Medical Superintendents and Principals of Medical Colleges in the State of Punjab, directing them to purchase drugs/pharmaceuticals from respondents No. 4 to 9. A broad brush factual backdrop will help delineate the contours of the forensic controversy.

(2) Punjab Drugs Manufacturers Association (the petitioner in this case) is an association of drugs manufacturers of Punjab. Members of the petitioner-Association used to supply drugs/medicines to Punjab Government at rates approved after inviting tenders from time to time.

(3) The Punjab Government, on October 29, 1984, took a policy decision (Copy Annexure R-I to the written statement of Respondents 1 and 2) that :

- “(i) All the six approved sources, namely, (a) I.D.P.L., (b) H.A.L., (c) Smith Stanistreet, (d) Bengal Chemicals and Pharmaceuticals Ltd., (e) Bengal Immunity Co. Ltd., and (f) M.S.D., must be treated equally, and those medicines, which are manufactured by them, must be purchased.
- (ii) Purchases shall be made from the cheapest firm and orders must be placed direct with the approved sources;
- (iii) So long as a medicine is available with the approved sources, it should be purchased from them only and not from firms on rate contract and *vice versa*;
- (iv) Rate contract should not be arranged/entertained in respect of medicines, which are available from approved sources.”

Indenting Officers were requested to make purchases strictly in accordance with the store purchase rules and the policy framed by the Government. Any lapse would be viewed strictly.

(4) In pursuance of this decision of the Government, the Director of Health and Family Welfare, Punjab, Respondent No. 2,—*vide* his order dated August 5, 1985 (Copy Annexure P-2 to the writ petition) directed the Indenting Officers to ensure that medicines on

the price list of any of the approved sources be not purchased from rate contract firms.

(5) In supersession of the orders dated October 29, 1984 (Annexure R-1), the Punjab Government,—*vide* orders dated February 12, 1987 (Annexure R-III) laid down the following policy for purchase of drugs/medicines for the State of Punjab :—

(i) Limited tenders will be invited from all the approved sources for the supply of drugs/formulations to the State of Punjab;

(ii) ** ** *

(iii) If one approved source cannot meet with the total requirements, then the orders are placed at the same price with the other sources or at the rates quoted by them, whichever is lower.

(iv) The policy will apply only in respect of drugs/formulations manufactured by the concerned approved source and that no trading will be allowed. It will also be ensured that the approved sources do not merely supply the drugs/formulations but actually manufacture the same."

A copy of this policy decision (Annexure R-III) was forwarded by the Secretary to Government, Punjab, Department of Health and Family Welfare, to the Director, Health Services, Punjab, with a direction that he would invite limited tenders for drugs/formulations required by the Department from all the approved sources, and that the purchases were to be made strictly in accordance with the above said policy. Copies of the aforesaid policy decision of the Government were also addressed to all the approved sources, namely,—

- (1) M/s. Indian Drugs and Pharmaceuticals Ltd., Gurgaon ;
- (2) M/s. Hindustan Antibiotics Ltd., Pimpri (Poona) ;
- (3) M/s. Smith Stanistreet Pharmaceuticals Ltd., Calcutta;
- (4) M/s. Bengal Chemicals and Pharmaceuticals Works Ltd., Calcutta;
- (5) M/s. Bengal Immunity Co. Ltd., Calcutta;
- (6) M/s. Japson Pharmaceuticals (Punjab) Ltd., Chandigarh;

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(7) M/s. Medical Store Depot., Karnal;

(8) M/s. Haffkin Institute, Bombay; and

(9) Central Research Institute, Kasauli.

The aforesaid undertakings had been declared by the State Government as approved sources for supply of drugs/medicines to the State of Punjab and its Departments and Officers. Out of these, the companies mentioned against serial Nos. 1 to 5 and 8 and 9 are public sector undertakings of Government of India and company mentioned against serial No. 6, i.e., M/s. Japson Pharmaceuticals (Punjab) Ltd., Chandigarh, is a joint sector company in which the Punjab State Industrial Development Corporation (for short, the 'PSIDC') holds 50 per cent equity. M/s. Medical Store Depot., Karnal mentioned at serial No. 7 is a Government undertaking. In compliance with the orders of the Secretary to Government, Department of Health and Family Welfare, Respondent No. 2, addressed a communication dated February 11, 1987, to the above-mentioned nine undertakings which had been declared approved sources, inviting tenders/quotations for the purchase of 164 drugs/drugs formulations required for the Health Department so as to reach his office by February 23, 1987. A detailed list of the drugs was appended with the said communication. It was stated in the communication that the tenders/quotations will be opened on the same day, i.e., February 23, 1987, at 3.00 P.M. in the presence of the Pricing/Purchase Committee, M/s Japson Pharmaceuticals (Punjab) Ltd. (Respondent No. 9) sent quotations for 65 items and it was awarded contract for 57 of them, as the prices quoted by it were lower than those quoted by the other approved sources. Respondents Nos. 4 to 8, which are Central Government's public sector undertakings, were approved for 17 drugs/medicines. Haffkin Pharmaceutical Corporation, Bombay, Central Research Institute, Kasauli and M.S.D., Karnal, who are approved sources, did not send any quotations/tenders and were thus approved for none.

(6) The Director of Health and Family Welfare, Punjab (Respondent No. 2) addressed a letter dated March 2, 1987 (Copy Annexure P-6 to the writ petition) to all the Civil Surgeons/Medical Superintendents and Principals of the Medical Colleges in the State of Punjab, intimating that the firms listed at Annexures 1 to 6 to that communication will be approved sources for the supply of drugs/drugs formulations listed in the annexures and at the rates noted

against each drugs/formulation. The orders were to be placed in respect of those items with the approved sources. In case the approved source is unable to supply these items, then the same shall be purchased in accordance with Appendix 11 of Punjab Financial Rules, Volume II.

(7) According to the written statement on behalf of the Controller of Stores, Punjab (Respondent No. 3), tenders for supply of drugs/medicines were invited from the open market and opened on May 6, 1987, but the rate contract could not be finalised due to non-participation of the indenting department, i.e., Respondent No. 2, in the meetings of the Technical Committee in four consecutive meetings held in the months of May, June and July, 1987. Finally, the Director, Health and Family Welfare, Punjab (Respondent No. 2),—*vide* his letter dated July 8, 1987, informed Respondent No. 3 that the policy of purchase of drugs/medicines from the approved sources was under review and case of finalisation of rate contract (of drugs/medicines) be kept pending. It is further averred in the written statement that the tenders in question were invited for arranging rate contracts with various firms for purchase of medicines etc. However, so long as the policy of the State Government regarding (purchase of drugs/medicines from) approved sources dated August 25, 1986 (sic August 5, 1985) is in force, no purchase of medicines appearing on approved source can be made from any other source. It is further averred that the arranging of rate contracts thus becomes redundant in respect of medicines which are available from approved sources.

(8) Dr. B. S. Cheema, Director, Health and Family Welfare, Punjab (Respondent No. 2) in his reply has averred that in pursuance of the Punjab Government's policy dated February 12, 1987 (Annexure R-III with the return), limited tenders were invited from the approved sources and the lowest rates quoted by the firms for various drugs/medicines were approved by the Price Fixation Committee. Thereafter, instructions dated March 2, 1987 (Annexure R-IV with the return) were issued to all the indenting officers. In view of the clear policy (Annexure R-III with the return) there was no necessity of inviting open tenders and giving opportunity to the petitioner to submit tenders. Since the medicines manufactured by public sector undertakings are to be purchased from them without inviting (open) tenders the rates of medicines are not compared with those of the private manufacturers.

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(9) From the above, it is manifest that the State Government has framed policy that for the purchase of drugs/formulations only limited tenders should be invited from the approved sources only. The manufacturers of drugs/medicines in the private sector like members of the petitioner-Association, who have been previously supplying drugs/medicines to the Government, and had a legitimate interest in and reasonable expectation of the continuance of this arrangement, have been excluded from offering to supply drugs/medicines. By the impugned policy decisions of the Punjab Government and the orders issued by the Director, Health and Family Welfare, Punjab (Respondent No. 2), they have been denied the opportunity to quote the prices and submit tenders for supply of drugs/medicines, along with respondents 4 to 9. Only respondents Nos. 4 to 9 have been permitted to send tenders/quotations for 164 drugs/medicines to the total exclusion of the private manufacturers including the members of the petitioner-Association. Similarly, no decision has been taken on the tenders submitted by the members of the petitioner-Association for the supply of drugs/medicines on the directions of respondent No. 2 on the plea that the policy or purchase of drugs/medicines was under review. Resultantly, the drugs/medicines are being purchased only from respondents 4 to 9.

(10) The executive power of the State Government extends to the carrying of any trade, the purchase and sale of property and making of contracts for any purpose. While dealing with individuals in transactions of sale and purchase of goods, the State cannot arbitrarily deny any individual opportunity to trade with it and the individual is entitled to a fair and equal treatment with others. The exercise of the executive functions in the matter of trade and making of contracts is subject to Part III of the Constitution. In the matter of making public contracts, the State has to provide equality of opportunity. While exercising the right to trade and enter into contracts, the State is under an obligation to observe equality, whereas ordinarily citizens are free to choose not to deal with any person whom they don't like. The State has duty to observe equality in such matters. While entering into contracts, it cannot arbitrarily choose to exclude persons and discriminate against them. Indeed, the State can enter into contracts with any person it chooses and nobody has a fundamental right to insist that the Government must enter into a contract with it. Yet, citizens have a right to claim equal treatment with others to offer tenders and quotations for the purchase or sale of goods and the democratic form of

Government demands equality and absence of arbitrariness and discriminations in such transactions. The State may not enter into any contract with anyone, but if it does so, it must do so fairly without discrimination and without unfair procedure. This view fully comports with the ratio of the decision of the final Court in *M/s Erusian Equipment and Chemicals Ltd. v State of West Bengal and another*, (1), wherein it was observed :

- "14. The State can enter into contract with any person it chooses. No person has a fundamental right to insist that the Government must enter into a contract with him. A citizen has a right to earn livelihood and to pursue any trade. A citizen has a right to claim equal treatment to enter into a contract which may be proper, necessary and essential to his lawful calling.
17. The Government is a government of laws and not of men. It is true that neither the petitioner nor the respondent has any right to enter into a contract but they are entitled to equal treatment with others who offer tenders or quotations for the purchase of the goods. This privilege arises because it is the Government which is trading with the public and the democratic form of Government demands equality and absence of arbitrariness and discrimination in such transactions. Hohfeld treats privileges as a form of liberty as opposed to a duty. The activities of the Government have a public element and, therefore, there should be fairness and equality. The State need not enter into any contract with any one but if it does so, it must do so fairly without discrimination and without unfair procedure. Reputation is a part of person's character and personality. Blacklisting tarnishes one's reputation.
18. Exclusion of a member of the public from dealing with a State in sales transactions has the effect of preventing him from purchasing and doing a lawful trade in the goods in discriminating against him in favour of other people. The State can impose reasonable conditions regarding rejection and acceptance of bids or qualifications of bidders. Just as exclusion of the lowest tender will be arbitrary, similarly exclusion of a person who offers the highest price from participating at a public auction would also have the same aspect of arbitrariness."

(1) AIR 1975 S.C. 266.

ment had decided to introduce a right of monopoly procurement of paddy in favour of co-operative societies and, therefore, no licenses should be granted to individual dealers other than co-operative societies. Judged against the background of facts to which we have earlier referred in this judgment, the impugned order dated April 11, 1961 appears to us to have been based on the same ground, namely, the creation of a monopoly in favour of co-operatives, even though the order refers to existing licences and the quantity of foodgrains available in the locality."

(11) In the case in hand also, by the policy decisions of the Government and orders of respondent No. 2, the members of the petitioner-Association have been excluded from sending quotations and tenders for the supply of drugs/medicines. A virtual monopoly has been created in favour of respondents 4 to 9. The principles enunciated in *Manna Lal Jain's case*, (supra) were reiterated by a Constitution Bench of the final Court in *Rasbihari Panda etc. v. State of Orissa*, (3), wherein it was observed by their Lordships:—

"18. The classification based on the circumstance that certain existing contractors had carried out their obligations in previous year regularly and to the satisfaction of the Government is not based on any real and substantial distinction bearing a just and reasonable relation to the object sought to be achieved, i.e., effective execution of the monopoly in the public interest. Exclusion of all persons interested in the trade, who were not in the previous year licensees is *ex facie* arbitrary, it had no direct relation to the object of preventing exploitation of pluckers and growers of Kendu leaves, nor had it any just or reasonable relation in the securing of the full benefit from the trade, to the State."

It is manifest from the above decision that restricting the invitation to submit tenders to a limited class of persons was held to be violative of the equality clause. The standard of norm laid down by the Government by entering into contract for sale of Kendu leaves with third parties was discriminatory and could not stand the

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scrutiny of Article 14 and hence the scheme was held to be invalid. The sweep and scope of Article 14 in the matter of public contracts has been brought out in the felicitous formulation of Justice Bhagwati (as his Lordship then was) in *Ramana Dayaram Shetty v. The International Airport Authority of India and Others* (4), wherein it has been laid down :

“12. ... It must, therefore, be taken to be the law that where the Government is dealing with the public, whether by way of giving jobs or entering into contracts or issuing quotas or licences or granting other forms of largess, the Government cannot act arbitrarily at its sweet will and, like a private individual deal with any person it pleases, but its action must be in conformity with standard or norm which is not arbitrary, irrational or irrelevant. The power or discretion of the Government in the matter of grant of largess including award of jobs, contracts quotas, licences etc., must be confined and structured by rational relevant and non-discriminatory standard or norm and if the Government departs from such standard or norm in any particular case or cases, the action of the Government would be liable to be struck down, unless it can be shown by the Government that the departure was not arbitrary, but was based on some valid principle which in itself was not irrational, unreasonable or discriminatory.”

(12) In *Madhya Pradesh Ration Vikreta Sangh Society and others etc. v. State of Madhya Pradesh and others* (5), it was held that consumers' cooperative societies form a distinct class by themselves. Benefits and concessions granted to them ultimately benefits persons of small means and promote social justice in accordance with the directive principles. There is an intelligible differentia between the retail dealers who are nothing but traders and consumers' cooperative societies. The position would have been different if there was a monopoly created in favour of the latter. The scheme only envisages a rule of preference. The formulation of the scheme does not exclude the retail traders from making an application for appointment as agents. It was held that the scheme was not violative of Articles 14 and 19 of the Constitution. The principle that

(4) A.I.R. 1979 S.C. 1628.

(5) AIR 1981 S.C. 2001

preference to be given to cooperative societies in the matter of being appointed as retail dealers for essential commodities, in preference to private retail dealers, but the latter were not excluded from applying for the licences and no monopoly had been created in favour of the cooperative societies. In this context, their Lordships observed that the position would have been different if there was a monopoly created in favour of the co-operative societies. In *M/s Partap Resin and Turpentine Factory, Hoshiarpur v. The State of Punjab and another*, (6), a Division Bench of this Court had struck down a Government Order sanctioning sale of entire Resin from Government stock to a co-operative society, because the order had created a virtual monopoly in favour of the co-operative society and had violated the petitioner's right to get Resin for their business and the violation was not in the interest of general public. The order was in violation of the provisions of Articles 14 and 19(1) (g) of the Constitution.

(13) In a recent decision of the final Court in *Shri Harminder Singh Arora v. Union of India and others* (7), the action of the Government in accepting a higher tender for supply of milk of the Government Milk Scheme in preference to the appellant's tender, which was lowest, was struck down being arbitrary and capricious and violative of Article 14 of the Constitution.

(14) In fairness to the learned counsel for the respondents, it may be stated that they had tried to justify the monopoly in favour of respondents 4 to 9 by reference to sub-clause (ii) of clause (6) of Article 19 of the Constitution. It was contended that because of this constitutional provision a monopoly can be created in favour of the State or a Corporation owned or controlled by the State. It was submitted that respondents 4 to 9 would squarely fall within the expression "Corporation owned or controlled by the State" used in the abovesaid sub-clause (ii). We are not impressed. Under Article 19(6) (ii) of the Constitution, the State can make any law imposing in the interest of general public, restrictions on the exercise of the rights conferred by sub-clause (g) of clause (1) of Article 19, i.e., freedom to practice any profession or carry on any occupation, trade or business and, in particular, nothing therein shall prevent the State from making any law relating to carrying on by the State, of any trade, or by a Corporation owned or controlled by

(6) AIR 1966 Pb. 16.

(7) AIR 1986 S.C. 1527.

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the State, of any trade, business, industry, or service, whether to the exclusion, complete or partial, of citizens or otherwise. Simply put, it means that the State Government can make any law which may impose, in the interests of the general public, reasonable restrictions on the right to practice any profession or carry on any occupation, trade or business, whether to the exclusion, complete or partial, of citizens. The State can create a monopoly in the public interest in relation to any trade, business or industry even to the exclusion of citizens, by making law. Admittedly, the State Legislature has not passed any Act authorising the State Government to restrict the purchase of drugs from approved sources only. It is also conceded that no statutory rules have been framed for this purpose. The policy decisions have been taken in exercise of the executive powers of the State. The expression 'law' as understood in Article 19(6)(ii) of the Constitution is a statute enacted by a competent legislature or statutory rules framed thereunder. The expression 'law' herein does not encompass mere administrative or executive orders/instructions. (See in this connection, *State of Kerala and others v. P. J. Joseph*, (8), and *H. C. Narayanappa and others v. State of Mysore and others* (9). The departmental instructions are neither law nor are they procedure established by law. (See in this connection, *Raj Kumar Narsingh Partap Singh Deo v. The State of Orissa and another* (10), *Kharak Singh v. State of U.P. and others*, (11) *Smt. Ujjam Bai v. State of Uttar Pradesh and others* (12), *Mannalal Jain v. State of Assam and others* (13), *M/s. Raman and Raman Ltd. v. The State of Madras and others* (14), *Sri Dwarka Nath Tewari and others v. State of Bihar and others* (15), and *Edward Mills Co. Ltd., Beawar and others v. State of Ajmer and another* (16). The impugned instructions cannot infringe or curtail the fundamental rights granted by Articles 14 and 19(1) (g) of the Constitution. In this view we are also fortified by a recent Division Bench decision of the Andhra Pradesh High Court in

(8) AIR 1958 S.C. 296.

(9) AIR 1960 S.C. 1073.

(10) AIR 1964 S.C. 1793.

(11) AIR 1963 S.C. 1295.

(12) AIR 1962 S.C. 1621.

(13) AIR 1962 S.C. 386.

(14) AIR 1959 S.C. 694.

(15) AIR 1959 S.C. 249.

(16) AIR 1955 S.C. 25.

Mahindra and Mahindra Ltd., Bombay and another v. State of Andhra Pradesh and another, (17), and a decision of the Orissa High Court in *Hrudananda Patra and another v. Revenue Divisional Commissioner Central Division, Cuttack and others*, (18).

(15) The object of creating a monopoly in favour of respondents 4 to 9 may be laudable. The authorities may be impelled by the desire that middlemen may not prosper at the cost of the tax-payers. However, in a society ruled by rule of law, even measures for achieving laudable objects have to conform to the constitutional mandates and other laws of the land. In a democratic system, means do not justify the ends. By the impugned orders the Government may have been able to eliminate the traders who operate with only the profit motive, but for achieving that end, the Government has to act in accordance with the Constitution. They could have achieved this object by making valid laws and not by issuing only executive instructions.

(16) We are of the considered view that by the impugned policy decisions of the Government and the impugned orders passed by respondent No. 2, a monopoly has been created in favour of respondents 4 to 9 and the members of the petitioner-Association have been denied the equality opportunity in making quotations and submitting tenders for the supply of drugs/medicines to the State. Tenders (it is not clear from the pleadings of the parties as for what drugs they related) invited by the Controller of Stores, Punjab (Respondent No. 3) were also not finalised firstly because of the non-cooperation and then under the orders of Respondent No. 2. Resultantly, medicines or substantial part thereof continued to be purchased from Respondents 4 to 9. The action of Respondents 1 and 2 was wholly arbitrary and discriminatory. The policy decisions of the Government and the impugned orders of Respondent No. 2 are violative of Articles 14 and 19(1) (g) of the Constitution.

(17) In view of what has been stated above, there was no justification in law in dispensing with the tender system which was in vogue earlier.

(18) We have carefully perused the pleadings of the parties and have heard Mr. Sarin at length. We are however, not persuaded

(17) AIR 1986 A.P. 332.

(18) AIR 1979 Orissa 13.

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to hold that the approval of Japson Pharmaceuticals (Punjab) Ltd. was tainted by legal *mala fides*. It is, indeed, true that the members of the family of S. Surjit Singh Barnala, who was Chief Minister of Punjab at the material time, were the promoters of this Company; but that in itself does not lead to the conclusion that the authorities while declaring this Company as an approved source have not acted *bona fide*.

(19) The policy in this behalf had been changed and amongst others, all the joint sector companies in which the Punjab State Industrial Development Corporation held equity of at least 50 per cent and which were manufacturing various articles used by the Government Departments, were made eligible for consideration for declaration as the approved sources for the supply of those articles by the Administrative Department concerned. This policy was confined only to the joint sector companies manufacturing drugs and pharmaceuticals. It encompassed all joint sector companies in which P.S.I.D.C. has 50 per cent shares. The Managing Director of the PSIDC had moved the Administrative Department to grant approval to all the three joint sector companies manufacturing drugs/pharmaceuticals for being declared as approved sources. The Director of Health and Family Welfare, Punjab (Respondent No. 2) had also made a similar recommendation. No material has been brought on the file to show that any favour had been shown to Respondent No. 9 in this behalf or the claim of any deserving applicant had been wrongly turned down.

(20) For the foregoing reasons, we allow this writ petition and quash the policy decisions of the Government dated October 29, 1984 (Annexure R-1) and dated February 12, 1987 (Annexure R-III) and the orders dated August 5, 1985 (Annexure P-2) and dated March 2, 1987 (Annexure P-6) passed by Respondent No. 2 and direct Respondents 1 to 3 to make purchases of drugs/medicines in accordance with law. No costs.

R.N.R.

Before M. M. Punchhi and M. R. Agnihotri, JJ.
SURINDER PAL,—Petitioner

versus

STATE OF PUNJAB AND OTHERS,—Respondents.

Civil Writ Petition No. 3533 of 1988

May 6, 1988.

Essential Commodities Act (X of 1955)—Section 2(a)—Essential commodity—Definition of—Expression 'Food Stuffs'—Meaning of.