

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.SURENDRA MOHAN  
&  
THE HONOURABLE MR. JUSTICE SHAJI P.CHALY

MONDAY, THE 21ST DAY OF DECEMBER 2015/30TH AGRAHAYANA, 1937

W.A.No. 1416 of 2015 () IN WP(C).19204/2005  
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AGAINST THE JUDGMENT IN W.P.(C) 19204/2005 of HIGH COURT OF KERALA DATED 29-05-2015.

APPELLANT(S)/3RD RESPONDENT IN W.P.(C):-  
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THE MANAGING DIRECTOR,  
KERALA STATE BEVERAGES CORPORATION LIMITED,  
SASTHAMANGALAM,  
THIRUVANANTHAPURAM - 695 010.

BY ADV. SRI.C.S.AJITH PRAKASH,SC,BEVERAGES CORPORATION

RESPONDENT(S)/PETITIONERS & RESPONDENT 1, 2 AND 4 IN W.P.(C):-  
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1. P.P.SURESH,  
S/O.PRABHAKARAN, PARAYIL VEEDU, VILANILAM P.O.,  
MUNDAKKAYAM.
2. THE WELFARE FUND INSPECTOR,  
THE KERALA ABKARI WORKERS WELFARE FUND BOARD,  
ERANAKULAM, KOCHI.
3. THE CHIEF WELFARE FUND INSPECTOR,  
THE KERALA ABKARI WORKERS WELFARE FUND BOARD,  
THIRUVANANTHAPURAM.
4. ROBIN ABRAHAM,  
NANDIKATTU, KANDATHIL, POOVARANI P.O.,  
MEENACHIL TALUK, PALA.

R1 BY ADV. SRI.K.REGHU KOTTAPPURAM  
R2,R3 BY ADV. SRI.ROY CHACKO,SC, KAWWFB.

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 08-12-2015, ALONG WITH WA. 1440/2015 & CONNECTED CASES, THE COURT ON 21-12-2015 DELIVERED THE FOLLOWING:

P.T.O.

**C.R.**

**K. SURENDRA MOHAN  
&  
SHAJI P. CHALY, JJ.**

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**W.A. Nos.1416, 1440, 1441, 1442, 1479,  
1482, 1488, 1503, 1505, 1976,  
2022, 2023, 2037, 2038, 2095,  
2108, 2110, 2123 & 2342 of 2015**  
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**Dated this the 21<sup>st</sup> day of December, 2015**

**JUDGMENT**

**Shaji P. Chaly, J.**

These writ appeals are filed by the Respondents in W.P. (C) Nos.19204 & 26208 of 2005, 19427 of 2009, 6316, 20180, 30569 & 33110 of 2010, 9959 & 32207 of 2011, viz. the State and the Kerala State Beverages Corporation, whereby the learned Single Judge allowed the writ petitions by a common judgment dated 29.05.2015 and directed the State Government to implement the order bearing No. G.O.(Rt.) No.81/2002/TD dated 20.02.2002, by which the Government have launched a scheme to provide 25% daily wage employment arising in the Kerala State Beverages Corporation (hereinafter called 'the Bevco') to the displaced arrack workers. Since the issue involved in the appeals are common, they are considered and disposed of by this common judgment.

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2. Arrack (country liquor) in eternity is the heart and soul and fuel and spirit of these litigations. Arrack was banned in Kerala with effect from 01.04.1996, as a result of which 12,500 workers were rendered jobless. To tide over the situation, initially, the State Government has paid Rs.30,000/- as compensation to each of the workers and apart from an *ex gratia* payment at the rate of Rs.2,000/-. Further, with an intention to provide employment to these workers, Government issued an order dated 20.02.2002, whereby 25% of all daily wage employment arising in the Kerala State Beverages Corporation in future stood reserved to be filled up by these jobless abkari workers registered with the Abkari Workers Welfare Fund Board and who were terminated from service due to the arrack ban with effect from 01.04.1996. The Government has undertaken such a commitment also due to the fact that sale of foreign liquor was solely entrusted to the Beverages Corporation and Consumer Federation, which are instrumentalities of the State, during the year 2001.

3. Initially, in order to tide over the situation of these abkari workers becoming jobless consequent to the ban of arrack, Government amended the Kerala Abkari Shops

Disposal Rules, 2002 and incorporated Rules 4(2) and 9(10), whereby the grantees of the privilege to sell toddy were insisted to engage one arrack worker each in every toddy shop. Even though the said amendments challenged in writ petition and writ appeal by the licensees of the toddy shops, went in vain before this Court, the Apex Court in the judgment in '**Kerala Samsthana Chethu Thozhilali Union v. State of Kerala**' [2006 (6) KLT 270 SC] declared the said provisions unconstitutional, consequent to which the attempt of the State Government to rehabilitate the displaced arrack workers so, became futile. This is the circumstance which led the Government to issue the Government Order dated 20.02.2002. Thereafter, since the Government failed to implement the said order, certain workers have filed writ petitions before this Court seeking implementation of the said order and appropriate directions were issued by this Court to implement the said Government Order.

4. While the issue remained so, the State Government issued an order dated 07.08.2004, which reads as follows:

**"GOVERNMENT OF KERALA**

**Abstract**

Taxes Department - Excise - Rehabilitation of abkari workers who lost employment due to arrack ban with effect from 01.01.1996 - Filling up of daily wage vacancies in KSBC - Fixation of criteria for appointment - Orders issued.

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**TAXES (G) DEPARTMENT**

G.O.(Rt) No.567/2004/TD. Thiruvananthapuram. Dated: 7-8-2004

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Read:- 1. G.O.(Rt) No.81/2002/TD dated 20-2-2002.  
2. Minutes of the meeting held by the Chief Minister on 22.10.2003.

**ORDER**

Government as per order first read above, ordered that 25% of all daily wage employment vacancies arising in the Kerala State Beverages Corporation in future should stand reserved to be filled up by the abkari workers registered with the Kerala Abkari Workers Welfare Fund Board who were terminated from service due to arrack ban with effect from 01.01.1996. Though certain daily wage vacancies were reserved for the ex-abkari workers, these vacancies could not be filled up, as a list of eligible workers was not made available to the KSBC. This issue was subjected to detailed discussion in the meeting held by the Chief Minister on 22.10.2003. It was therein decided to fix new criteria for the rehabilitation of abkari workers and to fill up the vacancies reserved for them in future based on the revised criteria.

Government have examined the issue in detail and are pleased to order that 25% of all daily wage employment vacancies arising in the Kerala State Beverages Corporation should be earmarked for the dependent sons of arrack workers who had perished consequent on the loss of employment due to the ban on arrack in the State and if such claimants are more than the available number of vacancies, selection will be made from among them subject to the following conditions:-

(1) Only the dependent sons who has not completed 38 years of age will be eligible

(2) The consent letter of the wife of the deceased and the FIR/Death Certificate also be submitted along with the application.

A list of eligible abkari workers prepared on the basis of the above guideline shall be made available to the KSBC by the Chief Welfare Fund Inspector, the Kerala Abkari Workers Welfare Fund Board to fill up the vacancies.

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The order read as first paper above will stand modified to this extent.

By order of the Governor,  
Sajen Peter  
Secretary to Government”.

5. Writ petitions were filed challenging the said order dated 07.08.2004 since the arrack workers felt that the Government was attempting to dilute the benefit conferred on the workers as per the first order dated 20.02.2002. On a perusal of the order dated 07.08.2004, nowhere it is stated that the same is issued in supersession of the order dated 20.02.2002. On the other hand, it reads that the said notification is also for rehabilitating abkari workers who lost employment due to arrack ban with effect from 01.01.1996. The order has referred to the order dated 20.02.2002. The displaced abkari workers felt that the attempt of the Government in issuing the said order impugned was to provide employment to the dependent sons of arrack workers who had perished consequent on the loss of employment alone, due to the ban of arrack in the State. Adding fuel to the fire, the Government again issued another notification dated 04.02.2006, whereby in the guise of the order dated 07.08.2004, a list of 265 eligible persons were prepared,

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alleged to be the dependents of the perished abkari workers and after examining the details, the State Government has directed 'the Bevco' to appoint the first 51 members in the list prepared by the Chief Welfare Fund Inspector against daily wage vacancies in the Kerala State Beverages Corporation.

6. In the circumstances mentioned above, the displaced abkari workers filed W.P.(C) No.26878 of 2007, seeking to quash the Government Order dated 07.08.2004 and seeking further direction to implement the Government Order dated 20.02.2002. By the judgment dated 03.04.2009, a learned Single Judge of this Court held that the Government Order limiting employment to 51 displaced arrack workers was unsustainable. Consequent to which, a direction was issued to the State as well as the Kerala State Beverages Corporation to pass orders employing the remaining dependent sons in Ext.P3 list in the 25% quota available to them. It was also directed that, if required, equal number of Employment Exchange hands appointed under certain orders of the Government shall be terminated to accommodate the candidates under the 25% quota, as prescribed in the order dated 07.08.2004. It was further held by the Court that the modification of the

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Government Order dated 20.02.2002 by the Government Order dated 07.08.2004, declining employment to unemployed abkari workers cannot be justified. Therefore, the State Government was directed to re-consider the Government Order dated 07.08.2004 denying benefits conferred on a larger group of beneficiaries by the Government Order dated 20.02.2002. Thereupon, it was also directed to consider filling up of the future vacancies with 25% of the beneficiaries under the order dated 20.02.2002. Further, the Government was given the liberty to modify the order dated 07.08.2004 to that extent. A direction was issued to consider and take a decision within a period of three months from the date of receipt of a copy of the said judgment. The said judgment of the learned Single Judge has become final.

7. The workers thereupon approached the State Government with suitable representations and after considering the notifications regarding the issue, the State Government has passed an order dated 22.06.2009 holding that, though there was a decision to reserve 25% daily wage employment vacancies arising in 'the Bevco' to be filled up by the said abkari workers, the same could not be implemented

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due to variety of practical difficulties, such as want of sufficient number of vacancies, fixing of a suitable criteria to accommodate them, etc. Further that, it was decided as per the Government Order dated 07.08.2004 to limit the reservation of 25% of the daily wage employment vacancies in 'the Bevco' for the appointment of dependent sons of arrack workers who had perished consequent to the loss of employment due to the ban of arrack in the State.

8. It is challenging the order dated 07.08.2004 and the order dated 22.06.2009, the displaced arrack workers have filed the aforesaid writ petitions, seeking to quash the same and seeking further direction to implement the Government Order dated 20.02.2002.

9. A learned Single Judge of this Court after appreciating the rival contentions and the evidence on record has allowed the said writ petitions by a common judgment and directed the State Government to take necessary steps to implement G.O.(Rt) No.81/2002/DD dated 20.02.2002, by providing employment in accordance with the terms contained therein in the Bevco and a further direction was issued to implement the directions contained in the judgment within a

period of two months from the date of receipt of a copy of the judgment. It is thus aggrieved by the said judgment of the learned Single Judge, these separate writ appeals are preferred by the State Government and the Kerala State Beverages Corporation.

10. Heard learned Government Pleader, Smt. Rekha Vasudevan, Sri. C.S. Ajith Prakash, learned Standing Counsel for the Bevco, learned Senior Advocate, Sri. Grashious Kuriakose, Smt. Molly Jacob and Sri. Saiby Jose Kidangoor for the respondent displaced abkari workers and Sri. Roy Chacko appearing for the Abkari Workers Welfare Fund Board.

11. The prime contention advanced by the learned Government Pleader is that the State Government as of right is entitled to change its policies. It is further contended that the State Government has found that the implementation of the Government Order dated 20.02.2002 has practical difficulties and realizing the situation, the State has changed its policy by taking suitable decision and thereby the order dated 07.08.2004 is issued and decided to take up the responsibility of providing employment to the dependent sons of the displaced arrack workers who had perished consequent to the

loss of employment in the arrack shops. It is further contended that the order dated 20.02.2002 was modified by the order dated 07.08.2004, after conducting negotiations and consultation with the appropriate stakeholders and therefore it was not open to the party Respondents to challenge the modified Government Order. It is also the contention of the State that, at any point of time, the State is at liberty to abolish any posts created within its realm and the policy decision so taken by the Government is not susceptible to a challenge, since they are taken absolutely in accordance with law. Therefore, the learned Government Pleader contended that it was not proper on the part of the learned Single Judge to have interfered with the policy decision taken by the Government to modify the Government Order dated 20.02.2002. That apart, it is also contended that the finding of the learned Single Judge that, by issuing Government Order dated 20.02.2002, the displaced abkari workers legitimately expected that they are entitled to get employment in accordance with the rehabilitation scheme is not correct, in view of the fact that in order to secure a right on the basis of a legitimate expectation, there should be a legal foundation for

such expectation. The learned Government Pleader thereupon contended that since the Government is vested with powers to change the policy in accordance with law, there is no factual foundation for such displaced abkari workers to entertain any legitimate expectation to have the employment.

12. It is also the contention of the State that the judgment rendered by the learned Single Judge of this Court in W.P.(C) No.26878 of 2007 dated 03.04.2009 did not conclude any issue with regard to two notifications referred *supra*, as held by the learned Single Judge, since the direction contained therein was only directing the State Government to take a decision in accordance with law with regard to the modification made by the State Government, vide its order dated 07.08.2004. Therefore, it is the contention of the learned Government Pleader that it is open for the State to pass orders in accordance with the terms of policy decision taken by the Government. By making such contentions, it is canvassed that the impugned order passed by the Government dated 22.06.2009 is in accordance with law, whereby the Government has reiterated its stand with regard to the modification of the Government Order dated 20.02.2002, vide

its order dated 07.08.2004.

13. *Per contra*, learned counsel for the party Respondents contended that having issued Government Order dated 20.02.2002, a vested right has accrued to the displaced abkari workers to secure 25% of employment that are available in the Bevco in the category of daily wages employment and therefore they are entitled to the benefit of the said notification. It is also contended that the said order was passed by the State after hearing all the stakeholders and such an order was passed after a consensus arrived at in the hearing conducted by the Government, and therefore the State is not at liberty to withdraw its promise, and a right came to be vested on the displaced arrack workers consequent to the fructification of the legitimate expectation entertained by the displaced workers. That apart, it is further contended that the order modifying the said order was issued not in consultation with any trade unions or other stakeholders, which according to the counsel, is very well reflected in the order dated 07.08.2004. It is also the contention of the learned counsel that if the State intended to supersede the Government Order dated 20.02.2002, it could have explicitly stated so in the

second order dated 07.08.2004. It is also the contention of the learned counsel that in the order dated 07.08.2004, there is a categoric reference to the Government Order dated 20.02.2002 and if the Government had any intention to supersede the same, instead of the expression 'modification', 'supersession' should have been applied. It is also their contention that by modification as per the order dated 07.08.2004, the State Government intended to include the dependent sons of displaced and perished abkari workers, which was not taken care of under the Government Order dated 20.02.2002. Therefore, the counsel contended that both the Government Orders should be read harmoniously, by which a reasonable and purposive interpretation can be provided to both the orders, which thus means, the Government intended by the said Government Orders not only to rehabilitate the displaced abkari workers but also their dependent sons in case their death was consequent to loss of employment.

14. The learned counsel also contended that the findings in the judgment rendered by the learned Single Judge of this Court in W.P.(C) No.26878 of 2007 dated 03.04.2009 has become final against the Government and therefore the

principles of *res judicata* applied, which interdicts the State Government to prefer the writ appeals. Learned counsel have taken us through the operative portion of the said judgment and contended that categoric and clear finding was rendered by the learned Single Judge, and held that the modification of the order dated 20.02.2002 by issuing order dated 07.08.2004 is unjustifiable. Therefore, the Government did not have any option, in view of the said conclusive findings than to pass an order in tune with the Government Order dated 20.02.2002. Therefore, apart from the constructive *res judicata* interdicting the State in challenging the judgment of the learned Single Judge, the Government went wrong in passing the impugned order dated 22.06.2009, overlooking the directions contained in the said judgment. Learned counsel also contended that at this distance of time, i.e. 20 years from the displacement of these abkari workers, only few are remaining and therefore there will not be any practical difficulties for the appellants as apprehended by them to employ the displaced workers.

15. Smt. Molly Jacob appearing for some of the party Respondents, apart from supporting the contentions advanced by other counsel for the party Respondents, referred to the

exhibits produced in certain writ appeals, to point out that in the guise of the Government Orders referred *supra*, the benefits thereunder were misused, in order to provide employment to persons who were not beneficiaries at all of the said two notifications. The learned counsel has also taken us through other Government Orders whereby several warehouses were opened by the Government in order to canvass the proposition that the Government will not find any difficulty in rehabilitating the displaced abkari workers and also the sons of perished workers. It is also contended that the Government have already employed 251 workers by virtue of the two Government Orders and therefore at this point of time, the State is not at liberty to resile from its promise and contend that it is at liberty to change the policy taken by it, in accordance with law. Learned counsel for the party Respondents referred to the Directive Principles of State Policy under Part-IV of the Constitution, and canvassed that the State is duty-bound to secure a social order for the promotion and welfare of the people. It is thus submitted by the counsel, that the appeals are to be dismissed since they lack bonafides, merit and legality. The learned Standing Counsel for the Bevco

contended that presently the Corporation is managing its affairs through contract workers appointed in accordance with the density of employment on each occasion. The learned counsel also contended that it is practically impossible to accommodate the workers as per the Government Order dated 20.02.2002 in view of its large volume.

16. Having considered the rival submissions, we are of the considered opinion that the point that arises for consideration is whether the Government Order dated 20.02.2002 is superseded by the Government by issuing order dated 07.08.2004, on the ground of the policy decision taken by the Government in view of the alleged practical difficulties for implementing the order dated 20.02.2002.

17. The learned Government Pleader has invited our attention to the judgment of the Apex Court in '**Union of India and others v. Hindustan Development Corporation and others**' [(1993) 3 SCC 499] and canvassed the proposition that the legitimate expectation in order to transform into a vested right must have a legal foundation. The learned Government Pleader specifically invited our attention to paragraph 28 of the said judgment, wherein it is

held as follows:

*"28. Time is a three-fold present: the present as we experience it, the past as a present memory and future as a present expectation. For legal purposes, the expectation cannot be the same as anticipation. It is different from a wish, a desire or a hope nor can it amount to a claim or demand on the ground of a right. However earnest and sincere a wish, a desire or a hope may be and however confidently one may look to them to be fulfilled, they by themselves cannot amount to an assertable expectation and a mere disappointment does not attract legal consequences. A pious hope even leading to a moral obligation cannot amount to a legitimate expectation. The legitimacy of an expectation can be inferred only if it is founded on the sanction of law or custom or an established procedure followed in regular and natural sequence. Again it is distinguishable from a genuine expectation. Such expectation should be justifiably legitimate and protectable. Every such legitimate expectation does not by itself fructify into a right and therefore it does not amount to a right in the conventional sense".*

18. So also, the judgment in '**Punjab Communications Ltd. v. Union of India and others**' [(1999) 4 SCC 727] is referred to for canvassing the proposition that a change in policy can defeat a substantive legitimate expectation if it can be justified on *Wednesbury*

reasonableness. It was also held that the decision maker has the choice in the balancing of the pros and cons relevant to the change in policy and it is, therefore, clear that the choice of the policy is for the decision maker and not for the court. That apart, the Apex Court has also held that the legitimate substantive expectation merely permits the court to find out if the change in the policy which is the cause for defeating the legitimate expectation is irrational or perverse or one which no reasonable person could have made.

19. Our attention was also invited to the judgment in **'Bannari Amman Sugars Ltd. v. Commercial Tax Officer and others'** [(2005) 1 SCC 625] and contended that the Courts would not intervene in the policy decisions. In paragraph 13 of the said judgment, the Apex Court taking into account the *'Hindustan Development Corpn. case'* and *'Punjab Communications Ltd. case'* (*supra*), held that the reasonableness of a restriction is to be determined in an objective manner and from the standpoint of interests of the general public and not from the standpoint of the interests of persons upon whom the restrictions have been imposed or upon abstract consideration and further held that a restriction

cannot be said to be unreasonable merely because in a given case, it operates harshly. In determining whether there is any unfairness involved, the nature of the right alleged to have been infringed, the underlying purpose of the restriction imposed, the extent and urgency of the evil sought to be remedied thereby, the disproportion of the imposition, the prevailing condition at the relevant time etc. etc., are relevant factors.

20. Yet another decision of the Apex Court in '**R.R. Verma and others v. Union of India and others**' [(1980) 3 SCC 402] is pressed into service to contend that the Government is free to alter its policy. In paragraph 5 of the judgment, the Apex Court after taking into account its earlier decisions, held that the power to review must be conferred by statute either specifically or by necessary implication and to the extend the principle to pure administrative decisions would indeed lead to untoward and startling results and further that any Government must be free to alter its policy or its decision in administrative matters and if they are to carry on their daily administration they cannot be hidebound by the rules and restrictions of judicial procedure though of course they are

bound to obey all statutory requirements and also observe the principles of natural justice, where rights of parties may be affected.

21. The judgment of the Apex Court in '**K. Rajendran and others v. State of Tamil Nadu and others**' [(1982) 2 SCC 273] was referred to canvass the proposition that the Government is at liberty to abolish any posts and held in paragraph 34 as follows:

*"34. It is no doubt true that Article 38 and Article 43 of the Constitution insist that the State should endeavour to find sufficient work for the people so that they may put their capacity to work into economic use and earn a fairly good living. But these articles do not mean that everybody should be provided with a job in the civil service of the State and if a person is provided with one he should not be asked to leave it even for a just cause. If it were not so, there would be no justification for a small percentage of the population being in government service and in receipt of regular income and a large majority of them remaining outside with no guaranteed means of living. It would certainly be an ideal state of affairs if work could be found for all the able bodied men and women and everybody is guaranteed the right to participate in the production of national wealth and to enjoy the fruits thereof. But we are today far away from that goal. The question whether a person who ceases to be a government*

*servant according to law should be rehabilitated by giving an alternative employment is, as the law stands today, a matter of policy on which the court has no voice”.*

22. The judgment of the Apex Court in '**Ram Pravesh and others v. State of Bihar and others**' [(2006) 8 SCC 381] is also referred to by the learned Government Pleader, which is a decision rendered by the Apex Court by taking into account its earlier judgments concerning legitimate expectation and held in paragraph 22 that the Committee appointed by the State Government recommended that the services of the eligible and qualified employees should be taken over. But, thereafter, the State Government considered the recommendation and rejected the same, apparently due to the precarious condition of the Board which itself was in dire financial straits and was contemplating retrenchment of its own employees. At all events, it was held that any decision by the State Government either to recommend or direct the absorption of the Society's employees was not binding on the Board, as it was a matter where it could independently take a decision.

23. The judgment of the Apex Court in '**Excise Commissioner, U.P. Allahabad and others v. Ram Kumar and others**' [(1976) 3 SCC 540] was referred to and invited our attention to paragraph 23, wherein the Apex Court has taken note of one of its earlier decisions and quoted the findings thereon to the following effect:

*"The courts will only bind the Government by its promises to prevent manifest injustice or fraud and will not make the Government a slave of its policy for all times to come when the Government acts in its Governmental, public or sovereign capacity".*

24. Yet another contention canvassed by the learned Government Pleader is that a Division Bench of this Court in the judgment in O.P.No.21971 of 2002 and other connected writ petitions dated 31.08.2006 had issued directions to the State and the Beverages Corporation that no back door appointments shall be made and further that all appointments shall be made in accordance with the rules in force. It is the contention of the learned Government Pleader that in view of the said judgment, no appointment can be made in accordance with the terms of the order dated 20.02.2002. In order to canvass the proposition that the implementation of the

Government Order will lead to unforeseen financial implications in view of the volume of workers required to be employed, the judgment of the Apex Court in '**Secretary, State of Karnataka and others v. Umadevi (3) and others**' [(2006) 4 SCC 1] is pressed into service and invited our attention to paragraph 19, wherein, the Apex Court held that the viability of the department or the instrumentality of the project is also of equal concern for the State and further that the State works out the scheme taking into consideration the financial implications and the economic aspects. Therefore, ultimately it was held that if a direction is issued to all those who were temporarily or casually employed in public sector undertakings, the burden may become so heavy by such a direction that the undertaking itself may collapse under its own weight.

25. *Per contra*, learned counsel appearing for some of the party Respondents, Adv. Molly Jacob has invited our attention to the judgment of the Apex Court in '**Official Liquidator v. Dayanand and others**' [(2008) 10 SCC 1] to canvass the proposition that though the decision of the employer to create or abolish posts or cadres or prescribe source or mode of recruitment etc. is not immune from judicial

review and also the judgment of the Apex Court in '**Brij Mohan v. Union of India**' [2012 (2) KLT SN 71 (C.No.71) SC], wherein the Apex Court has laid down the parameters for interfering with the policy decision of the State Government and held that it can be interfered with under six circumstances, i.e. (I) If the policy fails to satisfy the test of reasonableness, it would be unconstitutional; (II) The change in policy must be made fairly and should not give impression that it was so done arbitrarily on any ulterior intention; (III) The policy can be faulted on grounds of malafide, unreasonableness, arbitrariness or unfairness etc. (IV) If the policy is found to be against any statute or the Constitution or runs counter to the philosophy behind these provisions. (V) It is *de hors* the provisions of the Act or Legislations and (VI) If the delegate has acted beyond its power of delegation.

26. Learned counsel appearing for the Kerala Abkari Workers Welfare Fund Board, Sri. Roy Chacko submits that the Welfare Fund Board was directed by the Government to identify eligible persons in accordance with the terms of the Government Order dated 07.08.2004 and the Chief Welfare Fund Inspector has prepared a list of eligible persons who were

entitled to secure the benefits of the rehabilitation scheme under the said notification. It is also submitted by the learned counsel that the Welfare Fund Board is having the list of all the displaced arrack workers enrolled with the Welfare Fund Board and the list of beneficiaries under the order dated 07.08.2004 is already furnished to the Government, copies of which are produced before us along with a statement dated 07.12.2015.

27. We have also come across the decisions in '**Council of Civil Service Unions and others v. Minister for the Civil Service**' [1985 AC 374] and the judgment of the Apex Court in '**J.P. Bansal v. State of Rajasthan**' [(2003) 5 ILD 130 (SC)], '**National Building Corporation v. S. Ranganathan**' [JT 1998 (6) SC 21], '**Findlay v. Secretary of State of Home Department**' [(1984) 3 All ER 801] and in '**R. v. Secretary of State for the Home Department ex parte Ruddock**' [(1987) 2 All ER 518], wherein the principles of legitimate expectation and the extent of interference of the Court dependent on the said principle was considered, and laid down that: (i) the decision of the administrative authority must affect the person by depriving him of some benefit or advantage which were either--

(a) he had in the past been permitted by the decision-maker to enjoy and which he can legitimately expect to be permitted to continue to do until there has been communicated to him some rational grounds for withdrawing it on which he has been given an opportunity to comment; or

(b) he has received assurances from the decision-maker that they will not be withdrawn without giving him first an opportunity of advancing reasons for contending that they should not be withdrawn. Overlooking the said principles, if a right provided was withdrawn, it was held that such withdrawal is something akin to forfeiture.

(ii) In the second among the decisions, it was held that the representation made by administrative authority if clear and unambiguous and this representation was made to an individual or generally to a class of persons, then the same will amount to providing legitimate expectation, (iii) that the Government and its departments, in administering the affairs of the country, are expected to honour their statement of policy and intention and treat the citizens with full personal consideration without an iota of abuse of discretion. (iv) that unfairness in the form of unreasonableness is akin to violation

of principles of natural justice, (v) the doctrine of legitimate expectation was evolved which has today become a source of substantive as well as procedural rights.

28. In the two English decisions referred above, the House of Lords and the Queens Bench Division considered the said principle and held that the claim based on the principle of legitimate expectation can be sustained and the decision resulting in the denial of such expectation can be questioned, provided the same is found to be unfair, unreasonable, arbitrary and violative of principles of natural justice. So also, it was held in second among the decisions that the doctrine of legitimate expectation in essence, imposed a duty to act fairly and further that the doctrine is not confined to a right to be heard, indeed in a case where *ex hypothe* there is no right to be heard, it may be thought more important to fair dealing that a promise or undertaking given by Minister as to how he will proceed should be kept. Ultimately, it was held that if such a promise is violated, the same confers *locus standi* to a citizen to seek judicial review and the doctrine is to be confined mostly to right of a fair hearing before a decision which results in negating a promise or withdrawing an undertaking is

taken.

29. Therefore, taking into account the principles laid down in the judgments cited supra, the question now to be considered is whether a right was crystallized in favour of the displaced arrack workers on the basis of the promise extended by the Government, as per its order dated 20.02.2002.

30. On a consideration of the principles of law laid down by the Apex Court with regard to legitimate expectation, no doubt, the said principle can be pressed into service only if it is founded on intelligible, purposive, pragmatic and sound foundation whereby a right is accrued on a person. According to us, on a perusal of the Government Order dated 20.02.2002, we have no doubt in our minds that the State Government with the laudable object of rehabilitating the displaced arrack workers have taken the conscious policy decision, and thereby only the order was issued. It is explicit and clear from the said order that all stakeholders were consulted by the Government and it was almost on a consensus of opinion, it was decided to provide 25% of the employment of daily workers in the Bevco, to the displaced arrack workers. In that view of the matter, it can be safely

concluded that the State Government have issued the said order with the intention of creating a legitimate expectation in the workers that they are entitled to acquire work as of right. If at all any change in such decision was to be made, it should have been made after providing suitable opportunity to the stakeholders to represent their case in an effective manner. Such a procedure is *sine qua non* for observance of the principles of natural justice. Viewed in that circumstances, if the Government Order dated 07.08.2004 is implemented by the Government with the intention of changing the policy of providing employment to 25% displaced abkari workers, same is an arbitrary action and therefore violative of Article 14 of the Constitution of India. So also, having legitimately expected to secure an employment by virtue of the Government Order dated 20.02.2002, right was matured to the displaced workers and thereby paving way for the culmination of a right to life provided under Article 21 of the Constitution of India. This is all the more a further reason to have provided with a hearing to the workers/or their representatives before tinkering with the said order.

31. Moreover, on a perusal of the Government Order dated 07.08.2004, we have seen that Government has referred to its order dated 20.02.2002 and at the bottom of the order it is stated that the order dated 20.02.2002 is modified to the extent, to provide employment to 25% of the daily work in the Bevco to the dependent sons of perished arrack workers. If the Government intended a supersession of its order dated 20.02.2002, instead of employing the phraseology 'modification', the phraseology 'supersession' should have been used. Having not done so, we are of the clear opinion that the Government did not intend to supersede its earlier order dated 20.02.2002. We also feel that both the Government Orders should be read together in harmony in order to implement the rehabilitation scheme launched by the State Government to provide employment to the displaced abkari workers. On a perusal of various documents produced along with certain writ petitions, we also feel that deviating from the scheme proclaimed under the said Government Orders, Government have provided employment to persons who are not included in the said scheme.

32. We are also reminded of the duties cast upon the State Government under the Directive Principles of State Policy under Part-IV of the Constitution. On a reading of Articles 38, 39, 40, 41, 42 and 43, wherein the framers of the Constitution intended the Government to see that such policies contemplated under the said provisions of the Constitution are implemented by the Government. Therefore, when schemes were launched by the Government under the two Government Orders referred *supra*, we are definitely of the opinion that the Government was bearing in mind these social objectives propounded by the framers of the Constitution. Having framed policies on the basis of such social objectives, definitely, the Government was paving way to the displaced abkari workers to legitimately expect that they are entitled to get employment under the scheme launched by the State.

33. Therefore, the State cannot now turn around and submit that it was free and at liberty to change the policy at its sweet will and pleasure. That apart, having gone through the two Government Orders and the conduct of the Government discussed above, we do not think that the action of the Government in diluting the order dated 20.02.2002 is legal.

Rather, it suffers from the vice of arbitrariness and the same is irrational and unreasonable. We are constrained to say so since at the time of issuance of the Government Order dated 20.02.2002, the bonafide intention was to provide employment to the displaced abkari workers and we have already stated that such an order was issued after discussing with all the affected persons/or their representatives and therefore the benefits provided under the said scheme by itself created a vested right in the displaced abkari workers, and in that circumstances, without any justifiable reasons, the Government is not at liberty to change their policy to the disadvantage of the said workers and that too in absolute violation of the principles of natural justice. Moreover, before arriving at such a decision, it can only be legally presumed that, the Government have examined the pros and cons, means and measures, and practicality, viability and execution of such a rehabilitation policy. These are all characteristics and hallmarks of a good governance and the normal presumption can only be, accordingly. It is true that the established legal principles enunciated by the Courts lead us to the conclusion that the application of the principle depends on

facts and circumstances of each case and no Court would be able to provide a structural formula. But, if the denial of legitimate expectation in a given case amounts to denial of rights guaranteed or is arbitrary, unfair or biased or gross abuse of power or violative of the principles of natural justice, Articles 14 and 21 of the Constitution come into play and then the Constitutional Courts should not hesitate to strike at it.

34. Apart from these aspects, we also find force in the contention of the learned counsel for the party Respondents that by the judgment of the learned Single Judge in O.P.No.26878 of 2007, definite findings with regard to the orders dated 20.02.2002 and 07.08.2004 were rendered by the Court in favour of the displaced abkari workers. The Government having not chosen to impugn the said judgment, is not at liberty to canvass any proposition against the findings rendered in the said judgment adverse to the State. It is a well settled proposition of law that it is not the *ratio decidendi* alone, but the whole judgment will have to be read together in order to ascertain the conclusive findings rendered by the Court. In that view also, we are of the considered opinion that the order passed by the State Government pursuant to order

dated 22.06.2009 was not in compliance with the directions contained in the said judgment and the State is also prohibited from re-agitating the issue since it is hit by *res judicata*, in pursuance to the judgment in W.P.(C) No.26878 of 2007 dated 03.04.2009.

35. We are also of the opinion that the direction contained in O.P.No.21971 of 2002 and connected cases dated 31.08.2006 of a Division Bench of this Court was only concerning the back door appointments made in the Bevco and in order to put an end to the same only the directions were issued therein. That will not in any manner prevent the appellants from implementing a scheme launched by it to discharge its social obligations and to protect the interests of the displaced abkari workers. Moreover, if the State is willing to implement the order dated 07.08.2004, overlooking the directives contained in the said judgment *supra*, nothing prevents the State from implementing the Government Order dated 20.02.2002, as directed by the learned Single Judge.

36. Taking into account the cumulative fact situations, evidence on record and the principles of law put forth by the rival counsel, we are of the considered opinion that the judicial

review undertaken by the learned Single Judge was legally correct by sustaining the challenge made in the writ petitions and holding that the State is bound to implement the Government Order dated 20.02.2002. We do not find any illegality or other legal infirmities in the judgment of the learned Single Judge, warranting our interference in these appeals.

37. However, we find that the learned Single Judge has fixed two months time limit to implement the impugned judgment, which has already expired. Therefore, in the fitness of things, we think it is only just and proper that a further time of two months is granted to the appellants to implement the judgment of the learned Single Judge. It is also quite disturbing to note that the subject matter has been pending for the past twenty years and we hope that the appellants will bear in mind the social objectives imposed upon it under the Constitution of India to secure employment to the extent possible to the citizens, and take drastic and emergent steps to implement the judgment of the learned Single Judge.

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Accordingly, these writ appeals are dismissed with the above modification.

Sd/-  
**K. SURENDRA MOHAN**  
**JUDGE**

Sd/-  
**SHAJI P. CHALY**  
**JUDGE**

//true copy//

P.S. to Judge

St/-  
10.12.2015